IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

MINH NGUYET LUONG, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE DAWN THRONE, DISTRICT COURT JUDGE, Respondents, and JAMES W. VAHEY, Real Party in Interest.	S.C. No.: D.C. Case No.: D-18-581444-D **PETITIONER'S APPENDIX**

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VOLUME II

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Electronically Filed
6/20/2019 4:26 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

James W. Vahey, Plaintiff vs. Minh Nguyet Luong, Defendant.	Case No.: D-18-581444-D Department H

NOTICE OF HEARING

Please be advised that the Defendant s Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing in the above-entitled matter is set for hearing as follows:

Date: July 23, 2019

Time: 10:00 AM

Location: RJC Courtroom 03G
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Cecilia Dixon
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Cecilia Dixon
Deputy Clerk of the Court

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VOLUME II

EXHS

THE DICKERSON KARACSONYI LAW GROUP
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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. H

APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING

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 Appendix of Exhibits in Support of

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. . .

Plaintiff's Opposition to Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing.

DATED this 12th day of July, 2019.

THE DICKERSON
KARACSONYI LAW GROUP

By Sabrina M. Dolson
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
SABRINA M. DOLSON, ESQ.
Nevada Bar No. 013105
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

Title/Description of Document	Exhibit Number
Text Messages Between Minh Nguyet Luong and Hannah Vahey Regarding Communication	1
Text Messages Between Minh Nguyet Luong and Hannah Vahey Regarding Bathing	2
Text Messages Between Jim Vahey and Matthew Vahey Regarding Moving to California	3
Text Messages Between Jim Vahey and Matthew Vahey, and Jim Vahey and Hannah Vahey, Regarding Moving to California	4

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 12th day of July, 2019, I caused the above and foregoing document entitled APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING, to be served as follows:

[X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) 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;

[ ] 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 EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;

[ ] by hand-delivery with signed Receipt of Copy.

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

NEIL M. MULLINS, ESQ.
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
service@kainenlawgroup.com
Attorney for Defendant

An employee of The Dickerson Karacsonyi Law Group

Exhibit "1"

12:00

Nguyêt >

[redacted]

3:00 PM

That's too bad because mommy allows you to speak to daddy whenever you want.

3:38 PM

Friday 9:20 PM

Our flight is going to take off at 9:25am. Can you drop the kids off at the airport by 8am on Wednesday?

9:20 PM

Saturday 11:40 AM

Please have the children call me

11:40 AM

Sure so you want me to bring them earlier

12:31 PM

That should have said, "Do you want me to bring them earlier?"

12:35 PM

Exhibit "2"

74%

M

Mommy >

he can be matthew's twin

I know

But he is not a dog

Still cute

Di Hieu just sent me the same picture

But I looked at yours first

U probably got it from Di Hieu too

What did you work on during tutoring today?

Diagrams

Don't forget to learn your challenge words today. Tell Matthew too.

Ok I told him

Delive

Honey, tell me the truth. You won't be in trouble. Have any of you guys taken a shower or bath since you have been with daddy?

PLTF001165

Exhibit "3"

9:54
HMS >
Today 9:35 PM
Hi This is Matthew and I want to be with mommy.
9:35 PM
Hi buddy
You are with mommy
9:36 PM
I mean I want to be in California.
9:36 PM
Tell me what you've been talking about
9:37 PM
We didn't talk about anything?
9:39 PM
What are your thoughts
9:39 PM
I didn't have any thoughts.
9:40 PM
Mommy and Daddy haven't even decided where anybody is going to be
9:40 PM
I just want to let you know what I want
9:41 PM
Tell me why
9:42 PM
iMessage

9:55
HMS >
I want to be in California,because it is fun there and there are things that I can do there , but not in Las Vegas.
9:45 PM
Why do you think you have to choose. You can have both
9:46 PM
Because I will live there and I don't want both
9:48 PM
Matthew, Mommy and Daddy love you very much, and we will make sure you can be with both of us.
It's late. You should sleep so you're not any more tired tomorrow.
I love you and can't wait to see you tomorrow.
9:52 PM
And this is what I want
9:53 PM
Good night Daddy
9:54 PM
Goodnight Matthew.
I love you
9:54 PM

Exhibit "4"

Sent - May 1, 2019 at 7:14 PM - (iMessage)

Hi there. Are you there? Call me when you get a chance. Love Daddy.

Received - HMS Vahey - May 1, 2019 at 8:32 PM - (iMessage)

This is Matthew I want to be in California
x10000000000000000000000000000000000000000000000

Sent - May 1, 2019 at 8:33 PM - (iMessage)

How was school today

Received - HMS Vahey - May 1, 2019 at 8:34 PM - (iMessage)

Can we not change the subject

Sent - May 1, 2019 at 8:34 PM - (iMessage)

Does your FaceTime work

Received - HMS Vahey - May 1, 2019 at 8:35 PM - (iMessage)

Can we not change the subject and I wanted to text you instead

Sent - May 1, 2019 at 8:35 PM - (iMessage)

Why

Received - HMS Vahey - May 1, 2019 at 8:36 PM - (iMessage)

For which one

Sent - May 1, 2019 at 8:36 PM - (iMessage)

Either Whatever you would like to text about

Received - HMS Vahey - May 1, 2019 at 8:40 PM - (iMessage)

1.you get distracted and I want you to answer my first question 2. I like texting better than FaceTime.

Sent - May 1, 2019 at 8:41 PM - (iMessage)

The first question you wrote was, "Can we not change the subject?"

Received - HMS Vahey - May 1, 2019 at 8:41 PM - (iMessage)

Yes

Sent - May 1, 2019 at 8:42 PM - (iMessage)

If you want

Received - HMS Vahey - May 1, 2019 at 8:42 PM - (iMessage)

And I do want to

Sent - May 1, 2019 at 8:43 PM - (iMessage)

Ok

Received - HMS Vahey - May 1, 2019 at 8:43 PM - (iMessage)

So that means I can be in California.

Sent - May 1, 2019 at 8:45 PM - (iMessage)

Not at this time Matthew.

Received - HMS Vahey - May 1, 2019 at 8:46 PM - (iMessage)

How about after the school year

Sent - May 1, 2019 at 8:48 PM - (iMessage)

Matthew, that's something that even Mommy and Daddy don't know. That's a decision for grown-ups and something Mommy and Daddy will decide.

Received - HMS Vahey - May 1, 2019 at 8:49 PM - (iMessage)

Well I am a grownup

Sent - May 1, 2019 at 8:52 PM - (iMessage)

It's too slow Matthew

Sent - May 1, 2019 at 8:53 PM - (iMessage)

Where are Hannah and Selena

Received - HMS Vahey - May 1, 2019 at 8:54 PM - (iMessage)

I can type fast and can we go back to the subject.Hannah and Selena are sleeping.

Received - HMS Vahey - May 1, 2019 at 8:56 PM - (iMessage)

I think you're a slow type,because what is taking you so long.

Sent - May 1, 2019 at 8:57 PM - (iMessage)

Tell me how you are grown up

Received - HMS Vahey - May 1, 2019 at 8:58 PM - (iMessage)

I can carry a playhouse and you cannot

Sent - May 1, 2019 at 8:58 PM - (iMessage)

How

Received - HMS Vahey - May 1, 2019 at 8:59 PM - (iMessage)

It doesn't matter and can we go back to the subject

Received - HMS Vahey - May 1, 2019 at 9:00 PM - (iMessage)

Going once. . .

Received - HMS Vahey - May 1, 2019 at 9:01 PM - (iMessage)

Going twice. . .

Received - HMS Vahey - May 1, 2019 at 9:01 PM - (iMessage)

and sold

Sent - May 1, 2019 at 9:02 PM - (iMessage)

I think I was the one who asked the question. I think we're waiting for you to answer

Received - HMS Vahey - May 1, 2019 at 9:02 PM - (iMessage)

What

Sent - May 1, 2019 at 9:04 PM - (iMessage)

The question was how are you a grown up. You should go to sleep Matthew. It's late and it's a school night. I'll talk to you on the morning if you want

Received - HMS Vahey - May 1, 2019 at 9:04 PM - (iMessage)

Can I be in California after school 🏫!!!!!!!!!!!!!!!

5/2/19

Received - HMS Vahey - May 2, 2019 at 6:49 PM - (iMessage)

Hi daddy

Received - HMS Vahey - May 2, 2019 at 6:49 PM - (iMessage)

This is Hannah

Received - HMS Vahey - May 2, 2019 at 6:51 PM - (iMessage)

I wanted to ask u at Matthews karate test but I forgot but anyway I wanted to ask u why couldn't we be in California longer during spring break.

Received - HMS Vahey - May 2, 2019 at 6:51 PM - (iMessage)

It was fun there

Received - HMS Vahey - May 2, 2019 at 6:52 PM - (iMessage)

I want to be there more often, is that ok with u

Received - HMS Vahey - May 2, 2019 at 6:53 PM - (iMessage)

I want to go to school there

Received - HMS Vahey - May 2, 2019 at 6:57 PM - (iMessage)

I want to live there

Received - HMS Vahey - May 2, 2019 at 7:22 PM - (iMessage)

ANSWER ME!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

Received - HMS Vahey - May 2, 2019 at 7:23 PM - (iMessage)

Received - HMS Vahey - May 2, 2019 at 7:25 PM - (iMessage)

...

Received - HMS Vahey - May 2, 2019 at 7:26 PM - (iMessage)

???

Received - HMS Vahey - May 2, 2019 at 7:27 PM - (iMessage)

ANSWER ME!!!!!!!!!!!!!!!!!!!!!!

Received - HMS Vahey - May 2, 2019 at 7:28 PM - (iMessage)

I know you're ignoring me

Received - HMS Vahey - May 2, 2019 at 7:28 PM - (iMessage)

I have all the time in the world

Received - HMS Vahey - May 2, 2019 at 7:29 PM - (iMessage)

I know my vocabulary words, I did my homework

Sent - May 2, 2019 at 7:31 PM - (iMessage)

No, honey. I would never ignore you. In fact, when you see the bubbles coming out of the text box on the left of the screen, that tells you the other person is writing to you.

Sent - May 2, 2019 at 7:31 PM - (iMessage)

Very good. See, all your practice is paying off. I'm proud of you

Received - HMS Vahey - May 2, 2019 at 7:31 PM - (iMessage)

Yes I saw yours then it went away

Received - HMS Vahey - May 2, 2019 at 7:32 PM - (iMessage)

I don't want to talk I want to text

Sent - May 2, 2019 at 7:33 PM - (iMessage)

Let's talk. I can't text because I need my hands to get dinner ready for myself

Received - HMS Vahey - May 2, 2019 at 7:34 PM - (iMessage)

No

Sent - May 2, 2019 at 7:35 PM - (iMessage)

I'm sure you would agree that my being able to eat is important for me, right.

Received - HMS Vahey - May 2, 2019 at 7:35 PM - (iMessage)

We are in America ,I have my right to say no

Received - HMS Vahey - May 2, 2019 at 7:37 PM - (iMessage)

Also, you said u needed your hands to make your dinner not eat it

Received - HMS Vahey - May 2, 2019 at 7:37 PM - (iMessage)

U have two hands not one

Received - HMS Vahey - May 2, 2019 at 7:37 PM - (iMessage)

I see you drive and text at the same time

Received - HMS Vahey - May 2, 2019 at 7:38 PM - (iMessage)

So I think you can eat and text at the same time

Received - HMS Vahey - May 2, 2019 at 7:39 PM - (iMessage)

I do that

Received - HMS Vahey - May 2, 2019 at 7:39 PM - (iMessage)

Why r u ignoring me again

Received - HMS Vahey - May 2, 2019 at 7:40 PM - (iMessage)

Text to me now or not for a while (as in tomorrow) I need to go study for my other stuff

Received - HMS Vahey - May 2, 2019 at 7:42 PM - (iMessage)

Hurry up

Sent - May 2, 2019 at 7:42 PM - (iMessage)

Hannah, honey, I don't ignore you're. I already told you, I need two hands to make dinner. I missed talking to you. Please call later

Received - HMS Vahey - May 2, 2019 at 7:43 PM - (iMessage)

Don't change the subject!!!!!!!!!!!

Received - HMS Vahey - May 2, 2019 at 7:44 PM - (iMessage)

Also I enjoy texting instead of talking

Received - HMS Vahey - May 2, 2019 at 7:47 PM - (iMessage)

?

Received - HMS Vahey - May 2, 2019 at 7:50 PM - (iMessage)

Received - HMS Vahey - May 2, 2019 at 7:51 PM - (iMessage)

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VOLUME II

OPP
THE DICKERSON KARACSONYI LAW GROUP
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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. H Date of Hearing: July 23, 2019 Time of Hearing: 10:00 a.m. Oral Argument Requested: Yes

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING

COMES NOW Plaintiff, JAMES W. VAHEY, by and through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP, and submits the following Opposition to Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing ("Opposition").

. . .

. . .

. . .

. . .

. . .

This Opposition is made and based upon the following Memorandum of Points and Authorities, all exhibits filed herewith, all papers and pleadings on file herein, as well as oral argument of counsel as may be permitted at the hearing on this matter.

DATED this _____ day of July, 2019.

THE DICKERSON KARACSONYI LAW GROUP

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
SABRINA M. DOLSON, ESQ.
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Las Vegas, Nevada 89134
Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Plaintiff, Jim W. Vahey ("Jim"), and Defendant, Minh Nguyet Luong ("Minh"), were married in Henderson, Nevada, on July 8, 2006. The parties have three (3) minor children: Hannah Vahey, born March 19, 2009 (10 years old), Matthew Vahey, born June 26, 2010 (9 years old), and Selena Vahey, born April 4, 2014 (5 years old).

On May 28, 2019, at the Case Management Conference before this Court, Jim addressed his concerns that Minh was influencing, manipulating, and coaching the children. Jim had received text messages from the children while they were in Minh's care suggesting they were directed to discuss with their father the issue of the children relocating to California. Jim had also noticed changes in the children's behavior, as well as comments from the children regarding Las Vegas that strongly echoed Minh's opinions. Jim's intent in addressing these issues was to ensure the children received the appropriate therapy and counseling regarding such influence, manipulation, and coaching.

In response to Jim's concerns, Minh filed her instant Motion requesting that Hannah and Matthew be permitted to testify at the evidentiary hearing for the purpose of her legal defense against such allegations. Minh should be aware of the trauma that forcing the children to testify for the benefit of one parent over the other would cause the children. Minh's request for such selfish reasons demonstrates her clear lack of regard for the children's well-being and mental health. Most parents would not want to subject their children to court proceedings and force them to testify as to their parents' actions solely to clear their own conscience. Not Minh, however. Minh would like the children not only to clear her of such allegations, but would like to force the children to choose

between their parents. Minh has requested that the scope of the children's testimony include "the children's desire to relocate to California; when they realized this sentiment; and whether Minh has coached or influenced the children's desire to move to California." Def.'s Mot., pg. 4, line 28, to pg. 5, line 3.

The children are too young to testify at the evidentiary hearing regarding the scope Minh has requested. Hannah is only ten (10) years old and Matthew just turned nine (9) years old a few weeks ago. First, the children are too young to understand what relocating to California entails in regards to this custody action. The children do not understand that such an important decision could have an effect on the amount of time that they are able to spend with their parents. The children also do not have any concept of what is in their best interest. Second, Jim does not believe the children are at a sufficient age to determine when they realized any certain sentiment, regardless of whether it be they want to live in California or Nevada. Lastly, the children are not able to understand whether they are being influenced, coached, and manipulated, and to testify regarding the same.

It is completely inappropriate to involve the children in the parties' divorce action when the Court can review the evidence presented and make a determination as to whether it appears Minh has manipulated the children. The parties are currently in the process of arranging for the children to attend therapy sessions with Michelle Gravely, who can address the issue of Minh's influence, manipulation, and coaching. Although Jim does not think it is necessary, the Court could hear the therapist's testimony as to whether it appears the children have been influenced, coached, and manipulated. This would at least protect the

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children from being forced to appear at the evidentiary hearing and to testify as to their parents' actions.

II. LEGAL ANALYSIS

A. This Court Should Deny Minh's Request for the Children to Testify at the Evidentiary Hearing

Nevada Rules of Civil Procedure 16.215(c)(1) requires a party to identify and disclose any potential child witness whom the party intends to call as a witness during the case at the time of the case management conference/early case evaluation or by filing a Notice of Child Witness. The Notice of Child Witness must be filed no later than sixty (60) days before the hearing in which the child may be called as a witness unless otherwise ordered by the Court. NEV. R. CIV. P. 16.215(c)(2).

Minh acknowledges in her Motion that the issue of her manipulation and coaching the children was initially discussed at the Case Management Conference on May 28, 2019. Pursuant to NRCP 16.215(c)(1), Minh was required to disclose any potential child witness at the time of the Case Management Conference (i.e., May 28, 2019), or by filing a Notice of Child Witness no later than sixty (60) days before the evidentiary hearing (i.e, June 7, 2019). Despite having several opportunities and plenty of time to disclose the fact she would like the children to testify and to file a Notice of Child Witness, Minh failed to timely do so.

A party must file a Motion to Permit Child Testimony by Alternative Methods, under the Uniform Child Witness Testimony by Alternative Methods Act (NRS 50.500 *et seq.*), at the same time as the Notice of Child Witness, or no later than sixty (60) days before the hearing in which the child witness may be called to testify. NEV. R. CIV. P. 16.215(c)(3). Pursuant to NRCP 16.215(c)(3), Minh was required to file a Motion to

. . .

Permit Child Testimony by Alternative Methods no later than June 7, 2019. Minh did not timely file the motion.

Regardless of the fact that Minh failed to comply with NRCP 16.215, it is readily apparent from Minh's Motion that her ultimate motive in requesting the children testify at the evidentiary hearing is to elicit testimony from the children as to their desire to relocate to California. Due to Minh's manipulation and coaching of the children since the parties' separation, the children are not competent to testify and their testimony would not be reliable. The parties are currently in the process of having their children attend therapy to address this issue.

"[A] child is competent if he or she has the capacity to receive just impressions and possesses the ability to relate them truthfully." *Felix v. State*, 849 P.2d 220, 235 (Nev. 1993) (citing *Lanoue v. State*, 99 Nev. 305, 307, 661 P.2d 874, 875 (1983)). Courts must evaluate a child's competency on a case-by-case basis; however, the following are relevant factors to consider in making such a determination: "(1) the child's ability to receive and communicate information; (2) the spontaneity of the child's statements; (3) indications of "coaching" and "rehearsing;" (4) the child's ability to remember; (5) the child's ability to distinguish between truth and falsehood; and (6) the likelihood the child will give inherently improbable or incoherent testimony." *Id.*

Hannah is only ten (10) years old and Matthew just turned nine (9) years old a few weeks ago. The children are too young to receive just impressions of whether they are being influenced, manipulated, and coached, and possess the ability to relate such impressions to the Court. One of the factors the Court should consider in determining whether the children are competent to testify is whether there are indications of coaching and rehearsing. Minh's manipulation and coaching of the

children is readily apparent not only from text messages Jim has received from the children, but also from text messages Minh has sent to the children.

In one such conversation, Hannah sends a text message to Minh stating, "Hi mommy this is Hannah daddy said I'm not allowed to call you until everyone is done eating." **Exhibit 1**. Minh replies: "That's too bad because mommy allows you to speak to daddy whenever you want." **Exhibit 1**. Minh's comment is intended to criticize Jim to Hannah, diminishing Jim's parenting decision to eat dinner as a family without interruptions, and to highlight to Hannah why Minh believes she is a better parent. Minh has also questioned Hannah regarding how often the children bathe at Jim's home, stating to Hannah: "Honey, tell me the truth. You won't be in trouble. Have any of you guys taken a shower or bath since you have been with daddy?" **Exhibit 2**. Minh's comments are completely inappropriate, and it is highly likely there are not isolated incidents of Minh criticizing Jim to the children.

In addition, Jim has received text messages from the children suggesting Minh has influenced, manipulated, and coached them. On April 28, 2019, while Matthew was with Minh, he sent the following text message to Jim:

Matthew: Hi This is Matthew and I want to be with mommy.
Jim: Hi buddy. You are with mommy.
Matthew: I mean I want to be in California.
Jim: Tell me what you've been talking about
Matthew: We didn't talk about anything?
Jim: What are your thoughts
Matthew: I didn't have any thoughts.
Jim: Mommy and Daddy haven't even decided where anybody is going to be
Matthew: I just want to let you know what I want
Jim: Tell me why
Matthew: I want to be in California,because it is fun there and there are things that I can do there , but not in Las Vegas.
Jim: Why do you think you have to choose. You can

have both
Matthew: Because I will live there and I don't want both
Jim: Matthew, Mommy and Daddy love you very much, and we will make sure you can be with both of us. It's late. You should sleep so you're not any more tired tomorrow.
I love you and can't wait to see you tomorrow.
Matthew: And this is what I want
Good night Daddy
Jim: Goodnight Matthew. I love you

Exhibit 3.

A few days later, on May 1, 2019, Matthew again sent Jim text messages indicating he was being coached by Minh:

Matthew: This is Matthew I want to be in California . . .
Jim: How was school today
Matthew: Can we not change the subject
Jim: Does your FaceTime work
Matthew: Can we not change the subject and I wanted to text you instead
Jim: Why
Matthew: For which one
Jim: Either Whatever you would like to text about
Matthew: 1.you get distracted and I want you to answer my first question 2. I like texting better than FaceTime.
Jim: The first question you wrote was, "Can we not change the subject?"
Matthew: Yes
Jim: If you want
Matthew: And I do want to
Jim: Ok
Matthew: So that means I can be in California.
Jim: Not at this time Matthew.
Matthew: How about after the school year
Jim: Matthew, that's something that even Mommy and Daddy don't know. That's a decision for grown-ups and something Mommy and Daddy will decide.

Exhibit 4. The following day, Jim exchanged the following text messages with Hannah:

Hannah: Hi daddy
This is Hannah
I wanted to ask u at Matthews karate test but I forgot but anyway I wanted to ask u why couldn't we be in California longer during spring break.
It was fun there
I want to be there more often, is that ok with u

	I want to go to school there I want to live there ANSWER ME!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! ??? ANSWER ME!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! I know you're ignoring me I have all the time in the world I know my vocabulary words, I did my homework
Jim:	No, honey. I would never ignore you. In fact, when you see the bubbles coming out of the text box on the left of the screen, that tells you the other person is writing to you. Very good. See, all your practice is paying off. I'm proud of you
Hannah:	Yes I saw yours then it went away I don't want to talk I want to text
Jim:	Let's talk. I can't text because I need my hands to get dinner ready for myself
Hannah:	No

Exhibit 4.

Jim has also heard Minh make statements to the children when they talk to her on FaceTime, which are intended to paint her and the children as victims. Minh will make statements to the children, such as: "I am so sorry this is happening to you;" and "There is nothing mommy can do." These statements are intended to make Jim appear as the "bad guy" and Minh as a "victim," who is trying to save the children from some bad outcome.

Jim has also noticed changes in the children's behavior, as well as comments from the children regarding Las Vegas that strongly echo Minh's opinions.[1] For instance, the children all of a sudden appear to be fixated on the fact that there are scorpions in Las Vegas. Prior to the parties' separation, the children had minimal fear of scorpions. If they ever found a scorpion, they would simply identify it, place a cup over it, and then inform Jim to handle the removal of the scorpion. Now, the children

[1] The parties' five-year-old daughter, Selena, has even stated to Jim: "Mommy told me to tell you to let me stay with her all the time."

demonstrate significant phobic type behavior. Hannah asks Jim to check her shoes and clothing all of the time. Matthew has asked Jim for a pair of shoes to wear around the house. The children have also recently made comments about the distance from Jim's home to their school and the heat in Las Vegas. These comments mirror complaints Minh has made and is making in her case about why the children should live in California. It is completely unacceptable for Minh to direct the children to essentially make her case for her to Jim.

The above text messages and recently changed behavior of the children demonstrate that the children are being influenced, manipulated, and coached while they are with Minh. Given the extent of Minh's manipulation, the children would not be competent to testify at the evidentiary hearing. The parties are currently working to have the children attend therapy to address this issue and other issues.

Another factor this Court can consider when determining whether a child is competent to testify is the child's ability to distinguish between truth and falsehood. Jim does not know what Minh is telling the children, although it is readily apparent she is directing them to communicate with Jim about moving to California, but he has no doubt that the children will believe whatever Minh tells them. Given the children trust their mother, Jim does not believe they would be able to determine whether her statements and suggestions are true, false, or intended to influence and manipulate them.

Based on the foregoing, this Court should deny Minh's request for the children to testify at the evidentiary hearing as the children are too young. If Minh's desire is to clear herself of allegations of manipulating and coaching the children, she can do so through her own testimony and credibility. If this Court is so inclined, Jim would prefer the children's

therapist is called as a witness to testify as to whether it appears Minh is influencing, manipulating, and coaching the children. Jim does not believe this is necessary, however, and believes the Court is fully capable of analyzing the evidence presented.

B. This Court Should Deny Minh's Request to Exclude Evidence Unfavorable to Her

Nevada Rules of Civil Procedure, Rule 5.510 provides:

> (a) Except as otherwise provided herein or by court order, a motion in limine to exclude or admit evidence must ordinarily be in writing and must be heard not less than 5 calendar days prior to trial.
>
> (b) Where the facts that would support a motion in limine arise or become known after it is practicable to file a motion in the ordinary course as set forth above, the filing party may seek an order shortening time to hear the motion as provided by these rules, or bring an oral motion in limine at a hearing. The court may refuse to sign any such order shortening time or to consider any such oral motion.
>
> (c) A written motion in limine must be supported by affidavit and, if not filed in the ordinary course, must detail how and when the facts arose or became known. The motion shall also set forth that after a conference or a good-faith effort to confer, counsel were unable to resolve the matter satisfactorily, detailing what attempts to resolve the dispute were made, what was resolved and what was not resolved, and why. A conference requires either a personal or telephone conference between or among the parties. If a personal or telephone conference was not possible, the motion shall set forth the reasons.

"Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." All relevant evidence is admissible. NRS 48.025 (listing several exceptions). In determining whether it is in the children's best interest to relocate to California or remain in Nevada, this Court will need to consider the factors set forth in NRS 125C.0035(4). Evidence of Minh's manipulation and coaching of the children is relevant to the following NRS 125C.0035(4) factors: (1) which parent is more likely to allow the children

to have frequent associations and a continuing relationship with the noncustodial parent; (2) the level of conflict between the parents; (3) the ability of the parents to cooperate to meet the needs of the children; (4) the mental and physical health of the parents; (5) the physical, developmental, and emotional needs of the children; (6) the nature of the relationship of the children with each parent.

The only reason Minh would like such evidence regarding her manipulation and coaching of the children excluded is because it is unfavorable to her. This Court is perfectly capable of hearing the testimony, analyzing the evidence, and determining whether Minh has manipulated and coached the children and making a child custody determination that is in the children's best interest based on same.

III. CONCLUSION

Based on the foregoing, the Court should deny Minh's Motion in its entirety.

DATED this 12th day of July, 2019.

THE DICKERSON KARACSONYI LAW GROUP

Sabrina M. Dolson

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SABRINA M. DOLSON, ESQ.
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1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

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 OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING ("Opposition"). I have read the Opposition 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.

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

Executed on 7-12-19

JAMES W. VAHEY

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 12th day of July, 2019, I caused the above and foregoing document entitled PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING, to be served as follows:

[X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) 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;

[ ] 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 EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;

[ ] by hand-delivery with signed Receipt of Copy.

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

NEIL M. MULLINS, ESQ.
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3303 Novat Street, Suite 200
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service@kainenlawgroup.com
Attorney for Defendant

An employee of The Dickerson Karacsonyi Law Group

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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. H

ERRATA TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING

TO: MINH NGUYET LUONG, Defendant;

TO: NEIL M. MULLINS, ESQ., of KAINEN LAW GROUP, Attorney for Defendant:

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. . .

COMES NOW, JAMES W. VAHEY ("JAMES"), by and through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW GROUP, and submits this Errata to Plaintiff's Opposition to Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing that was filed July 12, 2019. Plaintiff's Opposition to Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing was inadvertently filed without an attorney's signature on page 2. Attached hereto as Exhibit 1, please find page 2 with Sabrina M. Dolson, Esq.'s signature.

Dated this 15th day of July, 2019.

THE DICKERSON KARACSONYI
LAW GROUP

Sabrina M. Dolson

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
SABRINA M. DOLSON, ESQ.
Nevada Bar No. 013105
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 15th day of July, 2019, I caused the following documents entitled, ERRATA TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING, to be served as follows:

[X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) 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;

[ ] 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 EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;

[ ] by hand-delivery with signed Receipt of Copy.

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

NEIL M. MULLINS, ESQ.
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
service@kainenlawgroup.com
Attorney for Defendant

An employee of The Dickerson Karacsonyi Law Group

Exhibit "1"

This Opposition is made and based upon the following Memorandum of Points and Authorities, all exhibits filed herewith, all papers and pleadings on file herein, as well as oral argument of counsel as may be permitted at the hearing on this matter.

DATED this 15th day of July, 2019.

THE DICKERSON KARACSONYI LAW GROUP

Sabrina M. Dolson

ROBERT P. DICKERSON, ESQ.
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VOLUME II

ROPP
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EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION

COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff

v.

MINH NGUYET LUONG,

Defendant.

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

Date of Hearing: July 23, 2019
Time of Hearing: 10:00 a.m.

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DEFENDANT'S REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR CHILDREN TO TESTIFY AT EVIDENTIARY HEARING

COMES NOW, Defendant, MINH NGUYET LUONG, by and through her attorney, NEIL M. MULLINS, ESQ., of the KAINEN LAW GROUP, PLLC, and respectfully submits her reply in support of *Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing*; and requests that this Honorable Court enter the following Orders:

1. An order denying any relief sought in Plaintiff's *Opposition to Defendant's Motion for Order Permitting Minot Children to Testify at Evidentiary Hearing*;

. . .

2. For an order permitting the parties' two (2) eldest children, HANNAH VAHEY, born March 19, 2009 (age 10), MATTHEW VAHEY, born June 26, 2010 (age 8) to testify by alternative means. The Court would interview the two child witnesses outside of the presence of the parties, with parties' counsel simultaneously viewing the interview via electronic method per N.R.C.P. 16.215(d)(A)(ii);

3. Alternatively, for an order *in limine* to prevent Plaintiff from introducing evidence (text messages or otherwise) regarding allegations of Defendant improperly influencing the children to express their desire to relocate to California; and

4. For any other and further relief that this Court deems just and proper in this matter.

This *Reply* is made and based upon the pleadings and papers on file herein, the Points and Authorities attached hereto, the Declaration of Defendant, MINH NGUYET LUONG, being submitted herewith, as well as any such argument as may be made by Counsel at the time of the hearing on this matter.

DATED this 18th day of July, 2019.

KAINEN LAW GROUP, PLLC

By: _____

NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
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Attorney for Defendant

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POINTS AND AUTHORITIES

Defendant, MINH NGUYET LUONG (hereinafter referred to as "Minh" or "Mother") and Plaintiff, JAMES VAHEY (hereinafter referred to as "Jim" or "Father") were married in Henderson, Nevada on July 8, 2006. The parties have three (3) minor children born the issue of their marriage, to-wit: HANNAH VAHEY, born March 19, 2009 (age 10); MATTHEW VAHEY, born June 26, 2010 (age 9); and SELENA VAHEY, born April 4, 2014 (age 5).

Unfortunately, Jim continues to distort reality by providing a slew of inaccurate representations within his *Opposition* to Minh's *Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing*, designed to manipulate the record.

Jim alleges that he "addressed his concerns that Minh was influencing, manipulating, and coaching the children" before this Court during the Case Management Conference that was held on May 28, 2019. Jim's Opp., pg. 1, lines 8-10. However, a review of the hearing video indicates no such representations made before this Court regarding the alleged manipulation/coaching by Minh. The issue regarding the alleged manipulation/coaching was first raised by Mr. Dickerson and disclosed to Mr. Mullins the same day of the CMC, but was never addressed before this Court.

Minh felt the need to seek redress when she was first placed on notice of a factual dispute regarding manipulation and/or coaching. Minh was forced to file her instant *Motion* due to the time constraints of first becoming aware of the factual dispute on May 28, 2019, and having to make the critical decision of determining whether or not their two (2) eldest children should provide testimony related to the issue of manipulating and coaching. This is not an easy decision for a parent to make, and only having ten (10) days to make such a unfavorable decision was insufficient to timely file the child witness notice to satisfy the 60-day requirement under N.R.C.P. 16.215(c)(2).

Having a child testify in any court proceeding is a difficult decision to make, especially in a divorce case when the children are still trying to cope with their parents' separation and living in two different households. Consequently and as the record

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supports, the parties stipulated to the appointment of Dr. Michelle Gravley as the children's therapist. Dr. Gravley's appointment was to provide the children therapy to cope with the parties' divorce, after the parents observed two (2) of the children acting up during some of the custody exchanges. During one of the exchanges, MATTHEW locked himself in a room and refused to go with his father. Jim's knee-jerk reaction was that "Minh is manipulating him (referring to MATTHEW)." This theory was mimicked by Jim's brother at his deposition.

Dr. Gravley was ***not*** appointed for the purposes of addressing the alleged manipulation and/or coaching that Jim asserts within his *Opposition*. Jim's Opp., pg. 2, lines 22-24. Dr. Gravley was also ***never*** intended to be use a tool for litigation purposes. See CMC hearing video at 11:31:28 – 11:32:35. In fact Dr. Gravley has not yet seen the children; therefore, the children have not yet commenced therapy with Dr. Gravley due to Dr. Gravley's busy schedule. The initial consultation with Dr. Gravley is set for August 1, 2019, which was Dr. Gravley's first availability. Therefore, even if Dr. Gravley was to be used for litigation purposes (which she is not), Dr. Gravley would not even possess the knowledge to render an opinion by at the time of the evidentiary hearing that is set for August 8th and 9th. For Jim to misrepresent the impetus of Dr. Gravley's appointment is disingenuous, contrived, and manipulative.

In order to protect herself from the spurious allegations, Minh ultimately made the decision to file the instant motion to seek child testimony, or alternatively, to exclude the speculative argument by Jim that the children's behavior or comments are Minh's doing. However, to place the children in a more comfortable and casual environment, Minh seeks an order permitting the two (2) eldest children to provide their testimony by alternative means pursuant to N.R.C.P. 16.215(d)(ii). Minh is absolutely aware of the emotional strain that is placed on the children when asked to testify. This is why Minh filed her instant *Motion* seeking testimony through alternative means both to reduce the stress on the children and to obtain the truth that Minh has not been manipulating and/or coaching the children.

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The children are simply confused. For years the children were allowed to believe that they were moving to Irvine, but now their parents are divorcing. They are constantly pressing Minh about why they are still attending school in Henderson, and why they are having to return to Nevada from Irvine. Apparently, the children have also asked their father the same questions.

As consistently asserted throughout this litigation, this family had previously planned to move to Irvine; during this period, the parties constantly discussed this sentiment with the children. The parties even took their children with them to look at houses down in Southern California, and the children even pointed out their anticipated school to Jim during one of their trips to Orange County.

The difference between this relocation matter as opposed to the standard relocation case is that the relocation to California was never hidden from the children until the commencement of this divorce action. However, Minh certainly ceased any such discussions with the children related to the relocation during pendency. But we are not talking about infant children, we are talking about children that are nine (9) and (10) years old. The children are smart and certainly competent to figure out what is going when they were consistently told by both parents that they were going to move to California prior to the commencement of the parties' divorce. Therefore, the children stating their opinions to their father regarding where they desire to live, does not consequently infer that Minh has been discussing the relocation, or has been manipulating or coaching the children.

Also, the text messages Jim attached as his *Opposition* as offers of proof can easily be construed as Jim manipulating the children as his responses elicit the children to continue discussing their opinions with Jim.

Finally, if the children are mature enough to confront their parents about their feelings, and even challenge their father "not to change the subject" in text messages, then how is an interview with the Court going to hurt them? Mr. Mullins agrees that the children are too young to evaluate their own best interests. But the comments of these

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children, expressed in the text messages produced by Jim and his counsel, are bringing them directly into this fray.

We should either exclude the manipulation argument, or allow all evidence concerning it. If we do neither, only Minh is disadvantaged. Consequently, this is the actual reason why Minh's *Motion* is being opposed by Jim.

Notice of Child Witnesses

Minh acknowledges missing the 60-day notice requirement, but adequate notice has been provided. The Court clearly has the discretion to allow it.

> the party must file a Motion to Permit Child Testimony by Alternative Methods, under the Uniform Child Witness Testimony by Alternative Methods Act contained in NRS 50.500 et seq., at the same time as the notice of child witness, or no later than 60 days before the hearing in which the child witness may be called to testify or 14 days after the timely filing of a notice of child witness, whichever period last expires, **unless otherwise ordered by the court**.

N.R.C.P. 16.2(c)(3).

N.R.C.P. 16.2(c)(3) provides this Court with discretion regarding whether to permit child testimony via alternative methods, as the deadlines enumerated above can be modified or circumvented by order of this Court. Minh's *Motion* seeks an order permitting the children to testify via alternative means, notwithstanding the procedural posture enumerated in N.R.C.P. 16.2(c)(3), as that was the purpose of filing the instant *Motion*.

Furthermore, under the Uniform Child Witness Testimony by Alternative Means Act (hereinafter "the Act"), "a judge may sua sponte order a hearing in determining whether a child witness should be allowed to testify by an alternative method. NRS 50.570(1)(a)" *Gordon v. Geiger*, 402 P.3d 671, 676, 133 Nev. Adv. Rep. 69 (Nev. 2017). Therefore, this Court has wide discretion in determining whether the children should be permitted to testify via alternative means, and should hold a hearing to determine whether the parties' two eldest children should be permitted to testify via alterative means. The Court should decide this important issue on the merits.

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. . .

Testimony via Alternative Means

Hannah and Matthew are absolutely competent to testify about whether they were coached or manipulated.

"[T]he family court judge may allow a child witness to testify by alternative means upon a finding by a preponderance of the evidence that such allowance 'is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact.'" *Gordon*, 402 P.3d at 676 (quoting NRS 50.570(1)(a)). In making this finding, the Court is to consider the following statutory factors:

> (a) The nature of the proceeding; (b) The age and maturity of the child; (c) The relationship of the child to the parties in the proceeding; (d) The nature and degree of emotional trauma that the child may suffer in testifying; and (e) Any other relevant factor.

Gordon, 402 P.3d at 676 (citing NRS 50.580(2)(a)-(e)).

This is a custody proceeding wherein the most contested factor is the determination of physical custody, and whether it is in the children's best interests to relocate to Orange County with Minh, or remain in Clark County with their father. The children that are anticipated to testify are ages ten (10) and (9) nine. Hannah, age 10, if very mature for her age; Matthew, age 9, has the maturity of an average nine-year-old. If the scope of the testimony is narrowed only to the issue of coaching or manipulating, very little emotional trauma will be imposed upon the children as they will not be providing testimony regarding their desired custody arrangement, nor have to make a determination as to which parent they would rather primarily reside with (which is inappropriate considering the children's ages).

Upon making the appropriate finding that the children's testimony serves their interests, the Court must next determine whether the children should testify via alternative means by considering the following factors:

> 1. Alternative methods reasonably available; 2. Available means for protecting the interests of or reducing emotional trauma to the child without resorting to an alternative method;

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> 3. The nature of the case; 4. The relative rights of the parties; 5. The importance of the proposed testimony of the child; 6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and 7. Any other relevant factor.

Gordon, 402 P.3d at 676 (citing NRS 50.590(1)-(7)).

This Court knows best whether alternative methods are reasonably available; therefore, this factor will not be addressed. There may have been available means for protecting the interests of or reducing emotional trauma to the children without resorting to an alternative method if this case was not proceeding to trial on August 8th and 9th. Considering that this matter needs to be tried before the commencement of the 2019-2020 school year, the issue is pressing, and an outsourced interview or other method is simply impracticable.

The importance of the testimony depends upon whether this Court is inclined to admit evidence offered by Jim related to any alleged manipulation/coaching of the children as the evidence is one-sided, and Minh needs to properly defend herself from the bogus allegations. Therefore, the children's testimony is critical if the manipulation/coaching issue is of consequence at the evidentiary hearing in this matter.

Testimony via alternative means, per N.R.C.P. 16.215(d)(ii), should be the only means employed to elicit testimony from the children as the emotional trauma would exponentially increase if the children were to be on the witness stand at the evidentiary hearing. This latter should never occur in this matter.

Consequently, the above certainly supports the children testifying via alternative means as delineated under N.R.C.P. 16.215(d)(ii).

Competency of Child Witnesses

Regarding the competency of a child witness, "a child is competent if he or she has the capacity to receive just impressions and possesses the ability to relate them truthfully." *Felix v. State*, 109 Nev. 151, 173, 849 P.2d 220, 235 (Nev. 1993) (citing *Lanoue v. State*, 99 Nev. 305, 307, 661 P.2d 874, 875 (Nev. 1983)). While competency is evaluated by the Court on a case-by-case, or rather witness-by-witness basis, the Court

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may use the following factors in determining competency of a child witness:

> (1) the child's ability to receive and communicate information; (2) the spontaneity of the child's statements; (3) indications of "coaching" and "rehearsing"; (4) the child's ability to remember; (5) the child's ability to distinguish between truth and falsehood; and (6) the likelihood that the child will give inherently improbable or incoherent testimony.

Felix, 109 Nev. at 173, 849 P.2d at 235.

It is a rather low threshold to meet in deeming a child witness competent to testify. The Court, within a few minutes of speaking with the two (2) eldest children in this matter, will easily find the foregoing factors to be met by both children. Both children can easily receive, disseminate, and communicate relevant information upon request. Furthermore, the Court will easily be able to determine the children's credibility and whether they have been coached or manipulated by Minh, as Jim tirelessly alleges. Furthermore, at ages ten (10) and nine (9), these two (2) children absolutely know truth from falsehood. They have two (2) parents that are highly educated that have both taught them how to distinguish the truth from lies. If the children are cautioned by this Court to only tell the truth, it is highly probable that they will provide coherent, accurate, and relevant testimony regarding the allegations of coaching and manipulation.

In the Alternative, Exclusion of Such Evidence

If the Court denies Minh's request permitting the eldest children from proffering testimony via alternative means, Minh moves to exclude any testimony and physical evidence related to both manipulating the children's desire to relocate to California, and speaking with the children about this case during pendency. Minh cannot properly defend herself from these claims if her request to allow the children to be interviewed by this Court is denied. Denying HANNAH and MATTHEW's testimony, but permitting Jim's testimony or evidence related to these claims would severely prejudice Minh's right to a fair trial due to an inability to rebut any such evidence.

. . .

. . .

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CONCLUSION

Based on the foregoing, Minh respectfully requests:

1. An order denying any relief sought in Plaintiff's *Opposition to Defendant's Motion for Order Permitting Minot Children to Testify at Evidentiary Hearing*;

2. For an order permitting the parties' two (2) eldest children, HANNAH VAHEY, born March 19, 2009 (age 10), MATTHEW VAHEY, born June 26, 2010 (age 8) to testify by alternative means. The Court would interview the two child witnesses outside of the presence of the parties, with parties' counsel simultaneously viewing the interview via electronic method per N.R.C.P. 16.215(d)(A)(ii);

3. Alternatively, for an order *in limine* to prevent Plaintiff from introducing evidence (text messages or otherwise) regarding allegations of Defendant improperly influencing the children to express their desire to relocate to California; and

4. For any other and further relief that this Court deems just and proper in this matter.

DATED this 18th day of July, 2019.

KAINEN LAW GROUP, PLLC

By: _____

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Nevada Bar No. 3544
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129-8714
Attorney for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of July, 2019, I caused to be served the ***Defendant's Reply in Support of Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing*** 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 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):

THE DICKERSON KARACSONYI LAW GROUP:
1. info@thedklawgroup.com
2. bob@thedklawgroup.com
3. sabrina@thedklawgroup.com

Attorneys for Plaintiff

ROBERT W. CLAPP, Law Clerk at the
KAINEN LAW GROUP, PLLC

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VOLUME II

NORH

DISTRICT COURT

CLARK COUNTY, NEVADA

****

JAMES W. VAHEY, Plaintiff, vs. MINH NGUYET LUONG, Defendant.	CASE NO.: D-18-581444-D DEPARTMENT H RJC-Courtroom 3G

NOTICE OF RESCHEDULING OF HEARING

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please be advised that the date and time of a hearing set before the Honorable T. Arthur Ritchie, Jr., has been changed. The Non-Jury Trial – Day 2, presently scheduled for the 9th day of August, 2019, at the hour of 9:00 a.m. has been rescheduled to the **5th** day of **September, 2019**, at the hour of **9:00 a.m.** at the Regional Justice Center, 200 Lewis Avenue, Courtroom 3G.

Honorable T. Arthur Ritchie, Jr.

By: _____
Katrina Rausch
Judicial Executive Assistant
Department H

T. ARTHUR RITCHIE, JR.
DISTRICT JUDGE
FAMILY DIVISION, DEPT. H
LAS VEGAS, NV 89155

CERTIFICATE OF MAILING

I hereby certify that the foregoing Notice of Rescheduling Hearing was:

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

Robert P. Dickerson, Esq. for
PLAINTIFF

Neil M. Mullins, Esq. for
DEFENDANT

Katrina Rausch
Judicial Executive Assistant
Department H

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NTSO
NEIL M. MULLINS, ESQ.
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Attorney for Defendant

EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION

COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY, Plaintiff, vs. MINH NGUYET LUONG, Defendant.	CASE NO. D-18-581444-D DEPT. H Date of Hearing: N/A Time of Hearing: N/A

NOTICE OF ENTRY OF STIPULATION AND ORDER APPOINTING DR. MICHELLE GRAVLEY AS CHILDREN'S THERAPIST

PLEASE TAKE NOTICE that on the 30th day of July 2019, the Honorable T. Arthur Ritchie, Jr. entered a *Stipulation and Order Appointing Dr. Michelle Gravley as Children's Therapist*, a true and correct copy of which is attached hereto.

DATED this 30th day of July 2019.

KAINEN LAW GROUP, PLLC

By: /s/ Neil M. Mullins
NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
3303 Novat Street, Ste. 200
Las Vegas, Nevada 89129-8714
Attorney for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of July 2019, I caused to be served the ***Notice of Entry of Stipulation and Order Appointing Dr. Michelle Gravley as Children's Therapist*** 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 a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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

_X_ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and 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):

THE DICKERSON KARACSONYI LAW GROUP:
1. bob@thedklawgroup.com
2. sabrina@thedklawgroup.com
3. aisja@thedklawgroup.com
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5. info@thedklawgroup.com

Attorneys for Plaintiff

/s/ Robert Clapp
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SAO
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Attorney for Defendant

EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION

COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

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

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

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STIPULATION AND ORDER APPOINTING DR. MICHELLE GRAVLEY AS CHILDREN'S THERAPIST

COMES NOW, Plaintiff, JAMES W. VAHEY (hereinafter "Jim"), by and through his attorneys, ROBERT P. DICKERSON, ESQ. and SABRINA M. DOLSON, ESQ., of the DICKERSON KARACSONYI LAW GROUP, and Defendant, MINH NGUYET LUONG (hereinafter "Minh"), by and through her attorney NEIL M. MULLINS, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby submit their joint stipulation to appoint Dr. Michelle Gravley, Psy.D., as the children's confidential therapist.

NOW THEREFORE,

IT IS HEREBY STIPULATED, AGREED, AND THEREFORE ORDERED that the parties mutually consent to the appointment of Dr. Michelle Gravley, Psy.D., for purposes of providing therapeutic counseling to the parties' three (3) minor children, to-

JUL 2 6 2019

wit: HANNAH VAHEY, born March 19, 2009 (age 10); MATTHEW VAHEY, born June 26, 2010 (age 9); and SELENA VAHEY, born April 4, 2014 (age 5).

IT IS FURTHER STIPULATED, AGREED, AND THEREFORE ORDERED that Dr. Michelle Gravley, Psy.D., is to be used as a resource for the parties' minor children in assisting them cope with their parents' divorce. Dr. Gravley is ***not*** being retained for purposes of this litigation; Dr. Gravley shall not provide any expert reports, analysis, opinions, nor provide expert testimony in this case.

Respectfully submitted by:

Dated this 25th day of July, 2019.

KAINEN LAW GROUP, PLLC

By /s/ 8414 for
NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorney for Minh

Approved as to form and content:

Dated this 23rd day of July, 2019.

THE DICKERSON KARACSONYI LAW GROUP

By Sabrina M. Dolson
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 945
SABRINA M. DOLSON, ESQ.
Nevada Bar No. 13105
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorney for Jim

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ORDER

IT IS HEREBY ORDERED that the terms and conditions of the above and foregoing *Stipulation and Order Appointing Dr. Michelle Gravley as Children's Therapist* are hereby adopted and ratified by the Court as though the foregoing stipulations are fully set forth herein.

EXECUTED this 26 day of July, 2019.

DISTRICT COURT JUDGE

T ART RITCHIE, JR.

Respectfully submitted by:

KAINEN LAW GROUP, PLLC

By 8414 for
NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorney for Minh

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VOLUME II

LIST
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Attorney for Defendant

EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION

COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

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

Date of Trial: August 8th and September 5th 2019
Time of Trial: 9:00 a.m.

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DEFENDANT'S WITNESS LIST

COMES NOW, Defendant, MINH NGUYET LUONG, by and through her attorney, NEIL M. MULLINS, ESQ., of the KAINEN LAW GROUP, PLLC, and provides her witnesses, that are anticipated to testify at the non-jury trial set for August 8th and September 5th , 2019 at 9:00 a.m. in the above-entitled action.

LIST OF WITNESSES

1. Minh Nguyet Luong, Defendant
c/o Neil M. Mullins, Esq.
Kainen Law Group, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Tel: (702) 823-4900

Minh is the Defendant in this action and is expected to testify as to the facts and circumstances surrounding the parties' marriage and divorce.

2. James W. Vahey, Plaintiff
c/o Robert P. Dickerson, Esq.
Sabrina M. Dolson, Esq.
The Dickerson Karacsonyi Law Group
1745 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 388-8600

James is the Plaintiff in this action and is expected to testify as to the facts and circumstances surrounding the parties' marriage and divorce.

3. Hieu Minh Luong
13632 Prospect Ave
Santa Ana, Ca 92705
Tel: (714) 724-2535

Hieu is the sister of Minh. She is expected to testify as to the parties' individual interaction with the children.

4. Shawndee Alvarado
2700 McCoig Ave
Las Vegas, NV 89120
shawndee702@yahoo.com
Tel: (702) -583-0373

Shawndee is a former nanny of the parties. She was first hired as a driver and then took over the babysitting job. She worked from February 2017 to February 2018. She will testify and provide an accurate picture of Jim's true work load and amount of time he interacted with the kids. She can testify as to how much trouble it is to drive the children to and from school and to and from all of their after school activities.

5. Truc Di Nguyen
1212 Red Sage
Irvine, CA 92618
trucdinguyen@yahoo.com
Tel: (714) 310-9220

Truc is a friend of Minh's who has known her for 40 years. She is the ex-wife of the parties' realtor. She went to view all the houses with the parties. She can testify to Minh's character. She has first hand knowledge of how involved Jim was searching for houses and his commitment to moving to Irvine. She can testify as to how attached the children are with Minh. She has two children of her own. Truc and her children are so

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close the parties and their children, that the all the children thought they were cousins.

6. Chau (Charlene) Luong
13632 Prospect Ave
Santa Ana, Ca 92705
minhhluong@gmail.com
Tel: (714) 724-2510

Chau is the younger sister of Minh. She is expected to testify as to the parties' individual interaction with the children. She has two children and the two families are constantly together.

7. Jeansse Villanueva
1124 Neva Ranch Ave
Las Vegas, NV 89081
Tel: (702) 335-5707

Ms. Villanueva is Minh's office manager. She is anticipated to testify as to how patients' are scheduled so that Minh would start her days after she has dropped off her kids at school. Ms. Villanueva will also testify about the significant bond Minh's has with her children, as well as how attached the children are to Minh.

8. Defendant reserves the right to call any and all witnesses used and/or identified by the Plaintiff.

9. Defendant reserves the right to identify rebuttal witnesses.

DATED this 31st day of July, 2019.

KAINEN LAW GROUP, PLLC

By: _____

NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
3303 Novat Street, Ste. 200
Las Vegas, Nevada 89129-8714
Attorney for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of July, 2019, I caused to be served the ***Defendant's Witness List*** 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 a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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

_X__ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and 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
bob@thedklawgroup.com
sabrina@thedklawgroup.com

An Employee at the
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PMEM
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Attorney for Defendant

EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION

COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

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

Date of Trial: Aug. 8th & Sept. 5th 2019.
Time of Trial: 9:00 a.m.

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DEFENDANT'S PRE-TRIAL MEMORANDUM

COMES NOW, Defendant, MINH NGUYET LUONG, by and through her attorney, NEIL M. MULLINS, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby submits her *Pre-trial Memorandum* in accordance with the *Order Setting Civil Non-jury Trial*, filed herein on the 31st day of May 2019.

DATED this 2nd day of August, 2019.

KAINEN LAW GROUP, PLLC

By: _____
NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
3303 Novat Street, Ste. 200
Las Vegas, Nevada 89129-8714
Attorney for Defendant

STATEMENT OF ESSENTIAL FACTS

This is a divorce case wherein the parties executed a valid and enforceable *Premarital Agreement* ("PMA") that nearly disposes all financial issues between the parties. The unresolved issue pertains to the determination of physical custody and whether it is in the three minor children's best interests to vest Minh with primary physical custody, for purposes of relocating with the minor children to Irvine, California.

1.0 NAMES/AGES OF PARTIES AND CHILDREN

1.1. Plaintiff, James Vahey (hereinafter "Jim"), age 56.

1.2. Defendant, Minh Nguyet Luong (hereinafter "Minh"), age 46.

1.3. Minor Child: Hannah Vahey (hereinafter "HANNAH"), born March 19, 2009, age 10.

1.4. Minor Child: Matthew Vahey (hereinafter "MATTHEW"), born June 26, 2019, age 9.

1.5. Minor Child: Selena Vahey (hereinafter "SELENA"), born April 4, 2014, age 5.

2.0 DATE/PLACE OF MARRIAGE AND DIVORCE

2.1. The parties were married on the 8th day of July, 2006 in Henderson, Nevada.

3.0 RESOLVED ISSUES, INCLUDING AGREED RESOLUTIONS

3.1. Nearly all financial issues have been resolved, as the parties both agree that their PMA, executed on the 12th day of June 2006, is valid and therefore, each party shall receive their sole and separate property since no community property was realized, save and except a few parcels of land in Arizona which will be resolved by agreement of the parties.

4.0 STATEMENT OF UNRESOLVED ISSUES

The heart of this matter, that unfortunately cannot be resolved by the parties, is determining whether the minor children's best interest are served by living in Irvine,

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California, with Minh as their primary physical custodian, or remaining in Clark County, Nevada, with Jim as their primary physical custodian.

While the issues of custody and relocation are still two separate and distinct issues, much of the factual analysis overlaps. *See Schwartz v. Schwartz*, 107 Nev. 378, 382, 812 P.2d 1268, 1270 (Nev. 1991). When this Court considers a motion to relocate minor children outside of the State of Nevada by a parent who has never had an initial custody determination, this Court "must base its decision on the child's best interest." *Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 515 (Nev. 2014). This was also affirmed by the Nevada Supreme Court in *Inboden v. Ayon*, 431 P.3d 39, 2018 Nev. Unpub. LEXIS 1081, Docket No. 74012 (Nev. Nov. 30, 2018) (unpublished disposition).[1] The *Inboden* Court held that in a custody/relocation case where an initial determination of custody has not yet been established, that "case does not fall within NRS 125C.007's purview because the statute addresses petitions to relocate filed in actions where primary or joint physical custody has already been established by court order." *Id.*

Therefore, this case is a true *Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246 (Nev. 2005), analysis. The *Potter* Court held that the district court must "determine whether the best interests of the children are better served by living outside of Nevada with the relocating parent as the primary physical custodian or living in Nevada with the nonmoving parent having primary physical custody." *Id.* at 614-615 and 1247.

However, in an abundance of caution, Minh will also prove that relocation to Irvine is in the children's best interests by satisfying the factors enumerated under NRS 125C.007.

4.1 BEST INTERESTS OF THE SUBJECT MINOR CHILDREN

In an initial determination of custody, "the district court has 'broad discretionary power' in determining child custody . . . including visitation." *Davis v. Ewalefo*, 352 P.3d 1139, 131 Nev. Adv. Rep. 45 (Nev. 2015) (quoting *Hays v. Gallacher*, 115 Nev. 1, 4,

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[1] In accordance with NRAP 36(c)(3), a complete copy of *Inboden v. Ayon* is attached hereto as **Exhibit A**.

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972 P.2d 1138, 1140 (1999)). In exercising its discretionary power in making the initial custody determination, the District Court's "sole consideration . . . is the best interest of the child." NRS 125C.0035. *See also Blanco v. Blanco*, 129 Nev. 723, 730, 311 P.3d 1170, 1174 (Nev. 2013).

When physical custody is in dispute, this Court is to determine what is in the minor children's best interests by weighing the factors enumerated in NRS 125C.0035 (4), as well other determinative factors that the Nevada Supreme Court articulated in *Rico v. Rodriguez*, 121 Nev. 695, 120 P.3d 812 (Nev. 2005).

Many of the factors set forth in NRS 125C.0035 (4) are not applicable in this case; however, the factors that are applicable weigh in favor of vesting Minh with primary physical custody of the parties' three minor children. The relevant factors are as follows:

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the non-custodial parent.

Both parents will follow all court orders and both parents would allow frequent contact and association by the other parent.

In addition to bringing the children here for a one weekend or holiday visit per month, Minh will give up her Irvine home for Jim's use for a second weekend visitation in Irvine with their children. Minh would allow Jim to use a room in her Irvine home for the weekend, while she goes and stays at her mother's home in Santa Ana, California, while Jim spends the weekend with their children in the Irvine home.

Minh also would provide Jim with Thanksgiving Break each year, Spring Break each year, and one-half of the Winter Break each year with their children. Also, Minh has no problem with Jim having 51 consecutive days of visitation during their Summer Break to maximize Jim's timeshare. If Jim takes advantage of a seconds weekend visit each month in addition to the other custodial timeshare being offered by Minh, Jim will have a total of approximately **116 days** with his children each year (only 30 days shy of a joint

physical custody schedule).[2]

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

Both parents would likely cooperate to meet the children's future needs.

(g) The physical, developmental, and emotional needs of the children.

The parties' children need and deserve engaged, committed, and dedicated parenting, ensuring stability and consistency in these children's lives. This is exactly what Minh brings to the table. Minh is an engaged parent that dedicates her entire existence to ensuring that the children's needs are being met. While these children are physically healthy, they are still of the age dependent on daily parental care and guidance, which Minh can provide on a daily basis considering her anticipated retirement. Minh's schedule upon retirement will be better suited than Jim's to accommodate the children's physical, developmental, and emotional needs on a more structured, routine and consistent basis. While there is no question that Jim is perfectly suited to do the same but only when he has the time, as his schedule simply will not afford him the amount of time to dedicate and ensure that the physical, developmental, and emotional needs of their children are being met on a daily basis. However, there is no dispute that if he were retiring like Minh, he would be just as capable as Minh to meet the children's needs; this is just simply not the facts of this case.

(h) The nature of the relationship of the children with each parent.

The children have a good relationship with both parents. There were a few child exchanges wherein MATTHEW refused to go with Jim for his custodial timeshare. However, both parents worked together to get MATTHEW to go with Jim for his timeshare. This issue only occurred on two (2) occasions and has not occurred recently. The parties stipulated to the appoint of a child therapist to assist them cope with the parties' divorce, and the children will continue to seek therapy until the therapist

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[2] 116 days = 5 months of three-day weekends + 5 months of two-day weekends + 10 months of extra weekends in Irvine at two-days + 4 days at Thanksgiving Break + 7 days for Winter Break + 9 days for Spring Break + 51 days for Summer Break.

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determines that the children no longer require therapy.

4.1.1 Additional Considerations in Determining Physical Custody

In addition to the above factors, the Nevada Supreme Court referenced other pragmatic factors that the district court may consider when determining the custodial arrangement between the parents. *Rico*, 121 Nev. at 702, 120 P.3d at 816. The factors the *Rico* Court articulated and applied to this case are as follows:

(1) Living conditions and environment.

Minh's home in Irvine, California, is a beautiful 6,500 square-foot home located in the heart of Orange County. The contrast between the living conditions with Minh in Irvine verses with Jim in the Henderson community of Lake Las Vegas is significant. Minh's home is located within about a five (5) minute walk from the school that the children are slated to attend, if they are permitted to relocate with Minh to Irvine. The schools in Irvine are highly rated and are only comparable to private schools in Las Vegas. If the children are to continue to attend Challenger in Las Vegas, due to Jim living in Lake Las Vegas, a remote part of Henderson, the children would be forced to continue their hour-long commute to and from school every day. While Jim's home in Lake Las Vegas is nice, it is extremely remote with very few child-friendly activities that are held by his community. The evidence will show that Minh's community, the Groves at Orchard Hills, holds many community events that are geared specifically for children. The parties' children will be able to participate in many of the community activities with their friends and family.

The environment in Irvine also trumps the Las Vegas's environment. The evidence will show that the crime rates are considerably lower in Irvine than in Las Vegas. In fact, for the past 13 years Irvine was ranked as the Safest City of its size for Part 1 violent crime according to FBI data. Irvine also has the lowest rate of violent crime per capita of any city in the nation with a population of 250,000 or more.

Clark County, Nevada, on the other hand, has significantly greater rates of violent crime compared to Irvine.

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(2) The parties' interaction with the children.

Both parents in this matter have good relationships with their children and are well bonded. However, Minh has more physical interactions with the children because she is the parent that primarily takes them to their extracurricular activities; ensures that they have their homework finished prior to going to school the next day; and ensures that her work schedule is fashioned around the children's schedule.

(3) Parental employment and stability.

Both parents are financially stable. The stability that Minh can provide to the children in Irvine is far superior to what Jim can provide to the children in Las Vegas. Minh is retiring and looking forward to spending her retirement primarily raising her children in her home in Irvine. Minh will have time to take the children to and from school each day; ensure that the children are getting adequate assistance on their schoolwork (without the reliance of tutors); ensuring that the children have home-cooked meals (without reliance on nannies); and facilitating the children's attendance at their extracurricular activities. Having a mother as a primary custodian that does not have to utilize nannies to care for the children to ensure that their best interests are always being met is preferred over a parent who wants to continue working and growing his medical practice. It simply is not practical to believe that a parent, who is a medical doctor that constantly works, will be able to manage his medical practice, while exercising primary physical custody of three minor children and ensure that their best interests are being met.

4.2 MINH'S REQUEST TO RELOCATE TO IRVINE, CALIFORNIA, WITH MINOR CHILDREN

Pursuant to NRS 125C.007(a), Minh will show that she has a sensible, good-faith reason for her request to relocate with the minor children to Irvine, California, and that her request is not intended to deprive Jim from his parenting time. Furthermore, pursuant to NRS 125C.007(b) and (c), Minh will also prove that their children's best interests are served by allowing Minh to relocate with the children to Irvine, and that both Minh and the children will benefit from many actual advantages as a result of this

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relocation.

4.2.1 Minh's sensible, good-faith reason to request to relocate with minor children, and the relocation is not intended to deprive the non-relocating parent of his or her parenting time. NRS 125C.007 1(a).

"[I]n assessing the 'actual advantage' requirement, courts are not free to ignore non-economic factors likely to contribute to the well-being and general happiness of the custodial parent and children." *Jones v. Jones*, 110 Nev. 1253, 1260, 885 P.2d 563, 568 (Nev. 1994). Furthermore, the *Jones* Court recognized that "what is in the best interest of the children cannot be addressed without considering the best interest of the other members of the household in which they live." *Id.* at 1261 and 568. The actual advantage does not have to be substantial, but the advantage must be "based on a sincere and genuine desire of the custodial parent to move and a sensible good faith reason for the move." *Id.* The *Jones* Court defined "good faith reason" as one that is "not designed to frustrate the visitation rights of the noncustodial parent." *Id.* (citing *Holder v. Polanski*, 111 N.J. 344, 544 A.2d 852, 856-57 (N.J. 1988)).

The evidence in this case will show that Minh possesses a good-faith, and sensible reason to request to relocate to Irvine with the parties' three (3) minor children. Minh would be able to take care of her ailing mother and surround herself and children with her siblings and their children. The children would go to school with neighborhood friends where they live, instead of 45 minutes away. The schools are superior; the cultural experiences will be better. And the children will be able to participate in their community and with extra- curricular activities and training they cannot achieve at Lake Las Vegas with their father. Most important, they will be raised by parents and not nannies.

4.2.2 The best interests of the children are served by allowing Minh to relocate with the parties' three minor children. NRS 125C.007 1(b).

See above.

4.2.3 Actual benefits conferred to both Minh and the subject minor children as a result of relocating to Irvine, California. NRS 125C.007 1(c).

See above. However, some additional benefits to both the minor children and Minh are as follows:

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- Irvine is one of the safest city in which to live since 2013. The public schools in Irvine are some of the highest rated schools nationwide. Irvine is highly sought after as the ideal city to live and raise a family.
- Minh, upon relocating, intends to retire from the practice of dentistry. Consequently, nannies will no longer be necessary to assist with child care.
- Orange County has one of the largest communities of Vietnamese outside of Vietnam and the children will get to experience their Vietnamese culture and language far better than they could do in Las Vegas.
- Minh and the children would thrive in an environment surrounded by extended family and friends. The children could establish a close bond to their maternal grandparents and share the remaining years of their lives with them.
- The parties will also save over $45,000.00 per year in private school tuition because the public schools in the Irvine neighborhood where Minh's home is located are among the best in California.

Since Minh will prove that she has both a sensible, good-faith reason to request the relocation and that there are actual benefits to her and the minor children, the Nevada Legislature provided six (6) additional factors that the district courts is to consider when determining whether to grant Minh's relocation request. Much of the above facts can be incorporated into the six (6) factors enumerated under NRS 125C.007 (2), which Minh will satisfy at trial.

4.3 CHILD SUPPORT

Minh will offset Jim's child support by his reasonable airfare and a rental car (once per month to Orange County and back). Jim will no longer have to pay for a nanny or private school and he will be less burdened financially.

5.0 ATTORNEY'S FEES

Minh should recover her legal fees and costs pursuant to NRS 125C.006 or NRS 125C.0065, if it is found that Jim unreasonably withheld his consent to allow this relocation to take place.

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Minh respectfully argues that any reasonable parent, similarly situated to Jim would have granted the move request, being that he was the person who abruptly derailed the entire family's long planned plan to relocate. However, Jim's view of the family being continually subservient to his schedule, and his lack of attention to the efforts Minh has made to improve their lives has caused significant error in his judgment. While a parent is entitled to his day in court to determine what he believes is in his children's best interest, the legislature has placed a burden on that decision. If a parent decides to *unreasonably* withhold consent, even in joint physical custody cases, he does so at his own peril. Due to the fact that his bad decision will cause considerable legal fees to Minh, who is the more involved parent, he should be obliged to pay her legal fees for his ill-advised decision. Justice is fair, but it comes at a price. In the alternative, Minh seeks a judgment for prevailing party legal fees.

See NRS 18.010 and *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (Nev. 2005) also warrant fees. The *Brunzell* factors and other authority for legal fees are cited in Minh's *Motion*.

6.0 LIST OF WITNESSES

6.1 Minh Nguyet Luong, Defendant
c/o Neil M. Mullins, Esq.
Kainen Law Group, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Tel: (702) 823-4900

Minh is the Defendant in this action and is expected to testify as to the facts and circumstances surrounding the parties' marriage and divorce.

6.2 James W. Vahey, Plaintiff
c/o Robert P. Dickerson, Esq.
Sabrina M. Dolson, Esq.
The Dickerson Karacsonyi Law Group
1745 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 388-8600

James is the Plaintiff in this action and is expected to testify as to the facts and circumstances surrounding the parties' marriage and divorce.

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6.3 Hieu Minh Luong
13632 Prospect Ave
Santa Ana, Ca 92705
Tel: (714) 724-2510

Hieu is the sister of Minh. She is expected to testify as to the parties' individual interaction with the children.

6.4 Truc Di Nguyen
1212 Red Sage
Irvine, CA 92618
trucdinguyen@yahoo.com
Tel: (714) 310-9220

Truc is a friend of Minh's who has known her for 40 years. She is the ex-wife of the parties' realtor. She went to view all the houses with the parties. She can testify to Minh's character. She has first hand knowledge of how involved Jim was searching for houses and his commitment to moving to Irvine. She can testify as to how attached the children are with Minh. She has two children of her own. Truc and her children are so close the parties and their children, that the all the children thought they were cousins.

6.5 Chau (Charlene) Luong
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Tel: (714) 724-2535

Chau is the younger sister of Minh. She is expected to testify as to the parties' individual interaction with the children. She has two children and the two families are constantly together.

6.6 Jeansse Villanueva
1124 Neva Ranch Ave
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Tel: (702) 335-5707

Ms. Villanueva is Minh's office manager. She is anticipated to testify as to how patients' are scheduled so that Minh would start her days after she has dropped off her kids at school. Ms. Villanueva will also testify about the significant bond Minh's has with her children, as well as how attached the children are to Minh.

6.7 Plaintiff reserves the right to call any and all witnesses used and/or identified by Defendant.

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6.8 Rebuttal witnesses, previously listed by Sara will be called if necessary.

7.0 LIST OF EXHIBITS

A. City of Irvine, California Research.

1. City of Irvine Awards and Accolades . . . . . Def001_1 - Def003_1
2. List of public schools in Irvine, California Def004_1 - Def021_1
3. Minh's correspondence with Orchard Hills School regarding registration of children . . Def022_1 - Def034_1
4. Minh's correspondence with Orchard Hills School regarding registration of children . . . Def022_1 - Def034_1
5. City of Irvine - Safest City. . . . . Def03142_9 - Def03143_9
6. FBI 2016 Crime in California . . . . . Def03144-9 - Def03159_9
7. FBI 2016 Crime in Nevada . . . . . Def03160_9 - Def03161_9

B. City and School Comparisons between Irvine and Henderson Schools.

1. Arnold Beckman HS graduation rates showing that are in the Top 100 Nationally . . . . . Def163_2 - Def170_2
2. Coronado HS Academic Statistics . . . . . Def171_2 - Def175_2
3. Orchard HS Academic Statistics . . . . . Def176_2 - Def188_2
4. City demographic comparisons between Irvine and Henderson. . . . . Def189_2 - Def200_2
5. Kid friendly events in Irvine . . . . . Def201_2 - Def245_2
6. Southwest Airlines Unaccompanied Minor Policy and ticket pricing . . . . . Def246_2 - Def253_2
7. Travel Distance from both homes to schools. Def254_2 - Def259_2
8. Printout of schools, and their corresponding ratings, near Minh's Irvine residence, from Great!Schools.org,

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Minh's Family's Involvement with the Children

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and grandparents visiting the hospital for Selena's birth, showing Minh's family's attendance at this event and efforts watching the other children for the family . . . . . Def1814_7 - Def1818_7

63. Photos of Hannah and Matthew at their grandma's house for Thanksgiving, showing the children enjoy spending time with Minh's family . . Def1819_7 - Def1820_7

D. Correspondence of the Parties.

1. Screen shots of Jim's Facetime calls with children . . . . . Def051_1 - Def057_1
2. Text Messages . . . . . Def058_1 - Def090_1

E. E-mails.

1. E-mail from Realtor with list of schools in Irvine CA, dated Sept 11, 2015 . . . . . Def260_2 - Def264_2
2. E-mails confirming offers on three house in California dated Sep 2016 to April 2017 . . Def265_2 - Def270_2
3. Facebook Messenger e-mails regarding children eating junk food at Jim's house . . . . Def271_2 - Def292_2
4. E-mail from Minh to Jim dated April 20, 2019, regarding the children's hygiene . . . . . Def536_5
5. E-mail from Minh to Jim regarding Co-parenting . . . . . Def537_5 - Def538 _5
6. E-mail from Minh to Imelda Vahey, dated February 18, 2015, regarding being exhausted getting back from a trip and not being able to handle the kids by herself. . . . . Def03330_9 -Def03331_9
7. E-mail from Emily Jackson (from Jim's community) to Minh regarding activities at Lake Las Vegas

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7. E-mails between Minh and Ms. Ritter, Hannah's teacher, showing Minh was the primary contact regarding Hannah's behavior and work at school, all dated during the 2017 to 2018 school year...Def02795_9 - Def02810_9

8. E-mails Minh forwarded to Jim regarding Hannah's behavior and school work that she has not completed, showing Minh kept Jim aware of events concerning Hannah at school, dated February 27, 2018... Def02811_9- Def02815_9

9. E-mails between Minh and Ms. Snailum, Hannah's teacher, supporting Minh was frequently communicating with Hannah's teacher to inform her teacher of events and questions regarding school work or activities, all dated during the 2015 to 2016 school yearDef02816_9-Def02851_9

10. Proof of Hannah doing homework during summer break . . . . . .Def03162_9 - Def03170_9

11. Proof of Matthew doing homework during summer break . . . . . .Def03171_9 - Def03177_9

12. Proof of Selena doing homework during summer break . . . . . .Def03178_9 - Def03182_9

J. The Children's Medical Records.

1. ABC Pediatrics visit summaries for Selena Vahey, from her birth to the present, of which Minh attended seventeen (17) appointments, Jim attended three

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(3) and they both attended one (1), for a total of twenty-one (21) appointments, starting with the most recent visits regarding her vaginitis due to improper/lack of care by Jim. . . . . Def1913_7 - Def1984_7

2. ABC Pediatrics visit summaries for Matthew Vahey, from his birth to the present, of which Minh attended twenty-five (25) appointments, Jim attended one (1), they both attended eleven (11) and Jenssy, Minh's assistant, attended one (1), for a total of thirty-eight (38) appointments. . . . . Def1985_7 - Def2095_7

3. ABC Pediatrics visit summaries for Hannah Vahey, from her birth to the present, of which Minh attended twenty (20) appointments, Jim attended one (1), they both attended ten (10), Jenssy, Minh's assistant, attended one (1) and their aunt attended two (2), for a total of thirty-four (34) appointmentsDef2096_7 - Def2195_7

4. Patient Prescription Record, from Warm Springs Road CVS, L.L.C., regarding Selena Vahey, listing medications that have been prescribed to her and who prescribed them between July 13, 2017, and July 13, 2019, showing that (while neither Minh nor Jim practice in family medicine or are pediatricians, but are licenced to write prescriptions) Jim has prescribed Salina the same medication Minh has and yet he has accused Minh of practicing outside of the scope of her practice. . . . . Def02852_9

5. Patient Prescription Record, from Warm Springs Road CVS, L.L.C., regarding Matthew Vahey, listing the

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4. Email exchange between Minh, Phil Fetter, Wealth Planning Associate at UBS Financial Services, Inc., and Stephen H. Hazel, Certified Financial Planner at UBS Financial Services, Inc., stating that the parties' previous Financial Goal Analysis was not properly saved but UBS Financial Services was able to take their previous data and input it into a new analysis [Def1580_5 - Def1661_5], which supports the new Financial Goal Analysis being a copy of their previous version, regardless of the current date on the Analysis, email dated May 13, 2019, to May 16, 2019 . . . . . Def1684_6 - Def1690_6

5. UBS Financial Planning Services Financial Goal Analysis for James Vahey and Minh-Nguyet Luong, dated May 15, 2019 . . . . . Def1580_5 - Def1661_ 5

6. Parties Forbearance Agreement dated 12-31-2017 and Promissory Note dated July 26, 2017 . . . . . Def091_1 - Def099_1

Irvine Residence

7. E-mail sent to Minh from Trevi (the model home company for the Irvine residence) via DocuSign, requesting Minh's signature on the *Purchase Agreement and Escrow Instructions*, regarding her purchase of her Irvine residence, *redacted to preserve attorney client privilege*, dated July 22, 2017 . . . . . Def02629_9 - Def02630_9

8. Purchase Agreement and Escrow Instructions, for Minh's Irvine residence, commonly known as 135 Larksong, Irvine, California, showing she wired her

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time is about twenty-three (23) minutes (*Reproduced to correct bates stamping error*) . . . . . Def2456_8

15. Map showing travel time from Minh's mother's home, in Santa Ana, California, to Tam Luong, Minh's sister's, home in Tustin, California, travel time is about fourteen (14) minutes (*Reproduced to correct bates stamping error*) . . . . . Def2457_8

Exhibits to Chau (Charlene) Luong's Deposition

16. Photos provided by Charlene Luong, with her own notes, presented as exhibits during her deposition, deposed on July 18, 2019. . . . . Def02859_9-Def02887_9

17. Notarized letter from Sahar Nazifpour, Minh's neighbor in Irvine, California, stating the reasons they relocated to Irvine from the state of Washington, some of which were in relation to the highly rated school system in Irvine and Southern California, and diverse family friendly environment, dated July 16, 2019 . . . . . Def02888_9-Def02889_9

18. E-mail from Minh to Candace Carlyon from Morris Polich & Purdy LLP, dated August 24, 2017, regarding the Forbearance Agreement for Jim to review and if the foreclosure sale should be continued out to November . . . . . Def03219_9 - Def03226_9

19. Toothfairy's Calendar - Week 6.28.15 to 8.3.19 . . . . . Def03332_9- Def03545_9

20. Minh's Calendar - Week 6.28.15 to 8.3.19 . . . . . Def03546_9- Def03759_9

. . .

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8.0 UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED

There are no unusual factual issues in this matter. This move is to the closest large city to Las Vegas. The parties have he resources to travel. Both parties have testified that they can manage their schedules to accommodate extra time with their children. This move is not a typical move that prevents parental involvement.

9.0 LENGTH OF TRIAL

Length of trial: Two full days – August 8th and September 5th, 2019.

DATED this 2nd day of August, 2019.

KAINEN LAW GROUP, PLLC

By: _____

NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
3303 Novat Street, Ste. 200
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of August 2019, I caused to be served the ***Defendant's Pre-trial Memorandum*** 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 a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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

____ 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):

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EIGHTH JUDICIAL DISTRICT COURT - FAMILY DIVISION

COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

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

Date of Trial: August 8th and September 5th, 2019
Time of Hearing: 9:00 a.m.

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ERRATA TO DEFENDANT'S PRE-TRIAL MEMORANDUM

COMES NOW, Defendant, MINH NGUYET LUONG, by and through her attorney, NEIL M. MULLINS, ESQ., of the KAINEN LAW GROUP, PLLC, and respectfully submits this ***Errata*** to attach Exhibit "A" which was erroneously not attached to Defendant's Pre Trial Memorandum filed August 2, 2019.

DATED this 2nd day of August, 2019.

KAINEN LAW GROUP, PLLC

By:/s/ *Neil M. Mullins*
NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129-8714
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of August, 2019, I caused to be served the ***Errata to Defendant's Pre-Trial Memorandum*** 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 a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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__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):

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EXHIBIT "A"

Document: Inboden v. Ayon, 2018 Nev. Unpub. LEXIS 1081

Inboden v. Ayon, 2018 Nev. Unpub. LEXIS 1081

Supreme Court of Nevada

November 30, 2018, Filed

No. 74012

Reporter

2018 Nev. Unpub. LEXIS 1081 *| 431 P.3d 39

LUCAS EUGENE INBODEN, Appellant, vs. MELISSA CHRISTINA AYON, Respondent.

Notice: NOT DESIGNATED FOR PUBLICATION. PLEASE CONSULT THE NEVADA RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Core Terms

district court, relocation, custody, physical custody, factors, parties, primary physical custody, best interests of the child, substantial evidence, domestic violence, minor child

Judges: [*1] Pickering ▾, J., Gibbons ▾, J., Hardesty ▾, J.

Opinion

ORDER OF AFFIRMANCE

This is an appeal from a district court order awarding child custody. Eighth Judicial District Court, Family Court Division, Clark County; Charles J. Hoskin ▾, Judge.

The parties were never married but share a minor child. The parties moved from Arizona to Nevada, but respondent Melissa Ayon later moved back to Arizona with the minor child over appellant Lucas Inboden's objections. Both parties filed for custody in their state of residence, but Arizona deferred the custody decision to Nevada. After a hearing, the district court awarded primary physical custody to Ayon and found that, if the case was viewed as a

request for relocation to allow Ayon and the child to move from Nevada to Arizona, that was granted as well. Inboden now appeals from the physical custody determination. 1

This court reviews an award of child custody for an abuse of discretion. *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009). The district court's factual findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). Substantial evidence is evidence that a reasonable person would accept as adequate to sustain a judgment. *Rivero*, 125 Nev. at 428, 216 P.3d at 226.

Awarding Ayon primary physical custody **[*2]** did not constitute an abuse of discretion. As the district court properly concluded, joint physical custody was not feasible in this case: Ayon lived in Arizona and the child would be starting school soon, leaving one or the other parent unable to care for the child for at least 146 days of the year. *See* NRS 125C.003(1)(a) (providing that joint physical custody is presumed not to be in the child's best interest if "a parent is unable to adequately care for a minor child for at least 146 days of the year"). The district court also lacked the ability to require Ayon to move back to Nevada so that joint physical custody would be possible. *See In re Marriage of Fingert*, 221 Cal. App. 3d 1575, 1581, 271 Cal. Rptr. 389 (Ct. App. 1990) (recognizing that "[c]ourts cannot[, under the Constitution,] order individuals to move and live in a community not of their choosing"); Linda D. Elrod, Child Custody Practice and Procedure § 5:15 (2018) ("As a general rule, absent a restriction in the divorce decree awarding custody or in a statute, the residential parent is free to move with the child.").

With joint physical custody not possible, the district court properly considered the best interest factors to determine which party should be awarded primary physical custody. *See* NRS 125C.0035 (instructing a district court to consider **[*3]** a child's best interest when determining physical custody if joint physical custody is not possible and listing factors for the court's consideration). One of these factors requires the court to consider whether either parent has committed an act of domestic violence. NRS 125C.0035(4)(k). In this case, the district court concluded that Ayon did not commit domestic violence against Inboden, despite clear evidence that she struck him, because the incident did not "rise[] to the level of domestic violence," This decision was clearly erroneous as this court has previously held that a battery occurs when one party exerts intentional and unwanted force upon another person, "however slight," *Hobbs v. State*, 127 Nev. 234, 239, 251 P.3d 177, 180 (2011), and NRS 125C.0035(10)(b) and NRS 33.018 deem the commission of battery upon the other parent an act of domestic violence.

Although Ayon's act of domestic violence creates a presumption that awarding her physical custody of the minor child would not be in the child's best interest, that presumption is rebuttable. NRS 125C.0035(5). Though remand might be appropriate because the district court did not address whether the presumption had been rebutted, we conclude that the record contains substantial evidence to rebut the presumption, The incident appeared to be an isolated **[*4]** incident wherein both parties may have acted inappropriately. The rest of the best interest factors weighed in Ayon's favor or were neutral, and the findings related to those factors were supported by substantial evidence in the record. 2 *Rivero*, 125 Nev. at 428, 216 P.3d at 226. Under these facts, we cannot conclude that the district court abused its discretion in awarding primary physical custody to Ayon. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (affirming a correct result, though on grounds different from those relied on by the district court).

Inboden next argues that the district court incorrectly applied NRS 125C.007, which provides the grounds for allowing a custodial parent to relocate with a minor child and the factors a court must consider when determining whether relocation is in the child's best interest. More specifically, he asserts that the district court abused its discretion by failing to consider whether "[t]he best interests of the child are served by allowing the relocating parent to relocate with the child." NRS 125C.007(1)(b). We disagree. This case does not fall within NRS 125C.007's purview because that statute addresses petitions to relocate filed in actions where primary or joint physical custody has already been established by court order. *See* NRS 125C.006 (primary physical custody); **[*5]** NRS 125C.0065 (joint physical custody). In this case, no such custody order exists and, furthermore, Ayon had already relocated at the time the parties sought a custody determination. NRS 125C.007 therefore does not apply. *See Druckman v. Ruscitti*, 130 Nev. 468, 473, 327 P.3d 511, 514 (2014) (concluding that the relocation statute did not apply when no party had been awarded primary physical custody).

The district court also concluded that NRS 125C.007 did not apply, but still analyzed the case under that statute "out of an abundance of caution." Assuming *arguendo* that NRS 125C.007 applies, by presuming a prior joint custody order existed and employing a legal fiction that Ayon and Inboden still lived in the same state, the district court did not abuse its discretion in its application of NRS 125C.007. *See id.* at 468, 475, 327 P.3d at 516 (reviewing a relocation decision for an abuse of discretion). Substantial evidence supports the district court's conclusion that Ayon demonstrated proper grounds for relocating and the court weighed the pertinent factors in concluding that allowing the child to relocate with Ayon was appropriate. *See* NRS 125C.007; *Druckman*, 130 Nev. at 473, 327 P.3d at 515 (concluding that the policy behind the relocation statute "may be used as a guide in instances where no custodial order exists and the parents dispute out-of-state relocation").

We have examined the parties' **[*6]** remaining arguments and find none that warrant reversal of the physical custody determination. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

/s/ Pickering, J.

Pickering

/s/ Gibbons, J.

Gibbons

/s/ Hardesty, J.

Hardesty

Footnotes

1 Inboden does not challenge the award of joint legal custody or child support and we therefore do not address those decisions.

2 Although Inboden argues that he presented evidence contrary to Ayon's evidence on the best interest factors, we will neither disturb the district court's decisions regarding conflicting evidence that are supported by substantial evidence, *see Barelli v. Barelli*, 113 Nev. 873, 880, 944 P.2d 246. 113 Nev. 873, 944 P.2d 246, 250 (1997) (recognizing that an appellate court will not disturb a district court's resolution of conflicting evidence if substantial evidence supports the decision), nor reweigh the parties' credibility as that is for the district court to determine, *Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) ("[W]e leave witness credibility determinations to the district court and will not reweigh credibility on appeal.").

Content Type: Cases

Terms: Inboden v. Ayon

Narrow By: -None-

Date and Time: Jul 31, 2019 04:00:26 p.m. PDT

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VOLUME II

PMEM
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DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY, Plaintiff, v. MINH NGUYET LUONG, Defendant.	CASE NO. D-18-581444-D DEPT NO. H

PLAINTIFF'S PRETRIAL MEMORANDUM

Date and Time of Trial:
August 8, 2019 at 9:00 a.m.
September 5, 2019, at 9:00 a.m.

I. BRIEF STATEMENT OF FACTS

A. Names and Ages of Parties:

1. Plaintiff, JAMES W. VAHEY ("James"), 56 years old.
2. Defendant, MINH NGUYET LUONG ("Minh"), 46 years old.

B. Date of Marriage: July 8, 2006

. . .

. . .

C. Resolved Issues:

The parties entered into a Premarital Agreement on June 14, 2006, which addresses, controls, and resolves all marital issues that exist between the parties that are incident to the parties' divorce, with the sole exception of the issues of child custody and child support.

D. Names, Birth Dates, and Ages of Children:

1. Hannah Vahey, born March 19, 2009 (10 years old);
2. Matthew Vahey, born June 26, 2010 (9 years old); and
3. Selena Vahey, born April 4, 2014 (5 years old).

II. CHILD CUSTODY

A. Background Information

Jim and Minh met in Las Vegas and began dating in 2003. At the time the parties met, they each owned their own successful practices. Jim is a hand surgeon and owns his own practice, Hand Center of Nevada. Minh is a dentist and owns her own practice, Toothfairy Children's Dental, where she practices in two locations: 8000 West Sahara Avenue, Suite 180, Las Vegas, Nevada 89117 (the "Las Vegas Office"); and 10925 South Eastern Avenue, Suite 130, Henderson, Nevada 89052 (the "Henderson Office").

Jim and Minh were married on July 8, 2006. The parties have three (3) minor children: Hannah, Matthew, and Selena. Prior to their marriage, the parties discussed where they would reside given both parties owned their own home. The parties decided they would reside at Jim's home in Lake Las Vegas. The home is also in a gated community, with security guards monitoring and patrolling the development. There are water patrols that also patrol the lake. The parties have lived in the Lake Las Vegas home since their marriage, and have raised their three (3) minor children in this home. During this thirteen (13) year period, the parties

have not had any safety issues or concerns about the community in which they live.

Although both parties own their own practices, they have worked together to ensure they are available for their children as much as possible. When the children started school, the parties tried to arrange their schedule to have Minh start work earlier than Jim during the week, sometimes as early as 6:00 a.m. Minh preferred to start her surgeries at 6:00 a.m. because she treats children who are required to forgo eating and drinking prior to their surgeries, and found it is easier for the children the earlier she starts. Starting her work day early ensures Minh will be off work earlier as well, and able to care for the children while Jim is at work.

In order to be available to take the children to school in the mornings, Jim modified his office and surgery schedule to begin work later. For instance, on Tuesdays, Jim scheduled his surgeries at Specialty Surgery Center near Smoke Ranch and Tenaya to begin at 9:00 a.m. Jim changed his office hours on Monday and Friday to begin at 8:30 a.m. Jim changed his start time at Concentra Medical Center to 8:45 a.m. on Wednesdays. Lastly, Jim changed the start time of his surgeries on Thursdays to 8:30 a.m. Making these modifications after the children started attending school allows Jim to take the children to school a majority of the time. Despite starting work later, Jim is off nearly every night by 6:00 p.m. This does not mean, of course, that Jim does not ever come home later than 6:00 p.m. from work. Jim is a hand surgeon and given the nature of his job it is inevitable there are unpredictable circumstances on rare occasions. In her deposition, Minh confirmed the parties shared the responsibility of taking the children to and picking them up from school. **Exhibit 1**, Deposition of Minh Luong, pg. 55, line 25 - pg. 56, line 21 ("We both . . .

were responsible for taking the kids to school, and sometimes the nannies too.").

Jim has reduced his workload significantly since the parties' children were born. For instance, Jim does not take any call and does not work on the weekends. Jim only works Monday through Friday, and modifies his work schedule to attend the children's school orientations, parent-teacher conferences, Principal's lunches, and Career Days, to name a few. On the weekends, Jim enjoys taking the children for bike rides, paddle boarding, kayaking, picnicking, and on their boat around the lake. Jim also takes the children to church with him on Sundays. Minh is not Catholic and does not attend. Thus, Jim gets the children ready, takes them to church with him, and takes them to their religion classes.

Although the parties have modified their work schedules to be home with the children as much as possible, the parties have also required the help of a nanny throughout the years to assist whenever necessary. Jim agrees with Minh's claim that the parties went through several nannies over the years; however, it is not because of the "extremely remote" location of the parties' home as Minh suggests. In fact, most of the nannies hired by the parties were from California and moved into the parties' home to be live-in nannies. Minh insisted on hiring Vietnamese nannies who could teach the children Vietnamese, and took control of hiring all the parties' nannies. In her deposition, Minh admitted that Yen Nguyen, the parties' most recent nanny, had previously worked for the parties' shortly after the birth of Hannah and only quit because her niece had a baby and she wanted to care for her niece's baby. **Exhibit 1**, Deposition of Minh Luong, pg. 48, lines 7-22. The parties also had to fire one nanny because she took the parties' daughter, Selena, to her apartment against their wishes. The parties had issues with several other

nannies regarding their ability to drive safely, one who rear-ended another vehicle, and another who put diesel in the parties' Acura, permanently damaging the vehicle.

When both parties were unavailable, the nannies typically helped with picking the children up from school, transporting the children to and from their extracurricular activities, and babysitting the children. The parties' two (2) oldest children, Hannah and Matthew, have participated in several extracurricular activities over the years, such as piano, karate, swimming, art class, and golf, and the scheduling of practices and lessons sometimes overlap, necessitating the help of a nanny. Nevertheless, more often than not, one or both parties were available to take the children to and from school, in attendance at the children's practices and lessons, and available after school to help with homework and school projects.

It should be noted that the parties' home in Lake Las Vegas is not located at such a distance from the children's school and extracurricular activities as to cause any significant inconvenience. Jim awakens the children at 6:30 a.m. each morning, and they are usually out of bed by 6:45 a.m. getting ready for school. Lake Las Vegas is far from the "remote" and "isolated" place Minh would have this Court believe it is. The parties agreed to live there prior to marriage and have managed to raise their three (3) children there without the sacrifice Minh suggests the parties and children have made. The fact the children are able to participate in so many extracurricular activities demonstrates the location of their home is no impediment.

Jim agrees that Minh is the parent who has typically coordinated the children's extracurricular activities, but that is because Minh would completely disregard Jim's opinion as to which extracurricular activities the children should participate. Minh also disregarded the children's

opinions for that matter. Minh enrolled Hannah and Matthew in karate lessons a few years ago. From the very beginning, Hannah did not enjoy karate. Minh forced Hannah to participate in karate lessons for two (2) years despite how unhappy it made her. Minh would threaten to take away things from Hannah if she was not prepared for her karate tests. On one occasion Minh would not allow Hannah to spend time on the lake with Jim and Matthew because she wanted Hannah to practice more for an upcoming karate test. Minh then told Jim to tell Hannah that neither he nor Matthew would go to the lake if Hannah was not ready for her test, putting an unnecessary amount of pressure on Hannah. The family did not spend time on the lake that weekend. After speaking to his therapist about his concern for Hannah's mental health, and on advice from his therapist, Jim finally told Minh that he was going to allow Hannah to quit karate if that was her desire. Despite the fact that neither Jim nor the children had a voice in choosing the extracurricular activities in which the children participated, Jim always helped the children, attended their practices, and transported them to and from their extracurricular activities.

In addition to spending most of his free time with his children, it has always been Jim's responsibility, at Minh's direction, to handle the "dirty" work. When the children were younger, Jim was responsible for cleaning up car seats if one of their children had an "accident." When the children were younger, and to this day, Jim tends to the children if they wake up in the middle of the night. Minh told Jim she would not be able to return to sleep if she was required to wake up. Jim is not complaining about these responsibilities. He has done them without complaint for years because he loves his children. But Minh's claim that she is the more nurturing parent is completely contradicted by the parties' actions throughout the years.

In fact, Minh often has little patience with the children. When the parties' oldest child, Hannah, was in first or second grade, Minh became so frustrated helping her with homework that Minh told Jim she would no longer help Hannah with her school work. Minh told Jim that "Matthew was her student" and she would help Matthew with his school work, and "Hannah was Jim's student" and he would help Hannah with her school work. Matthew has always been very diligent, obedient, and easy to teach, requiring little prompting and direction. Hannah, on the other hand, is strong-willed, and requires much patience and a calm tone to teach. Minh did not have the patience or temperament to teach Hannah so Minh refused to do so. After declaring she would no longer help Hannah with her school work and that Matthew was "her student," Minh would later imply Matthew received better grades because she was doing a better job teaching him. Minh never acknowledged the fact that Matthew is more diligent and obedient by nature.

Minh's lack of patience often results in Minh resorting to corporal punishment and yelling when she gets angry at the children. Minh pinches the children on their ears or noses and slaps their faces when Minh becomes angry or frustrated with the children. One time Hannah turned to get away from Minh and Minh grabbed Hannah by the hair and pulled her back to her. For years, Minh has threatened the children with being kicked out of the house, being homeless, not having a family anymore, and even being attacked by coyotes to intimidate the children into behaving the way she wants. One incident in particular made Jim so uncomfortable he documented it in his journal. On June 25, 2012, when Hannah was three (3) years old, Jim documented Minh stating to Hannah: "Hannah, do you want Mommy to slam your finger in the door? Hannah, if you do that again, I will slam your finger in the door. Do you want me

to hurt you?" Throughout the years, and with the help of therapy, Jim has become more confident in confronting Minh about her methods of punishment. Despite discussing his concerns with Minh, she has continued to use certain forms of punishment of which Jim does not approve.

B. Minh's Relocation to Irvine, California

Although Jim initiated the instant divorce proceedings, he only did so because Minh unilaterally decided to move to California, and informed Jim she planned on taking the children with her. **Exhibit 1**, Deposition of Minh Luong, pg. 152, line 24 to pg. 153, line 8. Minh told Jim he would need "to do something legal" to prevent her. **Exhibit 1**, Deposition of Minh Luong, pg. 152, line 24 to pg. 153, line 8. Jim loves Minh and did not want to divorce her. However, given her unilateral decision to relocate to California and her threats to take the children with her, Jim had no other option but to file for divorce.

Jim recalls the exact day Minh expressed her plans to relocate to California, with or without Jim and the children. On July 16, 2017, Minh was angry at Jim and stated: "I have come to the conclusion that you do not care about me and I am okay with that. What I have to do is take care of myself. So what I am going to do is I am going to sell my practice and I am moving to California. You can come when you are ready. I do not know if you will ever be ready."[1] Although Jim was aware Minh

[1] Minh concluded Jim did not care about her based on the fact Jim would not fire the anesthesia group he uses for his practice and hire a different anesthesia group. Minh was having issues hiring an anesthesiologist to cover her dental cases and found anesthesiologists (a husband and a wife) who would only cover her dental cases if Jim also agreed to use them. The anesthesiologists Minh wanted Jim to use did not have a very good reputation for being the safest anesthesiologists so Jim did not want to change his anesthesia group. In addition, Minh mistakenly believed, as she confirms in her Motion, that Jim intended to remove himself from a lawsuit against himself and Minh, while leaving Minh in the lawsuit to fend for herself. This could not be further from the truth. Jim attended a mediation and attempted to settle by offering up to

wanted to move to California, he was shocked Minh would decide to do so without him and without any regard for his opinion. Jim informed Minh that he would not relocate to California, and he would not consent to the children relocating to California. Jim felt as if he had been served with divorce papers that night.

Prior to Minh's decision to move to California on July 16, 2017, the parties had discussed possibly moving to California when they retired, but the parties made no actual plans to move at any specific time. Contrary to Minh's allegations, the parties have not been "planning and contemplating a move together, to Irvine, in Orange County, California since at least 2009." In actuality, Minh misrepresents the parties' discussions and several events that occurred in 2009.

In 2009, Jim was led to believe he was going to receive a $5,000,000.00 profit selling his office building. Jim discussed this with Minh, and before Jim even sold his office building, Minh excitedly suggested the parties purchase a vacation home on a beach in California. To appease Minh, Jim looked at vacation homes on the beach in California with her. However, the parties only ever discussed purchasing a beach home for vacation purposes and possibly retiring there in the future. The parties never discussed nor planned to move to California in the near future.

After it became apparent that Jim had been defrauded, and was not going to receive a $5,000,000.00 profit selling his office building, the parties realized very quickly that they would not be able to afford a vacation beach home. Nevertheless, Minh suggested they look at houses in Newport Beach with a view of the ocean, rather than a beach front

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$800,000.00 to remove both himself and Minh from the lawsuit. Jim also paid for Minh's lawyers to ensure she would not be adversely affected by the lawsuit.

property. The parties looked at a few houses in Newport Beach, Costa Mesa, and other surrounding areas. Jim does not recall the parties viewing any homes in Irvine.

The circumstances surrounding Jim being defrauded ultimately cost him approximately $2,000,000.00 in legal and other fees. Unfortunately, Minh's mind was set on purchasing a home in California. Jim recalls telling Minh he was not ready to retire, and in five (5) years, they could evaluate their situation and discuss purchasing a home in California. However, the parties did not make a plan to move in five (5) years; Jim merely asked for time and they could reevaluate their situation then. This resulted in the parties' discussing purchasing a home in California less and less.

To Jim's knowledge, Minh started looking to purchase a home in Irvine after the July 16, 2017 incident, despite the fact Jim made it clear to Minh that he did not approve of her plan. Minh did not discuss her search for a home in Irvine with Jim, fully aware he did not approve and would not agree to allow the children to relocate with Minh to California. Without Jim's knowledge or input, Minh purchased a new home, worked with the builder, and made all buyer decisions including, but not limited to, flooring, paint, exterior appearance, and lot choice. Jim was not involved in this process. **Exhibit 1**, Deposition of Minh Luong, pg. 137, lines 21-23. There was no possibility Minh could have known that Jim would "like the neighborhood and the schools," as Jim does not recall the parties ever looking at homes in the neighborhood where Minh purchased her home. It is absurd Minh claims Jim did not inform her he did not approve of her purchasing the home when she readily admits she purchased the home without informing him and without him ever viewing it. Her July 16, 2017 comments that she was moving to California with

or without him, and he could accompany her when he was ready, demonstrate she did not care whether Jim approved of her purchasing a home in California.

After Minh purchased the California home, she attempted to persuade Jim to move to California as well. Minh proposed that Jim could reduce his work days to three (3) days per week, and live in California for the four (4) days he would be off each week. Jim informed Minh that this was unacceptable and would deprive him of spending quality time with the children. Jim wants to be present in the children's everyday lives, helping them with homework, taking them to their extracurricular activities, and spending quality family time together (i.e., going to church, eating dinner together, biking, swimming, paddle boarding, boating, kayaking, picnicking, etc.). The parties discussed Minh's actions with a therapist as well. The therapist asked Minh if she considered that a court could prevent her from taking the children to California, and Minh responded that she was moving regardless.

After Minh purchased the California home, Jim did travel with her and the children to the home on several occasions to spend time with the children vacationing in California. However, the parties did not spend two (2) weekends every month at the home as Minh claims. Given the parties stayed at the home Minh purchased when they visited, Jim did help set up the children's bedrooms; however, this was not in acquiescence to Minh's demands that the parties relocate there. Minh did not inform Jim that she had completed pre-registration commitment forms for the school district, just as she did not inform him she purchased the home. Ultimately, Jim's opinions on such matters do not bear any weight in Minh's mind.

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Minh's claim that Jim has used his "lifestyle on the water" as an excuse not to relocate makes no sense given she moved near the beach where he would be able to continue any "lifestyle on the water." In addition, Jim is not so consumed with spending time on his boat that it is a priority in his decision not to relocate from Nevada to California. Jim's children are his priority, and his and the children's lives are in Henderson. The times Jim is able to get out on his boat each year, Jim spends with his children. Jim's friends, a couple with four (4) children, accompany him and the children when they are able to go out on each other's boats. Two (2) of the children are very close in age to Hannah and Matthew, and all three (3) children thoroughly enjoy the times they are able to go out on the boat. Unfortunately, because Minh does not enjoy spending time on the boat, she prevents Jim from taking the children out as often as he would like.

Throughout the parties' marriage, they did not participate in activities Minh did not enjoy. Jim was not afforded the same courtesy. Minh's relocation to California is a perfect example. Minh does not care nor have any regard for Jim's opinion, and will do exactly as she pleases, expecting everyone else, including this Court, to accommodate her.

Minh claims that she continued working in Las Vegas for the sole purpose of saving money to purchase a home in California. Throughout the years, the parties discussed on several occasions whether Minh would like to stay home to take care of the children. Jim assured Minh that if she chose to be a stay at home mother, he would ensure that was possible. However, Minh told Jim she did not want to be a stay at home mother, and wanted to continue practicing dentistry. Jim supported Minh in her decision, and the parties agreed to hire a live-in nanny to ensure they both could work full time. When Minh recently told Jim she wanted to sell her

practice, he again supported her in exercising her autonomy over her own practice. Jim was fully prepared to support Minh and the children whether Minh decided to continue working or sell her practice.

Since unilaterally deciding to move to California with or without Jim and the children, Minh has invented a whole slew of reasons as to why such an unnecessary move should be granted. Minh first claims that the commute from Jim's residence in Lake Las Vegas, as she suggests is an "extremely remote" place, makes it difficult to commute to work, the children's school, and the children's extracurricular activities. It is surprising Minh would even suggest that the commute from Lake Las Vegas is so unreasonable as to support a relocation of an entire family to California, which is notorious for its traffic. As stated above, the location of the parties' residence has not caused any significant inconvenience. The children arise at a normal time in the morning for school, and they have not been forced to sacrifice their participation in any extracurricular activities. It should not go unnoticed that Minh focuses on *her* feelings of isolation, loneliness, and helplessness, not the children's. This is because the sole reason for this relocation is to benefit Minh, not the children.

Most concerning and outlandish of all Minh's claims is her allegation that Jim is unable to care for the children on his own. As examples, Minh has stated she does not believe Jim will remove the earwax from Hannah's ears or put lotion on Matthew, whose skin becomes irritated when it is not moisturized. **Exhibit 1**, Deposition of Minh Luong, pg. 99, lines 12-20; pg. 104, lines 11-21. Minh has also stated she does not believe Jim will brush Matthew's teeth for him as she does or clean Matthew's eyeglasses for him. **Exhibit 1**, Deposition of Minh Luong, pg. 104, line 23 - pg. 105, line 5. Matthew is nine (9) years old. He is not a toddler. Matthew knows how to brush his teeth and clean his

eyeglasses. Jim also ensures all the children's teeth are brushed while in his care.

Minh even accuses Jim of allowing the children to starve in his care. This is absolutely ludicrous. Minh apparently forgets the multiple times Jim cared for the children on his own while she vacationed with her sister or her friends. Most years, Minh took a two (2) week vacation with her sister or friends while Jim cared for the children. Minh traveled to Turkey, Indonesia, Vietnam, Myanmar, and Papua New Guinea, to name a few places. Perhaps it was only because it benefitted her that she never had any issues with Jim's care of the children previously. Despite Minh's criticisms of Jim's parenting, Jim has had no issues caring for the children. Hannah did leave her lunch box in Jim's vehicle on one day he dropped the children off at school. These kinds of hiccups occur for every parent. For Minh to criticize Jim's ability to take care of the children because one child forgot her lunch box once is absurd.

Jim can also assure the Court that he provides adequate attention to the children while in his care. Minh has claimed Jim allowed Selena to run around the water without supervision. Deposition of Minh Luong, pg. 95, lines 6-14. Given Minh was not present, Jim wondered how she even created such a false story. At her deposition, Minh testified that Hannah and Selena were in the backyard when they decided to come in to the house. **Exhibit 1**, Deposition of Minh Luong, pg. 95, lines 11-14. Hannah walked inside, closed the door, and locked it. **Exhibit 1**, Deposition of Minh Luong, pg. 95, lines 11-14. Selena, who was behind Hannah, knocked on the glass window after Hannah locked it. **Exhibit 1**, Deposition of Minh Luong, pg. 95, lines 11-14. This is the incident Minh uses to show Jim allowed Selena to run around the water without supervision. This is clearly a gross mischaracterization of the event.

The children have been safe in Jim's care since the parties' separated, and Jim has made the necessary adjustments to his schedule to accommodate the temporary custody schedule. During the first week Jim had the children, he was even able to make last minute arrangements and adjustments to his schedule to provide care for the children when the parties' nanny, Yen, abruptly told him she would not work for him. Minh moved out of the Lake Las Vegas house on January 18, 2019. Jim discussed with Yen her ability to care for the children while they were in his care and Minh's. Yen reassured Jim she would work for both parties. Jim had planned a ski trip to Brianhead, Utah, for the Martin Luther King, Jr. Holiday weekend with the children, his brother, and his nephew.

On Saturday evening, January 19, 2019, while in Briandhead, Jim received a text message from Yen stating she would not be assisting him with the care of the children when they were with him as of the following Monday, and would only be assisting Minh. Jim was able to manage caring for the children regardless of the last minute notice from Yen. After Jim returned with the children from the ski trip, Jim helped Matthew and Hannah with their science fair projects, and helped them prepare for their oral presentations. Jim asked the parties' housekeeper, Maria, who also previously assisted with the care of the children, to help him with the children when necessary. Maria also has a five (5) year old daughter, Daphne, with whom Selena loves to play.

After Yen quit working for Jim, but prior to Jim hiring Maria as a nanny, Yen told Jim during an exchange at the children's school that Minh was letting Yen go and was taking her back to California. Yen told Jim that Minh informed her that Minh's attorney advised Minh to do what Jim is doing (i.e., take care of the children without a nanny). Yen

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informed Jim that Minh asked Yen if she would work for Minh after the case was over.

In addition, despite Minh's attempts to portray Jim as an inadequate parent, Jim has taken the children on multiple vacations since the parties' separation. Jim took the children on a camping trip to Zion National Park for a few days, and he and the children had a wonderful time. Jim also recently took the children to Hawaii for a week vacation and met up with his sister and her children for a portion of the vacation. The children were able to spend quality time with their cousins, play on the beach, and swim.

Even when not on vacation, Jim has made the necessary adjustments to his schedule to accommodate the temporary custody schedule and be available for his children. Jim is fortunate he has absolute control over his schedule. During this summer, since the children have been out of school, Jim has taken off nearly every day he has had custody of the children to spend time with and care for them. Jim has also informed his staff that beginning August 19, 2019, when the children return to school, he needs to be off work no later than 3:00 p.m. on his custodial days to pick up the children from school and take them to their extracurricular activities.

Jim has no desire to retaliate against Minh regarding the adequacy of the care they provide the children. Jim is confident that each parent will be able to adequately care for the children on their own. It is, nevertheless, noteworthy that Jim was required to treat Selena for constipation after he picked her up from Minh's care. Although Minh would likely twist this fact to support an argument that Jim did not adequately care for Selena if the roles were reversed, Jim understands that it is common and normal for children to have such issues, and this does not necessarily mean Minh's care directly caused or contributed to

Selena's constipation. Hannah also cracked her tooth while in Minh's care. Again, accidents happen and Jim understands Minh is not an inadequate parent because such an accident happened during her time.

Minh also claims that her request to relocate with the children should be granted because the children will be surrounded by her family and more exposed to their Vietnamese culture in California. Moving the children to California is not the only means to allow them time to visit with her family and expose them to the Vietnamese culture. There is a Vietnamese church in Las Vegas that is associated with the Catholic church that Minh can take the children to during her custodial timeshare. If Jim is granted joint or primary physical custody of the children, he would also ensure Minh was awarded reasonable and sufficient visitation with the children to allow them to spend time with her family in California. Minh could help her siblings take care of her mother in California during all times she did not have visitation with the children. Given Minh plans on retiring, she is much more able to travel to and from California to spend time with the children for visitation than Jim would be.

C. This Court Should Deny Minh's Request to Relocate to California

Nevada Revised Statute § 125C.007 provides as follows in regard to the factors the Court must weigh in determining whether to grant a petition for permission to relocate:

> 1. In every instance of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or 125C.0065, the relocating parent must demonstrate to the court that:
>
> (a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;
>
> (b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and

(c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

2. If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors and the impact of each on the child, the relocating parent and the non-relocating parent, including, without limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:

(a) The extent to which the relocation is likely to improve the quality of life for the child and the relocating parent;

(b) Whether the motives of the relocating parent are honorable and not designed to frustrate or defeat any visitation rights accorded to the non-relocating parent;

(c) Whether the relocating parent will comply with any substitute visitation orders issued by the court if permission to relocate is granted;

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

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

(f) Any other factor necessary to assist the court in determining whether to grant permission to relocate.

3. A parent who desires to relocate with a child pursuant to NRS 125C.006 or 125C.0065 has the burden of proving that relocating with the child is in the best interest of the child.

1. *Although Minh's relocation is not intended to deprive Jim of his parenting time, there does not exist a sensible, good-faith reason for the move*

At her deposition, Minh gave the following reasons to support her claim that her request to relocate to California is sensible and in good faith: (1) Minh believes the school system in Irvine is better than the school system in Las Vegas; (2) Minh claims the Irvine community is

better than the Las Vegas community; (3) Minh claims Irvine is more children friendly than Las Vegas; (4) Minh believes Irvine has better weather than Las Vegas; (5) Minh wants the children living close to her family for family support and so the children can grow up with their two (2) cousins who live in California; (6) Minh claims she would be available for the children all the time in Irvine; (7) Minh claims there are better opportunities in Irvine; (8) Minh claims she would be able to take the children to "any extracurricular activities they want, as opposed to being with Jim and the distance of [his] house;" and (9) Minh would be able to expose the children to the Vietnamese culture. **Exhibit 1**, Deposition of Minh Luong, pg. 69, line 20 - pg. 71, line 8. These are the reasons Minh believes it is in the children's best interest to be raised by her alone in California than by her and Jim in Las Vegas.

First, Minh claims that the school system in Irvine is better than the school system in Las Vegas, and the commute is shorter. **Exhibit 1**, Deposition of Minh Luong, pg. 71, lines 21-25. Minh believes that the schools in Irvine are "highly sought after" and "[a] lot of people want their kids to be going to school in the city of Irvine in that district." **Exhibit 1**, Deposition of Minh Luong, pg. 72, lines 15-24. Minh wants the children removed from the private school, Challenger, they attend in Las Vegas and placed into a public school in Irvine because she believes the public schools in Irvine are better than the public schools in Las Vegas. Minh is comparing apples to oranges. The children are attending a "highly sought after" private school in Las Vegas and have parents who can afford any additional educational needs they made need (e.g., tutors). Test results from the 2019 IOWA Test show Challenger students

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surpassed their national peers by a wide margin.[2] The children's educational needs will be met regardless of whether they reside in Las Vegas or Irvine.

Minh's second "sensible, good faith reason" for her relocation to Irvine is that Irvine offers a better community. Whether Irvine offers a better community compared to Lake Las Vegas specifically or the greater Las Vegas area depends on each individual statistic Minh references, which is very misleading. In her deposition, Minh testified that, according to her research, more families in Irvine have children than the families in Lake Las Vegas. **Exhibit 1**, Deposition of Minh Luong, pg. 77, lines 3-7. Minh then testified she believes Irvine offers a smaller community than Las Vegas. **Exhibit 1**, Deposition of Minh Luong, pg. 77, lines 15-23. If Minh's analysis is flipped and the percentage of children in Irvine is compared to the percentage of children in Las Vegas, not Lake Las Vegas only, it is clear that there is actually a larger percentage of children in Las Vegas than Irvine. Similarly, if the population of Irvine (more than 280,000 people) is compared to the population of Lake Las Vegas (approximately 23,000), it is clear Lake Las Vegas offers a smaller, closer community. Minh manipulates the areas being compared based on how each statistic benefits her position.

The third "sensible, good faith reason" Minh provides to support her request to relocate is that Irvine is more children friendly than Lake Las Vegas, Las Vegas, and Henderson. **Exhibit 1**, Deposition of Minh Luong, pg. 79, line 17 - pg. 80, line 8. Minh claims to have found research online that shows her "community provides activities for kids to do year around." **Exhibit 1**, Deposition of Minh Luong, pg. 80, lines 6-8. Minh also claims

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[2] The 2019 IOWA Test Scores for Challenger Students will be offered as evidence at the evidentiary hearing.

Irvine has "a lot of park systems." **Exhibit 1**, Deposition of Minh Luong, pg. 82, lines 5-8. Las Vegas also offers public parks for children. In addition to the several parks near Lake Las Vegas, where Jim lives, Lake Las Vegas Water Sports opened a massive aqua park this year. In the winter, Lake Las Vegas has an ice skating rink. On the weekends, Jim enjoys taking the children for hikes, bike rides, paddle boarding, kayaking, picnicking, and on their boat around the lake. Jim also takes the children to church with him on Sundays. The children also participate in multiple extracurricular activities, including Taekwondo, swim, art class, and golf. There are plenty of children friendly activities in Las Vegas.

The fourth "sensible, good faith reason" Minh provides in support of her request to relocate is the weather in Irvine is better than in Las Vegas. **Exhibit 1**, Deposition of Minh Luong, pg. 82, lines 17-23. Minh claims that it is hot in the summer in Las Vegas, which limits the amount of outdoor activities in which the children can participate. **Exhibit 1**, Deposition of Minh Luong, pg. 83, lines 7-9. Minh stated that Matthew was interested in playing golf so Minh and Jim signed him and Hannah up for golf after school. **Exhibit 1**, Deposition of Minh Luong, pg. 83, lines 1-5. Minh claims that Matthew quit because it was too hot outside at 3:00 p.m. or 4:00 p.m. when Matthew got out of school. **Exhibit 1**, Deposition of Minh Luong, pg. 83, lines 1-5.

The children attend school in Las Vegas from the second to last week of August to the first week of June. Summer begins at the end of June and concludes at the end of September. The parties could easily sign up Matthew for golf lessons in an any month other than June, August, and September to ensure Matthew was not playing golf in the summer heat after school. In addition, Jim and the children live on Lake Las Vegas, and as stated above, there are plenty of water sports, including swimming,

kayaking, paddle boarding, and boating in which the children can and do participate during the summer months of Las Vegas. It is interesting Minh complains about the heat in Las Vegas in the summer and then proposes that she be awarded primary physical custody of the children in California, and allow the children to spend their summers in Las Vegas with Jim.

The fifth "sensible, good faith reason" Minh provides in support of her request to relocate is that she and the children would be able to live near her family members, including the children's two (2) cousins. **Exhibit 1**, Deposition of Minh Luong, pg. 85, line 6 - pg. 86, line 12. Minh completely ignores the fact that relocating the children to California ensures the children are not able to live near or with one of the two most important family members in their lives, their father or their mother (given Minh has stated she is moving with or without the children). Not only will the children be with their loving and involved father if this Court denies Minh's request to relocate the children from Las Vegas to Irvine, but they will also be living near Jim's family. Jim's sister-in-law, Mel, and her son, Jason, recently moved to Las Vegas. Jim's brother, Ed, will be following his wife and son and moving to Las Vegas soon. Ed and Mel are retiring and will be able to assist in caring for the children when necessary. Jason has been accepted to Bishop Gorman and will begin the 2019-2020 school year.

Minh has claimed she wants to live in California to be available to care for her mother, who lives in Santa Ana, which is approximately twenty (20) to twenty-five (25) minutes from Minh's home in Irvine.[3] However, Minh's sister, Hieu, and brother, Thach (also known as Scott),

[3] Minh initially stated she needs to be available to care for her mother and father, but, sadly, Minh's father recently passed away.

currently reside with their mother and take care of her. **Exhibit 1**, Deposition of Minh Luong, pg. 62, lines 14-20; pg. 63, lines 18-23. Minh has two sisters, Tam and Chau (also known as Charlene), who live in Tustin, California, which is approximately ten (10) minutes from Santa Ana, California. **Exhibit 1**, Deposition of Minh Luong, pg. 64, lines 3-16. Neither Hieu, nor Thach, nor Tam, have children to take care of like Minh. **Exhibit 1**, Deposition of Minh Luong, pg. 68, lines 3-16. Thus, despite Minh's claims that she wants to relocate to California to take care of her mother, it is clear that her siblings are much more available to do so, especially considering two (2) siblings already live with their mother.

Minh's home is approximately eleven (11) miles from her mother's home, and it takes more than twenty (20) minutes to drive there when there is no traffic. It is much longer when there is traffic. It is disingenuous for Minh to complain about the remote location of Lake Las Vegas and having to travel twenty-five (25) minutes from Lake Las Vegas to other areas of Las Vegas when she acknowledges she will be traveling just as long in California to visit with family. **Exhibit 1**, Deposition of Minh Luong, pg. 60, line 19 - pg. 61, line 13.

In the past, when the parties vacationed in California, more often than not, it was Jim, rather than Minh, who would help take care of Minh's parents, attending doctor appointments with Hieu and Scott and ensuring Minh's parents received proper care and treatment. Jim evaluated Minh's mother for her rheumatoid arthritis, and has also operated on both of Minh's parents, performing carpal tunnel surgery on both. Jim also evaluated Minh's father regarding motor deficits and spasticity resulting from his stroke. Even if Minh's mother did need Minh's assistance, Minh could readily provide the same, while more easily traveling to Nevada (rather than Jim traveling to California) for visitation

with the children given she plans on retiring and would have fewer obligations.

The sixth "sensible, good faith reason" Minh provides in support of her request to relocate is that she would be able to care for the children because she plans on retiring. **Exhibit 1**, Deposition of Minh Luong, pg. 86, line 24 - pg. 87, line 4. Despite Minh's claims that she would be available to take care of the children whenever they are not in school, she actually wants to move to California so her family members can help her care for the children. On February 26, 2018, Minh sent a text message to Mel stating: "I need to sale [sic] my practice and move to oc so my family can help me." DEF563_5 - DEF565_5. That same day, Minh sent a text message to Jim stating: "We need to sale [sic] my practice and move to California so my family and [sic] help with the kids. I am not getting enough help here. And I told you I can't do this any more." DEF794_5. Minh does not actually plan on caring for the children any more than she currently does; she just will not be required to hire a nanny in California because she believes her family members will help her.

At her deposition, Minh stated she would not be able to provide the children with the same care in Las Vegas because she will not be living in Las Vegas even if her request to relocate is denied. **Exhibit 1**, Deposition of Minh Luong, pg. 87, lines 5-20. Previous text messages Minh exchanged with Mel demonstrate this is a bluff. On October 30, 2018, Minh exchanged the following text messages with Mel:

Mel: House looks great!
Minh: Wish I could live in it
Mel: You will.
Minh: Does not look like it. I won't leave here without my kids.

DEF689_5 - DEF670_5.

. . .

The seventh "sensible, good faith reasons" Minh provides in support of her request to relocate is that there are better opportunities in Irvine. **Exhibit 1**, Deposition of Minh Luong, pg. 89, lines 3-16. Such opportunities include the children's ability to participate in extracurricular activities and living in a central location where Minh will not have a problem hiring private tutors. **Exhibit 1**, Deposition of Minh Luong, pg. 89, lines 3-16. There has been no impediment to the parties transporting the children to their extracurricular activities in Las Vegas. The parties previously needed to hire a nanny to help with the transportation, but the children were never deprived of participating in an extracurricular activity because of any transportation impediment. Further, if Minh retires, she would be able to transport the children in Las Vegas during her custodial timeshare just as she would in Irvine. Jim plans on continuing to transport the children to their extracurricular activities, and may need to hire a nanny to help if Minh truly does move to California without the kids. However, this is how the parties have operated since the children were born.

The eighth "sensible, good faith reason" Minh provides in support of her request to relocate is that her home in Irvine is more centrally located than Jim's home in Las Vegas. **Exhibit 1**, Deposition of Minh Luong, pg. 90, lines 2-6. Minh complains about the distance and time it takes to travel from Jim's house to the children's school and extracurricular activities. This too has never prevented the children from being able to participate in their extracurricular activities. Minh also complains that Jim's home is not child friendly because it is right on the water, it has scorpions, and there are coyotes in the area. **Exhibit 1**, Deposition of Minh Luonh, pg. 90, lines 22-24. Minh and Jim decided to live in Jim's home at the time they married in 2006. Minh was well

aware there was no fence surrounding the parties' pool and the access to the lake when she had Hannah in 2009, Matthew in 2010, and Selena in 2014. The children have lived in this home their entire lives, all three children are great swimmers, and there have been no incidences as the parties vigilantly watch their children.

The fact that there are scorpions in the area does not make Jim's home a danger. Minh acknowledges there is no need for hospital attention if one of the children is stung by a scorpion, and these stings resolve on their own. The children are well aware that they are to place a cup over a scorpion if they ever see one and have Jim take care of it. Minh also confirmed the children have never been attacked by a coyote. **Exhibit 1**, Deposition of Minh Luong, pg. 92, lines 11-13.

The final "sensible, good faith reason" Minh has given in support of her request to relocate is that the children will be exposed to the Vietnamese culture and language. **Exhibit 1**, Deposition of Minh Luong, pg. 96, lines 18-21. However, Minh will have plenty of opportunity to teach the children about their Vietnamese culture and language during the reasonable and generous visitation she would exercise, especially considering the additional free time she will have when she retires. Jim completely supports Minh's exposing the children to the Vietnamese culture and language, which Minh can do while the children are in her care. Minh speaks Vietnamese and has been free to expose the children to the Vietnamese culture and teach them the Vietnamese language since they were born.

The above detailed reasons Minh has provided in support of her request to relocate to California are not sensible nor in good faith. Even assuming Minh's positions and research are accurate, none of the . . .

foregoing reasons are sensible given the children will be taken away from their father.

In reality, Minh decided to move to California with or without the children because she was angry at Jim. **Exhibit 1**, Deposition of Minh Luong, pg. 152, lines 12-17. Minh mistakenly believed Jim was going to have a case dismissed against him alone even though both were named as parties, and leave her to fend for herself. **Exhibit 1**, Deposition of Minh Luong, pg. 142, line 10 - pg. 143, line 18. In retaliation for what she felt was betrayal, Minh purchased the home in Irvine without Jim's knowledge. **Exhibit 1**, Deposition of Minh Luong, pg. 144, lines 11-18. When Jim did not agree to move to California thereafter, Minh created a story that the parties had intended to move there for years, and invented reasons as to why relocating would benefit the children. Minh's "sensible, good faith reasons" to relocate the children to California were only an afterthought. Minh's request to relocate with the minor children should be denied.

2. *The best interests of the children would not be served by allowing Minh to relocate with the children*

It is in the children's best interests to remain with both parents, with the parties being awarded joint physical custody on a week on/week off basis, if Minh is willing to travel to Nevada for same, or Jim being awarded primary physical custody, if Minh does not want to travel to Nevada for joint physical custody. Minh has already stated her plans to retire. Given Minh will not be working, she is able to live in California in pursuit of her lifelong dream, help her siblings take care of their mother, and travel to Nevada for her custodial timeshare, much more so than Jim, who cannot retire in the near future. Minh owns a home in Las Vegas in which she can stay when she has custody of the children and the children

are in school. Minh's home is located twenty (20) minutes away from the children's school. Minh can, of course, travel with the children to California on the weekends and whenever the children are not in school.

As Minh readily admits, and as the policy of this State confirms, it is in the children's best interest to have frequent associations and a continuing relationship with both parents after the parents have ended their marriage. See NRS 125C.001. In specifically opposing Minh's request for primary physical custody and petition to relocate, and in order to establish that the children's best interests would definitely not be served by an award of primary physical custody to Minh, Jim has set forth an analysis of the relevant factors of NRS 125C.0035(4), as follows:

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

Hannah is ten (10) years old, Matthew is nine (9) years old, and Selena is five (5) years old at this time. The children are not of sufficient age or capacity to form an intelligent preference as to their physical custody. The children are too young to understand what relocating to California entails in regards to this custody action. The children do not understand that such an important decision could have an effect on the amount of time that they are able to spend with their parents. The children also do not have any concept of what is in their best interest.

On May 28, 2019, at the Case Management Conference before this Court, Jim addressed his concerns that Minh was influencing, manipulating, and coaching the children. Jim had received text messages from the children while they were in Minh's care suggesting they were directed to discuss with their father the issue of the children relocating to California. Jim had also noticed changes in the children's behavior, as well as comments from the children regarding Las Vegas that strongly

echoed Minh's opinions. The children are also not able to understand whether they have been influenced, coached, and manipulated, and whether their opinions are a result of such manipulation.

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

Not applicable.

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

Jim is the parent who is more likely to allow the children to have frequent associations and a continuing relationship with the noncustodial parent. The fact that Minh has placed her own desires over the best interests of the children and decided to relocate to California with or without them, ultimately depriving them of the ability to be raised every day by both parties, speaks volumes. Minh is necessarily ensuring the children have less frequent associations with one parent based on her selfish decisions.

Since the parties' separation, Minh's actions have also demonstrated she is not the parent who is more likely to allow the children to have frequent associations and a continuing relationship with Jim as she has been actively interfering with the children's relationship with Jim. Minh is sending the children inappropriate text messages. In one such conversation, Hannah sends a text message to Minh stating, "Hi mommy this is Hannah daddy said I'm not allowed to call you until everyone is done eating." Minh replies: "That's too bad because mommy allows you to speak to daddy whenever you want."[4] Minh's comment is intended to criticize Jim to Hannah, diminishing Jim's parenting decision to eat dinner . . .

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[4] These text messages will be offered into evidence at the evidentiary hearing.

as a family without interruptions, and to highlight to Hannah why Minh believes she is a better parent.

Minh also attempts to obtain "dirt" from the children that she thinks she can use against Jim in this litigation, which interferes with Jim's relationship with the children. For instance, on multiple occasions, Minh has questioned the children regarding how often the children bathe at Jim's home. In one conversation, Minh states to Hannah: "Honey, tell me the truth. You won't be in trouble. Have any of you guys taken a shower or bath since you have been with daddy?"[5] On February 24, 2019, Minh asked the children: "How many times have you showered since you have been with daddy?" DEF1417_5. On April 19, 2019, Minh had the following conversation with Hannah:

> Minh: Have any of you guys taken a bath since you left mommy?
> Hannah: No, but we are going to today
> Minh: The last time you bath [sic] were on Tuesday sand [sic] today is Friday. That's not good.

DEF1462_5. Minh's comments are completely inappropriate, and it is highly likely these are not isolated incidents of Minh criticizing Jim to the children and diminishing Jim as a parent in front of the children.

(d) The level of conflict between the parents.

The level of conflict between the parties is higher than normal given Minh's recent actions. Since the parties separated, Minh's animosity toward Jim has increased. After the parties first separate, Minh yelled at Jim in front of the children regarding issues the parties should be discussing in private. Minh yelled at Jim that he is an imbecile, ignorant, and stupid in front of the children and the babysitter. Minh is frustrated that Jim is not succumbing to her demands as he typically did during the

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[5] These text messages will be offered into evidence at the evidentiary hearing.

parties' marriage to appease her. This has caused Minh to be more aggressive and uncooperative with Jim.

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

While Jim is hopeful that Minh will cooperate with him to meet the needs of the children, Minh's actions since the parties' separation have indicated she plans on making custodial exchanges and coparenting difficult. Minh sometimes refuses to help the children get out of her car at custodial exchanges, and expects Jim to not only facilitate the transfer of children, but also of all gear, clothing, lunches, etc. that must be exchanged. Minh has arrived late to several custodial exchanges, forcing Jim to accommodate her and, on one occasion, to be late for a meeting because he watched Selena at his office until Minh arrived. During this summer, Minh has been driving the children from California to Las Vegas throughout the night, delivering the children extremely exhausted to Jim.

Minh also refuses to communicate in person with Jim, even in front of the children. Minh and Jim have attended doctor appointments with the children where Minh refuses to speak to Jim. Minh will not even respond if Jim says "hello" or "good morning." Minh's actions have unnecessarily caused stress to both the parties and the children. Throughout the parties' marriage, they were able to cooperate to meet the children's needs, and Jim is hopeful that once the stressfulness of the current situation decreases, the parties will continue to do so and be able to better communicate.

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

Both parties are in good mental and physical health as far as Jim is aware. Although not diagnosed, Jim has concerns that Minh has exhibited signs of a narcissistic personality disorder.

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

It would serve the children's physical, developmental, and emotional needs for the Court to award the parties' joint physical custody on a week on/week off basis. In the alternative, if Minh does want to drive to Las Vegas for joint physical custody, this Court should award Jim primary physical custody. The children are currently attending Challenger School where they are receiving an excellent, private school education. It should be noted that Jim has no issue with the cost of the children's private school tuition. Minh has suggested that an added benefit of this Court granting her petition to relocate would be the parties' savings of the children's private school tuition because she would be sending the children to public school in California. Jim believes, given the parties' superior financial status and ability to pay, that saving on the children's private school tuition is not a reason to relocate the children to California, where the cost of living is drastically higher. In addition to attending private school, the children have participated in multiple extracurricular activities, including swimming, karate, piano, art class, and golf. The children are presently active in swimming and karate. The children are able to play outside all year long in both Irvine and Henderson. Even though it is hot during the summers in Nevada, the children live on Lake Las Vegas and have access to numerous water sports and activities.

Jim is also concerned as to whether the children's physical, developmental, and emotional needs will be met with Minh in California. Minh often has little patience with the children and little regard for their opinions as to which extracurricular activities they participate. Jim is also concerned for Hannah in particular given Minh becomes easily frustrated with her, and has declared in the past that she will not help her with homework. Jim is much more patient, understanding, and calm with the

children, and is better skilled in addressing their physical, developmental, and emotional needs.

At Minh's deposition, Minh stated she believed Hannah would not feel comfortable talking to Jim about developmental needs she will have soon. **Exhibit 1**, Deposition of Minh Luonh, pg. 98, line 17 - 25. Whether or not this is true, Minh will not be absent from the children's lives if the parties are awarded joint physical custody or Jim is awarded primary physical custody. Hannah will always have access to Minh to address developmental issues she may not feel comfortable talking to Jim about or to ask questions Minh is more suitable to answer. The same would apply to Matthew, who may have physical, developmental, or emotional needs he feels more comfortable addressing with Jim. The parties will be sharing custody in some manner, and there is no doubt that physical, developmental, and emotional needs will arise for all the children, and the parties will have to cooperate in addressing these regardless of whose timeshare on which they occur.

Lastly, Jim is concerned that Minh is adversely affecting the children emotionally by placing a heavy burden on them to make Minh happy by being with her. As discussed in further detail in the following section, Minh sends inappropriate text messages to the children talking about how sad she is when they are not with her, and making the children feel guilty when they are with Jim.

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

The children are closely bonded to both parents. Although Minh seems to believe the children are more attached to her than they are to Jim, it is becoming apparent that the nature of Minh's relationship with the children is one of Minh's dependence on them. Minh sends inappropriate text messages to the children, which are absolutely intended

to make the children feel guilty or sad for Minh while they are with Jim. Minh exchanged the following text messages with Hannah, which demonstrate she is placing a heavy burden on Hannah of having to deal with Minh's sadness:

Minh: I am so happy to hear from you since I am not so happy right now
Hannah: Why
Minh: Life
Hannah: ???

DEF1457_5. Hannah's response of "???" shows she is clearly concerned for her mother's well-being. In another text message, Minh states: "I wish you will be with me always . . . . I wish we will never have to part." DEF1392_5. In another text message, Minh states: "Good nite [sic] honey. I know you rather me being next to you but you do need to sleep." DEF1400_5. Minh has also attempted to manipulate the children into thinking they are missing her when they are with Jim:

Minh: Why r u up so early?
Hannah: I don't know I just woke up
Minh: Maybe u r missing mommy

DEF1369_5. It is clear Minh is attempting to make the children feel like they need to be with her to make her happy, which is likely emotionally taxing on the children.

Minh has also sent text messages that indicate she is trying to be the "fun" parent. On February 3, 2019, Minh exchanged the following text messages with Hannah while Hannah was with Jim:

Minh: Honey, make sure you finish the whole chapter of vocabulary and 2 math homework today. Stay ahead so when you are with mommy we can have fun.
Hannah: That's what I am doing

DEF1379_5.

. . .

. . .

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

Not applicable.

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

While there is technically no history of "abuse or neglect" in this matter, Jim has consistently worried in the past regarding Minh's tendency to discipline the children with corporal punishment. Jim does not know if Minh is still engaging in such inappropriate disciplinary tactics, but assumes so given her temperament.

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

See response to factor (j) immediately above.

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

Not applicable.

Based on the foregoing, it is <u>not</u> in the children's best interests for Minh to be awarded primary physical custody and permitted to relocate to California. The Court should award the parties joint physical custody on a week on/week off basis, or should award Jim primary physical custody and visitation to Minh. Minh will be easily able to travel between Las Vegas and Irvine given she is retiring.

3. *The children and Minh will not benefit from an actual advantage as a result of the relocation*

There is no actual advantage to Minh, nor the children, if Minh is permitted to relocate to California. The children are afforded every opportunity and advantage in Henderson with Jim and Minh sharing joint

physical custody (with Minh traveling to Nevada for her custodial timeshare) or with Jim being awarded primary physical custody, as they would be in California. Minh could also choose to spend her visitation with the children in California, affording them the quality time spent with her family and the exposure to the Vietnamese culture. Minh has made it clear that her relocation to California is in pursuit of *her* lifelong dream, and is not intended to realize an advantage to her career, or her or the children's well-being or standard of living.

Although the custodial parent 'need not prove a tangible economic or career advantage in meeting' the 'actual advantage' threshold requirement, Minh must show some actual advantage to both her and the children. *See Jones v. Jones*, 110 Nev. 1253, 1260, 885 P.2d 563, 568 (1994). *Jones* was a post-divorce case in which the mother, who had primary physical custody of the parties' children, sought permission to relocate to another state. *Id.* at 1256, 885 P.2d at 566. The mother was pursuing a relationship and career opportunities, which were integrally connected to the health and well-being of the mother and the children. *Id.* at 1261, 885 P.2d at 569. Unlike in *Jones*, this case is not a post-divorce case and Minh does not have primary physical custody. Moreover, Minh has not demonstrated that she is pursuing any economic or non-economic advantages.

Minh claims *McGuinness v. McGuinness* is a case where "[t]he Nevada Supreme Court has held that denial of a move under these circumstances was grounds for reversal." This is a misrepresentation of the Supreme Court's holding. The Supreme Court reversed the district court's custody order and remanded the matter to the district court for reevaluation of the custody decision and the motion to relocate by the standards the Supreme Court expressed in its opinion. 114 Nev. 1431, 970 P.2d 1074, 1079

(1998). In addition, the facts Minh has set forth are not comparable to the facts of *McGuinness*. In *McGuinness*, a mother requested permission to relocate with her child to the town in which she was raised. *Id.* at 1075. The mother's own mother had recently passed away, and the mother inherited a substantial sum of money, including part ownership in her mother's home, which her siblings agreed she could live in rent free while she finished college and earned a teaching license. *Id.* The mother had exhausted her career opportunities as a secretary in Las Vegas so this was a significant opportunity for her and her child. *Id.* Minh's situation could not be more different than the mother's in *McGuinness*. Minh is not moving to California to realize any advantage to her career or the lifestyle she can provide to the children.

Minh also compares her case to *Gandee v. Gandee*, 111 Nev. 754, 895 P.2d 1285 (1995). Again, the facts are not comparable. Like *Jones*, *Gandee* is a post-divorce case in which the party seeking relocation was the custodial parent. *Id.* at 756, 895 P.2d at 1286. In *Gandee*, the father, the custodial parent, requested permission to relocate with his children to accept a promotion from his position as a sales associate to general manager. *Id.* One of the father's children was born with physical disabilities, and the father demonstrated he would be able to better provide for his disabled daughter's needs, would have a greater familial support system, and his housing situation would improve if he was permitted to relocate. *Id.* at 756-57, 895 P.2d at 1286-87. Minh is not able to demonstrate, like the father in *Gandee* did, that she will experience an improved financial situation, expanded career opportunities, and greater familial support, all of which beneficially impacted the children's quality of life in *Gandee*.

. . .

If the Court finds that Minh has demonstrated the provisions set forth in NRS 125C.007(1), the Court must then weigh the following factors and the impact of each on the children, Minh, the relocating parent, and Jim, the non-relocating parent, including, without limitation, the extent to which the compelling interests of the children, Minh, and Jim are accommodated:

1. *The extent to which the relocation is likely to improve the quality of life for the children and Minh*

The Court should consider the following subfactors in determining whether the move will improve the quality of life for Minh and the children: "whether positive family care and support will be enhanced, whether housing and living conditions will be improved, whether educational advantages will result for the children, whether the custodial parent's employment and income will improve . . . ." *Jones*, 110 Nev. at 1261-62, 885 P.2d at 569 (citing *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d 1268, 1271 (1991)). Minh plans on retiring so her employment and income will not improve.

Positive family care and support will not be enhanced because although Minh will be a stay at home mother and surrounded by family members, the children receive the same level of positive family care and support in Henderson. If Minh retires as she has stated she plans on doing, she will be able to provide the same level of care and support to the children in Henderson as in California during her custodial timeshare. In addition, Jim's sister-in-law, Mel, and nephew, Jason, moved to Las Vegas, and Jim's brother, Ed, will be moving here shortly as well. Ed and Mel will be able to provide the same positive family care and support as Minh's relatives, and the children will be able to spend time with Jason, just as they would be able to spend time with their two cousins in

California. Thus, the children's family care and support will not be enhanced, it will merely be different.

Minh has not demonstrated that housing and living conditions will be improved by her relocation. The parties are fortunate to be financially able to provide their children with the upperclass lifestyle they have enjoyed. The children live in a beautiful, waterfront home on Lake Las Vegas, on approximately a third of an acre, in a secure, gated community with security guards who patrol the community. Thus, the relocation is not likely to improve the housing or living conditions of the children or Minh.

The children will not experience educational advantages. The children currently attend a private school, Challenger School, in Henderson. Minh suggests moving the children to a public school, Orchard Hills, in California, because she believes the public schools in Irvine are better than the public schools in Las Vegas. Whether this is true is irrelevant as the children are fortunate to have parents who can send them to private school.

Based on the foregoing, the relocation is not likely to improve the quality of life for the children and Minh.

2. *Whether Minh's motives are honorable and not designed to frustrate or defeat any visitation rights accorded to Jim*

Regardless of Minh's motives, if her petition to relocate with the children is granted, such an order will necessarily frustrate Jim's custody of his children. Nevertheless, Jim does not believe that Minh's motives are dishonorable, they are merely selfish.

. . .

. . .

. . .

3. *Whether Minh will comply with any substitute visitation orders issued by the court if permission to relocate is granted*

Both parents would comply with any visitation orders issued by the Court. If Jim is granted joint or primary physical custody, he will comply with any custodial order or visitation awarded to Minh.

4. *Whether Jim's motives are honorable in resisting the petition for permission to relocate or to what extent any opposition to the petition for permission to relocate is intended to secure a financial advantage in the form of ongoing support obligations or otherwise*

Jim's motives in resisting Minh's petition for relocation are honorable. Jim loves his children and wants to be present in their everyday lives. Jim wants to take his children to school, help them with their homework and school projects, take them to and watch them participate in their extracurricular activities, and hike, bike, boat, swim, and ski with them. Jim's opposition to Minh's petition to relocate is not intended to secure a financial advantage as Minh has attempted to pay him to forgo his custodial rights on numerous occasions, and Jim has adamantly refused all such offers.[6]

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

Given Minh's plans to sell her practice and retire in the near future, Minh would have more opportunity to travel and maintain a visitation schedule that would adequately foster and preserve her relationship with the children. Minh owns a home in Las Vegas and would have a place to reside when she has custody of the children. Jim plans on continuing to

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[6] Minh's offer, and Jim's denial, is not excluded evidence pursuant to NRS 48.105(1) because it is being offered not to prove the validity of claim, but to prove Jim's opposition to Minh's request to relocate is not intended to secure a financial advantage. NEV. REV. STAT. § 48.105(2).

work given his young age, growing practice, and the financial setbacks he has experienced in the past few years. There would not be a realistic opportunity for Jim to maintain a visitation schedule that would adequately foster and preserve his relationship with the children given the restraints on his ability and the frequency with which he could travel. If Minh retires, however, she will have the ability and time to travel for visitation much more so than Jim.

III. CHILD SUPPORT

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

IV. LIST OF EXHIBITS

1. Relevant Pages from the Deposition Transcript of Minh Nguyet Luong, deposition taken on April 12, 2019.

2. Text messages exchanged between the parties from August 25, 2018 to April 17, 2019, Bates Nos. PLTF000807 - PLTF001164; and PLTF001636 - PLTF001751.

3. Text messages exchanged between Minh Luong and Jim Vahey regarding the children's medical treatment, Bates Nos. PLTF001166 - PLTF001183.

4. Screenshot of transcription of voicemail Jim Vahey received from CVS regarding prescription for Selena Vahey, Bates No. PLTF001194.

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5. Text messages between Minh Luong and Jim Vahey regarding Selena's schooling, Bates Nos. PLTF001313 - PLTF001316.

6. Text messages regarding Matthew's karate test, Bates Nos. PLTF001309 - PLTF001312.

7. Text message from Minh Luong to Hannah Vahey, Bates No. PLTF001165.

8. Text Messages exchanged between Jim Vahey and Matthew Vahey, Bates Nos. PLTF001188 - PLTF001189.

9. Text messages exchanged between Plaintiff and the parties' minor children, Bates Nos. PLTF001203 - PLTF001308.

10. Photographs of Matthew completing book report, Bates Nos. PLTF001190 - PLTF001193.

11. Brochure for Challenger School, Bates Nos. PLTF001195 - PLTF001198.

12. Challenger Students' Amazing 2019 IOWA Test Scores, Bates Nos. PLTF001317 - PLTF001319.

13. Travel time from Challenger School - Silverado campus to 9742 West Tompkins Avenue, Las Vegas, Nevada, Bates No. PLTF001199.

14. Travel time from Challenger School - Silverado campus to 27 Via Mira Monte, Henderson, Nevada, Bates No. PLTF001200.

15. Challenger School Achievement Report for Hannah Vahey for the 2018-2019 school year, Bates No. PLTF001320.

16. Challenger School Mid-Term Notice for Hannah Vahey, dated March 18, 2019, Bates No. PLTF001321.

17. Challenger School Mid-Term Notice for Matthew Vahey, dated March 19, 2019, Bates No. PLTF001322.

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18. Challenger School Classroom Speech Evaluation Form for Matthew Vahey, Third Grade, Bates No. PLTF001323.

19. U.S. Census Bureau QuickFacts, Population Estimates as of July 1, 2018, for Henderson, Nevada, Las Vegas, Nevada, and Irvine, California, Bates Nos. PLTF001792 - PLTF001794.

20. Family photographs, Bates Nos. PLTF000416 - PLTF000806; PLTF001752 - PLTF001791.

21. Flamingo Surgery Center Surgeon Case History from January 1, 2010 to December 31, 2018, Bates Nos. PLTF000086 - PLTF000134.

22. Flamingo Surgery Center Surgeon Case History from January 1, 2019 to April 29, 2019, Bates Nos. PLTF000135 - PLTF000139.

23. Specialty Surgery Center of Las Vegas Surgeon Case History from January 1, 2010 to December 31, 2018, Bates Nos. PLTF000140 - PLTF000196.

24. Specialty Surgery Center of Las Vegas Surgeon Case History from January 1, 2019 to April 26, 2019, Bates Nos. PLTF000197 - PLTF000200.

25. Hand Center of Nevada Appointments for Dr. James W. Vahey, M.D., from January 1, 2018 to May 9, 2019, Bates Nos. PLTF001327 - PLTF001628.

26. Documents produced by Defendant, Bates Nos. DEF563_5 - DEF565_5; DEF573_5 - DEF574_5; DEF605_5; DEF689_5 - DEF670_5; DEF676_5; DEF678_5; DEF767_5; DEF794_5; DEF1392_5; DEF1369_5; DEF1379_5; DEF1389_5; DEF1400_5; DEF1417_5; DEF1432_5; DEF1457_5; DEF1462_5.

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V. LIST OF WITNESSES

1. JAMES W. VAHEY, Plaintiff
c/o THE DICKERSON KARACSONYI LAW GROUP
1745 Village Center Circle
Las Vegas, Nevada 89134
Telephone: (702) 388-8600

Dr. Vahey is expected to testify as to the facts and circumstances concerning all matters at issue in this action.

2. MINH NGUYET LUONG, Defendant
c/o KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Telephone: (702) 823-4900

Dr. Luong is expected to testify as to the facts and circumstances concerning all matters at issue in this action.

3. Tess Headley
26 Via Mira Monte
Henderson, Nevada 89011
Telephone: (831) 383-8868

Ms. Headley is expected to testify as to the facts and circumstances concerning her observations of the parties with the children.

4. Robert McDonald
26 Via Mira Monte
Henderson, Nevada 89011
Telephone: (828) 342-2666

Mr. McDonald is expected to testify as to the facts and circumstances concerning his observations of the parties with the children.

5. Magaly Pittman
264 Aqua Lane
Henderson, Nevada 89012
Telephone: (702) 203-6967

Ms. Pittman is expected to testify as to the facts and circumstances concerning her observations of Dr. Vahey with the children and Dr. Vahey's work schedule.

. . .

6. Richard Landeis
1085 Via Della Curia
Henderson, Nevada 89011
Telephone: (702) 271-1141

Mr. Landeis is expected to testify as to the facts and circumstances concerning his observations of the parties with the children.

7. Gig Landeis
1085 Via Della Curia
Henderson, Nevada 89011
Telephone: (702) 271-0158

Mrs. Landeis is expected to testify as to the facts and circumstances concerning her observations of the parties with the children.

8. Edward Vahey
419 Lomita Avenue
Millbrae, California 94030
Telephone: (650) 245-3335

Mr. Vahey is expected to testify as to the facts and circumstances concerning his observations of the parties with the children.

9. Imelda Vahey
419 Lomita Avenue
Millbrae, California 94030
Telephone: (650) 922-7052

Mrs. Vahey is expected to testify as to the facts and circumstances concerning her observations of the parties with the children.

10. Bowena Bautista
265 Trailing Putt Way
Las Vegas, Nevada 89148
(702) 326-0137

Ms. Bautista is expected to testify as to the facts and circumstances concerning her observations of Dr. Vahey with the children and Dr. Vahey's work schedule.

. . .

. . .

11. Yenni Nguyen
4140 West 142nd Street, Apt. A
Hawthorne, California 90250
(424) 376-4450

Ms. Nguyen is expected to testify as to the facts and circumstances concerning her observations of the parties with the children.

Jim reserves the right to call any necessary rebuttal witnesses or any witness named or called by Minh.

DATED this 2nd day of August, 2019.

THE DICKERSON
KARACSONYI LAW GROUP

By Sabrina M. Dolson

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
JOSEF M. KARACSONYI, ESQ.
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Nevada Bar No. 013105
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE DICKERSON KARACSONYI LAW GROUP, and that on this 2nd day of August, 2019, I caused the above and foregoing document entitled PLAINTIFF'S PRETRIAL MEMORANDUM, to be served as follows:

[X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) 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;

[ ] 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 EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;

[ ] sent a courtesy copy via e-mail on Eighth Judicial District Court's electronic filing system;

[ ] by hand-delivery with signed Receipt of Copy.

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

NEIL M. MULLINS, ESQ.
KAINEN LAW GROUP, PLLC
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Attorney for Defendant

Sabrina M. Dolson

An employee of The Dickerson Karacsonyi Law Group

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

VOLUME II

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. D-18-581444-D
	)	DEPT NO. H
	)	
MINH NGUYET LUONG,	)	
	)	
Defendant.	)	
	)	

DEPOSITION OF MINH NGUYET LUONG

Taken on Friday, April 12, 2019

At 9:24 a.m.

By a Certified Court Reporter

At 1745 Village Center Circle

Las Vegas, Nevada

Reported By: Shanyelle King, CCR No. 943
Job No. 541478

APPEARANCES:

For the Plaintiff:

THE DICKERSON KARACSONYI LAW GROUP
BY: ROBERT P. DICKERSON, ESQ.
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For the Defendant:

KAINEN LAW GROUP
BY: NEIL M. MULLINS, JR., ESQ.
3303 Novat Street, Suite 200
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(702) 823-4900
neil@kainenlawgroup.com

Also Present: Mr. James W. Vahey

Q. And how long did that nanny work for you?

A. About the same amount.

Q. So roughly two to three months?

A. Yes.

Q. How many nannies have you had?

A. Quite a few.

Q. So can you tell me the names of any of the nannies?

A. Yes.

Q. Who?

A. The last one is Y-E-N, N-G-U-Y-E-N.

Q. Pronounced Yen?

A. Yes.

Q. So how long did Yen work for you?

A. She started working for me when Hannah was born -- not when she was born. She was one of the nannies to help take care of Hannah. I don't remember what number she was from all those nannies.

She worked for us for about six months, and then she quit because of her personal issues. Her niece had a baby, so she wanted to go work for her niece instead.

Q. It had nothing to do with the way you treated her?

A. No.

force Hannah into doing what she doesn't want to do.
BY MR. DICKERSON:
Q. So explain that to me. What was the issue that you were dealing with?
A. School, Taekwondo, daily routine. Whatever Hannah doesn't do, Jim doesn't want to push her into doing anything.
Q. Did it really relate to Taekwondo, that she did not want to do Taekwondo?
A. That was one of them.
Q. What else?
A. Her homework.
Q. She didn't want to do her homework?
A. She doesn't want to do her homework.
Q. Well, who is responsible for helping Hannah with her homework?
A. I was responsible, and so was Jim.
Q. Isn't it true that you told Jim you did not have the patience to deal with Hannah and her homework so you told him he was responsible for working with her on her homework?
A. No.
Q. You never said that?
A. No.
Q. Tell me, who was responsible for taking the

children to school?

A. We both were responsible for taking the kids to school, and sometimes the nannies too.

Q. So as far as taking to school, how often would you take the children to school?

A. Probably three days.

Q. And how often would Jim?

A. Two days.

Q. And so you're telling us that you would take them to school and then get to work immediately after taking the kids to school?

A. Yes.

Q. And how often would the nannies take the kids to school?

A. It's random. It depends on when, which nanny you're talking about.

Q. Who would pick up the children from school?

A. It also depends which period of time you're asking, because there's time where the nannies were the ones picking them up, there's times where I was the one picking them, and there's times Jim picked them up.

Q. Can you tell me anything about what Hannah's science project was when she was in second grade?

A. It was about photosynthesis.

Q. I'm sorry?

BY MR. DICKERSON:

Q. The address of the home that you recently purchased in Irvine, California, would you give that to us to one more tine?

A. 135 Larksong.

Q. Spell that.

A. L-A-R-K-S-O-N-G, Irvine, 92602.

Q. And your parent's address?

A. 1829 W. Brewer Avenue, Santa Ana.

Q. West what?

A. Brewer, B-R-E-W-E-R, Avenue, Santa Ana, 92704.

Q. Now, would you agree that the distance between your home in Irvine and your parents' home in Santa Ana is 11 miles?

A. I don't know the exact miles.

(Exhibit 1 marked.)

BY MR. DICKERSON:

Q. I'm showing you what's been marked for identification purposes as Exhibit 1 for this deposition. If you take a look at that, it shows the distance between your home and your parents' home, is that correct, would you agree?

A. Yes.

Q. And it shows that it is a total of -- is it

11 miles?

A. Yes.

Q. And it indicates that to travel that 11 miles, it would take you approximately 27 minutes; is that correct?

A. This is during traffic hours.

Q. During traffic hours. Okay. That's at -- what time is it?

A. At traffic hours, 5:46.

Q. Okay. So you don't disagree that it's 11 miles from your home to your parents' home; is that right?

A. Correct.

Q. You agree with that. You believe that it would take less than 27 minutes to get there during non-traffic hours?

A. Yes.

Q. Like what time of day would be the best time for you to travel from your house to your parents' house?

A. Well, I travel from my house to my parents' house about 8:00 p.m. before, and it's -- the GPS said 18 minutes.

Q. Okay. So that's at 8:00 p.m. at night?

A. Yes.

Q. Okay. Any other times you travel to your parents' house?

A. During the day, in the middle of the day.

Q. And what time of the day are you telling us?

A. About 10 o'clock.

Q. In the morning?

A. Yes.

Q. And the same 11 miles; right?

A. Yes, because the miles don't change.

Q. How long are you telling us it took you to do it when you did it at 10:00 in the morning?

A. It's about 18 to 20 minutes, 23 minutes.

Q. Okay. Thank you.

Now, your parents do not live alone, do they?

A. No.

Q. Who lives with your mom and dad?

A. My sister Hieu, partially.

Q. What do you mean "partially"?

A. She lives there maybe three, four days, a week, and she lives at my house the rest of the time.

Q. She lives at what house?

A. 135 Larksong.

Q. So prior to your purchasing Larksong, she lived a hundred percent of the time with your mom and dad; is that right?

Q. And how about your sister Hieu?
A. She's a lawyer.
Q. And you have another sister that lives in close proximity to your parents in Santa Ana; is that correct?
A. No.
Q. Who is your sister that's the nurse practitioner?
A. She lives in Tustin.
Q. Oh, I'm sorry. Tustin. How close is Tustin and Santa Ana? They're right next to each other, aren't they?
A. I don't know exactly if they're next to each other or not.
Q. And what's the nurse practitioner's name?
A. Tam, T-A-M.
Q. Does any of your other siblings live with your parents?
A. No.
Q. You have -- we talked about three of your siblings, and you have three more siblings. Where do they live? Let's go through their names and where they live.
A. Duc, Duc is the oldest one.
Q. She lives where?

Q. Do you know her address?
A. No, I don't.
Q. Does Tam have any children?
A. No.
Q. How about Hieu, does Hieu have any children?
A. No.
Q. How about your brother --
A. No.
Q. -- he has no children?
Your brother's name again, I'm sorry.
A. Thach, T-H-A-C-H.
Q. And how about P-H-I, Phi, does she have any children?
A. No.
Q. How about Duc --
A. No.
Q. -- children?
And now the last one, T-E-N, Ten, did I spell that wrong? Oh, no.
A. Chau, C-H-A-U?
Q. Tell me about your siblings. Do any of them have children?
A. Yes.
Q. Which one?
A. C-H-A-U.

Q. C-H-A-U. And C-H-A-U lives in Tustin; correct?

A. Yes.

Q. Tell me about her children.

A. She has two daughters.

Q. How old are they?

A. Five and seven.

Q. Okay. And any of your other siblings have children?

A. No.

Q. All right. Can you tell me why -- I want you to list everything as to why you want to move to the home in Irvine. Why do you want to move to Irvine and take your children with you?

A. There's a lot of reasons, but just the top --

Q. Okay. Let's go through each and every one of them.

A. I'm not going to be able to remember all of them at the top of my head. I can tell you --

Q. Well, hold on. I'm interested in all the reasons. So I didn't realize that you would have to remember any.

So as we go through -- let's go through all the reasons you want to move and have the court allow you to move with your children to Irvine.

extracurricular activities they want, as opposed to being with Jim and the distance of the house, Jim's house, to anywhere.

The culture.

Q. I'm sorry?

A. The culture.

Q. Okay. What else?

A. That's what I can remember right now.

Q. Well, I want you to tell me everything. So did you try to memorize something?

A. No, I don't need to try and memorize anything.

Q. Okay. So right now you've given me nine.

A. Okay.

Q. So let's go through these one at a time. And what my understanding is, it's your position that these nine items that you've just discussed are the basis for your sensible, good faith reason for a move from Las Vegas to Irvine with your children; is that correct?

A. Yes.

Q. So you say better school system.

A. I'm sorry. The school is close to the house also.

Q. So --

A. The commute is a lot shorter.

Q. Than Lake Las Vegas. Okay. So explain that to me.

A. I went online, and I found research that the city of Irvine has 50 -- more than 50 percent that have families that have kids that are younger than 18, and Lake Las Vegas has less than 11 percent -- or has 11 percent.

Q. Anything else in support -- so as I understand it, you're saying that another sensible, good faith reason for your move is your belief that Irvine is a better community than Lake Las Vegas?

A. Yes.

Q. Okay.

A. For children.

Q. For children. Okay. Anything else about being a better community?

A. It's smaller. It gives a good sense --

Q. Irvine is smaller than Lake Las Vegas?

A. No. Irvine is smaller than Las Vegas.

Q. Okay. All right. So why does that make it a better community?

A. It gives the kids a sense of community, they belong to a community.

Q. And you feel that is a sensible, good faith reason to have your children --

BY MR. DICKERSON:

Q. All right. So we've talked about the better community. Is there anything else you want to say about Irvine being a better community and that's a sensible, good faith reason for your move?

A. Our house, there's kids in the community where --

Q. I'm sorry?

A. There's kids in the community where they can play with, and go to school with, and they can play with after school.

Q. Okay. Anything else?

A. I can't remember anything else right now.

Q. Okay. Now, your third sensible, good faith reason for the move is it's more children friendly?

A. Yes.

Q. So Irvine is more children friendly than Lake Las Vegas?

A. Yes.

Q. Is Irvine more --

A. My community is.

Q. Is Irvine more children friendly than Las Vegas?

A. Than Lake Las Vegas.

Q. Is it more friendly than Las Vegas?

A. Yes, I believe so.

Q. Is it more friendly than Henderson?

A. Yes.

Q. And you say you believe so. What do you base that belief upon?

A. I base it on the research I found online, and my community provides activities for kids to do year around.

Q. Have you ever researched online the effect on children when they do not have frequent contact with a parent? Did you research that online?

A. Jim will have frequent contact with the children.

Q. Well, you signed -- do you remember your motion that you filed with the court? Do you remember defendant's motion for primary physical custody to relocate with minor children to southern California, do you remember that notion?

A. Yes.

Q. And you read that motion before you signed the acknowledgment at the conclusion, did you not?

A. Yes.

Q. And on page 23 of 23 of that, you state that, "I have read defendant's motion for primary physical custody to relocate with the minor children to southern

say about your reason number three, that Irvine is more child friendly?

A. More than the fact that they always have activities for kids?

Q. Okay. Anything else?

A. They have a lot of park systems.

Q. I'm sorry?

A. Parks.

Q. Tell me about the parks.

A. There's parks everywhere for kids to do.

Q. Okay.

A. The kids would be -- because of the weather, they could be out playing all day long and not be --

Q. That's number four, number four is the weather.

A. Okay.

Q. So your fourth sensible, good faith reason for the move is that Irvine has better weather than Las Vegas; is that right?

A. Yes.

Q. So explain that to me.

A. Well, you know how hot it is in the summer here.

Q. Why is that a sensible, good faith reason for the move?

A. Matthew was interested in playing golf, and he -- we signed him up, and we signed Hannah up. He quit because it got too hot. Because when he gets out of school about 3:00 or 4:00, it's too hot for him, so he could not continue to take golf lessons.

Q. So what are you telling us?

A. I'm telling you because of the weather here, it restricts the amount of activities outdoor that he can do.

Q. So are you talking just the summertime, because when you say when he gets out of school it's too hot, that would suggest to me that during the months of -- roughly the months of September through May, that it's too hot in Las Vegas for your son to play golf. Is that what you're telling us?

A. That's what he was telling me, it was too hot.

Q. But is that what you're telling us?

A. Yes, that it was too hot for him to play golf.

Q. So between the months of September and May of each year, it's too hot for your son to play golf in Las Vegas. Is that true?

A. When he told me it was too hot to play, it was probably August and September.

else about better weather?

A. Well, the weather allows them to play outside.

Q. Okay. Anything else?

A. No.

Q. All right. Now, your fifth reason was that you would be there to help your family. That's reason number five.

A. To help my family, or to be with the kids 24/7?

Q. No, your -- I wrote it down as that your family -- that you would be there to help your family.

A. Well, that's one the of reasons why it would beneficial for me, but that's not why it would be beneficial for the kids.

Q. So to be there to help for your family would be just a benefit to you?

A. Yes.

Q. How is that a benefit for your children?

A. It is not.

Q. Okay. But you do believe that it would be a benefit for your children to live closer to their only two cousins, is that right, only two cousins from your side of the family?

A. Yes.

Q. And that's more important than them being near their father?

A. We chose to move together there.

Q. Do you understand my question?

A. Jim is the one who's changing his path.

Q. Do you understand my question?

A. Yes.

Q. Are you telling us that it is better for your children to be closer to their only two cousins on your side of the family than it is for them to be closer to their father?

A. It is only one of the reasons.

Q. And you believe that that is -- a sensible, good faith reason for your relocation is because it's more important for your three children to be closer to their only two cousins on your side of the family; is that right?

A. That is only one of the reasons.

Q. Okay. And that is one of your reasons?

A. Yes.

Q. And you think that is a sensible, good faith reason?

A. Yes.

Q. Okay. Your sixth sensible, good faith reason was that your children would be raised by you 24/7; is

that right?

A. Whenever they get home from school, I will be there. Aside from them being in school, I will be there.

Q. Now, if you lived in Las Vegas, you wouldn't be there for them?

A. I wouldn't live in Las Vegas.

Q. Pardon me?

A. I'm would not live here. I am not planning to live here.

Q. Okay. So regardless of what the court does, if the court denies your motion and says, no, I'm not going to allow your children to relocate with you to Irvine, you're telling us that you're still going to move to Irvine?

A. Yes.

Q. And you will leave your children here with their father?

A. If that's what the court believes is better for them.

Q. And let's say that the court did that, and the court decided that it was going to deny your motion and said that you can move to Irvine, but if you move to Irvine, then we need to set up a visitation schedule for you, what would be the visitation schedule that you

A. On that topic, I can't think of anything right now.

Q. The seventh sensible, good faith reason you've given us is that there are better opportunities for the children in Irvine than they have in Las Vegas. So explain that, what are the better opportunities in Irvine?

A. Well, like I said, I would be available to them to transport them to and from any extracurricular activities they want to take.

Q. Anything else?

A. We live at a centrally located location. We don't have a problem getting people to come to the house to do private tutoring.

Q. Anything else?

A. That's what I can come up with right now.

Q. So when you say that the seventh sensible, good faith reason for you requesting the court to allow you to move to Irvine, California with your children is what you've just described as better opportunities for the children; is that right?

A. Yes.

Q. The eighth sensible, good faith reason for your move is what you described as the distance from Jim's house, and I didn't quite understand that. So can

you clarify that?

A. Because we're centrally located, compared to Jim house, for everywhere that we need to go. It takes at least half an hour to 45 minutes to go anywhere for them, to go to swim class or Taekwondo or whatever it may be that they want to do.

Q. Okay.

A. So because of that, it restricted them from -- restricted us from enrolling them into anything they want.

Q. So that is what you meant by your eighth sensible, good faith reason for your move?

A. Yes.

Q. And that is because you just feel that it's best for you to relocate to Irvine with your children because Jim's house is just too far from anything. Is that it?

A. Yes.

Q. Okay. Anything else?

A. On that topic?

Q. Yes.

A. Also, his house is not child friendly. It has scorpions, we're right on the water, it has coyotes. It's not safe for the kids.

Q. So these are good ones. Let's go through

the hospital?

A. No, they just suffer through it.

Q. I see. So when your child is bitten by a scorpion, you just let them suffer through it?

A. There's nothing you can do.

Q. So let's -- maybe you didn't hear my question. When your children are bitten by a scorpion, you do not do anything about it, you just let them suffer through it; is that right?

A. That's correct.

Q. Okay. Now, coyotes, have your children ever been attacked by a coyote?

A. No, thank God.

Q. And you say that it's -- his house is not safe.

A. Correct.

Q. What else is not safe about it?

A. It's waterfront.

Q. I see. So --

A. There's no fence. There's nothing to prevent them from getting out of the house and getting in the water.

Q. Now, Hannah has lived there for over ten years.

A. Yes.

Q. And where was Jim?

A. Jim was inside the house.

Q. And where were you inside?

A. Inside the house.

Q. Okay. Who discovered her?

A. I came out of -- I stopped staying in Jim's room, the master bedroom. I stayed in one of the kids' room. I came out from their room -- because it's under his watch, the kids were under his watch because it was his weekend with them.

I came out of that room, I went to the dining room, I sat down, and I saw Hannah coming in, locking the door. And then I turned around and I saw Selena behind Hannah, and Selena knocked on the door.

Q. Now, did Selena -- this was not a near drowning that you've described.

A. I don't know what your definition of near drowning -- I mean, if she was to fall in the water, she would drown.

Q. But you were the one that said that having waterfront property is unsafe.

A. Correct.

Q. Has Selena ever had a near drowning because of the house being close to the water or on waterfront?

A. Well, if you're saying drowning as in calling

an ambulance or she's about to die, no.

Q. Now, anything else about Jim's house that you want to tell us is a sensible, good faith reason for you relocating with the children to Irvine?

A. Jim is very busy with his work schedule. He neglects taking caring of the house. The dishwasher broke for probably almost a year. I offered to get it replaced. He wanted it done his way, and never got around to it. We ended up using it as a rack instead of a dishwasher. Water accumulated, mold grew, and he still didn't do anything about it.

Q. And so that's another sensible, good faith reason for you getting away from Lake Las Vegas and moving to Irvine?

A. That's one of the reasons.

Q. Anything else?

A. I can't come up with anything else right now.

Q. And then, the final sensible, good faith reason for the move that you're requesting is, you termed it, culture.

A. Yes.

Q. Explain that.

A. Orange County has the highest Vietnamese population outside of Vietnam. And there's shops, schools. They are able to go to a Buddhist scout on

Q. All right. So can you tell us why is it in the best interest of each of your children to relocate and live primarily in Irvine, California with you and not continue living here in Las Vegas with their father?

A. I take care of them from A to Z, every single little detail. I care for them. Jim's too busy to do that. Do you want me to list for each individual kid?

Q. Yes. How is it in the -- so how is it in the best interest of Hannah, how is it in Hannah's best interest --

A. Hannah is emotionally --

Q. Let me state the question so we know --

A. I'm sorry.

Q. Why is it in Hannah's best interest for her to relocate to Irvine, California and live with you in Irvine?

A. She's ten years old. She's going to reach puberty soon. Girls reach puberty between the age of ten to 14. One time she was in Jim's car, driving to school for -- it was picture day, and she wanted me to show her how to put on her earrings. And I couldn't do it because I'm not there to do it for her. And I told her, you can ask daddy to help you, and she refused to ask him because she's not attached to Jim.

Q. Okay. So you believe, then, it's in Hannah's

best interest for the court to allow her to relocate with you to Irvine because she was afraid to ask her -- didn't feel comfortable asking her dad how to put on earrings?

A. No, that's not what I'm trying to tell you. I'm giving you an example of one -- how she is not able to ask her own dad for help.

Q. So tell us how it is in Hannah's best interest for her to move from the home that Jim currently is living in in Lake Las Vegas to live with you in Irvine?

A. Another one is Hannah has this condition where she builds up earwax extremely fast. And at one point, it actually plugged up her ear. You have to remove the earwax regularly, and it's not just tiny pieces, it's like a plug. And it could have caused her to have the three ear infections that she had.

Q. Okay.

A. I remove -- I use the hemostat to remove her earwax periodically, which Jim never does.

Q. Okay.

A. Recently, Hannah had a bully letter from school.

Q. Had a what, a bully letter?

A. Yes. From her friend, or used to be.

around families. And Matthew is really into -- whatever you put him in, he'll be good at it. He's a very good student. He's happy there. He asked in front of Jim and I why we haven't moved there yet.

Q. Okay. Now, what I want to focus on, though, is why is it in his best interest. Why is it in his best interest to relocate with you to Irvine?

A. Well, I did answer your question. So then they can be closer to families.

Q. Okay. Anything else?

A. Matthew has this skin condition, it's extremely dry, it's raised and rough, and it takes weeks for me to lubricate him to get it back to normal. But if you stop doing it, within a couple of days it goes back to being rough and raised and itchy.

Q. Okay.

A. I'm the only one who does it for him. Jim doesn't do it for him. Right now, when I have him, I lubricate his body with moisturizer every night. When he's with Jim and he comes back to me, he has that skin condition again when he's with Jim for the long weekend.

Q. Okay.

A. When I see Matthew, he wears glasses now, and his glasses are all smudged because Jim wouldn't take the time to clean it for him.

purchased in 2017; is that right?

A. Yes.

Q. So why would you purchase a home in 2017 if you're not moving into April of 2019, can you explain that to me?

A. You've got to furnish it.

Q. I'm sorry?

A. You've got to furnish it.

Q. Furnish it. Okay. So you purchased that home what month in 2017?

A. October or November.

Q. Okay. So how long did it take you to furnish your home?

A. It's still not completely furnished.

Q. So what other reasons, why would you buy a home in 2017 if you're not moving until April of 2019?

A. Just to get ready.

Q. Okay.

A. Because this is the home that the kids will be raised in. It takes time to decide which home.

Q. Well, but when you bought this home, you didn't consult with Jim before you bought it, did you?

A. Not this specific one.

Q. And can you explain to us why you didn't consult with Jim before you bought this specific home?

it.

THE WITNESS: No, I'm not --

MR. MULLINS: She said he was involved in a fraud, and what you're doing is taking a logical step and saying that she's accusing him of having committed fraud. Those are two different things. If somebody sues me tomorrow for fraud, it doesn't mean that I did it, but it's in involved in it.

BY MR. DICKERSON:

Q. We were on the question of why you did not consult with Jim before you bought the home that you currently own in Irvine.

A. So they decided to settle, between Jim and the lender, because he was going after Jim's business and a piece of land and his building. Jim came to me and asked me to lend him money, $1.7 million that I didn't have, and the lender sued me because I was involved in it.

And when Jim was with his lawyers, settled, he called me -- I was at work, I remember exactly what happened -- and he said, "They are willing to settle for $800,000, and they will drop all my lawsuits." And I asked Jim, "What about my lawsuit?"

And at that point, Jim blamed it on his lawyers, even though he didn't know, and I didn't know

at that time, and he said to me, "My lawyer said to get me out first and worry about you later." And I told Jim -- I mean, I was in shock of what I'd just heard. And I told Jim, "I can't believe you said that." So this was during work, so I had to get back to my patients.

When we got home that night, I had that conversation again with Jim, and I told him, "I got involved in this to help you, how could tell me you're going to get yourself out first, and leave me in there and deal with it later."

And that's when -- I was mad, and I told him that I will go ahead and buy the house and move to California because I know he doesn't care.

Q. All right. So everything you just explained is the reason you never consulted with Jim before you bought the house in Irvine, is that your testimony?

A. This specific house, yes.

Q. And so when did this discussion occur, when did this -- when is it that you decided you're going to buy this house, when is it that you had this discussion with him that you just referred to?

A. It was the day that he had the negotiation to settle.

Q. When was that, do you recall?

A. I don't remember the exact date.

Q. Do you know what year?

A. My guess would be before I bought the house. It would be in 2017.

Q. So in 2017, you just decided I'm going to move to Irvine whether you like it or not?

A. No, we decided that eight years ago, that we would move to Irvine.

Q. To move to Irvine?

A. Move to Orange County.

Q. So in response to my question as to why you never consulted with Jim before you bought this home, is that your position, is you didn't discuss it with him because you were mad at him?

A. On this specific house, yes, because I felt he was very selfish, and that he only thinks of himself, and for someone to help him and he turn around to say that.

Q. Do you know what the current court order is with respect to your visitation time, your custodial time? When are you supposed to have the kids, and when is Jim supposed to have them?

A. I have them Wednesday morning until Thursday -- until Friday morning, and then we --

Q. Do you remember the judge's order as to what

A. We discussed it.

Q. Did you ever have a Realtor come over?

A. No.

Q. The home has never been listed?

A. Not that I know of. It's not my house.

Q. In July of 2017, did you tell Jim that you were moving to California with or without him?

A. Yes.

Q. And did you tell him that you are moving to California with the children with or without him?

A. No.

Q. So what was your plan when you told Jim that you were planning to move to California with or without him, were you going to leave the kids here?

A. When I made that comment, I was mad at him. I only thought of myself when I made that comment. It was not related to the kids. We didn't talk about that.

Q. So you were going to leave the kids here; is that right?

A. I don't know, because I didn't think about what would happen, I just said that comment because --

Q. But is it your --

A. -- he was selfish.

Q. Is it your testimony that you never told Jim that you were going to leave Nevada and move with the

kids to California and that he would need to do something if he wanted to stop you?

A. Yes.

Q. Did you tell him that?

A. Yes.

Q. And why did you tell him that?

A. Because we made plans to move there together, and he changed his mind.

Q. Now, this was in July of 2017; correct?

A. No, no. This was 2018.

Q. Are you sure?

MR. MULLINS: Two different comments.

THE WITNESS: After we spoke to our therapist.

BY MR. DICKERSON:

Q. This was before you purchased your home in Irvine.

A. Okay.

Q. And you purchased your home in Irvine in 2017, didn't you?

A. Yes. The comment I made to him in 2017 was, "You don't care about me, I'm going to leave, I'm going to buy a house there, I'm going to leave." That's it. We didn't discuss about the kids.

Q. So when is it that you told him that you're

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EIGHTH DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY, Plaintiff, vs. MINH NGUYET LUONG, Defendant.	CASE NO. D-18-581444-D DEPT NO. H Date of Hearing: N/A Time of Hearing: N/A

RECEIPT OF DEFENDANT'S N.R.C.P. 16.2 PRODUCTION -9 AND DISCLOSURE OF WITNESS

I, ROBERT P. DICKERSON, ESQ., or authorized agent of THE DICKERSON KARACSONYI LAW GROUP, hereby acknowledge receipt of Defendant's N.R.C.P. 16.2 Production -9 and Disclosure of Witness on this 1 day of August, 2019.

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EIGHTH DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY, Plaintiff, and MINH NGUYET LUONG, Defendant.	CASE NO. D-18-581444-D DEPT. NO. H Date of Hearing: N/A Time of Hearing: N/A

NOTICE OF SEMINAR COMPLETION

Please take notice that Defendant, MINH NGUYET LUONG, successfully completed the Co-Parenting CARE Program, online parenting education for divorcing families, on August 4, 2019. A copy of the Certificate of Completion is attached hereto.

Dated this 5th day of August, 2019.

KAINEN LAW GROUP, PLLC

By: /s/ *Neil M. Mullins*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of August, 2019, I caused to be served the ***Notice of Completion*** to all interested parties as follows:

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

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

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

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

THE DICKERSON KARACSONYI LAW GROUP:
1. info@thedklawgroup.com
2. bob@thedklawgroup.com
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Online Parenting Programs

Extended Learning Center, Inc ®
PO BOX 3804
Paso Robles, CA 93447-3804
(866) 504-2883

CERTIFICATE OF COMPLETION

This certifies that

minh luong

has successfully completed the

Co-Parenting CARE Program

I certify under penalty of perjury that the foregoing is true & correct.

(parent signature)

Date of Registration	**Aug 03, 2019**
Date of Completion	**Aug 04, 2019**
Court Case Number	**D-18-581444-D**
District	**Clark, Nevada**
Administrator	**OnlineParentingPrograms**
Certificate	**OPP_40508119**
Delivery Type	**Electronic**

IMPORTANT NOTIFICATION

[illegible]

Director of Education

[illegible]

https://www.onlineparentingprograms.com/view-certificate/5d465968a2cc7.html

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DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY,

Plaintiff,

v.

MINH NGUYET LUONG,

Defendant.

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

RECEIPT OF COPY

RECEIPT of PLAINTIFF, JAMES W. VAHEY'S, TRIAL EXHIBITS is hereby acknowledged this 12 day of August, 2019, at 5:00 p.m.

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