

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.: Electronically Filed
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Elizabeth A. Brown
D.C. Case No.: Clerk of Supreme Court

**PETITIONER'S
APPENDIX**

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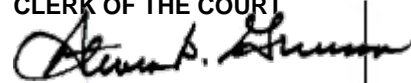
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176.	Defendant's Exhibit Appendix in Support of December 16, 2021, Return Hearing	12/15/2021	AA003500 - AA003512
177.	Supplement to Order from November 12, 2021 Hearing	1/31/2022	AA003513 - AA003516
178.	Notice of Entry of Supplement to Order from November 12, 2021 Hearing	2/1/2022	AA003517 - AA003523
179.	Guardian Ad Litem Report	2/2/2022	AA003524 - AA003527
180.	Declaration of James W. Vahey Regarding Case Status	2/5/2022	AA003528 - AA003537
181.	Defendant's Exhibit Appendix in Support of February 8, 2022, Return Hearing	2/7/2022	AA003538 - AA003564
182.	Defendant's Supplement and Response for the February 3, 2022, Return Hearing	2/7/2022	AA003565 - AA003587
183.	Transcript of Hearing Held on February 8, 2022	2/8/2022	AA003588 - AA003609
184.	Notice of Entry of Order from December 16, 2021 Hearing	2/15/2022	AA003610 - AA003619
185.	Order from December 16, 2021 Hearing	2/15/2022	AA003620 - AA003628
186.	Notice of Hearing	3/15/2022	AA003629 - AA003630
VOLUME XIX			

187.	Appendix of Exhibits in Support of Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief	3/15/2022	AA003631 - AA003700
188.	Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief	3/15/2022	AA003701 - AA003715
189.	Notice of Entry of Order Shortening Time	3/17/2022	AA003716 - AA003720
190.	Ex Parte Motion for Order Shortening Time on Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief	3/17/2022	AA003721 - AA003727
191.	Receipt of Copy	3/18/2022	AA003728 - AA003729
192.	Defendant's Exhibit Appendix in Support of Opposition to Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief and Countermotion to Hannah to be Interviewed, for the Immediate Return of Matthew to Minh, and for Attorney's Fees and Costs	3/20/2022	AA003730 - AA003790

193.	Defendant's Opposition to Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief and Countermotion to Hannah to be Interviewed, for the Immediate Return of Matthew to Minh, and for Attorney's Fees and Costs	3/20/2022	AA003791 - AA003824
VOLUME XX			
194.	Defendant's Exhibit Appendix in Support of Opposition to Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief and Countermotion to Hannah to be Interviewed, for the Immediate Return of Matthew to Minh, and for Attorney's Fees and Costs	3/21/2022	AA003825 - AA003885
195.	Defendant's Opposition to Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief and Countermotion to Hannah to be Interviewed, for the Immediate Return of Matthew to Minh, and for Attorney's Fees and Costs	3/21/2022	AA003886 - AA003922
196.	Transcript of Hearing on Monday, March 21, 2022, Before the Honorable Judge Dawn R. Throne	3/21/2022	AA003923 - AA003979

37

37



1 **MEM**
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11 EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION
12 COUNTY OF CLARK, STATE OF NEVADA

13 JAMES W. VAHEY,
14
15 Plaintiff,
16
17 vs.

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

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

18 MINH NGUYET LUONG,
19
20 Defendant.

21 **DEFENDANT'S TRIAL BRIEF PER EDCR 7.27**

22 COMES NOW, Defendant, MINH NGUYET LUONG, by and through her
23 attorney, NEIL M. MULLINS, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby
24 submits her *Trial Brief* in accordance with EDCR 7.27.

25 DATED this 3rd day of September 2019.

26 KAINEN LAW GROUP, PLLC

27 By: 

28 NEIL M. MULLINS, ESQ.
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Eighth Judicial District Court Rule 7.27:

Filing of civil trial memoranda.

Unless otherwise ordered by the court, an attorney may elect to submit to the court in any civil case, a trial memoranda of points and authorities at any time prior to the close of trial. The original trial memoranda of points and authorities must be filed and a copy of the memoranda must be served upon opposing counsel at the time of or before submission of the memoranda to the court. [Amended; effective July 29, 2011.]

ARGUMENT

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 (“HANNAH”), born March 19, 2009 (age 10); MATTHEW VAHEY (“MATTHEW”), born June 26, 2010 (age 8); and SELENA VAHEY (“SELENA”), born April 4, 2014 (age 5).

Jim filed his *Complaint for Divorce* on the 13th day of December 2019. Minh filed her Answer and Counterclaim on the 11th day of January 2019. The parties do not dispute the validity of their *Premarital Agreement* (“PMA”) that was executed on the 12th day of June 2006. The PMA nearly disposes all financial issues in this matter. Therefore, the primary issue to be tried is related to custody and support of the parties’ three (3) minor children.

This case is essentially a one (1) issue matter; whether the three minor children’s best interests are served with vesting Minh with primary physical custody, for purposes of relocating with the minor children to Irvine, California.

There is not a more compelling case to be made for a relocation under existing law. The statutes are not phrased in a way that puts an overwhelming burden upon a relocating parent. It does not say that the presumption of joint physical custody cannot be overcome without showing that the relocating parent and the children cannot survive without the impending move. The statutes merely require evidence that the children’s best interests will be served, and provides the same old factors necessary for the court to examine those

1 interests. The relocation statutes merely codified the case law. Minh has satisfied that
2 burden. The children's lives will be dramatically enhanced if they are allowed to relocate
3 and Jim exercises the custody time being afforded to him with Minh's offer.

4 But most important, the same cannot be said if this very reasonable move request
5 is denied. The long bitter struggle to make life in Southeast Henderson palatable enough
6 to work for this family will continue. Nannies and third parties will be required. The
7 children will go from school to school, and nanny to nanny, and bear the heavy sacrifice
8 of meaningful relationships with lifelong family members and friends to simply make
9 their life with their father work for them. This case is supposed to be about the children's
10 best interests, not their father's. Instead, Jim has made it a case of "if they cannot be
11 with me 50% of the time, they are not going. Period." The argument is all he has, because
12 there are no advantages to these children remaining in Henderson as compared with
13 moving to Irvine with Minh.

14 **Why is this Case Unique?**

15 Three considerations make this case unique, as compared to most relocation cases.
16 First, Minh is relocating regardless of this court's decision, though she painstakingly
17 explains the compelling reasons why the children need to be with her. Second, both Minh
18 and Jim have actively planned on moving to Orange County together from 2015 with
19 their children, and one of Minh's good faith reasons to relocate is in fact her detrimental
20 reliance upon that agreement. She readily acknowledges however, that such agreement
21 was not reduced to writing and does not obviate the necessity to prove her case in
22 accordance with the statutory factors under Nevada law. Third, this family has significant
23 resources to facilitate the out of state travel.

24 Starting in 2015, the parties together with their children, began regularly viewing
25 houses in Orange County. The parties met with a financial consultant in 2015 who
26 examined their financial resources and opined that they had sufficient resources to retire.
27 **See Deposition Transcript of Jim Vahey, M. D. at page 115, attached as Exhibit "A".**
28

1 The parties looked for and made offers on houses in Orange County prior to
2 commencement of this action. Minh purchased a home in Irvine in July 2017, which
3 closed in October 2017 for purposes of relocating to California. Minh listed and solicited
4 offers to sell her dental practice in January 2018. All of this was with Jim's knowledge
5 and consent. And all of this was for the purpose of Minh retiring and raising their
6 children, full time, near her family and friends in Irvine, California.

7 The parties disagree as to Jim's consent. Jim claims he told Minh that he disagreed
8 with her relocation plans in an argument in July 2017. Minh testified Jim did not revoke
9 his consent until April 2018 in a counseling session wherein he admitted "agreeing to the
10 move plans to appease her." Minh has testified to learning Jim's allegation that he told
11 her in July 2017 that he did not consent to the move, for the first time during his
12 deposition on April 22, 2019. **Jim testified as follows on page 120 line 24 to page 121**
13 **line 2, attached as Exhibit "B":**

14 Q Do you recall in that conversation that that was the first
15 time that you said the words "I told you I'd consider the
16 relocation to appease you"?

17 A I don't know if that's when.

18 Jim's testimony is not credible and is refuted by the testimony of Minh, her sister,
19 and basic common sense. Jim claims to have told Minh he "disapproved" on July 16,
20 2017, the same week Minh made the \$80,000.00 purchase deposit. This date is just ten
21 (10) days **before** Minh loaned Jim \$700,000.00 to help him settle his lawsuit, secured
22 by his house in Las Vegas. It is a full five months **before** Minh signed a Forbearance
23 Agreement to loan Jim nearly \$1,000,000.00 secured by his office building to avoid
24 foreclosure. To add insult to Jim's spurious allegations, Jim testified that during their "
25 throw down" (a non violent argument on July 16, 2017 when Minh told him she was
26 relocating with or without him) that he felt "as if I had been served divorce papers." Jim
27 then claimed to have written the comments down in his diary, which he failed to produce
28 in discovery. **See Jim's Deposition transcript at page 100-103 attached as Exhibit**

1 **“C”. See written discovery request dated April 3, 2019, and response, dated May 3,**
2 **2019, attached as Exhibit “D”.**

3 Minh and her sister, Hieu, have testified, that the parties regularly, at times twice
4 per month, traveled to Irvine after the house was purchased in October 2018 to furnish
5 it. Jim purchased vegetables to put in gardens for the children to grow vegetables. Jim
6 helped set up the children’s school desks and room furniture. Jim designed the yard
7 landscape. Jim discussed the schools with Realtors and Minh’s family members. And
8 according to Minh, on two (2) separate occasions, Jim said absolutely nothing to correct
9 his children when they pointed out their new school to him. Again, Jim’s deposition
10 testimony is not credible. Jim conveniently never recalls, specifically, anything that is
11 now adverse to his position.

12 Q Do you recall being present in the car on more than one
13 occasion where either Minh or the kids pointed out which
14 school they were going to attend, and you said, "Okay"?

15 A I absolutely did not say, "Okay."

16 Q Do you recall a comment being made by either Minh or
17 the kids about the school as you were driving by it?

18 A Yes.

19 Q Who made the comment and what was said?

20 A I don't know which of the children made the comment. If
21 I said anything, it would be, "Well, we don't know that yet.
22 That's something for Mommy and Daddy to decide."

23 Q Do you recall whether that was the only time that that
24 happened, or whether it happened on more than one occasion?
25 Where the comment in front of Minh and you by the children
26 was that they would either attend or go to a particular school?

27 A Please ask that question again.

28 Q Sure. Was there ever a time besides that one that you just

1 recalled where both Minh and the children and you were
2 together and a discussion was had about going to that
3 particular school?

4 A I don't recall if there was more than one event.

5 Q Besides you, Minh and the kids involving that one
6 conversation, do you ever remember the school issue being
7 brought up or discussed between either you, Minh, or the
8 children?

9 A It's possible that they told me, "Mommy said we're going
10 to be going to school in California next year." And I said,
11 "That's not true. Let Mommy and Daddy decide that. We
12 don't know what's going to happen tomorrow. Let us decide
13 what's going to happen next year."

14 [Page 123 line 25 to Page 125 line 11, attached as Exhibit "E"]

15 The plan has been discussed, refined, and initiated (purchasing a home; signing a
16 business listing agreement; seeking and implementing the financial advisor's
17 recommendation for early retirement; decreasing and later increasing hours of
18 employment, loaning Jim money to settle his lawsuits, etc.). Minh detrimentally relied
19 upon Jim's consent. She has sacrificed time with her children by waiting for Jim to retire,
20 by working extra days to increase business value before sale, etc.

21 In fact, prior to the parties' marriage, it was contemplated by the parties that upon
22 having children, Minh would primarily assume the parental responsibilities. This was
23 even reflected in the parties' PMA regarding each party's respective contributions to the
24 family living expenses. The pertinent part of the PMA (which was admitted to the record
25 and marked as Defendant's **Exhibit "GGG"**) states as follows:

26 At such time the parties have children, however, the parties
27 anticipate that it is likely JIM's annual income could be at least
28 twice as much as MINH's annual income, particularly if
MINH chooses to cut back on the number of hours she
currently is devoting to her practice of dentistry in order to

1 care for the parties' children.

2 PMA, at pg. 14, para. I(2). The PMA goes on to state the financial agreement that Jim
3 would contribute 75% of the household living expenses after Minh reduces her hours to
4 care for the children. The parties agreed to keep their properties separate and in case of
5 separation, Minh would not get anything from Jim.

6 Minh and Hieu testified (and Jim in his deposition) that after the birth of
7 HANNAH, Minh reduced her work hours wherein Minh would leave work by 3:00 p.m.
8 and trimmed back the number of days that she worked per week to two or three days.
9 Minh kept this lighter work schedule so she can care for the children. Then in furtherance
10 of their retirement plan, in the summer of 2016, Minh increased her hours to three to four
11 days per week, from 8:45 a.m. until 3:00 p.m., to increase the value of her business in
12 order to maximize its value for purposes of selling the practice in 2019. She started work
13 at 8:45 a.m. so she can drop the children off to school before going to work. Jim has
14 admitted in his deposition on **page 28 Lines 5-9, attached as Exhibit "F"**, that Minh at
15 times did not work at all, and at other times for only two or three days per week. But he
16 claims to not know what her work hours are or were during marriage. This is consistent
17 with being uninvolved and leaving the majority of the child rearing to Minh, until his
18 work day was over. He did not have to worry about because Minh covered it, except for
19 2 Wednesday mornings per month when Minh had surgery days.

20 In 2018, Minh hired dentists to perform the majority of the dentistry practice. Her
21 practice has remained successful, while allowing Minh to again reduce her work hours.
22 Most recently, Minh testified to reducing her work hours to approximately two (2)
23 surgery days per month until her employee dentists are certified to operate for her.

24 Minh always scheduled surgeries on only two (2) days per month (Wednesdays),
25 and would purposely schedule them between 6:00 a.m. and 7:00 a.m. so that she could
26 finish her day early to drive the children to and from their extracurricular activities, assist
27 the children with their homework, cook them dinner, and spend quality time with the
28 children prior to their bedtime. It also helped her pediatric patients, who were not able to

1 eat, be able to nourish themselves earlier on surgery day.

2 In July 2017, Minh purchased a 6,600 square-foot home in Irvine California for
3 roughly \$2,600,000.00. The sale closed in October 2017. This purchase was after much
4 consideration, by both parties, of homes located in Orange County. In fact, the parties
5 made three (3) other offers prior to this closing. For Jim to argue this July 2017 purchase
6 was impetuous, or was Minh's retaliatory gesture after an argument is simply not
7 supported by the evidence and is not credible.

8 However, this all changed in April 2018 when Jim rescinded his prior consent to
9 relocate the family to Irvine, California, and filed this divorce case. To make it more
10 clear, according to Minh, Jim never objected to the move until one week after the
11 counseling meeting in April 2018, where he agreed, during the therapy session, that he
12 would try the schedule that Minh proposed, which was for Jim to work three to four days
13 a week and be in Irvine with the family the other three to four days of the week. Jim had
14 agreed to try. See his deposition transcript, **page 136 Line 6, attached as Exhibit "G"**.
15 Jim also admitted in his deposition on **page 21 Line 20, attached as Exhibit "H"**, that
16 he was considering putting in a provision that would allow him to work less hours when
17 negotiating a contract with his partner.

18 Minh's argument is that Jim either changed his mind or misrepresented his
19 intentions from the very beginning. Either way, Jim would force his children to remain
20 in Clark County, Nevada because Jim has changed his mind and now asserts such is not
21 in the children's best interests; because he will now not relocate.

22 LEGAL ANALYSIS

23 While the issues of custody and relocation are still two separate and distinct issues,
24 much of the factual analysis overlaps. *See Schwartz v. Schwartz*, 107 Nev. 378, 382, 812
25 P.2d 1268, 1270 (Nev. 1991). While NRS 125C.0015 provides that "[i]f a court has not
26 made a determination regarding the custody of a child, each parent has joint legal custody
27 and joint physical custody of the child until otherwise ordered by a court of competent
28 jurisdiction." "When this Court considers a motion to relocate minor children outside of

1 the State of Nevada by a parent who has never had an initial custody determination, this
2 Court “must base its decision on the child’s best interest.” *Druckman v. Ruscitti*, 327 P.3d
3 511, 515, 130 Nev. Adv. Rep. 50 (Nev. 2014). This was also affirmed by the Nevada
4 Supreme Court in *Inboden v. Ayon*, 431 P.3d 39, 2018 Nev. Unpub. LEXIS 1081, Docket
5 No. 74012 (Nev. Nov. 30, 2018) (unpublished disposition).¹ The *Inboden* Court held that
6 in a custody/relocation case where an initial determination of custody has not yet been
7 established, that “case does not fall within NRS 125C.007’s purview because the statute
8 addresses petitions to relocate filed in actions where primary or joint physical custody has
9 already been established by court order.” *Id.* Nevertheless, the analysis is similar.

10 NRS 125C.007 is inapplicable in this matter because “[i]n every instance of a
11 petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or
12 125C.0065,” the party petitioning the court to relocate out of the State of Nevada with
13 minor children is to satisfy the factors enumerated under NRS 125C.007. *See* NRS
14 125C.007. However, both NRS 125C.006 or 125C.0065 unambiguously state that if joint
15 physical or primary physical custody has “been established pursuant to an order,
16 judgment or decree of a court” then that petitioning parent has the burden to satisfy the
17 relocation factors under NRS 125C.007. *See* NRS 125C.006 and 125C.0065. Neither
18 NRS 125C.006 nor 125C.0065 state anything about the applicability of the relocation
19 factors under NRS 125C.007 in matters wherein the parties have *de facto* joint legal and
20 joint physical custody per NRS 125C.0015, when no court of competent jurisdiction has
21 entered an order establishing such.

22 However, in an abundance of caution and analogous to the holding in *Druckman*
23 *v. Ruscitti*, the well advised policy behind NRS 125C.007 can be used for guidance in this
24 matter. *Druckman*, 327 P.3d at 515. Therefore, Minh has utilized the factors enumerated
25 under NRS 125C.007 to prove that her request to relocate to Irvine is in her and the
26 children’s best interests. Minh has met her burden under the statute. Minh has established

27
28 ¹ In accordance with NRAP 36(c)(3), a complete copy of *Inboden v. Ayon* was attached to Defendant’s
Pre-trial Memorandum. *See Errata to Defendant’s Pre-trial Memorandum*, filed on August 2, 2019.

1 good-faith reasons and actual benefits to both herself and her children to relocate.

2 Minh is going to retire and move to Irvine once this case has concluded, regardless
3 of the custody determination, because this has been her plan/goal since having children.
4 Minh believes that the parties have differing parenting styles; they do not work well
5 together; and they cannot co-parent to meet the children's daily needs. Minh has lost trust
6 in Jim. She believes he constantly lies and therefore will only text or email with him.

7 Therefore, this case really rests upon the policy considerations behind NRS
8 125C.007, the statutory factors set forth therein, but arguably with the primary focus
9 being the best interest analysis whereby this Court must "determine whether the best
10 interests of the children are better served by living outside of Nevada with the relocating
11 parent as the primary physical custodian or living in Nevada with the nonmoving parent
12 having primary physical custody." *Potter v. Potter*, 121 Nev. 613, 614-615, 119 P.3d
13 1246, 1247 (Nev. 2005).

14 **Initial Determination of Physical Custody**

15 The evidence in this matter will categorically show that the minor children's best
16 interests are served by vesting Minh with primary physical custody and granting her
17 permission to relocate to Irvine, California, with the parties' three (3) minor children.

18 In an initial determination of custody, "the district court has 'broad discretionary
19 power' in determining child custody . . . including visitation." *Davis v. Ewalefo*, 352 P.3d
20 1139, 131 Nev. Adv. Rep. 45 (Nev. 2015) (quoting *Hays v. Gallacher*, 115 Nev. 1, 4, 972
21 P.2d 1138, 1140 (1999)). In exercising its discretionary power in making the initial
22 custody determination, the District Court's "sole consideration . . . is the best interest of
23 the child." NRS 125C.0035. *See also Blanco v. Blanco*, 129 Nev. 723, 730, 311 P.3d
24 1170, 1174 (Nev. 2013).

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

Physical Custody Factors per NRS 125C.0035 (4):

- (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.**

While the children are still considerably young to form an intelligent preference, the two eldest children, ages ten (10) and nine (9), have consistently expressed to both parents, their preference to reside and attend school in California. The plan to move to California was never hidden from these children. Notwithstanding, Minh understands the court has ruled it will not take their testimony. Therefore, this factors slightly weighs in Minh's favor.

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

N/A.

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

While both parents will likely follow all of this Court's orders, Minh will absolutely facilitate Jim's frequent contact and associations with the children. Minh will always encourage a continuing relationship between the children and Jim. Minh's proposed custodial schedule, if the children are permitted to relocate with Minh to California, is generous and demonstrates she is not moving to remove Jim from their lives, or to frustrate his relationship. Conversely, Minh argues that Jim's use of a recording device during her calls with the children and Jim initially limiting her time to ten (10) minutes per call is evidence that Jim is not fostering her relationship and time with the children.

Jim should have a visitation with the children one weekend per month in Las Vegas, inclusive of three-day weekends during the children's school year (Labor Day, Veterans Day, Martin Luther King, Jr. Day/or President's day, Memorial Day, and staff development days). This equates to 15-20 days of visitation.

- Jim should also have a second weekend visitation in Irvine, California, each month, so long as he provides adequate notice and accompanies the children to any

1 scheduled activities that they are enrolled in. Minh will allow Jim to stay at her home in
2 Irvine for these weekend visitations (she will vacate during his visits). Minh will also
3 provide a bedroom in her home allowing Jim to keep spare clothes and other personal
4 items to minimize the travel burdens to facilitate frequent weekend trips to Irvine. Minh
5 will do just about anything to ensure that the children and Jim have a great and continuing
6 relationship despite the distance (if permitted to relocate to Irvine).

7 • Jim should receive 51 consecutive days (two-thirds of the summer recess)
8 visitation each summer commencing the day the children are released from school for
9 summer break.

10 • Jim would receive Thanksgiving break in alternating years, which equates
11 to 5-7 days of visitation depending on the school schedule.

12 • Jim would also receive Spring Break each year, which equates to
13 approximately nine (9) days, and Jim would also receive half , or nine (9) days each
14 Winter Break. If Jim takes advantage of the second weekend visit each month in addition
15 to the other custodial timeshare being offered by Minh, Jim will have a total of
16 approximately **116 days** with his children each year (only 30 days shy of a joint physical
17 custody schedule).²

18 This proposed schedule would ensure that Jim and the children would continue to
19 have frequent contact and associations. Just as Jim currently enjoys, he will also have
20 unlimited access to the children via FaceTime, phone calls, and text messaging. Minh
21 understands that a relocation to California would decrease the frequency of Jim's physical
22 contact with the children, but technology assists in allowing him to maintain daily contact
23 with his children. Furthermore, this schedule would allow Jim to have his timeshare with
24 the children when they are **not** in school, allowing him more quality time with the
25 children as he could spend the entire day with them. If Jim is vested with primary
26

27 ² 116 days = 5 months of three-day weekends + 5 months of two-day weekends + 10 months of extra
28 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.

1 physical custody, during the week, after performing surgeries all day, followed by the
2 requisite paperwork and file dictation, Jim would only receive a few hours of quality time
3 each week with the children. Therefore, this factor weighs in Minh's favor.

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

5 The evidence in this case is likely to show a moderate level of conflict between the
6 parties due to the high amount of stress the case has caused the entire family. However,
7 both parties are intelligent and rational individuals. Once this divorce matter has
8 concluded, the conflict between the parties will likely subside. Therefore, this factor is
9 not really at issue and is neutral.

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

11 The evidence has shown that Minh has the ability to meet the needs of their
12 children. Minh is retiring and moving to Irvine, California. This will give Minh the ability
13 to always care for her children without the necessity of retaining a nanny to assist with
14 the childcare responsibilities. Minh will take the children to and from school; she will
15 have time to make home-cooked meals daily; she will have time to assist the children
16 with their homework; and she will have time to take the children to their extracurricular
17 activities.

18 While the parents have cooperated and met the needs of their children when living
19 in the same household, Jim has relied heavily on Minh and nannies to assist in childcare.
20 Due to Jim's busy schedule as a surgeon, he simply does not have the time to involve
21 himself in all of the facets of childcare. If Jim were to receive primary physical custody,
22 the children would be raised primarily by nannies. The children would not receive
23 assistance on their school work because the parties' previous nannies refused to assist the
24 children with their homework. Furthermore, when Jim gets home after working all day,
25 he usually catches up on his post-operation dictations. Jim's work, while noble, consumes
26 the 90% of his weekly time, leaving very little time to dedicate to his children during
27 weekdays. However, Jim does usually have time on the weekends, which is when Jim
28 historically spends the most time with his children. Even during pendency of this case,

1 Jim is not doing his half of the children's homework assignments. And Jim has all but
2 ceased doing extra- curricular activities with them. Minh and the children FaceTime so
3 that Minh can help the children with their book reports.

4 Allowing Minh the opportunity to relocate to California with their children will
5 give their children the best of both worlds. The children will have the stability and
6 structure provided by Minh during the school year wherein Minh can assist the children
7 every night with their homework; provide a consistent and stable routine for the children
8 during the school year; and Jim will have the children during weekends, holidays, and the
9 majority of the summer break, thus ensuring Jim better quality time with his children as
10 his timeshare would mostly consist of the days he regularly has off of work. Jim will be
11 able to enjoy water sports (their regular activity together) with his children at home and
12 at the beach, which is his favorite thing to do with the children, by having them the
13 majority of the summer recess.

14 Therefore, this factor favors awarding Minh primary physical custody.

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

16 The evidence will show that both parties are mentally and physically fit. Therefore,
17 this is a neutral factor.

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

19 The parties' children need and deserve engaged, committed, and dedicated
20 parenting, ensuring stability and consistency in these children's lives. This is exactly what
21 Minh brings to the table. Minh is an engaged parent that dedicates her entire existence to
22 ensuring that the children's needs are being met. Minh has primarily taken the children
23 to their multiple extracurricular activities. She is engaging to the point where she also
24 takes classes with them. The children are emotionally attached to both parents, but have
25 made it well known to Jim that they want to live in Irvine. While these children are
26 physically healthy, they are still of the age dependent on daily parental care and guidance,
27 which Minh can provide on a daily basis considering her anticipated retirement. Minh's
28 schedule upon retirement will be better suited than Jim's to accommodate the children's

1 physical, developmental, and emotional needs on a more structured, routine and
2 consistent basis. Therefore, this factor also support's Minh's request for primary physical
3 custody. Minh has testified to the lack of stability and structure in Jim's home.

4 (Revolving door of nannies and tutors; no friends or family to play with; limited social
5 activities, limited extra- curricular activities; long commutes to school, etc.)

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

7 The children have a good relationship with both parents. Minh believes she is
8 closer to the children because she spends more time with them and they have relied on
9 her. Hannah only confided in Minh when she felt bullied at school, even though it
10 happened during Jim's timeshare. There is substantial testimony that Minh is the
11 disciplinarian that requires them to perform at their best at everything they do, and that
12 she is more committed to sacrifice for their success.

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

14 N/A.

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

17 This is a non-factor in this case, as there is no history of parental abuse nor neglect
18 of the children in this case.

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

22 This is also a non-factor in this case, as there is no history of domestic violence by
23 either party in this case.

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

26 This is also a non-factor in this case, as there is no history of any child abduction
27 by either party in this case.

28 **Additional Considerations in Determining Physical Custody**

In addition to the above factors, the Nevada Supreme Court referenced other

1 pragmatic factors that the district court may consider when determining the custodial
2 arrangement between the parents. *Rico v. Rodriquez*, 121 Nev. at 702, 120 P.3d at 816.
3 The factors the *Rico* Court articulated and applied to this case are as follows:

4 **(1) Living conditions and environment.**

5 Minh's home in Irvine, California, is a beautiful 6,600 square-foot home located
6 in the heart of Orange County. The evidence will show the contrast between the living
7 conditions with Minh in Irvine verses with Jim in Las Vegas. Minh's home is located
8 about a five (5) minute walk from the school that the children are slated to attend. The
9 schools in Irvine are highly rated and are only comparable to *private* schools in Las
10 Vegas. If the children are to continue to attend Challenger in Las Vegas, due to Jim living
11 in Lake Las Vegas, a remote part of Henderson, the children would be forced to continue
12 their hour-long commute to and from school every day. The relocation to Irvine would
13 also alleviate the necessity of paying private school tuition; thus, allowing the parties to
14 contribute more funds to their children's college savings accounts. Historically, Jim has
15 expressed his disdain of paying the children's private school tuition, which is why the
16 children have also attended charter schools in the past. In fact, Hannah has attended four
17 (4) different school campuses by the time she finished the fourth grade. It will be proven
18 at trial that the only reason Jim agreed to re-enroll the children into private school was
19 in contemplation of filing this case.

20 While Jim's home in Lake Las Vegas is nice, it is extremely remote with very few
21 child-friendly activities that are held by his community. The evidence will show that
22 Minh's community, the Groves at Orchard Hills, holds many community events that are
23 geared specifically for children. The parties' children will be able to participate in many
24 of the community activities with their friends and family.

25 The environment in Irvine also trumps Las Vegas's environment. The evidence
26 will show that the crime rates are considerably lower in Irvine than in Las Vegas. In fact,
27 for the past 13 years Irvine was ranked as the Safest City of its size for Part 1 violent
28 crime according to FBI data. Irvine also has the lowest rate of violent crime per capita of

1 any city in the nation with a population of 250,000 or more.

2 Las Vegas, on the other hand, has significantly greater rates of violent crime
3 compared to Irvine. Even Henderson has a greater rate of violent crime than Irvine. This
4 shows that the environment in Irvine is considerably safer than both Las Vegas or
5 Henderson.

6 **(2) The parties' interaction with the children.**

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

12 **(3) Medical neglect.**

13 This is a non-factor as both parents in this case properly care for the children,
14 especially considering that Jim is a medical doctor and Minh is a dentist with vast
15 knowledge of biology.

16 **(4) Parental employment and stability.**

17 The stability that Minh can provide to the children in Irvine is far superior to what
18 Jim can provide to the children in Las Vegas. Minh is retiring and looking forward to
19 spending her retirement primarily raising her children in her home in Irvine. Minh will
20 have time to take the children to and from school each day; ensure that the children are
21 getting adequate assistance on their schoolwork (without the reliance of tutors); ensuring
22 that the children have home-cooked meals (without reliance on nannies); and facilitating
23 the children's attendance at their extracurricular activities. If the children are forced to
24 remain in Clark County to be primarily raised by Jim, the children will have to endure an
25 hour long trip to and from school everyday (most of which will be facilitated by a nanny
26 due to Jim's surgery schedule); the children's enrollment and attendance in
27 extracurricular activities will cease (because Jim does not like to take the children to their
28 events due to the travel distance); and the children will be stuck at Jim's home while he

1 orders food in as Jim does not cook, and will be required to do his post-operation
2 dictations from his home every night as he has historically done throughout the parties'
3 marriage. Having a mother as a primary custodian that does not have to utilize nannies
4 to care for the children to ensure that their best interests are always being met is preferred
5 over a parent who wants to continue working and growing his medical practice. It simply
6 is not practical to believe that a parent, who is a medical doctor that constantly works,
7 will be able to manage his medical practice, while exercising primary physical custody
8 of three minor children and ensure that their best interests are being met.

9 While Jim argues he can handle his children and his work responsibilities, his
10 actions during pendency are to the contrary. He has stopped taking them to extra-
11 curricular activities, or convinced them to quit. He has forgotten lunches, clothes and
12 shoes. He embarrassed Matthew by forgetting the weapons Matthew needed for his
13 Taekwondo test. Jim did not take Matthew to one of his Taekwondo tests even after
14 Minh had signed him up and reminded Jim about it. And again, even after the first day
15 of trial, Jim again forgot to bring Matthew's weapons to his third test since separation.

16 **Minh's Request to Relocate to Irvine, California, with the Minor Children.**

17 A request by one parent to relocate to a different jurisdiction with the children is
18 a separate factual inquiry than the initial custody determination; however, the relocation
19 analysis also centers upon what is in the minor children's best interests.

20 In a case wherein a parent moves this Court for an order granting permission to
21 remove the children from the jurisdiction where the children currently reside, "the best
22 interests of the child[ren] should . . . be the paramount judicial concern." *Schwartz*, 812
23 P.2d at 1271, 107 Nev. 378. In determining whether it is in the subject minor children's
24 best interests to relocate to Irvine, the Nevada legislature codified the *Schwartz* factors,
25 enumerated under NRS 125C.007, which this Court is to evaluate to determine whether
26 to grant a parent's request to relocate with their minor children. However, the
27 "[d]etermination of the best interests of a child in the removal context necessarily
28 involves a fact-specific inquiry and cannot be reduced to a rigid 'bright-line' test."

1 *Schwartz*, 812 P.2d at 1271, 107 Nev. 378 (citing *In re Marriage of Eckert*, 518 N.E.2d
2 1041, 1045 (Ill. 1988); and *Cooper v. Cooper*, 491 A.2d 606, 614-15 (N.J. 1984)).

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

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

11 "[I]n assessing the 'actual advantage' requirement, courts are not free to ignore
12 noneconomic factors likely to contribute to the well-being and general happiness of the
13 custodial parent and children." *Jones v. Jones*, 110 Nev. 1253, 1260, 885 P.2d 563, 568
14 (Nev. 1994). Furthermore, the *Jones* Court recognized that "what is in the best interest
15 of the children cannot be addressed without considering the best interest of the other
16 members of the household in which they live." *Id.* at 1261 and 568. The actual advantage
17 does not have to be substantial, but the advantage must be "based on a sincere and
18 genuine desire of the custodial parent to move and a sensible good faith reason for the
19 move." *Id.* The *Jones* Court defined "good faith reason" as one that is "not designed to
20 frustrate the visitation rights of the noncustodial parent." *Id.* (citing *Holder v. Polanski*,
21 111 N.J. 344, 544 A.2d 852, 856-57 (N.J. 1988)).

22 The evidence in this case will show that Minh has established her good-faith, and
23 sensible reasons to request to relocate to Irvine with the parties' three (3) minor children
24 and that the move will actually benefit both Minh and her children. Minh be a stay at
25 home mother. She and the children will be surrounded by family support. The children's
26 Aunt Hieu, who has helped raise them, will be residing with the family for part of each
27 week. As addressed above, Minh purchased a beautiful home in Irvine for purposes of
28 the entire family relocating to California to be closer to family and friends; for the

1 children to attend superior schools; and to live in an environment more conducive to
2 raising children. One would arguably be hard pressed to find a more compelling case for
3 relocation than this case. The children have no friends or family in Henderson.³

4 Minh is certainly not seeking permission from this Court to relocate to Irvine to
5 frustrate Jim's contact with their children. Minh is simply requesting that this Court grant
6 her permission to effectuate the plan that both she and Jim believed was in the children's
7 best interests, at least until Jim filed this case and demanded that the children remain in
8 Clark County for the foreseeable future. Minh's request is simply to provide a better life
9 for her and their children, to which any reasonable person would understand and support
10 if they objectively compared and contrasted the lifestyles that each environment (Las
11 Vegas versus Irvine) would afford to them. Furthermore, Minh has already made it clear
12 that if Jim ever desires to move to Irvine (or close surrounding area) that the parties
13 would revert back to a joint physical custody schedule. Therefore, Minh's motives are
14 honorable and definitely not intended to frustrate Jim's contact/custodial time with their
15 three (3) beautiful children, as she is making her request in good-faith and has sensible
16 reasons to seek permission from this Court.

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

19 Minh will prove that it is in the minor children's best interests to allow the children
20 to relocate to Irvine, California, with Minh. Minh has addressed the children's best
21 interests above and hereby incorporates the best interests analysis above by reference.
22 Proximity to extended family, culture, friends in the neighborhood to attend school with
23 are in stark contrast to Henderson, where they have no friends in the community they
24 have lived in for ten (10) years. Jim admitted the children have no friends in the Lake
25

26
27 ³ While Jim argues his brother Ed is retiring and moving to Summerlin, he has also testified to the
28 limited contact Ed and his family have historically lived in Northern California and will now live an
hour away in Summerlin where their son, Jason, will attend Bishop Gorman. But to date the children
have not benefitted from Ed's planned relocation.

1 Las Vegas community in his deposition and in his requests for admissions. Jim admits
2 they had one play date in their childhood. He admits they have no friends outside of
3 school, and the school is a long drive from home. The fact is Lake Las Vegas is good for
4 Jim, but no one else in this family.

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

7 Minh's evidence will show several benefits that will be conferred to both her and
8 the children if her request to relocate is granted. Many of the benefits associated with a
9 move to Irvine were previously discussed above under the best interest analysis, which
10 should also be incorporated herein by reference.

11 However, some additional benefits to both the minor children and Minh are as
12 follows:

13 • Irvine is one of the safest cities in which to live since 2006. The public
14 schools in Irvine are some of the highest rated schools nationwide. Irvine is highly sought
15 after as the ideal city to live and raise a family.

16 • Minh, upon relocating, intends to retire from the practice of dentistry.
17 Consequently, nannies will no longer be necessary to assist with child care.

18 • Orange County has one of the largest communities of Vietnamese outside
19 of Vietnam and the children will get to experience their Vietnamese culture and language
20 far better than they could do in Las Vegas.

21 • Minh and the children would thrive in an environment surround by extended
22 family and friends. The children could establish a close bond to their maternal
23 grandmother and share the remaining years of their lives with her.

24 • The parties will also save over \$45,000.00 per year in private school tuition
25 because the public schools in the Irvine neighborhood where Minh's home is located are
26 among the best in California.

27 Since Minh will prove that she has both a sensible, good-faith reason to request the
28 relocation and that there are actual benefits to her and the minor children, the Nevada

1 Legislature provided six (6) additional factors that the district courts is to consider when
2 determining whether to grant Minh's relocation request.

3 These factors are enumerated under NRS 125C.007 (2), which are as follows:

4 **The extent to which the relocation is likely to improve the quality of life for**
5 **the children and the relocating parent. NRS 125C.007 2(a).**

6 **Proximity to school and activities.** Irvine is not isolated and remote like Lake
7 Las Vegas. The children will be able to walk to school in five minutes, as opposed to a
8 45-60 minute drive to and from school each day. Similarly, trips to sporting events and
9 activities will not be much of a burden in Irvine as compared to living in Lake Las Vegas
10 where it takes a minimum of 30 minutes to get anywhere. The children will be able to
11 sleep longer each night as they will not be forced to wake up as early to account for the
12 long trip to school each day. The children will benefit from having a parent prepare them
13 for school instead of nannies. The children will live in the community where they attend
14 school, their school friends will also reside in close proximity as they will be their
15 neighbors, and the children will be raised as normal members of an integrated community
16 and not grow up in retirement community like Lake Las Vegas.

17 Most importantly, the children will experience the least trauma if permitted to
18 relocate to Irvine with Minh rather than being forced to remain in Henderson with Jim.
19 That is because of the quality of time argument. Even currently, the children spend a
20 greater amount of time with their mom, and are emotionally attached to Minh, if only
21 because she has always devoted more time to their care and custody.

22 While the children are comfortable and enjoy spending time with their father, the
23 majority of the time they get to spend actual quality time with Jim is on his boat, at
24 Catholic Mass, or participating in other weekend activities with him. Jim is a great father,
25 but he simply does not have the time to devote to primary-care responsibilities, and
26 without Minh being around, the children will simply spend most of their lives being
27 raised by nannies if they are to remain in Henderson.

1 A relocation to Irvine will substantially improve the quality of both the children's
2 lives, as well as Minh's life.

3
4 **Whether the motives of the relocating parent are honorable and not designed**
5 **to frustrate or defeat any visitation rights accorded to the non-relocating**
6 **parent. NRS 125C.007 2(b).**

7 Minh's request to relocate to Irvine is honorable as this move was planned for both
8 parties and the children to move as a family. At this distance, it certainly makes it
9 possible for Jim to have one weekend of visitation with his children in Las Vegas per
10 month, and a second weekend of visitation with his children if he desires to drive (or fly)
11 to Irvine for any particular weekend. If this relocation is granted, Jim will still have
12 frequent contact and associations with his children on a consistent basis. Jim has testified
13 that his calendar is easily manipulated. The resources of this family eliminate any
14 financial restraints on contact. Therefore, this factor also weights in Minh's favor in
15 support of her relocation request.

16 **Whether the relocating parent will comply with any substitute visitation**
17 **orders issued by the court if permission to relocate is granted. NRS 125C.007**
18 **2(c).**

19 This factor weights in Minh favor as she will absolutely comply with all orders
20 made by this Court, not just orders regarding substitute visitation.

21 **Whether the motives of the non-relocating parent are honorable in resisting**
22 **the petition for permission to relocate or to what extent any opposition to the**
23 **petition for permission to relocate is intended to secure a financial advantage**
24 **in the form of ongoing support obligation or otherwise. NRS 125C.007 2(d).**

25 Jim's motives for resisting Minh's relocation request were brought in bad-faith,
26 but only considering the fact that he led Minh to believe that the parties were to relocate
27 together. Jim is unable to separate his own best interests from those of his children. Any
28 move away from a parent is made in bad faith according to Jim's deposition testimony.

29 **Whether there will be a realistic opportunity for the non-relocating parent to**
30 **maintain a visitation schedule that will adequately foster and preserve the**
31 **parental relationship between the child and the non-relocating parent if**
32 **permission to relocate is granted. NRS 125C.007 2(e).**

1 There will be absolutely no evidence that Jim cannot maintain a visitation schedule
2 which preserves and fosters his bond with his children. This relocation request is for a
3 move to Southern California, not across the Contiguous United States that would likely
4 obstruct monthly contact between a non-relocating parent and their children.

5 Minh's proposed visitation schedule is very liberal, exercisable and intended to
6 maximize Jim's time with his children. In fact, the proposed out-of-state visitation
7 schedule (if Jim utilizes all of the time offered) is approximately 30 days shy of the 146
8 days required to qualify as a joint physical custodian. With the financial resources that
9 these parties have, coupled with Minh's ability to facilitate frequent and consistent
10 visitation, this move will have little detrimental impact on Jim's ability to maintain
11 frequent contact and visitation with his children; thus, preserving his strong relationship
12 with his children.

13 **Any other factor necessary to assist the court in determining whether to grant**
14 **permission to relocate. NRS 125C.007 2(f).**

15 The children will be devastated if they are not allowed to leave with their mother.
16 These children have traveled back and forth, frequently, between Henderson and Orange
17 County since their births. They have gone back and forth between the Irvine and
18 Henderson homes bi-weekly since October 2017. They have no friends or family in
19 Henderson. They know there is no comparison between the two (2) homes, the schools,
20 the communities and their family contacts. Minh believes they will be devastated if they
21 have to remain behind. The children are traumatized because Jim has resisted this move.
22 The children believe their father has led them to believe that this move will happen and
23 should have happened a year ago. They have experienced and enjoyed Orange County
24 life over the life they have lived here in Lake Las Vegas. The children cannot wait to be
25 in Orange County.

26 **Attorney Fees and Costs**

27 Minh should recover prevailing party legal fees and costs pursuant to NRS 18.010
28 and *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005). Furthermore, the policy

1 considerations behind NRS 125C.006 and NRS 125C.0065 also warrant an award of fees
2 if it is found that Jim unreasonably withheld his consent to allow this relocation to take
3 place. The policy behind NRS 125C.006 and NRS 125C.0065 contemplates that after a
4 review of the relevant facts and statutes, the non-relocating parent should consider the
5 best interests and needs of their children before denying a move request.

6 Minh respectfully argues that any reasonable parent, similarly situated to Jim,
7 would have granted her relocation request. While a parent is entitled to their day in court
8 to determine what he or she believes is in his child's best interest, the legislature has
9 placed a burden on that decision. If a parent decides to *unreasonably* withhold consent
10 to a reasonable relocation request, he does so at his own peril. Justice is fair, but it comes
11 at a price.

12 **NRS 18.010. Award of attorney's fees.**

13 1. The compensation of an attorney and counselor for his or
14 her services is governed by agreement, express or implied,
15 which is not restrained by law.

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

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

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

3. In awarding attorney's fees, the court may pronounce its
decision on the fees at the conclusion of the trial or special

proceeding without written motion and with or without presentation of additional evidence.

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

In *Miller v. Wilfong*, the Nevada Supreme Court addressed the issue of attorney's fees. 121 Nev. 619, 119 P.3d 727. In *Miller v. Wilfong*, Nevada Supreme Court stated:

[W]hile it is within the trial court's discretion to determine the reasonable amount of attorney fees under a statute or rule, in exercising that discretion, the court must evaluate the factors set forth in *Brunzell v. Golden Gate National Bank* [85 Nev. 345, 349, 455 P.2d 31, 33 (1969)]. Under *Brunzell*, when courts determine the appropriate fee to award in civil cases, they must consider various factors, including the qualities of the advocate, the character and difficulty of the work performed, the work actually performed by the attorney, and the results obtained. We take this opportunity to clarify our jurisprudence in family law cases to require trial courts to evaluate the *Brunzell* factors when deciding attorney fee awards. Additionally, the *Wright v. Osburn* [114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998)], this court stated that family law trial courts must also consider the disparity in income of the parties when awarding fees. Therefore, parties seeking attorney fees in family law cases must support their fee request with affidavits or other evidence that meets the factors in *Brunzell* and *Wright*.

Miller, 121 Nev. at 623-624, 119 P.3d at 730.

The *Brunzell* factors adopted by the Nevada Supreme Court were derived from an Arizona case, *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144 (Ariz. 1959). In *Schwartz*, the Arizona Supreme Court classified the factors into four general areas:

(1) *the qualities of the advocate*: his ability, his training, education, experience, professional standing and skill; (2) *the character of the work to be done*: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) *the work actually performed by the lawyer*: the skill, time and attention given to the work; (4) *the result*: whether the attorney was successful and what benefits were derived. Furthermore, good judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight. (citations omitted).

Id. at 245 and 146.

1 In this case, this Court should consider the following in applying the foregoing
2 factors:

3 **1. Qualities of Minh's Advocates**

4 The qualities of Minh's attorney are excellent. Mr. Mullins is an AV rated, Nevada
5 Certified Family Law Specialist with (31 years) experience and training in the field of
6 Family Law Litigation. Mr. Mullins is also certified in Family Law by the National Board
7 of Trial Advocacy. Mr. Mullins is a Fellow, American Academy of Matrimonial
8 Lawyers. Mr. Mullins' hourly rate is \$500.00, and such is at or below what his peers
9 charge with similar work experience and value. A Law Clerk, as well as paralegal's were
10 also utilized to keep costs down.

11 **2. The Character of the Work Done**

12 In this instance, Minh's counsel was charged with the task of representing her in
13 a contested divorce matter with the primary issue being relocation. Under the
14 circumstances of this case, the character of work required to litigate this matter certainly
15 justifies the fees incurred.

16 **3. The Work Actually Performed by the Lawyer**

17 Mr. Mullins diligently and vigorously represented Minh in a highly contested
18 divorce matter that resulted in having to try the custody issue related to relocation. Mr.
19 Mullins prepared several pleadings; participated in and conducted extensive discovery;
20 prepared for and attended and summarized depositions; reviewed documents and satisfied
21 extensive discovery requests, and has tried this matter in light of the burden of proof.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 **4. The Results**

2 The final factor adopted in *Brunzell*, is whether the attorney was successful and
3 what benefits were derived. *Miller*, 121 Nev. at 623-624, 119 P.3d at 730. Assuming
4 Minh is the prevailing party, then pursuant to NRS 18.010, the policy behind the
5 relocation statutory mandate, and the *Brunzell* factors, Minh is entitled to an award of
6 attorney's fees and costs.

7 DATED this 3rd day of September 2019.

8 KAINEN LAW GROUP, PLLC

9
10 By: 

11 NEIL M. MULLINS, ESQ.

12 Nevada Bar No. 3544

13 3303 Novat Street, Ste. 200

14 Las Vegas, Nevada 89129-8714

15 Attorney for Minh Luong
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of September 2019, I caused to be served the ***Defendant's Trial Brief per EDCR 7.27*** 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):

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 5. info@thedklawgroup.com
- Attorneys for Plaintiff*



An Employee at the
KAINEN LAW GROUP, PLLC

EXHIBIT A

VOLUME III

AA000443

1 financials to a particular broker or financial
2 consultant with the idea that he was going to review
3 each of your portfolios to give him permission about
4 potential retirement or when you could be ready or
5 something of that nature?

6 A I remember giving our financial information
7 to a financial advisor to see where we were
8 financially and the ability to retire and live within
9 the lifestyle that we chose to have.

10 Q In that conversation, were you talking about
11 the lifestyle meaning a California house lifestyle or
12 beach lifestyle, or was it not mentioning the concept
13 of buying something in California at all?

14 A The California house was included in it.
15 The sale of the Vegas house and relocating from Vegas
16 was not included in that.

17 Q So when you were getting this advice, you
18 weren't telling the financial advisor that you were
19 ever going to be willing to give up your house, for
20 instance, to relocate?

21 A Correct.

22 Q Did she know that?

23 A I don't know.

24 Q So you could have been telling the financial
25 advisor something different than what she understood

EXHIBIT B

VOLUME III

AA000445

1 everybody sort of knew what everybody had?

2 A More the second than the first.

3 Q Did you sign joint returns during the
4 marriage for your personal income?

5 A Near the end.

6 Q And toward the beginning part of the
7 marriage, you did it all separately?

8 A Correct.

9 Q Did you feel like you both knew what each
10 others' financial positions were during the marriage,
11 or did you each hold stuff back?

12 A Other than the legal issues we've already
13 discussed, I think we both had a reasonable idea of
14 each others' financial positions.

15 Q Do you recall having conversations about the
16 "give me five years" or "give me another five year"
17 conversations in front of any third parties?

18 A I don't.

19 Q Do you recall discussing it with a mutual
20 therapist the two of you went to somewhere around
21 April of '18?

22 A I believe we addressed the comment of "give
23 me five years" with Carol Conti, the therapist.

24 Q Do you recall in that conversation that that
25 was the first time that you said the words "I told

1 you I'd consider the relocation to appease you"?

2 A I don't know if that's when.

3 Q Is it possible you did not tell her -- tell
4 Minh that in your mind you were never moving without
5 retirement while she considered and was talking to
6 you about the schools in Southern California, the
7 benefits the children could have for a move to
8 California, et cetera?

9 A I don't believe I ever said I never am
10 moving.

11 Q So you never said you were never moving
12 either?

13 A Correct.

14 Q So she could have been believing you were
15 considering a move for the whole family, but you were
16 only considering moving in terms of retirement, so
17 the two minds never met?

18 A I can't speak for her mind, but I know that
19 I wasn't planning to move prior to retirement.

20 Q Did you tell her that? "I'm not moving till
21 I retire, so I don't know why you're talking about
22 our kids moving because it's not going to be any time
23 near now that I'm retiring"?

24 A The first time I was ever told that our kids
25 were going to be moved was about a week after the

EXHIBIT C

1 interest in that residence, correct?

2 A Correct.

3 Q So do you recall a particular conversation
4 back in 2017, or right after that lawsuit that we
5 just talked about was settled, where Minh told you
6 that she was so upset with how she thought that
7 lawsuit was handled regarding the incident of whether
8 or not you absolved her from the liability that she
9 was going to start looking out for herself? Do you
10 remember the conversation?

11 A That wasn't the conversation.

12 Q In your mind or in your recollection, what
13 was the conversation?

14 A She was sitting at the dining room table. I
15 was standing in the kitchen. She looked up at me and
16 she said, "I've come to the conclusion that you don't
17 care about me. I have to take care of myself. I'm
18 going to sell my practice. I'm going to move to
19 California. I'm going to buy a house. You can come
20 when you're ready. I don't know if you will ever be
21 ready."

22 Q That was her words that you recall?

23 A Yes.

24 Q Do you recall the approximate date of that?
25 She bought the house in approximately October 2017.

1 A Right. Probably July 16th, 2017.

2 Q Okay. Do you keep and have you kept a
3 journal where you write down -- or a diary where you
4 write down things and write the dates down on them?

5 A Not in that level of formality, but I
6 sometimes would write notes to myself after an
7 argument or heated discussion about something.

8 Q And where do you keep such notes? A
9 particular notebook that you put it in or . . .

10 A I try to put them into a folder to hold
11 loose paper.

12 Q In your motion you suggested that when the
13 comment happened where you overheard the threat
14 regarding the hand in the door, that that was so
15 troubling to you and on a certain date in 2012, that
16 you memorialized it. Would such a comment be in that
17 same folder?

18 A I don't know if it was 2012, so I'm not --

19 Q Oh, your motion said 2012. I read it this
20 morning.

21 A Okay.

22 Q So I'm representing to you that in your
23 motion it said that that was troubling enough to you
24 that you wrote it down.

25 A Okay.

1 Q So I'm assuming that that date is correct.
2 But for purposes of my question, would it be the same
3 folder or same place that you would put this argument
4 note down and that argument note down, or would it be
5 scattered somewhere else where you kept it?

6 A Sometimes scattered, but many notes are in
7 this folder.

8 Q Do you recall anything else that's come up
9 in this case where you may have memorialized it
10 contemporaneously that's in that folder?

11 A Not that I haven't already shared with my
12 attorney.

13 Q I can't know what you shared with him. All
14 I can know is what's in your motion and what we
15 talked about today.

16 So, so far I have you said that this might
17 be in that folder. In other words, what you just
18 testified is what she told you that day when she was
19 at the table and you were standing, and you've also
20 mentioned that previous hand in the door incident.
21 So far that's the only two things that you said might
22 be in that folder or that journal.

23 My question is, you know, the other issues
24 in the case, are any of those in the folder as well?

25 A I haven't reviewed this folder for a long

1 time. I don't know.

2 Q And how thick is the folder?

3 A An inch.

4 MR. MULLINS: I'm going to ask Mr. Dickerson
5 to review that folder with the client. If there are
6 notes in there that are addressing stuff involving
7 either the custody case, your children, incidents
8 involving arguments with her, that that part of the
9 journal be produced.

10 MR. DICKERSON: Okay.

11 MR. MULLINS: If there's a privilege log you
12 need to do because something's privileged, he knows
13 how to do that too. All right.

14 BY MR. MULLINS:

15 Q Did you discuss relocating to Orange County
16 with Minh prior to the lawsuit settlement happening?
17 In other words, do you know the date approximately
18 that you settled those lawsuits? Or at least you
19 know the date that the two of you -- when she made
20 that comment to you about moving to California, had
21 you discussed prior to that the two of you moving to
22 California?

23 MR. DICKERSON: So you're looking at before
24 July 16, 2017?

25 MR. MULLINS: Yeah.

EXHIBIT D

VOLUME III

AA000453

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129-8714
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

1 **REQT**
2 NEIL M. MULLINS, ESQ.
3 Nevada Bar No. 3544
4 KAINEN LAW GROUP, PLLC
5 3303 Novat Street, Suite 200
6 Las Vegas, Nevada 89129-8714
7 Telephone (702) 823-4900
8 Facsimile (702) 823-4488
9 Service@KainenLawGroup.com
10 Attorney for Defendant

11 **EIGHTH DISTRICT COURT, FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 JAMES W. VAHEY,

14 Plaintiff,

15 vs.

16 MINH NGUYET LUONG,

17 Defendant.

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

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

18 **DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF**
19 **DOCUMENTS TO PLAINTIFF**

20 TO: JAMES W. VAHEY, Plaintiff; and

21 TO: ROBERT P. DICKERSON, ESQ., Attorney for Plaintiff:

22 Defendant, MINH NGUYET LUONG, by and through her attorney, NEIL M.
23 MULLINS, ESQ., of the KAINEN LAW GROUP, PLLC, requests, pursuant to Rule 34
24 of the Nevada Rules of Civil Procedure, that Plaintiff, JAMES W. VAHEY, produce and
25 permit Defendant to inspect and to copy the following documents that Plaintiff or any of
26 his agents, servants, employees, representatives or attorneys may have in their possession,
27 custody, or control.

28 **PRELIMINARY STATEMENT**

The following preliminary statement and definitions apply to each of the Requests
for Production set forth hereinafter and are deemed to be incorporated herein:

DEFINITIONS

- 1
- 2 A. "Person" means any individual, corporation, partnership, association, business trust,
- 3 municipality, or any other organization or entity.
- 4 B. "Document" or "documents" means any kind of written or graphic manner,
- 5 however, produced or reproduced, or in any kind or description, whether sent or
- 6 received or neither, including originals, copies, and drafts, including both sides
- 7 thereof, and including, but not limited to, papers, books, letters, correspondence,
- 8 photographs, objects, tangible things, telegrams, cables, telex messages,
- 9 memoranda, notes, notations, work, papers, transcripts (including trial and
- 10 deposition transcripts), pleadings, minutes, reports and recording of telephone or
- 11 other conversations of interviews or of conferences or other meetings, affidavits,
- 12 statements, summaries, opinions, reports, studies, analyses, evaluations, contracts,
- 13 agreements, journals, statistical records, desk calendars, appointment books, diaries,
- 14 lists, tabulations, sound recordings, computer printouts, data processing input and
- 15 output, microfilms, computer discs or other memory elements, and all other records
- 16 kept by electronic, photographic, or mechanical means, and things similar to any
- 17 of the foregoing, however denominated by you.
- 18 C. For the purpose of this Request, the phrase "tangible thing" means any material
- 19 inanimate object or living organism other than human and also includes any human
- 20 being or part thereof displaying relevant information communicable in any manner
- 21 other than the verbal testimony of that human being.
- 22 D. For the purpose of this Request, the phrases "in your possession" or "under your
- 23 control" refer to the documents or tangible things in your actual possession;
- 24 documents or tangible things in your custody or possession, although located
- 25 elsewhere; documents or tangible things in your care, custody and control, although
- 26 in the possession of your attorneys, accountants, agents or employees; and all
- 27 documents or tangible things, wherever located, as to which you have the right of
- 28 possession.

1 E. The term “you” or “your” means the Plaintiff, and all other persons acting or
2 purporting to act on her behalf.

3 F. The term “and” means and/or and the term “or” means and/or.

4 INSTRUCTIONS

5 A. *Document Production.* You are requested to produce the documents listed below
6 and tangible things in your possession or under your control to be inspected, sampled,
7 photographed, tested and/or copied.

8 The documents and tangible things are to be produced at KAINEN LAW GROUP,
9 PLLC, 3303 Novat Street, Suite 200, Las Vegas, Nevada, 89129-8714, on or before the
10 30th day following the date of service of this *Request for Production*.

11 All documents produced shall be organized and labeled to correspond with the
12 appropriate numbered paragraph of this *Request for Production* to which said documents
13 are responsive.

14 B. *Duty to Supplement.* These requests are continuing and require supplementary
15 responses if further information and/or documents are obtained following the
16 service of your responses to these requests.

17 C. *Claim of Privilege.* If any document is withheld under claim of privilege, please
18 identify the document for which there is a claim of privilege with a full description
19 thereof, including without limitation as follows:

- 20 1. The date it bears;
- 21 2. The name of each person who prepared it or participated in any way in its
22 preparation;
- 23 3. The name of each person who signed it;
- 24 4. The name of each person to whom it or a copy of it was addressed;
- 25 5. The name of each person who presently has custody of it or a copy of it;
- 26 6. Its subject matter and its substance; and
- 27 7. The basis for this claim of privilege.

28 . . .

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce copies of any and all documents and tangible evidence which you rely upon to support your position that the children's best interests are not served by their relocation to California with their mother.

REQUEST FOR PRODUCTION NO. 2:

Please produce any and all tangible evidence or documents you have to support your position that Minh Luong was impatient, abusive or otherwise mistreated any of your children.

REQUEST FOR PRODUCTION NO. 3:

Please produce any and all voice, audio, video or FaceTime or other digital or recordings in your possession in which Minh Luong is a party, which were recorded on or after January 1, 2017.

REQUEST FOR PRODUCTION NO. 4:

Please produce copies of all recordings described in Request No. 3, above, made prior to January 1, 2017 if deemed by you to be relevant to the issues being litigated in this matter.

REQUEST FOR PRODUCTION NO. 5:

Please produce any and all diaries, journals, memos or histories, created by you or on your behalf which memorialize or describe any of the issues or facts in dispute in this matter.

REQUEST FOR PRODUCTION NO. 6:

Please produce all documents or tangible evidence which evidences any communication between you and Minh Luong concerning whether you approved or objected to her proposed relocation of your family , or the children to Southern California.

REQUEST FOR PRODUCTION NO. 7:

Please produce a file stamped copy of your Financial Disclosure Form. Such is required to be filed by local court rule. Do not skip any pages, as your complete financial condition, including assets and debts is or may be relevant to the custody and relocation case even though not at issue concerning division of assets and debts in this matter.

REQUEST FOR PRODUCTION NO. 8:

Please produce a copy of your Homeowners Association Rules, CC & R's for your residence at Lake Las Vegas.

Dated this 3rd day of April, 2019.

KAINEN LAW GROUP, PLLC

By: 

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 3rd day of April, 2019, I caused to be served *Defendant's First Request for Production of Documents to Plaintiff* 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 by electronic mail, via Odyssey Wiznet E-File & Serve, to the following e-mail address(es):

info@thedklawgroup.com


Chris L. Cook, Paralegal
KAINEN LAW GROUP, PLLC

RSPN
THE DICKERSON KARACSONYI LAW GROUP
ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
SABRINA M. DOLSON
Nevada Bar No. 013105
1745 Village Center Circle
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E-SERVED
MAY 06 2019

Attorneys for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

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

**PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

TO: MINH NGUYET LUONG, Defendant; and
TO: NEIL M. MULLINS, ESQ., of KAINEN LAW GROUP, PLLC,
Attorney for Defendant:

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 responds to Defendant's First Request for Production
of Documents to Plaintiff as follows:

...

1 **REQUEST FOR PRODUCTION NO. 1:**

2 Please produce copies of any and all documents and tangible
3 evidence which you rely upon to support your position that the children's
4 best interests are not served by their relocation to California with their
5 mother.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

7 Please see the documents provided in Plaintiff's Initial NRCP 16.2
8 Disclosure of Documents. Discovery is ongoing in this matter, and
9 Plaintiff reserves the right to supplement this Response should additional
10 information become available to him.

11 **REQUEST FOR PRODUCTION NO. 2:**

12 Please produce any and all tangible evidence or documents you have
13 to support your position that Minh Luong was impatient, abusive or
14 otherwise mistreated any of your children.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

16 Objection. This request is unduly burdensome as to the time period
17 covered. Without waiving said objection, please see audio recording being
18 served herewith. Discovery is ongoing in this matter, and Plaintiff reserves
19 the right to supplement this Response should additional information
20 become available to him.

21 **REQUEST FOR PRODUCTION NO. 3:**

22 Please produce any and all voice, audio, video or FaceTime or other
23 digital or recordings in your possession in which Minh Luong is a party,
24 which were recorded on or after January 1, 2017.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

26 Objection. This request is unduly burdensome as to the time period
27 covered. Without waiving said objection, please see audio recording being
28 served herewith. Discovery is ongoing in this matter, and Plaintiff reserves

1 the right to supplement this Response should additional information
2 become available to him.

3 **REQUEST FOR PRODUCTION NO. 4:**

4 Please produce copies of all recordings described in Request No. 3,
5 above, made prior to January 1, 2017 if deemed by you to be relevant to
6 the issues being litigated in this matter.

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

8 Objection. This request is unduly burdensome as to the time period
9 covered. Defendant has no recordings responsive to this request. Discovery
10 is ongoing in this matter, and Plaintiff reserves the right to supplement
11 this Response should additional information become available to him.

12 **REQUEST FOR PRODUCTION NO. 5:**

13 Please produce any and all diaries, journals, memos or histories,
14 created by you or on your behalf which memorialize or describe any of the
15 issues or facts in dispute in this matter.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

17 Objection. This request is unduly burdensome as to the time period
18 covered. Please see Plaintiff's Initial NRCP 16.2 Disclosure of Documents,
19 documents Bates Nos. PLTF001201 - PLTF001202. Discovery is ongoing
20 in this matter, and Plaintiff reserves the right to supplement this Response
21 should additional information become available to him.

22 **REQUEST FOR PRODUCTION NO. 6:**

23 Please produce all documents or tangible evidence which evidences
24 any communication between you and Minh Luong concerning whether
25 you approved or objected to her proposed relocation of your family, or the
26 children to Southern California.

27 . . .

28 . . .

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

2 Objection. This request is unduly burdensome as to the time period
3 covered. Please see Plaintiff's Initial NRCP 16.2 Disclosure of Documents,
4 documents Bates Nos. PLTF001201 - PLTF001202. Discovery is ongoing
5 in this matter, and Plaintiff reserves the right to supplement this Response
6 should additional information become available to him.

7 **REQUEST FOR PRODUCTION NO. 7:**

8 Please produce a file stamped copy of your Financial Disclosure
9 Form. Such is required to be filed by local court rule. Do not skip any
10 pages, as your complete financial condition, including assets and debts is
11 or may be relevant to the custody and relocation case even though not at
12 issue concerning division of assets and debts in this matter.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

14 Please see Plaintiff's General Financial Disclosure Form filed on April
15 26, 2019.

16 **REQUEST FOR PRODUCTION NO. 8:**

17 Please produce a copy of your Homeowners Association Rules, CC
18 & R's for your residence at Lake Las Vegas.

19 ...

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RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Objection. This Request is overly broad and unduly burdensome, and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Discovery is ongoing in this matter, and Plaintiff reserves the right to supplement this Response should additional information become available to him.

DATED this 3rd day of May, 2019.

THE DICKERSON KARACSONYI
LAW GROUP

By Sabrina M. Dolson

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

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- [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRC P 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.

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

Saborina M. Dolzor

An employee of The Dickerson Karacsonyi Law Group

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can't about
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VIOXX®
(rofecoxib)
994713(1)-05-VIO

U made it v. vidly deft 10-14-10
that living in CA is
more imp to u than
being c me I hope
that some day u will
valu me more. I hope
there will be a day
that u glad to have me
As on Wedgude I find
you would have been happy to
HEALTHSOUTH
healthsouth.com
A dentist - maybe Jeff or John

~ 7-25

JUST SAY
GENERIC

You will love me less if the
leaves - b/c to u, love
is ur feeling happy (satisfied)
need ~~some~~ ^{some one} around for
u to feel that way b/c u can't
feel that way by urself.
Please stop making ur weaknesses
my ^{problem}. Safe. Effective. FDA approved.

JUST SAY
GENERIC

~ 8/27/10

DATA in freezer
602 or more
I want to make
well if for burst
Jim, your mom or
MARIA will be doing
the demand - explosion
Safe. Effective. FDA approved.

6-14-10

How dare you have the 1st thing you said to me Sat + Sun be complaints.

Sat - A doozie - we're moving to CA or I will take kids get div & go by myself

Sun - when u going to clean this room.

you say JUV good @ saying what I want

you said you didn't do a good job - diff is

you didn't say things

you did say some then reneg } to reel me in.
to do a bait - switch

you agreed to things - pro up

you volunteered to things take my name. } then you reneg

This is much diff than you deciding to tell me something now + think I should just accept it.

You aren't true to your word + this is something that I can't tolerate, I really am disappointed by this.

Sat - you're going to CA + you only reason you're in LV is for me - you have a practice N - I don't need to be here.

N - I'm going to go to CA much more often - How is that fair to me - You are complaining about how little time I have + you + then you're going to make it less - ok - Go but leave the kids here.

EXHIBIT E

1 had to buy it -- she wasn't involved in the selection
2 of color scheme or schematic either. Do you know
3 that?

4 A I wouldn't know because I wasn't involved in
5 any way with the purchase of the house.

6 Q But you used that fact that you weren't
7 involved in the selection of colors as a reason to
8 say that you didn't acquiesce to the purchase of that
9 particular house.

10 Do you recall you were involved in the
11 landscaping design? You helped furnish the property
12 by going with her to the furniture places and picking
13 it out, things of that nature?

14 A I recall those things.

15 Q You did help her with the designing the
16 landscaping and all that stuff?

17 A She asked me to do it, and I did.

18 Q And do you recall helping put the kids'
19 desks and bedroom furniture together and things of
20 that nature?

21 A I recall standing in the room while her
22 brother-in-law and the other brother-in-law assembled
23 the desks. I did very little to assemble these
24 desks.

25 Q Do you recall being present in the car on

1 more than one occasion where either Minh or the kids
2 pointed out which school they were going to attend,
3 and you said, "Okay"?

4 A I absolutely did not say, "Okay."

5 Q Do you recall a comment being made by either
6 Minh or the kids about the school as you were driving
7 by it?

8 A Yes.

9 Q Who made the comment and what was said?

10 A I don't know which of the children made the
11 comment. If I said anything, it would be, "Well, we
12 don't know that yet. That's something for Mommy and
13 Daddy to decide."

14 Q Do you recall whether that was the only time
15 that that happened, or whether it happened on more
16 than one occasion? Where the comment in front of
17 Minh and you by the children was that they would
18 either attend or go to a particular school?

19 A Please ask that question again.

20 Q Sure. Was there ever a time besides that
21 one that you just recalled where both Minh and the
22 children and you were together and a discussion was
23 had about going to that particular school?

24 A I don't recall if there was more than one
25 event.

1 Q Besides you, Minh and the kids involving
2 that one conversation, do you ever remember the
3 school issue being brought up or discussed between
4 either you, Minh, or the children?

5 A It's possible that they told me, "Mommy said
6 we're going to be going to school in California next
7 year."

8 And I said, "That's not true. Let Mommy and
9 Daddy decide that. We don't know what's going to
10 happen tomorrow. Let us decide what's going to
11 happen next year."

12 Q And I'm still talking about you may not
13 be -- I'm still talking about pre-divorce
14 conversations.

15 A This was pre-divorce.

16 Q Okay. So because if you're going to talk
17 about -- just tell me if you're ever going to talk
18 about a conversation that happens after you decided
19 to divorce her because it will help me with my
20 questions.

21 So all pre-divorce. That sounds pretty
22 specific what you just described. That means the
23 children were telling you or inquiring about you
24 moving there, correct?

25 A That means Minh was telling them that they

EXHIBIT F

1 A I wasn't privy to exactly what her hours
2 were, so that's difficult for me to say.

3 Q Do you recall whether or not she works three
4 days a week or more than three days a week?

5 A In the time we've been together, she's not
6 worked at all for periods of time. She's worked
7 three days a week. Some periods she's had employee
8 doctors. Other periods she's worked five days a
9 week.

10 Q How about in the last couple of years before
11 you separated, do you recall whether she had been on
12 the three-day-a-week-type schedule?

13 A I can't remember.

14 Q Do you recall how many days a week she
15 operated or had surgery in the morning?

16 A Usually one.

17 Q Was that Wednesday?

18 A Yes.

19 Q And is that the day that, to your
20 understanding, she would start surgeries at 6:00 or
21 6:30 in the morning?

22 A Yes.

23 Q Now, do you recall on average what time she
24 ended her day? Or -- or not ended the day at work.
25 Arrived home or able to do activities with the kids?

EXHIBIT G

1 back?"

2 And she agreed, "Yes."

3 And Carol said -- she goes, "Do you guys
4 agree to give it a try?"

5 She looked at Minh, and Minh said, "Yes."

6 She looked at me, and I said, "Yes."

7 That's the end of the session. And later
8 Minh goes, "Well, let's give it a try."

9 And I suggested doing it. And I wanted
10 anything to save our marriage. And our marriage
11 would be together to this day if it weren't this
12 issue of the children. But, you know, to take
13 children away from one parent, you have to do
14 something.

15 So I was willing to try it to try to rescue
16 our marriage. And I suggested doing it for a couple
17 of weeks, and Minh absolutely scoffed and got very,
18 very angry with me. She wanted it for a summertime
19 or a whole school year.

20 And I said, "No. That's not going to
21 happen."

22 And she says, "A couple" -- and this is
23 verbatim, "A couple of weeks is a joke. You never
24 want to go. You're just saying that. You're never
25 going. You never -- you shouldn't have even said

EXHIBIT H

VOLUME III

AA000476

1 A Dr. Gluck also does shoulders.

2 Q Do each of these doctors have an equal
3 interest in your practice, or do you retain more of
4 an interest than them?

5 A Equal interest.

6 Q Does your -- do they each have contracts and
7 do you have a contract in terms of a partnership
8 agreement with them?

9 A Yes.

10 Q And did you, in the contract for either one
11 of those, specifically provide that you can work less
12 hours and pay less overhead or not have extra
13 overhead attributed to you if you work less hours?

14 A Not that I know of.

15 Q Do you recall ever mentioning such a
16 provision to Minh? That when you were negotiating
17 one of the contracts, that you were either
18 considering or put in a provision that allowed you to
19 work less hours?

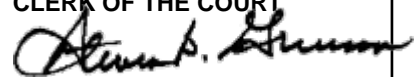
20 A Yes.

21 Q So you remember having that conversation
22 with her?

23 A I don't remember the conversation, but I
24 remember considering an overhead calculation that
25 included hours.

38

38



1 **CRTF**
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12 Attorneys for Plaintiff

13 **DISTRICT COURT**
14 **FAMILY DIVISION**

15 **CLARK COUNTY, NEVADA**

16 **JAMES W. VAHEY,**

17 Plaintiff,

18 v.

19 **MINH NGUYET LUONG,**

20 Defendant.


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

23 **CERTIFICATE OF SEMINAR COMPLETION**

24 ATTACHED hereto please find the Certificate of Completion of the
25 Seminar for the Separation of Parents (Clark County COPE Class)
26 administered by BOSS Court Education for Plaintiff, JAMES VAHEY.

27 DATED this 7th day of September, 2019.

28 **THE DICKERSON KARACSONYI
LAW GROUP**

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



BOSS
COURT EDUCATION

Certificate of Completion

JAMES VAHEY

Has successfully completed the BOSS Court Education course

"Seminar for the Separation of Parents (Clark County COPE Class)"

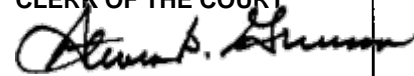
This 03rd Day of September, 2019

Case Number: d18581444d

BOSS Court Education
Business license #: NV20131288654
Nevada DMV Traffic Safety License
ID: TSS000043904
Nevada DMV DUI Class License ID:
DUI000043905

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES W. VAHEY,)
)
Plaintiff,)
)
vs.)
)
MINH NGUYET LUONG,)
)
Defendant.)

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

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

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

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

3 **I. STATEMENT OF THE CASE**

4 This matter is a pre-judgment custody dispute arising out of this divorce
5 case. This court was asked to resolve both parties' claims for legal and physical
6 custody, and Minh Luong's motion for an order allowing her to remove the
7 parties' minor children from Nevada to California over James Vahey's objection.
8
9

10 James Vahey, age 56, and Minh Luong, age 46, were married in
11 Henderson, Nevada on July 8, 2006. Three children were born the issue of their
12 relationship, Hannah Vahey, who was born on March 19, 2009, Matthew Vahey,
13 who was born on June 26, 2010, and Selena Vahey, who was born on April 4,
14 2014.
15
16

17 James Vahey filed a Complaint for Divorce on December 13, 2018,
18 seeking a divorce on no-fault grounds of incompatibility. James Vahey alleged in
19 his complaint that the Plaintiff and the Defendant are proper persons to be
20 awarded joint legal and joint physical custody of their children. Minh Luong filed
21 an Answer and Counterclaim for Divorce on January 11, 2019. Minh Luong
22 alleged in her counterclaim that the Plaintiff and the Defendant are proper persons
23 to be awarded joint legal custody. Minh Luong alleged that it is in the best
24 interest of the children that she have primary physical custody, and she seeks
25
26
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28

1 permission to remove the children from Nevada to California. James Vahey
2 opposes the request to remove the children from Nevada.

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

9
10 The parties' motions were heard on March 12, 2019. On that date, both
11 parties appeared with counsel. The court ordered that the parties share joint legal
12 and joint physical custody of the children pending an evidentiary hearing. The
13 court's temporary order provided that James Vahey have custodial responsibility
14 from Monday at 9:00 a.m. to Wednesday at 9:00 a.m., and that Minh Luong have
15 custodial responsibility from Wednesday at 9:00 a.m. to Friday at 9:00 a.m. The
16 court ordered the parties alternate weekends defined as Friday at 9:00 a.m. to
17 Monday at 9:00 a.m. The court set a discovery schedule and continued the case
18 management conference to May 28, 2019. The Order from the March 12, 2019
19 hearing was filed on May 2, 2019.
20
21
22

23 On May 31, 2019, the court entered an order setting the matter for
24 evidentiary hearing on August 8, 2019. The court held an evidentiary hearing on
25 August 8, 2019, September 5, 2019, and September 11, 2019. The court received
26 documentary proof and heard the testimony from six witnesses, Hieu Luong,
27
28

1 Minh Luong, James Vahey, Richard Landeis, Bowena Bautista, and Imelda
2 Vahey. This court concludes that the evidence presented at the hearing was
3 sufficient for the court to decide the custody issues in this case.
4

5 **II. FINDINGS AND CONCLUSIONS**

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

15 **A. CHILD CUSTODY**

16 Child custody orders necessarily address legal custody, which is an
17 expression of parental rights, and physical custody, which is an expression of
18 child placement and custodial responsibility. There is a presumption in Nevada
19 that parents share parental rights through joint legal custody, and a preference that
20 parents share joint physical custody through a parenting plan that affords parents
21 meaningful time and responsibility for minor children for at least 146 days of the
22 year. If a court has not made a determination regarding the custody of a child,
23 each parent has joint legal and joint physical custody of the child until otherwise
24 ordered by a court of competent jurisdiction. NRS 125C.0015 (2).
25
26
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1 This court has been asked to establish physical custody orders incident to
2 divorce, and to order the removal of the three minor children from Nevada to
3 California. In considering this request, the court is required to consider the best
4 interest of the children. In any action for determining physical custody of a
5 minor child, the sole consideration of the court is the best interest of the child.
6 NRS 125C.0035 (1). In removing the children from the jurisdiction where the
7 children currently live, the best interest of the children should also be the
8 paramount judicial concern. *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d
9 1268, 1271 (1991).
10
11
12

13 The court, with this pre-judgment custody order, makes an order that it
14 finds is in the children's best interest.
15

16 **1. Legal Custody**

17 NRS 125C.002 provides, in part, that when a court is making a
18 determination regarding the legal custody of a child, there is a presumption,
19 affecting the burden of proof, that joint legal custody would be in the best interest
20 of a minor child if: (a) The parents have agreed to an award of joint legal custody
21 or so agree in open court at a hearing for the purpose of determining the legal
22 custody of the minor child.
23
24

25 Joint legal custody has been the order in this case by agreement, and it is
26 not at issue in these pre-judgment proceedings. The parties have both pled and
27
28

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

3 **2. Physical Custody**

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

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

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

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

17 This divorce case requires the establishment of a physical custody order. Minh
18 Luong seeks an order granting her primary physical custody of the children, and
19 she seeks an order allowing her to remove the children to Irvine, California over
20 James Vahey's objection. Minh Luong had the burden to prove that it is in the
21 children's best interest that she have primary physical custody. Based on the
22 findings below, the court concludes that Minh Luong did not provide sufficient
23 proof to support a conclusion that she have primary physical custody. The
24 evidence supports a conclusion that it is in the best interest of the children that the
25 parties share joint physical custody.
26
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1 **3. Removal to Irvine, California**

2 Minh Luong seeks an order allowing her to remove the children from
3
4 Nevada to Irvine, California. Minh Luong has the burden to prove that it is in the
5 children's best interest to be removed from Nevada to Irvine, California, over
6 their father's objection. Even though the court concluded that Minh Luong did
7 not provide sufficient proof to have primary physical custody, the court evaluated
8 the move request factors found in NRS 125C.007. Based on the findings below,
9 the court concludes that Minh Luong did not provide sufficient proof to support a
10 removal of the children to California.
11
12

13 **B. MINH LUONG'S MOTION FOR PRIMARY PHYSICAL**
14 **CUSTODY AND FOR PERMISSION TO RELOCATE WITH**
15 **THE CHILDREN TO IRVINE, CALIFORNIA**

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

21 **1. Best Interest Findings**

22 The "best interest" standard applies when parents seek to establish a
23 physical custody order. In a contested case, the district court weighs factors that
24 may affect the consequence of placement. Factors the court considers are found
25 in statutes and in decisional law.
26
27
28

1 James Vahey has lived in Clark County, Nevada since 1995. James Vahey
2 is an orthopedic surgeon, and has practiced medicine in Nevada for twenty four
3 years. Dr. Vahey testified that he has a busy practice but that he has some control
4 over his patient and surgery schedule. Dr. Vahey testified that his office is
5 located a few miles from the children's school, and that he organizes his work
6 schedule to accommodate his custodial obligations. Bowena Bautista, Dr.
7 Vahey's practice manager, testified that Dr. Vahey sees patients on Mondays and
8 Wednesdays from approximately 9:00 a.m. – 2:00 p.m., and on Fridays from 9:00
9 a.m.–11:00 a.m. Dr. Vahey's surgeries are scheduled on Tuesdays and Thursdays.
10 Dr. Vahey testified that he earns approximately \$700,000 per year from
11 employment.
12

13
14
15 Minh Luong has lived in Clark County, Nevada since 2001. Minh Luong
16 is a dentist, and has practiced in Nevada for eighteen years. Dr. Luong is the
17 owner of Tooth Fairy Dental. The business has an office located in Las Vegas,
18 Nevada, and in Henderson, Nevada. Dr. Luong's sister, Hieu Luong worked in
19 the dental offices for approximately five years. Hieu Luong testified that Dr.
20 Luong worked three to four days per week at the dental offices during the time
21 that she worked there. Dr. Luong testified that she worked two to three days a
22 week during the marriage, and she currently works two days per month, every
23 other Wednesday, and she has hired two staff dentists to work her practice. Dr.
24 Luong testified that she plans to retire and have associates run the practice, or sell
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1 the practice. Dr. Luong testified that she earns approximately \$1,000,000 per
2 year, and she would earn between \$700,000 and \$800,000 per year if she
3 employed other dentists to run the practice.
4

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

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

5 The court finds that both parties are dedicated to raising their children.
6 Married couples often establish a division of labor that is related to the parties'
7 routines and interests. Both parents in this case have demanding jobs, and they
8 both have successfully guided their busy family through the rigors of raising three
9 children. Both parents have been involved in managing the children's daily
10 routines, sharing responsibilities for supervision, guidance, and education. Minh
11 Luong's allegation that James Vahey was a disengaged or neglectful parent, or
12 that she was the primary parent or the more suitable parent, was not credible, and
13 was not supported by sufficient proof. Minh Luong's testimony in this regard,
14 and these allegations were contradicted by documentary proof and witness
15 testimony that was credible. Hieu Luong, Richard Landeis, Bowena Bautista, and
16 Imelda Vahey testified that James Vahey was an active, engaged parent. James
17 Vahey testified that Minh Luong was an exceptional parent.
18
19
20
21

22 NRS 125C.0035 (4) sets forth factors that courts are required to consider as
23 part of the balancing test. This court, in evaluating this custody dispute,
24 considered the applicable statutory factors and the decisional law factors.
25 Specifically:
26

27
28 **(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.**

1 Hannah Vahey is ten (10) years of age, Matthew Vahey is nine (9) years of
2 age, and Selena Vahey is five (5) years of age. None of the children are of
3 sufficient age to form a preference.
4

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

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

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

12 The court finds that James Vahey is more likely to allow the children to
13 have a frequent and continuing relationship with the other parent. The court has
14 concerns that Minh Luong's negative attitude towards James Vahey that stems
15 from his refusal to allow her to move the children to California has caused her to
16 negatively influence the relationship between the children and their father.
17 Evidence was presented at the hearing that showed Minh Luong has discussed
18 this dispute with the parties' children. James Vahey's account of the events in
19 August, 2019 when Hannah was upset and crying on the first day of school was
20 credible. James Vahey testified that Minh Luong told him in the presence of the
21 children that he had forced the kids to go to school in Nevada instead of Irvine
22 where he promised, and said to him, in front of the children, that he misled all of
23 us. Evidence was presented that supports a finding that Minh Luong encouraged
24 Hannah and Matthew to discuss the move to California with their father. Minh
25
26
27
28

1 Luong testified that when asked by the children about moving to California, she
2 told the children to ask their dad. James Vahey testified that shortly after the
3 separation, Selena, age 4, told him at a custody exchange that mommy told me to
4 tell you to let her stay with her all of the time. This dialog shows poor judgment
5 and has the potential to alienate the children from their father.
6

7 Minh Luong alleged that James Vahey was a good father when he was
8 around, that he did not support the children's emotional needs, and discounted his
9 contributions to their schooling and extracurricular activities. Conversely, James
10 Vahey alleged that it was in the best interest of the children for both parents to
11 share physical custody. James Vahey complimented Minh Luong's parenting and
12 dedication to the children. Of the two parents, James Vahey is less likely to
13 undermine or interfere with the parent-child relationship. The court concludes
14 that James Vahey is more likely to foster and encourage a healthy relationship
15 between the children and the other parent.
16
17
18

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

21 The parties have moderate conflict. Minh Luong's decision to seek
22 primary physical custody and removal of the children from Nevada was a catalyst
23 for the filing of this divorce case. Removal disputes within a divorce case can
24 create significant conflict. James Vahey testified that Minh Luong does not speak
25 to him verbally, even in front of the children. Minh Luong insists on texting as
26 the mode of communication between the parties. The court reviewed text
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 /////

1 **Best Interest Conclusion**

2 The court concludes that it is in the best interest of the children that the
3 parties share joint physical custody. A joint physical custody order is only
4 possible if the parties live near one another. Minh Luong testified that she will
5 decide to live in Irvine, California after the divorce, regardless of the outcome of
6 her custody and removal request. If she moves to California, Minh Luong cannot
7 share joint physical custody, and James Vahey shall have primary physical
8 custody by default.
9

10
11 Based on NRS 125C, when the court concludes that a party fails to make a
12 case for primary physical custody, the secondary request for removal fails.
13 However, because the removal considerations overlap the best interest
14 considerations, the court made findings on the removal request.
15

16
17 **1. Removal Findings**

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

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

24 125C.0065 provides, in part,

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

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

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

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

17
18
19
20 **NRS 125C.007 1 (a)**

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

24 The court finds that Minh Luong was sincere in her desire to move to
25 Irvine, California, but concludes that her decision to move is not sensible because
26 joint physical custody is in the best interest of these children, and because the
27 move would deprive James Vahey of the opportunity to share joint physical
28

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

5 Minh Luong testified that she has nine sensible, good faith reasons for the
6 move. They are: (1) The Irvine, California public school is better than the
7 children's Nevada school; (2) Irvine, California is a better community than
8 Henderson, Nevada; (3) Irvine, California is more child friendly than Henderson,
9 Nevada; (4) Irvine, California has better weather than Henderson, Nevada; (5)
10 There is better family support in Irvine, California compared to Henderson,
11 Nevada; (6) The children would be raised by Minh Luong 24/7 in Irvine,
12 California; (7) There are better opportunities for the children in Irvine, California
13 compared to Henderson, Nevada; (8) There are better opportunities for
14 extracurricular activities for the children in Irvine, California compared to
15 Henderson, Nevada; and (9) There are cultural advantages in Irvine, California
16 compared to Henderson, Nevada, because there is a greater Vietnamese
17 population.
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22 Many of these reasons are subjective, and the court accepts that Minh
23 Luong is sincere in her belief that these reasons are sensible. The evidentiary
24 hearing lasted two and one-half days. The court heard several hours of testimony,
25 and yet did not receive sufficient proof to support a favorable finding on these
26 reasons. Minh Luong did not prove that the public school in Irvine, California is
27
28

1 better for the children than the Challenger private school where the children
2 currently attend. The court concludes that Minh Luong did not prove that Irvine,
3 California is a better community, is more child friendly, has better weather, has
4 better family support, has better opportunities for the children, has better
5 extracurricular activities for the children, or has cultural advantages compared to
6 Henderson, Nevada. Regarding the reason that the move would benefit the
7 children by being raised by Minh Luong 24/7 in Irvine, California the findings in
8 this order show that the court does not conclude that this is sensible or an
9 advantage for the children.
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13 The court finds that Minh Luong's intention to move is, in part, to deprive
14 James Vahey of his parenting time. She suggested that the children would be
15 better served by being raised by Minh Luong 24/7 in Irvine, California. Minh
16 Luong testified that she has been unhappy living in Las Vegas, Nevada for years.
17 Minh Luong testified that she has been trying to persuade James Vahey to move
18 to California since 2015. Between 2015 and 2017, the parties looked at vacation
19 homes in California. After the civil suit was resolved in July, 2017, Minh Luong
20 told James Vahey that he did not care about her, and she was going to purchase a
21 home in California, and you can follow if you want. James Vahey testified that
22 later in July, 2017 he told Minh Luong he was not on board with her plan to move
23 to Irvine, California. Minh Luong then purchased the home in California in
24 October, 2017. The parties continued to live in the marital residence in
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1 Henderson, Nevada throughout 2017 and 2018. Minh Luong testified that in a
2 therapy session in April, 2018 James Vahey again told her that he was not on
3 board with her moving to California with the children. The court is concerned
4 that Minh Luong's decision to live in California is intended to create a distance
5 between the parties, and to create a distance between the children and their father,
6 to avoid the sometimes tedious and inconvenient aspects of co-parenting.
7

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

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

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

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

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

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

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

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

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

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

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

15 The court finds that Minh Luong did not prove that the move to Irvine,
16 California improves the children's quality of life. Minh Luong testified that she
17 thought the schools and environment was better for the children in Irvine,
18 California. Her testimony was the evidence offered to the court. The court
19 concludes that she did not prove that schools in Irvine, California were better than
20 the children's current school in Las Vegas, Nevada, or that the children's
21 opportunities and environment would be better in Irvine, California.
22
23
24

25 **NRS 125C.007 2 (b)**

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

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

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

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

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

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

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

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

1 The court finds that James Vahey's motives are honorable in opposing the
2 request to remove his children to Irvine, California. James Vahey cannot
3 maintain a joint physical custody schedule with the children if they live in
4 California. The children are school age, and his custodial time would be limited
5 to school breaks. The court finds that removal of the children would reduce his
6 time by a significant percentage each year, but more importantly, would change
7 the character of his time with the children.
8
9

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

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

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

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

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

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

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

13
14
15 **C. CHILD SUPPORT**
16

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

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

4
5 The court finds that this child support agreement and order complies with
6 Nevada law.

7 **D. ATTORNEYS FEES / COSTS**

8
9 The Nevada Supreme Court held that factors found in *Brunzell v. Golden*
10 *Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) apply to family
11 law cases. Two requirements must be met before making an attorney's fees
12 award:
13

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

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

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

24 While there is a legal basis in statutes for an award of attorney's fees and
25 costs, this court concludes that the claim pursuant to NRS 18.010 and EDCR 7.60
26 (b) lacks merit and should be denied.
27

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

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

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

25
26
27 **b. Disparity in Income and Financial Resources**
28

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

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

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

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

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

3 **E. NOTICES**

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

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

15 b. Pursuant to NRS 125.510 (7) and (8), the parties are hereby
16 placed on notice that the terms of the Hague Convention of October
17 25, 1980, adopted by the 14th Session of the Hague Conference on
18 Private International Law, apply if a parent abducts or wrongfully
19 retains a child in a foreign country.

20
21 c. NOTICE IS HEREBY GIVEN that the parties are subject to
22 the provisions of NRS 31A and 125.450 regarding the collection of
23 delinquent child support payments, and that either party may request
24 a review of child support in accordance with NRS 125B.145.
25
26
27

28 ////

ORDER

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

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

1 involving the children; samples of school work; order forms for school pictures;
2 all communications from health care providers; the names, addresses and
3 telephone numbers of all schools, health care providers, regular day care
4 providers, and counselors. Each parent shall have the right to obtain information
5 concerning the athletic and social events in which the children participate. Both
6 parents may participate in school activities for the children such as open houses,
7 attendance at athletic events, etc. Each parent shall provide the other parent with
8 the address and telephone number of the residence where the minor children
9 reside when in that parent's care. In the event that the address and/or telephone
10 number of the residence changes, the parent shall notify the other parent of the
11 new address two (2) weeks prior to any change of address and/or shall provide the
12 other parent with the new telephone number as soon as the number is assigned.
13 The parent vacationing with the minor children shall provide the other parent with
14 a travel itinerary, which shall include telephone numbers, expected times of
15 arrival and departure and destinations.
16

17 **IT IS FURTHER ORDERED** that James Vahey shall have primary
18 physical custody of Hannah Vahey, Matthew Vahey, and Selena Vahey, subject
19 to Minh Luong's visitation. Specifically:
20

- 21 **1. Weekend Holidays:** Minh Luong shall have the children for weekend
22 holidays listed below. The weekend holiday time may be exercised in
23
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1 California and shall be defined as 4:00 p.m. the day school recesses
2 until 6:00 p.m. the day before school resumes.

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

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

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

15
16
17 a. **Mother's Day:** This holiday is defined as Friday at 4:00 p.m.
18 through Sunday at 6:00 p.m. Minh Luong shall have the children
19 each year for Mother's Day.

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

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

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

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

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

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

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

1 **IT IS FURTHER ORDERED** that neither party shall pay child support to
2 the other. The parties agree to share equally private school tuition and related
3 expenses, all medical and dental expenses for the children that are not covered by
4 insurance, expenses for the children's extracurricular activities that the parties
5 agree are best for the children, and tutoring or education expenses that the parties
6 agree are best for the children. If one party has paid for a shared expense,
7 reimbursement shall be made pursuant to the 30/30 rule for expenses. The parent
8 who paid for the expenses shall provide the other parent a copy of the receipt of
9 payment within 30 days of payment. The other parent should reimburse one-half
10 of the expenses within 30 days.
11
12

14 **IT IS FURTHER ORDERED** that both parties shall provide health
15 insurance for the children if it is offered through employment.
16

17 **IT IS FURTHER ORDERED** that each party shall be responsible for
18 their own attorney's fees and costs.
19

20 **IT IS FURTHER ORDERED** that the court directs the parties to submit a
21 stipulated divorce judgment to the court by October 18, 2019,
22

23 DATED this 20 day of September, 2019.
24

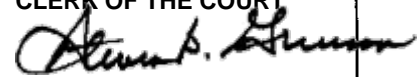
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26 DISTRICT COURT JUDGE
27 T. ART RITCHIE, JR.
28

28 Vahey / Luong

40

40



1 NEOJ

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6 ***

7 JAMES W. VAHEY,

8 Plaintiff,

9 vs.

10 MINH NGUYET LUONG,

11 Defendant.

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

12 **NOTICE OF ENTRY OF ORDER**

13 TO: ALL PARTIES AND/OR THEIR ATTORNEYS

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

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

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

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

Neil M. Mullins, Esq. for
DEFENDANT



Katrina Rausch
Judicial Executive Assistant
Department H



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

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

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

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

3 **I. STATEMENT OF THE CASE**
4

5 This matter is a pre-judgment custody dispute arising out of this divorce
6 case. This court was asked to resolve both parties' claims for legal and physical
7 custody, and Minh Luong's motion for an order allowing her to remove the
8 parties' minor children from Nevada to California over James Vahey's objection.
9

10 James Vahey, age 56, and Minh Luong, age 46, were married in
11 Henderson, Nevada on July 8, 2006. Three children were born the issue of their
12 relationship, Hannah Vahey, who was born on March 19, 2009, Matthew Vahey,
13 who was born on June 26, 2010, and Selena Vahey, who was born on April 4,
14 2014.
15

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

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

9
10 The parties' motions were heard on March 12, 2019. On that date, both
11 parties appeared with counsel. The court ordered that the parties share joint legal
12 and joint physical custody of the children pending an evidentiary hearing. The
13 court's temporary order provided that James Vahey have custodial responsibility
14 from Monday at 9:00 a.m. to Wednesday at 9:00 a.m., and that Minh Luong have
15 custodial responsibility from Wednesday at 9:00 a.m. to Friday at 9:00 a.m. The
16 court ordered the parties alternate weekends defined as Friday at 9:00 a.m. to
17 Monday at 9:00 a.m. The court set a discovery schedule and continued the case
18 management conference to May 28, 2019. The Order from the March 12, 2019
19 hearing was filed on May 2, 2019.
20
21
22

23 On May 31, 2019, the court entered an order setting the matter for
24 evidentiary hearing on August 8, 2019. The court held an evidentiary hearing on
25 August 8, 2019, September 5, 2019, and September 11, 2019. The court received
26 documentary proof and heard the testimony from six witnesses, Hieu Luong,
27
28

1 Minh Luong, James Vahey, Richard Landeis, Bowena Bautista, and Imelda
2 Vahey. This court concludes that the evidence presented at the hearing was
3 sufficient for the court to decide the custody issues in this case.
4

5 **II. FINDINGS AND CONCLUSIONS**

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

15 **A. CHILD CUSTODY**

16 Child custody orders necessarily address legal custody, which is an
17 expression of parental rights, and physical custody, which is an expression of
18 child placement and custodial responsibility. There is a presumption in Nevada
19 that parents share parental rights through joint legal custody, and a preference that
20 parents share joint physical custody through a parenting plan that affords parents
21 meaningful time and responsibility for minor children for at least 146 days of the
22 year. If a court has not made a determination regarding the custody of a child,
23 each parent has joint legal and joint physical custody of the child until otherwise
24 ordered by a court of competent jurisdiction. NRS 125C.0015 (2).
25
26
27
28

1 This court has been asked to establish physical custody orders incident to
2 divorce, and to order the removal of the three minor children from Nevada to
3 California. In considering this request, the court is required to consider the best
4 interest of the children. In any action for determining physical custody of a
5 minor child, the sole consideration of the court is the best interest of the child.
6 NRS 125C.0035 (1). In removing the children from the jurisdiction where the
7 children currently live, the best interest of the children should also be the
8 paramount judicial concern. *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d
9 1268, 1271 (1991).
10
11
12

13 The court, with this pre-judgment custody order, makes an order that it
14 finds is in the children's best interest.
15

16 1. Legal Custody

17 NRS 125C.002 provides, in part, that when a court is making a
18 determination regarding the legal custody of a child, there is a presumption,
19 affecting the burden of proof, that joint legal custody would be in the best interest
20 of a minor child if: (a) The parents have agreed to an award of joint legal custody
21 or so agree in open court at a hearing for the purpose of determining the legal
22 custody of the minor child.
23
24

25 Joint legal custody has been the order in this case by agreement, and it is
26 not at issue in these pre-judgment proceedings. The parties have both pled and
27
28

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

3 **2. Physical Custody**

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

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

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

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

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

2 Minh Luong seeks an order allowing her to remove the children from
3 Nevada to Irvine, California. Minh Luong has the burden to prove that it is in the
4 children's best interest to be removed from Nevada to Irvine, California, over
5 their father's objection. Even though the court concluded that Minh Luong did
6 not provide sufficient proof to have primary physical custody, the court evaluated
7 the move request factors found in NRS 125C.007. Based on the findings below,
8 the court concludes that Minh Luong did not provide sufficient proof to support a
9 removal of the children to California.
10

11 **B. MINH LUONG'S MOTION FOR PRIMARY PHYSICAL**
12 **CUSTODY AND FOR PERMISSION TO RELOCATE WITH**
13 **THE CHILDREN TO IRVINE, CALIFORNIA**

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

19 **1. Best Interest Findings**

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

13
14
15 Minh Luong has lived in Clark County, Nevada since 2001. Minh Luong
16 is a dentist, and has practiced in Nevada for eighteen years. Dr. Luong is the
17 owner of Tooth Fairy Dental. The business has an office located in Las Vegas,
18 Nevada, and in Henderson, Nevada. Dr. Luong's sister, Hieu Luong worked in
19 the dental offices for approximately five years. Hieu Luong testified that Dr.
20 Luong worked three to four days per week at the dental offices during the time
21 that she worked there. Dr. Luong testified that she worked two to three days a
22 week during the marriage, and she currently works two days per month, every
23 other Wednesday, and she has hired two staff dentists to work her practice. Dr.
24 Luong testified that she plans to retire and have associates run the practice, or sell
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28

1 the practice. Dr. Luong testified that she earns approximately \$1,000,000 per
2 year, and she would earn between \$700,000 and \$800,000 per year if she
3 employed other dentists to run the practice.
4

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

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

5 The court finds that both parties are dedicated to raising their children.
6 Married couples often establish a division of labor that is related to the parties'
7 routines and interests. Both parents in this case have demanding jobs, and they
8 both have successfully guided their busy family through the rigors of raising three
9 children. Both parents have been involved in managing the children's daily
10 routines, sharing responsibilities for supervision, guidance, and education. Minh
11 Luong's allegation that James Vahey was a disengaged or neglectful parent, or
12 that she was the primary parent or the more suitable parent, was not credible, and
13 was not supported by sufficient proof. Minh Luong's testimony in this regard,
14 and these allegations were contradicted by documentary proof and witness
15 testimony that was credible. Hieu Luong, Richard Landeis, Bowena Bautista, and
16 Imelda Vahey testified that James Vahey was an active, engaged parent. James
17 Vahey testified that Minh Luong was an exceptional parent.
18
19
20
21

22 NRS 125C.0035 (4) sets forth factors that courts are required to consider as
23 part of the balancing test. This court, in evaluating this custody dispute,
24 considered the applicable statutory factors and the decisional law factors.
25 Specifically:
26
27

28 **(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.**

1 Hannah Vahey is ten (10) years of age, Matthew Vahey is nine (9) years of
2 age, and Selena Vahey is five (5) years of age. None of the children are of
3 sufficient age to form a preference.
4

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

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

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

12 The court finds that James Vahey is more likely to allow the children to
13 have a frequent and continuing relationship with the other parent. The court has
14 concerns that Minh Luong's negative attitude towards James Vahey that stems
15 from his refusal to allow her to move the children to California has caused her to
16 negatively influence the relationship between the children and their father.
17 Evidence was presented at the hearing that showed Minh Luong has discussed
18 this dispute with the parties' children. James Vahey's account of the events in
19 August, 2019 when Hannah was upset and crying on the first day of school was
20 credible. James Vahey testified that Minh Luong told him in the presence of the
21 children that he had forced the kids to go to school in Nevada instead of Irvine
22 where he promised, and said to him, in front of the children, that he misled all of
23 us. Evidence was presented that supports a finding that Minh Luong encouraged
24 Hannah and Matthew to discuss the move to California with their father. Minh
25
26
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1 Luong testified that when asked by the children about moving to California, she
2 told the children to ask their dad. James Vahey testified that shortly after the
3 separation, Selena, age 4, told him at a custody exchange that mommy told me to
4 tell you to let her stay with her all of the time. This dialog shows poor judgment
5 and has the potential to alienate the children from their father.
6

7 Minh Luong alleged that James Vahey was a good father when he was
8 around, that he did not support the children's emotional needs, and discounted his
9 contributions to their schooling and extracurricular activities. Conversely, James
10 Vahey alleged that it was in the best interest of the children for both parents to
11 share physical custody. James Vahey complimented Minh Luong's parenting and
12 dedication to the children. Of the two parents, James Vahey is less likely to
13 undermine or interfere with the parent-child relationship. The court concludes
14 that James Vahey is more likely to foster and encourage a healthy relationship
15 between the children and the other parent.
16
17
18

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

21 The parties have moderate conflict. Minh Luong's decision to seek
22 primary physical custody and removal of the children from Nevada was a catalyst
23 for the filing of this divorce case. Removal disputes within a divorce case can
24 create significant conflict. James Vahey testified that Minh Luong does not speak
25 to him verbally, even in front of the children. Minh Luong insists on texting as
26 the mode of communication between the parties. The court reviewed text
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 /////

1 **Best Interest Conclusion**

2 The court concludes that it is in the best interest of the children that the
3 parties share joint physical custody. A joint physical custody order is only
4 possible if the parties live near one another. Minh Luong testified that she will
5 decide to live in Irvine, California after the divorce, regardless of the outcome of
6 her custody and removal request. If she moves to California, Minh Luong cannot
7 share joint physical custody, and James Vahey shall have primary physical
8 custody by default.
9

10
11 Based on NRS 125C, when the court concludes that a party fails to make a
12 case for primary physical custody, the secondary request for removal fails.
13 However, because the removal considerations overlap the best interest
14 considerations, the court made findings on the removal request.
15

16
17 **1. Removal Findings**

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

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

24 125C.0065 provides, in part,

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

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

5 Removal of a minor child from Nevada by the custodial parent is a separate
6 and distinct issue from child custody. However, some of the same factual and
7 policy considerations overlap. In removing the child from the jurisdiction where
8 the child currently lives, the best interest of the child should also be the
9 paramount judicial concern. *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d
10 1268, 1271 (1991). Determination of the best interest of a child in the removal
11 context necessarily involves a fact-specific inquiry and cannot be reduced to a
12 rigid "bright line" test. *Schwartz* at 1270, (citing *In re Marriage of Eckert*, 518
13 N.E. 2d 1041, 1045 (Ill. 1988), and *Cooper v. Cooper*, 491 A.2d 606, 614-15
14 (N.J. 1984)).
15
16

17 The court considered the proof and the factors to be weighed by the court
18 found in NRS 125C.007.
19

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

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

24 The court finds that Minh Luong was sincere in her desire to move to
25 Irvine, California, but concludes that her decision to move is not sensible because
26 joint physical custody is in the best interest of these children, and because the
27 move would deprive James Vahey of the opportunity to share joint physical
28

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

5 Minh Luong testified that she has nine sensible, good faith reasons for the
6 move. They are: (1) The Irvine, California public school is better than the
7 children's Nevada school; (2) Irvine, California is a better community than
8 Henderson, Nevada; (3) Irvine, California is more child friendly than Henderson,
9 Nevada; (4) Irvine, California has better weather than Henderson, Nevada; (5)
10 There is better family support in Irvine, California compared to Henderson,
11 Nevada; (6) The children would be raised by Minh Luong 24/7 in Irvine,
12 California; (7) There are better opportunities for the children in Irvine, California
13 compared to Henderson, Nevada; (8) There are better opportunities for
14 extracurricular activities for the children in Irvine, California compared to
15 Henderson, Nevada; and (9) There are cultural advantages in Irvine, California
16 compared to Henderson, Nevada, because there is a greater Vietnamese
17 population.
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22 Many of these reasons are subjective, and the court accepts that Minh
23 Luong is sincere in her belief that these reasons are sensible. The evidentiary
24 hearing lasted two and one-half days. The court heard several hours of testimony,
25 and yet did not receive sufficient proof to support a favorable finding on these
26 reasons. Minh Luong did not prove that the public school in Irvine, California is
27
28

1 better for the children than the Challenger private school where the children
2 currently attend. The court concludes that Minh Luong did not prove that Irvine,
3 California is a better community, is more child friendly, has better weather, has
4 better family support, has better opportunities for the children, has better
5 extracurricular activities for the children, or has cultural advantages compared to
6 Henderson, Nevada. Regarding the reason that the move would benefit the
7 children by being raised by Minh Luong 24/7 in Irvine, California the findings in
8 this order show that the court does not conclude that this is sensible or an
9 advantage for the children.
10
11
12

13 The court finds that Minh Luong's intention to move is, in part, to deprive
14 James Vahey of his parenting time. She suggested that the children would be
15 better served by being raised by Minh Luong 24/7 in Irvine, California. Minh
16 Luong testified that she has been unhappy living in Las Vegas, Nevada for years.
17 Minh Luong testified that she has been trying to persuade James Vahey to move
18 to California since 2015. Between 2015 and 2017, the parties looked at vacation
19 homes in California. After the civil suit was resolved in July, 2017, Minh Luong
20 told James Vahey that he did not care about her, and she was going to purchase a
21 home in California, and you can follow if you want. James Vahey testified that
22 later in July, 2017 he told Minh Luong he was not on board with her plan to move
23 to Irvine, California. Minh Luong then purchased the home in California in
24 October, 2017. The parties continued to live in the marital residence in
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1 Henderson, Nevada throughout 2017 and 2018. Minh Luong testified that in a
2 therapy session in April, 2018 James Vahey again told her that he was not on
3 board with her moving to California with the children. The court is concerned
4 that Minh Luong's decision to live in California is intended to create a distance
5 between the parties, and to create a distance between the children and their father,
6 to avoid the sometimes tedious and inconvenient aspects of co-parenting.
7

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

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

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

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

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

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

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

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

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

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

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

15 The court finds that Minh Luong did not prove that the move to Irvine,
16 California improves the children's quality of life. Minh Luong testified that she
17 thought the schools and environment was better for the children in Irvine,
18 California. Her testimony was the evidence offered to the court. The court
19 concludes that she did not prove that schools in Irvine, California were better than
20 the children's current school in Las Vegas, Nevada, or that the children's
21 opportunities and environment would be better in Irvine, California.
22
23
24

25 **NRS 125C.007 2 (b)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13
14
15 **C. CHILD SUPPORT**
16

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

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

4
5 The court finds that this child support agreement and order complies with
6 Nevada law.

7 **D. ATTORNEYS FEES / COSTS**

8
9 The Nevada Supreme Court held that factors found in *Brunzell v. Golden*
10 *Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) apply to family
11 law cases. Two requirements must be met before making an attorney's fees
12 award:

- 13
14 (1) There must be a legal basis for the award. Fees must be allowed
15 by an express or implied agreement or when authorized by statute
16 or rule; and
17 (2) Fees must be appropriate and reasonable. Courts must consider:
18 (a) The qualities of the advocate;
19 (b) The character and difficulty of the work performed;
20 (c) The work actually performed; and
21 (d) The result obtained.

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

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

25 While there is a legal basis in statutes for an award of attorney's fees and
26 costs, this court concludes that the claim pursuant to NRS 18.010 and EDCR 7.60
27 (b) lacks merit and should be denied.

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

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

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

25
26
27 **b. Disparity in Income and Financial Resources**
28

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

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

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

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

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

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

3 **E. NOTICES**

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

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

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

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

27
28 ////

ORDER

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

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

1 involving the children; samples of school work; order forms for school pictures;
2 all communications from health care providers; the names, addresses and
3 telephone numbers of all schools, health care providers, regular day care
4 providers, and counselors. Each parent shall have the right to obtain information
5 concerning the athletic and social events in which the children participate. Both
6 parents may participate in school activities for the children such as open houses,
7 attendance at athletic events, etc. Each parent shall provide the other parent with
8 the address and telephone number of the residence where the minor children
9 reside when in that parent's care. In the event that the address and/or telephone
10 number of the residence changes, the parent shall notify the other parent of the
11 new address two (2) weeks prior to any change of address and/or shall provide the
12 other parent with the new telephone number as soon as the number is assigned.
13 The parent vacationing with the minor children shall provide the other parent with
14 a travel itinerary, which shall include telephone numbers, expected times of
15 arrival and departure and destinations.
16

17 **IT IS FURTHER ORDERED** that James Vahey shall have primary
18 physical custody of Hannah Vahey, Matthew Vahey, and Selena Vahey, subject
19 to Minh Luong's visitation. Specifically:
20

- 21 **1. Weekend Holidays:** Minh Luong shall have the children for weekend
22 holidays listed below. The weekend holiday time may be exercised in
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1 California and shall be defined as 4:00 p.m. the day school recesses
2 until 6:00 p.m. the day before school resumes.

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

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

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

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

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

21 c. **Spring Break:** Minh Luong shall have the children every year
22 for Spring Break defined as 4:00 p.m. the day school recesses
23 until 6:00 p.m. the day before school resumes.
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1 d. **Summer Break:** Minh Luong shall have the children for six
2 consecutive weeks each summer in California beginning at 4:00
3 p.m. the day after school recesses.
4

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

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

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

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

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

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

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

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

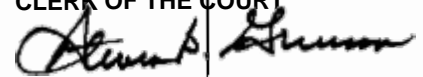
DATED this 20 day of September, 2019.

DISTRICT COURT JUDGE
T ART RITCHIE, JR.

Vahey / Luong

41

41



SUBT
FRED PAGE, ESQ.
NEVADA STATE BAR NO. 6080
PAGE LAW FIRM
6930 SOUTH CIMARRON ROAD, SUITE 140
LAS VEGAS, NEVADA 89113
TELEPHONE: (702) 469-3278
FACSIMILE: (702) 628-9884
Email: fpage@pagelawoffices.com
Attorney for Defendant

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

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

Case No.: D-18-581444-D

Dept.: H

SUBSTITUTION OF ATTORNEY


I, NEIL MULLINS, ESQ., attorney for Defendant, MINH NGUYET
LUONG, does hereby consent to the substitution of FRED PAGE, ESQ., for the
Defendant, in the above entitled matter in his place and stead.

DATED this 05th day of September 2019


NEIL MULLINS, ESQ.

MINH NGUYET LUONG, Defendant, in the above entitled case consents to
the substitution of FRED PAGE, ESQ., in the place and stead of NEIL MULLINS,
ESQ. has his attorney of record in the above entitled matter.

DATED this 5th October
day of ~~September~~ 2019

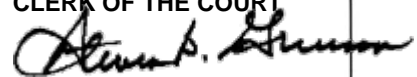

MINH NGUYET LUONG

FRED PAGE, ESQ., attorney at law, does hereby consent of the substitution
of himself as attorney for Defendant, MING NGUYET LUONG, in the above
entitled matter in NEIL MULLINS, ESQ.'S name and stead.


FRED PAGE, ESQ.

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1 NOH
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3
4

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 *****

8 JAMES W. VAHEY,

9 Plaintiff,

10 vs.

11 MINH NGUYET LUONG,

12 Defendant.

CASE NO.: D-18-581444-D

DEPARTMENT H

RJC-Courtroom 3G

13 **NOTICE OF HEARING**
14

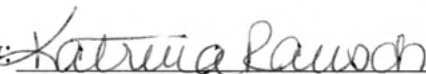
15 Date of Hearing: February 18, 2020

16 Time of Hearing: 10:00 a.m.

17 TO: ALL PARTIES AND/OR THEIR ATTORNEYS

18 Please be advised that the above-entitled matter has been scheduled for a Case
19 Management Conference regarding the Decree of Divorce to be heard in Department
20 H, at the Regional Justice Center, 200 Lewis Avenue, Courtroom 3G, Las Vegas,
21 Nevada, on the 18th day of February, 2020, at the hour of 10:00 a.m.
22

23 Honorable T. Arthur Ritchie, Jr.

24 By: 
25

26 Katrina Rausch

27 Judicial Executive Assistant

28 Department H

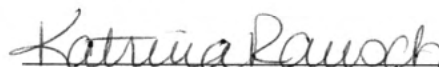
CERTIFICATE OF MAILING

I hereby certify that on or about the file stamp date the foregoing Notice of 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

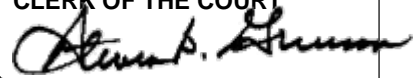
Fred Page, Esq. for
DEFENDANT



Katrina Rausch
Judicial Executive Assistant
Department H

43

43



1 EXHS
2 THE DICKERSON KARACSONYI LAW GROUP
3 ROBERT P. DICKERSON, ESQ.
4 Nevada Bar No. 000945
5 SABRINA M. DOLSON, ESQ.
6 Nevada Bar No. 013105
7 1745 Village Center Circle
8 Las Vegas, Nevada 89134
9 Telephone: (702) 388-8600
10 Facsimile: (702) 388-0210
11 Email: info@thedklawgroup.com
12 Attorneys for Plaintiff

13 DISTRICT COURT
14 FAMILY DIVISION
15 CLARK COUNTY, NEVADA

16 JAMES W. VAHEY,
17
18 Plaintiff,

19 v.

20 MINH NGUYET LUONG,
21
22 Defendant.

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

25 APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF'S
26 INDIVIDUAL CASE MANAGEMENT CONFERENCE BRIEF

27 COMES NOW Plaintiff, JAMES W. VAHEY ("Jim"), by and
28 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
Plaintiff's Individual Case Management Conference Brief.

...

...

...

...

...

...

Title/Description of Document	Exhibit Number
Decree of Divorce	1
Marital Settlement Agreement	2

DATED this 10th day of February, 2020.

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

1 CERTIFICATE OF SERVICE

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

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

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

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



An employee of The Dickerson Karacsonyi Law Group

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

1 **DECD**

2 **THE DICKERSON KARACSONYI LAW GROUP**

3 **ROBERT P. DICKERSON, ESQ.**

4 Nevada Bar No. 000945

5 **SABRINA M. DOLSON, ESQ.**

6 Nevada Bar No. 013105

7 1745 Village Center Circle

8 Las Vegas, Nevada 89134

9 Telephone: (702) 388-8600

10 Facsimile: (702) 388-0210

11 Email: info@TheDKlawgroup.com

12 Attorneys for Plaintiff

13 **DISTRICT COURT**
14 **FAMILY DIVISION**

15 **CLARK COUNTY, NEVADA**

16 JAMES W. VAHEY,

17 Plaintiff,

18 v.

19 MINH NGUYET LUONG,

20 Defendant.

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

23 **DECREE OF DIVORCE**

24 The above-entitled action having come on regularly for a summary
25 disposition of an uncontested divorce without a hearing, Plaintiff, JAMES
26 W. VAHEY ("JIM"), being represented by and through his attorneys,
27 ROBERT P. DICKERSON, ESQ., and SABRINA M. DOLSON, ESQ., of
28 THE DICKERSON KARACSONYI LAW GROUP, and Defendant,
MINH NGUYET LUONG ("MINH"), being represented by and through
her attorney, FRED PAGE, ESQ., of PAGE LAW FIRM. This divorce
action is at issue upon JIM's Complaint for Divorce, MINH's Answer and
Counterclaim for Divorce, and JIM's Reply to the Counterclaim. The
Court having conducted an evidentiary hearing over several days on the

1 child custody and child support issues, and JIM having testified in support
2 of the material allegations of his Complaint through his affidavit, and the
3 affidavit of his resident witness, and both parties having waived the
4 making, filing, and service of Findings of Fact, Conclusions of Law, and
5 written Notice of Entry of Judgment, and the giving of any and all notices
6 required by law or rules of the District Court; the cause having been
7 submitted for decision and judgment, and the Court having before it all
8 the files, pleadings, and papers in the action, being fully apprised in the
9 premises and being satisfied that the action has been duly and regularly
10 commenced, and good cause appearing therefor, the Court finds and
11 concludes as follows:

12 The Court finds that it has complete jurisdiction in the premises,
13 both as to the subject matter of this divorce action and as to the parties to
14 this action; that for more than six (6) weeks before the commencement of
15 this action JIM was, has been, and is now an actual bona fide resident and
16 domiciliary of the State of Nevada, actually and physically residing and
17 being domiciled in Clark County, Nevada during all of said period of time;
18 that the parties have three (3) minor children the issue of their marriage,
19 namely, HANNAH VAHEY, born March 19, 2009, MATTHEW VAHEY,
20 born June 26, 2010, and SELINA VAHEY, born April 4, 2014
21 (hereinafter sometimes collectively referred to as the “children” and
22 individually referred to as a “child”); that the parties have no other minor
23 children, including no adopted minor children, and MINH is not now
24 pregnant; that on August 8, 2019, September 5, 2019, and September 11,
25 2019, the Court held an evidentiary hearing on the issues of child custody
26 and child support, and entered its Findings of Fact, Conclusions of Law,
27 and Decision and Order on September 20, 2019; that the Court’s said
28 Findings of Fact, Conclusions of Law, and Decision and Order is merged

1 and incorporated into this Decree as if the same were included in its
2 entirety in this Decree; that both parties have completed the seminar for
3 separating parents as required by EDCR 5.302; that on or about June 14,
4 2006, the parties entered into a Premarital Agreement, which is valid and
5 enforceable in all respects; that the parties have entered into a Marital
6 Settlement Agreement resolving all issues pertaining to each party's waiver
7 of alimony, the division of property, the allocation of all debts, the
8 confirmation to each of their respective separate property, and all other
9 issues relating or incident to their marriage to each other; that the Marital
10 Settlement Agreement effectuated the terms of the parties' Premarital
11 Agreement except as otherwise agreed upon by the parties in the Marital
12 Settlement Agreement; that a copy of the parties' Marital Settlement
13 Agreement has been filed with the Court as a sealed document, and the
14 same shall remain a sealed document in the Court's files; that the parties'
15 said Marital Settlement Agreement is merged and incorporated into this
16 Decree as if the same were included in its entirety in this Decree; that
17 Plaintiff, JAMES W. VAHEY, is entitled to an absolute Decree of Divorce
18 from Defendant, MINH NGUYET LUONG, on the grounds of
19 incompatibility.

20 Thus, with good cause appearing therefor, the Court hereby enters
21 the following Orders:

22 I. TERMINATION OF THE PARTIES' MARRIAGE

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the
24 bonds of matrimony heretofore and now existing between JIM and MINH
25 be dissolved, set aside, and forever held for naught, and that JIM be, and
26 he hereby is, awarded and decreed an absolute and final Decree of Divorce
27 from MINH, and that the parties, and each of them, is hereby restored to
28 the status of a single, unmarried person.

1 II. CHILD CUSTODY AND CHILD SUPPORT

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
3 JIM and MINH shall have joint legal custody of their minor children,
4 HANNAH VAHEY, born March 19, 2009, MATTHEW VAHEY, born
5 June 26, 2010, and SELENA VAHEY, born April 4, 2014, with JIM being
6 awarded primary physical custody, pursuant to and in accordance with the
7 Court's Findings of Fact, Conclusions of Law, and Decision and Order,
8 entered September 20, 2019. As set forth at page 23, lines 1-14 of the
9 Court's Findings of Fact, Conclusions of Law, and Decision and Order,
10 entered September 20, 2019, the Court afforded MINH a reasonable
11 period of time up to October 18, 2019, to consider whether she chooses
12 to live primarily in Irvine, California, or in Clark County, Nevada. As the
13 Court states at page 23, lines 12-14, of its Findings of Fact, Conclusions
14 of Law, and Decision and Order, entered September 20, 2019, "[i]f Minh
15 Luong's settled purpose to live in Irvine, California remains unchanged,
16 James Vahey shall become the primary physical custodian." MINH
17 acknowledges, agrees, and represents that her settled purpose is to
18 continue to live in Irvine, California, as has been the case since the entry
19 of the Court's Findings of Fact, Conclusions of Law, and Decision and
20 Order, entered September 20, 2019. IT IS FURTHER ORDERED that
21 the said Court's Findings of Fact, Conclusions of Law, and Decision and
22 Order, entered September 20, 2019, and the specific child custody and
23 child support Orders set forth therein, is incorporated and merged into
24 this Decree of Divorce as though the same were set forth herein in full.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, and
26 the parties are put on notice, that the following Nevada statutory
27 provisions apply to each party:

28 . . .

1 1. The provisions of NRS 125C.006, NRS 125C.0065, NRS
2 125C.007, and NRS 125C.0075 apply to each party. Specifically, such
3 Nevada statutory provisions provide as follows with respect to a parent's
4 desire to relocate with the minor children to a place outside the State of
5 Nevada or to a place within the State of Nevada that is at such a distance
6 that the relocation would substantially impair the ability of the other
7 parent to maintain a meaningful relationship with the minor children –
8 (these provisions do not apply to vacations planned by either parent):

9 **NRS 125C.006 Consent required from noncustodial**
10 **parent to relocate child when primary physical custody**
11 **established; petition for permission from court; attorney's**
12 **fees and costs.**

13 1. If primary physical custody has been established
14 pursuant to an order, judgment or decree of a court and the
15 custodial parent intends to relocate his or her residence to a
16 place outside of this State or to a place within this State that
17 is at such a distance that would substantially impair the ability
18 of the other parent to maintain a meaningful relationship with
19 the child, and the custodial parent desires to take the child
20 with him or her, the custodial parent shall, before relocating:

21 (a) Attempt to obtain the written consent of the
22 noncustodial parent to relocate with the child; and

23 (b) If the noncustodial parent refuses to give that
24 consent, petition the court for permission to relocate with the
25 child.

26 2. The court may award reasonable attorney's fees and
27 costs to the custodial parent if the court finds that the
28 noncustodial parent refused to consent to the custodial
parent's relocation with the child:

 (a) Without having reasonable grounds for such
refusal; or

 (b) For the purpose of harassing the custodial
parent.

 3. A parent who relocates with a child pursuant to this
section without the written consent of the noncustodial parent
or the permission of the court is subject to the provisions of
NRS 200.359.

...

1 **NRS 125C.0065 Consent required from non-**
2 **relocating parent to relocate child when joint physical**
3 **custody established; petition for primary physical**
4 **custody; attorney's fees and costs.**

5 1. If joint physical custody has been established
6 pursuant to an order, judgment or decree of a court and one
7 parent intends to relocate his or her residence to a place
8 outside of this State or to a place within this State that is at
9 such a distance that would substantially impair the ability of
10 the other parent to maintain a meaningful relationship with
11 the child, and the relocating parent desires to take the child
12 with him or her, the relocating parent shall, before relocating:

13 (a) Attempt to obtain the written consent of the
14 non-relocating parent to relocate with the child; and

15 (b) If the non-relocating parent refuses to give
16 that consent, petition the court for primary physical custody
17 for the purpose of relocating.

18 2. The court may award reasonable attorney's fees and
19 costs to the relocating parent if the court finds that the non-
20 relocating parent refused to consent to the relocating parent's
21 relocation with the child:

22 (a) Without having reasonable grounds for such
23 refusal; or

24 (b) For the purpose of harassing the relocating
25 parent.

26 3. A parent who relocates with a child pursuant to this
27 section before the court enters an order granting the parent
28 primary physical custody of the child and permission to
relocate with the child is subject to the provisions of NRS
200.359.

1 **NRS 125C.007 Petition for permission to relocate;**
2 **factors to be weighed by court.**

3 1. In every instance of a petition for permission to
4 relocate with a child that is filed pursuant to NRS 125C.006
5 or 125C.0065, the relocating parent must demonstrate to the
6 court that:

7 (a) There exists a sensible, good-faith reason for
8 the move, and the move is not intended to deprive the non-
9 relocating parent of his or her parenting time;

10 (b) The best interests of the child are served by
11 allowing the relocating parent to relocate with the child; and

12 ...

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

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

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

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

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

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

25 (e) Whether there will be a realistic opportunity
26 for the non-relocating parent to maintain a visitation schedule
27 that will adequately foster and preserve the parental
28 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.

**NRS 125C.0075 Unlawful relocation with child;
attorney's fees and costs. If a parent with primary
physical custody or joint physical custody relocates with
a child in violation of NRS 200.359.**

1. The court shall not consider any post-relocation
facts or circumstances regarding the welfare of the child or the
relocating parent in making any determination.

...

1 2. If the non-relocating parent files an action in
2 response to the violation, the non-relocating parent is entitled
3 to recover reasonable attorney's fees and costs incurred as a
4 result of the violation.

5 2. NRS 125C.0045(6) provides as follows with respect to either
6 parent's violation of this Court Order:

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

21 3. Pursuant to NRS 125C.0045(7) and (8), the terms of the
22 Hague Convention of October 25, 1980, adopted by the Fourteenth
23 Session of the Hague Conference on Private International Law, apply if a
24 parent abducts or wrongfully retains a child in a foreign country. The
25 Court finds and concludes that the minor children's habitual residence is
26 located in the County of Clark, State of Nevada, within the United States
27 of America. NRS 125C.0045(7) and (8) specifically provide as follows:

28 Section 7. In addition to the language required pursuant
to subsection 6, all orders authorized by this section must
specify that the terms of the Hague Convention of October 25,
1980, adopted by the 14th Session of the Hague Conference
on Private International Law, apply if a parent abducts or
wrongfully retains a child in a foreign country.

Section 8. If a parent of the child lives in a foreign
country or has significant commitments in a foreign country:

(a) The parties may agree, and the court shall
include in the order for custody of the child, that the United
States is the country of habitual residence of the child for the

1 purposes of applying the terms of the Hague Convention as set
2 forth in Subsection 7.

3 (b) Upon motion of one of the parties, the court
4 may order the parent to post a bond if the court determines
5 that the parent poses an imminent risk of wrongfully removing
6 or concealing the child outside the country of habitual
7 residence. The bond must be in an amount determined by the
8 court and may be used only to pay for the cost of locating the
9 child and returning the child to his or her habitual residence
10 if the child is wrongfully removed from or concealed outside
11 the country of habitual residence. The fact that a parent has
12 significant commitments in a foreign country does not create
13 a presumption that the parent poses an imminent risk of
14 wrongfully removing or concealing the child.

15 4. Pursuant to the terms of the Parental Kidnapping Prevention
16 Act, 28 U.S.C. § 1738A, and the Uniform Child Custody Jurisdiction and
17 Enforcement Act, NRS 125A.005, et seq., the courts of Nevada have
18 exclusive modification jurisdiction of the custody, visitation, and child
19 support terms relating to the child at issue in this case so long as either of
20 the parents, or the child, continue to reside in Nevada.

21 5. Pursuant to NRS 125.007, the parties are placed on notice that
22 the wages and commissions of the party responsible for paying support are
23 subject to assignment or withholding for the purpose of payment of the
24 foregoing obligation of support as provided in NRS 31A.025 through
25 31A.350, inclusive.

26 6. Pursuant to NRS 125B.095, if an installment of an obligation
27 to pay support for a child becomes delinquent in the amount owed for one
28 (1) month's support, a 10% per annum penalty must be added to the
delinquent amount. In this regard, NRS 125B.095 provides as follows:

**NRS 125B.095 Penalty for delinquent payment of
installment of obligation of support.**

1. Except as otherwise provided in this section and
NRS 125B.012, if an installment of an obligation to pay
support for a child which arises from the judgment of a court
becomes delinquent in the amount owed for 1 month's
support, a penalty must be added by operation of this section

1 to the amount of the installment. This penalty must be
2 included in a computation of arrearages by a court of this State
3 and may be so included in a judicial or administrative
4 proceeding of another state. A penalty must not be added to
5 the amount of the installment pursuant to this subsection if
the court finds that the employer of the responsible parent or
the district attorney or other public agency in this State that
enforces an obligation to pay support for a child caused the
payment to be delinquent.

6 2. The amount of the penalty is 10 percent per
7 annum, or portion thereof, that the installment remains
8 unpaid. Each district attorney or other public agency in this
State undertaking to enforce an obligation to pay support for
a child shall enforce the provisions of this section.

9 7. Pursuant to NRS 125B.140, if an installment of an obligation
10 to pay support for a child becomes delinquent, the Court will determine
11 interest upon the arrearages at a rate established pursuant to NRS 99.040,
12 from the time each amount became due. Interest will continue to accrue
13 on the amount ordered until it is paid, and additional attorney's fees must
14 be allowed if required for collection.

15 8. Pursuant to NRS 125B.145, the parties are placed on notice
16 that the Court's order for support will be reviewed by the Court at least
17 every three (3) years to determine whether the order should be modified.
18 The review will be conducted upon the filing of a request by (1) a parent
19 or legal guardian of the child; or (2) the Division of Welfare and
20 Supportive Services of the Department of Health and Human Services, its
21 designated representative or the District Attorney's Office, if the Division
22 of Welfare and Supportive Services or the District Attorney has
23 jurisdiction over the case. In this regard, NRS 125B.145 provides as
24 follows:

25 1. An order for the support of a child must, upon the
26 filing of a request for review by:

27 (a) The Division of Welfare and Supportive
28 Services of the Department of Health and Human Services, its
designated representative or the district attorney, if the

1 Division of Welfare and Supportive Services or the district
2 attorney has jurisdiction in the case; or

3 (b) A parent or legal guardian of the child, be
4 reviewed by the court at least every 3 years pursuant to this
5 section to determine whether the order should be modified or
6 adjusted. Each review conducted pursuant to this section must
7 be in response to a separate request.

8 2. If the court:

9 (a) Does not have jurisdiction to modify the
10 order, the court may forward the request to any court with
11 appropriate jurisdiction.

12 (b) Has jurisdiction to modify the order and,
13 taking into account the best interests of the child, determines
14 that modification or adjustment of the order is appropriate,
15 the court shall enter an order modifying or adjusting the
16 previous order for support in accordance with the requirements
17 of NRS 125B.070 and 125B.080.

18 3. The court shall ensure that:

19 (a) Each person who is subject to an order for the
20 support of a child is notified, not less than once every 3 years,
21 that the person may request a review of the order pursuant to
22 this section; or

23 (b) An order for the support of a child includes
24 notification that each person who is subject to the order may
25 request a review of the order pursuant to this section.

26 4. An order for the support of a child may be reviewed
27 at any time on the basis of changed circumstances. For the
28 purposes of this subsection, a change of 20 percent or more in
the gross monthly income of a person who is subject to an
order for the support of a child shall be deemed to constitute
changed circumstances requiring a review for modification of
the order for the support of a child.

5. As used in this section:

(a) "Gross monthly income" has the meaning
ascribed to it in NRS 125B.070.

(b) "Order for the support of a child" means such
an order that was issued or is being enforced by a court of this
state.

9. The parties shall provide the information required by NRS
125.130, NRS 125.230, and NRS 125B.055, on a separate form to be
submitted to the Court and the Division of Welfare and Supportive

1 Services of the Department of Health and Human Services (“Welfare
2 Division”) within ten (10) days from the date the Court enters this Decree
3 of Divorce terminating the parties’ marriage. The parties shall update
4 such information filed with the Court and the Welfare Division within ten
5 (10) days should any of the information required to be provided become
6 inaccurate. Specifically, at such times as set forth above, each party shall
7 provide the following information to the Court and the Welfare Division,
8 as required by NRS 125.130, NRS 125.230, and NRS 125B.055: (1) such
9 party’s social security number; (2) such party’s residential and mailing
10 address; (3) such party’s telephone number; (4) such party’s driver’s
11 license number; (5) the name, address, and telephone number of such
12 party’s employer; and (6) the social security number of each minor child.
13 Such information shall be maintained by the Clerk of the Court and the
14 Welfare Division in a confidential manner, and such information shall not
15 be made part of the public record.

16 III. MERGER OF MARITAL SETTLEMENT AGREEMENT

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
18 the parties’ Marital Settlement Agreement be, and the same hereby is,
19 ratified, confirmed, and approved by this Court, and the same is
20 incorporated and merged into, and shall become a part of, this Decree of
21 Divorce as if the same were included in this Decree in its entirety.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
23 the parties’ Marital Settlement Agreement, a copy of which has been filed
24 with the Court as a sealed document, shall remain a sealed document in
25 the Court’s files, and the same shall not be open to public inspection.

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
27 each party shall comply with each and every provision set forth in, and
28 . . .

1 perform all acts and obligations required by, the Marital Settlement
2 Agreement, under penalty of contempt.

3 IV. ADDITIONAL ORDERS

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that,
5 pursuant to the Court's Findings of Fact, Conclusions of Law, and
6 Decision and Order, entered September 20, 2019, the parties shall pay
7 their own respective attorneys' fees, experts' fees, and costs incurred in this
8 matter.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
10 the Joint Preliminary Injunction previously entered in this matter is
11 dissolved.

12 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
13 this matter will be kept in a confidential and sealed file in accordance with
14 the Order of this Court entered on January 3, 2019.

15 DATED this ____ day of January, 2020.

16
17 _____
18 DISTRICT JUDGE

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 The parties to this action, JAMES W. VAHEY, Plaintiff, and MINH
2 NGUYET LUONG, Defendant, hereby STIPULATE AND AGREE to the
3 Court's entry of the Decree of Divorce set forth above, and each party
4 agrees to fully comply with the same.

5
6 JAMES W. VAHEY
7 Plaintiff

MINH NGUYET LUONG
Defendant

8
9
10 Submitted by:
11 THE DICKERSON KARACSONYI
12 LAW GROUP

Approved as to form and content:
PAGE LAW FIRM

13 By _____
14 ROBERT P. DICKERSON, ESQ.
15 Nevada Bar No. 000945
16 SABRINA M. DOLSON, ESQ.
17 Nevada Bar No. 013105
18 1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Plaintiff

By _____
FRED PAGE, ESQ.
Nevada Bar No. 006080
6930 South Cimarron Road
Suite 140
Las Vegas, Nevada 89113
Attorney for Defendant

19 Decree of Divorce (James W. Vahey v. Minh Nguyet Luong, Case No. D-18-581444-D)
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EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

MARITAL SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into on the ____ day of January, 2020, by and between MINH NGUYET LUONG (“MINH”), a resident of the State of California, and JAMES W. VAHEY (“JIM”), a resident of the County of Clark, State of Nevada. JIM and MINH sometimes will be collectively referred to in this Agreement as the “parties”, and individually may be referred to as a “party.”

W I T N E S S E T H:

WHEREAS, the parties to this Agreement were married on July 8, 2006, in Henderson, Nevada, and ever since such date have been and now are married to each other;

WHEREAS, on or about June 14, 2006, approximately three (3) weeks prior to the parties’ marriage, the parties entered into a Premarital Agreement (the “Premarital Agreement”);

WHEREAS, the parties, and each of them, acknowledge and agree that the said Premarital Agreement is a valid and binding agreement between the parties;

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

WHEREAS, as a consequence of disputes and numerous differences, divorce proceedings have been initiated in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark (the “Court”), for the purpose of terminating their marriage;

WHEREAS, the parties have separated and presently are living separate and apart from each other;

...

WHEREAS, it is the mutual wish and desire of the parties that a full and final adjustment and settlement of their property rights, interests, and claims against each other be had, settled, and determined at the present time by this integrated Agreement; and all questions concerning the support of the parties, with the parties releasing and forever discharging each other from any liability for alimony, spousal support, and maintenance (collectively referred to in this Agreement as “alimony”), also be settled and determined in finality at this time, such provisions for alimony being an inseparable part of the property settlement and of this integrated Agreement; and

WHEREAS, this Agreement shall be subject to the approval and order of the Court in the divorce action involving the parties currently pending in the Eighth Judicial District Court of Nevada, County of Clark, Case No. D-18-581444-D.

NOW, THEREFORE, in consideration of the foregoing facts and the mutual agreements and covenants contained in this Agreement, it is covenanted, agreed, and promised by each party hereto as follows:

I.

ACKNOWLEDGMENT OF RECITALS AND
LIVING SEPARATE AND APART

A. The parties acknowledge, warrant, represent, and agree that the recitals set forth on pages one and two of this Agreement are true and correct, and the same are incorporated in this Section I as though the same are repeated in this Section in full.

B. The parties further agree that at all times hereafter it shall be lawful for each party to live separate and apart from the other, free from the marital control, interference, restraint, and authority of the other, either directly or indirectly, as if each party were sole, separate, and unmarried. Neither party shall molest, harass, disturb or malign the other to their children, or to his or her friends, neighbors, relatives, employers, employees, co-workers, agents, or any other person, in any manner whatsoever.

...

II.

CHILD CUSTODY AND CHILD SUPPORT

Pursuant to the Court's Findings of Fact, Conclusions of Law, Decision and Order (the "Court's Child Custody/Support Order") enter by the Court on September 20, 2019, in the parties' divorce case currently pending before the Court, the parties shall have joint legal custody of their three (3) minor children, with JIM having primary physical custody of the children, subject to MINH's visitation rights as specifically set forth in the Court's Child Custody/Support Order. A copy of the Court's Child Custody/Support Order is attached to this Agreement as Exhibit A, and the same is incorporated herein by this reference as of the same were set forth in full in this Agreement.

III.

WAIVER OF ALIMONY

A. JIM and MINH agree that they each forever waive any right or claim he or she may have, now or at any time in the future, to receive alimony from the other, whether for the present time, for any time in the future, or for any time in the past. The parties expressly agree that neither party is in need of alimony from the other.

B. Each party's waiver of any right or claim to alimony is intended to be non-modifiable by the court. Specifically, the parties agree that this provision, as well as all other provisions of this Agreement, shall be non-modifiable, and specifically state and agree that no court shall have jurisdiction of any kind over either party's property or with respect to the terms of this Agreement to modify this or any other provision of this Agreement without the specific written consent of both parties to this Agreement.

...

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...

...

IV.

CONFIRMATION OF EACH PARTY'S SEPARATE PROPERTY AND DEBT

A. The parties acknowledge and agree that, pursuant to the terms of their Premarital Agreement, the parties have no community or jointly owned property, nor do they have any community or joint debt. The parties further acknowledge and agree that all property held in JIM's name, as well as all his personal property in his possession, is JIM's sole and separate property, and all debt owed by JIM is his separate debt. Similarly, the parties also acknowledge and agree that all property held in MINH's name, as well as all her personal property in her possession, is MINH's sole and separate property, and all debt owed by MINH is her separate debt.

B. The parties further acknowledge that JIM's sole and separate debt, secured by his property, includes two (2) promissory notes in favor of MINH, which combined balances were originally \$1,590,760.81 (the "MINH Promissory Notes"). Nothing in this agreement shall be interpreted or construed as a release of JIM's continuing obligations to MINH under the MINH Promissory Notes. MINH is still entitled to her prioritized collateral on JIM's assets to secure payment of those obligations, which shall also survive the Decree in this matter.

C. The parties also acknowledge and agree that one party may owe the other party monies to reimburse such other party for his or her overpayment of the parties' total federal income taxes for the 2014, 2015, 2016, and 2017 tax years. Pursuant to Section XVIII of the parties' Premarital Agreement, the parties filed a joint income tax return for each of the said tax years. As the said Section XVIII of the parties' Premarital Agreement provides:

. . . Any tax obligation shall be divided proportionately based upon the taxable income earned by the respective party. In the event the parties file a joint federal income tax return for any qualifying year, the parties' accountant shall prepare calculations setting forth the amount of tax due on each party's separate property income and gains, and each party shall then be required to tender the appropriate share of the total tax due.

. . .

The parties are not certain as to exactly how much either party may owe to the other for any such overpayment of the parties' income taxes for each of the said tax years. Therefore, the parties agree to jointly retain Ty Anderson, CPA, their accountant who prepared each of the said joint federal tax returns, and Mr. Anderson shall prepare the necessary calculations to determine how much money JIM may owe to MINH or how much money MINH may owe to JIM. The parties agree that once Mr. Anderson determines the total amount of the reimbursement to which either party is entitled to receive from the other party, such amount shall be paid within ten (10) days from the date Mr. Anderson provided each party with his calculations. If it turns out that MINH owes any monies to JIM, the amount owed shall be deducted and offset from the total amount of the outstanding balance JIM owes to MINH under the MINH Promissory Notes.

D. The parties agree that all the real and personal property, and all outstanding debt, listed in Exhibit B attached to this Agreement is JIM's sole and separate property, and his separate debt, and the same should be confirmed to him as such.

E. The parties agree that all the real and personal property listed in Exhibit C attached to this Agreement is MINH's sole and separate property, and her separate debt, and the same should be confirmed to her as such.

F. As noted in subparagraph B of this Section IV, JIM currently owes to MINH and/or Luong Investments, LLC, and shall continue to owe until paid in full, the remaining balance on that certain *Forbearance Agreement* dated December 31, 2017. The original New Note Balance, incident to this *Forbearance Agreement*, was \$890,760.81. The parties agree that interest and principal payments shall continue to be due and owing from JIM to MINH and shall survive the Decree of Divorce as a sole and separate obligation of JIM and his business entities. Additionally, JIM individually, and as trustee of the Via Mira Monte Trust, owes MINH and Luong Investments, LLC, the

balance remaining on that certain *Promissory Note* dated July 26, 2017, which original balance was \$700,000.00. The parties agree that interest and principal payments shall continue to be due and owing from JIM and MINH and shall survive the Decree of Divorce as a sole and separate obligation of JIM and his business entities. All terms and conditions of the *Forbearance Agreement* dated December 31, 2017, and the Promissory Note dated July 26, 2017, shall continue to govern.

G. MINH'S REVOCABLE TRUST AND HER FAMILY PROTECTION TRUST: The parties acknowledge and agree that, during the parties' marriage, MINH created two (2) separate trusts, namely, (1) MNL Revocable Trust, and (2) MNL Family Protection Trust (collectively, "MINH's Trusts"). The parties further acknowledge and agree that all the assets held in each such trust was MINH's sole and separate property at the time she conveyed such property to the trust. JIM acknowledges and agrees that he has no interest in any property held in either of MINH's Trusts. Additionally, to the extent JIM is named in either of MINH's Trusts, including any reference to him as MINH's "spouse," whether as a beneficiary, trustee, successor trustee, or in any other respect, JIM relinquishes and waives any and all rights, claims, and benefits he may have under MINH's Trusts. The parties agree that any reference in either of MINH's Trusts to her "spouse" shall not be a reference to JIM, and JIM waives any rights, interests, or claims he may have as MINH's spouse.

H. JIM'S REVOCABLE TRUST AND HIS FAMILY PROTECTION TRUST: The parties acknowledge and agree that, during the parties' marriage, JIM created two (2) separate trusts, namely, (1) JWV Revocable Trust, and (2) JWV Family Protection Trust (collectively, "JIM's Trusts"). The parties further acknowledge and agree that all the assets held in each such trust was JIM's sole and separate property at the time he conveyed such property to the trust. MINH acknowledges and agrees that she has no interest in any property held in either of JIM's Trusts. Additionally, to the extent MINH is named in either of JIM's Trusts, including any reference to her as JIM's

“spouse,” whether as a beneficiary, trustee, successor trustee, or in any other respect, MINH relinquishes and waives any and all rights, claims, and benefits she may have under JIM’s Trusts. The parties agree that any reference in either of JIM’s Trusts to his “spouse” shall not be a reference to MINH, and MINH waives any rights, interests, or claims he may have as JIM’s spouse.

I. EACH PARTY’S SEPARATE PROPERTY INTEREST IN THE ARIZONA PROPERTIES: Each party owns, as his or her sole and separate property, the following interests in real property located in Arizona.

1. The parcel located at the South Half of the Northwest quarter of the Northwest Quarter of Section 28, Township 5 South, Range 2 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, of which JIM has a 67.039% interest, as his sole and separate property, and MINH has a 20.803% interest, as her sole and separate property;

2. The parcel located at the North Half of the Northwest quarter of the Northwest quarter of Section 28, Township 5 South, Range 2 East, of the Gila and Salt River Base and Meridian, Pinal County, Arizona, of which JIM has a 67.039% interest, as his sole and separate property, and MINH has a 20.803% interest, as her sole and separate property;

3. The parcel that is comprised of a portion of Section 36, Township 16 South, Range 24 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, of which JIM has a 50% interest, as his sole and separate property, and MINH has a 50% interest, as her sole and separate property;

4. The parcel that is comprised of a portion of Section 36, Township 16 South, Range 24 East, and Section 1, Township 17 South, Range 24 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, of which JIM has a 50% interest, as his sole and separate property, and MINH has a 50% interest, as her sole and separate property;

5. The parcel that is comprised of a portion of Section 1, Township 17 South, Range 24 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, of which JIM has a 50% interest, as his sole and separate property, and MINH has a 50% interest, as her sole and separate property; and

6. The parcel that is comprised of a portion of Section 1, Township 17 South, Range 24 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, of which JIM has a 50% interest, as his sole and separate property, and MINH has a 50% interest, as her sole and separate property.

Each party will continue to own his or her respective ownership interest in each such parcel of real property as his or her sole and separate property. With respect to the ongoing payment of property taxes and all other costs and expenses relating to each such parcel of real property, each party shall pay his or her proportionate share of the same. At such time as either party elects to sell any of the above-referenced parcels of real property, which is owned only by the parties and is not owned with any other person or entity, they shall mutually select a realtor and place the property on the market for sale. Notwithstanding the foregoing, if only one party desires to sell any such parcel of real property that is owned by the parties with no other co-owner, the party who does not desire to sell the property at such time shall have the right to purchase the other party's ownership interest in the property under such terms that are acceptable to both parties. If the parties are unable to agree to such terms, then the parties shall mutually select a realtor and place the property on the market for sale, as provided above.

J. Notwithstanding the foregoing, the parties agree that each party shall receive the following personal property:

1. MINH shall receive as her sole and separate property, free from any claims by JIM, the sole possession and ownership in and to the following: the Audi automobile, valued at approximately \$5,000; and the Thule Luggage Rack, valued at approximately \$1,500. JIM shall cooperate with MINH and execute any car titles to

remove JIM's name from the titles within seven (7) days of MINH's presentment of the titles to JIM.

2. JIM shall receive as his sole and separate property, free from any claims by MINH, the sole possession and ownership in and to the following: the Acura automobile, valued at approximately \$2,000; and the boat dock, valued at approximately \$10,000. MINH shall cooperate with JIM and execute any car titles, bills of sales, and/or any other form of ownership certificate to remove MINH's name from the titles within seven (7) days of JIM's presentment of the deed to MINH.

V.

CHILDREN'S 529 PLANS

The parties acknowledge and agree that they currently have an account (529 account) opened for each child for the purpose of using the funds on deposit for each child's college education. The parties agree that each such account shall be divided into two (2) separate accounts (529 accounts) for each child, with MINH having one (1) such account in her name for the benefit of each child, and JIM having the other account in his name for the benefit of the child. In this regard, MINH shall be entitled to receive seventy five percent (75%) of the monies held in each child's currently existing 529 account, and JIM shall receive the remaining twenty five percent (25%) of each child's account. Such accounts to be held by each party for the benefit of each child shall continue to be held by each party in trust for the child for whom the account has been opened, and each party agrees to use the monies held in each child's account for the benefit of that child's attainment of his or her post-high school education. Each party shall be free to continue to invest monies in a child's account at his or her sole discretion.

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VI.

PROPERTY ACQUIRED IN FUTURE TO BE SEPARATE PROPERTY

Any and all property acquired by either party from and after the date of this Agreement, specifically including, but not limited to, any and all wages, salary, commissions, income, and other earnings each party receives as a result of his or her respective present or future employment, shall be the sole and separate property of the one so acquiring the same, and each of the parties hereby respectively grants to the other all such future acquisitions of property as the sole and separate property of the one so acquiring the same.

VII.

RIGHT TO DISPOSE OF PROPERTY BY WILL

Each of the parties shall have an immediate right to dispose of or bequeath by Will, living trust, or other estate planning vehicle, his or her respective interests in and to any and all property belonging to him or her from and after the date of this Agreement, and such right shall extend to all future acquisitions of property as well as to all property set over to either party under this Agreement.

VIII.

WAIVER OF INHERITANCE RIGHTS

Except as provided below, and except as may be provided by Will, Codicil, or other such testamentary instrument voluntarily executed after the date each party has signed this Agreement, the parties each hereby waive any and all right to the estate of the other left at his or her death and forever quitclaim any and all right to share in the estate of the other by the laws of succession; and the parties hereby release one to the other all rights to inherit from the other. Furthermore, the parties hereby renounce, one to the other, all right to be administrator or administratrix, executor or executrix, of the estate of the other. The parties hereby waive any and all right to the estate or any interest in the estate of the other by way of inheritance, or otherwise; for family

allowance; to a probate or other homestead upon any property of the other; and to have set aside to him or her any property of the other exempt from execution. From the date of this Agreement to the end of the world, all such waivers by each party in the estate of the other party shall be effective, and the parties shall have all the rights of single persons and maintain the relationship of such toward each other.

IX.

MUTUAL RELEASE OF OBLIGATIONS AND LIABILITIES

It is hereby mutually understood and agreed by and between the parties hereto that this Agreement is deemed to be a final and conclusive and integrated agreement between the parties. Except as specified in this Agreement, each party to this Agreement (together with their agents, representatives, assigns, and attorneys) is hereby released and absolved from any and all liabilities and obligations for the future acts and duties of the other, and each party hereby releases the other from any and all liabilities, future accounts, alimony and support, or otherwise, and all debts and obligations of any kind or character incurred by the other, except as expressly provided in this Agreement. It is the understanding and intent of the parties that this Agreement is intended to finally and conclusively settle the rights of the parties hereto in all respects arising out of their marital relationship, except as otherwise provided in this Agreement.

X.

AGREEMENT SHALL MERGE INTO DECREE OF DIVORCE

This Agreement shall be taken as a full and final property settlement agreement between the parties. The provisions of this Agreement shall be submitted for approval to the Court in the divorce action or proceeding filed with the Court, and the same shall be incorporated and merged into the Court's Decree of Divorce. This Agreement shall determine the property rights and obligations of the parties. The provisions hereof shall not be subject to modification or change at any time hereafter by any court or otherwise,

...

except by a written agreement executed by both JIM and MINH with the same formality as this Agreement.

XI.

EXECUTION OF NECESSARY DOCUMENTS

A. JIM and MINH agree to execute quitclaim deeds, stock transfers, and any and all other instruments that may be required in order to effectuate the transfer of any and all interest either may have in and to the property hereby conveyed to the other as specified in this Agreement, or as otherwise provided by the terms of this Agreement. Should either party fail to execute any such documents, this Agreement shall constitute a full and complete transfer of the interest of one to the other as provided in this Agreement, or to otherwise effectuate any provision of this Agreement. Upon failure of either party to execute and deliver any such deed, conveyance, title, certificate or other document or instrument to the other party, or as otherwise provided in this Agreement, this Agreement shall constitute and operate as such properly executed document, and the County Auditor and County Recorder and any and all other public and private officials are hereby authorized and directed to accept this Agreement or a properly certified copy thereof in lieu of the document regularly required for such conveyance or transfer.

B. JIM and MINH each agree that should either party sell any property in which the other has no right, title, or interest by virtue of this Agreement, that such other party will and shall sign any deed, contract, or other instrument necessary to perfect title to any such property so conveyed.

XII.

DISCLOSURE

Each party hereto acknowledges that he or she has read the foregoing Agreement, fully understands the contents of this Agreement, and accepts the same as fair, just, and equitable. Each party further acknowledges that there has been no promise, agreement or understanding of either of the parties made to the other, except as expressly set forth

in this Agreement, which has been relied upon by either as a matter of inducement to enter into this Agreement. Furthermore, each party hereto has had the opportunity to be independently advised by his or her attorney as to the legal effect of the terms and the execution of this Agreement.

XIII.

REPRESENTATION BY COUNSEL AND COMPLETE SETTLEMENT

A. Each party hereto stipulates with the other and warrants that he or she has had the opportunity for independent legal representation by counsel of his or her own choosing in the negotiations for and the preparation of this Agreement. MINH hereby acknowledges, represents, and warrants that she has retained Fred Page, Esq., of Page Law Firm (“MINH’s Attorney”) for the purpose of representing her in the negotiation and preparation of this Agreement. JIM hereby acknowledges, represents, and warrants that he has retained Robert P. Dickerson, Esq., of The Dickerson Karacsonyi Law Group (“JIM’s Attorney”) for the purpose of representing him in the negotiation and preparation of this Agreement.

B. Each party to this Agreement hereby understands that MINH’s Attorney represents MINH in this matter and is an advocate for MINH’s position, and that JIM’s Attorney represents JIM in this matter and is an advocate for JIM’s position. Both parties have entered into this Agreement without undue influence or coercion, or misrepresentation, or for any other cause except as specified in this Agreement.

C. JIM and MINH admit and agree that each of them has had the opportunity to discuss with independent tax counselors, other than MINH’s Attorney and JIM’s Attorney, concerning the income tax and estate tax implications and consequences with respect to the agreed upon division of properties and indebtedness, and that MINH’s Attorney and JIM’s Attorney were not expected to provide and did not provide tax advice concerning this Agreement. Each party acknowledges neither MINH’s Attorney nor JIM’s Attorney has made or is making any representations as to the tax obligations

or consequences to either party as a result of this Agreement. Each party specifically has been advised to seek independent tax advice concerning the effects of this Agreement.

XIV.

PAYMENT OF ATTORNEYS' FEES

The parties agree that each party shall pay his or her own respective attorneys' fees and costs incurred in the negotiation and preparation of this Agreement. Additionally, to the extent either party owes an outstanding amount to his or her attorney, such party further agrees to pay the remaining amount owed to his or her respective attorney(s) for all fees and costs incurred in his or her representation in the divorce proceeding filed in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, or in any other divorce proceeding that may be commenced in the future. Each party agrees to indemnify and hold the other party harmless from any such attorneys' fees and costs incurred by such indemnifying party. Neither party shall be required to reimburse to the other party any attorneys' fee that have been paid to either party's legal counsel as of the date of this Agreement.

XV.

WAIVER OF ALL OTHER CLAIMS

A. Other than expressly set forth in this Agreement, each party agrees that he or she forever waives, releases, and discharges the other party (together with his or her agents, representatives, assigns, and attorneys) from any and all rights, claims, demands, causes of action, and damages of any kind, known or unknown, existing or arising in the future, resulting from or relating to any personal injuries, property damage, events, conduct, happenings, or actions arising at any time prior to the date of this Agreement, whether arising from or during the marriage of the parties, or prior to the marriage of the parties.

B. The parties mutually understand and agree that this Agreement is intended and deemed to be a final and conclusive agreement between the parties, and, except as

otherwise expressly provided in this Agreement, each party (together with their agents, representatives, assigns, and attorneys) is hereby released and absolved from any and all liabilities and obligations for the past acts and duties of the other party. The parties understand and agree that this Agreement is intended to settle fully, finally, and conclusively the rights of the parties hereto in all respects arising out of their marital and business relationships, and any and all other relationships between the parties, except as expressly provided in this Agreement. Such release shall specifically include, but not necessarily be limited to, all existing causes of actions that actually exist or may exist between the parties, and all causes of actions accruing during the marriage but discovered after the execution of this Agreement.

C. Each party's waiver, release, and discharge as set forth in subparagraphs A and B immediately above is an integral part of this property settlement and may not be modified. The specific releases and waivers of liability set forth above in this Section of this Agreement are intended to be in addition to the specific mutual release of obligations and liabilities set forth in Section VIII of this Agreement.

XVI.

ENTIRE AGREEMENT

This Agreement contains the entire agreement and understanding of the parties, and there are no representations, warranties, covenants, or understandings other than those expressly set forth in this Agreement. The parties expressly agree that any and all other agreements which may have been made between the parties prior to the date of this Agreement, whether written or oral, shall be null and void upon the execution of this Agreement. The parties further represent and agree that no warranties or representations, whether written or oral, except as may be expressly provided in this Agreement, have been made by either party to the other to induce the execution of this Agreement, and the parties agree that this Agreement contains their entire agreement. Furthermore, this Agreement may not be changed, modified, or terminated orally, and

any such change, modification, or termination may only be made by a written instrument executed by the parties with the same formality as this Agreement. No written agreement to change, modify, or terminate this Agreement need be supported by any consideration, and each party hereby waives the defenses of part performance, estoppel, and similar defenses, whether legal or equitable. This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, and assigns of each of the parties.

XVII.

EFFECT OF PARTIAL INVALIDITY

If any term, provision, promise, or condition of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, in whole or in part, the remainder of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVIII.

ENFORCEMENT OF AGREEMENT

If either party institutes any action or proceeding to enforce, or for the breach of any of the terms of this Agreement, or any of the terms or orders of a decree of divorce relating to this Agreement, or if either party contests the validity of this Agreement or challenges or claims that this Agreement is not enforceable, then the prevailing party shall be entitled to recover his or her attorneys' fees and costs from the other party. In any such action or proceeding, the prevailing party shall be entitled to recover all attorneys' fees and costs incurred by that party, regardless of whether the action or proceeding is prosecuted to judgment. This shall include attorneys' fees and costs incurred by a party defending a claim or suit necessitated by the other party's failure to indemnify as required in this Agreement.

...

...

XIX.

NO PARTY DEEMED DRAFTER

The parties agree that neither party shall be deemed to be the drafter of this Agreement. In the event this Agreement is ever construed by a court of law or equity, such court shall not construe this Agreement or any provision hereof against either party as the drafter of the Agreement. The parties further hereby acknowledge and agree that both have contributed substantially and materially to the preparation of this Agreement.

XX.

GOVERNING LAW

The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Agreement. This Agreement and the rights of the parties hereto shall be governed and interpreted in all respects by the law applied to contracts made wholly to be performed within the State of Nevada.

XXI.

CUMULATIVE EFFECT

The parties' rights and remedies hereunder shall be cumulative, and the exercise of one or more shall not preclude the exercise of any other(s).

XXII.

COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an executed original, but all of which together shall be deemed one and the same document.

XXIII.

VERIFICATION

A. Each party agrees that he or she has read this Agreement in its entirety prior to his or her execution of this Agreement, and fully understands the same.

...

B. Each party further agrees that he or she has disclosed fully the nature and extent of all his or her assets and debts, whether community, joint, or separate, and all such assets and debts are accounted for in, and divided and distributed by this Agreement.

C. Each party further acknowledges and agrees that, prior to his or her execution of this Agreement, he or she independently has consulted with counsel of his or her choice and has received independent counsel's advise pertaining to his or her rights and obligations set forth in this Agreement.

D. Each party further acknowledges and agrees that he or she fully understands that this Agreement is a full and final settlement of rights and obligations pertaining to the matters addressed in and resolved by this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands to this Agreement the year and date above written.

MINH NGUYET LUONG

JAMES W. VAHEY

ACKNOWLEDGMENTS

STATE OF NEVADA)
COUNTY OF CLARK) ss.

On this ____ day of January, 2020, personally appeared before me, a Notary Public in and for said County and State, MINH NGUYET LUONG, personally known (or proved) to me to be the person whose name is subscribed to the above instrument, and who acknowledged that she executed the instrument.

Notary Public

STATE OF NEVADA)
COUNTY OF CLARK) ss.

On this ____ day of January, 2020, personally appeared before me, a Notary Public in and for said County and State, JAMES W. VAHEY, personally known (or proved) to me to be the person whose name is subscribed to the above instrument, and who acknowledged that he executed the instrument.

Notary Public

ATTORNEY CERTIFICATION

I, the undersigned hereby certifies that I am an attorney at law, duly licensed and admitted to practice in the State of Nevada; that I have been employed and compensated by MINH NGUYET LUONG, a party to this Marital Settlement Agreement ("Agreement"), and that I have advised such party with respect to this Agreement and explained to her the legal effect of it; and that MINH NGUYET LUONG has acknowledged to the undersigned her full and complete understanding of the Agreement and its legal consequences, and has freely and voluntarily executed the Agreement in my presence.

PAGE LAW FIRM

By _____

FRED PAGE, ESQ.
Nevada Bar No. 006080
6930 South Cimarron Road, Suite 140
Las Vegas, Nevada 89113
Attorney for MINH NGUYET LUONG

I, the undersigned hereby certifies that I am an attorney at law, duly licensed and admitted to practice in the State of Nevada; that I have been employed and compensated by JAMES W. VAHEY, a party to this Marital Settlement Agreement ("Agreement"), and that I have advised such party with respect to this Agreement and explained to him the legal effect of it; and that JAMES W. VAHEY has acknowledged to the undersigned his full and complete understanding of the Agreement and its legal consequences, and has freely and voluntarily executed the Agreement in my presence.

THE DICKERSON KARACSONYI
LAW GROUP

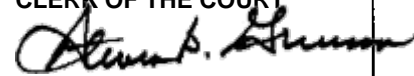
By _____

ROBERT P. DICKERSON, ESQ.
Nevada Bar No. 000945
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for JAMES W. VAHEY

EXHIBIT A

EXHIBIT A

EXHIBIT A



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES W. VAHEY,)
)
Plaintiff,)
)
vs.)
)
MINH NGUYET LUONG,)
)
Defendant.)

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

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

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

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

3 **I. STATEMENT OF THE CASE**

4 This matter is a pre-judgment custody dispute arising out of this divorce
5 case. This court was asked to resolve both parties' claims for legal and physical
6 custody, and Minh Luong's motion for an order allowing her to remove the
7 parties' minor children from Nevada to California over James Vahey's objection.
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9

10 James Vahey, age 56, and Minh Luong, age 46, were married in
11 Henderson, Nevada on July 8, 2006. Three children were born the issue of their
12 relationship, Hannah Vahey, who was born on March 19, 2009, Matthew Vahey,
13 who was born on June 26, 2010, and Selena Vahey, who was born on April 4,
14 2014.
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16

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

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

9
10 The parties' motions were heard on March 12, 2019. On that date, both
11 parties appeared with counsel. The court ordered that the parties share joint legal
12 and joint physical custody of the children pending an evidentiary hearing. The
13 court's temporary order provided that James Vahey have custodial responsibility
14 from Monday at 9:00 a.m. to Wednesday at 9:00 a.m., and that Minh Luong have
15 custodial responsibility from Wednesday at 9:00 a.m. to Friday at 9:00 a.m. The
16 court ordered the parties alternate weekends defined as Friday at 9:00 a.m. to
17 Monday at 9:00 a.m. The court set a discovery schedule and continued the case
18 management conference to May 28, 2019. The Order from the March 12, 2019
19 hearing was filed on May 2, 2019.
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23 On May 31, 2019, the court entered an order setting the matter for
24 evidentiary hearing on August 8, 2019. The court held an evidentiary hearing on
25 August 8, 2019, September 5, 2019, and September 11, 2019. The court received
26 documentary proof and heard the testimony from six witnesses, Hieu Luong,
27
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1 Minh Luong, James Vahey, Richard Landeis, Bowena Bautista, and Imelda
2 Vahey. This court concludes that the evidence presented at the hearing was
3 sufficient for the court to decide the custody issues in this case.
4

5 **II. FINDINGS AND CONCLUSIONS**

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

15 **A. CHILD CUSTODY**

16 Child custody orders necessarily address legal custody, which is an
17 expression of parental rights, and physical custody, which is an expression of
18 child placement and custodial responsibility. There is a presumption in Nevada
19 that parents share parental rights through joint legal custody, and a preference that
20 parents share joint physical custody through a parenting plan that affords parents
21 meaningful time and responsibility for minor children for at least 146 days of the
22 year. If a court has not made a determination regarding the custody of a child,
23 each parent has joint legal and joint physical custody of the child until otherwise
24 ordered by a court of competent jurisdiction. NRS 125C.0015 (2).
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1 This court has been asked to establish physical custody orders incident to
2 divorce, and to order the removal of the three minor children from Nevada to
3 California. In considering this request, the court is required to consider the best
4 interest of the children. In any action for determining physical custody of a
5 minor child, the sole consideration of the court is the best interest of the child.
6 NRS 125C.0035 (1). In removing the children from the jurisdiction where the
7 children currently live, the best interest of the children should also be the
8 paramount judicial concern. *Schwartz v. Schwartz*, 107 Nev. 378, 383, 812 P.2d
9 1268, 1271 (1991).
10
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13 The court, with this pre-judgment custody order, makes an order that it
14 finds is in the children's best interest.
15

16 **1. Legal Custody**

17 NRS 125C.002 provides, in part, that when a court is making a
18 determination regarding the legal custody of a child, there is a presumption,
19 affecting the burden of proof, that joint legal custody would be in the best interest
20 of a minor child if: (a) The parents have agreed to an award of joint legal custody
21 or so agree in open court at a hearing for the purpose of determining the legal
22 custody of the minor child.
23
24

25 Joint legal custody has been the order in this case by agreement, and it is
26 not at issue in these pre-judgment proceedings. The parties have both pled and
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28

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

3 **2. Physical Custody**

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

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

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

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

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

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

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

21 **1. Best Interest Findings**

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

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14
15 Minh Luong has lived in Clark County, Nevada since 2001. Minh Luong
16 is a dentist, and has practiced in Nevada for eighteen years. Dr. Luong is the
17 owner of Tooth Fairy Dental. The business has an office located in Las Vegas,
18 Nevada, and in Henderson, Nevada. Dr. Luong's sister, Hieu Luong worked in
19 the dental offices for approximately five years. Hieu Luong testified that Dr.
20 Luong worked three to four days per week at the dental offices during the time
21 that she worked there. Dr. Luong testified that she worked two to three days a
22 week during the marriage, and she currently works two days per month, every
23 other Wednesday, and she has hired two staff dentists to work her practice. Dr.
24 Luong testified that she plans to retire and have associates run the practice, or sell
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1 the practice. Dr. Luong testified that she earns approximately \$1,000,000 per
2 year, and she would earn between \$700,000 and \$800,000 per year if she
3 employed other dentists to run the practice.
4

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

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

5 The court finds that both parties are dedicated to raising their children.
6 Married couples often establish a division of labor that is related to the parties'
7 routines and interests. Both parents in this case have demanding jobs, and they
8 both have successfully guided their busy family through the rigors of raising three
9 children. Both parents have been involved in managing the children's daily
10 routines, sharing responsibilities for supervision, guidance, and education. Minh
11 Luong's allegation that James Vahey was a disengaged or neglectful parent, or
12 that she was the primary parent or the more suitable parent, was not credible, and
13 was not supported by sufficient proof. Minh Luong's testimony in this regard,
14 and these allegations were contradicted by documentary proof and witness
15 testimony that was credible. Hieu Luong, Richard Landeis, Bowena Bautista, and
16 Imelda Vahey testified that James Vahey was an active, engaged parent. James
17 Vahey testified that Minh Luong was an exceptional parent.
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22 NRS 125C.0035 (4) sets forth factors that courts are required to consider as
23 part of the balancing test. This court, in evaluating this custody dispute,
24 considered the applicable statutory factors and the decisional law factors.
25 Specifically:
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27

28 **(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.**

1 Hannah Vahey is ten (10) years of age, Matthew Vahey is nine (9) years of
2 age, and Selena Vahey is five (5) years of age. None of the children are of
3 sufficient age to form a preference.
4

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

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

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

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

7 Minh Luong alleged that James Vahey was a good father when he was
8 around, that he did not support the children's emotional needs, and discounted his
9 contributions to their schooling and extracurricular activities. Conversely, James
10 Vahey alleged that it was in the best interest of the children for both parents to
11 share physical custody. James Vahey complimented Minh Luong's parenting and
12 dedication to the children. Of the two parents, James Vahey is less likely to
13 undermine or interfere with the parent-child relationship. The court concludes
14 that James Vahey is more likely to foster and encourage a healthy relationship
15 between the children and the other parent.
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19 **(d) The level of conflict between the parents.**
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21 The parties have moderate conflict. Minh Luong's decision to seek
22 primary physical custody and removal of the children from Nevada was a catalyst
23 for the filing of this divorce case. Removal disputes within a divorce case can
24 create significant conflict. James Vahey testified that Minh Luong does not speak
25 to him verbally, even in front of the children. Minh Luong insists on texting as
26 the mode of communication between the parties. The court reviewed text
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28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 /////

1 **Best Interest Conclusion**

2 The court concludes that it is in the best interest of the children that the
3 parties share joint physical custody. A joint physical custody order is only
4 possible if the parties live near one another. Minh Luong testified that she will
5 decide to live in Irvine, California after the divorce, regardless of the outcome of
6 her custody and removal request. If she moves to California, Minh Luong cannot
7 share joint physical custody, and James Vahey shall have primary physical
8 custody by default.
9

10
11 Based on NRS 125C, when the court concludes that a party fails to make a
12 case for primary physical custody, the secondary request for removal fails.
13 However, because the removal considerations overlap the best interest
14 considerations, the court made findings on the removal request.
15

16
17 **1. Removal Findings**

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

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

24 125C.0065 provides, in part,

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

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

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

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

17
18
19
20 **NRS 125C.007 1 (a)**

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

24 The court finds that Minh Luong was sincere in her desire to move to
25 Irvine, California, but concludes that her decision to move is not sensible because
26 joint physical custody is in the best interest of these children, and because the
27 move would deprive James Vahey of the opportunity to share joint physical
28

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

5 Minh Luong testified that she has nine sensible, good faith reasons for the
6 move. They are: (1) The Irvine, California public school is better than the
7 children's Nevada school; (2) Irvine, California is a better community than
8 Henderson, Nevada; (3) Irvine, California is more child friendly than Henderson,
9 Nevada; (4) Irvine, California has better weather than Henderson, Nevada; (5)
10 There is better family support in Irvine, California compared to Henderson,
11 Nevada; (6) The children would be raised by Minh Luong 24/7 in Irvine,
12 California; (7) There are better opportunities for the children in Irvine, California
13 compared to Henderson, Nevada; (8) There are better opportunities for
14 extracurricular activities for the children in Irvine, California compared to
15 Henderson, Nevada; and (9) There are cultural advantages in Irvine, California
16 compared to Henderson, Nevada, because there is a greater Vietnamese
17 population.
18
19
20
21

22 Many of these reasons are subjective, and the court accepts that Minh
23 Luong is sincere in her belief that these reasons are sensible. The evidentiary
24 hearing lasted two and one-half days. The court heard several hours of testimony,
25 and yet did not receive sufficient proof to support a favorable finding on these
26 reasons. Minh Luong did not prove that the public school in Irvine, California is
27
28

1 better for the children than the Challenger private school where the children
2 currently attend. The court concludes that Minh Luong did not prove that Irvine,
3 California is a better community, is more child friendly, has better weather, has
4 better family support, has better opportunities for the children, has better
5 extracurricular activities for the children, or has cultural advantages compared to
6 Henderson, Nevada. Regarding the reason that the move would benefit the
7 children by being raised by Minh Luong 24/7 in Irvine, California the findings in
8 this order show that the court does not conclude that this is sensible or an
9 advantage for the children.
10
11

12
13 The court finds that Minh Luong's intention to move is, in part, to deprive
14 James Vahey of his parenting time. She suggested that the children would be
15 better served by being raised by Minh Luong 24/7 in Irvine, California. Minh
16 Luong testified that she has been unhappy living in Las Vegas, Nevada for years.
17 Minh Luong testified that she has been trying to persuade James Vahey to move
18 to California since 2015. Between 2015 and 2017, the parties looked at vacation
19 homes in California. After the civil suit was resolved in July, 2017, Minh Luong
20 told James Vahey that he did not care about her, and she was going to purchase a
21 home in California, and you can follow if you want. James Vahey testified that
22 later in July, 2017 he told Minh Luong he was not on board with her plan to move
23 to Irvine, California. Minh Luong then purchased the home in California in
24 October, 2017. The parties continued to live in the marital residence in
25
26
27
28

1 Henderson, Nevada throughout 2017 and 2018. Minh Luong testified that in a
2 therapy session in April, 2018 James Vahey again told her that he was not on
3 board with her moving to California with the children. The court is concerned
4 that Minh Luong's decision to live in California is intended to create a distance
5 between the parties, and to create a distance between the children and their father,
6 to avoid the sometimes tedious and inconvenient aspects of co-parenting.
7

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

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

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

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

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

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

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

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

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

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

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

15 The court finds that Minh Luong did not prove that the move to Irvine,
16 California improves the children's quality of life. Minh Luong testified that she
17 thought the schools and environment was better for the children in Irvine,
18 California. Her testimony was the evidence offered to the court. The court
19 concludes that she did not prove that schools in Irvine, California were better than
20 the children's current school in Las Vegas, Nevada, or that the children's
21 opportunities and environment would be better in Irvine, California.
22
23
24

25 **NRS 125C.007 2 (b)**

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

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

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

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

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

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

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

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

1 The court finds that James Vahey's motives are honorable in opposing the
2 request to remove his children to Irvine, California. James Vahey cannot
3 maintain a joint physical custody schedule with the children if they live in
4 California. The children are school age, and his custodial time would be limited
5 to school breaks. The court finds that removal of the children would reduce his
6 time by a significant percentage each year, but more importantly, would change
7 the character of his time with the children.
8
9

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

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

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

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

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

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

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

13
14
15 **C. CHILD SUPPORT**
16

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

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

4
5 The court finds that this child support agreement and order complies with
6 Nevada law.

7 **D. ATTORNEYS FEES / COSTS**

8
9 The Nevada Supreme Court held that factors found in *Brunzell v. Golden*
10 *Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) apply to family
11 law cases. Two requirements must be met before making an attorney's fees
12 award:
13

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

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

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

24 While there is a legal basis in statutes for an award of attorney's fees and
25 costs, this court concludes that the claim pursuant to NRS 18.010 and EDCR 7.60
26 (b) lacks merit and should be denied.
27

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

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

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

25
26
27 **b. Disparity in Income and Financial Resources**
28

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

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

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

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

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

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

3 **E. NOTICES**

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

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

15 b. Pursuant to NRS 125.510 (7) and (8), the parties are hereby
16 placed on notice that the terms of the Hague Convention of October
17 25, 1980, adopted by the 14th Session of the Hague Conference on
18 Private International Law, apply if a parent abducts or wrongfully
19 retains a child in a foreign country.

20
21 c. NOTICE IS HEREBY GIVEN that the parties are subject to
22 the provisions of NRS 31A and 125.450 regarding the collection of
23 delinquent child support payments, and that either party may request
24 a review of child support in accordance with NRS 125B.145.
25
26

27 /////
28

ORDER

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

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

1 involving the children; samples of school work; order forms for school pictures;
2 all communications from health care providers; the names, addresses and
3 telephone numbers of all schools, health care providers, regular day care
4 providers, and counselors. Each parent shall have the right to obtain information
5 concerning the athletic and social events in which the children participate. Both
6 parents may participate in school activities for the children such as open houses,
7 attendance at athletic events, etc. Each parent shall provide the other parent with
8 the address and telephone number of the residence where the minor children
9 reside when in that parent's care. In the event that the address and/or telephone
10 number of the residence changes, the parent shall notify the other parent of the
11 new address two (2) weeks prior to any change of address and/or shall provide the
12 other parent with the new telephone number as soon as the number is assigned.
13 The parent vacationing with the minor children shall provide the other parent with
14 a travel itinerary, which shall include telephone numbers, expected times of
15 arrival and departure and destinations.
16

17 **IT IS FURTHER ORDERED** that James Vahey shall have primary
18 physical custody of Hannah Vahey, Matthew Vahey, and Selena Vahey, subject
19 to Minh Luong's visitation. Specifically:
20

- 21 **1. Weekend Holidays:** Minh Luong shall have the children for weekend
22 holidays listed below. The weekend holiday time may be exercised in
23
24
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1 California and shall be defined as 4:00 p.m. the day school recesses
2 until 6:00 p.m. the day before school resumes.

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

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

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

15
16
17 a. **Mother's Day:** This holiday is defined as Friday at 4:00 p.m.
18 through Sunday at 6:00 p.m. Minh Luong shall have the children
19 each year for Mother's Day.

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

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

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

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

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

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

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

1 **IT IS FURTHER ORDERED** that neither party shall pay child support to
2 the other. The parties agree to share equally private school tuition and related
3 expenses, all medical and dental expenses for the children that are not covered by
4 insurance, expenses for the children's extracurricular activities that the parties
5 agree are best for the children, and tutoring or education expenses that the parties
6 agree are best for the children. If one party has paid for a shared expense,
7 reimbursement shall be made pursuant to the 30/30 rule for expenses. The parent
8 who paid for the expenses shall provide the other parent a copy of the receipt of
9 payment within 30 days of payment. The other parent should reimburse one-half
10 of the expenses within 30 days.
11
12

14 **IT IS FURTHER ORDERED** that both parties shall provide health
15 insurance for the children if it is offered through employment.
16

17 **IT IS FURTHER ORDERED** that each party shall be responsible for
18 their own attorney's fees and costs.
19

20 **IT IS FURTHER ORDERED** that the court directs the parties to submit a
21 stipulated divorce judgment to the court by October 18, 2019,
22

23 DATED this 20 day of September, 2019.
24

25 

26 DISTRICT COURT JUDGE
27 T. ART RITCHIE, JR.
28

28 Vahey / Luong

EXHIBIT B

EXHIBIT B

EXHIBIT B

Oberweis Funds James W. Vahey individual	\$579
Oberweis Funds IRA	\$28,538
Vehicles owned by James W. Vahey	
2019 Toyota Sienna	\$35,000
2004 Acura TL	\$900
2008 Audi Q7 Vin *9234 (Minh and Jim)	\$10,000
Boats owned by James W. Vahey	
2008 MasterCraft X15	\$20,000
2006 ElectraCraft	\$1000
Property owned by James W. Vahey or by LLCs and Trusts in his name	
27 Via Mira Monte owned by Via Mira Monte Trust	\$1,200,000
8585 S. Eastern Suite 100 owned by Other Hand	\$1,495,000
Raw Land behind 8585 S. Eastern Suite 100	\$1000
0 N. Los Hijos Rd., Maricopa, AZ (raw land) (amount paid by Vahey in 2005 for 67% of two parcels with total purchase price = \$1,800,000)	\$1,200,000
1900 N. Highway 191, Sunsite, AZ (raw land) (amount paid by Vahey in 2006 for 50% of four parcels with total purchase price = \$669,936)	\$334,968
Other LLCs in which James W. Vahey is a limited partner	
Specialty Surgery Center, LLC	\$34,177
<u>TOTAL ASSETS:</u>	<u>\$9,041,039</u>

LIABILITIES

Mortgage – 27 Via Mira Monte (Residence), Bank of America *8884	\$987,698
Mortgage – 8585 S. Eastern (Office building), Luong Investments, LLC	\$890,761
Promissory Note, Luong Investments, LLC	\$700,000
UBS Loan *6984	\$999,247
MidCountry Bank Loan *8027	\$742,984
Bank of America Credit Card *5930	\$133,357
<u>TOTAL LIABILITIES:</u>	\$4,454,047
<u>NET WORTH:</u>	\$4,586,992

EXHIBIT C

EXHIBIT C

EXHIBIT C

EXHIBIT B

SOLE AND SEPARATE PROPERTY OF MINH LUONG

<u>Property</u>	<u>Estimated Cash Value</u> <u>as of January 2019</u>
Cash, Savings, Certificates and IRA Accounts owned by Minh Luong	
MidCountry Bank checking account *9082 (ToothFairy Childrens Dental)	\$36,502.09
MidCountry Bank checking account *9096 (ToothFairy Childrens Dental Luong Investments, LLC)	\$34,460.99
Mid Country Bank checking account *9243 (ToothFairy Childrens Dental Luong Estate Major)	\$88.38
MidCountry Bank checking account *9250 (Luong Estate Minor, LLC)	\$35.00
MidCountry Bank checking account *9537 (The Minh-Nguyet Thi Luong Rev. Fam. Trust personal account)	\$15,341.50
Capital Group, American Funds, 401k/Profit Sharing Plan Account *7992	\$1,400,000.00
Interactive Brokers LLC Institution Master account *3460 (Luong Estate Major, LLC)	\$4,000,000.00
Tootfairy/HCON Defined Benefit Plan Etrade (Retirement Plan) account *0517	\$500,000.00

529 Kids College Fund, from VCSP/College America, \$700,600.42
Minh-NGUYET Thi Luong as owner, FBO Hannah,
account *2852

529 Kids College Fund, from VCSP/College America, \$370,000.00
Minh-NGUYET Thi Luong as owner, FBO Matthew,
account *2782

Vehicles owned by Minh Luong

2016 Tesla MOD vin no. *9517 \$90,000.00
2002 Lexis S43 vin no. *8552 (Minh-Nguyet Luong \$500.00
DDS PC)
1998 Toyota Camry \$500.00
2008 Audi LVQ7 Vin. *9234 (Minh and Jim) \$5,000.00

Businesses owned by Minh Luong and Selling Prices

Luong Investments, LLC

Minh-Nguyet Luong, D.D.S., P.C.

Listing the following for sale at:

Got Smile Dentistry \$100,000.00
Sahara Surgery Center Office \$50,000.00
Toothfairy Sahara Office \$1,000,000.00
Toothfairy Eastern Office \$400,000.00
VALU, LLC Unknown (Minh has a
20.803% interest in this LLC)

Other Property owned by Minh Luong or by Trusts in her name

1829 W. Brewer Ave., Santa Ana, California \$350,000.00
9742 W. Tompkins Ave., Las Vegas, Nevada \$250,000.00
5281 River Glen Dr., Unit 223, Las Vegas, Nevada \$100,000.00
9470 Peace Way, Unit 118, Las Vegas, Nevada \$100,000.00
7400 W. Flamingo Rd., Unit 2082, Las Vegas, Nevada \$100,000.00

1909 Villa Palms Ct., Unit 205, Las Vegas, Nevada	\$100,000.00
1401 N. Michael Way, Unit 114, Las Vegas, Nevada	\$100,000.00
2750 S. Durango Dr., Unit 1009, Las Vegas, Nevada	\$100,000.00
8101 W. Flamingo Rd., Unit 1068, Las Vegas, Nevada	\$100,000.00
9580 W. Reno Ave., Unit 269, Las Vegas, Nevada	\$100,000.00
855 N. Stephanie St., Unit 2322, Henderson, Nevada	\$100,000.00
2201 Ramsgate Dr., Unit 125, Henderson, Nevada	\$100,000.00
10925 S. Eastern Ave., Henderson, Nevada	\$1,370,000.00
135 Larksong, Irving, CA 92602	\$2,600,000.00 (purchase price)
0 N. Los Hijos Rd., Maricopa, Arizona (Land)	\$350,000.00 (put in by Minh at purchase)
50% of 1900 N. Highway 191, Sunsite, Arizona (Land)	\$669,600.00 (one-half of purchased)
1027 Lot 156 & 157, Kingman, Arizona (Land) 100% ownership	\$355,092.63 (purchase of Lot 157) \$275,073.84 (purchase of Lot 156)
<u>Total Assets:</u>	\$15,922,794.85

SEPARATE DEBTS OF MINH LUONG

<u>Creditor</u>	<u>Amount of Debt as of January 2019</u>
Interactive Brokers loan	\$2,300,000.00
<u>Total Debts:</u>	\$2,300,000.00

2009-28485

Page 1 of 7

Requested By: UDEED

Christine Rhodes - Recorder

Cochise County, AZ

11-25-2009 12:06 PM Recording Fee \$16.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AFTER RECORDING MAIL TO:

uDeed, LLC - 25676
9041 South Pecos Road, Suite 3900
Henderson, NV 89074

MAIL TAX STATEMENTS TO:

Minh Nguyet Luong, Trustee, et al
27 Via Mira Monte
Henderson, NV 89011

RECORDING REQUESTED BY:

Minh Nguyet Luong
27 Via Mira Monte
Henderson, NV 89011

WARRANTY DEED

TITLE OF DOCUMENT

FOR A GOOD AND VALUABLE CONSIDERATION, I or we,

Minh Nguyet Luong, an unmarried woman and James W. Vahey, an unmarried man, GRANTOR,

WHOSE mailing address is 27 Via Mira Monte, Henderson, Nevada 89011,

DO HEREBY CONVEY TO:

Minh Nguyet Luong, Trustee of The MNL Revocable Trust, as to an undivided fifty percent (50%) interest and James W. Vahey, Trustee of The JWV Revocable Trust, as to an undivided fifty percent (50%) interest, GRANTEE,

WHOSE mailing address is 27 Via Mira Monte, Henderson, Nevada 89011,

ALL RIGHT, title or interest to the real property located in the County of **Cochise**, State of **Arizona**, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Assessor's Parcel Number: **11802004D**Prior Recorded Doc. Ref.: **Warranty Deed**; Recorded: **August 30, 2006**; Doc. No. **060832797**EXEMPT: per A.R.S. §11-1134 **B8**NOTE: Pursuant to A.R.S. 33-404, the names and addresses of the beneficiaries of "**The MNL Revocable Trust**" are attached hereto in EXHIBIT "B" and by this reference made a part hereof.NOTE: Pursuant to A.R.S. 33-404, the names and addresses of the beneficiaries of "**The JWV Revocable Trust**" are attached hereto in EXHIBIT "C" and by this reference made a part hereof.

SUBJECT TO current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the GRANTOR hereby binds itself to warrant and defend the title as against all acts of the GRANTOR herein and no other.

WITNESS my/our hand(s), this 13th day of Oct, 2009.

Minh Nguyen Luong
Minh Nguyen Luong

James W. Vahey
James W. Vahey

STATE OF Nevada)
COUNTY OF Clark) ss

The foregoing instrument was acknowledged before me this 13th day of October, 2009,
by **Minh Nguyen Luong and James W. Vahey.**

NOTARY STAMP/SEAL



Kristen Henderson
Notary Public
My Commission Expires: 8/9/10

EXHIBIT "A"
LEGAL DESCRIPTION

ALL RIGHT, TITLE OR INTEREST TO THE REAL PROPERTY LOCATED IN THE COUNTY OF COCHISE, STATE OF ARIZONA, DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

A PORTION OF SECTION 36, TOWNSHIP 16 SOUTH, RANGE 24 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCHISE COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 36:

THENCE NORTH 89 DEGREES 59 MINUTES 31 SECONDS WEST ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 755.65 FEET;

THENCE NORTH 23 DEGREES 08 MINUTES 03 SECONDS WEST, A DISTANCE OF 1226.78 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 56 MINUTES 03 SECONDS WEST, A DISTANCE OF 2239.52 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 191;

THENCE NORTH 23 DEGREES 07 MINUTES 50 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 520.73 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 27 SECONDS EAST, A DISTANCE OF 1538.29 FEET;

THENCE NORTH 00 DEGREES 02 MINUTES 12 SECONDS EAST, A DISTANCE OF 1035.10 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 23 SECONDS EAST, A DISTANCE OF 257.92 FEET;

THENCE SOUTH 23 DEGREES 08 MINUTES 03 SECONDS EAST, A DISTANCE OF 1647.45 FEET TO THE TRUE POINT OF BEGINNING;

(ALSO SHOWN AS PARCEL A OF RECORD OF SURVEY RECORDED IN BOOK 28 OF SURVEYS, PAGE 68, OFFICIAL RECORDS)

EXCEPT ALL COAL, OIL, GAS AND MINERAL RIGHTS AS RESERVED IN DEED RECORDED IN DOCKET 180, PAGE 502, OFFICIAL RECORDS.

PARCEL NO. 2:

A PORTION OF SECTION 36, TOWNSHIP 16 SOUTH, RANGE 24 EAST, AND SECTION 1, TOWNSHIP 17 SOUTH, RANGE 24 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCHISE COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 36;

THENCE NORTH 89 DEGREES 59 MINUTES 31 SECONDS WEST ALONG THE SOUTH LINE THEREOF, A DISTANCE OF 755.65 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00 DEGREES 01 MINUTES 19 SECONDS EAST, A DISTANCE OF 280.36 FEET;

EXHIBIT "A"
LEGAL DESCRIPTION (CONTINUED)

THENCE NORTH 89 DEGREES 56 MINUTES 03 SECONDS WEST, A DISTANCE OF 2119.89 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 191;

THENCE NORTH 23 DEGREES 07 MINUTES 50 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 769.96 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 03 SECONDS EAST, A DISTANCE OF 2239.57 FEET;

THENCE SOUTH 23 DEGREES 08 MINUTES 03 SECONDS EAST, A DISTANCE OF 464.95 FEET TO THE TRUE POINT OF BEGINNING;

(ALSO SHOWN AS PARCEL C OF RECORD OF SURVEY RECORDED IN BOOK 28 OF SURVEYS, PAGE 68 OFFICIAL RECORDS)

EXCEPT ALL COAL, OIL, GAS AND MINERAL RIGHTS AS RESERVED IN DEED RECORDED IN DOCKET 180, PAGE 502, OFFICIAL RECORDS.

PARCEL NO. 3:

A PORTION OF SECTION 1, TOWNSHIP 17 SOUTH, RANGE 24 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCHISE COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 1;

THENCE NORTH 89 DEGREES 59 MINUTES 31 SECONDS WEST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 775.65 FEET;

THENCE SOUTH 00 DEGREES 01 MINUTES 19 SECONDS EAST, A DISTANCE OF 280.36 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 00 DEGREES 01 MINUTES 19 SECONDS EAST, A DISTANCE OF 805.03 FEET;

THENCE NORTH 89 DEGREES 56 MINUTES 03 SECONDS WEST, A DISTANCE OF 1776.15 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 191;

THENCE NORTH 23 DEGREES 07 DEGREES 50 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 875.82 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 03 SECONDS EAST, A DISTANCE OF 2119.89 FEET TO THE TRUE POINT OF BEGINNING;

(ALSO SHOWN AS PARCEL D OF RECORD OF SURVEY RECORDED IN BOOK 28 OF SURVEYS, PAGE 68. OFFICIAL RECORDS)

EXCEPT ALL COAL, OIL, GAS AND MINERAL RIGHTS AS RESERVED IN DEED RECORDED IN DOCKET 180, PAGE 502, OFFICIAL RECORDS.

EXHIBIT "A"
LEGAL DESCRIPTION (CONTINUED)

PARCEL NO. 4:

A PORTION OF SECTION 1, TOWNSHIP 17 SOUTH, RANGE 24 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCHISE COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 1;

THENCE SOUTH 00 DEGREES 01 MINUTES 22 SECONDS EAST ALONG THE EAST LINE THEREOF, A DISTANCE OF 1389.24 FEET;

THENCE NORTH 89 DEGREES 56 MINUTES 03 SECONDS WEST, A DISTANCE OF 2402.41 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 191;

THENCE NORTH 23 DEGREES 08 MINUTES 03 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 329.73 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 03 SECONDS EAST, A DISTANCE OF 1776.15 FEET;

THENCE NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST, A DISTANCE OF 1065.39 FEET;

THENCE SOUTH 89 DEGREES 56 MINUTES 31 SECONDS EAST, A DISTANCE OF 755.65 FEET TO THE POINT OF BEGINNING;

(ALSO SHOWN AS PARCEL E OF RECORD OF SURVEY RECORDED IN BOOK 28 OF SURVEYS, PAGE 68, OFFICIAL RECORDS)

EXCEPT ALL COAL, OIL, GAS AND MINERAL RIGHTS AS RESERVED IN DEED RECORDED IN DOCKET 180, PAGE 502, OFFICIAL RECORDS.

EXHIBIT "B"
DISCLOSURE OF BENEFICIARIES
THE MNL REVOCABLE TRUST

	NAME	ADDRESS
1.	MINH NGUYET LUONG	27 VIA MIRAMONTE, HENDERSON, NV 89011
2.	JAMES W. VAHEY	27 VIA MIRAMONTE, HENDERSON, NV 89011
3.		
4.		
5.		

EXHIBIT "C"
DISCLOSURE OF BENEFICIARIES
THE JWV REVOCABLE TRUST

	NAME	ADDRESS
1.		
2.		
3.		
4.		
5.		

UNOFFICIAL
DOCUMENT

Return to:)
Managing Member)
10925 S. Eastern Ave. #130)
Henderson, NV 89052)

PAGE: 1 of 2 FEE # 2009071072

B: 7635 P: 976

OFFICIAL RECORDS
OF MOHAVE COUNTY
CAROL MEIER
COUNTY RECORDER



11/20/2009 11:12 AM Fee: \$14.00
DOC TYPE: QCD
PAID BY: L KLINGSBERG

QUITCLAIM DEED

Exempt B7

KNOW ALL MEN BY THESE PRESENTS THAT:

FOR VALUABLE CONSIDERATION OF TEN DOLLARS (\$ 10.00), and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, Luong Investment 306-24-156 Golden Valley, AZ, LLC, hereinafter referred to as "grantor" does hereby transfer, remise, release, and forever quitclaim unto LUONG INVESTMENT, LLC a limited liability company, organized under the laws of the state of Nevada, hereinafter "Grantee" the following lands and property, together with all improvements, located thereon, lying in the County Mohave, State of Arizona to-wit.

PARCEL 1:

Sun West Acres, Track 1027, Lot 156, Section 35 21 18, Mohave County, Arizona.

EXCEPT all coal and other minerals as reserved unto the UNITED STATES of AMERICA in the patent to said land.

LESS AND EXCEPT all oil, gas and minerals, on and under the above described property owned by Grantors, if any, which are reserved by Grantors.

Subject to all easements, rights-of-way, protective covenants and mineral reservations of record, if any.

TO HAVE AND TO HOLD SAME UNTO Grantee, and unto Grantee's assigns forever, with all appurtenances thereunto belong.

Def2338_8
AA000636

977

Taxes for the year 2009 shall be _____ prorated between Grantors and Grantee as of the date selected by Grantors and Grantee, or _____ paid by Grantee, or X paid by Grantors.

The property herein conveyed X is not a part of the homestead of Grantors, or _____ is part of the homestead of Grantors.

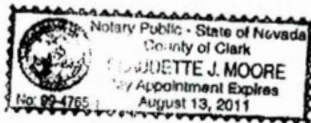
WITNESS Grantors hand this the 18th day of November 2009.

Minh Nguyen Luong
MINH NGUYET LUONG

State of Nevada

County of Clark

The foregoing instrument was acknowledged before me this
18th
Day of November 2009.



Candette J. Moore
NOTARY PUBLIC

My Commission Expires:

On 8/13/2011

Luong Investment 306-24-156 Golden Valley, AZ, LLC
Luong Investment, LLC
10925 S, Eastern Avenue #130
Henderson, NV 89052
702-222-9700

When recorded mail to:
Luong Inv 306-24-156
Golden Valley AZ, LLC
10925 S. Eastern Ave. Suite #130
Henderson, NV 89052

B: 7208 P: 964

OFFICIAL RECORDS
OF MOHAVE COUNTY
JOAN MCCALL,
COUNTY RECORDER



05/22/2008 12:30 PM Fee: \$14.00
DOC TYPE: RECON
PAID BY:NOTEWORLD SERVICING

Account #71082644

FIRST AMERICAN TITLE INSURANCE COMPANY, a California Corporation, Trustee under Deed of Trust executed by Luong Investment 306-24-156 Golden Valley AZ, LLC, a Nevada Limited Liability Company, Trustor, dated August 23, 2006, and recorded September 7, 2006, in Fee No. 2006088512, Book 6439, Page 558, Records of Mohave County, Arizona, having been requested to do so by Beneficiary in said Deed of Trust, hereby releases and reconveys to the person or persons legally entitled thereto, without covenant or warranty, express or implied, all the estate, title and interest acquired by Trustee under said Deed of Trust.

In witness whereof, Trustee has executed this Release and Reconveyance this 13th day of May, 2008.

FIRST AMERICAN TITLE INSURANCE COMPANY,
a California Corporation, as Trustee

By: John K. Graham, Regional Counsel

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged and executed before me this 15th day of May, 2008 by John K. Graham who acknowledged to be the Regional Counsel of FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, and that as such officer, being authorized so to do, signed the name of the corporation as such officer.



Notary Public

(This area for official notarial seal)

2
Return to:)
Managing Member)
10925 S. Eastern Ave. #130)
Henderson, NV 89052)

PAGE: 1 of 2 FEE # 2009071073

B: 7635 P: 978

OFFICIAL RECORDS
OF MOHAVE COUNTY
CAROL MEIER
COUNTY RECORDER



11/20/2009 11:12 AM Fee: \$14.00
DOC TYPE: QCD
PAID BY: L KLINGSBERG

QUITCLAIM DEED
Exempt B7

KNOW ALL MEN BY THESE PRESENTS THAT:

FOR VALUABLE CONSIDERATION OF TEN DOLLARS (\$ 10.00), and other good and valuable consideration, cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, Luong Investment 306-24-157 Golden Valley, AZ, LLC, hereinafter referred to as "grantor" does hereby transfer, remise, release, and forever quitclaim unto LUONG INVESTMENT, LLC a limited liability company, organized under the laws of the state of Nevada, hereinafter "Grantee" the following lands and property, together with all improvements, located thereon, lying in the County Mohave, State of Arizona to-wit.

PARCEL 1:

Sun West Acres, Track 1027, Lot 157, Section 35 21 18, Mohave County, Arizona.

EXCEPT all coal and other minerals as reserved unto the UNITED STATES of AMERICA in the patent to said land.

LESS AND EXCEPT all oil, gas and minerals, on and under the above described property owned by Grantors, if any, which are reserved by Grantors.

Subject to all easements, rights-of-way, protective covenants and mineral reservations of record, if any.

TO HAVE AND TO HOLD SAME UNTO Grantee, and unto Grantee's assigns forever, with all appurtenances thereunto belong.

When recorded mail to:
Luong Investment 306-24-157
Golden Valley AZ.LLC
10925 S. Eastern Avenue
Henderson, NV 89052

DEED OF RELEASE AND FULL RECONVEYANCE

Account #71082643

FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, Trustee under Deed of Trust executed by Luong Investments 306-24-157 Golden Valley AZ, LLC, a Nevada Limited Liability Company, Trustor, dated August 25, 2006, and recorded September 7, 2006, in Fee No. 2006088514, Book 6439, Page 568, Records of Mohave County, Arizona, having been requested to do so by Beneficiary in said Deed of Trust, hereby releases and reconveys to the person or persons legally entitled thereto, without covenant or warranty, express or implied, all the estate, title and interest acquired by Trustee under said Deed of Trust.

In witness whereof, Trustee has executed this Release and Reconveyance this 6th day of June, 2008.

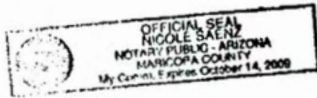
FIRST AMERICAN TITLE INSURANCE COMPANY,
a California corporation, as Trustee

By:

John K. Graham, Regional Counsel

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged and executed before me this 16 day of June, 2008 by John K. Graham who acknowledged to be the Regional Counsel of FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, and that as such officer, being authorized so to do, signed the name of the corporation as such officer.



(This area for official notarial seal)

Notary Public



B: 7249 P: 666

OFFICIAL RECORDS
OF MOHAVE COUNTY
JOAN MCCALL
COUNTY RECORDER



07/03/2008 11:37 AM Fee: \$14.00
DOC TYPE: RECON
PAID BY:NOTE WORLD SERVICING CTR

Recording Requested by:
FIRST AMERICAN TITLE

When recorded mail to:
Luong Investment 306-24-157
Golden Valley AZ LLC
10925 S. Eastern Avenue
Henderson, NV 89052

DEED OF RELEASE AND FULL RECONVEYANCE

Account #71082643

FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, Trustee under Deed of Trust executed by Luong Investments 306-24-157 Golden Valley AZ LLC, a Nevada Limited Liability Company, Trustor, dated August 25, 2006, and recorded September 7, 2006, in Fee No. 2006088514, Book 6439, Page 568, Records of Mohave County, Arizona, having been requested to do so by Beneficiary in said Deed of Trust, hereby releases and reconveys to the person or persons legally entitled thereto, without covenant or warranty, express or implied, all the estate, title and interest acquired by Trustee under said Deed of Trust.

In witness whereof, Trustee has executed this Release and Reconveyance this 6th day of June, 2008.

FIRST AMERICAN TITLE INSURANCE COMPANY,
a California corporation, as Trustee

By: [Signature]
John K. Graham, Regional Counsel

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged and executed before me this 6th day of June, 2008 by John K. Graham who acknowledged to be the Regional Counsel of FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, and that as such officer, being authorized so to do, signed the name of the corporation as such officer.



(This area for official notarial seal)

[Signature]
Notary Public

PAGE: 1 of 1 FEE # 2008046560

B: 7249 P: 666

OFFICIAL RECORDS
OF MOHAVE COUNTY
JOAN MCCALL
COUNTY RECORDER



07/03/2008 11:37 AM Fee: \$14.00
DOC TYPE: RECON
PAID BY: NOTE WORLD SERVICING CTR