

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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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

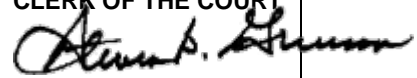
193.	Defendant's Opposition to Plaintiff's Emergency Motion for Order for Plaintiff to Participate in the Turning Points for Families Program with Minor Children, for Defendant to be Solely Responsible for the Costs Associated with the Program, and for Related Relief and Countermotion to Hannah to be 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

23

23

DISTRICT COURT
CLARK COUNTY, NEVADA

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



James W. Vahey, Plaintiff

vs.

Minh Nguyet Luong, Defendant.

Case No.: D-18-581444-D

Department H

NOTICE OF HEARING

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

Date: July 23, 2019

Time: 10:00 AM

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

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

STEVEN D. GRIERSON, CEO/Clerk of the Court

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

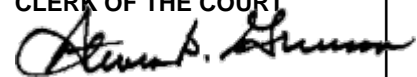
CERTIFICATE OF SERVICE

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

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

24

24



1 **EXHS**

2 **THE DICKERSON KARACSONYI LAW GROUP**

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

4 Nevada Bar No. 000945

5 **SABRINA M. DOLSON**

6 Nevada Bar No. 013105

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
14 DISTRICT COURT
15 FAMILY DIVISION

16 CLARK COUNTY, NEVADA

17 JAMES W. VAHEY,

18 Plaintiff,

19 v.

20 MINH NGUYET LUONG,

21 Defendant.

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

24
25 **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF'S**
26 **OPPOSITION TO DEFENDANT'S MOTION FOR ORDER**
27 **PERMITTING MINOR CHILDREN TO TESTIFY AT**
28 **EVIDENTIARY HEARING**

29 COMES NOW Plaintiff, JAMES W. VAHEY ("Jim"), by and
30 through his attorneys, ROBERT P. DICKERSON, ESQ., and SABRINA
31 M. DOLSON, ESQ., of THE DICKERSON KARACSONYI LAW
32 GROUP, and hereby submits his Appendix of Exhibits in Support of

33 ...

34 ...

35 ...

36 ...

37 ...

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

3 DATED this 12th day of July, 2019.

4 THE DICKERSON
5 KARACSONYI LAW GROUP

6 By Sabrina M. Dolson
7 ROBERT P. DICKERSON, ESQ.
8 Nevada Bar No. 000945
9 SABRINA M. DOLSON, ESQ.
10 Nevada Bar No. 013105
11 1745 Village Center Circle
12 Las Vegas, Nevada 89134
13 Attorneys for Plaintiff

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

CERTIFICATE OF SERVICE

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

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means;
- ☐ by hand-delivery with signed Receipt of Copy.

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

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

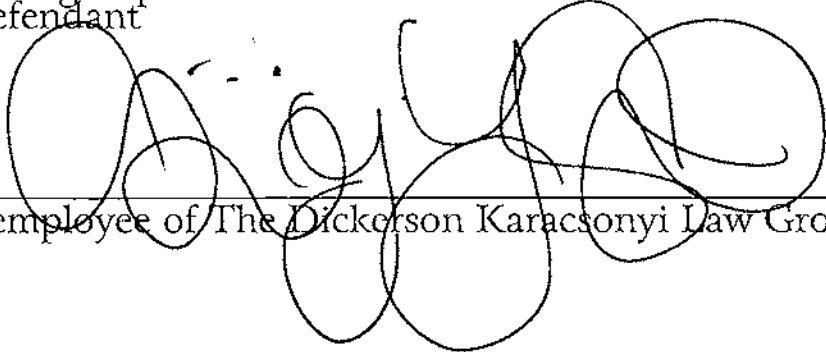

An employee of The Dickerson Karacsonyi Law Group

Exhibit “1”



Nguyêt >

Hi mommy, I'm in a car with
daddy and I'm so scared to
ask you until everyone is there
together.

3:00 PM

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

3:38 PM

Friday 9:20 PM

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

9:20 PM

Saturday 11:40 AM

Please have the children call
me

11:40 AM

Sure
so you want me to bring them
earlier

12:31 PM

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

12:35 PM

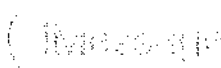


Exhibit “2”

M

Mommy >

he can be matthew's twin

I know

But he is not a dog 🐶

Still cute

Di Hieu just sent me the same picture

But I looked at yours first

U probably got it from Di Hieu too

What did you work on during tutoring today?

Diagrams

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

Ok I told him

Deliver

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



PLTF001165

Exhibit “3”

9:54



HMS >

Today 9:35 PM

Hi This is Matthew and I want to be with mommy.

9:35 PM

Hi mommy
You said with mommy

9:36 PM

I mean I want to be in California.

9:36 PM

Tell me what you've been talking about

9:37 PM

We didn't talk about anything?

9:39 PM

What are your thoughts?

9:39 PM

I didn't have any thoughts.

9:40 PM

Mommy and Daddy haven't even decided where anybody is going to be

9:40 PM

I just want to let you know what I want

9:41 PM

Tell me why

9:42 PM



Message





HMS >

I want to be in
California, because it is fun
there and there are things that I
can do there , but not in Las
Vegas.

9:45 PM

Why do you think you have to
choose. You can have both.

9:46 PM

Because I will live there and I
don't want both

9:48 PM

Matthew, Mommy and Daddy
love you very much, and we will
make sure you can live with
both of us.

It's late. You should sleep so
you're not any more tired
tomorrow.

I love you and can't wait to see
you tomorrow.

9:52 PM

And this is what I want

9:53 PM

Good night Daddy

9:54 PM

Goodnight Matthew.
I love you

9:54 PM



Messages



Exhibit “4”

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

How was school today

Does your FaceTime work

Why



Either Whatever you would like to text about

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



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

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

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

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



Yes

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

If you want

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



And I do want to

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

Ok

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



So that means I can be in California.

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

Not at this time Matthew.

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



How about after the school year

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

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

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



Well I am a grownup

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

It's too slow Matthew

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

Where are Hannah and Selena

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



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

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



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

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

Tell me how you are grown up

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



I can carry a playhouse and you cannot

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

How

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



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

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



Going once. . .

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



Going twice. . .

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



and sold

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

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

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



What

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

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

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



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

5/2/19

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



Hi daddy

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



This is Hannah

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



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

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



It was fun there

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



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

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



I want to go to school there

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



I want to live there

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



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

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



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



...

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



???

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



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

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



I know you're ignoring me

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



I have all the time in the world

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



I know my vocabulary words, I did my homework

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

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

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

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

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



Yes I saw yours then it went away

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



I don't want to talk I want to text

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

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

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



No

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

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

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



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

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



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

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



U have two hands not one

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



I see you drive and text at the same time

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



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

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



I do that

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



Why r u ignoring me again

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



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

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



Hurry up

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

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

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



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

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



Also I enjoy texting instead of talking

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



?

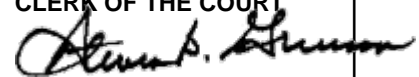
Received - HMS Vahey - May 2, 2019 at 7:50 PM - (iMessage)



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

25

25



1 **OPP**

2 **THE DICKERSON KARACSONYI LAW GROUP**

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

4 Nevada Bar No. 000945

5 **SABRINA M. DOLSON**

6 Nevada Bar No. 013105

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

25 Oral Argument Requested: Yes

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

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

34 ...

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37 ...

38 ...

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

DATED this _____ day of July, 2019.

THE DICKERSON KARACSONYI
LAW GROUP

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. STATEMENT OF FACTS

3 Plaintiff, Jim W. Vahey ("Jim"), and Defendant, Minh Nguyet
4 Luong ("Minh"), were married in Henderson, Nevada, on July 8, 2006.
5 The parties have three (3) minor children: Hannah Vahey, born March 19,
6 2009 (10 years old), Matthew Vahey, born June 26, 2010 (9 years old),
7 and Selena Vahey, born April 4, 2014 (5 years old).

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

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

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

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

19 It is completely inappropriate to involve the children in the parties'
20 divorce action when the Court can review the evidence presented and
21 make a determination as to whether it appears Minh has manipulated the
22 children. The parties are currently in the process of arranging for the
23 children to attend therapy sessions with Michelle Gravely, who can
24 address the issue of Minh's influence, manipulation, and coaching.
25 Although Jim does not think it is necessary, the Court could hear the
26 therapist's testimony as to whether it appears the children have been
27 influenced, coached, and manipulated. This would at least protect the
28 ...

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

3 **II. LEGAL ANALYSIS**

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

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

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

22 A party must file a Motion to Permit Child Testimony by Alternative
23 Methods, under the Uniform Child Witness Testimony by Alternative
24 Methods Act (NRS 50.500 *et seq.*), at the same time as the Notice of Child
25 Witness, or no later than sixty (60) days before the hearing in which the
26 child witness may be called to testify. NEV. R. CIV. P. 16.215(c)(3).
27 Pursuant to NRCP 16.215(c)(3), Minh was required to file a Motion to
28 . . .

1 Permit Child Testimony by Alternative Methods no later than June 7,
2 2019. Minh did not timely file the motion.

3 Regardless of the fact that Minh failed to comply with NRCP
4 16.215, it is readily apparent from Minh's Motion that her ultimate
5 motive in requesting the children testify at the evidentiary hearing is to
6 elicit testimony from the children as to their desire to relocate to
7 California. Due to Minh's manipulation and coaching of the children since
8 the parties' separation, the children are not competent to testify and their
9 testimony would not be reliable. The parties are currently in the process
10 of having their children attend therapy to address this issue.

11 "[A] child is competent if he or she has the capacity to receive just
12 impressions and possesses the ability to relate them truthfully." *Felix v.*
13 *State*, 849 P.2d 220, 235 (Nev. 1993) (citing *Lanoue v. State*, 99 Nev. 305,
14 307, 661 P.2d 874, 875 (1983)). Courts must evaluate a child's
15 competency on a case-by-case basis; however, the following are relevant
16 factors to consider in making such a determination: "(1) the child's ability
17 to receive and communicate information; (2) the spontaneity of the child's
18 statements; (3) indications of "coaching" and "rehearsing;" (4) the child's
19 ability to remember; (5) the child's ability to distinguish between truth
20 and falsehood; and (6) the likelihood the child will give inherently
21 improbable or incoherent testimony." *Id.*

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

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

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

17 In addition, Jim has received text messages from the children
18 suggesting Minh has influenced, manipulated, and coached them. On April
19 28, 2019, while Matthew was with Minh, he sent the following text
20 message to Jim:

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

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

11 **Exhibit 3.**

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

14 Matthew: This is Matthew I want to be in California . . .
15 Jim: How was school today
16 Matthew: Can we not change the subject
17 Jim: Does your FaceTime work
18 Matthew: Can we not change the subject and I wanted to text
19 you instead
20 Jim: Why
21 Matthew: For which one
22 Jim: Either Whatever you would like to text about
23 Matthew: 1. you get distracted and I want you to answer my
24 first question 2. I like texting better than
25 FaceTime.
26 Jim: The first question you wrote was, "Can we not
27 change the subject?"
28 Matthew: Yes
29 Jim: If you want
30 Matthew: And I do want to
31 Jim: Ok
32 Matthew: So that means I can be in California.
33 Jim: Not at this time Matthew.
34 Matthew: How about after the school year
35 Jim: Matthew, that's something that even Mommy and
36 Daddy don't know. That's a decision for grown-ups
37 and something Mommy and Daddy will decide.

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

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

1 I want to go to school there
2 I want to live there
3 ANSWER ME!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!
4 ???
5 ANSWER ME!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!
6 I know you're ignoring me
7 I have all the time in the world
8 I know my vocabulary words, I did my homework
9 Jim: No, honey. I would never ignore you. In fact, when
10 you see the bubbles coming out of the text box on
11 the left of the screen, that tells you the other
12 person is writing to you.
13 Very good. See, all your practice is paying off. I'm
14 proud of you
15 Hannah: Yes I saw yours then it went away
16 I don't want to talk I want to text
17 Jim: Let's talk. I can't text because I need my hands to
18 get dinner ready for myself
19 Hannah: No

12 Exhibit 4.

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

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

27
28 ¹ The parties' five-year-old daughter, Selena, has even stated to Jim: "Mommy told me to tell you to let me stay with her all the time."

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

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

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

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

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

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

7 Nevada Rules of Civil Procedure, Rule 5.510 provides:

8 (a) Except as otherwise provided herein or by court order, a
9 motion in limine to exclude or admit evidence must ordinarily
be in writing and must be heard not less than 5 calendar days
prior to trial.

10 (b) Where the facts that would support a motion in limine
11 arise or become known after it is practicable to file a motion in
the ordinary course as set forth above, the filing party may
12 seek an order shortening time to hear the motion as provided
by these rules, or bring an oral motion in limine at a hearing.
13 The court may refuse to sign any such order shortening time
or to consider any such oral motion.

14 (c) A written motion in limine must be supported by
15 affidavit and, if not filed in the ordinary course, must detail
how and when the facts arose or became known. The motion
16 shall also set forth that after a conference or a good-faith effort
to confer, counsel were unable to resolve the matter
17 satisfactorily, detailing what attempts to resolve the dispute
were made, what was resolved and what was not resolved, and
18 why. A conference requires either a personal or telephone
conference between or among the parties. If a personal or
19 telephone conference was not possible, the motion shall set
forth the reasons.

20 "Relevant evidence" is "evidence having any tendency to make the
21 existence of any fact that is of consequence to the determination of the
22 action more or less probable than it would be without the evidence." All
23 relevant evidence is admissible. NRS 48.025 (listing several exceptions).
24 In determining whether it is in the children's best interest to relocate to
25 California or remain in Nevada, this Court will need to consider the
26 factors set forth in NRS 125C.0035(4). Evidence of Minh's manipulation
27 and coaching of the children is relevant to the following NRS
28 125C.0035(4) factors: (1) which parent is more likely to allow the children

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

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

13 **III. CONCLUSION**

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

16 DATED this 12th day of July, 2019.

17 THE DICKERSON KARACSONYI
18 LAW GROUP

19 

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

1 DECLARATION OF JAMES W. VAHEY


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

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

7 2. I am making this declaration in support of my OPPOSITION
8 TO DEFENDANT'S MOTION FOR ORDER PERMITTING MINOR
9 CHILDREN TO TESTIFY AT EVIDENTIARY HEARING
10 ("Opposition"). I have read the Opposition prepared by my counsel and
11 swear, to the best of my knowledge, that the facts as set forth therein are
12 true and accurate, save and except any fact stated upon information and
13 belief, and as to such facts I believe them to be true. I hereby reaffirm said
14 facts as if set forth fully herein to the extent that they are not recited
15 herein. If called upon by this Court, I will testify as to my personal
16 knowledge of the truth and accuracy of the statements contained therein.

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

19 Executed on 7-12-19

20 
21 JAMES W. VAHEY
22
23
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28

1 CERTIFICATE OF SERVICE

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

8 [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D)
9 and Administrative Order 14-2 captioned "In the
10 Administrative Matter of Mandatory Electronic Service in the
11 Eighth Judicial District Court," by mandatory electronic
12 service through the Eighth Judicial District Court's electronic
13 filing system;

14 [] by placing same to be deposited for mailing in the United
15 States Mail, in a sealed envelope upon which first class postage
16 was prepaid in Las Vegas, Nevada;

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

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

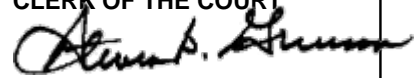
20 To the attorney(s) listed below at the address, email address, and/or
21 facsimile number indicated below:

22 NEIL M. MULLINS, ESQ.
23 KAINEN LAW GROUP, PLLC
24 3303 Novat Street, Suite 200
25 Las Vegas, Nevada 89129
26 service@kainenlawgroup.com
27 Attorney for Defendant
28


An employee of The Dickerson Karacsonyi Law Group

26

26



ERR
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Attorneys for Plaintiff

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY,
Plaintiff,

v.

MINH NGUYET LUONG,
Defendant.

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

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

TO: MINH NGUYET LUONG, Defendant;

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

...

...

...

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...

...

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

11 Dated this 15th day of July, 2019.

12 THE DICKERSON KARACSONYI
13 LAW GROUP

14 

15 ROBERT P. DICKERSON, ESQ.

16 Nevada Bar No. 000945

17 SABRINA M. DOLSON, ESQ.

18 Nevada Bar No. 013105

19 1745 Village Center Circle

20 Las Vegas, Nevada 89134

21 Attorneys for Plaintiff

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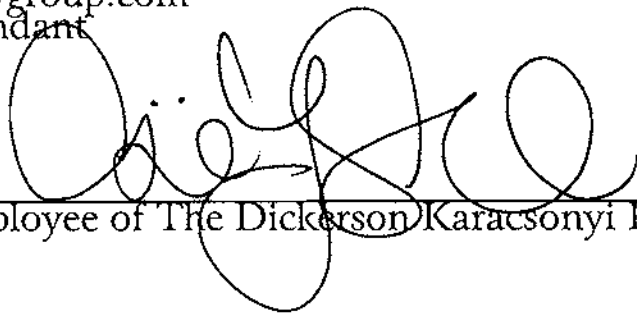
CERTIFICATE OF SERVICE

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

- ☒ [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☐ [] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly executed consent for service by electronic means;
- ☐ [] by hand-delivery with signed Receipt of Copy.

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

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



An employee of The Dickerson Karacsonyi Law Group

Exhibit “1”

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

DATED this 15th day of July, 2019.

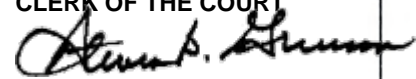
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Sabrina M. Polso

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EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION
COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY,
Plaintiff

v.

MINH NGUYET LUONG,
Defendant.

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

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

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

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

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

...

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Las Vegas, Nevada 89129
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2. For an order permitting the parties' two (2) eldest children, HANNAH VAHEY, born March 19, 2009 (age 10), MATTHEW VAHEY, born June 26, 2010 (age 8) to testify by alternative means. The Court would interview the two child witnesses outside of the presence of the parties, with parties' counsel simultaneously viewing the interview via electronic method per N.R.C.P. 16.215(d)(A)(ii);

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

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

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

DATED this 18th day of July, 2019.

KAINEN LAW GROUP, PLLC

By: 

NEIL M. MULLINS, ESQ.

Nevada Bar No. 3544

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129-8714

Attorney for Defendant

POINTS AND AUTHORITIES

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

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

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

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

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

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

8 Dr. Gravley was **not** appointed for the purposes of addressing the alleged
9 manipulation and/or coaching that Jim asserts within his *Opposition*. Jim's Opp., pg. 2,
10 lines 22-24. Dr. Gravley was also **never** intended to be use a tool for litigation purposes.
11 See CMC hearing video at 11:31:28 – 11:32:35. In fact Dr. Gravley has not yet seen the
12 children; therefore, the children have not yet commenced therapy with Dr. Gravley due
13 to Dr. Gravley's busy schedule. The initial consultation with Dr. Gravley is set for August
14 1, 2019, which was Dr. Gravley's first availability. Therefore, even if Dr. Gravley was
15 to be used for litigation purposes (which she is not), Dr. Gravley would not even possess
16 the knowledge to render an opinion by at the time of the evidentiary hearing that is set
17 for August 8th and 9th. For Jim to misrepresent the impetus of Dr. Gravley's appointment
18 is disingenuous, contrived, and manipulative.

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

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

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

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

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

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

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

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

6 **Notice of Child Witnesses**

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

9 the party must file a Motion to Permit Child Testimony by
10 Alternative Methods, under the Uniform Child Witness
11 Testimony by Alternative Methods Act contained in NRS
12 50.500 et seq., at the same time as the notice of child witness,
13 or no later than 60 days before the hearing in which the child
14 witness may be called to testify or 14 days after the timely
15 filing of a notice of child witness, whichever period last
16 expires, **unless otherwise ordered by the court.**

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

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

24 Furthermore, under the Uniform Child Witness Testimony by Alternative Means
25 Act (hereinafter "the Act"), "a judge may sua sponte order a hearing in determining
26 whether a child witness should be allowed to testify by an alternative method. NRS
27 50.570(1)(a)" *Gordon v. Geiger*, 402 P.3d 671, 676, 133 Nev. Adv. Rep. 69 (Nev. 2017).
28 Therefore, this Court has wide discretion in determining whether the children should be
permitted to testify via alternative means, and should hold a hearing to determine whether
the parties' two eldest children should be permitted to testify via alterative means. The
Court should decide this important issue on the merits.

1 . . .

2 **Testimony via Alternative Means**

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Competency of Child Witnesses**

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

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

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

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

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

20 **In the Alternative, Exclusion of Such Evidence**

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

...

...

CONCLUSION

Based on the foregoing, Minh respectfully requests:

1. An order denying any relief sought in Plaintiff's *Opposition to Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing*;
2. For an order permitting the parties' two (2) eldest children, HANNAH VAHEY, born March 19, 2009 (age 10), MATTHEW VAHEY, born June 26, 2010 (age 8) to testify by alternative means. The Court would interview the two child witnesses outside of the presence of the parties, with parties' counsel simultaneously viewing the interview via electronic method per N.R.C.P. 16.215(d)(A)(ii);
3. Alternatively, for an order *in limine* to prevent Plaintiff from introducing evidence (text messages or otherwise) regarding allegations of Defendant improperly influencing the children to express their desire to relocate to California; and
4. For any other and further relief that this Court deems just and proper in this matter.

DATED this 18th day of July, 2019.

KAINEN LAW GROUP, PLLC

By: 

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 18th day of July, 2019, I caused to be served the *Defendant's Reply in Support of Defendant's Motion for Order Permitting Minor Children to Testify at Evidentiary Hearing* to all interested parties as follows:

____ BY MAIL: Pursuant to N.R.C.P. 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

✓ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and N.E.F.C.R. Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey eFileNV, to the following e-mail address(es):

THE DICKERSON KARACSONYI LAW GROUP:

1. info@thedklawgroup.com
 2. bob@thedklawgroup.com
 3. sabrina@thedklawgroup.com
- Attorneys for Plaintiff*



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

28

28

Steven D. Grierson

1 NORH

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6 *****

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
14 NOTICE OF RESCHEDULING OF HEARING

15 TO: ALL PARTIES AND/OR THEIR ATTORNEYS

16 Please be advised that the date and time of a hearing set before the Honorable T.
17 Arthur Ritchie, Jr., has been changed. The Non-Jury Trial – Day 2, presently
18 scheduled for the 9th day of August, 2019, at the hour of 9:00 a.m. has been
19 rescheduled to the 5th day of September, 2019, at the hour of 9:00 a.m. at the
20 Regional Justice Center, 200 Lewis Avenue, Courtroom 3G.
21

22
23 Honorable T. Arthur Ritchie, Jr.

24 By: *Katrina Rausch*

25 Katrina Rausch

26 Judicial Executive Assistant

27 Department H
28

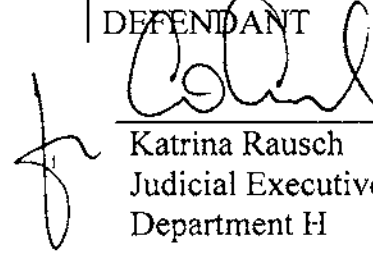
CERTIFICATE OF MAILING

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

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

Robert P. Dickerson, Esq. for
PLAINTIFF

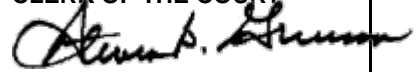
Neil M. Mullins, Esq. for
DEFENDANT



Katrina Rausch
Judicial Executive Assistant
Department H

29

29



1 **NTSO**
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 PH: (702) 823-4900
8 FX: (702) 823-4488
9 Service@KainenLawGroup.com
10 Attorney for Defendant

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

13 JAMES W. VAHEY,
14
15 Plaintiff,

16 vs.

17 MINH NGUYET LUONG,
18
19 Defendant.

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

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

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

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

25 DATED this 30th day of July 2019.

26 KAINEN LAW GROUP, PLLC

27 By: /s/ Neil M. Mullins

28 NEIL M. MULLINS, ESQ.

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of July 2019, I caused to be served the *Notice of Entry of Stipulation and Order Appointing Dr. Michelle Gravley as Children's Therapist* to all interested parties as follows:

____ BY MAIL: Pursuant to N.R.C.P. 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

____ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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

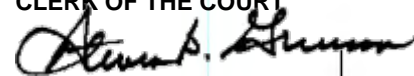
X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and N.E.F.C.R. Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey eFileNV, to the following e-mail address(es):

THE DICKERSON KARACSONYI LAW GROUP:

1. bob@thedklawgroup.com
2. sabrina@thedklawgroup.com
3. aisja@thedklawgroup.com
4. donna@thedklawgroup.com
5. info@thedklawgroup.com
Attorneys for Plaintiff

/s/ Robert Clapp

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



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

11
12 EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION
13
14 COUNTY OF CLARK, STATE OF NEVADA

15 JAMES W. VAHEY,
16
17 Plaintiff,
18
19 vs.
20
21 MINH NGUYET LUONG,
22
23 Defendant.

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

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

24
25 **STIPULATION AND ORDER APPOINTING**
26 **DR. MICHELLE GRAVLEY AS CHILDREN'S THERAPIST**

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

29 **NOW THEREFORE,**

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

KAINEN LAW GROUP, PLLC
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JUL 26 2019

VOLUME II

AA000279

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

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

8 Respectfully submitted by:

Approved as to form and content:

9 Dated this 25th day of July, 2019.

Dated this 23rd day of July, 2019.

10 KAINEN LAW GROUP, PLLC

THE DICKERSON KARACSONYI LAW GROUP

11
12 By

 8414 for
NEIL M. MULLINS, ESQ.

13 Nevada Bar No. 3544
14 3303 Novat Street, Suite 200
15 Las Vegas, Nevada 89129
16 Attorney for Minh

By



ROBERT P. DICKERSON, ESQ.

17 Nevada Bar No. 945
18 SABRINA M. DOLSON, ESQ.
19 Nevada Bar No. 13105
20 1745 Village Center Circle
21 Las Vegas, Nevada 89134
22 Attorney for Jim
23
24
25
26
27
28

ORDER

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

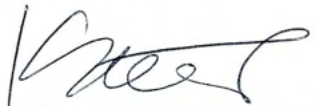
EXECUTED this 26 day of July, 2019.


DISTRICT COURT JUDGE

T ART RITCHIE, JR.

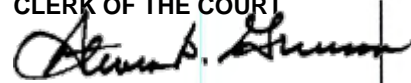
Respectfully submitted by:

KAINEN LAW GROUP, PLLC

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

30

30



LIST

NEIL M. MULLINS, ESQ.
Nevada Bar No. 3544
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129-8714
Telephone (702) 823-4900
Facsimile (702) 823-4488
Service@KainenLawGroup.com
Attorney for Defendant

EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION
COUNTY OF CLARK, STATE OF NEVADA

JAMES W. VAHEY,

Plaintiff,

vs.

MINH NGUYET LUONG,

Defendant.

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

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

DEFENDANT'S WITNESS LIST

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

LIST OF WITNESSES

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

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

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

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

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

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

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

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

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

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

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

2 6. Chau (Charlene) Luong
3 13632 Prospect Ave
4 Santa Ana, Ca 92705
5 minhluong@gmail.com
6 Tel: (714) 724-2510

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

10 7. Jeansse Villanueva
11 1124 Neva Ranch Ave
12 Las Vegas, NV 89081
13 Tel: (702) 335-5707

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

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

20 9. Defendant reserves the right to identify rebuttal witnesses.

21 DATED this 31st day of July, 2019.

22 KAINEN LAW GROUP, PLLC

23 By: 

24 NEIL M. MULLINS, ESQ.

25 Nevada Bar No. 3544

26 3303 Novat Street, Ste. 200

27 Las Vegas, Nevada 89129-8714

28 Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of July, 2019, I caused to be served the ***Defendant's Witness List*** to all interested parties as follows:


____ BY MAIL: Pursuant to N.R.C.P. 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

____ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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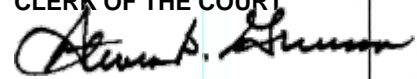
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info@thedklawgroup.com
bob@thedklawgroup.com
sabrina@thedklawgroup.com


An Employee at the
KAINEN LAW GROUP, PLLC

31

31



1 **PMEM**
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
12 EIGHTH JUDICIAL DISTRICT COURT – FAMILY DIVISION
13 COUNTY OF CLARK, STATE OF NEVADA
14

15 JAMES W. VAHEY,
16
17 Plaintiff,
18
19 vs.
20
21 MINH NGUYET LUONG,
22
23 Defendant.

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

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

24 **DEFENDANT'S PRE-TRIAL MEMORANDUM**

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

DATED this 2nd day of August, 2019.

KAINEN LAW GROUP, PLLC

By: 

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

STATEMENT OF ESSENTIAL FACTS

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

1.0 NAMES/AGES OF PARTIES AND CHILDREN

- 1.1. Plaintiff, James Vahey (hereinafter “Jim”), age 56.
- 1.2. Defendant, Minh Nguyet Luong (hereinafter “Minh”), age 46.
- 1.3. Minor Child: Hannah Vahey (hereinafter “HANNAH”), born March 19, 2009, age 10.
- 1.4. Minor Child: Matthew Vahey (hereinafter “MATTHEW”), born June 26, 2019, age 9.
- 1.5. Minor Child: Selena Vahey (hereinafter “SELENA”), born April 4, 2014, age 5.

2.0 DATE/PLACE OF MARRIAGE AND DIVORCE

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

3.0 RESOLVED ISSUES, INCLUDING AGREED RESOLUTIONS

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

4.0 STATEMENT OF UNRESOLVED ISSUES

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

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

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

15 Therefore, this case is a true *Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246 (Nev.
16 2005), analysis. The *Potter* Court held that the district court must “determine whether the
17 best interests of the children are better served by living outside of Nevada with the
18 relocating parent as the primary physical custodian or living in Nevada with the
19 nonmoving parent having primary physical custody.” *Id.* at 614-615 and 1247.

20 However, in an abundance of caution, Minh will also prove that relocation to
21 Irvine is in the children’s best interests by satisfying the factors enumerated under NRS
22 125C.007.

23 **4.1 BEST INTERESTS OF THE SUBJECT MINOR CHILDREN**

24 In an initial determination of custody, “the district court has ‘broad discretionary
25 power’ in determining child custody . . . including visitation.” *Davis v. Ewalefo*, 352 P.3d
26 1139, 131 Nev. Adv. Rep. 45 (Nev. 2015) (quoting *Hays v. Gallacher*, 115 Nev. 1, 4,
27

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

1 972 P.2d 1138, 1140 (1999)). In exercising its discretionary power in making the initial
2 custody determination, the District Court's "sole consideration . . . is the best interest of
3 the child." NRS 125C.0035. *See also Blanco v. Blanco*, 129 Nev. 723, 730, 311 P.3d
4 1170, 1174 (Nev. 2013).

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

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

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

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

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

22 Minh also would provide Jim with Thanksgiving Break each year, Spring Break
23 each year, and one-half of the Winter Break each year with their children. Also, Minh has
24 no problem with Jim having 51 consecutive days of visitation during their Summer Break
25 to maximize Jim's timeshare. If Jim takes advantage of a seconds weekend visit each
26 month in addition to the other custodial timeshare being offered by Minh, Jim will have
27 a total of approximately **116 days** with his children each year (only 30 days shy of a joint
28

1 physical custody schedule).²

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

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

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

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

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

20 The children have a good relationship with both parents. There were a few child
21 exchanges wherein MATTHEW refused to go with Jim for his custodial timeshare.
22 However, both parents worked together to get MATTHEW to go with Jim for his
23 timeshare. This issue only occurred on two (2) occasions and has not occurred recently.
24 The parties stipulated to the appoint of a child therapist to assist them cope with the
25 parties' divorce, and the children will continue to seek therapy until the therapist
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 determines that the children no longer require therapy.

2 **4.1.1 Additional Considerations in Determining Physical Custody**

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

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

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

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

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

(2) The parties' interaction with the children.

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

(3) Parental employment and stability.

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

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

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

1 relocation.

2 **4.2.1 Minh's sensible, good-faith reason to request to relocate with minor**
3 **children, and the relocation is not intended to deprive the non-**
4 **relocating parent of his or her parenting time. NRS 125C.007 1(a).**

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

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

25 **4.2.2 The best interests of the children are served by allowing Minh to**
26 **relocate with the parties' three minor children. NRS 125C.007 1(b).**

27 See above.

28 **4.2.3 Actual benefits conferred to both Minh and the subject minor children**
as a result of relocating to Irvine, California. NRS 125C.007 1(c).

See above. However, some additional benefits to both the minor children and

Minh are as follows:

1 • Irvine is one of the safest city in which to live since 2013. The public
2 schools in Irvine are some of the highest rated schools nationwide. Irvine is highly
3 sought after as the ideal city to live and raise a family.

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

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

9 • Minh and the children would thrive in an environment surrounded by
10 extended family and friends. The children could establish a close bond to their maternal
11 grandparents and share the remaining years of their lives with them.

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

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

21 **4.3 CHILD SUPPORT**

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

25 **5.0 ATTORNEY'S FEES**

26 Minh should recover her legal fees and costs pursuant to NRS 125C.006 or NRS
27 125C.0065, if it is found that Jim unreasonably withheld his consent to allow this
28 relocation to take place.

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

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

16 **6.0 LIST OF WITNESSES**

17 6.1 Minh Nguyet Luong, Defendant
18 c/o Neil M. Mullins, Esq.
19 Kainen Law Group, PLLC
20 3303 Novat Street, Suite 200
21 Las Vegas, Nevada 89129
22 Tel: (702) 823-4900

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

25 6.2 James W. Vahey, Plaintiff
26 c/o Robert P. Dickerson, Esq.
27 Sabrina M. Dolson, Esq.
28 The Dickerson Karacsonyi Law Group
1745 Village Center Circle
Las Vegas, Nevada 89134
Tel: (702) 388-8600

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

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

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

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

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

6.5 Chau (Charlene) Luong
13632 Prospect Ave
Santa Ana, Ca 92705
minhlluong@gmail.com
Tel: (714) 724-2535

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

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

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

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

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

7.0 LIST OF EXHIBITS

A. City of Irvine, California Research.

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

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

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

with map to show close proximity to Minh's Irvine residence, and statistics for Hicks Canyon Elementary School, Orchard Hills School, and Arnold O. Beckman High School, the schools the children will most likely attend in Irvine. Def02460_9-Def02493_9

C. Photographs.

1. Photos of the children in Orange County viewing houses. Def035_1 - Def040-1
2. Photos of children playing with their cousins in Orange County. Def041_1 - Def049_1
3. Photo of James building a desk for the children room at new house in Irvine. Def050_1
4. Bullying letter to Hannah. Def496_3
5. Photo of Matthew's burn in Jim's care Def497_3
6. Photo of Matthew's skin condition Def498_3
7. Selena's prescription for Fluconazole Def499_3
8. Minh's scorpion sting Def500_3
9. Children in Irvine CA. Def501_3 - Def516_3
10. Selena fell on a bike in Jim's care Def517_3
11. Photos of Children's activities near Irvine, CA Def518_3 - Def523_3
12. Photos of Minh in pool Def524_3 - Def532_3
13. Photos of Children in Buddhist activities . . . Def533_3 - Def534_3
14. Photo of Scratches on Selena's Chin Def535_5
15. Photos of children at ski lessons, showing Jim did not teach the children to ski Def1675_6 - Def1680_6
16. Photo of children at art class in Orange County, showing that the children have previously been

- 1 exposed to activities in Orange County Def1681_6
- 2 17. Photo of Matthew's and Hannah's soccer team,
- 3 showing Minh was the one who took them to their
- 4 soccer activities Def1682_6
- 5 18. Photo of family together at St. Thomas Moore church,
- 6 located in Irvine, California, showing the children have
- 7 previously been involved in religious groups in Orange
- 8 County Def1683_6
- 9 ****Jim's Neglect of the Children***
- 10 19. Photo of Matthew's skin condition after being neglected
- 11 by Jim while in Jim's care Def1752_7
- 12 ****The Children's Involvement in CA***
- 13 20. Photos of Hannah and Matthew at their Vietnamese
- 14 Buddhist boy and girl scout meetings and learning
- 15 Vietnamese, in Irvine, California, showing their
- 16 involvement in the Irvine and Vietnamese
- 17 communities. Def1753_7 - Def1755_7
- 18 21. Photo of Matthew, Minh, and Coach Herman,
- 19 Matthew's private golf instructor that he sees in
- 20 Orange County, California, showing Matthew's
- 21 involvement in physical activities in California
- 22 and Minh's support of his interests Def1756_7
- 23 22. Photo of Matthew leaving on an electric scooter to
- 24 attend his private tennis lesson in Irvine,
- 25 California, showing his involvement in activities
- 26 close to their California home Def1757_7
- 27 23. Photo of Selena attending her dance class in Irvine,
- 28 California, showing her involvement in activities in

- 1 California Def1758_7
- 2 24. Photo of strawberries Hannah grew in her garden
- 3 at their California home, showing her opportunities to
- 4 learn and grow at the California home. Def1759_7
- 5 25. Photos of family camping and visiting Yellowstone
- 6 National Park with close family friends, Truc Di,
- 7 and their family, whom live in Irvine, California,
- 8 and the children's aunt, Hieu, showing the family
- 9 has established relationships with friends in
- 10 California Def1760_7 - Def1764_7
- 11 26. Photo of the children with neighborhood friends,
- 12 Ariana (age 13) and Kianna (age 12), in Irvine,
- 13 California, showing the children have established
- 14 friends in California. Def1765_7
- 15 27. Photo of family fishing with family friend Kevin,
- 16 their broker in California, showing they have
- 17 established relationships in California. Def1766_7
- 18 28. Photo of Hannah doing cart wheel in the pool
- 19 with her friend Izzy at Irvine's house
- 20 community pool Def02947_9-Def02948_9
- 21 29. Photo of kids hanging out with cousins Haley and
- 22 Zoey at Irvine's house community pool . Def02949_9-Def02950_9
- 23 30. Photo of Hannah with her friend Izzy, Aubrey and
- 24 Next door neighbor Kianna at Irvine's house
- 25 community pool Def02951_9-Def02952_9
- 26 31. Photo of Hannah and Matthew riding the electric
- 27 bike to the Irvine's house community poolDef02953_9-Def02955_9
- 28 32. Photo of Matthew riding the electric bike to his private tennis class

- 1 at Irvine house tennis court Def02956_Def02957_9
- 2 33. Photo of Mother's Day 2019 at
- 3 Grandma's place Def02958_9-Def02959_9
- 4 34. Photo of Matthew's birthday 2019 at Irvine's house
- 5 with friends Aubrey, Izzy and cousins Haley,
- 6 Zoe and Aunt Charlene Def02960_9-Def02961_9
- 7 35. Photo of friends hanging out at Irvine's house
- 8 With friends Aubrey, Izzie and cousins
- 9 Haley and Zoe Def02962-Def02963_9
- 10 36. Photo of Hannah, Selena playing piggyback ride
- 11 with cousin Zoe at grandma's place. Def02964_9-Def02965_9
- 12 37. Photo of Selena's birthday party 2019 at Irvine's house
- 13 with friends Aubrey, Izzy, Ethan, Jacob, Selen, cousins
- 14 Haley and Zoe and uncle Tommy Def02966_9-Def02967_9
- 15 38. Photo of Easter 2019 at Irvine House
- 16 HOA community event Def02968_9-Def02974_9
- 17 39. Photo of Easter 2019 at Irvine house with
- 18 Aunt Hieu. Def02975_9-Def02977_9
- 19 40. Photo's of children and their activities
- 20 in Irvine Def02978_9-Def3141_9

****Minh's Involvement with the Children***

- 22 41. Photos of Minh with the children at Matthew's
- 23 Taekwondo belt ceremony, showing Minh's
- 24 involvement and support of Matthew's
- 25 interests Def1767_7 - Def1768_7
- 26 42. Photos of Minh with the children, showing her
- 27 interaction and efforts to spend time with the
- 28 children and how happy they all are Def1769_7 - Def1774_7

43. Photo of Hannah and Matthew after Minh painted their faces for the last day of school, “Circus Day”, showing Minh supports their school events and their participation in school activities Def1775_7
44. Photo of Matthew asleep in the car, after Minh picked him up from school, to show Minh’s efforts to commute to get him from school Def1776_7
45. Photo of Minh exposing Selena to swimming at three (3) months old, showing Minh’s efforts to expose Selena to new activities, just as she did with the other children Def1777_7
46. Video clip of Minh teaching Selena to ski, showing Minh’s involvement and support of Selena’s interests Def1778_7
47. Photos of Minh participating in Selena’s baptism, showing her support of the children’s religious beliefs. Def1779_7 - Def1780_7
48. Video of Minh with Hannah, as an infant, at swim class, showing Minh’s involvement with Hannah and promoting Hannah’s exposure to new activities . . . Def2277_8
49. Video clips of Hannah and Matthew at Taekwondo class, recorded by Minh, showing her presence to support their interests. Def2278_8 - Def2280_8
50. Family ATA Martial Arts Membership Agreement, filled out by Minh, for Hannah and Matthew to participate in Taekwondo classes, showing Minh was the parent who enrolled the children Def2281_8

****Minh’s Family’s Involvement with the Children***

- 1 51. Photos of the family with the children’s grandma,
2 aunt Tam and uncle Peter (Minh’s family),
3 during a trip to Catalina Island, showing Minh’s
4 family’s involvement with the children . . . Def1781_7 - Def1782_7
- 5 52. Photos of the children spending time with their
6 cousins at Boomers!, an amusement park in Orange
7 County, California, showing Minh’s family’s involvement
8 with the children and the children enjoying their
9 time together Def1783_7 - 1784_7
- 10 53. Photos of the children with their cousins, Zoey and
11 Hailey, and their aunt Chau, playing at the beach
12 in California, showing Minh’s family’s involvement
13 with the children and the children enjoying their
14 time together Def1785_7 - Def1786_7
- 15 54. Photos of the children and their aunt Chau and
16 uncles, Tommy and Scott, with Hannah and Matthew
17 playing together at the park in Las Vegas, Nevada,
18 San Diego, California, and Irvine, California,
19 showing Minh’s family’s efforts to enjoy their
20 time with the children Def1787_7 - Def1791_7
- 21 55. Photos of the children hanging out with their aunt
22 Phi, their cousins in Orange County, their aunt
23 Hieu, at the mall, and their cousin Zoey, at their
24 grandma’s house, showing the various opportunities
25 Minh’s family has made to be apart of the
26 children’s lives Def1792_7 - Def1795_7
- 27 56. Photo of the children with their uncle Tommy and
28 aunt Chau during a fund raising event for

- 1 disadvantaged children, showing Minh's family's
- 2 involvement with the children and the children's
- 3 exposure to helping good causes Def1796_7
- 4 57. Photos of Minh's family spending Christmas in
- 5 Las Vegas with the family, showing Minh's family's
- 6 efforts to travel in order to spend time with
- 7 the family Def1797_7 - Def1798_7
- 8 58. Photos of the family on Disney Cruise with Minh's
- 9 family, showing Minh's family's involvement
- 10 taking care of Hannah and Selena, for Minh and
- 11 Jim, and spending time with the family on
- 12 vacations Def1799_7 - Def1805_7
- 13 59. Photos of the children with their aunt Hieu, during
- 14 an Easter Egg Hunt that was held in a gated
- 15 community in Orange County, showing Minh's
- 16 family's involvement with the children and the
- 17 children's exposure to the community in
- 18 Orange County Def1806_7 - Def1809_7
- 19 60. Photos of the children's aunts, Tam, Chau and Phi,
- 20 and uncle Tommy visiting the hospital for Matthew's
- 21 birth, showing Minh's family's attendance to this event
- 22 and efforts watching Hannah for the family during
- 23 this time Def1810_7 - Def1812_7
- 24 61. Video clip of the children with their cousins and aunt
- 25 Chau, celebrating New Years at their California home,
- 26 showing Minh's family's involvement in celebrating
- 27 holidays with the family Def1813_7
- 28 62. Photos of the children's aunt Tam, uncle Peter

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

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

8 **D. Correspondence of the Parties.**

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

12 **E. E-mails.**

- 13 1. E-mail from Realtor with list of schools
14 in Irvine CA, dated Sept 11, 2015 Def260_2 - Def264_2
15 2. E-mails confirming offers on three house
16 in California dated Sep 2016 to April 2017.. Def265_2 - Def270_2
17 3. Facebook Messenger e-mails regarding
18 children eating junk food at Jim's house Def271_2 - Def292_2
19 4. E-mail from Minh to Jim dated April 20, 2019,
20 regarding the children's hygiene Def536_5
21 5. E-mail from Minh to Jim regarding
22 Co-parenting Def537_5 - Def538_5
23 6. E-mail from Minh to Imelda Vahey, dated
24 February 18, 2015, regarding being exhausted
25 getting back from a trip and not being able to
26 handle the kids by herself. Def03330_9 -Def03331_9
27 7. E-mail from Emily Jackson (from Jim's community) to
28 Minh regarding activities at Lake Las Vegas

- 1 dated March 27, 2019 Def03188_9 -Def03219_9
- 2 8. E-mail from Emily Jackson (from Jim's community) to
- 3 Minh regarding activities at Lake Las Vegas
- 4 dated October 22, 2015 Def03183_9 -Def03184_9
- 5 9. E-mail from Emily Jackson (from Jim's community) to
- 6 Minh regarding activities at Lake Las Vegas
- 7 dated December 11, 2013. Def03185_9 -Def03187_9

8 ****Regarding Taekwondo Lessons***

- 9 10. E-mail exchange between Minh and Bobby Erdman,
- 10 Taekwondo Master at Family ATA Martial Arts, to
- 11 reschedule test dates while Hannah and Matthew are out
- 12 of town and acknowledgment that Bobby will forward the
- 13 schedule for their Irvine classes so that the children may take
- 14 their classes in Irvine, showing Minh was the parent who
- 15 made these arrangements and show the efforts she made
- 16 to ensure the children can attend their classes, dated
- 17 December 12, 2017 Def02494_9-Def02495_9
- 18 11. E-mail exchange between Minh and Bobby Erdman,
- 19 Taekwondo Master at Family ATA Martial Arts,
- 20 regarding available test dates to reschedule Hannah's
- 21 and Matthew's tests since they will be out of town,
- 22 showing Minh was the parent who made these
- 23 arrangements, dated December 12, 2017. Def02496_9-Def02497_9

24 **F. Text Messages.**

- 25 1. Text messages regarding Minh inviting
- 26 Jim to children's Birthday Parties Def293_3 - Def296_2
- 27 2. Text messages between parties regarding
- 28 children not bathing at Jim's house Def297_2

3. Text messages between parties regarding
Rash on Hannah when in Jim's care Def298_2 - Def303_2
4. Text messages from Jim to children on
Days Jim complained about not having
contact with the children Def304_2 - Def320_2
5. Text messages between parties discussing
parenting and co-parenting Def321_2 - Def363_2
6. Text Messages between Minh and Jim
regarding 2019 Spring Break Def539_5
7. Text Messages between Imelda Vahey
and Minh from January 2018, through
April 2019 Def540_5 - Def746_5
8. Text Messages between Landis Gig and
Minh from December 2018, through
April 2019 Def747_5 - Def748_5
9. Text Messages between Minh and Jim from
January 2018, through April 2019 Def749_5 - Def 1319_5
10. Text Messages between Minh and Hannah
Vahey from December 2018, through
April 2019 Def1320_5 - Def1470_5
11. Text Messages between Minh and Jim from
April 1, 2019, to July 22, 2019, regarding doing
Homework with kids, kids being sick, making Doctor
appointments issues, pick up and drop off of kids
(who is picking them up or dropping them off), Request
for Face time and phone calls, communication issues
(Jim not getting back to Minh for hours). Def03284_9-Def03329_9
12. Text Messages between Jim and Hannah

Vahey from December 2018, through
July 2019 showing that he has frequent contact with
Hannah and Hannah asking him why they could
Not be in CA longer during spring break and
her wanting to go to school there and to live there and
Jim ignoring her and not answering (May of 2019)
Matthew talking to him on Hannah's Ipad regarding
being embarrassed by his dad in Karate in front
of everybody Def02498_9 - Def02584_9

13. Text Messages between Kianna (Irvine Neighbor) and Hannah
Vahey from July 9, 2019, through July 10, 2019,
Hannah talking about her trip to Hawaii,
her going to start taking tennis lesson and wanting
To do things with her friend. Def02585_9 - Def02590_9
14. Text Messages between Izzy Nguyen (Uncle Peter's daughter) and
Hannah Vahey from June 22, 2019, through
July 11, 2019 showing that she has interaction with her cousin
in Irvine Def02591_9 - Def02601_9

G. Screen Shots of Jim's Calls.

1. Screen shots of phone calls from Jim
on the Days Jim complained about
not having contact with the children. Def364_2 - Def385_2
2. Call log pulled from Minh's phone
showing all of the calls to and from
Ed Vahey Def1471_5
3. Call log pulled from Minh's phone
showing all of the calls to and from
Jim Vahey Def1472_5 - Def1478_5

4. Call log pulled from Ipad showing
all of the calls to and from Daddy Def1479_5 - Def1482_5
5. Call log pulled from Minh's phone
showing all of the calls to and from
Jim Vahey Def02602_9 - Def02612_9
6. Call log pulled from Ipad showing
all of the calls to and from Daddy Def02613_0 - Def02615_9
7. Call log pulled for Izzy Nguyen. Def02616_9

H. Proof of Jim's Intentions to Move.

1. Email from Stephen H. Hazel, Certified Financial
Planner at UBS Financial Services, Inc., forwarding
Minh an email from Jim, showing Jim was planning
on retiring to California, as he answered on question
no. 1, email forwarded dated
August 18, 2015 (Only redaction to this document
was for attorney/client privilege) Def1691_6 - Def1694_6

I. Homework with Children.

1. Book report that Minh assisted Hannah
graded by the teacher. Def442_2
2. Book report that Jim assisted Hannah
graded by the teacher. Def443_2
3. Hannah's missed homework while in
Jim's care Def444_2
4. Book report on "A Night Outdoors," by Hannah
Vahey Def1662_5 - Def1666_5
5. Book report on "Island of the Blue Dolphins,"
by Hannah Vahey Def1667_5 - Def1670_5
6. Mother's Day card made by Matthew Def1671_5

- 1 7. E-mails between Minh and Ms. Ritter, Hannah's
2 teacher, showing Minh was the primary contact
3 regarding Hannah's behavior and work at school,
4 all dated during the 2017 to 2018 school year...Def02795_9 -
5 Def02810_9
- 6 8. E-mails Minh forwarded to Jim regarding Hannah's
7 behavior and school work that she has not completed,
8 showing Minh kept Jim aware of events concerning
9 Hannah at school, dated February 27, 2018... Def02811_9-
10 Def02815_9
- 11 9. E-mails between Minh and Ms. Snailum, Hannah's
12 teacher, supporting Minh was frequently communicating
13 with Hannah's teacher to inform her teacher of events
14 and questions regarding school work or activities, all
15 dated during the 2015 to 2016 school yearDef02816_9-Def02851_9
- 16 10. Proof of Hannah doing homework during
17 summer breakDef03162_9 -
18 Def03170_9
- 19 11. Proof of Matthew doing homework during
20 summer breakDef03171_9 -
21 Def03177_9
- 22 12. Proof of Selena doing homework during
23 summer breakDef03178_9 -
24 Def03182_9
- 25 **J. The Children's Medical Records.**
- 26 1. ABC Pediatrics visit summaries for Selena Vahey,
27 from her birth to the present, of which Minh attended
28 seventeen (17) appointments, Jim attended three

- (3) and they both attended one (1), for a total of twenty-one (21) appointments, starting with the most recent visits regarding her vaginitis due to improper/lack of care by Jim. Def1913_7 - Def1984_7
2. ABC Pediatrics visit summaries for Matthew Vahey, from his birth to the present, of which Minh attended twenty-five (25) appointments, Jim attended one (1), they both attended eleven (11) and Jenssy, Minh's assistant, attended one (1), for a total of thirty-eight (38) appointments. Def1985_7 - Def2095_7
3. ABC Pediatrics visit summaries for Hannah Vahey, from her birth to the present, of which Minh attended twenty (20) appointments, Jim attended one (1), they both attended ten (10), Jenssy, Minh's assistant, attended one (1) and their aunt attended two (2), for a total of thirty-four (34) appointmentsDef2096_7 - Def2195_7
4. Patient Prescription Record, from Warm Springs Road CVS, L.L.C., regarding Selena Vahey, listing medications that have been prescribed to her and who prescribed them between July 13, 2017, and July 13, 2019, showing that (while neither Minh nor Jim practice in family medicine or are pediatricians, but are licenced to write prescriptions) Jim has prescribed Salina the same medication Minh has and yet he has accused Minh of practicing outside of the scope of her practice. Def02852_9
5. Patient Prescription Record, from Warm Springs Road CVS, L.L.C., regarding Matthew Vahey, listing the

medications that have been prescribed to him and
who prescribed them, between July 13, 2017, and
July 13, 2019 Def02853_9

6. Patient Prescription Record, from Warm Springs Road
CVS, L.L.C., regarding Hannah Vahey, listing the
medications that have been prescribed to her and who
prescribed them, between July 13, 2017, and July 13, 2019,
showing that (while neither Minh nor Jim practice in
family medicine or are pediatricians, but are licenced
to write prescriptions) Jim has prescribed Hannah
medication and yet he has accused Minh of practicing
outside of the scope of her practice
for doing so as well Def02854_9

7. Patient Prescription Record, from Warm Springs Road
CVS, L.L.C., regarding Minh Luong, listing the
medications that have been prescribed to her and who
prescribed them, between July 13, 2017, and July 13, 2019,
showing that Jim has prescribed her medication on multiple
occasions, while he does not practice in family medicine
but has the ability to write prescriptions Def02855_9

K. Miscellaneous.

1. Incident Report dated May 2, 2019 regarding
the nanny Def1672_5
2. Email dated May 2, 2019, regarding Incident
Report dated May 2, 2019 regarding
the nanny Def1673_5 - Def1674_5
3. Prenuptial Agreement
dated June 14, 2006 Def02893_9 - Def02946_9

4. Email exchange between Minh, Phil Fetter, Wealth Planning Associate at UBS Financial Services, Inc., and Stephen H. Hazel, Certified Financial Planner at UBS Financial Services, Inc., stating that the parties' previous Financial Goal Analysis was not properly saved but UBS Financial Services was able to take their previous data and input it into a new analysis [Def1580_5 - Def1661_5], which supports the new Financial Goal Analysis being a copy of their previous version, regardless of the current date on the Analysis, email dated May 13, 2019, to May 16, 2019 Def1684_6 - Def1690_6
5. UBS Financial Planning Services Financial Goal Analysis for James Vahey and Minh-Nguyet Luong, dated May 15, 2019 Def1580_5 - Def1661_5
6. Parties Forbearance Agreement dated 12-31-2017 and Promissory Note dated July 26, 2017 Def091_1 - Def099_1

****Irvine Residence***

7. E-mail sent to Minh from Trevi (the model home company for the Irvine residence) via DocuSign, requesting Minh's signature on the *Purchase Agreement and Escrow Instructions*, regarding her purchase of her Irvine residence, *redacted to preserve attorney client privilege*, dated July 22, 2017 Def02629_9 - Def02630_9
8. Purchase Agreement and Escrow Instructions, for Minh's Irvine residence, commonly known as 135 Larksong, Irvine, California, showing she wired her

deposit on July 21, 2017 Def02631_9 - Def02789_9

9. Certificate of Completion from DocuSign, showing Minh executed the request for her signature on the *Purchase Agreement and Escrow Instructions* to finalize her purchase of her Irvine residence (see bates stamp Def), dated July 26, 2017 Def02790_9 - Def02794_9

****Documents to Support Minh's Deposition***

10. Map showing travel time from Minh's Irvine home to Chau Luong, Minh's sister's, home in Santa Ana, California, travel time is about eighteen (18) minutes (*Reproduced to correct bates stamping error*) Def2452_8
11. Map showing travel time from Minh's Irvine home to Minh duc Luong ("Mindy"), Minh's sister's, home in Placentia, California, travel time is about twenty-seven (27) minutes (*Reproduced to correct bates stamping error*) Def2453_8
12. Map showing travel time from Minh's Irvine home to Tam Luong, Minh's sister's, home in Tustin, California, travel time is about fifteen (15) minutes (*Reproduced to correct bates stamping error*) Def2454_8
13. Map showing travel time from Minh's mother's home, in Santa Ana, California, to Chau Luong, Minh's sister's, home in Santa Ana, California, travel time is about sixteen (16) minutes (*Reproduced to correct bates stamping error*) Def2455_8
14. Map showing travel time from Minh's mother's home, in Santa Ana, California, to Minh duc Luong ("Mindy"), Minh's sister's, home in Placentia, California, travel

- 1 time is about twenty-three (23) minutes (*Reproduced*
2 *to correct bates stamping error*) Def2456_8
- 3 15. Map showing travel time from Minh's mother's home,
4 in Santa Ana, California, to Tam Luong, Minh's sister's,
5 home in Tustin, California, travel time is about fourteen
6 (14) minutes
7 (*Reproduced to correct bates stamping error*) Def2457_8
- 8 ****Exhibits to Chau (Charlene) Luong's Deposition***
- 9 16. Photos provided by Charlene Luong, with her own
10 notes, presented as exhibits during her deposition,
11 deposited on July 18, 2019. Def02859_9-Def02887_9
- 12 17. Notarized letter from Sahar Nazifpour, Minh's
13 neighbor in Irvine, California, stating the reasons
14 they relocated to Irvine from the state of Washington,
15 some of which were in relation to the highly rated
16 school system in Irvine and Southern California,
17 and diverse family friendly environment, dated
18 July 16, 2019 Def02888_9-Def02889_9
- 19 18. E-mail from Minh to Candace Carlyon from Morris
20 Polich & Purdy LLP, dated August 24, 2017,
21 regarding the Forbearance Agreement for Jim to review
22 and if the foreclosure sale should be continued
23 out to November Def03219_9 - Def03226_9
- 24 19. Toothfairy's Calendar - Week 6.28.15 to 8.3.19
25 Def03332_9- Def03545_9
- 26 20. Minh's Calendar - Week 6.28.15 to 8.3.19
27 Def03546_9- Def03759_9
- 28 ...

8.0 UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED

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

9.0 LENGTH OF TRIAL

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

DATED this 14th day of August, 2019.

KAINEN LAW GROUP, PLLC

By:

NEIL M. MULLINS, ESQ.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of August 2019, I caused to be served the ***Defendant's Pre-trial Memorandum*** to all interested parties as follows:

____ BY MAIL: Pursuant to N.R.C.P. 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

____ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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

____ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and N.E.F.C.R. Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey eFileNV, to the following e-mail address(es):

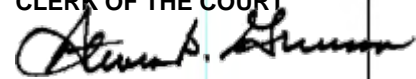
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32



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Attorney for Defendant

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

JAMES W. VAHEY,
Plaintiff,

vs.

MINH NGUYET LUONG,
Defendant.

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

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

ERRATA TO DEFENDANT'S PRE-TRIAL MEMORANDUM

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

DATED this 2nd day of August, 2019.

KAINEN LAW GROUP, PLLC

By: /s/ Neil M. Mullins

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of August, 2019, I caused to be served the *Errata to Defendant's Pre-Trial Memorandum* to all interested parties as follows:

___ BY MAIL: Pursuant to N.R.C.P. 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

___ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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

 X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and N.E.F.C.R. Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey eFileNV, to the following e-mail address(es):

THE DICKERSON KARACSONYI LAW GROUP:

1. bob@thedklawgroup.com
 2. sabrina@thedklawgroup.com
 3. aisja@thedklawgroup.com
 4. donna@thedklawgroup.com
 5. info@thedklawgroup.com
- Attorneys for Plaintiff*


An Employee of
KAINEN LAW GROUP, PLLC

EXHIBIT “A”

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

Inboden v. Ayon, 2018 Nev. Unpub. LEXIS 1081**Copy Citation**

Supreme Court of Nevada

November 30, 2018, Filed

No. 74012

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

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

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

PUBLISHED IN TABLE FORMAT IN THE PACIFIC REPORTER.

Core Terms

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

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

ORDER OF AFFIRMANCE

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

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

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

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

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

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

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

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

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

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

ORDER the judgment of the district court AFFIRMED.

/s/ Pickering ▼, J.

Pickering

/s/ Gibbons ▼, J.

Gibbons

/s/ Hardesty ▼, J.

Footnotes**1**

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

2

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

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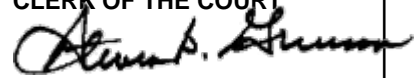
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Attorneys for Plaintiff

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

JAMES W. VAHEY,
Plaintiff,

v.

MINH NGUYET LUONG,
Defendant.

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

PLAINTIFF'S PRETRIAL MEMORANDUM

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

I. BRIEF STATEMENT OF FACTS

A. Names and Ages of Parties:

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

B. Date of Marriage: July 8, 2006

...

...

1 C. Resolved Issues:

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

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

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

10 II. CHILD CUSTODY

11 A. Background Information

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

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

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

3 Although both parties own their own practices, they have worked
4 together to ensure they are available for their children as much as possible.
5 When the children started school, the parties tried to arrange their
6 schedule to have Minh start work earlier than Jim during the week,
7 sometimes as early as 6:00 a.m. Minh preferred to start her surgeries at
8 6:00 a.m. because she treats children who are required to forgo eating and
9 drinking prior to their surgeries, and found it is easier for the children the
10 earlier she starts. Starting her work day early ensures Minh will be off
11 work earlier as well, and able to care for the children while Jim is at work.

12 In order to be available to take the children to school in the
13 mornings, Jim modified his office and surgery schedule to begin work later.
14 For instance, on Tuesdays, Jim scheduled his surgeries at Specialty Surgery
15 Center near Smoke Ranch and Tenaya to begin at 9:00 a.m. Jim changed
16 his office hours on Monday and Friday to begin at 8:30 a.m. Jim changed
17 his start time at Concentra Medical Center to 8:45 a.m. on Wednesdays.
18 Lastly, Jim changed the start time of his surgeries on Thursdays to 8:30
19 a.m. Making these modifications after the children started attending
20 school allows Jim to take the children to school a majority of the time.
21 Despite starting work later, Jim is off nearly every night by 6:00 p.m. This
22 does not mean, of course, that Jim does not ever come home later than
23 6:00 p.m. from work. Jim is a hand surgeon and given the nature of his
24 job it is inevitable there are unpredictable circumstances on rare occasions.
25 In her deposition, Minh confirmed the parties shared the responsibility of
26 taking the children to and picking them up from school. Exhibit I,
27 Deposition of Minh Luong, pg. 55, line 25 - pg. 56, line 21 ("We both
28 ...

1 were responsible for taking the kids to school, and sometimes the nannies
2 too.”).

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

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

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

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

14 It should be noted that the parties' home in Lake Las Vegas is not
15 located at such a distance from the children's school and extracurricular
16 activities as to cause any significant inconvenience. Jim awakens the
17 children at 6:30 a.m. each morning, and they are usually out of bed by
18 6:45 a.m. getting ready for school. Lake Las Vegas is far from the
19 "remote" and "isolated" place Minh would have this Court believe it is.
20 The parties agreed to live there prior to marriage and have managed to
21 raise their three (3) children there without the sacrifice Minh suggests the
22 parties and children have made. The fact the children are able to
23 participate in so many extracurricular activities demonstrates the location
24 of their home is no impediment.

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

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

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

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

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

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

6 B. Minh's Relocation to Irvine, California

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

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

23
24 ¹ Minh concluded Jim did not care about her based on the fact Jim would
25 not fire the anesthesia group he uses for his practice and hire a different anesthesia
26 group. Minh was having issues hiring an anesthesiologist to cover her dental cases and
27 found anesthesiologists (a husband and a wife) who would only cover her dental cases
28 if Jim also agreed to use them. The anesthesiologists Minh wanted Jim to use did not
have a very good reputation for being the safest anesthesiologists so Jim did not want
to change his anesthesia group. In addition, Minh mistakenly believed, as she confirms
in her Motion, that Jim intended to remove himself from a lawsuit against himself and
Minh, while leaving Minh in the lawsuit to fend for herself. This could not be further
from the truth. Jim attended a mediation and attempted to settle by offering up to

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

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

13 In 2009, Jim was led to believe he was going to receive a
14 \$5,000,000.00 profit selling his office building. Jim discussed this with
15 Minh, and before Jim even sold his office building, Minh excitedly
16 suggested the parties purchase a vacation home on a beach in California.
17 To appease Minh, Jim looked at vacation homes on the beach in
18 California with her. However, the parties only ever discussed purchasing
19 a beach home for vacation purposes and possibly retiring there in the
20 future. The parties never discussed nor planned to move to California in
21 the near future.

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

27
28

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

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

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

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

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

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

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

28 . . .

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

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

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

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

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

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

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

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

16 Jim can also assure the Court that he provides adequate attention to
17 the children while in his care. Minh has claimed Jim allowed Selena to
18 run around the water without supervision. Deposition of Minh Luong,
19 pg. 95, lines 6-14. Given Minh was not present, Jim wondered how she
20 even created such a false story. At her deposition, Minh testified that
21 Hannah and Selena were in the backyard when they decided to come in
22 to the house. Exhibit 1, Deposition of Minh Luong, pg. 95, lines 11-14.
23 Hannah walked inside, closed the door, and locked it. Exhibit 1,
24 Deposition of Minh Luong, pg. 95, lines 11-14. Selena, who was behind
25 Hannah, knocked on the glass window after Hannah locked it. Exhibit
26 1, Deposition of Minh Luong, pg. 95, lines 11-14. This is the incident
27 Minh uses to show Jim allowed Selena to run around the water without
28 supervision. This is clearly a gross mischaracterization of the event.

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

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

23 After Yen quit working for Jim, but prior to Jim hiring Maria as a
24 nanny, Yen told Jim during an exchange at the children's school that
25 Minh was letting Yen go and was taking her back to California. Yen told
26 Jim that Minh informed her that Minh's attorney advised Minh to do
27 what Jim is doing (i.e., take care of the children without a nanny). Yen
28 . . .

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

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

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

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

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

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

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

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

23 1. In every instance of a petition for permission to relocate
24 with a child that is filed pursuant to NRS 125C.006 or
25 125C.0065, the relocating parent must demonstrate to the
26 court that:

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

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

1 (c) The child and the relocating parent will benefit
2 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
9 non-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 are
14 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 with
17 any substitute visitation orders issued by the court if
18 permission to relocate is granted;

19 (d) Whether the motives of the non-relocating parent
20 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 for
26 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.

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

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

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

14 First, Minh claims that the school system in Irvine is better than the
15 school system in Las Vegas, and the commute is shorter. Exhibit 1,
16 Deposition of Minh Luong, pg. 71, lines 21-25. Minh believes that the
17 schools in Irvine are "highly sought after" and "[a] lot of people want their
18 kids to be going to school in the city of Irvine in that district." Exhibit
19 1, Deposition of Minh Luong, pg. 72, lines 15-24. Minh wants the
20 children removed from the private school, Challenger, they attend in Las
21 Vegas and placed into a public school in Irvine because she believes the
22 public schools in Irvine are better than the public schools in Las Vegas.
23 Minh is comparing apples to oranges. The children are attending a
24 "highly sought after" private school in Las Vegas and have parents who
25 can afford any additional educational needs they made need (e.g., tutors).
26 Test results from the 2019 IOWA Test show Challenger students

27 . . .

28 . . .

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

4 Minh's second "sensible, good faith reason" for her relocation to
5 Irvine is that Irvine offers a better community. Whether Irvine offers a
6 better community compared to Lake Las Vegas specifically or the greater
7 Las Vegas area depends on each individual statistic Minh references,
8 which is very misleading. In her deposition, Minh testified that, according
9 to her research, more families in Irvine have children than the families in
10 Lake Las Vegas. Exhibit 1, Deposition of Minh Luong, pg. 77, lines 3-7.
11 Minh then testified she believes Irvine offers a smaller community than
12 Las Vegas. Exhibit 1, Deposition of Minh Luong, pg. 77, lines 15-23. If
13 Minh's analysis is flipped and the percentage of children in Irvine is
14 compared to the percentage of children in Las Vegas, not Lake Las Vegas
15 only, it is clear that there is actually a larger percentage of children in Las
16 Vegas than Irvine. Similarly, if the population of Irvine (more than
17 280,000 people) is compared to the population of Lake Las Vegas
18 (approximately 23,000), it is clear Lake Las Vegas offers a smaller, closer
19 community. Minh manipulates the areas being compared based on how
20 each statistic benefits her position.

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

27
28 ² The 2019 IOWA Test Scores for Challenger Students will be offered as
evidence at the evidentiary hearing.

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

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

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

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

7 The fifth "sensible, good faith reason" Minh provides in support of
8 her request to relocate is that she and the children would be able to live
9 near her family members, including the children's two (2) cousins.

10 Exhibit I, Deposition of Minh Luong, pg. 85, line 6 - pg. 86, line 12.

11 Minh completely ignores the fact that relocating the children to California
12 ensures the children are not able to live near or with one of the two most
13 important family members in their lives, their father or their mother
14 (given Minh has stated she is moving with or without the children). Not
15 only will the children be with their loving and involved father if this Court
16 denies Minh's request to relocate the children from Las Vegas to Irvine,
17 but they will also be living near Jim's family. Jim's sister-in-law, Mel, and
18 her son, Jason, recently moved to Las Vegas. Jim's brother, Ed, will be
19 following his wife and son and moving to Las Vegas soon. Ed and Mel are
20 retiring and will be able to assist in caring for the children when necessary.
21 Jason has been accepted to Bishop Gorman and will begin the 2019-2020
22 school year.

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

27
28 ³ Minh initially stated she needs to be available to care for her mother and
father, but, sadly, Minh's father recently passed away.

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

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

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

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

3 The sixth "sensible, good faith reason" Minh provides in support of
4 her request to relocate is that she would be able to care for the children
5 because she plans on retiring. Exhibit 1, Deposition of Minh Luong, pg.
6 86, line 24 - pg. 87, line 4. Despite Minh's claims that she would be
7 available to take care of the children whenever they are not in school, she
8 actually wants to move to California so her family members can help her
9 care for the children. On February 26, 2018, Minh sent a text message to
10 Mel stating: "I need to sale [sic] my practice and move to oc so my family
11 can help me." DEF563_5 - DEF565_5. That same day, Minh sent a text
12 message to Jim stating: "We need to sale [sic] my practice and move to
13 California so my family and [sic] help with the kids. I am not getting
14 enough help here. And I told you I can't do this any more." DEF794_5.
15 Minh does not actually plan on caring for the children any more than she
16 currently does; she just will not be required to hire a nanny in California
17 because she believes her family members will help her.

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

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

DEF689_5 - DEF670_5.

...

1 The seventh "sensible, good faith reasons" Minh provides in support
2 of her request to relocate is that there are better opportunities in Irvine.
3 Exhibit 1, Deposition of Minh Luong, pg. 89, lines 3-16. Such
4 opportunities include the children's ability to participate in extracurricular
5 activities and living in a central location where Minh will not have a
6 problem hiring private tutors. Exhibit 1, Deposition of Minh Luong, pg.
7 89, lines 3-16. There has been no impediment to the parties transporting
8 the children to their extracurricular activities in Las Vegas. The parties
9 previously needed to hire a nanny to help with the transportation, but the
10 children were never deprived of participating in an extracurricular activity
11 because of any transportation impediment. Further, if Minh retires, she
12 would be able to transport the children in Las Vegas during her custodial
13 timeshare just as she would in Irvine. Jim plans on continuing to
14 transport the children to their extracurricular activities, and may need to
15 hire a nanny to help if Minh truly does move to California without the
16 kids. However, this is how the parties have operated since the children
17 were born.

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

1 aware there was no fence surrounding the parties' pool and the access to
2 the lake when she had Hannah in 2009, Matthew in 2010, and Selena in
3 2014. The children have lived in this home their entire lives, all three
4 children are great swimmers, and there have been no incidences as the
5 parties vigilantly watch their children.

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

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

25 The above detailed reasons Minh has provided in support of her
26 request to relocate to California are not sensible nor in good faith. Even
27 assuming Minh's positions and research are accurate, none of the
28 . . .

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

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

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

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

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

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

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

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

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

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

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

5 Not applicable.

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

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

17 Since the parties' separation, Minh's actions have also demonstrated
18 she is not the parent who is more likely to allow the children to have
19 frequent associations and a continuing relationship with Jim as she has
20 been actively interfering with the children's relationship with Jim. Minh
21 is sending the children inappropriate text messages. In one such
22 conversation, Hannah sends a text message to Minh stating, "Hi mommy
23 this is Hannah daddy said I'm not allowed to call you until everyone is
24 done eating." Minh replies: "That's too bad because mommy allows you
25 to speak to daddy whenever you want."⁴ Minh's comment is intended to
26 criticize Jim to Hannah, diminishing Jim's parenting decision to eat dinner
27 . . .

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

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

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

13 Minh: Have any of you guys taken a bath since you left
mommy?

14 Hannah: No, but we are going to today

15 Minh: The last time you bath [sic] were on Tuesday and
[sic] today is Friday. That’s not good.

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

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

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

27
28 ⁵ These text messages will be offered into evidence at the evidentiary
hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 Minh: I am so happy to hear from you since I am not so
6 Hannah: happy right now
7 Minh: Why
8 Minh: Life
9 Hannah: ???

10 DEF1457_5. Hannah's response of "???" shows she is clearly concerned
11 for her mother's well-being. In another text message, Minh states: "I wish
12 you will be with me always I wish we will never have to part."

13 DEF1392_5. In another text message, Minh states: "Good nite [sic]
14 honey. I know you rather me being next to you but you do need to
15 sleep." DEF1400_5. Minh has also attempted to manipulate the children
16 into thinking they are missing her when they are with Jim:

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

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

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

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

31 DEF1379_5.

32 . . .

33 . . .

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

3 Not applicable.

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

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

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

14 See response to factor (j) immediately above.

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

17 Not applicable.

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

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

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

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

9 Although the custodial parent 'need not prove a tangible economic
10 or career advantage in meeting' the 'actual advantage' threshold
11 requirement, Minh must show some actual advantage to both her and the
12 children. *See Jones v. Jones*, 110 Nev. 1253, 1260, 885 P.2d 563, 568
13 (1994). *Jones* was a post-divorce case in which the mother, who had
14 primary physical custody of the parties' children, sought permission to
15 relocate to another state. *Id.* at 1256, 885 P.2d at 566. The mother was
16 pursuing a relationship and career opportunities, which were integrally
17 connected to the health and well-being of the mother and the children.
18 *Id.* at 1261, 885 P.2d at 569. Unlike in *Jones*, this case is not a post-
19 divorce case and Minh does not have primary physical custody.
20 Moreover, Minh has not demonstrated that she is pursuing any economic
21 or non-economic advantages.

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

1 (1998). In addition, the facts Minh has set forth are not comparable to
2 the facts of *McGuinness*. In *McGuinness*, a mother requested permission to
3 relocate with her child to the town in which she was raised. *Id.* at 1075.
4 The mother's own mother had recently passed away, and the mother
5 inherited a substantial sum of money, including part ownership in her
6 mother's home, which her siblings agreed she could live in rent free while
7 she finished college and earned a teaching license. *Id.* The mother had
8 exhausted her career opportunities as a secretary in Las Vegas so this was
9 a significant opportunity for her and her child. *Id.* Minh's situation could
10 not be more different than the mother's in *McGuinness*. Minh is not
11 moving to California to realize any advantage to her career or the lifestyle
12 she can provide to the children.

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

28 . . .

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

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

9 The Court should consider the following subfactors in determining
10 whether the move will improve the quality of life for Minh and the
11 children: “whether positive family care and support will be enhanced,
12 whether housing and living conditions will be improved, whether
13 educational advantages will result for the children, whether the custodial
14 parent’s employment and income will improve” *Jones*, 110 Nev. at
15 1261-62, 885 P.2d at 569 (citing *Schwartz v. Schwartz*, 107 Nev. 378, 383,
16 812 P.2d 1268, 1271 (1991)). Minh plans on retiring so her employment
17 and income will not improve.

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

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

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

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

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

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

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

26 . . .

27 . . .

28 . . .

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

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

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

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

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

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

26
27 ⁶ Minh's offer, and Jim's denial, is not excluded evidence pursuant to NRS
28 48.105(1) because it is being offered not to prove the validity of claim, but to prove
Jim's opposition to Minh's request to relocate is not intended to secure a financial
advantage. NEV. REV. STAT. § 48.105(2).

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

8 **III. CHILD SUPPORT**

9 The Court should order each party to contribute to the support of
10 their minor children in accordance with Nevada law. The Court also
11 should order each party to pay one-half (1/2) of at least the following
12 expenses relating to their minor children: medical insurance for the
13 children, any medical expenses not covered by such medical insurance, all
14 costs and expenses relating to the children's elementary and secondary
15 education, and the children's extra-curricular activities.

16 **IV. LIST OF EXHIBITS**

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

19 2. Text messages exchanged between the parties from August 25,
20 2018 to April 17, 2019, Bates Nos. PLTF000807 - PLTF001164; and
21 PLTF001636 - PLTF001751.

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

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

28 . . .

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

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

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

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

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

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

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

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

17 13. Travel time from Challenger School - Silverado campus to
18 9742 West Tompkins Avenue, Las Vegas, Nevada, Bates No.
19 PLTF001199.

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

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

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

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

28 ...

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

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

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

8 21. Flamingo Surgery Center Surgeon Case History from January
9 1, 2010 to December 31, 2018, Bates Nos. PLTF000086 - PLTF000134.

10 22. Flamingo Surgery Center Surgeon Case History from January
11 1, 2019 to April 29, 2019, Bates Nos. PLTF000135 - PLTF000139.

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

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

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

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

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1 **V. LIST OF WITNESSES**

- 2 1. JAMES W. VAHEY, Plaintiff
3 c/o THE DICKERSON KARACSONYI LAW GROUP
4 1745 Village Center Circle
 Las Vegas, Nevada 89134
 Telephone: (702) 388-8600

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

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

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

- 12 3. Tess Headley
13 26 Via Mira Monte
 Henderson, Nevada 89011
14 Telephone: (831) 383-8868

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

- 17 4. Robert McDonald
18 26 Via Mira Monte
 Henderson, Nevada 89011
19 Telephone: (828) 342-2666

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

- 22 5. Magaly Pittman
23 264 Aqua Lane
 Henderson, Nevada 89012
24 Telephone: (702) 203-6967

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

28 . . .

1 6. Richard Landeis
2 1085 Via Della Curia
3 Henderson, Nevada 89011
4 Telephone: (702) 271-1141

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

7 7. Gig Landeis
8 1085 Via Della Curia
9 Henderson, Nevada 89011
10 Telephone: (702) 271-0158

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

13 8. Edward Vahey
14 419 Lomita Avenue
15 Millbrae, California 94030
16 Telephone: (650) 245-3335

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

19 9. Imelda Vahey
20 419 Lomita Avenue
21 Millbrae, California 94030
22 Telephone: (650) 922-7052

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

25 10. Bowena Bautista
26 265 Trailing Putt Way
27 Las Vegas, Nevada 89148
28 (702) 326-0137

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

 ...

 ...

1 11. Yenni Nguyen
2 4140 West 142nd Street, Apt. A
3 Hawthorne, California 90250
4 (424) 376-4450

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

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

9 DATED this 2nd day of August, 2019.

10 THE DICKERSON
11 KARACSONYI LAW GROUP

12 By Sabrina M. Dolson

13 ROBERT P. DICKERSON, ESQ.

14 Nevada Bar No. 000945

15 JOSEF M. KARACSONYI, ESQ.

16 Nevada Bar No. 010634

17 SABRINA M. DOLSON, ESQ.

18 Nevada Bar No. 013105

19 1745 Village Center Circle

20 Las Vegas, Nevada 89134

21 Attorneys for Defendant
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24
25
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28

1 CERTIFICATE OF SERVICE

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

- 6 [X] pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D)
7 and Administrative Order 14-2 captioned "In the
8 Administrative Matter of Mandatory Electronic Service in the
9 Eighth Judicial District Court," by mandatory electronic
10 service through the Eighth Judicial District Court's electronic
11 filing system;
12 [] by placing same to be deposited for mailing in the United
13 States Mail, in a sealed envelope upon which first class postage
14 was prepaid in Las Vegas, Nevada;
15 [] pursuant to EDCR 7.26, to be sent via **facsimile**, by duly
16 executed consent for service by electronic means;
17 [] sent a courtesy copy via e-mail on Eighth Judicial District
18 Court's electronic filing system;
19 [] by hand-delivery with signed Receipt of Copy.

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

22 NEIL M. MULLINS, ESQ.
23 KAINEN LAW GROUP, PLLC
24 3303 Novat Street, Suite 200
25 Las Vegas, Nevada 89129
26 service@kainenlawgroup.com
27 Attorney for Defendant
28

Sabrina M. Dolson

An employee of The Dickerson Karacsonyi Law Group

EXHIBIT I

EXHIBIT I

EXHIBIT I

1 DISTRICT COURT
2 FAMILY DIVISION
3 CLARK COUNTY, NEVADA
4 JAMES W. VAHEY,)
5 Plaintiff,)
6 vs.) CASE NO. D-18-581444-D
7) DEPT NO. H
8 MINH NGUYET LUONG,)
9 Defendant.)
10
11
12
13
14 DEPOSITION OF MINH NGUYET LUONG
15 Taken on Friday, April 12, 2019
16 At 9:24 a.m.
17 By a Certified Court Reporter
18 At 1745 Village Center Circle
19 Las Vegas, Nevada
20
21
22
23 Reported By: Shanyelle King, CCR No. 943
24 Job No. 541478
25

APPEARANCES:

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For the Plaintiff:

THE DICKERSON KARACSONYI LAW GROUP
BY: ROBERT P. DICKERSON, ESQ.
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1745 Village Center Circle
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KAINEN LAW GROUP
BY: NEIL M. MULLINS, JR., ESQ.
3303 Novat Street, Suite 200
Las Vegas, NV 89129
(702) 823-4900
neil@kainenlawgroup.com

Also Present: Mr. James W. Vahey

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

2 A. About the same amount.

3 Q. So roughly two to three months?

4 A. Yes.

5 Q. How many nannies have you had?

6 A. Quite a few.

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

9 A. Yes.

10 Q. Who?

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

12 Q. Pronounced Yen?

13 A. Yes.

14 Q. So how long did Yen work for you?

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

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

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

25 A. No.

1 force Hannah into doing what she doesn't want to do.

2 BY MR. DICKERSON:

3 Q. So explain that to me. What was the issue
4 that you were dealing with?

5 A. School, Taekwondo, daily routine. Whatever
6 Hannah doesn't do, Jim doesn't want to push her into
7 doing anything.

8 Q. Did it really relate to Taekwondo, that she
9 did not want to do Taekwondo?

10 A. That was one of them.

11 Q. What else?

12 A. Her homework.

13 Q. She didn't want to do her homework?

14 A. She doesn't want to do her homework.

15 Q. Well, who is responsible for helping Hannah
16 with her homework?

17 A. I was responsible, and so was Jim.

18 Q. Isn't it true that you told Jim you did not
19 have the patience to deal with Hannah and her homework
20 so you told him he was responsible for working with her
21 on her homework?

22 A. No.

23 Q. You never said that?

24 A. No.

25 Q. Tell me, who was responsible for taking the

1 children to school?

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

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

6 A. Probably three days.

7 Q. And how often would Jim?

8 A. Two days.

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

12 A. Yes.

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

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

17 Q. Who would pick up the children from school?

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

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

24 A. It was about photosynthesis.

25 Q. I'm sorry?

1 BY MR. DICKERSON:

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

5 A. 135 Larksong.

6 Q. Spell that.

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

8 Q. And your parent's address?

9 A. 1829 W. Brewer Avenue, Santa Ana.

10 Q. West what?

11 A. Brewer, B-R-E-W-E-R, Avenue, Santa Ana,
12 92704.

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

16 A. I don't know the exact miles.

17 (Exhibit 1 marked.)

18 BY MR. DICKERSON:

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

24 A. Yes.

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

1 11 miles?

2 A. Yes.

3 Q. And it indicates that to travel that
4 11 miles, it would take you approximately 27 minutes; is
5 that correct?

6 A. This is during traffic hours.

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

9 A. At traffic hours, 5:46.

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

13 A. Correct.

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

17 A. Yes.

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

21 A. Well, I travel from my house to my parents'
22 house about 8:00 p.m. before, and it's -- the GPS said
23 18 minutes.

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

25 A. Yes.

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

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

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

5 A. About 10 o'clock.

6 Q. In the morning?

7 A. Yes.

8 Q. And the same 11 miles; right?

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

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

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

13 Q. Okay. Thank you.

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

15 A. No.

16 Q. Who lives with your mom and dad?

17 A. My sister Hieu, partially.

18 Q. What do you mean "partially"?

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

21 Q. She lives at what house?

22 A. 135 Larksong.

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

1 Q. And how about your sister Hieu?

2 A. She's a lawyer.

3 Q. And you have another sister that lives in
4 close proximity to your parents in Santa Ana; is that
5 correct?

6 A. No.

7 Q. Who is your sister that's the nurse
8 practitioner?

9 A. She lives in Tustin.

10 Q. Oh, I'm sorry. Tustin. How close is Tustin
11 and Santa Ana? They're right next to each other, aren't
12 they?

13 A. I don't know exactly if they're next to each
14 other or not.

15 Q. And what's the nurse practitioner's name?

16 A. Tam, T-A-M.

17 Q. Does any of your other siblings live with
18 your parents?

19 A. No.

20 Q. You have -- we talked about three of your
21 siblings, and you have three more siblings. Where do
22 they live? Let's go through their names and where they
23 live.

24 A. Duc, Duc is the oldest one.

25 Q. She lives where?

1 Q. Do you know her address?
2 A. No, I don't.
3 Q. Does Tam have any children?
4 A. No.
5 Q. How about Hieu, does Hieu have any children?
6 A. No.
7 Q. How about your brother --
8 A. No.
9 Q. -- he has no children?
10 Your brother's name again, I'm sorry.
11 A. Thach, T-H-A-C-H.
12 Q. And how about P-H-I, Phi, does she have any
13 children?
14 A. No.
15 Q. How about Duc --
16 A. No.
17 Q. -- children?
18 And now the last one, T-E-N, Ten, did I spell
19 that wrong? Oh, no.
20 A. Chau, C-H-A-U?
21 Q. Tell me about your siblings. Do any of them
22 have children?
23 A. Yes.
24 Q. Which one?
25 A. C-H-A-U.

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

3 A. Yes.

4 Q. Tell me about her children.

5 A. She has two daughters.

6 Q. How old are they?

7 A. Five and seven.

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

10 A. No.

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

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

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

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

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

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

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

4 The culture.

5 Q. I'm sorry?

6 A. The culture.

7 Q. Okay. What else?

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

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

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

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

14 A. Okay.

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

20 A. Yes.

21 Q. So you say better school system.

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

24 Q. So --

25 A. The commute is a lot shorter.

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

3 A. I went online, and I found research that the
4 city of Irvine has 50 -- more than 50 percent that have
5 families that have kids that are younger than 18, and
6 Lake Las Vegas has less than 11 percent -- or has
7 11 percent.

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

12 A. Yes.

13 Q. Okay.

14 A. For children.

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

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

18 Q. Irvine is smaller than Lake Las Vegas?

19 A. No. Irvine is smaller than Las Vegas.

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

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

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

1 BY MR. DICKERSON:

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

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

8 Q. I'm sorry?

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

12 Q. Okay. Anything else?

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

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

16 A. Yes.

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

19 A. Yes.

20 Q. Is Irvine more --

21 A. My community is.

22 Q. Is Irvine more children friendly than Las
23 Vegas?

24 A. Than Lake Las Vegas.

25 Q. Is it more friendly than Las Vegas?

1 A. Yes, I believe so.

2 Q. Is it more friendly than Henderson?

3 A. Yes.

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

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

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

12 A. Jim will have frequent contact with the
13 children.

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

19 A. Yes.

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

22 A. Yes.

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

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

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

5 Q. Okay. Anything else?

6 A. They have a lot of park systems.

7 Q. I'm sorry?

8 A. Parks.

9 Q. Tell me about the parks.

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

11 Q. Okay.

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

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

16 A. Okay.

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

20 A. Yes.

21 Q. So explain that to me.

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

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

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

6 Q. So what are you telling us?

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

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

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

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

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

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

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

1 else about better weather?

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

4 Q. Okay. Anything else?

5 A. No.

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

9 A. To help my family, or to be with the kids
10 24/7?

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

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

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

18 A. Yes.

19 Q. How is that a benefit for your children?

20 A. It is not.

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

25 A. Yes.

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

3 A. We chose to move together there.

4 Q. Do you understand my question?

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

6 Q. Do you understand my question?

7 A. Yes.

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

12 A. It is only one of the reasons.

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

18 A. That is only one of the reasons.

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

20 A. Yes.

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

23 A. Yes.

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

1 that right?

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

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

7 A. I wouldn't live in Las Vegas.

8 Q. Pardon me?

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

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

16 A. Yes.

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

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

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

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

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

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

11 Q. Anything else?

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

15 Q. Anything else?

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

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

22 A. Yes.

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

1 you clarify that?

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

7 Q. Okay.

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

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

13 A. Yes.

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

18 A. Yes.

19 Q. Okay. Anything else?

20 A. On that topic?

21 Q. Yes.

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

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

1 the hospital?

2 A. No, they just suffer through it.

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

5 A. There's nothing you can do.

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

10 A. That's correct.

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

13 A. No, thank God.

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

16 A. Correct.

17 Q. What else is not safe about it?

18 A. It's waterfront.

19 Q. I see. So --

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

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

25 A. Yes.

1 Q. And where was Jim?

2 A. Jim was inside the house.

3 Q. And where were you inside?

4 A. Inside the house.

5 Q. Okay. Who discovered her?

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

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

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

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

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

22 A. Correct.

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

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

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

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

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

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

15 A. That's one of the reasons.

16 Q. Anything else?

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

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

21 A. Yes.

22 Q. Explain that.

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

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

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

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

11 A. Hannah is emotionally --

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

13 A. I'm sorry.

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

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

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

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

5 A. No, that's not what I'm trying to tell you.
6 I'm giving you an example of one -- how she is not able
7 to ask her own dad for help.

8 Q. So tell us how it is in Hannah's best
9 interest for her to move from the home that Jim
10 currently is living in in Lake Las Vegas to live with
11 you in Irvine?

12 A. Another one is Hannah has this condition
13 where she builds up earwax extremely fast. And at one
14 point, it actually plugged up her ear. You have to
15 remove the earwax regularly, and it's not just tiny
16 pieces, it's like a plug. And it could have caused her
17 to have the three ear infections that she had.

18 Q. Okay.

19 A. I remove -- I use the hemostat to remove her
20 earwax periodically, which Jim never does.

21 Q. Okay.

22 A. Recently, Hannah had a bully letter from
23 school.

24 Q. Had a what, a bully letter?

25 A. Yes. From her friend, or used to be.

1 around families. And Matthew is really into -- whatever
2 you put him in, he'll be good at it. He's a very good
3 student. He's happy there. He asked in front of Jim
4 and I why we haven't moved there yet.

5 Q. Okay. Now, what I want to focus on, though,
6 is why is it in his best interest. Why is it in his
7 best interest to relocate with you to Irvine?

8 A. Well, I did answer your question. So then
9 they can be closer to families.

10 Q. Okay. Anything else?

11 A. Matthew has this skin condition, it's
12 extremely dry, it's raised and rough, and it takes weeks
13 for me to lubricate him to get it back to normal. But
14 if you stop doing it, within a couple of days it goes
15 back to being rough and raised and itchy.

16 Q. Okay.

17 A. I'm the only one who does it for him. Jim
18 doesn't do it for him. Right now, when I have him, I
19 lubricate his body with moisturizer every night. When
20 he's with Jim and he comes back to me, he has that skin
21 condition again when he's with Jim for the long weekend.

22 Q. Okay.

23 A. When I see Matthew, he wears glasses now, and
24 his glasses are all smudged because Jim wouldn't take
25 the time to clean it for him.

1 purchased in 2017; is that right?

2 A. Yes.

3 Q. So why would you purchase a home in 2017 if
4 you're not moving into April of 2019, can you explain
5 that to me?

6 A. You've got to furnish it.

7 Q. I'm sorry?

8 A. You've got to furnish it.

9 Q. Furnish it. Okay. So you purchased that
10 home what month in 2017?

11 A. October or November.

12 Q. Okay. So how long did it take you to furnish
13 your home?

14 A. It's still not completely furnished.

15 Q. So what other reasons, why would you buy a
16 home in 2017 if you're not moving until April of 2019?

17 A. Just to get ready.

18 Q. Okay.

19 A. Because this is the home that the kids will
20 be raised in. It takes time to decide which home.

21 Q. Well, but when you bought this home, you
22 didn't consult with Jim before you bought it, did you?

23 A. Not this specific one.

24 Q. And can you explain to us why you didn't
25 consult with Jim before you bought this specific home?

1 it.

2 THE WITNESS: No, I'm not --

3 MR. MULLINS: She said he was involved in a
4 fraud, and what you're doing is taking a logical step
5 and saying that she's accusing him of having committed
6 fraud. Those are two different things. If somebody
7 sues me tomorrow for fraud, it doesn't mean that I did
8 it, but it's in involved in it.

9 BY MR. DICKERSON:

10 Q. We were on the question of why you did not
11 consult with Jim before you bought the home that you
12 currently own in Irvine.

13 A. So they decided to settle, between Jim and
14 the lender, because he was going after Jim's business
15 and a piece of land and his building. Jim came to me
16 and asked me to lend him money, \$1.7 million that I
17 didn't have, and the lender sued me because I was
18 involved in it.

19 And when Jim was with his lawyers, settled,
20 he called me -- I was at work, I remember exactly what
21 happened -- and he said, "They are willing to settle for
22 \$800,000, and they will drop all my lawsuits." And I
23 asked Jim, "What about my lawsuit?"

24 And at that point, Jim blamed it on his
25 lawyers, even though he didn't know, and I didn't know

1 at that time, and he said to me, "My lawyer said to get
2 me out first and worry about you later." And I told
3 Jim -- I mean, I was in shock of what I'd just heard.
4 And I told Jim, "I can't believe you said that." So
5 this was during work, so I had to get back to my
6 patients.

7 When we got home that night, I had that
8 conversation again with Jim, and I told him, "I got
9 involved in this to help you, how could tell me you're
10 going to get yourself out first, and leave me in there
11 and deal with it later."

12 And that's when -- I was mad, and I told him
13 that I will go ahead and buy the house and move to
14 California because I know he doesn't care.

15 Q. All right. So everything you just explained
16 is the reason you never consulted with Jim before you
17 bought the house in Irvine, is that your testimony?

18 A. This specific house, yes.

19 Q. And so when did this discussion occur, when
20 did this -- when is it that you decided you're going to
21 buy this house, when is it that you had this discussion
22 with him that you just referred to?

23 A. It was the day that he had the negotiation to
24 settle.

25 Q. When was that, do you recall?

1 A. I don't remember the exact date.

2 Q. Do you know what year?

3 A. My guess would be before I bought the house.
4 It would be in 2017.

5 Q. So in 2017, you just decided I'm going to
6 move to Irvine whether you like it or not?

7 A. No, we decided that eight years ago, that we
8 would move to Irvine.

9 Q. To move to Irvine?

10 A. Move to Orange County.

11 Q. So in response to my question as to why you
12 never consulted with Jim before you bought this home, is
13 that your position, is you didn't discuss it with him
14 because you were mad at him?

15 A. On this specific house, yes, because I felt
16 he was very selfish, and that he only thinks of himself,
17 and for someone to help him and he turn around to say
18 that.

19 Q. Do you know what the current court order is
20 with respect to your visitation time, your custodial
21 time? When are you supposed to have the kids, and when
22 is Jim supposed to have them?

23 A. I have them Wednesday morning until
24 Thursday -- until Friday morning, and then we --

25 Q. Do you remember the judge's order as to what

1 A. We discussed it.

2 Q. Did you ever have a Realtor come over?

3 A. No.

4 Q. The home has never been listed?

5 A. Not that I know of. It's not my house.

6 Q. In July of 2017, did you tell Jim that you
7 were moving to California with or without him?

8 A. Yes.

9 Q. And did you tell him that you are moving to
10 California with the children with or without him?

11 A. No.

12 Q. So what was your plan when you told Jim that
13 you were planning to move to California with or without
14 him, were you going to leave the kids here?

15 A. When I made that comment, I was mad at him.
16 I only thought of myself when I made that comment. It
17 was not related to the kids. We didn't talk about that.

18 Q. So you were going to leave the kids here; is
19 that right?

20 A. I don't know, because I didn't think about
21 what would happen, I just said that comment because --

22 Q. But is it your --

23 A. -- he was selfish.

24 Q. Is it your testimony that you never told Jim
25 that you were going to leave Nevada and move with the

1 kids to California and that he would need to do
2 something if he wanted to stop you?

3 A. Yes.

4 Q. Did you tell him that?

5 A. Yes.

6 Q. And why did you tell him that?

7 A. Because we made plans to move there together,
8 and he changed his mind.

9 Q. Now, this was in July of 2017; correct?

10 A. No, no. This was 2018.

11 Q. Are you sure?

12 MR. MULLINS: Two different comments.

13 THE WITNESS: After we spoke to our
14 therapist.

15 BY MR. DICKERSON:

16 Q. This was before you purchased your home in
17 Irvine.

18 A. Okay.

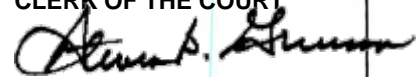
19 Q. And you purchased your home in Irvine in
20 2017, didn't you?

21 A. Yes. The comment I made to him in 2017 was,
22 "You don't care about me, I'm going to leave, I'm going
23 to buy a house there, I'm going to leave." That's it.
24 We didn't discuss about the kids.

25 Q. So when is it that you told him that you're

34

34



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

9 JAMES W. VAHEY,
10

11 Plaintiff,

12 vs.

13 MINH NGUYET LUONG,
14

15 Defendant.

CASE NO. D-18-581444-D

DEPT NO. H

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

16 **RECEIPT OF DEFENDANT'S N.R.C.P. 16.2 PRODUCTION -9 AND**
17 **DISCLOSURE OF WITNESS**

18 I, ROBERT P. DICKERSON, ESQ., or authorized agent of THE DICKERSON
19 KARACSONYI LAW GROUP, hereby acknowledge receipt of Defendant's N.R.C.P.
20 16.2 Production -9 and Disclosure of Witness on this 1 day of August, 2019.

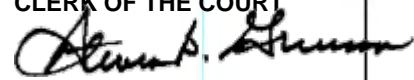
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22 
23 ROBERT P. DICKERSON, ESQ.

24 Nevada Bar No. 000945
25 1745 Village Center Circle
26 Las Vegas, Nevada 89134
27 Attorney for Plaintiff
28

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1 **NOTC**
2 NEIL M. MULLINS, ESQ.
3 Nevada Bar No. 3544
4 KAINEN LAW GROUP, PLLC
5 3303 Novat Street, Suite 200
6 Las Vegas, Nevada 89129
7 T: (702) 823-4900
8 F: (702) 823-4488
9 service@KainenLawGroup.com
10 Attorneys for Defendant

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

13 JAMES W. VAHEY,

14 Plaintiff,

15 and

16 MINH NGUYET LUONG,

17 Defendant.

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

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

18 **NOTICE OF SEMINAR COMPLETION**

19 Please take notice that Defendant, MINH NGUYET LUONG, successfully
20 completed the Co-Parenting CARE Program, online parenting education for divorcing
21 families, on August 4, 2019. A copy of the Certificate of Completion is attached hereto.

22 Dated this 5th day of August, 2019.

23 KAINEN LAW GROUP, PLLC

24 By: /s/ Neil M. Mullins

25 NEIL M. MULLINS, ESQ.

26 Nevada Bar No. 3544

27 3303 Novat Street, Suite 200

28 Las Vegas, Nevada 89129-8714

Attorney for Defendant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of August, 2019, I caused to be served the *Notice of Completion* to all interested parties as follows:

____ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

____ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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

 X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

THE DICKERSON KARACSONYI LAW GROUP:

1. info@thedklawgroup.com
 2. bob@thedklawgroup.com
 3. sabrina@thedklawgroup.com
- Attorneys for Plaintiff*


An Employee of
KAINEN LAW GROUP, PLLC



Extended Learning Center, Inc. ®

P.O. BOX 3894
Paso Robles, CA 93447-3894
(866) 504-2853

CERTIFICATE OF COMPLETION

This certifies that

minh luong

has successfully completed the

Co-Parenting CARE Program

I certify under penalty of perjury that the foregoing is true & correct.

Luong Minh Luong
Parent Signature

Date of Registration: Aug 03, 2019
Date of Completion: Aug 04, 2019
Case Number: D-18-581444-D
Location: Clark, Nevada

Administrator: OnlineParentingPrograms
Certificate: OPP_40508119
Delivery Type: Electronic

IMPORTANT NOTIFICATION

This certificate is valid only if signed by the parent(s) of the child(ren) who completed the program. If the parent(s) do not sign this certificate, it is not valid. If the parent(s) do not sign this certificate, it is not valid. If the parent(s) do not sign this certificate, it is not valid.



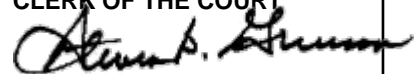
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<http://www.onlineparentingprograms.com/view/certificate/50405268a2c7.html>

Judith A. Lyons-Walls
Director of Education

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1 ROC
2 THE DICKERSON KARACSONYI LAW GROUP
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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 RECEIPT OF COPY

24 RECEIPT of PLAINTIFF, JAMES W. VAHEY'S, TRIAL EXHIBITS
25 is hereby acknowledged this 6th day of August, 2019, at 5:00 p.m.

26 KAINEN LAW GROUP, PLLC



27 NEIL M. MULLINS, ESQ.
28 Nevada Bar No. 003544
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Las Vegas, Nevada 89129
Attorneys for Defendant