

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 OLENA KARPENKO,
4 Petitioner,
5 vs.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF NEVADA, IN
8 AND FOR TH COUNTY OF CLARK, AND
9 THE HONORABLE DAWN THRONE,
10 DISTRICT COURT JUDGE,
11 Respondents, and

12 ENRIQUE SCHAEERER; and DOES I
13 through X,

14 Real Party in Interest.

Electronically Filed
Mar 17 2022 12:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 83997
District Court Case No:
D-21-628088-D

15 **REAL PARTY IN INTEREST'S APPENDIX**

16 Volume I - (Bates Stamps ES0001 - ES0158)

17
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ATTORNEYS FOR REAL PARTY IN
INTEREST

LIST OF APPENDIX DOCUMENTS

<u>Title of Document</u>	<u>Filing Date</u>	<u>Volume</u>	<u>Bates Stamp</u>
Defendant's Opposition to Plaintiff's Motion for Summary Judgment on the Issue of Paternity and Countermotion for Fees and Costs	12.15.21	I	ES0001 - ES0012
Exhibit Appendix to Reply to Opposition to Plaintiff's Motion for Summary Judgment on the Issue of Paternity	1.5.22	I	ES0045 - ES0051
Motion for NRCP Rule 11 Sanctions	1.5.22	I	ES0052 - ES0062
Notice of Entry of Stipulation and Order	12.21.21	I	ES0017 - ES0025
Plaintiff's Opposition to Defendant's Motion for NRCP Rule 11 Sanctions	1.19.22	I	ES0063 - ES0071
Reply to "Plaintiff's Opposition to Defendant's Motion for NRCP Rule 11 Sanctions"	1.24.22	I	ES0072 - ES0080
Plaintiff's Supplemental Exhibits	3.15.22	I	ES0081 - ES0158
Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment on the Issue of Paternity and Opposition to Countermotion for Fees and Costs	1.5.22	I	ES0026 - ES0044
Stipulation and Order Continuing Due Date for Plaintiff's Reply to Opposition to Plaintiff's Motion for Summary Judgment and his Opposition to Motion for Fees and Costs	12.20.21	I	ES0013 - ES0016

AFFIRMATION

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding documents filed in the above-referenced matter does not contain the social security number of any person.

DATED this 16 day of March, 2022.

KAINEN LAW GROUP, PLLC

By:

EDWARD L. KAINEN, ESQ.

Nevada Bar No. 5029

RACHEAL H. MASTEL, ESQ.

Nevada Bar No. 11646

Attorneys for Real Party in Interest

CERTIFICATE OF SERVICE

This is to certify that on March 16th, 2021, a true and correct copy of the foregoing *Real Party in Interest's Appendix* was served on the following by United States Mail, first class, and by the Supreme Court Electronic Filing System:

Marshal Willick, Esq.
Paul Lemcke, Esq.

BY: 
An employee of
KAINEN LAW GROUP

Steven D. Grierson

1 **OPPS**
2 WILICK LAW GROUP
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9 Attorney for Olena Karpenko

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

13 ENRIQUE SCHAEERER,
14 Plaintiff,

15 vs.

16 OLENA KARPENKO,
17 Defendant.

CASE NO: D-21-628088-D
DEPT. NO: U

DATE OF HEARING: 12/29/2021
TIME OF HEARING: 9:30 A.M.

18 ORAL ARGUMENT

Yes X No

19 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR**
20 **SUMMARY JUDGMENT ON THE ISSUE OF PATERNITY AND**
21 **COUNTERMOTION FOR FEES AND COSTS**

22 **I. INTRODUCTION**

23 Enrique – a licensed Nevada attorney – through his counsel, Mr. Lemcke, have
24 filed a *Motion for Summary Judgment* in a paternity case which involving both child
25 custody and child support. The *Motion* is devoid of any citation to the “relevant” case
26 law on the subject which specifically says that such a *Motion* is improper and will not
27 be entertained.
28

1 **III. LEGAL ANALYSIS**

2 **A. Summary Judgment Is Not Authorized in a Child Custody or**
3 **Support Matter**

4 When child custody or support is implicated in a case, the Court is not
5 authorized to grant a default or summary judgment. Specifically, the Nevada
6 Supreme Court held in *Blanco*²:

7 With regard to child custody and child support, we determine that a
8 case-concluding discovery sanction is simply not permissible. These child
9 custody matters must be decided on their merits. It is well established that
10 when deciding child custody, the sole consideration of the court is the child's
11 best interest. NRS 125.480; *Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328,
12 330 (1993). Child support awards are guided by certain formulas as applied to
13 the parties' income. See NRS 125B.070 (setting forth a child support formula
14 as applied in primary physical custody cases); *Wright v. Osburn*, 114 Nev.
15 1367, 1368-69, 970 P.2d 1071, 1072 (1998) (calculating child support in joint
16 physical custody cases based on the parties' gross incomes).

17 It is axiomatic that if paternity is established, child support will be required to
18 be paid by Enrique to Olena. As such, the case *cannot* be summarily decided as a
19 discovery sanction; doing so would be *per se* reversible error.

20 As to the issue of whether Olena has actually responded to the first request for
21 admission and his claim that all of the filed documents are ambiguous as to whether
22 Enrique is the father of the minor child, the Court is reminded that at the last hearing,
23 Mr. Crane specifically put on the record that Olena contends without reservation or
24 any doubt of any kind that Enrique *IS* the father of the minor child. All parties and
25 the Court are on notice that she has made this statement, so any claim that she has not
26 responded is untrue.

27 **B. Mr. Lemcke Gave an Open Ended Extension to Discovery**

28 As this Court is aware, the only issues before the Court are paternity and then
child support. When we came on the case, we immediately contacted Mr. Lemcke
and requested an extension as to the discovery which he granted until we had time to

² *Blanco v. Blanco*, 129 Nev. 723, 311 P.3d 1170 (2013).

1 review the *Opposition* due at that time and then had further discussions with him.
2 Those further discussions have never been held.

3 < Had Mr. Lemcke contacted us – as is required by EDCR 5.501 – and indicated
4 that he was demanding that the responses to discovery were again due, we would
5 have dealt with the situation at that time. He has never rescinded the extension and
6 discovery is still not due. His *Motion* remains frivolous as a result. >

7
8 **C. Discovery Relief Must First be Sought Through the Discovery**
9 **Commissioner**

10 EDCR 5.602(a) states:

11 Unless otherwise ordered, all discovery disputes (except disputes presented at
12 a pretrial conference or at trial) must first be heard by the discovery hearing
master.

13 Here, this Court has not made any orders concerning discovery disputes being
14 heard by the Judge and thus any requests for relief or for sanctions must first be taken
15 before the Discovery Commissioner. Neither Mr. Lemcke or Enrique has sought
16 relief through the Discovery Commissioner and thus they are in violation of the local
17 rules. The *Motion* remains frivolous.

18
19 **IV. COUNTERMOTION FOR FEES AND COSTS**

20 There is no reason for Enrique to have filed the instant *Motion* except that he
21 is attempting to starve out Olena with frivolous filings that require a response. This
22 egregious behavior should not be tolerated by the Court.

23 Since the Court is not allowed to grant summary judgment as a discovery
24 sanction – and both Enrique and Mr. Lemcke should know this – they can't prevail
25 on their *Motion* and attorney's fees and costs should be awarded to Olena both as a
26 sanction under EDCR 7.60³ and as the prevailing party under NRS 18.010.

27
28 ³ (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or
a party any and all sanctions which may, under the facts of the case, be reasonable, including the

1 **A. Legal Basis**

2 "[I]t is well established in Nevada that attorney's fees are not recoverable
3 unless allowed by express or implied agreement or when authorized by statute or
4 rule."⁴ Attorney's fees may be awarded in a pre- or post-divorce motion/opposition
5 under NRS 125.150.⁵ In addition, and because we believe that Olena will be the
6 prevailing party in this matter, she should receive an award of attorney's fees and
7 costs pursuant to NRS 18.010(2).⁶ Additionally, this Court can award attorney's fees
8 under EDCR 7.60(b).

9
10 **B. Disparity in Income**

11 The Court must also consider the disparity in the parties' income pursuant to
12 *Miller*⁷ and *Wright v. Osburn*.⁸ Therefore, parties seeking attorney fees in family law
13 cases must support their fee request with affidavits or other evidence that meets the
14 factors in *Brunzell*⁹ and *Wright*¹⁰. We will provide the *Brunzell* analysis below. As
15 to *Wright*, the actual holding is minimal:

16
17 imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
18 (1) *Presents to the court a motion or an opposition to a motion which is obviously frivolous,*
19 *unnecessary or unwarranted.*
20 (2) *Fails to prepare for a presentation.*
21 (3) *So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.*
22 (4) *Fails or refuses to comply with these rules.*
23 (5) *Fails or refuses to comply with any order of a judge of the court.*

24 ⁴ *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005).

25 ⁵ NRS 125.150.

26 ⁶ NRS 18.010(2).

27 ⁷ 121 Nev. 619, 119 P.3d 727 (2005).

28 ⁸ 114 Nev. 1367, 1370, 970 P.2d 1071, 1073 (1998).

⁹ *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

¹⁰ 114 Nev. 1367, 970 P.2d 1071 (1998).

1 The disparity in income is also a factor to be considered in the award of
2 attorney fees. It is not clear that the district court took that factor into
consideration.¹¹

3 The Court did not hold that the decision of the award of attorney's fees hinged on a
4 disparity in income. Only that it is one of the many factors that must be considered.
5 However, in this case, Enrique – who has refused to file an FDF – makes far more
6 than Olena, is vastly more wealthy, and thus the disparity in income weighs heavily
7 in her favor.

8
9 **C. Brunzell Factors**

10 With specific reference to Family Law matters, the Court has adopted
11 “well-known basic elements,” which in addition to hourly time schedules kept by the
12 attorney, are to be considered in determining the reasonable value of an attorney's
13 services qualities, commonly referred to as the *Brunzell*¹² factors:

- 14 1. *The Qualities of the Advocate*: his ability, his training, education,
15 experience, professional standing and skill.
- 16 2. *The Character of the Work to Be Done*: its difficulty, its intricacy, its
17 importance, time and skill required, the responsibility imposed and the
18 prominence and character of the parties where they affect the
19 importance of the litigation.
- 20 3. *The Work Actually Performed by the Lawyer*: the skill, time and
21 attention given to the work.
- 22 4. *The Result*: whether the attorney was successful and what benefits
23 were derived.

24
25
26
27 ¹¹ *Id.* at 1370, 970 P.2d at 1073 (1998).

28 ¹² 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1 Each of these factors should be given consideration, and no one element should
2 predominate or be given undue weight.¹³ Additional guidance is provided by
3 reviewing the “attorney’s fees” cases most often cited in Family Law.¹⁴

4 The *Brunzell* factors require counsel to make a representation as to the
5 “qualities of the advocate,” the character and difficulty of the work performed, the
6 work actually performed by the attorney, and the result obtained.

7 First, respectfully, we suggest that the supervising counsel is A/V rated, a
8 peer-reviewed and certified (and re-certified) Fellow of the American Academy of
9 Matrimonial Lawyers, and a Certified Specialist in Family Law.¹⁵

10 Marshal S. Willick, Esq., and Richard L. Crane, Esq., the attorneys primarily
11 responsible for litigating this case, have practiced exclusively in the field of family
12 law for over 50 years combined with Mr. Crane being under the direct tutelage of
13 supervising counsel. Both have substantial experience dealing with complex family
14 law cases.

15 As to the “character and quality of the work performed,” we ask the Court to
16 find our work in this matter to have been adequate, both factually and legally; we
17 have diligently reviewed the applicable law, explored the relevant facts, and believe
18 that we have properly applied one to the other.

19 The fees charged by paralegal staff are reasonable, and compensable, as well.
20 The tasks performed by staff in this case were precisely those that were “some of the
21 work that the attorney would have to do anyway [performed] at substantially less cost

22
23 ¹³ *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005).

24 ¹⁴ Discretionary Awards: Awards of fees are neither automatic nor compulsory, but within
25 the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89
26 Nev. 540, 516 P.2d 103 (1973); *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980); *Hybarger v.*
Hybarger, 103 Nev. 255, 737 P.2d 889 (1987).

27 ¹⁵ Per direct enactment of the Board of Governors of the Nevada State Bar, and independently
28 by the National Board of Trial Advocacy. Mr. Willick was privileged (and tasked) by the Bar to
write the examination that other would-be Nevada Family Law Specialists must pass to attain that
status.

1 per hour.”¹⁶ As the Nevada Supreme Court reasoned, “the use of paralegals and other
2 nonattorney staff reduces litigation costs, so long as they are billed at a lower rate,”
3 so “reasonable attorney’s fees’ . . . includes charges for persons such as paralegals
4 and law clerks.”

5 Victoria Javiel, paralegal with the Willick Law Group, was primarily the
6 paralegal on this case. Victoria earned a Certificate of Achievement in paralegal
7 studies in 2009. She has been a paralegal for a total of eighteen years; assisting
8 attorney's in several aspects of law.

9 The work actually performed will be provided to the Court upon request by
10 way of a *Memorandum of Fees and Costs* (redacted as to confidential information),
11 consistent with the requirements under *Love*.¹⁷

12
13 **V. CONCLUSION**

14 Based on all of the above, Olena requests that the Court dismiss Enrique’s
15 *Motion* with prejudice as frivolous and award her fees as the prevailing party and
16 sanctions under EDCR 7.60 for vexatiously extending the litigation in this case.

17 **DATED** this 15th day of December, 2021.

18 Respectfully Submitted By:
19 WILLICK LAW GROUP

20 

21 MARSHAL S. WILLICK, ESQ.
22 Nevada Bar No. 2515
23 RICHARD L. CRANE, ESQ.
24 Nevada Bar No. 9536
25 3591 East Bonanza Road, Suite 200
26 Las Vegas, Nevada 89110-2101
27 Attorneys for Olena Karpenko

28 P:\wp19\KARPENKO, O\DRAGTS\00533173.WPD/vj

27 ¹⁶ *LVMPD v. Yeghiazarian*, 129 Nev. 760, 312 P.3d 503 (2013), citing to *Missouri v. Jenkins*,
28 491 U.S. 274 (1989).

¹⁷ *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998).

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DECLARATION OF ATTORNEY

1. I, Marshal S. Willick, declare that I am competent to testify to the facts contained in the preceding filing.

2. I am an attorney for Defendant in the above-referenced matter, and I know the facts set forth herein of my own personal knowledge.

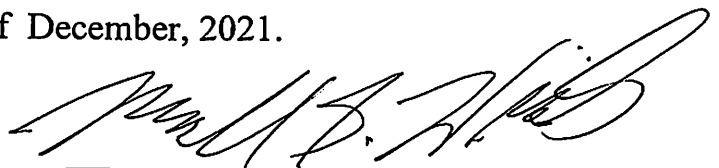
2. I have read the preceding filing, and I have personal knowledge of the facts contained therein, unless stated otherwise. Further, the factual averments contained therein are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.

3. The factual averments contained in the preceding filing are incorporated herein as if set forth in full.

4. Long prior to filing this *Opposition*, in October, I reached out to Mr. Lemcke to resolve the issue in dispute without the necessity of court intervention, and believed the parties were in agreement to hold off on all discovery responses as irrelevant given the orders, however, Mr. Lemcke filed this *Motion*.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

EXECUTED this 15th day of December, 2021.


MARSHAL S. WILICK, ESQ.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW
3 GROUP and that on this ¹⁵ day of December, 2021, I caused the above and foregoing
4 document to be served as follows:

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

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

22 Paul A. Lemcke, Esq.
23 Pecos Law Group
24 8925 South Pecos Road, Suite 14A
25 Henderson, Nevada 89074
26 paul@pecoslawgroup.com
27 Attorney for Plaintiff

28 /s/ Victoria Javiel
An Employee of the WILLICK LAW GROUP

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ENRIQUE SCHAEERER,
Plaintiff,

-v.-

OLENA KARPENKO,
Defendant,

Case No. D-21-628088-D

Department U

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.

-Or-

☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:

- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
☐ Other Excluded Motion (must specify) _____.

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

☒ **\$0** The Motion/Opposition being filed with this form is **not** subject to the \$129 or the \$57 fee because:

☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.

-Or-

☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.

-Or-

☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

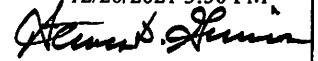
☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Olena Karpenko Date: 12/15/2021

Signature of Party or Preparer: Victoria Javiel at the Willick Law Group

Date Rec'd: 12-15-21
Calendared:
CC to Client:
Atty Rec'd:

ES0012


CLERK OF THE COURT1 **SAO**2 **Paul A. Lemcke, Esq.**

3 Nevada Bar No. 003466

4 **PECOS LAW GROUP**

5 8925 South Pecos Road, Suite 14A

6 Henderson, Nevada 89074

7 Telephone: (702) 388-1851

8 Facsimile: (702) 388-7406

9 Email: Paul@pecoslawgroup.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**13 **Enrique Schaerer,**

14 Plaintiff,

15 vs.

16 **Olena Karpenko,**

17 Defendant.

Case No. **D-21-628088-D**Dept No. **U**

Date of Hearing:

Time of Hearing:

18 **STIPULATION AND ORDER**19 **CONTINUING DUE DATE FOR PLAINTIFF'S REPLY TO OPPOSITION**
20 **TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AND HIS**
21 **OPPOSITION TO MOTION FOR FEES AND COSTS**22 Plaintiff **Enrique Schaerer**, by and through his attorney, Paul A. Lemcke,
23 Esq., of PECOS LAW GROUP, and Defendant **Olena Karpenko**, by and through her
24 attorney, Marshal S. Willick, Esq., of WILICK LAW GROUP, hereby stipulate and
25 agree that Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for
26 Summary Judgment on the Issue of Paternity and Plaintiff's Opposition to

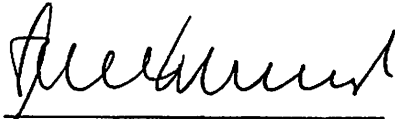
1 Defendant's Countermotion for Fees and Costs, shall be filed and served by
2 Wednesday, January 5, 2022.

3 Dated this 20 day of Dec., 2021.

Dated this 20th day of Dec., 2021.

4 PECOS LAW GROUP

WILLICK LAW GROUP

5
6 

// s // Richard L. Crane, Esq.

7 **Paul A. Lemcke, Esq.**
8 Nevada Bar No. 3466
9 8925 South Pecos Road, Ste. 14A
10 Henderson, Nevada 89074
Attorney for Plaintiff

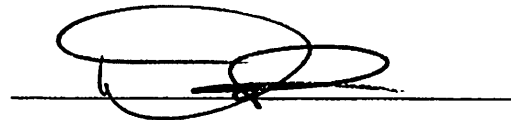
Marshal S. Willick, Esq.
Nevada Bar No. 2515
3591 East Bonanza Road, #200
Las Vegas, Nevada 89110
Attorney for Defendant

11 **ORDER**

12 **BASED ON A READING** of the foregoing stipulation of the parties in the
13 above-captioned matter, and good cause appearing therefore,

14 **IT IS HEREBY ORDERED** that the terms and conditions of the above
15 Stipulation are adopted and ratified by the Court, and the same is entered as the
16 Order of this Court.

17 Dated this 20th day of December, 2021

18 

19 Submitted by:
20 PECOS LAW GROUP

6E9 2F1 0C55 CB5D
Dawn R. Throne
District Court Judge

21 

22 **Paul A. Lemcke, Esq.**
23 Nevada Bar No. 003466
24 8925 South Pecos Road, Suite 14A
25 Henderson, Nevada 89074
Attorney for Plaintiff

Paul Lemcke

From: Victoria Javiel <victoria@willicklawgroup.com>
Sent: Monday, December 20, 2021 1:40 PM
To: Paul Lemcke
Cc: Richard Crane; Marshal Willick
Subject: Re: Stipulation and Order-Karpenko
Attachments: S O to allow late filing of Reply (00537116x7A582).doc

Please see attached the executed Stipulation from Mr. Crane.

Thank you,



Victoria Javiel, Paralegal at
Willick Law Group
A Domestic Relations & Family Law Firm
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Phone: (702) 438-4100, ext. 112
Fax: (702) 438-5311
Web: www.willicklawgroup.com
[View Our Newsletters](#)

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Enrique Schaerer, Plaintiff

CASE NO: D-21-628088-D

7 vs.

DEPT. NO. Department U

8 Olena Karpenko, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/20/2021

15 Marshal Willick

marshal@willicklawgroup.com

16 Reception Reception

email@willicklawgroup.com

17 Victoria Javiel

victoria@willicklawgroup.com

18 admin email

email@pecoslawgroup.com

19 Allan Brown

allan@pecoslawgroup.com

20 Paul Lemcke

paul@pecoslawgroup.com
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Steven D. Grierson

1 NTSO
2 Paul A. Lemcke, Esq.
3 Nevada Bar No. 003466
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8 Facsimile: (702) 388-7406
9 Email: Paul@pecoslawgroup.com
10 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 Enrique Schaerer,
10 Plaintiff,

11 vs.

12 Olena Karpenko,
13 Defendant.
14

Case No. D-21-628088-D
Dept No. U

Date of Hearing: n/a
Time of Hearing: n/a

15
16 NOTICE OF ENTRY OF STIPULATION AND ORDER

17 TO: Olena Karpenko, Defendant; and
18 TO: Marshal Willick, Esq., attorney for Defendant.

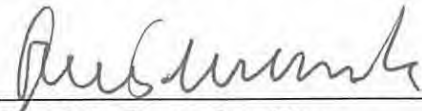
19 YOU WILL PLEASE TAKE NOTICE that STIPULATION AND ORDER
20 CONTINUING DUE DATE FOR PLAINTIFF'S REPLY TO OPPOSITION TO PLAINTIFF'S
21 MOTION FOR SUMMARY JUDGMENT, AND HIS OPPOSITION TO MOTION FOR FEES
22 AND COSTS was entered in the above-captioned case on the 20th day of December
23

24 ///

1 2021, by filing with the clerk. A true and correct copy of said STIPULATION AND
2 ORDER is attached hereto and made a part hereof.

3 DATED this 21st day of December, 2021.

4
5 PECOS LAW GROUP

6 

7 **Paul A. Lemcke, Esq.**

8 Nevada Bar No. 003466

9 8925 South Pecos Road, Suite 14A

10 Henderson, Nevada 89074

11 Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that on this 21st day of December
3 2021, the **Notice of Entry of Stipulation and Order**, in the above-captioned case
4 was served as follows:

- 5 ☒ pursuant to NEFCR 9, by mandatory electronic service through the
6 Eighth Judicial District Court's electronic filing system;
- 7 ☐ pursuant to NRCP 5, by placing the same to be deposited for mailing
8 in the United States Mail, in a sealed envelope upon which first class
9 postage was prepaid in Las Vegas, Nevada;
- 10 ☐ pursuant to EDCR 7.26 to be sent via facsimile and/or email, by duly
11 executed consent for service by electronic means;
- 12 ☐ by hand-delivery with signed Receipt of Copy.

13 To individual(s) listed below at the address:

14 Marshal Willick, Esq. marshal@willicklawgroup.com
15 Reception email@willicklawgroup.com
16 Victoria Javiel victoria@willicklawgroup.com

17 

18 **Allan Brown,**
19 An employee of PECOS LAW GROUP

1 **SAO**
2 **Paul A. Lemcke, Esq.**
3 Nevada Bar No. 003466
4 PECOS LAW GROUP
5 8925 South Pecos Road, Suite 14A
6 Henderson, Nevada 89074
7 Telephone: (702) 388-1851
8 Facsimile: (702) 388-7406
9 Email: Paul@pecoslawgroup.com
10 Attorney for Plaintiff

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **Enrique Schaerer,**

14 Plaintiff,

15 vs.

16 **Olena Karpenko,**

17 Defendant.

Case No. **D-21-628088-D**

Dept No. **U**

Date of Hearing:

Time of Hearing:

18 **STIPULATION AND ORDER**
19 **CONTINUING DUE DATE FOR PLAINTIFF'S REPLY TO OPPOSITION**
20 **TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AND HIS**
21 **OPPOSITION TO MOTION FOR FEES AND COSTS**

22 Plaintiff **Enrique Schaerer**, by and through his attorney, Paul A. Lemcke,
23 Esq., of PECOS LAW GROUP, and Defendant **Olena Karpenko**, by and through her
24 attorney, Marshal S. Willick, Esq., of WILICK LAW GROUP, hereby stipulate and
25 agree that Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for
26 Summary Judgment on the Issue of Paternity and Plaintiff's Opposition to

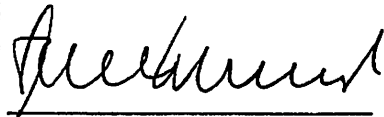
1 Defendant's Countermotion for Fees and Costs, shall be filed and served by
2 Wednesday, January 5, 2022.

3 Dated this 20 day of Dec., 2021.

Dated this 20th day of Dec., 2021.

4 PECOS LAW GROUP

WILLICK LAW GROUP

5
6 

// s // Richard L. Crane, Esq.

7 **Paul A. Lemcke, Esq.**
8 Nevada Bar No. 3466
9 8925 South Pecos Road, Ste. 14A
10 Henderson, Nevada 89074
11 Attorney for Plaintiff

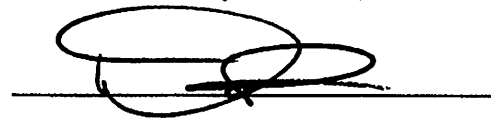
Marshal S. Willick, Esq.
Nevada Bar No. 2515
3591 East Bonanza Road, #200
Las Vegas, Nevada 89110
Attorney for Defendant

12 **ORDER**

13 **BASED ON A READING** of the foregoing stipulation of the parties in the
14 above-captioned matter, and good cause appearing therefore,

15 **IT IS HEREBY ORDERED** that the terms and conditions of the above
16 Stipulation are adopted and ratified by the Court, and the same is entered as the
17 Order of this Court.

Dated this 20th day of December, 2021

18 

19 Submitted by:
20 PECOS LAW GROUP

6E9 2F1 0C55 CB5D
Dawn R. Throne
District Court Judge

21 

22 **Paul A. Lemcke, Esq.**
23 Nevada Bar No. 003466
24 8925 South Pecos Road, Suite 14A
25 Henderson, Nevada 89074
26 Attorney for Plaintiff

Paul Lemcke

From: Victoria Javiel <victoria@willicklawgroup.com>
Sent: Monday, December 20, 2021 1:40 PM
To: Paul Lemcke
Cc: Richard Crane; Marshal Willick
Subject: Re: Stipulation and Order-Karpenko
Attachments: S O to allow late filing of Reply (00537116x7A582).doc

Please see attached the executed Stipulation from Mr. Crane.

Thank you,



Victoria Javiel, Paralegal at
Willick Law Group
A Domestic Relations & Family Law Firm
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Phone: (702) 438-4100, ext. 112
Fax: (702) 438-5311
Web: www.willicklawgroup.com
[View Our Newsletters](#)

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Enrique Schaerer, Plaintiff

CASE NO: D-21-628088-D

7 vs.

DEPT. NO. Department U

8 Olena Karpenko, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/20/2021

15 Marshal Willick

marshal@willicklawgroup.com

16 Reception Reception

email@willicklawgroup.com

17 Victoria Javiel

victoria@willicklawgroup.com

18 admin email

email@pecoslawgroup.com

19 Allan Brown

allan@pecoslawgroup.com

20 Paul Lemcke

paul@pecoslawgroup.com

Allan Brown

From: no-reply@efilingmail.tylertech.cloud
Sent: Tuesday, December 21, 2021 11:27 AM
To: Allan Brown
Subject: Notification of Service for Case: D-21-628088-D, ***** for filing Notice of Entry of Stipulation and Order - NTSO (FAM), Envelope Number: 9069127



Notification of Service

Case Number: D-21-628088-D

Case Style: *****

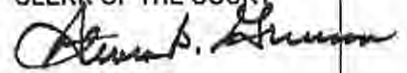
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Filing Details	
Case Number	D-21-628088-D
Case Style	*****
Date/Time Submitted	12/21/2021 11:26 AM PST
Filing Type	Notice of Entry of Stipulation and Order - NTSO (FAM)
Filing Description	Notice of Entry of Stipulation and Order
Filed By	Allan Brown
Service Contacts	: admin email (email@pecoslawgroup.com) Allan Brown (allan@pecoslawgroup.com) Paul Lemcke (paul@pecoslawgroup.com) : Marshal Willick (marshal@willicklawgroup.com) Reception Reception (email@willicklawgroup.com) Victoria Javiel (victoria@willicklawgroup.com)

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1 **RPLY**

2 **Paul A. Lemcke, Esq.**

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9 Email: Paul@pecoslawgroup.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **Enrique Schaerer,**

14 Plaintiff,

15 vs.

16 **Olena Karpenko,**

17 Defendant.

Case No. **D-21-628088-D**

Dept No. **U**

Date of Hearing: January 18, 2022

Time of Hearing: 11:00 a.m.

18 **REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY**
19 **JUDGMENT ON THE ISSUE OF PATERNITY**

20 - AND -

21 **OPPOSITION TO THE COUNTERMOTION FOR FEES AND COSTS**

22 Plaintiff Enrique Schaerer, by and through his attorney Paul A. Lemcke,
23 Esq., of PECOS LAW GROUP, hereby submits his Reply to Defendant Olena
24 Karpenko's Opposition to his Motion for Summary Judgment on the Issue of
25 Paternity. Plaintiff also opposes Defendant's Countermotion for Fees and Costs.

26 ///

1 **POINTS AND AUTHORITIES**

2 **Introduction**

3 Olena's opposition is built on a combination of misplaced vitriol and self-
4 righteous indignation, in the expectation that a well-placed gnashing of teeth and a
5 fundamentally incorrect account of the "facts" will prevail in avoiding the entry of
6 summary judgment on Olena's paternity claim. This Court is now tasked with
7 tuning out the noise and considering the issue of summary judgment on the merits.
8

9 **Facts**

10 Mr. Willick is Olena's third lawyer. The events preceding Mr. Willick's
11 substitution in the case – including a written confirmation sent by Mr. Lemcke to
12 Olena's second attorney (Jason Onello) confirming the acceptance of Mr. Onello's
13 request for a discovery extension to and including September 29, 2021 – are
14 documented in Enrique's motion and original supporting appendix ("Enrique's
15 MSJ Appendix").
16

17 Mr. Willick substituted into the case on September 29, 2021. That same
18 date, Mr. Willick called Mr. Lemcke and informed him that he had not yet been
19 able to read the case file. Mr. Willick asked Mr. Lemcke to permit him to read
20 and get up to speed on the case file, with the intention of *then* promptly discussing
21 the status and prospective handling of the case. Mr. Lemcke agreed. Mr. Willick
22 also asked Mr. Lemcke if he would be available later in the work week of 9/27/21-
23 10/1/21 so that he could then have an informed telephonic discussion of the case
24
25

1 with Mr. Lemcke. Mr. Willick also noted that he was generally aware – through
2 an initial phone call with Olena – that certain discovery responses were needed.¹
3 While Mr. Lemcke signified that he would hold Olena’s responses to the pending
4 discovery in temporary abeyance pending the return call from Mr. Willick (and
5 after Mr. Willick had been able to familiarize himself with the case file in the
6 rapid review window he conveyed), at no time in that phone conversation did Mr.
7 Willick solicit an open-ended extension to respond to the outstanding discovery,
8 nor did Mr. Lemcke offer one.² Moreover, contrary to the allegation specified at
9 page 2, lines 20-22 of Olena’s opposition, the notion that the proposed follow-up
10 telephone call between counsel was to include a discussion of “whether any such
11 discovery was actually warranted” is completely false. To that point, the subject
12 discovery had been properly served a month earlier, and as the Court is aware, had
13 already been extended once by agreement without any objection whatsoever from
14 Olena’s previous counsel as to its validity. *See* Exhibit “2” to Enrique’s MSJ
15 Appendix.
16
17
18

19 . . .

20 . . .

21
22
23 ¹ The discovery requests were comprised of a Request for Admissions, a First Set of Interrogatories, and
a First Request for Production of Documents.

24 ² Mr. Lemcke would never have approved or offered such an open-ended discovery extension without
25 client discussion and authorization. Enrique was not approached with nor did he authorize any such
extension, and he confirmed the above facts with Mr. Lemcke before filing the Motion for Summary
Judgment.

1 The September 29 phone call between Mr. Willick and Mr. Lemcke was the
2 one and only telephone conversation that counsel have ever had on this case. That
3 fact is significant in the wake of an email that Mr. Willick sent to Mr. Lemcke six
4 days later (on October 5, 2021), which reads, in pertinent part:
5

6 Hi Paul,

7 When we spoke, I had hoped everything could be put on hold until I
8 could read the file and we could talk again. Since then, the Order
9 from the hearing has been noticed, and the Interlocutory Decree has
10 been noticed. That set in motion time limits that can't be ignored, so
11 I have drafted and am filing a motion to reconsider/set aside those
12 orders, giving us room to discuss how to proceed.

13 For the reasons set out in the motion, the outstanding discovery is
14 unnecessary, irrelevant, and offensive. It is also moot, as the existing
15 order calls for the records to be produced with or without the release.
16 Nevertheless, I will inquire, follow up, and get back to you on that
17 point.

18 See Exhibit "1" to Enrique's Reply Appendix. (redacting the last two, non-
19 pertinent paragraphs of the email). Thereafter, Mr. Willick never sought to
20 schedule a second phone call with Mr. Lemcke, despite the fact that Mr. Willick's
21 communicated review of the file would have informed him that the discovery
22 responses to Enrique's pending Requests for Admission, First Set of
23 Interrogatories, and First Request for Production of Documents were then long
24 past the response date of September 29, 2021, as confirmed by Mr. Lemcke with
25 Olena's previous counsel, Mr. Onello.
26

1 The following facts are also pertinent and informative of the lack of basis to
2 Olena's bare argument that Enrique's counsel extended her an "open ended
3 extension on the response to all discovery":
4

- 5 ▪ The Court has *twice* denied motions by Olena to stay and/or suspend
6 discovery. See Order After Motion Hearing, entered September 23, 2021,
7 at page 7, lines 14-15; see also Order from the November 10, 2021
8 Hearing, entered November 30, 2021, at page 3, lines 23-27.
- 9 ▪ Olena's Motion to Reconsider, Set Aside, Alter or Amend the Order After
10 Motion Hearing, filed October 4, 2021, requested, *inter alia*, that "all
11 outstanding discovery requests should be ordered on hold until and unless
12 the court determine otherwise." See Motion at 5, lines 17-18. Notably,
13 Olena's Motion to Reconsider, *et al.* was filed five days after the phone
14 call between Mr. Willick and Mr. Lemcke. Footnote #5 immediately
15 following the request to suspend discovery (also at page 5) is spoken in the
16 first person and in reference to Mr. Willick. The footnote states: "*I would*
17 *rather not have to also file discovery motions which should be*
18 *unnecessary, and ask this Court to issue that order, but if the Court for*
19 *some reason requires me to file discovery motions on this point, I will*
20 *reluctantly do so.*" (Italics added.) This statement completely ignores the
21 fact that discovery had been served over thirty (30) days previous pursuant
22 to NRCP 33, NRCP 34, and NRCP 36, and that responses to that discovery
23
24
25

1 were by then not in fact optional – or subject to counsel’s approval – but
2 mandatory. Further, it is noteworthy that nowhere in her filing did Olena
3 assert the existence of a discovery extension of any kind. It is clear that in
4 the absence of a protective order, a party’s attorney is not permitted the
5 right to disregard and/or withhold responses to duly served discovery
6 requests simply because he or she does not approve of them.³

8 LEGAL ARGUMENT

- 9
10 1. No “open ended” discovery extension was granted, and per
11 EDCR 7.50, such a stipulation would have required a writing
12 subscribed by the party (or his or her lawyer) against whom the
13 stipulation is alleged.

14 The bottom line here is that there was no stipulation for a discovery
15 extension, let alone an alleged oral and open-ended one. A discovery extension by
16 agreement is a significant and material legal accommodation. Because such an
17 extension alters the due dates on the 30-day response times on discovery mandated
18 by the Nevada Rules of Civil Procedure – and in the case of Requests for
19 Admission propounded under NRCP 36, stands to modify the due date on
20 potentially dispositive evidentiary facts in the subject action – the required
21 practice is always to reduce any such agreements to a formal stipulation, or to

22
23 ³ By not objecting to the validity of discovery requests within 30 days, and instead asking only for an
24 extension of time to respond, Mr. Onello waived any later objection to them that may be improperly
25 asserted. See, e.g., *Marx v. Kelly, Hart & Hallman*, 929 F.2d 8, 12 (1st Cir. 1991) (“[A] party upon whom
26 a request for discovery is served [must] respond within thirty days, either stating its willingness to comply
or registering its objections. If the responding party fails to make a timely objection, or fails to state the
reason for an objection, he may be held to have waived any or all of his objections.”); *In re U.S.*, 864
F.2d 1153, 1156 (5th Cir. 1989) (“[A]s a general rule, when a party fails to object timely to interrogatories,
production requests, or other discovery efforts, objections thereto are waived.”).

1 confirm them in a subscribed writing. EDCR 7.50, pertaining to stipulations to be
2 in writing or to be entered in court minutes, specifically states:

3 No agreement or stipulation between the parties or their attorneys
4 will be effective unless the same shall, by consent, be entered in the
5 minutes in the form of an order, or unless the same is in *writing*
6 subscribed by the party against whom the same shall be alleged, or by
the party's attorney.

7 (Emphasis added.) *See also* NRCP 29(b), relating to stipulations about discovery
8 procedure.⁴

9 Indeed, written stipulations are the norm throughout the country.
10 *Stipulations*, 4 Williston on Contracts § 8:50 (4th ed. 2021, November 2021
11 Update) (noting that, “[i]n most jurisdictions, either by statute or by rule of court,
12 stipulations *must* be in writing” (emphasis added)).⁵ *See, e.g.*, footnote 5;
13 *Shearrer v. Union Pac. R. Co.*, No. 09-CV-0122-MJR-PMF, 2010 WL 1540113,
14
15

16 ⁴ **Rule 29. Stipulations About Discovery Procedure**

Unless the court orders otherwise, the parties may stipulate that:

17 (a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner
specified — in which event it may be used in the same way as any other deposition; and

18 (b) other procedures governing or limiting discovery be modified — but a stipulation extending the time for
any form of discovery must have court approval if it would interfere with the time set for completing discovery, for
hearing a motion, or for trial.

19 [Amended; effective March 1, 2019.]

20 ⁵ Nevada Rule of Civil Procedure 29(b) is identical to Federal Rule of Civil Procedure 29(b). It likely requires all
21 stipulations to be in writing too. *See* Steven Gensler & Lumen Mulligan, *Rule 29. Stipulations About Discovery*
22 *Procedure*, 1 Federal Rules of Civil Procedure, Rules and Commentary (Feb. 2021 Update) (“Stipulations should
be in writing. Prior to the general restyling of the Federal Rules in December 2007, Rule 29 expressly required a
23 stipulation to be in writing. Courts generally would not enforce a stipulation that was not reduced to writing. Those
courts enforcing oral stipulations generally would do so only where the fact and substance of the stipulation was not
24 in question. The restyled rule makes no mention of a writing requirement. The Advisory Committee’s note claims
that the changes were intended to be stylistic only. . . . Counsel should be cautious and get any out-of-court
stipulations memorialized in some type of writing. First, reducing the stipulation to writing will help to make sure
25 that the parties have actually reached an agreement. Second, the process of writing out the substance of the
agreement and its terms greatly reduces the risk that the parties will overlook or make assumptions about important
details. And third, the writing will provide critical documentation should there later be a disputed about the
existence of the agreement or its terms.” (footnotes omitted)).

1 at *1 (S.D. Ill. Apr. 15, 2010) (noting “parties may stipulate to extensions of
2 discovery deadlines” but “proceed at their own risk in doing so without reducing
3 any agreement to writing”). After all, the burden of establishing the elements of a
4 contract, “including discovery agreements,” is on the party asserting the existence
5 of one. *Bricker v. R & A Pizza, Inc.*, No. 2:10-CV-278, 2011 WL 3941982, at *6
6 (S.D. Ohio Sept. 6, 2011).

8 Olena’s claim that Enrique extended her an “open ended extension on the
9 response to all discovery” in this action fails in the absence of the stipulation
10 required by EDCR 7.50. This rule is precisely the reason that Enrique’s counsel
11 himself confirmed by email the specific discovery extension previously requested
12 by Olena’s second attorney, Mr. Onello, and further documented the newly agreed
13 due date of September 29, 2021. *See* Exhibit “2” to Enrique’s MSJ Appendix.

- 15 2. **Summary judgment is permissible on the issue of paternity. Olena’s argument that summary judgment is not authorized in a child custody or child support matter is irrelevant and inapposite if Enrique is granted summary judgment based on Olena’s conclusive admission that Enrique is not the biological or natural father of her child.**

19 As Enrique’s Motion for Summary Judgment points out, Olena’s failure to
20 respond to his Request for Admission #1 (“RFA #1”) serves to admit that Enrique
21 is not the biological or natural father of her child, and that admission is
22 conclusively established under the terms of NRCP 36(a)(7). Neither child custody
23 nor child support is implicated if Enrique is not the subject minor child’s natural
24

1 father. Instead, as the Court has recognized in this action before, the only
2 immediate issue in this action is the existence or non-existence of paternity.

3 The paternity issue on which Enrique seeks summary judgment is a proper
4 issue for summary judgment, because the dispositive fact established by Olena's
5 failure to respond to RFA #1 is legally conclusive, and thereby amenable to
6 summary judgment. See, e.g., *In re McQuillen v. Hufford*, 466 P.3d 380, 382
7 (Ariz. Ct. App. 2020) (affirming summary judgment of non-paternity, even though
8 genetic testing confirmed moving party was child's biological father, since child
9 "already had a legal father"); *Susan H. v. Jack S.*, 30 Cal. App. 4th 1435, 1439
10 (1994) (affirming trial court that "entered summary judgment in favor of Jack S.
11 and declared his nonpaternity" by virtue of a conclusive evidentiary presumption);
12 *People ex rel. Stockwill v. Keller*, 623 N.E.2d 816, 818 (Ill. App. Ct. 1993)
13 (holding "[s]ummary judgment may be granted on the issue of paternity" where,
14 for example, "admissions on file" show that there is no triable issue and the
15 moving party is entitled to judgment as a matter of law); *Albany Cty. Dep't of Soc.*
16 *Servs. on Behalf of Judy T. v. John T.*, 650 N.Y.S.2d 923, 924 (N.Y. Fam. Ct.
17 1996) (holding summary judgment is "available" in a paternity proceeding); see
18 also *Brezinsky v. Chervinko*, 548 N.E.2d 588, 589 (Ill. App. Ct. 1989) ("[T]he
19 circuit court did not err in entering summary judgment against Chervinko on the
20 paternity issue, reasoning that he was bound by his admissions in the consent form
21 and the June 25, 1985, hearing."); cf. *Jordan v. Knafel*, 823 N.E.2d 1113, 1122

(Ill. App. Ct. 2005) (“Knafel’s counsel only indicated that there was no allegation in the verified pleading that Jordan is the father. However, that statement is not a judicial admission that Jordan is not the father of this child, *which would relieve the opposing party from presenting evidence of its affirmative defense.*” (emphasis added)); *Djeto v. Texas Dep’t of Protective & Regul. Servs.*, 928 S.W.2d 96, 98 (Tex. App. 1996) (“[F]or an enforceable obligation to exist requiring the support of an illegitimate child, there must be a court order, *a judicial admission*, or an unequivocal acknowledgement of paternity.” (emphasis added)).

3. **The conclusive admission established by Olena’s failure to respond to RFA #1 does not create a “discovery” issue, nor a disputed discovery matter to be put before the discovery commissioner, but is clear grounds for a dispositive motion for summary judgment before the District Court Judge.**

Olena’s Opposition suggests, without on-point authority, that Enrique was required to seek sanctions before the Discovery Commissioner before filing the Motion for Summary Judgment. But that is simply not the case. Admissions under NRCP 36 are self-executing. They do not require court permission to implement, nor do they require an extraneous request to impose a discovery sanction. They are automatic in their effect.

Enrique was not required to seek sanctions before the Discovery Commissioner because, “[w]hile Rule 37 authorizes a wide range of sanctions for a party’s failure to make disclosures or cooperate in discovery, Rule 36 provides an *automatic* mechanism for deeming unanswered or belatedly-answered

1 [discovery] requests . . . to be admissions.” *ADM Agri-Indus., Ltd. v. Harvey*, 200
2 F.R.D. 467, 470 (M.D. Ala. 2001) (emphasis added).⁶ Where, as here, Olena
3 failed to respond to discovery requests without permission from Enrique or the
4 Court, the “unanswered requests could have been *automatically* counted as
5 admissions under Rule 36(a).” *Id.* (emphasis added); *see also Smith v. Pac. Bell*
6 *Tel. Co.*, 662 F. Supp. 2d 1199, 1229 (E.D. Cal. 2009) (“Failure to respond to
7 requests for admission results in *automatic* admission of the matters requested. No
8 motion to establish the admissions is needed because [Rule] 36(a) is *self-*
9 *executing.*” (internal quotation marks and alterations omitted; emphases added)).
10
11

12 Again, under NRCP 56(a), the court shall grant summary judgment if the
13 movant shows that there is no genuine issue as to any material fact and the movant
14 is entitled to judgment as a matter of law. On a motion for summary judgment,
15 facts that are not genuinely disputed may be established by admissions. NRCP
16 56(c)(1)(A). The sanction for failure to serve timely answers or objections to the
17 request for admissions is that all matters in the request are deemed admitted.
18 Moreover, “it is well-settled that unanswered requests for admission may be
19 properly relied upon as a basis for granting summary judgment.” *Estate of Adams*
20 *v. Fallini*, 132 Nev. 814, 820, 386 P.3d 621, 625 (2016); *see also Wagner v. Carex*
21 *Investigations & Security, Inc.*, 93 Nev. 627, 630, 572 P.2d 921, 923 (1977) (“It is
22
23

24 ⁶ Since Nevada Rule of Civil Procedure 36 is largely patterned off of Federal Rule of Civil Procedure 36, Nevada
25 courts often look to federal courts in interpreting Rule 36. *See, e.g., Wagner v. Carex Investigations*, 93 Nev. 627,
26 631, 572 P.2d 921, 924 (1977) (noting NRCP 36 “adopts” FRCP 36’s language and citing with approval federal
Advisory Committee Notes); *id.* at 632, 924 (citing with approval Wright & Miller’s *Federal Practice Guide*).
Schaerer v Karpenko

1 settled in this jurisdiction that such admissions may properly serve as the basis for
2 summary judgment against the party who has failed to serve a timely response.”),
3 citing Graham v. Carson-Tahoe Hosp., 91 Nev. 609, 540 P.2d 105 (1975).
4 Wagner establishes that a Rule 36 admission is in the nature of an ***admission in***
5 ***the pleadings***, or a stipulation drafted by counsel for use at trial.
6

7 Olena’s failure to respond to Enrique’s RFA #1 serves to conclusively
8 admit the ultimate issue central to the paternity claim, specifically, that Enrique is
9 not the biological or natural father of her child. That failure to respond does not
10 create a new litigable “discovery” issue, nor a need to obtain the review or
11 approval of the discovery commissioner. Such an admission “leave[s] no room
12 for conflicting inferences, and [it is] dispositive of the case.” Wagner, 93 Nev. at
13 631. Therefore, summary judgment on the issue of paternity by this Court is both
14 necessary and appropriate.
15

16
17 4. **Requests for Admission under NRCP 36 serve the salutary**
18 **purpose of promoting judicial economy and can be a valuable**
time saver for courts and litigants alike.

19 Rule 36’s vital importance has long been recognized by courts and scholars:

20 Through such definition and limitation, admissions promote both
21 efficiency and economy in resolving disputes. ***If a point is conceded,***
22 ***litigants need not expend effort in investigations concerning it nor***
23 ***incur expense in presenting evidence to prove it. Judicial***
24 ***administration is also aided.*** Admissions reduce the time required to
25 try a case. ***Indeed, they often make summary judgment possible.***
26 Finally, admissions encourage litigants to evaluate realistically the
hazards of trial and thus tend to promote settlements.

1 Ted Finman, *The Request for Admissions in Federal Civil Procedure*, 71 Yale L.J.
2 371, 376 (1962) (emphases added; footnotes omitted); *see also, e.g., Conlon v.*
3 *United States*, 474 F.3d 616, 622 (9th Cir. 2007) (recognizing admissions not only
4 “facilitate proof with respect to issues that cannot be eliminated from the case,”
5 but also “narrow the issues by eliminating those that can be,” thereby serving
6 “efficiency in dispensing justice”); *In re Stein*, 43 F. Supp. 845, 847 (N.D. Ill.
7 1942) (“Rule No. 36 has been adopted as a means whereby the trial of a case may
8 be shortened and the issues made clear, *avoiding unnecessary delay and*
9 *expenses*. Thus it may be said to conserve the time of the Court, counsel, litigants
10 and all persons involved in the proceedings.” (emphasis added)); Advisory
11 Committee’s Note, 48 F.R.D. 487, 531-32 (“Rule 36 serves two *vital* purposes,
12 both of which are designed to reduce trial time.” (emphasis added)).
13
14

15 Under Rule 36, Enrique was allowed to request an admission regarding his
16 non-paternity of Olena’s child. *See, e.g., In re Carney*, 258 F.3d 415, 419 (5th
17 Cir. 2001) (“Rule 36 allows litigants to request admissions as to a broad range of
18 matters, including ultimate facts, as well as applications of law to fact.”). That
19 request was properly served, and RFA #1 was then conclusively admitted when
20 Olena failed to timely respond to the same.⁷
21

22 ...
23

24 ⁷ Olena’s opposition unsuccessfully tries to make some legal significance of the fact that after twice
25 stating (in both her Answer and her Amended Answer) that Olena was “without sufficient knowledge” to
26 answer Enrique’s claim of non-paternity, Mr. Crane represented during the November 10 motion hearing
that Olena now *does* contend that Enrique is the father of her child. Notwithstanding that fact, Enrique’s
RFA #1 had as of that date not been responded to for a period of six (6) weeks.

1 Relatedly, several background facts are worth emphasizing: (1) in medical
2 records Enrique obtained pursuant to Olena's HIPAA release, Enrique is listed as
3 the emergency contact and insured party but not as the child's father (notably, that
4 section is left blank) [Bates ES18-87 of Enrique's 12/9/21 Disclosures, especially
5 Bates ES52]; (2) on the child's birth certificate, Enrique is not listed as the father
6 (significantly, someone else is listed as the father) [Bates 1-3OK of Olena's
7 10/5/21 Disclosures]; and (3) Olena failed to allege Enrique's paternity through
8 two prior sets of lawyers and has belatedly done so only through her third set of
9 lawyers (she has never done so under penalty of perjury). It also appears Olena
10 has been operating in bad faith and playing games. As a recent example, she
11 produced the HIPAA release only after an Order to Show Cause was issued and,
12 when she finally did so, the release she produced on November 10, 2021 was
13 already 5 days expired when it was produced—having been signed November 3
14 and interlineated with a newly added expiration date of November 5. Her failure
15 to respond to RFA #1, among all of Enrique's other discovery requests, as well as
16 her attempt to misrepresent the relevant record of her Rule 36 admission, are part
17 and parcel of a broader pattern of bad faith and gamesmanship, and she should not
18 be allowed to multiply the issues in this case and otherwise expand and drag out
19 this litigation any further.

20 For the foregoing reasons, summary judgment on the ultimate issue of
21 paternity is now appropriate.

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DATED this 5 day of January, 2022.

Stefan

Paul A. Lemcke, Esq.
Nevada Bar No. 003466
PECOS LAW GROUP
8925 South Pecos Road, Suite 14A
Henderson, Nevada 89074
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that the foregoing "REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF PATERNITY - AND - OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR FEES AND COSTS" in the above-captioned case was served this date as follows:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP (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 the 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 attorney(s) /person(s) listed below at the address:

Marshal Willick, Esq.	marshal@willicklawgroup.com
Reception	email@willicklawgroup.com
Victoria Javiel	victoria@willicklawgroup.com

DATED this 5th day of January, 2022.



Allan Brown
An employee of PECOS LAW GROUP

Allan Brown

From: no-reply@efilingmail.tylertech.cloud
Sent: Wednesday, January 5, 2022 4:38 PM
To: Allan Brown
Subject: Notification of Service for Case: D-21-628088-D, ***** for filing Reply - RPLY (FAM), Envelope Number: 9133684



Notification of Service

Case Number: D-21-628088-D

Case Style: *****

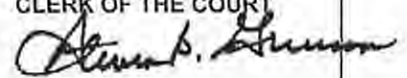
Envelope Number: 9133684

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	D-21-628088-D
Case Style	*****
Date/Time Submitted	1/5/2022 4:37 PM PST
Filing Type	Reply - RPLY (FAM)
Filing Description	Reply to Defendant's Opposition and Opposition to Defendant's Countermotion
Filed By	Allan Brown
Service Contacts	: admin email (email@pecoslawgroup.com) Allan Brown (allan@pecoslawgroup.com) Paul Lemcke (paul@pecoslawgroup.com) : Marshal Willick (marshal@willicklawgroup.com) Reception Reception (email@willicklawgroup.com) Victoria Javiel (victoria@willicklawgroup.com)

Document Details

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1 **EXHS**

2 **Paul A. Lemcke, Esq.**

3 Nevada Bar No. 003466

4 **PECOS LAW GROUP**

5 8925 South Pecos Road, Suite 14A

6 Henderson, Nevada 89074

7 Telephone: (702) 388-1851

8 Facsimile: (702) 388-7406

9 Email: Paul@pecoslawgroup.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **Enrique Schaerer,**

14 Plaintiff,

15 vs.

16 **Olena Karpenko,**

17 Defendant.

Case No. **D-21-628088-D**

Dept No. **U**

Date of Hearing: **January 18, 2022**

Time of Hearing: **11:00 a.m.**

18 **EXHIBIT APPENDIX TO REPLY TO OPPOSITION TO PLAINTIFF'S MOTION FOR**
19 **SUMMARY JUDGMENT ON THE ISSUE OF PATERNITY**

20 Plaintiff Enrique Schaerer, by and through his attorney of record Paul A.
21 Lemcke, Esq., of Pecos Law Group submits his *Exhibit Appendix to Reply to*
22 *Opposition to Plaintiff's Motion for Summary Judgment on the Issue of Paternity.*

23 ///

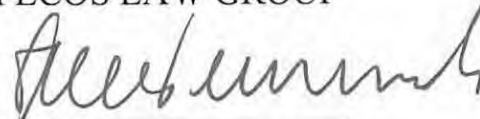
24 ///

25 ///

No.	Description	Bates Label Nos.
1	Email from Mr. Willick to Mr. Lemcke dated October 5, 2020	ES0089

DATED this 5 day of January, 2021.

PECOS LAW GROUP



Paul A. Lemcke, Esq.

Nevada Bar No. 003466

8925 South Pecos Road, Suite 14A

Henderson, Nevada 89074

Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that on this 5th day of January
3 2022, the *Exhibit Appendix to Reply to Opposition to Plaintiff's Motion for*
4 *Summary Judgment on the Issue of Paternity* in the above-captioned case was
5 served as follows:

- 6 ☒ pursuant to NEFCR 9, by mandatory electronic service through the
7 Eighth Judicial District Court's electronic filing system;
- 8 ☐ pursuant to NRCP 5, by placing the same to be deposited for mailing
9 in the United States Mail, in a sealed envelope upon which first class
10 postage was prepaid in Las Vegas, Nevada;
- 11 ☐ pursuant to EDCR 7.26 to be sent via facsimile and/or email, by duly
12 executed consent for service by electronic means;
- 13 ☐ by hand-delivery with signed Receipt of Copy.

14 To individual(s) listed below at the address:

15 Marshal Willick, Esq. marshal@willicklawgroup.com
16 Reception email@willicklawgroup.com
17 Victoria Javiel victoria@willicklawgroup.com


18
19 
20 **Allan Brown,**
21 An employee of PECOS LAW GROUP
22
23
24
25
26

EXHIBIT 1

EXHIBIT 1

Paul Lemcke

From: Marshal Willick <marshal@willicklawgroup.com>
Sent: Tuesday, October 5, 2021 9:18 AM
To: Paul Lemcke
Cc: Victoria Javiel; Richard Crane
Subject: RE: Schaerer v. Karpenko - Order of 9/23/21

Hi Paul:

When we spoke, I had hoped everything could be put on hold until I could read the file and we could talk again. Since then, the Order from hearing has been noticed, and the Interlocutory Decree has been noticed. That set in motion time limits that can't be ignored, so I have drafted and am filing a motion to reconsider/set aside those orders, giving us room to discuss how to proceed.

For the reasons set out in the motion, the outstanding discovery is unnecessary, irrelevant, and offensive. It is also moot, as the existing order calls for the records to be produced with or without the release. Nevertheless I will inquire, follow up, and get back to you on that point.

[REDACTED]

[REDACTED]

Marshal

ES0089
ES0049

Allan Brown

From: no-reply@efilingmail.tylertech.cloud
Sent: Wednesday, January 5, 2022 4:38 PM
To: Allan Brown
Subject: Notification of Service for Case: D-21-628088-D, ***** for filing Exhibits - EXHS (FAM), Envelope Number: 9133684



Notification of Service

Case Number: D-21-628088-D

Case Style: *****

Envelope Number: 9133684

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	D-21-628088-D
Case Style	*****
Date/Time Submitted	1/5/2022 4:37 PM PST
Filing Type	Exhibits - EXHS (FAM)
Filing Description	Exhibit Appendix to Reply and Opposition
Filed By	Allan Brown
Service Contacts	: Allan Brown (allan@pecoslawgroup.com) Paul Lemcke (paul@pecoslawgroup.com) admin email (email@pecoslawgroup.com) : Marshal Willick (marshal@willicklawgroup.com) Reception Reception (email@willicklawgroup.com) Victoria Javiel (victoria@willicklawgroup.com)

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1 **MOT**
2 WILICK LAW GROUP
3 MARSHAL S. WILICK, ESQ.
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5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
8 email@willicklawgroup.com
9 Attorney for Defendant
10

11 **DISTRICT COURT**
12 **FAMILY DIVISION**
13 **CLARK COUNTY, NEVADA**
14

15 ENRIQUE SCHAEERER,
16
17 Plaintiff,

18 vs.

19 OLENA KARPENKO,
20
21 Defendant.

CASE NO: D-21-628088-D
DEPT. NO: U

DATE OF HEARING:
TIME OF HEARING:

22 ORAL ARGUMENT

Yes X No

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

28 **MOTION FOR NRCP RULE 11 SANCTIONS**

I. INTRODUCTION

Enrique's *Motion for Summary Judgment* is patently frivolous and filed for the improper purposes of fee churning and to harass Olena. Some of the more obvious reasons for that observation are set out in the *Opposition and Countermotion*. Presuming the *Motion* is not withdrawn, this Court should impose Rule 11 sanctions, on this *Motion* or *sua sponte*.

1 More technically, this *Motion* is required because the filing:
2 (1) is being presented for an improper purpose, as it is intended to cause
3 unnecessary delay and needless increase in the cost of litigation;
4 (2) the claims, defenses, and other legal contentions therein are not warranted
5 by existing law and are frivolous;
6 (3) the allegations and other factual contentions do not have evidentiary
7 support and are not likely to have evidentiary support after a reasonable opportunity
8 for further investigation or discovery; and
9 (4) the denials of factual contentions are not warranted on the evidence and are
10 not reasonably based on information or belief.

11 An award of sanctions is warranted – targeted to address the actual party
12 causing it, either the party, counsel, or both.
13

14 POINTS AND AUTHORITIES

15 II. FACTS

16 The facts relating to this motion are detailed in the opposition to the pending
17 motion, which are incorporated here as if set out in full.
18

19 III. LEGAL ARGUMENT

20 A. The Rule and Its Violation

21 NRCP 11 provides in relevant part:

22 Signing Pleadings, Motions, and Other Papers; Representations to the Court;
23 Sanctions

23

24 (b) Representations to the Court. By presenting to the court a pleading,
25 written motion, or other paper — whether by signing, filing, submitting,
26 or later advocating it — an attorney or unrepresented party certifies that
27 to the best of the person’s knowledge, information, and belief, formed
28 after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as
to harass, cause unnecessary delay, or needlessly increase the
cost of litigation;

1 (2) the claims, defenses, and other legal contentions are
2 warranted by existing law or by a nonfrivolous argument for
3 extending, modifying, or reversing existing law or for
4 establishing new law;

5 (3) the factual contentions have evidentiary support or, if
6 specifically so identified, will likely have evidentiary support
7 after a reasonable opportunity for further investigation or
8 discovery; and

9 (4) the denials of factual contentions are warranted on the
10 evidence or, if specifically so identified, are reasonably based on
11 belief or a lack of information.

12 (c) Sanctions.

13 (1) In General. If, after notice and a reasonable opportunity to
14 respond, the court determines that Rule 11(b) has been violated,
15 the court may impose an appropriate sanction on any attorney,
16 law firm, or party that violated the rule or is responsible for the
17 violation. Absent exceptional circumstances, a law firm must be
18 held jointly responsible for a violation committed by its partner,
19 associate, or employee.

20 (2) Motion for Sanctions. A motion for sanctions must be made
21 separately from any other motion and must describe the specific
22 conduct that allegedly violates Rule 11(b). The motion must be
23 served under Rule 5, but it must not be filed or be presented to
24 the court if the challenged paper, claim, defense, contention, or
25 denial is withdrawn or appropriately corrected within 21 days
26 after service or within another time the court sets. If warranted,
27 the court may award to the prevailing party the reasonable
28 expenses, including attorney fees, incurred for presenting or
opposing the motion.

(3) On the Court's Initiative. On its own, the court may order an
attorney, law firm, or party to show cause why conduct
specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule
must be limited to what suffices to deter repetition of the
conduct or comparable conduct by others similarly situated. The
sanction may include nonmonetary directives; an order to pay a
penalty into court; or, if imposed on motion and warranted for
effective deterrence, an order directing payment to the movant
of part or all of the reasonable attorney fees and other expenses
directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not
impose a monetary sanction:

(A) against a represented party for violating Rule
11(b)(2); or

1 (B) on its own, unless it issued the show-cause order
2 under Rule 11(c)(3) before voluntary dismissal or
3 settlement of the claims made by or against the party that
4 is, or whose attorneys are, to be sanctioned.

5 (6) Requirements for an Order. An order imposing a sanction
6 must describe the sanctioned conduct and explain the basis for
7 the sanction.

8

9 The current “*Motion for Summary Judgment*” has nothing to do with Enrique’s
10 legitimate interests and seeks conflict and expenditure of time and money for its own
11 sake; seeking to needlessly increase the cost of litigation is a definitional “improper
12 purpose.” The “merits” of the dispute are key to the resolution of this case and
13 Enrique – through counsel – is doing everything in his power to avoid the Court
14 finding the truth – that there is no legitimate doubt that he is the father of the infant
15 at issue.

16 Opposing counsel granted an open end continuance on discovery when we
17 entered the case. That continuance was never rescinded and thus the responses to
18 discovery are not yet due. Even if that was not true and we actually were in default
19 of some deadline – and we are not – under the tenants of *Blanco*,¹ child custody and
20 child support claims *may not* be resolved by default as a sanction for discovery
21 violations because the child’s best interest is paramount and compels a decision on
22 the merits.

23 Mr. Lemcke is an experienced family law practitioner and does or should know
24 this essential point in Nevada law.² To file a *Motion for Summary Judgment* in a
25 case that is just about child custody and child support is frivolous on its face and
26 merits imposition of sanctions *sua sponte* even in the absence of a motion like this
27 one.

28

29 ¹ *Blanco v. Blanco*, 129 Nev. 723, 311 P.3d 1170 (2013).

² Enrique is *also* a licensed Nevada attorney and should understand the basics of Nevada law
including what constitutes a violation of NRCPC Rule 11.

1 Lastly, and the Court is well versed in this procedural element, Mr. Lemcke is
2 required to seek relief for any perceived discovery violations with the Discovery
3 Commissioner before bringing it before this Court.³

4 It is clear that the claims “and other legal contentions” made in the *Motion*
5 were “not warranted by existing law and ... frivolous” by failing to cite to the
6 controlling law and by failing to advise the Court that he had granted an open ended
7 extension to the responses to discovery.

8 At minimum, this Court should demand that the “attorney . . . show cause why
9 conduct specifically described in the order has not violated Rule 11(b).” In other
10 words, get a sufficient explanation of why the funds expended on both sides for the
11 *Motion* are warranted in light of the established case law. We expect a robust tap
12 dance in response, but there *is* no legitimately satisfactory answer to the question,
13 because the *purpose* of the *Motion* filing was wasted expense.

14
15 **B. Targeting of Sanctions**

16 An important question is what “suffices to deter repetition of the conduct or
17 comparable conduct by others similarly situated.”

18 For reasons detailed in the *Opposition and Countermotion*, this Court is
19 required to determine the actual paternity in this case. Attempting to use a procedural
20 claim to resolve custody and support is an egregious abuse of process and can never
21 be in the best interest of the child.

22 From the point of view of Mr. Lemcke, he has been paid thousands of dollars
23 with the objective of starving Olena out at the cost of the truth as to the paternity of
24 the child and the child’s future support. His current filing has nothing whatever to
25

26 ³ See EDCR 5.602(a), “Unless otherwise ordered, all discovery disputes (except disputes
27 presented at a pretrial conference or at trial) must first be heard by the discovery hearing master.”
28 We are confident that the Discovery Commissioner would not only deny his request for relief under
Blanco, but would find that his granting of an extension to the responses to discovery negate any
claims he is making.

1 do with looking out for the best interest of the child, only to assist Enrique in
2 avoiding a finding of paternity. This is nakedly litigation for the purpose of litigation
3 to churn fees and to financially harm Olena.

4 EDCR 7.60 provides for imposition of sanctions against an attorney or litigant,
5 consisting of “fines, costs, or attorney’s fees” when the person charged is found to
6 have increased costs by over-litigating “unreasonably and vexatiously.” The same
7 phrase is used in NRS 7.085, which was intended to deter abuse of the legal system,
8 as a test for holding a lawyer *personally* responsible for costs, expenses, and fees.
9 In the alternative, the statute is to be applied upon a finding that litigation was not
10 “well-grounded in fact” or warranted by law.

11 Accordingly, and for the reasons set out by the Nevada Legislature in *enacting*
12 NRS 7.085,⁴ the sanctions to be imposed should be at least jointly against counsel
13 directly, because that result is the *only* thing that will provide a motivation to Mr.
14 Lemcke to constrain litigation to the legitimate issues of this case. Anything else will
15 be taken as license to make as much useless noise as possible for the purpose of
16 provoking responses and ginning up the billable hours to the maximum possible
17 degree.

18
19
20 ⁴ NRS 7.085 Payment of additional costs, expenses and attorney’s fees by attorney who
files, maintains or defends certain civil actions or extends civil actions in certain circumstances.

21 1. If a court finds that an attorney has:

22 (a) Filed, maintained or defended a civil action or proceeding in any court in this State and such
action or defense is not well-grounded in fact or is not warranted by existing law or by an argument
23 for changing the existing law that is made in good faith; or

24 (b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this
State, the court shall require the attorney personally to pay the additional costs, expenses and
attorney’s fees reasonably incurred because of such conduct.

25 2. The court shall liberally construe the provisions of this section in favor of awarding costs,
expenses and attorney’s fees in all appropriate situations. It is the intent of the Legislature that the
26 court award costs, expenses and attorney’s fees pursuant to this section and impose sanctions
pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish
27 for and deter frivolous or vexatious claims and defenses because such claims and defenses
28 overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase
the costs of engaging in business and providing professional services to the public.

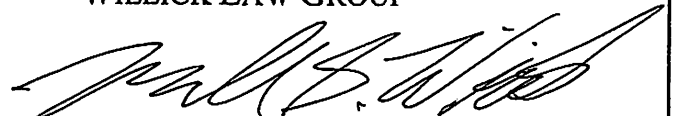
1 **IV. CONCLUSION**

2 Under NRCP 11, by placing his signature on the *Motion*, Mr. Lemcke vouched
3 for it. He knew perfectly well upon filing that it was frivolous and unwarranted. But
4 it consumed billable hours for him and forces us to bill Olena, which was the only
5 real consideration.

6 Both NRCP 11 and NRS 7.085 are properly invoked here. Sanctions, directly
7 targeted against opposing counsel as well as his client are warranted and necessary
8 to prevent continuation of the behavior seen so far and into the future.

9
10 **DATED** this 15th day of December, 2021.

11
12 Respectfully Submitted By:
13 **WILLICK LAW GROUP**

14 

15 **MARSHAL S. WILLICK, ESQ.**
16 Nevada Bar No. 2515
17 3591 E. Bonanza Rd., Suite 200
18 Las Vegas, Nevada 89110
19 (702) 438-4100
20 Attorneys for Defendant
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DECLARATION OF ATTORNEY

Marshal S. Willick, Esq., being first duly sworn, deposes and says:

1. I, Marshal S. Willick, Esq., declare that I am competent to testify to the facts contained in the preceding filing.
2. I am an attorney duly licensed to practice law in the State of Nevada; I am the principal of the WILLICK LAW GROUP; and I am one of the attorneys that represent Defendant, Olena Karpenko.
3. I have read the preceding filing, and it is true to best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.
4. The factual averments contained in the preceding filing are incorporated herein as if set forth in full.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

EXECUTED this 15th day of December, 2021.



MARSHAL S. WILICK, ESQ.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 15th day of December, 2021, I caused the above and foregoing document 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.
- [] By First Class, Certified U.S. Mail.

To the address, email address, and/or facsimile number indicated below:

Paul A. Lemcke, Esq.
Pecos Law Group
8925 South Pecos Road, Suite 14A
Henderson, Nevada 89074
paul@pecoslawgroup.com
Attorney for Plaintiff

/s/ Victoria Javiel
An Employee of the WILICK LAW GROUP

P:\wp19\KARPENKO,ODRAFTS\00535404 WPD\c

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ENRIQUE SCHAEERER,
Plaintiff,

-v.-

OLENA KARPENKO,
Defendant,

Case No. D-21-628088-D

Department U

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-Or-
☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
☒ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
☐ Other Excluded Motion (must specify) _____.

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

- ☒ **\$0** The Motion/Opposition being filed with this form is **not** subject to the \$129 or the \$57 fee because:
☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-Or-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-Or-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

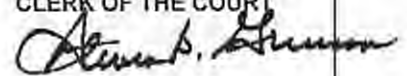
The total filing fee for the motion/opposition I am filing with this form is:

☒ **\$0** ☐ **\$25** ☐ **\$57** ☐ **\$82** ☐ **\$129** ☐ **\$154**

Party filing Motion/Opposition: Olena Karpenko Date: 1/5/2022

Signature of Party or Preparer: Justin K. Johnson at the Willick Law Group

Date Rec'd: 12-05-21
Calendared:
CC to Client: M
Atty Rec'd: PL



1 **OPP**

2 **Paul A. Lemcke, Esq.**

3 Nevada Bar No. 003466

4 PECOS LAW GROUP

5 8925 South Pecos Road, Suite 14A

6 Henderson, Nevada 89074

7 Telephone: (702) 388-1851

8 Facsimile: (702) 388-7406

9 Email: Paul@pecoslawgroup.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **Enrique Schaerer,**

14 Plaintiff,

15 vs.

16 **Olena Karpenko,**

17 Defendant.

Case No. **D-21-628088-D**

Dept No. **U**

Date of Hearing: **February 22, 2022**

Time of Hearing: **3:30 p.m.**

18 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S**
19 **MOTION FOR N.R.C.P. RULE 11 SANCTIONS**

20 Plaintiff **Enrique Schaerer**, by and through his attorney **Paul A. Lemcke,**
21 **Esq.**, of PECOS LAW GROUP, hereby opposes Defendant's motion for NRCP Rule
22 11 sanctions.

23 ...


24 ...

25 ...

1 This Opposition is made and based on all the papers and pleadings on file
2 herein, the Points and Authorities submitted herewith, and the argument as may be
3 adduced at the hearing of this matter.

4 DATED this 19 day of January, 2022.

6 PECOS LAW GROUP

7 

8 **Paul A. Lemcke, Esq.**

9 Nevada Bar No. 003466

10 8925 S. Pecos Rd., Suite 14A

11 Henderson, Nevada 89074

12 (702) 388-1851

13 Attorney for Plaintiff

14 **POINTS AND AUTHORITIES**

15 Plaintiff incorporates by reference "*Plaintiff's Motion for Summary*
16 *Judgment on the Issue of Paternity*," filed November 24, 2021, and his "*Reply to*
17 *Defendant's Opposition to Plaintiff's Motion for Summary Judgment on the Issue*
18 *of Paternity and Opposition to the Countermotion for Fees and Costs*," filed
19 January 5, 2022. The facts and legal arguments contained in those motion papers
20 are central to this Opposition, and are incorporated here by this reference as if set
21 forth in full.

22 ...

23 ...

24 ...

1 Make no mistake – Olena’s motion for sanctions is really an intrinsically
2 defensive motion. It seeks to use the perceived extremity of a request for Rule 11
3 sanctions in an ill-conceived attempt to gin up doubt about what *actually* occurred
4 here. The Court must recognize the motion for what it is.
5

6 At no time was an open-ended extension on Olena’s discovery responses
7 either offered or requested. The subject discovery had been properly served over a
8 month earlier, and had already been extended once by agreement with Olena’s
9 former counsel, Mr. Onello, with that extension agreement memorialized by Mr.
10 Lemcke in an email to Mr. Onello. *See* Exhibit “2” to Enrique’s MSJ Appendix.
11 That occurred because pursuant to EDCR 7.50, such stipulations are required to be
12 in a writing, subscribed by the party against whom the agreement is alleged, or by
13 that party’s lawyer. Olena’s claim that Enrique extended her an “open ended
14 extension on the response to all discovery” in this action fails in the absence of the
15 stipulation mandated by EDCR 7.50. Enrique confirmed the above with counsel
16 before proceeding with the motion for summary judgment once it became clear
17 that Olena and her counsel intended to disregard her discovery obligations,
18 multiply disputed issues, and needlessly prolong this litigation.
19

20
21 Enrique’s motion and reply also thoroughly addressed the false notion that
22 he was required to seek sanctions before the Discovery Commissioner before
23 filing the Motion for Summary Judgment. To the contrary, admissions under
24 NRCP 36 are self-executing. They do not require court permission to implement,
25

1 nor do they require an extraneous request to impose a discovery sanction. They
2 are automatic in their effect. Moreover, Nevada case law is clear and unequivocal
3 that unanswered requests for admission may be properly relied upon as a basis for
4 granting summary judgment. This includes paternity issues, as demonstrated in
5 the reply. The case for the imposition of summary judgment – on the the ultimate
6 issue central to the paternity claim, and specifically, that Enrique is not the
7 biological or natural father of Olena’s child – is clear.

9 Olena alleges (without evidence) that Enrique’s motion “seeks conflict and
10 expenditure of time and money for its own sake.” These bare statements couldn’t
11 be more conclusory and self-serving. The fact that Olena and her counsel despise
12 and intend to villainize Enrique is open and obvious. It does not change the fact
13 that Enrique’s well-supported motion papers fully and fairly comply with NRCP
14 11(b), and that the claims and legal contention specified therein are warranted by
15 existing law, as well as applicable local court rules. If anyone should be subject to
16 NRCP Rule 11 penalties, it is Olena’s counsel. *E.g.*, Restatement (Third) of the
17 Law Governing Lawyers § 110 (2000) (“A lawyer may not . . . fail to make
18 reasonably diligent effort to comply with a proper discovery request of another
19 party . . .”).

22 . . .

24 . . .

1 For all of the foregoing reasons, Olena's motion for NRCP Rule 11
2 sanctions should be summarily denied.

3 DATED this 19 day of January, 2022.

4
5 PECOS LAW GROUP

6 

7 **Paul A. Lemcke, Esq.**

8 Nevada Bar No. 003466

9 PECOS LAW GROUP

10 8925 South Pecos Road, Suite 14A

11 Henderson, Nevada 89074

12 (702) 388-1851

13 Attorney for Plaintiff

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CERTIFICATE OF MAILING

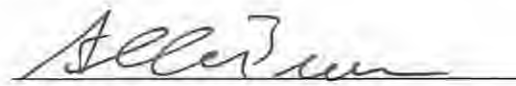
Pursuant to NRCP 5(b), I hereby certify that the foregoing **Plaintiff's Opposition to Defendant's Motion for NRCP Rule 11 Sanctions** in the above-captioned case was served this date as follows:

- ☒ pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP (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 the 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 attorney(s) /person(s) listed below at the address:

Marshal Willick, Esq.	marshal@willicklawgroup.com
Reception	email@willicklawgroup.com
Victoria Javiel	victoria@willicklawgroup.com

DATED this 19th day of January, 2022.


Allan Brown
An employee of PECOS LAW GROUP

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ENRIQUE SCHAEFER

Plaintiff/Petitioner

v.

OLENA KARPENKO

Defendant/Respondent

Case No.

D-21-628088.12

Dept.

U

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.

-OR-

☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:

☒ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☐ Other Excluded Motion (must specify) _____.

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

☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:

☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.

-OR-

☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ \$57 The Motion/Opposition being filed with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition:

ENRIQUE SCHAEFER

Date

1/19/2022

Signature of Party or Preparer

Allegan

ES0069

Allan Brown

From: no-reply@efilingmail.tylertech.cloud
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Subject: Notification of Service for Case: D-21-628088-D, ***** for filing Opposition - OPPS (FAM), Envelope Number: 9206735



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Case Style: *****

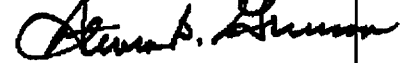
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Case Number	D-21-628088-D
Case Style	*****
Date/Time Submitted	1/19/2022 4:45 PM PST
Filing Type	Opposition - OPPS (FAM)
Filing Description	Plaintiff's Opposition to Defendant's Motion for NRCP Rule 11 Sanctions
Filed By	Allan Brown
Service Contacts	: admin email (email@pecoslawgroup.com) Allan Brown (allan@pecoslawgroup.com) Paul Lemcke (paul@pecoslawgroup.com) : Marshal Willick (marshal@willicklawgroup.com) Reception Reception (email@willicklawgroup.com) Victoria Javiel (victoria@willicklawgroup.com)

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3 MARSHAL S. WILICK, ESQ.
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5 3591 E. Bonanza Road, Suite 200
6 Las Vegas, NV 89110-2101
7 Phone (702) 438-4100; Fax (702) 438-5311
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9 Attorney for Defendant

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

9 ENRIQUE SCHAEERER,
10 Plaintiff,

11 vs.

12 OLENA KARPENKO,
13 Defendant.

CASE NO: D-21-628088-D
DEPT. NO: U

DATE OF HEARING: 2/22/2022
TIME OF HEARING: 3:30 p.m.

14
15 **REPLY TO**
16 **"PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR**
17 **N.R.C.P. RULE 11 SANCTIONS"**
18

19 **I. INTRODUCTION**

20 The expected "robust tap dance" in response to our Rule 11 *Motion* has been
21 filed as anticipated. The points within it were knowingly frivolous when made. Rule
22 11 Sanctions should be imposed.
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POINTS AND AUTHORITIES

II. STATEMENT OF FACTS

The Court is well aware of the facts of this case, although they have been repeatedly misrepresented by Enrique – as when he continues to rail about Olena’s “secret” flight back to Ukraine – after he kicked her out of the house, told her to leave, drove her to the airport himself, and denied any kind of material, legal immigration, or personal support to his pregnant wife.¹

For the relevant facts concerning this *Reply* we ask the Court to refer to our prior filings, which are incorporated here by reference.

III. REPLY

A. Plaintiff’s Opposition to NRCP 11 Sanctions is Baseless

There are few substantive points in the *Opposition*, which need not be long belabored.

First, Enrique falsely claims (at 3) that agreements between counsel must be placed on the record under EDCR 7.50. That has never been the law, as the Nevada Supreme Court made quite clear in approving the settlement of an entire case by counsel, despite one party’s attempted after-the-fact renegeing, in *Phung*.²

In fact, Nevada Rule of Professional Conduct 3.2 explicitly permits counsel, without even seeking client consent, to agree to any “accommodation, such as an extension of time.” In the 40 years I have practiced law in Nevada, honorable counsel have done so by phone without requiring the use of confirming letters or other

¹ As noted in prior filings, Olena texted Enrique’s father, Marcel Schaerer her departure specifics three weeks in advance, shortly after Enrique demanded she leave.

² *Phung v. Doan*, No. 69030, Order Affirming in Part, Reversing in Part, and Remanding (Unpublished Disposition May 10, 2018); see also *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005); *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012).

1 documentation of any kind – the few that betray such agreements usually become
2 known pretty quickly, and are treated thereafter as the pariahs they prove themselves
3 deserving of being. Such verbal agreements were at the heart of *Phung*, since all
4 counsel involved knew and trusted one another to abide by their verbal agreements;
5 that kind of trust and why it should be encouraged by the bench was the focus of the
6 oral argument.

7 Enrique falsely claims without support (at 4) that a discovery finding that he
8 is not the father of the infant at issue, thereby concluding claims of paternity and child
9 support, would somehow not be “case-concluding” sanctions under *Blanco*,³ the
10 facial illogic of which assertion defies further discussion.

11
12 **B. What *Should* Have Happened Under the Local Rules**

13 Before proceeding with the baseless motion for summary judgment, Mr.
14 Lemcke was required under EDCR 5.501 to call or send an email and say something
15 like “Where is that overdue discovery?” To which I would have responded “You
16 granted me an indefinite extension – are you revoking it?” He would then have said
17 either that he was indeed revoking it, or denied ever granting it, at which time we
18 would have agreed to “remember it differently” and I would immediately have
19 directed staff to begin preparation of the discovery responses, since, either way, there
20 was no further extension.

21 It is worth noting that EDCR 5.501 is mandatory – the attempt to resolve the
22 question was required before the inopportune motion was filed. And courts are
23 encouraged to impose sanctions when – as here – that duty has been deliberately
24 ignored in hopes of taking procedural advantage.

25 To be a whole lot more charitable than appears to be warranted, there was a
26 “miscommunication” on the matter of the indefinite extension – which is just the kind
27

28

³ *Blanco v. Blanco*, 129 Nev. 723, 311 P.3d 1170 (2013).

1 of thing EDCR 5.501 is designed to prevent becoming motion practice. While the
2 entire proceeding from Enrique on this issue is smarmy, it cannot be denied that there
3 is no indefinite extension any longer being offered, so the requested discovery
4 responses are being, or have been, provided.

5
6 **C. Why This Whole “Discovery” Dispute is Misguided**

7 The entire premise of Enrique’s attempt to “lawyer” his way to a false finding
8 of non-paternity of his infant child is wrong, and he knows it.

9 The point to any issue of this kind is the actual prejudice to the other side, and
10 we have made it absolutely clear from the moment we entered this case that there is
11 no doubt whatsoever in Olena’s mind that *Enrique is the father of the child*. There
12 is zero chance that anyone could have been “misled” by anything to believe
13 otherwise.

14 We will presume that Mr. Lemcke will continue to “not recall” granting the
15 indefinite extension – which I clearly *do* remember and recorded in my notes, which
16 is why no due date was calendared. If despite *Blanco*, this Court was inclined to
17 make any ruling on the discovery, then we officially move to withdraw any such
18 “admissions.”

19 Specifically, this Court has discretion to grant that request and the rules are
20 designed to eliminate any potential procedural trap so as to permit the matter to be
21 decided on the merits. Under NRCP 36(b),

22 A matter admitted under this rule is conclusively established unless the court,
23 on motion, permits the admission to be withdrawn or amended. Subject to
24 Rule 16(d)-(e), the court may permit withdrawal or amendment if it would
25 promote the merits of the action and if the court is not persuaded that it would
26 prejudice the requesting party in maintaining or defending the action on the
27 merits. An admission under this rule is not an admission for any other purpose
28 and cannot be used against the party in any other proceeding.

1 And there is guidance as to how that discretion is to be applied. The Court
2 must undertake a two part test before granting or denying the motion. The leading
3 case on this issue is the federal case of *Conlon*,⁴ which tells a court to grant such a
4 motion if “the presentation of the merits of the action will be subserved,” and “the
5 party who obtained the admission fails to satisfy the court that withdrawal or
6 amendment will prejudice that party in maintaining the action or defense on the
7 merits.”⁵ Both conditions are satisfied here.

8 What is at issue is Enrique’s paternity, and thus his obligation to pay child
9 support. That ultimate issue has been in contest since the beginning of the case. To
10 now deem Olena’s repeated denial of his claim of non-paternity to be deemed
11 “admitted” would be contrary to the purpose of Rule 36(b) which first is to ascertain
12 if the presentation of the merits would be subserved. Granting of the Motion to
13 Withdraw the Admissions would facilitate a presentation of the merits of matter, as
14 opposed to a denial which would eliminate a determination of the merits.

15 As the *Conlon* court stated, “The rule is not to be used in an effort to ‘harass
16 the other side’ or in the hope that a party’s adversary will simply concede essential
17 elements.”⁶ What Enrique seeks is exactly what the court in *Hadley*⁷ stated should
18 never be done: “The first half of the test in Rule 36(b) is satisfied when upholding the
19 admissions would practically eliminate any presentation of the merits of the case.”⁸
20
21

22 ⁴ *Conlon v. United States* 474 F.3d 616 (9th Cir. 2007). Federal Rule of Civil Procedure Rule
23 36(b) is essentially identical to NRCp 36.

24 ⁵ *Id.* at 621, citing Fed. R. Civ. P. 36(b); *Hadley v. United States*, 45 F.3d 1345, 1348 (9th
25 Cir. 1995); *Carney v. IRS (In re Carney)*, 258 F.3d 415, 419 (5th Cir. 2001).

26 ⁶ *Conlon, id.* at 622, citing *Perez v. Miami-Dade County*, 297 F.3d 1255, 1268 (11th Cir.
27 2002). See also *Smith v. First National Bank*, 837 F.2d 1575 (11th Cir. 1988).

28 ⁷ *Hadley v. United States*, 45 F.3d 1345 (9th Cir 1995).

⁸ *Conlon* at 622, citing *Hadley* at 1348.

1 As for the second test, as noted, we could not have been more clear in asserting
2 Enrique's paternity in every filing at and every hearing in this case; there is no
3 "prejudice" to Enrique within the meaning of the rules:

4 The party relying on the deemed admission has the burden of proving
5 prejudice. *Id.*

6 The prejudice contemplated by Rule 36(b) is 'not simply that the party
7 who obtained the admission will now have to convince the factfinder of its
8 truth. Rather, it relates to the difficulty a party may face in proving its case,
9 e.g., caused by the unavailability of key witnesses, because of the sudden need
10 to obtain evidence' with respect to the questions previously deemed admitted.⁹

11 In this case, all we have been arguing about for the past several months is how
12 to get the DNA testing accomplished to prove Enrique's paternity. No new discovery
13 of any kind has anything to do with the attempt to short-circuit the truth to establish
14 a false fact by way of a duplicitous discovery motion. When undertaking a prejudice
15 inquiry under Rule 36(b), district courts should focus on the prejudice that the
16 nonmoving party would suffer *at trial*.¹⁰ We don't even have a trial date, and can't
17 set one until the testing is accomplished.

18 ⁹ *Conlon, id.* at 622, quoting *Brook Vill. N. Assocs. v. Gen. Elec. Co.*, 686 F.2d 66, 70 (1st
19 Cir. 1982).

20 ¹⁰ *See Sonoda v. Cabrera*, 255 F.3d 1035, 1039-1040 (9th Cir. 2001) (district court did not
21 abuse its discretion by granting the Rule 36(b) motion to withdraw deemed admissions because the
22 motion was made before trial and the nonmoving party would not have been hindered in presenting
23 its evidence); *Hadley*, 45 F.3d at 1348 (focusing the prejudice inquiry on the unavailability of key
24 witnesses and a "sudden need to obtain evidence"); *see also Raiser v. Utah County*, 409 F.3d 1243,
25 1247 (10th Cir. 2005) (finding no prejudice when the nonmoving party had relied on the deemed
26 admissions for only a two week period in preparing its summary judgment motion); *Perez*, 297 F.3d
27 at 1268 (concluding that no prejudice would result because the nonmoving party had been
28 conducting discovery throughout the discovery period, the motion was made only six days after the
deadline, and withdrawal would not create a "sudden need" to gather evidence); *Kirley v. Sovereign
Life Ins. Co. (In re Durability Inc.)*, 212 F.2d 551, 556 (10 Cir. 2000) (holding categorically that
preparing a summary judgment motion by relying on admissions does *not* constitute prejudice);
FDIC v. Prusia, 18 F.3d 637, 640 (8th Cir. 1994) (same), *Brook Vill.*, 686 F.2d at 70 (focusing on
the difficulty that a party will face in proving his case at trial); *Moosman v. Joseph P. Blitz, Inc.*, 358
F.2d 686, 688 (2d Cir. 1966) (holding that there was no prejudice when the trial date would not be
delayed).

1 IV. CONCLUSION

2 Based on the above, Olena respectfully requests the following orders:

- 3 1. Granting Olena's *Motion* in its entirety, with imposition of
4 appropriate sanctions against Enrique, his counsel, or both.
5 2. To the degree it chooses to even reach the issue, deem any
6 "admission" of ultimate facts to be withdrawn.
7 3. For such other and further relief as the Court deems just and
8 proper, to specifically include an award of fees to Olena in this
9 ongoing action given the extent to which Enrique is needlessly
10 and relentlessly "multiplying the proceedings in a case as to
11 increase costs unreasonably and vexatiously."

12 DATED this 24th day of January, 2022.

13 Respectfully Submitted By:
14 WILICK LAW GROUP

15 /s/ Marshal S. Willick, Esq.
16 MARSHAL S. WILICK, ESQ.
17 Nevada Bar No. 2515
18 3591 E. Bonanza, Suite 200
19 Las Vegas, Nevada 89110-2101
20 (702) 438-4100 Fax (702) 438-5311
21 Attorneys for Defendant
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2. I have read the preceding filing, and I have personal knowledge of the facts contained therein, unless stated otherwise. Further, the factual averments contained therein are true and correct to the best of my knowledge, except those matters based on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of Nevada and the United State (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

/s/ Marshal S. Willick, Esq.
MARSHAL S. WILLICK, ESQ.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, pursuant to NRCP 5(b), that I am an employee of the
WILLICK LAW GROUP and that on this 24th day of January, 2022, I caused the
foregoing document 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 address, email address, and/or facsimile number indicated below:

Paul A. Lemcke, Esq.
Pecos Law Group
8925 South Pecos Road, Suite 14A
Henderson, Nevada 89074
paul@pecoslawgroup.com
Attorney for Plaintiff

/s/ Victoria Javiel
An Employee of the WILLICK LAW GROUP

P:\wp19\KARPENKO, O\DRAFTS\00542529.WPD/vj



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

ENRIQUE SCHAEERER,

Plaintiff,

vs.

OLENA KARPENKO,

Adverse Party.

CASE NO. D-21-628088-D

DEPT. U

PLAINTIFF'S SUPPLEMENTAL EXHIBITS

TO: OLENA KARPENKO, Defendant;

TO: MARSHAL WILLOCK, ESQ., Attorney for Defendant:

COMES NOW, Plaintiff, ENRIQUE SCHAEERER, through his attorney, RACHEAL H. MASTEL, ESQ., of the law firm KAINEN LAW GROUP, PLLC., and hereby submits this supplement of Exhibits to Plaintiff's Motion for Summary Judgment and his Reply to Adverse Party's Opposition thereto, with the following documents:





Title of Document	Exhibit	Bates Stamp No.
Email exchange between the parties dated January 20, 2021, regarding Certificate of Health Insurance Coverage	1	PLTF0001
Email exchange between the parties dated February 1, 2022 regarding insurance ID card	2	PLTF0002
Copy of Ukrainian Birth Certificate for minor child	3	PLTF0003 – PLTF0005
Email exchange between the parties and an immigration person indicating Plaintiff's discomfort with the Sponsor form	4	PLTF0006 - PLTF0015
Email exchange between the parties dated March 31, 2021, regarding Adverse Party leaving to apply for different Visa	5	PLTF0016
Letter to Immigration person from Plaintiff dated March 22, 2021, regarding Sponsor Visa	6	PLTF0017
Copy of medical record from Women's Health Associates of Southern Nevada with Plaintiff not listed as the Father	7	PLTF0018
Text messages between Adverse Party and Plaintiff's parents showing her intention to remain married and addressing Visa issue	8	PLTF0019 – PLTF0020
Text messages between the parties dated April 9, 2021, regarding continued relationship after Adverse Party went to the Ukraine	9	PLTF0021 – PLTF0031
Text messages between the parties dated February 22, 2021, showing affection between the parties	10	PLTF0032
Text messages between the parties dated February 23, 2021, showing affection between the parties	11	PLTF0033 – PLTF0034
Text messages between the parties dated January 2, 2021, regarding the parties looking for a house together	12	PLTF0035 – PLTF0038
Text messages between the parties dated January 23, 2021, containing pictures of the parties together	13	PLTF0039 – PLTF0041



Text messages between the parties dated March 1, 2021, showing affection between the parties	14	PLTF0042
Text messages between the parties dated May 15, 2021, showing Plaintiff's interest in the minor child	15	PLTF0043 – PLTF0057
Text messages between the parties dated April 6, 2021, depicting a good relationship between the parties when Adverse Party left in April of 2021	16	PLTF0058

DATED this 15 day of March, 2022.

KAINEN LAW GROUP, PLLC

By: 

RACHEAL H. MASTEL, ESQ.
Nevada Bar No. 11646
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Attorney for Plaintiff



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of March, 2022, I caused to be Served Plaintiff's Supplemental Filing 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 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):

victoria@willicklawgroup.com

email@willicklawgroup.com

marshal@willicklawgroup.com

Employee at the
KAINEN LAW GROUP, PLLC

EXHIBIT “1”



Enrique Schaerer <enrique.schaerer@gmail.com>

Hometown Health - Certificate of Health Insurance Coverage

Olena Karpenko <solomia.mail@gmail.com>

Wed, Jan 20, 2021 at 1:08 PM

To: Enrique Schaerer <enrique.schaerer@gmail.com>

Thank you, my dear!
Love you, too!

On Tue, Jan 19, 2021 at 9:45 PM Enrique Schaerer <enrique.schaerer@gmail.com> wrote:

Here you go, Kohana. I'm paying almost \$600/mo for your health insurance, starting January 1, 2021, not because it is required by our premarital agreement. I'm doing so just because I love you. :-)

As soon as possible, you should select an OBGYN (doctor). My mom and sister Christina are good resources if you need recommendations. I don't know who would be good. But they should.

Love,
Kohany

EXHIBIT “2”



Enrique Schaerer <enrique.schaerer@gmail.com>

insurance ID card

Enrique Schaerer <enrique.schaerer@gmail.com>
To: Olena Karpenko <solomia.mail@gmail.com>

Mon, Feb 1, 2021 at 10:25 AM

If you have any further trouble, Kohana, you should immediately text me and call customer service at Hometown Health: **775-982-3232**. It is godawful how **Meadows Women's Center, 9120 W Post Rd, Las Vegas, NV 89148**, where they turned you away and denied you medical attention (even though it's your 14th week of pregnancy) because you did not have your laminated insurance card, or a physical copy of it, and they would not accept anything on your phone or even take the time to call Hometown Health to verify your eligibility. Check with my mom on how we may file a complaint against the Center, perhaps through the Better Business Bureau. My dad may also have ideas on a state government agency with which we may lodge a complaint. What happened today was unacceptable. You should be treated better and given the attention and treatment that you deserve, and for which I pay good money. We will get this figured out for you, dear.

Love,
Kohana

On Mon, Feb 1, 2021 at 10:15 AM Olena Karpenko <solomia.mail@gmail.com> wrote:

--

Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A. 2005

EXHIBIT “3”

УКРАЇНА



СВІДОЦТВО ПРО НАРОДЖЕННЯ

Прізвище **Карпенко**
ім'я **Андрій** по батькові **Олексійович**
народився (лаєл) **28 липня 2021 року**
(число, місяць і рік)
двадцять восьмого липня дві тисячі двадцять першого року
(цифрами та словами)

Місце народження **Україна**
(державу)
область,
місто Київ
(місто, село, селище (селище))

при що **07** числа **серпня** місяця **2021** року складено
відповідний актовий запис № **3614**

Батьки
Батько **Карпенко**
(позначити)
Олексій Вікторович
Громадянин України
(громадянство)
Мати **Карпенко**
(позначити)
Олена Олексіївна
(і.м. по батькові)
Громадянка України
(громадянство)

Місце державної реєстрації **Печерський відділ державної реєстрації актів цивільного**
(назва органу державної реєстрації)
стану у місті Києві Центрального мікрорегіонального управління Міністерства
(реєстрації актів цивільного стану)
Юстиції (м. Київ) реєстрації актів цивільного стану, що надав свідоцтво
Печерський відділ державної реєстрації актів цивільного стану у місті Києві
(назва органу державної реєстрації)
Центрального мікрорегіонального управління Міністерства юстиції (м. Київ)
(реєстрації актів цивільного стану)

Дата видачі **07** **серпня** **2021** року
М.П. **УНЗР** **РНОКПП**
«Керівник органу державної реєстрації актів цивільного стану» **В.А. Копішкін**
(підпис та печатка)

Серія І-БК № 785675

000001OK
PLTF0003

ES0090

UKRAINE
/State Emblem of Ukraine/
BIRTH CERTIFICATE

Surname **Karpenko**
Name **Andrii** patronymic **Oleksiiiovych**
was born on **28 July 2021**
(date, month and year
the twenty-eighth of July, twenty twenty-one
in figures and words)
Place of birth **Ukraine**
(state,

region,

district,
Kyiv
city, urban-type settlement (village)

whereof the relevant vital entry No. 3614 was made on 07 August 2021.

PARENTS:

Father **Karpenko**
(surname,
Alexey Viktorovych
name, patronymic)
Citizen of Ukraine
(citizenship)
Mother **Karpenko**
(surname,
Olena Oleksiivna
name, patronymic)
Citizen of Ukraine
(citizenship)

Place of state registration: **Pecherskyi State Civil Register Office of the Central Interregional Department of the Ministry of Justice (Kyiv)**

(name of the State Civil Registry Office)

State Civil Registry Office that issued the certificate: **Pecherskyi State Civil Register Office of the Central Interregional Department of the Ministry of Justice (Kyiv)**

(name of the State Civil Registry Office)

Date of issue: **07 August 2021**

Unique Register Number (UNZR) _____ Registration number of taxpayer's card (RNOKPP) _____

Head of the State Civil Register Office

/signature/
(signature)


V.A. Kapishon
(initials and surname)

Series I-BK No. 785675

/Official seal: the Ministry of Justice of Ukraine, Pecherskyi State Civil Register Office of the Central Interregional Department, identification code 26125012/

Переклад тексту цього документа з української мови на англійську мову здійснено дипломованим перекладачем
Translation of this document from Ukrainian into English was made by the certified translator Dudchenko Lidiia Mykhailivna.
Дудченко Лідією Михайлівною.

Translator's signature /signature/

Підпис перекладача 
місто _____

City of _____

00002OK
PLTF0004

ES0091

Київ, Україна, двадцять третього вересня дві тисячі двадцять першого року.

Я, Макарьчева І.В., приватний нотаріус Київського міського нотаріального округу, засвідчую справжність підпису перекладача Дудченко Лідії Михайлівни, який зроблено у моїй присутності.

Особу перекладача встановлено, його дієздатність та кваліфікацію перевірено.

Зареєстрована в реєстрі за № _____

Приватний нотаріус Макарьчева І.В.



Kyiv, Ukraine, on the twenty-third of September in year two thousand twenty - first.

I, I.V. Makarcheva, Private Notary of Kyiv City Notary District, hereby certify the authenticity of translator's signature Dudchenko Lidiia Mykhailivna, made in my presence.

The identity of the translator has been established, her qualification and capability have been verified.

Registered in the Register under No. _____

Private Notary I.V. Makarcheva

/Signature/

/Official round seal: Kyiv City Notary District, Private Notary Makarcheva Iryna Volodymyrivna / 2 (two) pages have been bound, numbered and sealed

/Signature/

/Official round seal: Kyiv City Notary District, Private Notary Makarcheva Iryna Volodymyrivna /

В цьому документі
прономеровано, прошито
та скріплено печаткою
2 (два) аркуші.
Приватний нотаріус

Макарьчева І.В.



EXHIBIT “4”



Enrique Schaerer <enrique.schaerer@gmail.com>

RE: DRAFT FORMS FOR YOUR REVIEW

Enrique Schaerer <enrique.schaerer@gmail.com>
To: Nazanin Nodjoumi <naz@harrisonlawusa.com>
Cc: Olena Karpenko <solomia.mail@gmail.com>

Tue, Mar 23, 2021 at 11:18 PM

Thanks, Naz. We will call you tomorrow at 9am.

On Tue, Mar 23, 2021 at 8:44 AM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Enrique,

Thank you for officially informing us that you do not wish to proceed.

We can re-visit the options we spoke about last week. Let me know if tomorrow morning 9 am works for you and Olena.

Thank you and have a nice day.

Naz Nodjoumi

Immigration Division Manager

HARRISON & HARRISON

ATTORNEYS AT LAW

12100 Wilshire Boulevard

Suite 800

Los Angeles, CA 90025

E-Mail: naz@harrisonlawusa.com

Telephone: (310)445-8811

Fax: (310)445-8812

From: Enrique Schaerer <enrique.schaerer@gmail.com>
Sent: Monday, March 22, 2021 8:01 PM
To: Nazanin Nodjoumi <naz@harrisonlawusa.com>
Cc: Olena Karpenko <solomia.mail@gmail.com>
Subject: Re: DRAFT FORMS FOR YOUR REVIEW

Naz,

Please see the attached letter. Olena and I would like to set up a time to discuss other options with you. What is your availability for later this week?

Thanks,

Enrique

On Fri, Mar 19, 2021 at 11:39 PM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Dear Enrique

No problem. Thank u so much.

Sent from my iPhone

On Mar 19, 2021, at 11:07 PM, Enrique Schaerer <enrique.schaerer@gmail.com> wrote:

Thanks for your time today, Naz. Unless and until I say otherwise, please do not proceed with the sponsor affidavit. I will talk with my friend in DC, and Olena and I will continue to discuss options. If questions arise, Olena will be sure to ask you. Much appreciated, and happy Persian New Year!

All my best,

Enrique

On Fri, Mar 19, 2021 at 3:23 PM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Looking forward thank u so much

Sent from my iPhone

On Mar 19, 2021, at 3:22 PM, Enrique Schaerer <enrique.schaerer@gmail.com> wrote:

I plan to call at 4pm today. Thanks.

On Fri, Mar 19, 2021 at 1:46 PM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Thank you Olena.

With pleasure but I have not heard back from Enrique.

Naz Nodjoumi
Immigration Division Manager
HARRISON & HARRISON
ATTORNEYS AT LAW
12100 Wilshire Boulevard
Suite 800
Los Angeles, CA 90025
E-Mail: naz@harrisonlawusa.com
Telephone: (310)445-8811
Fax: (310)445-8812

From: Olena Karpenko <solomia.mail@gmail.com>
Sent: Friday, March 19, 2021 1:45 PM
To: Nazanin Nodjoumi <naz@harrisonlawusa.com>
Cc: Enrique Schaerer <enrique.schaerer@gmail.com>
Subject: Re: DRAFT FORMS FOR YOUR REVIEW

Hello, Naz,

Happy Persian New Year again! Blessings :)

Will it be convenient for you to speak with Enrique and me today at 4 pm?

Olena

On Thu, Mar 18, 2021 at 2:49 PM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Dear Olena

Enrique has not emailed me back with the day and time. I have no problem with you listening it depends on Enrique.

Sent from my iPhone

On Mar 18, 2021, at 2:46 PM, Olena Karpenko <solomia.mail@gmail.com> wrote:

Naz, Enrique,

Please, let me know when you're planning to chat.

Would you mind if I'll listen to the conversation?

Thanks,

Olena

On Tue, Mar 16, 2021, 8:54 AM Nazanin Nodjourni
<naz@harrisonlawusa.com> wrote:

Dear Enrique,

Good morning, thank you so much for your email response. Of course I will be available to have a proper chat about this. Just kindly let me know which day you will be calling.

Wishing you a good day and rest of the week.

Warm regards,

Naz Nodjourni
Immigration Division Manager
HARRISON & HARRISON
ATTORNEYS AT LAW
12100 Wilshire Boulevard
Suite 800
Los Angeles, CA 90025
E-Mail: naz@harrisonlawusa.com
Telephone: (310)445-8811
Fax: (310)445-8812

From: Enrique Schaerer <enrique.schaerer@gmail.com>
Sent: Monday, March 15, 2021 11:26 PM
To: Nazanin Nodjourni <naz@harrisonlawusa.com>
Cc: Olena Karpenko <solomia.mail@gmail.com>
Subject: Re: DRAFT FORMS FOR YOUR REVIEW

Thanks, Naz. Over the weekend, I was able to burn midnight oil and research Form I-864 (sponsor affidavit). After reading relevant statutes and various cases, including from the Ninth Circuit, as well as law review articles and other secondary sources, I have even more misgivings about that sponsor affidavit. I do not believe I will be able to consent to moving forward on it under any set of circumstances, though I welcome a phone discussion before finalizing my decision. I do think we need to begin considering other viable options. What is your availability in the late afternoon on Thursday or throughout the day on Friday?

All my best,

Enrique

On Mon, Mar 15, 2021 at 7:04 AM Nazanin Nodjourni <naz@harrisonlawusa.com> wrote:

Good morning Enrique,

I hope this email finds you well.

I cannot submit the petition until they have been corrected and re-reviewed by you and dear Olena. If at all possible I will be most grateful if you could find a few spare minutes before next weekend to chat my cell number is 3107095004.

Thank you and have a blessed day.

Naz Nodjourni

Immigration Division Manager

HARRISON & HARRISON

ATTORNEYS AT LAW

12100 Wilshire Boulevard

Suite 800

Los Angeles, CA 90025

E-Mail: naz@harrisonlawusa.com

Telephone: (310)445-8811

Fax: (310)445-8812

From: Enrique Schaerer <enrique.schaerer@gmail.com>

Sent: Saturday, March 13, 2021 7:01 PM

To: Nazanin Nodjourni <naz@harrisonlawusa.com>

5/11/2021

Gmail - RE: DRAFT FORMS FOR YOUR REVIEW

Cc: Olena Karpenko <solomia.mail@gmail.com>

Subject: Re: DRAFT FORMS FOR YOUR REVIEW

Thank you, Naz. Please hold off on submitting the petition until we get a chance to speak with you by phone. I may not have time until next weekend.

All my best,

Enrique

On Sat, Mar 13, 2021 at 6:13 AM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Dear Enrique

No problem at all you are very welcome to call me at any time including over the weekend. 3107095004.

Thank you

Naz

Sent from my iPhone

On Mar 12, 2021, at 10:30 PM, Enrique Schaerer <enrique.schaerer@gmail.com> wrote:

Naz,

Have you submitted Olena's petition yet? I am not comfortable with form I-864 (sponsor affidavit) and have questions about it. I would like to discuss it with you and Olena before we proceed. In particular, I would like to know if Olena has a path to lawful status, especially under the new administration, that does not require that form. Olena and I are also curious to know if we may contract around the form. What is your availability this coming week for a phone conference with Olena and me?

Thanks for your understanding.

5/11/2021

Gmail - RE: DRAFT FORMS FOR YOUR REVIEW

Sincerely,

Enrique

702-274-5501

On Wed, Mar 10, 2021 at 7:43 AM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Good morning Enrique,

Wishing you happiness in your home.

Thank you so much for the corrections.

Naz Nodjoumi

Immigration Division Manager

HARRISON & HARRISON

ATTORNEYS AT LAW

12100 Wilshire Boulevard

Suite 800

Los Angeles, CA 90025

E-Mail: naz@harrisonlawusa.com

Telephone: (310)445-8811

Fax: (310)445-8812

From: Enrique Schaerer

<enrique.schaerer@gmail.com>

Sent: Tuesday, March 9, 2021 9:28 PM

To: Nazanin Nodjoumi

<naz@harrisonlawusa.com>

Cc: Olena Karpenko

<solomia.mail@gmail.com>

Subject: Re: DRAFT FORMS FOR
YOUR REVIEW

Thanks, Naz. Sorry for the belated reply.

We have been in the process of moving to
a new house. Corrections:

FORM 1-130

Page 2, item 10: update mailing address from <1834 Hollywell St, Las Vegas, NV 89135> to <785 San Jacoma Pl, Las Vegas, NV 89138>

Page 2, item 12: same update to mailing address

Page 4, item 47: change <I S. Sierra St> to <1 S. Sierra St> (first character is number "1," not letter "I")

Page 5, item 6: change <Ryiv> to <Kyiv>

Page 5, item 11: update mailing address

Page 8, item 59: update mailing address

FORM I-864

Page 1, item 2: update mailing address

Page 3, item 2: same

Page 3, item 4: same

Thanks,

Enrique

On Wed, Mar 3, 2021 at 2:08 PM Nazanin Nodjoumi <naz@harrisonlawusa.com> wrote:

Good afternoon dear Enrique,

I would like to take this opportunity to congratulate you on your marriage to beautiful Olena. I wish you both happiness and health.

I have attached draft forms for you to review and ensure that the information provided is accurate. After all we are human and do make mistakes. Kindly review and let me know if I need to correct anything by emailing me the form number, page, and item number with correction. Once corrected it will be emailed back to you for final review and signing.

Your continued assistance is truly appreciated.

Blessings

Naz Nodjourni

Immigration Division Manager

HARRISON & HARRISON

ATTORNEYS AT LAW

12100 Wilshire Boulevard

Suite 800

Los Angeles, CA 90025

E-Mail: naz@harrisonlawusa.com

Telephone: (310)445-8811

Fax: (310)445-8812

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Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A.
2005

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Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A.
2005

--

Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A. 2005

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Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A. 2005

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Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A. 2005

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Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A. 2005

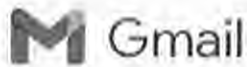
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Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A. 2005

--

Enrique Schaerer
Yale Law School, J.D. 2008
University of Notre Dame, B.A. & B.B.A. 2005

EXHIBIT “5”



Enrique Schaerer <enrique.schaerer@gmail.com>

It's important. Please, read this, Kohany

Olena Karpenko <solomia.mail@gmail.com>
To: Enrique Schaerer <enrique.schaerer@gmail.com>

Wed, Mar 31, 2021 at 7:48 PM

Dear Enrique, my beloved husband,

This new house feels like a fairy tale. Everything that I could and couldn't imagine in my best dreams. I appreciate you for all this beauty and comfort you supplied our young family with.

However, there's no way I can enjoy all this blessing for too long, unfortunately. Frankly speaking, your decision to stop my green card process put me in a very tough situation. Imagine. While pregnant / breastfeeding, I would either balance between illegal immigrant status with quite unrealistic hopes for being hired within a short timeframe in the circumstances of literally non-functioning entertainment market, or take a 15-19 hours-long flight with a newborn shortly after the surgery. Both scenarios are less than ideal.

I respect the law. And I respect your choice (even though it was hard for me to accept it). To me, it means that I expect that you'd also find it possible for yourself to respect my choice $\frac{3}{4}$ the only legal and logical choice I have so far. And yes, I realize it might be complicated for you and the whole family to accept it.

Neither my immigration documents nor your money never was my motivation to be with you and to stay in the USA no matter what. And here's the proof.

I'm planning to fly to Ukraine at the nearest time, before my visa expires and before I'll reach the "non-flying" term of my pregnancy.

I'll give birth to our son in Ukraine, surrounded with love and a stress-free atmosphere.

There, in no rush, not being put into any time or legal limitations, I'll apply for the applicable visa. God bless, I'll receive it as soon as possible.

Meanwhile, you and all Schaerer family are welcome to meet the child, to communicate with him any time and in any language, showing him love and care that he truly deserves.

Even being born overseas, he won't lose his chances for the American citizenship, as you know from the conversation with my attorney.

I came to your house with love in my heart, and now I'm leaving it with love in both my heart and my bump. Thank you that now there's even more love in me than I ever had in my life.

Hugs and kisses,
Your wife full of love

March 31, 2021
Las Vegas, NV

EXHIBIT “6”

March 22, 2021

Naz Nodjoumi
Immigration Division Manager
Harrison & Harrison
Attorneys at Law
12100 Wilshire Blvd., Ste. 800
Los Angeles, CA 90025

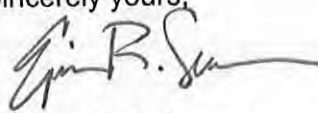
RE: Form I-864

Dear Naz,

After reviewing relevant authority/background on Form I-864 (sponsor affidavit), I hereby revoke my signature on the sponsor affidavit and do not authorize you to proceed with that sponsor affidavit. You and Olena should explore other, non-marriage-based changes of status for Olena. When we spoke by phone, you mentioned both short- and long-term options that do not depend on her marriage to me.

Thank you in advance for helping Olena.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Enrique R. Schaerer".

Enrique R. Schaerer

cc: Olena Karpenko/Schaerer

PLTF0017

ES0107

EXHIBIT “7”



Whasn Tenaya

2880 N TENAYA WAY Suite 420
LAS VEGAS NV 89128-0618
Ph: 702-255-2022 Fax:702-255-8810

Patient - Karpenko, Olena, DOB - 09/16/1981

Patient: Karpenko, Olena
Age: 39 Y
G: 1 **P:** 0, 0, 0, 0
Primary Insurance: Hometown Health Plan Nevada
Language:
Father Cell Phone:
Emergency Contact Home Phone: 702-274-5501

DOB: 09/16/1981
Phone: 310-982-5020
Address: 1834 HOLLYWELL ST LAS VEGAS NV 89135-3348
Provider: Tammy Reynolds, M.D.
Father Name:
Emergency Contact Name: Schaerer, Enrique
Race: Declined to Specify

G: 1 **GA:** 56
P: 0, 0, 0, 0 (Wks) 0(Days)
EDD: 08/03/2021
Risk Assessment:



Sticky Notes

AMA- NST/AFI 37w, Blood Type- A+, Large for date- 94%, Primary C/S, Hospital- Summerlin, Abnormal pap- ASCUS HPV POS- repeat pap after birth.

EDD							
Initial EDD			EDD Update				
	Date	Weeks	Days	EDD			
LMP		0	0				
Initial Exam	02/17/2021	16	1	08/03/2021			
Ultrasound		0	0				
Addl. Ultrasound		0	0				
Initial EDD			08/03/2021				
			Final EDD				
Form A							
TOTAL PREG	FULL TERM	PREMATURE	AB. INDUCED	AB. SPONTANEOUS	ECTOPICS	MULTIPLE BIRTHS	LIVING
1	0	0	0	0	0	0	0
MENSTRUAL HISTORY							
LMP	MENSES MONTHLY	FREQUENCY	MENARCHE	PRIOR MENSES	ON BCP AT CONCEPT	HCG+	
PAST PREGNANCIES (LAST SIX)							
No Past Pregnancies Exists.							
RISKS							

PLTF0018

ES0109

EXHIBIT “8”

Olena (Helen) Karpenko

Happy Holy Saturday, Sylvia!

Easter is a very special time, and it's important for us as a family to celebrate it with our open hearts. It's so thoughtful of you to suggest getting together today. It's a great idea. Let's schedule a time for a walk and some tea. Would 3.30 or 4 pm work for you? We'll need to run some errands before that time.

Hugs! 🍷❤️❤️❤️❤️

Papio

Hi Lola and Enrique

Sylvia and I already went for a walk this morning because of the warm temperatures this weekend. We can stop at 4pm at your place for tea. See you then. Hugs!!!

4/3/21, 3:20 PM

Olena (Helen) Karpenko

Great, 4 pm works!
We're on our way home

4/6/21, 6:20 PM

Mamanita

Hope you two are having a peaceful evening. Again, we ask that you please consider giving each other a bit more time to work through this complex situation and find better solutions. This is just happening too fast, and sometimes people need more time for better discernment. We love all three of you so much!

4/6/21, 9:17 PM

Olena (Helen) Karpenko

Dear, Sylvia and Marcel,

Thanks for this thoughtful text. I can feel your love and willingness to help. They are precious...

How I wish there would be some more time!

Enrique called his signature back 6 weeks before the expiration date of my visa. So, Time appears to be the most crucial thing in this case.

Wish I would have at least 5-6 months ahead to make a sober strategic move. But I don't. Even more.

PLTF0019

ES0111

My current term shortens this opportunity window dramatically. When I raised this topic during our conversation on March 14th at our house, there still was some time available for the discussion. However, this question was literally banned, because it was considered to be "our personal". As you can see, it's not. Alas, now there's no time left for anything at all.

Minding my term and a very few flight options in these current conditions, there's no space for any other move, rather than the one you're aware of.

Tourist visa with all possible and impossible extensions is not an option, I'm not willing to play any games with the American government.

In everything else, I remain your loving daughter and the wife of my beloved husband.

As I wrote to Enrique, now I have love both in my heart and in my bump. I never ever had more, and I'm grateful for this.

God loves us, that's why He tests us, but He never sends us things that we can't overcome.

We're one family. A very international one.

Now the baby kicks. That's the way he says he loves all of us and accepts us for who we are, unconditionally. Because he's who he is: a true Love.

Mamaola

This is devastating news, Lola. Marcel, Christina and I will swing by to say our good-byes tomorrow evening. May the love of God and his infinite mercy accompany you on this journey and in life, always. You and Nicholas will always be a part of our family. We will always love the two of you, near or far. Blessings!

Olona (Helen) Karpenko

Tomorrow's a big Orthodox holiday: Annunciation Day. And exactly 1 year since we met with Enrique. Come over, let's spend a wonderful time together celebrating Love and Future, not losses. Bring your swimming suites, slippers and towels, let's enjoy the spa in the name of Life 🙏

EXHIBIT “9”

4/9/21

Enrique Schaerer

You're in my thoughts and prayers, dear. Please let me know when you arrive in Istanbul.

8:40 AM ✓✓

Did you make it OK? I just saw a missed call. Was that you?

12:25 PM ✓✓

Olena Karpenko

Please let us know you're safe and well, kohana.

12:26 PM ✓✓

Kohany,
I'm in Kyiv already. My father met me at the airport and now I'm at my parent's flat. Tomorrow will drive to the countryside.
The flight was good, I'm feeling well. I took all possible precautions.
How are you?

1:39 PM

Kohany,
I'm in Kyiv already. My father met me at the airport and now I'm at my parent's flat. Tomorrow will drive to the countryside.
The flight was good, I'm feeling well. I took all possible precautions.
How are you?

1:40 PM

My dear, I see that my message is delivered, but not read. Hopefully you are not nervous about me. I'm okay, going to sleep now. What about you?

3:49 PM

I just got your texts, my dear. I'm relieved you and Nico made smoothly and safely. Get some very good rest—for you and Nico—and we'll connect soon. Ya tebe kohayu.

6:21 PM ✓✓

I ya tebe

7:57 PM

Are you up, dear? You should get more rest. :-)

9:02 PM ✓✓

I'm not up yet, just had 4 hrs of sleep. Will try to have some more sleep now.

9:07 PM

How are you, kohany?

9:09 PM

4/9/21

I'm hanging in there. Get some more rest, kohana.

11:09 PM ✓✓

4/10/21

📺 Missed video call at 03:42

My dear, I just tried to call you after I woke up. You didn't pick up the phone. Maybe, you're already asleep...
I'll text you here when we'll get to the countryside to let you know I'm ok.
Love you, miss you ❤️💕💕

3:45 AM

I just tried calling you back, my dear. Call me when you get a chance. I love and miss you and Nico.

10:54 AM ✓✓

Hey, I've been thinking of you and Nico. When you get a chance send me some photos of you at the Lake house? I'd love to see how you're doing. :-)
I hope it's peaceful and nice for you.

1:51 PM ✓✓

... and know what? now he's waking me up in the middle of the night again! :)
He's absolutely same active and demanding. Real Schaerer :)

6:02 PM

4/11/21

📺 Missed video call at 11:15

📞 Missed voice call at 12:09

Sorry I missed your call, dear. I was in the shower.

The connection is quite poor and unstable today. We'll work on it tomorrow. Let's see how we can improve it. However, it's not always like that. Most of the time I could have video chats with my parents with no interfaces. So hopefully it'll be better soon.

12:13 PM

4/11/21

Tried to send you some pictures, but they didn't go through (((I'll try to sleep now and to repeat sending when I'll wake up in the middle of the night.

Have a wonderful day, my dear!❤️❤️

5:37 PM



📷 262.10 KB

5:37 PM



📷 256.57 KB

5:37 PM

4/11/21



📷 402.75 KB

5:37 PM



📷 276.20 KB

5:38 PM

4/11/21



386.17 KB

5:38 PM



273.59 KB

5:38 PM

4/11/21



381.95 KB

5:38 PM



408.27 KB

5:38 PM

4/11/21



📷 372.16 KB

5:38 PM



🎥 01:10

5:39 PM

How is your Sunday going, Quique? Did you get some rest? Run?

It's almost 4 am here. I woke up 2 hours ago, and only now the internet connection established, so the photos which I tried to send you in the evening finally got delivered.

Have a lovely evening, my dear.

Our window for calls is 9 am - 12 pm your time. It'll work best for both of us, I hope.

Love, hugs 🤍🤍🍀

5:45 PM

4/11/21


They asked her,

"What is real happiness?"

She answered,

"Happiness is not fulfilling every pleasure or getting every outcome you desire. Happiness is being able to enjoy life with a peaceful mind that is not constantly craving for more. It is the inner peace that comes with embracing change."

yung pueblo | being

 25.61 KB

6:59 PM

I love the photos, my Lola. You are missed, and I so wish you and Nico were here with me but am relieved that you're doing well and enjoying the beautiful scenery of the lake house. Hopefully, you fell back asleep. I'll call you again in the morning my time, but feel free to call me whenever you get a chance your time. Ya tebe kohayu, kohana.

7:39 PM ✓✓

I had 2 hr sleep, and am back here reading your text, my Love. 🍷❤️
Yes, this departure was so quick, it's even hard to put it together in our minds... But it'll be better in time, I'm sure...

I'm very happy that Nico behaved so well during the flight. Such a good boy! No sickness, no pains or discomfort. Nothing. Just a great example of partnership. I love him so much! ❤️❤️👉👈

Yes, let's set up your morning time for our calls.
It's 7.45 here now, and I don't want to disturb my parents by talking, I think they're still asleep. And later you might be already in bed.

I miss you too. Te quiero 🍷🍷❤️❤️💕💕

9:35 PM

4/12/21

My dear, good morning. How are you?

10:52 AM

Missed voice call at 12:16

I'm on the phone but will call you shortly, my dear.

12:16 PM ✓✓

Ok! I'll be waiting, kohany

12:16 PM

I just tried calling.

12:36 PM ✓✓

Trying again now!

12:37 PM ✓✓



00:05

12:39 PM

It isn't working (again).

12:39 PM ✓✓



00:25

12:39 PM



00:42

12:42 PM

I can't hear you, and I'm not sure if you can hear me. Let's just try again another time. Feel free to message me, dear.

12:42 PM ✓✓

4/12/21



00:30

12:42 PM

Please text me when you're awake. Early your time and late my time works better for me. Perhaps the connection will be better then too. It's been so awful the last couple of times.

12:48 PM ✓✓



00:14

12:48 PM

Good night, kohana. Ya tebe kohayu.

12:48 PM ✓✓



00:04

12:48 PM

E ya tebe

12:48 PM

I'm listening to "Clair De Lune" and thinking of you, my Lo-Lo-Lo-Lola. I can't tell you how I relieved I am that, a couple days since your trip, you still appear to be doing well. I've been so worried. One of many reasons I didn't want you to go (and wanted you to seek a tourist visa to stay lawfully until you have the international press to self-petition based on your artistic talent), is that you're further along in a higher-risk pregnancy and we're still in the midst of a global pandemic. I've been praying that God would see you and Nico safely through the long trip and, though I continue to pray, it appears He has indeed answered that prayer. You and Nico appear to be doing quite well. Continue to take good care of the two of you. I wish you had not left, but I continue to respect your decision to leave (even if I disagree with it). God willing, we'll all be reunited soon. I continue to worry. So, please, let's figure out the connection issue so we may stay in touch better. I just want to ensure that you and Nico are OK. I look forward to chatting late my time and early your time. Rest well, kohana. Talk soon.

1:41 PM ✓✓

4/12/21

I'm so happy to hear that you finally got back to praying! Yes, all three of us need that a lot! Please, continue to looking for God's help and support instead of blaming Him. I appreciate that so much, my dear! This is our True Way in life.

I'm looking forward your coming in July to meet the little one. It'll be great! You should be the first one to hold him in your hands :)

Hope to chat with you early morning my time. Hopefully I'll wake up in time convenient for you, my dear.

Love, hugs 🤍🤍🤍🍃

3:30 PM

We all need to pray, now more than ever, for you, Nico, and our family. I'm looking forward to your call, though I see you're still getting up during the night there. Hopefully the jet lag will subside soon. Besos, kohana!

3:54 PM ✓✓

Right, kohany, it's true. Very much so...

And yes, it's 2 am here, and I'm still awake. Who knows when I'll wake up then. It's quite unpredictable...

Have a wonderful day, my dear. Lo-lo-lo-lo-loooooo :)

3:58 PM

📞 Missed voice call at 21:53

I just tried to call you, my dear

9:53 PM

📞 Missed voice call at 21:54

📞 Missed voice call at 22:16

EXHIBIT “10”

I'm glad to hear all is well. Thanks.

Love you!

E ya tebe!

Could someone see the house at 3:30pm today?

On the phone with a client.

I'll leave here in 10 minutes to pick you up.

Where should I pick you up? Albertsons?

I'm in CVS

Please, put the black bag with clothes (which is by my bed downstairs) into the closet. Thanks!



2/22/21, 6:17 PM

May we show the house tomorrow at 2:30pm? I'll be on Zoom in upstairs guest room, but try and accommodate them so they may see that final room. If you would like, you may come to this room too or go for a walk will prospective tenants are here. Please let me know ASAP.

2.30 ok

2/22/21, 10:17 PM

<https://youtu.be/GUCOppy-R0I>

EXHIBIT “11”

They're late and just arrived.

I'll keep you posted, kohana.

Thanks, kohany

?

Checking with Mark.

Is that you, Kohana?

Otherwise, I think they left.

You should come back, my dear.

Yes, I had no more time to wait. I'm in, there's no more people inside

Sounds good, my dear!

Sorry. Mark did not let me know as soon as they left.

It's okay, we both are back to work now :)

2/23/21, 7:35 PM

When do you finish tonight, Kohana? I want to spend time with you.

Now I'm going upstairs to heat up your food, my dear. I'm almost done :)

OK. When do you expect to be free?

5-10 min

I'm in the kitchen, waiting for you

I'm at Loma Bonita but walking back fast. See you soon, dear!

Ok!

2/24/21, 9:01 AM

<https://twitter.com/TheBabylonBee/status/1364560718528344064>

2/24/21, 12:42 PM

Tomorrow 12.00 - 3.00 pm

Let me know if you got my text

Got it! Thanks, dear.



Notary is coming to our house tmrw at 12pm.

Ok

2/25/21, 11:50 AM

Please don't turn the heater on until tonight. The sealant on the heater upstairs is still drying. Thanks, dear.

2/26/21, 3:00 PM

I'm out with Sylvia for registry. Kisses

2/27/21, 7:51 AM

<https://www.theatlantic.com/health/archive/2021/02/post-vaccination-risk-is-a-false-dilemma/618149/>

2/27/21, 2:48 PM

I'm at the Venetian, just parked

One of my favorites. Good luck, kohana! :-)

Never been here. Thanks!

I got my first dose of the Pfizer vaccine. I'm in a 15-min waiting area, and then I'll head over to mattress mania.

Sounds great, my dear!))

Passing by Venetian and thinking of my kohana.

Kisssssss

How do you feel after taking the vaccine?

EXHIBIT “12”

1/2/21, 7:35 PM

Don't forget to update your Euro notes tonight



1/3/21, 10:09 AM

<https://youtu.be/ks0mIODTq14>

<https://youtu.be/5eRru9vNNN0>

1/3/21, 12:56 PM

https://www.zillow.com/homedetails/884-Loma-Bonita-Pl-Las-Vegas-NV-89138/70056270_zpid/?utm_campaign=iosappmessage&utm_medium=referral&utm_source=txtshare

1/3/21, 1:58 PM

https://www.zillow.com/homedetails/7221-Sibley-Ave-Las-Vegas-NV-89131/59192582_zpid/?utm_campaign=iosappmessage&utm_medium=referral&utm_source=txtshare

1/3/21, 5:31 PM

https://www.zillow.com/homedetails/884-Loma-Bonita-Pl-Las-Vegas-NV-89138/70056270_zpid/?utm_campaign=iosappmessage&utm_medium=referral&utm_source=txtshare

1/4/21, 12:53 AM

Kohany, I ask you need get a sleep tonight

To get some sleep tonight

1/4/21, 3:12 PM

I'm 5 min ready at Albertsons

1/5/21, 10:19 PM

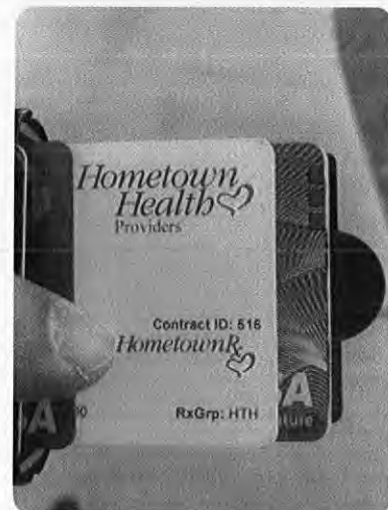
https://www.zillow.com/homedetails/524-Pinnacle-Heights-Ln-Las-Vegas-NV-89144/6968627_zpid/?utm_campaign=iosappmessage&utm_medium=referral&utm_source=txtshare

Mark pointed this one out. I'm underwhelmed, especially at that price point, but it has a casita.

1/7/21, 5:14 PM

https://www.zillow.com/homedetails/109-N-Buteo-Woods-Ln-Las-Vegas-NV-89144/6914211_zpid/?utm_campaign=iosappmessage&utm_medium=referral&utm_source=txtshare

1/9/21, 3:35 PM



1/11/21, 5:33 PM

Kohany, I'll be ready to go by 5.50

1/15/21, 8:32 AM



1/16/21, 8:03 PM

Check this out: Moen T62151 Brantford Posi-Temp Trim Ki... https://www.amazon.com/dp/B001DEUDE0/ref=cm_sw_r_sms_awdb_imm_t1_sy7aGbB1HSX80?_encoding=UTF8&psc=1

Did you follow through and order it? I would like to fix and get this off my "to do" list ASAP.

1/18/21, 3:36 PM

instacart.com/landing?...



Lemons
Bananas
Tomato juice

Thanks!

1/19/21, 12:17 PM

I'll step outside for some fresh air.
I'll be waiting for you at the nearest park (dog's one).
Please, take our thermoses. They are at the bench downstairs

1/20/21, 8:19 PM

Google:
-Hometown Health In-Network Providers
-Walk-in appointments with OBGYNs

1/21/21, 5:41 PM

<https://twitter.com/DiMartinoBooth/status/1352367764833447936>

<https://twitter.com/TheBabylonBee/status/1352375486417154053>

1/21/21, 9:27 PM

https://www.zillow.com/homedetails/504-Punto-Vallata-Dr-Henderson-NV-89011/124233148_zpid/?utm_campaign=iosappmessage&utm_medium=referral&utm_source=txtshare

1/22/21, 3:12 PM

Kohany,
I've sent you a video and 3 photos of the white Chevy via WhatsApp. My phone refuses to email them to the officer. I tried ~10 times in vain. I'll kindly ask you to email them to kjahraus@dps.state.nv.us

1/23/21, 12:49 AM

https://www.zillow.com/homedetails/9569-Los-Cotos-Ct-Las-Vegas-NV-89147/7131911_zpid/?utm_campaign=iosappmessage&utm_medium=referral&utm_source=txtshare

1/23/21, 9:11 AM

Wow, gorgeous

They accepted an offer last night.

Our house will be better :)

EXHIBIT “13”

1/23/21, 9:56 PM

Here is the video of Darwinism's math problem: <https://youtu.be/noj4phMT9OE>

Thanks

1/24/21, 12:21 PM

I discovered this superb interview last night. It is even better, deeper, and more thoroughgoing, in part because Ben knows both the science and the philosophy much better. No politics, just highly intelligent discussion, mostly from Dr. Stephen Meyer. Every Schaerer, including the littlest ones, should know this. And we should teach the strengths and significant weaknesses of neo-Darwinism in schools. Fantastic!

<https://youtu.be/FDSpLBNQk5I>

1/29/21, 3:19 PM

Kohany, I'll go for a walk now. Please, feel free to call me and find me when free

1/29/21, 8:26 PM

https://youtu.be/MDGhZ67F_QU

Awesome

1/30/21, 10:01 AM





1/30/21, 4:37 PM



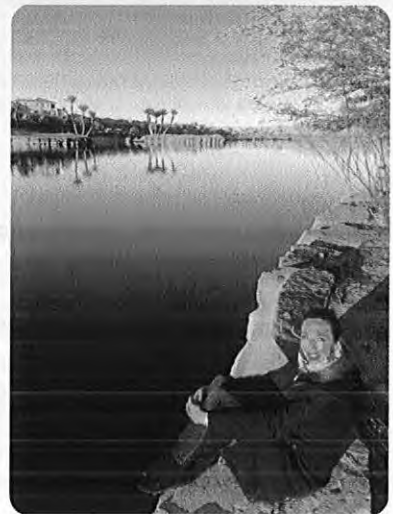


EXHIBIT “14”

2/28/21, 1:20 PM

8801 South Las Vegas Boulevard, Las Vegas, NV 89123

2/28/21, 8:56 PM

Are you on your way home yet?

?

???

3/1/21, 9:44 PM

Kohany, let me know when you're available for some time together, plz :)

15 mins or so, I think

Perfect. I'm gonna shower now and get ready for my kohany time

3/1/21, 11:22 PM

<https://twitter.com/amylutz4/status/1366569112948850688>

3/4/21, 2:48 PM

I'm off to Albertsons

:-)

3/5/21, 2:01 PM

Kohany, please, take the amazon package. It was just delivered

3/6/21, 8:04 PM

China A Gogo

<https://yelp.to/hcgOwN7eqeb>

Kohany, I'm gonna order a lobster sauce shrimp for myself. What would you like to have? Or I'll just order on my own choice for you (some beef option)?

It's in the same building as Bank of America, just a couple doos to the right if you're looking at the bank from the parking lot.
I placed an order under the name Helen (they had issues with Olena, I just made it easier).
The total is \$22 and a change. I'll send you money via Zelle for this

EXHIBIT “15”

Olena Karpenko

5/15/21

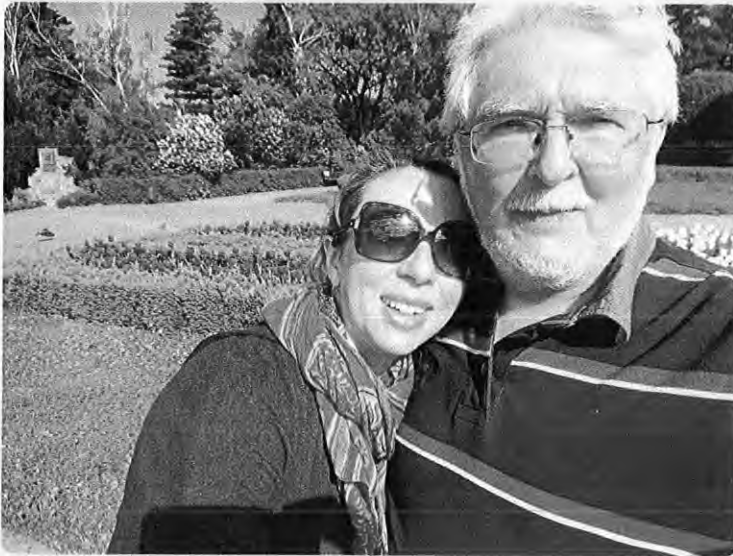
Messages to this chat and calls are now secured with end-to-end encryption.

Hello, dear,

I restored my WhatsApp completely, now we can chat again. :)

How are you?

12:43 PM



📷 213.86 KB

1:01 PM

5/15/21



268.53 KB

1:01 PM



248.35 KB

1:01 PM

5/15/21



200.06 KB

1:05 PM

Enrique Schaerer

Hello, dear. Beautiful photos. I've been tied up on a work call. Are you still awake?

1:17 PM ✓✓

I'm aware, but my parents are asleep already

1:21 PM

I don't want to disturb them by talking

1:21 PM

I fully understand, kohana. Let's aim to reconnect tonight (my time) and tomorrow morning (your time).

1:22 PM ✓✓

Get some rest. Besos.

1:22 PM ✓✓

Sure.
Have a great day

1:24 PM

By the way, I got our joint federal 1040 tax return out in the mail yesterday for us. :-)

1:27 PM ✓✓

5/15/21

Thanks!

1:27 PM

When we next chat, I'd like to hear more about the baby and what the doctors had to say.

1:28 PM ✓✓

Of course

1:28 PM

It sounds like all is well, and I continue to pray for you and the baby.

1:28 PM ✓✓

Besos.

1:29 PM ✓✓

Thanks. Hope you really pray and hold yourself from blaming Lord

1:29 PM

Kohana, please. I'm simply saying you and the baby are in my thoughts and prayers. Goodnight, and besos.

1:50 PM ✓✓

📞 Missed voice call at 23:27

Hey,
I just called you

11:28 PM

5/16/21

Good night

12:16 AM

Kohana, I just tried you. I was up late working. I'm going to bed now and just called to wish you a nice day. Goodnight from over here. Besos.

2:23 AM ✓✓

Wow, you were up really late. And it's your weekend... Ufffff... Get some rest, dear

3:52 AM

Are you still up, dear?

12:35 PM ✓✓

5/16/21

Yes, I am. I'm buying something online at the moment and need my internet banking right now. Sorry, I'll call you back shortly

12:36 PM

It looks like you're up, but your parents may be sleeping. If so, call me in the morning (your time) so we may catch up. :-)

12:36 PM ✓✓

OK. No worries.

12:36 PM ✓✓

Sorry, I'll call you shortly

12:37 PM

My dear, I just finished with the purchase. It was tremendously long process, the bank verified me 4(!) times . Ufffff.
I'll call you in the morning my time. Absolutely exhausted. Sorry

2:43 PM

No worries, dear. For your sake and the baby's, get some good rest. Besos.

2:47 PM ✓✓

5/17/21

📞 Missed voice call at 00:02

📞 Missed voice call at 00:03

Kohany,
I just called you. I know it's a midnight your time, so you might already be asleep.

12:04 AM

I just woke up after all my night's ups and downs

12:04 AM

Hope you are having a rest

12:05 AM

5/17/21

Good morning, my dear,
Hope you slept well!

We had a very powerful thunder storm here today. It was amazingly beautiful. I was missing such heavy rains for long. Grass and trees smell so freshly! It feels like nature needed such a rain badly. However, there was a consequence. Some issue happened to the internet repeater located ~3 miles away from us, so we don't have normal internet access now. Currently I'm using data ("e") on my phone, which is quite weak and not good for a call, unfortunately.

The baby is growing every day. I'm getting heavier. Often I experience back pains. I need to lie down more and more now. My parents provide me with some help. If there would be only you around, you wouldn't be happy with that. So it's good for you not to have this additional headache on top of everything you're overwhelmed with. I'm dealing with my problems by myself.

Wishing you a nice day

9:26 AM

Kohana,
I was about to call you to wish you a good night when I got your text messages. Continue to get good rest and take care of yourself and the baby. Please let me know when internet is restored so we may chat again.

12:37 PM ✓

I will, dear.
Have a lovely day!

12:38 PM

Good evening, dear.
How are you?
How was your day?

11:24 PM

I'm sending this at 11.25 pm your time, but it looks like it's not delivered. I still have "e" internet. Let's see when it'll get restored.
Good night!

11:25 PM

5/18/21

Hi, dear. I just got your messages. I hope you and the baby have been resting well. Please keep me posted on when you restore internet service so we may chat again by WhatsApp phone. Good night, dear.

11:02 AM ✓

Hello, dear. Is your internet back up yet? It would be nice to connect and hear how you and the baby are doing.

10:32 PM ✓

Hi,
I just woke up. Unfortunately, still I have only cell internet ("e"). Hopefully, it'll get restored soon.
How are you?
We're doing well, just my back issues are giving me hard times. But the baby is OK. He is very strong and moves all the time.

11:46 PM

5/19/21

Hey, my dear,
Hope you are doing well.
We both are OK. As he moves more, I start moving less))
Still with "e" internet. Needed to cancel all my classes.
How are you??

10:16 PM

I'm glad to hear you and the baby are well, but am sorry to hear your internet is still not up yet. Hopefully, it will be up soon. Continue to rest, and let me know when your internet is up again so we may catch up. How's everything at your lake house? Has the weather improved since the storm?

11:33 PM ✓

5/20/21

The weather is still rainy. There are some sunny and pleasant moments during the day, but then rain gets back. It's a nice restful atmosphere with calming rain drops heard from outside. I like it.

12:02 AM

What is going on with you?

12:03 AM

Hi, kohana. I'm glad to hear the local weather had been conducive to your rest. It sounds peaceful. How are you and the baby doing?

11:34 PM ✓

5/20/21

Over here, it has been quite windy lately. But when the wind arrived, the heat subsided, so it's a nice tradeoff.

11:35 PM

5/21/21

Thanks for asking about how we feel, dear. When I was there you were barely ever interested in this.

When I told you I would have problems going upstairs and downstairs I was absolutely right. Now staying in hypothetical Hollywell would mean staying just on the first floor, no joke. And as the heat goes up, it gets more and more complicated to breathe. You wouldn't be very happy with me turning the ac on all the time, while it's absolutely vital for me now. The person who walked in Bryce and the person who am I now are two different people. This upsets me, but that's the reality. I have nothing to do with it, but to accept, acomodate and pray.

I'm glad it's nice outside in Vegas. Hopefully you can enjoy the pool and your evening trainings.

12:52 AM

5/22/21

I'm not sure why you're trying so far, time and again, to paint yourself as a victim and draw me into argument. I was simply asking how you and the baby are, and I'm glad to hear you are both well. It sounds like the baby is growing quickly, and I'm glad you are able to rest and enjoy the cooler weather (though we are having a cold snap here in Vegas now). What are the doctor's saying about the progression of the pregnancy? Have they been able to schedule your C-section now? Continue to take good care of yourself and the baby, and besos to both of you. Btw, when will your internet be up again?

12:08 AM

5/22/21

Hello, dear,
Hope you are doing well.

On my previous doctor's appointment it was too early to schedule a date for the c-section yet. It's usually done much later on the term here. Definitely, the protocols are different in the US and in Ukraine.

After the internet repeater was damaged last week, the internet got very unstable here. Sometimes it works for a couple hours, sometimes even for half a day, but I can't totally rely on it with my classes. I needed to reschedule or cancel most of them. Not even once the internet worked in the morning, unfortunately. I don't know why.

I'm not aiming to draw you into an argument or so. And there's intention to "victimize" myself. No. I just know what sort of life order you are committed to, and I'm saying that things, as they are happening with me now, might have been of a big discomfort for you and might have caused some misunderstanding between us. I'm glad we both don't suffer from my current condition. I'm trying to accommodate to the new reality.

Tell me about yourself, please. What's going on with you, what are the news? How do you spend your weekend?

10:50 AM

🔔 Missed voice call at 23:58

🔔 Missed voice call at 23:59

Just tried to call you.
How's your weekend?

11:59 PM

5/23/21

My internet is on now. I wanted to take an advantage of it

12:00 AM

Hi, dear. I'm glad to hear your internet is back up. I'll call you in the morning your time (the late evening mine) to say hi and hear how you and the baby are doing.

7:12 PM ✓✓

I just tried calling, dear. I'll try and stay up a bit more but will be going to sleep soon.

10:28 PM ✓✓

5/23/21

📞 Missed voice call at 23:17

📞 Missed voice call at 23:17

📞 Missed voice call at 23:18

I woke up just a minute ago and called you back twice. I didn't understand if my calls went through. It looks like the internet is down again. So I'm not sure if you even received my calls now 😞

11:20 PM

📞 Missed voice call at 23:21

📞 Missed voice call at 23:26

📞 Missed voice call at 23:27

📞 Missed voice call at 23:27



📷 66.13 KB

11:30 PM

Dialed 7 times when saw the internet showed more stable signal, but in vain (Good night

11:31 PM

5/24/21



82.32 KB

2:57 PM ✓



Hi, dear. I was going through the cabinets this morning and came across these water jars and jugs, as well as this container of creatine. What was this for, kohana, and do you need me to save it for you?

126.32 KB

2:57 PM ✓

Yes, your calls went through but I was already sleeping. Let's try again tonight, though I expect to go to bed earlier. Hope we are able to connect!

3:00 PM ✓

6/3/21

Kohana, is your new cell phone set up with WhatsApp yet?

10:19 AM ✓✓

Yes, it's working now, dear

11:55 AM

Good news. Well, it's late your time now. Shall we aim to connect again by phone the morning your time?

12:13 PM ✓✓

Sure! I'm already falling asleep. Very long day.
Good night :)

12:14 PM

Good night to you. Get some good rest, and we'll talk in the morning your time.

12:50 PM ✓✓

Kohana,
I just tried you twice, once by video and once by voice. Are you up? If so, please call me so we may finally connect again.

10:22 PM ✓✓

6/4/21



00:35 3:50 PM

Wow! What was it you said last night, that he's a "real Cossack"? Indeed. Talk tonight.

4:18 PM ✓✓

Try and get more rest. I see this video came through during your sleep hours. Talk in the morning for you (and tonight for me).

4:20 PM ✓✓

I'm still awake. He's very active now. I just filmed it

4:29 PM

6/4/21

it's 2.30 am my time

4:29 PM

Are you up, kohana? I'm falling asleep fast after a long day but will try and stay up long enough to say hello to you and the baby.

10:29 PM ✓✓

It appears you're still sleeping. I'll try you in the evening your time (the morning mine). Have a lovely start to your weekend.

10:48 PM ✓✓

6/5/21

Good night ;)

12:21 AM

6/6/21

Hi, dear,
How are you? How was your weekend?

10:29 PM

6/7/21

Hi, dear. I just tried calling you. It was a nice weekend. I spent some time in the spa. How was your weekend? Have you been able to swim in the lake yet?

12:20 AM ✓✓

6/8/21

I just tried you. I'm off to bed now. Hope you have a good day!

11:41 PM ✓✓

6/9/21


Are you asleep now already?

12:03 AM

6/9/21

Here's the first of the planned interviews in a row FYI<https://ukrainianpeople.us/solomia-%d0%be%d0%bb%d0%b5%d0%bd%d0%b0-%d0%ba%d0%b0%d1%80%d0%bf%d0%b5%d0%bd%d0%ba%d0%be-%d1%85%d1%82%d0%be-%d0%b2%d0%b8-%d1%81%d0%bf%d1%96%d0%b2%d0%b0%d1%87%d0%ba%d0%b0-%d1%87%d0%b8/>

12:05 AM

 Missed voice call at 00:05


<https://ukrainianpeople.us/solomia-%d0%be%d0%bb%d0%b5%d0%bd%d0%b0-%d0%ba%d0%b0%d1%80%d0%bf%d0%b5%d0%bd%d0%ba%d0%be-%d1%85%d1%82%d0%be-%d0%b2%d0%b8-%d1%81%d0%bf%d1%96%d0%b2%d0%b0%d1%87%d0%ba%d0%b0-%d1%87%d0%b8/>

12:05 AM

I also tried you

12:06 AM

Thanks, kohana. Congratulations. Would this be considered international press?

9:57 AM 

 This message was deleted

9:59 AM

Thanks, dear) Yes, its' a major Ukrainian diaspora magazine in USA (published in Chicago)

10:01 AM

And it'll be translated in English

10:05 AM

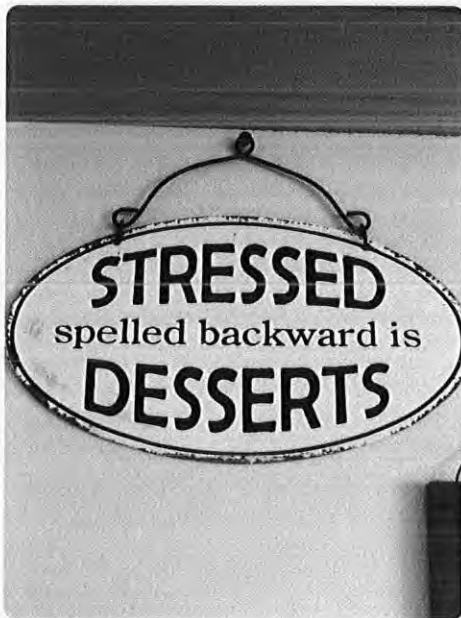
I'm exhausted, kohana, and am going to bed. You're usually still sleeping at this time. Have a good day, and hope to talk to you tomorrow. Congratulations again on the article!

10:48 PM 

Good night, dear!

10:49 PM

6/10/21



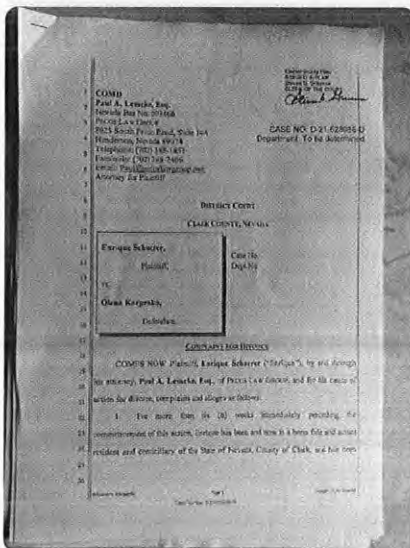
42.94 KB

11:38 PM

6/11/21

Received this on June 11, 2021, ~12.40 pm

6:36 AM



127.71 KB

6:36 AM

EXHIBIT “16”



And some beauty for you

Pigeon carrying an olive branch

4/6/21, 7:38 PM

All is well, kohana?

Yes, I'm on my way home, just said good bye to Kamela

Liked "Yes, I'm on my way home, just said good bye to Kamela"

4/8/21, 2:09 PM

Call you back. On phone, my dear.

Boarded
We love you

Just left a vm, kohana. Smooth & safe travels! Call me when you're in DC. Ya tebe kohayu.

4/8/21, 7:01 PM

Kohany,
I landed safely, everything went well.
I'm in DC waiting for the next flight at 11.15 pm ECT, it's in an hour.
Tried to call you, but my calls kept on dropping((

You stopped answering on the phone. I'm not sure if it was a bad connection. Feel free to call me back, my dear.