**MOT**

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** ) Courtroom:

DOB: )

AGE: \_\_ YEARS OLD )

)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** )

DOB: )

AGE: \_\_ YEARS OLD )

)

Minors. )

)

**MOTION TO COMPEL PLACEMENT AND REQUEST FOR A FINDING OF A LACK OF REASONABLE EFFORTS FOR FAILURE TO ACHIEVE PERMENANCY**

COMES NOW, \_\_\_\_\_\_\_\_\_\_\_\_\_\_*,* Esq., of FIRM, by and on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“\_\_\_\_\_\_\_\_\_\_\_\_\_”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“\_\_\_\_\_\_\_\_”), the above named minors, and hereby respectfully submits this Motion to Compel Placement and requests that this Court find that the Department of Family Services (“The Department”) has failed to make reasonable efforts to achieve permanency for \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_.

This Motion is based upon the attached Memorandum of Points and Authorities, the affidavit attached hereto, the exhibits attached hereto, the papers and pleadings on file and other such documentary and oral evidence as may be presented at the hearing of this Motion.

DATED this \_\_\_\_\_\_\_ day of April, 2014.

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTICE OF MOTION**

TO:

TO:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION on for hearing before the above-entitled court on the \_\_\_\_\_\_ day of April, 2014 at \_\_\_\_\_\_m.

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.**

DATED this \_\_\_\_\_\_\_ day of April, 2014.

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MEMORANDUM OF POINT AND AUTHORITIES**

1. **STATEMENT OF FACTS**

\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ came to the attention of the Department on June 28, 2012 due to domestic violence between their parents. They have been wards of the state since August 14, 2012. \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_’s parents failed to complete their case plan and as a result their parental rights were terminated January 28, 2014.

While in care \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ lived in various foster homes. In August 2012 they were moved to the foster home of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”). During their time in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home, she indicated multiple times to the Department that she was willing to adopt the children if their parents’ rights were ever terminated. However, the children were removed from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s in August 2013 due to concerns about their interactions with another foster child in her care.

Since their removal from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home and the termination of their parents’ rights, the children have remained in a non-adoptive foster home. Both \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ want to be adopted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and continue to ask about her. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has indicated that she is still willing to adopt the children and was working with the Department to ensure the children would be placed with her. In order to meet Department standards, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ bought bunk beds so each of the children would have their own bed. She also recently bought an SUV to accommodate \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_.

Although \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has gone to great lengths to become the adoptive foster parent of \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_, the Department will not place the children in her care because of the bunk beds in her home. The Department’s safety standards require a child to be eight-years-old to sleep in the top bunk. Although \_\_\_\_\_\_\_\_\_\_ will be eight-years-old in four months, the Department is not willing to waive the requirement and place the children in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home. They are also not willing to place the children in the home without waiving the requirement because they would lose Title IV-E funding.

1. **LEGAL ARGUMENT**
2. **This Court Has Original and Exclusive Jurisdiction Over this Matter.**

The Court has original jurisdiction over this matter pursuant to N.R.S. 432B.410. N.R.S. 432B.410(1) states:

Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.

The Indian Child Welfare Act does not apply in this case. \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ are children living within the county and were found in need of protection pursuant to a Petition of Abuse/Neglect filed by Clark County Department of Family Services and the termination of their parents’ rights on January 28, 2014.

1. **The Department Has Failed to Make Reasonable Efforts to Place the Children with an Adoptive Resource.**

The Department has failed to make reasonable efforts to achieve permanency for \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ by failing to place them in an adoptive home. Under Nevada law, a Court has broad discretion in placement decisions but must always keep the best interests of the child as its paramount consideration.[[1]](#footnote-1) N.R.S. 432B.553(1)(b) states that an agency that obtains legal custody of a child shall: “make reasonable efforts to finalize the permanent placement of the child in accordance with the plan adopted pursuant to paragraph (a).” To determine whether DFS has made reasonable efforts, N.R.S. 432B.393(5) states that the court shall:

(a) Evaluate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made;

(b) Consider any input from the child;

(c) Consider the efforts made and the evidence presented since the previous finding of the court concerning reasonable efforts;

(d) Consider the diligence and care that the agency is legally authorized and able to exercise;

(e) Recognize and take into consideration the legal obligations of the agency to comply with any applicable laws and regulations;

(f) Base its determination on the circumstances and facts concerning the particular family or plan for the permanent placement of the child at issue;

(g) Consider whether any of the efforts made were contrary to the health and safety of the child;

(h) Consider the efforts made, if any, to prevent the need to remove the child from the home and to finalize the plan for the permanent placement of the child;

(i) Consider whether the provisions of subsection 6 are applicable; and

(j) Consider any other matters the court deems relevant.

The Department’s failure to place \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ in an adoptive foster home is not in the children’s best interest and is unreasonable. The Department will not place \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home because of N.A.C. 424.375(8) which states:

“*Unless an exception is approved by the licensing authority*, bunk beds with more than two bunks are prohibited. If bunk beds are used, the upper bunk must have a guardrail. Upper bunks must not be used by children under 8 years of age.” (*emphasis added*).

The Department has stated that due to this requirement \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ cannot be placed in the adoptive home. The language “unless an exception is approved by the licensing authority” indicates that the Department, as the licensing authority, has the ability to waive this standard to allow the children to live in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home. If the home does not meet the Department’s safety standards, they are not eligible for Title IV-E benefits. The failure to place \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ in an adoptive home as soon as possible illustrates a lack of reasonable efforts and a failure to consider the best interest of the children.

The failure to waive the requirement of N.A.C. 424.375(8) is unreasonable. It is within the Department’s discretion to waive the requirement and instead they are choosing not to obtain permanency for \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ as soon as possible. The decision not to waive the standard becomes even more unreasonable when taking into consideration the lengths \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has gone through to reunite with the children, as well as the children’s desire to live with her.

Even if the Department could not waive this safety standard, failing to place \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ still illustrates a lack of reasonable efforts. Failing to place children with an adoptive resource because the children would become ineligible for Title IV-E benefits is unacceptable and unreasonable. Especially considering that the children would only be ineligible for Title IV-E funding during the period of time the safety standard was not met.[[2]](#footnote-2) In this case, the safety standard would be met again once \_\_\_\_\_\_\_\_\_\_ turns eight-years-old, which is in four months.

The Department will spend essentially the same amount placing the children in a non-adoptive foster home, as it would placing them in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home without Title IV-E benefits. The Department pays $682.94 per month for each child in foster care. The federal government reimburses $401.98 per month for each child. While \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home is ineligible for Title IV-E benefits the Department would pay $5,460.52 for both children to live with her. While the Department may indicate that they cannot afford to pay $5,460.52 for the children to live in the home while it is ineligible for Title IV-E benefits, the cost of placing them in a non-adoptive foster home is almost the same in the long run. The children would be eligible for adoption just two months after \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home would meet the safety standards. Delaying the children’s placement with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for four months means the department will have to pay for foster care for ten (10) months versus six (6) months.[[3]](#footnote-3) Even with the Title IV-E benefits the state will end up paying $5611.20 for \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ while they are not placed with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ versus $6582.56 for the six months in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s home until they can be adopted. It is unreasonable and contrary to the mental and emotional health of \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ to keep them out of an adoptive home for any amount of money, let alone $971.36.

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1. **Conclusion**

The Department is choosing fiscal concerns over the needs and best interests of the children in violation of federal and state laws which mandate they achieve permanency and act in the best interest of the children. \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ have missed out on months of being in an adoptive home with a foster parent who loves them. They have remained in a foster home that is not an adoptive resource. Due to the Departments’ actions, \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ will have to wait longer for the permanency they wish to achieve.

Therefore, it is respectfully requested that the Court compel the Department to place \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_ with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. It is also requested that the Court find that the Department lacked reasonable efforts in achieving permanency for \_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_.

DATED this \_\_\_\_\_\_\_ day of April, 2014.

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***CERTIFICATE OF MAILING***

I HEREBY CERTIFY that on the \_\_\_\_\_\_\_ day of April, 2014, I placed a true and correct copy of the foregoing Motion to Compel Placement and Request for a Finding of Lack of Reasonable Efforts for Failure to Achieve Permanency, postage fully prepaid, in the United States Mail addressed as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Esq.

Deputy District Attorney Juvenile

Family Court

601 N. Pecos Road, Room 470

Las Vegas, Nevada 89101

*Attorney for Department of Family Services*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Case Manager

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An employee of

FIRM

1. See *In re J.H.*, 2009 WL 1471277 2, (Nev. 2009) (paraphrasing NRS 432B.590(3)(b)). [↑](#footnote-ref-1)
2. “If compliance with safety requirements is lost sometime during the month, the childs’ title IV-E eligibility ends from that day forward until the requirement is met.” U.S. Department of Health and Human Services, *Title IV-E Foster Care Eligibility Review Guide*, at 53. (December 2012). [↑](#footnote-ref-2)
3. The ten month figure comes from the four months the children would not be eligible for Title IV-E benefits if in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s care, plus the six month placement requirement before adoption required by N.R.S. 127.150. [↑](#footnote-ref-3)