**PMOT**

ATTORNEY CONTACT INFO

Attorney for XXX

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

 ) Dept. No.:

**CLIENT 1,**  ) HEARING REQUESTED

DOB: )

 )

**CLIENT 2,** )

DOB: )

 )

 Minors. )

 )

**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.**

**MOTION TO SUSPEND VISITATION BETWEEN CLIENT 1,**

**CLIENT 2, AND FATHER**

 COMES NOW, *CLIENT* *1* and *CLIENT 2*, by and through counsel, *Attorney*, Esq. of the Children’s Attorneys Project of Legal Aid Center of Southern Nevada, Inc., and hereby submit this Motion to Suspend Visitation Between *Client 1*, *Client 2*, and *Natural Father*.

This Motion is made in good faith and is based upon the pleadings and papers on file herein, the Memorandum of Points and Authorities submitted in support hereof, any attached exhibits, and any oral arguments made at the hearing.

 Dated this \_\_\_\_ day of *Month, Year*.

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

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**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **STATEMENT OF FACTS**

*CLIENT 1*, age 6, was removed from her natural mother, *Mother,* on or about *Date*, due to allegations of abuse and/or neglect. *CLIENT 2*, age 2, was also removed from his mother on *Date*. *Father* is the natural father as to both children. The issue of visitation has been addressed before this court on multiple occasions since dad was released from prison in *Month Year*.[[1]](#footnote-1) On *Date*, this Court ordered visitation to occur two times a week for one hour each.[[2]](#footnote-2) Previous to this order, *Father* had not seen *CLIENT 1* since *Month* of *Year* where as two years have passed.[[3]](#footnote-3) On *Date*, this Court ordered that *Father* was to have therapeutic visitation in a therapeutic setting with both *CLIENT 1* and *CLIENT 2*.[[4]](#footnote-4)

On *Date*, *CLIENT 1*’s therapists at Healthy Minds met with *Father* to discuss the goals, expectations, purpose and rationale for family therapy and to provide *Father* with a psychoeducation regarding his daughter’s developmental milestones, and expectations.[[5]](#footnote-5) Healthy Minds attempted to educate *Father* on *CLIENT 1*’s perspective.[[6]](#footnote-6) Instead of taking advantage of the services, *Father* became agitated and did not seem interested in participating in family therapy.[[7]](#footnote-7) On *Date*, Healthy Minds recommended *Father* receive an assessment for appropriateness to participate in family therapy.[[8]](#footnote-8) *Father* has not completed the assessment therefore visits through Healthy Minds cannot continue.[[9]](#footnote-9)

On *Date*, after hearing evidence on the issue of lack of visitation, this Court found that the Department of Family Services did not willfully violate the court order in their attempts to find a new provider for the therapeutic visits. [[10]](#footnote-10) Therefore, therapeutic visits were to resume between *Father* and *CLIENT 1*.[[11]](#footnote-11) Between *Date* and *Date*, *CLIENT 1* had only one therapeutic visit with *Father*.[[12]](#footnote-12)

A termination of parental rights trial was held on *Date*, *Date*, and *Date.*[[13]](#footnote-13) After the trial, the Court found that *Father* was an unfit parent.[[14]](#footnote-14) The court also found that *Father* is resistant to help and would do nothing to change his violent and aggressive nature.[[15]](#footnote-15) Although the court found *Father* unfit to parent his children, the court did not terminate his parental rights because the state failed to prove the petition against *Mother*.[[16]](#footnote-16) Since the Court was not terminating mom’s parental rights, the Court would not leave the children fatherless.[[17]](#footnote-17) Since both parents’ rights are intact, on *Date*, this Court ordered supervised visitation with both natural parents to begin twice a week at Child Haven.[[18]](#footnote-18) The order permitted the foster parents to be present as needed.[[19]](#footnote-19)

As a result of these Court ordered visits, *CLIENT 1* is experiencing extremely severe anxiety at home and at school. She displays extreme anxiety through self injurious behaviors such as compulsive skin picking.[[20]](#footnote-20) *CLIENT 1* experiences anticipatory anxiety before the supervised visits, including having stomach aches on the car rides to visitations.[[21]](#footnote-21) She is having nightmares where she will scream out “don’t let him take me” and has had accidents wetting her pants since visits restarted. [[22]](#footnote-22) She has increased behavioral problems after visitations with *Father*, such as excluding her peers at school, refusing to listen to teachers, and pulling her hair out while in time-out at home.[[23]](#footnote-23) She now demonstrates aggressive behaviors at the visits, including shoving *Father* away, playing aggressively, and calling *Father* “bad dad.”[[24]](#footnote-24) Prior to visitation with *Father* none of these behaviors were observed.

*CLIENT 1* continues to avoid *Father* at all costs during the visits. When he tries to interact with her, she will either move away from *Father* or run into other rooms to get away from him.[[25]](#footnote-25) During one visit, *CLIENT 1* went under the table and pulled the chairs in close around her; she had a scared look on her face and was only calmed when the case worker at child haven informed her she would be leaving with foster parents.[[26]](#footnote-26) *CLIENT 1* has hid under the table on multiple occasions.[[27]](#footnote-27) *CLIENT 1* has, on multiple occasions told *Father* to stay away from her, to stop following her, that he is not her dad and to leave her alone.[[28]](#footnote-28) *CLIENT 1* repeatedly expresses being afraid that ULTIMO will “take me away.”[[29]](#footnote-29)

Despite being redirected by staff to focus on having a good visit with his children, *Father* continues to make inappropriate comments to and around *CLIENT 1* during scheduled visits.[[30]](#footnote-30) This is extremely concerning as this has a direct effect on *CLIENT 1*’s emotional wellbeing. *Father* has asked *CLIENT 1* during visits, “why can’t you be like your brother, why can’t you be cool?”[[31]](#footnote-31) He becomes agitated when *CLIENT 1* does not want to sit next to him, saying inappropriate comments such as, “I’m your family, not them…”[[32]](#footnote-32) He shouts that *CLIENT 1* is being “brain washed” and that her foster parents have turned her against him.[[33]](#footnote-33)

Visits between *CLIENT 2* and *Father* have not been great either. On one occasion, *CLIENT 2* was upset, crying, and screaming wanting to stay in foster mom’s arms; nevertheless *Father* attempted to rip *CLIENT 2* from his foster mother’s arms. [[34]](#footnote-34) Despite *CLIENT 2* clinging to and gripping onto his foster mother, *Father* ripped him away.[[35]](#footnote-35) *Father* was unable to console *CLIENT 2* after this altercation, and the supervising worker had to have the foster mother calm *CLIENT 2*.[[36]](#footnote-36) Additionally, *Father*’s behavior towards the foster parents in the presence of the children continues to be inappropriate. During a recent visit, *Father* attempted to physically fight the foster father, saying “make a move… try something,” with his fists clenched.[[37]](#footnote-37) He refers to the foster mother as “this idiot”[[38]](#footnote-38) and antagonizes the foster parents in efforts to solicit negative reactions from them in the presence of *CLIENT 1* and *CLIENT 2*.[[39]](#footnote-39)

Currently, both *Mother* and *FATHER* still retain parental rights to *CLIENT 1* and *CLIENT 2*. An Adjudicatory Trial is scheduled regarding the Abuse/Neglect petition (P4) for *Date*. Notwithstanding this, *CLIENT 1* and *CLIENT 2* respectfully request this Court for an Order to suspend visitation until such time as *FATHER* submits himself to an assessment by Healthy Minds as recommended, or in the alternative, until such time they can be facilitated by an therapist who can help *CLIENT 1* process theses visits and can assure the appropriateness of *Father*.

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

This Court has original jurisdiction to adjudicate the present case pursuant

to NRS 3.223. Specifically, NRS 3.223 provides:

NRS 3.223 Jurisdiction of family courts.

1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 et seq., in each judicial district in which it is established, the family court has original, exclusive jurisdiction in any proceeding:

(a) Brought pursuant to title 5 of NRS or chapter 31A, 123, 125, 125A, 125B, 125C, 126, 127, 128, 129, 130, 159A, 425 or 432B of NRS, except to the extent that a specific statute authorizes the use of any other judicial or administrative procedure to facilitate the collection of an obligation for support.

 In turn, NRS 432B.410 provides, “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 domiciled, living or found within the county who is a child in need of protection or may be a child in need of protection.”[[40]](#footnote-40) In this case, because *CLIENT 1* and *CLIENT 2* were removed pursuant to NRS 432B.470 on *Date* and *Date*, respectively, and subsequently adjudicated wards of the Court in need of protection. As such, this Court has subject matter jurisdiction over this case, as well as personal jurisdiction over *CLIENT 1* and *CLIENT 2*, minors.

1. **Visitation Between *CLIENT 1*, *CLIENT 2* and *Father* Must Be Suspended Because It Is Not In the Children’s Best Interest.**

Under the purview of NRS 432B.560, the Court has the authority to order a parent to refrain from visiting with the child if it is determined that the visits are not in the best interest of the child. NRS 432B.560(1)(b)(2). However, even after the Court enters a visitation order, the Court can nevertheless modify its previous order. Specifically, NRS 432B.570 states:

**432B.570. Motion for revocation or modification of order**

 1. A motion for revocation or modification of an order issued pursuant to [NRS 432B.550](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST432B.550&originatingDoc=N862480104D9011DB8C22BE35EE8F8955&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) or [432B.560](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000363&cite=NVST432B.560&originatingDoc=N862480104D9011DB8C22BE35EE8F8955&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)) may be filed by the custodian of the child, the governmental organization or person responsible for supervising the care of the child, the guardian ad litem of the child or a parent or guardian. Notice of this motion must be given by registered or certified mail to all parties of the adjudicatory hearing, the custodian and the governmental organization or person responsible for supervising the care of the child.

 2. The court shall hold a hearing on the motion and may dismiss the motion or revoke or modify any order as it determines is in the **best interest of the child.** (Emphasis added)

On *Date*, this Court entered an order granting supervised visitations twice per week between *Father* and both *CLIENT 1* and *CLIENT 2*. The visits were to be supervised at Child Haven and the foster parents were permitted to be present at the visits as needed. *CLIENT 1* and *CLIENT 2* now seek to modify this Visitation Order by this Court.

*CLIENT 1* is experiencing extremely severe anxiety. Her anxiety has caused her to start picking at her own skin until she makes herself bleed. Her anxiety over visits is also causing her to experience stomach aches on her way to the visits. *CLIENT 1* is having nightmares and has begun wetting herself out of fear that *Father* is going to take her away from the only family that she knows. *CLIENT 1* has had increased behavioral problems. During visits, she will run away and hide from *Father*, she will yell at him to stop following her and that he is not her real dad. *CLIENT 1* has even pushed *Father* away from her. Outside of the visits, *CLIENT 1* has had issues with her peers. She has been in trouble at school for excluding peers and refusing to listen to her teachers. *CLIENT 1* has also been noted to play more aggressively and has pulled her own hair out while on time out. She exhibits fear even when no longer in *Father*’s presence, such as wondering if he will show up to her therapy sessions or school to take her. *CLIENT 1* is suffering both mentally and physically due to her visits with her father.

Visits with *Father* have increasingly gotten worse. *Father* will make inappropriate statements in front of both children. He has even questioned *CLIENT 1* about why she doesn’t like him and why she won’t “be cool.” He becomes agitated when *CLIENT 1* does not want to sit next to him, saying inappropriate comments such as, “I’m your family, not them…” *Father* lacks the skills to connect with *CLIENT 1* and blames her for the lack of a relationship. *Father* believes that the foster parents are turning the children against him, yet he does not realize that the rift in their relationship is caused by his own behavior.

*CLIENT 1* and *CLIENT 2*’s visits with *Father* were ordered to help the children establish a healthy relationship with their father. These visits are not having this intended effect. Rather, these visits are causing the children great distress and anxiety. *Father* disregards *CLIENT 2*’s emotional needs and attachments, ripping him from the arms of the foster mother he knows and loves. He speaks badly of the foster parents in front of the children, directly stating that their foster mother, whom they both know and love, does not love them and is an “imposter parent.” He attempts to instigate physical altercations with the foster parents during the visits with the children. The one thing that makes the visits easier for the children, the calming presence of their foster parents for emotional support, has become yet another source of anguish and anxiety for *CLIENT 1* and *CLIENT 2* because of *Father*’s aggression towards them. Therefore, it is not in *CLIENT 1* or *CLIENT 2*’s best interests to continue visiting with *Father* at this time.

1. **CONCLUSION**

 *CLIENT 1*, *CLIENT 2* and *Father*’s visits are not in the best interest of the children. Therefore, *CLIENT 1*and *CLIENT 2* respectfully request that the Court enter an Order immediately suspending the visitations between *CLIENT*, *CLIENT 2*, and *Natural Father*.

Respectfully submitted this \_\_\_\_\_\_ day of *Month*, *Year*.

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

ATTORNEY CONTACT INFO

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

***CERTIFICATE OF SERVICE***

 I HEREBY CERTIFY that on the \_\_\_\_\_ day of *Month, Year*, I served the foregoing **MOTION TO SUSPEND VISITATION BETWEEN *CLIENT 1*, *CLIENT 2*, AND *FATHER*** by the Court’s electronic system (EFS E-File & Serve) and/or depositing in the U.S. Mail in a sealed envelope with first-class postage fully prepaid thereon, to the following:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 An employee of

 *Firm*

1. See Minute Orders for Hearings on *Date*, *Date*, *Date*, *Date*, *Date*, and *Date* attached hereto as part of Exhibit A. [↑](#footnote-ref-1)
2. See Minute Order for Hearing on *Date* (Exhibit A). [↑](#footnote-ref-2)
3. See Report for Permanency and Placement Review filed on *Date* page 4 and Report for Permanency and Placement Review filed on 8/30/13 page 4 and Report for Permanency and Placement Review filed on *Date* page 4 and Report for Permanency and Placement Review filed on *Date* page 4 attached hereto as Exhibit B. [↑](#footnote-ref-3)
4. See Minute Order for *Date* attached (Exhibit A) and Findings of Fact and order filed *Date* attached hereto as Exhibit H. [↑](#footnote-ref-4)
5. Therapist Report (attached hereto as Exhibit C) at 3-4. [↑](#footnote-ref-5)
6. Id at 4. [↑](#footnote-ref-6)
7. Id. [↑](#footnote-ref-7)
8. Id. [↑](#footnote-ref-8)
9. Id. [↑](#footnote-ref-9)
10. See Minute Order for *Date* (Exhibit A). [↑](#footnote-ref-10)
11. Id. [↑](#footnote-ref-11)
12. See Minute Order dated *Date* (Exhibit A). [↑](#footnote-ref-12)
13. See Decision Filed *Date* attached hereto as Exhibit I. [↑](#footnote-ref-13)
14. Id at 11. [↑](#footnote-ref-14)
15. Id. [↑](#footnote-ref-15)
16. Id at 14-15. [↑](#footnote-ref-16)
17. Id at 15. [↑](#footnote-ref-17)
18. Minute Order dated *Date* (Exhibit A). [↑](#footnote-ref-18)
19. Id. [↑](#footnote-ref-19)
20. *Date* Healthy Minds Treatment Team Planning Form Dated, attached hereto as Exhibit D at 3. *See also* Unity Notes, attached as Exhibit E at 4. [↑](#footnote-ref-20)
21. Therapist Report (Exhibit C) at 2; *Date* Healthy Minds Treatment Team Planning Form attached as Exhibit F at 5. [↑](#footnote-ref-21)
22. Therapist Report at 2; February 23 Treatment Form at 5; Unity Notes at 24, 27-28. [↑](#footnote-ref-22)
23. Therapist Report at 3; *Date* Treatment Form at 5. Unity Notes at 3 (“she has been on yellow 3 times” at school). [↑](#footnote-ref-23)
24. Therapist Report at 2. *See also* Unity Notes at 29, 30, 37. [↑](#footnote-ref-24)
25. Unity Notes at 4-5, 7-8, 8, 11-12, 12-13. [↑](#footnote-ref-25)
26. *Id*. at 11-12. [↑](#footnote-ref-26)
27. *Id.* at 1 and 11-12. [↑](#footnote-ref-27)
28. *Id*. at 7-8, 9, 21, 29, and 30.

 [↑](#footnote-ref-28)
29. March 22 Treatment Form at 10. [↑](#footnote-ref-29)
30. Unity Notes at 1, 4-5, 8-9, 11-13, 21-22, 24. [↑](#footnote-ref-30)
31. *Id.* at 24. [↑](#footnote-ref-31)
32. *Id.* at 13. [↑](#footnote-ref-32)
33. *See, e.g.*, *id.* at 5, 21. [↑](#footnote-ref-33)
34. Email from *Foster Mother* to *Attorney*, dated *Date* (“Email”), a true and correct copy attached hereto as Exhibit G ; United Notes at 3-4. [↑](#footnote-ref-34)
35. Email; Unity Notes at 3-4. [↑](#footnote-ref-35)
36. Email. [↑](#footnote-ref-36)
37. Email; Unity Notes at 3-4. [↑](#footnote-ref-37)
38. Unity Notes at 1. [↑](#footnote-ref-38)
39. *Id.* at 9 (“I speak two languages. How many languages do you speak?... How many houses do you have huh!”). *See also* *id.* at 12-13 (“If they were good people they would give the kids back then…You spending the states [*sic*] money?... Have your own kids!”). [↑](#footnote-ref-39)
40. NRS 432B.410 [↑](#footnote-ref-40)