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LUBA DACE
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LUBA DACE, Plaintiff, v. MELVIN GRIMES, BEN CHILDS, LAW OFFICE OF BENJAMIN B. CHILDS, ROBERTS STOFFEL FAMILY LAW GROUP, Defendants.	Case No.: A-25-922833-C Dept. No.: 29 **PLAINTIFF'S OPPOSITION TO DEFENDANT CHILDS' (1) ANTI-SLAPP MOTION AND (2) MOTION TO DISMISS**

I. INTRODUCTION

Plaintiff opposes Defendant Childs's (hereinafter "Mr. Childs") special motion to dismiss under NRS 41.660 and his motion to dismiss. To streamline the issues and promote judicial economy, Plaintiff limits the claims presently pursued against Mr. Childs to two causes of action: (1) legal malpractice/professional negligence (including breach of fiduciary duty) and (2) fraud/intentional misrepresentation. This narrowing is not a concession on the merits of any previously pled theories; it focuses the case on the claims most directly supported by the record.

Both motions fail for independent reasons. First, Nevada's absolute litigation privilege cannot be invoked by an attorney against the attorney's own former client to defeat malpractice

Case Number: A-25-922833-C

and fiduciary-duty claims. Second, even assuming the challenged statements qualify as petitioning activity under NRS 41.637, Plaintiff meets anti-SLAPP's second step by submitting prima facie evidence of breach, causation, and actual damages. Third, to the extent the Court has case-management concerns while related appellate proceedings continue, the appropriate remedy is abatement or a brief stay—not dismissal.

The documentary record—including contemporaneous written communications and trial testimony—presents disputes that cannot be resolved as a matter of law in Mr. Childs' favor at this stage. The Court should therefore deny the special motion and the motion to dismiss and allow Plaintiff's two narrowed claims to proceed to merits adjudication.

Preview of legal framework. At anti-SLAPP prong one, the movant must prove—act by act—that the claim targets a "good-faith communication" within one NRS 41.637 category; "litigation" coverage under § 41.637(3) turns on a direct connection to the issue actually under consideration and an interested audience. At prong two, Plaintiff need only show minimal merit. Separately, Nevada's *Greenberg Traurig* rule bars an attorney from using the litigation privilege against the attorney's own client in malpractice/fiduciary claims; those duties are not converted into "protected petitioning" by anti-SLAPP.

II. MOOTNESS AND JUDICIAL ECONOMY

Plaintiff has moved for leave to file a Fourth Amended Complaint. To promote judicial economy and narrow the issues on the pending motions, Plaintiff limits—solely for purposes of those motions—her claims against Mr. Childs to (1) legal malpractice/professional negligence (including breach of fiduciary duty) and (2) fraud/intentional misrepresentation. Plaintiff does not voluntarily dismiss any other theories at this time; upon the Court's grant of leave, the Fourth Amended Complaint will supersede the prior pleading as the operative complaint. See *Las Vegas Network v. Shawcross*, 80 Nev. 405, 409 (1964). Accordingly, the Court should resolve the

motion for leave to amend first and then treat any remaining issues in the motion to dismiss as directed to the operative pleading after amendment (or hold the motion in abeyance/deny without prejudice pending amendment).

III. THE LITIGATION PRIVILEGE DOES NOT BAR THESE CLAIMS

Nevada recognizes an absolute litigation privilege protecting communications made in the course of judicial or quasi-judicial proceedings so long as they are "in some way pertinent to the subject of the controversy." *Fink v. Oshins*, 118 Nev. 428, 433–36, 49 P.3d 640, 643–46 (2002); *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60–62, 657 P.2d 101, 104–05 (1983). Pertinency is construed broadly. *Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 382, 213 P.3d 496, 502 (2009).

But the Nevada Supreme Court has recognized a controlling exception: an attorney may not invoke the litigation privilege against the attorney's own client in a malpractice or professional-negligence action. *Greenberg Traurig, LLP v. Frias Holding Co.*, 130 Nev. 627, 631–35, 331 P.3d 901, 903–06 (2014) (en banc) (the privilege exists to protect clients; it does not shield attorneys from accountability to their clients). That rule squarely fits here, where the challenged conduct is Childs's private advice and fiduciary breaches toward his client, not public advocacy against an opponent.

Accordingly, Mr. Childs cannot defeat Plaintiff's Count I (legal malpractice/professional negligence, including breach of fiduciary duty) by invoking the litigation privilege. To the extent Count II (fraud/intentional misrepresentation) is predicated on misrepresentations to the client made during the attorney–client relationship, it likewise proceeds. If any sub-theory were construed as a perjury-based civil tort for in-court testimony, Plaintiff alternatively requests leave to conform to a breach-of-fiduciary-duty/constructive-fraud theory consistent with *Greenberg's* rationale.

A. Misuse of Client Confidences Is a Breach of Loyalty and Confidentiality Not Shielded by Privilege

Nevada imposes duties of loyalty and confidentiality on attorneys during and after representation. See NRPC 1.6; NRPC 1.9(c). While the Rules do not create a standalone private right of action, they define the professional duties supporting malpractice and fiduciary-breach claims. Where, as alleged here, a lawyer uses or discloses information obtained in the representation to the client's detriment, that conduct is actionable as a breach of loyalty and confidentiality sounding in malpractice. See *Stalk v. Mushkin*, 125 Nev. 21, 24–26, 199 P.3d 838, 840–41 (2009) (reversing summary judgment where attorney allegedly disclosed information harmful to former clients' interests; claim is essentially malpractice governed by NRS 11.207).

Critically, the litigation privilege is no defense to such attorney–client claims. *Greenberg Traurig* holds that an attorney generally cannot rely on the privilege against malpractice/professional-negligence claims by the client. 130 Nev. at 631–35, 331 P.3d at 903–06. Any "self-defense" disclosure under NRPC 1.6(b)(5) is narrowly limited to what is reasonably necessary; disclosures beyond that violate NRPC 1.6 and 1.9(c). See *In re Discipline of Draskovich*, 137 Nev. 733, 738–40, 499 P.3d 1166, 1171–72 (2021).

IV. TIMELINE OF CHILDS' COMMUNICATION WITH PLAINTIFF ABOUT CHILD DROP-OFF

Beginning on March 8, 2023, Mr. Childs initiated a series of written communications advising Plaintiff, Luba Dace, not to release the minor child for international travel. On that date, Mr. Childs relayed that both Robert Lueck, former family court judge, and Alexandra Monaco, an experienced immigration attorney, unequivocally opposed allowing the child to cross the border. Mr. Childs forwarded Monaco's written warning, which cautioned:

"Entering MX won't be that big a deal. Getting back in will be. Waits can be 6 to 8 hours long and during that time, they are at the criminal's mercy on the Mexican side. I will spare you

all the details of what has happened to some of my clients. Suffice it to say they will be scarred for life." (Ex. A:028)

On March 12, 2023, Mr. Childs sent Plaintiff a news article describing Mexico as unsafe for spring break travel. Plaintiff responded with growing concern (Ex. A:002–003). The following day, March 13, 2023, Mr. Childs reiterated that Judge Lueck—then present in Mr. Childs' office—strongly advised against permitting the trip. Mr. Childs further referenced Enrique Gonzalez's lack of employment and history of threatening to kidnap the child. He indicated that an emergency motion would be filed and later that evening again instructed Plaintiff not to allow the pickup, concluding emphatically: *"NO WAY!"* (Ex. A:005–009).

On March 15, 2023, the day the child was to be released for international travel, Mr. Childs explicitly conveyed this advice in writing to opposing counsel Melvin Grimes, stating: *"No, she cannot provide* [redacted] *at the exchange point right now for the following reasons… CBX tickets have not been provided."* (Ex. F:062). This statement clearly reflected Mr. Childs' legal instruction to Plaintiff. Yet in subsequent court proceedings, Defendant disclaimed responsibility for that advice and attempted to distance himself from it.

As a direct result of Plaintiff's refusal to deliver the child, Enrique, through counsel, filed an emergency motion mischaracterizing the incident as a criminal abduction. (Ex. H:068-070) This misrepresentation was used to fabricate a "change in circumstances" to justify modification of the custody order, leading to an evidentiary hearing which ultimately led to her losing joint physical custody. But for Mr. Childs' advice to withhold the child under the stated conditions, Plaintiff's legal position would not have been undermined in a manner enabling Enrique to seek emergency custody. Moreover, Plaintiff would not have been subjected to the rebuttable presumption of unfitness under NRS 125C.0035(4), which ultimately resulted in the loss of joint

custody. Despite the documented record of his advice, Mr. Childs testified on March 19, 2024—the first day of trial—that he had not advised Plaintiff to withhold the child. This sworn testimony directly contradicted his prior communications. Indeed, only hours after testifying, Mr. Childs texted Plaintiff: *"Just say you met with me and Bob Lueck & we said you need to protect* [redacted] *since he [Enrique] was not abiding by the agreement..."* (Ex. A:026). This message directly contradicted his in-court testimony and revealed that Plaintiff had been acting in reliance on counsel. During the same hearing, opposing counsel Melvin Grimes challenged Mr. Childs directly: *"You directed your client to violate orders of the court."* Mr. Childs responded: *"Absolutely not."* When pressed further—*"You didn't tell her she could violate the order?"*—Mr. Childs doubled down: *"Emphatically no."* (Ex. B:040). Yet the record is clear: Mr. Childs repeatedly instructed Plaintiff not to release the child. At no time did he advise neutrality, withdraw his prior guidance, or suggest Plaintiff should comply unconditionally.

At the close of cross-examination, Mr. Childs testified, *"I did not advise her to."* (Ex. B:041). This denial again stood in stark contrast to the documentary record. On recross-examination, when asked, *"So if she [Plaintiff] violated the custody order, it was her decision, correct?"* Mr. Childs responded: *"Absolutely."* (Ex. B:042). This statement falsely conveyed to the Court that Plaintiff acted unilaterally, thereby reinforcing the presumption of parental unfitness. In truth, Plaintiff acted in reasonable reliance on repeated legal instructions from Mr. Childs and from Judge Lueck, who expressly advised against the exchange absent specific conditions. By disavowing this record under oath, Mr. Childs not only breached his duty to his client but misled the Court at a decisive juncture. His misrepresentation, cloaked in the credibility of legal ethics, altered the Court's understanding of the facts and was a proximate cause of the adverse custody determination.

The family court's March 19, 2024 findings confirm this causal link. The court expressly held: *"THE COURT FINDS that according to testimony presented today, there is clear and convincing evidence of a single act of unlawful detaining…"* (Ex. C:053).

Causation. The family court's adverse finding flowed from Mr. Childs's disavowal of his written instruction; had the court received the true sequence (advice given → client reliance), the "unlawful detaining" premise would have been defeated.

This finding rested entirely on Mr. Childs' sworn statements that Plaintiff acted independently and unlawfully. Absent this false testimony, the record would have demonstrated that Plaintiff acted in good faith reliance on counsel. Thus, the rebuttable presumption of unfitness applied against Plaintiff was not only erroneous but the direct and foreseeable result of Mr. Childs material misrepresentations.

V. ANTI-SLAPP DOES NOT WARRANT DISMISSAL

A. Prong One— Mr. Childs has not shown coverage for each act.

Mr. Childs must prove by a preponderance that each challenged act is a "good-faith communication" within one NRS 41.637 category. For the "litigation" category (§ 41.637(3)), Nevada requires the statement be in direct connection with the issue actually under consideration and directed to persons with an interest in that proceeding. Here, the gravamen of Plaintiff's claims is malpractice/fiduciary breach (private advice to a client; misuse of confidences; disavowal of written instructions)—not public petitioning. Those private attorney-client acts are not statements to a tribunal and therefore are not protected "litigation communications." To the extent Mr. Childs re-labels private acts as "public concern" under § 41.637(4), that category

applies only to statements that were truthful or made without knowledge of falsity, which the record disproves (see § V.C)

Further, to the extent Mr. Childs suggests his statements were mere "opinions," Nevada anti-SLAPP does not permit recasting factual assertions as opinion to avoid the statute's truthfulness check. The prong-one showing fails where the movant's own exhibits and the contemporaneous record undercut the claimed "good faith." See *Shapiro*; *Coker*.

B. Prong Two— Minimal merit is satisfied.

Even if the Court views any act as category-covered, Plaintiff shows probability of prevailing on malpractice/fiduciary breach. If the Court were to reach prong two, Plaintiff has presented prima facie evidence of breach, causation, and damages sufficient to establish "minimal merit," and Mr. Childs litigation-privilege defense fails categorically in the attorney-client context. Nevada expressly recognizes an exception to the litigation privilege for a client's malpractice/professional-negligence claim against her own lawyer, because the privilege exists to protect clients, not shield attorneys from accountability to their clients. Where a defense fails as a matter of law, the special motion must be denied at step two. See *Coker* (two-step analysis; plaintiff need only make the prima facie showing under the current statute) and *Abrams* (probability-of-prevailing standard is satisfied by "minimal merit").

Nor does anti-SLAPP convert an attorney's breaches of loyalty, candor, and confidentiality—especially private attorney-client directives and misuse of client information—into protected petitioning activity. To the extent Plaintiff's claims arise from counsel's negligent advice and fiduciary breaches, they are not "good-faith communications" within NRS 41.637 and, in any event, succeed at prong two for the reasons above. See *Greenberg*; *Coke*r; *Abrams*.

VI. DEFENDANT'S "PUBLIC PARTICIPATION" ARGUMENT IS NOT MERITORIOUS IN THIS CONTEXT

Defendant's argument that his testimony constitutes "public participation" merely addresses prong one's categorical hook (e.g., statements made to a court). Even assuming that threshold is satisfied, Nevada law still requires (1) a showing that the statements were truthful or made without knowledge of falsity and (2) that Plaintiff can make a prima facie showing of likely success. Both requirements cut against dismissal here: the record evidence supports Plaintiff's malpractice/fiduciary-breach theories, and the litigation privilege cannot be invoked by an attorney against the attorney's own client. See *Greenberg* (malpractice exception to privilege); *Coker* (framework and plaintiff's prima facie burden); *Abrams* (minimal-merit standard).

Labeling testimony as "public participation" therefore does not confer immunity from a client's malpractice suit. The statute protects participation, not professional misconduct toward one's own client. Because Plaintiff's claims possess at least minimal merit and Mr. Childs reliance on litigation privilege fails as a matter of law, the Court should deny the special motion. See *Greenberg*; *Coker*; *Abrams*.

Evidence considered at anti-SLAPP. The Court may consider affidavits, transcripts, and exhibits at anti-SLAPP prong one. To the extent any materials include family-court content, Plaintiff has lodged them under seal and requests in-camera review as needed. This resolves any sealing concern while allowing the Court to evaluate the written record.

VII. DAMAGES ARE ALREADY BEING EXPERIENCED

Mr. Childs suggests malpractice is "premature" because the family law appeal remains pending. That argument overlooks the reality that Plaintiff's damages are present, concrete, and ongoing.

Loss of Custody: Plaintiff has already lost joint physical custody of her only child for nine months, seeing her just 7 days a month. That loss is immediate and not speculative; it is a lived harm suffered each day.

Financial Burden of Appeal: Plaintiff is incurring substantial expenses in prosecuting the appeal—filing fees, transcript costs, and legal costs that would not exist absent Mr. Childs' breaches.

These harms are independent of ultimate appellate disposition. Nevada courts recognize that existing injuries are compensable even while appellate review proceeds. If the Court nonetheless harbors concern about finality, the appropriate course is abatement or stay, not dismissal. *Hewitt v. Allen*, 118 Nev. 216, 221, 43 P.3d 345, 348 (2002) (discussing accrual, but not mandating dismissal where present harm exists).

To the extent Mr. Childs argues the malpractice claim is 'premature' during appeal, Nevada treats this as an accrual/tolling issue; the proper remedy, if any, is abatement or a short stay, not dismissal (*Hewitt*; *Gerrard*).

Nevada tolls accrual in litigation-malpractice until the appeal concludes; the bright-line is issuance of the remittitur. Concerns about parallel proceedings are addressed, if at all, by abatement or a brief stay, not dismissal. *See Hewitt v. Allen*, 118 Nev. 216, 221, 43 P.3d 345, 348 (2002); *Branch Banking & Tr. Co. v. Gerrard*, 134 Nev. 871, 874–76 (2018).

VIII. ADDITIONAL PERTINENT POINTS

Service: Mr. Childs accepted service through his then-counsel of record, Robert Lueck, Esq., by written agreement dated February 26, 2025. (Ex. G: 064-066)

Publicity Motive: To the extent Mr. Childs suggest that Plaintiff's filings are motivated by publicity, that characterization is unfounded. Plaintiff is acting in good faith to obtain redress for concrete personal harms already incurred, including the loss of joint custody and the

substantial costs of the ongoing appeal. These injuries—not any interest in publicity—are what drive the claims, underscoring that Plaintiff's purpose is remedial rather than tactical.

Limited Waiver: Plaintiff's limited waiver regarding the testimony given by Mr. Childs on March 19, 2024, did not authorize disclosure or misuse of confidences. NRPC 1.9(c) prohibits using former-client information to the client's disadvantage.

Evidence: Mr. Childs relies on unsworn exhibits; Plaintiff can authenticate text and email records showing contradictions.

IX. CONCLUSION

For these reasons:

Mr. Childs' motion is moot as to all claims not presently pursued against him.

The remaining counts for malpractice and fraud are not barred by privilege or anti-SLAPP.

Plaintiff's damages are real and present—loss of custody and financial burden of appeal—making dismissal inappropriate.

At most, the proper course is abatement or stay, not dismissal.

Plaintiff respectfully requests that the Court deny Mr. Childs' Motion in its entirety and for any other relief this Court may deem just and proper.

DATED this 8th day of September 2025.

/s/ *Luba Dace*

LUBA DACE, Pro Per

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VERIFICATION (Unsworn Declaration under NRS 53.045)

I, **Luba Dace**, declare:

I am the Plaintiff in this action. I have read the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT CHILDS' (1) ANTI-SLAPP MOTION AND (2) MOTION TO DISMISS,**

1. and the facts stated in it that are based on my personal knowledge are true and correct; as to those matters stated on information and belief, I believe them to be true.
2. The exhibits referenced in the pleading are true and correct copies of the documents they purport to be or are fair and accurate excerpts thereof.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on September 8, 2025, at Las Vegas, Nevada.

/s/ *Luba Dace*

Luba Dace

CERTIFICATE OF SERVICE (Electronic Service Only)

I certify that on **September 8, 2025,** I electronically filed the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT CHILDS' (1) ANTI-SLAPP MOTION AND (2) MOTION TO DISMISS** (including all referenced exhibits) with the Clerk of the Court using the **eFileNV/Odyssey** e-filing system. Pursuant to **NRCP 5(b)**, the system **automatically served** a Notice of Electronic Filing upon **all registered counsel and parties of record** at their e-mail addresses on file.

Dated: **September 8, 2025**

/s/ *Luba Dace*

Luba Dace

Exhibit List

A. SMS text messages from Mr. Childs 3/8/23-4/17/23 & 3/19/2024; Email from Mr. Childs 3/8/23; Email from attorney Alexandra Monaco to Mr. Childs 3/8/23; Declaration of Nadia [redacted] 3/26/24; Declaration of Philip Dace 3/26/24.

B. Transcript of Non-Jury Trial (Modification of Custody & Order to Show Cause), *Gonzalez v. Velazquez-Gonzalez,* No. D-18-575860-D (8th Jud. Dist. Ct., Fam. Div., Clark Cnty., Nev. Mar. 19, 2024).

C. Order After Non-Jury Trial (Modification of Custody & Order to Show Cause) Hearing, *Gonzalez v. Velazquez-Gonzalez,* No. D575860 (8th Jud. Dist. Ct., Fam. Div., Clark Cnty., Nev. Mar. 19, 2024) (memorializing rulings announced on the record).

D. Findings of Fact, Conclusions of Law & Order, *Gonzalez v. Velazquez-Gonzalez,* No. D-18-575860-D (8th Jud. Dist. Ct., Fam. Div., Clark Cnty., Nev. Jan. 9, 2025).

E. Order: All Pending Motions, *Gonzalez v. Velazquez-Gonzalez,* No. D-18-575860-D (8th Jud. Dist. Ct., Fam. Div., Clark Cnty., Nev. 6/13/23) (resolving motion filed Apr. 27, 2024).

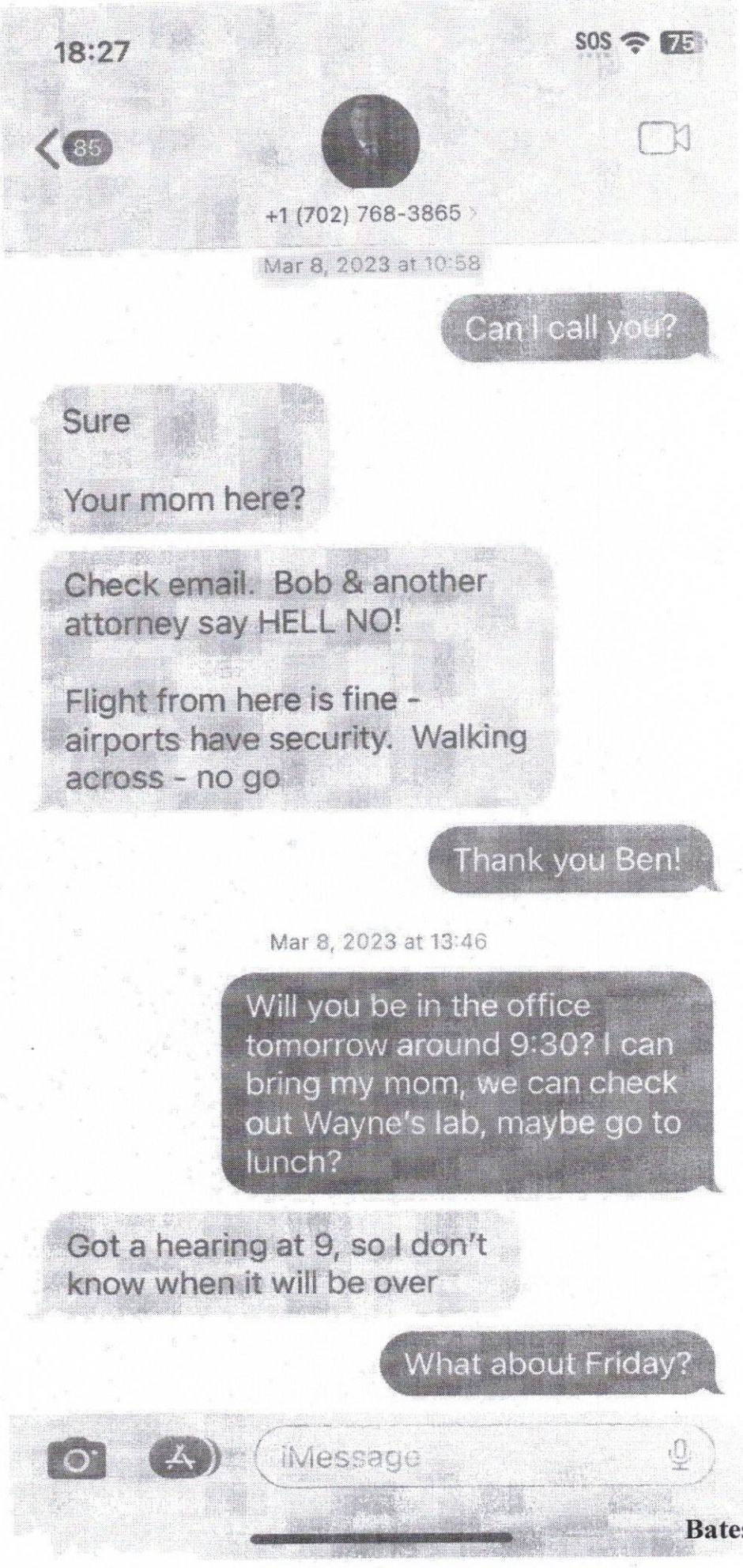
F. Email from Benjamin R. Childs, Esq., to Plaintiff (Mar. 15, 2023) (reaffirming withholding advice to opposing counsel Mr. Grimes and summarizing judge's ruling from same-day off-the-record conference in *Gonzalez v. Velazquez-Gonzalez,* No. D-18-575860-D (8th Jud. Dist. Ct., Fam. Div., Clark Cnty., Nev.)).

G. Letter from Robert Lueck dated February 26, 2025; Affidavit of Service showing Robert Lueck was served on Mr. Childs behalf.

H. Def.'s Opp'n to Pl.'s Mot. for OSC & Mot. for Add'l Orders re Talking Parents App., Travel, Child's Last-Name Hyphenation, Changing Minor's School & Att'ys' Fees, and Def.'s Countermot. for Modification of Custody Awarding Def. Primary Physical Custody & Sole Legal Custody (incl. sole possession of the child's passport) & Award of Att'ys' Fees, *Gonzalez v. Velazquez-Gonzalez,* No. D-18-575860-D (Nev. 8th Jud. Dist. Ct., Fam. Div., Clark Cnty. May 5, 2023).

EXHIBIT A

EXHIBIT A


18:27
SOS
75
85
+1 (702) 768-3865
Mar 8, 2023 at 10:58
Can I call you?
Sure
Your mom here?
Check email. Bob & another attorney say HELL NO!
Flight from here is fine - airports have security. Walking across - no go
Thank you Ben!
Mar 8, 2023 at 13:46
Will you be in the office tomorrow around 9:30? I can bring my mom, we can check out Wayne's lab, maybe go to lunch?
Got a hearing at 9, so I don't know when it will be over
What about Friday?
iMessage