OPPS

(Your Name) _____

(Address)_____

_____

(Telephone) _____

(Email Address)_____

In Proper Person

DISTRICT COURT

CLARK COUNTY, NEVADA

_____ Plaintiff, vs. _____ Defendant.	CASE NO.: _____ DEPT NO.: _____ DATE OF HEARING: _____ TIME OF HEARING: _____ Oral Argument Requested: Yes ☐ No ☐

OPPOSITION AND COUNTERMOTION TO MOTION TO MODIFY CUSTODY, VISITATION, AND/OR CHILD SUPPORT

COMES NOW *(☑ check one)* ☐Plaintiff/☐Defendant *(your name)* _____ _____, in Proper Person and files this Opposition and Countermotion hereby moving this Honorable Court for an Order denying the opposing party's request for modification of the existing custody, visitation, and/or child support order. This Opposition and Countermotion is brought in good faith and is based upon the papers and pleadings on file herein, and such further evidence and argument that may be requested at the hearing.

DATED this *(day)* _____ day of *(month)* _____, *(year)* _____.

▸ _____
(Your Signature)

ALL RIGHTS RESERVED

POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

Pursuant to NRS chapters 125 and 125B, an order for custody, visitation and/or child support of the parties' minor child(ren) may be modified by the court.

NRS 125.510 states in pertinent part:

> 1. In determining the custody of a minor child in an action brought pursuant to this chapter, the court may, except as otherwise provided in this section and chapter 130 of NRS:
>
> (a) During the pendency of the action, at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest.
>
> (b) At any time modify or vacate its order, even if the divorce was obtained by default without an appearance in the action by one of the parties.
>
> …
>
> 2. Any order for joint custody may be modified or terminated by the court upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires modification or termination.
>
> 3. Any order for custody of a minor child of a marriage entered by a court of another state may, subject to the jurisdiction requirements in chapter 125A of NRS, be modified at any time to an order of joint custody.
>
> 4. A party may proceed pursuant to this section without counsel.
>
> 5. Any order awarding a party a limited right of custody to a child must define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved. The order must include all specific times and other terms of the limited right of custody. As used in this subsection, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.

Additionally, NRS 125.480 states in pertinent part:

> 1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.
>
> 2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.
>
> 3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly pursuant to NRS 125.490 or to either parent… When awarding custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

…

4. In determining the best interest of the child, the court shall consider, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody;

(b) Any nomination by a parent or a guardian for the child; and

(c) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

…

Regarding child support for the parties minor child(ren), NRS 125B.140 provides that:

1. Except as otherwise provided in chapter 130 of NRS and NRS 125.012:

…

(b) Payments for the support of a child pursuant to an order of a court which have not accrued at the time either party gives notice that he has filed a motion for modification or adjustment may be modified or adjusted by the court upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction of the modification or adjustment.

Furthermore, NRS 125B.145 states, in pertinent part:

1. An order for the support of a child must, upon the filing of a request for review by:

…

(b) A parent or legal guardian of the child, be reviewed by the court at least every 3 years pursuant to this section to determine whether the order should be modified or adjusted…

…

2. If the court:

…

(b) Has jurisdiction to modify the order and, taking into account the best interests of the child, determines that modification or adjustment of the order is appropriate, the court shall enter an order modifying or adjusting the previous order for support in accordance with the requirements of NRS 125B.070 and 125B.080.

…

3. The court shall ensure that:

(a) Each person who is subject to an order for the support of a child is notified, not less than once every 3 years, that he may request a review of the order pursuant to this section;

…

4. An order for the support of a child may be reviewed at any time on the basis of changed circumstances. For the purposes of this subsection, a change of 20 percent or more in the gross monthly income of a person who is subject to an order for the support of a child shall be deemed to constitute changed circumstances requiring a review for modification of the order for the support of a child.

5. As used in this section:

(a) "Gross monthly income" has the meaning ascribed to it in NRS 125B.070.

(b) "Order for the support of a child" means such an order that was issued or is being enforced by a court of this state.

Lastly, NRS 125C.010 states, in pertinent part:

1. Any order awarding a party a right of visitation of a minor child must:

(a) Define that right with sufficient particularity to ensure that the rights of the parties can be properly enforced and that the best interest of the child is achieved; and

(b) Specify that the State of Nevada or the state where the child resides within the United States of America is the habitual residence of the child.

The order must include all specific times and other terms of the right of visitation.

2. As used in this section, "sufficient particularity" means a statement of the rights in absolute terms and not by the use of the term "reasonable" or other similar term which is susceptible to different interpretations by the parties.

The statutory guidelines for child support are set forth in NRS 125B.070 and NRS 125B.080. Child support should by set at the following levels of the non-custodial parent's gross monthly income: 1) For one minor child – 18%; 2) For two minor children – 25%; 3) For three minor children – 29%; 4) For four minor children – 31%; and 5) For each additional minor child – an additional 2%. The non-custodial parent is obligated to pay a minimum of $100.00 per month per child. The maximum amount per month per child varies according to that parent's gross monthly income. However, the court can deviate from these sums based upon the factors listed in NRS 125B.080.

The Nevada Supreme Court has held that a joint physical custody arrangement may be modified upon a showing that the modification is in the best interests of the child. *Truax v. Truax*, 110 Nev. 473, 874 P.2d (1994). In *Rivero v. Rivero*, 216 P.3d 213 (2009), the Nevada Supreme Court held that when considering whether to modify a physical custody arrangement, the district court must first determine what type of physical custody arrangement exists. The *Rivero* Court held that the parties have a joint physical custody arrangement when each parent has physical custody of the minor child at least 40 percent of the time (146 days), calculated over one calendar year. A modification of a joint physical custody arrangement is appropriate if it is in the child's best interest. *Id.* In *Ellis v. Carucci*, 123 Nev. 145 at 147 (2007), the Nevada Supreme Court concluded "that a modification of primary physical custody is warranted only

when (1) there has been a substantial change in circumstances affecting the welfare of the child, and (2) the modification serves the best interest of the child."

The *Rivero Court* also held that "although a party need not show changed circumstances for the district court to review a support order after three years, *changed circumstances are still required for the district court to modify the order*." (Emphasis Added). *Id.* at 229. In *Fernandez v. Fernandez*, 222 P.3d 1030 (2010), the Nevada Supreme Court again held that a parent is required to show a change in circumstances if he or she is seeking a modification of child support. The Court further held that parents cannot enter into agreements that limit or prohibit child support modification because it violates public policy.

II. FACTS AND ARGUMENT

A. Information About the Current Order for Custody, Visitation, and/or Child Support

1. I am the *(☑ check one)* ☐ Mom / ☐ Dad of the minor child(ren) at issue.

2. Pursuant to an Order or Decree filed on *(date)* _____, a copy of which is attached as Exhibit 1, *(☑ check one)* ☐ Mom / ☐ Dad is ordered to pay *(amount)* $_____ dollars per month for the support of the parties' *(number of children)* _____ minor child(ren).

3. Under the current order: *(fill out one section for each minor child)*

a. I have *(☑ check one)* ☐ joint physical custody /☐ primary physical custody/ ☐visitation only of *(child's name)* _____ who is _____ years old. I also have *(☑ check one)* ☐ sole/ ☐ joint legal custody of this child.

b. I have *(☑ check one)* ☐ joint physical custody /☐ primary physical custody/ ☐visitation of *(child's name)* _____ who is _____ years old. I also have *(☑ check one)* ☐ sole/ ☐ joint legal custody of this child.

ALL RIGHTS RESERVED

c. I have *(☑ check one)* ☐ joint physical custody /☐ primary physical custody/ ☐visitation of *(child's name)* _____ who is _____ years old. I also have *(☑ check one)* ☐ sole/ ☐ joint legal custody of this child.

d. I have *(☑ check one)* ☐ joint physical custody /☐ primary physical custody/ ☐visitation of *(child's name)* _____ who is _____ years old. I also have *(☑ check one)* ☐ sole/ ☐ joint legal custody of this child.

B. Opposition and Countermotion

1. Legal Custody: *(☑ check one)*

☐ The other party did not request a change of the current legal custody order.

☐ I agree to the other party's request to change the current legal custody order.

☐ I do not agree to the other party's request to change the current legal custody order. I want the order to stay the same and believe that the order should not be changed because *(explain)* _____

_____

_____

_____

☐ I do not agree with the other party's request to change the current legal custody order and instead I ask that the current order be changed as follows: *(fill out one section for each minor child)*

a. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ sole/ ☐ joint legal custody of *(child's name)* _____who is _____ years old.

b. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ sole/ ☐ joint legal custody of *(child's name)* _____who is _____ years old.

c. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ sole/ ☐ joint legal custody of *(child's name)* _____who is _____ years old.

d. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ sole/ ☐ joint legal custody of *(child's name)* _____who is _____ years old.

e. A change of the current order for legal custody is in the best interest of the child(ren) because *(explain)* _____

_____

_____

_____

f. The following change in circumstances has occurred since the order for legal custody was entered. *(explain)* _____

_____

_____

_____

2. Physical Custody: *(☑ check one)*

☐ The other party did not request a change of the current physical custody order.

☐ I agree to the other party's request to change the current physical custody order.

☐ I do not agree to the other party's request to change the current physical custody order. I want the order to stay the same and believe that the order should not be changed because *(explain)* _____

_____

_____

_____

☐ I do not agree to the other party's request to change the current physical custody order. Instead, I ask that the current order for physical custody be changed as follows: *(fill out one section for each minor child)*

a. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ primary / ☐ joint physical custody of *(child's name)* _____ who is ____ years old.

b. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ primary / ☐ joint physical custody of *(child's name)* _____ who is ____ years old.

c. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ primary / ☐ joint physical custody of *(child's name)* _____ who is ____ years old.

d. ☐ Mom/ ☐ Dad should be awarded *(☑ check one)* ☐ primary / ☐ joint physical custody of *(child's name)* _____ who is ____ years old.

e. A change of the physical custody arrangement is in the best interest of the child(ren) because: *(Explain)* _____
_____
_____
_____

f. The following change in circumstances affecting the welfare of the child has occurred since the entry of the last custody order: *(explain)* _____
_____
_____
_____

//

//

//

3. Visitation:

a. The regular visitation schedule *(☑ check one)*:

☐ The other party did not request a change of the regular visitation schedule.

☐ I do not agree to the other party's request to change the current regular visitation schedule.

☐ I do not agree to the other party's request to change the current regular visitation schedule. I want the visitation schedule to stay the same and believe it should not be changed because *(explain)* _____

_____

_____

_____

☐ I do not agree to the other party's request to change the regular visitation schedule. Instead, I ask that the regular visitation schedule be changed as described in the attached proposed regular visitation schedule.

b. The holiday visitation schedule *(☑ check one)*:

☐ The other party did not request a change of the holiday visitation schedule.

☐ I agree to the other party's request to change the current holiday visitation schedule.

☐ I do not agree to the other party's request to change the current holiday visitation schedule. I want the holiday schedule to stay the same and believe it should not be changed because *(explain)* _____

_____

_____

_____

☐ I do not agree to the other party's request to change the holiday visitation schedule. Instead, I ask that the holiday visitation schedule be changed as described in the attached proposed holiday visitation schedule.

4. Child Support: The current order for child support *(☑ check one)*:

☐ The other party did not request a change of the current order for child support.

☐ I agree to the other party's request to change the current order for child support.

☐ I do not agree to the other party's request to change the current order for child support. I want the order to say the same and believe that child support should not be changed because *(explain)* _____

_____

_____

_____

☐ I do not agree to the other party's request to change the current order for child support. Instead, I ask that the order for child support be changed because: *(☑ check all that apply)*

☐ The gross monthly income of *(☑ check one)* ☐Mom/ ☐Dad has changed by at least 20% since the last child support order was entered.

☐ The current order for child support should be changed as a result of my request to change the physical custody arrangement.

☐ The following change in circumstance has occurred since the last order was issued, which justifies a modification of the previous order: *(explain)*

_____

_____

_____

_____

_____

a. **Parties' Income:**

1. Mom's gross monthly income is *(amount)* $_____.

2. Dad's gross monthly income is *(amount)* $_____.

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b. **Amount of Child Support Requested:**

1. Based upon the *(☑ check one)* ☐ primary physical custody arrangement/ ☐ joint physical custody arrangement I am requesting, *(☑ check one)* ☐Mom/☐Dad should be ordered to pay $_____ dollars per month for the support of the parties' *(number)* _____ minor children.

2. This amount was calculated based on the following: *(☑ check one)*

☐ The statutory minimum of $100 per month, per child;

☐ The calculation for a primary physical custody arrangement as shown on the attached Worksheet A ;

☐ The calculation for a joint physical custody arrangement as shown on the attached Worksheet B; or

☐ Other: _____

_____

_____

III. CONCLUSION

Based on the law set forth and the pleadings on file herein, this party should be granted his/her requests for modification and an order denying the opposing party's request for a modification in custody, visitation, and/or child support.

WHEREFORE, Movant respectfully requests that this Court grant this motion and for such other relief as the Court deems appropriate.

DATED this _____ day of *(month)* _____, *(year)* _____.

Submitted By: ▸ _____

(Print your name) ▸ _____

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AFFIDAVIT IN SUPPPORT OF MOVANT'S OPPOSITION AND COUNTERMOTION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

COMES NOW, *(your name)* _____, being first duly sworn under oath and deposes and says:

1. That Affiant has personal knowledge of the facts contained in the attached Opposition and Countermotion and in this Affidavit and is competent to testify to same.
2. That the statements in the Opposition and Countermotion and Affidavit are true and correct to the best of Affiant's knowledge.
3. Additional facts to support my requests include: _____
_____
_____
_____
_____
_____
4. That Affiant has attached the following exhibits to the motion which support the requests made therein: *(Describe exhibits or write N/A on any blank lines.)*
   a. Current Custody Order or Decree filed on *(date)* _____
   b. _____
   _____

FURTHER YOUR AFFIANT SAYETH NOT.

▸ _____

(Your Signature)

SUBSCRIBED AND SWORN

Before me this_____ Day of _____, 20____.

_____

NOTARY PUBLIC

Proposed Holiday Visitation Schedule

Fill in only if you are requesting a modification of the holiday visitation schedule
(If you check Odd or Even you **cannot** use the Every Year column. You also **cannot** check **both** Mom and Dad in the same column)

Check box if this holiday applies:	Holiday:	Time (circle a.m. or p.m.):	Every Year	Even Years	Odd Years
☐	New Year's Eve	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	New Year's Day	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Martin Luther King, Jr. Day	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Presidents' Day	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Passover	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Easter	From: _____a.m./p.m. To: _____a.m./p.m	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Memorial Day	From: _____a.m./p.m. To: _____a.m./p.m	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Mother's Day	From: _____a.m./p.m. To: _____a.m./p.m	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Father's Day	From: _____a.m./p.m. To: _____a.m./p.m	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	4th of July	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Labor Day	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Rosh Hashanah	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Yom Kippur	From: _____a.m./p.m. To: _____a.m./p.m	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Nevada Day	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Halloween	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Veterans Day	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Thanksgiving Day	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad

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Holiday Visitation Schedule Continued

The following is the new proposed holiday visitation schedule.

☐	Chanukkah (Days): _____	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Chanukkah (Days): _____	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Christmas Eve	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Christmas	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Father's Birthday	From: _____a.m./p.m. To: _____a.m./p.m	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Mother's Birthday	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐	Child's Birthday	From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐		From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad
☐		From: _____a.m./p.m. To: _____a.m./p.m.	☐ Mom ☐ Dad	☐ Mom ☐ Dad	☐ Mom ☐ Dad

ALL RIGHTS RESERVED

Proposed Regular Visitation Schedule

Fill in only if you are requesting a modification of the regular visitation schedule

The following is the new proposed visitation schedule.

Week	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
Sample	Mom Pick up at 11 a.m.	Mom	Dad Pick up after school at 3 p.m.	Dad	Dad	Mom Pick up after school at 3 p.m.	Mom
Week #1							
Week #2							
Week #3							
Week #4							
Week #5 *(Jan. and July)*							

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