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Pro Per

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

Richard Riess,
Petitioner,

v.

Desiree Capuano,
Respondent.

Case No.: TD 035397

**DECLARATION OF RICHARD RIESS IN
SUPPORT OF REQUEST TO MODIFY
CHILD VISITATION SCHEDULE**

I, Richard Riess, hereby declare under penalty of perjury that I am the Petitioner in the captioned matter and that all statements made herein are true and correct to the best of my knowledge, and that such statements are based on facts and information made known to me after the entry of the Court's custody and visitation order dated December 6, 2011.

SUMMARY

1. Desiree has a serious drug problem and uses mood altering substances on a daily basis, which significantly impairs her ability to responsibly and reliably provide for her children.
2. Desiree regularly operates a motor vehicle while under the influence of marijuana.
3. Desiree has repeatedly and consistently exercised very poor judgment and has executed decisions which have put her children in serious danger.

4. Desiree has repeatedly allowed her fiancé, with whom she has been cohabiting, to engage in criminal activities and the use of methamphetamine in the house while her children are present.
5. Desiree has increasingly demonstrated a lack of interest in Gabriel's education, development and well-being.
6. Desiree has consistently refused to contribute, financially, to Gabriel's necessities or development, while continuing to fund her and her fiancé's drug use and lifestyles.

BACKGROUND

7. I am the biological father of Gabriel Riess.
8. Desiree Capuano is the biological mother of Gabriel Riess.
9. Desiree and I attended mediation on December 6, 2011 and came to an agreement with respect to custody and visitation of Gabriel.
10. At the time of mediation, when I agreed to the visitation terms as entered on December 6, 2011, I did not know about, or suspect, Desiree's and Kristopher's, ongoing drug use and involvement in criminal activities. Had I known of such I would not have agreed to the current visitation terms.
11. I have sole physical custody of Gabriel, as agreed upon at mediation.
12. Desiree and I have joint legal custody of Gabriel, as ordered by the Court on December 6, 2011.
13. Desiree has visitation with Gabriel, at her residence in Peoria, AZ, during the summer, winter and spring school breaks, and alternating long weekends, as agreed upon at mediation.
14. Desiree's visitation periods, in Arizona, range in length from 3 days to 7 weeks in duration.
15. Throughout these proceedings I have deliberately not submitted claims against Desiree which, although I may have suspected them, I was not able to provide proof of. This was done in the

interest of saving the Court's time and resources because Desiree had stated she would deny the allegations.

16. Throughout these proceedings I have repeatedly stated my concerns and beliefs that Desiree and Kristopher were involved in drug use and criminal activities which I believed put Gabriel in serious danger while in Desiree's care.
17. From early 2010 through the present, Desiree has been cohabiting with Kristopher Lauchner.
18. From the summer of 2011 until Kristopher's incarceration in October 2012 both Desiree and Kristopher have repeatedly insisted that they are engaged to be married. Desiree has further declared on numerous occasions, and publicly on her Facebook page, that Kristopher is the nicest, sweetest, and best man she has ever known.
19. Prior to November 2011 Desiree and Kristopher resided in a condominium owned by, and rented from, Kristopher's father.
20. From November 2011 until the present Desiree and Kristopher have been residing in a house owned by, and rented from, a cousin of Kristopher.
21. It is my belief, based on my extensive experiences with Desiree, and her actions and statements over the past year, that she is a very skilled manipulator and routinely exploits people's pity and compassion to get what she wants from them, and to avoid accepting the responsibilities and consequences of her actions and decisions.
22. I believe, based on her statements to, and demeanor before the Court, that Desiree has been manipulating the Court throughout these proceedings by falsely representing herself, her intentions, and her relationship with Gabriel. This is supported by her actions over the past year, which belie her statements and presentation before the Court.

DESIREE'S AND KRISTOPHER'S DRUG USE

23. Over the past year I have come to learn that Desiree and Kristopher were regularly using illegal drugs, including marijuana and methamphetamine, in the home and while Desiree's children were present.
24. On September 27, 2011 (Gabriel's 11th birthday), while Desiree had Gabriel in Phoenix, Desiree was arrested at her residence for possession of marijuana and possession of drug paraphernalia {Ex. pend-13hc}. The arresting officers found, inter alia, a large green bong in the master bedroom vanity; four pipes containing marijuana residue, and a small baggy containing 1.3 grams of marijuana in the night-stand to the right of Desiree's bed {Ex. pend13hc, pp 4-5}.
25. The marijuana and related artifacts found in Desiree's home on September 27, 2011 were not in a locked, secure place or out of reach of the children who were in the home {Ex. pend-13hc, p 4}, as Desiree had previously testified to the Court.
26. On November 1, 2011, Desiree was called to the scene of Kristopher's arrest to pick up Gabriel and her other child from the police (the children were in Kristopher's care outside the home when he was arrested). Upon her arrival, the police searched her purse and again found marijuana and paraphernalia which they confiscated {Ex. pend-14hc, p 8}.
27. Upon the police finding marijuana in her purse on November 1, 2011, Desiree falsely stated to the police that she had a permit for it. Such false statement was in violation of A.R.S. § 36-2816(E) and constitutes grounds for revocation of Desiree's medical marijuana card pursuant to A.R.S. § 36-2815(D).
28. On November 4, 2011, after being caught by the police for illegally possessing marijuana on at least two occasions, Desiree applied for a medical marijuana card in order to be able to continue

her drug use without legal consequences. A medical marijuana card was issued to Desiree on November 7, 2011.

29. Desiree's physician recommendation for her medical marijuana card was obtained through an organization named Arizona 420 Evaluations, which is a for-profit business whose sole service is to provide instant medical marijuana recommendations to walk-in customers, not from a physician who had any knowledge of Desiree's medical history.
30. Desiree falsely stated on the application for her medical marijuana card that she suffers from severe and chronic pain, resulting from chronic or debilitating fibromyalgia, myalgia, and arthritis (see exhibit 1 of Desiree's Responsive Declaration dated 2/21/12).
31. On March 13, 2012 Desiree agreed to enter the TASC drug diversion program in exchange for deferred prosecution of her criminal drug possession charges {Ex. pend-15hc}. On September 19, 2012 the charges were dismissed based on her successful completion of the drug diversion program.
32. On September 16, 2012 I discovered that Desiree had posted a public message on her Facebook page on November 29, 2010 stating that she had attended an event called "Hug a Pothead Day" {Ex. pend-16}. I believe such public support and promotion of recreational marijuana use sets a bad example for her children because her postings are published publicly and can be viewed by anyone on the Internet, including her children, neighbors, co-workers, et cetera. I also believe this demonstrates Desiree's affinity to recreational drug use and further proves that her marijuana use is purely recreational, not medicinal.
33. On November 19, 2012 I received an email from Desiree boasting that even while she was in the drug diversion program she "never had to stop" her use of marijuana, and even though she had to submit a urine and hair drug test for Child Protective Services they "still did not test for marijuana due to the fact that [she's] legal". I believe it is Desiree's position that because she has a medical

marijuana card her use of marijuana is completely immune from any scrutiny whatsoever, regardless of the danger it may put her children in or the effect it may have on them {Ex. pend-02}.

34. Since returning from his summer visitation Gabriel has stated the following to me:
 1. while he was in Arizona with Desiree, her house often smelled like marijuana;
 2. Desiree would often say that she was “going to smoke”, then she would go to her bedroom and close the door. Gabriel said he knew she was smoking marijuana in her room because he could smell it, and because Desiree and Kristopher were indiscrete about smoking cigarettes in front of him, and generally smoked cigarettes freely throughout the house;
 3. he believes Desiree has a drug problem “because she can’t even quit using it while she’s in the drug program”;
 4. he doesn’t like asking Desiree for things because “she always tries to make him feel bad about it”.
 5. he is uncomfortable speaking openly with Desiree because “she freaks out or get’s all emotional and starts crying or screaming if you say something she doesn’t want to hear”.
35. On November 6, 2012 I was contacted by Sgt. Livingston of the Glendale Police Department. He inquired, in part, whether I knew what illness Desiree had claimed to get her medical marijuana card. I told him she had claimed sever and chronic pain due arthritis. Sgt. Livingston stated that he was surprised by that because Desiree seemed very healthy and was very active when the police searched her house and interviewed her.

DESIREE’S AND KRISTOPHER’S CRIMINAL ACTIVITIES

36. Over the past year I have come to learn, through my own research, that both Desiree and Kristopher were regularly involved in a variety of illegal activities, including shoplifting, possession of stolen property, prohibited possession of lethal weapons, and possession of methamphetamine.
37. Prior to my discovery of Desiree's and Kristopher's criminal activities, Desiree repeatedly insisted to me and to the Court that neither herself nor Kristopher had been engaging in illegal activities, that Kristopher's criminal behavior was in the past, and that he was "not that type of person anymore".
38. The purpose of the police presence at Desiree's home on September 27, 2011 (when she was arrested for possession of marijuana) was to question Kristopher regarding their investigation of him for passing counterfeit currency on numerous occasions.
39. On November 1, 2011 Kristopher was arrested on two counts of forgery and one count of tampering with evidence {Ex. pend-14hc}. Gabriel, and Desiree's other child, were in Kristopher's care at the time, and Kristopher had taken the children with him to a WalMart store where he committed forgery and organized retail theft by using counterfeit currency to pay for items {Ex. pend-14hc, page 11}.
40. In December 2011 Kristopher was arrested for shoplifting in Peoria, AZ, near his and Desiree's home. This arrest occurred less than six weeks after his arrest for forgery. Kristopher pled guilty to that charge on January 10, 2012 and was sentenced to one year of unsupervised probation which he is currently serving {Ex. pend-25}.
41. On November 5, 2012 the Maricopa County Attorney's Office filed a petition to revoke Kristopher's probation based on his October 2, 2012 arrest which included another charge for shoplifting {Ex. pend-25}.

42. On March 23, 2011 Desiree's other husband, Michael Capuano, with whom she has another child and cohabited for at least 8 years, pled guilty to a charge of assault {Ex. pend-24hc}.
43. Desiree concealed all information about hers and Kristopher's arrests, convictions and criminal activities from me and from the Court, and it has only been through my own research and efforts that I have been able to discover these facts.
44. On October 3, 2012 I discovered that Kristopher had been arrested on October 2, 2012 on the charges of shoplifting; 3 counts of possession of a lethal weapon by a prohibited person; possession of a dangerous drug; possession of drug paraphernalia; and discharging a firearm within the city limits.
45. In particular, Kristopher had shoplifted a Bushmaster 223 assault rifle from a hunting store in Glendale, AZ. He then hid the weapon in the attic of Desiree's house. The weapon was not locked or in a secure place and children in the home could have come into unsupervised contact with it.
46. Kristopher was subsequently booked into the Maricopa County Jail and later issued a bond of \$9,000. At this time Kristopher is still in custody but can be bonded out at any time.
47. Kristopher has numerous family members, including his father who lives in Phoenix, that have the financial resources to post his bond.
48. It is my belief that upon his release from custody Kristopher would continue to reside with Desiree at the same house they have been cohabiting at since November 2011, and which is owned by Kristopher's cousin.
49. On October 4 and 5, 2012 the local Phoenix television news ran a stories on Kristopher's arrest, wherein they showed his mug shots, stated his full name, and showed the front of Desiree's house

on the television. Those stories (including the video broadcasts) have also been posted on the respective news channel's web sites, and are accessible to anyone, including Gabriel.

50. When Gabriel saw the news video showing the front of Desiree's house he was embarrassed and deeply troubled by it.
51. In the week of October 15, 2012 I spoke with Sgt. Livingston of the Glendale Police Department, regarding Kristopher's investigation and arrest. Sgt. Livingston provided me the following information:
 1. the Glendale Police, Repeat Offenders Unit, had been investigating and monitoring Kristopher's activities for some time, including watching the house where he lived (i.e. Desiree's house);
 2. on October 2, 2012, while Kristopher was being arrested, the police executed a search warrant on Desiree's home;
 3. while searching the house the police found additional lethal weapons, including swords and daggers, which were in plain view in the living room and were within reach of children, with the aid of a chair or stool;
 4. one of the daggers which was in plain view in the living room bore a Nazi swastika on the handle;
 5. from their investigation the police have determined that Kristopher had been associating with a number of dangerous individuals, including having them at Desiree's house while Desiree's children were present;
 6. the dangerous drug with which Kristopher was caught was crystal methamphetamine;
 7. Kristopher had fired at least one test round from the assault rifle, either in the back yard of Desiree's home, or inside the house;

8. Kristopher possessed a large amount of military style clothing and paraphernalia which he kept in Desiree's home, and which lead the police to believe Kristopher was serious threat to the safety of the community.
52. On November 6, 2012 I was contacted by Sgt. Livingston, informing me that during the course of interviewing Desiree on October 2, 2012 she did admit to the police that she knew Kristopher was hiding the stolen assault rifle in the house; and that during the execution of the search warrant the police also found a quantity of methamphetamine in the garage of the house.
53. On November 9, 2012 I received a copy of the police reports relating to the investigation and arrest of Kristopher and the execution of the search warrant on Desiree's home {Ex. pend-18hc}. The reports confirmed the information previously provided by Sgt. Livingston, as well as the following information:
 1. the assault rifle was hidden in the attic above the garage and was not locked or otherwise secured or protected from the children in the home;
 2. the serial number of the assault rifle had been illegally filed off;
 3. five glass smoking pipes with methamphetamine residue were found in the garage, within reach of the children in the home;
 4. a glass water bong, which is typically used in smoking methamphetamine, and containing methamphetamine residue, was found in the garage, within reach of the children in the home;
 5. a small metal case containing approximately 2 grams of methamphetamine was found in the garage, within reach of the children in the home;
 6. several syringes were found along with the methamphetamine in the garage, within reach of the children in the home;

7. a spent .223 calibre shell casing was found in the trash next to the house;
8. Kristopher admitted he had discharged the rifle inside the house and had used blankets to muffle the sound;
9. the police had Desiree's home under surveillance from September 25, 2012 through October 2, 2012;
10. Desiree was not at home when the police began the execution of the search warrant;
11. Desiree's other child, Sage, was at home with two of Desiree's friends who had been living at the house (in Gabriel's bedroom) since July, 2012 when the police executed the search warrant;
12. Sage and Desiree's other friends were required to vacate the house while the police executed the search warrant;
13. Desiree stated to the police that she "knew Kristopher was doing bad things", that he had "recently stolen an assault rifle", and that "the rifle was in the house".
14. during her interview Desiree told the police Kristopher leaves the house for long periods of time and she has no idea where he goes or what he does; when Kristopher is home he spends the majority of his time in the garage; that she has no idea what he does in the garage, or what is in the garage; and that she knew Kristopher had used methamphetamine.
15. during his interrogation Kristopher admitted to stealing the assault rifle and hiding it in the house; Kristopher claimed the trigger lock falling off the rifle in the store was a sign from God that he wanted him to steal the rifle; Kristopher stated he stole the rifle so he could protect his family; he stated that he owed people money that he believed people with guns might come after him; he admitted to firing the rifle in the living room of the house; he admitted to using methamphetamine and bath salts.

16. Kristopher also admitted to having a problem or an “addiction” to stealing things and that he “just couldn’t help himself”.
 17. another glass pipe, of the type commonly used to smoke methamphetamine, containing residue, was seized from Kristopher’s possession at the time of his arrest;
 18. two blankets, containing what appear to be a hole and burns caused by discharging a firearm at very close range, were seized from Desiree’s home the day after the execution of the search warrant.
54. Based on her statements to the police Desiree either had no idea about the criminal activities and dangerous drug use going on right in her own home, which raises serious concerns about her ability and interest in providing a safe environment for her children; or she knew about what was transpiring but did nothing to stop it until the police became involved and left her no choice. Either way, she put her children in an incredibly dangerous and possibly life threatening situation to satisfy her selfish desire to be with Kristopher.
55. Although Desiree stated to the police that she never went into the garage and had no idea what Kristopher was doing in the garage or what was in the garage, she has posted numerous photographs on her Facebook page of herself, Gabriel and her other son spending time in the garage {Ex. pend-17}.
56. Although Desiree maintains that she had no knowledge of Kristopher possessing any firearms, she had copied onto the iPod she gave Gabriel, a picture of Kristopher and Desiree’s other child handling a pistol inside the house {Ex. pend-26}. It appears Kristopher was teaching the child to aim and fire the pistol.
57. Gabriel has told me that Kristopher had, one time, shown him the dagger with the swastika on it.

58. When I asked Desiree about the Nazi dagger she admitted that it was mounted on the wall in the living room {Ex. pend-20}. When I asked her why she would even want something like that in her house, namely, on display in the living room, she responded that she didn't. Yet she allowed Kristopher to do so, in plain view of Gabriel, who she knew is actively Jewish. I believe this is an example of Desiree's willingness to put Kristopher, and own desires, before her children.
59. Immediately upon Kristopher's arrest Desiree proceeded to disassociate herself with him, including contacting his family members and asking that they not help him bond out of jail {Ex. pend-05}. I believe that is nothing more than an attempt to distance herself from any potential legal consequences of hers and Kristopher's illegal activities.
60. Although Desiree maintains that she had no idea that Kristopher was involved in illegal activities, I had confronted her on at least two occasions regarding two separate incidences of Kristopher's illegal activities {Ex. pend-19}. Both times Desiree refused to address the issue of Kristopher's illegal activities but continued to defend him and insist that he was good for Gabriel.
61. On January 20, 2012, I filed a request for a restraining order against Kristopher (case no. TS015675), based on his repeated threats, interference, and his extensive violent history. A temporary restraining order was granted, but at the hearing on February 7, 2012 the Court denied the request as being unfounded. Both Kristopher and Desiree appeared for the hearing, in person and submitted supporting documents which were not served on me and which the Court did not provide me the opportunity to review.
62. On October 19, 2012 I was contacted by Dana Markusen of the Maricopa County Child Protective Service regarding an open case on Desiree, stemming from the recent police involvement. On October 26, 2012 I then contacted by Jennifer Grow of the Maricopa County Child Protective Service. Miss Grow informed me that the "matter is currently open as an investigation".

63. I believe Desiree's cohabiting with men who have a record of violence, while insisting that those same men are not dangerous or harmful, shows that she has, and continues to, exercise very poor judgment with respect to the safety of her children and puts her own desires before the safety of her children.
64. I believe Desiree's insistence that Kristopher is not a bad person and that he is not the person he was ten years ago demonstrates her willingness to overlook or conceal facts that may put her children in danger, to satisfy her own selfish desires.
65. Based on Kristopher's extensive history of criminal activity, which includes larceny, assault, possession/use of dangerous drugs, and theft of means of transportation (grand theft auto), as well as his recent criminal activity, arrests and convictions, I believe it is harmful for Gabriel to be left in his care for any period of time. I also believe Kristopher sets a very bad example for children and I am concerned for Gabriel's safety when he is in Kristopher's company.

SUPPORT OF GABRIEL

66. For at least the past 18 months Desiree has financially supported Kristopher {Ex. pend-21}.
67. Since July 2012 Desiree has been supporting two additional friends who have been living with her, and are not related to her {Ex. pend-21}.
68. Since Gabriel was returned to my custody in November 2011, Desiree has consistently refused to provide any financial support for Gabriel's needs. In particular:
 1. In April 2012 the soles of Gabriel's only pair of shoes were coming apart and when I requested Desiree contribute to a portion of the cost of a pair of shoes she refused {Ex. pend06}.

2. In June 2012 I requested Desiree contribute to the cost of Gabriel's school supplies for the coming school year. She refused and instead insisted on purchasing him duplicate supplies {Ex. pend-07} which now sit in the closet, unused. I believe Desiree did that deliberately to avoid having to reimburse me for part of the cost of Gabriel's school supplies in order for to make it more difficult for me to provide for Gabriel.
3. In August 2012, while Gabriel was with Desiree in Phoenix, Desiree purchased him a number of new outfits for school, however, none of the outfits complied with the school's dress code/uniform policies. Desiree refused to return or exchange the items for ones that Gabriel could use for school and refused to assist in the cost of purchasing clothes that Gabriel could use for school {Ex. pend-08}.
69. On June 29, 2012 I received an email from Desiree stating if it's such a problem for me to take care of Gabriel then I could send him to live with her and she would take care of everything, and that I would never have to pay a cent {Ex. pend-09}. I believe that statement, in the context of the conversation, proves Desiree's consistent refusal to provide any support for Gabriel, when he is not in her physical care, is a deliberate and calculated attempt on her part to coerce me into relinquishing custody of Gabriel, even though her actions are directly harming Gabriel.
70. On October 9, 2012 I received a money order from Desiree, in the amount of \$75, for support of Gabriel {Ex. pend-23hc}. That is the only financial support for Gabriel that I have received from Desiree.
71. In September 2012 I began looking for employment in Canada, as well as continuing to seek employment in the US, due to my inability to obtain employment locally over the past year. When I began receiving offers from companies in Vancouver, Desiree informed me that she would oppose me relocating with Gabriel for the purpose of gaining employment. She refused to provide

a reason for such opposition, however. Based on that type of behavior, I believe Desiree is acting in bad faith to deliberately complicate my circumstances.

72. On October 21, 2012 I received an email from Desiree in response to a request for financial assistance for Gabriel's school supplies, in the amount of at least \$23. She stated she would send the money out of her next paycheck but no money has been received {Ex. pend-04}.
73. On November 19, 2011 I received an email from Desiree stating she had renewed her medical marijuana card for another year {Ex. pend-03}. The cost of the renewal was \$150.

GABRIEL'S EDUCATION

74. On June 5, 2012 I sent Desiree an email, informing her Gabriel had been accepted into the School for Advanced Studies (SAS) at Dodson Middle School and inquiring whether she had any objections. She used the opportunity to accuse me of not including her in Gabriel's educational decisions, as ordered by the Court, but failed to say whether she agreed with or objected to him attending the school.
75. On June 12, 2012 after not receiving a response from Desiree about Gabriel attending the SAS at Dodson, I sent her another email on the matter. I was under time constraints to get Gabriel registered because there are a very limited number of seats in the SAS program. Desiree accused me of executing decisions regarding Gabriel's education without consulting her, even though I had a week prior and she had failed to respond. She then attempted to justify her failure to respond by stating she didn't know anything about the school and suggesting I was trying to trick her. I then realized she had not taken a single action regarding the matter. She had not gone to the school's web site, didn't know if it was a public or private school, and didn't even know what city it was in.

Nor had she bothered to ask me any questions about the school. All she was interested in was making accusations against me and fighting with me {Ex. pend-11}.

76. On June 12, 2012 I emailed Desiree to inquire whether she would be attending Gabriel's elementary school culmination ceremony. She responded by accusing me of failing to provide her sufficient notice and claiming she could not take time off on such short notice {Ex. pend-12}. However, the school calendar had been on the school's web site since before she had returned Gabriel in November 2011 and the information had, therefore, been available to her had she been interested in it. I believe this further proves that Desiree has no interest in Gabriel or his education and is only interested in fighting with me.
77. Dodson Middle School utilizes the web sites JupiterGrades.com and TeacherWeb.com to assist teachers and parents in managing the student's educational progress. That information is available on Dodson's web site.
78. Parents are required by Dodson policy to log into JupiterGrades to activate their parent account, and to use JupiterGrades on a regular basis to monitor their child's progress. At this time Desiree has not activated her JupiterGrades account as required by Dodson policies.
79. Since Gabriel has been attending the SAS at Dodson Desiree has not made a single inquiry into how he is doing at school.
80. I believe Desiree's actions prove that she is more interested in accusing me of wrongdoing and fighting with me and that she has no interest in Gabriel's education.

**DESIREE'S CHARACTER, UNRELIABILITY AND REFUSAL TO COOPERATE IN
GABRIEL'S INTEREST**

81. Desiree was scheduled to have a visitation with Gabriel for Memorial Day weekend, 2012. Three weeks prior to that date she told Gabriel that she had already purchased his plane ticket. However, there was no further contact with Desiree until after Memorial Day weekend and the visitation never occurred.
82. Desiree was scheduled to have a visitation with Gabriel for Columbus Day weekend, 2012. Desiree did not contact me or Gabriel regarding her intentions for the visitation and did not exercise her visitation for that weekend.
83. On September 7, 2012 the Court ordered that Desiree be permitted additional visitation with Gabriel in Los Angeles, on the condition that she provide at least two weeks' notice to me. Desiree has not indicated any intention or interest in exercising that additional visitation.
84. On May 13, 2012 (Mother's Day) Kristopher sent an insulting and abusive text message to Liz Munoz's phone stating "May the same heartache and disappointment befall you 10 fold for your lack of courtesy and gratitude for the woman who bore the child you love. I curse you both jezebel and Jew." Then another message stating "About your son, who's sins befall the father...Not making any attempt to show any kindness to the woman who gave him life." I was later informed by Desiree that it was because Gabriel did not call her on Mother's Day. I believe that type of behavior is very inappropriate and harmful to Gabriel's well-being and emotional development.
85. While Gabriel was in Phoenix with Desiree, over the summer of 2012, he would call me regularly in the mornings, whispering. He said that Kristopher and Desiree's other child slept until noon or later and he had to be quiet so that he did not wake them. As the summer progressed Gabriel began staying up and sleeping in later and later until, by the end of the summer visitation, he was regularly staying up until 4am – 5am and sleeping until noon – 1pm. Since Desiree was home in the evenings she was allowing and supporting that routine. When I asked Desiree about it she

refused to respond. I believe this demonstrates Desiree's lack of interest in the well-being of her children and her willingness to allow her children to maintain unhealthy and potentially harmful lifestyles.

86. While Gabriel was visiting Desiree over the summer she had at least two friends residing at her home, in Gabriel's bedroom. When I requested the names of the friends she refused to provide the information. She stated it was none of my business and she didn't have to tell me who stayed at her house {Ex. pend-22}. While Desiree's friends were present Gabriel was not able to use his bedroom. I believe this demonstrates that Desiree considers her friends more significant than her children, and her refusal to inform me of the people living in her home when Gabriel is present demonstrates her lack of willingness to cooperate in the interest of Gabriel's safety.
87. In August 2012, while Gabriel was visiting Desiree in Phoenix, she had given him a mobile phone for the stated reason of facilitating communication between them without having to speak to me.
88. On September 7, 2012 while Desiree (with Kristopher) was in Los Angeles for a hearing in this matter, she called to ask if she could visit with Gabriel before she returned to Phoenix. Gabriel had told me he did not want to see her while she was here so I relayed that to Desiree. Gabriel was sitting next to me as I spoke to Desiree and heard the conversation. Desiree did not ask to speak to Gabriel and did not inquire why Gabriel did not want to see her.
89. On the following day (September 8, 2012) Desiree canceled the mobile phone she had given Gabriel only a month prior for the purpose of facilitating communication between them. I believe Desiree did that because she was angry with Gabriel for not wanting to see her. I believe that type of behavior sets a very bad example for Gabriel and is harmful to his psychological and emotional development, because it teaches him that his affection can be bought and that he will be penalized for not "loving and respecting" Desiree.

90. Since September 7, 2012 Desiree has not spoken to Gabriel, however, her and Kristopher have sent numerous belligerent, provocative and very insulting emails to my email account and left at least one hostile message on my telephone. None of those messages contained any inquiry as to why Gabriel did not want to see her and she did not inquire about how Gabriel was doing until October 21, 2012 while responding to one of my requests for financial support {Ex. pend-01}.
91. Desiree did not contact Gabriel on, or before, his birthday on September 27, 2012.
92. On September 29, 2012 Gabriel forwarded me an email he had received from Desiree, wherein she stated "I will not call you however as I am not going to call the house phone...and it is of no interest for you to speak to me while you are there."
93. Since relocating to Phoenix, AZ from Florida in 2009, Desiree has resided at at least five different address in different school zones, requiring frequent changes of school for the children in her care. I believe that demonstrates Desiree's willingness to pursue her own selfish interests at the expense of her children's well-being and educational and social development.
94. Desiree has consistently blamed me and/or Gabriel for her own problems and her failures to act responsibly and in Gabriel's best interests. I do not know of a single instance of Desiree accepting the responsibility for her actions or circumstances. I believe that behavior sets a bad example for Gabriel.
95. Desiree has consistently refused to cooperate in discovery and to disclose information which is vital to determining Gabriel's safety and well-being {Ex. pend-27} when he is in her care. Further, she has withheld critical information from myself and from the Court which would be required for any responsible parent, and for the Court, to react in Gabriel's best interests and to ensure his safety.

DESIREE'S MANIPULATION AND DECEPTIVE BEHAVIOR

96. In March 2011, after I had located and contacted Desiree following her voluntary nine year absence from Gabriel's life, but before she had contacted Gabriel, she sent me a letter wherein she stated:
1. "Then, when we took him [Gabriel] to Florida for those 2 weeks... Richard, he didn't want to leave you and he certainly didn't want to go with me. There was a bond there and...he didn't even remember me, it made me happy that he wanted to be with you."
 2. "As far as Gabriel goes...I have waited a very long time for this to happen and there's no way I'm going to rush anything or make anyone feel uncomfortable in any way."
 3. "He [Gabriel] is completely justified in whatever feelings or opinions he has toward me. I hope – like you – he can overcome them and try..."
 4. "It will go at no one else's pace but his [Gabriel's]. I could search him out that is true – but why would I do that? That is most certainly not the best way to handle the situation for him. The best way is for the people he loves trusts and knows to give him the information and let him process it in his own way and make his own decisions about what he wants to do, always. I will hope for a phone call one day...but I'm not going to initiate it. Not out of fear, but out of respect."
 5. "She [Liz Munoz] has been his mother for a long time now. If it ever happens that he [Gabriel] comes to live with me, it would only be with her acceptance. I have nothing but gratitude for everything she's done. I hope that if we get a chance to meet, she will see that I'm not some negligent mother..."
97. In March 2011, I received another letter from Desiree, wherein she stated "...I wanted to mention...that I certainly didn't mean to step on your toes. I mentioned in my letter to you that I

would love to have him live with me eventually...All of that, of course, would be contingent on the fact that one day Gabriel would even want to stay with me – which is a long way down the line. I just didn't want you to take that like I'm snatching him from you.”

98. On April 13, 2011 I received another letter from Desiree, wherein she stated:

1. “The most important thing I want everyone to understand is that if Gabriel doesn't want to come stay with us (me and Sage) – I won't take it personally, I won't push the issue and I'll be content to talk to him on the phone and visit.”
2. “...I don't think anyone is entitled to anything and I think the only way to get something is to work for it, cause [sic] how could it be important to you if you're not willing to put in your own time and effort into obtaining it.”
3. “I think our parenting styles will be a good match so it won't be too weird for him [Gabriel] to go from one home to the other. Also – you will know that if he's with me, I'm taking care of him the same way you would...”

99. In late June 2011 Desiree made plans, without consulting or notifying me, to take Gabriel to San Diego for at least a week. Because she did not inform me of the plans, I suspected she was intending to take Gabriel back to Phoenix with her against his will, and for that reason I notified her that I could not agree to her plans because it would be harmful to Gabriel to be uprooted in that manner.

100. On August 7, 2011 Desiree came to Los Angeles with no notice and took Gabriel, against his will, to Phoenix, AZ where she immediately commenced emergency custody proceedings and obtained a restraining order, based on false statements and allegations, barring me from visiting with Gabriel or bringing Gabriel home to California.

101. In September 2011 I discovered that on June 10, 2011 Desiree had posted a public message on her Facebook page indicating that she was working on bringing Gabriel to Phoenix permanently.
102. In open court, on September 7, 2012, when asked by the Court how her visitation with Gabriel over the summer vacation went, Desiree stated with great emotion and sentiment that it went “wonderfully” and that Gabriel had a “great time”. When the Court then entered an order granting Desiree two additional visitations between that date and the winter break visitation, Desiree responded with enthusiastic gratitude. However, since that hearing Desiree has not had any contact with Gabriel, and has not even exercised her scheduled visitation (Columbus Day weekend), let alone the additional visitations the Court granted her. I believe this is further evidence of Desiree’s false representation and sincere lack of interest in being involved in Gabriel’s life.
103. I believe, based on my experiences with Desiree and her own statements over the past 19 months, that she is very manipulative; will say anything including making very serious, false allegations against others; will freely exploit other people's pity, compassion and sympathy; and will agree to any terms, to get what she wants. Then, once she has obtained what she wants she will completely disregard any prior agreements and commitments and deny her prior statements and intentions.

CONCLUSION

104. Over the past year Desiree has repeatedly initiated adversarial communications with me then when she could no longer rationalize her position she would involve Kristopher who would send me grossly offensive and abusive messages, ordering me to desist further communication {Ex. 10}. This has continued to occur even though the Court has directed her to keep her boyfriend out of issues related to me, Desiree and Gabriel.

105. Over the past six months Gabriel has exhibited a growing lack of interest in visiting and maintaining a relationship with Desiree. Specifically:
1. when she did not call or follow through on her visitation over Memorial Day weekend Gabriel expressed no concern;
 2. since returning from his summer visitation in August, he has not initiated any contact with her; he has expressed to me his disappointment that she is still using drugs; he has expressed his disappointment that she has consistently refused to provide him anything he has requested while he is not in her care, her frequent failure to follow through on her promises to him, her unpredictable and violent mood changes (including sometimes getting angry or crying for no apparent reason), and her retaliatory behavior such as disconnecting the mobile phone she had gotten him because he did not want to visit with her, and having her boyfriend send insulting and offensive messages because Gabriel did not think to call her on Mother's Day.
106. I believe, based on Desiree's actions and statements to the Court, that she has deliberately and consistently attempted to manipulate the Court by misrepresenting herself and her relationship with Gabriel, in order to gain the sympathy of the Court.
107. I believe Desiree's consistent and ongoing refusal to provide any support for Gabriel when he is not in her physical care, resulting in Gabriel's unnecessary suffering, proves that Desiree has no concern for Gabriel's well-being and is more interested in making things difficult for me, even at the expense of Gabriel's well-being.
108. I believe Desiree's drug use and criminal activity related to that drug use, over the past year, prove that she has a serious drug problem which puts Gabriel in danger when he is in her care.

109. I believe Desiree's attempts to conceal the histories of violence of the men that she has recently been in relationships with, proves her willingness to put her personal desires before the safety of her children.
110. I believe Kristopher's recent criminal activities, and that he took Gabriel with him while he was engaging in criminal activities proves that Gabriel is in danger when he is in Kristopher's care and, that Desiree's attempts to portray Kristopher as a good and responsible person show that she has, and will continue to exercise very poor judgment in matters relating to the safety and well-being of her children.
111. I believe, even though Kristopher is currently incarcerated, he can be bonded out of jail at any time and, upon his release, he will return to residing with Desiree his cousin's house where they have been living since November 2011.

Dated this 23rd day of November, 2012.

Richard Riess