Original

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

MAYA EIBSCHITZ-TSIMHONI,

Plaintiff,

v.

OMER G. TSIMHONI,

Defendant.
_____/

PLAINTIFF'S AMENDED MOTION *IN LIMINE* AND *DAUBERT* CHALLENGE TO EXCLUDE DEFENDANT'S ALLEGED EXPERT TESTIMONY ON THE "PARENTAL ALIENATION SYNDROME," "PARENTAL ALIENATION," AND "INTERVENTION PROTOCOL"

NOW COMES the Plaintiff, MAYA EIBSCHITZ-TSIMHONI, by and through undersigned counsel, and moves this Court for an order *in limine* excluding expert testimony proposed by the Defendant regarding the so-called "parental alienation syndrome," "parental alienation," and the "intervention protocol." In support of the motion Movant states as follows:

1. An evidentiary hearing on the Defendant's motion for change of custody is now scheduled to begin on June 23, 2016.

2. On October 1, 2015, the Defendant provided notice that he would be seeking to introduce testimony from several persons associated with the so-called "parental alienation syndrome" ("PAS") and/or a "parental alienation" theory, and associated intervention "protocol". On information and belief, Plaintiff anticipates that the Defendant will tender Darcy Pruter, Dr. Dahlia Berkovitz, Katherine Okla-Jacobs, Dr. Craig Childress, and possibly others, as experts to opine about these things. Although counsel for Defendant has stated on the record that she does

not intend to call these witnesses during her case-in-chief, she has refused to stipulate that she will not call them in rebuttal, which necessitates this motion.

3. Under prevailing case authority, the proffered expert testimony involves a failed, unscientific theory that is not condoned, espoused or generally accepted by social scientists in the field. There is even less support within the relevant social science community for the use of a parental alienation "protocol" to "treat" such cases. Most authorities conclude that this is a dangerous technique that harms children. In addition, the program director who administered the PAS protocol to the parties' children is clearly unqualified.

WHEREFORE, for all of the foregoing reasons, and based upon the argument and authority contained in the accompanying brief, Plaintiff moves this Court for an *in limine* order excluding expert testimony proposed by the Defendant involving "parental alienation syndrome," "parental alienation" theory, and associated "protocol."

Respectfully submitted,

Gregory F. Jacob by Francie Novar 6/2/2016

O'MELVENY & MYERS LLP
By: Gregory F. Jacob (*pro hac vice*)
David R. Dorey (*pro hac vice*)
Attorney for Plaintiff
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5300

FRANCIE L. NOVAR (P66273)
Attorney for Plaintiff
117 N. First St., Ste. 111
Ann Arbor, MI 48104
(734) 761-9854

Dated: June 2, 2016

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S AMENDED MOTION *IN LIMINE* AND *DAUBERT* CHALLENGE TO EXCLUDE DEFENDANT'S ALLEGED EXPERT TESTIMONY ON THE "PARENTAL ALIENATION SYNDROME," "PARENTAL ALIENATION," AND "INTERVENTION PROTOCOL"

The widely rebuked "reunification" or "intervention" protocol used in this case based upon a claim of a "parental alienation syndrome" or parental alienation theory does not meet even the most rudimentary requirements for reliability. Therefore, Defendant's anticipated expert testimony on this topic should not be admitted by the Court.

A. Case authority regarding the *Daubert*/Rule702 requirements for admission:

As noted in prior briefing by Plaintiff, this Court's findings in a change of custody hearing must be based upon admissible evidence. Michigan Rule of Evidence 702 provides that expert testimony relating to "scientific, technical, or other specialized knowledge" is admissible only if it "will help the trier of fact to understand the evidence or to determine a fact in issue." MRE 702; *Gilbert v. Daimler Chrysler Corporation*, 470 Mich. 749, 779-783 (2007); FRE 702(a); *Pride v. BIC Corp.*, 218 F.3d 566, 578 (6th Cir. 2000) (citing *Daubert v. Merrell Dow Pharmaceuticals*, Inc., 509 U.S. 579, 592 n.10 (1993)) (explaining that an expert must "testify to scientific knowledge that will assist the trier of fact in understanding and disposing of issues relevant to the case").[1] A witness qualified as an expert may only offer testimony if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the expert has reliably applied the principles and methods to the facts of the case." MRE 702 (1)-(3); FRE 702(b)-(d).

[1]While the Supreme Court in *Daubert* was interpreting FRE 702, the Michigan Supreme Court in *Gilbert* noted that "MRE 702 has . . . been amended explicitly to incorporate *Daubert*'s standards of reliability." *Gilbert*, 470 Mich. at 781. Consequently, federal and state law discussing Rule 702 and *Daubert* are interchangeable.

Additionally, expert testimony is subject to general evidentiary strictures, such as rules of evidence 104, 401, and 403. *See Gilbert*, 470 Mich. at 780-81; *see also United States v. LeBlanc*, 45 Fed. App'x 393, 400 (6th Cir. 2002) ("Obviously, expert testimony is subject to the same relevancy constraints as all other kinds of evidence."); *Moisenko v. Volkswagenwerk Aktiengesellschaft*, 198 F.3d 246 (6th Cir. 1999) (applying Fed. R. Evid. 403 balancing test to expert testimony).

Under Rule 702, the trial judge is charged with the task of ensuring an expert's testimony is relevant to the task at hand and rests on a reliable foundation. *Daubert*, 509 U.S. at 591-92; *Zuzula v. ABB Power T & D Co., Inc.*, 267 F. Supp. 2d 703, 711 (E.D. Mich. 2003) ("[T]estimony is unhelpful when it is unreliable or irrelevant."). Under prior and current incarnations and interpretations of Rule 702, the trial court retains the "gatekeeper role," and may consider evidence only when

> it ensures, pursuant to MRE 702, that expert testimony meets that rule's standard of reliability. In other words, both tests require courts to exclude junk science; *Daubert* simply allows courts to consider more than just "general acceptance" in determining whether expert testimony must be excluded. This gatekeeper role applies to *all stages* of expert analysis. MRE 702 mandates a searching inquiry, not just of the data underlying expert testimony, but also of the manner in which the expert interprets and extrapolates from those data. . . . The proponent must also show that any opinion based on those data expresses conclusions reached through reliable principles and methodology.

Gilbert, 470 Mich at 782-783. Moreover, the necessary connection between the expert's methodology and ultimate conclusion may not be established on speculation alone. "[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only be the *ipse dixit* of the expert." *General Electric v. Joiner*, 522 U.S. 136, 146 (1997), quoted in *Gilbert*, 470 Mich at 783, applicable to MRE 702.

An expert's testimony must also be reliable. Reliability of an expert's conclusions is based on the expert's knowledge or experience in his or her discipline, rather than on subjective belief or unsupported speculation. *See, e.g.*, *Kumho Tire, Ltd. v. Carmichael*, 526 U.S. 137, 148 (1999); *Daubert,* 509 U.S. at 589-90. The Court must ensure that the expert employs "the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Newell Rubbermaid, Inc. v. Raymond Corp.*, 676 F.3d 521, 527 (6th Cir. 2012) (internal quotation marks omitted). In cases of scientific testimony, this means that an expert's testimony not only must reflect scientific knowledge, but also must be "derived by the scientific method" and amount to "good science." *See Daubert v. Merrell Dow Pharmaceuticals*, 43 F.3d 1311, 1315 (9th Cir. 1995) ("*Daubert II*"). In essence, the Court must "be on guard against all forms of junk science that may creep into the courtroom." *Greenwell v. Boatwright*, 184 F.3d 492, 501 (6th Cir. 1999).

Daubert suggested four non-exclusive criteria "against which to measure the validity of the underlying principles and methods which undergird an expert's opinion: (1) whether the technique or theory is capable of being tested; (2) whether it has been published and reviewed by peers in the relevant technical community; (3) the potential or known rate of error yielded by the methodology; and (4) whether the principle or theory has been generally accepted or shunned by the community of experts in the field." *Zuzula*, 267 F. Supp. 2d at 712. Authorities have identified several "red flags" that "caution against certifying an expert," including (1) reliance on anecdotal evidence, (2) improper extrapolation, (3) failure to consider other possible causes, (4) lack of testing, and (5) subjectivity. *Newell Rubbermaid, Inc.*, 676 F.3d at 527.

Further, regardless of whether an expert is certified to testify during the case in chief, or in rebuttal, the expert must still meet *Daubert* requirements. *See Valley View Angus Ranch, Inc.*

v. Duke Energy Field Services, LP, 2008 WL 7489089, at *1 (W.D Okla. July 22, 2008) ("where the rebuttal testimony is proffered by an expert witness, the Court must perform its Daubert 'gatekeeping' obligation and determine whether the testimony is sufficiently reliable") (citing *Daubert*); *cf. Pride*, 218 F.3d at 578-79 (reviewing district court's denial of admission of rebuttal expert witness under *Daubert* for abuse of discretion).

Applying these precedents, information gleaned (either directly on the witness stand or indirectly through the GAL or other witness) from a proposed "expert" or from a self-proclaimed "therapist" or "program director" regarding the diagnosis of, treatment for, or efficacy of, the "parental alienation syndrome" ("PAS") or parental alienation theory fails all of the above tests.

B."Parental alienation syndrome" evidence from proposed expert witnesses is inadmissible:

First, neither the existence of the PAS, nor the validity of a reunification or "intervention" "protocol" to cure PAS is generally accepted by qualified professionals in the relevant social science community. Rather, this is a highly questionable, dangerous "diagnosis" which is only used in the context of litigation. It has been rejected as lacking scientific validity by numerous leading social science and legal authorities which have carefully examined the research. J.S. Meier, J.S., *A Historical Perspective on Parental Alienation Syndrome and Parental Alienation*, 6 Journal of Child Custody 232, 239 (2009)("[t]he dominant consensus in the scientific community is that there is no scientific evidence of PAS") (emphasis in original); J. Hoult, *The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy, Children's Legal Rights Journal*, Vol 26-1, Spring 2006, atp. 7 (Spring 2006) (critical analysis, detailing social science, case law and other authority on PAS); R.E. Emery, R. E., R.K. Otto, R. K., & W.T. O'Donohue, W. T., *A Critical Assessment of Child Custody Evaluations: Limited Science*

and a Flawed System, 6 Psychological Science in the Public Interest 1 (2005) ("the scientific status of PAS is, to be blunt, nil"); C.S. Bruch, C. S., *Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases*, 35 Family Law QuarterlyL.Q. 527, 539 (2001) ("PAS as a scientific theory has been excoriated by researchers across the nation") (quoting leading DoctorM.D.)[2]

Nationally, courts have rejected the admissibility of PAS, and one state, New York, has even set binding precedent that PAS is inadmissible as a scientific theory in criminal cases. See *People v. Fortin*, 289 A.D. 2d 590, 591 (N.Y. App. Civ. 2001). Other jurisdictions have taken a skeptical view of the admissibility of PAS, although there are no other published opinions that set guiding legal precedent.[3]

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[2] *See also* C. Dalton, L. Drozd, & F. Wong, for the National Council of Juvenile & Family Court Judges, *Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide* (Rev. Ed. 2006) ("[t]he theory positing the existence of 'PAS' has been discredited by the scientific community. Any testimony that a party to a custody case suffers from the syndrome or 'parental alienation' should therefore be ruled inadmissible and/or stricken"); K.C. Faller, The parental alienation syndrome: What is it and what data support it? 3 Child Maltreatment 100 (1998); J.E.B. Myers, *Expert testimony describing psychological syndromes*, 24 Pacific Law Journal L.J. 1449 (1993); S.J. Dallam, *Parental alienation syndrome: Is it scientific?* E. St. Charles & L. Crook (Eds.*), Expose: The Failure of Family Courts to Protect Children From Abuse in Custody Disputes* (Our Children Our Future Charitable Foundation: 1999); Ragland and Fields, Parental Alienation Syndrome: What Professionals Need to Know, National Center for Prosecution of Child Abuse (NCPCA) Update Newsletter, Volume 16, Number 6, p. 2 (2003), published by the American Prosecutors Research Institute and National District Attorneys Association, at www.ndaa.org/publications/newsletters/ update _ volume_16_number_6_2003.html; R. Smith & P. Coukos, *Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations*, 38 Judges Journal 30 (1997); C. Wood, *The Parental Alienation Syndrome: A dangerous aura of reliability*, 27 Loy. L.A. L. Rev. 1367 (1994).

[3] Gillespie v. Gillespie, 2016 WL 1622890, at *12 (Md. Ct. Spec. App. Apr. 25, 2016) (unreported) (Friedman, J., concurring) ("I consider the diagnoses of 'parental alienation' . . . to be based on novel scientific theories"); M.A. v. A.I., No. FM-20-973-09, 2014 WL 7010813, at *2 (N.J. Super. Ct. App. Div. Dec. 15, 2014) (holding PAS does not meet scientific standards for admissibility); People v. Fortin, 289 A.2d 590 (N.Y.App.Div. 2001) (same); .M.S. v. I.D.S.,

Additionally, the National Council of Juvenile and Family Court Judges has now recognized that the PAS protocol harms children and, consequently, the Council denounces its use. *Navigating Custody & Visitation Evaluations in Cases With Domestic Violence: A Judge's Guide,* National Council of Juvenile and Family Court Judges, p 19 (2d ed. 2006); *see also* J. Bowles, K.Christian, M. Drew & K. Yetter, National Council of Juvenile and Family Court Judges ("NCJFC"), *A Judicial Guide to Child Safety in Custody Cases*, pp. 11-12, '3.3 (2008).

> . . . Under relevant evidentiary standards, the court should not accept testimony regarding parental alienation syndrome, or "PAS." The theory positing the existence of PAS has been discredited by the scientific community. 35 In [*Kumho Tire*], the Supreme Court ruled that even expert testimony based in the "soft sciences" must meet the standard set in the *Daubert* case. *Daubert*, in which the court re-examined the standard it had earlier articulated in the *Frye* case, requires application of a multi-factor test, including peer review, publication, testability, rate of error, and general acceptance. PAS does not pass this test. Any testimony that a party to a custody case suffers from the syndrome or "parental alienation" should therefore be ruled inadmissible and stricken from the evaluation report.
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> The discredited "diagnosis" of PAS (or an allegation of "parental alienation"), quite apart from its scientific invalidity, inappropriately asks the court to assume that the child's behaviors and attitudes toward the parent who claims to be "alienated" have no grounding in reality. It also diverts attention away from the

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2015 WL 926777 (La. App. Ct. 4 Cir. Mar. 4, 2015) (unpublished) (upholding trial court's decision to exclude PAS expert on grounds that "PAS has not been recognized as a relevant medical syndrome or diagnosable mental disorder by the medical community, any professional association, or Louisiana courts"); *Snyder v. Cedar*, 2006 Conn. Super. LEXIS 520 (2009) (unpublished) (PAS lacks "any scientific basis . . . [and] any methodological underpinning" and is inadmissible because it is "incapable of helping the fact finder determine a fact in dispute"); *see also C.J.L. v M.W.B.*, 879 So. 2d 1169 (Ala.Civ.App. 2003) (questioning PAS' admissibility); *In re Interest of TMW*, 553 So. 2d 260 (Fla. App. 1 Dist. 1989) (same); *People v. Sullivan*, 2003 WL 1785921 (Cal. App. 6 Dist. 2003) (same); *In re JC*, 2007 WL 4239288 (Cal. App. 2 Dist. 2007) (same); see also Holly Smith, Parental Alienation Syndrome: Fact or Fiction? The Problem with its use in Child Custody Cases, 11 U. Mass. L. Rev. 64 (2016) (collecting cases denying admissibility of diagnoses of parental alienation syndrome); Carol S. Bruch, Parental Alienation Syndrome and Parental Alienation: Getting it Wrong in Child Custody Cases, 35 Fam. L.Q. 527, 539 (2001-2002) (quoting Dr. Paul J. Fink, past president of the American Psychiatric Association: "[Parental Alienation Syndrome] as a scientific theory has been excoriated by legitimate researchers across the nation. Judged solely on [its] merits, [Parental Alienation Syndrome] should be a rather pathetic footnote or an example of poor scientific standards").

> behaviors of the abusive parent, who may have directly influenced the child's responses by acting in violent, disrespectful, intimidating, humiliating, or discrediting ways toward the child or the other parent. The task for the court is to distinguish between situations in which the child is critical of one parent because they have been inappropriately manipulated by the other (taking care not to rely solely on subtle indications), and situations in which the child has his or her own legitimate grounds for criticism or fear of a parent, which will likely be the case when that parent has perpetrated domestic violence. Those grounds do not become less legitimate because the abused parent shares them, and seeks to advocate for the child by voicing his or her concerns.

Id. (citations omitted). The Council notes further that "[a]ccording to the American Psychological Association, ' . . . there are no data to support the phenomenon called parental alienation syndrome . . . .'" *Id.*, n.35, quoting from Am. Psychol. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* 40, 100 (1996).

Not only is "parental alienation" theory junk science, but Okla-Jacobs, Barron, and Dr. Berkovitz do not meet the Daubert/Gilbert standards either. Defendants' purported 'expert' witnesses rely solely on interactions with the children, and Mr. Tsimhoni. See generally Field Reports of Roee, Natalie, and Liam Tsimhoni of Darrius Barron. Defendants' purported experts also have extensive ties with "parental alienation" theory and Dorcy Pruter's Conscious Co-Parenting Institute. For example, Dr. Berkovitz became involved in the case after a referral from the Conscious Co-Parenting Institute, an organization utilizing "parental alienation" theory. See Berkovitz Expert Report, at 1. Further, Dr. Berkovitz bases her expertise exclusively on interactions with the children and Mr. Tsimhoni, and conversations with other "parental alienation" theory therapists, including Dr. Childress, William Lansatt, and Dorcy Pruter. Id. Dr. Berkovitz is heavily involved in other organizations utilizing "parental alienation" theory, and has led several seminars in connection with these organizations. See Dads and Moms of

Michigan, "Understanding Parental Alienation Webinar with Dr. Dahlia Berkovitz, http://www.dadsandmomsofmichigan.org/ (last accessed May 25, 2016; 3:29 PM).

B. "Parental alienation" theory of Dr. Childress is inadmissible in the present context:

To the extent that Defendant plans to offer alleged expert testimony, for example, from Dr. Childress, that Plaintiff-mother can be faulted for behavior that qualifies as "parental alienation" ("PA"), as distinct from the parental alienation syndrome ("PAS"), this testimony is likewise inadmissible in the instant case based upon the following analysis. First, authorities rebuking these theories have used PAS and PA monikers interchangeably. *See e.g.*, J. Bowles, et. al., National Council of Juvenile and Family Court Judges, *A Judicial Guide to Child Safety in Custody Cases*, *supra* at 11-12, § 3.3 (2008) ("The discredited 'diagnosis' of PAS [ ] or an allegation of 'parental alienation' . . ."); *see also* Am. Psychol. Ass'n, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* 40 (1996) ("Terms such as 'parental alienation' may be used to blame the women for the children's reasonable fear of or anger towards their violent father."); *id.* at 100. Striking the word "syndrome" from the theory, therefore, does not save it from *Daubert*/Rule 702 scrutiny, and it does not render the testimony admissible.

Second, Dr. Childress's unique incarnation of PA theory likewise fails *Daubert*'s strictures and evidentiary relevance prerequisites. Dr. Childress espouses the notion that a diagnosis of parental alienation can be made by reference to the children's behavior, *i.e.*, hostility towards the "rejected" parent. Childress's theory continues that where the children's rejecting behaviors are apparent, the favored ("alienating") parent can be diagnosed as having one of several, alternative mental disorders, such as "narcissistic personality," "attachment disorder," or

"personality disorder." However, Childress's is a lone voice that such a diagnosis can be made on the basis of *the children's* behavior.

The vast research now available concerning children who are in fact alienated from the rejected parent suggests that the totality of circumstances (including a qualified psychological assessment of both parents) must be considered. Parental or child "alienation" is generally defined as involving a scenario in which a child is extremely hostile to one parent *for reasons other than a natural response to the rejected parent's own behavior*. *See* Kathleen C. Faller, Maltreatment in Early Childhood: Tools for Research-Based Intervention (NY 1999); Righthand *et al.*, Child Maltreatment Risk Assessments: An Evaluation Guide (NY 2003); *see also, e.g.*, *Matter of Bunting*, 1988 WL 10999 (Ohio Ct. App. Feb. 5, 1988) (where parents had abused and neglected the children the children had a great dislike and fear toward both parents). PA theory is generally understood to be more multifaceted than the original, somewhat simplistic PAS with the latter assuming that alienation is fueled entirely by a malevolent or pathological mother. PA, in contrast, is known to be caused by myriad different factors, but always including negative behaviors of the disliked parent. *Id.* There is no research-based reason to believe that parents can create rage, hatred, terror, and symptoms of trauma in children purely by coaching a child. On the contrary, children's fear, hostility, traumatic stress symptoms, and social or academic regression are usually seen by child abuse experts as indicative of true abuse. *See* Righthand et al., Child Maltreatment Risk Assessments: An Evaluation Guide (2003); Faller, Maltreatment in Early Childhood: Tools for Research-Based Intervention (1999); *see, e.g.*, *Matter of Bunting, supra*.

Dr. Childress's mutant version of PA theory, in contrast, is not generally accepted by qualified social scientists in this field.

Moreover, expert testimony concerning the Childress theory is inadmissible on the unique facts of this case. In the lengthy (and unfortunate) history of the Tsimhoni case, despite thorough psychological evaluations of both parents and all three children, Maya Eibschitz-Tsimhoni has never been diagnosed as having any of Childress's triggering mental disorders. As such, Dr. Childress's testimony should be barred as irrelevant given the instant case facts.

Assuming *arguendo* that there is some support within the qualified social science community that alienation between a parent and child can occur, most authorities agree that where certain behaviors and facts are extant within the family dynamic, parental alienation is not a proper diagnosis or finding. Most significantly, where children have a "reasonable fear of or anger towards" their violent parent, a parental alienation finding is misplaced. Am. Psychol. Ass'n, *Violence and the Family, supra*. In this case, there has been a substantiated report of violence by Mr. Tsimhoni towards his children in August of 2010. Significantly, as to the circumstances surrounding the interaction between Mr. Tsimhoni and his three children on that date, the facts are largely undisputed.[4] Both parents and all three children reported that Mr. Tsimhoni locked all three children in a car with the engine turned off on an extremely hot day; that Mr. Tsimhoni dragged a then nine-year old Liam by the arm and leg off playground equipment, across the playground into the car; that the children were afraid and called the police; and that Child Protective Services substantiated an abuse complaint. Mr. Tsimhoni was only allowed supervised parenting time as a result of that incident. Plaintiff contends that under the prevailing view of PA research, the August 2010 incident alone removes this dynamic from classification as parental alienation by Plaintiff.

[4] Mr. Tsimhoni only disputes his family's claim that he was also violent toward Ms. Tsimhoni on that date.

Other factors likewise belie a claim of parental alienation by Plaintiff. Even in the absence of criminal conduct, certain behaviors by the rejected parent are known by researchers to contribute to child estrangement, as distinct from alienation. *See* Johnston et al., *Is it Alienating Parenting, Role Reversal, or Child Abuse? A Study of Children's Rejection of a Parent in Child Custody Disputes*, 5 J. Emotional Abuse 191, 206 (2005). In addition to child abuse or neglect, these behaviors include lack of warm, involved parenting, and other behaviors which cause the children to feel poorly treated or disconnected. "Rejected parents, whether father or mother, appear to be the more influential architect of their own alienation, in that deficits in their parenting capacity are more consistently and most strongly linked to their rejection by the child." Johnston, *Parental Alignments and Rejection: An Empirical Study of Alienation in Children of Divorce*, 31 J. Am. Academy Psychiatry & L. 158, 169 (2003). Furthermore, research by Johnston and Campbell found that children who were aligned with one parent chose the one who provided more empathy and understood the child's age-specific concerns. Johnston & Campbell, *Impasses of Divorce: The Dynamics and Resolution of Family Conflict* (1988). Similarly, in examining specifically whether children's alignment with one parent over the other during divorce was due to manipulation by the preferred parent, researchers found that children naturally aligned with the parent who the child found to be more "self-confident, problem solving, enthusiastic, and outgoing." Lampel, *Children's Alignments with Parents in Highly Conflicted Custody Cases*, 34 Fam. & Conciliation Cts. Rev. 229 (1996).

> The complex family dynamics suggested by these studies are that a closed parent system, in which both parents are defensive and remain in conflict, led the child to align with the more problem solving, capable, and outgoing of the two parents. The empathy-driven model was more supported by the present studies than was the manipulation-driven model.

Id.

In the context of this case, the foregoing research supports a finding that Mr. Tsimhoni is not estranged from his children because his ex-wife is alienating the children. Rather, he is estranged because particularly given the ongoing crisis of this unfortunate case, the children favor their mother's more empathic approach over their father's intimidating behavior(s) and actions from 2009 to the present. Here, according to family psychologist Katherine Okla-Jacob's testimony, the children felt rejected by the fact that Mr. Tsimhoni moved to another country, visiting them only once every three months or so. The children were understandably angry at, and fearful of, their father who attempted, through Israel's court system, to compel them and their mother to remain in that war-torn country against their will. Finally, according to a recent GAL report in this case, the children are not reacting favorably at all to their father's intimidating and heartless actions in separating them for months from a mother who has raised them from birth.

D. Expert testimony of Dorcy Pruter regarding the intervention "protocol" is inadmissible:

Not only does the PAS "diagnosis" and "protocol" flunk the strictures of *Gilbert-Daubert*/Rule 702 as discussed above, in addition, the "reunification" or "intervention" individuals, including Dorcy Pruter ("program director"), utilized in this case does not meet any of the foregoing standards either. In fact,it would be difficult to envision a person less qualified for the task at hand. Ms. Pruter, whether confirming or making[5],the diagnosis and administering

[5] There has never been an evidence-based finding that Maya Eibschitz-Tsimhoni is a parental alienator, and she adamantly denies that she has alienated the children from their father. Judge Gorcyca's conclusion in the order denying the motion to disqualify—that Plaintiff's willingness to be evaluated by the Family Bridges program should be construed as a concession that she is an alienating parent—is clearly flawed. In fact, the Court of Appeals has now rejected Defendant's false and oft-repeated claim that Maya agreed to any such program in general, or to Pruter's program in particular. The Court of Appeals, in its April 14, 2016 opinion and order (reversing the August 12, 2015 and September 3, 2015 custody orders which had imposed the

the "protocol" in this case to the Tsimhoni children has testified recently, under oath, that she has only a high school diploma and holds no professional license. Her PAS-specific "training" consists primarily of a weekend seminar. She claimed to have other non-PAS specific "training", for example, as a "life coach," but the coaching industry does not really require certification. Pruter's glaring lack of training in the mental health field was demonstrated, sadly, when she discussed the Tsimhoni children and aspects of her therapeutic observations of them on the record, in a public courtroom, violating the children's HIPAA rights, the patient-therapist privilege, the children's rights to privacy, and in all likelihood, this Court's protective and gag orders. She claimed in her Wyoming trial testimony that she spoke directly with this Court. Pruter spoke extensively with counsel for Defendant, eschewing any input from Plaintiff's prior attorney before administering the protocol.[6]

Despite the Pruter's claim in sworn testimony that in "the Michigan case", she "successfully" reunited father and children, testimony in this case will show that this

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protocol), found that Maya agreed to two limited parenting time programs that the trial court found not suitable. Most significantly, Maya "objected to the specific program the children were placed in. Accordingly, [the Court] concluded that Maya ha[d] not waived these issues." *See* COA 4/14/16 Opinion, p.2. Judge Gorcyca's conclusion is not supported—and indeed is contrary—to the record. The only program discussed by the parties was a limited parenting time program involving "some dinners." See Tr. 4-2-15, p. 8. Plaintiff never agreed (a) to any separation between her and her children, (b) to the children's handcuffing by courtroom deputies, (c) to their placement in Children's Village against their consent, (d) to their placement at Camp Tamarack against their consent, (e) to their participation in Pruter's six-day intervention program against their consent, or (f) to their placement (until recently) exclusively with Defendant against their consent.

[6] The children were kept from their established custodial environment, beginning with their confinement at Children's Village in June of 2015 until this past month, when the Court of Appeals reversed Judge Gorcyca's orders and this Court reunited the children with their mother who presently shares 50-50 parenting time with Defendant. The fact that the children are now back in their established environment for significant periods of time does not reverse—or even mitigate—what has happened to them as a result of the "protective separation" and "intervention protocol" orders in this case, now reversed by the Court of Appeals.

"reunification" is far from a success. Finally, according to GAL reports post-dating the Pruter-intervention-protocol time period, the children reverted almost immediately to their practice of not communicating with their father (or communicating very little with him) once outside the walls of the "memory inn." Defendant, in turn, returned to his well-worn practice of threatening his children to gain their compliance. As a result, and predictably, the children have become somewhat more submissive and obedient to him while in his care. Recently, however, they have obvious, legitimate, strong, and negative feelings about their father's intimidating and heartless actions in separating them for months from a mother who has raised them from birth, and about his behavior in general.

> The recent history of this case proves again why these programs don't work.
>
> PAS treatment uses court-ordered threats of legal deprivations of custody, visitation, property and liberty to coerce the mother and child into behavioral compliance with rejected men's demands for love and respect. . . . But [t]here is no evidence that legal coercion can create love or respect, nor is there a way to distinguish genuine change of affection from charades feigned for survival. . . . It is perhaps not surprising that the scientific literature overwhelmingly reports that PAS treatment fails.

J. Hoult, *supra* at p. 7.

Respectfully submitted,

Gregory Jacob by Francie Nova w/permission

O'MELVENY & MYERS LLP
By: Gregory F. Jacob (*pro hac vice*)
David R. Dorey (*pro hac vice*)
Attorney for Plaintiff
1625 Eye Street, NW
Washington, DC 20006
(202) 383-5300

FRANCIE L. NOVAR (P66273)
Attorney for Plaintiff
117 N. First St., Ste. 111
Ann Arbor, MI 48104
(734) 761-9854

Dated: June 2, 2016

PROOF OF SERVICE

John Whitehead hereby certifies, under penalty of perjury, that on the 2nd day of June, 2016, copies of the attached Motion *in Limine* (*Daubert* challenge), Brief in Support, Notice of Hearing and this Certificate of Service were served on Keri Middleditch, and William Lansat, by personal delivery.