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BY A. NOYES, DEP

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4 Phoenix, Arizona 85020  
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7 *Attorneys for Respondent*

8  
9  
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR THE COUNTY OF MARICOPA**  
12

13 **RICHARD RIESS,**

14 Petitioner,

15 v.

16 **DESIREE TOMLIN RIESS**  
17 **nka DESIREE CAPUANO,**

18 Respondent.

No. FC 2011-093719

**RESPONSE TO MOTION TO DISMISS**

**ASSIGNED TO THE HONORABLE  
JOHN HANNAH**

19 Respondent, DESIREE CAPUANO, through her counsel undersigned, for her Response to  
20 Petitioner's Motion to Dismiss, responds as follows:

21 1. Respondent denies the allegations contained in paragraph 1, and alleges that in October  
22 2001, Mother moved to Arizona with Gabriel to stay with her Mother. Father had made it very clear he  
23 had no interest in being a Father to Gabriel and even told Mother he was mad at her for not letting the  
24 baby die when she went into premature labor. In fact, when Mother was able to bring Gabriel home  
25 from the hospital, Father demanded that Mother research adoption agencies to take Gabriel, but only  
26 ones who would give money for him.

27 In December 2001, Mother informed Father she wished to move to Florida with Gabriel.  
28 Father did not object and in fact stated that he would be looking into possible employment for himself in  
Florida. Father had made no attempt to have any visitation with Gabriel since October 2001.

1  
2 Mother went to Tampa, Florida for *one week* to look for employment and a place to live  
3 leaving the parties' minor child, Gabriel, in Arizona with maternal grandmother. Mother did leave a  
4 forwarding address because she was coming back to Arizona to prepare to move.  
5

6 2. Mother denies the allegations contained in paragraph 2, and alleges that while she was in  
7 Florida, Father drove to Arizona and removed Gabriel from maternal grandmother's care and took him  
8 back to California without informing Mother. Mother believes Father was angry after having learned  
9 she had reconnected with a former boyfriend, who lived in Florida.  
10

11 Father immediately filed Petition for Dissolution of Marriage in the Superior Court of  
12 California, County of Los Angeles, Case No. YD042145, on December 21, 2001, and obtained  
13 temporary custody in having made false allegations of Mother abandoning Gabriel in his Order to Show  
14 Cause for Child Custody, Visitation and Permission to take Minor to Arizona for Christmas.  
15

16 On January 18, 2002, Mother filed a Response to Dissolution of Marriage and a  
17 Responsive Declaration to Order to Show Cause and after a two day hearing, on February 21, 2002, the  
18 Court issued its Findings and Order After Hearing.  
19

20 Pursuant to the California Order, page 2, paragraphs 2, 3 and 4, it states:

21 "The parties are awarded joint legal custody of Gabriel, born  
22 September 27, 2000."

23 "The parties are awarded joint physical custody of Gabriel, each  
24 party to have equal time with him."

25 "Gabriel shall spend alternating two week periods with each  
26 parent."

27 Mother had informed the Court that she would be living in Florida, and expressed her  
28 concerns of the alternating two week parenting time based on the fact that Gabriel was only a year and a

1 half old, the parties lived in two different states and it would be costly for the parties to travel back and  
2 forth every two weeks from state to state. At no time during the hearing did Mother say she would  
3 move back to Arizona.

4  
5 3. Mother denies the allegations contained in paragraph 3, and alleges that during the two  
6 weeks she and Gabriel were in Florida, Father made several harassing calls to her making derogatory  
7 comments and threatened both her and her family. In fact, the last night of Mother's parenting time with  
8 Gabriel, she witnessed Father on her property tinkering with the engine of her vehicle. Father left in a  
9 cab as soon as the front door opened. Mother did not feel safe and when it was time for her next two  
10 weeks, she tried to gather the necessary funds to fly out to get Gabriel and bring someone along to assist  
11 her during the exchange. However, Mother simply did not have the funds to travel to California and  
12 return to Florida and informed Father she did not have the money.

13  
14 During the following weeks, Mother received several calls from Father stating he could  
15 not handle taking care of Gabriel and wanted to give him back to her. Mother begged Father to call his  
16 attorney so Mother could immediately take custody of Gabriel. Father never made the call to his  
17 attorney and stopped all contact with Mother.

18  
19 4. Mother can neither admit or deny the allegations contained in paragraph 4.

20  
21 5. Mother denies the allegations contained in paragraphs 5 and 6 and alleges that in the  
22 Spring of 2002, she was forced to move due to financial hardship and provided her home telephone  
23 number and address to her attorney in California. On March 15, 2002, Mother's attorney filed a Notice  
24 a Non-Availability of Counsel with the California court stating she would not be available from March  
25 31, 2002 through April 8, 2002. See Exhibit "A" attached hereto.

26  
27 In the Summer of 2002, Mother did remarry believing that her marriage had been  
28 dissolved and gave birth to her second child in July 2003. (Mother has been divorced from this marriage

1 since March 21, 2011). Mother has reason to believe that Father is still married to Kimberly Shivers,  
2 whom he married on November 22, 1997 in Nevada three years prior to marrying Mother on August 26,  
3 2000. See Exhibit "B" attached hereto.

4  
5 From Spring of 2002 to the Fall of 2003, Mother resided at the same address and had the  
6 same phone number she had provided to her attorney. All communication stopped from Father in 2002,  
7 despite the fact that Mother had the same email address Father had sent emails previously to her. It  
8 wasn't until May of this year, that Mother closed that email account. Father made no attempt contact to  
9 Mother at all during this entire time and Mother had no idea where Father and Gabriel were living.

10  
11 7. Mother denies the allegations contained in paragraphs 7 and 8, and alleges that in 2007,  
12 she received a phone call from maternal grandmother saying that Gabriel wanted to speak with her. This  
13 was the first contact Mother had from Gabriel for over six years. During their phone conversation,  
14 Gabriel told Mother how much he missed her and told her that he was going back to California that night  
15 and wasn't looking forward to it.

16  
17 A few days later after Gabriel returned to California, Mother received a telephone  
18 message from Gabriel telling her that this was not a good time for her to become involved in his life and  
19 she had missed her chance and he no longer wished to talk to her. A few days later, the number where  
20 Gabriel was calling from was disconnected.

21  
22 Mother made several calls to CPS, police officials and missing persons in Florida,  
23 Arizona and California, but could not locate Father or Gabriel.

24  
25 8. Mother admits in part the allegations contained in paragraph 9 and alleges that in 2009,  
26 she did an internet search for Father's name and came across information that he was incarcerated in a  
27 federal detention facility in Arizona for charges of forgery and theft. Mother immediately went to see  
28 Father in prison demanding to know where her son was, but he refused to tell her.

1           9.     Mother admits in part the allegations contained in paragraph 10 and alleges that despite  
2 Mother's efforts to locate Gabriel, it wasn't until February 13, 2011, that she received a five page letter  
3 from Father apologizing to her for keeping Gabriel away from her wherein he states: ***"I really am sorry for***  
4 ***causing so much misery, unhappiness, anger and whatever else I may have caused"*** and ***"I did have an***  
5 ***active and significant part in pushing you away."*** Father let Mother know that he had explained the  
6 situation to Gabriel as well and had provided him with her contact information. See Exhibit "C" attached  
7 hereto.  
8

9                     Father also sent a letter to Gabriel on February 11, 2011, letting him know that he's made  
10 ***"several mistakes the past ten years"*** and that he had been in touch with his mother and that she wants to  
11 get to know him and that it has to be Gabriel's decision. Father tells Gabriel ***"when I got custody of you I***  
12 ***did go out of my way to make it difficult for her."***  
13

14                     Father ends his letter to Gabriel saying ***"But after my years of drug use and neglect and***  
15 ***being an irresponsible asshole you were able to forgive me so I ask that you try to forgive her as well."***  
16 See Exhibit "D" attached hereto.  
17

18                     Mother immediately wrote Father back and their correspondence continued leading Mother  
19 to believe that not only would she be reconnected with Gabriel, but Father was now encouraging it. Mother  
20 also learned who had been caring for Gabriel the past four years while Father was incarcerated.  
21

22           10.     Mother admits in part the allegations contained in paragraph 11, and alleges that both and  
23 Mother and Process Server, Larry White, were informed on more than once occasion that the facility Father  
24 was being detained at was for illegal aliens and that he was being deported back to Canada. See Exhibit  
25 "E" attached hereto.  
26

27           11.     Mother admits in part the allegations contained in paragraph 12 and alleges that in March  
28 2011, Mother had her first conversation with Gabriel. Mother learned that Father had been arrested here in

1 Arizona, and when the police came to Father's home and arrested him, Gabriel went next door to a  
2 neighbor's home and called Liz Munoz, who lives in Carson City, California, asking her to come and get  
3 him. Father told Mother that he had given Liz temporary guardianship of Gabriel. Nothing has ever been  
4 filed with the California Court confirming this.  
5

6           Telephonic contact continued on a regular basis and pictures were sent to Mother as well as  
7 Gabriel's school records and grades.

8           12.     Mother denies the allegations contained in paragraph 13, and alleges that in June 2011,  
9 Mother and Gabriel had two visits together. The first visit planned was a weekend visit in California.  
10 When Mother arrived, she was told by Liz that she had plans with her family and Gabriel and agreed to let  
11 Gabriel go to Mother's hotel for a few hours. This was first reunion between Mother and Gabriel in ten  
12 years and was very emotional for both. Gabriel expressed his desire to be with Mother and his half-brother,  
13 Sage, age 8. Mother asked Gabriel if he wished to stay with her over night. However, Liz would not allow  
14 it and Gabriel left with Liz crying and very upset.  
15  
16

17           Mother arranged for a second visit two weeks later, again driving out to California for the  
18 weekend. Father had instructed Liz not to allow Gabriel to be alone with Mother for fear of her kidnapping  
19 him. Despite Father's warnings to Liz, she allowed Mother and Gabriel to spend the weekend together  
20 after seeing them interact and having listened to Mother's side of the story of how all these years she didn't  
21 know where Gabriel was and how Father had kept him from her.  
22

23           It was during that visit that Mother discussed with Gabriel the possibility of moving to  
24 Arizona with her and Gabriel expressed to her that it was his wish to remain in California for the coming  
25 school year as he was going into the fifth grade and he would miss graduating elementary school with his  
26 friends. Mother discussed with Gabriel that she would try to make that happen, but would want to see him  
27 during holidays and the summer.  
28

1 13. Mother denies the allegations contained in paragraph 14, and alleges that it was during the  
2 previous visit that Mother told Gabriel she planned a family vacation for the third week in July in San  
3 Diego and would like him to come. Gabriel was very excited and agreed to go. Mother spoke to Liz about  
4 this when she returned Gabriel to her and Liz requested that Mother tell Father.  
5

6 Plans were made that Mother would pick up Gabriel from Liz on Saturday, July 15<sup>th</sup> and  
7 return him to her on Sunday, July 24<sup>th</sup>. Mother had continual telephone contact with Gabriel and they  
8 discussed their upcoming trip and were both excited about it. On July 14, the day before the trip, Mother  
9 received a voice message from Liz saying the Gabriel had just gotten off the phone with his Father and  
10 Gabriel was no longer comfortable with the trip and did not want to go. Mother immediately called Liz and  
11 spoke briefly about it before speaking with Gabriel. Gabriel told Mother that he was no longer interested in  
12 going on vacation with her and any further weekend visitation for that matter. Despite Mother's efforts to  
13 find out what had changed Gabriel's mind, he just kept telling her he "was simply not interested."  
14  
15

16 The following day, Mother received a call from Father who told her that he could not in  
17 good conscious allow Gabriel to go on the family vacation because of her "erratic behaviour" in the past  
18 and his fear of her kidnapping Gabriel. Father ended the conversation telling Mother that if she attempted  
19 to remove Gabriel from California, he would bring charges against her. Mother also received a call that  
20 afternoon from Liz who told Mother that whatever she had said to Gabriel on the phone the day before had  
21 him very upset and she needed to get counselling for him to cope, so she was going to have him in an  
22 undisclosed location while Mother was in San Diego and that Gabriel no longer wished to speak with her.  
23

24 Mother was devastated and called Gabriel once while on vacation and made numerous calls  
25 once she returned on July 24<sup>th</sup> through August 4<sup>th</sup>, but no one answered the phone or returned her calls.  
26

27 14. Mother admits in part the allegations in part contained in paragraph 15, and alleges that on  
28 August 5<sup>th</sup>, she received a phone call from counsel undersigned informing her that he had just received a

1 complete copy of her California Court file which had been archived and informed her that she has joint  
2 legal and physical custody of Gabriel and there was nothing preventing her from going and getting Gabriel.

3 After carefully considering all the options, Mother came to the conclusion that unless  
4 Gabriel was made to go with her, she would never be given a fair chance based on the past and Father  
5 having alienated her from him all these years. Mother drove to California the following night.  
6

7 On August 7<sup>th</sup>, Mother contacted the local police department requesting assistance and  
8 when they arrived at the home where Gabriel was living with Liz, they were not home. One of the officers  
9 called Liz and left a message to contact him and suggested Mother try calling her. Liz answered the phone  
10 when Mother called and was instructed to bring Gabriel home within an hour.  
11

12 When Liz arrived with Gabriel there were several of her family members with her and it  
13 was very emotional for all involved. Gabriel was in tears and expressed to Mother that he did not want to  
14 go and insisted she call the police back to the house so he could tell them that.  
15

16 Mother called the police officer and requested that he return. Upon his arrival conversations  
17 with Liz, Mother and Gabriel took place and then the officer instructed Gabriel to gather his things, and say  
18 his goodbyes. The officer also instructed Mother that they were not to leave until he returned in about three  
19 hours. An hour later, Mother contacted the police department and requested an officer to return, so they  
20 could depart. When the officer arrived he requested to speak with Gabriel in private seeing how traumatic  
21 this was for him and in a matter of minutes approached Mother and told her with Gabriel there that he  
22 promised he would keep an open mind and agreed to try living with her.  
23

24 Since Gabriel has come to live with Mother, he has integrated with all family members and  
25 has bonded with his younger brother, Sage. He enjoys the family pets, has learned to swim, has started  
26 school, has already made friends and has had play dates and sleepovers. Gabriel is excelling in school and  
27 is engaged with communities to assist children with lower vision, has been provided with a laptop for his  
28

1 school work and has two half hour sessions of touch-typing weekly. Mother was able to celebrate  
2 Gabriel's birthday with him for the first time in ten years.

3  
4 Mother noticed that Gabriel first arrived to live with her that he constantly doubted his  
5 ability to do anything and had never been encourage to do things for himself. Mother is in the process of  
6 finding a counselor for Gabriel. Mother has had several discussions with Gabriel about his living  
7 arrangements and he has expressed to her that wishes to spend time with both parents.

8  
9 Mother has allowed and encouraged telephonic communication with Father and allows  
10 Gabriel to speak freely with Father whenever he calls. Mother has also encouraged Gabriel to have regular  
11 contact with his friends in California and even found their phone numbers for him.

12 15. Mother denies the allegations contained in paragraph 14, and alleges that she has  
13 allowed telephonic communication between Gabriel and Father. Mother does have some concerns  
14 because during their telephone conversations, Father drills his son for details about Mother's life and  
15 requests Gabriel gather information so he can build a case against her. Father tells Gabriel that when  
16 he gets out, "he's going to fix this" and come take him back and has even told him that his Mother is  
17 going to go to jail. Gabriel also speaks with Liz on the phone, but their conversations are usually in  
18 Spanish.  
19

20  
21 16. Mother can neither admit nor deny the allegations contained in paragraph 15.

22 17. Mother admits in part the allegations contained in paragraph 16 and alleges that on  
23 September 14, 2011, Father was served.

24 18. Mother denies the allegations contained in paragraph 17.

25  
26 19. Mother admits in part the allegations contained in paragraph 18 regarding Father and  
27 Gabriel having regular contact since he arrived in Arizona and can neither admit or deny the allegations  
28 that Gabriel wants to return to Los Angeles to live with his Father.

1           **1. Arizona is not the Child's Home States**

2           On October 4, 2011, Father filed an Application for Order and Supporting Declaration  
3 in the Superior Court of California, County of Los Angeles, Case No. TD035397 and the parties are  
4 ordered to attend Mediation on November 4, 2011 at 10 a.m. There is a hearing also scheduled for  
5 March 22, 2012 at 8 am. See Exhibit "F" attached hereto.  
6

7           Father in his "Declaration" fails to accurately state the facts including most importantly  
8 that he has been incarcerated for the past four years in the state of Arizona. See Exhibit "G" attached  
9 hereto.  
10

11           Father claims that Arizona is not the child's home state pursuant to the Uniform Child  
12 Custody Jurisdiction and Enforcement Act (UCCJEA) and A.R.S. 25-1031.

13           Although Gabriel has been in California since 2007, both Father and Mother have been  
14 residing in the state of Arizona and based on Father's contemptuous actions in failing to notify Mother  
15 immediately upon his incarceration, Mother had no knowledge as to Gabriel's whereabouts.  
16

17           Further, Mother domesticated the California Order immediately after having contact  
18 with Father for the first time in all these years. Due to the case in California having been inactive  
19 several years ago, it was sent to archives where Mother obtained a copy of the entire court file. See  
20 Exhibit "D" attached.  
21

22           Father had to file a new action in the state of California and did so after the hearing held  
23 on September 26, 2011, having been fully informed that the California Order had been domesticated in  
24 the state of Arizona on August 11, 2011.

25           Pursuant to A.R.S. 25-1031 specifically states that this State has jurisdiction to make an  
26 initial child custody determination if .....***"the child is absent from this state, but a parent or person***  
27 ***acting as a parent continues to live in this state."*** Although Gabriel did not live with Mother in  
28

1 Arizona until August 7, 2011, 17 days prior to filing her Emergency Ex Parte Petition for Temporary  
2 Orders Re Custody on August 24, 2011, both Mother and even Father were living in the state of  
3 Arizona.

4  
5 **2. Jurisdiction to Modify the Existing Determination**

6 Father alleges that the Arizona Court does not have jurisdiction to modify a child  
7 custody determination made by a court in another state pursuant to A.R.S. 25-1033.

8 A.R.S. 25-1033 states "except as other wise provided in 25-1034."

9 A.R.S. 25-1034(A) clearly states:

10  
11 *"A Court of this state has temporary emergency*  
12 *jurisdiction if the child is present in this state and the*  
13 *child has been abandoned or it is necessary in an*  
14 *emergency to protect the child."*

15 Gabriel was abandoned by Father in 2007, when he was arrested and has been  
16 incarcerated at the Department of Corrections in Eloy, Arizona. Gabriel has not been in Father's care for  
17 over the past four years.

18 Arizona took jurisdiction when Mother brought her Emergency Petition before the Court  
19 on August 24, 2011 and granted her temporary sole custody on September 19, 2011.

20 It is clear that Father has no basis or merit for bringing his Motion to Dismiss before the  
21 Court and based on the foregoing, Mother respectfully requests that the Court deny Father's Motion to  
22 Dismiss.

23 **RESPECTFULLY SUBMITTED** this 11 day of October, 2011.

24  
25 **GILLESPIE SHIELDS & DURRANT**

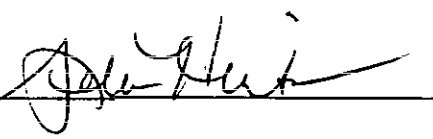
26   
27 **DAVID L. GOLDFARB, ESQ.**  
28 **ATTORNEY FOR RESPONDENT**

1 **COPY** of the foregoing delivered this  
2 11th day of October, 2011, to:

3 The Honorable John Hannah  
4 Maricopa County Superior Court

5 **COPY** of the foregoing mailed this  
6 same day to:

7 Richard Riess  
8 406 ½ E. Lincoln Street  
9 Carson, California 90745  
10 *Respondent*

11 By 

12  
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19  
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21  
22  
23  
24  
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26  
27  
28

# **Exhibit “A”**

1 MARITA NOGUEIRAS, Bar No. 213616

2 Law Offices of Marita Nogueiras

10535 Paramount Blvd., Ste. 202

3 Downey, CA 90241

(562) 927-2700

(562) 927-3550 (Fax)

**FILED**  
LOS ANGELES SUPERIOR COURT

MAR 15 2002

JONIA CLARKE, CLERK

BY *TARARA* <sup>2002</sup> ~~PHOENIX~~ DEPUTY

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF LOS ANGELES

9 RICHARD RIESS

Case No. YD042145

10 Petitioner.

NOTICE OF NON-AVAILABILITY OF  
COUNSEL

11 v.

12 DESIREE TOMLIN RIESS.

13 Respondent.

14 **PLEASE TAKE NOTICE** that Marita Nogueiras, counsel for Respondent DESIREE

15 TOMLIN RIESS herein will be unavailable for any and all Court appearances, including ex-parte  
16 applications, concerning MARCH 31, 2002 through APRIL 8, 2002 due to a pre-paid and pre-  
17 scheduled vacation.  
18

20 LAW OFFICES OF MARITA NOGUEIRAS

21 DATED: 4/14/02

BY: *Marita Nogueiras*

MARITA NOGUEIRAS

Attorney for Petitioner/Respondent

# **Exhibit “B”**

First Name: Kimberly  
Middle Name: Ann  
Last Name: Shires  
Gender: Female  
Spouse First Name: Richard  
Spouse Middle Name: S  
Spouse Last Name: Riess  
Spouse Gender: Male  
Marriage Date: Nov 22, 1997  
Marriage Location: Clark, NV [Map](#)  
Record Type: Marriage Record  
Instrument Number: 75884  
Book: 1124  
Page: C904419  
Certificate Number: 1997975884  
Recorded Date: Nov 24, 1997  
Recorded County: Clark  
Collection: Nevada Marriage Records  
Certificate: [Hard Copy Certificate](#)

**Source Information**

Source: Nevada Department of Health and Human Services  
Years: 1966-2007

Description: This collection of Nevada marriage records was provided by the Nevada Department of Health and Human Services. It contains data from 1966-2007.

Address: 4126 Technology Way, Suite 100 Carson City, Nevada 89706 [On the Web](#)

# **Exhibit “C”**

2-13-11

Dear Terence:

I have started this letter 5 or 6 times now. The first thing I wish to say is I sent a letter to Gabriel on 2-11-10 with your contact information. Therein, I emphasized that it must be his decision whether or not to contact you. I told him it is my own wish that he does but I will not influence him either way. I also included a letter for Liz (the friend taking care of him) making it clear that I would not tolerate any interference on her part.

Then, on Saturday (2-12-11) morning I called Gabriel and told him I had spoken to you. He didn't say much. Obviously, he was caught off guard.

Unfortunately, I cannot say whether or not I think he'll contact you. I honestly don't know. I would like to believe that he will but I can't say.

You have to realize that both you and Terence have always had the means to contact or locate both me and Gabriel (through gabrielriess.com or richardriess.com). And, after we moved here in January, 2006 I was in contact with Terence. I made no effort to keep our presence from her or you. I never prohibited her from visiting Gabriel. All I told her is that I think it's best that I be present for those visits. After that she stopped calling. Months later we ran into her at a Danny's one time. Gabriel pointed her out. She never came

over to say hello. Then, in 2009 you established contact that one time but not again. Based on all of this I can understand how he might form the belief that you had made a conscious choice to move on.

But I'm not being critical of you. I'm just trying to explain how I believe he might see the situation. I had considered all of this when writing the letter to him and explained that we all make mistakes and decisions that are regret. I have more than my share of shameful memories over the last 10 years. I also made it clear that I did have an active and significant part in pushing you away. Alright, I admit that I was an evil bastard (at times, anyway), and that I used the discrepancy in our respective financial positions to tilt the situation in my favor. And yes, I told him this. I don't keep any secrets from him and I try to present things to him in as objective a manner as possible.

So, that said - now the part I've been having difficulty with which has been the cause of the recites:

As you may recall, in 2000-2001 I didn't want children. I wanted you to be happy and you

wanted to proceed with the pregnancy, so I supported your decision. Unfortunately, that led to resentment and animosity, as I realized I had to give up a lot of other things that I wasn't prepared to give up (freedom, sports cars, motorcycles, travel, etc). I eventually convinced myself that you were just using me for money (though, years later I realized how incredibly ludicrous that belief was).

As you also may recall I wasn't religious at the time (I was atheist). However, there was one night in March (I think) of 2000 when no one knew where you were and I was driving from LA to Phoenix. I asked God to take care of you and pray that (believe it or not) you would become pregnant so that it may convince you to quit the drugs and erratic behavior. You had been missing for a couple of weeks at that point. Shortly thereafter I heard you were in the hospital in El Monte. But, of course, being atheist, I quickly forgot about that night driving to Phoenix.

Well, there are many, many things I've never told you about myself or my life before I met you. One of those things is that when I'm not atheist I'm Jewish. And I haven't been atheist since about 2005. Anyway, my religious beliefs

And no, you knower how people always say if  
 they could go back and change things in their lives  
 they would do it all over again. Well, I'm for to  
 realistic to see anything like that. Truth is there are  
 a great many things I would change. But not  
 for the world would I change living with you.  
 deciding to have Gabriel, marrying you, deciding to  
 have Gabriel, and never contact up your and telling  
 you all of this. Other than those and my career choice of  
 would probably have done everything else differently.  
 But I'm not going to wonder in self get  
 about how I've made a mess of things. That  
 would be like. And that's not my style.  
 And it's not because I'm in control, that I'm  
 saying all of this. I've wanted to return over  
 time over the years but the combination of  
 gods and the fact that you were married and  
 had a life going on kept me from doing so. It  
 just happens that I recently asked my investment

aside, once I get past the resentment I had to  
 realize that I was blessed with an amazing child.  
 And that I would always be indebted to you  
 for that. It's unfortunate that I spent so many years  
 being angry about my situation rather than  
 appreciating what I had.

to try to locate you and he provided your address

and telephone number. If they had a friend do a

search of your address and send me information

on the company. From the listings it looks like a

man there. So, as you can see, locating some one

is not that hard. Anyway, I don't want you to

think I'm stalking you or anything, if just wanted

to know what if was walking into before I contacted

you.

And finally, for the record, I want to say, if really

am sorry for causing so much misery, unhappiness,

anger, and what ever else I may have caused.

If do not necessarily expect a response to this

letter. I just wanted to finally say what I know

should have said many years ago - sorry

of which should have been said before we

aparted.

And if you've gotten this far I thank you

for listening.

Sincerely,

~~Richard~~

# **Exhibit “D”**

2-11-11

Dear Gabriel:

Everyone makes mistakes. Lord knows I've made my share. A lot of times I didn't have a role model or guide to show me the way so I had to learn through trial and error. Eventually, you'll make some mistakes too. Thankfully, you have access to good people who can help you to make good decisions. As you know, over the last ten years I've made a lot of bad decisions and done a lot of not so good things. But even still, you were able to forgive me and give me another chance.

The reason I bring all this up is that I've recently been in contact with Desiree. She very much wants to get to know you but I told her that has to be your decision. Not mine or hers. And while I disagree with some of the choices she's made in the past I have to realize that I've also made some pretty bad ones. And to be completely honest and fair I wasn't exactly the best husband and father back then. When I got custody of you I did go out of my way to make it difficult for her. But anyway, a long time ago she made some choices that I disagreed with and a consequence of those decisions meant her being 3000 miles

away from you. And I certainly didn't help that situation by being an asshole to her. My point is, a lot of time has passed since then. And with me being in custody she could have tried to take advantage of the situation but she didn't.

Anyway, I told her I would give you her contact information. Whether or not you decide to contact her is your choice. I personally, would like it if you did. But I would not push you to do so. You may find it easier to start by writing rather than calling. That way, you're not on the spot and you can take your time answering. Of course, there's also e-mail. I asked her if she has a web site or myspace page. I'll let you know. Also, if you prefer you can send a letter to me and I can forward it to her. Or, if you prefer you can do nothing. It's all up to you.

I only ask that you confirm that you received her information. And I won't bring it up again. And even if you want to contact her and not tell me - that's fine. That's personal stuff between her and you.

But after many years of drug use and neglect and being an irresponsible asshole you were able to forgive me. So I ask that you try to forgive her as well.

Anyway, that's all I will say on the matter. So, her address is:

Desiree Capuano

20100 N. 78th Rd #1080

Scottsdale, AZ 85255

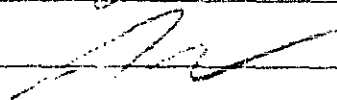
And her number is:

480-284-7731 (home)

480-455-2086 (mobile)

Apparently, the mobile is the best number to reach her on.

I'll talk to you soon.

Dad  


# **Exhibit “E”**

AFFIDAVIT OF ATTEMPTED SERVICE

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

Case No.: FC2011 - 093719

RICHARD REISS  
DESIREE REISS

Petitioner  
Respondent

I, Larry White, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was attempted, I was authorized by law to perform said service.

After due search and diligent inquiry, I have been unable to effect service of process of: (list documents below)

Document: 1.) Summons 2.) Order To Appear for Expedited Pre-Decree Temporary Orders Hearing 3.) Emergency Ex Parte Petition Temporary Orders Re Custody 4.) Notice of Appearance 5.) Notice of Filing Certified Copy of Judgment 6.) Affidavit of Foreign Judgment 7.) Notice of Filing Foreign Judgment 8.) Petition for Dissolution of a Non-Covenant Marriage With Child Packet

Upon: RICHARD REISS (A 088-664-582)  
c/o:

Address: 1705 E. Hanna Road, Eloy, Arizona 85331

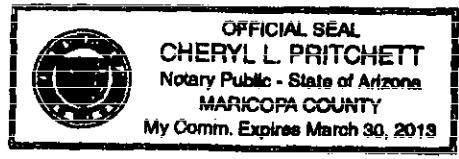
Explain: 8/25/11 - I called the Eloy Department of Corrections (520-464-3000) to be placed on the list to serve Richard Riess. I was advised that Corina Price is in charge of clearance for Service of Process. I left a message for her to call me.  
8/29/11 - My office received a call from Eloy Department of Corrections advising me to call Homeland Security (Immigration and Customs Enforcement) for verification, due to the facility where Richard Riess is housed is for Illegal Aliens. The phone number provided was (520-466-2000).  
9/2/11 - I called (520-466-2000) Immigration and Customs Enforcement to get cleared to serve Richard Riess. I was advised that they were placing me on the list and I was cleared right now to serve Richard Riess. They told me to contact the Eloy Prison located at 1705 E. Hanna Road, Eloy, Arizona 85331 to set up a date for service.  
9/6/11 - I called the Eloy facility (520-464-3000) to advise them I was cleared by Homeland Security (Immigration and Custom Enforcement) to serve Richard Riess. I spoke to Corina Price and she advised me that I needed to type a letter on company letterhead and address it to Eloy Department of Corrections and provide (Detainee's Name, Detainee's #, and reason we need to see the Detainee) and fax it to (520-466-7750), so she could set up the date for service.  
9/6/11 - I faxed the letter to Corina Price.  
9/8/11 - I received a call from Corina Price advising me I was cleared for service and she set a date for me to come out on 9/12/11 to service Richard Reiss.  
9/12/11 - I arrive at Eloy Prison to serve Richard Riess and I was advise that Richard Reiss had already been deported.

STATE OF ARIZONA )  
COUNTY OF MARICOPA )

[Signature]  
SIGNATURE OF SERVER

ABSCRIBED AND SWORN to before me this 10<sup>th</sup> day of October, 2011, by the affiant.

[Signature]  
SIGNATURE OF NOTARY



# **Exhibit “F”**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Richard Riess</b> 406 1/2 E. Lincoln St. Carson, CA 90745  TELEPHONE NO.: 310-518-0104 FAX NO. (Optional): E-MAIL ADDRESS (Optional): richardriess@gmail.com ATTORNEY FOR (Name): Richard Riess	FOR COURT USE ONLY  <b>ORIGINAL FILED</b>  <b>OCT 04 2011</b>  <b>LOS ANGELES SUPERIOR COURT</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles  STREET ADDRESS: 200 W. Compton Blvd. MAILING ADDRESS: 200 W. Compton Blvd. CITY AND ZIP CODE: Compton, CA 90220 BRANCH NAME: South Central District	
PETITIONER/PLAINTIFF: Richard Riess RESPONDENT/DEFENDANT: Desiree Capuano	
ORDER TO SHOW CAUSE <input checked="" type="checkbox"/> Child Custody <input type="checkbox"/> Child Support <input type="checkbox"/> Attorney Fees and Costs	MODIFICATION <input checked="" type="checkbox"/> Visitation <input type="checkbox"/> Spousal Support  <input type="checkbox"/> Injunctive Order <input type="checkbox"/> Other (specify):
CASE NUMBER: TD035397	

1. TO (name): Desiree Capuano
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE RELIEF SOUGHT IN THE ATTACHED APPLICATION SHOULD NOT BE GRANTED. If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed below.

a. Date: **MAR 22 2012** Time: **8:00AM**  Dept.: **M**  Room: **1211**

b. The address of the court is  same as noted above  other (specify):

c.  The parties are ordered to attend custody mediation services as follows: **11/4/11 Room 875 Mediation Tower, CA**

3. THE COURT FURTHER ORDERS that a completed *Application for Order and Supporting Declaration* (form FL-310), a blank *Responsive Declaration* (form FL-320), and the following documents be served with this order:

- a. (1)  Completed *Income and Expense Declaration* (form FL-150) and a blank *Income and Expense Declaration*
- (2)  Completed *Financial Statement (Simplified)* (form FL-155) and a blank *Financial Statement (Simplified)*
- (3)  Completed *Property Declaration* (form FL-160) and a blank *Property Declaration*
- (4)  Points and authorities
- (5)  Other (specify):

b.  Time for  service  hearing is shortened. Service must be on or before (date):

Any responsive declaration must be served on or before (date):

c.  You are ordered to comply with the temporary orders attached.

d.  Other (specify):

**STEPHEN M. LOWRY**

Date: **OCT 4 2011**

JUDICIAL OFFICER

**NOTICE:** If you have children from this relationship, the court is required to order payment of child support based on the incomes of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based on the information supplied by the other parent.

You do not have to pay any fee to file declarations in response to this order to show cause (including a completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) that will show your finances). In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least nine court days before the hearing date. Add five calendar days if you serve by mail within California. (See Code of Civil Procedure 1005 for other situations.) To determine court and calendar days, go to [www.courtinfo.ca.gov/selfhelp/courtcalendars/](http://www.courtinfo.ca.gov/selfhelp/courtcalendars/).

**Requests for Accommodations**  
 Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8.)

# **Exhibit “G”**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard Riess 406 1/2 E. Lincoln St. Carson, CA 90745  TELEPHONE NO.: 310-518-0104 FAX NO. (Optional): E-MAIL ADDRESS (Optional): richardriess@gmail.com ATTORNEY FOR (Name): Richard Riess	FOR COURT USE ONLY  <b>ORIGINAL FILED</b>  <b>OCT 04 2011</b> <b>LOS ANGELES</b> <b>SUPERIOR COURT</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles</b>  STREET ADDRESS: 200 W. Compton Blvd. MAILING ADDRESS: 200 W. Compton Blvd. CITY AND ZIP CODE: Compton, CA 90220 BRANCH NAME: South Central District	
PETITIONER: Richard Riess RESPONDENT: Desiree Capuano OTHER PARTY:	
GUARDIANSHIP OF (Name): _____ Minor	CASE NUMBER: TD035397
<b>DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)</b>	

1. I am a party to this proceeding to determine custody of a child.
2.  My present address and the present address of each child residing with me is confidential under Family Code section 3429 as I have indicated in item 3.
3. There are (specify number): 1 minor children who are subject to this proceeding, as follows:  
 (Insert the information requested below. The residence information must be given for the last FIVE years.)

a. Child's name <b>Gabriel Riess</b>	Place of birth <b>Phoenix, AZ</b>	Date of birth <b>09/27/2000</b>	Sex <b>M</b>
Period of residence <b>8/11</b> to present	Address <b>20100 N 78 Pl, #1080 Scottsdale, AZ 85226</b> <input type="checkbox"/> Confidential	Person child lived with (name and complete current address) <b>Desiree Capuano, 20100 N 78 Pl, #1080</b> <input type="checkbox"/> Confidential Scottsdale, AZ 85226	Relationship <b>Mother</b>
<b>01/03</b> to <b>08/11</b>	Child's residence (City, State) <b>406 1/2 E. Lincoln St. Carson, CA 90745</b>	Person child lived with (name and complete current address) <b>Richard Riess, 406 1/2 E. Lincoln St Carson, CA 90745</b>	<b>Father</b>
to	Child's residence (City, State)	Person child lived with (name and complete current address)	
to	Child's residence (City, State)	Person child lived with (name and complete current address)	
b. Child's name	Place of birth	Date of birth	Sex
<input type="checkbox"/> Residence information is the same as given above for child a. (If NOT the same, provide the information below.)			
Period of residence to present	Address <input type="checkbox"/> Confidential	Person child lived with (name and complete current address) <input type="checkbox"/> Confidential	Relationship
to	Child's residence (City, State)	Person child lived with (name and complete current address)	
to	Child's residence (City, State)	Person child lived with (name and complete current address)	
to	Child's residence (City, State)	Person child lived with (name and complete current address)	

- c.  Additional residence information for a child listed in item a or b is continued on attachment 3c.
- d.  Additional children are listed on form FL-105(A)/GC-120(A). (Provide all requested information for additional children.)

PLAINTIFF/PETITIONER: Richard Riess	CASE NUMBER:
DEFENDANT/RESPONDENT: Desiree Capuano	TD035397

## DECLARATION

*(This form must be attached to another form or court paper before it can be filed in court.)*

I seek an order directing Respondent to immediately return Gabriel to his home state of California and to my care and custody. Respondent has been absent from Gabriel's life from February 2002 until March 2011 and has had no contact with me or Gabriel during that time. Gabriel has been residing in California, exclusively, since July 2007. Respondent currently resides in Arizona. On August 7, 2011, while I was out of town, Respondent took Gabriel from his home in Carson, California, against Gabriel's will and without my knowledge or consent, and took Gabriel to Arizona where Respondent immediately filed an ex parte emergency custody petition in the Superior Court of Arizona (case no FC2011-093719). The petition was denied by the Arizona court, however, Respondent has commenced a new custody proceeding in Arizona. Respondent has also attempted to obtain an ex parte order of protection against me, in the Arizona Court, barring me from having any direct visitation with Gabriel.

I first commenced custody proceedings for Gabriel on December 21, 2001 (case no. YD042145). I was initially granted emergency custody of Gabriel because Respondent had taken Gabriel to Phoenix, AZ then left him in Phoenix with her mother while she moved back to Florida - leaving no forwarding information. A temporary custody hearing was held on February 6, 2002 and attended by both parties. At that time the Court issued an order granting each party equal custody of Gabriel, with each party to have physical custody in two week increments. Respondent took custody of Gabriel on that day as directed by the Court. The Court prohibited Respondent from driving cross country with Gabriel and Respondent stated she would immediately move back to Phoenix, AZ with her mother. Respondent then immediately drove cross country with Gabriel, to Florida. Two weeks later I flew to Florida to pick up Gabriel from Respondent. Thereafter, Respondent made no further attempts to pick up Gabriel for her periods of custody.

In May or June 2002 Respondent married another man (Michael Capuano) in Florida while still married to me. In September 2002 Respondent became pregnant with her new husband. At that time Respondent changed her address and telephone number and did not notify me or her attorney of her new whereabouts. From that point neither I nor Gabriel received any further contact from Respondent - except for one telephone call in May 2007.

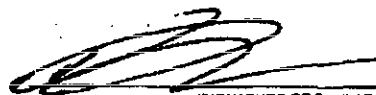
(continued on next page)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 4, 2011

Richard Riess

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

Attorney for  Plaintiff  Petitioner  Defendant  
 Respondent  Other (Specify):

PLAINTIFF/PETITIONER: Richard Riess  
 DEFENDANT/RESPONDENT: Desiree Capuano

CASE NUMBER:  
 TD035397

### DECLARATION

*(This form must be attached to another form or court paper before it can be filed in court.)*

(continued from previous page)

Respondent made no attempts to establish contact or to have a relationship with Gabriel. During the period of time from 2002 until the present mine and Gabriel's contact information has been available on the Internet.

During the nine years that Respondent was absent from Gabriel's life I, with the help of a friend, Liz Munoz, cared for and raised Gabriel without any assistance from, or contact with Respondent.

Due to Respondent's disappearance in September 2002 Petitioner decided to put the matter of Gabriel's custody on hold to allow Respondent a fair and reasonable opportunity to participate.

In January 2011 I located Respondent through an investigator retained by me. I then established contact with Respondent so that Gabriel may have the opportunity to meet and possibly to know his mother. In June 2011 Respondent, who then and now, lives in Phoenix, AZ made two trips to Los Angeles to visit Gabriel for the weekend. Those were the only times Gabriel has ever met Respondent or been in Respondent's presence. On August 7, 2011 while I was out of town on a legal matter, Respondent came to Los Angeles and took Gabriel, against his will and without my knowledge or consent, to Arizona. Respondent then immediately filed an ex parte petition for emergency custody in the Superior Court of Arizona. The petition was denied by the Court in Arizona. Nonetheless, Respondent has commenced new custody proceedings in Arizona (although California was, and is, Gabriel's home state under the UCCJEA) and has refused to return Gabriel to me or to his home state of California. The Arizona Court also issued an order prohibiting the removal of Gabriel from the State of Arizona pending the outcome of that proceeding. Respondent did not inform me that she had filed an ex parte petition or that she had commenced new proceedings in Arizona until September 11, 2011. On September 14, 2011 I informed Respondent I was considering going to Phoenix to visit Gabriel on September 18, 2011. Respondent then sought an order of protection, ex parte, in the Arizona Court, barring me from

(continued on next page)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 4, 2011

Richard Riess

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

Attorney for  Plaintiff  Petitioner  Defendant  
 Respondent  Other (Specify):

PLAINTIFF/PETITIONER: Richard Riess	CASE NUMBER:
DEFENDANT/RESPONDENT: Desiree Capuano	TD035397

## DECLARATION

(This form must be attached to another form or court paper before it can be filed in court.)

(continued from previous page)

visiting Gabriel pending the outcome of that proceeding. The request for the order of protection was denied but the Arizona Court did issue a temporary order requiring Court approval before I can visit Gabriel.

Since August 7, 2011 I have made numerous attempts to resolve the matter amicably and in the best interest of Gabriel such that Gabriel may maintain a relationship with both parents, should he choose to do so, but I have been unable to reach such a resolution with Respondent. Respondent continues to hold Gabriel, against his will, in Arizona. I have been in contact with Gabriel over the last six weeks and Gabriel steadfastly expresses his wish to return to California and to my care.

Respondent has had no involvement in Gabriel's life since 2002 and has made no contribution to his development or well-being. Gabriel has not had the time to development a significant bond or trust with Respondent prior to Respondent taking him, without notice, to Arizona. Gabriel has been in my care and custody since his birth. He has always known me as his father and someone he has been able to trust and to rely on.

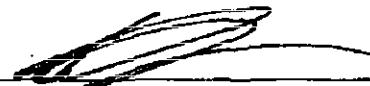
I don't believe Respondent has any concern for Gabriel's well-being or best interest because the last two months (since he was taken to Arizona) have been incredibly disturbing and traumatic for him, and he has repeatedly stated his desire to return to California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 4, 2011

Richard Riess

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

Attorney for  Plaintiff  Petitioner  Defendant  
 Respondent  Other (Specify):