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CONFIRMED FACSIMILE

Date: **February 3, 2010**
Number of pages including cover sheet: **14**

To:	
Attorney:	Walter P. Mahoney, Jr.
Attn:	
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Fax phone:	(281) 998-9430
Email:	Trip888@aol.com
CC:	Wendy Burgower (713) 522-5045

From:	
	Robert C. Kuehm, P.C.
Regarding:	Interest of Brisa Gawlikowski
Subject:	Motion to Quash; First Amended Findings and Order on Motion to Strike Pleadings and for Sanctions.
Phone:	713-861-6166
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IF ANY OF THE FOLLOWING PAGES ARE MISSING OR ILLEGIBLE, PLEASE CALL THE OPERATOR AT (713) 861-6166.

ORIGINAL WILL Regular Mail Certified Mail Hand Delivery Overnight Delivery
FOLLOW VIA:

Dear Wally,

The attached order to the Court is being presented to the Court today. I completely disagree with your position that the Fourteenth Court's order imposed any deadline for compliance on the Court and I am shocked that you represented this to the First Court, but the facts are what they are. I am filing this Order this morning. Also attached is my correspondence of today's date and Brandi McDonald Sikes' Opposed Motion to Quash and/or Motion for Protective Order Regarding the Notice of Intention to Take Oral Deposition of Alicia Sedberry Brooks, A Non-Party. Should you have any questions please contact my office.

Very truly yours,

Robert C. Kuehm

cc: Brandi Sikes
Mary Olga Lovett

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February 3, 2010

BY HAND DELIVERY

Mr. Loren Jackson
Harris County District Clerk
P.O. Box 4651
Houston, Texas 77210

RE: Cause Number 2003-67714; In the Interest of BRISA NICOLE GAWLIKOWSKI, A Child; In the 247th Judicial District Court of Harris County, Texas.

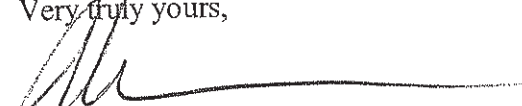
Dear Mr. Jackson:

Enclosed for filing with the Court please find attached the following:

- 1. Brandi McDonald Sikes' Opposed Motion to Quash and/or Motion for Protective Order Regarding the Notice of Intention to Take Oral Deposition of Alicia Sedberry Brooks, A Non-Party.**

Please file-mark and return the additional copy of the enclosures by way of the delivering messenger. Your assistance in this matter is greatly appreciated.

Very truly yours,


Robert C. Kuehm
Attorney at Law

RCK/rik
Enclosures

cc:	Brandi McDonald Sikes	By Email
	Mary Olga Lovett	By Email
	Walter P. Mahoney, Jr.	By First Class Mail and Facsimile
	Wendy Burgower	By First Class Mail and Facsimile



IN THE INTEREST OF

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IN THE DISTRICT COURT

BRISA NICOLE GAWLIKOWSKI,

247TH JUDICIAL DISTRICT

A CHILD

HARRIS COUNTY, TEXAS

BRANDI McDONALD SIKES' OPPOSED MOTION TO QUASH AND/OR MOTION FOR PROTECTIVE ORDER REGARDING THE NOTICE OF INTENTION TO TAKE ORAL DEPOSITION OF ALICIA SEDBERRY BROOKS, A NON-PARTY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BRANDI McDONALD SIKES, Respondent and files this Motion to Quash and/or Motion for Protective Order, and, for cause, would respectfully show unto the Court the following:

1. Facts and Background

On or about February 1, 2010, Petitioner, DANIEL EDWARD GAWLIKOWSKI, JR., by and through his attorney of record sent a fax with a Notice of Intention to Take Oral Deposition of Alicia Sedberry Brooks, A Non-Party. If the non-party was subpoenaed, a copy of the subpoena was not copied on counsel.

The notice requires the above-named person to appear and give their deposition testimony in this case on February 5, 2010 at 11:00 a.m. at the offices of Walter Fontenot located at 408 Main Street, Liberty, Texas 77575. BRANDI McDONALD SIKES would show that she has good cause to request the Court to grant a protective order and/or quash the deposition for the reasons set forth below.

2. Arguments

Respondent objects to the date and time of this deposition. Counsel for Respondent, Robert C. Kuehm and Mary-Olga Lovett were not conferred with in the setting the date and time of this deposition which is to occur in Liberty, Texas. Mary-Olga Lovett is scheduled to appear in court in the United States District Court for the Northern District of Texas, Dallas Division, in the matter styled Cause No. 3:10-CV-00152-N, Arquati Company USA Inc et al v. Corradi USA, Inc. et al. Robert C. Kuehm is scheduled to appear in the 311th Court in Cause No. 2007-35137; In the Matter of the Marriage of MANOOCHAR BABAAHMADI and SHAHIN ZAHRA VADIEI and in the 309th Court in Cause No. 2009-39907; In the Interest of MCKENZIE MADISON MATTHEWS, A Minor Child.

Counsel for Petitioner never attempted to coordinate the deposition of this non-party nor did he make known his intent to take the deposition testimony of this non-party. In the event, the deposition is granted the time and date should be rescheduled.

The deposition of Alicia Sedberry Brooks should be prohibited. Ms. Brooks has no information relevant to this action between Petitioner and Respondent. The effort to take the deposition of Ms. Brooks is designed to accomplish only one thing; that is, to try and embarrass and harass BRANDI McDONALD SIKES. Ms. Brooks has no information concerning any of the issues to be tried in this modification case and no deposition will discover information relevant to any inquiry of the attorneys representing the parties in this case. The only result which could be sought by the attorney issuing the notice of deposition is to cause embarrassment and harassment to BRANDI McDONALD SIKES and to Ms. Brooks, to cause the expenditure of funds in having to attend said deposition. This is not the reason that discovery is conducted in litigation.

DANIEL EDWARD GAWLIKOWSKI, JR. should not be allowed to use the discovery rules to visit untold embarrassment, inconvenience and additional expense on BRANDI McDONALD SIKES. The effort to conduct the deposition in this case should be stopped through the intervention of the Court.

3. Requested Relief

BRANDI McDONALD SIKES requests that the deposition of Alicia Sedberry Brooks be quashed and the Court should prohibit any future attempt to involve Alicia Sedberry Brooks in this litigation.

In the alternative, BRANDI McDONALD SIKES requests that the deposition of Alicia Sedberry Brooks be rescheduled to another date that is convenient to all parties and counsel.

4. Prayer

For the reasons stated, BRANDI McDONALD SIKES, requests the Court to set her motion to quash and/or motion for protective order for hearing and, after hearing, quash or grant a protective order in accordance with the relief requested above.

Respectfully submitted,

LAW OFFICE OF ROBERT C. KUEHM, P.C.



ROBERT C. KUEHM

State Bar No.: 11752400

8441 Gulf Freeway, Suite 600

Houston, Texas 77017

Telephone: (713) 861-6166

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Attorney for Brandi McDonald Sikes

GREENBERG TRAUERIG, LLP



MARY OLGA LOVETT

Mary-Olga Lovett

State Bar No.: 00789289

1000 Louisiana, Suite 1800

Houston, Texas 77002

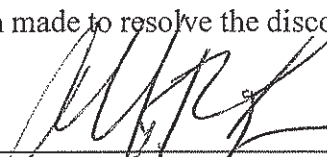
Telephone: (713) 374-3500

Facsimile: (713) 374-3505

Attorney for Brandi McDonald Sikes

CERTIFICATE OF CONFERENCE

I certify that a reasonable effort has been made to resolve the discovery dispute without the necessity of court intervention and has failed.



ROBERT C. KUEHM

Attorney for Brandi McDonald Sikes

NOTICE OF HEARING

The above motion is set for hearing on February 11, 2010 at 9:30 a.m. in 247th Judicial District Court of Harris County, Texas located at 201 Caroline, 15th Floor, Houston, Texas 77002.

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each of the following attorneys of record or parties in accordance with the Texas Rules of Civil Procedure on February 3, 2010, by the listed method:

Walter P. Mahoney, Jr.
Attorney At Law
6005 Fairmont Pkwy, Suite J
Pasadena, Texas 77505
BY FIRST CLASS MAIL AND FACSIMILE

Wendy S. Burgower
Burgower & Rainwater, L.L.P.
3355 W. Alabama, Suite 825
Houston, Texas 77098
BY FIRST CLASS MAIL AND FACSIMILE



ROBERT C. KUEHM
Attorney for Brandi McDonald Sikes

IN THE INTEREST OF

BRISA NICOLE GAWLIKOWSKI,

A CHILD

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IN THE DISTRICT COURT

247TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**FIRST AMENDED FINDINGS AND ORDER ON MOTION TO STRIKE
PLEADINGS AND FOR SANCTIONS**

The Court has before it Brandi McDonald Sikes' September 8, 2009 Motion to Strike Pleadings and for Sanctions. The Motion has been fully briefed and such briefing consists of the Motion, a Response, a Reply, and a Sur-Reply (entitled "Final Response"). The Court held an evidentiary hearing on September 22, 2009. Having considered the pleadings, the evidence, and the arguments of counsel, the Court hereby makes the following Findings and Order:

Findings

1. Dan Gawlikowski (also "Gawlikowski") is a litigant and real party in interest in Cause No. 2003-67714, and the biological father of the child made the subject of this lawsuit, Brisa Nicole Gawlikowski. Walter P. Mahoney (also "Mahoney") is Gawlikowski's counsel.
2. Dan Gawlikowski filed a petition seeking modification of the conservatorship of the child on December 9, 2008.
3. Brandi McDonald Sikes (also "Sikes"), mother of the child made the subject of this lawsuit, filed a Counter-Petition to Gawlikowski's petition referenced in Paragraph 2, above, on June 11, 2009.
4. Dan Gawlikowski took a voluntary nonsuit of the petition referenced above in Paragraph 2 on August 17, 2009, immediately prior to the commencement of a two-week jury

trial preferentially set for that date.

5. Following Gawlikowski's non-suit of his jury-determinative claims, this Court set August 28, 2009 as the new trial date for the bench trial of the counterclaims of Brandi McDonald Sikes.

6. Dan Gawlikowski re-filed a petition seeking modification of the conservatorship and domiciliary restriction of the child on August 19, 2009.

7. On August 21, 2009, Dan Gawlikowski filed a voluntary nonsuit of the petition filed on August 19, 2009.

8. On August 26, 2009, Dan Gawlikowski filed a Motion for Continuance of the August 28, 2009 trial setting.

9. Dan Gawlikowski verified his own Motion for Continuance as "counsel of record." In the Motion, Gawlikowski averred that he had a family emergency in which a "family member was assaulted and requires medical attention."

10. On August 28, 2009, Sikes appeared with counsel and announced ready for trial. Gawlikowski's attorney presented Gawlikowski's Motion for Continuance.

11. In his argument on the Motion for Continuance, Gawlikowski's counsel identified the assaulted "family member" as Gawlikowski's sister, Mary Deanna Gawlikowski. On the record during the hearing, Gawlikowski's counsel told the Court that Ms. Gawlikowski: (1) had been sexually assaulted; (2) had attempted suicide; (3) was hospitalized in Ohio; and (4) was in "grave condition." Gawlikowski's counsel further represented to this Court that it was unknown whether Ms. Gawlikowski's sister "was going to live or not live." Gawlikowski's counsel further represented to the Court that he had spoken to his client the preceding day to confirm this version of events. Based on the representations of Gawlikowski through his counsel, the Court

granted the Motion for Continuance and re-set the bench trial for Brandi McDonald Sikes' pending counterclaims for September 29, 2009.

12. On August 28, 2009, the same day that this Court heard and granted Gawlikowski's Motion for Continuance, Gawlikowski filed another petition (this one entitled a "Counter-Petition") to modify custody and domicile of the child, and paid a jury fee.

13. Brandi McDonald Sikes filed her Motion to Strike Pleadings and for Sanctions on September 8, 2009.

14. All parties were given notice and hearing was held on Sikes' Motion to Strike Pleadings and for Sanctions on September 22, 2009.

15. The Court finds that Mary Deanna Gawlikowski had not been sexually assaulted during the week prior to August 28, 2009 as represented by Gawlikowski during the hearing on Motion for Continuance.

16. The Court finds that Mary Deanna Gawlikowski had not attempted suicide during the week prior to August 28, 2009, as represented by Gawlikowski during the hearing on Motion for Continuance.

17. The Court finds that Mary Deanna Gawlikowski was not hospitalized on August 28, 2009, as represented by Gawlikowski during the hearing on Motion for Continuance.

18. The Court finds that Mary Deanna Gawlikowski was not "in grave condition," nor in peril of death on August 28, 2009, as represented by Gawlikowski during the hearing on Motion for Continuance.

19. The Court finds that Mary Deanna Gawlikowski's whereabouts and condition were, in fact, unknown to Dan Gawlikowski and his counsel on August 28, 2009.

20. The court finds that Dan Gawlikowski never saw his sister at any time during his

visit to Ohio which took place from August 26-August 30, 2009.

21. The Court has examined the facts available to the litigant and the circumstances existing when Gawlikowski filed each of the referenced pleadings.

22. The Court has examined all matters in the litigation to date, including the parties pleadings for attorneys' fees in the underlying litigation.

23. The Court finds that Gawlikowski acted in bad faith by non-suiting his case on August 17, 2009, on the day of trial despite the massive costs and fees incurred by the parties since the filing of Gawlikowski's December 9, 2008 petition.

24. The Court finds that Gawlikowski acted in bad faith by filing -- and then non-suiting -- his case a second time on August 19 and 21, 2009, respectively.

25. The Court finds that Dan Gawlikowski and his counsel filed and argued their Motion for Continuance for the purpose of delay and harassment, as Gawlikowski could not have filed his August 28 "Counter-Petition" without leave of court unless he obtained a continuance, because the parties were within seven (7) days of a trial setting. The Court finds that in Gawlikowski's Response, he judicially admits that he was only able to file the Counter-Petition because the September 29, 2009 trial setting, obtained as a result of the filing of his Motion for Continuance, was "more than 30 days" away at the time that Gawlikowski filed his Counter-Petition on August 28.

26. The Court finds that the "Counter-Petition" filed by Gawlikowski on August 28, 2009 was filed in bad faith and predicated on the conscious doing of wrong for dishonest and malicious purposes.

27. The Court finds that the "Counter-Petition" filed by Gawlikowski on August 28, 2009 was brought in bad faith and for the purpose of harassment.

28. The Court finds that Gawlikowski's filings are groundless and his egregious conduct and abuse of the judicial process justify the presumption that his claims lack merit.

29. The Court finds that Gawlikowski's repeated nonsuited and re-filing of his case was in bad faith and for the purpose of harassment.

30. The Court finds that Gawlikowski's repeated nonsuited and re-filing of his case was for the purpose of needless increase in the cost of litigation.

31. The Court finds that the Motion for Continuance was filed in bad faith and for the purpose of delay so that Gawlikowski could circumvent the TEXAS RULES OF CIVIL PROCEDURE in order to file the August 28 Counter-Petition.

32. The Court finds that Gawlikowski and his counsel made knowing material misrepresentations of fact to the Court in the filing and arguing of the Motion for Continuance.

33. The Court finds that Gawlikowski's testimony at the evidentiary hearing on the Motion to Strike Pleadings and for Sanctions was not credible.

34. The Court finds that Gawlikowski's evidence presented at the evidentiary hearing was not credible.

35. The Court SUSTAINS Mrs. Sikes' objections to Gawlikowski's evidence filed with his Response to Motion to Strike and for Sanctions, as set forth at Pages Two and Three of Sikes' Reply to Response to Motion to Strike and for Sanctions, and specifically SUSTAINS Sikes' Objections to Exhibits 1, 2, and 3-33 on the grounds stated in Sikes' Reply.

36. The Court finds that both Gawlikowski and his counsel were responsible for the sanctionable conduct outlined in this Order. The Court further finds that this sanctionable conduct was egregious because it involved (1) making blatant misrepresentations of fact to the Court (2) for the purpose of delay (3) in order to file a pleading for dishonest, harassing, and

malicious purposes.

37. The Court finds that sanctions are appropriate against both Gawlikowski and his counsel, pursuant to TEXAS RULE OF CIVIL PROCEDURE 13 and TEXAS CIVIL PRACTICE & REMEDIES CODE Section 10.001.

38. The Court finds that the monetary sanctions ordered in this case are appropriate because (1) they properly address a portion of the attorneys' fees incurred by Sikes due to the misconduct and misrepresentations of Gawlikowski and his counsel; and (2) they have no preclusive effect on Gawlikowski's ability to litigate, as payment of such fees is not a prerequisite to Gawlikowski's filing of future causes of action.

BASED ON THE ABOVE FINDINGS, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

(1) Dan Gawlikowski is **ORDERED** to pay Brandi McDonald Sikes the total sum of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) on or before November 29, 2009 at 5:00 p.m. directly to Brandi McDonald Sikes at 7719 Betty Jane Lane, Houston, Texas 77055, for attorneys' fees, representative of a fraction of the costs incurred by Ms. Sikes during the litigation from December, 2008 to August, 2009, and for the preparation and prosecution of the Motion to Strike Pleadings and for Sanctions. It is the **ORDER** of this court that such amount, if not paid on or before November 29, 2009 at 5:00 p.m., shall be reduced to a money judgment payable to Brandi McDonald Sikes.

IT IS THEREFORE ORDERED that good cause exists to award BRANDI MCDONALD SIKES judgment in the amount of \$45,000.00 for attorney's fees, expenses, and costs incurred by BRANDI MCDONALD SIKES, with interest at the legal rate per year compounded annually from the date the judgment is signed until paid. The judgment, for which let execution issue, is

awarded against DANIEL EDWARD GAWLIKOWSKI, JR. and BRANDI MCDONALD SIKES may enforce this judgment for fees, expenses, and costs in her own name by any means available for the enforcement of a judgment.

(2) Walter P. Mahoney, counsel for Dan Gawlikowski, is **ORDERED** to pay Brandi McDonald Sikes the amount of FIVE THOUSAND DOLLARS (\$5,000.00) on or before November 29, 2009 at 5:00 p.m. directly to Brandi McDonald Sikes at 7719 Betty Jane Lane, Houston, Texas 77055 in attorneys' fees. It is the **ORDER** of this court that such amount, if not paid on or before November 29, 2009 at 5:00 p.m., shall be reduced to a money judgment payable to Brandi McDonald Sikes.

IT IS THEREFORE ORDERED that good cause exists to award BRANDI MCDONALD SIKES judgment in the amount of \$5,000.00 for attorney's fees, expenses, and costs incurred by BRANDI MCDONALD SIKES, with interest at the legal rate per year compounded annually from the date the judgment is signed until paid. The judgment, for which let execution issue, is awarded against WALTER P. MAHONEY, JR. and BRANDI MCDONALD SIKES may enforce this judgment for fees, expenses, and costs in her own name by any means available for the enforcement of a judgment.

(3) In compliance with the order of the Fourteenth Court of Appeals, the prior order is hereby amended to read: The Court hereby assigns the parties and counsel to trial as of September 29, 2009, to be commenced to begin on June 7, 2010 at 9:30 a.m.

(4) The Order of this court regarding school and after-care visits entered in conjunction with the August 28, 2009 Order on Motion for Continuance shall remain in full force and effect until the conclusion of the trial of this cause and the entry of further extending or countermanding orders.

ENTERED on this _____ day of _____, 2010.

JUDGE PRESIDING