**PMOT**

ATTORNEY CONTACT INFO

Attorney for XXX

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

 ) Dept. No.:

**CLIENT,** ) HEARING REQUESTED

DOB: )

 )

 A MINOR. )

 )

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.**

**MOTION FOR THE DEPARTMENT OF FAMILY SERVICES TO PAY *CLIENT’S* STATE-ALLOCATED ALLOWANCE**

 COMES NOW, *Attorney*, Esq., of *Firm*, by and on behalf of *CLIENT*, and hereby submits this Motion respectfully requesting that this Court find that the Department of Family Services (“DFS”) is required to pay the state-allocated allowance that was not provided to *Client* during his time in institutional settings.

 This Motion is based upon the attached Memorandum of Points and Authorities, the papers and pleadings on file and other such documentary and oral evidence as may be presented at the hearing of this Motion.

 DATED this \_\_\_\_\_\_\_ day of *Month*, *Year*.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **BACKGROUND STATEMENT**

*CLIENT* has been in Protective Custody since March 26, 2016. On May 9, 2016, *Client* was committed to the Custody of Clark County Department of Family Services (“DFS”) after his mother stated she could not care for him. *Client* has an extensive mental health history and with a reported history of mood disorder, bi-polar disorder, and oppositional defiant disorder. *Client* was also diagnosed with Fetal Alcohol Spectrum Disorder on December 7, 2018 by the UNLV Ackerman Center for Autism and Diagnostic Clinic. During his time in care, *Client* went from residential placement to Child Haven, with intermittent stays at psychiatric hospitals.

 Starting on July 21, 2016, *Client* was in placement at Capstone Academy in Detroit, Michigan. He remained there until March 12, 2018 for a total of 630 days. Following his return to Las Vegas, *Client* was placed at St. Jude’s and Genesis and then an extended stay at Child Haven until he transitioned to a Desert Regional Center (“DRC”) home.

 On October 8, 2020, *Client*’s attorney inquired as to the state-allocated allowance that is provided to all foster children. According to DFS, allowance is not paid to kids placed in residential treatment centers (“RTC”). This is in violation of NRS 432B.6082.

**II. LEGAL ARGUMENT**

1. **DFS WAS LEGALLY OBLIGATED TO PAY *CLIENT* HIS STATE-ALLOCATED ALLOWANCE AS REQUIRED BY NRS 432B.6082 AND THE FAILURE TO DO SO WAS A VIOLATION OF HIS PERSONAL RIGHTS.**

In 2005, the Nevada State Legislature recognized a need to protect foster children who were placed in residential treatment facilities. Nevada Assembly Committee Minutes, 4/6/2005. The State Legislature amended NRS 432B (Protection of Children from Abuse and Neglect) to add such protections specifically for children in these facilities. *Id.*  One supporter of the amendment testified, “While in these facilities, these children are often denied rights that are afforded to other foster children, such as the right to contact their family members, *the right to collect their State-allocated allowance*, the right to continue their education, and the right to wear their own clothes.” *Id.* (emphasis added).

Children with “emotional disturbances” who have a court-ordered admission to certain facilities now have certain defined rights that child welfare service agencies have a legal duty to provide. NRS 432B.607–NRS 432B.6085. These treatment facilities are defined as “psychiatric hospital[s] or facilit[ies] which provide[s] residential treatment for mental illness that has a unit in the hospital or facility capable of being locked to prevent a child with an emotional disturbance from leaving the hospital or facility.” NRS 432B.6072.

Furthermore, NRS 432B.6082 states, “[a] child who is in the custody of an agency which provides child welfare services and who is admitted to a facility” has a right “to receive an allowance from the agency which provides child welfare services in an amount equivalent to any allowance required to be provided to children who reside in foster homes.” The State of Nevada has approved payment rates for “Personal Incidentals.” And “Clothing Allowance.” Division of Child and Family Services, Title 4-IV Foster Care Maintenance Payments (Oct. 5 2016).

As stated above, *Client* has a history of mental health issues that have required psychiatric treatment over the years. As a result, *Client* has been in and out of residential treatment facilities that have provided the aforementioned treatment. These facilities fall within the definition outlined in NRS 432B.6072, and children who are admitted to such facilities are entitled to an allowance from the child welfare agency that has custody of him or her.

DFS has offered to reimburse *Client* the amount of 848.89 dollars for allowance but is unable to do so without a court order.

Any indication that *Client* is not entitled to his state-allocated allowance is in direct contradiction of the language and the intent of the statute. *Client* is entitled to the same rights and protections regardless of his DFS sanctioned placement.

/ / /

**III. CONCLUSION**

A child welfare agency is required by law to provide foster children with an allowance. This includes children, such as *Client*, in residential treatment facilities. *Client* respectfully requests the court order the Department of Family Services to pay *Client* the amount of allowance for his time in the residential treatment facilities.

 Dated this \_\_\_ day of *Month*, *Year*.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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***CERTIFICATE OF SERVICE***

 I HEREBY CERTIFY that on the \_\_\_\_\_\_\_ day of *Month*, *Year*, I served the foregoing ***MOTION FOR THE DEPARTMENT OF FAMILY SERVICES TO PAY CLIENT’S STATE-ALLOCATED ALLOWANCE***, by the Court’s electronic system (EFS E-File & Serve) and/or depositing in the U.S. Mail in a sealed envelope with first-class postage fully prepaid thereon, to the following:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 An Employee of

 *Firm*