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| Larimer County, Colorado, District Court  201 LaPorte Avenue, Suite 100  Fort Collins, Colorado 80521-2761  (970) 498-6100  THE PEOPLE OF THE STATE OF COLORADO, IN THE  INTEREST OF:  IN THE INTEREST OF:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Children,  AND CONCERNING:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Respondents. | **🡹COURT USE ONLY🡹** |
|  | Case Number:  Courtroom |
| **GAL MOTION**  **FOR THE COURT TO ALLOW OUT-OF-COURT STATEMENTS**  **AND TO ALLOW CHILDREN TO BE CROSS-EXAMINED OUT OF THE PRESENCE OF RESPONDENTS** | |

COMES NOW, \_\_\_\_\_\_\_\_\_\_\_ Guardian *ad* *Litem* (GAL) for the minor children and files her/his motion requesting that the Court enter an order allowing the use of out-of-court statements in lieu of the testimony of the children and to allow the children to be cross-examined outside of the presence of the Respondents, as follows:

1. Colorado Statute §13-25-129 provides that out-of-court statements made by a child may be used in lieu of a child’s testimony in a dependency and neglect action under the following circumstances:
   1. When the child is the victim of an unlawful sexual offense, as defined by C.S. §18-3-411, or is the victim of incest, as defined by C.S. §18-6-301;
   2. When the victim was less than fifteen (15) years of age at the time of the commission of the offense, or in which the child is the subject of a proceeding alleging that a child is neglected or dependent under section §19-1-104(1)(b); and
   3. The child is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement.
2. The child, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, was subjected to a forensic interview, conducted by the Child Advocacy Center, on \_\_\_\_\_\_\_\_.
3. A copy of the videotaped interview was made available to all parties. It is possible that \_\_\_\_\_\_\_\_\_\_\_\_\_, may be subjected to additional forensic interviews and, if so, those videotaped interviews will also be provided to all parties immediately upon the availability of those recordings.
4. The therapist for the child, \_\_\_\_\_\_\_\_\_\_\_\_\_\_, in her/his expert opinion, believes that: 1) The emotional and psychological welfare of the children would be substantially impaired if they were forced to testify, and 2) Such impairment would be long standing rather than transitory in nature, rendering the children unavailable. *People v. Diefenderfer,* 784 P.2d 741, 750 (Colo. 1989).
5. There exists corroborative evidence of the acts claimed by the children, in the form of specific narratives and descriptions of the events, as well as behavioral changes in the children. *Stevens v. People,* 796 P.2d 946, 954 (Colo. 1990).
6. The video tape of the forensic interview(s) should be allowed in lieu of the children being subject to direct examination, if the children are available for cross-examination. *People v. Melendez,* 80 P.3d 883, 889 (Colo. App. 2003).

THEREFORE, the Guardian a*d Litem* respectfully requests the Court to order as follows:

1. That any and all forensic interviews of the children be admitted into evidence as testimony in lieu of the minor children being subjected to direct examination, and
2. That the minor children subjected to cross-examination outside of the presence of the Respondent parents.

RESPECTFULLY SUBMITTED this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_, Guardian a*d Litem*

Reg. No. \_\_\_\_\_\_\_\_\_\_\_\_\_

CERTIFICATE OF SERVICE

This is to certify that on this day of \_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_ a true and correct copy of the foregoing document was delivered to the following parties as follows:

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

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| Larimer County, Colorado, District Court  201 LaPorte Avenue, Suite 100  Fort Collins, Colorado 80521-2761  (970) 498-6100  THE PEOPLE OF THE STATE OF COLORADO, IN THE  INTEREST OF:  IN THE INTEREST OF:  LILLIAN MILLER AND MADELEINE MILLER, Children,  AND CONCERNING:  ERIKA LOPEZ AND KYLE MILLER, Respondents. | **🡹COURT USE ONLY🡹** |
| Julie M. Yates, Guardian *ad Litem*  Julie M. Yates, Attorney at Law, LLC  P.O. Box 387  Fort Collins, CO 80522  Phone (970) 219-9613 Email: julie@jyates.net  Fax (970) 237-4870 Registration No. 36393 | Case Number: 15JV143  Courtroom 2A |
| **ORDER OF**  **DETERMINATION OF PRIVILEGE AND LIMITED WAIVER**  **UNDER L.A.N. and §13-90-107(1)(g)** | |

THIS MATTER, having come before the Court on the Guardian *ad Litem*’s *Unopposed Motion for Determination of Privilege and Scope of Waiver under L.A.N. and §13-90-107(1)(g),* the Court Orders as follows:

1. On March 24, 2015, the GAL was appointed to represent the best interests of the minor children, Madeleine Miller, born 4/25/06, and Lillian Miller, born 7/16/08.
2. To protect the confidentiality of a children’s communications to their therapists, the Colorado Supreme Court has held that the psychotherapist-patient privilege applies to children in dependency and neglect proceedings. *L.A.N. v. L.M.B*., January 22, 2013 (2013 CO 6).
3. In this case, the children are too young or otherwise incompetent to hold the psychotherapist-patient privilege and the children’s interests may be adverse to each of the parent’s interest and/or that of Special Respondent. *Id.*
4. Therefore, in these circumstances, the Guardian *ad Litem* holds the psychotherapist-patient privilege for the child. *Id.*
5. For purposes of this proceeding it is in the children’s best interests that there be a limited waiver of the privilege.

NOW THEREFORE THE COURT ORDERS AS FOLLOWS:

1. Regarding the minor children, the Guardian *ad Litem* holds the privilege;
2. A limited waiver is granted as follows: Any psychotherapist or counselor may share within family unity meetings, permanency roundtables or to her caseworker or Guardian *ad litem*, treatment goals, attendance in therapy and general statements regarding progress on treatment goals, and/or recommendations as to different therapeutic modalities. Any therapist/counselor providing services to the minor children shall not be prohibited from assisting the children in communicating with individuals with whom the children desires to communicate or correspond and such assistance shall not be viewed as a waiver of the privilege or a breach of confidentiality;
3. That any forensic psychologist or a psychologist engage for the purpose of determining the validity of claims made by the minor child or allegations between the parents as to abuse or neglect of the child, may disclose any information necessary for the Department of Human Services, the Guardian *ad Litem* or the Court to make a determination as to the legitimacy or validity of the claims made by the child or the allegations between the parties with respect to abuse or neglect; and
4. The Court further orders that all parties, including CASA, are prohibited from: (1) signing releases of information that could extend the limited waiver of the privilege defined for each child in this order, and, (2) intentionally injecting information into the proceeding that contravenes the limited waiver of a child’s privilege as set out herein.

IT IS SO ORDERED this \_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015.

BY THE COURT:

District Court Judge/Magistrate

Copies to:

Jennifer Stewart

Dina Christiansen, Wabeke, Brummet & Christiansen, 325 E. 7th Street, Loveland, CO 80537

Stephanie Stout, Stout Law Firm, 822 7th Street #530, Greeley, CO 80631