

**Superior Court of Washington, County of Thurston**

In re:

Petitioner,

Jennifer Como

And Respondent

James Fowler

No. 19-2-30942-34

**MOTION FOR ORDER TO SHOW  
CAUSE RE VACATION OF  
PROTECTION ORDER  
(MT)**

**Motion for Order to Show Cause Re: Vacation of Order**

**To both parties:**

***Deadline!*** Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at [www.courts.wa.gov](http://www.courts.wa.gov).

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

The court may not allow you to testify at the motion hearing. Read your county's Local Court Rules, if any.

Bring proposed orders to the hearing.

**To the person filing this motion:**

1 You must schedule a hearing on this motion. You may use the *Notice of Hearing*  
2 (form FL All Family 185) unless your county's Local Court Rules require a different  
3 form. Contact the court for scheduling information.

4 **To the person receiving this motion:**

5 If you do not agree with the requests in this motion, file a statement (using form FL All  
6 Family 135, *Declaration*) explaining why the court should not approve those requests.  
You may file other written proof supporting your side.

7 **1. Relief Requested**

8 My name is James Fowler. I ask the court to approve the following orders:

9 Order to Show Cause Re: Vacation of the Order of Protection entered herein on  
10 May 22<sup>nd</sup> 2020;

11 **2. Statement of Issues**

12 I ask the court to decide the following issues:

13 See Declaration of James Fowler filed in conjunction with this motion;

14 **3. Statement of Facts/Grounds**

15 These facts support my request:

16 See Declaration of James Fowler filed in conjunction with this motion;

17 **4. Evidence Relied Upon**

18 I ask the court to consider this evidence:

19 See Declaration of James Fowler filed in conjunction with this motion;

20 **5. Legal Authority**

21 I have the right to ask for these orders according to the law:


22 See Declaration of James Fowler filed in conjunction with this motion;

6. A Proposed Order is attached to this *Motion*.

**Person making this motion fills out below**

I declare under penalty of perjury under the laws of the state of Washington that the facts I have provided on this form are true.

Signed at: \_\_\_\_\_, WA Date: Nov 19, 2020

 James Fowler  
James Fowler (Nov 19, 2020 06:37 EST) Print name here  
*Person making this motion signs here*

I agree to accept legal papers for this case at my lawyer's address, listed below.

**Lawyer fills out below**

 Forrest Wagner 16580 11/23/2020  
*Lawyer signs here* *Print name and WSBA No.* *Date*

1700 COOPER PONT ROAD, S.W., Ste C4 OLYMPIA WA 98502  
*Lawyer's address* *city* *state* *zip*

Email: FLWagner@comcast.net

**Warning!** Documents filed with the court are available for anyone to see unless they are sealed. Financial, medical, and confidential reports, as described in General Rule 22, **must** be sealed so they can only be seen by the court, the other party, and the lawyers in your case. Seal those documents by filing them separately, using a *Sealed* cover sheet (form FL All Family 011, 012, or 013). You may ask for an order to seal other documents.

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5 **STATE OF WASHINGTON**  
6 **COUNTY OF THURSTON**  
7 **FAMILY AND JUVENILE COURT**

8 In re

NO: 19-2-30942-34

9 **JENNIFER COMO**

Petitioner

10 And

**DECLARATION OF JAMES FOWLER IN  
SUPPORT OF MOTION FOR ORDER TO  
SHOW CAUSE RE VACATION OF ORDER**

11 **JAMES FOWLER**

Respondent.

12 James Fowler hereby states and certifies as follows:

13 I make this declaration in support of my motion to vacate and set aside the final order of  
14 protection entered on May 22, 2020. I am asking that the court set aside the order for  
15 protection because I did not engage in the alleged sexual abuse, and that evidence probative  
16 of that issue was not presented to the court as explained herein. The proceeding which  
17 resulted in the final order was an insufficient process for a final order which constituted a de  
18 facto termination of my constitutional right to the care, custody and companionship of my  
19 minor child. Although the protection order protecting my daughter will theoretically expire in a  
20 year, I am told that the finding of sexual abuse on which that order is based will form a  
21 perpetual bar to me having any contact. I am asking that a new evidentiary hearing where all  
22 of the relevant evidence can be reviewed and considered by the court.  
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27 ***Brief History***  
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1 I am the father of Jordan Rain Fowler Como, my daughter, who was born on June 5<sup>th</sup>,  
2 2012, making her 8 years old. Her mother and I have a final parenting plan governing our  
3 rights and responsibilities relative to Jordan. That parenting plan was entered in Thurston  
4 County on January 9<sup>th</sup>, 2018. Under the plan, Jordan lives primarily with her mother and has  
5 visitation with me which I have faithfully exercised from the beginning.  
6

7 In the late fall of 2019, I had discovered a great deal of information that Jordan was  
8 receiving sub-par care in the home of her mother. I obtained school records which are nothing  
9 short of alarming. Jordan clearly had significant behavioral-emotional problems which were  
10 evident in her school performance and in her behavior at school. **Exhibits 2 and 3** which I  
11 had filed in the protection order proceeding create an alarming record of nearly non-stop  
12 behavioral issues by Jordan. Those records undeniably show an unacceptable situation for my  
13 daughter at her mother's residence and I felt that serious intervention was required. I was  
14 preparing to file and serve a modification of custody. And I also attended school in person on  
15 many occasions only because I was concerned about my daughter and wanted to be able to  
16 help her.  
17

18 Around the time I became aware of Jordan's dismal school performance, I learned that  
19 the mother was continuing to abuse drugs. I fully acknowledge that I also have a significant  
20 history with drugs and alcohol, and I acknowledge that I served time in prison. However, my  
21 history with drugs and alcohol is exactly that –*history*. I completely reformed my life. I have  
22 filed an abundance of material in this case and in the family law case which shows that I am  
23 well-established in my recovery. A guardian ad litem, David Rothschild, conducted an  
24 investigation in the family law matter and he found that I had completely addressed all of my  
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1 issues. I had battled drugs and alcohol for many years. I tried to get clean more than once and  
2 I failed. But I finally established a foothold in recovery after I became a father and Jordan  
3 came into our life. At that point, I got serious about my sobriety. I completed an outpatient  
4 program at Northwest Resources *on March 9<sup>th</sup>, 2015*. I have filed my certificate of completion.  
5 Not only did I complete treatment but I excelled in treatment, and it was transformational. I  
6 came out of treatment a different person than I went in. I became friends with Dennis Neal,  
7 who is the director of NW Resources and through that friendship the realization of a life-long  
8 commitment to staying sober was further impressed upon me. I want the court to know that I  
9 have just over six years clean and sober in recovery. *My clean date is June 30<sup>th</sup>, 2014*. I also  
10 completed the Dynamic Dads Parenting Program, and I also did a mental health evaluation by  
11 Jason Cain. As a result of that evaluation, I then began and successfully completed a program  
12 of individual psychotherapy. The exit letter composed by Jason Cain attests that I attended 9  
13 additional sessions *after* I completed the program. In the exit letter, Jason Cain states:

14 ***Mr. Fowler has demonstrated himself to be an honest, helpful, and supportive***  
15 ***participant in treatment. Mr. Fowler has further demonstrated a willingness to be***  
16 ***accountable for his actions without minimizing or blaming others. Mr. Fowler has***  
17 ***expressed on numerous occasions his concerns related to the safety and wellbeing***  
18 ***of his child. Mr. Fowler has given this provider no reason to doubt the legitimacy***  
19 ***and/or sincerity of his claims.***

20 I have worked very hard to reform my life. I am now a union carpenter, very skilled in a  
21 variety of trades, and I am and have been gainfully employed. I am not affluent by any means,  
22 but I am stable and financially secure.

23 I was living in Florida when I met Jennifer. We both have family there. Our relationship  
24 was forged during a time we were both actively using drugs and alcohol. After she found out  
25

1 she was pregnant, our relationship became so unbearable I needed to remove myself from the  
2 environment. Jennifer suddenly disappeared. She simply left overnight for the state of  
3 Washington. Wanting to be an engaged father, I gave up my life in Florida and came to  
4 Washington. We both continued to use. I finally gave up drugs and alcohol for good on June  
5 30<sup>th</sup>, 2014. Jennifer continued to use. I do not think that Jennifer's drug problem was ever  
6 addressed in any meaningful way.  
7

8 I also learned that Jennifer had lost her job at the state of Washington for testing positive  
9 for Methamphetamine in a UA test they conducted on her. She was obviously performing poorly  
10 at work and having issues and when they tested her she tested positive for meth, which is a  
11 very addictive substance. I know of no treatment or services that Jennifer has accessed. I also  
12 discovered that Jennifer was living with an individual named Steven Williams who had served a  
13 year in county jail for a crime involving domestic violence. Due to our daughter's horrible school  
14 performance and the concerns about the mother's home, I notified the mother of my concerns.  
15 I initiated the dispute resolution procedure of our parenting plan. I thought we would attempt  
16 to co-parent and work together to address our daughter's situation. The Dispute Resolution  
17 Center called her to explaining that I wanted to discuss issues in mediation. The very next day  
18 Jennifer went to this court and filed a petition for a protection order. The entire basis for the  
19 petition was that my daughter allegedly said that I had touched her vagina "inside her  
20 underwear." That is the entire basis for the petition for protection.  
21

### 22 ***Protection Order Proceeding***

23 The mother initiated this protection order proceeding within a day or two of being notified  
24 that I was preparing for a modification based on the abysmal circumstances of my daughter's  
25

1 situation in her mother's home. While I attempted to comply with the parenting plan and  
2 scheduled a mediation, Jennifer went to court and obtained a Temporary Protection Order  
3 based on an allegation that she attributes to our daughter. I was served with the Petition for a  
4 Protection Order and the Temporary Order. I was made aware that I could have no contact  
5 with Jennifer or my daughter. The petition was filed on December 18th, 2019 and the  
6 Temporary Protection Order was signed on the same day.  
7

8  
9 Concurrently the mother also notified Child Protective Service (CPS) which began an  
10 investigation at that time in conjunction with the law enforcement agency with the appropriate  
11 jurisdiction, which is in this case was the Lacey Police Department. Both CPS and the Lacey  
12 Police conducted concurrent investigations into the allegations. *The allegations are false.* I  
13 would never harm my daughter in any way, and I have serious problems with the mother's  
14 motivation and bad faith. I have never ever touched my daughter in any inappropriate way—  
15 never. I am doubtful whether my daughter made such allegation, and if she did, it would have  
16 been under manipulation or coercion by her mother. I want to make it clear that I categorically  
17 deny that I have ever engaged in any abuse of my daughter, be it physical, emotional, or  
18 sexual. I would never do anything like that. I am a good father.  
19

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22 The Temporary Protection Order set a final hearing date but that hearing date had to be  
23 rescheduled several times because we were waiting for the results of the CPS investigation and  
24 that took a lot of time. Also, the COVID-19 pandemic intervened and delayed the final hearing  
25 *until May 22<sup>nd</sup>* roughly five months from the date the petition was filed. I did not have counsel  
26 in this proceeding and had to represent myself.  
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1 In responding to the petition, I provided *over a dozen supporting declarations* from  
2 disinterested third parties which affirmed my parenting skills, my relationship with Jordan, and  
3 my general good character. I also had the support of Jennifer's own mother and stepfather  
4 who are very concerned about Jennifer's care of Jordan and my exclusion from her life. They  
5 do not believe that I have engaged in any abuse of my daughter. I feel like I provided the court  
6 with a significant amount of information which shed doubt on the validity of this allegation. The  
7 hearing eventually took place on May 22<sup>nd</sup>. The court determined at that hearing that there  
8 was sufficient evidence to grant the protection order.

11 ***Basis to Vacate: New Evidence—CPS Report***

13 I am asking that the court consider the unusual circumstances of this case and grant a  
14 new evidentiary hearing on the merits of this petition. At the time of the hearing, CPS had  
15 completed its investigation *and it concluded that that the allegations against me were*  
16 *Unfounded* which means that by a preponderance of evidence it was more likely than not that I  
17 did not commit the abuse or that there was insufficient evidence to find that I had committed  
18 the act. The only evidence submitted in this case was an assertion by the mother that my  
19 daughter said I touched here vagina. The mother was referred to take Jordan to the Sexual  
20 Assault Clinic (SAC) for a physical examination and the mother refused. The court should  
21 consider that the mother is an interested party, and she is relating double hearsay which  
22 becomes the basis for this entire order.

26 There was not any evidence solicited through any forensic interview or law enforcement  
27 investigation. The only evidence was an inadmissible hearsay statement of the child which was  
28 coming through the mother who the evidence overwhelmingly shows is not a reliable reporter.

1 Nonetheless, it was on that evidence that the order for protection was issued, essentially  
2 terminating of my parental rights.

3  
4 I assumed that the court would have received the CPS Report which was published on  
5 April 23<sup>rd</sup>, 2020. I think that report is critical because it is my understanding that CPS was  
6 undertaking a forensic interview of the child. If trained child abuse investigators are conducting  
7 a forensic interview of an alleged child victim, I would think that their conclusions about the  
8 validity of the allegations would carry much more weight than the testimony of the mother who  
9 is clearly an interested party in this case. The probative weight of the CPS report is huge and it  
10 is paramount that any court making decisions based on these allegations should have the  
11 benefit of that report. *The court did not have that information at the time of the hearing.* And I  
12 submit that this evidence was important and should have been considered.  
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15 I am asking that the court consider the CPS report as significant evidence which in the  
16 interests of justice should be considered in the disposition of this request for a protection order.  
17 I am asking that the court set aside the order and set a new hearing date where the merits of  
18 this action can be fully litigated. There is no sound reason why the court should not receive and  
19 review the report and hear from the CPS investigator in live testimony. The conclusions of  
20 trained investigators who actually conducted a forensic interview of the alleged victim is  
21 evidence against which the mother's uncorroborated self-serving statement cannot stand up.  
22 The conclusions of CPS after a full investigation is vital evidence which in the interests of  
23 justice ought to be considered in this case.  
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27 I acknowledge that the CPS report was available and could have been introduced into  
28 evidence. However, as the party being investigated and going through a court proceeding and

1 a CPS investigation at the same time, it was inconceivable to me that the report of CPS would  
2 not be known to the court. I assumed it was all one unitary proceeding and when one branch  
3 of the proceeding concluded with a report, I simply assumed that as a matter of course it  
4 would be a part of the court record as well. Again, I was pro se, and while I understand that  
5 pro se litigants are bound by the rules just like lawyers, I am also understand that there is  
6 some authority for courts to employ liberality setting aside orders when justice so requires,  
7 particularly for mistakes common to family law matters [***In Re Marriage of Penneman, 135***  
8 ***Wn. App. 790 (2006)*** endorsing liberality in setting aside orders, "*particularly in family law*  
9 *matters where many parties are pro se, procedural orders are common, and the welfare of*  
10 *children is at stake. . . In matters involving children, courts need to be able to reach the merits*  
11 *whenever possible.*"]

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15 ***Basis to Vacate: New Evidence—Lacey Police Report***

16 Another significant new piece of evidence is that subsequent to the hearing on May 22,  
17 2020 the Lacey Police Department concluded its investigation. The detective in charge of the  
18 investigation is Detective Chris Ivanovich. Throughout the investigation when I spoke to the  
19 detective he would make comments to me which I interpreted as meaning he did not think the  
20 charges against me were substantiated. He at one point suggested to me that I obtain the  
21 counseling records from Monarch Counseling because they would be exculpatory. It is  
22 significant to note that even though my daughter had been months in counseling with Monarch  
23 there was not a single report or statement from them. Certainly, if my daughter had made  
24 credible disclosures to a therapist that would have been offered into evidence. The absence of  
25 such evidence is itself exculpatory. After being told by the detective that obtaining the  
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1 counseling records would be in my interests, I made every effort to do so. I asked Monarch  
2 directly for the records but I was told they could not supply them to me. Upon seeking counsel  
3 for the first time I was told that under RCW 26.09.225 both parents have a right to the medical  
4 and educational records of their children. We sent a letter soliciting all of their records and files  
5 concerning Jordan, and Monarch just stonewalled my request, essentially violating RCW  
6 26.09.225.  
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9 We have, however, obtained the final report of the Lacey Police Department which  
10 provides the entire bill of particulars against me in this matter. I defy any informed person to  
11 read that report and find there is substantial evidence that I committed any sexual abuse. The  
12 report represents a full examination of the available evidence by a detective trained in matters  
13 of child sexual abuse. I believe that the information contained in the Lacey Police report is  
14 inconsistent with the conclusion that I engaged in abuse by a preponderance of evidence.  
15 Jordan talks about me "being nice, not like her mother." She also makes statements which  
16 clearly show she has been exposed to her mother's anger and it appears that the focal point of  
17 the mother's anger was my potential custody modification which the mother cruelly exposed  
18 out daughter to as my "*attempt to take Jordan away from her mother.*" Reading the forensic  
19 interview of Jordan shows insubstantial evidence of sex abuse. The substance of what Jordan  
20 says, the context in which she says it, and the other circumstances would lead a reasonable  
21 person to not believe allegations of sexual abuse. If the court had the benefit of both the CPS  
22 report and the LPD report it would have come to a different conclusion regarding this matter.  
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27 ***Basis to Vacate: New Evidence—Prosecutor Finds Case Lacks Probable Cause***  
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1 The LPD sent their report on this matter to the Thurston County Prosecutor's Office for  
2 consideration of criminal charges. It is my understanding that action is standard. The police  
3 conduct the investigation and produce the information related to the criminal charges and refer  
4 it to the prosecutor for a review of whether charges can be established and whether charges  
5 should be brought.  
6

7 When I retained counsel to bring this matter back to court, he found out that the police  
8 report had been referred to the prosecutor's office and the office was way behind in making its  
9 determinations to charge or not charge. He began a correspondence with the Sexual Abuse  
10 Division of the Prosecutor's Office regarding my case and the prosecutors decision. They  
11 explained that they were very behind due to the COVID-19 pandemic and the backlog it  
12 created. The matter was referred to the prosecutor's office in June 2022. We asked to be  
13 notified by the prosecutor when she decided what to do with the referral involving me and my  
14 daughter. Finally, in October 2020 we received an email from the prosecutor which stated that  
15 after reviewing the report they were declining to bring criminal charges. Again, it is  
16 unsurprising that the prosecutor would reach such a conclusion when one considers the  
17 evidence and superimposes it over the legal elements necessary to establish the commission of  
18 a crime. But it is important that the prosecutor made such a decision. I am informed that such  
19 a decision means that the prosecutor concluded that probable cause was not established by the  
20 evidence. If it cannot be said that there is probable cause that I committed a sex abuse crime,  
21 how can it be said that there is a preponderance of evidence that I committed such an act. It is  
22 my understanding that the protection order that was granted was by necessity a finding by a  
23 preponderance of evidence that I engaged in sexual abuse. I think there is an inherent conflict  
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1 between the prosecutor's decision to decline charges and the court's finding that I committed  
2 sexual assault.

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4 ***Basis to Vacate: New Evidence—Reaction of Child to No Contact***

5 As I indicated above, I still have a positive relationship with Jennifer's family. Her family is  
6 very concerned about the quality of care Jennifer is providing to our daughter. Jennifer's mother  
7 and stepfather still rent out a property to Jennifer, and they have had the opportunity to  
8 observe her and to be in contact with her. They also have direct and regular contact with  
9 Jordan and the opportunity to observe how she has been functioning. The last time I saw my  
10 daughter was in December 2019, over six months ago. I believe that my daughter is  
11 traumatized my sudden removal from her life. She is having an extremely difficult time and is  
12 constantly asking her grandparents why she is unable to spend time with me. I have solicited  
13 additional statements from her family members which reveal the magnitude of my daughter's  
14 trauma. I believe that a child's exasperation in not seeing a parent is incompatible with a  
15 finding that such a parent has abused or harmed that child. Therefore, I think this newly  
16 available evidence also supports my motion for a new hearing.

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20 **CONCLUSION**

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22 This case really began with my well-documented concerns about the quality of care my  
23 daughter was receiving while in the custody of her mother. I showed those concerns were well-  
24 founded. I provided statements from the mother's own family members and school records  
25 which corroborated that there indeed were issues. In response to all of that evidence, Jennifer  
26 attempted to alienate Jordan from me by creating a narrative that I was trying to steal her  
27 from her mother. And after learning about the evidence I had against her, she immediately  
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1 went to the court and obtained a temporary protection order. We had a final hearing on May  
2 27<sup>th</sup>, and the court granted the order, shutting off all my contact with Jordan. The court  
3 indicated there could be a parenting plan modification, but I have been advised that with the  
4 court's finding of sexual abuse and the granting of a protection order, no commissioner or  
5 family court judge will ever grant me any contact because sexual abuse is a mandatory limiting  
6 factor. I am stuck on the outside. I have no path forward which maintains any aspect of my  
7 relationship with my daughter.  
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10 *I did not touch my daughter in any inappropriate way at any time.* These allegations are  
11 *false.* The disclosures are brought without any indicia of reliability. The allegations were not  
12 made as part of any sort of medical diagnosis, treatment, or counseling. They were not made  
13 as part of any law enforcement investigation. They were not even statements that *any other*  
14 *witness can corroborate.* The allegations come solely through the mother who, frankly, is not  
15 reliable for all of the reasons indicated herein. Finally, I was literally on the threshold of filing a  
16 petition for modification and seeking temporary primary residential placement of my daughter  
17 *based on the evidence of neglect, unraveling, and substance abuse in the mother's household.*  
18 I am convinced that the mother brought the allegations of sexual abuse strategically and  
19 preemptively because she knew that my concerns for our daughter were well-placed and well-  
20 supported by the evidence that I had. She brought fallacious allegations against me to protect  
21 herself. I am asking that the court recognize the critical importance of this proceedings and  
22 recognize that for all of the reasons suggested herein, the interests of justice demand that the  
23 final order entered on May 22<sup>nd</sup>, 2020 be set aside and the matter set for a new evidentiary  
24 hearing when all of the significant evidence omitted or unavailable at the previous hearing can  
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1 be duly offered and considered by the court and where parties can testify under oath and be  
2 subject to cross examination. It is submitted that such a proceeding is better calculated to  
3 produce a just and reliable outcome, which is important to me and important to my daughter.  
4

5 I thank the court for considering this request.  
6

7 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
8 WASHINGTON THAT THE FOREGOING STATEMENT IS TRUE AND CORRECT TO THE BEST OF  
9 MY KNOWLEDGE. Dated this 11/19/20 day of November 2020 in Olympia Washington.  
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James fowler (Nov 19, 2020 06:37 EST)  
13 JAMES FOWLER  
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# Motion Vacate Order

Final Audit Report


2020-11-19

Created:	2020-11-18
By:	Dawn Farrow (dawnfarrow@comcast.net)
Status:	Signed
Transaction ID:	CBJCHBCAABAAiO-rG-qnHO0qrG5WR_b_9o1LfnM6Qy6U

## "Motion Vacate Order" History

 Document created by Dawn Farrow (dawnfarrow@comcast.net)

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 Document emailed to James fowler (jameswfowler@yahoo.com) for signature

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 Email viewed by James fowler (jameswfowler@yahoo.com)

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 Document e-signed by James fowler (jameswfowler@yahoo.com)

Signature Date: 2020-11-19 - 11:37:50 AM GMT - Time Source: server- IP address: 99.121.228.106

 Agreement completed.

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