

1 William M. Hilton, CFLS
Attorney At Law
2 Box 269
Santa Clara, California 95052
3 408 246 8511/FAX 408 246 0114
4 Attorney for [Name of party]

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8 SUPERIOR COURT OF [State]

9 COUNTY OF &COUNTY&

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11 In re the Matter of:) No. [Case Number]
12 [Name of petitioner])
13 and) POINTS & AUTHORITIES
14 [Name of respondent]) RE: RETROACTIVE
APPLICATION OF THE
HAGUE CONVENTION
_____)

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16 1.0 FACTS

17 1.1 On 01 Jul 1988 The Convention on the Civil Aspects of
18 International Child Abduction, done at The Hague on
19 October 25, 1980 (Convention) came into force in the
20 United States.

21 1.2 On [Enter date] Respondent Wrongfully Removed the minor
22 child from the [Place removed from].

23 1.3 On [Enter date convention in force in the country of
24 choice] The Convention came into force for the [Enter
25 name of country].
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1 1.5 On [Enter date] the Central Authority of [Enter name
2 of country] made application to the Central Authority of
3 the United States for the return of the minor child to
4 its place of Habitual Residence, [Enter name of
5 country].

6 1.5 On [Enter date] the minor child was located and placed
7 in protective custody pending further order of the
8 court.

9 2.0 THE SENDING OF THE REQUEST FOR RETURN OF THE MINOR CHILD
10 BY THE CENTRAL AUTHORITY OF [NAME OF COUNTRY] AND THE
11 ACCEPTANCE OF THE REQUEST FOR RETURN BY THE CENTRAL
12 AUTHORITY OF THE UNITED STATES COULD BE CONSTRUED AS AN
13 AGREEMENT BETWEEN THE UNITED STATES AND [NAME OF
14 COUNTRY] THAT THE NON-RETROACTIVE PROVISIONS OF ARTICLE
15 35 DO NOT APPLY AS BETWEEN THE UNITED STATES AND [NAME
16 OF COUNTRY].

17 2.1 Article 35 of the Convention is as follows:

18 This Convention shall apply as between Contracting
19 States only to wrongful removals or retentions occurring
after its entry into force in those States.

20 Where a declaration has been made under Article 39 or
21 40, the reference in the preceding paragraph to a
22 Contracting State shall be taken to refer to the
territorial unit or units in relation to which this
Convention applies.

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1 2.2 Under Article 35 it is generally stated that the terms
2 of the Convention only apply to those wrongful removals
3 or retentions that have occurred after the Convention
4 has entered into force in the two Contracting States.
5 In this case the Convention came into effect in the
6 [Name of country] on [Date], after the minor child was
7 Wrongfully Removed from [Name of country] by Respondent.
8 2.3 Article 36, [N1] however, permits two or more Contracting
9 States to limit the restrictions to which the return of
10 the child may be subject by mutual agreement.
11 2.4 Article 27 [N2] requires the Central Authority of the
12 requested state to reject an application that does not
13 meet the requirements of the Convention.
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1. Nothing in this convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

2. When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

1 2.5 When the Central Authority of the United States accepted
2 the application of [Name of country] for the return of
3 the minor child without invoking Article 27, then such
4 application could be construed to be an agreement
5 between the United States and [Name of country] that,
6 pursuant to Article 36, the non-retroactive requirements
7 are not in force between these two Contracting States.

8 2.6 This agreement is in full accord with the principle
9 purpose of the Convention: To secure the prompt return
10 of children wrongfully removed to or retained in any
11 contracting State. [N3]

12 3.0 ASSUMING, ARGUENDO, THAT THE CONVENTION IS NOT
13 RETROACTIVE UNDER ARTICLE 35, THE WRONGFUL RETENTION OF
14 THE MINOR CHILD IN [ENTER NAME] IS, AS A MATTER OF LAW,
15 AN ONGOING OFFENSE AND IS ACTIONABLE AS A SINGLE ACTION
16 ON ANY DATE THAT THE CHILD IS WRONGFULLY RETAINED.

17 3.1 The minor child was wrongfully removed from [Name of
18 Country] on [Date], a single act. After that date the
19 child was wrongfully retained by Respondent.

20 3.2 The minor child was brought to [State] at some time
21 after [Date]. The minor child has been wrongfully
22 retained in [State] by Respondent since the date of
23 arrival.
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3. Article 1(a) of the Convention.

1 3.3 The facts of this situation closely match those of
2 People v Love (Cal.App. 4 Dist. 1988) 203 Cal.App.3d
3 1505 [251 Cal.Rptr. 6], Review Denied 28 Sep 1988. In
4 Love the minor child was taken by the non custodial
5 parent from the home of the custodial parent on 07 Sep
6 1974. The child was not located until 1986. The
7 non-custodial parent was charged, inter alia, with a
8 violation of Penal Code 278.5. The non-custodial parent
9 argued that there was no proof that he had committed any
10 wrongful act in 1977 or thereafter. The non-custodial
11 parent moved to dismiss the motion for lack of probable
12 cause. The Superior Court granted the motion. The
13 Court of Appeal reversed, holding:
14 The charged crimes cover more than Tracy's abduction;
15 they include detaining or concealing a child over a
16 period of time. The criminal conduct is ongoing and
 continuous. id at 1508 [8].

17 3.3.1 If the statement made in the court's decision is
18 re-written in the terminology of the Convention, the
19 following results:
20 The charged wrongful act covers more than the
21 child's wrongful removal; they include wrongful
22 retention of the child over a period of time. The
23 wrongful retention is ongoing and continuous.
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1 3.4 As the wrongful retention is ongoing, each day is a new
2 event. As each day is a new event, any wrongful
3 retention of the child by Respondent in [State] after
4 [Date] is a wrongful retention within the meaning of
5 Article 3 of the Convention and requires that this court
6 return the child to its Habitual Residence.

7 4.0 SUBMISSION

8 4.1 Respectfully submitted on [Date]

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William M. Hilton, CFLS

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