

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**2. BARBARA PARKERTON V. ROBERT PARKERTON**

**22FL0271**

Petitioner filed a Request for Order (RFO) on November 15, 2023 requesting guideline temporary spousal support and Family Code Section 2030 attorney's fees. Petitioner concurrently filed an Income and Expense Declaration. Respondent was served by mail on November 17, 2022.

Respondent filed a Responsive Declaration and Income and Expense Declaration on January 10, 2023. Petitioner was served by overnight mail on January 10, 2023. Respondent objects to Petitioner's request for guideline temporary spousal support and requests reimbursement for voluntary payments made to Petitioner. Respondent objects to Petitioner's request for attorney's fees and requests the parties each pay their own attorney fees from the proceeds of the sale of the former marital residence.

The court finds Petitioner has no income and no deductions based on her November 15, 2022 filed Income and Expense Declaration.

Respondent's average monthly income is \$10,782, based on his January 10, 2023 filed Income and Expense Declaration. Respondent has deductions of \$1,636 for medical insurance premiums.

Using the above figures and a tax status of married filing separately, the court finds temporary guideline spousal support to be \$2,836 per month (See DissoMaster report). The court orders Respondent to pay Petitioner \$2,836 per month as and for temporary guideline spousal support effective December 1, 2022, and due on the first of each month until further order of the court or termination by operation of law.

The court finds this order results in an arrears balance of \$8,508, for December through February inclusive. The court further finds, based on Respondent's Income and Expense Declaration, he has been making voluntary support payments to Petitioner of \$2,100. The court notes Respondent states in his Declaration he has been making voluntary support payments of \$2,500 per month to Petitioner. Petitioner has not disclosed any voluntary payments in her Income and Expense Declaration. The court finds the parties currently have an evidentiary hearing set for April 11, 2023. The court finds it needs additional evidence to determine the proper arrears owing. The court adds the arrears calculations to the issues to be determined at trial. The court reserves on the issue of the arrears balance.

The public policy of Family Code Section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." (IRMO Keech (1999) 75 Cal. App. 4th 860, 866; Kevin Q. vs. Lauren W. (2011) 195 Cal. App. 4th 633)) This assures each party has access to legal

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

representation to preserve each party's rights. It "is not the redistribution of money from the greater income party to the lesser income party," but rather "parity". (Alan S. v Superior Court (2009) 172 Cal. App. 4th 238,251.) The award must be just and reasonable; in taking into consideration what is just and reasonable, the court can take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately. In addition to the parties' financial resources, the court may consider the parties' trial tactics. (IRMO Falcone & Fyke (2012) 203 Cal. App. 4th 964; 975). The court must consider the impact of the fee award on the payor taking into account any orders for support. (IRMO Keech, supra, at 860).

The court finds that even after the payment of support, there is a disparity in income between the parties. The court grants Petitioner's request for Family Code section 2030 fees in the amount of \$6,000. This amount may be paid out of Respondent's portion of the proceeds of the sale of the former marital home.

All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #2: THE COURT ORDERS RESPONDENT TO PAY PETITIONER \$2,836 PER MONTH AS AND FOR TEMPORARY GUIDELINE SPOUSAL SUPPORT EFFECTIVE DECEMBER 1, 2022, AND DUE ON THE FIRST OF EACH MONTH UNTIL FURTHER ORDER OF THE COURT OR TERMINATION BY OPERATION OF LAW. THE COURT FINDS IT NEEDS ADDITIONAL EVIDENCE TO DETERMINE THE PROPER ARREARS OWING. THE COURT ADDS THE ARREARS CALCULATIONS TO THE ISSUES TO BE DETERMINED AT TRIAL. THE COURT RESERVES ON THE ISSUE OF THE ARREARS BALANCE. THE COURT GRANTS PETITIONER'S REQUEST FOR FAMILY CODE SECTION 2030 FEES IN THE AMOUNT OF \$6,000. THIS AMOUNT MAY BE PAID OUT OF RESPONDENT'S PORTION OF THE PROCEEDS OF THE SALE OF THE FORMER MARITAL HOME. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

ATTORNEY (NAME AND ADDRESS): <b>EDC Court</b>  <b>California</b>  ATTORNEY FOR: <b>Resp.</b>	TELEPHONE NO:  Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
<b>DISSOMASTER REPORT</b> 2023, Monthly	CASE NUMBER:

Input Data	Resp.	Pet.	Guideline (2023)	Cash Flow Analysis	Resp.	Pet.
Number of children	0	0	<b>Nets (adjusted)</b>	<b>Guideline</b>		
% time with Second Parent	0%	0%	Resp.	7,046 Payment (cost)/benefit	(2,706)	2,807
Filing status	MFS->	<-MFS	Pet.	(30) Net spendable income	4,210	2,807
# Federal exemptions	1*	1*	Total	7,016 % combined spendable	60%	40%
Wages + salary	0	0	<b>Support (Nondeductible)</b>	Total taxes	2,100	30
401(k) employee contrib	0	0	SS Payor	Resp. # WHA	0	0
Self-employment income	6,666	0	Alameda	2,836 Net wage paycheck/mo	0	0
Other taxable income	4,116	0	Total	2,836 Comb. net spendable	7,017	
Short-term cap. gains	0	0	<b>Proposed, tactic 9</b>	<b>Proposed</b>		
Long-term cap. gains	0	0	SS Payor	Resp. Payment (cost)/benefit	(2,706)	2,807
Other gains (and losses)	0	0	Alameda	2,836 Net spendable income	4,210	2,807
Ordinary dividends	0	0	Total	2,836 NSI change from gdl	0	0
Tax. interest received	0	0	Savings	0 % combined spendable	60%	40%
Social Security received	3,880	0	No releases	% of saving over gdl	0%	0%
Unemployment compensation	0	0		Total taxes	2,100	30
Operating losses	0	0		# WHA	0	0
Ca. operating loss adj.	0	0		Net wage paycheck/mo	0	0
Roy, partnerships, S corp, trusts	0	0		Comb. net spendable	7,017	
Rental income	0	0		Percent change	0.0%	
Misc ordinary tax. inc.	236	0		<b>Default Case Settings</b>		
Other nontaxable income	0	0				
New-spouse income	0	0				
Adj. to income (ATI)	0	0				
SS paid other marriage	0	0				
Ptr Support Pd. other P'ships	0	0				
CS paid other relationship	0	0				
Health ins(Pd by party)	1,636	0				
Qual. Bus. Inc. Ded.	0	0				
Itemized deductions	0	0				
Other medical expenses	0	0				
Property tax expenses	0	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Cr. for Pd. Sick and Fam. L.	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF,SSI and CS received	0	0				

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**3. BASSEL KHADRA V. STEPHANIE WU**

**PFL20200697**

On January 5, 2022, Petitioner filed a Request for Order (RFO) requesting a Child Custody Evaluation pursuant to Family Code Section 3111 to determine custody and visitation orders as well as a move-away request. Petitioner agreed to pay the costs of the evaluation subject to reallocation. The RFO was set to be heard on March 3, 2022.

On February 28, 2022, Petitioner requested the court continue the hearing to April 28, 2022 as service had not yet occurred. The hearing was continued as requested.

On March 1, 2022, Petitioner filed a Proof of Service showing service of the filing upon Respondent and Minor's Counsel the same day.

The court did not receive a Responsive Declaration or Opposition from Minor's Counsel or Respondent.

At the hearing on the RFO, the court granted the motion and ordered Petitioner to pay the costs of the 3111 Evaluation subject to reallocation. The parties presented the court with a stipulation appointing Deborah Barnes as the child custody evaluator. A review hearing was set for July 28th for receipt of the 3111 report. The July 28th hearing was continued to the present date.

On November 3, 2022, Rebecca Esty-Burke appeared on behalf of all parties to request the matter be continued to allow more time for the completion of the 3111 evaluation.

To date, the court has not received neither the 3111 report, nor a status declaration from either party. The court continues the matter an additional 90 days for the completion of the 3111 evaluation.

All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After hearing.

**TENTATIVE RULING #3: THE COURT CONTINUES THE REVIEW HEARING FOR RECEIPT OF THE 3111 EVALUATION TO APRIL 27, 2023 AT 8:30 IN DEPARTMENT 5. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS  
ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**4. BRIAN LYNCH V. MICHELLE LYNCH**

**PFL20100667**

On November 2, 2022, Petitioner requested oral argument on the court's tentative ruling. On November 3, 2022, only Respondent appeared. As such, the court adopted its tentative ruling. Respondent requested Family Code Section 271 sanctions for having to appear for the hearing at Petitioner's request for oral argument, and Petitioner's subsequent failure to appear. The court set a hearing for the sanctions request for February 2, 2023. The court further ordered any Supplemental Declarations and Income and Expense Declarations to be filed at least 10 days prior to the next hearing.

Petitioner was served by mail with the Findings and Orders After Hearing on November 4, 2022.

Neither party has filed a Supplemental Declaration or an Income and Expense Declaration.

Parties are ordered to appear.

**TENTATIVE RULING #4: PARTIES ARE ORDERED TO APPEAR.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**5. E.F. V. J.N.**

**22FL0879**

Petitioner filed a Petition to Establish a Parental Relationship on September 14, 2022. Respondent was served on September 15, 2022.

Respondent filed a Response to the Petition to Establish a Parental Relationship and Request for Order (RFO) requesting child custody, parenting plan, and child support orders, on September 27, 2022. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on October 17, 2022 and a review hearing on December 8, 2022. Respondent has not filed an Income and Expense Declaration. There is no Proof of Service showing Petitioner was served with the Response or RFO.

Despite the lack of Proof of Service, Petitioner filed a Responsive Declaration on October 11, 2022. Respondent was served at the address provided to the court on October 11, 2022. Petitioner objects to Respondent's requested orders, and requests the status quo be maintained, with Petitioner having sole legal and physical custody of the minor and Respondent having reasonable visitation. Petitioner requests the court order guideline child support.

Only Petitioner appeared for the CCRC appointment on October 17, 2022. As such a single parent report was filed. A copy of the report was mailed to the parties on October 18, 2022.

On November 8, 2022, Petitioner filed a Request to Continue the December 8, 2022 hearing as her counsel was unavailable that date. The court granted the request on November 9, 2022 and continued the hearing to February 2, 2023.

Petitioner filed an Income and Expense Declaration on November 10, 2022. Respondent was served by mail on November 10, 2022.

Petitioner filed an updated Proof of Service on December 12, 2022. Respondent's mail had been returned from the address he provided the court. Petitioner re-served Respondent with all her filings on December 12, 2022, at the new address he provided to counsel.

Petitioner filed a Supplemental Declaration on January 18, 2023. Respondent was served by mail on the same day. Petitioner makes supplemental requests for custody and parenting time to remain as the parties have been practicing with Respondent to have up to five hours of parenting time during the daytime with seven days advance notice; overnights to be in Petitioner's discretion; and Respondent and Petitioner to share travel expense for parenting time equally. Petitioner reaffirms her prior requests that she have sole legal and physical custody of the minor, Respondent take a parenting class focused on young children, Respondent take a co-parenting class, and guideline child support orders.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

Respondent has not filed any Supplemental Declarations.

The court orders parties to appear for the hearing on the issues of paternity, child custody, parenting time, and child support.

**TENTATIVE RULING #5: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING ON THE ISSUES OF PATERNITY, CHILD CUSTODY, PARENTING TIME, AND CHILD SUPPORT.**



LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**6. JANELLE LEONARDO V. COLEMAN LEONARDO**

**PFL20190869**

On October 11, 2022, Petitioner filed a Request for Order (RFO) requesting the court change child custody and parenting plan orders, including a revised holiday schedule, as well as orders for mutually shared expenses for the minors. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on November 2, 2022 and a review hearing on January 5, 2023. Respondent was served by mail on October 12, 2022.

Parties attended CCRC but were unable to reach any agreements. A report with recommendations was filed on January 17, 2023. A copy of the report was mailed to the parties on January 17, 2023.

On November 21, 2022, parties Stipulated to continue the hearing from January 5, 2023 to February 2, 2023.

Respondent has not filed a Responsive Declaration.

The court has read and considered the filings as outlined above. The court finds the recommendations contained in the January 17, 2023 CCRC report to be in the best interest of the minors. The court adopts the recommendations with the following modification. The parties shall continue to have joint legal custody and the parties shall continue to exercise the current parenting plan. As to joint legal custody, the parties are to use the talkingparents.com or similar application to communicate about the minors, including participation in all mutually agreed upon extracurricular activities. If there is a legal custody decision to be made, the parties are to discuss it using the application. If either party fails to respond to the other within 48 hours of a request, the party making the request may have decision making authority. The court adopts the remainder of the provisions as set forth in the report.

The court notes Petitioner requested modification of the holiday schedule in her RFO. It does not appear that issue was addressed at CCRC. If there is still a request to modify the holiday schedule, parties may request oral argument to be rereferred to CCRC.

All prior orders not in conflict with this order remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #6: THE COURT FINDS THE RECOMMENDATIONS CONTAINED IN THE JANUARY 17, 2023 CCRC REPORT TO BE IN THE BEST INTEREST OF THE MINORS. THE COURT ADOPTS THE RECOMMENDATIONS WITH THE MODIFICATIONS. THE PARTIES SHALL CONTINUE TO HAVE JOINT LEGAL CUSTODY AND THE PARTIES SHALL CONTINUE TO EXERCISE THE CURRENT PARENTING PLAN. AS TO JOINT LEGAL CUSTODY, THE PARTIES ARE TO USE THE TALKINGPARENTS.COM OR SIMILAR APPLICATION TO COMMUNICATE ABOUT THE MINORS, INCLUDING PARTICIPATION IN ALL MUTUALLY AGREED UPON EXTRACURRICULAR ACTIVITIES.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**IF THERE IS A LEGAL CUSTODY DECISION TO BE MADE, THE PARTIES ARE TO DISCUSS IT USING THE APPLICATION. IF EITHER PARTY FAILS TO RESPOND TO THE OTHER WITHIN 48 HOURS OF A REQUEST, THE PARTY MAKING THE REQUEST MAY HAVE DECISION MAKING AUTHORITY. THE COURT ADOPTS THE REMAINDER OF THE PROVISIONS AS SET FORTH. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**7. JASON STEVENS V. ANGELA STEVENS**

**21FL0076**

Petitioner filed a Request for Order (RFO) on November 16, 2022, requesting the court waive receipt of Respondent's preliminary disclosures. Upon review of the court file there is no Proof of Service showing Respondent was served.

Respondent has not filed a Responsive Declaration.

The matter is dropped from calendar due to lack of proper service.

**TENTATIVE RULING #7: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.**

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LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**8. JASON HARDOUIN V. JENA NORELL**

**22FL0118**

Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC) alleging Respondent has violated the parties' Stipulation and Order of March 12, 2019 and the court's orders of October 1, 2021. Respondent was personally served on December 12, 2022.

Parties are ordered to appear for arraignment.

**TENTATIVE RULING #8: PARTIES ARE ORDERED TO APPEAR FOR ARRAIGNMENT.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**9. JESSICA CHOW V. CHRIS WANG**

**PFL20210060**

Respondent filed a Request for Order (RFO) and Declaration on November 10, 2022, requesting the court make orders as to the refinance or sale of the former marital home located at 576 Powers Drive in El Dorado, California as well as to compel production of documents. Respondent requests the court order Family Code section 271 sanctions against Petitioner. Petitioner was served by mail on November 18, 2022.

Respondent asserts in his Declaration that Petitioner has failed to comply with the terms of the parties' March 2, 2022 Stipulation. Respondent requests Petitioner pay him the equalizing payment with 10% interest accruing beginning May 1, 2022. Respondent requests the court order Petitioner to refinance the home and remove Respondent and Respondent's brother Andrew Wang from with title within 30 days of the court's order. Respondent requests Petitioner pay the equalizing payment with interest and the court authorize a Writ of Execution. Respondent requests that if the home cannot be refinanced, then the home be listed for sale, with Respondent to receive the proceeds first. Alternatively, Respondent requests the equalizing payment be made from Petitioner's portion of the proceeds of the sale of the rental property located at 181 Alexander Drive, San Jose, California. Respondent requests the court compel Petitioner to produce documents regarding retirement and investment accounts. Respondent requests Family Code section 271 sanctions for having to bring the instant motion.

Petitioner filed a Responsive Declaration on January 24, 2023. The court finds this to be late pursuant to Code of Civil Procedure 1005, which requires Responsive pleadings to be filed at least nine court days in advance of the hearing. Therefore, the court will not consider Petitioner's Responsive Declaration.

The court grants Respondent's request for Petitioner to remove Respondent and Respondent's brother from the title of the former marital home through a refinance. The refinance shall be completed within 60 days. If Petitioner is unable to complete the refinance within the 60 days, the home shall be listed for sale. Petitioner shall propose the names of three real estate agents on or before April 9, 2023. Respondent shall select one of the 3 on or before April 16, 2023. If the apartment property sells prior to April 2, 2023, then Respondent shall be paid the equalizing payment from Petitioner's proceeds of the sale. The court denies Respondent's request for interest on the equalizing payment. The court finds the request for interest exceeds the terms of the parties' stipulation. The parties are admonished to comply with the court's March 2, 2022 order. To the extent that any retirement documents have not already been produced, such documents are ordered to be produced no later than February 16, 2023. Parties are reminded all prior orders remain in full force and effect and failure to comply with the court's orders may result in a contempt action being brought. The court reserves on Respondent's request for 271 sanctions.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

All prior orders not in conflict with this order remain in full force and effect. Respondent shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #9: THE COURT GRANTS RESPONDENT'S REQUEST FOR PETITIONER TO REMOVE RESPONDENT AND RESPONDENT'S BROTHER FROM THE TITLE OF THE FORMER MARITAL HOME THROUGH A REFINANCE. THE REFINANCE SHALL BE COMPLETED WITHIN 60 DAYS. IF PETITIONER IS UNABLE TO COMPLETE THE REFINANCE WITHIN THE 60 DAYS, THE HOME SHALL BE LISTED FOR SALE. PETITIONER SHALL PROPOSE THE NAMES OF THREE REAL ESTATE AGENTS ON OR BEFORE APRIL 9, 2023. RESPONDENT SHALL SELECT ONE OF THE 3 ON OR BEFORE APRIL 16, 2023. IF THE APARTMENT PROPERTY SELLS PRIOR TO APRIL 2, 2023, THEN RESPONDENT SHALL BE PAID THE EQUALIZING PAYMENT FROM PETITIONER'S PROCEEDS OF THE SALE. THE COURT DENIES RESPONDENT'S REQUEST FOR INTEREST ON THE EQUALIZING PAYMENT. THE COURT FINDS THE REQUEST FOR INTEREST EXCEEDS THE TERMS OF THE PARTIES' STIPULATION. THE PARTIES ARE ADMONISHED TO COMPLY WITH THE COURT'S MARCH 2, 2022 ORDER. TO THE EXTENT THAT ANY RETIREMENT DOCUMENTS HAVE NOT ALREADY BEEN PRODUCED, SUCH DOCUMENTS ARE ORDERED TO BE PRODUCED NO LATER THAN FEBRUARY 16, 2023. PARTIES ARE REMINDED ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT AND FAILURE TO COMPLY WITH THE COURT'S ORDERS MAY RESULT IN A CONTEMPT ACTION BEING BROUGHT. THE COURT RESERVES ON RESPONDENT'S REQUEST FOR 271 SANCTIONS. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**10. JOSEPH R. CARLISLE V. GINA MAE CARLISLE**

**PFL20170803**

Petitioner moves for an annulment order and related orders thereto. His Request for Order (RFO) was filed on November 8, 2022 and served thereafter on November 14<sup>th</sup>. Petitioner filed another RFO on November 30<sup>th</sup> seeking to compel discovery responses.

On January 5, 2023, Respondent filed an RFO seeking the entry of a status only judgment. Her RFO is set to be heard on March 16<sup>th</sup>.

Annulment

Given the overlap in issues between the request for annulment and the request for status judgment, in the interest of judicial economy, the court continues this matter to join with the RFO currently scheduled to be heard on March 16, 2023.

Motion to Compel

According to Petitioner, Requests for Production of Documents were propounded on Respondent on September 14, 2022 thereby making responses due on or before October 19<sup>th</sup>. Having received no responses, Petitioner sent a meet and confer letter on November 18, 2022, requesting responses within 10 days of the date of the letter. No responses were received. Petitioner now seeks an order compelling responses to the requests, without objections, and sanctions in the amount of \$2,600.

Among the authorized forms of discovery is a request for the production of documents and other tangible things. "A party to whom a demand for inspection, copying, testing, or sampling has been directed *shall respond separately to each item or category of item* by any of the following:" (1) a statement that the party will comply, (2) a statement that the party lacks the ability to comply, or (3) an objection to the demand or request made. Cal. Civ. Pro. §2031.210 (emphasis added). Where a party fails to provide timely responses the party to whom the discovery was directed waives "any objection...including one based on privilege or on the protection of work product..." Cal Civ. Pro. §2031.300(a).

"The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process...pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct...If a monetary sanction is authorized by any provision of this title, the court *shall* impose that sanction unless it finds that one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Cal. Civ. Pro. 2023.030(a)(emphasis added) & 2023.020. Misuse of the discovery process includes, but is not limited to, failing to respond or submit to an authorized method of discovery. Cal. Civ. Pro. § 2023.010. Requests for production of documents are an authorized forms of discovery. Cal. Civ. Pro. § 2031.210. A party requesting sanctions for reasonable expenses that were incurred as a result of discovery abuse must already be liable for those expenses before the court can award the costs as sanctions. See *Tucker v. Pacific Bell Mobile Servs.*, 186 Cal. App. 4<sup>th</sup> 1548 (2010) (anticipated costs for future deposition could not be included in award of sanctions).

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

Here, Petitioner properly served the subject discovery requests and attempted to meet and confer when responses were not timely produced. Respondent has not provided substantial justification, much less any justification at all, for her failure to comply with the Civil Discovery Act. As such, Respondent is ordered to provide full and complete responses, without objections, to Requests for Production of Documents, no later than February 16, 2023.

Regarding the request for monetary sanctions, it appears Petitioner is pro per. He lists an hourly rate in his moving papers but it does not appear that he actually incurred attorney's fees. Further, he does not indicate if, or how much, he incurred for any filing fees. In awarding discovery sanctions, the court may only award those amounts that have actually been incurred. Accordingly, Petitioner's request for monetary sanctions is denied.

**TENTATIVE RULING #10: THE HEARING ON THE RFO FOR ANNULMENT IS CONTINUED TO MARCH 16, 2023 AT 8:30 A.M. IN DEPARTMENT 5. PETITIONER'S MOTION TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS IS GRANTED. RESPONDENT IS ORDERED TO PROVIDE FULL AND COMPLETE RESPONSES, WITHOUT OBJECTIONS, TO REQUESTS FOR PRODUCTION OF DOCUMENTS SET ONE NO LATER THAN FEBRUARY 16, 2023. PETITIONER'S REQUEST FOR MONETARY SANCTIONS IS DENIED.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**



LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**11. KARA HERSOM V. JESSE TABORSKY**

**PFL20190244**

Petitioner filed a Request for Order (RFO) on August 16, 2022 requesting the court modify the child custody and parenting time orders as well as the child support orders. Petitioner also requested attorney's fees and an order for Respondent to provide her the healthcare information and insurance cards. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on September 14, 2022 and a review hearing on November 3, 2022. Petitioner filed an Income and Expense Declaration the same day. Respondent was personally served on September 2, 2022.

Petitioner asserts Respondent has had no contact with the minor since October 2020. Petitioner is requesting the court grant her sole legal and physical custody of the minor. Petitioner requests guideline child support based on a 0% timeshare. Additionally, Petitioner is requesting Respondent pay one-half of work-related childcare and one-half of extracurricular activities. Petitioner also requests Respondent pay her attorney fees pursuant to Family Code Section 2030. In her Declaration for Attorney's Fees, Petitioner states there is no child support order in this case.

Only Petitioner appeared for the CCRC appointment on September 14, 2022. As such, a single parent report with no agreements or recommendations was filed. A copy of the report was mailed to the parties on September 20, 2022.

Respondent filed an Income and Expense Declaration on October 24, 2022. Respondent filed a Responsive Declaration on November 2, 2022. Petitioner was served with the Responsive Declaration and Income and Expense Declaration by mail on November 2, 2022. Respondent objects to Petitioner's requested modifications.

On November 3, 2022, the parties appeared for the hearing a presented oral argument. The court rereferred the parties to CCRC for an appointment on November 21, 2022 and a further review hearing on February 2, 2023. The court found the Department of Child Support Services (DCSS) is a party to the case and directed Petitioner to provide notice of the request to modify child support.

On November 21, 2022, only Respondent appeared for the CCRC appointment, despite counsel for Petitioner being present at the hearing and receiving the referral to CCRC. A single parent report was filed with the court on December 14, 2022. A copy of the report was mailed to the parties on December 21, 2022.

Upon review of the court file, there is no Proof of Service showing DCSS was served with the RFO. Further Petitioner failed to appear at the CCRC session that was scheduled on her RFO. The court drops the matter from calendar due to lack of proper service.

All prior orders remain in full force and effect.

**TENTATIVE RULING #11: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE AND PETITIONER'S FAILURE TO APPEAR AT THE CCRC APPOINTMENT SET ON HER REQUEST FOR ORDER. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247(1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.13.08; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**12. KIMBERLY CLINE V. MICHAEL CLINE**

**PFL20120356**

Minor's Counsel filed a Request for Order (RFO) on November 16, 2022, requesting the court modify child custody, parenting time, a move-away request, and revoke the order for a 730 evaluation. Petitioner and Respondent were served by mail on November 22, 2022. Minor's Counsel asserts the minor wishes to relocate from Boston to California, as he has more friends and family in California. Minor's Counsel also requests the court vacate the order for a 730 evaluation as the minor finds the evaluation to be unduly stressful.

Petitioner filed a Responsive Declaration and Memorandum of Points and Authorities on January 18, 2023. Respondent and Minor's Counsel were served electronically on January 18, 2023. Petitioner objects to Minor's Counsel's requests. Petitioner requests the court maintain the order for the 730 evaluation with the added issue of the move-away request to be included. Petitioner requests a full evidentiary hearing on the move-away request.

Minor's Counsel filed a Statement of Issues and Contentions and Requested Orders on January 24, 2023. The court finds pursuant to Code of Civil Procedure Section 1005, that Statements of Issues and Contentions must be filed 10 calendar days prior to the hearing. Therefore, this filing is late and the court will not consider it. Petitioner and Respondent were served electronically on January 23, 2023.

Respondent filed a Responsive Declaration on January 26, 2023. The court finds this to be a late filed. Pursuant to Code of Civil Procedure section 1005, a Responsive Declaration is to be filed nine court days, not including the day of the hearing, prior to the hearing. Upon review of the court file, there is no Proof of Service showing the Responsive Declaration was served on Petitioner or Minor's Counsel. The court has not considered this document as it was late filed and not properly served.

Petitioner filed a Supplemental Declaration on January 26, 2023. The court deems this to be a Reply declaration. However, the court finds this filing was also untimely, as pursuant to Code of Civil Procedure section 1005, a Reply is to be filed at least five court days prior to the hearing, not counting the date of the hearing. Parties were served electronically on January 25, 2023. The court has not considered this document due to the late filing.

The court has read and considered the filings as set forth above. The court denies Minor's Counsel's request to vacate the 730 evaluation. The court grants Petitioner's request to modify the scope of the evaluation to include the potential relation of the minor to California.

The court orders parties to appear to select Mandatory Settlement Conference and Trial dates on the move-away request.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

All prior orders not in conflict with this order remain in full force and effect. Minor's Counsel shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #12: THE COURT ORDERS PARTIES TO APPEAR TO SELECT MANDATORY SETTLEMENT CONFERENCE AND TRIAL DATES ON THE MOVE-AWAY REQUEST.**

**THE COURT DENIES MINOR'S COUNSEL'S REQUEST TO VACATE THE ORDER FOR A 730 EVALUATION. THE COURT GRANTS PETITIONER'S REQUEST TO MODIFY THE SCOPE OF THE EVALUATION TO INCLUDE THE POTENTIAL RELATION OF THE MINOR TO CALIFORNIA. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. MINOR'S COUNSEL SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247(1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.13.08; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**13. KYLE WEINBERGER V. MESJA WEINBERGER**

**22FL0921**

Respondent filed a Request for Order (RFO) on November 15, 2022, requesting the court make orders as to child and spousal support as well as Family Code Section 2030 attorney fees. Respondent concurrently filed an Income and Expense Declaration. Petitioner was served by mail on November 15, 2022. Respondent requests the court order guideline child support, guideline temporary spousal support, as well as Family Code Section 2030 attorney fees in the amount of \$8,500.

Petitioner filed a Responsive Declaration on January 20, 2023. The court finds this to be less than nice court days prior to the hearing. Petitioner filed an Income and Expense Declaration on the same day. Respondent was personally served on January 20, 2023. In order to avoid further delay, and for judicial economy, the court finds good cause to consider Petitioner's Responsive Declaration and Income and Expense Declaration. However, the court admonishes counsel, future filings that are late filed may not be considered by the court.

Petitioner objects to Respondent's request for guideline child support, as requested by Respondent. Petitioner agrees to guideline child support, with credit for support amounts paid. Petitioner objects to temporary guideline spousal support. Petitioner asserts in his Declaration that Respondent has deliberately reduced her income. Petitioner objects to Respondent's request for attorney fees and request each party pay their own fees.

Respondent filed a Reply Declaration on January 25, 2023. Petitioner was served by overnight delivery on January 24, 2023. Respondent disputes several assertions by Petitioner in his Responsive Declaration. Respondent disputes Petitioner's assertions regarding his contributions to the minor's living expenses as well as the community expenses. Respondent states Petitioner spends one meal per week with the minor, equating to a timeshare of three percent, rather than 25 percent. Respondent also disputes the assertions regarding her income and ability to obtain employment with the state of California. Respondent disputes the assertions regarding her out of county travel. Respondent renews her request for guideline child and spousal support as well as attorney's fees and costs.

The court finds Respondent's average monthly income to be \$3,204 based on her November 15, 2022 filed Income and Expense Declaration. Respondent asserts in her Income and Expense Declaration the reason for the reduction in her income is due to the changes in the housing market in 2022. Respondent has additional income from rent of \$800 per month as well as \$25 year to date profit for boarding horses. Respondent states she has a deduction of \$546 per month for property taxes.

Petitioner has an average monthly income of \$17,534, based on the January 20, 2023 filed Income and Expense Declaration. Petitioner has a deduction of \$1,581 per month for his

## LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

401(k). Petitioner states in his Declaration he will be eliminating his contribution to his 401(k). Petitioner also has health insurance deductions of \$2,209 per month.

### Child Support

The court notes there are no current child custody or parenting plan orders. Respondent asserts Petitioner has an 8% timeshare with the minor. Petitioner asserts he has a 25% timeshare with the minor. The court finds based on the evidence presented in the parties' declarations the 3% timeshare accurately reflects the current custody arrangements. Using the 8% timeshare and a head of household filing status for Respondent and married filing separately for Petitioner, the court finds guideline child support to be \$1,846 per month. (See DissoMaster) The court orders Petitioner to pay Respondent \$1,846 per month as and for guideline child support. This order is effective December 1, 2022, with payment due on the 1<sup>st</sup> of each month until further court order or termination by operation of law.

The court finds this results in an arrears balance of \$5,538, for December through February inclusive. The court finds it needs additional evidence to determine, what if any amount the arrears should be offset by. The court reserves jurisdiction on the arrears determination.

### Temporary Spousal Support

Utilizing the above figures, the court finds temporary guideline spousal support to be \$1,890 per month (See DissoMaster). The court orders Petitioner to pay Respondent \$1,890 per month as and for temporary guideline spousal support effective December 1, 2022, and payable the first of each month until further court order or termination by operation of law.

The court finds this results in an arrears balance of \$5,670 for December through February inclusive. The court finds it needs additional evidence to determine, what if any amount the arrears should be offset by. The court reserves jurisdiction on the arrears determination.

### Attorney Fees and Costs

The public policy of Family Code Section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." (IRMO Keech (1999) 75 Cal. App. 4th 860, 866; Kevin Q. vs. Lauren W. (2011) 195 Cal. App. 4th 633)) This assures each party has access to legal representation to preserve each party's rights. It "is not the redistribution of money from the greater income party to the lesser income party," but rather "parity". (Alan S. v Superior Court (2009) 172 Cal. App. 4th 238,251.) The award must be just and reasonable; in taking into consideration what is just and reasonable, the court can take into consideration the need for

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately. In addition to the parties' financial resources, the court may consider the parties' trial tactics. (IRMO Falcone & Fyke (2012) 203 Cal. App. 4th 964; 975). The court must consider the impact of the fee award on the payor taking into account any orders for support. (IRMO Keech, supra, at 860).

The court finds that after support, the disparity between the parties is reduced. The court further finds that after the payment of support, Petitioner's ability to pay for both his counsel and Respondent's counsel is lowered. The court, however, finds Petitioner does have the ability to pay. The court orders Petitioner to pay \$3,500 for Respondent's attorney fees and costs. Petitioner may make monthly payments of \$350 per month for attorney's fees, starting February 15, 2023 and due on the 15<sup>th</sup> of each month until paid in full. If there is any missed payment the full amount is due with legal interest.

Parties are ordered to appear to select Mandatory Settlement and Trial dates on the issue of the arrears calculations.

All prior orders not in conflict with this order remain in full force and effect. Respondent shall prepare and file the findings and Orders After Hearing.

**TENTATIVE RULING #13: THE COURT FINDS GUIDELINE CHILD SUPPORT TO BE \$1,846 PER MONTH. (SEE DISSOMASTER) THE COURT ORDERS PETITIONER TO PAY RESPONDENT \$1,846 PER MONTH AS AND FOR GUIDELINE CHILD SUPPORT. THIS ORDER IS EFFECTIVE DECEMBER 1, 2022, WITH PAYMENT DUE ON THE 1<sup>ST</sup> OF EACH MONTH UNTIL FURTHER COURT ORDER OR TERMINATION BY OPERATION OF LAW. HE COURT FINDS THIS RESULTS IN AN ARREARS BALANCE OF \$5,538, FOR DECEMBER THROUGH FEBRUARY INCLUSIVE. THE COURT FINDS IT NEEDS ADDITIONAL EVIDENCE TO DETERMINE, WHAT IF ANY AMOUNT THE ARREARS SHOULD BE OFFSET BY. THE COURT RESERVES JURISDICTION ON THE ARREARS DETERMINATION. THE COURT FINDS TEMPORARY GUIDELINE SPOUSAL SUPPORT TO BE \$1,890 PER MONTH (SEE DISSOMASTER). THE COURT ORDERS PETITIONER TO PAY RESPONDENT \$1,890 PER MONTH AS AND FOR TEMPORARY GUIDELINE SPOUSAL SUPPORT EFFECTIVE DECEMBER 1, 2022, AND PAYABLE THE FIRST OF EACH MONTH UNTIL FURTHER COURT ORDER OR TERMINATION BY OPERATION OF LAW. THE COURT ORDERS PETITIONER TO PAY \$3,500 FOR RESPONDENT'S ATTORNEY FEES AND COSTS. PETITIONER MAY MAKE MONTHLY PAYMENTS OF \$350 PER MONTH FOR ATTORNEY'S FEES, STARTING FEBRUARY 15, 2023 AND DUE ON THE 15<sup>TH</sup> OF EACH MONTH UNTIL PAID IN FULL. IF THERE IS ANY MISSED PAYMENT THE FULL AMOUNT IS DUE WITH LEGAL INTEREST. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**PARTIES ARE ORDERED TO APPEAR TO SELECT MANDATORY SETTLEMENT AND TRIAL DATES ON THE ISSUE OF THE ARREARS CALCULATIONS.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247(1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.13.08; LOCAL RULE 8.05.07.**



ATTORNEY (NAME AND ADDRESS): <b>EDC Court</b>  <b>California</b>  ATTORNEY FOR: <b>Father</b>	TELEPHONE NO:  Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
<b>DISSOMASTER REPORT</b> 2023, Monthly	CASE NUMBER:

Input Data	Father	Mother	Guideline (2023)	Cash Flow Analysis	Father	Mother
Number of children	0	1	<b>Nets (adjusted)</b>	<b>Guideline</b>		
% time with Second Parent	3%	0%	Father	10,838	Payment (cost)/benefit	(3,560) 3,715
Filing status	MFS->	HH/MLA	Mother	3,804	Net spendable income	7,103 7,540
# Federal exemptions	1*	2*	Total	14,642	% combined spendable	48.5% 51.5%
Wages + salary	15,891	3,204	<b>Support (Nondeductible)</b>	Total taxes	4,667	200
401(k) employee contrib	1,581	0	CS Payor	Father # WHA	0	8
Self-employment income	0	0	Presumed	1,846	Net wage paycheck/mo	11,297 2,911
Other taxable income	0	0	Basic CS	1,846	Comb. net spendable	14,642
Short-term cap. gains	0	0	Add-ons	0	<b>Proposed</b>	
Long-term cap. gains	0	0	Presumed Per Kid		Payment (cost)/benefit	(3,721) 3,864
Other gains (and losses)	0	0	Child 1	1,846	Net spendable income	7,145 7,505
Ordinary dividends	0	0	SS Payor	Father	NSI change from gdl	42 (35)
Tax. interest received	0	0	El Dorado	1,890	% combined spendable	48.8% 51.2%
Social Security received	0	0	Total	3,736	% of saving over gdl	572.9% -472.9%
Unemployment compensation	0	0	<b>Proposed, tactic 9</b>	Total taxes	4,450	409
Operating losses	0	0	CS Payor	Father # WHA	0	4
Ca. operating loss adj.	0	0	Presumed	1,882	Net wage paycheck/mo	11,297 2,764
Roy, partnerships, S corp, trusts	0	0	Basic CS	1,882	Comb. net spendable	14,650
Rental income	0	0	Add-ons	0	Percent change	0.1%
Misc ordinary tax. inc.	0	0	Presumed Per Kid		<b>Default Case Settings</b>	
Other nontaxable income	1,643	800	Child 1	1,882		
New-spouse income	0	0	SS Payor	Father		
Adj. to income (ATI)	0	0	El Dorado	2,028		
SS paid other marriage	0	0	Total	3,910		
Ptr Support Pd. other P'ships	0	0	Savings	7		
CS paid other relationship	0	0	Total releases to Father	1		
Health ins(Pd by party)	2,029	0				
Qual. Bus. Inc. Ded.	0	0				
Itemized deductions	0	546				
Other medical expenses	0	0				
Property tax expenses	0	546				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Cr. for Pd. Sick and Fam. L.	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF, SSI and CS received	0	0				

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**14. MALIA GREEN V. BRYCE DANIELS**

**22FL0712**

Respondent filed a Request for Order (RFO) on November 10, 2022, requesting the court set aside the Domestic Violence Restraining Order (DVRO) granted on October 21, 2022. Petitioner, not her counsel, was served by mail on December 13, 2022. Respondent is requesting the court set aside the default as he was mistaken as to the time of the hearing and believed he had counsel to represent him for the hearing. Respondent states he believed the hearing was set for 1:00 pm rather than 8:30. Respondent asserts in his declaration that he had prepared a Responsive Declaration, a DV-120, but did not file it, as he believed his counsel would do so on his behalf.

Petitioner has not filed a Responsive Declaration.

The court finds Petitioner is represented by counsel in this matter. Respondent served Petitioner rather than her counsel. California Rule of Court 1.21 requires service on counsel of record. Therefore, the court finds service was not proper and drops the matter from calendar.

**TENTATIVE RULING #14: CALIFORNIA RULE OF COURT 1.21 REQUIRES SERVICE ON COUNSEL OF RECORD. THE COURT FINDS SERVICE WAS NOT PROPER, AS RESPONDENT SERVED PETITIONER AND NOT HER COUNSEL. THE COURT DROPS THE MATTER FROM CALENDAR.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247(1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.13.08; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**16. MICHELLE KLINKER V. DAVID KLINKER**

**22FL1070**

Petitioner filed a Request for Order (RFO) on November 7, 2022, requesting the court makes orders as to property control, spousal support, attorney fees, as well as an accounting of all funds withdrawn from the parties' joint account, a business valuation on the roofing business including a Business Income Available for Support (BIAS) analysis, return of Petitioner's separate property, proof of beneficiaries on retirement, life insurance, and if Petitioner has been removed by Respondent, restoration within 72 hours, and an order restricting Respondent from modifying the mortgage or failing to make mortgage payments in violation of the Automatic Temporary Restraining Orders (ATROs). Petitioner concurrently filed an Income and Expense Declaration. Respondent was personally served on November 12, 2022.

Petitioner is requesting the court order guideline temporary spousal support, with a reservation for retroactive modification. Petitioner asserts a BIAS is necessary and upon completion of the valuation of the business, the amount of income available for support may be higher. Petitioner states it is appropriate for the business valuation to be ordered and requests the court order Respondent to front the costs of the expert. The parties own a rental property which Petitioner is requesting the court order she have management and control over to ensure a fair and equal split of income or share in the expenses between the parties. Petitioner is requesting the return of personal property items, including jewelry and personal effects, such as clothing. Petitioner is requesting a date and time certain to allow her the opportunity to retrieve these items from the former marital residence, without Respondent being present. Petitioner requests the court admonish Respondent about the applicability of the ATROs. Petitioner requests the court order Respondent to identify the date, time and amount withdrawn from the parties' joint account for the prior 24 months, and to identify the account where those funds are now held, and if those funds have been spent, to provide an accounting. Petitioner requests the court order Family Code Section 2030 attorney fees in the amount of \$10,000. Petitioner requests the court order Respondent to provide proof of Petitioner being the named beneficiary on all retirement plans, life insurance, and medical insurance. If Petitioner has been removed, she requests she be reinstated within 72 hours, and provide proof of reinstatement.

Respondent filed a Responsive Declaration and Income and Expense Declaration on January 18, 2023. Petitioner was served by mail on January 18, 2023. Respondent objects to the request for property control, the request for Family Code Section 2030 attorney fees, and the request for guideline temporary spousal support. Respondent asserts he has not been served with an Income and Expense Declaration from Petitioner or a Declaration from Petitioner's Counsel. Respondent asserts Petitioner has sufficient resources to pay for her

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

attorney. Respondent asserts he has maintained all community debts and expenses for the prior 18 months.

Spousal Support

The court finds Petitioner's average monthly income is \$1,143 based on her November 7, 2022 filed Income and Expense Declaration. Petitioner has a monthly deduction of \$171 for Medicare.

Based on Respondent's January 18, 2023 filed Income and Expense Declaration, the court finds Respondent has an average monthly income of \$3,500. Respondent has a monthly deduction of \$435 for property taxes and \$20 for medical premiums.

Utilizing the above figures and a tax status of married filing jointly, the court finds guideline temporary spousal support to be \$732 payable from Respondent to Petitioner. (See DissoMaster) The court orders Respondent to pay Petitioner \$732 per month as and for temporary guideline spousal support effective December 1, 2022, and payable the first of each month until further court order, or termination by operation of law.

The court finds this order results in an arrears balance of \$2,196. The court orders Respondent to pay Petitioner \$244 per month as and for arrears effective February 15, 2023 and due on the 15<sup>th</sup> of each month thereafter until paid in full (approximately 9 months). If there is any missed payment, the full amount is due with legal interest.

The court reserves jurisdiction to retroactively modify temporary spousal support to December 1, 2022.

Business Valuation

The court grants Petitioner's request for a business valuation to be conducted, including the BIAS evaluation. The court orders Respondent to pay the costs of the evaluation, subject to reallocation. The court reserves jurisdiction to reallocate the costs of the business evaluation.

Property Control

Inherent in the court's authority to ensure that community assets are divided equally, the court holds broad discretion to "...make any orders [it] considers necessary.." to ensure the equal division of the community estate. Fam. Code § 2553. Prior to a final determination on the issue of property division the parties have a fiduciary duty to one another to act in the highest good faith and fair dealing with one another and neither shall take advantage of the other. Fam. Code § 721(b). Inherent in the fiduciary duty is each party's duty to account for community assets during the period between separation and final distribution. In re Marriage of Prentis-Margulis & Margulis, 198 Cal. App. 4<sup>th</sup> 1252, 1280 (2011). Where the community

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

owns properties that are producing rental income, each spouse is entitled to his/her share of the rental income. Boyd v. Oser, 23 Cal. 2d 613 (1944); *See also* In Re Marriage of Mohler, 47 Cal. App. 5<sup>th</sup> 788, 795 (2020).

Petitioner's declaration enumerates a multitude of ways in which Respondent has violated his fiduciary duty to her. The court is concerned with Respondent's actions and in light of the circumstances it appears necessary to ensure the proper division of the rental income, to award Petitioner with the control over the rental property located at 2687 Country Club Drive in Cameron Park, until a final determination on the issue of property division can be made. In doing so, Petitioner is to be the contact person for the management company, collect rents, ensure the payment of mortgage, insurance, and taxes on the property and approve reasonable expenses. Petitioner is to keep a full accounting of rental income and expenses for the property. Receipts, invoices, and other documentation to evidence any such payments are to be maintained by Petitioner. Upon request, Petitioner is to provide Respondent full and complete copies of all documentation regarding rental income and expenses. All payments for expenses on the rental property are to be made from the rental income. If payments are in excess of the rental income, the parties are to split the payments equally. Any amounts in excess of the payments are to be split by the parties equally.

Personal Property

The court grants Petitioner's request to retrieve personal property items from the former marital home. Parties are to meet and confer to select a date for Petitioner to retrieve her personal property. The items shall be retrieved on or before February 25, 2023.

ATROs

The court notes that a Petition for Dissolution was filed on November 7, 2022 and a Proof of Service of Summons was filed on August 11, 2020 showing service upon Respondent on November 12, 2022. Therefore, the court finds, and reminds the parties, that the ATROs are effective and currently enforceable against the parties. However, insufficient evidence has been provided to the court of any violation and the court denies the request to make any orders regarding the ATROs.

Respondent is directed to provide counsel for Petitioner proof that Petitioner remains the listed beneficiary on all retirement accounts, life insurance policies, and medical insurance. If Petitioner has been removed as the beneficiary of any such policies, Respondent is to reinstate Petitioner as the beneficiary within 72 hours and provide proof of reinstatement to the court and counsel no later than February 9, 2023.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

The court orders Respondent to identify the date, time and amount withdrawn from the parties' joint account for the prior 24 months, and to identify the account where those funds are now held, and if those funds have been spent, to provide an accounting of the use of those funds. Respondent shall provide the accounting on or before February 16, 2023.

Family Code Section 2030 Attorney's Fees

The public policy of Family Code Section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." (IRMO Keech (1999) 75 Cal. App. 4th 860, 866; Kevin Q. vs. Lauren W. (2011) 195 Cal. App. 4th 633)) This assures each party has access to legal representation to preserve each party's rights. It "is not the redistribution of money from the greater income party to the lesser income party," but rather "parity". (Alan S. v Superior Court (2009) 172 Cal. App. 4th 238,251.) The award must be just and reasonable; in taking into consideration what is just and reasonable, the court can take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately. In addition to the parties' financial resources, the court may consider the parties' trial tactics. (IRMO Falcone & Fyke (2012) 203 Cal. App. 4th 964; 975). The court must consider the impact of the fee award on the payor taking into account any orders for support. (IRMO Keech, supra, at 860).

Petitioner has failed to file the FL-319 and FL-158. Therefore, the court finds the request for attorney fees is not properly before the court. The court denies Petitioner's request for attorney fees.

Petitioner shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #16: THE COURT FINDS GUIDELINE TEMPORARY SPOUSAL SUPPORT TO BE \$732 PAYABLE FROM RESPONDENT TO PETITIONER. (SEE DISSOMASTER) THE COURT ORDERS RESPONDENT TO PAY PETITIONER \$732 PER MONTH AS AND FOR TEMPORARY GUIDELINE SPOUSAL SUPPORT EFFECTIVE DECEMBER 1, 2022, AND PAYABLE THE FIRST OF EACH MONTH UNTIL FURTHER COURT ORDER, OR TERMINATION BY OPERATION OF LAW. THE COURT FINDS THIS ORDER RESULTS IN AN ARREARS BALANCE OF \$2,196. THE COURT ORDERS RESPONDENT TO PAY PETITIONER \$244 PER MONTH AS AND FOR ARREARS EFFECTIVE FEBRUARY 15, 2023 AND DUE ON THE 15<sup>TH</sup> OF EACH MONTH THEREAFTER UNTIL PAID IN FULL (APPROXIMATELY 9 MONTHS). IF THERE IS ANY MISSED PAYMENT, THE FULL AMOUNT IS DUE WITH LEGAL INTEREST. THE COURT RESERVES JURISDICTION TO RETROACTIVELY MODIFY TEMPORARY SPOUSAL SUPPORT TO DECEMBER 1, 2022. THE COURT GRANTS PETITIONER'S REQUEST FOR A BUSINESS VALUATION TO BE CONDUCTED, INCLUDING THE BIAS EVALUATION. THE COURT ORDERS RESPONDENT TO PAY THE COSTS OF THE EVALUATION, SUBJECT TO REALLOCATION.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

THE COURT RESERVES JURISDICTION TO REALLOCATE THE COSTS OF THE BUSINESS EVALUATION. THE COURT FINDS, AND REMINDS THE PARTIES, THAT THE ATROS ARE EFFECTIVE AND CURRENTLY ENFORCEABLE AGAINST THE PARTIES. HOWEVER, INSUFFICIENT EVIDENCE HAS BEEN PROVIDED TO THE COURT OF ANY VIOLATION AND THE COURT DENIES THE REQUEST TO MAKE ANY ORDERS REGARDING THE ATROS. RESPONDENT IS DIRECTED TO PROVIDE COUNSEL FOR PETITIONER PROOF THAT PETITIONER REMAINS THE LISTED BENEFICIARY ON ALL RETIREMENT ACCOUNTS, LIFE INSURANCE POLICIES, AND MEDICAL INSURANCE. IF PETITIONER HAS BEEN REMOVED AS THE BENEFICIARY OF ANY SUCH POLICIES, RESPONDENT IS TO REINSTATE PETITIONER AS THE BENEFICIARY WITHIN 72 HOURS AND PROVIDE PROOF OF REINSTATEMENT TO THE COURT AND COUNSEL NO LATER THAN FEBRUARY 9, 2023. THE COURT DENIES PETITIONER'S REQUEST FOR ATTORNEY FEES. THE COURT ORDERS RESPONDENT TO IDENTIFY THE DATE, TIME AND AMOUNT WITHDRAWN FROM THE PARTIES' JOINT ACCOUNT FOR THE PRIOR 24 MONTHS, AND TO IDENTIFY THE ACCOUNT WHERE THOSE FUNDS ARE NOW HELD, AND IF THOSE FUNDS HAVE BEEN SPENT, TO PROVIDE AN ACCOUNTING OF THE USE OF THOSE FUNDS. RESPONDENT SHALL PROVIDE THE ACCOUNTING ON OR BEFORE FEBRUARY 16, 2023. THE COURT DENIES PETITIONER'S REQUEST FOR ATTORNEY FEES. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247(1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.13.08; LOCAL RULE 8.05.07.

ATTORNEY (NAME AND ADDRESS): <b>EDC Court</b>  <b>California</b>  ATTORNEY FOR: <b>Resp.</b>	TELEPHONE NO:  Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
<b>DISSOMASTER REPORT</b> 2023, Monthly	CASE NUMBER:

Input Data	Resp.	Pet.	Guideline (2023)	Cash Flow Analysis	Resp.	Pet.
Number of children	0	0	<b>Nets (adjusted)</b>	<b>Guideline</b>		
% time with Second Parent	0%	0%	Resp.	2,958 Payment (cost)/benefit	(732)	732
Filing status	MFJ->	<-MFJ	Pet.	902 Net spendable income	2,226	1,634
# Federal exemptions	1*	1*	Total	3,860 % combined spendable	57.7%	42.3%
Wages + salary	3,500	0	<b>Support (Nondeductible)</b>	Total taxes	522	70
401(k) employee contrib	0	0	SS Payor	Resp. # WHA	1	0
Self-employment income	0	0	El Dorado	732 Net wage paycheck/mo	2,948	0
Other taxable income	0	1,143	Total	732 Comb. net spendable	3,860	
Short-term cap. gains	0	0	<b>Proposed, tactic 9</b>	<b>Proposed</b>		
Long-term cap. gains	0	0	SS Payor	Resp. Payment (cost)/benefit	(732)	732
Other gains (and losses)	0	0	El Dorado	732 Net spendable income	2,226	1,634
Ordinary dividends	0	0	Total	732 NSI change from gdl	0	0
Tax. interest received	0	0	Savings	0 % combined spendable	57.7%	42.3%
Social Security received	0	0	No releases	% of saving over gdl	0%	0%
Unemployment compensation	0	0		Total taxes	522	70
Operating losses	0	0		# WHA	1	0
Ca. operating loss adj.	0	0		Net wage paycheck/mo	2,948	0
Roy, partnerships, S corp, trusts	0	0		Comb. net spendable	3,860	
Rental income	0	0		Percent change	0.0%	
Misc ordinary tax. inc.	0	1,143		<b>Default Case Settings</b>		
Other nontaxable income	0	0				
New-spouse income	0	0				
Adj. to income (ATI)	0	0				
SS paid other marriage	0	0				
Ptr Support Pd. other P'ships	0	0				
CS paid other relationship	0	0				
Health ins(Pd by party)	20	171				
Qual. Bus. Inc. Ded.	0	0				
Itemized deductions	435	0				
Other medical expenses	0	0				
Property tax expenses	435	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
Required union dues	0	0				
Cr. for Pd. Sick and Fam. L.	0	0				
Mandatory retirement	0	0				
Hardship deduction	0*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF,SSI and CS received	0	0				



LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**17. NANNETTE HAMPTON BEAT V. MATTHEW BEAT**

**PFL20170345**

Respondent filed a Request for Order (RFO) on November 8, 2022 requesting the court change the current spousal support orders as well as attorney's fees, arrears, and an equalizing payment. Petitioner was served by mail on November 8, 2022. Respondent requests the court change and/or end the current spousal support order issued on April 12, 2022. Respondent also requests the court reduce the amount of attorney's fees, arrears, and equalization being paid monthly. Petitioner was served by mail through counsel on November 8, 2022.

Petitioner filed a Responsive Declaration on November 21, 2022. Respondent was served by mail on November 21, 2022. Petitioner objects to Respondent's requests to modify permanent spousal support, as Respondent has failed to state a material change in circumstances to justify such a motion. Petitioner asserts Respondent has misrepresented the facts to the court. Petitioner states Respondent has failed to pay the sanctions ordered on April 12, 2022. Petitioner states Respondent has misrepresented the amount of spousal support ordered in his moving papers, as well as misrepresented his income. Petitioner requests the court award her \$2,000 in Family Code Section 2030 fees for having to respond to the RFO.

The court denies Respondent's request to modify permanent spousal support. Respondent has failed to set forth in his pleadings any material change in circumstances, which is a threshold issue for the court to consider any modification of permanent spousal support. The court denies Respondent's request to modify the current wage garnishment orders. Respondent has failed to set forth any grounds on which the court could modify those orders.

The public policy of Family Code Section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." (IRMO Keech (1999) 75 Cal. App. 4th 860, 866; Kevin Q. vs. Lauren W. (2011) 195 Cal. App. 4th 633)) This assures each party has access to legal representation to preserve each party's rights. It "is not the redistribution of money from the greater income party to the lesser income party," but rather "parity". (Alan S. v Superior Court (2009) 172 Cal. App. 4th 238,251.) The award must be just and reasonable; in taking into consideration what is just and reasonable, the court can take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately. In addition to the parties' financial resources, the court may consider the parties' trial tactics. (IRMO Falcone & Fyke (2012) 203 Cal. App. 4th 964; 975). The court must consider the impact of the fee award on the payor taking into account any orders for support. (IRMO Keech, supra, at 860).

The court finds that even with the support payment, the disparity of income between the parties remains significant. The court further finds that Respondent has sufficient resources

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

to pay Petitioner's attorney fees. Further, the court has taken into consideration Respondent's trial tactics and resistance to paying the previously ordered sanctions and attorney's fees. The court grants Petitioner's request for Family Code Section 2030 attorney fees in the amount of \$1000. Respondent shall make payments of \$100 per month to counsel starting March 5, 2023 and due on the 5<sup>th</sup> of each month thereafter. Any missed payment will result in the full balance being due with legal interest.

Petitioner filed an RFO on November 21, 2022, requesting the court enter judgment on reserved issues, amend the Findings and Orders After Hearing (FOAH) from April 12, 2022, grant Family Code Section 2030 attorney's fees, and Family Code Section 271 Sanctions. Petitioner concurrently filed an Income and Expense Declaration. Upon review of the court file, there is no Proof of Service showing Petitioner's RFO was served on Respondent.

Respondent has not filed a Responsive Declaration to Petitioner's RFO.

The court drops Petitioner's ROF from calendar due to lack of proper service.

All prior orders not in conflict with this order remain in full force and effect. Respondent shall prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #17: THE COURT DENIES RESPONDENT'S REQUEST TO MODIFY PERMANENT SPOUSAL SUPPORT. RESPONDENT HAS FAILED TO SET FORTH IN HIS PLEADINGS ANY MATERIAL CHANGE IN CIRCUMSTANCES, WHICH IS A THRESHOLD ISSUE FOR THE COURT TO CONSIDER ANY MODIFICATION OF PERMANENT SPOUSAL SUPPORT. THE COURT DENIES RESPONDENT'S REQUEST TO MODIFY THE CURRENT WAGE GARNISHMENT ORDERS. RESPONDENT HAS FAILED TO SET FORTH ANY GROUNDS ON WHICH THE COURT COULD MODIFY THOSE ORDERS. THE COURT GRANTS PETITIONER'S REQUEST FOR FAMILY CODE SECTION 2030 ATTORNEY FEES IN THE AMOUNT OF \$1000. RESPONDENT SHALL MAKE PAYMENTS OF \$100 PER MONTH TO COUNSEL STARTING MARCH 5, 2023 AND DUE ON THE 5<sup>TH</sup> OF EACH MONTH THEREAFTER. ANY MISSED PAYMENT WILL RESULT IN THE FULL BALANCE BEING DUE WITH LEGAL INTEREST. THE COURT DROPS PETITIONER'S ROF FROM CALENDAR DUE TO LACK OF PROPER SERVICE. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247(1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

February 2, 2023

8:30 a.m./1:30 p.m.

**MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS  
ISSUED. CAL. RULE CT. 3.13.08; LOCAL RULE 8.05.07.**