

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 8, 2022

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

**1. AMANDA CARRILLO V. MICHAEL CROSBY**

**PFL20140974**

On August 31, 2022, Petitioner filed a Request for Order (RFO) seeking sole legal and sole physical custody of the parties' minor child. The RFO and additional documents were served via U.S. Mail on September 13<sup>th</sup>. Petitioner argues that she should have sole legal and sole physical custody of the minor due to pending child endangerment charges. The parties were referred to Child Custody Recommending Counseling (CCRC) and the matter was set to be heard on December 8<sup>th</sup>. At the conclusion of the Domestic Violence Restraining Order trial on October 14, 2022, the court granted Petitioner sole physical and custody of the minor.

Respondent filed his Responsive Declaration to Request for Order on October 10<sup>th</sup>, however, there is no Proof of Service on file for this document, so the court has not read or considered it.

Respondent attended CCRC on October 19<sup>th</sup>. Petitioner did not attend. As such, a single parent report was prepared with no recommendations made by the CCRC counselor. According to the CCRC report, Respondent is seeking supervised visitation.

Petitioner did not appear at the CCRC report scheduled in response to the RFO filed by her. Further, Respondent stated at CCRC that he is seeking supervised visitation but he did not serve his Responsive Declaration so it cannot be considered.

Parties are ordered to appear for the hearing.

**TENTATIVE RULING #1: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**

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**2. APRIL LOCKHART V. DAVID MERCADO**

**PFL20200534**

On May 26, 2022, Respondent filed a Request for Order (RFO) requesting modification of the joint legal custody orders. The matter was set for hearing on August 4<sup>th</sup> but was continued to August 18<sup>th</sup>. Parties appeared for a hearing on Respondent's Order to Show Cause and Affidavit for Contempt (OSC) and RFO for Family Code section 271 sanctions on July 21, 2022. The court continued that hearing to the 18<sup>th</sup> of August as well.

Both parties appeared at Child Custody Recommending Counseling (CCRC) on June 28, 2022 and reached a full agreement which was adopted by the court at the August 18<sup>th</sup> hearing. At that time the court once again continued the hearing for the arraignment on the OSC re: Contempt, as the Public Defender's Office was appointed, but had not received notification of the appointment. The matter was continued to September 22<sup>nd</sup>.

The hearing on the OSC was held as scheduled. The parties once again reached a full agreement. Petitioner was ordered to prepare and file the Findings and Orders After Hearing containing a written copy of the agreement adopted by the parties. The court set a review hearing on the issue of parenting time for December 8, 2022.

Neither party has filed a supplemental declaration updating the court on the status of the parenting time arrangement. As it appears neither party has any issues to bring before the court at this time, all prior orders remain in full force and effect.

**TENTATIVE RULING #2: ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT.**

**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.**

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**3. ASHLEY MILLS V. COLE MILLS**

**PFL20200476**

On September 26, 2022, Petitioner filed an ex parte request for emergency orders, requesting modification of the custody and parenting plan orders. Petitioner concurrently filed an Income and Expense Declaration. On September 27, 2022, the court denied the ex parte request and ordered the parties to return to meet with Wendy Campbell, the private Child Custody Recommending Counselor (CCRC). On September 27, 2022, Petitioner filed a Request for Order (RFO) making the same requests as set forth in the ex parte application, specifically, child custody orders, parenting time orders, child support, attorney fees, and Family Code section 271 sanctions. Petitioner filed a Proof of Service on November 28, 2022, stating Respondent was served electronically on September 27, 2022.

Petitioner requests the court modify the current parenting plan, order guideline child support and spousal support. Petitioner also request Family Code section 2030 attorney fees as well as Family Code section 271 sanctions.

Respondent filed a RFO on November 7, 2022, requesting child support orders be modified to reflect the current custody time share and spousal support be ended, as well as assess for credits for Respondent's payments of Petitioner's household expenses for August 1, 2021, September 2, 2021, and October 1, 2021. This RFO has been set for a hearing on February 2, 2023. Respondent concurrently filed an Income and Expense Declaration. Petitioner was served by mail on November 8, 2022.

Respondent filed a Responsive Declaration on November 23, 2022. Petitioner was served by mail on November 22, 2022. Respondent requests the court review the updated report from Wendy Campbell and modify Respondent's parenting time. Respondent also requests the court set guideline child support to reflect the parties' earnings as well as the current timeshare. Respondent requests the court modify spousal support to be set consistent with each spouse's earnings. Respondent requests the court deny Petitioner's request for sanctions. Respondent makes his own request for sanctions of \$1,500. Last Respondent requests the court exercise its discretion to allow spousal and child support credits for Respondent's post-separation payments of Petitioner's household expenses.

On November 28, 2022, Petitioner filed a Reply Declaration as well as an updated Income and Expense Declaration. Respondent was served electronically on November 28, 2022. In her Reply, Petitioner requests the court receive and review the update report from Wendy Campbell and adjust Respondent's parenting time accordingly. Petitioner further requests the court modify guideline child support and spousal support consistent with the custody timeshare as well as each spouse's earnings. Petitioner requests the court grant her request for sanctions and deny Respondent's request for sanctions. Petitioner also requests the court deny Respondent's request for credits for post separation payments.

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Wendy Campbell filed an update to the 3111 report on December 1, 2022. Parties were served on November 23, 2022. The parties were able to reach agreements on the issues of communication and household structure to provide the minors consistency and continuity between the parties' homes. The report also contains recommendations as to the custody plan and the right of first refusal.

The court has read and considered the filings as set forth above and makes the following findings and orders:

The court finds the agreements and recommendations as set forth in the updated 3111 report to be in the best interest of the minors. The court adopts the agreements of the parties and recommendations as its orders.

As to the request to modify child and spousal support, the court finds the El Dorado County Department of Child Support Services (DCSS) is now a party to the case as a substituted payee. Therefore, the issues of child and spousal support must include DCSS. Neither party has served DCSS with their respective RFOs. The court, therefore, continues the requests to modify child and spousal support to the DCSS calendar, pursuant to Family Code section 4251. For judicial economy, the court is advancing Respondent's RFO, currently set for February 2, 2022, to December 8, 2022, for purposes of resetting the hearing. Parties are ordered to serve DCSS with their respective RFOs and Income and Expense Declarations forthwith. The court reserves jurisdiction to retroactively modify child and spousal support to the date of the filing of the RFO, September 27, 2022.

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).

While there is a disparity in income between the parties, the court finds that after the award of support, it is not substantial and with the support orders in place, Respondent's ability to pay is lessened. Further, it was Petitioner who brought this motion. While Petitioner has

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articulated her concerns about Respondent's failure to test on Monday September 5, 2022, the court notes, that was a federal holiday, Labor Day, and Respondent tested at the next available opportunity. The parties had agreed to Respondent participating in the Soberlink program; however, the court's tentative ruling modified that agreement. Respondent has provided documentation to the court that he had in good faith enrolled in and paid for the Soberlink program as agreed. The court's order of September 1, 2022, the Thursday before the Labor Day holiday, left little time for the parties to secure testing. Additionally, the court finds Respondent's test results that were negative-dilute to be reasonable, given the heatwave the region was experiencing at the time, and the nature of Respondent's employment. While Petitioner asserts in her Reply she has the same fears of Respondent's drinking as when she first presented the issue to the court, Petitioner has provided no basis for her ongoing fears, other than the late test in September. The court finds Respondent's noncompliance to be de minimis. Petitioner also expresses her fears regarding Respondent leaving the minors unattended for a period of time after dropping them off at practice. Respondent acknowledged this at the follow up 3111 evaluation. While this is concerning, and the court admonishes Respondent to ensure it does not happen in the future, the court cannot find this behavior warrants the court imposing sanctions on Respondent. The court denies Petitioner's request for attorney fees under both Family code 2030 and Family code 271.

Respondent requests the court order sanctions against Petitioner for misrepresenting the nature of the individual Petitioner describes as a "biker friend". Respondent asserts this is a family friend well known to Petitioner. Respondent asserts a sanction of \$1,500 is warranted to discourage Petitioner from levying such misrepresentation in the future. Petitioner asserts in her Reply declaration that the minors have expressed not being comfortable around this family friend, which is different from her assertion in her initial declaration. Petitioner may have not been forthright in her description of the family friend, however, the court denies Respondent's request for sanctions. Petitioner is admonished, that her declarations are made under penalty of perjury and failure to be truthful in her declarations can have serious ramifications. The court advises Petitioner to be particularly mindful of Ms. Campbell's statement in the updated 3111 report regarding her duties as a parent to remind herself to verify what the minors are relaying to her by asking neutrally worded questions rather than proceeding in an accusatory manner.

**TENTATIVE RULING #3: THE COURT FINDS THE AGREEMENTS AND RECOMMENDATIONS AS SET FORTH IN THE UPDATED 3111 REPORT TO BE IN THE BEST INTEREST OF THE MINORS. THE COURT ADOPTS THE AGREEMENTS OF THE PARTIES AND RECOMMENDATIONS AS ITS ORDERS. AS TO THE REQUEST TO MODIFY CHILD AND SPOUSAL SUPPORT, THE COURT FINDS THE EL DORADO COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES (DCSS) IS NOW A PARTY TO THE CASE AS A SUBSTITUTED PAYEE. THEREFORE, THE ISSUES OF CHILD AND**

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**SPOUSAL SUPPORT MUST INCLUDE DCSS. NEITHER PARTY HAS SERVED DCSS WITH THEIR RESPECTIVE RFOS. THE COURT THEREFORE, CONTINUES THE REQUESTS TO MODIFY CHILD AND SPOUSAL SUPPORT TO THE DCSS CALENDAR, PURSUANT TO FAMILY CODE SECTION 4251. FOR JUDICIAL ECONOMY, THE COURT IS ADVANCING RESPONDENT'S RFO, CURRENTLY SET FOR FEBRUARY 2, 2022, TO DECEMBER 8, 2022, FOR PURPOSES OF RESETTING THE HEARING. PARTIES ARE ORDERED TO SERVE DCSS WITH THEIR RESPECTIVE RFOS AND INCOME AND EXPENSE DECLARATIONS FORTHWITH. THE COURT RESERVES JURISDICTION TO RETROACTIVELY MODIFY CHILD AND SPOUSAL SUPPORT TO THE DATE OF THE FILING OF THE RFO, SEPTEMBER 27, 2022. THE CHILD SUPPORT AND SPOUSAL SUPPORT REQUESTS ARE CONTINUED TO JANUARY 23, 2023 AT 8:30 IN DEPARTMENT 5.**

**THE COURT DENIES PETITIONER'S REQUEST FOR ATTORNEY'S FEES AND COSTS UNDER FAMILY CODE SECTION 2030 AND 271. THE COURT DENIES RESPONDENT'S REQUESTS FOR FAMILY CODE SECTION 271 SANCTIONS.**

**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 THESE MATTERS 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.**

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**4. ERIKA LARSSON V. MATTIAS LARSSON**

**PFL20150771**

On July 14, 2022, Respondent filed a Request for Order (RFO) seeking custody and visitation orders, as well as an order for attorney's fees, an order directing Petitioner to move the children back to Placerville, CA and an order directing Petitioner to provide Respondent and the court with notice of the present location of the children. The parties were referred to attend Child Custody Recommending Counseling (CCRC) and a hearing on the RFO was scheduled for September 22, 2022.

On August 1<sup>st</sup> the CCRC counselor filed a notice of non-appearance at the scheduled CCRC appointment. The matter came before the court for hearing on September 22<sup>nd</sup>, at which time the parties requested a re-referral to CCRC. The request to return to CCRC was granted and a review hearing was scheduled for the present hearing date. Additionally, Kelly Bentley was re-appointed as Minor's Counsel.

The parties attended CCRC on October 19<sup>th</sup> and a report was issued and mailed to the parties on November 23<sup>rd</sup>. According to the CCRC report, the parties were unable to reach any agreements. CCRC recommended all prior orders remain in effect.

"...[I]t is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interests of children when making orders regarding the physical or legal custody or visitation of children..." Cal. Fam. Code § 3020. In determining the best interests of the child, the court is to consider the following factors: (1) The health, safety, and welfare of the child; (2) Any history of abuse by the individual requesting custody; (3) The nature and amount of contact with both parents; (4) The habitual or continual illegal use of controlled substances or alcohol. Cal. Fam. Code § 3011. This list is not exhaustive. The court is also to consider "...any other factors it finds relevant..." *Id.*

Here, Respondent has not provided the court with any reason why awarding him custody would be in the best interest of the children. He states only that Petitioner has failed to allow visitation pursuant to the previous court orders. Likewise, according to the CCRC report, Petitioner is of the opinion that Respondent has not complied with the current orders. Neither party has provided any reason why the current orders are detrimental to the health, safety, or welfare of the children. There are no claims of physical or substance abuse. The only issue is not with the orders themselves but the noncompliance of the parties.

All prior orders are to remain in full force and effect. Both parties are admonished to comply with the court's orders and ensure the children have frequent and continuing contact with both parents. Respondent's request for an order directing Petitioner to move the children back to Placerville is also denied as there is no evidence such a move would be in the best interests of the children.

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Respondent's request for Petitioner to disclose the location of the children is granted. The parties share joint legal custody of the children and Respondent has court ordered rights to visitation. Rights which he cannot exercise if he does not know where the children are. Petitioner is ordered to provide Respondent with the physical address where the children reside no later than December 15, 2022.

Regarding Respondent's request for attorney's fees, he does not state the basis for his request. Further, neither party has filed a current Income and Expense Declaration with the court and Respondent has not filed either an FL-319 or an FL-158. As such, Respondent's request for attorney's fees is denied.

**TENTATIVE RULING #4: ALL PRIOR ORDERS ARE TO REMAIN IN FULL FORCE AND EFFECT. BOTH PARTIES ARE ADMONISHED TO COMPLY WITH THE COURT'S ORDERS AND ENSURE THE CHILDREN HAVE FREQUENT AND CONTINUING CONTACT WITH BOTH PARENTS. RESPONDENT'S REQUEST FOR AN ORDER DIRECTING PETITIONER AND THE CHILDREN TO RETURN TO PLACERVILLE IS DENIED. PETITIONER IS ORDERED TO PROVIDE RESPONDENT WITH THE PHYSICAL ADDRESS OF THE CHILDREN'S RESIDENCE NO LATER THAN DECEMBER 15, 2022. RESPONDENT IS TO 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.**

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**5. GREGORY BUXTON V. KATHLEEN BUXTON**

**22FL0754**

Petitioner filed a Request for Order (RFO) on September 27, 2022 seeking an order to sell the marital residence. The RFO was mail served on October 18<sup>th</sup> and electronically served on November 9<sup>th</sup>. Respondent has not filed a responsive declaration.

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.." Fam. Code § 2553. This includes ordering the sale and division of proceeds of the marital residence. Marriage of Holmgren, 60 Cal. App. 3d 869 (1976); *See also* In re Marriage of Horowitz, 159 Cal. App. 3d 368 (1984).

In his moving papers Petitioner states that the marital home is a community asset, though he has not provided any documentation to that effect, nor has he provided the court with information regarding when the home was purchased and the form of title to the home. Further, Petitioner has not provided any reason as to why the marital home must be sold at this stage in the proceedings. The court is not inclined to make such an order unless there is a significant reason for doing so or the parties are in agreement. Given that Respondent has not filed a response, it is unclear what her position is on the matter. Petitioner's RFO is denied.

**TENTATIVE RULING #5: PETITIONER'S RFO IS DENIED. PETITIONER IS TO 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.**

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**6. JULIE JANKE V. JON JANKE**

**PFL20190932**

On September 14, 2022, Petitioner filed her Request for Order (RFO) seeking sole legal and physical custody of the minor children. The parties were referred to Child Custody Recommending Counseling (CCRC) and the matter was set to be heard on December 8<sup>th</sup>. There is no Proof of Service on file and Respondent has not filed a Responsive Declaration. However, both parties attended CCRC as scheduled. The parties are ordered to appear to discuss whether or not Respondent was properly served and whether the court should rule on the merits of the RFO.

**TENTATIVE RULING #6: THE PARTIES ARE ORDERED TO APPEAR TO DISCUSS WHETHER OR NOT RESPONDENT WAS SERVED WITH THE MOVING PAPERS AND IF THE COURT CAN REACH THE MERITS OF THE RFO.**

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**8. SARAH CRAIG V. RYAN CRAIG**

**PFL20170099**

Respondent filed a Request for Order (RFO) on September 20, 2022, requesting the reconsider its September 8, 2022 orders and stay the order for sanctions pending trial. Petitioner and Minors' Counsel were personally served on September 28, 2022.

In his declaration, Respondent asserts the court erred in finding he had not complied with the El Dorado County Local Rules of Court and the California Rules of Court when providing notice of his request for oral argument to opposing counsel. Respondent declares Petitioner's counsel and Minors' Counsel conspired to raise an objection to Respondent's notice for oral argument. Respondent further asserts as a litigant in propria persona that he cannot be held responsible to navigating the minutiae of the procedures and rules of court, which Respondent also asserts are irrelevant. Respondent fails to state any new law or facts which were not available to him at the time of the court's ruling which would constitute grounds for reconsideration. Respondent also fails to state any legal authority or reasoning for the court granting a stay of the sanctions orders.

Petitioner filed a Responsive Declaration on November 18, 2020. Respondent and Minors' Counsel were served by mail on November 18, 2022. Petitioner asserts Respondent's request to stay the sanctions orders should be denied as Respondent has failed to provide any legal authority to support this request. Further, Petitioner asserts Respondent was provided notice of the court procedures and requirements for requesting oral argument each time he has filed an RFO. The notice sets out the Local Rule and California Rule of Court which apply to the request for oral argument. Petitioner also asserts Respondent has failed to demonstrate any "new or different facts, circumstances, or law" support reconsideration of the court's order for Family Code section 271 sanctions.

Minors' Counsel has not filed a Responsive Declaration.

The court denies Respondent's request to reconsider the September 8, 2022 award of Family Code section 271 sanctions. Respondent has failed to set forth and new or different facts or law which would allow the court to grant a motion for reconsideration. Respondent disagreeing with the court's orders is not grounds for reconsideration. Respondent had an opportunity to request oral argument after reviewing the tentative ruling issued on September 7, 2022. Respondent failed to follow the Local Rules and California Rules of Court. The Local Rules and California Rules of Court and court procedure are not irrelevant as Respondent asserts. The Local Rules and California Rules of Court are applicable to all parties in court proceedings and ensure the court process is equitable to all. To allow Respondent leeway and to "bend" the rules in his favor because he is appearing in persona propria would defeat the purpose of the Local Rule and California Rules of Court.

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The court denies Respondent's request to stay the September 8, 2022 order for sanctions. As asserted by Petitioner, the purpose of Family Code section 271 sanctions is to discourage behaviors which "frustrate the public policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." (Family Code section 271) The court, in awarding sanctions, found Respondent's repeated filing on the same issues, repeated requests for orders shortening time and orders to show cause for contempt as frustrated the public policy for promoting settlement and reducing the cost of litigation. The court set forth a payment plan for Respondent to ensure the payments would not be overly burdensome. Respondent has provided no grounds upon which the court could grant a stay of those orders, other than his general objection to the court making the orders. Therefore, the court denies Respondent's request for a stay.

On October 27, 2022, the parties appeared for a hearing on the Orders to Show Cause and Affidavit re: Contempt (OSC) filed by Respondent. Petitioner was arraigned and Petitioner's counsel requested the matters be continued to join with the RFO previously set for December 8, 2022. Petitioner's counsel also requested leave to file an answer to the (OSC). The court granted the requests and continued the matter to December 8, 2022. The court further ordered any Supplemental Declarations were to be filed at least 10 days prior to the December 8, 2022 hearing.

Petitioner filed a Motion to Dismiss on November 28, 2022. Parties were served on November 29, 2022. The court finds this to be untimely as it was not 9 court days as required by Code of Civil Procedure section 1005. Therefore, the court cannot consider this motion.

Parties are ordered to appear on the OSC to select Mandatory Settlement and Trial Dates.

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 #8: PARTIES ARE ORDERED TO APPEAR ON THE OSC TO SELECT MANDATORY SETTLEMENT AND TRIAL DATES.**

**THE COURT DENIES RESPONDENT'S REQUEST FOR RECONSIDERATION AND A STAY OF THE SEPTEMBER 8, 2022 SANCTIONS ORDERS. 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 THESE MATTERS 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**

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**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.**

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**10. STEVE GARRISON V. DEBI AYRES GARRISON**

**PFL20190831**

Respondent filed a Request for Order (RFO) on September 26, 2022, requesting the court make spousal support orders as well as award attorney fees. Respondent concurrently filed an Income and Expense Declaration. Petitioner was personally served on October 18, 2022.

Respondent is requesting guideline spousal support. The court notes, this is a post-judgement request for spousal support and therefore, the court will need to take evidence as to the Family Code section 4320 factors in making an order as to spousal support. Respondent also requests \$5,500 in Family Code section 2030 attorney's fees.

Petitioner has not filed a Responsive Declaration or an Income and Expense Declaration.

The court has reviewed the Judgment entered May 22, 2020 which reserved jurisdiction to award spousal support. The court finds it must take evidence on the Family Code section 4320 factors. Therefore, the court orders the parties to appear to select a Mandatory Settlement Conference date and trial date. As to the request for Family Code section 2030 attorney's fees, the court finds it does not have the requisite information before to make a determination as to Petitioner's ability to pay. Therefore, the court reserves jurisdiction on this request. Petitioner is ordered to file and serve an Income and Expense Declaration forthwith.

All prior orders remain in full force and effect. Respondent is directed to prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #10: THE COURT FINDS IT MUST TAKE EVIDENCE ON THE FAMILY CODE SECTION 4320 FACTORS. THEREFORE, THE COURT ORDERS THE PARTIES TO APPEAR TO SELECT A MANDATORY SETTLEMENT CONFERENCE DATE AND TRIAL DATE. AS TO THE REQUEST FOR FAMILY CODE SECTION 2030 ATTORNEY'S FEES, THE COURT FINDS IT DOES NOT HAVE THE REQUISITE INFORMATION BEFORE TO MAKE A DETERMINATION AS TO PETITIONER'S ABILITY TO PAY. THEREFORE, THE COURT RESERVES JURISDICTION ON THIS REQUEST. PETITIONER IS ORDERED TO FILE AND SERVE AN INCOME AND EXPENSE DECLARATION FORTHWITH. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. RESPONDENT IS DIRECTED TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**11. SUSAN MOSKALETS V. VICTOR MOSKALETS**

**PFL20210479**

On May 5, 2022, Respondent filed a Request for Order (RFO) requesting the court set aside the temporary spousal support order made on February 17, 2022. Respondent requested the court set aside the spousal support order as he was unable to work due to medical issues and therefore, was not earning and income. The court set the matter for trial to be heard on July 6<sup>th</sup>. The July 6<sup>th</sup> trial date was continued to August 23<sup>rd</sup> and the court issued a temporary suspension of spousal support for the month of August. The August 23<sup>rd</sup> trial date was later continued to October 11<sup>th</sup> and then to January 17, 2023.

On September 13, 2022, Respondent filed an Ex Parte Application and Declaration for Orders and Notice requesting to have the suspension of spousal support continued to the time of trial on the issue. The court denied the ex parte and stated that it may be set on the regular law and motion calendar. On September 16<sup>th</sup> Respondent filed his RFO renewing his request to extend the suspension of spousal support. His RFO was served electronically on September 21<sup>st</sup>.

Given the upcoming trial on the issue of support, which is currently set for January 17, 2023, the court does not see good cause to extend the temporary support suspension. Respondent's request to extend the spousal support suspension is denied.

On September 21, 2022, Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC) on the basis that Respondent failed to pay spousal support for the month of September. The OSC was mail served on October 3<sup>rd</sup>. The parties are ordered to appear for arraignment.

On December 2, 2022, Petitioner filed an Application for Order Shortening Time and Order (OST) requesting that he be granted leave to file an RFO to compel discovery responses on a shortened basis with the hearing set for the present date. The court granted the OST. Petitioner filed her RFO the same day.

Petitioner seeks an order compelling responses to Demand for Production of Documents, Set One and attorney's fees and sanctions amounting to of \$6,800 total. Petitioner argues that discovery remains open as the upcoming trial is a pre-judgment trial for temporary spousal support and not trial on all issues, including ongoing support and the division of assets. Petitioner served Requests for Production of Documents, Set One, on October 4, 2022, thereby making responses due on or before November 8, 2022. On October 28<sup>th</sup>, Respondent provided repetitive, irrelevant objections but did not provide any responsive documents.

Petitioner has incurred \$3,545 in fees in preparation of the meet and confer documents and the present motion. Petitioner expects to incur additional fees if appearance at the hearing is necessary and Petitioner's counsel is to prepare the Findings and Orders After Hearing. Accordingly, Petitioner requests \$5,000 in attorney's fees pursuant to Family Code Section

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2030. She also requests \$1,800 in sanctions be paid directly to her as discovery sanctions pursuant to Civil Procedure Sections 2030.040, 2031.300 and 2031.310.

A Responsive Declaration to Request for Order along with a Declaration in support thereof, were filed on December 6<sup>th</sup> and mail served the same day. According to his responsive declaration, Respondent states he does consent to the requested attorney's fees, however he later asks the court to deny the motion to compel and attorney's fees. Respondent argues that discovery on the issue of temporary spousal support closed in accordance with the initial trial date which was May 4, 2022. He argues that there was no stipulation to keep discovery open so the discovery served on October 4<sup>th</sup> was served after the discovery cut off despite the fact that trial is currently set for January 17, 2023. Further, he states that Mr. Dosh failed to engage in meaningful meet and confer efforts prior to filing his motion to compel. He states that he was served with a meet and confer letter dated November 17, 2022 wherein the requests were amended. Respondent states that he provided responses on December 1<sup>st</sup> but Mr. Dosh still proceeded to file his Motion to Compel even after Respondent requested 14 days to provide additional responses.

Generally speaking, discovery is to be completed on the 30<sup>th</sup> day prior to the trial date, and discovery motions are to be heard on or before the 15<sup>th</sup> day "before the date initially set for trial..." Cal. Civ. Pro. § 2024.020(a). A continuance or postponement of the trial date by itself, does not automatically reopen discovery proceedings. *Id.* at (b). However, the legislature, in recognizing that family law cases are often ruled upon in segments, sought to provide an exception to this rule with the passage of Family Code Section 218. "With respect to the ability to conduct formal discovery in family law proceedings, when a request for order or other motion is filed and served after entry of judgment, discovery shall automatically reopen as to the issues raised in the post judgment pleadings currently before the court. The date initially set for trial of the action specified in subdivision (a) of Section 2024.020 of the Code of Civil Procedure shall mean the date the post-judgment proceeding is set for hearing on the motion or any continuance thereof, or evidentiary trial, whichever is later." (Emphasis added) Cal. Fam. Code § 218.

Here, it is apparent that the legislative intent to calculate discovery cut off dates based on the continued trial date is applicable. The January 17<sup>th</sup> date is for a hearing on the issue of temporary spousal support, not a final judgment on the issue. It would be illogical to think that the intent of the legislature would be to cut off discovery prior to trial for a final judgment having even been set. Accordingly, discovery does not close until 30 days prior to the January 17<sup>th</sup> date. Petitioner's discovery requests were therefore timely made.

Respondent further opposes the motion arguing that Petitioner's counsel failed to properly meet and confer. The court feels otherwise. Not only did counsel send his first letter of

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November 2<sup>nd</sup>, but he also sent a second letter on November 17<sup>th</sup> which notes that it is in response to Respondent's letter dated November 9<sup>th</sup>. In the November 17<sup>th</sup> letter, Counsel agrees to amend his separate statement. He did not add new or additional requests. He did not propound new discovery. Instead, he only modified his arguments in response to the letter from the opposing party, which is the entirety of the point of the meet and confer process. He states clearly in his letter that Respondent has until November 30<sup>th</sup> to provide amended responses or a motion to compel will be filed. The motion to compel was not filed until December 2<sup>nd</sup>. In all, Counsel provided Respondent an additional 22 days above and beyond the time to respond as set forth in the Code of Civil Procedure. Counsel provided his arguments and then amended them in response to correspondence from the other side. All of this is in keeping with Counsel's duties to meet and confer.

"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.

A statement of inability to comply shall "affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." Cal. Civ. Pro. § 2031.230.

An objection to a request shall identify with particularity what document or object is being objected to and clearly state the extent of and the specific ground for the objection. Cal. Civ. Pro. § 2031.240.

The requests at issue in the present matter sought the production of documents related to the finances of the parties, and Respondent's ability to earn income. All of which are items that are clearly relevant to claims being made in this case and thus clearly discoverable. If Respondent had a valid objection to any such requests, he was required to state as much with specificity. Simply copying and pasting form objections on all requests is insufficient to comply with Section 2031.240. Further, denying the existence of documents which Respondent later attaches to court filings gravely calls into question Respondent's veracity and his keeping with his fiduciary obligations to disclose all assets. Respondent is therefore ordered to provide full and complete responses to Requests for Production of Documents, Set One no later than December 22, 2022.

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“[T]he court *shall* impose a monetary sanction...against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” Cal. Civ. Pro. § 2031.320(b) (emphasis added). Additionally, the court may issue monetary sanctions simply on a showing that the noncompliant party engaged in an unjustified “misuse of the discovery process,” regardless of whether or not the noncompliant party opposes the motion. Cal. Civ. Pro. § 2023.030(a). “Misuse of the discovery process” includes, but is not limited to, “making, without substantial justification, an unmeritorious objection to discovery” and “making an evasive response to discovery.” Cal. Civ. Pro. §2023.010(e) & (f) respectively.

As stated above, Respondent’s discovery responses provide simply copy and pasted form objections to all requests. He indicates that documents are not in existence but later contradicts himself in his supplemental declaration filed with the court. Given Respondent’s evasiveness and his unsuccessful opposition to this motion, the court orders Respondent to pay Petitioner sanctions in the amount of \$1000 to be paid in monthly increments of \$500 due on the 15<sup>th</sup> of each month until paid in full (approximately 2 months). If any payment is late or missed, the entire amount is to become immediately due with legal interest. Such interest shall continue to accrue until payment is made in full.

On the issue of attorney’s fee, 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.” *In Re Marriage Of Keech*, 75 Cal. App. 4<sup>th</sup> 860, 866(1999). The award must be just and reasonable; in determining 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. *In Re Marriage Of Falcone & Fyke*, 203 Cal. App. 4<sup>th</sup> 964; 975 (2012).

The court once again reiterates Respondent’s evasive discovery responses. Such trial tactics have caused Petitioner to incur \$3,545 in the preparation and filing of this motion. The court therefore orders Respondent to pay Petitioner’s counsel \$3,545 due no later than December 22, 2022. The court reserves jurisdiction to, if the court feels it is warranted, increase this amount if a hearing is called on the matter and Petitioner incurs additional fees as a result thereof.

**TENTATIVE RULING #11: RESPONDENT’S REQUEST TO EXTEND THE SPOUSAL SUPPORT SUSPENSION IS DENIED. THE PARTIES ARE ORDERED TO APPEAR FOR ARRAIGNMENT ON THE**

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**OST. RESPONDENT IS ORDERED TO PROVIDE FULL AND COMPLETE RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE NO LATER THAN DECEMBER 22, 2022. THE COURT ORDERS RESPONDENT TO PAY PETITIONER SANCTIONS IN THE AMOUNT OF \$1000 TO BE PAID IN MONTHLY INCREMENTS OF \$500 DUE ON THE 15<sup>TH</sup> OF EACH MONTH UNTIL PAID IN FULL (APPROXIMATELY 2 MONTHS). IF ANY PAYMENT IS LATE OR MISSED, THE ENTIRE AMOUNT IS TO BECOME IMMEDIATELY DUE WITH LEGAL INTEREST. SUCH INTEREST SHALL CONTINUE TO ACCRUE UNTIL PAYMENT IS MADE IN FULL. THE COURT ORDERS RESPONDENT TO PAY PETITIONER'S COUNSEL \$3,545 DUE NO LATER THAN DECEMBER 22, 2022. THE COURT RESERVES JURISDICTION TO, IF THE COURT FEELS IT IS WARRANTED, INCREASE THIS AMOUNT IF A HEARING IS CALLED ON THE MATTER AND PETITIONER INCURS ADDITIONAL FEES AS A RESULT THEREOF. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING ON THE RFO.**

**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.**