

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**1. AMBER DOBBS V. ZACK MILLER**

**PFL20140872**

Petitioner filed a Request for Order (RFO) on March 16, 2023 seeking custody and visitation orders. The RFO and all other required documents were mail served on March 22<sup>nd</sup>. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on April 10<sup>th</sup> and a hearing on the RFO was set for the present date.

Respondent has not filed a Responsive Declaration to Request for Order.

Petitioner filed her RFO requesting sole legal and sole physical custody of the parties' minor child. She requests Respondent have visitation on Mondays and Tuesdays from 3:15 pm to 7:00 pm and on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> weekend of each month from 1:00 pm to 5:30 pm on Saturday and then again from 1:00 pm to 5:30 pm on Sunday. The last custody orders were made in February of 2021. Petitioner states that the change in circumstances which warrants a change in the custody orders is Respondent's increasing disregard for the minor's diabetes. She also requests an order directing Respondent to notify Petitioner of the minor's blood glucose level and number of insulin units administered within one hour of testing. Failure to do so would result in the minor being picked up immediately.

The parties attended CCRC and reached a full agreement. The agreement is codified in the CCRC report dated May 22, 2023.

On May 23<sup>rd</sup> Petitioner filed her Updating Declaration asking the court to continue the hearing date as she had not yet received the CCRC report. The court therefore continued the matter to the present date.

There have been no additional filings in response to the CCRC report. The court has reviewed the agreements contained in the CCRC report and finds that they are in the best interest of the minor. As such, the court hereby adopts the agreements contained in the May 22, 2023 CCRC report as the orders of the court.

**TENTATIVE RULING #1: THE COURT HEREBY ADOPTS THE AGREEMENTS CONTAINED IN THE MAY 22, 2023 CCRC REPORT AS THE ORDERS OF THE COURT. 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**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 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

August 10, 2023

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

**2. AMY E. SMITH V. DAVID G. SMITH**

**22FL0989**

Petitioner filed a Request for Order (RFO) requesting temporary spousal support and Family Code section 2030 attorney's fees on November 17, 2022. Petitioner concurrently filed an Income and Expense Declaration. Respondent was served by mail on November 17, 2022. Respondent filed a Responsive Declaration, an Income and Expense Declaration, and an additional Declaration on January 26, 2023. Petitioner was personally served the same day.

Petitioner requested guideline temporary spousal support and attorney's fees in the amount of \$4,500. Respondent did not oppose an order for spousal support, but he did request the court take into consideration Petitioner's failure to be self-supporting. He asked the court to issue a Gavron Warning, impute petitioner with a full-time minimum wage salary, order a vocational assessor/counselor, and he requested copies of the following documents: (1) An extensive list of the jobs applied for by Petitioner and (2) Petitioner's mother's living trust and power of attorney agreement evidencing Petitioner's status as the current trustee. He asked that each party pay their own attorney's fees.

The parties appeared before the court for hearing on the RFO on February 9<sup>th</sup>. The court set spousal support at \$2,486 per month, effective December 1, 2022. This resulted in an arrears balance of \$5,158, to be paid in monthly increments of \$430. Petitioner was ordered to seek work full time. She was given 60 days to complete the following: (1) Participate in low-cost training to improve administrative skills; and (2) Utilize professional assistance to improve resume and interview skills. After 60 days Petitioner was ordered to (1) begin submitting applications for employment, (2) register with job placement and employment agencies, (3) keep a journal of her applications and efforts in seeking employment, and (4) notify Respondent within 48 hours of her date of hire. The court set a review hearing for June 8, 2023 and ordered Petitioner to file a declaration as to her seek work progress. The court ordered both parties to file updated Income and Expense Declarations.

Pursuant to the court's June 8<sup>th</sup> tentative ruling, the court noted that Petitioner had complied with the court's orders but that she remained unemployed. As such, the court continued the matter to the present date and ordered Petitioner to file and serve an Income and Expense Declaration and a supplemental declaration updating the court on the status of her employment and her job search efforts no later than 10 days prior to the hearing date.

In accordance with the court's order, Petitioner filed and served Supplemental Declaration of Petitioner, Amy Smith on July 26, 2023. Thereafter, on July 31<sup>st</sup> she filed and served her Income and Expense Declaration. Respondent has not filed any additional declarations.

In reviewing Petitioner's supplemental declaration, as well as her prior declaration from May 23<sup>rd</sup>, it does not appear that Petitioner has registered with a job placement or employment agency. Given Petitioner's seeming difficulty in obtaining employment, she is reminded of this

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

portion of the court's prior orders. This matter is continued to 10/12/2023 at 8:30am in Department 5. Petitioner is ordered to register with a job placement or employment agency and provide the court and Respondent with written documentation of her enrollment prior to the next hearing date. Petitioner is further ordered to continue with her independent job search efforts in accordance with the court's prior orders. Petitioner is to file a supplemental declaration with the court updating the court on the status of her job search efforts and her registration with a job placement or employment agency. Petitioner's supplemental declaration is due no later than 10 days prior to the next hearing date. If Petitioner is employed by the next hearing date, she is to file an updated Income and Expense Declaration no later than 10 days prior to the next hearing date. If she is not employed, no Income and Expense Declaration is necessary.

**TENTATIVE RULING #2: THIS MATTER IS CONTINUED TO 10/12/2023 AT 8:30AM IN DEPARTMENT 5. PETITIONER IS ORDERED TO REGISTER WITH A JOB PLACEMENT OR EMPLOYMENT AGENCY AND PROVIDE THE COURT AND RESPONDENT WITH WRITTEN DOCUMENTATION OF HER ENROLLMENT PRIOR TO THE NEXT HEARING DATE. PETITIONER IS FURTHER ORDERED TO CONTINUE WITH HER INDEPENDENT JOB SEARCH EFFORTS IN ACCORDANCE WITH THE COURT'S PRIOR ORDERS. PETITIONER IS TO FILE A SUPPLEMENTAL DECLARATION WITH THE COURT UPDATING THE COURT ON THE STATUS OF HER JOB SEARCH EFFORTS AND HER REGISTRATION WITH A JOB PLACEMENT OR EMPLOYMENT AGENCY. PETITIONER'S SUPPLEMENTAL DECLARATION IS DUE NO LATER THAN 10 DAYS PRIOR TO THE NEXT HEARING DATE. IF PETITIONER IS EMPLOYED BY THE NEXT HEARING DATE, SHE IS TO FILE AN UPDATED INCOME AND EXPENSE DECLARATION NO LATER THAN 10 DAYS PRIOR TO THE NEXT HEARING DATE. IF SHE IS NOT EMPLOYED, NO INCOME AND EXPENSE DECLARATION IS NECESSARY.**

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LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**3. BRIAN ELLIOTT v. KENDRA ELLIOTT**

**PFL20210605**

On May 19, 2023, Petitioner filed a Request for Order (RFO) seeking child support orders. The Proof of Service indicates that the RFO was served along with an Income and Expense Declaration on May 30<sup>th</sup>. However, Petitioner did not file the Income and Expense Declaration with the court and the declaration on file is no longer current as it is dated April 18<sup>th</sup>.

“For all hearings involving child, spousal, or domestic partner support, both parties must complete, file, and serve a current income and Expense Declaration.” Cal. Rule Ct. 5.260(1); *See also* Cal. Fam. Code §2100. “‘Current’ means the form has been completed within the past three months providing no facts have changed.” Cal. Rule Ct. 5.260(3).

This matter is dropped from calendar due to Petitioner’s failure to file a current Income and Expense Declaration.

**TENTATIVE RULING #3: THIS MATTER IS DROPPED FROM CALENDAR DUE TO PETITIONER’S FAILURE TO FILE A CURRENT INCOME AND EXPENSE DECLARATION.**

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LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**4. DAVID MERCADO V. APRIL LOCKHART**

**PFL20180104**

Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC) on April 25, 2023, alleging 20 counts of contempt by Respondent for failure to pay attorney's fees. The parties appeared for hearing on June 15<sup>th</sup> at which time the court appointed a public defender and continued the arraignment to the present date. The court ordered Respondent to file an updated Income and Expense Declaration.

The parties are ordered to appear for arraignment.

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**5. DEBRA STANLEY V. ROBERT STANLEY**

**PFL20210202**

*Motion to Compel*

On June 12, 2023, Petitioner filed a Request for Order (RFO) seeking to compel responses to Form Interrogatories, Set One, Requests for Production of Documents, Sets One and Two, and discovery sanctions. The RFO was mail served on June 20<sup>th</sup>. On July 20<sup>th</sup> Respondent filed and served his Responsive Declaration to Request for Order and a Declaration of Amanda D. Yasbek, CFLS. Petitioner filed and served Petitioner's Reply re Motion to Compel on July 28<sup>th</sup>. Respondent filed an additional Declaration by Eric Lagunas on July 31<sup>st</sup>.

According to her moving papers, Petitioner served Respondent with Petitioner's First Set of Form Interrogatories on April 22, 2023. Respondent served verified responses on May 30, 2023, which Petitioner feels are deficient. Specifically, Petitioner requests further responses to Form Interrogatory numbers 1, 5, 7, 9, 10 and 17. Additionally, she requests responses to Requests for Production of Documents sets one and two which, according to Petitioner, have gone wholly unanswered despite having been served on June 13, 2022, and April 22, 2023, respectively. Petitioner states that meet and confer attempts were made telephonically and via a letter sent on May 30<sup>th</sup>.

Respondent opposes the motion on the basis that Petitioner failed to make a reasonable, good faith attempt to meet and confer regarding the responses. According to Respondent, counsel never received the May 30<sup>th</sup> letter that Petitioner claims to have served. Further, Respondent states that the call that took place between the parties did not address the discovery responses or any of their alleged deficiencies but instead consisted of Mr. Near berating Ms. Yasbek. Respondent filed a declaration of Eric Lagunas wherein he corroborates Ms. Yasbek's characterization of the interaction.

*Form Interrogatory No. 1*

This request seeks, among other things, the disclosure of Respondent's social security number. Respondent failed to provide the entirety of the social security number.

Generally speaking, "...a party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Cal. Civ. Pro. § 2017.010. The need for broad discovery is so critical to ensuring the fairness of the litigation process that "[a]ny doubt about discovery is to be resolved in favor of disclosure." *Advanced Modular Sputtering, Inc. v. Sup. Ct.*, 132 Cal. App. 4<sup>th</sup> 826 (2005). In furtherance of the state's broad

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

approach to discovery, responses are to be “as complete and straightforward” as possible. Cal. Civ. Pro. § 2030.220.

Here, Respondent’s social security number is quite clearly likely to lead to the discovery of admissible evidence as it is necessary to subpoena records. In keeping with the State’s policy to allow for broad discovery, Petitioner’s request for further response to Form Interrogatory 1 is granted. Respondent is to provide a full and complete amended response to Form Interrogatory number 1 no later than August 24, 2023.

*Form Interrogatory No. 5*

Similar to number 1, Respondent’s response to Form Interrogatory No. 5 is incomplete. The request seeks information regarding the amount of support provided for each individual per month. Respondent’s blanket response giving the “total support amount per month” is insufficient.

“The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by any of the following: (1) An answer containing the information sought to be discovered. (2) An exercise of the party’s option to produce writings. (3) An objection to the particular interrogatory.” Cal. Civ. Pro. § 2030.210(a). As previously stated, responses are to be “as complete and straightforward” as possible. Cal. Civ. Pro. § 2030.220.

Here, Respondent’s answer is insufficient and non-responsive to the request. As such, Respondent is to provide the amount of monthly support provided per individual per month. If he does not have that information, he is to state as such. Accordingly, Petitioner’s request for further response to Form Interrogatory 5 is granted. Respondent is to provide a full and complete amended response to Form Interrogatory number 5 no later than August 24, 2023.

*Form Interrogatory No. 7, 9, & 17*

These requests seek information regarding (1) the amount of income received by Respondent during the past 12 months as well as information regarding that income, (2) Respondent’s tax returns and tax schedules for the past three years, and (3) all of Respondent’s insurance policies or plans. He responded only “discovery ongoing.” This response is not compliant with Section 2030.210 or 2030.220. Respondent is to provide a complete and straightforward answer or produce writings providing such an answer. He has not done so, nor has he objected to the request. Accordingly, Petitioner’s request for further response to Form Interrogatory numbers 7, 9 and 17 is granted. Respondent is to provide full and complete amended responses no later than August 24, 2023.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

*Form Interrogatory No. 10*

This request asks Respondent to complete the Schedule of Assets and Debts served concurrently therewith. Petitioner argues Respondent failed to provide all documents required to be attached to the Schedule of Assets and Debts. Again, this is not compliant with Respondent's obligations regarding discovery responses. Petitioner's request for further response to Form Interrogatory number 10 is granted. Respondent is to provide a full and complete amended response no later than August 24, 2023.

*First and Second Set of Demand for Production of Documents*

According to Petitioner, the Demand for Production of Documents, Set One, was served on June 13, 2022. Set two was served on April 22, 2023. As of the filing of Petitioner's motion, no responses had been received. Respondent argues the motion should be denied because Petitioner failed to meet and confer prior to filing the motion. However, in instances where no responses are served there is no requirement to meet and confer prior to filing.

Petitioner's motion to compel responses to First Set of Demands for Production of Documents and Second Set of Demands for Production of Documents is granted. Respondent is to provide full and complete verified responses, without objections, no later than August 24, 2023.

*Discovery Sanctions*

Where a party engages in the misuse of the discovery process, the court "shall" impose monetary sanctions "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), 2031.300(c), 2030.300(d). Misuse of the discovery process includes, but is not limited to, failing to respond or submit to an authorized method of discovery, making an evasive response to discovery, or failing to confer in a reasonable, good faith attempt to informally resolve any discovery dispute "*if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made.*" Cal. Civ. Pro. § 2023.010 (emphasis added). There is no requirement to meet and confer where the party being compelled has not served any responses whatsoever. Leach v. Sup. Ct., 111 Cal. App. 3d 902 (1980).

Petitioner is requesting sanctions in the amount of \$4,700 pursuant to California Code of Civil Procedure Sections 2030.300(d) and 2031.300(c). Given the serious questions as to whether or not Petitioner's counsel did comply with the meet and confer requirements of the Civil Discovery Act the court finds imposing the entirety of the requested monetary sanctions on Respondent would be unjust. However, the meet and confer requirement only applies where

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

the motion is for further responses. There is no need to meet and confer where no responses have been served at all, as is the case with the requests for production of documents. Accordingly, Petitioner is awarded discovery sanctions against Respondent in the amount of \$2,350.

*Section 271 Sanctions*

In addition to the request for discovery sanctions Petitioner is requesting sanctions pursuant to Family Code Section 271 for Ms. Yasbek's recording of the call with Mr. Near and her alleged attempt to deceive the court. Petitioner is requesting \$5,000 in sanctions to be paid out of Respondent's share of the retirement funds.

Under Family Code Section 271, "...the court *may* base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties..." (emphasis added). Despite the court's discretion in imposing Section 271 sanctions, the court may not impose such sanctions unless the party against whom the sanction is proposed is given notice and the opportunity to be heard. Cal. Fam. Code § 271(b). Here, Petitioner makes her request for sanctions in her reply declaration, not in her moving papers. As such, Respondent was not given proper notice of the request and the opportunity to be heard on the issue. Further, the court finds this request to be outside the scope of the initial RFO which sought to compel discovery responses. For the foregoing reasons, Petitioner's request for Section 271 sanctions is denied.

*Petitioner's Objections*

Petitioner objects to the entirety of Respondent's Responsive Declaration citing improper opinions, legal conclusions, hearsay and lack of foundation. Additionally, Petitioner objects to the declarations of Ms. Yasbek and Mr. Lagunas as hearsay.

Petitioner's hearsay objections are overruled. The statements made in Respondent's declaration as well as Ms. Yasbek's are submitted to the court as prior statements made by counsel which are inconsistent with his declaration. See Cal. Evid. Code § 1235 ("Evidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his testimony..."). Further, the statements made in both declarations as well as the declaration of Mr. Lagunas are submitted to show Mr. Near's state of mind regarding his intention, or lack thereof, to meet and confer on discovery and his intention to mislead the court by declaring that the phone call that took place between the parties was for the purpose of discussing the allegedly deficient discovery responses. See Cal. Evid. Code § 1250 (Statements are not made inadmissible by the hearsay rule if they tend to prove the declarant's state of mind.).

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

Petitioner objects to the inclusion of the transcript of the recorded call pursuant to Penal Code Section 632. However, Section 632 expressly “excludes communication made...in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.” Ms. Yasbek declares that she informed Mr. Near that she was recording the call. While Section 632 would generally apply to private phone calls, because it is unlikely that a party would reasonably be expected to be recorded on a phone call, where the individual being recorded is notified of that fact, that individual no longer has a reasonable expectation of privacy on the call and therefore Section 632 no longer applies. As such, statements that were recorded prior to Mr. Near being put on notice may fall under Section 632 and may be inadmissible. However, once he was notified that the call was being recorded, from that point on Mr. Near had no reasonable expectation of privacy. He had the option to hang up, stop speaking or expressly refuse to be recorded. However, he failed to do so. As such from the time he received notice of the recording, his continued statements no longer fell within the protections of Section 632 and may be admissible in these proceedings. See Cal. Penal Code § 632(c); See also *Calhoun v. Google, LLC*, 526 f. Supp. 3d 605 (2021) (finding that consent may be implied); See also *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4<sup>th</sup> 95 (2006) (company that informs all parties that the call is being recorded is not in violation of the statute prohibiting recording without consent of all parties.). In light of the foregoing, Mr. Near’s objection on the basis of Penal Code Section 632 is overruled.

On the other hand, Petitioner’s improper opinions and legal conclusion objections appear to be well founded. The declaration submitted purports to be a declaration by Mr. Stanley himself, not his counsel. As such, much of what would otherwise be argument if made by his attorney, constitutes improper opinion and legal conclusions. These objections are sustained.

*Set Aside Orders from May 10<sup>th</sup> Hearing and Family Code Section 271 Sanctions*

On May 24<sup>th</sup>, Petitioner filed an RFO seeking to set aside orders from the May 10<sup>th</sup> hearing and requesting Family Code Section 271 sanctions. The RFO was mail served on June 9<sup>th</sup>. Respondent has not filed an opposition to the RFO and on August 3<sup>rd</sup> Petitioner filed a Notice of Non-Receipt of Opposition to Petitioner’s Request for Order.

On May 4<sup>th</sup>, Respondent filed ex parte for custody and visitation orders. Respondent provided Petitioner’s attorney with notice of the hearing on the ex parte which was set to be held on May 5<sup>th</sup>, though, according to Petitioner, Respondent did not serve copies of the ex part motion. Neither Petitioner nor her counsel appeared at the May 5<sup>th</sup> hearing. Counsel asserts that he was never served with the order from the ex parte hearing which set the matter for further hearing on May 10<sup>th</sup>. As such, on May 10<sup>th</sup> a hearing was held on the issue, once again without attendance by Petitioner or her counsel. The Minute Order from that date indicates

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

that Petitioner was properly notified of the hearing. Petitioner maintains that Respondent's counsel committed fraud by making this representation to the court when she did not, in fact, give notice of the May 10<sup>th</sup> hearing date.

Petitioner is requesting \$5,000 in Section 271 sanctions due and payable by Respondent's counsel Amanda Yasbek. While Section 271 generally allows for the imposition of a sanction where a party or attorney furthers or frustrates the policy of the law to promote settlement and reduce costs of litigation through cooperation of the parties. Cal. Fam. Code § 271. However, Section 271(c) provides that "[a]n award of attorney's fees and costs pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of community property." *Id.* "As should be clear from the text of the statute and ample precedent, the provisions of Section 271 do not provide for sanctions to be imposed on counsel for a party." *Featherstone v. Martinez*, 86 Cal. App. 5<sup>th</sup> 775, 784 (2022).

Given that Section 271 sanctions are to be paid by the party, Section 271 is not the proper mechanism to obtain sanctions against counsel. Petitioner's request for sanctions against Ms. Yasbek is denied.

Regarding Petitioner's request to set aside the orders from May 10<sup>th</sup>, the court does not find good cause to do so. "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." Cal. Civ. Pro. § 473(b). Generally speaking, "...Section 473 only permits relief from attorney error 'fairly imputable to the client, i.e., mistakes anyone could have made.' [Citations]. 'Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.' [Citation]." *Zamora v. Clayborn Contracting Group, Inc.*, 28 Cal. 4<sup>th</sup> 249 (2002) citing *Garcia v. Hejmadi*, 58 Cal. App. 4<sup>th</sup> 674, 682 (1997). "[B]efore granting relief, the court shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief." Fam. Code § 2121 (b).

Petitioner admittedly had notice of the May 5<sup>th</sup> hearing date and failed to attend. The court did not issue any orders at the May 5<sup>th</sup> hearing other than an order for the parties to appear on May 10<sup>th</sup> for hearing on the RFO. Had Petitioner's counsel attended the hearing he would have been informed of this fact. His failure to do so does not constitute mistake, inadvertence, surprise, or excusable neglect. Further, the court does not find that Petitioner would materially benefit from setting aside the May 10<sup>th</sup> orders simply because Respondent's

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

requests for sole legal and physical custody were not granted. The orders made at the May 10<sup>th</sup> hearing were essentially restatements of the court's prior orders. For these reasons, Petitioner's request to set aside the orders from May 10<sup>th</sup> is denied.

Custody and Visitation

Respondent filed a Request for Order (RFO) on January 19, 2023, seeking custody and visitation orders as well as the appointment of Minor's Counsel. On June 29<sup>th</sup> the parties appeared for hearing on that RFO as well as an additional RFO filed by Petitioner on April 24<sup>th</sup> and another one filed by Respondent on May 16<sup>th</sup>. The court ruled on all issues at that time. The court ordered Petitioner to complete the intake process with Ms. Anderson no later than June 30<sup>th</sup> and directed the parties to continue supervised exchanges. The court noted its preference that exchanges remain with Family Visitation Network but allowed for an additional exchange administrated if FVN was unavailable. These two issues along with the issue of sanctions were set to join with the August 10<sup>th</sup> hearing and an additional review hearing was set for September 28<sup>th</sup> on the issue of custody and visitation. Minor's Counsel was appointed and thereafter moved to have the September 28<sup>th</sup> hearing advanced to join with the August 10<sup>th</sup> hearing.

As of the date of the June 29<sup>th</sup> hearing the court ordered the parties to commence with the step up plan enumerated in the court's tentative ruling. Pursuant to step one, Respondent was to continue to have visitation with the children on Sundays from 10:00 a.m. until 2:00 p.m. Visits were ordered to be non-professionally supervised by paternal grandmother. After 90 days, and a review hearing by the court, the court indicated it would determine whether it is appropriate for visitation to move on to step two. On step two of the step-up plan, Respondent shall have unsupervised visits every Sunday from 10:00 a.m. to 2:00 p.m. The parties were ordered to submit supplemental declarations at least 10 days prior to the hearing date to address the status of the visits.

Respondent's Supplemental Declaration Re: Child Custody and Visitation was filed on July 31, 2023, along with declarations from Stephanie Gregory regarding supervised visits that took place on July 2<sup>nd</sup>, 9<sup>th</sup>, 16<sup>th</sup> and 23<sup>rd</sup>. All documents were personally served the same date as filing. Petitioner's Declaration and Minor Counsel's Statement of Issues and Contentions and Request for Orders were also filed on July 31<sup>st</sup>. Petitioner's Reply re Respondent's Supplemental Declaration re Child Custody and Visitation and Declaration of Eric Lagunas was filed and served on August 3<sup>rd</sup>. Petitioner also filed and served a declaration of the maternal grandparents on August 7<sup>th</sup>. This is late filed and as such the court has not read or considered it.

According to Minor's Counsel, the children have not had visitation with Respondent since September of 2022. Since that time Petitioner has brought the children to the supervised exchanges but the children have not actually been exchanged and none of the visits have taken

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

place. Nor have the phone calls which were previously ordered by the court. The children are stating that they do not want to go on visits with Respondent because they are not comfortable having the paternal grandmother as the supervisor. Petitioner and the maternal grandparents both state they do not believe the paternal grandmother should be supervising the visits and Respondent should focus on his time with the children. In light of Minor's Counsel's investigation she requests the following orders: (1) Tracy Stanley-Sibyan (the paternal aunt) or Kristi Stanley (the paternal grandmother) to be joined to the case as a claimant; (2) Temporary legal and physical custody of the children given to either the paternal aunt or the paternal grandmother; (3) Respondent to have visitation once a week from 10am to 6pm, supervised by either paternal grandmother or paternal aunt; (4) Petitioner to have agency supervised visits twice a week for two hours per visit; (5) Respondent to participate in family counseling with the children; (6) Petitioner to engage in individual counseling; (7) Irie (Petitioner's daughter from a previous relationship) is not to be part of the visits between the children and Respondent; (8) A review hearing set in 60-90 days to determine the progress each parent has made and to either expand the parenting time for one or both of them and determine if either parent is ready to take custody of the children. In the event the court is not inclined to award custody to either the paternal grandmother or the paternal aunt, Minor's Counsel recommends: (1) Respondent granted temporary sole legal and physical custody of the children; (2) Petitioner to have agency supervised visits twice a week for two hours per visit in the Redding area; (3) Respondent to participate in family counseling with the children and a therapist in the Redding area; (4) Petitioner to engage in individual counseling; (5) A review hearing in 60-90 days to address Petitioner's parenting time.

In Respondent's supplemental declaration he reiterates his request for sole legal and physical custody. Or, in the alternative, he asks that the children be removed from Petitioner's care and placed with another suitable family member who will comply with the court's orders. He also asks that visits be unsupervised, effective immediately.

Petitioner opens her brief with a series of objections to Respondent's declaration. The court rules on those objections as follows: Obj. 1 – Overruled. There is no "false statement" objection per the California Evidence Code. Further, Respondent may declare to his recollection of the court's prior ruling without attaching all prior rulings as it seems Petitioner's counsel would have him do. All remaining objections for lack of foundation and improper opinion evidence are likewise overruled. Respondent, has more than sufficiently established that he has been a party to the ongoing custody and visitation proceedings, and he has personal knowledge on the issue of Petitioner's actions and whether Petitioner has or has not complied with the court's orders of exchanging the children, setting up phone calls, etc. For these reasons, foundation has been established. Further, none of the opinions stated in the declaration are improper. Simply because the declarant is giving an opinion is not in and of itself improper.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

Opinions are only improper when they are made on an improper basis. Here, Respondent has sufficiently established his personal knowledge of the facts that have given rise to the opinions stated therein. These objections are overruled.

Petitioner argues that none of the court's prior orders should be amended. She argues it is not in the children's best interests to modify custody pending the children's progress in counseling. She does request the court change the professional exchange supervisor to Family Time Visitation Center instead of Family Visitation Network.

The court has reviewed the filings of the parties as outlined above and is extremely concerned with Petitioner's actions. Petitioner argues for the current custody orders to remain in place and hangs her hat on the fact that the court ordered reunification therapy in June of 2022, and this still has yet to occur. This argument is unconvincing. Petitioner cannot simply ignore the court's orders and then argue that noncompliance with those orders is the basis for continuing to vest her with custody of the children.

While it is the policy of the state to ensure that the children have frequent and continuing contact with both parties (Cal. Fam. Code § 3020) where contact with one parent is detrimental to the health and welfare of the children, the court is to make orders that it finds to be in the best interests of the children. In making such a determination, the court may consider that parent's compliance, or noncompliance, with court orders. Here, the court is not convinced that remaining with Petitioner is in the best interests of the children. However, it does not seem that removing the children from their school and friends is in their best interests either. As such, Petitioner is being given one final opportunity to ensure that the children have frequent and continuing contact with their father. Petitioner is to foster the relationship between the children and their father and to *actively encourage* the children to attend the visits and phone calls with their father per the court's previous orders. Petitioner and the children claim that their issue is with Respondent's mother supervising the visits. Accordingly, visits are no longer required to be supervised, effective immediately. Irie is not to be part of the visits between the children and Respondent. The court is setting a review hearing for August 24<sup>th</sup> at 8:30 a.m. in Department 5. Petitioner is advised that failure to exchange the children at their scheduled visits and failure to hold phone calls pursuant to the court's previous order may result in legal and physical custody being awarded to Respondent.

Petitioner is ordered to contact Ms. Wolff and schedule the children for the first available reunification therapy appointment. Thereafter, Petitioner is to schedule weekly reunification therapy sessions for the children and to ensure they attend all such sessions. Weekly sessions are to continue until Ms. Wolff states, in writing to be filed with the court by Petitioner, that weekly sessions are no longer necessary. Thereafter, the children are to attend reunification therapy at a frequency and duration as recommended by Ms. Wolff. At the August

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

24<sup>th</sup> hearing date, Petitioner is ordered to provide the court with evidence that the children have already attended their first reunification therapy session or, if Ms. Wolff does not have a session available prior to August 24<sup>th</sup>, Petitioner is to provide the court with written documentation that she has booked the next available session for the children as well as weekly sessions thereafter. Petitioner and Respondent are to equally split the cost of reunification therapy. If Petitioner is unable to afford half of the cost, she is ordered to pay for at least one visit per month. Respondent may pay the remaining amount, but any amounts paid by Respondent are subject to reallocation. Again, Petitioner is advised that failure to comply with these orders, or any other orders made by the court, may result in custody being awarded to Respondent at the next hearing.

Petitioner's request for the court to change the professional exchange supervisor to Family Time Visitation Center instead of Family Visitation Network is denied. There does not appear to be any problem with Family Visitation Network and Petitioner's recounting of the incident appears to be greatly exaggerated. Even the minor Lily, expressed that she does not want a new exchange facilitator.

Also pending for the present hearing date are both parties' previous requests for Section 271 sanctions. It is abundantly clear that Petitioner refuses to comply with the court's orders which unquestionably frustrates the court's policy to promote settlement and reduce the cost of litigation by encouraging cooperation amongst the parties. Thus, sanctions are warranted. Respondent's request for Section 271 sanctions is granted. Petitioner is to pay Respondent \$2,500 as and for sanctions. This amount is to be off-set by the amount Respondent owes Petitioner for discovery sanctions as ordered herein. The remaining \$150 may be paid in one lump sum or in monthly increments of \$50 due and payable on the 15<sup>th</sup> of each month commencing on August 15<sup>th</sup> and continuing until paid in full (approximately 3 months). If any payment is missed or late, the entire amount shall become immediately due and payable.

Petitioner had previously made a request for Section 271 sanctions, on which the court had reserved jurisdiction. Petitioner's prior request for sanctions is denied.

*Admonishment of Counsel*

Counsel for both parties are strongly admonished to comply with the California Rules of Professional Conduct. The court is concerned with the behavior by both attorneys as neither seem to be adhering to the Rules of Professional Conduct nor are they acting within the best interests of their clients. Counsel are reminded that the court may, in its discretion, report attorneys to the State Bar. Should both attorneys continue to act as they have been, the court may report to the Bar for disciplinary action.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

All prior orders not in conflict with these orders remain in full force and effect. Petitioner is to prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #5: PETITIONER'S MOTION TO COMPEL RESPONSES AND FURTHER RESPONSES IS GRANTED. RESPONDENT IS TO PROVIDE FULL AND COMPLETE VERIFIED RESPONSES NO LATER THAN AUGUST 24, 2023. PETITIONER IS AWARDED DISCOVERY SANCTIONS AGAINST RESPONDENT IN THE AMOUNT OF \$2,350. PETITIONER'S REQUEST FOR SECTION 271 SANCTIONS IS DENIED. PETITIONER'S OBJECTIONS BASED ON HEARSAY AND PENAL CODE SECTION 632 ARE OVERRULED. PETITIONER'S IMPROPER OPINION AND LEGAL CONCLUSION OBJECTIONS ARE SUSTAINED.**

**PETITIONER'S REQUEST FOR SECTION 271 SANCTIONS TO BE PAID FOR BY MS. YASBEK IS DENIED AS SECTION 271 MAY ONLY BE USED TO SANCTION A PARTY, NOT COUNSEL. FURTHER, PETITIONER'S REQUEST TO SET ASIDE THE MAY 10<sup>TH</sup> ORDERS IS DENIED.**

**RESPONDENT'S PARENTING TIME IS TO CONTINUE AS SCHEDULED, HOWEVER HIS VISITS ARE TO BE UNSUPERVISED, EFFECTIVE IMMEDIATELY. PETITIONER IS TO ENSURE THAT THE CHILDREN ATTEND THE VISITS AND HOLD PHONE CALLS WITH RESPONDENT PURSUANT TO THE COURT'S PREVIOUS ORDERS. IRIE (PETITIONER'S DAUGHTER FROM A PREVIOUS RELATIONSHIP) IS NOT TO BE PART OF THE VISITS BETWEEN THE CHILDREN AND RESPONDENT. THE COURT SETS A REVIEW HEARING FOR AUGUST 24, 2023 AT 8:30 A.M. IN DEPARTMENT 5. THE PARTIES ARE ORDERED TO APPEAR AT THE NEXT HEARING. DECLARATIONS DO NOT NEED TO BE FILED AND THE COURT WILL NOT ISSUE A TENTATIVE RULING. HOWEVER, PETITIONER IS ADVISED, FAILURE TO EXCHANGE THE CHILDREN FOR THEIR SCHEDULED VISITS WILL RESULT IN LEGAL AND PHYSICAL CUSTODY BEING AWARDED TO RESPONDENT AT THE NEXT HEARING.**

**PETITIONER IS ORDERED TO CONTACT MS. WOLFF AND SCHEDULE THE CHILDREN FOR THE FIRST AVAILABLE REUNIFICATION THERAPY APPOINTMENT. THEREAFTER, PETITIONER IS TO SCHEDULE WEEKLY REUNIFICATION THERAPY SESSIONS FOR THE CHILDREN AND TO ENSURE THEY ATTEND ALL SUCH SESSIONS. WEEKLY SESSIONS ARE TO CONTINUE UNTIL MS. WOLFF STATES, IN WRITING TO BE FILED WITH THE COURT BY PETITIONER, THAT WEEKLY SESSIONS ARE NO LONGER NECESSARY. THEREAFTER, THE CHILDREN ARE TO ATTEND REUNIFICATION THERAPY AT A FREQUENCY AND DURATION AS RECOMMENDED BY MS. WOLFF. AT THE AUGUST 24<sup>TH</sup> HEARING DATE, PETITIONER IS ORDERED TO PROVIDE THE COURT WITH EVIDENCE THAT THE CHILDREN HAVE ALREADY ATTENDED THEIR FIRST REUNIFICATION THERAPY SESSION OR, IF MS. WOLFF DOES NOT HAVE A SESSION AVAILABLE PRIOR TO AUGUST 24<sup>TH</sup>, PETITIONER IS TO PROVIDE THE COURT WITH WRITTEN DOCUMENTATION THAT SHE HAS BOOKED THE NEXT AVAILABLE SESSION FOR THE CHILDREN AS WELL AS WEEKLY SESSIONS THEREAFTER. PETITIONER AND RESPONDENT ARE TO EQUALLY**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**SPLIT THE COST OF REUNIFICATION THERAPY. IF PETITIONER IS UNABLE TO AFFORD HALF OF THE COST, SHE IS ORDERED TO PAY FOR AT LEAST ONE VISIT PER MONTH. RESPONDENT MAY PAY THE REMAINING AMOUNT BUT ANY AMOUNTS PAID BY RESPONDENT ARE SUBJECT TO REALLOCATION. AGAIN, PETITIONER IS ADVISED THAT FAILURE TO COMPLY WITH THESE ORDERS, OR ANY OTHER ORDERS MADE BY THE COURT, WILL RESULT IN CUSTODY BEING AWARDED TO RESPONDENT AT THE NEXT HEARING.**

**PETITIONER'S REQUEST FOR THE COURT TO CHANGE THE PROFESSIONAL EXCHANGE SUPERVISOR TO FAMILY TIME VISITATION CENTER INSTEAD OF FAMILY VISITATION NETWORK IS DENIED.**

**RESPONDENT'S REQUEST FOR SECTION 271 SANCTIONS IS GRANTED. PETITIONER IS TO PAY RESPONDENT \$2,500 AS AND FOR SANCTIONS. THIS AMOUNT SHALL BE OFF-SET BY THE AMOUNT RESPONDENT OWES PETITIONER FOR DISCOVERY SANCTIONS AS ORDERED HEREIN. THE REMAINING \$150 MAY BE PAID IN ONE LUMP SUM OR IN MONTHLY INCREMENTS OF \$50 DUE AND PAYABLE ON THE 15<sup>TH</sup> OF EACH MONTH COMMENCING ON AUGUST 15<sup>TH</sup> AND CONTINUING UNTIL PAID IN FULL (APPROXIMATELY 3 MONTHS). IF ANY PAYMENT IS MISSED OR LATE, THE ENTIRE AMOUNT SHALL BECOME IMMEDIATELY DUE AND PAYABLE. PETITIONER'S PRIOR REQUEST FOR SANCTIONS IS DENIED.**

**ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT.**

**COUNSEL FOR BOTH PARTIES ARE STRONGLY ADMONISHED TO COMPLY WITH THE CALIFORNIA RULES OF PROFESSIONAL CONDUCT. THE COURT IS CONCERNED WITH THE BEHAVIOR BY BOTH ATTORNEYS AS NEITHER SEEM TO BE ADHERING TO THE RULES OF PROFESSIONAL CONDUCT NOR ARE THEY ACTING WITHIN THE BEST INTERESTS OF THEIR CLIENTS. COUNSEL ARE REMINDED THAT THE COURT MAY, IN ITS DISCRETION, REPORT ATTORNEYS TO THE STATE BAR. SHOULD BOTH ATTORNEYS CONTINUE TO ACT AS THEY HAVE BEEN, THE COURT MAY REPORT TO THE BAR FOR DISCIPLINARY ACTION.**

**ALL PRIOR ORDERS NOT IN CONFLICT WITH THESE ORDERS REMAIN IN FULL FORCE AND EFFECT. 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**6. JOSEPH CARLISLE V. GINA CARLISLE**

**PFL20170803**

On May 15, 2023, Petitioner filed a Request for Order (RFO) seeking to compel responses to Requests for Production of Documents, Numbers 1-8.

According to Respondent, responses to the subject discovery requests were served on February 16, 2023. Petitioner seemingly admits that he has received the responses as his declaration lists a multitude of documents he believes are missing from the production. That said, the court is left to surmise that this is in fact a Motion to Compel *Further Responses*.

On receipt of responses to requests for production of documents, the requesting party may move for an order compelling further responses where the initial production is not in compliance with the Civil Discovery Act. Cal. Civ. Pro. § 2031.310. A motion to compel further responses shall (1) be filed and served within 45 days (50 with mailing) of the date the responses were served (Cal. Civ. Pro. §2031.310(c)); (2) be accompanied by a meet and confer declaration (Cal. Civ. Pro. § 2031.310(b)(2)), and (3) include a separate statement which complies with California Rules of Court rule 3.1345.

Here, Petitioner's motion fails to comply with all three of the aforementioned requirements. First, the motion is untimely. Respondent served responses on March 4th, which would have made April 24<sup>th</sup> the last day for filing the motion. The motion before the court was not filed until May 15<sup>th</sup>.

In addition to the untimeliness, this motion lacks the requisite meet and confer declaration. Petitioner states that he sent a meet and confer letter dated November 18<sup>th</sup>, however, this is the same letter that preceded his initial Motion to Compel. There is no indication that he made any effort to meet and confer with Respondent regarding the alleged deficiencies in the responses he received after the he received the discovery responses.

Finally, while Petitioner gives a summary of documents he feels are missing from the responses, this is not in conformance with Rule 3.1345. The separate statement must include, among other things, the following information for each discovery request such that the reader need not refer to any other pleading: "(1) The text of the request...; (2) The text of each response, answer, or objection and any further responses or answers; (3) A statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute..." Cal. Rule Ct. 3.1345(c). Petitioner's summary of the alleged deficiencies does not provide the requisite information needed for the court to rule on the motion.

For the foregoing reasons, Petitioner's Motion to Compel is denied.

**TENTATIVE RULING #6: PETITIONER'S MOTION TO COMPEL IS DENIED. RESPONDENT IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 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. 3.1308; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**7. KATHRYN SOMERS V. PAUL KORDIK**

**PFL20210672**

On May 5, 2023, Respondent filed a document entitled Points and Authorities in Support of Spousal Support Termination, though there was no Request for Order (RFO) pending at that time. The RFO was thereafter filed on May 25, 2023. Both documents were mail served on June 5, 2023. Petitioner has not filed a reply declaration.

On June 6, 2023, Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC). The OSC was personally served on June 14<sup>th</sup>.

In Respondent's RFO he seeks to have support orders set to \$0. He argues that when he moved back into his home he discovered Petitioner had left the home severely damaged. He states he has had to pay \$4,787 to repair the damages and he no longer has the ability to pay the support. Petitioner, on the other hand, has filed her OSC saying that Respondent has stopped paying support and she is requesting that the entire remaining support payments be paid in one lump sum.

Despite the filings by both parties, neither has provided the court with a current Income and Expense Declaration. Respondent filed his declaration on May 5<sup>th</sup>, prior to the filing of his RFO. However, "for all hearings involving child, spousal, or domestic partner support, both parties must complete, file, and serve a current income and Expense Declaration." Cal. Rule Ct. 5.260(1); See also Cal. Fam. Code §2100. "'Current' means the form has been completed within the past three months providing no facts have changed." Cal. Rule Ct. 5.260(3).

The RFO and the OSC are continued to 10/12/2023 at 8:30 a.m. in Department 5. The parties are each ordered to file and serve current Income and Expense Declarations no later than 10 days prior to the hearing date. Petitioner is admonished that her failure to do so may result in the court relying on Respondent's representations of Petitioner's current income and standard of living. Respondent is admonished that failure to file a current Income and Expense Declaration may result in the RFO being dropped from calendar.

All prior orders not in conflict with this order remain in full force and effect.

**TENTATIVE RULING #7: THE RFO AND THE OSC ARE CONTINUED TO 10/12/2023 AT 8:30 A.M. IN DEPARTMENT 5. THE PARTIES ARE EACH ORDERED TO FILE AND SERVE CURRENT INCOME AND EXPENSE DECLARATIONS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. PETITIONER IS ADMONISHED THAT HER FAILURE TO DO SO MAY RESULT IN THE COURT RELYING ON RESPONDENT'S REPRESENTATIONS OF PETITIONER'S CURRENT INCOME AND STANDARD OF LIVING. RESPONDENT IS ADMONISHED THAT FAILURE TO FILE A CURRENT INCOME AND EXPENSE DECLARATION MAY RESULT IN THE RFO BEING DROPPED FROM CALENDAR.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 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. 3.1308; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**8. MARCI ERICKSON V. ROBERT ERICKSON**

**PFL20210456**

On May 22, 2023, Petitioner filed a Request for Order (RFO) seeking to have the court bifurcate the civil case matters and try them separately from the remaining family law issues. The RFO was personally served on June 20, 2023. Thereafter, on July 28<sup>th</sup> the parties filed a Stipulation for Bifurcation and Trial Setting of Civil Issues in Consolidated Case. The parties have stipulated to waive their right to trial by jury and proceed with a trial on the civil matters. They have requested settlement conference and trial dates.

The parties are ordered to appear to choose settlement conference and trial dates.

**TENTATIVE RULING #8: THE PARTIES ARE ORDERED TO APPEAR TO CHOOSE SETTLEMENT CONFERENCE AND TRIAL DATES.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**8A. SANDRA GRANADE V. TIMOTHY GRANADE**

**PFL20190133**

This matter is being heard on an order shortening time. As such, the parties have been ordered to appear and no tentative ruling will be issued.

**TENTATIVE RULING 8A. THE PARTIES ARE ORDERED TO APPEAR.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**9. CLARISSA KIESEL V. MICHAEL BECKER**

**23FL0291**

The matter is before the court for a review hearing following the CCRC report issued and mailed to the parties on June 12, 2023. At the hearing on June 22, 2023, both parties requested oral argument, and Counsel for Respondent requested a continuance due to the late receipt of the CCRC report. Petitioner did not object, and the court continued the matter to August 10, 2023 and ordered the parties to file supplemental declarations at least 10 days in advance of the next hearing.

The court also indicated at the hearing that it would review Petitioner's Reply Declaration, which it has reviewed and considered. The court finds that recommendations contained within the CCRC report are in the best interests of the child and adopt them with the following modifications.

The court increases Petitioner's supervised parenting time to include Sundays from 10 a.m. to 3 p.m. starting on August 13, 2023. The step-up plan is adopted thereafter with the unsupervised time indicated in Item 4 of the Parenting Time section beginning 60 days after August 13, 2023. This unsupervised time shall include Petitioner's Tuesday, Saturday, and Sunday visits.

The requirement for Petitioner to provide verification of the services she is receiving (item 3 of the Counseling section) is modified to require Petitioner to provide verification by 10th of every month for the prior month.

Petitioner is ordered to prepare and file the Findings and Order After Hearing.

**TENTATIVE RULING #9: THE COURT FINDS THAT RECOMMENDATIONS CONTAINED WITHIN THE CCRC REPORT ARE IN THE BEST INTERESTS OF THE CHILD AND ADOPT THEM WITH THE FOLLOWING MODIFICATIONS. THE COURT INCREASES PETITIONER'S SUPERVISED PARENTING TIME TO INCLUDE SUNDAYS FROM 10 A.M. TO 3 P.M. STARTING ON AUGUST 13, 2023. THE STEP-UP PLAN IS ADOPTED THEREAFTER WITH THE UNSUPERVISED TIME INDICATED IN ITEM 4 OF THE PARENTING TIME SECTION BEGINNING 60 DAYS AFTER AUGUST 13, 2023. THIS UNSUPERVISED TIME SHALL INCLUDE PETITIONER'S TUESDAY, SATURDAY, AND SUNDAY VISITS. THE REQUIREMENT FOR PETITIONER TO PROVIDE VERIFICATION OF THE SERVICES SHE IS RECEIVING (ITEM 3 OF THE COUNSELING SECTION) IS MODIFIED TO REQUIRE PETITIONER TO PROVIDE VERIFICATION BY 10TH OF EVERY MONTH FOR THE PRIOR MONTH. PETITIONER IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDER 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**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**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

August 10, 2023

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

**10. JEREMY DAY V. RAVEN DAY**

**PFL20200495**

On June 22, 2023, Respondent filed a Request for Order (RFO) to modify visitation. While not included on the caption, she also requests that the court terminate spousal support, and remove the minors as protected parties on the restraining order protecting Petitioner. The RFO was served on Petitioner by mail on June 22, 2023.

On July 26, 2023, Petitioner filed a Responsive Declaration, served personally on Respondent that same day.

At the last hearing on March 30, 2023, the court denied Respondent's request to modify visitation, finding Respondent must first comply with the orders of the court. Respondent requests in this RFO to have the Tribe supervise her visits; however, as noted by Petitioner, the Tribe previously terminated its supervision of the visits. Respondent has provided no information indicating the Tribe's willingness to resume supervision. Further, Respondent has failed to provide any information indicating compliance with the court's prior orders. As such, the court denies Respondent's request.

Similarly, Respondent provides minimal information to support her request to end spousal support and likewise her request to remove the minors as protected parties of the restraining order. The court has insufficient information to support these requests and therefore denies them.

Respondent is ordered to prepare and file the Findings and Order After Hearing.

**TENTATIVE RULING #10: THE REQUESTS IN RESPONDENT'S RFO ARE DENIED. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDER 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**12. JOANNE BIERNACKI V. SERRELL GORDON**

**PFS20140404**

Respondent filed a Request for Order (RFO) on May 17, 2023, requesting modification of child custody and parenting time orders. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on June 26, 2023 and a review hearing on August 10, 2023. Upon review of the court file, there is no Proof of Service showing Petitioner was served with the RFO or referral to CCRC.

Neither party appeared for the June 26, 2023 CCRC appointment.

The court drops the matter from calendar due to lack of proper service and for Respondent's failure to appear at CCRC which was set at Respondent's request.

**TENTATIVE RULING #12: THE COURT DROPS THE MATTER FROM CALENDAR DUE TO LACK OF PROPER SERVICE AND FOR RESPONDENT'S FAILURE TO APPEAR AT CCRC WHICH WAS SET AT RESPONDENT'S REQUEST.**

**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

August 10, 2023

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

**13. MELISSA RASCON V. JEROME FIBBRES**

**PFL20190242**

On May 15, 2023, Petitioner filed a Request for Order (RFO) to modify the custody and parenting time orders. A Child Custody Recommending Counseling (CCRC) session was scheduled on June 22, 2023 with a hearing set on August 10, 2023. Upon review of the file, there is no proof of service in the file indicating service of the RFO on Respondent.

On May 16, 2023 and again on July 14, 2023, Petitioner filed declarations. On June 22, 2023, Respondent filed a declaration. On July 28, 2023, Respondent filed a Responsive Declaration. Upon review of the file, there are no proof of service forms in the file indicating service of any of these filings on the other party. As such, the court cannot review nor consider these filings.

Both parties participated in the CCRC session, but no agreements were reached. The CCRC report was issued and mailed to the parties on July 31, 2023. The report recommends that the current custody arrangement remain in place with some additional orders for right of first refusal and to ensure the child has appropriate supervision.

Despite the service defects, given the parties' active participation in CCRC and the fact that Respondent filed a Responsive Declaration, the court finds good cause to resolve the matter on its merits. The court finds that the recommendations contained within the CCRC report are in the best interest of the child, and the court adopts them as the orders of the court.

Petitioner shall prepare the Findings and Order After Hearing.

**TENTATIVE RULING #13: THE COURT FINDS THAT THE RECOMMENDATIONS CONTAINED WITHIN THE CCRC REPORT ARE IN THE BEST INTEREST OF THE CHILD, AND THE COURT ADOPTS THEM AS THE ORDERS OF THE COURT. PETITIONER SHALL PREPARE THE FINDINGS AND ORDER 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**14. MISTY SMITH V. VINCENT JOHN LOFRANCO**

**23FL0510**

On June 5, 2023, Petitioner filed a Request for Order (RFO) requesting property control of the property located at 3771 Starbust Lane in Placerville, CA. At the initial hearing on July 6, 2023, the court found service was not timely and continued the matter to August 10, 2023 to afford Respondent an opportunity to file a Responsive Declaration. Upon review of the file, Respondent has declined to file a Responsive Declaration.

Petitioner claims that there is tension in the home as both parties continue to reside there and that the home is Petitioner's separate property, acquired before the marriage without a mortgage. Petitioner further alleges that Respondent has other places at which he could live and that he is currently not employed.

While property issues generally are not decided until the end of a case, given the tension in the home which may intensify as the case progresses, the court finds good cause to grant Petitioner exclusion possession of the home, effective as of October 9, 2023.

Petitioner shall prepare the Findings and Order After Hearing.

**TENTATIVE RULING #14: THE COURT GRANTS PETITIONER EXCLUSION POSSESSION OF THE HOME, EFFECTIVE AS OF OCTOBER 9, 2023. PETITIONER SHALL PREPARE THE FINDINGS AND ORDER 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.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

**15. RYAN JOHNSON V. VANESSA JOHNSON**

**PFL20190418**

Respondent filed a Request for Order (RFO) and Income and Expense Declaration concurrently on June 2, 2023, requesting a Post-Judgment modification of child support. Respondent served Justin Berg by mail on June 8, 2023.

As this is a Post-Judgment modification of child support, Family Code section 215 applies. As such, service must be effectuated on the party either personally or by first class mail with address verification. Respondent has failed to comply with the provisions of Family code section 215. Therefore, the court drops the matter from calendar due to lack of proper service.

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

**TENTATIVE RULING #15: THE COURT DROPS THE MATTER FROM CALENDAR DUE TO LACK OF PROPER SERVICE.**

**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

August 10, 2023

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

**16. SHAWNTEE FLEMMING V. ANDRE FLEMMING**

**22FL0216**

Petitioner filed a Request for Order (RFO) on June 6, 2023, requesting the court order Respondent to complete his Preliminary Declarations of Disclosure. Respondent was served by mail on June 8, 2023. Petitioner included the FL-316 in the RFO, however, failed to attach a copy of the filed Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration, the FL-141, as required.

Respondent filed a Responsive Declaration on July 5, 2023. There is no Proof of Service for this document, therefore, the court cannot consider it.

The court notes Respondent filed a Proof of Service on June 29, 2023, showing Petitioner was served with the Declaration of Disclosures, Declaration of Service of Declaration of Disclosures, the Schedule of Assets and Debts, as well as an Income and Expense Declaration, the FL-140; FL-141; FL-142; and FL-150 respectively. Petitioner was served by mail on June 29, 2023. The court, therefore, finds Petitioner's RFO to be moot, as Respondent has since served Petitioner the required documents. The court confirms the previously set hearing dates.

**TENTATIVE RULING #16: THE COURT DISMISSES PETITIONER'S RFO AS MOOT. THE COURT CONFIRMS THE PREVIOUSLY SET HEARING DATES.**

**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

August 10, 2023

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

**17. TIFFANY WHITAKER V. VANESSA SUMNER (OTHER PARENT: ZACHARY PLOGHOFT)**

**22FL0802**

Petitioner filed a Request for Order (RFO) on March 7, 2023, the third RFO filed by Petitioner seeking grandparent visitation. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on April 5, 2023 and a review hearing on May 11, 2023. Proof of Service filed on March 24, 2023, shows Respondent was served with a Summons and the other requisite documents on March 15, 2023. The court is unaware of what Summons was issued in this matter. Further, the Proof of Service filed on March 24, 2023, shows Other Parent was personally served on March 21, 2023.

Only Petitioner appeared at CCRC on April 5, 2023. As such a single party report was filed on April 13, 2023. A copy was mailed to the parties on April 13, 2023.

Respondent filed a Responsive Declaration on May 8, 2023. There is no Proof of Service for this document, and therefore, the court cannot consider it. Moreover, it is not timely filed pursuant to Code of Civil Procedure section 1005, and therefore, even if there was a Proof of Service, the court could not consider it.

On May 11, 2023, Petitioner and Respondent appeared for the hearing. Other Parent did not appear. The court found proper notice had been provided to Other Parent and proceeded in Other Parent's absence. The parties reached an agreement to be referred to CCRC and to set a further review hearing. The parties also agreed Other Parent would accept whatever agreements Petitioner and Respondent reached and that it was unlikely he would participate in CCRC. Petitioner agreed to provide Other Parent notice of the CCRC appointment and continued hearing date. The court accepted the parties' agreement and rereferred the parties to CCRC for an appointment on June 21, 2023 and a review hearing on August 10, 2023.

Upon review of the court file, there is no Proof of Service showing Other Parent was provided notice of the CCRC appointment or continued hearing date.

Petitioner and Respondent appeared for CCRC on June 21, 2023, however, Other Parent did not. The parties were unable to reach any agreements. A report with recommendations was filed with the court and mailed to Petitioner and Respondent on July 31, 2023. It was mailed to Other Parent on August 8, 2023.

The court finds good cause to dispense with the additional notice to Other Parent. Other Parent received proper notice of the original hearing date and failed to file a Responsive Declaration. The court finds Other Parent to be in a default position. Further, the court finds the recommending grandparent visitation orders do no impact Other Parent's custody or

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 10, 2023

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

parenting time. Other Parent has absented himself from not only these proceedings but also the minor's life. Therefore, the court will proceed.

The court finds the recommendations as set forth in the July 31, 2023 CCRC report to be in the minor's best interest. The court adopts the recommendations 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.

**TENTATIVE RULING #17: THE COURT FINDS GOOD CAUSE TO DISPENSE WITH THE ADDITIONAL NOTICE TO OTHER PARENT. OTHER PARENT RECEIVED PROPER NOTICE OF THE ORIGINAL HEARING DATE AND FAILED TO FILE A RESPONSIVE DECLARATION. THE COURT FINDS OTHER PARENT TO BE IN A DEFAULT POSITION. FURTHER, THE COURT FINDS THE RECOMMENDING GRANDPARENT VISITATION ORDERS DO NO IMPACT OTHER PARENT'S CUSTODY OR PARENTING TIME. OTHER PARENT HAS ABSENTED HIMSELF FROM NOT ONLY THESE PROCEEDINGS BUT ALSO THE MINOR'S LIFE. THEREFORE, THE COURT WILL PROCEED. THE COURT FINDS THE RECOMMENDATIONS AS SET FORTH IN THE JULY 31, 2023 CCRC REPORT TO BE IN THE MINOR'S BEST INTEREST. THE COURT ADOPTS THE RECOMMENDATIONS AS SET FORTH.**

**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

August 10, 2023

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

**18. WALTER BORING V. ALLISON BORING**

**PFL20160114**

In preparation for the December 8, 2022 hearing on the issue of child support, Petitioner filed a document entitled Update to the Court Re Child Support and Uninsured Medical Reimbursement. As part of his update to the court, Petitioner requested the court order, among other things, Respondent to pay an arrears amount of \$5,282.26 as well as an order directing Respondent to reimburse him for Respondent's half of uninsured medical expenses for the minor which amounted to \$1,381.14. The December 8<sup>th</sup> hearing was held as scheduled and the court made orders regarding both the overpayment and the reimbursement of the uninsured medical costs. The parties were ordered to meet and confer regarding the reimbursement of the uninsured medical costs for the minors. Additionally, a repayment plan was set for the overpayment of child support and the parties were ordered to meet and confer regarding the amount overpaid from December 2022 forward based on the updated income withholding order. A review hearing was set for March 16, 2023, to address both issues.

Respondent's Counsel appeared at the March 16<sup>th</sup> hearing and, on behalf of all parties, requested a continuance. The court granted the request and continued the matter to the present date.

Respondent has not filed an update with the court.

Petitioner filed a Declaration as well as an Income and Expense Declaration on August 4, 2023. The court notes these documents were late filed, and therefore, the court has not considered them.

Parties are ordered to appear for the hearing.

**TENTATIVE RULING #18: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING.**