

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
December 21, 2023
8:30 a.m./1:30 p.m.

1. AMANDA RENFROE V. ANDREW RENFROE

PFL20160677

On January 30, 2023, the parties submitted a stipulation and order, which the court signed and adopted as its order. The stipulation included a provision for a rereferral to Child Custody Recommending Counseling (CCRC) and a review hearing on April 27, 2023.

The parties attended CCRC on March 6, 2023 and were unable to reach any agreements. A report with recommendations was filed on April 12, 2023. On April 27th the court adopted the recommendations contained in the CCRC report as the orders of the court with modifications as specified in the court's minute order from that date. The court set a review hearing for August 3rd at which time the court re-referred the parties to CCRC and ordered that the minor be made available to meet with the CCRC counselor. A review hearing was set for the present date. Effective August 11th, Petitioner was to have visits the 1st, 2nd, and 4th weekend of each month from Friday after school (or 3:00 p,) until Monday drop off at school. On the weeks where Petitioner does not have weekend visits, she is to have a visit on Wednesday from 5:00 pm to 7:00 pm. The court affirmed its prior drug testing orders.

The parties attended CCRC on October 11, 2023. A report was prepared on December 7th and mailed to the parties on December 8th. The parties were unable to make agreements at CCRC but after speaking with the minors the CCRC counselor was able to provide recommendations to the court which are contained in the CCRC report. The court has reviewed the filings of the parties and the CCRC report and finds the recommendations of the CCRC counselor to be in the best interests of the minors. Therefore, the recommendations as stated in the December 7, 2023 CCRC report are hereby adopted as the orders of the court. All prior orders not in conflict with this order shall remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #1: THE RECOMMENDATIONS AS STATED IN THE DECEMBER 7, 2023 CCRC REPORT ARE HEREBY ADOPTED AS THE ORDERS OF THE COURT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

2. AMY KNIERIEM V. BEAU MICHAEL LEMIRE

23FL0234

The parties appeared before the court on September 29, 2023, at which time the court granted Petitioner a domestic violence restraining order. The restraining order awarded Petitioner sole physical and sole legal custody of the minor. Respondent was ordered to have either nonprofessionally supervised visits by a mutually agreed upon 3rd party, or professionally supervised visits, twice per week for a minimum of 2 hours each. The parties were referred to Child Custody Recommending Counseling (CCRC) and a review hearing was set for the present date.

The parties attended CCRC on October 16, 2023. A report was prepared dated October 24, 2023 which contained several agreements of the parties as well as recommendations from the CCRC counselor.

Respondent filed and served a Declaration on December 4, 2023. A Supplemental Declaration of Christie Mitchell was filed and served on behalf of Respondent on December 12, 2023.

In his Supplemental Declaration Respondent requests that Petitioner be ordered to either (1) agree to one of Respondent's proposed nonprofessional supervisors; or (2) immediately contact Parenting Time in Loomis to complete her intake paperwork so Respondent may begin his visitation time.

The court has reviewed the filings as outlined above and finds the agreements and recommendations as stated in the October 24, 2023 CCRC report to be in the best interests of the minor. The recommendations and agreements of the parties as stated therein are hereby adopted as the orders of the court with the following modifications: Paragraphs 2 and 3 of the Supervised Visits section shall be deleted in their entirety. Petitioner is further ordered to contact Parenting Time in Loomis no later than January 5, 2024 and complete all intake paperwork as requested by them. Petitioner shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #2: THE COURT HAS REVIEWED THE FILINGS AS OUTLINED ABOVE AND FINDS THE AGREEMENTS AND RECOMMENDATIONS AS STATED IN THE OCTOBER 24, 2023 CCRC REPORT TO BE IN THE BEST INTERESTS OF THE MINOR. THE RECOMMENDATIONS AND AGREEMENTS OF THE PARTIES AS STATED THEREIN ARE HEREBY ADOPTED AS THE ORDERS OF THE COURT WITH THE FOLLOWING MODIFICATIONS: PARAGRAPHS 2 AND 3 OF THE SUPERVISED VISITS SECTION SHALL BE DELETED IN THEIR ENTIRETY. PETITIONER IS FURTHER ORDERED TO CONTACT PARENTING TIME IN LOOMIS NO LATER THAN JANUARY 5, 2024 AND COMPLETE ALL INTAKE PAPERWORK AS REQUESTED BY THEM. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 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
December 21, 2023
8:30 a.m./1:30 p.m.

3. ASHLEE NICOLE SCHMIDT V. JACOB SCHMIDT

22FL1154

This matter comes before the court on a Request for Order (RFO) filed by Respondent on November 6, 2023. The RFO was originally filed ex parte on November 3rd but was denied and the parties were referred to an emergency set Child Custody Recommending Counseling (CCRC) appointment. A review hearing was scheduled for the present date.

Petitioner did not file a Responsive Declaration to Request for Order in opposition of the November 6th RFO, but she did file one opposing the ex parte.

Respondent filed his RFO requesting sole legal and sole physical custody of the parties' minor child. He proposes Petitioner continue to have parenting time only on Tuesdays after school until Friday start of school.

Petitioner opposes the RFO requesting the court maintain the existing custody orders which were put into place on November 2, 2023.

The parties attended CCRC on November 14th and were able to reach agreements on all issues. A report codifying the agreements was prepared the same day. The court has reviewed the agreements of the parties and finds them to be in the best interests of the minor. Therefore, the agreements as contained in the November 14, 2023 CCRC report are hereby adopted as the orders of the court. Respondent shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #3: THE AGREEMENTS AS CONTAINED IN THE NOVEMBER 14, 2023 CCRC REPORT ARE HEREBY ADOPTED AS THE ORDERS OF THE COURT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

December 21, 2023

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

4. BRIAN BURKS V. MELISSA BURKS

PFL20180047

This matter is before the court on a Request for Order (RFO) filed by Respondent on September 5, 2023. The RFO and all other required documents were served on September 13th. Petitioner has not filed a Responsive Declaration to Request for Order.

The parties appeared for Child Custody Recommending Counseling (CCRC) on November 2nd and a report with recommendations was prepared dated December 7th. The CCRC report was mailed to the parties on December 8th. Neither party has filed a response or objection to the CCRC report.

Respondent brings her RFO requesting sole legal and sole physical custody of the parties' minor child. She proposes Petitioner have visitation alternating weekends from Friday at 4:00 pm to Sunday at 6:00 pm. She has also included a proposed holiday schedule with her filing.

The court has reviewed the CCRC report and finds the recommendations contained therein to be in the best interests of the minor. The recommendations of the December 7, 2023 CCRC report are hereby adopted as the orders of the court. The court appoints Kelly Bentley as Minor's Counsel. The parties are to split equally the costs of Minor's Counsel. 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 #4: THE RECOMMENDATIONS OF THE DECEMBER 7, 2023 CCRC REPORT ARE HEREBY ADOPTED AS THE ORDERS OF THE COURT. THE COURT APPOINTS KELLY BENTLEY AS MINOR'S COUNSEL. THE PARTIES ARE TO SPLIT EQUALLY THE COSTS OF MINOR'S COUNSEL. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

December 21, 2023

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

5. CAITLIN OSBORNE V. CAMERON SANTO

22FL0257

Respondent filed a Request for Order (RFO) on July 6, 2023 seeking custody and visitation orders as well as child support orders. There is no Proof of Service for the RFO. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on September 21, 2023 and the RFO was originally scheduled to be heard on November 2nd. In the meantime, Petitioner's Request for Domestic Violence Restraining Order (DVRO) was heard and ruled upon on September 15, 2023. Given the granting of the DVRO, the court re-referred the parties to CCRC and continued the hearing on the RFO to the present date.

Petitioner filed and served her Responsive Declaration to Request for Order on December 6, 2023. Only Respondent was served, not the Department of Child Support Services (DCSS).

On December 13th Respondent filed a Declaration with evidence of his completion of a parenting course. It was electronically served the same day.

Given the involvement of DCSS the court does not have jurisdiction over the child support request. Additionally, there is no evidence that DCSS was ever served or is aware of the pending request. Therefore, the request for child support is dropped from calendar.

Despite the defect in service to DCSS, the court finds there is good cause to reach the issues of child custody given that Petitioner filed her responsive declaration and given that the parties have now participated in CCRC twice. Therefore, ruling on the custody matters appears to be best for the preservation of court resources and in the best interests of the parties.

The parties attended CCRC on December 5th. A report was prepared dated December 14th, however it was mailed to the parties on December 13th. Given that the parties have had less than 10 days to review and respond to the report and in light of the time sensitive nature of the requests with the holidays approaching, the parties are ordered to appear.

TENTATIVE RULING #5: THE PARTIES ARE ORDERED TO APPEAR FOR HEARING TO ADDRESS THE ISSUES OF CHILD CUSTODY AND VISITATION AS WELL AS THE CCRC RECOMMENDATIONS. THE REQUEST FOR CHILD SUPPORT IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE ON DCSS.

NO HEARING ON THE CHILD SUPPORT REQUEST 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

December 21, 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
December 21, 2023
8:30 a.m./1:30 p.m.

6. DCSS v. BRIAN ORTEGA (JOINED PARTY: REBECCA GIERHART)

PFS20160102

This matter comes before the court on a Request for Order (RFO) filed by Respondent on September 13, 2023. The parties were referred to Child Custody Recommending Counseling (CCRC). The RFO, CCRC referral, and all other required documents were personally served on September 25th.

Joined Party filed and served her Responsive Declaration to Request for Order on November 16th.

Respondent brings his RFO requesting reunification therapy with the two minors prior to granting him parenting time. Ultimately, he would like joint legal and physical custody of the minors with a 50/50 timeshare.

The parties attended CCRC on November 2nd and a report was prepared dated November 6th. The report articulates a number of agreements which were reached by the parties. It also includes recommendations regarding legal and physical custody.

Joined Party opposes Respondent's request and asks that the current orders remain in place. She notes her concerns regarding Respondent's temper and alcohol use and she requests that he be ordered to file documentation of his completed anger management course.

Given that the CCRC counselor verified with Terrance Martin that Respondent has completed an anger management course, the court does not find it necessary to order Respondent to file additional proof.

The court finds the agreements and recommendations as stated in the November 6, 2023 CCRC report to be in the best interests of the minors and therefore adopts them as the orders of the court. Respondent shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #6: THE COURT FINDS THE AGREEMENTS AND RECOMMENDATIONS AS STATED IN THE NOVEMBER 6, 2023 CCRC REPORT TO BE IN THE BEST INTERESTS OF THE MINORS AND THEREFORE ADOPTS THEM AS THE ORDERS OF THE COURT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE 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
December 21, 2023
8:30 a.m./1:30 p.m.

7. IAN JAMES ELKERTON V. JORDYN AVIA TIMBERLAKE

23FL0767

On August 25, 2023, Respondent filed a Request for Order (RFO) seeking custody and visitation orders. The RFO and all other required documents were mail served on October 9th.

The parties appeared at Child Custody Recommending Counseling on November 2nd and were able to reach a full agreement on all issues. On November 29th, CCRC issued a report codifying those agreements. The report was mailed to the parties on November 30th and neither party has filed a response or opposition to its contents.

Respondent filed her RFO requesting joint legal and physical custody of the parties' minor child with a 2-2-3 schedule. She requests court ordered use of a parenting app for all communication and that communication be restricted to issues involving the minor only. Finally, she requests Petitioner be ordered to take anger management and co-parenting classes.

The court has reviewed the agreements of the parties and finds them to be in the best interests of the minor. They are therefore hereby adopted as the orders of the court. Respondent shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #7: THE AGREEMENTS OF THE PARTIES AS CODIFIED IN THE NOVEMBER 29, 2023 CCRC REPORT ARE ADOPTED AS THE ORDERS OF THE COURT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

December 21, 2023

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

8. JENNIFER WIDAU V. TOM SANDOVAL

PFL20210301

On August 23, 2023, Respondent filed a Request for Order (RFO) seeking custody and visitation orders. He filed a Notice of Lodgment and Lodgment and Exhibit List concurrently therewith. He filed a Declaration Regarding Address Verification but then served the moving papers electronically on Petitioner's counsel on August 31st. Generally, this would not constitute proper service. However, Petitioner filed and served a Responsive Declaration to Request for Order on October 30th, thereby waiving any defect in service.

Respondent filed a Supplemental Declaration on December 11th but there is no Proof of Service for this document and therefore the court cannot consider it.

The parties attended Child Custody Recommending Counseling (CCRC) on November 1st. A report was prepared dated December 7, 2023. It was mailed to the parties on December 8th.

Respondent filed his RFO requesting joint legal and joint physical custody of the parties' minor child. He requests visitation every first, second, and fourth weekend from Friday after school (3:00 pm when there is no school) to the following Sunday at 7:00 pm. He also requests every Thursday after school (3:00 pm when there is no school) to the following Friday at the start of school (3:00 pm when there is no school). He requests a holiday schedule in accordance with the schedule submitted on his FL-341c.

Petitioner opposes the requested visitation. Instead, she proposes reunification therapy for Respondent and the minor with a review hearing set 90 days out. She asks that the court stay the current step-up plan until the reunification therapy has commenced. She asks the court to modify the order regarding alcohol testing from random 72-hour etg/eth testing with Comprehensive Medical to testing via BACtrack monitoring app at least three times a day to show proof of consistent sobriety. She also requests the parties be ordered to participate in co-parenting counseling in lieu of private mediation with Respondent to incur all out-of-pocket costs for counseling. Finally, Petitioner is seeking sanctions in the amount of \$5,000 pursuant to Family Code § 271 for Respondent's failure to comply with court orders and failing to meet and confer.

The court has reviewed the filings as outlined above. The court finds the recommendations contained in the December 7, 2023 CCRC report to be in the best interests of the minor and therefore adopts them as the orders of the court. The court further orders that the parties shall sign any and all necessary releases to allow contact and communication between the conjoint therapist and the minor's therapist. The court sets a review hearing for 3/21/2024 at 8:30 am in Department 5 to address the status of reunification therapy. Parties are to file and serve supplemental declarations no later than 10 days prior to the hearing date. Until then, Respondent shall have phone or video calls with the minor no less than twice per week

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

unless the minor's therapist provides written documentation that such contact is not in the minor's best interest for the time being. Calls shall take place on dates and times mutually agreeable by both parties. Petitioner shall not unreasonably withhold her consent to a requested call in accordance with this order.

Respondent is ordered to participate in daily alcohol testing via BACtrack at least twice per day and provide Petitioner with copies of the results. The parties shall split equally the cost of BACtrack. If Respondent has any positive tests, then Respondent shall pay the entire BACtrack cost for the following month.

The court denies Petitioner's request to order co-parenting counseling at this time as it has not necessarily been shown that the parties are unable to work together to parent the minor but instead the larger issue is the strained relationship between the minor and Respondent.

The court reserves on Petitioner's request for Section 271 sanctions.

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

TENTATIVE RULING #8: THE COURT FINDS THE RECOMMENDATIONS CONTAINED IN THE DECEMBER 7, 2023 CCRC REPORT TO BE IN THE BEST INTERESTS OF THE MINOR AND THEREFORE ADOPTS THEM AS THE ORDERS OF THE COURT. THE COURT FURTHER ORDERS THAT THE PARTIES SHALL SIGN ANY AND ALL NECESSARY RELEASES TO ALLOW CONTACT AND COMMUNICATION BETWEEN THE CONJOINT THERAPIST AND THE MINOR'S THERAPIST. THE COURT SETS A REVIEW HEARING FOR 03/21/2024 AT 8:30 AM IN DEPARTMENT 5 TO ADDRESS THE STATUS OF REUNIFICATION THERAPY. PARTIES ARE TO FILE AND SERVE SUPPLEMENTAL DECLARATIONS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. UNTIL THEN, RESPONDENT SHALL HAVE PHONE OR VIDEO CALLS WITH THE MINOR NO LESS THAN TWICE PER WEEK UNLESS THE MINOR'S THERAPIST PROVIDES WRITTEN DOCUMENTATION THAT SUCH CONTACT IS NOT IN THE MINOR'S BEST INTEREST FOR THE TIME BEING. CALLS SHALL TAKE PLACE ON DATES AND TIMES MUTUALLY AGREEABLE BY BOTH PARTIES. PETITIONER SHALL NOT UNREASONABLY WITHHOLD HER CONSENT TO A REQUESTED CALL IN ACCORDANCE WITH THIS ORDER.

RESPONDENT IS ORDERED TO PARTICIPATE IN DAILY ALCOHOL TESTING VIA BACTRACK AT LEAST TWICE PER DAY AND PROVIDE PETITIONER WITH COPIES OF THE RESULTS. THE PARTIES SHALL SPLIT EQUALLY THE COST OF BACTRACK. IF RESPONDENT HAS ANY POSITIVE TESTS, THEN RESPONDENT SHALL PAY THE ENTIRE BACTRACK COST FOR THE FOLLOWING MONTH.

PETITIONER'S REQUEST FOR CO-PARENTING COUNSELING IS DENIED.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

THE COURT RESERVES ON PETITIONER'S REQUEST FOR SECTION 271 SANCTIONS.

ALL ORDERS NOT IN CONFLICT WITH THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE 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

December 21, 2023

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

9. KEVIN VANDELINDER V. BRIANA THORNTON

PFL20180810

Petitioner filed a Request for Order (RFO) on October 31, 2022 seeking changes in custody, as well as an award of attorney's fees. The RFO and all other required documents were served on Respondent on December 26, 2022. Respondent did not file a Responsive Declaration.

The parties appeared for hearing on February 9, 2023, at which time the court awarded Petitioner sole legal and sole physical custody. Respondent was granted professionally supervised visits once per month for one hour with the following terms: (1) Respondent to choose a facility for the visits no later than February 28, 2023; (2) Petitioner to schedule visits; (3) Respondent to pay for all visits; (4) Respondent to participate in the visits alone without bringing any family or other individuals with her; (5) If Respondent appears under the influence the visit will be cancelled and no other visits will be scheduled; (6) Visits are terminated if Respondent misses a visit without prior notification. Pending Respondent's compliance with all of the court's terms, visitation was to step up from once per month to twice per month beginning in June of 2023. The court instituted additional orders directing Respondent to submit to a hair follicle test no later than March 9, 2023, as well as random drug testing on a regular basis. She was also ordered to participate in Narcotics Anonymous and provide Petitioner with proof thereof. Petitioner's request for attorney's fees was denied. The court set a review hearing to assess the status of the visits.

The parties attended the review hearing on June 22nd and the court maintained its prior orders. A further review hearing was set for the present date. Parties were ordered to file supplemental declarations no later than 10 days prior to the review hearing however, Respondent was admonished that failure to file a supplemental declaration would result in the matter being dropped from calendar.

Respondent filed and served her Declaration on December 7th. Petitioner filed his Declaration on December 8th, however, there is no Proof of Service for this document therefore the court cannot consider it.

Respondent is requesting separate visits with each child to further the individual bonds with them. She also requests scheduled phone calls and an order allowing the children to meet their 2-year-old brother. She states that she has complied with all court orders regarding testing.

After reviewing Respondent's declaration and attached exhibits it does appear that she tested positive for buprenorphine at one point but the date of the test is unclear. The parties are ordered to appear to provide the court with additional information.

TENTATIVE RULING #9: THE PARTIES ARE ORDERED TO APPEAR.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

10. NICHOLAS WILLIAMS V. JENNIFER WILLIAMS

23FL0197

Respondent filed a Request for Order (RFO) on September 25, 2023 seeking spousal support and attorney's fees. She filed her Income and Expense Declaration and a Declaration of Roger G. Kosla concurrently therewith. All documents were mail served on September 21st. Petitioner has not filed a Responsive Declaration to Request for Order.

Respondent is requesting guideline spousal support as well as \$10,000 in attorney's fees and \$5,000 in expert costs pursuant to Family Code § 2030. She states that a forensic accountant will be necessary to value the community property business. The parties were married for over 24 years and experienced an upper middle class marital standard of living. Respondent states she was ousted from her job at the community property business and now works as a ranch hand. Petitioner continues to run the business and enjoy income from it.

Given Petitioner's failure to file his Income and Expense Declaration and given the large amount of support and fees requested, the parties are ordered to appear for hearing.

TENTATIVE RULING #10: THE PARTIES ARE ORDERED TO APPEAR FOR HEARING.

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
December 21, 2023
8:30 a.m./1:30 p.m.

11. NICOLE RILEY V. RANDY LOWELL HOFF

23FL0904

Petitioner filed a Request for Order (RFO) on September 12, 2023 seeking orders for custody and visitation, child support, and attorney's fees and costs. She filed her Income and Expense Declaration concurrently therewith. Both documents were mail served on September 14th along with the Summons and several other documents including a Notice and Acknowledgement of Receipt.

Mail service of the Summons and Complaint is only deemed complete upon the return of a written Notice and Acknowledgement of Receipt. Cal. Civ. Pro. § 415.30(c). Where the receiving party fails to return the acknowledgment "...there is no effective service and [said party] merely becomes liable for reasonable expenses of service in a more conventional manner. Thierfeldt v. Marin Hospital Dist., 35 Cal. App. 3d 186 (1973). "Although a proper basis for personal jurisdiction exists and notice is given in a manner which satisfies the constitutional requirements of due process, service of summons is not effective and the court does not acquire jurisdiction of the party unless the statutory requirements for service of summons are met." Engbreton & Co. v. Harrison, 125 Cal. App. 3d 436, 443 (1981).

Here, while it does appear Respondent has actual knowledge of the pending lawsuit, there is no signed Notice and Acknowledgement of Receipt on file with the court and therefore service of the Summons and Complaint has not been effectively complete. Without proper service, the court has no jurisdiction to rule on this matter. Therefore, the RFO is dropped due to improper service.

TENTATIVE RULING #11: THE RFO IS DROPPED FROM CALENDAR DUE TO IMPROPER 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

December 21, 2023

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

12. RACHEL ELIZABETH CRUZ V. VINCENT EDEN SANTOS CRUZ

22FL1146

On August 23, 2023, Petitioner filed a Request for Order (RFO) seeking custody and visitation orders, as well as attorney's fees and costs. Her Income and Expense Declaration and a Declaration of Attorney, Melissa M. Cantu, Esq. in Support of Attorney Fees and Costs were filed the day prior. All documents were mail served on October 24th.

The parties attended Child Custody Recommending Counseling (CCRC) on November 2, 2023. A report was issued on November 2nd and it was mailed to the parties on November 3rd.

Respondent filed and served his Responsive Declaration to Request for Order on December 6th.

Petitioner brings her RFO making the following the requests: (1) Sole legal and physical custody of the children; (2) Respondent shall continue to complete the substance abuse evaluation performed by Colleen Moore and any additional costs associated with doing so shall be paid by Respondent; (3) Set a further review hearing once Ms. Moore's report has been finished to determine if the court should adopt all, a portion of, or none of her recommendations; (4) Respondent shall continue to participate in SoberLink testing as directed by Ms. Moore subject to any changes outlined in the substance abuse evaluation. All costs associated with doing so shall be fully paid by Respondent; (5) If Petitioner suspects Respondent is drinking then Respondent to immediately submit to a hair follicle test for drugs and alcohol with results sent directly to each party's attorney. Respondent shall incur the full amount of costs for testing; (6) Respondent to have the choice of professionally supervised visitation to be paid for solely by Respondent or non-professionally supervised visits, on a set schedule until the substance abuse evaluation is completed. Maternal grandparents to supervise the visits if Respondent chooses non-professionally supervised visitation. If any supervisor suspects Respondent is under the influence, the supervisor shall require a test, and if Respondent is in fact under the influence, the visitation shall be immediately terminated. Visits to take place every Thursday and Sunday for up to three hours, time to be mutually agreed to by the parties; (7) After Ms. Moore's report is completed, a child custody evaluation pursuant to Evidence Code § 730 to be conducted taking into account Ms. Moore's report; (8) Respondent shall enroll and participate in a parenting class; (9) Respondent shall enroll and participate in in-person individual counseling; (10) \$8,000 in attorney's fees paid directly to the Law Office of Tiffany Andrews, P.C. within 14 days of the order being entered; and (11) The proceeds from the sale of the home currently held in an IOLTA client trust account be divided between the parties within 14 days of entry of the order.

The parties attended CCRC and were able to reach agreements regarding a parenting plan, drug treatment, counseling, phone calls, right of first option for childcare, and vacations.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

The agreements are codified in the CCRC report though the report did not address legal custody or payment of costs for Ms. Moore or drug testing.

Respondent agrees to joint legal and joint physical custody and asks the court to implement the agreements as stated in the CCRC report. He also asks for an order directing the parties to distribute any or all funds from the proceeds of the sale of the former family home to either a joint account in the names of both parties or to each party's attorney on their behalf, with a reservation of jurisdiction as to the characterization of said funds. He further asks the court to order each party to bear their own attorney fees and costs.

The court has reviewed the filings as outlined above and finds the agreements of the parties as stated in the November 2, 2023 CCRC report to be in the best interests of the minors and therefore the court adopts those agreements as the orders of the court. The parties are to share joint legal and joint physical custody pursuant to step 1 of the visitation schedule stated in the CCRC report. The court sets a review hearing for 6/20/2024 at 8:30 am in Department 5 to address Respondent's progress in his recovery efforts and whether or not moving to step 2 of the visitation schedule is in the best interests of the children. The court reserves jurisdiction on Petitioner's request for a Section 730 evaluation until the next hearing date. Parties are ordered to file and serve supplemental declarations no later than 10 days prior to the hearing date.

Respondent is ordered to pay the entirety of Ms. Moore's costs as well as the entirety of the costs for drug and alcohol testing. Petitioner's request for a parenting class is denied as Petitioner has failed to show that Respondent's parenting outside of his substance abuse is lacking such that a class would help him better parent the children and therefore be in the best interests of the children.

Regarding Petitioner's request for attorney's fees, the public policy of Family Code section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." In Re Marriage of Keech, 75 Cal. App. 4th 860, 866 (1999). In the face of a request for attorney's fees and costs, the court is to make findings on "whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties." Fam. Code § 2030(a)(2).

Family Code section 2032 works in tandem with Section 2030 to ensure that any award of costs and fees is just and reasonable. Fam. Code § 2032. "In determining what is just and reasonable under the relative circumstances, the court shall 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." *Id.* at (b). Financial resources are only one factor to be considered though. *Id.* The court may also consider the parties' trial tactics. In Re Marriage of Falcone & Fyke, 203 Cal. App. 4th 964; 975 (2012).

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

Here, Respondent relies on Petitioner's use of the sale proceeds to show her ability to pay her own fees but then opposes Petitioner's request to have the proceeds distributed. He also argues that Petitioner can, and should be, required to work full time to pay for her own attorney's fees. Given that there are four children aged from 6 to 11, the court finds that it would be unreasonable to require Petitioner to work full time when the children reside with her 100% of the time. Given Petitioner's part time employment compared to Respondent's monthly income of \$16,800 the court finds there to be a significant disparity in each party's ability to pay for his or her attorney's fees and therefore an award under § 2030 is proper. However, the court does not find \$8,000 to be reasonable amount to be awarded at this stage. While Petitioner did incur costs and fees associated with the filing of the present motion and she will incur additional fees for the preparation and filing of a supplemental declaration as well as her counsel's appearance at the review hearing, the court does not feel this matter is sufficiently complex to justify an award of \$8,000 at this time. As such, Petitioner is awarded the smaller amount of \$5,000. This amount shall be paid directly to the Law Office of Tiffany Andrews, P.C. as and for attorney's fees and costs for Petitioner. Respondent may pay this amount in one lump sum or in monthly increments of \$1,000 paid on the 15th of each month commencing on January 15th and continuing until paid in full (approximately 5 months). If any payment is missed or late, the entire amount shall become immediately due and payable.

Finally, regarding the proceeds from the sale of the family residence it is a longstanding tenant of the law that the court shall divide the community estate of the parties equally. Cal. Fam. Code 2550. 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). While the court is sympathetic to Respondent's argument that he believes a portion of the proceeds are his separate property, the court is concerned with Petitioner's ability to support her four children and maintain adequate representation in the present matter on her current income alone. That said, the funds are to be distributed equally to each party's attorney and held in an IOLTA client trust account on behalf of the represented party. Distribution of the funds shall take place no later than January 4, 2024. Thereafter, Petitioner's counsel is authorized to release \$100,000 of the funds to Petitioner which shall ultimately be taken out of her community property portion of the funds. The court reserves jurisdiction on the characterization of the proceeds.

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

TENTATIVE RULING #12: THE COURT HAS REVIEWED THE FILINGS AS OUTLINED ABOVE AND FINDS THE AGREEMENTS OF THE PARTIES AS STATED IN THE NOVEMBER 2, 2023 CCRC REPORT

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

TO BE IN THE BEST INTERESTS OF THE MINORS AND THEREFORE THE COURT ADOPTS THOSE AGREEMENTS AS THE ORDERS OF THE COURT. THE PARTIES ARE TO SHARE JOINT LEGAL AND JOINT PHYSICAL CUSTODY PURSUANT TO STEP 1 OF THE VISITATION SCHEDULE STATED IN THE CCRC REPORT. THE COURT SETS A REVIEW HEARING FOR 6/20/2024 AT 8:30 AM IN DEPARTMENT 5 TO ADDRESS RESPONDENT'S PROGRESS IN HIS RECOVERY EFFORTS AND WHETHER OR NOT MOVING TO STEP 2 OF THE VISITATION SCHEDULE IS IN THE BEST INTERESTS OF THE CHILDREN. THE COURT RESERVES JURISDICTION ON PETITIONER'S REQUEST FOR A SECTION 730 EVALUATION UNTIL THE NEXT HEARING DATE. PARTIES ARE ORDERED TO FILE AND SERVE SUPPLEMENTAL DECLARATIONS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE.

RESPONDENT IS ORDERED TO PAY THE ENTIRETY OF MS. MOORE'S COSTS AS WELL AS THE ENTIRETY OF THE COSTS FOR DRUG AND ALCOHOL TESTING. PETITIONER'S REQUEST FOR A PARENTING CLASS IS DENIED.

PETITIONER IS AWARDED \$5,000. THIS AMOUNT SHALL BE PAID DIRECTLY TO THE LAW OFFICE OF TIFFANY ANDREWS, P.C. AS AND FOR ATTORNEY'S FEES AND COSTS FOR PETITIONER. RESPONDENT MAY PAY THIS AMOUNT IN ONE LUMP SUM OR IN MONTHLY INCREMENTS OF \$1,000 PAID ON THE 15TH OF EACH MONTH COMMENCING ON JANUARY 15TH AND CONTINUING UNTIL PAID IN FULL (APPROXIMATELY 5 MONTHS). IF ANY PAYMENT IS MISSED OR LATE, THE ENTIRE AMOUNT SHALL BECOME IMMEDIATELY DUE AND PAYABLE.

THE FUNDS ARE TO BE DISTRIBUTED EQUALLY TO EACH PARTY'S ATTORNEY AND HELD IN AN IOLTA CLIENT TRUST ACCOUNT ON BEHALF OF THE REPRESENTED PARTY. DISTRIBUTION OF THE FUNDS SHALL TAKE PLACE NO LATER THAN JANUARY 4, 2024. THEREAFTER, PETITIONER'S COUNSEL IS AUTHORIZED TO RELEASE \$100,000 OF THE FUNDS TO PETITIONER WHICH SHALL ULTIMATELY BE TAKEN OUT OF HER COMMUNITY PROPERTY PORTION OF THE FUNDS. THE COURT RESERVES JURISDICTION ON THE CHARACTERIZATION OF THE PROCEEDS.

ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

13. AMANDA YOUNG V. CHRISTOPHER YOUNG

PFL20190149

Respondent filed a Request for Order (RFO) on July 3, 2023. Respondent requests a change in parenting time. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on September 7, 2023. Respondent is requesting shared physical custody. Petitioner was served on July 13, 2023. The court notes the service was by mail. The court further notes this is a post judgment request for modification and as such Family Code section 215 applies. Respondent did not file an address verification form as required by Family Code section 215.

Petitioner filed a Responsive Declaration on August 8, 2023. Respondent was served by mail on August 8, 2023. Petitioner objects to Respondent's requested change in orders. Petitioner asserts Respondent has failed to visit with the minors for at least two years although visitation was made available to him. However, Petitioner also states in her declaration that Respondent saw the minors on Christmas 2022.

Both parties appeared for the CCRC appointment on September 7th. However, the parties were unable to reach any agreements. A report with recommendations was filed with the court on September 21st. Copies were mailed to the parties on October 18, 2023.

Respondent filed an emergency request for orders on October 16, 2023, requesting the children maintain their current enrollment at Sutter's Mill elementary. Respondent asserted that Petitioner had unilaterally removed the minors from their school without any consultation with him despite the parties sharing joint legal custody. The court granted the ex parte request on October 16, 2023, and ordered the minors to remain in their school of origin pending the hearing on October 26, 2023. The court set Respondent's RFO regarding the minor's school for a hearing to coincide with the review hearing of the CCRC appointment. Proof of Service shows Petitioner was served electronically on October 16, 2023.

Respondent filed a supplemental declaration on October 17, 2023. Proof of Service shows petitioner was served with the supplemental declaration both electronically and by mail on October 17, 2023. Respondent disputes Petitioner's allegation that he has not seen the minors for two years. Respondent asserts that he had the children in his care and custody multiple times throughout 2022. Respondent asserts Petitioner has withheld the minors due to his inability to pay child support.

The court finds good cause to proceed with this matter despite the lack of address verification as required by Family Code section 215. The court finds that Petitioner received the RFO at the address and has filed a Responsive Declaration and has participated in the CCRC appointment.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

On October 26, 2023, the parties appeared for the hearing. The parties agreed to return to CCRC to address the school issue. Parties also agreed Northside School is to be the exchange location.

Parties attended CCRC on November 9, 2023 and agreed the minors are to continue attending Northside School. A report with the parties' agreement was filed with the court on November 9, 2023 and copies were mailed to the parties on the same date.

The court adopts the agreement of the parties as its order. The minors shall continue to attend Northside School.

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

TENTATIVE RULING #13: THE COURT ADOPTS THE AGREEMENT OF THE PARTIES AS ITS ORDER. THE MINORS SHALL CONTINUE TO ATTEND NORTHSIDE SCHOOL. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE 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
December 21, 2023
8:30 a.m./1:30 p.m.

14. BAYLEIGH MARK V. NOAH BINGAMAN

22FL0514

Respondent filed a Request for Order (RFO) on September 20, 2023, requesting the court order visitation between Respondent and the minor while Respondent is incarcerated. Petitioner was served by mail on October 23, 2023. The parties were not referred to Child Custody Recommending Counseling (CCRC) as they had been within the last six months.

Petitioner has not filed a Responsive Declaration.

The court notes these issues were encompassed in the court's July 20, 2023 ruling, therefore, this is essentially a request for reconsideration.

Any party may move for reconsideration of a court's order where the moving party (1) has been affected by the court's order; and (2) moves for reconsideration within 10 days of the service upon the moving party written notice of the entry of the order. Cal. Civ. Pro. § 1008. The moving party must establish "...new or different facts, circumstances, or law..." that would warrant reconsideration of the order and such facts, circumstances or law shall be set forth in a written affidavit including "...what application was made before, when and to what judge, [and] what order or decisions were made..." *Id.*

Here, Respondent has not established any change in circumstances that would warrant a change to the court's prior orders. Respondent was incarcerated at the time the court adopted the recommendations from CCRC on July 20, 2023. Respondent's RFO is denied. All prior orders remain in full force and effect. Respondent shall prepare and file the findings and orders after hearing.

TENTATIVE RULING #14: RESPONDENT'S RFO IS DENIED FOR THE REASONS SET FORTH ABOVE. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

December 21, 2023

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

15. BEAU GRIFFIN V. HANNAH GRIFFIN

PFL20200103

On September 21, 2023, the parties reached an agreement which included a review hearing for Respondent's step-up plan. Upon review of the court file, neither party has filed a Supplemental Declaration with the court.

As neither party has filed a supplemental declaration, the court reasonably infers there have been no issues with the step-up plan. Therefore, the court drops this matter from calendar.

All prior orders remain in full force and effect.

TENTATIVE RULING #15: THE MATTER IS DROPPED FROM CALENDAR. 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.

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
December 21, 2023
8:30 a.m./1:30 p.m.

16. CASEY SMITHART V. NICOLE ELSA

22FL0492

Petitioner filed a Request for Order on August 15, 2023, requesting modification of the current orders for child custody and parenting plan. The parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on November 1, 2023 and a review hearing on December 21, 2023. Upon review of the court file, there is no Proof of Service showing Petitioner served Respondent with the necessary documents.

Nevertheless, Respondent filed a Responsive Declaration on October 10, 2023. Petitioner was served on October 23, 2023. Respondent objects to Petitioner's requested orders. Respondent asserts Petitioner has failed to comply with the current court orders for the step-up plan. Respondent further asserts Petitioner relapsed.

Both parties attended CCRC on November 1, 2023. The parties were unable to reach any agreements. A report with recommendations was filed with the court on November 9, 2023. Copies were mailed to the parties the same day.

Respondent filed a Supplemental and Reply Declaration on December 4, 2023. Respondent filed additional Declarations from the minor's paternal aunt and therapist. Petitioner was served on December 4, 2023. Respondent reiterates her objection to any modification of the current orders and objects to the recommendations as set forth in the November 9, 2023 CCRC report.

The court has read and considered the filings as outlined above. The court finds the current orders remain in the minor's best interest. Petitioner argues for the change in orders on the basis that he was in court on October 24th but "unable to see the judge." This essentially eludes to the fact that he is requesting the court reconsider its October 2022 orders. Any party may move for reconsideration of a court's order where the moving party (1) has been affected by the court's order; and (2) moves for reconsideration within 10 days of the service upon the moving party written notice of the entry of the order. Cal. Civ. Pro. § 1008. The moving party must establish "...new or different facts, circumstances, or law..." that would warrant reconsideration of the order and such facts, circumstances or law shall be set forth in a written affidavit including "...what application was made before, when and to what judge, [and] what order or decisions were made..." *Id.* Petitioner's motion is not only woefully untimely but he fails to establish any new or different facts or circumstances that would warrant a change to the prior orders. The orders were found to be in the best interests of the minor at the time they were made and there has been no showing that they are no longer in the minor's best interests, therefore Petitioner's RFO is denied. The court is not adopting the November 9, 2023 CCRC recommendations. All prior orders remain in full force and effect.

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

TENTATIVE RULING #16: ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
December 21, 2023
8:30 a.m./1:30 p.m.

17. CHRISTINE PREMOCK V. RYAN PREMOCK

PFL20190171

Petitioner filed a Request for Order (RFO) on September 21, 2023, requesting reimbursement of childcare, medical, and extra-curricular costs. Respondent was served on September 21, 2023.

The Department of Child Support Services (DCSS) was involved with the parties in case number PFS20190133. The cases were consolidated with PFL20190171. The court finds DCSS is a party to this matter and the RFO deals with child support obligations. However, Petitioner has not served DCSS with the RFO. The court finds this matter should be heard by the child support commissioner in Department 8.

On its own motion, the court continues the matter to Department 8 on 3/11/2024 at 8:30 AM. Petitioner is directed to immediately serve DCSS with a copy of the RFO as well as a copy of the tentative ruling.

All prior orders remain in full force and effect. Petitioner shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #17: ON ITS OWN MOTION, THE COURT CONTINUES THE MATTER TO DEPARTMENT 8 ON 3/11/2024 AT 8:30 AM. PETITIONER IS DIRECTED TO IMMEDIATELY SERVE DCSS WITH A COPY OF THE RFO AS WELL AS A COPY OF THE TENTATIVE RULING. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

18. DCSS V. JAMES RHOADES (OTHER PARENT: BRIANNA SNYDER)

PFS20200140

Other Parent filed an ex parte request for emergency orders on August 8, 2023, requesting temporary sole physical custody of the minor. Respondent agreed with the requested orders. On August 11, 2023, the court granted the request and ordered Respondent to have reasonable visitation pending the hearing, which was to be a minimum of two times per week for two hours each visit, unsupervised. The court referred the parties to an emergency set Child Custody Recommending Counseling (CCRC) appointment for September 19, 2023 and a review hearing on October 12, 2023. Other Parent filed a Request for Order on August 11, 2023, making the same requests as set forth in the ex parte application. Upon review of the court file, there is no Proof of Service of the ex parte orders, referral to CCRC, or RFO.

Only Other Parent appeared for the CCRC appointment on September 19, 2023. As such, a single parent report with no agreements or recommendations was filed on September 19, 2023. A copy of the report was mailed to the parties on September 20, 2023.

Other Parent filed a Declaration on October 6, 2023. There is no Proof of Service, therefore, the court cannot consider this document.

Only Other Parent appeared for the hearing on October 12, 2023, despite the court ordering parties to appear. Other Parent requested the matter be continued to make further attempts to serve Respondent. The court granted the request to continue and set the matter for a further hearing on December 21, 2023.

The court received a Proof of Unsuccessful Service filed by the Sheriff's Department on December 11, 2023. Several attempts have been made to serve Respondent; however, all have been unsuccessful.

The court orders parties to appear for the hearing.

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

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
December 21, 2023
8:30 a.m./1:30 p.m.

19. GERGANA MUDROVA V. PAUL BONDAR

22FL0444

Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC) on October 2, 2023, raising 11 counts of contempt by Respondent. Respondent was personally served on October 12, 2023.

Respondent filed a Responsive Declaration on December 8, 2023. There is no Proof of Service for this document, therefore, the court has not considered it.

Parties are ordered to appear for arraignment.

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

LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
December 21, 2023
8:30 a.m./1:30 p.m.

20. ISAIAH RUBALCAVA V. JESSICA RUBALCAVA

23FL0670

On September 1, 2023, the court granted a three-year Domestic Violence Restraining Order (DVRO) with Petitioner as the protected party and Respondent as the restrained party. The minor Izabel is also a protected party. As a part of the DVRO, the court referred the parties to Child Custody Recommending Counseling (CCRC) with an appointment on November 3, 2023 and a review hearing on December 21, 2023. Respondent was personally served with the DVRO and referral to CCRC on October 9, 2023.

Petitioner filed four Declarations regarding violations of the restraining order, the minor Isaiah's school performance, Respondent's refusal to allow Petitioner to see Isaiah, and Petitioner's certification of completion of co-parenting classes. Respondent was served by mail with all four Declarations on October 30, 2023.

Both parties appeared for CCRC on November 3, 2023 and were unable to reach any agreements. A report with recommendations was filed with the court on December 7, 2023. Copies were mailed to the parties on December 8, 2023.

The court has read and considered the filings as outlined above and makes the following findings and orders: The court finds Family Code section 3044 applies, and there is a presumption that sole or joint legal or physical custody of the minor to Respondent would not be in the child's best interest. The court further finds, Respondent has failed to rebut the presumptions. The court finds the recommendations as set forth in the December 7, 2023 CCRC report or in the minors' best interest. The court adopts the recommendations as its orders.

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 #20: THE COURT FINDS FAMILY CODE SECTION 3044 APPLIES AND RESPONDENT HAS FAILED TO REBUT ITS PRESUMPTIONS. THEREFORE, THE RECOMMENDATIONS AS STATED IN THE DECEMBER 7, 2023 CCRC REPORT ARE IN THE MINOR'S BEST INTERESTS AND ARE HEREBY ADOPTED AS THE ORDERS OF THE COURT. ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 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

December 21, 2023

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

21. JENNIFER KRANZKE V. THOMAS COPE

PFL20200619

Petitioner filed a Request for Order (RFO) on September 26, 2023, requesting guideline temporary spousal support as well as Family Code section 2030 attorney's fees in the amount of \$15,000. Petitioner concurrently filed an Income and Expense Declaration. Respondent was served by mail on September 28, 2023.

Petitioner filed two Declarations on November 28, 2023. One includes the printout from Transparent California regarding Respondent's income the other has Petitioner's paystubs attached, which were not attached to her September 26, 2023 Income and Expense Declaration. Respondent was served by mail on November 28, 2023.

Respondent filed a Responsive Declaration and Income and Expense Declaration on December 7, 2023. Petitioner was served on December 7, 2023. Respondent objects to Petitioner's request for temporary guideline spousal support and requests the court set spousal support at \$0. Similarly, Respondent requests the court deny Petitioner's request for attorney fees.

Petitioner filed a Reply Declaration on December 8, 2023. Respondent was served on December 8, 2023. Petitioner asserts Respondent argues the wrong standard for temporary guideline support. Petitioner renews her request for spousal support and attorney's fees.

The court has read and considered the filings as outlined above and makes the following findings and orders.

An award of temporary spousal support lies solely within the trial court's discretion regarding each party's respective need and ability to pay. See Marriage of Tong & Samson, 197 Cal. App. 4th 23, 29 (2011). While the factors listed in Family Code section 4320 may be considered by the court, an award for temporary support is generally unrestricted by any statutory authority. *Id.* Support is appropriate where it is necessary to enable a spouse to advance their earning capacity and obtain marketable skills sufficient to become self-supporting. Marriage of Watt, 24 Cal. App. 3d 340, 347-348 (1989). However, it is not an abuse of discretion for the court to decrease an award for support, or deny it altogether, based on the requesting spouse's delay or refusal to seek employment consistent with *existing* marketable skills and ability. In re Marriage of Dennis, 35 Cal. App. 3d 279, 283 (1973); See also Marriage of Mason, 93 Cal. App. 3d 215, 221 (1979).

Utilizing the parties Income and expense Declarations, and a tax status of married filing separately, the court finds temporary guideline spousal support to be \$2,901 per month payable from Respondent to Petitioner (see attached DissoMaster). The court orders Respondent to pay Petitioner \$2,901 per month as and for temporary guideline spousal support effective October

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

1, 2023 and payable on the 1st of each month until further order of the court or termination by operation of law.

The court finds this order results in an arrears balance of \$8,703 for October through December inclusive. The court orders Respondent to pay \$967 per month as and for arrears starting on January 15, 2024 and payable on the 15th of each month until paid in full (approximately nine months). If any payment is missed or late, the full amount is due with legal interest.

The court further finds Respondent routinely earns overtime wages. Therefore, the court has included an overtime table. Respondent shall true up the overtime on a monthly basis.

Regarding Petitioner's request for attorney's fees, the public policy of Family Code section 2030 is to provide "at the outset of litigation, consistent with the financial circumstances of the parties, parity between spouses in their ability to obtain effective legal representation." In Re Marriage of Keech, 75 Cal. App. 4th 860, 866(1999). It "is not the redistribution of money from the greater income party to the lesser income party," but rather "parity." Alan S. v. Sup. Ct., 172 Cal. App. 4th 238, 251 (2009). In the face of a request for attorney's fees and costs, the court is to make findings on "whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties." Fam. Code § 2030(a)(2).

Family Code section 2032 works in tandem with Section 2030 to ensure that any award of costs and fees is just and reasonable. Fam. Code § 2032. "In determining what is just and reasonable under the relative circumstances, the court shall 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." *Id.* at (b).

The court finds that even after the award of spousal support, there is a disparity of income between the parties. Further Respondent has sufficient funds available to pay not only his, but also Petitioner's attorney's fees. The court finds this is not a complex case with multiple assets and the parties have been separated for a significant period of time, therefore Petitioner's request for attorney's fees in the amount of \$15,000 is not reasonable under the circumstances. The court grants Petitioner's request for attorney's fees in the amount of \$7,500, as the court finds that amount to be reasonable under the current circumstances. Respondent shall pay this amount directly to Petitioner's counsel. Payment may be made in one lump sum or in installments of \$750 per month beginning January 15, 2024 and payable until paid in full (approximately 10 months). If any payment is missed or late the full amount is due with legal interest.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

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 #21: THE COURT FINDS TEMPORARY GUIDELINE SPOUSAL SUPPORT TO BE \$2,901 PER MONTH PAYABLE FROM RESPONDENT TO PETITIONER (SEE ATTACHED DISSOMASTER). THE COURT ORDERS RESPONDENT TO PAY PETITIONER \$2,901 PER MONTH AS AND FOR TEMPORARY GUIDELINE SPOUSAL SUPPORT EFFECTIVE OCTOBER 1, 2023 AND PAYABLE ON THE 1ST OF EACH MONTH UNTIL FURTHER ORDER OF THE COURT OR TERMINATION BY OPERATION OF LAW.

THE COURT FINDS THIS ORDER RESULTS IN AN ARREARS BALANCE OF \$8,703 FOR OCTOBER THROUGH DECEMBER INCLUSIVE. THE COURT ORDERS RESPONDENT TO PAY \$967 PER MONTH AS AND FOR ARREARS STARTING ON JANUARY 15, 2024 AND PAYABLE ON THE 15TH OF EACH MONTH UNTIL PAID IN FULL (APPROXIMATELY NINE MONTHS). IF ANY PAYMENT IS MISSED OR LATE, THE FULL AMOUNT IS DUE WITH LEGAL INTEREST.

THE COURT FURTHER FINDS RESPONDENT ROUTINELY EARNS OVERTIME WAGES. THEREFORE, THE COURT HAS INCLUDED AN OVERTIME TABLE. RESPONDENT SHALL TRUE UP THE OVERTIME ON A MONTHLY BASIS.

THE COURT GRANTS PETITIONER'S REQUEST FOR ATTORNEY'S FEES IN THE AMOUNT OF \$7,500, AS THE COURT FINDS THAT AMOUNT TO BE REASONABLE UNDER THE CURRENT CIRCUMSTANCES. RESPONDENT SHALL PAY THIS AMOUNT DIRECTLY TO PETITIONER'S COUNSEL. PAYMENT MAY BE MADE IN ONE LUMP SUM OR IN INSTALLMENTS OF \$750 PER MONTH BEGINNING JANUARY 15, 2024 AND PAYABLE UNTIL PAID IN FULL (APPROXIMATELY 10 MONTHS). IF ANY PAYMENT IS MISSED OR LATE THE FULL AMOUNT IS DUE WITH LEGAL INTEREST.

ALL PRIOR ORDERS NOT IN CONFLICT WITH THIS ORDER REMAIN IN FULL FORCE AND EFFECT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

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

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

Input Data	Husband	Wife	Guideline (2023)	Cash Flow Analysis	Husband	Wife
Number of children	0	0	Nets (adjusted)	Guideline		
% time with Second Parent	0%	0%	Husband	8,156	Payment (cost)/benefit	(2,631) 2,839
Filing status	MFS->	<-MFS	Wife	739	Net spendable income	5,255 3,640
# Federal exemptions	1*	1*	Total	8,895	% combined spendable	59.1% 40.9%
Wages + salary	14,213	876	Support (Nondeductible)	Total taxes	3,845	137
401(k) employee contrib	0	0	SS Payor	Husband	Comb. net spendable	8,895
Self-employment income	0	0	El Dorado	2,901	Proposed	
Other taxable income	0	0	Total	2,901	Payment (cost)/benefit	(2,631) 2,839
Short-term cap. gains	0	0	Proposed, tactic 9		Net spendable income	5,255 3,640
Long-term cap. gains	0	0	SS Payor	Husband	NSI change from gdl	0 0
Other gains (and losses)	0	0	El Dorado	2,901	% combined spendable	59.1% 40.9%
Ordinary dividends	0	0	Total	2,901	% of saving over gdl	0% 0%
Tax. interest received	0	0	Savings	0	Total taxes	3,845 137
Social Security received	0	0	No releases		Comb. net spendable	8,895
Unemployment compensation	0	0			Percent change	0.0%
Operating losses	0	0			Default Case Settings	
Ca. operating loss adj.	0	0				
Roy, partnerships, S corp, trusts	0	0				
Rental income	0	0				
Misc ordinary tax. inc.	0	0				
Other nontaxable income	0	0				
New-spouse income	0	0				
SS paid other marriage	0	0				
CS paid other relationship	0	0				
Adj. to income (ATI)	0	0				
Ptr Support Pd. other P'ships	0	0				
Health insurance	428	0				
Qual. Bus. Inc. Ded.	0	0				
Itemized deductions	0	0				
Other medical expenses	0	0				
Property tax expenses	0	0				
Ded. interest expense	0	0				
Charitable contribution	0	0				
Miscellaneous itemized	0	0				
State sales tax paid	0	0				
Required union dues	163	0				
Cr. for Pd. Sick and Fam. L.	0	0				
Mandatory retirement	1,421	0				
Hardship deduction	0*	0*				
Other gdl. adjustments	200	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF,SSI and CS received	0	0				

ATTORNEY (NAME AND ADDRESS): California	TELEPHONE NO:	Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
ATTORNEY FOR: Husband		
Husband Monthly Overtime Wages Report 2023 Monthly		CASE NUMBER:

"R" denotes that Husband is a recipient for the corresponding support
"CS%" is the percentage of Overtime paid as additional Child Support
"SS%" is the percentage of Overtime paid as additional Spousal Support

Husband's Gross Overtime	Basic CS%	Basic CS	El Dorado SS%	El Dorado SS	Total Basic CS	Total SS	Total Support CS+SS
0	0.00	0	0.00	0	0	2,901	2,901
100	0.00	0	27.41	27	0	2,928	2,928
200	0.00	0	27.41	55	0	2,956	2,956
300	0.00	0	27.41	82	0	2,983	2,983
400	0.00	0	27.41	110	0	3,010	3,010
500	0.00	0	27.43	137	0	3,038	3,038
600	0.00	0	27.48	165	0	3,066	3,066
700	0.00	0	27.52	193	0	3,093	3,093
800	0.00	0	27.55	220	0	3,121	3,121
900	0.00	0	27.57	248	0	3,149	3,149
1,000	0.00	0	27.60	276	0	3,177	3,177
1,100	0.00	0	27.61	304	0	3,204	3,204
1,200	0.00	0	27.62	331	0	3,232	3,232
1,300	0.00	0	27.63	359	0	3,260	3,260
1,400	0.00	0	27.64	387	0	3,288	3,288
1,500	0.00	0	27.65	415	0	3,316	3,316
1,600	0.00	0	27.66	443	0	3,343	3,343
1,700	0.00	0	27.67	470	0	3,371	3,371
1,800	0.00	0	27.67	498	0	3,399	3,399
1,900	0.00	0	27.68	526	0	3,427	3,427
2,000	0.00	0	27.68	554	0	3,454	3,454



LAW & MOTION TENTATIVE RULINGS
DEPARTMENT 5
December 21, 2023
8:30 a.m./1:30 p.m.

22. MISTI SMITH V. VINCENT LOFRANCO

23FL0510

Respondent filed a Request for Order (RFO) on September 28, 2023, requesting the court set aside the default judgment for property control. Petitioner was personally served on November 28, 2023. Respondent asserts he was not properly served with the RFO and requests the court set aside the order pursuant to Code of Civil Procedure section 473(b). Respondent asserts he was never served with the "Summons" in this matter and therefore, the court should set aside the default.

Petitioner filed a Responsive Declaration on December 7, 2023. Respondent was served electronically on December 8, 2023. Petitioner asserts that there has been no default judgment entered. Petitioner asserts Respondent has not properly requested to set aside the Findings and Orders After Hearing filed on September 7, 2023. Petitioner also asserts that Respondent was properly served at an address where he routinely received mail. Petitioner states Respondent's Post Office Box was open and receiving mail at the time he was served at that address. Further, Respondent did not have access to the mailbox for the party's physical address. Petitioner reiterates her claims from the original RFO, that the home is her separate property, and Respondent has no cognizable claim to the property.

Respondent filed a Declaration on December 14, 2023, which the court deems to be a Reply Declaration. Petitioner was served on December 14, 2023. Respondent requests the court include the ex parte application filed on October 5, 2023.

The court has read and considered the filings as outlined above. Civil Procedure Section 473(b) governs the circumstances in which a party may be relieved of the terms of a judgment, dismissal, order, or other proceeding in instances of mistake, inadvertence, or excusable neglect. Cal. Civ. Pro. § 473(b). The statute addresses instances in which relief is mandatory as well as circumstances giving rise to discretionary relief. While the mandatory provisions only apply to defaults and default judgments, the discretionary portion of the statute has a much broader application. See Las Vegas Land & Development Co., LLC v. Wilkie Way, LLC, 219 Cal. App. 4th 1086 (2013) (Mandatory provisions of Section 473(b) apply only to defaults). Thus, the court turns to the discretionary relief requirements of 473(b).

Respondent repeatedly references a default judgment and requests the court set aside the default judgment dated August 9 [sic], 2023 (the court issued its tentative ruling on August 9, 2023, though the ruling was not adopted as the order of the court until August 10, 2023). However, there is no such judgment. Petitioner is correct in stating that Respondent's default has not been taken. The August 10th orders were not for default but instead substantive orders regarding property control. Nonetheless, as stated above, Section 473(b) applies to more than just default judgments and can be used to set aside the court's substantive orders under the right circumstances.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

Here, the circumstances do seem to warrant setting aside the August 10th orders pursuant to Section 473(b). Section 473(b) requires a finding of mistake, inadvertence, or excusable neglect to set aside its prior orders. Cal. Civ. Pro. § 473(b). Where the mistake, inadvertence, or excusable neglect was on the part of the court, errors made by the court are apportioned into two categories, clerical errors, and judicial errors. “‘Clerical’ errors are, generally speaking, those errors, mistakes, or omissions which are not the result of the judicial function. Mistakes of the court are not necessarily judicial errors. The distinction between a ‘clerical’ error and a ‘judicial’ one does not depend so much upon the person making the error as upon whether it was the deliberate result of judicial reasoning and determination.” Smith v. Smith, 115 Cal. App. 2d 92, 99 (1952). For example, “[i]nadvertence of a judge in signing a judgment or decree which does not correctly embody or carry out the judgment or decree as previously judicially ordered is a clerical, rather than a judicial error, which on being called to the attention of the court may be corrected by a nunc pro tunc order.” Wilson v. Wilson, 88 Cal. App. 2d 382, 384 (1948).

In making the court’s August 10th ruling, the court was of the mistaken belief that the Summons and Petition had been served on Respondent prior to the service of the RFO. However, it appears that was not the case. Respondent was not personally served with the Summons until September 29, 2023. Without proper service of the Summons and Petition, the court lacks personal jurisdiction to rule on the RFO. Engbreton & Co. v. Harrison, 125 Cal. App. 3d 436, 443 (1981) (“Although a proper basis for personal jurisdiction exists and notice is given in a manner which satisfies the constitutional requirements of due process, service of summons is not effective and the court does not acquire jurisdiction of the party unless the statutory requirements for service of summons are met”). Thus, at the time of making its August 10th ruling, the court did not have personal jurisdiction over Respondent and therefore did not have jurisdiction to make orders regarding property control. As such, Respondent’s request to set aside is granted and the court’s order dated August 10, 2023 is hereby vacated.

Any prior orders pursuant to the Domestic Violence Restraining Order requests each party has filed in this matter remain in full force and effect. Respondent shall prepare and file the Findings and Orders After Hearing.

TENTATIVE RULING #22: RESPONDENT’S REQUEST TO SET ASIDE IS GRANTED AND THE COURT’S ORDER DATED AUGUST 10, 2023 IS HEREBY VACATED. ANY PRIOR ORDERS PURSUANT TO THE DOMESTIC VIOLENCE RESTRAINING ORDER REQUESTS EACH PARTY HAS FILED IN THIS MATTER REMAIN IN FULL FORCE AND EFFECT. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

December 21, 2023

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

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.