

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

March 17, 2022

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

**1. DERRICK MILBURN-HARASHA V. ALYSSA DUMAS BRONNER**

**PFL20190741**

On December 27, 2021, Petitioner filed a Request for Order (RFO) requesting changes to custody and parenting time, with a request for move away. Respondent was served by mail on January 4, 2022, with Proof of Service filed on the same day. Parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on February 2, 2022 and a review hearing of March 17, 2022.

Parties previously attended CCRC and reached a full agreement wherein parties have joint legal custody, Respondent to have primary physical custody, Petitioner would have parenting time with the minor every two months alternating between California and Kentucky. Petitioner asserts Respondent has failed to comply with the parenting time orders from November 5, 2022, in that Respondent has not allowed the minor to travel to Kentucky, except for the November 2020 visit. Petitioner is requesting the court grant him primary physical custody with Respondent to have visitation every two months alternating between California and Kentucky.

Respondent filed a Responsive declaration on March 7, 2022. Petitioner was served by mail on March 4, 2022. Respondent requests the Petitioner's request for move away be denied and that all prior orders remain in effect. Respondent asserts the reason for not allowing the minor to travel to Kentucky is due to the ongoing pandemic and health concerns of the minor. Respondent further asserts she has concerns about Petitioner's parenting abilities.

Parties attended CCRC on February 2, 2022. The parties were able to reach agreements as to legal custody and transportation costs. The report makes recommendations as to parenting time and did consider the move away factors. A copy of the report was mailed to parties on March 8, 2022.

The court has read and considered the recommendations contained in the CCRC report. The adopts the recommendations as the court's order as they are in the best interest of the minor. Respondent shall continue to have primary physical custody. Petitioner will have parenting time in Kentucky and California as outlined in the report. The parties are to share in the transportation costs. Exchanges will take place at the Sacramento airport to start Petitioner's parenting time and at the Nashville airport at the end of Petitioner's parenting time in Kentucky. Parties are to enroll in and provide the court proof of completion of a co-parenting class.

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

**TENTATIVE RULING #1: THE COURT ADOPTS THE AGREEMENTS AND RECOMMENDATIONS CONTAINED WITHIN THE CCRC REPORT AS THEY ARE IN THE BEST INTEREST OF THE MINOR. PARTIES SHALL CONTINUE TO SHARE JOINT LEGAL CUSTODY OF THE MINOR WITH RESPONDENT HAVING PRIMARY PHYSICAL CUSTODY. PETITIONER WILL HAVE PARENTING TIME AS OUTLINED IN THE CCRC REPORT. PARTIES ARE TO SHARE IN THE COST OF TRANSPORTATION. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**3. HEATHER LOCKWOOD V. DAVID LOCKWOOD**

**PFL20200005**

On October 7, 2021, Petitioner filed a Request for Order (RFO) asking the court to modify the custody and visitation orders. A CCRC session scheduled on November 12, 2021 with the hearing on the RFO set for January 6, 2022. On October 8, 2021, Respondent was served by mail with the RFO and Referral to CCRC.

Only Petitioner participated in the CCRC session. A CCRC report was issued on November 12, 2021 with copies mailed to the parties on December 14, 2021. The report made no recommendations as only one party participated.

On December 23, 2021, Petitioner filed a Supplemental Declaration, served on Respondent by mail and electronically that same day. Petitioner requests that Respondent's parenting time be reduced to the 1<sup>st</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> weekends of the month, that Petitioner be granted final decision-making authority on legal custody issues, and that Respondent be removed from the children's online healthcare files and messages so that he cannot contact the pediatrician or interfere with the children's appointments. Petitioner alleges that Respondent has harassed the children's pediatrician, has refused to take the children to medical appointments or to pick up prescribed antibiotics, and permitted his girlfriend to discipline one of the minors, including potentially putting the minor in a cold shower as a form of punishment. Petitioner further notes an ongoing conflict between the parents over whether to get the minors the flu vaccine. Petitioner declares that on October 14, 2021 the children received the flu vaccine, despite Respondent not consenting to it.

The court admonished Respondent that he may not permit a third party, including his girlfriend, to discipline the children, as previously ordered by the court at the May 6, 2021 hearing. The court notes that at the May 6, 2021 hearing it also ordered that Respondent not place the youngest minor in a cold shower as a form of negative reinforcement to "potty train" her. The court finds that placing either child in a cold shower as a form of punishment is inappropriate and detrimental to the child's well-being. As such, the court specifically orders that neither child may be placed in a cold shower as a form of punishment.

The court further notes that at the May 6, 2021 hearing that court granted the parties joint legal custody, which includes a requirement to discuss and receive consent regarding the selection of a health care professional. The orders specifically permitted the parties to take all actions necessary to protect the health and welfare of the children, including to authorize emergency medical treatment if necessary. The parties also were ordered to administer any prescribed medications for the children. The court reminds the parties that these orders remain in full force and effect.

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On January 6, 2022, the court adopted the tentative ruling ordering parties back to CCRC and continuing the review hearing.

On January 18, 2022, Respondent filed an ex parte application requesting the court issue an order prohibiting Petitioner from having the minors' vaccinated. The court denied the request and reaffirmed the parties joint legal custody requirements. The court affirmed the CCRC appointment and review hearing date.

On February 4, 2022 parties attended CCRC. Parties were not able to reach any agreements. A CCRC report containing the recommendations of the counselor was issued on March 7, 2022 and mailed to the parties on March 8, 2022. The report recommends parties continue to have joint legal custody, but with the modification that in exercising joint legal custody if parties are unable to reach a consensus regarding matters of health, education, and welfare of the children following a good faith discussion of the issue, after 10 days Petitioner shall have the authority to render a decision. The recommendation is to maintain the current parenting plan which has been in place since April of 2020. The counselor recommends the parties share in ensuring the children attend all meetings and appointments with service providers. The counselor recommends spreading the appointments out Monday through Friday so as not to over burden the minors with attending multiple appointments within the same two-day period.

On March 10, 2022, Petitioner filed a supplemental declaration. Respondent was served electronically on March 9, 2022, with Proof of Service filed on March 10, 2022. Petitioner provides an update to the court including that parties are attending co-parenting counseling. Petitioner agrees with the recommendation for continued joint legal custody, but requests the court adopt language which the Petitioner believes to be clearer. Petitioner also requests the court modify Respondent's parenting time to the first, third, and fifth weekends of the month in addition to two to four non-consecutive weeks of additional parenting time when the minors are not in school.

On March 14, 2022, Respondent filed a Declaration and Reply to Petitioner's Supplemental Declaration. Petitioner was served by mail and email on March 11, 2022, with Proof of Service filed concurrently with the Declaration. Respondent requests the court consider the late filing in light of the late service of the CCRC report of in the alternative continue the matter. Respondent agrees with the recommendations in part. Respondent requests that if parties are unable to reach an agreement following a good faith discussion of the issue, after 10 days parties be referred to a Special Master appointed by the court.

The court has read and considered the above filings in this matter. The court adopts the recommendations as contained within the CCRC report as they are in the best interests of minors. Parties shall continue to share joint legal custody. In exercising joint legal custody if parties are unable to reach a consensus regarding matters of health, education, and welfare of the children following a good faith discussion of the issue, after 10 days Petitioner shall have the authority to render a decision. The current parenting plan remains in full force and effect. The court declines to appoint a Special Master. Local Rule 8.15.04 prohibits the court from ordering parties to use a Special Master. Should parties agree to use a Special Master and submit a written stipulation to the court, which includes a

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specific time period during which the parties agree to participate with the Special Master, the court will enforce such a stipulation for the period of time designated by the parties. Both parties are to ensure the minors attendance at service provider appointments.

Petitioner is to prepare and file the Findings and Orders After Hearing.

**TENTATIVE RULING #3: THE COURT ADOPTS THE RECOMMENDATIONS AS CONTAINED WITHIN THE CCRC REPORT AS THEY ARE IN THE BEST INTERESTS OF MINORS. PARTIES SHALL CONTINUE TO SHARE JOINT LEGAL CUSTODY. IN EXERCISING JOINT LEGAL CUSTODY IF PARTIES ARE UNABLE TO REACH A CONSENSUS REGARDING MATTERS OF HEALTH, EDUCATION, AND WELFARE OF THE CHILDREN FOLLOWING A GOOD FAITH DISCUSSION OF THE ISSUE, AFTER 10 DAYS PETITIONER SHALL HAVE THE AUTHORITY TO RENDER A DECISION. THE COURT DENIES THE REQUEST TO APPOINT A SPECIAL MASTER. THE CURRENT PARENTING PLAN REMAINS IN FULL FORCE AND EFFECT. BOTH PARTIES ARE TO ENSURE THE MINORS ATTENDANCE AT SERVICE PROVIDER APPOINTMENT. PETITIONER IS TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**4. JOHNATHAN KLEIN V. CALLIE KLEIN**

**PFL20160213**

On November 29, 2021, Petitioner filed a Request for Order (RFO) asking the court to compel Respondent to make further responses to Petitioner's Special Interrogatories and Request for Admissions and to issue sanctions pursuant to the Civil Discovery Act. On November 30, 2021, Petitioner filed a Separate Statement in Support of Motion to Compel and a Notice of Errata. On December 13, 2021, Respondent was served by mail with all the above filings.

On December 27, 2021, Petitioner filed an Income and Expense Declaration, served by mail on Respondent that same day.

On January 6, 2022, Respondent filed an RFO requesting attorney's fees under Family Code 2030. That same day, Respondent also filed an Income and Expense Declaration and Declaration of Respondent's attorney in support of the request for attorney's fees.

On January 21, 2022, the court approved the parties' stipulation to continue both parties' RFOs to March 17, 2022.

On January 31, 2022, Petitioner was served by mail with Respondent's RFO and Income and Expense Declaration and the Stipulation and Order that continued the hearings to March 17, 2022.

On March 2, 2022, Respondent filed a Responsive Declaration to Petitioner's RFO, a Points and Authority Regarding High Earner Exception, a Response to Petitioner's Separate Statement, and a Declaration of her attorney in support of Respondent's request to deny the motion to compel. That same day, Petitioner was personally served with the above filings.

On March 7, 2022, Petitioner filed a Responsive Declaration to Respondent's RFO, a supporting Declaration, and a Memorandum of Points and Authorities, all served on Respondent by overnight delivery on the same day.

Having reviewed the above filings, the court finds the following:

On September 17, 2021, Respondent was served with Petitioner's Request for Production of Documents, Special Interrogatories, and Request for Admissions. On October 12, 2021, Respondent served her responses on Petitioner. On October 20, 2021, Petitioner's attorney sent a meet and confer letter to Respondent's attorney. On October 28, 2021, Respondent's attorney responded by letter. On November 30, 2021, Respondent had her amended responses served on Petitioner and thereafter had her second amended responses served on Petitioner on January 4, 2022. On January 12, 2022, Petitioner's attorney sent another letter to Respondent's attorney, alleging further deficiencies in Respondent's response.

From the time of Respondent's initial response to the Petitioner's January 12, 2022 letter, the parties attempted to resolve the discovery issues in dispute, which the court finds have been resolved with the exception of a few remaining issues. The remaining issues primarily involve Petitioner's request for Respondent to identify with specificity the amounts that Respondent spent for the minor children in several enumerated categories, including groceries, eating out, and utilities, among others.

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Petitioner argues that Respondent has the burden of establishing the children's needs, including evidence to substantiate these needs. Additionally, Petitioner (through his counsel) states that Respondent has failed to provide some of the statements for the Wells Fargo accounts ending in 4484 and 4587 as well as the account statements that show the funds from which the opening balances for these two accounts were drawn.

Regarding the first issue noted above concerning the exact amounts of the expenditures for the minor children, the court finds this request to be unreasonable and overly burdensome. Respondent represents that she expends funds for groceries and other household needs for the household as a whole; determining the exact amount of the expense that is for her three children versus herself, her spouse, and her stepchild would require significant speculation. While the court is mindful of the relevance of the minor children's financial needs in the analysis of a possible downward deviation form guideline child support under Family Code 4057, the court finds Petitioner's request for the exact amount of expenses is not practical nor necessary for the court to conduct this analysis.

Regarding the missing bank statements, the court finds these requests to be reasonable and compels Respondent to file a further response no later than April 7, 2022 responsive to these requests.

Therefore, the court grants the motion to compel in part regarding the requests for the Wells Fargo statements and the related bank statements as described in the January 12, 2022 letter with a deadline for further responses of April 7, 2022. The court denies the motion to compel in part regarding the requests for further responses related to the identification of exact expenses for the minor children in the enumerated categories. As to the remaining requests for further responses, the court finds that the parties have resolved these issues through their meet and confer efforts and finds these requests to be moot.

As to the issue of sanctions under the Civil Discovery Act, the court finds that both parties acted with substantial justification and declines to issue any sanctions against either party.

Regarding Respondent's request for attorney's fees, the court finds that Respondent has not clearly articulated the basis of a fees award of \$50,000. Additionally, the court finds that Respondent has approximately \$630,000 in stock, bonds, or other assets she could easily sell per her January 6, 2022 Income and Expense Declaration. Respondent also receives sizable additional child support payments from Petitioner above and beyond the base child support amount of about \$9,000 and the monthly interest-only payments from Petitioner currently at about \$12,000. The court further finds that Respondent is set to received \$4.75 million dollars from Petitioner as an equalization payment in 2024. While Petitioner makes substantially more than Respondent in earned income, the court finds that there is not a disparity in the parties' access to funds to hire legal representation based on the totality of the resources available to Respondent, and the court denies the request for fees.

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

**TENTATIVE RULING #4: THE COURT GRANTS THE MOTION TO COMPEL IN PART REGARDING THE REQUESTS FOR THE WELL FARGO STATEMENTS AND THE RELATED BANK STATEMENTS AS DESCRIBED IN THE JANUARY 12, 2022 LETTER WITH A DEADLINE FOR FURTHER RESPONSES OF APRIL 7, 2022. THE**

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**COURT DENIES THE MOTION TO COMPEL IN PART REGARDING THE REQUESTS FOR FURTHER RESPONSES RELATED TO THE IDENTIFICATION OF EXACT EXPENSES FOR THE MINOR CHILDREN IN THE ENUMERATED CATEGORIES. AS TO THE REMAINING REQUESTS FOR FURTHER RESPONSES, THE COURT FINDS THAT THE PARTIES HAVE RESOLVED THESE ISSUES THROUGH THEIR MEET AND CONFER EFFORTS AND FINDS THESE REQUESTS TO BE MOOT. AS TO THE ISSUE OF SANCTIONS UNDER THE CIVIL DISCOVERY ACT, THE COURT FINDS THAT BOTH PARTIES ACTED WITH SUBSTANTIAL JUSTIFICATION AND DECLINES TO ISSUE ANY SANCTIONS AGAINST EITHER PARTY. THE COURT DENIES RESPONDENT'S REQUEST FOR ATTORNEY'S FEES UNDER FAMILY CODE 2030. PETITIONER IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDER AFTER HEARING.**

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**5. AND 22. JONATHON BISKNER V. KRISTEN BISKNER**

**21FL0132**

On November 29, 2021, Petitioner filed an ex parte application requesting an order for Respondent to stop giving medication to the oldest child and for Respondent to return the children to California. On November 30, 2021, the court denied the ex parte relief and set a CCRC session on January 3, 2022 with a hearing on the RFO set for February 17, 2022.

On December 23, 2021, Respondent was personally served with the RFO and Referral to CCRC.

On January 28, 2022, Respondent filed an RFO supported by a Memorandum of Points and Authority, requesting that the court quash Petitioner's motion for lack of jurisdiction. These filings were served on Petitioner by mail that same day. A hearing is set for this RFO on March 17, 2022.

Both parties participated in the CCRC session and reached a few agreements, but not on all issues. A CCRC report was issued on February 1, 2022 with copies mailed to the parties on February 3, 2022.

On March 8, 2022, Respondent's attorney filed a Declaration with attachments showing filings in the Superior Court of New Jersey, Docket number FD-14-000284-22. Respondent has retained counsel in New Jersey and filed for child custody and child support in the state of New Jersey.

The court finds that because the minors have resided in the state of New Jersey since March 21, 2021 and Respondent has filed a custody action in the state of New Jersey, California lacks jurisdiction in this matter. The Petitioner filed his RFO requesting custody of the minors more than six months after the Respondent and minors had relocated to the state of New Jersey. As such, the state of California lacks subject matter jurisdiction over the minors and cannot make custody orders. The court grants Respondents request to dismiss the child custody action as California lacks jurisdiction.

**TENTATIVE RULING #5 AND #22: RESPONDENT'S MOTION TO QUASH IS GRANTED AS CALIFORNIA LACKS SUBJECT MATTER JURISDICTION. PETITIONER'S RFO IS DENIED AS CALIFORNIA LACKS JURISDICTION IN THIS MATTER.**



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**6. KATHRYN KELLEHER V. MICHAEL KELLEHER**

**PFL20140242**

On December 17, 2021, Respondent filed a Request for Order (RFO) requesting a post judgement modification of spousal support. Respondent filed an Income and Expense Declaration on December 10, 2021. Petitioner was personally served with the RFO and Income and Expense Declaration on January 20, 2022, with a Proof of Service filed on March 4, 2022. Respondent asserts there has been a change in circumstances that warrants a modification of spousal support.

On February 8, 2022 parties filed a stipulation to continue the hearing to March 17, 2022.

On March 2, 2022 Petitioner filed a Responsive Declaration requesting the court deny the requested modification to spousal support and continue the current order until June 30, 2024 per the terms of the Judgment for Dissolution. Petitioner filed an Income and Expense Declaration contemporaneously. Respondent was served electronically on March 2, 2022 with a Proof of Service filed the same day. Petitioner requests an order for Respondent to pay the spousal support arrearages that are owed, plus interest at the standard legal rate. Petitioner is requesting Family Code Section 2030 attorney fees as well as section 271 sanctions.

On March 2, 2022, Petitioner filed a Declaration of Witness, Michael Fernsebner. The Declaration was served electronically on Respondent on March 2, 2022, with Proof of Service filed on the same day.

The court finds there is a need to hold an evidentiary hearing to determine the Family code 4320 factors. Parties are ordered to appear to select a hearing date.

**TENTATIVE RULING #6: PARTIES ARE ORDERED TO APPEAR TO SET DATES FOR A MANDATORY SETTLEMENT CONFERENCE AND TRIAL. THE COURT RESERVES JURISDICTION ON THE REQUEST TO MODIFY TO THE DATE OF THE FILING OF THE PETITIONER. THE COURT ALSO RESERVES JURISDICTION ON THE REQUEST FOR ATTORNEY FEES AND SANCTIONS TO THE TIME OF TRIAL.**

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**7. KIMBERLY DEVAUGHN V. MARK DEVAUGHN**

**PFL20180127**

On November 12, 2021 Petitioner filed a Request for Order (RFO) requesting modification of the custody and visitation orders and attorney's fees and costs. Petitioner filed a Declaration in support of the RFO as well. The parties were referred to CCRC on December 16, 2021 and the RFO was set on the Law and Motion calendar for January 27, 2022. On November 29, 2021 Petitioner filed a Proof of Service by Mail and email and an Address verification showing service upon Respondent on November 16, 2021.

On November 17, 2021 Respondent filed a Request for Order (RFO) requesting modification of the visitation orders and for an order shortening time. The OST was denied and the RFO was set for January 27, 2022. Respondent filed a Proof of Service showing service of the filings upon Petitioner, who also filed a response.

On December 16, 2021 Respondent filed a Responsive Declaration to the RFO with a number of attachments. On December 23, 2021 Respondent filed a Proof of Service by Mail showing service of the filing upon Petitioner on December 20, 2021.

The parties attended their CCRC session and a CCRC report was issued on January 14, 2021. Copies of the CCRC report were mailed to the parties on January 20, 2022.

On January 27, 2022, parties appeared for the hearing and the court made the following orders: Petitioner shall have temporary sole legal and physical custody of the minor and no visitation with the Respondent; the minor to continue in individual therapy; the court shall defer to the minor's therapist as to when telephone calls between the Respondent and minor would be appropriate, and that the therapist facilitate those calls; Respondent to be provided with therapeutic progress reports when deemed appropriate by the therapist; parties to submit a progress report to the court regarding the minor's progress in counseling and input from the minor's therapist about what type of contact, if any Respondent should have with the minor; parties to provide documentation from the District Attorney's Office regarding the status of any pending potential criminal charges; both parties were to prepare and file Income and Expense Declarations no later than 10 days prior to the next hearing; and the court reserved on both party's request for Family Code section 271 sanctions.

On February 16, 2022, Respondent filed a Declaration from attorney Jessica Davis regarding the potential criminal charges against Respondent. Petitioner was served on February 15, 2022 with Proof of Service filed on February 16, 2022. The Declaration includes a "Case Declined Report" attached as Exhibit A which states the District Attorney's Office declined to file due to a lack of sufficient evidence.

On March 3, 2022 Respondent filed an updated Income and Expense Declaration. Petitioner was served my mail on March 2, 2022, with Proof of Service filed on March 3, 2022.

On March 7, 2022, Petitioner filed a Supplemental Declaration which contains documentation from the Sacramento County District Attorney's Office regarding their intent not to pursue criminal charges against Respondent at this time, due to not being able to prove the case beyond a reasonable doubt, but that the victim was a credible witness. The office declined to prosecute due to the lack of corroborating evidence and the high burden of proof rather than a finding of innocence. Petitioner

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requests the court keep the current orders for custody and visitation in place. Petitioner further request the court order a full Psychosexual Evaluation of Respondent. Petitioner has not filed an updated Income and Expense Declaration.

On March 10, 2022 the court received a progress report from the minor's therapist. The minor has been engaging in therapy on a weekly basis since August of 2021. The therapist does not make any recommendations as to contact with the Respondent.

The court denies both parties' request for attorney fees. Petitioner has failed to file an Income and Expense Declaration as ordered by the court. Further, the court cannot find either parties' actions were taken in bad faith or have served to frustrate public policy for resolution.

The court further finds it needs additional information from the minor's therapist as previously ordered. The court continues the hearing to receive a report from the minor's therapist. It is clear to the court that the minor is experiencing significant issues. The court finds that appointing counsel to represent the minor will provide the court with information that is not otherwise available to the court, will help address the issues facing the minor, and is in the best interest of the minor. Therefore, the court appoints Rebecca Esty-Burke to represent the minor (CRC, rule 5.240.) The court reserves over the issue of payment for Minor's Counsel to the next hearing date and orders the parties to file and serve current Income and Expense Declarations no later than 10 days prior to the hearing date. All prior orders remain in full force and effect.

**TENTATIVE RULING #7: THE COURT CONTINUES THE HEARING TO MAY 12<sup>TH</sup>, 2022 FOR RECEIPT OF A FURTHER PROGRESS REPORT FROM THE MINOR'S THERAPIST. THE COURT APPOINTS MINOR'S COUNSEL. THE COURT RESERVES OVER THE ISSUE OF PAYMENT FOR MINOR'S COUNSEL TO THE NEXT HEARING DATE AND ORDERS THE PARTIES TO FILE AND SERVE CURRENT INCOME AND EXPENSE DECLARATIONS NO LATER THAN 10 DAYS PRIOR TO THE HEARING DATE. PARTIES ARE TO SHARE IN THE COSTS EQUALLY SUBJECT TO REALLOCATION. THE COURT DECLINES TO AWARD ATTORNEY FEES TO EITHER PARTY. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT.**

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**8. LINNEA BANKS V. KEVIN BANKS, SR**

**PFL20190908**

On January 27, 2022 parties appeared for the hearing on child custody and parenting time. Parties agreed to keep the current custody order in place, parties agreed to work to communicate better and use text and email unless there is an emergency, parties agreed to engage in co-parenting counseling if it was covered by insurance, and Petitioner agreed to provide a higher level of consistence and accountability to the parties' minor son to ensure he stays on top of schoolwork during her parenting time. Parties agreed to set a review hearing on March 17, 2022 to ensure the minor's grade and attendance have improved.

The court has received no further filings from either party.

Parties are ordered to appear.

**TENTATIVE RULING #8: PARTIES ARE ORDERED TO APPEAR**

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**9. LISA THOMASON V. LOUIS MOLAKIDES**

**PFL20210494**

On September 20, 2021 Respondent filed a Request for Order (RFO) requesting child custody and visitation orders. The parties were referred to CCRC and the RFO was set on the law and motion calendar for December 9, 2021.

On November 9, 2021 the court denied Respondent's ex parte application but ordered Petitioner shall ensure the children shall have no contact with M. Whitaker pending further order of the court.

Although there is no proof of service for the September 20, 2021 RFO, the parties both appeared for CCRC and a CCRC report was issued on November 15, 2021. Copies of the CCRC report were mailed to the parties on November 29, 2021.

On December 9, 2022, Parties appeared and presented argument. The court ordered Respondent to have supervised visitation and adopted the recommendations from CCRC as amended. The minors were to have no contact with Mr. Whitaker. Parties were ordered back to CCRC to address a holiday schedule and address contact between the minors and Mr. Whitaker.

Parties attended CCRC on January 24, 2022. Parties were not able to reach any agreements. A copy of the CCRC report was mailed to the parties on March 8, 2022. The CCRC does not contain a recommendation for a proposed holiday schedule. It does recommend that the minors be allowed to have contact with Mr. Whitaker, as there is no evidence that the minors have been exposed to Mr. Whitaker's disparaging remarks toward Respondent. The report also recommends the parties follow the respect guidelines and each complete a co-parenting class and provide the court with a copy of the certificate of completion.

On March 8, 2022 Respondent filed a Supplemental Declaration, which was served on Petitioner electronically the same day. Respondent asserts Petitioner has violated the no contact order by allowing the minors to reside with Mr. Whitaker. Respondent requests he be awarded sole physical custody of the children and Petitioner's parenting to be supervised and the no contact order between Mr. Whitaker remain in full force and effect.

Parties are ordered to appear.

**TENTATIVE RULING #9: PARTIES ARE ORDERED TO APPEAR**

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**10. MAEGAN ALBRIGHT V. NICOLAS MCAULAY**

**PFL20160478**

Respondent filed a Request for Order (RFO) on January 18, 2022. Petitioner was served both by mail on electronically on January 21, 2022, with Proof of Service filed on January 25, 2022. Respondent is requesting supervised visitation with the minor, a review hearing in three months to discuss a step-up plan, or in the alternative Respondent to select a new reunification counselor, Petitioner to comply with reunification therapy and pay 100% of costs to the prior reunification counselor, and split the costs of future reunification therapy, and attorney fees pursuant to Family Code 271.

Respondent asserts in his declaration that reunification therapy was stopped due to Petitioner not cooperating with the process. Respondent further asserts he was completed on drug test, and has not continued testing because no visits have been taking place. Respondent is requesting visits go forward in a professionally supervised setting. Alternatively, Respondent requests he be able to select a new reunification therapist and Petitioner be ordered to cooperate. Although Respondent requests Petitioner be ordered to pay 100% of the costs of the prior reunification therapy, based on his declaration, it appears he was not charged for those sessions. Finally Respondent requests Family Code section 271 attorney fees as it is his assertion Petitioner has not cooperated with the prior court orders.

Parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on February 3, 2022 and a review hearing on March 17, 2022. Both parties attended and were unable to reach any agreements. As such, a report with recommendations from the counselor was issued.

Petitioner filed a Responsive Declaration on March 7, 2022. Respondent was served may mail on March 7, 2022 with Proof of Service filed the same day. Petitioner requests the court deny Respondents request for order. Petitioner asserts she did not fail to cooperate with reunification therapy, but rather the therapist determined she was not suited for this type of therapy. Petitioner further asserts Respondent has failed to comply with the court's order for drug testing. Finally, Petitioner objects to Family Code section 271 attorney fees, as Respondent does not currently have an attorney, and the request would need to be made pursuant to Family Code section 2030.

The court has read and considered the above filings. The court adopts the recommendations contained with in the CCRC report as they are in the best interest of the minor. The prior orders remain in full force and effect. The best interests of the child to is participate in reunification therapy and to begin supervised visits once the therapist deems it appropriate.

Petitioner shall provide Respondent with three names of possible reunification therapists by March 24, 2022. Respondent shall select a therapist from these three names by March 31, 2022 and notify Petitioner of his selection. Within 5 days of Petitioner being notified of the selection, both parties shall contact the therapist to schedule their respective intakes. The parties shall communicate with one another regarding scheduling and other logistics issues regarding the reunification therapy through talkingparents.com. Respondent shall be responsible for the costs of the reunification therapy, including the intake fee costs, subject to reallocation upon later request by either party. Both parties shall request that the reunification therapist provide a declaration to the court regarding the progress of

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the therapy at least 10 days in advance of the next hearing with both parties signing any and all documents to permit the reunification therapist to do so.

In addition to these orders, the court finds that items 1 and 2 in the Additional Provisions section of the April 2021 CCRC report regarding random drug testing are also in the child's best interest and adopts them as the orders of the court.

The court further orders that supervised visits as contained in the April 2021 CCRC report may begin at the direction of the reunification counselor.

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

**TENTATIVE RULING #10: THE COURT ADOPTS THE RECOMMENDATIONS CONTAINED WITH IN THE CCRC REPORT AS THEY ARE IN THE BEST INTEREST OF THE MINOR. THE PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. THE BEST INTERESTS OF THE CHILD TO IS PARTICIPATE IN REUNIFICATION THERAPY AND TO BEGIN SUPERVISED VISITS ONCE THE THERAPIST DEEMS IT APPROPRIATE. PETITIONER SHALL PROVIDE RESPONDENT WITH THREE NAMES OF POSSIBLE REUNIFICATION THERAPISTS BY MARCH 24, 2022. RESPONDENT SHALL SELECT A THERAPIST FROM THESE THREE NAMES BY MARCH 31, 2022 AND NOTIFY PETITIONER OF HIS SELECTION. WITHIN 5 DAYS OF PETITIONER BEING NOTIFIED OF THE SELECTION, BOTH PARTIES SHALL CONTACT THE THERAPIST TO SCHEDULE THEIR RESPECTIVE INTAKES. THE PARTIES SHALL COMMUNICATE WITH ONE ANOTHER REGARDING SCHEDULING AND OTHER LOGISTICS ISSUES REGARDING THE REUNIFICATION THERAPY THROUGH TALKINGPARENTS.COM. RESPONDENT SHALL BE RESPONSIBLE FOR THE COSTS OF THE REUNIFICATION THERAPY, INCLUDING THE INTAKE FEE COSTS, SUBJECT TO REALLOCATION UPON LATER REQUEST BY EITHER PARTY. BOTH PARTIES SHALL REQUEST THAT THE REUNIFICATION THERAPIST PROVIDE A DECLARATION TO THE COURT REGARDING THE PROGRESS OF THE THERAPY AT LEAST 10 DAYS IN ADVANCE OF THE NEXT HEARING WITH BOTH PARTIES SIGNING ANY AND ALL DOCUMENTS TO PERMIT THE REUNIFICATION THERAPIST TO DO SO. IN ADDITION TO THESE ORDERS, THE COURT FINDS THAT ITEMS 1 AND 2 IN THE ADDITIONAL PROVISIONS SECTION OF THE APRIL 2021 CCRC REPORT REGARDING RANDOM DRUG TESTING ARE ALSO IN THE CHILD'S BEST INTEREST AND ADOPTS THEM AS THE ORDERS OF THE COURT. THE COURT FURTHER ORDERS THAT SUPERVISED VISITS AS CONTAINED IN THE APRIL 2021 CCRC REPORT MAY BEGIN AT THE DIRECTION OF THE REUNIFICATION COUNSELOR.**

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March 17, 2022

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

**11. MARY MCQUINN V. MICHAEL MCQUINN**

**PFL20170332**

On March 24, 2021, the court granted Petitioner ex parte application and ordered Petitioner to have temporary sole physical custody, the parties to share legal custody, and supervised visitation twice per week for 2 hours per visit for Respondent.

On April 1, 2021, Respondent was served by mail with the RFO and ex parte orders. On April 15, 2021, Respondent filed a Responsive Declaration, served by mail on Petitioner the day prior. At the hearing on the RFO on April 29, 2021, the court adopted the recommendations within the CCRC report as modified and continued the matter to August 12, 2021 for review.

On June 14, 2021, Respondent filed an RFO requesting the court allow him to move with the minors to Georgia. Respondent's RFO was also set for August 12, 2021.

On August 12, 2021, after considering all the filings, the court referred the parties a CCRC session on September 10, 2021 and set a review hearing on October 28, 2021. Pending the hearing, Respondent was ordered to give one-week advance notice of where he intended to exercise his parenting time and was ordered to advance the costs for the minor's therapy and supervised exchanges subject to reallocation.

The parties participated in the CCRC session and a CCRC report was issued on October 18, 2021 with copies mailed to the parties that same day. The CCRC report recommends that Respondent's request to move with the children to Georgia be denied. If Respondent does move to Georgia, the report recommends that his parenting time take place in El Dorado County and that it step-up, starting with Respondent visiting with one child at a time and progressing to having all children at the same time.

On October 22, 2021, Petitioner filed a Supplemental Declaration, served electronically on Respondent that same day. Petitioner requests that Respondent be ordered to give more than a one-week advance notice regarding his intended visits, that the court decline to set a trial on the move away request until Respondent provides more details regarding the proposed move, that Respondent be ordered to participate in individual counseling (as the co-parenting counselors have indicated this is a prerequisite for them starting the co-parenting counseling), that the holiday visits with all three children not begin until the children's therapist deems its appropriate for all three children to be at the visit at the same time, that Respondent's visits take place in El Dorado County, and that the rest of the CCRC recommendations not inconsistent with the above be adopted.

On October 28, 2021 the parties appeared before the court. As Respondent did not stipulate to Commissioner Shephard hearing the matter, the hearing was continued to December 2, 2021.

On November 19, 2021 Respondent filed a Declaration and a Proof of Electronic Service showing service upon Petitioner the same day. In Declaration, Respondent indicates that he is withdrawing his request to move away after receiving the CCRC report and has informed Petitioner. Respondent asserts that he has moved back to California and intends to do whatever is necessary to demonstrate that



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shared custody is in the best interest of the children. Respondent requests that the court deny any request by Petitioner to modify custody and visitation orders at this time.

At the December 2, 2021 hearing, the court appointed Barbara Newman as Minors' Counsel, ordered the minors to be administered all prescribed medications pending the next hearing, ordered the parties to work out exchange times with Parenting Time Inc., and ordered specific parenting time for the winter break. The court reserved over the issue of payment for Minor's Counsel to the next hearing date and ordered the parties to file and serve current Income and Expense Declarations no later than 10 days prior to the hearing date.

The court set a review hearing on January 27, 2021 at 8:30 am. The court ordered Minors' Counsel to provide input to the court and parties no later than 10 days prior to that hearing date. Pending return to court, the current orders were ordered to remain in full force and effect.

On January 10, 2022, Petitioner filed an Income and Expense Declaration, served on the other parties electronically that same day.

On January 19, 2022, Respondent filed a Declaration, served electronically on Petitioner that same day.

On January 21, 2022, Petitioner filed a Supplemental Declaration, served on the other parties electronically that same day.

On January 27, 2022, the matter was continued to March 17, 2022 to allow time for Minors' Counsel's to file a report. Minor's Counsel was ordered to provide input to the court and parties at least 10 days in advance of the next hearing. Respondent was ordered to file and serve on all parties an updated Income and Expense Declaration at least 10 days in advance of the next hearing. Pending the next hearing, the current orders remained in full force and effect.

Minors' Counsel filed a Statement of Issues and Contentions and Request for Orders on January 25, 2022. Proof of service showing Minors' counsel filed a Statement of Issues and Contentions and Request for Orders was served on parties on January 24, 2022 was filed on January 25, 2022. Minors' Counsel recommends the current orders for custody and visitation remain in place. It is imperative to the minors that there is a consistent set schedule. Any missed visits should not be made up, to maintain consistency. Minors Counsel also requests the party enroll and participate in co-parenting counseling. One object is to establish comparable rules and expectations for their respective homes. Finally, Minors' Counsel request the court order the parties to work with WRAP services and any other service providers for the minor.

The court has read and considered the above filings in this matter. The court finds the recommendations contained in Minors' Counsel's Statement are in the best interest of the minors. The current orders will remain in full force and effect. If there is a missed visit, it shall not be made up. Parties are to enroll and participate in co-parenting counseling if they have not already done so. Issues to be addressed at co-parenting counseling shall include establishing comparable rules and expectations

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for their respective homes. Parties are to cooperate with all Alta service providers including WRAP services.

Based on the parties Income and Expense Declarations, the court finds the that after deducting living expenses, parties are equally situated. Therefore, parties are ordered to share in the costs of minors' counsel equally.

Petitioner is ordered to prepare and file the Findings and Orders After hearing.

**TENTATIVE RULING #11: THE RECOMMENDATIONS CONTAINED IN MINORS' COUNSEL'S STATEMENT ARE IN THE BEST INTEREST OF THE MINORS. THE CURRENT ORDERS WILL REMAIN IN FULL FORCE AND EFFECT. IF THERE IS A MISSED VISIT, IT SHALL NOT BE MADE UP. PARTIES ARE TO ENROLL AND PARTICIPATE IN CO-PARENTING COUNSELING IF THEY HAVE NOT ALREADY DONE SO. ISSUES TO BE ADDRESSED AT CO-PARENTING COUNSELING SHALL INCLUDE ESTABLISHING COMPARABLE RULES AND EXPECTATIONS FOR THEIR RESPECTIVE HOMES. PARTIES ARE TO COOPERATE WITH ALL ALTA SERVICE PROVIDERS INCLUDING WRAP SERVICES. PARTIES ARE ORDERED TO SHARE IN THE COSTS OF MINORS' COUNSEL EQUALLY. PETITIONER IS ORDERED TO PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

March 17, 2022

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

**13. MICHELLE GREEN V. JOSHUA SEATS**

**PFL20210580**

On December 9, 2021 parties were referred to Child Custody Recommending Counseling (CCRC) following a Domestic Violence Restraining Order (DVRO) hearing. The minors were not protected parties in the DVRO. Parties were to attend CCRC appointment on December 14, 2021 and a review hearing on January 14, 2022.

Parties attended CCRC and were not able to reach any agreements. Therefore, the report was issued with recommendations from the CCRC counselor. A copy of the report was mailed to the parties on January 12, 2022.

On January 14, 2022, the court adopted the CCRC report with modifications. Petitioner and Respondent have joint legal custody of the children. Petitioner has primary physical custody. Respondent has parenting time on alternate weeks from Wednesday at 5:00 P.M. until Sunday at 5:00 P.M. The order for Respondent's parenting time was provisioned on him securing living arrangements that were suitable for the minors. Respondent asserted at the hearing that he had appropriate housing in the form of a converted detached garage next door to Petitioner's home. The matter was set for a further review hearing on March 17, 2022.

On March 1, 2022, Petitioner filed a Supplemental Declaration regarding visitation. It was served on Respondent by mail and electronically on March 1, 2022, with Proof of Service filed the same day. Petitioner requests the court adopt the CCRC report of January 14, 2022. Petitioner asserts the current living arrangements are not appropriate for the minors, as the garage only has one bed and no bathroom. Respondent has indicated the children are able to sleep in a bedroom inside the main house where they have access to a bathroom. Petitioner further asserts there are safety concerns of a pool the minors have unrestricted access to. Petitioner also requests the drop off be modified to either have the Respondent drop the minors off to KidsPark in Folsom or at Kaiser Roseville, or alternatively adjust the Sunday drop off time to 6:00 P.M. as Petitioner is not off work until 5:00 P.M. in Roseville. Petitioner also requests the minors be able to travel with her to her grandmother's funeral services, upon her passing.

Respondent has not filed any Supplemental Declarations.

**TENTATIVE RULING #13: PARTIES ARE ORDERED TO APPEAR.**

LAW & MOTION TENTATIVE RULINGS

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March 17, 2022

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

**14. NADINE DILLMAN V. GALEN DILLMAN**

**PFL20210295**

On November 17, 2021, Petitioner filed a Request for Order (RFO) and Declaration requesting the court order the sale of the marital residence. Following a review of the file, the court finds no Proof of Service has been filed showing that Respondent was served with the RFO or the Declaration and attachments as required by law. As such, the court cannot consider the filings.

On February 3, 2022 Petitioner appeared for the hearing and requested a continuance to effectuate service. The matter was continued to March 17, 2022.

No Proof of Service has been filed indicating Respondent has been served with Petitioner's RFO.

Petitioner's RFO is denied without prejudice.

**TENTATIVE RULING #14: PETITIONER'S RFO IS DENIED WITHOUT PREJUDICE.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

March 17, 2022

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

**15. STACI HALLIHAN V. KRISTOPHER HALLIHAN**

**PFL20200234**

Parties appeared for the February 10, 2022 hearing. The court adopted the tentative ruling. The court set a further review hearing on March 17, 2022 to consider Respondent's request for 271 sanctions, compliance with the court's orders for parties to arrange a peaceful transfer of the personal property items Respondent had requested, as well as the progress in the step-up parenting plan, the children's enrollment in therapy, and the parties' enrollment in co-parenting counseling.

On February 10, 2022, Petitioner filed a Supplemental Declaration in response to Respondent's request for personal property items. Upon review of the court file, there is no Proof of Service indicating the Declaration was served on Respondent. As such, the court cannot consider it.

There have been no further filings in this matter.

**TENTATIVE RULING #15: PARTIES ARE ORDERED TO APPEAR.**