

Petitioner previously filed a Request for Order (RFO) on August 28, 2020 raising issues including custody and visitation, child support, and attorney fees. Respondent was served by email on September 4, 2020 and both parties have filed Income and Expense Declarations with the Court. Additionally, Respondent filed a Responsive Declaration and Supplemental Declaration on November 25, 2020. Proof of Service filed November 25, 2020 shows Respondent's filings were served on Petitioner's attorney by email the same date.

The Court referred the parties to CCRC for an appointment on September 11, 2020. Respondent failed to appear at the CCRC appointment due to a family emergency per the CCRC report issued on September 16, 2020. As a result, the parties were rereferred to CCRC per a Tentative Ruling issued December 10, 2020. Pursuant to that ruling, the court reserved jurisdiction over retroactive modification of child support as well as the issue of attorney fees. The court set the next court date for February 19, 2021. Pursuant to the stipulation of both parties, that date was ultimately continued to March 24, 2021.

Additionally, Petitioner filed a Reply Declaration on March 9, 2021 which would not have been timely filed under Code of Civil Procedure Section 1005(b) for the intervening court date of March 12, 2021. However, since the parties agreed to continue the matter to March 24, 2021 (due to Respondent counsel's unavailability), the Court deems the Reply Declaration timely filed. Additionally, with the granted continuance, Respondent has now had sufficient time to read the Reply Declaration, which appears to be in response to Respondent's Supplemental Declaration filed March 1, 2021.

Both parties participated in the rescheduled CCRC appointment on December 28, 2020 and were able to reach a full agreement on the issue of custody and visitation as it relates to their two minor children, ages 8 and 10.

Following that agreement, Respondent filed a Supplemental Declaration on March 1, 2021 requesting changes to the agreements, including: 1) the parties move to a week on/week off parenting schedule rather than the currently 2-2-5-5 schedule; 2) the parties communicate and agree on mental health resources for the minor children prior to engaging those services; 3) each parent have a scheduled phone call with the minor children while they are with the other parent; 4) the parties notify each other at least 45 days prior to enrolling either child in any extracurricular activity and that they parties must agree on all extra-curricular activities before the children are enrolled; and 5) that neither parent coach any sport/activity of the minor children until the parents are able to co-parent.

Petitioner's reply requests that the agreements reached at CCRC, including maintaining the current 2-2-5-5 parenting schedule, be adopted with the following modifications: 1) no objection to the parties being notified if either minor is seen by a school counselor and that the parties consent prior to private mental health services being sought for the minor children; 2) one phone call per parent on a specific day and time to the minor children or in the alternative, one call per day at bedtime; 3) petitioner be allowed to return the children later in the day on a holiday Monday; and 4) current orders regarding extra-curricular activities remain.

CUSTODY AND VISITATION

After considering the agreements reached at CCRC as well as the additional filings by both parties, the court finds the following orders are in the best interests of the minor children:

1. The agreements of the parties reached at CCRC are adopted as an order of the court including that the parties maintain a 2-2-5-5 parenting schedule. This provides the greatest stability and consistency for the minor children who are well-adjusted to this schedule and the court has not been provided with a basis why it is in the *best interests of the children* to modify that parenting schedule.
2. Petitioner's request to return the children later on holiday Mondays (three-day weekends) is denied. It is of utmost importance to maintain the current schedule and provide stability and consistency for the children and making changes to the schedule in this way does not provide that to the children.
3. As to mental health services, if the children *choose on their own* to speak with a school counselor, no prior consent of the parents is necessary. Indeed, that is what a school counselor is present for, to provide support to school children. However, BOTH parents must be notified by the school, or the other parent, any time the children speak to the school counselor. Additionally, to engage the services of a private, or health-care covered mental health provider for the children, both parents must agree and consent to the children being seen by the mental health provider pursuant to the joint legal custody order.
4. Each parent shall be allowed one phone call to the children during the other parent's parenting time. Petitioner may call the children on Sundays between 9am – 9:30am and Respondent may call the children on Fridays between 4pm – 4:30pm. The phone calls shall last no longer than 20 minutes. If requested, the children shall be allowed to call the other parent so long as it does not create a disruption in the current parent's household and time allows.
5. The current order regarding extra-curricular activities remains in full force and effect with the modification that neither parent sign a child up for an extra-curricular activity that affects the other parent's parenting schedule (i.e. class time, meets, games, practices, etc. fall on any day for the other parent) without the prior agreement of that parent. In other words, both parents must agree to the activity prior to the child being signed up if the activity, in any way, falls on the other parent's parenting time. Per the agreement, the parents must notify each other at least 45 days prior to registration to seek the approval/agreement of each other. The court declines to make such restrictive orders as requested by Respondent finding those orders would not be in the best interests of the minor children.

All prior orders regarding custody and visitation, not in conflict with the above orders, remain in full force and effect.

CHILD SUPPORT

The issue of child support modification is appropriately considered in this case as the court reserved jurisdiction over retroactive modification, back to the date of filing, in its last ruling.

The court has reviewed the Income and Expense Declarations filed by each party, along with supporting documentation and finds that Petitioner's income is \$5,883/mo dating back to the date of filing. The court finds that Respondent's income is \$9,377/mo from his current paychecks. The amount is calculated at 84 hours per pay period (because Respondent is paid for his holidays in lieu of taking them) at a total hourly rate of $\$51.1586 = \$4,297.32 \times 26 = \$111,730.32/\text{year}$ divided by 12 = \$9,311/mo. Additionally, despite his statements to the contrary, Respondent does still receive a uniform allowance each pay period in the amount of $\$30.77 = \$67/\text{mo.}$, for a total income of \$9,377.

The deductions for each party are indicated on the attached DissoMaster™ printout. The court allowed for a ½ hardship deduction for Respondent's child with his current spouse. However, Respondent is not entitled to a hardship deduction for the two stepchildren he chooses to support and the court does not allow the additional hardship deductions for those purposes.

This results in a child support obligation owing by Respondent to Petitioner in the amount of \$436/month beginning September 1, 2020. The court understands Respondent has been paying child support in the amount of \$700/month pursuant to the order of March 1, 2017. The court finds based on its orders today that Respondent has **overpaid** child support for the period of September 1, 2020 – March 1, 2020 in the amount of \$1,848 ($\$246/\text{mo} \times 7$). The court orders that Respondent shall be reimbursed for his overpayment and is allowed to deduct \$136/mo from his monthly child support obligation beginning April 1, 2021, until the overpayment has been fully recovered which should be in approximately fourteen (14) months.

The court declines to include an overtime table after further review of Respondent's paystubs. The court finds that at this time he is no longer receiving overtime as he once was, nor is there a reasonable likelihood, that has been shown to the court, that he will again receive a similar rate of overtime in his current position.

ATTORNEY FEES

There are competing requests for attorney fees which the court denies at this time as to each party. The court does not find, under Family Code Section 2030, that either party has a greater ability to pay the attorney fees of the other party based on the above analysis on incomes and expenses. Additionally, while the parties are, at times, certainly contentious, they were able to reach agreements at CCRC and the court, at this time, does not find that either party is engaging in Family Code Section 271 type conduct more than the other. Therefore, attorney fee requests pursuant to Family Code Section 2030 and 271 are respectfully denied as to both parties.

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

TENTATIVE RULING: THE COURT MAKES ORDERS AS INDICATED IN THIS RULING ON THE ISSUE OF CUSTODY AND VISITATION FINDING THE ORDERS ARE IN THE BEST INTERESTS OF THE MINOR CHILDREN. ADDITIONALLY, THE COURT SETS CHILD SUPPORT IN THE AMOUNT OF \$436/MONTH

PAYABLE BY RESPONDENT TO PETITIONER EFFECTIVE SEPTEMBER 1, 2020. RESPONDENT HAS OVERPAID CHILD SUPPORT IN THE AMOUNT OF \$1,848 FOR THE PERIOD OF SEPTEMBER, 2020 – MARCH, 2021, AND MAY RECOVER THE OVERPAYMENT AT THE RATE OF \$136/MO BY DEDUCTING THAT AMOUNT FROM THE CURRENT CHILD SUPPORT OBLIGATION UNTIL THE REPAYMENT HAS BEEN MADE IN FULL IN APPROXIMATELY FOURTEEN (14) MONTHS. THE COMPETING REQUESTS FOR ATTORNEY FEES PURSUANT TO FAMILY CODE SECTIONS 2030 AND 271 ARE DENIED AS TO EACH PARTY. ALL PRIOR ORDERS NOT IN CONFLICT REMAIN IN FULL FORCE AND EFFECT.

ATTORNEY (NAME AND ADDRESS): California ATTORNEY FOR: Father	TELEPHONE NO: Superior Court Of The State of California, County of COURT NAME: STREET ADDRESS: MAILING ADDRESS: BRANCH NAME:
DISSOMASTER REPORT 2021, Monthly	CASE NUMBER:

Input Data	Father	Mother	Guideline (2021)	Cash Flow Analysis	Father	Mother
Number of children	1	1	Nets (adjusted)	Guideline		
% time with NCP	49.99%	49.99%	Father	Payment (cost)/benefit	(436)	436
Filing status	<-MFJ	HH/MLA	6,797	Net spendable income	6,361	5,305
# Federal exemptions	6	2	Mother	% combined spendable	54.5%	45.5%
Wages + salary	9,377	5,883	4,869	Total taxes	939	848
401(k) employee contrib	108	292	Total	# WHA	22	8
Self-employment income	0	0	11,666	Net wage paycheck/mo	8,369	5,034
Other taxable income	0	0	Support	Comb. net spendable	11,666	
Other nontaxable income	0	0	CS Payor	Proposed		
New-spouse income	0	0	Presumed	Payment (cost)/benefit	(436)	436
Wages + salary	0	0	Basic CS	Net spendable income	6,361	5,305
Self-employment income	0	0	Add-ons	NSI change from gdl	0	0
Misc ordinary tax. inc.	0	0	Presumed Per Kid	% combined spendable	54.5%	45.5%
SS paid other marriage	0	0	Child 1	% of saving over gdl	0%	0%
Retirement contrib if ATI	0	0	Child 2	Total taxes	939	848
Required union dues	0	0	Spousal support	# WHA	22	8
Nec job-related exp.	0	0	Total	Net wage paycheck/mo	8,369	5,034
Adj. to income (ATI)	0	0	Proposed, tactic 9	Comb. net spendable	11,666	
SS paid other marriage	0	0	CS Payor	Percent change	0.0%	
CS paid other relationship	0	0	Presumed	Default Case Settings		
Qual. Bus. Inc. Ded.	0	0	Basic CS			
Health insurance	552	166	Add-ons			
Itemized deductions	1,437	0	Presumed Per Kid			
Other medical expenses	0	0	Child 1			
Property tax expenses	557	0	Child 2			
Ded. interest expense	880	0	Spousal support	blocked		
Charitable contribution	0	0	Total	436		
Miscellaneous itemized	0	0	Savings	0		
Required union dues	136	0	No releases			
Mandatory retirement	844	0				
Hardship deduction	109*	0*				
Other gdl. deductions	0	0				
AMT info (IRS Form 6251)	0	0				
Child support add-ons	0	0				
TANF, SSI and CS received	0	0				