

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**1. APRIL LOCKHART V. DAVID MERCADO**

**PFL20200534**

On May 24, 2024, Respondent filed a Request for Order (RFO). He filed his Income and Expense Declaration concurrently therewith. Both documents, along with all other required documents were electronically served on July 19<sup>th</sup>. Petitioner filed and served her Responsive Declaration to Request for Order on August 15, 2024. Respondent's Reply Declaration was filed and served on August 22<sup>nd</sup>.

Respondent brings his RFO requesting the following: (1) Sanctions in the amount of \$10,000 pursuant to Family Code § 271; (2) An order affirming the agreement made by the parties at mediation regarding social media posting; (3) Final decision-making authority; and (4) an order precluding both parties from serving documents in front of the minor child and at exchanges.

Petitioner asks that the court deny all of Respondent's requests. She also makes the following requests for affirmative relief: (1) Final decision-making authority to be awarded to Petitioner; (2) A change in the visitation schedule; (3) Parallel parenting plan; (4) An order directing Respondent to comply with the order for individual therapy; (5) Change the child's school district to be the district where Petitioner resides; (6) An order precluding Respondent from screenshotting emails and providing them to physicians and mental healthcare providers; (7) Removal of Mrs. Bentley as Minor's Counsel; (8) Order mediation per the stipulation; and (9) attorney's fees pursuant to Family Code §§ 3121 and 2030.

While "[t]he responding party may request relief related to the orders requested in the moving papers...unrelated relief must be sought by scheduling a separate hearing using *Request for Order* (form FL-300)..." Cal. Rule Ct. § 5.92(g)(2). The following requests made by Petitioner are unrelated to the requests in Respondent's moving papers and therefore the court declines to rule on them as they are not properly before the court: (1) A change in the visitation schedule; (2) Parallel parenting plan; (3) Change the child's school district to be the district where Petitioner resides; (4) An order precluding Respondent from screenshotting emails and providing them to physicians and mental healthcare providers; and (5) Removal Mrs. Bentley as Minor's Counsel.

Turning to the issue of final decision-making authority, given that it is clear the highly contentious nature of the relationship between the parties has not subsided, the court is not confident that providing either party final decision-making authority would be in the minor's best interests. Therefore, the court's prior orders on final decision-making authority remain in full force and effect.

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Likewise, all other orders remain in full force and effect. This includes agreements of the parties that were adopted as court orders. Both parties are admonished to abide by all prior orders. Failure to do so may result in contempt charges and sanctions.

Regarding service of documents, the court agrees that doing so in front of the minor is not appropriate. Further, with few exceptions, court documents may be served by mail or electronically, thereby eliminating the need for personal service. As such, unless personal service is required by statute, the parties are to effectuate service by mail. When personal service is required, the parties are not to utilize the exchange of the minor for purposes of serving court documents.

The public policy of Family Code section 3121 is to “ensure that each party has access to legal representation ... to preserve each party’s rights by ordering...one party...to pay to the other party, or the other party’s attorney, whatever amount is reasonably necessary for attorney’s fees and for the cost of maintaining or defending...” a proceeding for custody or visitation. Fam. Code § 3121(a). 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 § 3121(b). “When considering a request for attorney fees, ‘the trial court must determine what is just and reasonable under the circumstances, taking into consideration the parties’ needs and ability to pay *and the conduct of each party*. [Citations]” Darab Cody N. v. Olivera, 31 Cal. App. 5<sup>th</sup> 1134, 1143 (2019) (italic in original). A party’s “tactics are relevant to evaluate the relative need-based fees between the parties and support the trial court’s decision to deny such.” In Re Marriage of Falcone & Fyke, 203 Cal. App. 4<sup>th</sup> 964, 977 (2012). Here, it is evident that while Petitioner did file an Income and Expense Declaration, the declaration is deficient leaving out very important details regarding Petitioner’s income. Given Petitioner’s failure to be forthright with the court, Petitioner’s request for attorney’s fees is denied.

Respondent makes his request for attorney’s fees pursuant to Family Code § 271 which states, in pertinent part, “...the court may base an award of attorney’s fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation of the parties and attorneys. An award of attorney’s fees and costs pursuant to this section is in the nature of a sanction.” Fam. Code § 271(a). While the purpose of Section 271 is to impose a punitive sanction, the court is not to impose a sanction that would create an “unreasonable financial burden on the party against whom the sanction is imposed.” *Id.*

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Given Petitioner's misleading Income and Expense Declaration, the court does fine sanctions to be warranted. However, \$10,000, as requested by Respondent, is likely to create an unreasonable financial burden on Petitioner and as such the court is not inclined to award that amount. Instead, Petitioner is to pay Respondent \$1,000 as and for sanctions pursuant to Family Code § 271. This amount may be paid in one lump sum or in monthly increments of \$250 commencing on September 15<sup>th</sup> and continuing until paid in full (approximately 4 months). If any payment is missed or late, the entire amount shall become immediately due and payable with legal interest.

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

**TENTATIVE RULING #1: THE FOLLOWING REQUESTS MADE BY PETITIONER ARE UNRELATED TO THE REQUESTS IN RESPONDENT'S MOVING PAPERS AND THEREFORE THE COURT DECLINES TO RULE ON THEM AS THEY ARE NOT PROPERLY BEFORE THE COURT: (1) A CHANGE IN THE VISITATION SCHEDULE; (2) PARALLEL PARENTING PLAN; (3) CHANGE THE CHILD'S SCHOOL DISTRICT TO BE THE DISTRICT WHERE PETITIONER RESIDES; (4) AN ORDER PRECLUDING RESPONDENT FROM SCREENSHOTTING EMAILS AND PROVIDING THEM TO PHYSICIANS AND MENTAL HEALTHCARE PROVIDERS; AND (5) REMOVAL OF MRS. BENTLEY AS MINOR'S COUNSEL. THE COURT'S PRIOR ORDERS ON FINAL DECISION-MAKING AUTHORITY REMAIN IN FULL FORCE AND EFFECT. ALL OTHER PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT AND THE PARTIES ARE ADMONISHED TO COMPLY WITH THEM. FAILURE TO DO SO MAY RESULT IN CONTEMPT. GIVEN PETITIONER'S FAILURE TO BE FORTHRIGHT WITH THE COURT, PETITIONER'S REQUEST FOR ATTORNEY'S FEES IS DENIED. UNLESS PERSONAL SERVICE IS REQUIRED BY STATUTE, THE PARTIES ARE TO EFFECTUATE SERVICE BY MAIL. WHEN PERSONAL SERVICE IS REQUIRED, THE PARTIES ARE NOT TO UTILIZE THE EXCHANGE OF THE MINOR FOR PURPOSES OF SERVING COURT DOCUMENTS. PETITIONER IS TO PAY RESPONDENT \$1,000 AS AND FOR SANCTIONS PURSUANT TO FAMILY CODE § 271. THIS AMOUNT MAY BE PAID IN ONE LUMP SUM OR IN MONTHLY INCREMENTS OF \$250 COMMENCING ON SEPTEMBER 15<sup>TH</sup> AND CONTINUING UNTIL PAID IN FULL (APPROXIMATELY 4 MONTHS). IF ANY PAYMENT IS MISSED OR LATE, THE ENTIRE AMOUNT SHALL BECOME IMMEDIATELY DUE AND PAYABLE WITH LEGAL INTEREST. 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 PHONE CALL TO THE COURT AT (530) 621-6725 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO***

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**LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY PHONE CALL OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

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**2. ASHLEE NICOLE SCHMIDT V. JACOB SCHMIDT**

**22FL1154**

On March 13, 2024, Petitioner filed an Ex Parte Application and Declaration for Orders and Notice requesting Respondent have professionally supervised visits for two weeks. She filed an Income and Expense Declaration the same day. The ex parte was denied and the matter was set for hearing on June 6<sup>th</sup>. It was later continued to the present date. Petitioner filed her Request for Order (RFO) on March 18, 2024. The RFO seeks orders for custody and visitation, child support, and attorney's fees.

Respondent filed and served his Responsive Declaration to Request for Order on March 15, 2024. Respondent filed and served his Income and Expense Declaration on May 2, 2024.

Petitioner is requesting Respondent's visitation time be professionally supervised for up to 2 hours per week. She makes her request based on the two DUI arrests of Respondent that he failed to disclose during prior hearings on the issue of custody. She is asking that Respondent be ordered to enroll in, and complete, a course of alcohol/substance abuse counseling prior to any future modification to make the visits unsupervised. She is seeking guideline child support and attorney's fees and costs pursuant to Family Code 271.

Respondent is also requesting sole legal and sole physical custody of the minor with supervised visits to Petitioner. He makes his request on the basis that Petitioner was investigated by CPS at least six times, the most recent of which was in November of 2023. He consents to guideline child support but he does not consent to Petitioner's request for attorney's fees. Respondent makes his own request for \$5,000 in attorney's fees pursuant to Family Code § 2030 and Family Code § 271. He also notes that there is a pending DCSS case and asks for the issue of child support to be heard in that matter.

Due to the pending DCSS case, the court cannot rule on the issue of child support. Additionally, DCSS was not served with the present motion and Petitioner has failed to file an updated Income and Expense Declaration. For the foregoing reasons, the issue of child support is dropped from calendar.

Regarding custody, the court has reviewed the filings of the parties as listed above and the court is not inclined to change the custody and visitation orders at this time. The court finds the current orders remain in the minor's best interest therefore all prior orders remain in full force and effect. For the avoidance of doubt, the court's ex parte orders also remain in full force and effect which are as follows: Respondent shall not transport the minor without a valid California driver's license and insurance. Respondent shall abstain

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from any alcohol or other intoxicating substance within 24 hours prior to and during his parenting time.

Each party's request for Section 271 sanctions is denied. It appears that each party withheld information from the other which is relevant to the issue of custody and visitation. However, there is no indication by either party that discovery requests were made specifically seeking the information at issue. As such, the court does not find Section 271 sanctions to be warranted against either party at this time.

Regarding Respondent's request for Section 2030 attorney's fees, the request is denied for failure to file the requisite documentation. "[T]o request attorney's fees and costs, a party must complete, file and serve the following documents:...Request for Attorney's Fees and Costs Attachment (form FL-319) or a comparable declaration that addresses the factors covered in form FL-319...[and a] personal declaration in support of the request for attorney's fees and costs, either using Supporting Declaration for Attorney's Fees and Costs Attachment (form FL-158) or a comparable declaration that addresses the factors covered in form FL-158..." Cal. Rule of Ct. 5.427(b)(1). Respondent has not filed either a form FL-319, an FL-158, or a declaration covering the necessary factors for the court to rule on a request for attorney's fees. Respondent's request for attorney's fees is therefore denied due to her failure to file the requisite documentation.

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

**TENTATIVE RULING #2: THE ISSUE OF CHILD SUPPORT IS DROPPED FROM CALENDAR. THE COURT FINDS THE CURRENT ORDERS REMAIN IN THE MINOR'S BEST INTEREST THEREFORE ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT. FOR THE AVOIDANCE OF DOUBT, THE COURT'S EX PARTE ORDERS ALSO REMAIN IN FULL FORCE AND EFFECT WHICH ARE AS FOLLOWS: RESPONDENT SHALL NOT TRANSPORT THE MINOR WITHOUT A VALID CALIFORNIA DRIVER'S LICENSE AND INSURANCE. RESPONDENT SHALL ABSTAIN FROM ANY ALCOHOL OR OTHER INTOXICATING SUBSTANCE WITHIN 24 HOURS PRIOR TO AND DURING HIS PARENTING TIME. EACH PARTY'S REQUEST FOR SECTION 271 SANCTIONS IS DENIED AND RESPONDENT'S REQUEST FOR SECTION 2030 ATTORNEY'S FEES IS DENIED. 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 PHONE CALL 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**

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**A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY PHONE CALL OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

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**3. CYNTHIA TOVERA V. HARRY TOVERA**

**PD2785**

Petitioner filed a Request for Order (RFO) on October 18, 2023 seeking a variety of orders regarding Respondent's retirement as well as attorney's fees and costs. Hearing on the RFO was held on April 18, 2024, at which time the court ordered Respondent to comply with his disclosure obligations and to file and serve his Income and Expense Declaration. Respondent was also ordered to provide Petitioner with copies of all correspondence received from the Office of Personnel Management until Petitioner began receiving her portion of the retirement funds. The court reserved jurisdiction on each party's request for attorney's fees and sanctions, as well as the issue of a *Gillmore* election. A return hearing was set for the present date for receipt of the QDROs.

Respondent filed his Income and Expense Declaration on August 12<sup>th</sup> it was served on August 8<sup>th</sup>. On August 26<sup>th</sup> Petitioner filed a Declaration. The court finds this to be late filed as it was not filed at least 10 days prior to the hearing date.

The parties are ordered to appear for the hearing to update the court on the status of all issues.

**TENTATIVE RULING #3: THE PARTIES ARE ORDERED TO APPEAR FOR THE HEARING TO UPDATE THE COURT ON THE STATUS OF ALL ISSUES.**



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**4. DERRICK MILBURN-HARSHA V. ALYSSA DUMAS-BRONNER**

**PFL20190741**

Counsel for Respondent filed a Notice of Motion and Motion to be Relieved as Counsel and supporting declaration on June 10, 2024. Petitioner was mail served with the motion on June 12<sup>th</sup>. Upon review of the court's file, there is no Proof of Service showing Respondent was properly served with the Motion to be Relieved.

The court drops the matter from calendar due to the failure to serve Respondent.

**TENTATIVE RULING #5: THE COURT DROPS THE MATTER FROM CALENDAR DUE TO THE FAILURE TO SERVE RESPONDENT.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY PHONE CALL 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 PHONE CALL OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

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**5. ISIAH RUBALCAVA V. JESSICA RUBALCAVA**

**23FL0670**

**&**

**7. JESSICA RUBALCAVA V. ISIAH RUBALCAVA**

**24FL0018**

Counsel for Jessica Rubalcava filed a Notice of Motion and Motion to be Relieved as Counsel and supporting declaration on June 4, 2024. Ms. Rubalcava was mail served with the motion on July 9<sup>th</sup>. Upon review of the court's file, there is no Proof of Service showing Mr. Rubalcava was properly served.

The court drops the matter from calendar due to the lack of proper service.

**TENTATIVE RULINGS #5 & 7: THE COURT DROPS THE MATTER FROM CALENDAR DUE TO THE LACK OF PROPER SERVICE.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY PHONE CALL 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 PHONE CALL OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

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**6. JAMES HERNANDEZ V. CHRISTINA SULLIVAN**

**24FL0301**

On June 12, 2024, the parties presented the court with a stipulation to mutually vacate their respective retraining orders against one another. 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 July 19<sup>th</sup> and were able to reach an agreement on only some of the issues presented. A report containing the agreement of the parties, and recommendations from the CCRC counselor, was prepared on July 27, 2024. It was mailed to the parties on July 29<sup>th</sup>. Neither party has filed a declaration in response to the CCRC report.

The court has reviewed the CCRC report and finds the agreements and recommendations contained therein to be in the best interests of the minors. The agreements and recommendations as stated in the July 27, 2024 CCRC report are hereby adopted as the orders of the court.

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

**TENTATIVE RULING #6: THE AGREEMENTS AND RECOMMENDATIONS AS STATED IN THE JULY 27, 2024 CCRC REPORT ARE HEREBY ADOPTED AS THE ORDERS OF THE COURT. PETITIONER SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**8. KATELYN BOLLINGER V. RYAN BOLLINGER**

**23FL0365**

On June 14, 2024, Petitioner filed an Order to Show Cause and Affidavit for Contempt (OSC), it was personally served on Respondent on June 30, 2024. The OSC was set for an arraignment on the present date.

On July 9, 2024, Respondent filed a Request for Order (RFO) demurring to the OSC and requesting that it be dismissed. The RFO was accompanied by a Memorandum of Points and Authorities in support of Respondent's requests. Both documents were mail served on July 17<sup>th</sup>. Petitioner has not opposed the motion.

Respondent requests dismissal of the OSC on the basis that Petitioner waived any right to enforcement by contempt in the May 30, 2024 settlement agreement and judgment which includes a mutual release and waiver. He also argues that the order to store or sell any prohibited items was too vague as to be enforced by the contempt power and therefore, the counts related to that order should be discharged. He further argues that counts regarding the surrender of a Winchester .30/.30 should be discharged in the interests of justice pursuant to Penal Code § 1385 because it is unclear if the court even found that Respondent still owned the Winchester .30/.30. He also requests count 3 be dismissed in the interest of justice as that count is simply alleging Respondent filled out the wrong gun form. Count 4 should also be dismissed as this count alleges Respondent failed to complete a batterers intervention program, however on November 2, 2023, the court already made findings that the program was successfully completed. Respondent states Count 5 should be dismissed as Petitioner cites a custody order from June 2, 2023 regarding travel outside of California with the children, however, there were numerous interim orders put in place since that time. Finally, he argues Counts 6-19 should be dismissed on the basis of estoppel and in the interests of justice because the orders are vague and when Respondent requested additional information from Petitioner she refused to comply.

Regarding Respondent's waiver argument, the court finds this argument to be without merit. The mutual release contained in the settlement agreement is specifically listed in Section 6, which is in reference to the division of property and debts. There is also a waiver of inheritance and other property rights in Section 8.2. The court cannot find anywhere in the settlement agreement where the parties waive their right to seek contempt for any preceding violation of court orders. For this reason, the court must reach the remaining issues on their merits.

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Penal Code § 1385 vests the court with the power to dismiss an action “in the furtherance of justice.” However, “[a] dismissal shall not be made for any cause that would be ground of demurrer to the accusatory pleading.” Pen. Code 1385(a).

A demurrer raises only issues of law, not fact, regarding the form and content of the pleadings of the opposing party. Cal. Civ. Pro. §§ 422.10 and 589. It is not the function of the demurrer to challenge the truthfulness of the complaint, instead, for the purposes of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts in the pleading but not contentions, deductions or conclusions of fact or law. Aubry v. Tri-City Hosp. Dist., 2 Cal. 4<sup>th</sup> 962, 966-967 (1992); Serrano v. Priest, 5 Cal. 3d 584 (1971); Adelman v. Associated Int’l Ins. Co., 90 Cal. App. 4<sup>th</sup> 352, 359 (2001). A demurrer can only challenge defects that appear on the face of the pleading and other matters that are judicially noticeable, the challenging party cannot make allegations of fact to the contrary. Blank v. Kirwan, 39 Cal. 3d 311, 318 (1985); Donabedian v. Mercury Ins. Co., 116 Cal. App. 4<sup>th</sup> 968 (2004); Harboring Villas Homeowners Assn. v. Sup. Ct., 63 Cal. App. 4<sup>th</sup> 426 (1998).

The proper analysis of Respondent’s motion requires the court to first address each count to determine if grounds for a demurrer exist. If not, then the court may turn to whether the interests of justice would require dismissal of the count in question.

Counts 1 and 2 are premised on the issue of whether or not Respondent is in possession of a Winchester .30/.30. Respondent argues that he does not own a .30/.30 and that all of his guns have been properly surrendered. However, this is a question of fact. The pleading at issue alleges there was a court order for Respondent to surrender his weapons, Respondent was aware of the court order, and facts which show that Respondent failed to comply with the order. This is sufficient for purposes of surviving a demurrer and therefore, Respondent’s demurrer and request to discharge these counts is denied.

Count 3 is regarding a seeming clerical error. Respondent filled out the form CH-800 instead of a DV-800/JV-270. While there may be sufficient facts pled to survive a demurrer, the court does find that this issue is easily remedied without the need for court intervention and therefore, this count is dismissed in the interests of justice.

Count 4 alleges Respondent was to complete a 12-week anger management class and provide proof of completion thereof. Respondent is essentially arguing res judicata on this issue as the court already made a finding that Respondent complied with this order at the November 2, 2023 hearing. Respondent is correct. However, making this determination requires referencing matters outside of the OSC pleading which no Request for Judicial Notice has been made, therefore, because this is not grounds for a demurrer, the court is dismissing this count in the interest of justice pursuant to Penal Code § 1385.

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Count 5 is regarding Respondent's alleged out-of-state travel with the minors. The count identifies the court order that was allegedly violated, however, there are no facts pled to establish that Respondent was aware of the court order. Without this necessary fact, the count is insufficiently plead and the demurrer is sustained with leave to amend. Petitioner is to file and serve her amended OSC no later than September 12, 2024.

Counts 6-19 all allege that Respondent failed to complete medical documentation and follow treatment recommendations. While each count states "Respondent willfully and intentionally refused to follow court orders regarding minor children's medical treatment," this is not sufficient to survive a demurrer. For the purposes of testing the sufficiency of the cause of action, the demurrer admits the truth of all material facts in the pleading *but not contentions, deductions or conclusions of fact or law*. Aubry v. Tri-City Hosp. Dist., 2 Cal. 4<sup>th</sup> 962, 966-967 (1992); Serrano v. Priest, 5 Cal. 3d 584 (1971); Adelman v. Associated Int'l Ins. Co., 90 Cal. App. 4<sup>th</sup> 352, 359 (2001). The statement that Respondent refused to follow court orders is a conclusory sentence. Petitioner has not provided any factual basis for her statement. Therefore, these counts are not sufficiently pled and the demurrer is sustained with leave to amend as to counts 6-19. Petitioner is to file her amended OSC no later than September 12, 2024.

The arraignment on counts 1 and 2 is continued to 10/31/2024 at 1:30pm in Department 5.

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

**TENTATIVE RULING #8: RESPONDENT'S REQUEST TO DISCHARGE OR DEMURRER TO COUNTS 1 AND 2 IS DENIED. THE ARRAIGNMENT ON COUNTS 1 AND 2 IS CONTINUED TO 10/31/2024 AT 1:30PM IN DEPARTMENT 5. COUNTS 3 AND 4 ARE DISMISSED IN THE INTERESTS OF JUSTICE. THE DEMURRER IS SUSTAINED WITH LEAVE TO AMEND AS TO COUNTS 5-19. PETITIONER IS TO FILE AND SERVE HER AMENDED OSC NO LATER THAN SEPTEMBER 12, 2024. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE  
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**9. KIM HOLZMANN V. BROOKE BOLING MARTINEZ**

**24FL0340**

Respondent filed a Request for Order (RFO) on May 6, 2024 seeking custody and visitation orders. The RFO and a referral to Child Custody Recommending Counseling (CCRC) were served on May 10, 2024, however there is no indication that either the Notice of Tentative Ruling or a blank FL-320 were served. Nevertheless, both parties attended CCRC as scheduled. Petitioner has not filed a Responsive Declaration to Request for Order.

The parties were unable to reach agreements at CCRC therefore a report with recommendations was prepared on July 26, 2024. The report was mailed to the parties on July 29<sup>th</sup>, and neither party has filed a response to the recommendations contained therein.

The court has reviewed the CCRC report and finds the recommendations to be in the best interests of the minor. Therefore, they are hereby adopted as the orders of the court.

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

**TENTATIVE RULING #9: THE RECOMMENDATIONS CONTAINED IN THE JULY 26, 2024 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 PHONE CALL 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 PHONE CALL OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**



LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**10. MOISES PINTO TROMPIZ V. SARAI PINTO**

**23FL0698**

On May 24, 2024, Respondent filed a Request for Order (RFO) and an Income and Expense Declaration. Both documents were mail served on May 30, 2024. Petitioner filed and served his Responsive Declaration to Request for Order on August 5<sup>th</sup>. He did not file an Income and Expense Declaration. Respondent filed and served an updated Income and Expense Declaration on August 14<sup>th</sup>.

Respondent brings her RFO making only a request for spousal support. However, the parties are already set for trial on October 14<sup>th</sup> on the issue of terminating spousal support. Given the overlapping issues, and in the interest of judicial economy, this matter is continued to join with the October 14, 2024 trial. Petitioner is ordered to file an Income and Expense Declaration at least 10 days prior to the trial date.

**TENTATIVE RULING #10: THIS MATTER IS CONTINUED TO JOIN WITH THE OCTOBER 14, 2024 TRIAL. PETITIONER IS ORDERED TO FILE AN INCOME AND EXPENSE DECLARATION AT LEAST 10 DAYS PRIOR TO THE TRIAL DATE.**

**NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY PHONE CALL 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 PHONE CALL OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**12. ANSELMO AMARAL DE ARAUJO V. WHITENY DE ARAUJO**

**PFL20200803**

Petitioner filed an ex parte application for emergency custody orders on April 19, 2024. The court denied the request on April 24, 2024. On April 24<sup>th</sup> Petitioner filed a Request for Order (RFO) making the same requests as set forth in the ex parte application.

On July 25, 2024, Petitioner appeared for the hearing, and requested the matter be continued to allow additional time to serve Respondent. The court granted the request and continued the review hearing to August 29, 2024.

On August 21<sup>st</sup> a Proof of Service was filed indicating the RFO was served on August 20<sup>th</sup>. This is untimely. Therefore, the matter is dropped from calendar due to Petitioner's failure to timely serve Respondent.

**TENTATIVE RULING #12: THE MATTER IS DROPPED FROM CALENDAR DUE TO PETITIONER'S FAILURE TO TIMELY SERVE RESPONDENT.**

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

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**13. CIERRA WELLS-AMMONS V. TRISTIAN FERRIER**

**22FL0022**

Petitioner filed a Request for Order (RFO) on May 24, 2024, requesting the court modify the child custody and parenting plan orders. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 10, 2024, and a review hearing on August 29<sup>th</sup>. Proof of Service shows Respondent was personally served on June 5, 2024.

Petitioner is requesting the court grant her sole legal and physical custody of the minor with Respondent to have supervised parenting time one time per week. Petitioner proposes the grandmother provide the supervision. Although Petitioner did not check the box on the face sheet of the FL-300 requesting orders as to child support, she is requesting the court order \$200 a month in child support. Petitioner did not file or serve an Income and Expense Declaration as required when making a request for support.

Both parties appeared at the CCRC appointment and were unable to reach any agreements. A report with recommendations was filed with the court on August 16<sup>th</sup> and mailed to the parties the same day.

Respondent has not filed a Responsive Declaration.

The court adopts the recommendations as set forth in the August 16<sup>th</sup> CCRC report as its orders. The court finds the recommendations to be in the best interest of the minor. The court denies Petitioner's request for child support orders as Petitioner failed to file and serve the necessary documents.

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 #13: THE COURT ADOPTS THE RECOMMENDATIONS AS SET FORTH IN THE AUGUST 16<sup>TH</sup> CCRC REPORT AS ITS ORDERS. THE COURT FINDS THE RECOMMENDATIONS TO BE IN THE BEST INTEREST OF THE MINOR. THE COURT DENIES PETITIONER'S REQUEST FOR CHILD SUPPORT ORDERS AS PETITIONER FAILED TO FILE AND SERVE THE NECESSARY DOCUMENTS. 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**

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

**A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**14. JUANITA BUCOL V. TREVOR CUNEO**

**22FL0703**

Petitioner filed a Request for Order (RFO) on May 28, 2024, requesting orders as to child custody, parenting time, and child support. Petitioner concurrently filed an Income and Expense Declaration. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 11, 2024, and a review hearing on August 29<sup>th</sup>. Although there is a Proof of Service showing Respondent was personally served, it shows he was only served with the RFO, and not the other required documents.

Only Petitioner appeared for the CCRC appointment on July 11, 2024. As such a single parent report was filed with the court on July 22<sup>nd</sup> and mailed to the parties the same day.

Upon further review of the court file, the court notes Petitioner filed a Petition to Establish a Parental Relationship on July 29, 2022. There is no Proof of Service showing Respondent was served with the Petition and Summons. As such, this court does not have jurisdiction to make orders in this matter.

The court drops the matter from calendar. The court does not have jurisdiction to make orders in this matter as Respondent has never been served with the Petition and Summons. Further, even if the Petition and Summons had been served, Petitioner failed to properly serve Respondent with all the required documents, and the matter would have been dropped from calendar on those grounds as well.

**TENTATIVE RULING #14: THE COURT DROPS THE MATTER FROM CALENDAR. THE COURT DOES NOT HAVE JURISDICTION TO MAKE ORDERS IN THIS MATTER AS RESPONDENT HAS NEVER BEEN SERVED WITH THE PETITION AND SUMMONS. FURTHER, EVEN IF THE PETITION AND SUMMONS HAD BEEN SERVED, PETITIONER FAILED TO PROPERLY SERVE RESPONDENT WITH ALL THE REQUIRED DOCUMENTS, AND THE MATTER WOULD HAVE BEEN DROPPED FROM CALENDAR ON THOSE GROUNDS AS WELL.**

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

**15. JUSTIN KREMER V. AIME WHEDBEE**

**22FL0765**

Respondent filed a Request for Order (RFO) on May 31, 2024, requesting the court make child custody and parenting plan orders. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 11, 2024, and a review hearing on August 29<sup>th</sup>. Upon review of the court file, there is no Proof of Service showing Petitioner was properly served with the RFO and other necessary documents.

Only Respondent appeared for the CCRC appointment on July 11<sup>th</sup>. As such a single parent report was filed with the court on July 11, 2024. Copies were mailed to the parties the same day.

The court drops the matter from calendar due to Respondent's failure to properly serve Petitioner.

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

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

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DEPARTMENT 5

August 29, 2024

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

**16. MELANIE SCHWARTZLER V. ROBERT CLINTON**

**PFL20170631**

Respondent filed a Request for Order (RFO) on June 25, 2024, requesting the court make child custody and parenting plan orders. The parties were referred to Child Custody Recommending Counseling (CCRC) with an appointment on July 26<sup>th</sup> and a review hearing on September 19, 2024. Petitioner was personally served on June 27, 2024.

Respondent is requesting parenting time every weekend and the holiday schedule as previously agreed upon. Respondent asserts that while the current order is for parenting time every other weekend, the practice has been for the minors to be with him every weekend. Respondent states Petitioner is now seeking to enforce the order by only allowing parenting time a maximum of two weekends a month. Further, Respondent states Petitioner unilaterally denied his parenting time on Father's Day, which was included as his holiday in the current orders.

Respondent filed an ex parte application for emergency custody orders on July 12, 2024. Petitioner filed a Responsive Declaration on July 17, 2024. On July 17<sup>th</sup>, the court granted Respondent's request, granting him temporary sole physical custody of the minors, with Petitioner to have non-professionally supervised visitation three times per week for two hours each, with the parties to agree to a supervisor in writing. If the parties are unable to agree to a supervisor, then the visits are to be professionally supervised with the parties to share the costs equally. The court ordered the minors to have no contact with Trent Klasna. The court set an emergency CCRC appointment on July 29<sup>th</sup> and advanced the review hearing from September 19<sup>th</sup> to August 29<sup>th</sup>. An RFO making the same requests as the ex parte application was filed by Respondent on July 17<sup>th</sup>.

Upon review of the court file, there is no Proof of Service showing Petitioner was served with the ex parte orders.

Both parties appeared for the CCRC appointment. The parties were able to reach many agreements. A report with the parties' agreements and further recommendations was filed with the court on August 5, 2024. Copies were mailed to the parties on August 6, 2024.

Petitioner filed a Supplemental Declaration on August 14, 2024. Respondent was served on August 15, 2024. Petitioner asserts she has addressed the issues which led to the ex parte orders. Petitioner also raised concerns about Respondent. Petitioner is seeking the prior orders be reinstated.

The court finds good cause to proceed with the July 17<sup>th</sup> filed RFO, as Petitioner filed a Responsive Declaration to the ex parte motion and appeared at CCRC. Further, Petitioner

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

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

has filed a Supplemental Declaration, which does not raise the issue of service, therefore, the court finds the issue to have been waived.

The court has read and considered the filings as outlined above. The court finds the parties agreements as set forth in the August 5<sup>th</sup> CCRC report to be in the best interest of the minors. The court adopts the recommendations with the following modifications. The court is modifying Petitioner's parenting time to be a minimum of three times per week for a minimum of three hours each. Petitioner's parenting time may be increased upon agreement of the parties, up to overnights, so long as Petitioner is residing with the maternal grandfather. The court is further ordering Petitioner to participate in a parenting class specializing in parenting teens and is to provide proof of completion to Respondent and the court by November 1, 2024. The court is only adopting the Halloween portion of the holiday schedule. The court is setting a review hearing on November 14, 2024, to assess an increase in Petitioner's parenting time.

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 #16: THE COURT FINDS THE PARTIES AGREEMENTS AS SET FORTH IN THE AUGUST 5<sup>TH</sup> CCRC REPORT TO BE IN THE BEST INTEREST OF THE MINORS. THE COURT ADOPTS THE RECOMMENDATIONS WITH THE FOLLOWING MODIFICATIONS. THE COURT IS MODIFYING PETITIONER'S PARENTING TIME TO BE A MINIMUM OF THREE TIMES PER WEEK FOR A MINIMUM OF THREE HOURS EACH. PETITIONER'S PARENTING TIME MAY BE INCREASED UPON AGREEMENT OF THE PARTIES, UP TO OVERNIGHTS, SO LONG AS PETITIONER IS RESIDING WITH THE MATERNAL GRANDFATHER. THE COURT IS FURTHER ORDERING PETITIONER TO PARTICIPATE IN A PARENTING CLASS SPECIALIZING IN PARENTING TEENS AND IS TO PROVIDE PROOF OF COMPLETION TO RESPONDENT AND THE COURT BY NOVEMBER 1, 2024. THE COURT IS ONLY ADOPTING THE HALLOWEEN PORTION OF THE HOLIDAY SCHEDULE. THE COURT IS SETTING A REVIEW HEARING ON NOVEMBER 14, 2024, TO ASSESS AN INCREASE IN PETITIONER'S PARENTING TIME. 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**



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

**BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**17. MICHAEL JOHNSON V. KIMBERLY JOHNSON**

**PFL20210500**

On April 18, 2024, Petitioner filed a Request for Order (RFO) and an Income and Expense Declaration. Both documents, along with all other required documents, were served by mail on April 23, 2024. Respondent filed and served her Responsive Declaration to Request for Order on June 26<sup>th</sup>. Petitioner filed and served his Updating Declaration on July 22<sup>nd</sup>.

Petitioner filed his RFO requesting the court to enter judgment pursuant to the terms of the Stipulation and Order to Sell Real Property and Other filed on January 22, 2024. He also requests immediate bifurcation and termination of the marital status and sanctions pursuant to Family Code §271 in the amount of \$4,021 (if a hearing is held) or \$3,802.50 (if no hearing is held). Also, if Respondent has not complied with the provision of the stipulation which requires her to refinance and pay off the Idaho home, then he requests a court order for the home to be immediately listed for sale and for the remaining loan balance on Respondent's car to be paid off from the sale of the proceeds before the division and distribution of the remaining amount. He further requests that sanctions be ordered to be paid from the proceeds of the home sale.

The matter came before the court for hearing on July 11<sup>th</sup>. At that time the court granted the bifurcation but stayed its ruling on the remaining issues as it had not yet reviewed Respondent's Responsive Declaration. The matter was continued to the present date.

Respondent opposes the requests for sanctions and to enforce the settlement agreement. She argues that the settlement agreement was reached by mistake or fraud, contains terms the parties did not negotiate, and it fails to address tax consequences and the allocation of proceeds from the sale of one of the properties. She argues that while the parties did reach a settlement agreement, the proposed MSA does not accurately reflect that agreement which is why she has refused to sign it. She has attempted to negotiate the issue with Petitioner prior to law and motion but Petitioner has apparently refused.

According to Respondent, the agreement for her to take the Idaho property was reached by fraud or mistake as Petitioner claimed \$63,000 was owed on the property when in fact it was over \$70,000. Respondent also states that the MSA adds additional, non-negotiated terms to the spousal support agreement, namely that any cohabitation, including non-romantic, constitutes a change in circumstances which would allow for a modification of support. Finally, the parties agreed to transfer the Colfax home to their son and he was to refinance the home prior to the end of 2024 or the home would be sold. Respondent argues that the MSA fails to account for the tax consequences of this

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

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

agreement. She requests the court defer the sale through 2025 to allow the parties to address the tax consequences. Respondent is also opposing the requested sanctions as she states she has been working in good faith to resolve these issues.

According to Petitioner's updating declaration, as of July 16<sup>th</sup> the Idaho home has been paid off though Petitioner had not yet received a deed transferring title. He requests Respondent be ordered to prepare a deed transferring title to her name exclusively. In the interim, he asks for an order directing Respondent to be exclusively responsible for any fees and costs related to the ownership of the home. Petitioner argues that there is no Civil Procedure 473 request to set aside pending before the court and such a request cannot properly be made in a Responsive Declaration. As of the date of the updating declaration, Petitioner states he is going to attempt revisions to the MSA. If the revisions are not approved then he requests the court re-issue its prior tentative ruling. He also renews his request for sanctions.

On August 1, 2024, parties appeared and requested a continuance as they were in the process of settlement negotiations and believed that a settlement was forthcoming. The court granted the request to continue and set a further hearing for August 29, 2024, at 1:30 in Department 5.

Upon review of the court file, there have been no new filings.

The parties are ordered to appear to update the court on the status of the MSA negotiations.

**TENTATIVE RULING #17: THE PARTIES ARE ORDERED TO APPEAR TO UPDATE THE COURT ON THE STATUS OF THE MSA NEGOTIATIONS.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**18. STEVE WOLF V. NAJA WOLF**

**23FL0404**

Petitioner filed a Request for Order (RFO) on May 22, 2024, requesting the court waive Respondent's Preliminary Declaration of Disclosure (PDD). Proof of Service shows Respondent was served by mail on May 24<sup>th</sup>.

Petitioner requests the court find good cause to waive Respondent's PDD. Petitioner asserts he is "not concerned about other potential accounts that Naja may or may not have. Would like to get this done." Petitioner states no other grounds upon which the court should grant the request. The court notes that Petitioner did not serve Respondent with his PDD until May 22, 2024, despite the Petition in this matter being filed on May 5, 2023.

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

Respondent filed her Response to the Petition on June 12, 2023, which made her PDD due at that time or within 60 days, August 11, 2023.

On August 8, 2024, the court adopted its tentative ruling ordering Respondent to serve her PDD on Petitioner no later than August 22<sup>nd</sup> and file the FL-141 with the court by the same date. Upon review of the court file, Respondent has not filed the FL-141.

Family Code section 2107 (b)(3) does allow the court to grant the complying party's voluntary waiver of the receipt of the noncomplying party's PDD. The court grants Petitioner's request to waive Respondent's PDD for good cause.

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

**TENTATIVE RULING #18: THE COURT FINDS GOOD CAUSE PURSUANT TO FAMILY CODE SECTION 2107 (B)(3) TO WAIVE RESPONDENT'S PRELIMINARY DECLARATION OF DISCLOSURE. THE COURT FINDS THAT RESPONDENT HAS HAD ADEQUATE TIME TO SERVE PETITIONER WITH HER PRELIMINARY DECLARATION OF DISCLOSURE AND THE COURT ISSUED AN ORDER COMPELLING HER TO DO SO ON OR BEFORE AUGUST 22, 2024. RESPONDENT FAILED TO COMPLY WITH THE COURT'S ORDER. AS SUCH, RESPONDENT'S PRELIMINARY DECLARATION OF DISCLOSURE IS WAIVED.**

**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**

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

**BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07.**

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DEPARTMENT 5

August 29, 2024

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

**19. STEVEN WILLIAMS V. CALLE WILLIAMS**

**23FL0918**

Respondent filed an ex parte application for emergency custody and parenting plan orders on April 11, 2024. Petitioner was properly served. Petitioner did not file a Responsive Declaration. On April 12, 2024, the court granted Respondent's request for temporary sole physical custody of the minors. The court ordered Petitioner to have professionally supervised visitation two times per week at Respondent's expense. The court appointed Ms. Kelly Bentley as Minor's Counsel. The parties were referred to an emergency set Child Custody Recommending Counseling (CCRC) appointment set for April 30, 2024, and a review hearing set for May 30, 2024. Respondent filed a Request for Order (RFO) on April 12, 2024, making the same requests as set forth in the ex parte application. Proof of Service shows Petitioner was personally served all the necessary documents, including the ex parte orders, on April 17, 2024.

Respondent filed a Declaration on April 29, 2024, for which there is no Proof of Service. Therefore, it has not been considered.

Respondent filed a Supplemental Declaration on May 20, 2024. There is no Proof of Service for this document, and therefore, the court has not considered it.

Parties attended CCRC and were unable to reach any agreements. A report with recommendations was filed with the court on May 24, 2024, and mailed to the parties the same day.

On May 30, 2024, parties, including Minors' Counsel appeared for the hearing. After seeking input from Minors' Counsel, the court adopted the recommendations as set forth in the May 24<sup>th</sup> CCRC report. The court made orders as to selecting a counselor for Miles and Isaiah. The court set a further review hearing for the present date. Parties were directed to file and serve Supplemental Declarations at least 10 days prior to the hearing.

Respondent filed two Supplemental Declarations, one on August 15<sup>th</sup> and one on August 19<sup>th</sup>. Proof of Service shows they were both served by mail on August 16<sup>th</sup>. However, both Proof of Service declarations were signed by Respondent. California Code of Civil Procedure 414.10 requires service of court documents to be performed by a person who is over 18 and not a party to the action. Therefore, the court finds the service to be deficient. Further, Respondent has failed to serve Minors' Counsel. As such, the court has not considered either Declaration.

Parties are ordered to appear for the hearing to provide updated information to the court.

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**TENTATIVE RULING #19: PARTIES ARE ORDERED TO APPEAR FOR THE HEARING TO PROVIDE UPDATED INFORMATION TO THE COURT.**

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

August 29, 2024

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

**20. YOLANDA SALAZAR V. WILLIAM QUIRANTE**

**24FL0179**

Petitioner filed a Request for Order (RFO) on May 31, 2024, requesting the court make orders as to spousal support, property control, an order compelling Respondent's preliminary declaration of disclosure, and for sale of the home. Petitioner concurrently filed an Income and Expense Declaration. Respondent was served by mail on May 31, 2024.

Petitioner is requesting guideline temporary spousal support. Petitioner also requests the court order Respondent to pay for certain monthly expenses including utilities, car payments, car insurance, as well as several credit cards. Petitioner seeks and order to compel Respondent's Preliminary Declaration of Disclosure (PDD) as well as sanctions pursuant to Family Code section 2107(b)(2) and (c) respectively. Petitioner requests the sale of the marital home, however, notes Respondent filed Bankruptcy on February 26, 2024. Petitioner was granted exclusive use and control of the home in a Domestic Violence Restraining Order Action in case number 24FL0104.

Respondent filed a Responsive Declaration as well as an Income and Expense Declaration on August 5, 2024. Respondent also filed a Notice of Intent to Seek Watts Charges and Epstein Credits on the same day. Petitioner was served by mail on August 1, 2024. Respondent objects to the request for spousal support, as he asserts, he has no income, and has been unemployed since 2022. Respondent also objects to the request he be responsible for the requested expenses and asserts he has filed for bankruptcy and several of the credit cards are subject to the bankruptcy action. Respondent has no objection to the order to compel his Preliminary Declaration of Disclosure. Last, Respondent objects to any order regarding the sale of the home, as the home is also subject to the bankruptcy action.

Petitioner filed a Declaration on August 16, 2024, opposing Respondent's Notice of Intent to Seek Watts Charges and Epstein Credits. Respondent was mail served on August 16<sup>th</sup>.

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

The court finds that Respondent and Petitioner currently have no income per their most recently filed Income and Expense Declarations. As such, the court sets temporary guideline spousal support at \$0.

The court denies Petitioner's request for Respondent to pay the expenses requested, except for the auto insurance. The court finds that is controlled by the



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automatic temporary restraining orders that were issued when the Petition and Summons were served on Respondent. Those orders remain in full force and effect.

The court grants Petitioner's request to compel Respondent's Preliminary Declaration of Disclosure. Respondent did not oppose this request. Respondent shall serve Petitioner with his Preliminary Declaration of Disclosure on or before September 12, 2024. Respondent shall file the FL-141 with the court no later than September 13, 2024.

Pursuant to Family Code section 2107(c) the court shall impose sanctions for failure to comply with disclosure requirements. The amount of the money sanctions should be sufficient to deter him or her from repeating the conduct or comparable conduct. The awarded amount is also to include reasonable attorney's fees, costs incurred, or both, unless the court finds that the non-complying party acted within substantial justification or that other circumstances make the imposition of the sanction unjust. Here, Respondent has been unemployed since 2022 and has no income. Further, Respondent is currently involved in a bankruptcy action. Respondent has not disclosed how he is paying his counsel in his Income and Expense Declaration. The court finds it cannot order sanctions as an imposition of sanctions would be unjust. However, should Respondent fail to comply with the order to compel, the court reserves on the issue of future sanctions.

The court denies Petitioner's request for the sale of the home pende lite. Petitioner has set forth no grounds upon which the court should order the sale of the home. Further, the court finds the home to be the subject of the bankruptcy action, thereby divesting this court of jurisdiction over that asset.

The court is not addressing the Watts Charges or Epstein Credits issue, as that is not currently before 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.

**TENTATIVE RULING #20: PETITIONER'S REQUEST FOR TEMPORARY GUIDELINE SPOUSAL SUPPORT IS DENIED FOR THE REASONS SET FORTH ABOVE. PETITIONER'S REQUEST FOR BILL PAYMENTS IS DENIED WITH THE EXCEPTION OF THE AUTO INSURANCE PAYMENT FOR THE REASONS SET FORTH ABOVE. PETITIONER'S MOTION TO COMPEL IS GRANTED. RESPONDENT IS DIRECTED TO SERVE PETITION WITH HIS PRELIMINARY DECLARATION OF DISCLOSURE ON OR BEFORE SEPTEMBER 12, 2024 AND FILE THE FL-141 WITH THE COURT ON OR BEFORE SEPTEMBER 13, 2024. THE COURT FINDS IT CANNOT ORDER SANCTIONS AS AN IMPOSITION OF SANCTIONS WOULD BE UNJUST. HOWEVER, SHOULD RESPONDENT FAIL TO COMPLY WITH THE ORDER TO COMPEL, THE COURT RESERVES ON THE ISSUE OF FUTURE SANCTIONS.**

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**PETITIONER'S REQUEST TO SELL THE FORMER FAMILY RESIDENCE IS DENIED FOR THE REASONS SET FORTH ABOVE. 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.**