

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Superior Court of California
County of Los Angeles**

In re the Marriage/Matter of:

PETITIONER:

X,

and

RESPONDENT:

X

: Case No.: BD x
: TENTATIVE DECISION
: ON ISSUE OF
: CHILD CUSTODY
:
: Date: X, 2008
: Time: 8:30 a.m.
: Place: Department X
: Assigned To: Judge X
:
:

In this document, the Court announces its Tentative Decision. The Tentative Decision will be the Statement of Decision unless within ten (10) days either party files and serves a document that specifies controverted issues or makes proposals not covered in the Tentative Decision as provided by *California Rules of Court, Rule 3.1590(c)*. Pending further order or entry of Judgment, the Tentative Decision constitutes the temporary orders of the Court.

Remainder of Page Intentionally Left Blank

1 1. Parties

2 1.1 X

3 2. Minor Children

4 2.1. The children subject to this proceeding are:

5 2.1.1. X

6 2.1.2. X

7 2.1.3. X

8 2.2. The plural "Minor Children" includes the singular child and refers to each
9 child subject to this Order. Where appropriate, the Court makes specific
10 reference to a particular child by using the child's first name for ease of
11 reference.

12 3. Prior Orders

13 3.1. The prior orders issued in this case are reflected in the Court's case file.
14 The Court takes judicial notice of those orders. Except as modified herein,
15 all prior orders remain in full force and effect. The following orders are
16 specifically superseded:

17 3.1.1. X

18 3.1.2. X

19 4. Evaluations

20 4.1. Confidentiality of Evaluation Records

21 Under *Section 3025.5*, the Court ordered a custody evaluation. The
22 Evaluation report is a confidential portion of the Court file of the
23 proceeding and available only to those persons enumerated in *Section*
24 *3025.5*. The evaluation was performed pursuant to the Judicial Council
25 Standards adopted pursuant to *Section 3117*; the evaluation was performed
26 by an evaluator duly qualified under *Section 3110* and in conformity with
27 the provisions of *Sections 3111* through *3118* and the applicable provisions
28 of the *California Rules of Court* and the Judicial Council Standards

1 established. The Evaluation Report was ordered under the applicable
2 provisions of the *Family Code*; and the duly qualified evaluator (Evaluator)
3 rendered the Evaluation Report as the Court's evaluator under *Evidence*
4 *Code Section 730*.

5 4.2. Order for Evaluation

6 The Court ordered an evaluation under *Section 3081* to determine whether
7 an order under joint custody is in the best interests of the Minor Children
8 (Evaluation Report). Consistent with the principles enunciated in *Marriage*
9 *of Seagondollar* (2006) 139 Cal. App. 4th 1116, the Court invited the
10 parties to make recommendations regarding the scope, methods and
11 protocols for the evaluation. In making its decision the Court has also
12 considered the evidence received during the direct and cross examination of
13 the Evaluator.

14 Among other protocols, The Evaluation Report followed the standards:
15 A written explanation of the process that clearly describes the purpose of
16 the evaluation; procedures used and the time required to gather and assess
17 information, including but not limited to the time spent in each aspect of the
18 evaluation. The Evaluator refrained from expressing opinions outside the
19 scope of the Evaluator's training and experience. Where appropriate, the
20 Evaluator consulted with other duly qualified experts rather than expressing
21 opinions on matters beyond the Evaluator's expertise. The Evaluation
22 Report acknowledges the limitations on the available information and the
23 extent to which these limitations are important in considering or giving
24 weight to the Evaluation Report. When appropriate, the Evaluation Report
25 indicates the extent to which either party or any collateral did not cooperate
26 or was not available in the evaluation process. The extent to which the
27 Evaluator considered and found reliable the reports of other evaluators from
28 other jurisdictions who collaborated with the Evaluator in securing

1 information for consideration by the Evaluator and inclusion in the
2 Evaluation Report. The Evaluator observed the protocols for avoiding ex
3 parte communication with the Court, any party or their attorney. Within the
4 context of the statutory obligation to avoid disclosure of information (and
5 maintain mandatory reporting protocols), the Evaluator maintained the
6 confidentiality of the information obtained in conducting, gathering
7 information and distributing any information contained in the Evaluation
8 Report.

9 5. Statement of Decision

10 The Court issues its Statement of Decision as required by *Family Code Section*
11 *3022.3* and consistent with the provisions of *Code of Civil Procedure Section 632*.
12 And to the extent otherwise applicable under the *Family Code*, this Statement of
13 Decision and Tentative Ruling articulates the reasons and findings supporting the
14 Court's decision.

15 6. Trial Preference

16 The Court gave priority to the trial of the issue of child custody as required by
17 *Family Code Section 3023*.

18 7. General Principles

19 7.1. Consideration of Options of Award

20 7.1.1. General Consideration of Joint Custody

21 In making its award of custody, the Court considered the options of
22 awarding joint custody (*Section 3002*), including joint legal custody
23 (*Section 3003*) and joint physical custody (*Section 3004*).

24 7.1.2. General Consideration of Sole Custody

25 In making its award of custody, the Court considered the options of
26 sole legal custody (*Section 3006*) and sole physical custody (*Section*
27 *3007*). Since the Court has made an award of sole legal and physical
28 custody, the Court's statement of reasons is set forth herein as

1 required by *Section 3011(e)(1)*. Further, the Court considered its
2 obligation to make its orders specific regarding the time, day, place
3 and manner of transfer of the Minor Children.

4 7.1.3. Application of *Family Code* & Cases Construing It

5 The Court finds that its determination of child custody in this
6 proceeding is governed by the *Family Code* as articulated in *Family*
7 *Code Section 3021*, including the cases construing it.¹ Accordingly,
8 this Court has jurisdiction to make orders for custody that seem
9 necessary and proper (*Section 3022*).

10 8. Health, Safety & Welfare Policy

11 The Court has considered the general policy of the State to assure that the health,
12 safety and welfare of children are the primary concern in determining the best
13 interests of children as articulated in *Section 3020(a)*.

14 9. Protecting Children From Abuse & Domestic Violence

15 Where relevant, the Court has considered the policy of the State to protect the
16 Minor Children from the perpetration of child abuse or domestic violence, since
17 the Legislature (*Section 3020(a)*) has declared that it is detrimental for children to
18 reside in a household where child abuse or domestic violence has occurred. As
19 required by *Section 3110*, the Court has made specific provisions in its order to
20 assure that any existing emergency protective order, or criminal protective order or
21 other restraining order protecting against domestic violence by making the
22 following findings and orders. Under *Section 3100(c)*, the Court has duly
23 considered and given primacy to any criminal protective order. Under *Section*
24 *3100(d)* the Court has taken steps to protect the confidentiality of the location of
25 any domestic violence prevention center or shelter.

26
27
28 ¹ All references are made to the *Family Code* unless otherwise specified.

1 10. Frequent & Continuing Contact

2 Unless indicated to the contrary, the Court has considered the policy of the State
3 that parents share in the decision making rights and responsibilities of child
4 rearing.

5 11. Parental Notice of Relocation

6 On the issue of whether the Court should order that notice be given before one
7 parent or the other relocates the Minor Children's principal place of residence,
8 under *Section 3024*, the Court has considered the policy for a minimum of 45 days
9 notice before a change of residence to allow time for mediation of a new
10 agreement concerning custody, and the Court makes the following orders:

11 X

12 12. Parental Access to Records

13 Unless specifically stated to the contrary, nothing in this order is intended to
14 impair the rights of both parents to access records and information pertaining to
15 the Minor Children, including but not limited to medical, dental, and school
16 records. Generally, the provisions of *Section 3025* provide parents access to this
17 information.

18 13. Health, Safety & Welfare Policy

19 The Court has considered the general policy of the State to assure that the health,
20 safety and welfare of children are the primary concern in determining the best
21 interests of children as articulated in *Section 3020(a)*.

22 14. Protecting Children From Abuse & Domestic Violence

23 Where relevant, the Court has considered the policy of the State to protect the
24 Minor Children from the perpetration of child abuse or domestic violence, since
25 the Legislature (*Section 3020(a)*) has declared that it is detrimental for children to
26 reside in a household where child abuse or domestic violence has occurred.

27 15. Parental Notice of Relocation

28 On the issue of whether the Court should order that notice be given before one

1 parent or the other relocates the Minor Children's principal place of residence,
2 under *Section 3024*, the Court has considered the policy for a minimum of 45 days
3 notice before a change of residence to allow time for mediation of a new
4 agreement concerning custody, and the Court makes the following orders:

5 X

6 16. Appointment of Minor's Counsel

7 16.1. Appointment

8 The Court appointed minor's counsel under *Section 3150, et seq.* At the
9 Court's direction, minor's counsel prepared and served upon the parties ten
10 (10) days before the hearing a written statement of issues and contentions
11 setting forth the facts that bear on the best interests of the Minor Children
12 under *Section 3151(b)*.

13 16.2. Findings of Court

14 16.2.1. Taking into account the statement of issues and contentions
15 presented by minor's counsel, the Court makes the following
16 findings:

17 X

18 17. Best Interest of Minor Children Determination

19 17.1. General Consideration

20 *Section 3011* mandates consideration of the following factors in awarding
21 custody:

22 17.1.1. The health, safety and welfare of the Minor Children (*Section*
23 *3011(a)*);

24 17.1.2. History of child abuse (*Section 3011(b)*).

25 17.1.3. History of abuse of the other parent or abuse of another with
26 whom the parent has a significant relationship (*Section*
27 *3011(b)(2)(3)*).

1 18.5.4. Under *Section 3046(a)(2)*, the absent parent was the victim of
2 actual or threatened domestic violence.

3 18.5.5. Under *Section 3046(b)*, the Court finds that a pattern of
4 interference in one parent's custodial access.

5 19. Findings on Best Interest of the Minor Children

6 The Court makes the following other specific findings on the issue of the best
7 interests of the Minor Children:

8 19.1. X

9 19.2. X

10 19.3. X

11 20. Domestic Violence

12 20.1. In General

13 Under *Section 3044(a)*, the Court makes findings concerning domestic
14 violence as set forth herein. When the Court finds that domestic violence
15 has occurred, it results in a rebuttable presumption against an award of joint
16 or sole custody of a Minor Children to the perpetrator.

17 20.2. Findings of Domestic Violence

18 Consistent with the provisions of *Section 3044 c)*, the Court considers the
19 perpetrating of domestic violence is found where a person has intentionally
20 or recklessly caused or attempted to cause bodily injury, or sexual assault,
21 or to have placed a person in reasonable apprehension of imminent serious
22 bodily injury. Among other things, domestic violence includes, but is not
23 limited to threatening, striking, harassing, destroying personal property or
24 disturbing the peace of another or other behavior for which the Court might
25 issue a protective order under *Section 6320*. As defined by *Section 3044(c)*,
26 the Court makes the following findings concerning domestic violence has
27 occurred within the past five (5) years:

28 X

1 X

2 20.3. Rebuttal Factors Under *Section 3044(b)*

3 The presumption against an award of sole or joint custody was rebutted
4 under *Section 3044(b)* by a preponderance of the evidence based on the
5 following findings:

6 X

7 X

8 20.3.1. The perpetrator of domestic violence has demonstrated that
9 awarding sole or joint legal or joint physical custody is in the
10 best interests of the Minor Children by the following facts:

11 20.3.2. Other Factors Under *Section 3044(b)*

12 20.3.2.1. *Section 3044(b)* articulates specific factors which may
13 be considered by the Court on the issue of rebuttal of
14 the presumption of sole or joint custody. The Court
15 makes the following findings on the enumerated
16 factors:

17 20.3.2.2. Successful completion of a batterer's treatment
18 program-

19 20.3.2.3. Successful completion of a program for alcohol or
20 drug abuse where appropriate-

21 20.3.2.4. Successful completion of a parenting class-

22 20.3.2.5. Successful compliance with the terms and conditions
23 of probation or parole-

24 20.3.2.6. Successful compliance with an existing protective
25 order or restraining order-

26 20.3.3. Other Rebuttal Facts

27 20.3.3.1. X

28 20.3.3.2. X

1 20.4. Matters Not Considered In Rebuttal Under *Section 3044(b)*

2 The Court did not consider the preference for frequent and continuing
3 contact with both parents under *Section 3020(b)*. The Court did not make
4 its finding of domestic violence solely on the conclusions reached by an
5 evaluator or Family Court Services staff.

6 20.5. Provision of a copy of *Section 3044*

7 Consistent with the requirements of *Section 3044(f)*, the Court provides
8 each party with the true and correct language of *Section 3044*, which is
9 quoted in its entirety here:

10 “(a) Upon a finding by the court that a party seeking custody of a
11 child has perpetrated domestic violence against the other party
12 seeking custody of the child or against the child or the child's
13 siblings within the previous five years, there is a rebuttable
14 presumption that an award of sole or joint physical or legal custody
15 of a child to a person who has perpetrated domestic violence is
16 detrimental to the best interest of the child, pursuant to Section
17 3011. This presumption may only be rebutted by a preponderance
18 of the evidence.

19 (b) In determining whether the presumption set forth in subdivision
20 (a) has been overcome, the court shall consider all of the following
21 factors:

22 (1) Whether the perpetrator of domestic violence has demonstrated
23 that giving sole or joint physical or legal custody of a child to the
24 perpetrator is in the best interest of the child. In determining the
25 best interest of the child, the preference for frequent and
26 continuing contact with both parents, as set forth in subdivision (b)
27 of Section 3020, or with the noncustodial parent, as set forth in
28 paragraph (1) of subdivision (a) of Section 3040, may not be used
to rebut the presumption, in whole or in part.

(2) Whether the perpetrator has successfully completed a batterer's
treatment program that meets the criteria outlined in subdivision
(c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program
of alcohol or drug abuse counseling if the court determines that
counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting
class if the court determines the class to be appropriate.

(5) Whether the perpetrator is on probation or parole, and whether
he or she has complied with the terms and conditions of probation
or parole.

(6) Whether the perpetrator is restrained by a protective order or
restraining order, and whether he or she has complied with its
terms and conditions.

1 (7) Whether the perpetrator of domestic violence has committed
any further acts of domestic violence.

2 (c) For purposes of this section, a person has "perpetrated domestic
3 violence" when he or she is found by the court to have
4 intentionally or recklessly caused or attempted to cause bodily
5 injury, or sexual assault, or to have placed a person in reasonable
6 apprehension of imminent serious bodily injury to that person or to
7 another, or to have engaged in any behavior involving, but not
8 limited to, threatening, striking, harassing, destroying personal
9 property or disturbing the peace of another, for which a court may
10 issue an ex parte order pursuant to Section 6320 to protect the
11 other party seeking custody of the child or to protect the child and
12 the child's siblings.

13 (d)(1) For purposes of this section, the requirement of a finding by
14 the court shall be satisfied by, among other things, and not limited
15 to, evidence that a party seeking custody has been convicted within
16 the previous five years, after a trial or a plea of guilty or no contest,
17 of any crime against the other party that comes within the
18 definition of domestic violence contained in Section 6211 and of
19 abuse contained in Section 6203, including, but not limited to, a
20 crime described in subdivision (e) of Section 243 of, or Section
21 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

22 (2) The requirement of a finding by the court shall also be satisfied
23 if any court, whether that court hears or has heard the child custody
24 proceedings or not, has made a finding pursuant to subdivision (a)
25 based on conduct occurring within the previous five years.

26 (e) When a court makes a finding that a party has perpetrated
27 domestic violence, the court may not base its findings solely on
28 conclusions reached by a child custody evaluator or on the
recommendation of the Family Court Services staff, but shall
consider any relevant, admissible evidence submitted by the
parties.

(f) In any custody or restraining order proceeding in which a party
has alleged that the other party has perpetrated domestic violence
in accordance with the terms of this section, the court shall inform
the parties of the existence of this section and shall give them a
copy of this section prior to any custody mediation in the case."

21 21. Child Abuse Allegations

22 21.1. Application to These Proceedings

23 21.1.1. The Court considered the allegations of child abuse as follows:

24 X

25 22. Order for Investigation

26 The Court **DID OR DID NOT** order a child sexual abuse investigation pursuant to
27 *Welfare & Institutions Code Section 328*.
28

1 22.1. Knowingly False Allegation of Child Abuse or Neglect

2 With respect to the contested issue of whether one parent has made a
3 knowingly false accusation of child abuse or neglect, and the imposition of
4 sanctions or restrictions on custodial access under *Section 3027.1*, the Court
5 makes the following findings and orders:

6 22.1.1. X

7 22.1.2. X

8 22.2. Notice of Order to Show Cause

9 22.2.1. The Court sets its own Order to Show Cause why monetary
10 sanctions should not be imposed under *Section 3027(b)* as
11 follows:

12 22.2.1.1. Person(s) Noticed: X

13 22.2.1.2. Date: **xx-xx-xx**

14 22.2.1.3. Time: **xx:xx a.m. p.m.**

15 22.2.1.4. Place: **Department xxx**

16 22.3. Specific Findings

17 22.3.1. The Court makes the following findings of facts:

18 22.3.1.1. X

19 22.3.1.2. X

20 22.3.1.3. X

21 22.4. Amount of Award

22 The Court makes the following award with respect to the reasonable
23 monetary sanctions incurred by the person defending the accusation. The
24 Court considered the amounts recoverable under *Section 3027.1(a)* with
25 respect to attorney's fees and costs of defending against the accusation.

26 22.5. Finding that False Allegation Was Made with Reasonable Belief

27 Under *Section 3027.5*, the Court finds that the party reporting abuse acted
28 with a reasonable belief in suspected sexual abuse of the child and acted

1 lawfully based on a reasonable belief that the child was a victim of sexual
2 abuse with respect to sexing medical or mental health treatment as
3 identified under *Section 3027.5(a)*. The court specifically finds that:

4 X

5 X

6 22.6. Amount of Recovery

7 22.6.1. The Court orders that **SPECIFY PARENT** shall recover from
8 **SPECIFY PARENT**, the following amounts:

9 X

10 23. Consideration of Parental Use of Alcohol or Controlled Substances

11 23.1. In General

12 Under *Section 3011(d)* the Court has considered the issue of habitual or
13 continual illegal use of controlled substances.

14 23.2. Corroboration

15 On the issue of corroboration of substance abuse, the Court has considered
16 the absence or presence of written reports from law enforcement, courts,
17 probation, social welfare or other medical facilities under *Section 3011(d)*.

18 The Court finds that:

19 X

20 23.3. Basis for Order for Testing for Controlled Substance

21 23.3.1. Under *Section 3041.5*, the Court finds good cause to order testing
22 for controlled substances.

23 23.3.2. As specified in *Section 3041.5(a)*, the Court makes the following
24 findings by a preponderance of the evidence, the Court finds
25 habitual, frequent or continual illegal use of controlled
26 substances or habitual or continual abuse of alcohol based on the
27 following evidence:

28 X

1 23.3.3. Specify whether the court finds any convictions for possession or
2 use of controlled substance in the past five years

3 23.4. Other Factors Considered

4 23.5. Terms of Order for Testing

5 The Court finds that urine testing for controlled substances or alcohol
6 currently complies with the procedures established by the United States
7 Department of Health and Human Services for drug testing of federal
8 employees. For the purposes of this order, the phrase "controlled
9 substances" shall have the same meaning as defined in the *California*
10 *Uniform Controlled Substances Act, Division 10 of the Health and Safety*
11 *Code* of California.

12 23.5.1. The test results of the urine testing shall be maintained in a
13 sealed record in the Court file and shall not be released to any
14 person except the court, the parties or their attorneys.

15 23.5.2. Any person granted access to the test results is restrained and
16 enjoined from disseminating copies or disclosing information
17 about the test results to any person other than a person who is
18 authorized to receive the test results pursuant to *Section 3041.5*.

19 23.5.3. Each person entitled to the release of these test results is advised
20 that any breach of the confidentiality of the test results shall be
21 punishable by civil sanctions not to exceed \$2,500.

22 23.5.4. The test results shall be used only in these proceedings for the
23 purpose of determining the best interest of the Minor Children
24 under *Section 3011*.

25 23.5.5. The cost of testing shall be borne by the person requesting the
26 test. If the tested parent tests positive for alcohol or controlled
27 substance, then the tested parent shall reimburse the requesting
28 party in full for the cost of the test. If not reimbursed within 10

1 days, then the requesting party may apply for a writ or other
2 order for the purposes of enforcement upon a duly executed
3 application under penalty of perjury.

4 23.6. Time, Place, Manner & Frequency of Testing

5 Tests may be requested on four (4) hours notice which shall be given by the
6 method mostly likely to demonstrate proof of actual notice, including but '
7 not limited to telephonic, text message, e-mail, or written notice.

8 23.6.1. The Notice shall specify the date, time, place of testing (which
9 shall be an authorized facility located within 20 miles, or less if
10 available) to the residence or place of employment of the tested
11 person. In specifying the date and time of testing, the person
12 requesting testing shall take into account the known schedule of
13 the person who is requested to undergo the test.

14 23.6.2. A durable, legible, duly authenticated, true and correct copy of
15 the test results shall be filed with the Court and served upon the
16 tested party or counsel of record.

17 23.7. Consideration of Positive Test Results

18 In making its order for custody and visitation as provided for herein, the
19 Court has determined the best interests of the Minor Children by weighing
20 all relevant factors together with the evidence of frequent or continual
21 illegal use of controlled substances or habitual frequent abuse of alcohol by
22 either parent.

23 24. Order for Counseling for Parties & Minor Children

24 24.1. In General

25 The Court has considered the need for counseling for the parties and the
26 Minor Children under *Sections 3190-3192*.

27 24.2. Basis for Order

28 Under *Section 3190*, the Court finds counseling **IS OR IS NOT** in the best

1 interest of the Minor Children based on the following:

2 X

3 24.3. Special Required Findings

4 The Court finds that the above enumerated findings of the Court satisfy the
5 requirements of *Section 3190(a)(1),(2)* that counseling for the period (not to
6 exceed one year) provided for below is supported and necessary

7 24.4. The Court finds a substantial danger to the best interests of the Minor
8 Children (*Section 3190(d)(1)*) based on:

9 24.4.1.X

10 24.4.2.X

11 24.5. The Court allocates the Cost for Counseling under *Section 3190(d)(2)* to
12 avoid an undue financial burden upon the parties based on the following:

13 X

14 24.6. Order for Counseling

15 24.6.1. Name of Counselor or Method of Selection

16 24.6.2. Counseling services shall be provided

17 by: _____

18 24.7. Processing Insurance & Payment of Expenses

19 24.7.1. The parties shall cooperate in processing insurance benefits for
20 the cost of counseling. Payment of any uninsured expenses for
21 counseling is deemed as a payment as and for child support in the
22 amounts or percentages provided for above.

23 24.8. Term of Counseling Not to Exceed One Year

24 The term of counseling, which shall not exceed one year shall be as
25 follows:

26 X

27 24.9. Other Terms

28 24.9.1. If necessary because of family violence, the counselor shall

provide separate sessions under *Section 3192*.

24.9.2. Both parties shall bring the Minor Children to counseling sessions as ordered herein.

24.9.3. The frequency of sessions shall be adjusted according to the following priorities only: (a) the schedule of the counselor and (b) the children's attendance at school.

24.9.4. Violation of the Order for Counseling is punishable by contempt, by an order for reimbursement of expenses of counseling if not paid by one parent, and an order for attorney's fees under all applicable law.

24.9.5. The Court specifically refrains from ordering a return date after counseling as prohibited by *Section 3191(e)*. Nothing in this order declining to set a return date after counseling prohibits either party from filing an Order to Show Cause after the end of the counseling as ordered herein.

25. Special Findings Regarding Registered Sex Offenders & Others Convicted of Violent Crimes As Described In *Family Code Section 3030, et seq.*

25.1. The Court finds that the provisions of *Sections 3030* and *3030.5* regarding orders for custody or visitation by a registered sex offender or a person guilty of another specified offense

25.2. Specific Findings & Orders

25.3. The Court makes the following specific findings:

25.4. **The Court should consult the Code Section for specific findings**

X

26. Special Findings Regarding Award of Custody to Nonparent

26.1. In General

26.2. X

27. Award of Custody

1 27.1. In General

2 The Court has exercised its discretion consistent with the provisions of
3 *Section 3040* regarding its award of custody. As elaborated herein, the
4 Court has made specific findings regarding custody.

5 27.2. Frequent & Continuing Contact

6 Taking into account the mandates of *Section 3040(a)(1)*, the Court makes
7 the following findings with regard to the issue of which parent is more
8 likely to allow the child frequent and continuing contact with the other
9 parent:

10 27.2.1. X

11 27.2.2. X

12 27.2.3. X

13 28. No Gender or Sexual Orientation Preference

14 Consistent with the prohibitions contained in *Section 3040(a)(1)*, the Court has not
15 preferred one parent over the other as a custodian because of that parent's sex or
16 sexual orientation.

17 28.1. Consideration of Parental Plans for Implementation of Court Order

18 Based on the testimony and evidence presented, the Court did consider the
19 plan (or lack of articulated plan) presented by each parent under *Section*
20 *3040(a)(1)*. With regard to the plans presented the Court makes the
21 following findings:

22 X

23 29. Joint Custody Factors

24 29.1. In General

25 In making its order granting or denying an award of joint custody, the Court
26 has considered the provisions of *Section 3080* through *Section 3089*.

27 29.2. Parental Agreement to Joint Custody

28 The Court finds that the parents have agreed to an award of joint legal

1 custody. Pursuant to *Section 3080*, the Court applies the presumption
2 affecting the burden of proof that joint custody is in the best interests of the
3 Minor Children. No other evidence was presented rebutting this
4 presumption.

5 29.3. Statement of Reasons for Grant, Denial or Modification of Joint Physical
6 Custody Order

7 As required by *Section 3082*, the Court states its decision and the reasons
8 for granting or denying the request for joint custody; and to the extent this
9 decision results in a modification or termination of an order for joint
10 physical custody, the Court articulates its findings as required by *Section*
11 *3087* or *Section 3088* if applicable. Knowing that the Court shall not
12 merely state the ultimate fact that joint physical custody is or is not in the
13 best interest of the Minor Children, the Court specifies the following
14 findings that support its decision:

15 29.3.1. X

16 29.3.2. X

17 30. Award of Joint Legal Custody

18 30.1. Joint Legal Custody

19 The Court awards the parties joint legal custody of the Minor Children.
20 The parents will share in the responsibility and confer in good faith on
21 matters concerning the health, education and welfare of the children.

22 30.2. Joint Decision Making

23 The parties must confer in making decisions on the following matters:

24 30.2.1. Enrollment in or leaving a particular private or public school or
25 day care center.

26 Beginning or ending of psychiatric, psychological or other
27 mental health counseling or therapy.
28

1 30.2.2. Except in emergency situations, the selection of a doctor, dentist
2 or other health care professional.

3 30.2.3. Participation in extracurricular activities including sports, or any
4 other program that would regularly involve the Minor Children in
5 an activity that would occur during both parties' periods of
6 custodial access as provided in this order or any subsequently
7 modified schedule.

8 30.3. Out of Country or Out of State Travel

9 30.4. Other:

10 30.4.1. X

11 30.4.2. X

12 30.5. Special Decision-making Designation

13 30.5.1. Notwithstanding the order for joint legal custody the
14 **DESIGNATE PARTY** will be responsible for making decisions
15 regarding the following issues:

16 30.5.2. X

17 30.5.3. X

18 30.6. Health Care Notification

19 Each party must notify the other of the name and address of each health
20 practitioner who examines or treats the Minor Children. Notifications must
21 be made within 24 hours of the commencement of the first such treatment
22 or examination.

23 30.6.1. Each parent is authorized to take any and all actions necessary to
24 protect the health and welfare of the Minor Children including
25 but not limited to consent to emergency surgical procedures or
26 treatment. The parent authorizing such emergency treatment
27 must notify the other parent as soon as possible of the emergency

1 situation and of all procedures or treatment to the Minor
2 Children.

3 30.6.2. Both parents shall administer any prescribed medications for the
4 Minor Children.

5 30.6.3. Each parent will be designated as a person the Minor Children's
6 school will contact in the event of an emergency.

7 30.6.4. Neither party will change the last name of the child or have a
8 different name used on any of the child's medical, school or
9 other records without the written consent of the other parent.
10 The parties are restrained from any informal use of a different
11 last name for the Minor Children.

12 30.6.5. In their exercise of joint legal custody, each parent is restrained
13 and enjoined from taking any action inconsistent with the Court's
14 order for physical custody unless such action is specifically
15 authorized under this order.

16 31. Award of Sole Legal Custody

17 31.1. Designated Legal Custodian

18 The court awards **DESIGNATE PARTY** sole legal custody of the Minor
19 Children.

20 31.2. Special Provisions Regarding Responsibilities of Legal Custodian

21 The party awarded sole legal custody shall be responsible to do the
22 following:

23 31.2.1. X

24 31.2.2. X

25 32. Award of Physical Custody

26 32.1. In General

27 This order specifies the rights of the parties to physical control of the Minor
28 Children under *Section 3084*. As required by *Section 3085*, the Court has

1 considered the propriety of an award of joint physical custody
2 independently of the manner in which legal custody is awarded under this
3 order. The rationales for the Court's determinations are otherwise set forth
4 in the other sections of this decision and ruling.

5 32.2. Award of Joint Physical Custody

6 The parties are awarded joint physical custody of the Minor Children.

7 32.3. Schedule for Custodial Access

8 The parents shall share physical custody of the Minor Children under the
9 following schedule:

10 32.3.1. X

11 32.3.2. X

12 32.3.3. Other Terms of Award of Joint Physical Custody

13 32.3.3.1. X

14 32.4. Primary Caretaker Designation

15 As permitted by *Section 3086*, the Court designates one parent as the
16 primary caretaker of the Minor Children and one home as the primary home
17 of the Minor Children for the purposes of determining eligibility for public
18 assistance. For these purposes, the primary caretaker is DESIGNATE
19 PARTY.

20 32.5. Award of Sole Physical Custody & Visitation

21 DESIGNATE PARTY is awarded sole physical custody of the Minor
22 Children subject to the rights of reasonable visitation reserved to the other
23 party. DESIGNATE PARTY shall have physical custody of the Minor
24 Children at all times not reserved to the other party under the Section
25 entitled Visitation Rights.

26 32.6. Visitation Rights

27 Under *Section 3100(a)*, the Court orders reasonable visitation for
28 DESIGNATE PARTY defined as follows

1 32.6.1. X

2 32.6.2. X

3 33. Special Days, Holidays & Summer

4 33.1. In General

5 The parties shall share the following special days, holidays, summer or
6 other designated time as provided herein. Special days, holidays, summer
7 or other designated time as provided herein shall supersede the regular
8 schedule for custodial access under this order; and in the event the regular
9 schedule for custodial access is subsequently modified, the allocation of
10 custodial access time for special days, holidays, summer or other
11 designated time shall remain in full force and effect and shall supersede any
12 subsequent modification of the regular schedule unless the Court
13 specifically modifies the allocation of special days, holidays, summer or
14 other designated time as provided in this Section.

15 33.2. X

16 33.3. X

17 33.4. X

18 34. Order for Supervised Visitation

19 34.1. In General

20 Consistent with the requirements of *Section 3100(b)*, the Court finds that
21 the best interests of the Minor Children require that custodial access by one
22 parent be limited to situations in which a third person is present under
23 *Section 3200* or if applicable because of domestic violence under *Section*
24 *6323(d)*.

25 34.2. Grounds for Order for Supervised Visitation

26 34.2.1. In General

27 Under *Section 3011(b)*, the Court has considered the nature of the
28 acts from which the party was enjoined, and the period of time

1 that has elapsed since the order was made enjoining that conduct.

2 34.2.2. Bases for Order

3 The Court's order for supervised visitation is based upon the
4 following findings:

5 X

6 35. Consideration of False Allegation of Child Sexual Abuse

7 The Court has considered the provisions of *Section 3027.5(b)* in making its order,
8 for supervised visitation. The Court finds that limitations of custody or visitation
9 are necessary to protect the health, safety and welfare of the Minor Children taking
10 into account the false allegations of child abuse findings set forth herein. Further,
11 the Court finds that such orders for supervised visitation are consistent with the
12 policy of promoting frequent and continuing contact between a parent and their
13 Minor Children under *Section 3020(b)*.

14 35.1. Proposed Monitors

15 With regard to consideration of the parties' proposals for a suitable monitor
16 under *Section 3011(b)*, the Court makes the following findings regarding
17 the suitability of the proposed monitors:

18 35.1.1. X

19 35.1.2. X

20 36. Consideration of False Allegation of Child Sexual Abuse

21 The Court has considered the provisions of *Section 3027.5(b)* in making its order
22 for supervised visitation. The Court finds that limitations of custody or visitation
23 are necessary to protect the health, safety and welfare of the Minor Children taking
24 into account the false allegations of child abuse findings set forth herein. Further,
25 the Court finds that such orders for supervised visitation are consistent with the
26 policy of promoting frequent and continuing contact between a parent and their
27 Minor Children under *Section 3020(b)*.

28 37. Stepparent Visitation

1 37.1. In General

2 The Court has considered the application of the stepparent **IDENTIFY**
3 **PERSON** (hereinafter "Stepparent") for visitation rights under *Section*
4 *3101(a)* which requires that the Court find that stepparent visitation is in the
5 best interests of the Minor Children.

6 37.2. Protective Order

7 As required by *Section 3101(b)* the Court has considered whether visitation
8 for Stepparent should be denied on the basis that there is an order for
9 protection directed against Stepparent as defined by *Section 3101(d)(2)*..

10 The Court makes the following findings:

11 37.2.1. X

12 37.2.2. X

13 38. Birth Parents Rights

14 As required by *Section 3101(c)*, the Court has considered the custody and
15 visitation rights of the nonparty birth parent **IDENTIFY** (hereinafter "Nonparty
16 Birth Parent) as defined by *Section 3101(d)(1)*.

17 38.1. Nature of Nonparty Birth Parent's Custody & Visitation Rights as
18 identified under *Section 3101(c)*.

19 38.2. The Nonparty Birth Parent enjoys the following custodial access rights with
20 the Minor Children:

21 38.2.1. X

22 38.2.2. X

23 38.3. Noninterference Under *Section 3101(c)*

24 The Stepparent's visitation rights do not interfere with the rights of the
25 Nonparty Birth Parent because:

26 38.3.1. X

27 38.3.2. X

28 39. Former Legal Guardian Visitation under *Section 3102*.

1 39.1. In General

2 Under *Section 3102*, the Court has jurisdiction to award a former legal
3 guardian visitation consistent with the best interest of the Minor Children.

4 39.2. Specific Findings

5 39.2.1. The Court makes the following specific findings:

6 39.2.2. X

7 39.3. Order

8 Based on the foregoing, the Court orders that:

9 40. Award to Nonparent

10 40.1. In General

11 In making its award of custody, the Court considered making an award of
12 custody to a nonparent under *Section 3040(a)(2),(3)*. The Court makes its
13 findings regarding the history of the child living in a wholesome and stable
14 environment in the home of a nonparent and with respect to the ability of
15 such person to provide adequate and proper care and guidance for the child.

16 40.2. Detriment Finding

17 40.2.1. On the contested issue of detriment to the Minor Children as
18 defined by *Section 3041(a)*, the Court makes the following
19 findings:

20 40.2.2. The Court observes the prohibition set forth in *Section 3041(a)*
21 and states only the ultimate fact that an award of parental custody
22 would be detrimental to the Minor Children.

23 40.2.3. The Court finds this detriment to the Minor Children was
24 established by clear and convincing evidence as required by
25 *Section 3041(b)*.

26 40.2.4. Factors Considered In Making Finding of Detriment

27 40.2.4.1. Under *Section 3041(c)* the Court makes its findings of
28 detriment based on the factors articulated in subsection

1 (c). The Court makes the following findings:

2 X

3 40.2.4.2. By a preponderance of the evidence under *Section*
4 *3041(d)*, on the issue of the harm of removing the child
5 from a stable placement with a person who has
6 assumed the daily care of the child, the Court finds:

7 40.2.4.2.1. X

8 40.2.4.2.2. X

9 40.2.4.3. By a preponderance of the evidence under *Section*
10 *3041(d)*, on the issue of the role the parents or another
11 has played in fulfilling the child's physical needs and
12 the child's psychological needs for care and affection,
13 the Court finds:

14 40.2.4.3.1. X

15 40.2.4.3.2. X

16 40.2.5. On the issue of whether the parents are demonstrably unfit
17 caretakers for the child the Court acknowledges that *Section*
18 *3041(c)* does not require a finding of unfitness of a parent as a
19 predicate to a finding of detriment. On the issue of unfitness of
20 the parents, the Court finds:

21 X

22 40.2.6. Application of Federal Law Concerning Award of Custody of an
23 Indian Child to a Nonparent

24 40.2.6.1. The Court finds that the Minor Children are Indian
25 Children as defined by Federal Law.

26 40.2.6.2. The Court has applied the provisions of Federal Law
27 as identified in *Section 3041(e)*. And under those
28 provisions, the Court finds:

1 40.2.6.2.1. X

2 40.2.6.2.2. X

3 41. Grand Parent Visitation Under *Section 3102, Et Seq.*

4 41.1. In General

5 Federal and State Case law prohibit an order for grandparent visitation over
6 objection of the parent who has otherwise offered the grandparent some
7 access to the Minor Children. See *In re Marriage of Harris*, (2004) 34 Cal.
8 4th 210, 17 Cal. Rptr. 3d 842 and *Troxel v. Granville*, (2000) 120
9 S.Ct.2054.

10 41.2. Specific Findings

11 41.2.1. The Court makes the following specific findings:

12 41.2.1.1. X

13 41.2.1.2. X

14 41.3. Order

15 Based on the foregoing, the Court orders that:

16 41.3.1.1. X

17 41.3.1.1. X

18 42. Required Findings Under *Section 3048*

19 42.1. In General

20 *Section 3048* the Court makes the requisite findings regarding the Court's
21 exercise of jurisdiction and other related factors:

22 42.2. Mandatory Findings

23 The Minor Children is subject to the jurisdiction of the California Superior
24 Court of this County under *Section 3048(a)(1)*.

25 42.3. Under *Section 3048(a)(2)*, the Court finds that notice of these proceedings
26 was properly given based on the proof of service or responsive pleadings
27 filed herein.

28 42.4. Under *Section 3048(a)(3)*, the Court informs each party that violations of

1 this order may subject the violator to civil or criminal penalties or both.

2 42.5. Under *Section 3048(a)(4)*, the Court finds that the Minor Children is a
3 habitual resident of the State of California.

4 42.6. Risk of Abduction Factors Under *Section 3048(b)*

5 42.7. The Court finds the following risk factors for abduction under *Section*
6 *3048(b)*:

7 42.7.1. Threats or conduct designed to keep, entice, withhold or conceal
8 the Minor Children under *Section 3048(b)(1)(A)(B)*.

9 42.7.2. A lack of strong ties to California under *Section 3048(b)(1)(C)*

10 42.7.3. Strong family, emotional or cultural ties to another state or
11 country, including foreign citizenship under *Section*
12 *3048(b)(1)(D)*

13 42.7.4. No financial ties to this State under *Section 3048(b)(1)(E)*

14 42.7.5. Actions demonstrating a plan to leave the state including the sale
15 of assets or making travel plans under *Section 3048(b)(1)(F)*

16 42.7.6. Lack of parental cooperation, or child abuse or domestic violence
17 under *Section 3048(b)(1)(G)*

18 42.7.7. A parent's criminal record *Section 3048(b)(1)(H)*

19 42.7.8. Other Evidence of Risk of Abduction or Concealment-

20 42.8. Orders Protecting Against Concealment

21 Based on the Court's findings of risk of concealment or abduction, the
22 Court makes the following orders:

23 42.8.1. An order for supervised visitation under *Section 3048(b)(2)(A)*.

24 42.8.2. An order requiring a parent to post a bond under *Section*
25 *3048(b)(2)(B)*.

26 42.8.3. An order restricting travel from the county or the state under
27 *Section 3048(b)(2)(C)*.

28 42.8.4. An order restricting relocation of the Minor Children under

1 *Section 3048(b)(2)(D).*

2 42.8.5. An order requiring the surrendering of passports or travel
3 documents under *Section 3048(b)(2)(E).*

4 42.8.6. An order prohibiting a parent from applying for new or
5 replacement passports for the Minor Children under *Section*
6 *3048(b)(2)(F).*

7 42.8.7. An order requiring a parent to notify the embassy or relevant
8 foreign consulate of travel restrictions under *Section*
9 *3048(b)(2)(G).*

10 42.8.8. Under *Section 3048(b)(2)(H)* an order requiring a traveling
11 parent to provide the itinerary, copies of round trip airline tickets,
12 and contact addresses and telephone numbers and if appropriate
13 an open airline ticket for the left behind parent in the event the
14 Minor Children is not returned.

15 42.9. Orders authorizing law enforcement assistance under *Section*
16 *3048(b)(2)(K).*X

17 42.10. Other Orders:

18 42.10.1. As required under *Section 3048(b)(3)*, the Court directs the Clerk
19 of the Court to set forth the Court's travel restrictions in the
20 Minute Order of these proceedings.

21 42.10.2. As required under *Section 3048(b)(3)*, the Court informs the
22 parties of their right to contact the Los Angeles County District
23 Attorney's Child Abduction Unit with respect to enforcement of
24 these orders.

25 43. General Provisions

26 43.1. X

27 43.2. X

28 43.3. By stipulation, the Court's Statement of Decision & Tentative Decision is

1 served upon counsel by facsimile (and if indicated by e-mail transmission
2 in a PDF Adobe Acrobat™ format.

3 43.4. This order is effective when signed and filed.
4

5 Date: x
6

7 _____
8 **X**
9 **JUDGE OF THE SUPERIOR COURT**
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28