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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNIFIED FAMILY COURT

In re the Marriage of: _____ Petitioner, and _____ Respondent	Case No.: _____ **STIPULATION AND ORDER RE:** **APPOINTMENT OF SPECIAL MASTER**

PURSUANT TO THE STIPULATION OF THE PARTIES hereinafter set forth, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

APPOINTMENT:

1. _____ is appointed Special Master under Code of Civil Procedure §638, until resignation of _____ or written agreement of the parties, further court order, or two years from the date of appointment, whichever first occurs.

2. This appointment is based upon the expertise of the Special Master as a licensed mental health professional.

3. The Special Master may make orders resolving conflicts between the parents which do not affect the court's exclusive jurisdiction to determine fundamental issues of custody and visitation. Each party specifically agrees that the Special

Master may make decisions regarding possible conflicts they may have on the following issues,[1] and that such decisions are effective as orders when made and will continue in effect unless modified or set aside by a court of competent jurisdiction:

a. dates and times of pick up and delivery
b. sharing of vacations and holidays
c. method of pick up and delivery
d. transportation to and from visitation
e. participation in child care/daycare and baby sitting
f. bedtime
g. diet
h. clothing
i. recreation
j. after school and enrichment activities
k. discipline
l. health care management
m. alterations in schedule which do not substantially alter the basic time share agreement
n. participation in visitation (significant others, relatives, etc.)
o. in the case of infants and toddlers, increasing time share when developmentally appropriate.
p. other:

4. The Special Master will have authority to make recommendations on the following issues,[2] which recommendations shall be submitted to the court, which may approve them and enter them as court orders.

These recommendations will be effective when adopted by the court, and can be reviewed only upon a hearing de novo at which the moving party has the burden of proof.

a. Private school education
b. Religion and religious training
c. Church attendance
d. Large changes in vacation and holiday time shares
e. Supervision of visitation
f. Time share changes which do not alter the child(ren)'s primary residence.
g. Appointment of counsel for child(ren)

5. The Special Master shall not make any orders which substantially[3] alter the parties' time sharing arrangements, alter an award of physical custody, alter an

[1] By agreement, signed by both, the parties may exclude specified items from the following list.
[2] By agreement, signed by both, the parties may exclude specified items from the following list.
[3] Ordinarily defined as more than 2 nights per week

award of legal custody, or substantially interfere with a party's contact with his/her child(ren). These decisions and others relating to the best interest of the child(ren) are reserved to the San Francisco Superior Court for adjudication, and may be presented to the court by either party upon the recommendation of the special master in the form of an order to show cause or notice of motion. In an emergency, the Special Master may ask the court to initiate an order to show cause on its own motion.

6. The Special Master may recommend that child(ren) or the parents participate in adjunct services including physical and psychological examinations and assessments and psychotherapy; and alcohol and drug monitoring/testing.

QUASI-JUDICIAL IMMUNITY:

7. The Special Master is a court officer/mediator. The Special Master has quasi-judicial immunity. The Special Master cannot be sued based on his/her actions in this matter. The Special Master cannot be compelled to testify.

PROCEDURE:

8. Both parties shall participate in the dispute resolution process as defined by the Special Master and shall be present when so requested by the Special Master. The Special Master may conduct hearings which are informal in nature, by telephone or in person, and need not comply with the rules of evidence. No record need be made, except the Special Master's written recommendations. The Special Master shall have the authority to determine the protocol of all interviews and sessions including, in the case of meetings with the parties, the power to determine who attends such meetings.

9. The Special Master may utilize consultants and/or assistants as necessary to assist the Special Master in the performance of the duties contained herein.

DECISIONS:

10. Decisions of the Special Master relating to the items listed in paragraph 3, above, by their very nature are often made in circumstances involving severe time constraints, and, possibly, emergencies; therefore, these decisions may be made orally, but in a fashion communicated to both parties. They are binding when made. In such an event, these decisions should be communicated to the parties by confirming letter as well.

WARNING: In signing this agreement, both mother and father should assume that the Special Master's decision on the issues listed in paragraph 3 will be final. Because of time constraints and because of the language of this stipulation, the possibility of obtaining a court order changing a Special Master's decision on these issues is unlikely. Any party challenging the Special Master's decision on any of these issues will have a burden of proving, with dear and convincing evidence, that the Special Master's decision was legally incorrect and/or not in the best interest of the child(ren).

11. If the Special Master makes decisions on issues addressed in paragraph 4, above, these orders should be in writing and filed with the court. If either party disagrees with any recommendation thus made, he/she may make a timely motion requesting a judicial review of the order. In that event, the party challenging the Special Master's recommendation has the burden of proof according to the law.

COMMUNICATION WITH SPECIAL MASTER:

12. The parties and their attorneys shall have the right to initiate or receive ex parte communication with the Special Master. Any party may initiate contact in writing with the Special Master, provided that copies are provided to opposing counsel simultaneously.

13. The Special Master may communicate ex parte with the judge, at the discretion of the Special Master and the judge. Such communications shall be made only after giving notice to both parties; provided, however, that notice may be excused if notice would frustrate the very purpose of the communication. If the Special Master communicates with the judge without having given notice, he/she shall notify the judge of that fact and his/her reasons for not giving notice.

14. The parties shall provide all reasonable records, documentation and information requested by the Special Master.

15. No physician-patient or therapist-patient relationship and/or privilege is created by this stipulation.

FEES:

16. The Special Master's fees are: $_____ per _____ hour. Time spent in interviewing, report preparation, review of records and correspondence, telephone conversation, travel, court preparation and any other time invested in connection with serving as Special Master will also be billed at the $_____hourly rate. The Special Master's fee for court appearances and settlement conference is $_____ per session while in court and at the settlement conference and $_____ per hour travel time to and from his/her office. The Special Master shall have the right to allocate payment of his/her fees at a percentage different from the above if he/she believes the need for his/her services is attributable to the conduct and/or intransigence of one party. The Special

Master may require an advance deposit in an amount to be agreed upon by him/her and the parties.

17. The Special Master shall be reimbursed for any expenses he/she incurs in association with his/her role as Special Master. These costs may include, but are not limited to, the following: photocopies, messenger service, long distance telephone charges, express and/or certified mail costs and excess postage to foreign countries, parking, tolls, mileage, travel expenses and word processing.

18. Any objection to the Special Master's bills must be brought to his/her attention in written form within _____ business days of the billing date; otherwise the billing shall be deemed agreed to.

19. In the event that arbitration proceedings or a legal action become necessary to enforce any provision of this order the non-prevailing party shall pay attorney's fees and costs as may be incurred.

20. The court reserves jurisdiction in the family law action to enforce the provisions of this stipulation.

ALLOCATIONS:

21. Except as otherwise provided herein, the fees of the Special Master shall be shared by the parties in the following manner: _____shall pay _____% of the Special Master's fees, expense and advance deposit, and _____ shall pay _____% of the Special Master'' fees, expenses and advance deposit.

22. Telephone Calls to the Special Master by either party are part of the process and appropriately paid for the parties according to their percentage share as ordered.

23. In the event that either party fails to provide twenty-four (24) hours telephone notice of cancellation of any appointment with the Special master, such party shall pay all of the Special Master's charges of such missed appointment at the full hourly rate, at the discretion of the Special Master.

GRIEVANCES:

24. The Special Master may be disqualified on any of the grounds applicable to the removal of a judge, referee or arbitrator.

25. Neither party may initiate court proceedings for the removal of the Special Master or to bring to the court's attention any grievances regarding the performance or actions

of the Special Master without meeting and conferring with the Special Master in an effort to resolve the grievance.

26. Neither party shall complain about the Special Master to the Special Master's licensing board without first meeting and conferring with the Special Master in an effort to resolve the grievance.

27. The court shall reserve jurisdiction to determine if either or both parties and/or the Special Master shall ultimately be responsible for any portion or all of said Special Master's time and costs spent in responding to any grievance and the Special Master's attorney's fees, if any.

28. If either party or the Special Master believes that there exists a grievance between them with respect to this stipulation that cannot be resolved, either party or the Special Master can move the court for relief from this stipulation, after complying with paragraph 25 above.

RESIGNATION OF SPECIAL MASTER:

29. The Special Master may resign any time he/she determines the resignation to be in the best interest of the child(ren) or the Special Master is unable to serve out his/her term, upon thirty (30) days written notice to the parties.

_____ _____
MOTHER FATHER

APPROVED AS TO FORM:

_____ _____
ATTORNEY FOR MOTHER ATTORNEY FOR FATHER

_____
SPECIAL MASTER

ORDER

Upon reading the foregoing stipulation, and good cause appearing therefor, IT IS SO ORDERED.

DATED:

_____
JUDGE OF THE SUPERIOR COURT

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