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2 Attorney for Petitioner

3 **SUPERIOR COURT OF CALIFORNIA,**
4 **XXXXXX COUNTY**

5
6 In re the Marriage of:) Case No.: 1-XX-FL-XXXXXX
7 NAME OF PETITIONER,) APJ:
8 Petitioner,) Department:
9 and)
10 NAME OF RESPONDENT,) **STIPULATION AND ORDER**
11 Respondent) **APPOINTING SPECIAL MASTER**
12)

13 Pursuant to the stipulation of the parties hereinafter set forth, and good cause appearing therefore,
14 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT:**

15 **A. APPOINTMENT AND AUTHORITY**

16 1. _____ Tel: _____ is appointed Special Master under
17 Code of Civil Procedure §638 until resignation, written agreement of the parties, further Court Order, or
18 _____ (optional ending date), whichever first occurs. This appointment is based upon the
19 expertise of the Special Master.

20 2. Special Master shall have authority as set forth below to make decisions regarding the best
21 interest of the child(ren), with the exception that the Special Master shall not have authority to make any
22 order which changes legal or physical custody.

23 ///

24 The Special Master may make the following types of orders in accordance with applicable
25 constitutional and case law:

- a. Implementing court ordered: time share, visitation schedule or conditions (other than supervision), telephone, or correspondence contact;
- b. Making and changing orders regarding exchange and/or transportation of the child(ren), including specifying time and place exchange;
- c. Ordering and changing education, daycare, and/or extra-curricular activities for the child(ren);
- d. Making and changing orders regarding the alteration of the child(ren)'s appearance, such as haircuts, pierced ears, body piercing, tattoos;
- e. Ordering either or both parents to substance abuse testing and having access to any generated reports or results;
- f. Making orders more specific so as to avoid violation of the Court's orders.

2. *Special Master shall have authority to make decisions regarding the best interest of the child(ren) on the issues set forth below and indicated by the initials of the parties. It is understood by the parties that such decisions are not subject to review by the Court and in the event either party objects to the decision of the Special Master, he or she may request a hearing de novo on that issue.*

The Special Master may make the following types of orders in accordance with applicable constitutional and case law:

____/____ *Permanent change in responsibility for making a decision, i.e. one parent will have the power to make a decisions over an issue; both parents must agree on an issue before action can be taken.*

____/____ *Temporary change in responsibility for making a decision, i.e. one parent will have the short-term power to make a decision over an issue; both parents must agree on an issue before action can be taken.*

____/____ *Permanent change in custody sharing schedule (without limit on the change in the time share or with a limit on how much the time share percentage can*

1 change, i.e. “provided that such change does not modify the then current
2 percentage of time sharing by more than 10%”).

3 ____/____ Temporary change in custody share schedule.

4 ____/____ Permanent change in telephone contact.

5 ____/____ Temporary change in telephone contact.

6 ____/____ Permanent change in custody condition, i.e. no smoking, no firearms, no
7 consumption of alcohol, home facilities such as number of bedrooms or
8 sleeping arrangements, etc.

9 ____/____ Temporary change in custody condition, i.e. no smoking, no firearms, no
10 consumption of alcohol, home facilities such as number of bedrooms or
11 sleeping arrangements, etc.

12 ____/____ Child care requirements.

13 ____/____ Exchange and/or transportation of the child(ren), including specifying time
14 and place of exchange.

15 ____/____ Ordering the changing of education, daycare, and/or extra-curricular
16 activities for the child(ren).

17 ____/____ Making and changing orders regarding the alteration of the child(ren)’s
18 appearance, such as haircuts, pierced ears, body piercing, tattoos.

19 ____/____ Ordering either or both parents to substance abuse testing and having access
20 to any generated reports or results.

21 ____/____ Making orders more specific or clarifying existing orders so as to help the
22 parties to avoid violation.

23 ____/____ Changing the times for religious observances and training by the child(ren).

24 ____/____ Determining and ordering appropriate medical, mental health, and
25 counseling treatment (including psychotherapy) for the child(ren); the

1 *Special Master shall designate whether any ordered counseling is or is not*
2 *confidential.*

3 ____/____ *Determining and ordering substance abuse treatment or counseling,*
4 *domestic violence counseling, attendance at batterer's intervention*
5 *programs, or parenting classes for the parents; the Special Master shall*
6 *designate whether any ordered counseling is or is not confidential.*

7 ____/____ *Ordering psychological testing for either or both parties or the child(ren).*

8 ____/____ *Other: _____*

9 3. In addition to the powers listed above in Paragraph 2, the Special Master may make the
10 following orders in accordance with applicable constitutional and case law (Check all applicable boxes):

- 11 Changing the times for religious observances and training by child(ren);
- 12 Determining and ordering appropriate medical, mental health, and counseling
13 treatment (including psychotherapy, substance abuse, and domestic violence
14 counseling, and parenting classes) for the child(ren) and the parents; the Special
15 Master shall designate whether any ordered counseling is or is not confidential;
- 16 Ordering psychological testing for either or both parents or the child(ren);
- 17 Other: _____
18 _____
19 _____
20 _____
21 _____

22 3. *In an emergency, the Special Master may assist a party in obtaining an Emergency*
23 *Protective Order through law enforcement and the Court.*

1 4. The Special Master may order the parties to an Emergency Screening at Family court
2 Services. The Order to Emergency Screening shall set forth a brief description of the nature of the
3 emergency.

4 4. *The Special Master may recommend that a party seek an Emergency Screening through*
5 *the Court.*

6 5. In an emergency, the Special Master may assist a party in obtaining an Emergency
7 Protective Order through law enforcement and the Court.

8 5. *The Special Master may recommend to one or both parties that a custody evaluation or*
9 *assessment be conducted.*

10 6. The Special Master may request instructions from the Court, either in open court or in a
11 writing directed to the court, on 15 days written notice to all parties, unless shortened by the Court. The
12 parties may choose to respond.

13 7. On notice to both parties and the Court, the Special Master may recommend in writing or
14 in open court that a custody evaluation or assessment be conducted. Such recommendation shall set forth
15 the issues to be evaluated or assessed. Unless the parties agree to the evaluation or assessment within 15
16 days, the matter shall be set for a Case Management Conference, at which the parties shall be present.

17 8. The Special Master may, on notice to both parties, recommend to the Court that an
18 attorney be appointed for the minor child(ren). Such recommendation shall set forth the necessity for the
19 appointment. If either party objects in writing to the recommendation within 2 court days of the date the
20 recommendation is made, the matter shall be set for a Case Management Conference at which the parties
21 shall be present. Objections shall be delivered to the clerk's office with a courtesy copy to the All
22 Purpose Judge's chambers.

23 9. The Special Master may make recommendations to the Court on the following additional
24 issues: _____

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3 **B. QUASI-JUDICIAL IMMUNITY**

4 1. The Special Master is an Officer of the Court, acting as a private judge for the parties to
5 this action, to the extent of this Stipulation. The Special Master has quasi-judicial immunity. The Special
6 Master cannot be sued based on his/her actions in this matter. The Special Master cannot be compelled to
7 testify and is subject to the restrictions of Evidence Code §703.5.

8 2. The Special Master may not testify without the express agreement of the Special Master
9 and the parties.

10 3. Notwithstanding the above, the Special Master may elect to testify in any hearing to
11 remove the Special Master, in any request of the Special Master to the Court to terminate the
12 appointment, in any request for instructions, or to enforce fee collection.

13 **C. PROCEDURE**

14 1. **Statement of Policies and Procedures:** The Special Master shall provide the parties with
15 a written agreement for services containing his or her policies, including specifically the policy
16 concerning confidentiality of information obtained by the Special Master, and the procedures used by the
17 Special Master for dispute resolution. In the event the Special Master's policy is to receive and maintain
18 confidential information, either party may later request removal of the Special Master on this basis, to be
19 considered by the Court in a good cause request.

20 2. **Process:** Both parties shall participate in the dispute resolution processes defined by the
21 Special Master in accordance with principles of due process, which shall include at a minimum the
22 opportunity for each of the parties to be heard. Each of the parties shall be present when so requested by
23 the Special Master. In the event a party does not attend a meeting set by the Special Master, the Special
24 Master may make orders despite the party's absence.

1 3. **Hearings:** The Special Master may conduct hearings either with the parties appearing
2 personally or by telephone. Conference calls are encouraged. If either party wants an issue decided by
3 the Special Master, he or she may submit a written or telephonic request to the Special Master, as directed
4 by the Special Master, clearly setting forth the issues in dispute. The hearings may be informal and need
5 not comply with the rules of hearsay or civil procedure. The testimony need not be sworn. **There is no**
6 **confidentiality as to any evidence presented at such hearings.** If either party desires a record of the
7 proceedings, on notice to the Special Master and the other party, he or she may, as may the Special
8 Master, audiotape the proceedings or he or she may pay for a certified court reporter. Absent an
9 emergency, the Special Master shall give the parties 10 days notice of such hearings. Either party may
10 request an alternative date or time, which will be granted restraining orders denied based upon good cause
11 shown.

12 4. **Interviews:** The Special Master may talk with and base orders or recommendations upon
13 conversations with parties, attorneys, witnesses, or examinations of writings which take place without
14 anyone by the Special Master. No record need be made. The Special Master may talk with each party
15 and without the presence of either counsel. The Special Master shall have the authority to determine the
16 protocol of all interviews, including the power to determine who attends such meetings.

17 5. **Decisions:** The Special Master must decide issues submitted within 30 days from the
18 submission of all applicable evidence. In the event that such a decision is not made within this time, the
19 Court retains jurisdiction to resolve the dispute on notices motion by either party.

20 5. ***Decisions:** The Special Master must decide issues submitted within 30 days from the*
21 *submission of all applicable evidence.*

22 6. **Child Abuse:** Notwithstanding any written policy of the Special Master, there is no
23 confidentiality concerning communications with the Special Master regarding child abuse. **Incidents of**
24 **child abuse or suspected child abuse that meet the mandatory reporting standards for mental**
25 **health professionals will be reported by the Special Master to appropriate authorities.**

1 7. **Use of Assistants/Consultants:** On reasonable notice to the parties, the Special Master
2 may utilize consultants and/or assistants as necessary to aid the Special Master in the performance of the
3 duties contained herein. Fees for such consultants or assistants will be advanced by he parties as directed
4 by the Special Master. In making such directions, the Special Master will consider the financial
5 circumstances of the parties. In the event of a dispute regarding the allocation of such fees, the Court
6 retains jurisdictions to resolve the dispute.

7 **D. DECISIONS**

8 ***D. ORDERS OF THE SPECIAL MASTER***

9 Decisions of the Special Master shall be subject to the following forms of judicial review:

10 1. Orders made by the Special Master, if in writing, shall be binding and effective when
11 signed by the Special Master. Orders need not be in writing and may be made orally, if circumstances
12 involving severe time constraints and/or possible emergencies so warrant. Oral orders shall be binding
13 and effective when made in a fashion communicated to both parties, and such orders shall be further
14 confirmed in writing to both parties and counsel as soon as practicable. Orders will be submitted to a
15 Judge at a later time, but their date of effectiveness is as stated in this paragraph.

16 *1. Orders made by the Special Master, if in writing, shall be binding and effective when*
17 *signed by the Special Master. Orders need not be in writing and may be made orally, if circumstances*
18 *involving severe time constraints and/or possible emergencies so warrant. Oral orders shall be binding*
19 *and effective when made in a fashion communicated to both parties, and such orders shall be further*
20 *confirmed in writing to both parties and counsel as soon as possible.*

21 2. The Special Master will issue a written Statement of Decision, setting forth the reasons for
22 an order or recommendation, if requested by either party within 5 days of the issuance of the order or
23 recommendation. The Special Master may issue a Statement of Decision with any order or
24 recommendation.

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1 3. **An order to show cause or motion challenging an order that is effective as set forth in**
2 **Paragraph (D)(1), above, must be filed no later than 15 calendar days after the date of mailing of**
3 **the Special Master’s order. Failure to do so without just cause shall be dispositive of the issue.**

4 Notwithstanding any other provisions of the local court Rules to the contrary, the filing of the motion is
5 all that is legally required to constitute a challenge to the entirety of the Special Master’s order; the
6 motion shall include a detailed statement of the specific objections to the Special master’s order. The
7 order of the Special Master shall remain effective unless specifically set aside or modified by an order of
8 the court.

9 Prior to the scheduled hearing, the parties and counsel, if requested by the parties, shall
10 meet and confer with the Special Master to attempt to resolve the objections. In the event that the issues
11 are resolved, a written stipulation shall be prepared by the Special Master or counsel and submitted to the
12 Court prior to the hearing. The Special Master’s orders or decision may be vacated or corrected on any of
13 the applicable grounds specified in CCP §641, 1286.2, and 1286.6

14 3. *In the event a party objects to an order by the Special Master, that aparty may file a motion*
15 *with the Court to change or modify the order. The order shall remain in effect until changed by the*
16 *Court. **The Court will make an independent determination following a de novo hearing during which***
17 ***the Court will take evidence and make a decision based upon the best interests of the child(ren).***

18 *Prior to scheduling a hearing on such motion, the parties and counsel, if requested by the*
19 *parties, shall meet and confer with the Special Master to attempt to resolve the objections. In the event*
20 *that the issues are resolved, a written stipulation shall be prepared by the Special Master or counsel and*
21 *submitted to the Court prior to the hearing. Such stipulation shall modify the prior order of the Special*
22 *Master, in whole or in part, as set forth in the stipulation.*

23 4. Any party challenging an order or recommendation of the Special Master shall have the
24 burden of proving that the recommendation or order should not be adopted.

2. Child(ren)'s current/previous psychologist/psychiatrist or mental health professional;
3. Child(ren)'s current/previous teacher(s) and schools;
4. Hospital and medical records of child(ren)'s current/previous physician;
5. Law enforcement agencies, police department/sheriff's office;
6. Prior Special Master;
7. Custody Evaluator;
8. Daycare providers;
9. Other: _____

The parties will sign the consent to release of the above-listed information form(s) provided to them by the Special Master. In addition, the parties shall provide non-privileged documents to the Special Master on request.

G. FEES

1. **Charges and Costs:** The Special Master's hourly fee shall be set by the Special Master pursuant to an agreement between the parties and the Special Master. Said fees shall not exceed \$ _____ per hour. It is understood that despite the fact that the Special Master may make decisions or orders in favor of one party, both parties will continue to be responsible for the payment of fees associated with such services at the allocated percentage designated in Section H below. Ultimately, the Court shall determine the proper allocation between the parties of the fees of the Special Master for such services and may require reimbursement by one party to the other for any payment to the Special Master.

The Special Master shall be reimbursed for any reasonable 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 and travel expenses, and word processing at a rate of \$ _____ per hour.

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

4 Telephone calls to the Special Master by either party are part of the process and
5 appropriately paid for by the parties according to their percentage share as ordered, unless otherwise
6 determined by the Special Master.

7 2. **Payment:** Prior to the initial interview, the parties will provide the Special Master with an
8 advance retainer totaling \$ _____, \$ _____ from each party. The aforementioned hourly fees
9 and costs as set forth above shall be drawn against this retainer. Any funds remaining at the termination
10 of the Special Master's services shall be refunded to the parties. In the event the retainer is expended
11 prior to the termination of the Special Master's services, the parties agree to provide a like amount as and
12 for an additional advance retainer within 15 days of the request. The Special Master shall not become a
13 creditor of the parties.

14 3. **Objections to Fees restraining or Costs:** Any objection to the Special Master's bills must
15 be brought to his/her attention in written form within 30 business days of the billing date, otherwise the
16 billing shall be deemed accepted.

17 4. **Enforcement:** In the event that a legal action becomes necessary to enforce any provision
18 of this order, the non-prevailing party shall pay actual and reasonable attorney's fees and costs as ay be
19 incurred. The Special Master may proceed by noticed motion to the Court in the event his/her fees are not
20 timely paid. A willful failure to advance an initial or later retainer within 15 days of a demand therefore
21 may be the subject of monetary or issue sanctions or contempt action.

22 **H. ALLOCATIONS**

23 Except as otherwise provided herein, the fees of the Special Master shall be shared by the parties
24 in the following manner:

25 Father shall pay _____% of the Special Master's fees, expenses and advance deposit; and

1 Mother shall pay _____% of the Special Master’s fees, expenses and advance deposit.

2 The Special Master shall have the right to *recommend* the reallocation of payment of his/her fees
3 at a percentage different from the above if he/she believes the need for his/her services is attributable to
4 the conduct of one party or if changed financial circumstances of one party or both parties warrant it.

5 **I. RENEWAL, WITHDRAWAL, REMOVAL, GRIEVANCES**

6 1. **Renewal of Term of Appointment:** The parties and the Special Master may agree to
7 renew or extend the term of the Special Master by written stipulation and order.

8 2. **Withdrawal of the Special Master:** The Special Master may, on notice to all parties and
9 counsel, ask that the Court remove him or her as Special Master. Such request shall set forth the reason
10 for such request.

11 3. **Removal of the Special Master:** The Special Master can be removed or replaced at any
12 time by written stipulation and order signed by all parties. In the event the parties do not agree to remove
13 the Special Master, either party may request the removal of the Special Master by noticed motion on any
14 of the grounds applicable to the removal of a Judge, Referee, or Arbitrator, or on showing of good cause
15 in the event it is the written policy of the Special Master to receive or maintain confidential information.
16 Such motion shall proceed on the written documents submitted by both parties and the Special Master,
17 unless the Court orders an evidentiary hearing. Each party and the Special Mater may respond to the
18 initial submissions in writing.

19 4. **Grievances:** Any complaints or grievances from either party regarding the performance or
20 actions of the Special Master shall be dealt with according to the following procedure:

21 (a) A person having a complaint or grievance regarding the Special Master must
22 discuss the matter with the Special Master in person before pursuing it in any other
23 manner.

24 (b) If, after discussion, the party decides to pursue a complaint, he/she must then
25 submit a written letter detailing the complaint or grievance to the Special Master, to

1 the other party, to both parties' attorneys (if any), and to the attorney for the
2 child(ren), if one exists. The Special Master will within 30 days provided a written
3 response to the grievance to both parties, both attorneys and the attorney for the
4 child(ren).

5 (c) If appropriate, given the circumstances, the Special Master will then meet with the
6 parties and their attorneys (if any), to discuss the matter.

7 (d) If the grievance or complaint is not resolved after this meeting, the complaining
8 party may proceed by noticed motion to the Court for removal of Special Master as
9 specified above.

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

14 **J. WAIVER OF RULE OF COURT 244.1**

15 Both parties agree that the Special Master shall be advised of the grounds for objection to
16 appointment under CCP §641, and the Special Master shall disclose to both parties, or their counsel if
17 represented, within 30 days the existence of any such grounds. The failure of either party to file with the
18 Court within 15 days any objection under CCP §641 shall be deemed a waiver of grounds for objection to
19 the Special Master under CCP §641. Both parties agree that the requirement to post a notice indicating
20 the case number and the telephone number of the person to contact to arrange for attendance in any
21 Special Master proceeding under California Rule of Court 244.1(C) is waived. To that extent, the records
22 in this case are deemed confidential.

23 **K. DELIVERY TO FAMILY COURT SERVICES**

24 The Petitioner/Plaintiff shall forthwith deliver a copy of this stipulation and order to Family Court
25 Services.

1 **L. CONSENT**

2 The parties acknowledge and initial the following:

3 ____/____ I understand that the Special Master can only be appointed with my agreement and
4 I agree to the appointment of the Special Master named in this stipulation.

5 ____/____ I understand that I can limit the issues before the Special Master. I have reviewed
6 the issues that are to be decided by the Special Master in this stipulation and I agree
7 to each of them.

8 ____/____ I understand that I can limit the time that the Special Master serves and that the
9 powers of the Special Master will end at the end of the appointment term. I agree
10 to the term of the appointment of the Special Master in this stipulation.

11 ____/____ I understand that the orders of the Special Master can be reviewed by the Court but
12 that the objection must be made within the time specified in this stipulation.

13 ____/____ *I understand that the orders of the Special Master cannot be reviewed by the Court*
14 *and that if I object to an order by the Special Master, it is my responsibility to*
15 *bring a motion before the Court, at which time the Court will conduct its own*
16 *investigation and make its own order in accordance with the best interests of the*
17 *child(ren).*

18 ____/____ I have had an opportunity to confer with the Special Master appointed in this
19 stipulation, and I have received this Special Master's written statement of policies
20 and procedures, and I agree to this Special Master's appointment.

21 ____/____ I understand that the Special Master cannot be called as a witness if I object to the
22 Special Master's order.

23 ____/____ I have had an opportunity to review this stipulation and to have questions about this
24 stipulation answered by legal counsel.

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AGREED:

DATED: _____

DATED: _____

FATHER

MOTHER

ATTORNEY FOR FATHER

ATTORNEY FOR MOTHER

I agree to my appointment as Special Master contained in this stipulation.

DATED: _____

SPECIAL MASTER

ORDER

IT IS SO ORDERED:

DATED: _____

JUDICIAL OFFICER