

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF**

In re the Marriage of:	)	<b>NO.</b>
	)	
Petitioner:	)	
	)	
and	)	<b>STIPULATION FOR ORDER,</b>
	)	<b>AND ORDER RE:</b>
Respondent:	)	<b>COLLABORATIVE PRACTICE</b>
_____	)	

Petitioner, **[NAME]**, Respondent, **[NAME]**, and their respective attorneys each agree and stipulate that orders shall be entered which shall remain in effect unless and until modified by written agreement signed by both parties and their attorneys or further court order, whichever occurs first. This stipulation shall be a binding court order when signed by the parties and filed with the court in the parties' action for Dissolution of Marriage.

**LIMITATION ON ATTORNEY REPRESENTATION**

1. **[PETITIONER'S ATTORNEY'S NAME]** has been retained by Petitioner to represent and advise Petitioner during the course of the Collaborative Practice process

and **[RESPONDENT'S ATTORNEY'S NAME]** has been retained by Respondent to represent and advise Respondent during the course of the Collaborative Practice process. Each attorney named shall be bound by the terms and provisions of this Stipulation for Order and Order (hereafter Order).

The parties and attorneys agree that it is necessary for attorneys to "appear" in order to process stipulations and agreements. However this agreement completely prohibits these attorneys from advocating in court. Each attorney, and any attorney in association with such attorney, is forever disqualified from appearing in any contested court proceedings as attorney of record for either party herein, or in any other contested family law matter, involving **[NAME]** and **[NAME]**. This disqualification shall survive the term of this Stipulation for Order. An attorney shall be deemed "in association" if, at any time during the pendency of these proceedings or future family law proceedings between these parties, such attorney is the partner/employer or employee of, or co-employee with, or shares a relationship of independent contractor status with any attorney herein.

### **COLLABORATIVE PRACTICE MATTER**

2. Both parties and attorneys shall treat this matter as a Collaborative Practice case. Each party and each attorney acknowledges that he or she has read and understands the document entitled *Guidelines and Principles Governing the Collaborative Practice Process*, and agrees to comply with the principles and guidelines set forth in that document.

3. For so long as this Stipulation and Order is in effect, the parties and attorneys shall devote all of their efforts to reaching a negotiated settlement in an efficient, cooperative manner pursuant to the terms of this Stipulation, and neither party

nor attorney may file any document requesting intervention by the court including, but not limited to, a Request to Enter Default, Notice of Motion, Order to Show Cause or At-Issue Memorandum, except as otherwise specifically permitted under Termination of Collaborative Status, below.

4. Both parties agree that they shall be subject to the Automatic Temporary Restraining Orders set forth in California Family Code §2040 commencing immediately, as follows:

“(a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(4) Restraining both parties from creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court.

(b) Nothing in this section restrains any of the following:

(1) Creation, modification, or revocation of a will.

(2) Revocation of a nonprobate transfer, including a revocable trust, pursuant to the instrument, provided that notice of the change is filed and served on the other party before the change takes effect.

(3) Elimination of a right of survivorship to property, provided that notice of the change is filed and served on the other party before the change takes effect.

(4) Creation of an unfunded revocable or irrevocable trust.

(5) Execution and filing of a disclaimer pursuant to Part 8 (commencing with Section 260) of Division 2 of the Probate Code.

(c) In all actions filed on and after January 1, 1995, the summons shall contain the following notice:

"WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption.

You should consult your attorney if you want the community property presumption to be written into the recorded title to the property."

(d) For the purposes of this section:

(1) "Nonprobate transfer" means an instrument, other than a will, that makes a transfer of property on death, including a revocable trust, pay on death account in a financial institution, Totten trust, transfer on death registration of personal property, or other instrument of a type described in Section 5000 of the Probate Code.

(2) "Nonprobate transfer" does not include a provision for the transfer of property on death in an insurance policy or other coverage held for the benefit of the parties and their child or children for whom support may be ordered, to the extent that the provision is subject to paragraph (3) of

subdivision (a).

(e) The restraining order included in the summons shall include descriptions of the notices required by paragraphs (2) and (3) of subdivision (b). (Am Stats 2001, C417)”

#### **JUDICIAL ASSIGNMENT**

5. This matter is assigned to a Department pursuant to local rules.

#### **EXPERT WITNESS**

6. On termination of the Collaborative Practice process, all members of the Collaborative Practice team and joint consultants and/or experts shall be disqualified from appearing as witnesses for either participant, and any reports and/or work product of the Collaborative Practice team and consultants and/or experts shall not be admissible as evidence unless otherwise we agreed in writing by the participants.

#### **DISCLOSURE AND DISCOVERY**

7. Each party shall timely provide his or her Preliminary and Final Declarations of Disclosure Declarations as provided in California Family Code §§ 2100 et. seq. and shall provide each other with any written authorizations requested which may be required in order to obtain information or documentation, or to prepare Qualified Domestic Relations Orders (or related orders for pension plans) or other orders facilitating agreements reached. The parties and attorneys acknowledge and understand that honesty, full disclosure of all relevant information, and compliance with California Family Code §§ 2100, et. seq. are an integral factor in the success of a Collaborative Practice case.

8. All discovery requests shall be made informally. Neither party may file a motion to compel nor motion for sanctions for any discovery requests made during the

time this Order is in effect.

### **CUSTODY MEDIATION**

9. In the event the parties agree to refer any child parenting issues to Family Court Services or to a private mediator during the time this Order is in effect, no action beyond mediation shall occur, except as expressly agreed upon in writing by the parties, nor shall any time limits or procedural requirements stated in any Local Court Rule apply to this matter. The parties shall specify, in writing, whether the mediation is confidential or non-confidential, whether the mediator shall write a report, and whether a recommendation will be made. The parties shall specify, in writing, prior to mediation, if the custody mediator is a person provided for in Paragraph "Expert Witnesses".

### **SANCTIONS**

10. The court may impose sanctions under any applicable California law in the event any party or any attorney (i) has used the Collaborative Practice process in bad faith for the purpose of unilateral delay or (ii) has engaged in any concealment, misrepresentation, or perpetuation of the same in any way that materially and adversely affects the rights of the other party, or (iii) whose conduct comes within the provisions of any law providing for the imposition of sanctions.

### **CONFIDENTIALITY OF COLLABORATIVE PROCESS**

11. The parties agree that their Collaborative case is a confidential process, and acknowledge that the communications covered by this section remain confidential regardless of when or how the Collaborative case ends, except as described below.

Written Communications. All documents and writings of any type or kind, prepared by any designated collaborative professional who is under written contract to either party, shall be treated as confidential, and the parties agree that these documents

shall be inadmissible as evidence in any non-criminal proceeding involving the parties.

The only exceptions to this prohibition shall be as follows:

- (a) Judicial Council forms that are prepared in the course of the Collaborative Case;
- (b) Written agreements of the parties that have been executed by the parties and their attorneys; and
- (c) Documents that both parties agree, in a stipulation of the parties, should be admissible in any particular legal action.

Oral Communications. All oral communications made to or from either party, and to or from any designated collaborative professional who is under written contract to either party, shall be treated as confidential, and the parties agree these oral communications shall be inadmissible as evidence in any non-criminal proceeding involving the parties. The only exceptions to this prohibition shall be as follows:

- (a) Oral communications which evidence an intent to endanger the health or safety of any person in any way;
- (b) Oral communications which evidence an intent to conceal assets or information which should have been disclosed;
- (c) Oral communications both parties agree, in a stipulation of the parties, should be admissible in any particular legal action.

Party Communications. All written and oral communications between the parties, except those which evidence an intent to endanger the health or safety of any person in any way, or which evidence an intent to conceal assets or information which should have been disclosed, are confidential and inadmissible in any non-criminal legal proceeding.

By initialing below, with their respective attorneys, the parties mutually agree that all communications between them are non-confidential and admissible in any legal action:

(Wife)

(Husband)

\_\_\_\_\_  
(Wife's Atty.)

\_\_\_\_\_  
(Husband's Atty.)

### **TERMINATION OF COLLABORATIVE STATUS**

12. Any party may unilaterally and without cause terminate this Stipulation and Order by giving written notice of such election (hereafter "Termination Election") to all other parties and by filing with the Court a Termination Election with a proof of service of a copy of such Termination Election to all other parties in the proceeding.

13. Either attorney may withdraw from this matter unilaterally by giving fifteen (15) days written notice of such election to all parties and attorneys. Notice of Withdrawal does not terminate the Collaborative Practice process; the party whose attorney has withdrawn may continue in the Collaborative Practice process by retaining a new attorney provided that the new attorney agrees in writing to be bound by this Order and the above-referenced "Guidelines and Principles".

14. Upon termination of the Collaborative Practice process by a party or withdrawal of any counsel, the attorney who represents the terminating party or who is withdrawing will promptly cooperate to facilitate the transfer of the client's matter to successor counsel.

15. The parties do not waive their right to seek the assistance of the Superior Court named above; however, any unilateral initiation of litigation by a party shall result in the automatic termination of the Collaborative Practice process, on the date of any application to the Superior Court for orders or notice of intent to appeal is signed or otherwise made.

### **NOTICE**

16. Any notice or document required to be served hereunder may be personally served, or shall be deemed served five (5) days after deposit in the United States Mail, first-class postage prepaid, addressed to the parties and their counsel at the following addresses:

PETITIONER:

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ATTORNEY FOR PETITIONER:

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RESPONDENT:

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ATTORNEY FOR RESPONDENT:

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17. A party or attorney may change his or her address, for purpose of service, by giving written notice of such change to all other parties and counsel named above.

**DATED:** \_\_\_\_\_

**DATED:** \_\_\_\_\_

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**PETITIONER**

**RESPONDENT**

**DATED:** \_\_\_\_\_

**DATED:** \_\_\_\_\_

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**ATTORNEY FOR PETITIONER**

**ATTORNEY FOR RESPONDENT**

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**ORDER**

Upon the Stipulation of the parties set forth above, the Court approves the terms of this Stipulation for Orders and orders the parties to comply with all of its terms and provisions.

**DATED:** \_\_\_\_\_

\_\_\_\_\_  
**JUDGE OF THE SUPERIOR COURT**