

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):

E. GREGORY ALFORD, CFLS SBN: 56431

JAC F. POULIOT, ESQ. SBN: 62431

LAW OFFICE OF E. GREGORY ALFORD

1551 FOURTH AVENUE, SUITE 301

SAN DIEGO, CALIFORNIA 92101

TELEPHONE NO.: (619) 232-4734

FAX NO.: (619) 239-3345

ATTORNEY FOR (Name): CLIFFORD L. ROEPKE

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 1501-55 SIXTH AVENUE

MAILING ADDRESS: SAME

CITY AND ZIP CODE: SAN DIEGO, CALIFORNIA 92101

BRANCH NAME: FAMILY COURT BUILDING

PETITIONER/PLAINTIFF: MICHELE LALLY

RESPONDENT/DEFENDANT: CLIFFORD L. ROEPKE

OTHER PARENT:

FILED

Clerk of the Superior Court

DEC 08 2003

By: J. Claros, Deputy

ORDER TO SHOW CAUSE AND
AFFIDAVIT FOR CONTEMPT

CASE NUMBER:

D472021

NOTICE!

A contempt proceeding is criminal in nature. If the court finds you in contempt, the possible penalties include jail sentence, community service, and fine.

You are entitled to the services of an attorney who should be consulted promptly in order to assist you. If you cannot afford an attorney, the court may appoint an attorney to represent you.

¡AVISO!

Un proceso judicial por desacato es de índole criminal. Si la corte le declara a usted en desacato, las sanciones posibles incluyen penas de prisión y de servicio a la comunidad, y multas.

Usted tiene derecho a los servicios de un abogado, a quien debe consultar sin demora para obtener ayuda. Si no puede pagar a un abogado, la corte podrá nombrar a un abogado para que le represente.

1. TO CITEE (name of person you allege has violated the orders): MICHELE LALLY
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS, TO GIVE ANY LEGAL REASON WHY THIS COURT SHOULD NOT FIND YOU GUILTY OF CONTEMPT, PUNISH YOU FOR WILLFULLY DISOBEYING ITS ORDERS AS SET FORTH IN THE AFFIDAVIT BELOW AND ANY ATTACHED AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT; AND REQUIRE YOU TO PAY, FOR THE BENEFIT OF THE MOVING PARTY, THE ATTORNEY FEES AND COSTS OF THIS PROCEEDING.

a. Date: 01 / 12 / 04 Time: 1 : 45 PM Dept.: F-1 Rm.:
 b. Address of court: ☒ same as noted above ☐ other (specify):

Date: DEC 08 2003

THOMAS C. HENDRIX

JUDICIAL OFFICER

AFFIDAVIT SUPPORTING ORDER TO SHOW CAUSE FOR CONTEMPT

3. ☒ An Affidavit of Facts Constituting Contempt (form FL-411 or FL-412) is attached.
4. Citee has willfully disobeyed certain orders of this court as set forth in this affidavit and any attached affidavits.
5. a. Citee had knowledge of the order in that
 - (1) ☒ citee was present in court at the time the order was made.
 - (2) ☒ citee was served with a copy of the order.
 - (3) ☐ citee signed a stipulation upon which the order was based.
 - (4) ☐ other (specify):
- Continued on Attachment 5a(4).
- b. Citee was able to comply with each order when it was disobeyed.
6. Based on the instances of disobedience described in this affidavit
 - a. ☒ I have not previously filed a request with the court that the citee be held in contempt.
 - b. ☐ I have previously filed a request with the court that the citee be held in contempt (specify date filed and results):

Continued on Attachment 6b.

PETITIONER/PLAINTIFF: MICHELE LALLY RESPONDENT/DEFENDANT: CLIFFORD L. ROEPKE OTHER PARENT:	FL-412 CASE NUMBER: D472021 DUS
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AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT
Domestic Violence/Custody and Visitation
Attachment to Order to Show Cause and Affidavit for Contempt (form FL-410)

1. ☐ The Citee has violated the restraining order issued on (date):
 harassing, attacking, striking, threatening, sexually assaulting, battering, telephoning, sending any messages to, following, stalking, destroying the personal property of, disturbing the peace of, keeping under surveillance, or blocking movements in public places and thoroughfares of me or any other person protected by the restraining order. (Specify which order was violated, how the order was violated, and when the violation occurred):

☐ Continued on Attachment 1.
by not moving from and

2. ☐ The Citee has violated the restraining order issued on (date):
 staying away from the residence as ordered by the court. (Specify how the order was violated and when the violation occurred):

☐ Continued on Attachment 2.
by not staying

3. ☐ The Citee has violated the restraining order issued on (date):
 (specify): yards away from me, the other protected persons, my residence, my place of work, the children's school or place of child care, my vehicle, or other (specify):
 (Specify which order was violated, how the order was violated, and when the violation occurred):

☐ Continued on Attachment 3.
by not relinquishing his

4. ☐ The Citee has violated the restraining order issued on (date):
 or her firearm(s) as ordered by the court. (Specify which order was violated, how the order was violated, and when the violation occurred):

☐ Continued on Attachment 4.
by failure to complete

5. ☐ The Citee has violated the restraining order issued on (date):
 court-ordered batterer's treatment/anger management class (specify how the order was violated):

☐ Continued on Attachment 5.
by violating the following custody or

6. ☒ The Citee has violated order issued on (date): see Attachment 6
 visitation order (specify which order was violated, how the order was violated, and when the violation occurred): See Attachment 6 which is incorporated herein as if fully set forth.

☒ Continued on Attachment 6.
by violating other orders (specify which

7. ☐ The Citee has violated the order issued on (date):
 order was violated and how the order was violated):

☐ Continued on Attachment 7.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: 12/8/03

Clifford L. Roepke
 (TYPE OR PRINT NAME)

SIGNATURE BY FAX, ATTACHED
 (SIGNATURE)

AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT
Domestic Violence/Custody and Visitation

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& Plus

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 Family Code, § 292
 Code of Civil Procedure,
 §§ 1211.5, 2015.5

PETITIONER/PLAINTIFF: MICHELE LALLY

FL-412

RESPONDENT/DEFENDANT: CLIFFORD L. ROEPKE

CASE NUMBER:

D472021 DUS

OTHER PARENT:

AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT
Domestic Violence/Custody and Visitation
Attachment to Order to Show Cause and Affidavit for Contempt (form FL-410)

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stalking, destroying the personal property of, disturbing the peace of, keeping under surveillance, or blocking movements in
public places and thoroughfares of me or any other person protected by the restraining order. (Specify which order was
violated, how the order was violated, and when the violation occurred):
2. ☐ The Citee has violated the restraining order issued on (date):
staying away from the residence as ordered by the court. (Specify how the order was violated and when the violation
occurred):
3. ☐ The Citee has violated the restraining order issued on (date):
(specify): yards away from me, the other protected persons, my residence, my place of work, the children's
school or place of child care, my vehicle, or other (specify):
(Specify which order was violated, how the order was violated, and when the violation occurred):
4. ☐ The Citee has violated the restraining order issued on (date):
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violation occurred):
5. ☐ The Citee has violated the restraining order issued on (date):
court-ordered batterer's treatment/anger management class (specify how the order was violated):
6. ☒ The Citee has violated order issued on (date): see Attachment 6
visitation order (specify which order was violated, how the order was violated, and when the violation occurred): See
Attachment 6 which is incorporated herein as if fully set forth.
7. ☐ The Citee has violated the order issued on (date):
order was violated and how the order was violated):

☐ Continued on Attachment 1.
by not moving from and

☐ Continued on Attachment 2.
by not staying

☐ Continued on Attachment 3.
by not relinquishing his

☐ Continued on Attachment 4.
by failure to complete

☐ Continued on Attachment 5.
by violating the following custody or

☒ Continued on Attachment 6.
by violating other orders (specify which

☐ Continued on Attachment 7.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/8/03

Clifford L. Roepke

(TYPE OR PRINT NAME)



(SIGNATURE)

AFFIDAVIT OF FACTS CONSTITUTING CONTEMPT
Domestic Violence/Custody and Visitation

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Family Code, § 262;
Code of Civil Procedure,
§§ 1211.5, 2015.5

1. The minor child of the parties subject to the visitation orders made by the Court is Oliver J. Lally-Roepke, born June 30, 1995, approximately 8½ years old.

2. **COURT ORDERS.** On December 2, 2002, the Court made the following order at the hearing on Order to Show Cause:

g. Paragraph 5: The following is inserted as paragraph 5: "The parenting of the child shall be shared as follows: Oliver shall be with his father in San Diego on the third weekend (determined by the Friday date) of every month from Thursday after school until Monday morning. The father may also visit Oliver from after school until 7:00 p.m. on the Wednesday evening prior to the third weekend."

3. On December 2, 2002, the Court also made the following order at the hearing on Order to Show Cause contained in the Findings and Order After Hearing at page 2, paragraph 2.c. which refers to the attachment from the Family Court Services report, page 5, paragraph 6.e. which reads as follows:

"Thanksgiving: In odd-numbered years the child shall be with the father from Wednesday after school until Monday morning..."

4. Paragraph 8 of the Family Court Services recommendation adopted by the Court as an order reads, as amended by the Court:

"Either parent may take traveling vacations with the child each year of up to three weeks however no vacation shall be for a period greater than two consecutive weeks. They shall notify the other parent in writing of their vacation plans a minimum of 30 days prior to departure and provide the other parent with a basic itinerary to include dates of departure and return, destinations, flight information and telephone numbers for emergency purposes. The vacationing parent shall not schedule the vacation during the

other parent's scheduled holiday time with the child, unless agreed upon in advance by both parents."

5. Paragraph 11 of the Family Court Services recommendation adopted by the Court as an order reads, in pertinent part:

"Neither parent shall make negative statements about the other parent in the presence or hearing of the child...."

6. These orders made on December 2, 2002, and have now been in effect for over a year.

7. **KNOWLEDGE OF ORDERS.** Petitioner was present in court at the time these orders were made. The written order was filed with this court on December 19, 2002. The written order had previously been approved by Petitioner's counsel as conforming to the order of the Court.

8. A conformed copy of the Findings and Order After Hearing filed on December 19, 2002, was served by mail on counsel for Petitioner on December 20, 2002.

9. **VIOLATIONS OF COURT ORDERS - COUNT ONE.** On Wednesday November 19, 2003, I flew down to San Diego County from San Mateo County, where I reside and work, to exercise my visitation with our son, Oliver. The weekend beginning Friday, November 21, 2003, is the third weekend of the month as defined in the above-referenced order and thus was my regular monthly visitation with Oliver, beginning with the non-overnight Wednesday evening.

10. At approximately 2:45 p.m., I proceeded to Stella Maris Academy at 7654 Herschel Avenue, La Jolla, County of San Diego, State of California, where Oliver attends school. As the end-of-school bell rang, I went to the school courtyard where the children are released but could not see Oliver. I then went to Oliver's classroom but there was no one in there. I went back to the courtyard and I saw Petitioner standing and waiting there. I approached and

asked her if she had seen Oliver. She replied that I was not supposed to be there. I informed her that this was the third weekend of the month as defined in the order of the court and it was my visitation weekend. She replied "It is not normally the third weekend but the second weekend of the month. You blew it because you were supposed to be here last week. Also holidays supercede any visitation dates." I thought to myself that this was a rather strange statement for Petitioner to make since I had been normally visiting Oliver on the third weekend of each month for the past year. I told her I had a copy of the court order in the car and went to get it. I held the envelope out to her and suggested that we look it over to clear up the misunderstanding. Petitioner snapped back "I don't need to read that. I already know what the court order is." or something to that effect. I sat down next to another father in the courtyard and tried to stay composed while chatting with him for about five minutes. I then went to a drinking fountain located on the outside wall of the bathroom and noticed Petitioner walking in my direction. As I was drinking, I heard Oliver's voice coming from the bathroom and I said "Hey Oliver, it's me. I've been looking for you." I then moved towards the door of the bathroom. Petitioner moved into the doorway and blocked the entrance. I tried to get around but she put her arm on the doorjamb and stated "If you touch me I'll call the police". I then back away and tried to talk to Oliver but, upon exiting the restroom he rushed over to Petitioner and Petitioner left with Oliver.

11. I knew it was customary for Oliver to attend soccer practice on Wednesdays around 4:00 p.m. The soccer practice field is located in La Jolla approximately two miles from Oliver's school. I drove over to the soccer field and Oliver was on the field. As soon as Petitioner saw me, she went onto the field and marshaled Oliver over to the other practice field. As everyone was leaving the field, I followed Oliver to Petitioner's car and was talking to him

as he was sitting in the seat behind the driver's seat of Petitioner's car. Petitioner came around right next to me as she opened the door to get in, yelling "Get the hell away from my car." Petitioner drove off and I returned to my hotel without Oliver. By then, it was around 6:00 p.m. and I returned to my hotel. Since my Wednesday evening visitation normally ends at 7:00 p.m., I thought it would be futile to take measures to enforce my visitation rights.

12. **COUNT TWO.** On Thursday, November 20, 2003, I picked up Oliver from the school, Stella Maris Academy located at 7654 Herschel Avenue, La Jolla, County of San Diego, State of California, for my visitation with him until the following morning when I returned him to school. When I returned to Stella Maris Academy on Friday, November 21, 2003, at approximately 1:50 p.m. to continue my weekend visitation with Oliver, I waited in my car for a few minutes. Normally school is out at 3:00 p.m. and I knew I was early. Then around 2:00 p.m., I saw Petitioner on the sidewalk going towards the school office across the street. Sister Mary Kiely, the principal of the school came out of the office, crossed the street and stood by the gate to the courtyard. I went over to her and she explained to me that it was Petitioner's intention to take Oliver with her after school. As I chatted with her for a while, Petitioner came over and stated to me that she was taking Oliver with her. I objected but she ignored me. I waited until 3:00 p.m. when school was dismissed. I went into the courtyard and into Oliver's classroom but could not locate Oliver anywhere. Petitioner was also nowhere to be seen. I went back to my hotel room and flew back to San Mateo on Saturday, the 22nd of November, 2003.

13. **COUNT THREE.** On or about October 27, 2003, I had sent to Petitioner an itinerary providing whereabouts and flights information for my upcoming Thanksgiving visitation with Oliver. The same document was also sent by facsimile on the same date to Oliver's

school. Copies of this correspondence faxed to my attorney and my attorney's letter to Petitioner's attorney forwarding same are attached as **Exhibit "A"**. This trip, as described in Exhibit "A", involved the advance purchase of three separate return trips in the approximate sum of \$750 so that I could fly back to the Bay Area with Oliver for a Thanksgiving weekend with me and his extended family.

14. On Wednesday, November 26, 2003, at approximately 10:30 a.m., upon arriving at the San Diego Lindbergh Field airport from the Bay Area, I received a phone call from Stella Maris Academy to the effect that Oliver was not in attendance that day. After leaving my voice mail message for Petitioner, I received a message on my cell phone from Petitioner that Oliver was sick. I immediately called Petitioner and we exchanged several voice mail messages. The outcome of this exchange was that we agreed that I would pick up Oliver from Petitioner's home after I had purchased cough drops, cough syrup and lip balm as Petitioner stated Oliver had a "cough".

15. I arrived at Petitioner's home at approximately 11:45 a.m. with the cough drops, cough syrup and lip balm. When Petitioner answered the door, she stated "You're early". This was because the school was to be dismissed early, i.e. at 12 noon rather than the usual 3:00 p.m. I offered the medicinal supplies I had purchased to Petitioner who started studying the contents. As I stood at the front door, I noticed that Oliver was still in sweat wear and without socks or shoes. I asked Petitioner if she could spend the approximate ten minutes of my early arrival on getting Oliver dressed. Petitioner did not do so. I tried to coax Oliver to go get dressed but Petitioner kept interrupting me. At one point, Petitioner exclaimed, within earshot of Oliver who was standing about five feet away, "Who would want to go with someone who looks like you!"

16. **COUNT FOUR.** At this point I realized that Petitioner was refusing to facilitate the exchange. I again asked Petitioner to get Oliver ready to go. Petitioner refused by stating "No!"
17. I went outside and called my attorney and the police in an attempt to resolve the matter. About one hour went by as I waited in my car when Petitioner walked out of the house with Oliver, who was now dressed, going towards her car. When I asked what she was doing, she replied that she was taking Oliver to the doctor. I again asked Petitioner to release Oliver to me for my Thanksgiving visitation. Petitioner again refused.
18. Petitioner and Oliver got in her car and Petitioner drove off. By then, it was approximately 3:00 p.m. My flight to the Bay Area with Oliver was scheduled for 3:30 p.m. **out of John Wayne airport in Orange County.** There was no way to make that flight by then. I was able to get a later flight for myself out of San Diego around 10:00 p.m. I, of course, did not see Oliver for the rest of the Thanksgiving weekend.

To : Jacques Pouliot
Sent : 10/27/2003 at 8:14:58 PM
Subject :

From : Cliff Roepke
Pages : 2 (including Cover)

Jacques:

Please forward this fax to Michele's attorney. Her fax machine keeps shutting down during transmission, and she is unwilling to speak with me on the phone to find an alternate means of delivery.

Cliff

Attention: Michele
Regarding: Thanksgiving Visitation
Date: 10/27/03

Cliff Roepke
Correspondence:
63 Bovet Road #234
San Mateo, CA 94402
cliff@r@sightandsounds.com
VOX: 650.697.7081
FAX: 650.697.7089

Michele:

I have made travel plans to pickup Oliver after school at 12:00pm on 11/26/03 and fly up together with him to San Mateo to spend Thanksgiving with extended family.

Here is the itinerary for 11/26/03:

CLIFF: DOUBLETREE TO PICKUP OLIVER AT SCHOOL
11:00 AM-12:00 PM
CLIFF & OLIVER: SCHOOL TO SNA AIRPORT PARK
12:00 PM-1:30 PM
CLIFF & OLIVER: SNA AIRPORT PARK TO SNA
1:30 PM-2:30 PM
CLIFF & OLIVER: SNA TO SJC
3:40 PM-4:55 PM

Here is the itinerary for 11/30/03:

CLIFF & OLIVER: DRIVE TO SJC (INC PARKING)
10:00 AM-12:00 PM
CLIFF & OLIVER: DRIVE BACK SJC TO SM
10:00 AM-10:30 AM
CLIFF & OLIVER: SJC TO SNA
1:35 PM-2:50 PM
CLIFF & OLIVER: SAN TO SNA PARK
3:00 PM-3:30 PM
CLIFF & OLIVER: SNA PARK TO HOUSE
3:30 PM-5:00 PM

During Wednesday, Thursday, Friday, and Saturday nights, Oliver will be staying with me at the house in San Mateo. You know the phone number and address there. I will be arriving between 5:00pm and 6:00pm on Sunday night (11/30/03) to drop Oliver off to you at the Caminito Cielo Del Mar address.

Here is the Southwest itinerary for 11/26/03 & 11/30/03:

Wednesday, November 26 - ORANGE COUNTY CA(SNA) to SAN JOSE CA(SJC)
Flight 742 Y

Depart ORANGE COUNTY CA(SNA) at 03:40PM and
Arrive in SAN JOSE CA(SJC) at 04:55PM

Sunday, November 30 - SAN JOSE CA(SJC) to ORANGE COUNTY CA(SNA)
Flight 851 Y

Depart SAN JOSE CA(SJC) at 01:35PM and
Arrive in ORANGE COUNTY CA(SNA) at 02:50PM

Please have Oliver call me. I called both Wednesday (10/22) and Sunday (10/26) and left messages.

Cliff

October 30, 2003

Jeffrey C. Fritz, Esq.
Basie & Fritz
3638 Camino del Rio North, Suite 280
San Diego, CA 92108

RE: Roepke, Marriage of, SDSC FL Central, Case No. D472021 DUS

Dear Mr. Fritz:

Please find enclosed a facsimile dated October 27, 2003, from our client intended for Ms. Lally. Upon attempting delivery of the facsimile, her machine keeps shutting down during transmission and Ms. Lally is unwilling to speak with Mr. Roepke on the phone to find an alternative means of delivery.

We will appreciate your transmitting this information to Ms. Lally. Thank you for your kind attention to this matter.

Yours very truly,



Jac F. Pouliot
Attorney at Law
Law Offices of E. Gregory Alford
JFP/mft

Enclosure

cc: Clifford L. Roepke (w/o enclosure)