

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. (Optional): (619) 232-4734 FAX NO. (Optional): (619) 239-3345 EMAIL ADDRESS (Optional): ATTORNEY FOR (Name): CLIFFORD L. ROEPKE		FOR COURT USE ONLY F I L E D Clerk of the Superior Court FEB 02 2004 By: A. FAGAN, Deputy
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: MICHELE LALLY RESPONDENT: CLIFFORD L. ROEPKE		
ORDER TO SHOW CAUSE FOR ☒ MODIFICATION ☒ Child Custody ☒ Visitation ☒ Injunctive Order ☒ Child Support ☐ Spousal Support ☒ Other (specify): ☐ Attorney Fees and Costs Custody evaluation and order for payment; order preventing Petitioner from scheduling vacation during Respondent's custodial time		
		CASE NUMBER: D472021 DUS

1. TO (name): MICHELE LALLY and her attorney of record
2. YOU ARE ORDERED TO APPEAR IN THIS COURT AS FOLLOWS TO GIVE ANY LEGAL REASON WHY THE RELIEF SOUGHT IN THE ATTACHED APPLICATION SHOULD NOT BE GRANTED. If child custody or visitation is an issue in this proceeding, Family Code section 3170 requires mediation before or concurrently with the hearing listed below.

a. Date: 3/23/04 Time: 9:00 a.m. ☒ Dept.: F-1 ☐ Room: TC#

b. The address of the court is ☒ same as noted above ☐ other (specify):

c. ☐ The parties are ordered to attend custody mediation services as follows:

Private mediator, Penny Angel-Levy, appointed by order of Court filed December 19, 2002, in paragraph 1.e. of Attachment 2.c. to Child Custody and Visitation Attachment.

3. THE COURT FURTHER ORDERS that a completed *Application for Order and Supporting Declaration* (form FL-310), a blank *Responsive Declaration* (form FL-320), and the following documents be served with this order:

- a. (1) ☐ Completed *Income and Expense Declaration* (form FL-150) and a blank *Income and Expense Declaration*
 (2) ☐ Completed *Financial Statement (Simplified)* (form FL-155) and a blank *Financial Statement (Simplified)*
 (3) ☐ Completed *Property Declaration* (form FL-160) and a blank *Property Declaration*
 (4) ☐ Points and authorities
 (5) ☐ Other (specify):

b. ☐ Time for ☐ service ☐ hearing is shortened. Service must be on or before (date):

Any responsive declaration must be served on or before (date):

c. ☐ You are ordered to comply with the temporary orders attached.

d. ☐ Other (specify):

Date: **FEB 02 2004**

Thomas C. Hendrix, Judge

JUDICIAL OFFICER

NOTICE: If you have children from this relationship, the court is required to order payment of child support based on the incomes of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise, the child support order will be based on the information supplied by the other parent. You do not have to pay any fee to file declarations in response to this order to show cause (including a completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) that will show your finances). In the absence of an order shortening time, the original of the responsive declaration must be filed with the court and a copy served on the other party at least ten calendar days before the hearing date.

PETITIONER/PLAINTIFF: MICHELE LALLY

CASE NUMBER:

D472021 DUS

RESPONDENT/DEFENDANT: CLIFFORD L. ROEPKE

APPLICATION FOR ORDER AND SUPPORTING DECLARATION
(THIS IS NOT AN ORDER)

- ☐ Petitioner ☒ Respondent ☐ Claimant requests the following orders be made:
1. ☒ CHILD CUSTODY ☐ To be ordered pending the hearing
 a. ☒ Child (name and age)
 OLIVER J. LALLY-ROEPKE 8
 b. ☐ Request custody to (name)
 Respondent
 c. ☒ Modify existing order
 (1) filed on (date): December 19, 2002
 (2) ordering (specify):
 Joint legal custody and primary physical custody to Petitioner
2. ☒ CHILD VISITATION ☐ To be ordered pending the hearing
 a. ☐ Reasonable
 b. ☒ Other (specify): specific as recommended by evaluator
 c. ☐ Child abduction prevention orders (attach form FL-312)
 d. ☐ Petitioner ☐ Respondent shall not remove the minor child or children of the parties
 (1) ☐ from the State of California. (2) ☐ other (specify):
 e. ☒ Modify existing order
 (1) filed on (date): December 19, 2002
 (2) ordering (specify):
3. ☐ CHILD SUPPORT (A Wage and Earnings Assignment Order will be issued.)
 a. ☐ Child (name and age)
 OLIVER J. LALLY-ROEPKE 8
 b. Monthly amount (if not by guideline)
 \$
 c. ☐ Modify existing order
 (1) filed on (date):
 (2) ordering (specify):
4. ☐ SPOUSAL SUPPORT (A Wage and Earnings Assignment Order will be issued.)
 a. ☐ Amount requested (monthly): \$
 b. ☐ Terminate existing order
 (1) filed on (date):
 (2) ordering (specify):
 c. ☐ Modify existing order
 (1) filed on (date):
 (2) ordering (specify):
5. ☐ ATTORNEY FEES AND COSTS a. ☐ Fees: \$ b. ☐ Costs: \$
6. ☐ PROPERTY RESTRAINT ☐ To be ordered pending the hearing
 a. The ☐ petitioner ☐ respondent ☐ claimant are restrained from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life.
☐ and applicant will be notified at least five business days before any proposed extraordinary expenditures and an accounting of such will be made to the court.
 b. ☐ Both parties are restrained and enjoined 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 or their minor children.
 c. ☐ Neither party shall incur any debts or liabilities for which the other may be held responsible, other than in the ordinary course of business or for the necessities of life.

NOTE: TO OBTAIN DOMESTIC VIOLENCE RESTRAINING ORDERS, YOU MUST USE THE FORMS REQUEST FOR ORDER (DOMESTIC VIOLENCE PREVENTION) (FORM DV-100) AND TEMPORARY RESTRAINING ORDER (DOMESTIC VIOLENCE PREVENTION) (FORM DV-110).

1 **1. PERTINENT FACTUAL HISTORY OF CASE.** On November 14, 2002, the parties
2 appeared for mediation at Family Court Services and could not reach an agreement.

3
4 Petitioner/mother lives in San Diego County with the minor child and I live in San Mateo
5 County.

6 2. The mediator made a recommendation and at the time of the hearing on December 2, 2002, the
7 parties, with their respective counsel, made some adjustment to portions of the recommendation,
8 stipulated to some original and modified recommendations and then submitted the remaining
9 issues to the Court.
10

11 3. The Court ruled on my regular monthly weekend visitation time, the travel expense allocation
12 for the summer visitation, limited the parties traveling vacation with the child to two
13 consecutive weeks at a time, deleted paragraph 16 of the Family Court Services
14 recommendation, and provided that I was not to call the minor child on the cell phone provided
15 by the Petitioner/mother to the child.
16

17 4. The order entered by the Court also appointed Penny Angel-Levy as private mediator in lieu of
18 Family Court Services for future disputes. The Findings and Orders After Hearing was filed on
19 December 19, 2002.
20

21 5. Petitioner/mother and I participated in several conjoint mediation sessions with Ms. Angel-Levy
22 since April 2003.
23

24 **6. CONTINUING PROBLEMS.** Since early 2003, I have been traveling to San Diego County to
25 visit with his son. Things have been very difficult because of Petitioner/mother's interference
26 with the my visitation. In May 2003, for example, Petitioner/mother scheduled vacation with the
27 child for four days **during my once-a-month visitation with the child.** It was only after
28 negotiations through counsel that Petitioner/mother agreed to a make-up weekend visitation for

effectively canceling my scheduled visitation. See Stipulation and Order re: Visitation and Re-scheduling of Deposition filed May 21, 2003.

7. During the last holidays, Petitioner/mother severely curtailed my court-ordered visitation time.

As a result, an Order to Show Cause for Contempt has been filed on January 8, 2004, and is currently pending. The arraignment date is presently scheduled for February 23, 2004. I

incorporate herein by reference my Affidavit of Facts Constituting Contempt. as if fully set forth.

8. In her letter of July 21, 2003, to counsel for the parties, Penny Angel-Levy writes in the last paragraph: "It must be noted that the difficulties experienced by these parents in cooperating and communicating are of concern and present significant risk to the emotional well-being of this child. The parents have been strongly encouraged to set aside their differences and put forth sincere effort to coparent [sic] more effectively. It is hoped that they will make progress within the next few weeks in this regard...."

9. Unfortunately the problems continued and carried into the holiday season as described in paragraph 7 above.

10. In her letter of September 18, 2003, to counsel for the parties, Ms. Angel-Levy concluded: "The mediation process with the parents has been fraught with difficulties and the future prospects for mediation appear to be bleak. It is hoped that with the assistance of therapists for each parent and continued therapy for the child, that a more normalized situation for the child can be achieved. If, by February 2004, the parents are still warring with regard the custodial schedule, it is thought **advisable** for counsel to **consider seeking assistance for the parents via a psychological evaluation**. The purpose of this evaluation would be to **determine, with greater precision than afforded by clinical interviews, the psychological**

1 **strengths and weaknesses of each parent and how these may be contributing to the**
2
3 **anxiety of child. A full understanding of these dynamics may be necessary for change to**
4 **be achieved....” *Emphasis added.***

5 11. Here we are in February 2004, and the problem has not even come close to resolving itself. I
6 agree with Ms. Angel-Levy that the prospects for mediation appears bleak.

7
8 12. I had resolved after the holidays to request that the Court order a custody evaluation as
9 recommended by Ms. Angel-Levy. Now Petitioner/mother has again given me reason to
10 pursue this extreme alternative.

11 13. On January 18, 2004, Petitioner/mother sent me a facsimile informing me that she is “...
12 taking a vacation Feb.20-21. We were invited to a friends [sic] cabin in Big Bear....” A copy
13 of her facsimile is attached as **Exhibit “A”**.

14
15 14. These days, of course fall during my one-weekend a month visitation for the month of
16 February 2004! As usual, I have made travel plans for my visitation with my son Oliver in
17 San Diego and they do not include going to Big Bear.

18
19 15. **I request that the Court make the following orders:**

- 20 a. **That Petitioner mother cannot take our son Oliver to Big Bear on the weekend that I**
21 **have my monthly visitation;**
22
23 b. **That a mental health professional be appointed to perform a custody evaluation as**
24 **proposed by Ms. Penny Angel-Levy;**
25
26 c. **That a hearing be scheduled, following the completion of the custody evaluation for**
27 **the Court to consider the recommendation of the mental health, the evidence and**
28 **argument of the parties, and make appropriate orders.**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

and know its contents.

☒ CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am, _____ an Officer _____ a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

X I am one of the attorneys for Respondent Clifford Roepke
a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make
this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that
the matters stated in the foregoing document are true.

Executed on February 2, 2004, at San Diego, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Jac F. Pouliot

Type or Print Name

PROOF OF SERVICE

1013a (3) CCP Revised 5/1/88

Signature _____

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of _____, State of California.

I am over the age of 18 and not a party to the within action; my business address is: _____, State of California

On, _____ I served the foregoing document described as _____

on _____ in this action

by placing ☐ the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;
by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

*I deposited such envelope in the mail at _____, California.
 envelope was mailed with postage thereon fully prepaid.

The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at _____ California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on _____, at _____, California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on _____, at _____, California.
(State) I declare under penalty of perjury and oath that _____

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
(Federal) I declare that I am employed in the office of _____, _____, California.

made.

Type or Print Name

Signature _____

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

*(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

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JOHN 10 2004 ST. 14 PM 11 ELE LALLY DESIGN 030 12 1100 P.O. 1

Michele lally
P.O. 95
La Jolla, CA 92038
858.792.8100
fax 858.792.1010
Jan. 18, 2004

Attn. Clifford Roespke

To inform you I am taking a vacation Feb. 20-21. We were invited to a friends cabin in Big Bear. I will give you the specifics before we leave.

Thank you,
Mchele Lally