

Contents for Appendix

INVOLVED STATUTES	1
1. CONSTITUTION, FIRST AMENDMENT:	1
2. Constitution, Fourteen Amendment §1	1
3. 28 USCS §455 Disqualification of	1
4. JUDICIAL CONFERENCE OF THE UNITED STATES, COMMITTEE ON CODE OF CONDUCT FOR UNITED STATES JUDGES, COMPENDIUM OF SELECTED OPINIONS § 3.6-6[1] (APR. 2013):	3
5. F.R.C.P. Rule 60(b)	3
6. California Constitution, Article VI, §14, ¶2	3
7. California Rules of Professional conduct Rule 5-300 Contact With Officials	3
8. Rule 8.57 of California Rules of Court: Motions before the record is filed	4
9. California Rules of Court Rule 8.54. Motions	5
10. California Rules of Court Rule 8.130:	6
11. California Government Code §68150:	7
12. California Government Code §68151(a)(3)	10
13. California Government Code §68152 (g)(16)	10
14. California Government Code § 68153:	10
15. California Government Code §6200 (willful destroy, falsify and alter records)	11
16. California Penal Code §96.5	11
17. California Penal Code §182	11
18. California Penal Code §278.5	12
19. Guide to Judiciary Policy Vol.2 C: §620	12
20. California Family Code 3042:	14
21. California Welfare and Institutions Code §317(e)(2) 14	
#1 CA SCT Order Filed on July 25, 2018	15
#2. CA 6th Court of Appeal's ORDER FILED May 10, 2018 without giving notice--- the court willfully sent via the email of attorneylindashao@gmail.com that the Court knew that SHAO was unable to have access to;	

abrupt dismissal in violation of Rule 8.57 of California Rules of Court. 16

#3. CA 6th District Court of Appeal’s ORDER FILED ON May 7, 2010 WITHOUT giving notice--- 3 days before dismissal, the Court wilfully sent to the email of attorneylindashao@gmail.com that the court knew SHAO could not receive.]..... 17

#4. CA 6th Dist. Court of Appeal’s Order FILED Dec. 18, 2015; California Court of Appeal Sixth District was fully aware that for 4 years no records on appeal were prepared and further had denied SHAO’s motion to direct the trial court to prepare the records on appeal. With fraud, California Appellate Court falsely accused lack of records to be on SHAO’s side and falsify false reasons in the attempts to dismiss the custody appeal in obstruction of justice. 18

#5. CA 6th Dist. Court of Appeal’s Order FILED June 10, 2015--- the Court was aware that parental deprivation was involved that should have justified expeditious processing and that fraud was involved in SHAO’s parental deprivation as WANG concealed his severe and dangerous mental illness that should have justified child custody change. 19

#6. Santa Clara County Court’s Child Custody Order of November 4, 2013, the subject for this appeal re court’s fraud]..... 20

#7. Order of 10/31/2011, 3+ months after the hearing of 7/22/2011 that creatively maintained the vacated orders of August 4 and 5 of 2011 to be valid, after granting SHAO’s motion to set aside these orders. This order is the subject of petition No. 14-7244..... 55

#8 Page 43 of Jill Sardeson’s deposition transcript admitting to ex parte communications between Respondent’s attorney David Sussman and Judge Edward Davila, that caused the supervised visitation

order and sibling separation order (Addendum to August 4, 2010's Order.)	57
#9. David Sussman's admission of illegal night time ex parte communication on August 4, 2010, the date Shao was illegally deprived of child custody.	58
#10 Orders filed on August 5, 2010, without any hearing, and the supervised visitation order was signed at the night of August 4, 2010 in response to David Sussman's voice mail (See #10 above)—subject of Petition for writ of certiorari, No. 111119	61
#11. August 4, 2010's Order issued after Lydia was locked in Jill Sardeson's office of the court for 3 hours until 5:40 p.m.	63
#12 Some evidence of conspiracy where Respondent used the social worker Misook Oh to pass on his "bottom line instruction" to Jill Sardeson	64
#13 P.10 of August 4, 2010's transcript stated the child's wishes to be with her mother, SHAO and complained abuse. See more of abuse at shaochronology.blogspot.com/2014/01/evidence . Over the objections of all three attorneys, except David Sussman, Judge Edward Davila forced separated the 5 year old from her mother and her brother who stood up to protect her.	65
#14. ORDER STAYING CIVIL TRIAL in 112cv220571 that was FILED on 3/11/2016	67
#15. SHAO's Supplemental filed ON 7/19/2018- CALIFORNIA SUPREME COURT HAD GRANTED JUDICIAL NOTICE ON 7/25/2018: EVIDENCE OF COURT'S FRAUD IN DISMISSING THIS CUSTODY APPEAL 69	
Exhibit JN-5 [sic: JN-9]	76
MOTION TO VACATE ORDERS OF JULY 3 (DENYING THE OBJECTIONS ACCEPTED FOR FILING ON JULY 3)	

AND JULY 10, 2018 THAT DISMISSED
THIS APPEAL 76

[1st attachment to jn-5[sic:JN-9] motion to vacate
orders and dismissal of Appeal H042531:
July 3, 2018’s order of California 6th District
Court of Appeal in H042531; the court Did
not enter on the docket until about July 10,
2018 and did not serve—knowingly sent to
the email that the court knew SHAO had no
access] 104

[2nd attachment to JN-5 [sic:JN-9] motion to
vacate orders and dismissal of Appeal
H042531: 2nd July 3, 2018’s order of
California 6th District Court of Appeal in
H042531 made without notice: The court
Did not enter on the docket until about July
10, 2018 and did not serve—knowingly sent
to the email that the court knew SHAO had
no access] 105

[3rd attachment to JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: 2nd July 3, 2018's order of California 6th District Court of Appeal in H042531 made without serving SHAO: The court rushed issued this dismissal after concealing its july 3 2018's order from serving shao and did not enter into the docket for all three orders until about July 10, 2018 and again did not serve shao but knowingly sent to the email that the court knew SHAO had no access; silent dismissal of H042531 appeal] 106

[Exhibit 1 to JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: SHAO's NEW e-filing account made because of unable to access the email of attorneylindashao@gmail.com]..... 107

[EXHIBIT 2 TO JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: CALIFORNIA 6TH DISTRICT COURT OF APPEAL PERSISTED ON MAINTAINING DISMISSAL BY ARGUING THAT NOTICE WAS GIVEN TO SHAO VIA ATTORNEYLINDASHAO@GMAIL.COM AND THE COURT WAS UNAWARE OF SHAO'S INABILITY TO ACCESS THE COURT, AFTER BEING SHOWN EVIDENCE TO THE CONTRARY--- THE COURT DID HAVE KNOWLEDGE OF SHAO'S INABILITY TO ACCESS THE EMAIL OF ATTORNEYLINDASHAO@GMAIL.COM THAT CAUSED SHAO TO CREATE A NEW ACCOUNT FOR E-FILING, AS EARLY AS ON MARCH 27, 2018.].... 108

- [EXHIBIT 3 TO JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: TRUEFILING'S WEBSITE ACCOUNT SHOWED THE SERVING EMAIL IS ATTORNEYSHAO@AOL.COM, NOT ATTORNEYLINDASHAO@GMAIL.COM.]..... 110
- [NOWHERE ASKED FOR EMAIL OF SHAO] 111
- [EXHIBIT 4 TO JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: MANY EMAIL NOTIFICATION FROM THE COURT SENT TO THE CORRECT EMAIL ADDRESS OF ATTORNEYSHAO@AOL.COM]..... 112
- [EXHIBIT 5 TO JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: CALIFORNIA 6TH DISTRICT COURT OF APPEAL DEFRAUDED SHAO BY SENDING TO THE CORRECT EMAIL OF ATTORNEYSHAO@AOL.COM 13 MINUTES AFTER ITS SILENT DENIAL, WHICH GAVE A FALSE IMPRESSION THAT THE COURT HAD ACCEPTED FILING SHAO'S MOTION WITH AN EXPECTATION THAT THE COURT WOULD WAIT AT LEAST DAYS, WITHOUT KNOWING THAT IT WAS ACTUALLY ALREADY SECRETLY DENIED AND SET A DUE DATE OF FILING THE OPENING BRIEF TO BE JULY 9, 2018.] .. 113
- [EXHIBIT 6 TO JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: PROOF OF SERVICE OF JULY 3'S ORDER WHICH SHOWS THAT THE COURT SECRETLY SET THE DUE DATE OF FILING THE OPENING BRIEF TO BE JULY 9, 2018 AND WILFULLY WOULD NOT GIVE ANY NOTICE TO SHAO, NOT ENTERING INTO THE DOCKET EITHER.]114

[EXHIBIT 7 TO JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: PRESUMPTION OF ADMISSION BY BETH MILLER ABOUT CALIFORNIA SIXTH DISTRICT COURT'S CONSPIRACY TO DETER SHAO FROM FILING THE OPENING BRIEF BY CONCEALING FROM SHAO THE DUE DATE OF JULY 9, 2018 THAT WAS SECRETLY SET IN THE SECRET ORDER OF JULY 3, 2018.]..... 116

[EXHIBIT 8 TO JN-5 [sic:JN-9] motion to vacate orders and dismissal of Appeal H042531: SAME SCHEME OF CONSPIRACY ON DISMISSING THE CHILD CUSTODY APPEAL BY DEFRAUDING SHAO THAT HER MOTION TO VACATE DISMISSAL WAS ACCEPTED FOR FILING BY SENDING TO THE CORRECT EMAIL ADDRESS WITHOUT KNOWING THE COURT'S SILENT DENIAL.]..... 119

#16. The other documents that California Supreme Court granted judicial notice in its July 25, 2018's Order—motion for judicial notice filed on June 19, 2018 120

JN-1: complaint, with case number of 1:18-cv-01233, which was e-filed by the Court with the USDC in the District of Columbia with ECF No. 1 on May 21, 2018 with the case number of 1:18-cv-01233 120

JN-2: attachment to Complaint, complaint, with case number of 1:18-cv- 01233, which was e-filed by the Court with the USDC in the District of Columbia as ECF No. 2[sic:1-1] on May 21, 2018 with the case number of 1:18-cv- 01233..... 121

- Exhibit 1 is relevant pages of certified deposition transcript of James McManis on July 20, 2015..... 121
- Exhibit 2: Declaration of Meera Fox filed in H-039823 on 4/24/2017 and also as being Exhibit A to her second declaration filed in H040395 on May 10, 2017. 122
- Exhibit 3: Declaration of Michael Buzzone which is relevant to show the “cozy”relationship between McManis Faulkner LLP and the Justices at California Sixth District Court of Appeal. 122
- Exhibit 4 is Declaration of Mei-Ying Hu, a teacher at Happy Childhood in Cupertino, that was filed on August 4, 2010 with the underlying family case, on the day of parental deprivation..... 122
- Exhibit 5 is the second declaration of Meera Fox filed with California Sixth District Court of Appeal in this appeal on May 10, 2017..... 123
- Exhibit 6 is Dr. Jeffrey Kline’s Declaration about decoding the mental illness of Wang, that was filed with Santa Clara County Court on December 18, 2014, yet the Court kept suppressing the evidence, for the hidden purpose of assisting James McManis and Michael Reedy to cause permanent parental deprivation..... 123
- Exhibit 7 are six docket sheets of 17-613 of the US Supreme Court case, which was printed out 6 times at different date. They are relevant to show the evidence of irregularities on this case docket, in the same patterns as the irregularities done by

	the conspirators led by James McManis and Michael Reedy.	123
	Exhibit 8 is Petitioner’s “Motion to vacate the Memorandum Pursuant to Rule 60(b)(6) filed with the Ninth Circuit, indicating the same pattern of irregularities of the Ninth Circuit.	123
#17.	Declaration of meera fox Filed with Cal.6 th Dist. Court of Appeal on 4/27/2017 in H039823	124
	EXHIBIT A TO MS. FOX’S DECLARATION: William A. Ingram Inn’s Executive Committee.....	145
	EXHIBIT B TO MS. FOX’S DECLARATION: Ingram Inn’s Executive committee’s meetings	148
	EXHIBIT C TO MS. FOX’S DECLARATION: Inn’s Meetings	149
	EXHIBIT D TO MS. FOX’S DECLARATION	151
	EXHIBIT E TO MS. FOX’S DECLARATION	153
	EXHIBIT F TO MS. FOX’S DECLARATION: CA 6th District DIsmissed this Appeal without notice as the first thing in the morning of March 14, 2016 at 9:25 a.m. ..	154
	EXHIBIT G TO MS. FOX’S DECLARATION: Saturday’s false notice in order to dismiss this appeal of H040395.....	155
	EXHIBIT H TO MS. FOX’S DECLARATION: Fraudulent Order of 3/14/2016 to dismiss this appeal (H040395).....	157
#18.	current docket of h040395] Docket (Register of Actions	158
#19	Selected Pages of the First Amended Complaint in 1:18-CV-2201571	177
#20.	Financial Conflicts of Interest of the Justices at the US Supreme Court for sponsoring gift	

solicitation of their clerks at the American Inns of Court 215

#21. TEMPLE BAR SCHOLARSHIP—a gift illegally targeting at the judiciary position of the Clerks at the US Supreme Court.....222

#22. McManis Faulkner’s news—close relationship between James McManis and Chief Justice John G. Roberts—purged in late January 2018 225

#23: Example of the William A. Ingram American Inn of Court’s social network with judges227

#24. Chief Justice John G. Roberts is an Honorary Bencher at the Middle Temple229

#25. Pending adjudication of Petition No. 17-256 where James McManis and Michael Reedy WERE Respondents, Michael Reedy was invited to the US Supreme Court.230

#26. McManis Faulkner, LLP website news: Michael Reedy, Featured Speaker for American Inns of Court 231

[omitted]#27. Evidence of lack of public confidence----
DECLARATION OF MICHAEL BRUZZONE233

#27. Evidence of lack of public confidence----
DECLARATION OF MICHAEL BRUZZONE234

#28 Presiding Judge at Santa Clara County Court refused to take an action regarding the issue of repeated false notices in order to dismiss this appeal and the issue of the court’s concealing the family case docket to be a confidential one such that SHAO was blocked from access to her own case information. She invited SHAO to make a complaint if unsatisfied with her bullying response. The Presiding Judge is Patricia Lucas who issued the corruptive child custody order of November 4, 2013 and has blocked the trial court to prepare the records on appeal for 4 years.....236

#29 Affidavit of Esther Alex Taylor submitted to the US Supreme Court in 14-7244 in support of SHAO's application for emergency relief based on new discovery of Respondent/Father's dangerous mental illness that could injure the children any time..... 239

INVOLVED STATUTES

1. CONSTITUTION, FIRST AMENDMENT:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. CONSTITUTION, FOURTEEN AMENDMENT§1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. 28 USCS §455 DISQUALIFICATION OF justice, judge, or magistrate [magistrate judge]:

(a) Any justice, judge, or magistrate [magistrate judge] of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

App.2

.....

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

...(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

.....

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

.....

4. JUDICIAL CONFERENCE OF THE UNITED STATES, COMMITTEE ON CODE OF CONDUCT FOR UNITED STATES JUDGES, COMPENDIUM OF SELECTED OPINIONS § 3.6-6[1] (APR. 2013):

When a judge or judicial nominee is named as a defendant and his credibility or personal or financial interests are at issue, all judges of the same district should recuse, unless the litigation is patently frivolous or judicial immunity is clearly applicable.

5. F.R.C.P. RULE 60(B)

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

....

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);....

(4) the judgment is void:... or

(6) any other reason that justifies relief.

6. CALIFORNIA CONSTITUTION, ARTICLE VI, §14, ¶2

“Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.”

7. CALIFORNIA RULES OF PROFESSIONAL CONDUCT RULE 5-300 CONTACT WITH OFFICIALS

(A) A member shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family

App.4

relationship between the member and the judge, official, or employee is such that gifts are customarily given and exchanged. Nothing contained in this rule shall prohibit a member from contributing to the campaign fund of a judge running for election or confirmation pursuant to applicable law pertaining to such contributions.

(B) A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except:

- (1) In open court; or
- (2) With the consent of all other counsel in such matter; or
- (3) In the presence of all other counsel in such matter; or
- (4) In writing with a copy thereof furnished to such other counsel; or
- (5) In ex parte matters.

(C) As used in this rule, "judge" and "judicial officer" shall include law clerks, research attorneys, or other court personnel who participate in the decision-making process. (Amended by order of Supreme Court, operative September 14, 1992.)

8. RULE 8.57 OF CALIFORNIA RULES OF COURT: MOTIONS BEFORE THE RECORD IS FILED

Rule 8.57.

(a) Motion to dismiss appeal

A motion to dismiss an appeal before the record is filed in the reviewing court **must** be accompanied by a certificate of the superior court clerk, a declaration, or both, stating:

- (1) The nature of the action and the relief sought by the complaint and any cross-complaint or complaint in intervention;
- (2) The names, addresses, and telephone numbers of all attorneys of record stating whom each represents and unrepresented parties;
- (3) A description of the judgment or order appealed from, its entry date, and the service date of any written notice of its entry;
- (4) The factual basis of any extension of the time to appeal under rule 8.108;
- (5) The filing dates of all notices of appeal and the courts in which they were filed;
- (6) The filing date of any document necessary to procure the record on appeal; and
- (7) The status of the record preparation process, including any order extending time to prepare the record.

**9. CALIFORNIA RULES OF COURT RULE
8.54. MOTIONS**

(a) Motion and opposition

- (1) Except as these rules provide otherwise, a party wanting to make a motion in a reviewing court must serve and file a written motion stating the grounds and the relief requested and identifying any documents on which the motion is based.
- (2) A motion must be accompanied by a memorandum and, if it is based on matters outside the record, by declarations or other supporting evidence.
- (3) Any opposition must be served and filed within 15 days after the motion is filed.

(Subd (a) amended effective January 1, 2007.)

(b) Disposition

App.6

- (1) The court may rule on a motion at any time after an opposition or other response is filed or the time to oppose has expired.
- (2) On a party's request or its own motion, the court may place a motion on calendar for a hearing. The clerk must promptly send each party a notice of the date and time of the hearing.

(c) Failure to oppose motion

A failure to oppose a motion may be deemed a consent to the granting of the motion.

**10. CALIFORNIA RULES OF COURT RULE
8.130:**

(a)

(4) If the appellant elects to proceed without a reporter's transcript, the respondent cannot require that a reporter's transcript be prepared. But the reviewing court, on its own or the respondent's motion, may order the record augmented under rule 8.155 to prevent a miscarriage of justice. Unless the court orders otherwise, the appellant is responsible for the cost of any reporter's transcript the court may order under this subdivision.

(d) Superior court clerk's duties

.....

(2) **The clerk must promptly** send the reporter notice of the designation and of the deposit or substitute and notice to prepare the transcript, showing the date the notice was sent to the reporter, **when the court receives:**

(A) The required deposit under (b)(1);

(B) **A reporter's written waiver of a deposit under (b)(3);** or

.....

(f) **Filing the transcript;** copies; payment

(1) **Within 30 days** after notice is sent under (d)(2), the reporter must prepare and certify an original of the transcript and file it in superior court. The reporter must also file one copy of the original transcript, or more than one copy if multiple appellants equally share the cost of preparing the record (see rule 8.147(a)(2)). Only the reviewing court can extend the time to prepare the reporter's transcript (see rule 8.60).

11. CALIFORNIA GOVERNMENT CODE

§68150:

(c) The Judicial Council shall adopt rules to establish the standards or guidelines for the creation, maintenance, reproduction, or preservation of court records, including records that must be preserved permanently. The standards or guidelines shall ensure that court records are created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance. They shall also ensure that the records are stored and preserved in a manner that will protect them against loss and ensure preservation for the required period of time. Standards and guidelines for the electronic creation, maintenance, and preservation of court records shall ensure that the public can access and reproduce records with at least the same amount of convenience as paper records previously provided.

(d) **No additions, deletions, or changes shall be made to the content of court records**, except as authorized by statute or the California Rules of Court.

.....

(f) A copy of a court record created, maintained, preserved, or reproduced according to subdivisions

(a) and (c) shall be deemed an original court record and may be certified as a true and correct copy of the original record. The clerk of the court may certify a copy of the record by electronic or other technological means, if the means adopted by the court reasonably ensures that the certified copy is a true and correct copy of the original record, or of a specified part of the original record.

(g) Any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, writ, subpoena, or other legal process or similar document issued by a trial court or by a judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council pursuant to this section. Notwithstanding any other provision of law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, writs, subpoenas, or other legal process or similar documents that are signed, subscribed, or verified by computer or other technological means pursuant to this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a trial court or a judicial officer of the court.

(h) A court record created, maintained, preserved, or reproduced in accordance with subdivisions (a) and (c) shall be stored in a manner and in a place that reasonably ensures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152.

(i) A court record that was created, maintained, preserved, or reproduced in accordance with

subdivisions (a) and (c) may be disposed of in accordance with the procedure under Section 68153, unless it is either of the following:

(1) A comprehensive historical and sample superior court record preserved for research under the California Rules of Court.

(2) A court record that is required to be preserved permanently.

(j) Instructions for access to data stored on a medium other than paper shall be documented.

(k) Each court shall conduct a periodic review of the media in which the court records are stored to ensure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to the standards or guidelines established by the Judicial Council.

(l) Unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under subdivisions (a) and (c) shall be **made reasonably accessible to all members of the public for viewing** and duplication as the paper records would have been accessible. Unless access is otherwise restricted by law, court records maintained in electronic form shall be viewable at the court, regardless of whether they are also accessible remotely. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

**12. CALIFORNIA GOVERNMENT CODE
§68151(A)(3)**

provides that court records include “**Other records** listed under subdivision (g) of Section 68152.”

**13. CALIFORNIA GOVERNMENT CODE
§68152 (G)(16)**

provides “(16) **Register of actions or docket**: retain for the same retention period **as for records in the underlying case**, but in no event less than 10 years for civil and small claims cases.”

**14. CALIFORNIA GOVERNMENT CODE §
68153:**

“Upon order of the presiding judge of the court, court records open to public inspection and not ordered transferred under the procedures in the California Rules of Court, confidential records, and sealed records that are ready for destruction under Section 68152 may be destroyed. Destruction shall be by shredding, burial, burning, erasure, obliteration, recycling, or other method approved by the court, except confidential and sealed records, which shall not be buried or recycled unless the text of the records is first obliterated. [Paragraph] **Notation of the date of destruction shall be made on the index of cases or on a separate destruction index.** A list of the court records destroyed within the jurisdiction of the superior court shall be provided to the Judicial Council in accordance with the California Rules of Court.”

**15. CALIFORNIA GOVERNMENT CODE §6200
(WILLFUL DESTROY, FALSIFY AND ALTER
RECORDS)**

Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:

- (a) Steal, remove, or secrete.
- (b) Destroy, mutilate, or deface.
- (c) Alter or falsify.

16. CALIFORNIA PENAL CODE §96.5

(a) **Every judicial officer**, court commissioner, or referee who commits any act that **he or she knows perverts or obstructs justice**, is guilty of a public offense punishable by imprisonment in a county jail for not more than one year.

(b) Nothing in this section prohibits prosecution under paragraph (5) of subdivision (a) of Section 182 of the Penal Code or any other law.

17. CALIFORNIA PENAL CODE §182

- (a) If two or more persons conspire:
- (1) To commit any crime.
 - (2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.
 - (3) Falsely to move or maintain any suit, action, or proceeding.
 - (4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by

false promises with fraudulent intent not to perform those promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows:

[omitted]

18. CALIFORNIA PENAL CODE §278.5

(a) Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars (\$1,000), or both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, a fine not exceeding ten thousand dollars (\$10,000), or both that fine and imprisonment.

(b) Nothing contained in this section limits the court's contempt power.

(c) A custody order obtained after the taking, enticing away, keeping, withholding, or concealing of a child does not constitute a defense to a crime charged under this section.

**19. GUIDE TO JUDICIARY POLICY VOL.2 C:
§620**

§620.25 "Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance or

other similar item having monetary value but does not include...

(g) scholarships or fellowships awarded on the same terms and based on the same criteria applied to other applicants and that **are based on factors other than judicial status.**

.....

§620.30: A judicial officer or employee shall not solicit a gift from any person who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer's or employee's official duties.

§620.35 (b) Notwithstanding this general rule, a judicial officer or employee may accept a gift from a donor identified above in the following circumstances:

...

(7)...so long as the gift is ... and is not offered or enhanced because of the judicial officer's or employee's official position, or

(8) the gift (other than cash or investment interests) is to a judicial officer or employee **other than a judge or a member of a judge's personal staff** and has an aggregate market value of \$50 or less per occasion, provided that the aggregate market value of individual gifts accepted from any one person under the authority of this subsection shall not exceed \$100 in a calendar year.

§620.45: Notwithstanding §620.35, no gift may be accepted by a judicial officer or employee if a reasonable person would believe it was offered in return for being influenced in the performance of an

official act or in violation of any statute or regulation, nor may a judicial officer or employee accept gifts from the same or different sources on a basis so frequent that a reasonable person would believe that the public office is being used for private gain.

§620.50: mandatory disclosure requirements

20. CALIFORNIA FAMILY CODE 3042:

(a) If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the court shall consider, and give due weight to, the wishes of the child in making an order granting or modifying custody or visitation.

.....

(c) If the child is 14 years of age or older and wishes to address the court regarding custody or visitation, the child shall be permitted to do so, unless the court determines that doing so is not in the child's best interests. In that case, the court shall state its reasons for that finding on the record.

**21. CALIFORNIA WELFARE AND
INSTITUTIONS CODE §317(E)(2)**

Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child. If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes.

#1 CA SCT ORDER FILED ON JULY 25, 2018

S249444

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

In re Marriage of Shao and Wang

LINDA SHAO, Plaintiff and Appellant,

v.

TSAN-KUEN, Respondent

Court of Appeal, Sixth Appellate District No.

H040395

Application for stay and Petition for Review is
denied. The request for judicial notice is granted.

CANTIL-SAKAUYE

Chief Justice

**#2 CA 6TH COURT OF APPEAL'S ORDER
FILED MAY 10, 2018 WITHOUT GIVING
NOTICE--- THE COURT WILLFULLY SENT
VIA THE EMAIL OF
attorneylindashao@gmail.com THAT THE
COURT KNEW THAT SHAO WAS UNABLE TO
HAVE ACCESS TO; ABRUPT DISMISSAL IN
VIOLATION OF RULE 8.57 OF CALIFORNIA
RULES OF COURT.**

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA SIXTH APPELLATE DISTRICT
In re the Marriage of LINDA SHAO and TSAN-
KUEN WANG,
LINDA SHAO,
Appellant,
v.
TSAN-KUEN WANG,
Respondent.

H040395
Santa Clara County No. FL126882

BY THE COURT:

The appellant having failed to procure the record on appeal within the time limits allowed or within any valid extensions of these time limits, and having further failed to apply to this court for relief from default, the appeal filed on November 18, 2013, is dismissed. (See rule 8.140(b), California Rules of Court.)

Dated 5/10/2018 Adrienne Grover, Acting P.J.

**#6. SANTA CLARA COUNTY COURT'S
CHILD CUSTODY ORDER OF NOVEMBER 4,
2013, THE SUBJECT FOR THIS APPEAL RE
COURT'S FRAUD]**

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

In re Marriage of Linda Shao, Petitioner And Tsan-Kuen Wang, Respondent	105FL126882 Statement of Decision and Order
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This extraordinarily contentious custody matter, filed in May 2005 and now occupying 36 volumes of court files, is almost as old as its subject, Lydia, born in March 2005. For eight days from July 9-18, 2013, the Court conducted a hearing for an order which the parties agree will be a final judicial custody determination, modifiable only on a showing of changed circumstances pursuant to *Montenegro v. Diaz* (2001) 26 Cal.4th 249.

The custody order currently in place, entered on August 4, 2010, as corrected on August 5, 2010 ("the 2010 Order"), provides that Respondent has sole legal and sole physical custody and that Petitioners contact with Lydia is limited to professionally supervised visitation for four hours each Saturday. Respondent, through counsel David Sussman, urges that the 2010 Order remain in effect. Court-appointed counsel for Lydia, BJ Fadem, requests that Petitioner have no unsupervised contact with Lydia "[u]ntil Petitioner has had further therapy and [submits] *proof* that *the therapy has helped.*" (Lydia 's Closing Argument ("LCA"), at 13:4-5 (emphasis in original).) Petitioner,

representing herself, requests sole legal and sole physical custody.

On July 23, 2013, Petitioner filed her 35-page Closing Argument ("PCA"), and on July 24, 2013, Petitioner filed a Request for Statement of Decision ("RSD"), specifying thirty "issues" she seeks to have the Court address. On July 30, 2013, Respondent's Closing Argument ("RCA) and the LCA were also filed. On August 6, 2013, Petitioner filed: (1) a sixteen-page Rebuttal Closing Argument ("PRCA"); (2) a sixteen-page ' Objection to Respondent's Closing Argument"; (3) a nine-page "Objection to Proposed Statements of Decision of Respondent and Minor Counsel Pursuant to Rule 3.1590 and Petitioner's Counter Proposed Statement of Decision", in which Petitioner identified eight more " issues" she seeks to have the Court address; (4) "'Table of Contents to Petitioner's Objection to Minor's Counsel's Closing Argument"; and (5) a 47-page "Objection to Minor's Counsel's Closing Argument". On receipt of these filings, the matter was submitted.

The Court's Tentative Decision was filed and served on September 24, 2013. Petitioner The Court's Tentative Decision was filed and served on September 24, 2013. Petitioner sought ex parte and was granted an extension of time to file objections. The following documents were filed on October 23, 2013, and have all been considered by the Court:(1) a four-page " Request for Further Statement of Decision Pursuant to Rule 3.1590", in which Petitioner identified 36 more. "issues" (for a total of 74) she seeks to have the Court address; (2) a 103-page "Objection to ' Tentative Decision ' Filed on September 24, 2013 ; Request [sic] Full Compliance with C.C.P. section 632 and Request for Omitted or

Ambiguous Factual and Legal Basis for the Tentative Decision Pursuant to Rule 3.1590 of California Rules of Court; Alternatively, Motion to Declare Mistrial if Tentative Decision Were Not Amended in Conformity with Laws", attaching 27 pages of material not admitted into evidence at the trial; (3) "Motion to Take Judicial Notice Supporting Petitioner's Objection to Tentative Decision", attaching 4 documents not admitted into evidence at the trial; and (4) a "First Supplement to Petitioner's Objection". setting forth ten more pages of objections. The 36 additional "issues" designated by Petitioner in her Request for Further Statement of Decision overlap and repeat many of the first 38 "issues". Neither Respondent nor counsel for Lydia responded to these filings.

Well after the evidence closed and the matter was submitted for decision, Petitioner requests that the Court receive additional evidence: the materials attached to the "Objection" and the four exhibits attached to the "Motion for Judicial Notice". No basis has been shown for re-opening the evidence at this late stage, and in any event the materials are not relevant and not admissible. The book excerpts are not authenticated and are hearsay. Exhibit 1 appears to be a minute order in a criminal case in which Petitioner apparently was charged with violation of Vehicle Code section 15620: leaving a child unattended inside a motor vehicle. In her motion at 1:17-18, Petitioner claims that the Tentative Decision "noted at Page 7, Lines 3-4 that Petitioner was charged with a crime of General Neglect, which was not at issue at the trial but adopted by the Court in the Tentative Decision". Petitioner is correct that the fact of the charge was

never presented to the Court during trial; therefore, it obviously was not referenced or considered in the Court's decision. The section of the Tentative Decision cited by Petitioner is a background chronology including a list of prior referrals to Child Protective Services (CPS"), not a reference to a criminal charge; there is nothing stated to suggest that the Court concluded that Petitioner was in any way at fault in connection with that referral or that anything about that incident contributed to the Court's order. Exhibit 2 is a copy of Petitioner's Verified Complaint against her former lawyers, which apparently she seeks to use for the truth of the matter asserted.

Exhibit 3 purports to be a copy of Model Standards of Practice for Child Custody Evaluation, which is not authenticated, not relevant and not subject to judicial notice. Exhibit 4 appears to be a transcript and numerous emails which are not authenticated and not subject to judicial notice. Moreover, even if the matter were re-opened and these materials received, they would not warrant a different decision.

Petitioner's filings following the Tentative Decision reargue the evidence and the law. They contain many assertions about the conduct of trial, including statements purportedly made by the Court, which are not supported by the record, and in any event do not warrant a different decision.

Petitioner contends that the Tentative Decision is defective because it does not address each of the 74 "issues" she has specified. She incorrectly asserts that one of the matters before the Court is her request to set aside the order appointing Dr. Orlando as the Court's Evidence

Code section 730 expert. However, that request was decided and denied by Judge Zayner on March 4, 2013: (by Judge Zayner) And just so we're clear, your motion at this time to disqualify Dr. Orlando is denied. The motion to reject the report, throw out the report, if you will, is denied." (Reporter's Transcript, March 4, 2013, at 52: 9-12.) Judge Zayner reserved for trial "[t]hose matters and issues of qualifications, training, and experience as well as the bases for any opinion to be stated": matters bearing on the admissibility and weight of Dr. Orlando's opinion. The Tentative Decision addressed Dr. Orlando's credibility and the reasons the Court gave weight to his opinion. Code of Civil Procedure section 632 does not require more.

The issue at trial was whether and to what extent the existing custody and visitation order should be modified: the Tentative Decision addressed the facts necessary to support the Court's conclusion. Petitioner's identification of 74 issues reflects her distinct view as to the scope of the issues before the Court. Nevertheless, the Court's obligation is to address the actual principal controverted issues, and the Court is not required to address specifically the many extraneous issues on which Petitioner maintains focus. *People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 525. Petitioner's alternative request for a mistrial is denied.

I. THE RECORD EVIDENCE AND ITS SIGNIFICANCE

Petitioner called ten nonparty witnesses, presented 99 exhibits, questioned Respondent for approximately ten hours, and presented two days of narrative testimony on her own behalf.

A. Dr. Michael Kerner

Petitioner called Dr. Michael Kerner, who the parties stipulated is an expert in psychological testing. Dr. Kerner conducted a psychological evaluation of Petitioner in early 2011. Petitioner perceives that Dr. Kerner's testimony strongly supports her case:

Petitioner "is conscientious about the emotional and physical needs of the Children".

- Petitioner copes well with stress.
- Petitioner scored high on the Global Assessment of Functioning.
- Petitioner has a very high level of intellectual functioning.
- Petitioner did not evidence psychotic functioning.
- Petitioner is "remarkably dedicated in caring for her children".

(PCA. at 2:26-3:8, and PRCA, at 9:2-8.)

However, Petitioner does not address or even acknowledge the numerous other aspects of Dr. Kerner's professional conclusions which, taken together, reflect negatively on Petitioner's ability to parent, and especially to co-parent, effectively. Petitioner presents with certain "personality dysfunction" highly relevant to Lydia's wellbeing (Exhibit 25, at 7):

- *Inability to perceive own weaknesses:*
Petitioner "tends to portray herself as being relatively free of common shortcomings to which most individuals will admit, and she appears to be reluctant to recognize faults or problems in herself." She "endorses no self-critical statements." (Exhibit 25, at 7 and 10.)

- *Readiness to place blame on others:* Petitioner "has a tendency to externalize problems away from herself and "persistently tend[s] to see her problems as external to herself, as resulting from the actions of others...". (Id., at 8 and 10.)
- *Inability to leave behind perceived transgressions:* Petitioner has "recurring difficulties in being able to forgive and forget, more so than the average child custody litigant." (Id., at 8.)
- *Preoccupation with details:* Petitioner "tend[s] to be overly concerned with minor details." (Id.) Dr. Kerner testified at trial that he had observed a process in Petitioner's functioning in which she distorts small details and extrapolates too far.
- *Inflexibility:* Petitioner is "an inflexible person who is set in her ways, disinclined to alter her perspectives on people and events, and reluctant to consider modifying her currently held beliefs", and her "relatively closed mind may limit her ability to function effectively as a parent". (Exhibit 25, at 8.)
- *Paranoia:* Petitioner has a "mixed profile including hysteroid, paranoid and histrionic elements", and her "feelings of paranoia [] may be evident in tendencies to view others suspiciously and attribute people working together to be against her when that is not the case." (Id., at 8 and 9.)
- *Denial and need for control:* Petitioner's "personality structure indicates significant tension, repression, denial and need for control." (Id.)

The insights gleaned from Dr. Kerner's work concerning Petitioner's "thinking style" (Exhibit 25, at 2) inform the history of this dispute and its current posture. For example, ironically Dr. Kerner's identification of Petitioner's inability to perceive her own weaknesses or shortcomings is

precisely the quality that causes her to view Dr. Kerner's report as uniformly positive and complimentary. Petitioner told Dr. Kerner that she was her father's "favorite child", that she was "'the flower' of [her] university because [she] was attractive and sociable", that she has received numerous professional acclamations, and of course that she "'considers [her]self one of the best mothers in the world'". (Id., at 5 and 6.)

Dr. Kerner also noted that as a part of her psychological evaluation, Petitioner wanted to convince him that she had been "wronged by the system." (Exhibit 25, at 2.) According to Petitioner, everyone involved in the custody determination in this case except herself is at best wrong, and most have been dishonest and unethical. Certainly, her presentation of evidence at trial and her lengthy post-trial arguments and objections confirm that this is Petitioner's perception.

The strength of Petitioner's irrational conviction that everyone, including judges and lawyers, are secretly conspiring against her, is reflected in her numerous unsuccessful challenges to judicial officers. In another example, she insists that she was deprived of her rights by counsel and Judge Edward J. Davila (who was at one time the all-purpose judge in this case and is now a member of the bench of the United States District Court for the Northern District of California), In a very animated fashion during cross-examination by Mr. Sussman, Petitioner testified that, while acting as her counsel, the McManis firm (specifically, counsel Michael Reedy) made a secret agreement with Judge Davila and Mr. Susmann not to pursue her motion to set aside the August 2010 order. Petitioner further

testified that she became aware of this agreement because Mr. Sussman admitted it on the record at a hearing on July 22, 2011. Apparently, Petitioner believed so strongly that the transcript supported her position that she herself offered it into evidence as Exhibit 86.

However, what the transcript shows is that there was *no secret*; there was *no agreement*; nor was there even a unilateral action by her counsel to forego pursuing the motion to set aside. At the July 22, 2011 hearing, Petitioner was represented by counsel Evelyn Cox (Exhibit 86, at 1:16-17), and used an assistive hearing device, (*Id.*, at 8:15-17.) Judge Mary Ann Grilli presided after Petitioner had improperly asserted a second peremptory challenge and had also asserted a deficient challenge for cause which was stricken. (*Id.*, at 3:24-4:9) In response to urging by Petitioner's counsel that a hearing on her motion to set aside the August 2010 order should begin that day, Judge Grilli explained that counsel's assumption was incorrect: that if the motion to set aside were granted, the Court might not simply reinstate the prior order, but rather would make a new order after a hearing to explore the then-current best interests of the child. (*Id.*, at 29:20-30:4.) Mr. Sussman followed up by explaining that essentially the same point had already been discussed on the record at a hearing with Judge Davila: "And Ms. Shao has been—was informed by the Court, and Mr. Reedy specifically was informed by the Court, that maybe the way—the best way to address all this is not to make a motion to set aside but to make a motion to modify. That's in the

transcripts, it's one of those Dr. Davila—Judge Davila's last hearings." (1d., at 34:3-8.)

B. *The Chronology of Events Leading Up to the 2010 Order*

The great majority of the eight-day hearing was consumed with Petitioner's presentation of evidence primarily relating to events that occurred in 2010, leading up to the 2010 Order. Petitioner focused on events in 2010 for three main reasons: 1) even though the order that will result from this hearing will supersede the 2010 Order, Petitioner wants the 2010 Order set aside on constitutional grounds; 2) the events of 2010 show, Petitioner believes, that Lydia is not safe with Respondent; and 3) because in Petitioner's view the events of 2010 show that Lydia is not safe with Respondent, they also tend to undermine the suggestion by Respondent and others that she exaggerates.

This Court concludes that a detailed review of the 2010 chronology does not confirm, but in fact refutes, each of Petitioner's three contentions, and is consistent with Dr. Kerner's observations that Petitioner dwells on and distorts details, cannot "let go" and move on, cannot appreciate any fault in her own conduct, and insists on imposing all responsibility on others.

(The following chronology, though extensive, is necessarily a summary and includes what the Court considers to be the most significant facts.)

Before 2010, there had been two referrals to Child Protective Services ("CPS"): one on May 19, 2005 (six days before Petitioner filed this action), alleging "emotional abuse" which was "evaluated out" (i.e., the social worker decided not to investigate); and one on February 12, 2009, alleging

general neglect and abuse by Petitioner, which was deemed "inconclusive". There were five more referrals in just the first seven months of 2010: the same period when Respondent and his then fiancée, Jing Zhao, purchased a home, moved in together, and married.

During the first three months of 2010, Petitioner took Lydia to the doctor once during each month. During the next four months, Petitioner took Lydia to the doctor 13 times. (Exhibit 40, at 23.)

Early March, 2010: Respondent's then fiancée, Ms. Zhao, had a 7-year-old son named Richard who lived with her and Respondent. Respondent testified that in late 2009 or early 2010, before he and Ms. Zhao lived together, on one occasion he stayed overnight at Ms. Zhao's home, and Lydia and Richard slept in the same bed. That never recurred, as Lydia and Richard had separate bedrooms in the new home.

March 13, 2010: Lydia's older brother Louis, 15 at the time, recorded his interrogation of Lydia about an alleged incident in which Richard removed Lydia's underpants. (Exhibits 42 and 56: the Court notes that the transcript offered by Petitioner fails to reflect all the sound on the audio recording, in which Louis repeatedly asks leading questions, interrupts and corrects Lydia, and uses a disapproving tone of voice. Lydia's voice indicates that she is stressed and trying to please Louis. Also, toward the end of the recording, a third voice is heard, along with what appears to be Louis's voice saying "Mom".) Louis reported the interrogation of Lydia to Petitioner, who contacted CPS. The investigation was assigned to CPS social worker

Anita Hu. Petitioner did not call Louis at trial to testify about what Lydia said.

March 14, 2010: Petitioner reported to the Sunnyvale Police Department the alleged incident with Richard. Officer Michael Franco interviewed Petitioner, Respondent, and Louis. (Exhibit 56.)

March 17, 2010: Concerning the alleged incident with Richard, the Sunnyvale police concluded that "no physical contact had taken place" and left the case inactive for "lack of evidence". (Exhibit 56.) Ms. Hu visited both Lydia and Louis at school. Ms. Hu found that Lydia had difficulty responding, and nodded her head instead of using words. Louis, who appeared nervous, told Ms. Hu that Lydia had told him that Richard "always wants to look at her vagina": despite Louis's leading questions, Lydia did not make such a statement in the recorded interview. (Exhibits 19 and 52.)

March 22, 2010: Ms. Hu conferred with Officer Franco and learned that Respondent had told Officer Franco that Richard helped Lydia remove her underpants after she had wet them while playing Wii. (Exhibit 52.)

March 25, 2010: Ms. Hu interviewed Richard who told her that "Lydia sometimes gets excited playing Wii and has wet herself before." Lydia has asked Richard to help her change her clothes and he had done so, but Richard's mother and Respondent had recently told him that only adults are allowed to change Lydia's clothing. Ms. Hu met with Respondent and Ms Zhao who told her that Louis had a breakdown in 2009, has psychosomatic symptoms, and has been receiving psychiatric attention. (Exhibit 52.)

March 26, 2010: When Ms. Hu advised Petitioner by telephone that Richard had changed Lydia's underwear after she wet herself, Petitioner advised Ms. Hu that Lydia is potty trained and that she should interview Lydia again with Louis present. Then Louis called Ms. Hu to say that he had overheard her conversation with Petitioner and that Respondent is a "retarded asshole" who cannot protect Lydia. Louis also stated that he is the only one who can protect his sister and that he knows everything that happened. At a home visit, Petitioner advised Ms. Hu that Louis has suffered severe depression and has attempted suicide multiple times. Petitioner continued to insist that Ms. Hu question Lydia again directly, and Ms. Hu responded that such questioning would be worse for Lydia who "may come to believe that she must answer in a certain way." (Exhibit 52.)

April 2, 2010: Ms. Hu learned from Sheila Altmann, the psychologist at Louis's school, that he missed two weeks in February, claimed to have a lot of illnesses, and had complained of "tremors" when it appeared that he was deliberately shaking his arm. Ms. Altmann also stated that Petitioner may be resentful of Respondent and does everything she can to destroy his relationship with Louis. (Exhibit 52.)

April 6, 2010: Officer Franco advised Ms. Hu that Petitioner has contacted him on several occasions since the initial report and has subpoenaed him to appear in Family Court. (Exhibit 52.)

April 8, 2010: After extensive investigation, CPS concluded that the allegation of neglect against Respondent concerning the alleged incident with

Richard was unfounded. However, "there are concerns that the high conflict relationship between their parents and the constant involvement of Family Court may negatively affect the children", and concern was expressed specifically about Louis's questioning of Lydia. The allegations of emotional abuse of Louis and Lydia by Petitioner "appear inconclusive." (Exhibit 52.) (The latter finding was later vacated for lack of notice to Petitioner. (Exhibit 18.)) Ms. Hu testified at trial about her concern over the repeated leading questions put to Lydia about the alleged incident with Richard.

April 30, 2010: During the 30-day period starting April 30, 2010, Petitioner took Lydia to the doctor 9 times (April 30, May 4, 6, 14, 15, 17, 22, 23, and 29).

May 13, 2010: Jill Sardeson, Family Court Services ("FCS") social worker, spoke to Ms. Hu. and interviewed Petitioner, Respondent and Respondent's counsel. (Exhibit E.)

May 14, 2010: Ms. Sardeson interviewed Louis, Lydia, Respondent, Ms. Zhao and Richard. She conducted family observations of Lydia with Petitioner and Louis. (Exhibit E.)

May 17, 2010: CPS received a referral alleging general neglect by Respondent relating to Richard hitting Lydia with a bike. The referent stated that there had been a Family Court mediation on May 14, repeated the (unfounded) allegation that Richard touched Lydia, and claimed that Richard was hurting Lydia in retaliation for "telling on him." (Exhibit 75.) The investigation was assigned to CPS social worker Mi Sook Oh.

May 18, 2010: Ms. Sardeson had telephone contact with counsel and Petitioner. (Exhibit E.)

May 20, 2010: Ms. Oh interviewed Respondent concerning the May 17 referral. (Exhibit 75.)

May 21, 2010: Petitioner left two long voicemail messages for Ms. Oh, continuing to pursue the incident determined to be unfounded in the March 13 referral and stating that Petitioner does not want Lydia to have her scheduled time with Respondent that weekend. (Exhibit 75.)

May 24, 2010: Ms. Oh interviewed Lydia who repeatedly stated that she had fun playing with Respondent and Richard. Lydia's teacher, Ms. Campbell, stated that Lydia was not traumatized or fearful after the recent bike incident, and that Respondent is the more responsible and reliable parent, consistently compliant with school policies. (Exhibit 75.)

May 25, 2010: Petitioner continued to insist that Lydia was traumatized and that she should have no time with Respondent for at least three months while she "recovers". When Ms. Oh interviewed Louis, he admitted that he had been severely depressed and had problems with school attendance. Louis also kept returning to the topic of the unfounded allegation of sexual abuse. Respondent told Ms. Oh that Lydia and Richard enjoy playing together, that he does supervise their play, and that Lydia did not fall from the bike but injured her lower back by sitting in front of the bike seat. (Exhibit 75.)

May 26, 2010: On approximately this date, Ms. Sardeson had telephone contact with Ms. Oh. (Exhibit E.) Ms. Oh concluded that the bike incident alleged in the May 17 referral was an accident between two young children and that the

allegation of general neglect on Lydia by Respondent was "unfounded". (Exhibit 75.)

June 1, 2010: CPS received a referral alleging general neglect by Respondent, which was determined to be "unfounded", and emotional abuse by Petitioner, which was determined to be "inconclusive".

June 23, 2010: Ms. Sardeson had telephone contact with Theresa Campbell, director of TLC, Lydia's preschool. (Exhibit E.)

Early July 2010: Respondent married his fiancée, Jing Zhao,

July 7, 2010: Ms. Sardeson met with counsel; Petitioner attended by phone. Ms. Sardeson wrote a letter to Dr. Todd Lewis, Lydia's doctor. (Exhibit E.)

July 8, 2010: Ms. Sardeson wrote a letter to counsel and Petitioner. (Exhibit E.)

According to Ms. Campbell at TLC, Petitioner and Louis came to Lydia's school. Petitioner instructed Lydia to call 911 if Richard hurts her. Louis told Lydia to call 911 if anyone is smothering her with a pillow and demonstrated how Lydia should pinch Richard. (Exhibit 77.)

July 9, 2010: CPS received a referral alleging emotional abuse by Petitioner, which was determined to be "inconclusive".

July 13, 2010: Ms. Oh interviewed Ms. Campbell at TLC. who advised that although Lydia was in Respondent's care that week, Petitioner came to school every day and sat by Lydia almost every day. (Exhibit 77.) Then Ms. Oh interviewed Lydia alone, and Lydia said she came to school late because her mother always got her up late. Lydia repeatedly brought up the bike incident from months ago. Although Lydia stated that she gets

hurt at Respondent's home, she could not provide any detailed information about how she supposedly got hurt. Lydia stated that "I need to call 911 at daddy's home." Then Lydia said that Richard hit her head accidentally and that no one hurts her at daddy's home.

July 15, 2010: CPS received yet another referral alleging general neglect by Respondent, restating the bike incident and also claiming that Richard hit Lydia with a stick. (Exhibit 77.) Because of the pending referral, this matter was also assigned to Ms. Oh.

July 18, 2010: Another reporting party repeated the underpants allegation, claiming that it was "sexual harassment", stated that Richard "strangled" Lydia and "tried to kill her" and that Lydia was afraid of Richard. These claims were added to the July 15 referral. The reporting party stated that he was with Petitioner and Lydia in San Francisco and that Lydia did not want to go to Respondent's home that night (as the custody order required). (Exhibit 77.) Ron Blankenhorn was at that time Petitioner's boyfriend.

July 20, 2010: Petitioner contacted Sunnyvale Department of Public Safety about alleged neglect and choking of Lydia by Respondent. Petitioner reported to Officer Santiago that she "took it upon herself to question her daughter about the various incidents that have been taking place with her daughter [and] presented [Officer Santiago] with a compact disc that contained various recordings of her, asking her daughter questions about the abuse she has been receiving." (Exhibit 56.) Ms. Oh conducted a visit at Respondent's home, and noted that Lydia looked happy playing with Respondent

and Richard. Ms. Oh interviewed Lydia who told her that Richard hurt her yesterday. When Ms. Oh asked where Richard hurt her. Lydia did not answer and said that Richard hurt her two days ago. Then Ms. Oh said that she thought Lydia had just come to Respondent's house yesterday, and Lydia did not say anything. When Ms. Oh asked if anyone told her to say something, Lydia stated that Petitioner and Louis asked her many times "if Richard hurt, strangled, choked you." When Ms. Oh asked how many times Petitioner and Louis had asked these questions, Lydia stated "20 times". (To counteract this evidence, Petitioner testified that when Lydia says "20 times", that is "a funny way to say 'many times'"). However, when Lydia told Louis that Richard had pulled down her pants "I don't know, maybe a hundred times" (Exhibit 19), Petitioner insisted that that implausible statement was literally true.) Lydia also told Ms. Oh that Petitioner and Louis told her that she (Lydia) "need[s] to call 911 and wave [her] hands." Ms. Oh noted that Lydia seemed confused and provided contradictory information. Then Lydia told Ms. Oh that when she was playing tennis with Richard, a tennis ball hit her shoulder accidentally and that it was not a hard hit. (In her narrative testimony, Petitioner claimed that Lydia made a "vocabulary mistake": i.e., when she says "accidentally", she means "willfully".) Lydia stated again how she enjoyed playing with Richard. Then Ms. Oh interviewed Respondent, who stated that Petitioner had refused to return Lydia to his care on July 18. He stated that when Lydia arrives, she recites "I hate Richard and I don't want to go to daddy's home", but then she forgets and immediately plays with Richard. (Exhibit 77.)

July 21, 2010: When Ms. Oh explained to Petitioner what she had learned from Lydia. Petitioner immediately responded that Lydia had been threatened that if she did not lie, she would be beat up. Petitioner "continued to speak without listening." (Exhibit 77.)

July 22, 2010: Petitioner came to Lydia's school during, Respondent's custody week. According to Lydia's teacher, Lydia was not happy to see Petitioner and told her "No, no, I'm fine." Ms. Oh met with Louis, Petitioner and Mr. Blankenhorn. When Ms. Oh requested to have an individual interview with Louis, Petitioner initially allowed it but then immediately returned and requested that Mr. Blankenhorn be present. Louis insisted on going back over the previous CPS referrals determined to be unfounded, and stated that he would kill himself if a daughter of his were sexually molested. Louis insisted that Lydia was forced to ride on Richard's bike and was badly bruised when the bike fell. Louis stated that Richard had strangled Lydia and threatened to kill her. Louis appeared very anxious during the interview. When Ms. Oh then interviewed Petitioner, also with Mr. Blankenhorn present, Petitioner admitted that she told Lydia to call 911 when Richard hurts her. After Ms. Oh explained to Petitioner that some aspects of her conduct could be harmful to Lydia. Petitioner and Louis both sent her multiple emails and voicemails after the meeting. (Exhibit 77.)

July 26, 2010: Petitioner took Lydia to the doctor who told Petitioner that she had been coming too often, so Petitioner took Lydia to an urgent care facility at 8:30 p.m. No injuries were observed, and Lydia was happy and not anxious. (Exhibit 40, at

23.) At 11:00 p.m., Petitioner took Lydia to the Sunnyvale Department of Public Safety. (Exhibit 77.)

July 27, 2010: Petitioner called the Sunnyvale Department of Public Safety at 4:00 a.m., and went back to the station at 11:00 a.m. and again in the late afternoon, to make a child abuse report. (Exhibit 77.) Petitioner testified that the police did not want to take Lydia's photograph and that between visits to the police, she took Lydia to get medical attention.

July 28, 2010: Ms. Oh reviewed recordings of interviews of Lydia conducted by Petitioner and Louis. In the interviews, Petitioner repeatedly asked leading questions "until she hears what she wants to hear from Lydia." Lydia's answers were vague and inconsistent. (Exhibit 77.)

July 30, 2010: Ms. Sardeson had telephone contact with Dr. Lewis, Lydia's pediatrician. (Exhibit E.)

August 1, 2010: Petitioner refused to return Lydia to Respondent on the exchange date. CPS received a referral after Petitioner brought Lydia to the doctor and Lydia had a "scared face". Lydia then told the reporting party that Respondent had beaten her on the back. Another party, who called CPS to be sure that a report had been tiled, added that Respondent beat Lydia in retaliation for "crying police"; that Respondent ordered Richard to "beat her up"; that Respondent "beat [Lydia] with a tennis racket for several hours"; that Respondent picked Lydia up off the ground and dropped her on her head; and that Respondent squirted water in her eye and poured apple juice on her head. (Exhibit 76.) At trial. Petitioner testified that "I really could not believe" this tale, "but that's what Louis reported."

August 2, 2010: Ms. Sardeson had telephone contact with Ms. Oh of CPS, and with Detective Monge of the Sunnyvale Department of Public Safety. (Exhibit E.) Ms. Oh completed her investigation concerning the July 15 referral, finding that the claim of neglect by Respondent was "unfounded" and that "the risk for emotional abuse on the child by the mother is moderate." (Exhibit 77.) Petitioner now accuses Ms. Oh of "distort[ing] facts" in connection with both the July 15 referral and the August 1 referral. (PRCA, at 7.) When Ms. Oh interviewed Petitioner about the August 1 referral, Petitioner claimed that Lydia was severely abused by Respondent on July 21 (the day before Petitioner went to Lydia's school and Lydia told her that she was fine). Ms. Oh interviewed Lydia again at her school. The teacher requested to be present during the interview. Lydia immediately stated that she doesn't want to go to daddy's home and that her daddy hurt her and that Richard helped her daddy hurt her. Lydia stated that she "kicked my daddy's feet 10 times and my daddy stepped on my toe 7 times" and that "[my] daddy hit my neck, nose, eye and ear and he scratched my hand." When Ms. Oh asked when that happened, Lydia responded "tomorrow morning". Then Lydia spontaneously stated that Respondent is a "liar", and when Ms. Oh asked if she understood what that means. Lydia said "yes, my daddy is a monster." When the teacher left the room to take a call and Ms. Oh asked Lydia if anyone told her what to say. Lydia stood up and approached Ms. Oh and whispered "My mother and brother told me what to say." (Exhibit 76.) At trial. Ms. Oh testified that it is very important when a child reports that she has been told what to say, and

that is why she made a note of it in her report. Petitioner claims that Ms. Oh "harass[ed] Lydia" during this interview. (PCRA, at 7.) Petitioner also accuses Ms. Oh of being corrupt, incompetent and unprofessional. (Id., at 4, 6.)

August 3, 2010: Ms. Sardeson again had telephone contact with Ms. Oh of CPS. and with Detective Monge of the Sunnyvale Department of Public Safety. (Exhibit E.)

August 4, 2010: Ms. Sardeson again had telephone contact with Nits. Oh of CPS. (Exhibit E.) The emergency screening, long deferred because of all the CPS referrals, came on for hearing before Judge Davila. Petitioner claims that the August 5, 2010 order was made without a [further] hearing. (E.g., RSD, at 1:27.) There was a hearing on August 4, 2010: the transcript reflects that Ms. Sardeson, though not sworn, explained at considerable length the bases for her recommendation and her conclusion that she had "grave concerns [] regarding what is happening for this child. She is so torn with what she needs to say or what she's expected to say." (Exhibit 40, at 15:26, and 25:19-21.) Petitioner had ample opportunity to address the Court--and did so at substantial length, for approximately 24 minutes until 5:30 p.m. (Id., at 44:6-8.) Given the late hour, Judge Davila offered to continue the proceeding, but Petitioner stated that she was not available and offered no alternative date. Although the recommended order entered on August 4, 2010, referenced at section 10 that the required supplemental forms for supervised visitation were attached, inadvertently they were not. Also, although limitations on Louis's access to Lydia (other than telephonic) were discussed at the

hearing (Exhibit 40, at 26), the order inadvertently omitted to include appropriate language on that issue. While there was no *further* hearing on August 5, 2010, the supplemental order entered that day changed nothing other than to address those formal deficiencies: adding the Mandatory FL-341(A) and Addendum to Supervised Visitation Order FL-341(A) as well as the references to Louis in sections 2 and 11.

Petitioner questioned Ms. Sardeson at trial: "You did not have sufficient time to interview Lydia?" Ms. Sardeson responded: "No, this child had been interviewed so many times. The more you interview a child, the less likely they are to tell you what actually happened. It is not helpful to children to be interviewed over and over."

Ms. Sardeson also testified at trial that when she first interviewed Lydia, the child expressed no concern about Richard or Respondent and conveyed that she and Richard liked each other. However, by the time of the second interview shortly before the emergency screening hearing, Lydia's demeanor had changed: "she came in clearly with a message to say", as if she had been told that you need to tell them that dad hurts you. Ms. Sardeson further testified that generally if something has happened to a child, he or she will disclose it in context; however, Lydia blurted out-of-context statements about her father hurting her, some relating to incidents long past. Ms. Sardeson concluded that she was concerned about Lydia in Petitioner's care: that Petitioner is emotionally traumatizing Lydia with coaching, questioning, always taking Lydia to the doctor and the police, suggesting by all these words and acts that Lydia must say that

Respondent was hurting her. In Ms. Sardeson's view, it would be detrimental to Lydia to be in Petitioner's care without supervision because Petitioner has no ability to restrain herself from this conduct. Just as she does with CPS, Petitioner also accuses PCS of dishonest and unethical conduct, both by Ms. Sardeson and by FCS Director Sarah Scofield. (PRCA, at 3, 5.)

C. The Events Following the 2010 Order including Dr. Orlando's Evaluation

At trial, Petitioner called Ms. Esther Alex-Taylor who, pursuant to the August 2010 Order, provided professional supervision of Petitioner's visitation with Lydia. Ms. Alex-Taylor testified that Petitioner is "an overprotective mother" who, when Lydia rode a bike, would provide kneepads and still run alongside the bike to protect Lydia from the tumbles that are part of learning to ride. Ms. Alex-Taylor observed Petitioner "literally stuff[ing] food into [Lydia's] mouth." During supervised visits, Petitioner on occasion would take Lydia away where Ms. Alex-Taylor could not hear their conversation, contrary to the rules of supervised visitation. Ms. Alex-Taylor observed that Respondent would tell Petitioner one thing and yet she "hears something else." (Exhibit A, at 23.) Ms. Alex-Taylor also observed that Respondent was "accommodating and flexible" when it came to facilitating Petitioner's visitation. (Id.)

Moreover, despite her arguments about being "deprived" of her child, Petitioner did not spend the weekly time with Lydia which the 2010 Order contemplated. Ms. Alex-Taylor testified that Petitioner would cancel or cut short her visits when Louis was unavailable or had to leave early. After

Louis turned 18 in May 2012, there were no visits at all in the nine months until February 25, 2013. On that date. Petitioner spent 1.5 hours with Lydia; 1 hour on March 13; and 1.5 hours on April 6. Then there were no visits at all in May 2013, and a total of only 5 hours on three dates in June.

In November 2011, the Court appointed Dr. John Orlando as an Evidence Code section 730 expert to conduct a custody evaluation. (Exhibit A.) Dr. Orlando perceived the same concerns as every other professional who interviewed the parties involved, and concluded:

While it is clearly the mother's desire to have care of Lydia, and there is no indication that the mother presents risk to Lydia's physical care, for the reasons contained in the body of evaluation, *there is substantial concern that Lydia would be at significant risk for both psychological and emotional damage, were she permitted to be in her mother's unsupervised care.* It was alarming to the evaluator, upon review of supervised visitation logs, that the mother made repeated inquiries regarding Lydia's health, safety and welfare while in her father's care, force-fed Lydia, and engaged Lydia in religious rituals and practices that may have been alarming or unsettling for Lydia....
There is no value in telling the mother to discontinue her actions if there is no change in her rigidly held, but distorted and ineffective belief system.

(Id., at 29-30 (emphasis added).)

When Dr. Orlando testified at trial, he explained his recommendation at length. All of

Petitioner's numerous allegations of abuse or neglect by Respondent had been professionally investigated and were determined to be unfounded. Yet Petitioner refused to let go of her accusations which are, in Dr. Orlando's words, "both crazy and serious." Lydia has been forced by Petitioner to create dual identities" to account for her own positive experiences with Respondent and Petitioner's relentless expectation that she can uncover a shortcoming in Respondent's care of Lydia. Lydia is thereby forced to live with the guilt of lying and keeping secrets, to "sell out one parent as a form of self-preservation" in the face of Petitioner's constant interrogation. The effect of this stress on Lydia was apparent. She was "exceedingly anxious" in speech and manner when in Petitioner's presence, and unable to address the most benign question (e.g., "what is your favorite thing to do with your mom?"), lest she get the answer "wrong". (Exhibit A, at 13.)

In Lydia's own words: "My mom is very worried, because my dad does not take care of my privates, and she said that my skin is too dry all the time. Sometimes, when I am with mom, she asked me too many times if my skin is too dry. Most of the time, I feel fine when I go to visit. But my morn tells me that my skin is too dry and my dad is not taking good care of me. Then, I do not feel good any more. Morn gives me vegetable sauce, it tasted very yucky, but I think it is because Louis and my mom feed it to me, and my mom says it will make me feel better. I am happy that my dad does not make me eat that vegetable sauce. *Sometimes, mom asked me over and over again if I feel good. If I tell her I am okay, she does not believe me. She really thinks that*

daddy does not take care of me. He does. But if Louis and my mom did not like my daddy, it is too hard for me to say he takes good care of me. I just tell my mom that I do not feel good, or that my skin is too dry, because if I say I am okay she will not listen. I do not want to spend all of my visit with my mommy talking about daddy, so I just tell her he does not take care of me. I wish mom could know that daddy takes good care of me. I just tell her he does not, because she does not believe that he does." (Exhibit A, at 11.)

In Dr. Orlando's view, Lydia's older brother had been severely damaged emotionally by Petitioner, and Dr. Orlando was concerned that the same thing would happen to Lydia as well. Louis has suffered a "level of enmeshment" with Petitioner that left him unable to identify himself apart from her. When Louis at age 17 was interviewed by Dr. Orlando in January 2012, Louis presented as "particularly solemn and distracted", with a "noticeably flat" affect. (Exhibit A. at 5.) Dr. Orlando found Louis "unanimated and emotionally unresponsive", "uncertain and anxious", as well as "guarded, cautious, defensive, and disengaged." (Id.) Louis was "unable to maintain eye contact, and any eye contact was brief and quickly broken." (Id.) Louis's mental process "bounced between concrete and confusing, and at times was strange and illogical", and his reasoning was "often poorly organized." (Id., at 6.) Louis admitted to having "preoccupations" and "obsessive thoughts", and "hav[ing] had severe depression in the past". Louis described "having irrational and unexplainable experiences". and recounted details of his paranoia, compulsiveness, isolation, and anxiety. (Id.) At that

time, he was taking psychotropic medications including Zoloft, Adderall, and Clonidine. Louis stated that he was performing poorly in high school and was in special-education classes.

Louis described his relationship with his mother as "very close--intimate": "I have always been close to my mom; I am a mama's boy. I want my mom to hold me." (Id., at 7.) When Dr. Orlando asked Louis how his mother encouraged him to be independent, his answer was: "What does that mean? I'm not sure. My mom is who I depend on." (Id.) Dr. Orlando asked twice how Louis is different from his mother, and the answers addressed only similarities. When asked a third time to identify any uniqueness between him and his mother, Louis in exasperation stated only that "We have different drawing styles. My mother is traditional and I draw cartoons." (Id.) Dr. Orlando concluded that [t]here is a significant level of enmeshment, interdependence, and fused identities within the relationship between mother and son. The boundaries between mother and son are so diffuse, that Louis was unable to identify any substantial way in which he and his mother are unique individuals." (Id., at 28.)

With a demeanor that conveyed his professional angst, Dr. Orlando testified that Louis's leading interrogation of Lydia concerning the alleged underpants incident with Richard was "alarming" and "unbearable to read", and "so contaminated that it was of no value". He expressed his concern that Louis's interrogation had contaminated every investigation thereafter. He also expressed his concern that Petitioner is unable to perceive the damage to Lydia caused by this interrogation and her involvement in the litigation.

In connection with this trial, Petitioner requested that Lydia be interviewed yet again, by the Court in chambers: the Court declined to do so.

Petitioner is unable to recognize that Dr. Orlando's conclusion is based on a comprehensive investigation including input from both Lydia and Louis. She continues to insist that the conclusion is based solely on an "incompetent diagnosis" of her own mental health. (PCA, at 3:14-19.) In keeping with Dr. Kerner's observation that Petitioner seizes on details and lets them distract her from the big picture, Petitioner remains focused on the fact that Dr. Orlando erroneously referred to himself as a psychologist. However, it is undisputed that Dr. Orlando has all the credentials and experience to function properly and competently as a custody evaluator. In a further attempt to discredit Dr. Orlando's conclusion, Petitioner called Dr. Jeffrey Kline to critique aspects of Dr. Orlando's procedure, such as not interviewing "significant others" and not conducting a home visit. Dr. Kline ultimately conceded that, while the analysis may be lacking, the conclusion may still be accurate. Although Petitioner has paid Dr. Kline over \$9,000 for his work on this case, she has not complied with the court order to pay Dr. Orlando's fees, claiming that she cannot afford to do so.

D. Why Supervised Visitation is Required

The Court is persuaded by the concerns articulated by all the professionals who have made a thorough study of this matter by interviewing the individuals involved: Ms. Hu, Ms. Oh, Ms. Sardeson and Dr. Orlando. Each of them has expressed concerns about the risk of potential emotional and psychological damage to Lydia from Petitioner's

conduct that she appears not to be able to stop: relentless accusations and unchangeable beliefs, despite all the evidence and conclusions to the contrary, that Lydia is safe and thriving in Respondent's care. Both Ms. Sardeson and Dr, Orlando are convinced that Lydia is not safe from this risk unless her time with Petitioner is supervised. Of particular concern to the Court is the evidence that significant psychological damage was inflicted on Lydia's older brother Louis, rendering more real and immediate the risk that Lydia may suffer the same damage if not protected.

Petitioner appears to believe that because of her grievance proceeding concerning the CPS "inconclusive" determination of the allegation of her emotional abuse of Lydia, there is no evidence of emotional abuse. That conclusion simply does not follow. Nor is the Court precluded from considering the ample record evidence, revealed in the CPS investigations and otherwise, and concluding that there is sufficient evidence of emotional abuse to warrant a continuation of the supervised visitation order.

The record is replete with examples of Petitioner's unwillingness or inability to modify her views or her behavior when it would be rational to do so. Petitioner confirmed in her very brief cross-examination how strongly she still believes her unfounded allegations of abuse and neglect by Respondent. Her extensive post-trial filings further corroborate this.

The Court has considered at some length whether there is any alternative to continued supervised visitation which would adequately protect Lydia from these risks while also providing

the benefits of unsupervised visitation. After carefully considering all these factors, the Court concludes that no alternative to supervised visitation is adequate to protect Lydia given the record evidence.

II. ORDER

A. *Custody*

Respondent shall have sole legal and sole physical custody. Lydia shall be in Respondent's custody at all times except as designated by the supervised visitation time.

B. Selection of Providers

Respondent shall have the right to select Lydia's educational and medical providers. Respondent shall have the sole authority to enroll Lydia in extracurricular activities. Respondent shall ensure that Lydia attends all scheduled functions (games, practices, lessons, performances, etc.) during his scheduled time with Lydia.

C. Access to Records

Both parents shall have access to medical and school records pertaining to Lydia. Each parent shall be responsible for contacting the school(s) and medical provider(s) to receive information.

Petitioner may not contact the providers more than one time in a week. If Petitioner contacts the providers more than once in a week, the providers have the authority not to speak to her after the first conversation in the week.

D. Supervised Visitation

1. Agency/Professional Supervised Visitation

Petitioner shall have visitation supervised by a professional agency. Petitioner may have four hours per week with Lydia every Saturday that

accommodates the agency's time constraints: 10 a.m. to 2 p.m. unless the parents agree otherwise. Petitioner may continue to use the professional agency previously in place. if Petitioner desires to change to a different professional agency, advance court approval is required. The parents shall supply the supervising agency with a copy of this order as well as Mandatory Judicial Council FL-341(A) and Addendum to FL-341(A) which are attached. Family Court Services and the selected agency shall have the right to exchange of information. The agency shall have the authority to release information to Family Court Services upon request.

2. No Other Contact

Petitioner shall have no contact with Lydia, except for agency supervised visitation, All other forms of contact are prohibited. including but not limited to: telephone calls, notes, letters, emails. texts, or message of any kind sent through third persons. Furthermore, Petitioner shall not visit Lydia's school during school hours or at any time when Lydia is at the school grounds_

3. Fees

Petitioner shall be responsible for the payment of fees subject to modification by the Court. All parties are hereby notified that they have the right to file a motion to request modification of this fee allocation. Private health insurance may be used to the extent the family is eligible.

D. Therapy for Petitioner

Within 30 days of this order, Petitioner shall begin therapy with a licensed mental health professional trained to work with issues related to separated parents, for purposes of addressing issues related to the Court's concerns as set forth in this

order. The selected therapist shall review this order in its entirety before therapy begins.

E. Conduct Orders

The parents shall adhere to the following standard of conduct with Lydia and shall ensure that any significant others, friends and family members shall also adhere to this conduct.

1. Interrogation

Neither parent shall permit Lydia to be interrogated about what happened while in the care of the other parent or about disputed child custody or visitation issues.

2. Threats

Neither parent shall expose Lydia to any threats related to custody or visitation, including but not limited to threats of loss of contact with either parent or their families.

3. Discussion of Custody Issues

The parents shall not expose Lydia to any verbal or written discussion of custody disputes or legal proceedings. Neither parent shall tell Lydia anything intended to frighten her or cause her to fear losing contact with a parent; nor tell her that the other parent does not love her; nor tell her the other parents does not want to see here, has caused the break-up of the family or is interfering with visits.

4. Alienation

Neither parent shall expose Lydia to inappropriate information or comments intended to alienate her from either parent or relationship(s) with both parents.

5. Corporal Punishment

Neither parent shall permit Lydia to be subjected to corporal punishment of any kind, including but not

limited to any violence, physical aggression, incidents of extreme or hostile conflict, profanity, or name-calling.

G. Petitioner's Request for Finding that She is Not a Vexatious Litigant

Petitioner has requested that the Court find that she is not a vexatious litigant. (RSD, at 1:22.) This request is not procedurally proper: Code of Civil Procedure section 391, et seq., does not provide a basis for a negative finding or a specification of the consequences of such a finding, and Petitioner made no motion which would have afforded Respondent notice and an opportunity to be heard.

In any event, the record evidence would not support such a finding. Although the Court is aware that an order was filed in this action on November 12, 2010, denying a motion by Respondent that Petitioner be found to be a vexatious litigant, almost three years have passed and a different record is before this Court which includes Petitioner's initiation of:

- over 50 ex parte motions (Respondent's Closing Argument ("RCA"), at 2:1-14)
- at least seven judicial challenges for cause (all denied)
- three judicial peremptory challenges
- several referrals to CPS
- a grievance proceeding with CPS
- a proceeding in the United States Supreme Court (Exhibit 31)
- motions to remove Mr. Fadem as counsel for Lydia, and to remove David Sussman as counsel for Respondent
- accusations of dishonest and professional misconduct against two custody evaluators (Dr.

Orlando and Dr. Newton), two CPS social workers (Mses, Hu and Oh), and two Family Court Services social workers (Mses. Sardeson and Scofield).

- claims against three attorneys who formerly represented her (Daniel Jensen, Hector Moreno, and Michael Reedy), as well as against custody evaluator Dr. Newton (Exhibit 25, at 5)

For the procedural reasons stated above, the Court makes no finding on this issue.

Dated: November 1, 2013

Hon. Patricia Lucas

Judge of the Superior Court