

SUPERIOR COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_

In re the Marriage of:	)	Case No.
	)	
	)	
Petitioner,	)	ORDER APPOINTING SPECIAL MASTER
and	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	
_____	)	

Pursuant to stipulation,  
 The matter came on regularly for hearing in Dept. \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_ Judge presiding, \_\_\_\_\_ Petitioner, \_\_\_\_\_ appeared in person and by counsel \_\_\_\_\_, Respondent, \_\_\_\_\_ appeared in person and by counsel \_\_\_\_\_, and good cause appearing:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

I. APPOINTMENT

A. Katie Fones is appointed Special Master under Evidence Code Sec. 730, Code of Civil Procedure Sec. 1280, *et seq*, and Code of Civil Procedure §638/639 until resignation of Katie Fones or written agreement of the parties, or further Court Order.

B. This appointment is based upon the expertise of the Special Master as a licensed real estate agent (DRE #02028807). The Special Master shall be the listing agent of the parties' real property commonly known as \_\_\_\_\_, CA. and shall have authority to make decisions regarding the sale of the real property including but not limited to the following issues:

II. AUTHORITY

1. Preparation of the property for sale, including who pays for repairs and preparation, and when payment shall be made.
2. Procuring of reports and inspections on the property, including who pays for the reports and inspections and when payment is to be made.
3. Listing price of property.
4. Who shall reside in the property pending sale.
5. Terms of any offer to be accepted, and of any counter offers to be made.
6. Showing times and arrangements for the property including the use of a lockbox and signs.
- 7.

In the event that either party shall fail or refuse to sign any documentation required to carry out the decisions of the Special Master (including but not limited to escrow papers, contracts and deeds), the clerk of the above entitled Court shall sign on behalf of such party upon the request of the Special Master.

**The Special Master shall indicate in any listing agreement, deposit receipt, counter offer or other contract pertaining to the sale of the property that the sale is subject to the jurisdiction of the above entitled Court. Any objection to said agreement or contract must be brought by the objecting party within ten (10) days of the making of the order by the Special Master under the procedure prescribed in paragraph V (B).**

III. QUASI-JUDICIAL IMMUNITY

The Special Master is an Officer of the Court. The Special Master has quasi-judicial immunity. The Special Master cannot be sued based on his or her actions in this matter. The Special Master cannot be compelled to testify and is not subject to Subpoena pursuant to Evidence Code Sec. 703.5. However, the Special Master may choose to testify if the Court so requests, or upon application of the Special Master to the Judge notifying the Court of the Special Master's desire to testify. Such testimony shall not constitute a waiver of the Special Master's quasi-judicial immunity.

IV. PROCEDURE

A. Both parties shall participate in the dispute resolution process as defined by the Special Master and shall be present when so requested by the Special Master. The Special Master shall conduct hearings as Arbitrator, that is, they may be informal in nature, can be by telephone or in person, and need not comply with the rules of evidence. No record need be made, except the Special Master's statement of decision or order, except that at the option of either party, any hearings before the Special Master can be recorded by audio or video technique. Upon the request of either party the Special Master shall allow testimony to be taken or either party to be represented by an attorney, or other actions required by Arbitrators.

B. The Special Master shall have the authority to determine the protocol of all interviews and sessions including, in the case of meeting with the parties, the power to determine who attends such meetings.

C. The Special Master may utilize consultants and/or assistants as necessary to assist the Special Master in the performance of the duties contained herein.

V. DECISIONS

If the Special Master is appointed by agreement, then unless his/her powers are limited in some way by the agreement, or unless the agreement provides for an alternate method of judicial review, the Special Master may make all decisions subject to the following forms of judicial review.

A. The Special master may make direct orders, subject to disapproval by the Court and reviewed only by a standard of abuse of discretion. These orders will be effective when made, and continue in effect until set aside by a Court of competent jurisdiction.

B. Hearings granted to review the decisions of the Special Master shall in general, be submitted on declaration, subject to cross-examination, as any other family law motion, unless oral testimony is requested pursuant to local rules. As provided in paragraph II any such motion shall be filed within ten (10) days of the date of the Special Master's written order/decision.

VI. COMMUNICATION WITH SPECIAL MASTER

A. The parties and their attorneys shall have the right to initiate or receive *ex parte* communication with the Special Master. Any party may initiate contact in writing with the Special Master, provided that copies are provided to opposing counsel simultaneously.

B. The Special Master may communicate *ex parte* with the Judge, at the discretion of the Special Master and the Judge.

C. The parties shall provide all records, documentation, and information requested by the Special Master.

VII. FEES

A. The Special Master shall be paid a commission of six percent of the selling price, less whatever sum is paid to a buyer's agent. If the work as Special Master consumes substantial time in excess of the customary demands of a real property sale, the Special Master should apply to the Court for fees to be paid out of escrow at the rate of \$500.00 per hour. The Special Master may also recommend an apportionment of the Special Master's fees between the parties if one party's conduct is responsible for the consumption of the Special Master's time.

B. The parties assign to the Special Master a lien in the amount of his/her fees.

C. In the event the arbitration proceedings or a legal action becomes necessary to enforce any provision of this order the non-prevailing party shall pay attorney's fees and costs as may be incurred. The Special Master may proceed by noticed motion to the Court in the event his/her fees are not timely paid.

#### VIII. GRIEVANCES

A. The Special Master may be disqualified on any of the grounds applicable to the removal of a Judge, Referee, or Arbitrator for cause, but may not be disqualified under the Code of Civil Procedure Section 170.6.

B. The Special Master's decision or action taken may be vacated or corrected on any of the applicable grounds specified in the Code of Civil Procedure Section 1286.2 and 1286.6.

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

1. A person having a complaint or grievance regarding the Special Master must discuss the matter with the Special Master in person before pursuing it in any other manner.

2. If, after discussion, the party decides to pursue a complaint, he/she must then submit a written letter, detailing the complaint or grievance, to the Special Master, to the other party, and to both parties' attorney. The Special Master will then provide a written response to the complaint or grievance to both parties and to both attorneys.

3. The Special Master will then meet with the complaining party and his/her attorney (if any) to discuss the matter. The complaining party must then submit a letter to the Special Master stating that the complaint or grievance is satisfactorily resolved, or detailing the reasons why the complain or grievance is not resolved, within ten (10) business days of the above meeting. If the complaint or grievance is resolved no further action shall be taken, regarding the complaint or grievance, by the complaining party.

4. If the complaint or grievance is not resolved, a meeting to include all involved attorneys, both parties and the Special Master shall then occur. Subsequent to this meeting the complaining party must submit a letter to the Special Master stating that the complaint or grievance is resolved, or listing the reasons why it is not, within ten (10) business days from the date of this meeting.

5. If the complaint or grievance is not resolved after this joint meeting, the complaining party may proceed by noticed motion to the Court for removal of the Special Master as specified above.

6. Complaints and grievances referred to above shall include, but not be limited to, allegations of bias, unethical conduct, unfair billing practices, overcharges, unprofessional conduct, "malpractice", or any other complaints regarding the performance of the duties of the Special Master.

7. The Special Master may submit a bill to reflect his/her time and costs involved in defending against the complaint, which shall be paid by the parties within ten (10) days of receipt thereof.

8. The Court shall reserve jurisdiction to determine if either or both parties and/or the Special Master shall ultimately be responsible for any portions or all of said Special Master's time and costs spent in responding to the complaint and the Special Master's attorney fees (if any).

IX. SUBSTITUTION OF SPECIAL MASTER

The Special Master may resign at any time he/she determines that he/she is unable to serve out his/her term, upon thirty (30) days written notice to the parties. The remaining term of the Special Master shall remain in full force and effect and shall be filled by a new Special Master unless otherwise mutually agreed by the parties. The new Special Master shall be chosen by agreement of the parties or, if the parties are unable to agree, the Judge to whom the case is assigned shall choose a new Special Master to fulfill the remaining term of this Stipulation.

X. MISCELLANEOUS ORDERS

Notwithstanding anything else provided herein, neither party shall have access to the Special Master's notes, memorandum, file, impressions or thoughts and neither party shall take the deposition of the Special Master, nor shall either party have the right to require the Special Master to participate in any type of discovery.

Dated: \_\_\_\_\_

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

CONSENT TO SERVE

I, Katie Fones, agree to serve as Special Master in the above entitled matter. My business address is: 1177 California Street, San Francisco, CA 94018.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Katie Fones

[ ] IT IS SO STIPULATED:

\_\_\_\_\_  
(Party)

\_\_\_\_\_  
(Party)

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney for Respondent