

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, January 10, 2025, at 9:30 a.m.
Courtroom 22 –Hon. Paul J. Lozada
3055 Cleveland Avenue, Santa Rosa**

TO JOIN “ZOOM” ONLINE:

Meeting ID: 161-312-0396

Passcode: 219644

<https://sonomacourt-org.zoomgov.com/j/1613120396>

TO JOIN “ZOOM” BY PHONE:

By Phone (same meeting ID and password as listed above):

(669) 254-5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, it will be necessary for you to contact the department’s Judicial Assistant by telephone at (707) 521 - 6836 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties/counsel of their intent to appear.

1. 24FL02082 DEMUSHKIN VS. RIVAS VILLALTA

Petitioner, Mark Demushkin (“Petitioner”) filed the petition to establish paternal relationship and custody (the “Petition”) on October 11, 2024, and moved the Court for orders returning the minor child to his care. Respondent, Ana Maria G. Rivas Villalta (“Respondent”), has moved to quash the service of summons based on lack of jurisdiction over the minor child under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). Petitioner has filed an opposition.

The minor child was born in El Salvador in 2017 but has resided in California since 2019. Respondent and the minor child left California for El Salvador on June 10, 2024. They have not returned. Petitioner filed the instant action on October 11, 2024. Respondent filed the instant motion to quash on December 18, 2024, arguing that the Court lacks jurisdiction over the minor child pursuant to the UCCJEA. Petitioner has filed an opposition.

The UCCJEA governs the interaction of interstate jurisdiction over child custody proceedings. See Fam. Code § 3400 *et seq.* Foreign countries are treated as if they were a state of the United States for the purposes of applying the UCCJEA. Fam. Code § 3405. A child’s “home state” is “the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.” Fam. Code, § 3402 (g). California has jurisdiction to make an initial child custody determination if “(t)his state . . . was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.” Fam. Code § 3421 (a)(1). “Read together, sections 3402 and 3421 provide two bases for home state jurisdiction.” *Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1288. “The commencement of a proceeding is the date the action is filed.” *Marriage of Torres* (1998) 62 Cal.App.4th 1367, 1374.

“(T)he UCCJEA gives prominence to objective factors in determining jurisdiction.” In re R.L. (2016) 4 Cal.App.5th 125, 139. Subjective intent is not necessarily determinative. *Ibid.* However, a temporary absence from a home state continues to be considered as the period of residence for that established home state. *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 493, fn. 12. “Personal jurisdiction over the parents is not required to make a binding custody determination, and a custody decision made in conformity with due process requirements is entitled to recognition by other states under both the UCCJA’s requirement of comity and the standards of the full faith and credit clause of the United States Constitution.” *Marriage of Torres* (1998) 62 Cal.App.4th 1367, 1378.

Respondent moves to quash the Petition on multiple bases. Most substantively, Respondent argues that El Salvador is now the child’s home state, and therefore this Court lacks jurisdiction to make determinations as to the minor child. Petitioner makes various arguments for why the Court should not find the child’s home state to have changed or why mother has waived the jurisdictional argument, but the analysis need not proceed that far, as the facts mandate the result. It is undisputed between the parties that the minor child left California with Respondent on June 10, 2024. The Petition was filed on October 11, 2024. Respondent has filed this motion after six months have

passed since the minor child was in California. The language of the statute operates in a manner unaffected by such strategic elections.

Initial jurisdiction is determined based on the child's residence "within six months before the **commencement of the proceeding** and the child is absent from this state but a parent or person acting as a parent continues to live in this state." Fam. Code, § 3421 (a)(1). This proceeding commenced on October 11, 2024, the date the Petition was filed. Even if the Court were to somehow interpret the commencement as the date Petitioner filed the request for order currently calendared for February 5, 2025, that request was filed on December 5, 2025. Commencement of the action clearly falls within the jurisdiction six-month period. California is the minor child's home state at the time of commencement of the action, and as such this Court has jurisdiction under the UCCJEA.

Respondent also appears to argue that California is an inconvenient forum, as there are witnesses and evidence which she claims are in El Salvador. This is unpersuasive. Respondent's motion is presumably predicated on Family Code § 3427. This is predicated not on a *lack* of jurisdiction as Respondent argues (see Respondent's Notice of Motion [the motion is "based on the grounds that this Court lacks personal jurisdiction over the Respondent in this action and/or lacks jurisdiction over the minor child pursuant to the UCCJEA."]), but rather a concession of jurisdiction based on several factors. *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 513. Accordingly, it is a matter tendered to the discretion of the Court. *Ibid.* Respondent states in very general terms that the relevant evidence is in El Salvador, but she presents no specific information as to what evidence would be more available there rather than California. The minor child had resided in California for the previous four and a half years preceding his trip to El Salvador. Petitioner presented evidence that the minor child has completed two years of education at Marguerite Hahn Elementary School from 2022 to 2024 and was expected to continue his enrollment there before Respondent refused to return in August of 2024. See Petitioner's Responsive Declaration ¶¶ 10-13. There is clearly substantial, specific evidence which is located within Sonoma County. This Court already has a hearing date scheduled which would expeditiously adjudicate the pending issues. While the substantial distance between the states and Respondent's lack of income are weighed, they fail to

outweigh the previously mentioned factors in this case. Respondent fails to make a showing that other factors are applicable. California appears to be the most convenient forum as a result.

Respondent also argues that the Court lacks jurisdiction over Respondent, and that the Petition should be struck. Both contentions are erroneous and without support. Jurisdiction over Respondent is irrelevant to the instant Petition, as the Court only needs jurisdiction over the minor child to make initial determinations of parentage and custody. *Marriage of Torres* (1998) 62 Cal.App.4th 1367, 1378. Respondent also asks that the Petition be struck but provides neither argument nor authority thereon. That request is therefore denied.

Based on the above, the motion to quash is DENIED.

Respondent shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and(b).

It is SO ORDERED.

2. SFL091891 TURNER DISSOLUTION

This matter is **CONTINUED** to March 14, 2025, at 9:30 a.m. in Dept. 22.

Respondent Traci Turner, self-represented, requested to reschedule the hearing so that she may have time to hire legal representation. Respondent is in post operative care recovering from a shoulder surgery and is also caring for her disabled adult sons. On good cause showing, the Court grants Respondent's request.

It is SO ORDERED.

3. **23FL00373 ALGREN/GONZALES DISSOLUTION**

Appearances required.

END OF TENTATIVE RULINGS