MARITAL SETTLEMENT AGREEMENT

A Marital Settlement Agreement or Legal Separation Agreement (collectively referred to below as MSA) can be entered into at any time after the initial filing of a Dissolution of Marriage or Legal Separation. Generally, this is agreement resolves all rights and obligations that apply in your case. It should include ALL items listed in the PETITION and the RESPONSE, if one was filed. These items include division of property, child custody and visitation, along with child and spousal support. Once signed by the parties the agreement is incorporated into the final judgment.

If a RESPONSE is filed (as opposed to a DEFAULT), there are other Judicial Council forms that will also be required to be signed by both parties in order to finalize the Judgment.

There are a total of four (4) Exhibit packets available, but you need only attach and include those Exhibit's that apply in your case. For example, if there are no minor children, you will not include Exhibits ONE and TWO.

If you have prior court orders for custody/visitation or child support, you must attach those as your Exhibit.

Instructions:

1. Complete the body of the MARITAL SETTLEMENT AGREEMENT with your case information.

2. Choose and attach only **one attachment** from each EXHIBIT packet that applies in your case.

   ☐ EXHIBIT NUMBER ONE – CHILD CUSTODY/VISITATION & CHILD SUPPORT

   (For help with calculating guideline child support visit the Self Help Center or go online to the California Department of Child Support Services calculator at http://www.childsup.ca.gov)

   ☐ EXHIBIT NUMBER TWO – SPOUSAL SUPPORT

   ☐ EXHIBIT NUMBER THREE – DIVISION OF PROPERTY

   ☐ EXHIBIT NUMBER THREE – OTHER TERMS (Miscellaneous terms not covered by standard attachments)

3. Once assembled, both parties must sign the MARITAL SETTLEMENT AGREEMENT.
   - If the RESPONDENT did not file a RESPONSE (and default was taken), the RESPONDENT's signature will be required to be NOTARIZED.

If a RESPONSE was filed: (additional forms are required)

4. Complete a STIPULATION AND WAIVER OF FINAL DECLARATION OF DISCLOSURE (Form FL-144) and have both parties sign it.
   - A PRELIMINARY and FINAL Declaration of Disclosures is required in a Dissolution of Marriage. The FINAL Disclosure, however, can be waived.

5. Complete an APPEARANCE, STIPULATIONS AND WAIVERS (Form FL-130) (**NOT required if a Default was filed**.)
   - This form allows for an appearance to be made by the RESPONDENT that the matter is uncontested and settling by agreement and it mutually waives each party's right to a trial or appeal.

6. Once the above documents have been completed and signed, bring the documents to the Self Help Center to get instructions and forms necessary to finalize the Judgment.

CUSTODY AND VISITATION – EXHIBIT ONE

What is "custody and visitation"?

When you separate or divorce, you need to decide who will have "custody" of your children and how they will be taken care of. You also need to decide on visitation, which means how each parent will spend time with the children. There are two kinds of "**custody**" orders:

Legal custody, which means who will make important decisions for your children (health care, education, and welfare). Legal custody can be:

Joint, where both parents share the right and responsibility to make important decisions about the health, education and welfare of the children.

Sole, where only one parent has the responsibility to make the important decisions about the health, education and welfare of the children.

Physical custody, which means with whom your children will live. Physical custody can be:

Joint, which means that the children live with both parents.

Sole or primary, which means the children live with one parent most of the time and usually visit the other parent.

"**Visitation**" (also called "time-share" or "parenting plan") is the plan for how you as the parents will share time with the children.

Instructions:

Select the attachments that reflect the terms of custody and visitation as accurately as possible.

- If any of your children were born PRIOR to the date of marriage, you must request the Court enter a Judgment of Parentage. This can be done by including the Child Paternity Exhibit contained in this packet.
- If you and your spouse have already attended mediation and have a specified order, simply attach a copy of the order and at the bottom of the first page write "EXHIBIT ONE"

CHILD SUPPORT – EXHIBIT ONE (cont'd)

How is child support calculated?

California has a statewide formula (called a "guideline") for figuring out how much child support should be paid. If parents can't agree on an amount, the Court will decide the child support amount based on the guideline calculation.

The guideline calculation depends on:

- How much money the parents earn or can earn,
- How much other income each parent receives,
- How many children these parents have together,
- How much time each parent spends with the child(ren),
- The actual tax filing status of each parent,
- Support of children from other relationships,
- Health insurance expenses,
- Mandatory union dues,
- Mandatory retirement contributions,
- The cost of sharing daycare and uninsured health-care costs, and
- Other factors.

Can parents agree on an amount other than the guideline amount?

Parents can agree on a "non-guideline" support amount if they:

- Know fully their child support rights,
- Know the guideline child support amount*
- Are not pressured or forced to agree to this child support amount,
- Are not receiving public assistance,
- Have not applied for public assistance,
- Think that the child support amount is in the best interest of the child(ren), and
- Have a judge approve the amount of child support payments.

***The staff at the Self Help Center can run a guideline calculation or you can go online and run a calculation at the Department of Child Support Services website at: http://www.childsup.ca.gov.**

ALERT! If your agreement changes a child support order and one of the parents gets public assistance, the local child support agency must sign the agreement before you file it with the court. The local child support agency must also sign the agreement if it is enforcing (collecting) the support order.

Can child support be waived?

No, due to public policy reasons child support cannot be waived. However, the parties can agree to reserve child support by setting it at $0.00 or some other "non-guideline" amount if they both agree to the criteria stated above.

When does court-ordered child support end?

Court-ordered child support usually ends when the child:

- marries or registers a domestic partnership,
- dies,
- is emancipated,
- turns 18 and is not a full-time high school student, or
- turns 19, whichever occurs first.

Instructions:

Select the attachments that reflect the terms of child support as accurately as possible.

- If you and your spouse have already been to court and an order for child support was made, simply attach a copy of the order and at the bottom of the first page write "EXHIBIT TWO"
- The CHILD SUPPORT CASE REGISTRY FORM (FL-191) is a **MANDATORY** form and one must be completed by each parent.

SPOUSAL SUPPORT – EXHIBIT TWO

How is spousal calculated?
You can ask for spousal support to be paid while your case is going on. This is called a "temporary spousal support order." In Stanislaus County the Court will generally rely on a Dissomaster printout or calculation to determine the temporary support guideline.

When the Court makes the **final** order or JUDGMENT, it cannot rely on a calculation, but instead must consider the factors in California Family Code section 4320. These factors are:

- The length of the marriage or domestic partnership,
- What each person needs,
- What each person pays or can pay (including earnings and earning capacity),
- Whether having a job would make it too hard to take care of the child(ren),
- The age and health of both people,
- Debts and property,
- Whether one spouse helped the other get an education, training, career, or professional license,
- Whether there was domestic violence in the marriage,
- Whether one spouse's, career was affected by unemployment, or by taking care of the children or home, and
- The tax impact of spousal support

How is spousal support taxed?
Usually, spousal support is tax deductible for the paying spouse and taxable income for the supported spouse.

When does spousal support end?
Spousal and domestic partner support usually end when:
- A court order, judgment, or marital settlement agreement says it ends,
- One of the spouses or domestic partners dies, or
- The person recieving the support remarries.

Can spousal support be waived?
Yes, spousal support can be waived by one or both parties. However, beware that when spousal support is waived the right to request it in the future is also forever waived.

The family code states that a marriage of ten (10) years or more is considered a long term marriage. If you are agreeing to waive spousal support in a long term marriage, our court's local rules require the marital settlement agreement set forth each parties income and its source.

Alert! Spousal support is a complex legal issue. It is strongly suggested you consult with a lawyer. They can better inform you about how much spousal support may be ordered, how long it may last, and how it might affect your taxes.

PROPERTY DIVISION – EXHIBIT THREE

California is what is referred to as a "community property" state. This means that both of you have a one-half interest in all assets and debts either one of you (individually) or both of you (jointly) acquired during the marriage.

This means that if the property has to be divided by the court, the judge would have to determine what is and is not community property, what it is worth and then decide who is going to get it so that each party receives one-half the net value of all community assets and debts.

As long as both parties are in agreement, you are free to divide the property equally or unequally.
If you choose to divide it equally, it may require what is referred to as an "equalizing payment." Since you cannot always cut everything in half *(Example: a couch, a car or a house, etc.)* an equal division is accomplished by way of an equalizing payment to the person with the lesser amount of property.

An equalizing payment is one-half the difference between what each party received.

Example:

Wife awarded:	*Husband awarded:*
$1,000.00 in varies items of property	*$2,000.00 in varies items of property*
-500.00 in credit card debt	*-1,000.00 in credit card debt*
$500.00 in net assets to Wife	*$1,000.00 in net assets to Husband*

Equalizing Payment: Husband will owe Wife $250.00
[$1,000 - $500 =$500 ÷ 2 = $250]

Community debts: generally are any balance still owed on any debts either of you took on during the time you were living together as husband and wife or as registered domestic partners. (Example: If you bought furniture on credit while you were married or in a registered domestic partnership and living together, the unpaid balance is a part of the community obligations.)

Community assets: generally everything that a husband and wife or registered domestic partners OWN TOGETHER. In most cases that includes:

(1) Money or benefits like pensions and stock options that you now have which either of you earned during the time you were living together as husband and wife or as registered domestic partners; and
(2) Anything either of you bought with money earned during that period.

Separate property: Separate property is everything that either of you OWNS SEPARATELY and not subject to division. In most cases that includes:

(1) anything that you owned **before** you got married or registered as domestic partners;
(2) anything you earned or received **after** your separation; and
(3) anything that of you received, as a **gift** or by **inheritance**, at any time.

Bankruptcy: If one party is considering a bankruptcy that includes community debts, the other spouse may be affected. It is strongly suggested that both of you consult with a bankruptcy attorney or your family law attorney if you have one, to discuss options and what effects filing bankruptcy might have on either of you or any agreement reached in mediation.

Case Name: _____ Case No.:_____

MARITAL SETTLEMENT AGREEMENT - Addendum to Judgment

This agreement is made with reference to the following facts:

1. The parties were married or registered as domestic partners on _____.

Irreconcilable differences have arisen between the parties; as a result, they separated and ceased to live together as husband and wife on _____, which is _____ years and _____ months from the date of their marriage. They now agree and intend to live apart permanently.

2. The parties have _____ minor child(ren)of their marriage.

3. The parties acknowledge that with this agreement they intend to effect a complete and final division of their property (and in doing so have endeavored to make an equal division of their community property and recognition that such division should result in no taxable transfer by either), and to resolve all rights and obligations relating to spousal support and maintenance. The parties also intend to relinquish any and all past, present, or future claims that each may have against the property or estate of the other and his or her executors, administrators, representatives, successors and assigns, except as otherwise provided herein.

4. Each of the parties declares and agrees that he or she has read this agreement and fully understands the same, and each of the parties agree that the execution of this agreement shall be and is intended to be a full, complete, and final adjustment of all property rights of the parties existing as of the date hereof and supersedes any prior agreement between the parties written or oral. Each of the parties further agrees that this agreement is made and entered into by him or her of his or her own volition and with full knowledge of its legal effect. By signing in execution hereof each party agrees that this agreement is made at his or her individual and mutual request and after full and thoughtful consideration.

5. The following issues are resolved by virtue of this agreement *(Check only those that apply)*:

☐ CHILD CUSTODY, VISITATION AND CHILD SUPPORT are set forth in **Exhibit ONE**, attached hereto and incorporated by reference.

☐ SPOUSAL SUPPORT is set forth in **Exhibit TWO**, attached hereto and incorporated by reference.

☐ PROPERTY DIVISION is listed in **Exhibit THREE** attached hereto and incorporated by reference, or ☐ The parties agree there are **NO** community assets or debts subject to divide.

☐ OTHER TERMS are set forth in **Exhibit FOUR,** attached hereto and incorporated by reference.

4. The parties hereby agree that the following may be incorporated into a Final Judgment and made an order of the court and may be signed by a Court Commissioner as a Judge Pro Tem.

THE UNDERSIGNED PARTIES APPROVE AS TO FORM AND CONTENT:

DATED: _____ *[signature]*

_____ *[print name]*
Petitioner

☐ **A DEFAULT has been entered; therefore RESPONDENT'S signature has been notarized.**

DATED: _____ *[signature]*

_____ *[print name]*
Respondent

EXHBIT ONE
PARENTAGE, CHILD CUSTODY/VISITATION AND SUPPORT

☐ The minor child(ren), namely:

Child's Name(s)	Date of Birth
_____	_____
_____	_____
_____	_____

A. PARENTAGE
*(Complete ONLY if your child(ren)was/were **born prior to the date marriage**)*

The parties agree any minor child(ren), listed above and named in the Petition that was/were born to the parties prior to their marriage on _____ *(date if marriage)*, request that judgment of parentage be entered herein.

B. CHILD CUSTODY AND VISITATION (Select only those that apply)

☐ The custody and visitation ordered on _____ and attached to this Agreement shall remain in full force and effect, OR

☐ **Petitioner** ☐ **Respondent** shall have ☐ **SOLE LEGAL** ☐ **JOINT LEGAL** and

☐ **Petitioner** ☐ **Respondent** shall have ☐ **SOLE PHYSICAL** ☐ **JOINT PHYSICAL CUSTODY**

☐ **Petitioner** ☐ **Respondent** to have reasonable rights of visitation as the parties can agree.

☐ The residence of the minor children shall not be changed from California ☐ County of Stanislaus without prior agreement of the parties or court order.

☐ **Petitioner** ☐ **Respondent** is designated primary caretaker. *(Not applicable if you requested **sole physical custody** above)*

The parties agree that this court has jurisdiction over the issue of child custody as California is the home state of the children, that they personally executed this agreement and understand their custodial rights and waive any further hearing on this issue, and agree that the United States is the country of habitual residence of the children. They acknowledge that they are aware that a violation of this custodial order may result in civil or criminal penalties. [Family Code Section 3048]

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C. CHILD SUPPORT: (If there are minor children of this relationship, the court MUST issue orders regarding child support **unless a case is already in effect through the Department of Child Support Services)**

☐ The Department of Child Support Services is enforcing an existing child support order in case number _____. Child support is reserved to that case. No other orders regarding child support are needed.

If there is no case with the Department of Child Support Services, check ONE of the following:

☐ The parties agree to **Guideline Child Support Order** per the attached **computer calculation printout.** Guideline support is $_____ per month payable by the ☐ **Petitioner** ☐ **Respondent** to the ☐ **Petitioner** ☐ **Respondent,** effective forthwith upon entry of Judgment.

or .

☐ The parties agree to a **Non-Guideline Child Support Order** in the amount of $_____ per month payable by the ☐ **Petitioner** ☐ **Respondent** to the ☐ **Petitioner** ☐ **Respondent**, effective forthwith upon entry of Judgment. The parties are fully informed of their rights concerning child support per the attached **computer calculation printout.** The amount is being agreed to without coercion or duress and the needs of the children will be adequately met by this order. Neither parent is receiving public assistance for these children no application is pending. No change of circumstances is needed to raise the order to guideline.

or

☐ The parties agree that the Court order that child support is **RESERVED** effective forthwith upon entry of Judgment. The parties are fully informed of their rights concerning child support per the attached **computer calculation printout.** The amount is being agreed to without coercion or duress and the needs of the children will be adequately met by this order. Neither parent is receiving public assistance for these children no application is pending. No change of circumstances is needed to raise the order to guideline.

Child support ordered under this section shall be paid ½ on the first and ½ on the 15th of each month commencing and shall continue until the supported child dies, emancipates, reaches the age of 18 or, if still a full-time high school student, age 19 or graduation, whichever first occurs.

In the event that there is a contract between a party receiving support and a private child support collector, the party ordered to pay support must pay the fee charged by the private child support collector. This fee must not exceed 33 1/3 percent of the total amount of past due support nor may it exceed 50 percent of any fee charged by the private child support collector. The money judgment created by this provision is in favor of the private child support collector and the party receiving support jointly.

MEDICAL INSURANCE: The ☐ **Petitioner** ☐ **Respondent** shall maintain health insurance for the minor children. Any uncovered health care expenses shall be paid equally by the parties.

CHILD CARE: Child care to allow either parent to work shall be paid as follows:

☐ included in the child support order above
☐ paid equally by the parties directly to the day care provider.
☐ other: _____

DEPENDENT EXEMPTIONS: The ☐ **Petitioner** ☐ **Respondent** shall be allowed to claim _____ as dependents for tax filing purposes in ☐ odd ☐ even tax years beginning _____. The ☐ **Petitioner** ☐ **Respondent** shall be allowed to claim _____ as dependents for tax filing purposes in ☐ odd ☐ even tax years beginning _____. If necessary, the custodial parent shall execute IRS form 8332 to release the exemptions.

EXHIBIT TWO
SPOUSAL SUPPORT

AGREED AMOUNT

☐ **PETITIONER** *or* ☐ **RESPONDENT** shall pay to ☐ **PETITIONER** *or* ☐ **RESPONDENT** for spousal support the sum of $_____ per month, payable in advance, on or before the _____ day of each month, commencing on _____ and continuing *(Select one of the following)*:

☐ NO SPECIFIC TERMINATION DATE
Until either party's death, the remarriage of the party receiving spousal support, or modification or termination by further court order, whichever occurs first.

☐ SPECIFIC DATE OF TERMINATION
Except by further court order, until _____ *(date),* either party's death, the remarriage of the party receiving spousal support, or termination by further court order, whichever occurs first.

or

COURT TO RESERVE JURISDICTION

The parties agree that the court shall **RESERVE** jurisdiction over the issue of spousal support as to ☐ **PETITIONER** and/*or* ☐ **RESPONDENT**, until the remarriage of that party, either party's death, or modification or termination by further court order, whichever occurs first. Spousal support may be ordered payable following this reservation of jurisdiction only upon a proper showing of a change of circumstances.

or

☐ **TERMINATION OF JURISDICTION** *(Marriage of LESS than 10 years)*

PETITIONER and **RESPONDENT** hereby **WAIVE** and release all rights and claims to receive support from the other party at any time. No court shall have jurisdiction to order spousal support payable by **PETITIONER** or **RESPONDENT** to the other party at any time, regardless of any circumstances that may arise.

or

☐ **TERMINATION OF SUPPORT IN A LONG TERM MARRIAGE** *(Marriage of MORE than 10 years - You must complete information for each party.)*

PETITIONER:

☐ Petitioner is currently employed by _____ as a _____ *(position title)* and has been since _____ *(date), earning* $_____ per hour/week/month.

☐ Petitioner is not employed but has a monthly source of income in the amount of $_____ per hour/week/month derived from _____.

RESPONDENT:

☐ Respondent is currently employed by _____ as a _____ *(position title)* and has been since _____ *(date), earning* $_____ per hour/week/month.

☐ Respondent is not employed but has a monthly source of income in the amount of $_____ per hour/week/month derived from _____.

Each party acknowledges that the marriage is of long duration but in consideration of other agreements and stability of our efforts to be mutually self-supporting, the parties voluntarily waive spousal support and request that the jurisdiction be terminated.

EXHIBIT THREE
DIVISION OF COMMUNITY PROPERTY ASSETS AND DEBTS

The parties agree that the community property assets and debts shall be divided as follows:

PETITIONER shall be awarded the following community property assets and debts as his/her sole and separate property and shall hold **RESPONDENT** harmless therefrom:

Description of Property/Debt ***(A Legal Description must be attached for any real property)***	Market Value		Loan or Debt		Net Value
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
Total awarded to PETITIONER:					**$**

RESPONDENT shall be awarded the following community property and debt as his/her sole and separate property and hold **PETITIONER** harmless therefrom:

Description of Property/Debt ***(A Legal Description must be attached for any real property)***	Market Value		Loan or Debt		Net Value
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
		-		=	
Total awarded to RESPONDENT:					**$**

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EXHIBIT THREE
RETIREMENT BENEFITS

☐ **WAIVER OF RETIREMENT BENEFITS**

Based on ☐**PETITIONER'S** ☐ **RESPONDENT'S** employment during the marriage with

_____, during the marriage, a community interest has arisen in the following plan:

_____,
[Name of pension or other employee benefit plan]

Under the terms of this agreement, that entire interest, including the right to name beneficiaries other than the employee's spouse for death and survivor benefits payable under the plan, is being awarded to the employee-spouse. The non-employee spouse is informed that, under federal law or the terms of the plan, she/he may, but for this agreement, have become entitled to survivor rights or benefits payable by the plan.

The non-employee spouse shall timely sign whatever documents, including but not limited to a stipulated qualified domestic relations order (QDRO), that may be required to implement her/his waiver of spousal rights in the plan, including written consent to the employee spouse's designation of one or more alternate beneficiaries. This provision does not waive any right expressly provided in any trust agreement or beneficiary designation executed by the employee spouse after the effective date of this agreement.

☐ **DIVISION OF RETIREMENT BENEFITS**

Based on ☐ **PETITIONER'S** ☐ **RESPONDENT'S** employment during the marriage with

_____, during the marriage, a community interest has arisen in the following plan:

_____,
[Name of pension or other employee benefit plan]

The parties agree to and will cooperate in the preparation of a Qualified Domestic Relations Order (QDRO) or retirement benefits order for each plan, which proposed order(s) shall set forth the respective community interests of the parties and govern the disposition of benefits upon qualification by the plan(s) based upon the *time rule*. The court shall reserve jurisdiction over the preparation of the order(s), and division of said retirement benefits.

EXHIBIT THREE
EQUALIZATION OF PROPERTY DIVISION
(Select all that apply)

EQUALIZING AMOUNT

☐ The parties agree that the above-division of assets and debts results in ☐**PETITIONER** ***or*** ☐**RESPONDENT** receiving $_____ more in net assets and debts than the other party, resulting in an equalization payment of $_____ which is one-half of the difference between the total net assets and debts going to each party.

PAYMENT TERMS

☐ In order to equalize the division of assets and debts, ☐**PETITIONER** *or* ☐ **RESPONDENT**, will pay to the other party the sum of $_____ as an equalizing payment.

☐ Said equalizing payment shall be payable as follows:
☐ $ _____ per month commencing _____ until paid in full. Should any payment become more than 30 days past due, then the entire sum is deemed due and payable.
☐ Other terms of payment:
_____
_____
_____

WAIVER OF EQUALIZING PAYMENT

☐ **PETITIONER** and **RESPONDENT** acknowledge that the above does not constitute an equal division of property; however both knowingly, freely and without duress or undo pressure waive and release all rights and claims to receive an equalizing payment from the other party at any time.

EQUAL DIVISION:

☐ **PETITIONER** and **RESPONDENT** acknowledge that the above division constitutes an equal division of property.

EXHIBIT THREE
CONFIRMATION OF SEPARATE PROPERTY

The following is/are the separate asset(s) and obligation(s) of **PETITIONER**, to be confirmed to him/her as his/her separate property. **RESPONDENT** disclaims and waives any and all rights and interest in these assets. **PETITIONER** shall pay the obligation(s) and hold **RESPONDENT** harmless from any liabilities:

Description of Property/Debt

The following is/are the separate asset(s) and obligation(s) of **RESPONDENT**, to be confirmed to him/her as his/her separate property. **PETITIONER** disclaims and waives any and all rights and interest in these assets. **RESPONDENT** shall pay the obligation(s) and hold **PETITIONER** harmless from any liabilities:

Description of Property/Debt

EXHIBIT FOUR
OTHER TERMS

☐ **FORECLOSED RESIDENCE**

The community property residence located at:

_____

and legally described in the attachment incorporated herein is currently in foreclosure. The parties agree that the court shall retain jurisdiction to divide any residual deficiency amount, if any.

☐ **RESIDENTIAL SHORT SALE**

The parties agree that the court shall retain jurisdiction to divide any residual tax implications resulting from the short sale of the community residence in _____.

☐ **CONVERSION OF ACTION**

The parties agree that the ☐ Petition and/or ☐ Response in this matter be amended and convert this matter to a Dissolution of Marriage.

☐ **OTHER**

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____