

FILED

Superior Court of California
County of Los Angeles

MAY 22 2015

Sherri R. Carter, Executive Officer/Clerk

By M. Arnold, Deputy
Mary Arnold

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6 KELLY RUTHERFORD

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES

9	In re Marriage of	:	Case No: SD 026 864
10	DANIEL GIERSCH, Petitioner	:	FINDINGS AND ORDERS AFTER EX
11	and	:	PARTE REQUEST FOR ORDER
12	KELLY RUTHERFORD, Respondent	:	Date: May 22, 2015
13		:	Time: 8:30 am
14		:	Assigned for all purposes to:
15		:	Dept: 64
16		:	Honorable Mark Juhas

17 FINDINGS and ORDER AFTER EX PARTE REQUEST FOR ORDERS

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19 1. This matter came on before this Court on this date on a no-notice ex parte
20 application by Respondent, KELLY RUTHERFORD by her attorney of record, David J.
21 Glass, Esq. of Enenstein Ribakoff LaVina & Pham. Respondent was not present.
22 Petitioner, DANIEL GIERSCH, who current represents himself on a pro per basis, was not
23 present, having not been given notice of the application. The Court found there was good
24 cause for the no-notice ex parte application.

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28 ¹ Certified Family Law Specialist, CA State Bar, Board of Legal Specialization
00044717, V.1

1 2. The parties presently have joint legal and physical custody of the two minor
2 children, Hermes Giersch (born 10-7-2006; age 8) and Helena Giersch (born 6-8-2009;
3 almost age 6), pursuant to this Court's Further Judgment dated November 25, 2013,
4 which remains in full force and effect and provides, *inter alia*, as follows:

5 a. California has sole and exclusive and continuing jurisdiction over the
6 issue of each of the minor child's custody. No court, other than the Superior Court of
7 California, may modify the Further Judgment or the orders set forth therein until and
8 unless this Court issues an order relinquishing child custody jurisdiction, which has not
9 occurred;

10 b. No other jurisdiction may modify or replace this Further Judgment.
11 The Superior Court of California, County of Los Angeles, requests that any jurisdiction
12 where the children may visit or be physically present afford comity to and enforce this
13 Further Judgment and the orders set forth herein.

14 c. The United States of America remains each child's habitual
15 residence for purposes of the Hague Convention on the Civil Aspects of International
16 Child Abduction (Hague Abduction Convention).

17 d. Neither parent has the authority to change either child's habitual
18 residence for Hague Abduction Convention or for any other purposes without the express
19 written consent of the other parent, which consent has not been provided by either parent.

20 e. Each child's habitual residence remains the United States and that
21 any foreign travel or stays in other countries, including but not limited to their custodial
22 time with Petitioner in France and/or Monaco, is temporary in nature, and does not result
23 in a change of either child's habitual residence, or of jurisdiction to modify custody and
24 visitation orders, or issue new custody and visitation orders.

25 f. Respondent is entitled to exercise her custodial time with the minor
26 children both in Europe and the United States, and it was anticipated that the children
27 would travel with Respondent to the United States, and in particular to New York, New
28 York and/or Los Angeles, California from time to time.

1 g. This Court reserved jurisdiction to make further Orders concerning
2 the possession of the children's United States Passports.

3 3. The Court is concerned that Petitioner is alleged to have committed
4 numerous violations of the terms of the Further Judgment dated November 25, 2013,
5 including, but not limited to, the following:

6 a. Petitioner was obligated to forthwith obtain "mirror orders" in France
7 and Monaco recognizing and adopting all of the findings and terms of this Further
8 Judgment for enforcement only (expressly providing that neither France nor Monaco will
9 modify the orders herein and expressly deferring to California's exclusive continuing
10 jurisdiction) in France and Monaco unless and until this Further Judgment has been
11 superseded by a subsequent Order of this Court or Further Judgment. Petitioner has not
12 met that obligation.

13 b. Petitioner has apparently instead requested that the Courts of
14 Monaco take jurisdiction over this custody matter, and modify the custody Orders, in
15 contravention and direct opposition to the express terms of the Further Judgment dated
16 November 25, 2015.

17 c. Petitioner was obligated to cooperate and provide access to the two
18 minor children for Respondent to exercise her periods of physical custody with the two
19 minor children, both in France and in the United States, which he has failed and refused
20 to do on at least two occasions since in or about October 2014.

21 ~~4. Each party acknowledged that 18 United States Code section 1204,~~
22 ~~pertaining to parental kidnapping, applied to him/her, that if he/she violated this Court's~~
23 ~~Further Judgment dated November 24, 2013 and the orders therein, he/she could be~~
24 ~~arrested pursuant to that provision, and that he/she would waive extradition on the arrest~~
25 ~~warrant.~~

26 **WHEREFORE, finding good cause therefor, the Court enters the following**
27 **Orders:**

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I. This Court retains exclusive jurisdiction over this custody matter. No other Court, domestic or foreign, has valid jurisdiction over this matter, nor may any other Court, domestic or foreign, modify or replace these Orders or the Further Judgment dated November 23, 2013. The Superior Court of California, County of Los Angeles, requests that any jurisdiction where the children may visit or be physically present afford comity to and enforce these Orders and the Further Judgment dated November 23, 2015.

II. For the ^{sole, limited} purpose of returning the two minor children to the United States, and in particular, to Los Angeles County, California, Respondent is awarded sole legal and physical custody of the minor children pending further Orders of this Court.

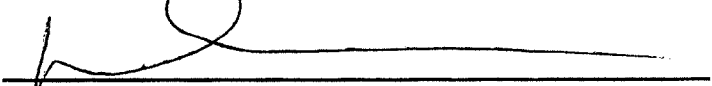
III. For the purpose of returning the two minor children to the United States, and in particular, to Los Angeles County, California, Respondent shall retain possession of the two minor children's United States passports pending further Orders of this Court.

IV. Respondent shall serve Petitioner with a copy of these Orders and her Ex Parte Request for Orders filed this date on or before May 29, 2015. Petitioner shall file and serve his Responsive Declaration on or before June 12, 2015 at 4:00 pm, and Respondent shall file and serve her Reply Declaration on June 15, 2015.

V. The two minor children, Petitioner or his designated representative, and Respondent are each, individually, Ordered to be present in this Department on June 15, 2015 at 8:30 am., at which time this Court shall hold a noticed hearing on Respondent's Request for Orders filed this date.

Dated: MAY 22 2015

BY THE COURT:



Honorable Mark Juhas, Judge
Los Angeles Superior Court **MARK JUHAS**