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## QUESTION PRESENTED

Whether a mother should be permitted to permanently relocate from New York with a six-year-old child where the record demonstrates that the child will benefit emotionally, economically and educationally from the move and the mother has demonstrated, during nearly three years when she traveled with the child from Virginia for visitation, her commitment to following a visitation schedule that allows the father to maintain a meaningful relationship with the child?

Petitioner-Appellant-Respondent respectfully submits that the answer is yes and that the court below erred in denying the mother's relocation petition.

## PRELIMINARY STATEMENT

A_____ V___-P_____ ("A___") was only a few months old when the first custody petitions in this case were filed in 1999. By the time the custody/relocation hearing began in September 2001, A___ was three years old. When the hearing finally ended in October 2004, after an astounding 44 days of trial, A___ was already six years old and in first grade.

After she filed her custody petition, but before the custody hearing began, Petitioner J____ V___ met and married J_____ L____, a divorced father of two from Falls Church, Virginia. Beginning in in December 2001, pending completion of the custody/relocation hearing, Petitioner and A___ resided in Virginia with the consent of the Referee and the Law Guardian. A___ attended preschool, kindergarten and day camp in Virginia, and Petitioner regularly transported A___ to New York for visitation with Respondent.

In August 2004, when the hearing was nearly complete, the Referee issued an interim order directing Petitioner to enroll A___ in school in New York or lose custody of A___. In January 2005, the Referee issued a final order giving Petitioner sole custody of A___, but denying her petition to permanently relocate to Virginia with A___.

As explained more fully below, the Referee's finding that relocation to Virginia is not in A___'s best interest contradicts extensive expert and non-expert

testimony and lacks a sound and substantial basis in the record. Proper application of the factors set forth in Tropea v. Tropea requires that this Court modify the order appealed from to grant Petitioner's relocation petition.

## STATEMENT OF FACTS

Petitioner (J____ V___) and Respondent (J_____ P_____), who were never married and never lived together, are the parents of a daughter, A_____ ("A___"), who was born on August 8, 1998. (3-4-99 Petition for Custody, p.1; 3-5-01 Petition to Modify an Order of Custody and Visitation, ¶1; Tr. 11-26-02, 16:12-16).[1] Petitioner ended the parties' nine-month relationship in October 1997, shortly before she discovered that she was pregnant. (Tr. 4-22-02, 36:3-5). During Petitioner's pregnancy, Respondent repeatedly and vehemently pressured her to abort the child, and he refused Petitioner's request that he co-parent the child. (Tr. 4-22-02, 36:19-25, 37:1-10; Tr. 9-9-04, 109:5-8, 16-25, 110:2-8, 14-15; Tr. 9-20-04, 90:1-12).

For the first four months of A___'s life, Respondent visited her at Petitioner's home but did little to participate in her care other than to hold her. (Tr. 4-22-02, 48:3-12, 51:2-9). To encourage the father/child relationship, Petitioner brought

[1]This appeal is prosecuted on the original record pursuant to 22 NYCRR §670.9(d)(1)(ii). Accordingly, all references to the transcript shall follow the following format: (Tr. date, page:lines). For purposes of brevity, all orders to show cause will be referred to as "OSC."

A___ to Respondent's parents' home for Rosh Hashanah, Thanksgiving and Chanukah in 1998. (Tr. 4-22-02, 48:16-24, 52:16-19; Tr. 6-7-04,13:11-18). Petitioner also consulted with a mediator in an attempt to resolve issues of visitation for Respondent, but he refused to participate. (Tr. 4-22-02, 53:3-7, 79: 24-25, 80:2-3; Tr. 11-19-02, 33:20-21).

On January 21, 1999, Petitioner filed *pro se* petitions in Queens County for custody of A___ and for an order of protection against Respondent. (Tr. 4-22-02, 52:19-24; 1-21-99 Family Offense Petition). On March 4, 1999, Respondent filed a Petition for Custody. (3-4-99 Petition for Custody).

After Judge Rhea Friedman of Queens Family Court ordered an investigation, the Administration for Children's Services recommended that Respondent be referred for domestic violence counseling before visitation was resumed, and that visitation should only resume under strict supervision once Respondent actively participated in such counseling. (Undated ACS Report, p.2; Tr. 4-22-02, 53:8-19, 69:15-25; 70:12-14, 17-21). On April 12, 1999, the parties entered into a consent order requiring them to attend domestic violence counseling and giving Respondent weekly visits to be supervised by A___'s maternal grandmother, who was caring for A___ after Petitioner returned to work as an instructor for the New York City Fire Department Emergency Medical Services Division. (Tr. 4-22-02, 65:16-25, 69:15-

25, 70:2-3; 4-12-99 Temporary Order Directing Custody, p.3). Respondent never visited A___ pursuant to this order or contacted Petitioner to make alternate arrangements to see A___, nor did he attend domestic violence counseling. (Tr. 4-22-02, 53:8-25, 67:2-4, 20-25, 68:2-5). Instead, on April 19, 1999, Respondent filed an "Application for Judicial Action" seeking interim visitation at his parents' house and asserting that there was no reason for him to go to domestic violence counseling. (4-19-99 Application for Judicial Action, p.1). Petitioner attended domestic violence counseling for victims. (Tr. 4-16-02, 51:6-15).

The case was transferred from Judge Friedman to Referee Amy Rood. On June 28, 1999, Referee Rood appointed Marc E. Strauss as A___'s law guardian pursuant to County Law §18B. (6-28-99 F-99).

Petitioner invited Respondent and his parents to her home to celebrate A___'s first birthday in August 1999. (Tr. 9-8-03, 45:7-25; Tr. 6-7-04, 14:24-25, 15:2-8). This was the first time Respondent had seen A___ since December 1998. (Tr. 4-22-02, 65:5-11, 67:11-23).

On September 15, 1999, Referee Rood entered an order requiring Respondent's visits with A___ to be supervised by Visitation Alternatives in Great Neck, Long Island. (9-15-99 All Purpose Short Order, p.1; Tr: 9-15-99, 14:23-25, 6:13-15; Tr. 4-22-02, 54:2-5). Although A___ missed some visits due to illness, all

the missed visits were made up. (Tr. 4-22-02, 70:22-25, 71:2-4, 18-24, 75:12-19). Respondent had a difficult time establishing a rapport with A___, whom he had not seen in months due to his failure to exercise his visitation rights under the April 12, 1999 consent order. (Tr. 4-22-02, 54:24-25, 55:2, 13-17, 56:4-15).

Meanwhile, in April 1999, Petitioner met J_____ L____. (Tr. 11-26-01, 9:17-25; Tr. 4-22-02, 63:6-14, 64:2-16). Although the two met in New York, Mr. L____ lived with his children in Virginia. (Tr. 4-22-02, 72:19-23, 73:8-12). In October 1999, after communicating by telephone and e-mail for six months, Petitioner and Mr. L____ began dating. (Tr. 4-22-02, 72:6-13; Tr. 11-26-01, 10:10-14). Mr. L____ visited Petitoner and A___ in New York on the weekends his children were with their mother in Virginia. (Tr. 4-22-02, 80:4-16, 89:9-25). Mr. L____ accompanied Petitioner when she brought A___ for her supervised visits with Respondent. (Tr. 4-22-02, 74:4-15). Petitioner and A___ went to Virginia on other weekends to visit Mr. L____ and his children, S_____ (then age 11) and S_____ (then age 5). (Tr. 4-22-02, 80:14-25, 81: 2-11). Petitioner always informed Respondent when she took A___ to see the L____s and gave Respondent the telephone number in Virginia where they could be reached. (Tr. 4-23-02, 111:20-25). Petitioner informed the court that she and A___ were going to Virginia for visits. (Tr. 11-30-99, 23:10). Petitioner continued to bring A___ to supervised

visits, which were gradually increased in length (Tr. 4-22-02, 82:15-21, 84:4-16), and continued to keep Respondent informed about A___'s development. (Tr. 4-22-02, 67:5-10).

In the Spring of 2000, Respondent began unsupervised visits. (Tr. 3-11-03, 19:20-21). Petitioner encouraged A___ to go with her father and enjoy the visits. (Tr. 4-16-02, 69:22-25, 70:2-21).

In the fall of 2000, Petitioner asked her then-attorney, Robert T_____, to raise in the Family Court proceeding her desire to marry Mr. L____ and relocate with A___ to Virginia. (Tr. 4-23-02, 110:18-25, 111:2-11; Tr. 11-26-02, 47:2-17). Attorney T_____ advised Petitioner to settle the custody/visitation case first and then file for relocation once she had a final order of custody. (Tr. 9-20-04, 16:21-24-17:5-15; Tr. 11-19-02, 34:18-22). Petitioner tried to speak to Respondent directly about this issue but he refused to talk to her. (Tr. 4-22-02, 79:22-25, 94:3-22, 95:3-12; Tr. 4-23-02, 110:3-13, 111:12-19, 134:9-15; Tr. 9-9-04, 124:23-25, 125:3-5; Tr. 11-19-02, 36:21-23). Petitioner asked Respondent to go to mediation to discuss her relocation, but he refused to go. (Tr. 4-22-02, 79:22-25, 80:2-3; Tr. 4-23-02, 110:5-13; Tr. 9-9-04, 125:3-5).

During this period, Petitioner and A___ (who was now over two years old) spent every weekend with Mr. L____ either in New York or in Virginia. (Tr. 4-22-

02, 80:8-13, 88:2-14, 89:9-21). A___ and the L____ children became very attached to one another. (Tr. 4-22-02, 80:20-25, 81:2-3).

At a scheduled court appearance on November 13, 2000, Attorney T_____ moved to withdraw as Petitioner's counsel on the ground that there had been a "break down [*sic*] of communications between us." (11-13-00 Affirmation in Support of Motion for Withdrawal of Attorney of Record, ¶7). On the record that day, Petitioner testified that Attorney T_____ had resigned on November 3, 2000 and that she had accepted his resignation. (Tr. 11-13-00, 4:10-12, 14). Referee Rood granted Attorney T_____'s motion and excused him from the courtroom. (Id., p.5:1-13).

Referee Rood then advised Petitioner that she would grant a 30-day adjournment in order to give Petitioner time to retain new counsel, and Petitioner indicated that she intended to retain new counsel. (Id., 5:16-21; 8:3-8). Petitioner and Respondent's counsel, Alan S. C_____, both stated that an agreement previously had been reached between the parties on all but two outstanding issues; however, the two disagreed as to what those outstanding issues were. (Id., 8:8-9, 9:10-18). Attorney C_____ specifically stated: "[t]he last time we were here, after we were in the Courtroom, we had two outstanding issues . . . . We had worked it out *outside*." (Id., 6: 14-15, 17-18) (emphasis supplied).

Referee Rood stated "I'm not going to try to settle the case with anybody," and told Attorney C_____ to draft a proposed order concerning the issues that had been settled for submission on the next court date (when Petitioner would be represented by counsel). (Id., 7:17-18, 23-25; see also id., 9:20-22; 13:19-22). Referee Rood also stated four times that she was sending the parties to mediation. (Id., 6:24-7:2, 7:17-18, 9:22-23, 14:14).

Despite all that had transpired on November 13, 2000, on November 28, 2000, Referee Rood signed an order giving Petitioner sole custody and giving Respondent alternate weekend visits plus a four-hour mid week visit. (11-28-00 Order, pp.1-2). The Order specifically recited—contrary to Petitioner's November 13, 200 testimony—that the parties had reached an agreement "except for outstanding issues concerning religious holidays and non-school vacations." (Id., p.1). The Order further inaccurately recited that the parties had been "represented throughout all court proceedings and negotiations to date" and that the partial agreement had "been reached in open Court." (Id.).[2] Again, Respondent refused to

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[2]On June 20, 2000, the parties appeared with counsel and negotiations were placed on the record. The transcript clearly reveals that Petitioner did not agree that Respondent would have mid-week visitation every week. (Tr. 6-20-00, 19:17-24). In light of Petitioner's own record statement, Attorney T_____'s apparent agreement to the contrary only moments later (Id., 20:5-7) can only be viewed as unauthorized. Moreover, Referee Rood stated more than once that whatever agreement was reached in court that day must be memorialized in an order to be signed by the parties and the Law Guardian *before* being submitted for her approval. (Id., 31:12-14, 37:10-11, 47:5-8). It is undisputed that the November 28, 2000 Order is not signed by the parties

attend the court-ordered mediation without his attorney. (Tr. 4-22-02, 79:22-25, 80:2-3; Tr. 4-23-02, 110:5-13; Tr. 9-9-04, 125:3-5).

On December 20, 2000, Petitioner and Mr. L____ were married in Virginia. (Tr. 11-26-01, 10:22). On February 27, 2001, Petitioner made an oral application (through her new counsel, Louisa Floyd), for an order allowing her and A___ to relocate to Virginia. (Tr. 2-27-01, 8:10-14, 24-25). Referee Rood requested a written motion, which was filed in March 2001. (3-5-01 Petition to Modify an Order of Custody and Visitation). In May 2001, Respondent cross-petitioned for custody (5-1-01 Cross-Petition), even though he had been willing, in June and November of 2000, to give Petitioner sole legal and physical custody of A___.

Dr. Paul M_____ conducted forensic evaluations of all parties. His July 12, 2001 initial report ("First M_____ Report") detailed the results of the extensive psychological testing he performed, his interviews with the parties, his contacts with numerous other individuals, and his review of additional documentation. (First M_____ Report, pp.1-2.).[3]

Dr. M_____ reported that "Ms. V___ has a legitimate reason to want to

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or the Law Guardian.

[3]Judge Friedman first ordered forensics on June 28, 1999, but they were not conducted then because the Law Guardian did not submit the required paperwork. (Tr. 9-15-99, 4:8-24).

relocate, to unite with her husband and to form a new unit with their respective children. Her life and A_____'s will also be enhanced somewhat economically and practically as Mr. L____ apparently has a large home in a pleasant suburban area and he brings a second income as a computer expert claiming to earn about $60,000 per year." (Id., p.18). He characterized Mr. L____ as a "reasonable, pleasant individual who is committed to his children and to making his marriage with Ms. V___ work" and further noted that Mr. L____ (who is also a divorced father) "expressed . . . a sincere sensitivity to Mr. P_____'s plight, saying he would do whatever he could so that Mr. P_____ could maintain a relationship with A_____, even to opening his home to him for visits." (Id., p.18; see also Tr. 12-20-01, 13:7-19; Tr. 11-26-01, 18:2-12).

Dr. M_____ stated that Petitioner's relationship with Mr. L____ "may well present an enhancing situation as she will have two half siblings and Ms. V___ is emotionally much more content." (First M_____ Report, p.19). He concluded that "Ms. V___ has found a good psychological match in Mr. L____ and helping her maintain this relationship should be encouraged for A_____'s benefit, and so that Mr. P_____ can have meaningful access and a reasonable relationship with his

daughter." (Id., pp.29-30).[4]

Significantly, Dr. M_____ found Respondent's suspicion that Petitioner was alienating A___ from him to be "unsupported," and noted that "[i]n fact[,] Ms. V___ has asked several times for advice on how to improve the relationship between A_____ and her father to reduce the stress on her daughter. (Id., pp.13-14). Dr. M_____ noted that Respondent conceded that Petitioner made A___ available for visits on time and that she did not interfere in his telephone conversations with A___. (Id., p.14). He dismissed Respondent's suspicions that, if Petitioner were allowed to relocate, she would attempt to permanently end his relationship with A___, stating that "his suspicions are just that." (Id., p.22).

Dr. M_____ recommended that Petitioner maintain physical and legal custody of A___, and that she be allowed to relocate with A___ after an initial six-month "phase-in" period, during which Respondent would have extensive visitation (including mid-week visits) to assist in strengthening the father-child bond. (Id., pp.28-30). Dr. M_____ further recommended that, after this initial phase-in period, A___ should have visitation with Respondent in New York every weekend for a year. (Id., pp.30-32). In the third phase, Dr. M_____ recommended that A___'s

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[4]Petitioner's treating psychiatrist, Dr. Victor R___, testified that forcibly keeping Petitioner separated from her husband would be stressful and harmful to both her and A___. (Tr. 4-15-02, 12:21-25).

visitation be reduced to two long weekends and one shortened one per month. (Id., p.32). Once A___ was in school full-time, Dr. M_____ recommended that she have twice-monthly weekend visits with Respondent. (Id., pp.32-33). Throughout all of these phases, Dr. M_____ recommended that Respondent have daily telephone contact with A___ and that he have A___ for more holiday periods than she spent with Petitioner. (Id., pp.33-34).

On July 16, 2001, the visitation order was modified, on consent and in accordance with Dr. M____'s recommendation, so that Respondent's visits were longer, and began on alternate Sundays at noon. (7-16-02 All Purpose Short Order, p.1). Mr. L____ was always at Petitioner's home and greeted Respondent when he picked up A___. (Tr. 4-22-02, 89:18-25). Petitioner and Mr. L____, along with their respective children, continued to spend as much time as possible together even though it involved a lot of traveling. (Tr. 12-20-01, 9:7-21, 11:7-18).

The hearing on Petitioner's custody and relocation petition, and Respondent's cross-petition for custody, finally commenced on September 24, 2001. Dr. M_____ was called as the first witness and his testimony backed up and expanded upon his report. (Tr. 9-24-01, 32:6-33:5).

On November 27, 2001, Petitioner was retired from the New York City Fire Department on ¾ disability pay. (Tr. 11-26-01, 17:17-19).

On December 20, 2001, upon consent, the visitation order was changed so that Respondent gave up his midweek visit with A___ and instead had three days of visitation from Sunday at noon to Wednesday at noon in alternate weeks. (12-20-01 Order Directing Visitation, p.2). Respondent, the Law Guardian and the Court were all aware that this change enabled Petitioner and A___ to be with the L____s in Virginia whenever A___ was not visiting with Respondent. (Tr. 12-20-01, 76:2-13, 83:25-84:9, 89:4-24, 92:14-17, 94:10-17). Petitioner and Mr. L____ transported A___ to New York for all of the visits. (Tr. 11-26-02, 69:3-18).

Beginning in February 2002, Respondent had four-day visits with A___ in alternate weeks (from Saturdays at noon to Wednesdays at noon), plus extra days at holidays. (12-20-01 Order Directing Visitation, p.2; Tr. 12-20-01, 92:11-13). The rest of the time, A___ was in Virginia with Petitioner and the L____s. (8-9-04 Affirmation of Petitioner, ¶16).

In Virginia, A___ has her own room in a five-bedroom home with a back yard. (Tr. 11-26-01, 20:14-19). The L____s live down the street from a beach and A___ has many friends in the area. (Id., 6:9-15, 7:10, 20). In Virginia, A___ has had dance classes, ice skating, swimming and gymnastics lessons and birthday parties. (Tr. 11-26-02 55:6-8; 8-9-04 Affidavit of Petitioner, ¶19).

Mr. L____ loves A___ very much and considers her "no different" than his

own children. (Tr. 11-26-01 13:2-3). A___ is close with her step-grandfather, who lives next door to the L____s, (Tr. 11-16-01, 19:23-24, 20:13-19). The L____s had a happy, well-functioning blended family. (Tr. 4-23-02, 11:5-25).

Petitioner, Respondent and Respondent's father all testified that Respondent's relationship with A___ improved during the period when she came from Virginia to New York for visitation (*i.e.*, from December 2001 through August 2004). (Tr. 3-11-03, 126:16-23; Tr. 12-17-03, 172:13-25; Tr. 7-19-04, 77:16-24). Respondent spoke to A___ by telephone every day while she was in Virginia. (Tr. 4-15-02, 76:6-15). Petitioner invited Respondent to Virginia to see A___'s life there. (Tr. 4-23-02, 107:21-25).

In April 2002, Dr. Laura G_____,[5] a psychologist who saw the L____s as their family therapist, provided the benefit of her clinical observations of the L____s, and also testified as an expert in family therapy. (Tr. 4-23-02, 5:25-7:21). Dr. G_____ testified that Petitioner wanted to foster the relationship between Respondent and A___. (Tr. 4-23-02, 16:15-25). As an expert in family therapy, she testified that children benefit in a number of ways from growing up with siblings, including learning how to handle and resolve conflict through mediation,

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[5]Dr. G_____'s name is sometimes spelled in the transcripts as Dr. G_____ or Dr. G_____.

compromise, taking turns and sharing and feeling a sense of belonging to a sibling group. (Tr. 4-23-02, 17:20-18:8). Dr. G_____ further testified that A___ and the L____ children consider one another to be siblings (Tr. 4-23-02, 18:9-24) and that, if those relationships ended, A___ would go through a grieving process that "could have life-long effects, because there's the issue of trust, then, in future relationships, there is attachment issues that can result from it." (Tr. 4-23-02, 19:3-16). On cross-examination, Dr. G_____ testified about the benefits to a parent/child relationship that can come from traveling together: " It's great to have – you know, mom and child or dad and child, in the car together, and have time alone." (Tr. 4-23-02, 56:15-25, 57:2-9). Dr. G_____ expressed concern that if Petitioner retained custody but was not allowed to relocate, A___ would have to juggle three households, and might not having a sense of belonging in any of them. (Tr. 4-22-03, 78:6-21)

Barbara K____ testified as Petitioner's treating therapist and as an expert in psychotherapy. (Tr. 4-16-02, 49:12-50:20, 60:10-14). Dr. K____, who had seen Petitioner for 55-60 sessions by the time she testified in April 2002, confirmed that Petitioner wants A___ to have a good relationship with Respondent. (Id., 60:10-14, 69:22-70:21, 72:15-21). She stated that the best scenario would be for Petitioner to be able to relocate to Virginia with A___, so that A___ and the L____ children (to

whom she has bonded) could be together and Petitioner could continue to maintain her supportive, stable relationship with Mr. L____. (Id., 54:23-5:4, 55:22-24, 74:4-5, 83:3-23, 103:7-11, 104:12-17).

Dr. M_____ performed an updated forensic evaluation and submitted a second report to the court, dated June 24, 2002 ("Second M_____ Report"). In this report, Dr. M_____ noted that, in the "last few months" prior to his report—during a period when A___ had visitation with Respondent alternate weeks from noon on Saturday to noon on Wednesday, and spent the rest of her time in Virginia with Petitioner and the L____s—Respondent's relationship with A___ "improved markedly." (Id., p.14). Dr. M_____ was "encouraged in [Petitioner's] ability to adhere to the visitation schedule in place now even though it requires long commutes back and forth to Virginia, and her seemingly fostering a more positive relationship between Mr. P_____ and A___." (Id., p.18).

Again, Dr. M_____ found Respondent's various challenges to Petitioner's fitness to be A___'s custodial parent to be unsupported. (Id., p.17). He again discussed—and dismissed—Respondent's claims that Petitioner would sabotage his relationship with A___ if she was allowed to relocate:

> . . . A___'s behavior with her father of late indicates that for her part, Ms. V___ can usually adequately control expression of her negative feelings about Mr. P_____. He

> worries that if Ms. V___ is allowed to relocate she will change her behavior and once again sabotage his relationship with A___. *The problem with this reasoning is that Ms. V___ should be motivated to continue supporting in every way A___'s relationship with her father because any marked deterioration of this relationship in the future that can be tracked to her influence could be cause for a change in custody based on a claim of interference.*

(Id., p.14) (emphasis supplied).[6]

Despite Respondent's renewed challenges to Petitioner's custody of A___ and to the relocation petition, Dr. M____'s recommendations concerning these issues were very similar to those he made in 2001: "Ms. V___ should continue to maintain physical and legal custody of A___ as long as she fulfills certain conditions to be delineated. Visitation for Mr. P_____ should remain as it is for the next year until A___ reaches full-time school age. At that time the visitation schedule will be altered to reflect the needs of a school-aged child. Relocation should be allowed according to the visitation schedule to be laid out." (Id., p.18). Dr. M_____ recognized that "[t]here is simply no easy way to develop a visitation schedule that is going to give Mr. P_____ the time he understandably would like to have with A___, because apart from vacation periods she will not be able to come to New

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[6]As recently as January 2004, Dr. M_____ testified that neither parent was alienating A___ from the other, and that A___ is very attached to Respondent. (Tr. 1-26-04, 38:20-22, 39:15-18, 44:18-23).

York on weekdays. I sympathize with the hardship this presents for Mr. P_____, but I am still not convinced that Making Ms. V___ move back to New York . . . to address this issue will be better for A___." (Id., p.19).

In addition to an "alternate weekend" visitation schedule once A___ reached school age, Dr. M_____ suggested that, "if Mr. P_____ so desires, he can fly down to Virginia to see A___ for part or all of another weekend each month, theoretically giving him up to three weekends a month." (Id., p.20). As before, Dr. M_____ recommended that Respondent have daily telephone contact with A___ and that he have additional time with her at holidays. (Id., pp.20-21).

In the summer of 2002, A___ attended summer day camp in Virginia at the Jewish Community Center of Northern Virginia ("JCCNV"). (Tr. 4-23-02. 132:11-22). Petitioner informed Respondent and the Law Guardian that she wanted to enroll A___ in preschool and sent Respondent information about available options. (Tr. 11-26-02, 64:15-25; Tr. 12-16-03, 41:14-18; 8-9-04 Affidavit of Petitioner, ¶5). Petitioner enrolled A___ in preschool at JCCNV in the fall of 2002. (8-9-04 Affidavit of Petitioner, ¶5). In the summer of 2003, A___ went back to summer day camp at JCCNV. (Id.; Tr. 3-11-03, 7:4-16).

As the custody/relocation hearing continued, a decision had to be made about where A___ would attend kindergarten. Since the public schools in Virginia are not

closed for Jewish holidays, Petitioner chose G____ Jewish Day School of Northern Virginia in order to accommodate Respondent's request that A___ celebrate the High Holy days and Passover with him in New York. (Tr. 3-11-03, 22:20-25, 23:3-5; Tr. 10-25-04, 68:5-15).[7] Petitioner gave Respondent and the Law Guardian information about the school. (Tr. 7-14-03, 19:24-25, 20:2-4). A___'s stepsister, S_____, already attended G____. (Tr. 11-26-01, 16:14-15; Tr. 10-25-04, 68:23). At G____, where A___ studied Hebrew and other facets of Judaism in addition to an academic program, there were two teacher for A___'s kindergarten class of about eighteen children. (8-9-04 Affirmation of Petitioner, ¶¶8-9)

On July 14, 2003, Referee Rood agreed that A___ could attend G____ but denied Petitioner's request to modify the visitation order so that A___ would not have to miss school for visitation. (Tr. 7-14-03, 31:9-45:25). The Referee acknowledged that A___ was effectively living in Virginia. (Id., 37:3-4). A new visitation order required that visits begin on Wednesday evenings at 8:00 p.m. and last until Sundays at noon in alternate weeks. (7-14-03 Order). Thus, A___ had to miss two days of kindergarten every other week, including her very first week of school. (Tr. 1-28-04, 41:18-20).

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[7]Although the parties are both Jewish and had agreed to raise the child in that faith, Respondent enrolled A___ in a Christian day care center and took her there during his visitation periods with her. (Tr. 9-10-03, 84:24-85:15, 86:11-18).

Petitioner was late bringing A___ from Virginia to New York for visitation on only three occasions: once because of Hurricane Isabelle, once because of other traffic problems, and once because the train was late. (Tr. 12-17-03, 9:15-18; 7-15-04 Affidavit of Petitioner, ¶12). Each time, Petitioner called Respondent to inform him that they would arrive late. (Tr. 12-17-03, 11:16-18).

Between September and December 2003, Petitioner packed schoolwork for Respondent to do with A___, but it always came back untouched (Tr. 1-28-04, 23:3-11, 21-25, 24:2-14; 8-9-04 Affidavit of Petitioner, ¶12). During A___'s kindergarten year, Respondent only once, at Petitioner's prodding, contacted A___'s teachers to check on her progress. (Tr. 12-16-03, 47:21-48:2; 8-9-04 Affidavit of Petitioner, ¶12).

Despite A___'s happiness in Virginia, in September 2003, Respondent filed an Order to Show Cause seeking to change custody or order Petitioner back to New York. (9-19-03 OSC). By Order, dated October 24, 2003, Referee Rood granted this motion and ordered Petitioner to enroll A___ in school in New York or lose custody of her until a final custody determination was rendered. (10-24-03 Order). On November 14, 2003, by order to show cause, Petitioner moved this Court for a

stay of the October 24, 2003 order.[8] On November 25, 2003, this Court granted the stay, granted leave to appeal under docket number 2003-09974 and ordered the Family Court to enter a new visitation order in accordance with its order.

In early January 2004, A___'s teachers told Petitioner that A___ was lagging behind her classmates and was in danger of repeating kindergarten. (1-13-04 Affidavit of Petitioner, ¶9). They believed that A___'s missing so much school was hindering her performance. (1-13-04 Affirmation of Louisa Floyd, Exh. A). Petitioner immediately informed Respondent, who refused to participate in a telephone conference with Petitioner and A___'s teachers. (8-9-04 Affidavit of Petitioner, ¶13).

Since Referee Rood had not yet entered a revised visitation order in compliance with this Court's November 25, 2003 order, by order to show cause dated January 15, 2004, Petitioner sought a new order of visitation that would not interfere with A___'s school attendance, but would instead give Respondent a third weekend with A___ each month, with Respondent coming to see A___ at Petitioner's expense. (1-15-04 OSC). After Dr. Richard Wagner (the Director of

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[8]This Court can take judicial notice of its own proceedings. See In re A.R.,309 A.D.2d 1153, 1153 (4th Dep't 2003) (*mem.*). Accordingly, Petitioner requests that the Court take judicial notice of all motions and appeals previously filed before it, and of all of its previous orders in this case.

G____), testified as an expert in early childhood education that an absence rate above 7-8% is harmful to a child of A___'s age and that kindergarten is an important grade where fundamental learning and school adjustments take place (Tr. 2-5-04, 16:2-6, 29:7-25), Referee Rood temporarily modified the order of visitation to begin the visits on alternate Thursdays at 8:00 p.m., thus requiring A___ to miss only one day of school every other week for visits. (2-5-04 OSC).

On April 1, 2004, this Court vacated its stay of the October 25, 2003 Order. On April 20, 2004, Respondent requested that A___ be transferred out of her kindergarten class in Virginia to a school in New York. (Tr. 4-20-04, 106:19-107:2, 107:10-25, 108:3-6, 109:6-19, 111:25-112:14). After both Petitioner and the Law Guardian objected to this attempt to yank A___ out of her kindergarten class and transfer her to a new school only two months before the end of the school year, Referee Rood denied Respondent's request and allowed A___ to complete kindergarten in Virginia. (Tr. 4-20-04, 109:6-19, 117:8-12). Respondent was invited to A___'s "crossing the bridge" ceremony at the end of kindergarten, and to a family party to celebrate, but declined to attend. (Tr. 6-10-04, 76:20-23; 8-9-04 Affidavit of Petitioner, ¶20).[9]

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[9]Respondent and his parents also declined to attend A___'s sixth birthday party in Virginia. (8-9-04 Affidavit of Petitioner, ¶20).

Respondent attempted to enroll A___ in summer day camp on Long Island near the home of A___'s paternal grandparents, but the camp would not accept the registration because Respondent had not provided Petitioner's contact information. (Tr. 7-19-04, 82:20-25; 7-15-04 Affidavit of Petitioner, ¶7). Respondent did not provide Petitioner with a brochure about the camp. (7-15-04 Affidavit of Petitioner, ¶4). Respondent then filed a frivolous "Emergency Application for Judicial Action" seeking to hold Petitioner in contempt and alleging that she had interfered with his attempt to register A___ in day camp. 7-7-04 Emergency Application for Judicial Action, ¶1). Petitioner gave her written consent to the camp registration. (Tr. 7-19-04, 10:18-23).

Referee Rood ordered counsel to submit written recommendations by August 12, 2004 concerning where A___ should attend first grade in September 2004. (See Tr. 7-19-04, 98:13-14). Respondent's submission inaccurately stated that A___ would be available to visit with Respondent "one full day" if she were to continue her education in Virginia. (Undated Affirmation of Alan S. C_____, p.3).[10]

On August 19, 2004 Referee Rood entered an interim Order requiring Petitioner to register A___ in New York for first grade. (8-19-04 Decision and

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[10]The Proposed Temporary Order of Visitation that Petitioner submitted provided (at ¶2A) that Respondent would have alternate weekend visitation from Fridays at 8:00 p.m. through Sundays at 5:30 p.m.

Order, p.3). The Referee found that "it is no longer in the child's best interest to continue traveling back and forth to Virginia." (Id., p.2). As discussed in more detail, *infra*, although the Order cited Tropea v. Tropea, it failed to mention (much less discuss) many of the factors that the Court of Appeals stated were relevant to the determination of whether relocation is in a child's best interests.

Petitioner filed a notice of appeal with respect to the August 19, 2004 Order, along with an order to show cause seeking a stay, on September 2, 2004. 9-2-04 OSC. On September 9, 2004, this Court denied the stay and granted Petitioner leave to appeal under docket number 2004-07473.[11]

Due, in part, to the expenses associated with this protracted litigation (including paying a *pro rata* portion of the Law Guardian's fees), Petitioner cannot afford her own apartment in New York. (Tr. 10-25-04, 75:5-22). As a result, upon their return to New York in accordance with the August 19, 2004 Order, Petitioner and A___ moved in with Petitioner's mother in East New York, Brooklyn. (Tr. 9-9-04, 66:22-67:6).

On September 9, 2004, Respondent moved by order to show cause seeking

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[11]Petitioner requests that this Court take judicial notice of the fact that she perfected her appeal from the August 19, 2004 interim order on December 19, 2004 (the "2004 appeal") and that, in the interest of fostering efficiency for both the parties and the Court, by letter dated March 23, 2005, Petitioner withdrew the 2004 appeal without prejudice to her right to address herein any and all issues that had been raised in the (previously perfected) 2004 appeal.

temporary custody of A___ based on his allegation that Petitioner was in violation of the August 19, 2004 Order and had not yet enrolled A___ in school in New York. (Tr. 9-9-04, 47:10-22). Referee Rood denied Respondent's motion based on Petitioner's testimony that she had, indeed, registered A___ for school in New York at PS 214 and Respondent's submission of supporting documentary evidence. (Tr. 9-9-04, 73:4-21).[12]

After additional court dates in September and October 2004, at which the Referee heard rebuttal evidence only (Tr. 6-10-04, 65:20-21), the trial finally concluded on October 25, 2004. On January 27, 2005, Referee Rood rendered a 40-page Decision and Order denying Petitioner's relocation petition and granting her sole physical and legal custody of A___. In the portion of the Decision and Order specifically addressing relocation, the Referee set forth only four of the

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[12]The Decision and Order, inaccurately states that the order to show cause was dismissed "*after* the child was enrolled in school in New York" (D&O, pp.6-7). The Decision and Order also inaccurately states that Petitioner "was not able to provide a rationale [*sic*] explanation for not allowing [A___] to attend a Jewish day school in New York when the father offered to pay the entire cost" and that Petitioner "did not do any research into Jewish day schools in New York or into any available transportation. It appears that the mother made the child's transition back to New York more difficult than it had to be." (D&O, p.29). However, Petitioner testified that she sent A___ to a Jewish day school in Virginia to accommodate Respondent's request that A___ celebrate the High Holy days and Passover with Respondent in New York; this was not necessary once A___ was attending school in New York, since New York City public schools do not hold classes on the High Holy days. (Tr. 3-11-03, 22:20-25, 23:3-5; Tr. 10-25-04, 68:5-15). Additionally, the closest Jewish day school is located 45 minutes away from Petitioner's mother's apartment. (Tr. 10-25-04, 18-25).

factors enunciated in Tropea v. Tropea:

> 1. each parent's reasons for seeking or opposing the move,
>
> 2. the quality of the relationships between the child and the custodial and non-custodial parent,
>
> 3. the degree to which the custodial parent's and child's life may be enhanced economically, emotionally, and educationally by the move,
>
> 4. and the feasibility of preserving the relationship between the non-custodial parent and the child through suitable visitation arrangements

(1-27-05 Decision and Order ["D&O"], pp.31-32). The Referee concluded that "[t]he deciding factor in this case is the feasibility of the non-custodial parent retaining a quality relationship with his daughter." (Id., p.34). Despite Petitioner's almost unblemished adherence to all visitation schedules during the course of the court proceedings, the Referee found that Petitioner's "continuing and perhaps increasing resentment" at having to transport A___ to New York for visitation "would make the visitation even more problematic." (Id., p.34). The referee further opined that "[i]t is very possible that she would soon file a petition in the New York or Virginia courts to decrease the amount of the visitation claiming that it is no longer in the child's best interest to spend so much time traveling." (Id.) Finally, the referee noted that A___ is close with her maternal grandmother, as well paternal

grandparents and cousins, all of whom live in New York. (Id., p.36). The Referee directed that Respondent have visitation with A___ on alternate weekends and on Wednesdays from after school until 7:00 p.m., plus sixty percent of each extended school vacation and six weeks of each summer vacation. (Id., pp. 36-37, 39).[13]

On February 1, 2005, Petitioner filed a notice of appeal from the January 27, 2005 Decision and Order. On February 9, 2005, Respondent filed a notice of cross-appeal from the January 27, 2005 Decision and Order.[14]

## ARGUMENT

### I. THIS COURT HAS BROAD POWER WHEN REVIEWING CUSTODY AND RELOCATION DECISIONS

A custodial parent seeking to relocate must prove by a preponderance of the evidence that the proposed relocation will serve the child's best interests. Tropea v. Tropea, 87 N.Y.2d 727, 741 (1996). In making a "best interests" determination, the Appellate Division's authority is as broad as that of the trial court. E.g., Miller v.

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[13]The Decision and Order also contains detailed provisions for visitation on religious and non-religious holidays. (Id., pp.37-39). It should be noted that the visitation schedule contained in the Decision and Order is premised on Dr. M____'s recommendations, which were set forth in the context of his reports recommending that Petitioner also be allowed to relocate.

[14]On or about March 23, 2005, Referee Rood issued a three-page "Order of Custody and Visitation," also dated January 27, 2005, which contains the same custody and visitation provisions as are contained in the Decision and Order. Petitioner filed a Notice of Appeal with respect to the order of Custody and Visitation on or about March 31, 2005. For the sake of clarity, all references to the January 27, 2005 order shall be to the Decision and Order.

Pipia, 297 A.D.2d 362, 364 (2d Dep't 2002). In this regard, "the deference ordinarily given to a trial court's findings is not warranted where its determination lacks a sound and substantial basis in the record." Id. (internal quotation and citations omitted); see also Sean I.R. v. Jennifer J.B., 251 A.D.2d 1034, 1034 (4th Dep't 1998) (*mem.*) (reversing custody and relocation decision that lacked sound and substantial basis in record).

## II. THE REFEREE'S FINDING THAT RELOCATION TO VIRGINIA IS NOT IN A___'S BEST INTEREST LACKS A SOUND AND SUBSTANTIAL BASIS IN THE RECORD

### A. Liberal Visitation Has Enabled Respondent to Develop and Maintain a Meaningful Relationship With A___, and it Will Enable Respondent and A___ to Continue to Maintain Such a Relationship

In Tropea, the Court of Appeals explained that, in relocation cases, "the impact of the move on the relationship between the child and the noncustodial parent . . . [is] a central concern." 87 N.Y.2d at 739. Consistent with Tropea, in the Decision and Order, the Referee explained that "[t]he deciding factor in this case is the feasibility of the non-custodial parent retaining a quality relationship with his daughter." (D&O, p.34). However, the Referee's conclusions concerning the feasibility of Respondent maintaining a quality relationship with A___ if Petitioner is allowed to relocate permanently are legally and factually unsupported.

After noting that, although Dr. M_____ recommended that A___ fly between New York and Virginia for all of her visits with Respondent, A___ in fact traveled between the two locations only by car or train, the Referee concluded that "[t]he logistics of the travel between the two cities results in the child and father not having enough time together. The prohibitive cost of air travel makes it very difficult for the parents to transport the child bi-weekly by plane. In any case, air travel on a regular basis presents it's [*sic*] own problems." (D&O, pp. 16, 17, 34). However, Dr. M____'s recommendation concerning air travel was never incorporated in either a court order or a so-ordered stipulation. Moreover, although Respondent made numerous motions concerning visitation and relocation, he never sought to compel Petitioner to transport A___ to New York by air. Furthermore, the proposed Temporary Visitation Order Petitioner submitted in August 2004 provided that respondent "shall bring the child to the airport if the child is returning by airplane or to the home of the maternal grandmother if the mother and child are driving or to Penn Station if they are returning to Virginia by Amtrak." (Proposed Temporary Visitation Order, ¶2B). Finally, the Referee's observation that the trip between Virginia and New York takes approximately 5-6 hours by car (D&O, p.32) ignores Petitioner's testimony that the trip takes less than three and a half hours by train. (Tr. 10-25-04, 85:13-19).

In Satalino v. Satalino, 273 A.D.2d 632 (3d Dep't 2000), the court addressed the feasibility of maintaining a meaningful relationship between a non-custodial parent and a child who lives a significant distance away. In Satalino (which is indistinguishable, on all relevant grounds, from the instant case), the parties entered into a separation agreement giving the mother primary physical custody of their daughter and giving the father visitation every other weekend with an overnight every Wednesday night (plus holiday and summer visits). Id. at 632. Two months after the entering into the settlement agreement, the mother sought permission to relocate with the parties' five-year-old daughter from Albany to Cattaraugus County—more than 340 miles and 5 hours by car—from the father's home in Schenectady County. Id. at 633. The mother sought relocation to be with her fianceé, who owned a three-bedroom home in a nice neighborhood near a playground and a public school. Id. at 634. The child had developed a positive and loving relationship with the mother's fianceé, whom she had known for more than a year. Id. Neither party had any relatives in the Cattaraugus County area, and the child had meaningful relationships with her extended family (both maternal and paternal) in the Albany area. Id. at 634-35. As in this case, the father's primary reason for objecting to the move was that he and his family would be denied quality access to his daughter. Id. at 634.

The trial court granted the mother's motion and gave the father visitation every third weekend, plus two weeks in the summer and some holidays. Id. at 633. The Third Department affirmed, noting that the trial court had "carefully crafted a visitation schedule providing periods of quality time with the child in the Albany area with the [father] and his family." Id. at 635.[15] The appellate court further found that the mother's "desire to move to western New York was not motivated by bad faith, but by the reality of better opportunities for her and the child in the locale where her fianceé reside[d] and [was] successfully employed." Id. Similarly, here, there is no dispute that Petitioner's desire to move to Virginia is motivated by the reality of better opportunities for her and A___ in the locale where her husband resides and is successfully employed (and where her husband's children are settled).

Gillard v. Gillard, 241 A.D.2d 966 (4th Dep't 1997) (*mem.*) is also nearly indistinguishable from the instant case. In Gillard, the mother sought to relocate from Genessee County to Vancouver, British Columbia with the parties' five-year-old child to be with her fianceé. Id. The fianceé's business interests kept him from moving to New York (id. at 967), just as, in this case, Mr. L____'s job, his son's special needs, and the custody and visitation arrangements with his ex-wife keep

[15]The court did increase the summer visitation from two weeks to four weeks, id. at 635, which is less visitation than the Referee granted in the Decision and Order (D&O, p.37) and less than Petitioner proposes herein.

him from moving to New York. (Tr. 11-26-02, 53:12-16; First M_____ Report, p.29).

The evidence in Gillard established that the father generally exercised his alternate weekend and holiday visitation and was actively involved with the child during visitation. Id. However, the father requested extra visitation only infrequently and, as here, was not actively involved in the child's education or medical treatment. Id.

Although the court recognized that relocation to Vancouver would make the then-current alternate weekend and holiday visitation schedule "impossible," it nevertheless allowed the relocation. Id. at 966, 968. The court noted that the mother's fianceé had a "good relationship" with the child, that marriage and relocation would significantly improve the mother's economic status, and that the child would gain the advantages of living in a household with a happily married couple. Id. at 967. Similarly, here, Mr. L____ has a close, loving relationship with A___, relocation will significantly improve Petitioner's economic status, and it will allow A___ to reap the advantages of living in a household with a happily married couple.

Other courts have also allowed a custodial parent to relocate even though the child(ren) would have to travel a long distance for weekend or other visitation. See

Thomas v. Thomas, 271 A.D.2d 726 (3d Dep't 2000) (allowing relocation where 7-year-old child would have to travel three hours each way for visitation with father; father had child three weekends per month and extended summer visitation, and parties agreed to meet halfway between their homes to facilitate visitation); Thompson v. Smith, 277 A.D.2d 520, 522 (3d Dep't 2000) (allowing mother to relocate with six-year-old child from Tompkins County to Maine even though relocation would effectively eliminate father's midweek visitation and diminish frequency of weekend visits; by requiring mother to pay air travel costs for child to be with father on numerous extended weekend visits throughout year in addition to extended summer and holiday visits, and by providing for additional visitation at father's option for one weekend per month in Maine, Supreme Court's visitation schedule allowed father to maintain close relationship with child);[16] Bodrato v. Biggs, 274 A.D.2d 694 (3d Dep't 2000) (allowing mother to relocate from Schenectady County to upstate New Jersey with seven- and nine-year-old children; relocation would not deny father reasonable access to his children because Family Court's order required mother to transport children to father's home for visitation every other weekend and gave father visitation for four weeks during the summer

[16]We note that, in his second report, Dr. M_____ recommended that Respondent have visitation on alternate weekends and that he be given additional visitation in Virginia for part or all of another weekend each month. (Second M_____ Report, pp.19-20).

and on some holidays); Long v. Long, 252 A.D.2d 722 (3d Dep't 1998) (allowing 200-mile relocation where mother had a genuine motive to relocate, move would provide financial benefit and enhanced educational opportunities for children and increase overall quality of their lives, and mother was willing to allow father liberal weekend visitation and provide transportation); see also Aziz v. Aziz, 8 A.D.3d 596 (2d Dep't 2004) (allowing mother to relocate from Nassau County to Texas with 13-year-old child where proposed move would provide economic, emotional and educational benefits for child); Hrusovsky v. Benjamin, 274 A.D.2d 674 (3d Dep't 2000) (allowing mother to relocate with nine-year-old child from Steuben County to Virginia); Pardee v. Pardee, 246 A.D.2d 522 (2d Dep't), app. denied, 92 N.Y.2d 802 (1998), amended, 684 N.Y.S.2d 904 (2d Dep't 1999) (allowing mother to relocate with child to Washington State, and modifying order so as to maximize father's visitation without interfering with child's schooling and home life).

The facts of Salichs v. James, 268 A.D.2d 168 (1st Dep't 2000)—the sole case the Referee relied on to support her denial of Petitioner's relocation application—are distinguishable on many crucial grounds from the facts of this case. In Salichs, the mother sought permission to relocate to Puerto Rico with the parties' six-year-old daughter. Id. at 169. The court found that an increase in the amount of time awarded for the father's summer visits and in the number of holiday weekend

visits could not satisfactorily make up for the loss in the quality of the visitation he previously enjoyed with the child because the father (who worked out of the home) had performed many of the functions of the primary caregiver for the child both before and after the parties' divorce, including taking the child to and from school and arranging for and transporting the child to play dates and other after-school activities. Id. at 171. Here, it is undisputed that Petitioner, not Respondent, has been A___'s primary caregiver for her entire life; indeed, even when circumstances presented Respondent with the opportunity to act as A___'s primary caretaker (such as by participating in decisions about school and camp), Respondent chose not to avail himself of that opportunity. Respondent simply has not had the level of "active participation in the child's regular day-to-day life" (id.) that would justify denying relocation under Salichs.

Moreover, in Salichs, the mother sought permission to relocate with the child after she asked to be transferred from her employer's New York office (which was closing) to its main office in Puerto Rico. Id. at 170. The court observed that the mother's employment history demonstrated that she previously had been able to find new, remunerative employment in New York whenever she sought it, and concluded that the trial court's conclusion that the child's standard of living would fall unless the mother accepted a position in Puerto Rico (at a substantially reduced salary) was

not supported by the evidence. Id. at 172. Here, there is no dispute that A___ will enjoy a better standard of living in Virginia than is available to her in New York.[17] Moreover, there is no suggestion that Petitioner purposely sought out a relationship with a man from another state (which would be analogous to the choice that the mother in Salichs made when she asked her firm to transfer her to Puerto Rico).

Finally, the First Department found it significant that when the parties in Salichs (who had joint legal custody) lived close to one another, the mother made important decisions about the child (relating to education, medical care, and the choice of babysitter) without consulting the father, and had made numerous attempts to limit his time with the child and the child's attachment to him . Id. at 173. Here, the Referee's finding that "neither party has consulted the other before making decisions concerning the child" (D&O, pp.35-36) is simply not supported by the record. Indeed, Petitioner has consistently provided Respondent with information about A___'s schools, camps, doctors and other activities. (Tr. 12-17-03, 79:16-23; 7-15-04 Affidavit of Petitioner, ¶4). Respondent, on the other hand, has made significant decisions concerning A___ without consulting with Petitioner, and has not informed her of certain significant events in A___'s life. For example, Respondent unilaterally changed A___'s pediatrician, and he did not tell Petitioner

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[17]See Point II.D, *infra*.

that the day care center in which he had enrolled A___ was having a "graduation" ceremony. (Tr. 9-20-04, 111:4-25, 112:2-17; Tr. 9-10-03, 87:21-88:13). Additionally, not only did Respondent fail to provide Petitioner with information about the summer day camp on Long Island where he wanted to send A___ during the summer of 2004, but he also failed to provide the camp with information about Petitioner (who has sole legal custody of A___). Finally, Petitioner sought to limit Respondent's visitation with A___ while A___ was living in Virginia only after A___'s teachers expressed their concern that A___'s frequent absences from school for visitation might result in her having to repeat kindergarten. Thus, Salichs is totally inapposite to this case.

### B. Petitioner Has Demonstrated her Commitment to Following a Visitation Schedule that Will Enable Respondent to Maintain a Meaningful Relationship with A___

One of the most significant aspects of this case is that, during the nearly three years that Petitioner was solely responsible for transporting A___ from Virginia to New York for visitation, she was late only three times and A___ missed but a single visit (because she was sick). Thus, although the Referee speculated that Petitioner would at some time in the future seek to limit Respondent's visitation with A___ (see D&O, p.34), Petitioner's past conduct more than sufficiently demonstrates her "willingness to maintain a visitation schedule that will enable [R]espondent 'to

maintain a positive nurturing relationship'" with A___. Boyer v. Boyer, 281 A.D.2d 953, 953 (4th Dep't 2001) (*mem.*) (quoting Tropea, 87 N.Y.2d at 740) (allowing relocation where, *inter alia*, mother was child's primary caretaker since birth and, although relocation would affect frequency of father's visitation, mother had demonstrated her willingness to maintain visitation schedule that would enable father to maintain positive nurturing relationship with child); see also Daniel R. v. Liza R., 309 A.D.2d 714 (1st Dep't 2003) (stating, in *dicta*, that if case were to be assessed on basis of relocation rather than custody modification, court would allow relocation from Bronx to Pennsylvania, since, *inter alia*, mother had not been denied meaningful access to her son and it was demonstrated that child would thrive in new location); Henion v. Henion, 267 A.D.2d 805, 806 (3d Dep't 1999) (although court recognized that father had "a deep love and affection for his children and [had] continued a meaningful relationship with them through the exercise of consistent regular visitation," it allowed relocation from Broome County to Charlottesville, Virginia because, *inter alia*, "the mother's flexible attitude toward extended periods of visitation and her willingness to bear the expenses associated with the transportation of the children encourage[d] the meaningful relationship developed between [the father] and his children."); Lukaszewicz v. Lukaszewicz, 256 A.D.2d 1031 (3d Dep't 1998) (allowing mother to permanently relocate with children from

Tioga County to Connecticut where, *inter alia*, father failed to demonstrate that mother's provisional relocation to Connecticut deprived him of his ability to visit his children on a regular basis); Morlando v. Morlando, 240 A.D.2d 852 (3d Dep't), app. denied, 91 N.Y.2d 802 (1997) (allowing father to relocate with 10 and 11-year-old children from Broome County to North Carolina, in part because father demonstrated a commitment to preserving relationship between mother and children by agreeing to transport children, at his expense, to Broome County at least four times a year during children's school vacations); Vasquez v. Vasquez, 2004 WL 1609180 (Sup. Ct. Queens Co. July 2, 2004) (allowing mother to permanently relocate with 7-, 10- and 12-year-old children from Queens to Pennsylvania and directing mother to continue bringing children to Queens for visitation every other weekend where, *inter alia*, children's visitation with their father had not changed, in either quality or quality, since their move to Pennsylvania).

Indeed, Petitioner strictly adhered to the various visitation orders, bringing A___ to New York for visits even though her on-the-job injury (which led to her disability retirement) makes it very painful for her to drive long distances (Tr. 11-26-02, 65:18-66:21). Respondent has never helped with the transportation in any way.

Moreover, there is absolutely no evidence that the reduction in the length and

frequency of A___'s regular weekend visitation—which is in accordance with Dr. M____'s recommendations in both his first and second reports and which is due to the inadvisability of A___ missing school for visitation—has had any effect on respondent's ability to maintain "a meaningful parent-child relationship." Tropea, 87 N.Y.2d at 740. Indeed, in Tropea, the court observed that "there are undoubtedly . . . many cases where less frequent but more extended visits over summers and school vacations would be equally conducive, or perhaps even more conducive, to the maintenance of a close parent-child relationship, since such extended visits give the parties the opportunity to interact in a normalized domestic setting." Id. at 738.

There is simply no evidence in the record that would support the conclusion that this is one of those cases "in which the loss of midweek or every weekend visits necessitated by a distant move may be devastating to the relationship between the noncustodial parent and the child." Id. First, as a matter of fact, A___'s weekend visits with her father are as frequent under the interim and final Orders as they were when A___ lived in Virginia. Therefore, the question comes down to whether the loss of the approximately four-hour Wednesday visit that is provided for in the interim and final Orders would be devastating to A___'s relationship with Respondent. In this connection, it is noteworthy that Dr. M_____ did not

recommend midweek visitation once A___ reached school age. See Second M_____ Report, p.19. The Referee's relocation determination, which flies in the face of Dr. M____'s recommendations on this issue and ignores his opinion on many other issues, does not give Dr. M____'s recommendations due weight. See Miller v. Pipia, 297 A.D.2d at 365 (recommendations of court appointed experts, while not determinative, are entitled to some weight).

### C. The Referee Failed to Consider the Feasibility of a Parallel Move by Respondent

In Tropea, the Court of Appeals instructed that, in a "proper case," the trial court "might consider the possibility and feasibility of a parallel move by an involved and committed noncustodial parent as an alternative to restricting a custodial parent's mobility." 87 N.Y.2d at 740. The Referee did not address this issue in either the interim or final Orders.

Respondent is single and unmarried, and lives in a one-bedroom apartment. His skills as a bill collector are readily transferrable. Indeed, Respondent testified that he was "quite sure" he'd be able to find a job in Virginia or Washington, D.C. (Tr. 12-17-03, 91:2-7). Thus, the possibility and feasibility of a parallel move by Respondent weigh in favor of permitting Petitioner to relocate to Virginia with A___. See Thompson v. Smith, 277 A.D.2d at 522 (noting feasibility of parallel

move by father to be near child, inasmuch as father's single lifestyle and skills as self-employed machinist and part-time baker were "readily transplantable").

### D. The Referee Ignored Extensive Testimony in the Record Concerning the Emotional and Economic Benefits A___ Would Receive—and has Received—as a Result of Being Part of a Stable Blended Family that Includes her Mother, Stepfather and Stepsiblings

In Tropea, the Court of Appeals pointed out "the value for the children that strengthening and stabilizing the new, postdivorce family unit can have in a particular case." 87 N.Y.2d at 739. The interim Order does not address this factor at all and the 40-page Decision and Order contains only a few offhand statements concerning A___'s relationship with Mr. L____ and her stepsiblings, S_____ and S_____.[18]

In Lazarevic v. Fogelquist, 175 Misc.2d 343 (Sup. Ct. N.Y. Co. 1997), the court was faced with the thorny issue of whether to allow a six-year-old child to relocate with his mother, stepfather and half-siblings to Dharan, Saudi Arabia.

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[18]"J___ L____, the mother's husband[,] testified that in spite of a rocky beginning he and the mother have a solid and loving relationship. The families have mixed well and A_____ and his children love one another." (D&O, p.9). "The forensic expert and the law guardian discussed the positive relationship between the mother and her husband. During his testimony, Mr. L____ appeared to be loving and supportive toward his wife and the child. It appears that the mother and Mr. L____ enjoy a supportive and loving relationship with each other. They . . . are working to create a stable combined family life." (D&O, pp.22-23). "[Petitioner] testified that the child is very happy in Virginia and loves being a part of the L____ home . . . . The law guardian described a very nice home and family in the L____ household. The child does appear to be very happy living there . . . ." (D&O, p.33).

Although the child had a deep loving, committed and caring relationship with both his parents, and although the distant relocation would mean a "dramatic" change in the child's life and in his relationship with his father, the court nevertheless allowed the relocation, in large part because it would allow the child to maintain his relationships with his stepfather and siblings:

> [T]o compel [the child] to live here in New York away from his Mother and siblings without the benefit of any extended family support, would not be in [the child's] best interest, notwithstanding the fact that [the child] has a good relationship with his Father. [The child] has always known and enjoyed the supportive benefits of his 'stay at home' Mother and the company and developing relationship with his younger siblings. In addition, [the child] has developed a healthy and loving relationship with his Stepfather who loves and treats [the child] equally to his own two children.

175 Misc.2d at 349; see also Thompson v. Smith, 277 A.D.2d at 522 (allowing relocation from Tompkins County to Maine where, among other things, record indicated that mother, new husband and child had developed a loving and mutually supportive relationship; move would benefit child insofar as it would strengthen and stabilize new post-divorce family unit).

Here, A___ has a very close, loving relationship with Mr. L____. Her only experience living with a loving, mutually supportive married couple in a nuclear family setting is when she resided with Petitioner and the L____s in Virginia. Dr.

G_____ testified that A___ considers S_____ and S_____ to be her sister and brother. Thus, notwithstanding the fact that A___ has a good relationship with Respondent, it would not be in her best interest to to compel her to live in New York, away from these individuals.

In a related vein, the Tropea court instructed that, "[i]n some cases, the child's best interests might be better served by fashioning visitation plans that maximize the noncustodial parent's opportunity to maintain a positive nurturing relationship while enabling the custodial parent, who has the primary child-rearing responsibility, to go forward with his or her life." 87 N.Y.2d at 740. Dr. M_____ recognized the extremely positive impact that allowing Petitioner to establish a new life, with a loving and supportive husband who loves A___, would have on both A___ and Petitioner, stating that Petitioner's relationship with Mr. L____ "may well present an enhancing situation as she will have two half siblings and Ms. V___ is emotionally much more content" (First M_____ Report, p.19) and concluding that "Ms. V___ has found a good psychological match in Mr. L____ and helping her maintain this relationship should be encouraged for A_____'s benefit, and so that Mr. P_____ can have meaningful access and a reasonable relationship with his daughter." (Id., pp.29-30).

Dr. M_____ also recognized that preventing Petitioner from permanently

relocating to Virginia would have a grave impact on Petitioner and A___:

> My concern is that if Ms. V___ is given no hope of ever being able to relocate and her marriage inevitably fails that she will once again fall into severe depression and that the intense hostility she has felt towards Mr. P_____ in the past will likely re-emerge. This hostility will almost certainly be transmitted one way or the other to A_____, and the child will not only have to be in the middle of a hostile relationship between her parents, but will have to face living with a markedly depressed mother. No one could predict what would happen then, but . . . I do not see how this scenario could lead to enhancing A_____'s life."

(First M_____ Report, p.29). In completely ignoring Dr. M____'s opinion that severing Petitioner from her new family and her primary source of emotional support would likely have a negative impact on A___, and is not in her best interest, the interim Order and the Decision and Order lack a sound and substantial basis in the record. See Barber v. Stanley, 260 A.D.2d 744 (3d Dep't 1999) (allowing mother to relocate to North Carolina with 10-year-old child in light of relationships with child's extended family that would be fostered by move, beneficial economic impact of move, cessation of exposure to what appeared to be continual acrimony between parties and feasibility of parallel move by father, if he so desired).[19]

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[19]In the Decision and Order, the Referee relied instead on Dr. M____'s testimony (on cross-examination by the Law Guardian) that, as she recounted, "if the focus is placed only on what is best for A___ and not what is best for the parents, he would recommend that A___ reside in New York with Petitioner while splitting her time as evenly as possible between the parties."

A___ will also benefit economically from the move. In Virginia, she has her own room in a five-bedroom house in the suburbs; in New York, she lives an apartment in East New York. While the Referee expressed doubts concerning Petitioner's reasons for living with her mother in East New York rather than obtaining her own apartment (see D&O, p.33), these doubts are not supported by the record. (See, e.g., Tr. 11-26-01 21:11-14 [Mr. L____'s testimony concerning expenses of maintaining two residences, frequent travel between New York and Virginia, and telephone bills]). Moreover, no one has suggested that Petitioner can afford to live with A___ in a house with a yard in a safe area in or around New York City on her current (disability) income, which is 3/4 of her past salary of about $35,000 per year. (See First M_____ Report, p.2).

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(D&O, p.19). However, as the Court of Appeals recognized in Tropea, it is simply impossible and unreasonable to attempt to look at a child's best interest in a vacuum, without taking into consideration the impact of a relocation determination on the psychological and economic status of the custodial parent. 87 N.Y.2d at 735 (" . . . the demands of a second marriage and the custodial parent's opportunity to improve his or her economic situation, may also be valid motives that should not be summarily rejected, at least where the over-all impact on the child would be beneficial."). The Referee's admonition that "[t]he mother appears to have difficulty in differentiating between the child's and her own best interests" (D&O, pp.28-28) ignores the fact that—in this case as well as in many of the other cases cited herein—the interests of the parent who wants to relocate and of the child may coincide.

### E. Neither the Interim Order, Which Forced A___ to Move Back to New York in September 2004 After Having Resided in Virginia for Nearly Three Years and Becoming Settled There, or the Final Order, Which Continued the Effect of the Earlier Order, is in A___'s Best Interest

In a number of cases, this Court has demonstrated its unwillingness to reverse temporary or provisional relocations, as long as those relocations have been in the child's best interest. For example, in Miller v. Pipia, the child had already relocated to another state by the time the trial court rendered its final relocation determination.[20] 297 A.D.2d at 365. After noting that the mother had been the child's primary caretaker since birth, and that the home environment provided by the mother provided a more appropriate and comfortable living arrangement for the child, this Court found that the child's best interests "would not be served by forcing her to move back to New York after having already relocated and becoming settled in Florida." Id. at 366; see also Alderstein v. Alderstein, 5 A.D.3d 616 (2d Dep't 2004) (refusing to compel mother, who had been awarded temporary custody of parties' 16-year-old son, to return with son from Toronto, where the two had lived since 2001, to Queens in order to facilitate therapy sessions aimed at establishing a healthy father-son relationship); Malandro v. Lido, 229 A.D.2d 541 (2d Dep't 1996)

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[20]In Miller, the mother simply remained in Florida with the child after going there for a three-week visit with the mother's family. 297 A.D.2d at 363. Here, by contrast, Petitioner obtained Respondent's and the Referee's consent every step of the way.

(child's best interests would not be served by forcing her to move back to New York after having already relocated and becoming settled in Florida); Thomas v. Thomas, 271 A.D.2d at 726 (although court should have held hearing before allowing temporary relocation, reversal was not warranted where, subsequent to relocation, father was permitted liberal visitation); Vasquez v. Vasquez, 2004 WL 1609180, at *4 (distinguishing Tropea on grounds that, in case at bar, father sought to return to New York children who were already relocated and settled, albeit without leave of court). Here, during the extremely long course of the proceedings in this case, Petitioner and A___ were allowed to live in Virginia, and A___ developed strong emotional ties to her family, friends and school there. As the extensive testimony of Dr. M_____ and Dr. G_____ reveal, forcing A___ to move back to New York after having already becoming settled in Virginia is simply not in her best interest.[21]

The noncustodial parent's level of involvement in the child's life is also an important factor in deciding to whether to reverse a provisional relocation. The

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[21]With all due respect to the Referee, one must question the weight due her observation (which must have resulted from her *in camera* examination of A___ on November 29, 2004) that "[t]he main source of discontent for the child was her school in New York." (D&O, p.33). This observation—the result of A___'s brief meeting with a stranger not trained in child or family therapy—simply does not "jibe" with the testimony of many, more qualified, witnesses who testified concerning the negative effect that being forced to move back to New York would likely have on A___.

level of commitment that can be inferred from Respondent's desire to block relocation and gain custody of A___ is more than belied by his many actions that have served to limit his involvement with A___'s life. For example, Respondent declined Petitioner's repeated invitations to participate in choosing a preschool, school and summer camp for A___ in Virginia. (8-9-04 Affidavit of Petitioner, ¶¶5-6). When A___ was in kindergarten (and missing two days of school every other week for visitation with Respondent), Respondent did not help her with her schoolwork during her visits with him. Additionally, during A___'s kindergarten year, Respondent only once, at Petitioner's prodding, contacted A___'s teachers to check on her progress. In more than three years, Respondent never once traveled to Virginia to see what A___'s life was like there, despite numerous invitations from Petitioner. (Tr. 4-15-02, 60:24-61:7 80:19-25). When asked why he had never done so, Respondent replied: ". . . . And I also feel that if I did go to Virginia it would almost suggest to the court that I'm [*sic*] condoned the relocation the fact that I actually visited A__ [*sic*] in Virginia that this is where she lives, when in fact she's a New York resident . . . . No, I'm not standing on principal [*sic*], my daughter in my view, absolutely does not belong in Virginia." (Tr. 12-16-03, 136:19-137:4). Numerous courts have allowed relocation where the noncustodial parent's actual degree of involvement in the child's life was similarly limited. E.g., Vasquez v.

Vasquez, 2004 WL 1609180, at *2 (noting, in opinion allowing permanent relocation even though mother originally relocated without leave of court, that father had never gone to Pennsylvania to visit his children, examine their living environment or check on their educational opportunities).[22]

### F. The Language of the Decision and Order Reveals that the Referee's Relocation Decision was Improperly Guided by a Punitive Animus

In Tropea, the Court of Appeals warned that:

> relocation determinations are not to be made as a means of castigating one party for what the other deems personal misconduct, nor are the courts to be used in this context as arbiters of the parties' respective 'guilt' or 'innocence.' Children are not chattel, and custody and visitation decisions should be made with a view towards what serves their best interests, not what would reward or penalize a purportedly 'innocent' or 'blameworthy' parent.

87 N.Y.2d at 742. In contravention of this directive, the language of the final Order reveals the punitive animus behind the Referee's determination.

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[22]The Referee also based her relocation determination on the fact that A___'s paternal and maternal grandparents, and her paternal cousins, live in New York. (D&O., p.36). However, there is no testimony in the record indicating that A___'s paternal grandparents saw her any less frequently during the nearly three years she lived in Virginia than they did previously. (See Tr. 11-26-02, 31:9-25). There is also no indication in the record that her maternal grandmother would not visit her in Virginia or that she would otherwise be unable to maintain a close relationship with A___ if permanent relocation were permitted. In fact, A___'s maternal grandmother traveled to Virginia for A___'s "crossing the bridge" ceremony following kindergarten and for A___'s birthday in 2004 (7-15-04 Affidavit of Petitioner, ¶12; 8-19-04 Affidavit of Petitioner, ¶20).

The Referee's determination of the relocation petition appears to have been influenced by her perception that Petitioner misled Respondent into agreeing to, and misled her into signing, the November 28, 2000 Order, which granted Petitioner sole legal and physical custody of A___: "The present problem arose when the mother got married, one month after the settlement[,] to J___ L____ . . . . The mother did not notify the father or the court when the father agreed and the court signed an order granting the mother an order of custody." (D&O, p.9; see also D&O, p.24 ["The mother . . . demonstrated questionable ethics in this court when she failed to notify the law guardian, the father and the court prior to the signing of the custody agreement in November of 2000 that relocation would become an issue in the immediate future as a result of her marriage one month later to Mr. L____."]; 8-19-04 Order ["The mother obtained a consent order of custody on November 28, 2000 without notifying the court or the father that she was planning to get married one month later to J___ L____ who resided with his two children in Virginia]).

However, it is clear that Petitioner did not intend to mislead Respondent or the Referee into giving her sole legal and physical custody of A___. In order to rebut this allegation, Petitioner took the extraordinary step of waiving her attorney-client privilege in order to allow Attorney T_____ to testify on this issue. Attorney T_____ admitted that, during the summer and fall of 2000, Petitioner discussed with

him her relationship with Mr. L____. He further admitted that he advised Petitioner not to tell the Referee about her impending marriage because the date had not been set, and to settle the issue of custody first before seeking to relocate. (Id., 16:13-24, 17:5-19).

Moreover, the fact that Petitioner married Mr. L____ before seeking permission to relocate is simply not relevant to the ultimate best interests determination. Again, Tropea is instructive. In Tropea, when the mother sought permission to relocate, she and her fianceé had already purchased a home in the Schenectady area and the two were expecting a child of their own. 87 N.Y.2d at 732. In accordance with its instruction that relocation determinations must not be motivated by a punitive animus, the Court of Appeals allowed the relocation with full knowledge that the mother was already financially and emotionally committed to making the move, and wanted very much to retain custody of the child she shared with the respondent/father. Id. at 741.

The Referee's belief that a parent who seeks to relocate is a troublemaker is revealed in her examination of Dr. K____:

> Referee Rood ("RR"): Would you agree, as an expert, if there are two appropriate fit parents, that it's probably best for the child to have a relationship with both parents?

* * *

> RR: And that it automatically does make it more difficult when one parent moves five hours away.

* * *

> RR: It can be done but it is more difficult. And would you agree that actually, Ms. V___ has caused a lot of the stress herself by asking this Court to relocate?
>
> The Witness: Well, I don't think she caused the stress intentionally, I think she wants to be with her husband and his family.
>
> RR: But this is the choice she made, knowing that it would cause all these kinds of problems because they were already into litigation when all this came up.

* * *

> RR: Ms. V___ knew that when she decided to have a relationship with her present husband, it was going to make a lot of problems.

(Tr. 4-16-02, 118:20-120:4).[23] The framework within which the Referee analyzed this case is simply antithetical to Tropea's recognition that "[i]n some cases, the child's best interests might be better served by fashioning visitation plans that maximize the noncustodial parent's opportunity to maintain a positive nurturing relationship while enabling the custodial parent . . . to go forward with his or her

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[23]Respondent's counsel and the Law Guardian had already cross-examined Dr. K____ before Referee Rood examined her. (Tr. 4-16-02, 73:3-118:11).

life." 87 N.Y.2d at 740. As a result, the punitive animus—which is factually unjustified and legally prohibited—behind the Referee's denial of the relocation petition vitiates that portion of the August 19, 2004 and January 27, 2005 Orders denying relocation.

## CONCLUSION

For all the foregoing reasons, Petitioner-Appellant-Respondent respectfully requests that this Court modify the January 27, 2005 Decision and Order and the Order of Custody and Visitation of even date by:

(1) deleting that provision denying Petitioner's relocation petition and substituting therefor a provision granting Petitioner's relocation petition;

(2) deleting paragraph "1" and substituting therefor the following:

> Alternate weekends from 8:00 p.m. on Friday until 5:30 p.m. on Sunday. In the event the father's visitation weekend ends in a Monday that is a holiday, the visit shall end at 5:30 p.m. on Monday. If the mother is driving, the mother shall bring the child to the father's home in Queens at the beginning of the visit. If the mother and child are traveling to New York by Amtrak, the father shall pick the child up at Penn Station. If the child is traveling by airplane, the father shall pick the child up at the airport. The father shall bring the child to: (a) the airport if the child is returning to Virginia by airplane; or (b) the maternal grandmother's home if he mother and child are driving to Virginia; or (c) Penn Station if the

mother and child are returning to Virginia by Amtrak. The mother shall inform the father of the return location at least 24 hours before the end of the visit.

(2) deleting paragraph "2" providing for visitation between Respondent and the child every Wednesday from after school until 7:00 p.m.;

(3) deleting paragraphs "3" through the second paragraph of "7" and substituting therefor the following:

3. Holiday visitation shall be divided as follows:

(a) The father shall have visitation for Rosh Hashanah in odd years and the mother shall have the child in even years. The father's visit shall commence at 8:30 pm on the last school day before the holiday until 5:00 pm on the last day of her school holiday.

(b) The father shall have visitation for Yom Kippur in even years and the mother shall have the child in odd years. The father's visit shall commence at 8:30 pm on the last school day before the holiday until 5:00 pm on the last day of her school holiday. If the child is only off from school for one day then the father shall pick up and return the child to the airport.

(c) The child shall spend Thanksgiving weekend with the mother in even years and with the father in odd years. The father's visit shall begin at 8:30 pm on the day before Thanksgiving and end on Sunday at 4:00pm.

(d) For Passover, the father shall have the first two Seders in even years and the mother shall have

them in odd years.

(e) The child shall always spend Mother's Day weekend with her mother and Father's Day weekend with her father even if it results in the child spending three consecutive weekends with one parent.

4. Visitation over the child's school vacations shall be divided as follows:

(a) The father shall have visitation for the six days of the child's December vacation from school which are contiguous with his alternate weekend visits.

(b) If the child attends a school that has a February break then the father shall have visitation for the four days of that break that are contiguous with his regular alternate weekend every year.

(c) The father shall have visitation for the six days of the child's school break that are contiguous with Passover in even years.

(d) The father shall have visitation with the child for her first week of summer vacation from school commencing the day after school is over.

(e) The father shall have visitation for the month of July in odd years and the month of August in even years. The child shall spend her actual birthday (August 8) with the parent with whom she is spending the month of August.

5. On one other weekend per month, during the school year, the father may pick up the child from the home of the L____ family, 3418 Rustic Way Falls Church, Virginia on

Saturday at 1:00 pm. The father shall return the child to the L____ home on Sunday evening at 6:00 pm, or may return the child to G____ Jewish Day School on Monday morning at 8:45 a.m. The mother shall provide the father with directions to the L____ home and to the G____ Jewish Day School as well as all information needed to bring the child to school. In the event that the father takes Amtrak the mother shall bring the child to meet the father at Union Station in Washington, D.C, or at the hotel where the father is staying in the Washington, D.C. or Northern Virginia area. The father shall notify the mother two weeks in advance of his intent to exercise his visitation under this subparagraph and shall notify the mother twelve hours in advance of the location he has chosen for the drop off and return of the child. In the event the father exercises his visitation pursuant to this subparagraph the mother shall accept two hundred ($200) dollars less in child support the following month.

6. In the event that any school holiday during which the father would have had a visit is cancelled then the visit shall be modified so that the child may attend school and the visit shall be made up over the child's summer vacation. The mother shall inform the father as soon as she learns of any cancelled school holiday.

(4) deleting that paragraph entitled "Further Requirements" and

substituting therefor the following:

7. Neither parent is to speak disparagingly about the other, or allow others to in the presence of the child. Each party is to encourage a positive relationship between the child and the other parent.

8. Both parents are to list the other as parents and emergency contacts for all school, camp and medical records. Both

parents shall inform the other of all medical and psychological treatment the child receives, and both parents shall have complete access to all of the child's records.

9. The mother shall install a separate telephone line in the child's bedroom, on which the father and the child can call each other at any time. The mother shall also provide the father with a computer camera that will allow him to view the child and speak with her over the internet, and will install similar equipment on the child's computer.

and, as so modified, affirm January 27, 2005 Decision and Order and the Order of Custody and Visitation of even date; and grant such other, further and different relief as may be just and proper.

Dated: April 12, 2005
New York, New York

Respectfully Submitted ,

_____
L_____ F____

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## CERTIFICATE OF COMPLIANCE
## PURSUANT TO 22 NYCRR §670.10.3(f)

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