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FILED
Superior Court of California
County of Los Angeles

AUG 19 2020

Shari R. Carter, Executive Officer/Clerk
Gustavo Morales Deputy
Gustavo Morales

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

10 In Re Marriage of:

11 HEIDI SAMUEL

12 Petitioner

13 - and -

14 HENRY SAMUEL

15 Respondent

Case No. BD 562 354 (Assigned to Dept. 83)

**Respondent, Henry Samuel's, Opposition to
Petitioner, Heidi Samuel's, Ex Parte
Application/Request for Order for Order
Shortening Time for Court to Hear
Petitioner's Requests to Travel to Germany
With Minor Children 10/19/20 – 12/19/20 &
from 1/9/21-2/23/21, and for Other Relief.**

Attached:

Declaration of Respondent, Henry Samuel
Memorandum of Points & Authorities

Ex Parte:

Hearing: August 19, 2020

Time: 8:30 a.m.

Dept: 83

Judge: The Honorable Joseph Lipner

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***Ex Parte* Declaration of
Respondent, Henry Samuel**

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1 DECLARATION OF HENRY SAMUEL

2 I, HENRY SAMUEL aka Seal, declare as follows:

3 1. I am the Respondent in the within action. This declaration is based on facts within
4 my knowledge and I could and would competently testify to such facts if called upon to do so as a
5 witness.

6 2. I submit this Declaration in support of my response and opposition to Petitioner,
7 Heidi Samuel's, aka, **Heidi Klum** ("Heidi") *Ex Parte* Application seeking an order shortening
8 time to take our minor children to Germany for two (2) months from October 19, 2020 through
9 December 19, 2020, and for another month and a half (approximately) from January 9, 2021
10 through February 23, 2021. **There is no emergency warranting this ex parte and I**
11 **respectfully ask this Court to deny Heidi's *Ex Parte*.**

12 **THERE IS ABSOLUTELY NO EMERGENCY OR EXIGENCY WARRANTING**

13 **HEIDI'S EX PARTE RELIEF.**

14 3. Heidi is improperly requesting orders on an *ex parte* basis to allow her to
15 immediately "travel" with our four (4) minor children, Leni Samuel, born May 4, 2004, age 16,
16 Henry Samuel, born September 12, 2005, age 14, Johan Samuel, born November 22, 2006, age
17 13, and Lou Samuel, born October 9, 2009, age 10, **over 5,000 miles away to Germany for**
18 **months at a time.** Heidi's self-created "exigency" does not satisfy the requirements for ex parte
19 orders and the Court should not make an exception for Heidi because of her celebrity status.
20 I believe Heidi has a hidden agenda to move the children to Germany. **Notwithstanding Heidi's**
21 **request, if granted, it could in effect move the children away from me and their home here in**
22 **Los Angeles to Germany for what could be an indefinite period of time given the**
23 **uncertainty of the impact of Covid-19 on this country's and Germany's travel restrictions**
24 **which could change at any time and prevent the children from leaving Germany or from**
25 **entering the United States.** This is a major decision that will impact the health, safety and
26 welfare of our children and I should be entitled to my due process rights to have the appropriate
27 time to prepare an opposition to Heidi's request which, if granted, could have a permanent impact
28 on the children's relationship with me. The Court must therefore deny this "ex parte."

BACKGROUND.

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2 4. Heidi is a well-known model and television personality, who frequently travels for
3 work. I am a professional singer and songwriter, and as part of my job, I regularly record and
4 release new albums and tour nationally and internationally.

5 5. Heidi and I were married on May 10, 2005 and we separated on January 19, 2012.
6 Heidi and I entered into a confidential Judgment on Reserved Issues on July 1, 2014
7 (“Judgment”), wherein we resolved all issues in the case including child custody and visitation.
8 Pursuant to the terms of our Judgment (which I am not attaching due to the confidentiality terms
9 therein), Heidi and I share joint legal custody and physical custody of our minor children. Heidi
10 and I agreed that I shall have frequent and regular custodial time with the minor children to be
11 arranged and agreed upon by Heidi and me, with consent by Heidi not to be unreasonably
12 withheld. I am aware that Heidi regularly employs her nanny, Sonja Plyler, to care for the
13 children while she is traveling or if Heidi is unavailable or wants time away from the children
14 while she is town.

15 5. I have always shared a close bond with our children. I try to spend as much time
16 as possible with our children when I am not working (including touring prior to the pandemic).
17 Although I do not have a regular custodial schedule with the children, I have made it a point to be
18 as involved in the children’s lives as I can. In the last few months, I was able to have custody of
19 Leni and Henry for two consecutive weeks and we were able to spend quality time together
20 during that time. I also spent time with all four of our children on Father’s Day, and I had Lou for
21 three days in the last two weeks and I had all of the children for lunch last week.

22 6. Unfortunately, when I ask Heidi for more time to see the children, Heidi often
23 makes it unnecessarily difficult by alleging that she and the children are “busy” on particular
24 days, that the children are ill, or that they simply cannot see me. As such, I am often forced to see
25 the children on Heidi’s schedule and when it is convenient for her, which has significantly
26 decreased my custodial time. Nevertheless, I make it a point to spend as much time with the
27 children as possible and to make myself accessible to the children. I even recently moved to
28 Topanga, Los Angeles, to reside closer to Heidi (who lives nearby) which will enable me to see

1 Heidi's request, I am requesting to have sufficient time, which is allotted to me per statute, to
2 fully brief the issues for the Court and to present all the facts and evidence necessary to assist the
3 Court in evaluating Heidi's request.

4 **CONCLUSION.**

5 13. Due to the gravity of Heidi's request to move with our children to Germany, the
6 lack of exigency in Heidi's request, and the fact that the Court must consider all the facts and
7 circumstances associated with Heidi's request, including the impact her move would leave on our
8 children and the potential impairment of my relationship with our children, I respectfully request
9 that the Court deny Heidi's *ex parte* in its entirety.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Executed on August 18, 2020 at Los Angeles, California.

13 See Signature Attached
14 _____
HENRY SAMUEL

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HENRY SAMUEL

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***Ex Parte* Memorandum of
Points & Authorities**

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1 unless the noncustodial parent shows a significant change of circumstances indicating that
2 a custody change is in the child's best interests; (3) look beyond the moving parent's motive to
3 any possible detriment to the child that the move might cause, placing greater emphasis on the
4 detriment than on the motive; and (4) exercise the broadest discretion in ruling on a move by
5 considering a wide range of relevant factors, including the child's interest in stability and
6 continuity, the distance of the move, the child's age, the child's relationship with both parents, the
7 parents' ability to communicate and cooperate, the parents' ability to put the child's interests first,
8 the wishes of the child (if he or she is mature enough), the reasons for the move, and the extent of
9 shared custody currently in place. Marriage of LaMusga (2004) 32 Cal.4th 1071, 1101.

10 Given the impact of Covid-19 on Germany's and this country's travel restrictions, the
11 children may be required to remain in Germany for an inordinate period of time regardless of
12 Heidi's intent, which would in effect result in a move-away. As such, the *LaMusga* factors are
13 relevant to this Court's consideration of Heidi's request.

14 **III. THERE IS NO IMMEDIATE HARM WARRANTING EX PARTE RELIEF**
15 **UNDER THE FAMILY CODE AND RULES OF COURT.**

16 Heidi's *Ex Parte* request falls far short of the factual showing of "immediate harm" or
17 "immediate risk that the child will be removed from the State of California" mandated by Family
18 Code Section 3064 for *ex parte* custody orders.

19 Family Code Section 3064(a) expressly states as follows:

20 "*(a) The court shall refrain from making an order granting or modifying a custody order*
21 *on an ex parte basis unless there has been a showing of immediate harm to the child or*
22 *immediate risk that the child will be removed from the State of California.*"

23 Family Code Section 3064(b) sets forth illustrative examples of "immediate harm" as
24 follows:

25 "*(1) Having a parent who has committed acts of domestic violence, where the court*
26 *determines that the acts of domestic violence are of recent origin or are a part of a demonstrated*
27 *and continuing pattern of acts of domestic violence.*

28 *(2) Sexual abuse of the child, where the court determines that the acts of sexual abuse are*

1 of recent origin or are a part of a demonstrated and continuing pattern of acts of sexual abuse.”

2 There are no allegations or evidence of immediate harm nor are there allegations or
3 evidence of domestic violence of any kind. As such, there is no support for this ex parte under
4 Family Code Section 3064.

5 The California Rules of Court mandate an affirmative, factual showing of “irreparable
6 harm, immediate danger or other statutory basis” for granting relief ex parte. Rule 3.1202(c)
7 states as follows: “An applicant must make an affirmative factual showing in a declaration
8 containing competent testimony based on personal knowledge of irreparable harm, immediate
9 danger, or any other statutory basis for granting relief ex parte.” There is no “irreparable harm,”
10 “immediate danger,” or “any other statutory basis.” No exceptional circumstances, no risk of
11 irreparable harm, no risk of immediate danger, and no bona fide emergency exists. Heidi’s
12 request for emergency orders is entirely void of the base elements necessary to grant *ex parte*
13 relief. Accordingly, Heidi’s *Ex Parte* request must be denied.

14 **IV. THERE IS NO GOOD CAUSE TO GRANT HEIDI’S REQUEST FOR AN ORDER**
15 **SHORTENING TIME.**

16 California, Rules of Court, Rule 5.94 states, “its own motion or on application for an order
17 shortening time supported by a declaration showing good cause, may prescribe shorter times for
18 the filing and service of papers than the times specified in Code of Civil Procedure section 1005.”
19 (Emphasis Added). In Marriage of Seagondollar (2006) 139 Cal.App.4th 1116, the Court of
20 Appeals held that there was no good cause and the trial erred in granting wife’s request for an
21 order shortening time to “hear such an important matter as an OSC to modify custody and
22 approve a move-away.” Marriage of Seagondollar (2006) 139 Cal.App.4th 1116, 1129.

23 Similarly, there is no good cause to grant Heidi’s request for an order shortening time, which is a
24 disguised request for a move away -- a serious attempt by Heidi to modify the parties’ joint
25 custodial rights, which is detrimental to the children’s best interests and severely impacts Seal’s
26 custodial rights of the children.

27 Seal will be prejudiced if the Court grants Heidi’s request for an order shortening time
28 because he will be unable to prepare his opposition, conduct discovery and investigation

1 regarding the important matter before the Court – Heidi’s move away to Germany, 5,000 miles
2 away from Los Angeles. Seal must have an adequate and unrestricted opportunity to prepare his
3 opposition and not be rushed by Heidi’s self-created emergency to run away with the children.

4 V. CONCLUSION.

5 In accordance with the aforementioned points and authorities, Seal respectfully requests
6 that the Court deny Heidi’s *Ex Parte* Application in its entirety.

7 Dated: August 18, 2020

FOX ROTHSCHILD LLP


8 By: 
9 SCOTT N. WESTON, ESQ.
10 JOEL D. SCHWARTZ, ESQ.
11 Attorneys for Respondent
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Exhibit "A"

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 10250 Constellation Blvd., Suite 900, Los Angeles, California 90067.

On August 18, 2020, I served the following document(s) described as **Respondent's, Henry Samuel's, Opposition to Petitioner's Ex Parte Application/Request for Orders for Order Shortening Time for Court to Hear Petitioner's Request to Travel to Germany with Minor Children & Other Relief** (for *ex parte* hearing 8-19-20 @ 8:30 a.m. in Dept. 83), upon Petitioner's counsel, as follows:

Service List:

Melanie Mandles, Esq.

Laura Wasser, Esq.

Wasser, Cooperman & Mandles, P.C.

2049 Century Park East, Suite 800

Los Angeles, California 90067

Email melanie.mandles@wcmfamilylaw.com

Email laura.wasser@wcmfamilylaw.com

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Fox Rothschild LLP practice for collecting and processing document for mailing. On the same day that the document(s) is/are placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL: I caused the service copy of the above pleading(s) to be sent by e-mail to the persons at the e-mail addresses listed in the Service List above, which service was made electronically, pursuant to Appendix I of the California Rules of Court, Emergency Rule 12.

BY OVERNIGHT MAIL: I enclosed said document(s) in an envelope or package addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of such courier or driver authorized to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 18, 2020, at Los Angeles, California.



Aleen Mayelian, Esq.