

At the *Matrimonial/IAS* Part _____
of New York State Supreme Court at
the Courthouse, _____
County, on _____.

Present:

Hon. _____ *Justice/Referee* _____X

_____X
-against- Plaintiff,

Index No.:
Calendar No.:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

Defendant.
_____X

The issues of this action having *been submitted to* **OR** *been heard* before me as one of the *Justices/Referees* of this Court at Part _____ hereof, held in and for the County of _____ on _____, and having considered the allegations and proofs of the respective parties, and due deliberation having been had thereon.

NOW, after *reading and considering the papers submitted* *hearing the testimony*, I do hereby make the following findings of essential facts which I deem established by the evidence and reach the following conclusions of law.

FINDINGS OF FACT

FIRST: Plaintiff and Defendant were both eighteen (18) years of age or over when this action was commenced.

SECOND:

The Plaintiff has resided in New York State for a continuous period in excess of two years immediately preceding the commencement of this action.

OR

The Defendant has resided in New York State for a continuous period in excess of two years immediately preceding the commencement of this action.

OR

The Plaintiff has resided in New York State for a continuous period in excess of one year immediately preceding the commencement of this action, and:

- a. the parties were married in New York State.
- b. the Plaintiff has lived as husband or wife in New York State with the Defendant.
- c. the cause of action occurred in New York State.

OR

The Defendant has resided in New York State for a continuous period in excess of one year immediately preceding the commencement of this action; and:

- a. the parties were married in New York State.
- b. the Defendant has lived as husband or wife in New York State with the Plaintiff.
- c. the cause of action occurred in New York State.

OR

The cause of action occurred in New York State and both parties were residents thereof at the time of the commencement of this action.

11 **THIRD:** The Plaintiff and the Defendant were married on the date of _____
in the City, Town or Village of _____, County of _____, State or
Country of _____; in a *civil* **OR** *religious* ceremony.

12 **FOURTH:** That no decree, judgment or order of divorce, annulment or dissolution of marriage has been granted to either party against the other in any Court of competent jurisdiction of this state or any other state, territory or country, and that there is no other action pending for divorce by either party against the other in any Court.

13 **FIFTH:** That this action was commenced by filing the *Summons With Notice* **OR**
 Summons and Verified Complaint with the County Clerk on _____.
Defendant was served *personally* **OR** *pursuant to Court order dated* _____
with the above stated pleadings. Defendant *defaulted in appearance* **OR** *appeared and
waived his / her right to answer* **OR** *filed an answer / amended answer withdrawing any
previous pleading, and neither admitting nor denying the allegations in plaintiff's complaint, and
consenting to entry of judgment.*

14 **SIXTH:** That Defendant is not in the military service of the United States of America, the State of New York, or any other state. **OR** Defendant is a member of the military service of the _____ and has appeared by affidavit and does not oppose the action **OR** is in default.

15 **SEVENTH:** There are no children of the marriage. **OR** There *is/are* _____ child(ren) of the marriage. Their name(s), social security number(s), address(es) and date(s) of birth are:

<u>Name & Social Security Number</u>	<u>Date of Birth</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

16 **EIGHTH:** The grounds for divorce that are alleged in the Verified Complaint were proved as follows:

Cruel and Inhuman Treatment (DRL §170(1)):

At the following times, none of which are earlier than (5) years prior to commencement of this action, the Defendant engaged in conduct that so endangered the mental and physical well being of the Plaintiff, so as to render it unsafe and improper for the parties to cohabit (live together) as husband and wife.

(State the facts that demonstrate cruel and inhuman conduct giving dates, places and specific acts. Conduct may include physical, verbal, sexual or emotional behavior).

(Attach an additional sheet, if necessary).

Abandonment (DRL 170(2)):

- That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant left the marital residence of the parties located at _____, and did not return. Such absence was without cause or justification, and was without Plaintiff's consent.
- That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant refused to have sexual relations with the Plaintiff despite Plaintiff's repeated requests to resume such relations. Defendant does not suffer from any disability which would prevent *her / him* from engaging in such sexual relations with Plaintiff. The refusal to engage in sexual relations was without good cause or justification and occurred at the marital residence located at _____.
- That commencing on or about _____, and continuing for a period of more than one (1) year immediately prior to commencement of this action, the Defendant willfully and without cause or justification abandoned the Plaintiff, who had been a faithful and dutiful *husband / wife*, by depriving Plaintiff of access to the marital residence located at _____. This deprivation was without the consent of the Plaintiff and continued for a period of greater than one year.

Confinement to Prison (DRL §170(3)):

- (a) That after the marriage of Plaintiff and Defendant, Defendant was confined in prison for a period of three or more consecutive years, to wit: that Defendant was confined in _____ prison on _____, and has remained confined to this date; and
- (b) not more that five (5) years elapsed between the end of the third year of imprisonment and the date of commencement of this action.

Adultery (DRL §170(4)):

- (a) That on _____, at the premises located at _____, the Defendant engaged in sexual intercourse with _____, without the procurement nor the connivance of the Plaintiff and the Plaintiff ceased to cohabit (live) with the Defendant upon the discovery of the adultery.
- (b) not more than five (5) years elapsed between the date of said adultery and the date of commencement of this action.

(Attach a corroborating affidavit of a third party witness or other additional proof).

Living Separate and Apart Pursuant to a Separation Decree or Judgment of Separation (DRL §170(5)):

- (a) That the _____ Court, _____ County, _____ (Country or State) rendered a decree or judgment of separation on _____, under Index Number _____; and
- (b) that the parties have lived separate and apart for a period of one year or longer after the granting of such decree; and
- (c) that the Plaintiff has substantially complied with all the terms and conditions of such decree or judgment.

Living Separate and Apart Pursuant to a Separation Agreement (DRL §170(6)):

- (a) That the Plaintiff and Defendant entered into a written agreement of separation, which they subscribed and acknowledged on _____, in the form required to entitle a deed to be recorded; and
- (b) that the *agreement / memorandum of said agreement* was filed _____ in the Office of the Clerk of the County of _____, wherein *Plaintiff / Defendant* resided; and
- (c) that the parties have lived separate and apart for a period of one year or longer after the execution of said agreement; and
- (d) that the Plaintiff has substantially complied with all terms and conditions of such agreement.

- 17 NINTH:**
- A sworn statement pursuant to DRL §253 that Plaintiff has taken all steps within his or her power to remove all barriers to Defendant's remarriage following the divorce was served on the Defendant.
 - A sworn statement as to the removal of barriers to remarriage is not required because the parties were married in a civil ceremony.
 - A sworn statement as to the removal of barriers to remarriage is not required because Defendant waived the need for the statement in his or her affidavit.

- 18 TENTH:** *The parties have agreed* **OR** *the court has determined* that *Plaintiff* **OR** *Defendant* will receive maintenance of \$_____ *per week* **OR** *bi-weekly* **OR** *per month* commencing on _____ pursuant to DRL §236(B)(6)(c).

- 19 ELEVENTH:** The children of the marriage now reside with *Plaintiff* **OR** *Defendant* **OR** *third party*, namely _____. The *Plaintiff* **OR** *Defendant* is entitled to visitation away from the custodial residence. The *Plaintiff* **OR** *Defendant* **OR** *Third Party*, namely _____ is entitled to custody. **OR** No award of custody due to the child(ren) of the marriage not residing in New York State. **OR** Other custody arrangement (specify): _____

Allegations of domestic violence and/or child abuse were or were not made in this case; Where such allegations were made, the Court has found that they were supported by a preponderance of the evidence, and has set forth on the record or in writing how such findings, facts and circumstances were factored into the custody or visitation direction. or has found that they were not supported by a preponderance of the evidence.

- 20 TWELFTH:** Equitable Distribution and ancillary issues shall be *in accordance with the settlement agreement* **OR** *pursuant to the decision of the court* **OR** *Equitable Distribution is not an issue.*

21 **THIRTEENTH:** There *is/are* no unemancipated child(ren). **OR** The award of child support is based upon the following:

(A) The children of the marriage entitled to receive support are:

<u>Name</u>	<u>Date of Birth</u>
_____	_____
_____	_____
_____	_____
_____	_____

(B) (1) By order of _____ Court, _____ County, *Index/Docket No.* _____ dated _____ the *Plaintiff/Defendant* was directed to pay the sum of _____ per _____ for child support. Said Order shall continue.

OR

(2) The adjusted gross income of the Plaintiff who is the *custodial* **OR** *non-custodial* parent is _____ per year and the adjusted gross income of the Defendant who is the *custodial* **OR** *non-custodial* parent is _____ per year and the combined parental annual income is _____. The applicable child support percentage is *17/25/29/31/35* %. The combined basic child support obligation attributable to both parents is _____ per year on income to \$130,000 and _____ per year on income over \$130,000. The Plaintiff's pro rata share of the combined parental income is _____% and the Defendant's pro rata share of the combined parental income is ____%. The non-custodial parent's pro rata share of the child support obligation on combined income to \$130,000 is _____ per year or _____ *per week* *bi-weekly* *per month*. The non-custodial parent's pro rata share of the child support obligation on combined income over \$130,000 is _____ per year or _____ *per week* *bi-weekly* *per month*. The non-custodial parent's pro rata share of future health care expenses not covered by insurance, child care expenses, educational or other extraordinary expenses is ____%.

OR

(3) The parties entered into a *stipulation/agreement* on _____ wherein the *Plaintiff* **OR** *Defendant* agrees to pay _____ *per week* **OR** *bi-weekly* **OR** *per month* child support *directly* **OR** *through the Support Collection Unit* to *Plaintiff* **OR** *Defendant* **OR** *Third Party, namely* _____. The parties agree to *waive* **OR** *apply* the Child Support Standards Act to combined income over \$130,000. The parties have agreed that health care expenses not covered by insurance shall be paid by *Plaintiff* **OR** *Defendant* in the amount of _____ *per week* **OR** *bi-weekly* **OR** *per month* **OR** _____% of the uncovered expenses. The parties have agreed that child care expenses shall be paid by *Plaintiff* **OR** *Defendant* to *Plaintiff* **OR** *Defendant* in the amount of _____ *per week* **OR** *bi-weekly* **OR** *per month* **OR** _____% of said child care expenses. The parties have agreed that educational and extraordinary expenses shall be paid by *Plaintiff* **OR** *Defendant* to *Plaintiff* **OR** *Defendant* in the amount of _____

_____ *per week* **OR** *bi-weekly* **OR** *per month* **OR** _____% of said educational and extraordinary expenses. Said agreement reciting in compliance with DRL §2401-b(h): The parties have been advised of the Child Support Standards Act. The basic child support obligation presumptively results in the correct amount of child support. The unrepresented party, if any, has received a copy of the Child Support Standards Chart promulgated by Commissioner of Social Services pursuant to Social Services Law Section 111-I. The presumptive amount of child support attributable to the non-custodial parent is _____ *per week* **OR** *bi-weekly* **OR** *per month*. The amount of child support agreed to *conforms with the non-custodial parent's basic child support obligation* **OR** *deviates from the non-custodial parent's basic child support obligation for the following reasons:*

22 **FOURTEENTH:** The Plaintiff's address is _____,
and social security number is _____. The Defendant's address is _____
_____, and social security number is _____.

- 23**
- There are no unemancipated children. **OR**
 - There are no health plans available to the parties through their employment. **OR**
 - The parties are covered by the following group health plans through their employment:

Plaintiff

Defendant

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

Group Health Plan: _____
Address: _____
Identification Number: _____
Plan Administrator: _____
Type of Coverage: _____

The parties have agreed or stipulated **OR** *the court has determined* that the *Plaintiff* **OR** *Defendant* shall be the legally responsible relative and that the unemancipated child(ren) shall be enrolled in *his / her* group health plan as specified above *until the age of 21 years* **OR** *until the child(ren) is / are sooner emancipated.*

24 **FIFTEENTH:** The _____ Court entered the following order(s) under Index No(s). / Docket No(s): _____

25 **SIXTEENTH:** *Plaintiff* **OR** *Defendant* may resume use of the prior surname: _____

26

SEVENTEENTH: Compliance with DRL § 255 (1) and (2) has been satisfied as follows:

A) The parties entered into a Stipulation of Settlement/Agreement dated

AND:

1. the stipulation of settlement complies with the requirements of DRL § 255 (2).

or

2. the parties entered into an addendum to the stipulation of settlement/agreement which complies with the requirements of DRL § 255 (2).

B) There is no stipulation of settlement/agreement

=====

1. each party has been provided notice as required by DRL § 255(1)

or

2. the plaintiff has been notified pursuant to DRL § 255(1). Notice to the defendant cannot be effectuated due to the defendant's whereabouts being unknown. Since the cost of publication would present an undue burden, notice to the defendant is hereby dispensed with.

EIGHTEENTH: Where applicable, registry checks were completed pursuant to DRL §240 1(a-1).

CONCLUSIONS OF LAW

FIRST: Residency as required by DRL § 230 has been satisfied.

SECOND: The requirements of DRL § 255 have been satisfied.

THIRD: The requirements of DRL § 240 1 (a-1) have been satisfied.

FOURTH: The requirements of DRL § 240 1 (a) have been satisfied.

27

FIFTH: *Plaintiff* **OR** *Defendant* is entitled to a judgment of divorce on the grounds of DRL §170 subd. _____ and granting the incidental relief awarded.

28

Dated: _____

J.S.C./Referee