

# SMITH/OSTLER ADDITIONAL SUPPORT GUIDELINES AND SAMPLE PROVISIONS

## SPECIAL CONSIDERATIONS

- **Identify the Income to be used for the Calculation:** The sample provisions below can be modified to require additional support based only on a bonus, overtime, commissions, or any other specific type of income, or a combination. Please make sure the order specifies the income to be considered in calculating additional support in as much detail as possible. It is often helpful to specify how the income is identified on the paystubs. Also keep in mind that if the order reads, for example, additional support shall be payable for all bonus income over base income of \$10,000 per month, unless the order defines what bonus income means, we interpret it to mean any type of income earned on the paystub that exceeds \$10,000, even if that income is identified on the paystub as bonus, overtime, commissions, etc. The more specific your order, the more enforceable and less problematic it is. Income Type Options/Examples:
  - Income over base gross monthly/quarterly/annual/etc. income of \$\_\_\_\_
  - Bonuses earned (caution: if you say "bonus income" as opposed to "bonuses," we will consider all types of income if you add: over base gross monthly/quarterly/annual/etc. income of \$\_\_\_\_)
  - Overtime earned [and consider adding: over base gross monthly/quarterly/annual/etc. income of \$\_\_\_\_]
  - Commissions earned [and consider adding: over base gross monthly/quarterly/annual/etc. income of \$\_\_\_\_]
  - All bonuses, overtime and commissions earned [and consider adding: over base gross monthly/quarterly/annual/etc. income of \$\_\_\_\_]
  - Income from all sources, including, but not limited to, [identify, i.e., gross employment income, exercised stock options, gross or net rental income] (if not—how do you calculate to get to net)
  - Gross income earned from whatever source as defined by Family Code section 4058 (note—if you're wanting to do the calculation/payment other than annually, you're going to need an annual "true up" to capture the additional gross income that cannot be verified on a paystub or earning statement. You might want to be specific that additional support based on certain payment types, such as employment income, are payable monthly and other income types, such as rental income or dividends, etc. are payable annually. )
- **Type of Income Verification:** It is important to include language for what income verification is required from the obligor to report the income to be used to calculate additional support. Be as specific as possible. Do you want paystubs? If so, would one paystub from a certain date do it, or do you need to see the detailed income over a period of time? If your calculation is for rental income, what do you want? Tax returns with all schedules and attachments? Rental receipts or receipt books? Bank statements? Also look at the frequency of the additional support. If you are basing the calculation of additional support on monthly income, getting a W-2 isn't going to tell you what the income was for each month. If your order isn't specific, you can't calculate the additional support and, if you can't calculate it, you can't collect it.
- **Reporting of Income Verification:** It is important to set time requirements on when the income verification is to be provided. Absent specifying when they are to provide it, their failure to provide it is not enforceable by contempt. You also need to tell them where to send the verification. We recommend that if DCSS is not involved, have the verification reportable to the party, in case the attorney no longer represents the party, and include "or their designee" which can be their next attorney or DCSS if they open a DCSS case in the future.
- **When and Where to Pay Additional Support Due:** As to the when, you want to give a time deadline for the payment to be made. Don't leave it open-ended; even though the additional support may be owed, you will not be able to say they willfully disobeyed the court order; they simply didn't know when to pay it. Consider adding a certain number of business days after receipt of the income earned or by the 15th of April of each year, or on the first business day of the following month, etc. Set the expectation. Also include language telling the obligor where they send the payment to. If support is payable by income withholding order via the State Disbursement Unit, make the additional support payable to the SDU as well. That way, the date and amount paid is forever traceable. If the income withholding order has been stayed and the obligor is to pay the other party directly, you may want to include that it is payable to the other party "or their designee" so that if you want to change where it's paid in the future, you can do so without a court order. Cautions: Most employers will not enforce additional support via and IWO provision. The IWO has not been designed to include additional support provisions. If you stick it in on the IWO, that doesn't require the employer to comply with it. If the employer agrees to calculate the additional support, it may not be correct. Also note that support payable via IWO is required to be paid via the SDU. If support is payable via earnings assignment order (meaning it is spousal support only), it cannot be paid via the SDU.

|   | Percentage/ Monthly Income   | Percentage/Quarterly Income  | Percentage/Annual Income  |
|---|--|--|---|
| <b>Case Open With DCSS</b>  | Effective [Date], [Obligor] shall pay ___% of [insert income type] as additional [child, spousal or child and spousal] support. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] to DCSS by mail to 50 Douglas Drive, Suite 100, Martinez, CA 94553, by fax to 925-335-3611, or by email to <a href="mailto:bonus.program@dcss.cccounty.us">bonus.program@dcss.cccounty.us</a> within 3 business days of receiving said [paystubs or earnings statements or other verification documentation]. All additional support due pursuant to this order shall be paid to the State Disbursement Unit within 3 business days of [Obligor] receiving notice from DCSS as to the additional support amount due. | Effective [Date], on a quarterly basis, [Obligor] shall pay ___% of [insert income type] as additional [child, spousal or child and spousal] support. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] for the prior quarter to DCSS by mail to 50 Douglas Drive, Suite 100, Martinez, CA 94553, by fax to 925-335-3611, or by email to <a href="mailto:bonus.program@dcss.cccounty.us">bonus.program@dcss.cccounty.us</a> by the 5 <sup>th</sup> day of the month following the end of the quarter (April 5, July 5, October 5, January 5). All additional support due pursuant to this order shall be paid to the State Disbursement Unit within 3 business days of [Obligor] receiving notice from DCSS as to the additional support amount due. | Effective [Date], on an annual basis, [Obligor] shall pay ___%" of [insert income type] as additional [child, spousal or child and spousal] support. [Obligor] shall provide [identify what verification is need, i.e., his/her W-2s, 1099s and tax returns with all attachments] to DCSS by mail to 50 Douglas Drive, Suite 100, Martinez, CA 94553, by fax to 925-335-3611, or by email to <a href="mailto:bonus.program@dcss.cccounty.us">bonus.program@dcss.cccounty.us</a> by the 20 <sup>th</sup> day of April of each year. All additional support due pursuant to this order shall be paid to the State Disbursement Unit within 3 business days of [Obligor] receiving notice from DCSS as to the additional support amount due. |
| <b>Case NOT Open With DCSS – Child Support or Child and Spousal Support</b> | Effective [Date], [Obligor] shall pay ___% of [insert income type] as additional [child, spousal or child and spousal] support. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], and pay the additional amount due to the State Disbursement Unit within 3 business days of receiving said [paystubs or earnings statements or other verification documentation].  | Effective [Date], on a quarterly basis, [Obligor] shall pay ___% of [insert income type] as additional [child, spousal or child and spousal] support. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] for the prior quarter to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], and pay the additional amount due to the State Disbursement Unit by the 5 <sup>th</sup> day of the month following the end of the quarter (April 5, July 5, October 5, January 5).  | Effective [Date], on an annual basis, [Obligor] shall pay ___%" of [insert income type] as additional [child, spousal or child and spousal] support. [Obligor] shall provide [identify what verification is need, i.e., his/her W-2s, 1099s and tax returns with all attachments] to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], and pay the additional amount due to the State Disbursement Unit by the 20 <sup>th</sup> day of April of each year.  |
| <b>Case NOT Open With DCSS – Spousal Support only</b>                       | Effective [Date], [Obligor] shall pay ___% of [insert income type] as additional spousal support. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] and pay the additional amount due to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], within 3 business days of receiving said [paystubs or earnings statements or other verification documentation].   | Effective [Date], on a quarterly basis, [Obligor] shall pay ___% of [insert income type] as additional spousal support. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] and pay the additional amount due for the prior quarter to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], by the 5 <sup>th</sup> day of the month following the end of the quarter (April 5, July 5, October 5, January 5).   | Effective [Date], on an annual basis, [Obligor] shall pay ___%" of [insert income type] as additional spousal support. [Obligor] shall provide [identify what verification is need, i.e., his/her W-2s, 1099s and tax returns with all attachments] and pay the additional amount due to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], by the 20 <sup>th</sup> day of April of each year  |

|   | <b>Table/ Monthly Income</b>  | <b>Table/Quarterly Income</b>   | <b>Table/Annual Income</b>  |
|---|---|---|---|
| <b>Case Open With DCSS</b>  | Effective [Date], [Obligor] shall pay additional [child, spousal or child and spousal] support pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] to DCSS by mail to 50 Douglas Drive, Suite 100, Martinez, CA 94553, by fax to 925-335-3611, or by email to <a href="mailto:bonus.program@dcss.cccounty.us">bonus.program@dcss.cccounty.us</a> within 3 business days of receiving said [paystubs or earnings statements or other verification documentation]. All additional support due pursuant to this order shall be paid to the State Disbursement Unit within 3 business days of [Obligor] receiving notice from DCSS as to the additional support amount due. | Effective [Date], on a quarterly basis, [Obligor] shall pay additional [child, spousal or child and spousal] support pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] for the prior quarter to DCSS by mail to 50 Douglas Drive, Suite 100, Martinez, CA 94553, by fax to 925-335-3611, or by email to <a href="mailto:bonus.program@dcss.cccounty.us">bonus.program@dcss.cccounty.us</a> by the 5 <sup>th</sup> day of the month following the end of the quarter (April 5, July 5, October 5, January 5). All additional support due pursuant to this order shall be paid to the State Disbursement Unit within 3 business days of [Obligor] receiving notice from DCSS as to the additional support amount due. | Effective [Date], on an annual basis, [Obligor] shall pay additional [child, spousal or child and spousal] support pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [identify what verification is need, i.e., his/her W-2s, 1099s and tax returns with all attachments] to DCSS by mail to 50 Douglas Drive, Suite 100, Martinez, CA 94553, by fax to 925-335-3611, or by email to <a href="mailto:bonus.program@dcss.cccounty.us">bonus.program@dcss.cccounty.us</a> by the 20 <sup>th</sup> day of April of each year. All additional support due pursuant to this order shall be paid to the State Disbursement Unit within 3 business days of [Obligor] receiving notice from DCSS as to the additional support amount due. |
| <b>Case NOT Open With DCSS – Child Support or Child and Spousal Support</b> | Effective [Date], [Obligor] shall pay additional [child, spousal or child and spousal] support Pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], and pay the additional amount due to the State Disbursement Unit within 3 business days of receiving said [paystubs or earnings statements or other verification documentation].  | Effective [Date], on a quarterly basis, [Obligor] shall pay ___% of [insert income type] as additional [child, spousal or child and spousal] support. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] for the prior quarter to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], and pay the additional amount due to the State Disbursement Unit by the 5 <sup>th</sup> day of the month following the end of the quarter (April 5, July 5, October 5, January 5).   | Effective [Date], on an annual basis, [Obligor] shall pay additional [child, spousal or child and spousal] support pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [identify what verification is need, i.e., his/her W-2s, 1099s and tax returns with all attachments] to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], and pay the additional amount due to the State Disbursement Unit by the 20 <sup>th</sup> day of April of each year.  |
| <b>Case NOT Open With DCSS – Spousal Support only</b>                       | Effective [Date], [Obligor] shall pay additional spousal support pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] and pay the additional amount due to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], within 3 business days of receiving said [paystubs or earnings statements or other verification documentation].   | Effective [Date], on a quarterly basis, [Obligor] shall additional spousal support pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [all paystubs or earnings statements or whatever other documentation would be needed to verify the income type] and pay the additional amount due for the prior quarter to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], by the 5 <sup>th</sup> day of the month following the end of the quarter (April 5, July 5, October 5, January 5).   | Effective [Date], on an annual basis, [Obligor] shall pay additional spousal support pursuant to the attached Table based on his/her [insert income type]. [Obligor] shall provide [identify what verification is need, i.e., his/her W-2s, 1099s and tax returns with all attachments] and pay the additional amount due to [insert name of party receiving support] or his/her designee, to the payment address provided to [Obligor], by the 20 <sup>th</sup> day of April of each year  |

**NOTE:** Consider clarifying that, notwithstanding the name of the attached Table/Chart/Report, additional support is to be calculated based on certain specifically specified types of income; alternatively re-name the Table/Chart/Report by hand to match up to the order terms.