**IN THE COURT OF APPEAL**
**OF THE STATE OF CALIFORNIA**

**SECOND APPELLATE DISTRICT**
**DIVISION FOUR**

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| **LEONARDO G.,**<br><br>*Respondent-Petitioner,*<br><br>*v.*<br><br>**PRISCILA N.,**<br><br>*Appellant-Respondent.* | Court of Appeal<br>Case No. B279584<br><br>Los Angeles Superior Court<br><br>The Honorable: Charles Q. Clay III, Judge Presiding<br><br>Case No. VD079703 |

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# *AMICUS CURIAE* BRIEF OF THE CALIFORNIA WOMEN'S LAW CENTER IN SUPPORT OF APPELLANT PRISCILA N.

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## CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rule 8.208 of the California Rules of Court, *amicus curiae* California Women's Law Center certifies that, to the best of its knowledge, it is unaware of any entities or persons who have a financial or other interest in the outcome of this proceeding that would be relevant to the question of disqualification under Canon 3E of the Code of Judicial Ethics.

## TABLE OF CONTENTS

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

**CASES**



**STATUTES AND RULES**

**OTHER AUTHORITIES**

## I. INTRODUCTION AND SUMMARY OF APPEAL

This appeal seeks to overturn an erroneous decision below that the family court division of the California Superior Court lacks jurisdiction under Family Code section 6345(a) to renew a domestic violence restraining order that was issued by the juvenile court and included in an "exit order" upon termination of a juvenile dependency case.[1]

In August 2013, the juvenile court issued a three-year restraining order pursuant to section 213.5 of the Welfare & Institutions Code to protect Appellant Priscila N. ("Priscila") and her three children from her now ex-husband, Respondent Leonardo G. ("Leonardo"). The restraining order was based on Priscila's showing of years of physical and verbal abuse, which led to state initiation of a dependency proceeding to protect the couple's children. In issuing the restraining order, the juvenile court was required to apply the Domestic Violence Prevention Act (DVPA), codified in the Family Code at section 6200 *et seq.*

The juvenile court issued an "exit" order approximately six months later terminating the dependency proceeding pursuant to section 362.4 of

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[1] This issue is not confined to a single case. CWLC's application for leave to file a similar *amicus curiae* brief in another pending California Court of Appeal case that addresses the same issue presented in this appeal, *Maria G. v. Gilbert E.*, No. B279530 (Second Appellate District, Division Eight), was granted on September 13, 2017 by Acting Presiding Judge Madeleine Flier. CWLC intends to submit an application for leave to file an *amicus curiae* brief in *Jessica V. (S.) v. Douglas M.*, No. C083120 (Third Appellate District), another case involving similar issues.

the Welfare & Institutions Code. The exit order gave Priscila sole physical and legal custody of her children, and included the domestic violence restraining order, which had more than two years to go. By operation of the statutory scheme, the juvenile court's restraining order was handed off for any further action to the family court, where Priscila's and Leonardo's marriage dissolution was underway.

Before the restraining order expired, Priscila filed a motion in the family court to renew it under section 6345(a) of the Family Code—which is part of the DVPA, pursuant to which the juvenile court issued the order in the first place. She used a family court form approved by the Judicial Council for renewal of domestic violence restraining orders that are initially issued in family court—which was the best available form—and she included information about Leonardo's continuing misconduct and the family's apprehension of further abuse and violence.

Under Family Code section 6345(a), *renewal* of a restraining order may be granted for a minimum of "five years or permanently" without a showing of any further abuse—in contrast to the showing of abuse required for an *initial* restraining order pursuant to Family Code section 6300 (which the juvenile court was required to apply). The family court erroneously denied Priscila's request because the family court did not believe that it had jurisdiction to *renew* a restraining order initially issued by the juvenile

court. Instead, the family court treated Priscila's motion as an application for an *initial* restraining order, which it granted, but for only three years.

This decision was incorrect. As a matter of statutory construction, legislative intent and logic, the family court clearly and necessarily has jurisdiction to renew a domestic violence restraining order initially issued by the juvenile court and transferred to the family court through an exit order. (See Welf. & Inst. Code §§ 302, 362.4.)

There is a statutory hand-off to the family court from the juvenile court baked into relevant, overlapping provisions of the Welfare & Institutions Code and the Family Code that govern the primary operations of the respective courts. The jurisdiction of the family court to renew a restraining order issued by the juvenile court is a recurring issue on which there is no published decision in the Court of Appeal.

The family court's error, if broadly applied, would weaken the protection available under the DVPA for a subset of survivors of domestic violence—*i.e.*, those who obtain their initial restraining orders in juvenile court, rather than family court. That subgroup is especially vulnerable as a matter of public health and safety because the violence and abuse to which they were exposed was severe enough to prompt state intervention to protect children. The family court's error would deny this vulnerable population the ability to obtain renewal of their restraining orders for "five years or permanently" under the DVPA without having to prove new

abuse—in contrast to survivors who obtain their initial restraining orders in family court. This result is contrary to the plain language of the statutory scheme governing transfer of domestic violence restraining orders from the juvenile and to the family court, and to the clear legislative purpose and policy underlying the DVPA, which governs domestic violence restraining orders in *both* the family and juvenile courts.

In summary:

First, the statutory hand-off from the juvenile court to the family court is designed to allow the family court to enforce, modify and extend domestic violence protective orders issued by the juvenile court. (See Welf. & Inst. Code § 213.5 [protective orders]; *id.* § 362.4 [exit orders]; Fam. Code § 6218 [protective orders]; *id.* § 6345 [renewals].)

Second, this construction is supported by the stated intention and purpose of the California Legislature in enacting and amending the DVPA, and related provisions of the Welfare & Institutions Code and Family Code in order to increase protection for victims of domestic violence.

Third, the family court's erroneous construction, if left to stand, would impose an arbitrary, different burden on victims of domestic violence who obtain initial restraining orders in juvenile court, by requiring them to "start over" later in family court, rather than make the separate showing for renewal permitted under Family Code section 6345(a), which also affords an extended period of protection as part of the DVPA.

This case presents an important opportunity to correct an erroneous reading of the law by the family court and clarify how the relevant statutes operate together to permit the family court to renew domestic violence restraining orders initially issued by the juvenile court. Such a decision by this Court of Appeal would provide much needed guidance to family courts throughout the state, which routinely take over responsibility for enforcement of restraining orders issued by juvenile courts, and would further the legislative purpose to protect an especially vulnerable segment of adult and minor victims of domestic violence and abuse.

## II. STATEMENT OF THE CASE

### A. The Juvenile Court Issues the Initial Domestic Violence Restraining Order

Leonardo and Priscila were married in 2008; they separated three years later. (AA 1.) They have three girls together, currently ages eleven to fourteen. (*Ibid.*) Throughout their relationship, Leonardo has physically and verbally abused Priscila, including punching and kicking Priscila and pushing her while she was pregnant. (See, e.g., AA 114.) The children have also witnessed numerous instances of Leonardo's violent behavior. (See AA 114 [explaining that the children have seen Leonardo "punch walls and break windows" and physically push Priscila].) Since 2012, Priscila, Leonardo and their children have been involved in litigation in the Los Angeles County Superior Court—both in the juvenile dependency

division and the family court division—over various issues related to the marriage, custody of the children, and the protection of those children and Priscila from Leonardo's abusive conduct. (E.g., AA 1.)

The court proceedings started in September 2012 when Leonardo filed a petition for dissolution of marriage in family court. (AA 1.) Soon thereafter, the Los Angeles County Department of Children and Family Services initiated a dependency proceeding in juvenile court to protect their minor children from potential abuse and neglect. (See AA 112.) As a matter of statutory law, initiation of the juvenile proceeding shifted "exclusive jurisdiction" to the juvenile court over certain matters, including domestic violence restraining orders to safeguard Priscila and the children. (Welf. & Inst. Code §§ 213.5(a), 304.)

In July 2013, the juvenile court issued a temporary restraining order on evidence of the children witnessing Leonardo push their mother, and his repeated calls and unannounced visits to Priscila at her home during late night hours. (AA 112.) The temporary restraining order required Leonardo to stay one hundred yards away from Priscila and their daughters, except for monitored visits with the children at specified times. (See AA 112.)

But Leonardo violated this order within a matter of weeks. (See AA 112, 118 [Los Angeles County Sherriff's Department complaint form].) Consequently, on August 22, 2013, the juvenile court issued a three-year domestic violence restraining order using Form JV-250 (the "Initial

Restraining Order") to protect Priscila and the children. (AA 112, 120.) The court also ordered Leonardo to complete a substance abuse treatment program, parenting class, and participate in counseling for his abusive behavior. (AA 113.) He did not follow through with any of these court-mandated tasks. (*Ibid.*)

In January 2014, the juvenile court issued a final judgment—also known as an "exit" order—using Form JV-200, which ended the juvenile proceedings by awarding Priscila sole legal and physical custody of her daughters. (AA 5.) The exit order also attached, and thereby continued, the Initial Restraining Order protecting Priscila and the children. (AA 6.) Pursuant to the statutory scheme, the family court, where Leonardo and Priscila's dissolution of marriage case was still pending,[2] thereafter had jurisdiction with respect to any further proceedings related to the juvenile court's exit order, including the Initial Restraining Order. (See AA 6; Welf. & Inst. Code § 362.4.)[3]

In July 2014, less than six months after the transfer of the restraining order to family court, Leonardo was arrested for violating the Initial

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[2] Their divorce was finalized in September 2014. (AA 18.)

[3] As discussed below, a potentially recurring source of confusion is that forms approved by the Judicial Council for use in domestic violence matters in family court and juvenile court do not cross-reference each other or recognize the transition of restraining orders between the courts.

Restraining Order. (AA 114-115, 129-137 [Los Angeles County Sheriff's Department incident report describing Leonardo's attempt to forcefully enter Priscila's residence late in the evening].) Over the next two years, Leonardo repeatedly violated the Initial Restraining Order by appearing unannounced at Priscila's home, calling her at odd hours, and failing to comply with the conditions set forth by the juvenile court for monitored visits with the children. (AA 20-22, 113.) One professional monitoring organization declined to monitor the visits because of Leonardo's behavior, describing him as "an openly hostile, volatile man." (AA 128.)

### B. The Family Court Erroneously Decides that It Cannot Renew the Initial Domestic Violence Restraining Order as a Matter of Law

On August 11, 2016—before the Initial Restraining Order was set to expire after three years—Priscila filed a timely motion in the family court to renew that order permanently under Family Code section 6345(a). (AA 111.) She filed the motion using Form DV-700, which is entitled "Request to Renew Restraining Order," attaching the Initial Restraining Order and evidence of the numerous instances of Leonardo's misconduct. (AA 112-137.) Because the court clerks did not view the Initial Restraining Order as capable of renewal using Form DV-700, Priscila was compelled to re-file her request using Form DV-100, which is entitled "Request for Temporary Restraining Order." (See AA 172, 197.)

Priscila sought a *renewal* of the Initial Restraining Order, however, under section 6345(a) of the Family Code—not an initial restraining order, which she had already obtained in the juvenile court. Section 6345(a) is part of the DVPA and authorizes renewal of a restraining order for "five years or permanently" without showing any further abuse, based on a showing of "reasonable apprehension" of future abuse. (See *Ritchie v. Konrad* (2004) 115 Cal. App. 4th 1275, 1284.)

The family court decided, however, that the renewal provision under section 6345(a) of the Family Code was not—as a matter of law—available to Priscila because the Initial Restraining Order had been issued by the juvenile court. The family court erroneously believed that the juvenile court's order was not issued under the DVPA—which is incorrect as discussed below. (See Section III, Part A.)

Specifically, the family court stated that "[b]ecause the original restraining order was issued in the juvenile court, this court doesn't have the power to renew that restraining order. You can seek a new restraining order [under the DVPA]. (1-RT 8:26-9:3.) At a subsequent hearing, the family court further explained its thinking:

> [Priscila's] request is to renew [the Initial Restraining Order] and permanently, and that is a procedural mechanism that's only available under the Domestic Violence Prevention Act. That's not the act under which her initial restraining order was requested, and so the court doesn't have jurisdiction to grant the requested renewal because there's no renewal of a

> juvenile restraining order under 213.5 or 362.4 [of the Welfare & Institutions Code].

(2-RT 15:18-25.)

Ultimately, the family court issued a new restraining order for a period of three years, which will force Priscila to again return to court, face Leonardo and seek another extension of the restraining order. (See AA 244.) The family court was troubled by this result and expressly invited Priscila to appeal its decision to provide "some clarity to the existing statutory scheme." (2-RT 26:2-3.)

## III. ANALYSIS

Contrary to the family court's ruling, it has full jurisdiction and authority to renew a domestic violence restraining order under the DVPA (Family Code § 6300 *et seq*.) that initially was issued by the juvenile court.

First, the analysis below starts with the relevant respective roles and statutory schemes governing the family court, the juvenile court, the relationship between them and their mutual use of the DVPA in issuing domestic violence restraining orders.

Second, the analysis shows how the plain language of the governing statutes—sections 213.5 and 362.4 of the Welfare & Institutions Code and section 6345(a) of the Family Code—allows the family court to renew restraining orders initially issued by the juvenile court.

Third, the analysis turns to the purpose and intent of the California legislature to enhance protections to victims of domestic violence in enacting and amending the relevant statutory scheme.

Finally, the analysis discusses how the family court's interpretation would impose, arbitrarily, a different evidentiary burden and provide less protection to an especially vulnerable subgroup of domestic violence survivors who obtain their initial restraining orders in the juvenile court.

### A. Juvenile and Family Courts have Complementary Roles and Jurisdiction in Preventing Domestic Violence

The Domestic Violence Prevention Act is the statutory lynchpin connecting the authority and jurisdiction of the juvenile and family courts to issue and modify restraining orders to prevent domestic violence. In 1993, the California legislature enacted the DVPA as Division 10 of the Family Code, section 6200 *et seq*. "The purpose of this division is to prevent acts of domestic violence, abuse and sexual abuse and to provide for separation of the persons involved in the domestic violence[.]" (Fam. Code § 6220.) The Legislature has since published findings affirming the importance and effectiveness of the DVPA, including a finding that civil protective orders "increase a victim's safety, decrease a victim's fear of future harm, and improve a victim's overall sense of well-being and self-esteem." (2014 Cal. Stats. Ch. 635, § 1, subd. (f).)

Other studies show that the majority of persons subjected to domestic violence are women. (Bugarin, *The Prevalence of Domestic Violence in California* (Nov. 2002) California Research Bureau, California State Library at p. 3 ["The Bureau of Justice estimates that '90 to 95 percent of domestic violence victims are women.'"].) As a result, 72% of the restraining orders issued by various divisions of the Superior Court "involved a restrained male and a protected female." (See Sorenson & Shen, *Restraining Orders in California: A Look at Statewide Data* (July 2005) 11 Violence Against Women 912, 920.) Women who are mothers, in turn, most often have custody and front-line responsibility for protecting their children from domestic violence and abuse. (See Emery, et al., *A Critical Assessment of Child Custody Evaluations: Limited Science and a Flawed System* (2005) 6 Psychological Science in the Public Interest 1, 4-5.) This is where the juvenile and family courts dovetail. Both courts have statutory authority to issue and modify domestic violence restraining orders under the DVPA.

**The Juvenile Court**

The primary focus of the juvenile court is to provide "maximum safety and protection for children" who are made dependents of the court, having been exposed to abuse and neglect. (Welf. & Inst. Code § 300.) The juvenile court's job is to ensure "the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (*Id.* § 300.2.) Juvenile court proceedings may be initiated only by the state

through the county Department of Children and Family Services (DCFS). (*Id.* § 325.) The parties are the state (through DCFS), the child through a *guardian ad litem* and legal counsel, and the parents through legal counsel which may be appointed by the court. (*Id.* §§ 317, 317.5, 325; Cal. Rules of Court, rules 5.534, subds. (c)-(d).) In general, juvenile court proceedings are governed by the Welfare & Institutions Code. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.)

Once initiated, the juvenile court has exclusive jurisdiction to issue domestic violence restraining orders involving dependent children. (Welf. & Inst. Code § 213.5, subd. (a).) Effective in 2012, the juvenile court's authority to issue such orders is expressly "in the manner provided by Section 6300 of the Family Code if related to domestic violence." (*Ibid*.) Section 6300 is part of the DVPA and governs the issuance of domestic violence restraining orders in family court. *Accordingly, both the juvenile and family courts follow the same DVPA provisions governing the scope and procedures for obtaining domestic violence protective orders*.

The juvenile court's jurisdiction includes authority to exclude an individual from "the dwelling of the person who has care, custody, and control of the child." (Welf. & Inst. Code § 213.5, subd. (a).) Where a mother has physical custody, among other situations, a juvenile court's restraining order may protect both woman and child. (*Ibid.*; see, e.g., AA 136.) Further, the juvenile court is authorized to issue orders "as described

in Section 6218 of the Family Code," which sets forth the full array of protective orders authorized under the DVPA. (Welf. & Inst. Code § 304.)

The Judicial Council is instructed by statute to adopt forms for these restraining orders, which "shall be enforceable in the same manner as any other order issued pursuant to Division 10 (commencing with section 6200) of the Family Code." (Welf. & Inst. Code § 304.) As shown by the facts in this case, however, the Judicial Council has approved "JV" forms for use in juvenile court, and "DV" forms for the same use in family court, but has failed to provide forms recognizing that a "JV" order may become a "DV" order through the exit order.[4]

At the conclusion of a juvenile proceeding, continued enforcement of any domestic violence restraining order is handed off to the family court. Under section 362.4 of the Welfare & Institutions Code, when the juvenile court terminates its jurisdiction over a minor, it may issue what is commonly called an "exit" order, which includes any domestic violence

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[4] The Judicial Council of California issues mandatory forms and optional forms. (See Forms & Rules, California Courts, www.courts.ca.gov/forms.htm [Using Forms].) Although the forms used for domestic violence protective orders are mandatory, relief may be granted even if the mandatory form is not used—and here, there was no perfectly suitable form available. (See *Faton v. Ahmedo* (2015) 236 Cal. App. 4th 1160, 1171 [the Family Code "states that the Judicial Council shall prescribe the [domestic violence restraining order] forms, but it does not state that a litigant's failure to use the forms necessarily requires the court to withhold the requested relief"].)

restraining order. The exit order "shall be filed" in any pending family court proceeding—or else may be used "as the sole basis" for opening a future family court proceeding. (Welf. & Inst. Code § 362.4.) The clerk of court is directed to handle the logistics and the Judicial Council is directed to adopt forms for these orders. (*Ibid*.)

**The Family Court**

The family court is "established to provide parents a forum in which to resolve, inter alia, private issues relating to the custody of and visitation with children." (*In re Chantal S., supra*, 13 Cal.4th at p. 201.) The family court has authority to issue restraining orders pursuant to the DVPA, which, as noted, is codified in Division 10 of the Family Code. (Fam. Code § 6200 *et seq.*) An initial restraining order may be issued where the applicant "shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse"—*i.e.*, the same standard that juvenile courts are directed to apply. (Compare Fam. Code § 6300 with Welf. & Inst. Code § 213.5, subd. (a).) The initial restraining order may be renewed for "five years or permanently" based on a showing of "reasonable apprehension" of future violence and abuse (*Ritchie*, *supra*, 115 Cal. App. 4th at p. 1284), but "without a showing of any further abuse since the issuance of the original order." (Fam. Code § 6345, subd. (a).)

Observers have noted that movement of a domestic matter from juvenile court to family court can create "interesting and complex" cases

because of gaps in the continuity of information, errors in the file transfer process, mismatched forms and other communication failures. (Edwards, *Moving Cases from Juvenile to Family Court: How Mediation Can Help* (Summer 2012) 16:2 U.C. Davis J. of Juvenile L. & Pol. 535, 537.) That said, these two courts are fully authorized under the DVPA to protect victims of domestic violence and they "should be prepared to work together" to do so. (See Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases* (1987) 27 Santa Clara L. Rev. 201, 269.)

Here, Priscila properly invoked the jurisdiction of the family court to renew her Initial Restraining Order, which was part of the juvenile court's exit order when the juvenile proceeding was terminated. There being no Judicial Council form for renewal of a juvenile court order in family court, Priscila properly improvised using the family court forms. (AA 112-137.) The family court nonetheless deprived Priscila of her rights under the DVPA to renew that Initial Restraining Order for "five years or permanently" by erroneously finding that it had no jurisdiction to do so, treating her application as a new request for an initial order, and granting her only three years of extended protection.

### B. The Plain Language of the Governing Statutes is that Restraining Orders Issued by the Juvenile Court may be Renewed by the Family Court

This Court's primary task is to determine whether the family court had jurisdiction in this case to renew the Initial Restraining Order under

Family Code section 6345(a). This is an issue of statutory construction where the guiding principle is "to determine the lawmakers' intent." (*Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal. App. 4th 1385, 1396 ["[T]he aim is 'to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.'"] [citations omitted].) In so doing, this Court looks "first [] to the plain meaning of the statutory language, then to its legislative history and finally to the reasonableness of a proposed construction." (*Ibid*. [citations omitted].) Applying these principles, the governing statutes at issue clearly give the family court jurisdiction to renew a domestic violence restraining order issued by the juvenile court. (See also Section III, Parts C and D.)

Starting with the plain language, the key statutes, when properly read together, form a logical chain establishing the authority of the family court to renew a domestic violence restraining order inherited from the juvenile court—sections 213.5 (restraining orders) and 362.4 (exit orders) of the Welfare & Institutions Code and Family Code section 6345(a) (renewal of restraining orders).

First, section 213.5 of the Welfare & Institutions Code directs the juvenile court to issue domestic violence restraining orders "in the manner provided by Section 6300 of the Family Code"—*i.e.*, under the DVPA in the same manner required in family court. While an initial juvenile court restraining order may be issued for "no more than three years," it may be

"extended by further order of the court." (Welf. & Inst. Code § 213.5, subd. (d).)[5] Where, as here, the juvenile court's order has been transferred to the jurisdiction of the family court, "the further order of the court" can *only* mean the family court. Termination of the juvenile court proceeding divests that court of jurisdiction. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 201.) Thus, a plain reading is that the family court acquires jurisdiction to extend a juvenile court restraining order.

Second, section 362.4 of the Welfare & Institutions Code governing exit orders *expressly* gives the family court jurisdiction to act on a domestic violence restraining order issued by the juvenile court. (Welf. & Inst. Code § 362.4.) When the juvenile court "terminates its jurisdiction over a minor," it may issue a protective order "as defined in section 6218 of the Family Code" (here again, the DVPA). (*Ibid*.) That exit order "shall continue *until modified or terminated by a subsequent order of the superior court*." (*Ibid*. [emphasis added].) Again, since the purpose of this section is to effectuate a hand-off from the juvenile court to the family court, any

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[5] In denying Priscila's request for renewal, the family court also honed in on the fact that section 213.5 of the Welfare & Institutions Code allows a restraining order to be "extended," whereas section 6345(a) of the Family Code uses the word "renewed." (2-RT 12:26-13:28.) The family court mistakenly found this difference in terminology to be significant in declining Priscila's request for renewal. As discussed in the Appellant's Opening Brief, both California legislature and courts use these terms interchangeably in referring to domestic violence restraining orders. (See section IV.A.5. of Appellant's Opening Brief.)

"subsequent order of the superior court" *necessarily* refers to the family court. Under the plain language, the family court may "modify" the initial juvenile order by, among other things, extending the termination date by "five years or permanently" under section 6345(a) of the Family Code.

### C. Legislative Intent Supports the Family Court's Authority to Renew Restraining Orders Initially Issued by the Juvenile Court

The purpose and intent of the California legislature in enacting and amending the DVPA supports this plain language construction of the statutory scheme. The legislature enacted the DVPA to "prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence[.]" (Fam. Code § 6220.) Since enactment, the legislature approved amendments that altered the showing for survivors to obtain renewals, increased the duration of initial and renewal orders, added the DVPA to the juvenile court's armory of tools to protect children and their custodians from domestic violence and abuse, and made findings affirming the DVPA's importance and track record.

In 2005, for example, the legislature increased the permitted renewal period available under section 6345(a) of the Family Code from three years to "five years or permanently," explaining its rationale as follows:

> [E]xtending the duration of these protective orders would save the victims the harrowing ordeal of returning to court every three years to renew the orders and allow them to go about their lives with more peace of mind.

> Advocates for domestic violence victims also argue that while in three years the physical battering of the victim may have stopped, oftentimes the litigation is drawn out for many years and the court becomes the forum through which the batterers revictimize and traumatize the party protected by the order.

(Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 99 (2005–2006 Reg. Sess.) as amended Mar. 1, 2005, p. 3.)

In 2010 (effective in 2012), the California legislature extended the DVPA to juvenile court by amending section 213.5 of the Welfare & Institutions Code to direct juvenile courts to issue restraining orders "in the manner provided by Section 6300 of the Family Code, if related to domestic violence." (Assem. Bill No. 1596 (2009-2010 Reg. Sess.) § 25 [effective Jan. 1, 2012].) In order to "better protect victims of domestic violence," this amendment assures that juvenile courts issue domestic violence restraining orders using the same process and with the same protections as the family court. (See Assem. Com. On Jud., Rep. on Assem. Bill No. 1596 (2009-2010 Reg. Sess.) Mar. 16, 2010, Key Issue.)

In 2014, the legislature made findings emphasizing the importance of the DVPA and its effective track record: "[T]he effective issuance and enforcement of civil protective orders are of paramount importance in the State of California as a means for promoting safety, reducing violence and abuse, and preventing serious injury and death." (2014 Cal. Stats. Ch. 635, § 1, subd. (i).) "Studies have shown that obtaining a civil protective order against an abuser can increase a victim's safety, decrease a victim's fear of

future harm, and improve a victim's overall sense of well-being and self-esteem." (*Id.* § 1, subd. (f).) These legislative findings and policies support the plain language construction of the statutes, which assures the family court's jurisdiction and authority to invoke the DVPA's renewal provisions once a domestic violence restraining order is transferred to the family court.

There is, moreover, strong social science research supporting the legislative findings that restraining orders are effective in reducing violence to women and children. In a recent study of women in both rural and urban settings, domestic violence restraining orders were found to be effective as measured by the elimination or reduction of violence and improved quality of life for survivors. (See Logan & Walker, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence: Challenges Remain in Rural Areas with Access and Enforcement* (Spring 2011) at p. 3-4, Carsey Institute, University of New Hampshire.)

Similarly, a large population-based study conducted in Seattle, Washington using review of police records found that having a permanent civil protection order in place during the twelve months after a police-reported incident of intimate partner violence "was associated with a significantly decreased risk of new episodes of police-reported physical abuse"—specifically, an 80% reduction. (Holt et al., *Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?* (2003) 24:1 Am. J. Prev. Med. at pp. 16, 19-20.)

In light of findings like these, the Division of Violence Prevention of the National Center for Injury Prevention and Control focused on domestic violence restraining orders in its 2017 package of programs, policies and practices for preventing intimate partner violence and increasing survivor safety. (See Niolon et al., *Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices* (2017) National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.) The report accompanying the package concludes that protective orders are "associated with lower risk of subsequent violence toward the survivor." (*Id.* at p. 40 [citing Benitez et al., *Do protection orders protect?* (2010) 38:3 J. of the Am. Acad. of Psychiatry and the Law Online, at pp. 376-385].)

Given the proven correlation between restraining orders and the safety of domestic violence survivors, this is not merely an academic argument. Women and children will be safer when family courts exercise their authority to renew restraining orders issued by juvenile courts, as the California Legislature intended. Accordingly, the relevant statutory scheme should be construed to support the family court's authority to invoke the DVPA to renew domestic violence restraining orders that safeguard survivors of domestic violence, regardless of whether their safety was initially protected by the juvenile court or by the family court.

### D. The Family Court's Interpretation Imposes an Arbitrary Burden on a Subset of Victims of Domestic Violence and Frustrates Legislative Intent

The family court's contrary interpretation should be rejected for the further reason that it unreasonably and arbitrarily burdens domestic violence survivors who obtain initial restraining orders in juvenile court. (See *Mt. Hawley Ins. Co.*, *supra*, 215 Cal. App. 4th at p. 1396 [court may look to the "reasonableness of a proposed construction" in determining statutory meaning].) Under the family court's interpretation, persons protected by domestic violence restraining orders issued by a juvenile court are forced to prove up an initial case for a new restraining order all over again in the family court. This result cannot be reconciled with the language of the statutes or legislative intent discussed above.

First, Priscila and others like her who successfully obtain a domestic violence restraining orders in juvenile court have *already* met the standards under the DVPA for obtaining an initial restraining order. Under section 215.5(a) of the Welfare & Institutions Code, they demonstrated to the juvenile court the showing required by Family Code section 6300: *i.e.*, by "affidavit or testimony and any additional information provided to the court . . . reasonable proof of a past act or acts of abuse."

Second, legislative policy with respect to domestic violence restraining orders issued by the juvenile court is set forth in section 304 of the Welfare & Institutions Code that such orders "*shall be enforceable in*

*the same manner as any other order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code*"—which *is* the DVPA. (See Welf. & Inst. Code § 304 [emphasis added].) The family court failed to follow this mandate.

Third, powerful public health and safety concerns drove legislative amendment of section 6345 of the Family Code to make it *easier* for survivors to obtain renewals and extend the duration of domestic violence restraining orders. Those concerns are undermined by the family court's interpretation limiting its power to act on Priscila's request for renewal.

The five-year minimum renewal in section 6345 was enacted in response to evidence of high rates of murder and recidivism by domestic violence perpetrators, and their frequent use of the confrontational arena of the courtroom to "revictimize and traumatize" survivors.[6] The five year minimum renewal is designed to provide survivors "peace of mind" to "go about their lives" and minimize the "harrowing ordeal" of returning to court to confront an abuser in order to obtain extended protection.

Similarly, the distinct showing required for renewal under section 6345 reflects recognition that if an initial restraining order is serving its intended purpose, requiring proof of new abuse to justify renewal is

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[6] See Sen. Rules Com., Off. Of Sen. Floor analysis, 3d reading of Assem. B. No. 99 (2005-2006 Reg. Sess.) Mar. 1, 2005 [cited in Appellants' Opening Brief at 22].

superfluous. (*Ritchie*, *supra*, 115 Cal. App. 4th at p. 1284.) Thus, a renewal applicant must only demonstrate "reasonable apprehension" of future abuse (*id.* at p. 1279) "without a showing of any further abuse since the issuance of the original order." (Fam. Code § 6345, subd. (a).) [7] Evidence of the "existence of the initial order . . . and the underlying findings and facts supporting that order often will be enough in themselves to provide the necessary proof." (*Ritchie*, *supra*, 115 Cal. App. 4th at p. 1291.)

The family court's erroneous ruling, denying Priscila and those in her position the protection offered by section 6345 of the DVPA, falls arbitrarily hard on survivors who are often at higher risk of harm because the violence and abuse they suffered was severe enough to call for state intervention to protect their children in juvenile court. Further, in obtaining their initial restraining orders, survivors in this subgroup likely had assistance of counsel, which often will be unavailable in family court where parties typically represent themselves. (See *Moving Cases*, *supra*, at p. 546 ["Parents usually have attorneys to assist them in juvenile court, while a high percentage of family litigants are unrepresented."]; Welf. & Inst. Code

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[7] Notably, the juvenile court may have access to evidence that is both useful in establishing the need for a restraining order and also not necessarily available to the family court. For example, the "testimony of a minor may be taken in chambers and outside the presence of the minor's parent or parents" if, among other factors, the child is "afraid to testify in front of his or her parents." (Welf. & Inst. Code § 350, subd. (b).)

§ 317, subd. (a)(1).) There is no rational basis for excluding this subgroup from the beneficial protections of obtaining renewal under section 6345.

Finally, it is important to consider that the juvenile court terminated its jurisdiction only because it found the children to be in a safe environment—*with a restraining order in place*. (See Welf. & Inst. Code § 364, subd. (c).) Mothers must have the right to seek renewal of restraining orders issued by the juvenile court in order to maintain the safe environment that the juvenile court determined to exist, and would continue to exist, when its jurisdiction ended. (See *Moving Cases*, *supra*, at pp. 538-539 ["At the time of dismissal, the juvenile court has concluded that the child currently resides in a safe environment, but the court must acknowledge the danger of re-abuse or neglect."].)

By requiring Priscila to prove grounds for issuance of an initial domestic violence restraining order, and denying her the relief of renewal for a minimum of five years or permanently, the family court committed prejudicial error. Important public safety and health laws designed to protect Priscila have been denied to her, and will not be extended to other victims of domestic violence like her unless this Court of Appeal steers the family court in the right direction with a reversal and reasoned opinion.

## IV. CONCLUSION

For these reasons, *Amicus Curiae* respectfully request that this Court reverse the family court's decision in a written opinion clarifying that the

DVPA's provisions governing renewal of domestic violence restraining orders apply to orders initially issued by the juvenile court, and transferred to the family court after termination of the juvenile case.

DATED: September 22, 2017

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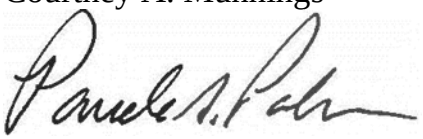

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