

No. D078273

In the Court of Appeal of the State of California
Fourth Appellate District, Division One

C.J.,

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

**PROPOSED AMICI CURIAE BRIEF OF THE
CALIFORNIA WOMEN'S LAW CENTER ET AL. IN
SUPPORT OF APPELLANT**

Appeal from the Superior Court of San Diego County
Hon. Frank Birchak, Case No. 17FL008621E

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Attorneys for Amici Curiae California Women’s Law Center, Advocates for Child Empowerment and Safety, Asian Pacific Institute on Gender-Based Violence, California Protective Parents Association, California Victims of Crime Resource Center, Child Abuse Forensic Institute, Domestic Abuse Center, Domestic Violence Legal Empowerment and Appeals Project, Family Violence Appellate Project, Haven Hills, Inc., Incest Survivors’ Speakers Bureau of California, Law Foundation of Silicon Valley, Legal Voice, Los Angeles Center for Law and Justice, New York Legal Assistance Group, Project Sanctuary, San Diego Volunteer Lawyer Program, Inc., Seton Hall Law Center for Social Justice, Stop Abuse Campaign, Stopping Domestic Violence, and WomenShelter of Long Beach certify that there are no interested entities or persons that must be listed in this certificate under California Rule of Court 8.208.

Dated: July 13, 2021

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I. INTRODUCTION

This case illustrates the critical need for guidance from this Court on the proper treatment of motions to set aside default judgments brought by survivors of domestic violence who cannot be located because of their flight from that violence. Such motions should be granted for three reasons: (1) to further California’s policy of supporting survivors by protecting the critical need for confidentiality following their flight from domestic violence; (2) to prevent abusers from seeking default judgments against their survivors as a means of further abuse; and (3) to allow cases to be decided on their merits.

First, when survivors of abuse flee to trusted friends or confidential domestic violence shelters, confidentiality is critical not only for the safety of the survivor, but also for other shelter residents and staff or others that may provide a temporary residence. California has a well-established and long-standing public policy of protecting survivors of abuse, and specifically protecting their confidentiality. Such safeguards are widespread and deeply rooted in California’s statutory and case law. (See, e.g., Fam. Code, § 6220 [describing “purpose” of the law “to prevent acts of domestic violence, abuse, and sexual abuse”]; Pen. Code, § 836, subd. (c)(3)(A) [explaining that the “intent of the law” is “to protect victims of domestic violence from continuing abuse”]; *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1498 [recognizing “the Legislature’s goal of reducing domestic violence,” and the need to “broadly construe[]” the law to achieve its “protective purpose”]; *In re Marriage of Cauley* (2006) 138 Cal.App.4th 1100, 1106 [discussing the “significant public policy against domestic violence”]; Pen. Code, § 273.7 [prohibiting any person from maliciously disclosing the location of a shelter or any place designated as a shelter]; Gov. Code, §§ 6505 et seq. [“The Legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual

assault, or stalking frequently establish new names or addresses in order to prevent their assailants or probable assailants from finding them”].)

Second, courts should not allow abusers to force a survivor to disclose his or her location through threats of default or other adverse legal judgments. This would lead to wide-ranging negative effects, such as dissuading domestic violence victims from going to shelters in the first place for fear that their abuser will pursue legal action without their participation and leave them with a judgment they cannot set aside. When a survivor seeks out a confidential location to protect him- or herself against further abuse, doing so should not be conflated with evading service. As the statistics and evidence in this brief will show, abusers go to great lengths to resume contact with and, in many instances, continue abusing survivors who have fled or attempted to flee that abuse.

Third, survivors should have the ability to litigate their cases on the merits when it is safe enough to do so. Survivors should not have to choose between their own safety and participation in the court process to protect their legal interests. When abusers inflict further abuse through threats of default or other adverse legal judgments, survivors like Appellant are forced to make such a choice. Rather, they should have the right to use confidential services as protection against ongoing abuse, including abusive court proceedings. They must then be permitted to set aside default judgments once they have actual notice of any legal proceedings instituted against them.

This case is a key example of why it is vital that the Court provide a way for domestic violence survivors who cannot be located and served to set aside a default judgment. During their short relationship, Respondent C.J. subjected Appellant T.R. to mental, physical, and sexual abuse, and T.R. fled. Over a year later, C.J. filed a petition for dissolution of marriage or annulment based on “irreconcilable differences” and alleged immigration

fraud by T.R. At the time C.J. filed the petition, T.R. was living in a domestic violence shelter and was not able to provide her address. Even so, although C.J. was in phone contact with T.R., he failed to indicate that he planned to file the petition and did not ask outright for her address for service. C.J. then misrepresented to the court that he “could not find” T.R. to serve her, so the court permitted service by publication and ultimately granted default judgment. C.J. failed to disclose to the court both his ongoing phone contact with T.R. and his knowledge of her last known address, which led to alleged attempts to locate T.R. for service, and the eventual service by publication, being carried out in counties where T.R. had never resided. Ultimately, C.J. obtained a court order dissolving their marriage, based in part on T.R.’s purported immigration fraud. Such a finding creates the risk of severe consequences for T.R. (See Appellant’s Opening Brief, at pp. 10–19.)

Permitting T.R. to set aside the default judgment will allow T.R. to right these wrongs and defend herself against these serious allegations. Here, C.J. hid the existence of the case against T.R. and lied to the court in order to obtain a harmful and unwarranted court order issued without T.R.’s participation. Even if he had directly asked for T.R.’s address, however, she would have faced the impossible choice described above: provide her location, so that she could fight against the harmful order her then-husband was seeking against her, or remain hidden and endure the consequences of C.J. obtaining a default judgment. In either scenario, it is inequitable to let the trial court’s default order stand.

The trial court should have granted the motion to set aside the default judgment in this case, and such motions should be granted in similar circumstances. Without reversal and the Court’s guidance, there will be major repercussions for vulnerable domestic violence survivors fleeing domestic abuse. Reversal will further California’s well-established public

policy goals of protecting domestic violence survivors and shelters—including their confidentiality—and will allow life-changing decisions in family law (and other areas) to be determined on the merits.

II. OVERVIEW OF DOMESTIC VIOLENCE AND BARRIERS TO FLEEING ABUSE

A. Domestic Violence Is a Public Health Crisis.

Domestic violence involves abuse perpetrated against a spouse or former spouse, a cohabitant or former cohabitant, or an intimate partner. (See Fam. Code, § 6211; Pen. Code, § 13700.) Such abuse can be physical, sexual, or psychological, or otherwise involve conduct that “disturbs the peace” of the victim. (See Fam. Code, §§ 6203, 6320.)¹ Often, survivors of domestic violence will experience many of these forms of violence concurrently.²

People of all genders and sexualities endure these varied forms of violence.³ In California, nearly 35% of women and more than 30% of men have experienced some form of sexual violence, physical violence, or

¹ Courts have defined “disturbing the peace” of another party as “conduct that destroys the mental or emotional calm of the other party.” *In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497.

² Gallaway, *What Recourse Do Vulnerable Immigrants Have?: Violations of The VAWA Confidentiality Provisions and the Pursuit of an Even Playing Field* (2020) 22 Scholar 1, 2.

³ See, e.g., Nat’l Ctr. for Injury Prevention & Control, Centers for Disease Control & Prevention, NISVS: An Overview of 2010 Findings on Victimization by Sexual Orientation, page 1, <https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf> (showing 44% of percent of lesbian women and 61% of bisexual women, and 35% of heterosexual women, experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime; similarly, 26% percent of gay men, 37% of bisexual men, and 29% of heterosexual men experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime).

stalking by an intimate partner.⁴ Further, California domestic violence shelters serve thousands of adults and children every day, but have to turn *many more* away because of their inability to meet the demand for services.⁵ Given this far reach, eliminating domestic violence is possible only if it is addressed from many angles. It is imperative that courts play an active role in combatting, rather than furthering or enabling, domestic violence. The Court should allow T.R. to set aside the default judgment against her and clarify that similarly situated survivors should have the same right.

B. Domestic Violence Abusers Use a Vast Range of Tactics, Including Abuse through the Legal System.

1. It's About Control – Abusers Utilize Threats, Violence, Intimidation, and Coercion to Control Their Victims.

For most abusers, it is all about control. Domestic violence often involves “a pattern of assaultive and coercive behaviors” intended to control a partner.⁶ Abusers may seek to gain or maintain control through various means, from physical to psychological. Common tactics employed by perpetrators often include intimidation, verbal abuse, physical force,

⁴ Smith et al., The National Intimate Partner and Sexual Violence Survey: 2010-2012 (2017) Centers for Disease Control & Prevention, page 128 <<https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>> (as of July 7, 2021).

⁵ National Coalition Against Domestic Violence, Domestic Violence in California (2020) <https://assets.speakcdn.com/assets/2497/ncadv_california_fact_sheet_2020.pdf> (as of July 7, 2021).

⁶ Missouri Coalition against Domestic & Sexual Violence, Understanding the Nature and Dynamics of Domestic Violence (2012), page 1.

imposing economic restraints, forced isolation, and initiating legal proceedings merely as a form of harassment.⁷

Accordingly, the “violence” in domestic violence takes many varied and complex forms. For example, forms of physical violence range from battery to sexual assault.⁸ In one study of California domestic violence shelters, more than 30% of study participants reported that an abusive intimate partner used a handgun in harming or threatening them.⁹ Stalking, which comprises “repeated, unwanted, uninvited, obsessive actions and attention,” is another form of physical violence survivors endure.¹⁰

While domestic violence may call to mind strictly physical violence, emotional abuse and “psychological aggression” are also extremely common.¹¹ Emotional abuse encompasses behaviors that are emotionally or mentally harmful or degrading, and is linked to victims developing anxiety, depression, and even post-traumatic stress disorder.¹² Abusers similarly control partners through economic abuse by controlling or severely limiting the partner’s economic resources and ability to earn an income.¹³

⁷ *Id.* at pages 3–7; Ward, *In Her Words: Recognizing and preventing Abusive Litigation against Domestic Violence Survivors* (2015) 14 Seattle J. Soc. Just. 429, 432-33.

⁸ Botein and Hetling, *Home Safe Home: Housing Solutions for Survivors of Intimate Partner Violence* (2016), page 16.

⁹ National Coalition Against Domestic Violence, *Domestic Violence in California* (2020) <https://assets.speakcdn.com/assets/2497/ncadv_california_fact_sheet_2020.pdf> (as of July 7, 2021).

¹⁰ Botein and Hetling, *supra* note 8, at page 16.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Id.* at page 17 (describing employment sabotage, inhibiting transportation, harassing the partner at work, stealing funds, closely monitoring spending, failing to pay bills, and more).

Moreover, abusers' coercive abuse tactics often escalate when the abuser suspects a survivor will leave, or after they do leave. While we discuss the intricacies of this phenomenon in more detail below (see *post*, Section C(1)), it is important to note that “[t]he survivor’s efforts to leave signal to the abusive partner an impending loss of control.”¹⁴ In response, the abusive partner frequently “escalat[es] control tactics, punishing the survivor through threats and violence, retaliating for the separation, or attempting to intimidate the survivor into returning.”¹⁵

This is the situation T.R. and other survivors find themselves in when, against all odds, they leave an abusive environment and are forced to avail themselves of confidential shelters or other secret arrangements to avoid their abusers' escalating and often increasingly dangerous tactics to reassert control. Survivors in this situation are extremely vulnerable, and the current court procedure forces an impossible choice. On the one hand, a survivor may eschew the protections of confidentiality and provide his or her abuser with a service address to participate in litigation *brought on by their abuser*, who may have filed the action as a means to reconnect with and reassert control over the survivor.¹⁶ Or, on the other hand, the survivor might stay in the confidential location and risk his or her abuser obtaining a default judgment against him or her that could significantly impact custody rights, access to money or property, or immigration status. As evidenced here, when a trial court refuses to set aside that default judgment, the abuser

¹⁴ Stoever, *Access to Safety and Justice: Service of Process in Domestic Violence Cases* (2019) 94 Wash. L. Rev. 333, 348–349.

¹⁵ *Ibid.*

¹⁶ See, e.g., Ward, *supra* note 7, at pp. 432–433 (describing “abusive litigation,” or “a range of tactics ... that abusers often use in connection with court proceedings in order to control, harass, intimidate, coerce, and/or impoverish survivors”).

can use the threat of such outcomes as a cudgel to further harass, coerce, and abuse the survivor.

2. Technological Advancement and the Internet Aid Abusers in Controlling and Abusing Survivors.

Unsurprisingly, technological advancements and the Internet have “given abusers a powerful new tool to expand and magnify the traditional harms of domestic violence.”¹⁷ Technology “has created and continues to create new and greater opportunities to monitor and control survivors, magnifying the harms of domestic violence.”¹⁸ While the tactics are not new, technology makes them “easier to employ and considerably less time consuming,” and “tech abuse” often occurs directly alongside more-traditional forms of abuse.¹⁹

Two common tactics of tech abuse are location tracking and cyberstalking. “Location tracking devices are widespread and easily manipulated as tools for tech abuse.”²⁰ Further, abusers “can monitor

¹⁷ Lo, *A Domestic Violence Dystopia: Abuse via the Internet of Things and Remedies Under Current Law* (2021) 109 Cal.L.Rev. 277, 277.

¹⁸ *Id.* at page 283 (citing King-Ries, *Teens, Technology, and Cyberstalking: The Domestic Violence Wave of the Future?* (2011) 20 Tex. J. Women & L. 131, 138; Baddam, Note, *Technology and Its Danger to Domestic Violence Victims: How Did He Find Me?* (2017) 28 Alb. L.J. Sci. & Tech. 73, 74, 77 [“Baddam”]).

¹⁹ *Ibid.* (citing *Abuse Goes Digital*, Res. Ctr. Newsletter (Res. Ctr. on Domestic Violence: Child Prot. & Custody, Reno, Nev.), Oct. 2019 <<https://www.rcdvcpc.org/images/blog/201910 - Technology Abuse.pdf>> (as of July 7, 2021); Harris & Woodlock, *Digital Coercive Control: Insights from Two Landmark Domestic Violence Studies* (2019) 59 Brit. J. Criminology 530, 530).

²⁰ Lo, *supra* note 17, at page 283 (citing Thebault, *A Woman’s Stalker Used an App that Allowed Him to Stop, Start and Track Her Car*, Wash. Post (Nov. 6, 2019, 11:40 PM) <<https://www.washingtonpost.com/technology/2019/11/06/womans-stalker-used-an-app-that-allowed-him-stop-start-track-her-car/>> (as of July 7, 2021) (discussing that location-tracking technologies are becoming more

survivors using the family-locator function offered by their phone providers' family plan, the location functionality in a phone's operating system, a freestanding GPS device, or even a stalking app sold in the App Store."²¹ Stalking apps are "nearly undetectable and allow an abuser to see the survivor's location, read texts remotely, see call history, listen to phone calls, or use the phone as a listening device."²²

Cyberstalking, or "stalking and harassing that occurs in an online environment through the use of the internet, email, or other electronic communication device," is also increasingly common.²³ According to researchers, up to 50% of abusive partners use some form of electronic surveillance for stalking.²⁴

In a rapidly advancing time where tracking and stalking continues to become easier and more accessible, it is critical that survivors be able to take themselves "off the grid," whether that entails a stay in a confidential shelter, changing phone numbers and email addresses, or simply finding a way not to be tracked. If the decision below is not reversed, survivors will feel forced to risk their safety by providing their physical address for service when litigation is filed against them by their abusers—negating any other protective measure they may have taken. Or, if they choose to stay hidden and safe, their abusers will be able to obtain a judgment by default against them, leading to potential custody, property, immigration, or other consequences. This Court can and should provide a safer option for survivors—allowing them to avail themselves of secrecy to avoid their

common and mentioning a widespread "stalkerware surveillance market" for spyware trackers)).

²¹ *Id.* at pages 283–84 (citing *Baddam* at page 78.)

²² *Id.* at page 284 (citing *Baddam* at page 82.)

²³ *Ibid.* (citing Al-Alosi, *Cyber-Violence: Digital Abuse in the Context of Domestic Violence* (2017) 40 U. New S. Wales L.J. 1573, 1573.)

²⁴ *Ibid.* (citing *Baddam* at page 83.)

abusers' increasingly abusive tactics and set aside any judgment an abuser obtains as a result of a survivor protecting the confidentiality of his or her location.

3. Abusers Manipulate Legal Proceedings in Order to Perpetrate Further Abuse.

Research reflects that perpetrators of domestic violence seek to exert control through court proceedings and abusive litigation, which further enable the abuser to coerce and even financially strain a former partner.²⁵

In some instances, abusers initiate legal proceedings to undermine or retaliate against a survivor of domestic violence who has left—such as by seeking sole custody of children and arguing that the survivor is an unfit parent.²⁶ Abusers may make excessive filings to seek personal information or create the need for additional hearings, actions that take an emotional, psychological, and financial toll on the victims.²⁷ The risk of court abuse in this way extends beyond divorce proceedings, impacting child custody and support cases, community property decisions, and judgments in immigration proceedings.

A 2020 survey of domestic violence survivors by the California Partnership to End Domestic Violence found that “too often” abusers “are able to afford lawyers and domestic violence survivors are self-represented.”²⁸ Systemic changes can and should be implemented to prevent abusive partners from “using the court system, time, and costs as an

²⁵ Ward, *supra* note 7, at pages 432–433.

²⁶ Ward, at pages 434–435.

²⁷ *Id.* at pages 436–439.

²⁸ California Partnership to End Domestic Violence, Summary of Responses to 2021 & 2022 Survivor Policy Priority Survey, <https://cpedv.memberclicks.net/assets/PolicyDocs/Survivor_Policy_Priority_Survey_Response_Summary_Write-Up_09302020.pdf> (as of Mar. 24, 2021) page 3.

extension of the abuse.”²⁹ The Family Violence Appellate Project notes that there is an overall “power imbalance” in the courtroom for domestic violence survivors.³⁰ Refusing to set aside the default judgment here reinforces this trend.

C. Survivors of Domestic Violence Face Numerous Barriers to Leaving, Including Threats of Further or Increased Violence.

1. Survivors of Domestic Violence Are Often Hindered by Emotional Factors, Safety Concerns, and Limited Resources.

Concerns about safety discourage many victims of domestic violence from leaving. In general, intimate partner violence often escalates “in frequency, intensity, and duration” over time, and especially when the perpetrator of the violence learns the survivor has left or believes he or she is planning to do so.³¹ Prolonged exposure to violence, or the threat of increased violence, is detrimental to survivors’ mental health, often leading them to develop post-traumatic stress disorder, depression, or anxiety disorders.³²

²⁹ *Ibid.*

³⁰ Family Violence Appellate Project, 2016 Survey of California Domestic Violence Service Providers (Oct. 2016) pages 6–7, <<https://fvaplaw.org/wpcontent/uploads/2017/12/FVAP-2016-Survey-of-CA-Domestic-Violence-Service-Providers-.pdf>> (as of Mar. 24, 2021) (FVAP Survey), (showing that nearly 90% of respondents to the survey reported abusers using the legal process to further abuse).

³¹ Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women* (1995) 29 Fam. L.Q. 273, 274; see also Lindauer, “Please Stop Telling Her to Leave.” *Where Is the Money: Reclaiming Economic Power to Address Domestic Violence* (2016) 39 Seattle U. L. Rev. 1263, 1265.

³² Wang, *Intimate Partner Violence in Immigrant/Refugee Populations* (2017) Family Medicine Clerkship Student Projects, page 240.

Survivors face economic and housing barriers as well, because they are often financially dependent on their abusers.³³ Leaving is not a simple decision, as survivors must secure housing with limited financial resources, and potentially without secure employment.³⁴ In fact, many survivors require government assistance if and when they leave, or would face homelessness without temporary security offered by a domestic violence shelter.³⁵ For many survivors, these difficult decisions must be made with the best interests of young children in mind, and with limited options for alternative childcare.³⁶

Accordingly, in addition to mustering unbelievable courage to leave a violent situation despite facing nearly impossible odds, survivors who make that choice almost invariably find themselves in incredibly vulnerable positions. While survivors may no longer be facing violence at the hands of that particular abuser, they may find themselves in equally unsafe situations, without money or housing.

Confidential shelters provide many survivors with that safe environment to pick up the pieces. The confidentiality of these shelters is a

³³ Lindauer, *supra* note 31, at page 1263 (explaining that “economic entanglement with an abusive partner” often inhibits survivors from leaving).

³⁴ Bell and Naugle, *Understanding Stay/Leave Decisions in Violent Relationships: A Behavior Analytic Approach* (2005) Behavior and Social Issues, page 22.

³⁵ Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a Why Abuse Victims Stay*, 28 Colo. Law 22, 24; Botein and Hetling, *supra* note 8, at pages 21–22; Elisa M. Fisher and Amanda M. Stylianou, To Stay or to Leave: Factors Influencing Victims’ Decisions to Stay or Leave a Domestic Violence Emergency Shelter, 34 *Journal of Interpersonal Violence*, page 788 (2016) (“While emergency shelters are usually designed and funded to offer victims shelter for 30 to 60 days after they flee an abusive relationship, many survivors need 6 months or more to secure stable, permanent housing”).

³⁶ Bell and Naugle, *supra* note 34, at page 22.

vital aspect of providing that safe environment. Yet, if allowed to stand, the trial court's order would force survivors to choose between giving up their confidential, safe spaces and risking judgments obtained through default. This contradicts California's clear and well-established policy of protecting domestic violence survivors and their confidentiality and must be reversed.

2. Immigrants and Non-Native English Speakers Face Additional Barriers to Fleeing Domestic Violence.

While millions of women in the United States experience intimate partner violence each year, immigrant women experience such violence at even higher rates.³⁷ In addition to the barriers described above, immigrants and non-native English speakers often must contend with a language barrier, which impacts their ability to seek help and to navigate the court system.³⁸ They may generally be unfamiliar with the U.S. legal system, or, if undocumented, may avoid law enforcement and courts because of fears about their immigration status.³⁹ Further still, abusers often threaten immigrant partners with immigration enforcement, deportation, and separation from their children.⁴⁰

On average, immigrants face greater rates of poverty, and public benefits and legal representation are often less accessible.⁴¹ If undocumented, immigrants may have fewer employment opportunities, which may prevent such survivors from securing alternative housing away from an abuser. Abusers can therefore exert further control over victims by

³⁷ Wang, *supra* note 32.

³⁸ *Ibid.*

³⁹ Olivares, *Battered by Law: The Political Subordination of Immigrant Women* (2014) 64 Am. U. L. Rev. 231, 236–238.

⁴⁰ Gallaway, *supra* note 2, at pages 2–3.

⁴¹ Olivares, *supra* note 39, at pages 236–237.

isolating them and making them dependent on the abuser's income and immigration status.⁴²

Immigrants and non-native English speakers are particularly vulnerable under the current system. For example, a lack of understanding and inability to navigate the court system makes them especially vulnerable to default judgments, which can be used against them in other proceedings or with law enforcement. As seen in this very case, under the current system, an abuser was able to obtain a marriage dissolution on the basis of "fraud" through a default judgment, which either he or law enforcement could use against T.R. in future immigration proceedings. The trial court's order creates an untenable system.

D. When Survivors Do Flee Domestic Violence, the Ability to Keep One's Location Confidential Is Critical for the Survivor's and Others' Safety.

1. Survivors Fleeing Domestic Violence Do So at the Risk of Violence or Retaliation by Their Abusers, and Therefore Take Protective Measures and Rely on Confidentiality.

When survivors do leave, they may take refuge with trusted family or friends, establish permanent housing in another city or state, or seek help from a confidential domestic violence shelter. It is understandable why, when they do so, they do not wish to provide their location to their abuser.

As discussed above, it is well documented that abusers go to great lengths to track down survivors after they leave, resorting to spying, stalking, harassing and other tactics.⁴³ Myriad records from daily life can help an abuser track down a survivor of domestic violence, from medical records to a child's school enrollment to voter registration information, among many others.⁴⁴ Thus, survivors often take extreme measures to

⁴² *Id.* at pages 237–238.

⁴³ Zorza, *supra* note 31, at page 281.

⁴⁴ *Id.* at pages 281–291.

protect their own privacy—or even to “disappear” from official records—as a form of protection against their abuser finding them.⁴⁵ But these measures are not without consequences, as they make other aspects of life, such as seeking employment or maintaining a strong credit score, more difficult.⁴⁶

For these reasons, confidentiality is critical when survivors of domestic violence leave. A confidential location is an invaluable barrier between a survivor who has recently fled and his or her abuser.

2. Confidential Domestic Violence Shelters Are an Important Resource for Survivors Seeking a Safe Temporary Residence.

Since the 1970s, confidential domestic violence shelters have evolved into a critical resource for survivors of domestic violence.⁴⁷ These shelters take many forms, from short-term emergency shelters to those offering longer-term transitional housing support.⁴⁸ Many offer benefits beyond housing, ranging from therapy and substance abuse interventions to assistance in finding permanent housing, to “some combination of social, legal, medical, and employment assistance.”⁴⁹ These offerings have been shown to improve survivors’ mental health, contributing to “hopefulness,

⁴⁵ Driskell, *Identity Confidentiality for Women Fleeing Domestic Violence* (2009) 20 *Hastings Women’s L.J.* 129, 130–131.

⁴⁶ *Id.* at page 130.

⁴⁷ Fisher and Stylianou, *supra* note 35, at pages 787–789 (noting that “emergency shelters are considered essential in protecting victims from abuse and linking victims facing housing instability to longer term solutions Victims report feeling safe in shelters and often rate shelters as the most effective social service for coping with abuse and ending the violence in their lives.”); see Botein and Hetling, *supra* note 8, at pages 43–59 (delineating the history of domestic violence shelters in the U.S.).

⁴⁸ See Botein and Hetling, *supra* note 8, at pages 43–59.

⁴⁹ Fisher and Stylianou, *supra* note 35, at page 788; see also Karla Arroyo et al, *Short-Term Interventions for Survivors of Intimate Partner Violence* (2017) 18 *Trauma, Violence & Abuse* 155.

self-esteem, and psychological independence from an abusive partner.”⁵⁰ Importantly, domestic violence shelters are required to maintain the confidentiality of residents, given that dissemination of the location of the shelter or its inhabitants could endanger both residents and staff.⁵¹

3. Federal and State Domestic Violence Legislation Underscores the Importance of Confidentiality in the Treatment of Domestic Violence Cases.

State and federal legislation both recognize the critical importance of confidentiality in addressing domestic violence and in protecting the confidentiality of domestic violence survivors that flee abuse.

The Violence Against Women Act (VAWA),⁵² a federal statute to combat gender-related violence, is one prominent example. (See, e.g., Pub. L. No. 113-4 (March 7, 2013) 127 Stat. 54.) VAWA provides funding for local domestic violence resources and funds research on domestic violence and its prevention. It also protects the confidentiality of residents of domestic violence shelters and immigrant victims. For example, VAWA first introduced confidentiality requirements for shelters and domestic violence service centers in 1994 to ensure that the identities of individuals receiving services would be protected.⁵³ Additionally, VAWA prohibits

⁵⁰ Fisher and Stylianou, *supra* note 35 at page 788.

⁵¹ Driskell, *supra* note 45, at page 131.

⁵² Though many programs continue to receive funding, VAWA expired in February 2019. Reauthorization is still pending because of disputes over the inclusion of new protections, such as restricting access to firearms by people convicted of violent crimes and expanded protections for gay, bisexual, and transgender people. See, e.g., He et al., *Twenty-First Annual Review of Gender and the Law: Annual Review Article: Domestic Violence* (2020) 21 *Geo. J. Gender & L.* 253, 259.

⁵³ Gallaway, *supra* note 2, at page 5 (“The main purpose of these initial protections was to ensure that abusers would not be able to track their victims’ locations and further harm them”).

adverse immigration enforcement decisions based solely on information provided by an abusive spouse.⁵⁴

The Family Violence Prevention and Services Act (FVPSA) (42 U.S.C. §§ 10401–10413) is another source of federal funding for domestic violence shelters and programs. FVPSA similarly requires federally funded shelters to keep shelter addresses and victims’ other personal identifying information confidential. (See § 10406(c)(5).)

California state laws also protect the confidentiality of domestic violence shelters and shelter residents by criminalizing the malicious publication, dissemination, or disclosure of the location of a shelter or any place designated as such without authorization of that shelter.⁵⁵ (Pen. Code, § 273.7.)

These provisions reflect both federal and state legislatures’ recognition of the importance of protecting confidentiality as an essential piece of efforts to combat domestic violence.

III. PROPER TREATMENT OF MOTIONS TO SET ASIDE

A. In California, Default Judgments May Be Set Aside on Statutory or Equitable Grounds.

California recognizes both statutory and equitable grounds to justify setting aside a default judgment. For example, Section 473.5 of the Code of Civil Procedure permits a party, within a reasonable time, to set aside a default if he or she did not receive “actual notice,” so long as the lack of such notice “was not caused by his or her avoidance of service or inexcusable neglect.” Alternatively, a court may set aside a default

⁵⁴ *Id.* at page 9.

⁵⁵ The statute defines “domestic violence shelter” to mean “a confidential location that provides emergency housing on a 24-hour basis for victims of sexual assault, spousal abuse, or both, and their families.” (Pen. Code, § 273.7 (b)(2).)

judgment as a form of equitable relief. *See Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981–982. To be eligible for this relief, a moving party must demonstrate (1) “a meritorious case,” (2) “a satisfactory excuse for not presenting a defense to the original action,” and (3) “diligence in seeking to set aside the default once discovered.” *Ibid.* In cases where a motion to set aside default judgment is brought by a survivor of domestic violence who could not be located because of flight from that violence, both standards are clearly satisfied, and relief should be granted.

The record establishes that C.J. misrepresented his ongoing communication with T.R. and his knowledge of her last known address. He improperly sought service by publication based on these misrepresentations while T.R. was residing in a confidential domestic violence shelter. The record also reflects that once T.R. learned of the judgment against her, she took immediate steps to move to set aside that judgment and reopen the case. At the hearing on her request, the trial court received evidence that C.J. had lied to the court and to T.R. to obtain the default judgement. It also acknowledged that T.R. was in a domestic violence shelter and was “not allowed” to disclose her address to C.J. Despite the evidence before it and its own finding, the trial court still found that T.R. had “evaded ... service of process.” (See Appellant’s Opening Brief at p. 21, citing RT.4:24–25, 5:6–11, 5:26–6:4, 13:14–21.)

With this appeal, the Court has the opportunity to institute a legal backstop against the harm caused by abusive partners who use the legal system as a form of continued abuse. Allowing survivors in T.R.’s position to set aside a default judgment gives those survivors greater security while availing themselves of confidential support services. Guidance from this Court to that effect would have a widespread positive impact on other survivors in T.R.’s situation seeking their day in court to litigate cases initiated after they fled domestic violence.

B. There Is a Significant Risk of Harm If Survivors’ Motions to Set Aside Default Judgments Are Denied.

Failure to recognize this legitimate justification for setting aside a default judgment will have significant ramifications for survivors of domestic violence and others in their orbit, from housemates to other shelter residents.

1. Utilization of Confidential Resources Should Not Come at the Expense of Protections against Adverse Legal Decisions Sought by an Abuser.

Survivors of domestic violence, who uproot their lives to seek safer environments, should have the right to protect their confidential location—even, and especially, in the face of lawsuits brought by their abusers. To protect that right, courts must be willing to set aside default judgments handed down while the survivor could not be located for service because of his or her flight. Reversing the decision and clarifying why a motion to set aside should be granted in other similar cases will affirm that the safety and protection of domestic violence survivors is paramount.

Letting the trial court’s decision stand would allow an abuser to weaponize the legal system. If survivors know they can be forced to reveal their confidential whereabouts, or otherwise face legal repercussions, they will be less likely to seek out a confidential shelter in the first place. This, in turn, will lead to lower use of confidential resources and important domestic violence interventions generally, as survivors may feel greater pressure to stay with their abusers. There is strong public policy against a court system that favors any outcome where survivors are exposed to greater and prolonged danger.

Finally, survivors’ use of confidential services should not come at the expense of their ability to participate in legal proceedings filed against them. The complex calculus of choosing between safety—that is, physical

distance from one's abuser and some anonymity—and enduring continued abuse (but perhaps with the benefit of continued care of one's child, or reduced fear of immigration consequences) should not be further complicated by concerns over exposure to punitive legal judgments. Through reversal, this Court can provide greater protection for survivors who, like T.R., must make these incredibly challenging decisions.

2. The Repercussions of the Decision Below Threaten the Confidentiality of Domestic Violence Shelters and the Safety of Residents and Staff.

If the ruling below is not set aside, the outcome will send a message to survivors of domestic violence that their safety in confidential shelters or other secret locations is highly tenuous. More than that, other domestic violence shelter residents, shelter staff, or people in a survivor's close circle will also be put in a more vulnerable position.

As discussed in detail above, perpetrators of abuse extensively monitor, stalk, and harass survivors even after they have left. Obtaining the survivor's address by demanding it for service of a complaint obviates the need for more illicit tactics. Thus, an abuser could easily procure direct access to a survivor by threatening or initiating legal action. The abuser could then go to the shelter location and accost the survivor, demand she leave, or otherwise act violently to others nearby. Additionally, once a confidential shelter's address has been disclosed, it is impossible to control its dissemination. Broad circulation of confidential addresses, such as on internet forums, quickly destroys the barrier of safety the shelters provide.

Likewise, even if a survivor fled to stay with a friend, disclosure of that location would risk the friend's safety, and the safety of anyone else living in the home. The courts cannot and should not tolerate a rule that empowers abusers to demand survivors' whereabouts, purportedly for

service of process, at the expense of the fragile safety that confidentiality offers survivors of domestic violence.

IV. CONCLUSION

For the foregoing reasons, the Court should reverse the trial court's erroneous denial of T.R.'s motion to set aside a default judgment and provide guidance that similarly situated domestic violence survivors may file motions to set aside default judgment where service could not be effected while the survivor was fleeing an abuser. Such a decision would further California's policy to support survivors' critical need for confidentiality following their flight from domestic violence, would help prevent abusers from seeking default judgments against survivors as a means of further abuse, and would allow cases to be decided on their merits.

Dated: July 13, 2021

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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, the undersigned hereby certifies that the foregoing amici curiae brief contains 5,919 words, including footnotes, according to the word count generated by our law firm’s word-processing software.

Dated: July 13, 2021

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PROOF OF SERVICE

I, the undersigned, hereby declare under penalty of perjury as follows: I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, 38th Floor, Los Angeles, CA 90071-1543. On July 13, 2021, I served the foregoing document entitled: **PROPOSED AMICI CURIAE BRIEF OF THE CALIFORNIA WOMEN'S LAW CENTER ET AL. IN SUPPORT OF APPELLANT** by U.S. Mail to:

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