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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN THE COUNTY OF SANTA CLARA

11 **In re** _____,) No. JD0_____
12 A person Coming Under the Juvenile Court Law,)
13 **SANTA CLARA COUNTY DEPARTMENT**) **POINTS AND AUTHORITIES IN**
14 **OF FAMILY AND CHILDREN’S SERVICES**) **CONCERNING PLACEMENT**
15 Petitioner,)
16 v.)
17 _____,)
18 Respondent.)

19 **I. PROCEDURAL BACKGROUND**

20 {Provide a history of the relevant history of the case}

21 **II. REMOVAL**

22 Parents have a constitutional right to the care and custody of their children, and their children
23 have a constitutional right to be in the care and custody of their parents under the First, Fourth, and
24 Fourteenth Amendments to the United States Constitution. Under the First Amendment, a person
25 has a right to association. Freedom of intimate association is a fundamental element of personal
26 liberty and receives protection against undue intrusion by the state. (*Roberts v. Jaycees* (1984) 468
27 U.S. 609, 617-618.)

1 The Fourth Amendment protects people from unreasonable searches and seizures. Taking
2 a child out of the home constitutes a seizure of the person, and consequently the Fourth Amendment
3 warrant requirement applies to removals by child welfare agencies. (*Wallis v. Spencer* (9th Cir. 2000)
4 202 F.3d 1126, 1138-1140; *Calabretta v. Floyd* (9th Cir. 1991) 189 F.3d 808, 817.) There is
5 generally a rebuttable presumption that a seizure without a warrant is unreasonable. “In cases of
6 alleged child abuse, governmental failure to abide by constitutional constraints may have deleterious
7 long-term consequences for the child and, indeed, for the entire family. Ill-considered and improper
8 governmental action may create significant injury where no problem of any kind previously existed.”
9 (*Wallis*, at p. 1130.) “Officials may remove a child from the custody of its parent without prior
10 judicial authorization only if the information they possess at the time of the seizure is such as
11 provides reasonable cause to believe that the child is in imminent danger of serious bodily injury and
12 that the scope of the intrusion is reasonably necessary to avert that specific injury.” (*Id.*, at p. 1138.)

13 Under the due process clause of the Fourteenth Amendment, parents have a fundamental
14 liberty interest in the care, custody, and management of their children, which does not evaporate
15 because they are not model parents or have lost temporary custody of the children. (*Santosky v.*
16 *Kramer* (1982) 455 U.S. 745, 753; *Wallis, supra*, 202 F.3d at p. 1141 [including medical decisions].)
17 “The companionship and nurturing interests of parent and child in maintaining a tight familial bond
18 are reciprocal and the distinction between the parent-child and the child-parent relationships does
19 not . . . justify constitutional protection for one but not the other. There is no reason to accord less
20 constitutional value to the child-parent relationship than . . . to the parent-child relationship.
21 Therefore, a child's interest in her relationship with a parent is sufficiently weighty by itself to
22 constitute a cognizable liberty interest.” (*Hardwick v. City of Orange* (9th Cir. 2020) 980 F.3d 733,
23 741, internal quotation marks and citations omitted, ellipses in original.)

24 “ ‘A parent’s right to care, custody and management of a child is a fundamental liberty
25 interest protected by the federal Constitution that will not be disturbed except in extreme cases where
26 a parent acts in a manner incompatible with parenthood. [Citations.]’ (*In re Marquis D.* (1995) 38
27 Cal.App.4th 1813, 1828 (*Marquis D.*.) ‘[F]reedom of personal choice in matters of family life is a
28 fundamental liberty interest protected by the Fourteenth Amendment. [Citations.]’ (*Santosky v.*

1 *Kramer* (1982) 455 U.S. 475, 753.) Thus, the constitutional right of parents to make decisions
2 regarding their children’s upbringing precludes the state from intervening in the absence of clear and
3 convincing evidence of a need to protect the child from severe neglect or physical abuse. (*Id.* at pp.
4 769-770; *Marquis D.*, *supra*, 38 Cal.App.4th at pp. 1828-1829.)” (*In re Isayah C.* (2004) 118
5 Cal.App.4th 684, 696, limited on other grounds by the same panel in *In re H.E.* (2008) 169
6 Cal.App.5th 710, 721.)

7 “‘Because we abhor the involuntary separation of parent and child,’ wrote Justice Baxter in
8 *In re Kieshia E.* (1993) 6 Cal.4th 67, 76, ‘the state may disturb an existing parent-child relationship
9 only for strong reasons and subject to careful procedures.’ Not surprisingly then, California law that
10 there are no alternative before a child may be removed from the home of his her parent.” (*In re*
11 *Jasmine G.* (2000) 82 Cal.App.4th 282, 284.) “‘[A] cardinal rule of our society that the custody,
12 care, and nurture of a child resides first in the parents rather than in a public agency . . . “[T]he
13 relationship of . . . natural parents . . . [and] . . . children is a vital human relationship which has far-
14 reaching implications for the growth and development of the child. [Citation.] . . . [T]he involuntary
15 termination of that relationship by state action must be viewed as a drastic remedy which should be
16 resorted to only in the extreme cases of neglect or abandonment.” [Citations.] [Citations.]” (*In re*
17 *Joanna Y.* (1992) 8 Cal.App.4th 433, 438, alterations in original.)

18 “A dispositional order removing a child from a parent's custody is ‘a critical firebreak in
19 California's juvenile dependency system’ [Citation], after which a series of findings by a
20 preponderance of the evidence may result in termination of parental rights. Due process requires the
21 findings underlying the initial removal order to be based on clear and convincing evidence.” (*In re*
22 *Henry V.* (2004) 119 Cal.App.4th 522, 530.) “We understand and share in the overriding concern
23 with the welfare of children who are dependents of the juvenile court. However, our dependency
24 system is premised on the notion that keeping children with their parents while proceedings are
25 pending, whenever safely possible, serves not only to protect parents’ rights but also children’s and
26 society's best interests. ‘Our society does recognize an ‘essential’ and “basic” presumptive right to
27 retain the care, custody, management, and companionship of one's own child, free of intervention
28 by the government. [Citations.] Maintenance of the familial bond between children and

1 parents—even imperfect or separated parents—comports with our highest values and usually best
2 serves the interests of parents, children, family, and community. Because we so abhor the involuntary
3 separation of parent and child, the state may disturb an existing parent-child relationship only for
4 strong reasons and subject to careful procedures.” (*Id.* at pp. 530-531.)

5 At a disposition hearing, a “dependent child shall not be taken from the physical custody of
6 his or her parents, guardian, or Indian custodian with whom the child did not reside at the time the
7 petition was initiated, unless the juvenile court finds clear and convincing evidence that there would
8 be a substantial danger to the physical health, safety, protection, or physical or emotional well-being
9 of the child for the parent, guardian, or Indian custodian to live with the child or otherwise exercise
10 the parent’s, guardian’s, or Indian custodian’s right to physical custody, and there are no reasonable
11 means by which the child’s physical and emotional health can be protected without removing the
12 child from the child’s parent’s, guardian’s, or Indian custodian’s physical custody.” (Welf. & Inst.
13 Code, § 361, subd. (d) & (c)(1).) In addition, “[t]he court shall make a determination as to whether
14 reasonable efforts were made to prevent or to eliminate the need for removal” (Welf. & Inst.
15 Code, § 361, subd. (e).)

16 Due process requires the department give notice of specific facts for alleging reasons for
17 removal. (*In re Roger H.* (1991) 228 Cal.App.3d 1174, 1181; *In re Jeremy C.* (1980) 109 Cal.App.3d
18 384, 397.)

19 Reasonable efforts must be made before the disposition hearing to avoid removal or the
20 department must justify why efforts were not made. (*In re Ashley F.* (2014) 225 Cal.App.4th 803,
21 809-810; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171-172.)

22 The court must consider less drastic measures. (Welf. & Inst. Code, § 361, subd. (c)(1); *In*
23 *re M.V.* (2022) 78 Cal.App.5th 944, 964-966, 969-970 [the court failed to consider having the
24 mother move out of the home and have the non-offending father care for the child]; *In re Haley T.*
25 (2012) 212 Cal.App.4th 139, 148.) The court must also state the facts for why removal is necessary.
26 (*In re D.P.* (2020) 44 Cal.App.5th 1058, 1067; *In re Ashley F.* (2014) 225 Cal.App.4th 803, 810.)

27 **III. PLACEMENT**

28 {Generally, keep the introduction and the subparts that apply; adjust the arguments as

1 appropriate}

2 Under Welfare and Institutions Code section 361.2, subdivision (b),¹ placement means the
3 place where the child is during the dependency (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1131
4 & fn. 2), even if the minor is ordered to live with the noncustodial parent (*id.*, at pp. 1133, fn. 4,
5 1134).

6 Emergency placement is not the same as a court-ordered placement at the disposition hearing.
7 (*In re M.L.* (2012) 205 Cal.App.4th 210, 224.) Section 309 applies to temporary placements before
8 the detention hearing. (§ 309, subd. (c); *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1414; *In re*
9 *Miguel E.* (2004) 120 Cal.App.4th 521, 541-542.) The standard for emergency placement is different
10 than for placement at the disposition hearing, and there is not a requirement for a full background
11 check. (*M.L.*, at p. 225; *Sabrina H.*, at pp. 1414-1415.)

12 The Legislature has repeatedly said the relative placement is preferred, starting at the time
13 of an emergency placement. (§§ 281.5, 306.5, 309, subds. (d)(1) & (e)(1), 319, subd. (h)(2), 361.3,
14 361.45, subd. (a), 366.26, subd. (k), 16000, subd. (a).) Accordingly, the department is required to
15 identify, locate, and assess relatives for possible placement within 30 days of removal. (§ 309, subd.
16 (e)(1).) While input from the parents is always important, the responsibility rests with the
17 department. “The social worker shall use due diligence in investigating the names and locations of
18 the relatives . . . , including, but not limited to, asking the child in an age-appropriate manner about
19 relatives important to the child, consistent with the child’s best interest, and obtaining information
20 regarding the location of the child’s adult relatives.” (§ 309, subd. (e)(3).) If the court removes the
21 child from the parents’ custody at the disposition hearing, it “shall make a finding as to whether the
22 social worker has exercised due diligence in conducting the investigation . . . to identify, locate, and
23 notify the child’s relatives.” (§ 358, subd. (b)(2); *In re S.K.* (2018) 22 Cal.App. 5th 29, 37.)

24 **A. Placement Before the Disposition Hearing**

25 Section 319 concern temporary placement decisions made by the court at the detention

27 ¹ Unless otherwise specified, all further statutory references are to the Welfare and
28 Institutions Code.

1 hearing. Again, this is an emergency placement with different standards than a formal placement
2 order. (*Sabrina H.*, *supra*, 149 Cal.App.4th at pp. 1414-1415.) At the detention hearing, placement
3 with relatives is preferred. (§ 319, subd. (h)(2).) The term “ ‘relative’ means an adult who is related
4 to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents,
5 stepsiblings, and all relatives whose status is preceded by the words ‘great,’ ‘great-great,’ or ‘grand,’
6 or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.”
7 (*Ibid.*) The statute applies to detention hearings held upon the filing of a supplemental or subsequent
8 petition. (See, e.g., *Miguel E.*, *supra*, 120 Cal.App.4th at p. 541.)

9 **B. Formal Placement Orders**

10 **1. Noncustodial parent**

11 The Legislature has determined that there is a priority for the placement of children. The first
12 option is the noncustodial parent. “If that parent requests custody, the court shall place the child with
13 the parent² unless it finds that placement with that parent would be detrimental to the safety,
14 protection, or physical or emotional well-being of the child.” (§ 361.2, subds. (a) & (e)(1); see, e.g.,
15 *In re Adam H.* (2019) 43 Cal.App.5th 27, 31-32.) The court may then terminate the dependency,
16 order family reunification to that parent, or order reunification services for the offending parent as
17 well. (§ 361.2, subd. (b); *In re Abram L.* (2013) 219 Cal.App.4th 452, 461; *Austin P.*, *supra*, 118
18 Cal.App.4th at pp. 1134-1135.) This preference applies even if the child is being removed from a
19 guardian appointed by the family court. (*In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1288,
20 1290, 1292, superseded by statute on other grounds as discussed in *In re Adrianna P.* (2008) 166
21 Cal.App.4th 44, 57-58.)

22 The lack of a relationship between the parent and the child or the child’s desire to be with
23 others does not in itself constitute detriment. (*In re C.M.* (2014) 232 Cal.App.4th 1394, 1402; *In re*
24 *John M.* (2006) 141 Cal.App.4th 1564, 1571; see also *In re K.B.* (2015) 239 Cal.App.4th 972, 979
25 [the statute states “the court *shall* place the child with the parent *unless* it finds that placement with

26
27 ² This assumes the parent is a presumed parent. (*In re Zacharia D.* (1993) 6 Cal.4th 435,
28 454; *In re A.J.* (2013) 214 Cal.App.4th 525, 536.)

1 that parent would be detrimental” to the child (emphasis in original)]; but see *In re A.C.* (2020) 54
2 Cal.App.5th 38, 43-46 [the court did not abuse its discretion to not place with the non-offending
3 father out of state with whom the 12 year-old child had no relationship and she would suffer
4 significant trauma if moved].) Nor is detriment established if placement with the noncustodial parent
5 would make reunification with the offending parent more difficult. (*In re M.C.* (2011) 195
6 Cal.App.4th 197, 223-224.)

7 It is not necessary for the child to physically live with the noncustodial parent. The court can
8 “place” the child with the incarcerated parent who can arrange to have an appropriate caretaker. (*In*
9 *re V.F.* (2007) 157 Cal.App.4th 962, 970, superseded by statute on other grounds as discussed in
10 *Adrianna P., supra*, 166 Cal.App.4th at pp. 57-58; *In re Isayah C.* (2004) 118 Cal.App.4th 694, 700;
11 see *In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1263-1265 [father deployed in the navy].)

12 Section 361.2, subdivision (a) applies even if the noncustodial parent is an ‘offending’ parent.
13 (*In re D’Anthony D.* (2014) 230 Cal.App.4th 292, 299 [“the word ‘nonoffending’ is not found in the
14 text of section 361.2.”]; *In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1504-1505; *In re V.F.*
15 (2007) 157 Cal.App.4th 962, 970; contra *In re A.A.* (2012) 203 Cal.App.4th 597, 608.) The
16 presumption under Family Code section 3044, that a child should not be placed with a parent who
17 engaged in domestic violence, does not apply to the juvenile court. (*In re C.M.* (2019) 38
18 Cal.App.5th 101,109-110.)

19 It violates due process (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7) not to place the
20 child with the noncustodial parent if it would not be detrimental to the child. “A parent's right to
21 care, custody and management of a child is a fundamental liberty interest protected by the federal
22 Constitution that will not be disturbed except in extreme cases where a parent acts in a manner
23 incompatible with parenthood.” (*Abram L., supra*, 219 Cal.App.4th at p. 461, internal quotation
24 marks omitted.) “[U]ntil the State proves parental unfitness, the child and his parents share a vital
25 interest in preventing erroneous termination of their natural relationship.” (*Santosky v. Kramer*
26 (1982) 455 U.S. 745, 760; *C.M., supra*, 232 Cal.App.4th at p. 1400; *In re Z.K.* (2011) 2011
27 Cal.App.4th 51, 64.) “California’s dependency system comports with *Santosky’s* requirements
28 because, by the time parental rights are terminated at a section 366.26 hearing, the juvenile court

1 must have made prior findings that the parent was unfit.” (Z.K., at p. 65, internal quotation marks
2 omitted.) “California’s dependency scheme no longer uses the term ‘ “parental unfitness,” ’ but
3 instead requires the juvenile court make a finding that awarding custody of a dependent child to a
4 parent would be detrimental to the child. [Citations.] Due process requires that a finding of detriment
5 be made by clear and convincing evidence before terminating a parent’s parental rights. [Citation.]”
6 (*Ibid.*)

7 The noncustodial parent retains a due process right to preference, even if the noncustodial
8 parent appears for the first time after the disposition hearing. (Z.K., *supra*, 2011 Cal.App.4th at p.
9 65.) There is also statutory authority under section 361.2, subdivision (a). The Supreme Court did
10 say that “[n]othing in this statute suggests that custody must be immediately awarded to a
11 noncustodial parent regardless of when in the dependency process the parent comes forward. Rather,
12 its language suggests that the statute is applicable only at the time the child is first removed from the
13 custodial parent or guardian's home.” (*Zacharia D.*, *supra*, 6 Cal.4th at p. 453.) The holding of the
14 case, however, was that a non-presumed father was not entitled to placement under section 361.2.
15 (*Id.* at p. 452.) Nonetheless, this language in *Zacharia D.* has been followed in court of appeal cases
16 holding that the parental preference in section 361.2 did not apply after the disposition hearing. (See,
17 e.g., *In re Liam L.* (2015) 240 Cal.App.4th 1068, 1083.) Other courts have held the preference to
18 place with the noncustodial parent continues after the disposition hearing if the parent has not
19 previously appeared. (See, e.g., *In re Jonathan P.* (2014) 226 Cal.App.4th 1240, 1255; *In re Suhey*
20 *G.* (2013) 221 Cal.App.4th 732, 744-745; see Z.K., *supra*, 201 Cal.App.4th at pp. 70-72.)

21 **2. Relative placement**

22 If placement with the noncustodial parent is not an appropriate option, then “the home of a
23 relative” is next in line. (§ 361.2, subd. (e)(2).) “In any case in which a child is removed from the
24 physical custody of his or her parents pursuant to Section 361, preferential consideration shall be
25 given to a request by a relative of the child for placement of the child with the relative, regardless
26 of the relative’s immigration status.” (§ 361.3, subd. (a).) The relative placement preference does not
27 constitute a relative placement guarantee. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.) Nor
28 does it create an evidentiary presumption that relative placement is in a child’s best interests. (*In re*

1 *Stephanie M.* (1994) 7 Cal.4th 295, 320; *In re Lauren R.* (2007) 148 Cal.App.4th 841, 855.) But it
2 does require that “the relative seeking placement shall be the first placement to be considered and
3 investigated.” (§ 361.3, subd. (c)(1).) “ ‘Relative’ means an adult who is related to the child by
4 blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and
5 all relatives whose status is preceded by the words ‘great,’ ‘great-great,’ or ‘grand,’ or the spouse of
6 any of these persons even if the marriage was terminated by death or dissolution.” (§ 361.3, subd.
7 (c)(2).) If the court does not place the child with a relative who has been considered for placement
8 pursuant to this section, the court shall state for the record the reasons placement with that relative
9 was denied. (§ 361.3, subd. (e).)

10 The statutes also apply to disposition hearings held upon the filing of a supplemental or
11 subsequent petition. (See, e.g., *Miguel E.*, *supra*, 120 Cal.App.4th at p. 541.) Even if the child has
12 been removed from a relative under section 387, this does not preclude application of the relative
13 preference for placement because the relative has not necessarily been found to be unsuitable. (*In*
14 *re Antonio G.* (2008) 159 Cal.App.4th 369, 377-378; see also *In re N.V.* (2010) 189 Cal.App.4th 25,
15 31 [though relative’s the administrative grievance against the department was still pending]; *Cesar*
16 *V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1027, 1033 [a history with child protective
17 services did not in itself preclude application of the relative preference].) The court must make its
18 independent judgment where to place the child. (*N.V.*, at p. 31; *Cesar V.*, at pp. 1033-1034.)

19 The preference for relative placement under section 361.3 continues at least as long as
20 reunification services are being offered. (§§ 361.3, subd. (d); 361.45, subd. (a); *In re R.T.* (2015) 232
21 Cal.App.4th 1284, 1299-1301; *In re Joseph T.* (2008) 163 Cal.App.4th 787, 793-798; *In re Robert*
22 *L.* (1993) 21 Cal.App.4th 1057, 1064.) This is so, even if no new placement is being contemplated,
23 though a change in placement would not occur unless it is in the child’s best interests. (*R.T.*, at p.
24 1300; *Joseph T.*, at pp. 795, 798; but see *Lauren R.*, *supra*, 148 Cal.App.4th at pp. 844-845.)

25 It is not clear if the relative placement preference continues to apply when reunification is
26 no longer the goal of the dependency. (See *In re Stephanie M.* (1994) 7 Cal.4th 295, 320.) Some
27 cases hold that the relative placement preference did not apply once the termination of parental rights
28 have been recommended. (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 596-597 [despite the

1 department’s failure to assess the relative who sought placement earlier in the dependency]; *In re*
2 *K.L.* (2016) 248 Cal.App.4th 52, 65-66; *In re M.M.* (2015) 235 Cal.App.4th 54, 63; *Lauren R.*,
3 *supra*, 148 Cal.App.4th at p. 855 and case cited therein.) Other cases hold that the relative placement
4 preference continues to apply after reunification services have been terminated. (*In re Isabella G.*
5 (2016) 246 Cal.App.4th 708, 720-721, 723 [when the relative sought placement before disposition
6 but the department failed to do an assessment]; *R.T.*, *supra*, 232 Cal.App.4th at p. 1300 [same];
7 *Cesar V.*, *supra*, 91 Cal.App.4th at p. 1032 [relative preference applied after reunification services
8 were terminated but before the section 366.26 hearing].)

9 **3. Nonrelative extended family member**

10 If the child cannot be placed with the noncustodial parent or with a relative, the court shall
11 consider placement at the home of a “nonrelative extended family member.” (§ 361.2, subd. (e)(3).)
12 A NREFM is “an adult caregiver who has an established familial relationship with a relative of the
13 child . . . , or a familial or mentoring relationship with the child.” (§ 362.7, ¶ 2.) Until 2013, a
14 familial or mentoring relationship was a prerequisite to being recognized as a NREFM. (See, e.g.,
15 *In re Michael E.* (2013) 213 Cal.App.4th 670, 675-676; *Samantha T. v. Superior Court* (2011) 197
16 Cal.App.4th 94, 109-110.) The statute was expanded, however, to include anyone who has a
17 relationship with the child’s family, even if the individual lacks a relationship with the child. (*In re*
18 *Joshua A.* (2015) 239 Cal.App.4th 208, 217.)

19 **C. Restrictions on Placement out of the County**

20 **1. Placement out of county**

21 Special procedures and considerations apply for placements outside the county. The
22 Legislature has required that “if the social worker must change the placement of the child and is
23 unable to find a suitable placement within the county and must place the child outside the county,
24 the placement shall not be made until the social worker has served written notice . . . at least 14 days
25 prior to the placement, unless the child’s health or well-being is endangered by delaying the action
26 or would be endangered if prior notice were given.” (§ 361.2, subd. (h)(1).) If an objection is lodged
27 within seven days of receiving notice, the court shall hold a hearing within five days of the objection
28 and prior to the placement. (*Ibid.*) “The court shall order out-of-county placement if it finds that the

1 child’s particular needs require placement outside the county.” (*Ibid.*) The child should not be placed
2 with a non-relative out of county without a showing of a need to do so. (§ 361.2, subd. (g).)

3 There are additional considerations in determining whether to place a child out of the county.
4 As in any placement decision, the court must also consider keeping siblings together (see generally
5 *Abraham L. v. Superior Court* (2003) 112 Cal.App.4th 9, 14) or at least maintaining contact among
6 siblings (see generally *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1003 [“ ‘[m]aintaining [sibling]
7 relationships, under the right circumstances, is imperative for the emotional well-being of the
8 [dependent] child’ ”]). It is often important for the child’s well-being to maintain and build ties with
9 the extended family as well.

10 Further, frequent visitation with the parents is necessary for there to be reasonable services.
11 “An obvious prerequisite to family reunification is regular visits between the noncustodial parent or
12 parents and the dependent children ‘as frequent[ly] as possible, consistent with the well-being of the
13 minor.’ ” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.) Reunification services can be unreasonable
14 when visitation is unduly limited. (*In re T.W.* (2017) 9 Cal.App.5th 339, 346-348; *Tracy J. v.*
15 *Superior Court* (2012) 202 Cal.App.4th 1415, 1425-1427; *Rita L. v. Superior Court* (2005) 128
16 Cal.App.4th 495, 508-509 [services were unreasonable when a planned trial visit with the parent
17 never occurred].)

18 **2. Placement out of state**

19 In addition to the factors the court must consider in placing a child out of county, the
20 Interstate Compact on the Placement of Children (ICPC) applies to placements with nonparents
21 outside of California. (Fam. Code, § 7900 et seq.) “Interstate compacts, like the ICPC, are formal
22 agreements among and between states that have the characteristics of both statutory law and
23 contractual agreements. They are enacted by state legislatures that adopt reciprocal laws that
24 substantively mirror one another. [Citation.] The ICPC has been enacted in all fifty states, the
25 District of Columbia and the U.S. Virgin Islands. [Citations.] . . . The purpose of the ICPC is to
26 facilitate cooperation between participating states in the placement and monitoring of dependent
27 children. [Citation.]” (*In re C.B.* (2010) 188 Cal.App.4th 1024, 1031-1032, internal quotation marks
28 omitted.)

1 “The key provisions of the ICPC state: ‘Before sending, bringing, or causing any child to be
2 sent or brought into a receiving state *for placement in foster care or as a preliminary to a possible*
3 *adoption*, the sending agency shall furnish the appropriate public authorities in the receiving state
4 written notice of the intention to send, bring, or place the child in the receiving state.’ (Fam. Code,
5 § 7901, art. 3, subd. (b), italics added.) ‘The child shall not be sent, brought, or caused to be sent or
6 brought into the receiving state until the appropriate public authorities in the receiving state shall
7 notify the sending agency, in writing, to the effect that the proposed placement does not appear to
8 be contrary to the interests of the child.’ (*Id.*, subd. (d).)” (*C.B.*, *supra*, 188 Cal.App.4th at p. 1032;
9 *In re Luke L.* (1996) 44 Cal.App.4th 670, 682.) Thus, a court cannot send a minor to a placement out
10 of state without first complying with the ICPC. (*Luke L.*, at p. 682; *In re Eli F.* (1989) 212
11 Cal.App.3d 228, 239-240.)

12 “‘Placement’ means the arrangement for the care of a child in a family free or boarding home
13 or in a child-caring agency or institution, but does not include any institution caring for persons with
14 developmental disabilities or mental health disorders or any institution primarily educational in
15 character, and any hospital or other medical.” (Fam. Code, § 7901, art. 2, subd. (d).)

16 The ICPC does not apply when the child is sent to a parent living out of state. (*In re Z.K.*
17 (2011) 201 Cal.App.4th 51, 69-70; *C.B.*, *supra*, 188 Cal.App.4th at p. 1032; *In re Emmanuel R.*
18 (2001) 94 Cal.App.4th 452, 458; *Johnny S.*, *supra*, 40 Cal.App.4th at p. 979; *Tara S. v. Superior*
19 *Court* (1993) 13 Cal.App.4th 1834, 1837-1838.) However, the ICPC process can be used to obtain
20 information about a parent in another state. (See, e.g., *In re Suhey G.* (2013) 221 Cal.App.4th 732,
21 743; *In re John M.* (2006) 141 Cal.App.4th 1564, 1572-1575.)

22 **3. Placement outside the United States**

23 In addition to the factors the court must consider in placing a child out of county, the court
24 should not place the minor with in another country and continue the dependency unless it can be
25 assured its orders will be followed. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1261-1270.) When
26 the minor is placed outside of the country, the minor is not eligible to receive AFDC. (*In re Joshua*
27 *S.* (2007) 41 Cal.4th 261, 277-278.) A party wishing to place a child with someone other than a
28 parent to a home outside the United States must prove by clear and convincing evidence that it is in

1 the child's best interests. (§ 361.2, subd. (f).) The potential foster parent or relative must be fully
2 assessed. (See *Sabrina H., supra*, 149 Cal.App.4th at pp. 1417-1418.)

3 **IV. THE FACTS SHOW THAT THE COURT ABUSED ITS DISCRETION IN**
4 **REMOVING THE CHILD; ALTERNATIVELY, PLACEMENT SHOULD BE WITH**

_____.

5 {Describe here facts that apply}

6
7
8
9 **V. CONCLUSION**

10 Therefore, the court should order that the child be placed with

11 _____.

12 DATED: _____

13 Respectfully submitted,
14 OFFICES OF _____

15 By: _____
16 _____, Esq.
17 Attorney for _____