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

**In re** \_\_\_\_\_, ) No. JD0\_\_\_\_\_  
A person Coming Under the Juvenile Court Law, )  
\_\_\_\_\_) **POINTS AND AUTHORITIES IN**  
**SANTA CLARA COUNTY DEPARTMENT** ) **SUPPORT OF INCREASED**  
**OF FAMILY AND CHILDREN’S SERVICES** ) **VISITATION**  
Petitioner, )  
v. )  
\_\_\_\_\_, )  
Respondent. )

**I. PROCEDURAL BACKGROUND**

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

**II. LEGAL BACKGROUND**

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

“Visitation rights arise from the very ‘fact of parenthood’ and the constitutionally protected right ‘to marry, establish a home and bring up children.’” [Citation.]” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.) Due process (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7) requires visitation to be as often as possible, unless the visits themselves are detrimental to the child. (*In re*

1 *Jennifer G.* (1990) 221 Cal.App.3d 752, 756-757.) “As to visitation, ‘[t]he relationship between  
2 parent and child is so basic to the human equation as to be considered a fundamental right, and that  
3 relationship should be recognized and protected by all of society . . . .” (*In re Smith* (1980) 112  
4 Cal.App.3d 456, 428.)

5 “[C]hildren have strong emotional ties to even the worst of parents.” (*In re James R.* (2007)  
6 153 Cal.App.4th 413, 429.) Indeed, “the child’s interest in the parent-child relationship is at least as  
7 important and as worthy of protection of the parent’s interest.” (*Ibid.*) “Continuity of the  
8 relationships is extremely important to children.” (*Hansen v. California Dept. of Social Svcs.* (1987)  
9 193 Cal.App.3d 283, 292, internal quotation marks omitted.)

10 As Judge Leonard Edwards (Ret.) wrote: “Whatever the reason for the removal, it is a  
11 traumatic event for the child and the parents. A child who is placed in foster care fears the unknown  
12 and may feel abandoned, helpless, and hopeless. She may worry about her family, imagining that her  
13 parents have died or are looking for and cannot find her. She may feel guilty for whatever has  
14 happened to her parents. The trauma of separation is potentially overwhelming to children. They may  
15 become despondent and depressed. They are often angry. The trauma can be increased when they  
16 are separated from both their parents and their siblings. These observations are true even in many  
17 cases of serious abuse and cases in which the child expresses fear of a parent or a reluctance to visit.  
18 In these situations the child will often express a wish to return home after a short period in out-of-  
19 home placement.” (Edwards, *Judicial Oversight of Parental Visitation* (Summer 2003) *Juvenile and*  
20 *Family Court Journal* 1, 2, fns. omitted.)<sup>1</sup> “Separation in these circumstances can affect the  
21 connections that a child has formed with her parents, siblings, and family members. Depending on  
22 the age of the child, the separation can damage relationships and have long-term implications for a  
23 child’s ability to form new attachments and relationships. Connectedness is necessary for healthy  
24 child development.” (*Ibid.*, fns. omitted.)

25 **A. An Appropriate Visitation Order is Important at Detention hearings.**

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26 <sup>1</sup> Available on the Internet at  
27 [www.judgeleonardedwards.com/docs/JudicialOversightofVisitationSummer03.pdf](http://www.judgeleonardedwards.com/docs/JudicialOversightofVisitationSummer03.pdf). (as of May 14,  
28 2020). See also <https://judgeedwards.wordpress.com/category/publications> (as of May 14, 2020).

1           There is little law on the right to visitation during detention hearings. “With respect to  
2 detention hearings, subdivision (e) of section 319<sup>2</sup> provides that, if the juvenile court orders a minor  
3 detained, it shall also ‘order services to be provided as soon as possible to reunify the child and his  
4 or her family if appropriate.’ And, our rules of court indicate that, at a detention hearing, ‘[t]he court  
5 must consider the issue of visitation between the child and other persons, determine if contact  
6 pending the jurisdiction hearing would be beneficial or detrimental to the child, and make  
7 appropriate orders.’ (Rule 5.670(c)(1).) Thus, it appears that parental visitation can be denied at  
8 detention based on a basic detriment finding.” (*In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1103.)

9           Santa Clara County’s Local Rule of Court concerning the Juvenile Court, rule 2H(2)c states  
10 “[v]isitation should be as frequent as possible, consistent with the well-being of the child.” In  
11 hearings after the detention hearing, “[a]bsent exigent circumstances indicating detriment to the  
12 child, only the Court may reduce visits for a parent. Juvenile Court visitation orders may be modified  
13 by an application for modification pursuant to W & I Code § 388 or by Application and Order, or  
14 by motion of a party at a regularly scheduled review hearing.” (Local rule 2H(2)b.)

15           Liberal visitation is also required under due process to preserve the parent-child relationship.  
16 (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7; *Julie M., supra*, 69 Cal.App.4th at p. 49.) Further,  
17 if the court orders removal at the disposition hearing, then it must determine if reasonable efforts  
18 were made to avoid removal. (§ 361, subd. (e); Cal. Rules of Court, rule 5.695(d).) Questions about  
19 the quality of the parent-child relationship or the parent’s ability to safely handle the child cannot  
20 be adequately answered without permitting liberal visitation from the start of the proceeding. Thus,  
21 reasonable efforts would include adequate visitation.

22           **B.       Liberal Visitation is Required for There to be Reasonable Services.**

23           **1.       Visitation is an important part of the disposition order.**

24           The court, in “ordering reunification services, shall provide . . . [¶] . . . for visitation between  
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27           <sup>2</sup> Unless otherwise specified, all further statutory references are to the Welfare and  
28 Institutions Code.

1 the parent<sup>3</sup> or guardian and the child. Visitation shall be as frequent as possible, consistent with the  
2 well-being of the child.” (§ 361.2, subd. (a)(1)(A).)<sup>4</sup> However, “[n]o visitation order shall jeopardize  
3 the safety of the child.” (§ 361.2, subd. (a)(1)(B).) “It is the purpose of the Juvenile Court Act that  
4 the bond between the minor and his or her family be ‘[preserved] and [strengthened]’ (§ 202)  
5 through the provision of appropriate services. (§ 307, subd. (a).) ‘The legislative scheme  
6 contemplates immediate and intensive support services to reunify a family where a dependency  
7 disposition removes a child from parental custody.’ [Citation.]” (*Hansen, supra*, 193 Cal.App.3d at  
8 pp. 292-293.) “An obvious prerequisite to family reunification is regular visits between the  
9 noncustodial parent or parents and the dependent children ‘as frequent[ly] as possible, consistent  
10 with the well-being of the minor.’ ” (*Julie M., supra*, 69 Cal.App.4th at p. 49.)

11 This means visitation must be more frequent than an hour or two once or twice a week. A  
12 parent-child relationship cannot be maintained by seeing a child 52 or 104 hours a year. Visitation  
13 should be longer, more frequent and unsupervised whenever possible. Contact with the child should  
14 include appointments with doctors and other services, participation in preschool, scholastic, and  
15 extracurricular activities, as well as involvement in the activities and hobbies of the child. The  
16 relationship should also be maintained through telephone calls, video meetings, and letters as is  
17 appropriate for the child. “When the Agency limits visitation in the absence of evidence showing the  
18 parents’ behavior has jeopardized or will jeopardize the child’s safety, it unreasonably forecloses  
19 family reunification . . . and does not constitute reasonable services.” (*Tracy J. v. Superior Court*  
20 (2012) 202 Cal.App.4th 1415, 1427.)

21 The juvenile court can delegate to the department how to do the visits, but the court generally

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22  
23 <sup>3</sup> Only a presumed father is entitled to visitation if it would not be detrimental. A biological  
24 father who is not a presumed father may be granted services or visitation, but it is not mandatory.  
25 (§ 361.5, subd. (a); *In re Zacharia D.* (1993) 6 Cal.4th 435, 451; *In re D.M.* (2012) 210 Cal.App.4th  
541, 544.)

26 <sup>4</sup> When the minor under the juvenile court’s protection is a teen parent, but the child of the  
27 teen parent is not a minor in the juvenile court system, the court may decide not to permit visitation  
28 if it “finds by clear and convincing evidence that visitation would be detrimental to the teen  
parent.” (§ 362.1, subd. (a)(4).)

1 must decide how frequently and how long the visits occur. (*In re Korbin Z.* (2016) 3 Cal.App.5th  
2 511, 518-519 [could not delegate to child when visitation would occur, even when the parent had  
3 no reunification services]; *In re E.T.* (2013) 217 Cal.App.4th 426, 439 [order that the department  
4 “create a detailed visitation schedule” was insufficient]; *Julie M., supra*, 69 Cal.App.4th at pp. 48-50  
5 [giving child veto power during reunification was an abuse of discretion].) This is because “the  
6 power to regulate visitation between minors determined to be dependent children and their parents  
7 rests in the judiciary. The judicial power in this state is vested in the courts. (Cal. Const., art. VI, §  
8 1.) The judicial function is to declare the law and define the rights of the parties under it. . . . and to  
9 make binding orders or judgments.” (*Jennifer G., supra*, 221 Cal.App.3d at p. 756, internal quotation  
10 marks and citations omitted.)

11 **2. Visitation should be unsupervised as soon as possible.**

12 Visitation should be unsupervised within a couple of months, if not immediately, unless there  
13 is new evidence to warrant otherwise. Properly utilized, supervised visits serve to protect children  
14 when there is concern over abuse or that the child could be significantly neglected during the short  
15 period of visitation. If threatening or significant neglectful behavior is not exhibited at visits, then  
16 visitation should progress to unsupervised. This serves several important functions. First, it provides  
17 a more realistic assessment of the parent’s skills when he or she is alone with the children for a few  
18 hours. Second, it allows the parent an opportunity to implement what has been learned from services  
19 in a more realistic setting. Third, it builds the bond between the children and the parent. Fourth,  
20 reunification cannot occur if visitation never progresses and reunification can even be jeopardized  
21 if visitation progresses to long unsupervised hours too quickly. Fifth, it permits more frequent  
22 visitation without overtaxing the resources for supervised visits while making resources available  
23 for supervised visitation in other cases.

24 **3. Visitation should occur even if the child displays anxiety.**

25 Sometimes the court must consider evidence that the child might be exhibiting anxiety or fear  
26 around the time of visits. “There is currently a split of authority as to whether section 362.1 mandates  
27 visitation absent evidence of a threat to the minor’s physical safety (see, e.g., *In re C.C.* (2009) 172  
28 Cal.App.4th 1481, 1491–1492) or whether courts may also deny visitation based on potential harm

1 to the minor’s emotional well-being (*In re* T.M. [(2016) 4 Cal.App.5th [1214,] 1219-1220.)” (*In*  
2 *re Matthew C.* (2017) 9 Cal.App.5th 1090, 1101.) Nonetheless, if the child displays anxiety around  
3 the time of visits, this is insufficient evidence of detriment because it cannot be shown what the  
4 source of the anxiety is. The social worker might assume the anxiety stems from past experience of  
5 neglect or abuse. Child specialists, however, caution that although children are often not be able to  
6 articulate it, they grieve and become more anxious when they perceive the loss of parent. This  
7 threatens their ability to form healthy bonds later in life. Frequent visitation is necessary to minimize  
8 the trauma. (Edwards, *Judicial Oversight of Parental Visitation*, at p. 3.) The child’s display of  
9 anxiety around visits could just as likely be a result of a fear of losing the parent. Decreasing  
10 visitation might diminish the symptoms but contribute to long-term harm to the child. (*Id.* at pp. 2,  
11 3.)

12 Even if the child displays signs of more significant emotional trauma around visits, it would  
13 not be acceptable to halt visitation in the hopes that therapy might some day remedy the situation.  
14 (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; see also *Julie M.*, *supra*, 69 Cal.App.4th at  
15 pp. 49-51.) “It is hard to imagine how the problems faced by this family could be resolved without  
16 . . . visitation. To provide the minor and/or his therapist with a veto power over this essential  
17 reunification service seems to us to undermine any hope of actual reunification.” (*Id.* at p. 1139.)  
18 Instead, it is incumbent on the court to facilitate the means by which visitation can occur without  
19 detriment. “Visitation is an essential component of any reunification plan. To promote reunification,  
20 visitation must be as frequent as possible. Where the minor is reluctant to visit, and family therapy  
21 is needed to promote visitation, such therapy may be critical to reunification.” (*In re Alvin R.* (2003)  
22 108 Cal.App.4th 962, 972, citations omitted; *In re David D.* (1994) 28 Cal.App.4th 941, 953 [“Due  
23 to the court’s order prohibiting visitation between this mother and her children, adequate  
24 reunification services were not provided.”].)

25 It might be somewhat counterintuitive, but it is important to maintain regular visitation if the  
26 child is displaying fear of visiting a parent. The proper purpose of supervised visitation is to facilitate  
27 visitation when the child is fearful, when there are concerns of the parent being abusive, or there is  
28 a substantial chance of the child suffering harm from neglect during the hours of the visitation. If

1 reunification efforts are eventually going to be terminated because, in part, there is a lack of a  
2 trusting relationship between the child and the parent, then reasonable services would necessarily  
3 include efforts to repair and strengthen the relationship. (See, e.g., *Alvin R.*, *supra*, 108 Cal.App.4th  
4 at p. 973 [“The longer parent and child live with no visitation, the less likely there will ever be any  
5 meaningful relationship.”]; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 255 [“[T]he problems  
6 leading to the dependency could only have been resolved by petitioner having some responsibility  
7 for the care of the children. The plan’s limitation on visitation prevented petitioner from  
8 demonstrating and improving his skills with respect to the care of the children.”].) If the child  
9 continues to have little or minimal contact with the parent, then the strain between them only  
10 becomes worse. Reasonable services have not been provided when the parent is not given the tools  
11 for reunifying with the child. While the wishes of the child are relevant in the court’s visitation  
12 ruling, “[i]n no case may a child be allowed to control whether visitation occurs.” (*In re Hunter S.*  
13 (2006) 142 Cal.App.4th 1497, 1505.)

14 **C. Visitation Shall Normally Occur When the Parent is in Custody.**

15 “[G]o to prison, lose your child” is not the law. (*In re Brittany S.* (1993) 17 Cal.App.4th  
16 1399, 1402.) “Section 361.5, subdivision (e)(1) provides that if a parent is incarcerated, the court  
17 shall order reasonable services unless the court determines, by clear and convincing evidence, that  
18 services would be detrimental to the child. In determining detriment, the court shall consider the age  
19 of the child, the degree of parent-child bonding, the length of the sentence, the nature of the crime,  
20 and the degree of detriment to the child if services are not offered. Reunification services for an  
21 incarcerated parent are subject to the time limitations imposed in section 361.5, subdivision (a), and  
22 may include, among others, telephone calls and ‘[v]isitation services, where appropriate.’”<sup>5</sup> (*In re*  
23 *J.N.* (2006) 138 Cal.App.4th 450, 456-457.)

24 Detriment cannot be based on the mere fact the parent is in custody. (*Brittany S.*, *supra*, 17  
25 Cal.App.4th at p. 1402.) Nor may visitation be denied merely because the parent is incarcerated at

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27 <sup>5</sup> The court has greater authority to deny visitation when the parent has been convicted of  
28 murder (§ 361.2, subd. (a)(1)(B)) or a sex offense (*Kevin R. v. Superior Court* (2010) 191  
Cal.App.4th 676, 684-688; *Robin J. v. Superior Court* (2004) 124 Cal.App.4th 414, 424).

1 least 50 miles away. (*In re Jonathan M.* (1997) 53 Cal.App.4th 1234, 1237, disapproved on other  
2 grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414.)

3 Visitation should not be denied simply because the child is young. On the contrary, the  
4 younger the child, the more compelling there be face-to-face visits. “We simply cannot agree with  
5 the following provision of the revised service plan: ‘Due to the minor’s tender age and the distance  
6 to California Institute from the minor’s home, a visitation schedule more frequent than every three  
7 months would create an undue hardship for the minor.’ First of all, as mentioned above, the  
8 ‘distance’ was only 36 miles. Second, the lack of personal contact with her mother created at least  
9 as much of an ‘undue hardship’ on Brittany as limiting contact to telephone calls and letters.”  
10 (*Brittany S., supra*, 17 Cal.App.4th at p. 1407, fn. 7.) “We fail to see how visitation could not have  
11 been appropriate when [the mother] was incarcerated at either county jail or Frontera. Particularly  
12 where the child is young (and Brittany was two to three years of age during the pertinent time  
13 period), limiting contact to letters and telephone calls should be used only as a last resort. By not  
14 providing visitation, SSA [Orange County Social Services Agency] virtually assured the erosion (and  
15 termination) of any meaningful relationship between [the mother] and Brittany.” (*Id.* at p. 1407, fns.  
16 omitted.)

17 “If the Legislature believed visitation with an incarcerated parent by a child of a young age  
18 would be detrimental based on age alone, it could have set forth an age restriction or at the least set  
19 forth some sort of presumption that visitation of an incarcerated parent by a child under the age of  
20 two years, as an example, is presumed to be detrimental unless shown otherwise. Its failure to set  
21 forth either indicates that there should not be a blanket restriction on visitation based solely on age.”  
22 (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 774.) There is no legal requirement that visits can occur  
23 only if the child is permitted a contact visit or in certain settings. (See *id.* at pp. 774-775.) The failure  
24 to provide visitation for a parent in custody who is receiving reunification services can result in a  
25 finding of unreasonable services. (See, e.g., *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1479; *In*  
26 *re Monica C.* (1995) 31 Cal.App.4th 296, 307.)

27 **D. Visitation Should Be Ordered Even If Reunification is not Ordered for an**  
28 **Incarcerated Parent.**



1           The denial or termination of reunification services for an incarcerated parent does not  
2 necessarily justify the lack of visitation. “Section 361.5, subdivision (f) provides that when a court  
3 does not order reunification services . . . ‘[t]he court may continue to permit the parent to visit the  
4 child unless it finds that visitation would be detrimental to the child.’ ” (*J.N., supra*, 138 Cal.App.4th  
5 at p. 457, emphasis deleted.) As shown above, visitation is important not only for the parent but also  
6 for the child. It is no less important if the parent is incarcerated. Fostering the bond between the child  
7 and the parent re-assures the child and creates options for the court concerning the ultimate outcome  
8 of the case.

9           Even if the parent has been incarcerated for a period of time before dependency proceedings  
10 began, the same benefits to the child are available through regular visitation. And those in custody  
11 continue to enjoy a due process right to visitation.<sup>6</sup> (*James R., supra*, 153 Cal.App.4th at pp. 428-429  
12 [delinquent minor’s right to visitation with parents while the minor is in placement]; *Hoversten v.*  
13 *Superior Court* (1999) 74 Cal.App.4th 636, 641 [family court matter]; *Smith, supra*, 112 Cal.App.3d  
14 at pp. 968-969 [civil rights action against a jail’s policy prohibition of most visits with children].)

15           **E.       Visitation Should not be Reduced When Services are Terminated.**

16           When the court terminates reunification services, “[t]he court shall continue to permit the  
17 parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be  
18 detrimental to the child.” (§§ 366.21, subd. (h), 366.22, subd. (a)(3).)

19           It is important not to reduce visitation when terminating services for two reasons. First, as  
20 explained above, there is a due process right to maintaining the parent-child relationship, and the  
21 child naturally benefits from continuing the relationship unless there is overriding evidence to the  
22 contrary. “Absent a showing of detriment caused by visitation, ordinarily it is improper to suspend  
23 or halt visits even after the end of the reunification period. [Citations.] Visitation may be seen as an  
24 element critical to promotion of the parents’ interest in the care and management of their children,  
25 even if actual physical custody is not the outcome. [Citation.]” (*In re Luke L.* (1996) 44 Cal.App.4th

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27           <sup>6</sup> The court may prohibit visitation if the parent molested the child. (*Robin J. v. Superior*  
28 *Court* (2004) 124 Cal.App.4th 414, 424.)

1 670, 679.) “Courts have long recognized that, in the context of dependency proceedings, a lack of  
2 visitation may ‘virtually assure[ ] the erosion (and termination) of any meaningful relationship’  
3 between mother and child. [Citation.] Even after family reunification services are terminated,  
4 visitation must continue unless the court finds it would be detrimental to the child. (§ 366.21, subd.  
5 (h).)” (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504.)

6 Second, a strong parent-child relationship through regular visitation is a reason for not  
7 terminating parental rights. While it is proper to terminate parental rights when the relationship  
8 between the child and the parent drifts apart on its own, it violates due process for the state to  
9 interfere with the relationship leading up to the section 366.26 hearing. (*In re David D.* (1994) 28  
10 Cal.App.4th 941, 954-955.) “The Supreme Court has held the statutory procedures used for  
11 termination of parental rights satisfy due process requirements only because of the demanding  
12 requirements and multiple safeguards built into the dependency scheme at the early stages of the  
13 process. [Citations.] If a parent is denied those safeguards through no fault of her own, her due  
14 process rights are compromised. Meaningful visitation is pivotal to the parent-child relationship,  
15 even after reunification services are terminated. [Citation.] Under section 366.26, subdivision  
16 (c)(1)(A) [now subdivision (c)(1)(A)(i)], the Legislature has provided a means by which even a  
17 parent to whose custody a child cannot currently be returned has a final chance to avoid termination  
18 of parental rights if she can show she has maintained regular contact and visitation with her child,  
19 and the child would benefit from continuing the relationship. Obviously, the only way a parent has  
20 any hope of satisfying this statutory exception is if she maintains regular contact with her child.”  
21 (*Hunter S., supra*, 142 Cal.App.4th at pp. 1504-1505.)

22 Visitation should continue after the section 366.26 hearing if the court does not terminate  
23 parental rights. “The court shall also make an order for visitation with the parents or guardians unless  
24 the court finds by a preponderance of the evidence that the visitation would be detrimental to the  
25 physical or emotional well-being of the child.” (§ 366.26, subd. (c)(4)(C).) Again, this is imperative  
26 because the child naturally desires a continued relationship with the parent unless there is evidence  
27 to the contrary. “[T]he Legislature made clear its intent to require juvenile courts to make visitation  
28 orders in both long-term foster care placements [as it was called at the time] and legal

1 guardianships.” (*In re M.R.* (2005) 132 Cal.App.4th 269, 274.) Further, “visitation is a significant  
2 issue in connection with a later section 366.26 hearing to determine whether parental rights should  
3 be terminated.” (*In re Josiah S.* (2002) 102 Cal.App.4th 403, 420.) “Because the trial court was  
4 required to make a visitation order unless it found that visitation was not in the children’s best  
5 interest, it could not delegate authority to the legal guardian to decide whether visitation would  
6 occur. [Citation.] The court may delegate authority to the legal guardian to decide the time, place,  
7 and manner in which visitation will take place.” (*M.R.*, at p. 274.)

8 **III. THE FACTS SHOW IT IS IN THE CHILD’S BEST INTERESTS TO INCREASE**  
9 **VISITATION**

10 {Describe here facts that show a relationship between the child and parent or why the parent  
11 should be allowed to establish a relationship. Address the social worker’s assertion of detriment.}

12  
13  
14  
15 **IV. CONCLUSION**

16 Therefore, the court should order that visitation occur \_\_ times per week for \_\_ hours,  
17 un/supervised.

18 DATED: \_\_\_\_\_

19 Respectfully submitted,  
20 OFFICES OF \_\_\_\_\_

21 By: \_\_\_\_\_,  
22 \_\_\_\_\_, Esq.  
23 Attorney for \_\_\_\_\_