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5 Attorney for Petitioner  
6

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF [REDACTED]

9 IN RE [REDACTED]  
10

CASE NO. JV

11 MEMORANDUM OF POINTS AND  
12 AUTHORITIES IN SUPPORT OF  
13 CHANGE IN CUSTODY  
14

15 Date: [REDACTED]  
16 Time: 2:00 pm  
17 Dept: A

18 **Introduction**

19 This matter is before the court for a post-permanency review hearing under section 366.3 of the  
20 Welfare and Institutions Code.<sup>1</sup> This brief is filed by the father, [REDACTED] FATHER requesting full  
21 custody of his son, [REDACTED] CHILD<sup>2</sup> and dismissal of this case.

22 **Statement of Facts**

23 [REDACTED] CHILD entered the juvenile dependency system in 1997 because of neglect due to his mother's  
24 mental illness.<sup>3</sup> The Department of Social Services<sup>4</sup> filed a petition under WIC 300(b) and (c); and  
25 the court substantiated the allegations. The mother and [REDACTED] FATHER were separated at the  
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27 <sup>1</sup> Hereinafter referred to as WIC.

28 <sup>2</sup> Hereinafter referred to as [REDACTED] CHILD

<sup>3</sup> The mother was diagnosed with schizophrenia in 1995. Detention Report [REDACTED] [REDACTED]

<sup>4</sup> Hereinafter referred to as the Department.

1 time, but shared joint legal custody of CHILD<sup>5</sup>. The court removed custody of CHILD from his mother.  
2 His father, FATHER, was working full time and taking a full-load of college engineering courses, thus  
3 expressed his inability to take custody of CHILD. FATHER agreed to CHILD's placement with the  
4 maternal family, until completion of his studies.

5 The CASA report by [REDACTED] on [REDACTED] / [REDACTED] describes how she initially expected FATHER  
6 to have little interest in his son, based on the Department's reports. The CASA then goes on to  
7 describe how he visits with his son 3-4 times a month, pays all of his child support to the County,  
8 provides all of CHILD's medical insurance through his work, and buys CHILD most of his clothes and  
9 toys. He expresses his desire "make a good life" for his son his intent to provide a home for CHILD  
10 upon obtaining his degree in engineering, but if CHILD's maternal family was unable or unwilling to  
11 care for CHILD, that he would quit school to care for his son. Finally, FATHER expresses to the CASA,  
12 his frustration by the Department's depiction of him.

13 FATHER graduated with an advanced degree in engineering, and secured work as an engineer  
14 with [REDACTED] in [REDACTED], California. He sought custody of CHILD at a review hearing on [REDACTED]  
15 [REDACTED]. In their report for this hearing, the Department agreed that the father visited with CHILD  
16 often and was meeting all of his obligations to his child, nonetheless, they presented additional  
17 requirements for FATHER to meet as part of a "transition" plan for CHILD.<sup>6</sup> The Department further  
18 expressed, "To date, the father shows every evidence of commitment and sincerity in following this  
19 plan," however, they recommended continued placement with the aunt in CHILD's best interest.

20 Six months later, in May of [REDACTED], despite having complied fully with all of the transition  
21 requirements,<sup>7</sup> the father's request for custody of CHILD was denied.<sup>8</sup>

22 While FATHER consistently expressed his appreciation for all that the maternal family had done  
23 for his son,<sup>9</sup> his contact with CHILD was increasingly hampered due to the difficult relationship  
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25 <sup>5</sup> Jurisdiction Report [REDACTED].

26 <sup>6</sup> Including regular visits, phone calls, contact with CHILD's teachers, and therapists, Review Report [REDACTED].

27 <sup>7</sup> Permanent Plan Review Report [REDACTED]

28 <sup>8</sup> Permanent Plan Review Report [REDACTED]

<sup>9</sup> CASA report [REDACTED] Review Report [REDACTED]

1 between him and the aunt.

2 [CHILD] has been in long term foster care placement with his maternal Aunt C [redacted] since 1998.  
3 This summer, Aunt C [redacted] asked that [CHILD] be removed from her home. [CHILD] was placed in a  
4 temporary group home where he continues to reside. Immediately upon learning of his son's  
5 placement in a group home, [FATHER] again stepped forward and requested that [CHILD] be placed with  
6 him. As [CHILD] was required to attend summer school, he agreed to have [CHILD] stay at this group  
7 home, with overnight weekend visits at his home throughout the summer. These visits went well, and  
8 allowed father and son to reconnect.

9 [FATHER] is currently employed by [redacted] in [redacted], California. He is scheduled to  
10 move to [redacted], Texas on [redacted], for a new position at [redacted]. His company  
11 offers housing accommodations for both [FATHER] and his son, and a generous moving allowance that  
12 will allow them to settle comfortably in Texas. He is informed and aware of [CHILD]'s continuing  
13 special educational and emotional needs, obtaining the most recent information from [CHILD]'s social  
14 workers<sup>10</sup> and therapist this summer.

### 15 Argument

16 Placement and custody of [CHILD] with his father meets the goals of the dependency system to  
17 provide permanency and stability to a child and serve the best interest of the child.  
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19 The dependency system has three primary goals: (1) protection of the child; (2) preservation of  
20 the family; and (3) provision of a stable permanent home.<sup>11</sup> Underlying these goals is the fundamental  
21 goal of serving the best interest of the child.<sup>12</sup>

22 Here, [CHILD] is placed in long term foster care with his Aunt C [redacted]. She consistently declines  
23 guardianship of [CHILD], and the result is a child who can be removed and placed in a group home at a  
24 moment's notice, a teenager who does not have a permanent and stable home. This summer, there was  
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26 <sup>10</sup> Child Welfare Workers [redacted] and [redacted] Therapist [redacted].

27 <sup>11</sup> WIC 202, 300.2, 361.5(a); WIC 396.

28 <sup>12</sup> WIC 202(a)-(b)

no major incident that precipitated Aunt C's request for CHILD's removal from her home. This teenager's failure to turn in schoolwork, refusal to clean a messy bedroom, poor communication, failure to meet the Aunt's expectations, stress---these were the reasons CHILD was moved to a group home. Aunt C also expressed some possible concerns about CHILD's mental health, yet did not seek therapy or counseling for CHILD. Aunt made no requests or efforts towards obtaining readily available assistance or support to keep CHILD in her home, instead choosing to request his removal.<sup>13</sup> As CHILD's de facto parent, Aunt C provided the only home CHILD has known; unfortunately this is not a stable or permanent home for CHILD. CHILD deserves the permanency and stability afforded by being returned to the custody of his father.

The law requires that at each review for hearing for a child in long term foster care, the court consider all permanency planning options including whether the child should be returned to the home of the parent.<sup>14</sup> Here, we are before the court for a review hearing on CHILD who continues to be in foster care. The Department in accordance with the goals of dependency made efforts to establish a permanent plan for CHILD by approaching Aunt C with legal guardianship information and offers on more than one occasion to no avail. FATHER repeatedly requested custody of his son over the years, but it was determined to be in CHILD's best interest to be with his Aunt C. This foster care placement is no longer in CHILD's best interest, and return to his father is very real option.

Overnight and weekend visits between CHILD and his father this summer went well. FATHER was in consistent and regular contact with CHILD's social worker, and contacted his son's new therapist. Reports over the years provide ample evidence of FATHER's commitment to his son, and desire to have custody of his son. Moreover, the reasons CHILD was not placed with his father earlier no longer exist. FATHER is no longer in school, he is also now single.<sup>15</sup> While FATHER was involved with his son from birth, there was never a WIC 300 allegation as to FATHER and no issues about CHILD's safety in his father's care. None existed then, and none exist now.

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<sup>13</sup> The assigned social worker(s), and are available to assist the child and family in any way necessary to maintain placements.

<sup>14</sup> WIC 366.3(g)

<sup>15</sup> One reason CHILD was not later placed with his father is because the Department and CASA were concerned that CHILD would have to share limited resources with his father's wife and two children. Permanent Plan Review Report.

1 The Legislature's intent that children not languish in long term foster care if the possibility of a  
2 more permanent placement exists is elucidated through the provisions of WIC 366.3(d)-(h), which  
3 require the juvenile court or other reviewing body to consider all permanency planning options  
4 including return to the parent. California has long recognized that children are better served by being  
5 reunified with parents or being in an alternative permanent placement such as adoption or guardianship  
6 than in foster care.<sup>16</sup> Thus, the provisions in WIC 366.3 allow for the court to consider a parents  
7 argument that the child should be returned without the need for a petition under WIC 388. FATHER

8 asserts that this court should consider returning custody of CHILD to him in light of the most  
9 recent events, which illustrate the instability of a foster care placement.

10 CHILD struggled all summer with the question of whom he wishes to live with in the future. An  
11 unfair question for a sixteen year old who has been a foster child for most of his life, this was certainly  
12 a very difficult question for him. His Aunt C struggled with whether she wanted him back in her  
13 home.<sup>17</sup> Upon learning of his father's upcoming move to , CHILD finally expressed his desire to  
14 live with his Aunt C. He does have extended family members nearby, and may worry about  
15 losing contact with them. While involved with CHILD in varying degrees, these family members  
16 unfortunately are unable to take legal guardianship of him. They were unavailable even as a temporary  
17 home or placement when CHILD was sent to the group home this summer. His father is ready, willing,  
18 able and committed to having CHILD in his care, for a period extending beyond that of his son's 18<sup>th</sup>  
19 birthday. Moreover, FATHER consistently recognizes and acknowledges the importance of this extended  
20 family to his son, and will help his son keep in contact with them through letter, phone calls, and visits.

21 While the child's wishes must be considered, it is not the sole or governing basis upon which  
22 the decision regarding his future placement should be determined. Foster care is meant to be  
23 temporary care. Providing CHILD with a permanent and stable placement is in CHILD's best interest  
24 for the immediate and for the long-term.

25 <sup>16</sup> WIC 396

26 <sup>17</sup> While de facto parents have a right to be present at hearings and present evidence, they do not have a right to  
27 reunification services, custody or visitation. <sup>17</sup> *In re Kieshia E.* (1993) 6 Cal. 4<sup>th</sup> 68, 77; *In re Jody R.* (1990) 218 Cal.  
28 App.3d 1615, 1628; *In re Jamie G.* (1987) 196 Cal. App.3d 675, 684; California Rule of Court 1412(e).

1  
2 **Conclusion**

3 It has been said that the best interest of the child is an "elusive guideline that belies rigid  
4 definition."<sup>18</sup> Here, the court has guidelines to assist making a determination as to CHILD's future as  
5 provided by WIC 366.3. CHILD has been a foster child in the dependency system long enough. He  
6 deserves the opportunity to live in a home where he will not be "aging out" when he turns eighteen, or  
7 removed for typical teen-age behavior. He has the opportunity to strengthen his relationship with his  
8 father in a permanent and stable home, and the court allowing that opportunity is in CHILD's best  
9 interest.

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13 Dated \_\_\_\_\_

Respectfully submitted,

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16 Attorneys for FATHER  
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<sup>18</sup> *In re Ethan N.* (2004) 122 Cal. App. 4<sup>th</sup> 55, 66, quoting *Michelle T.* (1975) 44 Cal.App.3d 699, 704.