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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF XXX XXXXXXX

In the Matter of

C.H. AND J.G.

Minors.

Case Number: XXXX

**MEMORANDUM OF POINTS AND
AUTHORITIES REGARDING DE FACTO
PARENTS' PARTICIPATION IN
WIC § 366.21(f) HEARING.**

Date: June 19, 2007

Time: 8:30

Dept.: XXX

Counsel for minor C.H. submits the following Memorandum of Points and Authorities in response to the Memorandum filed by D. and L. G., regarding their rights as *de facto* parents to participate in the contested Welf. & Inst. Code § 366.21(f) hearing on June X, 2007.

It is undisputed that the Gs have a right to appear and participate in court hearings in this case. However, their right to present evidence and cross-examine witnesses is limited to issues that are relevant at each specific hearing. In *In re Rita L. (2005)*, 128 Cal.App.4th 495, the Court of Appeal reversed in part because “the juvenile court improperly considered the quality of the relationship between [the child and the *de facto* parents], in reaching its decision to terminate reunification services.” *Id.*, 128 Cal.App.4th at 507. The court of appeal pointed out that prior to the § 366.26 hearing, the emphasis in dependency cases is on preserving the family whenever possible. In contrast, after the § 366.26 hearing, the emphasis shifts to assessing the quality of the

1 child's relationships with caregivers and developing a plan for the child to have a stable and
2 permanent home. *Id.*

3 This case, like *Rita L.*, is in the pre-permanent planning stage. At the § 366.21(f) hearing,
4 the relevant issues will be: whether the return of C.H. and/or J.G. to their parents "would create a
5 substantial risk of detriment to [their] safety, protection, or physical or emotional well-being;"
6 whether reasonable efforts have been offered to C.H.'s and J.G.'s parents; and issues concerning
7 the sibling relationship between C.H. and J.G., as set forth in §366(a)(1)(D).

8 Thus, the evidence that the Gs may present at the § 366.21(f) hearing, and the issues on
9 which they may cross-examine witnesses, are limited to the issues of reunification services,
10 reasonable efforts, and sibling relationship. The quality of their relationship with J.G. is not at
11 issue in the §366.21(f) hearing. The *Rita L.* case makes it clear that it would be legal error to allow
12 evidence concerning the relationship between J.G. and the Gs to influence this court's decisions on
13 any of the issues at the § 366.21(f) hearing, including the sibling relationship issues that this court
14 must consider pursuant to §366(a)(1)(D).

15 Moreover, contrary to the Gs' argument, *de facto* parents do not have full party status and
16 their role "is a limited one ... primarily intended to ensure the court has all relevant evidence." *In*
17 *re B.G.* (1974) 11 Cal.3d 679, 693. By granting de facto parent status, this court has recognized
18 the Gs' distinct interest in the companionship, custody, and care of J.G. – but "such recognition in
19 no way infuses that distinct interest with any independent relevance in the proceedings." *Rita L.*,
20 128 Cal.App.4th at 166. *Matthew P.*, *Cynthia C.*, and other cases cited in support of the Gs' broad
21 assertion of a right to "oppose the recommendation of the social service agency (or any other party)
22 by presenting evidence and cross-examining witnesses," Memorandum at pp. 3-4, are
23 distinguishable in that, unlike this case, they involved post-permanency § 387 or § 388 hearings, at
24 which removal of the children from the de facto parents *was* the relevant issue.

25 For the reasons stated above, counsel for the minor C.H. agrees that this court should allow
26 the Gs to present evidence and otherwise participate in the § 366.21(f) hearing on June 19, 2007,
27 but respectfully requests that this court carefully restrict the Gs' counsel to presenting evidence that
28 is relevant to the issues of reunification services, reasonable efforts, and sibling relationships.

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Dated: June , 2007

Respectfully submitted,

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By: XXX XXXX

Attorney for the minor C.H.