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[Redacted]

Telephone: [Redacted] / Fax: [Redacted]

Attorneys for Father
[Redacted] Father

SUPERIOR COURT OF CALIFORNIA

COUNTY OF [Redacted]

JUVENILE DIVISION

IN THE MATTER OF

[Redacted] Child
Minor

)
) Case No., JV [Redacted]
) FATHER'S JURISDICTION BRIEF
)
) Date: [Redacted]
) Time: 9:00 am
) Dept: [Redacted]

Introduction

This matter is before the court for a contested jurisdiction hearing under section 300(b) of the Welfare and Institutions Code.¹ This brief is filed by the father, [Redacted] Father in support of the court dismissing this case as the Department of Social Services² fails to meet its burden of establishing current risk of serious physical harm to his daughter, [Redacted] Child.

¹ Hereinafter referred to as WIC
² Hereinafter referred to as the Department

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1 Moreover, the conditions that bring the child within the juvenile court's jurisdiction must be
2 shown to exist at the time of the jurisdiction hearing.⁵ This burden of proving the conditions exist
3 at the time of the jurisdiction hearing falls squarely on the shoulders of the Department of Social
4 Services. And while past events are properly considered in a jurisdictional determination of
5 serious risk, the court may do so only if the circumstances existing at the time of the hearing
6 make it likely that the child will suffer the same type of "serious physical harm or illness in the
7 future."⁶ Here, the Department seeks adjudication of this case based on WIC 300(b) allegations
8 but do not provide supporting facts upon which adjudication under WIC 300(b) is warranted.
9

10 **I. There is no evidence the child is currently at substantial risk of serious physical harm.**

11 The threat of actual harm is required and the burden is on the Department to provide facts
12 showing this threat of harm. While the threat need not be imminent because the court's focus is
13 on averting harm to the child, there must be at least some threat of actual physical harm. Here,
14 **Child** was born healthy, and continues to be healthy while in the full-time care and custody of
15 her mother. There is a glaring absence of facts showing this child was ever harmed, sustained
16 any injuries, or is at imminent risk of any harm. The fact is, **Child** is a perfectly healthy, happy,
17 well cared for child.
18

19 **II. The Department fails to prove causation of harm, or possible causation of harm.**

20 The Department alleges that the mother has a history of substance abuse, yet the Department is
21 unable to provide any facts to show how this alleged history has in fact caused harm to **Child**.
22 There simply is no evidence of harm to this child. Mere speculation is not evidence.
23
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26 ⁵ *In re Melissa H.* (1974) 38 CA3d, 173, 113 CR139; *In re Nicholas B.* (2001) 88 CA4th 1126, 106 CR2d 465.

27 ⁶ *In re Janet T.* (2001) 93 CA4th 377, 388, 113 CR2d 163, citing *In re Rocco M.* (1991) 1 CA4th 814, 824, 2 CR2d 429,
28 and *In re Jennifer P.* (1985) 174 CA3d 322, 326, 219 CR 909.

1 This court is not provided with the facts required by law for a finding of causation of any specified
2 harm, or substantial risk of a specified harm to this child.

3 Past events are properly considered in a jurisdictional determination of serious risk, but
4 the court may do so only if the circumstances existing at the time of the hearing make it likely that
5 the child will suffer the same type of "serious physical harm or illness in the future." Here, in the
6 absence of evidence that this child ever suffered any serious physical harm or illness, the
7 Department cannot show that [Child] will suffer a physical harm in the future.

8
9 **CONCLUSION**

10 The basic question under WIC 300 is whether circumstances at the time of the hearing
11 subject the minor to the defined risk of harm. The law imposes a burden on the government to
12 prove by preponderance of the evidence that the child is at substantial risk of suffering some
13 defined risk of harm. Before this court is a healthy, normal infant who is being cared for by her
14 mother without any problems. The Department fails to provide any evidence upon which a
15 reasonable trier of fact could find by preponderance of evidence that this child is currently at
16 substantial risk of suffering serious physical harm. Therefore, we request that this case be
17 dismissed.

18 Dated: [redacted]

19 Respectfully submitted,

20
21 [redacted]

22 Attorneys for [redacted] Father