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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF XXX XXXXXX**
9

10 In the Matter of) Case Number: XXXX
11 (Minor)) Related Case Number: XXXX
12 Minor) **Points and Authorities Supporting (Mother)**
13) **As (Minor)'s Presumed Mother Pursuant to**
14) **Family Code § 7611 and §7650.**
15) Date: February XX, 200X
16) Time: 8:30 a.m.
17) Dept.: XXX

18 **STATEMENT OF THE CASE**

19 On May XX, 200X, the dependency court detained (Minor) and her five siblings, XXXX,
20 XXXX, XXXX, XXXX, and XXXX from their "mother" (Mother), under the dependency court case
21 XXXXXXX. At the time of detention (Minor) was nine-months-old. Prior to detention, (Minor) had been
22 living with (Mother) and her siblings, and (Mother)'s friend, Ms. M, and her son, XXXX. Between
23 January 200X and May 200X, the County Social Services Agency ("Agency") provided (Mother) and
24 her six children services under a voluntary family maintenance contract. On July 12, 200X, the
25 dependency court took jurisdiction over (Minor) and her siblings, declared them dependents, and
26 ordered the Agency to provide family reunification services to their "mother" (Mother). (Minor) was
27 placed in the same foster home as her sibling, XXXX, and she continues to be in this same placement
28 today.

1 On October 10, 200X, the Agency informed the court that (Minor)'s birth certificate names Ms.
2 M as her birth mother and the hospital birth records list Ms. M as the woman who gave birth to her.
3 However, the Agency also provided the court with an affidavit by (Mother) dated September XX, 200X
4 stating that she is the birth mother of (Minor). Given the conflicting information, the court ordered
5 (Mother) and Ms. M to submit to a DNA test to determine the maternity of (Minor). However, to date
6 (Mother) and Ms. M have not submitted to the DNA testing.

7 Since the detention hearing, (Minor) has maintained regular visits with her five sisters, her
8 maternal grandparents and maternal cousins, and until recently, her "mother" (Mother). On January XX,
9 200X, the court found that (Mother) was in substantial compliance with the case plan and ordered the
10 Agency to provide another six months of family reunification services to her. The court also ordered
11 that there is to be no contact between Ms. M and the children. Although the Agency reported in the past
12 that Ms. M was living with either (Mother) or the maternal grandmother, currently, her whereabouts are
13 unknown. The matter is set for a twelve-month-review hearing on May XX, 200X.

14 Notwithstanding the court already has jurisdiction over the child (Minor), she is currently in
15 reunification with her "mother" (Mother), she is placed with her sister in a foster home, and Ms. M's
16 whereabouts are unknown, on February XX, 200X the Agency filed a new petition under case number
17 XXXXX alleging that (Minor) is at risk of serious physical harm or illness due to abuse and neglect by
18 her "mother" Ms. M.

19 DISCUSSION

20 I. (MOTHER) IS THE PRESUMED MOTHER OF (MINOR) PURSUANT TO SECTIONS
21 7611(D) AND 7650 OF THE CALIFORNIA FAMILY CODE.

22 This court may find that (Mother) is the presumed mother of (Minor). First, pursuant to section
23 7650 of the California Family Code "any interested person may bring an action to determine the
24 existence or nonexistence of a mother and child relationship." CAL. FAM. CODE § 7650 (West 200X).
25 (Minor) is an interested party who clearly has standing to bring an action pursuant to section 7650 to
26 determine the existence of a mother and child relationship between herself and (Mother). The court's
27 determination on this issue will directly affect (Minor) because should the court determine that no
28 mother and child relationship exists, the court will not be required to continue to provide family

1 reunification services to (Mother) and (Minor). Further, (Minor) will effectively be left without a
2 mother by such a determination because Ms. M has never come forward to assert her rights as (Minor)'s
3 mother and her whereabouts are unknown. Moreover, the court would be depriving (Minor) of the only
4 mother she has ever known.

5 Second, under Family Code section 7611(d) "a man is presumed to be the natural father of a
6 child if...[h]e receives the child into his home and openly holds out the child as his natural child." CAL.
7 FAM. CODE § 7611(d) (West 200X). While this statute is clearly written with a man in mind, the court
8 in *In re Karen C.*, held that this section of the family code applies with equal force to women.
9 *Department of Children and Family Services v. Karen C.*, 101 Cal. App. 4th 932 (200X) (citing *In re*
10 *Nicholas H. v. Kimberly H.*, 28 Cal. 4th 56 (200X)). In *Karen C.*, the minor was born to a couple that
11 neither wanted the child nor could care for the child. Due to these reasons the child's biological parents
12 allowed Leticia to take custody of the child, naming Leticia as the mother on the birth certificate.
13 Leticia held Karen out to be her own child, telling Karen that she had adopted her. In Karen's eyes
14 Leticia was the only mother she had ever known because she had no contact with her biological parents.
15 *Id.* at 934. Because Leticia had brought Karen into her home, cared for her as if she were her biological
16 child, and held her out to the public as her own child, the court concluded that that Leticia was entitled
17 to presumed maternity status.

18 Similarly, (Mother) should also be granted presumed maternity status. First, (Mother) received
19 (Minor) into her home and cared for her since the day of her birth until the day of detention. (Mother)
20 provided (Minor) with all the necessities of life such as food, clothing, and shelter. (Mother) held
21 (Minor) out to be her own child. Moreover, (Mother) held (Minor) out to be her own child to her other
22 five daughters and to her extended family. Specifically, (Mother)'s other five children all consider
23 (Minor) to be their sister, and (Mother)'s extended family views (Minor) as their niece, cousin or
24 granddaughter. Notably, the maternal grandmother filed a De Facto Parent Application regarding
25 (Minor) and her five siblings, and the court set a hearing on March 6, 200X. Additionally, since being
26 removed from (Mother)'s home, (Minor) has participated in the weekly visits with (Mother) and the rest
27 of family.

1 “A presumption under section 7611 is a rebuttable presumption affecting the burden of proof and
2 may be rebutted in an appropriate action only by clear and convincing evidence.” CAL. FAM. CODE §
3 7612. In the instant case, there is no finding that can rebut the presumed maternity of (Mother) by clear
4 and convincing evidence. Since (Mother) and Ms. M have not submitted to the court ordered DNA
5 testing, the court does not have any evidence, much less clear and convincing evidence, that Ms. M is in
6 fact (Minor)’s mother. Further, Ms. M has never come forward to assert her right to be (Minor)’s
7 mother, and there is no evidence that Ms. M ever provided for (Minor) in any way.

8 Currently, the only evidence that the court has is (Minor)’s birth certificate and the birth records
9 that indicate Ms. M is her mother. Even if the court has DNA results indicating that Ms. M is (Minor)’s
10 biological mother, the presumption of maternity of (Mother) is not automatically overcome. In *In re*
11 *Nicholas H. v. Kimberly*, the presumed father, Thomas, admitted to the court that he was not the
12 biological father of Nicholas. *In re Nicholas H. v. Kimberly*, 28 Cal. 4th 56 (200X). However, in
13 holding that Thomas did have presumed paternity status the court noted that clear and convincing
14 evidence of non-paternity does not always overcome the presumption. *Id.* at 63 and 64.

15 Here, the court does not have clear and convincing evidence that Ms. M is (Minor)’s mother.
16 Rather, the court has conflicting evidence as to who is in fact this child’s mother. On the one hand, the
17 court has the signed affidavit of (Mother) stating that she is (Minor)’s biological mother, and on the
18 other hand, (Minor)’s birth certificate and records indicate that Ms. M is the child’s mother. Moreover,
19 given Ms. M was living in the same home as (Mother) during the time that the Agency was providing
20 voluntary family maintenance services to (Mother) and (Minor) and at the time of detention, she
21 certainly had the opportunity to claim that she was (Minor)’s mother or come forward to accept
22 responsibility for (Minor), but she chose not to do so. Thus, (Mother) should be given presumed
23 maternity status pursuant to section 7611(d) of the Family Code.

24 **II. IT IS IN (MINOR)’S BEST INTERESTS THAT THIS COURT FINDS (MOTHER) IS HER**
25 **PRESUMED MOTHER.**

26 This court should find (Mother) is the presumed mother of (Minor) because failure to do so
27 would result in detrimental harm to (Minor)’s emotional-well-being. First, removing (Minor) from the
28 petition filed on (Mother) would essentially make (Minor) an orphan because her alleged father, XXXX,
has never been involved in her life and she would lose the only mother she has ever known. Similarly,

1 the court in *Karen C.* noted that if the mother Leticia was not granted presumed maternity status Karen
2 would “effectively be made and orphan.” *Karen C.*, 101 Cal. App. 4th 932, at 936. (Minor) lived with
3 (Mother) for the first nine months of her life. (Mother) raised her as her own daughter and included her
4 in her family. (Minor) has five sisters through her mother-daughter relationship with (Mother) and an
5 entire extended family. There is no evidence that (Minor) has a relationship with Ms. M or her other
6 two children. Ms. M has never stepped forward to parent (Minor), and Ms. M is currently whereabouts
7 unknown. It is in (Minor)’s best interest to have a mother who loves her and who is invested in her. It
8 would be detrimental to (Minor)’s emotional well being to separate her now from the only mother and
9 family she has ever known. Further, (Mother) is in substantial compliance with the case plan, and it is
10 likely that (Minor) will be reunified with her at the next court hearing in May. It is in (Minor)’s best
11 interest to continue efforts to reunify her with (Mother) who is the only mother she has ever known. It is
12 not in (Minor)’s best interest to open a new dependency case as to (Minor) and Ms. M because
13 reunification with Ms. M would be detrimental to (Minor) as well as nonsensical since she is a woman
14 who has never parented (Minor) or expressed any interest in doing so.

15 16 CONCLUSION

17 This court should find that (Mother) is (Minor)’s presumed mother. It then follows that this
18 court should dismiss the new dependency petition regarding (Minor) and Ms. M under case XXXXX.
19 At most, Ms. M is an alleged mother of (Minor) and is entitled to notice of the dependency court
20 proceedings in the original case XXXX.
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23 Respectfully submitted,

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26 _____
27 XXXX
28 Attorney for (Minor)
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