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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF XXXXX**

In the Matter of

**XXXX and XXXX XXXX,**

Minors.

) Case Number: XXXX

) **RESPONSE TO MOTION FOR EVIDENCE**  
) **CODE 730 EVALUATION OF FATHER,**  
) **MINORS, AND PROSPECTIVE ADOPTIVE**  
) **PARENTS**

) Date: April 3, 2006

) Time: 8:30 a.m.

) Dept.: XXXX

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Minors, XXXX and XXXX hereby oppose XXXX's Motion for Evidence Code 730 Evaluation of Father, Minors and Prospective Adoptive Parents. Mr. XXXX has requested that the court order a 730 evaluation to assess (1) the relative bonding, identity, and attachment issues of the children, XXXX (detained) and XXXX (non-detained) with their father, XXXX, paternal grandmother, K XXXX, and prospective adoptive parents, and (2) the effect on XXXX of being adopted away from his sibling XXXX, his father, and his paternal grandmother. Father is requesting that the court consider the results of the 730 evaluation prior to terminating parental rights. Welfare and Institutions Code ("WIC") §366.26 does not include any provisions that would prevent termination of parental rights on the basis of attachment and/or bonding with grandparents or prospective adoptive parents. The relationship between a non-detained child and his father is also irrelevant at a WIC §366.26 hearing. Further, even

1 if the statements in Mr. XXXX's motion were not contradicted, he is unable to meet the requirements  
2 of WIC §366.26(c)(1)(A) or WIC §366.26(c)(1)(E). Therefore, the Motion for Evidence Code 730  
3 Evaluation of Father, Minors and Prospective Adoptive Parents should be denied.  
4

### 5 **STATEMENT OF FACTS**

6 This matter is before the Court to terminate parental rights, in order to allow XXXX and his  
7 half-sibling, XXXX XXXX, to be adopted. XXXX and XXXX were detained on June 11, 2003, when  
8 they were ages three and four months, respectively. On June 13, 2003, both children were placed in the  
9 foster home of XXXX XXXX, where they remained for approximately two-and-a-half years. On  
10 January 4, 2006, they were both placed with their prospective adoptive family, with whom they still  
11 live.

12 At the time of detention, both XXXX and XXXX lived with their mother and the XXXX father,  
13 who had lived with the family for approximately one year. XXXX's sibling, XXXX XXXX, who is  
14 approximately one year older than him, resided with his paternal grandmother, K XXXX, with whom  
15 his mother voluntarily placed him when he was a few months old. Therefore, XXXX and XXXX have  
16 never resided in the same home, and their entire relationship has consisted of visitation, as arranged by  
17 their parents. It is unclear what kind of contact the children had prior to XXXX and XXXX's  
18 detention. After detention, however, visitation between the siblings was extremely rare.

19 Over the approximately three-year period that XXXX and XXXX were placed with Ms. XXXX,  
20 either the XXXX father or the paternal grandmother called the home only 22 times. Some of these  
21 calls lasted only one minute, indicating that a conversation didn't even take place. Ms. XXXX also  
22 reported that XXXX's father and grandmother did call to speak to him, but never called for a visit,  
23 stating, "The grandmother has always known that he is at my house, she only calls to speak with  
24 XXXX over the telephone." Mr. XXXX's motion also fails to include any details of visits he initiated  
25 between XXXX and his paternal relatives, including his sibling XXXX. Mr. XXXX asserts that  
26 XXXX's mother used to bring him for visits during her period of reunification--without specifying how  
27 many visits occurred, what the duration of these visits was, and who was present at these visits. Ms.  
28 XXXX confirmed that such visits occurred, stating:

XXXX is aware that he has a brother XXXX however, he does not ask to see him. Earlier, in 2003 and 2004 he asked to see XXXX after he would spend time with his mother, but he no longer asks about him much. He has not asked about him at all this year. After returning from a visit with mother XXXX, XXXX would sometimes say he went to see his brother or that he saw his brother while he was with his mom. He has not said this since prior to August 2005.

*Interim Review Report/Response to WIC §388 Petition, dated January 25, 2006.*

Mr. XXXX made his first appearance in Court on November 21, 2005, when the WIC §366.26 hearing was set. It was after this hearing that he began to make attempts to arrange visits between himself and XXXX. Mr. XXXX and Ms. XXXX visited with XXXX on February 15, 2006, and it was not until February 22, 2006 that XXXX's sibling, XXXX, was included in a visit.

### **ARGUMENT**

The purpose of a 730 evaluation at this stage of the proceedings would be to establish that it is detrimental to XXXX to terminate parental rights at this time. WIC §366.26 allows the Court to make such a determination under very limited circumstances. The circumstances of this case allow only two provisions, WIC §366.26(c)(1)(A) and WIC §366.26(c)(1)(E), to be applicable. Mr. XXXX cannot meet the requirements of either of these statutory provisions, and a 730 evaluation will not provide the Court with any further relevant information.

WIC 366.26(c)(1)(A) requires the Court to find that Mr. XXXX has maintained regular visitation and contact with XXXX and that XXXX would benefit from continuing the relationship. Mr. XXXX's history of contact and visitation with XXXX is clear, and a 730 evaluation will not change what has occurred over the past 3 years. Mr. XXXX also asserts that a 730 evaluation is necessary because of the difficulties XXXX is having adjusting to his new home. However, he fails to acknowledge that XXXX's behavior corresponds with Mr. XXXX's sudden reemergence in XXXX's life. There were no reports of behavioral difficulties with XXXX when he was residing with Ms. XXXX. XXXX not only has to adjust to a new family and residence, but adjust to visits with his father, brother, and grandmother after over 6 months of no contact.

WIC §366.26(c)(1)(E) requires the Court to find that there would be a substantial interference with XXXX's sibling relationship. The statutory provision details what the Court should consider when assessing the nature and extent of any such relationship. Mr. XXXX's motion as well as every

388 petition he and the paternal grandmother have filed, fail to mention XXXX's sibling, XXXX. The facts of this case are clear. XXXX and XXXX have been together since detention, when XXXX was only 4 months old, and XXXX was only 3 months old. They have been raised together in the same foster home and are now together with the same prospective adoptive family. XXXX has never lived with XXXX and his only contact with him has been through occasional visitation. Mr. XXXX is requesting a 730 evaluation to establish that it would be detrimental to terminate parental rights as to XXXX and presumably then ask for XXXX to be placed in his home and be separated from XXXX. There is a strong sibling bond between XXXX and XXXX, but XXXX is someone who XXXX has not even mentioned for over 6 months. It is unnecessary for the court to order a 730 evaluation as requested by XXXX.

### **CONCLUSION**

Minors, XXXX and XXXX, request that the Court deny XXXX's Motion for Evidence Code 730 Evaluation of Father, Minors and Prospective Adoptive Parents. To order such an evaluation would not be in the best interest of either child. If, however, the Court is inclined to order a 730 evaluation, minors request that the Court include all three children--XXXX, XXXX, and XXXX, and limit the evaluation to assess whether it would be detrimental to terminate parental rights as to XXXX and XXXX on the basis of WIC §366.26(C)(1)(E). Further, if the Court is inclined to order a 730 evaluation to include Mr. XXXX, minors request that all three parents be included. Minors also request that under no circumstances shall the paternal grandmother, K XXXX or the prospective adoptive parents, be included in a 730 evaluation.

Dated: April 3, 2006

Respectfully submitted

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By: XXXX, ESQ.

Attorney for Minors