Firm
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Attorney for, Father

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF XXXXXXXXXXXXXXX

SITTING AS THE JUVENILE COURT

In re the Matter of:	) Case No.: XXXXXXX
	)
	) **PRE-TRIAL STATEMENT**
	) **OF**
	)
Minor.	)
	) PRE-TRIAL
	) Date: XX/XX/XX
	) Time: 8:30
DOB:	) Dept.: XXXX
	)
	) TRIAL
	) Date: XX/XX/XX
	) Time: 1:30PM
	) Dept.: XXXX

1.   REQUEST FOR DISCOVERY

Pursuant to California Rules of Court, Rule 5.546, hereby requests discovery of all evidence or information within the Department's possession or control, including but not limited to, delivered service logs from the original date of detention/arraignment to today's date. Counsel also respectfully requests any and all handwritten notes taken by Department personnel during the pendency of this action.

2. PARTY'S POSITION STATEMENT

Father maintains that he is the father of the child and as such is entitled, despite his incarceration, to make appropriate arrangements for the care of his child pursuant to W&I § 361.2.

3. LEGAL ISSUES

<u>A. FATHER IS ENTITLED TO MAKE ARRANGEMENTS FOR HIS CHILD AS THE FATHER AND REUNIFICATION SERVICES UNLESS 361.5 APPLIES TO THE FATHER BASED ON THE JUDGEMENT OF PATERNITY</u>

The father believes maintains that the judgment of paternity issued by the family court establishes him as the one and only father of the child and supplies him with all the rights and responsibilities of the mother in this action. Family Code §7636 states that a judgment of paternity is determinative for all purposes except to establish a parent child relationship except for actions pursuant to Penal Code 270. Family Code § 7612 states the presumption under 7611 of the Family Code is rebutted by a judgment of paternity. Based purely on the Family Code there is no question that the father has established his paternity.

The father maintains that his judgment of paternity entitles him to all the rights of the mother. Family Code §7636 expressly states the judgment establishes the parental relationship. Additionally, in *In re Liam L.,* the court made it clear that a father a voluntary declaration of paternity which has the same force and effect as a judgment conferred presumed father status stating, "We reject Agency's contention that a voluntary declaration of paternity signed after December 31, 1996, no longer entitles an unwed father to presumed father status. Agency erroneously claims that by changing the legal effect of voluntary paternity declarations signed after December 31, 1996, from

a conclusive presumption of paternity to "merely" an establishment of paternity with the same force and effect as a paternity judgment, the Legislature intended that voluntary paternity declarations would no longer entitle the male signatory to presumed father status. " *In re Liam L.* (2000) 84 Cal.App. 4th 739, 746. The court stated clearly that such entitled the father to presumed father status. *Id.*

As previously stated a judgment of paternity is binding and rebuts any prior presumptions. Under Family Code 7612, the presumptions that arise from Family code 7611 and any conflict between any possible fathers are resolved by virtue of a judgment of paternity. A judgment by its very definition has more force and authority in the law than that of a mere presumption. A presumption in the law affects the burden of producing evidence but can be rebutted in certain instances. A judgment, however, stands above a presumption in the law because it is entitled to recognition under the principles of res judicata and as such is rarely disturbed. In *Robert J. v. Leslie M.,* the court addressed this principle as it pertains to paternity judgments stating:

> Res judicata is one of the oldest and least flexible doctrines in American jurisprudence. It is also one of the most important. As our Supreme Court held in *Slater v. Blackwood* (1975) 15 Cal. 3d 791, 797 [126 Cal. Rptr. 225, 543 P.2d 593]: "The consistent application of the traditional principle that final judgments, even erroneous ones [citations], are a bar to further proceedings based on the same cause of action is necessary to the well-ordered functioning of the judicial process. It should not be impaired for the benefit of particular plaintiffs, regardless of the sympathy their plight might arouse in an individual case." The rule in *Slater* is particularly appropriate here. If there is one class of judgments where the doctrine of res judicata should be scrupulously honored, it is a paternity judgment. *Robert J. v. Leslie M.* (1997) 51Cal.App. 4th 1642, 1647

Father's rights based on the prior court finding and order establishing his paternity must provide him with all the legal rights and obligations that come with the status or the judgment would have no meaning and run completely contrary to the

purpose of such a judgment as outlined in *Robert J. v. Leslie M.*. Such rights include the right to arrange care for a child and the provision of reunification services unless such services can be otherwise denied.

Additionally, the father maintains that despite any issue regarding his presumption he is above a mere biological father in any event consistent with *In re Zacharia D. In re Zacharia D. (1993) 6 Cal.4th 435* The father did not wait till dependency proceedings were initiated to establish his paternity or to come forward and assert his parental responsibilities. *Id.* at 452. He is not simply trying to block the adoption of others. *Id.* He is attempting to assert his parental responsibilities to the extent he is permitted. *Zacharia D.,* clearly anticipates that even a mere biological father who comes forward in a timely fashion in dependency proceedings should be afforded the opportunity to, "develop a parental relationship." *Id.* While the mother has claimed the father has not been involved with the child, the father indicated to the court, through counsel that the mother refused him access to the child after she began her relationship with the boyfriend who is accused of domestic violence in the petition. Under these circumstances, the father is not a mere biological father even were the court to ignore the judgment of paternity.

The father is entitled to make appropriate arrangements for his child pursuant to W&I §361.2. The court is required to look to a non-custodial parent first and determine if that parent can take custody. Despite the father's incarceration, he is entitled to make arrangements for the care of his child. Father informed the court at the prejurisdictional status conference that his sister, who was present in court, is available for custody of the child. In the absence of evidence that such an arrangement would be

detrimental to the safety or emotional well-being of the child, the court must place the child with the father to delegate his parenting authority to his sister. The court in *In re V.F.* explains that an incarcerated non- custodial parent must be evaluated form the perspective of §361.2 stating:

> In *Isayah C.*, *supra*, 118 Cal.App.4th 684, 700, the reviewing court held that the juvenile court may consider placing a child with a noncustodial, incarcerated parent under section 361.2 if that parent seeks custody of the child, the parent is able to make appropriate arrangements for the child's care during the parent's incarceration and placement with the parent is not otherwise detrimental to the child. The *Isayah C.* court based its decision on the case law that held the juvenile dependency system has no jurisdiction to intervene "when an incarcerated parent delegates the care of his or her child to a suitable caretaker" and there is no other basis for jurisdiction under section 300. (*Isayah C.*, at p. 700, citing *In re S. D.* (2002) 99 Cal.App.4th 1068, 1077.) At disposition, the length of a parent's incarceration may be a factor in determining detriment under sections 361, subdivision (c) and 361.2, subdivision (a), but a finding of detriment cannot be based solely on the fact a parent is incarcerated. (*In re S. D.*, at p. 1077 [a parent cannot lose custody of a child merely because he or she may have been incarcerated]; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1402 (*Brittany S.*) [" 'Go to prison, lose your child' " is not an appropriate legal maxim.].) *In re V.F.* D050824, Fourth Appellate District, filed December 7, 2007.

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As such, the father is entitled to be evaluated by the court pursuant to the provisions of W&I §361.2.

4. **FACTUAL ISSUES**

Father believes his sister is an appropriate caretaker for the child and wants his child released to her care.

5. **WITNESS LIST**

Counsel for the FATHER respectfully reserves the right to call any and all persons named in any report or witness list prepared by any social worker or other person in pursuit of this matter, but specifically intends to offer testimony of:

XXXXXXXXXXXXXXX, FATHER

6. **EXHIBIT LIST**

To be determined at trial.

7. PARTY'S SETTLEMENT PROPOSAL

The mother would be in agreement with out-of-home placement and services being provided.

DATED:_____   _____

XXXXXXXXXXXXXXXXX
Attorney for, Father

PROOF OF SERVICE

Case Name: IN RE:
     Court: LLLL COUNTY SUPERIOR COURT; JUVENILE DIVISION
  Case No.:

I am a resident of the United States and of the State of California. I am employed in the County of YYYY. My business address is YYYY Street, Suite YYY , YYYY, California. My business telephone number is (YYY) YYY-YYYY; fax number is (YYY) YYY-YYYY. I am over the age of eighteen years. I am not a party to the within action or proceeding. On <u>YYYY, 2008</u>, I served the following document(s):

PRE-TRIAL STATEMENT OF BOBBY GRANT

I am familiar with the practice of Çã{ D for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above-mentioned document(s) would have been deposited with the United States Postal Service on the same day on which it was placed at Çã{ D for deposit

<u> X </u>   by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as set forth below. (CCP §1012, 1013, & 1013(a))

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  X   by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the addresses set forth below. (CCP §1011)

5 HcfbYm
5 XXfYgg

  X   by personally delivering, or causing to be delivered, a true copy thereof to the person(s) at the YYY Courthouse in the mailbox located in Room 101 of the mail distribution center.

NAME

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on XXXX, 2008, at XXXX, California.

                          _____

_____
                                Name