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

In the Matter of

D. F.

Child

) Case Number: XXXX

)

) **CHILD'S POINTS AND AUTHORITIES IN
OPPOSITION TO XXXX XXXX'S REQUEST
FOR PRESUMED MOTHER STATUS**

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) Date: April 24, 2007

) Time: 8:30 a.m

) Dept.: XXXX

STATEMENT OF FACTS

On XXXX, 2001, XXXX XXXX (hereinafter referred to as the "mother") gave birth to the child D.F. D.'s undisputed biological father is XXXX XXXX. According to the mother, she met the father in XXXX, became pregnant by him and moved with him to the United States prior to D's birth. Upon arriving in the United States, the couple lived with B (who is seeking presumed mother status), and live-in boyfriend, C for whom the father worked. According to the mother, B requested after D. was born, that mother give D. to B so that she could raise the baby.

1 D. and her parents lived with B and C until D. was three months old, at which time D. and her
2 parents moved to a separate residence. According to the mother, B had no contact with D. for the next
3 year, although the father remained in contact with C.

4 When D. was approximately fifteen months old, the mother returned to XXXX, with the
5 intention of retrieving her other two children and returning to the United States in fifteen days. Mother
6 determined that it was too dangerous to cross the border illegally with her other two children and
7 remained in XXXX. According to the Mother, she has not seen D. for four years but has talked to her
8 on the telephone and tells D. that she is her mother.

9 According to C, he has known father for eleven years and father works for him. At some point
10 in the first three years of their friendship, the two men began to room together. About eight years ago,
11 after C and B began a relationship, all three adults lived together. At some point in time, father left for
12 about one and one half to two months and came back with mother, who was pregnant with D.

13 According to B, C and she began to take care of D. when D. was approximately one and one
14 half years old. According to B, it was a day here and there in the beginning. Then their caretaking grew
15 to weeks and months, until the father, Mr. XXXX and she agreed that while father was at work, D.
16 should be cared for by one person and not by a series of babysitters. For a while, the three adults and D.
17 lived together until father moved out. D. remained with B and C during the week and spent weekends
18 with her father.

1 **PROCEDURAL HISTORY**

2 On XXXX, 2007, the County Social Services Agency (“Agency”), removed the child D. F. from
3 the custody of her father, XXXX XXXX, alleging that he sexually abused D., has a history of substance
4 abuse, is a current user of alcohol, and drove an automobile while under the influence of alcohol with D.
5 as a passenger. On XXXX, 2007, the Agency filed a petition pursuant to Welfare and Institutions Code
6 sections 300 (b) and (d) in juvenile court. At the initial hearing on XXXX, 2007, the court found that
7 Mr. XXXX was the presumed father of D. and ordered D. detained in shelter care. Over father’s
8 objection, the court allowed B and C visitation with D. on a monitored basis.

9 On XXXX, 2007, B filed a JV-505 Statement Regarding Parentage, seeking presumed mother
10 status with respect to D. B through her privately retained attorney, walked the matter into court on
11 XXXX, 2007, to request placement and to schedule a date for a hearing to decide her request for
12 presumed mother status. The matter was set for XXXX, 2007, to hear the requests. On XXXX, 2007,
13 the court denied placement with B, and the presumed mother issue was continued to XXXX, 2007, for
14 an evidentiary hearing and to give the parties more time to research the parentage issue. The pre-trial
15 resolution conference is set for the same day.

16
17 **ARGUMENT**

18 **1. Mother IS D.’S LEGAL MOTHER UNDER FAMILY CODE SECTION 7610 AND B’S**
19 **MATERNITY CLAIM MUST BE DISMISSED**

20 B admits that she is not D.’s biological mother. Rather, her request to be declared D.’s presumed
21 mother is premised on a gender-neutral application of Family Code¹ section 7611, subdivision (d).²
22 (See XXXX’s Statement Regarding Parentage (JV-505), pp. 2-3.) However, the recent Second
23 Appellate District opinion in *Amy G. v. M.W.* (2006) 142 Cal.App.4th 1 is squarely on point and requires
24 the juvenile court to dismiss B’s motion for presumed mother status.

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27 ¹ All further statutory references are to the Family Code unless otherwise specified.

28 ² Under section 7611, subdivision (d), a man is presumed to be the father if he “receives the child into
his home and openly holds out the child as his natural child.”

1 In *Amy G.*, the child, Nathan, resulted from an extramarital affair. When Nathan was one month old,
2 the biological mother, M.W. (“Kim”), gave custody of Nathan to the father and his wife, Amy, pursuant
3 to a written agreement. Thereafter, Kim filed an action to establish a parental relationship with Nathan.
4 Amy then filed her own action to be declared Nathan’s presumed mother, based in part on her claim that
5 she had received Nathan into her home and held him out as her own child under section 7611,
6 subdivision (d). The family court dismissed Amy’s action with prejudice, finding that she was not an
7 “interested person” entitled to bring an action to establish a mother-child relationship under section
8 7650.³ (*Amy G.*, *supra*, 142 Cal.App.4th 1, 5-7.)

9 Amy and the father appealed, contending as relevant here that: 1) Amy qualified as an “interested
10 person” under section 7650 and thus had standing to bring an action to establish a mother-child
11 relationship; 2) a gender-neutral application of the presumed father statutes, including section 7611,
12 subdivision (d), was required by law; 3) Amy was Nathan’s presumed mother under section 7611,
13 subdivision (d); and 4) to deny Amy standing to bring her maternity claim would violate equal
14 protection and due process. (*Amy G.*, *supra*, 142 Cal.App.4th 1, 9.)

15 The appellate court rejected each of these arguments and affirmed the trial court’s ruling. The court
16 said it was undisputed that Kim had given birth to Nathan, making her the natural mother under section
17 7610, subdivision (a).⁴ It acknowledged that the courts in *In re Karen C.*⁵, *In re Salvador M.*⁶, and *Elisa*
18 *B. v. Superior Court*⁷ had applied section 7611, subdivision (d) to give presumed mother status to
19 women who were not the biological parent. However, it found these cases to be distinguishable. In
20 *Karen C.* and *Salvador M.*, both dependency cases, the birth mothers were either deceased or absent and
21 thus there was no competing claim to maternity. (*Amy G.*, *supra*, 142 Cal.App.4th 1, 13.) Similarly, in

22 ³ Section 7650 provides in pertinent part: “Any interested person may bring an action to determine the
23 existence or nonexistence of a mother and child relationship.” (§ 7650, subd. (a).)

24 ⁴ Section 7610, subdivision (a) provides that a parent and child relationship between a child and a
25 natural mother “may be established by proof of her having given birth to the child”

26 ⁵ (2002) 101 Cal.App.4th 932.

27 ⁶ (2003) 111 Cal.App.4th 1353.

28 ⁷ (2005) 37 Cal.4th 108.

1 *Elisa B.*, a parentage dispute involving a same-sex couple, there was no competing claim to be the
2 children's *second* parent, a fact that was key to the Supreme Court's decision in that case. (*Ibid.*)

3 The court concluded that because Nathan's biological father and biological mother had both come
4 forward and asserted their parentage, "*it is not appropriate to invoke a gender-neutral reading of the*
5 *paternity presumptions to provide Nathan with another mother.*" (*Amy G.*, *supra*, 142 Cal.App.4th 1,
6 13, emphasis added.) Such a result would be impractical. (*Id.* at p. 14.) Further, the court rejected the
7 argument that Kim's and Amy's competing maternity claims should be balanced under section 7612,
8 subdivision (b)⁸ as was done in *In re Jesusa V.*,⁹ where a stepfather and biological father both vied to be
9 declared the presumed father under section 7611. Section 7612, subdivision (b) did not apply because
10 Kim's maternity was established under section 7610, subdivision (a), not section 7611. (*Id.* at p. 14.)
11 And, since it was impossible for Amy to establish herself as Nathan's legal mother, she could not be an
12 "interested person" entitled to bring an action to establish a mother-child relationship under section
13 7650. (*Id.* at p. 16.)

14 Finally, the court rejected Amy's equal protection argument, finding that she was not similarly
15 situated either to a woman in a same-sex relationship or to a nonbiological father who receives a child
16 into his home and holds the child out as his own. (*Amy G.*, *supra*, 142 Cal.App.4th 1, 16-18.) There are
17 inherent differences between men and women with regard to reproduction that justify different treatment
18 of biological mothers versus biological fathers. (*Id.* at pp. 17-18.)

19 In the present case, it is undisputed that mother gave birth to D. Mother is listed as the mother on
20 the birth certificate, which she certified and signed. Thus, mother's status as D.'s natural mother is
21 established under section 7610, subdivision (a). Moreover, mother's whereabouts are known and she
22 has made it clear that she is asserting herself as D.'s mother. The fact that mother is currently living in
23 XXXX is relevant, if at all, to the issue of custody, not maternity.

25
26 ⁸ Section 7612, subdivision (b) states: "If two or more presumptions arise under Section 7611 which
27 conflict with each other, the presumption which on the facts is founded on the weightier considerations
28 of policy and logic controls."

⁹ (2004) 32 Cal.4th 588.

1 It is also uncontested that Mr. XXXX, a party to this action, is D.'s biological father. Mr. XXXX is
2 listed as the father on D.'s birth certificate and this court found him to be the presumed father.
3 Therefore, D. already has two legal parents and B's motion for presumed mother status must be
4 dismissed with prejudice as this court cannot legally declare her to be D.'s mother.

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7 **CONCLUSION**

8 For the reasons stated, counsel for D. respectfully requests that the court deny B's request for
9 presumed mother status with prejudice. Such a ruling would not affect any request by B for placement
10 of D. as a nonrelative extended family member or for legal guardianship or adoption if the parents fail to
11 reunify.

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14 Date:

Respectfully submitted,
Law Offices of XXXX

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17 _____
18 By: XXXX XXXX
19 Attorney for Child
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