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9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**
10 **JUVENILE DIVISION**

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13 In the Matter of:
14 Los Angeles County Clients of Children’s
15 Law Center of California
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Minor(s).

**NOTICE OF MOTION; MOTION
FOR HEARING CHALLENGING
THE PRESIDING JUDGE’S
STANDING ORDER
REGARDING VISITATION
ISSUED 3/20/20; MOTION FOR
MODIFICATION OF SAID
STANDING ORDER;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTIONS**

**Date: March 23, 2020
Dept. 400
Hon. Victor Greenberg, PJ**

**TO THE HONORABLE VICTOR GREENBERG, ALL PARTIES, AND THEIR
ATTORNEYS OF RECORD:**

Children’s Law Center of California (“CLC”) hereby notices all counsel that on March 23, at 8:30a.m. in Department 400, or as soon thereafter as may be heard, counsel for Children’s Law Center of California will move the court to make the following orders:

- 1) Schedule a hearing on the Superior Court of California Juvenile Division County of Los Angeles Standing Order Temporarily Suspending

1 Dependency Court Ordered In-Person Visitation Due to COVID-19 issued
2 on March 20, 2020 to hear argument on the terms of the Standing Order,
3 any modification requests, and the detrimental effect on children and
4 families in the Los Angeles County child welfare system.

- 5 2) Modify the Standing Order issued on March 20, 2020 to allow continued
6 in-person visits in certain circumstances for parents, legal guardians, and
7 relatives, and non-related extended family members.
8 3) Modify the Standing Order issued on March 20, 2020 to provide stronger
9 direction for implementing substitute visits, in case in-person visits are
10 not feasible or safe, for parents, legal guardians, relatives, siblings, and
11 non-relative extended family members.

12 Counsel requests this matter be heard urgently, as the children in out-of-
13 home care have suffered, and will continue to suffer, undue harm and trauma due
14 to being separated from their families and denied any in-person visitation. These
15 motions are based upon the notice of motions, the attached points and authorities,
16 the attached exhibits, and upon any additional oral or documentary evidence as
17 may be presented at the time of the hearing.

18 **Statement of Facts**

- 19 1. On March 4, 2020, the Governor of California declared a State of Emergency
20 implement measures to help slow the spread of COVID-19.
21 2. On March 16, 2020, the Chief Justice of the Supreme Court of California
22 authorized Los Angeles County Superior Court's Emergency Orders under
23 Government Code section 68070, allowing the juvenile dependency division
24 to extend certain statutory timelines for detentions and adjudications and to
25 reduce court hearings to only detentions and urgent matters. (Los Angeles
Superior Court Emergency Orders ("Emergency Orders"), attached hereto as
Exhibit 1.)

- 1 3. On March 19, 2020, the Governor of the State of California issued a
2 statewide “Stay at Home” order. (Executive Order N-33-20, attached hereto
3 as Exhibit 2.)
- 4 4. Also on March 19, 2020, the Mayors of Los Angeles, Long Beach, and
5 Pasadena issued Safer at Home orders advising residents to stay at home,
6 and restricting travel and movement only under certain conditions.
- 7 5. The City of Los Angeles Safer at Home Order (“LA City Order”) mandates all
8 residents stay in their homes with a few exceptions. Residents are permitted
9 to travel for the purpose of obtaining groceries for their household or to
10 deliver to others, to provide care for minors, the elderly, dependents, persons
11 with disabilities, or other vulnerable persons. (LA City Order, attached
12 hereto as Exhibit 3.)
- 13 6. The LA City Order provides exceptions to the order to remain at home and
14 specifically states that, “compliance with an order of law enforcement or
15 court shall be exempt from this Order.” (Ex. 3, p. 3.)
- 16 7. Simultaneously, the County of Los Angeles Department of Public Health
17 published an order restricting social contact in order to minimize
18 transmission of COVID-19. (“LA DPH Order,” attached hereto as Exhibit 4.)
- 19 8. The LA DPH Order prohibited private group events and gatherings of 10 or
20 more people.¹ It also provided exceptions for travel for essential activities, to
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25 ¹ On March 21, 2020, the Los Angeles Department of Public Health issued a revised order prohibiting any gatherings in private or public (not just those with 10 or more people). As with the March 19, 2020 order, exceptions were made in the new order for travel to participate in essential activities and to purchase items from essential business, as well as to care for an elderly family member, care for minor children,

1 help care for children or the elderly, and to purchase essential goods. It
2 further provides that families may still engage in outdoor activities such as
3 walking, hiking, scootering, etc. as long as the familial group maintains a
4 safe social distance from non-family members. (Ex. 4, p. 2.)

5
6 9. The Presiding Judge of Los Angeles Superior Court, Juvenile Division issued
7 a Standing Order Temporarily Suspending Dependency Court Ordered In-
8 Person Visitation Due to COVID-19 (“LA Standing Order,” attached hereto
9 as Exhibit 4.) on March 20, 2020. The LA Standing Order “is effective
10 immediately, and shall continue until April 16, 2020 unless otherwise
11 modified by the court.” (Ex. 5, p. 2.)

12 10. The LA Standing Order mandates the following:

- 13 a. “Court ordered in-person visitation between parents, legal guardians,
14 siblings, and any other persons shall be temporarily suspended, subject
15 to modification by this court.” (Ex. 5, p. 2.)
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17 b. The Los Angeles Department of Children and Family Services
18 (“Department” or “DCFS”) “shall implement *wherever feasible* remote
19 visitation, by Facebook, Skype, telephone or any similar technology to
20 ensure children are provided with an opportunity to maintain contact”
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24 and help a dependent. The new order also allows families to participate in outdoor
25 activities together. In all respects relevant to this motion, except the change
identified above regarding the public or private gatherings, the new order is
consistent with the LA DPH order in effect at the time of the juvenile court’s
Standing Order. (Los Angeles County Public Health Order dated 3-21-20, found at
[http://publichealth.lacounty.gov/media/Coronavirus/COVID-19_March%2021-
HOOrder-7_00_FINAL2.pdf](http://publichealth.lacounty.gov/media/Coronavirus/COVID-19_March%2021-HOOrder-7_00_FINAL2.pdf).)

1 with persons who had been previously ordered in-person or remote visits
2 by the juvenile court. (Ex. 5, p. 2, emphasis added.)

3 c. If the persons with previously court ordered visitation or the children
4 lack necessary equipment to satisfy the order, DCFS “shall make efforts
5 to ensure such contact occurs.” (Ex. 5, p. 2.)

6
7 d. DCFS has the discretion, in cases where children have existing court-
8 ordered visitation for unmonitored overnight visits or where the
9 Department has the discretion to implement unmonitored overnight
10 visits, to allow those children to remain on an extended visit with their
11 parent(s) or legal guardian(s) for the duration of the effective dates of the
12 order. (Ex. 5, p. 2.)

13 11. [REDACTED]
14 [REDACTED]
15 [REDACTED]
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **INTRODUCTION**

4 The purpose of the juvenile dependency system is to protect children and
5 preserve family ties wherever possible. At a time where there are unprecedented
6 health emergencies affecting thousands of families in Los Angeles County, children
7 who are separated from their parents deserve a child-centered, thoughtful approach
8 to maintaining family connection using the least restrictive means possible. It is not
9 only the right of children and parents to build and maintain their relationship, but
10 the duty of everyone who serves the long-term interests of children and families to
11 ensure that in times of crisis, those relationship are not pushed aside or damaged.
12 The juvenile court’s March 20, 2020 standing order falls short of this obligation,
13 causing unnecessary harm and trauma to already vulnerable children in the child
14 welfare system.
15

16 **ARGUMENT**

17 **I. The Parent-Child Relationship is a Fundamental Right Protected by**
18 **the Constitutions of the United States and the State of California and**
19 **the Juvenile Court’s Order Suspending All In-Person Visitation**
20 **Between Parents and Their Children in the Los Angeles County**
21 **Dependency System is Constitutionally Invalid on Its Face.**

22 “The relationship between parent and child is so basic to the human
23 equation as to be considered a fundamental right, and that relationship should be
24 recognized and protected by all of society...[i]nterference with that right should only
25 be justified by come compelling necessity....” (*In re Smith* (1980) 112 Cal. App. 3d
956, 968-969; see *Stanley v. Illinois* (1972) 405 U.S. 645, 651; *Van Atta v. Scott*
(1980) 27 Cal.3d.424, 436.) The sanctity of family is so deeply rooted “in the

1 traditions and conscience of our people as to be ranked as fundamental” that they
2 are afforded protection under the Due Process Clause of the U.S. Constitution.
3 (*Moore v. East Cleveland* (1977) 431 U.S. 494, 504; *Michael H. v. Gerald D.* (1989)
4 491 U.S. 110, 122.) Visitation rights arise from the very fact of parenthood and the
5 constitutionally protected right to marry, establish a home, and bring up children.
6 (*Hoversten v. Superior Court of San Luis Obispo County* (1999) 74 Cal. App. 4th
7 636, 641.) The fundamental liberty interest of parents “does not evaporate simply
8 because they have not been model parents or have lost temporary custody of their
9 child to the State.” (*Santosky v. Kramer* (1982) 455 U.S. 745, 753.) Persons faced
10 with forced dissolution of their parental rights “retain a vital interest in preventing
11 the irretrievable destruction of their family life.” (*Id.*)
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14 **A. The Juvenile Court’s Order is an Unconstitutional**
15 **Infringement on the Parent-Child Relationship Because It is**
16 **Breathtakingly Broad.**

17 “While a court’s power is broad, it is not plenary.” (*In re Marriage of*
18 *Candiotti* (1995) 34 Cal.App.4th 718, 725.) A statute or rule that is overbroad
19 implicates the constitutional interest in due process of law. (U.S. Const., Amends. V,
20 XIV; Cal. Const., art. I, § 7, subd. (a), 24.) “A governmental purpose to control or
21 prevent activities constitutionally subject to state regulation may not be achieved by
22 means which sweep unnecessarily broadly and thereby invade the area of protected
23 freedoms.” (*Williams v. Garcetti*, (1993) 5 Cal.4th 561, 577, quoting *NAACP v.*
24 *Alabama* (1964) 377 U.S. 288, 307.) “The Fifth and Fourteenth Amendment
25 guarantee of ‘due process of law’ includes a substantive component, which forbids
the government to infringe certain ‘fundamental’ liberty interests at all, no matter

1 what process is provided, unless the infringement is narrowly tailored to serve a
2 compelling state interest.” (*Reno v. Flores* (1993) 507 U.S. 292, 302; see also *Parents*
3 *Involved in Cmty. Sch. V. Seattle Sch. Dist. No.1* (2006) 551 U.S. 701.) In the strict
4 scrutiny analysis, a court will determine whether a law is narrowly tailored by
5 determining if the state used the least restrictive means of achieving a compelling
6 state interest. (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32
7 Cal. 4th 527, 562.) When an order impinges on a fundamental right, strict scrutiny
8 will apply unless the effect on the fundamental right is merely “incidental,”
9 “marginal,” or “minimal.” (*Vergara v. State of California* (2016) 246 Cal. App. 4th
10 619, 645.) The strict scrutiny standard applies when there exists a real and
11 appreciable impact on, or a significant impact on, or a significant interference with
12 the exercise of the fundamental right. (*Fenn. v. Sheriff* (2003) 109 Cal. App. 4th
13 1466, 1490.)

16 Here, the LA Standing Order suspending all in-person visitation between the
17 approximately 17,000 of children in out-of-home care in Los Angeles County² with
18 their parents is a significant interference with the exercise of a parent’s
19 fundamental rights. The infringement of a parent’s fundamental right to visit and
20 maintain their parental bond with their child is not merely “incidental” or
21 “minimal.” The LA Standing Order is a violation of substantive due process because
22 it does not achieve the State’s interest of ensuring the safety and well-being of
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² California Child Welfare Indicators Project provides point in time placement data
of Los Angeles County children in placement. From October 2007 to October 2017
the average amount of children in out-of-home care in Los Angeles County was
16,895. <https://ccwip.berkeley.edu>

1 dependent children by narrowly tailored means. Instead, the LA Standing Order
2 immediately ceases all in-person visitation for children in out-of-home care with
3 their parent, regardless of individual circumstances or any individual risk analysis,
4 thereby infringing upon a parent and child’s fundamental right to maintain their
5 bond.

6
7 Although the Juvenile Court recognized visitation is mandated between
8 children in out-of-home care and their parents, it cited the COVID-19 pandemic,
9 emergency declarations by federal, state, and local authorities, and the need to
10 ensure the safety and well-being of dependent children as the basis for temporarily
11 suspending court ordered in-person visitation. (Ex. 5, p. 1.) During this
12 unprecedented public health situation, trying to protect the health and safety of a
13 dependent child, and the foster families/relatives with whom they reside, by
14 restricting social contact in order to minimize transmission of COVID-19 is
15 undoubtedly a legitimate state interest, but the LA Standing Order is not narrowly
16 tailored to meet this interest. In fact, the order makes a broad sweep upon a
17 fundamental right of thousands of children and families in the Los Angeles County
18 dependency system.

19
20 Unlike the LA Standing Order, the All County Letter issued by the California
21 Department of Social Services (“CDSS”) balances the state’s efforts to prevent the
22 spread of COVID-19 and the safety and well-being of dependent children by
23 recognizing that it may be prudent to suspend face to face visits with family
24 member for *some* children who are in out-of-home care while continuing with in-
25 person visitation in other circumstances. (CDSS All County Letter (“ACL”) No. 20-

1 25, dated March 21, 2020, attached hereto as Exhibit 14.) The ACL recognizes that
2 *all* children may struggle with changes to their visitation routines, and a lack of in-
3 person visits may be especially difficult for children who are very young. (Ex. 14, p.
4 8) As such it encourages that family connections that are essential to the well-
5 being of the child be maintained consistent with screening protocols and social
6 distancing recommendations to protect those children and the families who are
7 currently caring for them. (Ex. 14, p. 8.) The LA Standing Order fails to recognize
8 the harmful impact on children in banning all in-person contact with their biological
9 family, and it makes no provisions to allow for the type of in-person contact that is
10 permitted by the State and local emergency declarations and outlined in the ACL.
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12 In addition, a similar advisement was published by the New York
13 Administration for Children’s Services (“NY ACS”) on March 20, 2020. (NY ACS
14 Guidelines, attached hereto as Exhibit 15.) In it, NY ACS states that visitation
15 according to existing court orders should continue if possible, and they should be in-
16 person if consistent with the health and safety of the child, parent, case planner,
17 and foster parent. (Ex. 15, p. 7.) Recognizing the importance visitation has for
18 family reunification, bonding, and preventing additional trauma, NY ACS
19 recommends a more individualized approach to analyzing the safety of in-person
20 visits. (Ex. 15, pp. 7-8.)
21

22 Instead of assessing visitation and potential exposure to COVID-19 on a case
23 by case basis, like some other California counties, the LA Standing Order assumes
24 *all* parents, legal guardians, siblings and relatives pose an immediate health risk to
25 children in out-of-home care. The Honorable Shawna Schwartz, the Supervising

1 Judge of Santa Clara County Juvenile Dependency Court issued a Temporary
2 Emergency Order Modifying Dependency Court-Ordered Visitation on March 19,
3 2020 which allows for in-person visitation if the child would suffer significant
4 emotional harm from a suspension of in-person visitation and sets a presumption
5 that it would be significantly emotionally harmful to a child to cease in-person
6 visitation if the child and parent have overnight visits. (Santa Clara County
7 Emergency Order (“Santa Clara Order,”) attached hereto as Exhibit 16, p. 2.) The
8 Santa Clara Order also allows for social workers to assess on a case by case basis in-
9 person visitation if the caregiver is willing and the visitation can be accomplished
10 with following the Center for Disease Control recommendations around hygiene
11 practices. (Ex. 16, p. 3.) The Juvenile Court in Gwinnett County Georgia did not
12 require in-person visitation but encouraged in-person visits to safely occur. (Georgia
13 Order, Exhibit 17, p.1.) Rather than authorizing DCFS to work creatively with
14 parents, children, relatives, and foster families to support and facilitate family
15 visits, the LA Standing Order removes all discretion from social workers “to assess
16 when a caregiver and a parent can safely, willingly and appropriately coordinate
17 visitation.” (Orange County General Order No. 2 (“OC Order,”) attached hereto as
18 Exhibit 18.) DCFS, CLC, LADL and County Counsel proposed to the Juvenile Court
19 two alternative orders which could accomplish the goal of protecting the health and
20 safety of the children of Los Angeles County while ensuring that their fundamental
21 rights to their families were protected. The overbreadth of the LA Standing Order
22 undermines that shared goal because it ignores the significant emotional harm
23 many children will suffer from a suspension of in-person visitation with their parent
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1 or guardian. The unnecessary reach of the LA Standing order is a sweeping
2 violation of the fundamental rights of the children the order purports to protect.

3 **B. The LA Standing Order Denies Families In the Los Angeles**
4 **County Foster Care System Equal Protection Under the**
5 **Constitutions of the United States and the State of California.**

6 The Equal Protection Clauses of the Fourteenth Amendment of the United
7 States Constitution and Article I, Section 7, subdivision (a) of the California
8 Constitution have the same scope and effect. (*Brown v. Merlo* (1973) 8 Cal. 3d 855,
9 861.) The crux of the clause is the promise that persons similarly situated shall be
10 treated and protected equally by the laws. (U.S. Const., 14th Amend.; Cal. Const.
11 Art. I, § 7, subd. (a); *F.S. Royster Guano Co. v. Virginia* (1920) 253 U.S. 412, 415; *In*
12 *re Eric J.* (1979) 25 Cal.3d 522, 530.) Thus, “[t]he first prerequisite to a meritorious
13 claim under the equal protection clause is a showing that the state has adopted a
14 classification that affects two or more similarly situated groups in an unequal
15 manner. [Citation.]” (*Plyler v. Doe* (1982) 457 U.S. 202, 216; *Vergara v. State of*
16 *California, supra*, 29 Cal.App.4th at p. 644.)

17
18 When a statute affects similarly situated groups in an unequal manner, it is
19 evaluated as to whether there is a constitutionally sufficient reason to treat the
20 groups differently. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 831.) The general
21 rule is that the classification will be upheld if it is rationally related to a legitimate
22 state purpose. (*Plyler v. Doe, supra*, 457 U.S. at p. 217; *California Grocers Assn. v.*
23 *City of Los Angeles* (2011) 52 Cal.4th 177, 209.) This general rule gives way to strict
24 scrutiny review when the distinction drawn by a statute impinges upon a
25 fundamental right and the state bears the burden in establishing not only that it

1 has a “compelling interest that justifies the law but that distinctions drawn by the
2 law are necessary to further its purpose.” (*Shapiro v. Thompson* (1969) 394 U.S.
3 618, 660; *In re Marriage Cases*, *supra*, 43 Cal.4th at pp. 783, 832.)

4 Here, the standard of strict scrutiny applies as the LA Standing Order
5 impinges upon the fundamental right of children placed in out-of-home care to have
6 a relationship with their parents. (*In re Smith*, *supra*, 112 Cal.App.3d. at p. 968;
7 *Stanley v. Illinois*, *supra*, 405 U.S. at p. 651.) For children in out-of-home
8 placement, “[t]he fundamental liberty interest of natural parents in the care,
9 custody, and management of their child does not evaporate simply because they
10 have not been model parents or have lost temporary custody of their child to the
11 State.” (*Santosky v. Kramer*, *supra*, 455 U.S. at p. 753.)

12 The LA Standing Order creates disparate treatment of children in out-of-
13 home care as the LA DPH Order allows for familial contact and gathering. (*In re*
14 *Marriage Cases*, *supra*, 43 Cal.4th at p. 832.) “[T]ravel to and from Essential
15 Businesses, to work at or provide service to a Healthcare Operation or Essential
16 Infrastructure, to engage in Essential Activities, or to participate in an individual or
17 family outdoor activity, while practicing social distancing” is not prohibited. (Ex. 4,
18 p. 2.) Persons who are “family members or household contacts” may stand or move
19 together at Essential Businesses or during outdoor activities while practicing social
20 distancing to the extent practicable. (Ex. 4, pp. 1-2.) Moreover, the LA DPH Order
21 exempts “essential activities” which are defined as travel for purposes of, *inter alia*,
22 legally mandated governmental purposes, such as access to court, social and
23 administrative services, providing care for minors or other vulnerable persons, and
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1 complying with an order of law enforcement or court. (Ex. 4, p. 3.) The LA City
2 Order likewise excludes certain “essential activities” that include travel related to
3 providing care for minors, dependents, and other vulnerable persons and for the
4 compliance with a court order. (Ex. 3, p. 3.) Providing care or “support” for a family
5 member or friend “in another household” is also a permissible essential activity.
6 (*Id.*) Under these provisions, any child may continue in-person visitation with
7 virtually any person, from a friend to a parent with whom there is a court order for
8 visitation or custodial time. Thus, the LA DPH Order, the LA City Order, and the
9 statewide Executive Order all allow for children of separated parents to continue to
10 travel between households and for children to maintain family connections, whereas
11 the LA Standing Order strictly forbids children in out-of-home care from
12 maintaining visitation between with their parents and families.
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15 Parent/child visitation is considered such an essential activity, as it is
16 ordered by individual juvenile dependency judicial officers on a case by case basis
17 for the legally mandated purpose of reunification. (Welfare and Institutions Code
18 (“WIC”) §§ 361.5; 362.1.) Visitation is ordered by the juvenile court as an essential
19 component of reunification. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972.) The
20 essential quality of court-ordered visitation is based on the understanding that time
21 is of the essence when arranging visitation within the time constraints of
22 reunification as “the longer parent and child live with no visitation, the less likely
23 there will ever be any meaningful relationship.” (*Id.* at p. 973.)
24

25 Thus, the application of the plain language of the LA DPH Order results in
children being allowed to continue gathering with parents, family members, and

1 even household contacts, whether in a confined, enclosed space while being cared for
2 or outdoors with infection control precautions. For a child in foster care, on the
3 other hand, the impact of the LA Standing Order violates the foster child's
4 constitutional right to have and maintain a relationship with their parents, and is
5 compounded by the vast restriction from all in-person contact with her "legal
6 guardians, siblings, and *any other persons*." (Ex. 5, p. 2, emphasis added.) The
7 impact upon a foster child is to isolate the child not only from their parent with
8 whom they are constitutionally entitled to have a relationship, but also any person
9 whose visits the Juvenile Court had previously ordered, such as her relative,
10 siblings, family friend, or CASA, thereby depriving her the right to associate with
11 the rest of the county's children exercise. Therefore, the LA Standing Order fails the
12 strict scrutiny test as the order impinges upon the fundamental right to a parent-
13 child relationship and the Los Angeles County Juvenile Court has failed to establish
14 that the termination of all in-person visitation is necessary to protect the safety of
15 children from the COVID-19 pandemic.

18 Even under a rational basis review, the LA Standing Order cannot be
19 justified as the disparate treatment of foster children bears no relationship to a
20 legitimate state purpose. There is no rational basis established to support the
21 isolation of foster children as compared to the general population of children in Los
22 Angeles County. Studies confirm that foster children who visit more often with their
23 parents spend less time in the dependency system and have improved psychological
24 outcomes than those with less frequent contact. (Mech, *Parental Visiting and Foster*
25 *Placement* (1985) 64 *Child Welfare: Journal of Policy, Practice, and Program* 67-72;

1 McWey, Acock & Porter, *The Impact of Continued Contact with Biological Parents*
2 *upon the Mental Health of Children in Foster Care* (2010) 32 Child Youth Serv Rev.
3 1338-1345.) The LA Standing Order that purports to protect foster children instead
4 creates the harmful conditions of large-scale delay in reunification and
5 unwarranted psychological impact to the child. Nor can it be justified as a
6 protection of the foster child's physical health when other children are able to
7 gather under the orders of the LA DPH and the City of Los Angeles. There is no
8 compelling state interest served by the LA Standing Order where a foster child may
9 not visit with her own parents but may, to an absurd result, gather with "household
10 contacts" such as a foster parent's relatives. (*Plyler v. Doe*, *supra*, 457 U.S. at p. 217;
11 Ex. 5, p. 2; Ex. 4, p. 1, 2.)

12
13 **II. The LA Standing Order of March 20, 2020 Violates the Very Essence**
14 **of the Mandates of the Welfare and Institutions Code**

15 **A. The Court's Order Suspending Visitation for All Children in**
16 **Out-of-Home Care Violates Due Process**

17 Parents, legal guardians, and children in dependency are entitled to due
18 process notice of dependency proceedings affecting their custody rights and
19 interests in family reunification. (*In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1424;
20 *In re Antonio F.* (1978) 78 Cal. App. 3d 440.) Due process requires
21 "notice reasonably calculated, under all the circumstances, to apprise interested
22 parties of the pendency of the action and afford them an opportunity to present
23 their objections." (*In re Melinda J.* (1991) 234 Cal.App.3rd 1413, 1418, citations
24 omitted.) In dependency proceedings, due process requires notice and an
25 opportunity to be heard on the pending action or suggested change in court orders.

1 (*In re Matthew P.* (1999) 71 Cal. App. 4th 841, 851.) A parent or child must be given
2 a meaningful hearing, including the right to examine evidence and cross-examine
3 witnesses. (*Ibid.*)

4 In the context of visitation, changes to court-ordered visitation require a
5 party to file a petition under Welf. & Inst. Code section 388. (*In re Lance V.* (2001)
6 90 Cal. App. 4th 668, 677 [reversing court's order changing mother's visitation
7 because she was not noticed for a hearing on the modification and was not granted
8 an opportunity to object, present evidence, or contest the modification].) Section 388
9 procedures provide safeguards for parties in dependency matters that ensure due
10 process requirements are met before modifications to existing court orders can be
11 made. (*Ibid.*) Visitation cannot be changed to a more restrictive setting unless the
12 suggested modification is properly noticed, and the parent/legal guardian and child
13 have the opportunity to object, present evidence, and challenge the proposing
14 party's evidence. (*Ibid.*)

15 The LA Standing Order was issued by the Presiding Judge and made
16 applicable to all families whose children were in out-of-home care immediately,
17 without proper notice to any litigants, without following the proper procedure under
18 Welf. & Inst. Code section 388, without any hearing, and without an opportunity to
19 object or present evidence in opposition to the order. (Heimov Decl. ¶¶ 16-17.) This
20 is a clear violation of California law, which mandates, at minimum, notice and a
21 meaningful opportunity to object and be heard regarding any change to visitation
22 orders.
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1 **B. The Welfare and Institutions Code Mandates Frequent**
2 **Visitation Between a Parent/Legal Guardian and Their Child**
3 **Absent a Finding of Detriment.**

4 The focus of juvenile dependency law is on the preservation of the family as
5 well as the safety, protection, and physical and emotional well-being of the child.
6 (WIC § 300.2.) When a child is placed in out-of-home care, visitation between the
7 parent or legal guardian is ordered to maintain the ties between the parent or legal
8 guardian and the child. (WIC § 361.2.) Such visitation provided whenever
9 reunification services are ordered must be “as frequent as possible, consistent with
10 the well-being of the child.” (WIC § 362.1, subd. (a)(1)(A).)

11 An essential component of any reunification plan is visitation. (*In re Alvin R.*,
12 *supra*, 108 Cal.App.4th at p. 972.) The California Court of Appeal held that
13 visitation promotes reunification and so it should be as frequent as possible. (*In*
14 *re Luke L.* (1996) 44 Cal.App.4th 670, 679.) When a court’s order prohibits visitation
15 between a parent and their child, adequate reunification services are not provided.
16 (*In re David. D.* (1994) 28 Cal.App.4th 941, 954.) When a reunification plan provides
17 for visitation but “the subsequent actions of the court precluded any visitation
18 opportunities” there is no difference between a case in which a reunification plan
19 was not created and one in which it was created but not implemented. (*Ibid.*)

20 At the detention hearing, the juvenile court must make orders regarding
21 visitation for the child. (Cal. Rules of Court, rule 5.670.) “The absence of visitation
22 will not only prejudice a parent's interests at a section 366.26 hearing but may
23 'virtually assure[] the erosion (and termination) of any meaningful relationship”
24
25

1 between a parent and child. (*In re Monica C.* (1994) 31 Cal.App.4th 296, 307,
2 quoting *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1407.)

3 "Absent a showing of detriment caused by visitation, ordinarily it is improper
4 to suspend or halt visits even after the end of the reunification period. [Citations.]
5 Visitation may be seen as an element critical to promotion of the parents' interest in
6 the care and management of their children, even if actual physical custody is not
7 the outcome. [Citation.]" (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) Even
8 incarcerated parents are entitled to visitation with their child under certain
9 conditions, unless the visits would be detrimental to the child. (*In re Christopher H.*
10 (1996) 50 Cal.App.4th 1001, 1010.)
11

12 When crafting a visitation order, the juvenile court must not make an order
13 that jeopardizes the safety of the child. (WIC § 362.1, subd. (a)(1)(B).) The juvenile
14 court has the power to suspend visits when continuing them would be harmful to a
15 child's physical or emotional well-being. (*In re Brittany C.* (2011) 191 Cal.App.4th
16 1343, 1357; *In re A.J.* (2015) 239 Cal.App.4th 154, 160; *In re T.M.* (2016) 4
17 Cal.App.5th 1214, 1220.) The evidence of detriment must be "reasonable in nature,
18 credible, and of solid value..." (*Id.* at p. 581, quoting *Estate of Teed* (1952) 112
19 Cal.App.2d 638, 644.) Once the reunification period ends, the juvenile court is
20 required to permit ongoing visitation between the parent or legal guardian and the
21 child unless there is a finding that such visitation would be detrimental to the child.
22 (WIC § 366.21(h); *In re David. D., supra*, 28 Cal.App.4th at p. 954; *In re Heather B.*
23 (1992) 9 Cal. App. 4th 535, 544.) Even where reunification services are never
24 offered, the juvenile court may allow ongoing visitation unless there is a finding
25

1 that such visitation would be detrimental to the child. (WIC § 361.5, subd. (f); *In re*
2 *J.N.* (2006) 138 Cal.App.4th 450, 456-457.)

3 While referencing the current health crisis, the LA Standing Order makes no
4 specific mention of detriment to a child in visitation with their parents or legal
5 guardians, which is required before the court can terminate such visitation. Here,
6 the Juvenile Court unilaterally terminated in person visitation, the cornerstone of
7 reunification services, without complying with the law by first finding a specific
8 detriment to the individual child’s emotional or physical well-being, therefore
9 damaging the ties of the family and thwarting reunification.
10

11 **III. The LA Standing Order Is Outside the Scope of the Emergency**
12 **Provisions Authorized by the Chief Justice of the California**
13 **Supreme Court and Was Made Without Proper Legal Authority**

14 **A. The LA Standing Order Goes Beyond the Scope of Emergency**
15 **Authority Under Government Code Section 68115**

16 In times of emergency, such as a natural disaster, epidemic, substantial risk
17 to the health and welfare of court personnel or the public, or state of emergency
18 proclaimed by the Governor or President of the United States, Government Code
19 section 68115 grants the Chairperson of the Judicial Council authority make
20 temporary changes to certain provisions of criminal, civil, and child welfare law.
21 (Government Code (“GC”) § 68115.) Section 68115 enumerates the changes a
22 superior court and Chief Justice are allowed to make and does not grant any
23 additional broad powers to suspend or otherwise modify statutes that are not
24 among the enumerated list. (*Id.*)

25 The four provisions under Gov. Code section 68115 that apply to dependency
proceedings authorize the court to (1) declare the date upon which an emergency

1 condition prevented the court from conducting proceedings pursuant to WIC
2 sections 315, 334, or accepting a petition under WIC section 313, be deemed
3 holidays for purposes of computing time; (2) extend the expiration date for
4 temporary restraining orders; (3) extend the time periods provided in WIC sections
5 313, 315, only for the shortest period of time necessary under the circumstances of
6 the emergency, not to exceed 7 days; and (4) extend the time period provided in WIC
7 section 334 for a hearing on a juvenile petition, not to exceed 15 days. (GC § 68115,
8 subds. (a)(5), (7), (11), & (12).) Nothing in Gov. Code section 68115 allows the Chief
9 Justice of the California Supreme Court or any Presiding Judge of the Superior
10 Courts, to suspend the Constitutional and statutory rights afforded to parents/legal
11 guardians and children, or to deny them due process of the laws.
12

13 Pursuant to public health recommendations and in accordance with Gov.
14 Code section 68115, the Chief Justice of the California Supreme Court authorized
15 Emergency Orders for Los Angeles Superior Court on March 16, 2020. The
16 Emergency Orders provide that time mandated in the code for hearings pursuant to
17 Welf. & Inst. Code sections 315 and 334 be extended 7 and 15 days, respectively.
18 (Ex. 1, p. 2-3.) The Emergency Orders further provide that the time period
19 mandated in Welf. & Inst. Code section 313 within which children who are taken
20 into custody must be released from custody may be extended by no more than 7
21 days. (Ex. 1, p. 2.) Nothing in the Emergency Orders authorizes the Presiding Judge
22 of the Los Angeles Superior Court or the Presiding Judge of the Juvenile Division of
23 Los Angeles Superior Court to issue an order suspending in-person visits to an
24 entire class of families within the dependency system, infringing on both their
25

1 Constitutional and statutory rights. The LA Standing Order goes far beyond the
2 Court’s authority to modify courthouse procedures pursuant to Gov. Code section
3 68115.

4 **B. The LA Standing Order Violates Government Code Section**
5 **68070 and Was Adopted in Violation of the Procedures for the**
6 **Adoption of Local Rules and Policies under Government C Section**
7 **68071 and CCP Section 575.1**

8 Government Code section 68070 states, in relevant part, “[e]very court may
9 make rules for its own government and the government of its officers *not*
10 *inconsistent with law* or with the rules adopted and prescribed by the Judicial
11 Council.” (GC § 68070, subd. (a), emphasis added.) A court is thus without authority
12 to adopt local rules or procedures³ that “conflict with statutes or with rules of court
13 adopted by the Judicial Council, or that are inconsistent with the California
14 Constitution or case law.” (*In re Harley C.* (2019) 37 Cal. App. 5th 494, 501 [striking
15 down local court rule requiring joint trial statements because it violated GC section
16 68070 and parents’ due process under WIC 358.1], citing *Elkins v. Superior*
17 *Court* (2007) 41 Cal.4th 1337, 1351–1352.) This limitation in Gov. Code section
18 68070 applies whether the court's directive is characterized as a local rule or as a
19 court policy. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 612 [holding local court
20 policies, like local court rules, must be “consistent with the federal and state
21 Constitutions, statutes, rules of court, and applicable case law”].) This is true even
22 in the dependency context. (*In re A.L.* (2014) 224 Cal. App. 4th 354, 364 [striking
23
24

25 ³ A “local rule” is defined as “every rule, regulation, order, policy, form, or standard of general application adopted by a court to govern practice or procedure in that court or by a judge of the court to govern practice or procedure in that judge's courtroom. (Cal. Rules of Court, rule 10.613, subd. (a)(2).)

1 down blanket order issued by then Presiding Judge Michael Nash regarding media
2 access to juvenile dependency proceedings].) While dependency courts have broad
3 discretion to fashion orders to promote the best interest of the child, and may issue
4 blanket orders, those orders must be consistent with Constitutional law, statutes,
5 and court rules. (*Alliance for Children's Rights v. Los Angeles County Dept. of*
6 *Children and Family Services* (2002) 95 Cal.App.4th 1129, 1141.)
7

8 Even in the event that a local rule or policy is not contrary to Constitutional
9 law, statutes, or court rules, the local rule or policy must be adopted according to
10 strict guidelines in the California Code of Civil Procedure section 575.1, Gov. Code
11 section 68071, and Cal. Rules of Court, rule 10.613. (*Hall v. Superior Court* (2005)
12 133 Cal. App. 4th 908, 915 [striking down the functional equivalent of a local rule
13 because it was not promulgated under the procedures outlined in California Code of
14 Civil Procedure (“CCP”) 575.1 and GC 68071].) In order to adopt a local rule or
15 policy a court must, *inter alia*, prepare and distribute the proposed rule for
16 consideration of the judges of the court, submit proposed rules approved by the
17 judges of the court to local bar and other stakeholders for consideration and
18 recommendation, and if the rule is adopted by the judges of the court, it must be
19 submitted to the Judicial Council. (CCP 575.1, subs. (a)-(b); Cal. Rules of Court,
20 rule 10.613, subs. (d) & (g).) The court must also follow specific timeline
21 requirements for proposing new local rules, allowing for comment, and choosing an
22 effective date once the local rule is properly adopted. (GC 68701; Cal. Rules of
23 Court, rule 10.613, subs. (d), (g), & (i).) Local rules or court policies that do not
24 follow the strict procedures for adoption outlined in Code Civ. Proc. 575.1 and Gov.
25

1 Code 68701 have been ruled invalid by the Courts of Appeal. (See, e.g., *In re Harley*
2 *C.*, *supra*, 37 Cal. App. 5th at pp. 503-506; *Hall v. Superior Court*, *supra*, 133
3 Cal.App.4th at pp. 914-916; *Kalivas v. Barry Controls Corp.* (1996) 49 Cal. App. 4th
4 1152, 1158-1160.)

5
6 Given the fundamental liberties involved in a parent's interest in the custody
7 and control of his or her children, and the statutory requirements for visitation
8 mandated by Welf. & Inst. Code section 362.1, the LA Standing Order is contrary to
9 the Constitutions of the United States and the State of California, California
10 statutory law (WIC § 362.1), and caselaw requiring a specific finding of detriment
11 before a juvenile court may deny a parent or legal guardian visitation. It was also
12 adopted in violation of the due process rights of children, parents, and legal
13 guardians, in violation of Welf. & Inst. Code section 388. It also violates established
14 law which requires that any denial of visitation to a parent or legal guardian may
15 only be made after a finding of detriment. (See Motion, *infra*, at pp. 19-21.) In
16 addition, the LA Standing Order was adopted in violation of the procedural
17 requirements for adoption of local rules including, but not limited to, provisions
18 requiring the Court to offer the proposed rule to stakeholders for comment, follow
19 the guidelines for proposing new rules, obtain agreement of a majority of judges,
20 publish the proposed rule, and submit the rule to the Judicial Council. (See GC §§
21 68070, 68071; CCP 575.1; Cal. Rules of Court, rule 10.613.)
22
23

24 CONCLUSION

25 The LA Standing Order prohibiting all in-person visitation is considerably
more restrictive than recommendations and orders by public health and other

1 government officials. In spite of the difficulties of managing a child welfare system
2 in the midst of a public health crisis, other large county superior courts have crafted
3 narrowly tailored standing visitation orders that provide for maintaining safe in-
4 person visitation wherever possible. The First Proposed Order negotiated and
5 submitted jointly by CLC, LADL, DCFS and County Counsel provides both a more
6 nuanced, case by case approach to the health concerns regarding in-person
7 visitation while protecting the fundamental rights of parents/legal guardians and
8 maintaining focus on the needs of children currently separated from their parents,
9 legal guardians, and relatives. The Second Proposed Order endeavors to balance to
10 the safety concerns while still allowing individualized analysis and discretion for in-
11 person contact. It is this approach that most aptly protects the rights of children
12 and families using trauma-informed, thoughtful analysis while serving the
13 legitimate government purpose of providing protection to children currently in the
14 foster care system. For all the foregoing reasons, counsel respectfully requests this
15 Honorable Court grant the relief requested.

16
17
18 Respectfully submitted,

19 Dated: 3/23/20

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