

E080000

**IN THE CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION TWO**

Jennifer Ann Hatley,
Plaintiff and Appellant,

v.

James Braddy Southard,
Defendant and Respondent.

**CALIFORNIA WOMEN'S LAW CENTER'S APPLICATION
TO FILE AN AMICUS CURIAE BRIEF SUPPORTING
APPELLANT JENNIFER HATLEY;
PROPOSED AMICUS BRIEF**

On Appeal from an order denying a DVRO
Riverside County Superior Court No. DVHE2202266
The Honorable Jeffrey Zimel

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Amicus California Women’s Law Center—statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls—states that there are no interested entities or persons to disclose under California Rules of Court, rule 8.208.

June 21, 2023

Respectfully submitted,

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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.200(c) of the California Rules of Court, California Women's Law Center (CWLC) respectfully submits this application and proposed amicus curiae brief in support of Appellant Jennifer Hatley.

CWLC is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women. This case illustrates the critical need for appellate guidance from this Court on the granting of requests for DVROs by victims of intimate partner violence, particularly where the legal and psychological factors impact the manner and timing of a victim's evidence of abuse, the abuser's justifications for abuse unfairly undercut the victim, and the realities that the post-separation period between the abuser and victim often lead to an increase, both in frequency and severity, of continued abuse. The authorities cited in this brief, especially the secondary authorities, will assist the court in evaluating and deciding Jennifer's appeal.

Only amicus and its counsel funded this brief. No party or counsel for any party authored this amicus brief in whole or part, nor made any monetary contribution to fund the preparation or submission of this amicus brief.

June 21, 2023

Respectfully submitted,

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California Women's Law Center

[PROPOSED] BRIEF OF AMICI CURIAE

I. Introduction And Interest Of Amicus

The California Women’s Law Center (CWLC) is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women. This case illustrates the critical need for appellate guidance from this Court on the granting of requests for DVROs by victims of intimate partner violence, particularly where the legal and psychological factors impact the manner and timing of a victim’s evidence of abuse, the abuser’s justifications for abuse unfairly undercut the victim, and the realities that the post-separation period between the abuser and victim often lead to an increase, both in frequency and severity, of continued abuse. The trial court’s denial of Jennifer’s request for a DVRO exemplifies these problems, and should be reversed to afford Jennifer and her child the protection they desperately need and deserve. CWLC has no financial or other interest in the outcome of this proceeding.

II. Procedural, Neurological, And Psychological Hurdles Undercut Survivors’ Ability To Obtain Restraining Orders.

How and when survivors of intimate partner violence describe their abuse often frustrates their ability to obtain the potentially life-saving protections that DVROs were designed to provide. Here, for example, Jennifer (who appeared in propria persona in the trial court) submitted with her initial April 2022 DVRO request a declaration describing incidents of physical, financial, verbal, and emotional abuse. (AOB-15.) Months later, in June 2022, Jennifer submitted a supplemental declaration, disclosing that

her husband had also subjected her to “incidents involving sexual abuse.” (AOB-23.) When Jennifer attempted to provide details about that abuse at the hearing, the trial court stopped her, warning: “if you haven’t alleged [sexual abuse] in your paperwork, then I’m not going to allow you to talk about it here today.” (AOB-26-27.) The trial court did not ask probing questions regarding the alleged abuse and it did not consider *why* Jennifer may have waited until the hearing to recount details of that abuse.

The “why” is critical to explore and should be considered when courts rule on survivor DVRO requests. (*People v. Brown* (2004) 33 Cal.4th 892 [court may consider evidence regarding why survivors tell their stories the way that they do]; see also, *In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220, 227 [testimony at DVRO hearing not limited to the specific allegations in the party’s application].) Courts may expect a survivor to tell her story in what they deem to be a clear, logical, and trustworthy manner: chronologically and, as was the case here, up-front and in writing. In the context of DVRO requests, however, these expectations often blunt survivors’ ability to obtain DVROs. (See, e.g., *In re Ma.V.* (2021) 64 Cal.App.5th 11, 26 [“We are also mindful of society’s preconceptions that often damage the ‘credibility of victim-witnesses who present on the stand in atypical and non-paradigmatic fashions’ ... [w]e encourage continued diligence and education to guard against such preconceptions.”]; see also, *In re I.B.* (2020) 53 Cal.App.5th 133, 158 [taking legal action is not always a good measure of success because the legal system frequently provides an incomplete remedy to the violence due to the ... challenges of the courtroom atmosphere”] [internal citation and quotation marks omitted].)

Studies suggest that two primary factors may explain survivor testimony (and, in particular testimonial narratives of abuse, whether orally or in writing): (1) survivors often lack legal representation to help them navigate the ins and outs of DVRO requests and requirements , and (2) survivors may be neurologically and/or psychologically incapable of telling their stories in traditionally “trustworthy” narratives (i.e., linearly, coherently, and in detail in early court filings).

A. Survivors Face Procedural Hurdles to Obtaining DVROs.

Many survivors, like Jennifer, do not have the benefit of counsel in pursuing DVROs. As a result, they often lack knowledge of and ability to navigate the civil justice system. (Epstein & Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences* (2019) 167 U. Pa. L.Rev. 399, 404.) Survivors may not have an attorney to advise them of their rights to discovery and of certain procedural or pleading requirements. For example, as relevant here, unrepresented survivors are unlikely to know the importance of detailing their abuse in initial filings or that they can or should raise allegations of abuse in supplemental declarations (especially where, as in the case below, they have been advised by the court not to). This puts survivors at a significant disadvantage in DVRO proceedings, especially when facing a former or current intimate partner who *is* represented, as Jennifer did in the case below.

“Trial judges must acknowledge that in propria persona litigants often do not have an attorney’s level of knowledge about the legal system and are more prone to misunderstanding the court’s requirements.” (*Gamet v.*

Blanchard (2001) 91 Cal.App.4th 1276, 1284.) Courts should therefore consider how the lack of representation may impact the way a survivor presents her case. Without such consideration, survivors, like Jennifer, may be unable to obtain necessary protection simply because they cannot find or afford counsel.

B. The Neurological And Psychological Impacts Of Domestic Violence May Negatively Impact Survivors' Ability To Obtain Life-Saving Protective Measures.

For many survivors, “telling the truthful story of their abusive experience involves a narrative that is more impressionistic than linear, and that appears somewhat illogical or emotionally off-kilter.” (Epstein, *supra*, at p. 407.) Survivors may disclose details of their abuse piecemeal, over time, or in a manner that feels disjointed to their audience. Studies show that survivors may do so *as a result of* the very abuse from which they seek protection.

1. Neurological Hurdles Impede Testimony.

Survivors' ability to recount their stories of abuse up front (for example, in DVRO applications) and coherently may be hindered by the neurological effects of the abuse that they have suffered. Abuse between intimate partners often involves violent shaking, strangulation, or blows to the head, face and/or neck. (See Esopenko, Meyer, Wilde et al. (2021) *A global collaboration to study intimate partner violence-related head trauma: The ENIGMA consortium IPV working group*, *Brain Imaging and Behavior* 15, 475-503 (available at <https://doi.org/10.1007/s11682-020-00417-0>) [discussing study finding that approximately 23 million women in the United States live with head trauma related to intimate partner violence].)

In a study of three domestic violence shelters in New York, 92% of women questioned revealed that they had been hit in the head by their partners at least once, and 8% of that population reported having taken blows to the head over 20 times in the preceding year. (Epstein, *supra*, at pp. 407-408, citing Jackson et al., *Traumatic Brain Injury: A Hidden Consequence for Battered Women* (2002) 33 Prof. Psychol. Res. & Prac. 39, 41-42.) Forty percent of those same women reported losing consciousness as a result of their abuse at least once.¹ (*Ibid.*)

Each of these acts of violence may result in traumatic brain injuries, which disrupt brain function. (Hunnicut, *supra*, at p. 474.) Deprivation of oxygen caused by strangulation, for example, can cause damage to, and even death of, brain cells; while blows to the head (whether from being hit by an object, having your head smashed into/against something, or being violently shaken) can cause internal bleeding and nerve damage, among other things. (Epstein, *supra*, at pp. 407-408; see also, Esopenko, *supra* at p. 4 [“Cognitive dysfunction including impaired reaction time, response inhibition, working memory, attention, visuoconstruction, visual memory, as well as executive dysfunction have been reported in individuals exposed to IPV”] (internal citations omitted).)

Impaired brain function caused by intimate partner violence can impact a survivor’s physical, cognitive, and emotional wellbeing. (Hunnicut,

¹ Though not uncommon in domestic violence survivors, because traumatic brain injuries are often invisible (i.e., not accompanied by bruises or broken bones) they go undetected and unreported. (Hunnicut et al., *The Intersection of Intimate Partner Violence and Traumatic Brain Injury: A Call for Interdisciplinary Research* (2017) 32 J. Fam. Violence 471, 474-476.)

supra, at p. 474.) For example, survivors who have suffered from traumatic brain injuries may have diminished decision-making abilities, concentration, memory and judgment:

Even mild [traumatic brain injuries]—which can occur after only a short period without oxygen to the brain—can result in a significant and profound impact on memory and behavior, inducing symptoms such as confusion, poor recall, inability to link parts of the story together or to articulate a logical sequence of events, uncertainty about detail, and even recanting of stories.

(Epstein, *supra*, at p. 408 (internal citations omitted); see also, Valera & Berenbaum, *Brain Injury in Battered Women* (2003) 71 *J. of Consulting & Clinical Psychology* 797-804.) This impact can become cumulative—causing even more significant damage—as survivors endure additional abuse over time. (Hunnicut, *supra*, at pp. 474-475.)

In other words, as a direct result of the abuse that they have endured, survivors may be neurologically unable to recall specific details of their abuse or the general order of events, or to disclose their stories all at once. Thus, the impacts of abuse can prevent a survivor from telling her story of abuse in written court filings (whether in the initial application or through supplemental declarations) or in a facially “credible” way.² These impairments inevitably impact a court’s decisions to issue a DVRO. That should not be the case. Instead of requiring survivors to detail their abuse in

² The trial court did not make an explicit finding that Jennifer was not credible. However, in the larger context of requests for DVROs, the way and order in which survivors tell their stories also impacts whether courts find survivors credible (and therefore eligible for protection). (See Epstein, *supra*, at p. 406.)

written filings and thereby discounting survivor stories, in evaluating DVRO requests, courts should consider why a survivor might not follow traditional storytelling patterns. (See *In re Ma.V.*, 64 Cal.App.5th at p. 26.)

2. Psychological Hurdles Impede Testimony.

Survivors may also be negatively affected in their ability to describe their abuse (whether verbally or in writing) in early pleadings because of the psychological effects of the trauma that they have endured. Survivors who have experienced psychological trauma (for example, through coercive control, fear and intimidation, emotional abuse, and physical abuse) may struggle with behavioral difficulties (impulsivity, aggressiveness, substance misuse, etc.), emotional difficulties (depression, rage, suicidal ideation, or panic), and cognitive difficulties (memory loss, dissociation, and changes in personal identity), among others. (National Center for PTSD, *Complex PTSD*, https://www.ptsd.va.gov/professional/treat/essentials/complex_ptsd.asp; see also Lagdon et al., *Adult experience of mental health outcomes as a result of intimate partner violence victimisation: a systematic review* (2014) 5 *European J. of Psychotraumatology*, 24794, DOI: 10.3402/ejpt.v5.24794; see also Esopenko, *supra*; see also, Epstein, *supra*, at pp. 410-411.) Experts associate these symptoms with complex PTSD, which can be caused by trauma (such as that incurred by survivors of domestic violence. (*Complex PTSD, supra.*) Survivors may also experience dissociative flashbacks (like those commonly associated with Post-Traumatic Stress Disorder) or intense emotional responses to reminders of their abuse (including outbursts of anger or episodes of numbness). (Esopenko, *supra*; see also, Epstein, *supra*, at pp. 410-411.)

Studies show that a survivor's abuse might be encoded differently in her memories: Traumatic memories “often lack verbal narrative detail and context; they are encoded in the form of sensations, flashes, and images, often with little or no story.” (Epstein, *supra*, at p. 411.) As a result, a survivor may struggle to describe her abuse all at once, in writing (for example, in court filings), and even on directed examination.

The psychological effects of abuse can be long-lasting, impacting survivors for life, and, as with traumatic brain injuries, may affect how and when a survivor discloses facts about her experience. (Schafran, *Barriers to Credibility: Understanding and Countering Rape Myths* (2005) at p. 13 (available at: https://www.nationalguard.mil/portals/31/documents/j1/sapr/sarcvatraining/barriers_to_credibility.pdf) [discussing a study showing that “three years after the rape, a variety of psychological symptoms persist, leading researchers to believe that many victims never recover completely”].)

For example, survivors forced to confront their former or current intimate partners/abusers or to publicly recount the details of their abuse (including in written court filings) may be unable to tell a coherent or logical story—because they are experiencing flashbacks or overwhelming emotion. (Epstein, *supra*, at pp. 410-411.) “The predictable result is that she will skip, or forget, certain parts of her story—or, indeed, be unable to speak key elements of it out loud.” (*Id.* at p. 411.)

In addition, many survivors (and especially victims of sexual abuse) struggle to recount their stories in writing or under questioning due to denial that the abuse in fact occurred. (Schafran, *supra*, at p. 11 [“Denial of all or

part of the assault is an extremely common response”].) Survivors may also hesitate out of fear that they will be victim-blamed for “allowing” the abuse or re-traumatized as a result of being forced to re-live it. (*People v. Cogswell* (2010) 48 Cal.4th 467, 478 [discussing how given the nature of sexual assault/abuse, survivors are “particularly likely to be traumatized,” to suffer distress seeing their attacker in court, and to be hesitant to describe their assault/abuse]; Katirai, *Retraumatized in Court* (2020) 62 Ariz. L.Rev. 81, 88 [discussing the experience of survivors who experience trauma caused by, among other things, victim blaming when sharing their abuse with medical, behavioral health, and justice systems].) These psychological effects have significant detrimental impacts on how survivors tell their stories of abuse, and should not be used to discount survivors’ credibility in DVRO proceedings. Instead, courts should take them into consideration when evaluating DVRO requests.

III. Abusers Often Attempt To Justify Their Abuse To The Detriment Of The Victim.

Domestic violence abusers often attempt to justify their abuse with a myriad of reasons. Often, abusers will not use one of these tactics alone, but will use a mix of tactics to justify their abuse. These tactics are particularly problematic when considering victims of domestic violence often act in illogical ways that to an untrained judge may hurt the victims’ credibility. (See generally Epstein, *supra*.) In contrast, abusers will often seem calm and collected, and will not meet a judge’s preconceived expectations of an abuser. (*Ibid.*) Listed below are common ways in which abusers often attempt to justify their abuse.

DVRO. It is increasingly common for abusers to claim that *they* are actually the victim of abuse and so were only acting in self-defense. (*People v. Brackins* (2019) 37 Cal.App.5th 56, 69 [affirming ruling on expert testimony that stated “[b]lame shifting was not unusual in domestic violence situations”].) Abusers may try to minimize their abuse by stating that the victim was over-reacting or that the victim provoked the abuser. (Douglas, *The Criminal Law’s Response to Domestic Violence: What’s Going On?* (2008) 30 Sydney L.Rev. 439, 459-460.) In some cases, abusers may even *believe* they are the victim. (*Ibid.*) This may be particularly difficult when victims have fought back in self-defense leaving marks on the abuser. (Epstein, *supra*, at pp. 413-416.) Then it becomes a he-said-she-said situation and the credibility of the witness becomes even more important—which creates its own issues. (See *infra*, The Abuser Appears More Credible.)

Victims’ Failure to Leave the Relationship. A common misconception—and one that abusers often rely on—is that if the domestic violence was as severe as the victim claimed, the victim would simply have left the relationship. (See *Challenging the Myths*, Women’s Aid, <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/myths/>, last visited June 16, 2023.) This idea is wrong for many reasons.

First, victims may not leave relationships because they have legitimate reasons to fear for their physical safety. (See Campbell, *How Domestic Violence Batterers Use Custody Proceedings in Family Courts to Abuse Victims, and How Courts Can Put a Stop to It* (2017) 24 UCLA Women’s L.J. 41, 42.)

Second, the abuser may control the victim's finances, and the victim may have no other safe housing. (See Lindauer, *"Please Stop Telling Her to Leave."* *Where Is the Money: Reclaiming Economic Power to Address Domestic Violence* (2016) 39 Seattle U.L.Rev. 1263, 1265-1266.) This issue becomes even more significant when there is a child involved and the victim is worried about the safety of the child. (See Gordon, *Helping Survivors of Domestic Violence: The Effectiveness of Medical, Mental Health, and Community Services* (2d ed. 2016) p. 57); Susi, *The Forgotten Victims of Domestic Violence* (1998) 54 J. Mo. B. 231, 232.) But if the victim has resources, they are more likely to leave the abusive relationship. (See Boonin, *Ten Years Too Long—Reforming Social Security's Marriage Duration Requirement in Cases of Domestic Violence* (2016) 39 Harv. J.L. & Gender 369, 397.)

Third, repeated abuse may make a victim think illogically. (See Lindgren & Renck, *Intimate Partner Violence and the Leaving Process: Interviews with Abused Women* (2008) 3 Int'l J. of Qualitative Studies on Health & Well-being 113, 123; Epstein, *supra*, at pp. 413-416.)

Substance Abuse. Abusers may claim they have a substance abuse problem (e.g., with alcohol or drugs) and that is why they abused their partner. (See *Common Justifications for Abusive Behavior*, The Maine Coalition to End Domestic Violence, <https://www.mcedv.org/learn-about-abuse/common-justifications-for-abusive-behavior/> (last visited June 16, 2023).) However, correlation does not equal causation. Put another way, most who abuse substances do not abuse their partners. (*Ibid.*; *Blame Shifting and Minimizing: There's No EXCUSE for Abuse*, National Domestic Violence Hotline, <https://www.thehotline.org/resources/blame-shifting-and->

[minimizing-theres-no-excuse-for-abuse/](#) (last visited June 16, 2023).) Thus, an abuser fixing their substance issues will not necessarily mean they no longer abuse their partner. (*Ibid.*)

Mental Illness. Similar to substance abuse, abusers may claim they have mental health issues that are responsible for the abuse. (See *Common Justifications, supra*). This line of reasoning is faulty for the same reasons undermining the substance abuse justification discussed above.

The Abuser Appears More Credible. Generally speaking, abusers present in a calmer manner that makes their statements seem more truthful to untrained judges. (See *The First Annual American Bar Association Domestic Violence Commission And Journal Of Gender, Social Policy And The Law Domestic Violence Dedicated Section: Abuse And Discretion: Evaluating Judicial Discretion In Custody Cases Involving Violence Against Women* (2009) 17 Am. U.J. Gender Soc. Pol’y & L. 163, 174; *Domestic violence against women: Recognize patterns, seek help*, Mayo Clinic, <https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/domestic-violence/art-20048397> (last accessed June 16, 2023).) In contrast, victims of domestic violence often present in a non-linear way that makes their stories seem less credible. (*Ibid.*; *People v. Cogswell* (2010) 48 Cal.4th 467, 478 (domestic violence victims “frequently exhibit ‘counter-intuitive behavior’”); Epstein, *supra*, at p. 407 [“[F]or many domestic violence survivors, telling the truthful story of their abusive experience involves a narrative that is more impressionistic than linear, and that appears somewhat illogical or emotionally off-kilter. The tension between our desire for internal consistency and the realities of survivor stories can be explained in part by some of the

neurological and psychological consequences of domestic violence itself, such as traumatic brain injury and posttraumatic stress disorder.”].) The result of this phenomenon is that the abuser is more likely than the victim to appear credible.

IV. The Post-Separation Time Period Is Often The Most Dangerous For Domestic Violence Survivors.

It is undeniable that the post-separation time period involves a high risk of continued and increased danger for domestic violence victims, underscoring the importance and necessity of a DVRO for Jennifer. The unfortunate reality is that abuse does not immediately cease upon separation of a victim and the abuser. Rather, the time of separation is often *more* dangerous for domestic violence victims. (Zeoli et al., *Post-Separation Abuse of Women and their Children: Boundary-Setting and Family Court Utilization among Victimized Mothers* (2013) 28 J. of Family Violence 547; Klein, Battered Women’s Justice Project, Practical Implications of Current Domestic Violence Research for Probation Officers and Administrators (Mar. 15, 2015) pp. 9-10 [recounting statistics of rapid domestic violence re-offenses and stating “[s]tudies agree that for those abusers who reoffend, a majority do so relatively quickly”].)

Post-separation abuse can be defined as the ongoing, willful pattern of intimidation of a former intimate partner that includes (1) legal abuse, (2) economic abuse, (3) threats and endangerment to children, (4) isolation and discrediting, and (5) harassment and stalking. (Spearman et al., *Post-separation abuse: A concept analysis* (2022) 1-22 J. Adv. Nurs. 1, 3.) Post-separation abuse is designed to make the victim feel powerless, and a history

of power and control is central to understanding violence towards an intimate partner. (*Ibid.*) Given James's history of just this kind of abusive behavior, the statistics and realities of the risk of post-separation abuse warrants reconsideration of the trial court's denial of Jennifer's request for a DVRO, both for her and her child's safety.

A. The Risk and Severity of Abuse Often Increases Post-Separation.

Many studies conclude that the risk of danger to victims *increases* post-separation, and the severity of the abuse often *escalates*, even to the point of homicide. Such studies have determined that even accounting for individual characteristics of the victims, the single factor of separation demonstrates the strongest correlation for an increased risk of abuse, both to the victim and their children. This is particularly relevant where the past relationship involved the abuser engaging in strong, controlling behavior, which serves as a predictor that such abuse will continue and intensify post-separation.

Here, there are many examples of James's "controlling" abuse that reflect a precursor to further post-separation abuse that cannot be ignored: (1) restricting Jennifer's access to finances; (2) preventing Jennifer from working; (3) forcing Jennifer to rely on James for transportation by denying her use of her own vehicle; and (4) denying Jennifer phone service, as well as tracking her phone calls during periods of separation. (See AOB-16-19, 21-22.)

Other relevant forms of abuse suggesting a high risk of post-separation abuse include signs of jealousy and demeaning treatment of the victim. James has exhibited each of these behaviors, including vulgar and degrading

language aimed at Jennifer, and sexually degrading comments directed to her out of jealousy. (See AOB-19, 22.) Finally, the most concerning predictor of post-separation abuse is James's physical abuse towards Jennifer during their relationship, including smothering her with a pillow and threatening to strangle her. (See AOB-15-16.)

While conceptually the opportunity post-separation for an abuser to demonstrate reformed behavior over a period of time makes sense, the harsh reality is that abuse and violence often continue or escalate after a victim separates from an abuser. (See Araji & Bosek, *Domestic Violence, Contested Child Custody, and the Courts: Findings from Five Studies, in Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues* (Hannah & Goldstein eds. 2010) pp. 6-28.)

Such post-separation abuse targets the fundamental human needs of survivors and cause fear, entrapment, and loss of agency and autonomy. (Spearman, *supra*, at p. 1.) In other words, it creates a continuation or escalation of "intimate terrorism" that occurred during the relationship. (*Id.* at p. 3.) Post-separation abuse is characterized by the abuser's intent or motive to dominate and control their partner. (*Id.* at p. 1.) Accordingly, the abuse that occurs following separation, divorce, or child custody disputes requiring family court involvement is amplified by these pre-cursors, with nearly half (46%) of family homicides involving multiple victims occurring in this critical period. (*Id.* at p. 3.)

A 2010 report based on the National Crime Victimization Survey identified rates of domestic violence 30 times higher for separated women, and 9 times higher for divorced women, as compared with married women

based on 2-year rolling averages of reports of the prior 6 months. (Spearman, *supra*, at p. 2.) After separation from an abusive partner, up to 90% of women report continued harassment, stalking, or abuse. (*Ibid.*)

Post-separation abuse is perpetrated at the individual level, but facilitated and perpetuated by factors at the family (power differentials between intimate partners, stigma), community (legal system responses) and societal level (gender and patriarchal norms). (*Ibid.*) Accordingly, post-separation abuse must be understood holistically through the assaults on the personhood, dignity, autonomy, liberty, and self-worth of the human being, not just the physical harm.

Nevertheless, the risk of ultimate physical harm is very real. Approximately 1700 women are murdered by intimate partners every year in the United States, bereaving an estimated 3,300 children annually (*Id.* at p. 2.) Approximately 44% of the women were separated from their partners when killed. (*Ibid.*) This most severe consequence of post-separation abuse is associated with custody disputes and contact arrangements (*Id.* at p. 6.) Sadly, the combination of physical and legal separation created the greatest risk of murder by an intimate partner (*Ibid.*) In addition, the trait of a partner who was highly controlling increased significantly the risk of homicide for female partners who had left their abusers. The first three months and the first year following separation are the most lethal. (*Ibid.*) Commonly, female victims report continued threats and intimidation post-separation, including against their children. (Zeoli, *supra*.) Importantly, the denial of a restraining order petition increases the danger to victims from estranged partners. (*Id.* at p. 556)

The impact is similar with respect to nonlethal violence against victims. For example, U.S. researchers Fleury et al. (2000) found that over a third (36%) of the women who participated in their longitudinal study were assaulted by a male ex-partner during a 2-year period. (DeKeseredy et al., *Separation/divorce sexual assault: The current state of social scientific knowledge* (2004) 9 *Aggression & Violent Behavior* 675, 676.) Moreover, 40% of the divorced men who participated in Arendell's (1995) study stated that they threatened or used violence against their former spouses after separation. (*Ibid.*) Similarly, the data generated by the National Crime Victimization Survey reveal that separated women were assaulted three times more often than divorced women, and close to 25 times more than married women (Bachman & Saltzman, 1995). (*Ibid.*)

B. History of Control Behaviors is a Key Predictor of Post-Separation Abuse

Post-separation abuse is not a single act or incident. It is a pattern of behavior perpetrated during and following a separation over time, continuing a pre-existing history of abuse, perpetuating a strategic form of ongoing oppression and terrorism that invades all arenas of women's activity.

(Fersch, *Domestic Violence: Coercion And Control Equates To A Loss Of Liberty, Sense Of Self And Dignity For Women*, Forbes (Mar. 19, 2021), <https://www.forbes.com/sites/patriciafersch/2021/03/19/domestic-violence-coercion-and-control-equates-to-a-loss-of-liberty-sense-of-self-and-dignity-for-women/?sh=6f6848cd5b65>.) In addition, there is no evidence to suggest that finalizing a separation (such as a divorce) brings an end to the abuse. In many cases, the duration of post-separation abuse may be much longer than

the entire length of the separation or divorce process. Unfortunately, abuse often continues for years post-separation.

Post-separation abuse can take various forms and can include verbal abuse, sexual abuse and harassment, violence and physical threat, emotional/psychological abuse, economic abuse and financial exploitation, defamation and character assassination. Often separating partners are involved in legal battles, especially when something valuable is at stake, whether it is child custody or support. (Ali et al. (eds.), *Gender-Based Violence: A Comprehensive Guide* (2023) 118) Studies show that separated women were in fact more likely than women of all other marital status groups to be victims of domestic violence during most years from 1995 to 2010, even after controlling for the effects of characteristics that may be associated with their likelihood of victimization. (Rezey, *Separated Women's Risk for Intimate Partner Violence: A Multiyear Analysis Using the National Crime Victimization Survey* (2020) 35 J. Interpersonal Violence 1056, 1073.) Although all genders experience abuse, abuse towards women by their male partners following separation is enabled by patriarchal norms and is more lethal. Women are ten times more likely to be victims of domestic violence than men, especially in the post-separation context. (Spearman, *supra*, at p. 2.)

A key predictor of post-separation abuse is a history of control behaviors on the part of the abuser. Empirically, control behaviors have been found to predict the severity and frequency of violence in ongoing violent relationships. (Ornstein & Rickne, *When Does Intimate Partner Violence Continue After Separation* (2013) 19 Violence Against Women 617, 618-619.)

A highly systematic pattern exists in the characteristics of the abusive men who continue to abuse post-separation. Men who subjected their wives to control behaviors during the time of cohabitation are *heavily* overrepresented among the perpetrators of these crimes. (*Ibid.*)

James's history of controlling behaviors and abuse to Jennifer is well documented in the record, and discussed above. In conjunction with James's expressed jealousy, vulgar and degrading language, sexually degrading comments, and physical violence against Jennifer, the chances are high that he will continue to engage in post-separation abuse without the protection afforded by a DVRO. (See AOB 16-19, 21-22.) In fact, James has already committed post-separation abuse, even after moving out-of-state to Kentucky, including ordering Jennifer from using the ATM card, and taking Jennifer's car with him, knowing she would not be able to work or see her daughter. (See AOB 17-18.) Absent a DVRO, James's abuse will continue and escalate.

V. Conclusion

This Court should reverse the order denying Jennifer's request for a DVRO against James. The trial court ignored the procedural, neurological, and psychological hurdles impacting Jennifer that resulted in piecemeal evidence of the abuse she suffered; failed to see through James's veiled justifications for his abuse; and did not consider that the post-separation period may be the most vulnerable and violent period for increased abuse against Jennifer, especially given James's prior history of controlling behavior. Given the dynamics affecting how and when survivors of intimate partner violence describe their abuse, survivors' attempts to obtain the potentially life-saving protections that DVROs were designed to provide are

often unfairly frustrated with devastating consequences. This Court has the opportunity to correct and prevent that from happening to Jennifer.

June 21, 2023

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 4,923 words as counted by the Microsoft Word used to generate the brief, and uses a 13-point font.

June 21, 2023

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PROOF OF SERVICE

I, BESS HUBBARD, declare: I am a citizen of the United States and employed in Los Angeles County. I am over the age of eighteen years and not a party to this action. My business address is 2049 Century Park East, Suite 1700, Los Angeles, California 90067. On **June 21, 2023**, I served a copy of the:

CALIFORNIA WOMEN'S LAW CENTER'S APPLICATION TO FILE AN AMICUS CURIAE BRIEF SUPPORTING APPELLANT JENNIFER HATLEY; PROPOSED AMICUS BRIEF

by placing the documents listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail in Los Angeles, California, addressed as set forth below.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **June 21, 2023**, in Los Angeles, California.

s/Bess Hubbard _____