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**APPELLANT'S MOTION TO SEAL
[CALIFORNIA RULES OF COURT, RULES 8.46 and 8.47]**

Pursuant to rule 8.47(c) of the California Rules of Court, Appellant [REDACTED] respectfully moves to seal portions of her opening brief that reference information contained in three documents deemed confidential by statute: (1) an [REDACTED] Family Court Services Report; (2) a [REDACTED] Family Court Services Report; and (3) [REDACTED] drug test results, dated [REDACTED]. [REDACTED] has submitted a redacted, publicly filed version of her opening brief, and an unredacted version of her opening brief (the latter of which has been conditionally submitted under seal, pending this Court's ruling on this motion to seal).

This motion is based upon this request, the attached memorandum of points and authorities, and the attached declaration of Marco Pulido.

Respectfully submitted,
HAYNES AND BOONE, LLP

Dated: [REDACTED]

By: Marco A. Pulido
Marco A. Pulido
Attorney for Appellant
[REDACTED]

MEMORANDUM OF POINTS AND AUTHORITIES

A. The Standard for Sealing Records.

The Court of Appeal may “order a record sealed ‘only if it expressly finds facts that establish: [¶] (1) There exists an overriding interest that overcomes the right of public access to the record; [¶] (2) The overriding interest supports sealing the record; [¶] (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; [¶] (4) The proposed sealing is narrowly tailored; and [¶] (5) No less restrictive means exist to achieve the overriding interest.” (See *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 888–889; Cal. Rules of Court, rules 8.47., subd. (c)(2), 8.46, subd. (d)(6), 2.550 subds. (d)-(e).)

These standards are met here.

B. Legislatively Mandated Confidentiality Interests Outweigh the Public’s Right to View Those Portions of the Opening Brief Referencing Confidential Information.

██████ seeks to seal portions of her opening brief that reference: (1) an ██████████ Family Court Services Report; (2) a ██████████ Family Court Services Report; and (3) ██████████ drug test results, dated ██████████

Family Court Services Reports. Both of the Family Court Services Reports contain statements that the parties made during a mediation session, as well as the Child Custody Recommending Counselor's recommendations to the trial court. These records are confidential. (See Fam. Code, § 3177 [making mediation proceedings confidential]; *id.* § 3183 [recognizing Child Custody Recommending Counselors as mediators].) Since the Legislature has determined that these documents must remain confidential by law, sealing the portions of [REDACTED]'s opening brief that refer to information in the Family Court Services Reports serves an "overriding interest that overcomes the right of public access to the record." (See *H.B. Fuller Co. v. Doe*, *supra*, 151 Cal.App.4th at pp. 888–889; *Cox Broad. Corp. v. Cohn* (1975) 420 U.S. 469, 496 ["If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information."].)

Drug Test Results. The results of [REDACTED]'s drug test, which he took in connection with child custody and visitation proceedings, are likewise made confidential by law. (See Fam. Code, § 3041.5; *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150,

1173 [the “Legislature had procedural safeguards in mind when it implemented” section 3041.5 by requiring, among other things, that the “confidentiality of the test results be maintained”].)

Sealing those portions of [REDACTED] opening brief which refer to these drug test results therefore serves an “overriding interest that overcomes the right of public access to the record.” (See *H.B. Fuller Co. v. Doe, supra*, 151 Cal.App.4th at pp. 888–889; accord *Cox Broad. Corp. v. Cohn, supra*, 420 U.S. at p. 496.)

C. The Requested Sealing Here Is Narrowly Tailored by Least Restrictive Means. Unsealing the Redacted Portions of the Brief Will Likely Prejudice Confidentiality Interests Recognized by California Statutes.

[REDACTED] has submitted both redacted and unredacted versions of her brief to develop arguments that rely on confidential information. (See *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 788 [observing that redacted and unredacted versions of a document should be submitted].) Further, only those portions of [REDACTED]’s opening brief that reference information related to the confidential Family Court Services Reports and [REDACTED]’s confidential drug test results are sought to be sealed. (See *H.B. Fuller Co. v. Doe, supra*, 151 Cal.App.4th at pp. 888–889 [sealing should be narrowly tailored by least restrictive means].)

Accordingly, there is a substantial probability that statutorily protected confidentiality interests would be prejudiced if [REDACTED] motion to seal were to be denied. (See *ibid.*)

CONCLUSION

For the reasons set forth herein, [REDACTED] respectfully requests that her motion to seal be granted.

Respectfully submitted,
HAYNES AND BOONE, LLP

Dated: [REDACTED]

By: Marco A. Pulido
Marco A. Pulido
Attorney for Appellant
[REDACTED]

DECLARATION OF MARCO PULIDO

I, Marco Pulido, do hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California and an associate with the law firm Haynes and Boone, LLP. We have been retained on a pro bono basis by Appellant [REDACTED] for purposes of this appeal. I am one of the attorneys responsible for preparing the Appellant's Opening Brief in this case.

2. I have reviewed the three documents that are the basis for seeking to file portions of Appellant's Opening Brief under seal: (1) an [REDACTED] Family Court Services Report; (2) a [REDACTED] Family Court Services Report; and (3) [REDACTED] drug test results, dated [REDACTED]

3. The [REDACTED] Family Court Services Report identified in paragraph 2, which is identified as Exhibit [REDACTED] in [REDACTED] previously filed motion to augment the record on appeal, contains statements made by the parties and the Child Custody Recommending Counselor that are made confidential by California statutes. (See Fam. Code, § 3177 [making mediation proceedings confidential]; *id.* § 3183 [recognizing Child Custody Recommending Counselors as mediators].)

4. The [REDACTED] Family Court Services Report identified in paragraph 2, which is identified as Exhibit [REDACTED] in [REDACTED] previously filed motion to augment the record on appeal, contains statements made by the parties and the Child Custody Recommending Counselor that are made confidential by California statutes. (See Fam. Code, § 3177 [making mediation

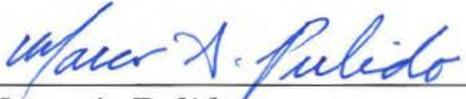
proceedings confidential]; *id.* § 3183 [recognizing Child Custody Recommending Counselors as mediators].)

5. [REDACTED] drug test results (dated [REDACTED]), which are incorporated into Exhibit [REDACTED] of [REDACTED] previously filed motion to augment the record on appeal, are made confidential by law. (See Fam. Code, § 3041.5; *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1173 [the “Legislature had procedural safeguards in mind when it implemented” section 3041.5 by requiring, among other things, that the “confidentiality of the test results be maintained”].)

6. [REDACTED] has submitted both a redacted, publicly filed version of her opening brief that excludes references to this confidential information and an unredacted version conditionally filed under seal.

7. The publicly filed version of Appellant’s Opening Brief has been carefully redacted to prevent disclosure of only those portions of the Appellant’s Opening Brief that reference information made confidential by law.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed [REDACTED], at Costa Mesa, California.



Marco A. Pulido

[REDACTED]

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

[REDACTED] APPELLATE DISTRICT

[REDACTED]

Appellant,

v.

[REDACTED]

Respondent.

APPEAL FROM THE [REDACTED] COUNTY SUPERIOR COURT
NO. [REDACTED]; HON. [REDACTED]

[PROPOSED] ORDER

The Court considered the Motion to Seal Confidential Portions of Appellant's Opening Brief. Good cause appearing, the Court orders as follows:

IT IS HEREBY ORDERED that the Motion to Seal Confidential Portions of Appellant's Opening Brief is GRANTED.

In granting Appellant [REDACTED]'s motion, this Court makes the following findings:

There exists an overriding interest that overcomes the right of public access to view the redacted portions of Appellant's Opening Brief—namely, information contained in confidential Family Court Services Reports and drug test results obtained in connection with child custody and visitation proceedings. (See Fam.

Code, §§ 3041.5, 3177, 3183.) This overriding interest supports sealing portions of Appellant's Opening brief—specifically, portions of pages 20, 21, 22, 23, 24, 25, 26, 30, 53, 61 of this brief; the request to seal is narrowly tailored to this confidential material by the least restrictive means; and there is a substantial probability that statutorily protected, overriding confidentiality interests will be prejudiced if portions of Appellant's Opening Brief are not sealed. Therefore, the unredacted version of Appellant's Opening Brief is ordered to be filed under seal.

Dated: _____

PRESIDING JUSTICE

PROOF OF SERVICE

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of Orange, State of California. My business address is 600 Anton Blvd., Ste. 700, Costa Mesa, CA 92626. My electronic service address is christine.loeza@haynesboone.com.

On December 18, 2018, I served a true copy of the attached **MOTION TO SEAL CONFIDENTIAL PORTIONS OF APPELLANT'S OPENING BRIEF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MARCO PULIDO; [PROPOSED] ORDER** on each party listed below, by placing same in an envelope(s) addressed as follows:

| | |
|--|------------|
| [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 7 | [REDACTED] |
| [REDACTED] [REDACTED] [REDACTED] 4 | [REDACTED] |

Each said envelope was sealed and the postage thereon fully prepaid. I am familiar with this office's practice of collection and proceeding correspondence for mailing with the United States Postal Service in Orange, California, on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on [REDACTED], in Orange, California.

Christine A. Loza