

No. [REDACTED]

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

[REDACTED] APPELLATE DISTRICT, [REDACTED]

[REDACTED]
Appellant,

vs.

[REDACTED]
Respondent.

[REDACTED]

FAMILY VIOLENCE APPELLATE PROJECT, ET AL. AMICI
CURIAE BRIEF IN SUPPORT OF APPELLANT [REDACTED]
[REDACTED]

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CERTIFICATE OF INTERESTED ENTITIES

Pursuant to California Rules of Court, rule 8.208, Amici Curiae Family Violence Appellate Project et al. know of no interested entity or person with either (1) an ownership interest of 10 percent or more in the party filing this Certificate, or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves.

Dated: October 21, 2022

Respectfully submitted,
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I. INTRODUCTION

The Domestic Violence Prevention Act (DVPA) is a thoughtfully crafted statutory scheme designed to provide survivors with protection and the means to safely separate from their abusive persons—a monumental undertaking. Such separation is not only physical but encompasses various considerations that vary from person to person depending on their unique individual needs to achieve safety and healing. Indeed, the “path to independence from an abusive relationship is neither linear nor the same for everyone” because there is no “singular battered woman profile.” (*In re I.B.* (2020) 53 Cal.App.5th 133, 155.)

The DVPA allows California courts to address the wide range of barriers a survivor faces at the point of separation by providing well-designed remedies to assist a survivor with protection from abuse and relief from its effects. Temporary Restraining Orders provide survivors *ex parte* protection from abusive persons and are meant to be issued on the same day they are requested. The relief a court can provide with a TRO is limited and its focus is on short term protection and triage for survivors and their children until a noticed hearing can be held.

Survivors are connected to their abusers in a variety of ways that cannot be undone or safely managed without a court order, particularly where there are children involved. As such, the Legislature has recognized that more than just temporary physical stay-away or no-contact orders are required to address this insidious public health crisis and begin to untangle the web

of harms a survivor faces when approaching the court. Only after a noticed hearing, where a victim has proven by a preponderance of the evidence that abuse occurred, are courts empowered to issue a Domestic Violence Restraining Order (DVRO), and with it the full panoply of court orders necessary for victims to achieve safety, healing, and lasting freedom from the abuse.

Temporary Restraining Orders allow a court to provide certain forms of protection and relief for survivors. These include orders that physically protect survivors and their family members from abuse and from direct contact and communication, as well as permission to record communications that violate the order. A court can order an abuser move out of the shared residence, order control over shared property like a vehicle, and order that the survivor may not be removed from any shared health or other insurance. A court may also provide temporary orders of child custody and for visitation in a Temporary Restraining Order.

After a noticed DVRO hearing, courts are empowered to issue a slew of additional and more long-term orders. These can include requiring the abuser successfully complete a 52-week batterer's intervention program, parenting classes, alcohol or drug abuse programs, or mental health treatment. The court may also order the abuser to pay child support and spousal support, and to pay redress for any physical injuries and economic damage from the abuse. The court can also order control of the family's cell phone plan to the protected party. And the court can make

custody and visitation orders that will remain in effect even after the DVRO expires.

Indeed, the Restraining Order After Hearing Form (DV-130) that a petitioner submits to apply for the Domestic Violence Restraining Order after hearing, lists 26 separate items of relief that are available, in addition to any other necessary orders, to effectuate the purpose of the DVPA.¹ Each of these items has been carefully identified by the Legislature as a potential barrier to resolving domestic violence.

Once a DVRO has been in effect for up to five years, a survivor can only renew the no contact and stay-away provisions of the order. To do so, the survivor must show a reasonable fear of future abuse. This makes sense at this stage. Having provided whatever tools the court believed necessary to resolve the abuse in applying for the initial order, on renewal the only issue is whether it is reasonable to fear that there will be more abuse in the future. Importantly, a survivor seeking renewal of a DVRO is not required to show a violation of the DVRO; a renewal can be based on the same abuse supporting the initial DVRO, even if it took place 5 years or more from the request for renewal.

When courts, as here, try to use Temporary Restraining Orders to bypass the crucial noticed hearing for an initial DVRO or when they deny initial DVROs by using the improper renewal standard, they block victims' access to the tools necessary to

¹ Jud. Council Cal. Courts Self-Help Guide, *Restraining Order After Hearing (CLETS—OAH) (DV-130)* (2022) <<https://selfhelp.courts.ca.gov/jcc-form/DV-130>> (as of Oct. 18, 2022).

safely separate from their abusive person and resolve the issues that led to the abuse. Family Code section 6320.5 expressly grants survivors “the right to a noticed [DVRO] hearing on the *earliest date* that the business of the court will permit, but *not later* than 21 days or, *if good cause* appears to the court, 25 days from the date of the order.” (Italics added.) When it issued Emergency Rule 8 during the COVID-19 pandemic, the Chief Justice and our court system further recognized that only in extreme circumstances should a Temporary Restraining Order (TRO) be extended beyond the 25 days allowed by statute, further delaying a survivor’s noticed DVRO hearing.

Unfortunately, the case at hand is not an isolated incident. In Amici’s experience, courts are more frequently and repeatedly continuing TROs without any request to do so from the survivor and most troubling, without the survivor’s informed consent as to what they are giving up by doing so. Such continuances may go on for months and months on end, resulting in the court failing to ever hear the case on its merits. And even if it finally does, the court may then incorrectly apply a renewal standard, and ultimately deny the DVRO based on improper criteria like the amount of time that had passed—criteria that only exists because of the improper granting of multiple TRO continuances.

A tangible and problematic result of courts failing to reach the noticed hearing stage, is that survivors are unable to take advantage of important orders only available after the noticed DVRO hearing, like orders to attend a batterer’s intervention program and parenting classes, that provide abusive parties

critical tools to put the best interests of their children before their need to further abuse and control the parent of their children. An absence of such orders can result, as in this case, in a court wrongly conflating protective parenting strategies—whereby survivors walk the fine line between putting themselves at further risk of abuse and ensuring their children can safely interact with an abusive parent—with a determination that the ameliorative and protective remedies available under the DVPA are not necessary because the survivor is interacting with their abuser as a co-parent. Breaking the cycle of violence for children exposed to domestic abuse becomes that much harder as a result.

II. RELEVANT FACTUAL BACKGROUND

A. The Trial Court Grants ██████████ Temporary Restraining Order and Extend it Multiple Times in Lieu of Holding a Full Hearing.

Appellant ██████████ ██████████ filed a DVRO request on ██████████, 2019 against ██████████ ██████████ from whom she is physically separated and in the process of dissolution. (Clerk’s Transcript (C.T.) at pp. 19-26). In her request, ██████████ stated ██████████ “pushed [her] and hit [her] on the arm”; “yelled at [her] angrily that he hated [her]” and “that [she] ruined his life”; and “threatened [to do] things to [her] that he did not want to do.” (*Id.* at p. 25.) Further, while “trying to take the kids against [her] will” ██████████ “tried to push [her] out of his way.” (*Ibid.*) ██████████ declared that ██████████ “would keep firearms and knives in the closet, and he was always worked up and anxious...would smoke marijuana all the time, drink energy drinks, and sleep very little

during the night.” (*Ibid.*) [REDACTED] stated she was “afraid that he will hurt [her] kids and [herself].” (*Ibid.*)

On [REDACTED] 2019, the Court issued a TRO to last until it held a hearing on [REDACTED] DVRO request 21 days later. (*Id.* at pp. 33–38.) [REDACTED] asked the court to issue the following orders in her request: (1) a stay-away order, to prohibit [REDACTED] from coming within 100 yards of [REDACTED] her home, her car, and her workplace; and (2) a personal-conduct order, to prohibit [REDACTED] from harassing, attacking, or contacting her. (*Id.* at p. 20.) Her request contained a handwritten exception to the personal-conduct order: “Brief & peaceful contact with regards to the kids.” (*Ibid.*) [REDACTED] also requested court orders for sole legal and physical child custody, supervised visitation pending hearing, child abduction orders, and child support. (*Id.* at pp. 21, 27–29.) She also asked for a property restraint, the right to record unlawful communications and for [REDACTED] “to attend an anger management program and a drug rehab program.” (*Id.* at pp. 21–22.)

The court granted much of the relief requested but critically, several requests were not granted because they could not be until the noticed DVRO hearing. The court ordered no visitation pending the noticed hearing, marked the property restraint as not requested, and did not grant the requests for anger management and a drug rehab program because they cannot be ordered absent a noticed hearing. (*Id.* at pp. 16, 42–43.)

On May 6, 2021, after multiple extensions of the TRO due to COVID-19 and a pending criminal case against [REDACTED] the

trial court held a hearing on [REDACTED] DVRO request. (Reporter's Transcript (R.T.) 1:24–2:5.) At the onset, the trial court asked if counsel for both parties had discussed extending the TRO “for some period of time up to a year.” (*Id.* 2:6–9.) The trial court stated that such extensions are “a standard thing [the court] discuss[es] and offer[s] to parties and counsel in a [domestic violence] hearing before [the court] actually start[s] to make findings.” (*Id.* 2:20-23.) The trial court also explained that it believed the “benefit” of extending the TRO “is that there is no permanent record of it and . . . it just falls off after the expiration of the temporary restraining order.” (*Id.* 2:10-13.)

[REDACTED] did not agree to yet another TRO extension, and her counsel noted that [REDACTED] had repeatedly violated the TRO and that another TRO extension would be prejudicial. (*Id.* 3:4-14.) The trial court erroneously stated “[the TRO] provides the same protections during its pendency as a restraining order after hearing would provide to the protected party” (*id.* 2:6-21); and, by extending the TRO “there’s no prejudice at all to your client.” (*id.* 3:15-17). The trial court further speculated, without basis, that a TRO extension may be beneficial to the parties’ young children. (*Id.* 3:1-3).

B. The Trial Court Denied [REDACTED] Domestic Violence Restraining Order Request Based On Its Erroneous View of the Date When the Last Incident Took Place.

After testimony and argument, the trial court denied the DVRO saying among other things that it could not determine whether domestic violence occurred. (*Id.* 64:18-21.) In addition, the trial court stated that the last incident of abuse occurred in

2018. (*Id.* 65:20-22.) During his testimony, ██████ admitted to understanding the terms of the TRO and contacting ██████ in violation of those terms. (*Id.* 33:8-35:18; 41:3-7; 62:6-12.) In only looking at the 2018 incident as possible abuse, the court used the length of time that had passed to deny the restraining order. (*Id.* 64:11-66:4.) During this time ██████ was under the protection of a TRO, and the length of time was a result of court's numerous TRO continuances.

C. The Trial Court Denied ██████ DVRO Request Based Her Alleged Lack of Fear.

The trial court denied ██████ request for a DVRO, reasoning in part that ██████ did not appear to fear ██████ because she “[had] partial dinners with Mr. ██████ “she has gone to the beach with Mr. ██████ and the children”; “she has gone to parks with Mr. ██████ and the children”; and she “allows him into the home by herself with just him and the children present.” (*Id.* 65:9-19.) Based on this, the trial court stated the “moving party does not entertain a reasonable apprehension of future abusive conduct.” (*Id.* 65:24-26). Thus, it is clear that the trial court was applying the renewal standard, rather than the initial DVRO standard, in denying ██████ request. (*Id.* 66:1-4.)

III. ARGUMENT

A. Temporary Restraining Orders Are Not a Substitute for Domestic Violence Restraining Orders After Hearing.

The Legislature has acknowledged that domestic violence is a serious public health crisis in California.² The COVID-19 pandemic exacerbated that crisis, particularly among marginalized populations.³ The range of harm domestic violence survivors may suffer is vast and varied.⁴ While immediate relief is necessary and important, it does not end the danger to the survivor, or the need for full and further protection. Many harms will require a longer-term solution. For example, children who are not physically separated from an abusive person face an increased risk of being subjected to child abuse. (*De la Luz Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389, 402-403 (conc. opn. of Streeter, J.) [pointing out that studies “show that in 30-60 percent of families where either child abuse or spousal abuse

² Cal. Bill Anal., A.B. 2089 Assem. Jud., 04/22/2014 pp. 3, 5 (“Domestic violence is a pervasive public safety and public health problem... [and] takes a devastating toll on victims, their families and their communities.”).

³ Drotning et. al, *Not All Homes Are Safe: Family Violence Following the Onset of the Covid-19 Pandemic* (2022) J. of Fam. Violence <<https://link.springer.com/content/pdf/10.1007/s10896-022-00372-y.pdf>> (as of Oct. 20, 2022) p. 6-10.

⁴ Gallaway, *What Recourse Do Vulnerable Immigrants Have?: Violations of The VAWA Confidentiality Provisions and the Pursuit of an Even Playing Field* (2020) 22 The Scholar 1, 2 (Domestic violence “can be expressed in various forms—including physical violence, sexual violence, stalking, or psychological aggression. Victims of abuse often experience multiple forms of violence at the same time.”).

exists, *both* forms of the abuse exist [citation], a phenomenon no doubt reflective of the sad reality that some batterers abuse children as a way to inflict pain on the abused spouse.”).⁵ An order for the abusive parent to successfully complete a batterer’s intervention program or parenting classes, which cannot be issued as part of a TRO, may temper these risks.

Survivors who do take the difficult step of separating from their abusive person and filing for protection under the DVPA are still vulnerable to being coerced back into the relationship. For example, in *N.T. v. H.T.*, despite a TRO prohibiting communication unless brief, peaceful, and necessary for child custody exchanges, H. repeatedly used child custody exchanges, to “urge[] N. to reconcile with him” including preying on her cultural and religious sensibilities to try and force her back into their relationship. ((2019) 34 Cal.App.5th 595 at 598, 600-601.) Similarly, in *In re Marriage of Fregoso and Hernandez*, there was “a pattern of behavior where Fregoso would be violent, seek forgiveness, bring gifts, and then they would have sex” under threat of further physical violence, which the trial court found continued even after a TRO was entered. ((2016) 5 Cal.App.5th 698 at 701-703.) The appellate court agreed this supported the

⁵ See also Harrison, *The Long-term Effects of Domestic Violence on Children* (2021) 41 Child. Legal Rts. J. 63, 64 (“This report indicates that there is an increased risk of children becoming victims of abuse themselves because of the link between domestic violence and child abuse. Among victims of child abuse, 40% also witness domestic violence in their homes. The National Domestic Violence Hotline found that children who witnessed domestic violence were fifteen times more likely to experience physical or sexual abuse compared to the national average.”).

need for long term protection with a DVRO. (*Id.* at p. 703.) According to the National Domestic Violence Hotline, “[o]n average, it takes a victim **seven times** to leave before staying away for good.”⁶ The Hotline lists 50 obstacles to leaving an abusive relationship, many related to cultural values, such as believing children fare better in two parent families, and family pressure to stay together.⁷ Survivors may also be faced with threats from their abuser if they leave, including physical threats of bodily injury or death, or losing custody of their children.⁸ And still others remain because of financial abuse, financial dependence, or the substantiated fear that leaving will result in homelessness.⁹ These latent or longer-term risks require different forms of relief to address—like detailed custody and visitation orders, financial orders, and comprehensive limited or no contact orders tailored to the individual’s circumstances.

1. **Temporary Restraining Orders are not intended to provide the same relief to survivors as Domestic Violence Restraining Orders entered after a noticed hearing.**

⁶ National Domestic Violence Hotline, *50 Obstacles to Leaving* <<https://www.thehotline.org/resources/get-help-50-obstacles-to-leaving>> (as of Oct. 18, 2022) (original boldface).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*; Jasinski, et al., *The Experience of Violence in the Lives of Homeless Women: A Research Report* (2005) p. 19 <<https://www.ojp.gov/pdffiles1/nij/grants/211976.pdf>> (as of Oct. 3, 2022).

To properly address the wide range of harms that survivors of domestic violence face, the DVPA provides procedures tailored to attack the causes and ameliorate the effects of domestic violence by utilizing civil protective orders. (Fam. Code, § 6200 et seq; Cal. Bill. Anal., A.B. 2089 Assem. Jud. 04/22/2014, p. 1.) (“[T]he effective issuance and enforcement of civil protective orders are of paramount importance in the State of California as a means for promoting safety, reducing violence and abuse, and preventing serious injury and death.”)

When a survivor approaches the court to request relief, courts are empowered to issue a TRO. (Fam. Code, §§ 6320 et seq.) Under Family Code section 6320.5, survivors have “the right to a noticed hearing on the earliest date that the business of the court will permit, but not later than 21 days or, if good cause appears to the court, 25 days from the date of the order.” Thus, the TRO is meant to provide short term relief until a full DVRO hearing can be held.

A TRO may be issued without notice to the opposing party. (*Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334 [Domestic violence TROs are of a short duration “[b]ecause they [can] issue without formal notice or an opportunity to be heard.”].) The Legislature has acknowledged that “[d]omestic violence victims face significant barriers to safely leaving an abusive relationship, including, but not limited to, a risk of retaliation and escalated violence by the abusive person.” (Assem. Bill No. 2089 (2013-2014 Reg. Sess.) § 1, subd. e.) Accordingly, providing notice to an

abusive person would contravene the very purpose of the DVPA itself.

Experts agree that the risk of retaliation is particularly high at the initial point of contact between the survivor and the court: “Notifying a proposed restrained person about an applicant’s request for a restraining order can trigger a significant risk of harm to the applicant.”¹⁰ Reinforcing this point, the Legislature passed AB 2694 in 2018, which prohibits a trial judge from denying a TRO brought by a domestic violence survivor solely on the basis of a lack of notice to the abusive person. (Assem. Bill No. 2694 (2017-2018 Reg. Sess.)) A TRO also must generally be granted or denied on the same day the petitioner files their request. (Fam. Code, §§ 246, 6326.)

However, while a TRO can be granted without notice, a Restraining Order After Hearing, or DVRO, cannot be entered without notice and the opportunity to respond and be heard in opposition. (Fam. Code, § 6340 et. seq.) This reflects the Legislature’s intent that a TRO only cover the immediate period of time preceding a full DVRO hearing. Indeed, the importance of having the truncated protection afforded by a TRO in place for only a short period of time was highlighted by the Chief Justice’s Emergency Rule 8(b), effective April 20, 2020, which ordered that any TRO set to expire during the COVID-19 emergency must

¹⁰ Judicial Council of Cal., *Domestic Violence Practice & Proc. Task Force, Final Report* (2008) < https://www.familyjusticecenter.org/wp-content/uploads/2017/10/Final-Report-of-the-Domestic-Violence-Practice-and-Procedure-Task-Force_.pdf > (as of Oct. 19, 2022), p. 14.

remain in effect for a period of time sufficient for a hearing on the long term order to occur, “*for up to 90 days.*” (Cal. Rules of Court, Rule 8(b) (adopted April 19, 2020)) (italics added).

The DVPA does not contemplate or encourage the practice of allowing multiple continuances of a TRO in lieu of the trial court holding a DVRO hearing at the TRO’s expiration. In fact, the Legislature has indicated a clear preference *against* issuing continuances of TROs. In 2010, AB 1596 was enacted and extended the time by which a court must hold a full DVRO hearing after a TRO is issued from 15 days to 21 days. (Assem. Bill No. 1596 (2009-2010 Reg. Sess), § 3.) The Legislature indicated that its intent in doing so was to avoid excess continuances of the TRO. It stated that “[b]y increasing the timeframe for hearings on protective orders to 21 days,” the bill would allow the court to set the DVRO hearing “at exactly three weeks from the time the temporary restraining order is issued.” (Cal. Bill Anal., A.B. 1596 Sen. Jud., 6/22/10, p. 12.) Importantly, the Legislature noted that this would “provide petitioners with additional time to serve the order and *potentially prevent many continuances and reissuances of temporary restraining orders* ...” (*Id.* at p. 12-13, italics added.)

Thus, the DVPA and its legislative history make clear that the intent of a TRO is to provide short term relief to survivors and protection from abuse and retaliation, until they are able to have a full noticed DVRO hearing. While the DVPA does provide for one continuance to the Respondent to file a response or obtain

an attorney, this is not a basis for continuing a reissued TRO out for more than 21 days. (Fam. Code, § 245.)

To be clear, there may be reasons why a survivor may request or agree to a continuance when they are given information about the differences between a TRO and a DVRO and the consequences. The DVPA is not designed or intended to take away a survivor's autonomy to make choices that they feel are best for their safety and those of their children particularly through stipulation or agreement. But in Amici's experience, continuances are occurring not because of survivors informed requests or agreements after knowing fully the differences between the two and the benefits and drawbacks. Instead, continuances are occurring based on mistaken beliefs about criminal proceedings, false equivalencies about TROs and DVROs, an abusive party's efforts to prolong and delay the process, and a reluctance by some trial courts to hold abusive persons accountable.

2. Temporary Restraining Orders do not provide the comprehensive relief of Domestic Violence Restraining Orders that survivors need.

DVROs, which are only issued after a noticed hearing, are intended to address long-term harm, including preventing acts of abuse, protecting the survivor, and providing "for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence." (Fam. Code, § 6220.) In order for a court to grant a DVRO, a petitioner must make a showing of past abuse by a preponderance of the evidence. (*Id.*, § 6203; *In re Marriage of*

Everard (2020) 47 Cal.App.5th 109, 122.) Acts of abuse include causing or attempting to cause bodily injury, sexual assault, placing a person in reasonable apprehension of imminent serious bodily injury, attacking, stalking, or threatening, and disturbing the petitioner's peace, among many others. (Fam. Code, §§ 6203, 6320.)

The differences in the relief provided by a TRO compared to a DVRO, reflect the Legislature's intent for the DVPA to provide comprehensive relief for those experiencing domestic violence. A TRO offers limited remedies consistent with its goals immediate relief for the survivor and their children including the risk of retaliation in separation, seeking court intervention or other factors. A TRO does not result in any findings of fact or statement of decision by the trial court.

a. Domestic Violence Restraining Orders offer more robust relief to survivors than Temporary Restraining Orders.

Consistent with its function to protect the survivor, prevent abuse, safely separate the parties permanently, and resolve the underlying causes of the abuse, a DVRO offers broader relief to survivors. The court can issue financial orders to help a survivor maintain independence from an abusive person including spousal support (*id.*, § 6341, subd. c), restitution for loss of earnings and out-of-pocket expenses, including, but not limited to, expenses for medical care and temporary housing, incurred as a direct result of the abuse or any actual physical injuries sustained from the abuse (*id.*, § 6342), child support (*id.*, § 6341, subd. a), orders about long term property control, payment of mortgage and other

liens on the property (*id.*, § 6342.5), and award attorney’s fees and costs (*id.*, § 6344).

The court can also transfer the rights to a phone plan from the abusive person to the survivor (*id.*, § 6347), provide permanently for protection of pets (*id.*, §§ 6340, 6320, subd. b), and enter long-term detailed custody and visitation orders (*id.*, § 6346). In addition, the restrained party can be ordered to successfully complete a batterer’s intervention program (*id.*, § 6343) and to take parenting classes, participate in drug or alcohol abuse programs, and/or obtain mental health services (*id.*, § 6346).

This relief is not meant to simply tide a survivor over for a short period of time but to address the underlying causes and effects of abuse, such as financial coercion, that can continue to manifest after the parties’ relationship ends. (*Id.*, §§ 6320 [“Abuse” includes “coercive control, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty,” including financial abuse, social isolation, and reproductive coercion.].) Research has shown that the number one reason a survivor stays or returns to an abusive situation is because they cannot afford to stay safe.¹¹ Nine out of ten California survivors of domestic abuse say having a safe place to live is “very” important in helping them feel safe (91%).¹²

¹¹ Allstate Foundation, *2018 National Poll on Domestic Violence and Financial Abuse* (2018) <https://allstatefoundation.org/wp-content/uploads/2020/03/2018-Research-Deck_Final.pdf> (as of Oct. 18, 2022), p. 30.

¹² Blue Shield of California Foundation, *Key Insights from a Survey of Californians about COVID-19, Domestic Violence, and*

Other key factors to safety for survivors are financial stability (88%), personal freedom (83%) and having a steady job (80%).¹³ The cost of abuse to survivors over their lifetime is \$103,767 for women and \$23,414 for men.¹⁴ Surveys show that 52% of survivors experience coerced and fraudulent debt.¹⁵

Notably, DVROs, as opposed to TROs can be and are meant to be renewed. Family Code section 6345, subdivision (a), provides that an initial DVRO “may be renewed upon the request of a party, either for five or more years, or permanently, at the discretion of the court, *without a showing of any further abuse since the issuance of the original order.*” In *Ritchie v. Konrad*, the appellate court interpreted section 6345 to mean that renewal of a DVRO requires reasonable apprehension of future abuse if the initial order expires. ((2004) 115 Cal.App.4th 1275, 1283.) The court reasoned, “section 6345 makes it unnecessary for the protected party to introduce or the court to consider actual acts of abuse the restrained party committed after the original order went into effect.” (*Ibid.*) Thus, the renewal standard is not meant

Racism (2020).

<<https://blueshieldcafoundation.org/sites/default/files/webinars/PerryUndem-Key-Insights-Survey-Californians-COVID-19-Domestic-Violence-Racism-Final-Report-Summary.pdf>> (as of Oct. 18, 2022), p. 3.

¹³ *Ibid.*

¹⁴ Center for Disease Control and Prevention, *Violence Prevention Fact Facts*

<<https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>> (as of Oct. 18, 2022).

¹⁵ Adams et al., *The Frequency, Nature, and Effects of Coerced Debt Among a National Sample of Women Seeking Help for Intimate Partner Violence*, Violence Against Women (2019), p. 7.

to determine whether a past act of abuse has occurred, because the initial DVRO would have already considered and addressed such abuse. Instead, the renewal standard requires the trial court only to evaluate apprehension of *future* abuse with the understanding that abuse has already occurred and that this prior abuse alone can be a basis for renewal.¹⁶

Accordingly, these added benefits afforded to survivors only after a noticed hearing on the merits of their claims should not be cast aside by trial courts. They were intentionally created by the Legislature to offer the greatest protection to survivors and to allow the abusive party the time to resolve the causes of their abuse. (Fam. Code, § 6220.) Additionally, when courts, attorneys or opposing parties mistakenly suggest that survivors will receive the same protection under TROs and DVROs, that there will be no prejudice or, as in this case, that this is generally better for children, survivors are denied accurate information on which to make informed decisions. This was not the system envisioned by the Legislature when it enacted the DVPA.

b. Domestic Violence Restraining Orders provide emotional benefits critical to survivors that Temporary Restraining Orders cannot.

Relatedly, one of the benefits of having a DVRO and its longer-term broad protection is that it fundamentally changes the power dynamics in the relationship by allowing the survivor to

¹⁶ The standard courts should use to determine whether an initial DVRO should be issued is “a past act or acts of abuse.” (Fam. Code, § 6300.)

reclaim some power from the abusive person.¹⁷ The DVRO “provides the woman with an opportunity to restructure how the couple interacts between themselves and with their children, and how they maintain their real and personal property, thereby changing the power dynamics.”¹⁸ This is precisely the purpose of the DVPA, to resolve the underlying causes of abuse. (Fam. Code, § 6220.)

In addition to the relief itself, a DVRO hearing also provides a forum for survivors to tell their story and receive validation, a form of empowerment important to healing and resolving trauma.¹⁹ This affords the survivor an opportunity, if they choose, to “tell their stories, telling the abusive person they object to the abuse, making a public record of the abuse, and regaining some control over their lives.”²⁰ In issuing a DVRO, the trial court is affirming that the survivor has shown proof of a past act or acts of abuse. The recognition from the court that domestic violence has occurred is important validation for survivors and sends a message of clarity and accountability to the abusive party. Having a DVRO hearing as a forum to express their story allows survivors to “experience healing, validation, and empowerment.”²¹

¹⁷ Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law* (2009) 42 U.C. Davis L. Rev. 1107, 1113.

¹⁸ *Id.* at p. 1129.

¹⁹ Johnson, *supra*, at 1129.

²⁰ *Ibid.*

²¹ *Ibid.*

DVROs also improve survivors' quality of life because they allow survivors to feel safer, reducing stress, and improving their quality of life.²² Indeed, survivors protected by DVROs reported reduced days of depression, anxiety, and stress.²³

Accordingly, when courts treat TROs the same as DVROs through multiple continuances they also deprive the survivor of a healing process that attaches with the final resolution of their claim.

3. Using the renewal standard in lieu of the standard to issue an initial Domestic Violence Restraining Order, is harmful.

As explained above, the DVPA is an extensive well-designed statutory scheme intended to provide survivors of domestic violence with a broad range of remedies and protection. (*Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 863-864.) The statute was enacted in response to "increased public concern" regarding domestic violence and was intended to "expand remedies to domestic violence victims." (*Id.* at p. 863.)

A DVRO granted after a finding of abuse by a preponderance of the evidence can last up to five years. (Fam. Code, § 6345.) Nothing in the plain language of the DVPA or caselaw asks petitioners to prove that they are afraid or that their fear is objectively reasonable to grant a DVRO. Only when that DVRO is renewed does a Court move to this question. (*Id.*, §

²² Logan et al., *The Economic Costs of Partner Violence and the Cost-Benefit of Civil Protective Orders* (2012) 26 J. of Interpersonal Viol. 1137, 1143-1147.

²³ *Id.* at p. 1143.

6345, subd. a.) This is because at the point of renewal under the DVPA, the robust protections of the DVRO have *already* been tailored by the trial court to address past abuse and resolve the causes of the violence. (*Id.*, § 6220.)

The Legislature enacted the DVRO renewal statute not only to prevent further acts of abuse, but also to prevent the re-victimization of survivors. The Legislature recognized that domestic violence can continue well after parties have separated and even when a restraining order is in effect. In addition, as explained *post*, pp. 40-42, having to relitigate the underlying abuse is traumatic for survivors.

Conflating the standard for an initial DVRO with the standard for renewal of a DVRO—before any initial DVRO has been issued—is contrary to the broad protective purpose of the DVPA and unfairly burdens survivors.

B. Courts Evading a Full Domestic Violence Restraining Order Decision Harm Survivors.

1. Requiring survivors to come into court more often for Temporary Restraining Orders causes additional unnecessary trauma.

Forcing a survivor to return to court again and again to “continue” their TRO gives the abusive person more opportunities to perpetrate abuse. Perpetrators can and do use the courthouse as a venue for continued abuse and trauma.²⁴ “For many

²⁴ Beeman, *The Need For More States to Adopt Specific Legislation Addressing Abusive Use of Litigation in Intimate Partner Violence* (2022) 20 Seattle J. for Social Justice 825, 835; Epstein & Goodman, *Discounting Women: Domestic Violence*

survivors, being in a courtroom, in close proximity to an abusive partner—particularly while being instructed to review his abusive behavior in detail—constitutes a potent trigger.”²⁵ This also can affect a survivor’s ability to defend their position in court as “a survivor may have flashbacks or feel overwhelmed by emotion.”²⁶

When an abusive person has been physically separated from the survivor, “the courtroom may be the only place left where an abusive person can continue their abuse.”²⁷ For example, when affirming the renewal of Michelle Ashby’s DVRO, the Court of Appeal pointed to the trial court’s reliance on, among other factors, “Jeff’s continual use of ‘threatening and aggressive language in Michelle’s presence, in and around the Courthouse’ as well as his spiteful efforts to insert Michelle’s abusive father into the [court] proceedings.” (*Ashby v. Ashby* (2021) 68 Cal.App.5th 491, 506.) Likewise, in an unpublished 2022 opinion the Court of Appeal affirmed another DVRO renewal where the trial court relied, in part, on the restrained party having flipped off the protected party in court as evidence that circumstances had not changed and so the fear of future abuse was reasonable. (*Jensen v. Jensen* (Mar. 30, 2022, B307354) [nonpub. opn.] pp. 6-7.)

Survivors’ Credibility and Dismissing Their Experiences (2019) 167 U. Pa. L. Rev. 399, 410-412.

²⁵ Epstein & Goodman, *supra*, at p. 410.

²⁶ *Id.* at pp. 410-411.

²⁷ Beeman, *supra*, at p. 831.

2. Serially returning to court is not only unsafe for survivors but drains litigants and the court of resources.

The Legislature has confirmed that decreasing the number of times one must renew a restraining order by increasing the maximum length of the restraining order is an important tool to effectuate the DVPA's purpose.²⁸ The drain on resources and disruption to life that survivors face by having to return to court more often is significant, including costs for childcare, transportation, and missed wages.

And the very practice of seeking multiple continuances is a tactic used by abusive persons to prolong litigation, intimidate the survivor, disrupt the survivor's life, and assert coercive control. Indeed, "survivors report that abusive persons repeatedly seek continuances to prolong the litigation as much as possible, which causes survivors to miss more time from work and adds significantly to the economic costs of domestic violence."²⁹

It is also a drain on the Court's own resources to have to spend more time holding more frequent hearings.

3. Stripping survivors of the opportunity to be protected by a Domestic Violence Restraining

²⁸ Cal. Bill Anal., A.B. 99 Sen. Jud. 06/07/2005 ("The problem with current law is that victims of domestic violence are having to go back to court every three years to get a protective order renewed. This bill addresses this by giving the court the authority to issue an order for up to five years if the court feels it is necessary and there is sufficient evidence to support that need. This bill is a cost saver because victims won't be coming back to court every three years.")

²⁹ Beeman, *supra*, at pp. 832-33.

Order causes unnecessary emotional trauma and harm.

When a survivor is not afforded the opportunity to reap the more comprehensive and long-term protections and orders that a DVRO can provide, they are often pulled into long protracted legal battles with their abusive persons.

Being forced to continually confront an abusive person in court, or outside of court in adversarial situations due to ongoing abuse that a TRO cannot adequately address, further traumatizes survivors and forces them into “survival mode.”³⁰ This is the exact opposite of the purpose of the DVPA and a DVRO, to “seek a resolution of the causes of the violence.” (Fam. Code, § 6220.) Without the robust protections of a DVRO, a perpetrator often forces himself back into the survivor or their kids’ lives.³¹

Survivors struggle with healing their trauma when forced back again and again to institutions they do not fully understand and who do not appear to take their fears seriously. Two key complaints survivors cite are the amount of time spent at dealing with litigation and their abusive person being taken more seriously by the court.³² Being forced to consistently interact with an abusive person in court stalls a survivor’s attempts to heal, recover, and resolve the underlying causes of the domestic

³⁰ Bryngeirsdottir & Halldorsdottir, *Fourteen Main Obstacles on the Journey to Post-Traumatic Growth as Experienced by Female Survivors of Intimate Partner Violence: “It Was All So Confusing”* (2022), Int’l J. of Environ. Research & Pub. Health, p. 8.

³¹ *Id.* at p. 9.

³² *Ibid.*

violence. Survivors “have reported that the need to endure prolonged contact with their abusive person due to the long-term nature of the process significantly interfered with their ability to heal and recover from the abuse.”³³

The legal system itself often mimics the dynamics of an abusive relationship, causing survivors more emotional distress and impacting how much they utilize the legal system.³⁴

To interrupt this harm, courts need to be mindful that continuances of TROs not requested by the survivor or to which they have not agreed after receiving accurate information should be limited. Crafting comprehensive relief through fulsome DVROs issued in a timely fashion must be the goal. By law, continuances should be limited to “good cause.” (Fam. Code, § 245.) And courts must be aware that pending criminal charges are not in and of themselves a sufficient basis for a continuance.³⁵

³³ Beeman, *supra*, p. 833.

³⁴ Hefner et al., *Legal Consciousness and Intimate Partner Violence Survivors’ Perceptions of Protection Order Violations* (2021), p. 9 <<https://doi.org/10.1007/s10896-021-00336-8>> (as of Oct. 18, 2022) (“[W]omen are often silenced and marginalized...while men are often given the benefit of the doubt, which maintains and perpetuates their control over their victims. Thus, similar power dynamics that are intrinsic to abusive relationships are often perpetuated through the [restraining order] process, including the differential treatment of survivors and abusive persons when violations are reported to the legal authorities.”).

³⁵ The Constitution does not ordinarily require a stay of civil proceedings pending the outcome of criminal proceedings. (*Federal Sav. & Loan Ins. Corp. v. Molinaro* (9th Cir. 1989) 889 F.2d 899, 902.) A civil defendant does not have the absolute right to invoke the privilege against self-incrimination. (*Fuller v. Superior Court* (2001) 87 Cal.App.4th 299, 305-306; *In re*

Enforcing the good cause requirement for continuances will go a long way toward preventing abusive persons from using the court system to further abuse their victim and enabling the DVRO process to help interrupt the cycle of violence.

C. Co-Parenting With an Abusive Party Is Not a Valid Basis For Denying a Survivor Protection.

Judges may improperly assume that a survivor who continues to have contact with their abusive person does not need the protection of DVRO. This would be wrong. The fact that a survivor might engage in co-parenting with their abusive person does not mean that the survivor is safe or feels safe and should not provide a barrier to a survivor accessing the protections afforded by a post-hearing DVRO. *See supra*, at pp. 34-37 (explaining plethora of benefits a DVRO provides a survivor).

Survivors may maintain contact with exes regardless of their fears because they are co-parenting in challenging circumstances and are seeking to put their children first. As explained by Jennifer Hardesty and Lawrence Ganong in their 2006 article “How women make custody decisions and manage co-parenting with abusive former husbands:”

Although fears factored into women’s desires to restrict their former husbands’ access to the children, fears also influenced women’s decisions to maintain

Marriage of Sachs (2002) 95 Cal.App.4th 1144, 1155-1156.) Instead, the court must conduct a particularized inquiry to decide whether the privilege is well founded for each specific area that the questioning party seeks to explore. (*Fisher v. Gibson* (2001) 90 Cal.App.4th 275, 285.) Only after the party claiming the privilege objects with specificity to the information sought can the court decide whether the privilege may be invoked. (*Ibid.*)

contact as did pragmatic concerns and family ideology... Thus, the process by which women made custody decisions involved carefully balancing often competing needs (e.g., safety vs. practical needs and concerns about the effects of divorce on the children) . . . Over time, safety concerns took precedence over pragmatic concerns and family ideology for some women, as their hopes for co-operative co-parenting relationships free from control and violence were not realized. Thus, for these women, separation was just one step in an ongoing process of ending the violence against them and gaining autonomy and control over their lives.³⁶

1. Co-parenting with an abusive person does not mean a survivor is or feels safe.

Even where a trial court properly considers apprehension or fear in the context of *renewing* a DVRO once an initial DVRO has already been issued, evidence that a survivor has co-parented or is co-parenting with their abusive person is not sufficient to show an absence of fear. Abuse continues post-separation. It does not end simply because an order is in place. “Even after the couple has separated, the abusive person may still be motivated to abuse his former partner. Abusive persons may devise new ways to maintain power and control over their former partner.”³⁷

The form of abuse often only shifts or changes post-separation, and an abusive person may rely more on *indirect*

³⁶ Hardesty & Ganong, *How women make custody decisions and manage co-parenting with abusive former husbands* (2006) 23 J. of Social & Personal Relationships 543, 558-559.

³⁷ Hayes, *Indirect Abuse Involving Children During the Separation Process* (2015) 32 J. of Interpersonal Violence 1, 2.

abuse like using children as proxies.³⁸ Indirect abuse involves “using third parties as proxies to manipulate, control, and monitor an abused partner, especially during the process of separation.”³⁹

“In some cases, children may be the only remaining connection between the former partners [who have separated]. Therefore, children may serve as the only ‘legitimate’ reason for an abusive person to maintain contact with his former partner. The abusive person can then use the children as proxies to control, intimidate, or manipulate the mother.”⁴⁰ Separation actually *increases* the odds that an abusive person will make threats of indirect abuse involving their children.⁴¹ Thus, co-parenting may often increase abuse by providing more opportunities for indirect abuse.

Caselaw has repeatedly recognized the ways in which abusive parties use co-parenting as a vehicle for further abuse and harm. In *De la Luz Perez v. Torres-Hernandez* the court held that child abuse, even if not witnessed firsthand, is abuse under the DVPA and is relevant to renewing a DVRO. ((2016) 1 Cal.App.5th 389.) In that case, having been restrained by the court from contacting his former wife, Torres-Hernandez turned to directly abusing their very young children. (*Id.* at pp. 393-394) When criminal child abuse charges were dropped, he taunted his ex-wife about it, texting her “the kids pay the consequences.” (*Id.*

³⁸ *Id.* at pp. 2, 4.

³⁹ *Id.* at p. 2.

⁴⁰ *Ibid.*

⁴¹ *Id.* at p. 11.

at p. 394.) In his concurrence, Justice Streeter discusses “the abundance of social science studies showing a direct correlation between abuse against a parent and abuse against the children of that parent,” and points out studies “show that in 30-60 percent of families where either child abuse or spousal abuse exists, *both* forms of the abuse exist [citation], a phenomenon no doubt reflective of the sad reality that some batterers abuse children as a way to inflict pain on the abused spouse.” (*Id.* at pp. 402-403)

In *Ashby v. Ashby* and *In re Marriage of Fajota*, the restrained parties turned to another common tactic for furthering control and abuse after being restrained from abusing a former partner -- recruiting children to surveil and report on the private activities of the protected parent. (*Ashby, supra*, 68 Cal.App.5th 491 at p. 501 [“Jeff offered their daughter \$10 to take Michelle's court-related documents, causing the child to feel anxiety and fear about doing something wrong or causing her father to become angry”]; *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1495 [“The couple's oldest child told Elenita that Romer had questioned him about Elenita's comings and goings, and that Romer had asked who takes care of the children when Elenita is not at home. The child reported that if he did not respond, Romer would spank him.”].)

Another key tactic abusive persons may utilize to perpetuate control and abuse post-separation is omnipresence, whereby the abusive person communicates with the survivor

often and takes any opportunity to create contact.⁴² “Although a survivor may be separated in physical space, technology allows perpetrators to overcome geographical boundaries.”⁴³ As a result, physical separation from an abusive partner may create neither safety, nor freedom. Stalking and harassing tactics, even those not reaching criminal levels, communicate that abusive persons can access and affect them at any time.⁴⁴ Abusive persons may use subtle behaviors that come across to others as being an ‘involved’ parent, such as creating additional excuses for contact,⁴⁵ but survivors recognize these tactics as intrusion or harassment. (See e.g., *Rybolt v. Riley* (2018) 20 Cal.App.5th 864, 867 [“The court also modified a parenting plan to prohibit Riley from attending their son's extracurricular activities during Rybolt's parenting time, after finding that Riley used the time as a pretext to harass and manipulate Rybolt in violation of the restraining order.”].)

Engaging in co-parenting post-separation does not negate a victim’s need for the protections of a DVRO. To the contrary, a robust protective order can help establish safe boundaries allowing safe child visitation while protecting against the known risks of post-separation abuse.

⁴² Spearman et al., *Post-separation abuse: A concept analysis* (2022) J. of Advanced Nursing, p. 5
<<https://onlinelibrary.wiley.com/doi/full/10.1111/jan.15310>> (as of Oct. 18, 2022).

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

2. Protective co-parenting is a tactic survivors engage to maximize children's safety during visitation even at risk to their own safety.

The facts of this case highlight the inherent dangers in failing to properly consider domestic abuse in the context of parenting. Here the trial court entered a TRO that permitted ██████ to contact ██████ for "brief & peaceful contact with regard to the kids." (C.T. at p. 34.) Yet it issued no actual visitation orders. (*Id.* at p. 39.) This was despite the fact that ██████ had specifically requested ██████ have visitation the second and fourth Saturday and Sunday from 7:30 am to 8:30 pm and every Monday, to be supervised by ██████ mother, Deborah ██████ (*Id.* at pp. 28-29.) Survivors understand that in some cases offering some contact is safer for both them and the children than no contact which could lead to escalation at a time where both survivors and children are at higher risk. It was only through subsequent mediation that ██████ request for a set schedule for supervised visitation was entered as a court order. (*Id.* at pp. 50-54; 84-87.)

██████ also understood the orders allowed for the parties to alter the visitation, if they both agreed. (R.T. 24:20-24.) While ██████ was berating ██████ accusing her of using him for immigration, pressuring her to drop the criminal charges and trying to reconcile with her, ██████ was prioritizing what she believed was safest for the children. ██████ testified that on occasion she went with the children and ██████ to a park and the beach, "because he didn't have his mother's help." (*Id.* 28:2-12.) She also testified that sometimes when she brought the children

to supervised visitation, ██████ was not yet present and she stayed and ate dinner with his mother and the children because “the agreement is that he can have the kids as long as him and his mother are [sic] there to watch them and []I wait for him to get there. . .” (*Id.* 25:7-13.) Understandably, rather than agreeing to unsupervised visitation, or risking backlash from canceling visitation, ██████ felt it was safest for the children that she be present with them even if she was afraid. Rather than understanding these dynamics and holding ██████ accountable for his actions, the trial court held it against ██████ that she was helping to facilitate the children’s visitation with their father in safe settings.

Even if the children are no longer directly exposed to the abuse because the perpetrator and victim no longer reside together, perpetrators of domestic violence often parent or co-parent in ways that are dangerous or detrimental to both the domestic violence victim and their children.⁴⁶

It is well established that children exposed to domestic violence are at risk of serious physical and mental detriment.⁴⁷

⁴⁶ Brinig et al., *Perspectives on Joint Custody Presumptions as Applied to Domestic Violence Cases* (2014) 52 Fam. Ct. Rev. 271, 273 (“Parenting problems commonly...associated with coercive controlling abuse include systematic interference with and undermining of the victim parent’s authority, the use of inflexible, controlling and authoritarian parenting, and the elevation of the abuser’s needs above those of their children.”)

⁴⁷ Carlson et. al., *Viewing Children’s Exposure to Intimate Partner Violence Through a Developmental, Social-Ecological, and Survivor Lens: The Current State of the Field, Challenges, and Future Directions* (2018) 25 Violence Against Women 6, 7 (“[T]he population-level health consequences of [intimate partner

Indeed, “[c]hildren’s exposure to [intimate partner violence (IPV)] imposes a significant burden on localities, states, and society at large, made explicit over the child’s lifetime and over a wide range of behaviors and outcomes, including increased use of social services, health care utilization, educational outcomes, workforce productivity, and criminal behavior. It is estimated that an IPV-exposed child’s average costs to the national economy over their lifetime will reach nearly US\$50,000, totaling over US\$55 billion for all children exposed to IPV in the United States.”⁴⁸ Positive parenting practices, such as parents’ use of nurturance (i.e., provision of emotional and physical care), consistency, responsiveness, and control has been linked to fewer behavioral problems in children exposed to IPV.⁴⁹ It is wrong to make ██████ protective parenting an obstacle to obtaining protection under the DVPA.

IV. CONCLUSION

For the reasons above, Amici support Appellant’s request this Court reverse the trial court’s denial of the DVRO Request, and remand with instructions to issue a DVRO. We urge the court to issue a published opinion that will help trial courts fully implement the purposes of the DVPA including guarding against TRO continuances without good cause, advancing robust DVRO orders, and properly contextualizing co-parenting and other

violence] exposure across the lifespan and the related social and economic costs of such exposure are enormous.”)

⁴⁸ *Ibid.*

⁴⁹ *Id.* at p. 14.

protective behaviors survivors engage in the process of separating from abusive persons.

Dated: October 21, 2022

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to California Rules of Court, rule 8.204, subd. (c)(1), and rule 8.360, subd. (b)(1), the enclosed brief of Amici Curiae Family Violence Appellate Project, et al. is produced using 13-point Century Schoolbook font in roman style, including footnotes. It contains approximately 8,674 words, which is fewer than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: October 21, 2022

BARNES & THORNBURG LLP

By: /s/ Amy C. Poyer
Amy C. Poyer

Attorneys for Amicus Curiae
Family Violence Appellate Project

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STATE OF CALIFORNIA
California Court of Appeal, [REDACTED]

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California Court of Appeal, [REDACTED]

Case Name: [REDACTED] v. [REDACTED]

Case Number: **G060832**

Lower Court Case Number: [REDACTED]

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