

1 [Petitioner/Respondent]: \_\_\_\_\_

2 Address line 1

3 Address line 2

4 Phone: \_\_\_\_\_

5 Email: \_\_\_\_\_

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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**FOR THE COUNTY OF \_\_\_\_\_**

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13 [Name] )

14 )

15 Petitioner, )

16 )

17 v. )

18 [Name] )

19 )

20 Respondent. )

21 )

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24 )

DECLARATION & MEMORANDUM OF  
POINTS &  
AUTHORITIES IN SUPPORT OF  
SOLE LEGAL AND PHYSICAL  
CUSTODY TO [PETITIONER/RESPONDENT]

CASE NUMBER: \_\_\_\_\_

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26  
27 As a female survivor of same-sex domestic violence (DV), I am submitting this  
28 memorandum to address potential issues that disproportionately impact female survivors of  
29 same-sex abuse. Specifically, this memorandum addresses my arrest for DV on [date], my lack  
30 of prior disclosure of the abuse at the hands of [opposing party name], and my ability to parent  
31 as a [sexual orientation] woman. These issues are interrelated, and have been discussed in  
32 social science literature and case law. I am also submitting this memorandum as a partial  
33 declaration to provide the court with more information about how these issues specifically  
34 affect me. I am willing and ready to testify in support of any factual matter related to my case,  
35 except as to matters stated on information and belief, in which case I believe them to be true.

1 First, regarding the arrest on my record, in that scenario, I was the victim, not the  
2 perpetrator, of DV. [Briefly describe what happened.] On that occasion, the opposing party  
3 and I were both arrested. [Or change to fit your case.] This is typical for female survivors in  
4 same-sex relationships.<sup>1</sup>

5 A study reviewing arrest rates in DV situations found that, “While approximately 1.3  
6 percent of all intimate partner violence cases involve dual arrests, 26–27 percent of domestic  
7 violence incidents involving same-sex couples result in dual arrest.”<sup>2</sup> Failure of adequate police  
8 response to DV calls can make survivors like myself less likely to “seek police assistance in the  
9 future,”<sup>3</sup> which underscores why victims of same-sex abuse are less likely to seek police  
10 assistance than different-sex couples.<sup>4</sup>

11 The higher dual arrest rate for female DV survivors in same-sex relationships is likely  
12 because of one or more of the following reasons: (1) responding officers often “are not trained  
13 to identify primary aggressor roles”;<sup>5</sup> (2) implicit or explicit bias or prejudice against women  
14 who are attracted to women, whether actual or perceived;<sup>6</sup> (3) the unjustifiable belief that a  
15 woman should be able to defend herself against her female partner;<sup>7</sup> (4) the damaging myth

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<sup>1</sup> Note, *The Disproportionate Effect of Mutual Restraining Orders on Same-Sex Domestic Violence Victims* (2020) 108 Cal.L.Rev. 1047, 1048 (*Mutual Restraining Orders*).

<sup>2</sup> *Id.* at p. 1057.

<sup>3</sup> See U.S. Dept. of J., *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* (2016) p. 8.

<sup>4</sup> Pertnoy, *Same Violence, Same Sex, Different Standard: An Examination of Same-sex Domestic Violence and the Use of Expert Testimony on Battered Woman’s Syndrome in Same-sex Domestic Violence Cases* (2012) 24 St. Thomas L.Rev. 544, 561.

<sup>5</sup> Hirschel et al., *A 10-Year Study of the Impact of Intimate Partner Violence Primary Aggressor Laws on Single and Dual Arrest* (2017) 36 J. of Interpersonal Violence 1, 28 (*10-Year Study*); Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention* (2015) 120 Penn. St. L.Rev. 337, 408 (“When lesbian partner violence does get reported, police officers who are ignorant of the dynamics of abuse between women often have difficulty identifying the primary aggressor.”) (*Stereotyped Offender*).

<sup>6</sup> Hirschel et al., *10-Year Study, supra*, 36 J. of Interpersonal Violence at p. 28; Note, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at pp. 1059-1068

<sup>7</sup> Note, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at pp. 1059, 1066-1067.

1 that women simply cannot abuse or batter;<sup>8</sup> and (5) more specifically, the unfounded  
2 misconception that female same-sex relationships are a sort of “utopian” ideal.<sup>9</sup> Additionally,  
3 when abused, “lesbian victims are more likely to fight back than are heterosexual women,”<sup>10</sup>  
4 but this does not constitute mutual battering,<sup>11</sup> or mean that I was a primary or dominant  
5 aggressor. These rationales, among others, are also employed by courts, implicitly or explicitly,  
6 when issuing mutual restraining orders to female same-sex couples.<sup>12</sup>

7 Second, I want to acknowledge this is the first time I am disclosing the abuse I have  
8 suffered at the hands of Respondent. Anticipating possible concerns regarding my credibility  
9 about these allegations, I wish to explain why I had not previously disclosed the abuse. One  
10 reason is that I had concerns about what would happen to my relationship with [children’s  
11 names], with whom I have a loving parental relationship. However, without a biological or  
12 adoptive connection, I feared losing custody and visitation to the opposing party, who does  
13 have such a connection. My fears are shared by many female survivors of same-sex abuse.<sup>13</sup>

14 Moreover, I have had doubts about whether I could even be a victim of DV, and have  
15 felt shame and embarrassment about what the opposing party had done to me.<sup>14</sup> Furthermore,

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<sup>8</sup> Duke & Davidson, *Same-sex Intimate Partner Violence: Lesbian, Gay, and Bisexual Affirmative Outreach and Advocacy* (2009) 18 J. of Aggression, Maltreatment & Trauma 795, 802 (*Affirmative Outreach*).

<sup>9</sup> See Duke & Davidson, *Affirmative Outreach*, *supra*, 18 J. of Aggression, Maltreatment & Trauma at p. 799 (“There is a myth among members of the LGB community of a lesbian utopia, or that relationships between women constitute ideal egalitarian relationships.”), italics and citations omitted; Ramsey, *Stereotyped Offender*, *supra*, 120 Penn. St. L.Rev. at p. 408.

<sup>10</sup> Qureshi, *Utilizing Florida’s Stance on Domestic Violence Laws Regarding Same-sex Couples as an Effective Model for National Uniformity* (2017) 28 U. of Fla. J.L. & Public Policy 143, 149.

<sup>11</sup> See Duke & Davidson, *Affirmative Outreach*, *supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-802.

<sup>12</sup> See Note, *Mutual Restraining Orders*, *supra*, 108 Cal.L.Rev. at pp. 1059-1068

<sup>13</sup> *Id.* at 1059.

<sup>14</sup> See Subirana-Malaret et al., *Intersectionality and Sex and Gender-Based Analyses as Promising Approaches in Addressing Intimate Partner Violence Treatment Programs Among LGBT Couples: A Scoping Review* (2019) 5 Cogent Social Sciences 1, 3-4; Woulfe & Goodman, *Identity Abuse as a Tactic of Violence in LGBTQ Communities: Initial Validation of the Identity Abuse Measure* (2018) 36 J. of Interpersonal Violence 1, 4-5, 13.

1 I feared the backlash I would face from my own community, as well as society at large, if I chose  
2 to disclose the abuse.<sup>15</sup> [If appropriate: Indeed, being a [sexual orientation] woman has boxed  
3 me into a sort of “double marginality,” in that my identity may not be fully embraced by either  
4 the heterosexual or lesbian and gay community.<sup>16</sup>]

5 Third, I want to address any doubts or concerns you may have about my ability to  
6 lovingly and effectively parent [children’s names] due to my sexual orientation.<sup>17</sup> Over a  
7 decade ago, the California Supreme Court concluded “that an individual’s capacity to establish a  
8 loving and long-term committed relationship with another person and responsibly to care for  
9 and raise children does not depend upon the individual’s sexual orientation, and, more  
10 generally, that an individual’s sexual orientation—like a person’s race or gender—does not  
11 constitute a legitimate basis upon which to deny or withhold legal rights.”<sup>18</sup> Moreover, when  
12 legalizing same-sex marriage in every state, the U.S. Supreme Court recognized this same fact  
13 when it explained “that gays and lesbians can create loving, supportive families.”<sup>19</sup> If that were  
14 not enough, most studies looking at “how parents’ sexual orientation may influence their  
15 children’s well-being” have shown “no or minimal differences between same-sex and

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<sup>15</sup> See Ramsey, *Stereotyped Offender, supra*, 120 Penn. St. L.Rev. at p. 409 (“Fearing the prejudice of society in general, as well as pressure not to air the dirty laundry of the LGBT community, lesbian, gay, bisexual, and transgender victims are less likely to seek help than women battered by men.”).

<sup>16</sup> See Duke & Davidson, *Affirmative Outreach, supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-803.

<sup>17</sup> See Patterson, Am. Psychological Assn., *Lesbian & Gay Parenting* (2005) p. 5 (“Unlike heterosexual parents and their children, however, lesbian and gay parents and their children are often subject to prejudice *because of their sexual orientation* that can turn judges, legislators, professionals, and the public against them, sometimes resulting in negative outcomes, such as loss of physical custody, restrictions on visitation, and prohibitions against adoption.”), italics added and citations omitted.

<sup>18</sup> *In re Marriage Cases* (2008) 43 Cal.4th 757, 782, overruled in part on other grounds by Cal. Const., art. I, § 7.5, added by initiative, Gen. Elec. (Nov. 4, 2008), commonly known as Prop. 8, as explained in *Strauss v. Horton* (2009) 46 Cal.4th 364, and *Hollingsworth v. Perry* (2013) 570 U.S. 693. Section 7.5 of article I of the California Constitution was effectively abrogated by *Obergefell v. Hodges* (2015) 576 U.S. 644 and *Perry v. Schwarzenegger* (N.D. Cal. 2010) 704 F.Supp.2d 921.

<sup>19</sup> *Obergefell, supra*, 576 U.S. at p. 668.

1 heterosexual couples in parenting skills and their children’s adjustments.”<sup>20</sup> Thus, my sexual  
2 orientation objectively has no negative impacts on my ability to care for [children’s names].

3 The above reasons help demonstrate why I, a female victim of same-sex abuse, am at  
4 much higher risk of being arrested—and was indeed arrested on [dates]. Further, the above  
5 explains why I had previously been unable to disclose the abuse I was suffering at the hands of  
6 the opposing party. Finally, as a [sexual orientation] woman, I am no less capable of loving,  
7 nurturing, and raising [children’s names]. While I understand generalizations of any research  
8 article may not apply to every female survivor of same-sex abuse, the conclusions I have cited  
9 to apply to me, as I have explained above.

10 Based on these considerations, and my other pleadings filed in this matter, I believe my  
11 request for sole legal and physical custody, and [supervised/unsupervised/no] visitation to the  
12 opposing party, is appropriate under the law and in the best interest of [children’s names].<sup>21</sup>  
13 Moreover, this court must provide for everyone’s safety in the visitation exchange orders, and  
14 ensure no one is exposed to abuse.<sup>22</sup> And in cases involving domestic abuse, the court must  
15 ensure that any visitation orders protect the health, safety, and welfare of all family members,  
16 including the parent who is a survivor of domestic abuse.<sup>23</sup> Finally, since there are allegations  
17 of abuse against the opposing party, if she is granted sole or joint legal or physical custody, this  
18 court must state its reasons in writing or on the record pursuant to Family Code section 3011,  
19 subdivision (5)(A).<sup>24</sup>

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<sup>20</sup> Ioverno et al., *Assessing Prejudice Toward Two-Father Parenting and Two-Mother Parenting: The Beliefs on Same-Sex Parenting Scale* (2017) J. of Sex Research 1, 2, citations omitted; see Patterson, *Lesbian & Gay Parenting*, *supra*, at pp. 5-15 (summarizing research).

<sup>21</sup> See Fam. Code, §§ 3011, 3020, 3040, 3044 & 3100.

<sup>22</sup> See Fam. Code, §§ 3020, subd. (c), 3031, subd. (b) & 3100, subd. (c); *Christina L. v. Chauncey B.* (2014) 229 Cal.App.4th 731, 736-737.

<sup>23</sup> See Fam. Code, § 3020, subd. (c); see, e.g., *De La Luz Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389, 401-403 (conc. opn. of Streeter, J.); *Rybolt v. Riley* (2018) 20 Cal.App.5th 864, 586-588 (providing an example of how a trial court can fashion a safe parenting plan for everyone).

<sup>24</sup> See *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 662; see also *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794, 805-807.

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

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

[Name]

[Petitioner/Respondent]