

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**

9  
10

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

11  
12

13 [Name] )

14 )

15 Petitioner, )

16 )

17 v. )

18 )

19 [Name] )

20 )

21 Respondent. )

22 )

23 )

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 male survivor of same-sex domestic violence (DV), I am submitting this  
28 memorandum to address potential issues that disproportionately impact male 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] man. These issues are interrelated, and have been discussed in social  
32 science literature and case law. I am also submitting this memorandum as a partial declaration  
33 to provide the court with more information about how these issues specifically affect me. I am  
34 willing and ready to testify in support of any factual matter related to my case, except as to  
35 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 male 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 male 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 men who  
14 are attracted to men, whether actual or perceived;<sup>6</sup> (3) the unjustifiable belief that a man  
15 should be able to defend himself against his male partner;<sup>7</sup> (4) the damaging myth that gay,  
16 bisexual, or queer men are “more sensitive” than others, so their “potential for violence” is  
17 “minimal”;<sup>8</sup> and (5) the toxic deceit that “boys will be boys,” which basically means men are

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<sup>1</sup> Note, *The Disproportionate Effect of Mutual Restraining Orders on Same-Sex Domestic Violence Victims* (2021) 108 Cal.L.Rev. 1046, 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.

<sup>6</sup> *Id.* at p. 28.

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

<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, 800 (*Affirmative Outreach*).

1 expected and allowed to be violent.<sup>9</sup> And when abused, men are more likely to “fight back,”  
2 although “this behavior does not constitute mutual battering”<sup>10</sup> or make me a primary or  
3 dominant aggressor. These rationales, among others, are also employed by courts, implicitly or  
4 explicitly, when issuing mutual restraining orders to male same-sex couples.<sup>11</sup>

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

12 Moreover, I have had doubts about whether I could even be a victim of DV, and have  
13 felt shame and embarrassment about what the opposing party had done to me.<sup>13</sup> Furthermore,  
14 as with many male survivors of same-sex abuse, I feared the backlash I would face from my own  
15 community, as well as society at large, if I chose to disclose the abuse.<sup>14</sup> Indeed, being a [sexual

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<sup>9</sup> Merrill & Wolfe, *Battered Gay Men* (2000) 39 J. of Homosexuality 1, 7.

<sup>10</sup> Duke & Davidson, *Affirmative Outreach, supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-802.

<sup>11</sup> See Note, *Mutual Restraining Orders, supra*, 108 Cal.L.Rev. at pp. 1059-1068

<sup>12</sup> *Id.* at p. 1059.

<sup>13</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.

<sup>14</sup> See Ramsey, *The Stereotyped Offender: Domestic Violence and the Failure of Intervention* (2015) 120 Penn. St. L.Rev. 337, 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.”).

1 [orientation] man has boxed me into a sort of “double marginality,” in that my identity may not  
2 be fully embraced by either the heterosexual or gay community.<sup>15</sup>

3 Third, I want to address any doubts or concerns you may have about my ability to  
4 lovingly and effectively parent [children’s names] due to my sexual orientation.<sup>16</sup> Over a  
5 decade ago, the California Supreme Court concluded “that an individual’s capacity to establish a  
6 loving and long-term committed relationship with another person and responsibly to care for  
7 and raise children does not depend upon the individual’s sexual orientation, and, more  
8 generally, that an individual’s sexual orientation—like a person’s race or gender—does not  
9 constitute a legitimate basis upon which to deny or withhold legal rights.”<sup>17</sup> Moreover, when  
10 legalizing same-sex marriage in every state, the U.S. Supreme Court recognized this same fact  
11 when it explained “that gays and lesbians can create loving, supportive families.”<sup>18</sup> If that were  
12 not enough, most studies looking at “how parents’ sexual orientation may influence their  
13 children’s well-being” have shown “no or minimal differences between same-sex and  
14 heterosexual couples in parenting skills and their children’s adjustments.”<sup>19</sup> Thus, my sexual  
15 orientation objectively has no negative impacts on my ability to care for [children’s names].

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<sup>15</sup> See Duke & Davidson, *Affirmative Outreach*, *supra*, 18 J. of Aggression, Maltreatment & Trauma at pp. 801-803.

<sup>16</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>17</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>18</sup> *Obergefell*, *supra*, 576 U.S. at p. 668.

<sup>19</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).

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

8 Based on these considerations, and my other pleadings filed in this matter, I believe my  
9 request for sole legal and physical custody, and [supervised/unsupervised/no] visitation to the  
10 opposing party, is appropriate under the law and in the best interest of [children's names].<sup>20</sup>  
11 Moreover, this court must provide for everyone's safety in the visitation exchange orders, and  
12 ensure no one is exposed to abuse.<sup>21</sup> And in cases involving domestic abuse, the court must  
13 ensure that any visitation orders protect the health, safety, and welfare of all family members,  
14 including the parent who is a survivor of domestic abuse.<sup>22</sup> Finally, since there are allegations  
15 of abuse against the opposing party, if he is granted sole or joint legal or physical custody, this  
16 court must state its reasons in writing or on the record pursuant to Family Code section 3011,  
17 subdivision (e).<sup>23</sup>

18 I declare under penalty of perjury under the laws of the State of California that the  
19 foregoing is true and correct.  
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<sup>20</sup> See Fam. Code, §§ 3011, 3020, 3040, 3044 & 3100.

<sup>21</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>22</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>23</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.

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

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

2 [Name]

3 [Petitioner/Respondent]