Case No. \_\_\_\_\_\_\_

**IMMEDIATE STAY REQUESTED**

[INSERT NATURE AND DATE OF THE PROCEEDING OR ACT SOUGHT TO BE STAYED]

|  |
| --- |
| **IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**APPELLATE DISTRICT** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,
*Petitioner*,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,
*Respondent*,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,
*Real Party in Interest*.

|  |
| --- |
| **PETITION FOR WRIT OF MANDATE, PROHIBITION, CERTIORARI, OR OTHER APPROPRIATE RELIEF; VERIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES (SUPPORTING EXHIBITS FILED UNDER SEPARATE COVER)** |

Related Appeal Pending

On Review of the Superior Court of California, County of \_\_\_\_\_\_\_\_\_\_\_\_\_

Case No. \_\_\_\_\_\_\_\_\_\_\_\_\_
The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_, Judge, Dept. \_\_\_\_

Telephone: [Superior Court Telephone Number]

[Attorney Name] (SBN \_\_\_\_\_\_)

[Attorney Name[ (SBN \_\_\_\_\_\_)

[LAW FIRM OR ORGANIZATION]

[mailing address]

Telephone: [phone number]

Facsimile: [fax number]

[Attorney Email]

[Attorney Email]

Attorneys for Petitioner,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, rules 8.208 and 8.488, the undersigned certifies that they know of no other entity or person other than the parties to this proceeding who has a financial or other interest in its outcome.

|  |  |
| --- | --- |
| Dated:  | [LAW FIRM OR ORGANIZATION]By: [Attorney Name]Attorneys for Petitioner [PETITIONER FULL NAME] |
|  |  |

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1. INTRODUCTION TO VERIFIED PETITION AND SUPPORTING MEMORANDUM

Petitioner [Petitioner Full Name] (“[Petitioner First Name]”[[1]](#footnote-1)) seeks this Court’s immediate intervention to challenge the order of Respondent [County Name] County Superior Court (“Respondent Court”) [insert description of order being challenged]. Real Party in Interest [Real Party in Interest Full Name] (“[Real Party First Name]”) . . . [insert brief summary of issue and irreparable harm that Petitioner will suffer without writ relief]

[insert only if there is a related pending appeal] This petition for a writ of mandate, prohibition, certiorari, or other appropriate relief is filed in connection with the related pending appeal in [Appeal Case Name], Court of Appeal Case No. [Appeal Case Number], pertaining to the underlying action [County Name] County Superior Court Case No. [Superior Court Case Number].

Accordingly, [Petitioner First Name] respectfully requests this Court issue a writ of mandate, prohibition, certiorari, or other appropriate relief commanding Respondent Court . . . [insert requested relief]

1. VERIFIED PETITION
	1. Related Appeal Pending

[insert only if there is a related pending appeal] This petition for a writ of mandate, prohibition, certiorari, or other appropriate relief is filed in connection with the related pending appeal in [Appeal Case Name], Court of Appeal Case No. [Appeal Case Number], pertaining to the underlying action [County Name] County Superior Court Case No. [Superior Court Case Number].

* 1. The Parties

Petitioner [Petitioner Full Name] is the [Petitioner or Respondent] in the underlying action titled [Superior Court Case Name], pending in [County Name] County [insert only if there is a related pending appeal] and the Appellant in the related pending appeal.

Real Party in Interest [Real Party in Interest Full Name] is the [Petitioner or Respondent] in the underlying action pending in [County Name] County [insert only if there is a related pending appeal] and the Respondent in the related pending appeal.

Respondent is the [County Name] County Superior Court, which issued the decision [insert description of order being challenged].

* 1. Authenticity of Exhibits

The exhibits accompanying this petition, labeled numerically and consecutively paginated, are true and correct copies of original documents on file in Respondent Court, except for [insert exhibit numbers and titles for those not on file in the Superior Court, such as a Reporter’s Transcript]. [insert only if a declaration is being filed concurrently] These exhibits are accompanied by the Declaration of [Declarant Full Name] (“[Declarant Last Name] Decl.”), filed herewith. All exhibits are incorporated by reference as if fully set forth in this petition.

* 1. Factual Background and Procedural History

[insert factual background and procedural history, organized chronologically paragraph by paragraph, with applicable record citations]

. . .

. . .

. . .

* 1. Petition Timing

[Petitioner First Name] now files this petition to challenge Respondent Court’s [insert description of order being challenged and applicable legal error/abuse of discretion].

[Petitioner First Name] has acted expeditiously in seeking appellate relief by immediately requesting a transcript of the proceedings and researching legal grounds for bringing the present petition.

[INSERT BELOW ARGUMENT IF WRIT PETITION *IS* FILED WITHIN 60-DAY OR APPLICABLE DEADLINE]

This petition is not subject to any statutory filing deadlines and is therefore timely. (See *M**cDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1100.) The time for filing a petition for writ of mandate is governed by laches if, as here, there is no time limit specified by statute. (*Peterson v. Superior Court* (1982) 31 Cal.3d 147, 163.) Generally, a writ petition should be filed within the 60-day period applicable to notices of appeal. (*McDermott Will & Emery LLP v. Superior Court*, *supra*, 10 Cal.App.5th at p. 1100; *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701.)

Respondent Court issued its [insert type of order being challenged] on [date of order]. Since the challenged order was issued just [insert number of days between the order and filing of writ petition] prior to filing, this writ petition is timely.

[INSERT BELOW ARGUMENT IF WRIT PETITION *IS NOT* FILED WITHIN 60-DAY OR APPLICABLE DEADLINE]

This petition is not subject to any statutory filing deadlines. (*McDermott Will & Emery LLP v. Superior Court* (2017) 10 Cal.App.5th 1083, 1100 (*McDermott*).) The time for filing a writ petition is governed by laches if, as here, there is no time limit specified by statute. (*Peterson v. Superior Court* (1982) 31 Cal.3d 147, 163.) Generally, a writ petition should be filed within the 60-day period applicable to notices of appeal. (*McDermott, supra,* 10 Cal.App.5th at p. 1100; *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701 (*Volkswagen*).) However, an appellate court can exercise discretion to consider a writ petition filed after the 60-day deadline provided the doctrine of laches does not require denial. (*McDermott*, *supra,* 10 Cal.App.5th at p. 1100; *People v. Superior Court (Lopez)* (2005) 125 Cal.App.4th 1558, 1562.)

For a writ petition to be untimely, laches requires both an unreasonable delay in filing the petition and prejudice to the real party in interest. (*Peterson v. Superior Court*, *supra,* 31 Cal.3d at p. 163.) Here, neither unreasonable delay (see *infra,* ¶¶ [Paragraph Numbers]), nor prejudice exists (see *infra*, ¶¶ [Paragraph Numbers]).

[Petitioner First Name]’s delay in filing this writ petition is reasonable because [Petitioner First Name] was exhausting available remedies from Respondent Court, as is a requirement for writ relief. (See *Phelan v. Superior Court* (1950) 35 Cal.2d 363, 372.) [insert only if applicable] [Petitioner First Name] has acted expeditiously in seeking relief, especially when viewed with the significant access-to-justices issues [Petitioner pronoun] experienced, including language, cultural, and financial barriers.

[insert additional details on language, cultural, financial, etc. barriers if applicable]

[insert details about Petitioner’s exhaustion of Superior Court remedies, such as filing a post-trial motion]

Therefore, [Petitioner First Name]’s delay in filing is reasonable because [Petitioner pronoun] “legitimately sought relief in the trial court” and is now seeking a writ petition immediately after [insert reason for seeking a writ petition now, such the Superior Court denying a post-trial motion]. (*Peterson v. Superior Court*, *supra,* 31 Cal.3d at p. 163 [no unreasonable delay for writ petition filed after seven-and-one-half months where petitioner sought two post-trial motions]; see *Nixon Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 821–822 [nearly five-month delay in filing writ petition was reasonable where petitioner “diligently sought relief” and the trial court “clearly erred”].)

Additionally, “extraordinary circumstances” justify the delay and in turn support this Court considering [Petitioner First Name]’s writ petition. (*Volkswagen*, *supra,* 94 Cal.App.4th at p. 701.) [insert argument for extraordinary circumstances or irreparable harm Petitioner is facing—e.g., a heightened risk of abuse or collateral consequences to Petitioner’s well-being, such housing insecurity or mental anguish]

Real Party in Interest [Real Party in Interest First Name] is not prejudiced by the delay and thus the doctrine of laches should not prohibit review of this writ petition on the merits. (See *Peterson v. Superior Court*, *supra*, 31 Cal.3d at p. 163; see also *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 354–355 [prejudice of an undue delay cannot be presumed]; *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368 [“Even if we were to find an unreasonable delay, [the real party in interest] has not shown any prejudice”].)

Prejudice requires a “material change in statu[s] quo” or in other words, a “detriment suffered” by the real party in interest. (*Conti v. Board of Civil Service Commissioners, supra,* 1 Cal.3d at p. 360.) Here, prejudice does not exist because [Real Party in Interest First Name] has not done or “omitted to do something which detrimentally altered [their] position” during the delay in the filing of this writ petition. (*In re Marriage of Nicolaides* (1974) 39 Cal.App.3d 192, 203.)

[Real Party in Interest First Name] is not prejudiced by the delay because . . . [insert argument for why there is no prejudice based on the nature of the order being challenged and Superior Court proceedings]

[insert only if there is a related pending appeal] [Real Party in Interest First Name] had notice that [Petitioner First Name] disagreed with and would challenge the [insert type of order being challenged] because [Real Party in Interest pronoun] was served by mail with the notice of appeal on [date of service for Notice of Appeal]. Thus, [Real Party in Interest First Name] was alerted “to the necessity of preparing a defense to a potential claim” and cannot claim prejudice on those grounds. (*Ponce v. Graceous Navigation, Inc.* (1981) 126 Cal.App.3d 823, 830.)

[insert only if applicable] Further, [Real Party in Interest First Name] cannot prove prejudice because [Real Party in Interest pronoun] conduct in part led to the delay. (*Ornbaun v. Main* (1961) 198 Cal.App.2d 92, 100 [“Where the delay in commencing action is induced by the conduct of the defendant, laches is no defense”]; *Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486, 1495 [“In determining whether a defendant has sustained its burden of proving laches, the court may consider the extent to which the defendant is partially responsible for the delay”].)

[insert argument for why Real Party in Interest’s conduct led to the delay in filing] Accordingly, [Real Party in Interest’s First Name] conduct contributed to the delay, which in turn negates any argument of prejudice. (*Farahani v. San Diego Community College Dist., supra,* 175 Cal.App.4th at p. 1495 [“We agree with the trial court that the prejudice claimed by the District was the result of the District's own illegal actions terminating Farahani without a hearing and expressly informing him that he had no right to an appeal”].)

Lastly, this Court should exercise its discretion to consider the merits of [Petitioner First Name]’s petition because it raises an issue of high importance concerning the [insert description of order being challenged and applicable legal error/abuse of discretion]. (*People v. Superior Court (Clements)* (1988) 200 Cal.App.3d 491, 495–497 [reviewing merits of writ petition, despite two-and-one-half months filing delay, because “[t]he issue is one of importance to both the bar and the public”].)

[insert only if applicable] Further, [Petitioner First Name]’s petition “raises important access-to-justice issues” for [insert relevant identities of Petitioner, such being indigent, self-represented, non-English-speaking, and/or an immigrant] individuals navigating the legal system. (*Davis v. Superior Court of Los Angeles County* (2020) 50 Cal.App.5th 607, 615 [writ petition “timely enough” in part because it “raises important access-to-justice issues” for “indigent, self-represented litigants”]; see *Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 241 [scheduling order to show cause on writ petition because it “presents an important issue regarding access to justice for pro per family law litigants”]; see generally *Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1368–1369, fn. 20 [recognizing the importance in family law cases of “ensur[ing] access to justice for litigants, many of whom are self-represented”].)

Consequently, this Court should exercise its discretion to consider the merits of [Petitioner First Name]’s writ petition because: (1) any delay in filing this request is reasonable, (2) Real Party in Interest [Real Party in Interest First Name] is not prejudiced by the delay, and (3) the petition raises an issue of high importance. (*See Peterson v. Superior Court*, *supra*, 31 Cal.3d at p. 163; *People v. Superior Court (Clements)*, *supra*, 200 Cal.App.3d at pp. 495–497.)

* 1. Bases for Writ Relief

Writ relief is appropriate where a petitioner will suffer irreparable injury without immediate appellate intervention. (See *Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 299–300.) Irreparable injury is demonstrated when a petitioner will suffer harm or prejudice that cannot be corrected on appeal. (See *ibid.*) Here, [Petitioner First Name] has suffered and will continue to suffer irreparable injury unless this Court intervenes.

[insert description of irreparable harm and additional, relevant factors supporting writ relief under *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273-1274: (a) “the issue tendered in the writ petition is of widespread interest,” (b) “the trial court's order deprived petitioner of an opportunity to present a substantial portion of [their] cause of action,” (c) “conflicting trial court interpretations of the law require a resolution of the conflict,” or (d) “the trial court's order is both clearly erroneous as a matter of law and substantially prejudices petitioner's case.”]

* 1. Absence of Other Remedies

[INSERT BELOW ARGUMENT IF ORDER BEING CHALLENGED IS *NOT* DIRECTLY APPEALABLE]

Writ relief is appropriate because “there is no other plain, speedy, and adequate remedy in the ordinary course of law.” (*Gay v. Torrance* (1904) 145 Cal. 144, 148; see also *Omaha Indemnity Co. v. Superior Court*, *supra,* 209 Cal.App.3d at p. 1274.)

[insert type of order being challenged] is not directly appealable. [insert legal basis for lack of appealability]

Even if [insert type of order being challenged] was appealable, an appeal is not an adequate remedy because [Petitioner First Name] needs immediate appellate intervention to protect [Petitioner pronoun] safety and [insert any additional reasoning]. (See *Phelan v. Superior Court* (1950) 35 Cal.2d 363, 370–371; *Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1080 [“We note in closing that if appellant had sought relief through petition for writ of mandate, rather than through an appeal, we would have been able to afford speedier, and perhaps more effective, relief”].) If this Court denies [Petitioner First Name]’s writ petition, Respondent Court will . . . [insert likely outcome in Superior Court that Petitioner would then be required to appeal]. An appeal of that order would take months or years to resolve—time [Petitioner First Name] does not have. [insert further details of why Petitioner could not wait for an appeal]

[Petitioner First Name] has already exhausted [Petitioner pronoun] remedies from Respondent Court. (See *Phelan v. Superior Court*, *supra*, 35 Cal.2d at p. 372 [writ relief should “ordinarily” not be granted unless the petitioner demonstrates that they requested relief from the lower court or that such a request would be futile].) [insert details about Petitioner’s exhaustion of Superior Court remedies, such as filing a post-trial motion]

[insert if applicable] [Petitioner First Name] has no new law or facts to support a motion for reconsideration. (Code Civ. Proc., § 1008, subd. (a).) Moreover, it is clear Respondent Court would not be swayed by such a motion—or in other words, such a demand from Respondent Court would be “futile.” (*Phelan v. Superior Court*, *supra*, 35 Cal.2d at p. 372.)

Therefore, [Petitioner First Name] has done all [Petitioner pronoun] can to exhaust [Petitioner pronoun] trial court remedies.

Lastly, immediate appellate intervention is needed because “the issues presented are of great public importance and must be resolved promptly.” (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 113.) The issues addressed in this petition are common to many survivors of domestic violence . . . [insert brief summary of relevant issues raised by this writ petition]

In summary, writ relief is necessary because [Petitioner First Name] has no adequate remedy at law to challenge Respondent Court’s harmful error. The [insert type of order being challenged] is not directly appealable, an appeal would not provide the immediate protection that [Petitioner First Name] urgently needs, and [Petitioner First Name] has exhausted all other remedies. (See *Phelan v. Superior Court*, *supra,* 35 Cal.2d at pp. 370–372; *Quintana v. Guijosa*, *supra,* 107 Cal.App.4th at p. 1080.) Swift and immediate appellate review is required, as the longer the current [insert type of order being challenged] remains in place, the greater the risk of continued irreparable injury to [Petitioner First Name].

[INSERT BELOW ARGUMENT IF ORDER BEING CHALLENGED *IS* DIRECTLY APPEALABLE]

Writ relief is warranted because [Petitioner First Name] has “no other plain, speedy, and adequate remedy in the ordinary course of law” that will provide [Petitioner pronoun] immediate relief from an unlawful order that places [Petitioner pronoun] at imminent risk of harm. (*Gay v. Torrance* (1904) 145 Cal. 144, 148; see also *Omaha Indemnity Co. v. Superior Court*, *supra,* 209 Cal.App.3d at p. 1274.) The risk of harm caused by delaying relief from an erroneous order by pursuing an appeal instead of a writ is well understood. (*Quintana v. Guijosa* (2003) 107 Cal.App.4th 1077, 1080 [“We note in closing that if appellant had sought relief through petition for writ of mandate, rather than through an appeal, we would have been able to afford speedier, and perhaps more effective, relief”].)

[Petitioner First Name] has exhausted [Petitioner pronoun] remedies from Respondent Court. (See *Phelan v. Superior Court*, *supra,* 35 Cal.2d at p. 372.) [insert details about Petitioner’s exhaustion of Superior Court remedies, such as filing a post-trial motion]

Although [Petitioner First Name] has preserved the remedy of an appeal, an appeal is not a viable alternative to the immediate relief that a writ can provide. (See *Phelan v. Superior Court*, *supra,* 35 Cal.2d at pp. 370–371; *Quintana v. Guijosa*, *supra,* 107 Cal.App.4th at p. 1080.) An appeal cannot offer the imminent relief that [Petitioner First Name] requires, given that “appellate review these days, in consideration of our overly crowded dockets and generally understaffed Courts of Appeal, is unduly delayed, and cannot be compared to writ review in terms of time effectiveness.” (*Science Applications Internet Corp. v. Superior Court* (1995) 39 Cal.App.4th 1095, 1101.) In the 2022–2023 fiscal year, the median time from notice of appeal to the filing of an opinion in a civil appeal in this Court was [insert number] days. (Judicial Council of California, *2024 Court Statistics Report: Statewide Caseload Trends* (2024) at p. [insert page number] <https://www.courts.ca.gov/documents/2024-Court-Statistics-Report.pdf> [as of Mar. 24, 2024].) Ten percent of civil appeals took longer than [insert number] days to reach the stage of a filed opinion. (*Ibid*.)

Swift and immediate appellate review is required because . . . [insert brief description of irreparable harm]

Accordingly, “the issues presented are of great public importance and must be resolved promptly,” which means that an appeal is not an adequate remedy. (See *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 112–113.) To correct a clear legal error and prevent further irreparable harm to [Petitioner first Name], this Court should grant [Petitioner First Name]’s prayer for writ relief. Because [Petitioner First Name] has and will continue to be unfairly prejudiced, the [insert type of order being challenged] should be [insert relief requested] as soon as practicable and practical.

* 1. Beneficial Interest

[Petitioner First Name] has a beneficial interest in this writ petition because [Petitioner pronoun] is “directly and prejudicially affected” as the [Petitioner or Respondent] in the underlying action against [Real Party in Interest First Name]. (Code Civ. Proc., §§ 1069, 1086, 1103; *Burlingame v. Justice’s Court of City of Berkeley* (1934) 1 Cal.2d 71, 75.)

* 1. Prayer for Relief

[Petitioner First Name] respectfully prays this Court:

Issue in the first instance a peremptory writ of mandate, prohibition, certiorari, or other appropriate relief commanding Respondent Court to [insert relief requested];

Alternatively, issue in the first instance a peremptory writ of mandate, prohibition, certiorari, or other appropriate relief commanding Respondent Court [insert alternative relief requested, if applicable];

Alternatively, if a peremptory writ does not issue in the first instance, issue an alternative writ directing Respondent Court to grant to [Petitioner First Name] the relief requested in paragraph [Paragraph Number], or show cause why it should not be ordered to do so—and upon return of the alternative writ, if Respondent Court does not itself act to correct its error, issue a peremptory writ granting the relief requested in paragraph [Paragraph Number]; and

Award [Petitioner First Name] [Petitioner pronoun] costs and such other relief as is just and proper.

VERIFICATION

I, [Petitioner First Name], declare as follows:

I am the Petitioner in this writ proceeding and the [Petitioner or Respondent] in the underlying action in Respondent Court [insert only if there is a related pending appeal] and the Appellant in the related pending appeal. I have read this petition and know its contents. The matters stated in the petition are true. The facts alleged in the petition are within my personal knowledge and I know these facts to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on [date of signature].

By:

[Petitioner Full Name]

1. MEMORANDUM OF POINTS AND AUTHORITIES

[insert brief introduction]

* 1. Standard of Review

[insert standard of review]

* 1. Argument

Respondent Court . . .

* + 1. Sub-Argument

The text of . . .

* + 1. Sub-Argument

 Respondent Court . . .

* + 1. Sub-Argument

There are good reasons . . .

* + 1. Sub-Argument

Here, the failure of Respondent Court . . .

1. CONCLUSION

Respondent Court erred as a matter of law . . . [insert description of order being challenged and applicable legal error/abuse of discretion]. To remedy a clear legal error, prevent further harm, and address a continuing issue of widespread public interest, this Court should explore the important and unresolved issues presented and, after doing so, issue corrective writ relief commanding . . . [insert requested relief]

|  |  |
| --- | --- |
| Dated:  | Respectfully submitted,[LAW FIRM OR ORGANIZATION]By: [Attorney Name]Attorneys for Petitioner [PETITIONER FULL NAME] |

CERTIFICATION OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this writ petition is proportionately spaced, is set in Century Schoolbook font, has a typeface of 13 points or more, and contains [Word Count] words according to the word count feature of the computer program used to prepare the petition.

|  |  |
| --- | --- |
| Dated:  | [LAW FIRM OR ORGANIZATION]By: [Attorney Name]Attorneys for Petitioner [PETITIONER FULL NAME] |

1. This petition follows the practice in family law cases of “refer[ring] to the parties by their given names for purposes of clarity and not out of disrespect. [Citation.]” (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 817, fn.1.) [↑](#footnote-ref-1)