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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

VINCENT HYLER Petitioner, vs. CARLI HELLER Respondent.	Case No.: 25FL01030 **PETITIONER'S OPPOSITION TO RESPONDENT'S EX PARTE REQUEST FOR IMMEDIATE RETURN OF THE CHILD AND OBJECTION TO EXTENSION OF THE AUGUST 12, 2026 ORDERS**

1. Relief requested

Petitioner Vincent Michael Hyler opposes Respondent's request for immediate return of the parties' minor child under the February 11, 2026 Findings and Order After Hearing and her request that the Court refuse to memorialize its subsequent extension of the August 12, 2026 temporary custody orders.

Petitioner requests that the Court:

1. Deny immediate return of the child on the premise that the February 11 order alone governs the present custody arrangement.
2. Confirm the operative custody provisions and the precise duration of the Court's extension of the August 12 orders, based on counsel's personal-knowledge declaration, Respondent's acknowledgments, and the Court's determination of its prior rulings.

3. Reject Respondent's request for a blanket prohibition against entering a written order accurately reflecting a ruling the Court actually made.
4. Address any properly invoked expedited enforcement procedure without prejudging Respondent's entitlement to custody or authorizing transfer before resolving the operative-order issue.
5. If the Court determines that the duration or effect of an earlier ruling requires clarification, promptly hear that issue and enter a clear written ruling. Any new custody relief should rest on proper notice, evidence, and applicable statutory findings, not a retroactive creation of an order never made.

2. Introduction

Respondent's application proceeds from the premise that no court order extended the August 12, 2026 temporary custody orders. Petitioner disputes that premise: on October 6, 2026, the Court orally ordered that all temporary orders remain in effect, specifically including the August 12, 2026 order giving Petitioner full custody of JJ. Counsel's declaration describes that ruling based on her personal attendance and recollection. Respondent's own papers also acknowledge that the Court announced an extension.

Respondent's papers themselves acknowledge a subsequent extension ruling. Her objection recounts that on October 6 the Court stated that, if the August 12 orders had not been extended on September 2, it was extending them nunc pro tunc at least through October 7. Her ex parte request likewise describes the Court as having extended the orders orally. Respondent contests the legal effect of that action, but her account does not support treating the Court's subsequent rulings as nonexistent. On October 6, 2026, Petitioner's counsel had a written Order available providing for extension of the August 12, 2026 Order, however the Court made an oral ruling rather than sign the Order. The Court stated on the record, that if the order had not been extended on September 2, it was extending it nunc pro tunc, until at least August 7, 2026, the day that the Contempt hearing was set for. However, on October 7, 2026, Respondent failed to appear

for the contempt matter and a warrant issued. Respondent's own failure to appear does not mean the court's Order the day before is now void.

In an abundance of caution, Petitioner requests the Court sign the attached Order which continues the August 12, 2026 TECO Order to avoid further confusion by Respondent.

3. The later custody rulings must be considered before enforcing the February 11 order

Family Code section 3022 authorizes the Court, during the pendency of a proceeding or afterward, to make custody orders that are necessary or proper. The February 11 order must therefore be read together with subsequent custody rulings, including the August 12, 2026 TECO Order, rather than as though the Court lacked authority to issue later temporary orders. Fam. Code, § 3022.

Section 3450 expressly recognizes modification by a court with jurisdiction as a defense to immediate-custody enforcement. Thus, even assuming Respondent's chosen enforcement procedure applies, her entitlement to immediate return depends on the effect of the later orders, not merely the existence of the February 11 order. Fam. Code, § 3450, subd. (a)(1)(B), (2).

On October 6, 2026, the Court orally ordered that all temporary orders remain in effect, specifically including the August 12, 2026 order giving Petitioner full custody of JJ. Counsel personally heard that ruling and describes it in her declaration. (Perkins Decl., ¶¶ 2–3.) Petitioner relies on that affirmative continuation ruling, not merely on a continuance of the hearing or on Respondent's narrower description of the ruling. Petitioner requests that the Court confirm and accurately memorialize its October 6 ruling without adding an expiration date not stated by the Court.

Respondent also relies on a September 10 disqualification ruling recounting an earlier reference to the February 11 standing orders. Her own application describes that reference as a reminder made on May 26, before the August 12 custody ruling. An account of an earlier reminder does not, without an operative custody ruling to that effect, resolve the subsequent order history. (Respondent's Ex Parte Request, p. 6.)

4. Accurate memorialization is distinct from impermissible retroactive judicial action

Respondent correctly identifies a limitation on nunc pro tunc relief, but seeks a broader prohibition than that limitation supports. A court may correct its record to reflect the order actually made; it may not create a different judicial decision retroactively. *Estate of Eckstrom* (1960) 54 Cal.2d 540, 544–545.

The proper inquiry is what the Court actually ordered. Silence in a particular minute entry should not be considered in isolation from counsel's personal-knowledge declaration, Respondent's acknowledgment of the later extension ruling, and the Court's determination of its own prior rulings. A written order should accurately memorialize any extension actually made. Petitioner does not request an extension backdated to a date on which no extension was made.

5. A request for an expedited hearing is not an adjudication awarding custody

Section 3448 provides for a verified enforcement petition and an order directing appearance, followed by a hearing on the next judicial day after service unless that date is impossible. Petitioner does not ask the Court to replace an applicable statutory hearing requirement with a requirement that Respondent file a separate request for order. Fam. Code, § 3448, subds. (a)–(c).

The hearing-setting question is nevertheless separate from whether Respondent is entitled to immediate physical custody. Section 3450 requires a finding of entitlement and addresses the effect of a later modification. The Court should resolve that issue with consideration of counsel's personal-knowledge declaration and Respondent's acknowledgment of the extension, and with an opportunity for Petitioner to be heard concerning the later rulings. Fam. Code, § 3450, subd. (a).

Respondent's proposed order would do more than calendar a hearing: it would declare the August 12 orders expired, declare the February 11 order controlling, and permit immediate return pending the hearing. Those requested merits determinations should not be embedded in a scheduling order before the contested extension issue is resolved. (Respondent's Proposed Order, pp. 1–2.)

6. Section 3044's presumption has not been triggered by the dismissed allegations

6.1. The statutory predicate is a domestic-violence finding, not an allegation

Petitioner's position is that no finding that he perpetrated domestic violence has ever been made in this case. Respondent's allegations therefore do not, by themselves, trigger the custody presumption. Section 3044, subdivision (a), requires a finding that the party seeking custody perpetrated qualifying domestic violence within the preceding five years. Subdivisions (c) and (d) specify the conduct and findings relevant to that determination. Before requiring Petitioner to rebut the presumption, the Court must determine that its statutory predicate exists. Fam. Code, § 3044, subds. (a), (c), (d), (g).

Respondent cannot substitute the existence of a prior temporary protective order, its continuation, or references to unadjudicated allegations for identification of an actual qualifying finding. The relevant question is what the Court found, not merely the title of a filing or the fact that temporary protective relief once issued. Petitioner requests that the Court reject Respondent's assertion of an already-triggered presumption given there has been a dismissal of the allegations with prejudice.

6.2. The stipulated dismissal with prejudice did not establish domestic violence

The February 11, 2026 Findings and Order After Hearing memorializing the July 3, 2025 settlement expressly dismisses the DVRO application with prejudice. Its stated findings concern the parties' settlement and its knowing, voluntary character; its dismissal and mutual civil stay-away provisions do not state that Vincent perpetrated domestic violence. Respondent may not recast that settlement disposition as an adjudication sustaining her allegations. (Findings and Order After Hearing filed February 11, 2026, attachment, Findings ¶¶ 1–3; Orders ¶¶ 1–2.)The parties placed a global settlement on the record resolving issues related to parentage, custody, visitation, relocation, and dismissal of the DVRO.

Petitioner submits that no domestic-violence finding was made in this case, and the dismissed allegations cannot themselves supply the missing statutory predicate. The dismissal provides no affirmative finding that the alleged conduct occurred. The mutual civil stay-away

agreement likewise must not be treated as an admission or judicial finding of domestic violence merely because it incorporates protective conduct provisions.

6.3. Florida made no domestic-violence finding either

Petitioner's position is that the Florida court likewise never made a finding that he perpetrated domestic violence. Respondent's reliance on the Florida temporary injunction therefore does not supply the missing predicate. Petitioner does not argue that findings by another court are irrelevant; he argues that no such domestic-violence finding was made in the Florida proceeding.

This distinguishes *Ellis v. Lyons*, where the out-of-state court expressly found conduct placing the child in reasonable apprehension of imminent serious bodily injury. That actual finding triggered section 3044 under subdivision (d)(2). *Ellis v. Lyons* (2016) 2 Cal.App.5th 404, 416–417.

Here, no domestic-violence finding was made in this case or in Florida. Respondent cannot substitute allegations or the existence of temporary protective relief for the qualifying finding required by the statute. Petitioner requests an express determination that section 3044's presumption has not been triggered on that basis. This argument rests on the absence of qualifying findings, not on a contention that the California dismissal would nullify a finding actually made by another court.

6.4. The same settled claims cannot simply be revived by changing forums

Petitioner further asserts that Respondent's Florida petition repeated the same incidents alleged in her California DVRO application, which she stipulated to dismiss with prejudice. On that factual premise, Petitioner contends that Respondent's effort to obtain renewed protective relief for the same alleged wrong implicates claim preclusion and the finality of the settlement. A dismissal with prejudice is treated as a final judgment on the merits for claim-preclusion purposes. *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 793, 797–798.

The analysis must identify the same cause of action, the same parties or their privies, and a final judgment on the merits. Repetition of the same factual narrative is relevant but does not, alone, establish that every later proceeding involves the same cause of action. Claim preclusion

also differs from issue preclusion: the latter requires an identical issue actually litigated and necessarily decided. *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824–825.

Petitioner requests that the Court give the stipulated dismissal its proper final effect and reject any attempt to treat repackaged, unadjudicated allegations as an established domestic-violence finding. He does not contend that the dismissal itself adjudicated every underlying factual allegation, categorically deprived another court of jurisdiction, or prohibited consideration of otherwise admissible evidence in a distinct custody proceeding. Any claim-preclusion determination should be tied to the actual California and Florida pleadings and the settlement's scope. The independent and dispositive point for Respondent's asserted section 3044 predicate remains that neither court made a qualifying domestic-violence finding.

7. Conclusion

Petitioner requests denial of Respondent's immediate-return request on the asserted premise that no later operative custody ruling exists; confirmation of the actual terms and duration of the extension described in counsel's declaration; and rejection of the request to prohibit accurate written memorialization of rulings actually made.

Dated: 10·14·2026

Kali S. Perkins
Attorney for Petitioner, Vincent Michael Hyler

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MENDOCINO

VINCENT HYLER Petitioner, vs. CARLI HELLER Respondent.	**Case No.: 25FL01030** **DECLARATION OF KALI S. PERKINS REGARDING PETITIONER'S OPPOSITION TO RESPONDENT'S EX PARTE REQUEST**

I, Kali S. Perkins, declare:

1. I am counsel for Petitioner Vincent Michael Hyler in this proceeding. The statements below concerning the hearings I attended are based on my personal knowledge and recollection.
2. I personally appeared at the hearing on October 6, 2026. At that hearing, the Court orally ordered on the record that all temporary orders remain in effect.
3. The Court specifically included the August 12, 2026 order giving Petitioner full custody of JJ. I personally heard the Court make this ruling. This statement describes the Court's ruling, not merely a request I made.
4. Petitioner seeks confirmation and accurate written memorialization of the custody rulings the Court actually made. He does not request that the Court record an extension as having been made on a date when no such ruling occurred.

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

Executed on October 14, 2026, at Ukiah, California.

Kali S Perkins

Kali S. Perkins