Andrea C. Wood
40 Hilldale Court
Orinda, CA 94563
Tel.: +1(415) 375-1686
Email: dreacwood@gmail.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREA C. WOOD, Petitioner, vs. **COUNTY OF CONTRA COSTA, LOIS HAIGHT, RAVINDER BAINS, M.D., ERICA BAINS, and BENJAMIN PACKWOOD** Respondents. **)RAL ARGUMENT REQESTED**	**CASE NO.: 19-cv-3885-EDJ** **MEMORANDUM OF LAW**

PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION TO COUNTY DEFENDANTS MOTION TO QUASH SERVICE OF PROCESS

Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

Constitutional Provisions

I. Introduction

1. On July 5, 2019, Petitioner filed a Petition for a Writ of Habeus Corpus pursuant to 28 U.S.C. 2241 and 28 U.S.C. 2243, served it, and submitted proofs of service.

2. Respondent now objects to service of process at 751 Pine Street, Martinez, Cal. 94553.

3. Plaintiff maintains, and notwithstanding FRCP 4(j)(2), that it has routinely served the County at 751 Pine Street, Martinez, Cal. 94553 as follows:

   a. An unrelated original proceeding style as 19-cv-2678 Wood v. County of Contra Costa, et al. as well as a Reply to Motion to Dismiss;

   b. An Appeal to the Court of Appeals for the State of California, First Appellate District;

   c. Memorandum of Law in Opposition to a Motion in Limine; and

   d. Other sundry items.

4. Now the County respondents refuse to accept service at 751 Pine Street, Martinez, Cal. 94553. When they point to FRCP 4(j(2) they provide no Affidavit or Declaration that the County Executive does not have offices at 751 Pine Street; the location that Counsel Rodriguez lists on ECF is a courthouse.

5. Upon information and belief, the real issue is that the County respondents caught a glimpse of Respondent's (Petitioner in this application) Opposition to a Motion In Limine

where within one of the arguments is the Declaration of Melinda Murphy. Melinda Murphy most recently was a social worker in the Child and Family Services ("CFS") of Contra Costa County who resigned in disgust at the shocking, arbitrary, and egregious actions of CFS where she states:

> DCFS does not have a mechanism for backing down and, has a tendency, even if the parent is innocent, to make them appear guilty in some way, and that includes perjuring testimony, falsifying reports and fabricating evidence to justify taking children.

6. As such, Ms. Murphy has "flipped" and now is one of the Respondent-Plaintiff-Petitioner's star witnesses across all Federal and State actions (see Exhibit "A").

7. Therefore, as a result of Ms. Murphy's turnabout, the County defendants are struggling to restrain HP and KP, the wrongly removed children of Petitioner without a warrant or without a court order of temporary removal, through any means possible. The County defendants are struggling to restrain HP and KP despite the successful completion of Petitioner's case plan. where on December 20, 2018, Mark Demanes, MFT, Ph.D. wrote attached as Exhibit "B":

> Ms. Wood is a competent parent and I further find no grounds for her to be restrained from full custody and access to her own children. It is my belief that there is no better placement, for Ms. Wood's three children than in their own home with their own loving mother.

8. Based on the report of Dr. Demanes, a referral by the County of Contra Costa itself, and, as a result of Ms. Murphy's turnabout, the County defendants seek to restrain HP and KP who should have been returned long ago one of the factors that leads to the instant Petition.

9. According to Melinda Murphy, attached herein as Exhibit "A" "DCFS does not have

a mechanism for backing down and, has a tendency, even if the parent is innocent, to make them appear guilty in some way, and that includes perjuring testimony, falsifying reports and fabricating evidence to justify taking children. " Thus, HP and KP are wrongly detained, *res ipsa loquitur*

II. The District Court has Subject Matter Jurisdiction

10. 28 U.S.C. 2241 provides:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> (b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.
>
> …He is in custody in violation of the Constitution or laws or treaties of the United States; or…

11. 28 U.S.C. 2241 provides:

> A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.
>
> The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.
>
> The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.
>
> When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.
>
> Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.
>
> The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

12. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as HP and KP are presently in custody under color of authority of the State of California, and such custody is in violation of the Constitution, laws, or treaties of the United States.

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. §1651.

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Northern District of California, the judicial district where HP and KP currently are in custody.

III. Oppositional Points and Authorities

A. Point I. Common Law Right to the Writ

15. Respondents are aware that in *Lehman v. Lycoming County Children's Servs. Agency*, 648 F.2d 135, 139 (3d Cir. 1981), the Court recognized that habeas corpus has been used in child custody cases in England and in many of the states and that the federal habeas corpus statute authorizing federal court collateral review of federal decisions can be construed to include child custody cases.

16. Therefore, the Petitioner has the right to this application for a writ under the

Common Law.

17. However, the Court found "reliance on what may be appropriate within the federal system or within the state system to be "of little force" in determining what is appropriate between the federal and state systems. The federal writ should be reserved "for those instances in which the federal interest in individual liberty is so strong that it outweighs federalism and finality concerns." See Section B.Point II Facts are Severe directly below.

B. Point II. Facts are Severe

18. Lehman held that the federalism and finality concerns implicated by such an extraordinary interference with a state's judicial system outweigh the federal interest in liberty in all but cases of special urgency where restraints on liberty are immediate and severe.

19. Petitioner maintains that the facts of the instant application are severe for all the following reasons:

20. Petitioner maintains that the facts of the instant application are severe for all the following reasons:

a. HP now has documented suicidal tendencies in the loss of Petitioner.

b. Nine year old KP is at risk of being sex trafficked in the sex trafficking capital of the world, State of California. For the District Court's benefit, sex trafficking is generally described as:

Sex trafficking is human trafficking for the purpose of sexual exploitation, including sexual slavery. A victim is forced, in one of a variety of ways, into a situation of dependency on their trafficker and then used by said trafficker to give sexual services to customers….

c. New Evidence:

i. Little KP's physicians are alarmed at much higher cholesterol levels in her 2.0 years in foster care;

ii. KP was arbitrarily retained in 3rd grade without notice, parental consent, or a Court Order;

iii. Upon information and belief, KP was rarely taken to school in retaliation for the foster family losing their own biological child in a drowning accident shortly before KP was placed and seen as a hindrance for their own grieving; KP and the biological child were both under the age of 7.

iv. KP now needs remedial tutoring under the supervision of Petitioner to get back on her grade track in the 2019-2020 school year. The literature and school administrators indicate that retention is more damaging than below average grades. The research says that students are more negatively impacted by grade retention than they are positively affected by it. Grade retention can also have a profound impact on a student's socialization, a student who has been separated from their friends could become depressed and develop poor self-esteem, student who are retained are likely physically bigger than their classmates

because they are a year older (KP's pediatric claims that she is on track to reach the height of 6 feet at physical maturity), often causing the child to be self-conscious. Students who are retained sometimes develop serious behavior issues, especially as they age.

v. At a July 12, 2019 visitation, little KP now reports that she is continually being struck by other children in her foster home.

vi. Petitioner brings bags full of clothes, shoes, and toys to every visitation, but KP reports that her presents are "shared away" to other children or sold at flea markets; on a July 8, 2109 visit KP was wearing size 9 shoes on her little size 7 foot.

21. The instant application meets the requisite severity or special urgency in child custody cases, *res ipsa loquitur*.

C. *Point III. Habeus Corpus is Allowable When Accompanied by a Federal Cause of Action.*

1. Section One of the Fourteenth Amendment to the United States Constitution provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

2. In the past thirty-five years, the case law reads and is authority that:

a. It is well settled that parents have a substantive due process right to the custody of their children and, except in emergency circumstances, a procedural due process right to a pre-deprivation child custody hearing;

b. The Fourteenth Amendment imposes a requirement that except in emergency circumstances, judicial process must be accorded both parent and child before removal of the child from his or her parent's custody may be effected.

d. "[A] parent may . . . bring suit under a theory of violation of his or her right to substantive due process . . .. Parents have a 'substantive right under the Due Process Clause to remain together [with their children] without the coercive interference of the awesome power of the state.") (quoting *Tenenbaum v. Williams*, 193 F.3d 581, 600 (2d Cir. 1999) (second alteration in original)); *Cox v. Warwick Valley Cent. Sch. Dist.*, 654 F.3d 267, 275 (2d Cir. 2011); and

e. "The interest of natural parents 'in the care, custody, and management of their child' is a 'fundamental liberty interest protected by the Fourteenth Amendment.'" (quoting *Santosky v. Kramer*, 455 U.S. 745, (1982)).

3. In stating a claim of a violation of procedural due process, Petitioner alleges:

a. the existence of a property or liberty interest that was deprived (the biological Mother of the wrongly removed TP, HP, and KP);

b. and (2) deprivation of that interest without due process as a result of witness tampering, obstruction of justice, extortion, and a civil conspiracy to cover it up (the lack of any non-tarnished fact finding hearing since the inception of this matter).

4. In stating a claim of a violation of substantive due process, Petitioner alleges

that: (1) she had a valid property or liberty interest (the biological mother of the wrongly removed TP, HP, and KP), and (2) that interest was infringed upon in an arbitrary or irrational manner (the arbitrary allegation of "neglect") contrary to the legal standard of neglect defined as:

> Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or
>
> An act or failure to act which presents an imminent risk of serious harm.

(see 42 U.S.C.A. § 5106g, emphasis supplied).

5. Further, Petitioner maintains that, quoting *Tenenbaum*, that removal of TP, HP ,and KP "was 'so shocking, arbitrary, and egregious that the Due Process Clause would not countenance it even where it accompanied by full procedural protection.'" *Cox v. Warwick Valley Cent. Sch. Distr.*, 654 F.3d 472 267, 275 (2d Cir. 2011) (quoting *Tenenbaum*, 193 F.3d at 600):

   a. So shocking in that TP, HP, and KP had the benefit of a nanny and a handyman, a part time chef at Alameda Yacht Club, who provided fabulous meals from a fully stocked pantry and were whisked away without notice, Access Order, warrant, or Order of Temporary Removal;

   b. So arbitrary according to the definition of "unsanitary conditions" in *Matter of Jennifer B.,* 163 AD2d 910, 558 NYS2d 429 (4th Dept.

1990), *Matter of Pedro F.*, 622 NYS 2d 518 (1st Dept. 1995), *Matter of Billy Jean II* 640 NYS2d 326 (3rd Dept. 1996) that state, in part, maggot infested couch, spoiled food on the floor, urine soaked sheets, children had head lice for over 2 months, home was littered inches deep with garbage and rotten moldy food; and the legal standard of neglect in 42 U.S.C. § 5106g;

c. So egregious in the glaring, flagrant actions of Federal defendants, Child Protective Services brought a neglect petition in less than 12 hours later that relied on the standard of preponderance of the evidence rather than the clear and convincing evidence standard that it was palmed off on Federal respondent Haight who, upon information and belief, rubber stamped the Petition as is customary among the "good 'ole girls club among Child Protective Services, Orinda County Family Court, and the Deputy County Attorney" that caused the removal of TP, HP, and KP.

6. As a result, by a. to c. above, Petitioner has suffered the shock of her conscience, has been horrified, has experienced life changing events, experienced the taking of property (persons) unlawfully and by force in the precious years of her children's lives; such injuries persists to this day.

7. Petitioner had single handedly raised the minor children TP, HP, and KP since the age of 3, 1 ½, and an embryo born in 2010 after the death of Jeremy Packwood, her husband and TP's, HP's, and KP's, father.

8. Emergency circumstances did not exist then and do not exist now to warrant the shocking, arbitrary, and egregious removal of the minor children, TP, HP, and KP, from Petitioner's custody contrary to the legal standard of neglect - it is not even close.

9. In the Matters of TP, HP, and KP, the burden of proof is on the County, and they have not met such burden - it is not even close.

10. TP, HP, and little KP (who as of April-May 2019, Petitioner was notified that KP suffers from high cholesterol since removal from Petitioner) were wrongly removed, and, upon information and belief, the once happy-go-lucky threesome - TP, HP, and KP suffer from fear of parental alienation, suicidal tendencies of HP and a fascination with the make believe in KP.

WHEREFORE, Petitioner respectfully requests the District Court to deny the County defendants Motion to Quash, or in the alternative grant leave to re-serve, and such further relief that the District Court deems appropriate.

Dated: August 21, 2019
Orinda, Cal.

For Petitioner

/s/ Andrea C. Wood

Andrea C. Wood

EXHIBIT "A"

EXHIBIT "B"

SUSAN S. E.
434 North Bedford Drive
Los Angeles, California 90210
T: (310) 205-0669 F: (310) 205-0670
E: drsusan90210@gmail.com

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SUSAN S. E.

Plaintiff.

v.

COUNTY OF LOS ANGELES, et al.

Defendants.

Case No.

DECLARATION OF M. a. MELINDA MURPHY

I, Melinda Murphy declare under penalty of perjury under the laws of the United States of America as follows:

1. I am not a party in the above-entitled case and I have personal knowledge of the following facts, and, if called as a witness, I could and would competently testify thereto.

2. Prior to my current position as with law firms associated with juvenile dependency court, I was being trained by the Los Angeles County Department of Children & Family Services, (DCFS) as a Supervising Children's Social Worker (SCSW).

3. My focus throughout my work in child welfare has been for the children's health and safety, but the expectation that I be less than honest during my tenure with the DCFS

became a problem. When I became a social worker, I took an oath to "DO NO HARM" to my clients.

4. I resigned from DCFS on good terms.

6. I co-authored the book, A Culture of Fear: An Inside Look at Los Angeles County's Department of Children & Family Services, (2013) that cites various cases, including the 20 % of the parent population who are thoroughly innocent, but where the DCFS will not admit their mistake(s). The damages to the family in these situations is unconscionable.

7. My DCFS trainer for the Supervisor position stated to us on the first day of training, "We should be ashamed of what we have done to some of the families that we have sworn to serve."

8. During my training, my observations, and in my work experiences, I learned that the DCFS does not have a mechanism for backing down and, has a tendency, even if the parent is innocent, to make them appear guilty in some way, and that includes perjuring testimony, falsifying reports and fabricating evidence to justify taking children.

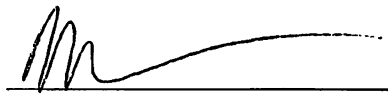
9. On and around April 5, 2016, I spoke extensively to Barbara Smith, a social worker in case DK02119, involving Susan's children N, L, S and, Z before she testified in trial.

10. It was my impression that Ms. Smith and I shared character traits in that it was her priority to put the needs of the children first, and not let politics, biases, and/or departmental positions take precedence over the children's safety and welfare. She stated that she planned to testify about the truth despite her suffering reprisal.

11. Ms. Smith disclosed that her documentation in the DCFS file was deleted regarding her questioning the children's safety with Brian Evans, the father.

DATED: July 10, 2019

By:



Melinda Murphy