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8 **In Limited Scope**  
**Attorneys for Petitioner,**  
9 **MYLEA LOGIN**

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 IN AND OF THE COUNTY OF MENDOCINO

12 MYLEA LOGIN, 13 Petitioner, 14 vs. 15 CARLOS ALBERTO ESPARZA DE 16 LA TORRE, 17 Respondent.	Case No.: 23FL00613  PETITIONER’S BRIEF RE PROCEDURE & JURISDICTION  APJ: Hon. Patrick Peckin Dept: C Date: 06/11/2024 Time: 9:30am
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19 **I. FACTUAL AND PROCEDURAL HISTORY**

20 Petitioner, MYLEA LOGIN (hereinafter “Mother”), and Respondent, CARLOS  
21 ALBERTO ESPARZA DE LA TORRE (hereinafter “Father”) have one child of their marriage,  
22 ILEANA ESPARZA LOGIN (hereinafter “Ileana”) (age 5). Mother filed a Request for a  
23 Domestic Violence Restraining Order against Father on August 15, 2023. The court issued a  
24 temporary restraining order, protecting both Mother and Ileana from Father, with no contact or  
25 visitation to Father pending a hearing. Because Father lives in Mexico, Mother had to facilitate  
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1 service through the Service Aspects of the Hague Convention, which require her to serve  
2 Father through the central authority. Service through the central authority can take up to a year  
3 for service. Father became aware of Mother Request for a Domestic Violence Restraining  
4 Order in early 2024 and retained counsel to represent him at the hearing on April 2, 2024.

5 At the hearing on April 2, 2024, the court continued the DVRO hearing, appointed  
6 minor's counsel, Mr. Daniel Beck, and inquired as to whether Father waives any defect of  
7 service of the DVRO. Father's counsel did not waive defect of service. Mother's DVRO was  
8 continued pending service through the central authority. The court set a continued hearing for  
9 April 25, 2024.  
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11 Prior to this hearing, Father, by and through his counsel, filed a "Motion to Quash for  
12 Lack of Jurisdiction" on March 26, 2024. In the motion, Father requests that the court dissolve  
13 the restraining order for lack of jurisdiction, and cites CCP Section 418.10(a)(1) in order to  
14 quash service of summons. A hearing on Father's Motion to Quash was set for April 25, 2024.  
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16 At the hearing on April 25, 2024, Father's counsel argued that the court lacked  
17 jurisdiction to hear Mother's Request for a Domestic Violence Restraining Order because  
18 jurisdiction lies with Mexico and there are custody orders out of Mexico. No custody orders  
19 have been submitted for registration by Father. The court provided its preliminary analysis on  
20 the Motion to Quash, UCCJEA jurisdiction, and temporary emergency jurisdiction, but  
21 determined it had yet to complete research on this subject at this time. Mother's counsel argued  
22 that there were serious procedural deficiencies, including a lack of service of the Motion to  
23 Quash, lack of service of the Request for a DVRO, and no submission for the registration of out  
24 of state custody orders. The court indicated that it was unclear whether it should address the  
25 Request for a DVRO aspect first, but noted that the cases seemed to suggest that where there is  
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1 a credible demonstration of domestic violence, the cases suggest that the court should exercise  
2 jurisdiction.

3 In order to resolve some of the procedural issues, both counsel agreed to accept email  
4 service of the unserved pleadings. Father accepted email service of Mother's Request for a  
5 Domestic Violence Restraining Order, which was effectuated, and Mother accepted service of  
6 Father's Motion to Quash, which was effectuated. The court then expressed its concern for  
7 priority of the issues; i.e. which to be heard first, noting there's an integral connection on the  
8 issue of whether there is a valid judgment/order that can be enforce, and Mother's allegations  
9 of Domestic Violence. The court continued the status conference to June 11, 2024, continued  
10 the temporary orders, and requested that counsel provide briefings to the court as to what  
11 should happen next procedurally by June 4, 2024.

## 12 **II. LEGAL ARGUMENT**

### 13 **A. THE COURT SHOULD HEAR THE REQUEST FOR A DVRO BECAUSE IT IS** 14 **THE ONLY ACTION BEFORE THE COURT THAT HAS MERIT AND IS** 15 **PROPERLY BEFORE THE COURT, THERE IS NO REGISTRATION OF A** 16 **MEXICO ORDER, THE MOTION TO QUASH IS MOOT AND LACKS MERIT,** 17 **AND THE COURT HAS AMPLE AUTHORITY TO HEAR THE DVRO** 18 **PURSUANT TO TEMPORARY EMERGENCY JURISDICTION.**

#### 19 **I. The Request for a Domestic Violence Restraining Order is the Only Action** 20 **Properly Before the Court.**

21 At this time, the only action properly before the court that holds any merit is Mother's  
22 Request for a Domestic Violence Restraining Order (hereinafter "DVRO"). At the hearing on  
23 April 25, 2024, Father's counsel agreed to service of the DVRO via email, which was  
24 effectuated on April 25, 2024. Therefore, Father has been properly served with Mother's  
25 DVRO. As a matter of policy, the DVRO should be heard as soon as possible because it deals  
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1 with emergency issues and holds priority. As a matter of procedure, it is the only action that  
2 can be heard by this court because Father’s motion to quash service of summons is now moot  
3 and lacks merit, procedurally deficient, and there has been no application for registration of any  
4 orders out of Mexico, as explained in more detail below. The DVRO is the *only* action before  
5 this court.

6 a. Father’s motion to quash service of summons is moot, lacks merit, and is  
7 procedurally deficient.  
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9 On March 26, 2024, Father filed a Motion to Quash “for lack of jurisdiction,” citing  
10 CCP § 418.10(a)(1) in order to quash service of summons, and therefore lacking jurisdiction.  
11 CCP § 418.10(a)(1) states that a party may serve and file a notice of motion to “quash service  
12 of summons on the ground of lack of jurisdiction of the court over him or her.” Father argues  
13 that the court should quash service of summons for lack of service and lack of personal  
14 jurisdiction over Father because he is a non-resident and has no contacts with the United States.  
15 He further argues that the court does not have personal jurisdiction over Mother because she  
16 has no significant ties with the State of California to implicate personal jurisdiction over  
17 Mother, and does not live in Mendocino County. Father then attempts to seemingly include an  
18 out of state custody order out of Mexico without an application to register the orders and an  
19 arrest warrant out of Mexico.  
20

21 In the first instance, Father has accepted service of the DVRO via email, so the issue of  
22 defective service is now moot and holds no merit. There is no longer a basis to quash service of  
23 the summons due to defective service as service has been properly effectuated as of April 25,  
24 2024.  
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1 In the second instance, Father’s argument that the court has no personal jurisdiction  
2 over a non-resident defendant who has no ties to the State of California conveniently leaves out  
3 the court’s ability to take jurisdiction over non-resident defendants in certain circumstances;  
4 e.g. despite having no ties with the State of California when the child of the parties is present  
5 in the State of California and involved in a domestic violence action. *A.H. v. Superior Court*  
6 (2023) 89 Cal.App.5th 504; *In re Marriage of Fernandez-Abin & Sanchez* (2011) 191  
7 Cal.App.4th 1015; *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478. “[T]he requirements  
8 of due process of law under the Fourteenth Amendment are met in a child custody proceeding  
9 when, in a court having subject-matter jurisdiction over the dispute, the out-of-state parent is  
10 given notice and an opportunity to be heard...” *In re Marriage of Leonard* (1981) 122  
11 Cal.App.3d 443, 459.

13 Further, the UCCJEA expressly allows California courts to exercise temporary  
14 emergency jurisdiction if a child is present in the state and there is an emergency need to  
15 protect the child from abuse. *A.H. v. Superior Court* (2023) 89 Cal.App.5th 504; *In re C.T.*  
16 (2002) 100 Cal.App.4th 101; *In re Aiden L.* (2017) 16 Cal.App.5th 508. In the present case,  
17 Mother and the minor child have been present in the State of California since August 2023,  
18 nearly a year, satisfying the court’s ability to take jurisdiction over the parties and minor child  
19 because of the minor child’s presence in California, as well as the court’s ability to exercise  
20 temporary emergency jurisdiction in the action due to the emergency need to protect the child,  
21 and Mother, from the abuse alleged in Mother’s DVRO.  
22

24 As a matter of policy, California retains a substantial interest in protecting its residents  
25 and minor children that are present in the state from domestic violence. If a defendant was able  
26 to contest jurisdiction because they are not a resident of the state, when both Mother and the  
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1 child have been present in the State of California, it would completely prevent the State's  
2 ability to protect its residents and minor children that are present within the State. Father's  
3 argument that the court cannot assert personal jurisdiction over him in order to protect Mother  
4 and the minor children directly contradicts policy and the law.

5 In the third instance, Father's argument that the court lacks personal jurisdiction over  
6 Mother has no merit as Mother is present in the State of California, has been present in  
7 California since August 2023, and holds residence in California. Mother has a residence in  
8 Mendocino County, which is currently protected under the Temporary Emergency Restraining  
9 Order. Mother provided an address in Chico in order to provide an address to the court for  
10 mailing and still ensure her actual address is protected from Father. Further, the child and  
11 Mother have been present in the State of California for over 6 months, affording the court to  
12 take UCCJEA jurisdiction.  
13

14 b. There is no application to register any orders out of Mexico.

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16 Father's attempt to include any orders out of Mexico in a motion to quash is  
17 procedurally deficient and violates due process. A motion to quash under CCP 410.18 does not  
18 permit for registration of foreign custody orders and therefore cannot be considered by the  
19 court. There has been no attempt to register any foreign custody orders, and the consideration  
20 of foreign custody orders without the proper procedure for registration violates Mother's due  
21 process rights to object to a registration. Therefore, because there has been no application for  
22 registration of foreign custody orders filed or served, any foreign custody orders cannot be  
23 considered and are not before the court.  
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1 II. The Court has Ample Authority to Make a Determination on Mother’s Request  
2 for a Domestic Violence Restraining Order Pursuant to Temporary Emergency  
3 Jurisdiction and is Given Priority.

4 As indicated above, the UCCJEA expressly allows California courts to exercise temporary  
5 emergency jurisdiction if a child is present in the state and there is an emergency need to  
6 protect the child from abuse. *A.H. v. Superior Court* (2023) 89 Cal.App.5th 504; *In re C.T.*  
7 (2002) 100 Cal.App.4th 101; *In re Aiden L.* (2017) 16 Cal.App.5th 508. In the present action,  
8 Mother has implicated the court’s ability to exercise temporary emergency jurisdiction under  
9 Family Code § 3424 in order to protect the child from abuse, as alleged in her Request for a  
10 DVRO.  
11

12 Even if another state has jurisdiction over the child, the California court may still exercise  
13 temporary emergency jurisdiction to address immediate safety concerns before deferring to the  
14 home state for a final custody determination. *A.H. v. Superior Court* (2023) 89 Cal.App.5th  
15 504. Once temporary emergency jurisdiction is invoked, the California court can make  
16 necessary orders in connection with domestic violence restraining orders to protect the child.  
17 *Id.* Therefore, in the present case, the potential knowledge or actual knowledge of a foreign  
18 custody order [which is disputed and not before this Court] does not prevent a California court  
19 from asserting temporary emergency jurisdiction to address safety concerns and protect the  
20 minor child.  
21

22 Last, Requests for Domestic Violence Restraining Orders are given priority by statute. Cal.  
23 Fam. Code § 244. DVROs “shall be set for trial at the earliest possible date and shall take  
24 precedence over all other matters, except older matters of the same character, and matters to  
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1 which special precedence may be given by law.” *Id.* Therefore, as a matter of law, Mother’s  
2 Request for a DVRO has priority and shall be set at the earliest possible date.

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4 **LAW OFFICES OF BJ FADEM & ASSOCIATES**

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6 Dated: 6/4/2024

*Erika Lee*

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Erika Lee, Esq.  
Attorney for Respondent