

Case No. C095538

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

Z. A.,
Plaintiff and Appellant,
v.

F. T.,
Defendant and Respondent.

Appeal from a Judgment of the Yolo County Superior Court,
No. FL2021-79
Hon. Paul K. Richardson

**APPLICATION OF THE NATIONAL HOUSING LAW
PROJECT, *ET AL.*, FOR LEAVE TO FILE
AMICI CURIAE BRIEF; *AMICI CURIAE* BRIEF
IN SUPPORT OF PLAINTIFF-APPELLANT**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Attorneys for *Amici Curiae* National Housing Law Project, *et al.*,
certify that there are no interested entities or persons that must be listed
in this certificate under Cal. R. Ct. 8.208.

Dated: October 7, 2022

Respectfully submitted,

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**APPLICATION OF NATIONAL HOUSING LAW PROJECT, *ET AL.*,
FOR PERMISSION TO FILE *AMICI CURIAE* BRIEF
IN SUPPORT OF PLAINTIFF-APPELLANT**

Pursuant to the California Rules of Court, rule 8.200(c), the parties described below respectfully request permission to file the attached brief as amici curiae in support of Plaintiff-Appellant. This application is timely made pursuant to an extension granted by this Court on October 5, 2022. No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief, and no other person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than the amici curiae, their respective members or their respective counsel.

Amici are nonprofit organizations and individuals who collectively work with thousands of domestic violence survivors each year in California and nationwide. *Amici* are committed to ensuring the safety and well-being of domestic violence survivors and their children. *Amici* believe that living a life free of violence, including physical, emotional, and financial abuse, is a basic human right. *Amici* also believe that housing is a right, and actively support survivors in their efforts to stay safely and stably housed. Domestic violence in all its forms is a leading cause of homelessness for women and children. *Amici* support Z.A.'s efforts to reinstate the relief the Domestic Violence Prevention Act makes available to her and other survivors, including having a restraining order in place for three years and for the mortgage payments to be paid by the perpetrator during that period of time, unless or until modified by further court order.

The **National Housing Law Project (NHLP)**, is a private, nonprofit, national housing and legal advocacy center established in 1968 and located in San Francisco, California, with NHLP attorneys based out of California, Illinois, Virginia, and Florida. NHLP's mission is to advance housing justice for poor people by increasing and preserving the supply of decent, affordable housing; improve existing housing conditions, including physical conditions and

management practices; expand and enforce low-income tenants' and homeowners' rights; and increase housing opportunities for racial and ethnic minorities. NHLP is the lead legal organization that spearheaded efforts to pass the proposed housing title provisions of the 2022 Reauthorization of VAWA. NHLP also played a key role in drafting and passing the housing title sections of the 2013 Reauthorization of VAWA. NHLP frequently works with the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture's Rural Development on the agencies' implementation of VAWA and other policies to support survivors of gender-based violence. NHLP's Domestic Violence Project provides technical assistance and support on the housing rights of domestic violence, sexual assault, dating violence, and stalking survivors to hundreds of housing providers, domestic and sexual violence advocates, and legal aid attorneys across the country. Through litigation, policy advocacy, and training, NHLP supports local legal advocates in their efforts to enforce the housing protections of survivors under VAWA, the Fair Housing Act, as well as state and local laws. NHLP publications on domestic and sexual violence, including its nationally recognized *Housing Rights of Domestic Violence Survivors: A State and Local Law Compendium*, are widely used by housing providers and survivor advocates alike, and are cited by federal housing agencies.

Building Futures is a non-profit organization based in San Leandro, California providing individuals and families in need shelter, domestic violence support and advocacy, and housing services, including permanent supportive housing and a range of resources to end homelessness. Building Futures' mission is to build communities with underserved individuals and families, where they are safely and supportively housed, free from homelessness and family violence.

Los Angeles Center for Law and Justice is an East Los Angeles-based nonprofit law firm with a mission to secure justice for survivors of domestic violence, sexual assault, and human trafficking and empower them to create their own futures. LACLJ provides free legal services, including representation and other extensive services to survivors throughout Los Angeles County. LACLJ represents survivors in family and immigration court, files

humanitarian and other forms of immigration relief, advocates for survivors in the criminal justice system, and takes appeals when appropriate. Through our integrated service model, LACLJ also provides supportive services such as education, safety planning, accompaniment, and linkages to other service providers as a part of the legal team.

Stopping Domestic Violence is a California-based domestic violence victim service organization and nongovernmental entity providing free, wide-ranging services, including shelter, transportation, health care, education, food, clothing, advice, support, guidance, technology, communication, to all affected by domestic violence.

California Protective Parents Association (“CPPA”) is a 501(c)(3) nonprofit organization that was established in 1998 and is headquartered in Oakland, CA. CPPA’s mission is to protect children from incest and family violence through research, education and advocacy. CPPA supports housing rights for victims of domestic violence and their children whose right to a safe home is frequently jeopardized by ongoing financial and litigation abuse.

Kelly Behre, Director of the UC Davis Family Protection and Legal Assistance Clinic, provides free civil legal assistance to victims of domestic and sexual violence in Yolo County. Director Behre previously developed a Domestic and Sexual Assault Law Clinic at West Virginia University College of Law, where she also taught courses in Family Law and Professional Responsibility. From 2009-2011, she was Acting Director of the Domestic Violence Law Clinic and Visiting Assistant Professor of Clinical Legal Education at the University of Alabama School of Law. Director Behre also served as a staff attorney at the ABA Commission on Domestic and Sexual Violence and at the Sexual Assault Legal Institute of the Maryland Coalition Against Sexual Assault. Director Behre has published scholarly works on Title IX, domestic violence, and family law issues. She currently serves on the ABA Commission on Domestic and Sexual Violence and provides trainings to legal professionals and advocacy groups on domestic and sexual violence law and legal education.

Assoc. Prof. Margaret Drew, Human Rights at Home Clinic, University of Massachusetts School of Law, is an associate professor of law at the University of Massachusetts Law School. Professor Drew has a decades-long history of representing women who have experienced violence. She researches and writes in the field of gender violence, particularly on issues of intimate partner abuse. Professor Drew often represents victims of violence in their appeals of trial court decisions. Professor Drew appreciates the power of a client's ability to appeal and has an extensive history of pro bono appellate work.

Family Violence Law Center is a 501(c)(3) nonprofit organization that works to end intimate partner and family violence in Alameda County by providing crisis support and legal services for survivors of domestic violence, sexual assault, and stalking, as well as violence prevention education.

California Women's Law Center ("CWLC") is a statewide, nonprofit law and policy center dedicated to advancing the civil rights of women and girls. CWLC's mission is to create a more just and equitable society by breaking down barriers and advancing the potential of women and girls through impact litigation, policy advocacy, and education. Since its inception in 1989, CWLC has placed a particular emphasis on eradicating all forms of discrimination and violence against women. CWLC provides legal assistance to survivors of abuse, advocates for survivors on important legislative issues, and offers training and legal support for attorneys, legal service providers, and counselors regarding the legal protections of survivors of domestic violence. In order to provide comprehensive relief to survivors, CWLC has garnered first-hand knowledge of the legal standards applicable to Domestic Violence Prevention Act cases, as well as the Violence Against Women Act and the Fair Housing Act.

FreeFrom is a national nonprofit based in Los Angeles, California, creating pathways to financial security and long-term safety for survivors of intimate partner violence. FreeFrom envisions a world where survivors have sustaining income, savings and credit with which to build wealth and the resources to support individual, intergenerational

and community healing which will enable them to thrive. FreeFrom is building an ecosystem in which survivors can thrive through the use of data, technology, peer-to-peer networks, training programs for shelters, policy advocacy, social enterprise models and cross-sector solutions.

The Washington State Coalition Against Domestic Violence (WSCADV) is a 501(c)(3), nonprofit network of domestic violence programs in Washington State that was founded in 1990 by survivors and their allies. WSCADV's mission is to mobilize its member programs and allies to end domestic violence through advocacy and action for social change.

Sojourn Services for Adult and Child Victims of Domestic Violence ("Sojourn") has served domestic violence victims since 1977, as the second oldest confidential shelter in Southern California. Sojourn remains to this day the premiere provider on the west side of Los Angeles County. Sojourn provides a 24 hour hotline, confidential shelter in secure locations, counseling, horticultural therapy, social services assistance, transitional housing assistance, advocacy toward achieving financial self-sufficiency and stability, support groups, outreach and prevention programs, domestic violence classes, and mentorship for both residential and non-residential clients. Children in residential programs receive empowerment playgroups, clinical art/play therapy, assistance with school enrollment, tutoring, and non-violent parenting skills workshops. Sojourn also provides a weekly pro-bono legal clinic for victims staffed by volunteer attorneys, and well as offering direct legal representation.

Amici submit that further briefing is necessary to assist the Court with respect to topics and issues not fully addressed by the parties' briefs, particularly regarding the history, purpose, and intent behind the Domestic Violence Prevention Act, how California's efforts to provide survivors comprehensive relief to protect their housing and finances are consistent with the efforts of other states, and the serious and long-term damage caused by economic abuse and housing instability. *Amici* believe survivors can best maintain independence from an abuser through financial independence. *Amici* have unique experiences that will assist this Court in understanding how the Court's decision will affect survivors of gender-based violence.

For these reasons, NHLP et al., respectfully request permission to file the accompanying brief as *amici curiae*.

Dated: October 7, 2022

Respectfully submitted,

/s/Lisa M. Sitkin

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AMICUS CURIAE BRIEF

I. INTRODUCTION

The trial court's sua sponte decision to alter the terms of Z.A.'s Domestic Violence Restraining Order ("DVRO") were not in line with the purpose and intent of the Domestic Violence Prevention Act ("DVPA") (Fam. Code, § 6200 et seq.). First, the trial court's actions to strike the mortgage relief term from Z.A.'s DVRO was not only legal error and contrary to Family Code Section 6324 ("Section 6324"), but it also greenlighted F.T.'s continued economic abuse of Z.A. F.T.'s actions to strictly limit Z.A.'s access to resources and leave her with no access to marital finances or safe housing are common tactics among abusers, which the trial courts have the power to stop. Second, the trial court's decision to shorten the duration of Z.A.'s DVRO was an abuse of discretion and should be also reversed. The Legislature intentionally increased the duration of DVROs so that survivors would not have to be retraumatized by frequent returns to court to renew them. For these reasons, the trial court's decision should be reversed to the extent it amended the original June 18, 2021, DVRO by striking the mortgage payment term and shortening the duration.

For more than 40 years, the Legislature repeatedly sought to strengthen and expand the protections available to survivors. In response to the crisis of domestic violence, including the pervasive amount of economic abuse exacted by perpetrators seeking to keep their victims tethered to them, the state long ago overhauled domestic violence laws in order to ensure that DVROs can offer "comprehensive relief to address the various barriers victims face when safely separating from an abuser." (Stats. 2014, ch. 635, § 1, subd. (h)). California is among a majority of states that have sought to address abuse and financial exploitation of survivors by enacting laws that give survivors a better chance of

maintaining or securing safe and affordable housing. The trial court's actions run contrary to these efforts, and make survivors vulnerable to increased violence, economic abuse, and housing instability.

II. RELEVANT BACKGROUND INFORMATION: DOMESTIC VIOLENCE IS A PATTERN OF COERCIVE CONTROL, DOMINATION AND INTIMIDATION INTERSPERSED WITH ACTS OF VIOLENCE.

Some context on the characteristics, prevalence, and effects of domestic violence may illuminate the practical impact of the trial court's sua sponte actions to shorten the duration and narrow the terms of the restraining order to relieve F.T. of the obligation to make mortgage payments on the home where Z.A. and their daughter live. Domestic violence is a terrifying reality, primarily for women and their children, across the county. National estimates of the prevalence of domestic violence report, "about 1 in 3 women (36.3%) and nearly 1 in 6 men (17.1%) experience[] some form of contact sexual violence during their lifetime." (Smith et al., *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report* (2017) National Center for Injury Prevention and Control, Centers for Disease Control and Prevention p. 1 <<https://www.cdc.gov/violenceprevention/pdf/nisvs-statereportbook.pdf>> [as of October 4, 2022].) In California, 34.9% of women and 31.1% of men experience domestic violence. *Id.* at pp. 128, 144. Low-income women are five times more likely to experience domestic violence. (Renzetti, *Economic Stress and Domestic Violence* (2009), <https://www.researchgate.net/publication/228448815_Economic_stress_and_domestic_violence> [as of Sept. 24, 2022].) California state and federal courts have also recognized the harmful effects of domestic violence. (see *Hernandez v. Ashcroft*, (9th Cir. 2003) 345 F. 3d 824, 836-38; *Noergaard v. Noergaard*, (2015) 197 Cal.App.4th 76, 84-85.)

Domestic violence is more than discrete acts of physical violence. Rather, it is “widely understood as an ongoing pattern of behavior defined by both physical and non-physical manifestations of power.” (Tuerkheimer, *Recognizing and Remediating the Harm of Battering: A Call to Criminalize Domestic Violence* (2004) 94 J. Crim. L. & Criminology 959, 962-963 (noting that this is “a remarkably uncontroverted proposition”).) The well-known “power and control wheel,” a common instrument used by advocacy and support programs, captures an array of tactics used by individuals who are abusive, including “intimidation, coercion, and threats; using male privilege; economic abuse; using children; minimizing, denying and blaming; isolation, and emotional abuse.” (Domestic Abuse Intervention Programs, *Power and Control Wheel* <<https://www.theduluthmodel.org/wp-content/uploads/2017/03/PowerandControl.pdf>> [as of Sept. 24, 2022].) Researchers and scholars have explained battering as something “premised on an understanding of coercive behavior and of power and control-- including a continuum of sexual and verbal abuse, threats, economic coercion, stalking, and social isolation -- rather than ‘number of hits.’” (Schneider, *Battered Women and Feminist Lawmaking* (2000) p. 65, quoted in Tuerkheimer, *supra*, p. 964-965; see also Dutton, *Understanding Women’s Responses to Domestic Violence: A redefinition of Battered Woman Syndrome* (1993) 21 Hofstra L. Rev. 1191, 1204-06.)

Evan Stark, a foremost expert on coercive control in battering relationships, explains that violence in abusive relations is not an end in itself; rather, the abuser seeks complete possession and control of his partner, which Stark terms “entrapment.” Indeed, Stark emphasizes that the most significant harm abusers inflict is preventing their partners from “doing for themselves by appropriating their resources; undermining their social support; subverting their rights to privacy, self-respect, and

autonomy; and depriving them of substantive equity,” which is far more destructive to abused women than direct physical and emotional harm. (Stark, *Coercive Control: How Men Entrap Women in Personal Life* (2009) p.13 (hereinafter “Coercive Control”); see also Stark, *Re-Presenting Women Battering: From Battered Women Syndrome to Coercive Control* (1995) 58 Alb. L. Rev. 972, 986.)

Accordingly, the harm that a survivor suffers is not merely caused by discrete incidents of violence -- the essence of the harm of abuse is the cumulative effect of the abuser’s ongoing undermining of the survivor in all dimensions:

What is taken from the women whose stories I tell ... is the capacity for independent decision making in the areas by which we distinguish adults from children and free citizens from indentured servants. Coercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources required for personhood and citizenship (control).

(*Coercive Control, supra*, at p. 15.)

Leaving a perpetrator is the most dangerous time for a survivor of domestic violence. (see Block *How Can Practitioners Help an Abused Women Lower Her Risk of Death* (Nov. 2003) National Institute of Justice Journal, < <https://www.ojp.gov/pdffiles1/jr000250c.pdf>> [as of October 4, 2022] (“Three-fourths of homicide victims and 85 percent of women who had experienced severe but nonfatal violence had left or tried to leave in the past year.”).) One study found through interviews with men who have killed their wives that either threats of separation by their partner or actual separation were often the precipitating events that lead to the murder. (Barnard et al., *Til Death do us Part: A Study of Spouse Murder* (1982) 10

Bulletin of the American Academy of Psychiatry and the Law 271, 278; see Tjaden & Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* (2000) National Institute of Justice and the Centers for Disease Control and Prevention < <https://www.ojp.gov/pdffiles1/nij/181867.pdf>> [as of October 4, 2022] p. 37.) Abusers repeatedly go to extremes to prevent the survivor from leaving, including threatening to harm or kill them or their children, or ruining them financially, among other tactics. (*Why Do Victims Stay?* National Coalition Against Domestic Violence, <<https://ncadv.org/why-do-victims-stay>> [as of Sep. 24, 2022].)

Survivors fear their leaving will only escalate the violence and that they will have no financial means to support themselves or their children, which will lead to their homelessness. (*Ibid.*) These fears are not unfounded. There is a direct correlation between domestic violence and homelessness, with domestic violence being one of the leading causes of homelessness for women and their children. (The U.S. Conference of Mayors, *Hunger and Homelessness: A Status Report on Hunger and Homelessness in America's Cities* (2007) < http://www.ncdsv.org/images/USCM_Hunger-homelessness-Survey-in-America%27s-Cities_12%202007.pdf> [as of October 4, 2022] p. 12; Family and Youth Services Bureau, *An Office for the Administration of Children and Families, Domestic Violence and Homelessness Statistics (2016) Fact Sheet* (2016) <<https://www.acf.hhs.gov/fysb/fact-sheet/domestic-violence-and-homelessness-statistics-2016>> [as of Sept. 23, 2022].) A disproportionate number of homeless women have experienced domestic violence and became homeless after fleeing from their abusers. (Berkeley Economic, Review *Economic Abuse* (2019) <<https://econreview.berkeley.edu/economic-abuse/>> [as of Oct. 4, 2022] (hereinafter “Berkeley”).) A study of women in California found that

women who experienced interpersonal violence “within the last year were almost four times more likely to report housing instability than those who did not.” (Pavaoet al., *Intimate Partner Violence and Housing Instability* (2007) 32 Am. J. Preventative Medicine 2,143, p. 145; see also Clough et al., “*Having Housing Made Everything Else Possible*”: *Affordable, Safe and Stable Housing for Women Survivors of Violence* (2014) Qual. Soc. Work <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4196210/pdf/nihms528901.pdf>> [as of Sept. 24, 2022].)

This was exactly what happened to Z.A. When she tried to separate from F.T., his threats and actions escalated: he locked her out of the family home, rendering her effectively homeless; denied her access to funds to live on; and threatened that she would lose custody of her daughter. (1 Appellant’s Appendix (“AA”), p. 13, 20-21.) F.T. then placed conditions on Z.A.’s return to the home, including that his brother would live with them, that home security cameras F.T. installed without Z.A.’s consent would remain in the home, and that Z.A. would not to use the family car. (1AA12-13, 1AA21.) Like so many perpetrators, F.T.’s tactics of control and domination trapped Z.A. and directly risked her housing, financial stability, and ability to care for her child.

ARGUMENT

III. ECONOMIC ABUSE IS A MEANS THROUGH WHICH ABUSERS CONTROL SURVIVORS, MAKE THEM FINANCIALLY DEPENDENT AND DEPRIVE THEM OF THE RESOURCES TO PROVIDE FOR THEMSELVES.

One of the most salient features of domestic violence is economic abuse. Economic abuse involves behaviors that “control a woman’s ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency.” (Adams et al., *Development of the Scale of Economic Abuse* (2008) 14 *Violence Against*

Women, 553, 564.) In order to create one of the first scales of economic abuse experienced by survivors, researchers conducted a study of 103 survivors of domestic abuse in which participants responded to measures of economic, physical, and psychological abuse as well as economic hardship. (*Ibid.*) The study showed that 99% of survivors were subjected to economic abuse during their relationships. (*Id.* at p.580; see also Doyle et al., *Survivors Know Best: How to Disrupt Intimate Partner Violence During COVID-19 and Beyond* (2020), at pp. 10, 30 <<https://www.freefrom.org/wp-content/uploads/2021/06/Survivors-Know-Best.pdf> > [as of Oct. 4, 2022] (finding that of the survivors surveyed for the study, 96% reported experiencing economic abuse, 94% reported experiencing economic exploitation, and 95% reported experiencing economic restriction.)).¹

In furtherance of this power and control, abusers commonly sabotage a survivor's economic stability and isolate them from their family and friends. (Stylianou, *Economic Abuse Within Intimate Partner Violence: A Review of the Literature* (2018) 33 Violence and Victims 1 <https://connect.springerpub.com/highwire_display/entity_view/node/87664/full> [as of Sept. 24, 2022].; See also The Economic Stability working group of the Transition Subcommittee of the Governor's Commission on Domestic Violence, *Voices of Survival: The Economic Impacts of Domestic Violence: A blueprint for Action 39* (2002) (finding that more than two out of every five survivors surveyed stated that lack of affordable permanent housing puts domestic violence survivors in the position of choosing between homelessness and continued abuse). Some perpetrators

¹Economic exploitation is defined as "harm-doers stealing survivors' property, forcing survivors to hand over savings or assets, incurring debt in survivors' names without their knowledge or consent." (Doyle, *supra*, at p. 30.) Economic restriction is defined as "harm-doers keeping financial information from survivors, demanding receipts from survivors, making survivors ask for money, etc.,"). (*Ibid.*)

“intentionally deplete women’s available resources, as a means of limiting their options ... including stealing partners’ money, creating costs, and generating debt.” (Adams, *supra*, at pp. 563, 580.) Abusers also use a variety of tactics to prevent their partner from also acquiring new or additional resources. (*Ibid.*) These tactics, many of which F.T. used against Z.A., include discouraging their partner from working outside the home, sabotaging their partner’s use of a car, refusing to put the survivor’s names on the deed to a home or other community property, denying them access to a bank account, lying about shared assets, or incurring debt in the survivor’s name. (1 AA 12, 19-21, 1 Reporter’s Transcript (RT), 45-46, 148-150, 159-160; see Adams, *supra*, at p. 565-567; see also Berkeley, *supra*.)

Many survivors also face the loss of their housing due to the calculated acts of their abusers, such as intentionally not paying the rent or mortgage or damaging the home, to render their survivors homeless and dependent and forced to return to them. (see e.g., Levin, et al., *Pathways to and From Homelessness: Women and Children in Chicago Shelters* (2004) Center for Impact Research <<https://www.issuelab.org/resources/346/346.pdf>> [as of Oct. 4, 2022] (finding that for a substantial portion of women surveyed in Chicago shelters, housing arrangements were destroyed due to intimate partner violence).) *Amici* often see abusers who are well aware that their conduct can contribute to jeopardizing a survivor’s housing stability. In *Amici*’s experience, abusers are aware of the importance of safe, stable, and affordable housing for survivors and the serious consequences for survivors who are housing insecure, including loss of custody of their children. Thus, abusers will directly threaten survivors that their housing is at risk and often carry out threats in order to trigger a foreclosure or eviction. (see e.g., *Ashby v. Ashby* (2021) 68 Cal.App.5th 491, 517 (upholding the trial court’s

decision to renew the domestic violence order based on the abuser seizing the family car and supporting the eviction of the survivor from the family home in order to pressure her to terminate the DVRO.) Providing safe, affordable housing, such as requiring F.T., pursuant to the DVPA, to pay the monthly mortgage payments, gives the survivor the foundation to focus on other needs such as education, employment, and counseling.

A. Economic Abuse Traps Survivors and Creates Housing Instability.

Economic abuse creates a cycle that traps survivors. Researchers have identified the lack of financial resources, including affordable housing, as one of the main reasons why battered women, risking their lives and possibly their children's lives, remain with or return to their abusers. (see Clough, *supra.*); Reif & Krisher, *Subsidized Housing and the Unique Needs of Domestic Violence Survivors*, 34 Clearinghouse Rev. 20, 21-22 (2002); Berkeley, *supra* (A major reason cited by women who leave shelters and return to abusive partners is the lack of alternative housing and income); *2018 National Poll on Domestic Violence and Financial Abuse* (2018) The Allstate Foundation <https://allstatefoundation.org/wp-content/uploads/2020/03/2018-Research-Deck_Final.pdf> [as of Oct. 6, 2022](finding that financial abuse not only jeopardizes a person's physical safety but also prohibits them from leaving).) Z.A. had this very experience. Before and after her separation, F.T.'s economic abuse left Z.A. with no income or resources, which effectively made her homeless and increased the likelihood she would return to F.T. (1AA 12-13, 20-21.)

Worse still, even for survivors seeking services as a way to escape, survivors often cannot leave because there are not enough resources to meet the demand, making effective and comprehensive restraining orders that much more important. For example, in 2021, the National Network to End Domestic Violence conducted its annual Case Count, which is an

unduplicated, one-day count of adults and children who seek domestic violence services in the United States. In just one day in California, the count identified 1,071 unmet requests for domestic violence services – such as emergency shelter, transitional housing, counseling, legal advocacy, child care, and public benefits help – 42 percent of which were for housing. (*16th Annual Domestic Violence Counts California Summary* (2021) National Network to End Domestic Violence < <https://nnedv.org/wp-content/uploads/2022/03/16th-Annual-Domestic-Violence-Counts-California-Summary-FINAL.pdf>> [as of Sept. 23, 2022].)

The U.S. Congress has also recognized the serious and dangerous harm posed by economic violence. In response to advocates’ concerns regarding abuser tactics to intentionally limit and control victims’ access to housing, banking, transportation, and finances, Congress incorporated findings into the 2005 Reauthorization of the Violence Against Women Act (“VAWA 2005”) that “recognized a strong link between domestic violence and homelessness” and the fact that “abusers frequently manipulate finances in an effort to control their partners.” (*Violence Against Women and Department of Justice Reauthorization Act of 2005*, Pub. L. No. 109-162, § 41401 (1), (10), (Jan. 5, 2006) 119 Stat. 2960, 3041-49 (2006).) VAWA 2005 also protected survivors of domestic violence, dating violence, and stalking from evictions or admission denials in the federally subsidized housing programs arising out of the acts of violence against them. (*Id.* at § 41402.)

Subsequent reauthorizations have continued to address the harms caused by economic abuse. The 2022 Reauthorization of VAWA makes domestic violence survivors for the first time eligible for victim’s services when there is “... a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may

or may not constitute criminal behavior...” (34 U.S.C. §12291(a)(12)).)

B. Economic Abuse Has Severe Financial Costs on Survivors.

Economic abuse is financially costly for survivors and society.

Survivors bear the financial burden of loss in income, loss in productivity, property loss or damage, stolen resources, debt, and medical costs incurred by their abuser or as a result of the abuse. (see Peterson, et al., *Lifetime Economic Burden of Intimate Partner Violence Among U.S. Adults* (2018) American Journal of Preventative Medicine, at P. 1 <
https://www.researchgate.net/publication/327157353_Lifetime_Economic_Burden_of_Intimate_Partner_Violence_Among_US_Adults> [as of Sept. 24, 2022]; *Costs of Intimate Partner Violence Against Women in the United States* (2003) National Center for Injury Prevention and Control & Centers for Disease Control and Prevention, at p. 2 (hereinafter “CDC”).) Over a survivor’s lifetime, it is estimated that the cost of intimate partner violence is \$103,767 per female survivor and \$23,414 per male survivor. (Peterson, *supra*, at p. 1.) According to the Centers for Disease Control and Prevention, intimate partner violence results in nearly \$0.9 billion in lost productivity. (CDC, *supra*, at p. 2; see also Berkeley, *supra*.)

Incidents of domestic violence and economic abuse increased during the global pandemic. While studies on the full extent of the pandemic’s effect on domestic violence are still being gathered, preliminary data from police departments in early 2020 showed a sharp increase in domestic violence-related arrests. (Boserup et al., *Alarming trends in US domestic Violence during COVID-19 Pandemic* (2020) American Journal of Emergency Medicine, 2753, 2753 (Portland saw a 22% increase in DV arrests, San Antonio saw an 18% increase in calls related to family violence, Jefferson County Alabama saw a 27% increase in DV calls, and

New York City police responded to a 10% increase in DV reports).)² Research found that increased rates of economic abuse during the pandemic resulted in survivors carrying staggering amounts of debt or in theft of funds. *See Doyle, supra*. Survivors reported, on average, that their abuser stole \$1,280 each month and their abuser restricted their freedom to spend \$1,090 of their own money each month. *Id.* at 10. Survivors also reported carrying \$15,936 in coerced or fraudulent debt incurred by their abuser and annually, \$17,770 in property damage costs. *Id.*

These tactics were deployed by F.T. against Z.A. to dominate and control her. F.T.’s actions, as is the case for so many abusers, signaled that he knew that increasing Z.A.’s economic insecurity made her more reliant on him. Courts must be cognizant of these dynamics of abuse and ensure that abusers are not allowed to bind their victims with the acquiescence of the justice system. Courts have the opportunity and the obligation to deploy available remedies under the DVPA to stop economic abuse, including by directing the payment of housing costs under Section 6324, so that survivors

² In the midst of the global pandemic, the Legislature made the following findings:

- “(a) In times of natural disasters and crises, rates of interpersonal violence historically rise, especially among households experiencing significant financial strain.
- (b) The COVID-19 pandemic has proven this historical trend to be the reality for survivors of domestic violence as police chiefs nationwide reported increases of 10 percent to 30 percent in domestic violence assaults in the first two weeks after a national emergency was declared in March, also revealing more severe violence as compared with past years.
- (c) During the COVID-19 crisis, reports show this is a worst-case scenario for victims experiencing domestic violence, with the data showing the virus is being used as a scare tactic to keep victims isolated from their support systems, or even their children.
- (d) Shelter-in-place orders and other restrictions related to COVID-19 have also resulted in victims being isolated from family, friends, and their community.
- (e) While some jurisdictions have reported a drop in domestic violence calls, this does not necessarily equate to a reduction in domestic violence. Increased isolation of victims has created an environment where abuse, including coercive control, is more likely to go undetected and therefore unreported.”

(Sen. Bill No. 1141 (2019-2020 Reg. Sess.) § 1, eff. Nov. 18, 2020 <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1141> [as of Oct. 5, 2022].)

like Z.A. can secure some level of economic stability. Section 6324 can be powerfully impactful. When properly utilized, it can interrupt the cycle of violence and economic abuse, and give survivors a path towards safety, economic security, and autonomy.

C. Survivors Face Unique Risks of Mortgage Delinquency and Foreclosure.

Survivors of domestic violence who remain in the family home after separating from an abusive partner face unique risks of mortgage delinquency and loss of the home to foreclosure. (see *Foreclosure Defense for Survivors* in Guidebook on Consumer & Economic Civil Legal Advocacy for Survivors (2017) Center for Survivor Agency and Justice, Ch. 8.) While most separations cause financial strain, as discussed above, abusers frequently exercise unilateral control over the household finances and community assets. They are likely to withhold financial support after a separation, putting the survivor at greater risk of not being able to make the mortgage payments. In addition, abusers may attempt to retain control by directing creditors like mortgage servicers to send monthly statements and other mortgage-related documents to the abuser's new address at the same time that they stop making mortgage payments. If the abuser is the sole named borrower on a mortgage, it can be difficult, if not impossible, for the survivor to gain access to this critical information about amounts due, changes in escrow payments, how to make payments and how to get assistance with a defaulted mortgage account through a loss mitigation process.³

Mortgage servicers are required by federal law to communicate with a non-borrower who claims to be a successor-in-interest to the named

³ Loss mitigation is the process by which a mortgage servicer (often using the guidelines established by and with the approval of the investor and/or insurer of the loan) reviews a mortgage loan for possible options to avoid a foreclosure, thereby mitigating the loss to the mortgage investor.

borrower in order to verify the claimant’s ownership interest in the property. (see Banks and Banking Regulations, 12 CFR §§1024.31, 1024.32(c)(1), 1024.38(b)(1)(iv).)

In practice, however, it can take weeks or months to initiate the verification process and then become confirmed as a successor-in-interest with access to account information. The process often takes even longer—and can fail entirely—when the named borrower is still living and is an abuser who objects to granting the survivor access to the account.

The risk that a mortgage default will result in foreclosure is also particularly high for a survivor occupying the family home in California after a separation. First, lenders in California virtually always employ the statutory non-judicial foreclosure process, which allows them to sell a property at auction without ever going before a court. (see Cal. Civ. Code §2924 *et seq.*) This non-judicial process can be completed in less than eight months from the date of initial default, *ibid.*, so a survivor who is forced to rely solely on much slower-moving dissolution or other family law proceedings for relief will generally lose the house before a court can intervene. Consumer attorneys attempting to help survivors avoid foreclosure regularly run up against this problem, which is only exacerbated by the shortage of family law attorneys who offer no- or low-cost services. Moreover, whether the abuser is the sole named borrower or a co-borrower with the survivor, the abuser can also wield that borrower status to interfere with the survivor’s efforts to resolve the delinquency by blocking access to account information or by simply refusing to participate in the loss mitigation process.⁴

⁴ Recognizing this problem, the Federal Housing Administration recently modified its loan servicing guidance, effective September 26, 2022, to make it easier for a survivor to engage in loss mitigation without the participation of an abuser. (FHA Single Family Housing Policy Handbook 4000.1 at pp. 960, 963.) Other federally-backed and non-federally backed loans are not covered by

IV. CALIFORNIA HAS SOUGHT TO RESPOND TO THE CRISIS OF DOMESTIC VIOLENCE AND ECONOMIC ABUSE BY ENSURING THAT COMPREHENSIVE AND LONG-TERM RELIEF IS AVAILABLE.

Even in the late 1970s, it was understood that there was a crisis of domestic violence in the United States, and it was determined, based on an estimate of national statistics, that 50% of married women in California experienced some form of domestic violence by their husbands. (Mills & McNamar, *California's Response to Domestic Violence* (1981) 21 Santa Clara L.Rev. 1-2).) An evaluation of available civil temporary restraining orders at the time by the California attorney general found their “enforcement ... to be generally non-existent.” (*Id.* at p. 5.) This lack of enforcement can be attributed to the orders’ limited scope in terms of eligibility and duration, and to how vaguely they were written. (*Ibid.*) A survivor would have to be married and seeking a marital dissolution, nullification, or separation to apply for a restraining order through the former Sec. 4359 of the Civil Code, as a part of the former Family Violence Act of 1970, but its vague description of what constituted abuse left survivors unprotected. (*Id.* at pp. 5-6 (citing former Civ. Code § 4359).) Unmarried survivors or married survivors who did not want to separate, dissolve, or nullify their marriages had to apply for an order through Sec. 527(b) of the Code of Civil Procedure, and were forced to show “actual violence resulting in physical injury.” (*Id.* at p. 6.) Even then, they could only secure a restraining order for 30 days. (*Id.* at p. 7.)

Recognizing that thousands of survivors were still being denied protection, the California Attorney General convened a multi-disciplinary working group to study this problem and make recommendations to Legislature. (*Ibid.*) These efforts culminated in the Legislature enacting the

this guidance, however, so an abuser’s refusal to cooperate remains a serious impediment to foreclosure avoidance.

DVPA in 1979 in order to “prevent recurrent acts of violence by and upon family or household members through the use of protective orders.” (*Ibid.*, citing former Code Civ. Pro. §§ 540-553 (West Supp. 1980).) Since the historic passage of the DVPA in 1979, domestic violence advocates have worked with the Legislature to continue to amend the DVPA to more directly and comprehensively respond to the needs of survivors.

One important result of this work is Section 6234, which grants the trial court’s authority to issue orders regarding temporary possession of real property and the payment of liens or encumbrances due during the term of a DVRO, rather than force a survivor to seek this relief in another proceeding, such as a part of a divorce. (*Nicole G. v. Braithwaite* (2020) 49 Cal.App.5th 990 [upholding the trial court’s ex parte order providing the survivor temporary possession and control of real property since the survivor owned the property as a joint tenant with abuser, the abuser had assaulted the survivor, and there was evidence of continued physical or emotional harm had both continued to reside in co-owned property together]; *Marriage of J.Q. & T.B.* (2014) 223 CA4th 687, 704 [holding that the trial court properly ordered abuser to pay the survivor \$1,600 over two months for *future living expenses* pursuant to Section 6324].) Section 6324 provides that a court “may issue an ex parte order determining the temporary use, possession, and control of real or personal property of the parties and the payment of any liens or encumbrances coming due during the period the order is in effect.” (Fam. Code § 6324).

The Legislature also allowed the term of DVROs to be extended in order to provide the best protection for domestic violence survivors. (See, e.g., Stats. 2005, ch. 125 (A.B. 99), § 1; § 6345, subd. (a).) In 2005, when the Legislature amended section 6345 to extend the term of DVROs from three to five years, the stated purpose was to “to protect all victims of domestic violence from retraumatization caused by frequent court visits to

renew DVROs.” (*Priscila N. v. Leonardo G.* (2017) 17 Cal.App.5th 1208, 1214 [citing Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 99 (2005-2006 Reg. Sess.) as amended Mar. 1, 2005, p. 3].) California Courts have highlighted that the five-year renewal period in section 6345 was adopted to “save the victims [of domestic violence] the harrowing ordeal of returning to court every three years [or sooner] to renew the orders and allow them to go about their lives with more peace of mind.” (See, e.g., *Avalos v. Perez* (2011) 196 Cal.App.4th 773, 777; *Garcia v. Escobar* (2017) 17 Cal.App.5th 267, 272.)

In 2014, domestic violence advocates sought further amendments to Sections 6203, 6220, 6300, 6301, 6305, and 6340 of the DVPA in order to improve the use and enforcement of restraining orders. (A.B.2089, <<https://legiscan.com/CA/text/AB2089/id/965436>>.) The amendments made clear, among other things, that restraining orders were not limited to survivors alleging “actual infliction of physical abuse or assault,” that a restraining order could be issued based solely on the testimony or affidavit of the person seeking a restraining order, that restraining orders due not expire and “shall be valid for five years” and that restraining orders are most effective when they provide “comprehensive relief” to survivors to address the various barriers they face, are specific in their terms, and consistently enforced. (Stats.2014, c. 635 (A.B. 2089), §§ 1-7, eff. Jan. 1, 2015.)

More recently, in 2020, to strengthen a trial court’s authority under section 6324, the Legislature added section 6324.5. (Stats.2020, c. 245 (A.B.2517), § 1, eff. Jan. 1, 2021.) Section 6324.5 combines sections 6324 and 6340 into one streamlined provision to reaffirm a trial court’s authority to issue an order “determining the use, possession, and control of real or personal property of the parties during the period the order is in effect and the payment of any liens or encumbrances coming due during that period.”

(Ibid.)

California continues to address domestic violence as a pervasive public health and public safety problem. Because effective issuance and enforcement of civil restraining orders are of paramount importance in this effort, the Legislature has continued to amend the DVPA to better address survivor needs. An individual trial court's refusal to utilize the critical tools the Legislature has developed to protect survivors runs contrary to the law and undermines the state's more than 40-year effort to provide broad and comprehensive relief to survivors.

V. A MAJORITY OF STATES HAVE ALSO PASSED LAWS PROTECTING SURVIVORS FROM ECONOMIC ABUSE AND HOUSING INSTABILITY.

In recognition that more must be done to protect survivors of gender-based violence who live in a family rental or mortgaged housing, Legislatures around the country have adopted laws aimed at ensuring that survivors are protected from further economic abuse and housing instability. California is among an overwhelming majority of states that have enacted laws to protect survivors of domestic violence and sexual assault who live in family dwellings from the economic harms associated with leaving an abusive relationship. (National Housing Law Project, Housing Rights of Domestic Violence Survivors, A State and Local Law Compendium (2017) < <https://www.nhlp.org/manuals/state-law-compendium-housing-rights-of-domestic-violence-survivors/>>. While these state laws vary in application and coverage, they generally seek to achieve the same purpose and goals as California's DVPA -- to allow courts to impose obligations on the abuser to cover housing expenses or provide alternative housing for survivors. Thus, California's DVPA is well situated among the many other states that explicitly recognize the severe and lasting impacts of economic abuse and affirm the power of courts to address the

economic challenges faced by survivors.

Numerous states, including California, have crafted their laws to address common sabotaging strategies like the ones F.T. engaged in to render Z.A. penniless, homeless, and forced to return to him. (1RT 426-428.) When properly applied, these state laws can protect survivors like Z.A. from this abuse and impose orders that ensure a survivor's housing expenses are covered, so as to reduce the likelihood a survivor will be forced to return to the abuse.

A. Several States Have Passed Laws that Allow Courts to Require Abusers to Cover Housing Expenses, Provide Economic Maintenance, or Provide Alternative Housing for Survivors.

Like California, numerous states have provided courts with tools to mitigate the economic and housing challenges faced by survivors by authorizing courts to require the abuser to cover housing expenses. For instance, the State of Connecticut allows courts to issue protection orders enjoining the respondent from entering the family dwelling and ordering the respondent to make rent or mortgage payments and maintain utility services. (See Conn. Gen. Stat. § 46b-15.) Similarly, Nevada provides courts not only with the power to exclude the restrained party from the protected party's residence, but also with the ability to issue orders requiring the restrained party to pay rent or make payments on a mortgage on the protected party's place of residence. (See Nev. Rev. Stat. § 33.030.) Additionally, New Jersey, Pennsylvania, and Missouri enacted laws that allow state courts to order abusers to provide relief in the form of rent or mortgage payments on residences occupied by survivors. (See N.J. Stat. Ann. § 2C:25-29 [providing courts the ability to issue orders requiring the restrained party to pay the protected party's housing expenses]; 23 Pa. Cons. Stat. Ann. § 6108 [courts can issue protection orders directing the defendant to make or continue to make rent or mortgage payments on the

residence of the plaintiff to the extent that the defendant has a duty to support the plaintiff or other dependent household members]; Mo. Stat. § 455.050 [courts can issue orders requiring the abuser to pay the survivor's housing costs].) By enacting these laws, these states have recognized the severe and lasting impacts of economic abuse and the need for survivors to be able to use protective order proceedings to secure a broader category of housing and economic relief.

Other states have passed laws that enable courts to issue orders requiring abusers to provide alternative housing for survivors. The states of Georgia, Kansas, Maine, Mississippi, New Mexico, North Carolina, Ohio, Pennsylvania, Tennessee, and Wyoming permit the state courts to issue protection or restraining orders requiring abusers to provide suitable alternative housing for the survivors. (See Ga. Code Ann. § 19-13-4 [Courts can issue orders requiring the restrained party to provide suitable alternate housing for the protected party]; Kan. Stat. Ann. § 60-3107 [Courts can issue orders requiring that the restrained party pay for alternate housing]; Me. Rev. Stat. Ann. tit. 19-A, §§ 4006, 4007 [Courts can issue orders requiring that the restrained party pay for alternate housing and moving expenses]; Miss. Code Ann. § 93-21-15 [Protection orders requiring the respondent to provide suitable alternate housing to the petitioner]; N.M. Stat. Ann. § 40-13-5 [Orders requiring restrained party to provide for alternative housing. N.M. Stat. Ann. § 40-13-5]; N.C. Gen. Stat. Ann. § 50B-3 [Orders requiring the restrained party to pay for alternate housing]; Ohio Rev. Code Ann. § 3113.31 [Orders allowing the restrained party to provide suitable alternate housing in the case of a consent agreement]; 23 Pa. Cons. Stat. Ann. § 6108 [Protection orders directing the defendant to provide suitable alternate housing]; Tenn. Code Ann. § 36-3-606 [Protection orders directing the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee

of the residence]; Wyo. Stat. Ann. § 35-21-105 [A petitioner for a protection order may be granted sole possession of the residence; a restrained party may be ordered to provide alternative housing for the petitioner].) By establishing these laws, these states – like California – have recognized the critical importance of the court’s role in mitigating the economic and housing challenges faced by survivors.

VI. CONCLUSION

For the reasons set forth above, the application for permission should be granted and the accompanying brief of *amici curiae* filed. This Court should also grant the Plaintiff-Appellant’s request for relief and reverse the trial court’s November 16, 2021, order to the extent it amended the original June 18, 2021, DVRO by striking the mortgage payment term and shortened the duration. The court should also remand the case to the trial court with instructions to reinstate the original terms of the June 18, 2021, DVRO, retroactive to that date.⁵

Dated: October 7, 2022

Respectfully submitted,

/s/Lisa M. Sitkin

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⁵ Counsel for *Amici* acknowledge the substantial contributions of Kelark Azer, a NHLP law clerk extern, to the preparation of this brief.

**CERTIFICATE OF COMPLIANCE WITH WORD
COUNT REQUIREMENT**

Pursuant to Rule of Court 8.204(c)(1), the undersigned certifies that the computer program used to generate this brief indicates that it does not exceed 14,000 words.

Dated: October 7, 2022

Respectfully submitted,

/s/Lisa M. Sitkin

Lisa M. Sitkin
Lila Gitesatani
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Attorneys for Amici Curiae

DECLARATION OF ELECTRONIC SERVICE

I hereby declare:

1. I am, and was at the time of service, a resident of the County of Alameda, over the age of 18 years, and not a party to this legal action. My business address is 1663 Mission Street, Suite 460, San Francisco, California, 94103.

2. On the date indicated below, I served this **APPLICATION OF THE NATIONAL HOUSING LAW PROJECT, ET AL., FOR LEAVE TO FILE *AMICI CURIAE* BRIEF; *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT** by transmitting a true copy via this Court's TrueFiling system addressed as follows:

PLEASE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on October 7, 2022, at Berkeley, California.

/s/ Lisa M. Sitkin

Lisa M. Sitkin

ELECTRONIC SERVICE LIST

Case Name: Z.A. v. F.T.

Case No.: No. C095538

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DECLARATION OF SERVICE

I hereby declare:

1. I am, and was at the time of service, a resident of the County of San Francisco, over the age of 18 years, and not a party to this legal action. My business address is 1663 Mission Street, Suite 460, San Francisco, California, 94103.

2. On the date indicated below, I served this **APPLICATION OF THE NATIONAL HOUSING LAW PROJECT, ET AL., FOR LEAVE TO FILE *AMICI CURIAE* BRIEF; *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT** by transmitting a true copy via U.S. Mail to Respondent addressed as follows:

Faris Farid Tayeb
1490 Peppertree Road
West Sacramento, CA 95691

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on Oct. 7, 2022, at San Francisco, California.

/s/ Allan Manzanares

Allan Manzanares