

No. B302026

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION 6

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STANLEY VINCENT,  
*Plaintiff-Respondent,*

v.

CALIFORNIA HIGHWAY PATROL,  
*Defendant-Appellant.*

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On Appeal from the Superior Court of California,  
County of Santa Barbara, Case No. 16CV05599,

Honorable Donna D. Geck, presiding

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AMENDED APPLICATION FOR LEAVE TO FILE *AMICI*  
*CURIAE* BRIEF IN SUPPORT OF PLAINTIFF-RESPONDENT;  
[PROPOSED] *AMICI CURIAE* BRIEF

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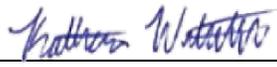
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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Pursuant to California Rules of Court, Rule 8.208, I hereby certify that no entity or person has an ownership interest of 10 percent or more in proposed *amici curiae* A Better Balance, The California Employment Lawyers Association, California Women’s Law Center, The Center for Law and Social Policy, Disability Rights Advocates, The Disability Rights Legal Center, Equal Rights Advocates, Family Values @ Work, Legal Aid at Work, The National Partnership for Women & Families, National Women’s Law Center, Public Counsel, and the U.C. Hastings Center for WorkLife Law. I further certify that I am aware of no person or entity, not already made known to the Justices by the parties or other *amici curiae*, having financial or other interest in the outcome of the proceedings that the Justices should consider in determining whether to disqualify themselves as defined in Rule 8.208(e)(2).

Dated: May 26, 2021

  
\_\_\_\_\_  
Katherine Wutchiett

**APPLICATION FOR LEAVE TO FILE**

Pursuant to California Rule of Court 8.200(c), Legal Aid at Work, *et al.* respectfully apply for leave to file an *amici curiae* brief in support of Plaintiff-Respondent Stanley Vincent. The proposed brief is lodged concurrently with this application.

**CERTIFICATION OF NON-PARTICIPATION**

Pursuant to California Rule of Court 8.200(c)(3), *amici curiae* certify that no counsel for either party authored the brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting the brief, and no person or entity contributed money that was intended to fund preparing or submitting the brief.

**STATEMENTS OF INTEREST OF THE *AMICI CURIAE***

Legal Aid at Work (“LAAW”) and twelve *Co-Amici* (collectively “*Amici*”) respectfully submit this brief supporting Real Parties in Interest. *Amici* are each non-profit organizations, with no parent corporations or publicly traded stock.

*Amici* are nonprofit organizations dedicated to advancing and protecting civil rights of workers and families. *Amici* include organizations with extensive experience with the issues raised herein, and are recognized for their expertise in the

interpretation of civil rights laws and the impact of laws and policies on workers. The expertise and experience of *amici* will assist in resolving the important legal issues presented in the case. The individual organizations are described below.

**A Better Balance** (“ABB”) is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education, and technical assistance to state and local campaigns, ABB is committed to helping workers care for themselves and their families without risking their economic security. ABB has co-drafted model paid sick leave and paid family and medical leave legislation that has been used and adapted in the 51 jurisdictions that have enacted paid sick leave laws and the 10 jurisdictions that have enacted paid family and medical leave laws, including California. For years, ABB has led a coalition of organizations from a range of social justice movements to ensure that our laws and policies broadly define family to include extended relatives and other loved ones who may not be biologically or legally related.

The **California Employment Lawyers Association** (“CELA”) is an organization of California attorneys whose members primarily represent employees in a wide range of employment cases, including individual, class, and representative actions enforcing California’s wage and hour laws. CELA has a substantial interest in protecting the statutory and common law rights of California workers and ensuring the vindication of the public policies embodied in California employment laws. The organization has taken a leading role in advancing and protecting the rights of California workers, which has included submitting amicus curiae briefs and letters and appearing before the California Supreme Court in employment rights cases such as *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (2018), *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, *Gentry v. Superior Court* (2007) 42 Cal.4th 443, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, and *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, as well as in cases before the Ninth Circuit.

**California Women’s Law Center** (“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 transformative litigation, policy advocacy, and education. CWLC places a particular emphasis on fighting for economic justice, including by advocating for strong paid family leave laws and protections for caregivers.

The **Center for Law and Social Policy** (“CLASP”) is a national, non-partisan, anti-poverty organization that has advocated for policy solutions that support the needs of people with low incomes for over 50 years. CLASP develops practical yet visionary strategies for reducing poverty, promoting economic opportunity, and addressing barriers faced by people of color. CLASP has deep expertise in paid family and medical leave policies, including how to ensure that all workers—regardless of income, industry, employer, family make-up, and immigration status—can easily and safely take the leave they need to ensure their economic security and wellbeing. As nearly all working people will experience a caregiving need at some point in their lives, inclusive, job-protected paid family and medical leave is

critical to reducing and preventing poverty and economic insecurity.

**Disability Rights Advocates** (“DRA”) is a non-profit public interest center that specializes in high-impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, employment, transportation, education, employment, technology and housing.

The **Disability Rights Legal Center** (“DRLC”) is a non-profit legal organization founded in 1975 to represent and serve people with disabilities. Individuals with disabilities continue to struggle against ignorance, prejudice, insensitivity, and lack of legal protection in their endeavors to achieve fundamental dignity and respect. DRLC assists people with disabilities in attaining the benefits, protections, and equal opportunities guaranteed to them under the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and other state and federal laws. Its mission is to champion the rights of people with disabilities through education, advocacy, and litigation. DRLC supports work leave policies for

employees with disabilities, as well as leave to care for family members with disabilities or medical conditions.

**Equal Rights Advocates** (“ERA”) is a national civil rights organization dedicated to advancing employment and educational opportunities for women and girls through impact litigation, direct legal services, and policy advocacy. Since its inception in 1974, ERA has focused much of its efforts on ensuring family-friendly workplaces, including representing plaintiffs in two of the first pregnancy discrimination cases heard by the U.S. Supreme Court, *Geduldig v. Aiello* (1974) 417 U.S. 484, and *Richmond Unified School District v. Berg* (1977) 434 U.S. 158. More recently, ERA has for decades advised and represented individuals on the application and enforcement of the Family and Medical Leave Act and the California Family Rights Act. Additionally, ERA has led efforts at the local, state and national level to expand access to parental leave for workers, including through passage of the San Francisco Paid Parental Leave Ordinance and California laws that provide workers who work for smaller employees (of 5 or more employees) to take job-protected parental leave to bond with a new child. ERA continues to advocate for federal legislation to expand the right to job-

protected parental leave to apply to more workers and is currently working on legislation that would expand CFRA's application to include chosen family members for caregiving leave.

**Family Values @ Work** ("FV@W") grew out of the recognition that valuing caregiving and enabling people to be good providers and good family members is key to achieving racial, gender and economic equity. Founded in 2003 with leaders in 8 states, FV@W has grown to become a network of 27 state-based coalitions and is a recognized leader with significant experience fostering grassroots coalitions and policy change across the country and nationally. FV@W has shaped the debates around Earned Sick Days (ESD) and Family and Medical Leave Insurance (FMLI), engaged a wide range of partners, and guided development of the most inclusive policies to date.

**Legal Aid at Work** ("LAAW") is a non-profit public interest law firm whose mission is to protect, preserve and advance the workplace rights of individuals from traditionally underrepresented communities. Since 1970, LAAW has represented clients in cases involving the rights of employees in California workplaces, especially those cases of special import to

communities of color, women, recent immigrants, individuals with disabilities, caregivers, members of the LGBTQ+ community, and working families with low incomes. LAAW specializes in, among other areas of the law, job-protected leave rights including those with claims brought under the Family and Medical Leave Act and the California Family Rights Act. LAAW has appeared before the California Court of Appeal, the California Supreme Court, and the United States Supreme Court, both as counsel for plaintiffs as well as in an *amicus curiae* capacity.

**The National Partnership for Women & Families** (formerly the Women’s Legal Defense Fund) is a national advocacy group dedicated to achieving equity for all women. National Partnership for Women & Families works to create the conditions that will improve the lives of women and their families by focusing on achieving workplace and economic equity, and advancing health justice by ensuring access to high-quality, affordable, and equitable care, especially for reproductive and maternal health. Since its founding in 1971, the National Partnership has worked to advance women’s economic opportunities through policy and the courts, including writing the

first draft of the federal Family and Medical Leave Act and leading the fight for its passage.

**National Women’s Law Center** (“NWLC”) is a nonprofit legal advocacy organization dedicated to the advancement and protection of the legal rights and opportunities of women and girls and all who are harmed by sex discrimination. Since its founding in 1972, the Center has focused on issues of importance to women and girls, including education, income security, child care, workplace justice, and reproductive rights and health, with an emphasis on the needs of low-income women, women of color, and others who face multiple and intersecting forms of discrimination. The Center has participated as counsel or amicus curiae in a range of cases before the Supreme Court, federal Courts of Appeals, federal district courts, and state courts to ensure that all individuals enjoy full protection against sex discrimination as promised by our laws.

**Public Counsel** is the nation’s largest public interest law firm specializing in the delivery of pro bono services. Founded in 1970, Public Counsel is dedicated to advancing equality, justice and economic opportunity by delivering pro bono legal services and impact litigation to low-income individuals and communities

in Los Angeles County. In 2020, Public Counsel staff and 3000 pro bono partners provided legal services to 19,000 individuals and conducted impact litigation and policy advocacy on behalf of millions of people. Public Counsel advocates for civil rights across program areas, including immigration, housing, education, and employment discrimination. Public Counsel's workplace justice attorneys represent low-wage workers in a range of employment and anti-discrimination matters, including rights of parents and caregivers.

The **U.C. Hastings Center for WorkLife Law** is a research and advocacy organization at UC Hastings Law that seeks to advance racial, gender, and class equity at the workplace and in education. WorkLife Law partners with a range of stakeholders, including employers, employees, lawyers, and policy makers to identify and implement employment-focused solutions that support family caregivers. WorkLife Law has pioneered the area of law known as family responsibilities discrimination and has published extensively on the topic, including the legal treatise *Family Responsibilities Discrimination* (Bloomberg BNA Books 2014 & 2016).

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[PROPOSED] *AMICI CURIAE* BRIEF OF LEGAL AID AT  
WORK, *et al.* IN SUPPORT OF PLAINTIFF-RESPONDENT

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## INTRODUCTION

In today's America, many families consist of multi-generational households, include family members who are not related through blood or marriage, or involve familial relationships that extend across vast geographical distances. Regardless of a family's structure, the members' cohesiveness and care for one another is typically a defining feature. Individuals experiencing temporary health issues as well as those requiring lifelong care often depend on family caregivers to meet their basic needs. And in spite of obstacles family members may face related to employment, distance, or finances, many make every effort to respond to the caregiving needs of their loved ones and ultimately provide that care nonetheless. California enacted the California Family Rights Act to mitigate one of those barriers, by ensuring that family members could provide that necessary care for one another without risking job loss.

Defendant-Appellant the California Highway Patrol (CHP) asks this Court to overturn the jury's verdict in favor of Plaintiff-Appellee Stanley Vincent, who acts like a parent to – and took protected leave to care for – his sister Karine, a dependent adult with paranoid schizophrenia who resides in Haiti. Defendant-

Appellant bases its request in large part on its contention that because Vincent was a biological sibling who resided in another country than his sister, he could not possibly have stood in loco parentis to her.

As amici discuss further below, CHP’s argument is baseless – the CFRA (as well as the federal Family and Medical Leave Act) recognizes and reflects the diverse circumstances and needs of families today, and the in loco parentis provision in both statutes reflects varied circumstances, encompassing Vincent’s relationship with his sister. The broad application of the in loco parentis provision is especially essential to immigrants in Vincent’s situation, who stand in loco parentis to a care recipient residing outside of the country, as well as to adult care recipients with serious mental health disabilities, who may require specialized caregiving vastly different from the day-to-day care that a parent would typically provide for a minor child.

## **LEGAL ARGUMENT**

- I. The “in loco parentis” provision was intended to be interpreted broadly in order to provide job-protected leave to those in a range of family structures.**

The California Family Rights Act (CFRA) was “intended to help ‘families,’ the members of which are not always connected by

blood or formal legal arrangements” and to “enable workers to meet their family obligations without fear of job loss.”<sup>1</sup> In order to protect the employment rights of all families, including those that do not follow the traditional nuclear model, both the Family and Medical Leave Act (FMLA)<sup>2</sup> and CFRA expressly apply to individuals serving in loco parentis to a care recipient for whom they are taking job-protected leave.

FMLA defines “son or daughter” to include “a child of a person standing in loco parentis.” (29 U.S.C. § 2611(12).) This provision “reflect[s] the reality that many children in the United States today do not live in traditional ‘nuclear’ families with their biological father and mother” and may rely on others for that support.<sup>3</sup>

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<sup>1</sup> Assemblymember Gwen Moore, *Letter to Assembly Chief Clerk E. Dotson Wilson*, Feb. 6, 1992, p. 6 (see Respondent’s Request for Judicial Notice [hereinafter “RJN”], Ex.A.Pt.3 at 113-114).

<sup>2</sup> FMLA can be looked to for guidance to the extent it is not inconsistent with or less protective than CFRA. However, when CFRA provides more protection or the laws are inconsistent, CFRA controls. See 29 C.F.R. § 825.702(a) (2013) (“An employer must therefore provide leave under whichever statutory provision provides the greater rights to employees.”)

<sup>3</sup> See Deputy Administrator Nancy J. Leppink, Dept. of Labor Wage and Hour Division, *Administrator’s Interpretation No. 2010-3*, June 22, 2010, available at

Similarly, from its original iteration through its many amendments, including the recent addition of protected leave to care for seriously ill grandparents, grandchildren, siblings, and adult children regardless of dependency status, the CFRA has preserved the “in loco parentis” definition.<sup>4</sup>

In both the current and former versions of the CFRA, “child” includes “a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.” (Cal. Gov. Code § 12945.2, subd. (b)(1), added by Stats. 2020, ch. 86, § 2, eff. Jan. 1, 2021; Former Gov. Code § 12945.2, subd. (c)(1), added by Stats. 1991, ch. 462, § 4, eff. until Dec. 31, 2020).<sup>5</sup>

Further, the CFRA regulations define in loco parentis broadly to

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[https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010\\_3.pdf](https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf)>(as of May 24, 2021) (hereafter Leppink), citing S. Rep. No. 103-3, at 22.

<sup>4</sup> See Gov. Code § 12945.2, subd. (b), added by Stats. 2020, ch. 86, § 2, eff. Jan. 1, 2021; *see also* Former Gov. Code § 12945.2, subd. (c)(3), added by Stats. 1991, ch. 462, § 4, amended by Stats. 1992, ch. 427, § 49; Stats. 1993, ch. 827, § 1; Stats. 1994, ch. 146, § 68; Stats. 2011, ch. 678, § 2; Stats. 2017, ch. 799, § 11; Stats. 2019, ch. 718, § 1, eff. until Jan. 1, 2021.

<sup>5</sup> At the time of the events at issue in this matter, the CFRA defined “child” to include an adult dependent child. (Former Gov. Code § 12945.2, subd. (c)(1)(B), added by Stats. 1991, ch. 462, § 4, eff. until Jan. 1, 2021.)

mean “in the place of a parent; instead of a parent; charged with a parent’s rights, duties, and responsibilities. It does not require a biological or legal relationship.” (Cal. Code Regs. tit. 2, § 11087, subd. (c)(1).)

The legislative history behind the in loco parentis provision in CFRA also confirms its inclusive scope. A proposed amendment to the original bill attempted to limit the reach of family leave to a person’s “spouse, parent and specified dependent children, including certain adult children” but the amendment was rejected in favor of the broader in loco parentis provision. (Sen. Com. on Industrial Relations, Analysis of Sen. Floor Amends. to Assem. Bill 77 (1991-1992 Reg. Sess.) as amended Jul. 11, 1991 [*see* Respondent’s Request for Judicial Notice (hereafter “RJN”), Ex.A.Pt.3 at pp. 149-150]; *see* Gov. Code § 12945.2, subs.(c), (e).) Notably, the Fair Employment and Housing Commission rejected a proposal that would have limited in loco parentis status to include only those with a legal relationship to the child, finding that instead the “normally accepted definition” should govern because the Commission “did not want to limit its definition to [legal] relationships, given the informal but very real relationships that exist in California.”

(Fair Employment and Housing Com., *Final Statement of Reasons for Regulations Regarding Family Care Leave*, Nov. 18, 1992, Attachment A: Response to Comments to the Original Text of the Proposed Family Care Leave Regulations, p. 2 [*see* RJN, Ex.B at 238]). Thus, as with the text of the statute and regulations, the legislative and regulatory history points to a broad reading of in loco parentis that serves a variety of family structures.

The United States Congress and the California Legislature both included the in loco parentis provision in their respective family leave laws for the very purpose of insuring that those laws would be generously applied in order to match the reality of diverse family caregiving needs.

**A. The assumption of an in loco parentis relationship is fundamentally a question of intention, with no single set of factors determinative of status.**

Courts have held that “the assumption of the relationship is primarily a question of intention, to be shown by the acts, conduct and declaration of the person alleging to stand in that relationship.” (*Banks v. United States*, (2nd Cir. 1959) 267 F.2d 535, 538; *see also Leyerly v. U.S.* (10th Cir. 1947) 162 F.2d 79, 85.) Courts have referenced a non-exclusive list of factors to be

considered in determining the existence of an in loco parentis relationship, including “(1) the age of the child; (2) the degree to which the child is dependent on the person claiming to be standing in loco parentis; (3) the amount of support, if any, provided; and (4) the extent to which duties commonly associated with parenthood are exercised.” (*Dillon v. Maryland-Nat'l Capital Park & Planning Comm'n.* (D. Md. 2005) 382 F. Supp. 2d 777, 787, *aff'd sub nom. Dillon v. Maryland-Nat'l Capital Park & Planning Comm'n* (4th Cir. 2007) 258 F. App'x 577 [citation omitted]). However, more than anything, the in loco parentis relationship “is such that must reside in the minds and hearts of the parties involved.” (*Banks, supra*, 267 F.2d at p. 538.) These cases demonstrate a flexible, fact-based standard for interpreting whether an individual serves in loco parentis to a care recipient.

**B. An individual may have multiple parents including a parent who stands in loco parentis.**

The assumption of parental duties by one individual does not preclude the existence of an in loco parentis status of another.<sup>6</sup> In this case, Karine had two parents, her elderly

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<sup>6</sup> See Leppink, *ante* note 3 (“Neither the statute nor the regulations restrict the number of parents a child may have under the FMLA. For example, where a child’s biological parents

biological mother and Plaintiff Vincent. Vincent stands in loco parentis to his sister, as he provided the support and care that she needed and his intent has been to act as her parent.

In sum, the law has long recognized that parenting responsibilities may be shared differently within different family structures, and the nuclear family conception of parenting is not the only form of parenting accepted under the law.

**C. CHP knew Vincent acted as his sister’s parent and was obligated to investigate if it needed more information to determine whether Vincent stood in loco parentis to his sister.**

The CFRA’s implementing regulations are quite clear that no magic words must be used by an employee to notify their employer of their need for CFRA leave. They “need not ... even mention CFRA or FMLA to meet the notice requirement,” and even if they frame the leave as a vacation, other paid time off, or need to resign, such references do not render their notice insufficient. (Cal. Code Regs., tit. 2, § 11091, subd. (a)(1).) Rather, the employee must only “state the reason the leave is needed” as

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divorce, and each parent remarries, the child will be the ‘son or daughter’ of both the biological parents and the stepparents and all four adults would have equal rights to take FMLA leave to care for the child.”)

well as “the anticipated timing and duration of the leave.” (*Ibid.*) After an employee has provided such notice, it is the employer’s obligation to “inquire further of the employee if necessary to determine whether the employee is requesting CFRA leave.” (*Ibid.*)

Courts have found that, where an employee provides notice that they need leave to care for a family member other than their own child, such information is enough to trigger an employer’s responsibility to ask further questions in order to determine whether in loco parentis status exists such that the leave would be CFRA- or FMLA-qualifying. (*Coutard v. Municipal Credit Union* (2d Cir. 2017) 848 F.3d 102, 113 [holding that “the district court erred in ruling that Coutard’s notice to MCU was deficient because he did not specify the in loco parentis relationship with his grandfather at or before the time he requested FMLA leave, and in ruling that MCU was entitled as a matter of law to deny Coutard FMLA leave without requesting additional information.”].) This is important for CFRA to achieve its intended goals.

CFRA must permit employees to inform their employers of their relationship with family members and qualifying familial

obligations in regular, non-legal terms, just as Vincent did.

Vincent had shared that he had a sister with a significant mental health disability with whom he had an ongoing caregiving relationship. To read into CFRA a requirement beyond this—that workers understand the term “in loco parentis” and explain their familial relationships under its terms—is unrealistic and would prevent low-literacy workers, workers with less education, and those with limited-English proficiency, much less Latin proficiency, from accessing the leave to which they are entitled. CFRA’s protections are not limited to highly sophisticated workers’ families or those with lawyers in their families.

Vincent notified CHP that he needed time off to care for his adult dependent sister. In doing so, he met his obligation. CHP knew that Vincent acted like a parent to his sister and had previously made a job-protected CFRA leave request to care for her. To the extent it had questions regarding his status, the burden was on CHP to request additional information in order to determine whether his leave was CFRA qualifying – in particular, whether he stood in loco parentis to his sister. Its failure to do so does not render his notice insufficient. If there is any doubt about an employee’s leave entitlement, an employer is

required to gather and evaluate further information to determine CFRA eligibility.

**II. Persons like Vincent who stand in loco parentis may provide varying types of care depending on the needs of the care recipient and other factors; they need not personally assist with activities of daily living.**

The CHP argues that Vincent did not hold a parent's rights, duties, and responsibilities for purposes of establishing his in loco parentis status because he did not always care for his sister in-person and personally assist her with activities of daily living. This narrow definition of being a parent exists nowhere within the California Family Rights Act. It also ignores the fact that long-distance care is prevalent and necessary for so many caregivers and care recipients. Perhaps most importantly, CFRA is designed to facilitate caregiving for dependent adults in times of need as well as minor children, and necessarily incorporates what providing support for a dependent adult means and requires. The type of care that CHP contends is required in order to satisfy the in loco parentis standard would not necessarily be helpful, and could in fact be harmful, to an adult with paranoid schizophrenia.

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**A. Persons acting in loco parentis to a care recipient need not always provide day-to-day care.**

The support provided by a person standing in loco parentis can be day to day or financial. “The FMLA regulations define in loco parentis as including those with day-to-day responsibilities to care for and financially support a child.”<sup>7</sup> However, the Department of Labor has found that “the regulations do not require an employee who intends to assume the responsibilities of a parent to establish that he or she provides both day-to-day care and financial support in order to be found to stand in loco parentis to a child.”<sup>8</sup>

Further, neither the statutory language of the CFRA nor its implementing regulations mention any requirement that an individual provide both day-to-day care and financial assistance in order to stand in loco parentis. It simply states that an individual standing in loco parentis is “charged with a parent’s rights, duties, and responsibilities.” (Cal. Code Regs. tit. 2 § 11087, subd. (c)(1).)

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<sup>7</sup> Leppink, *ante* note 6 (citing 29 C.F.R. § 825.122, subd. (c)(3)).

<sup>8</sup> Leppink, *ante* note 6.

**B. Providing care from a distance is a necessary reality for many families.**

Providing long-distance support for an adult care recipient is not atypical. Approximately one in ten adults caring for seriously ill or disabled adult family members provides care for a family member that lives more than an hour away from them.<sup>9</sup> Such long-distance care is regularly provided by the children of elderly parents or other family members with Alzheimer's disease or other health conditions.<sup>10</sup> Nearly one-fourth of these long-distance caregivers are the recipient's sole or primary care provider.<sup>11</sup>

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<sup>9</sup> AARP and National Alliance for Caregiving, *Caregiving in the United States 2020* (May 2020) Care Recipient Living Situation, page 21 <<https://www.aarp.org/content/dam/aarp/ppi/2020/05/full-report-caregiving-in-the-united-states.doi.10.26419-2Fppi.00103.001.pdf>> (as of May 10, 2021) (hereafter *Caregiving in the United States*).

<sup>10</sup> MetLife Mature Market Institute and National Alliance for Caregiving, *Miles Away: the MetLife Study of Long-Distance Caregiving; Findings from a National Study by the National Alliance for Caregiving with Zogby International* (July 2004), p. 3. <<https://www.yumpu.com/en/document/read/28327207/miles-away-national-alliance-for-caregiving>> (as of May 10, 2021) (hereafter *Miles Away*).

<sup>11</sup> *Id.* at pp. 2, 7.

Many adult care recipients do not live with the family members they depend on. Nearly half (46%) of adult care recipients live in their own home, and more than a quarter (26%) live alone.<sup>12</sup> As was the case with Vincent, long-distance parent stand-ins who do not live with the recipient and who are financially able to do so will often hire an in-home caregiver who can assist with the recipient's daily life activities. Thirty-six percent of adults caring for adult family members who need care who do not live with that family member enlist paid help to provide direct, day-to-day care for the recipient.<sup>13</sup> Paid help has been found especially necessary for long-distance family members who are, like Vincent, the only person providing care for the recipient.<sup>14</sup>

The fact that a recipient is being cared for by an in-home paid provider, hospital, or care home in no way obviates the necessity of family care providers. Nor does it affect the ability of those family care providers to stand "*in loco parentis*". As was

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<sup>12</sup> *Caregiving in the United States*, ante note 10, at pp. 21-22.

<sup>13</sup> *Id.* at p. 45.

<sup>14</sup> *Miles Away*, ante note 11, at p. 8.

acknowledged in a 2020 study by AARP and the National Alliance for Caregiving, “[family c]aregivers’ responsibilities often extend beyond the traditional direct care [assisting with activities of daily living], to interacting with various providers, agencies, and professionals on their care recipient’s behalf.”<sup>15</sup> According to the study, 71% of adults caring for adult family monitor the condition of the recipient so that they can adjust care as needed; 65% communicate with healthcare providers regarding their recipient’s care, and 56% take on the responsibility of advocating for the recipient with care providers, government agencies, or community services.<sup>16</sup>

Notably, long-distance family members often have even more responsibilities and greater pressures than do local caregivers. According to the AARP, they “spend nearly twice as much on caregiving as do people caring for a loved one close by because they’re more likely to need to hire help, take uncompensated time off work and pay for travel.”<sup>17</sup> They also

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<sup>15</sup> *Caregiving in the United States*, ante note 10, at p. 35.

<sup>16</sup> *Ibid.*

<sup>17</sup> AARP, *Long-Distance Caregiving: 5 Key Steps to Providing Care From Afar; Steady communication and building a trusted team are crucial* (Updated May 15, 2020) AARP

spend at least as much time on caregiving tasks as do local caregivers. According to a MetLife study on long distance family care providers, “[t]here are no significant distance differences related to the number of hours [family caregivers] report spending on arranging needed services, supervising or monitoring these services or helping with personal care needs.”<sup>18</sup>

Further, although most family members providing care for dependent adults provide some financial support to the family member, the cost for long-distance care is especially high. According to a November 2007 study, remote family care providers had significantly higher annual caregiver-related expenses (\$8,728) than did local family care providers who lived in the same home as recipients or those who lived close by (\$5,885 and \$4,570, respectively).<sup>19</sup> In caring for his sister, Vincent expended significant financial resources.

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<<https://www.aarp.org/caregiving/basics/info-2019/long-distance-care.html?intcmp=AE-CAR-CLB-EOA2>> (as of May 10, 2021).

<sup>18</sup> *Miles Away*, *supra* note 11, at p. 10.

<sup>19</sup> National Association for Caregivers and Evercare, *Study of Family Caregivers – What They Spend, What They Sacrifice* (Nov. 2007) <[https://www.caregiving.org/wp-content/uploads/2020/05/Evercare\\_NAC\\_CaregiverCostStudyFINAL20111907.pdf](https://www.caregiving.org/wp-content/uploads/2020/05/Evercare_NAC_CaregiverCostStudyFINAL20111907.pdf)> (as of May 10, 2021).

**C. Interpretation of in loco parentis should recognize the needs of California’s immigrant families, who must often provide much-needed care from a distance.**

Many parents, including family members acting as parents, make the sacrifice of moving from out of the country to California for financial opportunity, so that they can better support their families. In doing so, they are not abandoning their responsibilities as parents; they are making a difficult choice in order to parent in the best way they can. This is the choice that Vincent made. He migrated away from the sister whom he cared for in order to earn the income he needed to support her through sending remittances. Research has found that remittances sent by emigrating family members can benefit their families and improve the quality of nutrition, clothing, housing, and access to healthcare and schooling.<sup>20</sup> As discussed *supra*, CFRA does not require “day-to-day responsibilities” for in loco parentis status,

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<sup>20</sup> Simmons, et al., *The Remittance Sending Practices of Haitians and Jamaicans in Canada* (Nov. 14, 2005), Expert Group Meeting on International Migration and Development in Latin America and the Caribbean <[https://www.un.org/en/development/desa/population/events/pdf/expert/10/P01\\_ASimmmons.pdf](https://www.un.org/en/development/desa/population/events/pdf/expert/10/P01_ASimmmons.pdf)> (as of May 10, 2021); *see also* UNICEF, *Children and migration: rights, advocacy and resilience* <<https://www.unicef-irc.org/article/606-migration-and-children.html>> (as of May 10, 2021).

which suggests an intentional recognition of such parenting.

This practice of caring for a family member as a parent, from a distance, happens both nationally and internationally. Approximately 14% of the United States population are immigrants, a number that has generally been increasing over time.<sup>21</sup> Legal Aid at Work frequently receives calls from workers seeking to provide care for their family members in other countries.

For families living in countries with high rates of poverty or impacted by disasters, receiving remittances from family abroad can be especially critical. A typical Haitian working in a low-paid job in the United States earns six times what they would earn in Haiti. The vast majority of Haitians who escape poverty, do so by leaving the country. Emigration and remittances make up more than one-third of Haiti's gross domestic profit.<sup>22</sup> Remittances not

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<sup>21</sup> Batalova et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States* (Feb. 11, 2021), Migration Policy Institute <<https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2020>> (as of May 10, 2021).

<sup>22</sup> Clemens, *Foreign Policy: Migration May Be Haiti's Solution*, (Jan. 28, 2010) NPR <<https://www.npr.org/templates/story/story.php?storyId=123081925U>> (as of May 10, 2021).

only provide financial resources for poor households, they affect poverty and welfare through indirect multiplier effects.<sup>23</sup> For some adults with disabilities, these remittances may be their main source of non-hired support. In such instances, these remittances may constitute parental care, and should be recognized as such.

If the FMLA and CFRA required an employee to live in the same location as the person to whom they stand in loco parentis (their “child”), it could force them to forgo their only opportunity to earn the resources that their child needs for food, shelter, and healthcare. Similarly, individuals acting as parents who have been forced to flee from their home country under circumstances that do not permit them to simultaneously bring their child with them should not be excluded from the definition of in loco parentis. Parental figures may recognize that their child’s health may fare better in a different location where specialized care is available, especially if their child is a disabled and dependent adult. In fact, many biological parents, for instance divorced

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<sup>23</sup> Ratha, *Leveraging Remittances for Development* (June 2007) Migration Policy Institute  
<[https://www.migrationpolicy.org/sites/default/files/publications/MigDevPB\\_062507.pdf](https://www.migrationpolicy.org/sites/default/files/publications/MigDevPB_062507.pdf)> (as of May 10, 2021).

parents living in different states, would fail to meet the stringent in loco parentis definition proposed by the California Highway Patrol.

Not only is Vincent best able to meet his sister's care needs through long-distance caregiving, but barriers preventing her immigration to the United States have made it impossible for him to provide in-person care.

The process of obtaining a visa is difficult, and for those with significant psychiatric health conditions, it may be both procedurally and substantively impossible. In the instant case, Vincent's sister's mental health disability made it impossible for her to successfully complete the interview required to obtain a visa.

Not only may adult dependents experience disabilities that prevent them from successfully obtaining a visa to the United States, but they may not have family members with the resources to support them in the immigration process. CFRA's protections for stand-in parents must not be limited to those with significant financial resources and the sophistication to complete the necessary paperwork for immigration.

In loco parentis is designed to meet the needs of California’s diverse families. This includes the needs of immigrant families, like Vincent and his sister to whom he acted as a parent.

**D. CHP’s definition of in “loco parentis” does not address the individualized needs of care recipients with schizophrenia or other mental health disabilities.**

Both FMLA and CFRA are meant to cover a person standing in loco parentis to an adult dependent child “who is ... incapable of self-care due to a mental or physical disability.”<sup>24</sup> To understand what it means to stand in loco parentis to an adult disabled individual, the Court must recognize the realities of such relationships and care.

Twenty-seven percent of adult care recipients live with a mental or emotional disability.<sup>25</sup> The care needs of adults with paranoid schizophrenia or other serious mental health disabilities are significantly different from care required by a

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<sup>24</sup> 29 U.S.C. § 2611(12). As of January 1, 2021, the CFRA was expanded to ensure job-protected leave to care for all children, including adult children who are not dependents. (Gov. Code § 12945.2, subd. (b)(1), added by Stats. 2020, ch. 86, § 2, eff. Jan. 1, 2021.)

<sup>25</sup> *Caregiving in the United States*, ante note 8, at p. 24.

neurotypical young child. Ongoing in-person, daily care by Vincent would not have helped, and may have even caused harm, to his sister.

### 1. Coordinating and managing complex care

Parenting an adult with a mental health disability is not simple and often requires community supports and other special services that an unpaid family caregiver is not typically equipped to provide themselves. In many cases, a parent may not have the expertise or ability to assist a care recipient with schizophrenia or psychosis directly. An adult with schizophrenia often needs assistance from a number of different mental health professionals, including but not limited to those who can provide emotional support, teach the recipient life skills and assist with socialization, intervene during a crisis, and provide hospital and resident treatment, where necessary.<sup>26</sup> It is therefore not unusual that Vincent primarily cared for his sister whom he parented

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<sup>26</sup> National Alliance for Caregiving and NAMI, *Circle of Care: A Guidebook for Mental Health Caregivers*, p. 32 <[https://www.nami.org/Support-Education/Publications-Reports/Guides/Circle-of-Care-Guidebook/CircleOfCareReport?utm\\_source=di](https://www.nami.org/Support-Education/Publications-Reports/Guides/Circle-of-Care-Guidebook/CircleOfCareReport?utm_source=di)> (as of May 10, 2021) (hereafter *Circle of Care*).

through organizing and financing her caregiving.

Because of the multiple and varying medical and other services necessary to help an adult with schizophrenia maintain their health and safety, one of the most vital roles of a parent is to find, coordinate, collaborate, and pay for these services. A 2016 study on caregivers of recipients with mental health disabilities found that 82% of mental health caregivers “actively manage the ‘business of care’” by handling financial and other paperwork, including keeping track of and paying bills, completing forms, and managing health insurance.<sup>27</sup>

## 2. Financial support

Individuals with mental health disabilities often rely upon family to provide financial support. A 2016 study by the National Alliance of Caregiving found that half of mental health family caregivers reported that the recipients were financially dependent on family or others.<sup>28</sup> Accordingly, “[i]ssues of financial

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<sup>27</sup> National Alliance for Caregiving, *On Pins and Needles: Caregivers of Adults with Mental Illness* (Feb. 2016), p. 34 <[https://www.mhanational.org/sites/default/files/2019-07/NAC\\_Mental\\_Illness\\_Study\\_2016\\_FINAL\\_WEB.pdf](https://www.mhanational.org/sites/default/files/2019-07/NAC_Mental_Illness_Study_2016_FINAL_WEB.pdf)> (as of May 10, 2021).

<sup>28</sup> *Id.* at p. 35

dependence and issues in securing financial assistance are often top of mind among mental health caregivers, as they attempt to navigate the complex care system with limited resources.”<sup>29</sup>

### 3. Encouraging Independence

Encouraging and supporting adult care recipients, especially including those with mental health disabilities, in maintaining some level of independence is in itself a vital part of parenting. According to an article published by the American Psychiatry Association, “[i]ndividuals with serious mental illnesses are more likely to thrive when they are allowed to take appropriate responsibility for their own lives.”<sup>30</sup> “Even among seriously mentally ill individuals, there can be ‘wellness within illness.’ Although professional versus consumer definitions of recovery differ in terms of requiring symptom remission, both acknowledge the importance of independence [...]”<sup>31</sup>

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<sup>29</sup> *Ibid.*

<sup>30</sup> American Psychological Association, *Supporting a family member with serious mental illness* (Aug. 27, 2019) <<https://www.apa.org/topics/mental-health/support-serious-mental-illness>> (as of May 10, 2021).

<sup>31</sup> Jeste DV et al., *Positive Psychiatry: Its Time Has Come* (2015) *J. Clin. Psychiatry*; 76(6):675-683, p. 676.

Indeed, such independence is possible, especially while a recipient is supported with medication, therapy, or other resources in order to manage their mental health disability. As the National Institute on Mental Health explains, “[w]hen delivered in a timely, coordinated, and sustained manner, treatment can help affected individuals [with schizophrenia] to engage in school or work, achieve independence, and enjoy personal relationships.”<sup>32</sup>

**4. Meeting the individualized needs of care recipient**

Of course, a family member standing in as a parent should provide care in a way that does not harm or further exacerbate symptoms of the recipient’s disability. Because of her disability, Vincent’s sister often had the delusion that Vincent was not her brother, but rather an imposter. In fact, paranoia that a family member is not who they say they are is a type of delusion

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<https://www.psychiatrist.com/jcp/psychiatry/positive-psychiatry-has/> (as of May 10, 2021).

<sup>32</sup> National Institute of Mental Health, *Schizophrenia* <https://www.nimh.nih.gov/health/topics/schizophrenia/index.shtml> (as of May 10, 2021).

commonly associated with paranoid schizophrenia.<sup>33</sup> Further, as NAMI and the National Alliance for Caregiving explained in their guidebook for mental health caregiving: “Mental health treatment is sensitive and private. It is not unusual to feel vulnerable when experiencing depression, anxiety, or psychosis. As hurtful as it seems, some people with mental illness may not trust their families.”<sup>34</sup> Because Vincent’s sister believed, at times, that he was an imposter, receiving in-person day-to-day care from him may not have met her needs.

People with schizophrenia may also at times act impulsively or aggressively, as was the case with Karine. Consequently, her elderly mother, due to her advanced age and physical condition, could not provide her with care. Vincent took on the caregiving duties typically performed by one’s parent. He is able, available, and willing to provide financial support to his sister, coordinate her care, and travel to Haiti during a crisis or

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<sup>33</sup>Iftikhar et al., *What do we know about delusional misidentification disorders? A focus on Capgras syndrome* (2012) *Neuropsychiatry Journal* (London) (2012)(2/2), 127-132, p. 130. <<https://www.jneuropsychiatry.org/peer-review/what-do-we-know-about-delusional-misidentification-disorders-a-focus-on-capgras-syndrome-neuropsychiatry.pdf>> (as of May 10, 2021).

<sup>34</sup> *Circle of Care*, ante note 27, at p. 47.

on other occasions when his presence has been needed, and does so. He provides the same care a parent would.

Thus, Vincent provided care to his sister as a parent in the best manner available to him and in the manner best suited to her needs.

### CONCLUSION

The Court should apply the plain language and legislative intent behind the CFRA in proclaiming that Vincent acted in loco parentis to his sister and that his leave to care for his sister was job-protected. Accordingly, CHP illegally interfered with Vincent's right to take job-protected leave to care for her. Defendant-Appellant's appeal should be denied.

Dated: May 26, 2021

Respectfully submitted,

LEGAL AID AT WORK



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Katherine Wutchiett

**CERTIFICATE OF COMPLIANCE**

[Cal. Rule of Court 8.204(c)(1)]

The text in this [proposed] Amici Curiae brief consists of 5,106 words as counted by the word processing program used to generate this document.

Dated: May 26, 2021

Respectfully submitted,

LEGAL AID AT WORK



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KATHERINE WUTCHIETT

## PROOF OF SERVICE

STATE OF CALIFORNIA

Re: *Vincent v. State of California, et al.*, 2DCA No. B302026;  
S.B.S.C. No. 16CV05599

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the above-entitled action. My business address is 180 Montgomery Street, Suite 600, San Francisco, CA 94104.

On May 26, 2021, I served the foregoing document(s) described as **Amended Application for Leave To File *Amici Curiae* Brief in Support of Plaintiff-Respondent; [Proposed] *Amici Curiae* Brief** on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by using the EFS/TrueFiling system as required by California Rules of Court, rule 8.70. Participants in the case who are registered EFS/TrueFiling users will be served by the EFS/TrueFiling system. Participants in the case who are not registered EFS/TrueFiling users will be served by mail or by other means permitted by the court rules.

If U.S. Mail service is indicated, I served the said document(s) by depositing a true copy thereof with the U.S. Postal Service, pursuant to Code of Civil Procedure section 1013a(3), with the postage fully pre-paid and addressed to each person indicated on the service list below.

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

Executed on May 26, 2021.

  
\_\_\_\_\_  
Valerie Sprague

## SERVICE LIST

*Vincent v. State of California, et al.*, 2DCA No. B302026;  
S.B.S.C. No. 16CV05599

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<p>Via (U.S. Mail)</p> <p>Hon. Donna Geck (Judge Presiding) SANTA BARBARA COUNTY SUPERIOR COURT 312-C East Cook Street Santa Maria, CA 93454</p>	<p>Via (U.S. Mail)</p> <p>Rule 8.29: Information only</p> <p>Attorney General Office of the Attorney General- Appellate Coordinator 300 South Spring Street North Tower, 5th Floor Los Angeles, California 90013</p>