

**In the
Court of Appeal of the State of California
in and for the
First Appellate District,
Division Three**

SANDEEP GUPTA,)	No. A147524
)	
<i>Plaintiff-</i>)	(Super. Ct. No. HF14751482)
<i>Appellant,</i>)	
)	Alameda County Superior Court
v.)	Honorable Alice Vilardi, Judge
)	
NANDINI KUMAR,)	
)	
<i>Defendant-</i>)	
<i>Respondent.</i>)	

**APPLICATION TO FILE & BRIEF OF *AMICUS CURIAE*
NATIONAL COALITION FOR MEN (NCFM) IN SUPPORT OF
APPELLANT DR. GUPTA FROM THE DENIAL OF HIS
DOMESTIC VIOLENCE RESTRAINING ORDER**

Imran A. Khaliq, Esq.
(No. 232607)
720 11th Ave
Menlo Park, CA 94025
(415) 596-6519
*Attorney for Amicus
Curiae, NCFM*

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APPLICATION TO FILE BRIEF OF AMICUS CURIAE

Pursuant to California Rules of Court 8.882(d), *Amicus Curiae*, the National Coalition For Men (“NCFM”), respectfully requests permission to file this amicus brief in support of appellant Dr. Gupta’s appeal from the denial of his request for a Permanent Domestic Violence Restraining Order (“DVRO”). NCFM is a 501(c)(3) non-profit organization that helps individuals and families address the harmful effects and consequences of gender stereotyping against both women and men.

NCFM and its undersigned counsel, Imran Khaliq (State Bar #232607) are not being compensated for this amicus brief. This application and brief are timely made pursuant to Rules of Court, and therefore NCFM requests leave of Court to file this brief in support of appellant Dr. Gupta’s appeal from the denial of his DVRO application.

INTEREST OF *AMICUS CURIAE*

The National Coalition for Men (NCFM), a 501(c) (3) educational nonprofit corporation, was founded in 1977, and is the nation's oldest men's human rights organization. Its directors, advisors, liaisons, and members are men and women from a wide variety of professions from around the globe, including attorneys, former and retired prosecutors and law enforcement officers.

NCFM is committed to the removal of gender-based stereotypes, especially as they adversely impact boys, men, their families, including but not limited to, issues involving the criminal justice, family court, and military judicial systems. NCFM is recognized by the federal government for work domestically and internationally.

NCFM believes that men and women should be entitled to equal protection under the domestic violence laws in this country. However, as it is too often the case, when a male party raises the issue of domestic violence (in family court or criminal proceedings) and presents evidence of physical, emotional and psychological abuse against him, he is often met with contempt, skepticism and hostility

from law enforcement authorities, social workers, judges and the very institutions that are tasked with deciding these issues impartially.

NCFM receives thousands of inquiries every year from men and women across the country asking for help with their family court proceedings. Based on its experience in counseling men and women going through protracted and acrimonious divorce and custody disputes, NCFM is continuously amazed at the amount of resources, time and energy spent by lawyers and the family courts in deciding routine issues such as division of property, support payments, child custody, and domestic violence restraining orders. The truth is, the family court system is broken and is not serving the needs of husbands, wives, fathers, mothers and their children.

This case presents a classic example of how appellee's family court lawyers used a scorched earth litigation strategy to bring appellant, a medical doctor at Kaiser, to the edge of bankruptcy because he requested a domestic violence restraining order against his wife for acts of physical, financial, and emotional abuse, threats of kidnapping their only child, and destruction of property. Not only was appellant's reasonable request eventually denied, but he had to endure a 23-day trial and was then ordered to pay for his wife's

attorneys' fees in the amount of over \$425,000 in connection with *his* request for a domestic violence restraining order.

NCFM and its members have an interest in ending this type of abuse in the family court system. If a male party raises evidence of domestic violence, emotional abuse, manipulation and threats, the courts and judges should take these issues seriously rather than view the allegations with disdain or skepticism. NCFM believes this brief will assist the court in examining both legal precedent as it applies to victims of domestic violence seeking restraining orders, the errors the lower court made, as well as the inherent discrimination faced by men in the family court system when dealing with conflicting domestic violence allegations. As will be discussed below, several studies demonstrate that male victims of domestic violence are more likely to underreport abuse to protect their spouses and when they do report they are unlikely to get relief or be arrested themselves.

If the lower court's decision is upheld it sends a dangerous message to male victims of domestic violence – if you bring an application for a restraining order (and it is supported by credible evidence) you will be met with skepticism by the family court judge and will have to pay your wife's attorneys' fees for requesting this

relief. This is not justice. Family courts (and all courts for that matter) are entrusted with ensuring the just and speedy resolution of disputes. This was not the case here.

BRIEF OF AMICUS CURIAE

I. INTRODUCTION

This case presents a troubling abuse of discretion by the trial judge and clear bias against the appellant when he sought to obtain a restraining order against his abusive ex-wife. Although Dr. Gupta presented compelling *prima facie* evidence of domestic violence to meet the definition of "abuse" under the DVPA by a preponderance of evidence, the Court disregarded this evidence and exhibited gender bias in her rulings against the appellant. Moreover, the court excluded key video and audio evidence which demonstrated that the respondent had engaged in violent and destructive actions, which if admitted into evidence, would have provided a basis for a DVRO under the applicable legal standard.

According to a national study funded by the Centers for Disease Control and U.S. Department of Justice, men are the overwhelming targets of intimate partner physical violence (IPV). (*See* Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey* (NISVS)). According to the National Intimate Partner and Sexual Violence Survey released in

December, 2011, an estimated 5,365,000 men and 4,741,000 women were victims of intimate partner physical violence that year. (*Id.*) Further, intimate partner violence is more likely to be mutual or female-initiated than male-initiated. In an analysis of 36 general-population studies on IPV and dating violence, *Straus* (2011) found that women were half again as likely to perpetrate physical violence. (*See Straus, M.A. (2011). Gender symmetry and mutuality in perpetration of clinical-level partner violence: Empirical evidence and implications for prevention and treatment. Aggression and Violent Behavior 16 (2011) 279-288.*)

Despite the overwhelming evidence that men experience domestic abuse, threats of child abduction, emotional and verbal abuse, national and state agencies continue to treat men as perpetrators and not victims. Time and again, this familiar scenario is played out in the criminal justice and family court system – a male raises the specter of violence and abuse and he is disbelieved, called a liar and either arrested, jailed or forced to bear the entire burden of the family court proceedings against him, losing his child, his livelihood and drained of all his financial resources.

This case presents ample evidence that equal protection and due process rights for male victims of domestic violence have been violated. It also demonstrates a gross of abuse of judicial discretion and highlights the abuse of family court judges in punishing men when they raise issues of domestic violence. If a female victim of domestic violence was threatened by her husband that he would “fucking punch your mouth” and “I will abort [the baby] if you don’t cooperate,” as Dr. Gupta was threatened repeatedly by ex-wife, the trial court would have handily granted the restraining order for his wife. Incredibly, with these same threats against him, Dr. Gupta was denied this basic relief.

In this case, Dr. Gupta was not only denied the right to a domestic violence restraining order from his abusive wife, but was *punished* by the Court by having to endure an unnecessary and inefficient 23-day trial, resulting in a miscarriage of justice and a capricious award of attorneys’ fees for his wife in the amount of \$425,000. (Dr. Gupta’s case in chief was finished in approximately two days while the rest of the trial was unfairly devoted to appellee’s witnesses and rebuttal).

While this amicus recognizes that family court disputes are emotionally fueled with conflicting versions of events from both sides, NCFM's review of the record in this case reveals that the lower court made unfair and arbitrary credibility findings against petitioner when respondent had in fact misled the court on several key issues. Accordingly, NCFM respectfully requests this Court take a complete and careful review of the record and overturn the rulings of the lower court and grant Dr. Gupta's request for a new hearing and trial on his domestic violence restraining order.

II. PROCEDURAL HISTORY

December 16, 2014, Petitioner, Dr. Sandeep Gupta (hereinafter referred to as "Dr. Gupta") filed an *Ex Parte* Request for a Temporary Restraining Order under the Domestic Violence Prevention Act ("DVPA") alleging acts of domestic violence perpetrated by Respondent, Nandini Kumar (hereinafter referred to as "Kumar"). Dr. Gupta requested the following: (1) Personal Conduct Orders; (2) Stay-Away Order; (3) Move-Out Order; (4) Record Unlawful Communications; (5) Child Custody and Visitation Orders; and (6) Property Control. (V1 CT001-CT0018). All requests were granted and

a Temporary Restraining Order was filed on December 16, 2014 and the matter was set for hearing on January 2, 2015.

Kumar filed a Response to Request for Domestic Violence Restraining Order on December 29, 2014 opposing all of the requests contained in the Temporary Restraining Order. (V1 CT0055-CT00148). The Declaration of her father Nand Kumar was filed on December 29, 2014 in support of said Response by Kumar. (V1 CT00151-CT00157). Kumar denied the allegations.

Petitioner, Dr. Gupta filed a Reply Declaration of Sandeep Gupta In Support of Request for Restraining Order alleging false statements and inaccuracies contained in Kumar's Response. (Petitioner's Ex. 2).

On April 28, 2015, when the trial commenced, the parties agreed that the testimony would be limited to the facts surrounding the application for the restraining order and no other issues and therefore no custody, support or attorney's fees would be addressed. (RT 4/28/15; 27:22-27). The trial Commenced April 28, 2015 and was supposed to last no more than 2-3 days. Instead, because of the number of irrelevant witnesses offered by the respondent and the lower court's failure to efficiently control the proceedings and limit

the scope of irrelevant witness testimony, the trial continued (on nonconsecutive days over the course of 23 days) and concluded on July 31, 2015.

During this period, Kumar objected to the testimony of forensic IT expert Benjamin Rose proffered by Dr. Gupta as an expert on rebuttal. Mr. Rose provided testimony and evidence authenticating a series of videos taken by Dr. Gupta the morning of December 10, 2014 evidencing destruction of property and criminal activity by Kumar as outlined in the original DVRO application. Kumar objected to the introduction of the video evidence on the basis of privacy and alleged late production in discovery. After lengthy briefing and testimony by Mr. Rose, the Court ruled to exclude this evidence. (V5 CT001235-CT001236).

On November 3, 2015, the Court entered an Order denying appellant's request for a DVRO. (V5 CT001234-1245). In this Order, the Court made several determinations that were biased against the appellant, including: (1) denying appellant the right to use video evidence to demonstrate criminal and abusive conduct by respondent Kumar; (2) denying appellant the right to use a rebuttal expert to authenticate the video evidence which would have refuted Kumar's

version of events on Dec. 10, 2014; (3) finding against petitioner on each and every single allegation of domestic violence under the DVPA despite the overwhelming physical and corroborating evidence of violence, threats and abusive behavior by Kumar; and (4) making arbitrary and capricious findings of credibility against appellant Dr. Gupta despite finding that there were multiple instances where appellee Kumar was not credible and her testimony was impeached by other witnesses, phone logs and other documentary evidence which the lower court failed to consider.

III. MALE VICTIMS OF DOMESTIC VIOLENCE ARE ROUTINELY DENIED SERVICES AND TREATMENT UNDER EXISTING FEDERAL AND STATE STATUTES

According to the National Violence Against Women Survey, 835,000 men are assaulted each year by their intimate partners. (Tjaden P, Thoennes N. *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*. National Institute of Justice, Publication No. NCJ 183781, November 2000). About one-third of those assaults are “severe,” meaning that the men were kicked, bit, hit with a fist, threatened or attacked with a gun or knife, or beat up. (Gelles RJ. *Intimate Violence in Families*. Thousand Oaks, CA: Sage Publications, 1997).

Knowing that a victim of severe partner assault will be in need of assistance, it is estimated that each year about 275,000 abused men need domestic violence treatment or rehabilitation services. More recent research shows that women are more likely than men to engage in partner aggression. Centers for Disease Control researchers reported that in the 18-28 year-old group, 71% of the instigators of nonreciprocal partner violence are female. (Whitaker DJ et al. *Differences in frequency of violence and reported injury between relationships with reciprocal and nonreciprocal intimate partner violence*. American Journal of Public Health, Vol 97, No. 5, May 2007, pp. 941-947.).

Despite these compelling statistics, federal and state agencies continue to discriminate against men when it comes to services and relief from domestic violence. This issue has been fairly documented when it comes to male victims seeking equal access to domestic violence shelters and other services which receive federal funding under the Family Violence Prevention and Services Act, which is administered by the U.S. Department of Health and Human Services (HHS). By law, HHS grantees are barred from engaging in sex discrimination:

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, 1682, 1683, 1685, and 1686, provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

Similar anti-discrimination provisions also apply to the Violence Against Women Act, which is administered by the Department of Justice. VAWA-funded grants are governed by the Omnibus Crime Control and Safe Streets Act of 1968 which states:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.

These non-discrimination requirements apply both to direct recipients of federal government funds (*e.g.*, state domestic violence coalitions) as well as to sub-contractors (*e.g.*, abuse shelters).

The penalties for violating these requirements are described in Section 3789d(c)(2) of the law. *See* 42 U.S.C § 3789d. In response to complaints of sex-based discrimination by VAWA-funded programs, Senator Orrin Hatch made the following statement in 2000 to clarify Congressional intent:

Despite the need to direct federal funds toward the most pressing problem, it was not, and is not, the intent of Congress categorically to exclude men who have suffered domestic abuse or sexual assaults from receiving benefits and services under the Violence Against Women Act. The Act defines such key terms as ‘domestic violence’ and ‘sexual assault,’ which are used to determine eligibility under several of the grant programs, including the largest, the STOP grant program, in gender-neutral language. Men who have suffered these types of violent attacks are eligible under current law to apply for services and benefits that are funded under the original Act—and they will remain eligible under the Violence Against Women Act of 2000—whether it be for shelter space under the Family Violence Protection and Services Act, or counseling by the National Domestic Violence Hotline, or legal assistance in obtaining a protection order under the Legal Assistance for Victims program. (Senator Orrin Hatch, *Congressional Record*, October 11, 2000, pp. S10191–92).

In *Woods v. Horton*, 167 Cal. App. 4th 658 (2008), the California Court of Appeals ruled that California’s gender based classifications for domestic violence shelters openly discriminated against men. However, despite modest gains, discrimination against male victims of domestic violence continues at both the federal and state level. Recently, on January 4, 2016, the Attorney General of the previous administration issued a memorandum on “Federal Efforts to Improve the Safety of Domestic Violence Victims.” (See Memorandum for Director Eousa from the Attorney General, dated January 4, 2016 at www.justice.gov/opa). That memorandum starts with an improper bias recognizing that the problem of domestic violence only affects

women: “Ending the scourge of violence against women in our society has been and continues to be a priority of the Department.”

(*Id.*).

On several occasions the OVW has issued directives or established funding mechanisms that openly discriminatory in nature:

- In 2002, the OVW instructed the Delaware Domestic Violence coordinating council that, “states must fund only programs that focus on violence against women.” (*Documentation from the DoJ Violence Against Women Office*, quoted in letter from the Delaware Domestic Violence Coordinating Council to David Burroughs, dated October 9, 2002).
- Department of Justice (DoJ) research solicitations have explicitly excluded applications that focus on male victims. One Solicitation for Proposals from the DoJ National Institute of Justice specifically prohibited “proposals for research on intimate partner violence against, or stalking of males of any age...” (National Institute of Justice, Department of Justice, *Justice Responses to Intimate Partner Violence and Stalking*. November 5, 2005

Given these federal actions, it is not surprising that state-level governmental programs, district attorneys and criminal and family court judges follow these same discriminatory directives. Despite the significant amount of violence that occurs against men in relationships, it has been estimated that about 85% domestic violence restraining orders are issued against men, with the remaining 15%

issued against women. (Young C. *Domestic violence: An in-depth analysis*. Washington, DC: Independent Women's Forum, 2005. p. 25.).

As discussed below, this case presents a compelling example of how a male victim of domestic violence applied for a restraining order and was met with skepticism, disdain, discrimination and unjust treatment by the lower court, eventually culminating in fines and penalties of over \$425,000 in attorneys' fees for bringing a DVRO request (not counting the hundreds of thousands of dollars in fees that appellant had to pay his own lawyers to litigate this issue).

IV. LEGAL ARGUMENT

A. Standard For Granting Domestic Violence Restraining Orders Under the DVPA

Abuse, as defined by the Domestic Violence Prevention is not limited to causing or attempting to cause bodily injury or apprehension of serious bodily injury. Abuse also includes molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, destroying personal property and disturbing the peace of the other party. Thus the requisite abuse need not be actual infliction of physical injury or assault and may include disturbing the peace of the other party. *See* Cal. Fam. Code § 6203 and § 6320.

Courts have routinely granted domestic violence restraining orders in situations where defendants have engaged in threatening or menacing behavior, including abusive language by text messages or emails. For example, in *Burquet v. Brumbaugh*, 223 Cal. App. 4th 1140 (2014), the trial court properly granted plaintiff's application for a restraining order pursuant to the Domestic Violence Protection Act (DVPA), where there was substantial evidence to support the trial court's finding that defendant disturbed the peace of the plaintiff, an act of "abuse" under the DVPA. Despite plaintiff's numerous requests that he not contact her, defendant engaged in a course of conduct of contacting plaintiff by phone, email, and text, which messages contained inappropriate sexual innuendos, and arriving at her residence unannounced and uninvited, and then refusing to leave and making a scene, when she refused to see him for the purpose of causing her to renew their romantic relationship. *Id.*

Furthermore, appellate courts have found error in denying DVROs when there has been a reasonable apprehension of violence and abuse. *Eneaji v. Ubboe*, 224 Cal. App. 4th 1069 (2014). In *Eneaji*, the court of appeals held that renewal of a domestic violence restraining order should not have been denied on the basis that there

was no reasonable apprehension of future physical abuse where nothing had happened in three years. This provision does not limit the definition of abuse to physical injury. (*Id.*). Downloading and disclosing or threatening to disclose a spouse's text messages that included intimate details was "abuse" under the Domestic Violence Prevention Act. (*Id.*).

Appellate courts have also found error when the trial courts have not considered evidence of mental abuse and controlling behavior when ruling on a DVRO. In *Rodriguez v. Menjivar*, 243 Cal. App. 4th 816 (2015), the trial court erred in denying plaintiff's application for a domestic violence restraining order she sought against defendant, when it ruled that the evidence of mental abuse and controlling behavior testified to by plaintiff and her mother were not relevant to its determination. The trial court also erred in determining that the significant past acts of physical abuse that it found to be true were too remote in time, and not sufficiently likely to be repeated, to warrant the issuance of a protective order. (*Id.*).

B. Dr. Gupta Presented Credible Evidence Of Domestic Violence, Threats, Property Destruction, and Disturbing the Peace To Support A Domestic Violence Restraining Order Against His Wife

To put this case in context, Dr. Gupta and Kumar were in a 4-½ year marriage. (RT: 4/28/15;4:21-22,24: 26-27, AOB, pg. 9).

Although Kumar is an educated lawyer with advanced degrees from Australia, she was never employed during the length of the parties' marriage and failed the California bar exam multiple times. The record reveals that Kumar put extensive financial pressure on Dr.

Gupta early in their relationship by forcing him to buy a multimillion dollar house in an upscale area and threatened to leave him if he did not comply (“NOT IN THREE YEARS. NOW WHEN I NEED IT. I WANT TO GET USE TO THINGS. I WANT TO BE IN A LARGE SPACIOUS HOUSE AT LEASET (*sic*) 4000 SQU FEET”)(Exh. S-0003)(emphasis in original)(*See also* Pet. Ex. 35).

She also picked constant fights over his relationship with his family, and behaved as if she were doing Dr. Gupta a favor by allowing him to see his family: “I have given you so many precious gifts the one most important is your ability to see your parents when you like”

(AOB pg.10; Exhibit 49 (2/4/12)). This abuse was further corroborated by a history of Kumar sending threatening and abusive emails to Dr. Gupta, including, but not limited to the following:

- “I WILL FUCKING PUNCH YOUR MOUTH!..IT WILL NOT BE EASY DICKHEAD, DICK,DICK, DICK...” (Ex. 29, 2/3/14)
- “I WILL ABORT [the baby] IF YOU DON'T COPRORATE (*sic*) WITH THIS ONE” (Exhibit 5, 7/31/13)
- “If you were here, I would have broken you in pieces...” (Exhibit 30, 4/21/13)
- “I Can’t believe I married someone like you...you dickhead. You just fuck your money!” (Exhibit 49, 2/3/12).

The most recent acts of abuse that petitioner documented in his DVRO application, before the couple separated, occurred from December 7, 2014 through December 11, 2014. Dr. Gupta’s DVRO application and the evidence presented at trial documented the following acts of abuse by Kumar: she attacked and struck Dr. Gupta when he was in the car with her hands and fists and with a diaper; she called 911 in a threat to get Dr. Gupta to hand over their child; she attacked him and scratched him on his face causing bodily injury (V1 CT0017, CT0018, also Pet. Ex. 19); she threatened him that she would kill his family if he did not sign to get a passport for their son; and she put him in apprehension of great bodily injury by

smashing items in the house, forcing him to leave the house because she would not calm down. After these incidents, she told him to leave the house and that he would not be able to come back without a court order. The court even acknowledged this fact in its decision. (V5 CT001243-CT001244).

E-mails which were stipulated to have been sent by Kumar to extended family members on December 8, 2014 at 12:01 p.m. and 12:17 p.m. (Exhibit 53, pgs.1, 2) clearly indicate that Kumar was upset with the family and intended to leave Dr. Gupta with their son to Australia: “my father and I including Ayaan have decided to leave this family”; “my relationship with this family is finally done” and “we are going to be here until December 30th to attend the wedding etc. and then we are flying to Australia.” (RT: 7/27/15;4:5-7:15). Furthermore, it is undisputed that the same day, Kumar transferred the couple’s entire bank balance of sixty thousand dollars out of the couple’s joint account into her own account with plans to take the baby and leave the country. (Pet. Ex. 7, AOB pg. 28-31). Dr. Gupta alleges that Kumar assaulted him the night of December 8, 2014 over an altercation concerning these events.

The testimony of Poonam Shetty, Gokal Gupta, Dr. Amy Chuang, Dr. Sergio Sapetto and therapist Jim Herold, as well as Dr. Gupta's call to the police corroborate Dr. Gupta's version of events and the fact that he suffered visible scratches on his face as a result of Kumar's violent attack against him on the night of December 8, 2014. (V1 CT 0012:22-26 ; RT:4/28/15;34:6:35:3; RT:4/28/15;98:22:99:19; RT:4/29/15;118:3:119:11; RT:4/29/15;107:10-26; RT:4/29/15;92:8:95:4; RT:4/28/15;34:16-22;37:1-5; RT :6/25/15; 13:23:14:28 ; RT:4/28/15;37:1-5, Scratches Exhibit on V1 CT0017, CT0018; AOB pgs.36 - 43, Ex. MM, NN, FF, H-0036)

Instead of impartially considering this evidence, the lower court erred in admitting and crediting hearsay evidence by Kumar's family members that Dr. Gupta allegedly admitted that his own family attacked him. To compound this error, the court arbitrarily determined that the "most credible" witness in the case was, Dr. Bhushan (appellee's sister) who lived in Australia and was never present in the United States during ANY of the events in this case. (V5 CT001238, CT001242). That witness alleged that Dr. Gupta told her over a mysterious and uncorroborated "Skype" call that his scratches were caused by his sister and mother. (RT: 6/10/15; 13:2-

16:28). The court erroneously admitted this hearsay evidence as the most significant in the case: “But most significant to the court, this is what Dr. Bhushan testified the petitioner *told* her happened during a Skype call later that evening when she noticed the marks and asked him what happened.” (V5 CT001242-CT001243).

Dr. Gupta also presented credible evidence that Kumar became hysterical the morning of December 10, 2014 and destroyed a significant amount of property in the household. (Ex. 53 pg. 12, Ex. 59, 61, 62, Ex. 3, Ex. 54, Ex. 55, Ex. KKK, Ex. O, 4, L; V1 CT0013:17- 22; RT:4/28/15;40:12-25; RT:4/29/15:174:2-17; RT:6/25/15;23:23:26:23; RT: 4/28/15;43:4-8; RT:7/27/15;21:1-34:17). This destruction of property by Kumar was supported by video and audio evidence proffered by Dr. Gupta and his IT expert Rose, which the lower court failed to consider. (V5 CT001235). This authenticated evidence and its transcript demonstrate that Kumar is shouting and there are items being broken in the house. (*Id*). Despite this key evidence, the court ruled that it would take too much time to sort through this evidence (even though it let this trial drag on to permit a number of witnesses testify to hearsay and irrelevant events over the course of 23-days). The court also allowed appellees’

attorney to openly mock and demean Dr. Gupta's male status on the stand:

Q [attorney Lawlor]. Okay. But you are a man, right?

A [Dr. Gupta]. Excuse me?

Q. You're a man?

A. Are you asking me?

Q. Correct. Answer my question.

You're a man?

A. The answer is yes.

Q. Okay. And your wife is a woman with long hair, correct?

A. Is a woman with long hair, yes.

Q. Have you ever had long hair?

A. Not to her degree, no. (RT:7/8/15; 20:8-20).

Collectively the evidence presented by Dr. Gupta should have been credited by the trial court to find that the petitioner had met his burden of proof that Kumar had committed acts of abuse within the meaning of the DVPA. And at the very least, the evidence should have been considered impartially. This was not the case. Instead the lower court went out of its way to discredit Dr. Gupta and his witnesses and exhibited clear gender bias in favoring appellee Kumar by admitting and crediting irrelevant and inadmissible hearsay evidence to support her opinion and denial of the DVRO.

Moreover, although not stated in the Order, it is clear from a review of the transcripts that the court's decision was colored by uncorroborated testimony and hearsay evidence that Dr. Gupta and his family were allegedly abusive to Kumar. However, when asked to address under Family Code § 3011, whether there was "any history of abuse of one parent against the child or the other parent," Kumar stated, "[t]here is no evidence that would warrant anything other than joint legal and physical custody in this matter." (V1 CT00235, CT00236 Respondent's Trial Brief filed April 23, 2015, pg. 7-8, ll. 23-10)(emphasis added). Therefore the majority of the testimony from Kumar and her family in their case in chief that Dr. Gupta and his family were abusive, was likely fabricated and/or irrelevant.

C. The Court Discriminated Against Appellant By Making Arbitrary and Capricious Credibility Findings Against the Victim Dr. Gupta When Kumar and Her Witnesses Were Impeached On Key Issues During the Trial

Victims of domestic violence often lie to protect their abusers and spouses from law enforcement and family shame. In this case there are plenty of examples where Dr. Gupta made statements to the authorities and his family to protect Kumar and appease her. (Ex. FF, pg.1, RT:4/28/15;39:2-11; Ex. EE, pg. 9, Ex. G; RT:4/28/15;33

:20:34:5; Ex. 53, pg. 0012). Instead of characterizing these instances of conduct as well recognized victim behavior (and not relevant to the material facts at issue), the Court used these statements against Dr. Gupta to attack his credibility, essentially calling him a liar. (V5 CT001236-CT001237). These credibility findings were used to discredit the rest of Dr. Gupta's testimony, even though the instances where he allegedly "lied" were instances where he was protecting his wife from his family or law enforcement authorities.

It is well documented that male victims of IPV often hide their suffering due to fear of being judged negatively by others, and/or having their masculinity questioned. (Lupri, Eugene; Grandin, Elaine (2004). "*Intimate partner abuse against men*". National Clearinghouse on Family Violence). For some men, this evasive behavior is based upon the fear of being ridiculed by friends, family and co-workers, and by fear of people saying that the woman is the real victim, and must have been acting in self-defense. (Migliaccio, Todd A. (Winter 2001). "*Marginalizing the Battered Male*". The Journal of Men's Studies). For a man to admit he is the victim of female perpetrated IPV necessitates the abandonment of the veneer of machismo which society expects from men, and to admit being submissive to a female

partner. Some researchers have also demonstrated a degree of socio-cultural acceptance of aggression by women against men, whereas there is a general condemnation of aggression by men against women. This can lead to men not considering themselves victims, and/or not realizing the IPV they are experiencing is a crime. (Robertson, Kristen; Murachver, Tamar (July 2009). "*Attitudes and Attributions Associated With Female and Male Partner Violence*". *Journal of Applied Social Psychology*. 39 (7): 1481–1512).

Furthermore, studies have shown that women who assault their male partners are more likely to avoid arrest than men who attack their female partners and that female perpetrators of IPV are often viewed by law enforcement agencies and the courts as victims rather than offenders. Felson, Richard B.; Pare, Paul-Philippe (September 2007). "*Does the Criminal Justice System Treat Domestic Violence and Sexual Assault Offenders Leniently?*" *Justice Quarterly*. 24 (3): 440; 447; Kingsnorth, Rodney F.; MacIntosh, Randall C. (September 2007). "*Intimate Partner Violence: The Role of Suspect Gender in Prosecutorial Decision-Making*" (PDF). *Justice Quarterly*. 24 (3): 460–494). As such, men fear that if they *do* report to the police, they

will be assumed to be the aggressor, and placed under arrest.¹ Cook, Phillip W. (1997). *Abused Men: The Hidden Side of Domestic Violence*. Westport, CT: Praeger. pp. 43–91; Grady, Ann (2002). "Female-on-Male Domestic Violence: Uncommon or Ignored?" In Hoyle, Carolyn; Young, Richard. *New Visions of Crime Victims*. Portland, Oregon: Hart Publishing).

Given this statistical backdrop and well known psychological phenomenon that men underreport domestic violence due to fear, stigmatization or not being believed or arrested themselves, the lower court made arbitrary and capricious findings of credibility against the petitioner when it was clear from the record that respondent had serious credibility problems. (AOB pgs 9-43 Statement of Facts). The

¹ The 1985 U.S. National Family Violence Survey, carried out by Murray A. Straus and Richard J. Gelles on a nationally representative sample of 41 houses where 1 to 10 calls to the police had been made (24 female callers and 17 male callers), found that when a woman called the police to report IPV, the man was ordered out of the house in 41.4% of cases. However, when a man called, the woman was ordered out of the house in 0% of cases. When a woman called, the man was threatened with immediate arrest in 28.2% of cases; when a man called, the woman was threatened with arrest in 0% of cases. When a woman called, the man was threatened with arrest at a later date in 10.7% of cases; when a man called, the woman was threatened with arrest at a later date in 0% of cases. When a woman called, the man was arrested in 15.2% of cases; when a man called, the woman was arrested in 0% of cases. In fact, in 12.1% of cases when the man called, the man himself was arrested. Gelles, Richard J.; Straus, Murray A. (1988). *Intimate Violence: The Causes and Consequences of Abuse in the American Family*. New York: Simon & Schuster. p. 262.

question then begs why the court did not consider inconsistencies and fabrications in the appellee's testimony as significant?

For example on December 7, 2014 Kumar stated she could not have been hitting Gupta because he was on the phone and yet stipulated call logs show no incoming or outgoing calls to Dr. Gupta's phone at the time of this incident (AOB pgs.12-19, 16, 19; Ex. OO, pg. 8; V5 CT001240:7-10; RT: 5/12/15;101:14-28; RT: 7/28/15; 89:4-8; RT:6/15/15;184:16:185:2).

On December 8th, Kumar misled the court about the timing and sequences of emails she sent and received and the threats to abduct their son. (Pet. Ex. 53, pgs 1-4; Res. Ex. M; V1 CT0066, 14-21; AOB pg. 26; AOB pgs. 19-21, 63, RT:5/21/15;68:19-74:24). These communications followed with her withdrawing the full amount of the couple's joint account (~\$60,000) without informing Dr. Gupta. Moreover, Kumar and her father never discussed any "Skype" call in her responsive declaration to Dr. Gupta's DV100 (V1 CT0060-CT0070, V1 CT00151-CT00157 (specifically CT00153 where details of Dec. 8th, 2014 are shared) or her entire trial brief (V1 CT00229-CT00239) even though the Court credited this hearsay as the most significant evidence in the case. (V5 CT001242, 1-4).

On December 9, Kumar testified everything was normal that day, although e-mails presented at trial reveal that she was threatening Dr. Gupta to abduct their son and leave the country (Resp. Ex. N, Pet. Ex.53, pgs. 5,6; RT:7/27/15:4:5-7:15; RT: 5/12/15;135:12-22; AOB, pgs. 28-31). Kumar also misled the court regarding her plans to obtain a passport for her son that day. At trial she testified that her father made a call to the passport office to extend his visa (RT: 7/31/15;86:26:87:28), and yet according to her own testimony and emails, his flight had already been extended days before this call on December 8th afternoon at 12:17pm (AOB, pg. 27-28, Ex. 53, pg. 2 - "My father has extended his ticket."). With respect to the religious statue Kumar smashed on December 10, at trial she claimed the statue was broken during the move into the couple's house. (RT: 5/12/15, 144:7-20). However, pictures after the couple's move into the house showed the statue completely intact. (Pet. Ex. 54, AOB pg. 34).

An objective review of the facts and evidence would have found glaring inconsistencies and credibility issues with appellee Kumar. Instead, the lower court credited Dr. Bhusan, Kumar's sister, "as the most credible witness" who was never in the United States during *any* of the alleged instances of abuse. The court admitted Dr.

Bhushan's testimony that Dr. Gupta *told her* on a "Skype" call that the scratches to his face were caused by his own sister and mother. (RT: 6/10/15;13:2-16:28). Evidence of this "Skype" call was never admitted or produced into evidence, and as such, this testimony was inadmissible hearsay. Dr. Bhushan should not have been permitted to testify as a percipient witness.

Moreover, both Kumar and her father Nand Kumar misled the court by testifying that nothing unusual happened the morning of December 10, when in fact Kumar was crying, shouting and breaking items at the parties' residence. (RB pg. 21; RT 5/12/15,140:23-28; 141:1-8; RT 5/12/15,143:6-8; RT: 6/15/15, 176:9-13). Instead of taking the time to consider this video/audio evidence, which was authenticated and supported by Mr. Rose's expert testimony, the Court unfairly excluded this evidence which would have disproved Kumar's version of events the morning of December 10, 2014. (V5 CT001235).

However, while seemingly acknowledging in the court's Order that Kumar had credibility issues the court did not give those findings any weight and instead placed the blame of the proceedings entirely on Dr. Gupta. (V5 CT001237). Rather than carefully examining the

stipulated facts and how the testimony of Kumar and Gupta aligned with these events, the lower court ignored the various inconsistencies in Kumar and her witnesses' testimony which would have supported Dr. Gupta's version of the events. In fact, it appears that the lower court's credibility findings against Dr. Gupta are not related to facts or evidence concerning the events of December 7-10, but rather to instances where Dr. Gupta was trying to appease his wife or not permit a situation where his wife would be arrested and thrown in jail. (V5 CT001236). As discussed above, this type of victim behavior should not have been used by the lower court to discredit Dr. Gupta as a credible witness and victim, and certainly not to punish him with an outrageous attorney fee award. The lower court's rulings demonstrated clear gender bias and failure to consider the facts and evidence impartially.

D. The Court Abused The Process of Justice By Allowing A 23-Day Trial Resulting In Exorbitant and Unreasonable Attorneys' Fees

To make matters worse, the Court failed in its judicial ethics to adjudicate a simple TRO trial and let the proceedings drag on for 23-days, forcing Dr. Gupta to miss work for nearly three weeks and pay hundreds of thousands of dollars to his own attorneys and for his ex-

wife's fees in the amount of \$425,000. Not only was this a tremendous waste of the parties' and the court's judicial resources, it is antithetical the purpose of resolving family disputes and preserving resources that could have been put to productive use for the family. Moreover this ruling sends a chilling message to men seeking a DVRO -- if a man comes forward with evidence of domestic violence and seeks a TRO -- the family court will punish you and force you to pay exorbitant fees that are completely unjustified under the circumstances.²

It is also important to note that Dr. Gupta has been bearing the entire financial burden of these proceedings, paying for his wife's unreasonably expensive attorneys' fees on top of spousal and child support. While Dr. Gupta has conscientiously sought to keep his own

² Although the topic of a separate appeal, NCFM, has reviewed the record from the outsized award of the attorneys' fees and notes that the court should have taken into consideration the obvious defects and inconsistencies from Kumar's witnesses in presenting their version of events. For example, in connection with the fee motion (on the issue of witness credibility), Dr. Gupta presented evidence that Kumar lied about being at home between the hours of 3:30 p.m. to 4:30 p.m. on December 8, 2014, when HSBC records demonstrate that she was at the bank pilfering the contents of the couple's joint account. Rather, in order to support her incredible version of events, Kumar claimed that she was at home at that time and *saw* Dr. Gupta arrive with scratches on his face. (RT : 5/12/15 ;121 :1-28; AOB pgs. 59-61). These types of inconsistencies permeate the record.

fees lower by using one attorney, Kumar has hired an expensive team of lawyers, and her bills are at least twice the amount, if not more, than Dr. Gupta's.

V. CONCLUSION

For these reasons and based on the arguments stated in appellant's opening and reply briefs and from the evidence presented from the record on appeal, NCFM respectfully requests this appellate Court to reverse the orders of the lower court and grant appellant a new trial and hearings to impartially consider the evidence of domestic abuse in support of his DVRO.

Respectfully Submitted,

_____/s/ Imran A. Khaliq____

Imran A. Khaliq
720 11th Ave
Menlo Park, CA 94025
(415)596-6519

Attorney for Amicus NCFM

CERTIFICATE OF COMPLIANCE

Pursuant to Cal. Rules of Court 8.204(c)(1), I hereby certify that the foregoing AMICUS BRIEF is proportionately spaced, has a typeface of 13 points or more, and contains approximately 6356 words.

DATED: August 11, 2017.

 /s/Imran Khaliq _____

Imran Khaliq

Attorney for Amicus NCFM

PROOF OF ELECTRONIC SERVICE

I, the undersigned, declare that I am a resident of the State of California. I am over the age of eighteen (18) and not a party to the action; my business address is: 720 11th Ave, Menlo Park, CA 94025. My electronic address is imran.khaliq@gmail.com

I electronically served the following document:

**APPLICATION TO FILE & BRIEF OF *AMICUS CURIAE*
NATIONAL COALITION FOR MEN (NCFM) IN SUPPORT OF
APPELLANT DR. GUPTA FROM THE DENIAL OF HIS
DOMESTIC VIOLENCE RESTRAINING ORDER**

As follows:

- a. Name of person served: Schoenberg Family Law Group
- b. Electronic service address: dschoenberg@sflg.com
- c. On (date): August 11, 2017

DATED: August 11, 2017.

_____/s/Imran Khaliq_____

Imran Khaliq

Attorney for Amicus NCFM