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5 Attorney for Objector/Appellant

6 JUVENILE COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF LOS ANGELES

8 In re C.R. et al.,) Case No. _____
9 Persons Coming Under the Juvenile Court Law)
10 LOS ANGELES COUNTY DEPARTMENT OF) APPLICATION FOR
CHILDREN AND FAMILY SERVICES,) PERMISSION TO PREPARE
11) A SETTLED STATEMENT
12 Petitioner/Respondent,) UNDER RULES 8.346 AND
13) 8.137; DECLARATION OF
v.) COUNSEL; PROPOSED
14 T.H.,) ORDER
15 Objector/Appellant.) Dept. _____
Hon. _____, Judge

16
17 PLEASE TAKE NOTICE that T.H. (“mother”), the appellant in Court of Appeal
18 case number _____, applies for permission to prepare a settled statement in lieu of a
19 reporter’s transcript for oral proceedings held _____. This application is being made
20 under California Rules of Court, rule 8.346 and 8.137. It is based on the attached
21 exhibits, the declaration of appellate counsel, and the following memorandum of points
22 and authorities.

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24 Dated: _____ Respectfully submitted,
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27 _____
ATTORNEY NAME
28 Counsel for T.H.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. This court should grant mother permission to prepare a settled statement**
3 **because a portion of the reporter’s transcript that is necessary for her**
4 **appeal was irretrievably lost.**

5 The court reporter’s notes from a key hearing, the final section 366.26 hearing,
6 were stolen. (Ex. A.) Therefore, mother must apply to this court for permission to
7 propose a settled statement in lieu of the reporter’s transcript.

8 It is the appellant’s responsibility to ensure an adequate record for review. (See *In*
9 *re Valerie A.* (2007) 152 Cal.App.4th 987, 1001-1002.) The appellant must ensure a
10 record that is sufficient to affirmatively show – without need for speculation, conjecture,
11 or theorizing as to the contents of the missing record – the existence of reversible error.
12 (See *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

13 When a reporter’s transcripts cannot be produced, the appellant may move for
14 certification of a settled statement in the superior court. (Rules of Court, rule 8.346
15 (b)(2)(A)(ii).) A settled statement is a summary of the superior court proceedings
16 approved by the superior court. (*Id.*, rule 8.137(a).) It operates to make up for the
17 absence of a reporter’s transcript. (*People v. Griffin* (2004) 33 Cal.4th 536, 554, fn. 4.)
18 The procedures for obtaining a settled statement expressly apply to juvenile dependency
19 appeals. (Rules of Court, rule 8.407(d).)

20 As soon as a party learns that any portion of the oral proceedings cannot be
21 transcribed, the party may serve and file in the superior court an application for
22 permission to prepare a settled statement. (Rules of Court, rule 8.346(a).) The
23 application must explain why the oral proceedings cannot be transcribed. (Rules of
24 Court, rule 8.346(a).) The appellant must also explain “with some certainty” how the
25 contents of an unreported matter may be useful on appeal. (*People v. Gzikowski* (1982)
26 32 Cal.3d 580, 584, fn.2.) In deciding whether to grant the motion, the trial court should
27 accept appellate counsel’s version of the expected content of the statement. (*Ibid.*) The
28

1 trial court **must rule on the application within five days of its filing.** (Rules of Court,
2 rule 8.346(b).)

3 If this initial application for permission to prepare a settled statement is granted,
4 the appellant must deliver a proposed statement to the trial court within 30 days. (*Id.*,
5 rules 8.137(c), 8.346(b).) The proposed statement must include the points that appellant
6 is raising and “a concise factual summary of the evidence and the testimony of each
7 witness” relevant to those points. (*Id.*, rule 8.137(d)(1), (2).) A copy of the judgment or
8 order being appealed must also be attached. (*Id.*, rule 8.137(d)(3).)

9 Within 20 days after the appellant serves the proposed statement, the respondent
10 may serve and file proposed amendments to the proposed statement. (*Id.*, rule
11 8.137(e)(1).) No later than 10 days after respondent files the proposed amendments, or
12 the time to do so expires, whichever is earlier, either appellant or respondent may request
13 a hearing to review and correct the proposed statement. (*Id.*, rule 8.137(f)(1).)

14 The parties may stipulate that this proposed statement is correct. (*Id.*, rule
15 8.137(h)(2).) Such a stipulation is equivalent to the trial court’s certification of the
16 statement. (*Ibid.*); *Quail v. Municipal Court* (1985) 171 Cal.App.3d 572, 576.) Whether
17 through stipulation or trial court certification, the settled statement must be immediately
18 transmitted to the clerk for filing of the record under rule 8.150. (*Id.*, rule 8.137(h)(3).)

19 Here, a settled statement is necessary for the following reasons. On appeal, mother
20 intends to argue that the child welfare agency (DCFS) failed to comply with the inquiry
21 and notice provisions of the Indian Child Welfare Act (“ICWA”). At the detention
22 hearing, mother stated that she may have Cherokee heritage, prompting the juvenile court
23 to direct DCFS to obtain additional family information and to then provide notice to the
24 Cherokee tribe. (Ex. B.) The current record provides no indication that DCFS followed
25 these orders. Because the agency owes a continuing duty to inquire into whether a child
26 may be an Indian child, mother can raise this apparent noncompliance with ICWA notice
27 provisions in an appeal from an order terminating parental rights. (See *In re Isaiah W.*

1 (2016) 1 Cal.5th 1, 12-15.)

2 To affirmatively establish reversible error, however, mother must show that the
3 juvenile court *still* had reason to know that an Indian child was involved in the
4 proceedings at the time of the final section 366.26 hearing. (See 25 U.S.C. § 1912(a);
5 Welf. & Inst. Code, § 224.2, subd. (a).) For example, if the juvenile court was
6 subsequently provided information that mother did not have Cherokee ancestry after all,
7 the DCFS’s initial failure to provide notice could be deemed harmless error.

8 Appellate counsel expects that the settled statement will ultimately reflect the
9 following. At the hearing held (date), mother did not appear, DCFS submitted its
10 documents into evidence, the juvenile court summarily denied a section 388 petition, and
11 the juvenile court terminated parental rights – all without addressing the ICWA. This
12 expectation is based on the minute order, which includes no mention of the ICWA.
13 (Ex. C.) It is also based on a discussion with mother’s trial counsel, who has no
14 recollection of the ICWA being addressed at the hearing. (See Decl. of Appellate
15 Counsel.) Given the apparent noncompliance with ICWA notice requirements, a settled
16 statement showing that the ICWA was not addressed on (date) would be useful to mother
17 on appeal.

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1 **CONCLUSION**

2 Thus, in order to prosecute her appeal, it is necessary for mother to obtain a settled
3 statement in lieu of the reporter’s transcript for the oral proceedings held (date).

4 Therefor, this court should grant mother permission to prepare a settled statement. (See
5 Rules of Court, rul 8.346(a).)

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7 Dated: _____

Respectfully submitted,

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10 Attorney Name
11 Counsel for T.H.
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1 ATTORNEY NAME
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4 Attorneys for Defendant

5 JUVENILE COURT OF THE STATE OF CALIFORNIA
6 COUNTY OF LOS ANGELES

7 In re C.R. et al.,) Case No. _____
8 Persons Coming Under the Juvenile Court Law) (Proposed) ORDER
9 LOS ANGELES COUNTY DEPARTMENT OF) GRANTING PERMISSION
10 CHILDREN AND FAMILY SERVICES,) TO PREPARE A SETTLED
11) STATEMENT UNDER
Petitioner/Respondent,) RULES 8.346 AND 8.137
12)
v.) Dept. _____
13 T.H.,) Hon. _____, Judge
14 Objector/Appellant.)

15
16 THE COURT:

17 The application filed by mother, T.H., to prepare a settled statement for the oral
18 proceeding held (date) in case number _____ is granted. In accordance with
19 California Rules of Court, rule 8.137 (c)(1), mother is to file a proposed settled statement
20 within 30 days. Within 20 days after appellant serves the proposed statement, respondent
21 is to serve its amendments, if any, or agreement. No later than 10 days after respondent
22 files proposed amendments or the time to do so expires, whichever is earlier, the appellant
23 or respondent may request a hearing to review and correct the proposed statement.

1 In re ____ et al.
2 Juvenile Court No. _____

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4 **PROOF OF SERVICE**

5 I, the undersigned, declare: I am over the age of eighteen years and not a party to the
6 cause of action. My business address is _____.

7
8 APPLICATION FOR PERMISSION TO PREPARE SETTLE STATEMENT UNDER
9 RULES 8.346 AND 8.137; DECLARATION OF APPELLATE COUNSEL; PROPOSED
10 ORDER

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12 in said action, by emailing a true copy and e-filing through TrueFiling thereof to:

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16 and by placing a true copy thereof enclosed in a sealed envelope, addressed as follows,
17 and deposited the same in the United States Mail at _____:

18
19 I declare under penalty of perjury that the foregoing is true and correct.

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21 Executed _____, at _____.