No. A168007

COURT OF APPEAL, STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

JOSHYA GALANG GAMOS, ET AL.,
Defendants and Appellants.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Appellant

v.

JOSHYA GALANG GAMOS, ET AL.,
Defendants and Respondents.

San Mateo County Superior Court,
Case Nos. 18SF014404A, 18SF014404B, 18SF014404C
The Honorable Elizabeth K. Lee

BRIEF OF AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT'S RESTITUTION APPEAL

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INTRODUCTION

Prosecuting trafficking is not just about punishing traffickers. It is also about securing victims' rights. The case below was one of the largest labor trafficking cases ever criminally prosecuted in California. Forced labor cases are rarely prosecuted, but in this case, incredibly, the defendants were prosecuted and convicted at trial for their involvement in a ten-year conspiracy to commit human trafficking and wage theft, among other crimes. The defendants all had roles operating or owning a chain of adult residential and child-care facilities, in which they preyed on vulnerable individuals. The defendants used fraud, physical abuse, and psychological warfare to trap their victims in inhumane conditions and compel work at far-below the minimum wage. More than one hundred people were victims of the defendants' conspiracy.

This case drew the attention of the national anti-trafficking movement, including leading legal organizations focused on victims' rights. All eyes were on the court, as this case represented a pivotal—and rare—occasion on which survivors of labor trafficking could obtain justice through the criminal legal system. Instead of delivering that justice, this case trampled the rights of human trafficking survivors, blocking many of them from receiving

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restitution for the egregious harms caused by their abusers. It risks setting a dangerous precedent that undermines the rights of survivors across the state.

The California Constitution provides that "all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer." Cal. Const. art. I, § 28(b)(13)(A). Despite the plain language of the Constitution, the court in this case sought to limit the rights of victims. It held that a victim must be called as a witness at trial to qualify as a crime victim. The court's invention of a testifying requirement has no basis in the law. Moreover, this unfortunate decision runs directly counter to a victim-centered and trauma-informed approach to human trafficking cases.

Because the court's ruling significantly limits crime victims' rights to restitution and causes unnecessary trauma to survivors of human trafficking by tying restitution rights to trial testimony, the Human Trafficking Legal Center, the Alliance to End Human Trafficking, Beloved Survivors Trauma Recovery Center, Bet Tzedek, the California Rural Legal Assistance Foundation, the Center for the Human Rights of Children, the Coalition to Abolish Slavery & Trafficking, Community Legal Services in East Palo Alto, Freedom Network USA, HEAL Trafficking (Health, Education, Advocacy, Leadership), the Holistic Immigration Hub, Legal Aid at Work,

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the Maryland Crime Victims' Resource Center, Inc., the National Crime Victim Law Institute, the Open Door Network, the Pilipino Workers Center of Southern California, the Sunita Jain Anti-Trafficking Policy Initiative, the UCLA Human Rights Litigation Clinic, the Virginia Coalition Against Human Trafficking, and Volare submit this brief as *amici curiae* in support of the Plaintiff-Appellant's restitution appeal.

ARGUMENT

I. The Court's Decision Is Contrary to California Law and Harms Survivors of Human Trafficking

The California Constitution makes clear that victims are entitled to receive restitution "in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss." Cal. Const. art. I, § 28(b)(13)(B). Crime victim is defined broadly to include "all persons who suffer losses as a result of criminal activity." Cal. Const. art. I, § 28(b)(13)(A); *see People v. Taylor*, 197 Cal. App. 4th 757, 761 (2011) ("A victim's restitution right is to be broadly and liberally construed.") (internal citations and quotation marks omitted); *Santos v. Brown*, 238 Cal. App. 4th 398, 418 (2015) (similar).

This broad definition recognizes the importance—both to the victims and to the public—in advocating and protecting crime victims' rights:

Victims of crime are entitled to have the criminal justice system

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> view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance.

Cal. Const. art. I, § 28(a)(2). The right to restitution is not only expansive. It is also mandatory. California Penal Code Section 1202.4, which implements this Constitutional mandate, specifically provides: "It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime *shall* receive restitution directly from a defendant convicted of that crime." Cal. Penal Code § 1202.4(a)(1) (emphasis added).

Nevertheless, in this case, the court misapplied the law and illegitimately narrowed crime victims' rights. Specifically, the court found that "non-testifying victims are not entitled to crime victim restitution." [A168007] 3RT 121-122; *see id.* ("[T]he Court's ruling [is] that non testifying employees are not entitled to restitution because the Court is finding they're not crime victims[.]"). This ruling creates a new and unprecedented threshold inquiry for victims seeking restitution. If a defendant proceeds to trial, the victim must now testify at that trial in order to seek restitution at sentencing.

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As an initial matter, there is no basis in the law for such a requirement. Nothing in the California Constitution or the penal code suggests that a victim must testify to meet the burden of proof required at a restitution hearing. Nor would such a requirement make any sense. A victim does not even have to testify at trial in order to secure a conviction. The Confrontation Clause of the U.S. Constitution provides the defendant with a right to cross examine a witness, but it does not compel the prosecution to call a victim to testify. *See* Alessandra P. Serano, *Evidence Considerations in Proving Sex Trafficking Cases Without a Testifying Victim*, 65 U.S. ATT'YS' BULL. 115, 121 (Nov. 2017) ("The Confrontation Clause guarantees every defendant the opportunity for effective cross-examination of any witness at trial. It does not provide an obligation for the United States to call all witnesses against a defendant, including a victim."). A defendant can be found guilty of committing a crime against a victim without the victim ever testifying at trial. *See* U.S. DEP'T OF JUST., VICTIM WITNESS HANDBOOK 9 (2023), *available at* https://www.justice.gov/usao-nj/victim-witness/handbook ("Not all victims are required to be witnesses at the trial"); *see*, *e.g.*, Jury Verdict Sheet at 2–3, *United States v. Deutsch*, No. 18-CR-502 (FB) (E.D.N.Y. June 15, 2022), Doc. No. 154 (convicting the defendant at trial for the sexual exploitation

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and attempted sexual exploitation of minor "Montana," among other charges, even though she did not testify at the trial). If a defendant can be convicted of a victim-based crime without that victim's testimony, it simply cannot be that restitution, which has a lower evidentiary standard, compels that same victim's testimony at trial.

Significantly, the lower court's ruling shows a complete disregard for the harmful effects that testifying can have on survivors of human trafficking. Testifying at a criminal trial can retraumatize victims. *See* HENRY WU AND ALEXANDRA YELDERMAN, THE HUMAN TRAFFICKING LEGAL CENTER, PROSECUTION AT ANY COST? THE IMPACT OF MATERIAL WITNESS WARRANTS IN FEDERAL HUMAN TRAFFICKING CASES 13–14 (2020), *available at* https://htlegalcenter.org/wp-content/uploads/Material-Witness-Report-final-for-publication_April-2020.pdf. It is further well recognized that "the adversarial structure of criminal prosecutions may be at odds with survivors' mental health and safety needs." HANNA LOVE, ET AL., URBAN INSTITUTE, JUSTICE IN THEIR OWN WORDS: PERCEPTIONS AND EXPERIENCES OF (IN)JUSTICE AMONG HUMAN TRAFFICKING SURVIVORS 2 (March 2018), *available at* https://www.urban.org/sites/default/files/publication/97351/justice_in_their_own_words_0.pdf. Survivors are already "at a heightened risk for retraumatization in the wake of violence" and then their participation

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in "a criminal prosecution subjects them to public scrutiny and challenges to their credibility." *Id.* Indeed, survivors of human trafficking, in particular, "may face heightened procedural hardships because of misconceptions regarding their victimization."[1] *Id.* There can be little doubt that the court's testimony requirement, which has no basis in the law, will do harm to survivors of human trafficking by insisting on their participation at trial, regardless of necessity or the impact on the survivor, in order for them to receive any restitution. This invented requirement does not "ensur[e] that crime victims are treated with respect and dignity," as promised by California's Constitution. Cal. Const. art. I, § 28(a)(2).

II. The Court's Decision Infringes on the Crime Victims' Constitutional Rights in California

California's constitutional mandate provides that all victims are entitled to restitution. That right is "personally enforceable" by not only the prosecutor, but also by the victim and the victim's attorney or lawful

[1] The court's suggestion that the victims improperly attempted to seek civil damages under the guise of criminal restitution is contrary to fact and to law. Criminal restitution and civil damages are distinct remedies and should not be conflated. The court's comments reveal a fundamental misunderstanding of the law and the role of restitution for trafficking victims. *See* [A168007] 3RT 113-118 ("[C]ivil claims for damages, economic damages, are never properly litigated in criminal court."); *id.* ("I'll repeat: The criminal court is not to be used as a vehicle to address civil liability, notwithstanding that this is a big labor trafficking case and there are over 120 other employees who are seeking redress here; they would like their back wages.").

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representative. Cal. Const. art. I, §§ 28(a)(3), (c)(1). The Constitution also recognizes that "California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime." Cal. Const. art. I, § 28(a)(2). But tying the right to restitution to whether a witness testified at trial further diminishes the limited rights of victims within the criminal legal system. Put simply, the court's ruling places the prosecution in an impossible bind: calling every conceivable witness to the stand or eviscerating victims' restitution claims by trimming the evidence presented to the jury.[2]

The prosecution in a criminal case is generally entitled to prove its case to a jury as it sees fit. *See Old Chief v. United States*, 519 U.S. 172, 186 (1997) (recognizing that "the prosecution is entitled to prove its case by evidence of its own choice"). There is no requirement that to establish each element of the crime, the prosecution present testimony from every victim.

[2] Moreover, courts, as the court did in this case, will often put limits on the length of the prosecution's case, thereby, further limiting the ability to preserve victims' rights. *See* Pet. for Writ of Mandamus, Ex. B to Victim Impact Statement of H.G., at ¶ 11 (quoting May 9, 2022, Hearing Tr., at 50:18-21) ("As the court explained to the jury: 'The People would very much have liked to call all witnesses on their list but because the Court had imposed that deadline of May 5, [the People] have chosen to present what they've presented up to this time.'").

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Thus, it is not surprising, as detailed in the victim's previously-filed writ, that courts have routinely awarded restitution to non-testifying victims in criminal cases. *See* Pet. for Writ of Mandamus, Ex. B to Victim Impact Statement of H.G., at 30–31 (discussing *United States v. Askarkhodjaev*, Case No. 09-00143-08-CR-W-ODS (W.D. Mo. May 16, 2011); *United States v. Mueffelman*, 400 F. Supp. 2d 368 (D. Mass. 2005); *United States v. Franzen*, Case No. 1:15-CR-55LG-RHW-001 (S.D. Miss. Feb. 2, 2017)). For example, in *United States v. Mueffelman*, 400 F. Supp. 2d 368 (D. Mass. 2005), the defendant argued that the district court could only order the defendant to pay restitution as to the individuals who were named in the indictment. The district court rejected the defendant's argument, finding that the court was empowered to order the defendant to pay restitution to victims who, while not named in the indictment, fit within the scheme of conduct alleged and proved. *Id.* at 387.

Had *Mueffelman* gone to trial under the law set by the court in this case, the prosecution would have faced a terrible dilemma: to present the testimony of more than 300 witnesses, or to abandon the restitution rights for every victim not called to testify. In the instant case, the defendants were charged with a ten-year conspiracy, which encompassed approximately 120 victims. The prosecutors made strategic decisions regarding which

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witnesses to call. Their goal was to present the most compelling case to the jury, as efficiently as possible. Notably, the People hoped to present more evidence, including additional witness testimony, but this goal was shattered by the court's rulings, imposing a firm deadline for when the People's case had to be concluded. *See* Pet. for Writ of Mandamus, Ex. B to Victim Impact Statement of H.G., at ¶ 11 (quoting May 9, 2022, Hearing Tr., at 50:18-21) ("During the course of trial, the court told the People that they needed to finish their case by May 5. That timeline prevented the People from putting on all [its] witnesses."). The court cannot force prosecutors to truncate their cases and then arbitrarily strip trafficking victims of their rights because the prosecution did not call them as a witness at trial.

By inserting itself into the purview of the prosecution—prosecutors have a right to choose their witnesses and build their case—the court capriciously strips the already limited rights of victims in criminal proceedings. The prosecutors in the instant case zealously advocated for the victims' rights, but even if the prosecutors had known the court's ruling in advance, they would have been left in an impossible position. The prosecution could have attempted to call 120 victim-witnesses, which would have been impossible under the court's deadline but even without that deadline would have resulted in a prohibitively long trial. Moreover, forcing

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every victim to testify in order to protect their right to restitution would have led to cumulative, or even confusing, testimony. Requiring all 120 witnesses to testify to preserve their restitution rights could also have annoyed the judge and jury, putting a conviction in jeopardy. The prosecution, unaware of this invented new testimony requirement, behaved ethically: presenting the strongest possible case to the jury through the strongest possible witnesses. That strategy has now inadvertently denied victims of any right to restitution and left these victims without recourse to vindicate their rights.[3]

Under the court's ruling, the victims who were not selected by the prosecution to testify—and who had no right to demand that they be allowed to testify—would have no avenue to seek a remedy. By discarding crime victims' rights so cavalierly, the court has ensured that victims will be denied restitution for no other reason than the defendants trafficked *too many* people to call as witnesses. This ruling is in direct conflict with the

[3] Notably, the instant appeal is indicative of the limited recourse available to victim witnesses. If this Court denies the appeal, the victims do not have any right or ability to bring an appeal. *Crump v. App. Div. of Superior Ct.*, 37 Cal. App. 5th 222, 240 (2019) ("Without party status, there is no basis for a direct appeal"). Rather, the victims are, once again, at the whims of the decision of the prosecutor, who must balance a variety of factors in deciding whether or not to continue to appeal the case.

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"unequivocal intention of the People of the State of California that *all persons* who suffer losses as a result of criminal activity shall have the right to seek and secure restitution." Cal. Const. Art. I, § 28(b)(13)(A) (emphasis added).

III. Survivors of Forced Labor and Human Trafficking Already Face Significant Obstacles in Receiving Restitution

The court's ruling serves to exacerbate a persistent problem. Survivors of trafficking are frequently denied the restitution they are legally required to receive. Without a right to counsel or the rights of a party to the litigation, crime victims' rights are in the hands of the prosecutors and the courts. Restitution under California law, as it is under the federal Trafficking Victims Protection Reauthorization Act ("TVPRA"), is mandatory. In fact, the language in California Penal Code Section 1202.4 mirrors the language in the TVPRA. *Compare* 18 U.S.C. § 1593(b)(3) ("The term 'full amount of the victim's losses' has the same meaning as provided in section 2259(c)(2) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.") *with* Cal. Penal Code § 1202.4(p) ("In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the

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victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim."); *see also* Cal. Penal Code § 236.1(g) ("The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(11) of Title 22 of the United States Code.").

Even when criminal restitution is mandatory, it is all too often simply not ordered. When the TVPRA's mandatory restitution provision is overlooked, trafficking victims are left empty-handed, deprived of the resources that would enable them to rebuild their lives. Advocates have documented and fought this trend. The Human Trafficking Legal Center has published two in-depth studies of federal criminal human trafficking cases and the infrequency with which restitution was awarded in those cases. *See* ALEXANDRA F. LEVY, HUMAN TRAFFICKING LEGAL CENTER, UNITED STATES FEDERAL COURTS CONTINUING FAILURE TO ORDER MANDATORY CRIMINAL RESTITUTION FOR HUMAN TRAFFICKING VICTIMS (2018), *available at* https://htlegalcenter.org/wp-content/uploads/2018-Mandatory-Restitution-

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Report.pdf; ALEXANDRA F. LEVY, HUMAN TRAFFICKING LEGAL CENTER, WHEN "MANDATORY" DOES NOT MEAN MANDATORY: FAILURE TO OBTAIN CRIMINAL RESTITUTION IN FEDERAL PROSECUTION OF HUMAN TRAFFICKING CASES IN THE UNITED STATES (2014), *available at* https://htlegalcenter.org/wp-content/uploads/HTProBono-Trafficking-Restitution-Report.pdf. Collectively, the reports analyzed 510 federal human trafficking cases. The researchers found that restitution was ordered in only about 30 percent of cases. *See* LEVY, UNITED STATES FEDERAL COURTS CONTINUING FAILURE TO ORDER MANDATORY CRIMINAL RESTITUTION FOR HUMAN TRAFFICKING VICTIMS, at App'x A.

Other data (later in time and relying on a slightly different methodology) suggests that there have been some recent increases in mandatory restitution orders in federal trafficking cases. *See* LINDSEY LANE, ET AL., HUM. TRAFFICKING INST., 2023 FEDERAL HUMAN TRAFFICKING REPORT 133 (2024), *available at* https://traffickinginstitute.org/wp-content/uploads/2024/06/2023-Federal-Human-Trafficking-Report-WEB-Spreads-LR.pdf ("In 2023, 48% . . . of the defendants convicted of a Chapter 77 offense were ordered to pay restitution, even though restitution is mandatory"). Still, that percentage remains well below fifty percent. Looking at all human trafficking cases, the numbers drop even further, down

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to 33 percent. *See id.* ("In 2023, 33% . . . of defendants sentenced in human trafficking cases were ordered to pay victim restitution"). In federal human trafficking cases prosecuted in California, at least one study indicates that restitution was ordered against just 18 percent of defendants in cases where there was at least one identified victim. *See* HUMAN TRAFFICKING INSTITUTE, CALIFORNIA STATE REPORT (2022), *available at* https://traffickinginstitute.org/wp-content/uploads/2022/09/2021-State-Summary-CA-PROOF2.pdf. This case, if allowed to stand, will replicate this state's disappointing record on restitution for trafficking victims.

The limited victims' rights afforded in criminal proceedings undermine constitutional and substantive protections for survivors. The failure to order restitution often stems from the victims' lack of legal representation. Moreover, prosecutors routinely fail to seek restitution. But here, the blame for the lack of restitution for these particular victims must be laid at the feet of the court. This court has violated the law, failing to uphold the basic rights of victims, repeating a problem that advocates have long lamented:

> [W]hile the best prosecutors take a victim-centered approach, others, as well as the judges overseeing the criminal cases, are frequently oblivious to their direct legal obligations to victims. The abysmal result is that defendants get to keep what they stole; victims remain penniless; and under-funded public-interest organizations are saddled with the costs of caring for

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victims.

Martina Vandenberg, *Palermo's Promise: Victims' rights and human trafficking*, 6 ANTI-TRAFFICKING REVIEW 138, 139 (2016). The court's ruling has caused grievous harm to victims who have already suffered. The ruling strangles the rights of victims in criminal proceedings. Most dangerously, the ruling puts even well-meaning prosecutors in the position of eviscerating a victim's rights to secure a defendant's conviction.

IV. Civil Damages Are Not a Substitute for Restitution

A civil action is not an alternative to a restitution award. Contrary to the court's repeated insinuations, the victims' restitution requests are not equivalent to civil claims. *See* [A168007] 3RT 113-118 ("[C]ivil claims for damages, economic damages, are never properly litigated in criminal court."); *id.* ("I'll repeat: The criminal court is not to be used as a vehicle to address civil liability, notwithstanding that this is a big labor trafficking case and there are over 120 other employees who are seeking redress here; they would like their back wages."). The victims were subjected to fraud and abuse by the defendants. They were forced to work for below minimum wage under inhumane conditions. They are crime victims entitled to criminal restitution, regardless of what other civil claims may be available.

In the instant case, the People sought the gross value of the victims'

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labor based on the value of the labor as guaranteed under California law. This request is precisely what is provided for under the law. Victims are entitled to restitution "sufficient to fully reimburse the victim or victims for every determined economic loss." Cal. Penal Code § 1202.4(f)(3); *see also* Cal. Penal Code § 1202.4(f)(3)(D) (specifically providing that victims are entitled to lost wages as part of restitution). A court should base its restitution order on "the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim." *Id.* Here the law is unequivocal that the victims have a constitutional right to be awarded restitution precisely for their losses in the criminal proceeding. The law does not preclude restitution where other civil claims exist at law. That is not the standard, and no victim should be forced to engage in civil litigation simply to obtain remedy for the harms their abusers caused when a criminal case already provides a mechanism for that remedy.

Sadly, civil litigation is often the only option for survivors of labor trafficking, as governments routinely fail to prosecute labor trafficking

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cases. *See 2026 Trafficking In Persons Report: United States*, U.S. DEP'T OF STATE (2026), https://www.state.gov/reports/2026-trafficking-in-persons-report/united-states (in fiscal year 2025, the Department of Justice initiated 302 federal human trafficking prosecutions but only 14 of those cases predominantly involved labor trafficking). But here, the state of California did prosecute the case. The victims cooperated with the prosecution. They should not be redirected by the court to engage in civil litigation instead, where the court should have awarded mandatory restitution instead. Many victims would prefer to end their engagement with the legal system after the conclusion of the criminal case. The victims should not be subjected to the additional trauma and expense of being forced to litigate a civil case. They should be able to do so, without suffering additional detriment, such as the loss of criminal restitution. If California intends to be true to the intent and purpose of its Constitution, the trial court's decision must be reversed.

CONCLUSION

For the reasons set forth above, the court's finding that an individual must testify at trial to be a crime victim is contrary to the law and must be reversed.

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Dated: November 13, 2026

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c)(1))

I, Catherine Sweetser, declare and state as follows:

1. I am an attorney duly licensed to practice law before all courts of the State of California and am Deputy Director of the Promise Institute for Human Rights, and Director of the Human Rights Litigation Clinic at UCLA School of Law, attorneys of record herein for the Human Trafficking Legal Center, the Alliance to End Human Trafficking, Beloved Survivors Trauma Recovery Center, Bet Tzedek, the California Rural Legal Assistance Foundation, the Center for the Human Rights of Children, the Coalition to Abolish Slavery & Trafficking, Community Legal Services in East Palo Alto, Freedom Network USA, HEAL Trafficking (Health, Education, Advocacy, Leadership), the Holistic Immigration Hub, Legal Aid at Work, the Maryland Crime Victims' Resource Center, Inc., the National Crime Victim Law Institute, the Open Door Network, the Pilipino Workers Center of Southern California, the Sunita Jain Anti-Trafficking Policy Initiative, the UCLA Human Rights Litigation Clinic, the Virginia Coalition Against Human Trafficking, and Volare.

2. I make this declaration in support of this Brief of Amicus Curiae in Support of Plaintiff-Appellant's Restitution Appeal.

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3. I have personal knowledge of the facts set forth in this declaration and if called as a witness, could and would testify competently to them.

4. Pursuant to California Rules of Court, Rule 8.204(c)(1), I hereby make the following certification: The text of this brief consists of 3,986 words as counted by the word-processing program used to generate this brief.

Executed on November 13, 2026, under the laws of the State of California at Los Angeles, California.

/s/ Catherine Sweetser

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