In the Supreme Court of the State of California

J.G., **a Person Coming Under the Juvenile Court,** **v.** **THE PEOPLE OF THE STATE OF CALIFORNIA,** **Plaintiff and Respondent,** **J.G.,** **Defendant and Appellant.**	Case No. S240397

Third Appellate District, Case No. C077056
Shasta County Superior Court, Case No. JDSQ122933901
The Honorable Anthony Anderson, Judge
The Honorable Monique McKee, Judge

ANSWER BRIEF ON THE MERITS

REDACTED VERSION
Redacts Material From Sealed Record

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CONSTITUTIONAL PROVISIONS

ISSUES PRESENTED

1. Can outstanding restitution be converted to, or enforced as, a civil judgment when a juvenile petition is dismissed after a minor successfully completes deferred entry of judgment (Welf. & Inst. Code,[1] § 790 et seq.)?

2. Can a juvenile court consider a minor's Supplemental Security Income Program (SSI) or Social Security Disability Insurance Program (SSD) benefits when determining the extent to which the minor has the ability to pay restitution under the Graffiti Removal and Damage Recovery Program ("the Graffiti Program" or "Program"; § 742.10, et seq.)?

3. Did the juvenile court abuse its discretion [redacted]?

INTRODUCTION

[redacted]

Vandalism is one of the few crimes subject to the Graffiti Program. Unlike the general restitution statutes, in setting restitution under the Graffiti Program, a court considers a minor's ability to pay. (§ 742.16, subd. (a).) [redacted]

[1] All undesignated statutory references are to the Welfare and Institutions Code.

[redacted]

As he did in the Court of Appeal, appellant claims the juvenile court did not have the authority to [redacted] his first claim, has forfeited his third and fourth claims, and has failed to show merit in any of them.

STATEMENT OF THE CASE

[redacted]

[redacted]

[redacted]

[redacted]

2 [redacted]

[redacted]

[redacted]

[redacted]

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3 [redacted]

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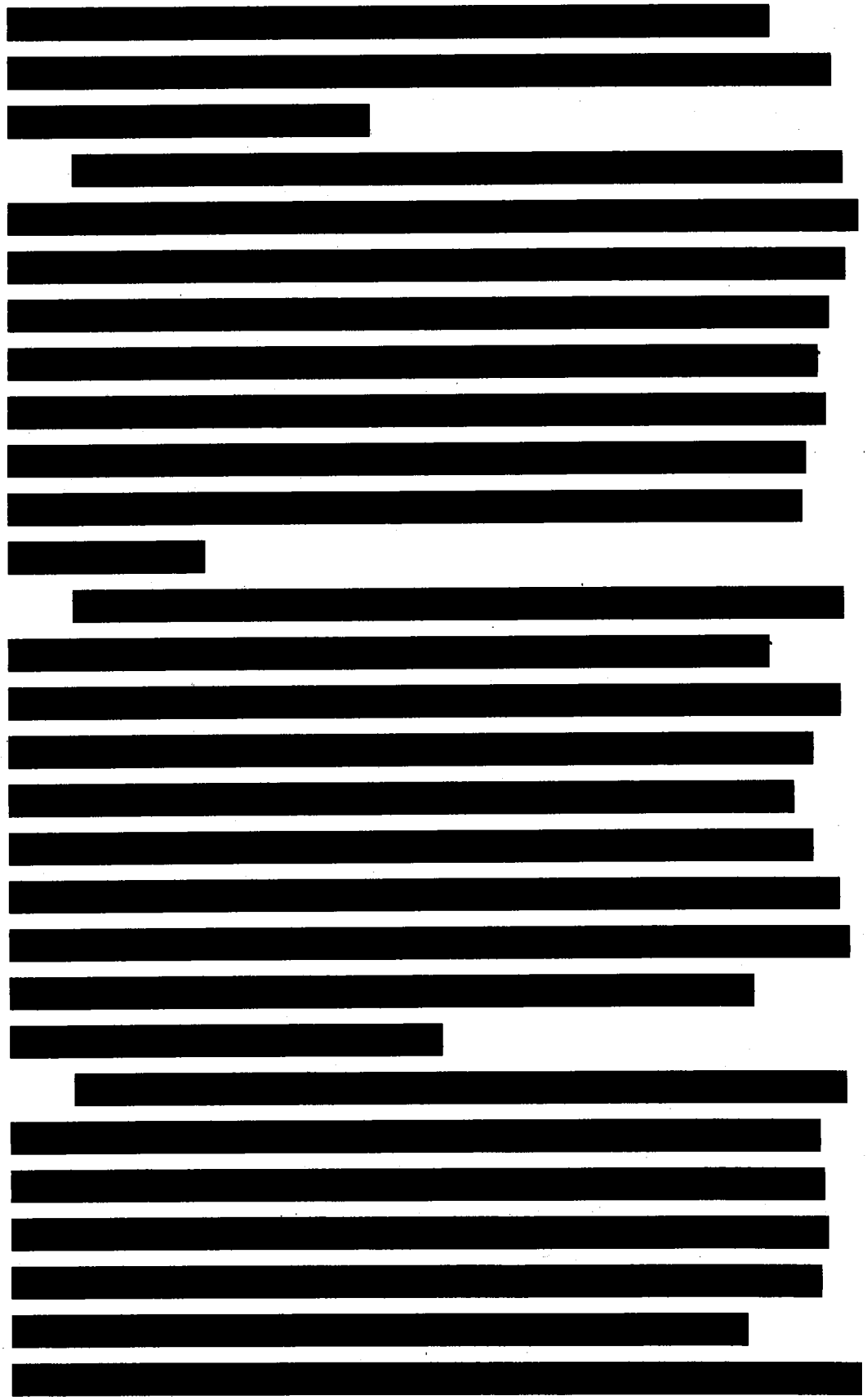

[redacted]

[redacted]

4. Court of Appeal proceedings

[redacted]

SUMMARY OF ARGUMENT

1. [redacted]

[redacted], the claim fails on the merits. Section 793 subdivision (c) does not unambiguously provide that

restitution cannot be converted to a civil judgment when a petition is dismissed after successful completion of DEJ. Rather, the various DEJ statutes explicitly provide that a restitution order issued pursuant to their provisions is enforceable as a civil judgment both during and after the time a court has jurisdiction over the minor. (§ 730.6, subds. (i), (l), (r); § 742.16, subd. (j).)

2. Because a complete picture of a minor's expenses, obligations, and financial resources should be considered when assessing the minor's ability to pay restitution under the Graffiti Program, Social Security payments must be considered as a factor that bears on the minor's financial capability. Although a court cannot order those payments to be used to pay restitution, it is proper for a court to consider them when determining a minor's ability to pay restitution under the Program.

3. Appellant's challenges to [redacted] was not an abuse of discretion. Nor did the record before the court necessarily establish that [redacted]. While the appellate record furnishes no basis for reversal, it may be that appellant could pursue other remedies in the trial court to challenge [redacted]

ARGUMENT

I. A JUVENILE COURT CAN CONVERT OUTSTANDING RESTITUTION TO A CIVIL JUDGMENT UPON SUCCESSFUL COMPLETION OF DEJ, [redacted]

Section 793, subdivision (c), states that upon successful completion of DEJ the charges "in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred[.]" Appellant claims this language "unambiguously prohibits a juvenile court from converting unpaid restitution to a civil judgment when a minor completes DEJ." (AOBM 12-13.) This is not the case. [redacted]

Second, [redacted], the claim fails on the merits. Section 793, subdivision (c) unambiguously provides that upon successful completion of DEJ the charges in the wardship petition will be dismissed and the arrest upon which the petition is based shall be deemed not to have occurred. The section makes no mention of restitution, let alone unambiguously states that a restitution order in a juvenile case cannot be converted to, or enforced as, a civil judgment after successful completion of DEJ. Appellant's claim to the contrary should be rejected.

A. General Background on Restitution and DEJ

1. Restitution in adult cases

In 1982, the California Constitution was amended to provide that "all persons who suffer losses" resulting from crime are entitled to "restitution from the persons convicted of the crimes causing the losses." (Cal. Const., art. I, § 28, subd. (b)(13)(A); *Luis M. v. Superior Court* (2014) 59 Cal.4th 300, 304 (*Luis M.*).) In 1983, the Legislature enacted Penal Code section 1202.4 which directs a court to order full restitution in a criminal case for every determined economic loss. (Pen. Code, § 1202.4, subds. (f) & (f)(3).) "A defendant's inability to pay shall not be a consideration in determining the amount of a restitution order." (Pen. Code, § 1202.4, subd. (g).) A restitution order imposed pursuant to this section "shall be enforceable as if the order were a civil judgment" (Pen. Code, § 1202.4, subd. (i)) and "[a]ny portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied."[6] (Pen. Code, § 1202.4, subd. (m).)

2. General restitution in juvenile cases

"In 1994, the Legislature enacted section 730.6 to provide 'parallel restitutionary requirements for juvenile offenders.' [Citation.]" (*Luis M.*, *supra*, 59 Cal.4th at p. 305.) This section directs a court to order full restitution for every determined economic loss unless it finds compelling and extraordinary reasons for not doing so. (§ 730.6, subd. (h)(1).) "A

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[6] Among other things, Penal Code section 1214 provides that an order to pay restitution is deemed a money judgment and "shall be enforceable by a victim as if the order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment." (Pen. Code, § 1214, subds. (b) & (d).)

minor's inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order." (*Ibid.*)

As in the adult context, a restitution order imposed pursuant to section 730.6 is enforceable as a civil judgment (§ 730.6, subds. (i) & (r)), and any portion of a restitution order that remains unsatisfied after a minor is no longer on probation shall continue to be enforceable as a civil judgment until the obligation is satisfied in full. (§ 730.6, subd. (l).) Restitution is a mandatory condition of juvenile probation (*ibid.*), but probation cannot be revoked for failure to make restitution "unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay." (§ 730.6, subd. (m).)

In 1995, the legislature enacted section 730.7, which makes a parent "rebuttably presumed to be jointly and severally liable with the minor ... subject to the court's consideration of the parent's or guardian's inability to pay." (§ 730.7, subd. (a).) The burden is on the parent to show an inability to pay. (*Ibid.*)

3. Restitution in juvenile cases under the Graffiti Program

In 1994, the Legislature added the Graffiti Program to the Welfare and Institutions Code (§ 742.10 et seq.; Stats. 1994, ch. 909, § 11, p. 4603 et seq.) to allow for recovery of graffiti remediation costs. (*Luis M.*, *supra*, 59 Cal.4th at pp. 305-306.) The Legislature's intent in enacting the Graffiti Program was to assist owners of property defaced by minors with graffiti to recover their full damages from the minor (§ 742.10, subd. (a)); to minimize the cost of collecting restitution (§ 742.10, subd. (d)); to deter graffiti by requiring minors and their parents to bear the costs associated with defacement of property with graffiti (§ 742.10, subd. (e)); and to retain

in the juvenile court the discretion needed to rehabilitate minors (§ 742.10, subd. (f)).

While the Graffiti Program is directed at graffiti-related vandalism, it also governs direct victim restitution for any act of vandalism, regardless of whether it involves graffiti.[7] (§ 742.16, subd. (a).) Under section 742.16, subdivision (a), when a minor commits "an act prohibited by Section 594" the court, as a condition of probation, shall order the minor to repair the property defaced, damaged, or destroyed, or otherwise pay restitution, or both. If a minor is not granted probation, or if "the minor's cleanup, repair, or replacement of the property will not return the property to its condition before it was defaced, damaged, or destroyed, the court shall make a finding of the amount of restitution that would be required to fully compensate the owner and possessor of the property for their damages." (§ 742.16, subd. (a).)

Section 742.16, subdivision (a) further requires the court to order the minor or the minor's estate to pay restitution to the extent it determines they "have the ability to do so[.]" If the court determines that the minor or the minor's estate are unable to pay full restitution, the court can order the minor's parents to pay restitution if it determines they have the ability to do so and they have been cited into court pursuant to section 742.18. (§ 742.16, subd. (d).)

The court may execute the restitution order "in the same manner as on a judgment in a civil action, including any balance unpaid at the termination of the court's jurisdiction over the minor." (§ 742.16, subd. (j).)

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[7] Penal Code section 594, subdivision (a), states that a person can commit vandalism by maliciously: defacing property with graffiti; damaging property; or destroying property.

4. DEJ

Under the DEJ procedures (§ 790 et seq.), when a minor admits that he or she committed a felony offense, the court, under specified conditions, is authorized to place the minor on probation for a period of 12-36 months without adjudging him or her a ward of the court if it finds the minor is suitable for such deferral and would benefit from education, treatment, and rehabilitation efforts. (*In re Mario C.* (2004) 124 Cal.App.4th 1303, 1308; §§ 790, subds. (a) & (b), 791.) When a minor is permitted to participate in DEJ, the court must impose certain conditions of probation, may impose any term authorized by the Welfare and Institutions Code, and may also require the minor "to pay restitution to the victim or victims pursuant to the provisions of this code." (§ 794; *G.C. v Superior Court* (2010) 183 Cal.App.4th 371, 377.) If a minor successfully completes probation, "the charge or charges in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred and any records in the possession of the juvenile court shall be sealed" except in circumstances not relevant here. (§ 793, subd. (c).)

B. [redacted]

[redacted]

In order to participate in DEJ, a minor must admit every allegation contained in the petition. (§ 791, subd. (a)(3).) There are certain mandatory conditions of probation, and a court may order a minor to pay restitution "pursuant to the provisions" of the Welfare and Institutions Code. (§ 794.) [redacted]

(See *In re K.C.* (2013) 220 Cal.App.4th 465, 471-473; *People v. Hester* (2000) 22 Cal.4th 290, 295 ["defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process."].)

This is true regardless of whether appellant's underlying claim is meritorious. For example, in *In re K.C.*, *supra*, 220 Cal.App.4th 465 the Court of Appeal found that the section 654.2 informal probation provisions did not incorporate the restitution provisions found in section 730.6 and, thus, a court could not convert outstanding restitution to a civil judgment upon successful completion of informal probation. (*Id.* at pp. 470-471.) However, in that case, "in exchange for the benefit of a program of informal supervision and to avoid an adjudication, the minor agreed that the order of victim restitution would remain in effect until paid in full pursuant to section 730.6 and would not be discharged upon termination of probation." (*Id.* at pp. 471-472.) Thus, "the minor agreed that section 730.6 would apply to the restitution order, despite the fact it did not by its terms apply. In so doing, the minor consented to an act in excess of the

court's jurisdiction." (*Ibid.*) Accordingly, the court held, the minor was estopped from challenging the court's order converting the outstanding restitution obligation to a civil judgment because, "[a] litigant who has stipulated to a procedure in excess of jurisdiction may be estopped to question it when 'To hold otherwise would permit the parties to trifle with the courts.' [Citations.]" (*Id.* at p. 472, quotation marks altered.)

Like the minor in *In re K.C.*, [redacted] (*In re K.C.*, *supra*, 220 Cal.App.4th at p. 472; see *People v. Hester*, *supra*, 22 Cal.4th at p. 295.) [redacted]

C. Outstanding Restitution Can Be Converted to, or Enforced as, a Civil Judgment upon Successful Completion of DEJ

Section 794 incorporates the Welfare and Institution Code's restitution statutes which provide for enforcement of a restitution order as a civil judgement after a juvenile court no longer retains jurisdiction over a minor. (§ 730.6, subds. (i), (l), (r); § 742.16, subd. (j); Pen. Code, § 1214, subd. (b); *G.C. v. Superior Court*, *supra*, 183 Cal.App.4th at p. 377.) Nonetheless, appellant attempts to narrowly construe section 793, subdivision (c), to prevent the [redacted]. Appellant claims language in section 793 subdivision (c) about what occurs upon successful

completion of DEJ probation—"the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred"—despite its silence on the issue of restitution, unambiguously means that a restitution order cannot be enforced as, or converted to, a civil judgment upon successful completion of DEJ. (AOBM 11-19.) However, appellant's narrow interpretation of section 793 ignores the greater statutory scheme and the intent of the Legislature in enacting other provisions of the Welfare and Institutions Code applicable to restitution.

1. Rules of statutory construction

The rules of statutory construction are well settled. (*Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340.) The fundamental premise is that the objective of statutory interpretation is to ascertain and effectuate legislative intent. (*Ibid.*) When the language is clear, there is no need for further inquiry. (*Ibid.*) As this Court has stated, "We begin by examining the statutory language because the words of a statute are generally the most reliable indicator of legislative intent. We give the words of the statute their ordinary and usual meaning and view them in their statutory context. We harmonize the various parts of the enactment by considering them in the context of the statutory framework as a whole. 'If the statute's text evinces an unmistakable plain meaning, we need go no further.'" (*In re C.H.* (2011) 53 Cal.4th 94, 100-101, citations omitted.) Further, with regard to the interpretation of statutes relating to restitution, "[i]n keeping with the [voters'] unequivocal intention that victim restitution be made, statutory provisions implementing the constitutional directive have been broadly and liberally construed." (*Luis M., supra*, 59 Cal.4th at p. 305, internal quotation marks and citations omitted; *In re Keith C.* (2015) 236 Cal.App.4th 151, 155 [a juvenile court has a statutory and constitutional

duty to order a minor to make restitution to their victim and courts must broadly construe the statutory provisions implementing restitution].)

2. The plain language of the DEJ statutes provides for civil enforcement of a restitution order after successful completion of DEJ

Section 794, the statute setting forth the probation conditions for a minor who has been placed on DEJ, "plainly incorporates into the deferred entry of judgment process the provisions of the Welfare and Institutions Code pertaining to victim restitution." (*G.C. v. Superior Court*, *supra*, 183 Cal.App.4th at p. 377.) Among these provisions is that a restitution order is enforceable as a civil judgment both during and after the time a court has jurisdiction over the minor. (§ 730.6, subds. (a)(1), (a)(2)(B), (h)(1), (i), (l), (r); § 742.16, subd. (j); Pen. Code, § 1214, subd. (b).) By incorporating these provisions, the DEJ statutes explicitly contemplate a restitution order issued pursuant to their provisions is enforceable as a civil judgment after a petition is dismissed upon successful completion of DEJ. Because the language of the statute is clear, there is no need for further inquiry. (*Nolan v. City of Anaheim*, *supra*, 33 Cal.4th at p. 340.)

Appellant argues that section 793, subdivision (c)'s statement that upon successful completion of DEJ the charges "in the wardship petition shall be dismissed and the arrest upon which the judgment was deferred shall be deemed never to have occurred[,]" "unambiguously prohibits a juvenile court from converting unpaid restitution to a civil judgment when a minor completes DEJ." (AOBM 12-13.) Not so. The provision makes no explicit mention of restitution and does not explicitly say that a restitution order can no longer be enforced after completion of DEJ. Additionally, the fact that an arrest is deemed not to have occurred after DEJ is completed does not mean that the damage inflicted by a minor did not occur or that a minor is no longer liable for that damage. [redacted]

[redacted]

3. Even assuming some ambiguity, the Legislature and electorate's intent is for restitution to be enforced as a civil judgment

Even if the DEJ statues are ambiguous about whether unpaid restitution could be enforced as, or converted to, a civil judgment at the completion of DEJ, the ambiguity is resolved by the electorate and Legislature's intent that a victim recover full restitution. (*Luis M.*, *supra*, 59 Cal.4th at p. 305 [statutory provisions implementing restitution have been broadly and liberally construed]; *In re Keith C.*, *supra*, 236 Cal.App.4th at p. 155 [same]; *People v. Harrison* (2013) 57 Cal.4th 1211, 1221-1222 [when a statute is ambiguous a court may "'look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.'"].)

The electorate amended the California Constitution to provide that "all persons who suffer losses" resulting from crime are entitled to "restitution from the persons convicted of the crimes causing the losses." (Cal. Const., art. I, § 28, subd. (b)(13)(A); *Luis M.*, *supra*, 59 Cal.4th at p. 304.) The Legislature also enacted Penal Code section 1202.4 which directs a court to order full restitution in a criminal case and calls for such an order to be enforceable as a civil judgment both during and after a defendant's term of probation. (Pen. Code, §§ 1202.4, subds. (f), (f)(3), (i), & (m), 1214, subds. (b) & (d).) It also enacted section 730.6 which directs a court in juvenile cases to order full restitution and calls for such an order to be enforceable as a civil judgment both during and after the time a court

has jurisdiction over the minor. (§ 730.6, subds. (a)(1), (a)(2)(B), (h)(1), (i), (l), (r); Pen. Code, § 1214, subd. (b).)

In addition, the Legislature added the Graffiti Program which calls for a restitution order to be enforceable as a civil judgment both during and after the time a court has jurisdiction over the minor. (§ 742.16, subd. (j).) The Legislature made its intent in enacting the Program explicit: to assist victims to recover their full damages from a minor; to minimize the cost of collecting restitution; to deter graffiti by requiring minors to bear the costs associated with their defacement; to retain in the juvenile court the discretion needed to rehabilitate minors; to safeguard the fiscal integrity of cities and counties by enabling them to recoup the full costs of graffiti remediation; and to recoup the cost to law enforcement for identifying and apprehending the minor. (§ 742.10, subds. (a)-(f)). It made clear that its first priority was for a minor to provide restitution to the victim of his or her conduct. (§ 742.20, subd. (a).)

In amending sections 781 and 786, the Legislature recently reaffirmed its intent to have restitution orders enforced as civil judgments upon completion of a minor's supervision. (SO 10-11.) Section 781—providing for the sealing of juvenile delinquency records—states in subdivision (a)(2), "An unfulfilled order of restitution that has been converted to a civil judgment pursuant to Section 730.6 shall not be a bar to sealing a record pursuant to this subdivision." Section 786—regarding the completion of informal supervision or probation—states, "An unfulfilled order or condition of restitution, including a restitution fine that can be converted to a civil judgment under Section 730.6 or an unpaid restitution fee shall not be deemed to constitute unsatisfactory completion of supervision or probation under this section." (§ 786, subd. (c)(2).) "This section does not prohibit a court from enforcing a civil judgment for an unfulfilled order of restitution ordered pursuant to Section 730.6." (§ 786, subd. (g)(1).)

As the foregoing establishes, the Legislature's unambiguous intent is for a restitution order to be enforced as a civil judgment in juvenile cases. That intent, along with section 794's incorporation of the Welfare and Institutions Code provisions pertaining to victim restitution, provisions which include enforcement as a civil judgment after a juvenile court no longer has jurisdiction over a minor, resolves any ambiguity about whether restitution can be enforced as a civil judgement after a petition is dismissed upon successful completion of DEJ.

Appellant's contrary interpretation would lead to absurd results. First, it would remove or greatly diminish any incentive for a minor to make efforts to pay restitution during DEJ probation. As noted, probation cannot be revoked absent a court finding of willful failure to pay. (§ 730.6, subd. (m).) Knowing that restitution cannot be converted to a civil judgment and that probation can be violated based only on a willful failure to pay restitution, a minor would have little incentive to pay restitution—for example by getting a job—while on DEJ probation and would instead have an incentive to delay payment.

The Court of Appeal correctly reached a similar conclusion in *In re Keith C.*, *supra*, 236 Cal.App.4th 151. In that case, the juvenile court found 15-year-old Keith C. to be a ward of the court and ordered him to pay restitution. (*Id.* at p. 153-154.) When he was 23, the court terminated Keith C.'s probation "unsatisfactorily," dismissed his wardship, and issued an abstract of judgment requiring him to pay victim restitution. (*Id.* at p. 154.) On appeal, Keith C. argued the juvenile court did not have the authority to enter an abstract of judgment after it lost jurisdiction over him when he turned 21. (*Id.* at pp. 153, 155.)

The Court of Appeal rejected this argument. (*In re Keith C.*, *supra*, 236 Cal.App.4th at p. 153.) It observed that to accept Keith C.'s position "not only would contravene the express intent of the Legislature that

victims may enforce juvenile restitution orders in the same manner as civil judgments (see § 730.6, subds. (i) & (r); Pen. Code, § 1214, subd. (b)), but would reward defaults by juvenile offenders hoping they can escape their restitutionary obligations by 'running out the clock' as they grow into adulthood." (*Id.* at p. 156.) The same is true here. If a court cannot convert a restitution order to a civil judgment after successful completion of DEJ probation, and DEJ probation cannot be violated for failing to pay restitution, a minor would have no incentive to pay restitution during a period of DEJ probation and would have every incentive to "run out the clock" until their DEJ probation ended so as to avoid paying restitution altogether.

In addition, as *Keith C.* explained, appellant's constricted view would likely force prosecutors to seek, and courts to order, civil enforcement as soon as a minor is put on DEJ probation without regard to a minor's individual circumstances, something that is "inconsistent with the flexibility juvenile courts must have in overseeing their charges." (*In re Keith C., supra*, 236 Cal.App.4th at p. 157.) As the court noted, "accommodating a ward's difficulty in making restitutionary payments for some period of time, or establishing 'soft' goals on a payment timetable,[8] while holding back the 'hammer' of full enforcement by civil judgment for a period, may be the most rehabilitative way of handling the ward in some cases." (*Ibid.*) Under appellant's theory, however, a court would have to immediately enforce a restitution order civilly so a victim could attempt to recover their restitution before DEJ probation ended.

Appellant's approach could also lead to other problems that would run counter to the purposes and interests of DEJ. For example, a court might

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[8] Here, the juvenile court imposed such a "soft goal"; namely the $25 per month payment.

find a minor unsuitable for DEJ simply because the minor owes a large amount of restitution. (§ 790, subd. (b).) Or a court might keep a minor on DEJ probation for as long as possible to recover the most restitution it can while the minor is under its jurisdiction.

Moreover, DEJ probation typically lasts for 12 months, and it is not uncommon for the full amount of restitution not to be known when DEJ probation commences. If restitution cannot be converted to a civil judgment after dismissal, and restitution is not determined until 12 months after DEJ probation is commenced, a minor will pay little or none of his obligation under appellant's interpretation. Again, that interpretation encourages a minor to run out the clock in order to avoid paying restitution.[9]

4. The authorities relied on by appellant do not support his position

Appellant relies on *People v. Gross* (2015) 238 Cal.App.4th 1313. (AOBM 17.) There, the defendant's case was dismissed pursuant to former section 3200 and Penal Code section 1203.4, the latter of which provides that a defendant is, with certain exceptions, "released from all penalties and disabilities resulting from the offense of which he or she had been convicted." (*Id.* at p. 1315.) The Court of Appeal rejected the defendant's argument that this released him from the obligation to pay restitution to the victims, finding that "[t]he obligation to make a victim whole through direct victim restitution is a constitutional mandate that serves to protect public safety and welfare, rather than to punish the defendant, and thus it is

9 [redacted]

not a penalty or disability from which a defendant is released upon the dismissal of criminal charges pursuant to Welfare and Institutions Code former section 3200 or section 1203.4." (*Id.* at pp. 1315-1316.)

Appellant argues *Gross* supports his claim because section 793, which deems an arrest not to have occurred, provides broader protection than Penal Code section 1203.4, which releases a defendant from penalties and disabilities resulting from conviction. (AOBM 17.) Appellant's reliance on *Gross* is misplaced because it does not examine the effect or reach of section 793. Nothing in the *Gross* opinion suggests that a provision like Penal Code section 1203.4 marks the limit or reach of California's restitution provisions. If anything, *Gross* supports the argument that section 793's language about an arrest being deemed not to have occurred cannot overcome the state constitution's restitution mandate.

Appellant also claims *G.C. v. Superior Court*, *supra*, 183 Cal.App.4th at page 378 "recognized that restitution does not survive the dismissal of a section 602 petition in the DEJ context." (AOBM 19.) *G.C.* did not directly address this issue. Rather, *G.C.* addressed whether the restitution provisions of the Graffiti Program (§ 742.16) were limited to minors who had been found to be persons described in section 602 or whether they also applied to minors who had been placed on DEJ (who, because of the deferral of the entry of judgment, have not been found to be persons described in section 602). Finally, the portion of *G.C.* relied upon by appellant merely states that an ability-to-pay finding under section 742.16 must be made "'at the front end.'" (*Id.*) That part of the opinion, however, did not specifically hold that "restitution does not survive the dismissal of a section 602 in the DEJ context" (AOBM 19) or that a court can only order an amount of restitution that a minor can repay during the period he or she is on DEJ, and any suggestion by the court that that is the case is dicta.

And, in any event, to the extent either of these cases could be interpreted in the way appellant suggests, they are not soundly reasoned. As already explained, both the plain language and the intent of the Legislature and the electorate confirm that a restitution order survives the completion of DEJ probation.

Nor does appellant's reliance on the Voter Information Guide for Proposition 21, which codified DEJ for juveniles, assist his argument. (AOBM 18.) While the portion of the guide he cites evinces an intent to expunge some offenses committed by certain "first time, non-violent juvenile felons[,]" it makes no mention of restitution, what happens to an outstanding restitution order on successful completion of DEJ, or, more explicitly, say that an outstanding restitution order cannot be enforced as a civil judgment after successful completion.

Finally, appellant notes that section 786 provides that a restitution order can be civilly enforced when a case is dismissed after a minor successfully completes "an informal program of supervision pursuant to Section 654.2," "probation under Section 725," or "a term of probation for any offense." (AOBM 16.) He argues that the lack of such language in section 793 "is a strong indication that such an exception should not be read into section 793." (AOBM 16.) Just the opposite is true, however. The provisions allowing for civil enforcement after dismissal in section 786 show, as set forth above, that the legislature intends broadly that restitution orders be civilly enforceable so that victims can obtain full restitution. Further, section 786 applies to any "person who has been alleged ... to be a ward of the juvenile court" and who "satisfactorily completes...a term of probation for any offense[.]" (§ 786, subd. (a).) This language appears to apply to a minor who completed DEJ probation (though its dismissal provisions would seem to be duplicative of those in section 793, subdivision (c)). Finally, the lack of such language in section 793 does not

lead to the necessary conclusion a restitution order cannot be enforced civilly after a case is dismissed upon successful completion of DEJ, as appellant suggests. (AOBM 16.)

II. THE JUVENILE COURT DID NOT ERR WHEN [redacted]

Title 42 United States Code section 407(a) provides that "[t]he right of any person to any future payment under this subchapter [Assignment of Social Security and Supplemental Security Benefits] shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process[.]" Appellant claims that the juvenile court's [redacted] Appellant's claims to the contrary should be rejected.

A. A Juvenile Court May Consider Federal Benefits as Part of a Juvenile's Overall Financial Situation Even Though Those Benefits May Not Be Used to Pay Restitution

Section 742.16, subdivision (a) provides that a minor shall be ordered to pay restitution "to the extent the court determines that the minor or the minor's estate have the ability to do so[.]" The statute does not define what it means when it says "ability to do so," but section 730.6, subdivision (d)(2), which deals with a minor's ability to pay a restitution fine, states, "[t]he consideration of a minor's ability to pay may include his or her

future earning capacity." Sections 742.16, subdivision (d), and 730.7, providing for parental liability, state that, when considering a parent's ability to pay, a court can take into consideration a families' income, obligations, and future earning capacity. Other analogous statutes containing "ability to pay" language also define that term as including consideration of a defendant's present financial position, her reasonably discernible future financial position, the likelihood she can obtain employment in the reasonably near future, and any other factor which may bear upon her financial capability. (E.g., Pen. Code, §§ 1203.1b, subd. (e) [ability to reimburse probation costs], 1203.1c, subd. (b) [ability to reimburse incarceration costs], 987.8, subd. (g)(2) [ability to reimburse attorney fees]; see *In re Brian S.* (1982) 130 Cal.App.3d 523, 532 [a court can consider future employment].) Additionally, a court can order a minor to work to earn money for "reparation." (§ 730, subd. (b).)

It is important for a court to consider a minor's complete financial picture—including the minor's financial resources, expenses, and obligations—when determining the minor's ability to pay restitution. (See SO 12-13, citing to *Kays v. State* (2012) 963 N.E.2d 507, 510-511.) SSI or SSD payments are undoubtedly a factor which may bear on a person's financial capability, and, therefore, as the Indiana Supreme Court has held, "it is proper for a court to consider social security benefits in determining a defendant's ability to pay restitution." (*Kays*, *supra*, at p. 510; SO 13.)

In *Kays*, the defendant was convicted of misdemeanor battery and ordered to pay restitution. (*Kays v. State, supra,* 963 N.E.2d at pp. 508-509.) At sentencing, Kays objected to the $1,496.15 restitution amount because her sole source of income was $674 per month in SSD payments. (*Id.* at p. 509.) The trial court overruled the objection and imposed the full restitution amount. (*Ibid.*) The Indiana Court of Appeals reversed, finding that the trial court failed to inquire into Kays' ability to pay. (*Ibid.*) In its

remand order, the Court of Appeals directed the trial court to ignore Kays' social security benefits when considering her ability to pay because, it concluded, considering such benefits would amount to an improper taking of social security benefits by "other legal process," something that is prohibited under the anti-alienation provisions of 42 U.S.C. § 407(a). (*Ibid.*)

The Indiana Supreme Court reversed the Court of Appeals' finding in this regard. (*Kays*, *supra*, 963 N.E.2d at p. 510.) It reasoned that "ignoring a defendant's social security income may paint a distorted picture of her ability to pay restitution. For example, a debt-free defendant who lives with a family member and receives room and board at no charge may very well have the ability to pay restitution even if her only income is from social security. This does not mean that the State could levy against that income to collect the restitution, but it does reflect an important part of the person's total financial picture that a trial court may consider in determining ability to pay." (*Id.* at pp. 510-511.)

Kays was correct in this regard. If a person's federal benefits could not be considered in determining their ability to pay restitution, it would create a distorted picture of their financial situation. Take, for example, a minor, minor A, who received $500 in disability each month for living expenses. If minor A's benefits could not be considered in determining her ability to pay, it would appear she had negative income of $500 each month. Contrast that with a different minor, minor B, who had the same living expenses but who did not receive benefits and instead had a job to pay her living expenses. If minor A's benefits could not be considered when determining her complete financial picture, it would appear that she was in a worse financial position at the end of each month (negative $500) than minor B ($0). In actuality, however, minor B is in a worse financial position each month because she already has a job and would have to find a second job to secure additional income to pay restitution whereas minor A

might be able to more easily find additional income to pay restitution. Further consider minor C whose parents provide for all her living expenses. From a practical standpoint, she is like minor A in that her living expenses are being provided for. Again, however, if minor A's benefits cannot not be considered, it appears she is in a worse financial position (negative $500 each month) than minor C and, therefore, has an inferior ability to pay restitution instead of an equal one.

As the foregoing establishes, "ignoring a defendant's social security income may paint a distorted picture of his ability to pay restitution." (*Kays*, *supra*, 963 N.E.2d at p. 510.) Accordingly, a minor's federal benefits should be considered to accurately determine whether the minor has the ability to pay.

Appellant disagrees, arguing that that the mere consideration of federal benefits when determining ability to pay amounts to taking those benefits by "other legal process" because "in many cases...the defendant's only source of income is SSI and SSD benefits. There is no other source...from which restitution payments can be made." (AOBM 22.) This argument overlooks the fact that, among other things, a court can consider a minor's other sources of income and even future earning capacity, i.e., ability to obtain employment, when determining whether he or she has an ability to pay. (*In re Brian S.*, *supra*, 130 Cal.App.3d 532; § 730, subd. (b); see § 730.6, subd. (m).) Consideration of SSI and SSD benefits to determine how much total financial support a minor has is not the same as requiring the minor to use those benefits to satisfy "legal process."

Appellant argues *Kays* is wrongly decided because the court there failed to address whether treating social security benefits as income for ability to pay purposes amounts to "other legal process." (AOBM 23.) This is not the case. The *Kays* court made clear that federal benefits could

only be *considered* when making the ability to pay determination and that a court could not order those benefits to be used to pay restitution. (*Kays*, *supra*, 963 N.E.2d at p. 510-511.) Under the reasoning of *Kays*, no federal benefits are being taken by any process.

As *Kays* noted, "[t]here is scant authority on the question of whether social security benefits 'can be taken into account simply to determine an individual's ability to pay a fine or restitution,' and the case law that exists 'does not appear to yield a clearcut answer' to this question." (*Kays*, *supra*, 963 N.E.2d at p. 510.) Nevertheless, while "not authoritative[,]" the court "found persuasive the decisions of other courts that have permitted consideration of income or other assets that cannot be levied against in assessing a defendant's overall ability to pay fines or restitution." (*Id.* at p. 511 [citing *United States v. Lampien* (7th Cir. 2001) 1 Fed.Appx. 528, 533, fn. 3, involving prospective OASDI benefits; *United States v. Smith* (4th Cir. 1995) 47 F.3d 681, 684, involving pension benefits; and *Gleave v. Graham* (W.D.N.Y. 1997) 954 F.Supp. 599, 610-611, involving veterans' disability benefits].)[10]

[redacted]

Nor is appellant correct to the extent he argues that the trial court's order in this case [redacted]

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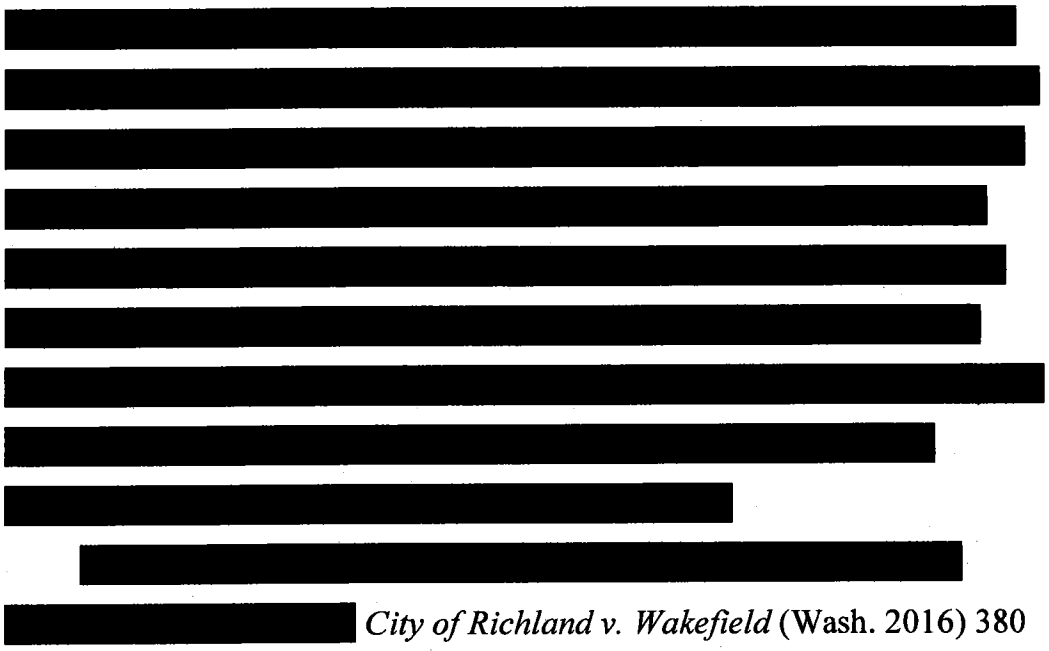
[10] Appellant faults these cases for not being exactly on point. (AOBM 23-25.) However, as the *Kays* court stated, the cases are persuasive, not authoritative. In any event, appellant acknowledges that *United States v. Lampien*, *supra*, 1 Fed.Appx. 528 at pages 531-532 holds that social security benefits can be treated as income for restitution purposes (AOBM 23-24) and that *Gleave v. Graham*, *supra*, 954 F.Supp. 599 at pages 610-611 held that veteran's benefits could be treated as income for ability to pay purposes without violating anti-alienation provisions similar to the ones here. (AOBM 24.)



City of Richland v. Wakefield (Wash. 2016) 380 P.3d 459 (*Wakefield*) and *In re S.M.* (2012) 209 Cal.App.4th 21 (*S.M.*), cases upon which appellant relies in support of his argument.

In *Wakefield*, the defendant was 27 years old, homeless, permanently disabled, indigent, and recovering from drug addiction. (*Wakefield*, *supra*, 380 P.3d at p. 461-462, 466.) She also suffered from bipolar disorder, attention deficit disorder, hyperactivity disorder, and posttraumatic stress disorder. (*Id.* at p. 461.) She had been receiving social security income since the age of 18 due to her inability to work. (*Ibid.*) At the time of the case, she received $710 in social security payments each month and received $170 in food stamp assistance from the state. (*Ibid.*) These were her only sources of income. (*Ibid.*)

Wakefield was ordered by the district court to pay $15 per month towards discretionary legal financial obligations (LFOs) as a result of misdemeanor disorderly conduct and harassment convictions. (*Wakefield*, *supra*, 380 P.3d at p. 461.) At a fine review hearing, Wakefield said she was homeless and did not have enough money to pay her LFOs. (*Id.* at pp. 462.) She also presented testimony from an expert who said that the minimum amount a one-person household needed in order to meet the core

necessities of life in 2011 in Kennewick or Richland, Washington was $1,492 per month. (*Ibid.*) In other words, Wakefield needed an additional $782 per month to meet her basic needs. The district court ordered Wakefield to pay $15 per month, but did not make a finding that she had the ability to do so and did not "mention or apply the [statutory] manifest hardship standard for remitting costs for indigent defendants." (*Ibid.*)

The Washington Supreme Court reversed the $15 per month order. (*Wakefield, supra*, 380 P.3d at p. 461.) It found the district court had not applied the correct "manifest hardship" standard under the relevant state statute, had failed to properly analyze the effect of Wakefield's disabilities and homelessness on her ability to pay, and had made numerous factual errors. (*Id.* at pp. 464-466.) It also found that the district court's order had violated the anti-attachment provisions of the Social Security Act. (*Id.* at pp. 465-466.) Specifically, the court held that since Wakefield had no other source of income, the district court's order required her to pay LFOs from her social security disability payments resulted in a taking of those monies by "other legal process" in violation of federal law. (*Id.* at pp. 465-466.)

In re S.M. (2012) 209 Cal.App.4th 21 (*S.M.*), the county requested that S.M.'s mother, S.P., pay for the cost of legal services incurred by her and S.M. in a juvenile court dependency proceeding. (*Id.* at p. 25.) S.P. received $420 a month in Social Security benefits and $430 in SSI benefits. (*Id.* at p. 26.) The juvenile court ordered her to make $20 monthly payments. (*Id.* at pp. 26, 28.) On appeal, S.P. argued that the court erred in treating her SSI benefits as income. (*Id.* at pp. 26, 28.)

The Court of Appeal noted that unlike SSD and other social security benefits, SSI benefits are based on need, and are intended to assure a minimum level of income for the indigent, blind, aged, and disabled. (*S.M., supra*, 209 Cal.App.4th at pp. 28-29.) It noted that "California law is clear that SSI benefits are not considered income for purposes of determining

child support obligations" and concluded S.P.'s SSI benefits should not have been considered in determining her ability to pay the legal fees because treating SSI benefits as income would be inconsistent with the SSI purpose of assuring a minimum level of income for eligible individuals. (*Id.* at p. 29-30.)

Even assuming they were correctly decided, neither *Wakefield* nor *In re S.M.* show that the court's order in this case [redacted]. Wakefield was 27 years old, permanently disabled, homeless, recovering from addiction, and living solely off her social security benefits which were less than half of what a person needed to meet their minimal living requirements. Wakefield was an individual "who show[ed] no prospects of any change in their ability to pay[.]" (*Wakefield, supra*, 380 P.3d at p. 465.) Similarly, it does not appear that S.P.'s ability to pay was likely to change. On the other hand, [redacted].

Finally, appellant's reliance on *State v. Eaton* (Mont. 2004) 99 P.3d 661 (*Eaton*) is equally unfounded. (AOBM 21, 25.) In that case the defendant was convicted of theft after stealing approximately $110,000. (*Id.* at p. 664.) He was ordered to pay over $114,000 in restitution and "make payments equal to 20 percent of his net income per month, from any source, including money received from his social security" or retirement benefits. (*Id.* at pp. 664, 666.) The Montana Supreme Court found that the order was "an improper attempt to subject Eaton's social security benefits to 'other legal process.'" (*Id.* at p. 666.) Here, however, [redacted]

[redacted]

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY [redacted]

Appellant claims the juvenile court abused its discretion when it [redacted]

[redacted]

A. [redacted]

Appellant claims that, [redacted]

[redacted] (See *People v. Brasure* (2008) 42 Cal.4th 1037, 1075 [failure to object to restitution amount forfeited any claim that the order was unwarranted by the evidence]; *Reilly v. Inquest Technology, Inc.* (2013) 218 Cal.App.4th 536, 552 [under the doctrine of invited error, where a party, by his conduct, induces the commission of an error, he is estopped from asserting it as grounds for reversal].) [redacted]

[redacted]

[redacted] Appellant does not provide a citation for this quoted language, and, as set forth in Argument I.C, *ante*, a DEJ restitution order can be converted to, or enforced as, a civil judgment after a successful completion of DEJ, meaning that it does not need to be paid during the period of DEJ probation. Appellant later cites to *Charles S. v. Superior Court* (1982) 32 Cal.3d 741, 744-745. (AOBM 28-29.) But that case held that "a minor cannot be denied probation under section 654 solely because of his inability to pay restitution to his victim." (*Id.* at p. 751.) It did not hold that a juvenile court is required to reduce restitution to an amount a minor is capable of repaying during the period of DEJ or that restitution cannot be enforced as a civil judgment after DEJ has been successfully completed.

Second, the court did not abuse its discretion [redacted] (§ 730.6, subd. (l); *Brian S.*, *supra*, 130 Cal.App.3d at p. 532; *Keith C.*, *supra*, 236 Cal.App.4th at p. 155; *In re Michael S.* (2007) 147 Cal.App.4th 1443, 1456-1457.) Thus, the ability to pay restitution in this context is not based simply on the assets available to a minor at the time of the order. Rather, as set forth in Argument II.A., *ante*, a juvenile court can take into account a minor's future earnings and the likelihood he or she will be able to pay the amount over time. (See *In re Michael S.* (2007) 147 Cal.App.4th 1443, 1457; *In re Brian S.*, *supra*, 130 Cal.App.3d at pp. 527-528.) In fact, a definition of ability to pay which focuses only on a minor's

financial condition at the time of the order would mean most minors would be excused from restitution under the Graffiti Program because most minors do not have a source of income. But the Legislature's intent in enacting the Program was to help victims recover their full damages, enable cities and counties to recover their clean-up and law enforcement costs, minimize the cost of collecting the costs, to discourage graffiti, and to retain discretion in the courts to rehabilitate minors. (§ 742.10, subds. (a)-(f).) Limiting the definition of ability to pay not only conflicts with definitions in analogous statutes (see Argument II.A., *ante*) but also contradicts these purposes.

[redacted] *In re Michael S.* (2007) 147 Cal.App.4th 1443, 1457, dealt with a restitution order for $139,000, arising from a fire set by a minor which damaged a school. The court noted the minor may be burdened with the payments well into adulthood. Similarly, the court in *In re Brian S.*, *supra*, 130 Cal.App.3d at pp. 527-528, recognized that payment of restitution could well continue into adulthood. Brian S. was 18 years old at the time of the order and was unemployed. The record, however, gave no reason to doubt he could become employed in the future and could pay restitution over time. (*Id.* at p. 532.)

Like Brian S., [redacted] Like the minors in *In re Michael S.* and *In re Brian S.*, [redacted] There is sufficient evidence in this record to support a finding that [redacted]

[redacted]

B. Appellant's Claim That [redacted]

Appellant claims [redacted] (SO 16; *In re Sheena K.* (2007) 40 Cal.4th 875, 885; *In re Kevin S.* (1996) 41 Cal.App.4th 882, 886; see *People v. Brasure*, *supra*, 42 Cal.4th at p. 1075 [failure to object to restitution amount forfeited any claim that the order was unwarranted by the evidence].)

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11 [redacted]

[redacted]

Moreover, the claim fails on its own terms [redacted]

[redacted]

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12 [redacted]

Appellant claims, however, [redacted]

[redacted]

13 [redacted]

[redacted]

C. Direct Appeal Is Not the Proper Vehicle for Appellant's Challenge [redacted]

For the reasons discussed, appellant's challenges [redacted] Under the circumstances, while the appellate record furnishes no basis for reversal, it may be that appellant could pursue other remedies in the trial court to challenge the amount of the ultimate restitution award.

CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: November 8, 2017

Respectfully submitted,

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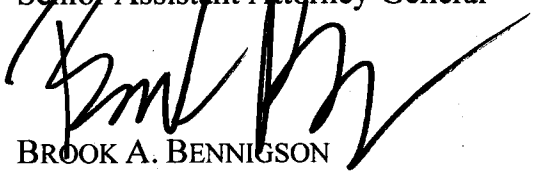

BROOK A. BENNIGSON
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CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 13,238 words.

Dated: November 8, 2017

XAVIER BECERRA
Attorney General of California

BROOK A. BENNIGSON
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re J.G.** No.: **S240397**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 9, 2017, I served the attached **ANSWER BRIEF ON THE MERITS – REDACTED VERSION-REDACTS MATERIAL FROM SEALED RECORD** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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Shasta County
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Redding, CA 96001

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 9, 2017, at Sacramento, California.

P. Robles
Declarant

Signature

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