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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF SACRAMENTO, a municipal corporation,

Petitioner,

vs.

SKYLER MICHEL-EVLETH, aka SKYLER HENRY

Respondent.

Case No.: 34-2021-70009184

PETITIONER CITY OF SACRAMENTO'S OPPOSITION TO MOTION TO STRIKE

As with any employer, the City of Sacramento (City) has a legal obligation to provide a safe and secure workplace for its employees. This obligation extends to taking all reasonable steps necessary to address credible threats of violence against members of the workforce. When an employee is threatened, one of the few tools that an employer has available to meet its obligation is to seek a workplace violence restraining order pursuant to the Workplace Violence Safety Act; a step that the City has taken in this action. In response, Respondent Skyler Michel-Evleth (aka Skyler Henry or Mr. Henry) has filed the within motion to strike pursuant to the California anti-SLAPP statute. In his motion, Mr. Henry questions the integrity of the City's intentions, claiming that the City's petition is politically motivated.

In his motion to strike, Mr. Henry attempts to re-write his own publicly stated penchant

1 for supporting the use of terrorism and violence in order to prove that the basis for the City's
2 request for injunctive relief is, in fact, an effort to silence its critics. Mr. Henry's brief misses
3 the point wildly both with respect to the City's motivations and his own. In point of fact, it is
4 Mr. Henry that seeks to politicize the City's valid efforts to protect one of its employees. The
5 motion to strike is replete with references to Mr. Henry's politics, his memberships, and his
6 belief that the City stands against him and those who join in his fight against "fascism." The
7 application for a workplace violence restraining order contains no such rhetoric, taking no
8 position whatsoever on the merit or significance of Mr. Henry's politics. Instead, the
9 application focuses its attention on those factors that place City Manager Howard Chan and
10 his family in fear for their safety. It is on that ground that the City has requested injunctive
11 relief, and it is on that ground that the City asks this court to deny Mr. Henry's motion to
12 strike.

13 I

14 FACTUAL BACKGROUND

15 Mr. Henry's recitation of the facts relevant to this motion are, for the most part, accurate;
16 in point of fact, he largely admits making the statements that form the basis of the City's
17 petition. However, his attempts to sanitize the prior comments do not form an adequate basis
18 for this motion as his post hoc explanations for overtly violent rhetoric are contrived and
19 unbelievable.

20 The motion to strike describes Mr. Henry as "an articulate podcast critic" of the City and
21 Mr. Chan in particular (Brief at 1:21), and that his podcast provides "local news with a 'sense
22 of humor.'" (Brief at 2:11-12) That articulate humor was missing when Mr. Henry directed the
23 following comment to Mayor Darrell Steinberg and Mr. Chan:

24 "You should be terrified for the rest of your life. You should never be able to
25 leave your house if that is how you're going to use your position to govern.
26 And like, to me the same thing sort of applies with the mayor and the city
27 manager of this City. It's like no, no, no, you don't get to do that. You do
28 not get to make the decisions that you have made over and over and over again
to the detriment of everybody who lives here and then go home to you little f-
--- little McMansion in Natomas and like have a good night's rest. I'm sorry,
you don't get to do that. You do not have a right to do that. Absolutely not.

1 (Brief at 3:7-11) In his motion, Mr. Henry uses a declaration to say that his 'point' was that
2 "our leaders should operate with a sense of accountability to the people they are representing."
3 (Brief at 3:12-14) He also tries, post hoc, to sanitize his statement in support of this motion by
4 saying it was "directed primarily towards federal elected officials, like Senator Sinema..."
5 (Brief at 4:7-9) However, his statement refers specifically to people who "live here," as well as
6 to the object of his statement returning to his "f---- little McMansion in Natomas." (Brief at
7 3:7-11) It is at Mr. Chan's home in Natomas that the violence supported by Mr. Henry has
8 taken place.

9 Mr. Henry's brief also indicates that he has not "engaged in any violence, endorsed
10 violence, threatened violence, or even approved violence." (Brief at 1:10-11.) If this were true,
11 the City would not have brought this motion forward, but the reality is far different. The City's
12 application for a workplace violence restraining order includes an April 11, 2021 tweet by Mr.
13 Henry following the protests at Mayor Darrell Steinberg's home in which he was openly
14 threatened and had property destroyed. Mr. Henry's response: "We'll see you soon Darrell."
15 Clearly, Mr. Henry supported the violent acts that had occurred at Mayor Steinberg's home,
16 and was indicating his intent to either participate in, or at least support, another such event.
17 Other examples of Mr. Henry's endorsement or support for violence can be taken from Mr.
18 Henry's podcast "Voices: River City":

- 19 - On June 12, 2020, he stated that "the people who burned that police prescient did more
20 for police reform in a night than the Democrats have done in like centuries or ever."
- 21 - On April 6, 2021, he stated that "You don't often in real life, see someone get in
22 someone else's face in an attempt to tear them down in that way, and it's pretty intense
23 to watch, and your first reaction is like wow, that's pretty messed up, to do that to
24 another human being because it is so hostile. But because of the way that things are
25 ordered, it is really one of the best tactics you have..." (emphasis added)
- 26 - Also on April 6, 2021, he stated "And I applaud any protester who does anything that
27 they have in their arsenal to make sure that the cops understand that they are regarded
28 as an enemy and as a trespasser in a neighborhood they are not welcome in."

1 These comments again make the point that Mr. Henry's declaration is an effort to re-write his
2 own public statements in a way that supports the motion to strike. The court should not be
3 swayed by his current rationalizations for these statements, nor the statements from his
4 acquaintances

5 II

6 DISCUSSION

7 A. Respondent's Motion to Strike is Untimely

8 Mr. Henry has noticed the hearing on his motion to strike for July 7, 2021. Based upon
9 that hearing date, his motion to strike should have been served and filed no later than June 14,
10 2021, which is sixteen court days prior to the hearing. (CCP § 1005 (b)) In fact, Mr. Henry
11 filed and served his motion to strike on June 18, 2021.

12 As Mr. Henry has made no request of this court to shorten time for his motion, or sought
13 any other relief, this motion should not be heard on July 7, 2021, because Mr. Henry failed to
14 timely file and notice his motion.

15 B. Declaration of Katie Valenzuela Breaches Attorney-Client Communication 16 Privilege and Cannot Be Relied Upon

17 The Declaration of Councilmember Katie Valenzuela filed in support of Respondent's
18 Anti-SLAPP motion contains two paragraphs where Councilmember Valenzuela unlawfully
19 discloses confidential attorney-client communication, specifically, at paragraphs 10 and 12,
20 and discussed in Respondent's brief at pg. 4, lines 22-28, pg. 5 lines 1-3, 6-9. Because
21 Respondent refuses to redact and claw-back this unlawful disclosure the Court must take
22 action and not to rely upon this testimony in any way when considering the merits of the
23 motion.

24 Evidence Code § 950 et seq. define the attorney-client privilege. Section 951 defines a
25 client for the purpose of the privilege as a "person" while Section 175 defines "person" to
26 include a "public entity." "Ample authority acknowledges the right of public entities to assert
27 the attorney-client privilege." (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370.) The
28 attorney-client privilege is held by the client to prevent disclosure of confidential

1 communications between client and lawyer. (Evid. Code § 954.) The client is the public entity
2 itself and not any individual council member, city official or staff person. (*Roberts, supra*, 5
3 Cal.4th at 370.) “Confidential communication” is defined as including “a legal opinion
4 formed and the advice given by the lawyer in the course of that relationship.” (Evid. Code §
5 952.) The California Rules of Professional Conduct currently provide that where an
6 organization is a client, “a member shall conform his or her representation to the concept that
7 the client is the organization itself acting through its highest authorized officer, employee, body
8 or constituent overseeing the particular engagement.” Rule 3-600, Cal. Rules of Prof.
9 Conduct.

10 Here, Councilmember Valenzuela (as opposed to Valenzuela in her individual capacity)
11 disclosed confidential attorney-client communications which took place between City
12 Attorney Susana Alcala Wood and herself at paragraphs 10 and 12. The statements contained
13 therein are confidential as they include legal opinions and advice given by the City Attorney
14 to a council member regarding potential initiation of litigation as well as the heightened risk
15 of future litigation against the City for failing to provide a safe work environment for the City
16 Manager, Howard Chan. Disclosure of such communications cannot be made by
17 Councilmember Valenzuela herself because the holder of the privilege is all of council acting
18 as the governing body for the public entity, and the Council has not acted to waive the
19 privilege. (*Roberts, supra*, 5 Cal.4th at 373.) As such, the portions of the Declaration that breach
20 confidential attorney-client communication must be stricken and not relied upon by the Court.

21 C. Respondent’s Motion to Strike Should be Denied

22 In ruling on an anti-SLAPP motion to strike, the court engages in a two-step process. First,
23 the moving party must make a threshold showing that the challenged cause of action is one
24 arising from protected activity. In other words, the defendant must show that the acts of which
25 the plaintiff complains arise from the defendant’s right of petition or free speech as protected
26 by the United States or California Constitutions. If so, then the burden shifts to the plaintiff to
27 show the ability to demonstrate a likelihood of prevailing on the claims asserted. (*Jarrow*
28 *Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 733.) However, recognizing that the anti-

1 SLAPP motion is initiated as a motion to strike at the outset of litigation, the plaintiff must
2 only make out “a minimum level of legal sufficiency and triability” for its claims. (*Id.* at 737-
3 738.) When a complaint is both legally sufficient, and supported by a prima facie showing of
4 facts where the evidence submitted by the plaintiff is credited, the case is not subject to being
5 stricken as a SLAPP. (*Id.* at 738.)

6 1. The Workplace Violence Restraining Order Being Sought by the City does not
7 Arise from Protected Activity

8 The First Amendment guards citizens’ rights to free speech, to peaceably assemble, and
9 to petition the government. But these rights come with limits. Certain speech or acts receive
10 limited or no First Amendment protections, such as obscenity, child pornography, threats of
11 violence, and speech that incites riots, violence, or insurrection. California makes it a
12 misdemeanor to engage in conduct that urges others to riot, commit acts of force or violence,
13 or commit acts of burning or destroying property. (Cal. Pen. Code § 404.6.) To cross the legal
14 threshold from protected to unprotected speech, the Supreme Court held the speaker must
15 intend to incite or produce imminent lawless action, and the speaker’s words or conduct must
16 be likely to produce such action. (*Brandenburg v. Ohio* 395 U.S. 444 (1969).)

17 “The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising
18 from the protected rights of petition or speech. It only provides a procedure for weeding out,
19 at an early stage, *meritless* claims arising from protected activity.” (*Baral v. Schnitt* (2016) 1
20 Cal.5th 376, 384.) However, where a case involves both protected and unprotected activity,
21 the anti-SLAPP statute can be used to strike allegations of protected activity. (*Ibid*, at 385.)

22 Here, at best Mr. Henry’s conduct involves a mix of protected and unprotected activity as
23 much of it involves his incitement of violence potentially in violation of Penal Code § 404.6.

24 2. The City has Established a Prima Facie Right to a Workplace Violence
25 Restraining Order

26 When read together, the Labor Code and the Workplace Violence Protection Act establish
27 an employer’s obligation to provide a safe and secure workplace. (*Franklin v. The Monadnock*
28 *Co.* (2007) 151 Cal.Ap.4th 252, 259-260.) This obligation is triggered when an employee has

1 been the subject of a credible threat of violence that the employee reasonably believes will be
2 carried out. (*Id.*) In that situation, the employer’s obligation is to take affirmative steps to
3 protect that employee, but the menu of options available to the employer is limited. (*Id.*) The
4 WVPA provides one of the few preemptive options; a workplace injunction. (Cal Code of Civil
5 Procedure § 527.8.) An injunction will be granted where the offending individual has made
6 credible threats of violence that has caused a reasonable fear on the part of the subject of the
7 threat.

8 Mr. Henry states repeatedly in his motion to strike that he is simply passionate about
9 certain issues but has no intention of harming Mr. Chan or his family. When considering
10 whether there has been a credible threat of violence, the court should only consider whether
11 the “statements would have placed a ‘reasonable person in fear for his safety,’ regardless of
12 [the speaker’s] subjective intent.” (*City of Los Angeles v. Herman* (2020) 54 Cal.App.5th 97, 102.)
13 On that standard, Mr. Henry’s intent to “uplift” his audiences (Brief at 2:9-10), make his *post*
14 *hoc* explanations for his harsh rhetoric (Brief at 3:13-14; Henry Declaration at ¶ 9), and the
15 declarations from his acquaintances (Ibarra and Fink Declarations) indicating their subjective
16 belief that Mr. Henry is non-violent, wholly irrelevant to the court’s analysis. The question
17 presented is whether Mr. Henry made one or more statements that created a reasonable fear
18 of violence on the part of Mr. Chan for himself or his family. Clearly, Mr. Henry has done so.
19 He has stated his firm support for actions intended to harass and terrorize his political
20 opponents on multiple occasions, as described in the City’s petition. He has provided Mr.
21 Chan’s home address to others in the hope of encouraging such conduct on multiple occasions,
22 a step taken by the respondent in *City of Los Angeles*, and which the court held “served no
23 legitimate purpose.” (*City of Los Angeles, supra*, at 102) The fear engendered by these actions is
24 reasonable, as made clear in the declarations of Mr. Chan and his wife. (See generally Decls.
25 of Emily and Howard Chan)

26 In point of fact, the threat assessment makes clear that Mr. Henry, prior to seeking
27 employment with the City, made clear his disdain for Mr. Chan and made equally clear his
28 support for the use of harassing tactics against Mr. Chan and his family to show his discontent.

1 The declarations of Mr. Chan and his wife make clear the fear that the two felt while the group
2 supported by Mr. Henry beat on his door, the side of his home, and his garage door to the
3 point that it required repairs. (Decl. of Emily Chan at ¶ 3; Decl. of Howard Chan at ¶ 6) Mr.
4 Henry points out that no such activity occurred on the second demonstration that he supported
5 at Mr. Chan’s home, but that was only because of the significant police presence on that
6 occasion. (Decl. of Emily Chan at ¶ 4; Decl. of Howard Chan at ¶ 7) The remainder of Mr.
7 Henry’s rhetoric equally makes the point that he, at least, believes that terrorizing and
8 harassing public servants to achieve one’s political ends is an appropriate course of conduct.
9 It is that course of conduct upon which the City’s petition is based. Mr. Henry’s attempts to
10 now rehabilitate his earlier comments are equally unbelievable and irrelevant to the
11 determination as to whether the court should issue an injunction.

12 The conduct supported by Mr. Henry is shockingly close to that of the defendants in
13 *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th
14 1228. The company Huntingdon Life Sciences (HLS) admittedly tested pharmaceuticals and
15 chemicals on mice, rats, and other small animals. (*Id.* at 1240.) The Stop Huntingdon Animal
16 Cruelty (SHAC) group directly supported protests against HLS and its shareholders and
17 employees by advertising such protests on its social media pages. (*Id.*) While there was no
18 evidence of physical harm to any individual, SHAC did openly target specific HLS employees
19 by providing their home addresses publicly, which resulted in protests at their homes. On
20 occasion, this involved banging on walls and doors, shouting with megaphones from the street,
21 pouring red paint on their driveways as a means of replicating blood, and damaging an
22 employee’s garage door with blue paint. (*Id.*)

23 As with Mr. Henry, the SHAC also filed a motion to strike under California’s anti-SLAPP
24 statute, taking the position that the protests only resulted in property damage, and that there
25 was no indication that the individuals against whom the injunction was sought were present
26 at any of the described protests. (*Id.*) The court rejected these arguments saying that the history
27 of supporting violence at the employees’ homes was sufficient to give rise to a cause of action
28 under the Workplace Violence Act, and also showed a probability of prevailing on the merits

1 of its harassment claim. (*Id.* at 1258-1259)

2 The foregoing discussion rather clearly establishes that Mr. Henry has made statements
3 intended to intimidate and terrorize Mr. Chan and his family. Those statements were made
4 for that purpose and preceded and followed the protests at the Chan home. Both protests
5 reasonably caused anxiety and fear on the part of Mr. Chan, his wife, children, and brother.
6 That anxiety is now exacerbated by the fact that Mr. Henry may be working on the same floor
7 in City Hall as Mr. Chan, parking in the same garage, and walking the same halls. The
8 injunction sought by the City of Sacramento will, minimally, impact Mr. Henry but it is clear
9 that the City has made out at least a “minimum level of legal sufficiency” in its petition for
10 injunction and this opposition to his anti-SLAPP motion. (*Jarrow Formulas, supra*, 31 Cal.4th
11 at 738.) On that basis, the motion to strike should be denied.

12 3. The Workplace Violence Restraining Order Does Not Unduly Inhibit Mr.
13 Henry’s First Amendment Rights

14 It is noteworthy that the workplace violence restraining order sought by the City would
15 only prevent Mr. Henry from entering City Hall and from being within 100 feet of Mr. Chan,
16 and his family and his home. The City is not seeking to silence Mr. Henry or enjoin him from
17 using his various platforms to criticize the City – his employer. Additionally, the City is not
18 seeking an order estopping Mr. Henry from employment with the City or from the access to
19 the Council and City government granted to him both as a citizen and through his employment
20 with Councilmember Valenzuela. The City is only seeking protection for its employees and
21 specifically its City Manager Howard Chan. Even assuming that the workplace violence
22 restraining order does impact protected speech, the injunction requested by the City leaves
23 open ample alternatives for expression.

24 III

25 CONCLUSION

26 The City of Sacramento’s duty to provide a safe work environment for its employees is
27 amongst the greatest and sometimes the most challenging, duty that it has. The City has taken
28 the necessary step of seeking a workplace violence restraining order to protect its employees,

1 specifically the City Manager, Howard Chan and his family. Respondent's Anti-SLAPP
2 which seeks to paint the City's action as being politically motivated must be denied as there is
3 no evidence that he City is seeking to silence Respondent. Rather, the City is seeking to protect
4 its employees.

5 DATED: June 23, 2021

SUSANA ALCALA WOOD,
City Attorney



6
7
8 By: Andrea Velasquez (Jun 23, 2021 12:42 PDT)

9 ANDREA M. VELASQUEZ
Senior Deputy City Attorney

10 Attorneys for the CITY OF SACRAMENTO

1 PROOF OF SERVICE

2 CASE NAME: City of Sacramento v. Skyler Michel-Evleth, aka Skyler Henry
3 (TRO)
4 COURT: Sacramento Superior Court
CASE NUMBER: 34-2021-70009184

5 I declare that:

6 I am employed in the County of Sacramento, California. I am over the age of eighteen
7 years and not a party to this action; my business address is 915 I Street, Room 4010,
8 Sacramento, CA 95814-2604. On the date executed below, I served the following
document(s):

9 PETITIONER CITY OF SACRAMENTO'S OPPOSITION TO MOTION TO STRIKE

10 [X] By Overnight Delivery. I enclosed the documents in an envelope or package provided by
11 an overnight delivery carrier and addressed to the persons at the addresses listed below. I
12 placed the envelope or package for collection and overnight delivery at an office or a regularly
utilized drop box of the overnight delivery carrier.

13 [X] By Electronic Service. Based on a court order or an agreement of the parties to accept
14 electronic service. I caused the documents to be sent to the persons at the electronic service
addressed as follows:

15 Mark E. Merin
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20 I declare under penalty of perjury that the foregoing is true and correct, and that the
21 declaration was executed on June 23, 2021, at Sacramento, California.

22 

23 Christina L. Will (Jun 23, 2021 12:45 PDT)

24 CHRISTINA L. WILL