

**Response to Petition for Workplace
Violence Restraining Orders**

Clerk stamps date here when form is filed.

Use this form to respond to the *Petition* (form WV-100)

- Read *How Can I Respond to a Petition for Workplace Violence Restraining Orders?* (form WV-120-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—**not you**—serve the petitioner or the petitioner's lawyer by mail with a copy of this form and any attached pages. (Use form WV-250, Proof of Service of Response by Mail.)

1 Petitioner (Employer)Name: City of Sacramento**2 Employee Seeking Protection**Full Name: Howard Chan**3 Respondent (Person From Whom Protection Is Sought)**a. Your Name: Skyler Michel-Evleth a/k/a Skyler Henry

Your Lawyer (if you have one for this case)

Name: Mark E. Merin State Bar No.: 043849Firm Name: Law Office of Mark E. Merin

b. Your Address (You may give a mailing address if you want to keep your street address private; skip this if you have a lawyer.)

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

**Superior Court of California, County of
Sacramento**Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

Fill in case number:

Case Number:

34-2021-70009184-CU-HR-GDS

The court will consider your response at the hearing. Write your hearing date, time, and place from form WV-109, item ④ here:

**Hearing
Date**Date: 07/12/2021 Time: 9:00 a.m.Dept.: 35 Room: _____**If you were served with a Temporary
Restraining Order, you must obey it until the
hearing. At the hearing, the court may make
orders against you that last for up to three years.****4 ☐ Personal Conduct Orders**

- a. ☐ I agree to the orders requested.
- b. ☒ I do not agree to the orders requested.
(Specify why you disagree in item ⑪ on page 3.)
- c. ☐ I agree to the following orders (specify below or in item ⑪ on page 3):
- _____
- _____

5 ☐ Stay-Away Orders

- a. ☐ I agree to the orders requested.
- b. ☒ I do not agree to the orders requested. (Specify why you disagree in item ⑪ on page 3.)
- c. ☐ I agree to the following orders (specify below or in item ⑪ on page 3):
- _____
- _____



6 ☒ **Additional Protected Persons**

- a. ☐ I agree that the persons listed in item **(4)** of the Petition may be protected by the order requested.
- b. ☒ I do not agree that the persons listed in item **(4)** of the Petition may be protected by the order requested.

7 **Firearms Prohibition and Relinquishment**

If you were served with form WV-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms in your immediate possession or control within 24 hours of being served with form WV-110. (See item **(8)** of form WV-110.) You must file a receipt with the court. You may use form WV-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.

- a. ☐ I do not own or control any guns or other firearms.
- b. ☐ I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. (Explain):

☐ Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 7b—Firearms Surrender Exemption" as a title. You may use form MC-025, Attachment.

- c. ☐ I have turned in my guns and firearms to the police or sold them to or stored them with a licensed gun dealer. A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

8 ☐ **Other Orders**

- a. ☐ I agree to the orders requested.
- b. ☒ I do not agree to the orders requested. (Specify why you disagree in item **(11)** on page 3.)
- c. ☐ I agree to the following orders (specify below or in item **(11)** on page 3):

9 ☒ **Denial**

I did not do anything described in item **(8)** of form SV-100. (Skip to **(11)**.)



10 ☒ **Justification or Excuse**

If I did some or all of the things that the petitioner has accused me of, my actions were justified or excused for the following reasons (*explain*):

- ☐ Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 10—Justification or Excuse" as a title. You may use form MC-025, Attachment.

See attached: (1) Respondent's Opposition to Petition for Workplace Violence Restraining Order;
(2) Supplemental Declaration of Skyler Henry; and (3) Respondent's Evidentiary Objections to Evidence in Support of Petition for Workplace Violence Restraining Order. Respondent further incorporates the Special Motion to Strike (SLAPP) Petition and associated attachments (ROA# 7) in support of this opposition.

11 ☒ **Reasons I Do Not Agree to the Orders Requested**

Explain your answers to each order requested that you do not agree with.

- ☐ Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 11—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

See attached: (1) Respondent's Opposition to Petition for Workplace Violence Restraining Order;
(2) Supplemental Declaration of Skyler Henry; and (3) Respondent's Evidentiary Objections to Evidence in Support of Petition for Workplace Violence Restraining Order. Respondent further incorporates the Special Motion to Strike (SLAPP) Petition and associated attachments (ROA# 7) in support of this opposition.



12 ☐ **No Fee for Filing**

- a. ☒ I ask the court to waive the filing fee because the petitioner claims in form WV-100 item **14** to be entitled to free filing.
- b. ☐ I request that I not be required to pay the filing fee because I am eligible for a fee waiver. (Form FW-001, Request to Waive Court Fees, must be filed separately.)

13 ☐ **Costs**

- a. ☐ I ask the court to order the petitioner to pay my court costs. The amounts requested are:

| <u>Item</u> | <u>Amount</u> | <u>Item</u> | <u>Amount</u> |
|-------------|---------------|-------------|---------------|
| _____ | \$ _____ | _____ | \$ _____ |
| _____ | \$ _____ | _____ | \$ _____ |
| _____ | \$ _____ | _____ | \$ _____ |


- ☐ Check here if there are more items. Put the items and amounts on the attached sheet of paper and write "Attachment 13—Costs" for a title. You may use form MC-025, Attachment.
- b. ☐ I ask the court to deny the request of the person asking for protection that I pay his or her lawyer's fees and costs.

14 Number of pages attached to this form, if any: 30

Date: July 6, 2021

Mark E. Merin

Lawyer's name (if any)



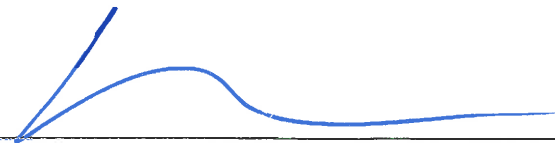
Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: July 6, 2021

Mark E. Merin

Type or print your name



Sign your name

Proof of Service of Response by Mail

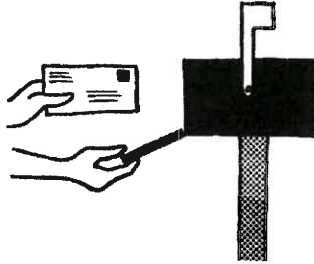
Clerk stamps date here when form is filed.

- 1 Petitioner (Employer)**
Name: City of Sacramento
- 2 Employee in Need of Protection**
Name: Howard Chan
- 3 Respondent (Person From Whom Protection Is Sought)**
Name: Skyler Michel-Evleth a/k/a Skyler Henry

④ Notice to Server

The server must:

- Be 18 years of age or older.
- Be a resident of or employed in the county where the mailing took place.
- Not be the respondent.
- Mail a copy of all documents checked in (5) below to the petitioner or the petitioner's lawyer.
- Complete and sign this form and give it to the respondent.



Fill in court name and street address:

Superior Court of California, County of
Sacramento
Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

Fill in case number:

Case Number:
34-2021-70009184

PROOF OF SERVICE BY MAIL

- 5** I am 18 years of age or older and not a party to this proceeding. I am live or am employed in the county where the mailing took place. I mailed the petitioner or the petitioner's lawyer a copy of:
- a. Form WV-120, *Response to Petition for Workplace Violence Restraining Order* (completed)
- b. ☒ Other (specify): Documents identified on the attached Form POS-050(D)/EFS-050(D)
-
- 6** I placed copies of the documents listed above in a sealed envelope and mailed them as described below:
- a. Mailed to (name): Emilio Camacho, Esq.; Andrea M. Velasquez, Esq.
- b. To this address: 915 I Street, Room 4010
- City: Sacramento State: CA Zip: 95814
- c. On (date): July 6, 2021 Mailed from: City: Sacramento State: CA

7 Server's Information

Name: Paul H. Masuhara Telephone: (916) 443-6911
Address: 1010 F Street, Suite 300
City: Sacramento State: CA Zip: 95814

(If you are a registered process server):

County of registration: _____ Registration number: _____

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: July 6, 2021

Paul H. Masuhara

Type or print server's name

Server to sign here

Mark E. Merin (State Bar No. 043849)
Paul H. Masuhara (State Bar No. 289805)
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Attorneys for Respondent
SKYLER MICHEL-EVLETH
a/k/a SKYLER HENRY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF SACRAMENTO,

Petitioner,

vs.

SKYLER MICHEL-EVLETH a/k/a SKYLER
HENRY,

Respondent.

Case No. 34-2021-70009184-CU-HR-GDS

**RESPONDENT'S MEMORANDUM:
(1) IN OPPOSITION TO PETITION FOR
WORKPLACE VIOLENCE RESTRAINING
ORDER; AND
(2) IN REPLY IN SUPPORT OF SPECIAL
MOTION TO STRIKE (SLAPP) PETITION**

Date: July 12, 2021
Time: 9:00 a.m.

Location: Gordon D. Schaber Courthouse
720 9th Street
Sacramento, CA 95814

Department: 35
Judge: Hon. George Acero

Petition Filed: June 16, 2021
Hearing Date: July 12, 2021

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I. INTRODUCTION¹

This case is an affront to democratic principles. It reveals that high-ranking officials for the City of Sacramento are willing to trample free speech rights because they cannot handle the criticism that our Constitution protects. As this Court recognized, however, the case has “obvious First Amendment concerns.” But rather than heed the Court’s warning, the City has doubled-down in its efforts to pursue a workplace violence restraining order against Skyler Henry by misrepresenting both the facts and the law in its Opposition to his anti-SLAPP Motion.

As the Opposition confirms, the City’s petition primarily arises from a single comment that Mr. Henry made on the political podcast, “Voices: River City,” on March 30, 2021—days and months *after* protests critical of City Manager Howard Chan had taken place at Mr. Chan’s home. What the City fails to clarify, however, is that ***Mr. Henry had nothing to do with these protests***. He neither planned nor participated in them. Until the City filed its petition and made Mr. Chan’s home address public, Mr. Henry did not know the specific address. (Supplemental Decl. of Skyler Henry ISO Mot. to Strike [“Supp. Henry Decl.”] ¶ 3.) Moreover, even if Mr. Henry had been involved in these protests, his participation, like his podcast comment, would be protected by the First Amendment.

The additional statements compiled in the Sacramento Police Department’s “threat assessment” brief and discussed in the Opposition are also not actionable. This material—namely excerpted political podcast commentary and social media messages purportedly posted, liked, or re-tweeted by Mr. Henry—reveals that the City’s case rests on a guilt-by-association theory and fundamentally misapprehends the law. The statements that Mr. Henry, himself, is alleged to have made are all protected by the First Amendment. They were made in furtherance of his free speech rights on topics of public interest for a legitimate purpose. Additionally, none of Mr. Henry’s statements or other acts involved any specific or credible threats by Mr. Henry against Mr. Chan, and none can reasonably be construed to have occurred in the workplace—the touchstone for a ***workplace*** violence restraining order.

¹ To preserve the Court’s resources and streamline these proceedings, Mr. Henry submits this memorandum: (1) in opposition to the City of Sacramento’s Petition for a Workplace Violence Restraining Order (ROA# 1) and (2) in reply in support of his Special Motion to Strike (ROA# 7). Also submitted herewith is Mr. Henry’s WV-120 Form (Response to Petition for Workplace Violence Restraining Orders), as well as his objections to the evidence proffered in support of the City’s petition.

1 While Mr. Henry respects his colleagues’ right to a safe work environment (and hopes to create
2 such an environment as Councilmember Katie Valenzuela’s aide), the present petition has little to do
3 with the workplace. It has much more to do with the weaponization of the City’s legal resources to
4 persecute speech it does not favor. The right to speak critically of government forms the foundation of
5 the First Amendment. Mr. Henry’s anti-SLAPP Motion must be granted and the City’s petition denied.

6 II. ARGUMENT

7 A. Mr. Henry’s anti-SLAPP Motion under Section 425.16 must be granted.

8 1. Step One: the restraining order sought by the City arises from protected activity.

9 a. *The protests at Mr. Chan’s house were not as the City pretends them to be and* 10 *did not involve Mr. Henry.*

11 As an initial matter, the City sensationalizes the two protests at Mr. Chan’s house in a way that
12 prejudices the entire petition and belies the City’s credibility. Not only does the City insinuate, without
13 evidence, that Mr. Henry was involved in both protests (he was not involved in either), it alludes to these
14 events as acts of terror and violence. (ROA# 8 [“Opp’n”] at 3, 7-9.) In reality, they were no such thing.
15 The first protest on July 22, 2020 was largely peaceful. Police officers and detectives “monitored” the
16 scene, and the police report attached to the City’s petition reveals that, at worst, one person—bearing no
17 resemblance to Mr. Henry—banged on the Chans’ garage door, leaving “various handprints” and “minor
18 dents.” (ROA #1 [“Pet.”] Decl. of Howard Chan [“Chan Decl.”] Ex. 1 at 4-6, 8.)² Notably, after the
19 protest, Mr. Chan told the police that he was “not concerned” that the person banging on his garage door,
20 who was already known to Mr. Chan as a local activist, had recently also “been following” him and his
21 coworkers. (*Id.* at 5.) The second protest on March 28, 2021 involved a larger police presence and
22 proceeded with even less incident. (Chan Decl. Ex. 2 at 4-5.) Mr. Chan was apparently so unconcerned
23 after this protest that he waited months to file a police report, only doing so right before the City Council
24 voted to proceed with its petition for a workplace restraining order against Mr. Henry. (*See id.* at 1
25 [“Reported on Jun-15-2021 (Tue.) 1247”] and [“Occurred on Mar-28-2021 (Sun) 1800”].)

26
27 ² The police report does not include any description of the many “individuals pound[ing] on [the Chans’]
28 front door” as described, and attested to, by Chan and his wife. (*Compare* Chan Decl. Ex. 1 at 4-6, 8 *with*
Chan Decl. ¶ 6 and Pet., Decl. of Emily Chan ¶ 3; *see also* Opp’n at 7-8.)

1 Had Mr. Henry participated in these protests, however, his participation would have been
2 protected. Indeed, demonstrations, picketing, and leafleting to criticize government policy constitute a
3 classic exercise of the constitutional rights of petition and free speech in connection with an issue of
4 public interest within the meaning of Section 425.16. (*See, e.g., Thomas v. Quintero* (2005) 126 Cal.
5 App. 4th 635, 658; *Fashion 21 v. Coal. for Humane Immigrant Rts.* (2004) 117 Cal. App. 4th 1138.)

6 ***b. The alleged conduct personally attributed to Mr. Henry is protected.***

7 Try as the City might to distort the facts and make this case a referendum on progressive politics
8 and unspecified “Antifa” factions, the facts alleged in the petition about Mr. Henry’s personal conduct
9 concern only: (i) the statement by Mr. Henry on his political podcast about U.S. Senator Krysten Sinema,
10 which was “sort of” also related to City Manager Chan and Mayor Steinberg; (ii) the additional podcast
11 statements by Mr. Henry discussing issues of public interest that were not directed to Mr. Chan; and (iii)
12 the social media posts selectively compiled by the Sacramento Police Department (another frequent
13 target of Mr. Henry’s political criticism). All of this conduct is protected under both the First
14 Amendment and California’s anti-SLAPP statute. (*See* Code Civ. Proc. § 425.16(e)(3)-(4).)

15 **(1) March 30, 2021 Podcast Comment**

16 As Mr. Henry explained in his moving papers, he had commented that Senator Sinema “should be
17 terrified for the rest of [her] life” because of the disrespectful way in which Sinema employed a “thumbs
18 down” gesture to vote against a proposed \$15 minimum wage. (*See* ROA# 7 [“Anti-SLAPP Motion”]
19 Decl. of Skyler Henry [“Henry Decl.”] ¶¶ 8-9; *see also* Supp. Henry Dec. ¶ 4.) Mr. Henry’s frustration
20 also led him to state: “You should never be able to leave your house if that is how you’re going to
21 govern.” (*Ibid.*) Then, Mr. Henry continued:

22 To me, the same thing sort of applies with the Mayor and the City Manager of this city
23 [Sacramento]. It’s like no, no, no, you don’t get to do that. You do not get to make the
24 decisions that you have made over and over and over again to the detriment of everybody
25 who lives here and then go home to your 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 that. Absolutely not.”

26 (Chan Decl. Ex. 3 at 3.) These comments, which Mr. Henry recognizes as “perhaps clumsily made,”
27 were still an earnest attempt to argue that “our leaders should operate with a sense of accountability to
28 the people they serve.” (Henry Decl. ¶ 9.)

1 But regardless of whether the City accepts this explanation,³ Mr. Henry’s comments are
2 protected under the First Amendment. A long line of cases confirms our country’s “profound national
3 commitment to the principle that debate on public issues should be uninhibited, robust, and wide open,
4 and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on
5 government and public officials.” (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 270.) More
6 recently, in *Mahanoy Area School District v. B.L.* (U.S. June 23, 2021), the Supreme Court
7 reemphasized that the protection of free speech “must include the protection of unpopular ideas, for
8 popular ideas have less need for protection.” (No. 20-255, 2021 WL 2557069, at *15.) Within this
9 framework, “political hyperbole” is afforded particularly strong protection no matter how distasteful a
10 listener may find it because the “language of the political arena . . . is often vituperative, abusive, and
11 inexact.” (*Watts v. United States* (1969) 394 U.S. 705, 708.) Simply put, under both federal and state
12 law, “political hyperbole cannot be punished as a threat.” (*People v. Superior Court (Anderson)* (1984)
13 151 Cal. App. 3d 893, 896; *see also Watts*, 394 U.S. at 708 [ruling that the “only offense” committed by
14 defendant was a “very crude offensive method of stating a political opposition to the President”].)

15 The City contravenes this well-established authority when it argues that Mr. Henry’s political
16 speech is not protected, attempting to cast it as “incitement of violence potentially in violation of Penal
17 Code § 404.6.” (Opp’n at 6.) Nonsense. The suggestion of criminal sanctions is both irresponsible and
18 dangerous. Section 404.6 of the Penal Code has nothing to do with this case. That statute criminalizes
19 instances where an individual “with the intent to cause a riot” performs an act “that urges a riot” and
20 does so “at a time and place and under circumstances that produce a clear and present and **immediate**
21 **danger** of acts of force or violence . . .” (Pen. Code § 404.6(a) [emphasis added].) Significantly, the
22 statute defines a “riot” as any use, or threatened use, of force or violence “accompanied by **immediate**
23 power of execution.” (*Id.* § 404(a).) Mr. Henry never made any statements with the intent to cause a riot,
24 much less made any such statement naming a specific time and place under circumstances evidencing
25 the immediate power of execution. (Suppl. Henry Decl. ¶ 4.) The two largely peaceful protests at the
26

27 ³ The City’s castigation of Mr. Henry for attempting “to sanitize” his prior comments and provide “post-
28 hoc explanations for overtly violent rhetoric” is improper. (Opp’n at 2.) First Amendment jurisprudence
commands: “context is everything.” (*United States v. Bell* (9th Cir. 2002) 303 F.3d 1187, 1192.)

Chans' house had already occurred by the time of Mr. Henry's March 30 podcast comment, and no specific plans for any immediate or further protest were discussed.

Frankly, these arguments expose City officials as "supersensitive or too thin-skinned concerning criticism." (*Yorty v. Chandler* (1970) 13 Cal. App. 3d 467, 473.) Urging "others to acts of force or violence or to burn or destroy property, as proscribed by section 404.6, is neither similar nor comparable to speech which merely stirs to anger, invites public dispute, or brings about a condition of unrest." (*People v. Davis* (1968) 68 Cal. 2d 481, 485.) Indeed, "a function of free speech under our system of government is to invite dispute," and it may "best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." (*Terminiello v. Chicago* (1949) 337 U.S. 1, 4.) The First Amendment even protects speech that—unlike the statement here—advocates violence, so long as the speech is not directed to inciting or producing imminent lawless action and is not likely to incite or produce such action. (*Brandenburg v. Ohio* (1969) 395 U.S. 444, 447; *Hess v. Indiana* (1973) 414 U.S. 105 [finding "We'll take the fucking street later (or again)" to be protected speech].) Because Mr. Henry's podcast comment does not come close to the line of calling for imminent lawless action, this speech is protected.

(2) Additional Podcast Comments

The City also seems to contend that Mr. Henry's additional podcast comments are not protected because they reflect an "endorsement or support for violence." (Opp'n at 3.) But the comments that the City highlights in its Opposition do not advocate for any violence against Mr. Chan.⁴ These comments are therefore irrelevant, and certainly more prejudicial than probative, to the City's petition concerning whether Mr. Henry made a specific, credible threat of violence against Mr. Chan that could reasonably be construed to have occurred in the workplace. The City also takes many of these comments, which were made during wide-ranging conversations discussing topics like police reform and the right to political protest, out of context. For example, in highlighting a comment that Mr. Henry made about the burning

⁴ Only one of the 18 podcast quotes compiled in the police brief attached to the petition reference Mr. Chan at all. (*See* Morse Decl. Ex. 1 at 16 ["Because Howard Chan cannot dump money on, into the police budget fast enough. I feel like every time I turn around, anytime there is a surplus, Howard Chan is just trying to hire more cops. In a city where the cops are out of control."].)

1 of a police precinct, the City misquotes its own evidence and fails to include that Skyler, himself, admits
2 that what he is saying “might be hyperbolic.” (*Compare* Opp’n at 3 with Pet., Decl. of Kristine Morse
3 [“Morse Decl.”] Ex. 1 at 13.) Moreover, even if the City’s cherry-picked comments were material to the
4 present issue, they would also easily fall within the safeguards of the First Amendment’s protection of
5 “parody, rhetorical hyperbole, and loose, figurative, or hyperbolic language.” (*D.C. v. R.R.* (2010) 182
6 Cal. App. 4th 1190, 1218; *see also* *Anderson*, 151 Cal. App. 3d at 896.)

7 (3) Social Media Posts

8 Although the City argues that its Petition is not brought because Mr. Henry articulated support for
9 specific political causes with which City leaders may disagree (Opp’n at 2), the City’s treatment of Mr.
10 Henry’s social media presence puts the face on this lie and serves to further confirm that the entire
11 petition arises from protected activity. The social media posts compiled by the Sacramento Police
12 Department reveal that the City is inclined to label any anti-establishment, anti-fascist, or anti-
13 authoritarian idea that it does not like as the bogeyman “Antifa.” (*See* Morse Decl. Ex. 1 at 1-10.) The
14 police brief is rife with unfounded references to “Antifa Twitter accounts,” equating such ideology with
15 “Anti ‘Blue Lives Matter’ memes” and seeking to hold Mr. Henry accountable for any personal tweet
16 that “resulted in responses from Antifa-affiliated accounts.” (*Id.* at 2-4.)

17 The City best exemplifies its problematic guilt-by-association strategy when it seeks to label Mr.
18 Henry a proponent of violence because he (1) retweeted a “NorCal Resist” post about a widely
19 publicized event to honor the life of Daunte Wright, who had just been shot and killed by a police officer
20 in Minnesota, and then (2) attended the event. (Morse Decl. Ex. 1 at 7, 10.) Although the police brief
21 acknowledges that Mr. Henry was “not dressed in Black Bloc” at the event, the brief inexplicably
22 includes “images of other participants as they arrived” in black clothing and details acts of vandalism that
23 unidentified persons (not alleged to be Mr. Henry) purportedly committed on the evening of the protest.
24 (*Id.* at 10-12.) The law is clear, however, “the right to associate does not lose all constitutional protection
25 merely because some members of [a] group may have participated in conduct or advocated doctrine that
26 itself is not protected.” (*NAACP v. Claiborne Hardware Co.* (1982) 458 U.S. 886, 908; *see also* *Lam v.*
27 *Ng* (2001) 91 Cal. App. 4th 832, 837 [concluding that, absent a direct connection, involvement in the

28 \\\

1 “nonviolent aspects” of a protest cannot support liability for violent acts at protest].⁵

2 The City’s discussion of a “tweet” on April 11, 2021 again misstates the record. (Opp’n at 3.) The
3 “tweet” at issue was actually published by the Twitter handle “@sac_rad_edu,” and then “re-tweeted” by
4 Mr. Henry. It stated: “First, thank you to the comrades @voicesrivercity for being so eloquent, as per
5 usual. [¶] Second; we’ll see you soon Darrell.” (Morse Decl. Ex. 1 at 8.) Mr. Henry never wrote “we’ll
6 see you soon Darrell” and the City is wrong to suggest that this compound post “clearly” shows Mr.
7 Henry supported unspecified “violent acts” during a protest at Mayor Steinberg’s home. (Opp’n at 3.) In
8 fact, Mr. Henry explains that he “re-tweeted” the message because it had named and “thank[ed]” his
9 podcast. (Supp. Henry Decl. ¶ 2.) Additionally, like the protests at Mr. Chan’s house, Mr. Henry did not
10 participate in the protest at Mayor Steinberg’s house and is unaware of any other protests that have taken
11 place since the April 11 retweet. (*Id.* ¶¶ 4-5.)

12 When the City’s own inflammatory rhetoric is stripped away, the evidence demonstrates that Mr.
13 Henry’s personal conduct is limited to statements offering support for protected protest activity, as well
14 as criticism of government leaders on issues of public interest. The City’s petition therefore arises solely
15 from Mr. Henry’s protected speech. None of Mr. Henry’s words reflected a “true threat” to Mr. Chan or
16 called for any sort of specific and imminent lawless action.

17 **2. SLAPP Step Two: City cannot demonstrate probability of prevailing on the merits.**

18 Mr. Henry’s anti-SLAPP Motion under Section 425.16 of the Code of Civil Procedure must be
19 granted for the same reason that the City’s restraining order petition under Section 527.8 must be
20 denied: the City has neither alleged facts, nor offered evidence, sufficient to demonstrate the likelihood
21 that it will prevail on its Section 527.8 claim. (*See* Code Civ. Proc. § 425.16(b); *id.* § 527.8(j).)

22 ***a. No unlawful violence or credible threat of violence occurred in the workplace.***

23 As discussed, the City’s petition relies on Mr. Henry’s podcast comments and social media posts,
24

25 ⁵ The petition also relies on a Facebook post by Josue El Crudo thanking Mr. Henry—and other civil
26 rights activists and prominent attorneys—for their support. (Morse Decl. Ex. 1 at 9.) Without any
27 foundation, the City claims this post demonstrates Mr. Henry’s support for Joshua Fernandez, an
28 individual accused (but not convicted) of assault following a “White Lives Matter” event. (Morse Decl. ¶ 6.) Even assuming a connection, the City’s reasoning is preposterous. It suggests that any individual who is thanked by an accused person must unequivocally have endorsed the underlying alleged offense.

1 primarily focusing on the March 30 podcast about Senator Sinema that “sort of” applied to Mr. Chan and
2 the Mayor. “Context is critical in a true threats case.” (*Planned Parenthood of Colombia/Willamette, Inc.*
3 *v. Am. Coal. of Activists* (9th Cir. 2002) 290 F.3d 1058, 1078.) Viewing Mr. Henry’s comments in
4 context, here, it is evident that the conduct alleged did not constitute “unlawful violence” against Mr.
5 Chan or even a “credible threat of violence,” and none of it can reasonably be construed to have occurred
6 in the workplace—the essential elements of a Section 527.8 claim. While the Court may not condone the
7 language that Mr. Henry used during the March 30 podcast *after* the two protests at Mr. Chan’s house,
8 Mr. Henry never claimed that he would personally harm Mr. Chan and never incited any imminent
9 specific lawless action against him. Mr. Henry is a long-time community organizer with no history of
10 violent acts. He has also expressly disavowed violence. (Skyler Decl. ¶¶ 7, 11; Pet., Decl. of Mayor
11 Steinberg ¶ 4; *see also* Anti-SLAPP Mot., Valenzuela Decl. ¶ 5, 9, 11; Ibarra Decl. ¶¶ 3, 7.)

12 Further, to establish that Mr. Henry made “a credible threat of violence” against Mr. Chan, the
13 City must demonstrate that the speech giving rise to the action “serve[d] no legitimate purpose.” (Code
14 Civ. Proc. § 527.8(b)(2).) But here, the comments ascribed to Mr. Henry occurred during legitimate
15 political discourse on topics of significant public interest, including police misconduct, government
16 spending, and civil unrest. Even the protests to which the City unsuccessfully tries to link Mr. Henry
17 served the legitimate purpose of criticizing Sacramento leadership for, among other things, deciding not
18 to fire the police officers who had fatally shot the unarmed Stephon Clark and deciding not to open a
19 warming shelter on a night in January when a major storm killed several unhoused people.

20 The City’s reliance on *Huntingdon Life Sciences v. Stop Huntingdon Animal Cruelty USA* (2005)
21 129 Cal. App. 4th 1228 is misguided (Opp’n at 8), as the case is distinguishable for several reasons.
22 **First**, the *Huntingdon* Court never grappled with Section 527.8(a)’s requirement that the alleged
23 violence, or threat of violence, be “reasonably construed” to have “occurred in the workplace”—an
24 oversight recognized in *City of Los Angeles v. Animal Def. League* (2006) 135 Cal. App. 4th 606, 624,
25 which held that the lack of such a nexus mandated denial of a Section 527.8 claim.⁶ The same nexus is
26

27 ⁶ In *City of Montebello v. Vasquez* (2016) 1 Cal. 5th 409, 418 the California Supreme Court disapproved
28 *dicta* in *City of Los Angeles*’ regarding Section 425.16’s applicability in public enforcement actions, but
otherwise left the reasoning in *City of Los Angeles* undisturbed.

1 missing here too. As the Opposition candidly acknowledges: “It was at Mr. Chan’s home in Natomas that
2 the violence supported by Mr. Henry has taken place.” (Opp’n at 3.) **Second**, the *Huntingdon* court
3 appears to have premised liability on the fact that a defendant had helped to run a website that disclosed
4 “the names, addresses, and telephone numbers” of the people whom his anti-animal cruelty group
5 targeted and that also provided “tactics” on how best to harass those people. (129 Cal. App. 4th at 1252-
6 58.) But, here, notwithstanding the City’s false assertions to the contrary, Mr. Henry never disclosed
7 “Mr. Chan’s home address to others in the hope of encouraging actions intended to harass or terrorize.”
8 (Opp’n at 7.) In fact, as noted earlier, Mr. Henry was unaware of Mr. Chan’s address until the City itself
9 disclosed the information in its court papers. (Supp. Henry Decl. ¶ 3.) **Third**, and finally, *Huntingdon* is
10 different because it involved a cohesive, self-identified group that engaged in organized, repeated, and
11 sustained conduct, including dumping red paint on a victim’s driveway, puncturing car tires, spray-
12 painting a garage door, ringing doorbells, setting off alarms, and shouting through megaphones in the
13 pre-dawn hours. (129 Cal. App. 4th at 1240-41.) The two protests at Mr. Chan’s house are not alleged to
14 have been nearly as coordinated, numerous, sustained, or destructive, and, in any event, Mr. Henry
15 neither organized nor participated in them.

16 ***b. It is not reasonably likely that unlawful violence will occur in future.***

17 The City has ignored Section 527.8’s requirement that it establish “by clear and convincing
18 evidence” that unlawful violence is “reasonably likely” to occur because this case presents no realistic
19 threat of harm (future or otherwise). Mr. Henry’s commentary occurred after the protests at Mr. Chan’s
20 house. No evidence indicates that other protests have since taken place at the home. Moreover, as the
21 Court previously found, some of the City’s own evidence “actually undercuts” the claim of future harm.
22 The Court aptly observed that, despite having been named in the March 30 podcast with Mr. Chan,
23 Mayor Steinberg recently met with Mr. Henry “in person” and “apparently without incident.” (ROA# 5 at
24 5-6; Henry Decl. ¶ 11.) And since the Court issued its order, Mr. Henry has been working at City Hall
25 without any incident to report. (Henry Suppl. Decl. ¶ 6; *Scripps Health v. Marin* (1999) 72 Cal. App. 4th
26 324, 322 [“[I]njunctive relief lies only to prevent threatened injury . . .”].)

27 ***c. The terms of the City’s proposed restraining order violate Section 527.8(c).***

28 For its final act of subterfuge, the City states that the proposed restraining order “would only

1 prevent Mr. Henry from entering City Hall and from being within 100 feet of Mr. Chan, and his family
2 and his home.” (Opp’n at 9.) The City avers that it is “not seeking to silence Mr. Henry or enjoin him
3 from using his various platforms to criticize the City.” (*Ibid.*) Not so. In addition to the stay-away
4 provisions which will undoubtedly impair Mr. Henry’s ability to do his work, the City’s petition also
5 seeks to prohibit Mr. Henry from contacting Mr. Chan “either directly or indirectly, by **any** means,
6 including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice
7 mail, by e-mail, by text message, by fax, or by other electronic means.” (Pet. at 4.) For Mr. Henry—a
8 communications aide responsible for conveying the messages of a City Councilmember—such a
9 provision all but assures that his speech rights will be silenced in violation of Section 527.8(c).

10 **B. The City’s other erroneous arguments are a poor attempt to distract from the merits.**

11 **1. The Anti-SLAPP Motion was timely.**

12 The City’s characterization of Mr. Henry’s anti-SLAPP motion as untimely (Opp’n at 4) is wrong
13 and, more importantly, moot. The motion was filed with the express permission of the Court clerk so that
14 it could be heard on the same date as the City’s restraining order petition. Thereafter, and consistent with
15 this approach, the Court found “good cause” to reschedule the hearings to July 12, 2021. (ROA# 9.)

16 **2. Councilmember Valenzuela’s declaration must be considered in full.**

17 The City cannot meet its burden of establishing that Councilmember Valenzuela’s declaration at
18 paragraphs 10 and 12 violates the attorney-client privilege. (*Costco Wholesale Corp. v. Superior Court*
19 (2009) 47 Cal. 4th 725, 733.) Not every conversation between a city attorney and a member of that city’s
20 governing body is privileged. No facts indicate that the City Council authorized City Attorney Susana
21 Alcala Wood to communicate a specific legal opinion to Ms. Valenzuela or that Ms. Wood was
22 conveying confidential information. The conversation recounted in paragraph 10 did not occur in private
23 and can more readily be construed as a message to the future manager of Mr. Henry. At paragraph 12, the
24 declaration contains no confidential information and merely acknowledges the fact that “Wood
25 admonish[ed] [Ms. Valenzuela] for publishing a statement.” (Valenzuela Decl. ¶ 12.)

26 **III. CONCLUSION**

27 For the reasons stated, Mr. Henry’s special motion to strike (SLAPP) should be granted and the
28 City’s petition for a restraining order should be denied.

1 Dated: July 6, 2021

Respectfully Submitted,

2
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF SACRAMENTO,

Petitioner,

vs.

SKYLER MICHEL-EVLETH a/k/a SKYLER
HENRY,

Respondent.

Case No. 34-2021-70009184-CU-HR-GDS

**SUPPLEMENTAL DECLARATION OF
SKYLER HENRY**

I, Skyler Henry, hereby declare:

1. I am the Respondent in the above-referenced matter and make this supplemental declaration in support of **RESPONDENT'S MEMORANDUM (1) IN OPPOSITION TO PETITIONER'S PETITION FOR WORKPLACE VIOLENCE RESTRAINING ORDER; AND (2) IN REPLY IN SUPPORT OF SPECIAL MOTION TO STRIKE (SLAPP) PETITION.** The following is based on my personal knowledge and if called upon to testify, I could and would competently testify thereto.

1 2. In the City’s Opposition, it represents to the Court that I posted a “tweet” stating “We’ll see you
2 soon Darrell.” I did not write this tweet. The “tweet” at issue was actually published by the Twitter
3 handle @sac_rad_edu (“Sacramento Radical Education”). I “re-tweeted” this “tweet” on my personal
4 Twitter account because the handle thanked the Voices: River City podcast “for being so eloquent, as per
5 usual.” The part of the tweet referenced in the City’s opposition follows their thanking our podcast. To
6 the best of my knowledge, I could not simply re-tweet a portion of someone else’s tweet. Mayor
7 Steinberg never raised my re-tweet as any cause for concern when we personally met before the City
8 filed their Petition for Restraining Order.

9 3. The City states in its Opposition that I have “provided [City Manager] Chan’s home address to
10 others in the hope of encouraging such conduct on multiple occasions...”. This is false. I have never
11 posted Mr. Chan’s home address on any of my social media accounts or provided his address to anyone
12 for any purpose. Prior to the City filing its Petition in which it disclosed Mr. Chan’s home address, I
13 never knew Mr. Chan’s address.

14 4. The context of the specific episode of the March 30, 2021 Voices: River City podcast is vital. I
15 had just returned from a vacation when we recorded this particular podcast and felt compelled to share
16 my opinion that governmental leaders should expect protests and behavior that they may deem
17 objectionable if they make decisions harmful to the community. I referred to Senator Sinema’s thumbs
18 down “no” vote to a \$15.00 minimum wage as an example and said someone like that should be
19 “terrified for the rest of your life” that the constituents harmed by those actions would protest against
20 them. When I made this comment, I did not have the intent to threaten Senator Sinema, Mayor
21 Steinberg, or Mr. Chan with any type of violence. Nor did I have any intent to cause a riot or to urge
22 anyone else to act violently or destructively.

23 5. To the best of my knowledge, there have not been any protests at Mayor Steinberg or Mr. Chan’s
24 homes after the March 30, 2021 podcast when I made the statements the City claims supported terrorism
25 and violence against Mr. Chan. If there have been any such protests, I certainly have not organized or
26 participated in them.

27 6. I began working for Councilmember Valenzuela on or about June 19, 2021. Since beginning my
28 job, I have worked in City Hall and there have been no incidents. I did not join Councilmember

1 Valenzuela's staff to commit violence against anyone at City Hall.

2 I declare under penalty of perjury under the laws of the State of California that I executed this
3 declaration on July __, 2021 at Sacramento, California.

4 07 / 05 / 2021

5 

6 _____
7 Skyler Henry
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15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SACRAMENTO

16 CITY OF SACRAMENTO,

17 Petitioner,

18 vs.

19 SKYLER MICHEL-EVLETH a/k/a SKYLER
20 HENRY,

21 Respondent.

Case No. 34-2021-70009184-CU-HR-GDS

**RESPONDENT'S EVIDENTIARY
OBJECTIONS: (1) TO EVIDENCE IN
SUPPORT OF PETITION FOR WORKPLACE
VIOLENCE RESTRAINING ORDER; AND
(2) IN REPLY IN SUPPORT OF SPECIAL
MOTION TO STRIKE (SLAPP) PETITION;
[PROPOSED] ORDER**

22 Respondent SKYLER MICHEL-EVLETH a/k/a SKYLER HENRY's ("Respondent") hereby
23 submits his objections to the evidence submitted by Petitioner City of Sacramento ("City" or
24 "Petitioner") in support of its Petition for Workplace Violence Restraining Order. Petitioner did not
25 submit additional evidence to support its opposition to Respondent's Special Motion to Strike (SLAPP)
26 the Petition for Workplace Violence Restraining Order—a fact that "now takes special importance."
27 (*Lam v. Ngo* (2001) 91 Cal. App. 4th 832, 845.) Respondent therefore also submits these evidentiary
28 objections in further support of his anti-SLAPP Motion. (Code Civ. Proc. § 425.16(b); *see also Martin v.*
Inland Empire Utils. Agency (2011) 198 Cal. App. 4th 611, 630.)

RESPONDENT'S EVIDENTIARY OBJECTIONS

City of Sacramento v. Henry, Superior Court of California, County of Sacramento, Case No. 34-2021-70009184-CU-HR-GDS

A. OBJECTIONS TO DECLARATION OF CITY MANAGER HOWARD CHAN IN SUPPORT OF CITY'S PETITION FOR TRO & RESTRAINING ORDER

| # | OBJECTION TO EVIDENCE | RULING |
|---|---|-----------------|
| 1 | Paragraph 6:16-17: "...in an effort to intimidate my family and I ..." | SUSTAINED: ____ |
| | Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352). | OVERRULED: ____ |
| | Declarant offers his speculative opinion regarding the intent and purpose of protestors during the identified protest. Any probative value of Declarant's comments is substantially outweighed by the unfair prejudice to Respondent as there is no evidence that Respondent was present at the identified protest or engaged in any of the identified conduct. | |
| 2 | Paragraph 6:18-22: "These individuals pounded on my front door, damaged my garage door, and damaged my yard. It is my belief the individuals did this in an attempt to force their way into my home or force me to come outside for a confrontation. More significantly, they terrified my wife, children, and my severely disabled brother, who is paraplegic, who lives with us." | SUSTAINED: ____ |
| | Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352). | OVERRULED: ____ |
| | Declarant offers his speculative opinion regarding the intent and purpose of protestors during the identified protest. Any probative value of Declarant's comments is substantially outweighed by the unfair prejudice to Respondent as there is no evidence that Respondent was present at the identified protest or engaged in any of the identified conduct. | |
| 3 | Exhibit 1: Sacramento Police Department Report (#2020-220529) describing protest at Howard Chan's house on July 22, 2020; incident "reported on" July 23, 2020. | SUSTAINED: ____ |
| | Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200); Lack of Authentication (Evid. Code § 1400). | OVERRULED: ____ |
| | Respondent was not present at the identified protest. The protest occurred at Mr. Chan's house, not the workplace, and so the protest is not relevant to whether Respondent committed an act of violence or made a credible threat of violence against Mr. Chan at the workplace. Any probative value is therefore substantially outweighed by the unfair prejudice to Respondent. | |

| # | OBJECTION TO EVIDENCE | RULING |
|---|--|---|
| 4 | <p>Paragraph 7:23-25: “On or about March 28, 2021, individuals held a second protest outside my residence to continue intimidating my family and I, for continuing to do my job as a City Manager in a manner in which they disagree.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352).</p> <p>Declarant offers his speculative opinion regarding the intent and purpose of protestors during the identified protest. Any probative value of Declarant’s comments is substantially outweighed by the unfair prejudice to Respondent as there is no evidence that Respondent was present at the identified protest or engaged in any of the identified conduct.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 5 | <p>Exhibit 2: Sacramento Police Report (#2021-165180) describing protest at Howard Chan’s house on March 28, 2021; incident “reported on” June 15, 2021.</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200); Lack of Authentication (Evid. Code § 1400).</p> <p>Respondent was not present at the identified protest. The protest occurred a Mr. Chan’s house, not the workplace, and so it is not relevant to whether Respondent committed an act of violence or made a credible threat of violence against Mr. Chan at the workplace. Any probative value is therefore substantially outweighed by the unfair prejudice to Respondent. Also, unlike Police Report #2020-220529 at Exhibit 1, this second police report lacks any information as to whether this report was ever “approved.”</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 6 | <p>Paragraph 8:1-2: “Respondent, with full knowledge of the risks and with willful disregard to our safety, has continued to incite, condone and encourage violence against us.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Legal Conclusion (Evid. Code § 310); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352)</p> <p>Declarant lacks foundation and improperly speculates as to Respondent’s knowledge, mental state, and future conduct. His statement constitutes an impermissible legal conclusion. (<i>See Hayman v. Block</i> (1986) 176 Cal. App. 3d 629, 638-39 [“[A]ffidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts.”]; <i>see also Taliaferro v. Taliaferro</i> (1962) 203 Cal. App. 2d 649, 651 [“[T]he failure to state facts upon which an opinion is based may warrant disregard of the opinion, even if uncontradicted.”].)</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

| # | OBJECTION TO EVIDENCE | RULING |
|---|--|---|
| 7 | <p>Paragraph 8:5-6: “These statements, along with Respondent’s specific course of conduct towards me, have placed my safety, and the safety of my family, in jeopardy.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352).</p> <p>Declarant offers no explanation as to when or where he first encountered Respondent’s purported “statements,” what he means by “Respondent’s specific course of conduct,” or how such statements and conduct put anyone’s safety in “jeopardy.” (<i>See Wheeler v. St. Joseph Hosp.</i> (1977) 63 Cal. 3d 345, 362 [explaining that an “opinion” is an inference or conclusion derived from one’s own perceptions or observations]; <i>see also Taliaferro, supra</i>, 203 Cal. App. 2d at p. 651.) To the extent Declarant refers to a “course of conduct” attributable to individuals other than Respondent, then the evidence is not relevant, and any probative value is substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 8 | <p>Paragraph 9:11-15: “Based on Respondent’s past conduct and statements, I believe it is clear Respondent will continue to escalate his conduct if he disagrees with my decisions as City Manager.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352).</p> <p>Declarant offers no explanation as to what he means by “Respondent’s past conduct and statements” or why such conduct and statements suggest continued escalation. (<i>See Taliaferro, supra</i>, 203 Cal. App. 2d at p. 651; <i>see also Wheeler, supra</i>, 63 Cal. 3d at p. 362.) To the extent Declarant refers to “past conduct” attributable to individuals other than Respondent, then the evidence is not relevant, and any probative value is substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 9 | <p>Paragraph 10:16-17: “Moreover, several City employees have independently told me they are afraid of Respondent working at City Hall.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200).</p> <p>Declarant provides no basis or substantiating facts for this statement and the statement constitutes hearsay for which there is no exception. (<i>See Taliaferro, supra</i>, 203 Cal. App. 2d at p. 651; <i>see also Wheeler, supra</i>, 63 Cal. 3d at p. 362.)</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

**B. OBJECTIONS TO DECLARATION OF SACRAMENTO POLICE DEPARTMENT
SERGEANT KRISTEN MORSE IN SUPPORT OF CITY'S PETITION FOR TRO &
RESTRAINING ORDER**

| # | OBJECTION TO EVIDENCE | RULING |
|----|--|---|
| 10 | <p>Paragraph 5:1-4: "In summary, the Brief contains background information on Antifa protests in Sacramento, . . . , social media posts on Twitter and Facebook by Respondent regarding support for Antifa causes, his attendance at Antifa protests, and excerpts from the Podcast, <i>Voices: River City</i> for which Respondent is a co-host."</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200).</p> <p>Declarant's statement regarding "Antifa" and her opinion that Respondent supports "Antifa causes" lacks foundation, is impermissibly vague, and is not relevant. The summary does not tend to establish any material fact of consequence to the petition—namely, whether Respondent made a credible threat of violence against Mr. Chan that can reasonably be construed to have occurred in the workplace. Declarant has not provided sufficient foundation to demonstrate her expertise as a witness in assessing the nature of the material to which she refers and on which she seeks to opine. Declarant's summary opinion is also impermissible hearsay. (<i>See People v. Sanchez</i> (2016) 63 Cal. 4th 665, 686.) Any probative value of Declarant's comments is substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 11 | <p>Paragraph 6:5-7: "Based on my review of podcasts and social media such as Twitter and Facebook, Respondent has a history of supporting individuals that advocate violence to accomplish their objectives."</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200).</p> <p>Declarant has not provided sufficient foundation to demonstrate her expertise as a witness in assessing the nature of the material to which she refers and on which she seeks to opine. Declarant's summary opinion is also impermissible hearsay. (<i>See Sanchez, supra</i>, 63 Cal. 4th at p. 686.) Any probative value of Declarant's comments is substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

| # | OBJECTION TO EVIDENCE | RULING |
|----|---|---|
| 12 | <p>Paragraph 6:7-13: “For example, I saw a post by Antifa Sacramento member Joshua Fernandez on 04/13/2021 thanking individuals—including Respondent ‘Skyler Henry’—for his support following the arrest of Fernandez on 04/11/2021 for a hate crime (See Sacramento Police Report #21-96619). Fernandez assaulted two people he believed were a part of a White Lives Matter event in downtown Sacramento. Fernandez is an active and open Antifa member and has been noted directly participating and organizing Antifa events, and also promoting events resulting in felony crimes in and around the State Capitol in December 2020.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200).</p> <p>Declarant’s statement lacks foundation, is misleading, and likely misstates the record (<i>see</i> Ex. 1 at p. 9 [April 13 post by “Josue El Crudo”].) Mr. Fernandez’s alleged (and/or uncharged) conduct is not relevant to establish a material fact of consequence to this action, specifically whether Respondent made a credible threat of violence against Mr. Chan that could reasonably be construed to have occurred in the workplace. Any probative value of this information is substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 13 | <p>Exhibit 1 – “Skyler Henry Brief”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Legal Conclusion (Evid. Code § 310); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200); Lack of Authentication (Evid. Code § 1400); Incomplete (Evid. Code § 356).</p> <p>The “Skyler Henry Brief” compiles and discusses alleged conduct by individuals that are purportedly “associated” with the “movement” referred to as “Antifa.” The references to “Antifa” throughout the brief are vague and reflect irrelevant and inflammatory information. The report fails to provide sufficient information to evaluate the authors’ expertise in assessing the nature of the material to which the report refers and on which the report seeks to opine. The contents of the brief also represent impermissible hearsay. (<i>See Sanchez, supra</i>, 63 Cal. 4th at p. 686.) Any probative value of the brief is substantially outweighed by the unfair prejudice to Respondent as the brief advances a duplicitous guilt-by-association campaign. At a minimum, all references to “Antifa” should be stricken.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

| # | OBJECTION TO EVIDENCE | RULING |
|----|--|---|
| 14 | <p>Exhibit 1 – Skyler Henry Brief, “Background” (p. 1)</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Legal Conclusion (Evid. Code § 310); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200); Lack of Authentication (Evid. Code § 1400); Incomplete (Evid. Code § 356).</p> <p>The authors’ opinion concerning “Antifa,” a “movement with a loose, unorganized membership and affiliation” is vague and lacks foundation to demonstrate the authors’ expertise in assessing the nature of the material to which the brief refers and on which the brief seeks to opine.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 15 | <p>Exhibit 1 – Skyler Henry Brief, “Social Media” (pp. 2-9)</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Legal Conclusion (Evid. Code § 310); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200); Lack of Authentication (Evid. Code § 1400); Incomplete (Evid. Code § 356).</p> <p>None of the excerpted social media activity cited reflects any threat of violence against Mr. Chan that could reasonably be construed to have occurred in the workplace (or elsewhere). Any probative value is therefore substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 16 | <p>Exhibit 1 – Skyler Henry Brief, “Attendance at Antifa Action: 4/13/2021” (pp. 10-12)</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Legal Conclusion (Evid. Code § 310); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200); Lack of Authentication (Evid. Code § 1400); Incomplete (Evid. Code § 356).</p> <p>Respondent’s alleged attendance at a lawful protest in Cesar Chavez Park is a protected activity and does not reflect any threat of violence against Mr. Chan that could reasonably be construed to have occurred in the workplace (or elsewhere). The brief includes numerous images of “other participants as they arrived” at the protest and discusses acts of vandalism not alleged to have any connection to Respondent. Any probative value of this information is substantially outweighed by the prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

| # | OBJECTION TO EVIDENCE | RULING |
|----|--|---|
| 17 | <p>Exhibit 1 – Skyler Henry Brief, “<i>Voices: River City</i> Podcast” (pp. 12-18)</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Improper Expert Opinion/Unqualified Expert (Evid. Code §§ 720, 801-803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Lack of Authentication (Evid. Code § 1400); Incomplete (Evid. Code § 356).</p> <p>This portion of the brief includes cherry-picked and excerpted statements transcribed by an unknown person relating to Respondent’s podcast commentary on a wide range of issues of public interest. The discussion of images reflecting purported “Antifa-affiliated” logos is vague and lacks foundation. The authors fail to establish the basis for their conclusions as to what these images represent, as well as their qualifications to opine on such information. Any probative value of this information is substantially outweighed by the prejudice suffered by Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

A. OBJECTIONS TO DECLARATION OF EMILY CHAN IN SUPPORT OF CITY’S PETITION FOR TRO & RESTRAINING ORDER

| # | OBJECTION TO EVIDENCE | RULING |
|----|--|---|
| 18 | <p>Paragraph 3:26-4:8: “On July 22, 2020, at approximately 6 p.m., protestors arrived at our home in North Natomas and staged a ‘sit-in/die-in.’ It is my understanding that they demanded my husband resign from his position as City Manager for, in their view, not holding the police department accountable. This event was promoted on multiple social media platforms in the days leading up to the protest. I was scared from the moment I first heard of the planned protest at our home and had anxiety as a result. During the protest, I saw the fake body bags in our driveway and tomb stones on our lawn. I heard helicopters circling overhead. The protestors pounded on our front door and our garage door which made me fearful because I had no idea whether they would break into our home. My husband, both my children and my brother-in-law were all home during the protest. I was scared for the safety of our family and hid with my daughter in her bedroom. The crowd broke up at about 10 p.m.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352).</p> <p>Declarant offers her speculative opinion regarding the intent and purpose of protestors during the identified protest. Any probative value of Declarant’s comments is substantially outweighed by the unfair prejudice to Respondent as there is no evidence that Respondent was present at the identified protest or engaged in any of the identified conduct.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

RESPONDENT’S EVIDENTIARY OBJECTIONS

| # | OBJECTION TO EVIDENCE | RULING |
|----|---|---|
| 19 | <p>Paragraph 4:9-21: “On March 28, 2021, a demonstration was planned to take place again at our home. The demonstration was posted on several social media platforms, which included ‘Wanted’ posters lettered in bloody calligraphy of my husband seeking that he be held accountable for crimes and abuses of power by the Sacramento Police Department. Coming off the heels of the January 6, 2021, insurrection at the United States Capitol, this protest was more fearful to me. If the United States Capitol could be breached, I was very scared of the unknown factor of what could happen to us in our home. It was my understanding that the group promoting this protest was a dangerous, well organized group who are known to dress in black gear and black armor. In reaction to this protest, the City’s Mayor’s Office released a letter to the organizers denouncing the ‘wanted’ photos and suggested alternative forms of peaceful protesting rather than protesting at the homes of City officials. Fortunately, City’s Police Department protected all of us that day as they surrounded our home to keep protestors away from the grounds of our private residence.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352).</p> <p>Declarant offers her speculative opinion regarding the intent and purpose of protestors during the identified protest. Any probative value of Declarant’s comments is substantially outweighed by the unfair prejudice to Respondent as there is no evidence that Respondent was present at the identified protest or engaged in any of the identified conduct.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 20 | <p>Paragraph 4:15-16: “It was my understanding that the group promoting this protest was a dangerous, well organized group who are known to dress in black gear and black armor.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352).</p> <p>Declarant offers no evidence to support her speculative opinion regarding the group that she alleges promoted the protest or that Respondent is associated with this group. Any probative value is therefore substantially outweighed by the unfair prejudice to Respondent as there is no evidence that Respondent was present at the identified protest or engaged in any of the identified conduct.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

| # | OBJECTION TO EVIDENCE | RULING |
|----|---|---|
| 21 | <p>Paragraph 5:23-26: “Respondent has been a vocal supporter of the threats against my husband and the violent protests at our home; in fact, he stated that my husband and the City’s Mayor ‘should be terrorized for the rest of their lives.’”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200).</p> <p>Declarant does not identify the specific “threats against [her] husband” to which she is referring and also does not offer evidence to support her speculative opinion that “Respondent has been a vocal supporter of the threats against [her] husband.” Declarant also provides no foundation for the assertion that Respondent stated her “husband and the City’s Mayor should be terrorized for the rest of their lives.” It is unclear whether, where, and when she may have encountered such a statement. No evidence suggests that Respondent ever used the word “terrorized” in connection with Mr. Chan or Mayor Steinberg. Any probative value to this statement is therefore substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |
| 22 | <p>Paragraph 6:1-6: “I have seen a wide range of calls against my husband, some demand my husband be fired and others are more extreme and advocate for physical or psychological harm. It is clear to me that Respondent’s call for my husband to be terrorized for the rest of his life falls into the latter category. I also believe that Respondent’s calls are meant to incite and, based on Respondent’s previous statements, I am fearful that Respondent will continue to direct protests to our home and that they will be aimed to harm our family.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Legal Conclusion (Evid. Code § 310); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200).</p> <p>Declarant offers no evidence to support her speculative opinion regarding the “calls against her husband” and their alleged connection to Respondent. Her statement is impermissibly vague, and any probative value of this statement is substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

| # | OBJECTION TO EVIDENCE | RULING |
|----|--|---|
| 23 | <p>Paragraph 6:11-12: “because of Respondent’s hiring and his past conduct—which includes advocating physical violence and broadcasting that call to others—”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Speculation (Evid. Code § 702); Lack of Personal Knowledge (Evid. Code § 702(a)); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Vague; Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352); Hearsay (Evid. Code § 1200).</p> <p>Declarant offers no evidence to support or explain her speculative opinion regarding Respondent’s “past conduct,” his “advocating physical violence,” or his “broadcasting that call to others.” Her statement is impermissibly vague, and any probative value is substantially outweighed by the unfair prejudice to Respondent.</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

B. OBJECTIONS TO DECLARATION OF MAYOR STEINBERG IN SUPPORT OF CITY’S PETITION FOR TRO & RESTRAINING ORDER

| # | OBJECTION TO EVIDENCE | RULING |
|----|--|---|
| 24 | <p>Paragraph 3:9-10: “That statement is a clear threat of violence.”</p> <p>Basis for Objection: Lack of Foundation (Evid. Code §§ 400, 403); Lack of Personal Knowledge (Evid. Code § 702(a)); Speculation (Evid. Code § 702); Improper Legal Conclusion (Evid. Code § 310); Improper Lay Opinion (Evid. Code §§ 701, 800, 803); Lack of Relevance/Unfair Prejudice (Evid. Code §§ 350, 352).</p> <p>Declarant’s conclusion that Respondent’s statements is a “threat of violence” reflects a legal conclusion and is improper lay witness testimony. (<i>Hayman v. Block</i>, 176 Cal.App.3d (1986) 629, 638-39 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate’ facts”]); <i>Marriage of Heggie</i>, (2002) 99 Cal. App. 4th 28, 30 n.3 [“The proper place for argument is in points and authorities, not declarations”]).</p> | <p>SUSTAINED: ____</p> <p>OVERRULED: ____</p> |

1 Dated: July 6, 2021

Respectfully Submitted,

2
3 By: 

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26 Attorneys for Respondent
27 SKYLER MICHEL-EVLETH
28 a/k/a SKYLER HENRY

29
30 **[PROPOSED] ORDER**

31 GOOD CAUSE APPEARING, the foregoing rulings on Respondent's evidentiary objections are
32 hereby ordered as provided herein.

33 DATED: July ____, 2021

34 _____
35 Hon. George Acero
36 Judge, Superior Court of California,
37 County of Sacramento

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: Mark E. Merin (State Bar No. 043849) FIRM NAME: Law Office of Mark E. Merin STREET ADDRESS: 1010 F Street, Suite 300 CITY: Sacramento STATE: CA ZIP CODE: 95814 TELEPHONE NO.: (916) 443-6911 FAX NO.: (916) 447-8336 E-MAIL ADDRESS: mark@markmerin.com ATTORNEY FOR (name): Respondent SKYLER MICHEL-EVLETH a/k/a SKYLER HENRY | FOR COURT USE ONLY CASE NUMBER: 34-2021-70009184-CU-HR-GDS |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Gordon D. Schaber Courthouse | |
| PLAINTIFF/PETITIONER: CITY OF SACRAMENTO DEFENDANT/RESPONDENT: SKYLER MICHEL-EVLETH a/k/a SKYLER HENRY | JUDICIAL OFFICER: Hon. George Acero |
| PROOF OF ELECTRONIC SERVICE | DEPARTMENT: 35 |

1. I am at least 18 years old.
 - a. My residence or business address is (specify):
1010 F Street, Suite 300
Sacramento, CA 95814
 - b. My electronic service address is (specify):
<paul@markmerin.com>
2. I electronically served the following documents (exact titles):

☒ The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:
 - a. Name of person served: Emilio Camacho, Esq.; Andrea M. Velasquez, Esq.
On behalf of (name or names of parties represented, if person served is an attorney):
City of Sacramento
 - b. Electronic service address of person served :
<ECamacho@cityofsacramento.org>; <AVelasquez@cityofsacramento.org>
 - c. On (date): July 6, 2021

☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
(Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: July 6, 2021

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Paul H. Masuhara

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

| | |
|---|----------------------------------|
| CASE NAME: City of Sacramento v. Henry | CASE NUMBER: 34-2021-70009184 |
|---|----------------------------------|

ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (DOCUMENTS SERVED)*(This attachment is for use with form POS-050/EFS-050.)***The documents that were served are as follows *(describe each document specifically)*:**

Form WV-120 - Response to Petition for Workplace Violence Restraining Orders

Form WV-250 - Proof of Service of Response by Mail

Respondent's Memorandum: (1) in Opposition to Petition for Workplace Violence Restraining Order; and (2) in Reply in Support of Special Motion to Strike (SLAPP) Petition

Supplemental Declaration of Skyler Henry

Respondent's Evidentiary Objections: (1) to Evidence in Support of Petition for Workplace Violence Restraining Order; and (2) in Reply in Support of Special Motion to Strike (SLAPP) Petition;

[Proposed] Order