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SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

FREMONT AUTOMOBILE DEALERSHIP, LLC, D/B/A FREMONT TOYOTA, and HANK TORIAN,

Petitioner,

v.

ROBERT KIRALY,

Respondent.

Case # 22CV005860

**RESPONDENT ROBERT KIRALY'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE § 425.16**

Date: April 14, 2022
Time: 9:00 a.m.
Dept: 519

**TO: THE ABOVE-ENTITLED COURT AND PETITIONER:**

PLEASE TAKE NOTICE that on ____04/14/22____, at the hour of __9:00__ a.m. or as soon thereafter as the matter may be heard in the courtroom of Department __519__ of the above-entitled court, the Respondent requests the court strike the WVRO file by Petitioner in case #22CV005860 be stricken as a violation of the Anti-Slapp statutes.

The motion will be based on this notice of motion, the memorandum of points and authorities served and filed herewith on the records on file in this action, the attached declaration(s), and on such oral and documentary evidence as may be presented at the hearing on the motion.

Dated: April 4, 2022

Nabiel Ahmed

Nabiel C Ahmed, Esq.
Attorney for Respondent

## I.

## INTRODUCTION

This matter arises out of websites and e-mails published by Respondent Robert Kiraly ("Kiraly") which express constitutionally-protected opinions regarding Plaintiffs Fremont Automobile Dealership LLC d/b/a Fremont-Toyota and Christine Long (collectively, "Petitioners"). In an effort to chill Respondent's exercise of his free speech rights, Petitioners have filed two workplace violence restraining orders against Respondent which purport to allege a violation of the workplace violence statutes found in Code of Civil Procedure section 527.8. Respondent hereby moves to strike the petitions pursuant to Code of Civil Procedure § 425.16 on the grounds that each of the petitions filed requesting relief arises out of written statements made in a public forum in connection with an issue of public interest, and is meritless.

## II.

## STATEMENT OF FACTS

Respondent submits the following timeline in support of his request to deny workplace violence restraining orders to Berliner Cohen LLP, and Fremont-Toyota, in case numbers 22CV005860 and 21CV004608 respectively.

**Chronology of Events leading to two SLAPP filings against Respondent:**

**2020-12-11.** Brian Martin and his wife and daughter visited Fremont-Toyota to purchase a Toyota Tacoma SR Double Cab that had been advertised. There were oddities in the process. For example, one of the financial people involved physically tore up a "Four-Square" numbers document with the excuse: "This copy is too messy, I'll need to redo it".

**2020-12-12 to 2020-12-29.** In the two weeks that followed the truck purchase, Martin received phone calls and text messages that urged him to return to the dealership to sign vaguely specified additional papers.

One example of such a request was: “We forgot to get you to sign a document. Can you come in to sign it and bring all of the loan paperwork with you? We're sorry about the trouble and will buy you a tank of gas to compensate you for your time.”

**2020-12-29.** Martin agreed to return to the dealership. He did so primarily to end the harassing communications from Fremont-Toyota.

Martin met with a financial person there named Hugo Alcantar. Text and email messages confirm that the meeting took place. Alcantar physically took loan papers out of Martin’s hands, left the room, and returned with papers that Martin subsequently noted were not the same.

Martin signed a new paper that he was told was a disclaimer or other innocuous paperwork. Alcantar didn't provide Martin with a copy. At 6:34 p.m., Martin texted Alcantar and asked for a copy. At 10:29 p.m. – this was still on 2020-12-29 – Alcantar sent by email to Martin the clumsy forgery that is described elsewhere. Martin subsequently noted that the forgery wasn’t the paper he’d signed.

**Spring 2021.** Martin’s wife noticed discrepancies in the loan numbers due to the fact that she was the one who took care of the payments. Martin initially dismissed the possibility that there was an issue. Upon closer examination, he realized that fraud had taken place. Martin tried to establish communication with Fremont-Toyota regarding the fraud. His inquiries were ignored.

Martin and Respondent were acquainted. Martin was aware of Respondent’s 44 years of professional experience. The experience in question included years in fraud detection for two corporations as well as data work for UK-NCIS, the DTIC, the CIA, and the military.

Martin asked Respondent to comment on possible evidence. Respondent agreed to do so both as a favor and in the public interest; specifically, the point was that the public should not be defrauded in auto purchases. Martin did not hire Respondent then or ever.

Respondent determined that fraud of an unusually obvious and clumsy nature had occurred. The details are provided later in this document.

**2021-05-29.** Respondent registered the domain name “fremonttoyota.org” to use for a website that was intended to document Martin’s story and Fremont-Toyota’s response to inquiries. There were two purposes

related to the public interest: to reduce the risk of fraud against the public and to seek evidence related to the frequency and degree of fraud at the dealership.

**June to July 2021.** Respondent edited a statement by Martin. There were multiple iterations. Martin confirmed that the evolving statement was accurate. Respondent placed the statement online for the purposes noted in the preceding paragraph. Martin didn't request the posting but he approved it. Martin emailed and/or snail-mailed one or more versions of the statement to people who were believed to be managers at Fremont-Toyota and/or who were believed to be able to forward.

Respondent never snail-mailed anybody involved in the current SLAPP cases. All allegations that involve snail-mail by Respondent are entirely false. Respondent did suggest points and/or wording that Martin might use as well as edit the statement mentioned here.

A Cc list in one of the documents that was sent constitutes the bulk of the alleged violence target list that Petitioner has implied existed.

**2021-06-09 to late July 2021.** Martin exchanged emails with "Mark" Hashimi, believed to be general manager of the dealership, in connection with the fraud that had taken place. It rapidly became clear that Hashimi's goal was to dodge and to obfuscate.

**2021-06-29.** "Mark" Hashimi stated in email: "If you are accusing Fremont Toyota for Fraud, you need to proof it, I will have get in touch with my Attorney and I have your file in front of my with your signatures, I will take action about this!! you can go and post whatever you want. Once you get my attorneys letter I'm sure you will understand that Fremont Toyota did not do any fraud!!!"

The letter suggested that "Mark" Hashimi wasn't proceeding in good faith. Litigation in the public interest against Fremont-Toyota as an entity and/or "Mark" Hashimi as an individual was now believed to be likely to take place.

**2021-07-03.** Respondent registered the domain "markhashimi.org" to use for a website that was intended to document Fremont-Toyota's position on the fraud that had been committed. This was to be by way of the email exchange between Hashimi and Martin.

The idea was to allow the general public to assess Fremont-Toyota's position and to seek in the public interest relevant information from others who had interacted with the dealership.

Respondent posted most though not all of the email exchange. He placed a public profile photo of Hashimi next to each of Hashimi's letters and a similar photo of Martin next to each letter from Martin. The point was to make it easier for readers to follow the email exchange.

Petitioner later characterized the use of a profile photo of Hashimi as incitement to violence against Hashimi despite the fact that a profile photo of Martin had been used as well.

Respondent used the new website, as well, to seek information related to two issues related to Hashimi himself: the question of whether or not "Mark" Hashimi and Kamal Sayed Hashimi were the same person and the question of his location in the context of Court jurisdiction.

**2021-07-06.** Respondent noticed that Berliner-Cohen's San Jose office was visiting one or both of the websites that now existed. He interpreted this, in the context of Hashimi's 2021-07-03 remarks, as assessment by the law office of a possible SLAPP action.

Respondent emailed the law office, using one or more attorneys selected at random, to make the case that abuse of process would be inadvisable.

Petitioner has suggested that the fact one of the attorneys was "non-white" demonstrated racial hatred. Actually, it demonstrated the fact that the organization of the law office wasn't clear. As a related note, Berliner-Cohen later declined to state who was in charge. Respondent stated that he'd ask the State Bar to ask Berliner-Cohen to provide the information. Petitioner has suggested that the idea of asking the State Bar to ask a law office to identify who is in charge is an illegal threat and tantamount to physical violence.

About two hours after Respondent emailed Berliner-Cohen regarding abuse of process, "Mark" Hashimi wrote to Martin. The email included a vague legal threat but suggested that Berliner-Cohen had elected not to commit abuse of process at the time.

**Summer 2021 to Fall 2021.** Martin spoke with both Toyota National and Ally Financial regarding the fraud that had occurred.

Toyota National was polite but disinterested. Ally was not just clearly but aggressively reluctant to discuss the matter or to conduct an investigation.

Ally made statements to Martin to the effect that the company was reluctant even to provide the names of the people that he was talking to. Ultimately, the company claimed to have conducted an investigation but Martin told Respondent that they'd declined to review the physical signatures involved. Respondent isn't informed regarding whether or not they ultimately did so.

During this period, Respondent contacted attorneys for exploratory discussions related to litigation. One attorney commented that Ally Financial was most likely reluctant to conduct an investigation because if the company found that fraud had occurred it might be "on the hook" itself for the disputed amount.

**2021-11-03.** Martin commented as follows on the so-called investigation by Ally Financial:

*"I called Ally yesterday. I have been leaving messages for Mark Burkhart for weeks but he would not return my calls. He said he would call me back but he didn't. The last discus[s]ion I had with him was over a month ago. I called him after he said he was sending an investigator to Fremont Toyota to examine the loan documents. I explained to him beforehand that he would not find original signatures because I never signed the forged document."*

**2021-12-03. Date approx.** An ex-employee of Fremont-Toyota named Sam Pawar [legal name Kulwant Pawar] saw the websites and contacted Martin.

Pawar had filed a claim with EEOC. The claim had been vetted and Pawar had been granted the right to sue. He presented a credible story of systemic fraud against the public by Fremont-Toyota and racial and religious hate speech and harassment by a number of parties at the dealership.

In short, the websites served one of their stated purposes precisely. They brought in a party who provided information that was relevant both to Martin's case and to the public interest.

Pawar requested assistance with the gathering and organization of evidence related to these issues in connection with the interests of the public. He provided names of former employees that he believed might be willing to confirm under oath that the systemic fraud existed. There were photos of license badges that were believed to be in the public record. Pawar had 1 or 2 videos as well. He had also started to contact people who

had posted complaints online related to Fremont-Toyota with the goal of organizing their statements for use in litigation related to the public interest.

Respondent edited a statement by Pawar. On 2021-12-05, Pawar stated that the statement was "100% true". Respondent placed the statement online on the original loan-fraud site.

Pawar's statement was more damaging to Fremont-Toyota than Martin's statement had been due to the fact that it confirmed systemic fraud as opposed to being based on a single consumer event. Pawar's allegations of hate speech and religious and racial harassment by Fremont-Toyota employees would have been seen as problematic as well.

**2021-11-06.** Martin suggested that Respondent remove the word "Jihadi" from the websites as the word might be misconstrued.

The word is believed to have been used for less than 24 hours before the suggestion. Respondent removed the word less than 24 hours after the suggestion.

**2021-11-10. Date approx.** A Fremont-Toyota customer named Sandra Melendez contacted an attorney in connection with the purchase of a Sienna LE. Respondent was provided with some of the paperwork related to the purchase. It suggested that loan fraud similar to the fraud in Martin's case had occurred. Respondent placed one key part online but removed it pending further research.

**December 2021 to January 2022.** Respondent assisted Pawar with the public-interest research that Pawar had requested.

**2022-01-15. Date approx.** Martin notified Respondent that he'd been served with a WVRO. He didn't provide Respondent with the papers or more than basic information. The action was surprising regardless as it was a website take-down attempt directed at a whistle-blower whose story was online but who wasn't the publisher and who had no ability to do a take-down.

**2022-01-16. Date approx.** Respondent wrote a letter and emailed it to multiple people with the intention of getting copies primarily to two people: "Mark" Hashimi and Petitioner.

Petitioner has claimed that the 2022-01-16 letter was a response to a filing against Respondent. As the timeline below shows, the claim is false. The letter was a response to the abuse of process that had been initiated

against Brian Martin. Respondent hadn't seen those papers, but he proceeded based on such points as Martin had summarized for him.

One goal of the letter was to demonstrate that claims which Respondent understood to have been made wouldn't be supportable. Respondent believed that it was especially important to cite the fact that Sam Pawar's testimony regarding hate speech at Fremont-Toyota would be used.

This was in regard to the abuse of process against Martin. However, a reasonable person will agree that it is contrary to the public interest to permit racial hatred such as "minorities are smelly" to be used to justify systemic fraud.

In short, the 2022-01-16 letter was intended to serve both the public interest and Martin's defense.

Petitioner has claimed that the 2022-01-16 letter was inappropriate. It should be noted that in citations she has made, she has carefully scissored-out references to Pawar's statements related to hate-speech at Fremont-Toyota and essentially all context related to other parts of the letter.

**2022-01-16.** Subsequent to learning of the SLAPP action against Martin, Respondent registered the domain name "christinelong.attorney" for use by a website that was to discuss the public-interest issues of SLAPP and abuse of process in general.

**Mid-January 2022.** Respondent had removed the word "Jihadi" from the websites long before. However, subsequent to the filing against Martin, he put up an explanation of why the word had been used previously.

**Mid-January 2022 to 2022-01-29.** Respondent focused primarily on trying to assist Martin though he continued to work in the public interest with Pawar.

Martin was a P.I. but he'd been ordered to surrender his guns. He was dismayed. Respondent pointed out that he didn't need to give them to a gun dealer but could turn them in to his police friends who'd treat him with respect. So that is how he proceeded.

Respondent tried to interest attorneys in Martin's case. Respondent did what else was possible. Martin stated: "I appreciate your help, these people are trying to destroy me".

**Mid-February 2022.** Respondent sought to determine if a legal case had been filed against him. He

asked an attorney to check all possible jurisdictions. The attorney wasn't able to find any filings.

**Mid-February 2022.** A process server broke into a closed backyard, confronted a 78-year-old man who was not Respondent, threw papers on the ground, and left. Respondent was 100 to 150 miles away at the time. He believes that Petitioner was aware of the crime of break-in that was committed because the same process server came back the next day and admitted to the same elderly man that Petitioner's side was aware Respondent wasn't present.

## III.

## MEMORANDUM OF POINTS AND AUTHORITIES

### LEGAL ARGUMENT

#### A. The anti-SLAPP Statute

Code of Civil Procedure Section 425.16, commonly referred to as the anti-SLAPP law, provides in relevant part: "(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly. [¶] (b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. [¶] (2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based. [¶] (3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination. [¶] … [¶] (e) As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: … (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with

an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

Under the anti-SLAPP statute, the court makes a two-step determination: "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)' [citation]. If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. (§425.16, subd. (b)(1) … .)" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88; *see also Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten, supra*, 29 Cal.4th at 89.)

## B. Petitioner's Claims Are Based on Constitutionally Protected Writings

### 1. Overview of the First Step of the anti-SLAPP Analysis

Under the first step of the anti-SLAPP analysis, the Court considers whether the party filing the motion has made "a prima facie showing that the 'cause of action [sought to be stricken] aris[es] from' an act by the [moving party] 'in furtherance of [that party's] right of petition or free speech ... in connection with a public issue.'" (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21, *quotin*g Code Civ. Proc. § 425.16, subd. (b)(1).) To make such a showing, the moving party need not demonstrate that its actions were protected as a matter of law, but need only establish a prima facie case that the actions fell into one of the categories listed in section 425.16, subdivision (e). (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 314.)

Here, Petitioner's claims arise out of the statements published by Respndent on the publicly-accessible websites concerning the loan fraud. As explained below, the statements were made in a place open to the public or a public forum in connection with an issue of public interest.

### 2. The Website Statements Were Made in a Public Forum

"Web sites accessible to the public ... are 'public forums' for purposes of the anti-SLAPP statute." (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41; *see also Muddy Waters, LLC v. Superior* Court (2021) 62 Cal.App.5th 905, 917 ["Internet postings on websites that 'are open and free to anyone who wants to read the messages' and 'accessible free of charge to any member of the public' satisfies the public forum requirement of section 425.16. [citation]"]; *Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 693; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1366; *D.C. v. R.R.* (2010) 182 Cal.App.4th 1190, 1226.) In this regard, the websites at issue do not cease "to be public simply because interested persons may not be able to respond" as "an individual's right to free speech should be limited or curtailed based upon the ability of another person to respond." (*Muddy Waters,* 62Cal.App.5th at 917-918.)

**3. <u>The Statements on the Websites Concern an Issue of Public Interest</u>**

The statements on the websites address an issue of "public interest," namely Fremont Toyota's fraudulent loan practices which affect large portions of the public who purchase automobiles.

The anti-SLAPP statute does not define "public interest," but "its provisions 'shall be construed broadly' to safeguard 'the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.'" (S*ummit Bank, supra,* 206 Cal.App.4th at 693, *quoting* Cal. Code Civ. Proc. § 425.16, subd. (a).) In determining whether an issue is a matter of public interest, courts may consider "whether the subject of the speech or activity was a person or entity in the public eye or could affect large numbers of people beyond the direct participants; and whether the activity occur[red] in the context of an ongoing controversy, dispute or discussion." (*FilmOn.com Inc.v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 145, internal quotation marks and citations omitted.)

Court have routinely found that websites which provide information to consumers fall within the scope of the anti-SLAPP statute. (*See, e.g., Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883; *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1144.)

In *Wilbanks*, defendant Wolk, a self-styled "consumer watchdog" in the viatical insurance industry, maintained a website that provided "information about those who broker life insurance policies, including information about licenses, suits brought by clients against brokers and investigations of brokers by

governmental agencies." (*Wilbanks, supra*, 121 Cal.App.4th at 889.) In connection with that purpose, she published allegedly defamatory statements suggesting that plaintiffs, a broker of viatical settlements and its principal, had engaged in wrongful conduct against their customers and were under state investigation. In concluding that the posting involved matters of public interest, the *Wilbanks* court first made clear that the issue of plaintiffs' business practices, in and of itself, did not meet the normal criteria for matters of public interest, since "plaintiffs are not in the public eye, their business practices do not affect a large number of people and their business practices are not, in and of themselves, a topic of widespread public interest." (*Id.* at 898.) However, the court nonetheless concluded that the posting was protected, because it was "in the nature of consumer protection information …" (*Id.* at 900.) As the *Wilbanks* court explained, "It is undisputed that Wolk has studied the industry, has written books on it, and that her Web site provides consumer information about it, including educating consumers about the potential for fraud. As relevant here, Wolk identifies the brokers she believes have engaged in unethical or questionable practices, and provides information for the purpose of aiding viators and investors to choose between brokers. The information provided by Wolk on this topic, including the statements at issue here, was more than a report of some earlier conduct or proceeding; it was consumer protection information." (*Id.* at 899.) In other words, Wolk's statements about plaintiffs were made in connection with her overarching goal of providing consumer protection information to those interested in the viatical industry, and "[i]n the context of information ostensibly provided to aid consumers choosing among brokers …" (*Id*. at 900.)

Similarly, in *Chaker,* the defendant posted derogatory comments about the plaintiff and his forensics business on a website, Ripoff Report. (*Chaker, supra,* 209 Cal.App.4th at 1146.) The defendant's statements included "'You should be scared. This guy is a criminal and a deadbeat dad…' 'I would be very careful dealing with this guy. He uses people, is into illegal activities, etc. I wouldn't let him into my house if I wanted to keep my possessions or my sanity.'" (*Id.* at 1142.) The defendant also accused the plaintiff of picking up streetwalkers and homeless drug addicts. (*Id*.) The court had "little difficulty finding the statements were of public interest. The statements posted to the Ripoff Report [website] about Chaker's character and business practices plainly fall within the rubric of consumer information about Chaker's 'Counterforensics' business

and were intended to serve as a warning to consumers about his trustworthiness." (*Id.* at 1146.)

Likewise, here, the websites provide information to consumers about Fremont Toyota's fraudulent loan practices, including its forgery of documents. This is quintessential consumer information, and is protected speech under Code of Civil Procedure § 425.16, subdivisions (3) and (4).

**C. Petitioner Can't Show a Probability of Success on the Merits of the WVRO**

**1. Petitioner Has the Burden of Establishing Their Claims Have Merit**

Because the Petitioner's claims arise from protected speech, the Court must turn to the second prong of the section 425.16 analysis: whether Plaintiffs have established a probability of prevailing on the causes of action in their Complaint.

"'In order to establish a probability of prevailing on the claim [citation], a petitioner responding to an anti-SLAPP motion must 'state[ ] and substantiate[ ] a legally sufficient claim.' [Citation.] Put another way, the petitioner 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the petitioner is credited.' [Citations.] In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the petitioner and the respondent [citation]; though the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the Respondent's evidence supporting the motion defeats the petitioner's attempt to establish evidentiary support for the claim.'" (*Vargas v. Cityof Salinas* (2009) 46 Cal.4th 1, 19-20.)

**2. Petitioner Has the Burden of Establishing By Clear & Convincing Evidence Respondent Committed an Unlawful Act of Violence or Credible Threat of Violence Against Petitioner**

Section 527.8 permits an employer to seek a restraining order on behalf of an employee who has "suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace." (§ 527.8, subd. (a).) A "credible threat of violence" includes a "course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose." (§ 527.8, subd. (b)(2).) After a hearing, if a judge "finds by clear and convincing evidence that the Respondent

engaged in unlawful violence or made a credible threat of violence, an order shall issue prohibiting further unlawful violence or threats of violence." (§ 527.8, subd. (j).) The trial court must find that the evidence shows a credible threat of violence. *City of Los Angeles v. Herman (2020) 54 Cal. App. 5th 97, 103*. The court also must find that irreparable harm would occur in the absence of an order because Respondent's threatening conduct was reasonably likely to recur. *Id.*

"Context is everything in threat jurisprudence." *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., (2005) 129 Cal. App. 4th 1228, 1250*. In *Planned Parenthood,* the court held that in analyzing whether a "threat of force" was made within the meaning of the statute, the alleged threat must be analyzed in light of "the entire context and under all the circumstances," including prior violence by third parties. *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., (2005) 129 Cal. App. 4th 1228, 1250*.

**3. Respondent's Posting of Petitioner's Residence Addresses Served a Legitimate Business Purpose and Was Not A Credible Threat of Violence**

Respondent's posting of Petitioner's home address alone, does not amount to a credible threat of violence. Courts have found a credible threat of violence existed by the posting of home addresses online when combined with additional online treats, as well as the Petitioner's knowledge of the occurrence of past acts of violence. For example, the courts listed below found a credible threat of violence based upon the posting of Petitioner's residence addresses when the following additional factors existed:

***City of Los Angeles v. Animal Defense League (2006) 135 Cal. App. 4Th 606***

Petitioner attached declarations and exhibits asserting that Respondent's described themselves as a "militant animal rights activist group" on a Web site on which "high powered bullets are aimed at '[Petitioner's] Target- Administration,' which leads to [Petitioner's] employee's name and home address and a page with [Petitioner's] employee's name with bullet holes depicted." *City of Los Angeles v. Animal Defense League (2006) 135 Cal. App. 4th 606, 612.*

[Petitioner]'s declaration states the Web site has his picture, home information and a page of allegations regarding his job performance. *City of Los Angeles v. Animal Defense League (2006) 135 Cal.*

*App. 4th 606, 612.* Petitioner also declared, "I am afraid for my life and safety and I am especially afraid for the lives and safety of my wife and four children, who were badly frightened by the[ir knowledge of a prior noisy demonstration at their home.] *Id.* Hence, the fact that Petitioner was targeted by self-described militants, who posted Petitioner's home address and telephone numbers on their web site along with violent images, and previously created a noisy demonstration at Petitioner's home, allowed the court to determine a credible threat of violence had been made. *Id. @ 612, 627.*

***Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., (2005) 129 Cal. App. 4th1228***

The court in *HLS, Inc. v. SHAC USA, Inc., supra at 1253*, had plenty of contextual evidence to enjoin Respondent from targeting Petitioner or any other protected party, from publishing their names, addresses or other identifying information… at their homes after determining Respondent had committed the following conduct:

[Respondents] wrote in a Web site entry that it "has identified, and is targeting, any and every pillar of support that [Petitioner] has. This includes … individual employees." *HLS, Inc. v. SHAC USA, Inc., supra at 1253.* The entry contained a "Click here" prompt to learn the identities, and presumably home addresses and other identifying information, of the "current targets" of the campaign. *Id.* Additionally, "'In England last summer, activists beat [Petitioner's] managing director and sprayed a caustic liquid in the face of another [of Petitioner's employee[s].'" *HLS, Inc. v. SHAC USA, Inc., supra at 1263.* The Web site article quoted [Respondent] as saying, " 'inducing human terror "pales by comparison to what … animals feel" during research.' " *Id.*

Also, Respondent's USA's Web site published "tactics" animal rights activists have used against HLS employees, including physical violence and threats of violence. *Id.* The entry noted that such tactics as "[d]emonstrations at your home or place of work, including verbal abuse using a loudhailer," "[c]haining gates shut or blocking gates with old cars to trap staff on site," "[p]hysical assaults on yourself and your partner, including spraying cleaning fluid into your eyes," "[s]mashing all the windows in your home when your family is home," "[s]ledghammer attack on your car—while you are still inside it," "[f]irebombing your car in your drive, firebombing sheds and garages," "[b]omb hoaxes requiring

evacuation of premises," "[t]hreatening telephone calls and letters (threats to kill or injure you, your partner and children)," and "[a]rranging for the undertaker to call to collect your body." *HLS, Inc. v. SHAC USA, Inc., supra at 1253.*

***City of Los Angeles v. Herman (2020) Cal. App. 2d. 97***

In *City of Los Angeles v. Herman (2020) Cal. App. 2d. 97*, the court properly imposed a workplace violence restraining order on appellant pursuant to CCP § 527.8 after appellant made threatening statements toward a deputy city attorney at city council meetings. The court found Respondent's threats were credible and that Respondent's repeated disclosure of Petitioner's home address served "no legitimate purpose." (§ 527.8, subd. (b)(2).) *Id. at 102-103.* A reasonable person could conclude that Respondent disclosed Petitioner's address so that Petitioner would know Respondent could find Petitioner's residence. *City of Los Angeles v. Herman (2020) Cal. App. 2d. 97*, 102-103. The threatening context of these disclosures is further shown by Respondent's direct threat that he would "go back to Pasadena [where Petitioner lives] and fuck with" him. *City of Los Angeles v. Herman (2020) Cal. App. 2d. 97*, 102-103. The circumstances of the threats, including Respondent's angry demeanor, supported the trial court's conclusion that the threats could reasonably be viewed as serious. *Id. @ 103*.

Here, Respondent has never been alleged to have committed an unlawful act of violence against Petitioner. Thus, Petitioner must assert that Respondent committed a credible act of violence towards the Petitioner, and reviewing the cases above, it appears Petitioner CAN NOT make this initial showing sufficient to withstand Anti-Slapp review. Respondent submits his online speech served a legitimate business purpose of exposing consumer fraud at Fremont-Toyota and protecting the purchasing public of said fraud. Please see the Declaration of Robert Kiraly below for the contextual analysis of the Constitutionally protected free-speech involved here.

**4. Associating Petitioner as Counsel for Jihadis Is Not A Credible Threat of Violence**

**The First Amendment Protects Hate Speech**

The First Amendment of the United States Constitution and the California Constitution prohibit the enactment of laws abridging the freedom of speech. The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the

people" [Citations] and it "attempt[s] to secure the 'widest possible dissemination of information from diverse and antagonistic sources.'" (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 266 [11 L. Ed. 2d 686, 84 S. Ct. 710].) Speech "may indeed 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. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, (2005) 129 Cal. App. 4th 1228, 1249.

Even assuming Petitioner's contextual assertions regarding Respondent's use of the term Jihadi is true, that speech is still Constitutionally protected at the Federal and state levels.

**5. Respondent Is Entitled to Recover His Attorney's Fees and Costs**

Section 425.16, subdivision (c), makes an award of attorney fees and costs to a defendant who prevail on an anti-SLAPP motion mandatory. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) Respondent will submit an itemization of his attorney's fees upon prevailing on the anti-SLAPP Motion.

## IV.

## CONCLUSION

Petitioners' WVRO's are an improper attempt to chill Respondent's free speech rights by forcing him to defend factually and legally meritless claims. The Court should strike the Petitions pursuant to the anti-SLAPP statute, and award Respondent his attorney's fees and costs.

Dated: April 04, 2022

Nabiel Ahmed

NABIEL C AHMED, Esq. for Respondent Robert Kiraly

## III.

## DECLARATION OF ROBERT KIRALY; 22CV005860

I, ROBERT KIRALY declare as follows:

The statements made below are within my personal knowledge or are stated upon information and belief, which statements I believe to be true. If called upon to testify, I could and would competently do so.

**Contents:**

**1. Overview and key points**

**2. Deceptive practices at Fremont-Toyota and the "Jihadi" issue**

**3. Responses to allegations**

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**Part 1. Overview and key points:**

This document is Robert Kiraly's declaration related to case 22CV005860.

## Background:

I'm a graduate of the University of California at Berkeley with High Honors in Mathematics and Honors in Computer Science.

I'm also a software architect and data specialist with 44 years of professional experience. My decades of experience include anti-terrorism for UK-NCIS after 9/11, military database appliances, data conversion and other tasks for the U.S. Defense Technical Information Center and the CIA, CCPA and HIPAA privacy issues, and the detection of fraud of different types for two corporate chains, including a respected national chain that has about 1,500 stores.

Over the past decade, I've spent a significant amount of time on fraud detection while employed in those capacities.

## My involvement with Brian Martin:

Brian Martin is a licensed private investigator in the S.F. Bay Area. In December 2020, Mr. Martin purchased a Toyota Tacoma from Fremont-Toyota. In connection with the vehicle purchase, Fremont Toyota provided Mr. Martin with a forged document that the dealership claimed evidenced Mr. Martin's agreement to pay $9,995 more than had actually been agreed to. My understanding is that this worked out to about $6,000 in terms of the actual net cost to Mr. Martin.

Mr. Martin first noticed the loan fraud in Spring 2021 when he looked into discrepancies in the paperwork. He was aware of my background and believed that I'd be able to comment objectively and accurately. So, not long after he noticed the issue, he asked me to determine whether or not there was evidence that confirmed the existence of fraud.

I agreed to do so as a personal favor and in the public interest. Mr. Martin did not hire me.

**My review of the loan fraud:**

Mr. Martin provided materials of different types for review. This included text messages and emails that supported his story. I reviewed meta-data in the email headers and it was consistent with Mr. Martin's allegations that his signature was forged onto an addendum of the sales contract entitled "market adjust[ment]" that increased the vehicle price by $9,995.00.

It turned out that the forged document didn't even purport to be an agreement. It was just an electronic copy of a signature pasted onto a copy of a price sticker. There was nothing about an agreement other than the hand-scrawled words "Market Adjust". The figures didn't add up. In short, this was an unusually clumsy example of loan fraud on the part of Fremont Toyota.

Hence, after my review of Mr. Martin's allegations, including his supporting evidence, I believed loan fraud had been committed by Fremont Toyota, and I designed a way to seek further evidence of a systemic practice of loan fraud by creating two websites. The number of websites was increased to three in January 2022 for reasons explained below.

**The websites:**

I elected to put the story online for the purpose of protecting automobile consumers from being de-frauded by Fremont-Toyota. Ultimately, three websites were placed by me online: fremonttoyota dot org, markhashimi dot org, and christinelong dot attorney.

I created a number of alternate domain names as well. The alternate domain names simply linked to the original three sites.

The "fremonttoyota" and "markhashimi" websites set forth my opinions "that Fremont-Toyota side has committed auto loan fraud against multiple unwary Toyota buyers". The websites offer advice to auto buyers, including to "Be suspicious of every dealership regardless of history unless you trust a particular sales-person" and to "nail down the numbers."

The websites further recommend that the public: “Never buy from a dealership that has a history of fraud or abuse of different types. This includes Fremont-Toyota of Fremont, California. The rhyme to remember is: Stay away or be prey.”

The “christinelong” site discusses, additionally, the retaliation that Fremont-Toyota customers may face if they talk publicly online about loan fraud.

None of the websites are used for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services.

**Other victims came forward:**

Two people came forward to comment regarding loan fraud occurring at Fremont-Toyota. Their statements suggested that the loan fraud issue wasn't limited to Martin's experience and that the general public was at risk of systemic loan fraud by Fremont Toyota.

One person, a Fremont-Toyota customer named Sandra Melendez who had recently purchased a Toyota Sienna LE, indicated that Fremont-Toyota had falsely claimed that she too had agreed to a $9,995 markup over the agreed-upon vehicle price.

Brian Martin forwarded some of Ms. Melendez’s evidence of concern to me. My understanding was that these were the files Ms. Melendez was providing to attorneys in the course of seeking redress.

In Ms. Melendez’s case, there was once again no agreement to a price change; just the words “Mark-up” and the $9,995 figure crudely scrawled by hand onto a generic price sticker. The $9,995 figure was the exact same number that had appeared in the forged document in Mr. Martin's case. My assessment was that the dealership might be using a standard approach to commit fraud on a regular basis. This was consistent with what I learned from the next person.

Sam Pawar, an ex-employee of Fremont Toyota, contacted Brian Martin due to seeing the fremont-toyota.org website. Mr. Martin directed Mr. Pawar to me in the context of a loan-fraud assessment. Mr. Pawar told me that fraud against the general public was a common practice at the dealership. He then confirmed to me that the following statement which appeared subsequently on the websites was “100% true”:

*"Most USA people are bad at math. The Fremont-Toyota people took advantage of this. If a dollar figure was at $9,999, Mark Hashimi and his people just added $10,000 to make it $19,999. Fremont-Toyota figured that it was on the customer to detect a mistake and that it would be no big deal to take care of it in the cases where somebody did. I saw them committing fraud and stealing from people. I talked to General Manager Kamal [Mark Hashimi]. He told me to get out of his office. Mark Hashimi was part of the fraud operation, so I lost my job. But I did the right thing. I just wanted to protect Toyota buyers from the fraud and explain how to buy a car from Fremont-Toyota without being robbed."*

**The emails:**

Mr. Martin and I separately sent emails related to the loan fraud to employees and agents of Fremont Toyota.

In 2021, I published online primarily letters between Mr. Martin and "Mark" Hashimi. The purposes of publication included transparency related to inquiry into the loan fraud and to let the car-buying public judge for itself whether or not Fremont Toyota's denials of fraud were credible.

In January 2022, I wrote a detailed letter intended to be read by Mr. Hashimi and Fremont Toyota's attorney, Christine Long. The letter offered for consideration points related to a case that had been filed against Martin. I wasn't aware at the time of any case against me.

I sent that letter to multiple parties with the request that it be forwarded. In some cases, I added that consensual communication related to the points made in the letter would be welcome.

**Part 2. Deceptive practices at Fremont-Toyota and the "Jihadi" issue:**

Petitioner repeats numerous times in her complaints the point that Respondent has used the word "Jihadi". The goal is to suggest that the word was used inappropriately and impermissibly in the context in which it was found. The term "Jihadi" was referenced in my websites not at random, but as the dictionary word for the type of race and religious harassment that Fremont-Toyota employees subjected a minority-race employee named Sam Pawar to for months. This said, the word was never used except briefly well before the WVRO against Mr. Martin was filed. More about that fact further down.

Fremont-Toyota employees directed remarks towards Mr. Pawar of the following type: "Mother-

f*cker you can't call us brother because you aren't Muslim". The group indicated as well that Mr. Pawar's race and other races were inferior and "smelly". As Mr. Pawar was of Asia-India race, they also referred to him as "Mr. Curry".

The hate-based perspective of the Fremont-Toyota core group extended to minority-race customers of the dealership. The word "smelly" was used in this context. Inside Fremont-Toyota, though, Mr. Pawar became a special target due to his failure to go along with deceptive practices that were used on a regular basis.

Mr. Pawar sold a Dodge van to an Indian couple. The couple asked him about lower interest rates. Mr. Pawar took them to see a Fremont-Toyota Finance Manager named Ayub Mohammad Jalal. Mr. Jawal was furious. He shouted, "Why you tell them about the lower interest rates?! How can we make money if we tell them about those rates?!"

At this point, Mr. Jawal became physically violent and threw an object. He shouted further, "All of you Indians are like that!! Stupid salesperson!! Why you telling them about lower interest rate!! F*ck you! Get out of my office, you stupid man!"

Not much later, Mr. Pawar sold a Toyota RAV4. A Fremont-Toyota Finance Manager named Naqib U. Halimi credited half of the sale to another salesperson.

Mr. Pawar asked Mr. Halimi why this had happened. Mr. Halimi responded, "You asking lower interest rate from Ayub Mohammad Jalal and that's your punishment. I'm taking your half-deal and giving to other person."

"You can't do that," Mr. Pawar said. "I'll complain to the manager". Mr. Halimi of Fremont-Toyota laughed. He said, "Go and complain to your Hindu god also and no one will help you". This proved to be true. Racial and religious harassment of Mr. Pawar escalated rapidly.

Mr. Pawar asked, "Why is this happening?" The response was, "It's because you complained about Naqib Halimi". Mr. Halimi had, again, confiscated Mr. Pawar's earnings to "punish" him for even bringing buyers to Mr. Jalal to discuss possible lower interest rates.

Respondent used the word "Jihadi" as the dictionary word for the conduct summarized above. The definition used is as follows. The definition has been cited by Petitioner in one complaint as being, in and of

itself, incitement to violence:

*"The Quran uses the word "jihad" in two general contexts: the internal struggle, "al-jihad fi sabil Allah", and the external one. The inner struggle is praiseworthy. The external one, not so much. The latter ranges from, on the mildest side, those who proselytize to, on the most dangerous side, Muslim terrorists."*

The word is believed to have been removed from the websites within 48 hours of its initial use. It is believed not to have been used subsequently until Brian Martin was served with a SLAPP action intended to prevent the public from learning about deceptive practices against the general public. At that point, an explanation of why the word had been used originally was placed online. Respondent used the word subsequently in correspondence as well.

**Part 3. Responses to allegations:**

*** Alleged investigation by Ally Financial:**

Petitioner cites an investigation by Ally Financial that she asserts indicates proves no wrong-doing by Fremont-Toyota occurred and that the actions of all three of the whistle-blowers involved were motivated by ethnic hatred.

Including, it should be noted, the whistle-blower who is himself an ethnic minority and to whom Fremont-Toyota employees stated: "Mother-f*cker you can't call us brother because you aren't Muslim".

The claim that Ally Financial's investigation can be used to dismiss allegations of fraud is false on a prima facie basis. The prima facie part is that Ally Financial conducted an investigation of only one case and Respondent, the publisher of the websites at issue, did not rely solely on the one case. In fact, he relied on statements and/or tangible evidence provided by three different and initially unrelated people: Brian Martin, Sam Pawar, and Sandra Melendez.

Petitioner cites an investigation by Ally Financial of Martin's case and only of that case. Respondent is informed and believes that the Martin investigation didn't meet legal and/or usual, customary, and reasonable standards. In particular, as one example, Ally doesn't seem to have reviewed the original signature on the forged document that Fremont-Toyota falsely claimed was Martin's agreement to add $9,995 to the price of his vehicle. The point is, however, irrelevant to the other cases that Respondent relied on.

Respondent doesn't need to prove that Ally Financial didn't actually conduct an investigation to

explain his understanding of the facts, his intentions, and the basis on which he proceeded.

Martin's case was persuasive enough regardless of the putative investigation. Fremont-Toyota asked Martin to return weeks after sale, physically took loan papers out of his hands and replaced them, and then provided Martin with a clearly – and clumsily – forged document which supposedly evidenced Martin's agreement to pay $9,995 more than had actually been agreed to. Note: This worked out to about $6,000 in terms of the actual net cost to Martin.

Text messages and emails exist which confirm that the unusual meeting took place. Additionally, the forged document didn't even purport to be an agreement. It was just an electronic copy of a signature pasted onto a copy of a price sticker. There was nothing about an agreement other than the hand-scrawled words "Market Adjust". The figures didn't add up. In short, this was not simply loan fraud but an unusually clear and clumsy example of the practice.

*** "Cyberattacks":**

Petitioner uses the word "cyberattack" in multiple places without ever citing an example of a "cyber-attack". The implied allegations are conclusory and prima facie false.

The prima facie part is that Petitioner has characterized passive websites and email as "cyberattacks". Neither is a "cyberattack", in any formal or legal sense, unless malware is involved. A "cyberattack" is specifically a software and/or illegal access attack such as DDoS – Distributed Denial of Service – or breaking into a bank account.

As a related note, Respondent believes that Petitioner hired parties in January 2022 to conduct the latter type of "cyberattack" on him. Specifically, those parties accessed his financial records, the intent being to determine his physical location at the time. Respondent spoke by phone with one of the people involved and may or may not be able to identify them in due course.

*** "Stalking":**

Petitioner uses the word "stalking" or "cyberstalking" in multiple places. Neither Petitioner nor any other party ever, prior to litigation, expressed a concern or made a request to Respondent related to any conduct

that they found objectionable or any steps that they wished him to take or not to take. Respondent engaged in communications and research in good faith. Such allegations are false.

*** "Misleading" email addresses:**

Petitioner claims that Respondent "has used misleading email addresses … under the ruse that he is soliciting this information with Petitioner's permissions for a book he is writing."

The allegation related to "ruse" is conclusory and false. In fact, Respondent took care, in most cases, to use usernames that clearly identified email as being sent in a "Review" context. For example: Fremont-Toyota Review.

Respondent has some experience with SEO [Search Engine Optimization]. He chose domain names that would, in the public interest, take traffic from sites associated with a company that committed fraud on a systemic basis and build traffic to sites that documented the fraud.

The email addresses used the same domains because that is how the FOSS software that Respondent used, Mail in a Box, works. Those who wish to confirm Respondent's claim may review the home page for the software at the following link: https://mailinabox.email/

Petitioner adds that Respondent tried to persuade others he had her permission to ask questions. The allegation is both conclusory and false. Petitioner offers no evidence to the effect that anything stated was a "ruse" or that there was an intent to mislead.

In fact, Respondent stated that Petitioner was aware of the inquiry in an effort to be transparent as he has been transparent since the start of the current matter in mid-2021. Additionally, the book referred to has been in progress since 2012, parts are online, and Respondent believes that Petitioner is not only aware of this but has read the parts in question. httpd logs – this is a technical term – suggested that parties at Berliner-Cohen's San Jose office had done such reading.

*** There were no "intimate" details:**

Petitioner alleges that Respondent requested "intimate" details from others. The allegation is false. "Intimate" implies details of a far more personal nature than were sought. Respondent requested ordinary personal details and did so for reasons involving Free Speech, Freedom of Association, and the public interest.

Any biographer is permitted to ask questions of the type that were asked or no biographies might exist. Any person who wishes to respond on a consensual basis is, in the United States of America, free to respond.

The public interest part is related to Petitioner's use of abuse of process to prevent the general public from learning about deceptive practices and loan fraud. A biography related to a person who would do this and the factors that led them to be able to compartmentalize this conduct is in the public interest. So are the details of what Petitioner was able to do, and chose to do, in the context of the history of her career.

*** Distribution of a photograph:**

Petitioner claims that Respondent "has stated he is distributing Petitioner's photograph". This seems to be a conscious falsehood. Respondent has never stated or implied any such thing. The claim is indicative of Petitioner's need to find a way to falsely position cases that are about fraud against the general public as being about violence.

Respondent assumes that Petitioner will defend the falsehood by stating that Respondent intended to popularize a public-interest website related to abuse of process and that her photo was on the website. It's an inappropriate leap to go from there to "distributing" a photograph.

Petitioner lied about the word "distributing", of course, to falsely suggest that she was being targeted for violence.

*** The role of an attorney:**

Petitioner has made false claims in multiple places to the effect that Respondent has claimed she is a Jihadi terrorist", that she is "embedded" in a "terrorist" organization, or that she "supports Jihadi terrorists".

Petitioner is referring solely to the fact that Respondent publicized hate speech and racial and religious harassment by Fremont-Toyota directed at a minority-race whistle-blower.

The whistle-blower was Sam Pawar, an employee of the dealership. The hate speech by Fremont-Toyota employees included statements such as: "Mother-f*cker you can't call us brother because you aren't Muslim".

For details related to such events, including a clear connection to the public interest, see the "Deceptive practices and Jihadi issue" section at the start of these responses.

Petitioner is asserting to the Court that because she represents alleged Jihadis she herself is "embedded" with Jihadis or is one of the group. This contradicts Respondent's understanding of what an attorney is and is supposed to do.

Petitioner's attempts to represent hate speech committed by her clients as incitement to violence against her clients' attorney [Petitioner herself] are out of line. The allegation of such incitement is conclusory and emphatically false.

*** Brian Martin's role in research:**

Petitioner claims that Respondent "has acted with the assistance of Brian Martin, who is a licensed private investigator who would have access to the private information and is obtaining it in violation of the rights conferred upon him."

The claim is conclusory and false. In fact, the January 16, 2022 letter that Petitioner cites repeatedly in the current cases was sent in part to explain to Petitioner how information had been and was being assembled. Respondent mocked the notion that the procedures used were so complicated that a P.I. must have come up with them. He believes that Petitioner understood the explanation and has mentioned Martin here to indirectly support SLAPP litigation against him.

The purpose of the latter SLAPP, as with the multiple SLAPPs that Petitioner has filed against Respondent, is to prevent the general public from learning about deceptive practices and fraud of different types at Fremont-Toyota.

The short version is that the parts related to "Mark" Hashimi and Petitioner were largely in Google. The January 16, 2022 letter explained this. Respondent included possible street addresses for "Mark" Hashimi and Petitioner as well as the vehicle information that she mentions in that letter to illustrate the point and to make the related point that Petitioner had no case against Martin.

Martin did do research related to Khachaturian Foundation and in a few other areas that Respondent relied upon. However, Petitioner offers no evidence to the effect that improper, let alone illegal, means were ever employed.

*** Biography:**

Petitioner states: “On said website, [Respondent] has listed residential addresses for Petitioner, personal email addresses, description of a vehicle that he believes belongs to her (which it doesn’t), discussions regarding her alleged family members and his beliefs regarding her parents, her siblings and related private personal information.”

Petitioner is referring to, specifically, a letter dated January 16, 2022 that Respondent attempted to send to her and “Mark” Hashimi, including attempts to send by forward that Petitioner has positioned as “harassment”.

A link to the letter was included on a website that had been created to discuss the public interest issue of SLAPP by corporations and other types of abuse of process. The details in question were therefore “on said website” but Petitioner neglects to mention context.

First, information that is in Google may be “private” in some respects but not in the sense that Petitioner suggests.

The [possible] street addresses and vehicle information that Petitioner alludes to were listed to make the point to her that she had falsely accused Brian Martin of using “illegal” means to obtain information. In fact, the information that she cites here was in Google [or in sites linked to by Google].

Second, if there are legitimate and reasonable purposes, a biographer is permitted to research family relationships and even, up to a point, to discuss conclusions, or no biographies might exist. A biography related to a person who is willing to commit abuse of process and the factors that led them to compartmentalize this conduct is in the public interest. So are the details of what Petitioner was able to do, and chose to do, in the context of the history of her career.

Information as simple as the age at which parents passed away or parts of life that siblings share may be relevant to analysis. In Petitioner’s case, for example, it appeared that she might be close in a positive way to a brother and that this might be related to the earlier than usual passing of their parents. These are not “intimate” secrets as Petitioner implies in some allegations. And there is no question that to seek an understanding of Petitioner’s SLAPP actions [plural] in defense of systemic fraud committed against the general public is in the interests of the general public.

Respondent doesn't need to prove the fraud or SLAPP allegations to explain his understanding of the facts, his intentions, and the basis on which he proceeded.

Respondent adds that he is no "vigilante" as Petitioner has stated. He has a legitimate and understandable personal interest in abuse of process as well as a desire to do something productive about it in the interests of society.

*** Objectionable description of Petitioner:**

Petitioner notes that Respondent has referred to her as a "rapist of an attorney". The quote is accurate. However, the phrase is an assessment of Petitioner's character and conduct as opposed to a statement of fact related to physical rape. A reasonable person wouldn't interpret the phrase otherwise.

Respondent acknowledges that the phrase is unnecessarily colorful and that this distracts from attention to the facts of the matter.

*** Petitioner has offered a conscious falsehood related to the Quran:**

Petitioner has stated that Respondent used the phrase "Muslim terrorists" to describe her clients. The allegation seems to be a conscious falsehood as we'll demonstrate below. Note: Pointing to the words "Muslim terrorists" doesn't make a prima facie false allegation true.

Respondent did offer "Mark" Hashimi an admonishment that included the word "terrorist" and we'll come to that point shortly.

In the "Muslim terrorists" allegation, Petitioner is believed to be quoting the following paragraph:

*Q5. The Quran uses the word "jihad" in two general contexts: the internal struggle, "al-jihad fi sabil Allah", and the external one. The inner struggle is praiseworthy. The external one, not so much. The latter ranges from, on the mildest side, those who proselytize to, on the most dangerous side, Muslim terrorists.*

The passage is a paraphrase of paragraphs that you'll find in textbooks and Wikipedia. It's obviously a neutral analysis and entirely correct.

Respondent had written to "Mark" Hashimi to ask him to justify the following statement and others made by people working under his authority: "Mother-f*cker you can't call us brother because you aren't Muslim".

In the next paragraph, starting with the next line after the Quran analysis quoted above, a paragraph

that Petitioner was certainly aware of, Respondent drew the conclusion that the Fremont-Toyota employees who had engaged in hate speech against a non-Muslim employee "fall right in the middle of the external-jihad scale".

A reasonable person would agree that "right in the middle" is, if anything, generous to Fremont-Toyota.

Fremont-Toyota employees referred to minorities – including their customers – as "smelly", they mocked the "Hindu god", and these remarks were part of a pattern that lasted for months. Respondent doesn't need to prove these allegations to explain his understanding of the facts, his intentions, and the basis on which he proceeded.

*** The only actual public use of "terrorist":**

Respondent presently recalls having characterized any party to the current cases publicly as a "terrorist" once and only once. In the January 16, 2022 letter which Respondent attempted to use to establish communication with "Mark" Hashimi and/or Petitioner, he included a copy of Surah 9:67. Note: A Surah is essentially a Quran Bible Verse. He captioned the Surah as follows:

*If you so much as poke a finger at it, Streisand Effect is a possibility. Jihadi, false Muslim, terrorist; I suggest that you Google the term "Streisand Effect"*

The intention was to use the Quran Bible Verse to admonish Hashimi in the hope that a conscience existed. A reasonable person would agree that, in the context of the Surah, the statement was nothing more than an admonishment. Note: The Surah was in a Middle East language. The English translation is as follows:

*The hypocrites, both men and women, are all strictly alike. They enjoin the wrong and forbid the right and withhold their hands (from spending for the cause of Allah). They have forsaken Allah, so He (too) has forsaken them. It is the hypocrites who have truly been the rebellious. The Holy Quran;* Surah 9:67

Note: The "Streisand Effect" referred to above is the situation where a website take-down lawsuit has the opposite of the intended effect. The content in such cases goes "viral" and is mirrored by thousands of people.

*** State Bar mediation isn't a bad thing:**

Petitioner claims: "[Respondent] then and now threatens that if Berliner Cohen, LLP continues with

representation he will seek to have the attorneys stripped of their licenses and damage their reputations."

Respondent presently recalls that he has directly speculated about disbarment for one and only one attorney in the current matter; specifically, Petitioner.

Respondent believes in good faith that Petitioner may be in violation of standards. He doesn't yet contend this formally. The fact that four separate though related SLAPP actions against two parties seem to have been initiated to prevent the general public from learning of deceptive practices suggests the lack of a moral compass. This combined with what seem to be conscious falsehoods suggests that a review of past cases may lead to evidence of violations.

As a related note, Petitioner has made an issue in the current cases of Respondent's claims that two attorneys he happens to have known in the past elected to leave their firms. The attorneys in question didn't do so due to inappropriate steps on Respondent's part. Misconduct such as, for example, trading sexual favors for representation or not actually being licensed is supposed to be addressed. It's unlikely that most people or attorneys would question the point.

Regarding Berliner-Cohen in general, Respondent attempted to engage other attorneys in discussion by noting that he'd start with asking the State Bar to ask Berliner-Cohen to take the minimum step of responding to inquiries related to the organization of the law office.

Respondent believes that the idea a law office should respond to such inquiries and that the State Bar might advise them to do so is reasonable.

The organization of the law office was of interest in connection with the question of whether or not abuse of process to protect an organized-crime group had been approved by anybody in the law office other than Christine Long. The answer was intended to shape other steps at the State Bar level that were to be taken in the public interest.

*** Police reports:**

Petitioner mentions that police reports were filed or discussions with the police took place. Respondent was never aware of any type of police report or investigation. This was the case, it appears, because the police understood there was no merit to the false claims that Petitioner and/or her clients made.

*** The Feds are not physical violence:**

Petitioner cites that Respondent stated he will "go to the Feds". The point of the citation isn't clear. It's hardly appropriate to cite a promise to "go to the Feds" as an inappropriate threat. The "Feds" are able to decide for themselves whether or not an inquiry is appropriate.

The take-away, in Respondent's view, is that to cite positive dealings with the police and the FBI and a possible interest in talking to the State Bar isn't a threat of violence nor, if a crime is occurring, is it even inappropriate to make the point.

*** "Unlawful" investigation:**

Petitioner states: Respondent "is unlawfully investigating and stalking Mr. Long. He is intentionally deceiving Petitioner's family and colleagues into believing these emails are coming from her so they will open the emails, then blatantly lying that he has permission to gather intimate and personal details about her life – including who she is married to, her relationship to various named individuals and her current vehicle and residence."

The "blatantly" false allegations of stalking, deception related to email, and "intimate" details [as opposed to personal] details are addressed elsewhere in these responses.

Respondent has certainly sought personal [as opposed to "intimate"] details for legitimate and reasonable purposes related to the public interest in understanding abuse of process as implemented in the SLAPP against whistle-blower Brian Martin. The point is discussed in the part of these responses related to biographies.

To address the remaining point, that of unlawful investigation, Petitioner uses the word "unlawful" without supporting evidence of any type. The idea seems to be, and Respondent is familiar with the perspective, that to be able to see patterns in information is mysterious and therefore frightening.

In fact, Respondent explained to Petitioner in the same January 16, 2022 letter that she cites in multiple places that there is nothing magic about patterns. And, for that matter, there is nothing magic about Google. The "Aunt Coder Gypsy Queen" joke that Petitioner cites elsewhere as terrifying was an attempt to make the point in a humorous way.

Petitioner adds, “We are informed and believe this is not protected speech.” Respondent responds that it does seem to be exactly that.

*** Positive interactions with the police and FBI:**

Petitioner cites statements by Respondent such as ““The police and FBI are comfortable with me” as evidence of wrongdoing.

Respondent is unable to follow how positive interactions in the past with the police – whose assistance he sought and received – are negative. He has reported issues to, and has discussed them with, the police on perhaps half a dozen occasions in the past decade. In most cases, the police were interested and helpful. There is nothing wrong with speaking with the police if somebody speaks honestly and is consistent in details.

Respondent has sought assistance of the FBI, ICE, OCR, and other departments and agencies as well as the local police in multiple jurisdictions. He’ll continue to do so in the future. The implication that it’s inappropriate to do so is out of line.

*** Court Orders:**

Petitioner claims that Respondent “further indicates that he does not intend to comply with any court orders to remove the websites, rather, he intends to turn control of the websites “over to Anonymous and groups of a similar nature,” and that “there certainly won't be a takedown that doesn’t lead to more copies of the websites out there.”

The claim goes beyond conclusory to falsehood. Regarding “more copies of the websites out there” this is primarily a reference to Streisand Effect.

Streisand Effect is the situation where a take-down lawsuit that is against the public interest has the opposite of the intended effect. The content in such cases goes “viral” and is mirrored by thousands of people. The most recent well-known example is the failed take-down of FOSS [Free and Open Source Software] named “youtube-dl”. A Google search for “youtube-dl takedown” will explain.

The Streisand Effect is named after a legal case where singer Barbra Streisand sought to take-down a photo that the California Coastal Records Project had taken of her residence in Malibu, California. Prior to the take-down attempt, only 6 copies of the photo had been downloaded. Subsequent to the story going viral,

millions of copies of the photo circulated.

Respondent's mention of Streisand Effect is a simply technical point related to the natural consequences of litigation that is against the public interest. He has no special ability himself to induce Streisand Effect. It's simply something that happens.

Regarding "turn control [over]" to third parties, Petitioner is unfamiliar with how the Web works.

Respondent placed his public-interest anti-fraud websites in Creative Commons at the start. As a related legal point, Creative Commons can't be retracted. The attorney who created Creative Commons, Lawrence Lessig, made sure of this. One natural consequence is that third-party copies can't be taken down without legal actions that are independent of initial SLAPPs.

Mr. Lessig was the Professor of Law at Stanford who argued the Mickey Mouse Copyright Extension case before the Supreme Court circa 2003. He lost the case but founded Creative Commons as a response to corporate overreach in the matter.

The most important features of Creative Commons include the point mentioned above – full take-downs by abusive SLAPP are not legally practical – and the fact that inclusion in Creative Commons leads to copies independently of Streisand Effect.

For a decade, Respondent has placed much of his content in Creative Commons. He has observed the preceding to be the case. Respondent presently uses Creative Commons CC BY-NC-SA 4.0 International and similar licenses. The legal language for the specific example cited may be viewed online at: https://creativecommons.org/licenses/by-nc-sa/4.0/legalcode

Respondent made his public-interest anti-fraud websites mirror-friendly as well; this is a technical term. And he put the websites at the top of several search engines. These were all legitimate and reasonable steps to take for public-interest anti-fraud websites.

It adds up to the fact that copies of the sites are out there as things stand. Petitioner is referring to active transfer. Active transfer is something that people do but the step isn't required. Internet Archive creates mirrors for millions of public-interest sites without permission or discussion. Respondent's primary public-interest website is at Internet Archive and in lesser-known but similar projects in Europe and other regions around the

world already. Respondent didn't request this.

It should be noted that Respondent has no way to identify third-party copies unless Streisand Effect kicks in and no control over such copies regardless. They'd simply be out there.

Regarding Court Orders, Respondent has never knowingly violated a Court Order. He doesn't believe that he has ever violated one unknowingly either.

*** Working within the system:**

Petitioner notes that Respondent said: " 'If I don't receive a complete and polite response in the short term,' he will proceed to "start work on a State Bar filing." Respondent's response is, yes, certainly. Isn't mediation with attorneys who appear to be in violation of standards one of the functions of the State Bar?

Respondent cites exactly the quote that Petitioner has offered as evidence and even as proof that he has sought to be reasonable and to work within the system.

*** The Rain Man:**

Petitioner cites a reference to "The Rain Man", and therefore to autism, as indicative of mental illness. Autism is not mental illness. Respondent believes that the citation may be a violation of standards and possibly of Federal Law that isn't covered by the protected nature of the current litigation.

*** Fox News:**

Petitioner cites the fact that Respondent "plans to contact Fox News to pick up this story". It isn't clear how this step is inappropriate.

*** Countries that "instill fear":**

Petitioner states that a reference to websites in "Luxembourg, Bulgaria, and Russia" was "clearly designed to instill fear".

The part about "clearly designed to instill fear" isn't clear. Luxembourg was cited for the reasons related to the following part of the country's Constitution:

*"The freedom to manifest one's opinion by speech in all matters, and the freedom of the press are guaranteed, save the repression of offenses committed on the occasion of the exercise of these freedoms. Censorship may never be established."*

The preceding point is fearful primarily to those who engage in SLAPP. Bulgaria was only a fallback

as its anti-SLAPP protections were weaker than those in Luxembourg. However, in the context of SLAPP, the U.S. is more fearful.

Regarding Russia, Respondent is half-Ukrainian and, subsequent to Russia's invasion of the Ukraine, he doesn't plan to have anything further to do with Russia. However, in the period before the invasion, it was simply another VPS [Virtual Private Server] venue.

*** Themes of the book:**

Petitioner notes directly that Respondent is working on a book. It's not clear if she's suggesting that the book doesn't exist or if the project doesn't have merit.

Either way, as noted elsewhere, Respondent started the project in 2012, parts exist and are online, and the book serves the public interest. Based on something known as httpd logs, Respondent believes that Petitioner has read the key parts and is aware of the central themes.

The central themes include the physical and emotional abuse of women and children as well as the use of abuse of process by the wealthy to prevent public discussion of these and other crimes. Respondent believes that the themes are in the public interest.

*** Process server facts:**

Petitioner states: "It is clear from [Respondent's] statements in several emails that he has spoken with Mr. Martin (who has been served), has reviewed the complaint in its entirety, and is therefore intentionally evading service."

Petitioner's allegations related to service are conclusory, false, and abusive in context. Respondent wasn't aware of any filings against him until mid-February 2022 and, in fact, he was 100 to 150 miles away on the date of service that never took place.

A process server broke into a closed backyard, confronted a 78-year-old man who was not Respondent, threw papers on the ground, and left. Respondent believes that Petitioner was aware of the crime of break-in that was committed because the same process server came back the next day and admitted to the same elderly man that Petitioner's side was aware Respondent wasn't present.

Respondent didn't receive official and legal copies until days before these responses were written.

This was about two months after Brian Martin was served. Respondent made a good faith effort in mid-February – at about the same time as the break-in at a residence that he wasn't present at – to determine whether or not cases against him existed. He asked an attorney to check this. The attorney turned up nothing.

As Respondent hadn't been aware of any filings, and as he was 100 to 150 miles away at the time of non-existent service, he filed a Motion to Quash Service. He subsequently dropped the motion but comments now that Petitioner's allegations in this context are ironic.

Regarding "spoken with Mr. Martin", Respondent certainly did and was startled to learn that the subject of a whistle-blower story as opposed to the publisher had been served. Martin did not, however, provide Respondent with a copy of whatever he was served with or explain the content beyond the basic facts of the abuse of process that Petitioner had committed.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on the date indicated below in Antioch, CA.

DATED: 04/04/2022

Robert Kiraly
Robert Kiraly (Apr 4, 2022 19:01 PDT)

Robert Kiraly, Declarant, Respondent

# Final 22CV005860 Anti-Slapp

Final Audit Report 2022-04-05

| | |
|---|---|
| Created: | 2022-04-05 |
| By: | Nabiel Ahmed (nabiel@eastbaylawpractice.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAApXzLoDac7IMisbA7fERSpn7bD6X91W2A |

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