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10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

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

14 Petitioner,

15 v.

16 ROBERT KIRALY,

17 Respondent.

Case # 21CV004608

**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

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

19 PLEASE TAKE NOTICE that on 04/14/22, at the hour of 9:00 a.m. or as soon
20 thereafter as the matter may be heard in the courtroom of Department 519 of the above-entitled
21 court, the Respondent requests the court strike the WVRO file by Petitioner in case #22CV005860
22 be stricken as a violation of the Anti-Slapp statutes.

23 The motion will be based on this notice of motion, the memorandum of points and authorities
24 served and filed herewith on the records on file in this action, the attached declaration(s),
25 and on such oral and documentary evidence as may be presented at the hearing on the motion.
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1 Dated: April 4, 2022

Nabiel Ahmed

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3 Nabiel C Ahmed, Esq.
Attorney for Respondent

4 **I.**

5 **INTRODUCTION**

6 This matter arises out of websites and e-mails published by Respondent Robert Kiraly (“Kiraly”)
7 which express constitutionally-protected opinions regarding Plaintiffs Fremont Automobile Dealership LLC
8 d/b/a Fremont-Toyota and Christine Long (collectively, “Petitioners”). In an effort to chill Respondent’s
9 exercise of his free speech rights, Petitioners have filed two workplace violence restraining orders against
10 Respondent which purport to allege a violation of the workplace violence statutes found in Code of Civil
11 Procedure section 527.8. Respondent hereby moves to strike the petitions pursuant to Code of Civil Procedure
12 § 425.16 on the grounds that each of the petitions filed requesting relief arises out of written statements made
13 in a public forum in connection with an issue of public interest, and is meritless.
14

15 **II.**

16 **STATEMENT OF FACTS**

17 Respondent submits the following timeline in support of his request to deny workplace violence
18 restraining orders to Berliner Cohen LLP, and Fremont-Toyota, in case numbers 22CV005860 and
19 21CV004608 respectively.

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

21 **2020-12-11.** Brian Martin and his wife and daughter visited Fremont-Toyota to purchase a Toyota
22 Tacoma SR Double Cab that had been advertised. There were oddities in the process. For example, one of the
23 financial people involved physically tore up a “Four-Square” numbers document with the excuse: “This copy
24 is too messy, I’ll need to redo it”.

25 **2020-12-12 to 2020-12-29.** In the two weeks that followed the truck purchase, Martin received phone
26 calls and text messages that urged him to return to the dealership to sign vaguely specified additional papers.
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1 One example of such a request was: “We forgot to get you to sign a document. Can you come in to
2 sign it and bring all of the loan paperwork with you? We're sorry about the trouble and will buy you a tank of
3 gas to compensate you for your time.”

4 **2020-12-29.** Martin agreed to return to the dealership. He did so primarily to end the harassing
5 communications from Fremont-Toyota.

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

9 Martin signed a new paper that he was told was a disclaimer or other innocuous paperwork. Alcantar
10 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. –
11 this was still on 2020-12-29 – Alcantar sent by email to Martin the clumsy forgery that is described elsewhere.
12 Martin subsequently noted that the forgery wasn’t the paper he’d signed.

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

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

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

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

25 **2021-05-29.** Respondent registered the domain name “fremonttoyota.org” to use for a website that was
26 intended to document Martin’s story and Fremont-Toyota’s response to inquiries. There were two purposes
27
28

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

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

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

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

13 **2021-06-09 to late July 2021.** Martin exchanged emails with "Mark" Hashimi, believed to be general
14 manager of the dealership, in connection with the fraud that had taken place. It rapidly became clear that
15 Hashimi's goal was to dodge and to obfuscate.

16 **2021-06-29.** "Mark" Hashimi stated in email: "If you are accusing Fremont Toyota for Fraud, you
17 need to proof it, I will have get in touch with my Attorney and I have your file in front of my with your
18 signatures, I will take action about this!! you can go and post whatever you want. Once you get my attorneys
19 letter I'm sure you will understand that Fremont Toyota did not do any fraud!!!"
20

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

24 **2021-07-03.** Respondent registered the domain "markhashimi.org" to use for a website that was
25 intended to document Fremont-Toyota's position on the fraud that had been committed. This was to be by way
26 of the email exchange between Hashimi and Martin.
27
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1 The idea was to allow the general public to assess Fremont-Toyota's position and to seek in the public
2 interest relevant information from others who had interacted with the dealership.

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

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

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

11 **2021-07-06.** Respondent noticed that Berliner-Cohen's San Jose office was visiting one or both of the
12 websites that now existed. He interpreted this, in the context of Hashimi's 2021-07-03 remarks, as assessment
13 by the law office of a possible SLAPP action.

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

16 Petitioner has suggested that the fact one of the attorneys was "non-white" demonstrated racial hatred.
17 Actually, it demonstrated the fact that the organization of the law office wasn't clear. As a related note,
18 Berliner-Cohen later declined to state who was in charge. Respondent stated that he'd ask the State Bar to ask
19 Berliner-Cohen to provide the information. Petitioner has suggested that the idea of asking the State Bar to ask
20 a law office to identify who is in charge is an illegal threat and tantamount to physical violence.
21

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

25 **Summer 2021 to Fall 2021.** Martin spoke with both Toyota National and Ally Financial regarding the
26 fraud that had occurred.
27
28

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

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

7 During this period, Respondent contacted attorneys for exploratory discussions related to litigation.
8 One attorney commented that Ally Financial was most likely reluctant to conduct an investigation because if
9 the company found that fraud had occurred it might be "on the hook" itself for the disputed amount.
10

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

12 *"I called Ally yesterday. I have been leaving messages for Mark Burkhart for weeks but he would not*
13 *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*
14 *month ago. I called him after he said he was sending an investigator to Fremont Toyota to examine the loan*
15 *documents. I explained to him beforehand that he would not find original signatures because I never signed*
16 *the forged document."*

17 **2021-12-03. Date approx.** An ex-employee of Fremont-Toyota named Sam Pawar [legal name
18 Kulwant Pawar] saw the websites and contacted Martin.

19 Pawar had filed a claim with EEOC. The claim had been vetted and Pawar had been granted the right
20 to sue. He presented a credible story of systemic fraud against the public by Fremont-Toyota and racial and
21 religious hate speech and harassment by a number of parties at the dealership.
22

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

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

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

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

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

9
10 **2021-11-06.** Martin suggested that Respondent remove the word “Jihadi” from the websites as the
11 word might be misconstrued.

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

14 **2021-11-10. Date approx.** A Fremont-Toyota customer named Sandra Melendez contacted an
15 attorney in connection with the purchase of a Sienna LE. Respondent was provided with some of the paperwork
16 related to the purchase. It suggested that loan fraud similar to the fraud in Martin’s case had occurred.
17 Respondent placed one key part online but removed it pending further research.

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

20 **2022-01-15. Date approx.** Martin notified Respondent that he’d been served with a WVRO. He didn’t
21 provide Respondent with the papers or more than basic information. The action was surprising regardless as it
22 was a website take-down attempt directed at a whistle-blower whose story was online but who wasn’t the
23 publisher and who had no ability to do a take-down.

24 **2022-01-16. Date approx.** Respondent wrote a letter and emailed it to multiple people with the
25 intention of getting copies primarily to two people: “Mark” Hashimi and Petitioner.

26
27 Petitioner has claimed that the 2022-01-16 letter was a response to a filing against Respondent. As the
28 timeline below shows, the claim is false. The letter was a response to the abuse of process that had been initiated

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

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

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

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

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

13 **2022-01-16.** Subsequent to learning of the SLAPP action against Martin, Respondent registered the
14 domain name "christinelong.attorney" for use by a website that was to discuss the public-interest issues of
15 SLAPP and abuse of process in general.

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

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

21 Martin was a P.I. but he'd been ordered to surrender his guns. He was dismayed. Respondent pointed
22 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
23 with respect. So that is how he proceeded.

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

26 **Mid-February 2022.** Respondent sought to determine if a legal case had been filed against him. He
27
28

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

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

7 **III.**

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **LEGAL ARGUMENT**

10 **A. The anti-SLAPP Statute**

11 Code of Civil Procedure Section 425.16, commonly referred to as the anti-SLAPP law, provides in
12 relevant part: "(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits
13 brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for
14 the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage
15 continued participation in matters of public significance, and that this participation should not be chilled
16 through abuse of the judicial process. To this end, this section shall be construed broadly. [¶] (b)(1) A cause of
17 action against a person arising from any act of that person in furtherance of the person's right of petition or free
18 speech under the United States or California Constitution in connection with a public issue shall be subject to
19 a special motion to strike, unless the court determines that the plaintiff has established that there is a probability
20 that the plaintiff will prevail on the claim. [¶] (2) In making its determination, the court shall consider the
21 pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.
22 [¶] (3) If the court determines that the plaintiff has established a probability that he or she will prevail on the
23 claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later
24 stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by that
25 determination. [¶] ... [¶] (e) As used in this section, 'act in furtherance of a person's right of petition or free
26 speech under the United States or California Constitution in connection with a public issue' includes: ... (3)
27 any written or oral statement or writing made in a place open to the public or a public forum in connection with
28

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

3
4 Under the anti-SLAPP statute, the court makes a two-step determination: “First, the court decides
5 whether the defendant has made a threshold showing that the challenged cause of action is one arising from
6 protected activity. (§ 425.16, subd. (b)(1).) ‘A defendant meets this burden by demonstrating that the act
7 underlying the plaintiff’s cause fits one of the categories spelled out in section 425.16, subdivision (e)’
8 [citation]. If the court finds that such a showing has been made, it must then determine whether the plaintiff
9 has demonstrated a probability of prevailing on the claim. (§425.16, subd. (b)(1))” (*Navellier v. Sletten*
10 (2002) 29 Cal.4th 82, 88; *see also Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67; *City*
11 *of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) “Only a cause of action that satisfies both prongs of the anti-
12 SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a
13 SLAPP, subject to being stricken under the statute.” (*Navellier v. Sletten, supra*, 29 Cal.4th at 89.)

14
15 **B. Petitioner’s Claims Are Based on Constitutionally Protected Writings**

16 **1. Overview of the First Step of the anti-SLAPP Analysis**

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

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

27
28 **2. The Website Statements Were Made in a Public Forum**

1 “Web sites accessible to the public ... are ‘public forums’ for purposes of the anti-SLAPP statute.”
2 (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41; *see also Muddy Waters, LLC v. Superior Court* (2021) 62
3 Cal.App.5th 905, 917 [“Internet postings on websites that ‘are open and free to anyone who wants to read the
4 messages’ and ‘accessible free of charge to any member of the public’ satisfies the public forum requirement
5 of section 425.16. [citation]”]; *Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 693; *Wong v. Jing* (2010)
6 189 Cal.App.4th 1354, 1366; *D.C. v. R.R.* (2010) 182 Cal.App.4th 1190, 1226.) In this regard, the websites at
7 issue do not cease “to be public simply because interested persons may not be able to respond” as “an
8 individual’s right to free speech should be limited or curtailed based upon the ability of another person to
9 respond.” (*Muddy Waters*, 62Cal.App.5th at 917-918.)

11 3. The Statements on the Websites Concern an Issue of Public Interest

12 The statements on the websites address an issue of “public interest,” namely Fremont Toyota’s
13 fraudulent loan practices which affect large portions of the public who purchase automobiles.

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

22 Court have routinely found that websites which provide information to consumers fall within the scope
23 of the anti-SLAPP statute. (*See, e.g., Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883; *Chaker v. Mateo* (2012)
24 209 Cal.App.4th 1138, 1144.)

25 In *Wilbanks*, defendant Wolk, a self-styled “consumer watchdog” in the viatical insurance industry,
26 maintained a website that provided “information about those who broker life insurance policies, including
27 information about licenses, suits brought by clients against brokers and investigations of brokers by
28

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

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

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

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

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

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

7
8 Because the Petitioner’s claims arise from protected speech, the Court must turn to the second prong
9 of the section 425.16 analysis: whether Plaintiffs have established a probability of prevailing on the causes of
10 action in their Complaint.

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

20
21 **2. Petitioner Has the Burden of Establishing By Clear & Convincing Evidence**
22 **Respondent Committed an Unlawful Act of Violence or Credible Threat of Violence**
23 **Against Petitioner**

24 [Section 527.8](#) permits an employer to seek a restraining order on behalf of an employee who has
25 “suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be
26 construed to be carried out or to have been carried out at the workplace.” ([§ 527.8, subd. \(a\).](#)) A “credible
27 threat of violence” includes a “course of conduct that would place a reasonable person in fear for his or
28 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

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

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

12
13 **3. Respondent’s Posting of Petitioner’s Residence Addresses Served a Legitimate**
14 **Business Purpose and Was Not A Credible Threat of Violence**

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

20
21 **City of Los Angeles v. Animal Defense League (2006) 135 Cal. App. 4Th 606**

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

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

1 *App. 4th 606, 612.* Petitioner also declared, “I am afraid for my life and safety and I am especially
2 afraid for the lives and safety of my wife and four children, who were badly frightened by the [ir
3 knowledge of a prior noisy demonstration at their home.] *Id.* Hence, the fact that Petitioner was
4 targeted by self-described militants, who posted Petitioner’s home address and telephone numbers
5 on their web site along with violent images, and previously created a noisy demonstration at
6 Petitioner’s home, allowed the court to determine a credible threat of violence had been made. *Id. @*
7 *612, 627.*

8 **Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc., (2005) 129**
9 **Cal. App. 4th 1228**

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

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

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

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

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

5 In *City of Los Angeles v. Herman (2020) Cal. App. 2d. 97*, the court properly imposed a workplace
6 violence restraining order on appellant pursuant to [CCP § 527.8](#) after appellant made threatening statements
7 toward a deputy city attorney at city council meetings. The court found Respondent's threats were credible
8 and that Respondent's repeated disclosure of Petitioner's home address served “no legitimate purpose.”
9 (§ 527.8, subd. (b)(2).) *Id.* at 102-103. A reasonable person could conclude that Respondent disclosed
10 Petitioner's address so that Petitioner would know Respondent could find Petitioner's residence. *City of*
11 *Los Angeles v. Herman (2020) Cal. App. 2d. 97*, 102-103. The threatening context of these disclosures is
12 further shown by Respondent's direct threat that he would “go back to Pasadena [where Petitioner lives]
13 and fuck with” him. *City of Los Angeles v. Herman (2020) Cal. App. 2d. 97*, 102-103. The circumstances of
14 the threats, including Respondent's angry demeanor, supported the trial court's conclusion that the threats
15 could reasonably be viewed as serious. *Id.* @ 103.

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

24 **4. Associating Petitioner as [REDACTED] Jihadis Is Not A Credible Threat of Violence**

25 **The First Amendment Protects Hate Speech**

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

1 people” [Citations] and it “attempt[s] to secure the ‘widest possible dissemination of information from
2 diverse and antagonistic sources.’” (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 266 [11 L. Ed.
3 2d 686, 84 S. Ct. 710].) Speech “may indeed best serve its high purpose when it induces a condition of
4 unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often
5 provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling
6 effects as it presses for acceptance of an idea.” *Huntingdon Life Sciences, Inc. v. Stop Huntingdon
7 Animal Cruelty USA, Inc.*, (2005) 129 Cal. App. 4th 1228, 1249.

8
9 Even assuming Petitioner’s contextual assertions regarding Respondent’s use of the term
10 Jihadi is true, that speech is still Constitutionally protected at the Federal and state levels.

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

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

15 **IV.**

16 **CONCLUSION**

17
18 Petitioners’ WVRO’s are an improper attempt to chill Respondent’s free speech rights by forcing him
19 to defend factually and legally meritless claims. The Court should strike the Petitions pursuant to the anti-
20 SLAPP statute, and award Respondent his attorney’s fees and costs.

21 Dated: April 04, 2022

NABIEL C AHMED, Esq. for Respondent Robert Kiraly

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

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

6 **My review of the loan fraud:**

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

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

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

19 **The websites:**

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

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

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

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

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

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

10 **Other victims came forward:**

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

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

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

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

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

3 *“Most USA people are bad at math. The Fremont-Toyota people took advantage of this. If a dollar figure was*
4 *at \$9,999, Mark Hashimi and his people just added \$10,000 to make it \$19,999. Fremont-Toyota figured that*
5 *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*
6 *somebody did. I saw them committing fraud and stealing from people. I talked to General Manager Kamal*
7 *[Mark Hashimi]. He told me to get out of his office. Mark Hashimi was part of the fraud operation, so I lost*
8 *my job. But I did the right thing. I just wanted to protect Toyota buyers from the fraud and explain how to buy*
9 *a car from Fremont-Toyota without being robbed.”*

10
11 **The emails:**

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

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

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

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

22
23 **Part 2. Deceptive practices at Fremont-Toyota and the “Jihadi” issue:**

24 Petitioner repeats numerous times in her complaints the point that Respondent has used the word
25 “Jihadi”. The goal is to suggest that the word was used inappropriately and impermissibly in the context in
26 which it was found. The term “Jihadi” was referenced in my websites not at random, but as the dictionary
27 word for the type of race and religious harassment that Fremont-Toyota employees subjected a minority-race
28 employee named Sam Pawar to for months. This said, the word was never used except briefly well before the

1 WVRO against Mr. Martin was filed. More about that fact further down.

2 Fremont-Toyota employees directed remarks towards Mr. Pawar of the following type: "Mother-
3 f*cker you can't call us brother because you aren't Muslim". The group indicated as well that Mr. Pawar's
4 race and other races were inferior and "smelly". As Mr. Pawar was of Asia-India race, they also referred to
5 him as "Mr. Curry".

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

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

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

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

18 Mr. Pawar asked Mr. Halimi why this had happened. Mr. Halimi responded, "You asking lower inter-
19 est rate from Ayub Mohammad Jalal and that's your punishment. I'm taking your half-deal and giving to other
20 person."
21

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

25 Mr. Pawar asked, "Why is this happening?" The response was, "It's because you complained about
26 Naqib Halimi". Mr. Halimi had, again, confiscated Mr. Pawar's earnings to "punish" him for even bringing
27 buyers to Mr. Jalal to discuss possible lower interest rates.
28

1 Respondent used the word "Jihadi" as the dictionary word for the conduct summarized above. The
2 definition used is as follows. The definition has been cited by Petitioner in one complaint as being, in and of
3 itself, incitement to violence:

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

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

12 **Part 3. Responses to allegations:**

13 *** Snail-mail:**

14 Petitioner cites snail-mail in multiple allegations against Respondent. In fact, Respondent never sent
15 any snail-mail in the current matter to anybody. All snail-mail allegations are false.

16 *** Number of websites:**

17 There are 3 websites. Not 18 or more. Each website has a specific legitimate and reasonable purpose.
18 Alleged websites beyond 3 are alternate domain names that go to the same websites.

19 The 3 websites include (a) a site that advises the public regarding auto-loan fraud at the Fremont-
20 Toyota auto dealership and car-buying in general, (b) a site that focuses on correspondence between one loan-
21 fraud victim and the general manager of Fremont-Toyota that allows the public to judge the dealership's
22 position for itself, and (c) a site that warns the public of the retaliation that they may face if they speak out
23 online about auto-loan fraud.
24

25 *** Likeness and pictures of family members:**

26 Petitioner asserts that the "likeness" of "family members" were published. If "likeness" is a reference
27 to a picture, to the best of Respondent's recollection, Respondent never published any picture of any "family
28 member" who wasn't employed by Fremont-Toyota.

1 Respondent doesn't recall ever using such a picture in email either.

2 If Petitioner is unable to cite to a photo of a non-employee "family member" on websites or in email
3 that Respondent sent, Respondent believes that the allegation is false. Respondent disclaims responsibility for
4 anything sent by others other than anything that Respondent wrote originally.

5 *** Photographs in general:**

6 The "pictures" that existed on the websites, not counting clip-art, are believed to have consisted largely
7 of a public profile photo of "Mark" Hashimi placed next to letters from him to make it easier to follow a
8 discussion related to loan fraud, (b) a public profile photo of Christine Long on a public-interest website that
9 discussed abuse of process, and (c) photos taken by a whistle-blower ex-employee named Sam Pawar of badges
10 of Fremont-Toyota employees that were believed to be in the public record, those photos intended to make it
11 easier to organize the loan-fraud whistle-blower story that Mr. Pawar had started to tell.

12 As a related note, in the loan-fraud email exchange that was posted, a photo of Brian Martin was placed
13 next to letters from him as well. The idea was to emulate Twitter so that people would be able to tell Mr.
14 Martin's and Mr. Hashimi's letters apart easily.

15 *** Personal contact information:**

16 Petitioner implies repeatedly that a street address hit list was posted of Fremont-Toyota employees.
17 No such list ever existed. The allegation is false.

18 In mid-2021, a summary of Mr. Martin's story was sent to managers who were believed to be appro-
19 priate contacts at the dealership. This was by email and/or snail-mail. In some cases, people who were believed
20 to be able to forward the letter to the managers received it as well.

21 The "personal contact information" that appeared publicly was largely a Cc list in the PDF version of
22 that letter.

23 One purpose for the Cc list was simply to provide Brian Martin, who handled the snail-mail part, with
24 the snail-mail addresses to use. Another purpose was to inform the managers of who had been contacted so
25 that they'd know who had been contacted and could discuss who among them who should take responsibility
26 for the loan-fraud issue.
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1 "Mark" Hashimi aka Kamal Sayed Hashimi was an exception to the preceding. His location was sought
2 for reasons related to Court jurisdiction over planned litigation in the public interest against Mr. Hashimi and/or
3 Fremont-Toyota. As part of the process of establishing jurisdiction, one possible residence address for Mr.
4 Hashimi may have been posted in 2021. However, Respondent hasn't been able to confirm that a posting in
5 that context existed.

6 The same possible address appeared in a letter that was sent to Mr. Hashimi and Petitioner in mid-
7 January 2022 for reasons that were explained in the letter; including, in particular, the point that the addresses
8 were publicly available in Google, and Respondent was entitled both to seek and to disclose the address for
9 legitimate and reasonable purposes that served the public interest.

10 Petitioner falsely cites street and/or email addresses that appeared in non-public research email as
11 having been posted on websites. Examples include some of the addresses related to the Khachaturian Found-
12 ation, a California Foundation connected to Fremont-Toyota by way of the Khachaturians who are believed to
13 have owned and/or controlled the dealership for years.

14 Respondent presently recalls only a single case where contact information for a Fremont-Toyota
15 employee was knowingly posted on an explicitly designated contact page, the employee being Naqib Halimi,
16 and that information was limited to email addresses.

17 Mr. Halimi was a manager, specifically, a Finance Manager. The goal of the designated contact page
18 was to assemble contact information for managers, to be limited to email addresses except in appropriate con-
19 texts, exactly as any website engages in analysis of a company might include. However, the contact page was
20 never completed and so Mr. Halimi remained the only entry.

21 The preceding is in reference to Fremont-Toyota. To avoid misunderstandings, there is a separate Ally
22 Financial contact page that lists email addresses related to that firm.

23 *** Alleged "harassing" emails had a legitimate business purpose:**

24 The so-called "harassing" emails in the current cases were sent for the most part (a) to request a forward
25 of a single document to parties who had initiated abusive legal proceedings against a whistle-blower (b) to
26 request information or perspectives related to loan fraud and/or other crimes against the public from people
27
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1 who wished to communicate (c) and to request that attorneys in a law office, Berliner-Cohen San Jose, respond
2 to reasonable questions related to the organization of the law office.

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

7 *** “Cyberattacks”:**

8
9 Petitioner uses the word “cyberattack” in multiple places without ever citing an example of a “cyber-
10 attack”. The implied allegations are conclusory and prima facie false.

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

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

19 *** Use of the phrase “organized crime”:**

20
21 Petitioner cites Respondent’s use of the term “organized crime” as objectionable. Respondent asserts
22 based on his years of work in fraud detection for corporations and his 44 years of professional experience with
23 data in general that he believes the term “organized crime” to be accurate.

24 Petitioner also claims that Respondent used the term “crime ring”. Respondent doesn’t believe that he
25 ever did so. A “crime ring” would be different.

26 *** Allegation that a TV P.I. is dangerous:**

27
28 Petitioner asserts that a TV P.I. can “reasonably” be believed to be “dangerous” due to being involved
with TV. The allegation isn’t supportable. Directors and actors are not their characters.

1 *** Alleged publication of “home addresses”:**

2 Petitioner states that Respondent published, i.e., posted, “home addresses” for Fremont-Toyota
3 employees. In fact, Respondent isn’t aware that any of the websites ever contained “home addresses” for any
4 Fremont-Toyota employees other than Kamal Sayed Hashimi – in legitimate and reasonable contexts – plus a
5 group of managers and/or senior-ranked people in the mid-2021 Cc list that was previously discussed.

6 Petitioner has falsely cited street addresses for some parties that appeared only in research email as
7 having been posted publicly.

8 *** Validity of fraud allegations against Fremont-Toyota:**

9
10 Petitioner repeatedly cites an investigation by Ally Financial that Petitioner asserts proves no wrong-
11 doing by Fremont-Toyota occurred and that the actions of all three of the whistle-blowers involved were
12 motivated by ethnic hatred.

13 The claim that Ally Financial’s investigation can be used to dismiss allegations of fraud is false on its
14 face. Ally Financial simply concluded there was not enough evidence of suspicious activity at that time to
15 continue with their limited investigation. Respondent, however, did not rely solely on the Brian Martin fraud
16 allegation against Fremont-Toyota alone. In fact, Respondent relied on statements and/or tangible evidence
17 provided by three different and initially unrelated people: Brian Martin, Sam Pawar, and Sandra Melendez.

18
19 Martin’s case, when combined with the allegations of Sandra Melendez, and Sam Pawar, convinced
20 Respondent persuasive evidence of systemic loan fraud existed despite the speculative conclusion of Ally
21 Financial. Text messages and emails from the aforementioned parties were reviewed by Respondent prior to
22 his publication of any websites, or dissemination of correspondence to Fremont-Toyota employees.

23 *** Court Orders:**

24 Petitioner states: “[Respondent] boasts that ‘OldCoder’ has never done an involuntary takedown. He’s
25 also fine with the idea of discussing threats of abuse of process with the State Bar.” Petitioner positions the
26 lack of takedown Orders and – somehow, a reference to the State Bar – as evidence that Respondent has defied
27 Court Orders in the past: “It is clear from the above that Respondent does not intend to comply with any orders
28 of the court to remove these websites”.

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

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

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

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

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

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

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

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

25 For a decade, Respondent has placed much of his content in Creative Commons. He has observed the
26 preceding to be the case. Respondent presently uses Creative Commons CC BY-NC-SA 4.0 International and
27
28

1 similar licenses. The legal language for the specific example cited may be viewed online at:
2 <https://creativecommons.org/licenses/by-nc-sa/4.0/legalcode>

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

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

11
12 It should be noted that Respondent has no way to identify third-party copies unless Streisand Effect
13 kicks in and no control over such copies regardless. They'd simply be out there.

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

16 * **“Confusing” email addresses:**

17 Petitioner claims that Respondent used email addresses that were “designed to confuse individuals and
18 otherwise drive traffic from Fremont Toyota to Respondent's and Mr. Martin's vicious websites”.

19 The allegation related to “confuse” is conclusory and false. In fact, Respondent took care, in most
20 cases, to use usernames that clearly identified email as being sent in a “Review” context. For example:
21 Fremont-Toyota Review.
22

23 The point about “drive traffic” is incorrect in the sense that Petitioner means. Respondent has some
24 experience with SEO [Search Engine Optimization]. Respondent chose domain names that would, in the public
25 interest, take traffic from sites associated with a company that committed fraud on a systemic basis and build
26 traffic to sites that documented the fraud.

27 The email addresses used the same domains because that is how the FOSS software that Respondent
28 used, Mail in a Box, works. Those who wish to confirm Respondent's claim may review the home page for

1 the software at the following link: <https://mailinbox.email/>

2 *** Allegedly “false” and “defamatory” statements:**

3 Petitioner cites quotes by Respondent that she asserts are “false” and “defamatory”. Respondent
4 responds that, based on his years of work in fraud detection for corporations and 44 years of data experience
5 in general, all statements of fact as opposed to opinions or metaphors are believed to be accurate. This said,
6 Respondent included the following notice on the sites from the start:

7 “Statements are based on belief and best understanding of facts and are not necessarily statements of
8 fact except where this is explicitly stated. People with knowledge of facts that may be relevant to content are
9 invited to suggest corrections or additions.”

10 To the best of Respondent’s knowledge, nobody ever attempted to offer a correction to any statement
11 of fact on the sites.

12 Respondent believes that the sole purpose of the three actions that Petitioners have initiated against
13 him is to take-down websites which provide factually accurate evidence regarding a systemic fraud scheme by
14 Fremont-Toyota. The takedowns are not in the public interest.

15 *** Statements related to criminal charges:**

16 Petitioner cites statements related to possible criminal charges against Kamal Sayed Hashimi and
17 others as objectionable.

18 “Mark” Hashimi was believed to be, based on Respondent’s years of work in fraud detection for
19 corporations and 44 years of experience with data in general, the leader of a minor but well-funded organized
20 crime group that didn’t mind committing fraud against the public in an unexpectedly casual manner.

21 This, combined with remarks that Hashimi made to Martin, suggested that Hashimi was both confident
22 and well-funded. The odds were high that he’d threaten or initiate abuse of process. This, as it turned out, is
23 exactly what happened.

24 Respondent’s comments were intended to caution Hashimi that abuse of process was inappropriate
25 and inadvisable.

26 *** “Pictures” of “Mark” Hashimi:**

1 Petitioner states that “pictures” of “Mark” Hashimi were posted online. Respondent responds that, to
2 the best of his knowledge and belief, two and only two such photographs of Hashimi were posted and that the
3 context was as follows.

4 In an email exchange between Brian Martin and “Mark” Hashimi, a public profile photo of each person
5 was posted next to each of their emails so as to help the reader to follow the discussion.

6 In a statement made by Fremont-Toyota ex-employee Sam Pawar, Respondent included photos that
7 Mr. Pawar had taken of license badges that were believed to be in the public record. The badge photos were
8 included to aid in the organization and readability of planned expansions to Mr. Pawar’s statement. Hashimi’s
9 photo may have been included in that set.

10
11 *** Communication with Ms. Campos:**

12 Petitioner asserts that communication that Respondent initiated with a woman named Kathryn Campos
13 was inappropriate. Respondent notes, first, that neither Ms. Campos nor anybody else ever objected to or
14 expressed concern related the communication prior to litigation. The communication was initiated for
15 legitimate and reasonable purposes regardless; most importantly, as a step towards litigation against Hashimi.

16 In mid-2021, “Mark” Hashimi assumed initial responsibility for communications at Fremont-Toyota
17 related to the loan fraud that the dealership had committed. The name Kamal Sayed Hashimi turned up in
18 related loan-fraud research. For purposes related to possible litigation as well as documentation, Respondent
19 needed to confirm that the two men were, or were not, the same person and identify the Court that would have
20 jurisdiction when he was sued.

21
22 A woman named Kathryn Campos had initiated divorce proceedings against “Mark” and/or Kamal
23 Sayed Hashimi in the 2000s. The divorce seemed to have been called off. Hashimi’s location thereafter was
24 unknown. It was appropriate to ask Ms. Campos if she was able to comment on who and where Hashimi was.
25 Ms. Campos never communicated to Respondent prior to litigation that the inquiry was unwelcome.

26 Petitioner states that Respondent invited “Ms. Campos to join efforts to essentially take-down Mr.
27 Hashimi”. The word “take-down” is intended by Petitioner to convey a tone of physical violence. In fact, the
28 only “take-down” was to be litigation in the public interest against “Mark” Hashimi and/or Fremont-Toyota as

1 an organization.

2 Regarding the fact that Ms. Campos's address was mentioned, the point wasn't that it might be her
3 address. The point was the question of whether or not it was the current or only the past address of her husband
4 or ex-husband and, if he was not there, once again, which Court would have jurisdiction when he was sued.

5 Regarding the allegation Petitioner makes in multiple places that "illegal means" were used to "obtain
6 information", the allegation is false. In the Hashimi context, Hashimi himself voluntarily provided a personal
7 phone number to Martin. The phone number made it possible to confirm that "Mark" and Kamal Sayed were
8 the same person.

9
10 *** DMCA issue:**

11 Petitioner cites a statement by Respondent to Berliner-Cohen where he stated "don't even think about"
12 DMCA as objectionable. The DMCA point was intended to preempt abuse of process by Fremont-Toyota. An
13 attempt to do this through the implied suggestion that the complaint will fail in Court is neither an inappropriate
14 threat nor harassment.

15 *** Alleged defamation of Khachaturian Foundation in particular:**

16 Petitioner asserts that Respondent has defamed the Khachaturian Foundation. In fact, Respondent
17 attempted to initiate non-public communications with and/or regarding the Foundation for the legitimate and
18 reasonable purpose of assessing its position on the loan fraud that its key figures were believed to be involved
19 in directly or indirectly.

20 Respondent adds that, based on his 44 years of professional experience working on data projects for
21 UK-NCIS, the DTIC, the CIA, the military, and other entities as well as years of experience in fraud detection
22 for two corporations, his allegation that "the Khachaturian Foundation is funded in part by the proceeds of
23 prosecutable crimes" is believed to be correct.

24 The question of which of the individuals who connected Fremont-Toyota to Khachaturian Foundation
25 were aware of the fraud is separate. Respondent intended to finalize a position subsequent to consensual
26 communication with those who wished to discuss the matter.

27
28 *** Timing of snail-mail:**

1 Petitioner states that “Mr. Hashimi received [snail-mail] shortly after his wife contacted the police
2 inquiring about a restraining order against Mr. Martin and Respondent. The timing is suspicious, as if Mr.
3 Martin and Respondent wanted to reinforce to Mr. Hashimi and his family that they do in fact know where he
4 and his family live.”

5 Respondent reiterates that he never sent snail-mail to anybody involved in the current matter. The
6 allegation is both conclusory and entirely false.

7 *** False claim of “harassing others”:**

8 Petitioner states that he is not the subject of any conduct orders by any tribunal, outside of the instant
9 litigation.

10 *** Alleged focus on race:**

11 Petitioner claims that in the public-interest websites that Respondent posted as well as related emails,
12 “there is a focus on highlighting minority individuals and pressing on their race inappropriately”.

13 Petitioner is referring here to Respondent’s public support of a minority-race ex-employee of Fremont-
14 Toyota, Sam Pawar, who had been targeted by the dealership for harassment due to his concerns related to
15 deceptive business practices and outright loan fraud at Fremont-Toyota as well as his race and religion.

16 The Fremont-Toyota core group repeatedly made statements of the following type to Mr. Pawar:
17 “Mother-f*cker you can’t call us brother because you aren’t Muslim”. When he expressed concerns related to
18 deceptive business practices, his earnings were confiscated and he was told, “complain to your Hindu god also
19 and no one will help you”.

20 Respondent’s documentation of such behavior by Fremont-Toyota employees is the primary justifica-
21 tion that Petitioner is attempting to use for the current cases.

22 The so-called “focus on highlighting minority individuals” has to do with the fact that the employees
23 who engaged in hate speech happened to be Muslims. In fact, no minority has the right to engage in hate speech
24 and ethnic harassment and to use the fact that it’s a minority to justify such conduct. In short, Indians and other
25 races have the same rights that Muslims do.

26 *** Race of one attorney:**

1 Petitioner states: "Berliner Cohen has 65+ attorneys and the current managing partner is white. Yet,
2 Respondent specifically selected a non-white attorney to threaten the firm". This allegation is devoid of merit
3 unless there exists only one minority attorney at Berliner Cohen.

4 I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my
5 knowledge and belief. Executed on the date indicated below in Antioch _____, CA .
6

7 DATED: 04/04/2022

Robert Kiraly
Robert Kiraly (Apr 4, 2022 19:02 PDT)

Robert Kiraly, Declarant, Respondent

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Final 21CV004608 Anti-Slapp _Redacted

Final Audit Report

2022-04-05

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