

1 Seth W. Wiener, California State Bar No. 203747  
2 Law Offices of Seth W. Wiener  
3 609 Karina Court  
4 San Ramon, CA 94582  
5 Telephone: (925) 487-5607  
6 Email: [seth@sethwienerlaw.com](mailto:seth@sethwienerlaw.com)

7 Attorney for Respondent  
8 Robert Kiraly

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 FREMONT AUTOMOBILE DEALERSHIP, LLC

12 Petitioner,

13 v.

14 ROBERT KIRALY,

15 Respondent.

16 BERLINER COHEN, LLP,

17 Petitioner,

18 v.

19 ROBERT KIRALY,

20 Respondent.

Case No.: 21CV004608  
and Related Case No. 22CV005860

**RESPONDENT ROBERT KIRALY'S  
HEARING STATEMENT**

Date: October 12, 2023  
Time: 9:00 a.m.  
Dept.: 519  
Commissioner: Elizabeth Riles

1 **I. INTRODUCTION**

2 The instant cases arise out of websites published by Respondent Robert Kiraly (“Kiraly”) which  
3 express constitutionally-protected opinions regarding Petitioners Fremont Automobile Dealership LLC  
4 d/b/a Fremont Toyota (“Fremont Toyota”) and Berliner Cohen, LLP (“Berliner Cohen”). In an effort  
5 to chill Kiraly’s exercise of his free speech rights, Petitioners have sought Workplace Violence  
6 Restraining Orders (“WVRO”) and a broad gag order against him. The Court should decline to grant  
7 the requested WVROs and broad gag order because: Kiraly’s speech was constitutionally protected and  
8 not illegal; Kiraly did not engage in unlawful violence or make a credible threat of unlawful violence;  
9 Petitioners are unable to demonstrate the requisite nexus with their workplaces; and Petitioners will be  
10 unable to demonstrate a reasonable probability of future violence.

11 It is an element of workplace violence that the acts complained of serve “no legitimate purpose.”  
12 (Code Civ Proc. §527.8(b)(2).) It is also the case that speech which serves a legitimate purpose is not  
13 to be limited. And Respondent’s actions and speech in these cases were replete with legitimate purpose:  
14 both seeking to confirm that a major car dealership did, or did not, have a practice of fraudulently  
15 surcharging customers on a systemic basis and disclosing the facts related to such fraud to the general  
16 public.

17 While some of Petitioners’ allegations are serious, the bringing of these WVRO Petitions, in  
18 addition to a separate civil defamation action which Fremont Toyota is also pursuing, in order to silence  
19 the serious allegations that have been made against Fremont-Toyota, is an overreaching attempt to bring  
20 the WVRO statute to bear in a situation to which the statute was never intended to apply.

21 **II. FACTUAL BACKGROUND**

22 **A. The Parties**

23 Plaintiff Fremont Automobile Dealership, LLC d/b/a Fremont Toyota (“Fremont Toyota”) is an  
24 automobile dealership.

25 Berliner Cohen is a law firm that prides itself on offering innovative and sophisticated legal  
26 advice combined with a keen awareness and understanding of its clients’ business needs.

27 Kiraly is a graduate with High Honors of the University of California, Berkeley, and a software  
28 architect with 45 years of professional experience, including work in classified data for the Defense

1 Technical Information Center, anti-terrorism for the United Kingdom’s National Criminal Intelligence  
2 Service, data forensics, California Consumer Privacy Act and Health Insurance Portability and  
3 Accountability Act privacy enforcement, primary responsibility one year for the code level of 50% of  
4 the U.S. Vote, and the detection of fraud of multiple types for two national chains. Over the past decade,  
5 he has spent a significant amount of time on fraud detection in particular.

6 Kiraly has been diagnosed with an Autism Spectrum Disorder, and is registered with the  
7 California Department of Rehabilitation. He has difficulty speaking coherently in confusing situations  
8 or under time pressure. Additionally, Kiraly is literal and has difficulty understanding what some type  
9 of questions mean. As an accommodation for his disability, Kiraly will need to be permitted to focus  
10 before responding to questions, to outline answers on paper before he attempts to speak, and to ask that  
11 unclear questions be rephrased.

12 **B. The Fraud at Fremont Toyota**

13 In December 2020, Kiraly’s co-Respondent Brian Martin purchased a Toyota Tacoma from  
14 Fremont Toyota. In connection with the vehicle purchase, Fremont Toyota provided Martin with a  
15 forged document (Exhibit 9) that Fremont Toyota claimed evidenced Martin’s agreement to pay \$9,995  
16 more than had actually been agreed to. Kiraly’s understanding was that this worked out to about \$6,000  
17 in terms of the actual net cost to Martin. In fact, the forged document didn’t even purport to be an  
18 agreement. It was just an electronic copy of a signature pasted onto a copy of a price sticker. There was  
19 nothing about an agreement other than the hand-scrawled words “Market Adjust”. The figures didn’t  
20 add up. In short, this was not simply fraud but an unusually clear and inept example of the practice.

21 Martin first noticed the fraud in Spring 2021 when he looked into discrepancies in the paperwork  
22 (Exhibit 2, pp.22 to 27). Shortly afterward, in mid-2021, he asked Kiraly to determine whether or not  
23 there was evidence that confirmed the issue existed. Kiraly agreed to look as a personal favor and in the  
24 public interest. Kiraly determined, based on his professional experience in fraud detection and his  
25 analysis of the data, that fraud had certainly occurred. He elected to put the story online for the purpose  
26 of protecting automobile consumers from being defrauded by Fremont Toyota.

27 **C. The Websites**

28 Ultimately, Kiraly put three websites online: fremonttoyota.org, markhashimi.org, and

1 christinelong.attorney. He created a number of alternate domain names as well. The alternate domain  
2 names simply linked to the original three sites.

3 The fremonttoyota.org and markhashimi.org set forth Kiraly's opinions "that Fremont-Toyota  
4 [has] committed auto loan fraud against multiple unwary Toyota buyers" including co-Respondent  
5 Brian Martin. The websites offered advice to auto buyers, including to "Be suspicious of every deal-  
6 ership regardless of history unless you trust a particular sales-person" and to "nail down the numbers."  
7 The websites further recommended that the public: "Never buy from a dealership that has a history of  
8 fraud or abuse of different types. This includes Fremont-Toyota of Fremont, California. The rhyme to  
9 remember is: Stay away or be prey." (Exhibit 4)

10 The third website, christinelong.attorney, discussed, as well, the retaliation that Fremont-Toyota  
11 customers may face if they talk publicly about loan fraud.

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

15 One person was a woman, Sandra Melendez, who was falsely said to have agreed to a \$9,995  
16 markup, the same number that had appeared in the forged document in Martin's case. Kiraly looked at  
17 the evidence that Melendez was sending to attorneys at the time. It seemed similar to what Martin had  
18 shown to Kiraly. Kiraly's assessment was that the dealership might be using a standard approach to  
19 commit fraud on a regular basis. This was consistent with what Kiraly learned from the next person.

20 The next person was an ex-employee of Fremont Toyota, Kulwant S. Pawar aka Sam Pawar,  
21 who told Kiraly that fraud against the general public was a common practice at the dealership. (Exhibit  
22 2, pp. 41 to 47 and Exhibit 12). Pawar confirmed that the following statement which appeared on the  
23 websites was true:

24 Most USA people are bad at math. The Fremont-Toyota people took advantage of this. If  
25 a dollar figure was at \$9,999, Mark Hashimi and his people just added \$10,000 to make it  
26 \$19,999. Fremont-Toyota figured that it was on the customer to detect a mistake and that  
27 it would be no big deal to take care of it in the cases where somebody did. I saw them  
28 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

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fraud and explain how to buy a car from Fremont Toyota without being robbed.

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

In 2023, Kiraly voluntarily surrendered the domains containing the websites, and Petitioners are believed to have acquired the domains.

**D. The Emails**

Martin and Kiraly separately sent email related to the fraud to employees and agents of Fremont Toyota. Contrary to allegations, Kiraly doesn't believe that he ever sent any physical U.S. mail to Petitioners.

In 2021, Kiraly published online primarily letters between Martin and Hashimi. (Exhibit 6). The purposes of publication included transparency related to inquiry into the fraud and to let the car-buying public judge for itself whether or not Fremont Toyota's denials of fraud were credible. The posted correspondence included small profile photos to indicate who each letter was from. (Exhibit 6). It has been alleged that the photo of Hashimi was taken in person by Kiraly. In fact, it was Hashimi's LinkedIn photo.

In January 2022, Kiraly wrote a detailed letter intended to be read by Hashimi and Fremont Toyota's attorney, Christine Long. The letter offered for consideration points related to a case that had been filed against Martin by Fremont Toyota. Kiraly wasn't aware at the time of any case against him. He sent the letter to multiple parties with the request that it be forwarded. In some cases, he added that consensual communication related to the points made in the letter would be welcome.

**E. Kiraly Has Not Stalked Petitioners**

Kiraly has not followed, alarmed, placed under surveillance or harassed Petitioners. He has never made any threats against the Petitioners or their employees.

**F. Exhibits**

Respondent respectfully submits 18 exhibits. The exhibits will be introduced into evidence by testimony at the hearing. Respondent and/or others will testify in connection with the exhibits.

Following is a summary of the import of each exhibit.

**Exhibit 1: Current website: Home page.** Petitioners have demanded that Kiraly not be

1 permitted to write about the current legal cases. Exhibits 1 through 6 are the primary online writing that  
2 exists as of September 30, 2023. Exhibit 1 is a copy of the home, or summary, web page. It provides an  
3 overview of the cases. It would be inappropriate to state that the cases can't be documented or that this  
4 content or anything else on the website can't be posted.

5 **Exhibit 2: Current website: General pages about the cases.** Exhibit 2 contains several  
6 subsections of the website dedicated primarily to cases material. A Site Notices page is included. The  
7 Site Notices page includes a clear notice related to statements of fact: "Statements are based on belief  
8 and best understanding of facts and are not necessarily statements of fact except where this is explicitly  
9 stated. People with knowledge of facts that may be relevant to content are invited to suggest corrections  
10 or additions."

11 **Exhibit 3: Current website: Court filings page.** Exhibit 3 is the page where Court filings have  
12 been presented to the public.

13 **Exhibit 4: Current website: Auto buyers advice page.** This part of the website presents advice  
14 to the general public that is intended to reduce the incidence of fraud against the general public.

15 **Exhibit 5: Current website: Other pages.** Exhibit 5 is other content from the current website.

16 **Exhibit 6: Current website: Martin-Hashimi email page.** This part of the website presents an  
17 email exchange between Brian Martin and Kamal Sayed Hashimi aka "Mark" Hashimi. A small photo  
18 of each person is included next to each email, in the style of Twitter and other sites, so as to indicate  
19 who is speaking in each email.

20 **Exhibit 7: Kulwant S. Pawar Complaint in EEOC Charge No. 555-2020-01205.** This  
21 document was provided by Sam Pawar to Robert Kiraly by means, Kiraly believes, of upload. There  
22 are therefore no email headers related to the transfer. As with other documents related to Sam Pawar,  
23 Sam Pawar will testify regarding authenticity. In this document, Sam Pawar discusses discrimination  
24 by Fremont Toyota and business practices at the company. It is offered here, not to prove the truth of  
25 facts asserted, but to demonstrate that Kiraly had a reasonable basis for the posting of conclusions.

26 **Exhibit 8: Text Messages [12/18-20] between Hugo Alcantar [of Fremont Toyota] and Co-**  
27 **Respondent Brian Martin.** Brian Martin will testify that these are his text messages. This exhibit is  
28 offered, not to prove the truth of facts asserted, but to demonstrate that Kiraly had a reasonable basis

1 for the posting of conclusions.

2 **Exhibit 9: Document that Fremont Toyota claimed Brian Martin signed on 12/29/20.** This  
3 document, generated by Fremont Toyota and supplied to Robert Kiraly by Brian Martin, serves to  
4 support the factual accounting of events that Robert Kiraly has posted. It illustrates Fremont Toyota's  
5 practice of adding to the purchase price of a car without approval. Brian Martin will testify that the  
6 signature on the document is forged. This exhibit is offered, not to prove the truth of facts asserted, but  
7 to demonstrate that Kiraly had a reasonable basis for the posting of conclusions.

8 **Exhibit 10: Email from Kulwant S. Pawar cc'd to Fremont Toyota H.R. Department 2020-**  
9 **05-13.** This document was provided by Sam Pawar to Robert Kiraly by means, Kiraly believes, of  
10 upload. There are therefore no email headers related to the transfer. As with other documents related to  
11 Sam Pawar, Sam Pawar will testify regarding authenticity. In this document, Sam Pawar discusses  
12 discrimination by Fremont Toyota and business practices at the company. It is offered here, not to prove  
13 the truth of facts asserted, but to demonstrate that Kiraly had a reasonable basis for the posting of  
14 conclusions.

15 **Exhibit 11: Emails between Kulwant S. Pawar and Robert Kiraly 2022-03-13 to 2022-03-**  
16 **17.** The authenticity and relevance of these emails will be established in testimony. The context is a  
17 claim by Kulwant S. Pawar to the effect he had been told by his attorney, Richard Oriakhi, that a judge  
18 had ordered Mr. Pawar to, in some manner, achieve the takedown of Mr. Pawar's statement from the  
19 Web.

20 **Exhibit 12: Text messages between Pawar and Kiraly 2021-12-04 to 2022-02-10.** As with  
21 other documents related to Sam Pawar, Sam Pawar will testify regarding authenticity. In these text  
22 messages, Sam Pawar discusses business practices at Fremont-Toyota. These communications are  
23 offered here, not to prove the truth of facts asserted, but to demonstrate that Kiraly had a reasonable  
24 basis for the posting of conclusions.

25 **Exhibit 13: Context that Petitioner omitted from photograph[s] that Petitioner has filed**  
26 **and cited.** Petitioner has filed photograph[s] of Respondent holding a gun, has omitted accompanying  
27 text in violation of evidence rules, and has substituted contrived text of Petitioner's own wording.  
28 Exhibit 13 shows the text that Petitioner edited out. The text in question expresses a dislike of weapons.

1           **Exhibit 14: cc list context for mid-2021 use of residential addresses.** Petitioner has suggested  
2 that dossiers of individuals, including residential addresses, were posted online. In fact, the vast majority  
3 of such addresses were present only in a Cc list for a statement that Brian Martin sent to people in the  
4 reasonable belief that they were associated with management at a company, Fremont-Toyota, that had  
5 not responded previously to communications. This exhibit shows the context in which the addresses  
6 appeared.

7           **Exhibit 15: Site notice that offered to make corrections; from websites that Petitioner has**  
8 **filed and cited.** The entire web page in which this site notice appeared is included herein as part of  
9 Exhibit 2. This notice is related to statements of fact. It reads, “Statements are based on belief and best  
10 understanding of facts and are not necessarily statements of fact except where this is explicitly stated.  
11 People with knowledge of facts that may be relevant to content are invited to suggest corrections or  
12 additions.”

13           **Exhibit 16: Key context from a January 16, 2022 letter that has been filed and cited by**  
14 **Petitioner.** Petitioner has quoted Respondent in numerous places out of context. The text in this Exhibit  
15 provides relevant context.

16           **Exhibit 17: 2022-01-22 text messages from Brian Martin to Robert Kiraly related to a**  
17 **phone call from Rachel Ghiringhelli.** The authenticity and relevance of this Exhibit will be established  
18 in testimony.

19           **Exhibit 18: 2022-06-08 email from Kulwant S. Pawar to Robert Kiraly.** The authenticity  
20 and relevance of these emails will be established in testimony. The context is a claim by Kulwant S.  
21 Pawar to the effect that he had been ordered by his attorney, Richard Oriakhi, to sign a false pre-written  
22 statement related to Kiraly and to Pawar’s own previously posted statement about Fremont-Toyota.

23 **III. PROCEDURAL BACKGROUND**

24           On December 23, 2021, Fremont Toyota filed a Petition for Workplace Violence Restraining  
25 Order against Kiraly, in *Fremont Toyota v. Kiraly*, Alameda Superior Court, Case No. 21CV004608.  
26 On January 21, 2022, Fremont Toyota’s counsel also filed a Petition for Workplace Violence LLP  
27 against Kiraly, in *Berliner Cohen LLP v. Kiraly*, Alameda Superior Court, Case No. 22CV005860.  
28 Neither of the Petitions alleged any unlawful violence by Kiraly nor a credible threat of violence.



1 Instead, Fremont Toyota sought a WVRO based on its allegation that Kiraly had “sent at least 75  
2 harassing emails and created at least 18 websites in Fremont Toyota’s, employees’, and family  
3 members’ names and likeness for the purpose of harassing and defaming them.” (Attachment 8c to  
4 Fremont Toyota’s Petition for Workplace Violence Restraining Orders, p. 1.) Similarly, Berliner Cohen  
5 requested a WVRO based on allegations that “Kiraly has created several email addresses unlawfully  
6 using the name and likeness of Ms. Long and her colleagues (e.g., [me@ christinelong.attomey](mailto:me@christinelong.attomey))” and  
7 “used misleading email addresses to send over 65 emails that appear to be sent by Ms. Long, to Ms.  
8 Long's family members, her colleagues, and her colleagues family members requesting the recipients  
9 respond by providing intimate and personal details about Long including who she is married to,  
10 information about her activities, and relationships to Kiraly under the ruse that he is soliciting this  
11 information with Ms. Long’s permission for a book he is writing.” (Attachment 8c to Berliner Cohen’s  
12 Petition for WVRO, p. 1.) In fact, Kiraly never stated or implied that he was acting with Long’s  
13 permission.

14 The Court issued Temporary Personal Conduct Orders and Stay-Away Orders against Mr.  
15 Kiraly, and Kiraly has complied with those Orders. The Court has denied both Petitioners’ “Request for  
16 broad prior restraint of online speech by Respondent ...”

17 On April 8, 2022, Kiraly filed anti-SLAPP Motions in response to the Petitions. During the July  
18 21, 2022 oral argument on the Petitioners, the Court stated that it “agree[d] with [Kiraly] on the first  
19 prong” (i.e., that the Petitioners’ claims arose from Kiraly’s free speech or petition activity and that  
20 Kiraly presented “compelling” argument that the Petitions were lacking in merit. Nonetheless, the Court  
21 denied the anti-SLAPP Motions. Kiraly appealed the denials, but was forced to drop the appeals due to  
22 economic considerations. The cases were remitted to this Court on August 1, 2023.

#### 23 **IV. LEGAL ARGUMENT**

##### 24 **A. Code of Civil Procedure Section 527.8**

25 The Petitions are brought under Code of Civil Procedure § 527.8. Section 527.8 is specifically  
26 directed to unlawful violence and credible threats of violence: “Any employer, whose employee has  
27 suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be  
28 construed to be carried out or to have been carried out at the workplace, may seek a temporary

1 restraining order and an order after hearing on behalf of the employee ...” (Code Civ. Proc. § 527.8,  
2 subd. (a).) “Thus, to obtain a permanent injunction under section 527.8 ..., a plaintiff must establish by  
3 clear and convincing evidence not only that a defendant engaged in unlawful violence or made credible  
4 threats of violence, but also that great or irreparable harm would result to an employee if a prohibitory  
5 injunction were not issued due to the reasonable probability unlawful violence will occur in the future.”  
6 (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 335.)

7 **B. Kiraly’s Speech Was Constitutionally Protected and Not Illegal**

8 Here, Kiraly’s speech and activities were in furtherance of the exercise of the constitutional right  
9 of petition or the constitutional right of free speech in connection with a public issue or an issue of  
10 public interest. Such speech and activities do not provide a basis for the issuance of a workplace  
11 violence restraining order. (*See* Code Civ. Proc. § 527.8, subd. (c) [“This section does not permit a  
12 court to issue a temporary restraining order or order after hearing prohibiting speech or other activities  
13 that are constitutionally protected.”]; *see also Los Angeles v. Herman* (2020) 54 Cal.App.5th 97, 103  
14 [“Section 527.8, subdivision (c) precludes a court from issuing any restraining order that prohibits  
15 speech or other activities ‘that are constitutionally protected.’”].) The arguments made by Petitioners  
16 against said conclusion are unavailing.

17 First, the websites and emails did not violate Penal Code § 528.5, which provides that “any  
18 person who knowingly and without consent credibly impersonates another actual person through or on  
19 an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or  
20 defrauding another person” has committed the misdemeanor offense of false impersonation. (Penal  
21 Code 528.5.) An impersonation is credible “if another person would reasonably believe, or did  
22 reasonably believe, that the defendant was or is the person who was impersonated.” (Penal Code §  
23 528.5.) Petitioners have not adduced any evidence that anybody believed that Kiraly was Fremont  
24 Toyota or Berliner Cohen or one of their employees, nor could anybody reasonably believe that any of  
25 those persons would have created websites detailing Fremont Toyota’s fraudulent loan practices.

26 Second, Kiraly did not violate Penal Code § 653m, which prohibits obscene, threatening,  
27 harassing, or annoying telephone calls and electronic communications. “[A]nnoying rants concerning  
28 customer service ...cannot constitute substantial evidence that [Kiraly] violated section 653m,

1 subdivision (a).” (See *People v. Powers* (2011) 193 Cal.App.4th 158, 166.) Moreover, Petitioners have  
2 not presented any evidence that Kiraly “intend[ed] to cause the recipient actual psychic or emotional  
3 harm.” (*People v. Astalis* (2014) 226 Cal.App.4th Supp. 1, 9.)

4 Third, Kiraly did not make any “true threats” against Plaintiff. “True threats encompass those  
5 statements where the speaker means to communicate a serious expression of an intent to commit an act  
6 of unlawful violence to a particular individual or group of individuals. [Citations.]” (*People v. Lowery*  
7 (2011) 52 Cal.4th 419, 424.) None of Kiraly’s statements indicate any intent to commit unlawful  
8 violence against Petitioners. Rather, Kiraly’s statements about Fremont Toyota’s loan practices qualify  
9 as protected speech under the First Amendment.

10 Fourth, none of the challenged speech is commercial in nature. Petitioners do not claim that any  
11 of the websites are used for purposes of advertising or selling, or soliciting purchases of, products,  
12 merchandise, goods or services.

13 **C. Kiraly Did Not Engage in Unlawful Violence or Make a Credible Threat of**  
14 **Unlawful Violence**

15 The Petitions do not allege that Kiraly actually engaged in any act of unlawful violence.  
16 Accordingly, to obtain a permanent restraining order under section 527.8, Petitioners must establish by  
17 clear and convincing evidence that Kiraly made a credible threat of violence against an employee.  
18 (Code Civ. Proc. § 527.8, subd. (a).) “‘Credible threat of violence’ is a knowing and willful statement  
19 or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of  
20 his or her immediate family, and that serves no legitimate purpose.” (Code Civ. Proc. § 527.8, subd.  
21 (b)(2).) “A true threat occurs when a reasonable person would foresee that the threat would be  
22 interpreted as a serious expression of intention to inflict bodily harm.” (*In re Steven S.* (1994) 25  
23 Cal.App.4th 598, 607.)

24 A threat to kill or cause bodily harm is a credible threat of violence under section 527.8. (*Kaiser*  
25 *Foundation Hospitals v. Wilson* (2011) 201 Cal.App.4th 550, 552-554; *In re M.B.* (2011) 201  
26 Cal.App.4th 1057, 1066-1067, 1072.) For example, in *Kaiser Foundation Hospitals*, the Court of  
27 Appeal affirmed the grant of a workplace violence restraining order where the respondent told an  
28 employee that he was “going to put [her] and [a co-worker] down,” that he was “going to flip his

1 lid” and “do something that he would regret” and told police after being restrained for making threats  
2 that he was going to “kill someone.” (*Kaiser Foundation Hospitals, supra*, 201 Cal.App.4th at 553.)  
3 Similarly, in *M.B.*, the Court found a workplace violence restraining order was properly issued against  
4 a mother who “repeatedly yelled and cursed at employees of San Bernardino County Children and  
5 Family Services” and “threatened to shoot the social worker.” (*M.B., supra*, 201 Cal.App.4th at 1060.)

6 Here, Kiraly did not make any statements indicating an intention to inflict bodily harm or kill  
7 any of Petitioners’ employees. To the contrary, his communications with the Petitioners express his  
8 intent to seek lawful redress for the Petitioners’ conduct. (*See, e.g.*, Petitioners’ Exh. 33 [email from  
9 Kiraly to Electronic Frontier Foundation and Petitioners stating “a police report, a State Bar complaint,  
10 a suit for 6 figures in abuse of process damages, and publicity measures are under consideration.”]; Exh.  
11 44 [email from Kiraly to Berliner Cohen stating “I feel the circumstances are unusual enough that it  
12 would be appropriate to start work on a State Bar filing.”].) Such statements cannot serve as the basis  
13 for a workplace violence restraining order.

14 **D. Petitioners Are Unable to Demonstrate the Requisite Nexus with their Workplaces**

15 The websites and emails that forms the centerpiece of the Petitions did not take place at the  
16 workplace. Nothing in the testimony or the exhibits submitted in support of the Oppositions in any way  
17 suggests violence will occur at the Petitioners’ workplace, an essential requirement for an injunction  
18 under section 527.8. (*Scripps Health, supra*, 72 Cal.App.4th at 333–334.) To the contrary, the Internet  
19 postings described by the Petitioners reference that Kiraly “has posted home addresses”, not employees’  
20 work addresses, and thus cannot reasonably be construed as threats to be carried out at the workplace.

21 **E. Petitioners Are Unable to Show a Reasonability Probability of Future Violence**

22 Finally, Petitioner have not demonstrated a reasonable probability of future violence. “[T]o  
23 obtain a permanent injunction under section 527.8 ..., a plaintiff must establish by clear and convincing  
24 evidence not only that a defendant engaged in unlawful violence or made credible threats of violence,  
25 but also that great or irreparable harm would result to an employee if a prohibitory injunction were not  
26 issued due to the reasonable probability unlawful violence will occur in the future.” (*Scripps Health,*  
27 *supra*, 72 Cal.App.4th at 335.)

28 Here, Kiraly has ceased all communications with the Petitioners, and the Petitioners have not

1 claimed that he has violated any of the temporary restraining orders since they were served upon him  
2 over one and a half years ago. Consequently, a workplace violence order restraining order is not  
3 warranted. Indeed, a change in circumstances at the time of the hearing, rendering injunctive relief  
4 moot or unnecessary, justifies denial of the request. (*Cisneros v. U.D. Registry, Inc.* (1995) 39  
5 Cal.App.4th 548, 574; *Donald v. Cafe Royal, Inc.* (1990) 218 Cal.App.3d 168, 184.) Moreover, not only  
6 can injunctive relief be denied where the defendant has voluntarily discontinued the wrongful conduct  
7 (*Cisneros, supra*, 39 Cal.App.4th at 574), there exists no equitable reason for ordering it where the  
8 defendant has in good faith discontinued the proscribed conduct (*People v. National Association of*  
9 *Realtors* (1981) 120 Cal.App.3d 459, 476). In short, a permanent restraining order against Kiraly is not  
10 justified as it does not “appear with reasonable certainty that the wrongful acts will be continued or  
11 repeated.” (*Gold v. Los Angeles Democratic League* (1975) 49 Cal.App.3d 365, 372.)

12 **F. Frivolous Demands and Allegations should be Noted**

13 Respondent submits that examples of an unusual number of averments, demands, and phrasings  
14 by Petitioners which are egregious or patently frivolous include the following:

15 \* In Attachment 9(f) to Fremont Toyota’s WVRO Petition, Fremont Toyota demands that Kiraly  
16 be barred from posting “anything not factually related to purchase of vehicle from Petitioner, including  
17 but not limited to personal websites, social media, blogs, yelp, comment boards, and the following  
18 websites”. In fact, Kiraly has never purchased a vehicle from Fremont-Toyota nor is he even alleged to  
19 have done so. Petitioner is demanding here that Kiraly not be permitted even to state the name “Fremont  
20 Toyota”. Additionally, even if Kiraly had purchased a vehicle from Fremont Toyota, he is alleging  
21 systemic mass fraud against the general public and not a single consumer event to which writing can be  
22 limited. Petitioner is attempting to do an end run around the interests of the general public as well as  
23 Kiraly’s right to write.

24 \* Attachment 8(c) to Berliner Cohen’s WVRO Petition cites two separate statements by Kiraly  
25 that express confidence in law enforcement, “I’m going to need to go to the Feds” and “The police and  
26 the FBI are comfortable with me”, as being in some manner indications of an intent to break the law.  
27 The same attachment cites references to Kiraly’s faith in the California State Bar as being similarly  
28 indications of violent intent.

1 \* Attachment 8(c) to Berliner Cohen’s WVRO states as well that “Mr. Kiraly specifically  
2 targeted Ms. Long after she was individually identified as filing a TRO to restrain Mr. Kiraly on behalf  
3 of her client, Fremont Toyota”. Opposing Counsel is attempting to suggest here, without actually  
4 making the allegation, that Kiraly violated a TRO by sending her an email message. In fact, Opposing  
5 Counsel does not even allege that Kiraly had been served with a TRO at the time.

6 \* In the absence of any evidence that Kiraly had ever expressed any interest in visiting the  
7 workplaces cited in these cases, in Fall 2022, Petitioners filed a photo of Kamal Sayed Hashimi and  
8 alleged that Kiraly had taken the photo in person at the workplace. It was Hashimi’s LinkedIn photo.

9 \* In July 2021, Kiraly noticed that the law office of Berliner Cohen was reading Martin’s  
10 statement online. Kiraly emailed the company to comment on the statement and the visit by the law  
11 office. Part III of Attachment 8(c) to Fremont Toyota’s WVRO Petition states, “Berliner Cohen has 65+  
12 attorneys and the current managing partner is white. Yet, Mr. Kiraly specifically selected a non-white  
13 attorney to threaten the firm and try to intimidate from representing Petitioner.” This email to a random  
14 attorney was cited as an example of a “Focus on Race and Hate Speech”.

15 \* Petitioners cite snail-mail in numerous places. Not only did Kiraly never send even one piece  
16 of snail-mail that he recalls, it is not clear it is even alleged that he ever sent even one such piece.

17 \* Petitioners aver in multiple places that Kiraly has violated one or more past restraining orders  
18 and can therefore be expected to violate new such orders. Such pattern evidence is inadmissible. Further  
19 Kiraly has never been under a post-case restraining order, not even the order that is implicit in a Court  
20 settlement. Kiraly has never lost or settled a case of this type except through non-Court agreement.

21 \* Attachment 8(c) to Fremont Toyota’s WVRO comments that a former television detective,  
22 Brian Martin, can “reasonably” be assumed to be “dangerous” on the basis of having been in two TV  
23 series and suggests that a workplace violence restraining order against Kiraly is warranted based on his  
24 association with a TV star.

25 **V. CONCLUSION**

26 In conclusion, the Court should deny the Petitions for Workplace Violence Restraining Orders  
27 as Kiraly engaged in constitutionally protected speech, and Petitioners have failed to establish any  
28 unlawful violence or a credible threat of violence or lack of legitimate purpose as required by Code of

1 Civil Procedure § 527.8. In the event that the Court determines that Workplace Violence Restraining  
2 Orders are warranted, they must be narrowly drawn so as not to impede Kiraly' free speech rights.

3  
4 Dated: October 4, 2023

LAW OFFICES OF SETH W. WIENER



6 By: \_\_\_\_\_

7 Seth W. Wiener  
8 Attorney for Respondent  
9 ROBERT KIRALY