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Omar R. Serrato, SBN #295975

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Superior Court of California
County of San Francisco

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Attorney for Respondent, MICHAEL MARRACCINI

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

LAURA OWENS,

Petitioner

vs.

MICHAEL MARRACCINI,

Respondent

) Case No: FDV-18-813693

)
) OPPOSITION DAVIG GINGRAS'S MOTION TO
) INTERVENE, STRIKE, SANCTIONS; AND
) MOTION FOR DISCIPLINARY REFERRAL TO
) STATE BAR.

1 I. Introduction

2 On August 25, 2025, Respondent moved to disqualify attorney David S. Gingras from
3 representing Petitioner. The motion focused on Gingras's conflict of interest, both in defending
4 his past conduct and due to the advocate-witness rule (a legal principle that prohibits an
5 attorney from acting as both an advocate and a necessary witness in the same proceeding).
6 Respondent argued Gingras's need to defend himself in a pending State Bar investigation
7 involving Respondent and his role as a witness to key disputed events made him unfit to
8 continue as counsel.

9
10 On September 12, 2025, Gingras, not a party to this case, responded with a wide array of
11 counter-motions. Calling himself an "Intervenor," he seeks:

- 12
13 1) Leave to Intervene in this family law action for the limited purpose of pursuing sanctions
14 against Respondent's counsel;
15
16 2) An Order Striking the Motion to Disqualify in its entirety;
17
18 3) Monetary Sanctions against Respondent's counsel under Code of Civil Procedure § 128.5,
19 based on allegations that the disqualification motion was frivolous and filed in bad faith; and
20
21 4) A Disciplinary Referral of Respondent's counsel to the State Bar of California, premised on
22 the same accusations of misconduct.

23
24 Gingras's filings attempt to inject issues about opposing counsel's conduct into the
25 DVRO process, referencing matters outside the court's purview, such as YouTube commentary
26 and social media. Because these filings could disrupt the DVRO schedule and impede
27 Respondent's trial preparation, prompt resolution is necessary.

28 Accordingly, Respondent brings the present Request for Order Shortening Time,

ensuring Gingras's motions are resolved before the DVRO renewal trial proceeds. This transition clarifies the direct link between disruptions described above and the action now sought.

II. Procedural History

- (1) This case concerns a domestic violence restraining order between Petitioner Laura Owens and Respondent Michael Marraccini. Filed in 2018, Owens obtained a temporary DVRO in January 2018, which both parties agreed to extend (without admitting wrongdoing) until July 10, 2020.
- (2) In 2020, over Respondent's objection and without finding new abuse, the court renewed the DVRO for five years, effective through July 10, 2025.
- (3) On July 10, 2025, Owens sought a second DVRO renewal, with the intention of making it permanent. Respondent, who maintains Owens's claims were fabricated, vigorously contests the renewal and has requested a multi-day evidentiary hearing.
- (4) David Gingras, an Arizona attorney specializing in internet defamation, became involved in the Owens/Marraccini dispute prior to the latest renewal request. In June 2024, he represented Owens in an Arizona trial (Owens v. Echard) and objected to Marraccini's role as a subpoenaed witness.
- (5) Marraccini was lawfully subpoenaed to testify in that Arizona case. Despite this, Gingras tried to invoke the California DVRO to block Marraccini's testimony. As stated in Gingras's declaration, he contacted law enforcement on June 10, 2024, to have Marraccini arrested for attending the court proceeding.
- (6) Law enforcement denied Gingras's request, finding Marraccini was not violating the DVRO as a subpoenaed witness. This led to a State Bar complaint against Gingras. The resulting investigation found probable cause and is proceeding to disciplinary action (Exhibit A – Correspondence from Arizona State Bar).
- (7) A hearing on Owens's renewal took place on August 15, 2025. Gingras, representing Owens, proposed a short hearing, while Marraccini requested a long cause trial. Marraccini's request was granted.

- 1
- 2 (8) Following the August 15, 2025, hearing, attorneys Omar Serrato and Rachel Juarez
- 3 (defending Marraccini) held a conference call to discuss the case. Meant to last five
- 4 minutes, the call lasted over an hour, focusing mostly on Gingras's personal vendettas,
- 5 impending Arizona State Bar discipline, and DUI arrests.
- 6 (9) Gingras spoke rapidly and struggled to focus. He said he needed Marraccini to testify to
- 7 support his Arizona State Bar defense. I then told him this was a conflict of interest, as it
- 8 brought his personal concerns into the case.
- 9 (10) Based on that discussion, I filed a motion to disqualify due to an obvious Rule 1.7
- 10 conflict affecting these proceedings. I prepared the motion and told Gingras I would e-
- 11 serve the documents. Gingras then said he would not continue representing Owens
- 12 and sent written confirmation.
- 13 (11) As trial neared and ethics concerns persisted, counsel filed for Gingras's disqualification
- 14 on August 25, 2025, to prevent delay, questioning whether he would voluntarily
- 15 withdraw. The motion was expected to be unopposed and aimed at removing
- 16 distractions before trial.
- 17 (12) The disqualification motion cited two ethical grounds: (1) the advocate-witness rule,
- 18 which posits that Gingras, as a necessary witness on key facts, would face a conflict if
- 19 he continued advocating in the case and this could prejudice the trial, and (2) Gingras's
- 20 personal conflict due to his pending disciplinary case, which creates a self-interest that
- 21 might influence his conduct in the proceedings.
- 22 (13) The motion noted Gingras intended to withdraw and stated it was likely unopposed by
- 23 Owens, seeking to formalize his exit and protect proceedings from further distractions.
- 24 Gingras can still attempt to re-enter this case.
- 25 (14) Rather than withdrawing, Gingras responded to the disqualification motion by filing a
- 26 Motion to Intervene, Motion to Strike, Motion for Sanctions, and Motion for
- 27 Disciplinary Referral against Serrato.
- 28

1 (15) Gingras accuses Serrato of court fraud and gross misconduct. He claims: (1) I
2 misled the Court about Gingras being Owens's counsel; (2) the disqualification motion
3 was frivolous, filed in bad faith, and intended to harass him; and (3) I am using court
4 filings to run a social media campaign to smear him and build my YouTube presence.

5 (16) Gingras asks the Court to: impose monetary sanctions and attorney's fees on
6 Serrato under CCP § 128.5; strike the motion to disqualify; declare violations of multiple
7 Rules of Professional Conduct; and refer Serrato to the State Bar. Granting these
8 demands would punish and potentially silence Serrato. Gingras's filings feature heated
9 rhetoric and personal attacks, for example, accusing Serrato of "arrogantly and
10 menacingly" boasting about violence, calling his YouTube work "sleazy," and describing
11 the disqualification motion as a "scheme" to defame Gingras online.
12

13 **III. Points and Authorities**

14 **1. David Gingras Has No Standing to Intervene in this Case.**

15 **(a) Legal Standard for Intervention**

16 Under Cal. Code Civ. Proc. § 387, permissive intervention (a procedural device allowing a
17 nonparty to join ongoing litigation with the court's discretion) is appropriate only when a
18 nonparty demonstrates a direct and immediate interest in the action. A "direct and immediate
19 interest" means the nonparty will gain or lose legal rights based on the outcome of the
20 judgment itself. Turrieta v. Lyft, Inc., 69 Cal. App. 5th 955 (2021). In contrast, if the impact on
21 the nonparty is merely indirect or consequential, intervention is not permitted under this
22 standard.

23 The permissive intervention statute balances the interests of others who will be affected
24 by the judgment against the interests of the original parties in pursuing their litigation without
25 being burdened by others. City and County of San Francisco v. State of California, 128 Cal. App.
26 4th 1030. If proper procedures are followed, the court has discretion to permit a nonparty to
27 intervene in litigation pending between others, provided that the nonparty has a direct and
28 immediate interest in the litigation, the intervention will not enlarge the issues in the case, and

1 the reasons for intervention outweigh any opposition by the existing parties. Truck Ins.
2 Exchange v. Superior Court, 60 Cal. App. 4th 342.

3
4 **(b) Gingras Lacks Direct and Immediate Interest in the DVRO Proceedings**

5 Gingras seeks intervention in a domestic violence restraining order renewal case
6 between Laura Owens and Michael Marraccini. The underlying dispute concerns whether
7 Owens should receive a permanent restraining order against Marraccini. Gingras has no direct
8 interest in the merits of this restraining order request, as that dispute is strictly between the
9 actual parties.

10 Gingras's stated interest relates entirely to his personal reputation and desire to avoid
11 sanctions, which are collateral to the subject matter of the litigation. His motion seeks relief
12 solely against opposing counsel Omar Serrato, including monetary sanctions, striking of
13 motions, and disciplinary referral. These personal grievances against an attorney do not
14 constitute the type of direct and immediate interest, meaning a stake in the outcome of the
15 case itself, that California law requires for intervention.

16 Whether the restraining order is granted or denied will have no direct legal operation or
17 effect on Gingras, as he is neither the petitioner seeking protection nor the respondent from
18 whom protection is sought. Any impact on his reputation or professional standing would be
19 indirect and speculative, which is insufficient to support intervention. Turrieta v. Lyft, Inc., 69
20 Cal. App. 5th 955.

21
22 **(c) Attorneys Cannot Intervene to Pursue Personal Relief in Client Actions**

23 California courts have specifically addressed the improper use of intervention by
24 attorneys seeking personal relief in their clients' cases. Because an attorney is very unlikely to
25 meet the criteria to intervene and become a party to the underlying action, the fundamental
26 rule is that the attorney is not a party to the client's action and cannot appear on his or her own
27 behalf to seek any relief in that action, including enforcement of a contractual lien against the
28 proceeds of the judgment. Southern California Gas Co. v. Flannery, 5 Cal. App. 5th 476. The

1 limitation is founded on the fundamental principle that one who is not a party to a proceeding
2 may not make a motion therein. Southern California Gas Co. v. Flannery, 5 Cal. App. 5th 476.

3 After the client obtains a judgment, the attorney must bring a separate, independent
4 action against the client to establish the existence of the lien, to determine the amount of the
5 lien, and to enforce it. Southern California Gas Co. v. Flannery, 5 Cal. App. 5th 476. This principle
6 applies equally to Gingras's situation; if he believes he has been wronged by opposing counsel's
7 conduct, the appropriate remedy is through separate proceedings, not intervention in the
8 underlying case. The law requires a "specific present interest in the subject matter of the
9 action" rather than merely a collateral interest in the proceedings. Contentions of falsehoods
10 that are demonstrably false do not qualify.

11
12 **(d) Gingras's Intervention Would Improperly Enlarge the Issues.**

13 Gingras seeks to intervene solely for the limited purpose of seeking sanctions against
14 Serrato based on alleged misconduct. However, this request would significantly enlarge the
15 issues in the litigation beyond the core dispute between the actual parties. The underlying case
16 involves renewal of a domestic violence restraining order, while Gingras seeks to litigate
17 entirely separate issues regarding attorney conduct, sanctions, and disciplinary referrals.

18 Allowing such intervention would set a troublesome precedent, where any non-party
19 attorney who feels personally aggrieved by something in a case could intervene to litigate side
20 issues and attack opposing counsel. This is not what Code of Civil Procedure section 387
21 contemplates.

22 Gingras has no standing to intervene in this case. He is not a party to the Owens v.
23 Marraccini matter, and as of August 25, 2025, he was no longer counsel of record for either
24 side. Yet he seeks to intervene in the action solely to pursue personal relief against opposing
25 counsel. This is an improper use of the intervention mechanism. The dispute is strictly between
26 Owens and Marraccini. Whatever personal interest Gingras has (reputation, avoiding sanctions,
27 etc.) is collateral to the subject matter of the litigation.

1 noticed motion seeking judicial relief, rather than a sham pleading subject to being struck.

2
3 **(a) The Proper Response to a Disqualification Motion is Opposition, Not Striking.**

4 If Gingras believed the disqualification motion lacked merit, the appropriate course was
5 to file an opposition and let the Court deny the motion on its merits. California's procedural
6 framework provides clear mechanisms for responding to motions through opposition briefs and
7 oral argument, not through striking. Gingras chose to escalate with a punitive strike demand,
8 which finds no support in California law.

9
10 **(b) The Disqualification Motion Addressed Legitimate Legal Issues**

11 Substantively, there is nothing irrelevant or improper about the content of the
12 disqualification motion that would warrant striking it. The motion raised serious and valid
13 concerns under well-established ethics rules. California courts have inherent authority under
14 Code of Civil Procedure Section 128, subdivision (a)(5), to control the conduct of ministerial
15 officers and all other persons connected with judicial proceedings Kim v. The True Church
16 Members of Holy Hill Community Church, 187 Cal. Rptr. 3d 515.

17 Trial courts are empowered to disqualify counsel through this inherent power to control
18 the conduct of ministerial officers in furtherance of justice, M'Guinness v. Johnson, 243 Cal.
19 App. 4th 602. The determination of a motion to disqualify counsel requires balancing the
20 interests between a client's right to counsel of their choice and the need to maintain ethical
21 standards of professional responsibility. Benasra v. Mitchell, 96 Cal. App. 4th 96, 110. The
22 paramount concern must be to preserve public trust in the scrupulous administration of justice
23 and the integrity of the bar, as seen in M'Guinness v. Johnson, 243 Cal. App. 4th 602, and
24 Fremont Indemnity Co. v. Fremont General Corp, 143 Cal. App. 4th 50.

25 The disqualification motion detailed legitimate concerns, including Gingras's role as a
26 key witness regarding material events and potential conflicts of interest. It is indisputable that
27 Gingras is a key witness regarding the June 2024 incident, invoking the advocate-witness rule,
28 which generally bars an attorney from acting as trial counsel if he is likely to testify on a

1 material matter. California courts have repeatedly affirmed that they have discretion to
2 disqualify an attorney in such situations to avoid prejudice and protect the integrity of
3 proceedings.

4 Gingras's indication that he wouldn't continue as counsel does not render the motion
5 improper; if anything, it confirms the motion's point. Gingras was bound to become inflamed at
6 Marraccini's characterization of the evidence, and the risk in not filing this motion to disqualify
7 was Gingras entering at the 11th hour to disrupt proceedings. His sensitivities are on full display
8 in his moving papers.

9 Serrato's filing simply ensured that Gingras's withdrawal was made official under a cloud
10 of conflict, so that he could not later re-enter or influence the trial on behalf of Owens. This was
11 a prudent step given the stakes. In sum, there is nothing to "strike." The disqualification motion
12 was a proper filing addressing matters within the Court's purview. It should simply be heard on
13 its merits (if it has not been mooted by events). Gingras's Rule 3.1322 gambit is a misuse of
14 procedural rules. The Court should deny the motion to strike.

15 16 **3. Sanctions Under CCP § 128.5 Are Unwarranted and Unjustified**

17 Gingras's centerpiece request, to sanction Counsel under CCP § 128.5, is utterly without
18 merit. CCP § 128.5 allows a court to award attorney's fees or expenses against an attorney who
19 engages in bad-faith tactics that are frivolous or solely intended to harass. The statute is to be
20 applied sparingly, and it carries a safe-harbor provision similar to CCP § 128.7 (and FRCP Rule
21 11) requiring the moving party to give notice and an opportunity to correct any alleged
22 improper filing. Mr. Gingras's bid for sanctions fails on both substantive and procedural
23 grounds.

24 25 **(a) Gingras Promised False Statements to the Court. They Do Not Exist, So He Provided** 26 **Them Himself.**

27 Gingras's motion hinges on the accusation that Serrato lied to the Court in the
28 disqualification motion. The supposed "lies" boil down to three statements in Mr. Serrato's

1 filing (as identified by Mr. Gingras):

- 2 1) That Gingras "continues to represent" Ms. Owens in this case.
- 3 2) That Gingras has a personal conflict of interest that materially limits his ability to
- 4 represent Petitioner (due to a pending State Bar proceeding).
- 5 3) That allowing Gingras to continue as counsel would prejudice Respondent's rights and
- 6 undermine the integrity of the proceedings.

7
8 **The first alleged representation was never made.** This allegation from Gingras is a
9 blatant lie to the court. The motion stated specifically, "David Gingras has since indicated to
10 counsel, Omar Serrato, both verbally and in writing, that he does not intend to represent Laura
11 Owens in these proceedings." (**Motion to Disqualify, Page 4, lines 15-19**)

12 Serrato was forthcoming about the conversation. If the motion nonetheless referenced
13 "allowing Gingras to continue as counsel," it would be after the disclosure of Gingras's intent,
14 and completely moot unless Gingras attempted to continue as Owen's counsel. Gingras was
15 counsel at the August 15 hearing and had not filed any withdrawal. Serrato never received a
16 notice of limited scope representation, but a 66 minute phone call was had where Gingras
17 discussed continuing the October hearing for months to allow time to litigate. He spoke as a
18 man who intended to represent Laura Owens. After the motion was drafted to disqualify
19 Gingras, he then stated his intention not to represent Owens.

20 Serrato's phrasing, "does not intend to represent," was a fair description of the
21 situation: it left open the possibility that intentions might change or needed to be formalized by
22 court order. There was nothing malicious or deceptive here. In fact, Gingras's own declaration
23 reveals the real disagreement: he wishes Serrato had worded it as "no longer represents"
24 instead of "does not intend to represent." Quibbling over verb tenses is not grounds for
25 sanctions. The substance was conveyed to the Court that Gingras was stepping aside, which is
26 true. There was no false statement of material fact.

27 **The 2nd allegation:** Everything Serrato stated about conflict was factually supported.
28 Gingras is "the subject of a pending State Bar disciplinary proceeding arising out of his conduct

1 toward Respondent in this case". That is true, and was supported by evidence. Gingras does not
2 deny the disciplinary case exists or that it involves the June 2024 incident with Mr. Marraccini,
3 which is what he should do if he's going to represent those statements as lies, lest he himself
4 materially misrepresent material facts to the court.

5 Moreover, Gingras "has stated he intends to use this case to elicit testimony from
6 Marraccini that will aid in his defense" in that bar proceeding. That statement is supported by
7 Serrato's Declaration and the declaration of Rachel Juarez, who was a percipient witness to the
8 phone call referenced by Gingras.

9 Gingras has never refuted that he made such statements; indeed, it aligns with common
10 sense that he would want to clear his name by extracting favorable testimony. These facts lead
11 to a straightforward conclusion: Gingras has a personal stake in the case (defending himself
12 from discipline) that could conflict with Owens's interests.

13 For example, Gingras might conduct the DVRO trial or advise Owens in a way designed
14 to justify his past actions, rather than solely focusing on Ms. Owens's current protection needs.
15 This is a classic Rule 1.7 concurrent conflict scenario. Whether Gingras agrees that it "materially
16 limits" his representation is irrelevant. If he disagreed, he could have represented Owens and
17 opposed the motion to disqualify. It is a reasonable assessment of risk, not a knowingly false
18 factual assertion. Whatever the characterization, when we are arguing the interpretation of
19 facts, there is no lie.

20 **3rd Allegation:** This statement is plainly an expression of legal opinion or argument, not
21 an objectively verifiable "fact" that can be true or false. Serrato asserted that if Mr. Gingras
22 were allowed to continue as counsel despite the conflict and witness issues, Respondent's
23 rights would be prejudiced and the proceeding's integrity would be undermined. Gingras
24 bizarrely calls this a lie. This statement is plainly an expression of legal opinion or argument, not
25 an objectively verifiable "fact" that can be true or false. Serrato genuinely believed (and still
26 believes) that this is true. There is a solid foundation for this opinion: an advocate-witness
27 situation inherently threatens the fairness of a trial, as recognized by California case law.
28 Likewise, a lawyer with a personal agenda could skew the presentation of evidence in ways that

1 harm the opposing party.

2 One may disagree about the degree of prejudice, but treating this as a "knowing
3 falsehood" is absurd. It's advocacy. Importantly, the Court is fully capable of judging for itself
4 whether such prejudice would exist; Serrato wasn't hiding anything that would prevent the
5 Court from making an informed decision. No sanctionable misconduct can be predicated on this
6 kind of statement. Serrato did not violate Rule 3.3(a)(1) (candor to the tribunal). He did not
7 knowingly make a false statement of fact or law. He presented facts supported by evidence and
8 arguments supported by law. Gingras did something else.

9 Gingras's own filings confirm the core facts: he appeared as counsel on August 15,
10 withdrew, and had a personal entanglement with the case. Far from misleading the Court,
11 Serrato equipped the Court with the relevant information (even quoting Gingras's intent to
12 withdraw). Gingras appears to be satisfying an inability to avoid involvement in this case.

13 If Gingras felt a nuance needed clarification, that could have been handled through a
14 straightforward opposition or a simple notice to the Court that he was no longer representing
15 Ms. Owens. Instead, he chose scorched-earth accusations. The Court should firmly reject the
16 notion that any "false statement" occurred here, and consider whether or not Gingras himself
17 has ironically misrepresented material facts to this court.

18
19 **(b) The Disqualification Motion was Neither Frivolous nor Filed to Harass.**

20 By any objective measure, Serrato's motion to disqualify was supported by ample
21 factual and legal basis. It is therefore not "frivolous" (i.e., totally devoid of merit) nor was it filed
22 for the sole purpose of harassing Gingras. Serrato articulated concrete conflicts of interest and
23 cited on-point case law in his motion. This easily clears the low bar of "any reasonable basis"
24 needed to avoid a frivolousness finding.

25 It is worth highlighting the timeline: Mr. Serrato filed the motion promptly after the
26 August 15 hearing, in preparation for a trial that was fast approaching. This timing served to
27 resolve counsel issues before trial, not out of delay or malice. Owens was expected not to
28 oppose the motion, which undercuts any claim that it was meant to harass. The motion

1 targeted Gingras's participation. Far from being vexatious, the motion to disqualify aimed to
2 ensure a fair and orderly proceeding. It sought to prevent prejudice to Respondent and protect
3 the Court's process, in line with an attorney's duty. More importantly, it foresaw the scenario
4 where Gingras, after reading Marraccini's characterization of the facts, that necessarily
5 opposed Gingras's sworn declaration, would be triggered enough to attempt to re-enter
6 proceedings as counsel for Owens.

7
8 **(c) Gingras's Intervention Confirms the Risk We Flagged: It Is a Back-Door Merits Brief and**
9 **a Vehicle to Re-Enter as De Facto Counsel:**

10 The disqualification motion anticipated exactly what has now occurred: after reading
11 Respondent Marraccini's statement of facts; facts that necessarily contradict Gingras's sworn
12 narrative, Gingras was triggered to reinsert himself into this case. Unable (and ethically barred)
13 to cure the problem as Petitioner's trial advocate, he instead styled himself an "Intervenor" and
14 lodged a motion that purports to police "material misrepresentations," but in substance
15 rehashes and advocates the merits of the DVRO renewal and attempts to rehabilitate his own
16 declaration. That is precisely the scenario Rule 3.7 is designed to prevent: a lawyer-witness
17 trying to argue the case from counsel table and the witness stand at the same time—here, by
18 converting a sanctions/intervention filing into a surrogate trial brief.

19 Gingras says his motion is about candor to the tribunal. The paperwork says otherwise.
20 Most of his pages are spent recasting the June 10, 2024 incident and other DVRO facts,
21 previewing his testimony, attacking Respondent's credibility, and defending his own conduct;
22 subjects he has already sworn to in a declaration. That is not "misrepresentation policing"; it is
23 merits advocacy by a necessary witness. And it is exactly why Respondent moved to disqualify:
24 once Gingras's narrative is disputed, he cannot resist litigating himself, either by trying to return
25 as Owens's advocate, or, as here, by using an "intervention" vehicle to function as advocate in
26 all but name.

1 The result of Gingras filing this motion to intervene are the following:

2 **Abuse of Procedure and Court Processes:** Intervention and sanctions are not a license
3 to file a shadow merits brief. They are narrow tools to address threshold party status or truly
4 sanctionable litigation conduct. When a non-party lawyer devotes the lion's share of his papers
5 to fact-bound disputes underpinning the DVRO, arguments he wants the Court to adopt as true,
6 he is misusing procedure to litigate issues he should address only as a witness under oath,
7 subject to cross-examination.

8 **Circumvention of Rule 3.7 (advocate-witness).** The advocate-witness prohibition does
9 not evaporate because the lawyer changes captions from "Counsel for Petitioner" to
10 "Intervenor." If the content of the filing is factual advocacy on contested events for which the
11 lawyer is a percipient witness, the prejudice and confusion Rule 3.7 seeks to avoid are the
12 same. The Court should not permit Mr. Gingras to do indirectly, via "intervention" and
13 sanctions, what he cannot ethically do directly at trial.

14 **Conflicts and credibility become the sideshow.** Allowing a non-party lawyer to use
15 motion practice to defend his own credibility and attack Respondent's version drags the Court
16 into a collateral trial about the lawyer, not the parties. That is exactly what Respondent warned
17 would happen. It burdens the Court, distracts from the merits, and forces Respondent to
18 litigate against opposing counsel as a fact advocate, rather than confining Mr. Gingras to his
19 proper role as a witness.

20 Gingras's filings do not remedy any supposed "misrepresentation"; they confirm the
21 need for disqualification. They are a merits-driven attempt to re-enter the fray and shape the
22 factual record through attorney argument instead of admissible testimony. The Court should (i)
23 deny leave to intervene (or strictly cabin any leave to the threshold, non-merits issues), (ii)
24 disregard factual advocacy in the intervention/sanctions briefing as improper, and (iii) set the
25 matter on a clean track where Mr. Gingras appears only as a witness, and Petitioner proceeds
26 with conflict-free counsel.

27 Gingras's characterization of the disqualification motion as having "no purpose other
28 than to harass" is unsustainable. His briefing maligns Serrato's motives, claiming a "personal

1 obsession" and a vendetta. But the record tells a different story: Serrato's actions were
2 precipitated by Mr. Gingras's own extraordinary conduct and the ensuing ethical
3 entanglements.¹ A lawyer who moves to disqualify opposing counsel due to a genuine conflict is
4 doing his job, not engaging in harassment. To hold otherwise would chill attorneys from raising
5 legitimate ethics issues for fear of personal sanctions.

6
7 **(d) Gingras's Accusations Regarding YouTube Videos and Rhetoric are Irrelevant and**
8 **Overblown**

9 Gingras levels an extraordinary allegation, that Serrato "threatened Owens and her
10 (now former) counsel with physical violence" in YouTube videos. That is not mere rhetorical
11 flourish; it is an accusation that an officer of the court made criminal threats. If true, it would be
12 disqualifying. But it is not true.

13 **(1) The Record is empty of any threat.** The videos Gingras cites are still publicly
14 accessible, and complete transcripts are readily available. They contain no threats of
15 violence toward anyone, neither Owens nor Gingras, nor does any video in Serrato's
16 catalog. What Gingras points to boils down to (a) a single colloquial phrase, "want
17 the smoke," and (b) a satirical, obviously doctored thumbnail image used for
18 comedic effect. In context, "Do you want the smoke?" is common slang for "do you
19 want the conflict / challenge," typically understood as figurative and often verbal
20 conflict; it is not a literal promise of bodily harm.

21 **(2) California Law Requires a "True Threat," Not Rhetoric or Hyperbole.** A punishable
22 or sanctionable "threat" requires words that, in context and in light of the
23 surrounding circumstances, convey a serious expression of an intent to commit
24 unlawful violence, and are made with the specific intent that they be taken as a

25
26 ¹ Over the past 18 months, Gingras's actions in this matter have demonstrated a pattern of erratic and
27 unpredictable behavior. This is exemplified by a conference call involving Serrato, Rachel Juarez, and
28 Gingras, during which Gingras exhibited difficulty maintaining focus, communicated at an unusually rapid
rate, discussed personal grievances, and indicated that he required Marraccini's testimony to support his
defense in an ongoing Arizona State Bar proceeding. Given the imminence of the trial and the uncertain
prospect of Gingras attempting to resume representation at a late stage, these circumstances provided a
concrete basis for the motion to disqualify him as counsel.

1 threat (e.g., Pen. Code § 422; In re George T. (2004) 33 Cal.4th 620, 630-634; People
2 v. Felix (2001) 92 Cal.App.4th 905, 913-915). Ambiguous or hyperbolic language,
3 satire, and rhetorical bravado, particularly in public commentary about a matter of
4 public interest, do not constitute a true threat. Here, the slang phrase and a
5 meme-style graphic fall squarely on the rhetorical side of that line. There is no direct
6 statement of intent to inflict harm, no immediacy, no directive, no targeted menace,
7 and no evidence anyone experienced the “sustained fear” Penal Code § 422
8 contemplates. On this record, the legal threshold for a “true threat” is not remotely
9 met.

10 **(3) Context Gingras Omits: The videos pre-date Serrato’s representation and were**
11 **part of a public legal debate.** Gingras also fails to tell the Court that the cited videos
12 were published before Serrato ever appeared as counsel in this case and during a
13 period when Gingras himself was producing content and engaging publicly about
14 these same issues. Serrato was acting as a legal commentator in a widely followed
15 public controversy (driven largely by the Owens v. Echard saga). The two lawyers
16 exchanged content critiquing each other’s legal positions (including
17 procedural/ethics issues). Serrato and Gingras exchanged content regarding a legal
18 debate about Federal Rule 11 and its application to Arizona Family Law. At no time
19 during the production of those videos had Gingras ever raised the idea that threats
20 of violence were proffered. However, several members of the public who follow this
21 case had commented that Gingras produced video content with firearms in the
22 background that they perceived as threats to Serrato, and others who had fallen out
23 of favor with Gingras (for disagreeing with him)².

24 **(4) Irrelevance and Prejudice even if the Court Credited Gingras’s Spin:** Even if the
25 Court were to accept Gingras’s strained reading of slang and satire, none of the
26

27 ² It is observed that much of Gingras’s online content, including social media posts and YouTube videos,
28 is no longer publicly accessible. While the Arizona State Bar is conducting an ongoing investigation
concerning his public conduct on these platforms, the reasons for the removal of this content have not
been expressly disclosed in the record before the Court.

1 third-party YouTube ephemera is relevant to the questions actually before the
2 Court; whether Serrato's filings were frivolous or in bad faith, or whether Gingras
3 can ethically continue in a dual role. (Evid. Code § 350.) Injecting screenshots and
4 internet slang only invites confusion and undue consumption of time (Evid. Code
5 § 352) and distracts from the merits. And to the extent Gingras is relying on
6 third-party creators' commentary to bolster his narrative, that material is hearsay
7 (often multiple-hearsay), typically unauthenticated, and not attributable to
8 Respondent's counsel in any event.
9

10 Gingras's theory that Mr. Serrato filed the motion to disqualify to create new YouTube
11 content is unsupported and unreasonable. Serrato filed one motion on a serious issue and has
12 not created any content related to Owens or Gingras since entering this case in August 2025.
13 He cannot control the content practices of other creators, who continue to cover this case
14 because of the public interest in Owens' conduct.
15

16 **(e) Gingras's Online War With The Public Who follows This Case – Threatened Lawsuits,**
17 **Retaliatory Takedowns, and Direct Attacks on Respondent's Counsel.**

18 A striking portion of Gingras's filing is devoted to YouTube videos and commentary
19 created by people other than Respondent's counsel, complete with screenshots and links,
20 including a "Court of Random Opinion" video and other channels' content that Mr. Serrato did
21 not produce and cannot control.

22 Gingras's declaration likewise parades thumbnails and insults he attributes to "The
23 Tilted Lawyer" channel and "friends," again conflating independent creators' speech with
24 litigation conduct in this case.

25 This is telling: his true dispute is with those third-party commentators, not with any
26 "action or tactic" by Serrato cognizable under the sanctions statutes.
27

28 That matters for at least five independent reasons:

- 1
- 2 **(1) Sanctions must target litigation conduct.** Code of Civil Procedure § 128.5 and
- 3 § 128.7 reach “actions or tactics” of a party or the party’s attorney in the litigation.
- 4 Third-party YouTube uploads are not Respondent’s “actions or tactics,” and Serrato
- 5 has no legal ability to control what unaffiliated creators publish. Sanctions cannot be
- 6 imposed to punish a lawyer for someone else’s out-of-court speech. (See CCP
- 7 §§ 128.5(a), 128.7(b)–(c).)
- 8 **(2) Irrelevance and prejudice (Evid. Code §§ 350, 352).** Whether other creators posted
- 9 harsh commentary about Mr. Gingras is irrelevant to (a) the merits of the DVRO
- 10 renewal, (b) the Rule 1.7 conflict, (c) the Rule 3.7 advocate-witness problem, or (d)
- 11 any allegation that Serrato filed a frivolous motion. Injecting third-party videos
- 12 invites mini-trials on YouTube gossip and creates undue prejudice, confusion, and
- 13 consumption of time. (Evid. Code §§ 350, 352.)
- 14 **(3) Hearsay, lack of foundation, and authentication (Evid. Code §§ 1200, 702, 1401).**
- 15 Screenshots and clips of what others said online are hearsay (often multiple hearsay)
- 16 if offered for their truth; they are also frequently unauthenticated and lack proper
- 17 foundation or personal knowledge. Mr. Gingras offers them to paint a narrative
- 18 about Respondent’s “camp,” but that proves nothing about Respondent’s counsel’s
- 19 litigation conduct. (Evid. Code §§ 1200, 702, 1401.)
- 20 **(4) No duty (and no power) to police independent speakers.** California law imposes no
- 21 duty on counsel to moderate, retract, or “correct” independent third-party
- 22 commentary. To the contrary, California courts recognize that state-court remedies
- 23 cannot be used to command the removal of third-party online content—even when
- 24 alleged to be false—underscoring that courts are not content-moderation boards.
- 25 (Hassell v. Bird (2018) 5 Cal.5th 522, 544–546.)
- 26 **(5) Safe-harbor theory collapses when the “harm” is third-party speech.** Gingras tries
- 27 to dodge the § 128.5/128.7 safe harbor by claiming “incurable” reputational harm
- 28 from online republication of his accusations. But those republications are third-party

1 acts he deliberately put at issue by submitting a motion laden with YouTube exhibits.
2 Safe harbor is not excused because unrelated speakers talk about a filed motion on
3 their channels.
4

5 Further, he attempted to create a media storm by previewing his motion for sanctions,
6 teasing its filing, commenting on it publicly, and blogging about it for days after the filing,
7 perhaps as a gauge to see how his arguments with the public would be perceived. He wanted
8 the attention; he invited the attention and was anxious to see the public react to his filing.

9 (Exhibit B – Gingras Blogs)

10 At bottom, this Court is not the forum to settle Gingras's disputes with YouTubers. His
11 motion lays that bare: rather than confine himself to alleged misstatements in a court filing
12 (which he never identifies with specificity), he spends page after page litigating the internet, a
13 campaign that is neither relevant nor cognizable under the sanctions rules. The Court should
14 sustain Respondent's evidentiary objections (relevance, § 350; undue prejudice/consumption of
15 time, § 352; hearsay, § 1200; lack of foundation/personal knowledge, § 702; lack of
16 authentication, § 1401), disregard the YouTube-based material and arguments, and deny the
17 requested sanctions and strike relief.

18 To the extent these third-party exhibits were offered as a proxy to re-argue the merits
19 of the DVRO or to rehabilitate Mr. Gingras's own declaration, that only confirms why he cannot
20 ethically continue in a dual role: he is attempting to prosecute a broad, public-relations
21 grievance through this case.

22 As further evidence of his deep obsession with third party content creators, the court
23 should be aware that he has a long history of threatening and publicly feuding with content
24 creators who don't agree with him. Content creator Dave Neal publicly documented receiving a
25 threatening email from Mr. Gingras, which was tied to Neal's critical coverage (video segment
26 showing the email and summarizing the threat). Additionally, Neal has separately covered
27 Gingras's repeated defamation and threat rhetoric toward creators who have discussed this
28 case. (Exhibit C – Screenshot of Dave Neal Video Regarding Gingras Harassment)

1 Investigative journalist Megan Fox similarly reports that Mr. Gingras (with co-counsel)
2 demanded that coverage “stop immediately or change to favor their clients,” and she has
3 repeatedly noted Gingras’s defamation-lawsuit threats directed at independent reporters.

4 **(Exhibit D – Megan Fox Tweet Regarding Gingras Harassment)**

5 Beyond threats, Gingras has weaponized DMCA takedowns: on his own law firm blog, he
6 boasts that YouTube “approved [his] copyright strike” against a small critic (LoudLilDucky) and
7 celebrates the takedown (“#JusticeForDingus”), expressly linking his strike to the creator’s
8 criticism of the Respondent’s disqualification motion. **(Exhibit E – LoudLilDucky Blogs)**

9 The same blog series is used to attack the Respondent’s counsel personally. Gingras
10 accuses Omar Serrato of having “straight-up lied to the court,” announcing he moved to
11 intervene solely to seek sanctions and a State Bar referral against Serrato, an unequivocally
12 defamatory statement that was published for anyone who follows this case to see. **(Exhibit E)**
13 These episodes are not isolated. They form part of a pattern in which Mr. Gingras threatens
14 legal action (bar complaints, copyright takedowns, demand letters, notices) against content
15 creators who critique or report on the Owens litigation. The timing, language, and frequency of
16 these threats suggest they are being used to suppress public criticism and defend Gingras’s
17 personal reputation. This pattern of behavior has predictably spilled into the pleadings in
18 Owen’s DVRO renewal request. This motion should be Exhibit A, demonstrating Gingras’s
19 involvement in the case is not only as counsel for Petitioner but also as an actor seeking to
20 control public discourse — a role incompatible with fair, impartial representation under Rules
21 1.7 and 3.7

22
23 **(f) Gingras Did Not Adhere to the Safe Harbor Procedure, and No Valid Exception Excuses**

24 **This Failure.**

25 California Code of Civil Procedure Section 128.5 incorporates safe harbor provisions that
26 mirror those found in Section 128.7. Under these provisions, a motion for sanctions “shall not
27 be filed with or presented to the court unless, within 21 days after service of the motion, or any
28 other period as the court may prescribe, the challenged paper, claim, defense, contention,

1 allegation, or denial is not withdrawn or appropriately corrected." Cal Code Civ Proc § 128.7.
2 California courts have consistently held that "strict compliance with the safe harbor provisions
3 of Code Civ. Proc. , §§ 128.5 and 128.7, for sanctions motions" is required, and "[f]ailure to
4 comply with the safe harbor provisions precludes an award of sanctions." Transcon Financial,
5 Inc. v. Reid & Hellyer, APC, 81 Cal. App. 5th 547.

6 The safe harbor provision establishes "a two-step process with a safe harbor waiting
7 period: The moving party is to serve the sanctions motion on the offending party, but cannot
8 file it with or present it to the court unless, within 21 days after service of the motion, or any
9 other period as the court may prescribe, the challenged paper, claim, defense, contention,
10 allegation, or denial is not withdrawn or appropriately corrected." CPF Vaseo Associates, LLC v.
11 Gray, 29 Cal. App. 5th 997. This procedural requirement is "mandatory and the full 21 days
12 must be provided absent a court order shortening that time if sanctions are to be awarded."
13 Broadcast Music, Inc. v. Structured Asset Sales, LLC, 75 Cal. App. 5th 596, Li v. Majestic Industry
14 Hills LLC, 177 Cal. App. 4th 585.

15
16 **(1) Gingras Admittedly Failed to Comply with the Safe Harbor Provision**

17 Gingras explicitly acknowledges that he did not comply with the safe harbor
18 requirement. In his motion, Gingras states that he "filed his motion without prior warning" and
19 emphasizes this fact. This admission alone is sufficient to mandate denial of his sanctions
20 motion under established California law.

21 The purpose of the safe harbor provision is remedial, not punitive, and "is intended to
22 foster compliance and to conserve judicial resources otherwise spent adjudicating a sanctions
23 motion by affording a prescribed period of time during which a party may correct or withdraw a
24 frivolous or improper pleading or motion without any penalty." CPF Vaseo Associates, LLC v.
25 Gray, 29 Cal. App. 5th 997. By bypassing this process entirely, Gingras deprived both the court
26 and opposing counsel of the opportunity to resolve the matter without litigation.
27
28

1 **(2) Gingras's Exception Arguments Do Not Apply**

2 Recognizing his procedural failure, Gingras attempts to invoke a narrow exception to the
3 safe harbor requirement, arguing that the harm was irreparable and could not be mitigated by
4 withdrawal. However, this exception applies only in extremely limited circumstances where
5 "the very act of filing or the manner of filing causes a harm that cannot be undone."

6 The cases Gingras cites to support his exception argument are distinguishable. In
7 *Marriage of Sahafzadeh-Taeb*³, the exception applied because an attorney misled the court
8 about being ready for trial, causing the court and parties to waste a trial date, an incurred harm
9 that withdrawal of the statement wouldn't fix. In *Shenefield*⁴, an attorney publicly disclosed
10 confidential material in violation of a statute; once out, the secret was out, so no retraction
11 could undo that breach. These cases involved immediate, concrete harms to judicial resources
12 or statutory violations that could not be remedied by subsequent withdrawal of the action.

13
14 **(3) The Alleged Harm Does Not Justify Bypassing the Safe Harbor Provision**

15 Gingras's claimed harm, including reputational damage from YouTube videos discussing the
16 disqualification motion, does not meet the standard for the safe harbor exception. Reputational
17 harm to an attorney is not the concern of CCP § 128.5; the concern is abuse of the court
18 process." The alleged harm is essentially personal embarrassment, which "does not warrant
19 dispensing with a statutory prerequisite." Furthermore, the pleadings in this case are open to
20 the public. Serrato did not publish any content related to the pleadings in this case, and Serrato
21 has no ability to prevent other content creators from commenting publicly. Gingras's anger is
22 misplaced.

23
24
25
26 ³ In re Marriage of Sahafzadeh-Taeb & Taeb: 39 Cal. App. 5th 124: An attorney's bad faith conduct was
27 sufficient to support the imposition of sanctions under Code Civ. Proc., § 128.5, because the attorney not
only failed to appear because of a trial conflict, but also misrepresented readiness for trial and failed to
correct that misrepresentation, and the record could support a finding of subjective bad faith.

28 ⁴ *Shenefield v. Shenefield*, 75 Cal. App. 5th 619 (2022). In a child custody dispute, the husband's attorney
was properly sanctioned for unwarranted disclosure of a confidential custody evaluation because the
husband's declaration, which the attorney filed, quoted a psychological evaluation from the wife's

1 **4. The Extreme Request for Disciplinary Referral Should Be Rejected.**

2 Gingras asks this Court not only to punish Mr. Serrato with sanctions, but to make
3 formal findings of ethical violations (Rules 3.1, 3.3, 4.1, 8.4) and refer Mr. Serrato to the State
4 Bar for investigation. This is an extraordinary request that is entirely unwarranted on the facts.
5 It appears designed more to generate a flashy talking point for his blog (or headline) than to
6 address any genuine threat to the profession. The Court should decline this invitation to
7 overstep.

8 Rule 3.1 (frivolous actions) – Serrato did not pursue a frivolous position; the motion to
9 disqualify had substantial merit and was rooted in legitimate concerns. It was not filed to harass
10 or maliciously injure Mr. Gingras, but to protect Respondent's rights.

11 Rule 3.3 (candor to tribunal) – Serrato did not knowingly make false statements of fact
12 or law to the Court. All material facts were fairly disclosed (including Mr. Gingras's intent not to
13 continue), and the legal arguments were grounded in existing law. There was no deception of
14 the court. Mr. Gingras's disagreement with phrasing does not equal a 3.3 violation.

15 Rule 4.1 (truthfulness in statements to others) – This rule concerns false statements of
16 material fact or law to third parties (e.g., in negotiations). Gingras has pointed to no specific
17 communication to a third party in which Serrato lied. Everything in the motion to disqualify
18 Gingras was based on law and fact, derived from the sworn declarations of David Gingras and
19 other exhibits used in the motion. (that Mr. Gingras tried to get Mr. Marraccini arrested, that
20 he faces a bar complaint, etc.). It may be unflattering, but truth is an absolute defense – both in
21 defamation law and certainly against a Rule 4.1 accusation.

22 Rule 8.4 (misconduct) – This catch-all rule (specifically 8.4(c) cited by Gingras) prohibits
23 conduct involving "dishonesty, fraud, deceit, or reckless or intentional misrepresentation" as
24 well as conduct prejudicial to the administration of justice. There is no evidence of fraud or
25 deceit by Serrato. Filing a motion that Gingras didn't like is not conduct that prejudices the
26 administration of justice. Gingras's attempt to equate vigorous representation with ethical
27 misconduct is unsupported.

28 previous marital dissolution. Attorneys can make unwarranted disclosures for purposes of Fam. Code, §
3111

1 If Gingras honestly believed Serrato's behavior in this case violated professional rules,
2 he is free to report it to the California State Bar. The Bar can then evaluate the matter
3 independent of these proceedings. Dragging the Court into making a finding and referral is
4 unnecessary. Courts typically reserve disciplinary referrals for clear-cut, egregious misconduct
5 that the judge personally witnesses (e.g., an attorney lying in open court, tampering with
6 evidence, etc.). There is no incontrovertible act of dishonesty or obstruction before the Court
7 that would compel disciplinary action.

8 The Court should decline Gingras's request emphatically. Mr. Gingras's motions have
9 already created a sideshow; the Court can close the curtain on it by denying these extreme
10 measures.


11 IV. Conclusion

12 Gingras's motions are an unnecessary and inflammatory tangent to the real issues in
13 this case. Gingras chose to inject himself into this proceeding and, when met with rightful
14 resistance through a well-grounded disqualification motion, he retaliated with personal attacks
15 and meritless requests. The Court should not allow this approach. Serrato's conduct did not
16 violate any laws or rules to warrant sanctions or disciplinary actions. By contrast, Gingras's
17 filings exemplify the scorched earth tactics that waste judicial resources and turn a domestic
18 violence case into a personal grudge match.

19 Respondent and his counsel urge the Court to bring the focus back to the parties'
20 dispute and put a stop to the peripheral attorney feud. Denying Mr. Gingras's motions will send
21 that message clearly. We ask that the Court do so and allow the Owens v. Marraccini matter to
22 proceed on course, free from further distractions.

23
24 Dated: September 23, 2025

Respectfully Submitted,

25
26 
27 Omar R. Serrato
28 Attorney for Respondent, Michael Marraccini