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Intervenor/Former Counsel
for Petitioner Laura Owens

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

LAURA OWENS,

Petitioner,

v.

MICHAEL MARRACCINI,

Respondent.

OPPOSITION TO RESPONDENT'S MOTION TO DISQUALIFY

Judge Assigned: Hon. Carolyn Gold
Hearing Date: October 10, 2025
Time: 1:30 P.M.
Dept: 405A

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Non-party/Intervenor (and former counsel to Petitioner Laura Owens) David S. Gingras respectfully opposes Respondent Michael Marraccini's Motion to Disqualify. The motion should be denied and the Court should sanction Mr. Marraccini's counsel, Omar Serrato, for bringing it.

I. INTRODUCTION

It is unfortunate this Court must waste its time considering the issue of disqualification (especially on shortened time). As explained below, the question of disqualification is both moot and objectively frivolous for multiple independent reasons.

First, the attorney/client relationship between the undersigned and his former client (Ms. Owens) was voluntarily terminated before Mr. Serrato filed the motion to disqualify. Thus, the issue was moot *before* Mr. Serrato's motion was filed (a fact which Mr. Serrato knew, but which he intentionally misrepresented to this Court).

Second, the motion argues a conflict of interest exists – but not a conflict *between Mr. Marraccini and the undersigned*. Rather, placing himself in the role of virtual bar counsel, Mr. Marraccini claims a conflict exists between Ms. Owens and her (now former) counsel, David Gingras, for various hypothetical reasons.

If Mr. Marraccini bothered to read the cases cited in his brief, he would know the law is squarely against him – Mr. Marraccini lacks standing to seek disqualification based on an alleged conflict between Ms. Owens and her counsel. That point was explained in *Great Lakes Construction Inc v. Burman* — the very first case Mr. Marraccini cited on page 8 of his motion under the heading "Legal Standard for Disqualification of Counsel". Had Mr. Marraccini bothered to read *Great Lakes*, he would have instantly noticed a small problem:

> A "standing" requirement is implicit in disqualification motions. Generally, before the disqualification of an attorney is proper, the complaining party must have or must have had **an attorney-client relationship with that attorney**.

Great Lakes Const. Inc v. Burman, 186 Cal.App.4th 1347, 1356 (Cal. App. 2nd Dist. 2010) (emphasis added).

Mr. Marraccini never had an attorney-client or other confidential relationship with the undersigned. For that reason, even if a conflict exists (which none does) Mr. Marraccini has no standing to raise this argument.

Third, the motion argues disqualification is proper due to the "advocate/witness" rule. But the motion misstates the law and ignores the facts (by failing to mention that Ms. Owens gave informed consent which defeats, as a matter of law, any disqualification argument under Professional Conduct Rule 3.7, and that undersigned counsel decided *not* to act in a dual role, *before* the disqualification motion was filed).

For these reasons, the motion to disqualify should be denied. In addition, the Court should impose sanctions on Mr. Serrato for knowingly filing a frivolous pleading which was brought in bad faith, for purposes of harassment and to cause unnecessary delay.

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II. DISCUSSION

Mr. Marraccini's motion raises two main bases for disqualification. First, he argues a current conflict of interest exists between Ms. Owens and her (now former) counsel. Second, Mr. Marraccini invokes Professional Conduct Rule 3.7 (the advocate/witness issue) and claims it requires disqualification.

Both arguments are not just wrong, they are objectively frivolous. In fact, Mr. Marraccini's motion is more than frivolous; it contains intentional false statements by counsel, and it is clear the motion was brought solely for purposes of harassment. Accordingly, this Court should deny the motion, impose sanctions on Mr. Marraccini's counsel, Omar Serrato, and refer him to State Bar of California for discipline.

a. The Issue of Disqualification Is Moot

All other problems aside, Mr. Marraccini's motion should be denied for one simple reason – because the issue is moot. This is so because the attorney/client relationship between Ms. Owens and the undersigned was voluntarily terminated *before* the motion was filed.

That single fact eliminates any need for this Court to consider other arguments, all of which are based on the *generally* accurate statement that: "courts retain discretion to disqualify an attorney-witness …." Mot. at 2:21. The problem with Mr. Marraccini's position (which he takes from cases such as *Lyle v. Superior Court*) is that he omitted the mandatory condition-precedent to a court's authority to disqualify: "***Failing voluntary withdrawal by trial counsel*** in such situation a trial court is vested with broad discretion to order withdrawal." *Lyle v. Superior Court*, 122 Cal.App.3d 470, 479–480 (Cal.App. 4th Dist. 1981) (emphasis added).

Here, undersigned counsel appeared on behalf of Ms. Owens at a single brief hearing. Days later, Mr. Marraccini's counsel argued various grounds existed to terminate the undersigned's representation of Ms. Owens. After considering the issues, undersigned counsel *agreed* (in part). The unsigned then terminated the representation, and informed Mr. Marraccini's counsel of that fact, in writing.

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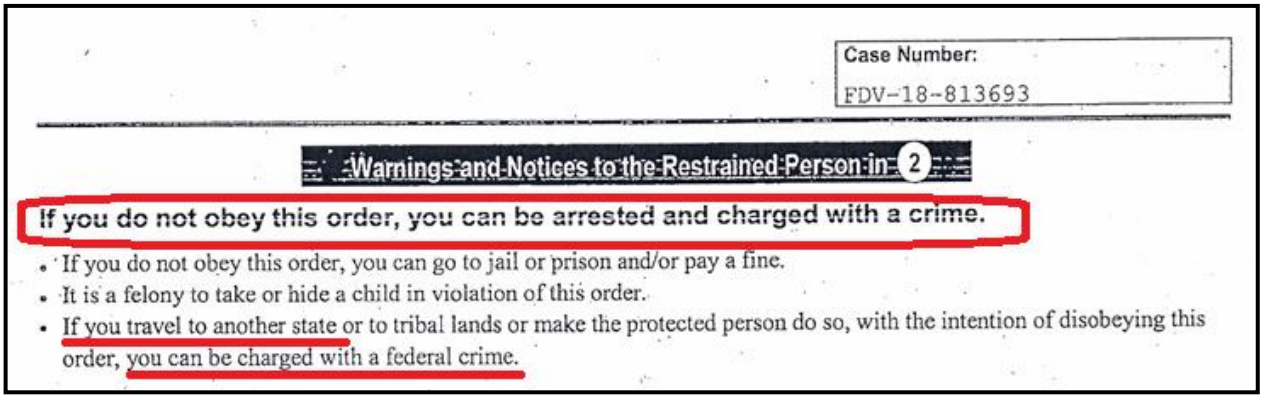
Here, undersigned counsel has *not failed to voluntarily withdraw*. Rather, the attorney/client relationship has already ended. Accordingly, this Court cannot exercise its discretion to involuntarily terminate the attorney/client relationship because no such relationship exists.

b. No Basis Exists To Disqualify Due To A "Conflict of Interest"

Mr. Marraccini's remaining arguments are all based on false premises; *e.g.*, that undersigned counsel has *failed to voluntarily withdraw*, and that as a result, various current conflicts exist (a lawyer cannot have a current conflict with a party that lawyer no longer represents). This means all of Mr. Marraccini's remaining arguments are purely hypothetical/theoretical.

For instance (and ignoring the fact the undersigned no longer represents Ms. Owens), Mr. Marraccini argues a present conflict of interest exists because in November 2024, Marraccini filed a complaint with the State Bar of Arizona against the unsigned which arose from his representation of Ms. Owens in Arizona. In his complaint, Mr. Marraccini claimed the undersigned acted unethically by, among other things, *reminding* Mr. Marraccini that he could face arrest and criminal prosecution if he violated the DVRO issued by this Court (the same warning was also present on the face of this Court's order).



Case Number:
FDV-18-813693

Warnings and Notices to the Restrained Person in 2

If you do not obey this order, you can be arrested and charged with a crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

In his Arizona bar complaint, Mr. Marraccini also accused the undersigned of acting unethically by contacting law enforcement in Arizona to report that Mr. Marraccini violated the proximity restriction of the DVRO by coming closer than 300

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away from Ms. Owens in the parking lot outside the court in Phoenix. Although Mr. Marraccini was not arrested at the time, he asserts that by merely contacting law enforcement to report a suspected crime, the undersigned acted improperly.[1]

To be clear — Mr. Marraccini's discussion of what occurred in Arizona is incomplete, irrelevant, and highly misleading. Among other things, as of today's date, no disciplinary charges have been filed against the undersigned in Arizona. Rather, it appears the State Bar of Arizona is still determining what (if anything) it intends to allege as a basis for discipline. To be sure, this *might* include some aspect of Mr. Marraccini's complaint. At this time, since no actual disciplinary charges have been filed, it is purely speculative to guess what hypothetical role Mr. Marraccini's complaint may have, if any.

But thankfully, it is not necessary for this Court to delve into the thorny question of whether Mr. Marraccini's complaint to the Arizona bar requires disqualification. On that issue, California law is clear – under the facts of this case, Mr. Marraccini has no standing to raise this argument.

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[1] Reporting a suspected crime to law enforcement falls squarely with the "right of petition" protected by the First Amendment and the anti-SLAPP law:

> The law is that communications to the police are within SLAPP. (*Walker v. Kiousis* (2001) 93 Cal.App.4th 1432, 1439, 114 Cal.Rptr.2d 69 [complaint to police is "made in connection with an official proceeding authorized by law"]; *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1511, 65 Cal.Rptr.3d 641 [in action by physical therapist against client alleging false report of child abuse, client's "statements to the police clearly arose from protected activity"]; *see generally ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1009, 113 Cal.Rptr.2d 625 [filing complaint with a government agency constitutes a "statement before an official proceeding" within section 425.16, subdivision (e)(1)]; *Lee v. Fick* (2005) 135 Cal.App.4th 89, 97, 37 Cal.Rptr.3d 375 [complaint to the government is itself "part of the official proceedings"].)

Comstock v. Aber, 212 Cal. App. 4th 931, 941–42 (Cal. App. 1st Dist. 2012).

Retaliating against another person for reporting a crime is also a separate criminal offense. *See* 18 U.S.C. § 1513 (making it a federal crime to take: "any action harmful to any person … for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense ….")

i. Because He Is Not A Former Client And Had No Confidential Relationship, Mr. Marraccini Lacks Standing To Seek Disqualification Based On A Conflict of Interest

On page 8 of his motion, Mr. Marraccini attempts to explain the "legal standard for disqualification of counsel", citing various cases starting with *Great Lakes Construction Inc v. Burman*, 186 Cal.App.4th 1347 (Cal. App. 2nd Dist. 2010). Mr. Marraccini then argues this Court should disqualify the undersigned based on an alleged/hypothetical conflict of interest he has with Ms. Owens (arising from the bar complaint Mr. Marraccini filed in Arizona).

If Mr. Marraccini's counsel had bothered to read *Great Lakes*, he would have realized it requires this Court to deny his motion to the extent it is based on a conflict of interest. This is so because Mr. Marraccini is not a former client, nor did he have any prior confidential/fiduciary relationship with the undersigned.

In *Great Lakes*, the Court of Appeal was clear – as a general rule, an *adverse* party in litigation cannot seek disqualification of opposing counsel based on an alleged conflict of interest unless the moving party is a *current or former client* of that attorney: "Generally, before the disqualification of an attorney is proper, the complaining party must have or must have had an attorney-client relationship with that attorney." *Great Lakes*, 186 Cal.App.4th at 1356 (emphasis added). The Court further clarified:

> We reject the … argument that Code of Civil Procedure section 128, subdivision (a)(5), permits a court to dispense with standing requirements when evaluating attorney disqualification motions. That statute gives courts authority to grant disqualification motions brought by a party who meets the standing requirements. Thus, *a moving party must have standing*, that is, an invasion of a legally cognizable interest, to disqualify an attorney.

Id. at 1357 (cleaned up) (emphasis added).

Here, putting aside the fact no *actual* (or even *potential* conflict exists) Mr. Marraccini clearly lacks standing to seek disqualification based on the alleged conflict between Ms. Owens and her counsel (whether present or former). Although Mr.

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Marraccini seems to enjoy articulating his personal belief that the undersigned is acting unethically by violating certain Rules of Professional Conduct, petty gratuitous *ad hominem* attacks are not the sort of "legally cognizable interest" that confer standing; "The State Bar Rules of Professional Conduct govern attorney discipline, not standards for disqualification in the courts." *Great Lakes*, 186 Cal.App.4th at 1356 n.5 (emphasis added) (citing *Hetos Investments, Ltd. v. Kurtin*, 110 Cal.App.4th 36, 47 (Cal. App. 4th Dist. 2003)).

Beyond *Great Lakes*, other cases cited by Mr. Marraccini compel the same result, albeit for slightly different reasons. For instance, Mr. Marraccini also cites *Kennedy v. Eldridge*, 201 Cal.App.4th 1197 (Cal. App. 3rd Dist. 2011), which (oddly), mentions *Great Lakes*, but then partially disagrees with it, stating: "no California case has held that only a client or former client may bring a disqualification motion." *Kennedy*, 201 Cal.App. 4th at 1204.

Upon closer inspection, *Kennedy* does not help Mr. Marraccini's position. This is so because although *Kennedy* took a *slightly* broader view of when a non-client has standing to seek disqualification, it affirmed the rule that a moving party must have some sort of special relationship or interest with the opposing lawyer before disqualification can be sought.

In *Kennedy*, that special relationship existed because the lawyer (Richard Eldridge) was disqualified from representing his own son (Tyler) in a custody dispute based on a motion filed by the other parent (Kayla). Kayla previously worked for Mr. Eldridge, her mother consulted with Mr. Eldridge regarding her (Kayla's) previous divorce, and Mr. Eldridge's firm previously represented Kayla's father; "as a result of the foregoing, [attorney] Richard has access to Kayla's confidential information." *Kennedy*, 201 Cal.App.4th at 1201–02. In other words, the Court found although Mr. Eldridge had not directly represented Kayla himself, his firm had previously represented Kayla's father, and had sufficient other indirect contact with her family members such that the firm obtained "confidential information" about her.

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The Court of Appeal held those highly unique circumstances warranted disqualification of Mr. Eldridge; "The trial court could reasonably find there was a significant danger that—as a result of its prior involvement in her father's divorce case—the Eldridge firm acquired relevant confidential information about Kayla to which it otherwise would not have had access." *Id*. at 1207 (emphasis added).

Given these narrow and unusual facts, other courts have dismissed *Kennedy* as an "outlier" with only limited application. *See T-12 Three, LLC v. Turner Constr. Co.*, 2017 WL 87059, at *8 (Cal. App. 4th Dist. 2017) (explaining, "*Kennedy* is an outlier due to the unique factual circumstances it addressed and is not determinative here. While we do not believe a nonclient can *never* establish standing, case law consistently denies standing to a nonclient.") (emphasis added) (citing extensive authority).

Here, Mr. Marraccini lacks standing because he does not allege anything remotely close to the unique facts of *Kennedy*. He does not allege any prior attorney/client or other relationship with the undersigned, either as to himself or any of his close family members. Again, the key issue in *Kennedy* was a fact *not* present here – the disqualified lawyer's firm previously represented the moving party's father, and the moving party (Kayla) declared that as a result, "the Eldridge firm did acquire access to her confidential information" by virtue of that representation. *Id*. at 1208.

Mr. Marraccini is not a former client. He does not claim (and certainly does not show) the undersigned ever acquired his "confidential information" by representing his father or any other family member. Instead, Mr. Marraccini simply wants to disqualify the undersigned for reasons of personal dislike, and because he perceives (incorrectly) some nefarious personal motives are involved.

But if that was the correct standard, Mr. Serrato would equally be subject to disqualification for the same reason – because Ms. Owens and the undersigned believe Mr. Serrato is not pursuing this matter to advance Mr. Marraccini's best interests. Instead, Ms. Owens and the undersigned believe Mr. Serrato is acting primarily if not exclusively for his own self-interest; i.e., Mr. Serrato hopes to use this case to help gain

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subscribers for his YouTube channel, and to generate new content for his friends to share on their YouTube channels, as has already occurred.

Either way, the law is clear: personal hatred for an opponent (or opposing counsel) does not confer standing to seek disqualification. That single fact is dispositive as to the conflict argument.

Furthermore, no conflict (either actual or potential) exists between Ms. Owens and counsel. Although it is certainly *possible* the State Bar of Arizona *might* someday pursue future discipline relating to Mr. Marraccini's complaint, that has not happened yet; "Such a highly speculative and tactical interest does not meet the standing requirements." *Great Lakes*, 186 Cal.App.4th at 1359. And even if it did occur, this would *still* not create a conflict sufficient to warrant disqualification (because both Ms. Owens and the undersigned each hold exactly the same views – they both believe Mr. Marraccini violated this Court's order, that he should face consequences as a result, and that Mr. Marraccini's complaint to the Arizona bar is frivolous).

The bottom line is this Court need not concern itself with any alleged conflict between Mr. Owens and the undersigned. Indeed, because the attorney/client relationship was voluntarily terminated, there is no basis for Mr. Marraccini to argue a current conflict exists, and thus disqualification could not be justified on that basis.

c. The Advocate/Witness Rule Does Not Apply Because The Undersigned No Longer Represents Ms. Owens

On page 9 of his motion, Mr. Marraccini argues: "A lawyer may not serve as both an advocate and witness on a material issue at trial, absent narrow exceptions." (emphasis added). That argument misstates the law; in California, a lawyer can *always* act as both an advocate and a trial witness IF:

(1) the lawyer's testimony relates to an uncontested issue or matter; [or]

…

(3) the lawyer has obtained informed written consent from the client.

Cal. R. Prof. Conduct 3.7(a)(1)–(3).

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Here, based on discussions with Mr. Serrato that took place days **before** he moved to disqualify, the undersigned made the decision to *not* act as both an advocate and a witness. That fact was communicated to Mr. Serrato, in writing, on August 22, 2025 – several days *before* the disqualification motion was filed. Because the undersigned will not be acting in a dual role at trial, Rule 3.7 simply does not apply here.

Nevertheless, if the undersigned were to assume a dual role of advocate and witness, that would be permitted under both Rule 3.7(a)(1) and 3.7(a)(3).

As to the first point, the only issues the undersigned plans to testify about are factual matters which are (or should be) uncontested. For instance, the testimony of the undersigned was already set forth in a declaration submitted by Mr. Owens in connection with her original request to renew the DVRO. As explained in that declaration, the undersigned will (if needed) testify regarding events which are (or should be) completely uncontested, such as:

- In June 2024, Mr. Marraccini appeared in Phoenix, Arizona outside the Maricopa County Superior Court and came within less than 300 feet away from Ms. Owens;
- Mr. Marraccini later sat as a spectator in the gallery of a courtroom approximately 20-40 feet away from Ms. Owens for a period of more than an hour;
- Mr. Marraccini had initially been disclosed as a *potential* trial witness, but the party who disclosed him failed to comply with the requirements of Ariz. R. Fam. L.P. 49(*i*) which states: "Each party must disclose the names, addresses, and telephone numbers of any witness whom the disclosing party expects to call at trial, along with a statement fairly describing the substance of each witness's expected testimony." (emphasis added).
- To determine whether Mr. Marraccini was planning to appear at trial, the undersigned talked to the contact person listed for Mr. Marraccini (his former counsel in this matter, Randy Sue Pollock). Following that discussion, Ms. Pollock sent an email verifying Mr. Marraccini was not going to testify in Arizona.

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- Shortly after Ms. Pollock stated Mr. Marraccini would not be testifying, new information was disclosed by the respondent, Clayton Echard, which included text messages allegedly exchanged between Mr. Marraccini and Ms. Owens in 2016–17. These text messages would have required Mr. Marraccini's authentication to be admissible in evidence.
- To determine whether Ms. Pollock's position had changed, a phone call took place on May 6, 2024 between Ms. Pollock and the undersigned. During that call, the undersigned informed Ms. Pollock that if Mr. Marraccini intended to appear as a trial witness in Arizona, that was fine as long as he complied with the disclosure requirements imposed by Arizona law.
- In response, Ms. Pollock stated Mr. Marraccini "was not willing to cooperate" with any investigation by the undersigned, and that instead, Mr. Marraccini intended to simply appear in Arizona as a non-subpoenaed "spectator".
- In response to that threat, the undersigned sent an email to Ms. Pollock on May 6, 2024

> In light of that response I want to make two things clear:
>
> 1.) If Mr. Marraccini intends to testify at trial, then I have an absolute right to know this, and I have a right to interview him. That interview can be done informally in a phone call, or it can be done formally in a deposition. Either way, refusing to cooperate is NOT an available option IF Mr. Marraccini wants to participate as a trial witness.
>
> 2.) On the phone, you suggested Mr. Marraccini may just "show up" at trial rather than participating as a subpoenaed witness (i.e., he would simply choose to be there, either as a spectator, or as a non-subpoenaed witness).
>
> If that is his plan, I need to be clear about our position – if Mr. Marraccini shows up as *either* a spectator or as a non-subpoenaed witness, Laura will ask the Phoenix Police to have Mr. Marraccini immediately arrested for violating the restraining order issued against him (copies attached).
>
> In short, I agree Mr. Marraccini CAN testify at trial without fear of arrest, *provided* he complies with the rules of procedure. That means, among other things, I have the right to interview him and take his deposition if necessary.
>
> If Mr. Marraccini does not want to comply with the procedural rules, that's 100% OKAY. I am more than happy if he wants to stay home (assuming he hasn't been lawfully summoned). But if he comes within 100 yards of Laura without being compelled to appear by valid subpoena, then he will risk arrest and prosecution for violating the restraining order.

- Ms. Pollock never responded to the May 6th email.
- On the morning of June 10, 2024, Mr. Marraccini violated the proximity restriction of this Court's DVRO outside the Phoenix courthouse.

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- Federal law (the Violence Against Women Act, 18 U.S.C. § 2265) provides:

  (a) Full Faith and Credit.—
  Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe. (emphasis added)

- Arizona law, A.R.S. § 13–3602(v) provides:

  A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and shall be enforced as if it were issued in this state for as long as the order is effective in the issuing jurisdiction. (emphasis added)

- Arizona Rules of Protective Order Procedure, Rule 28, provides:

  (a) Effectiveness of Conflicting Orders. When two parties have obtained conflicting protective orders, both orders must be given full force and effect, regardless of whether the orders were issued by courts of limited or general jurisdiction. (emphasis added)

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As these points show, substantially every detail of the undersigned's expected testimony is (or should be) uncontested. There is no dispute Mr. Marraccini traveled from California to Arizona. There is no dispute on June 10, 2024, he appeared in Arizona less than 300 feet away from Ms. Owens.

The only remaining issue is purely a question of law – i.e., does Mr. Marraccini have some lawful defense for his conduct? In this situation, where Mr. Marraccini *claims* to have been served with an Arizona subpoena (which is legally unenforceable in the State of California), does that mean he had the right to travel to Arizona and violate this Court's DVRO by approaching Ms. Owens in the parking lot outside the Arizona court? Put another way, does an Arizona trial subpoena (issued by a lawyer, not a judge) *override* the DVRO from this court, or was Mr. Marraccini required to comply with both

the terms of the DVRO (by staying at least 300 feet away from Ms. Owens) and with the Arizona subpoena?

In his motion, Mr. Marraccini boldly asserts: "It's doubtful that David Gingras, who's been in practice for roughly 25 years, has as profound a misunderstanding of the law, that he reasonably believes Marraccini violated the DVRO by complying with a validly issued subpoena." Mot. at 5:4–6. But Mr. Marraccini cites no legal authority of any kind to support his argument that a subpoena issued by a lawyer (not a judge) somehow overrides a valid domestic violence restraining order, thus permitting Mr. Marraccini to pretend the DVRO no longer existed. Mr. Marraccini's argument further appears to directly conflict with both federal law and Arizona criminal law (both of which *require* out-of-state court orders to be enforced, which did not occur here).

In sum, substantially all factual issues the undersigned plans to testify about are (or should be) undisputed. Thus, even *without* client consent, Rule 3.7(a)(1) would permit such testimony, even if the undersigned was also acting as a trial advocate.

And, of course, Ms. Owens has given her informed written consent. That fact alone defeats any argument Mr. Marraccini could otherwise make as to Rule 3.7. On that issue, this Court's task is easy; it should simply adopt the same logic other California courts have used when ruling on this question (these remarks should sound familiar):

> Before the Court is a motion seeking to deprive a party of its chosen counsel. These disqualification motions come with a high risk of improper motivation, such as eliminating formidable opponents, disrupting or harassing the adversary, increasing litigation costs, or distracting from the important issues. State bar associations have responded to this risk in various ways, including by deviating from the ABA model rules to further protect parties against gamesmanship. Under California rules, parties may avoid the disqualification of their lawyers by consenting to their lawyers' serving as witnesses. When, as here, such consent is given, the analysis should end.

Real Estate Training Int'l. v. Vertucci, 124 F.Supp.3d 1005, 1006 (C.D.Cal. 2015) (emphasis added).

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As the district judge explained *Vertucci*, older California decisions cited the now-abrogated Professional Conduct Rule 2–111 to reach conclusions which are no longer valid (particularly since the California Rules of Professional Conduct were substantially amended in 2018). Specifically, in analyzing the dispositive impact client consent has on the issue of disqualification for a lawyer seeking to testify at trial, the *Vertucci* court rejected older cases such as *Lyle v. Superior Court*, 122 Cal.App.3d 470 (Cal. App. 4th Dist. 1981) (cited on page 12 of Mr. Marraccini's motion) and *Comden v. Superior Court*, 20 Cal.3d 906 (Cal. 1978) (cited on page 13 of the motion) because they were based on prior versions of the ethical rules which contained no exception for client consent. Since the Rules of Professional Conduct were amended in 2017 (effective Nov. 1, 2018),[2] cases like *Lyle* and *Comden* are likely no longer valid law. Under the current version of Rule 3.7 (allowing dual roles, as long as the client has given consent), "informed consent ends the inquiry." *Vertucci*, 124 F.Supp.3d at 1007.

Finally, Mr. Marraccini cites cases such as *Geringer v. Blue Rider Finance*, 94 Cal. App. 5th 813 (Cal. App. 2nd Dist. 2023) for the principle "courts retain discretion to disqualify an attorney under Rule 3.7, even with client consent ….." Mot. at 2, n.2. But in *Geringer*, the Court of Appeal *reversed* the trial court's disqualification order, finding it was improperly based on "overarching statements of policy or conclusory allegations by the party seeking disqualification." *Geringer*, 94 Cal.App.5th at 826. Here, all other issues aside, Mr. Marraccini offers literally nothing but "statements of policy" and "conclusory allegations" of prejudice; neither is sufficient.

III. CONCLUSION

Mr. Marraccini's Motion to Disqualify is groundless. There was no basis to bring the motion even *before* the attorney/client relationship between undersigned counsel and Ms. Owens was terminated (which happened *before* the motion was filed). But after the relationship ended, and after Mr. Serrato was informed of that fact in writing (again, before the motion was filed), the motion crossed the line from groundless to sanctionable.

[2] *See* https://www.calbar.ca.gov/Portals/0/documents/Supreme%20Court%20Order%202018-05-09.pdf

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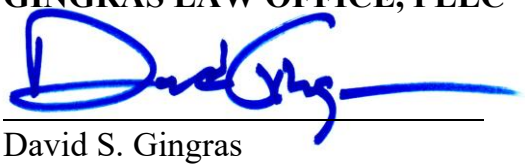
For the reasons stated above, the Motion to Disqualify should be denied. In addition, for the reasons stated in the concurrently filed Motion for Sanctions, this Court should find Mr. Serrato violated CCP § 128.5 by bringing the motion in bad faith, by intentionally lying to/misleading the Court, and by using a tactic which was frivolous and intended solely to harass and to cause unnecessary delay.

DATED October 7, 2025.

GINGRAS LAW OFFICE, PLLC



David S. Gingras
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PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 4802 E. Ray Road, #23-271, Phoenix, AZ 85044.

On October 7, 2025, I served the following documents described as OPPOSITION TO RESPONDENT MICHAEL MARRACCINI'S MOTION TO DISQUALIFY the persons listed below:

SEE ATTACHED LIST

☐ **By United States mail:** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Phoenix, Arizona.

☐ **By overnight delivery:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **By messenger service:** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service.

☐ **By fax transmission:** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☒ **By e-mail or electronic transmission:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury of the laws of the State of Arizona that the foregoing is true and correct. Executed on October 7, 2025, at Phoenix, Arizona.

SERVICE LIST

Laura Owens
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Petitioner *In Pro Se*

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