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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

11 YVETTE FELARCA, AKA YVONNE C.
12 FELARCA, an individual,

13 Petitioner,

14 v.

15 TROY WORDEN, an individual,

16 Respondent

Case No.: RG17874412

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RESPONDENT'S MOTION FOR
ATTORNEY FEES AND COSTS**

Date: December 18, 2017

Time: 9:00 a.m.

Dept.: 512

Judge: Hon. Thomas Rasch, Commissioner

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I. INTRODUCTION

Respondent Troy Worden brings this motion for Attorney fees and costs. Yvette Felarca, whose real name is Yvonne Felarca, filed a petition for Civil Harassment Restraining Order (RO) on September 7, 2017. After an initial hearing, but before Worden could present all of his evidence, Felarca dismissed her petition for a RO. Pursuant to California law, Worden is the prevailing party. As the prevailing party, he is entitled to bring this motion for his attorney fees and costs.

Yvette Felarca filed a petition for Civil Harassment Restraining Order (RO) against Troy Worden. Felarca also obtained a Temporary Restraining Order (TRO) that restricted Worden’s movement around the university campus, prevented him from fulfilling his duties as Berkeley College Republican President, and hindered his First and Second Amendment Rights. (Decl. of Worden 28-33).

Felarca is a national organizer for the organization By Any Means Necessary (BAMN). (Trans. Felarca, Sept. 28, 2017, p. 14:27-28). Worden was at all relevant times the president of the Berkeley College Republicans (BCR). (Decl. of Worden 2).

Felarca filed this Petition for a RO after an August 23, 2017 interaction occurred between the organization BAMN and the BCR. At this interaction, Felarca and the organization BAMN was holding a meeting where they were discussing among other things how they could shut down the BCR’s Ben Shapiro event that was to take place on September 14, 2017. (Decl. of Worden 15).

In obtaining the TRO against Worden, Felarca testified about four separate alleged interactions between herself and Worden. The first event never occurred. Furthermore, the threats of harm alleged during the third event also never happened as is seen by the video evidence produced by Worden. Without any credible threat of harm, a TRO should not have been granted against Worden.

II. PROCEDURAL BACKGROUND

Yvette Felarca filed a petition for RO on September 7, 2017 against Troy Worden. Felarca also obtained a TRO against Worden.

On September 28, 2017, Felarca, along with three other national organizers for the organization BAMN testified regarding the events contained in Felarca’s statement in her Petition for RO. Felarca did not present a single student from U.C. Berkeley to testify on her behalf regarding any of the interactions that took place between the two student groups.



1 Due to how long it took for Petitioner to put her evidence before the court, Worden was unable
2 to present any evidence at this first hearing. The hearing on the RO was continued to October 13,
3 2017. The Court, on motion by Worden's counsel, reduced the distance contained in the TRO from
4 100 yards to 10 yards.

5 On October 6, 2017, in violation of both California law and California Court Rules, Felarca's
6 attorneys continued the hearing on the RO from October 13, 2017 to October 26, 2017.

7 On October 12, 2017, counsel for Worden appeared *ex parte*, after properly notifying Felarca's
8 counsel, and requested that this court dismiss the TRO. This request was made because the new
9 hearing date obtained by Petitioner had not been agreed to by Worden, and the new hearing date was
10 outside the 25 days that a TRO may be in place pursuant to California Law. This Court granted
11 Worden's *ex parte* and the TRO was dismissed. The hearing for the RO remained on the calendar for
12 October 26, 2017.

13 On October 12, 2017, Worden submitted a copy of his video evidence for the Court to review
14 prior to the next hearing.

15 On October 26, 2017, hours before the hearing on the RO, Felarca dismissed her Petition for
16 Restraining Order "Without Prejudice."

17 III. ATTORNEY FEES AND COSTS MAY BE AWARDED

18 The prevailing party in a Petition for Civil Harassment may be awarded court costs and
19 attorney fees. (CCP 527.6(s)). In *Alder v. Vaicius*, 21 Cal.App.4th 1770 (App. 2 Dist. 1993), the court
20 found that a respondent was entitled to attorney fees and costs when the petitioner dismissed the case
21 prior to the continued hearing date. While CCP §527.6(s) does not define who the prevailing party is,
22 the court in *Alder* relied upon CCP §1032 to determine that "Prevailing party" includes ... a defendant
23 in whose favor a dismissal is entered ...". *Alder* at 1777. "The decision whether to award attorney fees
24 to the prevailing party ... under section 527(i) is a matter committed to the discretion of the trial
25 court." *Krug v. Maschmeier*, 172 Cal.App.4th 796, 802 (App. 1 Dist. 2009).

26 Factors considered in determining a reasonable attorney fee award include the nature of the
27 litigation and its difficulty; the amount involved; the skill required and employed in handling the
28 litigation; the attention given to the case; the attorney's success, learning, age and experience in the
particular type of work demanded; the intricacy and importance of the litigation; the labor and



1 necessity for skilled legal training and ability in litigating the case; and the amount of time spent on
2 the case. *Niederer v. Ferreira* 189 Cal.App.3d 1485, 1507 (1987). However, while the amount of
3 money involved in the litigation is a factor, *Niederer* holds that it is not a controlling factor - citing a
4 U.S. Supreme Court case in which \$245,456 was held to be a reasonable fee to secure a judgment of
5 \$33,350.

6 In this case, Felarca dismissed the case just hours before the continued hearing was scheduled
7 where Worden would finally be permitted to present his testimony to the court. Counsel for Worden
8 had already fully prepared to present Worden's case including interviewing the witnesses, preparing
9 them to testify, and investigating the evidence relevant to the hearing.

10 Worden, just like the respondent in *Alder*, obtained all the relief he was seeking. The TRO and
11 the RO were dismissed. Worden is the prevailing party.

12 **A. In Balancing whether to Grant Attorney Fees, the Court should Weigh the**
13 **Difference between the Parties**

14 In determining whether or not to award attorney fees to Worden, the Court should consider that
15 Worden is a college student attending the U.C. Berkeley. (Decl. of Worden 25). Worden has been
16 unable to raise sufficient funds to pay for his legal fees and costs. (Decl. of Worden 25-27). The cost
17 of this litigation has already made his free speech rights very expensive, and will have a significant
18 impact upon his future financial well-being if Felarca is not required to pay his attorney fees and costs
19 for bringing this frivolous motion.

20 Felarca, on the other hand, is a sophisticated litigant who has had four different criminal case
21 brought against her and has brought six different civil litigations against others. (Judicial Notice 1-9
22 and Decl. of Meuser 10). Felarca is a national organizer for the organization By Any Means
23 Necessary. Her out-of-state attorney, Shanta Driver, who is not licensed in California, is a founder of
24 the organization By Any Means Necessary. (See *Pro Hac Vice* Application & Judicial Notice 10).

25 **IV. CALIFORNIA USES THE LODESTAR METHOD FOR ATTORNEY FEES**

26 In calculating attorney fees, the Court begins "with a lodestar figure based on the reasonable
27 hours spent, multiplied by the hourly prevailing rate for private attorneys in the community
28 conducting non contingent litigation of the same type. *Ketchum v. Moses*, 24 Cal.4th 1122, 1133



1 (2001). The “lodestar figure may be increased by application of a fee enhancement, or reduced as
2 appropriate, after the trial court has considered other factors concerning the lawsuit, including the
3 contingent nature of the fee award. (*Ketchum* at 1134.) The enhancement includes compensation for
4 “contingent risk, extraordinary skill, or any other factors a trial court may consider.” *Ketchum* at 1138.

5 In this case, the Dhillon Law Group spent a total of 175.6 hours of attorney time and 118.6
6 hours of paralegal and law clerk time. The hourly prevailing rate is less than the prevailing rate in the
7 community. (Decl. of Meuser 11-12, and Decl. of Dhillon 22-26).

8 As such, the reasonable attorney fee award without adjustment for time spent through the
9 filing of this motion is \$113,037.50. Counsel for Worden estimates that there will be an additional
10 \$6,000 of attorney fees in responding to and attending the hearings for Worden’s Motion for Fees and
11 his Motion for Sanctions. Respondent requests that this Court adjust the lodestar by 1.5 to include
12 compensation for the risk that the Dhillon Law Group took in being unable to recover its fees because
13 it was representing a college student. Respondent thus is asking for an award of attorney fees in the
14 amount of \$178,556.25.

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16 **V. ATTORNEY FEES ARE REASONABLE AND NECESSARY**

17 “California law requires that attorney fee awards be fully compensatory.” *Roth v. Plikaytis*, 15
18 Ca.App.5th 283, 290 (App. 4 Dist. 2017). Furthermore, “absent circumstances rendering the award
19 unjust, an attorney fee award should ordinarily include compensation for all the hours reasonably
20 spent, including those relating solely to the fee.” *Ketchum* at 1133.

21 This is not your typical RO. The volume of witnesses and evidence that needed to be reviewed
22 was substantial. Furthermore, because of the nature of the parties and the circumstances surrounding
23 the events contained in the Petitioner’s statement, this case had Constitutional Law implications.

24 When first being retained, counsel for Worden (Meuser) interviewed Worden about the names
25 of all the potential witnesses who might have information regarding this matter. Meuser was given the
26 names of over a dozen witnesses. Meuser and his team interviewed many potential witnesses and
27 obtained over 125 videos and audio files that also needed to be reviewed. These files were related to
28 the parties and their interactions. In order to keep the cost of this litigation reasonable, Meuser did not
review all the files but instead relied on summaries that Worden assembled. After Meuser’s review of



1 the revised list of files, the appropriate evidence was presented to the Court to review. (Decl of
2 Meuser 7).

3 Meuser started the process of filing a special motion under California anti-SLAPP statute.
4 (Decl. of Meuser 6). Since the purpose of the August 23 meeting was to disrupt the BCR's Ben
5 Shapiro event, the TRO and the petition for a RO were attempts to use the legal system to suppress
6 Worden's speech. The day before Meuser was planning on filing the anti-SLAPP motion, Felarca was
7 arrested on the University of Berkeley's campus for inciting a riot. (Decl. of Meuser 6 and Judicial
8 Notice 2). Felarca's arrest caused the Dhillon Law Group to revise their legal strategy and a decision
9 was made to shelf the anti-SLAPP motion in exchange for the quicker process of simply contesting
10 the petition for a RO.

11 Felarca's counsel decided that they needed to change the hearing date. Instead of
12 communicating with Meuser and obtaining an agreeable date for a continued hearing as is required by
13 court rules, Felarca's counsel obtained an extension to the TRO that far exceeded the 25 day limit
14 established by California law. Furthermore, Felarca's counsel never notified Meuser of the new
15 hearing date. Meuser discovered the new hearing date when he was checking the Court's docket while
16 preparing to deliver to the Court their video evidence for the Court to review. As such, the Dhillon
17 Law Group was required to prepare an ex parte application and attend a second hearing to resolve
18 Felarca's violations of California law and California court rules. (*See Application for Ex Parte*).

19 Meuser appeared at Court for the third hearing, only to discover that Petitioner had dismissed
20 the petition. While Felarca had dismissed her petition the morning of the hearing, Felarca's attorneys
21 never called Meuser to notify him. Instead, he sent an email only to Meuser. Because Meuser was in
22 another court attending another matter, he did not know the case was dismissed until minutes before
23 the hearing when he checked his email. (Decl. of Meuser 9).

24 Due to the volume of evidence that needed to be reviewed, the multiple arrests of Felarca, the
25 multiple civil cases Felarca was involved with, and the manner in which Felarca's counsel handled the
26 litigation, the hours billed by Worden's attorneys was both reasonable and necessary.

27 **VI. ATTORNEY FEES ARE JUST IN LIGHT OF YVETTE FELARCA'S**
28 **FILING A FRIVOLOUS PETITION FOR RESTRAINING ORDER**

The history between the BCR and Felarca is not a secret. Felarca took credit for shutting down

1 BCR's Milo Yiannopoulos, Ann Coulter, and David Horowitz events. (Decl. of Worden 12). Worden
2 and the BCR knew that Felarca intended to shut down their September 14, 2017 Ben Shapiro event.
3 (Trans. Lopez, p. 56:2-9 and Decl. of Worden 13). Worden knew that Felarca had beat up a man in
4 Sacramento who she declared a fascist. (Decl. of Worden 10). He knew that Felarca bragged to the
5 media that it was self-defense to beat up fascist. (Decl. of Worden 11). Worden knew that By Any
6 Means Necessary was publishing posters and posting them on campus that declared he was a "baby
7 fascist". (Decl. of Worden 8).

8 In her petition for a RO, Felarca signed her statement under penalty of perjury. It was based
9 upon these facts that Felarca obtained a TRO. Felarca's statement can be summarized as follows:

10 1. On February 17, 2017, Worden asked to take a "selfie" with Felarca and after the selfie was
11 taken, Worden tried to touch her and had a "hard, chilling, menacing expression."

12 2. On August 21, 2017, Worden was in Sproul Plaza for approximately two hours while
13 Felarca was handing out flyers to an event. Worden allegedly "stared at [Felarca] and called her by
14 name".

15 3. On August 23, 2017, Worden came with a group of friends to attend her BAMN meeting.
16 She alleges that Worden said to her:

17 A. You're going to get what's coming to you.

18 B. We're going to get you

19 C. I'm going to punch you

20 4. On August 28, 2017, Worden would not leave Sproul Plaza when she asked him to and she
21 alleges that he was staring at her in a threatening manner.

22 As discussed *infra*, Felarca lied under oath as to the statements contained in the first and third
23 events that resulted in her filing for a RO. In order to obtain a TRO under CCP §527.6, a Petitioner
24 must present evidence of "Credible threat of violence". The remaining two allegations contained in
25 the second and fourth statement do not in and of themselves contains a credible threat of violence.
26 Furthermore, the reason that Worden was "staring" at her can be answered by the evidence that
27 Felarca had already made threats against Worden and Worden knew she was trying to shut down
28 BCR's events. (Decl. of Worden 8-14, & 18-23).

The TRO and the Petition for a RO were completely frivolous motions designed to restrict



1 Worden's First and Second Amendment rights, and help Felarca pursue her plans of shutting down or
2 disrupting the Ben Shapiro event.

3 **A. Felarca Lied Under Oath**

4 Felarca testified that the February 17, 2017 meeting took place at approximately 1:00 p.m.
5 Worden could not have asked to take a selfie with Felarca at that time, because he was at work. (Decl.
6 of Worden 4). Felarca lied under oath and committed perjury.

7 Felarca and her witnesses (other national organizers for BAMN) testified that Worden had
8 made three specific statements. Worden has produced multiple videos of the August 23, 2017
9 interaction which clearly show that Worden never made the statement's alleged by Felarca, nor did
10 any of Worden's friends. (See Video Evidence for the Court to View Prior to Next Hearing tendered to
11 Court on October 12, 2017 and Decl. of Worden 16). Felarca and her witnesses lied under oath.

12 This Court should grant attorney fees and costs against Felarca because she lied under oath in
13 order to obtain a TRO.

14 **B. A Purpose of the Restraining Order was to Shut Down the Ben Shapiro Event**

15 The purposes for the August 23, 2017 meeting was to shut down the BCR's Ben Shapiro event.
16 (Trans. Lopez, p. 56:2-9 and Decl. of Worden 13). When the University Police told Felarca that she
17 could not restrict access to her meeting, Felarca abruptly ended her meeting. (Trans. Airgood, p.
18 36:4-24)

19 Felarca knew that she could not continue to use University resources to plan her disruption
20 tactics as long as Worden was allowed to attend her meetings. By filing the TRO, Felarca was able to
21 prevent Worden from attending her meetings where she planned how to disrupt BCR events. Also, the
22 TRO would also prevent Worden from promoting BCR's events on Sproul Plaza while Felarca was on
23 campus promoting her protests of those events.

24 This Court should grant attorney fees and costs against Felarca because the TRO was obtained
25 for the purpose of shutting down free speech.

26 **C. Felarca had Threaten to Harm to Worden and His Girlfriend**

27 Shortly after the August 23, 2017 interaction between BAMN and BCR, Felarca was caught on
28 audio threatening both Worden and his girlfriend. (Decl. of Worden 18-19). Worden was aware of this
threat and it was for this reason that he was keeping an eye on her while she was tabling on Sproul

1 Plaza on August 28, 2017. The RO was a fulfillment of Felarca's threats because Worden had tried to
2 attend her August 23, 2017 meeting.

3 This Court should grant attorney fees and costs against Felarca because Worden has presented
4 evidence of an audio recording that Felarca has threatened him.

5 **VII. COSTS**

6 As a part of tendering its defense of Worden, the Dhillon Law Group incurred costs in the
7 amount of \$2,057.38. The estimated future costs in this case are \$400. These amounts are reasonable,
8 and \$2,457.38 should be reimbursed by Petitioner.

9 **VIII. CONCLUSION**

10 For the above stated reasons, this Court should grant Worden's Motion for Attorney Fees in the
11 amount of \$178,556.25 and Costs in the amount of \$2,457.38.

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13 Date: November 20, 2017

DHILLON LAW GROUP INC.

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16 Mark P. Meuser
17 Attorney for Respondent Troy Worden
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