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Attorneys for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF

, an individual,

Petitioner,

v.

, an individual,

Restrained Person.

CASE NO:

**POINTS AND AUTHORITIES  
IN SUPPORT OF PETITIONER'S  
EX PARTE APPLICATION  
TO SEAL FORM DV-101  
DESCRIPTION OF ABUSE AND  
THE DECLARATION AND  
EXHIBITS ATTACHED  
THERETO,  
OR IN THE ALTERNATIVE,  
MOTION FOR ORDER  
SHORTENING TIME TO HEAR  
MOTION TO SEAL**

**Assigned:  
Dept:  
Room:**

**I. INTRODUCTION**

Petitioner ("Petitioner") hereby requests an order pursuant to Cal. R. of Ct., Rule 2.550 et seq., to file certain documents under seal, including, Petitioner's Form DV-101 Description of Abuse and the declaration and exhibits attached thereto.

Petitioner seeks to file a domestic violence restraining order to put an end to the harassment, extortion, and disclosure of confidential and private information orchestrated by the Restrained Person. Yet, in order to be able to submit the evidence in support of the

1 application without waiving his right to privacy, Petitioner must first obtain an order from  
2 the Court to seal Form DV-101 Description of Abuse and the declaration and exhibits  
3 attached thereto. This order is necessary to protect Petitioner’s California constitutional  
4 right to privacy. Thus the Petitioner requests that the Court enter an order sealing the  
5 subject documents, or in the alternative, enter an order shortening time so that a motion to  
6 seal may be heard.

7 **II. RELEVANT FACTS**

8 **III. DISCUSSION OF APPLICABLE LEGAL STANDARDS**

9 **A. Sealing of Form DV-101 Description of Abuse and the declaration and**  
10 **exhibits attached thereto, is Proper in this Case.**

11 California Rules of Court, Rules 2.550 & 2.551, provide that a record may be filed  
12 under seal pursuant to a court order. Rule 2.550(d) provides that the court may order that  
13 a record be filed under seal if it finds that: (1) There exists an overriding interest that  
14 overcomes the right of public access to the record; (2) The overriding interest supports  
15 sealing the record; (3) A substantial probability exists that the overriding interest will be  
16 prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and  
17 (5) No less restrictive means exist to achieve the overriding interest.

18 The findings required under Cal. R. Ct. 2.550(d) reflect the test articulated by the  
19 Supreme Court in *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178  
20 (1999), which applies to the sealing of records. The Supreme Court in *NBC Subsidiary*  
21 provides various examples of “overriding interests” recognized by case law. Specifically,  
22 courts have found that, under appropriate circumstances, various statutory privileges,  
23 trade secrets, and **privacy interests**, when properly asserted and not waived, may  
24 constitute “overriding interests.” See *NBC Subsidiary*, 20 Cal. 4th at 1222 n.46 (also  
25 assuming that civil litigant’s right to fair trial would constitute overriding interest, and  
26 noting additional overriding interests such as binding contractual obligation not to  
27 disclose and protection of witnesses from extreme embarrassment or intimidation). Rule  
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1 2.550(d) does not attempt to define this term, but leaves such definition to developing  
2 case law. Advisory Committee Comment to Cal. Rules of Ct., Rule 2.550.

3 As set forth below, Petitioner’s request to seal Form DV-101 Description of Abuse  
4 and the declaration and exhibits attached thereto, meets these requirements.

5 **1. There is an overriding interest in protecting the private and confidential**  
6 **information of parties and non-parties contained in the documents.** Under Cal.  
7 Const. art. 1, § 1, “[a]ll people are by their nature free and independent and have  
8 inalienable rights. Among these are . . . pursuing and obtaining safety, happiness, and  
9 privacy.” The privacy interests protected under Cal. Const. art. I, § 1, fall into two  
10 categories: “(1) interests in precluding the dissemination or misuse of sensitive and  
11 confidential information (called informational privacy) and (2) interests in making  
12 intimate personal decisions or conducting personal activities without observation,  
13 intrusion, or interference (called autonomy privacy).” *Hill v. Nat’l Collegiate Athletic*  
14 *Ass’n*, 7 Cal. 4th 1, 35 (1994). If the interest alleged by the plaintiff falls into either of  
15 these categories, then it is a “legally protected privacy interest.” *Id.* Petitioner’s right to  
16 privacy is an “overriding interest” that California courts have recognized sealing records.  
17 *See NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999). In  
18 addition, the Ninth Circuit has recognized recognized that, “‘compelling reasons’  
19 sufficient to outweigh the public’s interest in disclosure and justify sealing court records  
20 exist when such ‘court files might have become a vehicle for improper purposes,’ such as  
21 the use of records to gratify private spite, promote public scandal, circulate libelous  
22 statements, or release trade secrets.” *See Kamakana v. City & Cnty. of Honolulu*, 447  
23 F.3d 1172, 1179 (9th Cir. 2006).

24 Here, there are strong overriding interests at stake and compelling reasons to seal the  
25 record. The public release of Petitioner’s sexually degraded image would violate  
26 Petitioner’s California constitutional right of privacy. This case involves confidential and  
27 personal information, and the publication of Petitioner’s Form DV-101 Description of  
28 Abuse and the declaration and exhibits attached thereto, would serve little public purpose

1 other to gratify private spite, promote public scandal, and invade the privacy of Petitioner  
2 and nonparties.

3 **2. The overriding interest supports sealing the record.** The sexually explicit  
4 content at issue in this case, and other extremely private information that will be  
5 presented in the papers filed with the Court, are likely to attract media  
6 attention that would serve little legitimate public purpose but would harm Petitioner  
7 greatly by exacerbating the harm to Petitioner and furthering Restrained Person's  
8 despicable agenda to injure Petitioner through public humiliation and scandal.

9 In fact, the public interest would be best served by sealing the record in this case.  
10 Plaintiffs who have been victims of highly embarrassing invasions of privacy and  
11 harassment often find it difficult or impossible to seek meaningful redress in the courts,  
12 for fear the harm they have already suffered will be magnified by publicity. Such  
13 publicity is often the aim of defendants who seek to further harm plaintiffs or to gain an  
14 improper advantage in litigation. Sealing the record in appropriate cases not only  
15 reassures such victims that access to the courts can be a practical reality for them, but  
16 also puts defendants on notice that the court will not permit the use of publicity as a tool  
17 of terror.

18 **3. A substantial probability exists that the overriding interest will be prejudiced**  
19 **if the record is not sealed, because the Petitioner will irrevocably lose his right to**  
20 **private information and confidential communications.** If this order were not granted,  
21 the very content that the Restrained Person is using to inflict irreparable harm to  
22 Petitioner's reputation would be published in a public record that could be digitized,  
23 indexed, blogged and tweeted, and there would be no way to close the door, reclaim  
24 Petitioner's reputation, and end the harassment. And the message to the public would be  
25 that victims should stay silent and hope their harasser goes away rather than file a lawsuit  
26 that risks exacerbating the harm. Given the seriousness and the reprehensibility of the  
27 harm at issue, this would be the worst possible outcome. The public has an interest in  
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1 punishing and deterring such behavior by providing victims of invasion of privacy with a  
2 clear path to justice through our judicial system.

3 **4. and 5. The proposed sealing is narrowly tailored and no less restrictive means**  
4 **exist to achieve the overriding interest of Petitioner’s right to private and**  
5 **confidential communications.** The primary aspects of the subject documents that the  
6 public is likely to be interested in relate to (1) Petitioner’s identity; (2) the fact that  
7 photographs of the Petitioner in a state of undress and of a sexual nature were  
8 published to third parties; and (3) various private and/or scandalous facts surrounding  
9 the relationship. This is not a legitimate public interest, and creating a public record of  
10 these facts would not further the purpose of the public accountability. In fact, it would  
11 have the opposite effect, by engaging the courts as instruments of harassment.

12 Petitioner’s Form DV-101 Description of Abuse and the declaration and exhibits  
13 attached thereto, is being lodged with this application. The Restrained Party will be  
14 served with a confidential copy of the subject documents, and will suffer no prejudice.

15 **B. An Ex Parte Order to Seal the Record is Proper and Warranted in this Case.**

16 The Code grants the Court authority to shorten the time required for noticed  
17 motions. Code of Civil Procedure section 1005(b) (“The court, or a judge thereof, may  
18 prescribe a shorter time.”). *See* Cal. R. Ct., Rule, Rule 2.551 (setting forth the procedures  
19 for filing records under seal – by motion or application); Cal. R. Ct., Rule 3.1201 (listing  
20 required documents for ex parte relief). Petitioner is in urgent need of a restraining order  
21 to put an end to the Retrained Person’s escalating harassment campaign. In order to be  
22 able to proceed with his application without waiving his right of to privacy and client  
23 confidences, the Petitioner must first obtain an order from this Court to seal the pertinent  
24 records so that his harm is not exacerbated through the filing of public records. Thus, the  
25 Petitioner requests that the court enter an order sealing Form DV-101 Description of  
26 Abuse and the declaration and exhibits attached thereto or, in the alternative, enter an  
27 order shortening time so that a motion to seal may be heard. Additionally, the Petitioner  
28 has indicated that any delay in filing this application risks causing substantial hardship

1 given the ease and rate of abuse. Accordingly, through this ex parte application, the  
2 Petitioner seeks an order to file records under seal.

3 **IV. CONCLUSION**

4 A restraining order to put an end to the Restrained Person's escalating harassment  
5 and extortion is urgently needed. But putting certain evidence on record in a public filing  
6 would violate Petitioner's state constitutional right to privacy. Therefore, Petitioner  
7 respectfully requests that the Court issue an order permitting the filing under seal of Form  
8 DV-101 Description of Abuse and the declaration and exhibits attached thereto.

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10 Dated: \_\_\_\_\_ By: \_\_\_\_\_

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