

1 Jesse D. Franklin-Murdock (SBN: 339034)
2 **SWEIGART MURDOCK, LLP**
3 1160 Battery Street, Suite 100
4 San Francisco, California 94111
5 Telephone: (415) 873-0123
6 Email: jesse@sm-llp.com

7 Laura Powell (SBN: 240853)
8 Law Office of Laura Powell
9 2120 Contra Costa Blvd. #1046
10 Pleasant Hill, CA 94523
11 Telephone: (510) 457-1042
12 Email: laura@laurabpowell.com

13 *Attorneys for Defendant Elizabeth Young Bourne*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF YOLO**

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiff

19 v.

20 ELISABETH YOUNG BOURNE,

21 Defendant

Case No. CR2026-3499

**DEFENDANT'S NOTICE OF DEMURRER
AND DEMURRER TO MISDEMEANOR
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Hearing:

Date: November 30, 2026

Time: 9:00 a.m.

Department: 8

Complaint Filed: August 31, 2026

Trial Date: None

1 Dated: October 19, 2026

Respectfully submitted,

2 /s/ Jesse D. Franklin-Murdock

3 Jesse D. Franklin-Murdock (SBN: 339034)

4 **SWEIGART MURDOCK, LLP**

1160 Battery Street, Suite 100

San Francisco, California 94111

5 Telephone: (415) 873-0123

6 Email: jesse@sm-llp.com

7 /s/ Laura Powell

8 Laura Powell (SBN: 240853)

Law Office of Laura Powell

2120 Contra Costa Blvd. #1046

9 Pleasant Hill, CA 94523

10 tel. (510) 457-1042

laura@laurabpowell.com

11
12 *Attorneys for Defendant Elisabeth Young Bourne*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Elisabeth Young Bourne is an outspoken and persistent activist who frequently
4 exercises her First Amendment right to comment on one of the most divisive issues of our time.
5 Those who vehemently disagree with her have made no secret of their desire to silence her. But the
6 government cannot use the criminal law to accomplish what her opponents cannot.

7 In June, a local mother obtained an ex parte temporary restraining order against Ms. Bourne
8 after the mother's children's daycare worker got into a heated argument with Ms. Bourne in a public
9 park over messages written in chalk on the walkway of a public park. Days later, Ms. Bourne was
10 filming at a public event when she was served with the papers. On June 21, 2026, she posted footage
11 of the service on social media, taking care to attempt to cover the petitioner's personal information
12 on the paperwork. That video was the only conduct on that date connected to this matter, and it must
13 therefore be the basis for the criminal contempt charges.

14 The District Attorney filed those charges while a request to modify the restraining order, to
15 require Ms. Bourne to remove the posts and many others, was still pending. Rather than wait to see
16 how the issuing court would view the matter, the District Attorney jumped ahead. The issuing judge
17 later ruled that the posts did not violate his order. The District Attorney nonetheless persisted with
18 this ill-conceived prosecution despite knowledge of the underlying proceedings.

19 In addition to the fact that the Court already permitted the conduct the prosecution labels as
20 contempt, the underlying temporary restraining order was unconstitutionally vague from the start
21 because it can be read to reach all manner of protected speech. The Complaint compounds the
22 problem and offends due process by alleging, for example, that the order protected an unspecified
23 entity called "Day Care," even though Code of Civil Procedure section 527.6 applies only to natural
24 persons. It also fails to meet the Penal Code's specificity requirements by not naming the protected
25 persons.

26 This prosecution is so riddled with constitutional and statutory defects that the unusual
27 remedy of sustaining a demurrer and dismissing the case is warranted. The power to prosecute is not
28 a license to silence unpopular speakers. Because the complaint fails to meet the basic requirements

1 of a criminal prosecution, the Court should dismiss it to safeguard the rights to due process and free
2 speech.

3 II. BACKGROUND

4 On June 18, 2026, the Yolo County Superior Court issued a CH-110 Temporary Restraining
5 Order (the “TRO”) against Ms. Bourne, in favor of Protected Person Jessica Murray and two minor
6 children. (Request for Judicial Notice (“RJN”), Ex. 1.)

7 On July 10, 2026, the Court issued a CH-130 Civil Harassment Restraining Order (“CHRO”)
8 After Hearing that included substantially similar terms to the TRO. (RJN, Ex. 2.)

9 On July 14, 2026, Ms. Murray filed a CH-600 Request to Modify Civil Harassment
10 Restraining Order, requesting that the Court order Ms. Bourne to remove twenty-two social media
11 posts, of which Ms. Murray provided hyperlinks. (RJN, Ex. 3.) These posts included three posts,
12 each dated June 21, 2026, where Ms. Bourne filmed herself being served with the TRO. Ms. Bourne
13 edited the video to cover the image of the TRO with an image of a woman who reportedly worked
14 for Ms. Murray’s children’s daycare, although an incomplete snippet appears for a split second. (*Id.*,
15 Ex. R at 1.)¹

16 On September 15, 2026, the Court held a hearing on Ms. Murray’s Request, and it only
17 ordered the removal of two of the twenty-two social media posts Ms. Murray raised in her Request.
18 (RJN, Exs. 4 & 5 at 15:4–16:5.) The Court thus ruled that Ms. Bourne’s June 21, 2026, posts *did not*
19 violate the CHRO, which was materially identical to the TRO.

20 On August 31, 2026, while Ms. Murray’s Request was pending, the District Attorney filed a
21 Complaint charging Ms. Bourne with two counts of unlawfully committing contempt of court by
22 willful disobedience of a process and order lawfully issued by a court under Penal Code section
23 166(a)(4). Both Counts referenced Ms. Bourne’s actions on June 21, 2026. Count 1 referenced a
24
25

26
27 ¹ The hyperlinks to these three posts as stated on Ms. Murray’s Request are as follows:
28 <https://fb.watch/IaAAsqUAhZ/?mibextid==wwXlfr>;
[https://www.instagram.com/reel/DZ3jAdYzOwz/?igsh=NTc4MTlwNjQ2YQ=](https://www.instagram.com/reel/DZ3jAdYzOwz/?igsh=NTc4MTlwNjQ2YQ=;); and
https://x.com/bourne_beth2345/status/2068853603130098098?s=46. (*Id.*, Ex. R at 1.)

1 “Temporary Restraining Order issue [sic] to Protect J.M.,” and Count 2 referenced a “temporary
2 restraining order to protect Day Care.” (RJN, Ex. 6.)

3 **III. LEGAL STANDARD FOR DEMURRER**

4 “The defendant may demur to the accusatory pleading at any time prior to the entry of a plea,
5 when it appears upon the face thereof either: . . . (b) That it does not substantially conform to the
6 provisions of Sections 950 and 952[;] . . . (d) That the facts stated do not constitute a public offense[;]
7 [and] (e) That it contains matter which, if true, would constitute a legal justification or excuse of the
8 offense charged, or other legal bar to the prosecution.” (Pen. Code § 1004.) A demurrer “tests only
9 those defects appearing on the face of [the] pleading,” and is appropriate when it “raises an issue of
10 law as to the sufficiency of the . . . pleading.” (*People v. Osorio* (2015) 235 Cal.App.4th 1408, 1412.)
11 “[F]or purposes of demurrer . . . matters which may be judicially noticed may be said to appear
12 constructively on the face of the pleading.” (*People v. Tolbert* (1986) 176 Cal.App.3d 685, 689.)

13 A defendant may further demur to a charge that is unconstitutional or otherwise preempted.
14 (*Williams v. Superior Court* (2003) 111 Cal.App.4th Supp. 1, 6 [“A demurrer’s purpose under section
15 1004 is dismissal of a pleading which lacks adequate notice of the public offense charged or charges
16 one that is unconstitutional so as to generate a legally sufficient accusation.”]). Indeed, the California
17 Supreme Court has often sustained demurrers dismissing criminal charges that violate the First
18 Amendment. (See, e.g., *People v. Superior Court* (1989) 49 Cal.3d 14, 27 [sustaining superior court
19 demurrer to charges against theatre for unlawfully displaying adult films based on standard that
20 violated the First Amendment]; *Dulaney v. Municipal Court* (1974) 11 Cal.3d 77, 89 [sustaining
21 demurrer and entering writ of prohibition prohibiting prosecution under municipal ordinance
22 precluding posting of signs on utility poles as violating the First Amendment]; *Whitney v. Municipal*
23 *Court* (1962) 58 Cal.2d 907, 910-11 [sustaining demurrer to prosecution under municipal obscenity
24 ordinance preempted by state law].)

25 **IV. ARGUMENT**

26 **A. The Court Already Concluded that the Charged Conduct Was Lawful.**

27 To the best of Ms. Bourne’s understanding, the People’s theory is that Ms. Bourne engaged
28 in contempt of court by posting a video of her being served with the TRO to social media. Yet the

1 Court proceeding over the civil harassment case already determined that Ms. Bourne’s posts did not
2 violate the materially identical CHRO, and that she could leave the posts online. Charging conduct
3 approved by the underlying court as willful contempt of court is downright ludicrous.

4 The TRO included three material categories of orders: (1) personal conduct orders preventing
5 Ms. Bourne from harassing, contacting, or obtaining the address or location of the protected parties;
6 (2) a stay-away order²; and (3) a special provision stating, “Respoindent [sic] shall not photograph
7 or film the children and shall not post any images or information about the children protected by this
8 Order or the children’s daycare.” (RJN, Ex. 1 at 2, 4.)

9 The apparent basis for this prosecution is the videos Ms. Bourne posted on social media on
10 June 21, 2026, which depict her being served with the TRO and include brief, incomplete snippets
11 of the first page of the TRO. (See fn. 1, *supra*.) Ms. Bourne is not aware of any other conduct that
12 occurred on this date that could possibly be the basis for this prosecution. Prior to her arraignment,
13 undersigned counsel discussed this case with a supervisor at the District Attorney’s Office, who did
14 not contradict this understanding of the factual basis for the prosecution.

15 Four days after the Court held a hearing on Ms. Bourne’s Petition and issued the CHRO, Ms.
16 Murray filed a request asking the Court to “modify or clarify” the CHRO by requiring that Ms.
17 Bourne remove twenty-two social media posts that she posted before the hearing on the CHRO.
18 These included the three videos referenced above from June 21, 2026. (RJN, Ex. 3 at Ex. R at 1.)

19 The Court permitted Ms. Bourne to leave the social media posts on her public social media
20 pages, emphasizing that civil harassment restraining orders have a “limited purpose.” (RJN, Ex. 5.)
21 The Court identified only one video (contained in two social posts) that included the protected
22 parties’ faces that “may be” within the scope of the CHRO and stated that the remaining videos were
23 “not encompassed by the order.” (Ex. 5 at 15:4–16:5.) The Court’s finding that Ms. Bourne’s June
24 21, 2026, social media posts were “not encompassed” by the CHRO is fatal to the People’s case in
25 this matter. If the Court with jurisdiction over the civil harassment case concluded that Ms. Bourne
26 had the right to publish June 21, 2026, social media posts, how could those posts possibly constitute

27 _____
28 ² The stay-away order in the June 18, 2026, TRO was defective in that it failed to specify any
distance.

1 contempt of court? The People cannot possibly prove beyond a reasonable doubt that Ms. Bourne
2 willfully violated a court order when the Court in the underlying action expressly allowed the conduct
3 at issue.

4 **B. The Charged Conduct Is Constitutionally Protected.**

5 Even if the Court had not already ruled on the propriety of Ms. Bourne’s June 21, 2026, posts,
6 the First Amendment to the U.S. Constitution and Article 1, Section 2(a) of the California
7 Constitution guarantee Ms. Bourne’s right to post publicly available court documents. A criminal
8 prosecution based on posting a snippet of a publicly filed temporary restraining order offends the
9 core freedoms enshrined in both constitutions.

10 The Supreme Court has emphasized that the First Amendment’s freedom of the press includes
11 the right to publish court documents. “By placing the information in the public domain on official
12 court records, the State must be presumed to have concluded that the public interest was thereby
13 being served. . . . The freedom of the press to publish that information appears to us to be of critical
14 importance to our type of government in which the citizenry is the final judge of the proper conduct
15 of public business.” (*Cox Broad. Corp. v. Cohn* (1975) 420 U.S. 469, 495.) Courts in other
16 jurisdictions have upheld the right of individuals to publish public, unsealed court documents,
17 including in cases involving restraining orders. (See *Catlett v. Teel* (Wash. 2020) 477 P.3d 50, 60
18 [holding that a protection order prohibiting the publishing of arrest and other public records “violates
19 the United States Constitution” because “publishing of accurate and lawfully obtained public records
20 is constitutionally protected speech”]; *In re Midwest Milk Monopolization Litig.* (W.D. Mo. 1975)
21 405 F.Supp. 118, 121 [“The First Amendment protects the right to report pleadings and other data
22 contained in the open files maintained by the Clerk’s office, all of which are available for examination
23 by the general public.”].) If the U.S. Constitution protects the publishing of public court filings, so
24 too does the California Constitution. (See *Molinaro v. Molinaro* (2019) 33 Cal.App.5th 824, 832
25 [“The California Constitution is more protective of free speech rights than the federal
26 Constitution[.]”].)

27 The Court of Appeal’s decision in *Teran v. Superior Court* (2025) 112 Cal.App.5th 371 is
28 instructive. The Attorney General charged a special advisor in the Los Angeles District Attorney’s

1 Office with felony violations of the Comprehensive Computer Data Access and Fraud Act (Pen.
2 Code § 502) for accessing, compiling, and transmitting “tentative and final superior court writ
3 decisions that arouse of out civil service proceedings involving numerous sheriff’s deputies,”
4 including *Brady* material and other “information about law enforcement personnel.” (*Teran, supra*,
5 112 Cal.App.5th at pp. 375–76.) The court issued a writ blocking the prosecution, concluding that
6 Section 502 did not reach public court records stored on computers. (*Id.* at 385–86.) While the
7 Court’s decision rested on statutory grounds, it nonetheless signaled support for the defendant’s
8 constitutional argument that “interpreting Section 502 to permit prosecution for sharing public court
9 records is discordant with constitutional law protecting the public’s right to make use of [public
10 court] records.” (*Id.* at 385 fn. 10 [collecting cases regarding the public’s constitutional right to access
11 court filing].) *Teran* thus signals that a criminal prosecution based on publishing a public court filing
12 would be unconstitutional.

13 The People’s theory in this case appears to be that Ms. Bourne engaged in contempt of court
14 when she posted a video of her being served with the TRO, which included very brief and incomplete
15 snippets of the TRO. As Ms. Bourne had the constitutional right to publish public court filings, the
16 facts alleged in the Complaint cannot constitute a public offense.

17 **C. The Underlying TRO Is Unconstitutionally Vague.**

18 The Due Process Clause requires an injunction to define prohibited conduct with sufficient
19 precision to provide fair notice and prevent arbitrary enforcement. “No one may be required at peril
20 of life, liberty or property to speculate as to the meaning of penal statutes.” (*Lanzetta v. New Jersey*
21 (1939) 306 U.S. 451, 453; see also *People v. Heitzman* (1994) 9 Cal.4th 189, 199–200.) A prohibition
22 is unconstitutionally vague when persons of ordinary intelligence must guess at its meaning and may
23 differ as to its application. (*Connally v. General Construction Co.* (1926) 269 U.S. 385, 391.)

24 These principles apply to injunctions enforced through contempt. (*In re Berry* (1968) 68
25 Cal.2d 137, 155–157; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1145.) Because violation
26 of the TRO may result in criminal punishment, the order must provide clear notice of the conduct
27 prohibited. (*Schmidt v. Lessard* (1974) 414 U.S. 473, 476.) That requirement is especially important
28

1 where, as here, the order restricts expression potentially protected by the First Amendment and article
2 I, section 2 of the California Constitution.

3 At issue in this case is the provision of the TRO that states: “Respoindent [sic] shall not
4 photograph or film the children and shall not post any images or information about the children
5 protected by this Order or the children’s daycare.” (RJN, Ex. 1 at 4.) This posting prohibition is
6 unconstitutionally vague because it fails to define the scope of the prohibited speech and leaves its
7 application to subjective interpretation.

8 First, the provision potentially extends the order’s protections to unnamed persons merely
9 because of their association with the children or their daycare. As explained below, a restraining
10 order issued pursuant to Code of Civil Procedure section 527.6 may protect only natural persons, not
11 a business entity. Yet the posting prohibition can be construed to extend comparable protection to an
12 indeterminate class of persons associated with the daycare. Under that construction, a photograph of
13 a daycare worker becomes prohibited because the worker is associated with the daycare. The same
14 reasoning could encompass every employee, contractor, parent, visitor, or other person connected to
15 the facility. Information about any such person could likewise be characterized as information
16 “about” the daycare. This is impermissible, given that the order does not identify those persons, much
17 less include them in the list of protected persons.

18 Second, the provision prohibits posting “any images or information about” the protected
19 children or their daycare without defining what makes an image or information “about” either
20 subject. The word “about” supplies no objective boundary. The provision is not limited to publishing
21 the children’s names, addresses, or other identifying information. Its language potentially
22 encompasses any speech mentioning their parents, caregivers, locations they frequent, or the
23 existence of legal proceedings. The prohibition concerning “the children’s daycare” compounds the
24 uncertainty. An ordinary reader cannot determine from the order itself where lawful discussion ends
25 and criminally punishable publication begins.

26 The provision fails to indicate whose images and “information” are covered beyond images
27 of the children, what information qualifies as being “about” the children, or when an image or
28 statement concerning an unnamed person becomes “about” the daycare. The potentially unlimited

1 scope of the order as written denies fair notice and invites subjective, after-the-fact determinations
2 of criminal liability. Critically, the TRO did not clearly establish that publishing the TRO itself was
3 prohibited, as the People apparently maintain in this case.

4 Because the posting prohibition fails to define the prohibited conduct with constitutionally
5 adequate precision, it violates due process and cannot serve as the predicate for criminal liability
6 under Penal Code section 166. The Court should therefore find the challenged provision
7 unenforceable for vagueness and dismiss the charges.

8 **D. “Day Care” Cannot Be a Protected Party under Code Civil Procedure section 527.6.**

9 Count 2 of the Complaint is defective because it is based on the premise that the TRO
10 protected “Day Care.” The TRO was entered under Code of Civil Procedure section 527.6, which
11 protects individuals, not places or institutions. Accordingly, “Day Care” is not, and could not have
12 been, a Protected Party identified in the TRO. It is therefore legally impossible that Ms. Bourne “did
13 unlawfully commit contempt of court by willful disobedience of a process and order lawfully issued
14 by a court, to wit, A temporary restraining order to protect Day Care,” as alleged in the Complaint.

15 Nothing in Section 527.6 allows a court to enter a temporary restraining order that would
16 protect “Day Care,” that is, an unspecified place or institution. Instead, “[a] *person* who has suffered
17 harassment . . . may seek a temporary restraining order[.]” (Code Civ. Proc. § 527.6, subd. (a)(1)
18 (emphasis added).) “In the discretion of the court, on a showing of good cause, a temporary
19 restraining order . . . issued under this section may include other named family or household
20 members.” (*Id.*, subd. (c).) The Third District Court of Appeal has further confirmed “that the purpose
21 of section 527.6 is to provide a remedy only to natural persons[.]” (*Diamond View Ltd. v. Herz* (1986)
22 180 Cal.App.3d 612, 619 [citing legislative history].) And consistent with Section 527.6, the Court’s
23 TRO did not purport to protect “Day Care”—only Ms. Murray and two minors were listed as
24 protected parties. (RJN, Ex. 1 at 1.)

25 The facts stated in Count 2 therefore cannot constitute a public offense because there was not,
26 and could not have been, a temporary restraining order in effect that protected “Day Care.” It is thus
27 impossible that Ms. Bourne violated such an order.

28

1 **E. The Complaint’s Use of Initials and “Day Care” Do Not Conform to Penal Code**
2 **Section 952.**

3 Penal Code section 952 requires each count to state the charged offense in ordinary and
4 concise language sufficient to give the accused notice of the offense. Even a pleading that tracks
5 statutory language may be insufficient if it fails to identify the conduct the defendant must defend
6 against. (*Sallas v. Municipal Court* (1978) 86 Cal.App.3d 737, 743.) Due process requires sufficient
7 specificity to permit the accused to prepare a defense without being surprised at trial. (*In re Rudolfo*
8 *A.* (1980) 110 Cal.App.3d 845, 853.) A failure to provide such notice is a ground for demurrer under
9 Penal Code section 1004, subdivision (b).

10 Both Counts 1 and 2 fail to identify the individuals or entities purportedly protected by the
11 restraining orders underlying the charges. Count 1 refers to a temporary restraining order issued “to
12 protect J.M.” Count 2 refers to one issued “to protect Day Care.” Neither allegation identifies the
13 protected party. “J.M.” supplies only unexplained initials, while “Day Care” is a generic label that
14 identifies neither a person nor a legal entity.

15 No statute authorizes the use of initials or a generic description in place of the protected
16 parties’ names in a section 166(a)(4) prosecution. Penal Code sections 293 and 293.5 allow a court
17 to order the use of a Jane Doe or John Doe designation for an alleged victim of a specified sex offense
18 under prescribed circumstances. This complaint charges misdemeanor contempt under section 166,
19 subdivision (a)(4), not a sex offense. Those provisions therefore provide no basis for substituting
20 unexplained initials or a generic label for the protected parties’ identities.

21 The unexplained use of initials also risks unfairly prejudicing Ms. Bourne. A jury may infer
22 from the designation “J.M.” that the person has been afforded special protection because of unusual
23 vulnerability or the nature of the alleged conduct, although neither inference is established by the
24 charge itself. Meanwhile, “Day Care” leaves Ms. Bourne unable to determine whether Count 2
25 concerns a person, a business, or another entity. These labels obscure information necessary to
26 prepare a defense while inviting inferences unsupported by the allegations.

27 The prosecution cannot cure these pleading defects by assuming Ms. Bourne already knows
28 the identities of the protected parties or by supplying the missing information through discovery. In

1 a misdemeanor prosecution, discovery and assumptions about the accused's knowledge do not
2 substitute for adequate notice in the accusatory pleading. (*Lamadrid v. Municipal Court* (1981) 118
3 Cal.App.3d 786, 788.). The pleading itself must identify the prosecution's theory with sufficient
4 particularity to permit preparation of a defense. (*People v. Jordan* (1971) 19 Cal.App.3d 362, 369.)

5 California law permits concise pleading, not the omission of information necessary to
6 understand the charges. Because neither Count 1 nor Count 2 identifies the purportedly protected
7 party, the complaint fails to provide adequate notice of the offenses charged as required by Penal
8 Code section 952. The Court should sustain the demurrer to both counts under Penal Code section
9 1004, subdivision (b).

10 **V. CONCLUSION**

11 Based on the foregoing arguments and authorities, Defendant Elisabeth Young Bourne
12 respectfully requests that Court sustain her Demurrer to the Complaint with prejudice and without
13 leave to amend.

14
15 Dated: October 19, 2026

Respectfully submitted,

16 /s/ Jesse D. Franklin-Murdock
17 Jesse D. Franklin-Murdock (SBN: 339034)
18 **SWEIGART MURDOCK, LLP**
19 1160 Battery Street, Suite 100
20 San Francisco, California 94111
Telephone: (415) 873-0123
Email: jesse@sm-llp.com

21 /s/ Laura Powell
22 Laura Powell (SBN: 240853)
23 Law Office of Laura Powell
24 2120 Contra Costa Blvd. #1046
Pleasant Hill, CA 94523
tel. (510) 457-1042
laura@laurabpowell.com

25
26 *Attorneys for Defendant Elisabeth Young Bourne*
27
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