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- EXPEDITE
- No Hearing Set
- Hearing is Set

Date: Friday, September 7, 2018
 Time: 9:00 a.m.
 Judge James J. Dixon

**STATE OF WASHINGTON
 THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

 Plaintiff,

 v.

 TIM EYMAN, *et al.*,

 Defendants.

NO. 17-2-01546-34

 PLAINTIFF STATE OF
 WASHINGTON'S RESPONSE TO
 DEFENDANTS' MOTION FOR
 RECONSIDERATION OF ORDER
 GRANTING PRODUCTION OF
 EYMAN'S BANK RECORDS
 DIRECTLY TO STATE GOVERNMENT

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I. INTRODUCTION

Defendant Eyman has withheld discoverable financial records for 14 months. He has been afforded numerous opportunities to produce them voluntarily and in accordance with Court and Special Master orders. Instead of compliance, he chose to resist all the State's efforts to secure those records as well as orders to produce them. Given the lengthy record of his resistance and the State's demonstrated need, the Special Master ordered the records produced directly to the State from his banks. Those orders were not in error. They were not an abuse of discretion. The Court should affirm the Special Master's orders.

II. COUNTER-STATEMENT OF FACTS

A. Defendant Eyman's Repeatedly Defies Orders for Bank Records Production

Defendant Eyman's refusal to produce his bank records in discovery has run the entire length of this case. This Court and Special Master issued multiple orders requiring him to produce those records. All Defendant Eyman needed to do to timely comply to the State's discovery requests for those records in June 2017 was to request them from his own bank and then turn them over to the State. He simply chose not to do so and still—even today—refuses to comply with his discovery obligations and orders requiring him to produce those records despite being given every opportunity to comply.

1. State's First Discovery Requests for Defendant Eyman's Bank Records

On June 13, 2017, the State served its first set of discovery requests on Defendant Eyman. Declaration of S. Todd Sipe ¶ 4. These requests sought the production of certain bank records from Defendant Eyman's accounts. *Id.* For example, Request for Production 1 sought all documents relating to payments made to Defendant Eyman or any of his businesses from Defendant Citizen Solutions LLC, Defendant William Agazarm, Edward Agazarm, or Roy Ruffino, including copies of checks, wire, digital, or other electronic transfer documentation, credit card statements, bank statements, check stubs, and receipts received, regardless of the method of payment. *Id.* at

1 5. Request 3 sought the same bank records for payments Defendant Eyman or his businesses
2 received from Citizens in Charge. *Id.*

3 **2. Court compels Defendant Eyman to produce responsive bank records**

4 On October 12, 2017, the State filed a motion to compel Defendant Eyman's discovery
5 responses. *See* State's Motion to Compel (filed Oct. 12, 2017). Shortly after, Defendant Eyman
6 filed a motion for protective order seeking to restrict the State's requests for Defendant Eyman's
7 financial and phone records. *See* Defendants' Motion for a Protective Order (filed Oct. 26, 2017).
8 While Defendant Eyman argued in his motion that an associational privilege applied to the
9 request for phone records, he did not make any such contention regarding the State's financial
10 records requests. *Id.* at 9-10.

11 On November 3, 2017, this Court granted the State's motion to compel requiring
12 Defendant Eyman to respond to the State's requests (including those seeking bank records) "as
13 requested" by November 14, 2017. *See* Order Granting Motion to Compel (filed Dec. 8, 2017).
14 The Court also ordered Defendant Eyman to file a certification attesting to the completeness of
15 his answers/responses when they were served. *Id.* at ¶ 3. The Court did not grant Defendant
16 Eyman a protective order restricting the State's request for financial records.¹

17 **3. Court holds Defendant Eyman in contempt**

18 Defendant Eyman chose not to comply with this Court's Order. *Sipe Decl.* ¶ 6. He refused
19 to produce any of his personal bank records. *Id.* He also refused to respond to the State's
20 Interrogatory 3 seeking information about his bank accounts until January 10, 2018, when he
21 provided the names of his banks for his accounts, but no account numbers or other information
22 requested. *Sipe Decl.* ¶ 7, Ex. A.

23 Further, Defendant Eyman withheld information about payments made between
24 Defendant Eyman and Defendant Citizen Solutions LLC or its predecessor until January 10,

25 _____
26 ¹ This Court's protective order struck the State's request for cell phone records (¶ 1) and ordered a process
to safeguard the privacy of the financial records that Defendant Eyman was compelled to produce. *See* Protective
Order at ¶¶ 2-14 (filed Nov. 9, 2017).

1 2018. Sipe Decl., ¶ 8, Ex. A. He only revised his answer to Interrogatory 7 seeking this
2 information after the State moved for contempt and identified from secondary sources another
3 \$200,000 in payments between himself and Citizen Solutions in 2009. At that time, Defendant
4 Eyman revised his answer to reveal \$400,000 in payments between Defendant Eyman and
5 Citizen Solutions in 2009 and another \$60,000 in payments in 2012. *Id.* However, he failed to
6 produce any bank records relating to these newly identified payments. *Id.*

7 The State filed a motion with the Special Master seeking his recommendation that
8 Defendant Eyman (and the other Defendants) be found in contempt of court for their discovery
9 violations. *See* State’s Motion for Order Recommending Contempt Sanctions to the Trial Court
10 (filed Feb. 1, 2018). On February 16, 2018, the Special Master determined that Defendant Eyman
11 should be found in contempt. *See* Order Granting State’s Discovery Motion No. 2 to the Special
12 Master for Recommendation to Judge Dixon for Order of Contempt of Court (filed Mar. 2, 2018).
13 The Special Master directed Defendant Eyman to complete his discovery responses no later than
14 March 2, 2018, and file with the previously ordered certificate of completeness with the Special
15 Master by March 2. *Id.* at ¶ 3.

16 On March 2, 2018, Defendant Eyman again served incomplete responses to the State’s
17 discovery requests and filed a purported certificate of completeness that was objected to by the
18 State. Sipe Decl., ¶ 9, Ex B. The only personal bank records Defendant Eyman produced were
19 excerpts from selected personal bank records consisting of nine scanned checks, none of which
20 were connected to his recently disclosed \$460,000 in transfers between himself and Defendant
21 Citizen Solutions LLC and its predecessor. *Id.* at ¶ 10. His March 2 responses set forth the same
22 payments previously identified on January 10 as the only ones that occurred between him, his
23 family and his business, and Citizen Solutions and persons associated with Citizen Solutions. *Id.*
24 at ¶ 11, Ex. B. He failed to identify any payments from Edward Agazarm or Roy Ruffino to him,
25 his family or his businesses. *Id.*

1 On March 16, 2018, this Court adopted the Special Master's recommendation and found
2 Defendant Eyman in contempt as of February 16, 2018. *See* Order Granting Plaintiff State of
3 Washington's Motion to Adopt Special Master's Recommendation and Assess Contempt
4 Sanctions. The Eyman Defendants have been in contempt since that time. *See* Order on Plaintiff
5 State of Washington's Motion for Recommendations for Additional Contempt Sanctions, ¶ 1
6 (filed Aug. 21, 2018).

7 **4. State requests orders directing Defendant Eyman's banks to deliver records**
8 **to the State**

9 Despite being found in contempt and incurring a \$250 daily penalty, Defendant Eyman
10 steadfastly maintained his refusal to comply with Court's December 8 Order and produce
11 responsive records from his personal bank accounts. *Sipe Decl.* ¶ 12. As a result, the State filed
12 a motion with the Special Master seeking orders directed to the banks to produce Defendant
13 Eyman's personal banking records.² There, the State noted that it had not received any records
14 from Defendant Eyman regarding payments involving his personal accounts to and from Citizen
15 Solutions and affiliated persons even though he was disclosing such payments in his discovery
16 responses (one that had been first uncovered by the State on its own). *April 20 Mot.* at 10.

17 The State also noted that Defendant Eyman had not produced records responsive to
18 Request for Production 18 documenting the disposition of that portion of the \$308,185.50 Citizen
19 Solutions LLC's payment that made its way into his personal accounts (approximately \$61,000).
20 *Id.* at 5. Finally, the State informed the Special Master that time was of the essence because bank
21 records are continually being purged based on the banks' retention policies, and bank records
22 may have already been lost as result of Defendant Eyman's refusal to produce these records. *Id.*
23 at 8-9.

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26 ² *See* Plaintiff State of Washington's Discovery Motion No. 6 to the Special Master: Motion for Judicially
Issued Subpoenas for Defendant Eymans' Bank Records to be Produced From the Banks Directly to the State (filed
Apr. 20, 2018).

1 Although the State had requested orders directing the banks to deliver Defendant
2 Eyman's bank records directly to the State, the Special Master based on privacy concerns³ orally
3 ruled on April 30, 2018 that he would instead order the banks to deliver Defendant Eyman's
4 personal banking records to his counsel for review.⁴ The Special Master gave Defendant Eyman
5 three weeks from the receipt of those records from his banks to produce responsive records to
6 the State. *Id.*

7 **5. Defendant Eyman violates Special Master's May 3 Order**

8 Defendant Eyman's counsel acknowledged receipt of records from his banks on May 29,
9 2018. Sipe Decl. ¶ 13, Ex. C. This required Defendant Eyman to produce responsive bank
10 records by June 19, 2018. *Id.* at ¶ 13. Defendant Eyman ignored the deadline and failed to
11 produce any banking records to the State on June 19; he also made no timely request to the
12 Special Master for an extension. *Id.* On June 26, 2018, the State sought an order directing the
13 banks to produce records directly to the State.⁵

14 Instead of producing the records, Defendant Eyman filed a motion for an extension after
15 the production deadline that had already passed.⁶ Then on July 13, 2018, Defendant Eyman
16 finally produced incomplete bank records from his personal accounts. Sipe Decl. ¶ 14.

17 **6. Defendant Eyman violates Special Master's July 12 order**

18 On July 12, 2018, the Special Master granted the State's motion seeking banking records
19 directly from the banks as modified and allowed Defendant Eyman one more final opportunity
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21 _____
22 ³ Contrary to Defendant Eyman's unsupported assertion in this motion (Mot. at 2), the Special Master did
23 not indicate that this ruling was based on "privilege concerns". See Order Granting Plaintiff State of Washington's
Discovery Motion No. 6 Requesting Issuance of Orders to Banks for the Production of Bank Records (filed May 3,
2018).

24 ⁴ See Order Granting Plaintiff State of Washington's Discovery Motion No. 6 Requesting Issuance of
Orders to Banks for the Production of Bank Records, ¶ 2 (filed May 3, 2018).

25 ⁵ See Plaintiff State of Washington's Discovery Motion No. 11 to the Special Master: Motion for Judicially
Issued Subpoenas for Defendant Eyman's Bank Records to be Produced From the Banks Directly to the State (filed
26 Jun. 26, 2018).

⁶ See Eyman Defendants' Motion for Extension of Time to Produce Privileged Confidential Bank Records
in Response to Subpoena to Produce Bank Records (filed July 2, 2018).

1 to produce the responsive bank records.⁷ The Special Master ordered Defendant Eyman to
2 produce complete responsive banking records no later July 13, 2018.⁸

3 Once again, Defendant Eyman did not comply. Sipe Decl. ¶ 14. The continued
4 deficiencies in Defendant Eyman’s bank records production were set forth by the State in detail
5 in a July 18, 2018 letter to the Special Master. Sipe Decl. ¶ 14. Ex. D.

6 Although Defendant Eyman identified three personal bank accounts under his control at
7 Bank of America and four more personal accounts at U.S. Bank, he produced statements from
8 only a single account – an equity line of credit at U.S. Bank. Sipe Decl. ¶ 15. He produced no
9 statements for any of his checking or savings accounts even though the payments that he
10 previously identified involve one or more of those accounts. *Id.* In addition to absence of bank
11 statements, Defendant Eyman also provided no records regarding the disposition of the
12 approximately \$61,000 that was transferred to his personal accounts from the \$308,185.50
13 payment Defendant Watchdog received from Citizen Solutions as requested in Request for
14 Production 18. Sipe Decl. ¶ 16.

15 Similarly, nearly all of the checks that Defendant Eyman produced consisted of payments
16 to the equity line of credit account. Sipe Decl. ¶ 17. Although Defendant Eyman deemed both
17 the statements for and payments made into his equity line of credit account to be responsive
18 (which together made up nearly the entire production), he left out documentation showing to
19 whom the outgoing advances from that line of credit were made. *Id.*

20 The only bank records produced on July 13 pertaining to Defendant Eyman’s checking
21 and savings accounts were three deposit slips and 14 checks. Sipe Decl., ¶ 18. The failure to
22 produce any statements relating to these deposits and payments constituted a glaring deficiency
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24 ⁷ See Order Granting Plaintiff State of Washington’s Discovery Motion No. 11 to the Special Master:
25 Motion for Judicially Issued Subpoenas for Defendant Eyman’s Bank Records to be Produced from the Banks
26 Directly to the State (filed Jul. 12, 2018).

⁸ *Id.* at ¶ 2 (“If the responsive documents are not provided as of that time or if any such disclosure is
incomplete, Plaintiff State of Washington’s proposed judicial subpoenas ... shall be issued by the Special Master
without further argument or briefing.”).

1 in the production since the State expressly requested those statements. *Id.* Moreover, some of
2 the checks and deposit slips that were produced are notable because they revealed that Defendant
3 Eyman had not been truthful in his discovery responses. Sipe Decl. ¶ 19, Ex. E.

4 For example, Defendant Eyman deposited seven separate checks totaling \$86,000 (six
5 for \$13,000 and one for \$8,000) into a Bank of America checking account in December 2011
6 and January 2012. Citizen Solutions Inc. principals Edward Agazarm and Roy Ruffino made
7 these checks out from their personal accounts to Defendant Eyman (one from each principal),
8 Defendant Eyman's spouse (one from each principal) and one to each of Defendant Eyman's
9 three children (from Edward Agazarm).⁹ Sipe Decl. ¶ 19, Ex. E. Defendant Eyman has never
10 disclosed these payments despite being asked in interrogatories and requests for production for
11 more than a year to identify all of the payments made to him, his family, and his business from
12 Citizen Solution players. Sipe Decl. ¶ 19.

13 On July 20, 2018, in response to the State's letter to the Special Master detailing the
14 deficiencies in the Eyman Defendant production and a full week after the deadline set by the
15 Special Master in his last chance order, Defendant Eyman produced statements for one of his
16 accounts at Bank of America. Sipe Decl. ¶ 20. On July 31, 2018, the State sent a second letter to
17 the Special Master detailing remaining deficiencies with Defendant Eyman's production of bank
18 records even taking to account the late produced statements for a single account. Sipe Decl. ¶
19 21, Ex. F. The letter noted that late-produced statements showed more than \$100,000 in deposits
20 from unknown sources in a span of just six months during the time period at issue that were
21 suspicious based on Defendant Eyman's pattern of concealment and false representation in
22 discovery. Sipe Decl. ¶ 22, Ex. F. The letter also detailed that Defendant Eyman still had not
23 produced any records showing where the advances from the equity line of credit account went
24 nor any records from the three other U.S. Bank accounts that were all closed just after this case
25 was filed. Sipe Decl. ¶ 23, Ex. F.

26 _____
⁹ These checks and their corresponding deposit slips are being provided to the Court under seal.

1 On August 23, 2018, Defendant Eyman revealed for the first time that he also maintains
2 accounts at two other banks, Key Bank and Heritage Bank, not previously disclosed in discovery.
3 Sipe Decl., ¶ 24, Ex. G. Defendant Eyman then produced the statements for these newly
4 identified accounts, which have been open for over a year. Sipe Decl. ¶ 25.

5 **7. Special Master orders banks to produce records directly to the State**

6 On August 21, 2018, the Special Master signed orders directing US Bank and Bank of
7 America to produce Defendant Eyman's personal banking records to the State.¹⁰ At the Eyman
8 Defendants' request, the Special Master ordered the State to maintain any records it receives
9 from these banks under seal until the Court rules on any motion for revision. *Id.* at ¶ 2. The
10 Special Master issued orders to both banks the same day. Sipe Decl. ¶ 26. In accordance with
11 the Special Master's order, the State will maintain the bank records it receives for Defendant
12 Eyman's personal accounts under seal and will not review such records until this Court rules on
13 the motion for revision.¹¹ Sipe Decl. ¶ 27.

14 **B. Recently Produced Records from Defendant Eyman's Computer Reveal Additional
15 Concealed Payments Involving Defendant Eyman's Accounts**

16 Shortly after Defendant Eyman produced Roy Ruffino and Edward Agazarm's checks
17 made out to Defendant Eyman and his family not previously disclosed in discovery, Defendant
18 Eyman produced documents from his computer. Sipe Decl. ¶ 28. These documents reveal that
19 payments from Mr. Ruffino and Edward Agazarm to Defendant Eyman were not an isolated
20 occurrence. Sipe Decl. ¶ 29. Rather, emails disclosed that payments were part of a longstanding
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24 ¹⁰ See Order Granting Plaintiff State of Washington's Discovery Motion No. 11 to the Special Master:
25 Motion for Judicially Issued Subpoenas for Defendant Eyman's bank Records to be Produced from the Banks
26 Directly to the State (filed Aug. 21, 2018).

¹¹ Defendant Eyman appears to misapprehend this aspect of the Special Master's August 21 order in his
motion. Mot. at 4. Based on this order, the State will not review any records it receives for Defendant Eyman
accounts until this Court rules on Defendant Eyman's motion. The protective order, in contrast, only restricts parties'
ability to share records with third parties.

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IV. ARGUMENT

The Court should affirm the Special Discover Master’s Order directing Defendant Eyman’s banks to send banking records directly to the State. His order was made after multiple attempts to obtain Defendant Eyman’s compliance with prior orders had failed. Furthermore, the State has shown that Defendant Eyman is withholding discoverable information in violation of the Court’s order. As such, the Special Master’s order was proper.

The Court appointed the Special Master to handle discovery motions in this case. *See* Order Appointing Special Discovery Master (entered Dec. 8, 2017). It also set up the process by which a Special Master’s decision could be reviewed. *Id.* at 9(a). On review, the Court should apply the same standard used by the appellate courts to review trial court discovery orders. In this instance, the standard should be abuse of discretion. *Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 777-79, 819 P.2d 370 (1991).

As detailed below, Defendant Eyman provides no basis for finding any error made by Special Master regarding his handling of the issue of Defendant Eyman’s banks records. The issue has been pending for months during which time the Special Master provided Defendant Eyman many opportunities to comply with his discovery obligations and avoid having orders directed to his banks. Defendant Eyman just did not. Without any demonstrated error, the Special Master’s order should stand.¹⁴

A. Defendant Eyman’s Claim that His Financial Solicitations and Dealings Are Shielded From Discovery By a Purported “Associational Privilege” is Baseless

Defendant Eyman claims that the Special Master’s orders directing his banks to produce records to the State should be set aside because they reveal “political associations, supporters and donors”. Mot. at 1. This argument is peculiar since it appears to concede the very basis for the State’s request for these bank records and the reason why the Special Master’s ruling is appropriate. The fact that Defendant Eyman used these accounts to accept previously unreported

¹⁴ Any claim that Defendant Eyman makes as to his privacy is addressed by the Court’s November 9, 2017 protective order. That order limits the dissemination of information from Defendant Eyman’s accounts.

1 contributions in support of Defendant Eyman’s initiative work is what makes them relevant and
2 discoverable. *See* RCW 42.17A.235, .240 (concerning how to report contributions to support a
3 political committee).

4 Documents recently produced by Defendant Eyman reveal that he solicited and received
5 unreported contributions, some of which were funneled through Citizen Solutions and its
6 associates. Sipe Decl. Exs. H, I, J. This conduct and concealed contribution activity goes to the
7 heart of the State’s case. Under state campaign finance laws, the public has right to know who
8 these contributors were, how much was contributed, and how these funds were used.¹⁵ Defendant
9 Eyman seems to be contending that engaging in improper unreported campaign finance activity
10 involving his personal accounts somehow allows those accounts to be shielded from discovery.
11 Mot. at 1:18-21. In fact, the very opposite is true.

12 Further, Defendant Eyman’s attempt to attach an associational privilege to his personal
13 bank records is baseless. There is no First Amendment associational privilege at issue here. The
14 documents being produced are bank records of an individual – not communications of a political
15 association. They simply report financial transactions. Not surprisingly, Defendant Eyman
16 provides no authority for his novel contention that his bank records should be afforded special
17 treatment merely because he asserts himself to a “public political figure” and appears to have
18 used them in schemes to skirt campaign finance disclosure laws. Mot. at 6:20-24.

19 Also not surprisingly, Washington law does not support Defendant Eyman’s
20 assertion of an associational privilege’s application. “While a First Amendment associational
21 privilege to discovery requests does exist, that privilege is not absolute.” *Snedigar v. Hoddersen*,
22 114 Wn.2d 153, 159, 786 P.2d 781 (1990) (citing *Wilkinson v. FBI*, 111 F.R.D. 432, 436

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25 ¹⁵ *See* RCW 42.17A.001 (It is hereby declared by the sovereign people to be the public policy of the state
26 of Washington: (1) that political campaign . . . contributions and expenditures be fully disclosed to the public and that secrecy be avoided.); RCW 42.17A.001 (The Act is “to be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying . . .”); *State v. Evans Campaign Comm.*, 86 Wn.2d 503, 508-09, 546 P.2d 75 (1976).

1 (C.D.Cal.1986); *Britt v. Superior Court*, 20 Cal.3d 844, 855, 574 P.2d 766, 143 Cal. Rptr. 695
2 (1978)). There is no presumption of a First Amendment privilege.

3 In *Snedigar v. Hoddersen*, 124 Wn.2d at 158-67, the Washington Supreme applied this
4 qualified privilege in a narrow context that does not apply here. There, the Court found that the
5 privilege applied to discovery requests for meeting minutes of a political party. *Id.* at 167. In
6 protecting those meeting minutes, the Court recognized the limited privilege previously
7 enunciated in *Wilkerson* for requests impairing a group's associational activities. *Id.* at 160.

8 In *Wilkerson*, the federal court applied this qualified privilege for discovery requests
9 seeking membership or contribution lists from a political association. Significantly, the
10 *Wilkerson* court held that the privilege does not extend to requests directed to individual political
11 activists. *Wilkerson*, 111 F.R.D. at 436-37; *see also McCormick v. City of Lawrence*, No. 02-
12 2135-JWL, 2002 WL 1606595, **7-9 (D. Kan. July 8, 2005) (finding associational privilege did
13 not apply to discovery requests for records of political activist since he is not an organization
14 and request did not implicate core associational concerns such as requests for membership lists).

15 More recently, the Washington Supreme Court emphasized the limited scope of this
16 qualified privilege in *T.S. v. Boy Scouts of America*, 157 Wn.2d 416, 138 P.2d 416 (2006). In
17 *Boy Scouts*, the Court rejected the application of this privilege to discovery seeking private
18 information from the Boy Scouts. "[T]he qualified First Amendment associational privilege . . .
19 protects a particular type of relationship - the relationship between a political party and its
20 members - and the communications 'at the core of' that relationship.'" *Id.* at 429 (*quoting*
21 *Wilkerson*, 111 F.R.D. at 436). Moreover, even when the discovery is directed to an association,
22 courts have still refused to apply the privilege to where there is protective order in place and the
23 association is unable to demonstrate some probability that the requests would infringe upon the
24 organization's constitutional rights. *See Rhinehart v. Seattle Times*, 59 Wn. App. 332, 337-38,
25 798 P.2d 1155 (1990). Here, the Court has already issued a protective order to address how to
26 handle Defendant Eyman's personal banking records. *See Protective Order* (filed Nov. 9, 2017).

1 Defendant Eyman’s reliance *Eugster v. City of Spokane*, 121 Wn. App. 799, 807, 91 P.3d
2 117 (2004) is misplaced. Mot. at 7-8. In *Eugster*, the discovery requests sought, among other
3 things, all *communications* between identified non-parties and a broad range of non-party
4 candidates and officials.¹⁶ *Id.* In contrast to *Eugster*, there has been no showing here that
5 Defendant Eyman’s bank records implicate the associational rights of any third parties. In
6 contrast to private communications, campaign contributions *are* statutorily required to be
7 disclosed to the public. RCW 42.17A.235, .240.

8 Defendant Eyman’s attempt to extend the limited associational privilege to shield his
9 own bank records should be rejected as inconsistent with both state and federal law. Defendant
10 Eyman provides no authority for this privilege applying to an individual’s bank records. To the
11 contrary, the Washington Supreme Court states that the privilege only applies to a particular type
12 of relationship - that between a political party and its members – and only for information that
13 goes to the core of that relationship. No case says that payments made to an individual for their
14 work to support a ballot proposition are covered by the associational privilege, regardless of
15 where those payments are deposited.

16 **B. Defendant Eyman’s Bank Records Are Plainly Relevant to the State’s Claims**

17 Even if an associational privilege could attach to his personal bank records, Defendant
18 Eyman’s claim that these records should be exempt from discovery relies on his repeated and
19 baseless assertions that such bank records are not relevant. Mot. at 7-8. As an initial matter, this
20 Court already ordered Defendant Eyman to produce bank records responsive to State’s discovery
21 requests. *See* Order Granting State’s Motion to Compel (filed Dec. 8, 2017). The reason the State
22 sought these records and the Special Discovery Master ordered the banks to produce them is
23 because Defendant Eyman refused to comply with this Court’s order.

24 _____
25 ¹⁶ Contrary to Defendant Eyman’s suggestion, the *Eugster* case does not stand for the proposition that a
26 request for a party’s bank records alone can trigger the associational privilege. The subpoenas at issue in *Eugster*
sought *all* records relating to a third party mortgage company’s campaign contributions as well as “all
communications with various and current former elected officials, political candidates, and members of the media”.
See Eugster, 121 Wn. App. at 805.

1 Defendant Eyman's failure to comply with his discovery obligations became more
2 apparent when the State received documents from Defendant Eyman's computer, which
3 referenced more unreported and undisclosed payments to Defendant Eyman by Citizen
4 Solutions' principals, including Mr. Ruffino and Edward Agazarm, that were never disclosed in
5 discovery. Sipe Decl. ¶¶ 29-31, Exs. H, I. Defendant Eyman's documents also contain insight
6 into his schemes to keep those payments to him hidden from reporting requirements that
7 substantiate the State's claims. Sipe Decl. Exs. H, I, J. The details and extent of these payments
8 can only be determined by reviewing Defendant Eyman's bank records.

9 The importance of obtaining Defendant Eyman's bank records is heightened by the fact
10 that few sources of testimony can be tapped to prove these schemes. Mr. Ruffino asserted the
11 Fifth Amendment when questioned about his payments. Defendant Eyman has now asserted the
12 same protection with respect to answering the State's discovery. Sipe Decl. ¶ 34. Thus,
13 Defendant Eyman's bank records are the only "testimony" that will corroborate the emails in
14 which Defendant Eyman spells out his scheme to receive money to support ballot propositions
15 that were never publicly reported as required by law. The State has no other means to obtain
16 information regarding additional unreported payments for initiative work that Defendant Eyman
17 himself has referenced in communications with Citizen Solution principals, but did not disclose
18 in discovery.

19 **C. The Special Master Appropriately Considered Privacy Issues And Only Issued the**
20 **Judicial Subpoenas After Defendant Eyman Repeatedly Failed to Comply With His**
21 **and This Court's Orders to Produce Responsive Records**

22 Defendant Eyman's contention that the Special Master failed to properly consider
23 privacy concerns is also without merit. Mot. at 9. The *State v. Miles* decision (Mot. at 6) does
24 not prohibit the State from obtaining personal banking records; rather, it simply requires an order
25 to be issued by a judicial officer in an appropriate case such as this. *State v. Miles*, 160 Wn.2d
26 236, 156 P.3d 864 (2007). In this case, the Special Master's concern for privacy led him to allow
Defendant Eyman multiple opportunities to comply despite being in contempt. The Special

1 Master ordered the banks to send the records to the State *only after* Defendant Eyman repeatedly
2 ignored those opportunities and disregarded of the Special Master orders.¹⁷ He chose instead to
3 ignore court orders as well as Special Master deadlines. Even when he did produce information,
4 it was from only one of his checking accounts. Sipe Decl., ¶ 15. Significantly, Defendant Eyman
5 has not produced bank records for payments specifically referenced in his solicitations for funds
6 produced in discovery.

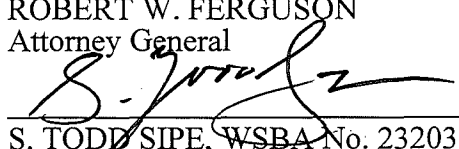
7 Defendant Eyman's privacy concerns were addressed. The Special Master entered his
8 August 21 orders to the banks only after Defendant Eyman violated multiple orders and had been
9 given every reasonable opportunity to voluntarily comply.¹⁸ The orders were appropriate and
10 should not be disturbed.

11 **V. CONCLUSION**

12 Defendant Eyman bears the burden of demonstrating that the Special Master's order to
13 produce his personal banking records directly to the State was in error or an abuse of discretion.
14 He fails to do either. As such, Defendant Eyman's motion should be denied.

15 RESPECTFULLY SUBMITTED this 4th day of September, 2018.

16 ROBERT W. FERGUSON
17 Attorney General

18 
19 S. TODD SIPE, WSBA No. 23203
20 Assistant Attorney General
21 Attorney for Plaintiff State of Washington

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25 ¹⁷ Not surprisingly, Defendant Eyman provides no support for the peculiar assertion that he could not
26 access the records for his own accounts without judicial subpoenas or that subpoenas in some manner reached
records that he could not access or have requested from the banks himself. Mot. at 7.

¹⁸ Defendant Eyman's delay tactics may have already caused responsive bank records to be lost as result
of banks' retention practices and allowing more delay was not warranted. Sipe Decl. ¶ 35.

PROOF OF SERVICE

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DATED this 4th day of September, 2018, at Olympia, Washington.



Jessica Buswell, Legal Assistant

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