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STOP LAPD SPYING COALITION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

JANE DOES and JOHN DOES 1 through 200, inclusive;

Plaintiffs,

vs.

CITY OF LOS ANGELES, a government entity; MIKE FEUER (Former Los Angeles City Attorney), an individual; MICHEL MOORE (Chief of Police LAPD); LIZABETH RHODES (Police Administrator III LAPD); and DOES 1 through 100 inclusive,

Defendants.

CITY OF LOS ANGELES,

Cross-Complainant,

vs.

BEN CAMACHO, STOP LAPD SPYING COALITION, and ROES 1-100, inclusive;

Defendants.

Lead Case No. 23STCV21284
Related Case No. 23STCV21995

Hon. David S. Cunningham, Department 11

OPENING BRIEF IN SUPPORT OF CROSS-DEFENDANT STOP LAPD SPYING COALITION'S SPECIAL MOTION TO STRIKE UNDER THE ANTI-SLAPP STATUTE

[Filed concurrently with: Notice of Special Motion to Strike Under the Anti-SLAPP Statute; Request for Judicial Notice; Declaration of Hamid Khan; Declaration of Ben Camacho; Declaration of Adrian Riskin.]

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INTRODUCTION

The City of Los Angeles is claiming that a community organization, the Stop LAPD Spying Coalition, must indemnify the City's liability to several hundred of the City's police officers whose official images and identities the City shared with a journalist, since the Coalition is among countless members of the public who *re-published* those records months after the City first made them public.

This is a classic SLAPP suit. Protected activity is the Stop LAPD Spying Coalition's entire connection to the case. Every time any pleading in this case mentions the Coalition, it is in reference to the Coalition either filing public records requests or re-publishing records from the public domain. Filing requests for public records is no doubt protected activity, as is re-publishing public records: a long line of First Amendment precedent bars any liability for re-publication of truthful information from the public domain. So not only do the City's claims arise entirely from protected activity, they are cleanly barred by the First Amendment.

The City's two claims can even be struck without constitutional analysis. The first claim, contribution, requires the City to have paid more than its share of a judgment entered jointly against the Coalition too. No such judgment has ever been entered, let alone payments made toward it. And the City's indemnification claim requires proving that the Coalition is liable for the plaintiffs' claims against the City. But the plaintiffs' claims all require either a government defendant (which the Coalition is not) or other elements that cannot be met. That means the Coalition is not liable for these claims. In addition, each plaintiff lacks the capacity to sue because they have not complied with the statutory requirement that the title of any civil lawsuit "shall include the names of all the parties." (Code Civ. Proc., § 422.40.) The Coalition does not know the names of anyone who initiated this action. Forcing the Coalition to defend against claims from over 800 unknown litigants violates both due process and the Code of Civil Procedure.

FACTS

In October 2021, photojournalist Ben Camacho asked the Los Angeles Police Department (LAPD) for images of all its officers along with a roster listing those officers. (Compl. ¶ 18.)[1] LAPD responded by

[1] Consistent with the citations in the City's motion to strike briefing filed on January 16, 2024, all citations here to "Compl." refer to the Complaint for Damages filed in Case Number 23STCV21995 on September 12, 2023, and all citations to "FAC" refer to the First Amendment Complaint for Damages filed in Case Number 23STCV21284 on September 18, 2023.

providing a roster listing its officers, similar to at least 20 other rosters LAPD had published going back to 2019, but it refused to publish the images. (Compl. ¶ 19; Riskin Decl., ¶¶ 3–19.) Camacho filed a petition for a writ of mandate to enforce that aspect of his request. (Compl. ¶ 20.) The City Attorney agreed to produce the images but stated that it would be "excluding from disclosure" images of "undercover officers, which is expected." (*Id.* ¶ 22.) The settlement offer did not define "undercover officers." Camacho's counsel thus asked how many officers would be withheld on that basis. (Camacho Decl., ¶ 12, Exh. A.) The City Attorney's office responded: "We do not disclose this information. These individuals are not on any published roster." (*Ibid*.) In other words, the City deliberately chose to produce images of officers named on published rosters, while excluding "undercovers" who are not.

The City's choice made good sense. Those published rosters, which had been downloadable on the City's websites for years and remain available to the public there today, listed officers' names, ethnicity, sex, year of hire, rank, division, supervisor's name, and more. (Riskin Decl., ¶¶ 3–19.) If the City withheld image of any officer listed on those rosters (including the roster LAPD produced to Camacho shortly before he sued), the public could use the rosters to identify who was withheld. As Chief Assistant City Attorney Scott Marcus later wrote, "excluding only the undercover officers would necessarily identify them by nature of their exclusion." (Camacho Decl. Ex. C.) The City thus had two choices: either reveal that it considered some of those officers "undercover" or hide those assignments by providing images of all officers. The City chose the latter: every officer whose image the City gave Camacho – so, presumably every plaintiff in this case – is named on a public roster. (Riskin Decl., ¶ 22.)

The City Attorney's office handed Camacho the images in September 2022. (*Id.* ¶ 24.) Camacho then published the images online. Six months later, in March 2023, the Stop LAPD Spying Coalition republished the images on a website it had created, watchthewatchers.net. (Khan Decl., ¶¶ 3, 5–7.) The website explains that its purpose is community education, government transparency, and political participation. (*Id.* ¶ 4.) The website prominently states: "This website is intended as a tool to empower community members engaged in copwatch and other countersurveillance practices. You can use it to identify officers who are causing harm in your community. The website's ease of use also makes it a political statement, flipping the direction of surveillance against the state's agents. Police have vast information about all of us at their fingertips, yet they move in secrecy." (*Ibid.*)

Before launching its website, the Coalition confirmed that the identity of every officer listed on the website was public information by requesting a new roster from LAPD. (*Id.* ¶ 6) This roster, published online by LAPD in January 2023, is what the Coalition used to build its website. (*Ibid*.) No LAPD officer is depicted on the Coalition's website unless their name, rank, serial number, division, year or hire, gender, ethnicity, and other details are currently – to this day – published online by the City. (*Id*. ¶ 8.)

On April 6, 2023, the City sued both the Coalition and Camacho demanding censorship of every image the City had produced to Camacho. (Compl. ¶ 43, Ex. 3.) The lawsuit claimed that the City had "inadvertently" included images of "undercover" officers in the production. (*Id*.) But again, the City Attorney only gave Camacho images of officers who were already named on public rosters, just as the City Attorney's office had told Camacho's counsel and just as was necessary to avoid revealing if any of those officers is an "undercover." So what was the City saying it actually meant to do instead? Apparently, what it intended to do is withhold images of officers who were named on rosters, thereby announcing their "undercover" assignments to the world.

The court rejected the City's claims, twice denying the City substantive relief. On April 25, 2023, the Court held a hearing on the City's application for a temporary restraining order and denied it. (RJN Ex. 2.) The City next applied for a writ of possession requiring the Coalition to destroy all copies of the images, including from its website. The Court held a hearing and denied the writ on May 24, 2023, ruling that the City had failed to "establish Defendants are in possession of exempt records under the CPRA" and failed to "demonstrate[] with admissible evidence that the flash drive it produced to Defendant Camacho contains photographs and/or images of LAPD officers serving in an undercover capacity." (RJN Ex. 3 at 5.) The City never challenged or appealed this ruling. Meanwhile, numerous others re-published the same records, including as part of news coverage and a documentary film about the City's censorship efforts. (Camacho Decl., ¶¶ 25–26.) And as those efforts drew more and more attention to the records, others also created similar online databases and back-up copies. (*Id.* ¶ 21.)

In September 2023, over 800 anonymous individuals filed the present pair of damages actions. The plaintiffs claim they are current and retired LAPD officers whose identities had been secret until the City made them public. On January 16, 2024, the City filed an anti-SLAPP motion to strike all of the plaintiffs' claims. The same day, the City also filed a Cross-Complaint alleging that the Coalition and

Camacho are liable for the plaintiffs' claims because they re-published the records the City made public.

ARGUMENT

"A SLAPP suit is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so." (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21.) The purpose of the anti-SLAPP statute is to prevent and deter SLAPPs brought to chill the valid exercise of the constitutional rights of freedom of speech and petition. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 311–312.) To protect against these abuses, the Legislature required that the anti-SLAPP statute "shall be construed broadly." (Code Civ. Proc., § 425.16, subd. (a).) The statute permits a defendant to strike "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (*Id.*, subd. (b)(1).)

In ruling on an anti-SLAPP motion, the Court "engages in a familiar two-step process." (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 95.) "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) A defendant meets this burden simply "by demonstrating that the act underlying the plaintiffs' cause of action fits one of the categories spelled out in section 425.16, subdivision (e)." (*Ibid.*) Second, if the defendant makes that showing, the plaintiff must establish "that the complaint is legally sufficient and supported by a prima facie showing of facts that, if proved at trial, would support a judgment in the plaintiff's favor." (*Digerati Holdings, LLC v. Young Money Entm't, LLC* (2011) 194 Cal.App.4th 873, 884.) The motion must be granted if the "plaintiff fails to produce evidence to substantiate his claim or if the defendant has shown that the plaintiff cannot prevail as a matter of law." (*Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1570.)

This case is a SLAPP. The City of Los Angeles claims that a community group must pay damages for expression that is in no way wrongful: re-publishing records that the City itself made public. Not only does the First Amendment bar such liability, all of the plaintiffs' claims that the City is demanding indemnification for require either a government defendant or other elements that cannot be met here.

I. The anti-SLAPP statute applies to the City's cross-claims.

The anti-SLAPP statute applies to the City's cross-claims against the Coalition because the claims

arise from the Coalition's speech on a matter of public interest in a public forum.

A. The City's claims arise from protected activity.

"A claim arises from protected activity when that activity underlies or forms the basis for the claim." (*Park v. Bd. Of Trustees of Cal. State Univ.* (2017) 2 Cal.5th 1057, 1062 (*Park*).) Each time the Coalition is mentioned in any pleading in this case, it's in reference to either requesting public records from the City or publishing public records on its website. (See Compl. ¶¶ 27, 28, 30, 44; FAC ¶¶ 18, 19, 21; Cross-Compl. ¶¶ 15, 16.) These are both acts "in furtherance of the [Coalition]'s right of petition or free speech." (Code Civ. Proc., § 425.16, subd. (b)(1).)

In particular, publishing records online is "writing made in a place open to the public or a public forum in connection with an issue of public interest." (*Id.* § 425.16, subd. (e)(3).) This alone means the anti-SLAPP statute applies here. In addition, everything the Coalition is being sued for is protected by subdivision (e)(4) of section 425.16 because it was "done in furtherance of the [Coalition]'s exercise of its free speech right to gather, receive, or process information for communication to the public." (*San Diegans for Open Gov't v. San Diego State Univ. Rsch. Found.* (2017) 13 Cal.App.5th 76, 101.)

On top of that, the claims in this case all arise from a public records lawsuit against the City. The City's anti-SLAPP motion thus argues that subdivisions (e)(1) and (e)(2) apply to the claims here. That is true, and there is no basis to hold that the City producing records in public records litigation is protected by the anti-SLAPP statute while the Coalition re-publishing the very same records is not. The Coalition's website even announces that the images come from a lawsuit against the City. (Khan Decl., Ex. A at 2.) This means the Coalition's speech about the products of that lawsuit was "made in connection with an issue under consideration or review by a . . . judicial body." (Code Civ. Proc., § 425.16, subd. (e)(2).)

Because receipt and publication of public records from a public records lawsuit are the Coalition's entire connection to this case and the basis of the City's counter-claims, they are "the wrong complained of" and the "claims arise from protected activity." (*Park*, *supra*, 2 Cal.5th at pp. 1060, 1067.)

B. The Coalition's activities addressed an issue of public interest in a public forum.

Subdivisions (e)(1) and (e)(2) of section 425.16 do not require any analysis of public interest: so long as the claims arise from litigation – which the City's briefing in support of its anti-SLAPP motion argues is true for all the claims it is demanding the Coalition indemnify – then the statute applies.

As for subdivisions (e)(3) and (e)(4), these also apply here because the Coalition's speech that gave rise to the claims here were all connected to an issue of public interest. (Code Civ. Proc., § 425.16, subds. (e)(3), (e)(4).) Courts use "a two-part analysis rooted in the statute's purpose and internal logic" to determine whether speech is connected to an issue of public interest. (*FilmOn*, 7 Cal.5th at p. 148.) "First, [a court should] ask what 'public issue or . . . issue of public interest' the speech in question implicates — a question [courts can] answer by looking to the content of the speech." (*Ibid.*, quoting Code Civ. Proc., § 425.16, subd. (e)(4) (ellipsis in original).) "Second, [a court should] ask what functional relationship exists between the speech and the public conversation about some matter of public interest." (*Id.* at pp. 149–150.)

1. The Coalition's activities implicated a public issue.

In identifying the public issue, "*FilmOn*'s first step is satisfied so long as the challenged speech or conduct, considered in light of its context, may reasonably be understood to implicate a public issue, even if it also implicates a private dispute." (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1253 (*Geiser*).) Defendants will "virtually always" be able to make this showing. (*Id.* at p. 1250.)

The issue here is clear: the website prominently states that it seeks police accountability and transparency. (Khan Decl., ¶ 4.) A website posting "truthful lawfully-obtained, publicly-available personal identifying information" about police officers—even including residential addresses—"is generally directed to the issue of police accountability," which is "a matter of public significance." (*Sheehan v. Gregoire* (W.D. Wash. 2003) 272 F.Supp.2d 1135, 1139 n.2, 1145]; see also *Rall v. Tribune 365, LLC* (2019) 43 Cal.App.5th 638, 653 ["Police misconduct is always a matter of public interest," parentheses omitted].); *Assn. for L.A. Deputy Sheriffs v. L.A. Times LLC* (2015) 239 Cal.App.4th 808, 826 ["The public has a strong interest in the qualifications and conduct of law enforcement officers."].) The issue is public.

2. The Coalition's activities connected to conversation about the public issue.

FilmOn's second step examines "what functional relationship exists between the speech and the public conversation about some matter of public interest." (*FilmOn*, *supra*, 7 Cal.5th at pp. 149–50.) The factors to be considered here include the identity of the speaker, its audience, and its purpose. (*Id.* at p. 145.) All these factors show that the Coalition's speech connects to a public issue.

The Coalition's identity shows its speech furthered the conversation on the public issue. Unlike

the private, for-profit enterprise selling its commercial products in *FilmOn*, the Coalition is a community advocacy organization publishing public records in a public forum. (See *Ampex Corp. v. Cargle* (2005) 128 Cal.App.4th 1569, 1576 [publicly accessible "Web sites . . . meet the definition of a public forum"].)

The Coalition's audience also shows its speech furthered the conversation on a public issue. A private audience "makes heavier [the speaker's] burden of showing that . . . the alleged statements nevertheless contributed to discussion or resolution of a public issue." (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 903.) The Coalition's audience was literally anyone it could get to listen. It published a website, held a press conference to announce the website's launch, and heavily promoted the website on social media, through fliers, at public rallies, in community meetings, and in media interviews. (Khan Decl., ¶¶ 11–12.) The Coalition's audience was the public.

Finally, the purpose of the Coalition's speech also shows an intent to further public conversation on public issues. The website states this intent expressly and in detail. (See Khan Decl., ¶ 4, Ex. A.)

II. The City cannot show a probability of success on its claims.

Because the anti-SLAPP statute applies to the City's claims, the burden shifts to the City to prove that its claims are legally sufficient and supported by a prima facie evidentiary showing of success. At this juncture, "a plaintiff seeking to demonstrate the merit of the claim 'may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.'" (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940 [citation omitted].)

The City's Cross-Complaint raises two causes of actions: contribution and equitable indemnification. The City cannot show a probability of success on either of these claims.

A. The City's contribution claim is meritless.

A contribution claim "can come into existence only after rendition of a judgment declaring more than one defendant jointly liable to the plaintiff" because it "requires a showing that one of several joint tortfeasor judgment debtors has paid more than a pro rata share of [the] judgment." (*Coca-Cola Bottling Co. v. Lucky Stores, Inc.* (1992) 11 Cal.App.4th 1372, 1378 (*Coca-Cola Bottling*); see also *State Ready Mix, Inc. v. Moffatt & Nichol* (2015) 232 Cal.App.4th 1227, 1235 n.4 ["The right of contribution is a creature of statute (Code Civ. Proc., § 875) and comes into existence only after rendition of a judgment declaring more than one defendant jointly liable to the plaintiff."]; Code Civ. Proc., § 875 [contribution

claim accrues only "[w]here a money judgment has been rendered jointly against two or more defendants in a tort action" and "only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share"].) Neither of those required elements is met here. There is no judgment making the City and the Coalition jointly liable to anyone. And the City has of course not made payments toward such a judgment. This means the City's contribution claim must be struck as unripe. (See *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 78.)

B. The City's equitable indemnification claim is meritless.

The City's equitable indemnification claim is meritless too. In fact, the City's contribution and indemnification claims can't both have merit. (See Code Civ. Proc. § 875, subd. (f) ["where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them"]; *Coca-Cola Bottling*, *supra*, 11 Cal.App.4th at p. 1378 ["Where a right of indemnity exists there can be no right of contribution."].) At least one (but really both) must be struck.

Even on its own, the City's equitable indemnification claim is meritless. This claim requires the City to establish that the Coalition is liable to the plaintiffs for their claims. (See *W. Steamship Lines, Inc. v. San Pedro Peninsula Hosp.* (1994) 8 Cal.4th 100, 116 ["unless the prospective indemnitor and indemnitee are jointly and severally liable to the plaintiff there is no basis for indemnity" (quotation omitted)].) "This rule is often expressed in the shorthand phrase ' . . . there can be no indemnity without liability." (*Prince v. Pac. Gas & Elec. Co.* (2009) 45 Cal.4th 1151, 1159 (quotation omitted and alteration in original) (*Prince*).) In the context of an anti-SLAPP motion, this rule means that the City must show that the plaintiffs' underlying claims are likely to succeed against the Coalition (in other words that the Coalition and the City are both liable for the plaintiffs' claims), or else the City's equitable indemnification claim against the Coalition must be struck. (See, e.g., *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153, 1177 [striking equitable indemnification claim because there was no showing that alleged indemnitor was "liable to another person for the same injury"]; *Lennar Homes of Calif. v. Stephens* (2014) 232 Cal.App.4th 673, 685 [striking express indemnification claim because "the indemnity clause on which [the] claims are based is unenforceable, precluding any showing of probability of success on the merits"].)

None of the plaintiffs' claims are likely to succeed against the Coalition because (1) the First Amendment fully bars any liability here, (2) all of the plaintiffs' claims require either a government

defendant or other elements that cannot be met, (3) the plaintiffs do not have capacity to sue because the Coalition does not know their names, and (4) the plaintiffs' claims are meritless against the City too.

1. The Coalition is not liable for any of the plaintiffs' claims because the First Amendment bars such liability.

The most important reason the Coalition cannot be liable for any of plaintiffs' claims is that the First Amendment bars such liability. The Coalition's sole connection to the claims in this case is a website where the Coalition re-published records from the public domain. (See Compl. ¶¶ 27, 28, 30, 44; FAC ¶¶ 18, 19, 21; Cross-Compl. ¶¶ 15, 16.) The Coalition cannot be made liable for this speech due to a long line of U.S. Supreme Court precedent establishing that the First Amendment bars any relief for re-publication of truthful and lawfully acquired information.

Bartnicki v. Vopper (2001) 532 U.S. 514 (*Bartnicki*) best illustrates this rule. There, the U.S. Supreme Court held that the First Amendment prohibited any relief against a re-publisher of truthful information, even if the re-publisher knew that his source obtained the information illegally. (*Id.* at pp. 517–518, 535.) In that case, two people whose phone call was illegally intercepted and recorded sued Vopper, a radio commentator, under state and federal wiretapping laws after he repeatedly aired excerpts of the conversation on his radio show. (*Id.* at pp. 519–520.) The wiretapping law made it civilly actionable to "intentionally disclose" illegally recorded conversations. (*Id.* at p. 520 & n.3, citing 18 U.S.C. § 2511, subd. (1)(c).) But the court held that "a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern." (*Id.* at p. 535.) The conversation at issue in the case concerned "negotiations over the proper level of compensation for teachers" at one high school in Pennsylvania. (*Ibid*.) The high court ruled that this topic was "unquestionably a matter of public concern" and the First Amendment barred liability against Vopper even if he knew that the conversation was illegally intercepted. (*Ibid.*)

Two decades prior to *Bartnicki*, the high court had synthesized its prior rulings into a succinct principle of strict First Amendment scrutiny: publication of lawfully obtained and truthful "information about a matter of public significance" cannot be punished "absent a need to further a state interest of the highest order." (*Smith v. Daily Mail Publishing Co.* (1979) 443 U.S. 97, 103 (*Daily Mail*).) *Daily Mail* involved a newspaper that learned of a shooting at a junior high school by monitoring a police band radio

frequency; obtained the name of the alleged juvenile assailant by interviewing witnesses, police, and the prosecutors; and then published the juvenile's identity in violation of a West Virginia statute. (*Id.* at p. 99.) The Court held that "state action to punish the publication of truthful information seldom can satisfy constitutional standards." (*Id.* at 102.) And this rule applies not only to professional media but "every sort of publication which affords a vehicle of information and opinion." (*Lovell v. City of Griffin* (1938) 303 U.S. 444, 452; see also *Obsidian Finance Group, LLC v. Cox* (9th Cir. 2014) 740 F.3d 1284, 1291 ["a First Amendment distinction between the institutional press and other speakers is unworkable"].)

The Florida Star v. B.J.F. (1989) 491 U.S. 532, further illustrates the broad sweep of this First Amendment privilege. There, a newspaper reporter learned the name of a rape victim from a police report that was left by error in the police department's press room. (*Id.* at p. 527.) The newspaper published a news account of the rape in its "Police Reports" section, including the name of the victim. (*Ibid.*) A Florida statute made it actionable to "print, publish, or broadcast . . . in any instrument of mass communication" the name of the victim of a sexual assault. (*Id.* at p. 526 fn. 1.) A jury awarded the victim $75,000 in compensatory damages against the newspaper along with $25,000 in punitive damages. (*Id.* at pp. 528–529.) In holding that this liability was unconstitutional, the Supreme Court reiterated the First Amendment principle that it had synthesized from prior cases in *Daily Mail*: "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish the publication of the information, absent a need to further a state interest of the highest order." (*Id.* at p. 533, quoting *Daily Mail*, 443 U.S. at 103.) The Court found that the interests said to be served by the Florida statute – including protection of the privacy and safety of rape victims – were insufficient to trump the First Amendment even though those privacy interests at stake were "highly significant" and the actual injury to the plaintiff was a "tragic reality." (*Id.* at pp. 537–541.)

A version of this same rule was at work in the Pentagon Papers case when the Supreme Court invalidated an order enjoining the publication of a confidential military report that was allegedly stolen from the Defense Department. (*New York Times v. United States* (1971) 403 U.S. 713, 723–724.) *New York Times* shows that this rule applies even in the face of legitimate and significant governmental interests in confidentiality: the government had claimed that publication of the information threatened a "'grave and immediate danger to the security of the United States.'" (*Id.* at p. 741 (opn. of Marshall J., quoting

Brief of United States).)

The California Supreme Court affirmed this rule in a case that, like this one, involved an anti-SLAPP motion brought to strike an invasion of privacy claim. (*Gates v. Discovery Communications, Inc.* (2004) 34 Cal.4th 679 (*Gates*).) The plaintiff there sued the producers of a documentary film who gained information about his past criminal conviction and broadcasted it in their film. (*Id.* at pp. 683–684.) After surveying U.S. Supreme Court precedent – including *Bartnicki*, *Daily Mail*, and *Florida Star* – the Court concluded the First Amendment precluded any invasion of privacy claim based on allegations of harm caused by a publication of facts obtained from public official records. (*Id.* at pp. 687–696.) And because the First Amendment precluded any liability, the anti-SLAPP motion had to be granted. (*Id.* at p. 696.)

When the rule from this line of cases is applied to the claims here, the result is clear: the First Amendment bars any liability against the Coalition for publishing the records it received from Camacho. There is no evidence or even suggestion that the Coalition engaged in any unlawful conduct to obtain these records. And while Camacho did not act unlawfully either – he was handed the images by the City Attorney to settle a lawsuit he filed – as far as the Coalition's liability for re-publishing goes a third party's "illegal conduct does not suffice to remove the First Amendment protection shield from speech." (*Bartnicki*, *supra*, 532 U.S. at p. 535; *see also id.* at pp. 529–530 ["it would be quite remarkable to hold that speech by a law-abiding possessor of information can be suppressed in order to deter conduct by a non-law-abiding third party"].) And this rule applies even when a re-publisher of the information *knew or should have known* that its source had obtained the information illegally. (*Id.* at pp. 517–518, 535.)

It is that simple. The Coalition stands in the same position as Vopper, the Daily Mail, the Florida Star, the New York Times, and Discovery Communications. It simply re-published information that was available in the public domain. The First Amendment provides an absolute shield against liability for the Coalition's expression here.

2. The Coalition is not liable for any of the plaintiffs' claims because the elements required for those claims cannot be met here.

This motion can even be resolved without constitutional analysis. The plaintiffs raise a total of nine claims: negligence by a public entity; failure of a public entity to perform mandatory duties; negligence per se by a public entity; invasion of privacy; public disclosure of private facts; negligence;

negligent infliction of emotional distress; breach of contract; and legal malpractice. (Compl. at 1–2; FAC at 1.)[2] The City cannot show that anything the Coalition did satisfies the elements of those claims.

The first three of those claims can only be brought against "a public entity." (Gov. Code §§ 815.2; 815.6; see also FAC ¶¶ 30.) The Coalition is not a public entity. Likewise, the next four claims – invasion of privacy, public disclosure of private facts, negligence, and negligent infliction of emotional distress – are pled exclusively based on statutes establishing when a public entity can refuse to disclose public records (see Compl. ¶¶ 36–37, 47, 54; FAC ¶¶ 68–74, 82–88, 96), not any standard of care or duty that is applicable to the public at large. And even for public entities, "the exemptions from disclosure provided by [these statutes] are permissive, not mandatory: They allow nondisclosure but do not prohibit disclosure." (*Iloh v. Regents of Univ. of Calif.* (2023) 87 Cal.App.5th 513, 524.)

Even if the privacy and negligence torts were pled differently though, none of the Coalition's expression can satisfy the required elements. First, for an invasion of privacy, the "plaintiff must show the defendant penetrated some zone of physical or sensory privacy surrounding, or obtained unwanted access to data about, the plaintiff." (*Shulman v. Group W Productions* (1998) 18 Cal.4th 200, 231 (*Shulman*).) Likewise, public disclosure of private information "require[s] a plaintiff to prove, in each case, that the publisher invaded his privacy with reckless disregard for the fact that reasonable men would find the invasion highly offensive." (*Briscoe v. Reader's Digest Assn.* (1971) 4 Cal.3d 529, 542–543.) Finally, the two negligence torts both require "the failure to use reasonable care to prevent harm to oneself or to others." (CACI 401; see also CACI 1620.)

The Coalition did nothing remotely unwarranted, reckless, or negligent in re-publishing official records about public employees that the City itself had made public and were thus already circulating online when the Coalition re-published them. When the City Attorney's office gave Camacho the records (six months before the Coalition published them), it stated both that they were "non-exempt" under the Public Records Act (in other words that they were public records) and that "images of officers working in

[2] The Complaint in Case No. 23STCV21995 pleads six of these claims: invasion of privacy, public disclosure of private facts, negligence, negligent infliction of emotional distress, breach of contract, and legal malpractice. (Compl. at 1–2.) The First Amended Complaint in Case No. 23STCV21287 pleads five of those six claims (everything but general negligence) as well as negligence by a public entity; failure of a public entity to perform mandatory duties; and negligence per se by a public entity. (FAC at 1.)

an undercover capacity" were not included. (See Compl. ¶¶ 22–26.) No one would have had reason to think otherwise, not only because the City's legal counsel stated this repeatedly but also because the City had published the identities of all these officers dating back to at least January 2019. (*Id.*; Riskin Decl., ¶¶ 3–22.) The Coalition did nothing negligent or otherwise tortious by accepting the City's word.

The Coalition even went out of its way to double-check the City's word. The Coalition verified that all these officer identities were public information by sending LAPD a new records request for a public roster in December 2022, three months after the City made images of the officers public. (Compl. ¶ 27.) LAPD responded by publishing a new roster listing all these officers. (*Id.* ¶ 28.) This January 2023 roster, which remains public on the City's own website today, is what the Coalition used to build its website. (Khan Decl., ¶ 6.) No officer is depicted on the Coalition's website unless their name, serial number, email, ethnicity, gender, division, rank, and year of hire were listed in that roster. (*Id.* ¶ 8.) And again, the images themselves had already been circulating online after Camacho published them months earlier. The Coalition had no duty to censor itself after both the City and the press did the opposite.

Even supposing that it was somehow wrongful for the Coalition to re-publish these records, both of the privacy torts require a "highly offensive" intrusion, and "determining offensiveness requires consideration of all the circumstances of the intrusion, including its degree and setting and the intruder's 'motives and objectives.'" (*Shulman*, *supra*, 18 Cal.4th at p. 236.) All the Coalition did here was re-publish public records, and "there can be no liability for the examination of a public record concerning the plaintiff." (*Id.* at p. 232, quoting Rest.2d Torts, § 652D.) In addition, there can be no liability for "the use of names, likenesses or facts in giving information to the public for purposes of education, amusement or enlightenment." (*Id.* at p. 225, quoting Rest.2d Torts, § 652D.) Nothing about publishing a website where the public can examine public records about police officers is offensive. To the contrary, it is "important for the public to know the identities of the officers serving the community." (*Long Beach Police Officers Ass'n v. City of Long Beach* (2014) 59 Cal.4th 59, 75.) And "it does little to protect the right of privacy to punish the publication of information already available to the public." (*Gates*, *supra*, 34 Cal.4th p. 690.)

Finally, "lack of newsworthiness is an element of the 'private facts' tort, making newsworthiness a complete bar to common law liability." (*Taus v. Loftus* (2007) 40 Cal.4th 683, 717, quotation omitted.) LAPD making 9,310 official images of police officers available for the public to search was,

unsurprisingly, very newsworthy. It received much news coverage. (See Camacho Decl., ¶ 21; Khan Decl., ¶ 12.) In fact, the City admits that this news coverage is what led it to sue the Coalition. (Compl. Ex. 3 ¶ 15.) So, even if trusting the City's word was tortious and publishing public records could be deemed "offensive," the Coalition still would not be liable for the plaintiffs' claims here.

The plaintiffs' remaining two causes of action against the City are breach of contract and legal malpractice. The Coalition has never owed contractual or attorney obligations to any LAPD officer.

3. The Coalition is not liable for any of the plaintiffs' claims because it does not know who the plaintiffs are.

Another reason the Coalition is not liable for the plaintiffs' claims is that the Coalition does not know who the over 800 individuals bringing those claims are. Filing a complaint under more than 800 pseudonyms is only permitted with leave of the Court and in exceptional circumstances. (Rutter Group, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 2-B § 2:136.5.) Without such leave, a pseudonymous plaintiff lacks capacity to even sue. (*Id.* Ch. 2-B.)

This is not a case where the plaintiffs' identities are "known to the defendant" as might be true for disputes between parties with a preexisting relationship. (*Dep't of Fair Emp. & Hous. v. Superior Ct.* (2022) 82 Cal.App.5th 105, 110 (*DFEH*).) Even in a case like that, "litigating by pseudonym should occur only in the rarest of circumstances." (*Id.* at p. 112, quotation omitted.) But forcing a party to defend against claims by hundreds of secret litigants appears to be unprecedented, and it raises "[s]ignificant constitutional concerns." (*Id.* at p. 110; see also *United States v. Microsoft* (D.C. Cir. 1995) 56 F.3d 1448, 1463 ["We are not aware of any case in which a plaintiff was allowed to sue a defendant and still remain anonymous to that defendant. Such proceedings would . . . seriously implicate due process."]; *In re Sealed Case* (D.C. Cir. 2020) 971 F.3d 324, 326 ["When pseudonymous status hides the suing party's identity from the defendant, that lack of openness can implicate significant due process concerns."].)

Those significant and unprecedented constitutional concerns have not been aired in this case. Instead, the "true names and identities of the Plaintiffs" were "provided to the City Attorney" before the case was initiated. (Compl. ¶ 17.) The City can use that information to investigate and defend against the plaintiffs' claims. But as explained above, any defense that is available to the City must also be available to the Coalition. (See, e.g., *Prince*, *supra*, 45 Cal.4th at p. 1158.) The Coalition cannot investigate and

advance these defenses if it does not even know the plaintiffs' names.

The failure to name any of the plaintiffs also violates the statutory requirement that "the title of the action shall include the names of all the parties." (Code Civ. Proc., § 422.40; *DFEH*, 82 Cal.App.5th at p. 110 ["The name of all parties to a civil action must be included in the complaint."].) Because the pseudonymous plaintiffs lack capacity to sue, the City cannot establish that its claims against the Coalition are likely to prevail.

4. The Coalition is not liable for any of the plaintiffs' claims because the claims are meritless against the City.

Finally, as the City argues for its anti-SLAPP motion, all the plaintiffs' claims against the City are meritless due to the litigation privilege and other defenses. These same defenses are available to the Coalition too, since there is no liability for the Coalition to indemnify if the City is not liable for the plaintiffs' claims. (See *Prince*, *supra*, 45 Cal.4th at pp. 1158–1159.) So, should this Court strike the plaintiffs' claims against the City, then the City's indemnification claim must be struck on that basis too.

CONCLUSION

Each of the City's two claims against the Coalition arise entirely from protected activity and are barred by binding precedent. This Court should grant the Coalition's motion to strike.

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