

No. 25-1165

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IN THE  
**Supreme Court of the United States**

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GARRETT M. ZIEGLER, *et al.*,

*Petitioners,*

*v.*

P. KEVIN MORRIS,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE COURT OF APPEAL OF CALIFORNIA,  
SECOND APPELLATE DISTRICT

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**BRIEF IN OPPOSITION**

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**RELATED PROCEEDINGS**

*Morris v. Ziegler, et al.*, Los Angeles Superior Court,  
Case No. 23SMCV01418.

*Morris v. Ziegler, et al.*, California Court of Appeal,  
Second Appellate District, Division Two, Case No.  
B333812.

*Morris v. Ziegler, et al.*, California Supreme Court, Case  
No. S293105.

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## INTRODUCTION

The Petition for Writ of Certiorari (“Writ”) filed by Petitioners Garrett Ziegler (“Ziegler”) and ICU, LLC (dba Marco Polo) (“MarcoPolo”) (collectively “Petitioners”) should be denied for a number of reasons.

First and foremost, as a threshold issue, this Court lacks jurisdiction to review the Writ because there has been no final judgment by a state court of last resort regarding the federal questions asserted therein. In fact, none of the federal, constitutional questions asserted in the Writ were raised before any of the California state courts who have reviewed this matter and are being raised for the first time in the Writ.

Second, the Writ does not meet the criteria for this Court to grant certiorari because: (i) no circuit split exists regarding the issues presented in the Writ; (ii) no conflict exists between a state court and a federal court regarding the same issues; (iii) no important unsettled question of federal law is at issue; (iv) no novel issue is presented; (v) the issues presented in the Writ are not of national significance; and (vi) the trial court correctly applied controlling California law.

Third, the Writ relies on various misrepresentations of material facts, the procedural posture of this case, and the applicable state laws. In this regard, the crux of Petitioners’ arguments is to blame the statutory framework and alleged improper application of the same by the trial court and appellate court, when in fact it was Petitioners’ procedural missteps that created the issues of which they now complain.

At its heart, the Writ is essentially challenging state procedural law that does not present any federal constitutional questions. Accordingly, for the reasons stated herein, Respondent P. Kevin Morris (“Respondent” or “Morris”) respectfully requests that this Court deny the Writ.

### STATEMENT OF THE CASE

Ziegler was a former member of President Donald Trump’s first term White House staff who has since become a right-wing activist as exemplified by numerous media reports. Since leaving the White House, Ziegler formed ICU, LLC aka MarcoPolo and focused on exposing supposed information from what he claims was a laptop allegedly belonging to Hunter Biden, the son of former President Joe Biden, and publishing on MarcoPolo’s website a self-described “report.” Once Morris’ friendship and professional relationship with Hunter Biden became public, Petitioners commenced a campaign of harassment directed at Morris, his family, and friends.

As a result of this conduct, on April 3, 2023, Morris sued Petitioners in California state court, alleging the following causes of action: (i) Harassment in violation of California Penal Code § 653.2; (ii) Civil Harassment; (iii) Invasion of Privacy—False Light; (iv) Criminal Impersonation; and (v) Intentional Infliction of Emotional Distress. Morris also filed a motion for preliminary injunction seeking an order to stop Appellants’ harassment of him. On June 20, 2023, Petitioners filed a special motion to strike Morris’ Complaint under California’s Anti-SLAPP statute codified as Cal. Code Civ. Proc., § 425.16 (the “Anti-SLAPP Motion”). Petitioners did not

file a demurrer, motion for judgment on the pleadings, sanctions motion under Cal. Code Civ. Proc., § 128.7, or any other challenge as to the sufficiency of the alleged causes of action in Morris' Complaint. On July 17, 2023, the Trial Court held a hearing on the Anti-SLAPP Motion and ultimately requested additional briefing to address various questions raised by the Trial Court at the hearing, which were submitted on July 28, 2023 pursuant to a joint stipulation between the Parties, which also stipulated to a continuance of the hearing.

On October 13, 2023, the Trial Court issued its order on the Anti-SLAPP Motion finding that all causes of action in the Complaint implicated the First Amendment. The Trial Court granted the Anti-SLAPP Motion as to the first cause of action on the procedural ground that Penal Code § 653.2 does not contain a private right of action and denied the Anti-SLAPP motion on all other causes of action finding that Morris submitted sufficient evidence meeting the requisite "minimal merit" standard on the second prong of the Anti-SLAPP analysis.

On November 8, 2023, Petitioners filed a Notice of Appeal regarding the trial court's Anti-SLAPP Motion ruling and on November 13, 2023, Morris filed his Notice of Cross-Appeal regarding the same.

On or about February 18, 2025, Petitioners filed their opening brief in the appeal. *See* Resp. App. A<sup>1</sup>. Therein, Petitioners argued that the Trial Court erred in denying

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1. To avoid overburdening the Court with voluminous record of exhibits, Morris is only submitting the memorandum of points and authorities.

the Anti-SLAPP Motion as to Morris' remaining claims because: (1) the litigation privilege barred Morris' claims, (2) the claims based on criminal statutes which did not provide for a private right of action were legally deficient, (3) the First Amendment bars the remaining claims because Morris cannot prove that Petitioners acted with actual malice, (4) the Trial Court's "two-bucket" approach in evaluating the Anti-SLAPP Motion's challenge to the various causes of action was flawed and the Trial Court failed to apply the correct standard, and (5) the failure to dismiss the claims against MarcoPolo was reversible error, all of which resulted in legal error and undue prejudice to Petitioners. *Id.* Beyond the First Amendment argument, which was limited to the lack of actual malice claim, no argument regarding the constitutionality of California's Anti-SLAPP statute or its application was raised by Petitioners on appeal.

Following oral argument, the Court of Appeal issued its Decision on August 14, 2025, in which the Court reversed the trial court's ruling as to the second cause of action for Civil Harassment, thereby ordering that cause of action to be dismissed, and affirming the trial court's order in all other respects. A Remittitur adopting the Decision as the final order of the California Court of Appeal was issued on November 14, 2025. *See* Pet. App. A. With respect to Petitioners' arguments regarding Morris' criminal impersonation cause of action, the California Court of Appeal noted:

“[Petitioners] did not raise this argument below. And their arguments on appeal are conclusory, comprising roughly six sentences across the appellate briefs and lacking any analysis of

the statute's text or legislative history. ... Our conclusion does not preclude defendants from raising this issue in future proceedings. When litigation resumes, they will have further opportunity to test the legal sufficiency of Morris's criminal impersonation claim. But they have forfeited the opportunity to do so as part of their anti-SLAPP motion."

Pet. App. 16a-17a, fn. 18. The California Court of Appeal's Opinion does not address or mention any constitutional arguments, due process argument, or federal questions, nor were any raised by Petitioners at any stage of the proceedings.

Thereafter, on or about September 19, 2025, Petitioners filed a Petition for Review of the California Court of Appeal's Decision with the California Supreme Court. The California Supreme Court denied the Petition for Review. On March 19, 2026, the trial court granted Petitioners' attorney's fees motion relating to the anti-SLAPP motion and awarded Petitioners \$50,000.00 in fees. On April 7, 2026, Petitioners filed their Writ with the Supreme Court of the United States.

## **JURISDICTION**

Petitioners' assertion that the California anti-SLAPP statute is unconstitutional was never raised or decided in the California Court of Appeal or the California Supreme Court. Under 28 U.S.C. §1257(a), this Court may only review final state court judgments in which a federal claim was actually adjudicated. Because no state court addressed or adjudicated the constitutional questions

Petitioners present, no final judgment exists regarding those issues, and this Court lacks jurisdiction to consider them.

## **REASONS FOR DENYING THE WRIT**

### **I. THIS COURT LACKS JURISDICTION**

“This Court has long adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257(a) that it will not consider a petitioner’s federal claim unless it was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.” *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (per curiam). Petitioners did neither.

Specifically, Petitioners’ Writ presents the following question:

“Whether California’s anti-SLAPP statute is unconstitutional, particularly as applied where a civil court, rather than dismissing claims predicated on criminal statutes that confer no private right of action, disregards time limits and orders briefing that burdens protected speech, coerces disclosures, and exposes defendants to punitive fee sanctions without the procedural safeguards required by the First, Fourth, Fifth, Sixth, and Fourteenth Amendments.”

Writ, at p. i. While the California Court of Appeal did render a final judgment in this action on the issues pertaining to Petitioners’ Anti-SLAPP Motion, no part

of the federal question presented in Petitioners' Writ was asserted at any stage of the proceedings before the lower courts. Accordingly, as a threshold matter, this Court lacks jurisdiction over the issues presented in Petitioners' Writ.

## **II. THE WRIT DOES NOT FIT THE CRITERIA FOR THIS COURT TO GRANT CERTIORARI**

Rule 10 of the Rules of the Supreme Court of the United States sets forth the statutory criteria by which this Court evaluates whether to grant review of a writ of certiorari, and provides in relevant part:

“Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Sup. Ct. R. 10.

In addition to the jurisdictional issues outlined herein, the Writ also does not meet the criteria outlined in Rule 10 for this Court to grant certiorari.

#### **A. Circuit Split Or Conflict Between State And Federal Courts**

The Writ does not present a circuit split for the Court to resolve. The Writ does not present a conflict between a state court and a federal court regarding the same issues. Nor do Petitioners allege these as bases for review.

### **B. No Widespread Consequences Or Issues Of National Importance**

The Writ does not involve a case with widespread consequences or of national importance, despite Petitioners' claim that this matter concerns their reporting on "a matter of undisputed public concern: an abandoned laptop computer that once belonged to R. Hunter Biden" and that Respondent is Mr. Biden's friend. However, Petitioners fail to acknowledge that Respondent's lawsuit was not directed at enjoining Petitioners' "reporting" on Mr. Biden's laptop or Joe Biden's presidency, but rather was specifically and narrowly focused on Petitioners' campaign of harassment directed at Respondent and his family that included posting Respondent's personal contact information on social media under the guise of "reporting" due to his relationship with Mr. Biden. The so-called "laptop" and Joe Biden's presidency are completely irrelevant to this case. Accordingly, that matter between Mr. Biden and Petitioners is wholly unrelated to this matter.

As such, despite involving a friend of the son of the former President of the United States, this case involves a run-of-the-mill anti-SLAPP issue and claims relating to online harassment, none of which are of national importance from a legal or societal perspective nor do they involve novel areas of law despite Petitioners' attempts to portray them as such. Thus, while Respondent herein may be famous and his associations may be newsworthy, the legal issues in the case itself are not.

### **C. No Novel Or Unresolved Federal Question**

Further, despite Petitioner's claims, the Writ presents no novel or unresolved federal question for this Court to

decide. The Question Presented by Petitioners, and the arguments intended to establish its importance, rely on material misrepresentations with respect to the procedural posture of this case, California's controlling laws, and the material facts, as well as Petitioners' incorrect perception that the lower courts misapplied applicable California laws in error, which the lower courts did not.

**1. The Lower Courts Did Not Err in Failing to Sua Sponte Dismiss Claims Based on Criminal Statutes**

Petitioners claim that the Trial Court erred in failing to *sua sponte* dismiss Respondents' claims at the outset that were predicated on criminal statutes but conferred no private right of action. In California, an argument that a cause of action is based on a statute that does not confer a private right of action is at its heart an argument that the plaintiff has failed to state a cause of action upon which relief can be granted; it is not a jurisdictional issue. *See In re Keet's Estate*, 15 Cal. 2d 328, 335-336 (1940) ("Failure to state a cause of action is not, however, a jurisdictional defect"); *County of Riverside v. Loma Linda Univ.*, 118 Cal. App. 3d 300, 319 (1981) (in evaluation of a lack of standing argument, Court noted such a challenge is not jurisdictional, similar to a failure to state a cause of action argument). Accordingly, California, trial courts have no affirmative independent obligation to *sua sponte* dismiss claims in a civil action that do not state a valid cause of action. Rather, it is the obligation of the defendant in a civil action to timely raise that argument.

The proper mechanisms by which a defendant would challenge a claim that does not state a valid cause of action

would be through a demurrer, in which case it must be raised in their initial response to the complaint, a motion for judgment on the pleadings, or through a sanctions motion for a frivolous pleading pursuant to California Code of Civil Procedure § 128.7. *See Moradi-Shalal v. Fireman's Fund Ins. Companies*, 46 Cal. 3d 287 (1988) (Supreme Court reviewed ruling on demurrer filed to challenge cause of action based on a criminal statute that did not provide a private right of action); *Mayron v. Google LLC*, 54 Cal. App. 5th 566 (2020) (Court of Appeal reviewed ruling on demurrer filed on same basis); *Animal Legal Defense Fund v. Mendes*, 160 Cal. App. 4th 136 (2008) (same). Petitioners fail to inform the Court of these procedural rules in California and the fact that they did not make such a timely challenge in the lower state courts. Instead, Petitioners focused solely on the anti-SLAPP issues and never filed any demurrer, motion for judgment on the pleadings, or a sanctions motion under Cal. Civ. Proc., § 128.7.

Moreover, Petitioners argue that despite acknowledging claims predicated on penal statutes lacking a private right of action cannot proceed before it, the California Court of Appeal committed an unconstitutional error when it declined to strike a claim asserted under a penal code statute.<sup>2</sup> However, this argument is misleading because

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2. The case Petitioners rely upon for the premise that absent an express legislative authorization creating a private right of action, a California civil court lacks authority to adjudicate claims predicated on criminal statutes, *Moradi-Shalal*, 46 Cal.3d at 304, does not stand for a general prohibition as Petitioners assert. Rather, the holding in *Moradi-Shalal* was limited to determining that Cal. Insurance Code § 790.03 does not provide a private right of action to impose civil liability against an insurance company for engaging in unfair claims settlement practices.

on appeal, Petitioners failed to adequately raise this issue, which is why the California Court of Appeal declined to address it; not because of some unconstitutional error. In this regard, the Court of Appeal noted as follows:

“[Petitioners] did not raise this argument below. And their arguments on appeal are conclusory, comprising roughly six sentences across the appellate briefs and lacking any analysis of the statute’s text or legislative history. ... Our conclusion does not preclude defendants from raising this issue in future proceedings. When litigation resumes, they will have further opportunity to test the legal sufficiency of Morris’s criminal impersonation claim. But they have forfeited the opportunity to do so as part of their anti-SLAPP motion.”

Pet. App. 16a-17a, fn. 18. Accordingly, the failure to have the claims dismissed which were based on criminal statutes that do not confer a private right of action was not the lower courts’ error, but the error of Petitioners.

## **2. The Lower Courts’ Application of the Anti-SLAPP Statute Did Not Deny Applicable Constitutional Safeguards**

Petitioners assert that as a result of the lower courts’ failure to *sua sponte* dismiss the claims based on criminal statutes, Petitioners were forced to defend such claims in a civil action without the procedural safeguards criminal defendants are afforded under the United States Constitution. In support of this argument, Petitioners point out that the United States Constitution guarantees that individuals accused of criminal conduct are afforded

fundamental procedural protections, including the right against compelled self-incrimination, the right to assistance of counsel, and the right to trial by jury.

The fatal flaw in this argument here however is the failure to acknowledge the key difference between criminal defendants and civil defendants. Criminal defendants are afforded specific protections and safeguards under the Constitution because, by the nature of the charges, the State or Federal government is attempting to deprive them of their life and/or liberty. Civil defendants face no such deprivation of life and/or liberty at the hands of the State or Federal government; they merely face monetary, injunctive, or equitable relief. Accordingly, in a civil case where a defendant is not facing deprivation of life and/or liberty, the safeguards and protections afforded by the Fourth, Fifth, Sixth, and Fourteenth Amendments to criminal defendants do not apply. *See Austin v. U.S.*, 509 U.S. 602, 608-609 (1993) (Protection against self-incrimination under Fifth Amendment, and protections under Sixth Amendment “are explicitly confined” to criminal defendants); *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Hunt v. Hackett*, 36 Cal. App. 3d 134, 137 (1973) (“The California Constitution ... and the federal Constitution ... specifically provide for court-appointed counsel in criminal matters only.”).

Here, Petitioners were merely facing civil liability for conduct which Respondent claimed violated the relevant criminal statutes; they were not facing criminal charges at the hands of the State or Federal Government, nor were they facing quasi-criminal charges for which they were facing a deprivation of life and/or liberty. Therefore, not only was the fact that Petitioners were continuing to face civil claims based on criminal statutes a product

of Petitioners' own litigation errors, but the protections afforded to criminal defendants under the Fourth, Fifth, Sixth, and Fourteenth Amendments are not applicable here. Thus, the lower courts' application of the anti-SLAPP statute did not implicate any deprivation of constitutional rights in this regard.

Additionally, Petitioners' related argument that the anti-SLAPP statute does not expressly prescribe how to dispose of facts which relate solely to a stricken claim, and the lower courts erred by not determining which facts related solely to the claims brought under the Penal Code and thus striking them, is a misnomer. While the anti-SLAPP statute does not expressly prescribe how to dispose of specific factual allegations rather than just whole claims, the California Supreme Court has expressly prescribed that procedure. In *Baral v. Schnitt*, 1 Cal. 5th 376 (2016), the California Supreme Court held that anti-SLAPP motions may be used to strike specific factual allegations rather than just entire causes of action, but that "[a]llegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute." *Baral*, 1 Cal. 5th at 394. The *Baral* Court also explained that "the moving defendant bears the burden of identifying all allegations of protected activity" to be stricken. *Id.* at 396.

The California Supreme Court has since developed a framework based on the *Baral* holding by which Courts can carve-out allegations relating solely to protected activity, rather than whole claims, that puts the burden on the moving defendant to identify the specific allegations they argue must be stricken. See *Bonni v. St. Joseph*

*Health System*, 11 Cal. 5th 995 (2021); *see also Park v. Board of Trustees of California State University*, 2 Cal. 5th 1057 (2017). This case law nullifies Petitioners' claim that the statute itself does not expressly prescribe how to dispose of a claim or carve out which facts may or may not relate solely to a stricken claim and should therefore be stricken.

Here, the reason none of the allegations relating solely to the claims brought under the penal code statutes were stricken was because there were no allegations that were isolated to supporting only those claims. Rather, as Petitioners admitted in their attorneys' fee motion in the Trial Court, the facts supporting each individual claim are so intertwined that they cannot be isolated as supporting just a single cause of action. Also, Petitioners failed to identify each of the specific allegations they believed should be stricken, and instead focused on the Complaint as a whole. As such, essentially all of the allegations support each of the asserted claims, including those based on criminal statutes. This result is not the product of some unconstitutional structure of the anti-SLAPP statute or the lower courts' unconstitutional application of the same.

### **3. The Lower Courts' Application of the Anti-SLAPP Statute Did Not Chill Protected Speech or Punish Petitioners For It**

Petitioners argue that the lower state courts applied the anti-SLAPP statute in a manner that chilled protected speech and punished Petitioners for it. It appears this chilling argument is based on Petitioners' false claim that the lower courts' application of the anti-SLAPP statute "deprived the American people of their right to receive the information" Petitioners published. Writ, at p. 15. It's

unclear how Petitioners believe their protected speech was chilled considering no order in this case stemming from any anti-SLAPP argument enjoined Petitioners from publishing such information in the first instance, and then continue to publish the same information thereafter. Indeed, Petitioners did not curb any efforts to publish such information, and if anything, increased the publication of such information following the initiation of the lawsuit. As such, the anti-SLAPP statute and its application here did not do anything to prevent Petitioners' continued publication of similar information which formed the basis of Respondent's Complaint. Notably, Respondent's Motion for Preliminary Injunction, which was heard concurrently with Petitioners' anti-SLAPP motion, sought in part to enjoin Petitioners from publishing further information about Respondent, and that motion was denied.

Petitioners also fail to assert why they believe out-of-state journalists are disproportionately victimized by the anti-SLAPP statute, nor is any such disproportionate harm apparent. It appears this argument is based on the realities and burdens any out-of-state litigant faces in any civil case, including having to hire a California attorney and periodically travel to California to defend the case. There is simply no evidence that the anti-SLAPP statute imposes greater burdens on out-of-state journalists than any other civil statute does, nor that the statute is in any way unconstitutional for those reasons.

#### **4. The Anti-SLAPP Statute's Fee-Shifting Provision Does Not Unconstitutionally Impose Punitive Sanctions**

Petitioners' claim that the anti-SLAPP statute's fee-shifting provision serves to unconstitutionally impose

punitive fee sanctions on defendants is also contrived and without any legitimacy.

It appears this is in reference to California case law that provides a carve-out to the mandatory fee provision in the anti-SLAPP statute in the case of a partially successful defendant who achieves “no practical effect” on the litigation. In this regard, California’s anti-SLAPP statute includes a mandatory fee-shifting provision. *See* Cal. Code Civ. Proc., § 435.16(c)(1) (“[A] prevailing defendant on a special motion to strike shall be entitled to recover that defendant’s attorney’s fees and costs.”) However, “[w]hile ‘the term ‘prevailing party’ must be ‘interpreted broadly to favor an award of attorney fees to a partially successful defendant[,]’ ... a fee award is not required when the [anti-SLAPP] motion, though partially successful, was of no practical effect”” on the litigation as a whole such that the moving party is not properly classified as a “prevailing party” for purposes of a fee award. *Gumarang v. Braemer on Raymond, LLC*, 110 Cal. App. 5th 370, 388 (2025) (quoting *City of Colton v. Singletary*, 206 Cal. App. 4th 751, 782 (2012)).

Moreover, in such instances, “[w]hether a partially successful [defendant] achieved a sufficient benefit to qualify as a prevailing party lies within the broad discretion of the trial court”. *Id.* Petitioners fail to articulate in any substantive manner how this discretionary fee award framework is unconstitutional or serves to punish defendants for filing an anti-SLAPP motion. Under Petitioners’ argument, any fee statute that provides a trial court discretion to award fees based on a determination of prevailing party status would be unconstitutional.

The fallacy in Petitioners’ argument is that by the nature of only obtaining a partially successful result on

an anti-SLAPP motion, that party has not proven they were subjected to a meritless action; rather, they have merely proven a part of the lawsuit violated the statute. In fact, as previously outlined herein, California's anti-SLAPP case law allows defendants to challenge not just whole claims but discrete factual allegations. *See Baral, supra*, 1 Cal. 5th at 394; *Bonni, supra*, 11 Cal. 5th 995; *Park, supra*, 2 Cal. 5th 1057. This means a "partially successful" defendant who may have sought to have the entire complaint dismissed, may have ultimately only achieved getting a single factual allegation dismissed, while the rest of the allegations and claims remain intact, thereby achieving zero practical impact on the case. In such a case, it would be inequitable for the Court to award all fees incurred by the defendant for such a minimal success. No constitutional concerns are implicated by this framework.

Petitioners' argument that in a separate, unrelated action in which they were sued in federal court in the Central District of California by Hunter Biden regarding unrelated issues, Mr. Biden obtained an interlocutory fee award under the anti-SLAPP statute, is unavailing. This argument is based on misrepresentations and that case is not comparable to the events here. In that other matter, the plaintiff obtained a fee award because it is well-established that California's anti-SLAPP statute cannot be used to challenge federal question claims in federal court<sup>3</sup> as Petitioners attempted to do in that matter

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3. See *Hilton v. Hallmark Cards*, 599 F.3d 894, 901 (9th Cir. 2010) ("a federal court can only entertain anti-SLAPP special motions to strike in connection with state law claims."); *Bulletin Displays, LLC v. Regency Outdoor Advert., Inc.*, 448 F. Supp. 2d 1172, 1180 (C.D. Cal. 2006) ("[a]lthough the anti-SLAPP statute does apply to state law claims brought in federal court, [] it does not apply to federal question claims in federal court.") (citation omitted).

and therefore the Court found that motion was entirely frivolous. The anti-SLAPP statute specifically codifies this right when an anti-SLAPP motion is determined to be frivolous. Cal. Code Civ. Proc., § 425.16(c)(1) (“If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney’s fees to a plaintiff prevailing on the motion.”) Conversely, while the anti-SLAPP statute also codifies a right for a prevailing defendant to be awarded fees (*see* Cal. Code Civ. Proc., § 425.16(c)(1)), Petitioners were not prevailing parties – they were *partially* prevailing parties.

Therefore, this doctrine is no different than requiring parties in any other action to prove they have achieved prevailing party status for the purposes of fee awards in cases with mixed results. While it does require parties to submit additional briefing on the matter, and incur additional attorneys’ fees, it is neither punitive, nor unconstitutional.

**5. The Lower Courts’ Application of the Anti-SLAPP Statute Did Not Unconstitutionally Disregard Statutory Timelines or Coerce Disclosures**

Petitioners argue the Trial Court’s application of the anti-SLAPP statute was unconstitutional in that it disregarded the statutory time limits and ordered additional briefing that coerced disclosures. This is not an accurate representation of the actions of the Trial Court or the facts regarding the Parties’ supplemental briefing and scheduling of the motion hearing.

On June 20, 2023, Petitioners filed their anti-SLAPP motion and the hearing was scheduled by Petitioners for July 13, 2023. The Court conducted a hearing on the anti-SLAPP motion on July 13, 2023, but after determining that more time was needed for oral argument, the Court continued the hearing to July 18, 2023. Then, Petitioners' counsel contacted the Court following a conference between counsel for the Parties, and informed the Court that the parties agreed to a July 17, 2023 hearing date instead, and the Court advanced the hearing to that date. At the July 17, 2023 hearing, extensive oral argument occurred and the Court requested supplemental briefing of various legal questions and continued the hearing again to August 11, 2023.

On July 25, 2023, the Parties jointly stipulated to a briefing schedule and agreed that if the Court determines an additional hearing is necessary, the Court shall continue the August 11, 2023 hearing date to a date after August 19, 2023. The Court then issued an order stating that if an additional hearing is necessary, the Court would schedule it for August 31, 2023. Pursuant to the joint stipulation, the Parties respectively submitted their supplemental briefs on or about July 28, 2023. The Court then continued the hearing again to October 4, 2023, specifically citing scheduling issues with the Court's docket. This fact contradicts a representation to the contrary in the Writ. Ultimately, the Court resolved the anti-SLAPP motion without an additional hearing and the Court issued its Order denying in part and granting in part the anti-SLAPP motion on October 13, 2023.

Not only did Petitioners not object<sup>4</sup> to the hearing on the anti-SLAPP motion being heard more than 30 days after the motion was filed, they jointly stipulated to submitting additional briefing and to an extended briefing schedule. Petitioners therefore have unclean hands and are estopped from arguing the briefing schedule they stipulated to and did not timely object to, is unconstitutional.

It is unclear what “evidentiary disclosures” Petitioners contend were improperly provided as a result of the Trial Court’s application of the anti-SLAPP statute in this case. Their argument simply refers to “evidentiary disclosures protected by the Fourth and Fifth Amendments.” As the Court is aware, the Fourth Amendment protects against unlawful searches and seizures and the Fifth Amendment protects against answering for a capital or otherwise infamous crime without an indictment to a grand jury, double-jeopardy, self-incrimination, deprivation of life, liberty, or property without due process, and the taking of private property for public use without just compensation. None of which are implicated or infringed by California’s anti-SLAPP statute in civil cases or the lower courts’ application thereof.

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4. In *DeCambre v. Rady Children’s Hospital-San Diego*, 235 Cal. App. 4th 1 (2015) (overruled on other grounds), the Court overruled an objection by plaintiff in the appeal to the hearing taking place more than 30 days after the anti-SLAPP motion was filed, finding no merit to the objection and noting the plaintiff “did not raise this objection in the trial court and the statutory provision on which [the plaintiff] relies, section 425.16, subdivision (f), requires the clerk of the court to schedule a ‘hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.’” *Id.* at 12, fn. 6 (quoting Cal. Code Civ. Proc., § 425.16(f)).

Petitioners were not compelled by the lower courts to provide any evidentiary disclosures, nor is there any Order in the lower courts in this regard. Indeed, no discovery occurred in this case so all evidence submitted by Petitioners was done voluntarily. If Petitioners are referring to the supplemental briefing ordered by the trial court in July 2023, no evidentiary disclosures were required as all the issues that were addressed in that supplemental briefing pertained to purely legal issues and were stipulated to by the Parties. If Petitioners are referring to the briefing on appeal, no evidentiary disclosures were required there either beyond which Petitioners felt was necessary to support the appeal they initiated.

#### **6. The Anti-SLAPP Statute Does Not Unconstitutionally Burden Protected Speech**

Petitioners argue the Trial Court's application of the anti-SLAPP statute burdened protected speech. Petitioners' argument appears to be based on their claim that anti-SLAPP statutes in general impose front-loaded burdens on defendants because they involve early merits adjudication, compelled evidentiary submissions, discovery stays, immediate appellate review, and mandatory fee-shifting that departs from the ordinary civil process. As such, Petitioners posit that whether and to what extent such mechanisms may be reconciled with the First Amendment, due process, and the separation of powers presents a recurring and substantial federal question warranting review. This is not the case.

What Petitioners fail to acknowledge is the purpose of the anti-SLAPP statute is to protect against those exact

concerns and reduce the litigation burdens on *defendants*. “Because these meritless lawsuits seek to deplete the defendant’s energy and drain his or her resources [citation omitted], the Legislature sought to prevent SLAPP’s by ending them early and without great cost to the SLAPP target. [citation omitted.]” *Varian Medical Systems, Inc. v. Delfino*, 35 Cal. 4th 180, 192 (2005). “Section 425.16 therefore establishes a procedure where the trial court evaluates the merits of the lawsuit using a summary judgment-like procedure at an early stage of the litigation. [citation omitted.] In doing so, section 425.16 seeks to limit the costs of defending against such a lawsuit.” *Id.* at 192 (see *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 65 (2002) (noting that the “short time frame for anti-SLAPP filings and hearings” and the “stay of discovery” pending resolution of the motion evidences the Legislature’s intent to minimize the litigation costs of SLAPP targets).)

Therefore the early adjudication of such issues actually serves to protect the rights Petitioners are claiming were infringed. It’s unclear how the rights the statute was enacted to protect are unconstitutionally burdened by the statute’s early adjudication of such issues, which benefit defendants with meritorious claims and imposes fee-shifting onto plaintiffs in such cases, while imposing fee-shifting on those defendants who attempt to use the anti-SLAPP statute in a frivolous manner.

Moreover, the California Supreme Court has found that the anti-SLAPP statute does not compel evidentiary disclosures or require a full factual adjudication, but rather, similar to a responsive pleading which seeks to challenge claims on the face of the complaint or a

summary judgment motion, it merely determines the legal sufficiency of a claim after a defendant “has made a threshold showing that the challenged cause of action is one arising from protected activity.” *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002) (citing Code Civ. Proc., § 425.16(b) (1).) As for the second step, which imposes burdens on the plaintiff, not the defendant, the California Supreme Court has made a similar determination and described it as being similar to a summary judgment procedure:

“If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. We have described this second step as a ‘summary-judgment-like procedure.’ [*Taus v. Loftus*, 40 Cal. 4th 683, 714 (2007)]. The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff’s evidence as true, and evaluates the defendant’s showing only to determine if it defeats the plaintiff’s claim as a matter of law.”

*Baral*, 1 Cal. 5th at 384-385 (2016). Accordingly, by its nature and application, the anti-SLAPP statute preserves the jury’s function as a factfinder and due process protections.

Here, the lower courts correctly applied the anti-SLAPP statute in accordance with the Legislature’s intent and controlling case law, such that Petitioners’ constitutional rights were not infringed.

### III. REMAINING MISREPRESENTATIONS

The previous sections address many of the misrepresentations asserted in Petitioners' Writ. All remaining misrepresentations shall be addressed in this section.

First, Petitioners assert that to date "the trial court has not awarded the mandatory attorneys' fees the statute purports to require". Writ, at p. 4. However, this is not entirely accurate because on March 19, 2026, several weeks before Petitioners' filed their Writ on April 7, 2026, the trial court granted Petitioners' attorney's fees motion relating to the anti-SLAPP motion and awarded Petitioners \$50,000.00 in fees pursuant to the anti-SLAPP statute.

Second, Petitioners argue that despite the fact that the anti-SLAPP statute places the burden on a plaintiff to demonstrate legal sufficiency of their claims, the Court of Appeal here ruled that Petitioners forfeited the argument that the criminal statute did not include a private right of action. However, Petitioners fail to acknowledge that the reason they forfeited that argument was because they failed to raise it in the trial court or in the California Court of Appeal, not because of the Court of Appeal's unconstitutional application of the anti-SLAPP statute. Accordingly, because they did not carry their burden on the first step of their analysis under the anti-SLAPP statute on that issue, the burden did not shift to Respondent.

Third, Petitioners claim that after the Court of Appeal issued its Remittitur, Respondent was "permitted" to

voluntarily dismiss remaining claims without prejudice and without waiting for entry of judgment on the stricken claims, as if the Trial Court made an exception to the rules for Respondent. Petitioners fail to advise the Court that in California, subject to several very limited exceptions, none of which apply here, a plaintiff has an absolute right to dismiss a case with or without prejudice at any time before trial and neither the clerk nor the Trial Court have any discretion to refuse to enter such a voluntary dismissal. *See* Cal. Code of Civ. Proc. § 581(c); *see also O'Dell v. Freightliner Corp.*, 10 Cal. App. 4th 645, 659 (1992) (“[T]he plaintiff in a lawsuit has an absolute right to dismiss. [Citation] Neither the clerk nor the trial court has any discretion in the matter.”); *321 Henderson Receivables Origination LLC*, 172 Cal. App. 4th at 300-301 (same).

Also, there was no need for Respondent to wait for a separate entry of judgment on the stricken claims or for the Trial Court to strike those claims and enter judgment accordingly because the Court of Appeal’s Remittitur is final and binding as an operation of law when issued, and has preclusive effect on the parties. *See Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 896–97 (2002); *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles*, 126 Cal. App. 4th 1180, 1202 (2004); *Rymer v. Hagler*, 211 Cal. App. 3d 1171 (1989); *Murray v. Alaska Airlines*, 50 Cal. 4th 860 (2010). Respondents’ voluntary dismissal of the case does not change the preclusive effect of the Court of Appeal’s Remittitur.

Fourth, Petitioners claim that Respondent’s “repeated references” to President Biden and his family in the operative complaint “underscore that the speech at issue concerned matters of the highest political significance”

and thus the litigation could have “operated as a proxy mechanism for investigating and responding to political speech ordinarily addressed” through executive channels subject to constitutional constraints. The name “Biden” is referenced in the complaint a total of 32 times, all of which refer to background facts to provide context as to what motivated Petitioners’ to begin their campaign of harassment against Respondent based on his association with the Biden family. The one exception is a mention in the emotional damages portion saying that Petitioners’ actions have caused Respondent emotional distress, as well as that of his family and associates, including the Biden family. None of the references to the Biden family are material to the issues in this Writ. Also, for these reasons, while Petitioners may have believed that they could have used this litigation to depose the Biden family on issues unrelated to Petitioners’ harassment of Respondent, they would not have been allowed to do so under California’s laws regarding relevant discovery, due to the completely irrelevant nature any other matters involving the Biden family would have had to the underlying lawsuit.

Fifth, in quoting the anti-SLAPP statute’s provision that states a court may order that “specified discovery be conducted” on a showing of good cause and noticed motion (Cal. Code Civ. Proc., § 425.16(g)), Petitioners seem to suggest that this portion of the statute allows Court’s to compel evidentiary disclosures in an unconstitutional manner. That is not true. Not only does this provision require a noticed motion, thereby implying a willful request by a party to seek such discovery, but it is limited to seeking only “specified discovery [that] is necessary for the plaintiff to oppose the [anti-SLAPP] motion and is tailored to that end.” *Britts v. Superior Court*, 145 Cal.

App. 4th 1112, 1125 (2006). Therefore, there are restraints on the specified discovery designed to protect against concerns of disclosures that go beyond their limited purpose. Notably, no such motion was sought or granted in this case.

Sixth, Petitioners claim the anti-SLAPP statute does not provide a right to counsel or a right to a jury on factual issues. While that is true, Petitioners neglect to acknowledge that no such protections need be asserted in the statute. First, under both California and Federal law, parties in civil cases do not have a right to counsel like in criminal cases. *See Hunt, supra*, 36 Cal. App. 3d at 137 (“The California Constitution ... and the federal Constitution ... specifically provide for court-appointed counsel in criminal matters only.”) Second, in California, civil litigants have a constitutional right to a trial by jury of factual issues. *See Windsor Square Homeowners Assn. v. Citation Homes*, 54 Cal. App. 4th 547, 550 (1997) (“Civil litigants in California are guaranteed the right to trial by jury by California Constitution, article 1, section 16...”). This “right extends to factual questions only; issues of law are triable by the court.” *Alpert v. Villa Romano Homeowners Assn.*, 81 Cal. App. 4th 1320, 1328, fn. 6 (2000). Accordingly, the anti-SLAPP statute does not need to codify such rights, and the Legislature’s failure to do so in this statute is inconsequential.

Seventh, Petitioners claim the Trial Court record exceeds 8,000 pages. Rather the Trial Court record combined with the appellate record exceeds 8,000 pages solely because many of the same lengthy pleadings, orders, and transcripts were repeatedly attached to the various briefs in this case. That page count does not represent any importance of this matter or infringement of any rights.

Finally, it is unclear and Petitioners do not explain how the anti-SLAPP statute or the lower courts' application of the same in this case infringe on the plenary authority of the executive branch or the separation of powers of the Federal Government. Neither concerns are with any merit.

### CONCLUSION

For the reasons stated above, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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**APPENDIX — APPELLANT’S OPENING BRIEF  
OF THE COURT OF APPEAL, STATE OF  
CALIFORNIA, SECOND APPELLATE DISTRICT,  
DIVISION P, DATED FEBRUARY 18, 2025**

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION P

Court of Appeal No. B333812  
Superior Court No. 23SMCV01418

P. KEVIN MORRIS,

*Respondent, Cross-Appellant and Plaintiff,*

v.

GARRETT ZIEGLER, ICU, LLC,  
A WYOMING LIMITED LIABILITY COMPANY  
D/B/A MARCO POLO USA,

*Appellants and Cross-Respondents and Defendants.*

Appeal from an Order of the  
Superior Court, County of Los Angeles  
Hon. Mark Epstein, presiding

**APPELLANTS’ OPENING BRIEF**

[\*\*\*Certificates and Tables omitted for this appendix\*\*\*]

*Appendix***[7]INTRODUCTION AND FACTUAL BACKGROUND**

Defendants/ Appellants/ Cross-Respondents Garrett Ziegler and ICU, LLC (hereinafter referred to as “Marco Polo”) appeal an order granting in part, but incorrectly denying in part, their Special Motion to Strike under the anti-SLAPP statute. Although the trial court correctly found that the Defendants met their burden to show the alleged conduct was protected under the first prong of the analysis, the trial court used an incorrect legal standard and novel approach for the second prong of the analysis where a Plaintiff must meet his burden to show a possibility of prevailing on the merits on each claim. See Code Civ. Proc. § 425.16; See also *Baral v. Schnitt* (2016) 1 Cal.5th 376, 381. As a threshold issue, the trial court neglected to identify the applicability of the litigation privilege which operates as a complete bar to claims involving communications made in connection with legal proceedings. See Civ. Code § 47(b).

This appeal arises from a lawsuit filed by Plaintiff/ Respondent and Cross-Appellant P. Kevin Morris, a licensed attorney who represents Hunter Biden, the son of (then) President Joseph R. Biden, against Defendants/ Appellants and Cross-Respondents Ziegler and Marco Polo concerning investigative reporting on matters of public concern including Hunter Biden’s abandoned laptop computer. [JA00028-JA00092]. In fact, Marco Polo published a *Report* on the laptop. [Vol. 26-28 JA06999-JA07674] Morris acknowledges that in “May of 2022, news articles appeared describing Morris as a friend of Hunter Biden stating that Morris was financially helping

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Hunter Biden,” and cites an article in the *New York Post*. [JA00034 ¶ 22, FN 6]. [8]The title of the article included in the Complaint is “Meet Hunter Biden’s Sugar Brother Lawyer Kevin Morris.” [*Id.*]

In 2022, Morris mistakenly believed he was exchanging text messages with someone named “Jon Cooper,” [JA00045] and when he realized he had disclosed sensitive information about Hunter Biden to someone else, Morris sent a barrage of abusive and threatening texts directed to the other party whom he alleges to be Defendant / Appellant Garrett Ziegler. [JA00062-JA00065] Morris mistakenly assumed, and still assumes, despite Mr. Ziegler’s un rebutted sworn statement to the contrary [JA-GZ DEC], that Mr. Ziegler was on the other end of the text exchange. [See e.g. JA00034] Morris admits he threatened Ziegler with legal action. [JA00034:15] (“Morris sent a text to Ziegler threatening him with legal action for his misconduct.”)

Morris alleges that some of the text messages he sent were published on Ziegler’s social media accounts along with a post by Ziegler truthfully stating that Hunter Biden’s lawyer had threatened him. [JA00034; JA00073] Every allegation Morris makes about Ziegler’s conduct, apart from the impersonation of Jon Cooper, involves conduct following Morris’s unequivocal threat of legal action.

Plaintiff alleges that Ziegler’s republication of Morris’s threatening messages and related commentary – including publishing previously published photographs

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of Morris and his family with disparaging remarks [e.g. JA00067] – caused reputational harm and emotional distress to Morris. [JA00039, ¶ 52] However, the conduct at issue is entirely protected under the First Amendment and/or the litigation privilege under Civil Code § 47(b). See U.S. Const. amend I; Calif. Const. Amend. I Moreover, Plaintiff’s legal theories rely on [9]criminal statutes that lack private rights of action which the trial court failed to fully identify. [See JA08197]

The trial court properly found that Plaintiff did not meet his burden on prong two to prove minimal merit under his “doxing” claim under Penal Code § 653.2 which did not include a private right of action. [JA08197-JA08201]. The trial court correctly dismissed the “doxing” claim but erred in allowing the remaining claims to proceed despite clear constitutional and statutory bars to liability. [JA08201]. For example, the trial court neglected to identify that the impersonation statute, Penal Code § 529, also does not include a private right of action but allowed that claim to proceed. [JA08204]

In analyzing the Special Motion to Strike, the trial court, having taken the hearing off calendar [JA08181] also improperly failed to treat the corporate defendant independently of the individual defendant and was required to grant the motion in its favor, dismiss all claims, and award the entity party its attorney’s fees and costs. [See JA08179-JA08219] The trial court’s failure to do so leaves the corporate party to defend an entirely meritless lawsuit. This must be reversed.

*Appendix***STATEMENT OF APPEALABILITY**

This appeal is proper because an order denying an anti-SLAPP motion is immediately appealable. Cal. Code Civ. Proc. § 904.1(a)(13); See also *Baral v. Schnitt* (2016) 1 Cal.5th 376, 381

**[10]STANDARD OF REVIEW**

This Court reviews de novo the denial of an anti-SLAPP motion. *Flatley v. Mauro*, 39 Cal.4th 299, 325 (2006). Under this standard, the appellate court exercises independent judgment in reviewing both the legal issues and the sufficiency of the evidence without deference to the trial court's ruling. *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal. App.4th 1049, 1056. This review extends to both prongs of the anti-SLAPP analysis as set forth in the statute, requiring the appellate court to determine (1) whether the defendants met their burden to show their conduct is protected activity as defined in the anti-SLAPP statute; and (2) whether the plaintiff has demonstrated "minimal merit," a probability of prevailing on each claim. *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.

Where, as here, the trial court has found that the defendants' conduct is protected under the first prong but has misapplied the second prong by allowing legally deficient claims to survive, the error is one of law, subject to full appellate review. See *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-385.

*Appendix***[11]STATEMENT OF THE CASE**

On April 3, 2023, Plaintiff filed a lawsuit alleging doxing, impersonation, false light, harassment, and intentional infliction of emotional distress. [JA00028-JA00092] Although Morris included a claim for civil harassment, he did not file the mandatory judicial council form required under Code of Civil Procedure § 527.6(x) (1). [See *Id.*] The statute does not provide for monetary damages, limiting relief to an injunction, but Mr. Morris nevertheless improperly seeks \$1,000,000 in damages for this claim. [JA00036]. Morris's claims for impersonation and doxing are based on statutes that do not include a private right of action. See Pen. Code § 529, § 653.2.

In his Complaint, Mr. Morris *admitted he threatened legal action* against a person he believed was Mr. Ziegler on May 29, 2022. [JA00034 at 15]. Mr. Morris also included copy of a purported text exchange with Garrett Ziegler, but no telephone numbers are reflected on the document, leaving unresolved questions about the identity of the party to the text exchange with Morris. [JA00064-JA00065]. In the copy of the text exchange Mr. Morris provided, Mr. Morris makes a number of threatening, abusive statements reiterating his threat of legal action:

**“Watch your eyes... Because the latest thing in prisons is eye socket fucking...We have 8 SDNY prosecutors on our team...All this took was a phone call...8 lawyers with 10+ years as AUSA's in SDNY... You're going to prison and we're going to get all of the money your family has and you will work for us**

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**for the rest of your life... We will follow you to the ends of the earth.”** [JA00045-JA00065]. Ziegler, who submitted an un rebutted [12]sworn declaration stating he never impersonated Jon Cooper acquired copies of these messages from a whistleblower [JA000832], published some of them, and posted, **“Just got threatened by Hunter Biden’s attorney and fixer, Kevin Morris. More to come.”** [JA00073] Morris alleges that Mr. Ziegler “cherry picked” the text messages he published which forms the basis of Morris’s claim for false light. [JA00034 ¶ 26] After the publication of the text exchange, Mr. Ziegler allegedly published the tail number to Morris’s plane, satirical photographs of Mr. Morris, photographs of Morris’s family, and more. [JA00029]

On June 20, 2024, Defendants filed a Special Motion to Strike under the anti-SLAPP statute, asserting that the conduct at issue – newsgathering and publication of information about a public figure – is protected and that Plaintiff’s claims were meritless. [JA00299-JA00327]. Mr. Ziegler filed a sworn Declaration in support of the motion [JA00328-JA00335] and a Request for Judicial Notice [JA Vol. 3-12, JA00338-03241]

Morris also filed a Request for Judicial Notice listing twenty-seven items [JA07759-07964] including Ziegler’s X posts and various news articles about Hunter Biden, Morris, Ziegler, and Mr. Ziegler’s relationship with Donald J. Trump, President of the United States. [See e.g. JA07759]

On October 13, 2023, the trial court granted in part and denied in part the anti-SLAPP motion. [JA08179-

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JA08219] The court struck the doxing claim, finding no private right of action, but denied the motion as to the remaining causes of action, holding that while Defendants' conduct was protected under the First Amendment, Plaintiff had [13]demonstrated "minimal merit" under the second prong of the anti-SLAPP analysis. [JA08211] However, the trial court also denied Plaintiff's motion for a preliminary injunction, recognizing that Defendants' speech did not constitute a true threat or incitement under *Counterman v. Colorado* (2023) 600 U.S. 66. [JA08219].

Defendants timely filed the notice of this appeal on November 8, 2023, and timely filed this brief on February 18, 2025. [JA08223]

**SUMMARY OF THE ARGUMENT**

The trial court correctly found that Defendants' conduct is protected under the first prong of the anti-SLAPP test but erred in denying dismissal under the second prong. As a threshold matter, the trial court failed to identify that the litigation privilege bars Morris's claims based on Ziegler's conduct following Morris's unequivocal threat of criminal prosecution and imprisonment to Ziegler.

1. The Litigation Privilege Bars Plaintiff's Civil Claims. Plaintiff's allegations involve communications related to anticipated litigation, which are absolutely immune under Civ. Code § 47(b).

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2. Plaintiff's Claims Under Criminal Statutes Are Legally Deficient. Plaintiff's claims for doxing and impersonation arise under criminal statutes that lack private rights of action. Penal Code §§ 653.2 (doxing) and 529 (impersonation).
- [14]3. The First Amendment Bars the Remaining Claims. Plaintiff, a public figure, must establish actual malice to sustain his false light and IIED claims – a burden he cannot meet.
4. The Trial Court's Novel "Two-Bucket" Approach Was Legally Flawed. The trial court misapplied the second prong of the anti-SLAPP test by (a) improperly analyzing types of claims, as opposed to each independent claim, and (b) improperly weighing factual disputes instead of assessing legal sufficiency. The trial court therefore overlooked key, claim-dispositive issues. See Code Civ. Proc. § 425.16; see also *Baral v. Schnitt* (2016) 1 Cal.5th 376
5. The Court Erred in Failing to Dismiss Marco Polo. Marco Polo, a nonprofit engaged in investigative journalism, is entitled to heightened First Amendment protections and cannot be vicariously liable for Ziegler's independent speech. Morris did not make any factual showing that any claims asserted against Marco Polo have minimal merit.

*Appendix***ARGUMENT****I. The Trial Court Erred in Denying the Anti-SLAPP Motion as to the Remaining Claims**

Noting that “Plaintiff is a semi-public figure whose information is already publicly available,” [JA08195: 24-25] the trial court correctly found that Defendant met his burden to show the conduct at issue was protected under the first prong of the anti-SLAPP analysis. [JA08188-[15] JA08196; JA08196:8-9] The trial court erred, however, in allowing any of Plaintiff’s claims to proceed. Under the second prong of the anti-SLAPP analysis, the trial court was required to determine whether Morris could show that each of his claims had “minimal merit,” the requisite probability of prevailing. See *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 88-89. “[I]n order to establish the requisite probability of prevailing (§ 425.16, subd. (b)(1)), the plaintiff need only have ‘stated and substantiated a legally sufficient claim.’” *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 88 quoting *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal. 4th 1106, 1123, [citations omitted] Because Morris failed to meet his burden under the anti-SLAPP framework, because the First Amendment and/or the California litigation privilege bars liability as a matter of law, and because the trial court mistakenly overruled key evidentiary objections without explanation, this Court should reverse the ruling and dismiss each of the causes of action.

*Appendix***A. Litigation Privilege Bars Plaintiff's Claims**

The litigation privilege, codified in *Civil Code* § 47(b), provides absolute protection to statements made in connection with judicial proceedings, including communications made in anticipation of litigation. See *Rubin v. Green* (1993) 4 Cal.4th 1187; *Silberg v. Anderson*, 50 Cal.3d 205, 212 (1990).

Here, a lawyer representing the son of then-President Biden, the Chief Executive of the United States, openly admits he sent text messages to a person he believed to be Garrett Ziegler and, identifying him by name, explicitly threatened prosecution (“We have 8 SDNY prosecutors on our team... You’re going to prison”), making Ziegler’s publication of those messages – and any subsequent related conduct [16]involving Morris – privileged. *Id.* Plaintiff’s claims, following his threat to have Ziegler prosecuted [JA00065], arise from Ziegler’s statements and communications made in the context of legal disputes – rendering them non-actionable. Civ. Code § 47(b).

“For well over a century, communications with “some relation” to judicial proceedings have been absolutely immune from tort liability by the privilege codified as section 47(b).” *Rubin*, 4 Cal.4th at 1193 (Cal. 1993) The trial court erred in failing to recognize this absolute privilege, which alone warrants dismissal of Morris’s claims. See *Silberg v. Anderson* (1990) 50 Cal.3d 205, 212. In *Silberg*, the California Supreme Court held that the privilege is absolute and applies to all publications having “some relation” to litigation, even if the publication

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“is made outside of the courtroom and no function of the court or its officers is involved.” *Id.* citing *Albertson v. Raboff*, 46 Cal. 2d 375, 381. The litigation privilege applies even to allegedly wrongful or malicious conduct if the communications or publications are reasonably connected to litigation. *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 955

As Mr. Ziegler’s alleged conduct is fully privileged, the trial court erred in failing to dismiss the claims under prong two because Plaintiff cannot show minimal merit on these claims as a matter of law. See Code Civ. Proc. § 425.16

**B. Claims Under the Criminal Statutes Lack a Private Right of Action**

Plaintiff’s claims for doxing and impersonation also fail because these statutes do not provide a private right of action. See Pen. Code § 529; Pen Code § 653.2 Under well-settled California law, courts do not [17]imply private rights of action absent clear legislative intent. *Moradi-Shalal v. Fireman’s Fund Ins. Companies* (1988) 46 Cal.3d 287, 305.

The trial court correctly dismissed the doxing claim but failed to dismiss the impersonation claim-despite both suffering from the same legal defect. [JA08205]. Plaintiff has no probability of success on claims based on a statute that lacks a private right of action; therefore, the claims should be dismissed. See *Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 142

*Appendix***C. The First Amendment Bars the Remaining Claims**

The First Amendment categorically prohibits liability for speech about public figures absent clear and convincing evidence of actual malice. *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 279-280. The trial court already determined that Plaintiff is a public figure and that Defendants' speech concerned matters of public concern. [JA08203]

Thus, Plaintiff's claims for false light and intentional infliction of emotional distress (IIED) cannot survive absent a showing of actual malice—i.e., knowledge of falsity or reckless disregard for the truth. *Hustler Magazine v. Falwell* (1988) 485 U.S. 46, 56 (public figures must meet actual malice standard for emotional distress claims); *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 256 (false light claims require the same actual malice standard as defamation). Plaintiff presented no evidence of actual malice, improperly asking the court to make inferences, and there is simply no evidence of a false statement. [JA08203] The trial court erred in allowing these claims to proceed.

[18]Moreover, Plaintiff's harassment claim is legally improper because California law does not recognize a private cause of action for civil harassment for money damages, and harassment claims must be pursued through a restraining order under Code of Civil Procedure § 527.6 using the mandatory Judicial Council form. See *Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 652 (civil harassment statute is a procedural mechanism for restraining orders, not an independent tort); *Nora*

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*v. Kaddo* (2004) 116 Cal.App.4th 1026, 1029 (failure to follow statutory procedure bars relief). The trial court incorrectly permitted Plaintiff to circumvent statutory requirements, warranting reversal.

Further, Plaintiff's harassment claim cannot survive First Amendment scrutiny absent evidence of a true threat- speech so unambiguous and immediate that it instills fear of imminent harm. *Counterman v. Colorado*, 600 U.S. 66 (2023) Plaintiff's allegations in the Complaint fail to meet this high standard, and posting lyrics to a television show theme song on social media does not constitute a threat, much less an imminent one. See *Id.*

**D. The Trial Court's Novel "Two-Bucket" Approach Was Legally Flawed**

The trial court did not provide any authority for one of the legal standards the court used in analyzing the issues in prong two. [Order, p. 20:19-21] The trial court wrote,

"The question of plaintiff's factual showing has (again) two components. The first is whether the alleged misconduct is immune such that even if plaintiff's allegations are true, there is no liability. The second is just factual: has plaintiff put forth enough evidence to create a triable issue of fact." [*Id.*]

[19]The trial court offered no authority for this standard, and the court's language and reasoning

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suggests it improperly weighed competing inferences and credibility, which is explicitly prohibited under the anti-SLAPP standard as this Court has repeatedly made clear. See e.g. *Collins v. Waters* (2023) 308 Cal. Rptr. 3d 326 The phrase, “has plaintiff put forth enough evidence to create a triable issue of fact,” implies a summary judgment standard, where the existence of any disputed material fact means the case must go to trial. That is not the anti-SLAPP standard; the correct standard is whether a plaintiff has provided admissible evidence that, if believed, would establish a prima facie case. *Baral v. Schnitt* (2016) 1 Cal.5th 376, 385. The trial court does not weigh evidence or decide credibility; it only determines whether the plaintiff’s evidence, if credited, would establish a claim. *Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821

The trial court improperly divided the claims into two categories-those without a private right of action (doxing) and those allegedly presenting factual issues (false light, IIED, and impersonation). This misapplied the second prong of the anti-SLAPP test, which requires courts to assess both legal sufficiency and evidentiary support for each claim. The penal code statute (529 PC) for impersonation was not included in the first category despite the fact that it includes no private right of action.

By failing to apply the correct standard, the trial court improperly allowed legally deficient claims to proceed. Under *Baral v. Schnitt*, courts must analyze each claim individually to determine whether the plaintiff has

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provided legally and factually sufficient evidence. *Baral v. Schnitt*, 1 Cal.5th 376, 384-85 (2016). Here, the trial [20] court failed to conduct that analysis properly, resulting in legal error and undue prejudice to Ziegler and Marco Polo who are entitled to relief under the statute. See *Navellier v. Sletten*, 29 Cal.4th 82, 88-89 (2002).

**E. Failure to Dismiss Claims Against Marco Polo Is Reversible Error**

The trial court failed to analyze the claims against Marco Polo separately, instead treating it as indistinguishable from Ziegler. California law prohibits such vicarious liability absent specific allegations of wrongdoing by the corporate entity itself. The U.S. Supreme Court has repeatedly recognized that journalistic entities cannot be held liable for their reporting absent actual malice or direct legal wrongdoing. See *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918-20 (1982); See also *Bartnicki v. Vopper* (2001) 532 U.S. 514, 527-28

Here, Plaintiff presented no allegations linking Marco Polo to any actionable conduct. [See JA00028-JA00092] The trial court's failure to separately analyze the corporate defendant under the anti-SLAAP test and dismiss the claims against Marco Polo constitutes clear legal error warranting reversal. See e.g. *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538 (issuing a writ of mandate to the trial court to vacate its order denying the corporate party's motion to quash upon finding that a plaintiff had not sufficiently alleged facts regarding the relationship between the individual and the entity or any basis for liability.)

*Appendix***II. Defendants Are Entitled to Attorneys' Fees and Costs**

[21] Under California's anti-SLAPP statute, Defendants are entitled to mandatory fee recovery for both trial and appellate litigation. Code Civ. Proc. § 425.16(c)(1); See also *Ketchum v. Moses*, 24 Cal.4th 1122, 1131 (2001) Courts routinely award fees to prevailing anti-SLAPP defendants to deter strategic lawsuits against public participation. Because Plaintiff's claims are legally and constitutionally deficient, Defendants are entitled to full recovery of attorneys' fees and costs incurred at both the trial and appellate levels. See e.g. *Rosenauro v. Scherer*, 88 Cal. App.4th 260, 283 (2001).

**CONCLUSION**

For the reasons stated above, this Court should:

1. Reverse the trial court's order denying the anti-SLAPP motion as to the remaining claims; and
2. Remand with instructions to grant the motion and dismiss the entire complaint; and
3. Award Defendants their attorneys' fees and costs incurred at both the trial and appellate levels.

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Date: Feb. 18, 2025

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