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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

CITY OF LOS ANGELES,

Plaintiff,

v.

BEN CAMACHO et al.,

Defendants

Case No.: 23STCP01060

**NOTICE AND SPECIAL MOTION TO
STRIKE COMPLAINT BY DEFENDANT
BEN CAMACHO; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF BEN CAMACHO
WITH EXHIBITS A-C**

Hearing: August 2, 2023

Time: 9:30 a.m.

Dept.: 86

Judge: Hon. Judge Mitchell L. Beckloff

Action filed: April 6, 2023

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on August 2, 2023, at 9:30 a.m., or as soon thereafter as
3 counsel may be heard in Department 86 of the Superior Court of California, County of Los
4 Angeles, located at 111 North Hill Street, Los Angeles, California 90012, defendant Ben
5 Camacho will and hereby do move this Court, pursuant to California Code of Civil Procedure §
6 425.16, for an order striking the Complaint of plaintiff City of Los Angeles and all of its claims
7 against Mr. Camacho with prejudice.

8 This Motion is made on the grounds that the Complaint is subject to a special motion to
9 strike under Code of Civil Procedure § 425.16 (the “SLAPP statute”) because it arises from Mr.
10 Camacho’s exercise of his constitutional rights of petition and free speech on a public forum
11 through his reporting about a matter of public interest. The City’s Complaint arises from Mr.
12 Camacho’s petitioning activity through his filing a writ of mandate in court against the City
13 under the Public Records Act, which resulted in the City agreeing to give Mr. Camacho the
14 names, serial numbers, and official headshot photographs of over 9,000 Los Angeles Police
15 Department officers. The City’s Complaint also arises from Mr. Camacho’s speech through his
16 publishing the names, serial numbers, and photographs of those over 9,000 LAPD officers on
17 Twitter and reporting about how and why he obtained those records. All three of the City causes
18 of action easily fall within subsections 425.16(e)(1), (e)(3) and (e)(4).

19 Because the SLAPP statute applies to the Complaint, the burden falls on the City to
20 establish a probability of prevailing on each of its claims, pursuant to § 425.16(b)(1). The City
21 cannot meet its burden and its claims therefore should be dismissed in their entirety, with
22 prejudice, for each of the following reasons:

23 The City’s claims for “Possession of Private Property,” “Declaratory Relief,” and
24 “Return of Government Records” all seek a court order banning Mr. Camacho from publishing
25 the photographs of the over 9,000 LAPD officers and forcing him to return the photographs to
26 the City, which would violate Mr. Camacho’s right to petition the government and report about
27 the LAPD officer photographs that he lawfully obtained in his lawsuit and settlement with the
28 City and a prior restraint in violation of Mr. Camacho’s right to free speech under the state and

1 federal constitutions.

2 The City's claims fail for the independent reason that the First Amendment bars
3 government punishment of the press for publishing truthful information that is lawfully obtained
4 and a matter of public interest, as these LAPD photographs were and are.

5 The City's claims also fail for the independent reason that the First Amendment bars
6 punishment for publication of government records that have been lawfully obtained and
7 published in the public domain.

8 The City's claims fail for the independent reason that the City's attempt to claw back the
9 photographs has released the photographs to Mr. Camacho and he and others published them on
10 the internet. Clawing back the photographs from Mr. Camacho will not remove them from the
11 public domain.

12 For each of these independent reasons, this Court should grant Mr. Camacho's SLAPP
13 motion and dismiss each of the City's claims in their entirety with prejudice.

14 This Motion is based on this Notice; the attached Memorandum of Points and
15 Authorities; the concurrently filed Request for Judicial Notice; all other matters of which this
16 Court may take judicial; all pleadings, files, and records in this action; and any other such
17 argument as may be received by this Court at the hearing on this Motion.

18
19 DATED: April 18, 2023

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24 By /s/ Susan E. Seager

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BEN CAMACHO

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1 **I. Introduction**

2 The City of Los Angeles is asking this Court to issue an unconstitutional prior restraint
3 against journalist Ben Camacho to stop him from publishing government records the City
4 voluntarily gave him *six months ago*. This case arises from Mr. Camacho’s Public Records Act
5 lawsuit that he filed against the City, seeking disclosure of the official headshot photographs of
6 more than 9,000 Los Angeles Police Department officers, which was assigned to the Honorable
7 Judge James C. Chalfant. Following significant settlement discussions, the City settled with Mr.
8 Camacho. On September 16, 2022, the City handed Mr. Camacho a flash drive containing the
9 names and official headshot photographs for 9,310 LAPD officers, stating in a letter that the
10 photographs did *not* include any officers working “undercover.”

11 Suddenly the City sued Mr. Camacho and now asks this Court to order him to return the
12 photographs and never publish them again. The City asserts that it mistakenly included
13 photographs of some officers who work “undercover” or in “sensitive assignments.” But the City
14 never provides a definition of “undercover.” Nor does it provide any evidence that any
15 undercover officers or operations have been compromised. Chief Michel Moore recently said
16 that no undercover operations have been disrupted.

17 Ordering Mr. Camacho to return the photographs and stop publishing them would
18 accomplish nothing. Mr. Camacho already posted a link to the photographs on social media, and
19 others posted the photographs on several websites. A claw back is not possible from the internet.

20 Nearly a decade ago, the Court of Appeal affirmed dismissal of a similar lawsuit in
21 *Assoc. of Los Angeles Sheriffs v. Los Angeles Times*, 239 Cal. App. 4th 808 (2015) (“*ALADS*”).
22 In that case, the Los Angeles county sheriff’s deputies’ labor union filed a claim for injunctive
23 relief, asking a Los Angeles Superior Court judge to enjoin the *Los Angeles Times* from
24 publishing the photographs, names, and confidential background investigation files for 500
25 deputies, claiming the records were “unlawfully” obtained by a reporter. *Id.* at 811-12, 815.

26 The *Times* filed a SLAPP motion pursuant to Code of Civil Procedure § 425.16, which
27 was granted by the trial court and affirmed on appeal. *Id.* at 827. The Court of Appeal cited with
28 approval the trial court’s holding that the union’s claim for injunctive relief arose from the

1 newspaper’s constitutional right of “news-gathering” and “reporting” (*id.* at 816, 819) about a
2 matter of public concern – “the qualifications, conduct, and identities of peace officers are
3 matters of public interest.” *Id.* at 814. The Court of Appeal held that the deputies’ union failed to
4 establish a probability of prevailing because the injunction would be an unconstitutional prior
5 restraint. “ALADS has cited no case permitting the kind of injunction it seeks here, to restrain a
6 newspaper from publishing news articles on a matter of public concern ... because there is no
7 such case.” *Id.* at 824.

8 The same result is required here. As in *ALADS*, the City is seeking an unconstitutional prior
9 restraint. The City cannot evade the constitutional protection for Mr. Camacho’s petitioning and
10 speech activity by labeling its claims as “Possession of Private Property,” “Declaratory Relief,”
11 and “Return of Government Records.” All of the claims arise from Mr. Camacho’s exercise of his
12 constitutional right to petition and free speech about the photographs. These photographs are a
13 matter of public interest because they allow the public and journalists to monitor a huge urban
14 police force of over 9,000 officers doing their jobs as public servants. The City’s disclosure of the
15 photographs has caused a public controversy, which is itself a matter of public interest. The City’s
16 Complaint is fatally flawed and should be stricken without leave to amend.

17 **II. Statement of Facts**

18 **A. Mr. Camacho Engaged in Petitioning Activity to Obtain the Photographs**

19 **1. Mr. Camacho Is a Journalist and Documentary Filmmaker**

20 Mr. Camacho is a freelance reporter, photojournalist, and documentary filmmaker.
21 Declaration of Ben Camacho, ¶ 1. He is currently a reporter for *Knock LA*, a non-profit news
22 website based in Los Angeles. *Id.* He has published his news articles and photographs in
23 periodical publications such as *Knock LA*, *LA Taco*, and Poynter Institute, among others. *Id.* He
24 has reported on policing issues in Santa Ana and the asylum seekers at the US-Mexico border.
25 *Id.* He is currently filming and editing a feature documentary, *The Blue Hand*, about an LAPD
26 investigation of a June 3, 2020 shooting, which was a finalist for a Pulitzer Center grant. *Id.*

27 **2. Mr. Camacho Sues the City to Obtain LAPD Officer Photographs**

28 On May 27, 2022, Mr. Camacho filed a Verified Petition for Writ of Mandate, or, in the

Alternative, Complaint for Declaratory and Injunctive Relief, *Camacho v. City of Los Angeles*, Los Angeles Superior Court Case No. 22STCP02029. *Id.* ¶ 10; Request for Judicial Notice (“RJN”), Declaration of Susan E. Seager, Ex. D. The case was assigned to Judge Chalfant. Mr. Camacho sued the City for refusing to provide all of the records he requested on October 11, 2021 under the Public Records Act – “[t]he most up-to-date roster of LAPD Names, badge numbers, serial numbers, division, sworn status” and “[t]he department headshot photos of all of the same officers” (“Photographs”) (collectively, “Records”). *Id.* ¶¶ 6, 9-10.

Mr. Camacho asked the LAPD for the Records as part of his reporting and documentary filmmaking about LAPD officers and law enforcement officers more generally. *Id.* ¶¶ 7-8. Mr. Camacho considered the Records to be a matter of public interest because they could help him as well as other journalists and members of the public identify police officers who engage in misconduct, including those who block photojournalists and members of the public from filming officers in public. *Id.* Mr. Camacho alleged that the LAPD frequently published photographs of its officers online and included examples in his lawsuit. Camacho Decl. ¶ 10; RJN, Ex. D.

3. The City Discloses LAPD Photographs in Settlement Agreement

After significant negotiations between Mr. Camacho’s counsel and Deputy City Attorney Hasmik Badalian Collins, the parties signed a settlement agreement requiring the City to provide the Photographs to Mr. Camacho. Camacho Decl. ¶ 12; Ex. A. The settlement made no mention of undercover officers. *Id.* On or about September 16, 2022, a staff member from the City Attorney’s Office handed Mr. Camacho a flash drive with 9,310 LAPD officers’ photographs, names, and serial numbers. Camacho Decl. ¶ 13. The staff member gave Mr. Camacho a letter dated September 16, 2022 stating that “images of officers working in an undercover capacity as of the time the pictures were downloaded (end of July 2022) are *not included*.” *Id.*, Ex. B. (emphasis added).

B. Mr. Camacho Engaged in Free Speech by Newsgathering and Reporting

1. Mr. Camacho Publishes Photographs and News Reports on Twitter

A few days after receiving the Photographs, Mr. Camacho posted a link to the Photographs, names and serial numbers for 9,310 of LAPD headshots – on his Twitter account.

1 Camacho Decl. ¶ 13. He later deleted the post after realizing that the link did not work. *Id.*

2 On March 20, 2023, Mr. Camacho posted the Photographs for a second time on his
3 Twitter account: “RAW DATA DUMP. Here’s 9,310 of LAPD’s headshots. All of these are a
4 public record” and attached a link to the Photographs. Camacho Decl. ¶ 17; RJN, Ex. G. Mr.
5 Camacho posted a series of tweet posts (known as a Twitter thread) reporting that he obtained
6 the LAPD Photographs, names, and serial numbers as part of his newsgathering as a journalist
7 and filmmaker. *Id.* Mr. Camacho’s Twitter post linking to the Photographs has been viewed over
8 25,000 times. Mr. Camacho has seen about 15 LAPD officers look at the link to the Photographs
9 because he can see their email addresses when they access the link. *Id.*

10 **2. Mr. Camacho Provides the Records to a Website, Which Publishes** 11 **Them**

12 Several months after receiving the Records from the City, Mr. Camacho was asked by a
13 representative of Stop LAPD Spying Coalition for a copy of the flash drive of the LAPD officer
14 photographs, names, and rank. Once the City gave Mr. Camacho the Records, the Records
15 became public records for everyone. *See Black Panther Party v. Kehoe*, 42 Cal.App.3d 645, 658
16 (1974) (government not permitted to “withhold[] from one citizen what another citizen is
17 permitted to see”). Mr. Camacho therefore provided access to the flash drive to the Stop LAPD
18 Spying Coalition. Camacho Decl. ¶ 15.

19 On March 17, 2023, the Stop LAPD Spying Coalition created a new website,
20 <https://watchthewatchers.net>, to host the LAPD Photographs with a search function allowing the
21 public to search for LAPD officers’ photographs, names, and serial numbers that Mr. Camacho
22 had provided to the organization on the organization, and added other information such as the
23 officers’ work email addresses, which it obtained independently of Mr. Camacho. *Id.* ¶ 16; RJN
24 pp. 6-7. On March 21, 2023, the *Times* published a news article reporting that Mr. Camacho
25 obtained the Photographs and that the Stop LAPD Spying Coalition posted them on the
26 <https://watchthewatchers.net> website, and the LAPD officers’ labor union harshly criticized the
27 City for disclosing the Photographs. RJN, Ex. H. Numerous media outlets reported about Mr.
28 Camacho’s obtaining of the Photographs, the posting of the Photographs by the Stop LAPD

Spying Coalition, and the police union’s criticisms. RJN, Exs. H-EE.

3. LAPD Officers’ Police Union File Legal Actions against the City

March 28, 2023, the LAPD’s officers’ labor union, the Los Angeles Police Protective League, sued the City and Chief Michel Moore for disclosing the Photographs. RJN, Ex. E. Many news organizations published articles about the lawsuit and controversy. RJN, Exs. H-EE.

C. The City Sues Mr. Camacho and Seeks Court Injunction to Stop His Reporting

On or March 30, 2023, over six months after providing Mr. Camacho with the Photographs on September 16, 2022, the City Attorney’s Office sent his lawyers a letter demanding that he return the Photographs, asserting the City mistakenly included some “undercover” officer photographs in the flash drive. Camacho Decl. ¶ 18, Ex. C.

Just a few days later, on April 6, 2023, the City sued Mr. Camacho and the Stop LAPD Spying Coalition, alleging three causes of action. The first cause of action for “Possession of Personal Property” alleges that Mr. Camacho has “been and now [is] in wrongful possession” of the City’s “personal property.” Complaint ¶¶ 25-28. The second cause of action for “Declaratory Relief” seeks both a declaratory judgment resolving ownership of the Photographs *and* an injunction requiring Mr. Camacho to return the Photographs, destroy all “electronic copies” and “prohibit[] ... publishing said records online.” *Id.* ¶¶ 29-33. The third cause of action for “Return of Government Records” alleges that Mr. Camacho is in “wrongful possession” of “photographs and images of officers assigned to undercover duties” and seeks a court order requiring Mr. Camacho to return the Photographs based on Government Code § 6204 and 6204.1. *Id.* ¶¶ 35-36. The City’s “Prayer” seeks a Court order commanding the Los Angeles County Sheriff’s Department to “seize said property” from Mr. Camacho, permanently enjoin him “from possessing, using, posting, or further distributing all inadvertently produced photographs” and order him to return “the flash drive and return of all photographs and destruction of all electronic and physical copies in [his] possession, custody or control.” *Id.*, Prayer ¶¶ 1-6. The City also asks the Court order Mr. Camacho to pay “[l]itigation costs and attorneys’ fees.” *Id.*, Prayer ¶ 5.

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III. Argument

The SLAPP statute requires the City’s Complaint to be stricken because it arises from Mr. Camacho’s exercise of his constitutional rights of petition and free speech about a matter of public concern and the City cannot meet its burden of establishing a probability of prevailing on any of its claims because they are barred by the state and federal constitutions.

The City’s lawsuit is futile because the Photographs have been published across the internet. *The Intercept* news website posted copies of the photographs in an article posted on its website, <https://theintercept.com/2023/04/11/los-angeles-lawsuit-lapd-headshots/>. RJN, Ex. CC. The website DDoSecrets.com has downloaded the Photographs onto its website available to the public for downloading at <https://data.ddosecrets.com/LAPD%20Headshots/>, which reportedly uses BitTorrent to keep others from removing the file. The Photographs have been downloaded to the internet archive website, <https://archive.org/download/lapd-headshots-2023>. RJN, pp. 6-7.

A. The City’s Lawsuit Fails to Define “Undercover”

The City’s Complaint alleges that the Photographs contain images of some LAPD officers who work in “sensitive assignments” or “undercover” – but never defines those labels. Compl. p. 1, ¶¶ 15-16, 18, 35-36. Nor does the City cite any evidence that any of the Photographs actually include “undercover” officers, relying on a newspaper article. *Id.* ¶ 15. The Complaint provides only conjecture about “*potential* threats,” “the *possibility* of danger” to officers, and “harm[]” to undercover operations without any evidence. *Id.* ¶ 18 (emphasis added). In short, the City seeks to trample on Mr. Camacho’s constitutional rights with zero evidence.

B. The SLAPP Statute Requires the Court to Conduct a Two-Part Test

The California Legislature enacted Code of Civil Procedure § 425.16 to create a new “special motion to strike any 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.” C.C.P. § 425.16(b)(1). The motion provides “a fast and inexpensive unmasking and dismissal of SLAPP’s” (*Wilcox v. Superior Court*, 27 Cal. App. 4th 809, 819, 823 (1994)) and is meant to “nip SLAPP litigation in

1 the bud[.]” *Braun v. Chronicle Publ’g Co.*, 52 Cal. App. 4th 1036, 1042 (1997). The statute
2 instructs that the law “shall be construed broadly” to ensure that “this participation should not be
3 chilled through abuse of the judicial process.” C.C.P. § 425.16(a).

4 The California Supreme Court has instructed courts to “examine the principal thrust or
5 gravamen of plaintiff’s cause of action to determine whether the ... SLAPP [statute] applies,”
6 not label of the claim. *Id.* “A claim arises from protected activity when that activity underlies or
7 forms the basis of the claim.” *Park v. Board of Trustees of Cal. State University*, 2 Cal. 5th 1057,
8 1062 (2017). Courts have held that many types of claims can “arise” from protected
9 activity. *E.g.*, *San Diegans for Open Gov’t v. San Diego State Univ. Research Found.*, 13 Cal.
10 App 5th 76, 89 (2017) (claim for violating self-dealing statute); *Cross v. Cooper*, 197 Cal. App.
11 4th 357, 365 (2011) (interference with prospective economic relations); *Navellier v. Sletten*, 29
12 Cal. 4th 82, 90, 92 (2002) (breach of contract and fraud); *Kashian v. Harriman*, 98 Cal. App. 4th
13 892, 907-08 (2002) (unfair competition).

14 The SLAPP statute requires a court to conduct a two-step process. In the first step, the
15 court must determine whether the “claim arises from protected activity when that activity
16 underlies or forms the basis of the claim” by considering whether the “liability” is “based on
17 speech or petitioning activity” and whether the plaintiff could have asserted the claim “but for”
18 the defendant’s protected activity. *Park*, 2 Cal. 5th at 1062, 1065. During this first step, the court
19 is precluded from considering whether the speech violates a civil statute or common law; doing
20 so would be “placing the cart before the horse.” *DuPont Merck v. Superior Court*, 78 Cal. App.
21 4th 562, 759 (2000). The court must wait to consider the merit of the plaintiff’s claim “in the
22 second part of the analysis,” when deciding “whether there is a probability plaintiffs will
23 prevail.” *Id.* Once the court determines that the defendant has satisfied this first test, the burden
24 shifts to the plaintiff to demonstrate “a probability of prevailing on the claim[s].” *Id.*

25 **C. The Claims Arise From Activity Protected by Subsections (e)(1), (e)(3), and**
26 **(e)(4)**

27 **1. The Three Claims Arise from Protected Petitioning Activity**

28 All of the claims arise from Mr. Camacho’s petitioning activity. His filing of his lawsuit

1 against the City and obtaining the Photographs as a result of his lawsuit qualify as a “writing
2 made before a ... judicial proceeding,” which is petitioning activity protected by § 425.16(e)(1)).
3 This subsection does not require Mr. Camacho to establish that his petitioning activity involved a
4 matter of public interest. *Id.*

5 The City cannot evade the SLAPP’s protection of petitioning activity by labeling its
6 claims as “Possession of Personal Property,” “Declaratory Relief,” and “Return of Government
7 Records.” Mr. Camacho’s liability is based on his lawsuit against the City and obtaining the
8 Photographs through that lawsuit. The City could not allege its claims against Mr. Camacho “but
9 for” his successful lawsuit that resulted in the City giving him the Photographs. *See Park*, 2 Cal.
10 5th at 1062, 1065 (using “but, for” analysis).

11 **2. All Three Claims Arise from Protected Speech on Issue of Public**
12 **Interest**

13 **a. The Claims Arise from Protected Speech on a Public Forum**

14 The City’s claims arise from Mr. Camacho speech on a “public forum” – his posting of
15 the Photographs on Twitter – which is protected by § 425.16(e)(3). The California Supreme
16 Court has held that “Web sites accessible to the public ... are ‘public forums’ for purposes of the
17 ... SLAPP statute.” *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41, n. 4 (2006). In *Cross v. Facebook,*
18 *Inc.*, 14 Cal. App. 5th 190 (2017), the Court of Appeal held that “Facebook’s website and the
19 Facebook pages at issue are ‘public forums’” for the purpose of the SLAPP statute. *Id.* at 222
20 (quotation marks and citation omitted).

21 **b. The Claims Arise from Speech: Newsgathering and Reporting**

22 The City’s claims also arise from Mr. Camacho’s “conduct in furtherance of a
23 constitutional right to free speech” – his newsgathering, reporting, and posting the Photographs
24 on Twitter. Both activities are protected by § 425.16(e)(4). The City cannot get around the
25 SLAPP statute’s protection of speech by avoiding any mention in its Complaint that Mr.
26 Camacho posted the Photographs on Twitter. Nor can the City evade the SLAPP’s protection of
27 Mr. Camacho’s speech by labeling its claims as “Possession of Personal Property,” “Declaratory
28 Relief,” and “Return of Government Records.” All of the City’s claims arise from Mr.

1 Camacho's speech activity because all of the claims seek to stop him from publishing the
2 Photographs and require him to return them to the City. Compl. ¶¶ 25-36, Prayer ¶¶ 1-4.

3 The "free speech right to report the news" is protected by § 425.16(e)(4). *San Diegans for*
4 *Open Gov't v. San Diego State Univ. Rsch. Found.*, 13 Cal. App. 5th 76, 101 (2017) (citation
5 omitted). "Reporting the news usually requires the assistance of newsgathering, which therefore
6 can be construed as undertaken *in furtherance* of the news media's right to free speech" under
7 subsection (e)(4). *Lieberman*, 110 Cal. App. 4th at 166 (italics in original). *See also Sipple v.*
8 *Found. for Nat. Progress*, 71 Cal. App. 4th 226, 240 (1999) (news reporting is free speech
9 protected by § 425.16); *Braun v. Chronicle Publ'g.*, 52 Cal. App. 4th 1036, 1045 (1997) (same).

10 In *ALADS*, the Court of Appeal held the plaintiff's cause of action for injunctive relief to
11 block the newspaper from *future* news reporting using confidential background files, names, and
12 photographs for 500 Los Angeles County Sheriff's Department deputies arose from the
13 newspaper's speech protected by subsections (e)(3) and (e)(4). *Id.* at 816. The court so held with
14 the heading: "The Trial Court Correctly Found [that the] Complaint Arises from the Times's
15 Protected Activity: News Reporting." *Id.* The same is true here.

16 **3. The City's Claims Arise From Speech About an Issue of Public** 17 **Interest**

18 The City's claims trigger the protection of subsections (e)(3) and (e)(4) because the
19 claims arise from Mr. Camacho's speech on public forum and reporting about the Photographs,
20 which are a matter of public interest. In *ALADS*, the Court of Appeal cited with approval the trial
21 court's holding that "the qualifications, conduct, and *identities* of peace officers are matters of
22 public interest" protected by subsections (e)(3) and (e)(4). *Id.* at 814, 816 n.8 (citation omitted)
23 (emphasis added). "The public has a strong interest in the ... conduct of law enforcement
24 officers." *Id.* at 826. *See also Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039, 1050 (2021)
25 (conduct of police officer is "undoubtedly" an issue of public interest pursuant to SLAPP
26 statute). Outside of the SLAPP context, the California Supreme Court has held that "[t]he
27 public's legitimate interest in the *identity and activities* of peace officers is even greater than its
28 interest in those of the average public servant." *Commission on Peace Officer Standards &*

1 *Training v. Superior Court*, 42 Cal. 4th 278, 297 (2007) (“*POST*”) (emphasis added). “In order to
2 maintain trust in its police department, the public must be kept fully informed of the activities of
3 its peace officers.” *Id.* (citation omitted). *See also Gomes v. Fried*, 136 Cal. App. 3d 924, 933
4 (1982) (Even a patrolman ... [of] the lowest in rank of police officials ... has duties ... highly
5 charged with the public interest.”) (quotation marks and citation omitted).

6 As in these cases, the Photographs posted by Mr. Camacho are a matter of public interest.
7 His Twitter post linking to the Photographs has been viewed more than 25,000 times. Camacho
8 Decl. ¶ 17; RJN, Ex. G. Many news organizations have reported about the Photographs and the
9 controversy surrounding the publication of those Photographs on the internet. RJN, Exs. H-EE.
10 Courts may take judicial notice of news reports submitted by defendants to establish that the
11 claims arise from a matter of public concern. *Seelig*, 97 Cal. App. 4th at 115 & n.5 (“debate
12 within the media” as shown through news articles establishes that issue is of public interest in
13 SLAPP case). Mr. Camacho’s reporting on Twitter that he sought the Photographs to assist his
14 own reporting, that of other journalists, and members of the public to identify LAPD officers on
15 the street is also of public interest. Camacho Decl. ¶¶ 7-8.

16 For all of these reasons, the City’s claims arose from Mr. Camacho’s free speech on a
17 public forum about a matter of public interest and his newsgathering and reporting a matter of
18 public interest – the Photographs and their publication – which are speech activities protected by
19 § 425.16(e)(3) and (e)(4).

20 **D. The City Cannot Meet Its Burden to Prove a Probability of Prevailing**

21 Because the City’s claims fall within Section 425.16(e)(1), (e)(3) and (e)(4), the burden
22 shifts to the City “to establish[] that there is a probability that the [City] will prevail” on each of
23 its claims. C.C.P. § 425.16(b)(1). The City “may not rely solely on its complaint, even if
24 verified; instead, its proof must be made upon competent admissible evidence.” *Sweetwater*
25 *Union High School Dist. v. Gilbane Building Co.*, 6 Cal. 5th 931, 940 (2019) (quotation marks
26 and citation omitted). “Courts have long required that the evidence relied on by the plaintiff must
27 be admissible at trial.” *Id.* at 946. Affidavits and declarations “must reflect that they were made
28 by competent witnesses with personal knowledge of the facts they swear to be true.” *Id.* at 945.

1 The City has cited *no* admissible evidence to support its claims.

2 **1. The City Cannot Overcome the Constitutional Bar Against a Prior**
3 **Restraint**

4 “The cases invalidating prior restraints -- especially restraints on publication by the press
5 -- are legion.” *ALADS*, 239 Cal. App. 4th at 822. For more than 100 years, California and federal
6 courts have struck down court orders enjoining speech about a matter of public concern, known
7 as prior restraints. Prior restraints are presumptively unconstitutional under the First Amendment
8 and even more so under the California Constitution. In *Wilson v. Superior Court*, 13 Cal. 3d 652,
9 658 (1975), the California Supreme Court held that a “preliminary injunction violated
10 petitioner’s rights of freedom of expression under the United States Constitution, and for an
11 independent ground, under the broader terms of the California Constitution.” *Id* at 662. The court
12 explained held the “state constitutional guarantee of the right of free speech and press” is a
13 “protective provision more definitive and inclusive than the First Amendment.” *Id.* at 658.
14 Section 2, Article 1(a) not only guarantees that “[e]very person may freely speak, write and
15 publish his or her sentiments on all subjects, being responsible for the abuse of this right,” but
16 also expressly provides that “[a] law may not restrain or abridge liberty of speech or press.” *Id* at
17 658 (quoting Cal. Const., art. I, § 2(a)). In *Freedom Comm. v. Superior Court*, 167 Cal. App. 4th
18 160 (2008), the Court of Appeal held that a court order barring a newspaper from reporting about
19 a public trial was “an impermissible prior restraint violative of both the United States and
20 California Constitutions.” *Id.* at 152. The court noted that prior restraints are barred by the
21 California Constitution because it “provides an even broader guarantee of the right of free speech
22 and the press than does the First Amendment.” *Id.* at 154 (citation omitted). *Accord* *ALADS*, 239
23 Cal. App. 4th at 823 (California Constitution ““provides an even broader guarantee of the right of
24 free speech and the press than does the First Amendment””) (citation omitted).

25 The United States Supreme Court has described a court order barring the press from
26 publishing information about matters of public concern “the essence of censorship.” *Near v.*
27 *Minnesota*, 283 U.S. 713, 713 (1931). “[P]rior restraints on speech and publication are the most
28 serious and the least tolerable infringement on First Amendment rights.” *Nebraska Press Assn. v.*

1 *Stuart*, 427 U.S. 539, 559 (1971). There is a “heavy presumption” against the “constitutional
2 validity” of prior restraints on expression. *Organization for a Better Austin v. Keefe*, 402 U.S.
3 415, 419 (1971). Not even when the Nixon Administration warned that Daniel Ellsberg’s
4 unauthorized disclosure to the press of the classified “Pentagon Papers” about the disastrous
5 Vietnam War posed a “grave and immediate danger” to national security did the Supreme Court
6 grant a prior restraint ordering the press to stop publishing the leaked documents. *New York*
7 *Times Co. v. United States*, 403 U.S. 713, 714 (1971).

8 In *ALADS*, a labor union for rank-and-file deputies in the Los Angeles County Sheriff’s
9 Department asked a court to enjoin the *Los Angeles Times* from publishing the full background
10 investigation files for 500 deputies, which included “the deputies’ names,” “photographs,”
11 “names and address of family members,” information about juvenile arrests, school and military
12 disciplinary actions, and previous job firings and reprimands. *Id.* at 811-12. The *Times* filed a
13 SLAPP motion, asserting that the union could not establish a probability of prevailing because
14 the requested injunction was a prior restraint that violated both the state and federal constitutions;
15 the trial court and the Court of Appeal agreed and dismissed the lawsuit. *Id.* at 821, 824.

16 **2. The Complaint Cites No Evidence of Harm to Officers**

17 “[T]he First Amendment tolerates absolutely no prior judicial restraints of the press
18 predicated upon surmise or conjecture that untoward consequences may result.” *New York Times*,
19 403 U.S. at 725-26. Here, the Complaint provides only conjecture about “*potential* threats,” “the
20 *possibility* of danger” to officers, and “harm[]” to undercover operations without any evidence.
21 Compl. ¶ 18 (emphasis added). This falls short of the evidence required for a prior restraint.

22 **3. Police Officers Lack a Right to Privacy in Their Identities**

23 The California Supreme Court has held that “identities” of sworn police officers are not
24 confidential. *POST*, 42 Cal. 4th at 295. Official police officer “photographs are not protected by
25 ... the right to privacy” and therefore official officer photographs must be disclosed in response
26 to a Public Records Act request. *Ibarra v. Superior Court*, 217 Cal. App. 4th 695, 698-99 (2013).
27 “[A]n officer’s appearance, as disclosed in an official service photograph, is information that
28 ordinarily is known to persons that the officer comes into contact with.” *Id.* at 704.

1 **4. The City’s Claims Are Also Barred by the First Amendment Because**
2 **the Records Were Lawfully Obtained and Are a Matter of Public**
3 **Interest**

4 The City cannot show a probability of prevailing for the independent reason that the First
5 Amendment prohibits court punishment against individuals who have lawfully obtained
6 information that is a matter of public interest, as here. In *ALADS*, the Court of Appeal held that a
7 *Los Angeles Times* reporter who received over 500 confidential police files from an unknown
8 source – including *photographs* of deputies – had a constitutional right to possess those files
9 because there was no evidence the reporter had engaged in any unlawful conduct to obtain those
10 records, as here. 239 Cal. App. 4th at 819. ““While the government may desire to keep some
11 [records] confidential and may impose the duty upon [government employees] to maintain
12 confidentiality, it may not impose criminal or civil liability upon the press for obtaining and
13 publishing newsworthy information through routine reporting techniques.”” *Id.* (*quoting*
14 *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 519-20 (1986)).

15 The Supreme Court’s decision in *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989) is
16 instructive. In that case, a local sheriff’s department mistakenly disclosed a rape victim’s name in
17 a police report distributed to reporters. *Id.* at 527. The disclosure violated a Florida statute that
18 made it unlawful to “print, publish, or broadcast ... in any instrument of mass communication”
19 the name of the victim of a sexual offense. *Id.* After a reporter from the *Florida Star* newspaper
20 published an article about the rape “derived entirely from the police report” and included the
21 victim’s name, the victim sued the newspaper for negligently violating the statute by revealing
22 her identity and was awarded damages. *Id.* at 527, 529.

23 The Supreme Court reversed. The court held that “if a newspaper lawfully obtains
24 truthful information about a matter of public significance then state officials may not
25 constitutionally punish publication of the information, absent a need to further a state interest of
26 the highest order.” *Id.* at 533 (quoting *Smith v. Daily Mail Publ’g Co*, 443 U.S. 97, 103 (1979)).
27 The Court held that newspaper was entitled to First Amendment protection because its reporter
28 “lawfully obtained” the victim’s name from a government agency – even if the agency

1 mistakenly disclosed it – and the victim’s identity and related crime were matters of “public
2 significance.” *Id.* at 533-36. *See also Bartnicki v. Vopper*, 523 U.S. 514, 535 (2001) (First
3 Amendment bars liability for publication of lawfully obtained records about matter of public
4 concern, even where records illegally obtained by third-party source).

5 Here, the City readily admits that Mr. Camacho lawfully obtained the Photographs from
6 the City as part of his settlement of his lawsuit against the City. Compl. ¶¶ 11-12. As in *ALADS*,
7 the “identities” of the LAPD officers – their Photographs – obtained by Mr. Camacho are a
8 matter of public concern because they allow the public and journalists to observe police officers
9 as they work as public servants, an important function where “the potential for abuse of power is
10 far from insignificant.” 239 Cal. App. 4th at 814, 826. Because Mr. Camacho lawfully obtained
11 the Photographs from the City and the Photographs are truthful and a matter of public concern,
12 the constitutional protection for free speech bars any court action against him. The City therefore
13 cannot show a probability of prevailing on its claims.

14 **5. An Injunction Would Be Futile When the Records Are in the Public** 15 **Domain**

16 The City cannot show a probability of prevailing on its claims for the independent reason
17 the First Amendment forbids punishing reporters “once ... truthful information was publicly
18 revealed in *the public domain*.” *Florida Star*, 491 U.S. at 535 (emphasis added) (quotation marks
19 and citation omitted). That’s because “privacy interests fade once information already appears on
20 the public record.” *Id.* at 532 n. 7 (quotation marks and citation omitted).

21 In federal Freedom of Information Act litigation, federal courts have consistently rejected
22 government attempts to keep records confidential after the government placed the records in the
23 public domain based on the “public domain doctrine” and “doctrine of futility.” *Judicial Watch*,
24 *Inc. v. U.S. Dept. of Defense*, 963 F. Supp. 2d 6, 12, 14 (D. D.C. 2013) (citing cases)
25 (government efforts to keep records confidential are “pointless when the withheld information is
26 truly public, when it has entered and remains in the public domain.”). “To the extent that any
27 data requested under FOIA are in the public domain, the government is unable to make any
28 claim to confidentiality[.]” *Watkins v. U.S. Bureau of Customs and Border Protection*, 643 F.3d

1 1189, 1198 (9th Cir. 2011) (brackets and citation omitted). In *Cottone v. Reno*, 193 F.3d 550,
2 554-56 (D.C. Cir. 1999), the D.C. Circuit Court of Appeals held that the federal government
3 waived a confidentiality exemption for FBI wiretap tapes when the government played the tapes
4 during a public criminal trial. “Our cases leave little doubt that audio tapes aired publicly in open
5 court become a part of the public domain.” *Id.* (citations omitted). “The logic of the public
6 domain doctrine is that where information requested is truly public,” a statutory confidentiality
7 provision no longer “fulfill its purposes.” *Id.* (quotation marks and citation omitted). *See also*
8 *Students Against Genocide v. Dep’t of State*, 257 F.3d 828, 836 (D.C. Cir. 2001) (“government
9 may not rely on an otherwise valid exemption to justify withholding information that is already
10 in the ‘public domain.’”).

11 The case cited by the City, *Ardon v. City of Los Angeles*, 62 Cal. 4th 1176 (2016)
12 (Compl. ¶ 22), is inapposite because the privileged records at issue had not been widely
13 disseminated across the internet, as here. *Florida Star* and the public domain/futility doctrines
14 require the City’s claims be stricken. It would be futile and unfair to punish Mr. Camacho now
15 that the records are in the public domain.

16 **IV. CONCLUSION**

17 Mr. Camacho did nothing wrong. He relied on the City’s statement that the Photographs
18 included *no* “undercover” officers. He had the right under the state and federal constitutions to
19 petition the City for those records and publish them on the internet after the City gave them to
20 him. The Photographs have been spread far and wide on the internet. Nothing the City or this
21 Court can do will get those Photographs out of the public domain. There is no claw back from
22 the internet. Not only would an injunction violate Mr. Camacho’s constitutional right to free
23 speech, it would be futile. Because the City’s claims arise from Mr. Camacho’s constitutional
24 petition and free speech rights protected by the SLAPP statute and because the City’s claims are
25 barred by the state and federal constitutions, the City’s Complaint should be stricken without
26 leave to amend. *See Simmons v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1073 (2001).

27 DATED: April 18, 2023

UC IRVINE SCHOOL OF LAW
PRESS FREEDOM PROJECT

INTELLECTUAL PROPERTY, ARTS, AND
TECHNOLOGY CLINIC
COLLEEN FLYNN ATTORNEY AT LAW
HADSELL STORMER RENICK & DAI LLP

By /s/ Susan E. Seager
Susan E. Seager
Attorneys for Defendant
BEN CAMACHO

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DECLARATION OF BENJAMIN CAMACHO

I, Benjamin Camacho, a defendant in this action, submit this declaration in support of Notice and Special Motion to Strike Plaintiff's Complaint by Defendant Ben Camacho. The facts stated below are true to my personal knowledge, except those matters stated on information and belief, which I am informed and believe to be true.

1. I have worked as a multimedia journalist in Southern California for five years. I am currently a reporter for *Knock LA*, a non-profit news website based in Los Angeles. I have published news articles and photographs in *Knock LA*, *LA Taco*, and Poynter Institute, among others. I have reported on policing issues in Santa Ana and asylum seekers at the US-Mexico border. I am currently filming and editing a feature documentary, *The Blue Hand*, about an LAPD investigation of a June 3, 2020 shooting, which was a finalist for a Pulitzer Center grant. I am chair of the Industrial Workers of the World (IWW) Freelance Journalists Union legal committee, which has provided legal aid for freelance journalists around the world.

2. On May 5, 2021, I witnessed Santa Ana City Councilman Johnathan Hernandez intervene in an incident in the street in downtown Santa Ana involving a man holding a struggling woman, groping her breasts, and yelling at her to "shut up." After Hernandez broke up the incident, he asked one of the men if he was an off-duty Santa Ana police officer, but the man refused to say. Based on my observations of the incident and information provided by others, I believed that the man groping the woman was off-duty Santa Ana Police Department Detective John Rodriguez, and decided I wanted to write a news article about the incident.

3. On the next day, on May 6, 2021, I submitted a Public Records Act request to the City of Santa Ana seeking copies of the current roster of sworn officers, including "names, badge numbers, serial numbers, division, sworn status" and copies of "department headshot photos" for all the officers so I could identify the off-duty officer involved in the groping incident who refused to identify himself to Councilman Hernandez.

4. On June 1, 2021, the City of Santa Ana notified me that a court had issued an injunction blocking the City from disclosing the officer photographs in response to a lawsuit filed by the Santa Ana Police Officers Association. The association alleged the officers had a right to privacy in their photographs and the photographs were confidential police personnel records. On or about June 7, 2021, I intervened in the case and the police union eventually dropped their lawsuit. The City then agreed to produce the officer photographs and other

1 information that I had requested. Based on the photographs released by the city, I was able to
2 confirm that Detective Rodriguez was the man involved in the May 5, 2021 incident in
3 downtown Santa Ana.

4 5. On April 22, 2022, I published a news article on the Knock LA website,
5 “EXCLUSIVE: Santa Ana’s Police MET Team Includes Gang-Like Group that Sexually
6 Assaulted a Child.” The article reported about a group of Santa Ana police officers who have
7 formed a gang with shared skull tattoos whose members allegedly sexually assaulted a 15-year-
8 old girl at a Santa Ana restaurant but faced no consequences. The article also reported about
9 Detective Rodriguez’s involvement in the May 5, 2021 street incident and included several
10 group photographs of the police gang members, including Detective Rodriguez.

11 6. On October 11, 2021, I submitted a Public Records Act request to the Los
12 Angeles Police Department (“LAPD”) asking for “[t]he most up-to-date roster of LAPD Names,
13 badge numbers, serial numbers, division, sworn status” and “[t]he department headshot photos
14 of all of the same officers” (“Records”). These were the same type of photographs and other
15 officer information that I had received from the City of Santa Ana.

16 7. I asked for the LAPD headshot photographs (“Photographs”) because I am
17 considering using headshots of the officers for my documentary about an LAPD investigation,
18 *The Blue Hand*. I also sought the Photographs to identify the LAPD officers I have seen shining
19 their flashlights in journalists’ cameras to block being filmed and refusing to identify
20 themselves in public. I also wanted the Photographs as part of my newsgathering, reporting, and
21 photojournalism about LAPD officers and law enforcement officers more generally.

22 8. These Photographs of the LAPD officers are a matter of public interest because
23 journalists need to inform the public about the identities of police officers when they are
24 working in public, especially when the officers are involved in matters of public interest. It is a
25 matter of public interest to be able to identify police officers who arrest protesters and
26 photojournalists, citizen journalists, and who shine their flashlights in our cameras when we are
27 trying to film officers working in public. It is a matter of concern to be able to identify police
28 officers who refuse to provide their names, badge or serial numbers when they are on duty and
interacting with the public and journalists.

9. On or about January 25, 2022, the LAPD gave me “the roster for the sworn
personnel” but refused to provide any photographs, asserting that it didn’t have a digital

1 database of the photographs and that officers would have manually “locate the negatives” and
2 “determine if there would be any security concerns” with releasing the photos, which would be
3 “unduly burdensome” and therefore not “in the public interest.”

4 10. On May 27, 2022, I filed a Verified Petition for Writ of Mandate, or, in the
5 Alternative, Complaint for Declaratory and Injunctive Relief, *Ben Camacho v. City of Los*
6 *Angeles*, Los Angeles Superior Court Case No. 22STCP02029, against the City of Los Angeles
7 for refusing to provide the photographs I had requested. RJN, Ex. D. Before filing the lawsuit, I
8 conducted research on the internet and found many photographs and names of LAPD officers
9 on the LAPD’s own websites and individual social media accounts created by individual
10 officers. I attached those photographs to my lawsuit against the City of Los Angeles. RJN, Ex.
11 D.

12 11. On June 1, 2022, I posted a tweet on my public Twitter account that attached a
13 link to my lawsuit against the City of Los Angeles. I posted a series of tweets, known as a
14 Twitter “thread,” explaining that I had obtained the same type of photographs from the City of
15 Santa Ana for my reporting about that city’s police department and “realiz[ed] that having
16 photos of officers is a huge help in investigations,” so I “decided it would be nice to have
17 LAPD’s as well.”

18 12. After negotiations, I reached a settlement with the City requiring the City to
19 release the photographs that I had requested for the 9,310 active sworn officers; the agreement
20 did not mention “undercover” officers. The agreement was signed after we reached an
21 agreement on fees. A true and correct copy of the agreement is attached as **Exhibit A**.

22 13. On or about September 16, 2022, I met with a staff member of the City Attorney’s
23 Office, who handed me a flash drive with the LAPD officers’ photographs (“Photographs”). The
24 staff member handed me a letter dated September 16, 2022 stating that the “flash drive includes
25 pictures of all full-time, active duty, sworn officers” and that “[a]s discussed and agreed upon
26 by all counsel, images of officers working in an undercover capacity as of the time the pictures
27 were downloaded (end of July 2022) are not included.” The letter also stated that about 100
28 officers “did not have photographs in the system based on when their last ID badge picture was
taken.” A true and correct copy of the letter is attached hereto as **Exhibit B**.

14. A few days after I received the Photographs, I posted a tweet on my Twitter
account announcing that I had obtained the photographs of LAPD officers through my Public

1 Records Act lawsuit. I included a link to the database of the Photographs, names, and serial
2 numbers, which I had placed in the cloud. However, my laptop was unable to handle the traffic
3 and the link did not work, so I deleted the tweet.

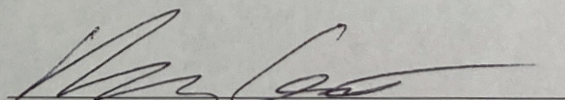
4 15. Several months after I obtained the photographs, a representative of Stop LAPD
5 Spying Coalition asked me for a copy of the flash drive of the LAPD officer photographs,
6 names, and rank. Because the City of Los Angeles voluntarily and intentionally gave me the
7 flash drive in response to my Public Records Act request and the photographs and other
8 information had become public records, available to everyone, I provided access to the flash
9 drive to the Stop LAPD Spying Coalition.

10 16. On or about March 17, 2023, I observed that the website posted the officers'
11 photographs, names, and serial numbers that I had provided to the website – but added other
12 information like the officers' work email addresses, which it obtained independently of me.

13 17. On March 20, 2023, I again posted on my Twitter account a link to the
14 photographs, names, and serial numbers of 9,310 LAPD officers that the City had provided to
15 me. My post said, "RAW DATA DUMP. Here's 9, 310 of LAPD's headshots. All of these are a
16 public record." I posted a series of related posts (known as a Twitter thread) reporting that I
17 obtained the Photographs as part of my newsgathering as a journalist and filmmaker. I reported
18 that I had obtained the same photographs from the City of Santa Ana to identify a police officer
19 who had been involved in a fight and "realiz[ed] that having photos of officers is a huge help in
20 investigations," so I "decided it would be nice to have LAPD's as well." My March 20, 2023
21 post that included the link to the Photographs has been viewed over 25,000 times. As of today,
22 my post and link to the Photographs remains active, and all of the photographs, names and serial
23 numbers remain available to the public.

24 18. On or March 30, 2023, more than six months after providing me with the
25 photographs, the City Attorney's Office sent my lawyers a letter demanding that I return the
26 photographs. A true and correct copy of the letter is attached as **Exhibit C**.

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct, and that this Declaration was executed on the 18 th day of April
2023, in Los Angeles, California.


Benjamin Camacho

Index of Exhibits

<u>Exhibit No.</u>	<u>Description/Title</u>	<u>Date</u>
<u>Exhibit A</u>	Settlement Agreement for <i>Ben Camacho v. City of Los Angeles</i>	11/10/2022
<u>Exhibit B:</u>	Letter from City Attorney's Office describing contents of City's flash drive containing photographs of 9,310 Los Angeles Police Department officers provided to Ben Camacho	09/16/2022
<u>Exhibit C:</u>	Letter from City Attorney's Office demanding Ben Camacho return City's flash drive containing photographs of 9,310 Los Angeles Police officers.	03/30/2023

Decl of Deft Ben Camacho
Ex. A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release of Claims is entered into by and between Petitioner BEN CAMACHO (“Petitioner”) and the CITY OF LOS ANGELES, a municipal corporation (“Respondent”) (hereafter “Parties”), to terminate all disputes arising out of, or related to, the Proceeding as defined hereafter.

RECITALS

WHEREAS, pursuant to the California Records Act (codified as *Government Code* §§6250, *et seq.*), Petitioner requested a roster of all sworn LAPD officers and their headshot photographs; and

WHEREAS, on May 27, 2022, Petitioner commenced an action in the Superior Court of the State of California, County of Los Angeles, Case No. 22STCP02029 (the “Proceeding”) to enforce the Public Records Act; and

WHEREAS, during the pendency of the Proceeding, Respondent has acted in good faith and with reasonable diligence to produce available, responsive, non-exempt records to Petitioner; and

WHEREAS, without admitting liability, the Parties desire to fully and forever resolve any and all claims arising out of or relating to the Proceeding pursuant to the terms and conditions of this Release.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions of this Settlement Agreement and Release and other good and valuable consideration, including but not limited to the above recitals, the Parties hereby agree as follows:

1. RELEASE

(a) Except as set forth in paragraph (b) below, and except as otherwise provided in this Settlement Agreement, in consideration for Respondent paying the sum set forth in Paragraph 2 below, and Respondent's promises and representations herein, Petitioner hereby releases and forever discharges the City, its past and present officers, directors, attorneys, agents, servants, representatives, and employees, and its past and present boards, bureaus, departments, commissions, subsidiaries, affiliates, partners, predecessors, successors-in-interest and assigns (hereinafter collectively referred to as the "Releasees") of and from any and all past and present claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation of any nature whether for compensatory, punitive or any other form of damages, which Petitioner now has or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or related to the claims made in the Civil Action, including any disagreements regarding the issuance and distribution of checks made payable to Petitioner's attorneys only as described in Paragraph 2 below. This release and discharge shall be a fully binding and complete settlement between the Parties to this Settlement Agreement and all parties represented by or claiming through such parties.

(b) Notwithstanding any of the provisions of this Settlement Agreement, nothing in this Settlement Agreement shall operate to release any claim which Petitioner may have against the Respondent or any individual which claim is not included in the claims alleged in the Civil Action.

(c) Petitioner understands and agrees that the sum paid in consideration of this Settlement Agreement is intended to and does release and discharge any and all claims or damages which Petitioner does not know or suspect to exist at the time of their execution of this Settlement Agreement, and Petitioner does hereby waive any rights under section 1542 of the *Civil Code* of the State of California.

2. PAYMENT OF COSTS AND ATTORNEYS' FEES

In consideration of the release set forth in Paragraph 1 above, and Petitioner's promises and representations herein, Respondent hereby agrees to pay Petitioner's counsel the sum of Ten Thousand Dollars (\$10,000.00). Said sum shall be paid by two checks: 1) a check in the amount of \$4,534.30 made payable to the Law Office of Colleen Flynn, 3435 Wilshire Boulevard, Suite 2910, Los Angeles, CA 90010, and 2) a check in the amount of \$5,465.70 made payable to the Law Office of Shakeer Rahman, 838 East 6th Street, Los Angeles, CA 90021. These checks will be issued in settlement of Case No. 22STCP02029 on or before December 5, 2022. Petitioner agrees that the checks will be made payable to his attorneys only and that the checks will be issued directly to Petitioner's counsel as described herein. City will need a valid and completed IRS Form W-9 from both payees in order to process the payment of settlement funds. If Respondent issues any Form 1099s, it will issue one each to each of the two payee law offices above, reflecting the respective amount of the check paid to that office by Respondent. The payment under this Settlement Agreement is payment for costs, attorneys' fees and other expenses.

3. WITHDRAWAL OF PETITION FOR WRIT OF MANDATE

Concurrently with the execution of this Settlement Agreement, counsel for Petitioner shall deliver to counsel for Respondent, an executed Request for Dismissal, in its entirety, with prejudice, of the Proceeding described above. Petitioner shall file said stipulation with the appropriate court and enter it as a matter of record.

4. DISCLAIMER OF LIABILITY

Petitioner agrees and acknowledges that acceptance of the terms of this Settlement Agreement is a full and complete compromise of matters involving disputed issues; that neither the Respondent's promises set forth herein nor the negotiations for this settlement (including all statements, admissions or communications) by Respondent or its attorneys or representatives, shall be considered admissions by them; and that no past or present wrongdoing on the part of the Respondent, or any other person or entity, shall be implied by such payment or negotiations.

5. ENTIRE AGREEMENT

This Settlement Agreement contains the entire agreement between Petitioner and Respondent with regard to the matters set forth in it and shall be binding upon and inure to the benefit, jointly and severally, of Petitioner and Respondent and the executors, administrators, personal representatives, heirs, successors and assigns of each. Any prior agreements, promises, negotiations or representations, whether written or oral, relating to the subject matter of this Settlement Agreement which are not expressly set forth in this Settlement Agreement are of no force or effect. Any amendment or modification of this Settlement Agreement must be in writing, and signed by all Parties.

6. CONTROLLING LAW

This Settlement Agreement is entered into in the State of California and shall be construed and interpreted in accordance with its laws.

7. REPRESENTATIONS

In entering into this Settlement Agreement, Petitioner represents that he has relied upon the advice of his attorneys, and that the terms of this Settlement Agreement have been completely read and explained to Petitioner by his attorneys, and that those terms are fully understood and voluntarily accepted by Petitioner.

8. ADDITIONAL DOCUMENTS

All Parties agree to cooperate fully and to execute any and all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

9. SEVERABILITY

Should any provision of this Settlement Agreement and Release be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not to be a part of the Settlement Agreement and Release.

10. CONSTRUCTION

This Settlement Agreement and Release was mutually drafted by the Parties and their counsel, and it is the result of arms length negotiations. In the event of any ambiguity in or dispute regarding the interpretation of this Settlement Agreement and Release, any such ambiguity or dispute shall not be resolved by any rule or interpretation providing for interpretation against the party who caused the uncertainty to exist, or against the draftsman, and the provisions of *Civil Code* section 1654 shall not apply.


11. CAPTIONS NOT CONTROLLING

The provisions of this Settlement Agreement are controlling as set forth in each paragraph hereof, and the captions are to be disregarded and given no weight whatsoever.

WHEREFORE, THE PARTIES have caused this instrument to be executed.

UNDERSTOOD, ACKNOWLEDGED, AND AGREED:


DATE: 11/10/2022


BEN CAMACHO, Petitioner

DATE: _____ MICHAEL M. FEUER, City Attorney
CARLOS DE LA GUERRA, Senior Managing Asst. City Atty.
JULIE S. RAFFISH, Assistant City Attorney

By: _____
HASMIK BADALIAN COLLINS, Deputy City Attorney
Attorneys for Respondent
CITY OF LOS ANGELES

Approved as to content and form:

DATE: 11/10/2022 LAW OFFICE OF SHAKEER RAHMAN

By: _____
SHAKEER RAHMAN, Esq.
Attorney for Petitioner, BEN CAMACHO

DATE: 11/10/22 LAW OFFICE OF COLLEEN FLYNN

By: /S/ Colleen Flynn
COLLEEN FLYNN, Esq.
Attorney for Petitioner, BEN CAMACHO

Decl of Deft Ben Camacho

Ex. B



Hasmik Badalian Collins
Tel (213) 978-8397
Hasmik.Collins@lacity.org

MICHAEL N. FEUER
CITY ATTORNEY

September 16, 2022

Shakeer Rahman, Esq.
LAW OFFICE OF SHAKEER RAHMAN
838 East 6th Street
Los Angeles, CA 90021

Via messenger pick-up

Colleen Flynn, Esq.
LAW OFFICE OF COLLEEN FLYNN
3435 Wilshire Boulevard, Suite 2910
Los Angeles, CA 90010

Dear Ms. Flynn and Mr. Rahman,

As discussed and agreed upon by counsel, I am enclosing documents responsive to your client's California Public Records Act (CPRA) request (Request #21-8914).

Included in this envelope is a roster of all active duty officers as of July 3, 2022. This is the roster LAPD used in pulling pictures of officers as described below.

Also enclosed in the envelope is a black flash drive. The enclosed flash drive includes pictures of all full-time, active duty, sworn police officers as of July 3, 2022 that were available in our system.

As discussed and agreed upon by all counsel, images of officers working in an undercover capacity as of the time the pictures were downloaded (end of July 2022) are not included. Additionally, there is a small number of individuals (less than approximately 100) who did not have photographs in the system based on when their last ID badge picture was taken.

Ms. Flynn and Mr. Rahman
Page 2
September 16, 2022

I believe this completely and accurately describes the scope of the parameters used in producing pictures responsive to the CPRA request that the parties agreed to. Please let me know if I am missing something. It is my understanding that this production fulfills the CPRA request at issue in the writ entitled *Ben Camacho v. City of Los Angeles* (22STCP02029). I further understand that all that remains after your client's review of the production is the issue of Attorney's fees and a full settlement of the action. I look forward to expeditiously resolving these issues with you both.

Sincerely,

MICHAEL N. FEUER, City Attorney

/S/ Hasmik Collins

By

Hasmik Badalian Collins
Deputy City Attorney

HC/lp

Decl of Deft Ben Camacho

Ex. C

Los Angeles City Attorney Office
200 N Main St, Room 800
Los Angeles CA 90012

USPS CERTIFIED MAIL



9214 8901 9403 8309 2924 81

SHAKEER RAHMAN ESQ
LAW OFFICE OF SHAKEER RAHMAN
838 E 6TH ST
LOS ANGELES CA 90021-1028

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fold Here

Custom 1:
Custom 2:
Custom 3:
Custom 4:
Custom 5:



Office of the Los Angeles City Attorney
Hydee Feldstein Soto

March 30, 2023

Shakeer Rahman, Esq.
LAW OFFICE OF SHAKEER RAHMAN
838 East 6th Street
Los Angeles, CA 90021

Colleen Flynn, Esq.
LAW OFFICE OF COLLEEN FLYNN
3435 Wilshire Boulevard, Suite 2910
Los Angeles, CA 90010

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Re: Demand for Return of Records Pursuant to Government Code Section 6204.2

Dear. Ms. Flynn and Mr. Rahman:

The Los Angeles City Attorney's Office ("Office") has reasonable grounds to believe that records as further described below belonging to the Los Angeles Police Department ("LAPD") are in the possession of your client, Ben Camacho, without authorization by law to possess those records. Pursuant to Government Code section 6204.2, this letter serves as a written notice demanding that your client return the records to the LAPD as required by the terms of the statute. Our Office is authorized to take legal action to recover the records if you fail to respond in writing within the required time or do not adequately demonstrate that the records do not belong to the LAPD.

This Office entered into the Settlement Agreement and Release (the "Agreement") with your client, Ben Camacho, in resolution of his California Public Records Act ("CPRA") (Gov. Code § 7920.000 et seq.), request (Request #21-8914). This Agreement

was lodged in *Ben Camacho v. City of Los Angeles* (22STCP02029) on September 30, 2022. Pursuant to this Agreement and contemporaneous communications, this Office, on behalf of the LAPD, agreed to provide “pictures of all full-time, active duty, sworn officers as of July 3, 2022 that were available in [LAPD’s] system” except for “images of officers working in an undercover capacity as of the time the pictures were downloaded.”¹ These photos were produced to counsel on September 16, 2022, via a flash drive.

As you are now aware, this production inadvertently included numerous images of officers working in an undercover capacity, although some such images were excluded. Based upon our agreement and the CPRA, your client is not in lawful possession of these records. We therefore demand return of the flash drive described above and all digital copies of records obtained from that drive pursuant to the terms of Government Code section 6204.2.

After this Office receives the drive and all copied images, we will provide an updated production. This production will contain all photos of sworn personnel whose photos are displayed on the official LAPD website based upon their seniority and/or rank. Because a production of photos of the remainder of the officers excluding only the undercover officers would necessarily identify them by nature of their exclusion, the amended production will exclude all photographs of sworn personnel except as described above. This exclusion is necessary given the extreme danger to these undercover officers that would be caused by disclosure of their identities.

We thank you in advance for your prompt cooperation with this demand. Should you have the need to contact our office in the interim, please contact me directly at scott.marcus@lacity.org.

Sincerely,

[Scott Marcus](#)

Scott Marcus
Chief Assistant City Attorney

¹ Letter from Los Angeles City Attorney to Shakeer Rahman and Colleen Flynn dated September 16, 2022 at p. 1.

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PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 128 N. Fair Oaks Avenue, Pasadena, California 91103.

On April 18, 2023, I served the foregoing document described as: **NOTICE AND SPECIAL MOTION TO STRIKE COMPLAINT BY DEFENDANT BEN CAMACHO; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF BEN CAMACHO WITH EXHIBITS A-C** on the interested parties in this cause by placing true and correct copies thereof in envelopes addressed as follows:

Christen A. Sproule City of Los Angeles 200 N. Main Street Los Angeles, CA 90012 E-Mail: christen.sproule@lacity.org	Attorneys for Plaintiff CITY OF LOS ANGELES
--	--

XX BY MAIL

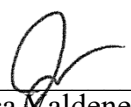
XX I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

XX BY E-MAIL (COURTESY)

XX I served the above-mentioned document electronically on the parties listed to their e-mail addresses listed above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

Executed on April 18, 2023, at Pasadena, California.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Jessica Waldenegro
Declarant