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

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

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

APPELLANTS' OPENING BRIEF

JENNIFER L. HOLLIDAY
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ATTORNEY FOR DEFENDANTS / APPELLANTS / CROSS-RESPONDENTS
ZIEGLER AND ICU, LLC d/b/a *Marco Polo*

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL SECOND **APPELLATE DISTRICT, DIVISION** P	COURT OF APPEAL CASE NUMBER: B333812
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 261343 NAME: Jennifer L. Holliday FIRM NAME: Law Office of Jennifer STREET ADDRESS: 7190 W. Sunset Blvd. #1430 CITY: Los Angeles STATE: CA ZIP CODE: 90046 TELEPHONE NO.: 805-622-0225 FAX NO.: E-MAIL ADDRESS: JLHolliday@Proton.me ATTORNEY FOR (*name*): Garrett Ziegler; ICU, LLC, a Wyoming Limited Liability Company d/b/a	SUPERIOR COURT CASE NUMBER: 23SMCV01418
APPELLANT/ PETITIONER: Garrett Ziegler; ICU, LLC, a Wyoming Limited Liability Company d/b/a Marco Polo RESPONDENT/ REAL PARTY IN INTEREST: P. Kevin Morris	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* [✖] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party *(name*): ICU, LLC d/b/a Marco Polo

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [✖] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)	ICU, Inc.	Parent non-profit corporation and sole member of ICU LLC
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 18, 2025

Jennifer L. Holliday
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF APPELLANT OR ATTORNEY)

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: B333812
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 261343 NAME: Jennifer L. Holliday FIRM NAME: Law Office of Jennifer L. Holliday STREET ADDRESS: 7190 W. Sunset Blvd. #1430 CITY: Los Angeles STATE: CA ZIP CODE: 90046 TELEPHONE NO.: 310-600-6078 FAX NO.: E-MAIL ADDRESS: JLHolliday@Proton.me ATTORNEY FOR (*name*): Garrett Ziegler; ICU, LLC, a Wyoming Limited Liability Company d/b/a Marco Polo USA	SUPERIOR COURT CASE NUMBER: 23SMCV01418
APPELLANT/ PETITIONER: Garrett Ziegler; ICU, LLC, a Wyoming Limited Liability Company d/b/a RESPONDENT/ REAL PARTY IN INTEREST: P. Kevin Morris	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): [✖] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party *(name*): Garrett Ziegler

2. a. [✖] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	**Nature of interest *(Explain):***
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: Feb. 17, 2025

Jennifer L. Holliday
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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MISCELLANEOUS

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 Hunter Biden," and cites an article in the *New York Post*. [JA00034 ¶ 22, FN 6].

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 unrebutted 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 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

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.

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

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.

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 for the rest of your life… We will follow you to the ends of the earth." [JA00045-JA00065]. Ziegler, who submitted an unrebutted

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-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

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).

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).

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.

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-

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.

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

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 "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

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

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.

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 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*.]

The trial court offered no authority for this standard, and the court's language and reasoning 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 provided legally and factually sufficient evidence. *Baral v. Schnitt*, 1 Cal.5th 376, 384-85 (2016). Here, the trial

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.)

II. Defendants Are Entitled to Attorneys' Fees and Costs

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. *Rosenaur 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.

Respectfully submitted,

Date: Feb. 18, 2025

JENNIFER L. HOLLIDAY
SBN 261343
ATTORNEY FOR DEFENDANTS / APPELLANTS / CROSS-RESPONDENTS
GARRETT ZIEGLER, ICU LLC D/B/A MARCO POLO

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1), 8.360(b)(1) and/or Rule 8.74(b) of the California Rules of Court, Appellant's Opening Brief is in text-searchable format, produced using 13-point Century Schoolbook type, and contains approximately 3,538 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: Feb. 18, 2025

__/s/ *Jennifer L. Holliday*___
Jennifer L. Holliday

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2. a. My ☐ residence ☒ business address is *(specify)*:
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   b. My electronic service address is *(specify):* JLHolliday@Proton.me
3. I electronically served the following documents *(exact titles):*
   Appellant's Opening Brief
4. I electronically served the documents listed in 3. as follows:
   a. Name of person served: Bryan Sullivan
   On behalf of *(name or names of parties represented, if person served is an attorney)*:
   P. Kevin Morris

   b. Electronic service address of person served: Bsullivan@earlysullivan.com
   c. On *(date):* Feb. 18, 2025

   ☐ The documents listed in 3. were served electronically on the persons and in the manner described in an attachment *(write "APP-009E, Item 4" at the top of the page)*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 18, 2025

Jennifer L. Holliday
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

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APP-009E [New January 1, 2017]

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At the time of service, I was over 18 years old and not a party to this action. I am in the County of Los Angeles, State of California. My business address is 7190 W. Sunset Blvd. #1430, Los Angeles, CA 90046.

On February 18, 2025, I served true copies of Appellant's Opening Brief on the interested parties in this action as follows:

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Division P

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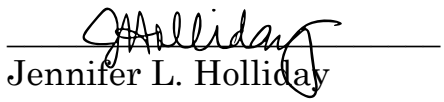
I served an electronic copy of the document via the Court's TrueFiling portal on February 18, 2025 following the ordinary business practice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 18, 2025 at Los Angeles, California.



Jennifer L. Holliday