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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16
17 **FOR THE COUNTY OF FRESNO**
18

19 THE PEOPLE OF THE STATE OF
20 CALIFORNIA,

21 Plaintiff,

22 vs.

23 WICKEY TWOHANDS,

24 Defendant.

Case No.: M255900561

**NON-PARTY JOURNALIST PABLO
ORIHUELA'S MOTION TO QUASH
SUBPOENA OR IN THE ALTERNATIVE
MOTION FOR PROTECTIVE ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
PABLO ORIHUELA; DECLARATION OF
DAVID LOY**

Date: April 10, 2025

Time: 8:30 a.m.

1 TO THE HONORABLE COURT AND ALL PARTIES AND COUNSEL:

2 PLEASE TAKE NOTICE that on April 10, 2025, at 8:30 a.m., in the above-captioned
3 Court, located at 1100 Van Ness Avenue, Fresno, California 93721, or as soon thereafter as the
4 matter can be heard, non-party journalist Pablo Orihuela will and hereby does move to quash any
5 subpoena served on him by the People in its entirety. In the alternative, Orihuela will and hereby
6 does move the Court for a protective order as follows: (a) barring any party from asking or
7 requiring Orihuela to provide any unpublished information concerning his newsgathering or
8 reporting, including but not limited to any testimony concerning his notes, recordings, or
9 personal recollections of information learned as a journalist conducting newsgathering or
10 reporting; and (b) permitting Orihuela to remain in the courtroom during all proceedings in this
11 action notwithstanding his purported status as a subpoenaed witness.

12 Orihuela has not yet been personally served with any subpoena and does not waive
13 personal service. This motion is contingent on personal service on Orihuela of any subpoena.

14 As explained in more detail in the accompanying Memorandum of Points and Authorities,
15 Orihuela brings this Motion pursuant to Article I, section 2(b) of the California Constitution,
16 California Evidence Code § 1070, *Miller v. Superior Court*, 21 Cal. 4th 883, 890–901 (1999)
17 (holding criminal prosecutors absolutely cannot override the constitutional right to shield
18 unpublished journalistic materials or information from subpoena), and Article I, section 2(a) of
19 the California Constitution and the First Amendment to the United States Constitution.

20 This Motion is based on this Notice of Motion and Motion, the supporting Memorandum
21 of Points and Authorities; the attached declarations; the pleadings, files, and records in this case;
22 and any other evidence or argument as may be considered at the hearing on this Motion.

23 Date: April 9, 2025

FIRST AMENDMENT COALITION

24 By:  _____

25 DAVID LOY

26 DAVID SNYDER

27 Attorneys for Non-Party Journalist Pablo
28 Orihuela

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Binding and controlling precedent from the California Supreme Court requires the Court
4 to grant this motion. In *Miller v. Superior Court*, 21 Cal. 4th 883, 890–901 (1999), the Supreme
5 Court held that a criminal prosecutor’s subpoena for a reporter’s unpublished materials and
6 information cannot, under any circumstances, override the protection guaranteed by the reporter
7 shield law contained in Article 1, section 2(b) of the California Constitution. The protection is
8 clear and it is “absolute.” *Id.* There is no weighing or counterbalancing to be done. *Id.*

9 Pablo Orihuela is a reporter employed by *Fresnoland*, a nonprofit news periodical, which
10 is regularly and frequently updated and available online at <https://fresnoland.org/>. Orihuela Decl.
11 ¶ 2. Orihuela joined *Fresnoland* in 2023 as a California Local News Fellow covering the region’s
12 affordable housing crisis and what can be done to fix it. *Id.* ¶ 3.

13 As a reporter, Orihuela regularly gathers information on housing and homelessness in
14 Fresno with the intent to disseminate such information to the public in *Fresnoland* articles, and
15 he has regularly written articles on housing and homelessness in Fresno that have been published
16 in *Fresnoland*. *Id.* ¶¶ 4–5. His only knowledge of any matters related to the prosecution of
17 Wickey Two Hands for violating Fresno’s anti-camping ordinance is derived from his
18 newsgathering as a reporter. *Id.* ¶ 6; *see also, e.g.*, Pablo Orihuela, ‘*Not a legitimate prosecution.*’
19 *Fresno man plans to be the first to fight the city’s anti-camping law*, *Fresnoland* (Feb. 21, 2025),
20 <https://fresnoland.org/2025/02/21/fresno-anti-camping-law/>. Notwithstanding a letter and
21 telephone call from undersigned counsel explaining the relevant law, the prosecution declined to
22 withdraw the subpoena. Loy Decl. ¶¶ 2–3.

23 On the undisputed facts, *Miller* is unambiguous and controlling. Because Orihuela cannot
24 be compelled to answer the prosecution’s questions about anything outside the four corners of his
25 published articles—which are self-authenticating without his testimony under Evidence Code
26 section 645.1—the subpoena cannot be enforced and must be quashed. The Court’s review and
27 analysis can begin and end with the controlling precedent of *Miller*.

1 Although the Court need not reach other issues, the subpoena also cannot overcome the
2 qualified journalist's privilege not to disclose unpublished materials or source information
3 gathered as part of his newsgathering and reporting. There is a very high bar to overcoming that
4 privilege, and the prosecution has done nothing to address let alone overcome it.

5 Finally, even if Orihuela could be compelled to testify, his exclusion from the courtroom
6 is unnecessary and would violate his right to attend and report firsthand on the trial. Therefore, he
7 should not be subject to any exclusion order.

8 The subpoena should be quashed in its entirety. In the alternative, the Court should issue a
9 protective order: (a) barring any party from asking or requiring Orihuela to provide any
10 unpublished information, including but not limited to any testimony concerning his notes,
11 recordings, or personal recollections of information learned as a journalist conducting
12 newsgathering or reporting; and (b) permitting Orihuela to remain in the courtroom during all
13 proceedings in this action notwithstanding his purported status as a subpoenaed witness.

14 **II. THE SUBPOENA SHOULD BE QUASHED.**

15 **A. California's Reporter Shield Law Guarantees Absolute Protection Against** 16 **Compelled Disclosure of any Unpublished Information in a Criminal Case.**

17 The California Constitution guarantees, in relevant part, that any "publisher, editor,
18 reporter, or other person connected with or employed upon a newspaper, magazine, or other
19 periodical publication ... *shall not be adjudged in contempt* ... for refusing to disclose the source
20 of any information procured while so connected or employed for publication in a newspaper,
21 magazine or other periodical publication, or *for refusing to disclose any unpublished information*
22 obtained or prepared in gathering, receiving or processing of information for communication to
23 the public." Cal. Const., art I, § 2(b) (emphasis added); *see also* Cal. Evid. Code § 1070
24 (collectively referred to as the "Shield Law"). The Shield Law protects reporters for digital media
25 such as *Fresnoland*. *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1466 (2006).

26 "Unpublished information" broadly includes information that could be elicited in the
27 testimony sought here:

1 [U]npublished information includes information not disseminated to the public by
2 the person from whom disclosure is sought, whether or not related information has
3 been disseminated and includes, but is not limited to, all notes, outtakes,
4 photographs, tapes or other data of whatever sort not itself disseminated to the public
5 through a medium of communication, whether or not published information based
6 upon or related to such materials has been disseminated.

7 Cal. Const., art. I, § 2(b); *see also* Cal. Evid. Code § 1070(c).

8 The Shield Law “applies to unpublished information whether confidential or not.” *Miller*,
9 21 Cal. 4th at 897; *see also Delaney v. Superior Court*, 50 Cal. 3d 785, 798 (1990) (“The use of
10 the word ‘any’ makes clear that [the Shield Law] applies to all information, regardless of whether
11 it was obtained in confidence”). Unpublished information protected by the Shield Law includes
12 recollections of “percipient observations of a nonconfidential occurrence” or “observations of an
13 event.” *Delaney*, 50 Cal. 3d at 799–800.

14 In particular, the Shield Law protects Orihuela from being compelled to answer questions
15 about whether his unpublished notes or recollections “would confirm or refute the accuracy of the
16 statements” attributed to Two Hands in any published reporting. *Playboy Enterprises v. Superior*
17 *Court*, 154 Cal. App. 3d 14, 23 (1984); *see also In re Howard*, 136 Cal. App. 2d 816, 819 (1955)
18 (holding reporter could not be compelled to testify whether “statement attributed to” person “was
19 made directly to” reporter).

20 Any testimony from Orihuela confirming or refuting the accuracy of any statements
21 attributed to Two Hands in a published article would require Orihuela to compare published
22 information to unpublished notes or recollections, which is exactly what the Shield Law prohibits.
23 As the Court of Appeal explained, the Shield Law does not

24 allow the construction that its protection is inapplicable whenever unpublished
25 information or materials could or would confirm or amplify the published
26 information derived therefrom because nothing new would be disclosed in the
27 source materials. This would conflict with the statute’s unqualified protection
28 “whether or not published information based upon or related to such
[unpublished] material has been disseminated.” By necessity, published material
that could or would be confirmed, amplified or discredited by undissemintated
source material is “related to” or “based upon” such unpublished source material.

Playboy Enterprises, 154 Cal. App. 3d at 23. In the words of the Court of Appeal, any “published
information attributed to [Two Hands] in the article is either based upon or related to the

1 underlying records of the interview. Accordingly, this material falls squarely within the ambit of
2 article I, section 2 protection whether the published information is an exact transcription of the
3 source material or paraphrases or summarizes it.” *Id.* at 23–24; *see also McGarry v. Univ. of San*
4 *Diego*, 154 Cal. App. 4th 97, 120 (2007) (affirming holding of *Playboy Enterprises* and noting
5 “unpublished information remained protected even though the journalist published some
6 information and published the identity of the source”). Because the Shield Law protects
7 unpublished recollections as much as notes or other records, *Delaney*, 50 Cal. 3d at 799–800, it
8 prohibits inquiry into whether Orihuela’s unpublished records or recollections confirm or refute
9 the accuracy of any statements attributed to Two Hands in any published article.

10 In *Miller*, the Supreme Court explained that the Shield Law “is, by its own terms,
11 *absolute* rather than qualified in immunizing a newsperson from contempt for revealing
12 unpublished information obtained in the newsgathering process.” 21 Cal. 4th at 890 (emphasis in
13 original). The Court in *Miller* made it clear that ***prosecutors have no constitutional right that***
14 ***can overcome the absolute protection afforded by the Shield Law.*** *Id.* at 890–901. The Court
15 rejected the People’s request to balance “the prosecution’s interest in obtaining relevant
16 evidence,” *id.* at 892, against the Shield Law’s absolute immunity: “Nor may we convert an
17 absolute into a qualified immunity merely because it is in accord with a particular conception of
18 the proper balance between journalists’ rights and prosecutor’s prerogatives.” *Id.* at 901.

19 *Miller* absolutely bars enforcement of the subpoena. While the subpoena does not identify
20 specific topics, *all* of Orihuela’s knowledge related to this case was learned in the course of his
21 newsgathering activities as a journalist. Orihuela Decl. ¶ 6. Under *Miller*, he cannot be compelled
22 to answer *any* questions related to his sources, newsgathering, or reporting outside of his
23 published work, and the People do not require testimony from Orihuela to authenticate his
24 articles. Cal. Evid. Code § 645.1 (“Printed materials, purporting to be a particular newspaper or
25 periodical, are presumed to be that newspaper or periodical if regularly issued at average
26 intervals not exceeding three months.”); *O’Grady*, 139 Cal. App. 4th at 1466 (holding “periodical
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publication” includes “all ongoing, recurring news publications,” online or otherwise).

Accordingly, the subpoena should be quashed entirely.

The subpoena may also be untimely. Except “in circumstances that pose a clear and substantial threat to the integrity of the criminal investigation or present an imminent risk of death or serious bodily harm,” which are not apparently at issue, “a journalist who is subpoenaed in any civil or criminal proceeding shall be given at least five days’ notice by the party issuing the subpoena that his or her appearance will be required.” Cal. Code Civ. Proc. § 1986.1(a). While the prosecution could argue the subpoena was emailed to *Fresnoland* on May 4, 2025, it is not clear that such an email is sufficient notice. In any event, regardless of timeliness, the subpoena should be entirely quashed.

B. The Qualified Journalist’s Privilege under the California Constitution and the First Amendment Independently Requires Quashing the Subpoena.

Although the Court need not reach any other issues because the Shield Law guarantees absolute protection for Orihuela against the prosecution’s subpoena, Orihuela is also protected by the qualified journalist’s privilege under Article I, section 2(a) of the California Constitution and the First Amendment. *See, e.g., Mitchell v. Superior Court*, 37 Cal. 3d 268, 279 (1984); *O’Grady*, 139 Cal. App. 4th at 1467; *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir. 1993) (*Shoen I*). The journalist’s privilege applies because “at the inception of the newsgathering process,” Orihuela had the “intent to use material—sought, gathered or received—to disseminate information to the public.” *Shoen I*, 5 F.3d at 1293–94 (internal quotation marks omitted); Orihuela Decl. ¶¶ 4–6 .

In *Shoen v. Shoen*, 48 F.3d 412 (9th Cir. 1995) (*Shoen II*), the court held that a party demanding the disclosure of unpublished nonconfidential information can overcome the journalist’s privilege “*only* upon a showing that the requested material is (1) unavailable despite exhaustion of all reasonable alternative sources; (2) non-cumulative; *and* (3) clearly relevant to an important issue in [the] case.” 48 F.3d at 416 (emphasis added). The prosecution cannot make the requisite showing to overcome the privilege.

1 First, under the journalist’s privilege, “virtually all cases agree that discovery should be
2 denied unless the [requesting party] has exhausted *all* alternative sources of obtaining the needed
3 information.” *Mitchell*, 37 Cal. 3d at 282 (emphasis added). Here, the prosecution has made no
4 showing or effort to explain how or whether it have made *any* effort to exhaust alternative sources
5 to testify to any allegedly relevant statements of Two Hands or any other matter at issue.

6 Second, the prosecution has not demonstrated that any testimony Orihuela might give is
7 non-cumulative of other available evidence regarding Two Hands or other matters at issue.

8 Third, nothing establishes that any testimony which could be elicited from Orihuela is
9 “*clearly* relevant to an important issue” in this case. *Shoen II*, 48 F.3d at 416 (emphasis added).
10 Here, the prosecution has made no attempt to articulate the relevance—let alone *clear* relevance,
11 necessity, or criticality—of whatever testimony it hopes to elicit from Orihuela. The subpoena
12 sheds no light on how it supposedly relates to *any* issue, much less a key issue, in the prosecution
13 of Two Hands. The prosecution does not attempt to and cannot overcome the qualified journalist’s
14 privilege. In any event, the Court need not decide that issue, because the prosecution cannot
15 overcome the absolute protection of the Shield Law no matter how important it contends
16 Orihuela’s testimony might be.

17 **C. The Policies Underlying the Shield Law and Journalist’s Privilege Support**
18 **Quashing the Subpoena.**

19 In 1980, California voters approved Proposition 5, incorporating the Shield Law into the
20 state Constitution. *People v. Von Villas*, 10 Cal. App. 4th 201, 228 n.2 (1992). “The elevation” of
21 the Shield Law to “constitutional status must be viewed as an intention to favor the interest of the
22 press in confidentiality” over any competing interests, as the Constitution is the “paramount law
23 of the state.” *Playboy Enterprises*, 154 Cal. App. 3d at 27–28.

24 Accordingly, the California Supreme Court held that the policies underlying the Shield
25 Law must be given great weight:

26 A comprehensive reporter’s immunity ... has the effect of safeguarding ‘the
27 autonomy of the press.’ The threat to press autonomy [from subpoenas] is
28 particularly clear in light of the press’ unique role in society. As the institution

1 that gathers and disseminates information, journalists often serve as the eyes
2 and ears of the public. Because journalists not only gather a great deal of
3 information, but publicly identify themselves as possessing it, they are
especially prone to be called upon by litigants seeking to minimize the costs
of obtaining needed information.

4 *Miller*, 21 Cal. 4th at 898 (internal quotation marks omitted). The Ninth Circuit likewise
5 recognizes the special harm that befalls journalists when they are perceived to be a “research tool
6 of the government.” *Shoen I*, 5 F.3d at 1295. Compelled disclosure of unpublished material
7 “convert[s] the press in the public’s mind into an investigative arm of prosecutors and the
8 courts,” and causes reporters to “be shunned by persons who might otherwise give them
9 information without a promise of confidentiality, barred from meetings which they would
10 otherwise be free to attend and to describe, or even physically harassed if, for example, observed
11 taking notes or photographs at a public rally.” *Id.*

12 Orihuela is being subpoenaed because of his reporting on the controversial topic of
13 enforcing Fresno’s anti-camping ordinance. It is imperative that he not be seen as a research tool
14 or investigative arm of the government. That would hamper his ability to gather information and
15 report on important issues, because sources would be less likely to share newsworthy information
16 with him. Orihuela Decl. ¶¶ 7–8. These very concerns animate the Shield Law’s absolute
17 immunity from prosecution subpoenas. *See, e.g., Miller*, 21 Cal. 4th at 898 (emphasizing need for
18 journalist autonomy and dangers of litigants using journalists for their own purposes).
19 The California Constitution, the United States Constitution, and the Evidence Code all,
20 independently and collectively, make it clear that the subpoena should be quashed. Even if it is
21 not quashed in its entirety, the Court should instruct and admonish all counsel that they may not
22 ask or require Orihuela to provide any unpublished or source information protected by the Shield
23 Law and/or First Amendment.

24 **III. ORIHUELA SHOULD BE EXEMPT FROM ANY EXCLUSION ORDER.**

25 If the subpoena is not quashed and Orihuela is compelled to testify in spite of his
26 constitutional rights, then he should nevertheless be exempted from any witness exclusion order.

1 This Court has discretion in ordering the sequestration or exclusion of witnesses from
2 attending trial. Ca. Evid. Code § 777(a) (“The court *may* exclude from the courtroom any witness
3 not at the time under examination so that such witness cannot hear the testimony of other
4 witnesses.”) (emphasis added); *People v. Valdez*, 177 Cal. App. 3d 680, 687 (“The exclusion of
5 witnesses from the courtroom is a matter within the trial court’s discretion.”). As discussed above,
6 Orihuela should not be compelled to testify at all. But even if he were, the Court should exempt
7 him from any exclusion order the Court might issue.

8 **A. Excluding Orihuela from Attending the Trial Would Not Serve the Purpose of**
9 **the Exclusion Order Because He Is Not a Fact Witness.**

10 The purpose of excluding witnesses is “to prevent tailored testimony and aid in the
11 detection of less than candid testimony.” *Valdez*, 177 Cal. App. 3d at 687. But that rationale does
12 not apply to witnesses who offer testimony summarizing records—*i.e.*, testifying about written
13 information—and such witnesses “need *not* be sequestered.” *U.S. v. Bertoli*, 854 F. Supp. 975,
14 1037 (D.N.J. 1994) (emphasis in original), *aff’d in part, vacated in part on other grounds*, 40 F.3d
15 1384 (3d Cir. 1994). “Like experts, summary witnesses do not testify to the facts of the case, but
16 rather testify ‘based on the testimony of others.’” *Id.* at 1038. And where a witness’s “testimony
17 relate[s] only to a summary of records ... and [does] not depend upon any prior testimony, even
18 the rationale for sequestration ... [is] absent.” *U.S. v. Strauss*, 473 F.2d 1262, 1263 (3d Cir. 1973)
19 (citing *U.S. v. Cozzetti*, 441 F.2d 344, 350 (9th Cir. 1971)).

20 Orihuela’s role is that of a journalist—investigating, interviewing, gathering information,
21 and reporting. He accumulates information and provides it to the public in a summarized,
22 comprehensible way. At most, he could only testify to published information, so there is no risk
23 that he would shape his testimony to that of other witnesses. Accordingly, he is, at most, akin to a
24 witness who summarizes records. The rationale for excluding such a witness is entirely absent,
25 and Evidence Code section 777’s purpose would not be served by Orihuela’s exclusion.

26 There are special dangers posed by listing reporters as witnesses: “Using the power of
27 subpoena to remove reporters with a special background on a story is a troubling matter. It will
28 not enhance the public’s understanding of events, and it may restrain the flow of information in a

1 way that ordinary subpoenas do not.” *United States v. Long*, 978 F.2d 850, 854–55 (4th Cir. 1992)
2 (Wilkinson, J., concurring).

3 The concern does not diminish where a court determines that reporters are “not adversarial
4 witnesses,” but are nonetheless singled out for exclusion. *United States v. Connolly*, 204 F. Supp.
5 2d 138, 138 (D. Mass. 2002). In *Connolly*, the court granted a motion to excuse and exempt two
6 reporters from a witness sequestration order. *Id.* The court recognized the “salutary effect of
7 permitting them to meet their important First Amendment responsibility of keeping the public
8 informed as to the events taking place in open court.” *Id.* The court “adopt[ed] the rationale” in the
9 briefing from counsel, which explained that the reporters intended to report on the trial; the
10 reporters had experience reporting on the “subject matter of the case”; the reporters intended to
11 move to quash trial subpoenas “on the grounds that neither party can satisfy the constitutional
12 burdens imposed on those who seek to compel the testimony of newsmen”; it was unlikely the
13 reporters would be called at trial, and, even if they testified for some limited purpose, they still
14 should be relieved from the sequestration order because neither of the reporters “was a party or
15 witness to any criminal activity” and their “qualifications as witnesses apparently arise from
16 accurately reporting news to the public”; and the “combined effect of the subpoenas (the
17 enforceability of which [had] not yet been ruled upon by the Court) and the sequestration order
18 would violate the reporters’ First Amendment rights if applied to them.” *Id.* at 138–39. As such,
19 “the public interest in these reporters being able to cover [the] proceeding far outweighs any
20 conceivable interest in excluding them from the trial of this case.” *Id.* at 140. The court permitted
21 the reporters to remain at trial and ordered subpoenaing counsel to give the court 48 hours’ notice
22 before calling the reporters to testify so that the court could consider the reporters’ previously filed
23 motions to quash, or for a protective order, as to the subpoenas. *Id.* at 138.

24 **B. Excluding Orihuela Would Infringe His Rights and Privileges.**

25 Orihuela has First Amendment rights to be present and report on the trial and to be treated
26 the same as other reporters who are allowed to stay in the courtroom and report on the trial.
27 The press and public enjoy a First Amendment “right of access to criminal trials.” *Globe*
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1 *Newspaper Co. v. Superior Court*, 457 U.S. 596, 604–05 (1982); *see also NBC Subsidiary*
2 *(KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1181 (1999); Cal. Code Civ. Proc. § 124.
3 Steeped in Anglo-American jurisprudence is the principle that “throughout its evolution, the trial
4 has been open to all who cared to observe,” as criminal trials are “presumptively open.” *Richmond*
5 *Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564, 575 (1980). Indeed, a trial courtroom is “a public
6 place where the people generally—and representatives of the media—have a right to be present.”
7 *Id.* at 578. While the Court has not entirely closed the trial in this action, Orihuela’s right to attend
8 and report on the trial will be infringed if he is not exempted from any exclusion order.

9 **IV. CONCLUSION**

10 This is an easy motion to grant. The Shield Law absolutely bars the prosecution from
11 compelling Orihuela to testify to any unpublished information, including but not limited to his
12 notes or recollections of any statements made by Two Hands. His testimony is unnecessary to
13 introduce a self-authenticating article published in *Fresnoland*. The journalist’s privilege also
14 protects Orihuela against being compelled to testify. To compel a reporter to testify offends the
15 independence of the press and compromises its ability to gather news and inform the public. Even
16 if Orihuela could be compelled to give limited testimony about published information, his
17 exclusion from the courtroom would be unnecessary and unlawful.

18 For all of the foregoing reasons, Orihuela’s Motion to Quash should be granted in full, or,
19 in the alternative, his Motion for Protective Order should be granted.

20 Date: April 9, 2025

FIRST AMENDMENT COALITION

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22 By: 
23 DAVID LOY
24 DAVID SNYDER
25 *Attorneys for Non-Party Journalist Pablo*
26 *Orihuela*
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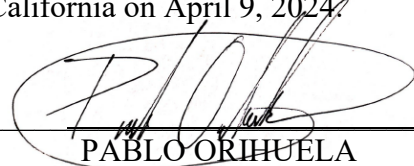
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1 8. In the course of my newsgathering, I may need to make promises of
2 confidentiality in order to obtain pertinent information from them. Even if I do not have to make
3 such a promise to a particular source, it is vitally important that I am able to rely on the
4 protections of California's reporter shield law to prevent compelled testimony as to any
5 unpublished information. As a journalist, I depend on the ability to keep confidential source
6 information and any unpublished materials confidential. If I disclose identifying information for
7 people whose identities I promised to protect, I will be breaking my word to these sources. Even
8 if a source is not confidential, my ability to interview sources and gain their trust depends on my
9 right not to be compelled to testify about my conversations with them. If I am compelled to do
10 so, I could develop a reputation as not being a trustworthy journalist, which could irreparably
11 harm my ability to gain the confidences of other sources. In addition, if my confidential sources'
12 identities were exposed, or if I am compelled to testify about my conversations with any sources,
13 it would have a profound chilling effect on vulnerable people who would otherwise provide
14 journalists like me with important newsworthy information.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed at Fresno, California on April 9, 2024.

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PABLO ORIHUELA

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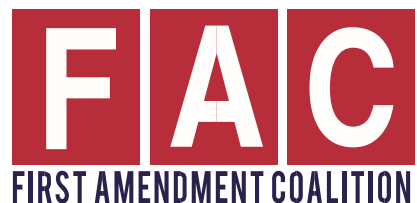
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Exhibit A



David Loy, Legal Director
dloy@firstamendmentcoalition.org
Direct: 619.701.3993

VIA ELECTRONIC MAIL

April 4, 2025

Daniel R. Cisneros, Esq.
Deputy City Attorney
2600 Fresno St., 2d floor
Fresno, CA 93721

Email: Daniel.Cisneros@Fresno.gov

Re: Attempted Subpoena to Pablo Orihuela in *People v. Twohands*, No. M25900561

Dear Mr. Cisneros:

I represent Pablo Orihuela, a reporter for FresnoLand and the subject of an attempted subpoena signed by you and emailed to FresnoLand today. I write to object to the attempted subpoena for the reasons discussed below.

As an initial matter, I understand Mr. Orihuela has not been personally served with the subpoena. He does not consent to electronic service or any manner of service other than personal service as required by law. The subpoena may also be untimely under Code of Civil Procedure section 1986.1.

Apart from those issues, I understand you are attempting to subpoena Mr. Orihuela to testify about information related to his reporting for an article published in FresnoLand. I understand he has no information about any matters at issue in the above-referenced case except through reporting on them as a journalist.

On that basis, even if the subpoena were timely and properly served, California's reporter shield law absolutely protects Mr. Orihuela against a subpoena from the City compelling him to testify about any unpublished information, including but not limited to any notes or recollections about any statements made by Mr. Twohands. Accordingly, the City should immediately cease attempting to subpoena Mr. Orihuela.

Under the reporter shield law, any "publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed, shall not be adjudged in contempt ... for refusing to disclose the source of any information procured while so connected or employed for publication in a newspaper, magazine or other periodical publication, or for refusing to disclose any unpublished information obtained or prepared in gathering, receiving or processing of information for communication to the public." Cal. Const.,

Art. I, § 2(b); see also Evid. Code § 1070(a). The shield law protects reporters for digital media such as FresnoLand. *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1466 (2006).

The term “unpublished information” includes any “information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated and includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated.” Cal. Const., Art. I, § 2(b); see also Evid. Code § 1070(c).

As the California Supreme Court has confirmed, the shield law covers any “unpublished information whether confidential or not.” *Miller v. Superior Court*, 21 Cal. 4th 883, 897 (1999); see also, e.g., *Delaney v. Superior Court*, 50 Cal. 3d 785, 805 (1990) (holding protection of shield law “is not contingent on a showing that a newsperson’s unpublished information was obtained in confidence”). Unpublished information protected by the shield law includes unwritten recollections of “percipient observations of a nonconfidential occurrence” or “observations of an event.” *Delaney*, 50 Cal. 3d at 799–800.

The shield law protects Mr. Orihuela against being compelled to answer any questions regarding unpublished information of any kind, including but not limited to questions about whether his notes or recollections “would confirm or refute the accuracy of the statements” attributed to Mr. Twohands in any published reporting. *Playboy Enters. v. Superior Court*, 154 Cal. App. 3d 14, 23 (1984); see also *In re Howard*, 136 Cal. App. 2d 816, 819 (1955) (holding reporter could not be compelled to testify whether “statement attributed to” person “was made directly to” reporter). As a result, Mr. Orihuela cannot be compelled to testify whether Mr. Twohands in fact made any statements attributed to Mr. Twohands in published reporting.

In a criminal case, the shield law provides absolute protection against a subpoena from the prosecution and cannot be overcome by any argument that the information sought is important or necessary to the government’s case. *Miller*, 21 Cal. 4th at 890–901. Accordingly, the City cannot compel Mr. Orihuela to answer any questions related to his sources or reporting and should cease attempting to subpoena him.

All rights are reserved; this letter may not present all applicable claims or arguments. Please let me know if you have any questions. I hope this matter can be resolved without the need for litigation, but if necessary, an appropriate motion may be filed with the court.

Sincerely,



David Loy
Legal Director

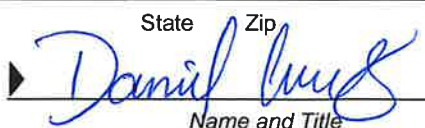
Exhibit B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): — ANDREW JANZ, CITY ATTORNEY FRESNO CITY ATTORNEY'S OFFICE BY: DANIEL R. CISNEROS, DEPUTY CITY ATTORNEY (338960) 2600 FRESNO STREET, 2nd FL., FRESNO, CA 93721 TELEPHONE NO.: 559-621-7500 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): PLAINTIFF, FRESNO POLICE DEPARTMENT		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO STREET ADDRESS: 1100 VAN NESS AVENUE MAILING ADDRESS: CITY AND ZIP CODE: FRESNO, CA 93721 BRANCH NAME: CENTRAL DIVISION		
CASE NAME: PEOPLE OF THE STATE OF CALIF. v WICKEY TWOHANDS		
ORDER TO ATTEND COURT OR PROVIDE DOCUMENTS: Subpoena/Subpoena Duces Tecum		CASE NUMBER: M25900561

You must attend court or provide to the court the documents listed below. Follow the orders checked in item 2 below. If you do not, the judge can fine you, send you to jail, or issue a warrant for your arrest.

- To: (name or business) PABLO ORIHUELA - 710 Van Ness Ave. Ste 120 Pmb 113 Fresno CA 93721
- You must follow the court order(s) checked below:
 - ☒ Attend the hearing.
 - ☐ Attend the hearing *and* bring all items checked in c. below.
 - ☐ Provide a copy of these items to the court (Do not use this form to obtain Juvenile Court records):
 - (1) _____
 - (2) _____
 - (3) _____
 - ☐ If this box is checked, provide all items listed on the attached sheet labeled "Provide These Items."
 - ☐ If someone else is responsible for maintaining the items checked in c. above, that person (the Custodian of Records) must also attend the hearing.
 - ☐ If this box is checked and you deliver all items listed above to the court **within 5 days of service of this order**, you do not have to attend court if you follow the instructions in item 5.

3. Court Hearing Date: Date: <u>04/10/2025</u> Time: <u>8:30 a.m.</u> Dept.: <u>1</u> Rm.: _____	The court hearing will be at (name and address of court): <u>FRESNO SUPERIOR COURT</u> <u>1100 VAN NESS AVENUE, FRESNO, CA 93721</u>
Call the person listed in item 4 below to make sure the hearing date has not changed. If you cannot go to court on this date, you must get permission from the person in item 4. You may be entitled to witness fees, mileage, or both, in the discretion of the court. Ask the person in item 4 after your appearance.	

- The person who has required you to attend court or provide documents is:
 Name: DANIEL R. CISNEROS Phone No.: 559-621-7573
 Address: FRESNO CITY ATTORNEY'S OFFICE
 Number, Street, Apt. No.
2600 FRESNO STREET, 2nd FL., FRESNO, CA 93721
 City _____ State _____ Zip _____
 Date: 04/04/2025 Signature:  _____
 Name and Title: _____

FOR COURT USE ONLY

CASE NAME: PEOPLE OF THE STATE OF CALIF. v WICKEY TWOHANDS	CASE NUMBER: M25900561
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- 5 a. Put all items checked in item 2c and your completed *Declaration of Custodian of Records* form in an envelope. (You can ask the person in item 4 where to get this form.) Attach a copy of page 1 of this order to the envelope.
- b. Put the envelope inside another envelope. Then, attach a copy of page 1 of this form to the outer envelope or write this information on the outer envelope:
- (1) Case name
 - (2) Case number
 - (3) Your name
 - (4) Hearing date, time, and department
- c. Seal and mail the envelope to the Court Clerk at the address listed in ☐ item 3 or ☐ The court address in the caption on page 1. You must mail these documents to the court within five days of service of this order.
- d. If you are the Custodian of Records, you must also mail the person in item 4 a copy of your completed *Declaration of Custodian of Records*. Do not include a copy of the documents.



— The server fills out the section below. —

Proof of Service of CR-125/JV-525

1. I personally served a copy of this subpoena on:
 Date: _____ Time: _____ ☐ a.m. ☐ p.m.
 Name of the person served: _____
 At this address: _____
 After I served this person, I mailed or delivered a copy of this Proof of Service to the person in item 4 on (date): _____
 Mailed from (city): _____
2. I received this order for service on (date): _____ and was not able to serve (name of person) _____ after (number of attempts) _____ attempts because:
- a. ☐ The person is not known at this address.
 - b. ☐ The person moved and the forwarding address is not known.
 - c. ☐ There is no such address.
 - d. ☐ The address is in a different county.
 - e. ☐ I was not able to serve by the hearing date.
 - f. ☐ Other (explain): _____
3. Server's name: _____ Phone no. _____
4. The server (check one)
- a. ☐ is a registered process server.
 - b. ☐ is not a registered process server.
 - c. ☐ is a sheriff, marshal, or constable.
 - d. ☐ works for a registered process server.
 - e. ☐ is exempt from registration under Business and Professional Code section 22350(b).
5. Server's address: _____
 If server is a registered process server:
 County of registration: _____ Registration no.: _____

I declare under penalty of perjury under the laws of the State of California that I am at least 18 years old and not involved in this case and the information above is true and correct.

Date: _____

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TYPE OR PRINT NAME OF SERVER

SIGNATURE OF SERVER

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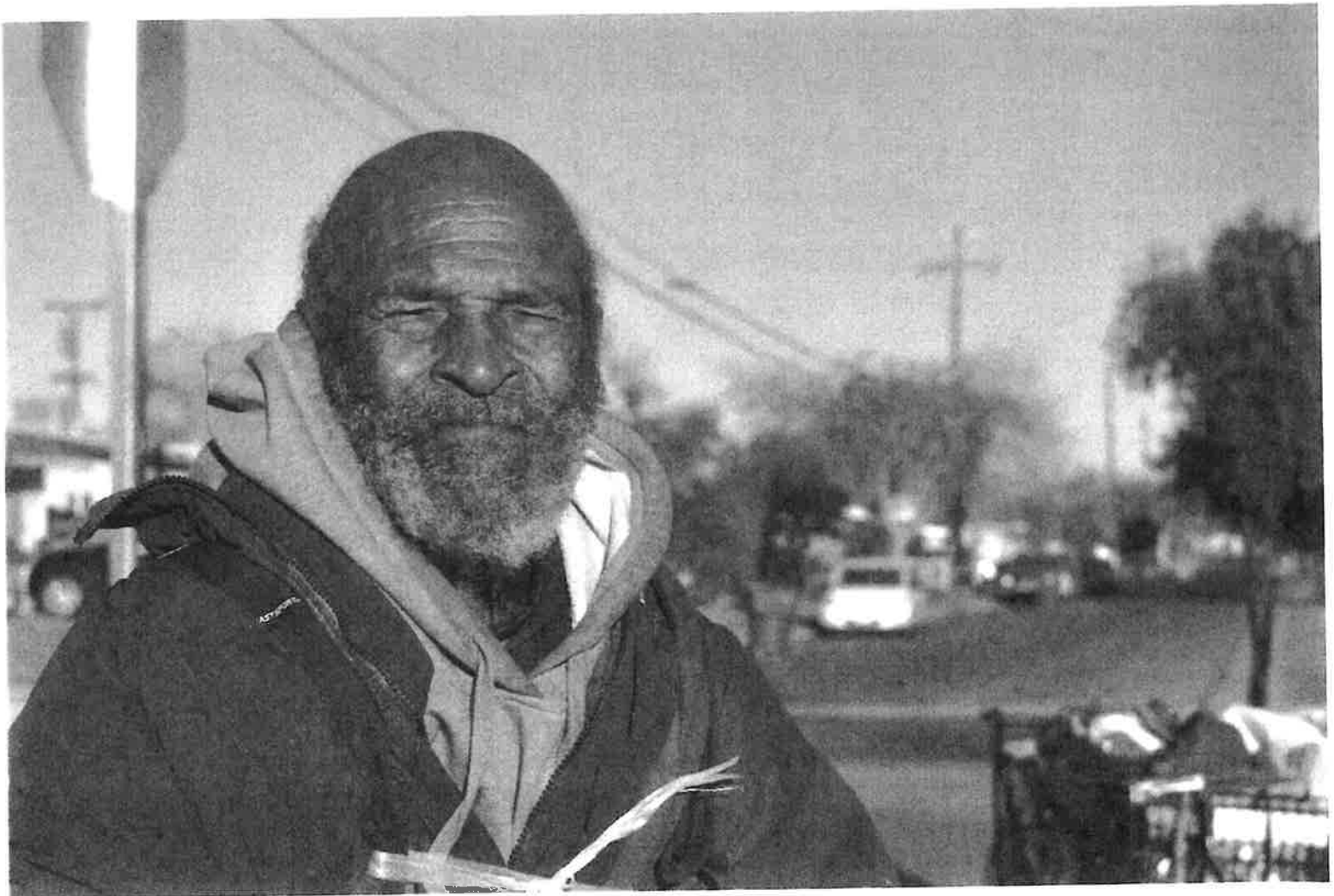
Housing

‘Not a legitimate prosecution.’ Fresno man plans to be the first to fight the city’s anti-camping law

Fresno city prosecutors charged the 77-year-old unhoused man with two misdemeanors. He has pleaded not guilty.



by **Pablo Orihuela**
February 21, 2025



Wickey Two Hands, 77, may be the first man to be put on trial for allegedly violating the city's new anti-encampment ordinance. Pablo Orihuela
| FresnoLand

Overview:

On Thursday, Fresno city lawyers and defense attorney Kevin Little met two stories below the Van Ness Avenue courthouse to begin the city's first criminal trial under its new anti-camping ordinance — in which a 77-year-old man has pleaded not guilty to two misdemeanors.

The trial was postponed until April following motions by Little to dismiss the case.

Should the trial continue, it'll be the first time the city's anti-encampment law has been put under legal scrutiny by the local court.

Deep under Fresno's courthouse, the stage was set this week for a potentially precedent-setting legal fight over the city's contentious anti-camping law.

On Thursday, Fresno city lawyers and defense attorney Kevin Little met two stories below the Van Ness Avenue courthouse to begin the city's first criminal trial under its new anti-camping ordinance — in which a 77-year-old man has pleaded not guilty to two misdemeanors.

The defendant, Wickey Two Hands, has denied wrongdoing and said he doesn't believe he violated the city's controversial "sit, lie, sleep" ordinance when Fresno police arrested him on Oct. 14, 2024 — about a month after the new law went into effect.

If convicted, Two Hands faces up to a year in jail and about \$1,000 in fines.

Thursday's trial was postponed when Little, Two Hands' defense attorney and a longtime advocate for the unhoused, filed a series of motions to dismiss the case. Attorneys representing the City of Fresno asked the court for more time to review the defense motions.

"This prosecution," Little said later in a FresnoLand interview, "like the statute that gave rise to it, is ill-conceived, and we'll continue fighting."

Both sides are due back in court on April 10, where Little said he expects the judge will hand down a ruling on the motions to dismiss.

FresnoLand reached out to Fresno city officials numerous times without hearing back. City Hall spokesperson Sontaya Rose referred all questions to the City Attorney's Office. Daniel Cisneros, one of the attorneys

handling the misdemeanor prosecution, declined to comment, citing office policy. City Attorney Andrew Janz did not respond to requests for comment.

Fresnoland has also submitted multiple public records requests to the city attorney's office and police department requesting documents in connection with the arrest.

'He wasn't breaking any valid law'

Wickey Two Hands has pleaded not guilty to two misdemeanor charges — one alleging the anti-camping ordinance violation and another for “unlawful possession and abandonment of carts.”

Fresno police also did not respond to numerous requests for comment.

Court documents filed by the city say the arrest took place on the morning of Oct. 14, 2024. The officer arrested Two Hands for allegedly admitting that his carts and campsite were illegal.

In his arguments urging the judge to toss the case, Little said, in part, that police body camera footage showed officers failed to inform Two Hands of his Miranda Rights.

Two Hands, a Bakersfield native, moved to Fresno in 1990, and said he lived for about a decade on Motel Drive — an old strip of rundown hotels and inns along Highway 99 on Parkway Drive and Golden State Boulevard near downtown. He also said he was displaced from the area about three years ago when the shelters were transformed into affordable housing.

When asked about how he became homeless, the soft-spoken Two Hands said “it's just the way I live.”

“I just chose this way of life,” Two Hands said. “I just may have chosen it at the wrong time.”

Two Hands said he's aware of available shelters and services, but chooses to stay outside since many of the shelters are only a temporary solution to get off the streets. He also said he can't afford to find a place to live on the money he makes working.

Little said his client declined the city's offer of “diversion” because, Little said, the city failed to provide any specific details of a potential deal.

Diversion is a legal provision where a deal can be struck between the prosecution and the defense to meet a set of guidelines in an effort to circumvent a trial and possible jail time.

Little praised his client for rejecting the city's offer.

"He wasn't breaking any valid law, and he's entitled to have his day in court to prove that, for all of the reasons that we've indicated, that this is not a legitimate prosecution and he shouldn't have to kneel to the powers of the state simply because he's unhoused, and they want to enforce this illegitimate ordinance."

He also said that going to trial forces the ordinance to face legal scrutiny. Little has been mounting a case against the ordinance itself since it was passed, and he said that he sees the case first as a way to "vindicate" his client, but also as an extension of his goal to challenge the city's new law.

"...I think, kind of how the unhoused community feels, that someone needs to stand up and challenge (the ordinance) well," Little said. "We can't continue to have people dragged into court and then take pleas, take diversion...because in a way, we're saying that what's going on is OK."

"I don't think that a lot of people who, in theory, are in favor of this ordinance really know what it entails," Little later added. "So it's time for that to be aired in public."

What happens next?

According to Little, a judge will decide on April 10 whether to dismiss the case or proceed with a criminal trial. When asked what would need to happen for him to come away with a win, Little pointed to a need for transparency.

"To force the city to explain this ordinance and how it's been being enforced and why it's only being enforced against unhoused people," Little said. "To expose how this ordinance is being enforced and why it's being enforced, in front of a public forum, because that has not happened."

Two Hands acknowledged that all of this, for him, was "an unusual circumstance." He said that, if he had it his way, he'd just be able to live in his space alone, unbothered by anybody, saying "it's not a crime to survive and live."



English



Español (Spanish)

[Privacy Policy](#)

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On April 9, 2025, I served true copies of the following document(s) described as **NON-PARTY JOURNALIST PABLO ORIHUELA'S MOTION TO QUASH SUBPOENA OR IN THE ALTERNATIVE MOTION FOR PROTECTIVE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF PABLO ORIHUELA; DECLARATION OF DAVID LOY** on the interested parties in this action as follows:

Kevin G. Little
P.O. Box 8656
Fresno, CA 93747
Email: service@kevinglittle.com

By Electronic Service via Odyssey
Efile

Daniel Cisneros
Fresno City Attorney's Office
2600 Fresno Street, 2nd Floor
Fresno, CA 93721
Email: Daniel.Cisneros@Fresno.gov

By Electronic Service via Odyssey
Efile

Zachary Colbeth
Cannata O'Toole & Olson LLP
100 Pine Street, Suite 350
San Francisco, CA 94111
Email: zcolbeth@cofolaw.com

By Email

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to Odyssey Efile California One Legal, LLC, through the user interface at <https://california.tylertech.cloud/OfsEfsp/ui/landing>.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 9, 2025, at East Palo Alto, California.



Robin P. Regnier