SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

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MARC ANTHONY,

Plaintiff,

- against -

KAITLIN HAAS and THE TOWN BOARD OF THE TOWN OF HIGHLAND,

Respondents.

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INDEX NO. E2023-260

NOTICE OF MOTION TO QUASH SUBPOENA

PLEASE TAKE NOTICE that upon the annexed Memorandum of Law, the Affirmation of Joseph Abraham, and the exhibit attached thereto, nonparty Joseph Abraham will move the Supreme Court of the State of New York, County of Sullivan, 414 Broadway, Monticello, New York, 12701, before the Hon. Stephan Schick, on the 10th day of September, 2024, at 11 a.m. or as soon thereafter as counsel may be heard for an Order to Quash Plaintiff's Subpoena, and for such other and further relief as this Court may deem just and proper.

Dated: August 19, 2024

Respectfully submitted,

By: /s/ *Michael Linhorst*

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*Counsel for Nonparty Joseph Abraham*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

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MARC ANTHONY,

Plaintiff,

- against - INDEX NO. E2023-260

KAITLIN HAAS and THE TOWN BOARD OF THE TOWN OF HIGHLAND,

Respondents.

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# MEMORANDUM OF LAW IN SUPPORT OF NONPARTY JOSEPH ABRAHAM'S MOTION TO QUASH SUBPOENA

Respectfully submitted,

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After Plaintiff's first subpoena of nonparty journalist Joseph Abraham was quashed for inadequate service, Plaintiff is now attempting to subpoena a broader swath of information that even more clearly violates Mr. Abraham's rights under the New York Shield Law and the First Amendment. Mr. Abraham therefore appears for the limited purpose of moving to quash the latest subpoena, which seeks to compel him to testify at a deposition and to produce any documents referring to, among other things, Marc Anthony, the Town of Highland Constabulary, or a *Sullivan County Democrat* article. The Shield Law protects journalists like Mr. Abraham from precisely this type of compulsory testimony. Mr. Abraham respectfully requests that the Court quash the subpoena.

**PRELIMINARY STATEMENT**

The New York Shield Law, Civil Rights Law § 79-h, protects the First Amendment's guarantee of a free press by giving journalists the right to avoid compelled disclosure of information. For confidential sources, the Shield Law provides "[a]bsolute protection." Civil Rights Law § 79-h(b). For all other information that the journalist chooses not to publish, the Shield Law sets out a stringent test that must be met before any information can be disclosed. Civil Rights Law § 79-h(c). This is true regardless of the source of the information, including in cases of government sources.

Plaintiff's latest subpoena does not come close to meeting the test set forth by the Shield Law. Plaintiff cannot show that the testimony he seeks is "highly material and relevant" (in fact, it is not relevant at all), "critical or necessary" to his defamation claim (his defamation claim can proceed without it), and "not obtainable from any alternative source" (other sources can provide any relevant information he seeks). *See* Civil Rights Law § 79-h(c).

Mr. Abraham therefore respectfully requests that the Court grant his Motion to Quash.

**BACKGROUND**

After Plaintiff's prior subpoena to Joseph Abraham was quashed, *see* Order of July 8, 2024, Doc. No. 114,[1] he issued a new subpoena on July 18, 2024, *see* Abraham Aff. ¶ 4 & Exhibit A (subpoena). This latest subpoena is even broader than the first one. It seeks "[a]ny documents" in Mr. Abraham's possession "which refer[] to Marc Anthony, the Town of Highland Constabulary, or to an article published in the Sullivan County Democrat on or about August 19 or 22, 2022 regarding the Town of Highland Constabulary, including but not limited to notes, and texts with Kaitlin Carney Haas." Ex. A. The subpoena additionally states that it is being served on Mr. Abraham because he allegedly "possess[es] information which would identify the person or people that confirmed the Constable Report and other information received anonymously by the Sullivan County Democrat which resulted in the publication of the article entitled 'Highland Constabulary internal turmoil.'" *Id*. It sets a deposition date of August 20, 2024. *Id*.

Other than the contents of the subpoena, the relevant facts have not changed since Mr. Abraham's prior Motion to Quash. *See* Abraham Mem. in Support of Mot. to Quash, Doc. No. 101.

Mr. Abraham was managing editor of the *Sullivan County Democrat* when it published an article titled *Highland Constabulary internal turmoil* on August 19, 2022. *See* Pl.'s Exhibit JA-7, Doc. No. 94. Mr. Abraham was not the reporter assigned to the article; he did not write it, and his name is not included on the byline. *See id*.; Abraham Aff. ¶ 6. The article reported on the contents of an unredacted copy of an investigative report written by the Town of Highland regarding the Town's Constabulary. The newspaper relied on two sources in the article. Abraham Aff. ¶ 7; *see*

[1] Documents that have been previously filed in this matter are identified by their NYSCEF document numbers.

Pl.'s Exhibit JA-7, Doc. No. 94. The first was an anonymous source, who was promised confidentiality and provided a copy of the unredacted report to the newspaper. Abraham Aff. ¶ 7. The second was an unnamed Town source, who confirmed the authenticity of the report. *Id.*; *see* Exhibit JA-7, Doc. No. 94 (article stating "[t]he town has confirmed the contents of the unredacted report obtained by the Democrat").

Plaintiff Marc Anthony was Constable for the Town of Highland until he was suspended in April 2022. Compl. ¶ 1. His Complaint in this matter alleges that Kaitlin Haas, a Town board member, defamed him in "[a] defamatory statement [that] was published in the Sullivan County Democrat." Compl. ¶¶ 81-82. The Complaint does not specify what that "statement" was. *See id*. Plaintiff does not allege that he was defamed by Mr. Abraham or the *Sullivan County Democrat*. Neither Mr. Abraham nor the *Sullivan County Democrat* are parties to this suit.

**ARGUMENT**

Mr. Abraham's Motion to Quash should be granted because the subpoena is wholly barred by the New York Shield Law. The law protects the free press by providing a privilege against compelled disclosure of all unpublished information, including information from government sources and any other non-confidential source. Civil Rights Law § 79-h; *Holmes v. Winter*, 22 N.Y.3d 300, 308-10 (2013).

The subpoena is extremely broad, seeking not only the identity of the Town source who confirmed the authenticity of the report, but also "*[a]ny documents*" that "refer[]" in any way to "Marc Anthony," "the Town of Highland Constabulary," or the article published in the *Sullivan County Democrat* — a demand that would include *all* reporter notes referring to the controversy over the Town's Constabulary (not just notes for this one article), plus *all* unpublished information referring to the controversy, and anything related to either of the two sources. Ex. A (emphasis

added). Additionally, the subpoena seeks *all* notes and texts with Ms. Haas, a Town board member who may have been in communication with the local newspaper about any number of issues. *Id*. The subpoena should be quashed because its scope is far beyond anything that could *even arguably* overcome the Shield Law's protections.

The subpoena's breadth flies in the face of assurances that Plaintiff's counsel made to the Court and to Mr. Abraham's counsel that she was only seeking information about the identity of the Town source. Van Malden Aff. in Opp., Doc. No. 107, ¶ 18 ("The information that is sought from Mr. Abraham is simply who at the Town confirmed the authenticity of the report."); Linhorst Aff., Doc. No. 103, ¶ 8 & Exhibit B, Doc. No. 105 (Plaintiff's counsel stating that "[t]he sole purpose of the deposition is to identify who at 'The Town' confirmed the report"). But even if the subpoena were limited to only that information, it would still be barred by the Shield Law, which protects against the compelled disclosure of all unpublished information, including the government source in this case. To overcome this privilege, a party must meet an exacting three-part test — which Plaintiff cannot meet here because the information about the Town source is not relevant and necessary to Plaintiff's defamation claim, and Plaintiff can obtain any relevant information through other sources. The Court should therefore grant Mr. Abraham's Motion to Quash.

## I. The Shield Law Protects All Unpublished Information.

Any information that a journalist chooses not to publish is protected by the Shield Law. *See* Civil Rights Law § 79-h. The Shield Law provides journalists the "broadest possible protection" against forced disclosure of newsgathering information, and it is "recognized as the strongest in the nation."[2] *Holmes v. Winter*, 22 N.Y.3d 300, 308, 310 (2013). The particular level

[2] In addition to the Shield Law, the First Amendment protects against disclosure of confidential or unpublished information. Compelled disclosure of unpublished information impinges on the

of protection depends on whether the information came from a confidential source, but even the lower level of protection "imposes a very heavy burden on any party seeking to overcome it." *Giuffre v. Maxwell*, 221 F. Supp. 3d 472, 476 (S.D.N.Y. 2016) (citation omitted) (quashing subpoena of nonparty journalist in defamation case).

For information from confidential sources, the Shield Law provides "[a]bsolute protection" to journalists against compelled disclosure of the information. Civil Rights Law § 79-h(b); *see, e.g.*, *Baker v. Goldman Sachs & Co.*, 669 F.3d 105, 107 (2d Cir. 2012) ("New York's Shield Law provides journalists an absolute privilege from testifying with regard to news obtained under a promise of confidentiality.").

For all other unpublished information, the Shield Law imposes a "stringent" test that a party must meet before it can compel a journalist to disclose the information. *Giuffre*, 221 F. Supp. 3d at 476. To obtain any unpublished information from a non-confidential source, Plaintiff would have to make a "clear and specific" showing that the information "(i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative source." Civil Rights Law § 79-h(c). "[A]ll three prongs" of the test "must be satisfied before disclosure can be ordered." *In re Grand Jury Subpoenas to Maguire*, 161 Misc. 2d 960, 966 (Sup. Ct., Westchester Cnty. 1994).

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press's constitutionally protected right of autonomy in editorial judgment. *See Miami Herald Publ. Co. v. Tornillo*, 418 U.S. 241 (1974). Compelled disclosure opens to public scrutiny information and materials that reporters and editors, in their editorial judgment, have chosen not to publish — and in doing so, it subjects those editorial decisions to external pressures that may "seriously hamper [the press's] ability to function in its editorial role." *Application of Consumers Union of U.S., Inc.*, 495 F.Supp. 582, 586 (S.D.N.Y. 1980). Especially when (as here) the press is not even a party to the proceeding, respect for a free press requires that journalists' "editorial privacy" be protected from incursion. *See People v. Iannaccone*, 112 Misc.2d 1057, 1063 (Sup. Ct., N.Y. Cnty. 1982) ("Compelling this reporter to produce her resource materials significantly intrudes into the news gathering and editorial processes.").

This qualified privilege, applying to all unpublished information, is "necessary to insure the protections guaranteed by the First Amendment." *O'Neill v. Oakgrove Const., Inc.*, 71 N.Y.2d 521, 528 (1988). Without it, the free press would come under threat in multiple ways. First, journalists often report on allegations of misconduct in government, along with any number of other controversies that could result in litigation. But if every time journalists reported on such topics they risked getting subpoenaed — with all the time and expense that responding to a subpoena requires — the press would face a serious impediment to freely covering the news. *See, e.g.*, *Giuffre*, 221 F. Supp. 3d at 477 (noting that the Shield Law "protects the independence of the press and the need to allow the press to publish freely on topics of public interest without harassment and scrutiny by litigants" (citation omitted)). In enacting the law, the Legislature recognized that journalists needed special protections, as newspapers play a "unique role" as both "purveyors of information to the public" and "forums for criticism, discussion and debate." *O'Neill*, 71 N.Y.2d at 532 (Bellacosa, J., concurring). Thus, to support that role, the Shield Law protects journalists from becoming, in effect, "an investigative arm of the judicial system, the government, or private parties." *Giuffre*, 221 F. Supp. 3d at 477 (quoting *Gonzales v. Nat'l Broad. Co.*, 194 F.3d 29, 35 (2d Cir. 1999)).

The Shield Law's protections also guard against "incursions into the integrity of the editorial process." *Id*. (quoting *In re Grand Jury Subpoenas Served on Nat. Broad. Co., Inc.*, 178 Misc.2d 1052, 1055 (Sup. Ct., New York Cnty. 1998)). The Legislature aimed to protect "the privacy of editorial processes and the press's independence in its selection of material for publication," as doing so promotes a press that is free, unhampered by undue scrutiny from the government or private litigants. *Id*. (quoting *Pugh v. Avis Rent A Car Sys., Inc.*, 1997 WL 669876, at *5–6 (S.D.N.Y. Oct. 28, 1997)). Indeed, the questions that Plaintiff seeks to ask Mr. Abraham

illustrate how opening the door to compelled testimony inevitably leads to incursions into "the privacy of editorial processes" — Plaintiff proposes asking about Mr. Abraham's "practice as an . . . editor" and about the newspaper's publisher, among other invasive questions. *See* Van Malden letter to Hon. Stephan Schick (June 27, 2024) (attaching proposed deposition questions). These questions demonstrate how deeply into the *Sullivan County Democrat's* private editorial processes Plaintiff wants to inquire. In a similar situation, where "plaintiffs inevitably would have to ask questions regarding the reporter's techniques for conducting his investigation [and] the backgrounds of co-authors and the publication's editorial staff," a federal court applying the Shield Law held that all such information was protected. *Giuffre*, 221 F. Supp. 3d at 478 (explaining that these were "all inquiries into the newsgathering process protected by the Shield Law" (cleaned up)).

Thus, to ensure the press remains fully vital and unfettered, as the Constitution demands, the law imposes important restrictions on compelling information from journalists. Courts apply the law "stringent[ly]," *id.* at 476, and Plaintiff does not come close to meeting this high bar.

## II. Information About the First Source Is Absolutely Protected.

Although Plaintiff's counsel has repeatedly stated that she is not seeking information about the first source — the confidential source who was involved in providing the unredacted investigative report to the *Sullivan County Democrat*, *see* Abraham Aff. ¶ 7 — the scope of the subpoena and counsel's proposed questions both encompass this source. To the extent the subpoena seeks any information concerning this first source, the information is protected by the Shield Law's "[a]bsolute" privilege for confidential material. Civil Rights Law § 79-h(b). As a result, Mr. Abraham cannot be compelled to testify about the identity of the source, the report itself, or any related information. *Id.*

The facts here closely mirror those in *Beach v. Shanley*, where an anonymous source gave a journalist confidential reports about alleged wrongdoing in a county sheriff's office. 62 N.Y.2d 241, 246 (1984). The journalist promised anonymity to the source. *Id*. A grand jury investigating the leak issued a subpoena to the journalist, but the Court of Appeals held that the subpoena had to be quashed under the Shield Law. *Id*. at 247; *see also id*. at 252 ("Although this may thwart a grand jury investigation, the statute permits a reporter to retain his or her information, even when the act of divulging the information was itself criminal conduct.").

The same holds here. The source who provided the investigative report was promised confidentiality. Abraham Aff. ¶ 7. Information about that source is entirely shielded. Civil Rights Law § 79-h(b); *Beach*, 62 N.Y.2d at 247. Indeed, Plaintiff's counsel appears to have recognized as much, stating to the Court and to Mr. Abraham's counsel that she sought only "to identify who at 'The Town' confirmed the report," and not who provided the report in the first place. Linhorst Aff., Doc. No. 103, ¶ 8 & Exhibit B, Doc. No. 105; Van Malden Aff. in Opp., Doc. No. 107, ¶ 18 ("The information that is sought from Mr. Abraham is simply who at the Town confirmed the authenticity of the report."). To the extent the subpoena seeks any information about this first source, it must be quashed.

## III. Information About the Town Source Is Protected Because Plaintiff Falls Far Short of the Shield Law's Stringent Three-Part Test.

Plaintiff also cannot compel disclosure of information about the Town source — the unnamed source from "[t]he town" who confirmed the investigative report's authenticity. Plaintiff cannot make the required "clear and specific" showing that the information is "highly material and relevant," is "critical or necessary" to his claim, or that it could not be obtained "from any alternative source." *See* Civil Rights Law § 79-h(c).

**A. The information would not be "highly material and relevant."**

Plaintiff has offered no argument — let alone a "clear and specific" one — for why the identity of the source who confirmed the authenticity of the report is relevant to his defamation claim. Plaintiff's complaint alleges that Ms. Haas defamed him by making a statement that "was published in the Sullivan County Democrat on August 19, 2022." Compl. ¶¶ 81-82. To succeed in this claim, Plaintiff will have to establish that Ms. Haas (1) made a false statement of fact, (2) to a third party, (3) without privilege or authorization, (4) "constituting fault as judged by, at a minimum, a negligence standard," (5) "and it must either cause special harm or constitute defamation per se." *Jule v. Kiamesha Shores Prop. Owners Ass'n Inc.*, 210 A.D.3d 1330, 1334 (3d Dep't 2022). Mr. Abraham's testimony is not relevant, and certainly not "highly material," to any of those elements.

First, Plaintiff's Complaint never identifies the precise statement it claims to be defamatory, nor does it explain how a statement published in August 2022 harmed Plaintiff, who was already suspended in April 2022. *See* Compl. ¶ 1. Because Plaintiff has not identified the specific words he believes were defamatory, it is not possible for him to give a "clear and specific" explanation for why Mr. Abraham's testimony would be relevant. This failure to identify specific words is fatal to both enforcing this subpoena and establishing defamation at all. *See Jule*, 210 A.D.3d at 1334 (affirming Schick, J.'s dismissal of defamation claim because, among other reasons, "[n]othing in the pleadings provides any actual words attributed to [defendant]" that could amount to defamation).

But even if Plaintiff had made out a cognizable defamation claim, he still could not show that Mr. Abraham's testimony would be relevant, because the identity of the Town source has no bearing on any element of Plaintiff's defamation claim. The Town source merely confirmed that the investigative report provided to the newspaper was authentic. This was a true statement; there

is no allegation here that the report was faked. Therefore, even if Plaintiff could establish that Ms. Haas were the Town source, that would not help at all to establish that she made any false statement against him. And if someone other than Ms. Haas were the source, then that would be yet another reason why the source's identity has no relevance to Plaintiff's claim. Indeed, no matter who the Town source was, information about the source would not have any relevance to whether Ms. Haas is liable for defamation.

**B. The information would not be "critical or necessary."**

Because the identity of the Town source is not even relevant, it certainly is not "critical or necessary." To determine that unpublished information is "critical or necessary within the meaning of § 79–h, there must be a finding that the claim for which the information is to be used virtually rises or falls with the admission or exclusion of the proffered evidence." *In re Application to Quash Subpoena to Nat'l Broad. Co.*, 79 F.3d 346, 351 (2d Cir. 1996). In other words, to meet this element, "a petitioner cannot merely show that it would be useful, but rather that the defense could not be presented without it." *Perito v. Finklestein*, 51 A.D.3d 674, 675 (2d Dep't 2008).

Plaintiff falls woefully short of the line, merely repeating in a conclusory fashion the elements of the Shield Law. *See* Van Malden Aff. in Support, Doc. No. 87, ¶¶ 28, 31; Van Malden Aff. in Opp., Doc. No. 107, ¶¶ 23, 26. He does nothing to explain *why* his defamation claim "virtually rises or falls" with whether Ms. Haas confirmed the authenticity of the report to the newspaper. Plaintiff cannot show that Mr. Abraham's testimony is "critical or necessary."

**C. Any relevant information can be obtained from other sources.**

If Plaintiff were correct that Ms. Haas was the newspaper's Town source, he could have confirmed that in deposing Ms. Haas or in seeking relevant discovery from her. If Ms. Haas was not the source, Plaintiff could similarly have confirmed that with her, and the identity of the source would not be relevant to this suit. Either way, Plaintiff could get the information he claims to need

by deposing Ms. Haas. He therefore cannot establish that the information is "not obtainable from any alternative source." Civil Rights Law § 79-h(c). The Shield Law prohibits subpoenaing Mr. Abraham to obtain this information. *See id*.

Plaintiff's counsel has stated that she already deposed Ms. Haas. Van Malden Aff. in Support, Doc. No. 87, ¶ 12. Apparently, Ms. Haas denied being the source, and Plaintiff's real purpose in seeking Mr. Abraham's testimony is merely to cast doubt on Ms. Haas's credibility. This is not enough to overcome the Shield Law. The law's protections do not yield to "general and ordinary impeachment material or matters which might arguably bear on the assessment of credibility of witnesses. To permit that might well result in the piercing of the privilege far more often and with far less basis than the legislative history suggests is appropriate." *In re Am. Broad. Companies, Inc.*, 189 Misc. 2d 805, 808 (Sup. Ct., New York Cnty. 2001); *see also Perito*, 51 A.D.3d at 675 (holding that petitioner could not overcome Shield Law when the testimony he sought related to "the credibility of witnesses in the impending trial"). Instead, Plaintiff would have to identify a "specific issue, other than general credibility," for which Mr. Abraham's testimony would be "truly necessary." *In re Am. Broad. Companies, Inc.*, 189 Misc. 2d at 808.

A similar situation to the Plaintiff's arose in *Holmes v. Winter*, where a journalist received leaked information from "law enforcement sources," but all of the law enforcement officials who could have been a source testified that they were not and did not know who was. 22 N.Y.3d at 303–04. Even though the trial court concluded that the journalist was the only person who could identify the sources, *id*. at 304, that still was not enough for the Court of Appeals, which held that the journalist could not be compelled to reveal the sources, given the strength of the Shield Law's privilege and New York's public policy supporting journalists in their efforts to report the news. *Id*. at 311.

In another case, a defendant tried to obtain unpublished out-takes from a television news organization, which the defendant claimed would contradict important parts of the plaintiff's deposition testimony. *In re Application to Quash Subpoena to Nat. Broad. Co., Inc.*, 79 F.3d 346, 350 (2d Cir. 1996). The Second Circuit, applying the Shield Law, quashed the defendant's subpoena, explaining that (1) the defendant provided no evidence to establish that the unpublished information would actually contradict the testimony, and (2) such "impeachment material is not critical or necessary to the maintenance or defense of a claim, and there is no clear and specific showing that it would be so here." *Id*. at 352.

The same holds here. If Ms. Haas were the Town source, then Plaintiff could obtain that information from Ms. Haas. But since Plaintiff has already deposed Ms. Haas and she denied it, then the most he could get from Mr. Abraham would be impeachment material, which is not sufficient to overcome the Shield Law's privilege. Either way, the law requires that Plaintiff's subpoena be quashed.

**IV. The Source's Identity Has No Effect on the Shield Law's Protections.**

The Shield Law's protections apply the same no matter who the source may be. The statute distinguishes only between confidential and non-confidential sources; it makes no other distinctions. *See generally* Civil Rights Law § 79-h. That is because the Shield Law is intended as much to protect the journalist as the source. As the Court of Appeals as noted, the Shield Law "provides a mantle of protection *for those who gather and report the news* — and their confidential sources." *Holmes*, 22 N.Y.3d at 310 (emphasis added).

Even if a source works for the government, that makes no difference. In *Holmes*, the journalist learned about a leaked notebook "from two unidentified law enforcement sources." *Id*. at 303. But the fact that the sources belonged to law enforcement had no bearing on the court's analysis. Instead, the Court of Appeals held that it was "evident based on the New York

Constitution, the Shield Law and our precedent that a New York court could not compel [the journalist] to reveal the identity of the sources." *Id*. at 311. Similarly, the Second Department applied the Shield Law and quashed a subpoena seeking documents that were provided to a journalist "by law enforcement officials." *Perito*, 51 A.D.3d at 674–75.

Here, the Shield Law's protections for the Town source are no less rigorous because the source may have been a government official. That is because, in part, the Shield Law exists to protect the journalist and the newsgathering process, not only to protect the source. As the Court of Appeals has explained, the Shield Law reflects the Legislature's decision to give "reporters strong protection against compulsory disclosure of their sources or information obtained in the news-gathering process." *Beach*, 62 N.Y.2d at 245. The law furthers New York's "consistent tradition" of providing journalists "the broadest possible protection." *Holmes*, 22 N.Y.3d at 308. Journalists regularly have to gather information from government officials, sometimes anonymously. The Shield Law would lose much of its effect if it failed to protect journalists when they interviewed such figures. The fact that a source is in government makes no difference in the applicability of the Shield Law's privilege.

**V. Any Other Information Plaintiff Seeks Is Also Protected From Disclosure.**

After issuing the first subpoena, Plaintiff's counsel repeatedly stated that the only information she seeks from Mr. Abraham is the identity of the Town source. She told the Court that "[t]he information that is sought from Mr. Abraham is simply who at the Town confirmed the authenticity of the report." Van Malden Aff. in Opp., Doc. No. 107, ¶ 18. And she told Mr. Abraham's counsel that her "sole purpose" in seeking the deposition was "to identify who at 'The Town' confirmed the report." Linhorst Ex. B, Doc. No. 105. Yet this latest subpoena is far broader than that. It seeks all reporter notes referring to the controversy over the Town's Constabulary, all unpublished information referring to the controversy, anything related to either

of the newspaper's two sources, all notes and texts with Ms. Haas, and possibly any "other information received anonymously by the Sullivan County Democrat." Abraham Ex. A. Plaintiff has not offered any argument — at all — for why this wide range of additional information beyond the identity of the Town source could be relevant in any way, let alone could pass the Shield Law's stringent test. Indeed, Plaintiff cannot meet the three-part test with respect to any of this additional information, and the information is therefore protected from disclosure.

Courts have been clear that the Shield Law applies to all unpublished information, not only to the identities of sources. Therefore, the privilege covers any "unpublished details of the newsgathering process," which includes such details as who made calls and interviewed particular sources, techniques for the reporters' investigation, and the backgrounds of editorial staff. *Baker v. Goldman Sachs & Co.*, 669 F.3d 105, 109, 111 (2d Cir. 2012); Civil Rights Law § 79-h(c). For each piece of information that Plaintiff seeks, he would have to make a "clear and specific" showing that it passes all three parts of the test for overcoming the Shield Law's privilege. Civil Rights Law § 79-h(c). Plaintiff has attempted (and failed) to pass the test with respect to information about the Town source; he has not even attempted with respect to any other information. To the extent the subpoena seeks any other information, it should be quashed.

**VI. Plaintiff Cannot Establish Any Waiver.**

Finally, Ms. Van Malden's affidavit speculates that Mr. Abraham could have "waived" the Shield Law's privilege, citing a purported text message in which Ms. Haas asks, "Can I give our/my attorney your cell number for the defamation case," and Mr. Abraham replies, "Yeah that should be fine." Van Malden Aff. in Support, Doc. No. 87, ¶¶ 33-38. But Ms. Van Malden offers nothing beyond rank speculation that any conversation took place at all, never mind a conversation that could have waived the privilege. *See id*. ¶ 36 ("It is unknown if that conversation took place.").

She apparently obtained no evidence from Ms. Haas or from the attorney. Such pure speculation cannot overcome the "strong protection" of the Shield Law.[3]

**CONCLUSION**

The Shield Law provides "[a]bsolute protection" against compelling Mr. Abraham from testifying about the confidential source who was involved in providing the investigative report. The law provides a strong, qualified privilege against compelling testimony about the unnamed Town source who confirmed the report's authenticity. Plaintiff does not come close to meeting even one, let alone all three, of the elements required for overcoming this privilege. The subpoena therefore cannot be enforced under the New York Shield Law. Mr. Abraham respectfully requests that the Court grant his Motion to Quash.

Dated: August 19, 2024

Respectfully submitted,

By: /s/ *Michael Linhorst*

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[3] Even if some sort of waiver had occurred, it would be limited to only the specific information that was disclosed; it would not act as a waiver of the privilege more broadly. *Brown & Williamson Tobacco Corp. v. Wigand*, No. 101678/96, 1996 WL 350827, at *6 (Sup. Ct., New York Cnty. Feb. 28, 1996).

**SECTION 202.8-b CERTIFICATION**

I, Michael Linhorst, do hereby certify that this document complies with the word count limit set forth in Section 202.8-b of the Uniform Civil Rules. The word count of this Memorandum of Law is 4,828 words. The word count excludes any caption, table of contents, table of authorities, and signature block, and it is compliant with the word count limit. This document was prepared using Microsoft Word. The font of this document is Times New Roman, size 12.

/s/ *Michael Linhorst*
Michael Linhorst