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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN JOAQUIN

STK-CV-WMM2024-110425

12 PEN-LINK, INC.,
13 Plaintiff/Petitioner,
14 vs.
15 SAN JOAQUIN COUNTY SHERIFF'S
16 OFFICE, and DOES 1-10,
17 Defendants/Respondents.

No.
**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF; PETITION FOR WRIT OF
MANDATE**
Judge:
Date Action Filed:

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INTRODUCTION

1. This is a reverse-California Public Records Act (“CPRA”) action.

2. Defendant and Respondent San Joaquin County Sheriff’s Office (“SJSO” or “Defendant”) has in its possession Plaintiff and Petitioner Pen-Link, Inc. (“Pen-Link”)’s confidential, proprietary, and trade secret-protected information (the “Confidential Information”).

3. SJSO has notified Pen-Link that it intends to disclose this information to the Electronic Frontier Foundation (“EFF”), an entity that submitted a CPRA request to SJSO and to which the Confidential Information is or may be responsive.

4. By this action, Pen-Link seeks (1) to obtain a writ of mandate directing SJSO not to release the Confidential Information, (2) to enjoin SJSO from producing the Confidential Information in response to EFF’s CPRA request, and (3) to obtain a judicial declaration that the Confidential Information is exempt from disclosure under the CPRA.

PARTIES

5. Plaintiff and Petitioner Pen-Link, Inc. is a Nebraska corporation, qualified at all relevant times to do business in California.

6. Defendant and Respondent San Joaquin Sheriff’s Office is a public entity located in San Joaquin County, California.

7. The true names and capacities of Defendants and Respondents Does 1-10 are unknown to Pen-Link and are therefore sued by fictitious names. Each of the Doe Defendants and Respondents is also properly subject to a reverse CPRA lawsuit to prevent the disclosure of Pen-Link’s Confidential Information.

VENUE

8. Venue is proper in San Joaquin County because SJSO is located in San Joaquin County.

BACKGROUND FACTS

9. Pen-Link provides services to law enforcement agencies throughout the United States and internationally. Some of the services Pen-Link provides include investigation

1 platforms that assist law enforcement agencies with investigations of electronic information and
2 processing and analysis of data.

3 10. Pen-Link provided some of these services under contract with SJSO in 2022 and
4 2023. The contracts between Pen-Link and SJSO were not subject to competitive bidding. Pen-
5 Link is informed and believes, and thereon alleges, that SJSO did not disclose the Confidential
6 Information to any person or entity outside of SJSO.

7 11. On or about October 22, 2024, Pen-Link learned that the EFF submitted a CPRA
8 request to SJSO for materials that include documents containing Pen-Link's Confidential
9 Information.

10 12. SJSO notified Pen-Link of EFF's CPRA request. Pen-Link notified SJSO that it
11 believed its Confidential Information would be disclosed if SJSO responded to EFF's CPRA
12 request without the Confidential Information being withheld or redacted. Pen-Link asked SJSO
13 to withhold or redact the Confidential Information from its response.

14 13. After discussions with Pen-Link, SJSO took the position that it did not hold the
15 privilege to withhold or redact the Confidential Information, and Pen-Link would need to file a
16 reverse CPRA lawsuit in order to prevent the disclosure of the Confidential Information.

17 14. SJSO informed Pen-Link that it would not produce the Confidential Information
18 unless a court ordered it to do so. This lawsuit followed.

19 **THE CPRA EXEMPTS TRADE SECRETS FROM DISCLOSURE**

20 15. Government Code section 7927.705 states in relevant part that the CPRA "does
21 not require disclosure of records, the disclosure of which is exempted or prohibited pursuant to
22 federal or state law, including, but not limited to, provisions of the Evidence Code relating to
23 privilege."

24 16. Government Code section 7930.005 states that "[r]ecords or information not
25 required to be disclosed pursuant to Section 7927.705 may include, but shall not be limited to,
26 records or information identified in statutes listed in Chapter 2 (commencing with Section
27 7930.100)."
28

1 17. Government Code section 7930.205 lists “[t]rade secrets, Section 1060, Evidence
2 Code,” as an exemption from disclosure under the CPRA.

3 18. Evidence Code section 1060 states that “the owner of a trade secret has a privilege
4 to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the
5 privilege will not tend to conceal fraud or otherwise work injustice.”

6 19. Civil Code section 3426.1, subdivision (d) defines a “trade secret” as “information,
7 including a formula, pattern, compilation, program, device, method, technique, or process, that:
8 (1) Derives independent economic value, actual or potential, from not being generally known to
9 the public or to other persons who can obtain economic value from its disclosure or use; and (2)
10 Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

11 **THE CPRA EXEMPTS PRIVATE PERSONAL INFORMATION FROM DISCLOSURE**

12 20. The California Constitution guarantees individuals’ personal privacy by, among
13 other things, limiting government disclosure of personal, private information that may come into
14 the government’s possession.

15 21. Individuals have a recognized right to preclude government disclosure of sensitive
16 or confidential information.

17 22. Though the CPRA is generally designed to facilitate public access to information
18 in the government’s possession, disclosure may still be limited by an individual’s right to
19 personal privacy.

20 **THE CONFIDENTIAL INFORMATION**

21 23. Three documents contain the Confidential Information: an August 30, 2022
22 Purchase Order (the “August 2022 PO”), a December 7, 2023 Purchase Order (the “December
23 2023 PO”), and an October 17, 2023 Price Quotation (the “October 2023 Quote”).

24 24. As part of Pen-Link’s offering to SJSO in the October 2023 Quote, it provided
25 options (and corresponding prices) for services which SJSO could select. SJSO did not select all
26 of the options Pen-Link offered.

27 25. The Confidential Information is generally as follows:

28 a. In the August 2022 PO and December 2023 PO, (1) Pen-Link’s services

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and prices it charged SJSO for specific services, and (2) a Pen-Link employee's personal phone number.

- b. In the October 2023 Quote, Pen-Link's entire pricing structure for all services offered to SJSO, including the services and the prices for those services SJSO did not select.

PEN-LINK'S CONFIDENTIAL INFORMATION IS A TRADE SECRET

26. Pen-Link operates in a highly competitive industry in the United States. It has numerous direct competitors (for example, Babel Street, Fivecast, OSINT Combine) in the United States offering competing services to law enforcement agencies, including services that compete directly with the services Pen-Link provided to SJSO in 2022 and 2023.

27. Pen-Link keeps the financial details of its transactions, both consummated and proposed, with its customers confidential as between itself and its customers so that Pen-Link's competitors cannot undercut Pen-Link's prices, copy Pen-Link's sales and pricing strategies, or unfairly gain a competitive advantage over Pen-Link. Pen-Link ensures confidentiality of this information by, among other things:

- a. Sharing the Confidential Information only with limited third parties who have a need to know it in order to make purchasing decisions;
- b. Providing the Confidential Information to such third parties with the clear understanding that the information is to be kept private and not to be further disclosed;
- c. Keeping the Confidential Information generally confidential and otherwise internal to Pen-Link, allowing only those persons at Pen-Link access who need to know it to perform their jobs;
- d. Requiring all Pen-Link employees to sign non-disclosure agreements prohibiting disclosure of information such as the Confidential Information;
- e. Marking documents containing the Confidential Information as "proprietary," "confidential," or both.

1 28. Pen-Link's Terms and Conditions to which its customers, including SJSO, agreed
2 before purchasing Pen-Link's services state, among other things, that its quotations are
3 confidential and may only be disclosed on a need to know basis,
4 and in any event, may not be disclosed to any third party. Customer
5 and End Users are prohibited from disclosing use of the
6 Deliverables, names of Cobwebs' tools and technologies, the
7 existence of this agreement or the relationship between Customers
8 and End Users and Cobwebs to any third party, without the prior
9 written consent of Cobwebs. Customers and End Users affirm that
10 they will not reference Cobwebs (including any Cobwebs tool or
technology) or use the output of the Deliverables in any judicial,
regulatory or other government proceeding or disclose such
information publicly in any forum, without Cobwebs' prior written
consent. In addition, Customers and End Users shall refrain from
referencing Cobwebs and any Cobwebs tool or technology in using
the Deliverables electronically.¹

11 29. Pen-Link is a privately-held entity. It does not make public reports about its
12 profits, losses, or internal operations, including its pricing strategies and structures.

13 30. The Confidential Information is a product of Pen-Link's efforts to be competitive
14 in its industry. Pen-Link sets its prices through a combination of careful analysis of market
15 trends, publicly available information about its competitors' prices, its own historical and
16 confidential pricing information, including with repeat customers, its own internal and
17 confidential information regarding costs and overhead, and confidential information it learns from
18 customers and potential customers about their needs and finances.

19 31. The Confidential Information is valuable to Pen-Link and it derives that value
20 from secrecy. The value in that secrecy is attributable to, and Pen-Link would suffer the serious,
21 irreparable harm of the loss of that value in the following ways if the Confidential Information
22 were disclosed:

- 23 a. Competitive disadvantage: If competitors gain access to Pen-Link's pricing models,
24 they could, and would be incentivized to adjust their own pricing strategies
25 accordingly. This could result in Pen-Link losing its market share or being forced to
26 lower prices, which would negatively impact Pen-Link's profitability that is

27 _____
28 ¹ Cobwebs is the name of a Pen-Link affiliate and one of Pen-Link's platforms which SJSO
contracted with Pen-Link to use.

1 currently supported in part by the secrecy of its pricing models. Specifically, if the
2 prices Pen-Link charged for each individual service (as opposed to the aggregate
3 price charged to a client) were disclosed, competitors could reverse-engineer Pen-
4 Link's entire confidential price list.

- 5 b. Loss of bargaining power: Disclosure of Pen-Link's pricing models would diminish
6 Pen-Link's ability to negotiate favorable terms with government entities or other
7 clients. Competitors would leverage this information to underbid or offer better
8 terms, undermining Pen-Link's negotiating position.
- 9 c. Reduced innovation and investment: If Pen-Link's proprietary pricing information
10 were exposed, Pen-Link may become less able, due to reduced profits, to invest in
11 innovation and improvements, as competitors could replicate Pen-Link's successful
12 pricing strategies without incurring similar costs or risks. Additionally, because the
13 precise description of Pen-Link's offered products and services are not public, public
14 release of this information would allow competitors to copy Pen-Link's non-public
15 product offerings that Pen-Link has designed to be as competitive and attractive as
16 possible to potential and current customers.
- 17 d. Loss of trust and credibility: Government entities and clients would lose trust in
18 Pen-Link if the Confidential Information were made public. Pen-Link's clients rely
19 on and attach value to Pen-Link keeping its product information confidential,
20 including the specific products its customers purchase from Pen-Link so that they
21 can keep their data analysis capabilities private, and which is of particular value to
22 law enforcement. A forced breach of this confidentiality by the Court would lead to
23 reputational harm, reducing Pen-Link's future opportunities for contracts or
24 customers avoiding purchasing certain services.
- 25 e. Financial loss: Direct financial losses would stem from Pen-Link needing to modify
26 its current pricing strategy due to competitor actions based on disclosed information,
27 which could result in lost contracts and customers.
- 28

1 **PRIVATE, PERSONAL INFORMATION IS ALSO CONTAINED IN THE**
2 **CONFIDENTIAL INFORMATION**

3 32. The Pen-Link employee whose personal phone number appears in Confidential
4 Information has a right of privacy in his personal phone number.

5 33. The public's right of access to information in the government's possession does
6 not extend to knowing a Pen-Link employee's personal phone number.

7 34. Neither the purpose of the CPRA nor the public interest in disclosure of
8 information in the government's possession is served by disclosing the personal phone number of
9 a Pen-Link employee.

10 35. Pen-Link's proposed redactions to the Confidential Information do not include
11 business phone numbers used by Pen-Link employees.

12 **COUNT 1: PETITION FOR WRIT OF MANDATE**

13 (Code Civ. Proc., § 1085)

14 36. Pen-Link incorporates the foregoing paragraphs as if set forth in full herein/

15 37. Code of Civil Procedure section 1085 allows courts to issue writs of mandate to
16 control the actions of entities such as SJSO to ensure they conform with the law. (See also
17 *Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202 Cal.App.4th 1250, 1266 [petition
18 for writ of mandate proper means to prevent disclosure of confidential information in CPRA
19 response].)

20 38. A peremptory writ of mandate is necessary to prevent disclosure of the
21 Confidential Information which would be contrary to law.

22 39. Pen-Link has no plain, speedy, or adequate remedy at law, because no other
23 judicial, administrative, or contractual remedy is available to Pen-Link, and because the release of
24 Pen-Link's Confidential Information will render any such relief moot.

25 **COUNT 2: INJUNCTIVE RELIEF**

26 (Code Civ. Proc., § 527)

27 40. Pen-Link incorporates the foregoing paragraphs as if set forth in full herein.

28 41. Pen-Link is entitled to a preliminary injunction preventing SJSO from disclosing

1 the Confidential Information during the pendency of this case because irreparable harm will result
2 from SJSO disclosing Pen-Link's Confidential Information, including but not limited to its
3 competitors learning Pen-Link's pricing formulas and strategies, thereby allowing them to
4 immediately and directly under-price Pen-Link for the same or similar services to be provided to
5 Pen-Link's customers.

6 42. Pen-Link is entitled to a preliminary injunction because it has a strong likelihood
7 of success on the merits of obtaining a permanent injunction, for the reasons set forth above (i.e.,
8 that Pen-Link's Confidential Information derives value from remaining secret and Pen-Link takes
9 reasonable efforts under the circumstances to protect the Confidential Information from public
10 disclosure, and Pen-Link's employee's personal phone number is private and no public interest is
11 served by disclosing it).

12 43. Pen-Link is further entitled to a permanent injunction preventing SJSO from
13 disclosing the Confidential Information for the same reason, that is, the merits of Pen-Link's
14 claim that the Confidential Information is exempt from disclosure under the CPRA are in Pen-
15 Link's favor and the Confidential Information is, in fact, exempt from disclosure under the
16 CPRA.

17 **COUNT 3: DECLARATORY RELIEF**

18 (Code Civ. Proc., § 1060)

19 44. Pen-Link incorporates the foregoing paragraphs as if set forth in full herein.

20 45. There exists an actual controversy relating to SJSO's legal rights and duties with
21 respect to the release of Pen-Link's Confidential Information, to wit: Pen-Link contends the
22 Confidential Information falls under one or more exceptions to the disclosure requirements in the
23 CPRA, and SJSO has indicated that it will nonetheless release the Confidential Information in
24 response to a CPRA request.

25 46. The Court may decide this controversy by declaring the respective rights and
26 obligations of the parties, to wit: whether the Confidential Information is exempt from disclosure
27 under the CPRA, and therefore, whether SJSO may or may not release it in response to a CPRA
28 request.

1 47. Pen-Link seeks a judicial declaration that the Confidential Information is exempt
2 from disclosure under the CPRA and that SJSO may not release it in response to a CPRA request.
3 Unless the Court issues such a declaration, there will continue to be disputes and controversy
4 between Pen-Link and SJSO regarding the proper treatment of Pen-Link's Confidential
5 Information and further litigation will likely result.

6 **PRAYER FOR RELIEF**

7 Plaintiff Pen-Link prays for the following relief:

- 8 1. Issuance of a peremptory writ of mandate compelling SJSO not to release the
9 Confidential Information in response to a CPRA request;
- 10 2. An order preliminarily and permanently enjoining SJSO from disclosing the
11 Confidential Information to any person or entity in response to a CPRA request or otherwise;
- 12 3. A declaration that the Confidential Information constitutes a trade secret within the
13 meaning of Evidence Code section 1060, Civil Code section 3426.1, and Government Code
14 sections 7927.705, 7930.005, and 7930.205, and as appropriate is otherwise private and
15 confidential and is thereby exempt from disclosure in response to a CPRA request;
- 16 4. Court costs and attorneys' fees in the event this action is challenged.
- 17 5. Such other and further relief as the Court deems just and proper.

18 Dated: November 22, 2024

DENTONS US LLP

20 *Samuel D. Jubelirer*
21 By: _____
22 SAMUEL D. JUBELIRER

23 Attorneys for Plaintiff Pen-Link, Inc.

1 VERIFICATION

2 Peter J. Weber declares:

3 I am the Chief Executive Officer of Pen-Link, Inc. I have read the foregoing Complaint
4 for Injunctive and Declaratory Relief and Petition for Writ of Mandate. Pursuant to Code of Civil
5 Procedure sections 446 and 1086, the facts in the foregoing Complaint for Injunctive and
6 Declaratory Relief and Petition for Writ of Mandate are true of my own knowledge, except as to
7 the matters which are therein stated on information and belief, and as to those matters I believe
8 them to be true.

9
10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12
13 Executed November 22, 2024.



14 _____
15 Peter J. Weber

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