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

10 PEN-LINK, INC.,
11 Plaintiff/Petitioner,
12 v.
13 SAN JOAQUIN COUNTY SHERIFF’S
OFFICE, and DOES 1-10,
14 Defendants/Respondents.

Case No.: STK-CV-UWM-0016425

**MEMORANDUM OF POINT AND
AUTHORITIES IN SUPPORT OF
ELECTRONIC FRONTIER FOUNDATION’S
UNOPPOSED MOTION TO INTERVENE**

DATE:
TIME:
DEPT: 10A

16 ELECTRONIC FRONTIER
17 FOUNDATION,
18 Proposed Intervenor.

Judge: Hon. George J. Abdallah
Dept: 10A
Action Filed: November 22, 2024
Trial Date: Unassigned

Filed Concurrently With: (1) Notice of Motion and
Motion to Intervene; (2) Declaration of F. Mario
Trujillo in Support of Motion to Intervene

21 **I. INTRODUCTION**

22 The Electronic Frontier Foundation (EFF) seeks to intervene in the above captioned case,
23 and to file a proposed Cross-Petition to vindicate its rights under the California Public Records Act
24 (“CPRA”) and California Constitution. EFF filed the CPRA request with Defendant San Joaquin
25 County Sheriff’s Office (“Sheriff’s Office”) demanding the public release of law enforcement
26 contracts that Petitioner Pen-Link, Inc.’s (“Pen-Link”) lawsuit seeks to block. EFF and the public
27 have a right to know which products the Sheriff’s Office has considered and purchased from Pen-
28

1 Link, and how much money the agency has spent on those products.

2 EFF meets all the requirements of intervention as of right because it has a direct interest in
3 the subject matter of this case. EFF has a statutory and constitutional interest in obtaining public
4 records that it requested. This lawsuit seeks to impair or impede EFF’s access to those records. And
5 at the request of Pen-Link, the Sheriff’s Office has withheld the records from EFF—proving that the
6 Sheriff’s Office cannot be relied upon to represent EFF’s interests in this case. Alternatively, EFF
7 satisfies the test for permissive intervention. Neither party opposes intervention.

8 **II. FACTS**

9 The Electronic Frontier Foundation is a nonprofit organization defending civil liberties in
10 the digital world. Among other things, EFF documents police technology for the public. Declaration
11 of F. Mario Trujillo ¶ 3 (“Trujillo Decl.”).

12 The San Joaquin County Sheriff’s Office is a public agency that uses taxpayer money to
13 purchase law enforcement surveillance products from private companies like Pen-Link, the
14 Petitioner in this case.

15 As part of EFF’s mission, it filed a CPRA request to disclose whether the Sheriff’s Office
16 ever considered or tested Pen-Link’s products, and whether it purchased those products. If the
17 Sheriff’s Office purchased any products, EFF sought records that would disclose how much the
18 agency paid. *Id.* ¶ 5; Proposed EFF Verified Cross-Petition Ex. A.

19 On October 3, 2024, EFF requested documents from the San Joaquin County Sheriff’s
20 Office. *Id.* EFF requested documents “relating to the relationship between this agency and Cobwebs
21 Technologies” and its parent company Pen-Link. *Id.* On Nov. 8, 2024, the Office of the County
22 Counsel, County of San Joaquin, produced 40 pages of redacted documents. Trujillo Decl. ¶ 6;
23 Proposed EFF Verified Cross-Petition Ex. B. The Office noted:

24 “A portion of these redactions are based on a claim of trade secrets brought by Pen-
25 Link Ltd. Pen-Link has notified the undersigned that it intends to file pleadings with
26 the Superior Court for a protective order related to the release of the redacted
information. Upon determination of the courts, a further response will be provided to
indicate whether unredacted documents will ultimately be produced.”

27 *Id.*

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1 On Nov. 22, 2024, Pen-Link filed its Verified Complaint in this case, attempting to use a
2 “Reverse-CPRA” lawsuit to assert a trade secret privilege and prevent the Sheriff’s Office from
3 releasing unredacted records to EFF. Verified Complaint for Declaratory and Injunctive Relief;
4 Petition for Writ of Mandate ¶¶ 23-31 (“Complaint”). The Complaint noted “SJSO informed Pen-
5 Link that it would not produce the Confidential Information unless a court ordered it to do so.”
6 Complaint ¶ 14. The Complaint referenced EFF as the requester, but Pen-Link did not join EFF as a
7 party. Complaint ¶ 3. On Nov. 26, 2024, the Sheriff’s Office informed EFF that Pen-Link had filed
8 the Verified Complaint. Trujillo Decl. ¶ 7. On Nov. 26, 2024, the Sheriff’s Office was served. On
9 December 6, 2024, Proof of Service to the Sheriff’s Office was filed with the Court. Neither party
10 opposes intervention. Trujillo Decl. ¶ 8.

11 **III. ARGUMENT**

12 EFF meets all the requirements of intervention as of right or, alternatively, satisfies the
13 standards for permissive intervention. California’s statute governing intervention, Cal. Civ. Proc.
14 Code § 387, “should be liberally construed in favor of intervention.” *City of Malibu v. Cal. Coastal*
15 *Comm’n*, 128 Cal. App. 4th 897, 902 (2005) (citation omitted). “The purpose of allowing
16 intervention is to promote fairness by involving all parties potentially affected by a judgment.”
17 *Simpson Redwood Co. v. State*, 196 Cal. App. 3d 1192, 1199 (1987) (citations omitted).

18 Once leave to intervene is granted, the intervenor becomes a party with all the rights of an
19 original party. *Carlsbad Police Officers Ass’n v. City of Carlsbad*, 49 Cal. App. 5th 135, 148–49
20 (2020). In a reverse-CPRA case, for example, a successful intervenor can then file a cross-petition
21 to compel disclosure of agency records and seek attorney fees. *See, e.g., id.* at 142; *City of Los*
22 *Angeles v. Metro. Water Dist. of S. California*, 42 Cal. App. 5th 290, 298 (2019).

23 A nonparty seeking mandatory intervention pursuant to Cal. Civ. Proc. Code § 387(d)(1)(B)
24 must:

- 25 (1) show a protectable interest in the subject of the action, (2) demonstrate that the
26 disposition of the action may impair or impede its ability to protect that interest; and
(3) demonstrate that its interests are not adequately represented by the existing parties.

27 *Carlsbad Police Officers Ass’n*, 49 Cal. App. 5th 135 at 148.

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1 EFF meets each element for intervention as of right.

2 **A. EFF Has a Constitutional and Statutory Interest in Obtaining Public Records**
3 **Central to This Case.**

4 EFF should be granted intervention as of right because it filed the CPRA request that
5 resulted in Pen-Link filing this reverse-CPRA suit. *Carlsbad Police Officers Ass'n*, 49 Cal. App. 5th
6 at 149.

7 EFF has a “right of access” to information concerning the conduct of the people’s business.
8 Cal. Const. Art. I, § 3(b)(1); Cal. Gov’t Code § 7923.000. As the party that requested the public
9 records at issue in this case, EFF has “direct interests in the subject matter of the litigation.”
10 *Carlsbad Police Officers Ass'n*, 49 Cal. App. 5th at 149. A Reverse-CPRA action—like the one at
11 issue here—to prevent an agency from releasing records “will necessarily affect the rights of the
12 party requesting the information.” *Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal.
13 App. 4th 1250, 1269 (2012). EFF filed the CPRA request to obtain public records that gave rise to
14 Pen-Link’s suit against the Sheriff’s Office. The case concerns the propriety of disclosing the
15 records that EFF requested. EFF, therefore, has a direct interest in the subject of this case. *Carlsbad*
16 *Police Officers Ass'n*, 49 Cal. App. 5th at 149.

17 **B. This Case May Impair EFF’s Ability to Obtain Public Documents it Requested.**

18 If Pen-Link is successful in this action, it will as a practical matter “impair or impede” EFF’s
19 ability to obtain the public records it sought in its request. *Carlsbad Police Officers Ass'n*, 49 Cal.
20 App. 5th at 149 (citation omitted). As mentioned above, EFF has a protected interest in obtaining
21 public records that it requested. Pen-Link’s lawsuit seeks a court order to block the Sheriff’s Office
22 from releasing those records to EFF. This case, therefore, may necessarily impair or impede EFF’s
23 ability to protect its interest in obtaining public records.

24 **C. EFF’s Interests are Not Adequately Represented by Pen-Link or the Sheriff’s**
25 **Office Who Have Blocked Disclosure.**

26 EFF’s interests are not adequately represented by Pen-Link or the Sheriff’s Office because
27 they have each blocked EFF’s access to the public records at issue in this case.

28 A proposed intervenor need only show that the “representation of his interest ‘may be’
inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v.*

1 *United Mine Workers of America*, 404 U.S. 528, 538, fn. 10 (1972) (citations omitted, analyzing the
2 required showing for intervention under analogous federal procedure); *Lewis v. County of*
3 *Sacramento* 218 Cal. App. 3d 214, 219 (1990) (same). Here, that burden is easily met because—
4 during and before this lawsuit—both parties have taken positions contrary to EFF’s interest in
5 obtaining information.

6 By filing this lawsuit, Pen-Link has sought to prevent disclosure of the information to EFF,
7 which is contrary to EFF’s interests.

8 In addition, the Sheriff’s Office on Nov. 8, 2024, withheld the information from EFF at Pen-
9 Link’s request, which is contrary to EFF’s interests. Moreover, the Sheriff’s Office has informed
10 Pen-Link that it will “not produce” the information that EFF requested “unless a court ordered it to
11 do so.” Complaint ¶ 14. There is no indication that the Sheriff’s Office tested Pen-Link’s factual
12 assertions underlying its trade secret claim before withholding public records from EFF. *See* EFF
13 Proposed Verified Cross-Petition Ex. B. Similarly, it is unlikely that it will adequately do so
14 through fulsome discovery and briefing now that the case has been filed.

15 **D. EFF alternatively qualifies for permissive intervention**

16 While not necessary to prove in this case, EFF also meets the test for permissive joinder
17 because the proper procedures have been followed (EFF has timely petitioned the court, attached a
18 proposed cross-petition in intervention, and set forth the grounds); it has a direct and immediate
19 interest in obtaining the documents it requested; the issues in this case will not be enlarged because
20 the case is already about the proper release or withholding of the same documents; and EFF’s
21 intervention for the purpose of adequately protecting its rights to obtain public documents outweigh
22 any opposition from the existing parties. *Carlsbad Police Officers Ass’n*, 49 Cal. App. 5th at 148.

23 **E. EFF’s motion for leave is timely.**

24 EFF’s motion is timely because it is filed within 26 days of Pen-Link filing the lawsuit and
25 within 22 days of learning the lawsuit had been filed. Trujillo Decl. ¶ 7. The Sheriff’s Office has not
26 yet answered. Intervention is considered timely if it is “asserted within a reasonable time” and the
27 intervenor is not “guilty of an unreasonable delay after knowledge of the suit.” *Sanders v. Pac. Gas*
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1 & Elec. Co., 53 Cal. App. 3d 661, 668 (1975) (permitting intervention eighteen months after
2 complaint was filed); *see also Truck Ins. Exch. v. Superior Court*, 60 Cal. App. 4th 342, 351(1997)
3 (finding motion to intervene timely when filed nearly two years after notice of litigation).

4 **IV. CONCLUSION**

5 For the forgoing reasons, EFF asks the court to permit nonparty EFF to intervene and order
6 EFF to file its proposed Cross-Petition in intervention.

7
8 DATED: December 18, 2024

ELECTRONIC FRONTIER FOUNDATION

9 /s/ F. Mario Trujillo

10 F. MARIO TRUJILLO

11 AARON MACKEY

BETELHEM ZEWGE GEDLU

12 *Attorneys for Electronic Frontier Foundation*
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1 **PROOF OF SERVICE**

2 I, James A. Littau, declare as follows:

3 I am over the age of 18 years and not a party to the within action. My business address is
4 815 Eddy Street, San Francisco, California 94109. I am employed in the office of a member of the
5 bar of this court at whose direction the service was made.

6 On December 18, 2024, I served the foregoing document(s) entitled:

7 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR
8 LEAVE TO INTERVENE**

8 On the following:

<p>9 <u>By Email</u></p> <p>10 Rachael Allgaier, Esq. 11 Deputy County Counsel, 12 Office of County Counsel 13 County of San Joaquin 14 allgaier@sjgov.org</p> <p>15 Counsel for Defendant/Respondent San Joaquin Sherriff’s Office (email only, with consent)</p>	<p><u>By Electronic Transmission via One Legal</u></p> <p>Samuel D. Jubelirer, Esq. DENTONS US LLP 1999 Harrison Street, Suite 1210 Oakland, CA, 94612-4709 Samuel.jubelirer@densons.com</p> <p>Counsel for Plaintiff Pen-Link, Inc.</p>
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16 **BY ELECTRONIC TRANSMISSION VIA ONE LEGAL:** I caused a copy of the
17 foregoing document to be sent via File and Serve California to the persons at the e-mail addresses
18 listed above. The above parties and/or counsel of record are designated for electronic service in this
19 matter on the File and Serve California website. I did not receive, within a reasonable time after the
20 transmission, any electronic message or other indication that the transmission was unsuccessful.

21 **BY E-MAIL:** I caused a copy of the document(s) to be sent from e-mail address
22 james@eff.org to the persons at the e-mail addresses listed above. I did not receive, within a
23 reasonable time after the transmission, any electronic message or other indication that the
24 transmission was unsuccessful.

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

27 Executed on December 18, 2024 at San Francisco, California.

28 /s/ James A. Littau _____
James A. Littau