

CJ GRIFFIN

Member of the Firm
 cgriffin@pashmanstein.com
 Direct: 201.270.4930



October 28, 2020

Via eCourts & Regular Mail

Honorable James Den Uyl, J.S.C.
 Superior Court of New Jersey
 118 Washington Street
 Toms River, New Jersey 08754

Re: Schwab, et al. v. Blay, et al.

Docket No. OCN-2695-18

Our File No. 29232-001

Dear Judge Den Uyl:

Please accept this letter brief, in lieu of a more formal brief, on behalf of proposed amici curiae the Reporters Committee for Freedom of the Press (“Reporters Committee”), BuzzFeed, International Documentary Assn., The Media Institute, MPA - The Association of Magazine Media, National Press Photographers Association, New York Public Radio, Radio Television Digital News Association, Society of Environmental Journalists, Society of Professional Journalists, and Tully Center for Free Speech (collectively, “proposed amici”). This letter brief addresses both proposed amici’s motion to appear as amici through the submission of this letter brief, as well as the substantive issues raised in Plaintiffs’ Motion in Aid of Litigants’ Rights.

PRELIMINARY STATEMENT

New Jersey’s newsperson’s privilege, more commonly known as the “Shield Law,” N.J.S.A. 2A:84A-21 to -21.8, plays a critical role in ensuring journalists’ ability to gather news and keep the public informed. By providing absolute protection in civil cases for reporters’ sources and information obtained in the course of pursuing their professional activities, N.J.S.A. 2A:84A-21, the Shield Law enables reporters to obtain newsworthy information so that they may share that information with the public.

Court Plaza South
 21 Main Street, Suite 200
 Hackensack, NJ 07601

Phone: 201.488.8200
 Fax: 201.488.5556
 www.pashmanstein.com

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The Shield Law applies fully to journalists connected with nontraditional news media outlets, including blogs. And, once the Shield Law applies, it protects journalists from the compelled disclosure of their sources of information or any information obtained in the course of pursuing their professional activities, even if a party in civil litigation seeks to question them about news articles they did not write. For the reasons explained herein, the Court should hold that the Shield Law applies to Defendant Shlomie Klein.

STATEMENT OF FACTS

On November 6, 2018, Yechezkel Schwab and Datamap Intelligence, LLC (collectively, “Plaintiffs”) filed a complaint against Joyce Blay, Hershel Herskowitz, Shlomie Klein, Abraham Sharaby, John Does 1-10, and ABC Corps. A-J (collectively, “Defendants”), alleging defamation, false light, conspiracy to defame, and aiding and abetting in the alleged defamation. During discovery, Shlomie Klein (“Klein”) attempted to invoke the Shield Law. The Court held that Klein failed to demonstrate that the Shield Law applies to him. *See* Certification of Willard C. Shih, Esq., Ex. A (filed Oct. 14, 2020) (“Shih Certification”). On October 14, 2020, Plaintiffs filed a Motion in Aid of Litigants’ Rights, requesting that the Court 1) require Klein to pay Plaintiffs’ fees, 2) preclude Klein from providing certain testimony in future proceedings, 3) appoint a Discovery Master pursuant to *Rule* 4:41-1, and 4) provide other relief as the Court deems appropriate. Pls.’ Notice of Mot. in Aid of Litigants’ Rights (filed Oct. 14, 2020).

Plaintiffs previously argued that the Shield Law does not apply to Klein because the websites at issue in this case—jleaks.com (“jleaks”) and hefkervelt.blogspot.com (“hefkervelt”)—do not qualify as “news media.” *See* Shih Certification, Ex. D. Plaintiffs also argued that Klein’s denial of involvement in these websites and the articles at issue precludes him from invoking the reporter’s privilege in response to questions about them. *See id.*

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Proposed amici write to explain the importance of the Shield Law to the press and the public; that the Shield Law applies to journalists connected with nontraditional news media outlets, including blogs; and that the Shield Law protects reporters' sources of information and any information obtained in the course of their professional activities, even if a reporter denies involvement in the articles about which he or she is questioned.

LEGAL ARGUMENT

I. Proposed amici's motion to participate as amicus curiae, through the submission of this letter brief, should be granted.

Pursuant to *Rule* 1:13-9:

An application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby.

[*R.* 1:13-9.]

New Jersey courts have explained that *Rule* 1:13-9 establishes "a liberal standard for permitting amicus appearances." *Pfizer, Inc. v. Director, Div. of Taxation*, 23 N.J. Tax 421, 424 (Tax Ct. 2007); *In re State ex rel. Essex Cty. Prosecutor's Office*, 427 N.J. Super. 1, 5 (Law Div. 2012).

This Court should grant proposed amici's motion to submit this letter brief as amicus curiae (the "Motion") because they have fully complied with *Rule* 1:13-9. The Motion is timely. It is noticed with a return date of November 13, 2020, the same as the return date on Plaintiffs' Motion in Aid of Litigants' Rights. Therefore, no party will be prejudiced by proposed amici's participation. Moreover, proposed amici limit their participation in this matter to the issues

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previously presented to the Court by the Plaintiffs and Klein and do not raise any new legal issues. *State v. J.R.*, 227 N.J. 393, 421 (2017).

In addition, proposed amici's participation will assist the Court in its determination of the scope and applicability of the Shield Law, a matter of public importance. The accompanying certification of Caitlin Vogus, staff attorney for proposed amicus the Reporters Committee, sufficiently details proposed amici's special expertise in cases involving shield laws, as well as specific involvement in important shield law cases. New Jersey's Shield Law is an essential protection for journalists, and proposed amici have an interest in ensuring that courts properly apply it. Without the Shield Law's protections, journalists would have fewer sources of information, and newsworthy matters such as abuses of power would remain unexposed to the public. For these reasons, proposed amici seek leave to file this amicus curiae brief.

II. The Court should hold that journalists connected with nontraditional news media, like Klein, can invoke the Shield Law's protections.

In *Branzburg v. Hayes*, the United States Supreme Court explained that Congress and the states can enact shield laws to protect journalists' newsgathering activities. 408 U.S. 665, 667–77 (1972) (holding that the First Amendment does not protect reporters from compelled disclosure of their confidential sources in the specific context of grand jury proceedings). As the Court wrote:

At the federal level, Congress has freedom to determine whether a statutory newsman's privilege is necessary and desirable and to fashion standards and rules as narrow or broad as deemed necessary to deal with the evil discerned and, equally important, to refashion those rules as experience from time to time may dictate. There is also merit in leaving state legislatures free, within First Amendment limits, to fashion their own standards in light of the conditions and problems with respect to the relations between law enforcement officials and press in their own areas.

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[*Id.* at 706.]

Forty states, including New Jersey, and the District of Columbia have enacted shield laws that provide either absolute or qualified protection against compelled disclosure of reporters' sources and other information.¹ Reporters Comm. for Freedom of the Press, *Introduction to the Reporter's Privilege Compendium*, <https://perma.cc/59PU-JQQ2> (last accessed Oct. 16, 2020).

The Shield Law provides absolute protection in civil cases, including defamation cases, for reporters' sources and information obtained in the course of their professional activities. *See Too Much Media*, 206 N.J. at 242; *Maressa v. N.J. Monthly*, 89 N.J. 176 (1982) (confirming that Shield Law applies even where journalist is a defendant in a defamation action). It provides as follows:

Subject to Rule 37, a person engaged on, engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated has a privilege to refuse to disclose, in any legal or quasi-legal proceeding or before any investigative body, including, but not limited to, any court, grand jury, petit jury, administrative agency, the Legislature or legislative committee, or elsewhere.

a. The source, author, means, agency or person from or through whom any information was procured, obtained, supplied, furnished, gathered, transmitted, compiled, edited, disseminated, or delivered; and

¹ The First Amendment also provides a qualified reporter's privilege outside the grand jury context, particularly in civil cases such as this one. *See Too Much Media, LLC v. Hale*, 206 N.J. 209, 226 (2011). The New Jersey Supreme Court has held that the Shield Law affords greater protection to journalists than the First Amendment reporter's privilege. *Id.* at 227–28. Because the Shield Law applies to Klein, proposed amici do not address the First Amendment reporter's privilege; however, to the extent the Court holds that the Shield Law does not apply to Klein, it should consider whether the First Amendment reporter's privilege shields Klein from compelled disclosure of specific information.

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b. Any news or information obtained in the course of pursuing his professional activities whether or not it is disseminated.

[N.J.S.A. 2A:84A-21.]²

To invoke the Shield Law, claimants must make a “prima facie showing that (1) they have the requisite connection with news media, (2) they have the necessary purpose to gather or disseminate news, and (3) the materials subpoenaed were obtained in the ordinary course of pursuing professional newsgathering activities.” *Too Much Media*, 206 N.J. at 240.

The Shield Law is a critical protection for journalists and the free flow of information to the public. It facilitates reporters’ ability to create and maintain relationships with sources, who provide newsworthy information that journalists, in turn, report to the public. The plain language of the Shield Law and New Jersey case law interpreting it demonstrates that the Shield Law applies to journalists connected with nontraditional news media, including blogs, and that the Shield Law protects journalists from the compelled disclosure of the information specified in the statute even if they did not write the articles at issue. For the reasons explained herein, the Court should hold that the Shield Law applies to Klein.

A. The Shield Law affords critical protection for the exercise of First Amendment rights.

The Shield Law “promotes and protects the ability of newsmen to gather and communicate information to the public,” *Too Much Media*, 206 N.J. at 226, by protecting from

² The Shield Law permits reporters to be compelled to disclose information in a civil case in one limited circumstance: when they are “an eyewitness to, or participant in, any act involving physical violence or property damage.” See N.J.S.A. 2A:84A-21(b) (requiring a reporter to have been acting “[i]n the course of pursuing his professional activities” to invoke the Shield Law); N.J.S.A. 2A:84A-21a(h) (providing that “in the course of pursuing his professional activities” does not include “any situation in which a reporter is an eyewitness to, or participant in, any act involving physical violence or property damage”).

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compelled disclosure both journalists' confidential and nonconfidential sources, as well as any information obtained in the course of pursuing their professional activities. N.J.S.A. 2A:84A-21. New Jersey courts have described the Shield Law as "one of the most far-reaching Shield Laws in the country, providing the 'strongest possible protection' to the newsgathering and news reporting activities of the media." *In re Venezia*, 191 N.J. 259, 269 (2007); *see also In re Jan. 11, 2013 Subpoena by Grand Jury of Union Cty.*, 432 N.J. Super. 570, 576 (Law Div. 2013) ("*In re Jan. 11, 2013 Subpoena*").

Journalists' ability to keep sources and information obtained while gathering the news confidential is essential to their work. *See State v. Boiardo*, 83 N.J. 350, 360 (1980) ("[E]very compelled production chills confidential sources."). Some sources are willing to speak to reporters only if they have confidence that their identities will not be made public. As investigative journalist Sharyl Attkisson explained in a 2018 House of Representatives Committee of Oversight and Reform hearing on the need for a federal shield law, many news reports would not be possible if reporters could not keep sources' identities confidential.

Attkisson testified:

My investigation into fraud inside the Red Cross after all the 9/11 donations—which was recognized with an investigative Emmy award . . . was possible only with assistance from inside sources who provided me audits and information. . . . Same with my investigations into Enron, Halliburton, prescription drugs and countless others. Stories that arguably led to taxpayer money and lives saved. . . . Without the ability to protect confidential sources, I probably wouldn't have been able to report that when the CDC was alarming our nation about a swine flu epidemic . . . the vast majority of cases blamed on swine flu were not swine flu . . . or any sort of flu at all.

[*See Sharyl Attkisson, Investigative Journalist, Opening Statement before the H. Comm. On Oversight and Gov't Reform, Hearing on*

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“Shielding Sources: Safeguarding the Public’s Right to Know” (July 24, 2018).]

In New Jersey, reporters often rely on confidential sources—and information provided by them—to report on matters of public concern. For example, in 2014, journalist Christopher Baxter published the results of a five-month investigation into the death of Kenwin Garcia, a twenty-five-year-old man who died in police custody in Hanover Township, New Jersey. Christopher Baxter, *What killed Kenwin Garcia?*, NJ.com (Oct. 1, 2014), <https://perma.cc/7YF3-P6WV>. The report was based in part on State Police investigative reports provided by a confidential source, and it exposed potential conflicts of interest in the investigation carried out by the Attorney General’s office. *Id.* The Shield Law reassures potential sources that they can speak to reporters on the condition of confidentiality and that reporters will be able to honor their commitments to keep sources’ identities confidential. Without the Shield Law’s protection against compelled disclosure of reporters’ sources and information obtained in newsgathering, this and many other important stories may not have been possible.

The Shield Law’s protection is not limited to the identities of confidential sources. *Kinsella v. Welch*, 362 N.J. Super. 143, 152 (App. Div. 2003) (“The availability of this privilege does not turn on whether the information was ‘derived from a confidential source.’”) (citing *In re Woodhaven Lumber & Mill Work*, 123 N.J. 481, 490 (1991)). Rather, it protects “all significant news-gathering activities.” *Maressa*, 89 N.J. at 188. It applies to editorial processes, *id.* at 189, as well as “notes, memoranda, rough drafts, editorial comments, sources and other [similar] information,” *Resorts Int’l, Inc. v. NJM Assocs.*, 89 N.J. 212, 215 (1982). By its terms, the Shield Law’s protections extend to nonconfidential sources, N.J.S.A. 2A:84A-21(a), and any

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“news or information” a reporter obtains “in the course of pursuing his professional activities whether or not it is disseminated,” N.J.S.A. 2A:84A-21(b).

As with the protection for confidential sources, the Shield Law’s protections for nonconfidential sources and information obtained in the course of newsgathering are also critical to journalists and their ability to keep the public informed. Responding to subpoenas is costly and time-intensive and, especially for small news organizations and freelance journalists, can diminish their ability to carry out their journalistic work. *See In re Schuman*, 114 N.J. 14, 29 (1989) (observing that compelling the testimony of one reporter in a nine-person newspaper “or embroiling the paper in a costly, protracted controversy over a prosecution subpoena could severely hinder its newsgathering activities”); *Gonzales v. Nat’l Broad. Co.*, 194 F.3d 29, 35 (2d Cir. 1999) (“[W]holesale exposure of press files to litigant scrutiny would burden the press with heavy costs of subpoena compliance, and could otherwise impair its ability to perform its duties—particularly if potential sources were deterred from speaking to the press, or insisted on remaining anonymous, because of the likelihood that they would be sucked into litigation.”). The Shield Law’s protection for nonconfidential information also ensures that journalists are not forced to routinely destroy information they would otherwise maintain for future use in their reporting because they fear a subpoena. *See In re Schuman*, 114 N.J. at 29 (noting that “apprehension about subpoenas may cause the reporter to destroy valuable notes and files”); *Gonzales*, 194 F.3d at 35 (“Incentives would also arise for press entities to clean out files containing potentially valuable information lest they incur substantial costs in the event of future subpoenas.”).

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B. The Shield Law applies to journalists connected with nontraditional news media.

To invoke the Shield Law, claimants must first make a *prima facie* showing that they have the requisite connection with news media. *Too Much Media*, 206 N.J. at 240. The Shield Law can be invoked by “a person engaged on, engaged in, connected with, or employed by news media for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public or on whose behalf news is so gathered, procured, transmitted, compiled, edited or disseminated.” N.J.S.A. 2A:84A-21. The statute defines “news media” as “newspapers, magazines, press associations, news agencies, wire services, radio, television or other similar printed, photographic, mechanical or electronic means of disseminating news to the general public.” N.J.S.A. 2A:84A-21a(a). It defines “news” as “any written, oral or pictorial information gathered, procured, transmitted, compiled, edited or disseminated by, or on behalf of any person engaged in, engaged on, connected with or employed by a news media and so procured or obtained while such required relationship is in effect.” N.J.S.A. 2A:84A-21a(b). These definitions are interpreted broadly. *See In re Jan. 11, 2013 Subpoena*, 432 N.J. Super. at 587.

As the New Jersey Supreme Court has explained, the Shield Law’s protections are not limited to “professional journalists.” *Too Much Media*, 206 N.J. at 240. By contrast, other states have limited the category of people who may invoke their shield laws. *See, e.g.*, N.Y. Civ. Rights Law § 79-h (stating that the New York shield law applies only to “professional journalists and newscasters”). As the Court noted in *Too Much Media*: “[T]he Legislature could have chosen that approach but did not.” 206 N.J. at 240 (citing N.Y. Civ. Rights Law § 79-h). Instead, the Shield Law only “requires those seeking the privilege to have some connection to ‘news media.’” *Id.* at 230.

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New Jersey courts have found on several occasions that journalists publishing in nontraditional news media have the “requisite connection with news media” to invoke the protections of the Shield Law. Courts have upheld the Shield Law’s application to a range of defendants, including videographers of a reality-based television show,³ the author of a nonfiction book,⁴ and a Spanish-language tabloid.⁵ *See also Too Much Media*, 206 N.J. at 233 (citing those cases with approval). When New Jersey courts have held that the Shield Law does not apply, it is because the person or entity claiming the privilege has *no* connection to journalism. *See Too Much Media*, 206 N.J. at 235–36 (holding that defendant could not invoke the Shield Law based on posts on an internet message board); *In re Napp Techs., Inc. Litig.*, 338 N.J. Super. 176, 184 (Law Div. 2000) (holding that public relations firm hired by the owner of a chemical plant could not invoke reporter’s privilege).

Under the statute, “news media” includes electronic means of disseminating news “so long as they are similar to traditional news media.” *Too Much Media*, 206 N.J. at 233. Thus, in *In re Jan. 11, 2013 Subpoena*, 432 N.J. Super. at 592, the court found that the Shield Law applied to a blogger whose posts covered local county politics.⁶ In determining whether the blogger had a sufficient “nexus” to the “news media,” the court stated that “the relevant inquiry

³ *Kinsella*, 362 N.J. Super. at 153–55.

⁴ *Trump v. O’Brien*, 403 N.J. Super. 281, 303 (App. Div. 2008).

⁵ *In re Avila*, 206 N.J. Super. 61, 65–66 (App. Div. 1985).

⁶ A blog is “a type of personal column posted on the Internet. . . . Some blogs are like an individual’s diary while others have a focused topic, such as recipes or political news.” *Too Much Media*, 206 N.J. at 219 n.1 (quoting Douglas Downing, *Dictionary of Computer and Internet Terms* 58–59 (10th ed. 2009)). *See also* Merriam-Webster, <https://perma.cc/3ZU7-NXWX> (last visited Oct. 21, 2020) (defining “blog” as “a regular feature appearing as part of an online publication that typically relates to a particular topic and consists of articles and personal commentary by one or more authors”); *id.* (defining blog alternatively as a “a website that contains online personal reflections, comments, and often hyperlinks, videos, and photographs provided by the writer”).

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is whether [the blogger] is connected or employed by an entity that is sufficiently similar to the traditional news media sources enumerated in the Shield Law.” *In re Jan. 11, 2013 Subpoena*, 432 N.J. Super. at 587 (citing N.J.S.A. 2A:84A-21(a); *Too Much Media*, 206 N.J. at 233). The court noted that the blogger’s “methods of talking to sources, attending freeholder meetings, and using Open Public Records Act (OPRA) requests, reading agendas, resolutions, and ordinances, and asking questions at freeholder meetings, is sufficiently similar to the methods used by traditional news media entities enumerated in the governing statute.” *Id.* at 589. The court also emphasized that the blogger wrote on newsworthy topics such as local corruption and wrote with relative frequency (on average, one post a week). *Id.* at 588–89. The court concluded that the blogger’s “actions in connection with the blog and the website demonstrate the necessary connection to the news media.” *Id.* at 589. *In re Jan. 11, 2013 Subpoena* demonstrates that the Shield Law is properly applied to journalists who disseminate news using electronic means, including bloggers.

C. The Shield Law applies to Klein because he is connected with the news media.

Plaintiffs claim that Klein cannot invoke the Shield Law because the websites at issue in this case—jleaks and hefkervelt—do not qualify as “news media” and so Klein is not connected with the news media. Shih Certification, Ex. D at 5. However, Klein denies involvement in those two sites.⁷ Klein’s connection with the news media comes instead from his own blog, <https://firstamendmentactivist.blogspot.com>, as well as publication of the Facebook page “FAA,” <https://www.facebook.com/FAALAKEWOOD/>.⁸

⁷ See Compl. ¶ 37 (filed Nov. 6, 2018) (alleging that Klein is the “driving force behind both hefkervelt and jleaks”); Answer ¶ 37 (filed Apr. 10, 2019) (denying ¶ 37 of the Complaint); see also Shih Certification, Ex. D at 4.

⁸ See Resp. to Mot. to Compel Dep., at 2 (filed Feb. 25, 2020).

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As the court held in *In re Jan. 11, 2013 Subpoena*, a blogger can have the requisite connection to “news media” to qualify for protection under the Shield Law. 432 N.J. Super. at 592. Klein’s blog is sufficiently similar to the traditional news media outlets listed in the Shield Law to establish Klein’s connection to the “news media.” Klein’s blog reports regularly on a particular topic: news in the Lakewood, New Jersey area.⁹ Similar to the blogger in *In re Jan. 11, 2013 Subpoena*, Klein attends public meetings, speaks with sources, and files New Jersey Open Public Records Act requests as part of his journalistic work.¹⁰ Accordingly, Klein is connected with the “news media” through his blog.

Klein’s connection to the news media is a stark contrast to the facts of *Too Much Media*, in which the New Jersey Supreme Court held that the Shield Law did not apply to a defendant in a defamation lawsuit who wrote comments on an internet message board. *Too Much Media*, 206 N.J. at 235–36. In *Too Much Media*, the Court concluded that the message board on which the defendant posted was insufficiently similar to “newspapers, magazines, press associations, news agencies, wire services, radio, [or] television,” to qualify for protection under the Shield Law. *Id.* at 234–36. Internet message boards, the Court explained, are “essentially online forums for

⁹ See Resp. to Mot. to Compel Dep., at 3 (filed Feb. 25, 2020) (explaining that Klein posts articles “uncovering how government agencies work” including “public meetings, agendas, planning and zoning” and stating that Klein “record[s] and publish[es] government meetings of Lakewood Township and others.” See also, e.g., <https://firstamendmentactivist.blogspot.com/2020/10/ny-governor-coronavirus-press.html> (reporting on a press conference by Governor Cuomo concerning COVID-19); <https://firstamendmentactivist.blogspot.com/2020/10/breaking-first-report-lakewood-township.html> (reporting on the status of the Lakewood Township Municipal Building); <https://firstamendmentactivist.blogspot.com/2020/10/lakewood-developer-cons-neighbors-into.html> (reporting on an application to the Lakewood Township Zoning Board). Klein’s Facebook page, which posts videos of government press conferences and public meetings, among other newsworthy content, is also sufficient to establish his connection to the “news media” under the Shield Law.

¹⁰ See Resp. to Mot. to Compel Dep., at 3–5 (filed Feb. 25, 2020)

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conversations,” and comparable to “message board[s] at the grocery store.” *Id.* at 217 (citation omitted). Accordingly, the Court held, “they are not the functional equivalent of the types of news media outlets outlined in the Shield Law.” *Id.* at 235. However, the Court also noted that “[c]ertain online sites could satisfy the [Shield L]aw’s standards,” and it specifically stated that “[a] single blogger might qualify for coverage under the Shield Law provided she met the statute’s criteria.” *Id.* at 236–37.

Application of the Shield Law to bloggers like Klein not only complies with the statute’s text but also serves the purpose of the law. New Jersey courts have emphasized that the Shield Law recognizes the public’s right to the “unencumbered free flow of information.” *See, e.g., In re Schuman*, 114 N.J. 14, 20 (1989). “Digital news outlets, particularly blogs, are increasingly present and vital to the delivery of news to the public in our modern internet age.” *In re Jan. 11, 2013 Subpoena*, 432 N.J. Super. at 580. Klein’s blog provides information on newsworthy topics to the Lakewood, New Jersey community. As the Appellate Division explained in holding that the Shield Law applies to books, “the exception of that medium of communication from the protections of the New Jersey Shield Law would make no policy sense and would substantially undercut the Law’s goals of protecting the free exchange of ideas.” *See Trump*, 403 N.J. Super. at 304. The same is true with respect to blogs.

In sum, because Klein’s blog is an electronic means of disseminating news that is similar to traditional news media, he is “connected with . . . news media,” N.J.S.A. 2A:84A-21, and can invoke the Shield Law’s protections.

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- D. Klein can invoke the Shield Law even if he denied publishing the specific blog posts at issue in this case.

Plaintiffs argue that because Klein “takes the position that he is not the author, publisher or editor of jleaks or hefkervelt, he cannot invoke the newsperson’s privilege as it only protects the source of information and newsgathering in an article [in] which the individual has some involvement.” Shih Certification, Ex. D at 4–5. This argument relies on a false dichotomy. While Klein denies involvement with jleaks or hefkervelt, he is still a journalist covered by the Shield Law, *see supra* Section II.C, and he can therefore invoke the reporter’s privilege to decline to answer questions about his sources and any information obtained in the course of pursuing his professional activities.

The Shield Law protects journalists from compelled disclosure of their sources of information or any information obtained in the course of pursuing their professional activities, whether or not they wrote or were otherwise involved in the specific articles giving rise to the claims of the case or about which they are being questioned. As the New Jersey Supreme Court noted in *Maressa*, 89 N.J. at 188:

The Legislature plainly expressed its intent that all significant news-gathering activities be protected. The Shield Law protects against disclosure of the “source, author, means, agency or person from or through whom any information was procured, obtained, supplied, furnished, gathered, transmitted, compiled, edited, disseminated, or delivered.” . . . It also separately protects “any news or information obtained in the course of pursuing . . . professional activities whether or not it is disseminated.” . . . This litany of protected activities was clearly intended to afford complete and pervasive security against disclosure.

(citations omitted). The Shield Law’s text contains no requirement, nor any implied requirement, that a journalist be the author of the articles about which he or she is questioned before he or she may claim its protections to shield journalistic work product and source

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information from compelled disclosure. *See generally* N.J.S.A. 2A:84A-21. If, for example, the *Asbury Park Press* were sued for publishing an allegedly defamatory article about a local business, reporters from *The Star-Ledger* could not be compelled to testify about their sources and information they obtained in writing an article that they published about the local business. Under the Shield Law, although *The Star-Ledger* reporters did not author the allegedly defamatory article, they nonetheless have an absolute privilege not to testify about their sources or information obtained in the course of pursuing their professional activities in *any* proceeding.

Thus, to the extent that Plaintiffs seek information from Klein about “the source, author, means, agency or person from or through whom any information was procured, obtained, supplied, furnished, gathered, transmitted, compiled, edited, disseminated, or delivered” or “any news or information obtained in the course of pursuing his professional activities,” that information is protected under the Shield Law. The Shield Law protects Klein from compelled disclosure of sources or information he obtained in the normal course of newsgathering, even if he denies involvement in jleaks or hefkervelt.

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CONCLUSION

For these reasons, this Court should hold that the Shield Law applies to Klein and permit him to refuse to divulge “the source, author, means, agency or person from or through whom any information was procured, obtained, supplied, furnished, gathered, transmitted, compiled, edited, disseminated, or delivered” as well as “[a]ny news or information obtained in the course of pursuing his professional activities whether or not it is disseminated.” *See* N.J.S.A. 2A:84A-21.

Respectfully Submitted,

/s/ CJ Griffin

CJ Griffin (031422009)

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation

Court Plaza South

21 Main Street, Suite 100

Hackensack, New Jersey 07601

(201) 488-8200

Attorney for Amici Curiae On the Brief