

No. A173244

**IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR**

MAURY BLACKMAN,

Plaintiff and Appellant,

v.

SUBSTACK, INC.; JACK POULSON; TECH INQUIRY, INC.,

Defendants and Respondents.

Appeal from an Order of the Superior Court, County of San Francisco
The Hon. Christine Van Aken
Case No. CGC24618681

APPELLANT'S APPENDIX

VOLUME 2 OF 4 – PAGES AA0342-0522 OF AA1031

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12/06/2024
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Deputy Clerk

7 *Attorneys for Defendant Jack Poulson*

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

10
11 JOHN DOE, an individual,

Plaintiff,

12
13 v.

14 SUBSTACK, INC., a Delaware
15 Corporation; AMAZON WEB
SERVICES, INC., a Delaware
16 Corporation; JACK POULSON, an
individual; TECH INQUIRY, INC., a
17 Delaware corporation;
DOES 1-25, inclusive,
18

Defendants.
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21

Case No.: CGC-24-618681

**DECLARATION OF JACK POULSON IN
SUPPORT OF DEFENDANT JACK
POULSON'S SPECIAL MOTION TO
STRIKE (CCP 425.16)**

REDACTED

DATE: January 6, 2025
TIME: 9:30 a.m.
DEPT: 302

Judge:
Action Filed: October 3, 2024
Trial Date:

22
23 **PUBLIC**

24 **Redacted Materially from Conditionally Sealed Record**
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

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11 JOHN DOE, an individual,

12 Plaintiff,

13 v.

14 SUBSTACK, INC., a Delaware
15 Corporation; AMAZON WEB
SERVICES, INC., a Delaware
16 Corporation; JACK POULSON, an
individual; TECH INQUIRY, INC., a
17 Delaware corporation;
DOES 1-25, inclusive,

18 Defendants.
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Case No.: CGC-24-618681

**DECLARATION OF JACK POULSON IN
SUPPORT OF DEFENDANT JACK
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STRIKE (CCP § 425.16)**

DATE: January 6, 2025

TIME: 9:30 a.m.

DEPT: 302

Judge:

Action Filed: October 3, 2024

Trial Date:

21
22 **DECLARATION OF JACK POULSON**

23 I, JACK POULSON, declare as follows:

- 24 1. I am an independent journalist focused on the intersection of technology and national
25 security. I currently write primarily through my newsletter, *All-Source Intelligence*,
26 published through Substack, but I have also freelanced headline investigative reports
27 in both The Guardian and The Intercept. I began the newsletter in April 2023. The
28 newsletter currently has more than 3,000 subscribers. I publish approximately once

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per week, albeit with no fixed schedule. The newsletter is also publicly available on the internet at <https://substack.com/@jackpoulson>.

2. I am also the executive director and founder of Tech Inquiry, a public website that provides government records, articles, and data investigating the intersection of surveillance and weapons companies with governments. I founded Tech Inquiry in 2019. Tech Inquiry is an independent legal entity. I write the Substack newsletter described in the preceding paragraph in my personal capacity and not as an officer of Tech Inquiry.
3. Prior to starting Tech Inquiry and my newsletter, I was a senior research scientist at Google Research. Prior to that I was an Assistant Professor of Mathematics at Stanford University and an Assistant Professor of Computational Science and Engineering at Georgia Tech.
4. In my Substack newsletter, I have frequently reported on the connectedness of companies making surveillance and weapons technologies and the governments that contract with them. Among these companies is [REDACTED] of which Plaintiff [REDACTED] was formerly the chief executive officer.
5. I first wrote about [REDACTED] in my newsletter on August 27, 2023 after it was cited in *The Economist* as an unbiased pollster for African opinion on a recent coup in Niger. A true and correct copy of my article, "Pollster for Niger Coup Is a Surveillance Platform for U.S. Special Operations Forces," is attached hereto as **Exhibit A**. This article is publicly available on my *All-Source Intelligence* Substack page at [REDACTED]
6. I was prompted to write the August 27, 2023 article about [REDACTED] because the company was previously exposed in *The Wall Street Journal* as a human intelligence and signals intelligence provider for U.S. Special Operations Command in Africa. See Byron Tau, "App Taps Unwitting Users Abroad to Gather Open-Source Intelligence," *The Wall Street Journal* (June 24, 2021),

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- [REDACTED]
- [REDACTED].
7. I next reported on September 1, 2023 on public court filings in a long-running [REDACTED] lawsuit against one of its former employees who had become a whistleblower against the company’s work as a government contractor. My report focused on a signed declaration from [REDACTED] acknowledging his company's classified contracts with U.S. government agencies. In that declaration, [REDACTED] argued that public disclosure of [REDACTED] military and intelligence work could place [REDACTED] gig workers at risk. In that same declaration, [REDACTED] claimed to hold a security clearance with the U.S. Department of Defense. A true and correct copy of my September 1, 2023 article, “[REDACTED] Confirms Secret Military Intelligence Contracts in Court Filing,” is attached hereto as **Exhibit B**. The article is publicly available on my *All-Source Intelligence* Substack page at [https://jackpoulson.substack.com/p/\[REDACTED\]confirms-secret-military](https://jackpoulson.substack.com/p/[REDACTED]confirms-secret-military).
8. I next reported on [REDACTED] on September 14, 2023 on the domestic violence arrest of [REDACTED] then-CEO [REDACTED]. The article included information about the arrest from the police Incident Report that is the subject of this litigation. The article also included information about [REDACTED] having been accused of: being used by the Russian government to target Ukrainians as part of their ongoing invasion; of being a covert surveillance platform for U.S. Special Operations Command; and [REDACTED] having confirmed [REDACTED] work with U.S. defense and intelligence agencies in a public court filing. The article also originally included a link to a redacted copy of the Incident Report that I had uploaded to the Tech Inquiry server. As explained in an update to the article, I later directly embedded a redacted copy of the Incident Report directly into the article. A true and correct copy of my September 14, 2023 article, Jack Poulson, “The Covert Gig-Work Surveillance CEO Arrested for Felony Domestic Violence,” is attached hereto as **Exhibit C**. The article is publicly

Document received by the CA 1st District Court of Appeal.

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available on my *All-Source Intelligence* Substack page at

[REDACTED]

9. I also reported on plaintiff’s resignation from his role as CEO of [REDACTED] on December 17, 2023. As I understood it, his departure appeared to be a response to years of reckless behavior, including the felony domestic violence arrest and dragging [REDACTED] into the multi-year lawsuit against former employees in which plaintiff accidentally confirmed the company’s covert military surveillance operations through a legal filing. A true and correct copy of my December 17, 2023 article, “CEO of Gig-work Surveillance Firm Resigns,” is attached hereto as **Exhibit D**. The article is publicly available on my *All-Source Intelligence* Substack page at

[REDACTED]

10. I wrote again about [REDACTED] on January 15, 2024, wherein I discussed the (apparently accidentally published) terms of services of the surveillance dataset providers for a special operations contractor chaired by former acting CIA director Michael Morell, Orbis Operations. The terms of service detailed Orbis's relationship with numerous companies, including both [REDACTED] and the cellphone location-tracking data broker Anomaly Six. A true and correct copy of my January 15, 2024 article, “Anomaly detection firm tied to numerous former CIA officials affiliated with Beacon Global accidentally published its confidential data brokerage and persona management agreements,” is attached hereto as **Exhibit E**. This article is publicly available on my *All-Source Intelligence* Substack page at

[REDACTED]

[REDACTED]

11. I regularly report on many other companies in the government surveillance space and their leaders. As one example, I reported on the Silicon Valley data fusion company Orbital Insight's secretive contract with Indonesia's State Intelligence Agency, serving as the central data fusion platform for a large-scale wiretapping system coordinated in an office in the Samsung tower in Singapore that, according to my

1 sources, included targeted surveillance of West Papuans. I quoted one of the former
2 employees telling me that that company’s (now-former) CEO was one of the “most
3 unethical” people they had ever worked for. Jack Poulson, “Exclusive: Google-
4 backed startup's main income from Indonesian intelligence tracking West Papuans,
5 former employee says *All-Source Intelligence*, (October 16, 2023),

6 [REDACTED]

7 [REDACTED].

- 8 12. Prior to starting my Substack newsletter, I discussed [REDACTED] in a research
9 report published by Tech Inquiry on September 10, 2021 on how analysis of public
10 procurement records demonstrate how myriad subcontractors—such as [REDACTED]
11 support the U.S. military's usage of artificial intelligence to fuse and analyze
12 numerous surveillance datasets, including from commercial cellphone location-
13 tracking data brokers. Jack Poulson, “Easy as PAI (Publicly Available Information),”
14 Tech Inquiry, (Sept. 10, 2021),

15 [REDACTED].

- 16 13. I received the Incident Report that is the subject of this matter through an unsolicited
17 message on the end-to-end encrypted messaging platform Signal from a confidential
18 source in early September 2023. My source sent me the incident report after I
19 published my September 1, 2023 article discussing the chief executive’s accidental
20 public confirmation of his company’s classified intelligence contracts in his
21 declaration in the whistleblower lawsuit (described in Paragraph 7, *supra*, and
22 attached as Exhibit B). I had no prior relationship with the source. I did not request
23 or otherwise seek out the Incident Report.

- 24 14. I was unaware that the Incident Report was sealed when I received it and wrote about
25 it. There are no markings on the Incident Report that I understood at the time or
26 understand now to indicate it had been sealed. A true and correct copy of the record I
27 received from the source is attached hereto as **Exhibit F**. I never published this
28 version of the Incident Report. The version I initially published and linked to

1 redacted the names of the purported victim and 911 caller. I later also redacted home
2 address information for each. Attached hereto as **Exhibit G** is a true and correct copy
3 of the redacted version of the Incident Report as it currently appears in my article at
4 [REDACTED]
5 [REDACTED].

6 15. Upon receipt of the Incident Report, and before reporting on it, I phoned the San
7 Francisco Police Department's Crime Information Services Unit at 415-575-7232
8 and, after providing the incident report number (210-844-280), asked for and
9 received confirmation of each pertinent detail in the report, including: the name of
10 the reporting officer, the street address and unit number at which the arrest took
11 place, the names of the arrested individual and his alleged victim, as well as the
12 alleged victim's age and statement to the police that the plaintiff "just started beating
13 me" and that police observed and seized bloody pillowcases in addition to observing
14 multiple cuts, visible redness, and possible swelling on her face. The SFPD did not
15 inform me that the Incident Report had been sealed.

16 16. I chose to report the arrest of the sitting CEO of [REDACTED] for several reasons. At
17 the most basic level of relevance to my beat, I had recently reported the CEO's public
18 confirmation of his company's classified work with U.S. government agencies within
19 a declaration published as part of his company's multi-year lawsuit against its former
20 employees who had allegedly become whistleblowers. At a deeper level, two of the
21 primary concerns that arose within the [REDACTED] lawsuit were widespread concerns
22 about the ethics of the CEO himself, as well as the company's willful ignorance of
23 the safety of its gig workers. I thus concluded that the CEO being arrested on
24 suspicion of felony domestic violence against a much younger woman was relevant.
25 I believe this was borne out by the information revealed during [REDACTED] lawsuit
26 against the whistleblowers. For example, as I reported in articles published on
27 January 6, 2024 and April 25, 2024, deposition testimony and documents filed in the
28 case revealed that [REDACTED] had, among other things: secretly listened to a private

1 phone call between two [REDACTED] executives who he claimed had themselves
2 eavesdropped on an embarrassing call between [REDACTED] and a young female
3 employee; fired numerous employees who criticized his leadership of the company;
4 and openly mocked [REDACTED] employees' mass concern about the direction of the
5 company, which secretly pivoted to military surveillance under [REDACTED]
6 leadership. Documents also reflect serious concerns about the company's failure to
7 adopt appropriate safeguards to prevent bad actors from putting vulnerable gig
8 workers in harm's way or misusing the vast amounts of data collected from users.
9 They also showed [REDACTED] eagerness to engage even highly suspect business
10 partners, such as an entity owned by an entrepreneur whose previous company, a
11 military contractor, failed to prevent the deaths of many of its employees, including
12 19 who were pulled off a bus in Iraq and executed on the side of the road while
13 performing as part of the company's secretive military contracts. A true and correct
14 copy of my January 6, 2024 article, "Gig-Work Surveillance Firm Settles Case
15 Against Alleged Whistleblower," is attached hereto as **Exhibit H**. This article is
16 publicly available on my *All-Sources Intelligence* Substack page at

17 [REDACTED]. A true and
18 correct copy of my April 25, 2024 article, "California-Based Covert Surveillance
19 Firm Attempted to Criminalize This Publication and Unmask Its Sources, Court
20 Filings Reveal," is attached hereto as **Exhibit I**. This article is publicly available on
21 my *All-Sources Intelligence* Substack at

22 [REDACTED]

- 23 17. Third, given that the CEO was in the middle of a multi-year lawsuit against
24 numerous former employees for (allegedly) daring to blow the whistle on [REDACTED]
25 covert work with U.S. security agencies, I was of course aware that the CEO's
26 litigious nature was likely to deter other reporters from covering his arrest. I
27 therefore concluded that refusing to publish a confirmed copy of the CEO's arrest
28 report would be an act of cowardice on my part.

- 1 18. As I reported in November 2023, a pseudonymous email account
2 “ericssenchristian@gmail.com” using the name “Christian Ericson” claimed to be a
3 representative of [REDACTED] before attempting to bribe me to retract my article and
4 then, failing that, submitting abuse report and fraudulent Digital Millennium
5 Copyright Act requests to Tech Inquiry’s cloud provider, Digital Ocean. A true and
6 correct of my November 20, 2023 article, “Fraudulent DMCA Takedown Submitted
7 to Hide Details of Felony Domestic Violence Arrest of [REDACTED] CEO [REDACTED] [REDACTED]
8 [REDACTED] is attached hereto as **Exhibit J**. This article is publicly available on my
9 *All-Source Intelligence* Substack page at
10 [REDACTED]
- 11 19. As that article notes, in November 2023, several months after I first reported on
12 plaintiff’s felony domestic violence arrest, and as part of my newsgathering for
13 further reporting, I reached out to the public affairs office of the U.S. Special
14 Operations Command—a U.S. military entity that frequently contracts with [REDACTED]
15 [REDACTED] for comment on whether plaintiff’s felony domestic violence arrest or
16 targeted harassment of journalists through the bogus DMCA takedown demands
17 violates any Department of Defense policies for holding a security clearance. I
18 sought comment on these matters because plaintiff’s security clearance allows him to
19 access sensitive national security information, placing him in a position of public
20 trust, despite that his conduct raises concerns about his character and judgment. U.S.
21 Special Operations Command did not respond to my request for comment, which is
22 reflected in my reporting.
- 23 20. Prior to [REDACTED] resignation from his position as CEO of [REDACTED] the
24 company attempted to unmask my confidential sources using forensic means and
25 numerous document requests during discovery in the Whistleblower lawsuit.
- 26 21. As stated above, I write all of the newsletters in my personal capacity, and not as an
27 officer of Tech Inquiry. My Substack article originally included a link to a redacted
28 version of the arrest report, which I had posted on the Tech Inquiry website in my

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capacity as a Substack writer. Several months later, I removed the arrest report from Tech Inquiry and embedded the document directly within the Substack article. I also posted links on Tech Inquiry to my Substack article and other articles about the arrest report. Tech Inquiry had no other role in this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 6th day of December 2024 in Rio Rico, Arizona.



Jack Poulson

EXHIBIT A

CONDITIONALLY UNDER SEAL

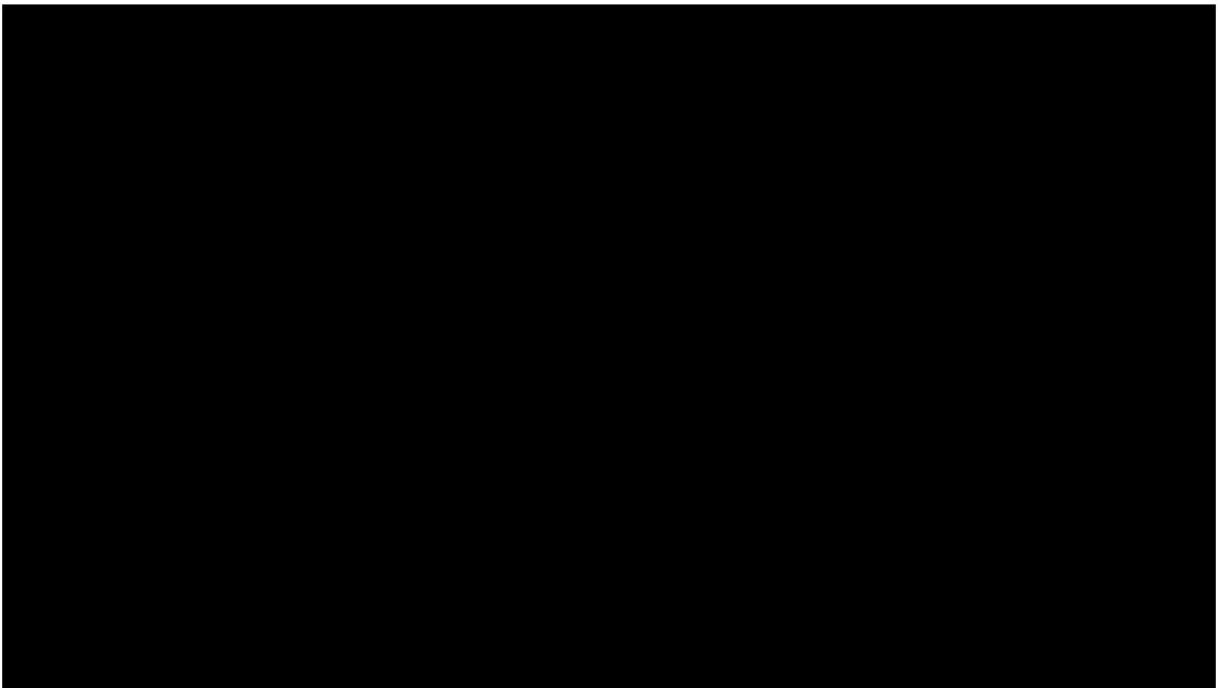
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Pollster for Niger coup support is a surveillance platform for U.S. Special Operations Forces

Prominent poll on Niger published in The Economist on Thursday was conducted by ██████████ whose own leaked slide deck pitched company to U.S. Special Forces as a surveillance platform.



JACK POULSON
AUG 27, 2023



The title slide from a leaked ██████████ slide deck — published in The Wall Street Journal — which pitched the company as a human and signals intelligence collection platform for use by U.S. Special Operations Forces in Afghanistan.

A poll published in The Economist on Thursday — entitled “Cock-a-doodle-coup” — claims that the recent coup in Niger is overwhelmingly supported by the neighboring

country of Mali, as well as majority supported by the nearby countries of Ghana, Nigeria, and the Ivory Coast. [Reporting](#) from earlier this month in The Intercept revealed that at least five members of the Niger junta were trained by the United States.

Unmentioned by The Economist, pollster [REDACTED] was [exposed](#) in 2021 by The Wall Street Journal as a covert surveillance platform for U.S. Special Operations Forces specializing in the usage of its gig-work platform for the collection of human and signals intelligence, as well as in conducting information operations. The company's own [leaked pitch](#) to Combined Joint Special Operations Task Force-Afghanistan ([CJSOTF-A](#)) summarized [REDACTED] capabilities as such:

“Managed through [REDACTED] Corp.'s smartphone app and digital task marketplace, Afghan contributors shall identify and assess messages, take photos, find locations, travel identified routes, ask questions, and map wireless networks to augment all-source reporting, including information operations (IO), human intelligence (HUMINT) and signals intelligence (SIGINT).”

Draft Statement of Work

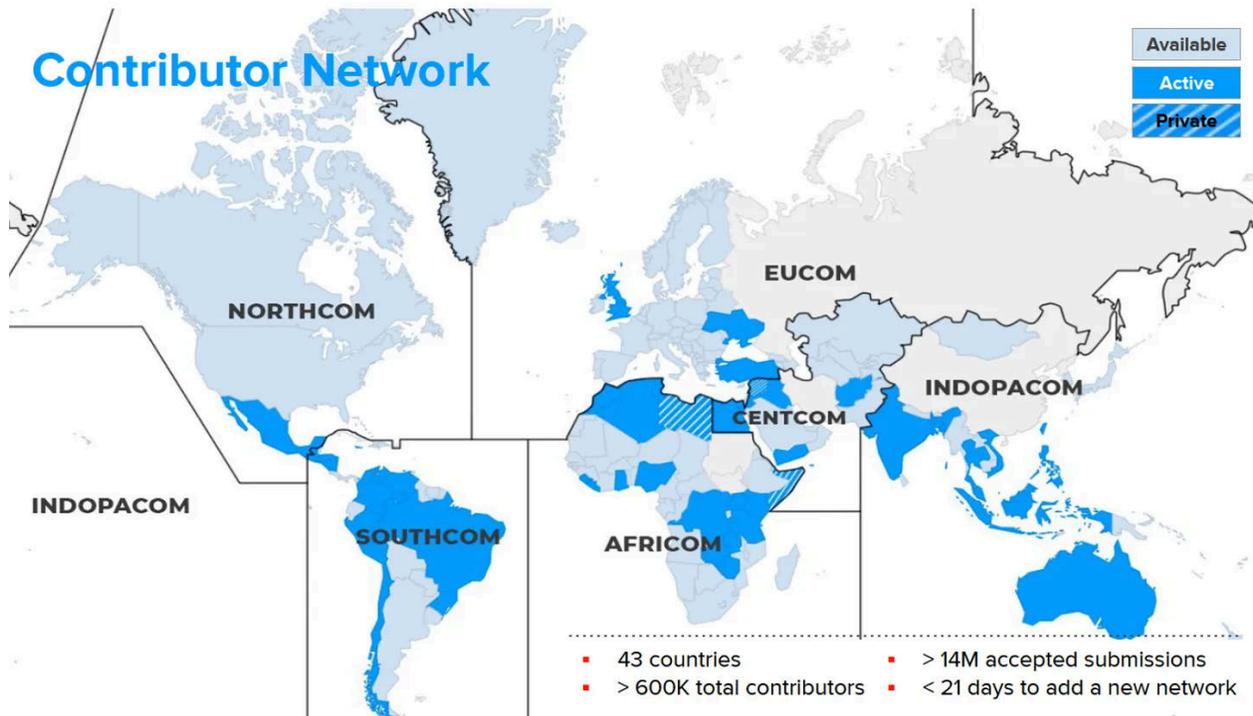
Contractor [REDACTED] shall use directed, crowdsourced networks of thousands of Afghan contributors to collect data in CJSOTF-A-identified areas of interest (AOIs). Managed through [REDACTED] smartphone app and digital task marketplace, Afghan contributors shall identify and assess messages, take photos, find locations, travel identified routes, ask questions, and map wireless networks to augment all-source reporting, including information operations (IO), human intelligence (HUMINT) and signals intelligence (SIGINT). [REDACTED] contributors shall perform combinations of those tasks, in any sequence, across AOIs in Afghanistan in near real-time over a 12-month period of performance (PoP).

©2019 [REDACTED] Not for distribution

A slide from [REDACTED] leaked 2019 pitch to U.S. Special Operations Forces in Afghanistan — as published by The Wall Street Journal.

As of the company’s May 31, 2019 pitch deck, two of the four polled nations — Nigeria and Ghana — were listed as having surveillance capabilities taskable by U.S. Africa Command (AFRICOM) through ████████ network. Records [published](#) by the U.S. government also show that ████████ was paid \$498,701 on March 31, 2020 on a subcontract under the Nigeria branch of the U.S. Agency for International Development for “Venezuela Basic Service Common Operating Picture, data collection in Venezuela to improve basic service delivery and information within Venezuela.”

Venezuela is also clearly visible as a member of ████████ contributor network taskable by U.S. Southern Command (SOUTHCOM). In fact, just over a month after ████████ ████████ to collect data in Venezuela, three American ex-Special Forces [attempted](#) to [overthrow](#) the Venezuelan government in what is now known as Operation Gideon.



A slide from a leaked May 2019 pitch by ████████ to U.S. Special Operations Forces in Afghanistan — as published by The Wall Street Journal.

████████ is far from the only U.S. intelligence contractor using polling as at least a partial cover for its covert operations. Two Six Technologies — which [hired](#) the former head of all covert operations in the Central Intelligence Agency, Elizabeth Kimber, in

Document received by the CA 1st District Court of Appeal.

May 2022 — has active contracts with U.S. Special Operations Forces around the world conducting “[tactical information warfare](#)” in the name of counter-disinformation, including through the usage of commercial cellphone location-tracking data. And, [REDACTED] [REDACTED] Two Six Technologies predecessor IST Research has been fond of [repurposing](#) their human intelligence networks for public surveys.

In addition to a [previously published](#) ongoing contract between Two Six and U.S. Special Forces — including Green Berets, Civil Affairs, and Psychological Operations groups — we are newly publishing here ongoing information operations contracts between Two Six and:

- The elite U.S. counter-terrorism force known as [Joint Special Operations Command](#),
- The U.S. Army’s primary force for influence operations, [1st Information Operations Command](#),
- The branch of U.S. Special Operations Command responsible for South and Central America, [Special Operations Command South](#),
- [Naval Forces Southern Command](#), and
- The U.S. Space Force’s [Space Delta 6](#).

Despite overwhelming primary source evidence, there appears to be little appetite in the U.S. media to interrogate the roles of [REDACTED] and Two Six Technologies in ongoing U.S. information operations.

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EXHIBIT B

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confirms secret military and intelligence contracts in court filing

Polling firm disclosed existence of its covert work with military and intelligence agencies in a court filing from Monday -- but requested protection against any further disclosures.



JACK POULSON
SEP 01, 2023

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 CUPERTINO, CA 95014

9	Attorneys for Plaintiff	
10	CORPORATION, a Delaware Corporation	
11	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
12	COUNTY OF SANTA CLARA	
13	CORPORATION, a	Case No.: 19-CV-346678
14	Delaware Corporation	(consolidated with Case No.: 21-CV-385478)
15	Plaintiff,	
16	v.	
17	ALEX POMPE, an individual, DOES 1	
18	through 100, inclusive,	
19	Defendants.	

The header for a declaration from CEO that details of the company's military and intelligence contracts be protected from disclosure within its ongoing lawsuit against former employee Alex Pompe.

More than four years into its lawsuit against former employee Alex Pompe, the gig-work data collection platform has requested that the Santa Clara County Superior Court protect the company against any disclosures of its secretive military and intelligence contracts. The request came from who took over as CEO of in February 2018 — seven months before Pompe left the company to become

a research manager in Facebook's Data for Good program and fourteen months before the company sued Pompe for allegedly disclosing sensitive trade secrets.

At the center of the April 19, 2019 [complaint](#) against Pompe is an allegation that he "interfered" with [REDACTED] international data collection contract with the Bill & Melinda Gates Foundation by alerting them in March 2019 to [REDACTED] covert work with U.S. military and intelligence agencies. Said relationships received prominent press coverage two years later in a Wall Street Journal [exposé](#) which [published](#) a copy [REDACTED] [REDACTED] pitch to U.S. Special Operations Forces in Afghanistan on how the company's platform was used to covertly support U.S. Human Intelligence (HUMINT) and Signals Intelligence (SIGINT) collection, as well as Information Operations (IO).



A photo of [REDACTED] President and CEO [REDACTED] published on the company's 'leadership' page. [REDACTED] August 24, 2023 declaration to the Santa Clara County Superior Court confirmed [REDACTED] active contracts with U.S. military and intelligence agencies as part of an attempt to suppress any further disclosure of said relationships.

Despite the high-profile leak of [REDACTED] clandestine surveillance activities, influential outlets such as The Economist have [unskeptically promoted](#) [REDACTED] as a neutral polling

platform for delicate topics such as Western African support for the [ousting](#) of Niger president Mohamed Bazoum in July.

The recent declaration from [REDACTED] CEO [REDACTED] — which took place on August 24th but was electronically filed four days later — opens with the direct admission that “[REDACTED] has clients in the military and intelligence sectors, which represent a portion of its overall client base.” [REDACTED] further notes that he holds a “security clearance with the United States Department of Defense” and that disclosure of [REDACTED] military and intelligence clients — “a closely-guarded trade secret” — “would cause [REDACTED] incalculable business harm” because [REDACTED] believes said contracts to be conditioned on their clandestine nature.

Concept of Operations – HUMINT

- **Capability:** Identification of key structures (e.g., mosques, banks/hawalas, internet cafes) complete with photos and details combined with associated sentiment survey questionnaires.
- **Dynamic Tasking:** Only limitation with new tasks is time to translate, safeguard true intent and minimize risk to contributor.
- **Deliverable (Processed):** KML/KMZ files with geo-tagged photos of locations for ingestion into existing Google Earth platforms, dashboards with sentiment data.
- **Data Transfer:** Multiple options including secure AWS, ArcGIS, or GCP transfer through CSV, JSON, and enriched KMZ formats.

 PREMISE

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A slide from [REDACTED] March 2019 pitch to Combined Joint Special Operations Task Force-Afghanistan (CJSOTF-A), as published by The Wall Street Journal. The slide deck contains similar overviews of [REDACTED] [REDACTED] for Signals Intelligence (SIGINT) collection and Information Operations (IO).

Past advisors to [REDACTED] have included former USAID Administrator [Rajiv J. Shah](#) — who is currently the President of Rockefeller Foundation. And board members have included former Treasury Secretary [Lawrence H. Summers](#) and the founder of venture capital firm Social+Capital, [Chamath Palihapitiya](#). (Current U.S. Secretary of State

Antony J. Blinken [disclosed](#) investing at least \$250,001 into Social+Capital before becoming part of the Biden administration.)

As part of his declaration, ██████████ warned that public disclosure of ██████████ military and intelligence work could put workers on its platform at risk, “simply by virtue of having the ██████████ app on their phones.” Given that ██████████ role as a surveillance platform for U.S. military and intelligence agencies is now confirmed from multiple primary sources, it would seem that foreign governments have a right to be skeptical of the gig-work surveillance economies ██████████ is managing in their countries on behalf of the U.S. government.

emma@eff.org

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EXHIBIT C

CONDITIONALLY UNDER SEAL

Document received by the CA 1st District Court of Appeal.

The Covert Gig-Work Surveillance CEO Arrested for Felony Domestic Violence

After a Christmas party, then 53 year old CEO of [REDACTED] [REDACTED] was arrested when his 25 year old girlfriend told San Francisco police that "he just started beating me."



JACK POULSON
SEP 14, 2023

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2024-06-03: Today, roughly nine months after publication, a member of Substack's Trust & Safety Team, identified only as "Jim," twice "temporarily unpublished" this article demanding the removal of both the unit number and street address of the apartment complex where the covert intelligence contractor [REDACTED] then-CEO [REDACTED] was arrested. In the time since the original publication, [REDACTED] filed at least [six discovery requests](#) in court to unmask this article's source, [settled their lawsuit](#) against numerous former employees for allegedly revealing [REDACTED] contracts with U.S. special operations forces, and [ousted](#) [REDACTED] as CEO.

2023-10-13: As a result of persistent attempts from an anonymous individual claiming to represent [REDACTED] to bribe the author into taking down this article, as well as an attempt to have the original police report file taken down through a fraudulent DMCA copyright claim, the report is now directly embedded in this article.

Late on the Tuesday night before Christmas in 2021, San Francisco police officer Drew R. Jackson arrived on the sixth floor of the [REDACTED] luxury apartments to respond to a 911 call regarding potential domestic violence and furniture thrown into the walls of unit [REDACTED]. The officers were greeted by the 30 year old female neighbor who had reported the incident and handed an audio recording which they interpreted to be a voice saying "stop, please stop."

A shirtless, apparently sweating, 53 year-old white male — [REDACTED] CEO [REDACTED] — then answered the door of unit [REDACTED]. According to San Francisco Police Department Incident Report 210844280, Mr. [REDACTED] 25 year-old girlfriend — who also lived in the apartment — was then observed by Officer Jackson to have “visible redness to the left side of her face and possible swelling to the left of her eye.”



Police report on former [REDACTED] CEO [REDACTED]
[REDACTED] arrest
 7.81MB · PDF file

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A redacted copy of the San Francisco Police Department's December 21, 2021 arrest of [REDACTED] [REDACTED] who was then CEO of the information-gathering gig-work company [REDACTED]. Mr. [REDACTED] was arrested for alleged felony domestic violence against his 25-year-old girlfriend, but the charges were later dropped.

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Though initially distraught and having trouble controlling her breathing, Mr. [REDACTED] girlfriend reportedly told the officers that, after coming home from a Christmas party and having an argument, Mr. [REDACTED] “just started beating me.” Officer Jackson further described the young girlfriend as crying “uncontrollably” after stating that Mr. [REDACTED] hit her in their bedroom “so many times” with his open hand.

After finding “bloody pillowcases” in the bedroom where Mr. [REDACTED] allegedly beat his girlfriend, the two police officers placed the CEO under arrest for felony domestic violence. Seven months later, Mr. [REDACTED] published the [first episode](#) of his new podcast, [REDACTED]. The guest was [Lanny Davis](#), a lawyer/crisis-manager who previously represented film producer and [convicted rapist](#) Harvey Weinstein.



A photo of ██████████ President and CEO ██████████ published on the company's 'leadership' page. According to San Francisco Police Department Incident Report 210844280, then 53 year-old Mr. ██████████ was arrested for felony domestic violence against his 25 year-old girlfriend on the night of Tuesday, December 21, 2021.

Perhaps due to Mr. ██████████ alleged victim subsequently recanting her initial statements and telling police that “nothing happened,” the incident has not previously been publicly reported. And, less than a year after the police encounter, she publicly promoted Mr. ██████████ [podcast interview](#) with Clinton-era Treasury Secretary Larry Summers.

Neither Mr. ██████████ nor his alleged victim responded to requests for comment.

Mr. ██████████ company, the covert gig-work surveillance platform ██████████ is undoubtedly best known for having been [accused](#) in February 2022 — just two months after ██████████ arrest — of having been used by the Russian government to target Ukrainians as part of their ongoing invasion. Ironically, the company had been [exposed](#) the previous year by The Wall Street Journal as a covert surveillance platform for U.S. Special Operations Forces, including [providing support](#) for Human Intelligence

(HUMINT), Signals Intelligence (SIGINT), and Information Operations (IO). By March, [REDACTED] had [hired Lanny Davis](#) to help manage their crisis communications.

The most recent [confirmation](#) of [REDACTED] work with U.S. defense and intelligence agencies came from Mr. [REDACTED] himself. [REDACTED] initiated a lawsuit against former employee Alex Pompe and many of his colleagues in 2019 for allegedly having alerted the Bill & Melinda Gates Foundation as to [REDACTED] covert intelligence work. As part of the ongoing lawsuit, which goes to trial early next year, Mr. [REDACTED] submitted a declaration last month requesting that his company’s covert intelligence activities be protected from disclosure due to the damage it would cause [REDACTED] as well as potential risk to their gigworkers “simply by virtue of having the [REDACTED] app on their phones.”

(The San Francisco Police Department Incident Report is being [published here](#) in redacted form to protect both the alleged victim and the neighbor who called 911. The original was available [upon request](#) from the San Francisco Police Department.)



An artistic rendition of [REDACTED], which is down the hall from [REDACTED] CEO [REDACTED] was arrested for felony

Document received by the CA 1st District Court of Appeal.

domestic violence on the night of Tuesday, December 21, 2021. Credit: [UDR](#)

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Maria Accounting and Finance Newslett... September 23, 2023

Liked by Jack Poulson

Mr. Poulson, thank you for your great reporting! I read the Racket News article this morning and immediately signed on to your Substack. I look forward to more of this fantastic intel!

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EXHIBIT D

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CEO of Gig-work Surveillance Firm Resigns

██████████ resigned from ██████████ this week after years of court battles, the exposure of ██████████ clandestine surveillance, and publication of his felony domestic violence arrest.



JACK POULSON
DEC 17, 2023

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2023-12-19: After publication of this article, ██████████ updated its [leadership page](#) to confirm Matt McNabb as the company's new CEO. Mr. McNabb also replaced ██████████ ██████████ board of directors, and both Alex Moore and David Soloff were removed.

Launched in [late 2013](#) by punk-rock-drummer-turned-venture-capitalist [David Soloff](#), ██████████ became an obscure, data-gathering analogue of Uber, paying small fees to gig workers in exchange for tasks such as taking photos of the shelves at supermarkets or [polling West Africans](#) about their view on Niger's coup. But despite securing an [investment](#) from Google Ventures, a grant from the Bill & Melinda Gates Foundation, and landing former U.S. Treasury Secretary [Lawrence Summers](#) on its board, ██████████ stalled. Soloff was subsequently replaced in early 2018 as CEO by ██████████ ██████████ who led the government digitization company ██████████ for more than fifteen years and joined the board of a police data sharing [company](#) now owned by ██████████, the company formerly known as ██████████.

According to a statement from ██████████ Marketing Director Dora Kuo obtained by [Allbritton Journalism Institute](#) reporter Byron Tau and shared with the author, Mr. ██████████ resigned as CEO of ██████████ earlier this week and "transitioned to an advisory role". His departure appears to be a response to years of reckless behavior, including a [felony domestic violence arrest](#) and dragging ██████████ into a multi-year lawsuit against former employees in which ██████████ [accidentally confirmed](#) the company's covert military surveillance through a legal filing. Ms. Kuo further noted that ██████████ has

been replaced as CEO by Matt McNabb, the former CEO of competitor Native who became ██████ Chief Strategy Officer after ██████ [acquired](#) Native in 2021.

As of publication of this article, ██████ [website](#) still lists Mr. ██████ as the company's CEO. Prior to confirmation from ██████ of ██████ replacement by McNabb, the author received an anonymous tip that ██████ board of directors demanded the replacement on Friday, December 8, before announcing it to the company the following Monday alongside notice of layoffs.

The board that allegedly demanded Mr. ██████ termination includes [Alex Moore](#), the first employee of the data fusion giant Palantir, who has since become an investor at 8VC, a venture capital firm led by Palantir co-founder Joe Lonsdale. Until earlier this week, ██████ was [listed](#) alongside Moore and Lonsdale as a board member of Esper, a company which describes itself as “building a data-driven policy solution”. Mr. ██████ and Mr. Moore did not respond to requests for comment, nor did Mr. McNabb or numerous other members of ██████ board.

In a series of bizarre events spanning October and November, someone operating under the pseudonym “Christian Eric[s]en”, and claiming to represent Mr. ██████ [committed perjury](#) by filing a fraudulent Digital Millennium Copyright Act takedown request against the author. The target of the fraudulent copyright enforcement attempt was the San Francisco Police Department incident report detailing ██████ 2021 felony arrest for domestic violence, which Mr. ‘Eric[s]en’ earlier attempted to pay the author to retract from the internet.



A photo of former [REDACTED] CEO [REDACTED] which was published on the company's leadership page. Mr. [REDACTED] reportedly resigned [REDACTED] [REDACTED] earlier this week.

The consequences of [REDACTED] handover in 2018 from Mr. Soloff, a former punk rocker, to Mr. [REDACTED] a government surveillance executive, were immense, including spurring a multi-year lawsuit in the Superior Court of Santa Clara County which is set to go to trial in March. Beyond clashes in management style, by April 2019 [REDACTED] had sued former employee Alex Pompe for allegedly alerting the Gates Foundation to the company's recent expansion into covert surveillance operations for the U.S. military, claiming that "Pompe came to work as a saboteur" and that "numerous employees left in 2018 as a result of Pompe's conduct".

Two years after the lawsuit was filed, The Wall Street Journal [exposed](#) [REDACTED] covert military surveillance work, including by publishing [REDACTED] [May 2019 pitch](#) to the unified command for all unconventional warfare conducted by the International Security Assistance Force in Afghanistan, Combined Joint Special Operations Task Force-Afghanistan ([CJSOTF-A](#)). [REDACTED] promised that its "600K+ local data contributors", including 340 in Afghanistan, could perform tasks such as mapping cell

towers and wifi networks, surveilling activity around mosques and internet cafes, and conducting information operations under cover of polling.

(The author of The Wall Street Journal’s exposé on ██████ Byron Tau, is slated to publish a book on commercial surveillance companies such as ██████ in February, through Penguin Random House, titled “[Means of Control](#)”).

██████ was awarded a [\\$459,846 contract](#) three months later with the same title, “A Dynamically Re-taskable, Global System for Persistent Ground ISR [Intelligence, Surveillance & Reconnaissance]”, supporting Air Force components of Special Operations Command Africa . The “SOF [Special Operations Forces] ISR Integration Team Lead” for the contract, former 501st Military Intelligence Brigade commander Jason Chung, had been hired the same month as ██████ pitch to CJOTF-A, according to Mr. Chung’s [LinkedIn profile](#).

In the last two years, ██████ has received tens of millions of dollars in [public payouts](#) through subcontracts under Defense Department components such as U.S. Cyber Command. But the company is best known for having been [accused](#) in February 2022 — just two months after Mr. ██████ arrest — of being used for targeting by the Russian government during their invasion of Ukraine. The company also [announced](#) its support for the U.S. Agency for International Development’s [Myanmar Analytical Activity](#) just last month.

emma@eff.org



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Maria Accounting and Finance Newslett... Dec 18



Now that Section 702 has been renewed US citizens continue to be a target rich environment, there's lots of work to go around. Great article!

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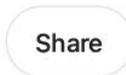
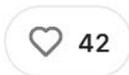
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Anomaly detection firm tied to numerous former CIA officials affiliated with Beacon Global accidentally published its confidential data brokerage and persona management agreements

Orbis Operations, which has been chaired by former acting CIA Director Michael Morell, deleted the list of data broker license agreements for its Discovery product after being approached for comment.



JACK POULSON
JAN 15, 2024



The banner image from the [homepage](#) of Orbis Operations, which the company superimposed with the text “Insights for Impact.” The image appears meant to depict data collection and analysis which spans the globe.

2024-01-15, 11:47 p.m. EST: The article was updated to note that former acting CIA director Michael Morell's "Intelligence Matters" podcast was relaunched under Beacon Global's umbrella on October 11, with former CIA Chief Operating Officer Andrew Makridis as a co-host.

Founded in 2008 and led by [Josh Mayne](#), a former intelligence advisor for counterinsurgency efforts in Afghanistan, Orbis Operations has [pitched](#) the central idea behind its methodology as BAD, "Baseline + Anomaly = Decision." As argued on the [website](#) for Orbis's Situational Awareness Training: "All individuals and groups give off signals when they are measured against context, relevance, and the local societal baseline. In certain circumstances, these 'signals' can, with the proper training, be read as 'anomalies.'"

U.S. intelligence agencies use anomaly detection techniques to hunt for foreign spies, while major corporations apply similar practices to root out anonymous leakers and whistleblowers under the banner of "[insider threat detection](#)," often with the help of former U.S. intelligence officers. Similarly, U.S. Special Operations Forces test such surveillance capabilities on themselves as part of minimizing their footprint — typically under the banner of "[signature reduction](#)" — when covertly operating in areas controlled by sophisticated rivals, such as 5G-connected Chinese 'Smart Cities' filled with facial recognition-enabled surveillance cameras.

Thanks to a previously unreported accidental [publication](#) of the End User License Agreement for Orbis's secretive "Discovery" data fusion product, many of the underlying data brokers which have fueled Orbis's anomaly-detection services, such as the cellphone location-tracking firm [Anomaly Six](#) (A6) and the gig-work surveillance company [REDACTED], are now known. Orbis's agreement with A6 fittingly comes first, as the two companies use strikingly similar terminology: "Anomaly Six" can be understood as a riff on the popular military parlance of 'watching your six', which translates to 'watching your back' due to the location of the six on a clock relative to its center. (The accidentally published agreement between A6 and Orbis claims to have been last updated on December 14, 2021.)

Orbis Operations did not respond to a request for comment and, instead, within 24 hours removed the revealing license agreement from its website. Data brokers included in the license agreement for Orbis Discovery, such as A6, [REDACTED] the Australian social media surveillance firm [Fivecast](#), and the New York-based information warfare firm

[Blackbird.ai](#), did not initially respond to requests for comment within 24 hours. After publication, A6 co-founder Brendan Huff stated that his company does not “comment on clients or other relationships” and that “Anomaly Six stands with America and its allies to support National Security interests.” Should others subsequently respond, this article will be updated to include their comments.

Orbis’s agreement with Fivecast is perhaps the most detailed and, beyond asserting itself as confidential, details Fivecast’s provision of “Online Persona Management Services” to Orbis, stating that “The Licensee appoints Fivecast as its agent to create the specified number of personas for each specified social media site.” Critics typically refer to such personas as “sock puppets,” as was the case when U.S. Central Command [purchased](#) “managed attribution” software from the Herndon-based firm [Ntrepid](#).

FIVECAST CUSTOMERS AND PERMITTED USE-CASES

CUSTOMER TYPE & DESCRIPTION	PERMITTED USE-CASES
Law Enforcement Agencies City, provincial, county, state & federal police/sheriffs	<ul style="list-style-type: none"> Intelligence gathering or investigation on persons or groups of interest connected to an intelligence or law enforcement investigation and/or who have provided consent.
National Security Agencies Federal security, intelligence or defence agencies	<ul style="list-style-type: none"> Event detection and monitoring of public events and/or locations for the purpose of ensuring public safety. Integrity investigations into staff, or staff of other agencies subject to the relevant agency's powers. Establishing a person's or group's online presence, including linking multiple online accounts to an identity. Identifying potential risks to public safety based on an online footprint of an individual or group. Online audience segmentation based on their online reaction to issues concerning public safety. Insider threat detection. Identifying potential risks to an individual, group or public safety based on an online footprint of an individual or group, for example to mitigate fixated threats or undertake close personal protection services.
Other Government Agencies Other government agencies with an intelligence/investigative function such as Crime Commissions, Corrections, Tax office investigation teams or fraud investigation teams	<ul style="list-style-type: none"> Identifying potential risks to an individual, group or public safety based on an online footprint of an individual or group, for example to mitigate fixated threats or undertake close personal protection services.
Private Sector Contractors Intelligence contractors/advisors engaged to provide intelligence to law enforcement/ national security End-Users	<ul style="list-style-type: none"> Provision of services to law enforcement, national security or other government agencies where the services are consistent with the approved use-cases above.
Corporate security companies or dedicated security and compliance units within large enterprises	<ul style="list-style-type: none"> Event detection and monitoring of events and/or locations for the purpose of ensuring safety of an individual, group or public safety relevant to the company's staff, customers or facilities. Identifying potential physical or reputational risks to an individual, group or public safety based on an online footprint of an individual or group. Insider threat and personnel security vetting corporate risks associated with fraud or other malicious insider action or potential physical or reputational threats to commercial supply chains. Know your customer (KYC), customer due diligence (CDD) or compliance with regulation e.g anti-money laundering, counter terror financing

A section of the since-deleted [End User License Agreement](#) for Orbis Discovery which details the “customers and permitted use-cases” for the social media surveillance firm Fivecast. Prior to the list of use-cases, the agreement itself is stated to be confidential.

Perhaps the most high-profile [endorsements](#) of Orbis have come from Michael J. Morell, a former acting director of the Central Intelligence Agency who hosted the popular CBS News “[Intelligence Matters](#)” podcast and has frequently noted his role as chairman of Orbis’s board of directors. [Michael G. Vickers](#), a former Under Secretary of Defense for

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Intelligence (USDI) and Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD SO/LIC), has similarly [described himself](#) as a member of Orbis's board.

In addition to their roles at Orbis, Morell and Vickers are respectively listed as [Senior Counselor](#) and [Senior Advisor](#) to Beacon Global Strategies, a consulting firm which has [worked for](#) Israeli spyware company NSO Group and was co-founded by [Jeremy Bash](#), the former Chief of Staff to CIA Director and Secretary of Defense Leon Panetta, who subsequently joined Morell as a Senior Counselor at Beacon. Morell and Bash were [previously](#) Director and Advisor, respectively, of the [failing](#) national security investment firm Chain Bridge, while Morell and Vickers have been members of the advisory board of the social media monitoring firm [Dataminr](#), which was previously minority-owned by Twitter.

Orbis also [hired](#) as Senior Vice President Philip F. Reilly, a former chief of the CIA's paramilitary organization who was the agency's Chief of Station in Afghanistan when Orbis was founded and later worked as [head of special activities](#) at Constellis Group, the successor to [controversial](#) private military contractor Blackwater. Orbis also received an [investment](#) from a venture capital partnership headed by Hank Crumpton, who was [chief](#) of the CIA's domestic activities arm, the National Resources Division, for nearly two years during the early days of the Global War on Terror. (Crumpton's firm also [invested](#) in Morell's Chain Bridge.)

Orbis did not respond to a request for comment as to how its board of directors has changed since its [April 2021 acquisition](#) by McNally Capital, an investment firm run by the family which owned and operated the famed geographic publisher Rand McNally, but Federal Election Commission filings state that Philip Reilly was still a consultant with Orbis on June 26, 2023, when he donated \$1,041 to the [now-aborted](#) Republican presidential campaign of former CIA operations officer — and [former](#) OpenAI board member — Will Hurd.

Following McNally Capital's investment in firms such as Orbis Operations and the Maryland-based [FedData](#), which Mr. Vickers similarly disclosed himself as a board member of, last year Rand McNally announced its [transition](#) into a technology company

“focused on providing innovative solutions for connected cars and advanced fleet management.”

Myriad national security data brokers

Despite the tendency of many journalists to focus on surveillance technologies in individual isolation, such as in the case of facial recognition, cellphone location-tracking, drone surveillance, or social media monitoring, companies such as Babel Street and the publicly traded Palantir have long focused on the fusion of disparate data sources into a single surveillance platform. The most basic form of tradecraft consists of “pivoting” between different datasets during an investigation, such as by identifying cellphone tracks which intersected with a geotagged and timestamped tweet, [deanonymizing](#) a cellphone owner by looking up the address it rests at most nights through Google Maps and then performing a LexisNexis query to determine their name, or by using an underlying advertising or device identifier to connect different accounts held by the same person.

In the case of Babel Street, which A6 [contentiously](#) spun out from in 2018, the company has combined corporate records from [Sayari](#), personal records from [Pipl](#), cellphone location-tracking data [reportedly](#) sourced from Gravy Analytics / Venntel, and has spoken with Fivecast about purchasing access to the company’s aggressive Facebook scrapes. Similarly, U.S. Army Green Berets have deployed the [“tactical information warfare”](#) capabilities of the [Pulse platform](#) of Two Six Technologies, which has included data from Flashpoint collected by infiltrating the chatrooms of target groups, as well as commercial social media surveillance and commercial cellphone location-tracking data, ostensibly acquired from the McLean-based firm [Creative Radicals](#). In analogy with Orbis, former Director of National Intelligence and head of the National Security Agency Michael McConnell [joined the board](#) of Two Six, but the company is unique in its employment of the former head of the CIA’s Directorate of Operations, [Elizabeth Kimber](#), as Vice President for Intelligence Community Strategy.

There is thus precedence for Orbis Discovery fusing cellphone location data purchased from A6 with social media capabilities from Fivecast. Further, both A6 and Fivecast have had close relationships with the UK-based intelligence contractor Prevail Partners, which has [publicly announced](#) the incorporation of Fivecast’s data into its “all-source

intelligence” capabilities and, according to an [apparent leak](#) of internal A6 files, is a white-labeled reseller of A6 capabilities. A6 did not respond to a previous request for comment on the veracity of the leak or its relationship with Prevail, but the most recent LinkedIn post from A6 co-founder Brendan Huff is a reshare of a [Prevail job ad](#).

The arguable outlier in the leaked data providers for Orbis Discovery is [REDACTED] a sort of Uber-for-information-gathering which was [exposed](#) by The Wall Street Journal in 2021 as a [covert](#) human and signals intelligence collection platform for U.S. Special Operations Forces, including as part of the war effort in Afghanistan. Alongside the Pulse Platform of Two Six Technologies, which concentrates on developing informants through an analogue of the customer acquisition funnel of an advertising agency, [REDACTED] is a rare example of how the U.S. Government has modernized its human intelligence collection in the age of cellphones. As reported by the author earlier this month, [REDACTED] [conditionally settled](#) its nearly five-year lawsuit against alleged whistleblower Alex Pompe on January 5, one month after the company [removed](#) its embattled CEO, [REDACTED]

One of Orbis’s larger payouts from U.S. Special Operations Forces came from a more than \$1 million surveillance support [subcontract](#) with Special Operations Command Pacific (SOCPAC) on February 3, 2023 through the technology-focused defense contractor [SMX](#). Fellow Orbis Discovery data provider [REDACTED] was listed as receiving roughly \$49 million through four separate subcontracts from the same award, while Palantir was listed as receiving \$766,236.80 and Elon Musk’s SpaceX received nearly \$500,000.

While not a household name, SMX, which was formerly known as Smartronix, [announced](#) in November that its board of directors had been extended to include former CIA Chief Operating Officer Andrew Makridis, who is [best known](#) for leading the response to the WikiLeaks ‘[Vault 7](#)’ disclosures of the CIA’s hacking tools. Similar to Orbis board members Michael Morell and Michael Vickers, Makridis was [announced](#) as a senior advisor to Beacon Global in June, and on [October 11](#), Morell [relaunched](#) his ‘Intelligence Matters’ podcast at Beacon with Makridis as a co-host. Just one week after becoming a senior advisor at Beacon, Makridis [joined](#) the advisory board of chatroom infiltration firm Flashpoint, which similarly [accidentally disclosed](#) its integration with de facto A6 parent Babel Street.

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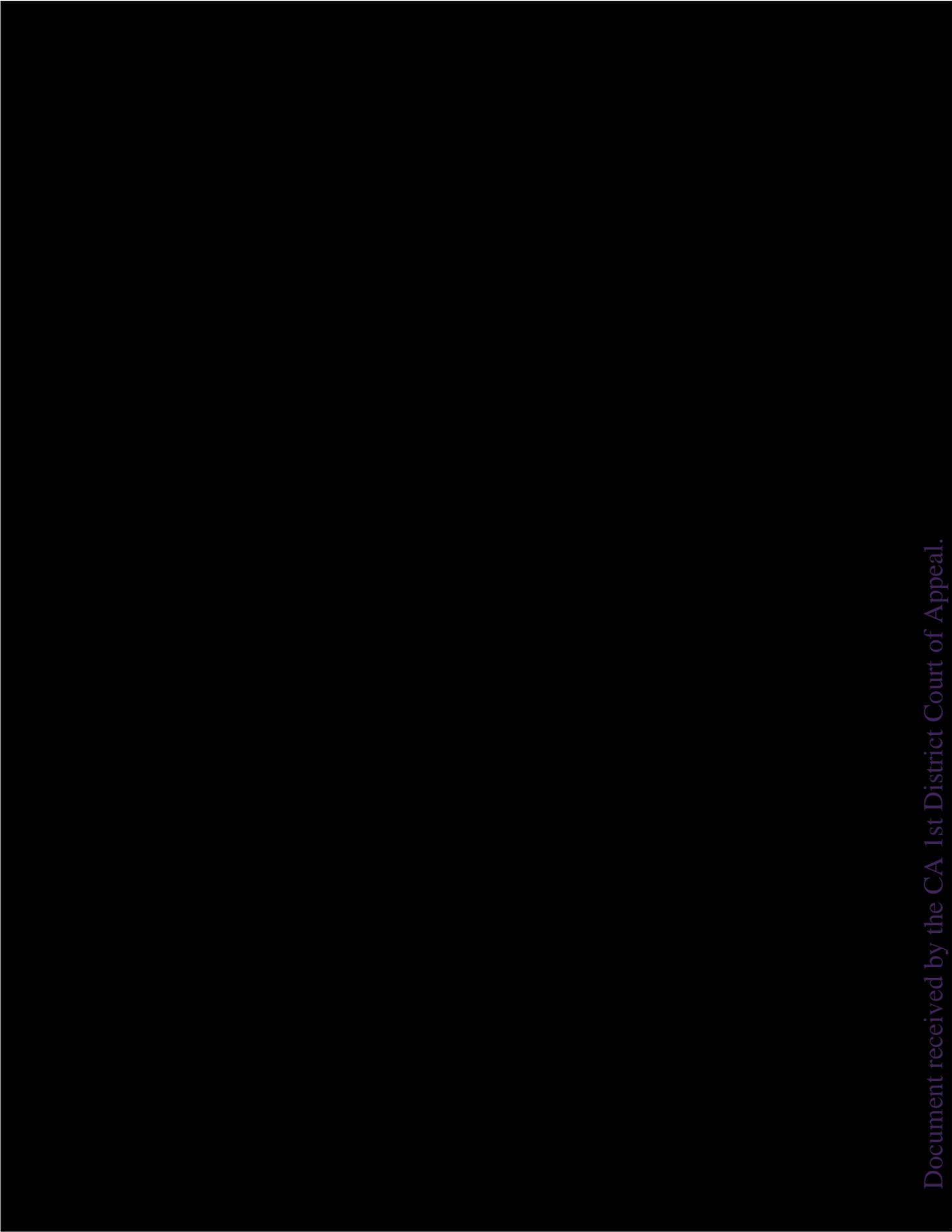


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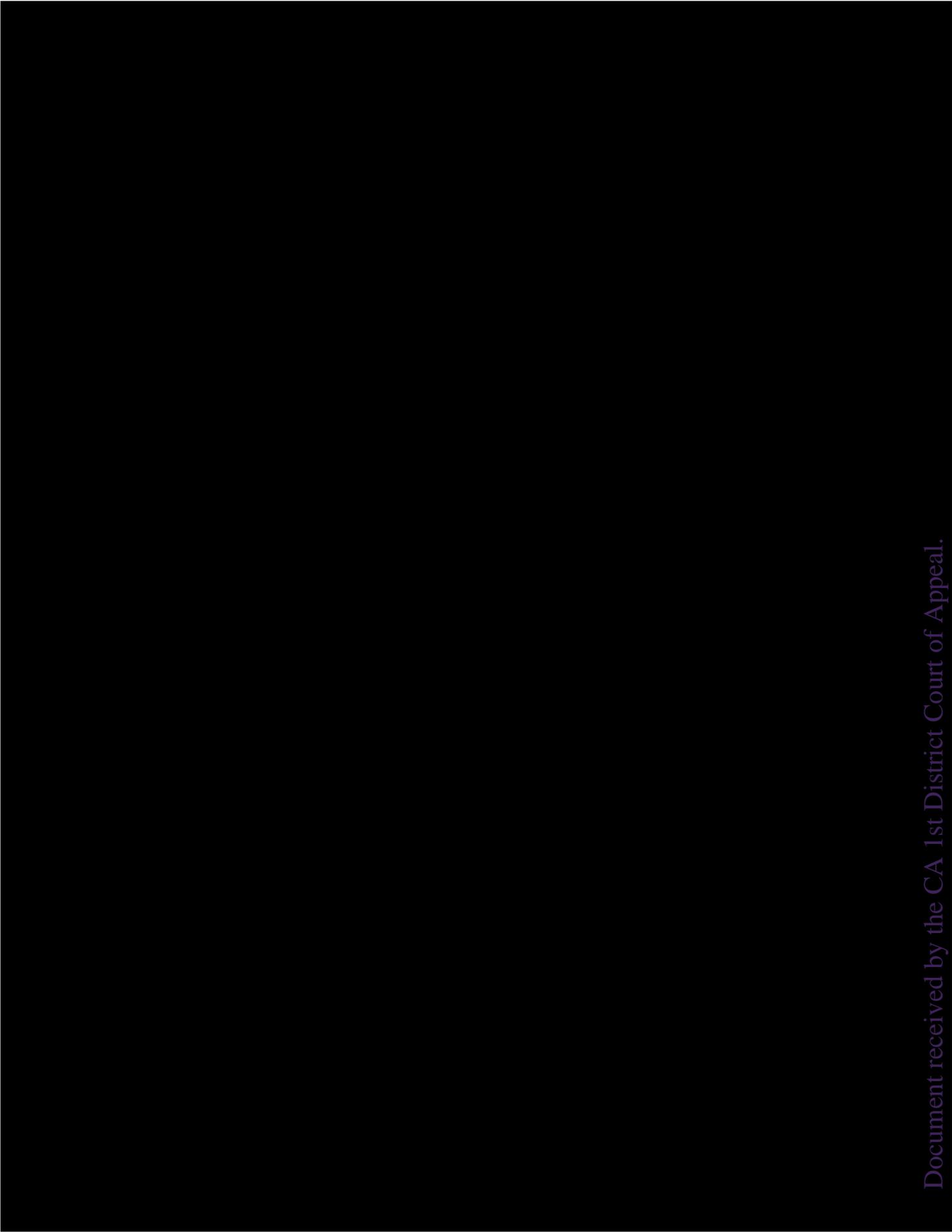
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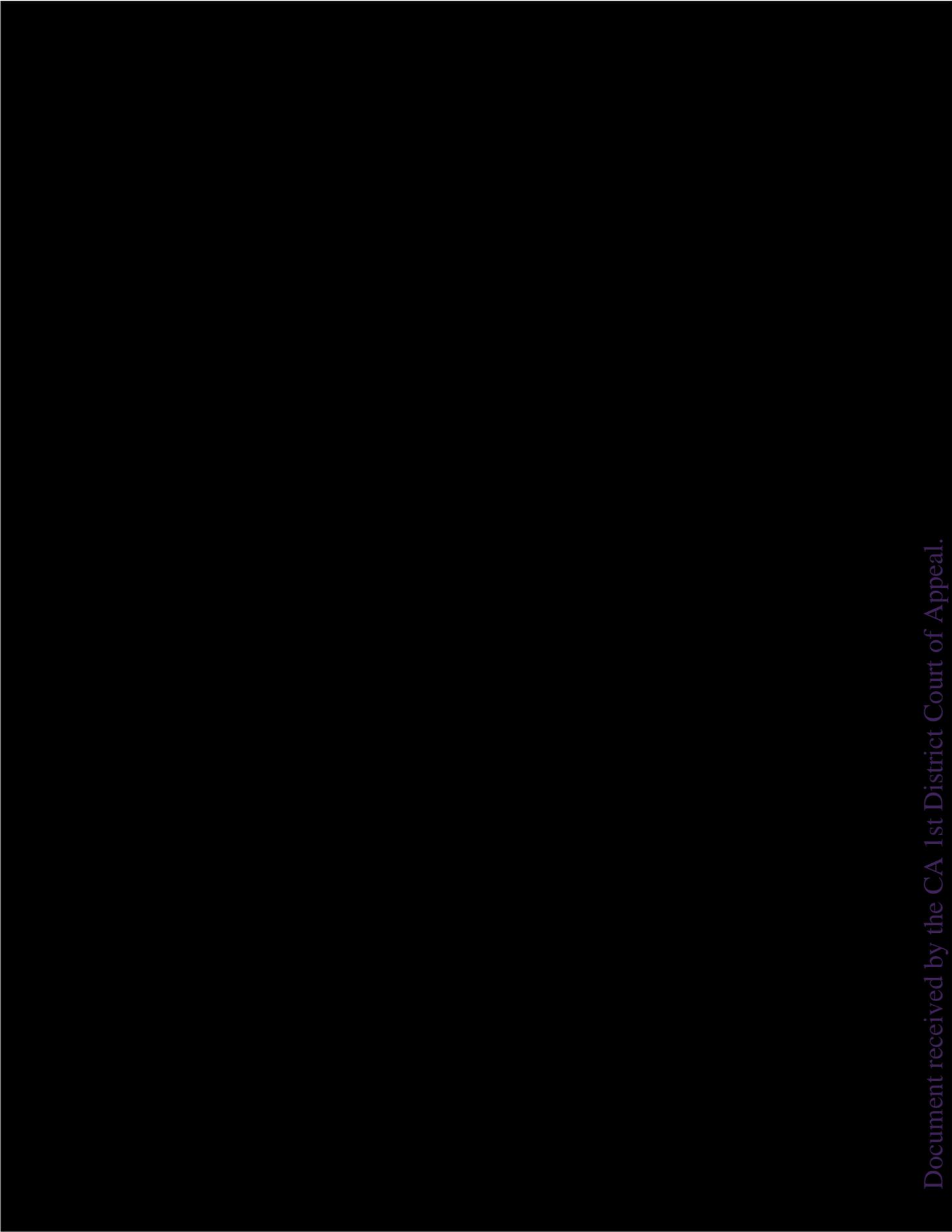
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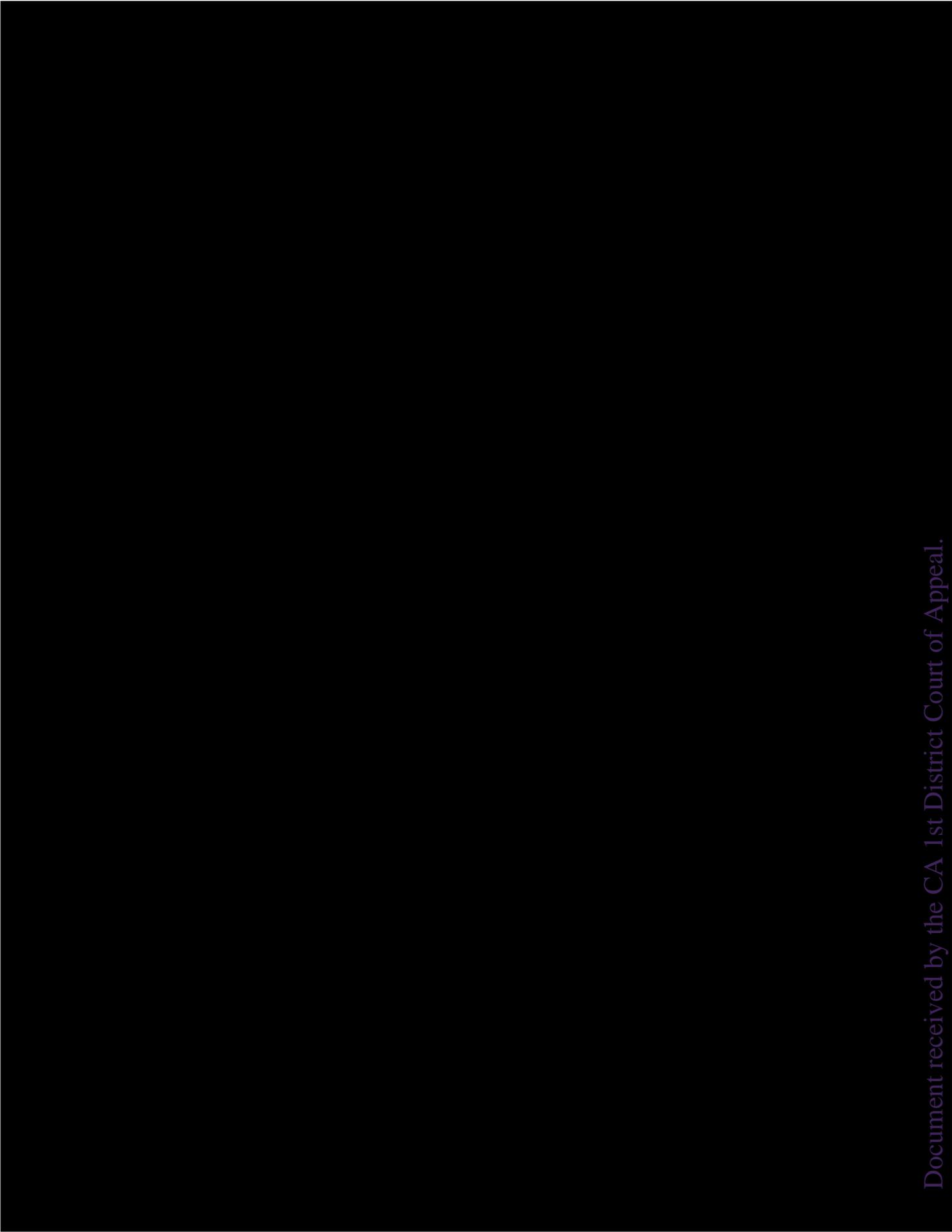
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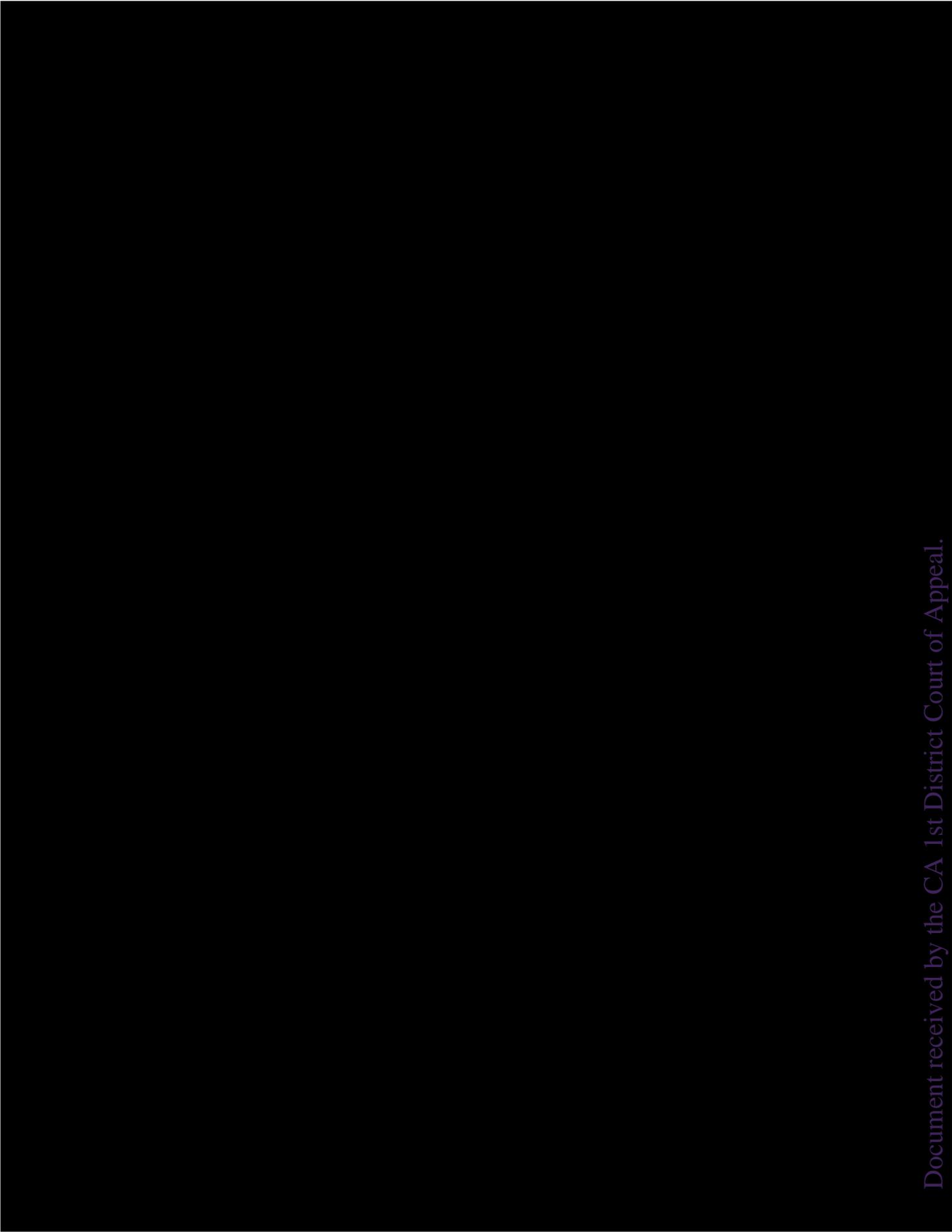
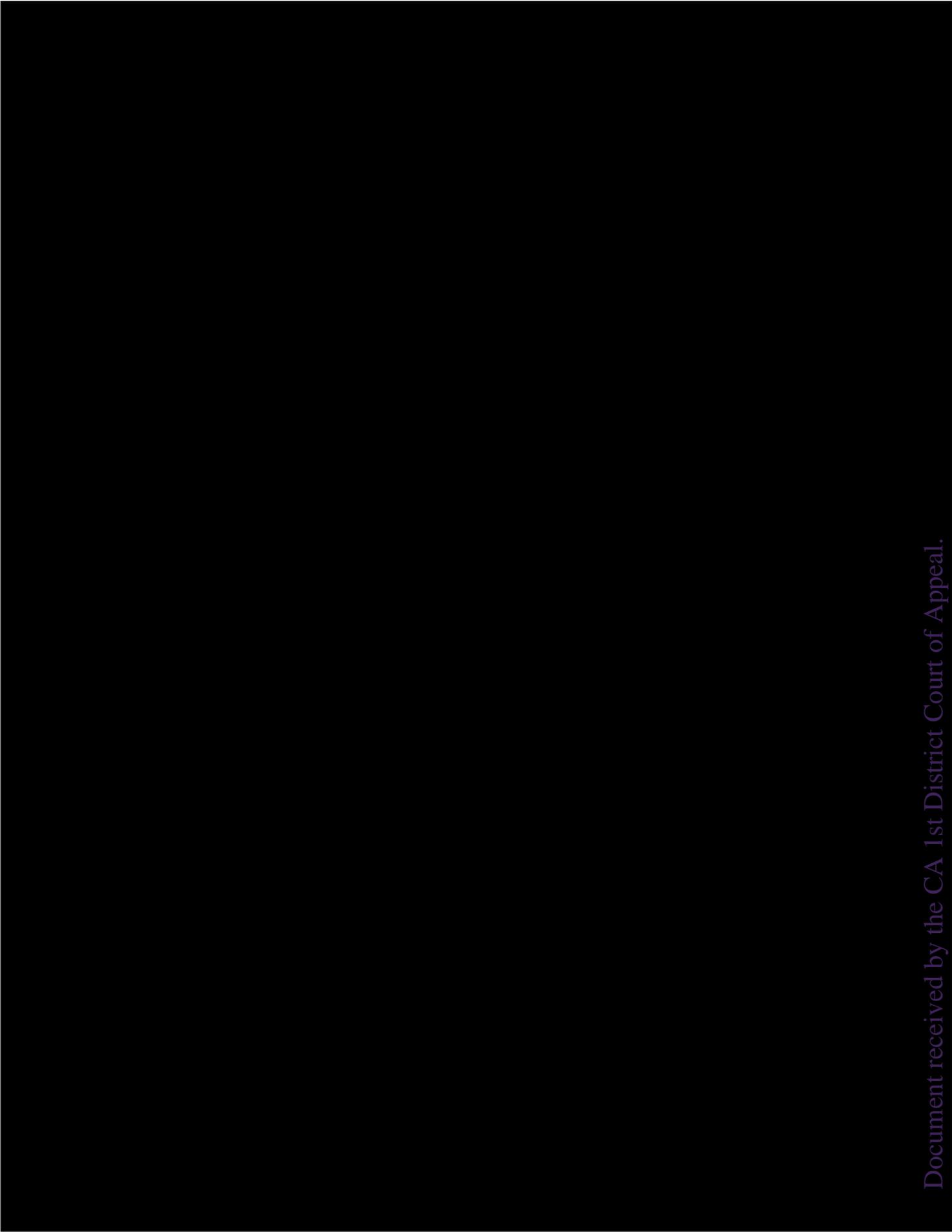


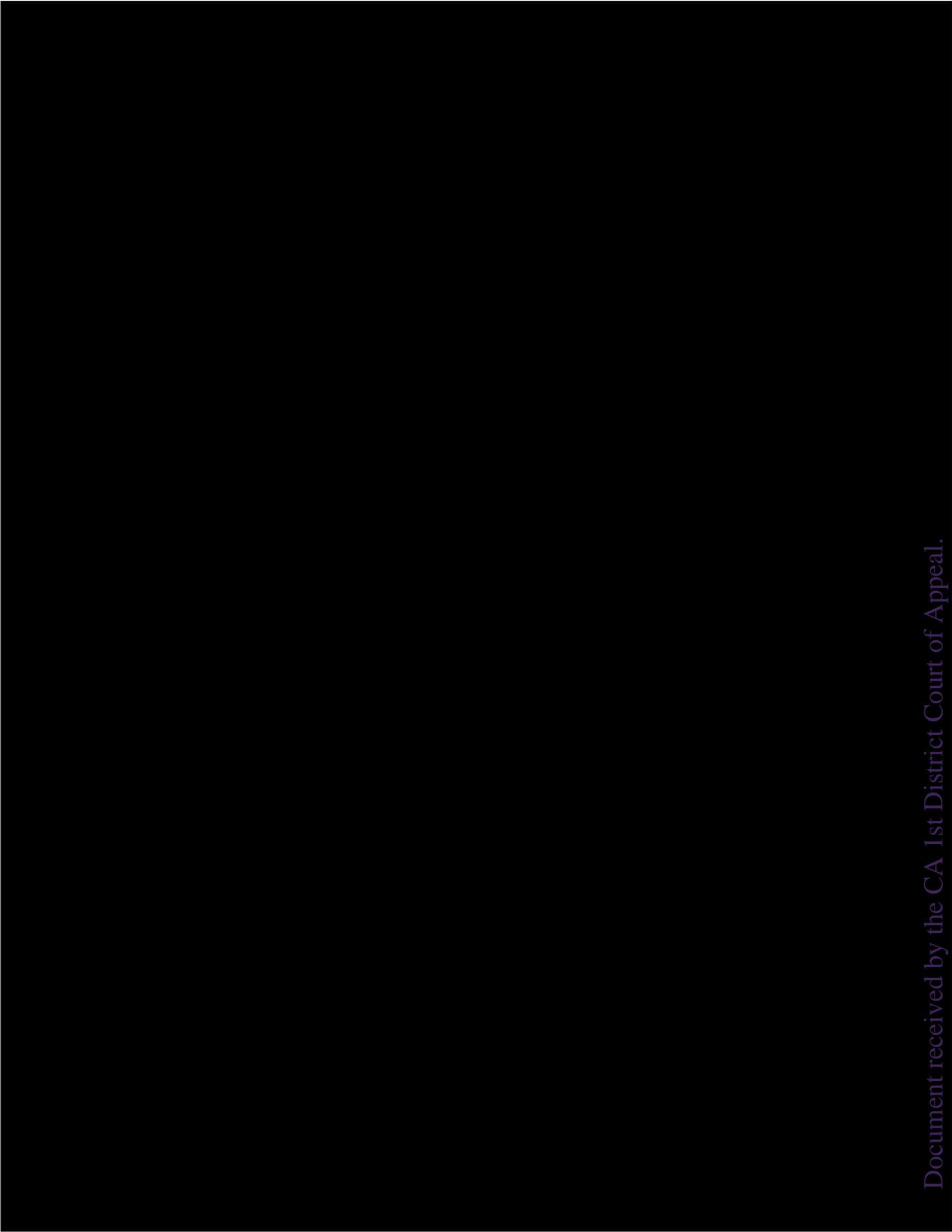
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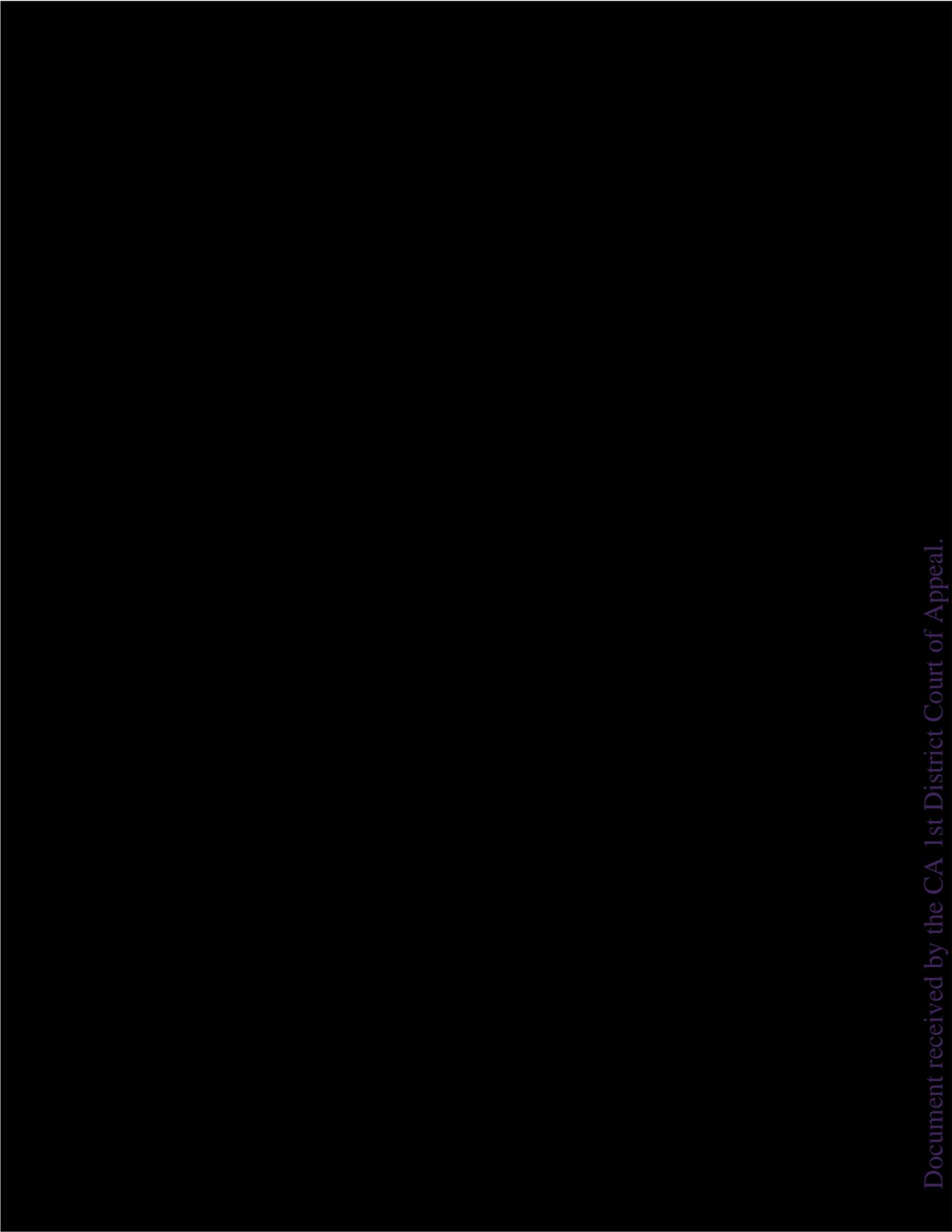
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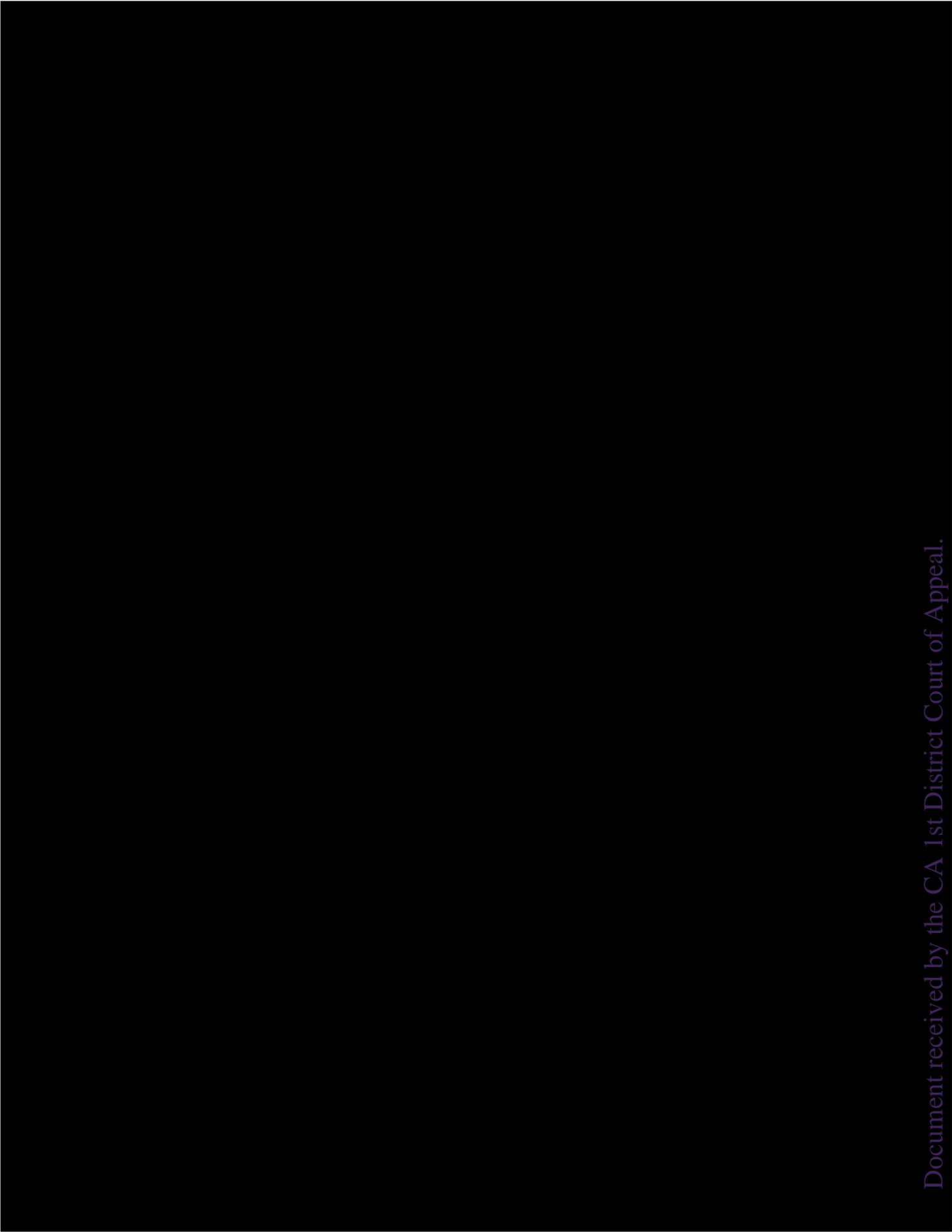
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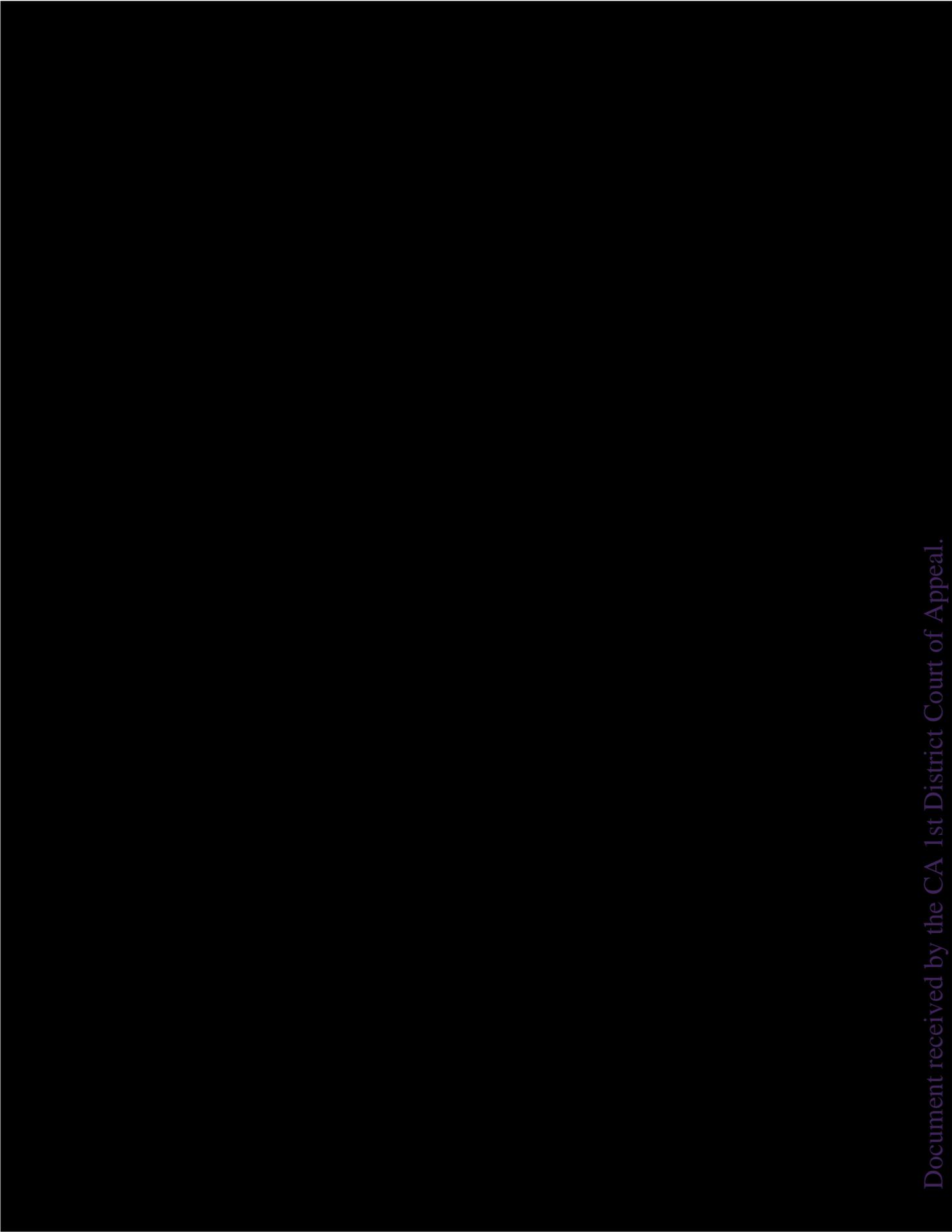
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EXHIBIT H

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Gig-work surveillance firm settles case against alleged whistleblower

Lawyers from [REDACTED] declared on Friday that they have conditionally settled their lawsuit against former employee Alex Pompe, who allegedly exposed the company's covert surveillance.



JACK POULSON
JAN 06, 2024

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TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff [REDACTED] Corporation has conditionally settled the case as to defendant Alex Pompe (“Pompe”). The settlement agreement conditions dismissal of this matter as to Pompe on the satisfactory completion of specified terms that are not to be performed within 45 days of the date of the settlement. A request for dismissal as to Pompe will be filed no later than October 31, 2024. For avoidance of doubt, this is not a notice of settlement of the entire case under California Rule of Court 3.1385, and unsettled claims remain pending against several other defendants.

Dated: January 5, 2024

GRELLAS SHAH LLP

By: /s/Dhaivat H. Shah
 Dhaivat H. Shah, Esq.
 Attorneys for Plaintiff
 [REDACTED]
 Delaware Corporation

A screenshot from a January 5, 2024 notice of partial settlement filed by attorneys for the gig-work surveillance firm [REDACTED] and published by the Superior Court of Santa Clara County, California.

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Update, 2024-02-22: Lawyers for ██████ filed a request today for the entire case to be dismissed with prejudice.

The covert gig-work surveillance firm ██████ has settled its nearly five-year lawsuit against former employee Alex Pompe, according to a notice of partial settlement filed on Friday by lawyers representing ██████. While the notice is clear that “unsettled claims remain pending against several other defendants”, Mr. Pompe was the primary defendant in the original April 2019 complaint. One of the central allegations from the lawsuit was that Mr. Pompe alerted ██████ flagship client, the Bill & Melinda Gates Foundation, as to the conflict between ██████ humanitarian work and the company’s [covert intelligence collection](#) for the U.S. military, which was originally [exposed](#) by The Wall Street Journal.

██████ global network of hundreds of thousands of data collection contractors, which operates as a sort of boutique Uber-for-informaton-gathering, was secretly repurposed for military intelligence purposes as early as 2018. The surveillance work apparently followed the replacement of ██████ original CEO, former punk-rock drummer David Soloff, with ██████ a government technology executive who was then a board member of a company later purchased by the gunshot detection ██████ ██████. ██████ settlement of its longstanding case against Mr. Pompe took place one month after the company’s [removal of Mr. ██████](#) as CEO.

Mr. ██████ exit from ██████ followed months of bizarre behavior relating to the author’s [publication](#) of a San Francisco Police Department incident report which detailed ██████ arrest for alleged felony domestic violence after a company Christmas party on December 21, 2021. A pseudonymous account claiming to represent Mr. ██████ which operated under the name “Christian Eric[s]en”, subsequently attempted to bribe the author to remove the police report and then, after failing, [committed perjury](#) through the submission of a fraudulent Digital Millennium Copyright Act (DMCA) claim against the document.

The now-settled case against Mr. Pompe was scheduled for trial in Santa Clara County in March.

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Cassie Jan 6



♥ Liked by Jack Poulson

Interesting that the lawsuit had been going on for years but when Mr ██████ "resigned", the case is now settling less than a month later. I wonder if the lawsuit was more a personal vendetta by the former CEO and now that he is gone, the new Board is not interested.

♥ LIKE (2) ◻ REPLY ↗ SHARE

1 reply by Jack Poulson



Maria Accounting and Finance Newslett... Jan 6



Could ██████ show that Pompe 'damaged' its relationship with the Gates Foundation? Doesn't sound like it. Do you have any of the settlement details?

♥ LIKE ◻ REPLY ↗ SHARE

1 reply by Jack Poulson

2 more comments...

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EXHIBIT I

CONDITIONALLY UNDER SEAL

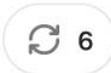
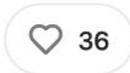
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California-based covert surveillance firm attempted to criminalize this publication and unmask its sources, court filings reveal

Unsealed filings from ██████████ settled case against former employees reveal this publication became center of lawsuit; judge referred to targeting of me as "Pentagon Papers all over again."



JACK POULSON
APR 25, 2024



Share



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REQUESTS FOR PRODUCTION:

REQUEST FOR PRODUCTION NO. 151:

ALL COMMUNICATIONS, on or before September 14, 2023, between YOU AND blogger Jack Poulson, publisher of <https://jackpoulson.substack.com/>, RELATING TO

██████████

REQUEST FOR PRODUCTION NO. 152:

ALL COMMUNICATIONS, on or before September 14, 2023, between YOU and ANY PERSON, RELATING TO San Francisco Police Department Incident Report #

██████████ or information YOU derived therefrom.

One of six separate document production requests filed by lawyers ██████████ from Grellas Shah LLP attempting to unmask my source for a police incident report documenting former ██████████ CEO ██████████ ██████████ felony domestic violence arrest after a Christmas party in 2021. As has now become rote, lawyers supportive of this publication refer to me as a journalist, while those who are antagonistic call me a blogger.

In a recently unsealed direct message exchange, then-CEO of ██████████ ██████████ ██████████ asked senior director of marketing [Allen Chen](#) if head of product

Document received by the CA 1st District Court of Appeal.

David Mendelson had “run off like a little bitch with [senior manager] Alex [Pompe]?” “He’s a bitch. Needs to be fired,” [REDACTED] continued, before adding that: “Fuck him. I’m gonna send his ass packing.”

During the roughly 90 minute period spanning the sporadic exchanges between the two executives on September 4, 2018, Chen also coordinated with [REDACTED] on the next day’s [press release](#) regarding [REDACTED] ill-fated partnership with the Bill & Melinda Gates Foundation. Titled “[REDACTED] Tapped to Collect Ground Truth on Health Facilities Worldwide,” Chen was listed as the press contact, and his LinkedIn profile continues to boast that his marketing work at [REDACTED] “generate[d] prominent press placements in major publications such as Reuters, TechCrunch, and Forbes.”

Document received by the CA 1st District Court of Appeal.

Folder: Direct Messages: allen; [REDACTED]
File: 2018-09-04

2018-09-04 18:54:57

[REDACTED] has Dave M run off like a little bitch with Alex?

2018-09-04 18:55:13

[REDACTED] walk around and see

2018-09-04 18:58:41

allen I'll check now

2018-09-04 19:03:49

allen Alex is in the office. I didn't see Dave M anywhere.

2018-09-04 19:04:34

[REDACTED] he's a bitch, needs to be fired, Tim W. saw he and Gary walking around last week :face_with_rolling_eyes:

2018-09-04 19:05:54

allen Hmm. Ok, well get Arul in.

2018-09-04 19:47:28

allen I'm scheduling the Gates release for tomorrow at 9am EDT (PR Wire + Hubspot campaign to your Investor Contact List). Let me know if there's any reason to delay.

2018-09-04 19:52:34

allen (I'm looking into adding keywords: Valor Equity Partners, Social Capital)

2018-09-04 19:53:28

[REDACTED] sounds good

2018-09-04 20:21:33

allen Dave M is in the office now. Just saw him.

2018-09-04 20:24:11

[REDACTED] Fuck him, IAC'm gonna send his ass packing

Despite journalist Byron Tau using [primary sources](#) to [expose](#) the California-based, gig-work information gathering company [REDACTED] in 2021 as a covert front for intelligence gathering for U.S. Special Operations Forces around the globe, the reporting never captured broad public attention. ¹ [REDACTED] managed to continue landing [puff pieces](#) in prestigious outlets such as The Economist even while it was more than

four years into litigation against a large number of former employees, particularly against [Mr. Pompe](#) for allegedly blowing the whistle on [REDACTED] intelligence activities to the company’s flagship partner, the Gates Foundation.

Recently unsealed filings from the Santa Clara County litigation reveal that a [short article](#) from this humble publication set the proceedings on fire by publishing a police incident reporting detailing [REDACTED] arrest for alleged felony domestic violence on the Tuesday night before Christmas 2021, resulting in at least seven document production requests, attempts to forensically unmask my sources, and the judge making an exaggerated claim that the case had become “Pentagon Papers all over again, for those of us old enough to remember that.”

[Confirmation](#) of [REDACTED] classified work with U.S. military and intelligence agencies was inadvertently made public through a statement authored by Mr. [REDACTED] during the proceedings. [REDACTED] lawyers further falsely disputed that I easily confirmed the details of Mr. [REDACTED] arrest through a single, brief phone call to the San Francisco Police Department’s [Crime Information Services Unit](#).

27 | MR. LLEWELLYN: WE CAN ONLY SAY WHAT WE DID. WE
 28 | CAN'T SPEAK FOR MR. POULSON, AS YOU SAID. IT'S GETTING
 1 | CRAZIER AND CRAZIER NOW IN THIS HEARING, YOUR HONOR.
 2 | MR. SHAH JUST IS GOING OFF ON TANGENT AFTER TANGENT AFTER
 3 | TANGENT.
 4 | THE COURT: WELL, I DON'T BLAME HIM IN A WAY. THIS
 5 | IS PRETTY SERIOUS. I DON'T KNOW ABOUT CONFUSION -- I
 6 | SHOULDN'T SAY CONFUSION. IT'S NOT CONFUSING. VERY
 7 | INTERESTING. PENTAGON PAPERS ALL OVER AGAIN, FOR THOSE OF
 8 | US OLD ENOUGH TO REMEMBER THAT.

A segment from the transcript of a November 16, 2023 hearing in Santa Clara County Court involving [Paul T. Llewellyn](#), a namesake of the law firm Lewis & Llewellyn representing defendant and former [REDACTED] employee David Mendelson, and the judge for the trial. Mr. Llewellyn makes a

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reference to Dhaivat H. Shah of Grellas Shah LLP, a lawyer representing the plaintiff [REDACTED]

Displaying records 1 to 5 of 5

Requester

Reference No	Request Info	Create Date	Customer Full Name	Status	Assigned Dept	Assigned Staff
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Completed	CISU	Elizabeth Elemento
[REDACTED]	[REDACTED]	10/3/2023 11:49 AM	David Segel	Completed	CISU	Elizabeth Elemento
[REDACTED]	[REDACTED]	10/3/2023 10:04 AM	[REDACTED]	Incomplete	CISU	Diane Harper
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	5/3/2022 1:20 PM	Newton Oldfather	Completed	CISU	Daniel Leung

A redacted screenshot produced by [REDACTED] lawyers of San Francisco Police Department records regarding the requestors of the retroactively sealed police incident report documenting former [REDACTED] CEO [REDACTED] [REDACTED] arrest in December 2021 for alleged felony domestic violence against his girlfriend. [REDACTED] lawyers claimed that the timestamp on the published document identified my source as Newton Oldfather, counsel for defendant David Mendelson. As noted in the filings, Mr. Oldfather has never spoken with me.

The unsealed documents contain roughly 150 pages from the August 23, 2023 deposition of Mr. [REDACTED] including him admitting to a sort of recursive phone surveillance by secretly listening to a phone call between two [REDACTED] executives who were themselves allegedly listening to a recorded phone call between [REDACTED] and a young female employee who “showed [REDACTED] up.” “The fact of the matter is, I listened to the conversation. Don't tell me what I did was wrong,” stated [REDACTED] during his deposition.

In addition to firing / severing the two executives who were laughing at a junior employee criticizing him, head of technology Gary Rudolph and Chief Operating Officer [Joanna Lee Shevelenko](#) — a former right-hand employee of former [REDACTED] member and Social+Capital founder Chamath Palihapitiya during his time at Facebook — Mr. [REDACTED] also fired the head of human resources, Jeff Umscheid, for allegedly not investigating Mr. Rudolph and Ms. Shevelenko aggressively enough. ²

As part of an email sent to Ms. Shevelenko on May 11, 2018 which copied Mr. [REDACTED] co-founder David Soloff ironically joked to Ms. Shevelenko more than three months before her departure that he knew she wasn't “tapping [his] phones or reading [his] WhatsApp.” Ms. Shevelenko has since co-founded F7 Ventures, which listed Mr.

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Umscheid as a member of its ‘operator network’. Ms. Shevelenko did not respond to a request for comment through the firm.

A separate published exchange between Ms. Shevelenko and Mr. [REDACTED] from May 11, 2018 also discussed the possibility of the company expanding [REDACTED] information collection capabilities into Syria through a partnership with John P. DeBlasio’s “international development contractor” [DT Global](#). Just 29 days prior, [REDACTED] publicly [announced](#) its partnership with DT on information gathering in Mosul, Iraq, using funding from the United Kingdom’s Foreign & Commonwealth Office.

Mr. DeBlasio previously ran the private security contractor Sallyport, which he sold to DC Capital Partners for roughly \$64.5 million in 2011, and subsequent [litigation](#) from his former business partner regarding alleged fraud noted that 19 Sallyport employees were pulled off a bus in Iraq and executed on the side of the road as part of the company’s secretive military contracts, which were [reportedly](#) in support of General Dynamics. DT Global’s parent company, Global Peace and Development Charitable Trust, is a major backer of the active, Syria-focused news outlet Syria Direct, which [lists](#) Mr. DeBlasio as a chairperson. (Mr. DeBlasio did not respond to a request for comment through DT Global.)

Document received by the CA 1st District Court of Appeal.

2018-05-11
15:43:53

What's out position on setting up a network in Syria?

2018-05-11
15:44:02

Need a partner?

2018-05-11
15:58:52

joanna yes, i've told you that before and you've said that we can get DT to provide a private network. Is that still the case?

2018-05-11
15:59:02

joanna if so, i would love for syria to be part of our 50 anchors

The unsealed legal filings include partially redacted exit interviews from 28 employees, including not only the mid-20's female employee whose phone call with ██████ led to the firing of Shevelenko and Rudolph, but also of a Business Development Executive (BDE) leaving to join the Central Intelligence Agency. Despite having just joined ██████, the former sales executive referred to joining the CIA as “a once in a lifetime opportunity,” but ██████ claimed during his deposition that the sales executive left after privately telling him “This place is bullshit.” By contrast, a senior Android developer told ██████ on November 1, 2018 that they resigned partly because “We collect a whole bunch of data on our users and I feel very concerned about who we're going to work for.”

While not visible in the redacted exit interviews, the separately produced September 24, 2018 email resignation of defendant Kyle Dawkins noted the “MoD” — presumably the UK Ministry of Defence — was visiting ██████ San Francisco office at the time. After referring to Mr. Dawkins as a “dirt bag,” ██████ joked to ██████ co-founder David

Soloff that Mr. Palihapitiya was unlikely to care about mass employee concern about the direction of the company, stating “I don’t see Chamath giving a shit about them.”

I was only made aware of the aggressive targeting of my own communications while reading said thousands of pages of recently unsealed filings from the case. The only apparent communications with me from █████ came from a clearly [pseudonymous](#) persona of “Christian Eric[s]en,” who claimed to represent Mr. █████ before offering to bribe me to remove my article on █████ arrest and then, after I refused, submitted a fraudulent Digital Millennium Copyright Act (DMCA) takedown to my cloud provider. Roughly three weeks after publishing an account of the takedown request, I received an anonymous tip that █████ had been forced to resign, which was [confirmed](#) roughly one week later by Mr. Tau. And, despite the trial having been scheduled for March, █████ [initiated settlement](#) of the case in early January.

(In a particularly heated section of Mr. █████ deposition regarding former employee Moorea Brega, █████ had stated that “you know what? I’m telling you right now, there is no way I’m settling this case.”)

Coincidentally, one of the primary lawyers behind the actions and accusations against me, Grellas Shah namesake Dhaivat H. Shah, was simultaneously litigating *against* Orbital Insight, a satellite surveillance company I [exposed](#) as secretly primarily contracting with Indonesia’s State Intelligence Agency.³ Just as Mr. █████ was forced out of █████ former Orbital CEO Kevin O’Brien jumped ship to Chainalysis after threatening me with a lawsuit for my reporting. As of last week, Orbital was served an eviction notice from its Palo Alto headquarters.

emma@eff.org

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1 Despite the lack of public appetite, Tau dedicated a chapter to █████ in his recent book, [‘Means of Control’](#).

2 According to Mr. █████ deposition, Ms. Shevelenko was paid roughly \$150,000 — which he equated to six months of her severance — and both parties agreed through lawyers to not prosecute each other.

3 Shah was representing former Orbital subtenant Databook Labs regarding Orbital’s failure to pay rent at their Palo Alto headquarters. The discovery of Orbital defaulting on its rent led me down the rabbit hole which eventually exposed the company’s work with Indonesian intelligence and, likely, led to Apple co-founder Steve Wozniak’s space startup Privateer [aborting](#) its acquisition of Orbital as the company’s CEO jumped ship to blockchain surveillance company Chainalysis.



36 Likes · 6 Restacks

Discussion about this post

Comments

Restacks



Write a comment...



Cassie Apr 26

♥ Liked by Jack Poulson

This really needs to be made into a limited series t.v. show. It has it all- an arrogant unscrupulous boss, a paranoid and hostile work environment, spite firings, infidelity, arrests, vindictive lawsuits to scare people into keeping quiet, threats to journalists, attempted bribery, and now telephone and dm eavesdropping. You can’t make this stuff up. And the bad guy gets fired in the end. Everyone loves a juicy true story. I’m sorry for the innocent people who got ensnared in this mess, though. If the author doesn’t want to write the screenplay- at least could he shop the idea out to someone else? Maybe the person who wrote, “She Said?”

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Rusty Shackelford Apr 26 Edited

♥ Liked by Jack Poulson

What date are the unsealed ██████████ deposition papers listed under for the SC court site? Having a hard time finding them and my session keeps restarting.

Somewhat related: Sometime in early-mid June 2016 there was a huge conspiracy ██████████ ██████████ posted on Reddit. It was largely untrue and had ties to "Pizzagate", but it garnered thousands of comments and was really a site to behold. There were "internet sleuths" that were hiding behind trees near the ██████████ office, recording employees entering and leaving. The recorders were claiming they were likely to be "disappeared" by the company— maybe they weren't too far off! It was deleted some years later, presumably due to a lawsuit, but maybe your search skills can dig something up. It's a real fun read.

♡ LIKE (1) 💬 REPLY ↗ SHARE

1 reply by Jack Poulson

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EXHIBIT J

CONDITIONALLY UNDER SEAL

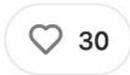
Document received by the CA 1st District Court of Appeal.

Fraudulent DMCA Takedown Submitted to Hide Details of Felony Domestic Violence Arrest of [REDACTED] CEO [REDACTED]

A pseudonymous account claiming to represent [REDACTED] CEO [REDACTED] submitted a fraudulent DMCA Takedown request in an attempt to hide details of Mr. [REDACTED] felony arrest.



JACK POULSON
NOV 20, 2023



On the afternoon of Friday, October 6th, a pseudonymous online account began sending emails demanding takedowns of the author’s [previous reporting](#) on the felony domestic violence arrest of [REDACTED] the CEO of the [covert gig-work surveillance firm](#) [REDACTED]. Using purposefully sloppy English and a pseudonym of “Christian Ericssen” — along with a differently spelled email address of “ericssenchristian@gmail.com” — the account asserted its connection to Mr. [REDACTED] stating that “I’m representative Mr. [REDACTED] on the online community”.

By Thursday, October 12th, the nominal representative of Mr. [REDACTED] escalated to attempting to bribe the author to take down the reporting critical of Mr. [REDACTED] asking “How much you want for removing?” The same day, ‘Mr. Ericssen’ began submitting fraudulent abuse reports to Digital Ocean, a cloud service provider which was being used to host an external copy of Mr. [REDACTED] felony arrest. Initially claiming that the file was abusive as a result of the alleged domestic violence it described, Mr. [REDACTED] apparent representative further escalated to committing perjury by filing a fraudulent takedown request through the Digital Millennium Copyright Act, or DMCA. Although, this time, he would spell his last name as “Ericssen” and, bizarrely, falsely digitally sign the DMCA takedown using the name of the author of this article, Jack Poulson. (The phone number associated with the

Document received by the CA 1st District Court of Appeal.

takedown request, 812-651-1989, is non-functional, and the address fragment, “3832 Heliport Loop”, appears to be similarly made up.)

 **SFPD Incident Report 210844280 [Redacted]** Download
8.41MB · PDF file

A redacted copy of the October 21, 2021 San Francisco Police Department Incident Report detailing the felony domestic violence arrest of [REDACTED] CEO [REDACTED]

Download

Despite the clearly fraudulent and malformed nature of the DMCA takedown request allegedly submitted on behalf of Mr. [REDACTED] — whom has held a [security clearance](#) as a result of his company’s [covert surveillance work](#) with U.S. Special Operations Forces — Digital Ocean nevertheless complied with the fraudulent request to minimize its own legal liability. Even a cursory inspection reveals that the document in question for the copyright claim was created by the San Francisco Police Department, and is therefore a public record, and that the document was signed using a fraudulent digital signature: that of the author being harassed by the fraudulent DMCA request. Despite these glaring details, Digital Ocean was unresponsive to a request for comment on whether it protects journalists from harassment through fake DMCA takedown requests. (To prevent any censorship of the document, it has been directly embedded in this article as well.)



A photo of [REDACTED] President and CEO [REDACTED] published on the company's 'leadership' page. According to San Francisco Police Department Incident Report 210844280, then 53 year-old Mr. [REDACTED] was arrested for felony domestic violence against his 25 year-old girlfriend at 185 Channel St., Apartment 622 on the night of Tuesday, December 21, 2021. In response to the author revealing the arrest, a pseudonymous account claiming to represent Mr. [REDACTED] has attempted to have the underlying police report taken down through both bribery and a fraudulent DMCA takedown request.

The public affairs office of U.S. Special Operations Command — which Mr. [REDACTED] frequently contracts with — did not respond to a request for comment on whether felony domestic violence arrests or the targeted harassment of journalists through fraudulent DCMA takedown requests violates any Department of Defense policies for holding a security clearance.

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Appendix

A complete copy of the original DMCA takedown request notification submitted by the pseudonymous representative of [REDACTED] CEO [REDACTED] 'Christian

Ericssen' / 'Christian Ericssen', follows:

Hello,

This notice is to inform you that material posted on one or more of your Droplet(s), was the subject of a notification of claimed copyright infringement pursuant to the Digital Millennium Copyright Act (DMCA). A copy of that notice is included below.

As you know, DigitalOcean provides hosting service to your Droplet, but is not responsible for the content hosted on it. Copyright infringement is expressly forbidden by our terms of service. DigitalOcean takes seriously the DMCA notices it receives and expects its customers to do the same.

Accordingly, no later than 3 days from today, you must certify in writing that you have removed or disabled access to the material identified in the attached DMCA notice. If we do not hear from you within 3 days, we may disable access to the Droplet without further notice.

Please let us know if you have questions about this issue or would like additional information.

Regards.

Security Operations Center
DigitalOcean

nixos-web-server

138.197.60.145

Type of Abuse: dmca

Copyright Owner's Full Name: Jack Poulson

Reporter Full Name: Christian Ericssen

Address: 3832 Heliport Loop

Phone Number: +1 812-651-1989

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Email Address: ericssenchristian@gmail.com

URL(s) of the infringing content:

[https://techinquiry.org/docs/\[redacted\].pdf](https://techinquiry.org/docs/[redacted].pdf)

Police report not for publication

URL(s) and/or a description of the original content:

<https://jackpoulson.substack.com/p/the-covert-gig-work-surveillance>

Original article about this incident

By checking this box, you attest, under penalty of perjury, that (1) you have a good faith belief that use of the material in this report is not authorized by the copyright owner, its agent, or the law; (2) you are the copyright owner or authorized to act on behalf of the copyright owner; and (3) you understand, under 17 U.S.C. § 512(f), that you may be liable for any damages, including costs and attorneys fees, if you knowingly materially misrepresent that the material you are reporting is infringing: true

Digital Signature: Jack Poulson

ref:!00Df2018t5m.!5004P02KJv7Z:ref



30 Likes · 2 Restacks

Discussion about this post

Comments

Restacks



Write a comment...



Cassie November 20, 2023



Out of curiosity, can an average citizen get the unredacted police report or does one need to be a reporter? This is a fascinating story that is only getting more interesting.

♡ LIKE (4) 💬 REPLY ↗ SHARE

1 reply by Jack Poulson

1 more comment...

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6 Email: twakefield@wsgr.com

7 Attorneys for Defendant
SUBSTACK, INC.

8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11

12 JOHN DOE, an individual,
13 Plaintiff,

14 v.

15 SUBSTACK, INC., a Delaware corporation;
AMAZON WEB SERVICES, INC., a
16 Delaware corporation; JACK POULSON, an
individual; TECH INQUIRY, INC., a
17 Delaware corporation; DOES 1-25, inclusive,
18 Defendants.

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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
12/06/2024
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

) CASE NO.: CGC-24-618681
)

) **DEFENDANT'S NOTICE OF SPECIAL**
) **MOTION TO STRIKE AND SPECIAL**
) **MOTION TO STRIKE PLAINTIFF'S**
) **COMPLAINT AND REQUEST FOR**
) **ATTORNEYS' FEES**

) Date: January 6, 2025
) Time: 9:30 AM
) Dept.: 302
) Before: Hon. Richard B. Ulmer, Jr.

) Action Filed: October 3, 2024
) Trial Date: None Set

DEFENDANT'S SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT UNDER
C.C.P. SECTION 425.16 AND REQUEST FOR ATTORNEYS' FEES

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STATUTES

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MISCELLANEOUS

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NOTICE OF SPECIAL MOTION TO STRIKE

PLEASE TAKE NOTICE that on January 6, 2025 at 9:30 a.m. or as soon thereafter as counsel may be heard in the Superior Court of San Francisco, the Hon. Richard B. Ulmer, Jr., presiding, Defendant SUBSTACK, INC. (“Substack”) will and hereby does move this Court for an order, pursuant to California Code of Civil Procedure § 425.16 (“Section 425.16” or the “anti-SLAPP statute”), striking and dismissing each and every cause of action in the Complaint (“Compl.”) filed by the Plaintiff identified as JOHN DOE with prejudice and without leave to amend.¹

Every cause of action alleged in the Complaint falls within the scope of Section 425.16(e)(3). Accordingly, the burden shifts to Plaintiff to establish, with admissible evidence, a probability that he will prevail on his claims. (Code Civ. Proc., § 425.16(b)(1).) Plaintiff cannot satisfy this burden. Substack therefore requests that the Court strike and dismiss, with prejudice and without leave to amend, each of Plaintiff’s causes of action, or, alternatively, portions thereof, for the following separate and independent reasons:

1. Plaintiffs’ claims all arise from the publication of lawfully obtained information on a matter of public significance, and are accordingly barred by the First Amendment. (*Florida Star v. B.J.F.* (1989) 491 U.S. 524, 533; *Bartnicki v. Vopper* (2001) 532 U.S. 514, 535.)
2. Plaintiff’s claims are completely barred by the federal Communications Decency Act, 47 U.S.C. § 230(c)(1) (the “CDA” or “Section 230”), which confers broad immunity from civil claims against internet service providers like Substack for enabling third parties to publish information on the internet. (E.g., *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 39.)

¹ “A plaintiff cannot avoid a SLAPP motion by amending the complaint.” (*Hansen v. Cal. Dep’t of Corr. & Rehab.* (2008) 171 Cal.App.4th 1537, 1547; see also *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.)

Document received by the CA 1st District Court of Appeal.

1 This Motion is based on this Notice, the attached Memorandum of Points and Authorities,
2 the Declaration of Joshua A. Baskin, all pleadings and documents on file, and such further evidence
3 or argument as may be presented at the hearing on this Motion.

4 Substack reserves the right to request that the Court enter an award of attorneys' fees and
5 costs pursuant to Code of Civil Procedure § 425.16(c). (See, e.g., *Am. Humane Ass'n v. L.A. Times*
6 *Commc'ns LLC* (2001) 92 Cal.App.4th 1095, 1103.)

7

8 Dated: December 6, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

9

10 By: /s/ Joshua A. Baskin
11 Joshua A. Baskin
E-mail: jbaskin@wsgr.com

12 Attorneys for Defendant
13 Substack, Inc.

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1 **SPECIAL MOTION TO STRIKE PLAINTIFF’S COMPLAINT**
2 **AND REQUEST FOR ATTORNEYS’ FEES**

3 **I. INTRODUCTION**

4 Plaintiff,² then the CEO of a technology company, was investigated and arrested on
5 suspicion of felony domestic violence in 2021. He does not dispute that fact, nor can he. Though
6 Plaintiff was not charged, and a judge sealed the report of that arrest in 2022 at Plaintiff’s request,
7 that does not change the authenticity of the report or the fact of the arrest. Defendant Jack Poulson,
8 a journalist who publishes an online newsletter about the technology sector, published an accurate
9 copy of the report on his online blog, which is operated by Defendant Substack, Inc. (“Substack”).
10 Poulson had lawfully obtained the report from a confidential source, and deemed it newsworthy that
11 Plaintiff had been arrested on suspicion of a violent crime against a woman apparently without
12 suffering any consequences in his role as CEO. The First Amendment privileged the decision by
13 Poulson and his organization Tech Inquiry, Inc. (“Tech Inquiry”) to publish the report and stories
14 based on it. The First Amendment equally protects the internet service providers, like Substack Inc.
15 (“Substack”), who enabled Poulson to publish his newsletter.

16 Yet, in defiance of clear First Amendment precedent, Plaintiff now sues Poulson, his
17 organization, and the internet service providers that enable him to publish online, in an effort to
18 pressure them to remove information about his arrest report from the internet. This is a classic
19 Strategic Lawsuit Against Public Participation (“SLAPP”), which has imposed costs on an
20 independent journalist but has no chance of succeeding on the merits.

21 The internet service providers have a second dispositive defense under Section 230(c)(1) of
22 the Communications Decency Act, 47 U.S.C. § 230(c)(1) (the “CDA” or “Section 230”). Substack,
23 which enables independent journalists and other creators to publish subscription newsletters online,
24 and Amazon Web Services (“AWS”), which provides cloud computing services, are being sued only
25

26 _____
27 ² Plaintiff’s identity has been widely disseminated on the internet and discussed in the *San*
28 *Francisco Chronicle*, but he has improperly styled himself as a pseudonymous “John Doe” without
leave of Court. (See Compl.)

1 for enabling Poulson to publish content online, and for not removing his content from the internet.
2 Such claims are barred by Section 230.

3 The California Anti-SLAPP statute (Code Civ. Proc., § 425.16) was designed just for this
4 purpose: to prevent defendants from incurring fees and costs to defend baseless lawsuits as a price
5 for exercising their First Amendment rights. Poulson’s newsletter, like many websites, is a vehicle
6 for communicating about public matters to a large audience—clearly a “public forum.” His writing
7 about Plaintiff’s arrest on suspicion of a violent crime against a woman—without apparent
8 consequences for his career as a tech CEO at the time—concerned an “issue of public interest.”
9 Accordingly, the Anti-SLAPP statute applies. The burden then shifts to Plaintiff to show that he has
10 viable claims, which is not possible in light of Substack’s dispositive defenses under the First
11 Amendment and the Communications Decency Act. The Court should accordingly strike Plaintiff’s
12 complaint and award Substack—and the other defendants—their fees and costs to defend this action.

13 **II. BACKGROUND**

14 Before the events giving rise to this case, Plaintiff was arrested by the San Francisco Police
15 Department in December 2021. (Pl.’s Mot. to Proceed under a Fictitious Name at 3; Compl. ¶¶ 14-
16 17, 24-25.) Plaintiff’s arrest was detailed in a police incident report, which was a public record for
17 nearly two months, from December 2021 until February 17, 2022, when a judge sealed the report at
18 Plaintiff’s request. (Pl.’s Mot. to Proceed under a Fictitious Name at 3; Compl. ¶ 17; see also Gov.
19 Code, §§ 7923.610, 7923.615(a) [mandating that arrest reports and incident reports are public
20 records].)

21 Defendant Jack Poulson, a journalist, published multiple articles on Substack about Plaintiff
22 and the technology company for which he was the chief executive officer. (Compl. ¶¶ 30, 34, 140.)
23 This was part of Plaintiff’s reporting on the role of American companies in intelligence operations
24 (Poulson Decl. ¶ 4), and in particular concerns about Plaintiff’s former company and Plaintiff’s
25 integrity in light of his U.S. security clearance and the work he and his company were performing
26 on behalf of the US Government. (See Baskin Decl. Exs. 3-6.) Some of Poulson’s articles included
27
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1 a link to the Incident Report.³ (See Compl. ¶¶ 24, 29, 30, 34, 140; Baskin Decl. Ex. 1.) Poulson
2 obtained the Incident Report from a source, and did not know at the time that it had been sealed.
3 (Poulson Decl. ¶¶ 13-15.)

4 According to the December 21, 2021 police report (hereinafter, “Incident Report”), police
5 arrested Plaintiff, who was then 53 years old, after he became involved in an alleged domestic-
6 violence incident that injured his 25-year-old girlfriend and attracted the attention of a neighbor.
7 (Baskin Decl. Ex. 1.) Plaintiff was evidently not criminally charged over this incident, and at his
8 request, the San Francisco Superior Court sealed his Incident Report. (*Ibid.*; Mot. at 3.) Plaintiff
9 does not allege that Poulson or any of the other Defendants obtained the Incident Report unlawfully.

10 Nor does Plaintiff dispute that the copy of the Incident Report posted online was a true and
11 accurate representation of the original, or claim that Poulson’s stories contain any false statements.
12 Indeed, he does not even allege that the police description of events was false in the report itself.
13 Instead, without disputing that all relevant statements in Poulson’s articles are true, Plaintiff alleges
14 two theories of falsity that defy common sense.

15 *First*, Plaintiff alleges that unspecified “[s]tatements” by Poulson “create the false and
16 intentionally misleading understanding that PLAINTIFF was found guilty” of felony domestic
17 violence. (Compl. ¶ 29.) The only reason suggested for this is that Poulson’s articles did not initially
18 say expressly that Poulson was *not* found guilty. (*Ibid.*) But Plaintiff does not (and cannot) allege
19 that Poulson’s stories ever said that he was charged and brought to trial, much less found guilty.
20 Again, Plaintiff does not allege that Poulson made *any* false statement of fact.

21 *Second*, Plaintiff asserts that “any statement that the arrest did occur is, *by operation of law*,
22 *not truthful*” because a judge sealed the report in an order that stated in part that “the arrest [was]
23 *deemed not to have occurred.*” (Compl. ¶ 20 [emphasis added].) But the sealing order does not
24 purport to have the Kafkaesque effect that Plaintiff suggests. (Baskin Decl. Ex. 2.) It is true that

26 ³ Plaintiff alternatively refers to the police report as an “arrest report” and an “incident report,”
27 both of which are presumptively public records under different sections of the Public Records Act.
28 (See Gov. Code, §§ 7923.610, 7923.615(a).) The report itself appears to be titled “Incident
Report.”

1 Plaintiff was arrested on suspicion of felony domestic violence in 2022, and the sealing order does
2 not render it false. (*Ibid.*; cf. *G.D. v. Kenny* (N.J. 2011) 15 A.3d 300, 315-16.)⁴ This is clear from
3 the order itself, which is incorporated by reference in the Complaint. (Baskin Decl. Ex. 2.)⁵

4 **III. PROCEDURAL BACKGROUND**

5 On October 3, 2024, Plaintiff sued Poulson, Tech Inquiry, Substack, and AWS (collectively,
6 “Defendants”). (Compl. ¶ 1.) Every one of Plaintiff’s claims against Defendants arises from the
7 publication of the Incident Report that was a public record from December 2021 to February 2022—
8 with Poulson’s corresponding news articles—and Defendants’ purported failure to remove these
9 documents from Poulson’s online newsletter. (Compl. ¶¶ 50-176.) Yet the Complaint omits the
10 details of the Incident Report, and the order that sealed it in February 2022.

11 Throughout, Plaintiff has taken steps that have increased litigation costs on Defendants. At
12 the outset, he ignored the requirement that he seek leave of Court before filing under a fictitious
13 name (*Dep’t of Fair Emp. & Hous. v. Superior Court* (2022) 82 Cal.App.5th 105, 111, fn. 1), and
14 sued as a “John Doe” despite his name being publicized in the *San Francisco Chronicle* and
15 elsewhere on the internet (Compl. ¶ 1; Baskin Decl. Exs. 3-7). Defendants have accordingly had to
16 undertake expensive additional steps to oppose Plaintiff’s motion to proceed anonymously and
17

18 ⁴ In a case involving an analogous statute, the New Jersey Supreme Court explained: “It is true
19 that under the expungement statute, as a matter of law, an expunged conviction is ‘deemed not to
20 have occurred.’ N.J.S.A. 2C:52–27. But the expungement statute does not transmute a once-true
21 fact into a falsehood.... It is not intended to create an Orwellian scheme whereby previously public
22 information—long maintained in official records—now becomes beyond the reach of public
23 discourse on penalty of a defamation action. Although our expungement statute generally permits
24 a person whose record has been expunged to misrepresent his past, it does not alter the
25 metaphysical truth of his past, nor does it impose a regime of silence on those who know the truth.”
26 (*G.D.*, 15 A.3d at 315-16.)

27 ⁵ The order makes clear that the *Court* deems the arrest not to have occurred, and restores to
28 Plaintiff certain privileges as a result, but it does not require parties not before the Court to pretend
that the arrest did not actually happen. (*Ibid.* [“The court GRANTS the petition. The record of
arrest in the following matter shall be sealed under the provisions of section 851.91, and the arrest
deemed not to have occurred[.]”]) The order goes on to explain what this means: while Plaintiff
“may answer any question relating to the sealed arrest as though it did not happen, and petitioner
is released from all penalties and disabilities resulting from the arrest,” there are exceptions. (*Ibid.*)
For example, “[t]he sealed arrest may be pleaded and proved in any later prosecution of the
petitioner for any other offense.” (*Ibid.*) The order, by its terms, did not command any non-party
to do anything at all—and certainly did not purport to command journalists to censor themselves.

1 lodge documents tentatively under seal merely because they reflect Plaintiff's (widely known)
2 identity. (Baskin Decl. ISO Mot. to Seal.)

3 Later, on November 12, 2024—over a year after Poulson's first published the arrest report
4 and over a month after filing suit—Plaintiff sandbagged Defendants by filing an *ex parte* application
5 for a temporary restraining order ("TRO"). (Pl.'s App. for TRO.) The TRO sought to compel
6 Defendants to remove information about his arrest report from the internet. (*Ibid.*) This forced
7 Defendants to undertake an expensive round of overnight briefing and to prepare for argument the
8 next day. (See Def's Opp'n to Pl.'s App. for TRO.) The TRO motion was futile: at the hearing, the
9 Court declined to reach the merits, instead ordering Plaintiff to do what he had been required to do
10 from the beginning: "Plaintiff should first file a regularly-noticed motion for Court authorization to
11 proceed in this action as a Doe plaintiff." (Def's. Opp. to Pl.'s Mot. to Proceed under a Fictitious
12 Name at 8.) Plaintiff thereafter filed a belated motion to proceed under a pseudonym (Pl.'s Mot. to
13 Proceed Under a Fictitious Name), which Defendants opposed (Def's. Opp. to Pl.'s Mot. to Proceed
14 under a Fictitious Name), and which remains pending.

15 Defendants, including Substack, now bring Anti-SLAPP motions to specially strike
16 Plaintiff's complaint in its entirety. (See Code Civ. Proc., § 425.16.) Substack also demurs to the
17 Complaint in a motion filed herewith, but the law requires that the Court decide this motion first.
18 (See *Reed v. Gallagher* (2016) 248 Cal.App.4th 841, 864-65 ["Trial courts should either grant or
19 deny [anti-SLAPP] motions in toto, i.e., without leave to amend, prior to ruling on any pending
20 demurrers."].)

21 **IV. ARGUMENT**

22 **A. CALIFORNIA'S ANTI-SLAPP STATUTE PROTECTS JOURNALISTS 23 FROM FEAR OF CRUSHING LITIGATION.**

24 The term "SLAPP" is an acronym for "strategic lawsuit against public participation."
25 (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.) SLAPP suits are "aimed at
26 preventing citizens from exercising their political rights or punishing those who have done so."
27 (*Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal.4th 12, 21; *Equilon Enters., LLC v. Consumer*
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1 *Cause, Inc.* (2002) 29 Cal.4th 53, 59-60.) To prevent such lawsuits from “masquerad[ing] as
2 ordinary lawsuits such as defamation” (*Simpson Strong-Tie*, 49 Cal.4th at 21), the California
3 legislature enacted the anti-SLAPP statute “to nip SLAPP litigation in the bud by striking offending
4 causes of actions which ‘chill the valid exercise of the constitutional rights of freedom of speech
5 and petition.’” (*Braun v. Chronicle Publ’g Co.* (1997) 52 Cal.App.4th 1036, 1042 [quoting
6 § 425.16(a)].)

7 The purpose of the law is “to prevent SLAPPs by ending them early and without great cost
8 to the SLAPP target.” (*Varian Med. Sys., Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) The legislature
9 further directed that the anti-SLAPP statute “be construed broadly.” (§ 425.16(a).)

10 Resolution of an anti-SLAPP motion involves a two-step analysis. “*First*, the court decides
11 whether the defendant has made a threshold showing that the challenged cause of action is one
12 ‘arising from’ protected activity” as defined in Code Civ. Proc., § 425.16(e). (*Nygaard, Inc. v. Uusi-*
13 *Kerttula* (2008) 159 Cal.App.4th 1027, 1035; *Taus v. Loftus* (2007) 40 Cal.4th 683, 712.) This
14 threshold showing is not onerous; “[i]nstead, a court must generally presume the validity of the
15 claimed constitutional right in the first step of the anti-SLAPP analysis.” (*Chavez v. Mendoza* (2001)
16 94 Cal.App.4th 1083, 1089.) *Second*, once the threshold showing has been made, “the burden shifts
17 to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.” (*Baral*
18 *v. Schnitt* (2016) 1 Cal.5th 376, 384; *Nygaard*, 159 Cal.App.4th at 1035.)

19 **B. PLAINTIFF’S CLAIMS ARISE FROM SUBSTACK’S PROTECTED**
20 **ACTIVITY, AND THE ANTI-SLAPP STATUTE APPLIES.**

21 Under prong one of the anti-SLAPP statute, Substack must show that “the acts underlying
22 the plaintiff’s cause of action fall within one of the four categories of conduct described in section
23 425.16, subdivision (e).” (*Nygaard*, 159 Cal.App.4th at 1036.) One such category of protected
24 conduct is “any written or oral statement or writing made in a place open to the public or a public
25 forum in connection with an issue of public interest.” (§ 425.16(e)(3).) Subsection (e)(3)’s threshold
26 criteria are easily met here: Substack is a public forum, and Poulson’s article was in connection with
27 a matter of public interest.

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1. Substack Is A Public Forum

It is black letter law that “[w]eb sites accessible to the public ... are ‘public forums’ for purposes of the anti-SLAPP statute.” (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4 [collecting cases]; see also, e.g., *Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, 917 [websites are public forums]; *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1252 [posts on the defendant’s Facebook page and Instagram account were “made ‘in a place open to the public or a public forum’ within the meaning of [§] 425.16, subd[.] (e)(3)”]; *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1007 [same].) So are newsletters generally. (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476 [“newsletter ... distributed to ... approximately 3,000” recipients “was also a ‘public forum’ within the meaning of section 425.16, subdivision (e)(3)”].) Poulson’s Substack newsletter is no exception. It has approximately 3,000 subscribers (Poulson Decl. ¶ 1), and covers the technology sector and those who govern it, with special attention to ethics concerns and the relationship between technology companies and governments. (See Baskin Decl. Exs. 3-6; Poulson Decl. ¶¶ 2, 4-10.) It is “a vehicle for communicating a message about public matters to a large and interested community.” (*Damon*, 85 Cal.App.4th at 476.) This quintessential public forum is available to anyone with an internet connection.

2. Poulson’s Article Was In Connection With A Matter of Public Interest

Likewise, Poulson’s news articles about Plaintiff’s arrest for felony domestic violence while serving as CEO of a company with reportedly lucrative contracts with U.S. Special Forces, and while holding a security clearance, were published in connection with an issue of public interest. (See generally *Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 164 [“[n]ews reports concerning current criminal activity serve important public interests”].) Events that cast doubt on the trustworthiness of people charged with protecting national security, or senior business people who benefit from substantial government contracts, are also clearly an issue of legitimate interest to the public. (See generally *Henry v. Lake Charles Am. Press, L.L.C.* (5th Cir. 2009) 566 F.3d 164, 181 [holding that “loss of a government contract and the investigation of an entity doing business with the [government]” were “matters of public interest” for purposes of Louisiana’s anti-

1 SLAPP statute]; *N.Y. Times Co. v. United States* (1971) 403 U.S. 713, 724 (Douglas, J., concurring)
2 [emphasizing importance of public debate on national security].)

3 The articles are equally related to the public’s interest in journalism about the status of
4 women in the technology sector generally, and efforts to improve accountability for men who
5 engage in abusive behavior toward women. This, in turn, is related to a broader set of issues about
6 powerful men using their power to gain control over, and abuse, women—a topic of widespread
7 interest, especially in the wake of the #MeToo movement. As the Court of Appeal held in *Sipple v.*
8 *Found. for Nat’l Progress* (1999) 71 Cal.App.4th 226, 238, “[d]omesic violence is an extremely
9 important public issue in our society” and constitutes an “issue of public interest” under
10 § 425.16(e)(3). The public interest is particularly strong when domestic violence involves powerful
11 individuals who may be able to misbehave with impunity. (See *id.* at 238-39 [Section 425.16(e)(3)
12 satisfied where the article in question not only addressed “the issue of domestic violence” but also
13 the “theme that rich and powerful men may use the legal system to their advantage over women
14 who may have been abused by them”]; see also *Coleman v. Grand* (E.D.N.Y. 2021) 523 F.Supp.3d
15 244, 259 [“sexual impropriety and power dynamics in the music industry, as in others, were
16 indisputably an issue of public interest”], app. filed (2d Cir., Mar. 26, 2021, No. 21-800); cf. *Cross*
17 *v. Cooper* (2011) 197 Cal.App.4th 357, 375 [holding that speech related to child sexual abuse can
18 be considered speech on a matter of public concern].)

19 The public interest here is further demonstrated by the extensive media coverage of this case.
20 (E.g., *Cross*, 197 Cal.App.4th at 378, fn. 13 [“extensive media coverage” of speech established
21 public interest]; *Sipple*, 71 Cal.App.4th at 238-39 [“public interest can be ‘evidenced by media
22 coverage’”]; see also, e.g., Baskin Decl. Ex. 7.)

23 Accordingly, the burden now shifts to Plaintiff to establish his probability of success on his
24 claims. He cannot satisfy that burden.

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C. PLAINTIFF CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING ON ANY OF HIS CLAIMS.

1. The First Amendment Bars Plaintiff’s Claims.

The First Amendment⁶ bars Plaintiff’s claims, all of which arise from the publication of information Poulson lawfully obtained from a confidential source on a matter of public significance.

The Supreme Court has repeatedly reaffirmed that the First Amendment bars legal action against media organizations for publishing lawfully obtained information that is a matter of public significance, absent extraordinary circumstances. As the Court explained in a seminal case: “our synthesis of prior cases involving attempts to punish truthful publication: ‘[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.’” (*Florida Star v. B.J.F.* (1989) 491 U.S. 524, 533 [quoting *Smith v. Daily Mail Publ’g Co.* (1979) 443 U.S. 97, 103]). Similarly, in *Cox Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469, 495, the Supreme Court held that the First Amendment barred civil damages against a television station for broadcasting the name of a rape-murder victim lawfully obtained by a reporter from a court proceeding because “[s]tates may not impose sanctions on the publication of truthful information contained in official court records open to public inspection.” (See also *Okla. Publ’g Co. v. Okla. Cnty. Dist. Ct.* (1977) 430 U.S. 308 [First Amendment barred injunction blocking publication of the name and photograph of minor charged in a juvenile proceeding lawfully obtained by reporters]; *Daily Mail*, 443 U.S. at 103 [under First Amendment, statute barring publication of information about juvenile criminal defendant could not be applied to newspaper publisher that obtained information by monitoring police band and interviewing witnesses]; *Landmark Commc’ns, Inc. v. Virginia* (1978) 435 U.S. 829 [striking down law criminalizing publication of information from confidential judicial misconduct commission proceedings].)

⁶ Substack uses “First Amendment” to refer both to the United States Constitution ((U.S. Const. am. I [“Congress shall make no law ... abridging the freedom of speech, or of the press”]), and the California Constitution (Cal. Const., art. I, § 2(a) [“A law may not restrain or abridge liberty of speech or press.”])).

Document received by the CA 1st District Court of Appeal.

1 In *Florida Star*, a local police department mistakenly released the name of a rape victim to
2 a reporter, who published the rape victim’s name in the newspaper in violation of a state statute.
3 The Supreme Court held that the statute violated the First Amendment’s protection for the press,
4 reaffirming that “where a newspaper publishes truthful information which it has lawfully obtained,
5 punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the
6 highest order, and that no such interest is satisfactorily served by imposing liability” on the press.
7 (491 U.S. at 541.) The Court held that the statute violated the First Amendment because the
8 newspaper lawfully obtained the rape victim’s name from the police; its article concerned a matter
9 of public importance because it reported about “the commission, and investigation, of a violent
10 crime that had been reported to authorities” (*id.* at 525); and the rape victim had not shown that
11 imposing liability on the newspaper was a “punishment ... narrowly tailored to a state interest of
12 the highest order” (*id.* at 541).

13 These principles have been reaffirmed in the California courts. The California Supreme
14 Court has recognized that “state officials may not constitutionally punish publication of [truthful]
15 information” that “a newspaper lawfully obtains ... about a matter of public significance” absent “a
16 need to further a state interest of the highest order,” and that the interest of alleged criminals and
17 crime victims in remaining anonymous is generally *not* a state interest “of the highest order.” (See
18 *Gates v. Discovery Commc’ns, Inc.* (2004) 34 Cal.4th 679, 690, 692-93 & fn. 6 [quoting *Daily Mail*,
19 443 U.S. at 103].) Just as the United States Supreme Court did not prioritize the privacy and
20 anonymity interests of juvenile offenders in *Daily Mail*, or those of rape victims in *Cox* and *Florida*
21 *Star*, so too the California Supreme Court did not prioritize “the long-term anonymity of former
22 convicts.” (*Id.* at 693.) All of these interests give way to the interest of the press in publishing truthful
23 stories on matters of public significance.

24 This case falls clearly within the principle expressed in *Florida Star*, *Daily Mail*, and *Gates*,
25 and Plaintiff’s claims accordingly fail. All Plaintiff’s claims arise from harm allegedly caused by
26 “disseminating the sealed Incident Report or information related to the sealed Incident Report.”
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1 (Compl. ¶ 53; see also *id.* ¶¶ 58, 69, 105, 110, 122, 136, 141, 153, 164, 170, 175.)⁷ There is no
2 dispute that the published information is truthful. Indeed, Plaintiff implicitly acknowledges that
3 Poulson published an accurate copy of the Incident Report. (See Compl. ¶ 14.) And he nowhere
4 alleges that any of the information is factually incorrect—despite his frivolous claim that “any
5 statement that the arrest did occur is, by operation of law, not truthful.” (Compl. ¶ 20.) Poulson also
6 lawfully obtained the Incident Report from a confidential source (Poulson Decl. ¶¶ 13-15), and
7 Plaintiff does not allege otherwise. Regardless, even if Plaintiff had alleged that Poulson obtained
8 the Incident Report in an unlawful manner (which, again, he does not), Plaintiff certainly does not—
9 and cannot—allege that **Substack** obtained the Incident Report unlawfully. Poulson’s reporting
10 about the Incident Report is also about a matter of public significance. The public significance of a
11 powerful man being arrested for felony domestic violence—without suffering job-related
12 consequences for his role as a CEO with government contracts and a role in national security—is
13 obvious. (See *ante*, at pp. 15-16.)

14 Further, the First Amendment protects one’s right to disclose material received from a source
15 regarding a matter of public concern even if the *source* obtained it unlawfully. (*Bartnicki v. Vopper*
16 (2001) 532 U.S. 514, 535). In *Bartnicki*, the U.S. Supreme Court held that the First Amendment
17 protected journalists who repeatedly reported the contents of a telephone conversation about a public
18 issue, which they obtained from a source who illegally intercepted the conversation. (*Id.* at 517-18.)
19 Despite the journalists knowing, or having reason to know, that their source obtained the
20 conversation unlawfully, they were free to disclose its contents because “a stranger’s illegal conduct
21 does not suffice to remove the First Amendment shield from speech about a matter of public
22 concern.” (*Id.* at 535; see also *Jean v. Mass. State Police* (1st Cir. 2007) 492 F.3d 24, 31-32 [holding
23 that defendants “made the decision to proceed with their disclosures knowing that the tape was

24
25 ⁷ Plaintiff cannot evade the First Amendment by arguing that his claims do not arise from
26 publication, but rather “possession” of the Incident Report, “allow[ing] the sealed Incident
27 Report ... to remain publicly accessible,” or “refusal to remove” the report from the internet.
28 (Compl. ¶ 58.) Such actions and omissions—maintaining a digital copy of the information,
making it publicly accessible, and not subsequently removing it—are encompassed within the act
of publication.

1 illegally intercepted, yet the Supreme Court held in *Bartnicki* that such a knowing disclosure is
2 protected by the First Amendment”]; *Democratic Nat’l Comm. v. Russian Fed’n* (S.D.N.Y. 2019)
3 392 F.Supp.3d 410, 435-36, 449 [“A person is entitled [to] publish stolen documents that the
4 publisher requested from a source so long as the publisher did not participate in the theft.”)]; *Bowley*
5 *v. City of Uniontown Police Dep’t* (3d Cir. 2005) 404 F.3d 783, 787 [“[a]lthough [the source]
6 violated Pennsylvania law prohibiting the release of juvenile arrest records by doing so, his unlawful
7 release of the information does not make receipt of that information by the Herald Standard
8 unlawful”].)

9 *Bartnicki*, which itself dealt with a statutory command of secrecy, controls even if the
10 government requires that information be kept confidential. As the Court of Appeal has recognized,
11 “it may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy
12 information through routine reporting techniques,” which “of course, include asking persons
13 questions, including those with confidential or restricted information.” (*Nicholson v. McClatchy*
14 *Newspapers* (1986) 177 Cal.App.3d 509, 511, 519-20.) Plaintiff “cannot distinguish[] the ‘wealth
15 of both State and Federal case law, discussing the protection journalists and the press enjoy under
16 the First Amendment where there have been allegations that published or disclosed content had been
17 illegally obtained.’” (*Ass’n for L.A. Deputy Sheriffs v. L.A. Times Commc’ns LLC* (2015) 239
18 Cal.App.4th 808, 819-20 [collecting cases].)

19 Even considering Plaintiff’s self-serving allegations, the conduct of all Defendants—and
20 certainly Substack’s—falls squarely within *Bartnicki*’s protection. It is undisputed that Poulson
21 obtained the arrest report from a source. (Compl. ¶¶ 43, 46; Poulson Decl. ¶ 13.) Although the
22 Complaint advances the conclusory allegation that “[u]pon information and belief, POULSON knew
23 or should have known at all times that the report had been sealed” (Compl. ¶ 15), it is undisputed
24 that Poulson himself did not himself illegally obtain the report from the San Francisco Police
25 Department (Poulson Decl. ¶¶ 13-15). Nor did Poulson violate the law merely by receiving the
26 report from his source. Obtaining confidential information from a source is a constitutionally
27 protected newsgathering technique, and cannot be “stripped” of its constitutional shield by “calling”
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1 it “tortious.” (*Ass’n for L.A. Deputy Sheriffs*, 239 Cal.App.4th at 819 [quoting *Nicholson*, 177
2 Cal.App.3d at 513].)

3 As for Substack, there are no allegations that it acted unlawfully to obtain the report either.
4 Their only alleged wrongdoing was to facilitate Poulson’s journalism generally and then not act to
5 take down the arrest report when posted online. (See Compl. ¶¶ 27, 32, 42, 141.)⁸ And Plaintiff
6 cannot evade Defendants’ First Amendment protections by claiming that even if Poulson is
7 protected for the act of writing news stories, the Defendants are not protected for their actions in
8 allowing the dissemination of those stories and the underlying Incident Report. Both “creation and
9 dissemination of information are speech within the meaning of the First Amendment.” (*Sorrell v.*
10 *IMS Health Inc.* (2011) 564 U.S. 552, 570.) And “[w]hether government regulation applies to
11 creating, distributing, or consuming speech makes no difference.” (*Brown v. Ent. Merchs. Ass’n*
12 (2011) 564 US 786, 792, fn. 1.)

13 Simply put, the First Amendment forecloses Plaintiff’s claims in light of *Florida Star* and
14 *Bartnicki*.

15 2. Section 230 Bars Plaintiff’s Claims Against Substack.

16 Beyond the First Amendment, Plaintiff has no chance of success in his claims against
17 Substack, all of which are barred by Section 230 of the Communications Decency Act. (See 47
18 U.S.C. § 230(c)(1).) Section 230 provides expansive immunity to internet service providers⁹ against
19 claims based on enabling third parties to publish content online, such as Poulson’s blog and the
20 arrest report linked therein. (See *Hassell v. Bird* (2018) 5 Cal.5th 522, 535, 538 [California courts
21 have also construed Section 230 to “afford[] interactive service providers broad immunity from tort
22 liability for third party speech”]; *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 39 [Section 230 has

24 ⁸ Substack was allegedly “involved in reviewing” and “editing” Poulson’s articles, but this is
25 not alleged to be wrongdoing. The only changes allegedly made by Substack were to remove
26 certain content or request that Poulson add the caveat that “the charges were later dropped.”
(Compl. ¶ 32.)

27 ⁹ Substack is a “provider ... of an interactive computer service,” and therefore entitled to
28 Section 230 immunity in appropriate circumstances. (47 U.S.C. § 230(c)(1); see *Smith v.*
Substack, Inc. (N.D.Cal., Aug. 12, 2024, No. 24-cv-727-AGT) 2024 WL 3757501, at *2 [“The
parties agree that Substack is a provider of an interactive computer service.”]).

1 “been widely and consistently interpreted to confer broad immunity against defamation liability for
2 those who use the Internet to publish information that originated from another source”].). Indeed,
3 just months ago, a court dismissed a complaint based on a Substack blog post after finding Substack
4 was “an interactive computer service” entitled to Section 230 immunity. (*Smith*, 2024 WL 3757501,
5 at *2-3, *5 [“Substack did not create the content nor decide to post material unintended for
6 publication. Substack merely decided whether or not to withdraw the post from publication, which
7 is lawfully within the purview of a publisher.”].)

8 Section 230 states that “[n]o provider ... of an interactive computer service shall be treated
9 as the publisher or speaker of any information provided by another information content provider.”
10 (47 U.S.C. § 230(c)(1).) Congress enacted this provision because it “recognized the threat that tort-
11 based lawsuits pose to freedom of speech in the new and burgeoning Internet medium.” (*Hassell*, 5
12 Cal.5th at 536 [quoting *Zeran v. Am. Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 330].) Section 230
13 aims “to maintain the robust nature of Internet communication and, accordingly, to keep government
14 interference in the medium to a minimum.” (*Ibid.*)

15 “[A]ny activity” by an internet service provider “that can be boiled down to deciding whether
16 to exclude material that third parties seek to post online is perforce immune under section 230.”
17 (*Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC* (9th Cir. 2008) 521 F.3d
18 1157, 1170-71 (en banc).) Substack’s decision not to take down Poulson’s material falls squarely
19 within this broad protection. This applies even if Plaintiff attempts to circumvent Section 230
20 immunity claiming that Substack is liable for “possession” of the Incident Report separate from any
21 publishing activity. (Compl. ¶ 58.) Not so: the only thing Substack allegedly did to harm Plaintiff
22 was enable publication of content by a third party (Poulson), and “possession” of Poulson’s content
23 on its servers is a necessary step in publishing that third-party content online—exactly what Section
24 230 protects. The totality of Plaintiff’s Complaint is that Substack did not make decisions he likes

1 with respect to Poulson’s newsletter, but Section 230 gives Substack the discretion to make that
2 decision.¹⁰

3 Section 230 thus bars all of his claims regardless of labels, including: defamation (*Hassell*,
4 5 Cal.5th at 536), negligence (*Zeran*, 129 F.3d at 330 [holding that Section 230 immunity applies
5 where allegations of negligence require publication of another’s statement]; *Doe II v. MySpace Inc.*
6 (2009) 175 Cal.App.4th 561, 573 [holding that claims for gross negligence are barred by Section
7 230 where they are based on decisions to “restrict or make available certain material”]), privacy-
8 related torts (*Caraccioli v. Facebook, Inc.* (2016) 167 F.Supp.3d 1056, 1066 [holding that Section
9 230 bars claims for public disclosure of private facts, false light, intrusion into private affairs, and
10 intentional and negligent infliction of emotional distress], *affd.* (9th Cir. 2017) 700 F.App’x 588),
11 and business torts (*Jurin v. Google, Inc.* (E.D.Cal. 2010) 695 F.Supp.2d 1117, 1122 [holding that
12 Section 230 bars claims for negligent and intentional interference with prospective economic
13 relations and intentional interference with contractual relations]; *Gentry v. eBay, Inc.* (2002) 99
14 Cal.App.4th 816, 836 [barring plaintiff from bringing a cause of action against an interactive service
15 provider under unfair competition law when the information originated with a third party]). Section
16 230 also bars Plaintiff’s claims based on California criminal laws. (See *Voicenet Commc’ns, Inc. v.*
17 *Corbett* (E.D.Pa., Aug. 30, 2006, No. 04-1318) 2006 WL 2506318, at *3-4 [“the plain language of
18 the CDA provides internet service providers immunity from inconsistent state criminal laws”].)

19 Moreover, even if Plaintiff could show that Poulson violated the law by publishing the
20 Incident Report and stories about it online (he cannot), that would not pierce Substack’s immunity
21 under the CDA. Section 230 immunity applies “even if a service provider knows that third parties
22 are using such tools to create illegal content.” (*Goddard v. Google, Inc.* (N.D.Cal., Dec. 17, 2008,
23 No. C 08-2738JF(PVT)) 2008 WL 5245490, at *3.) In that case, “the service’s provider’s failure to
24 intervene is immunized.” (*Ibid.*; see also *Coffee v. Google, LLC* (N.D.Cal., Feb. 10, 2021, No. 20-
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26 ¹⁰ This is true even if Substack allegedly requested edits to Poulson’s stories. (See
27 *Roommates.com*, 521 F.3d at 1169 (“A website operator who edits user-created content—such as
28 by correcting spelling, removing obscenity or trimming for length—retains his immunity for any
illegality in the user-created content, provided that the edits are unrelated to the illegality.”).

1 CV-03901-BLF) 2021 WL 493387, at *8 [same]; *Voicenet*, 2006 WL 2506318, at *3-4 [“the plain
2 language of the CDA provides internet service providers immunity from inconsistent state criminal
3 laws”].) Plaintiff simply has no viable argument that Section 230 does not apply because Poulson’s
4 content violated criminal law.

5 Plaintiff also cannot argue that Section 230 does not protect Substack because it was engaged
6 in illegal conduct. The only accusation against Substack is that it refuses to take down content posted
7 by Poulson. But “deciding whether to publish or to withdraw from publication third-party content”
8 is “*publishing conduct*” squarely protected by Section 230. (*Barnes v. Yahoo!, Inc.* (9th Cir. 2009)
9 570 F.3d 1096, 1102-05 (“[Section 230](c)(1) ... shields from liability all publication decisions,
10 whether to edit, to remove, or to post, with respect to content generated entirely by third parties.”).)
11 Because all Plaintiff’s claims against Substack arise from its publishing conduct with respect to a
12 third-party newsletter, they are all barred.

13 **CONCLUSION**

14 For these reasons, Plaintiff’s SLAPP Complaint should be stricken, consistent with Code
15 Civ. Proc., § 425.16, and the Court should award Substack its attorneys’ fees and costs to defend
16 this action.

17
18 Dated: December 6, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

19 By: /s/ Joshua A. Baskin
20 Joshua A. Baskin
21 E-mail: jbaskin@wsgr.com

22 Attorneys for Defendant
23 Substack, Inc.

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7 Attorneys for Defendant
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ELECTRONICALLY
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Superior Court of California,
County of San Francisco
12/06/2024
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

12 JOHN DOE, an individual,
13 Plaintiff,

14 v.

15 SUBSTACK, INC., a Delaware corporation;
AMAZON WEB SERVICES, INC., a
16 Delaware corporation; JACK POULSON, an
individual; TECH INQUIRY, INC., a
17 Delaware corporation; DOES 1-25, inclusive,
18 Defendants.

) CASE NO.: CGC-24-618681

)
) **DEFENDANT'S MOTION TO**
) **FILE PORTIONS OF SPECIAL**
) **MOTION TO STRIKE PLAINTIFF'S**
) **COMPLAINT AND DEFENDANT'S**
) **DEMURRER UNDER SEAL**

) Date: January 6, 2025
) Time: 9:30a.m.
) Dept: 302
) Before: Hon. Richard B. Ulmer, Jr.

) Action Filed: October 3, 2024
) Trial Date: None Set

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DEFENDANT'S MOTION TO FILE PORTIONS OF SPECIAL MOTION TO STRIKE AND DEMURRER
UNDER SEAL

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on January 6, 2024 at 9:30a.m. at Department 302 Defendant
3 will and hereby does move the Court pursuant to California Rules of Court 2.550 and 2.551 to issue
4 an order sealing the Declaration of Joshua A. Baskin in support of Defendant’s Special Motion to
5 Strike and Defendant’s Demurrer to Complaint (“Declaration”) and the exhibits filed therewith
6 (“Exhibits”), which have been lodged conditionally under seal.

7 Defendant files this Motion out of an abundance of caution. Defendant does not believe any
8 of the materials should be sealed. However, Plaintiff might believe that good cause exists for
9 granting this Motion to Seal. (See Declaration of Joshua A. Baskin, filed herewith.)

10 This Motion is based on the accompanying Memorandum of Points and Authorities, the
11 Declaration, the papers and records on file in this action, and such further evidence or argument as
12 may be submitted at or before the time of the hearing.

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Dated: December 6, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Joshua A. Baskin
Joshua A. Baskin
E-mail: jbaskin@wsgr.com

Attorneys for Defendant
Substack, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 6, 2024, Defendant Substack Inc. will file its Special Motion to Strike and
4 Demurrer. As Plaintiff may believe that certain information in the Special Motion to Strike,
5 Demurrer, and supporting materials thereto should be filed under seal, out of an abundance of
6 caution, Defendant moves to seal the Declaration of Joshua A. Baskin in support thereof, and the
7 Exhibits attached thereto. Defendant makes this motion to allow Plaintiff the opportunity to seek
8 to seal this information, and provide sufficient justification under the rules to do so.

9 **II. ARGUMENT**

10 The Court may order a document to be sealed if the Court finds facts that establish: “(1)
11 [t]here exists an overriding interest that overcomes the right of public access to the record; (2) [t]he
12 overriding interest supports sealing the record; (3) [a] substantial probability exists that the
13 overriding interest will be prejudiced if the record is not sealed; (4) [t]he proposed sealing is
14 narrowly tailored; and (5) [n]o less restrictive means exist to achieve the overriding interest.” (Cal.
15 Rules of Court, rule 2.550(d).)

16 Here, Plaintiff may contend that certain of the information in the Declaration and the
17 Exhibits is subject to sealing under this standard. Therefore, Defendant files this motion to seal to
18 allow Plaintiff to the opportunity to justify sealing of the information, if he so wishes.

19 **III. CONCLUSION**

20 For the foregoing reasons, Defendant files this motion to seal.

21
22 Dated: December 6, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

24 By: /s/ Joshua A. Baskin
Joshua A. Baskin

25 Attorneys for Defendant
26 Substack, Inc.

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12 Attorneys for Defendant
13 SUBSTACK, INC.

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO

16 JOHN DOE, an individual,
17 Plaintiff,

18 v.

19 SUBSTACK, INC., a Delaware corporation;
20 AMAZON WEB SERVICES, INC., a
21 Delaware corporation; JACK POULSON, an
22 individual; TECH INQUIRY, INC., a
23 Delaware corporation; DOES 1-25, inclusive,
24 Defendants.

) CASE NO.: CGC-24-618681

)
) **DECLARATION OF JOSHUA A.**
) **BASKIN IN SUPPORT OF**
) **DEFENDANT'S MOTION TO**
) **FILE PORTIONS OF SPECIAL**
) **MOTION TO STRIKE PLAINTIFF'S**
) **COMPLAINT AND DEFENDANT'S**
) **DEMURRER UNDER SEAL**

) Date: January 6, 2025
) Time: 9:30a.m.
) Dept: 302
) Before: Hon. Richard B. Ulmer, Jr.

) Action Filed: October 3, 2024
) Trial Date: None Set

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BASKIN DECLARATION IN SUPPORT OF MOTION TO SEAL

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I, Joshua A. Baskin, declare and state as follows:

1. I am a Partner at Wilson Sonsini Goodrich & Rosati, Professional Corporation (“WSGR”), counsel for Defendant Substack, Inc. (“Substack”) in this litigation. I make this declaration of my personal knowledge obtained in my capacity as attorney of record for Substack and, if called as a witness, I could and would competently testify thereto.

2. I submit this declaration in support of Defendant’s Motion to File Portions of Defendant Substack Inc.’s Special Motion to Strike Plaintiff’s Complaint and Defendant’s Demurrer Under Seal.

3. Defendant files the Declaration of Joshua A. Baskin in Support of Defendant’s Special Motion to Strike Plaintiff’s Complaint and Defendant’s Demurrer, including the exhibits attached thereto, under seal to give Plaintiff an opportunity to justify whether they should be sealed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 6, 2024 in San Mateo, California.

Dated: December 6, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Joshua A. Baskin
Joshua A. Baskin
E-mail: jbaskin@wsgr.com

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7 Attorneys for Defendant
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

12 JOHN DOE, an individual,) CASE NO.: CGC-24-618681
13 Plaintiff,)
14 v.) **DECLARATION OF JOSHUA A.
BASKIN IN SUPPORT OF
15) DEFENDANT'S SPECIAL MOTION TO
SUBSTACK, INC., a Delaware corporation;)
16) STRIKE PLAINTIFF'S COMPLAINT
AMAZON WEB SERVICES, INC., a)
17) AND DEFENDANT'S DEMURRER TO
Delaware corporation; JACK POULSON, an)
18) **COMPLAINT**
individual; TECH INQUIRY, INC., a)
19) **REDACTED**
Delaware corporation; DOES 1-25, inclusive,)
20) Date: January 6, 2025
21) Time: 9:30a.m.
22) Dept: 302
23) Hon. Richard B. Ulmer, Jr.
24)
25) Action Filed: October 3, 2024
26) Trial Date: None Set
27)
28)**

23 **PUBLIC**
24 **Redacted Material from Conditionally Sealed Record.**

BASKIN DECLARATION IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO STRIKE AND
DEFENDANT'S DEMURRER TO COMPLAINT

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EXHIBIT 1

CONDITIONALLY UNDER SEAL

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EXHIBIT 2

CONDITIONALLY UNDER SEAL

Document received by the CA 1st District Court of Appeal.

EXHIBIT 3

CONDITIONALLY UNDER SEAL

Document received by the CA 1st District Court of Appeal.

EXHIBIT 4

CONDITIONALLY UNDER SEAL

Document received by the CA 1st District Court of Appeal.

EXHIBIT 5

CONDITIONALLY UNDER SEAL

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EXHIBIT 6

CONDITIONALLY UNDER SEAL

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EXHIBIT 7

CONDITIONALLY UNDER SEAL

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12/09/2024
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Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**
10

11 JOHN DOE, an individual,
12
13 Plaintiff,
14
15 v.
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17 SUBSTACK, INC., a Delaware
18 Corporation; AMAZON WEB SERVICES,
19 INC., a Delaware Corporation; JACK
20 POULSON, an individual; TECH
21 INQUIRY, INC., a Delaware corporation;
22 DOES 1-25, inclusive,
23
24 Defendants.
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27
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Case No.: CGC-24-618681

**DEFENDANT TECH INQUIRY, INC.'S
NOTICE OF MOTION AND MOTION TO
STRIKE UNDER THE ANTI-SLAPP
STATUTE (CCP § 425.16)**

DATE: January 10, 2025
TIME: 9:30 a.m.
DEPT: 302

Judge: Hon. Richard B. Ulmer, Jr.

Action Filed: October 3, 2024
Trial Date: None set

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NOTICE OF MOTION AND MOTION

TO PLAINTIFF AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 10, 2025 at 9:30, or as soon thereafter as the matter may be heard in Dept. 302, of the above-entitled court, located at 400 McAllister Street, San Francisco, California 94102, defendant Tech Inquiry, Inc., will and hereby moves the court to grant Tech Inquiry, Inc.’s special motion to strike Plaintiff’s 14 claims against Tech Inquiry, Inc. pursuant to Code of Civil Procedure § 425.16(e)(2), (e)(3), and (e)(4).

The motion will be based on Tech Inquiry’s Memorandum of Points and Authorities, the Declarations of Jack Poulson and Victoria Noble, which are concurrently filed with Mr. Poulson’s special motion to strike, the pleadings filed concurrently by the other defendants in this matter, any opposition papers and admissible evidence filed by Plaintiff, the reply papers of the defendants, and any other material the Court deems proper.

Plaintiff has filed a motion asking this Court to allow him to litigate his case anonymously, which is pending. Tech Inquiry therefore is not naming Plaintiff or his company in its notice or motion to strike, although Tech Inquiry cites to the unredacted versions of the pleadings filed concurrently by Mr. Poulson, which are lodged tentatively under seal.

DATED: December 7, 2024

LAW OFFICE OF SUSAN E. SEAGER

/s/ Susan E. Seager

Susan E. Seager

Attorneys for Defendant Tech Inquiry, Inc.

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21 INQUIRY, INC., a Delaware corporation;
22 DOES 1-25, inclusive,
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Case No.: CGC-24-618681

**MEMORANDUM OF POINTS AND
AUTHORITES IN SUPPORT OF
DEFENDANT TECH INQUIRY, INC.'S
SPECIAL MOTION TO STRIKE
(CCP § 425.16)**

DATE: January 10, 2025
TIME: 9:30 a.m.
DEPT: 302

Judge: Hon. Richard B. Ulmer, Jr.

Action Filed: October 3, 2024
Trial Date: None set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This lawsuit is a SLAPP lawsuit. It seeks to chill defendant Tech Inquiry, Inc.’s speech
4 about the official actions of San Francisco police, their police report describing the felony arrest of
5 Plaintiff, a high-profile technology executive, for allegedly battering his girlfriend. Plaintiff alleges
6 that Tech Inquiry should be held liable because journalist Jack Poulson posted a copy of Plaintiff’s
7 arrest report and related articles on Tech Inquiry’s website in alleged violation of a new California
8 statute that makes it unlawful to publish an arrest report after it has been sealed by a court, as
9 Plaintiff’s arrest report was.

10 But Plaintiff’s claims and the statute, Penal Code § 851.92, are fatally flawed. All of
11 Plaintiff’s claims against Tech Inquiry arise from Tech Inquiry’s speech about official police
12 actions, Plaintiff’s official arrest report, and alleged domestic violence, which are matters of public
13 concern. Plaintiff’s claims therefore trigger the protection of C.C.P. § 415.16(2), (3), and (4) of
14 the anti-SLAPP statute. Plaintiff cannot meet his burden of showing a probability of prevailing on
15 any of his claims, as required by the anti-SLAPP statute. Plaintiff’s claims are barred by § 230 of
16 the Communications Decency Act, the absolute California fair report privilege, and the First
17 Amendment protection for news reports about lawfully obtained government records and bar
18 against prior restraint. This Court should therefore grant Tech Inquiry’s special motion to strike all
19 of Plaintiff’s claims against Tech Inquiry.

20 **II. FACTUAL BACKGROUND**

21 **A. Tech Inquiry Is a News Website That Passively Hosted the Incident Report**

22 Defendant Tech Inquiry, Inc. is a public website, <https://www.techinquiry.org>, that provides
23 the public with government records, news articles, data, and other information investigating the
24 intersection of surveillance and weapons companies with governments. Declaration of Jack Poulson
25 (“Poulson Decl.”) ¶ 2 (attached to Mr. Poulson’s concurrently Special Motion to Strike). Tech
26 Inquiry was founded by Mr. Poulson, who is the executive director of Tech Inquiry. *Id.* ¶ 2.

27 Mr. Poulson is an independent journalist focusing on the intersection of technology and
28 national security who reports primarily through his periodic newsletter, *All-Source Intelligence*,

1 published through Substack. *Id.* ¶ 1. His newsletter is publicly available on the internet at
2 <https://substack.com/@jackpoulson>. *Id.* ¶ 1. Mr. Poulson writes his Substack newsletter in his
3 personal capacity and not as an officer of Tech Inquiry. *Id.* ¶¶ 2, 21.

4 One the companies that Mr. Poulson has been reporting about in his Substack newsletter is a
5 tech company where Plaintiff worked as chief executive officer. *Id.* ¶ 4; Exhibit B. One of Mr.
6 Poulson’s Substack articles, published on September 1, 2023, discussed Plaintiff’s accidental public
7 confirmation of his company’s classified intelligence contracts in his declaration in a lawsuit. *Id.* ¶
8 7; Exhibit B.

9 On September 14, 2023, Mr. Poulson posted a newsletters on Substack to report that
10 Plaintiff, then-CEO of a tech company, had been arrested for alleged felony domestic abuse of his
11 girlfriend in San Francisco, “The Covert Gig-Work Surveillance CEO Arrested for Felony
12 Domestic Violence.” *Id.* ¶ 8; Exhibit C.

13 Mr. Poulson received the Incident Report through an unsolicited message on the end-to-end
14 encrypted messaging platform Signal from a confidential source in early September 2023. *Id.* ¶ 13.
15 Mr. Poulson had no prior relationship with the source and did not request or otherwise seek out the
16 Incident Report. *Id.* ¶ 13. Mr. Poulson was unaware that the Incident Report was sealed by a San
17 Francisco Superior Court when he received it, wrote about it, and posted it on Tech Inquiry. *Id.* ¶¶
18 14-15. There were no markings on the Incident Report indicating it was sealed and when Mr.
19 Poulson called the San Francisco Police Department’s Crime Information Services Unit, which
20 confirmed the accuracy of the Incident Report, police did not inform Mr. Poulson the report was
21 sealed. *Id.* ¶¶ 14-15.

22 When he posted his article about the Incident Report on Substack, Mr. Poulson included a
23 link to a redacted version of the Incident Report, which he had posted on the Tech Inquiry website
24 in his capacity as a Substack writer, not an executive of Tech Inquiry. *Id.* ¶ 21. Several months later,
25 Mr. Poulson removed the arrest report from Tech Inquiry. *Id.* ¶ 21.

26 Mr. Poulson decided to report about Plaintiff’s Incident Report because Plaintiff was a
27 controversial and apparently reckless CEO at his tech company, reportedly holding a government
28 security clearance granting him to access sensitive national security information, placing him in a

1 position of public trust; yet he had accidentally publicly revealed his company’s classified work
2 with U.S. government agencies in his public court declaration; hired gig workers who unknowingly
3 performed high-risk intelligence work overseas; whose company secretly pivoted to performing
4 military surveillance; and failed to prevent the deaths of many of the company’s employees,
5 including 19 who were pulled off a bus in Iraq and executed on the side of the road while
6 performing as part of the company’s secretive military contracts. *Id.* ¶¶ 16-17.

7 Mr. Poulson writes all of his Substack newsletters in his personal capacity, and not as an
8 officer of Tech Inquiry. Tech Inquiry’s only role in this matter is that Mr. Poulson initially stored a
9 redacted copy of Plaintiff’s Incident Report on Tech Inquiry’s server so that he could directly link
10 to the document in his Substack article about Plaintiff’s arrest, although Mr. Poulson subsequently
11 deleted the redacted Incident Report from Tech Inquiry’s server. *Id.* ¶ 21.

12 **B. Plaintiff Is a Public Figure Who Demanded that Tech Inquiry Remove the Incident**
13 **Report and Related Articles from the Website**

14 Plaintiff has repeatedly sought public attention as an American technology executive,
15 including by describing himself as a “prominent figure” in the industry; creating a personal website;
16 hosting podcasts with high-profile guests, including former U.S. Treasury Secretary Larry
17 Summers; creating a public LinkedIn profile; and working as a CEO at a company with U.S.
18 government and foreign government contracts. Declaration of Sarah Noble in Support of Jack
19 Poulson’s Special Motion to Strike; Exhibits A-I, concurrently filed.

20 On September 16, 2024, Plaintiff’s counsel sent a cease and desist letter and \$25-million
21 damages demand to Tech Inquiry, demanding it remove the Incident Report from its website, “all
22 references” to the Incident Report, and all “information related to the sealed Incident Report.”
23 Compl. ¶ 41. On October 3, 2024, Plaintiff filed suit against Tech Inquiry, Mr. Poulson, Substack,
24 and Amazon Web Services, Inc., alleging 14 claims against Tech Inquiry. Compl. ¶¶ 50-149, 157-
25 176, and seeking injunctive relief. Compl. p. 22.

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1 **III. ARGUMENT**

2 **A. The Anti-SLAPP Statute Is Designed to Protect News Websites Such as Tech**
3 **Inquiry From Meritless Lawsuits Targeting Its Protected Speech**

4 The Legislature enacted Code of Civil Procedure § 415.16 to “provide[] a procedure for
5 weeding out, at an early stage, meritless claims arising from protected activity” of speech and
6 petitioning, known as SLAPP suits. *Baral v. Schnitt*, 1 Cal. 5th 376, 384 (2016). Special motions to
7 strike brought under § 425.16 are designed to provide “a fast and inexpensive unmasking and
8 dismissal” of lawsuits targeting protected speech or petitioning activity (*Wilcox v. Superior Court*,
9 27 Cal. App. 4th 809, 819, 823 (1994)), allowing the defendant to “nip SLAPP litigation in the
10 bud[.]” *Braun v. Chron. Publ’g Co.*, 52 Cal. App. 4th 1036, 1042 (1997)).

11 The statute permits a defendant to “file a special motion strike any “cause of action against a
12 person arising from any act of that person in furtherance of the person’s right of petition or free
13 speech under the United States Constitution or the California Constitution in connection with a
14 public issue.” C.C.P. § 525.16(b)(1). The statute “requires a court to engage in a two-step process”
15 to analyze the defendant’s anti-SLAPP motion. *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th 728
16 (2003).

17 “First, the court decides whether the defendant has made a threshold showing that the
18 challenged cause of action is one arising from protected activity.” *Navellier v. Sletten*, 29 Cal.4th 82,
19 88 (2002) (citations omitted). A defendant meets this burden simply “by demonstrating that the act
20 underlying the plaintiffs’ cause of action fits one of the categories spelled out in section 425.16,
21 subdivision (e).” *Id* (citation omitted). The court is precluded during this first step from considering
22 whether the speech violates a civil statute or common law because doing so would be “placing the
23 cart before the horse.” *DuPont Merck Pharm. Co. v. Superior Ct.*, 78 Cal. App. 4th 562, 759 (2000).
24 Instead, the court must wait to consider the merit of the plaintiff’s claims “in the second part of the
25 analysis,” when deciding “whether there is a probability plaintiffs will prevail.” *Id*.

26 Second, if the court determines that the defendant has satisfied this first test, the burden
27 shifts to the plaintiff to demonstrate “a probability of prevailing on the claim[s].” *Id*. at 88. The
28 plaintiff must establish “that the complaint is legally sufficient and supported by a prima facie

1 showing of facts that, if proved at trial, would support a judgment in the plaintiff’s favor.” *Digerati*
2 *Holdings, LLC v. Young Money Entm’t, LLC*, 194 Cal. App. 4th 873, 884 (2011). The motion must
3 be granted if the “plaintiff fails to produce evidence to substantiate his claim or if the defendant has
4 shown that the plaintiff cannot prevail as a matter of law.” *Siam v. Kizilbash*, 130 Cal. App. 4th
5 1563, 1570 (2005).

6 The anti-SLAPP statute “may apply to any cause of action.” Burke, *Civil Litigation Series:*
7 *Anti-SLAPP Litigation* (The Rutter Group 2023) § 4:1, p.212 (emphasis in original). “Nothing in the
8 statute itself categorically excludes any particular type of action from its operation[.]” *Navellier*, 29
9 Cal. 4th at 92 (quoting *Calif. Teachers Assn v. Governing Bd. of Rialto Unified School Dist.*, 14 Cal.
10 4th 627, 633 (1997)). Courts have held that the anti-SLAPP statute applies to claims asserted by
11 Plaintiff, including claims for defamation (*Wilcox*, 30 Cal. App. 4th at 809); *Lafayette Morehouse,*
12 *Inc. v. Chronicle Publ’g Co.*, 37 Cal. App. 4th 855 (1995)); infliction of emotional distress (*Ketchum*
13 *v. Moses*, 24 Cal. 4th 1122 (2001)); disclosure of confidential information (*Fox Searchlight Pictures,*
14 *Inc. v. Paladino*, 89 Cal. App 4th 294 (2001)); interference with prospective economic advantage
15 (*Sipple v. Found. for Nat. Progress*, 71 Cal. App. 4th 226 (1999)); invasion of privacy (*Seelig v.*
16 *Infinity Broadcasting Corp.*, 97 Cal. App. 4th 798 (2002)); publication of private facts and intrusion
17 (*Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337 (2007)); false light (*Tamkin v. CBS*
18 *Broadcasting, Inc.*, 193 Cal. App. 4th 133 (2011); negligence (*Birkner v. Lam*, 156 Cal. App. 4th 275
19 (2007)); and various statutory violations (*Blue v. Office of Inspector General*, 23 Cal. App. 5th 138
20 (2018) (alleged violation Penal Code § 6126.5)).

21 **B. Plaintiff’s Claims Arise from Tech Inquiry’s Speech Protected by § 425(e)**

22 “A claim arises from protected activity when that activity underlies or forms the basis for the
23 claim.” *Park v. Bd. Of Trustees of Cal. State Univ.*, 2 Cal. 5th 1057, 1062 (2017). All of Plaintiffs
24 claims against Tech Inquiry arise from the website’s speech protected by the anti-SLAPP statute.

25 **1. Tech Inquiry’s Speech Is Protected by § 425(e)(2)**

26 All of Plaintiff’s claims against Tech Inquiry arise from its hosting of Plaintiff’s official
27 Incident Report by the San Francisco Police Department documenting Plaintiff’s arrest for alleged
28 felony domestic violence and related articles, which is speech “made in connection with an issue

1 under consideration by a ... executive, or judicial body, or any other official proceeding authorized
2 by law” protected by C. C .P.§ 425€(2). Compl. ¶ 27 (“Tech Inquiry ... published the sealed
3 Incident Report on the Tech Inquiry website”); ¶¶ 51, 58, 69 (negligence, gross negligence, and
4 intentional interference claims arise from Tech Inquiry’s “possession and public dissemination of a
5 sealed Incident Report and information related to the sealed Incident Report”); ¶ 100 (private facts
6 claim arises from Tech Inquiry’s “publiciz[ing] private information concerning Plaintiff”); ¶ 110
7 (false light claim arises from Tech Inquiry’s “publicly disclos[ing] information or material that
8 showed Plaintiff in a false light”) ¶ 112 (intrusion claim arises from Tech Inquiry “publicly
9 disseminat[ing] and refus[ing] to take down [from its website] “the sealed Incident Report and
10 information related to the sealed Incident Report”); ¶ 170 (Penal Code § 851.92(c) claim arises
11 from Tech Inquiry “disseminating the sealed Incident Report and information related to the sealed
12 Incident Report”); *see also* Compl. ¶¶ 76, 87, 128, 135 (other claims “refer[] to and incorporate[]”
13 the “allegations contained in the foregoing paragraphs” alleging that Tech Inquiry published
14 Plaintiff’s Incident Report and related information on its website).

15 A “governmental investigation” into “potential criminal conduct” is an “official proceeding”
16 under C.C.P. § 425(e)(2). *Comstock v. Aber*, 212 Ca. App. 4th 931, 943 (2012). The investigation is
17 an “official proceeding” even if the suspect was never charged with a crime.” *Hansen v. Calif.*
18 *Dept. of Corrections and Rehabilitation*, 171 Cal. App. 4th 1537, 1544 (2008). Here, the Incident
19 Report was an official writing that documented an official proceeding by the San Francisco Police
20 Department, and the Incident Report was also under consideration by the San Francisco County
21 Superior Court, which later sealed the Incident Report. Subsection 425(e)(2) does not require a
22 defendant to establish that its speech about an official proceeding is related to a matter of public
23 concern. *See Briggs v. Eden Council for Hope & Opportunity*, 18 Cal. 4th 1106, 1116 (1999).

24 **2. Tech Inquiry’s Speech Is Protected by C. C. P. § 425(e)(3)**

25 All of Plaintiff’s claims against Tech Inquiry arise from its hosting of Plaintiff’s official
26 police arrest report for alleged felony domestic violence, which is a matter of public interest, on
27 Tech Inquiry’s website, which is a public forum, all of which is speech protected by § 425(e)(3).
28 Compl. ¶¶ 27, 51, 58, 69, 76, 87, 100, 110, 112, 128, 135, 170. The California Supreme Court has

1 held that “Web sites accessible to the public ... are ‘public forums’ for purposes of the ... SLAPP
2 statute.” *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41, n. 4 (2006). *See also ComputerXpress, Inc. v.*
3 *Jackson*, 93 Cal. App. 4th 993, 1006 (2001) (same). Tech Inquiry publishes news to the public, an
4 activity protected by the anti-SLAPP statute. “[T]he language of the statute [is] broad enough to
5 cover news reporting activity,” “publishers,” and “media defendants” ... who regularly face libel
6 litigation[.]” *Sipple*, 71 Cal. App. 4th at 240. *See also Braun*, 52 Cal. App. 4th at 1045 (news
7 reporting is free speech and section 425.16 applies to media defendants in libel actions); *Assoc. for*
8 *Los Angeles Cnty Deputy Sheriff’s v. Los Angeles Times Comms., LLC*, 239 Cal. App. 4th 808, 816
9 (2015) (“ALADS”) (plaintiff’s cause of action arising from newspaper’s newsgathering of deputies’
10 confidential personnel files “[a]rises from the Times’s [p]rotected [a]ctivity: [n]ews [r]eporting”).

11 Media reports about the actions of law enforcement officers qualify as speech on a public
12 forum about a matter of public interest protected by § 425(e)(3). “The public has a strong interest in
13 the ... conduct of law enforcement officers.” *Id.* at 826. *See also Collondrez v. City of Rio Vista*, 61
14 Cal. App. 5th 1039, 1050 (2021) (conduct of police officer is “undoubtedly” an issue of public
15 interest pursuant to § 425(e)(3). *See generally Commission on Peace Officer Standards & Training v.*
16 *Superior Court*, 42 Cal. 4th 278, 297, 300 (2007) (“POST”) (“Peace officers ‘hold one of the most
17 powerful positions in our society; our dependence on them is high and the potential for abuse of
18 power is far from insignificant.”) (citation and quotation marks omitted). News reports about
19 suspected criminal activity are considered a matter of public interest. *Lieberman v. KCOP*
20 *Television, Inc.*, 110 Cal. App. 4th 156 (2022). News reports about allegations of domestic abuse
21 contained in official records involving public figures also qualify as free speech about a matter of
22 public concern under the SLAPP statute. *Sipple*, 71 Cal. App. 4th at 238. “The ... topic of ...
23 domestic abuse is [an issue of] significant and of public interest” under the anti-SLAPP statute.
24 *M.G. v. Warner*, 89 Cal. App. 4th 623, 629 (2001).

25 Because all of Plaintiff’s claims against Tech Inquiry arise from its hosting of the Incident
26 Report and related articles, which is speech on a public forum about matters of public interest, all
27 of Plaintiff’s 14 claims against Tech Inquiry fall within the protection of § 425.16(e)(3).
28

1 applying the statute the concern that lawsuits could threaten the ‘freedom of speech in the new and
2 burgeoning Internet medium.’” *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir.2003) (quoting *Zeran*
3 *v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir.1997)). “Congress decided not to treat providers
4 of interactive computer services like other information providers such as newspapers, magazines or
5 television and radio stations, all of which may be held liable for publishing obscene or defamatory
6 material written or prepared by others.” *Id.* at 1026 (citing *Blumenthal v. Drudge*, 992 F. Supp. 44,
7 49 (D.D.C. 1998)).

8 Section 230 provides immunity for a broad variety of state law claims arising from allegedly
9 tortious publications posted on websites and other ISPs by third parties, including claims for
10 defamation (*Id.* at 1034-35; *Johnson v. Arden*, 614 F. 3d 785 (8th Cir. 2010); *Blumenthal v. Drudge*,
11 992 F. Supp. 44, 49-53 (D.D.C. 1998); *Global Royalties, Ltd. V. Xcentric Ventures, LLC*, 544 F.
12 Supp.2d 929 (D. Ariz. 2008); posting a false dating website profile (*Carafano v. Metrosplash.com,*
13 *Inc.*, 339 F.3d 1119 (9th Cir. 2003)); posting incorrect stock information (*Ben Ezra, Weinstein & Co.*
14 *v. America Online*, 206 F.3d 980, 984-985 (10th Cir. 2000)); negligence (*Doe v. America Online*,
15 783 So.2d 1010, 1013-1017 (Fl. 2001); infliction of emotional distress (*Doe One v. Oliver*, 755
16 A.2d 1000, 1003-1004 (Conn. Super. Ct. 2000); tortious interference (*Nemet Chevrolet Ltd. V.*
17 *ConsumerAffairs.com, Inc.*, 591 F.3d 250 (4th Cir. 2009); and alleged violations of state and federal
18 statutes (*Voicenet Communications, Inc. v. Corbett*, No. 04-1318, 2006 WL 2506318 (E.D. Pa. Aug.
19 30, 2006); *Doe v. Bates*, No. 5:05-CV-91-DF-CMC, 2006 WL 3813758 (E.D. Tex. Dec. 27, 2006)).

20 Tech Inquiry’s website is an interactive computer service provider protected by § 230. *See*
21 *Batzel*, 333 F.3d at 1031. The challenged material hosted by the website – the Incident Report, a
22 link to Mr. Poulson’s Substack article about the Incident Report, and links to articles by other
23 authors about the Incident Report – were “written or prepared by others.” *Id.* at 1026. Tech Inquiry
24 did not prepare the Incident Report, write Mr. Poulson’s Substack article about the Incident Report,
25 or the other articles about the Incident Report by other authors. When Mr. Poulson posted the
26 Incident Report and related Substack articles on Tech Inquiry, he did so in his capacity as a
27 Substack writer, not an executive for Tech Inquiry. Poulson Decl. ¶¶ 2, 21. For all of these reasons,
28 all of Plaintiff’s claims are barred by § 230.

1 **2. Plaintiff’s Claims Are Barred by the California’s Fair Report Privilege**

2 Plaintiff’s claims also are all barred by California’s statutory fair report privilege. Civil
3 Code § 47(d) provides an absolute bar against all content-based claims arising from substantially
4 accurate news reports about official government proceedings and documents. For example, in
5 *Jennings v. Telegram-Tribune Co.*, 164 Cal. App. 3d 119 (1985), the Court of Appeal held that a
6 newspaper story about a local architect’s tax evasion court case was protected by the fair report
7 privilege and ordered the dismissal of the plaintiff’s causes of action for libel, invasion of privacy,
8 intentional infliction of emotional distress, injurious falsehood, interference with contractual
9 relations, interference with prospective economic advantage, and violation of Civil Code § 1708. *Id.*
10 at 129. The fair report privilege immunizes news reports about arrest records. *Hayward v.*
11 *Watsonville Register-Pajaronian and Sun*, 265 Cal. App. 2d 255 (1968) (“crime reports of a police
12 department ... and upon which a criminal complaint is filed and a warrant of arrest is issued ... are
13 privileged” under Civil Code § 47(d)). The fair report privilege “does not require the reporter to
14 resolve the merits of the charges, nor does it require that he present the arrestee’s version of the
15 facts.” *Rollenhagen v. City of Orange*, 116 Cal. App. 3d 414, 427 (1981) (news report about
16 plaintiff’s arrest protected by fair report privilege). The fair report privilege is absolute and protects
17 news reports even if the reporter or news organization published with ill will toward the plaintiff or
18 published with constitutional actual malice. *McClatchy Newspapers, Inc. v. Superior Court*, 189
19 Cal. App 3d 961, 974-75 (1987); *Howard v. Oakland Tribune*, 199 Cal. App. 3d 1124, 1128 (1988).

20 California’s fair report privilege applies to news reports about official government
21 proceedings and records that are confidential by law. *Reeves v. American Broadcasting Companies,*
22 *Inc.*, 719 F.2d 602, 606 (2d Cir.1983) (California fair report privilege immunized press coverage of
23 grand jury proceedings even though they were secret by law); *Crane v. The Arizona Republic*, 972
24 F.2d 1511, 1518-19 (9th Cir.1992) (California fair report privilege immunized press coverage of
25 congressional investigation even though it was confidential; “Citizens cannot monitor their
26 government when it conducts business behind closed doors); *Braun*, 52 Cal. App. 4th at 1052
27 (California fair report privilege immunized news report about confidential government audit).

28

1 Here, California’s fair report privilege is an absolute bar to all of Plaintiff’s claims against
2 Tech Inquiry. All of the claims arise from Tech Inquiry’s publication of an exact copy of the
3 Incident Report, which provides far more than a substantially accurate summary of the arrest report.
4 Plaintiff alleges that Tech Inquiry’s publication of the Incident Report and related “information”
5 falsely imply that Plaintiff was convicted of domestic abuse, but Plaintiff does not cite any
6 statements published by Tech Inquiry that contain that implication – because there are none.
7 Journalists routinely report about police arrests; their reports do not imply a conviction.

8 **3. Plaintiff’s Claims Are Barred by the First Amendment Because Tech
9 Inquiry Lawfully Obtained the Incident Report, a Matter of Public Interest**

10 Plaintiff cannot show a probability of prevailing on his claims for the independent reason
11 that the First Amendment prohibits courts from punishing news organizations that have lawfully
12 obtained government records or information that are a matter of public interest, as here. The
13 Supreme Court’s decision in *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989) is instructive. In that
14 case, a local sheriff’s department mistakenly disclosed a rape victim’s name in a police report
15 distributed to reporters, who published the name in violation of a Florida statute that made it
16 unlawful to “print, publish, or broadcast ... in any instrument of mass communication” the name of
17 the victim of a sexual offense. *Id.* at 527. The victim successfully sued the newspaper for
18 negligently violating the statute by revealing her identity. *Id.* at 527, 529. The Supreme Court
19 reversed, holding that “if a newspaper lawfully obtains truthful information about a matter of public
20 significance then state officials may not constitutionally punish publication of the information,
21 absent a need to further a state interest of the highest order.” *Id.* at 533 (quoting *Smith v. Daily Mail
22 Publ’g Co.*, 443 U.S. 97, 103 (1979)). The court also held that the Florida statute barring the
23 publication of the name of a rape victim was unconstitutional as applied to the newspaper. *Id.* at
24 541. The Supreme Court has repeatedly held that state laws barring the media from publishing
25 information from lawfully obtained official government records and proceedings violate the First
26 Amendment. *E.g.*, *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 469 (1975) (finding unconstitutional
27 a civil damages award entered against a television station for broadcasting the lawfully obtained
28 name of a rape-murder victim in violation of a state statute); *Daily Mail*, 443 U. S. at 103 (finding
unconstitutional indictment of two newspapers for violating state statute forbidding newspapers to

1 publish, without written approval of the juvenile court, lawfully obtained name of minor). *See also*
2 *Bartnicki v. Vopper*, 523 U.S. 514, 535 (2001) (First Amendment barred liability against radio
3 station for publishing illegal wiretaps of telephone calls on grounds that recordings were matter of
4 public concern and reporter was a passive recipient of records); *ALADS*, 239 Cal. App. 4th at 819
5 (“While the government may desire to keep some [government records] confidential and may
6 impose the duty upon [government employees] to maintain confidentiality, it may not impose
7 criminal or civil liability upon the press for obtaining and publishing newsworthy information
8 through routine reporting techniques.”) (*quoting Nicholson v. McClatchy Newspapers*, 177 Cal.
9 App. 3d 509, 519-20 (1986)).

10 **4. Plaintiff’s Claim Based on Penal Code Section § 851.92(c) Fails Because the**
11 **Statute Is Unconstitutional**

12 Penal Code § 851.92(c) prohibits almost any person or entity – including news websites
13 such as Tech Inquiry – from disseminating any information “relating to” a sealed arrest record. Penal
14 Code § 851.92(c). Plaintiff alleges that Tech Inquiry violated the statute by hosting the sealed Incident
15 Report and related “information.” Compl. ¶¶ 166-171. But the statute is unconstitutional, both facially
16 and as applied to Tech Inquiry. The statute is a content-based restriction, which is subject to strict
17 scrutiny. *Kasky v. Nike*, 27 Cal. 4th 939 (2002) (“a content-based regulation is valid under the First
18 Amendment only if it can withstand strict scrutiny, which requires that the regulation be narrowly
19 tailored (that is, the least restrictive means) to promote a compelling government interest”). The
20 statute fails strict scrutiny because the state has no compelling governmental interest in penalizing the
21 dissemination of lawfully obtained information about a sealed arrest report – an official government
22 report – that involves a matter of public concern, as here. Nor is the statute the least restrictive means
23 of achieving any government interest or narrowly tailored to address that interest. Plaintiff’s cause of
24 action for alleged violation for Penal Code section 851(c) fails because the statute is unconstitutional.

25 **5. Plaintiff Cannot Overcome the Constitutional Bar Against a Prior Restraint**

26 Plaintiff’s request for injunctive relief in his “Prayer for Relief,” ¶ 10, is barred by the First
27 Amendment. For more than 100 years, California and federal courts have struck down court orders
28 enjoining speech about a matter of public concern, known as prior restraints. The Supreme Court

1 has described a court order barring the press from publishing information about matters of public
2 concern “the essence of censorship.” *Near v. Minnesota*, 283 U.S. 713 (1931). “[P]rior restraints on
3 speech and publication are the most serious and the least tolerable infringement on First
4 Amendment rights.” *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1971). There is a “heavy
5 presumption” against the “constitutional validity” of prior restraints on expression. *Organization for
6 a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Not even when the Nixon Administration
7 warned that Daniel Ellsberg’s unauthorized disclosure to the press of the classified “Pentagon
8 Papers” about the disastrous Vietnam War posed a “grave and immediate danger” to national
9 security did the Supreme Court grant a prior restraint ordering the press to stop publishing the
10 leaked documents. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971).

11 Prior restraints are presumptively unconstitutional under the California Constitution. In
12 *Wilson v. Superior Court*, 13 Cal. 3d 652, 658 (1975), the California Supreme Court held that a
13 “preliminary injunction violated petitioner’s rights of freedom of expression under the United States
14 Constitution, and for an independent ground, under the broader terms of the California
15 Constitution.” *Id.* at 662. The court explained held the “state constitutional guarantee of the right of
16 free speech and press” is a “protective provision more definitive and inclusive than the First
17 Amendment.” *Id.* at 658. Section 2, Article 1(a) expressly provides that “[a] law may not restrain or
18 abridge liberty of speech or press.” *Id.* at 658 (quoting Cal. Const., art. I, § 2(a)). In *Freedom Comm.
19 v. Superior Court*, 167 Cal. App. 4th 160 (2008), the Court of Appeal noted that prior restraints are
20 barred by the California Constitution because it “provides an even broader guarantee of the right of
21 free speech and the press than does the First Amendment.” *Id.* at 154 (citation omitted). *Accord*
22 *ALADS*, 239 Cal. App. 4th at 823 (California Constitution “provides an even broader guarantee of
23 the right of free speech and the press than does the First Amendment”) (citation omitted). In
24 *ALADS*, a labor union for rank-and-file deputies in the Los Angeles County Sheriff’s Department
25 asked a court to enjoin the *Los Angeles Times* from publishing confidential personnel files for 500
26 deputies. *Id.* at 811-12. The newspaper filed an anti-SLAPP motion, asserting that the union could
27 not establish a probability of prevailing because the requested injunction was a prior restraint that
28

1 violated both the state and federal constitutions, and the trial court and the Court of Appeal agreed,
2 with the latter affirming the dismissal of the lawsuit. *Id.* at 821, 824.

3 **IV. CONCLUSION**

4 The anti-SLAPP statute applies to all 14 of Plaintiff's claims against Tech Inquiry because
5 all the claims arise from Tech Inquiry's exercise of its constitutional free speech rights under
6 subsections 425.16(e)(2), (e)(3), and (e)(4). Plaintiff cannot show a probability of prevailing on any
7 of his claims because they are barred by Section 230 of the Communications Decency Act;
8 California's absolute fair report privilege; the First Amendment protection for the publication of
9 lawfully obtained government records about a matter of public concern; and constitutional bars
10 against prior restraints. Plaintiff's claims against Tech Inquiry should therefore be stricken without
11 leave to amend because no amendments can cure the fatal flaws in Plaintiff's claims. *See Simmons*
12 *v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1073 (2001).

13 DATED: December 7, 2024

LAW OFFICE OF SUSAN E. SEAGER

14
15 /s/ Susan E. Seager

16 Susan E. Seager

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18 *Attorneys for Defendant Tech Inquiry, Inc.*

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