

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 3 OF 4 – PAGES AA0523-0714 OF AA1031

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13 **SUPERIOR COURT OF STATE OF CALIFORNIA**
14 **COUNTY OF SAN FRANCISCO**
15 **CIVIL UNLIMITED JURISDICTION**

16 MAURY BLACKMAN, an individual,

17 *Plaintiff,*

18 v.

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

22 *Defendants.*

Case No.: CGC-24-618681

**PLAINTIFF'S AMENDED NOTICE OF
MOTION AND MOTION TO SEAL
PURSUANT TO CAL R. CT. 2.550;**

**PLAINTIFF'S AMENDED RESPONSE TO
DEFENDANTS' VARIOUS MOTIONS TO
SEAL; AND**

**PLAINTIFF'S AMENDED OPPOSITION TO
POULSON'S MOTION TO SEAL**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

**DECLARATION OF DAVID MAREK IN
SUPPORT OF PLAINTIFF'S AMENDED
MOTION TO SEAL DOCUMENTS**

[PROPOSED] ORDER

Date: January 6, 2025

Time: 9:30 am

Dept.: 302

Judge: Hon. Richard B. Ulmer, Jr.

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
12/18/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

1 **MEMORANDUM IN SUPPORT OF MOTION TO FILE RECORDS UNDER SEAL**

2 **I. INTRODUCTION**

3 Plaintiff respectfully submits this Motion to Seal Records to protect the confidentiality of
4 information contained in court records that were sealed pursuant to California Penal Code § 851.91.
5 This Motion is necessary to uphold the public policy enshrined in California law that ensures
6 confidentiality for individuals whose arrest records have been sealed. It seeks to balance the public’s
7 right to access court records with the overriding interest in maintaining the integrity of a prior court’s
8 Sealing Order and preventing further dissemination of confidential and prejudicial information.

9 **II. RELEVANT PROCEDURAL BACKGROUND**

10 Plaintiff brought this action conditionally under seal on October 2, 2024. On November 14,
11 2024, Plaintiff moved to proceed pseudonymously. Defendants opposed the motion on November
12 27, 2024 supported by a redacted Declaration from Joshua Baskin dated November 27, 2024 (“Baskin
13 Nov. 27 Declaration”) filed with eleven exhibits filed provisionally under seal without redactions
14 including the Sealed Incident Report (Exh. 9). Defendants concurrently filed a Motion to Seal dated
15 November 27, 2024³. The Plaintiff replied in support of the Motion to proceed under a pseudonym
16 on December 5, 2024. The court heard argument on the Motion to Proceed Under a Pseudonym on
17 December 12, 2024 and then denied the Motion on December 13, 2024.

18 Meanwhile, on December 6, 2024, all four Defendants in this proceeding filed multiple
19 motions. Defendants AWS, Substack, Poulson, and Tech Inquiry filed Special Motions to Strike
20 Plaintiff’s Complaint Pursuant to Code of Civil Procedure §425.6 (anti-SLAPP motion). The
21 Defendants each submitted various documents in support of the motions, all of which contain the
22 sealed Incident Report.

23 Defendant AWS filed a Motion to Seal and conditionally filed a “Compendium of Evidence”
24 in support of its Special Motion to Strike Plaintiff’s Complaint Pursuant to Code of Civil Procedure
25 Section 425.16. The anti-SLAPP motion includes a Declaration by Attorney Sarah Burns dated

26 _____
27 ³ The parties have agreed to consolidate the hearing on the various motions to seal to January 6, 2024.
28 Accordingly, because Plaintiff seeks to seal the documents, he files this Motion to Seal in the interest
of judicial economy to address the documents in Defendants’ various motions to seal and Poulson’s
Lodging Notice that are pending before the Court since the arguments are virtually identical.

1 December 6, 2024 (“Burns Decl.”) which was publicly filed with redactions and provisionally filed
2 under seal without redactions along with six exhibits provisionally filed under seal including the
3 sealed Incident Report (Exh. 2).

4 Defendant Poulson lodged with the Court under conditional seal: (1) motion documents
5 including the Memorandum of Points and Authorities in Support of Poulson’s Special Motion to
6 Strike; (2) Declaration of Jack Poulson dated December 6, 2024 and Exhibits A-I (Poulson
7 Declaration); (3) Declaration of Victoria Noble dated December 6, 2024 and Exhibits A-J (Noble
8 Declaration) in support of his Special Motion to Strike the Complaint. Concurrent with his lodging
9 notice, Defendant Poulson moves to seal a portion of lodged Exhibit F, but otherwise simply notifies
10 Plaintiff of the lodging because Defendant Poulson does not seek to seal the documents or
11 information.

12 Defendant Substack conditionally filed the Declaration of Joshua Baskin dated December 6,
13 2024 in support of its Special Motion to Strike Plaintiff’s Complaint Pursuant to Code of Civil
14 Procedure Section 425.16 and seven exhibits including the sealed Incident Report (Exh. 1).

15 Finally, Defendant Tech Inquiry did not lodge any separate exhibits or documents with the
16 Court under conditional seal because i’s motion relies on the Poulson Declaration and exhibits.

17 **III. ARGUMENT**

18 **A. Standard**

19 California Rules of Court 2.550 and 2.551 (jointly, the sealed records rules) articulate the
20 public’s First Amendment right of access to court records concerns. To overcome the presumption
21 that court records are open, the Rule 2.550 provides that a court may order a record sealed “only if it
22 expressly finds facts that establish: [¶] (1) There exists an overriding interest that overcomes the right
23 of public access to the record; [¶] (2) The overriding interest supports sealing the record; [¶] (3) A
24 substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
25 [¶] (4) The proposed sealing is narrowly tailored; and [¶] (5) No less restrictive means exist to
26 achieve the overriding interest.” Cal. Rule Ct. 2.550(d); *see also Overstock.com, Inc. v. Goldman*
27 *Sachs Grp., Inc.*, 231 Cal. App. 4th 471, 487 (2014); *In re Marriage of Tamir*, 72 Cal. App. 5th 1068,
28 1079 (2021).

1 **B. Presumption of Public Access Does Not Apply Because the Information and**
2 **Documents Related to the Incident Report Were Sealed Pursuant to Cal. Pen. Code**

3 Importantly, the presumption that court records are open applies *unless* confidentiality is
4 required by the law.” *Overstock.com, Inc.*, 231 Cal.App.4th at 486 citing Advisory Com. comments to
5 rule 2.550. California Penal Code § 851.91 and 851.92 © legally mandates that very confidentiality
6 for sealed arrest records. Indeed, “a record filed publicly in the court must not disclose material
7 contained in a record that is sealed, conditionally under seal, or subject to a pending motion or an
8 application to seal.” Rule 2.551©. On February 15, 2022, Judge Carolyn Gold of the Superior Court
9 of California sealed Plaintiff’s Incident Report pursuant to Cal. Pen. Code §851.91. (*See Baskin*
10 Decl. at Exh. 2, conditionally filed under seal). The law notes, “[A] petition to seal an arrest record
11 pursuant to this section may be granted as a matter of right or in the interests of justice.” Cal. Pen.
12 Code §851.91(c). Judge Gold granted the petition upon concluding Plaintiff satisfied his burden of
13 proof to show that he was entitled to sealing as a matter of right or in the interests of justice.
14 §851.91(d)(2). Judge Gold thus concluded the sealing did not interfere with the interests of justice.
15 *See Baskin Nov. 27 Decl. at Exh. 2.*

16 Here, the Defendants all seek to disclose the sealed record. (*See Baskin Nov. 27 Decl. at Exh.*
17 *9; Burns Decl. at Exh. 2; Poulson Decl. at Exhs. F, G; Baskin Decl. at Exh. 1*) The law explicitly
18 allows for confidentiality of this Report and filing it publicly in this case or otherwise is an
19 inappropriate end run around the important protections afforded to individuals who are not convicted
20 of a crime under the false auspices of the public right of access which is inapplicable here. *See Cal.*
21 *Rule of Ct. 2.551; see also In re Providian Credit Card Cases*, 96 Cal.App.4th 292, 298 (2002)
22 (noting the sealing record rules do not apply to records that courts must keep confidential by law).
23 Accordingly, the Court must keep the Incident Report, and any material contained in that sealed
24 record confidential in compliance with the Sealing Order.

25 **C. Alternatively, Plaintiff Can Establish Facts to Overcome Any Presumption of Court**
26 **Access**

27 Even if the Court finds the presumption of public access applies, the records at issue meet the
28 criteria for sealing. First, the overriding interest is ensuring compliance with a Court’s sealing order

1 and preserving the confidentiality protections afforded under Cal. Pen. Code §851.91. The legislative
2 history notes the protections provide a legal pathway for to sealing an arrest record from public view
3 that if the arrest did not result in a conviction as a matter of right with specified exceptions and
4 safeguards and with meaningful prohibitions on the dissemination of records that have been sealed.
5 *See* 2017 California Senate Bill No. 393, California 2017-2018 Regular Session. Here, the legislature
6 explicitly considered the right of public access to a record and determined that the rights of
7 individuals arrested without conviction and the penalties in housing and employment opportunities
8 that they suffer overcomes the right of public access to the record, particularly in light of how “these
9 issues disproportionately affect communities of color.” (*Id.* noting in 2017 the prevalence of
10 background checks and that by 23 one in three Americans will have been arrested while nearly half of
11 black males are arrested by age 23, and although representing only 14 percent of the population,
12 African Americans account for 28 percent of all arrests.)

13 Accordingly, this overriding interest of preserving confidentiality protections accorded by law
14 is supported by sealing the record here where Plaintiff obtained a Sealing Order of his Incident
15 Report through the procedure set forth in Cal. Pen. Code §851.91. Here, it is a guarantee that the
16 overriding interest will be prejudiced if the records are not sealed because disclosure of the Incident
17 Report will further expose the very information the statute seeks to protect. Plaintiff’s proposed
18 sealing under this interest is narrowly tailored to include only the Incident Report. Finally, there
19 exists no less restrictive means to ensure the Incident Report remain protected from public access.
20 Accordingly, Plaintiff’s motion to seal all exhibits of the Incident Report should be granted.

21 To the extent that Defendants argue again the cat is out of the bag (because they took it out),
22 this does not alter the assessment of the overriding interest outweighing the public right of access.
23 *See In re M.T.*, 106 Cal. App. 5th 322 (2024) (reversing a trial court’s order denying a motion to seal
24 the entire record of her name change and gender marker correction that was made five years after the
25 name change). The lower court in *M.T.*, was asked to seal – in 2023 – the record of her name and
26 gender correction in its entirety, which was issued in 2018. The information online included M.T.’s
27 private medical and contact information as well as their former name. This led to her being outed on
28 social media in 2023 which resulted in harassment by anonymous transphobic social media users,

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

1 cyberbullying, and repeated publishing of her private information. The Court of Appeal reversed the
2 trial court’s denial of the motion to seal and ordered the trial court to seal all court records that reveal
3 M.T.’s name change or gender marker correction. The Court of Appeal put the cat back in the bag in
4 recognition that the harm would continue even if the information was once accessible. Therefore, the
5 Incident Report’s existence online, in violation of Cal. Pen. Code § 851.91 does not foreclose
6 Plaintiff’s rights to be protected pursuant to a sealing order.

7 **D. Plaintiff Opposes Poulson’s Motion to Seal**

8 Defendant Poulson moves to seal Exhibit F by redacting the Report lodged at Exhibit F “to
9 exclude the names and house and unit numbers of the individuals identified in that Incident Report as
10 “R/Victim” and “Reportee.” Poulson seeks to place Exhibit F into the public record in redacted form
11 so that it is identical to Exhibit G, the document that Defendants have refused to remove from the
12 internet. Plaintiff, however, seeks to seal both Exhibits F and G in their entirety because they are
13 sealed reports protected from disclosure.⁴

14 Moreover, Poulson concedes that it is inappropriate to put documents in the public record that
15 identify Plaintiff’s address and the other individual in the Report. *See* Def. Poulson Mem. of Pts. and
16 Auth. ISO Motion To File a Record Under Seal at p. 4 *citing* *People v. Jackson*, 110 Cal. App. 4th
17 280, 289-90 (2003). However, both Plaintiff’s home address and information that identifies the other
18 individual are included in Exhibit G. Even in its redacted form, Exhibit G (which is the same as
19 document that Defendants refuse to remove from the internet) includes Plaintiff’s home address, and
20 identifying information about the other person, including her age, date of birth, race, sex, height,
21 weight, hair color, eye color, and a description of her relationship with Plaintiff during a particular
22 time period.⁵ Thus, while Poulson claims to offer a redacted version of the Report that does not

23 _____
24 ⁴ Documents put into the record by Defendants establish that Substack’s Trust & Safety Team
25 “demand[ed]” Poulson remove this or similar identifying information. *See* Poulson Decl. at Exh. C.
26 Notwithstanding this instruction from Substack, Poulson has refused to properly redact the Incident
27 Report online, and therefore Poulson continues to disseminate Plaintiff’s home address and
28 information that identifies the other person referred to in the Report.

⁵ California Penal Code section 832.7(b)(5) requires sealing documents to “[t]o remove personal data
or information,” “[t]o preserve the anonymity of complainants and witnesses,” and “[t]o protect
confidential. .. information of which disclosure ... would cause an unwarranted invasion of personal
privacy.” Cal. Penal Code§ 832.7(b)(5).

1 disclose Plaintiff's address and information that identifies the other person, he has not actually
2 provided such a document. Accordingly, there is an overriding interest in preserving confidentiality
3 protections accorded by law that is threatened by permitting Exhibits F and G to be made a part of the
4 public record. Thus, sealing both Exhibits F and G is a narrowly tailored solution that serves this
5 interest and that cannot otherwise be achieved.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Plaintiff respectfully requests that the Court grant his Motion to
8 Seal Records submitted by Defendants in their opposition to the Motion to Proceed Pseudonymously
9 and in support of their Motions to Strike. Additionally, Plaintiff requests that this Court deny
10 Defendant Poulson's motion to redact portions of Exhibit F so that it can be sealed in its entirety as
11 part of Plaintiff's Motion to Seal.

12 Dated: December 18, 2024

Respectfully submitted,

13 THE MAREK LAW FIRM, INC.

14 By: /s/ David Marek
15 David Marek
16 *Attorney for Plaintiff*

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1 10. Defendant Poulson filed a Notice of Lodgement on December 6, 2024 notifying Plaintiff of
 2 the documents he has provisionally filed under seal, thereby triggering the ten-day window for
 3 Plaintiff to file a motion to seal.

4 11. Plaintiff files this one Motion to Seal in response to Defendants’ Motions to Seal, Notice of
 5 Lodging, and in opposition to Poulson’s Motion to Seal for the sake of judicial economy because each
 6 of these documents address the same issue – namely, the sealing of the Sealed Report.

7 12. Plaintiff seeks to seal any exhibits with the Incident Report throughout the documents filed by
 8 Defendants in support of the various motions for the reasons as set forth in Plaintiff’s Memorandum
 9 of Points and Authorities:

Defendant	Document	Exhibit	Basis for Sealing
Defendants Jointly in Support of Doe Motion	Declaration of Joshua Baskin in Support of Defendants’ Opposition to Plaintiff’s Motion to Proceed Pseudonymously dated November 27, 2024	Exhibit 9	California Penal Code § 851.91 and 851.92 (c)
AWS	Declaration of Sarah E. Burns dated December 6, 2024	Exhibit 2	California Penal Code § 851.91 and 851.92 (c)
Defendant Poulson	Declaration of Jack Poulson ISO Defendant Jack Poulson’s Special Motion to Strike (CCP 425.16) dated December 6, 2024	Exhibit F	California Penal Code § 851.91 and 851.92 (c)
		Exhibit G	California Penal Code § 851.91 and 851.92 (c)
Substack	Declaration of Joshua A. Baskin ISO Defendant’s Plaintiff’s Complaint and Defendant’s Demurrer to Complaint Special Motion to Strike dated December 6, 2024	Exhibit 1	California Penal Code § 851.91 and 851.92 (c)

[PROPOSED] ORDER

The motion of Plaintiff for an order to allow Defendants to file records under seal came on for hearing in Department 302 of this Court on January 6, 2025.

Having read and considered the motion, the memoranda and declarations filed by the parties, and having heard argument of counsel, and having reviewed the documents proposed to be placed under seal, the court finds as follows:

Plaintiff’s overriding interest in protecting his identity and the confidentiality afforded his sealed reports under Cal. Penal Code § 851.91 overcomes the right of public access to the Incident Report, and is sufficient to support the sealing of the Incident Report. The Sealing Order by Judge Carolyn Gold indicates that the court engaged in an analysis as to whether the sealing protections under Cal. Penal Code § 851.91 applied to Plaintiff. The grant of the sealing protections by a court of competent jurisdiction cannot be ignored. If the Incident Report is not sealed, there is a substantial probability that Plaintiff’s overriding interests will be prejudiced. The sealing is narrowly limited to Incident Report and is the least restrictive means to achieve the overriding interest. Therefore, IT IS ORDERED THAT the motion to file the following documents under seal is GRANTED:

Defendant	Document	Exhibit	Basis for Sealing
Defendants Jointly in Support of Doe Motion	Declaration of Joshua Baskin in Support of Defendants’ Opposition to Plaintiff’s Motion to Proceed Pseudonymously dated November 27, 2024	Exhibit 9	California Penal Code § 851.91 and 851.92 (c)
AWS	Declaration of Sarah E. Burns dated December 6, 2024	Exhibit 2	California Penal Code § 851.91 and 851.92 (c)
Defendant Poulson	Declaration of Jack Poulson ISO Defendant Jack Poulson’s Special Motion to Strike	Exhibit F	California Penal Code § 851.91 and 851.92 (c)

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

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	(CCP 425.16) dated December 6, 2024		
		Exhibit G	California Penal Code § 851.91 and 851.92 (c)
Substack	Declaration of Joshua A. Baskin ISO Defendant's Plaintiff's Complaint and Defendant's Demurrer to Complaint Special Motion to Strike dated December 6, 2024	Exhibit 1	California Penal Code § 851.91 and 851.92 (c)

IT IS FURTHER ORDERED THAT Defendant Poulson's Motion to Seal Portions of Exhibit F is DENIED because Exhibit F has been ordered SEALED in its entirety.

Date:

Judge of the Superior Court

1 **PROOF OF SERVICE**

2 I, Christina Yanacek, declare as follows:

3 I am over eighteen years of age and not a party to the within action. I am employed in San
4 Francisco, California. My business address is 2001 Van Ness Avenue, Suite 300, San Francisco,
5 California 94109.

6 On the date set forth below, I served a copy of the following:

- 7 • **PLAINTIFF’S AMENDED NOTICE OF MOTION AND MOTION TO SEAL**
8 **PURSUANT TO CAL R. CT. 2.550;**
- 9 **PLAINTIFF’S AMENDED RESPONSE TO DEFENDANTS’ VARIOUS MOTIONS**
10 **TO SEAL; AND**
- 11 **PLAINTIFF’S AMENDED OPPOSITION TO POULSON’S MOTION TO SEAL**
- 12 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
- 13 **DECLARATION OF DAVID MAREK IN SUPPORT OF PLAINTIFF’S AMENDED**
14 **MOTION TO SEAL DOCUMENTS**
- 15 **[PROPOSED] ORDER**

15 on the parties named below as follows:

- 16 (X) **(BY EMAIL)** – by electronically mailing a true and correct copy through BERMAN
17 NORTH LLP’s electronic mail system to the email address(es) set forth below, or as
18 stated in the attached service list per the parties’ agreement.
- 19 (X) **(BY E-SERVICE)** – by electronically serving the document(s) listed above and on the
20 Transaction Receipt, which were e-filed with the San Francisco County Superior Court
21 and e-served via the One Legal’s electronic filing system, to the email address(es) of
22 the party(ies) designated below in accordance with the San Francisco County Superior
23 Court Local Rules.

21 I served the above document(s) on the following person(s):

22 **SEE ATTACHED SERVICE LIST**

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct and that this declaration was executed on December 18, 2024, at Long Beach,
25 California.

26 Dated: December 18, 2024

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28 Christina Yanacek

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SERVICE LIST

<p>Ambika Kumar Sarah E. Burns DAVIS WRIGHT TREMAINE LLP 50 California Street, 23rd Floor San Francisco, CA 94111 Phone: (206) 757-8030 (415) 276-4892 Email: ambikakumar@dwt.com; sarahburns@dwt.com cc: ryanrubio@dwt.com</p> <p>Counsel for Defendant Amazon Web Services, Inc.</p>	<p>Joshua A. Baskin Thomas R. Wakefield Wilson Sonsini Goodrich & Rosati 1 Market Plaza, Spear Tower, Suite 3300 San Francisco, CA 94105 Email: jbaskin@wsgr.com; twakefield@wsgr.com; Substack-Doe@wsgr.com cc: rglynn@wsgr.com</p> <p>Counsel for Defendant Substack, Inc.</p>
<p>Susan E. Saeger The Office of Susan E. Saeger Phone: (310) 890-8991 Email: susanseager1999@gmail.com</p> <p>Counsel for Defendant Tech Inquiry, Inc.</p>	<p>David Greene Victoria Noble Electronic Frontier Foundation 815 Eddy Street San Francisco, CA 94109 Tel.: (415) 436-9333 Fax: (415) 436-9993 Email: davidg@eff.org; tori@eff.org; cc: victoria@eff.org</p> <p>Counsel for Jack Poulson</p>
<p>Stacy Y. North BERMAN NORTH LLP 2001 Van Ness Avenue, Suite 300 San Francisco, CA 94109 Phone: (650) 463-9158 Email: stacy@bermannorth.com</p> <p>Counsel for Plaintiff Maury Blackman</p>	

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 TELEPHONE NO.: 650-460-7148 FAX NO.:
 ATTORNEY FOR (Name): Plaintiff John Doe

RESERVED FOR CLERK'S FILE STAMP

FILED
 Superior Court of California
 County of San Francisco

DEC 20 2024

CLERK OF THE COURT
 BY: 
 Deputy Clerk

CASE NUMBER:
 CGC-24-618681

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
 400 McAllister Street

San Francisco, CA 94102

PLAINTIFF: John Doe

DEFENDANT: Substack, Inc., et al

AMENDMENT TO COMPLAINT
 (Fictitious/Incorrect Name)

FICTITIOUS NAME (No order required) PURSUANT TO THE 12/13/24 ORDER Denying Plaintiff John Doe's Motion Seeking Permission For Plaintiff To Proceed Under A Fictitious Name:

Upon the filing of the complaint, plaintiff's true name was not disclosed and designated the plaintiff in the complaint by the fictitious name of:

FICTITIOUS NAME
 John Doe

and having Plaintiff's Motion Seeking Permission To Proceed Under A Fictitious Name denied by the Court, the true name of the plaintiff is disclosed to be:

TRUE NAME
 Maury Blackman

amends the complaint by substituting the true name for the fictitious name wherever it appears in the complaint.

DATE December 18, 2024	TYPE OR PRINT NAME David Marek	SIGNATURE OF ATTORNEY <i>David Marek</i>
---------------------------	-----------------------------------	---

INCORRECT NAME (Order required)

The plaintiff, having designated a defendant in the complaint by the incorrect name of:

INCORRECT NAME

and having discovered the true name of the defendant to be:

TRUE NAME

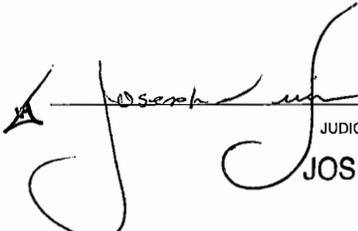
amends the complaint by substituting the true name for the incorrect name wherever it appears in the complaint.

DATE	TYPE OR PRINT NAME	SIGNATURE OF ATTORNEY
------	--------------------	-----------------------

ORDER

THE COURT ORDERS the amendment approved and filed.

Dated *Dec. 20, 2024*


 JUDICIAL OFFICER
 JOSEPH M. QUINN

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

1 David Greene (SBN 160107)
Victoria Noble (SBN 337290)
2 Electronic Frontier Foundation
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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
12/20/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

7 *Attorneys for Defendant Jack Poulson*

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

10 JOHN DOE, an individual,
11
12 Plaintiff,
13 v.
14 SUBSTACK, INC., a Delaware
Corporation; AMAZON WEB SERVICES,
15 INC., a Delaware Corporation; JACK
POULSON, an individual; TECH
16 INQUIRY, INC., a Delaware corporation;
DOES 1-25, inclusive,
17
18 Defendants.

Case No.: CGC-24-618681

**DEFENDANT JACK POULSON'S NOTICE
OF LODGEMENT UNDER CONDITIONAL
SEAL**

DATE: January 6, 2025
TIME: 9:30 a.m.
DEPT: 301

Judge:

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

19
20 **NOTICE OF LODGEMENT OF RECORDS UNDER CONDITIONAL SEAL**

21 TO PLAINTIFF AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE THAT on December 6, 2024, pursuant to California Rules of
23 Court 2.551(b)(4) and 2.551(d), Defendant Jack Poulson lodged with the Court under conditional
24 seal the following documents:

- 25 • Defendant Jack Poulson's Notice of Motion and Special Motion to Strike the
26 Complaint, and Memorandum of Points & Authorities in Support hereof;

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- Declaration of Jack Poulson in Support of Jack Poulson’s Special Motion to Strike, and exhibits A-I thereto;
- Declaration of Victoria Noble in Support of Defendant Jack Poulson’s Special Motion to Strike, and exhibits A-J thereto;

PLAINTIFF IS HEREBY ADVISED of its obligation pursuant to California Rule of Court 2.551(b)(3)(B) to move to seal any of the above-listed documents, or portions thereof, that Plaintiff contends must be sealed.

Poulson is filing redacted versions of all documents in the court’s public file pursuant to California Rules of Court 2.551(b)(3)(A)(2) and 2.551(b)(5).

DATED: December 6, 2024

ELECTRONIC FRONTIER FOUNDATION

/s/ David Greene
David Greene
Victoria Noble

Attorneys for Defendant Jack Poulson

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

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Victoria Noble (SBN 337290)
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7 *Attorneys for Defendant Jack Poulson*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
12/20/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

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

10 JOHN DOE, an individual,
11

12 Plaintiff,

13 v.

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

19 Defendants.

Case No.: CGC-24-618681

**JACK POULSON'S NOTICE OF MOTION
AND MOTION TO FILE A RECORD
UNDER SEAL; MEMORANDUM OF
POINTS AND AUTHORITES IN SUPPORT
THEREOF**

DATE: January 6, 2025
TIME: 9:30 a.m.
DEPT: 301

Judge:

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

20
21 **NOTICE OF MOTION AND MOTION**

22 TO PLAINTIFF AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on January 6, 2025 at 9:30, or as soon thereafter as the matter
24 may be heard in Dept. 301, of the above-entitled court, located at 400 McAllister Street, San
25 Francisco, California 94102, Defendant Jack Poulson will and hereby moves the court for an order
26 sealing in part **Exhibit F to the Declaration of Jack Poulson in Support of his Special Motion to**
27

28

1 **Strike.** Defendant Poulson does not seek to seal, in whole or in part, any other document lodged
2 under conditional seal.

3 The proposed redacted **Exhibit F** will be identical to **Exhibit G** of the Declaration of Jack
4 Poulson in Support of Jack Poulson’s Special Motion to Strike lodged under conditional seal with
5 this Court.

6 This motion will be made pursuant to California Rules of Court 2.550 and 2.551 of the
7 California Rules of Court

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. INTRODUCTION**

10 Poulson by this motion seeks only to partially seal **Exhibit F** to the Declaration of Jack
11 Poulson in Support of his Special Motion to Strike in order to conceal identifying information about
12 individuals identified in a San Francisco Police Department Incident Report as “R/Victim” and
13 “Reportee.”

14 **II. FACTUAL BACKGROUND**

15 Defendant Jack Poulson filed a special motion to strike in this matter on December 6, 2024.
16 Knowing that Plaintiff is seeking to pursue this lawsuit under a fictitious name, and that the court
17 has not yet ruled on Plaintiff’s motion to proceed in that manner, and that Plaintiff contends that the
18 Incident Report itself should be entirely sealed, Poulson is lodging the documents listed in the
19 Notice above under conditional seal, and filing redacted versions in the court’s public record. With
20 the exception of the one exhibit indicated above, Poulson believes that the documents should not be
21 sealed in whole or in part, but is providing Plaintiff with the opportunity to move for the documents
22 to be sealed.

23 Plaintiff’s case arises from the publication of information from a San Francisco Police
24 Department Incident Report. Poulson has submitted as evidence an unredacted copy of that record
25 so that the court can see exactly what he received from his source. This document is **Exhibit F** to
26 his declaration in support of his special motion to strike. Poulson never published this version of the
27 Incident Report in his newsletter or anywhere else other than this proceeding.

28

1 Poulson hereby moves that the public version of the **Exhibit F** be redacted to exclude the
2 names and house and unit numbers of the individuals identified in that Incident Report as
3 “R/Victim” and “Reportee.” This is the condition under which the Incident Report currently appears
4 in Poulson’s newsletter, and has for several months, as indicated by **Exhibit G** to the same
5 declaration. [Declaration of Jack Poulson in Support of Defendant Jack Poulson’s Special Motion to
6 Strike (CCP 425.16) ¶ 14, Exh. G]

7 **III. ARGUMENT**

8 The Court may order a document to be sealed, in whole or in part, “only if finds expressly finds
9 facts that establish (1) There exists an overriding that overcomes the right of public access to the record;
10 (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the
11 interest will be prejudiced if the record is not sealed; (4) The proposed sealing order is narrowly
12 tailored; and (5) No less restrictive means exist to achieve the overriding interest.” Cal. Rule of Court
13 2.550(d).

14 Here, the overriding interest is in protecting the identities of the individuals identified in a San
15 Francisco Police Department Incident Report as “R/Victim” and “Reportee.” Courts have recognized the
16 interests in protecting victims and witnesses from public disclosure, especially in cases like domestic
17 violence where such persons are typically disincentivized to cooperate with prosecutions. *See People v.*
18 *Jackson*, 110 Cal. App. 4th 280, 289-90 (2003). And unlike Plaintiff, these individuals are not public
19 figures who sought to influence public opinion or held sensitive contracts with the US Department of
20 Defense. *See* Memorandum of Points & Authorities in Support of Jack Poulson’s Special Motion to
21 Strike at 7-8; Declaration of Victoria Noble in Support of Poulson’s Special Motion to Strike Exhs. A-
22 D.

23 The overriding interest supports this limited, narrowly tailored redaction because unlike
24 Plaintiff’s name, which has been widely disclosed in press reports on this litigation,¹ the identities of
25 _____

26 ¹ See, e.g., *California Courts Newsroom*, “Tech exec sues journalist for \$25M for publishing his
27 sealed arrest report,” (October 29, 2024), <https://newsroom.courts.ca.gov/news/tech-exec-sues-journalist-25m-publishing-his-sealed-arrest-report>; Bob Egelko, “Tech exec sues journalist for
28 publishing his sealed arrest report,” *San Francisco Chronicle*, (October 29, 2024); Rachel Bowman,

1 “R/Victim” and “Reportee” have not been publicly reported by Poulson or anyone else. As a result, the
2 requested redactions will serve the interests of protecting their privacy.

3 A substantial probability exists that privacy interest of “R/Victim” and “Reportee” will be
4 prejudiced if their identifying information is not redacted from the public court filing. As noted above,
5 Plaintiff’s lawsuit has drawn significant media attention but, unlike Plaintiff, the identities of
6 “R/Victim” and “Reportee” have not yet been publicly reported.²

7 The proposed redactions are narrowly tailored to redact only the identifying information of
8 “R/Victim” and “Reportee” and no other information. The proposed redactions are also the least
9 restrictive means of advancing the privacy interests of “R/Victim” and “Reportee.”

10 **IV. CONCLUSION**

11 For the above stated reasons, this Court should order that **Exhibit F to the Declaration of**
12 **Jack Poulson in Support of Jack Poulson’s Special Motion to Strike** be redacted and filed in
13 identical form as **Exhibit G** of the same declaration.

14 DATED: December 6, 2024

ELECTRONIC FRONTIER FOUNDATION

/s/ David Greene

David Greene

Victoria Noble

Attorneys for Defendant Jack Poulson

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24 “Tech executive files \$25 million lawsuit against journalist who revealed shocking, secret arrest
25 report,” *DailyMail.com*, (October 30, 2024), <https://www.dailymail.co.uk/news/article-14020567/tech-executive-lawsuit-journalist-secret-arrest-report-maury-blackman.html>; Seth Stern
26 and Ginny LaRoe, “San Francisco should not be part of tech exec’s censorship campaign,” *San*
27 *Francisco Chronicle*, (November 22, 2024),
28 <https://www.sfchronicle.com/opinion/openforum/article/san-francisco-tech-censorship-19932816.php>. Other examples exist that cannot be included here because their titles reveal
Plaintiff’s name and their inclusion here would require that this motion also be filed under
conditional seal.

² See *supra* note 1.

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

17 MAURY BLACKMAN, an individual,
18 Plaintiff,
19 v.

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

Case No.: CGC-24-618681

**OPPOSITION OF DEFENDANTS TECH
INQUIRY, INC. AND JACK POULSON AND
TO PLAINTIFF'S AMENDED MOTION TO
SEAL**

DATE: January 6, 2025
TIME: 9:30 a.m.
DEPT: 301

Judge: Hon. Joseph M. Quinn

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

26
27 Defendants Tech Inquiry, Inc. and Jack Poulson respectfully submit their Opposition to
28 Plaintiff's Amended Motion to Seal Plaintiff's arrest report contained in five court exhibits.

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1 **I. INTRODUCTION**

2 Plaintiff Maury Blackman cannot hide from the fatal flaw in his motion to seal his arrest
3 report contained in five court exhibits: his report has been public for over a year and remains public
4 today. A court document that is in the public domain cannot subsequently be sealed without
5 violating the First Amendment. *Hurvitz v. Hoefflin*, 84 Cal. App. 4th 1232, 1245 (2000). His motion
6 to seal his arrest report in its entirety must be denied; only limited redactions to protect the identities
7 of the alleged victim and witness should be permitted.

8 Plaintiff contends that the First Amendment right of public access to court records does not
9 apply to his arrest report because it was sealed by another judge in 2022 pursuant to Penal Code
10 § 851.91. Plaintiff contends that the constitutional right of access does not apply because
11 “confidentiality is required by law.” Motion p. 5 (quoting *Overstock.com, Inc. v. Goldman Sachs*
12 *Grp., Inc.*, 231 Cal. App. 4th 471, 486 (2014) and citing Advisory Committee comments to Rule
13 2.550).

14 This is incorrect for three reasons. *First*, the starting point for this Court’s analysis is the
15 First Amendment to the United States Constitution, not the Rules of Court. The California Supreme
16 Court ruled in *NBC Subsidiary (KNBC-TV) Inc. v. Superior Court*, 20 Cal. 4th 1178, 1208 n. 25
17 (1999), that there is a “First Amendment right of access to civil litigation documents filed in court
18 as a basis for adjudication.” Because Defendants Jack Poulson, Tech Inquiry, Inc., Substack Inc.,
19 and Amazon Web Services, Inc. submitted Plaintiff’s redacted arrest report as exhibits as a basis for
20 adjudication for their special motions to strike Plaintiff’s complaint, the exhibits are presumptively
21 public court records under the First Amendment. *Id.* Plaintiff therefore has the burden to establish
22 an “overriding interest” overcomes the presumptive right of public access to the arrest report
23 exhibits. *NBC Subsidiary*, 20 Cal. 4th at 1218.

24 *Second*, Plaintiff cannot meet this burden because it is undisputed and dispositive that a copy
25 of the arrest report is and remains publicly available on the Substack website and key details from
26 the arrest report have been reported by the media. Once disclosure of the arrest report has occurred,
27 sealing cannot prevent the alleged harm to Plaintiff. *See, e.g., Hurvitz*, 84 Cal.App.4th at 1245
28 (finding that once the information at issue has been made public, “any request to seal the

1 information is ineffective in advancing the countervailing compelling interest in secrecy”); *accord*
2 *Bank Julius Baer & Co. v. Wikileaks* 535 F. Supp. 2d 980, 985 (N.D. Cal. 2008) (rejecting
3 injunction where “there is evidence in the record that ‘the cat is out of the bag’ and the issuance of
4 an injunction would therefore be ineffective...”.)

5 *Third*, Rule 2.550(a)(2), is inapplicable here because the arrest record is already public. A
6 court order prohibiting disclosure of the exhibits would constitute an unconstitutional prior restraint
7 because arrest report is already public. Courts have made clear that a court order restricting
8 publication is a prior restraint, whether it requires removal of a past publication or prevention of a
9 future one. *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 417-18 (1971) (holding that an
10 injunction barring a group from continuing to pass out pamphlets already in the public domain was
11 an unconstitutional “prior restraint”).

12 For all of these reasons, Plaintiff’s motion to seal these court exhibits should be denied.

13 **II. STATEMENT OF FACTS**

14 Defendants provide the following dispositive facts that were omitted from Plaintiff’s
15 amended motion to seal but recounted in his complaint and Defendants’ special motions to strike: In
16 early September 2023, Defendant Jack Poulson received an unsolicited copy of Plaintiff’s arrest
17 report from a confidential source. Declaration of Jack Poulson ¶ 15 (filed on December 6, 2024 in
18 support of his special motion to strike Plaintiff’s complaint). The arrest report did not contain any
19 markings that it had been sealed and Mr. Poulson did not know the arrest report had been sealed by
20 San Francisco County Superior Court Judge Carolyn Gold on February 17, 2022 pursuant to Penal
21 Code § 851.91. *Id.* ¶ 14. Mr. Poulson posted a redacted version of the arrest report along with a
22 news story reporting about it on the Substack website, redacting the names, house, and unit numbers
23 of the individuals identified in the report as “R/Victim” and “Reportee,” where it remains available
24 to the public today along with Mr. Poulson’s news stories about the arrest report. *Id.* ¶¶ 8, 14,
25 Exhibits C, G. On December 6, 2024, Mr. Poulson filed his own motion to partially seal the arrest
26 report (Exhibit G), redacting only information about the alleged victim and witness.

27 On October 3, 2024, Plaintiff filed a defamation lawsuit against Defendants over the
28 publication of the arrest report and Mr. Poulson’s newsletter discussing the arrest report, which

1 resulted a number of news organizations published news reports about the lawsuit, naming Plaintiff
2 and discussing the details of the arrest report.¹ Many of the facts set forth in the arrest report are
3 included in the memoranda of points and authorities filed by Defendants in support of their special
4 motions to strike. Plaintiff has not moved to seal those records. This means that information about
5 Plaintiff’s arrest that Plaintiff seeks to keep confidential will otherwise be public on the same court
6 docket.

7 **III. ARGUMENT**

8 **A. There Is a Strong First Amendment Presumption Of Access to the Exhibits**

9 The United States Supreme Court has long recognized that the public and press have a
10 presumptive First Amendment right of access to a variety of criminal proceedings, from preliminary
11 hearings to trials. *Richmond Newspapers*, 448 U.S. 555, 580 (1980) (criminal trials); *Press-*
12 *Enterprise Co. v. Superior Court*, 464 U.S. 501, 505-508 (1984) (“*Press-Enterprise I*”) (voir dire);
13 *Waller v. Georgia*, 467 U.S. 39, 47 (1984) (evidence suppression hearing); *Press-Enterprise Co. v.*
14 *Superior Court* 478 U.S. 1, 12-13 (1986) (“*Press-Enterprise II*”) (preliminary hearings). This
15 presumptive First Amendment right of access to criminal court proceedings applies equally to
16 criminal court records. As then-Ninth Circuit Judge Anthony Kennedy stated in *CBS, Inc. v. District*
17 *Court*, 765 F.2d 823, 825 (9th Cir. 1985), the First Amendment creates a “presumption that the
18 public and the press have a right of access to criminal proceedings and the documents filed therein,”
19 which “extends to documents filed in pretrial proceedings as well as in the trial itself.”

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23 ¹ See, e.g., California Courts Newsroom, “Tech exec sues journalist for \$25M for publishing his
24 sealed arrest report,” (October 29, 2024), [https://newsroom.courts.ca.gov/news/tech-exec-sues-](https://newsroom.courts.ca.gov/news/tech-exec-sues-journalist-25m-publishing-his-sealed-arrest-report)
25 [journalist-25m-publishing-his-sealed-arrest-report](https://newsroom.courts.ca.gov/news/tech-exec-sues-journalist-25m-publishing-his-sealed-arrest-report); Bob Egelko, “Tech exec sues journalist for
26 publishing his sealed arrest report,” San Francisco Chronicle, (October 29, 2024); Rachel Bowman,
27 “Tech executive files \$25 million lawsuit against journalist who revealed shocking, secret arrest
28 report,” DailyMail.com, (October 30, 2024), [https://www.dailymail.co.uk/news/article-](https://www.dailymail.co.uk/news/article-14020567/tech-executive-lawsuit-journalist-secret-arrest-report-maury-blackman.html)
[14020567/tech-executive-lawsuit-journalist-secret-arrest-report-maury-blackman.html](https://www.dailymail.co.uk/news/article-14020567/tech-executive-lawsuit-journalist-secret-arrest-report-maury-blackman.html); Seth Stern
and Ginny LaRoe, “San Francisco should not be part of tech exec’s censorship campaign,” San
Francisco Chronicle, (November 22, 2024),
[https://www.sfchronicle.com/opinion/openforum/article/san-francisco-tech-censorship-](https://www.sfchronicle.com/opinion/openforum/article/san-francisco-tech-censorship-19932816.php)
[19932816.php](https://www.sfchronicle.com/opinion/openforum/article/san-francisco-tech-censorship-19932816.php).

1 The California Supreme Court has held that “the First Amendment provides ‘broad access
2 rights to judicial hearings *and records* ... *both* in criminal *and* civil cases.” *NBC Subsidiary*, 20 Cal.
3 4th at 1208 n. 25 (emphasis added). *See also Savaglio v. Wal-Mart Stores, Inc.* (2007) 149 Cal.
4 App. 4th 588, 596 (2007); *Overstock.com, Inc.*, 231 Cal. App. 4th at 484-86.) This requirement
5 furthers one of the fundamental principles vindicated by the First Amendment: “people have the
6 right to know what is done in their courts.” *Wilson v. Sci. Applications Internat. Corp.*, 52 Cal. App.
7 4th 1025, 1030 (1997), citing *Estate of Hearst*, 67 Cal. App. 3d 777, 782-784 (1977); *Estate of*
8 *Hearst*, 67 Cal.App.3d at 784 (“[T]raditional Anglo-American jurisprudence distrusts secrecy in
9 judicial proceedings and favors a policy of maximum public access to proceedings and records of
10 judicial tribunals...[I]t is a vital function of the press to subject the judicial process to ‘extensive
11 public scrutiny and criticism’”) (citing *Shephard v. Maxwell*, 384 U.S. 333, 350 (1966)).

12 **B. Court Records Cannot Be Sealed If They Are Already in the Public Domain**

13 To prevail on his motion to seal the exhibits, Plaintiff must meet a four-part test: “(i) there
14 exists an overriding interest supporting ... or sealing; (ii) there is a substantial probability that the
15 interest will be prejudiced absent ... sealing; (iii) the proposed ... sealing is narrowly tailored to
16 serve the overriding interest; and (iv) there is no less restrictive means of achieving the overriding
17 interest.” *NBC Subsidiary*, 20 Cal. 4th at 1218.

18 While this test has been mirrored in California Rule of Court 2.550, the test is constitutional
19 in nature, setting out the requirements of the First Amendment. *Id.* Thus, even if Rule 2.550 does
20 not apply, as Blackman argues, the constitutional test must still be met. *See EFF v. Superior Court*,
21 83 Cal. App. 5th 407, 423 (2022).

22 Plaintiff cannot establish that his privacy interests will be prejudiced absent sealing because
23 his arrest is already in the public domain. In *NBC Subsidiary*, 20 Cal. 4th at 1223 n.47, the
24 California Supreme Court held that there was no basis to close court proceedings to keep the jury
25 from hearing normally private details about the parties where that information had been placed in
26 the public domain in media reports. “[W]here sensitive details of a case already revealed to the
27 public, no substantial probability that closure or sealing would prevent prejudice.” *Id.* Similarly, in
28 *People v. Jackson*, 128 Cal. App. 4th 1009, 1028 (2005), the Court of Appeal vacated order sealing

1 of portions of the criminal child molestation indictment of celebrity Michael Jackson because the
2 information had already been disclosed in a public hearing. “Under these circumstances, there is no
3 reason to keep the indictment sealed.” *Jackson*, 128 Cal.App.4th at 1028 (citing *NBC Subsidiary*, 20
4 Cal. 4th at 1223 n.47. In *Hurvitz*, 84 Cal. App. 4th at 1247, the Court of Appeal vacated an order
5 sealing civil court records on the grounds that the records had been in a public court file – even if
6 only one day – holding that “neither the state nor the federal Constitution permits the court to lock
7 the barn door after the horse is gone.”

8 This rule has been adopted by courts across jurisdictions. In *Kamakana v. City & County of*
9 *Honolulu*, 447 F.3d 1172, 1184 (9th Cir. 2006), the court similarly refused to seal civil court records
10 because “many names or references for which the United States sought redaction were either
11 already publicly available or were available in other documents being produced” to the press, and
12 the government could not meet its burden of showing the information could remain confidential. In
13 *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir. 2008), the Court held, “Secrecy is a one-way
14 street: Once information is published, it cannot be made secret again.” *See also Apple Inc. v.*
15 *Samsung Elecs. Co.*, 727 F.3d 1214, 1220 (Fed. Cir. 2013) (“once the parties’ confidential
16 information is made publicly available, it cannot be made secret again”); *Ameziane v. Obama*, 620
17 F.3d 1, 5 (D.C. Cir. 2010) (“once” information “is revealed publicly, the disclosure cannot be
18 undone”); *In re Charlotte Observer*, 921 F.2d 47, 49-50 (4th Cir. 1990) (reversing the injunction
19 preventing reporters from publishing the name of the target of an ongoing grand jury investigation
20 after it was inadvertently disclosed in open court in violation of confidentiality law, noting that
21 “[o]nce announced to the world,” “the cat [was] out of the bag” and “the information lost its secret
22 characteristic, an aspect that could not be restored...”); *Gambale v. Deutsche Bank, AG*, 377 F.3d
23 133, 144 n.11 (2d Cir. 2004) (“Once the cat is out of the bag, the ball game is over.” (citation
24 omitted); *SmithKline Beecham Corp. v. Pentech Pharm., Inc.*, 251 F. Supp. 2d 1002, 1009 (N.D. Ill.
25 2003) (Posner, J., sitting by designation) (granting a motion to seal terms of a settlement agreement
26 but only to the extent he had chosen not to discuss those terms in his opinion, as “there the cat is out
27 of the bag”).

28

1 Even where a recognized right to confidentiality once existed, a party who decides to file a
2 lawsuit placing confidential information at issue is deemed to waive their privacy rights that might
3 have otherwise existed. This is especially true here, where Plaintiff sued over the publication of his
4 sealed arrest report, which brought even more public attention to the arrest report. As the Court held
5 in *Estate of Hearst*, 67 Cal.App.3d at 783-784, “when individuals employ the public powers of state
6 courts to accomplish private ends, ... they do so in full knowledge of the possibly disadvantageous
7 circumstance that the documents and records filed ... will be open to public inspection,” and that
8 “with public protection comes public knowledge” of what might otherwise be private material.
9 Similarly, in *Green v. Uccelli*, 207 Cal. App. 3d 1112, 1119-1120 (1989), an action for invasion of
10 privacy for disclosure of information sealed in divorce proceedings, the California Court of Appeal
11 held that no such action was viable and noted that the sealing was likely improper. In so ruling, the
12 Court explained that to allege an invasion of privacy, one must demonstrate the public disclosure of
13 private facts. *Id.* at 1120. Yet, court files, even in divorce proceedings, are “historically and
14 presumptively” a matter of public record. *Id.* “In short [plaintiff] should have realized that when he
15 filed his action for dissolution in superior court he was entering a public forum which would result
16 in public disclosure of private facts.” *Id.*; see also *Register Div. of Freedom Newspapers v. County*
17 *of Orange*, 158 Cal. App. 3d 893, 902-903 (1984) (“although private in nature,” the medical records
18 submitted by claimant “were voluntarily submitted to substantiate [the claimant’s] personal injury
19 claim” and “by voluntarily submitting these records to the County for the purpose of reaching a
20 settlement on his claim, [the claimant] tacitly waived any expectation of privacy regarding these
21 medical records”) (emphasis in original). Thus, regardless of any privacy Plaintiff may have had in
22 his sealed arrest report, once Plaintiff filed this case and placed his already-published arrest report at
23 the center of his complaint, any claim of privacy or confidentiality was waived. See generally *Gates*
24 *v. Discovery Communications, Inc.*, 34 Cal. 4th 679, 692, 696 (2004) (litigant cannot bring a
25 cognizable invasion of privacy claim based on publication of information contained in public court
26 records, even if those court records are old and obscure).

27 Plaintiff’s citation to *In re M.T.*, 106 Cal. App. 5th 322 (2024), does not help him. In that
28 case, the Court of Appeal carefully considered the overriding interest in sealing court records to

1 protect the privacy of a non-public figure whose name, gender correction, private medical and
2 contact information contained in public court records had been used to out her on social media and
3 subject her to online harassment based on her gender transition. As set forth in defendants’ special
4 motions to strike, Plaintiff is not a private figure, he is a wealthy, successful tech executive whose
5 company has secured sensitive U.S. government contracts, who has sought to influence public
6 debate, and has not shown the kind of extreme harassment based on his identity.

7 Nor does Substack’s editorial policy control the constitutional question or otherwise define
8 the public’s interest in disclosure, as Plaintiff suggests.

9 **C. Any Further Delay In Disclosure Violates the Public’s First Amendment Rights**

10 Further delays in disclosure would cause serious harm on the right of the press to obtain and
11 report on the exhibits containing Plaintiff’s arrest report – which have been lodged as exhibits to
12 Defendants’ special motions to strike – at the heart of Plaintiff’s controversial case. This right is
13 rooted in our First Amendment. The United States Supreme Court has recognized that “The loss of
14 First Amendment freedoms, for even minimal periods of time, unquestionably constitutes
15 irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also NBC Subsidiary*, 20 Cal. 4th
16 at 1211 (delaying public access is inconsistent with “utilitarian values”); *Freedom Communications*
17 *v. Sup. Ct.*, 167 Cal. App. 4th 150, 153 (2008) (“[e]very moment’s continuance of [such an order]
18 amounts to a flagrant, indefensible, and continuing violation of the First Amendment”).

19 “The plain language of [California’s] sealed records rules indicates ... the drafters did not
20 envision an inherently delayed resolution of sealing issues.” *Overstock.com*, 231 Cal. App. 4th at
21 496. “Indeed, the courts have expressed concern about delayed rulings on sealing issues.” *Id.* (citing
22 *Mercury Interactive Corp. v. Klein*, 158 Cal. App. 4th 60, 92 (2007) (approving of Seventh Circuit
23 case stating “ ‘access should be immediate and contemporaneous’”); *Savaglio*, 149 Cal. App. 4th at
24 601 (“any reading of rules 2.550 and 2.551 that encourages an open-ended timeframe for filing a
25 motion to seal records long after the underlying substantive matter has been decided would defeat
26 the purpose of the rules”); *Lugosch v. Pyramid Co. of Onondaga*, 435 F. 3d 110, 121 (2d Cir. 2006)
27 (concluding district court erred when it postponed sealing decision “until it had ruled on the
28 underlying summary judgment motion”).

1 Courts across the country have recognized that even the temporary deprivation of a First
2 Amendment right constitutes irreparable harm, which cannot be justified merely because the
3 infringement is purported to be of short duration. In *Associated Press v. District Court*, 705 F. 2d
4 1143, 1147 (9th Cir. 1983), the Ninth Circuit issued a writ of mandamus to vacate an order sealing
5 pretrial pleadings in the criminal trial of celebrity automaker John DeLorean. Although the sealing
6 order in that case provided that most documents would remain under seal for only 48 hours — as
7 opposed to the indefinite sealing order here — the Ninth Circuit found that extraordinary relief
8 necessary. *Id.* at 1145-1147. “[E]ven though the restraint [wa]s limited in time,’ the Ninth Circuit
9 held that a writ of mandamus was required because the “effect of the order is a total restraint on the
10 public's first amendment right of access.” *Id.*

11 As another court explained, the public’s right of access is “threatened whenever immediate
12 access . . . is denied,” regardless of “whatever provision is made for later disclosure.” *In re*
13 *Charlotte Observer*, 882 F. 2d at 856. In that case, the lower court found that a temporary sealing
14 order was constitutional because it would cause only “a ‘minimal delay’ in access.” *Id.* at 854. The
15 Fourth Circuit rejected this argument, criticizing the respondent court for its “misapprehension and
16 undervaluation of the core first amendment value at stake.” *Id.* at 856; *see also Globe Newspaper*
17 *Co. v. Pokaski*, 868 F.2d 497, 507 (1st Cir. 1989) (“even a one to two day delay [in access to court
18 records] impermissibly burdens the First Amendment” and invalidating statute requiring temporary
19 sealing of some court records).

20 As in the cases cited above, preventing disclosure of these key court records would be an
21 ongoing violation of the defendants’ and the public’s constitutional rights.

22 Finally, the public has a constitutional right of access to the writings of public officials
23 under the California Constitution, which encompasses the arrest report exhibits. *See* Cal. Const. Art.
24 I, § 3(b); *Savaglio*, 149 Cal. App. 4th at 597 (recognizing constitutional right of access to civil court
25 records under Proposition 59). Thus, the constitutional rights of each person who would otherwise
26 be able to access to these records would also be affected by any delay in disclosure.

27
28

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

1 **D. The Motion Should Be Denied to Avoid an Unconstitutional Prior Restraint**

2 The First Amendment protects not only the right to convey information but also the right to
3 receive it. “Freedom of speech presupposes a willing speaker. But where a speaker exists, as is the
4 case here, the protection afforded is to the communication, to its source and to its recipients both.”
5 *Virginia State Bd. of Pharmacy*, 425 U.S. 748, 756 (1976); accord *Pine v. Tomson*, 160 Cal. App.
6 3d 370, 398 (1984) (“[The] protection afforded is to the communication, to its source and to its
7 recipients both...[This] Court has referred to a First Amendment right to “receive information and
8 ideas,’ and that freedom of speech ‘necessarily protects the right to receive.’”]; *Kleindienst v.*
9 *Mandel*, 408 U.S. 753, 762–763 (1972) “[i]t is now well established that the Constitution protects
10 the right to receive information and ideas”).

11 For more than 100 years, federal courts have struck down court orders enjoining
12 publications by the press, known as prior restraints. A prior restraint “‘comes to this Court bearing a
13 heavy presumption against its constitutional validity.’” *New York Times Co. v. United States*, 403
14 U.S. 713, 714 (1971) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)). “The
15 Government ‘thus carries a heavy burden of showing justification for the imposition of such a
16 restraint.’” *Id.* (quoting *Org. for Better Austin v. Keefe*, 402 U.S. at 419.) “[P]rior restraints on
17 speech and publication are the most serious and the least tolerable infringement on First
18 Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). In *Near v. Minnesota*,
19 283 U.S. 697, 713 (1931), the United States Supreme Court described a court order barring the
20 press from publishing information “the essence of censorship.” “The fact that for one hundred and
21 fifty years there has been almost an entire absence of attempts to impose previous restraints upon
22 publications relating to the malfeasance of public officers is significant of the deep-seated
23 conviction that such restraints would violate constitutional right.” *Id.* at 718. The First Amendment
24 disfavor of prior restraints directed at the press is grounded on “the general conception that liberty
25 of the press, historically considered and taken up by the Federal Constitution, has meant, principally
26 although not exclusively, immunity from previous restraints or censorship.” *Id.* at 716.

27 Overcoming the presumption that prior restraints violate the First Amendment is
28 exceedingly difficult. The government “carries [the] heavy burden of showing justification.” *Org.*

1 for *Better Austin*, 402 U.S. at 419. The Supreme Court has listed an “extremely narrow” set of
2 circumstances that would justify a prior restraint.” *New York Times*, 403 U.S. at 726 (Brennan, J.
3 concurring). A court may grant a prior restraint “only when the Nation is at war” to prevent “actual
4 obstruction” to the military draft, block “publication of the sailing dates of transports or the number
5 and location of troops,” or “suppress[...]information that would set in motion a nuclear holocaust.”
6 *Id.* (citation, brackets, and quotation marks omitted).)

7 It is not enough to argue that publication “could,” or “might,” or “may” harm a government
8 interest; it must submit evidence that publication would “inevitably, directly, and immediately”
9 cause the threatened harm. *Id.* at 725-27. “The First Amendment tolerates absolutely no prior
10 judicial restraints of the press predicated upon surmise or conjecture that untoward consequences
11 may result.” *Id.* at 725-26.

12 An example of a government failure to present “proof” of inevitable, direct, and immediate
13 harm caused by a media publication can be seen in the *New York Times* case. In that case, the Nixon
14 Administration submitted mere “conjecture” that government contractor Daniel Ellsberg’s
15 unauthorized disclosure to the press of the classified “Pentagon Papers” about the disastrous
16 Vietnam War “could,” “might,” or “may” pose a “grave and immediate danger” to national security,
17 without any supporting proof. This failed to persuade the Supreme Court to order the *New York*
18 *Times* and *Washington Post* to stop publishing the leaked documents. *New York Times*, 403 U.S. at
19 714, 725-26 (Brennan, J., concurring).

20 Here, Plaintiff seeks a prior restraint stopping members of the public and press from
21 accessing an arrest report that has been submitted to this Court as a court exhibit more than one year
22 after the arrest report was made public. This flagrant request to violate the First Amendment should
23 not be entertained.

24 **IV. CONCLUSION**

25 For all of the foregoing reasons, Tech Inquiry and Mr. Poulson respectfully request that this
26 Court summarily deny Plaintiff’s motion to seal his redacted arrest report in its entirety lodged with
27 this Court as Exhibits F and G to the Declaration of Jack Poulson filed in support of his special
28 motion to strike; Exhibit 2 to the Declaration of Sarah Burns in support of Amazon Web Services’

1 special motion to strike; Exhibit 1 to the Declaration of Josh Baskin in support of Substack’s special
2 motion to strike; and Exhibit 9 to the Declaration of Josh Baskin in support of Defendants’
3 opposition to Plaintiff’s Motion to Proceed Pseudonymously; and redact only the identifying
4 information for the alleged victim and witness in those exhibits.

5 DATED: December 20, 2024

LAW OFFICE OF SUSAN E. SEAGER

/s/ Susan E. Seager

Susan E. Seager

Attorneys for Defendant Tech Inquiry, Inc.

9 DATED: December 20, 2024

ELECTRONIC FRONTIER FOUNDATION

/s/ David Greene

David Greene

Victoria Noble

Attorneys for Defendant Jack Poulson

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12/27/2024
Clerk of the Court
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Deputy Clerk

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

11
12 MAURY BLACKMAN, an individual,) CASE NO.: CGC-24-618681
13 Plaintiff,)
14 v.) **REPLY TO DEFENDANT'S MOTION**
15) **TO FILE PORTIONS OF SPECIAL**
16) **MOTION TO STRIKE PLAINTIFF'S**
17) **COMPLAINT AND DEFENDANTS'**
SUBSTACK, INC., a Delaware corporation;) **DEMURRER UNDER SEAL**
18)
AMAZON WEB SERVICES, INC., a)
19)
Delaware corporation; JACK POULSON, an) Date: January 6, 2025
20)
individual; TECH INQUIRY, INC., a) Time: 9:30 AM
21)
Delaware corporation; DOES 1-25, inclusive,) Dept.: 301
22)
23) Before: Hon. Joseph M. Quinn
24)
25) Action Filed: October 3, 2024
26) Trial Date: None Set
27)
28)

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

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

1 On December 06, 2024, Defendant filed a Motion to Seal portions of Defendant’s Special
2 Motion to Strike and Defendant’s Demurrer. As noted in the Motion: “Defendant files this Motion
3 out of an abundance of caution...However, Plaintiff might believe that good cause exists for
4 granting this Motion to Seal.” Plaintiff filed a joint Motion to Seal and Opposition to Defendant’s
5 Motion to Seal on December 16, 2024.

6 Defendant opposes sealing any document filed in this case for the reasons stated in
7 Defendants Tech Inquiry Inc. and Jack Poulson’s Opposition to Plaintiff’s Motion to Seal filed on
8 December 20, 2024.

9
10
11 Dated: December 27, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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

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Substack, Inc.

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BY: JEFFREY FLORES
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SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
CIVIL UNLIMITED JURISDICTION

MAURY BLACKMAN, an individual,
Plaintiff,
v.
SUBSTACK, INC., a Delaware Corporation;
AMAZON WEB SERVICES, INC., a
Delaware corporation; JACK POULSON, an
individual; TECH INQUIRY, INC., a
Delaware corporation; DOES 1-25, inclusive
Defendants.

Case No.: CGC-24-618681
**DECLARATION OF PLAINTIFF IN
FURTHER SUPPORT OF PLAINTIFF'S
MOTION TO SEAL**
Date: January 6, 2025
Time: 9:30 am
Dept.: 301
Judge: Hon. Rochelle C. East
Action Filed: October 3, 2024
Trial Date: None set

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

1 I declare and state as follows:

2 1. I made this declaration in further support of Plaintiff’s Motion to Seal. The facts set
3 forth herein are true to my own personal knowledge, and if called upon to testify thereto, I could
4 and would competently do so under oath.

5 2. I am a resident of San Francisco, California. I am over 18 years old and fully
6 competent to submit this affidavit. I make this statement based on my personal knowledge of the
7 events described herein.

8 **I Am Not A Public Figure**

9 3. I have never been a public figure or achieved any level of fame. While my work has
10 occasionally intersected with government entities, my roles have been limited to operational or
11 advisory capacities and have never involved policy creation, decision-making authority, or public
12 advocacy. I have not engaged in public controversies, debates, or activities that would attract public
13 attention or recognition. I am not widely recognized, well-known, or famous in any context.

14 4. From December 2017 through December 2023, I worked as the CEO of Premise
15 Data (referred to as “Premise Data” or “Employer”). Premise Data was a private company with no
16 more than 100 employees. Premise Data was not well known.

17 5. Like many people, I have a personal webpage. My webpage was created in 2016 to
18 help in my job search at the time. My page has never received more than 1000 views in a calendar
19 year.

20 6. For four months in September 2022, while I worked at Premise Data, I hosted five
21 episodes of a podcast in which we paid guests. The podcast never had more than 200 listeners. The
22 podcast was stopped because there was very little interest.

23 7. I am one of more than 1 million U.S. citizens who hold a security clearance. My
24 clearance is the lowest level available, and I have never visited the Pentagon or the headquarters of
25 SOCOM (U.S. Special Operations Command).

26 //

27 //

28 //

1 **On February 17, 2022, Judge Gold Of San Francisco Superior Court Sealed The Arrest**
2 **Report and Related Information**

3 8. I was involved in an incident on December 21, 2021 that resulted in my being
4 arrested for felony domestic violence.

5 9. I was never accused of or committed sexual violence.

6 10. After the trial court considered the evidence, I was not charged with felony domestic
7 violence, and the charges against me were dismissed by no later than February 17, 2022.

8 11. Pursuant to Penal Code section 851.91, I successfully petitioned the trial court to
9 seal the arrest report and its contents.

10 12. On February 17, 2022, pursuant to California Criminal Code section 851.91, San
11 Francisco Superior Court Judge Carolyn Gold entered an order sealing law enforcement agency
12 report number 210844280 (the “Sealing Order”) related to Court case number 21012755. (A copy
13 of the “Sealing Order” issued by Judge Gold is attached hereto as “Exhibit A”.)

14 **These Events Were Not Newsworthy**

15 13. Between December 2021 and February 17, 2022, when the incident and report were
16 public record, no media reported on this incident or Judge Gold’s Sealing Order. No third party
17 contested Judge Gold’s Sealing Order.

18 14. Between February 17, 2022, and September 14, 2023, during which time the SFPD
19 released the Sealed Report to an attorney, Newton Oldfather (discussed below), no media reported
20 on this incident or the Sealing Order.

21 15. On September 14, 2023, Jack Poulson initially disseminated the Sealed Report and
22 his own detailed description of the events. In December 2023, Poulson blogged about Premise
23 Data’s termination of my employment, which Poulson occurred because of he disseminated the
24 Sealed Report, and in January and February 2024, Poulson blogged about Premise Data settling a
25 lawsuit against former employees pending in Santa Clara County Superior Court. Yet, between
26 September 14, 2023 and October 3, 2024 (when this lawsuit was filed), no media covered the
27 incident, the termination of my employment, the lawsuit that was pending in Santa Clara County
28 Superior Court, or Poulson’s Substack blog posts that disseminated this sealed information.

1 16. A review of Poulson’s posts shows minimal engagement on this matter.

2 **Poulson’s Substack Blog Posts Disseminate The Sealed Report**

3 17. Shortly before September 14, 2023, Poulson contacted by phone the woman
4 involved in the incident and made her feel threatened that he was going he was going to disseminate
5 the Sealed Report.

6 18. On September 14, 2023, Poulson disseminated the Sealed Report and his own
7 description of the events set forth in the Sealed Report.

8 19. Poulson disseminated the Sealed Report and/or a description of the events in the
9 Sealed Report on several instances after September 14, 2023, including on October 13, 2023,
10 November 20, 2023, December 19, 2023, January 6, 2024, April 25, 2024, and June 6, 2024.

11 20. Poulson initially failed to indicate the disposition of the Sealed Report.

12 21. In his posts, Poulson disseminated my name, home address, and picture. He also
13 disseminated identifying information of the woman referred to in the report, including her address,
14 date of birth, age, hair color, eye color, height, and relationship to me.

15 22. Even after Substack instructed Poulson to remove certain identifying information,
16 such as my home address, Poulson did not do so.

17 **The Santa Clara County Litigation**

18 23. In 2019, Premise Data, but not me personally, commenced a lawsuit in Santa Clara
19 County Superior Court against former employees who allegedly breached contracts and committed
20 torts aimed at harming Premise Data.

21 24. The former employees were represented by, among other lawyers, Newton
22 Oldfather, an attorney at Lewis & Llewellyn, LLP, and Kenneth Nabity, an attorney at Delfino
23 Madden.

24 25. Prior to joining Lewis & Llewellyn, LLP, Oldfather served as an attorney for the San
25 Francisco City Attorney’s Office and the Department of Policy Accountability from November
26 2012 until April 2021. (A copy of Oldfather’s firm biography is attached hereto as “Exhibit B.”)

27 26. After September 14, 2023, when I became aware of Poulson’s post through Lewis &
28 Llewellyn’s use of the post and the Sealed Report in the Santa Clara County Litigation, I reached

1 out to the City of San Francisco in an effort to learn how Oldfather and Poulson became in receipt
2 and possession of the Sealed Report. Through these efforts, I was provided documents from the
3 City that establish the facts set forth below regarding the disclosure of the Sealed Report.

4 (Documents showing Oldfather’s contact with the SFPD on May 3, 2022, are attached hereto as
5 “Exhibit C.”)

6 27. On May 3, 2022, Oldfather requested a copy of the sealed Incident Report by the
7 unique report number from the San Francisco Police Department (“SFPD”) indicating that he had
8 accessed my file. (See Exhibit C) In making this request, Oldfather responded to the inquiry,
9 “Describe your interest in this Report”, by stating “Attorney Investigator.”

10 28. Prior to getting a response from the SFPD with respect to his initial request on May
11 3, on May 9, 2022, at 1:00 AM, Oldfather made a second request to the SFPD for the Sealed
12 Report. (See Exhibit C.) In making this second request, Oldfather left blank the response to the
13 inquiry to “Describe your interest in this Report.”

14 29. On May 16, 2022, Diane Bryan, of the SFPD, wrote to Oldfather: “We have
15 received your report request, but due to the nature of the report we must route the request to the
16 investigative unit for final release/approval. Please be patient as this may add several days to our
17 processing time.” (See Exhibit C.)

18 30. On May 17, 2022, Diane Bryan wrote to Oldfather that the SFPD received his
19 request dated May 9, 2022, that his request has been processed, and that the documents he
20 requested have been made available via the San Francisco Public Records Portal. (See Exhibit C.)

21 31. The Sealed Report that the SFPD provided to Oldfather had a unique watermark
22 identifier.

23 32. On July 21, 2022, after the SFPD had already provided Oldfather with the Sealed
24 Report pursuant to his May 9 request, Daniel Leung sent an email to Oldfather in connection with
25 Oldfather’s initial request on May 3 for the Sealed Report that read: “Dear Newton Oldfather: We
26 have received your request for Incident Report No. [XXX]. In order to process the request, please
27 provide authorization from the party named in the report. Your request will be processed upon
28 receipt.” (See Exhibit C.) Oldfather did not provide or have authorization from me.

1 33. During the Santa Clara County Litigation, Oldfather never disclosed that he was in
2 receipt and possession of the Sealed Report.

3 34. Before Jack Poulson unlawfully disseminated the Sealed Report and published his
4 Substack blog post describing its contents on September 14, 2023, the former employees had made
5 no attempt to introduce the Sealed Report into the Santa Clara County litigation. Despite having
6 possession of the Sealed Report since March 2022, they did not propound any discovery requests
7 related to it, nor did they raise it during my multi-day deposition. However, just two hours after
8 Poulson’s blog post was published, the former employees’ counsel suddenly served a flurry of
9 discovery requests directly referencing the Sealed Report and asserted its supposed relevance to the
10 litigation. This abrupt and calculated shift underscores the coordinated misuse of the Sealed Report
11 as a litigation tactic, weaponizing illegally obtained and disseminated information to gain an unfair
12 advantage.

13 35. The version of the Sealed Report that Poulson published on September 14, 2023,
14 contained the same unique watermark identifier as the copy of this report that the SFPD provided to
15 Oldfather.

16 36. According to records provided by the SFPD, as of October 3, 2023, five requests had
17 been made to the SFPD for the release of this report (including the two requests by Oldfather). (See
18 Exhibit C.) The SFPD only released the report two times: once to me in December 2021 and once
19 to Oldfather in May 2022. The SFPD never released the report to a journalist. Neither Poulson nor
20 Byron Tau ever submitted a request to the SFPD for release of the report, and the SFPD never
21 released the report to either Poulson or Tau.

22 37. By no later than September 25, 2023, counsel representing my Employer in the
23 Employee Litigation, Dhaivat Shah of Grellas Shah LLP, notified Oldfather and Nability that the
24 Sealed Report had been sealed by Court Order pursuant to Section 851.91.

25 38. Nability admitted that he sent the Sealed Report to Byron Tau.

26 **I Made Efforts To Get The Sealed Report Removed**

27 39. In November 2023, I notified Substack that the Sealed Report that was in its
28 possession and being disseminated on Poulson’s blog had been sealed by a Court Order, and I

1 requested that Substack give up possession of the Sealed Report and immediately take down all
2 content describing or related to the Sealed Report, which was required by California law and
3 Substack's Acceptable Use Policy, which prohibits illegal content.

4 40. Substack remained in receipt and possession of the Sealed Report and did not
5 remove Poulson's posts.

6 41. On November 28, 2023, counsel representing my Employer in the Employee
7 Litigation filed a motion with respect to the Sealed Report seeking to keep the Sealed Report and its
8 contents sealed and confidential pursuant to a protective order. The documents filed with the Court
9 in connection with the Employee Litigation referenced that the Sealed Report that Poulson had
10 published on Substack had been sealed pursuant to a court order dated February 17, 2022.

11 42. On April 26, 2024, my counsel, Binall Law Group, sent correspondence to Substack
12 requesting the immediate removal of the Sealed Report and its contents.

13 43. In June 2024, Police Accountability referred the matter to SFPD Internal Affairs

14 44. On June 3, 2024, Police Accountability informed me that they had referred the
15 matter to SFPD internal affairs.

16 45. On June 20, 2024, after not hearing from them, I reached out directly to internal
17 affairs.

18 46. On June 25, Lt. Chris Beauchamp #561 reached out and informed me I would need to
19 wait until department head Lt. Lisa Springer returned on July 7, 2023.

20 47. On June 23, 2024, I sent an email to Substack requesting the immediate removal of
21 the Sealed Report and its contents due to the sealed nature of the report and violations of California
22 law. Substack did not respond.

23 48. In August 2024, Lt Springer notified me that the department would conduct an
24 investigation into the release of the Sealed Report.

25 49. In September 2024, the woman involved in this matter and I together met with Sgt.
26 Degand, the investigator, to express our joint concerns regarding the release of the Sealed Report.
27 We urged him to take some action to stop the illegal dissemination of the Sealed Report.
28

1 50. On September 13, through my counsel, I again contacted Substack to request that
2 Substack immediately remove the Sealed Report because Substack was in violation of California
3 law and Substack’s Acceptable Use Policies.

4 51. On September 13, 2024, through counsel, I contacted Amazon Web Services, which
5 hosts Substack, and requested that it remove the Sealed Report and its contents because AWS was
6 in violation of California law and AWS’s Acceptable Use Policy.

7 52. On September 16, 2024, through counsel, I contacted Poulson and Tech Inquiry and
8 requested that they remove the Sealed Report and related information because Poulson and Tech
9 Inquiry were in violation of California law.

10 53. On September 19, 2024, the San Francisco City Attorney sent a letter to Substack
11 that, pursuant to Section 851.92(c) and Substack’s Acceptable Use Policy, requested that Substack
12 “immediately remove the Sealed Report and its contents from your website and ensure that the
13 index to postings no longer allows for the Sealed Report to be viewed or downloaded” by
14 September 23, 2024, and “refrain from publishing this material in the future.” (A copy of the letter
15 from the SF City Attorney is attached hereto as “Exhibit D.”)

16 54. On September 23, 2024, through my counsel, I forwarded a copy of the letter the
17 San Francisco City Attorney had sent to Substack to AWS.

18 55. On September 23, 2024, Substack’s counsel, Wilson Sonsini, responded to my
19 September 13, 2024, on behalf of Substack, letter, indicating that Substack would not remove the
20 Sealed Report.

21 56. On September 25, 2024, Joshua Stokes, of Berry, Silberberg, & Stokes, sent a letter
22 to my lawyer on behalf of Poulson. In this letter, Poulson’s lawyer indicated that Poulson would
23 not remove the Sealed Report or its contents.

24 57. On October 3, 2024, the San Francisco City Attorney sent letters to each Substack
25 and Poulson. (Copies of the letter from the San Francisco City Attorney are attached as “Exhibit E”
26 and “Exhibit F.”) In these letters, the San Francisco City Attorney instructed Substack and Poulson
27 to remove the Sealed Report and related information pursuant to California law and Substack’s
28 Acceptable Use Policy.

1 58. The Sealed Report has not been taken down and remains in receipt and possession of
2 all Defendants.

3 59. On October 3, 2024, I filed this lawsuit as John Doe to protect my privacy, and all
4 Defendants were immediately notified.

5 **The San Francisco Chronicle Covered This Lawsuit**

6 60. On October 29, 2024, a reporter from the San Francisco Chronicle, who had
7 knowledge that the report had been sealed by Court Order, published an article online titled “Tech
8 exec sues journalist for \$25M for publishing his sealed arrest report,” that referred to the Sealed
9 Report and its contents, as well as my name. The article mistakenly confused what was in the
10 demand letter I had sent to Poulson and Tech Inquiry with the actual Complaint, thereby showing
11 that Poulson was the source for this article.

12 61. Prior to October 29, 2024, the San Francisco Chronicle never reported on me, the
13 arrest, the Sealing Order, Poulson’s Substack blog posts that disseminated the Sealed Report, the
14 termination of my employment, or the Santa Clara County Litigation.

15 62. I called the reporter and asked where he learned of the lawsuit, and he informed me
16 Susan Seager, Tech Inquiry’s attorney, had contacted him.

17 **Defendants’ Conduct Has Caused Me Damage.**

18 63. I am a private individual, and the events detailed in the Sealed Report are deeply
19 personal and private, affecting both myself and the woman involved. These events hold absolutely
20 no relevance to any matter of public significance or issue of legitimate public interest. Any
21 attention directed toward these events would amount to nothing more than a gratuitous and prurient
22 intrusion into my private life, driven by sensationalism rather than any genuine or lawful purpose.

23 64. The continued and ongoing dissemination of the Sealed Report has caused and will
24 continue to cause both monetary and irreparable harm, including but not limited to the
25 stigmatization that comes with public dissemination of the Sealed Report and the arrest, particularly
26 when Poulson often failed to indicate the disposition of the arrest.

27 65. While my arrest was not itself newsworthy, people and entities interested in hiring
28 me will become aware of it by conducting a basic Google search of my name.

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I declare under penalty of perjury to the laws of the State of California that the foregoing facts are true and correct.

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

/s/
Plaintiff Delwin Maurice Blackman III

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PROOF OF SERVICE

I, Christina Yanacek, declare as follows:

I am over eighteen years of age and not a party to the within action. I am employed in San Francisco County, California. My business address is 2001 Van Ness Avenue, Suite 300, San Francisco, CA 94109.

On the date set forth below, I served a copy of the following:

DECLARATION OF PLAINTIFF IN FURTHER SUPPORT OF PLAINTIFF'S MOTION TO SEAL

on the parties named as follows:

- (X) **(BY EMAIL)** – by electronically mailing a true and correct copy through BERMAN NORTH LLP’s electronic mail system to the email address(es) set forth below, or as stated in the attached service list per the parties’ agreement.
- (X) **(BY E-SERVICE)** – by electronically serving the document(s) listed above and on the Transaction Receipt, which were e-filed with the San Francisco County Superior Court and e-served via the One Legal’s electronic filing system, to the email address(es) of the party(ies) designated below in accordance with the San Francisco County Superior Court Local Rules.

I served the above document(s) on the following person(s):

SEE ATTACHED SERVICE LIST

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 27, 2024, at Long Beach, California.



 Christina Yanacek

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

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SERVICE LIST

<p>Ambika Kumar Sarah E. Burns DAVIS WRIGHT TREMAINE LLP 50 California Street, 23rd Floor San Francisco, CA 94111 Phone: (206) 757-8030 (415) 276-4892 Email: ambikakumar@dwt.com; sarahburns@dwt.com cc: ryanrubio@dwt.com</p> <p>Counsel for Defendant Amazon Web Services, Inc.</p>	<p>Joshua A. Baskin Thomas R. Wakefield Wilson Sonsini Goodrich & Rosati 1 Market Plaza, Spear Tower, Suite 3300 San Francisco, CA 94105 Email: jbaskin@wsgr.com; twakefield@wsgr.com; Substack-Doe@wsgr.com cc: rglynn@wsgr.com</p> <p>Counsel for Defendant Substack, Inc.</p>
<p>Susan E. Saeger The Office of Susan E. Saeger Phone: (310) 890-8991 Email: susanseager1999@gmail.com</p> <p>Counsel for Defendant Tech Inquiry, Inc.</p>	<p>David Greene Victoria Noble Electronic Frontier Foundation 815 Eddy Street San Francisco, CA 94109 Tel.: (415) 436-9333 Fax: (415) 436-9993 Email: davidg@eff.org; tori@eff.org; cc: victoria@eff.org</p> <p>Counsel for Defendant Jack Poulson</p>

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EXHIBIT A

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

CR-410

Order to Seal Arrest and Related Records (Pen. Code, §§ 851.91, 851.92)

Clerk stamps date here when form is filed.

① Name: BLACKMAN DELWIN M
Last First Middle

Mailing address: 360 RITCH ST. #201
Street
SAN FRANCISCO CA 94107
City State Zip

FEB 17 2022

② The court finds that the petitioner is eligible for the following requested relief and makes the following order:

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:

Law enforcement agency report number: 210844280
Prosecuting agency report number: _____
Court case number: 21012755

Other: _____
Petitioner 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, except as follows:

- The sealed arrest may be pleaded and proved in any later prosecution of the petitioner for any other offense, and will have the same effect as if it had not been sealed.
- The sealing of an arrest under section 851.91 does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
- The sealing of an arrest under this section does not affect petitioner's authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.
- The sealing of an arrest under this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

③ The court **DENIES** the petition (*check one*):
a. The petition does not meet the requirements listed in Penal Code section 851.91(b)(1).
b. Petitioner's arrest does not qualify under Penal Code section 851.91(a).
c. The court finds that sealing the arrest would not serve the interests of justice under Penal Code section 851.91(c)(2).
d. Other: _____

Date: FEB 15 2022

Hon. Carolyn Gold
Signature of judicial officer

This is a Court Order.

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

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EXHIBIT B

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

CONTACT < [HTTPS://LEWISLLEWELLYN.COM/CONTACT](https://lewisllewellyn.com/contact)>

< <https://lewisllewellyn.com/>>



Attorney
Newto
n
Oldfat
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✉ [Emai
l
Newt
on](mailto:Newton@lewisllewellyn.com) ☎ [62
60
75](tel:626075)

Education

Skidmore
College, BA

[Privacy - Terms](#)

UCLA School of

Law JD

CONTACT < [HTTPS://LEWISLLEWELLYN.COM/CONTACT](https://lewisllewellyn.com/contact) >

< <https://lewisllewellyn.com/> >

Biography.

Newton Oldfather is an experienced litigator with over ten years of experience in government practice, internal investigations, litigation, and trials.

Before joining Lewis & Llewellyn, Newton began his career in the San Francisco office of Latham & Watkins LLP, one of the world's premier international law firms. There, he worked on the white-collar defense team, specializing in high-profile complex



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

commercial

disputes

CONTACT < [HTTPS://LEWISLLEWELLYN.COM/CONTACT](https://lewisllewellyn.com/contact) >

< <https://lewisllewellyn.com/> >

Following that, Newton was a member of the San Francisco City Attorney's Office Trial Team, where he defended the City and County of San Francisco in a wide variety of cases, including personal injury, civil rights, property, and complex litigation. As a Deputy City Attorney, Newton tried multiple cases to jury verdict in both state and federal court.

More recently, Newton worked at the San Francisco Department of Police Accountability, where he prosecuted law enforcement



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[< https://lewisllewellyn.com/ >](https://lewisllewellyn.com/)

CONTACT < [HTTPS://LEWISLLEWELLYN.COM/CONTACT](https://lewisllewellyn.com/contact) >

misconduct cases, oversaw high-profile internal investigations, and advised on issues of police reform and privacy. Newton also created and implemented the first civilian oversight system for the San Francisco Sheriff's Office.

Away from the office, Newton enjoys camping and exploring the outdoors with his wife and two kids.

OUR CLIENTS

CONTACT < [HTTPS://LEWISLLEWELLYN.COM/CONTACT](https://lewisllewellyn.com/contact)>

< <https://lewisllewellyn.com/>>

< <https://lewisllewellyn.com/>>

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EXHIBIT C

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

All Requests

New Request Browse Edit Export Letters Print Delete Checked

Show Requests that match all of these conditions:

IRB Report Number contains 210844280

Reference No. contains Friss

Any Field contains Error...

Duplicate/Similar Requests equals Enter Number

Customer Last Name equals Enter

Customer Email contains Enter

Results: 5 Requests

Displaying records 1 to 5 of 5

Reference No	Request Info	Create Date	Customer Full Name	Status	Assigned Dept	Assigned Staff	Summary	Public Record Desired	Customer Email	Extension
<input type="checkbox"/> 8038311-132721	# 1	12/27/2021 8:58 PM	Mauri Blackman	Completed	CSU	Elizabeth Elemeno	210844280		[Redacted]	release
<input type="checkbox"/> 8028514-100323	# 1	10/9/2023 11:49 AM	David Siegel	Completed	CSU	Elizabeth Elemeno	210844280		[Redacted]	not release
<input type="checkbox"/> 8026487-100323	# 1	10/9/2023 10:04 AM	Mike Lipton	Completed	CSU	Dane Harper	210844280		[Redacted]	Not release
<input type="checkbox"/> 8011205-051622	# 2	5/9/2022 1:00 AM	Newton Oldfather	Completed	CSU	Dane Bryan	210844280		[Redacted]	release
<input type="checkbox"/> 8010166-050322	-	5/3/2022 1:20 PM	Newton Oldfather	Completed	CSU	Daniel Leung	210844280		[Redacted]	Not release

CISU Staff entered request in GOVQA

210844280 (Incident Report Request #R011205-051622)

▼ Incident Report Request Details

> Supervisor Review

▼ San Francisco Police Department Incident Report Information

San Francisco Police Department Incident Report Information

 Requester Category

Is this a DHS ICE Report pursuant to 5.15 General Order?: No

Please Select One: Public

Report No.: 210844280

Date of Incident:

Location of Incident:

Incident Type: Domestic Violence

Is this a Traffic Collision Report:

Is this case assigned to Special Victims Unit (SVU)?: Yes

Are you the victim?: No

Relationship to Victim: Other/Not Listed

If Relationship to Victim is Other - Please Provide Details: I don't know who this person is

ID and Authorization Required to Pick Up Report:

▼ Requester Information

Requester Information

Name: Newton Oldfather

Address:

City: San Francisco

State: CA

Zip Code:

Country:

Company/Agency Name:

Phone:

Email:

Name of Party Listed on Report: [REDACTED]

Date of Birth:

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

Describe Your Interest in this Report:

Preferred Method to Receive Report: Pick-up Copies

Preferred Method to Receive Report (INTERNAL ONLY): Email (Non-Portal)

Pick-Up Report:

If you have elected to pick up your report, please be aware the report will be made available at:

SFPD Headquarters

1245 3rd Street, 1st Floor

San Francisco, CA 94158

Hours: Monday through Friday (8:00am-5:00pm)

We are closed on weekends and holidays.

Please call 415-575-7232 to confirm your report is ready for pick up.

Authorization

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. There is no legal requirement to fill out this form in its entirety. However, certain individuals are entitled to receive more information pursuant to California Government Code § 6254 (f). The more information you provide may help the Department determine the amount of information provided to you.

Internal Information Only

Incident Type Designation:

Unit for PINK Assignment: Special Victims Unit (SVU)

Exemptions

Redaction Guidelines

Days in Status Counter (Internal Only)

Message History

Date

On 5/17/2022 2:39:44 PM, Diane Bryan wrote:

Subject: Service Request Updated :: R011205-051622

Body:

May 17, 2022

Newton Oldfather

San Francisco, CA

RE: Police Incident Report Request, dated May 09, 2022, Reference # R011205-051622

Dear Newton Oldfather:

The San Francisco Police Department (SFPD) received your Police Incident Report Request, dated May 09, 2022.

Your request has been processed and is now complete. Documents/records have now been made available via the San Francisco Public Records Center.

Incident Report Request - R011205-051622

Please Note:

If you need to request a correction to a report or add additional lost/stolen items and your Initial Report was submitted:

1. Online through CopLogic: You may submit a Supplemental Report online using CopLogic via <https://www.sanfranciscopolice.org/get-servicepolice-reports/file-police-report>
2. Phone: Call 311 (outside of San Francisco 1-415-701-2311) and relay the information over the phone.
3. Person: Go to your local police station and file a supplemental report.

To Request Photos/Videos/Statements/Evidence:

File a public records request online at <https://www.sanfranciscopolice.org/get-service/public-records-request>

On 5/16/2022 1:12:07 PM, Diane Bryan wrote:

Subject: Service Request Updated :: R011205-051622

Body:

May 16, 2022

Dear Newton Oldfather:

We have received your report request, but due to the nature of the report we must route the request to the investigative unit for final release/approval. Please be patient as this may add several days to our processing time.

To monitor the progress or update this request please log into the SFPD Public Records Center.

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

AA0586

Date

On 5/16/2022 1:04:37 PM, System Generated Message:

Subject: INCIDENT REPORT Request :: R011205-051622

Body:

FAQ: Why is it taking so long to receive a copy of my report/record?

As the result of the COVID-19 pandemic and an understaffed Unit, increased workload, and financial restrictions; CISU is currently experiencing a backlog of requests for public records. We appreciate your patience during this time. Please DO NOT make a duplicate request for a copy of your report/record. This could potentially further delay your request, it is advised you follow the steps below.

FAQ: How do I send an email asking for a follow-up on the report/record I'm still waiting for?

While on the *Incident Report Request Portal*, please click on *View My Requests* and sign in to your account. Once you have signed in, you should see a form that you are allowed to type in. In the box provided, you may type "*I would like an update on the status of my initial report requested*". Please be patient while waiting for an email response back from CISU.

Dear Newton Oldfather:

The San Francisco Police Department has received your request for Incident Report Number 210844280.

Your request was received on 5/9/2022 and given the reference number R011205-051622 for tracking purposes. Your request will be processed within ten (10) days in the order it was received. If applicable, your request will be expedited pursuant to the statutory guidelines.

Under CA Family Code § 6228, incident reports requested by a victim or his or her representative for the alleged crimes of domestic violence, sexual assault, stalking, human trafficking, and abuse of an elder or dependent adult are entitled to receive copies within five (5) working days of the request, unless good cause for delay exists. If good cause exists, reports shall be released no later than ten (10) working days after request is made.

To monitor the progress or update this request please log into the SFPD Public Records Center.

Thank you,

San Francisco Police Department
Crime Information Services Unit
1245 3rd Street, First Floor
San Francisco, CA 94158
415-575-7232

Counter Operating Hours: Monday – Friday 8:00 am to 5:00 pm
Closed Saturday and Sunday

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

AA0587

Date

On 5/16/2022 1:04:36 PM, System Generated Message:

Message sent to: **Newton Oldfather**

Subject: Incident Report Request :: R011205-051622

Body:



*If you have already picked up your incident report at Police Headquarters, please disregard the automated message below.

Dear Newton Oldfather:

The San Francisco Police Department has received your request for Incident Report Number 210844280.

Your request was received on 5/9/2022 and given the reference number R011205-051622 for tracking purposes. Your request will be processed within ten (10) days in the order it was received. If applicable, your request will be expedited pursuant to the statutory guidelines.

Under CA Family Code § 6228, incident reports requested by a victim or his or her representative for the alleged crimes of domestic violence, sexual assault, stalking, human trafficking, and abuse of an elder or dependent adult are entitled to receive copies within five (5) working days of the request, unless good cause for delay exists. If good cause exists, reports shall be released no later than ten (10) working days after request is made.

Thank you,

San Francisco Police Department
Crime Information Services Unit
1245 3rd Street, First Floor
San Francisco, CA 94158
415-575-7232

Counter Operating Hours:
Monday - Friday 8:00 am to 5:00 pm
Closed Saturday and Sunday

To monitor the progress or update this request please log into the CISU Incident Report Request Portal.

This is an auto-generated email and has originated from an unmonitored email account. Please DO NOT REPLY.

On 5/16/2022 1:04:35 PM, Diane Bryan wrote:
Request was created by staff

Request Details

Reference No: R011205-051622
Created By: Diane Bryan
Create Date: 5/9/2022 1:00 AM
Update Date: 5/17/2022 2:39 PM
Completed/Closed: Yes
Close Date: 5/17/2022 2:39 PM

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

Status: Completed
Priority: Medium
Assigned Dept: CISU
Assigned Staff: Diane Bryan

Customer Name: Newton Oldfather

Email Address: [REDACTED]

Phone:

Group: CISU

Source: Email

Incomplete

210844280 (Incident Report Request #R010166-050322)

▼ Incident Report Request Details

> Supervisor Review

▼ San Francisco Police Department Incident Report Information

San Francisco Police Department Incident Report Information

 Requester Category

Is this a DHS ICE Report pursuant to 5.15 General Order?: No

Please Select One: Public

Report No.: 210844280

Date of Incident: 12/22/2021

Location of Incident: Unknown

Incident Type:

Is this a Traffic Collision Report:

Is this case assigned to Special Victims Unit (SVU)?: Does Not Apply

▼ Requester Information

Requester Information

Name: **Newton Oldfather**

Address:

City: San Francisco

State: CA

Zip Code:

Country:

Company/Agency Name:

Phone: 518-879-9060

Email: [REDACTED]

Name of Party Listed on Report: [REDACTED]

Date of Birth:

Describe Your Interest in this Report: Attorney Investigation

Preferred Method to Receive Report (INTERNAL ONLY):

Authorization

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. There is no legal requirement to fill out this form in its entirety. However, certain individuals are entitled to receive more information pursuant to California Government Code § 6254 (f). The more information you provide may help the Department determine the amount of information provided to you.

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

I acknowledge that by clicking on the submit button, I have read and understand the Authorization. |

Preferred Method to Receive Report: Pick-up Copies

▼ **Internal Information Only**

Incident Type Designation:

Unit for PINK Assignment:

➤ **Exemptions**

➤ **Redaction Guidelines**

➤ **Days in Status Counter (Internal Only)**

▼ **Message History**

Date

On 7/21/2022 10:17:40 AM, Daniel Leung wrote:

Subject: Service Request Updated :: R010166-050322

Body:

July 21, 2022

Dear Newton Oldfather:

We have received your request for Incident Report No. 210844280. In order to process the request, please provide authorization from the party named in the report. Your request will be processed upon receipt.

To monitor the progress or update this request please log into the SFPD Public Records Center.

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

Date

On 5/3/2022 1:20:51 PM, System Generated Message:

Subject: INCIDENT REPORT Request :: R010166-050322

Body:

FAQ: Why is it taking so long to receive a copy of my report/record?

As the result of the COVID-19 pandemic and an understaffed Unit, increased workload, and financial restrictions; CISU is currently experiencing a backlog of requests for public records. We appreciate your patience during this time. Please DO NOT make a duplicate request for a copy of your report/record. This could potentially further delay your request, it is advised you follow the steps below.

FAQ: How do I send an email asking for a follow-up on the report/record I'm still waiting for?

While on the *Incident Report Request Portal*, please click on *View My Requests* and sign in to your account. Once you have signed in, you should see a form that you are allowed to type in. In the box provided, you may type "*I would like an update on the status of my initial report requested*". Please be patient while waiting for an email response back from CISU.

Dear Newton Oldfather:

The San Francisco Police Department has received your request for Incident Report Number 210844280.

Your request was received on 5/3/2022 and given the reference number R010166-050322 for tracking purposes. Your request will be processed within ten (10) days in the order it was received. If applicable, your request will be expedited pursuant to the statutory guidelines.

Under CA Family Code § 6228, incident reports requested by a victim or his or her representative for the alleged crimes of domestic violence, sexual assault, stalking, human trafficking, and abuse of an elder or dependent adult are entitled to receive copies within five (5) working days of the request, unless good cause for delay exists. If good cause exists, reports shall be released no later than ten (10) working days after request is made.

To monitor the progress or update this request please log into the SFPD Public Records Center.

Thank you,

San Francisco Police Department
Crime Information Services Unit
1245 3rd Street, First Floor
San Francisco, CA 94158
415-575-7232

Counter Operating Hours: Monday – Friday 8:00 am to 5:00 pm
Closed Saturday and Sunday

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

AA0593

Date

On 5/3/2022 1:20:51 PM, System Generated Message:
Message sent to: **Newton Oldfather**
Subject: Incident Report Request :: R010166-050322
Body:



*If you have already picked up your incident report at Police Headquarters, please disregard the automated message below.

Dear Newton Oldfather:

The San Francisco Police Department has received your request for Incident Report Number 210844280.

Your request was received on 5/3/2022 and given the reference number R010166-050322 for tracking purposes. Your request will be processed within ten (10) days in the order it was received. If applicable, your request will be expedited pursuant to the statutory guidelines.

Under CA Family Code § 6228, incident reports requested by a victim or his or her representative for the alleged crimes of domestic violence, sexual assault, stalking, human trafficking, and abuse of an elder or dependent adult are entitled to receive copies within five (5) working days of the request, unless good cause for delay exists. If good cause exists, reports shall be released no later than ten (10) working days after request is made.

Thank you,

San Francisco Police Department
Crime Information Services Unit
1245 3rd Street, First Floor
San Francisco, CA 94158
415-575-7232

Counter Operating Hours:
Monday – Friday 8:00 am to 5:00 pm
Closed Saturday and Sunday

To monitor the progress or update this request please log into the CISU Incident Report Request Portal.

This is an auto-generated email and has originated from an unmonitored email account. Please DO NOT REPLY.

On 5/3/2022 1:20:50 PM, Newton Oldfather wrote:
Request Created on Public Portal

▼ Request Details

Reference No: R010166-050322
Create Date: 5/3/2022 1:20 PM
Update Date: 9/19/2023 8:56 PM
Completed/Closed: Yes
Close Date: 9/19/2023 8:56 PM
Status: Completed

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

Priority: Medium
Assigned Dept: CISU
Assigned Staff: Daniel Leung

Customer Name: Newton Oldfather

Email Address: [REDACTED]

Phone:

Group: CISU

Source: Web

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

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EXHIBIT D

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

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

JENNIFER CHOI
Deputy City Attorney

Direct Dial: (415) 554-3887
Email: jennifer.choi@sfcityattty.org

September 19, 2024

Via U. S. Mail and Electronic Mail

Substack
111 Sutter Street, 7th Flr.
San Francisco, CA 94104
“tos@substackinc.com”

Re: Notice of Publication of Sealed Document

Dear Substack:

It has come to our office’s attention that San Francisco Police Department incident report number 210844280 (“Incident Report”) as well as its contents have been published in multiple postings on your website.¹ The Incident Report was previously sealed by court order. A copy of the court order sealing the report is attached.

Pursuant to California Penal Code section 851.92(c) and your own “Acceptable Use Policy,” we expect that you will immediately remove the Incident Report and its contents from your website and ensure that the index to postings no longer allows for the Incident Report to be viewed or downloaded. Please alert us when the documents and its contents have been taken down from your website by no later than September 23, 2024. Finally, please refrain from publishing this material in the future.

If you would like to discuss further, please let us know. Thank you.

Very truly yours,

DAVID CHIU
City Attorney

JENNIFER E. CHOI
Deputy City Attorney

Encl.

¹ See https://jackpoulson.substack.com/p/the-covert-gig-work-surveillance?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2. See also https://jackpoulson.substack.com/p/fraudulent-dmca-takedown-submitted?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2. See also https://jackpoulson.substack.com/p/ceo-of-gig-work-surveillance-firm?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2. See also https://jackpoulson.substack.com/p/california-based-covert-surveillance?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2.

CR-410

Order to Seal Arrest and Related Records (Pen. Code, §§ 851.91, 851.92)

Clerk stamps date here when form is filed.

① Name: BLACKMAN DELWIN M
Last First Middle

Mailing address: 360 RITCH ST. #201
Street
SAN FRANCISCO CA 94107
City State Zip

FEB 17 2022

② The court finds that the petitioner is eligible for the following requested relief and makes the following order:

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:

Law enforcement agency report number: 210844280
Prosecuting agency report number: _____
Court case number: 21012755

Clerk fills in the name and street address of the court.

Superior Court of California, County of SAN FRANCISCO, 850 BRYANT STREET, SAN FRANCISCO, CA 94107

Other: _____
Petitioner 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, except as follows:

Clerk fills in the number and name of the case.

Trial Court Case Number:
21012756

Trial Court Case Name:
People of the State of California
v. BLACKMAN

- The sealed arrest may be pleaded and proved in any later prosecution of the petitioner for any other offense, and will have the same effect as if it had not been sealed.
- The sealing of an arrest under section 851.91 does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
- The sealing of an arrest under this section does not affect petitioner's authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.
- The sealing of an arrest under this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

③ The court **DENIES** the petition (*check one*):
a. The petition does not meet the requirements listed in Penal Code section 851.91(b)(1).
b. Petitioner's arrest does not qualify under Penal Code section 851.91(a).
c. The court finds that sealing the arrest would not serve the interests of justice under Penal Code section 851.91(c)(2).
d. Other: _____

Date: FEB 15 2022 Hon. Carolyn Gold
Signature of judicial officer

This is a Court Order.

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

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EXHIBIT E

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

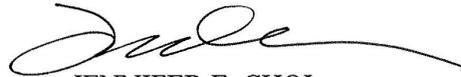
Page 2

Please alert us when the Incident Report and its contents have been taken down from Substack's platform. As stated previously, please also refrain from publishing this material in the future.

Thank you.

Very truly yours,

DAVID CHIU
City Attorney



JENNIFER E. CHOI
Deputy City Attorney

CR-410

Order to Seal Arrest and Related Records (Pen. Code, §§ 851.91, 851.92)

Clerk stamps date here when form is filed.

① Name: BLACKMAN DELWIN M
Last First Middle

Mailing address: 360 RITCH ST. #201
Street
SAN FRANCISCO CA 94109
City State Zip

FEB 1 / 2022

② The court finds that the petitioner is eligible for the following requested relief and makes the following order:

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:

Law enforcement agency report number: 210844280
Prosecuting agency report number: _____
Court case number: 21012755

Other: _____

Petitioner 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, except as follows:

- The sealed arrest may be pleaded and proved in any later prosecution of the petitioner for any other offense, and will have the same effect as if it had not been sealed.
- The sealing of an arrest under section 851.91 does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
- The sealing of an arrest under this section does not affect petitioner's authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.
- The sealing of an arrest under this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

- ③ The court **DENIES** the petition (*check one*):
- The petition does not meet the requirements listed in Penal Code section 851.91(b)(1).
 - Petitioner's arrest does not qualify under Penal Code section 851.91(a).
 - The court finds that sealing the arrest would not serve the interests of justice under Penal Code section 851.91(c)(2).
 - Other: _____

Date: FEB 15 2022

Hon. Carolyn Gold
Signature of judicial officer

This is a Court Order.

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

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EXHIBIT F

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

CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

JENNIFER CHOI
Deputy City Attorney

Direct Dial: (415) 554-3887
Email: jennifer.choi@sfcityattorney.org

October 3, 2024

Via U. S. Mail and Electronic Mail

Joshua C. Stokes
Berry, Silberberg, & Stokes
11600 Washington Place, Suite 202C
Los Angeles, CA 90066
"jstokes@berrysilberberg.com"

Re: Notice of Publication of Sealed Document

Dear Mr. Stokes:

It has come to our office's attention that San Francisco Police Department incident report number 210844280 ("Incident Report") as well as its contents have been published in multiple postings on Substack by your client Jack Poulson.¹ The Incident Report was previously sealed by court order. A copy of the court order sealing the report is attached.

Pursuant to California Penal Code section 851.92(c) and Substack's "Acceptable Use Policy," we expect that you will immediately remove the Incident Report and its contents from Substack and ensure that the index to postings no longer allows for the Incident Report to be viewed or downloaded. Please alert us when the documents and its contents have been taken down from your website. Finally, please refrain from publishing this material in the future.

Thank you.

Very truly yours,

DAVID CHIU
City Attorney

A handwritten signature in black ink, appearing to read "Jennifer Choi".

JENNIFER E. CHOI
Deputy City Attorney

Encl.

¹ See https://jackpoulson.substack.com/p/the-covert-gig-work-surveillance?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2. See also https://jackpoulson.substack.com/p/fraudulent-dmca-takedown-submitted?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2. See also https://jackpoulson.substack.com/p/ceo-of-gig-work-surveillance-firm?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2. See also https://jackpoulson.substack.com/p/california-based-covert-surveillance?utm_source=%2Fsearch%2Fmaury%2520blackman&utm_medium=reader2.

CR-410

Order to Seal Arrest and Related Records (Pen. Code, §§ 851.91, 851.92)

Clerk stamps date here when form is filed.

FEB 17 2022

① Name: BLACKMAN DELWIN M
Last First Middle

Mailing address: 360 RITCH ST. #201

SAN FRANCISCO CA 94109
City State Zip

② The court finds that the petitioner is eligible for the following requested relief and makes the following order:

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:

Law enforcement agency report number: 210844280

Prosecuting agency report number: _____

Court case number: 21012755

Other: _____

Petitioner 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, except as follows:

- The sealed arrest may be pleaded and proved in any later prosecution of the petitioner for any other offense, and will have the same effect as if it had not been sealed.
- The sealing of an arrest under section 851.91 does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.
- The sealing of an arrest under this section does not affect petitioner's authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.
- The sealing of an arrest under this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

- ③ The court **DENIES** the petition (*check one*):
- a. The petition does not meet the requirements listed in Penal Code section 851.91(b)(1).
 - b. Petitioner's arrest does not qualify under Penal Code section 851.91(a).
 - c. The court finds that sealing the arrest would not serve the interests of justice under Penal Code section 851.91(c)(2).
 - d. Other: _____

Date: FEB 15 2022

Hon. Carolyn Gold
Signature of judicial officer

This is a Court Order.

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

1 THE MAREK LAW FIRM, INC.
2 DAVID MAREK (CA Bar No. 290686)
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12 2001 Van Ness, Suite 300
13 San Francisco, CA 94109
14 (650) 463-9158

15 Attorneys for Plaintiff

16 **SUPERIOR COURT OF STATE OF CALIFORNIA**
17 **COUNTY OF SAN FRANCISCO**
18 **CIVIL UNLIMITED JURISDICTION**

19 MAURY BLACKMAN, an individual,

20 *Plaintiff,*

21 v.

22 SUBSTACK, INC., a Delaware
23 Corporation; AMAZON WEB SERVICES,
24 INC., a Delaware corporation; JACK
25 POULSON, an individual; TECH
26 INQUIRY, INC., a Delaware corporation;
27 DOES 1-25, inclusive,

28 *Defendants.*

Case No.: CGC-24-618681

**PLAINTIFF'S REPLY IN FURTHER
SUPPORT OF PLAINTIFF'S MOTION TO
SEAL**

DATE: January 6, 2025

TIME: 9:30 am

DEPT: 301

JUDGE: Hon. Rochelle C. East

Action Filed: October 3, 2024

Trial Date: None set

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

12/27/2024
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

1 Defendants veil the argument as an Opposition to Plaintiff’s Motion to Seal (the
2 “Opposition”), when in fact it is an impermissible, inappropriate, and untimely request that this Court
3 reverse Judge Gold’s February 17, 2022 Sealing Order pursuant to Penal Code section 851.91 (the
4 “Sealing Order”) Judge Gold’s Sealing Order that sealed an arrest that did not lead to conviction,
5 however, was only entered after consideration of “interests of justice,” California’s strong public
6 policy, and the applicable First Amendment interests. Further, in addition to the Sealing Order,
7 California has both criminal and civil statutes that prohibit the dissemination of this document and
8 related information. See Penal Code section 851.92(c); Labor Code section 432.7(g)(2), (3). This
9 court does not have appellate oversight over Judge Gold, and, even if it did, it would have no basis in
10 fact or law to entertain Defendants’ arguments to reverse the Sealing Order and unseal this record.
11 Unable to advance any legitimate bases for unsealing, Defendants now argue that the Sealed
12 Document became unsealed when they illegally disseminated it and refused to stop doing so. By this
13 theory, any party can reverse a sealing order by putting the sealed document on the internet, even
14 when a statute prohibits that exact conduct. No court has ever held this to be the case. For the
15 reasons set forth herein and all of the other papers before this Court, Plaintiff respectfully requests
16 that this Court issue an order that requires Defendants to file the Sealed Report under seal in
17 compliance with the Sealing Order and the applicable statutes.

16 **I. STATEMENT OF FACTS**

17 **A. Defendants’ Illegal Dissemination Of A Sealed Report**

18 This case arose from Defendants’ ongoing illegal dissemination of a document and related
19 information (the “Sealed Report”) that was sealed pursuant to a sealing order entered by San
20 Francisco Superior Court Judge Carolyn Gold dated February 17, 2022. (Complaint, ¶19; see
21 Declaration of Plaintiff In Further Support of Motion to Seal (“Plaintiff Decl.”), ¶12, Exh. A) Judge
22 Gold considered the record before that court, interests of justice, and First Amendment interests
23 before entering the Sealing Order. (Plaintiff Decl., ¶¶10, 11) In fact, to protect the privacy of
24 individuals arrested without a conviction and avoid the stigmatization of an arrest, the arrest was
25 “deemed the arrest not to have occurred.” See Sealing Order; Penal Code section 851.91(e). In
26 addition to the Sealing Order, California has also criminalized the unauthorized dissemination of the
27 Sealed Report under Penal Code section 851.92(c). See also Labor Code section 432.7(g).
28

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

1 **B. Defendant’s Arrest Was Never Newsworthy**

2 This matter was never newsworthy. In December 2021, after Plaintiff’s encounter with the
3 police, the matter was public, yet no media reported on these events, even though at that time
4 Plaintiff, the CEO of a private technology company, was petitioning the Court and making the
5 requisite showing under Cal. Pen. Code §851.91 to seal the report. (Plaintiff Decl., ¶¶13-16)
6 (Declaration of Jack Poulson In Support of Special Motion to Strike (“Poulson Decl.”), Exhs. D, I)
7 When Judge Gold entered the Sealing Order on February 17, 2022, no media reported on the events,
8 and no third parties challenged the Sealing Order, although they were permitted to do so pursuant to
9 Rules of Court, Rule 2.551(h)(2). (Plaintiff Decl., ¶13-16) Even in September 2023, when Poulson
10 disseminated the Sealed Report and described its contents in a false, unflattering way, failing to
11 indicate the disposition of the arrest, no media reported on Poulson’s blog posts. (Poulson Decl., Exh.
12 C) (Plaintiff Decl., ¶¶13-16) In December 2023, when Poulson wrote in his blog post that Plaintiff’s
13 employment was terminated because of the Sealed Report (without indicating the disposition of the
14 arrest), no media reported on either the termination or that Poulson’s dissemination of the Sealed
15 Report and its contents caused the termination. (Poulson Decl., Exh. D) (Plaintiff Decl., ¶¶13-16) In
16 fact, between December 2021 and October 3, 2024 (when this Complaint was filed), no one other
17 than Defendants disseminated the Sealed Report or reported on it. (*Id.*) Only after the Complaint was
18 filed did the San Francisco Chronicle first write a story on these issues that focused on the litigation’s
19 legal issues. (Plaintiff Decl., ¶60)

18 **C. Misuse Of The Sealed Report In The Santa Clara County Litigation**

19 In 2019, Premise Data, Plaintiff’s employer at the time, commenced a civil lawsuit in Santa
20 Clara County Superior Court (the “Santa Clara County Litigation”) against former employees
21 alleging breach of contract and torts aimed at harming the company. (Plaintiff Decl., ¶23) No media
22 other than Defendants reported on this civil litigation.¹ (Plaintiff Decl., ¶¶13-16)

23
24
25 ¹Poulson conceded the public was not interested in Premise Data even when journalist Byron Tau
26 covered the company. (Poulson Decl., Exh. A, p. 4/5 “there appears to be little appetite in the U.S.
27 media to interrogate the roles of Premise Data and Two Six Technologies in ongoing U.S.
28 information operations.”; Exh I p. 3/10 “Despite journalist Byron Tau using primary sources to
expose the California-based, gig-work information gathering company Premise Data 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.”; Exh. I, p. 8/10 “Despite the lack of public appetite,
Tau dedicated a chapter to Premise in his recent book”).

1 One of the attorneys representing a former Premise Data employee, Newton Oldfather—who
2 had spent a decade as a lawyer for San Francisco and the Department of Police Accountability before
3 entering private practice—obtained the Sealed Report in March 2022 without authorization. (Plaintiff
4 Decl., Exh., ¶¶24-25, Exh. B) During the Santa Clara County Litigation, the former employees did
5 not produce the Sealed Report in discovery. (Plaintiff Decl., ¶¶33, 34) Instead, Oldfather concealed
6 his possession of the Sealed Report for over 18 months (*id.*), only to weaponize it by disseminating it
7 through Poulson on September 14, 2023, as the trial date approached, and then sought discovery
8 concerning the Sealed Report, claiming it was related to the Santa Clara County Litigation. (Poulson
9 Decl., Exh. C) The former employees used Defendants’ illegal dissemination of the Sealed Report to
10 pressure Premise Data into a more favorable settlement for his client. (Poulson Decl., Exhs. H, I)

11 Poulson, acting to further this scheme, repeatedly disseminated the Sealed Report and his
12 description of the events, disregarding both Plaintiff’s privacy and that of the woman involved.²
13 (Poulson Decl., Exh. C, D, E, H, I, J) Poulson later gloated that his actions had successfully caused
14 Plaintiff’s termination in December 2023 and forced Premise Data to settle the lawsuit in January
15 2024. (Poulson Decl., Exhs. D, H, I) Thus, far from being a matter of public significance, the
16 dissemination of the Sealed Report was a litigation tactic by a private attorney who used Poulson to
17 leverage private, sealed information to get a better settlement for his client in a civil litigation.

18 **D. Plaintiff’s Efforts To Remove The Sealed Report**

19 Since Plaintiff learned Defendants were disseminating the Sealed Report, he made repeated
20 efforts to get it taken down. (Plaintiff Decl., ¶¶39-59) He reached out to Defendants, and sought legal
21 protection in the Santa Clara County Litigation. (*Id.*) Between September 14, 2023, and October 3,
22 2024, Plaintiff and the San Francisco City Attorney made repeated requests to Defendants to remove
23 the Sealed Report and related information. (Plaintiff Decl., ¶¶53, 57) Defendants refused these
24 requests, and continued to disseminate more information related to the Sealed Report, even long after
25 Plaintiff’s employment terminated. (Plaintiff Decl., ¶58) Plaintiff, to seek enforcement of the Sealing
26 Order and protect his privacy interests, commenced this litigation.

27 ² While Defendants argued in their anti-SLAPP motions that Poulson’s dissemination of the Sealed
28 Report was part of the #MeToo movement, in fact Poulson included personal identifying information
of the woman, as well as Plaintiff’s name and address. Poulson disseminated the woman’s age,
birthdate, address, hair color, eye color, height, and relationship with Plaintiff. (Poulson Decl., Exh.
C) He also seemed critical of her for being in a relationship with an older man and suggested that she
lied to the police. (*Id.*)

1 **II. ARGUMENT**

2 **1. Defendants Presented No Evidence To Support Reversal Of The Sealing Order.**

3 Between December 2021 (when the incident occurred) and February 17, 2022, Judge Gold
4 was required to and did consider the record presented to the Court and weigh the interests of justice
5 and of the First Amendment before entering the Sealing Order pursuant to Penal Code section 851.91.
6 California enacted Rules 2.550 and 2.551 to “provide a standard and procedures for courts to use
7 when a request is made to seal a record.” The standard is based on *NBC Subsidiary (KNBC-TV), Inc.*
8 *v. Superior Court*, 20 Cal.4th 1178, 1208-1209, fn. 25, 1217-1218 (1999) (requiring an overriding
9 interest before closing a hearing or sealing a transcript in recognition of the First Amendment right of
10 access to documents used at trial or as a basis of both civil and criminal adjudications). These rules
11 “recognize the First Amendment right of access to documents used at trial or as a basis of
12 adjudication.” *See* R.2.550 Advisory Committee Comment. Yet, under appropriate circumstances,
13 various statutory privileges, trade secrets, and privacy interests may constitute “overriding interests.”
14 (*Id.*) Thus, California law only permits a Court to seal documents after considering the First
15 Amendment interests. Defendants do not and cannot – and should not be permitted to – intimate
16 without any evidence that Judge Gold was derelict of her duties in issuing the Sealing Order.

17 The parameters, authority, and procedures to seek the sealing of arrest and related records
18 when an arrest did not result in a conviction are explicitly set forth in the Penal Code. Pen. Code
19 §§851.91; 851.92.³ Here, Judge Gold, having considered the evidence presented, dismissed the
20 charges against Plaintiff and upon Plaintiff’s successful sealing petition to the Court, sealed the
21 records having considered both the First Amendment interests and interests of justice. Thus, Judge
22 Gold already determined that the Sealed Report and related information should be sealed.⁴ *See*

22 ³ The purpose of Sections 851.91 and 851.92 was to protect the privacy interests of individuals
23 arrested without being convicted. “The intent [of Section 851.91] was to address the ‘serious
24 consequences of arrest records and shortcomings of existing law in addressing those consequences.’
25 (Assem. Com. on Judiciary, Analysis of SB 393 as amended June 28, 2017, p. 9, boldface & italics
26 omitted.) The Legislature was aware that an arrest carries with it particularly negative connotations
27 more negative than those that flow from even interactions with law enforcement which result in a
28 temporary investigative detention.” *People v. Hadim*, 82 Cal. App. 5th Supp. 39, 47, 298 Cal. Rptr.
3d 639, 645–46 (Cal. App. Dep’t Super. Ct. 2022), citing *Loder v. Municipal Court for the San Diego
Judicial Dist.* (1976) 17 Cal.3d 859, 868–877.

27 ⁴ In *Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp.*, the Ninth Circuit similarly recognized that
28 “[w]hen a court grants a protective order for information produced during discovery, it already has
determined that ‘good cause’ exists to protect this information from being disclosed to the public by

1 *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984) (the trial court has “broad discretion ... to
2 decide when a protective order is appropriate and what degree of protection is required.”).
3 Accordingly, there is no basis to belatedly attack Judge Gold’s assessment and determination in this
4 matter. Judge Gold had access to the underlying issues that allowed that Court to enter the Sealing
5 Order, whereas none of those issues have been presented to this Court. Thus, Defendants’ effort to
6 attack the Sealing Order in this improper fashion must be rejected.

7 Moreover, the Sealing Order is consistent with California’s strong public policy that protects
8 the privacy interests of individuals who are arrested without conviction. *See Loder v Municipal*
9 *Court*, 17 Cal.3d 859, 868 (1976) (recognizing arrestee has a “legitimate concern to protect himself
10 from improper use of his record” that California addressed “by significant legislative and executive
11 action” designed to negate the adverse effects on an individual’s life of the improper use of an arrest
12 record; and likening a sealed arrest report to “contraband” that is illegal to even possess); Assembly
13 Committee on Judiciary (recognizing the “serious consequence of an arrest record” and need for a
14 more effective mechanism to properly seal arrests); Labor Code §§ 432.7(g)(2), (3) ⁵ (prohibiting the
15 dissemination, receipt, and possession of arrest records that did not lead to conviction). California
16 courts have recognized that “dissemination of arrest records that contain nonconviction data” is a
17 privacy interest protected by the California Constitution. *Central Valley Ch. 7th Sep Foundation, Inc.*
18 *v. Younger*, 214 Cal.App.3d 145, 161-2 (1989). The U.S. Supreme Court has also “recognized the
19 privacy interest of uncharged or acquitted targets”. *Illinois v. Abbott & Assocs., Inc.*, 460 U.S. 557,
20 566–67 n. 11 (1983) (“grand jury secrecy has traditionally been invoked to justify the limited
21 procedural safeguards available to witnesses and persons under investigation”). The sections of the
22 Penal Code and Labor Code are consistent with this recognition that an individual has a compelling
23 privacy interest in preventing the disclosure of allegations without conviction.

24 Where a document has already been sealed pursuant to a Court Order, as here, Rule 2.551(h)
25 recognizes a mechanism to make a “petition to unseal records.” According to Rule 2.551(h)((2), “[a]

26 _____
27 balancing the needs for discovery against the need for confidentiality.” 307 F.3d 1206, 1213 (9th Cir.
28 2002). Applying the exact same reasoning, this Court must recognize that Judge Gold’s Sealing Order
establishes that the court already determined that the Sealed Report and related information should be
sealed.

⁵ Labor Code sections 432.7(g)(3) is not limited to employers or actions affecting employment. While
(g)(1) is limited to law enforcement employees who act with an intent to affect employment, (g)(2)
prohibits “any other person” from disclosing the information for any reason whatsoever and (g)(3)
prohibits an unauthorized person from knowingly receiving or possessing the information.

1 party or member of the public may move, apply, or petition, or the court on its own motion may
2 move, to unseal a record.” Defendants have never made a petition to unseal under this Rule.⁶

3 Further, Defendants have not advanced any legitimate arguments to attack the trial court’s
4 decision to seal the record. *See Mary R. v. B & R Corp.*, 149 Cal. App. 3d 308, 315, (1983) (sealing
5 order can be attacked on fraud, collusion, mistake, or lack of jurisdiction). Defendants have not
6 argued the occurrence of any of these, or any other, legitimate reasons to attack the Sealing Order.

7 This Court does not have appellate authority to overrule the Sealing Order, nor does it possess
8 the record that was before Judge Gold. However, if the Sealing Order was appealed, the appellate
9 court would have reviewed it “under the abuse of discretion standard, and any factual determinations
10 made in connection with that decision will be upheld if they are supported by substantial evidence.”
11 *Oiye v. Fox*, 211 Cal.App.4th 1036, 1067 (2012). Thus, Defendants have presented no argument, let
12 alone evidence at all, to support a finding that Judge Gold’s decision should be reversed, even if this
13 Court had the power to hear such an appeal.

2. The Sealed Report Is Required To Be Kept Confidential By Law.

14 Because the Sealed Report is required to be confidential bylaw, the heightened standard for
15 sealing documents set forth in Rule 2.550(d) does not apply in this instance. See Cal. Rules of Court,
16 Rule 2.550(a)(2). Accordingly, no one has a right to access the Sealed Report.

3. The Sealing Order Cannot Be Reversed Because Of Defendants Illegal Dissemination.

17 Ignoring wholly the legal standard required to petition to unseal a document, Defendants
18 argue that this Court should reverse the Sealing Order because Defendants’ illegal and unlawful
19 conduct has resulted in publicizing the Sealed Document and related information. (Opposition, pp. 8-
20 11) The doctrine of unclean hands prohibits such a result. A party cannot violate the Sealing Order,
21 the Penal Code, and the Labor Law by continuing to disseminate a sealed document, and then claim
22

23 ⁶ Although Defendants did not make such a petition, Defendants cited to cases where parties
24 requested that the court unseal sealed records. In *Kamakan v. City and County of Honolulu*, 447 F.3d
25 1172 (9th Cir. 2006), a newspaper moved to intervene in an action to seek “an order to release
26 documents where were sealed under protective order.” In that case, unlike the case before this Court,
27 the newspaper made substantive arguments that the order restricting access to the documents was
28 made in error. *Id.* Similarly, *In re Copley Press*, 518 F.3d. 1022 (9th Cir. 2008), a media intervenor
moved for an order to unseal documents. In that case, the media intervenor made substantive
arguments that the court’s decision to seal documents was made in error. *Id.* Here, Defendants
elected not to petition the court to unseal the Sealed Report after the Sealing Order and cannot do so
in this fashion.

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

1 the document is no longer sealed as a result of its illegal activities. *Farahani v. San Diego Cmty.*
2 *Coll. Dist.*, 175 Cal. App. 4th 1486, 1495–96 (2009) (“The doctrine of unclean hands rests on the
3 maxim that ‘he who comes into equity must come with clean hands.’ It ... closes the doors of a court
4 of equity to one tainted with inequity or bad faith relative to the matter in which he seeks
5 relief, however improper may have been the behavior of the defendant.”) (internal citations omitted);
6 *see also In re Tiffany G.*, 29 Cal.App.4th 443, 451 (1994) (holding that allowing an individual with
7 access to confidential documents to disseminate them to anyone she pleases “would stand the
8 confidentiality principle on its head, and disserve rather than support the principle of
9 confidentiality.”). Indeed, Defendants’ argument yields an absurd outcome that would undermine
and possibly eviscerate the Court’s power to seal documents.⁷

10 No case cited by Defendants stands for the proposition that the illegal dissemination of a
11 document becomes legal by Defendants’ illegal conduct. Rather, Defendants cite to inapposite cases
12 where a party made public a private document by filing a lawsuit. *See Estate of Hearst*, 67
13 Cal.App.3d 777, 783-4 (1977) (holding the parties, who sought the sealing order, lost protection when
14 they went to court on a different matter); *Green v. Uccelli*, 207 Cal.App.3d 1112, 1119-20 (1989)
15 (holding that the party to a divorce proceeding should have realized that seeking a writ of mandate
16 related to the dissolution of his marriage would result in records from the dissolution becoming
17 public); *Register Div. of Freedom Newspapers v. County of Orange*, 158 Cal.App.3d 893, 902-3
18 (1984) (party waived privacy of documents when the party brought an action regarding the private
19 documents). Here, the document is only public because Defendants, as of September 14, 2023 and
20 till the present, are illegally disseminating it. Thus, unlike any case cited by Defendants, the Sealed
21 Report and related information are not public because of Plaintiff’s lawsuit; he brought the lawsuit
because of Defendants’ ongoing illegal and unlawful dissemination.

22 4. There Is No Presumption Of Access To A Sealed Document.

23 Defendants incorrectly argue that there is a presumption of access to the Sealed Report.
24 (Opposition, pp. 7-8) No such presumption exists when the documents have already been sealed. *See*
25 *e.g., Phillips ex rel. Ests. of Byrd*, 307 F.3d at 1213.

26 ⁷ Defendants failed to recognize that “the First Amendment does not guarantee the press a
27 constitutional right of special access to information not available to the public generally”. *Houchins v.*
28 *KQED, Inc.*, 438 U.S. 1, 11 (1978), citing *Branzburg v. Hayes*, 408 U.S. 665, 64 (1972). Defendants
had no right to access the Sealed Report and therefore their illegal dissemination of the Sealed Report
cannot possibly have the effect of unsealing the Sealed Report.

1 **5. Defendants Cannot Distinguish *In re M.T.***

2 Defendants cannot distinguish *In re M.T.* 106 Cal.App.5th 322 (2024). Defendants argue that
3 Plaintiff, unlike the plaintiff in *M.T.*, is “is not a private figure.”⁸ (Opposition, p. 11) The U.S.
4 Supreme Court defined two classes of public figures. *Gertz v. Robert Welch, Inc.*, 418 U.S. at p. 351.
5 The first is the “all purpose” public figure who has “achiev[ed] such pervasive fame or notoriety that
6 he becomes a public figure for all purposes and in all contexts.” *Id.* Plaintiff plainly does not fall into
7 this category. The second category is that of the “limited purpose” public figure, an individual who
8 “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a
9 public figure for a limited range of issues.” *Id.* Unlike the “all purpose” public figure, the “limited
10 purpose” public figure loses certain protection for his reputation only to the extent that the allegedly
11 defamatory communication relates to his role in a public controversy.” *Id.* Plaintiff has not, and
12 Defendants cannot claim that he has, voluntarily injected himself into these issues.

13 Moreover, not only was Plaintiff not a public person, but – more importantly – the Sealed
14 Document and related information were neither “newsworthy” nor “matters of public significance.”
15 *See Bartnicki v. Vopper*, 532 U.S. 514, 528 (2001). The undisputed record in this case belies any
16 suggestion that the events at issue were newsworthy because at no time prior to the filing of the
17 lawsuit, even when the record was public and before the charges were dismissed, did any media other
18 than Defendants report on these events. Compare to *Bartnicki*, 532 U.S. at 518 (involving publication
19 of illegally recorded conversation where union President made threatening comments to public
20 School Board President during a highly publicized public union negotiation to blow up the Board
21 members’ houses, leading the Supreme Court to conclude the illegally recorded conversation would
22 have been newsworthy had it taken place in public); *New York Times Co. v. United States*, 403 U.S.
23 713 (1971) (upholding the right of the press to publish “information of great public concern” like the
24 Pentagon Papers⁹). Moreover, Defendants cannot establish that these events are a “matter of public

24 ⁸ In Defendants’ anti-SLAPP Opposition, cited to in the Opposition, Defendants rely on *Sipple v.*
25 *Foundation for National Progress*, 71 Cal.App.4th 216 (1999) to argue that Plaintiff is a “public
26 person.” (Poulson Anti-SLAPP Motion, p. 16) In that case, however, Sipple was a high-profile
27 consultant to various nationally known elected official, and he injected himself into the issue of
28 domestic violence when he put his views on domestic violence in the public record. *Id.* at 238.
Defendants do not and cannot claim that Plaintiff worked in a high profile role as did Sipple or that
Plaintiff’s role has any connection to the issue of domestic violence.

⁹ Poulson called a comparison of his dissemination of the Sealed Report to the Pentagon Papers “an
exaggerated claim.” (Poulson Decl., Exh I, p. 4/10)

1 significance”. *Bartnicki*, 532 U.S. at 518. A matter of public significance is “speech on public issues
2 [that] occupies the highest rung of the hierarchy of First Amendment values.” *Dun & Bradstreet v.*
3 *Greenmoss Builders*, 472 U.S. 749, 758–759 (1985). The events here occurred nearly two years
4 before Poulson disseminated his blog post, concerned two non-public figures, did not lead to charges
5 or a conviction, and were deemed not to have occurred. Rather, Poulson’s dissemination of the
6 Sealed Report was part of a tactic by litigation counsel in the Santa Clara County Litigation to
7 pressure Premise Data to settle a civil litigation.

8 **6. Defendants’ Argument Regarding Delay Is Nonsensical.**

9 Defendants argue that if the Sealed Report remained sealed that it would “cause serious
10 harm on the right of press to obtain and report on exhibits containing Plaintiff’s arrest report”.
11 (Opposition, p. 11) First, as discussed herein, the document was already sealed by Judge Gold’s
12 Sealing Order dated February 16, 2022, and there has been no evidence presented to justify reversing
13 this decision. Also as discussed herein, Plaintiff and his non-arrest was not newsworthy, and
14 therefore no one reported on either the arrest or the Sealing Order or challenged the Sealing Order.
15 Thus, there is no possible delay that could result from this Court maintaining the status quo that was
16 effectuated by Judge Gold’s Sealing Order entered on February 17, 2022.

17 **7. Prior Restraint Is Permitted When The Conduct Is Illegal.**

18 To the extent Defendants’ argument that retaining the Sealing Order constitutes prior restraint,
19 that argument must be rejected. The California Supreme Court has recognized that [a]n injunction
20 may properly issue to prohibit the repetition or continuation of speech that the court has found to be
21 unlawful. Such an injunction does not constitute an invalid prior restraint of speech.” The Rutter
22 Group, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 9(II)-A [9:708], citing *Aguilar v. Avis A Car*
23 *System, Inc.*, 21 Cal.4th 121, 140-142 (1999). The *Aguilar* Court found that “once a court has found
24 that a specific pattern of speech is unlawful, an injunctive order prohibiting the repetition,
25 perpetuation, or continuation of that practice is not a prior restraint of speech.” 21 Cal.4th at 140. See
26 also, *In re Tiffany G.*, 29 Cal. App. 4th at 452–53 (rejecting argument of invalid prior restraint or First
27 Amendment issues when court prohibited parties from disseminating confidential documents that
28 were sealed by both court order and statute that prohibited dissemination). That court held that even
if the recipients legally received the confidential documents, prohibiting their dissemination was not
an invalid prior restraint.

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III. CONCLUSION

For the reasons stated herein and in all of the other moving papers, Plaintiff's Declaration submitted hereto, and all other documents in this record, Plaintiff respectfully requests that this Court grant Plaintiff's motion to seal.

Dated: December 27, 2024

Respectfully Submitted,
THE MAREK LAW FIRM
By: /s/ David Marek
DAVID MAREK
Attorneys for Plaintiff

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

1 **PROOF OF SERVICE**

2 I, Christina Yanacek, declare as follows:

3 I am over eighteen years of age and not a party to the within action. I am employed in San
4 Francisco County, California. My business address is 2001 Van Ness Avenue, Suite 300, San
5 Francisco, CA 94109.

6 On the date set forth below, I served a copy of the following:

7 **PLAINTIFF’S REPLY IN FURTHER SUPPORT OF PLAINTIFF’S MOTION TO SEAL**

8 on the parties named below as follows:

- 9 (X) **(BY EMAIL)** – by electronically mailing a true and correct copy through BERMAN
10 NORTH LLP’s electronic mail system to the email address(es) set forth below, or as
11 stated in the attached service list per the parties’ agreement.
- 12 (X) **(BY E-SERVICE)** – by electronically serving the document(s) listed above and on the
13 Transaction Receipt, which were e-filed with the San Francisco County Superior Court
14 and e-served via the One Legal’s electronic filing system, to the email address(es) of
15 the party(ies) designated below in accordance with the San Francisco County Superior
16 Court Local Rules.

17 I served the above document(s) on the following person(s):

18 **SEE ATTACHED SERVICE LIST**

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct and that this declaration was executed on December 27, 2024, at Long Beach,
21 California.

22 
23 _____
24 Christina Yanacek
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<p>Susan E. Saeger The Office of Susan E. Saeger Phone: (310) 890-8991 Email: susanseager1999@gmail.com</p> <p>Counsel for Defendant Tech Inquiry, Inc.</p>	<p>David Greene Victoria Noble Electronic Frontier Foundation 815 Eddy Street San Francisco, CA 94109 Tel.: (415) 436-9333 Fax: (415) 436-9993 Email: davidg@eff.org; tori@eff.org; cc: victoria@eff.org</p> <p>Counsel for Jack Poulson</p>

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FILED
Superior Court of California
County of San Francisco
JAN 07 2025
CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

7 Attorneys for Defendant Jack Poulson

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

11 JOHN DOE, an individual,
12
13 Plaintiff,
14
15 v.
16
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.

Case No.: CGC-24-618681
JHO
~~PROPOSED~~ ORDER GRANTING
POULSON'S MOTION TO PARTIALLY
SEAL RECORD
DATE: January 6, 2025
TIME: 9:30 a.m.
DEPT: 301
Judge: Hon. Joseph M. Quinn
Action Filed: October 3, 2024
Trial Date:

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

1 Having considered the arguments of the parties, the Court finds, as follows:

2 Defendant Poulson’s motion to seal pursuant to CRC 2.550 is GRANTED. Poulson seeks to seal
3 references to the identity of the complaining witness in a Police Incident Report.

4 The Court may order a document to be sealed, in whole or in part, “only if it expressly finds facts
5 that establish (1) There exists an overriding that overcomes the right of public access to the record; (2)
6 The overriding interest supports sealing the record; (3) A substantial probability exists that the interest
7 will be prejudiced if the record is not sealed; (4) The proposed sealing order is narrowly tailored; and (5)
8 No less restrictive means exist to achieve the overriding interest.” (Cal. Rule of Court 2.550(d).) Courts
9 have recognized the interests in protecting victims and witnesses from public disclosure, especially in
10 cases like domestic violence where such persons are typically disincentivized from making reports and/or
11 cooperating with investigators, police officers or prosecutors. (See *People v. Jackson*, 110 Cal. App. 4th
12 280, 289-90 (2003).)

13 Here, the record supports a finding that the interest in protecting the identity of the complaining
14 witness substantially overrides the public’s interest in disclosure. The complaining witness did not bring
15 any attention on themselves (the incident was reported by a third party), they seek no relief in this
16 proceeding and they have never held themselves out as a public figure with respect to this incident or
17 otherwise. They are part of this case only because they were the victim an incident reported by another.
18 The complaining witness’s overriding interest in privacy supports sealing information that would
19 otherwise make public their identity. The incident type is one in which complaining witness anonymity is
20 generally respected. To date, the complaining witness’s identity has not been reported in the media or
21 otherwise publicly disclosed.

22 A substantial probability exists that privacy interest of the complaining witness will be prejudiced
23 if their identifying information is not redacted from the public court filing. As noted above, Plaintiff’s
24 lawsuit has drawn significant media attention but, unlike Plaintiff, the identity of the complaining witness
25 has not yet been publicly reported. The sealing request is narrowly tailored to maintain the complaining
26 witness’s identity, while not substantially prejudicing the public’s right of access.

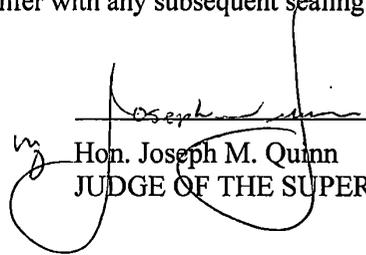
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Document received by the CA 1st District Court of Appeal.

1 Exhibit F to the Declaration of Jack Poulson in Support of Jack Poulson's Special Motion to Strike
2 shall be partially sealed and filed in redacted form. The redacted version of Exhibit F that will be included
3 in the court's public file will be identical to Exhibit G of the same declaration and which has been lodged
4 with this Court.

5 The parties are ordered to meet and confer in person or by videoconference before filing any
6 papers in which sealing may be at issue. The parties must make a good faith effort to coordinate and
7 organize their filings and sealing motions sensibly. Four sealing motions at this time is
8 demonstrably not sensible. At least two of these motions could have been avoided by meet and confer.
9 Additionally, the filings would be in better shape if meet and confer had occurred. The parties must file
10 declarations regarding their meet and confer with any subsequent sealing motion. ✓

11
12 DATED: Jan 7, 2025



Hon. Joseph M. Quinn
JUDGE OF THE SUPERIOR COURT

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FILED
San Francisco County Superior Court

JAN 07 2025
CLERK OF THE COURT
By: Woodman
Deputy Clerk

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SAN FRANCISCO

18 MAURY BLACKMAN, an individual,
19
20 Plaintiff,

21 v.

22 SUBSTACK, INC., a Delaware
23 Corporation; AMAZON WEB SERVICES,
24 INC., a Delaware Corporation; JACK
25 POULSON, an individual; TECH
26 INQUIRY, INC., a Delaware corporation;
27 DOES 1-25, inclusive,
28 Defendants.

Case No.: CGC-24-618681

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO SEAL
DOCUMENTS**

DATE: January 6, 2025
TIME: 9:30 a.m.
DEPT: 301

Judge: Hon. Joseph M. Quinn
Action Filed: October 3, 2024

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

1 Having considered the arguments of the parties, the Court finds, as follows:

2 Plaintiff Maury Blackman’s motion to seal is GRANTED. The court notes Plaintiff’s motion to
3 seal is untimely under CCP Section 1005. Without objecting as to timeliness, Defendants opposed the
4 motion. The court, thus, will consider the motion on its merits. Plaintiff seeks to seal five exhibits, each
5 of which is a copy of a Police Incident Report. The Incident Report has already been sealed by order of
6 Judge Gold. “A record filed publicly in the court must not disclose material contained in a record that is
7 sealed[.]” (CRC Rule 2.551(c).) Here, the Incident Report is sealed, thus it and material contained in it
8 cannot be publicly disclosed in any court filing. Any party seeking to publicly disclose material from the
9 Incident Report must first obtain an unsealing order from Judge Gold. (*Church of Scientology v.*
10 *Armstrong* (1991) Cal.App.3d 1060, 1069 [“The power of one judge to vacate an order duly made by
11 another judge is limited.”].)

12 Defendants argue the court should undertake an independent constitutional analysis without
13 regard to the California Rules of Court. One bench officer cannot overrule another bench officer of equal
14 stature. If Defendants want to undo Judge Gold’s order—whether on constitutional, statutory or common
15 law grounds—they must address their request to Judge Gold.

16 Citing *Hurvitz v. Hoefflin* (2000) Cal.App.4th 1232, Defendants contend the court cannot now
17 seal the Incident Report because it “is and remains publicly available on the Substack website.” *Hurvitz*
18 is inapposite. There, the trial court issued a sealing order only after the contents of the sealed documents
19 were already published in the media. The appellate court reversed because it found that the order was an
20 unconstitutional prior restraint and, more importantly, because the records were “part of the public record
21 for one day, during which time it was widely reported in the media, [] it makes little sense to seal the
22 information after the fact.” (*Id.* at 1247.) Here, Judge Gold’s sealing order has been in place since 2022,
23 and there’s no substantial evidence that information from the Incident Report was already in the public
24 domain prior to her order. Judge Gold’s sealing order remains in force, this court cannot undo her order,
25 and nothing in *Hurvitz* suggests otherwise. If Defendants believe changed circumstances justify vacatur
26 of the order, they must address their argument to Judge Gold.

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

1 Nor would an order granting Plaintiff's motion constitute an unconstitutional prior restraint.
2 Plaintiff here is not asking for the removal of a past publication nor the prevention of a future one. Instead,
3 Plaintiff wants any submitted copies of the Incident Report filed under seal consistent with Judge Gold's
4 order. It would be impossible to square any denial of the motion with Judge Gold's existing order, which
5 only Judge Gold or a higher court can change.

6 The court seals

7 Exhibit 9 of the Baskin Declaration, filed provisionally under seal Nov. 27, 2024;

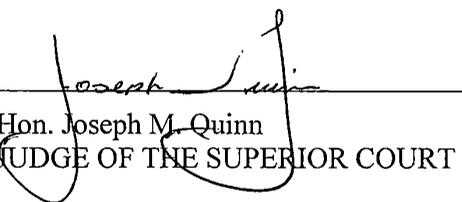
8 Exhibit 2 of the Burns Declaration, filed provisionally under seal on Dec. 6, 2024;

9 Exhibits F & G of the Poulson Declaration, filed provisionally under seal on Dec. 6, 2024;

10 Exhibit I of the Baskin Declaration, filed provisionally under seal on Dec. 6, 2024.

11 The parties are ordered to meet and confer in person or by videoconference before filing any
12 papers in which sealing may be at issue. The parties must make a good faith effort to coordinate and
13 organize their filings and sealing motions sensibly. Four sealing motions at this time is demonstrably not
14 sensible. At least two of these motions could have been avoided by meet and confer. Additionally, the
15 filings would be in better shape if meet and confer had occurred. The parties must file declarations
16 regarding their meet and confer with any subsequent sealing motion.

17
18 DATED: Jan 7, 2025


Hon. Joseph M. Quinn
JUDGE OF THE SUPERIOR COURT

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

CGC-24-618681
ET AL

JOHN DOE VS. SUBSTACK, INC., A DELAWARE CORPORATION

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on January 07, 2025 I served the foregoing ORDER GRANTING PLAINTIFF'S MOTION TO SEAL DOCUMENTS on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: Januarv 07. 2025 Bv: M. GOODMAN 

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11 *Attorneys for Plaintiff*

FILED
Superior Court of California
County of San Francisco

JAN 07 2025

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

12 MAURY BLACKMAN, an individual,

13 Plaintiff,

14 v.

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

21 Defendants.

Case No.: CGC-24-618681

~~PROPOSED~~ ORDER DENYING
DEFENDANT SUBSTACK, INC.'s MOTION
TO SEAL

DATE: January 6, 2025
TIME: 9:30 a.m.
DEPT: 301

Judge: Hon. Joseph M. Quinn
Action Filed: October 3, 2024

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

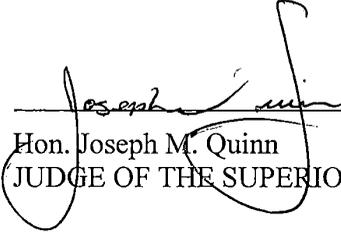
1 Having considered the arguments of the parties, the Court finds, as follows:

2 Defendants Substack, Inc. Amazon Web Services, Inc. and Tech Inquiry, Inc's motions to seal are
3 DENIED. From their reply briefs, the court understands Defendants have abandoned their motions.

4 The parties are ordered to meet and confer in person or by videoconference before filing any
5 papers in which sealing may be at issue. The parties must make a good faith effort to coordinate and
6 organize their filings and sealing motions sensibly. Four sealing motions at this time is demonstrably not
7 sensible. At least two of these motions could have been avoided by meet and confer. Additionally, the
8 filings would be in better shape if meet and confer had occurred. The parties must file declarations
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DATED: Jan 7, 2025



Hon. Joseph M. Quinn
JUDGE OF THE SUPERIOR COURT

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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
01/10/2025
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

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

11 MAURY BLACKMAN, an individual,
12
13 Plaintiff,

14 v.

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

18 Defendants.
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20
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Case No.: CGC-24-618681

**DEFENDANT TECH INQUIRY, INC.'S
AMENDED MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF ITS
SPECIAL MOTION TO STRIKE
PLAINTIFF'S COMPLAINT**

DATE: February 4, 2025
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1 Defendant Tech Inquiry, Inc. respectfully submits this Amended Memorandum of Points
2 and Authorities in support of its Special Motion to Strike Plaintiff Maury Blackman’s Complaint.

3 An earlier version of this Memorandum of Points and Authorities was filed on December 9,
4 2024. This amended version amends the description of the Declaration of Jack Poulson on page 8,
5 lines 4-6; updates the hearing date and department; adds Plaintiff’s true name in the caption after
6 the court signed Plaintiff’s Amendment to Complaint inserting his true name in the caption on
7 December 20, 2024; and fixes some pagination and formatting issues.

8 DATED: January 10, 2025

LAW OFFICE OF SUSAN E. SEAGER

9 /s/ Susan E. Seager

10 Susan E. Seager

11 *Attorneys for Defendant Tech Inquiry, Inc.*

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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(c), 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(e)(2), (e)(3), and
14 (e)(4) of the anti-SLAPP statute. Plaintiff cannot meet his burden of showing a probability of
15 prevailing on any of his claims, as required by the anti-SLAPP statute. Plaintiff’s claims are barred
16 by § 230 of the Communications Decency Act, the absolute California fair report privilege, and the
17 First 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 Inquiry**
3 **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. § 425.16(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
16 728 (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
19 82, 88 (2002) (citations omitted). A defendant meets this burden simply “by demonstrating that the
20 act 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
13 (*Ketchum v. Moses*, 24 Cal. 4th 1122 (2001)); disclosure of confidential information (*Fox*
14 *Searchlight Pictures, Inc. v. Paladino*, 89 Cal. App 4th 294 (2001)); interference with prospective
15 economic advantage (*Sipple v. Found. for Nat. Progress*, 71 Cal. App. 4th 226 (1999)); invasion of
16 privacy (*Seelig v. Infinity Broadcasting Corp.*, 97 Cal. App. 4th 798 (2002)); publication of private
17 facts and intrusion (*Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337 (2007)); false light (*Tamkin*
18 *v. CBS Broadcasting, Inc.*, 193 Cal. App. 4th 133 (2011)); negligence (*Birkner v. Lam*, 156 Cal.
19 App. 4th 275 (2007)); and various statutory violations (*Blue v. Office of Inspector General*, 23 Cal.
20 App. 5th 138 (2018) (alleged violation Penal Code § 6126.5)).

21 **B. Plaintiff’s Claims Arise from Tech Inquiry’s Speech Protected by § 425.16(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 § 425.16(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. § 425.16(e)(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 from
11 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. § 425.16(e)(2). *Comstock v. Aber*, 212 Ca. App. 4th 931, 943 (2012). The
17 investigation is an “official proceeding” even if the suspect was never charged with a crime.”
18 *Hansen v. Calif. Dept. of Corrections and Rehabilitation*, 171 Cal. App. 4th 1537, 1544 (2008).
19 Here, the Incident Report was an official writing that documented an official proceeding by the San
20 Francisco Police Department, and the Incident Report was also under consideration by the San
21 Francisco County Superior Court, which later sealed the Incident Report. Subsection 425.16(e)(2)
22 does not require a defendant to establish that its speech about an official proceeding is related to a
23 matter of public concern. *See Briggs v. Eden Council for Hope & Opportunity*, 18 Cal. 4th 1106,
24 1116 (1999).

25 **2. Tech Inquiry’s Speech Is Protected by § 425.16(e)(3)**

26 All of Plaintiff’s claims against Tech Inquiry arise from its hosting of Plaintiff’s official
27 police arrest report for alleged felony domestic violence, which is a matter of public interest, on
28 Tech Inquiry’s website, which is a public forum, all of which is speech protected by § 425.16(e)(3).

1 Compl. ¶¶ 27, 51, 58, 69, 76, 87, 100, 110, 112, 128, 135, 170. The California Supreme Court has
2 held that “Web sites accessible to the public ... are ‘public forums’ for purposes of the ... SLAPP
3 statute.” *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41, n. 4 (2006). *See also ComputerXpress, Inc. v.*
4 *Jackson*, 93 Cal. App. 4th 993, 1006 (2001) (same). Tech Inquiry publishes news to the public, an
5 activity protected by the anti-SLAPP statute. “[T]he language of the statute [is] broad enough to
6 cover news reporting activity,” “publishers,” and “media defendants” ... who regularly face libel
7 litigation[.]” *Sipple*, 71 Cal. App. 4th at 240. *See also Braun*, 52 Cal. App. 4th at 1045 (news
8 reporting is free speech and section 425.16 applies to media defendants in libel actions); *Assoc. for*
9 *Los Angeles Cnty Deputy Sheriffs v. Los Angeles Times Comms., LLC*, 239 Cal. App. 4th 808, 816
10 (2015) (“ALADS”) (plaintiff’s cause of action arising from newspaper’s newsgathering of deputies’
11 confidential personnel files “[a]rises from the Times’s [p]rotected [a]ctivity: [n]ews [r]eporting”).

12 Media reports about the actions of law enforcement officers qualify as speech on a public
13 forum about a matter of public interest protected by § 425.16(e)(3). “The public has a strong interest
14 in the ... conduct of law enforcement officers.” *Id.* at 826. *See also Collondrez v. City of Rio Vista*,
15 61 Cal. App. 5th 1039, 1050 (2021) (conduct of police officer is “undoubtedly” an issue of public
16 interest pursuant to § 425.16(e)(3). *See generally Commission on Peace Officer Standards &*
17 *Training v. Superior Court*, 42 Cal. 4th 278, 297, 300 (2007) (“POST”) (“Peace officers ‘hold one
18 of the most powerful positions in our society; our dependence on them is high and the potential for
19 abuse of power is far from insignificant.”) (citation and quotation marks omitted). News reports
20 about suspected criminal activity are considered a matter of public interest. *Lieberman v. KCOP*
21 *Television, Inc.*, 110 Cal. App. 4th 156 (2022). News reports about allegations of domestic abuse
22 contained in official records involving public figures also qualify as free speech about a matter of
23 public concern under the SLAPP statute. *Sipple*, 71 Cal. App. 4th at 238. “The ... topic of ...
24 domestic abuse is [an issue of] significant and of public interest” under the anti-SLAPP statute.
25 *M.G. v. Warner*, 89 Cal. App. 4th 623, 629 (2001).

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

1 **3. Tech Inquiry Speech Is Protected by § 425.16(e)(4)**

2 All of Plaintiff’s claims against Tech Inquiry arise from the website’s hosting of the Incident
3 Report and related news reports, which are matters of public interest within the catch-all protection
4 of § 425.16(e)(4). “The “free speech right to report the news” is protected by § 425.16(e)(4). *San*
5 *Diegans for Open Gov’t v. San Diego State Univ. Rsch. Found.*, 13 Cal. App. 5th 76, 101 (2017)
6 (citation omitted). The conduct of police officers is “undoubtedly” an issue of public interest.
7 *Collondrez*, 61 Cal. App. 5th at 1050. News reports about suspected criminal activity are a matter of
8 public interest. *Lieberman*, 110 Cal. App. 4th at 156. The arrest of a high-profile technology
9 executive for alleged felony domestic violence is also a matter of public interest. *Sipple*, 71 Cal.
10 App. 4th at 238; *M.G.*, 89 Cal. App. 4th at 629. Plaintiff’s 14 claims against Tech Inquiry therefore
11 fall within the protection of § 425.16(e)(4).

12 **C. Plaintiff Cannot Meet His Burden to Prove a Probability of Prevailing**

13 Because Plaintiff’s claims fall within subsection 425.16(e)(2), (e)(3), and (e)(4), the burden
14 shifts to Plaintiff “to establish[] that there is a probability that [he] will prevail” on each of his 14
15 claims against Tech Inquiry. C.C.P. § 425.16(b)(1). Plaintiff “may not rely solely on [his]
16 complaint, even if verified; instead, its proof must be made upon competent admissible evidence.”
17 *Sweetwater Union High School Dist. v. Gilbane Building Co.*, 6 Cal. 5th 931, 940 (2019) (quotation
18 marks and citation omitted). “Courts have long required that the evidence relied on by the plaintiff
19 must be admissible at trial.” *Id.* at 946. Declarations “must reflect that they were made by
20 competent witnesses with personal knowledge of the facts they swear to be true.” *Id.* at 945.

21 **1. Plaintiff’s Claims Are Barred by 47 U.S.C. 230**

22 The Communications Decency Act, 47 U.S.C. § 230, “expressly preempts any state law”
23 claims arising from publication of third-party content on interactive computer service providers.
24 *Perfect 10, Inc. v. CCBill LLC*, 488 F. 3d 1102, 1118 (9th Cir. 2007). Websites are interactive
25 computer service providers. *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir.2003). The CDA
26 “establishes broad federal immunity to any cause of action that would make service providers liable
27 for information originating with a third-party user of the service.” *Id.* (internal quotation marks and
28 citations omitted). The Ninth Circuit has noted that “courts construing § 230 have recognized as

1 critical in applying the statute the concern that lawsuits could threaten the ‘freedom of speech in the
2 new and burgeoning Internet medium.’” *Id.* at 1027 (9th Cir.2003) (quoting *Zeran v. America*
3 *Online, Inc.*, 129 F.3d 327, 330 (4th Cir.1997)). “Congress decided not to treat providers of
4 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 &*
14 *Co. v. America Online*, 206 F.3d 980, 984-985 (10th Cir. 2000)); negligence (*Doe v. America*
15 *Online*, 783 So.2d 1010, 1013-1017 (Fl. 2001); infliction of emotional distress (*Doe One v. Oliver*,
16 755 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 Comms, Inc. v. Corbett*, No. 04-1318, 2006 WL 2506318 (E.D. Pa. Aug. 30,
19 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).

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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 Inquiry**
9 **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

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

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

13 Penal Code § 851.92(c) prohibits almost any person or entity – including news websites
14 such as Tech Inquiry – from disseminating any information “relating to” a sealed arrest record. Penal
15 Code § 851.92(c). Plaintiff alleges that Tech Inquiry violated the statute by hosting the sealed Incident
16 Report and related “information.” Compl. ¶¶ 166-171. But the statute is unconstitutional, both facially
17 and as applied to Tech Inquiry. The statute is a content-based restriction, which is subject to strict
18 scrutiny. *Kasky v. Nike*, 27 Cal. 4th 939 (2002) (“a content-based regulation is valid under the First
19 Amendment only if it can withstand strict scrutiny, which requires that the regulation be narrowly
20 tailored (that is, the least restrictive means) to promote a compelling government interest”). The
21 statute fails strict scrutiny because the state has no compelling governmental interest in penalizing the
22 dissemination of lawfully obtained information about a sealed arrest report – an official government
23 report – that involves a matter of public concern, as here. Nor is the statute the least restrictive means
24 of achieving any government interest or narrowly tailored to address that interest. Plaintiff’s cause of
25 action for alleged violation for Penal Code
26 § 851.91(c) fails because the statute is unconstitutional.

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

2 Plaintiff’s request for injunctive relief in his “Prayer for Relief,” ¶ 10, is barred by the First
3 Amendment. For more than 100 years, California and federal courts have struck down court orders
4 enjoining speech about a matter of public concern, known as prior restraints. The Supreme Court
5 has described a court order barring the press from publishing information about matters of public
6 concern “the essence of censorship.” *Near v. Minnesota*, 283 U.S. 713 (1931). “[P]rior restraints on
7 speech and publication are the most serious and the least tolerable infringement on First
8 Amendment rights.” *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1971). There is a “heavy
9 presumption” against the “constitutional validity” of prior restraints on expression. *Organization for*
10 *a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Not even when the Nixon Administration
11 warned that Daniel Ellsberg’s unauthorized disclosure to the press of the classified “Pentagon
12 Papers” about the disastrous Vietnam War posed a “grave and immediate danger” to national
13 security did the Supreme Court grant a prior restraint ordering the press to stop publishing the
14 leaked documents. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971).

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

1 asked a court to enjoin the *Los Angeles Times* from publishing confidential personnel files for 500
2 deputies. *Id.* at 811-12. The newspaper filed an anti-SLAPP motion, asserting that the union could
3 not establish a probability of prevailing because the requested injunction was a prior restraint that
4 violated both the state and federal constitutions, and the trial court and the Court of Appeal agreed,
5 with the latter affirming the dismissal of the lawsuit. *Id.* at 821, 824.

6 **IV. CONCLUSION**

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

16 DATED: January 10, 2025

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17
18 /s/ Susan E. Seager

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17 **SUPERIOR COURT OF STATE OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**
19 **CIVIL UNLIMITED JURISDICTION**

20 MAURY BLACKMAN, an individual,
21 *Plaintiff,*
22 v.
23 SUBSTACK, INC., a Delaware
24 Corporation; AMAZON WEB SERVICES,
25 INC., a Delaware corporation; JACK
26 POULSON, an individual; TECH
27 INQUIRY, INC., a Delaware corporation;
28 DOES 1-25, inclusive,
Defendants.

Case No.: CGC-24-618681
**PLAINTIFF'S OPPOSITION TO
DEFENDANT SUBSTACK'S MOTION
TO STRIKE UNDER THE ANTI-SLAPP
STATUTE (CCP § 425.16)**
REDACTED
Date: February 4, 2025
Time: 9:30 AM
Dept.: 301
Judge: Hon. Joseph M. Quinn

PUBLIC
REDACTS MATERIALS PURSUANT TO COURT'S JANUARY 7, 2025 ORDER

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17 **SUPERIOR COURT OF STATE OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**
19 **CIVIL UNLIMITED JURISDICTION**

20 MAURY BLACKMAN, an individual,

21 *Plaintiff,*

22 v.

23 SUBSTACK, INC., a Delaware
24 Corporation; AMAZON WEB SERVICES,
25 INC., a Delaware corporation; JACK
26 POULSON, an individual; TECH
27 INQUIRY, INC., a Delaware corporation;
28 DOES 1-25, inclusive,

Defendants.

Case No.: CGC-24-618681

**PLAINTIFF'S OPPOSITION TO
DEFENDANT SUBSTACK, INC.'S
SPECIAL MOTION TO STRIKE
PLAINTIFF'S COMPLAINT**

Date: February 4, 2025

Time: 9:30 AM

Dept.: 301

Judge: Hon. Joseph M. Quinn

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1 **I. INTRODUCTION**

2 Plaintiff commenced this action because Defendants continue to engage in illegal conduct.
3 They are in receipt and possession of and continue to disseminate a sealed arrest report that did not
4 result in a conviction. California criminal and civil laws and public policy safeguard the rights of
5 individuals arrested without a conviction. These Defendants, however, refuse to comply with the law.
6 The First Amendment does not protect them, and a motion under the anti-SLAPP statute is not
7 appropriate in light of Defendants’ illegal activities. Plaintiff incorporates by reference and joins in
8 his concurrently filed oppositions to the Defendants’ anti-SLAPP motions. For all the reasons stated
9 in the memoranda, Plaintiff respectfully requests that the Court deny Defendant’s motion.

10 **II. STATEMENT OF FACTS**

11 **A. Defendants’ Illegal Dissemination Of A Sealed Report**

12 This case arose from Defendants’ ongoing dissemination of a document and information
13 contained in it (the “Sealed Report”) that was subject to an uncontested sealing order entered by San
14 Francisco Superior Court Judge Carolyn Gold dated February 17, 2022. (Compl. ¶19; see Declaration
15 of Plaintiff In Further Support of Motion to Seal, dated January 14, 2025 (“Plaintiff Decl.”) ¶16, Exh.
16 A (“Sealing Order”)) California law “deemed the arrest not to have occurred.” See Sealing Order;
17 Pen. Code § 851.91(e). In addition to the protections afforded by the Sealing Order, Pen. Code §§
18 851.92(b)(5) and (c) prohibit and criminalize the unauthorized dissemination of such a Sealed Report.
19 Pen. Code § 11143 and Labor Code § 432.7(g)(3) prohibit the receipt and possession of these
20 documents and information. At no time has any person or entity challenged Judge Gold’s Sealing
21 Order. (Plaintiff Decl. ¶17)

22 **B. Defendant’s Arrest Was Never Newsworthy**

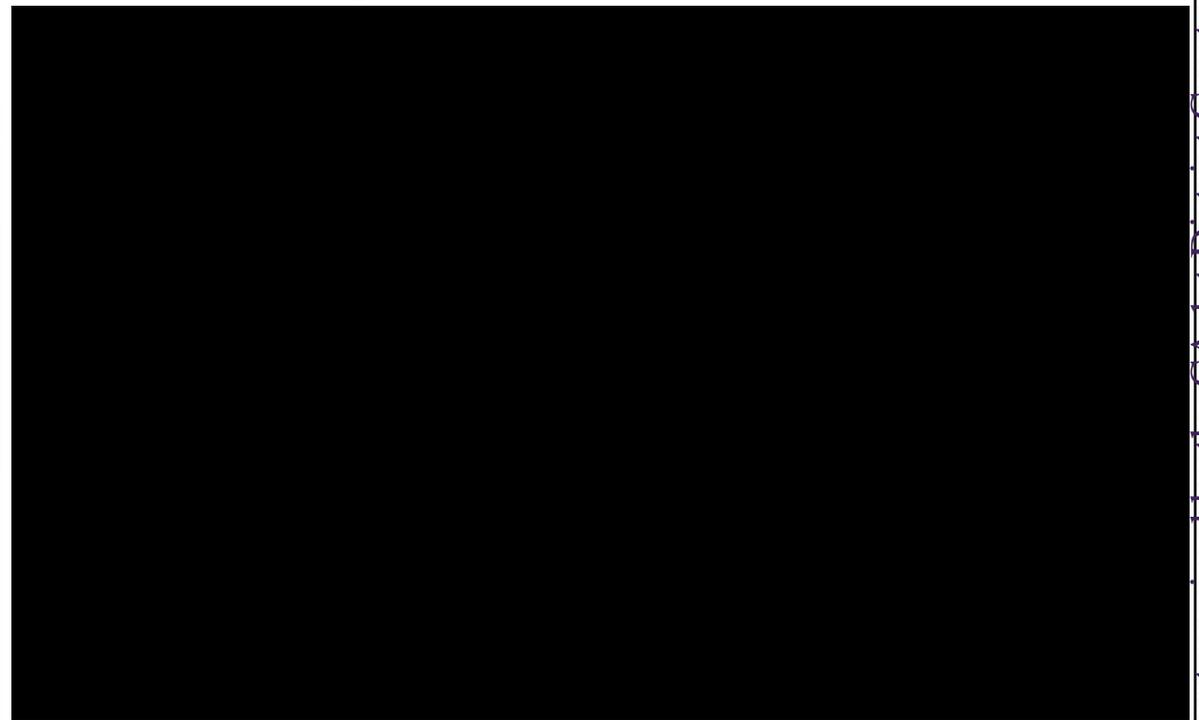
23 Plaintiff was the CEO of Premise Data, a private company, in December 2021 when he had an
24 encounter with the San Francisco Police Department at his residence. (*Id.* ¶¶4, 9) Although the matter
25 was public between December 2021 and February 2022, no media reported on these events. (*Id.* ¶¶18-
26 20) After the charges were quickly dismissed, at which time Plaintiff was petitioning the Court under
27 Cal. Pen. Code § 851.91 to have the record sealed, no media reported on the events and no third
28 parties challenged the Sealing Order. (*Id.*) Nineteen months later, in September 2023, Poulson
publicly disseminated the Sealed Report, and at that time, no media reported on Poulson’s blog posts.
(*Id.* ¶20) In December 2023, Poulson reported that the Premise Data Board demanded Plaintiff’s
termination in substantial part because of Plaintiff’s [REDACTED] and no media

1 reported on the termination. (Declaration of Jack Poulson In Support of Special Motion to Strike
2 dated December 6, 2024 (“Poulson Decl.”) Exhs. D, H; Plaintiff Decl., ¶20) In fact, between
3 December 2021 and October 3, 2024 (when this Complaint was filed), no one other than Defendants
4 publicly disseminated the Sealed Report or reported on it. (*Id.*)

5 In addition, between 2019 and 2024, Premise Data was involved in a lawsuit against former
6 employees in Santa Clara County (the “Santa Clara Litigation”). No one other than Poulson reported
7 when this case was filed, during the litigation, or when it settled. (Plaintiff Decl. ¶ 35)

8 Not only was Plaintiff unknown, but also Premise Data – and the use of technology
9 surveillance by the U.S. Special Operations Forces – was not in the public interest. (Declaration of
10 Cameron Scherer dated January 14, 2025 (“Scherer Decl.”) ¶6; Plaintiff Decl. ¶4) Poulson admitted
11 that “there appears to be little appetite in the U.S. media to interrogate the roles of Premise Data and
12 Two Six Technologies in ongoing U.S. information operations.” (Poulson Exh. A; I) According to
13 Poulson, “[d]espite journalist Byron Tau using primary sources to expose the California-based gig-
14 work information gathering company Premise Data in 2021 as a covert front for intelligence
15 gathering for U.S. Special Operations Forces around the globe, the reporting never captured broad
16 public attention.” (Poulson Exh. I)

17 **C. Poulson’s Blog Posts Create False Implications Of Facts.**



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D. Plaintiff's Efforts To Remove The Sealed Report; Plaintiff's Damages.

Since Plaintiff learned Defendants were disseminating the Sealed Report, he and San Francisco City Attorney made repeated, unsuccessful requests to Defendants to remove the Sealed

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

1 Report and related information. (*Id.*, ¶¶49-69) Defendants continue to disseminate the Sealed Report
2 and information contained in it, long after Plaintiff’s employment terminated. (*Id.*)

3 As a result of Defendants’ ongoing dissemination of the Sealed Report and Poulson’s blog
4 posts, Plaintiff has suffered severe financial and non-financial injuries. (*Id.* ¶¶73-75)

5 **III. ARGUMENT**

6 **A. The Anti-SLAPP Statute Does Not Apply.¹**

7 **1. Illegal Activities Fall Outside the Protection of Anti-SLAPP.**

8 Speech that is “illegal as a matter of law” is not constitutionally protected and falls outside the
9 protection of the anti-SLAPP statute. *Flatley v. Mauro*, 39 Cal.4th 299, 320 (2006). Defendants’
10 ongoing conduct from which the Complaint arises – including, receiving, possessing, and disseminating
11 the Sealed Report and the information contained in it – is illegal because it violates California Penal
12 Code §§ 851.91, 851.92, 11143, and 166. Specifically, Sections 851.92 (b)(5) and 851.92(c) make it

13 illegal for an unauthorized person to disseminate a sealed record or information related to it.
14 Defendants do not dispute that they possessed, disseminated, and continue to disseminate the Sealed
15 Report and the information contained in it. Section 11143 makes it a misdemeanor for any person
16 “who, knowing he is not authorized by law to receive a record or information obtained from a record,
17 knowingly buys, receives, or possesses the record or information”. Defendants do not dispute that they
18 were not authorized by law to receive the Sealed Report or the information contained in it. Section
19 166(a) makes it unlawful to disregard a court order. Defendants do not dispute that a valid Sealing
20 Order existed prohibiting disclosure of the Sealed Report. Any argument by Defendants that these
21 statutes are unconstitutional must be rejected for the reasons addressed herein.

22 **2. The Challenged Speech Does Not Concern an Issue of Public Interest.**

23 Defendants bear the initial burden of demonstrating that the conduct alleged in the complaint
24 is arising from protected activity within the meaning of the statute. *Navellier v. Sletten*, 29 Cal.4th 82,
25 88 (2002). The statute must be construed broadly; however, the statute is not intended to apply to
26 purely private transactions. *See e.g., Weinberg v. Feisel*, 110 Cal.App.4th 1122 (2003) (complaint

27 ¹ Code of Civ. Proc. §425.16(c) also mandates that a prevailing plaintiff on a SLAPP motion “shall”
28 recover attorney’s fees and costs upon the successful dismissal of Defendant’s frivolous motion to
strike the entire Complaint. Here, Defendants’ decision to bring a SLAPP motion despite their
blackletter violations of the law, renders the motion frivolous. *See Moore v. Shaw*, 116 Cal.App.4th
182, 199 (2004), *as modified* (Mar. 26, 2004) (applying substantive standards of section 128.5 in
awarding attorney fees to prevailing Plaintiff under the anti-SLAPP statute). If the Court denies the
Motion, then Plaintiff will file a separate fee motion and memorandum of costs.

1 relating to false allegations of criminal conduct against party who is not public figure nor has thrust
2 himself into a public issue is a private matter not subject to anti-SLAPP statute). If Defendants fail to
3 meet this burden, the motion must be denied. *Blackburn v. Brady*, 116 Cal.App.4th 670 (2004).

4 Section 425.16(e)(3) and (4) only protect speech that concerns an “issue of public interest”.²
5 Defendants must establish, first, that the speech at issue implicated an issue of public interest, and
6 then, if it did, the existence of a “functional relationship ... between the speech and the public
7 conversation about some matter of public interest.” *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal.5th
8 133, 145 (2019) (denying anti-SLAPP protection for speech that bore some relationship to issues of
9 public interest was nonetheless private as between parties and “never entered the public sphere”).
10 Here, the challenged speech is not an issue of public interest, and, even if it is, has no functional
11 relationship with the public conversation on such issue.

12 “The most commonly articulated definitions of ‘statements made in connection with a public
13 issue’ focus on whether (1) the subject of the statement or activity precipitating the claim was a
14 person or entity in the public eye; (2) the statement or activity precipitating the claim involved
15 conduct that could affect large numbers of people beyond the direct participants; and (3) whether the
16 statement or activity precipitating the claim involved a topic of widespread public interest.” *Wilbanks*
17 *v. Wolk*, 121 Cal.App.4th 883, 898 (2004) (internal citations omitted), *see also Weinberg*, 110
18 Cal.App.4th at 1131-32 (“a ‘public controversy’ does not equate with any controversy of interest to
19 the public”), citing *Time, Inc. v. Firestone*, 424 U.S. 448, 454 (1976) (holding that a divorce action
20 between two well-known people may have piqued the public’s interest but was not a public
21 controversy); *Rand*, 6 Cal.5th at 616-9.

22 Using this analysis, Poulson’s blog posts concerning and disseminating the Sealed Report and
23 information contained in it – the challenged speech – do not concern an issue of public interest.
24 Cases that have been found to address a person in the public eye refer to celebrities or nationally
25 known figures or entities. *See Sipple v. Found. for Nat’l Progress*, 71 Cal.App.4th 226, 239 (1999)
26 (“nationally known figure”); *Church of Scientology v. Wollersheim*, 42 Cal.App.4th 628, 650 (1996)

27 ² An “issue of public interest” as that phrase is used in § 425.16(e)(3) and (4) is broader than “matter
28 of public significance” as that phrase is used in Supreme Court jurisprudence on the First
Amendment. *See Bartnicki v. Vopper*, 532 U.S. 514, 528 (2001); *See also* Section 425.16(e); *Briggs*
v. Eden Council for Hope & Opportunity, 19 Cal.App.4th 1106, 1117-1120 (1999) (“Where different
words or phrases are used in the same connection in different parts of a statute, it is presumed the
Legislature intended a different meaning.”). Thus, even if the Court found that Defendants’ speech
constituted “an issue of public interest”, the speech still is not a “matter of public significance”.

1 (matters of public interest include “when a large, powerful organization may impact the lives of many
2 individuals”). Plaintiff is not in the public eye, and Substack makes no argument and presents no
3 evidence that he is.

4 Defendants do not argue that the challenged speech directly affected a large number of people.

5 Further, Poulson’s speech about the Sealed Report does not concern a topic of widespread,
6 public interest. *See World Fin. Grp., Inc. v. HBW Ins. & Fin. Servs., Inc.*, 172 Cal. App. 4th 1561,
7 1570 (2009), *as modified* (May 7, 2009) (requiring consideration of the specific nature of the speech
8 and the context). Cases that fall into this category include *M.G. v. Time Warner, Inc.*, 89 Cal.App.4th
9 623 (2001) (concerning media coverage that featured a coach, who pled guilty to child molestation, in
10 a story “about adult coaches who molest youths playing team sports); *Carney v. Santa Cruz Women*
11 *Against Rape*, 221 Cal.App.3d 1009, 1021 (1990) (“content, form and context” of the speech “portray
12 a publication dedicated to addressing the general topic of sexual assault and harassment,” including
13 “a list of certain [counseling and defense] services provided by SCWAR”); or *Sipple*, 71 Cal.App.4th
14 at 239 (article protected because it focused on domestic abuse by a nationally known person who was
15 involved in the national debate on domestic violence) and involve plaintiffs that were directly
16 connected to a discussion of topics of widespread public interest. *See e.g., Dyer v. Childress*, 147
17 Cal.App.4th 1273, 1281 (2007). Here, the challenged speech concerns the dissemination of the Sealed
18 Report and the information contained in it published nearly two years after the occurrence. *See*
19 *Jeppson v. Ley*, 44 Cal.App.5th 845 (2020) (dispute between private people, even if it made an
20 appearance on the internet and defendant argued it had “lofty justifications,” was not transformed into
21 an issue of public interest); *Rivero v. Am. Fed’n of State, Cty. and Mun. Employees, AFL-CIO*, 105
22 Cal.App.4th 913, 924-26 (2003) (speech accusing public employee of illegal activity, including
23 “soliciting bribes” at a publicly financed institution, was not an issue of public interest); *Abuemeira v.*
24 *Stephens*, 246 Cal.App.4th 1291 (2016) (publicizing a dispute between private people did not
25 transform the dispute into an issue of public interest).

24 Contrary to Defendants’ arguments, the challenged speech was not “about the status of
25 women in the technology sector generally, and efforts to improve accountability for men who engage
26 in abusive behavior toward women,”. (Poulson Motion, pp. 14-15); *FilmOn*, 7 Cal.5th at 150 (statute
27 “demands ‘some degree of closeness’ between the challenged statements and the asserted public
28 interest”). Poulson’s blogposts included no references to issues of domestic violence or violence
against women. Whereas Substack’s lawyer (at Motion p. 15) refers to “the #MeToo movement,”

1 Poulson himself referred to no such thing. Indeed, *FilmOn* instructs that the Court must look at the
2 context of the speech – “including the audience, speaker, and purpose” – and here Poulson admits he
3 wrote a blog about the technology surveillance industry, and Defendants offer no evidence that
4 Poulson’s blog post was concerned with the issue of women in the technology sector.

5 Defendants also argue that Poulson’s speech is a matter of public interest because a CEO who
6 holds security clearance who works for a company with government contracts arrested for felony
7 domestic violence is automatically an issue of public interest. The court rejected the idea that “criminal
8 activity is always a matter of public interest,” *Weinberg*, 110 Cal.App.4th at 1134, and here there was no
9 finding of any criminal activity, as the charges were dismissed. Poulson claimed that he decided to
10 disseminate the Sealed Report because he had concerns about Premise Data’s ethics and failure to keep
11 its employees safe.³ (Poulson Motion p. 9) Further, Poulson admits that Premise Data was not in the
12 public interest. (Poulson Decl. Exh. I) Poulson does not make any connection between the Sealed Report
13 and his issues with Premise Data, and Defendants provided no evidence that anyone other than Poulson
14 was raising these concerns, undermining any argument that these issues concerned public interests.

15 Substack cannot credibly compare these facts to those in *Lieberman v. KCOP Television, Inc.*
16 110 Cal.App.4th 156 (2003). *Lieberman* involved reporting on a doctor who was allegedly *presently*
17 prescribing controlled substances without a legitimate medical purpose. *Id.*; *see also Du Charme v.*
18 *Int’l Bhd of Elec. Workers*, 110 Cal. App. 4th 107, 119 (2003) (“protected activity must, at a
19 minimum, occur in the context of an ongoing controversy, dispute or discussion”). Here, the
20 challenged speech occurred more than 18 months after the charges were dismissed. Further,
21 California rejects the argument that an employee who was arrested without a conviction is an issue of
22 public interest because it might affect his work. *See* Lab. Code § 432.7 (prohibiting employer from
23 taking adverse action against an employee arrested without a conviction); Penal Code § 851.91.

24 ³ This malicious claim that Plaintiff failed to address the safety of Premise Data employees resulted in
25 Tech Inquiry, where Poulson is Executive Director and Founder, making the false contention in its
26 motion *and amended motion* that Poulson decided to disseminate the Sealed Report because, in
27 substantial part, Plaintiff failed to prevent the deaths of 19 Premise Data employees were executed on
28 the side of the road in Iraq. (Tech Inquiry Motion, p. 7-8, citing Poulson Decl.) This statement is an
outrageous misrepresentation that Poulson and Tech Inquiry use to justify that Poulson’s decision to
disseminate the Sealed Report was an issue of public interest. Further, Poulson’s statement in his
Declaration (¶16) that Plaintiff was “eager” to do business with a company, who had an owner,
whose previous company allegedly failed to prevent the deaths of its employees in Iraq was offered
as evidence that Plaintiff was willfully ignorant about the safety of his workers. The statement is
misleading and irrelevant.

1 Substack also argues that the public interest is demonstrated “by the extensive media coverage
2 of this case.” (Substack Motion, p. 16) The media coverage of this case, however, centers on the First
3 Amendment issues, not the protected speech. Moreover, Substack cited to one article that covered this
4 case, which is hardly extensive media coverage. (Baskin Decl., Exh. 7) Further, the converse of
5 Substack’s argument is true: where Plaintiff’s arrest resulted in no media coverage, nor Poulson’s
6 dissemination of the Sealed Report or the termination of Plaintiff’s employment, it is incredulous to
7 argue this is an issue of public interest, let alone a matter a matter of public significance.

8 Moreover, Poulson’s continued dissemination of the Sealed Report and the information
9 contained in it after Premise Data terminated Plaintiff’s employment undermines the argument that
10 the speech was of widespread interest in “high-powered tech CEO” or Premise Data. *See Cole*, 206
11 Cal.App.4th at 1121 (speech about *defunct* company not an issue of widespread public interest).

12 Indeed, even if the Court finds that the challenged speech concerned an issue of public
13 interest, Defendants still cannot satisfy the second prong under *FilmOn*. Defendants would need to
14 establish that Poulson’s speech “participated in, or furthered, the discourse that makes an issue one of
15 public interest.” *FilmOn*, 7 Cal.5th at 151. Here, Poulson’s blog posts and the dissemination of the
16 Sealed Report do not engage in a discussion or analysis of violence against women. Rather, Poulson
17 demonstrated a total disregard for the woman by publishing her identifying characteristics,
18 infantilizing her by repeated comments about her and Plaintiff’s age, and suggesting without evidence
19 that she lied to the police. Further, the challenged speech does not further the discourse about CEOs
20 arrested for domestic violence. In addition, the challenged speech did not participate in or further
21 discourse on Premise Data or the technology surveillance industry because Defendants offer no
22 evidence that any such discourse existed.

23 **B. Plaintiff Has a Probability of Success on His Claims**

24 If Defendants demonstrate the challenged claims arise from protected activity, the burden
25 shifts to Plaintiff to show a probability he will prevail on the merits. *City of Santa Monica v. Stewart*,
26 126 Cal.App.4th 43, 71 (2005), *as modified on denial of reh’g* (Feb. 28, 2005). Under an anti-SLAPP
27 motion, a plaintiff is required to demonstrate only a minimal level of sufficiency and triability of the
28 claim. *Lin v. City of Pleasanton*, 176 Cal.App.4th 408 (2009); *Jarrow Formulas, Inc. v. LaMarche*,
31 Cal.App.4th 728 (2003) (complaint not stricken if supported by prima facie showing of facts).

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1. The First Amendment Does Not Immunize Defendants’ Illegal Activities.

Substack argues that its conduct is not illegal because “the First Amendment protects the right to publish lawfully obtained, truthful, newsworthy information.” (Substack Motion, p. 17-21). *See The Florida Star v. B.J.F.*, 491 U.S. 524, 533 (1989).⁴ *Florida Star* involves allegations of harm caused by publication of facts obtained from public official records – not a sealed document. Substack’s illegal conduct is not protected by the First Amendment because (i) Defendants continue, without obtaining an unsealing order, to disseminate the Sealed Report; (ii) Poulson’s speech was not a “matter of public significance,” (iii) Poulson’s speech was not “truthful;” (iv) Poulson did not lawfully receive the Sealed Report; and (v) California has an interest of the highest order to safeguard sealed information concerning an arrest that did not lead to a conviction.

a. Defendants Are Publicly Disseminating The Sealed Report.

The Sealing Order granted pursuant to Section 851.91 remains in effect, unchallenged. *See* Rules of Court, rules 2.550 and 2.551 (establishing a standard and procedure for courts to use when request is made to seal a record, recognizing the First Amendment right of access to documents). Rule 2.551(h)(2) has a mechanism to challenge the Sealing Order, but Defendants never did so and could not meet that high burden. Accordingly, as this court has already recognized, the Sealed Report and the material contained in it cannot be publicly without first obtaining an unsealing order from Judge Gold. Order Granting Plaintiff’s Motion to Seal, January 7, 2025. *See Phillips ex rel. Estates of Byrd v. G.M. Corp.*, 307 F.3d 1206, 1210 (9th Cir.2002) (recognizing that if there is a right of access to a document subject to a protective order it would “would surely undermine, and possibly eviscerate, the broad power of the district court to fashion protective order.”).

b. Defendants’ Speech Is Not A “Matter Of Public Significance.”

The Supreme Court recognized that the First Amendment provides greater protection to speech that is “newsworthy” and “a matter of public significance.” *See Bartnicki*, 532 U.S. 514 at 528, citing to *New York Times Co. v. United States*, 403 U.S. 713 (1971) (upholding the right of the

⁴ Substack also cites to *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495 (1975). This case does not support Defendants’ arguments because it stands for the proposition that “the States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection”. Here, the Sealed Report is not and was not at the time of Defendants’ possession and dissemination a record open to public inspection.

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

1 press to publish “information of great public concern” like the Pentagon Papers)⁵; *see also Snyder v.*
2 *Phelps*, 562 U.S. 443, 452 (2011) (noting less rigorous First Amendment protections for matters of
3 purely private significance which do not implicate the same constitutional concerns as matters of
4 public concern) *citing Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 758-759 (1985)
5 (recognizing not all speech is of equal First Amendment importance and “speech on public issues
6 occupies the highest rung of the hierarchy of First Amendment values”).

7 *Bartnicki* plainly dealt with “newsworthy” matters. *Bartnicki*, 532 U.S. at 518 (involving
8 publication of illegally recorded conversation where union President made threatening comments to
9 School Board President during a highly publicized public union negotiation that “would have been
10 newsworthy” had they “been made in a public arena”). The *Bartnicki* Court refused to determine
11 broadly that truthful publication may never be punished, but it held that, after weighing the First
12 Amendment interests against the competing interests in that matter, the interests served by the law at
13 issue did not justify restricting a journalist’s “truthful” speech on a “matter of public significance.” *Id.*
14 The speech in *Bartnicki*, unlike Defendants’ dissemination of the Sealed Report, was an unsealed,
15 newsworthy matter of public significance that concerned public issues; use of public funds; and
16 ongoing threats of violence against members of the public School Board. That Court concluded that
17 had the statements been made in a public arena they would have been “newsworthy,” whereas here
18 the arrest was initially public and then illegally made public again by Poulson’s September 2023 post
19 but was not newsworthy. Far from a public entity, Poulson admits that the public had no interest in
20 Premise Data. And there was no suggestion of ongoing threats to members of a public board.
21 Moreover, Substack offered no support for its conclusory contention that Poulson’s blog posts and
22 dissemination of the Sealed Report was a “matter of public significance.”

23 **c. Defendants’ Speech Was Not “Truthful”.**

24 In determining truthfulness, the “pertinent question” is whether a “reasonable fact finder”
25 could conclude that the statements “as a whole, or any of its parts, directly made or sufficiently
26 implied a false assertion of defamatory fact that tended to injure” plaintiff’s reputation. *James v. San*
27 *Jose Mercury News, Inc.*, 17 Cal.App.4th 1, 13 (1993); *see also Wilbanks*, 121 Cal.App.4th at 902
28 (speech is not truthful if “a reasonable trier of fact could conclude that the published statements imply
a provably false factual assertion.” Where a speaker states “incomplete” facts, the statements may

⁵ Poulson rejected the comparison of his posts to the Pentagon Papers as an “an exaggerated claim.”
(Baskin Decl., Exh. 5, p. 3/7)

1 imply a false assertion of fact. *Id.*, at 903. Further, where the speaker “implies a knowledge of facts
2 which may lead to a defamatory conclusion,” the implied facts may constitute defamation. *Eisenberg*
3 *v. Alameda Newspaper, Inc.*, 74 Cal.App.4th 1359 (1999). Here, Poulson’s statements falsely imply
4 that Plaintiff was guilty of having engaged [REDACTED] and state falsely that the
5 arrest was deemed to have occurred. (Scherer Decl. ¶¶10-13; Plaintiff Decl. ¶¶30-31)

6 **d. Defendants Did Not Legally Receive The Sealed Report.**

7 Defendants did not – and could not – lawfully receive the Sealed Report, when doing so was
8 unlawful under Penal Code § 11143 and Labor Code § 432.7(g)(3).⁶ See *Loder v. Municipal Court*,
9 17 Cal.3d 859, 868 (1976) (comparing the sealed report to “contraband”). See also *Bartnicki*, 532
10 U.S. at 548 (dissent) (Scalia, A. dissenting) (recognizing that, even without an express prohibition on
11 receipt, “knowingly receiving and disclosing” the protected speech is “hardly ... law-abiding”).
12 Further, the First Amendment does not protect illegal conduct in connection with newsgathering, and
13 the press is not “immune from liability for crimes and torts committed in news gathering activities.”
Nicholson v. McClatchy Newspapers, 177 Cal.App.3d 509, 513 (1986).

14 **e. The Ability to Seal an Arrest Record Serves a Compelling**
15 **Interest.**

16 Even if Defendants obtained truthful information lawfully, imposing liability for the
17 dissemination of a Sealed Report serves the need to further state interest of highest order – i.e., giving
18 meaning to the Legislature’s decision to enact laws that allow for individuals who have suffered
19 arrest without conviction to seal their records and giving meaning to an order by a court of competent
20 jurisdiction. Section 851.91 and 851.92 provide specific parameters for who and how records can be
21 sealed. The restriction of disseminating sealed information is not a content-based restriction because
22 the restriction is not based on the topic discussed or the idea or message expressed. See *Loder*, 17

23 ⁶ Labor Code § 432.7(g)(3) is not limited to employers or actions affecting employment. *Rutherford*
24 *v. S.E.C.*, 842 F.2d 214 (9th Cir. 1988), referred to subsection (a)(1) when it stated that “[t]he
25 California provision, by its own terms, is applicable only to employers.” *Id.* at 216. The provision
26 addressed by *Rutherford* – subsection (a)(1) – expressly applies only to “employers.” See *Id.*; Cal.
27 Lab. Code § 432.7(a)(1). Subsection (g)(3), by contrast, applies to any “person.” See Cal. Lab. Code
28 § 432.7(g)(2) and (3). The various subsections of section 432.7 impose different restrictions on
different groups of people. So while (g)(1) is limited to law enforcement employees who act with an
intent to affect employment, (g)(2) prohibits “any other person” from disclosing the information for
any reason whatsoever and (g)(3) prohibits an unauthorized person from knowingly receiving or
possessing the information. See Cal. Lab. Code § 432.7(g).

1 Cal.3d at 868. Moreover, the Supreme Court has recognized explicitly “California could decide not
2 to give out arrestee information at all without violating the First Amendment.” See *Los Angeles*
3 *Police Dep’t v. United Reporting Pub. Corp.*, 528 U.S. 32, 40 (1999).

4 Here, in determining whether to provide a legal pathway to sealing an arrest record, the
5 Legislature contemplated the collateral consequences suffered by individuals who suffer an arrest but
6 are not convicted alongside the right of public access to a record. See 2017 California Senate Bill No.
7 393, California 2017-2018 Regular Session.

8 **2. 47 U.S.C. § 230 Does Not Immunize Substack.**

9 While courts have held that 47 U.S.C. § 230(c)(1) (“Section 230”) provides broad immunity
10 in certain circumstances, “this immunity is not limitless.” *Calise v. Meta Platforms, Inc.*, 103 F.4th
11 732, 739 (9th Cir. 2024) citing *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009) (Section
12 230(c)(1) does not “declare[] a general immunity from liability deriving from third-party content” and
13 reversing District Court’s finding of immunity under Section 230 because all of the plaintiffs’ claims
14 are premised on Meta’s publication of a third-party advertisement).

15 **a. The Language Of Section 230 Provides For A Narrow
16 Limitation On Liability.**

17 Contrary to the approaches taken by many courts, Section 230(c)(1) is a narrow limitation on
18 liability that applies only to speech actions, and even more specifically only to such actions that
19 attempt to impose liability on a provider or user of an interactive computer service as though it were
20 the original author of a third-party’s speech. See CDA 230(c)(1) See *Rotkiske v. Klemm*, 589 U.S. 8,
21 13 (2019) (question of statutory interpretation must begin with plain text of the law). Entitled
22 “Protection for ‘Good Samaritan’ blocking and screening of offensive material,” Section 230(c)
23 contains two subsections. Section 230(c)(1) provides that “[n]o provider or user of an interactive
24 computer service shall be treated as the publisher or speaker of any information provided by another
25 information content provider.” 47 U.S.C. § 230(c)(1). Section 230(c)(2), provides in relevant part that
26 “[n]o provider or user of an interactive computer service shall be held liable on account of ... any
27 action voluntarily taken in good faith to restrict access to or availability of material that the provider
28 or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise
objectionable.” *Id.* § 230(c)(2).

Section 230(c)(1) allows an ICSP to be held liable under common-law principles as the
“distributor” of defamatory content “if, but only if, [it] knows or has reason to know of its defamatory

1 character.” Restatement (Second) of Torts § 581 (1977). Section 230(c)(2) does not immunize ICSPs
2 that do not act as Good Samaritans—namely, those that do nothing to address harm, that have a pre-
3 existing duty to address harm yet fail to do so, or that contribute to or profit from harm.

4 Thus, on its face and contrary to Substack’s argument, Section 230 does not broadly
5 immunize ICSPs against any and all state-law claims involving content submitted by third parties.
6 Rather, the text addresses two specific circumstances: (i) under Section 230(c)(1), merely providing
7 access to third-party content does not make an ICSP the “publisher” or “speaker” of that content; and
8 (ii) under Section 230(c)(2), an ICSP is immune from liability for actions taken voluntarily and in
9 good faith to restrict access to objectionable content. Cases reading Section 230 to have a broader
10 preemptive effect than provided for in (c)(1) and (c)(2) have departed from the statutory text.

11 Accordingly, in this instance, where Defendants knew that it was in receipt and possession of
12 and disseminating the Sealed Report in violation of California law and its own policies, Section 230
13 does not immunize Defendants.

14 **b. Section 230 Does Not Provide Immunity from the Statutory
15 Prohibition on Receiving and Possessing The Sealed Report.**

16 CDA Section 230 only applies to claims that “seek to treat [defendants] as a publisher or
17 speaker.” *Calise*, 103 F.4th at 739, citing *Barnes*, 570 F.3d at 1100 (immunity to an interactive
18 computer service provider against claims that “seek to treat [the provider] as a publisher or
19 speaker.”); *see also In re Facebook Simulated Casino-Style Games Litig.*, No. 22-16888, 2024 WL
20 2287200, at *2 (9th Cir. May 21, 2024) (“To determine whether a particular claim should be
21 dismissed under Section 230, a court must identify “the underlying legal duty” and determine whether
22 “it seek[s] to hold the defendant liable as a ‘publisher or speaker’ of third-party content.”) citing
23 *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019); *Doe v. Internet*
24 *Brands* 824 F.3d 846, 851, 853(9th Cir. 2016); *Hassell v. Bird*, 5 Cal. 5th at 544 (“we recognize that
25 not all legal duties owed by Internet intermediaries necessarily treat them as the publishers of third
26 party content, even when these obligations are in some way associated with their publication of the
27 material.”). Here, California law prohibits any unauthorized person from being in possession of the
28 Sealed Report. See Labor Code § 432.7(g)(3); Penal Code § 11143.

Here, Defendants’ conduct violates these laws. Defendants are prohibited by California law
from knowingly receiving or possessing information “pertaining to an arrest or other proceeding that did
not result in conviction.” Lab. Code § 432.7(g)(3). Penal Code § 11143 criminalizes this same conduct.

1 *See Loder v Municipal Court*, 17 Cal.3d 859, 873 (1976) (referring to a sealed arrest report that did not
2 lead to a conviction as “contraband” because it is illegal to even possess it). Here, the unlawful nature of
3 Defendants’ conduct is exacerbated because this report and information were sealed by court order that
4 Defendants never sought to unseal, and therefore the conduct also violates Penal Code § 166.

5 This illegal conduct forms the basis of Defendants’ liability to Plaintiff because the source of
6 their duty to Plaintiff arises from the statutes they violated. *See In re Apple Inc. App Store Simulated*
7 *Casino-Style Games Litig.*, 625 F.Supp.3d 971, 994 (N.D. Cal. 2022) (permitting one theory of
8 liability to proceed where Plaintiffs did not attempt to treat the Platforms as “the publisher or
9 speaker” of third-party content, but rather sought to hold the Platforms responsible for their own
10 illegal conduct), appeal dismissed and remanded sub nom. *In re Facebook Simulated Casino-Style*
11 *Games Litig.* (9th Cir. May 21, 2024) No. 22-16888, 2024 WL 2287200. Thus, these statutes do not
12 seek to hold these defendants liable a “publisher or speaker” of third-party content. Rather, they are
13 liable for being knowingly in possession of contraband. The prohibition on receipt of the sealed
14 document and the information contained in it is a separate legal duty than the prohibition on
15 dissemination. *See Bartnicki v. Vopper*, 532 U.S. 514, 548 (2001) (dissent by J. Scalia) (recognizing
16 the distinction between a law that prohibits dissemination and one that prohibits receipt).

17 Substack’s demurrer must be denied because Substack simply ignores Plaintiff’s allegations.
18 Contrary to Substack’s statement that “the only accusation against Substack is that it refuses to take down
19 content posted by Poulson,” (Demurrer, p. 17), Plaintiff actually violated the law by being in receipt and
20 possession of the Sealed Report. (Complaint, ¶¶69, 175) *See Loder*, 17 Cal.3d at 873. Substack’s ongoing
21 violations of these provisions give rise to Plaintiff’s claims. *See Jacobs Farm/Del Cabo, Inc. v. W. Farm*
22 *Serv., Inc.*, 190 Cal.App.4th 1502, 1526 (2010) (recognizing negligence per se and noting the presumption
23 of negligence arises if: (1) the defendant violated a statute; (2) the violation proximately caused the
24 plaintiff’s injury; (3) the injury resulted from the kind of occurrence the statute was designed to prevent;
25 and (4) the plaintiff was one of the class of persons the statute was intended to protect).

26 **c. Section 230 Does Not Provide In This Instance.**

27 If “Congress intends to alter the usual constitutional balance between the States and the
28 Federal Government, it must make its intention to do so unmistakably clear.” *Gregory v. Ashcroft*,
501 U.S. 452, 460 (1991). This presumption against preemption applies, not “only to the question
whether Congress intended any pre-emption at all,” but also to “questions concerning the scope of its
intended invalidation of state law.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (emphases

1 added; citations and quotation marks omitted). Thus, even though Congress expressly intended to
2 displace state actions that are inconsistent with Section 230(c), see 47 U.S.C. § 230(e)(3), this Court
3 must still apply a “narrow interpretation of such an express command” to ensure that the scope of
4 displacement is consistent with this Court’s presumption against preemption, *Lohr*, 518 U.S. at 485.

5 Moreover, “[n]one of the policies within section 230(b) state or suggest an express immunity
6 from compliance with state court orders.” See *Hassell v. Bird*, 5 Cal.5th 522, 568; 571 (2018),
7 (dissent disagreeing with “plurality opinion’s conclusion that section 230 protects an Internet
8 platform from complying with a state court order simply because the platform operates as a publisher
9 of third-party speech.”). As explained by the dissent, Section 230(c)(2) “does not endow Internet
10 platforms with a complete immunity from compliance with state court orders.” *Id.*

11 Defendants are not immune because they “materially contribute” to the illegality in question –
12 namely the possession and dissemination of the Sealed Report. See *Fair Hous. Council of San*
13 *Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1170 (9th Cir. 2008) (denying Section 230
14 immunity website required users to disclose protected characteristics to tailor results that steered
15 users according to discriminatory preferences which limited access to housing in violation of housing
16 antidiscrimination laws) Here, the facts are even more straightforward and do not require an analysis
17 of whether Defendants induced discriminatory content because they are responsible for what makes
18 the displayed content unlawful.

19 **IV. CONCLUSION**

20 For the reasons stated herein and in conjunction with arguments set forth in Plaintiff’s
21 Opposition to Defendants AWS, Tech Inquiry, and Poulson’s Motions to Strike, Defendant
22 Substack’s Motion to Strike Plaintiff’s entire Complaint must be denied.

23 Dated: January 14, 2025

Respectfully submitted,

THE MAREK LAW FIRM, INC.

By: David Marek

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Attorney for Plaintiff

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Deputy Clerk

17 **SUPERIOR COURT OF STATE OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**
19 **CIVIL UNLIMITED JURISDICTION**

20 MAURY BLACKMAN, an individual,
21 *Plaintiff,*
22 v.
23 SUBSTACK, INC., a Delaware
24 Corporation; AMAZON WEB SERVICES,
25 INC., a Delaware corporation; JACK
26 POULSON, an individual; TECH
27 INQUIRY, INC., a Delaware corporation;
28 DOES 1-25, inclusive,
Defendants.

Case No.: CGC-24-618681

**PLAINTIFF'S OPPOSITION TO
DEFENDANT TECH INQUIRY'S MOTION
TO STRIKE UNDER THE ANTI-SLAPP
STATUTE (CCP § 425.16)**

REDACTED

Date: February 4, 2025
Time: 9:30 AM
Dept.: 301
Judge: Hon. Joseph M. Quinn

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11 **SUPERIOR COURT OF STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**
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18 INQUIRY, INC., a Delaware corporation;
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20

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1 **I. INTRODUCTION**

2 Plaintiff commenced this action because Defendants continue to engage in illegal conduct.
3 They are in receipt and possession of and continue to disseminate a sealed arrest report that did not
4 result in a conviction. California criminal and civil laws and public policy safeguard the rights of
5 individuals arrested without a conviction. These Defendants, however, refuse to comply with the law.
6 The First Amendment does not protect them, and a motion under the anti-SLAPP statute is not
7 appropriate in light of Defendants’ illegal activities. Plaintiff incorporates by reference and joins in
8 his concurrently filed oppositions to the Defendants’ anti-SLAPP motions. For all the reasons stated
9 in the memoranda, Plaintiff respectfully requests that the Court deny Defendant’s motion.

9 **II. STATEMENT OF FACTS**

10 **A. Defendants’ Illegal Dissemination of A Sealed Report**

11 This case arose from Defendants’ ongoing dissemination of a document and information
12 contained in it (the “Sealed Report”) that was subject to an uncontested sealing order entered by San
13 Francisco Superior Court Judge Carolyn Gold dated February 17, 2022. (Compl. ¶19; see Declaration of
14 Plaintiff In Further Support of Motion to Seal, dated January 14, 2025 (“Plaintiff Decl.”) ¶16, Exh. A
15 (“Sealing Order”)) California law “deemed the arrest not to have occurred.” See Sealing Order; Pen. Code
16 § 851.91(e). In addition to the protections afforded by the Sealing Order, Pen. Code §§ 851.92(b)(5) and
17 (c) prohibit and criminalize the unauthorized dissemination of such a Sealed Report. Pen. Code § 11143
18 and Labor Code § 432.7(g)(3) prohibit the receipt and possession of these documents and information.
19 At no time has any person or entity challenged Judge Gold’s Sealing Order. (Plaintiff Decl. ¶17)

19 **B. Defendant’s Arrest Was Never Newsworthy**

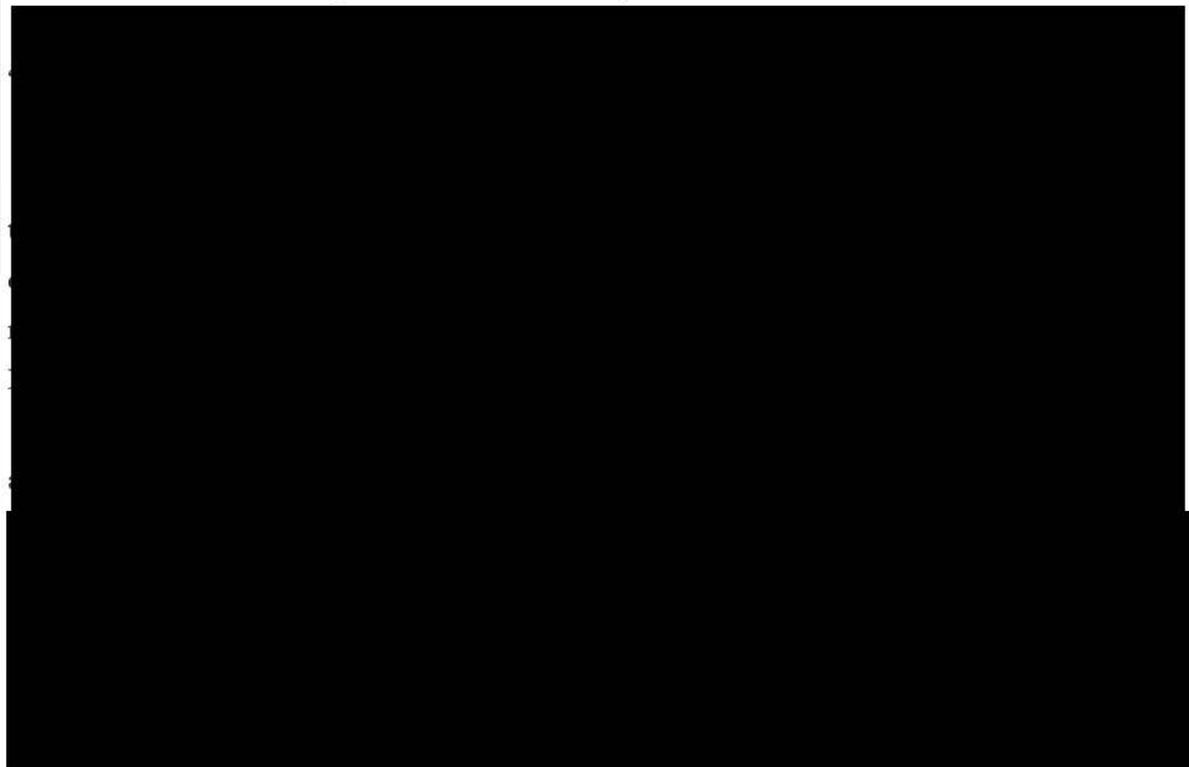
20 Plaintiff was the CEO of Premise Data, a private company, in December 2021 when he had an
21 encounter with the San Francisco Police Department at his residence. (*Id.* ¶¶4, 9) Although the matter
22 was public between December 2021 and February 2022, no media reported on these events. (*Id.* ¶¶18-
23 20) After the charges were quickly dismissed, at which time Plaintiff was petitioning the Court under
24 Cal. Pen. Code § 851.91 to have the record sealed, no media reported on the events and no third
25 parties challenged the Sealing Order. (*Id.*) Nineteen months later, in September 2023, Poulson
26 publicly disseminated the Sealed Report, and at that time, no media reported on Poulson’s blog posts.
27 (*Id.* ¶20) In December 2023, Poulson reported that the Premise Data Board demanded Plaintiff’s
28 termination in substantial part because of Plaintiff’s [REDACTED] and no media
reported on the termination. (Declaration of Jack Poulson In Support of Special Motion to Strike

1 dated December 6, 2024 (“Poulson Decl.”) Exhs. D, H; Plaintiff Decl., ¶20) In fact, between
2 December 2021 and October 3, 2024 (when this Complaint was filed), no one other than Defendants
3 publicly disseminated the Sealed Report or reported on it. (*Id.*)

4 In addition, between 2019 and 2024, Premise Data was involved in a lawsuit against former
5 employees in Santa Clara County (the “Santa Clara Litigation”). No one other than Poulson reported
6 when this case was filed, during the litigation, or when it settled. (Plaintiff Decl. ¶ 35)

7 Not only was Plaintiff unknown, but also Premise Data – and the use of technology surveillance
8 by the U.S. Special Operations Forces – was not in the public interest. (Declaration of Cameron Scherer
9 dated January 14, 2025 (“Scherer Decl.”) ¶6; Plaintiff Decl. ¶4) Poulson admitted that “there appears to
10 be little appetite in the U.S. media to interrogate the roles of Premise Data and Two Six Technologies in
11 ongoing U.S. information operations.” (Poulson Exh. A) According to Poulson, “[d]espite journalist
12 Byron Tau using primary sources to expose the California-based gig-work information gathering
13 company Premise Data in 2021 as a covert front for intelligence gathering for U.S. Special Operations
14 Forces around the globe, the reporting never captured broad public attention.” (Poulson Exh. I) Poulson
15 also wrote that there was “lack of public appetite” for reporting on Premise Data. (*Id.*)

16 **C. Poulson’s Blog Posts Create False Implications of Fact.**



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D. Plaintiff's Efforts to Remove The Sealed Report; Plaintiff's Damages

Since Plaintiff learned Defendants were disseminating the Sealed Report, he and San Francisco City Attorney made repeated, unsuccessful requests to Defendants to remove the Sealed

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

1 Report and related information. (*Id.*, ¶¶49-69) Defendants continue to disseminate the Sealed Report
2 and information contained in it, long after Plaintiff’s employment terminated. (*Id.*)

3 As a result of Defendants’ ongoing dissemination of the Sealed Report and Poulson’s blog
4 posts, Plaintiff has suffered severe financial and non-financial injuries. (*Id.* ¶¶73-75)

5 **III. ARGUMENT**

6 **A. Tech inquiry’s Motion Should be Dismissed as Untimely**

7 The anti-SLAPP statute requires a defendant to file a timely motion to strike within 60 days of
8 service of a complaint to be heard. Cal. Code Civ. Proc. (CCP) § 425.16. *See Hewlett-Packard Co. v.*
9 *Oracle Corp.*, 239 Cal.App.4th 1174, 1193 (2015) (declining to hear motion filed 23 days late). This
10 is particularly true where the defendant offers no excuse for the late filing. *Platypus Wear, Inc. v.*
11 *Goldberg*, 166 Cal.App.4th 772, 776 (2008) (trial court abused its discretion hearing late-filed motion
12 without a “compelling explanation” for lateness) Tech Inquiry was personally served with Plaintiff’s
13 complaint on October 7, 2024. The sixtieth day after service was Friday, December 6, 2024. The
14 Court marked Tech Inquiry’s motion filed on Monday, December 9, 2024. Tech Inquiry’s untimely
15 motion should be disregarded.

16 **B. Tech Inquiry’s Motion Should Be Denied For Failure of Evidentiary Support**

17 An anti-SLAPP motion must be supported by affidavits stating facts upon which the
18 defendant’s defense is based. CCP §425.16(b)(2). Part of the argument that the challenged speech
19 concerns an issue of public interest is the claim that Poulson decided to disseminate the Sealed Report
20 because of Premise Data’s “willful ignorance of the safety of its gig workers.” (Poulson Motion, p. 9)
21 In support of this claim, Tech Inquiry falsely asserts Plaintiff, while overseeing Premise Data’s
22 “secret[] pivot[]to performing military surveillance,” *personally* “failed to prevent the deaths of many
23 of the company’s employees, including 19 who were pulled off a bus in Iraq and executed on the side
24 of the road while performing as part of the company’s secretive military contracts.” (*Id.*, pp. 7-8;
25 “Amended” Motion, pp. 9-10(repeating same after Plaintiff’s counsel raised concern in writing over
26 the egregious misrepresentation) both citing Poulson Decl. ISO Poulson Motion to Strike filed
27 December 6, 2024 at ¶¶16-17). These facts are patently false (Plaintiff’s Decl. at ¶¶77-78) and
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1 Poulson’s declaration does not aver to these facts.¹ The motion should be denied on the basis of these
2 statements alone. *See* CCP § 128.5 and Cal. Rules of Ct., rule 3.3.

3 **C. The Anti-SLAPP Statute Does Not Apply**

4 **1. Illegal Activities Fall Outside the Protection of Anti-SLAPP**

5 Speech that is “illegal as a matter of law” is not constitutionally protected and falls outside the
6 protection of the anti-SLAPP statute. *Flatley v. Mauro*, 39 Cal.4th 299, 320 (2006). Defendants’
7 ongoing conduct from which the Complaint arises – including, receiving, possessing, and
8 disseminating the Sealed Report and the information contained in it – is illegal because it violates
9 California Penal Code §§ 851.91, 851.92, 11143, and 166. Specifically, Sections 851.92(b)(5) and (c)
10 make it illegal for an unauthorized person to disseminate a sealed record or information related to it.
11 Defendants do not dispute that they possessed, disseminated, and continue to disseminate the Sealed
12 Report and the information contained in it. Section 11143 makes it a misdemeanor for any person
13 “who, knowing he is not authorized by law to receive a record or information obtained from a record,
14 knowingly buys, receives, or possesses the record or information”. Defendants do not dispute that
15 they were not authorized by law to receive the Sealed Report or the information contained in it.
16 Section 166(a) makes it unlawful to disregard a court order. Defendants do not dispute that a valid
17 Sealing Order existed prohibiting disclosure of the Sealed Report. Any argument by Defendants that
18 these statutes are unconstitutional must be rejected for the reasons addressed herein.

19 **2. The Anti-SLAPP Provisions Do Not Apply to the Challenged Speech.**

20 Defendants bear the initial burden of demonstrating that the conduct alleged in the complaint
21 arises from protected activity within the meaning of the broadly constructed statute that is nonetheless
22 not intended to apply to purely private individuals. *Navellier v. Sletten*, 29 Cal.4th 82, 88 (2002); *see*
23 *also Weinberg v. Feisel*, 110 Cal.App.4th 1122 (2003) (complaint relating to false allegations of
24 criminal conduct against party who is not public figure nor has thrust himself into a public issue is a
25 private matter not subject to anti-SLAPP statute). If Defendants fail to meet this burden, the motion
26 must be denied. *Blackburn v. Brady*, 116 Cal.App.4th 670 (2004).

27 ¹ Poulson’s statement in his Declaration (¶16) that Plaintiff was “eager” to do business with a
28 company, who had an owner, whose previous company allegedly failed to prevent the deaths of its
employees in Iraq was offered as evidence that Plaintiff was willfully ignorant about the safety of his
workers. The statement is misleading and irrelevant.

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i. Poulson’s Substack Posts Do Not Fall Under §425.16(e)(2).

Section 425.16(e)(2) “does not accord anti-SLAPP protection to suits arising from any act having any connection, however, remote, with an official proceeding.” *Paul v. Friedman*, 95 Cal.App.4th 853, 866 (2002) (rejecting application of (e)(2) where statements simply mention or refer to official proceedings without connection with an issue under review in that proceeding.); *see also Maranatha Corr., LLC v. Dep’t of Corr. & Rehab.*, 158 Cal.App.4th 1075, 1085 (2008) (finding matter under consideration if kept “before the mind” and given “attentive thought, reflection, meditation.”) Thus, the statute contemplates an “ongoing—or, at the very least, immediately pending—official proceeding.” *Rand Res., LLC v. City of Carson*, 6 Cal.5th 610, 627 (2019) (collecting cases denying application of 425.16(e)(2) when no official proceeding was pending at the time of the speech); *see also Cole v. Patricia A. Meyer & Assoc.*, 206 Cal.App.4th 1095, 1120 (2012) (rejecting speech as protected when published after the issue was no longer under consideration by a judicial body). The court disposed of Plaintiff’s matter 18 months prior to the initial post and thus, no expression could be “made in connection with an issue under consideration or review.” *See Rand*, 6 Cal.5th at 627. Tech Inquiry relies on inapposite cases where the investigation was ongoing or the matter was still under consideration. (TI Motion, p. 10-11)

ii. Poulson’s Posts Are Not Protected by §425.16(e)(3) or (4).

Section 425.16(e)(3) and (4) only protect speech that concerns an “issue of public interest”.² Defendants must establish, first, that the speech at issue implicated an issue of public interest, and then, if it did, the existence of a “functional relationship ... between the speech and the public conversation about some matter of public interest.” *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal.5th 133, 145 (2019) (denying anti-SLAPP protection for speech that bore some relationship to issues of public interest was nonetheless private as between parties and “never entered the public sphere”). Here, the challenged speech is not an issue of public interest, and, even if it is, has no functional relationship with the public conversation on such issue.

² An “issue of public interest” as that phrase is used in § 425.16(e)(3) and (4) is broader than “matter of public significance” as that phrased in used in Supreme Court jurisprudence on the First Amendment. *See Bartnicki v. Vopper*, 532 U.S. 514, 528 (2001); *See also* Section 425.16(e); *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal.App.4th 1106, 1117-1120 (1999) (“Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning.”). Thus, even if the Court found that Defendants’ speech constituted “an issue of public interest”, the speech still is not a “matter of public significance”.

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1 “The most commonly articulated definitions of ‘statements made in connection with a public
2 issue’ focus on whether (1) the subject of the statement or activity precipitating the claim was a
3 person or entity in the public eye; (2) the statement or activity precipitating the claim involved
4 conduct that could affect large numbers of people beyond the direct participants; and (3) whether the
5 statement or activity precipitating the claim involved a topic of widespread public interest.” *Wilbanks*
6 *v. Wolk*, 121 Cal.App.4th 883, 898 (2004) (internal citations omitted), *see also Weinberg*, 110
7 Cal.App.4th at 1131-32 (“a ‘public controversy’ does not equate with any controversy of interest to
8 the public”), citing *Time, Inc. v. Firestone*, 424 U.S. 448, 454 (1976) (holding that a divorce action
9 between two well-known people may have piqued the public’s interest but was not a public
10 controversy); *Rand*, 6 Cal.5th at 616-9.

11 Using this analysis, Poulson’s blog posts concerning and disseminating the Sealed Report and
12 information contained in it – the challenged speech – do not concern an issue of public interest. Cases
13 that have been found to address a person in the public eye refer to celebrities or nationally known
14 figures or entities. *See Sipple v. Found. for Nat’l Progress*, 71 Cal.App.4th 226, 239 (1999)
15 (“nationally known figure”). Plaintiff is not in this category.³ Tech Inquiry argued that Plaintiff was a
16 public figure because he has a personal website, hosted five episodes of a podcast, has a LinkedIn
17 profiled, and worked as the CEO of private company (that Poulson admitted was not in the public
18 interest (Poulson Decl., Exh. I). (TI Motion, p. 8) In fact, Plaintiff was an unknown CEO of an
19 unknown private company. (Plaintiff Decl. ¶¶1,2; Scherer Decl. ¶6) No one reported on Plaintiff’s
20 public [REDACTED] when Premise Data replaced Plaintiff as the CEO; or when
21 Poulson repeatedly disseminated the Sealed Report; and no one reported on the Santa Clara
22 Litigation. (Id. ¶18-20; 35)

23 Defendants do not argue that the challenged speech directly affected a large number of people.

24 Further, Poulson’s speech does not concern a topic of widespread, public interest. *See World*
25 *Fin. Grp., Inc. v. HBW Ins. & Fin. Servs., Inc.*, 172 Cal.App.4th 1561, 1570 (2009), *as modified* (May
26 7, 2009) (requiring consideration of the specific nature of the speech and the context). Cases that fall

27 ³ Plaintiff is neither a public nor a limited purpose public figure. *See Gertz v. Robert Welch, Inc.*, 418
28 U.S. 323, 351(1974); *see also Copp v. Paxton*, 45 Cal.App.4th 829, 845-46 (1996) (elements to
characterize a limited purpose public figure are: a public controversy regarding an issue debated
publicly with foreseeable and substantial ramifications for nonparticipants; plaintiff’s voluntary act
through which he sought to influence resolution of that public issue; and that statements are germane
to the plaintiff’s participation in the controversy.”).

1 into this category include *M.G. v. Time Warner, Inc.*, 89 Cal.App.4th 623 (2001) (concerning media
2 coverage that featured a coach, who pled guilty to child molestation, in a story “about adult coaches
3 who molest youths playing team sports); *Carney v. Santa Cruz Women Against Rape*, 221 Cal.App.3d
4 1009, 1021 (1990) (“content, form and context” of the speech “portray a publication dedicated to
5 addressing the general topic of sexual assault and harassment,” including “a list of certain [counseling
6 and defense] services provided by SCWAR”; or *Sipple*, 71 Cal.App.4th at 239 (article protected
7 because it focused on domestic abuse by a nationally known person who was involved in the national
8 debate on domestic violence) and involve plaintiffs that were directly connected to a discussion of
9 topics of widespread public interest. *See e.g., Dyer v. Childress*, 147 Cal.App.4th 1273, 1281 (2007).
10 Here, the challenged speech concerns the dissemination of the Sealed Report and the information
11 contained in it published nearly two years after the occurrence.

12 Contrary to Tech Inquiry’s arguments, the challenged speech was not a “report about the
13 actions of law enforcement officers”. (TI Motion, p. 12) *FilmOn*, 7 Cal.5th at 150 (statute “demands
14 ‘some degree of closeness’ between the challenged statements and the asserted public interest”).
15 Poulson’s blogposts concern and disseminate the Sealed Report without any references to the issues
16 of domestic violence or violence against women. (Poulson Decl., Exh. C) *Assoc. for Los Angeles
17 Deputy Sheriffs v. Los Angeles Times Comms. LLC*, 239 Cal.App.4th 808, 826 (2015) (“ALADS”)
18 (considering the right of a police labor union to stop the press from “publishing news reports about
19 the hiring and evaluation of officers, including allegations of past misconduct”) and *Collondrez v.
20 City of Rio Vista*, 61 Cal.App.5th 1039 (2021) (considering claims by former police officers arising
21 from the disclosure of information from their personnel file in response to a media outlet’s requests
22 under the California Public Records Act) bear no resemblance to the case before this Court. Those
23 cases address the public interest in information about police officers. Tech Inquiry makes no
24 argument – and none can be made – that the challenged speech here concerns these types of issues.

25 Tech Inquiry also argues that Poulson’s speech is automatically an issue of public interest
26 because it concerned unsubstantiated and sealed allegations of [REDACTED] (TI Motion, p.
27 12) However, the challenged speech “must, at a minimum, occur in the context of an ongoing
28 controversy, dispute or discussion.” *Du Charme v. Inter’l Bhd. of Elec. Workers*, 110 Cal. App. 4th
107, 119 (2003). The challenged speech does not occur in the context of an ongoing controversy,
dispute, or discussion. The court had dismissed these charges more than 18 months before Poulson’s

1 initial dissemination. Further, Poulson’s speech does not concern a controversy, dispute, or discussion
2 on either domestic violence in general or the Sealed Report.

3 Tech Inquiry appears to argue that under *Lieberman v. KCOP Television, Inc.* 110
4 Cal.App.4th 156 (2003), *Sipple*, 71 Cal.App.4th 226, and *M.G.*, 89 Cal.App.4th 623 news reports
5 about suspected criminal activity and domestic violence are automatically issues of public interest.
6 The court rejected the idea that “criminal activity is always a matter of public interest,” *Weinberg*,
7 110 Cal.App.4th at 1134, and here there was no finding of any criminal activity, as the charges were
8 dismissed. *Lieberman* involved challenged speech reporting on a doctor who was allegedly *presently*
9 prescribing controlled substances without a legitimate medical purpose in a news report about doctors
10 engaging in that specific conduct. 110 Cal.App.4th 156. Here, there was no suspected criminal
11 activity at the time of the challenged speech. That is not the case here, where the challenged speech
12 does not concern the issue of domestic violence. Further, the *Sipple* Court considered all of the
13 following issues: that Sipple was in the public eye; that he was in the public eye partially because he
14 “was able was able to capitalize on domestic violence issues to further his career”; and “[o]n different
15 levels, the article addresses the issue of domestic violence.” 71 Cal.App.4th at 238. In *M.G.*, “[t]he
16 broad topic of the article and the program was not whether a particular child was molested but rather
17 the general topic of child molestation in youth sports”. 89 Cal.App.4th 623. *Dyer*, 147 Cal.App. at
18 1282. These cases show that courts look at a variety of factors, none of which exist here, when
19 determining public interest.

20 Indeed, even if the Court finds that the challenged speech concerned an issue of public
21 interest, Defendants still cannot satisfy the second prong under *FilmOn*. Defendants would need to
22 establish that Poulson’s speech “participated in, or furthered, the discourse that makes an issue one of
23 public interest.” *FilmOn* at 151. The challenged speech does not engage in a discussion or analysis of
24 the actions of law enforcement officers or domestic violence.

25 **D. Plaintiff Has a Probability of Success On His Claims**

26 If Defendants demonstrate the challenged claims arise from protected activity (which is not
27 the case here), the burden shifts to Plaintiff to show a probability he will prevail on the merits. *City of*
28 *Santa Monica v. Stewart*, 126 Cal.App.4th 43, 71 (2005), *as modified on denial of reh’g* (Feb. 28,
2005). Under an anti-SLAPP motion, a plaintiff is required to demonstrate only a minimal level of
sufficiency and triability of the claim. *Lin v. City of Pleasanton*, 176 Cal.App.4th 408 (2009); *Jarrow*

1 *Formulas, Inc. v. LaMarche*, 31 Cal.App.4th 728 (2003) (complaint not stricken if supported by
2 merely prima facie showing of facts).

3 **1. Plaintiff’s Claims Are Not Barred By the First Amendment.**

4 Tech Inquiry’s primary argument is that its violations of the Penal Code, Labor Code, and
5 Plaintiff’s privacy are immunized by the First Amendment. (TI Motion, p. 16-17), citing *The Florida*
6 *Star v. B.J.F.*, 491 U.S. 524, 533 (1989) (when the press “lawfully obtains *truthful* information about
7 a matter of *public significance* then state officials may not constitutionally punish publication of the
8 information, *absent a need to further a state interest of the highest order.*”); *Bartnicki*, 532 U.S. at
9 514. Tech Inquiry’s illegal conduct is not protected by the First Amendment because (i) Defendants
10 continue, without obtaining an unsealing order, to disseminate the Sealed Report; (ii) Poulson’s
11 speech was not a “matter of public significance,” (iii) Poulson’s speech was not “truthful;” (iv)
12 Poulson did not lawfully receive the Sealed Report; and (v) California has an interest of the highest
13 order to safeguard sealed information concerning an arrest that did not lead to a conviction.

14 **i. Defendants are Publicly Disseminating a Sealed Report.**

15 The Sealing Order granted pursuant to Section 851.91 remains in effect, unchallenged. *See*
16 Rules of Court, rules 2.550 and 2.551 (establishing a standard and procedure for courts to use when
17 request is made to seal a record, recognizing the First Amendment right of access to documents).
18 Rule 2.551(h)(2) has a mechanism to challenge the Sealing Order, but Defendants never did so and
19 could not meet that high burden. Accordingly, as this court has already recognized, the Sealed Report
20 and the material contained in it cannot be publicly without first obtaining an unsealing order from
21 Judge Gold. Order Granting Plaintiff’s Motion to Seal, January 7, 2025.

22 **ii. Defendants’ Speech Is Not A “Matter Of Public Significance.”**

23 The Supreme Court recognized that the First Amendment provides greater protection to
24 speech that is “newsworthy” and “a matter of public significance.” *See Bartnicki*, 532 U.S. 514 at
25 528, citing to *New York Times Co. v. United States*, 403 U.S. 713 (1971) (upholding the right of the
26 press to publish “information of great public concern” like the Pentagon Papers); *see also Snyder v.*
27 *Phelps*, 562 U.S. 443, 452 (2011) (noting less rigorous First Amendment protections for matters of
28 purely private significance which do not implicate the same constitutional concerns as matters of
public concern) *citing Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 758-759 (1985)
(recognizing not all speech is of equal First Amendment importance and “speech on public issues
occupies the highest rung of the hierarchy of First Amendment values”).

1 *Bartnicki* plainly dealt with “newsworthy” matters. *Bartnicki*, 532 U.S. at 518 (involving
2 publication of illegally recorded conversation where union President made threatening comments to
3 School Board President during a highly publicized public union negotiation that “would have been
4 newsworthy” had they “been made in a public arena”). The speech in *Bartnicki*, unlike Defendants’
5 dissemination of the Sealed Report, was an unsealed, newsworthy matter of public significance that
6 concerned public issues; use of public funds; and ongoing threats of violence against members of the
7 public School Board. That Court concluded that had the statements been made in a public arena they
8 would have been “newsworthy,” whereas here the arrest was initially public and then illegally made
9 public again by Poulson’s September 2023 post but was not newsworthy. Far from a public entity,
10 Poulson admits that the public had no interest in Premise Data. And there was no suggestion of
ongoing threats to members of a public board.

11 **iii. Defendant’s Speech Was Not “Truthful”**

12 In determining truthfulness, the “pertinent question” is whether a “reasonable fact finder”
13 could conclude that the statements “as a whole, or any of its parts, directly made or sufficiently
14 implied a false assertion of defamatory fact that tended to injure” plaintiff’s reputation. *James v. San*
15 *Jose Mercury News, Inc.*, 17 Cal.App.4th 1, 13 (1993); *see also Wilbanks*, 121 Cal.App.4th at 902
16 (speech is not truthful if “a reasonable trier of fact could conclude that the published statements imply
17 a provably false factual assertion.”) Where a speaker states “incomplete” facts, the statements may
18 imply a false assertion of fact. *Id.* at 903. Further, where the speaker “implies a knowledge of facts
19 which may lead to a defamatory conclusion,” the implied facts may constitute defamation. *Eisenberg*
20 *v. Alameda Newspaper, Inc.*, 74 Cal.App.4th 1359 (1999)s. Here, Poulson’s statements falsely imply
21 that Plaintiff was guilty of having engaged i [REDACTED] and state falsely that the
arrest was deemed to have occurred. (Scherer Decl. ¶¶10-13; Plaintiff Decl. ¶¶30-31)

22 **iv. Defendants Did Not Legally Receive the Sealed Report.**

23 Defendants did not – and could not – lawfully receive the Sealed Report, when doing so was
24 unlawful under Penal Code § 11143 and Labor Code § 432.7(g)(3). *See Loder v. Municipal Court*, 17
25 Cal.3d 859, 868 (1976) (comparing the sealed report to “contraband”). *See also Bartnicki*, 532 U.S. at
26 548 (dissent) (Scalia, A. dissenting) (recognizing that, even without an express prohibition on receipt,
27 “knowingly receiving and disclosing” the protected speech is “hardly ... law-abiding”). Further, the
28 First Amendment does not protect illegal conduct in connection with newsgathering, and the press is

1 not “immune from liability for crimes and torts committed in news gathering activities.” *Nicholson v.*
2 *McClatchy Newspapers* (1986) 177 Cal.App.3d 509, 513.

3 **v. Sealing an Arrest Record Serves a Compelling Interest.**

4 Even if Defendants obtained truthful information lawfully, imposing liability for the
5 dissemination of a Sealed Report serves the need to further state interest of highest order – i.e., giving
6 meaning to the Legislature’s decision to enact laws that allow for individuals who have suffered
7 arrest without conviction to seal their records and giving meaning to an order by a court of competent
8 jurisdiction. *See* Section 851.91 and 851.92. The restriction of disseminating sealed information is not
9 a content-based restriction because the restriction is not based on the topic discussed or the idea or
10 message expressed. *See Loder*, 17 Cal.3d at 868. Moreover, the Supreme Court has recognized
11 explicitly “California could decide not to give out arrestee information at all without violating the
12 First Amendment.” *See Los Angeles Police Dep’t v. United Reporting Pub. Corp.*, 528 U.S. 32, 40
(1999). *See* 2017 California Senate Bill No. 393, California 2017-2018 Regular Session.

13 **2. Section 851.92(c) Is Not Unconstitutional.**

14 Contrary to Tech Inquiry’s uncited contention, the restriction of disseminating sealed
15 information is not a content-based restriction because the restriction is not based on the topic discussed
16 or the idea or message expressed. *See Loder*, 17 Cal.3d at 868. Indeed, there is no intimation that
17 Section 851.92(c) seeks “to suppress unpopular ideas on information or manipulate the public debate”
18 or that they “distinguish between unfavored speech on the basis of the ideas or views expressed.”
19 *Turner Broadcasting v. FCC*, 512 U.S. 622, 641-3 (1994). The Supreme Court has recognized
20 explicitly “California could decide not to give out arrestee information at all without violating the First
21 Amendment.” *See Los Angeles Police Dep’t v. United Reporting Pub. Corp.*, 528 U.S. 32, 40 (1999).
22 Accordingly, Tech Inquiry incorrectly argues that this statute is subject to strict scrutiny. “A content-
23 neutral regulation will be sustained if ‘it furthers an important or substantial governmental interest; if
24 the governmental interest is unrelated to the suppression of free expression; and if the incidental
25 restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of the
26 interest.’” *Bartnicki*, 532 U.S. at 544. California has repeatedly recognized the important interest in
preventing the stigmatization that comes from an arrest that does not lead to a conviction.

27 **3. Plaintiff’s Claims Are Not Barred By Prior Restraint.**

28 As this Court recognized, “[a]ny party seeking to publicly disclose material from the Incident
Report must first obtain an unsealing order from Judge Gold.” (Order Granting Plaintiff’s Motion to

1 Seal, dated January 7, 2025) Further, Defendants have not made any arguments that would warrant
2 unsealing the Sealing Order and therefore lack a basis to contest Plaintiff's request for injunctive
3 relief at this time. Moreover, the California Supreme Court has recognized that "[a]n injunction may
4 properly issue to prohibit the repetition or continuation of speech that the court has found to be
5 unlawful. Such an injunction does not constitute an invalid prior restraint of speech." Cal. Prac. Guide
6 Civ. Pro. Before Trial Ch. 9(II)-A [9:708], citing *Aguilar v. Avis Rent A Car System, Inc.*, 21 Cal.4th
7 121, 140-142 (1999) ("once a court has found that a specific pattern of speech is unlawful, an
8 injunctive order prohibiting the repetition, perpetuation, or continuation of that practice is not a prior
9 restraint of speech."); *see also In re Tiffany G.*, 29 Cal. App.4th 443, 452-53 (1994) (rejecting
10 argument of invalid prior restraint when court prohibited parties from disseminating legally received
11 confidential documents sealed by court order and statute prohibiting dissemination).

11 **4. Plaintiff's Claims Are Not Barred By The Fair Reporting Privilege.**

12 Tech Inquiry's reliance on Civ. Code § 47(d) as an absolute privilege to report about official
13 proceedings is completely unfounded. The law makes clear that any communication to a public
14 journal that breaches a court order is not privileged. *See* Cal. Civ. Code § 47(d)(2)(B). As this court
15 has already found, there existed - at the time that Poulson wrote his blogs and disseminated the
16 Sealed Report - a valid court order sealing the information. Defendants' dissemination of the Sealed
17 Report and the information within it was a breach of that court order and thereby loses the fair report
18 privilege articulated in Cal. Civ. Code § 47(d)(1). Accordingly, Defendant's reliance on the privilege
19 applying in the context of confidential proceedings is unavailing since none of those cases involve
20 reporting that breaches a valid court order.

21 **5. Plaintiff's Claims Are Not Barred By Section 230**

22 While courts have held that 47 U.S.C. § 230(c)(1) ("Section 230") provides broad immunity
23 in certain circumstances, "this immunity is not limitless." *Calise v. Meta Platforms, Inc.*, 103 F.4th
24 732, 739 (9th Cir. 2024), *citing Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009) (Section
25 230(c)(1) does not "declare[] a general immunity from liability deriving from third-party content" and
26 reversing District Court's finding of immunity under Section 230 because all of the plaintiffs' claims
27 are premised on Meta's publication of a third-party advertisement).

28 Section 230 only applies to claims that "seek to treat [defendants] as a publisher or speaker."
Calise, 103 F.4th at 739, *citing Barnes*, 570 F.3d at 1100 (immunity to an interactive computer
service provider against claims that "seek to treat [the provider] as a publisher or speaker."); *see also*

1 *In re Facebook Simulated Casino-Style Games Litig.*, No. 22-16888, 2024 WL 2287200, at *2 (9th
2 Cir. May 21, 2024) (“To determine whether a particular claim should be dismissed under Section
3 230, a court must identify “the underlying legal duty” and determine whether “it seek[s] to hold the
4 defendant liable as a ‘publisher or speaker’ of third-party content.”) citing *HomeAway.com, Inc. v.*
5 *City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019). Here, California law prohibits any
6 unauthorized person – such as Defendant – from being in possession of the Sealed Report. *See* Labor
7 Code § 432.7(g)(3); Penal Code § 11143.

8 This illegal conduct forms the basis of Defendants’ liability to Plaintiff because the source of
9 their duty to Plaintiff arises from the statutes they violated. *See In re Apple Inc. App Store Simulated*
10 *Casino-Style Games Litig.*, 625 F.Supp. 3d 971, 994 (N.D. Cal. 2022) (permitting one theory of
11 liability to proceed where Plaintiffs did not attempt to treat the Platforms as “the publisher or
12 speaker” of third-party content, but rather sought to hold the Platforms responsible for their own
13 illegal conduct), *appeal dismissed and remanded sub nom. In re Facebook*, 2024 WL 2287200. Thus,
14 these statutes do not seek to hold Defendants liable as a “publisher or speaker” of third-party content.
15 Rather, they are liable for being knowingly in possession of contraband.

16 Moreover, “[n]one of the policies within section 230(b) state or suggest an express immunity
17 from compliance with state court orders.” *See Hassell v. Bird*, 5 Cal.5th 522, 568; 571 (2018),
18 (dissent disagreeing with “plurality opinion’s conclusion that section 230 protects an Internet
19 platform from complying with a state court order simply because the platform operates as a publisher
20 of third-party speech.”). As explained by the dissent, Section 230(c)(2) “explains that providers or
21 users of interactive computer services shall not be liable for actions taken in good faith to restrict
22 access to obscene, harassing, or objectionable material, regardless of whether such material is
23 constitutionally protected”. *Id.* This section, however, “does not endow Internet platforms with a
24 complete immunity from compliance with state court orders.” *Id.*

25 Defendants are not immune because they “materially contribute” to the illegality in question –
26 namely the possession and dissemination of the Sealed Report. *See Fair Hous. Council of San*
27 *Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1170 (9th Cir. 2008) (denying Section 230
28 immunity website required users to disclose protected characteristics to tailor results that steered
users according to discriminatory preferences which limited access to housing in violation of housing
antidiscrimination laws)

1 Finally, Tech Inquiry is just a website that publishes Poulson's posts and thus publication of
2 his posts does not constitute a third-party post. (Plaintiff Decl. at ¶TK)

3 **IV. CONCLUSION**

4 For the reasons stated herein and in conjunction with arguments set forth in Plaintiff's
5 Opposition to Defendants AWS, Substack, and Poulson's Motions to Strike, Defendant Tech
6 Inquiry's Motion to Strike Plaintiff's entire Complaint must be denied.

7 Dated: January 14, 2025

Respectfully submitted,

8 THE MAREK LAW FIRM, INC.

9
10 By: David Marek
11 David Marek
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