

No. A173244

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**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION 4**

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**MAURY BLACKMAN,**  
*Plaintiff-Appellant,*

vs.

**SUBSTACK INC., ET AL.,**  
*Defendant-Respondents.*

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Appeal From the Superior Court of the State of California,  
County of San Francisco,  
CGC-24-618681, Honorable Christine Van Aken

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**RESPONDENT'S BRIEF OF SUBSTACK INC.  
[REDACTED]**

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**CERTIFICATE OF INTERESTED ENTITIES  
OR PERSONS**

**(Cal. Rules of Court, Rule 8.208)**

Pursuant to California Rule of Court 8.208, Defendant-Respondent Substack Inc. (“Substack”) certifies that the following persons or entities may have either an ownership interest of 10 percent or more in Substack or a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves: Christopher Best, Hamish McKenzie, Jairaj Sethi, and AH Capital Management, LLC.

Dated: December 15, 2025    By: /s/ Joshua A. Baskin  
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## COUNTER-STATEMENT OF THE ISSUES

I. Did the trial court correctly hold that articles about the domestic violence arrest of the CEO of a military intelligence contractor were published “in connection with an issue of public interest” for purposes of the first step of the anti-SLAPP analysis? (Code Civ. Proc., § 425.16(e)(3).)

II. Did the trial court correctly hold that Substack’s anti-SLAPP motion was not barred at the first step by *Flatley v. Mauro* (2006) 39 Cal.4th 299, a case arising from acts of criminal extortion entirely absent in this case?

III. Did the trial court correctly hold at the second step that the First Amendment protected the publication of a lawfully obtained, accurate record on a matter of public significance?

IV. Did the trial court correctly hold at the second step that claims arising from the publication of third-party content on Substack’s platform were barred by 47 U.S.C. § 230(c)(1)?

## INTRODUCTION

This appeal challenges a textbook application of California’s anti-SLAPP statute (Code Civ. Proc., § 425.16) to protect First Amendment rights. Plaintiff-Appellant Maury Blackman, the former CEO of a government contractor holding a Top Secret security clearance, seeks to impose ruinous civil liability on a journalist and the digital platforms that hosted truthful journalism regarding Blackman’s arrest for a violent felony.

Blackman has sought to blame everyone but himself, suing the journalist who reported on his arrest (Poulson), an organization affiliated with the journalist (Tech Inquiry), the online platform that publishes the journalist’s newsletter (Substack), and the cloud computing service that hosts the platform (Amazon Web Services). (AA0011.)

Blackman contends that Defendant-Respondent Substack Inc. (“Substack”) is liable not for any content it created, but simply for “possessing” and “disseminating” a Substack user’s journalism about an arrest report that the government itself released to the public. Distilled to its essence, Blackman’s theory of liability rests on a single premise: that a state court order sealing his arrest record under Penal Code section 851.91 effectively erased that event from history, rendering any subsequent reporting on it unlawful and punishable with damages. That is mistaken. While Blackman has been spared “some of the consequences of [his] arrest,” he “cannot alter how past events unfolded.” (AA0998.) Blackman’s insistence to the contrary evokes the Orwellian “memory hole” for facts that are inconvenient—but true. Under

binding law, he cannot hold Substack liable for hosting truthful journalism about a lawfully obtained and newsworthy arrest report—particularly when, in separate litigation, both the California Attorney General and San Francisco City Attorney have stipulated not to enforce Penal Code section 851.91 as to Blackman’s arrest report. (AA0934-AA0936.)

The trial court correctly concluded that the anti-SLAPP statute forbids Blackman’s attempt to silence and punish those who reported on his arrest. (AA0991-AA0999.) At the first step, where the defendant must show that the lawsuit arises from protected activity, the court correctly found that reporting in a public newsletter on the integrity of a government contractor with a security clearance was “speech ... in connection with a public issue.” (Code Civ. Proc., § 425.16(b)(1).) The court rejected the argument that the conduct here was unprotected illegal conduct, given that the arrest report was lawfully obtained and published without knowledge that it had been sealed. (AA0994-AA0996.) At the second step, where the plaintiff must establish a probability of success on the merits, the court rightly concluded that Blackman’s claims were doomed because the First Amendment and Section 230 of the Communications Decency Act shield Defendant-Respondents from liability. (AA0996-AA0999.)

Blackman’s lawsuit offers a paradigmatic example of a strategic lawsuit against public participation, which the Legislature enacted the anti-SLAPP statute to combat. Blackman’s pressure campaign has already imposed significant costs on Defendant-Respondents and sent a chilling message to

others who might consider reporting on him critically. This case should end here. The judgment should be affirmed.

## STATEMENT OF THE CASE

### A. The Parties

Plaintiff-Appellant Maury Blackman was hired in 2017 as the Chief Executive Officer of Premise Data, a San Francisco-based “cyber-physical market intelligence platform.” (AA0211.) Premise Data developed a mobile-phone application that allowed clients to pay gig workers around the globe to collect information at sites and topics of interest. Blackman held a “Top Secret” security clearance. (AA0213 [Blackman’s personal website touting his “Top Secret Clearance”].) After Blackman took the reins at Premise Data, the company began to market its services to military and intelligence agencies as a means of gathering intelligence in foreign countries and hostile areas through crowdsourcing. (AA0475.) These efforts yielded lucrative government contracts worth [REDACTED] (AA0475.) As a result of the questionable practices associated with Premise Data’s government work, Blackman and the company garnered significant public scrutiny in 2021 and 2022.<sup>1</sup>

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<sup>1</sup> See, e.g., Byron Tau, “App Taps Unwitting Users Abroad to Gather Open-Source Intelligence,” *The Wall Street Journal*, <https://www.wsj.com/business/telecom/app-taps-unwitting-users-abroad-to-gather-open-source-intelligence-11624544026> (June 24, 2021); Byron Tau, “Premise Mobile-Phone App Suspends Ukraine Activities After Accusations Fly,” *The Wall Street Journal*, <https://www.wsj.com/livecoverage/russia-ukraine-latest-news->

Blackman had long sought out the public eye. He has styled himself as a “prominent figure” in the American technology industry. (AA0211.) He hosted a podcast, *Great Minds Think Data with Maury Blackman*, with high-profile guests, including former U.S. Treasury Secretary Larry Summers and former Speaker of the House Newt Gingrich. (AA0226-AA0227.) He also frequently opined about politics, public policy, and technology in national publications and on television programs. (AA0234-AA0260.)

Defendant-Respondent Jack Poulson is an independent journalist focusing on the intersection of technology and national security who reports through a newsletter, *All-Source Intelligence*, published on Substack. (AA0958-AA0959.) His newsletter has over 3,000 subscribers and is publicly available on the internet at <https://substack.com/@jackpoulson>. (*Ibid.*) One of the companies that Poulson had been reporting about in his Substack newsletter

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2022-02-26/card/premise-mobile-phone-app-suspends-ukraine-activities-after-accusations-fly-8FDnhZe9raunaIJ4HV66 (Feb. 26, 2022); Byron Tau, “Gig App Gathering Data for U.S. Military, Others Prompts Safety Concerns,” *The Wall Street Journal*, <https://www.wsj.com/tech/gig-app-gathering-data-for-u-s-military-others-prompts-safety-concerns-11646481601> (Mar. 5, 2022); “West African Views on Niger’s Coup,” *The Economist*, <https://www.economist.com/middle-east-and-africa/2023/08/24/west-african-views-on-nigers-coup> (Aug. 24, 2023).

was Premise Data, which Blackman helmed as CEO. (AA1005 [Order Granting Motions to Strike].)

Defendant-Respondent Tech Inquiry, Inc. is a public website, <https://www.techinquiry.org>, that provides the public with government records, news articles, data, and other information investigating the nexus between surveillance and weapons companies and governments. (*Ibid.*) Poulson founded and is the executive director of Tech Inquiry. (*Ibid.*)

Defendant-Respondent Substack is an online media platform that provides publishing, payment, analytics, and design infrastructure to support subscription-based content, including newsletters and blogs. (See AA0343-AA0348.)

Defendant Amazon Web Services (“AWS”) provides cloud computing services that allow users to host content on the internet. Blackman voluntarily dismissed with prejudice his claims against AWS after the trial court granted Defendants’ motion to strike. (AA1030 [Apr. 14, 2025 Dismissal Order].)

**B. Factual Background**

[REDACTED]

[REDACTED]

[REDACTED] Prosecutors never filed charges against Blackman. (AA0014-AA0015; AA0427.)

For nearly two months, the Arrest Report was a public record. (Gov. Code, §§ 7923.610, 7923.615(a) [mandating that arrest reports and incident reports are public records].) On February 17, 2022, a judge in San Francisco Superior Court sealed the report at Blackman’s request. (AA0013 [Compl. ¶¶ 17-19].) The sealing order stated simply that “[t]he record of arrest in the following matter [*People of the State of California v. Blackman*] shall be sealed under the provisions of section 851.91, and the arrest deemed not to have occurred.” (AA0575 [“Sealing Order”].) The order, based on Form CR-410, did not contain any reasoning or purport to bind anyone who was not a party to the criminal case. (*Ibid.*)

While this transpired, Premise Data was engaged in a long-running lawsuit against one of its former employees, who had become a whistleblower against the company’s work as a government contractor. In May 2022, an attorney representing that employee requested a copy of the Arrest Report from the San

Francisco Police Department. (AA0565-AA0566.) Despite the Sealing Order, the police released the Arrest Report to the attorney through the San Francisco Public Records Portal. (*Ibid.*)

On September 1, 2023, Poulson published an article in his newsletter about a public filing in Premise Data’s lawsuit against the whistleblower. (AA0359-AA0362.) The article focused on a declaration filed by Blackman in the lawsuit that acknowledged Premise Data’s classified contracts with U.S. government agencies. (*Ibid.*) The article highlighted the dangers this disclosure posed to the safety of Premise Data’s gig workers operating in foreign countries.

After publishing this article about Premise Data’s lawsuit, Poulson received the Arrest Report through an unsolicited message from a confidential source. (AA0347 [Poulson Decl. ¶ 13]; AA0308-AA0312 [Arrest Report].) Poulson “had no prior relationship with the source” and “did not request or otherwise seek out” the Arrest Report. (AA0347 [Poulson Decl. ¶ 13].) The Arrest Report had “no markings” indicating it had been sealed, and Poulson “was unaware” that the Arrest Report was sealed. (AA0347 [Poulson Decl. ¶ 14].)<sup>2</sup> Before writing about the Arrest

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<sup>2</sup> Under Penal Code section 851.92(b), a sealing order must be provided to the law enforcement agency that made the arrest within 30 days. And a “police investigative report related to the sealed arrest” shall be stamped “ARREST SEALED: DO NOT RELEASE OUTSIDE THE CRIMINAL JUSTICE SECTOR.” (Penal Code, § 851.92(b)(3).) The Arrest Report received by Poulson and published on Substack did not bear this stamp.

Report, Poulson called the San Francisco Police Department, which confirmed the key details and did not inform Poulson that it had been sealed. (AA0348 [Poulson Decl. ¶ 15].)

Believing that the arrest of Premise Data’s CEO for felony domestic violence was newsworthy, Poulson wrote about it in his newsletter on September 14, 2023. (AA0344-AA0345.) The article linked to a copy of the Arrest Report that redacted the names of both the woman in the report and the woman who called 911. (*Ibid.*) The same article reported that Premise Data had been accused of being used by the Russian government to target Ukrainians as part of the ongoing invasion and of being a covert surveillance platform for U.S. Special Operations Command. (*Ibid.*) It also reported that Blackman had confirmed Premise’s work with U.S. defense and intelligence agencies in a public court filing. (*Ibid.*) After his September 14, 2023 article, Poulson wrote several more articles in *All-Source Intelligence* about Premise Data

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(AA0347-AA0348 [Poulson Decl. ¶ 14]; AA0308-AA0312 [Arrest Report].) Blackman separately sued the City and County of San Francisco, alleging that its Police Department improperly released the Arrest Report. (*Blackman v. City & County of San Francisco* (Super. Ct. S.F. County, Apr. 25, 2025, No. CGC-25-624793).) The court found that the City did not improperly release the rest report and that Blackman failed to prove that the City’s “actions related to the incident report were criminal.” (Mot. for Judicial Notice, Ex. 4.) Rather than appeal that finding, Blackman dismissed the case. (Mot. for Judicial Notice, Ex. 8.)

and Blackman’s questionable acts as CEO. (E.g., AA0320-AA0321; AA0325-AA0333; AA0336-AA0340.)

In response to Poulson’s journalism, Blackman launched a campaign to silence the reporting. This campaign began with a pseudonymous person claiming to be a representative of Blackman and offering to bribe Poulson to take down his reporting. (AA0273 [Poulson Decl. ¶ 18].) Poulson refused. (*Ibid.*) Blackman’s apparent representative also submitted fraudulent takedown requests under the Digital Millenium Copyright Act, falsely claiming that Poulson was infringing copyright in the Arrest Report. (AA0336-AA0340.)

Blackman’s representatives also contacted the San Francisco City Attorney’s office, thus enlisting the government to threaten Respondents. (AA0892.) The government obliged Blackman. On September 19, 2024, a Deputy City Attorney wrote to Substack: “Pursuant to California Penal Code section 851.92(c) ..., [the City Attorney] expect[s] you will immediately remove the [Arrest Report] and its contents from your website” and “refrain from publishing this material in the future.” (A0597; A0892.)<sup>3</sup> Substack did not cave, despite the Deputy City Attorney writing to the company two more times. (AA0892.)

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<sup>3</sup> Penal Code section 851.92(c) provides:

Unless specifically authorized by this section, a person or entity, other than a criminal justice agency or the person whose arrest was sealed, who disseminates information relating to a sealed arrest is subject to a civil penalty of not less than five hundred dollars (\$500) and not more than two thousand five hundred dollars (\$2,500) per violation. The civil penalty may be

These threats prompted the First Amendment Coalition, a free speech advocacy group, and Professor Eugene Volokh, a First Amendment scholar and the publisher of the legal blog *The Volokh Conspiracy*, to sue the City Attorney and California Attorney General, challenging Penal Code section 851.92(c) on First Amendment grounds. (AA0885-AA0906; *First Amend. Coal. v. Chiu* (N.D.Cal., Nov. 22, 2024, No. 3:24-cv-08343).) These plaintiffs explained that “[b]ecause of [Penal Code section 851.92(c)] and the City Attorney’s credible threats to enforce the statute,” they had “refrained from publishing articles or information about [Blackman’s] arrest.” (AA0896.) They argued that Penal Code section 851.92(c) was unconstitutional on its face and as applied to dissemination of the Arrest Report. (AA0897-AA0905.) In response to those plaintiffs’ motion for a preliminary injunction against the law, and after Substack filed its anti-SLAPP motion in this case, the Attorney General and the City Attorney stipulated that they would not enforce Penal Code section 851.92(c)—including specifically with respect to Blackman’s Arrest Report. (AA0934-AA0936.)

### **C. Procedural History**

After Blackman’s threats came to naught, on October 3, 2024, he sued Poulson, Tech Inquiry, Substack, and AWS (collectively, “Respondents”). (AA0010-AA0011 [Compl. ¶ 1].) The

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enforced by a city attorney, district attorney, or the Attorney General. This subdivision does not limit any existing private right of action. A civil penalty imposed under this section shall be cumulative to civil remedies or penalties imposed under any other law.

Complaint asserted 15 causes of action against Substack: negligence, gross negligence, intentional interference with prospective economic relations, negligent interference with prospective economic relations, intentional interference with contractual relations, public disclosure of private facts, false light, intrusion into private affairs, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, unfair business practices under California Business & Professions Code section 17200, violation of California Constitution Article I, section 1, violation of Penal Code section 851.92(c), and violation of Penal Code section 11143. (AA0018-AA0030 [Compl. ¶¶ 50-176].) Though he sued Respondents in their true names, Blackman filed suit as a “John Doe” plaintiff without seeking leave of court, as required. (AA0010-AA0032 [“John Doe” complaint].) When he belatedly sought leave to proceed pseudonymously, the court denied his motion. (AA00538.)

On December 6, 2024, Poulson and Substack filed separate special motions to strike the Complaint in its entirety pursuant to California’s anti-SLAPP statute, Code of Civil Procedure section 425.16. (AA0103-AA0125 [Poulson]; AA0419-AA0447 [Substack].)<sup>4</sup> Substack argued that Blackman’s lawsuit was exactly what the Legislature had in mind when it passed the anti-

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<sup>4</sup> On December 9, 2024, Tech Inquiry also filed a motion to strike. (AA0500-AA0522.) Although this motion was filed outside the 60-day window for special motions to strike, the trial court exercised its discretion to hear it because it presented the same issue as the motions timely filed by Poulson and Substack. (AA0999.)

SLAPP statute. His campaign of threats and intimidation having failed, Blackman sued a journalist, his organization, and the internet service providers that hosted his journalism—all in an effort to pressure them to remove newsworthy information about Blackman’s arrest from the internet. (AA0427-AA0445.)

On February 14, 2025, the Superior Court (Hon. Christine Van Aken) granted Respondents’ motions to strike in their entirety. (AA0991-AA0999.)

The court had “little difficulty finding” that Respondents “succeed[ed] at the first step” of the anti-SLAPP analysis under section 425.16(e)(3). (AA0993.) The court began by finding that Poulson’s articles were “a writing in a public forum,” i.e., Poulson’s Substack newsletter. (*Ibid.*) And the writings “concerned the character and conduct of the CEO of a company with government contracts in the security and intelligence arena” and “a security clearance”—matters of “public significance.” (AA0993-AA0994.)

The court rejected Blackman’s argument that the speech was illegal and therefore could not satisfy the first prong of the anti-SLAPP analysis under *Flatley v. Mauro* (2006) 39 Cal.4th 299, 320. (AA0994-AA0996.) *Flatley* held that where “the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff’s action.” (39 Cal.4th at 320.) Blackman argued that Poulson violated a raft of laws in obtaining the Arrest Report, but the court found that none of them fell within *Flatley*’s narrow exception. First, Penal Code section 11143 “makes it a misdemeanor for a member of the public to knowingly possess a

‘record.’” (AA0995 [quoting Penal Code, § 11143; Penal Code, § 11140(a)].) Poulson did not violate that provision because a “record” is “defined in that statute as ‘statute summary criminal history’”—not a mere arrest report. (*Ibid.*) That provision also “exempt[ed] journalists, as d[id] Labor Code 432.7(g), another provision Blackman relie[d] on.” (AA0995.) Penal Code section 116 prohibits “[w]illful disobedience of the terms, as written, of a ... court order.” Poulson did not violate that provision because the Sealing Order did not include any “written terms that, by themselves, create an obligation by Poulson or anyone else not to disseminate” the Arrest Report. (AA0995.) Penal Code section 851.92(c) prohibits “disseminat[ing] information related to a sealed arrest.” The court found this statutory provision irrelevant because it did not impose “criminal liability” and *Flatley*’s illegality exception applied only to conduct that was “criminal.” (AA0996 [quoting *Mendoza v. ADP Screening & Selection Servs., Inc.* (2010) 182 Cal.App.4th 1644, 1654].)

At the second step of the anti-SLAPP analysis, the court concluded that Blackman’s claims against Substack would fail both under the First Amendment and under Section 230. (AA0996-AA0999.)

The court observed that “only wrongful conduct at the ‘extreme end’ [of illegality] will overcome the First Amendment protection for reporting.” (AA0994 [quoting *Jenni Rivera Enters., LLC v. Latin World Ent. Holdings, Inc.* (2019) 36 Cal.App.5th 766, 798].) It found Defendant-Respondents’ conduct was nowhere near that extreme end, observing that Poulson lawfully obtained the

Arrest Report and Respondents “had [no] reason to believe that the [Arrest Report] was sealed when Poulson first published his ... post.” (AA0996-AA0997.) The court relied on a seminal First Amendment precedent: *Bartnicki v. Vopper* (2001) 532 U.S. 514. There, the Supreme Court held that the First Amendment protected the disclosure of an illegally intercepted phone conversation where defendants “did not participate in the interception, but they did know ... that the interception was unlawful.” (*Id.* at 517-18.) The court also followed *Jenni Rivera Enterprises*, which held that the First Amendment protected a defendant who solicited information subject to a nondisclosure agreement where the defendant initially “had no knowledge of the nondisclosure agreement.” (36 Cal.App.5th at 800.)

The court easily rejected Blackman’s arguments that Poulson’s speech was “false, and therefore not protected by the First Amendment.” (AA0997.) An arrest is “deemed not to have occurred” when it is sealed, but while the Sealing Order “exempt[ed]” Blackman from “some of the consequences of [the] arrest,” it “cannot alter how past events unfolded” or render true facts false. (AA0997-AA0998.) Likewise, Blackman’s complaints that Poulson’s articles “misleadingly implied” that Poulson was present and that Blackman was guilty did not remove the speech from First Amendment protection. Rather, the court correctly held that “a journalist does not become subject to suit because he does not include every detail the subject of the piece would like him to include.” (AA0998.)

The court then turned to Section 230, which provides that “interactive computer service[s]” cannot be “treated as the publisher or speaker of any information provided by another information content provider.” (47 U.S.C. § 230(c)(1).) Given this immunity, the court held that Blackman had “not carried his burden of proving minimal merit as to AWS, Substack, and Tech Inquiry.” (AA0998.) Blackman argued that his claims did not treat them as publishers because the “possession” of the Arrest Report was unlawful. (*Ibid.*) But the court reasoned that the only statute AWS, Substack, and Tech Inquiry had violated—Penal Code section 851.92—did not prohibit possession, only “disclosure or dissemination, which is what the CDA immunizes.” (AA0999.) In the alternative, the court concluded that “it is difficult to see how a publisher of a website could publish content without being in possession of it, and accordingly ... the conduct alleged in the complaint as to these defendants is immunized.” (*Ibid.*)

On April 11, 2025, Blackman appealed. (AA1013.)

### **STANDARD OF REVIEW**

This Court “independently review[s] the trial court’s ruling on an anti-SLAPP motion.” *Michael K. v. Cho* (2025) 113 Cal.App.5th 1, 8.

### **ARGUMENT**

#### **I. CALIFORNIA’S ANTI-SLAPP STATUTE PROTECTS JOURNALISTS FROM FEAR OF CRUSHING LITIGATION.**

The California Legislature “enacted Code of Civil Procedure section 425.16 to combat ‘a disturbing increase’ in strategic

lawsuits against public participation (SLAPPs): ‘lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.’” (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1242 [quoting Code Civ. Proc., § 425.16(a)].) To prevent such lawsuits from ““masquerad[ing] as ordinary lawsuits such as defamation,”” (*Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal.4th 12, 21) the California Legislature enacted the anti-SLAPP statute “to nip SLAPP litigation in the bud by striking offending causes of actions which ‘chill the valid exercise of the constitutional rights of freedom of speech and petition.’” (*Braun v. Chron. Publ’g Co.* (1997) 52 Cal.App.4th 1036, 1042 [quoting Code Civ. Proc., § 425.16(a)].) The legislature directed that the anti-SLAPP statute “be construed broadly.” (Code Civ. Proc., § 425.16(a); accord *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1121-22.) And the anti-SLAPP statute applies even to lawsuits brought without any intent to chill speech. (*Equilon Enters., LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 66-67.)<sup>5</sup>

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<sup>5</sup> Blackman is wrong to suggest that the anti-SLAPP statute applies only to plaintiffs who “do not intend to win their suits.” (Opening Br. 27, 37 [quoting *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1363].) It does not matter whether Blackman intended to win his meritless lawsuit or whether he genuinely believed he could wield the Sealing Order to silence a journalist. “[I]ntentions are ultimately beside the point,” and anti-SLAPP movants “face[] no additional requirement of proving [the plaintiff’s] subjective intent.” (*Equilon Enters.*, 29 Cal.4th at 67-

Resolution of an anti-SLAPP motion involves a two-step analysis:

“**First**, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one “arising from” protected activity” as defined in Code Civ. Proc., § 425.16(e). (*Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1035; *Taus v. Loftus* (2007) 40 Cal.4th 683, 712.) This threshold showing is not onerous; “[i]nstead, ... a court must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis.” (*Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 964) The focus at the first step is “the defendant’s *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92 [emphasis in original]; accord *Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 679 [“Thus, we do not evaluate the first prong of the anti-SLAPP test solely through the lens of a plaintiff’s cause of action.”].)

**Second**, once the threshold showing has been made, “the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384; *Nygård*, 159 Cal.App.4th at 1035.) At the second step, “to defeat a SLAPP motion, [the plaintiff] must overcome substantive defenses.” (*Comstock v. Aber* (2012) 212 Cal.App.4th

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68; see also *id.* at 68 n.5 [“To the extent they hold to the contrary, *Paul for Council* [and other cases] are disapproved”].)

931, 953 [grant of anti-SLAPP motion to strike defamation claim affirmed where plaintiff could not show malice as required to defeat an affirmative defense that the statement was privileged].)

**II. BLACKMAN’S CLAIMS ARISE FROM  
SUBSTACK’S PROTECTED ACTIVITY, AND THE  
ANTI-SLAPP STATUTE APPLIES.**

The first step of the anti-SLAPP analysis asks whether the claims “aris[e] from any act of [the defendant] in furtherance of [the defendant’s] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (Code Civ. Proc., § 425.16(b)(1).) Specifically, an anti-SLAPP movant must show that “the acts underlying the plaintiff’s cause of action fall within one of the four categories of conduct described in section 425.16, subdivision (e).” (*Nygård*, 159 Cal.App.4th at 1036.) At issue here is the category of protected conduct covering “any written or oral statement or writing made in ... a public forum in connection with an issue of public interest.” (Code Civ. Proc., § 425.16(e)(3).)

The trial court had “little difficulty” finding that Substack “succeed[s] under 425.16(e)(3),” and that determination was correct: “reporting on a blog post” in “a public newsletter with at least 3,000 subscribers, concerning companies making surveillance technologies” was “a writing in a public forum,” and “the character and conduct of the CEO of a company with government contracts in the security and intelligence arena” and “a security clearance” is an issue of public interest. (AA0993-AA0994.)

At the threshold, Blackman disputes whether his claims arise from Defendant-Respondents' speech and conduct in furtherance of it. (Opening Br. 28-29.) They plainly do. This first prong of the anti-SLAPP analysis asks whether the "acts underlying the plaintiff's cause of action" are protected activity. (*Nygård*, 159 Cal.App.4th at 1036.) And those acts are all speech and conduct making that speech possible, i.e., the "possession and dissemination" of the Arrest Report. (Opening Br. 16.)

**A. Blackman's Claims Arise From A "Writing Made In ... A Public Forum."**

It is undisputed on appeal, as it was below, that Poulson's articles were a writing in a public forum. (See Opening Br. 28; AA0659-AA0663.) He published the articles on Substack's online platform and in his newsletter. (AA0365-AA0375.) It is black letter law that "[w]eb sites accessible to the public ... are 'public forums' for purposes of the anti-SLAPP statute." (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4 [collecting cases].) So are newsletters. (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 475-76 ["newsletter ... distributed to ... approximately 3,000" recipients "was also a 'public forum' within the meaning of section 425.16, subdivision (e)(3)"].) The trial court correctly found this element satisfied without controversy, (AA0993-AA0994), and Blackman's opening brief gives no reason to overturn that finding.

**B. The Writings Were “In Connection With An  
Issue Of Public Interest.”**

An issue of public interest is simply “*any issue in which the public is interested.*” (*Nygård*, 159 Cal.App.4th at 1042 [emphasis in original].) “[T]he issue need not be ‘significant’ to be protected by the anti-SLAPP statute—it is enough that it is one in which the public takes an interest.” (*Ibid.*) The public interest determination is flexible, and courts have found statements to implicate an issue of public interest when (1) the statement “concern[s] a person or entity in the public eye”; (2) the statement concerns “conduct that could directly affect a large number of people beyond the direct participants”; (3) the statement concerns a “topic of widespread, public interest”; (4) the issue is “of concern to a substantial number of people”; or (5) the issue has “been the subject of extensive media coverage.” (*Geiser*, 13 Cal.5th at 1248.)<sup>6</sup> The arrest of Blackman, the CEO of a government contractor with a security clearance, for a violent felony was plainly a matter of public interest.

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<sup>6</sup> Blackman cites *FilmOn* to claim that defendants invoking the anti-SLAPP statute “must establish ... the existence of a ‘functional relationship ... between the speech and the public conversation.’” (AA0705 [quoting *FilmOn.com Inc. v. DoubleVerify, Inc.* (2019) 7 Cal.5th 133, 149-50].) But *FilmOn.com* applies that requirement only to section 425.16(e)(4) of the statute, the catch-all provision. Here, Substack relies only on section 425.16(e)(3), and because the speech here was made in “a public forum” (Code Civ. Proc., § 425.16(e)(3)), the speech is by definition part of the public conversation.

Blackman and the company he ran were in the public eye. In a bout of self-serving and false modesty, Blackman casts himself as “an unknown person” and “an unknown CEO of an unknown private company.” (Opening Br. 40.) The record shows the opposite. Blackman has repeatedly sought out the public eye, touting himself as a “prominent figure” in the tech industry (AA0211), hosting a podcast with high-profile guests, including the former U.S. Treasury Secretary and former Speaker of the House (AA0134-AA0135), and frequently opining about politics, public policy, and technology in national publications and on television programs (AA0134). More to the point, both he and Premise Data attracted national press coverage related to their controversial work for the U.S. military and foreign governments. (See *supra* note 1.)

Blackman’s character and integrity were also a matter of widespread public interest and concern because of his role as Premise Data’s CEO and his Top Secret security clearance. The public has an interest in the “character” and “trustworthiness” of business leaders. (See *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1146.) And the public has an especially strong interest in the character and trustworthiness of those who hold security clearances and lead businesses with significant and sensitive government contracts in the national security sector. (*N.Y. Times Co. v. U.S. Def. Counterintelligence & Sec. Agency* (S.D.N.Y., Oct. 8, 2025, No. 08-30201) 2025 WL 2855339, at \*5-6 [holding, in the FOIA context, that “the public has an interest in knowing whether the leader of SpaceX and Starlink [i.e., military contractors] holds

the appropriate security clearances,” and disclosures about the CEO’s “drug use ... only enhance[] the public interest in disclosure” due to the “duty of ‘continuous vetting’” of clearance holders].)

The public’s interest in these issues cannot be voided by government fiat. Blackman suggests that if any arrest report that is “sealed” by a judge, and “uncharged” by a prosecutor, then the facts underlying the arrest cannot be charged in any forum to a person’s character and trustworthiness, because a contrary “conclusion runs afoul of ... public policy[.]” (Opening Br. 46.) He adds that “evidence of an accused individual’s prior arrests is not admissible in a criminal proceeding,” as if the rules of evidence at trial supply the standard for the public’s interest in knowing the truth. (*Ibid.*) In fact, California’s protections for uncharged arrestees do not have the powers that Blackman suggests. Common sense dictates that the events depicted in the Arrest Report *are* relevant to Blackman’s integrity, and to whether he is an appropriate person to safeguard national secrets and to receive military contracts. Blackman cannot erase the past through judicial fiat. That would be the ultimate affront to the First Amendment.

Events that cast doubt on the trustworthiness of people charged with protecting national security, or senior business people who benefit from substantial government contracts, are clearly an issue of legitimate interest to the public. (See generally *Henry v. Lake Charles Am. Press, L.L.C.* (5th Cir. 2009) 566 F.3d 164, 181 [holding that “loss of a government contract and the investigation of an entity doing business with the [] government”

were “matters of public interest” for purposes of Louisiana’s anti-SLAPP statute].)

The articles are equally related to the public’s interest in journalism about the status of women in the technology sector generally, and about efforts to improve accountability for men in the technology sector who engage in abusive behavior toward women. This, in turn, is related to a broader set of issues about powerful men using their power to gain control over, and abuse, women—a topic of widespread interest, especially in the wake of the #MeToo movement. As the Court of Appeal held in *Sipple v. Foundation for National Progress* (1999) 71 Cal.App.4th 226, 238, “[d]omestic violence is an extremely important public issue in our society” and constitutes an “issue of public interest” under section 425.16(e)(3). The public interest is particularly strong when domestic violence involves powerful men who may be able to misbehave with impunity. (See *id.* at 238-39 [section 425.16(e)(3) satisfied where the article in question not only addressed “the issue of domestic violence” but also the “theme that rich and powerful men may use the legal system to their advantage over women who may have been abused by them”]; see also *Coleman v. Grand* (E.D.N.Y. 2021) 523 F.Supp.3d 244, 259 [“sexual impropriety and power dynamics in the music industry, as in others, were indisputably an issue of public interest”]; see also *Button v. Doherty* (S.D.N.Y., July 30, 2025, No. 24-CV-5026) 2025 WL 2846927, at \*15 [“Courts have deemed allegations of sexual assault, particularly among influential members of arts

professions during the period of the #MeToo movement, a matter of public interest.”].)

Blackman’s efforts to downplay the public’s interest in his felony domestic violence arrest are unconvincing. It is of no moment that Poulson’s reporting took place 20 months after the arrest. (Opening Br. 41.) Poulson published the Arrest Report within days of receiving it from the confidential source and confirming its details with the San Francisco Police Department. (AA0347-AA0348 [Poulson Decl. ¶¶ 13-16].) Blackman suggests that had the Arrest Report been newsworthy, it would have been reported sooner. (Opening Br. 42.) But there is no evidence that any other journalist even knew of the Arrest Report, and without that, no journalist could have reported on it. In any event, the “age of the particular records” does not diminish the public’s interest in them, as “[p]ublic records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media.” (*Gates v. Discovery Commc’ns, Inc.* (2004) 34 Cal.4th 679, 693.) From the date it was written to the date Poulson reported on it, the Arrest Report remained topical to the significant public issues above—Blackman’s character as a government contractor and security clearance holder, and his role as a tech-industry executive arrested for violently abusing a woman.

Blackman next argues that there can be no public interest in his Arrest Report because, as a sealed record, it was “deemed not to have occurred.” (Opening Br. 44.) He relies on *Briscoe v.*

*Reader's Digest Association, Inc.* (1971) 4 Cal.3d 529, 537-39, 541, which held that there was “minimal social value” in reporting a criminal’s “identity” when the crime occurred 11 years earlier and the criminal had been “rehabilitated.” Blackman, however, was not some “anonymous member of the community” who was plucked from obscurity to the pages of *Reader's Digest*. (*Id.* at 541.) And whatever *Briscoe's* merits when decided, it is contrary to decades of subsequent Supreme Court precedent and has been expressly overruled by the California Supreme Court. (*Gates*, 34 Cal.4th at 692 [“We conclude that the high court’s decision in *Cox* and its subsequent pronouncements in *Oklahoma Publishing, Daily Mail, The Florida Star*, and *Bartnicki* have fatally undermined *Briscoe's* holding ....”].)

Grasping at straws, Blackman seems to argue that, even if a matter of public interest when initially reported, the Arrest Report was “no longer” a matter of public interest “*after* his Premise Data employment ended.” (Opening Br. 44.) Blackman’s argument is far from clear, but he apparently objects to Poulson’s contemporaneous reporting on Blackman’s resignation as Premise Data’s CEO. (Opening Br. 44-45 [citing AA0294-AA0298].) That was timely reporting on a newsworthy event—not stale reporting on a “defunct” company that “no longer exists.” (Opening Br. 44 [citing *Cole v. Patricia A. Myer & Assocs., APC* (2012) 206 Cal.App.4th 1095, 1121].) To the extent Blackman means to suggest that Defendant-Respondents were obligated to take down reporting after he resigned, he offers no authority for that position.

And nothing in the First Amendment or the anti-SLAPP statute requires parties to erase the past.

The trial court's finding that the Arrest Report was a matter of public interest should be affirmed.

**C. Blackman Cannot Sidestep Anti-SLAPP  
Simply By Branding Substack's Conduct As  
"Unlawful."**

Attempting to sidestep application of the anti-SLAPP statute, Blackman points to the exception for illegal activity recognized in *Flatley*, 39 Cal.4th at 315-16. He misapplies the "narrow" exception in *Flatley*. (*Ibid.*) It applies only in "rare cases in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law." (*Cross v. Cooper* (2011) 197 Cal.App.4th 357, 386 [emphasis added].) The illegality must be a "crime." (*Ibid.*; see also *Ass'n for L.A. Deputy Sheriffs v. L.A. Times Commc'ns LLC* (2015) 239 Cal.App.4th 808, 817 ["Cases decided after *Flatley* have held the *Flatley* rule applies only to criminal conduct, not to conduct that is illegal because it violates statutes (other than criminal statutes) or the common law."]; *Mendoza*, 182 Cal.App.4th at 1654 ["criminal, and not merely violative of a statute"].)<sup>7</sup> And even then, the conduct must

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<sup>7</sup> Blackman argues that the trial court was wrong to rely on *Mendoza* because that case involved "a punishment enhancement statute," "rather than a statute that defines" a crime. (Opening Br. 32.) That misses the point. The trial court cited *Mendoza* only for the proposition, repeated elsewhere, that the holding in *Flatley* is narrow. (AA0996.)

be unprotected by the First Amendment, such as in *Flatley* where the alleged conduct was “[e]xtortion[,] [which] is not a constitutionally protected form of speech.” (*Flatley*, 39 Cal.4th at 328.)

None of these conditions is met here. Defendant-Respondents vehemently deny that their conduct was criminal. There is no evidence that establishes any crime as a matter of law, particularly given that “only wrongful conduct at the ‘extreme end’ will overcome the First Amendment protection for reporting.” (AA0994 [quoting *Jenni Rivera Enters.*, 36 Cal.App.5th at 798].)<sup>8</sup> Blackman’s arguments to the contrary all fail. (Opening Br. 30-37.)

First Amendment. As an initial matter, *Flatley* does not apply because Defendant-Respondents’ activity is protected by the First Amendment. Defendant-Respondents assert a First Amendment right to publish the Arrest Report and the information derived from it. Barring defendants from raising their free speech defenses as part of the special motion to strike would defeat the very purpose of the anti-SLAPP statute: encouraging the exercise of freedom of speech. (See *Mendoza*, 182 Cal.App.4th at 1654 [explaining that “a reading of *Flatley* to push any statutory

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<sup>8</sup> Blackman claims that the trial court improperly “reli[ed]” on *Jenni Rivera*. (Opening Br. 61.) Not so. *Jenni Rivera* fairly illustrates the trial court’s point that there is a “continuum” of actions newsgatherers might take, and that Poulson’s conduct in this case—like Univision’s actions in arguably encouraging the breach of a nondisclosure agreement in *Jenni Rivera*—are far from the extreme end of the spectrum. (AA0996.)

violation outside the reach of the anti-SLAPP statute would greatly weaken the constitutional interests which the statute is designed to protect” because “plaintiff’s complaint *always* alleges a defendant engaged in illegal conduct”].)

A wealth of both state and federal case law holds that allegations that published or disclosed content had been illegally obtained do not defeat First Amendment protection. (See *Ass’n for L.A. Deputy Sheriffs*, 239 Cal.App.4th at 818.) For example, in *Nicholson v. McClatchy Newspapers* (1986) 177 Cal.App.3d 509, two newspapers reported that the State Bar’s commission found the plaintiff unqualified for appointment to the bench—a confidential determination under the government code. In rejecting the plaintiff’s lawsuit, the court explained, “the First Amendment protects the ordinary news-gathering techniques of reporters and those techniques cannot be stripped of their constitutional shield by calling them tortious.” (*Id.* at 513.) The court stated that ordinary news-gathering techniques “of course, include asking persons questions, including those with confidential or restricted information.” (*Id.* at 519.) It concluded, “[w]hile the government may desire to keep some proceedings confidential and may impose the duty upon participants to maintain confidentiality, it may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy information through routine reporting techniques.” (*Id.* at 519-20.)

Countless other decisions are in accord. (See, e.g., *Bartnicki*, 532 U.S. at 517, 535 [First Amendment protected journalists who reported contents of illegally intercepted telephone conversations

even though they knew “or at least had reason to know” the interceptions were unlawful; contentious collective bargaining negotiations between school board and union were matters of public concern]; *Landmark Commc’ns, Inc. v. Commonwealth of Virginia* (1978) 435 U.S. 829 [First Amendment protected newspaper from criminal conviction for publishing confidential proceedings of judicial review commission]; *Cox Broad. Corp. v. Cohn* (1975) 420 U.S. 469 [First Amendment protected reporter who published rape victim’s name in violation of state criminal statute]; *Florida Star v. B.J.F.* (1989) 491 U.S. 524 [First Amendment protected newspaper that published rape victim’s name—inadvertently released by police—in violation of state criminal statute].); *Smith v. Daily Mail Publ’g Co.* (1979) 443 U.S. 97 [invalidating state law that criminalized publication of juvenile murder suspect’s name without court permission].)

Against this constitutional backdrop, Blackman cannot show that Defendant-Respondents’ conduct was criminal as a matter of law. If anything, this is a much easier case than the likes of *Bartnicki*. Here, there is not a shred of evidence that Poulson—much less Substack, whose role was confined to offering a journalism platform—unlawfully obtained the Arrest Report or knew the Arrest Report was sealed before publishing it. (AA0996.) This Court need go no further at this step to find that *Flatley’s* rare exception does not apply here. But in all events, Blackman has not established that Defendant-Respondents committed any crime even assuming away their dispositive First Amendment defense.

Penal Code, § 851.92(c). This section provides that “a person or entity[] ... who disseminates information relating to a sealed arrest is subject to a civil penalty .... enforce[able] by a city attorney, district attorney, or the Attorney General.” (Penal Code, § 851.92(c).)

As the trial court found, a violation of this section does not trigger *Flatley* because “no criminal liability” attaches to a violation. (AA0996.) A violation triggers, at most, “a civil penalty.” (Penal Code, § 851.92(c).) Under *Flatley* and its progeny, that is not enough. (*Cross*, 197 Cal.App.4th at 386; *Mendoza*, 182 Cal.App.4th at 1654.) Blackman contends that *Flatley* does not require a criminal violation, citing *Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2006) 143 Cal.App.4th 1284. (Opening Br. 31.) But *Novartis* involved a “conspiracy” to “carry[] out attacks on the homes” of individuals involved in animal testing, including through “terrifying incidents in which persons broke employees’ windows, vandalized their cars, set off ear-piercing alarms in their yards, and left excrement on their doorsteps.” (143 Cal.App.4th at 1288, 1296-97 [noting that the First Amendment does not protect “solicitation of crime”: “In short, statements in furtherance of a conspiracy are not the sort of speech [the anti-SLAPP statute] was designed to protect”].) That is obviously criminal, and a far cry from reporting on a formerly public government record.

In any event, section 851.92(c) is unconstitutional at least as applied to dissemination of the Arrest Report. (AA0996.) Without exception, the Supreme Court has invalidated government efforts

to punish those who lawfully obtain and publish information of public concern the government deems sensitive. (E.g., *Florida Star*, 491 U.S. at 533 [name of a rape victim]; *Bartnicki*, 532 U.S. at 534-35 [broadcast of phone call known to have been recorded unlawfully].) It is undisputed that the Arrest Report was lawfully obtained. (AA0996.) Indeed, for precisely that reason, the Attorney General and San Francisco City Attorney stipulated to a preliminary injunction against enforcement of the law as to the Arrest Report. (AA0934-AA0936.) And when Blackman subsequently sued the City for releasing the Arrest Report, his claim was stricken on an Anti-SLAPP motion, in part because the City's conduct was not "illegal as a matter of law." (Mot. for Judicial Notice, Ex. D [City and County Order at 6].) Blackman chose not to appeal that ruling. (Mot. for Judicial Notice, Ex. H [Dismissal with Prejudice].)

Penal Code, § 11143. Penal Code section 11143 provides that "[a]ny person, except those specifically referred to in section 1070 of the Evidence Code, who, knowing he is not authorized by law to receive a record or information obtained from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor." (Penal Code, § 11143.)

As the trial court correctly concluded, these sections do not apply to the Arrest Report but, assuming *arguendo* they did, Defendant-Respondents are exempt. (AA0995.)

The Arrest Report is not a "record" within the meaning of section 11143. The relevant article of the Penal Code defines "[r]ecord" as "the state summary criminal history information as

defined in subdivision (a) of Section 11105, or a copy thereof, maintained under a person's name by the Department of Justice." (Penal Code, § 11140(a).) In turn, "[s]tate summary criminal history information" is defined as "the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person" and "does not refer to records and data compiled by criminal justice agencies other than the Attorney General." (Penal Code, § 11105(a)(2)(A)-(B).) The Arrest Report is the report of a single arrest by the San Francisco Police Department. (AA0345-AA0349.) It is not a "master record" of Blackman's criminal history. Nor was it "compiled by the Attorney General." (Penal Code, § 11105(a)(2)(A).) Thus, Penal Code section 11143 does not apply.

Even if the Arrest Report were a covered record, Defendant-Respondents would be exempt as persons "specifically referred to in section 1070 of the Evidence Code." (Penal Code, § 11140(a).) Evidence Code section 1070 shields any "publisher, editor, reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication." (Evid. Code, § 1070(a).) Poulson is both a "reporter" and a "person connected with ... a periodical publication," i.e., his Substack newsletter. (*O'Grady v. Super. Ct.* (2006) 139 Cal.App.4th 1423, 1465-66 [applying the state shield law to occasionally published, news-oriented websites]; AA0343-AA0344 [Poulson Decl. ¶ 1 (independent journalist; worked with *The Guardian* and *The Intercept*; newsletter with more than 3,000 subscribers), 4 (report on "companies making surveillance and weapons technologies"), 5-

12 (description of news articles)].) Substack is a “person connected with” Poulson’s periodical publication. (Evid. Code, § 1070(a).) Blackman asserts that Poulson’s newsletter lacked the “consistent[] and frequent[]” publication schedule and the “substantial audience” necessary to qualify as a periodical publication, but those are at most factual disputes. (Opening Br. 34-35.) *Flatley* demands “uncontroverted and conclusive evidence.” (39 Cal.4th at 320.) Blackman has none.

Penal Code, § 13304. Penal Code section 13304 is a separate provision for local summary criminal history information. This section provides that “[a]ny person, except those specifically referred to in Section 1070 of the Evidence Code, who, knowing he is not authorized by law to receive a record or information obtained from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor.” (Penal Code, § 13304.)

As an initial matter, Blackman did not advance this argument below. (See AA0659.) Consequently, the court need not (and should not) consider this argument at all, as Blackman cannot raise new allegations of criminal violations “for the first time on appeal.” (*Bogacki v. Bd. of Supervisors* (1971) 5 Cal.3d 771, 780 [“a legal theory may not be raised for the first time on appeal”].) His belated invocation of section 13304 tacitly acknowledges that the section he did raise below—Penal Code section 11143—applies only to certain state records, not a local arrest report like the one at issue here. (See Opening Br. 33 [asserting the trial court’s “distinction between state summary criminal history and local summary criminal history” was “a distinction without a

difference”].) Blackman is wrong to fault the trial court for addressing the argument he actually made and the statute he actually invoked.

Regardless, Substack did not violate Penal Code section 13304. There is no evidence that any of the Defendant-Respondents obtained or received the Arrest report “knowing [it] is not authorized by law.” (Penal Code, § 13304.) Indeed, the undisputed evidence shows the opposite: the Arrest Report contained no indication that it was sealed. (AA0347 [Poulson Decl. ¶ 14].)

Assuming *arguendo* there was evidence that Defendant-Respondents knew they were acting illegally, that would be of no moment. For the reasons discussed above, Substack (and Poulson) are exempt from Penal Code section 13304 as a “reporter” and “person connected with ... [a] periodical publication.” (Evid. Code, § 1070(a).)

Moreover, there is no evidence that the Arrest Record was obtained from a “record” as defined under Penal Code § 13301(a). A “[r]ecord” is “the master local summary criminal history information,” i.e., “the master record of information compiled by a[] local criminal justice agency ... pertaining to the identification and criminal history of a[] person.” (Penal Code, § 13301(a) [defining “record”]; see also Penal Code, § 13300(a)(1) [defining “[l]ocal summary criminal history information”].) The Arrest Report is the report of a single arrest, not a master record of Blackman’s criminal history. (See AA0345-AA0349.)

Finally, Blackman gestures toward another novel argument,

namely that the Arrest Report is somehow “information obtained from” the master record. (Opening Br. 34.) This argument fails at least four times over. First, Blackman did not make this argument below, so it is waived. (See AA0659; *Bogacki*, 5 Cal.3d at 780.) Second, but-for the Sealing Order, the Arrest Report was a public record. (Gov. Code, §§ 7923.610, 7923.615(a) [mandating that arrest reports and incident reports are public records].) Third, Blackman has adduced no evidence that the Arrest Report was actually obtained from the master record—he simply assumes it, without even opining as to what specific information might have come from a master record. Fourth, Blackman’s gloss on the Penal Code would give it sweeping breadth, potentially criminalizing any receipt of any information about a person’s criminal history. He cites no authority for that breathtaking contention.

Penal Code, § 166. Penal Code section 166 is a “contempt” statute under which “[w]illful disobedience of the terms, as written, of a process or court order” is a “misdemeanor.” (Penal Code, § 166(a)(4).)

As the trial court correctly concluded, the “[S]ealing [O]rder here does not include written terms that, by themselves, create an obligation by Poulson or anyone else not to disseminate the [Arrest Report].” (AA0995.) It is black-letter law that for a contempt finding, “[t]he order must be clear, specific, and unequivocal,” and “[a]ny ambiguity in a decree or order must be resolved in favor of an alleged contemnor.” (*In re Marcus* (2006) 138 Cal.App.4th 1009, 1014-15.) Nothing in the Sealing Order even purported to bind anyone not a party to Blackman’s criminal case—much less

clearly, specifically, and unequivocally direct them not to possess or disseminate the Arrest Report. (See AA0575.) All that Blackman can muster is the claim that all this was implied by the word “sealed.” (Opening Br. 36.) That single word imposed no obligation on any third party and is not nearly clear or specific enough to justify liability for criminal contempt. Defendant-Respondents did not disobey the Sealing Order at all, let alone do so *willfully*.

Labor Code, § 432.7(g)(3). Labor Code section 432.7(g)(3) provides that, “[e]xcept for those specifically referred to in Section 1070 of the Evidence Code, a person who is not authorized by law to receive or possess criminal or juvenile justice records information maintained by a local law enforcement criminal or juvenile justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall not knowingly receive or possess that information.” (Labor Code, § 432.7(g)(3).)

As the trial court correctly concluded, Defendant-Respondents are exempt from this provision under Evidence Code section 1070 as a “reporter” and “person[s] connected with ... [a] periodical publication.” (Evid. Code, § 1070(a).) Moreover, as Blackman admits, this Labor Code provision “is not a criminal statute.” (Opening Br. 37.) Thus, even assuming Blackman’s “uncontroverted and conclusive evidence” that Defendant-Respondents violated the provision, it would not trigger *Flatley*’s exception for criminal conduct. (39 Cal.4th at 320.)

\* \* \*

Blackman cannot use the *Flatley* exception to short-circuit the anti-SLAPP analysis. The trial court correctly concluded that Defendant-Respondents carried their burden at the first step.

**III. BLACKMAN CANNOT DEMONSTRATE A PROBABILITY OF PREVAILING ON ANY OF HIS CLAIMS.**

Because Substack has made the threshold showing that the claims against it arise from protected activity, “the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.” (*Baral*, 1 Cal.5th at 384.) At the second step, “to defeat a SLAPP motion, [the plaintiff] must overcome substantive defenses.” (*Comstock*, 212 Cal.App.4th at 953 [affirming grant of anti-SLAPP motion to strike defamation claim where plaintiff could not show malice as required to defeat an affirmative defense that the statement was privileged].)

As the trial court correctly concluded, Blackman’s claims against Substack would fail in light of two independently dispositive defenses: the First Amendment and Section 230. (AA0996-AA0999.)

**A. The First Amendment Bars Blackman’s Claims.**

The First Amendment<sup>9</sup> bars Blackman’s claims, all of which arise from the publication of information Poulson lawfully

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<sup>9</sup> Substack uses “First Amendment” to refer both to the United States Constitution (U.S. Const., 1st Amend. [“Congress shall make no law ... abridging the freedom of speech, or of the press”]),

obtained from a confidential source on a matter of public significance.

The Supreme Court's decision in *Florida Star v. B.J.F.* (1989) 491 U.S. 524 controls. In that case, a local sheriff's department mistakenly disclosed a rape victim's name in a police report distributed to reporters, who published the name in violation of a Florida statute that made it a crime to "print, publish, or broadcast ... in any instrument of mass communication" the name of the victim of a sexual offense. (*Id.* at 526.) The victim successfully sued the newspaper for negligently violating the statute by revealing her identity. (*Id.* at 527, 529.) The Supreme Court reversed, holding that "[i]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." (*Id.* at 533 [quoting *Daily Mail*, 443 U.S. at 103].) The court also held that the Florida statute barring the publication of the name of a rape victim was unconstitutional as applied to the newspaper. (*Id.* at 541.)

This case is on all fours. In *Florida Star*, as here, the defendant was accused of breaking a state criminal law. (See Opening Br. 55 [arguing that California law "criminalizes the knowing receipt and possession" of the Arrest Report].) There, as here, the defendant was a journalist publishing information

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and the California Constitution (Cal. Const., art. I, § 2(a) ["A law may not restrain or abridge liberty of speech or press."].)

obtained from a report released by the police. (AA0347-AA0348 [Poulson Decl. ¶¶ 13-15].) And there, as here, the plaintiff argued that a countervailing interest in privacy justified silencing the press. (See Opening Br. 55 [invoking “privacy interests”].)

Other Supreme Court decisions buttress this conclusion. In *Cox*, the Court held that the First Amendment barred civil damages against a television station for broadcasting the name of a rape-murder victim lawfully obtained by a reporter from a court proceeding because “[s]tates may not impose sanctions on the publication of truthful information contained in official court records open to public inspection.” (420 U.S. at 495.) This same principle runs throughout Supreme Court precedent. (E.g. *Okla. Publ’g Co. v. Okla. Cnty. Dist. Ct.* (1977) 430 U.S. 308 [First Amendment barred injunction blocking publication of the name and photograph of minor charged in a juvenile proceeding lawfully obtained by reporters]; *Daily Mail*, 443 U.S. at 103 [under First Amendment, statute barring publication of information about juvenile criminal defendant could not be applied to newspaper publisher that obtained information by monitoring police band and interviewing witnesses]; *Landmark Commc’ns*, 435 U.S. 829 [striking down law criminalizing publication of information from confidential judicial misconduct commission proceedings].)

Blackman offers no reason why his Arrest Report should be treated any differently from the name of a minor victim of sexual assault (*Florida Star*, 491 U.S. at 533), a rape-murder victim (*Cox*, 420 U.S. at 495), or the name of a juvenile criminal offender (*Daily Mail*, 443 U.S. 97; *Okla. Publ’g Co.*, 430 U.S. 308). If anything,

those cases were much more difficult on the equities: they involved *victims* of heinous crimes or *minors* charged with offenses, whereas Blackman is an adult who was arrested as the *perpetrator* of domestic violence.

Blackman's efforts to dodge *Florida Star* are makeweight. (Opening Br. 59-61.) It does not matter that Poulson received the Arrest Report "through an encrypted messages platform" rather than directly from the police; that he received it "nearly two years after" the arrest; or that the Arrest Report had been sealed. (Opening Br. 60.) Those are distinctions without any constitutional difference. What matters is that he "lawfully obtain[ed] truthful information about a matter of public significance." (*Florida Star*, 491 U.S. at 533.) Blackman disputes that too, baselessly asserting that Poulson did not "legally obtain[]" the Arrest Report because it would have been unlawful for the police to release it and that this "Court must presume that 'public officers ... have properly discharged their official duties.'" (Opening Br. 60 [quoting *U.S. v. Chemical Found., Inc.* (1926) 272 U.S. 1, 14-15].) Below, however, Blackman submitted a sworn declaration alleging the opposite: that despite the Sealing Order, a San Francisco Police Department employee had knowingly released the Arrest Report to someone, who in turn provided it to Poulson. (AA0846, AA0848-AA0849.) Regardless, Poulson's declaration below established that he lawfully obtained the Arrest Report. (AA0270 [Poulson Decl. ¶ 13].) Blackman offers no actual evidence to the contrary. Nor does he ever contend that Substack, as the platform that Poulson used to publish the Arrest Report, somehow obtained it unlawfully.

Again grasping at straws, Blackman suggests that Defendant-Respondents lost any First Amendment protection they had with respect to the Arrest Report once they learned that “possession and any distribution of [it was] illegal.” (Opening Br. 61-62.) But Defendant-Respondents have not violated any law. (See *supra* at 16-17.) And Blackman has no serious argument that such a law would be constitutional or operate to deprive Defendant-Respondents of their First Amendment protection. (See *Jean v. Mass. State Police* (1st Cir. 2007) 492 F.3d 24, 31 [dissemination of illegal recording of police search protected by the First Amendment even where defendant “disclosed to others the contents of an oral communication that she knew had been recorded illegally, and ... arguably participated ... in a conspiracy [with the person who made the illegal recording] to disclose the [illegal recording’s] content”].)

“[P]unishing truthful publication in the name of privacy” is an “extraordinary measure.” (*Florida Star*, 491 U.S. at 540.) The State may have some interest in shielding ordinary citizens from opprobrium for their criminal history, but it cannot rise to an “interest of the highest order.” (*Bartnicki*, 532 U.S. at 545.) Far greater interests than a CEO damaging his own reputation, such as encouraging survivors to report domestic violence, fall short of this high bar. Simply put, the First Amendment forecloses Blackman’s claims *in toto*.

Knowing the unbroken First Amendment precedents set out above foreclose his claims, Blackman pivots and asks this Court to apply the “history and utility” test. (Opening Br. 51.) That is the

wrong test. The issue here is whether the First Amendment protects Defendant-Respondents’ journalism, *not* whether they have a “First Amendment right” as “member[s] of the public” to “access ... documents from [a judicial] proceeding.” (*Elec. Frontier Found. Inc. v. Superior Ct.* (2022) 83 Cal.App.5th 407, 423.) In *Electronic Frontier Foundation*, the plaintiff sought to use the First Amendment as a sword to compel the disclosure of confidential documents. (*Id.* at 408.) By contrast, the Defendant-Respondents are using the First Amendment as a shield to protect themselves against Blackman’s lawsuit based upon publication of a document given to a journalist. Of course, the *Electronic Frontier Foundation* court did not purport to overrule *Florida Star* or *Bartnicki*, which are dispositive of Blackman’s claims.

**B. Section 230 Bars Plaintiff’s Claims Against Substack.**

Blackman has no chance of success in his claims against Substack because of a separate, and independent, legal bar: Section 230(c)(1) of the Communications Decency Act (See 47 U.S.C. § 230(c)(1).) Section 230 “afford[s] interactive service providers broad immunity from tort liability for third party speech.” (*Hassell v. Bird* (2018) 5 Cal.5th 522, 532.) Section 230 is also commonly applied in the context of an anti-SLAPP motion, and courts regularly approve the striking of lawsuits barred by the statute. (E.g., *Six4Three, LLC v. Facebook, Inc.* (2025) 109 Cal.App.5th 635, 654 [affirming grant of anti-SLAPP motion to strike where plaintiff could not “overcome any ‘substantive defenses’ to their claim” because the claims sought to treat

Facebook as the publisher of data created by third parties].)<sup>10</sup> The trial court correctly concluded that Blackman “ha[d] not carried his burden of proving minimal merit” because Substack is “immunized under the CDA.” (AA0996-AA0998.)

Section 230(c)(1) states that no “[1] provider ... of an interactive computer service [2] shall be treated as the publisher or speaker [3] of any information provided by another information content provider.” (47 U.S.C. § 230(c)(1).) All three elements are easily met here.

Provider of an interactive computer service. Blackman does not dispute that Substack is a “provider ... of an interactive computer service.” (47 U.S.C. § 230(c)(1); Opening Br. 62-63.) Nor could he, as courts routinely recognize that Substack and other

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<sup>10</sup> Blackman attempts to recast the legal standard for movants at step two of the anti-SLAPP analysis with respect to Section 230. He cites a single federal motion-to-dismiss case to argue that “Defendants must show that Blackman’s allegations establish ‘beyond dispute’” the elements of the three-part test for Section 230. (Opening Br. 62.) That is obviously wrong. Defendants do not have to show anything at the second step of the anti-SLAPP analysis. One of Blackman’s own cases clearly states that “the plaintiff has the burden” at the second step, where “the plaintiff will be required to demonstrate that ‘there is a probability that the plaintiff will prevail on the claim.’” (Opening Br. 27 [quoting *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356, 1364, disapproved of on other grounds by *Equilon Enters., LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53].)

services that enable users to disseminate content are interactive computer services within the meaning of Section 230. (*Smith v. Substack, Inc.* (N.D.Cal., Aug. 12, 2024, No. 24-cv-727-AGT) 2024 WL 3757501, at \*2 [“The parties agree that Substack is a provider of an interactive computer service.”]; *Does v. Reddit, Inc.* (9th Cir. 2022) 51 F.4th 1137, 1141 [Reddit]; *Bennett v. Google, LLC* (D.C. Cir. 2018) 882 F.3d 1163, 1167 [Google’s Blogger service]; *Murphy v. Twitter, Inc.* (2021) 60 Cal.App.5th 12, 25 [Twitter].)

Treated as the publisher or speaker. Blackman’s claims also plainly treat Substack as the publisher or speaker of information. “[A]ny activity” by an internet service provider “that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230.” (*Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC* (9th Cir. 2008) 521 F.3d 1157, 1170-71 (en banc).) Section 230 applies to shield such decisions no matter the label of the cause of action, including those at issue in this case.<sup>11</sup> Substack’s decision

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<sup>11</sup> E.g., *Hassell*, 5 Cal.5th at 536 [defamation]; *Zeran v. Am. Online, Inc.* (1997) 129 F.3d 327, 330 [negligence]; *Doe II v. MySpace Inc.* (2009) 175 Cal.App.4th 561, 573 [gross negligence]; *Caraccioli v. Facebook, Inc.* (N.D.Cal. 2016) 167 F.Supp.3d 1056, 1066 [public disclosure of private facts, false light, intrusion into private affairs, and intentional and negligent infliction of emotional distress], affd. (9th Cir. 2017) 700 F.App’x 588; *Jurin v. Google, Inc.* (E.D.Cal. 2010) 695 F.Supp.2d 1117, 1122 [negligent and intentional interference with prospective economic relations and intentional interference with contractual relations]; *Gentry v. eBay, Inc.* (2002)

to publish and not to take down Poulson’s material falls within Section 230’s heartland.

Blackman concedes that his common law claims treat Substack as a publisher,<sup>12</sup> but he insists that his statutory claims are “not an attempt to regulate Defendants’ editorial functions” because they seek “to hold Defendants accountable for their own statutory violations” of the “California Labor and Penal Codes.” (Opening Br. 67-68.) He argues, without analysis of any particular statute, that Respondents “violat[ed] ... statutes forbidding possession and dissemination” of the Arrest Report. (Opening Br. 69.)

Whatever statutes Blackman has in mind, his attempt to premise liability on either “possession” or “dissemination” plainly treats Substack as the publisher of the Arrest Report. To publish content, one must “be[] in possession of it,” and so claims based on possession of content are barred by Section 230. (AA0999; see also *Doe #1 v. Twitter, Inc.* (9th Cir., May 3, 2023, No. 22-15103) 2023 WL 3220912, at \*2 [“[T]he district court correctly ruled that section 230 precluded Plaintiffs from stating a viable claim for *possession*

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99 Cal.App.4th 816, 836 [unfair competition law]; *Voicenet Commc’ns, Inc. v. Corbett* (E.D.Pa., Aug. 30, 2006, No. 04-1318) 2006 WL 2506318, at \*3-4 [state criminal law].)

<sup>12</sup> Blackman admits that claims seeking to impose “liability for harmful information (a false and defamatory statement)” treat interactive computer services as the publisher or speaker of the information. (Opening Br. 68.)

and distribution of child pornography[.]” (emphasis added) (quoting *Roommates.com*, 521 F.3d at 1170-71)]; *Doe v. WebGroup Czech Republic, A.S.* (C.D.Cal., July 24, 2024, No. 2:21-cv-02428 SPG(SKx)) 2024 WL 3533426, at \*6 “[I]nsofar as Plaintiff seeks to hold Defendants liable for ‘receipt’ of the illicit videos, these claims are immune from liability under Section 230. Receipt of materials or content is, as it were, simply the first step in any publishing regime; if so, then mere receipt of illicit material is not sufficient to preclude immunity under Section 230.”.) And nowhere does Blackman explain how “dissemination” differs from publication. (Opening Br. 69.) It does not; dissemination *is* publication.

Blackman also misses the mark in asking this Court to set aside binding precedent and to instead follow the “framework” from *Henderson v. The Source of Public Data, L.P.* (4th Cir. 2022) 53 F.4th 110, 122. (Opening Br. 68.) *Henderson* is not binding here, and more importantly, its “narrow interpretation of section 230(c)(1) is in tension with the California Supreme Court's broader view.” (*Prager Univ. v. Google LLC* (2022) 85 Cal.App.5th 1022, 1033 n.4; see also *Divino Grp. LLC v. Google LLC* (N.D.Cal., Jan. 17, 2023, No. 19-CV-04749-VKD) 2023 WL 218966, at \*2 [*Henderson* is not binding on this Court; and ... the Fourth Circuit’s narrow construction of Section 230(c)(1) appears to be at odds with Ninth Circuit decisions indicating that the scope of the statute's protection is much broader.”].)

In any event, even under *Henderson*, Blackman’s claims would still be barred. Breaking with the broad consensus followed in California courts and elsewhere, *Henderson* concluded that “for

§ 230(c)(1) protection to apply, ... liability [must] attach to the defendant on account of some improper content within their publication.” (53 F.4th at 122.) That is exactly the case here, as Blackman seeks to hold Substack liable for publishing improper content, i.e., Poulson’s articles about the Arrest Report, which due to their content allegedly harmed Blackman’s employment prospects and reputation. (AA0019-AA0030 [Compl. ¶¶ 56, 63, 74, 86, 95, 106, 117, 126, 133, 137, 148, 155, 165, 171, 176].)

Continuing on this theme, Blackman urges this Court to hold that “courts have impermissibly extended Section 230 immunity far beyond its text.” (Opening Br. 69.) But Blackman’s claims are of precisely the sort that Section 230 was designed to bar. And in all events, Blackman relies only on concurrences and statements respecting the denial of certiorari. (See *ibid.* [citing *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC* (2020) 141 S. Ct. 13 [Thomas, J., statement respecting denial of certiorari]; *Doe v. Facebook, Inc.* (2022) 142 S. Ct. 1087 [Thomas, J., statement respecting denial of certiorari].) He provides no basis for this Court to depart from binding California precedent.

Finally, Blackman urges this Court to disregard Section 230’s plain text and hold that it does not preempt a state court Sealing Order. (Opening Br. 70 [citing *Hassell*, 5 Cal.5th at 568 (dissenting)].) Blackman himself acknowledges, as he must, Section 230’s “explicit intent to displace state actions.” (*Ibid.*) The text is crystal clear: “No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” (*Hassell*, 5 Cal.5th at 526.) Even

*Hassell*, Blackman’s lone citation, understood Section 230 to require vacatur of a validly entered court order. (*Ibid.*) This Court should decline Blackman’s invitation to follow *Hassell*’s dissent.

Information provided by another information content provider. A provider of an interactive computer service “qualifies for immunity so long as it does not also function as an ‘information content provider’ for the portion of the statement or publication at issue.” (*Carafano v. Metroplash.com, Inc.* (9th Cir. 2003) 339 F.3d 1119, 1123.) In limited circumstances, an interactive computer service can itself become an information content provider with respect to third-party content if it “‘materially contribut[es] to [the content’s] alleged unlawfulness.’” (*Wozniak v. YouTube, LLC* (2024) 100 Cal.App.5th 893, 921 [quoting *Roommates*, 521 F.3d at 1167-68].) This test draws a “crucial distinction between, on the one hand, taking actions to display actionable content and, on the other hand, responsibility for what makes the displayed content [itself] illegal or actionable.” (*Ibid.* [internal quotation marks omitted].)

As to Substack, it is undisputed that the allegedly unlawful content here—Poulson’s articles discussing the Arrest Report—was provided by a third party (Poulson). And Blackman cannot show that Substack did anything to materially contribute to what supposedly made that content unlawful.

That should end the analysis, yet Blackman contends that Substack materially contributed by “expos[ing] the confidential Sealed Report and the information contained in it to public view.” (Opening Br. 65.) As an initial matter, Blackman did not advance

this argument below. (See AA0670.) He cannot do so “for the first time on appeal.” (*Bogacki*, 5 Cal.3d at 780 [“a legal theory may not be raised for the first time on appeal”].)

Regardless, the argument lacks merit. Exposing information to public view is precisely what publishers do and what Section 230 protects. And the sole authority Blackman cites for his novel argument, *F.T.C. v. Accusearch Inc.* (10th Cir. 2009) 570 F.3d 1187, is non-binding and involved facts far different from what Blackman alleges here. In *Accusearch*, the Tenth Circuit held that “a service provider is ‘responsible’ for the development of offensive content only if it in some way specifically encourages development of what is offensive about the content.” (570 F.3d at 1199.) The service provider there had “solicited requests for [] confidential information,” “paid researchers to obtain it,” “knew that its researchers were obtaining the information through fraud or other illegality,” and “knowingly sought to transform virtually unknown information into a publicly available commodity.” (*Ibid.*) There is nothing like that in the record here.

\* \* \*

A straightforward application of precedent is all that is required to hold that “the CDA bars claims based on a failure to remove content posted by others,” and that Substack’s motion therefore succeeds at step two, which required the trial court to grant the motion to strike. (*Cross v. Facebook* (2017) 14 Cal.App.5th 190, 207 [holding that anti-SLAPP motion should be granted in its entirety because CDA barred plaintiff’s claims];

*Hupp v. Freedom Commc'ns, Inc.* (2013) 221 Cal.App.4th 398, 405 [similar].)

The trial court's holding that Section 230 bars Blackman's claims should be affirmed.

### CONCLUSION

The trial court's order striking Blackman's claims against Substack pursuant to section 425.16(e)(3) should be affirmed.

Dated: December 15, 2025 By: /s/ Joshua A. Baskin  
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## CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c), I hereby certify that this brief contains 12,201 words using 13-point Century Schoolbook font, including footnotes, which is less than the total words permitted by the California Rules of Court. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: December 15, 2025 By: /s/ Joshua A. Baskin  
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## PROOF OF SERVICE

I, Joshua A. Baskin, declare:

I am employed in San Francisco County, State of California. I am over the age of 18 years and not a party to the within action. My business address is One Market Plaza, Spear Tower, Suite 3300, San Francisco, CA 94105. My electronic mail (email) address is: [jbaskin@wsgr.com](mailto:jbaskin@wsgr.com)

On this date, I served:

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- **RESPONDENT'S BRIEF OF SUBSTACK INC. [REDACTED]**
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County of San Francisco  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on December 15, 2025.

*/s/ Joshua A. Baskin*

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