In the Court of Appeal of the State of California
First Appellate District, Division Four

MAURY BLACKMAN, *Plaintiff/Appellant,* v. SUBSTACK, INC., JACK POULSON, TECH INQUIRY, INC., *Defendants/ Respondents*.	No. A173244 Super. Ct. No. CGC24618681

Appeal from an Order of the Superior Court
County of San Francisco
The Hon. Christine Van Aken

DEFENDANT/RESPONDENT TECH INQUIRY, INC.'S RESPONSE BRIEF

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CERTIFICATE OF INTERESTED PARTIES

This form is being submitted on behalf of the following party: Defendant/Respondent Tech Inquiry, Inc.

Pursuant to Rules of Court, rule 8.208, the undersigned certifies that there are no interested parties or persons that must be listed in this certificate under rule 8.208.

Date: December 15, 2025 *<u>/s/ Susan E. Seager</u>*
Susan E. Seager

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Introduction and Summary of Argument

The United States Supreme Court has made clear in *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) and *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979) that the First Amendment bars legal claims against journalists and news outlets after they publish lawfully obtained information of public concern, as here.

At the heart of this the case a relatively new California statute, Penal Code § 851.92, enacted in 2017 to help individuals clean up their record of minor criminal arrests. It allows arrestees of certain crimes to seal their arrest reports if no conviction is obtained. It contains a strict prohibition against anyone who "disseminates" "information relating to a sealed arrest" report, subjecting violators to a civil prosecution by government prosectors and a "private right of action." Penal Code § 851.92(c). The law does not provide an exception for a person who lawfully obtains a copy of the arrest report before it is sealed or when it involves a matter of public concern.

Plaintiff/Appellant Maury Blackman, a San Francisco tech executive, sued Defendant/Respondent Tech Inquiry, a website focusing on the intersection between tech, covert surveillance, and U.S. government agencies, after it hosted a copy of his sealed arrest report and related articles revealing that Mr. Blackman had been arrested by San Francisco Police Department officers for alleged felony domestic abuse after he had the report sealed by a superior court judge. Tech Inquiry contends it was simply a passive host to the arrest report and related articles, which were

posted on the website by Defendant/Respondent Jack Poulson, a journalist. Mr. Poulson provided evidence that he received the arrest report from a confidential source unsolicited, and he was unaware that the arrest report had been sealed because it did not contain any markings indicating it was sealed, and the police department did not inform him of that fact when he called to verify its authenticity.

Tech Inquiry filed a special motion to strike Mr. Blackman's claims.

San Francisco County Superior Court Judge Christine Van Aken relied on well-established First Amendment authority and California precedent in granting Tech Inquiry, Inc.'s special motion to strike Mr. Blackman's claims for defamation as well as claims for an alleged violation of Penal Code § 851.92(c) and other torts and statutory violations.

The Superior Court held that Tech Inquiry met its burden of establishing that the anti-SLAPP statute applied to Mr. Blackman's claims, holding that that the claims arise from Tech Inquiry's speech on a public forum about Mr. Blackman's business dealings and domestic violence arrest report, which are matter of public concern, under C.C.P. § 425.16(e)(3). The court held that Mr. Blackman failed to meet his burden of showing a probability of prevailing on any of his claims, holding that that the claims are barred by the First Amendment protection for the publication of lawfully obtained government records about a matter of public concern and 47 U.S.C. § 230 of the Communications Decency Act.

Tech Inquiry also asserted that Penal Code § 851.92(c) violates the First Amendment because it is a content-based restriction on speech that fails strict scrutiny and urged the Superior Court to hold that it unconstitutional, but the Superior Court declined to reach that issue.

This Court should affirm the Superior Court's order granting Tech Inquiry's special motion to strike but also hold that Penal Code § 851.92(c) violates the First Amendment as a content-based restriction on speech that fails strict scrutiny. Government prosecutors and private litigants should not be permitted to use the statute to punish speech about lawfully obtained arrest reports when the case involves individuals or circumstances that are a matter of public concern.

Standard of Review

Mr. Blackman appeals from an order granting Respondent Tech Inquiry's special motion to strike the 14 claims asserted against the website under C.C.P. § 425.16, which is subject to de novo review and an independent review of the entire record. *Rall v. Tribune 365, LLC*, 43 Cal. App. 5th 638, 652 (2019) (citing *Soukup v. Law Offices of Herbert Hafif*, 39 Cal. 4th 260, 269 n.3 (2006)).

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Statement of the Case

California Enacts a Broad Statute Allowing Persons to Seal Their Arrest Reports and Prohibiting Public Dissemination of Sealed Arrest Reports

In 2017, the California Legislature enacted Senate Bill 393 to allow individuals to seal their arrest reports if no conviction was obtained and barring public dissemination of those sealed reports. Penal Code § 851.91(a) provides that any "person who has suffered an arrest that did not result in a conviction may petition the court to have his or her arrest and related records sealed[.]" Penal Code § 851.92(c) prohibits the public "disseminat[ion]" of "information relating to a sealed arrest" report. Violators are subject to a civil prosecution by government prosectors and a "private right of action." Penal Code § 851.92(c). The law does not provide an exception for a person who lawfully obtains a copy of the arrest report or when it involves a person or incident that is a matter of public concern.

Jack Poulson Writes a Periodic Substack Newsletter About Technology and National Security

Mr. Poulson is an independent journalist focusing on the intersection of technology and national security who reports primarily through his periodic newsletter that he sends to subscribers, "All-Source Intelligence," and publishes through Substack website, which is publicly available at https://substack.com/@jackpoulson. 2 AA0343-44. One area of focus is the close relationship between private companies that

have contracts to sell surveillance and weapons technologies to government agencies. 2 AA0344.

Before Reporting About Mr. Blackman's Arrest, Mr. Poulson Published Articles About Mr. Blackman's Role as a Tech Executive With U.S. Government Contracts and a Security Clearance

Before Mr. Poulson wrote about Mr. Blackman's felony domestic abuse arrest, Mr. Poulson focused on Mr. Blackman because of his role as a tech executive with Premise Data, which had secretive gig-work surveillance contracts for U.S. government agencies, Mr. Blackman's government security clearance, and his bungles that had been published by other media outlets. As Mr. Poulson reported in a Substack article on September 1, 2023, Mr. Blackman's company, "Premise Data was exposed in 2021 by The Wall Street Journal as a covert surveillance platform for U.S. Special Operations Forces specializing in the usage of its gig-work platform for the collection of human and signals intelligence, as well as in conducting information operations." 2 AA0344; 2 AA0353-56; unredacted version available ____; https://jackpoulson.substack.com/p/pollster-for-niger-coup-support-is. Mr. Poulson's September 1, 2023 article reported that Premise Data's leaked pitch document to Combined Joint Special Operations Task Force-Afghanistan (CJSOTF-A) summarized Premise's surveillance work in Afghanistan by gig workers. 2 AA0354.

Mr. Poulson also wrote an article about Mr. Blackman and Premise Data because company was involved in a contentious

public lawsuit against a former employee-turned-whistleblower, *Premise Data Corp. v. Alex Pompe*, and Mr. Blackman played a prominent role in the lawsuit's strategy. 2 AA0345, 2 AA0359-352. Mr. Poulson published a Substack article about Mr. Blackman, Premise Data, and the lawsuit on September 1, 2023. 2 AA0345, 2 AA0359-62. Mr. Poulson reported that Mr. Blackman accidentally revealed in a public declaration filed in that case that Premise Data "has clients in the military and intelligence sectors" through classified intelligence contracts with U.S. government agencies. 2 AA0345, 2 AA0359-62; unredacted version of article available at https://jackpoulson.substack.com/p/premise-data-confirms-secret-military. Mr. Poulson also reported that Mr. Blackman's declaration stated that he holds a "security clearance with the United States Department of Defense" and that disclosure of Premise Data's military and intelligence clients – a closely guarded trade secret" – "would cause Premise incalculable business harm" because Mr. Blackman believed his company's government contracts to be conditioned on their clandestine nature. 2 AA0345; 2 AA359-61; Respondent Jack Poulson's Appendix ("RA") 00093-94; Respondents' Motion for Judicial Notice, pp. 5-6, Ex. D.

Before Mr. Poulson Reported About Blackman's Arrest, the Tech Executive Repeatedly Sought Public Attention

Mr. Blackman attracted and sought publicity in his role as an American technology executive well before his domestic violence arrest. He and Premise Data were the subject of articles

by the *Wall Street Journal, TechCrunch, GovTech, and StateScoop* in 2016, 2018, 2021, 2022. RA 0009-84. Mr. Blackman also published two op-ed articles expressing his views on tech start-ups and government data access on publicly available websites in 2014. RA 0009-84. He also hosted seven episodes of a podcast, "Great Minds Think Data with Maury Blackman," in 2022, appearing with high-profile guests such as Larry Summers, Director of the White House National Economic Council during the Obama Administration; former Speaker of the House Newt Gingrich; and Lanny Davis, special counsel to President Bill Clinton during the Monica Lewinsky scandal. 1 AA0208; 1 AA0224-33; Appellant's Sealed Appendix, 2 AA0166-74; *see also* https://art19.com/shows/great-minds-think-data-with-maury-blackman.

Mr. Blackman Is Arrested For Alleged Felony Domestic Violence, Which Is Documented In Public Arrest Report Until Mr. Blackman Wins a Court Sealing Order

On December 21, 2021, according to Mr. Blackman's declaration and the Superior Court, he was "arrested for alleged felony domestic violence" at a time he was CEO for Premise Data. 4 AA0845; 4 AA1005. The San Francisco Police Department prepared a written report of his arrest ("Arrest Report"). Mr. Blackman alternatively refers to the report as an "incident report" and "arrest report." Under the California Public Records Act, Government Code §§ 7923.610 and 7923.615(a), an arrest report and incident report – or their contents – qualify as a "public record," available to the public upon request.

About two months after his arrest, Mr. Blackman filed a petition "in a public court proceeding" in the San Francisco County Superior Court, asking the court to seal the Arrest Report, law enforcement agency report number 210844280 and related to Court Case No. 21012755, and its contents pursuant to Penal Code § 851.91(a) because the charges were dropped. 4 AA0845. On February 15, 2022, San Francisco County Superior Court Judge Carolyn Gold signed an order sealing the Arrest Report in San Francisco Superior Court Case No. 21012756, and the order was entered on February 17, 2022. 4 AA0855. However, the San Francisco Police Department failed to act quickly to ensure that the Arrest Report was not released to the public and marked "sealed," and provided a copy of the Arrest Report pursuant to a Public Records Act request without any indication it had been sealed.

Mr. Poulson Receives an Unsolicited Copy of the Public Version of the Arrest Report

In early September 2023, Mr. Poulson received an unsolicited copy of the Arrest Report. 2 AA0347. The Arrest Report was sent to him through an unsolicited message on the end-to-end encrypted messaging platform Signal from a confidential source in early September 2023. 2 AA0347. Mr. Poulson had no prior relationship with the source and did not request or otherwise seek out the Arrest Report. 2 AA0347. There were no markings on the copy of the Arrest Report sent to him indicating it was sealed. 2 AA0347. When Mr. Poulson telephoned the San Francisco Police Department's Crime

Information Services Unit and the Department orally confirmed the accuracy of the Arrest Report, the Department did not inform Mr. Poulson that the Arrest Report was sealed. 2 AA00348. In summary, Mr. Poulson was unaware that the Arrest Report was sealed by a San Francisco Superior Court when he received it and called the police about it. 2 AA00347-48.

On September 14, 2023, Mr. Poulson wrote an article about Mr. Blackman's Arrest Report and posted it on Substack. AA0345. Mr. Poulson initially posted a redacted copy of the Arrest Report on Tech Inquiry's server and placed a link to the report on Substack, but later removed the report from Tech Inquiry's server and linked to the report via Substack. 2 AA00350-51.

Mr. Poulson also posted a link to his September 14, 2023 Substack article on Mr. Blackman's arrest and other related articles on the Tech Inquiry website, which passively hosted the articles. 2 AA00350-51. When Mr. Poulson posted his news articles and a redacted version of the Arrest Report on Tech Inquiry, he did so in his personal capacity as a Substack writer, not an executive of Tech Inquiry, and "Tech Inquiry had no other role in this matter" other than passively hosting the Arrest Report for a short time and hosting links to Mr. Poulson's Substack articles about Mr. Blackman's arrest. 2 AA00350-51.

Mr. Blackman provided no evidence that Tech Inquiry solicited Mr. Poulson's articles about the Arrest Report or the Arrest Report itself, edited Mr. Poulson's articles, or took an

active role in posting the Arrest Report or Mr. Poulson's related articles on the Tech Inquiry website.

Mr. Blackman Sends Tech Inquiry a Cease and Desist Letter and Demands $25 Million In Damages for the Website's Hosting of Articles about His Arrest

Between November 2023 and October 3, 2024, Mr. Blackman's counsel sent cease-and-desist letters to Substack, Amazon, Mr. Poulson, and Tech Inquiry, demanding they remove Mr. Poulson's articles and link to the Arrest Report. 1 AA0015-16, 4 AA0849-51.

Those letters included Mr. Blackman's September 16, 2024 cease-and-desist letter and $25-million damages demand to Mr. Poulson and Tech Inquiry, demanding they "immediately take down all references" to the Arrest Report and all "information related to the" Arrest Report from Tech Inquiry. 1 AA0017; 1 AA085.

On September 19, 2024, apparently at the insistence of Mr. Blackman, the Office of the City Attorney of the City and County of San Francisco sent a cease-and desist letter to Substack demanding that it remove the Arrest Report and "its contents [that] have been published in multiple postings on your website" on the grounds that "the Arrest Report was previously sealed by court order" and publishing the Arrest Report and its contents violated Penal Code § 851.92(c). 1 AA0016.

None of the Defendants removed Mr. Poulson's Substack news articles about the Arrest Report or Substack's link to the Arrest Report. 1 AA0017; AA0851-52. The links to Mr. Poulson's

articles about the Arrest Report remain on all of the Defendants' websites – including the Tech Inquiry website – as of this filing.[1]

Mr. Blackman Files a Lawsuit Against Tech Inquiry, Mr. Poulson, Substack, and Amazon Web Services, Inc. Seeking an Illegal Prior Restraint

On October 3, 2024, more than one year after Tech Inquiry and the other defendants disseminated the Arrest Report and related news articles in September 2023, Mr. Blackman filed a civil complaint in San Francisco County Superior Court against Tech Inquiry, Mr. Poulson, Substack, and Amazon Web Services, Inc. 1 AA0010-32. The lawsuit alleging 15 claims for defamation, other torts, and alleged statutory violations (the "Complaint"). AA010. Mr. Blackman's publicly filed Complaint states that the claims arise from Defendants' publication of a "sealed arrest report" (also labeled as a "sealed Arrest Report") "relating to plaintiff" and related to "a felony domestic [sic] arrest." 1 AA0012-13, 1 AA0015.

Fourteen of the 15 claims – all except the claim for violation of Business and Professionals Code § 17200 (1 AA0028) – were alleged against Tech Inquiry. 1 AA0018-21.

The Complaint alleged that Defendants violated Penal Code § 851.92(c) by publishing the sealed arrest report. 1 AA0030. That statute provides that a "person or entity … who

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[1] https://jackpoulson.substack.com/p/the-covert-gig-work-surveillance; https://techinquiry.org/?entity=delwin%20maurice%20blackman&guard=.

disseminates information relating to a sealed arrest is subject to a … private right of action" or a civil penalty enforced by "a city attorney, district attorney, or the Attorney General." Penal Code § 851.92(c). The Complaint also alleged that Defendants violated Penal Code § 11143, which provides that a person 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." 1 AA0030.

Mr. Blackman's Complaint sought a prior restraint in the form of a permanent injunction ordering all Defendants – including Tech Inquiry – "to immediately remove" the Arrest Report "and all information related to" it from the Tech Inquiry website and other Defendants' websites. 1 AA0031.

Mr. Blackman's Lawsuit and Felony Domestic Abuse Arrest Are Publicized by Non-Party News Outlets, Which Remain Available to the Public today

Mr. Blackman's defamation lawsuit over Defendants' reporting about his felony domestic abuse arrest were quickly publicized by several third-party media outlets, all of which identified him by name even though he had sued as "John Doe." The *San Francisco Chronicle* published one of the first articles on October 29, 2024, "Tech Exec sues journalist for $25M for publishing sealed Arrest Report."[2] MJN p. 8, Ex. B. The *Chronicle* article identified Mr. Blackman and reported that Mr.

[2] https://www.sfchronicle.com/politics/article/maury-blackman-lawsuit-19871638.php

Blackman sued over news reports about his "felony domestic violence arrest." MJN p. 8, Ex. B.

All of these media reports remain available to the public as of this filing.

Mr. Blackman Files an Unsuccessful Ex Parte Application for a Prior Restraint to Stop Publication of the Arrest Report and Related News Articles

On November 12, 2024, Mr. Blackman filed an ex parte application for a temporary restraining order barring Tech Inquiry and the other Defendants from disseminating the Arrest Report or any information related to or describing the contents of the Arrest Report, and ordering Tech Inquiry and other Defendants to immediately remove all posts, articles, and other content under Defendants' control referencing the Arrest Report. 4 AA1019-20.

Defendants filed opposition briefs, arguing that the application sought a prior restraint that violated the First Amendment. 4 AA1019-20. On November 13, 2024, the Superior Court took Mr. Blackman's ex parte application off calendar on the grounds that Mr. Blackman had improperly filed his Complaint on October 3, 2024 as a "John Doe" plaintiff without filing the required motion seeking permission to file anonymously, and ordered Mr. Blackman to file such a motion. 4 AA1020. Mr. Blackman did not appeal the court's order nor re-file his application for a prior restraint. 4 AA1020-31.

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The Superior Court Denies Mr. Blackman's Motion Seeking Permission to Proceed Under a Fictitious Name and Mr. Blackman Amends His Complaint to Add His True Name

On November 14, 2024, as ordered by the Superior Court, Mr. Blackman filed a motion seeking permission to proceed under a fictitious name. 4 AA1020. On December 12, 2024, the court held a hearing on the motion and took the matter under submission. 4 AA1022. On December 13, 2024, the court entered an order denying Mr. Blackman's motion seeking permission to proceed under a fictitious name. 4 AA1022. Mr. Blackman did not appeal that order. Mr. Blackman filed a Form Amendment to Complaint (Fictious/Incorrect Name), officially disclosing the plaintiff's "true name" as Maury Blackman. On December 20, 2024, the Hon. Superior Court Judge Joseph M. Quinn signed an order replacing "John Doe" as the name of the Plaintiff with "Maury Blackman." 3 AA0538. Mr. Blackman used his true name in all of his subsequent filings and the Superior Court changed the case caption to *Maury Blackman v. Substack, Inc. et al.* 3 AA0538.

U.S. District Court Enjoins California Attorney General Rob Bonta and San Francisco City Attorney David Chiu From Enforcing Penal Code § 851.92(c) in Part

On November 22, 2024, the First Amendment Coalition, a California free speech and press advocacy organization, joined by one of its employees and First Amendment scholar Eugene Volokh, filed a complaint in the U.S. District Court in San Francisco alleging that Penal Code § 851.92(c) is

unconstitutional. 4 AA0885-0906 (*First Amendment Coalition v. Chiu*, Case No. 3:24-cv-08343-RFL); RJN, Ex. 7. The plaintiffs sued California Attorney General Rob Bonta and San Francisco City Attorney David Chiu, noting that Mr. Chiu sent several letters to Mr. Poulson and his "webhost" demanding that they remove the Arrest Report and articles discussing "its contents" from the website, citing Penal Code § 851.92(c). 4 AA0892-93.

The complaint alleges that Penal Code § 851.92(c) violates the First Amendment in three ways. First, the *First Amendment Coalition v. Chiu* complaint alleges that the statute is a "content-based restriction that penalizes the 'dissemination' of lawfully obtained 'information related to a sealed arrest report,'" and fails strict scrutiny both facially and as applied to the plaintiffs because "the State has no compelling governmental interest in penalizing the dissemination of lawfully obtained information about a sealed arrest that involves a matter of public concern." 4 AA0898-99; MJN, Ex. 7. The complaint also alleges that the statute is unconstitutionally overbroad and "void for vagueness." AA0900-904; MJN, Ex. 7. The complaint asks the court to declare that Penal Code § 851.92(c) is "unconstitutional, facially and as applied to Plaintiffs, under the First Amendment and Fourteenth Amendments," and issue a preliminary and permanent injunction barring Bonta and Chiu's offices from enforcing Penal Code § 851.92(c) against the First Amendment Coalition and the two other plaintiffs and barring enforcement of the statute against "any dissemination of any lawfully obtained information about a sealed arrest report." 4 AA0905; MJN, Ex. 7. On November 25,

2024, the plaintiffs filed a Plaintiffs' Notice of Motion and Motion for Preliminary Injunction. 4 AA0908-32; MSJ, Ex. 8.

On December 19, 2024, U.S. District Judge Rita F. Lin entered a preliminary injunction, stipulated by the parties, barring Bonta and Chiu's offices from enforcing Penal Code § 851.92(c) against "any person or entity" for the "dissemination … of information relating to *any arrest report* that the person or entity reasonably believes was obtained from the government through a public records request" or has been previously made public, including the Blackman arrest report. 4 AA0935 (emphasis added); MJN, Ex. 9. The case remains pending.

Tech Inquiry, Mr. Poulson, Substack, and Amazon File Special Motions to Strike under CCP § 425.16, Which Are Granted by the Superior Court

On December 6 and 9, 2024, Tech Inquiry, Mr. Poulson, Substack, and Amazon filed separate special motions to strike Mr. Blackman's Complaint pursuant to § 425.16. 1 AA0103-04; 2 AA0419; 2 AA0500-02; 4 AA1005.

In its motion, Tech Inquiry asserted that the anti-SLAPP statute applied to Mr. Blackman's claims against Tech Inquiry because his claims arise from Tech Inquiry's protected speech in connection with an official government proceeding protected under C.C.P. § 425.16(e)(2)); its speech on a public forum about a matter of public concern protected under C.C.P. § 425.16(e)(3), and its speech about a matter of public concern protected under C.C.P. § 425.16(e)(4). 2 AA0508, 2 AA512-15; see also 4 AA0639-42.

Tech Inquiry asserted that Mr. Blackman could not show a probability of prevailing on any of his claims because they are barred by 47 U.S.C. § 230; California's absolute fair report privilege under Civil Code § 47(d)(1)(C); the First Amendment protection for the publication of lawfully obtained government records about a matter of public concern; constitutional bars against prior restraints; and because Penal Code § 851.92(c) violates the First Amendment. 3 AA0515-21; 4 AA0642-48.

The Superior Court granted the special motions to strike by Tech Inquiry and the other defendants. 4 AA0991-99.

Argument

I. The SLAPP Statute Is Designed to Protect News Websites Like Tech Inquiry Against Speech-Based Lawsuits

The California Legislature enacted Code of Civil Procedure § 425.16 to "provide[] a procedure for weeding out, at an early stage, meritless claims arising from protected activity" of speech and petitioning, known as SLAPP suits. *Baral v. Schnitt*, 1 Cal. 5th 376, 384 (2016). Special motions to strike brought under § 425.16 are designed to provide "a fast and inexpensive unmasking and dismissal" of lawsuits targeting protected speech or petitioning activity, *Wilcox v. Superior Court*, 27 Cal. App. 4th 809, 819, 823 (1994) that allow the defendant to "nip SLAPP litigation in the bud[.]" *Braun v. Chron. Publ'g Co*., 52 Cal. App. 4th 1036, 1042 (1997)). The statute instructs that the law "shall be construed broadly" to ensure that speech and petitioning activity "should not be chilled through abuse of the judicial

process" through lawsuits targeting protected constitutional activity, known as SLAPP lawsuits. C.C.P. § 425.16(a).

The statute permits a defendant to file a special motion strike any "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." C.C.P. § 425.16(b)(1). The statute "requires a court to engage in a two-step process" to analyze the defendant's anti-SLAPP motion. *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th 728 (2003).

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

In this first prong, the California Supreme Court has instructed that "[a] claim arises from protected activity when that activity underlies or forms the basis of the claim." *Park v.*

Board of Trustees of Cal. State University, 2 Cal. 5th 1057, 1062 (2017). The anti-SLAPP statute "may apply to *any* cause of action." Burke, ANTI-SLAPP LITIGATION (The Rutter Group 2023) § 4:1, p. 212 (emphasis in original). "Nothing in the statute itself categorically excludes any particular type of action from its operation[.]" *Navellier*, 29 Cal. 4th at 92 (quoting *Calif. Teachers Assn v. Governing Bd. of Rialto Unified School Dist*., 14 Cal. 4th 627, 633 (1997)). Courts have held that the anti-SLAPP statute applies to the same claims asserted by Mr. Blackman here: defamation (*Wilcox*, 30 Cal. App. 4th at 809); *Lafayette Morehouse, Inc. v. Chronicle Publ'g Co*., 37 Cal. App. 4th 855 (1995)); infliction of emotional distress (*Ketchum v. Moses*, 24 Cal. 4th 1122 (2001)); disclosure of confidential information (*Fox Searchlight Pictures, Inc. v. Paladino*, 89 Cal. App 4th 294 (2001)); interference with prospective economic advantage (*Sipple v. Found. for Nat. Progress*, 71 Cal. App. 4th 226 (1999)); invasion of privacy (*Seelig v. Infinity Broadcasting Corp*., 97 Cal. App. 4th 798 (2002)); publication of private facts and intrusion (*Hall v. Time Warner, Inc*., 153 Cal. App. 4th 1337 (2007)); false light (*Tamkin v. CBS Broadcasting, Inc*., 193 Cal. App. 4th 133 (2011); negligence (*Birkner v. Lam*, 156 Cal. App. 4th 275 (2007)); and violations of statutes (*Blue v. Office of Inspector General*, 23 Cal. App. 5th 138 (2018) (alleged violation Penal Code § 6126.5)).

If the court determines that the defendant has established that the claims arise from protected speech, the second step shifts the burden to the plaintiff to demonstrate "a probability of prevailing on the claim[s]." *Navellier*, 29 Cal.4th. at 88. In this

"second step inquiry, a plaintiff[']s . . . proof must be made upon competent admissible evidence." *Sweetwater Union High School Dist. v. Gilbane Building Co.*, 6 Cal. 5th 931, 940 (2019) (citations and quotation marks omitted). The motion must be granted if the "plaintiff fails to produce evidence to substantiate his claim or if the defendant has shown that the plaintiff cannot prevail as a matter of law." *Siam v. Kizilbash*, 130 Cal. App. 4th 1563, 1570 (2005).

II. The Superior Court Correctly Held That Tech Inquiry Met Its Burden of Proving That Mr. Blackman's Claims Arise from Its Protected Speech

A. The Superior Court Held that Mr. Blackman's Claims Against Tech Inquiry Arise from the Website's Protected Speech on a Public Forum About a Matter of Public Interest Under § 425(e)(3)

The Superior Court held that Tech Inquiry met its burden under prong one of establishing that Mr. Blackman's claims arise from Tech Inquiry's protected speech on a public forum about a matter of public concern and his claims therefore fall within the protection of § 425.16(e)(3). "The court has little difficulty finding defendants succeed at the first step." 4 AA1006. The court analyzed all of Defendants' speech through its analysis of Mr. Poulson's speech. "Poulson was reporting on a blog post about Blackman, a CEO of a company … that Poulson had previously covered as part of his Substack newsletter, a public newsletter with at least 3,000 subscribers, covering companies making

surveillance technologies." 4 AA1006. "This was writing on a public forum." 4 AA1006.

The court held that Defendants' speech about Mr. Blackman "concerned the character and conduct of the CEO of a company with government contracts in the security and intelligence arena." 4 AA1006. "The character and trustworthiness of members of the business community have been held to be of public significance where business leaders hold themselves out as trustworthy and advertise their businesses to members of the public (citation omitted), the court cannot see how the character and trustworthiness of the leader of a business with contracts with the U.S. government and a security clearance can be of any less public significance." 4 AA1006-07. "Thus, defendants succeed under 425.16(e)(3) and the court need not analyze the other prongs of step one." 4 AA1007.

B. Mr. Blackman Conceded That Tech Inquiry Is a Public Forum

Both in the Superior Court and now in his Appeal, Mr. Blackman does not discuss, let alone contest, that Tech Inquiry is a public forum. AA00704-08; AOB pp. 37-49. The Superior Court's holding that websites such as Substack and Tech Inquiry are public fora is consistent with California precedent. The California Supreme Court has held that "Web sites accessible to the public … are 'public forums' for purposes of the … SLAPP statute." *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41, n. 4 (2006). *See also ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1006

(2001) (same). Nor does Mr. Blackman contest that Tech Inquiry publishes news to the public, an activity protected by the anti-SLAPP statute. "[T]he language of the statute [is] broad enough to cover news reporting activity," "publishers," and "media defendants" … who regularly face libel litigation[.]" *Sipple*, 71 Cal. App. 4th at 240. *See also Braun*, 52 Cal. App. 4th at 1045 (news reporting is free speech and section 425.16 applies to media defendants in libel actions); *Assoc. for Los Angeles Cnty Deputy Sheriffs v. Los Angeles Times Comms., LLC*, 239 Cal. App. 4th 808, 816 (2015) ("*ALADS*") (plaintiff's cause of action arising from newspaper's newsgathering of deputies' confidential personnel files "[a]rises from the Times's [p]rotected [a]ctivity: [n]ews [r]eporting"). By failing to contest Tech Inquiry's status as a public forum in the Superior Court and now in his appeal, Mr. Blackman has waived any argument that Tech Inquiry is a not public forum. his burden requires more than a mere assertion that the judgment is wrong. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. "Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] ... waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99…) It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. "When an appellant fails to raise a point" in "their opening brief or their reply brief … we treat the point as waived." *Badie v. County of*

Bank of America, 67 Cal. App. 4th 779, 784-85 (1998) (citation omitted).

C. Mr. Blackman Conceded Below That His Claims Arise From Tech Inquiry's "Speech"

Mr. Blackman now raises an entirely new argument on appeal: that his claims do "not" arise from Tech Inquiry's "right of free speech," but from his "statutorily mandated privacy rights" supposedly arising from Penal Code § 851.92(c). AOB p. 29; *see also* AOB p. 15. But Mr. Blackman cannot raise a new argument on appeal that contradicts his repeated admission in the trial court that his claims arise from Tech Inquiry's "speech" about him. "Issues not raised in the trial court will not be considered on appeal" where the appellant's new argument is "contrary" to the appellant's position in the trial court. *Transcon. Ins. Co. v. Ins. Co. of the State of Pennsylvania*, 148 Cal. App. 4th 1296, 1309 (2007).

Mr. Blackman's Opposition to Tech Inquiry's Special Motion to Strike filed in the Superior Court, Mr. Blackman repeatedly admits that he is suing over Tech Inquiry's "challenged speech." 3 AA0704-08. He also says he is suing over "Poulson's blog posts … concerning and disseminating the Sealed Report and information contained in it – the challenged speech." 3 AA0700.

Similarly, in his Complaint, Mr. Blackman repeatedly alleges that he is suing over Tech Inquiry's dissemination and posts published about him. He alleges that "Tech Inquiry …

published the sealed Incident Report and information related to the sealed Incident Report on the Tech Inquiry website" on October 13, 2023, November 20, 2023, December 19, 2023 and June 3, 2024," and that he "suffered severe harm as a result of .. Defendants' ongoing dissemination" of the Arrest Report and "information contained in it." 1 AA0011, 1 AA0018. Mr. Blackman's Complaint alleges claims for negligence, gross negligence, and intentional interference claims arising from Tech Inquiry's "possession and public dissemination of a sealed Arrest Report and information related to the sealed Arrest Report" (1 AA0018; 1 AA0019; 1 AA0021); his private facts claim arising from Tech Inquiry's "publiciz[ing] private information concerning Plaintiff" (1 AA0023); his false light claim arising from Tech Inquiry's "publicly disclos[ing] information or material that showed Plaintiff in a false light" (1 AA0024); his intrusion claim arising from Tech Inquiry "publicly disseminat[ing] and refus[ing] to take down [from its website] "the sealed Arrest Report and information related to the sealed Arrest Report" (1 AA0024); his defamation claims arising from Tech Inquiry's "posts … published and republished" by Tech Inquiry (1 AA0027); his Penal Code § 851.92(c) claim arising from Tech Inquiry "disseminating the sealed Arrest Report and information related to the sealed Arrest Report" (1 AA0030); and his other claims "refer[] to and incorporate[]" the "allegations contained in the foregoing paragraphs" alleging that Tech Inquiry published Mr. Blackman's Arrest Report and related information on its website. 1 AA0021; 1 AA0022; 1 AA0026; 1 AA0026.

His "Prayer for Relief" makes clear that he is suing over Tech Inquiry's speech about him because he seeks "a preliminary injunction, followed by a permanent injunction that: Compels all DEFENDANTS to immediately remove the sealed police [report] and all information related to the sealed Incident Report, including but not limited to its contents, and ensure that the index to postings no longer allows for the sealed Incident Report to be viewed or downloaded" and "enjoins all DEFENDANTS from disseminating directly or indirectly the sealed Incident Report or information related to the sealed Incident Report[.]" 1 AA0031. There is simply no dispute that Mr. Blackman admitted in the Superior Court that his claims arise from Tech Inquiry's speech about him and his arrest.

Even if this Court considers Mr. Blackman's newly minted argument that his claims do not arise from Tech Inquiry's speech, the sole case he cites is inapposite. In *Gerbosi v. Gaims, Weil, W. & Epstein, LLP*, 193 Cal. App. 4th 435 (2011), the plaintiff sued the defendant, a law firm, for allegedly wiretapping his telephone. The law firm filed an anti-SLAPP motion, arguing that its alleged wiretapping was protected petitioning activity because it was conducted during the firm's representation of a client. *Id*. at 442. But the Court of Appeal held that the plaintiff's complaint simply alleged that the law firm "listened in on his private conversations" when the plaintiff was not a client and "was a stranger to … myriad litigation" and the anti-SLAPP motion did not allege anything to the contrary. *Id*. at 444. "Accordingly, the wiretapping and privacy invasions alleged by

[the plaintiff] do not 'arise from' any protected activity by [the defendant law firm] on behalf of" the plaintiff and "the alleged criminal conduct does not fall within 'protected activity' as defined by the anti-SLAPP statute." *Id*. "The cases cited by [the law firm] do not support its implicit proposition that a lawyer may employ the anti-SLAPP statute to strike cause of action merely because he or she is a lawyer. The rule is to the contrary." *Id*. at 445 (citations omitted).

The facts in *Gerbosi* stand in direct contrast to the facts here, where Mr. Blackman's Complaint asserts over and over that his claims are based on Tech Inquiry's "speech" and "dissemination" of information about Mr. Blackman on Tech Inquiry's website (1 AA0011; 1 AA0018-19; 1 AA0021; 1 AA0023-24; 1 AA0027; 1 AA0030) and his Opposition to Tech Inquiry's Special Motion to Strike asserts the same. 3 AA0700; 3 AA0704-08.

D. Mr. Blackman Provides No Valid Basis to Overturn the Superior Court's Holding that Tech Inquiry's Speech About Him Is a Matter of Public Concern

The Superior Court's holding that Tech Inquiry's speech about Mr. Blackman was a matter of public concern is based on undisputed facts and well established law. The court held that "[t]he character and trustworthiness of members of the business community have been held to be of public significance where business leaders hold themselves out as trustworthy and advertise their business to members of the public." 4 AA1006

(citing *Chaker v. Mateo*, 209 Cal. App. 4th 1138, 1146 (2012)). "[T]he court cannot see how the character and trustworthiness of the leader of a business with contracts with the U.S. government and a security clearance can be of any less public significance." 4 AA1006-07.

The Court did not consider additional grounds for finding that Tech Inquiry's speech was about a matter of public concern because it was speech about police actions, a police arrest report, and Mr. Blackman's domestic violence arrest, as Tech Inquiry asserted, California courts have consistently held that media reports about the actions of law enforcement officers qualify as speech about a matter of public interest protected by § 425.16(e)(3). "The public has a strong interest in the … conduct of law enforcement officers." *ALADS*, 239 Cal. App. 4th at 826. *See also Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039, 1050 (2021) (conduct of police officer is "undoubtedly" an issue of public interest pursuant to § 425.16(e)(3). Outside of the anti-SLAPP context, court have held that news reports about suspected criminal activity are considered a matter of public interest. *Lieberman v. KCOP Television, Inc*., 110 Cal. App. 4th 156 (2022). *See generally Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal. 4th 278, 297, 300 (2007) ("*POST*") ("Peace officers 'hold one of the most powerful positions in our society; our dependence on them is high and the potential for abuse of power is far from insignificant.") (citation and quotation marks omitted).

Independently, the California Legislature has made the determination that the public has a valid interest in even the most routine police arrest reports about private figure by requiring state and local law enforcement agencies to provide the public with copies of *all* arrest reports or key information contained in those reports under the California Public Records Act. Government Code § 7923.610 requires that "a state and local law enforcement agency shall make public … [t]he full name and occupation of every individual arrested by the agency … time and date of arrest … time and date of booking … location of the arrest … factual circumstances surrounding the arrest," commonly known as arrest reports. Government Code § 7923.615(a) requires state and local police to disclose the "time, substance, and location of all complaints or requests for assistance received by the agency" and "information regarding crimes alleged or committed," commonly known as incident reports.

Here, Tech Inquiry's hosting of the Arrest Report and related news articles detailed the actions of San Francisco Police Department officers as they responded to a report of violent domestic abuse and decided to arrest Mr. Blackman on suspicion of felony domestic abuse. The fact that these reports are "public records" under the CPRA weighs strongly in favor of finding that reports about Mr. Blackman's Arrest Report are a matter of public concern.

This was not just any Arrest Report; it was a report about alleged felony domestic abuse. News reports about allegations of domestic abuse contained in official records involving public

figures a matter of public concern under the SLAPP statute. *Sipple*, 71 Cal. App. 4th at 238. "The … topic of … domestic abuse is [an issue of] significant and of public interest" under the anti-SLAPP statute. *M.G. v. Warner*, 89 Cal. App. 4th 623, 629 (2001). Mr. Blackman contends that *Sipple* does not apply here because Mr. Sipple was a public figure, while Mr. Blackman was "an unknown person" at the time of his arrest. AOB pp. 39-40. Mr. Blackman contends that Mr. Poulson failed to provide "any evidentiary support" to establish Mr. Blackman was in the public eye, and that Mr. Blackman was in fact "an unknown CEO of an unknown private company that Poulson admits did not pique the public's interest." AOB p. 40.

But Mr. Blackman cannot ignore the evidentiary support provided by Defendants establishing that Mr. Blackman was the subject of several news articles – including national news reports – for several years before Mr. Poulson wrote about his arrest on September 14, 2023, and hosted a podcast in 2022 with high-profile former U.S. government officials.

Between 2016 and 2022, Mr. Blackman and Premise Data were the subject of articles by the *Wall Street Journal, TechCrunch, GovTech, and StateScoop*. RA 0009-84. Mr. Blackman also published two op-ed articles expressing his views on tech start-ups and government data access on publicly available websites in 2014. RA0009-84. He also hosted seven episodes of a podcast, "Great Minds Think Data with Maury Blackman," in 2022, appearing with high-profile guests such as Larry Summers, Director of the White House National Economic

Council during the Obama Administration; former Speaker of the House Newt Gingrich; and Lanny Davis, special counsel to President Bill Clinton during the Monica Lewinsky scandal. 1 AA0208; 1 AA0224-33; Appellant's Sealed Appendix, 2 AA0166-74; *see also* https://art19.com/shows/great-minds-think-data-with-maury-blackman.

Mr. Poulson also posted two Substack articles about Mr. Blackman and Premise Data on September 1, 2023, reporting that Mr. Blackman accidentally filed a declaration in court revealing his company has secret intelligence-gathering contracts with U.S. government agencies and boasting that he had a government security clearance. AA0344-45; AA0353-56; AA0359-62; AA0345; AA359-61; RA 00093-94; MJN, pp. 5-6, Ex. D.[3] This evidence establishes that Mr. was hardly an "unknown person" or that his work as a tech CEO working for the federal government in covert intelligence-gathering was not a matter of public concern.

Because all of Mr. Blackman's claims against Tech Inquiry arise from its speech about Mr. Blackman's work as a government contractor with government security clearance and his character and trustworthiness, as well as speech about the conduct of the San Francisco Police Department officers, Mr. Blackman's alleged beating of his girlfriend as documented in the

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[3] https://jackpoulson.substack.com/p/pollster-for-niger-coup-support-is; https://jackpoulson.substack.com/p/premise-data-confirms-secret-military

Arrest Report alleging felony domestic violence, and the topic of domestic violence, the Superior Court correctly held that these topics qualify as matters of public concern and all of Mr. Blackman's 14 claims against Tech Inquiry are speech protected by § 425.16(e)(3).

E. The Court Implicitly Held That the Catch-All Provision of § 425.16(e)(4) Applied to Tech Inquiry's Speech

The Superior Court said that because the "defendants succeed under 425.16(e)(3), … the court need not analyze the other prongs of step one," and did not rule on whether the claims arise from Tech Inquiry's speech in connection with an official proceeding under C.C.P. § 425.16(e)(2) or its speech about a matter of public concern under the catch-all subsection, C.C.P. § 425.16(e)(4). AA1007.

But the court's holding that Mr. Blackman's claims arise from Tech Inquiry's speech about a matter of public interest under 425.16(e)(3) is an implicit holding that that Mr. Blackman's claims arise from Tech Inquiry's speech about a matter of public concern under 425.16(e)(4).

This is consistent with similar court authorities holding that § 425.16(e)(4) protects "free speech right to report the news." *San Diegans for Open Gov't v. San Diego State Univ. Rsch. Found.*, 13 Cal. App. 5th 76, 101 (2017) (citation omitted). The conduct of police officers is "undoubtedly" an issue of public interest. *Collondrez*, 61 Cal. App. 5th at 1050. News reports

about suspected criminal activity are a matter of public interest. *Lieberman*, 110 Cal. App. 4th at 156. The arrest of a high-profile technology executive for alleged felony domestic violence is also a matter of public interest. *Sipple*, 71 Cal. App. 4th at 238; *M.G.*, 89 Cal. App. 4th at 629. Mr. Blackman's 14 claims against Tech Inquiry therefore fall within the protection of § 425.16(e)(4).

III. The Superior Court Correctly Held That *Flatley* Does Not Apply Because There Was No Criminal Conduct

Mr. Blackman fails to provide a valid challenge to the Superior Court's holding that *Flatley v. Mauro*, 39 Cal. 4th 299, 320 (2006) does not apply to this case. 3 AA0704. The Superior Court reaffirmed that only claims alleging *criminal* conduct fall outside the protection of the anti-SLAPP statute – not claims alleging violating of *civil* statutes. As the court observed, the plaintiff in *Flatley* alleged the defendant engaged in the crime of extortion (4 AA1007), which means that "'the Supreme Court's use of the phrase 'illegal' [in *Flatley*] was intended to mean criminal, not merely violative of a statute.'" 4 AA1009 (quoting *Mendoza v ADP Screening and Selection Services, Inc.*, 182 Cal. App. 4th 1644, 1654 (2010)). This means that *Flatley* requires that the plaintiff to establish that the defendant concedes its own criminality or provides "uncontroverted and conclusive evidence of *criminal* conduct" by the defendant. *Safari Club Int'l v. Rudolph*, 845 F.3d 1250, 1259 (9th Cir. 2017) (emphasis added). The court concluded that *Flatley* did not apply because Mr. Poulson, and by extension, the other defendants, did not violate

any *criminal* laws. 4 AA1007-09. The court rejected Mr. Blackman's claim that Mr. Poulson, and by extension, the other defendants, violated Penal Code § 11143, which "'makes it a misdemeanor for a member of the public to knowingly possess a 'record' … defined … as 'state summary criminal history.'" 4 AA1008. As the Superior Court held, a "state summary criminal history"(which is also known colloquially as a "rap sheet") "is distinct from the Incident Report." 4 AA1008. More importantly, the court correctly held that Penal Code § 11143 "exempts journalists, as does Labor Code § 432.7(g), another provision Blackman relies on." 4 AA1008 (citing Penal Code § 11143, Labor Code § 432.7(g)(3); Evidence Code § 1070). As Mr. Blackman concedes, Labor Code § 432.7 "is not a criminal statute"; it is a "civil statute." AOB p. 37.

For the first time, Mr. Blackman raises a new argument on appeal: Tech Inquiry does do not fall within the exemption for journalists provided by Penal Code § 11143 or Labor Code § 432.7(g) because Tech Inquiry "does not constitute '[a] publisher, editor, or reporter, or other person connected with or employed upon a newspaper, magazine, or other periodical publication or wire service, or any person who has been so connected or employed,'" as defined by Evidence Code § 1070. AOB p. 34 (quoting Evidence Code § 1070). Mr. Blackman contends that Tech Inquiry did not "contend that [it is] exempted under section 1070." AOB p.34. This misstates the record.

In fact, Tech Inquiry did specifically "contend" in its Reply In Support of Its Special Motion to Strike Plaintiff's Complaint

that Penal Code § 11143 or Labor Code § 432.7(g) do not apply to Tech Inquiry because Penal Code § 11143 "expressly exempts periodical publications protected by Evidence Code § 1070, which includes websites such as Tech Inquiry," as does Labor Code § 432.7(g). AA0940. Tech Inquiry cited *O'Grady v. Sup. Ct.*, 139 Cal. App. 4th 1423, 1456-66 (2006), as modified (June 23, 2006). AA0940.

The Superior Court's holding that Tech Inquiry qualifies for protection as a periodic news publication is well supported by *O'Grady*, which held that Evidence Code § 1070 protects web blogs that publish "a particular kind of information to an interested readership," even blog reported solely on Apple products, because "such conduct constitutes the gathering and dissemination of news, as that phrase must be understood and applied under" Evidence Code § 1070. *O'Grady*, 139 Cal. App. 4th at 1458. The court held that the web blog at issue qualified for protection as a "periodical publication" under Evidence Code § 1070, even if the web blog published news on an "occasional" but "ongoing, recurring" basis, not on a regular schedule like a newspaper or television news program. *Id*. at 1465-66. Mr. Blackman cites no court authority to support his challenge to the Superior Court's ruling that Tech Inquiry did not violate Penal Code § 11143 or Labor Code § 432.7(g).

Mr. Blackman also fails to cite any authority to support his challenge to the Superior Court's holding that Defendants did not violate Penal Code § 166. That statute bars "[w]illful disobedience of the terms, as written, of a … court order," including

disseminating a sealed court order. 4 AA1008. But the court held that Judge Gold's order sealing the Arrest Report "does not include written terms that, by themselves, create an obligation by Poulson or anyone else not to disseminate the Incident Report[.]" 4 AA1008. This is correct. Because none of the Defendants were parties to the proceedings that resulted in the sealing order by Judge Gold, they are not bound by it. "Judge Learned Hand, in an oft-cited statement of the rule, explained [this] logic in this way: '[N]o court can make a decree which will bind any one but a party[.]'" *Hassell v. Bird*, 5 Cal. 5th 522, 549-550 (2018) (Kruger, J., concurring).

The Superior court also concluded that Defendants did not violate Penal Code § 851.92(c) by receiving the Arrest Report because "the copy of the Incident Report that Poulson received" was a copy of the original version of the report "before the court issued its sealing order." 4 AA1008. "It is undisputed that the copy of the Incident Report that Poulson received did not include any language indicating the arrest was sealed, and the police did not inform Poulson of this when he called to verify the authenticity of the report." 4 AA1008. "To summarize," the Superior Court concluded, "Poulson did not violate any law in obtaining the Incident Report." 4 AA1009. "There is no evidence that Poulson and the other defendants had reason to believe the Incident Report was sealed when Poulson first published his September 2023 post reporting the incident." 4 AA1009.

Mr. Blackman seizes on the court's subsequent, somewhat contradictory conclusion that by "defendants' conduct violated

Penal Code 851.92(c)" because Defendants subsequently "disseminat[ed] the sealed [sic] Incident Report." 4 AA1009. The court held that Defendants' subsequent violation of the civil statute did not place Defendants' speech outside of the protection of the anti-SLAPP statute under *Flatley* because "no criminal liability attached to that conduct" – the alleged violation of Penal Code § 851.92(c). 4 AA1009.

Mr. Blackman contends that the court erred because its conclusion that Defendants violated Penal Code § 851.92(c) puts "this case … on all fours with *Flatley*." AOB p. 31. Mr. Blackman cites only one case in support of his challenge to the Court's order, but *Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc*., 143 Cal. App. 4th 1284, (2006). Although, as Mr. Blackman notes, the Court of Appeal held that the defendants' "illegal" conduct fell outside the protection of the anti-SLAPP statute under *Flatley* without deciding the conduct was criminal or civil, the facts leave no question that the alleged "illegal" conduct was criminal. The court cites evidence that trespassers broke windows and "evidence in the record … made out a prima facie case of conspiracy with regard to … [a] claim for the trespass and bombing," citing a declaration from "an FBI special agent assigned to investigate domestic terrorism cases and threats" provided "sufficient evidence to make out a prima facie claim that [the defendant] conspired to commit the trespass and bombing" that had occurred. *Novartis Vaccines & Diagnostics*, 143 Cal.

App. 4th at 1300-01. Because no such criminal conduct has been alleged here, *Flatley* does not apply.

IV. The Superior Court's Holding That Mr. Blackman Failed to Meet Burden to Prove a Probability of Prevailing on His Claims Is Based on Undisputed Facts and Well-Established Law

The Superior Court's holding that that Mr. Blackman failed to meet met his burden of showing a probability of prevailing on his 14 claims against Tech Inquiry is consistent with California and U.S. Supreme Court precedent barring liability for press publications of lawfully obtained government records of public concern and based on undisputed facts.

A. The First Amendment Bars Mr. Blackman's Claims

The Superior Court held that Mr. Blackman's could not show a probability of prevailing because all of his claims were barred by First Amendment. "This court is persuaded that the First amendment's protections for the public of truthful speech concerning matters of public interest vitiate Blackman's merits showing." 4 AA1010. Tech Inquiry "has shown that its conduct as described in the Complaint and the parties' declarations arises out of protected activity under the First Amendment that cannot be subject to civil liability without compromising well established speech protections." 4 AA1011.

The is consistent with the U.S. Supreme Court's consistent holdings that the First Amendment bars legal action against media publications for publishing lawfully obtained information

that is a matter of public significance, absent extraordinary circumstances. "[O]ur synthesis of prior cases attempting to punish truthful publication: '[I]f a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order.'") *Florida Star*, 491 U.S. at 533 (quoting *Daily Mail*, 443 U.S. at 103).

Similarly, in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495 (1975), the Supreme Court held that the First Amendment barred civil damages against television station for broadcasting name of rape-murder victim lawfully obtained by a reporter from a public court proceeding because "[s]tates may not impose sanctions on the publication of truthful information contained in official court records open to public inspection." *See also Okla. Publ'g Co. v. Okla. Cnty. Dist. Ct.*, 430 U.S. 308 (1977) (First Amendment barred injunction blocking publication of name/photograph of minor charged in a juvenile proceeding lawfully obtained by reporters during juvenile court hearing); *Daily Mail*, 443 U. S. 97 (First Amendment barred criminal indictment of newspaper for violating statute forbidding press from publishing names of minors charged in juvenile court proceeding lawfully obtained by reporters from police radio, witnesses, police, and prosecutor); *Bartnicki v. Vopper*, 523 U.S. 514, 535 (2001) (First Amendment barred liability against radio station for publishing illegal wiretaps of telephone calls on grounds that recordings were matter of public concern and

reporter was a passive recipient of records); *ALADS*, 239 Cal. App. 4th at 819 ("'While the government may desire to keep some [government records] confidential and may impose the duty upon [government employees] to maintain confidentiality, it may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy information through routine reporting techniques.'") (quoting *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 519-20 (1986)).

The Supreme Court explained in *Florida Star* that this strong First Amendment prohibition against punishing press publications of lawfully obtained information of public concern is supported by three "considerations." *First*, where government agencies control the information released to the press, those agencies have the responsibility to "establish and enforce procedures ensuring its redacted release" – not the press. 491 U.S. at 534. "Where information is entrusted to the government, a less drastic means than punishing truthful publication almost always exists for guarding against the dissemination of private facts." *Id*.

Second, "[w]here the government has made certain information publicly available, it is highly anomalous to sanction persons other than the source of its release." *Id*. at 535.

Third, "timidity and self-censorship" by the media might result if courts "allow[] the media to be punished for publishing certain truthful information" obtained from the government. *Id*. at 534-35. "[D]epriving protection to those who rely on the government's implied representations of the lawfulness of

dissemination, would force upon the media the onerous obligation of sifting through government press releases, reports, and pronouncements to prune out material arguably unlawful for publication." *Id*. at 536.

The facts of *Florida Star* are similar to the facts here. In that case, a police department accidentally included a rape victim's name in a press release. *Id*. at 527. A newspaper reporter copied the victim's name from the press release and published her name in its newspaper. *Id*. The victim sued the newspaper for publishing her name, alleging it negligently violated a Florida statute making it unlawful to "print, publish, or broadcast" the name of a rape victim, which opened her to public threats and prompted her to seek police protection. *Id*. at 528. A jury found in favor of the victim and ordered the newspaper to pay the rape victim $100,000 in compensatory and punitive damages. *Id*. at 528-29.

The Supreme Court held that the statute violated the First Amendment protection for the press, reaffirming that, "where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order, and no such interest is satisfactorily served by imposing liability" on the press. *Id*. at 541. The court held that the statute violated the First Amendment because the newspaper lawfully obtained the rape victim's name from the police; its article concerned a matter of public importance because it reported about "the commission, and investigation, of a violent crime that had been

reported to authorities" (*id*. at 537); and the rape victim had not shown that imposing liability on the newspaper was a "punishment . . . narrowly tailored to a state interest of the highest order[.]" *Id.* at 541.

The same is true here. As in *Florida Star*, the Arrest Report is an official record created by the San Francisco Police Department, just as the press release in Florida Star was an official record created by the local Florida police department. As in *Florida Star*, Mr. Poulson and Tech Inquiry lawfully obtained the Arrest Report from an unsolicited source. AA0347. Mr. Blackman submitted *no evidence* contradicting Defendants' evidence that Mr. Poulson received the Arrest Report from an unsolicited source (2 AA0347) and Tech Inquiry was the passive host of the Arrest Report and related articles. 2 AA00350-51. As in *Florida Star*, the state law cited by Mr. Blackman to impose civil liability on Tech Inquiry for publishing the Arrest Report, Penal Code § 851.92(c), and the prior restraint sought by Mr. Blackman violate the First Amendment because the punishments are not "narrowly tailored to a state interest of the highest order[.]" 491 U.S. at 541.

Although the Superior Court did not expressly hold that the Arrest Report is a matter of public concern, it implicitly held that it was by holding that the "character and trustworthiness of the leader of a business with contracts with the U.S. government and a security clearance" is a matter of public concern. 4 AA1007.

Even if Mr. Blackman had not been a business leader with U.S. government contracts and a security clearance at the time of

his arrest, his Arrest Report would still a matter of public concern under *Florida Star*, which held that "the commission, and investigation, of a violent crime that had been reported to authorities" is a matter of public concern, even without any mention of a high-profile arrestee or victim. 491 U.S. at 537.

B. Mr. Blackman Provides No Valid Basis to Overturn the Superior Court's Holding That Mr. Blackman's Claims Against Tech Inquiry Are Barred by § 230

The Communications Decency Act ("CDA"), 47 U.S.C. § 230, "expressly preempts … state law" claims arising from publication of third-party content on interactive computer service providers. *Perfect 10, Inc. v. CCBill LLC*, 488 F. 3d 1102, 1118 (9th Cir. 2007). The CDA "establishes broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Batzel v. Smith*, 333 F.3d 1018, 1031 (9th Cir.2003) (internal quotation marks and citations omitted). The Ninth Circuit has noted that "courts construing § 230 have recognized as critical in applying the statute the concern that lawsuits could threaten the 'freedom of speech in the new and burgeoning Internet medium.'" *Id*. at 1027 (quoting *Zeran v. America Online, Inc*., 129 F.3d 327, 330 (4th Cir.1997)). "Congress decided not to treat providers of interactive computer services like other information providers such as newspapers, magazines or television and radio stations, all of which may be held liable for publishing obscene or defamatory material written or prepared by others." *Id*. at 1026

(citing *Blumenthal v. Drudge*, 992 F. Supp. 44, 49 (D.D.C. 1998)). Section 230 immunity applies to websites that host content "written or prepared by others." *Id. at* 1026, 1031.

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

In his Opposition to Tech Inquiry's Special Motion to Strike in the Superior Court and now in his appeal, Mr. Blackman does not contest that the Tech Inquiry website is an interactive computer service provider as defined by Section 230 and *Batzel*,

333 F.3d at 1031. 3 AA0712-14. His chief argument in the Superior Court that Tech Inquiry was stripped of its immunity because it was "knowingly in possession of contraband" – Mr. Blackman's sealed Arrest Report – in violation of the court sealing order and Penal Code § 851.92(c). AA0712-13. He also alleged in the Superior Court that Mr. Poulson is not a third-party publisher because "Tech Inquiry is just a website that publishes Poulson's posts and thus publication of his posts does not constitute a third-party post." AA0714. But Mr. Blackman failed to provide any evidence about Tech Inquiry's relationship with Mr. Poulson, citing only "Plaintiff Decl. at ¶TK (sic)." AA0714.

The Superior Court, noting this lack of evidence, held that "[t]he Court finds that Blackman has not carried his burden to proving minimal merit as to … Tech Inquiry, which [is] immunized under the CDA." AA1011. The court held that Penal Code § 851.92(c) does not apply to Tech Inquiry's hosting of Mr. Poulson's articles because the statute does not prohibit possession of a sealed arrest report – it merely bars "disclosure or dissemination, which is what the CDA immunizes." 4 AA1012. "In any event, it is difficult to see how a publisher of a website could publish content without being in possession of it, and accordingly, the court concludes that the conduct alleged in the complaint as to … [Tech Inquiry] is immunized" by § 230. 4 AA1012.

Mr. Blackman's asserts for the first time on appeal that Tech Inquiry is stripped of § 230 immunity because "Poulson's

actions are imputed on Tech Inquiry" on the basis that Mr. Poulson "founded and runs" the website and is therefore its "agent" with "the ability to control Tech Inquiry's activities based on is role as the entity's Executive Director." AOB p. 66. Mr. Blackman also argues confusingly that "there is no evidence that the Sealed Report was not provided to Poulson" for use on the internet" but also "there can be no argument that the Sealed Report was legitimately provided to Poulson for use on the internet" on the Tech Inquiry website. AOB p. 66. In any case, Mr. Blackman forgets that it is his burden to provide evidence to establish a probability of prevailing. Mr. Blackman failed to meet his burden in the Superior Court to provide a scintilla of evidence to establish that Tech Inquiry was anything but a passive host of Mr. Poulson's Substack posts and the Arrest Report. Mr. Blackman's argument in his appeal is simply that; argument. It is not evidence. He has no evidence or legal support to challenge the Superior Court's holding that his claim against Tech Inquiry is barred by § 230 because Tech Inquiry was a passive host.

C. Plaintiff's Claims Are Barred by the California's Fair Report Privilege

The Superior Court did not reach Tech Inquiry's assertion that Plaintiff's claims are all barred by California's statutory fair report privilege. AA0517-18; AA0944-45; AA0996-99. But this Court should reach this issue as an alternative ground for affirming the Superior Court's order to Civil Code § 47(d) provides an absolute bar against all content-based claims arising

from substantially accurate news reports about official government proceedings and documents – without requiring the news reports to be about a matter of public concern.

For example, in *Jennings v. Telegram-Tribune Co.*, 164 Cal. App. 3d 119 (1985), the Court of Appeal held that a newspaper story about a local architect's tax evasion court case was protected by the fair report privilege and ordered the dismissal of the plaintiff's causes of action for libel, invasion of privacy, intentional infliction of emotional distress, injurious falsehood, interference with contractual relations, interference with prospective economic advantage, and violation of Civil Code § 1708. *Id.* at 129. There was no holding that the report was about a matter of public concern.

It is without dispute that the fair report privilege immunizes news reports about arrest records. *Hayward v. Watsonville Register-Pajaronian and Sun*, 265 Cal. App. 2d 255 (1968) ("crime reports of a police department … and upon which a criminal complaint is filed and a warrant of arrest is issued … are privileged" under Civil Code § 47(d)). The fair report privilege "does not require the reporter to resolve the merits of the charges, nor does it require that he present the arrestee's version of the facts." *Rollenhagen v. City of Orange*, 116 Cal. App. 3d 414, 427 (1981) (news report about plaintiff's arrest protected by fair report privilege). The fair report privilege is absolute and protects news reports even if the reporter or news organization published with ill will toward the plaintiff or published with constitutional actual malice. *McClatchy Newspapers, Inc. v. Superior Court*, 189

Cal. App 3d 961, 974-75 (1987); *Howard v. Oakland Tribune*, 199 Cal. App. 3d 1124, 1128 (1988).

It is important for this Court to reach this issue because California's fair report privilege applies to news reports about official government proceedings and records even if they are confidential by law. *See* R*eeves v. American Broadcasting Companies, Inc.*, 719 F.2d 602, 606 (2d Cir.1983) (California fair report privilege immunized press coverage of grand jury proceedings even though they were secret by law); *Crane v. The Arizona Republic*, 972 F.2d 1511, 1518-19 (9th Cir.1992) (California fair report privilege immunized press coverage of congressional investigation even though it was confidential; "Citizens cannot monitor their government when it conducts business behind closed doors); *Braun*, 52 Cal. App. 4th at 1052 (California fair report privilege immunized news report about confidential government audit).

Here, California's fair report privilege is an absolute bar to all of Mr. Blackman's claims against Tech Inquiry. Tech Inquiry's publication of the Arrest Report is better than a substantially accurate summary of the Arrest Report – it is a copy of the Arrest Report. The articles also provide a substantially accurate summary of the Arrest Report.

Mr. Blackman asserted in the Superior Court that Tech Inquiry's posting of and about the Arrest Report fall outside of the fair report privilege because the postings allegedly "breache[d]" Judge Gold's sealing order, citing Civil Code § 47(d)(2)(B) (fair report privilege does not apply to "any

communication in a public journal that … [b]reaches a court order"). But Mr. Blackman cites no supporting case precedent and ignores contrary authority. Tech Inquiry did not "breach" Judge Gold's sealing order because Tech Inquiry was not a party to the that proceeding and is therefore not bound by it. *Hassell*, 5 Cal. 5th at 549-550 ("'[N]o court can make a decree which will bind any one but a party[.]'").

Moreover, California's fair report privilege applies to news reports about official government proceedings and records even if they are confidential by law. R*eeves,* 719 F.2d at 606; *Crane*, 972 F.2d at 1518-19; *Braun*, 52 Cal. App. 4th at 1052). Mr. Blackman does not discuss the fair report privilege in his Appeal.

D. Plaintiff's Claims Based on Penal Code § 851.92(c) Fail Because the Statute Is Unconstitutional

The Superior Court also opted not to decide whether Penal Code § 851.92(c) violates the First Amendment, as Tech Inquiry asserted. 3 AA0519-20; 4 AA1011. But this Court should decide this important issue. The Supreme Court has repeatedly held that state laws and court punishments arising from press publication of information from lawfully obtained official government records and court proceedings violate the First Amendment. E.g., *Florida Star*, 491 U.S. at 541 (finding that Florida statute barring publication of rape victim's name and imposing lability on press for publishing victim's from lawfully obtained official police records violated the First Amendment protection for the press because imposing liability on the

newspaper was a "punishment . . . narrowly tailored to a state interest of the highest order"); *Cox Broadcasting Corp.,* 420 U. S. at 495 (finding unconstitutional a civil damages award entered against a television station for broadcasting the lawfully obtained name of a rape-murder victim in violation of a state statute); *Daily Mail*, 443 U. S. at 103 (finding unconstitutional indictment of two newspapers for violating state statute forbidding newspapers to publish, without written approval of the juvenile court, lawfully obtained name of minor).

Penal Code § 851.92(c) is a similarly unconstitutional statute. It prohibits any person or entity – including news websites such as Tech Inquiry – from disseminating any information "relating to" a sealed arrest record. Penal Code § 851.92(c). Plaintiff alleges that Tech Inquiry violated the statute by hosting the sealed Arrest Report and related "information." 1 AA0030. But the statute is unconstitutional, both facially and as applied to Tech Inquiry. The statute is a content-based restriction, which is subject to strict scrutiny. *Kasky v. Nike*, 27 Cal. 4th 939 (2002) ("a content-based regulation is valid under the First Amendment only if it can withstand strict scrutiny, which requires that the regulation be narrowly tailored (that is, the least restrictive means) to promote a compelling government interest"). The statute fails strict scrutiny because the state has no compelling governmental interest in penalizing the dissemination of lawfully obtained information about a sealed Arrest Report – an official government report – that involves a matter of public concern, as here. Nor is the statute's broad-based

anti-dissemination provision – which imposes civil liability and civil fines imposed by government prosecutors – the least restrictive means of achieving any government interest or narrowly tailored to address that interest.

California Attorney General Rob Bonta – the state's top law enforcement officer – and San Francisco City Attorney David Chiu both agree Penal Code § 851.92(c) should not be enforced by their offices in this case and similar cases. They agreed not to enforce the anti-dissemination portion of the statute for arrest reports that were obtained via a Public Records or have already been publicly disclosed after being sued in U.S. District Court on November 22, 2024, by the First Amendment Coalition, a California free speech and press advocacy organization, one of its employees, and First Amendment scholar Eugene Volokh. AA0885-0906 (*First Amendment Coalition v. Chiu*, Case No. 3:24-cv-08343-RFL); MJN, Ex. 7. The complaint alleges that Penal Code § 851.92(c) violates the First Amendment because it is (1) a "content-based restriction that penalizes the 'dissemination' of lawfully obtained 'information related to a sealed arrest report'"; (2) unconstitutionally overbroad and (3) void for vagueness. AA0900-904; MJN, Ex. 7. On November 25, 2024, the plaintiffs filed a Plaintiffs' Notice of Motion and Motion for Preliminary Injunction. AA0908-32; MJN, Ex. 8.

On December 19, 2024, U.S. District Judge Rita F. Lin entered a preliminary injunction, stipulated by the plaintiffs, Mr. Bonta and Mr. Chiu, that those two prosecutors' offices were barred from enforcing Penal Code § 851.92(c) against "*any* person

or entity" for the "dissemination … of information relating to *any arrest report* that the person or entity reasonably believes was obtained from the government through a public records request" or *has been previously made public*, including the Blackman arrest report. 4 AA0935 (emphasis added); MJN, Ex. 9. The case is pending as the plaintiffs seek a permanent injunction.

This is compelling evidence that Penal Code § 851.92(c) is unconstitutional, both facially and as applied to Tech Inquiry, and supplies an additional grounds for finding that Mr. Blackman has not shown a probability of prevailing on his claims against Tech Inquiry based on Penal Code § 851.92(c).

Conclusion

The First Amendment encompasses the "right to receive information and ideas." *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) (citation omitted). The threat of more lawsuits like this one will chill the press from publishing lawfully obtained official government records. The public would suffer from the lack of a free flow of information about its police departments, routine arrests, domestic violence arrests, and executives of companies with important federal government contracts and government security clearances.

This Court should affirm the Superior Court's order granting Tech Inquiry's special motion to strike Mr. Blackman's Complaint in its entirety with prejudice and hold that Penal Code § 851.92(c) violates First and Fourteenth Amendments both facially and as applied to Tech Inquiry.

DATED: December 15, 2025 Respectfully submitted,

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By: */s/ Susan E. Seager*
SUSAN E. SEAGER
Attorneys for Respondent
TECH INQUIRY, INC.

Certificate of Compliance

Counsel of Record hereby certifies that pursuant to Rules 8.486(a)(6) and 8.204(c) of the California Rules of Court, the enclosed "Defendant/Respondent Tech Inquiry's Response Brief" is produced using 13-point Century Bookmark type, and that, including footnotes, but excluding the tables and any supporting documents, the Response Brief contains approximately 12,700 words, which is fewer than the 14,000 words allowed by these rules. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: December 15, 2025 Respectfully submitted,

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By: */s/ Susan E. Seager*
SUSAN E. SEAGER
Attorneys for Respondent
TECH INQUIRY, INC.

CERTIFICATE OF SERVICE

I, Susan E. Seager, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action. My business address is 128 North Fair Oaks Avenue, Pasadena, California 91103.

On December 16, 2026, I served the foregoing documents:

DEFENDANT/RESPONDENT TECH INQUIRY, INC.'S RESPONSE BRIEF

X BY TRUEFILING: I caused to be electronically filed the foregoing document with the court using the court's e-filing system, TrueFiling. Parties and/or counsel of record were electronically served via the TrueFiling website at the time of filing.

X BY FIRST CLASS MAIL: I placed the document in a sealed envelope for collection and mailing following our ordinary business practices and deposited it with the United States Postal Service, with postage fully paid:

San Francisco Superior Court
Attn: Hon. Christine Van Aken
400 McAllister Street
San Francisco, CA 94102

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

Executed on December 16, 2025 at South Pasadena, California.

Susan E. Seager

Susan E. Seager