

Case No. A173244

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

MAURY BLACKMAN,

Plaintiff and Appellant,

v.

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

Defendants and Respondents,

Appeal from the Superior Court for the County of San Francisco
The Honorable Christine Van Aken, Presiding Judge
Case No. CGC-24-618681

BRIEF OF DEFENDANT AND RESPONDENT JACK POULSON

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CERTIFICATE OF INTERESTED ENTITIES

Pursuant to California Rule of Court 8.208, Defendant-Respondent Jack Poulson is an individual. Poulson knows of no entity or person, other than the parties themselves, that has a financial or other interest in the outcome of the proceeding.

Dated: December 15, 2025

/s/ Victoria J. Noble

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED ENTITIES..... 2

TABLE OF AUTHORITIES..... 6

INTRODUCTION AND SUMMARY OF THE ARGUMENT 14

STATEMENT OF THE CASE 15

STATEMENT OF FACTS..... 19

 I. BLACKMAN WAS ARRESTED FOR FELONY DOMESTIC
 VIOLENCE AND CHARGED WITH UNSPECIFIED
 CRIMES. 19

 II. BLACKMAN PRODUCED NO EVIDENCE THAT THE
 INCIDENT REPORT RECEIVED AND PUBLISHED BY
 POULSON WAS SEALED..... 19

 III. POULSON IS A JOURNALIST WHO TRUTHFULLY
 REPORTED ON BLACKMAN’S ARREST AS PART OF
 HIS BROADER REPORTING ON THE MILITARY
 SURVEILLANCE INDUSTRY..... 21

 IV. THE INCIDENT REPORT AND ARTICLES ABOUT IT WERE
 PUBLICLY AVAILABLE FOR ONE YEAR BEFORE THIS
 LAWSUIT WAS FILED..... 25

STANDARD OF REVIEW..... 25

ARGUMENT..... 26

 I. JUDGE QUINN’S SEALING ORDERS DID NOT ADDRESS
 THE MERITS OF THE CASE..... 26

 II. POULSON’S JOURNALISM UPON WHICH EACH CLAIM IS
 BASED IS PROTECTED BY THE FIRST AMENDMENT 26

 A. The First Amendment protects Poulson’s publication of
 information from government records, including
 information deemed confidential by law..... 27

 B. The First Amendment immunizes Poulson’s publication
 of truthful information pertaining to matters of public
 concern 28

1.	Poulson’s reporting was truthful.	30
2.	Poulson legally obtained the Incident Report	30
3.	Poulson’s reporting pertained to matters of public concern.	32
	(a) Police activity, arrests, and response to reports of criminal activity are of public concern.....	33
	(b) Domestic violence is a public concern	34
	(c) Trustworthiness of U.S. military contractors is a public concern.	35
	(d) Blackman is a public figure.....	37
C.	The standard for unsealing judicial records does not apply to whether the record can be published once legally obtained	39
D.	Blackman’s claimed injunctive relief would be an unconstitutional prior restraint	39
III.	EACH OF BLACKMAN’S CLAIMS AGAINST POULSON MUST BE STRUCK PURSUANT TO THE ANTI-SLAPP STATUTE.	39
A.	Each claim against Poulson arises from conduct protected under section 425.16.	40
	1. Poulson’s reporting of the Incident Report were statements made in connection with an issue under consideration by a judicial body under subsection (e)(2).....	42
	2. Poulson’s reporting on the Incident Report were statements made in a place open to the public in connection with an issue of public interest under subsection (e)(3).....	43
	(a) Poulson published the articles in a place open to the public	43

(b) Poulson’s reporting of Blackman’s arrest was made in connection with an issue of public interest.	43
(i) Poulsons’ speech implicated numerous public issues	44
(ii) Poulson’s reporting contributed to the public debate on those issues.	46
3. Poulson’s journalism also satisfies subsection (e)(4).....	47
B. Poulson’s anti-SLAPP motion is not barred by <i>Flatley v. Mauro</i>	47
1. Poulson’s First Amendment defense renders <i>Flatley</i> inapplicable.	48
2. Penal Code § 851.92(c) does not trigger <i>Flatley</i> because it imposes no criminal penalty	50
3. Penal Code sections 11104 and 13304 and Labor Code section 432.7 do not apply to Poulson.....	51
4. Penal Code section 11143 does not apply to the Incident Report.	52
5. Penal Code section 166 does not apply to Poulson	52
C. Blackman will be unable to show a probability of prevailing on his claims against Poulson.	53
1. Blackman cannot demonstrate that his claims have even minimal merit because the First Amendment bars them.	54
2. Each of Blackman’s claims fail on their merits.	55
3. Section 230 bars Plaintiff’s claims against Poulson for Publishing the Incident Report	59
CONCLUSION.....	62
CERTIFICATE OF WORD COUNT.....	64
CERTIFICATE OF SERVICE.....	65

TABLE OF AUTHORITIES

	Page
Cases	
<i>Aisenson v. Am. Broad. Co.</i> , 220 Cal. App. 3d 146 (1990)	58
<i>Ass'n for L.A. Deputy Sheriffs v. L.A. Times</i> , 239 Cal. App. 4th 808 (2015)	49, 50
<i>Bantam Books, Inc. v. Sullivan</i> , 372 U.S. 58 (1963).....	39
<i>Baral v. Schnitt</i> , 1 Cal. 5th 376 (2016)	40, 53
<i>Barrett v. Rosenthal</i> , 40 Cal. 4th 33 (2006)	60, 61
<i>Bartnicki v. Vopper</i> , 532 U.S. 514 (2001).....	29, 30, 32, 34
<i>Bergstein v. Stroock & Stroock & Lavan LLP</i> , 236 Cal. App. 4th 793 (2015)	50
<i>Bernardo v. Planned Parenthood Fed'n of Am.</i> , 115 Cal. App. 4th 322 (2004)	54
<i>Braun v. Chronicle Publishing Co.</i> , 52 Cal. App. 4th 1036 (1997)	40, 42
<i>Briggs v. Eden Council for Hope & Opportunity</i> , 19 Cal. 4th 1106 (1999)	40
<i>Briscoe v. Readers Digest Ass'n, Inc.</i> , 4 Cal. 3d 529 (1971)	33
<i>Brodeur v. Atlas Entertainment, Inc.</i> , 248 Cal. App. 4th 665 (2016)	44
<i>CACI Premier Tech., Inc. v. Rhodes</i> , 536 F.3d 280 (4th Cir. 2008)	36
<i>Carlisle v Fawcett Publications, Inc.</i> , 201 Cal. App. 2d 733 (1962)	33
<i>Carney v. Santa Cruz Women Against Rape</i> , 221 Cal. App. 3d 1009 (1990)	34
<i>City of Cotati v. Cashman</i> , 29 Cal. 4th 69 (2002)	40

<i>City of Montebello v. Vasquez</i> , 1 Cal. 5th 409 (2016)	48
<i>Cochran v. Cochran</i> , 65 Cal. App. 4th 488 (1998)	57
<i>Collier v. Harris</i> , 240 Cal. App. 4th 41 (2015)	50
<i>Colt v. Freedom Commc'ns, Inc.</i> , 109 Cal. App. 4th 1551 (2003)	58
<i>ComputerXpress, Inc. v. Jackson</i> , 93 Cal. App. 4th 993 (2001)	43
<i>Comstock v. Aber</i> , 212 Cal. App. 4th 931 (2012)	42
<i>Copp v. Paxton</i> , 45 Cal. App. 4th 829 (1996)	37
<i>Cox Broad. Corp. v. Cohn</i> , 420 U.S. 469 (1976).....	27, 28, 33
<i>Cross v. Cooper</i> , 197 Cal. App. 4th 357 (2011)	48, 50, 51
<i>Delfino v. Agilent Technologies, Inc.</i> , 145 Cal. App. 4th 790 (2006)	40, 59, 60
<i>Downey v. City of Riverside</i> , 16 Cal. 5th 539 (2024)	57
<i>Du Charme v. Int'l Brotherhood of Electrical Workers</i> , 110 Cal. App. 4th 107 (2003)	45
<i>Dubac v. Itkoff</i> , 101 Cal. App. 5th 540 (2024)	44
<i>Equilon Enterprises v. Consumer Cause, Inc.</i> , 29 Cal. 4th 53 (2002)	40, 51
<i>F.T.C. v. Accusearch Inc.</i> , 570 F.3d 1187 (10th Cir. 2009)	61, 62
<i>FilmOn.com Inc. v. DoubleVerify Inc.</i> , 7 Cal. 5th 133 (2019)	46
<i>Flatley v. Mauro</i> , 39 Cal. 4th 299 (2006)	47, 48, 49, 50, 51, 52
<i>Fremont Reorganizing Corp. v. Faigin</i> , 198 Cal. App. 4th 1153 (2011)	50, 51

<i>G.R. v. Intelligator</i> , 185 Cal. App. 4th 606 (2010)	50
<i>Gates v. Discovery Communications, Inc.</i> , 34 Cal. 4th 679 (2004)	27, 33, 34
<i>Geiser v. Kuhns</i> , 13 Cal. 5th 1238 (2022)	40, 43, 44, 45, 47
<i>Geragos v. Abelyan</i> , 88 Cal. App. 5th 1005 (2023)	48
<i>Gilbert v. Sykes</i> , 147 Cal. App. 4th 13 (2007)	37, 46
<i>Golden Eagle Land Inv., L.P. v. Rancho Santa Fe Assn.</i> , 19 Cal. App. 5th 399 (2018)	56, 57
<i>Governor Gray Davis Com. v. Am. Taxpayers All.</i> , 102 Cal. App. 4th 449 (2002)	49
<i>Hall v. Time Warner, Inc.</i> , 153 Cal. App. 4th 1337 (2007)	53
<i>Hansen v. California Department of Corrections and Rehabilitation</i> , 171 Cal. App. 4th 1537 (2008)	42
<i>Hassell v. Bird</i> , 5 Cal.5th 522 (2018)	60, 61, 62
<i>Hecimovich v. Encinal School Parent Teacher Organization</i> , 203 Cal. App. 4th 450 (2012)	45
<i>Henry v. Lake Charles Am. Press, L.L.C.</i> , 566 F.3d 164 (5th Cir. 2009)	36
<i>Hoang v. Tran</i> , 60 Cal. App. 5th 513 (2021)	37
<i>Hynes v. N.H. Democratic Party</i> , 175 N.H. 781 (2023)	30
<i>Jean v. Mass. State Police</i> , 492 F.3d 24 (1st Cir. 2007)	29
<i>Jenni Rivera Enterprises v. Latin World Entertainment Holdings</i> , 36 Cal. App. 5th 766 (2019)	29
<i>Kapellas v. Kofman</i> , 1 Cal. 3d 20 (1969)	33
<i>Kasparian v. Cnty. of Los Angeles</i> , 38 Cal. App. 4th 242 (1995)	57

<i>Kronemyer v. Internet Movie Database Inc.</i> , 150 Cal. App. 4th 941 (2007)	43
<i>Lafayette Morehouse, Inc. v. Chronicle Publishing Co.</i> , 37 Cal. App. 4th 855 (1995)	42
<i>Landmark Communications, Inc. v. Virginia</i> , 435 U.S. 829 (1978).....	27
<i>Lieberman v. KCOP Television, Inc.</i> , 110 Cal. App. 4th 156 (2003)	33, 41, 48, 53, 54
<i>Litinsky v. Kaplan</i> , 40 Cal. App. 5th 970 (2019)	53
<i>M.G. v. Time Warner, Inc.</i> , 89 Cal. App. 4th 623 (2001)	45
<i>Martin v. Hearst Corp.</i> , 777 F.3d 546 (2d Cir. 2015).....	30
<i>McCall v. Oroville Mercury Co.</i> , 142 Cal. App. 3d 805 (1983)	31
<i>Mendoza v. ADP Screening & Selection Servs., Inc.</i> , 182 Cal. App. 4th 1644 (2010)	25, 49, 50, 51
<i>Monterey Plaza Hotel v. Hotel Emps. & Rest. Emps.</i> , 69 Cal. App. 4th 1057 (1999)	58
<i>Navellier v. Sletten</i> , 29 Cal. 4th 82 (2002)	41, 42, 54
<i>Near v. Minnesota ex rel. Olson</i> , 283 U.S. 697 (1931).....	39
<i>Nebraska Press Ass’n v. Stuart</i> , 427 U.S. 539 (1976).....	39
<i>New York Times Co. v. United States</i> , 403 U.S. 713 (1971).....	39
<i>Nicholson v. McClatchy Newspapers</i> , 177 Cal.App.3d 509 (1986)	29, 39
<i>Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.</i> , 143 Cal. App. 4th 1284 (2006)	51
<i>Nygård, Inc. v. Uusi-Kerttula</i> , 159 Cal. App. 4th 1027 (2008)	44

<i>O'Grady v. Sup. Ct.</i> , 139 Cal. App. 4th 1423 (2006)	31, 32
<i>Ojeh v. Brown</i> , 43 Cal. App. 5th 1027 (2019)	46, 47
<i>Oklahoma Publishing Co. v. District Court In and For Oklahoma County</i> , 430 U.S. at 308 (1977).....	28
<i>Park v. Bd. of Trustees of California State Univ.</i> , 2 Cal. 5th 1057 (2017)	25
<i>Paul for Council v. Hanyecz</i> , 85 Cal. App. 4th 1356 (2001)	51
<i>People v. Moses</i> , 43 Cal. App. 4th 462 (1996)	52
<i>Pettus v. Cole</i> , 49 Cal. App. 4th 402 (1996)	59
<i>Phan v. Pham</i> , 182 Cal. App. 4th 323 (2010)	61
<i>Rivero v. Am. Fed'n of State, Cnty., & Mun. Emps., AFL-CIO</i> , 105 Cal. App. 4th 913 (2003)	37
<i>Rudnick v. McMillan</i> , 25 Cal. App. 4th 1183 (1994)	37
<i>San Diegans for Open Gov't v. San Diego State Univ. Rsch. Found.</i> , 13 Cal. App. 5th 76 (2017)	41
<i>Shulman v. Group W Productions, Inc.</i> , 18 Cal. 4th 200 (1998)	32, 33, 58
<i>Sipple v. Foundation for National Progress</i> , 71 Cal. App. 4th 226 (1999)	34
<i>Smith v. Daily Mail Pub. Co.</i> , 443 U.S. 97 (1979).....	29, 30, 34
<i>Smith v. Maldonado</i> , 72 Cal. App. 4th 637 (1999)	58
<i>Steiner v. Superior Ct.</i> , 220 Cal. App. 4th 1479 (2013)	52
<i>Summit Bank v. Rogers</i> , 206 Cal. App. 4th 669 (2012)	37, 49
<i>Terry v. Davis Community Church</i> , 131 Cal. App. 4th 1534 (2005)	46

<i>The Florida Star v. B.J.F.</i> , 491 U.S. 524 (1989).....	27, 33, 34
<i>Trinity Risk Mgmt., LLC v. Simplified Lab. Staffing Sols., Inc.</i> , 59 Cal. App. 5th 995 (2021)	25
<i>U.S. v. Chemical Foundation, Inc.</i> , 272 U.S. 1 (1926).....	20
<i>Varian Med. Sys., Inc. v. Delfino</i> , 35 Cal. 4th 180 (2005)	40
<i>Wilbanks v. Wolk</i> , 121 Cal.App.4th 883 (2004)	43
<i>Wilson v. Cable News Network, Inc.</i> , 7 Cal. 5th 871 (2019)	25, 39, 41, 54
<i>Worrell Newspapers of Indiana, Inc. v. Westhafer</i> , 739 F.2d 1219 (7th Cir. 1984), <i>aff'd</i> , 469 U.S. 1200 (1985).....	28
<i>Zucchet v. Galardi</i> , 229 Cal. App. 4th 1466 (2014)	48

Statutes

47 U.S.C. § 230.....	55, 59, 60, 61, 62
47 U.S.C. § 230(c)(1)	59, 60, 61, 62
47 U.S.C. § 230(e)(3)	60
47 U.S.C. § 230(f)(2).....	60
47 U.S.C. § 230(f)(4)(C).....	60
Code of Civil Procedure § 425.16	14, 16, 25, 39, 40, 42, 43, 47, 51
Evidence Code § 1070	31
Evidence Code § 664.....	20
Government Code § 81000 <i>et seq.</i>	51
Government Code § 91000 (a)	51
Labor Code § 432.7(g)(3)	31, 48, 51, 55, 56
Penal Code § 11140(a).....	52
Penal Code § 11143	15, 31, 41, 48, 51, 52, 55, 56, 59
Penal Code § 13304	31, 48, 51, 55
Penal Code § 166	48, 52, 53, 55, 56
Penal Code § 290.46	50

Penal Code § 851.91	30, 55
Penal Code § 851.92	15, 16, 41, 55, 59
Penal Code § 851.92(b)	19
Penal Code § 851.92(b)(1)(B)	20
Penal Code § 851.92(b)(3).....	20
Penal Code § 851.92(b)(5).....	21
Penal Code § 851.92(c).....	48, 49, 50, 56
Penal Code § 852.91	55

Other Authorities

“Great Minds Think Data with Maury Blackman,” <i>Art14</i>	38
2 Witkin, Cal. Crim. Law 5th Crimes--Govt § 59 (2025.)	52
32 C.F.R. 147.12.....	36
Aliya Ram, “Tech investors include #MeToo clauses in start-up deals,” <i>Financial Times</i> , (Mar. 17, 2019)	35
Amanda Kippert, “A Comprehensive Guide to Domestic Violence Awareness Month,” <i>DomesticShelters.Org</i> (Sept. 21, 2021)	34
<i>CBS San Francisco</i> , “San Francisco-Based RadiumOne Fires CEO after Girlfriend Beating, Plea Deal,” (Apr. 28, 2014)	35
Janine de La Vega, “Outcry over Silicon Valley CEO’s Domestic Violence Plea Deal,” <i>ABC 7 News</i> , (June 15, 2017).....	35
Matthew LaGarde, “Defense Contractors Are Silencing Their Cybersecurity Watchdogs,” <i>Bloomberg Law</i> (Nov. 7, 2025)	36
Mike German, “Private Intelligence Contractors Need Better Oversight,” <i>Brennan Center for Justice</i> (Jan. 9, 2015)	36
Paul Pardew, et al., “Joint Operational Contract Support Challenges, <i>U.S. Army</i> (June 29, 2017)	36
Sophia Chupein, “Take Back the Night, 1978-”, <i>Living History Project</i> (Oct. 10, 2019)	34
Susannah N. Tapp and Emilie J. Coen, “Criminal Victimization, 2024,” U.S. Department of Justice, Bureau of Justice Statistics (Sept. 2025) ...	35
U.S. Administration for Children and Families, Office of Family Violence Prevention and Services, “October Is Domestic Violence Awareness Month,” (2024).....	34

Rules

California Rule of Court 2.550 18
California Rule of Court 2.551 17

Constitutional Provisions

Cal. Const., Art. I, Sec. 1 58
Cal. Const., Art. I, Sec. 2(b) 31
U.S. Const. amend. I..... 14, 26, 27, 28, 29, 30, 39, 41, 49, 52, 53, 54, 55

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This classic SLAPP seeks to punish First Amendment-protected news reporting of truthful material about a matter of public interest: the felony domestic violence arrest of a prominent executive of a controversial military surveillance company. Plaintiff-Appellant Maury Blackman wants to silence Defendant-Respondent Jack Poulson, a journalist and researcher who published news articles on Blackman’s company and later his arrest and a copy of the arrest record created by the responding officers (the “Incident Report”).¹

The anti-SLAPP statute applies to each claim against Poulson because each claim arises from protected news publication and routine newsgathering performed as part of reporting those articles, such as receiving the Incident Report from a confidential source, conducting interviews, and seeking comment from relevant people.

The burden then shifts to Blackman to prove a prima facie case for each of his claims, and the Superior Court correctly found that Blackman cannot sustain that burden: “the First Amendment’s protections for the publication of truthful speech concerning matters of public interest vitiate Blackman’s merits showing.” 4 AA0997.

The Superior Court correctly struck every claim against Poulson under California’s anti-SLAPP statute, California Code of Civil Procedure section 425.16, and should be affirmed. 4 AA0991–99.

¹ “Incident Report” refers specifically to the copy of Blackman’s arrest record received and reported on by Poulson. The term does not refer to any other copy of Blackman’s arrest record that may exist.

STATEMENT OF THE CASE

Blackman filed a pseudonymous “Doe” Complaint against Defendants Jack Poulson, Substack, Inc., Amazon Web Services, Inc., and Tech Inquiry, Inc. on Oct. 3, 2024. 1 AA0010. The Complaint asserted fourteen claims against Poulson,² all of which arose from Poulson’s receipt of the Incident Report from an anonymous source, interviews and requests for comment, and subsequent publication of the Incident Report and news articles reporting information about Blackman’s arrest derived from the Incident Report. 1 AA0010, 1 AA0018–30. It is undisputed that at the time he received the Incident Report and first reported on it, Poulson did not know that the Incident Report had been sealed. 2 AA0347–48.³ Blackman filed this lawsuit after the Incident Report and articles about it were publicly available online for over a year. 1 AA0010–12, 2 AA0365–69.

Blackman sought, *inter alia*, punitive damages and a permanent injunction compelling Defendants to remove, deindex, and “eliminate access to” all webpages that “reference” or contain “information related to”

² Blackman asserted the following causes of action against Poulson: (1) negligence, (2) gross negligence, (3) intentional interference with prospective economic relations, (4) negligent interference with prospective economic relations, (5) intentional interference with contractual relations, (6) public disclosure of private facts, (7) false light, (8) intrusion into private affairs, (9) intentional infliction of emotional distress, (10) negligent infliction of emotional distress, (11) defamation, (13) violation of California Constitution Section 1, (14) violation of California Penal Code Section 851.92, and (15) violation of California Penal Code Section 11143. 1 AA0010, 1 AA0018–30.

³ Blackman claims only that Poulson and the other defendants were informed that the arrest had been ordered sealed by Blackman himself only after Poulson published his September 14, 2023 post. Opening Br., 35.

the Incident Report and enjoining Defendants from “disseminating directly or indirectly” the Incident Report or any related information. 1 AA0031.

Blackman originally filed his Complaint as an anonymous Doe plaintiff, without first seeking permission to proceed as such. 3 AA0525, 4 AA1020, 4 AA1022. On November 12, 2024, Blackman filed an *ex parte* application for a temporary restraining order. 4 AA1020. After Defendants fully briefed and argued Blackman’s *ex parte* application, Judge Quinn removed the *ex parte* application from the calendar and instructed Blackman to first file a motion to proceed as a Doe plaintiff. *Id.* Plaintiff then filed a motion to proceed under a fictitious name on November 14, 2024, which Defendants opposed. *Id.* Judge Quinn denied Blackman’s Doe motion on December 13, 2024, explaining that the “details of Plaintiff’s arrest record have already been publicly disclosed,” and any privacy interest Blackman may have under Penal Code section 851.92 is not sufficient to justify anonymity. 4 AA1022; 1 RA0086–90. Accordingly, Blackman amended his Complaint to reflect his true name on December 20, 2024. 4 AA1023.

On December 6, 2025, Poulson, as well as each co-defendant, moved to strike the Complaint pursuant to California Code of Civil Procedure section 425.16, supported by numerous exhibits. 1 AA0103–04; AA0208–64, 2 AA0352–418. Because Blackman’s Doe petition plaintiff was still pending, Poulson protectively lodged his anti-SLAPP papers under conditional seal and filed heavily redacted versions of each. 3 AA0539–44; *see generally* 1 AA0126–46, 1 AA206–64, 2 AA0342–418. This included provisionally redacting every mention of Blackman’s name and image, even when such was included in public news media reporting and website URLs. Poulson also provisionally fully redacted the Incident Report.

As required by California Rule of Court 2.551, Poulson then moved to file his anti-SLAPP papers under seal. 3 AA0541–44. Since most of the redactions Poulson made were protective, he only moved to seal the names and house and unit numbers of the complaining witness and the victim from the Incident Report, as he had redacted the same information in his most recent reporting. 3 AA0542–44. With respect to the other provisional redactions, Poulson explained that he “believes that the documents should not be sealed in whole or in part, but is providing Plaintiff with the opportunity to move for the documents to be sealed.” 3 AA0542.

Blackman filed a timely opposition to Poulson’s motion to seal and an untimely motion to seal in which he argued that all versions of Blackman’s arrest record, including the copy of the Incident Report Poulson published, and information uniquely derived from it should remain redacted from the public court records of the anti-SLAPP proceedings. 3 AA0523–33, 3 AA0623. Blackman did not contend that any of the other text or images that had been filed provisionally under seal by the defendants should be sealed, nor did he seek any further redactions from the already filed documents. 3 AA0523–33.

On December 27, 2025, after filing his motion to seal, but before the hearing on that motion, Blackman submitted a declaration in an open, unsealed court filing in which he testified that he “was involved in an incident on December 21, 2021 that resulted in my being arrested for felony domestic violence.” 3 AA0562, 3 AA0564. In doing so, Blackman himself publicly disclosed the most material facts of the Incident Report.

On January 7, 2025, Judge Quinn granted both Poulson’s and Blackman’s Motions to Seal. 3 AA0619–25.

In granting Poulson’s motion, Judge Quinn, having considered the four California Rule of Court 2.550 factors, ruled that the partially redacted version of the Incident Report which Poulson had lodged “will be included in the court’s public file.” 3 AA0620–21.

In granting Blackman’s motion to seal, Judge Quinn ordered sealed all copies of the of Blackman’s arrest record, including the Incident Report, filed as exhibits. 3 AA0622–24. In granting Blackman’s motion, Judge Quinn did not consider the four required factors from Rule of Court 2.550. *Id.* Instead, he found that “[t]he Incident Report has already been sealed by order of Judge Gold...thus it and material contained in it cannot be publicly disclosed in any court filing.” 3 AA0623.

Judge Quinn thus in one order ordered one copy of the Incident Report to be filed with small and specific redactions, and in the other order ordered all copies of the same document to be maintained entirely under seal. 3 AA0619–21, 3 AA0622–24.

Regardless of the inconsistencies in Judge Quinn’s orders on the motions to seal, the only issue before Judge Quinn was whether the Incident Report needed to be filed under seal in the parties’ court filings on the anti-SLAPP motions. Judge Quinn made no order on the public nature of the Incident Report in any other context. *See* 3 AA0624 (noting that Blackman’s motion to seal “is not asking for the removal of a past publication nor the prevention of a future one,” just for any copies of the Incident Report filed with the Court to be under seal).

On February 14, 2025, Judge Van Aken granted Poulson’s Motion to Strike the entire Complaint. 4 AA0991–99.

STATEMENT OF FACTS

I. BLACKMAN WAS ARRESTED FOR FELONY DOMESTIC VIOLENCE AND CHARGED WITH UNSPECIFIED CRIMES.

On December 21, 2021, the San Francisco Police Department (SFPD) responded to a 911 call regarding a suspected domestic violence incident involving Plaintiff Maury Blackman. 1 AA0308–12. The police recorded the substance of the 911 call and detailed their observations and interactions with Blackman and the other persons present in the arrest record. 1 AA0312.

Blackman admits that he was arrested for felony domestic violence on December 21, 2021, and that he was charged with unspecified crimes, though not felony domestic violence, which were later dismissed. 4 AA0845, 3 AA0564.

II. BLACKMAN PRODUCED NO EVIDENCE THAT THE INCIDENT REPORT RECEIVED AND PUBLISHED BY POULSON WAS SEALED.

Poulson prevails in this case even if the Incident Report were sealed.

But the evidence in the record indicates that the copy of the Incident Report received and published by Poulson was an unsealed public record, and that its source was likely a copy of the arrest record that was produced via a public records request several months before Poulson obtained the Incident Report.

Unlike the self-executing sealing of court records, the sealing of police records requires subsequent action by the police. Penal Code section 851.92(b) provides that “When the court issues an order to seal an arrest, the sealing shall be accomplished as follows: ... [¶] ... (3) A police

investigative report related to the sealed arrest shall, only as to the person whose arrest was sealed, be stamped “ARREST SEALED: DO NOT RELEASE OUTSIDE THE CRIMINAL JUSTICE SECTOR,” and shall note next to the stamp the date the arrest was sealed and the section pursuant to which the arrest was sealed. The responsible local law enforcement agency shall ensure that this note is included in all master copies, digital or otherwise, of the police investigative report related to the arrest that was sealed.” Cal. Pen. Code § 851.92(b)(3).

The copy of Incident Report received and published by Poulson had no mandatory marking, or any other indication of sealing. Blackman produced no version of the Incident Report or the arrest record so marked, and no other evidence that the SFPD accomplished the sealing. Indeed, the evidence Blackman did produce points the other direction: a copy of the arrest record was produced to a member of the public on May 17, 2022, following release approval from the SFPD investigative unit, more than a year before Poulson received the Incident Report. 2 AA0406, 2 AA0347, 3 AA0566–67, 3 AA0583–86, 3 AA0590.

Blackman contends that this Court must ignore this evidence and presume that the sealing was accomplished because it is presumed that an official duty has been “regularly performed.” Opening Br., 60 (citing Cal. Evidence Code § 664; *U.S. v. Chemical Foundation, Inc.*, 272 U.S. 1, 14–15 (1926)). However, Blackman produced no evidence as to what SFPD’s “regular performance” of its duty to accomplish a seal is, or how long it “regularly” takes. The statute requires *the court* to forward the order to seal to the law enforcement agency that made the arrest within 30 days. Cal. Penal Code § 851.92(b)(1)(B). But the statute sets forth no schedule for *the agency* to then accomplish the sealing. And to the extent the presumption

does apply, it applies to all of the SFPD's actions. This Court must then also presume that the SFPD regularly performed its duties when it produced a copy of an unsealed arrest record pursuant to a Public Records Act request. It would have been irregular to produce the record to a member of the public had the sealing been accomplished at that time. *See* Cal. Penal Code § 851.92(b)(5). The evidence in the record supports this latter presumption over the former.

But rather than presume anything, this Court should judicially notice the SFPD's Order to Seal Report 210-844-280 that indicates that the arrest record was indeed a public, unsealed record for 10 months following Judge Gold's order. Respondents' Motion for Judicial Notice ("MJN"), Exhs. A, B, D. This record was produced by the SFPD after the anti-SLAPP motions at issue in this appeal were granted. The production occurred in litigation Blackman brought against the SFPD based on its May 17, 2022 production of the arrest report as a public record, and its alleged failure to affix the "SEALED" stamp to the copy of the arrest record. MJN, Exh. B. According to this Order to Seal Report, although Judge Gold ordered the arrest sealed on February 17, 2022, the SFPD's Crime Information Services Unit ("CISU"), the unit responsible for accomplishing the seal, did not receive the order to seal until October 15, 2022, and did not actually seal the arrest records for another eight weeks, until December 14, 2022. MJN, Exh. B.

III. POULSON IS A JOURNALIST WHO TRUTHFULLY REPORTED ON BLACKMAN'S ARREST AS PART OF HIS BROADER REPORTING ON THE MILITARY SURVEILLANCE INDUSTRY.

Poulson is an independent journalist who, since 2023, has published a publicly available newsletter called *All-Source Intelligence* approximately

once per week on Substack. 2 AA0343. As of October 3, 2024, it had over 3,000 subscribers. 2 AA0343–44. *All-Source Intelligence* focuses on the intersection of technology and national security, particularly government contractors that build surveillance and weapons technologies for military and intelligence agency clients. 2 AA0343–47. Poulson frequently writes about these companies and their executives. 2 AA0346–47.

Among those companies featured prominently in *All-Source Intelligence* is Premise Data (“Premise”), for which Blackman was serving as Chief Executive Officer at the time of his arrest. 2 AA0344–48, 2 AA0353–62. Premise is a government contractor that has drawn public scrutiny, from Poulson and other journalists, for conducting surveillance for the U.S. military and foreign governments. 2 AA0344–45, 2 AA0348; 1 RA0017–29. As Poulson reported, Premise received tens of millions of dollars from U.S. taxpayers for work performed for the U.S. Department of Defense. 2 AA0374. National news outlets, such as *The Wall Street Journal*, reported on Premise’s surveillance work for the U.S. military. 1 RA0017–29; 2 AA0344, 2 AA0354, 2 AA0360, 2 AA0367–68, 2 AA0373, 2 AA0382. While Blackman led the company, Premise conducted covert military intelligence operations for U.S. Special Operations Forces, including as part of the war effort in Afghanistan. 2 AA0382; 1 RA0017–29. Premise’s work in Ukraine even sparked an international incident, after Russia allegedly used Premise’s platform to target airstrikes on Ukraine. 2 AA0345, 2 AA0367; 1 RA 0028–29.

On September 14, 2023, Poulson published an article in his newsletter that reported the information from the Incident Report and linked to an uploaded copy of it. 2 AA0345, 2 AA0365–69. The article also reported that Premise had been accused of being used by the Russian

government and that Blackman confirmed Premise’s work with U.S. defense and intelligence agencies in a public court filing. *Id.*

Poulson received the Incident Report “through an unsolicited message on the messaging platform Signal from a confidential source in early September 2023,” after publishing a September 1, 2023 article about Blackman and his former company. 2 AA0347. Poulson did not request or otherwise seek out the Incident Report. *Id.*

After receiving the Incident Report and prior to reporting on it, Poulson sought to verify its authenticity and confirm the accuracy of its contents. 2 AA0348. He phoned the SFPD’s CISU and, after providing the Incident Report number, asked for and received confirmation of each pertinent detail in the Incident Report that he ultimately published, including “the names of the arrested individual and his alleged victim, as well as the alleged victim’s age and statement to the police” as well as the officers’ observations of the scene. *Id.*

At no point during this call did the CISU indicate to Poulson that the arrest was ordered sealed or the sealing accomplished. *Id.*

Poulson was thus not aware that the arrest was ordered sealed when he received the Incident Report and first reported on it. 2 AA0347–48. Blackman produced no evidence to the contrary.

Poulson accurately reported on the contents of the Incident Report. 4 AA0841. Poulson never reported or implied that Blackman was charged with or convicted of any crime. *Id.* To the contrary, Poulson reported that the alleged victim recanted her statements to the SFPD on the scene. 2 AA0367, 4 AA0841.

Poulson’s reporting on Blackman’s arrest was part of his broader reporting in *All-Source Intelligence* focusing on the intersection of

technology and national security. 2 AA0343. Poulson wrote about Premise and Blackman’s questionable acts as CEO in several *All-Source Intelligence* articles both before and after he reported his domestic violence arrest. 2 AA0344–46. Among other issues, these articles reported Premise’s work as a human intelligence and signals intelligence provider for U.S. Special Operations Command, and Blackman’s claim that in his role as CEO, Blackman held a security clearance with the U.S. Department of Defense that allowed him to access sensitive national security information. 2 AA0344–45, 2 AA0350, 2 AA0361, 3 AA0563, 4 AA0845.

Poulson chose to report Blackman’s arrest for several reasons. First, he deemed it relevant to his beat, as he had recently reported on Premise’s classified work with U.S. government agencies. 2 AA0348–49. Poulson had also reported on Blackman's unethical conduct as CEO as alleged in a lawsuit Premise brought against several former employees who had blown the whistle on the company. 2 AA0348–49; 2 AA0402–11. Two of the primary concerns that arose in that litigation pertained to Blackman’s ethics and the company's willful ignorance of the safety of its gig workers. *Id.* Poulson concluded that Blackman being arrested on suspicion of felony domestic violence was relevant to these issues. 2 AA0348–49.

In November 2023, as part of his newsgathering for further reporting, Poulson reached out to the public affairs office of the U.S. Special Operations Command for comment on whether Blackman’s arrest violates any Department of Defense policies for holding a security clearance. 2 AA0350. Poulson sought comment on these matters because plaintiff’s security clearance allows him to access sensitive national security information, placing him in a position of public trust. *Id.*

IV. THE INCIDENT REPORT AND ARTICLES ABOUT IT WERE PUBLICLY AVAILABLE FOR ONE YEAR BEFORE THIS LAWSUIT WAS FILED.

Blackman filed this lawsuit after the articles and the Incident Report were publicly available online for over a year. 1 AA0010–14.

Several news publications have now reported on Blackman’s arrest, including the California Courts Newsroom, an official website of the Judicial Branch of California. 1 RA0068–84.

STANDARD OF REVIEW

Courts of Appeal “review de novo the grant or denial of an anti-SLAPP motion.” *Park v. Bd. of Trustees of California State Univ.*, 2 Cal. 5th 1057, 1067 (2017). Appellate courts “employ the same two-pronged procedure as the trial court in determining whether the anti-SLAPP motion was properly granted.” *Mendoza v. ADP Screening & Selection Servs., Inc.*, 182 Cal. App. 4th 1644, 1652 (2010).

Courts of Appeal consider the pleadings, as well as declarations that state the facts upon which a claim or defense is based. *Trinity Risk Mgmt., LLC v. Simplified Lab. Staffing Sols., Inc.*, 59 Cal. App. 5th 995, 1003 (2021) (citing § 425.16 (b)(2)). Although courts “accept as true the *evidence* favorable to the plaintiff,” courts do *not* credit a complaint’s allegations “in the face of contrary evidence.” *Wilson v. Cable News Network, Inc.*, 7 Cal. 5th 871, 887 (2019) (quotation omitted; emphasis original).

ARGUMENT

I. JUDGE QUINN’S SEALING ORDERS DID NOT ADDRESS THE MERITS OF THE CASE.

Judge Quinn’s orders on the various motions to seal were just that—determinations of which court records needed to be filed under seal in the anti-SLAPP proceedings. They were not rulings on any aspect of the merits of the case, none of which were argued before Judge Quinn. Judge Quinn found that the Incident Report “cannot be publicly disclosed *in any court filing*,” 3 AA0623 (emphasis added), and said nothing about whether it could be disclosed anywhere else. *Contra* Opening Br., 23. Judge Quinn did not reach the merits of Blackman’s claims or Poulson’s First Amendment defenses. 3 AA0623–24 (noting that “Plaintiff here is not asking for the removal of a past publication nor the prevention of a future one. Instead, Plaintiff wants any submitted copies of the Incident Report filed under seal.”).

II. POULSON’S JOURNALISM UPON WHICH EACH CLAIM IS BASED IS PROTECTED BY THE FIRST AMENDMENT.

That the First Amendment protects Poulson’s newsgathering and reporting is important in each step of the anti-SLAPP analysis and is thus helpfully considered first.⁴

⁴As detailed below, the granting of Poulson’s anti-SLAPP motion can also be affirmed on alternative nonconstitutional grounds.

A. The First Amendment protects Poulson’s publication of information from government records, including information deemed confidential by law.

The First Amendment protects the publication of information obtained from government records, even if the information was supposed to be confidential. *The Florida Star v. B.J.F.*, 491 U.S. 524, 533, 538 (1989). The U.S. and California Supreme Courts have deemed numerous compelling privacy interests insufficient to justify limits on this First Amendment right. *Florida Star*, 491 U.S. at 537 (statutory privacy interests of rape victim); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 495 (1976) (same); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 840–41 (1978) (confidentiality of judicial commission proceedings); *Gates v. Discovery Communications, Inc.*, 34 Cal. 4th 679, 693 & n.6 (2004) (rehabilitation and privacy of former convicts).

Although the rule is not absolute, the state’s interest in protecting the privacy of the information at issue is heavily compromised when the state is itself the source and does not “police itself in disseminating information.” *Florida Star*, 491 U.S. at 538. In *Florida Star*, the newspaper learned the name of a rape victim from a publicly released police report, even though the victim’s identity was supposed to be kept confidential. *Id.* at 526, 538. The statute prohibiting publication of the victim’s name could not withstand strict scrutiny because of the readily available least restrictive alternative: “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.* at 534.

A law asserting to protect the confidentiality of government information thus cannot be constitutionally applied when the information is

obtained through the government, which, for whatever reason, did not treat it as confidential. In *Oklahoma Publishing Co. v. District Court In and For Oklahoma County*, 430 U.S. at 308, 311 (1977), a pretrial court order that prohibited the publication of a juvenile defendant’s photograph could not be enforced against a newspaper that published such a photograph when the court held an open hearing and took no action to prevent the photographer from making the image as the juvenile left the courtroom. And in *Cox*, 420 U.S. at 471–72, a state law protected the anonymity of a rape victim. But the privacy interests asserted could not outweigh the First Amendment interests when a reporter learned of the name from the indictments, which were public records. *Id.* at 472–73, 496.

The First Amendment specifically protects the publication of sealed court records. See *Worrell Newspapers of Indiana, Inc. v. Westhafer*, 739 F.2d 1219, 1225 (7th Cir. 1984), *aff’d*, 469 U.S. 1200 (1985).

“Undisputably, courts may seal criminal informations as well as other documents. However, when the press, by whatever means, obtains the information contained in a court-sealed document, a state cannot prohibit the publication of the information without violating the First Amendment.”
Id.

B. The First Amendment immunizes Poulson’s publication of truthful information pertaining to matters of public concern.

As discussed above, the Incident Report provided to Poulson was an open, unsealed public record; but the First Amendment protection applies even if the source of the information was not a public government record.

The First Amendment protects a person’s right to publish newsworthy truthful information that they legally obtained from a

nongovernmental source, even if the source obtained it illegally. *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001); *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103–04 (1979); *Jenni Rivera Enterprises v. Latin World Entertainment Holdings*, 36 Cal. App. 5th 766, 797–800 (2019) (holding that First Amendment barred liability for publishing information that source provided in violation of a nondisclosure agreement). *Bartnicki* protects the publisher as long as they did not commit a crime to obtain the information; civil liability for such acts does not nullify *Bartnicki*'s protections. See *Jenni Rivera Enterprises*, 36 Cal. App. 5th at 800.

This protection applies even when the publisher knows or should have known that their source obtained the information illegally. See *Bartnicki*, 532 U.S. at 517–18, 535; *Jean v. Mass. State Police*, 492 F.3d 24, 33 (1st Cir. 2007).

And it applies even if, as here, the information was deemed confidential by law. See *Bartnicki*, 532 U.S. at 533–34. “While the government may desire to keep some proceedings confidential...it may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy information through routine reporting techniques.” *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 519–20 (1986).

In addition, the mere act of receiving confidential information from a source is also protected from punishment, again, even if the source wrongfully disclosed it. Obtaining information from a source is a “routine reporting technique[.]” that “could rarely, if ever,” be deemed actionable consistent with the First Amendment. *Jenni Rivera Enterprises*, 36 Cal. App. 5th at 798–800; *Nicholson*, 177 Cal. App. 3d at 519–20).

Neither the State's interest in the confidentiality of arrest reports nor

Blackman’s privacy interests under Penal Code section 851.91 defeat Poulson’s First Amendment rights. The U.S. Supreme Court directly rejected an analogous interest in the rehabilitation and privacy of juvenile offenders as overriding the constitutional right to publish lawfully obtained information. *See Daily Mail*, 443 U.S. at 103–04. And Blackman’s privacy interests are even weaker in this case to the extent he claims only that Poulson should have unpublished his reporting after Blackman told Substack his arrest had been ordered sealed, at which time the information had already been widely available for at least several weeks. Opening Br., 21.⁵

1. Poulson’s reporting was truthful.

There is no dispute the Poulson accurately reported the contents of the Incident Report. That the arrest was ordered sealed and the “legal fiction” that it never occurred does not make the fact of the arrest false. *Martin v. Hearst Corp.*, 777 F.3d 546, 551 (2d Cir. 2015). *See also Hynes v. N.H. Democratic Party*, 175 N.H. 781, 798 n.3 (2023) (collecting cases).

2. Poulson legally obtained the Incident Report.

Of the many statutes Blackman claims Poulson violated, just three possibly make the mere receipt of the Incident Report by Poulson a crime, but none of these apply to Poulson.

⁵ Blackman wrongly relies on Justice Breyer’s concurrence in *Bartnicki* for the proposition that the First Amendment only protects a publication if “the interests of publishing matters of public significance” outweigh “competing privacy interests.” Opening Br., 54–55. This is *not* the law. The opinion of the Court held that “privacy concerns give way when balanced against the interest in publishing matters of public importance.” *Bartnicki*, 532 U.S. at 534.

First, each law criminalizes only knowing receipt. Cal. Penal Code §§ 11143, 13304; Cal. Labor Code § 432.7(g)(3). And it is undisputed that Poulson did not know the arrest was ordered sealed when he received the Incident Report: Blackman contends only that Poulson learned of the order to seal later. 2 AA0347.

Second, each statute specifically exempts journalists, like Poulson, that is, “those specifically referred to in Section 1070 of the Evidence Code.” Cal. Penal Code §§ 11143, 13304; Cal. Labor Code § 432.7(g)(3); Cal. Evid. Code § 1070. These exemptions are intended to prevent the laws from impeding “the free flow of truthful information relevant to the public interest” by exempting “members of the news media from its sanctions.” *McCall v. Oroville Mercury Co.*, 142 Cal. App. 3d 805, 808 (1983).

Poulson is a “reporter” and “publisher” of *All-Source Intelligence*, a “periodical publication,” as defined by Evidence Code section 1070 and the cases interpreting it. *See O’Grady v. Superior. Ct.*, 139 Cal. App. 4th 1423, 1465–66 (2006); 2 AA0343. *Contra* Opening Br., 34–35. Like the online publications in *O’Grady*, *All-Source Intelligence* is an “ongoing, recurring news publication[,]” to which Poulson added articles as they became ready for publication, and which gathered and analyzed information for the purposes of disseminating it to the public. 2 AA0343–44. *See O’Grady*, 139 Cal. App. 4th. at 1458–59, 1465–66.

In *O’Grady*, the court found that two “online news magazines” that reported on Apple products were “periodical publications” pursuant to Evidence Code section 1070 and the substantially identical provision of the California Constitution, article 1, section 2(b). *Id.*, at 1437, 1464–66. The court found that the Legislature intended to sweep broadly, holding that “the Legislature intended the phrase ‘periodical publication’ to include all

ongoing, recurring news publications while excluding nonrecurring publications such as books, pamphlets, flyers, and monographs.” *Id.* at 1466. The court did not require that the websites be published in “distinct issues at regular, stated, or fixed intervals.” *Id.* at 1465.

The court did not rely on or refer to the websites’ age, numbers of readers, the size of their staffs, or the scope of their reporting, all factors Blackman wrongly claims *O’Grady* requires. Opening Br., 34, 35. Indeed, one of the journalists in *O’Grady* was by himself the pseudonymous “primary publisher, editor, and reporter” for his website. *O’Grady*, 139 Cal. App. 4th at 1432. And the subject matter scope of the websites in *O’Grady*, the products of a single company, Apple, was narrower than the scope of *All-Source Intelligence*, which covers the products, practices, and contracts of numerous companies within the government-contracted surveillance industry. *See Id.*; 2 AA0343–44.

3. Poulson’s reporting pertained to matters of public concern.

Bartnicki defined “public concern” by reference to whether a statement is “newsworthy.” 532 U.S. at 525. A “publication is newsworthy if some reasonable members of the community could entertain a legitimate interest in it.” *Shulman v. Group W Productions, Inc.*, 18 Cal. 4th 200, 225 (1998).

Poulson’s reporting on Blackman’s arrest and publication of the Incident Report pertained to matters of public concern for several reasons, any of which on its own would be sufficient to trigger *Bartnicki*, and which in combination certainly do.

(a) Police activity, arrests, and response to reports of criminal activity are of public concern.

Generally, news reports of police responses to and activity around reported criminal activity, including arrests, “serve important public interests.” *Lieberman*, 110 Cal. App. 4th at 164. “Newspapers have traditionally reported arrests or other incidents involving suspected criminal activity, and courts have universally concluded that such events are newsworthy matters of which the public has the right to be informed.” *Kapellas v. Kofman*, 1 Cal. 3d 20, 38 (1969). As the U.S. Supreme Court explained, the investigation “of a violent crime which had been reported to authorities” is a “matter of paramount public import.” *Florida Star*, 491 U.S. at 536–37; *see also Cox*, 420 U.S. at 492.

The mere passage of time does not diminish the public interest in arrests and other police activity; the public interest in such matters extends beyond current events. *See Shulman*, 18 Cal. 4th at 225; *Carlisle v. Fawcett Publications, Inc.*, 201 Cal. App. 2d 733, 746 (1962). As the California Supreme Court has explained, “courts are not freed by the mere passage of time, to impose sanctions on the publication of truthful information that is obtained from public official court records.” *Gates*, 34 Cal. 4th at 694. The First Amendment protections were not diminished because the publication “was of an historical nature.” *Id.* at 695. In so holding, *Gates* directly overruled Blackman’s chief authority on this very point, *Briscoe v. Readers Digest Ass’n, Inc.*, 4 Cal. 3d 529 (1971). *See Gates*, 34 Cal. 4th at 687, 693–96, 697 n.9. *Contra Opening Br.*, 42.⁶

⁶ Although *Gates* spoke in terms of court records, since that was the issue before it, it relied on the U.S. Supreme Court cases involving confidential

(b) Domestic violence is a public concern.

Incidents of reported domestic violence are also matters of public concern. California courts have consistently found that “Domestic violence is an extremely important public issue in our society.” *Sipple v. Foundation for National Progress*, 71 Cal. App. 4th 226, 238 (1999); *see also Carney v. Santa Cruz Women Against Rape*, 221 Cal. App. 3d 1009, 1021 (1990) ([“S]exual harassment and violence against women is of a pressing public concern.”).

The public has had a strong interest in domestic violence dating back at least to the Take Back the Night protests, which started in San Francisco in 1978.⁷ Congress recognized the need to raise public awareness of domestic violence and declared October to be Domestic Violence Awareness Month in 1989; it has been observed every October since.⁸

information that was not obtained from public court records. *See Gates*, 34 Cal. 4th at 689–93 (citing *Daily Mail*, 443 U.S. at 98 (juvenile offender’s name obtained from nongovernmental eyewitnesses and published without court permission, in violation of statute); *Bartnicki*, 532 U.S. at 518–19 (recordings of illegally wiretapped phone conversations provided by anonymous source); *Florida Star*, 491 U.S. at 526–29 (police disclosed name of minor victim in report released to the press)).

⁷ Sophia Chupein, “Take Back the Night, 1978-”, *Living History Project* (Oct. 10, 2019), <https://livinghistory.as.ucsb.edu/2019/10/10/take-back-the-night/>.

⁸ Amanda Kippert, “A Comprehensive Guide to Domestic Violence Awareness Month,” *DomesticShelters.Org* (Sept. 21, 2021), <https://www.domesticshelters.org/articles/ending-domestic-violence/a-comprehensive-guide-to-domestic-violence-awareness-month>; U.S. Administration for Children and Families, Office of Family Violence Prevention and Services, “October Is Domestic Violence Awareness Month,” (2024), <https://acf.gov/archive/ofvps/fact-sheet/october-domestic-violence-awareness-month>.

Domestic violence affects a large number of people, and is of concern to many, many more: approximately 5.4 million Americans experienced domestic violence within the past five years, according to the U.S. Bureau of Justice Statistics.⁹

The public has a special interest in domestic violence incidents involving executives. Public reporting has previously scrutinized prosecutors' failure to pursue felony domestic violence convictions against tech CEOs, sparking a "major outcry," "online outrage," and a "rally" outside of a courthouse.¹⁰ The public also has a special interest in violence against women within the tech and start-up community, which increasingly scrutinizes start-up founders' conduct towards women, and investors even condition deals on the disclosure of these incidents.¹¹

(c) Trustworthiness of U.S. military contractors is a public concern.

The reporting on Blackman's arrest was in connection with the public issue that is the main focus of Poulson's reporting in *All-Source*

⁹ Susannah N. Tapp and Emilie J. Coen, "Criminal Victimization, 2024," U.S. Department of Justice, Bureau of Justice Statistics (Sept. 2025), <https://bjs.ojp.gov/document/cv24.pdf>, MJN Exh. E.

¹⁰ See, e.g., *CBS San Francisco*, "San Francisco-Based RadiumOne Fires CEO after Girlfriend Beating, Plea Deal," (Apr. 28, 2014) <https://www.cbsnews.com/sanfrancisco/news/san-francisco-based-radiumne-fires-ceo-gurbaksh-chahal-after-girlfriend-beating-plea-deal-outrage-sf-anger-attack-video-recording-taped/>; Janine de La Vega, "Outcry over Silicon Valley CEO's Domestic Violence Plea Deal," *ABC 7 News*, (June 15, 2017) <https://abc7news.com/silicon-valley-ceo-domestic-violence-abhishek-gattani-neha-tastogi/2105003/>.

¹¹ Aliya Ram, "Tech investors include #MeToo clauses in start-up deals," *Financial Times*, (Mar. 17, 2019) <https://www.ft.com/content/5d4ef400-4732-11e9-b168-96a37d002cd3>.

Intelligence: exposing the surveillance and military intelligence industry and the need for greater oversight over private contractors' work for governments. 2 AA0344–49. This included Poulson's reporting on numerous misdeeds by Premise and Blackman. *See* 2 AA0345–49, 2 AA0367, 2 AA0371–82, 2 AA0397–410. This important topic is routinely covered by other journalists and discussed in policy publications and government reports.¹² Indeed, the question of “how commercial business and governments can use real-time data to make actionable decisions” was the featured subject of Blackman's own podcast. 1 AA0225.

It is well-established that the “conduct of the military and its designated civilian surrogates during wartime is a matter of the highest public concern.” *CACI Premier Tech., Inc. v. Rhodes*, 536 F.3d 280, 294 (4th Cir. 2008). Moreover, the public has a clear interest in knowing about the people their government is doing business with. *Henry v. Lake Charles Am. Press, L.L.C.*, 566 F.3d 164, 181 (5th Cir. 2009). And federal regulations provide that “allegations...of criminal conduct, regardless of whether the person was formally charged,” are relevant to security clearance determinations because they “create[] doubt about a person's judgment, reliability, and trustworthiness.” 32 C.F.R. 147.12.

¹² *See, e.g.*, 1 RA0017–29; 1 AA0141. *See also* Paul Pardew, et al., “Joint Operational Contract Support Challenges, *U.S. Army* (June 29, 2017), https://www.army.mil/article/189269/joint_operational_contract_support_challenges; Mike German, “Private Intelligence Contractors Need Better Oversight,” *Brennan Center for Justice* (Jan. 9, 2015), <https://www.brennancenter.org/our-work/analysis-opinion/private-intelligence-contractors-need-better-oversight>; Matthew LaGarde, “Defense Contractors Are Silencing Their Cybersecurity Watchdogs,” *Bloomberg Law* (Nov. 7, 2025), <https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/defense-contractors-are-silencing-their-cybersecurity-watchdogs>.

Blackman’s role as the CEO of a surveillance company that received tens of millions of taxpayer dollars under U.S. military contracts, who was entrusted with classified information, thus magnifies the public’s interest in incidents bearing on his character and trustworthiness. *See, e.g.*, 2 AA0345, 2 AA0348–50, 2 AA0374, 4 AA0845. Blackman himself averred in another lawsuit that Premise’s work—if performed irresponsibly—“could compromise national security” and “directly endanger Premise’s contributors around the world.” 1 RA0098.¹³

(d) Blackman is a public figure.

Although it is not required, the fact that Blackman is a public figure for the issue of his company’s appropriateness as a government contractor bolsters the finding that the reporting of his arrest pertains to issues of public interest.

In assessing whether one is a public figure, courts focus on the person’s efforts, their “sought-after prominence,” and not whether the person succeeded at being successfully influential. *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 25–26 (2007). “It is not necessary to show that a plaintiff actually achieves prominence in the public debate; it is sufficient that “[a plaintiff] attempts to thrust himself into the public eye.”” *Copp v. Paxton*, 45 Cal. App. 4th 829, 845–46 (1996) (quoting *Rudnick v. McMillan*, 25 Cal. App. 4th 1183, 1190 (1994)). This rule applies to business executives. *See Hoang v. Tran*, 60 Cal. App. 5th 513, 527 (2021); *see also Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 694 (2012).

¹³ *Rivero v. Am. Fed’n of State, Cnty., & Mun. Emps., AFL-CIO*, 105 Cal. App. 4th 913, 925 (2003) is distinguishable; that case involved “the actions of a supervisor of eight custodians,” whereas Blackman was responsible for major decisions of a powerful defense contractor.

Blackman held himself out as a public figure. At the time Poulson reported on Blackman’s arrest, Blackman had positioned himself as “prominent figure” in the technology industry. 1 AA0211. His personal website, press statements, press releases, public LinkedIn profile, and podcast cultivated his reputation as a “serial entrepreneur” and publicized his investments in and leadership of numerous “high-growth technology companies” over 25 years, including several defense contractors. 1 AA0211–16, 1 AA0220–25, 4 AA0826–37. News publications reported on Blackman’s career and executive roles at various companies for nearly a decade. 1 RA0035–55.

Blackman actively sought to influence public policy discussions regarding government technology and data governance. For example, on his podcast, “Great Minds Think Data with Maury Blackman,” he discussed “prominent topics at the intersection of data and the worlds of business, politics, and economics,” shares data collected from “over 4.5 million contributors in 135 countries,” and interviewed high-profile guests, including government officials such as former Secretary of the Treasury Larry Summers, former Special Counsel to the President Lanny Davis, and former Speaker of the U.S. House of Representatives Newt Gingrich. 1 AA0225–32.¹⁴ He also frequently opined about politics, public policy, and technology in national and international publications, online, and on television programs. 1 AA0235–60, 4 AA0826–37; 1 RA0057–65.

¹⁴ Blackman’s podcast remains active. See “Great Minds Think Data with Maury Blackman,” *Art14*, <https://art19.com/shows/great-minds-think-data-with-maury-blackman>, MJN Exh. F; “Great Minds Think Data,” <https://greatmindsthinkdata.com/>, MJN Exh. G.

C. The standard for unsealing judicial records does not apply to whether the record can be published once legally obtained.

Contrary to Blackman’s arguments, the wholly distinct standard for sealing a judicial record does not apply to the liability issues here. *See* Opening Br., 51–54. The question of whether a court may seal a record is a much different constitutional question than whether it may restrict its possession and publication once it has been lawfully obtained. *Nicholson*, 177 Cal. App. 3d at 519. No sealing order entered in this case suggests otherwise, *contra* Opening Br., 51, as explained above.

D. Blackman’s claimed injunctive relief would be an unconstitutional prior restraint.

The First Amendment additionally bars Blackman’s claims for injunctive relief as a prior restraint. An injunction restraining further publication of existing newsletters “no doubt” is a “prior restraint.” *Wilson*, 13 Cal. 3d at 658. Even an order issued by a court against the press to preserve courtroom confidentiality is a prior restraint. *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). Prior restraints are “the essence of censorship,” *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931), and bear “‘a heavy presumption against its constitutional validity,’” *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)).

III. EACH OF BLACKMAN’S CLAIMS AGAINST POULSON MUST BE STRUCK PURSUANT TO THE ANTI-SLAPP STATUTE.

“The 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*, 13 Cal. 5th 1238, 1242 (2022) (quoting CCP, § 425.16 (a)). Nevertheless, the anti-SLAPP statute applies even to lawsuits brought without any intent to chill speech. *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 66–67 (2002); *City of Cotati v. Cashman*, 29 Cal. 4th 69, 75–76 (2002). Courts broadly construe every element of anti-SLAPP statute. *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1121–22 (1999).

Courts decide anti-SLAPP motions in two steps. “First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success.” *Baral v. Schnitt*, 1 Cal. 5th 376, 384 (2016) (citation omitted). The court “must strike the cause of action” if “the plaintiff fails to demonstrate a probability of prevailing.” *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 192 (2005).

A. Each claim against Poulson arises from conduct protected under section 425.16.

At the first step of the analysis, the defendant need only demonstrate that its conduct “fits one of the categories spelled out in section 425.16, subdivision (e).” *City of Cotati*, 29 Cal. 4th at 78 (quoting *Braun v. Chronicle Publishing Co.*, 52 Cal. App. 4th 1036, 1043 (1997)). Importantly, the “anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives

rise to his or her asserted liability.” *Navellier v. Sletten*, 29 Cal. 4th 82, 92–93 (2002).

The defendant need *not* prove at this step that their conduct was protected by the First Amendment. *See Wilson*, 7 Cal. 5th 871, 887–88 (2019). “It is not the defendant’s burden in bringing a SLAPP motion to establish that the challenged cause of action is constitutionally protected as a matter of law.” *Lieberman v. KCOP Television, Inc.*, 110 Cal. App. 4th 156, 165 (2003).

Each claim against Poulson arises from his receipt and publication of the Incident Report, and other related journalistic activities. Reporting, publishing, and disseminating the news are paradigmatic forms of protected speech. *See, e.g., San Diegans for Open Gov’t v. San Diego State Univ. Rsch. Found.*, 13 Cal. App. 5th 76, 101 (2017), *as modified on denial of reh’g*; *Lieberman*, 110 Cal. App. 4th at 165–66.

No claim is based on any other conduct by Poulson. Several of Blackman’s claims are predicated on Poulson’s publication of and about the Incident Report: (6) public disclosure of private facts, (7) false light, (8) intrusion into private affairs, (11) defamation, (13) violation of Article I, sec. 1 of the California Constitution, (14) and violation of California Penal Code sec. 851.92. *See, e.g.* 1 AA0023–30. The remainder of the claims arise from Poulson’s newsgathering: Blackman’s claim under California Penal Code Sec. 11143 arises from Poulson’s mere receipt of the Incident Report from the anonymous source, and his possession of the report. *See, e.g.*, 1 AA0013–14, 1 AA0017–18, 1 AA0030. Blackman’s claims for (3) intentional interference with prospective economic relations, (4) negligent interference with prospective economic relations, and (5) intentional interference with contractual relations, arise from Poulson’s newsgathering

in seeking comment from the public affairs office of the U.S. Special Operations Command. 1 AA0014, 1 AA0020–23, 2 AA0350.

Blackman’s argument that his claims arise from his privacy interests is irrelevant; application of the anti-SLAPP statute turns solely on the defendant’s conduct, not the Plaintiff’s alleged injury. *See Navellier*, 29 Cal. 4th at 92–93.

1. Poulson’s reporting of the Incident Report were statements made in connection with an issue under consideration by a judicial body under subsection (e)(2).

Poulson’s accurate news reports about and republication of the Incident Report are written statements “made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.” CCP § 425.16 (e)(2). *See Lafayette Morehouse, Inc. v. Chronicle Publishing Co.*, 37 Cal. App. 4th 855, 863 (1995); *Braun*, 52 Cal. App. 4th at 1046.

The Incident Report, as a police record, is part of an “official proceeding authorized by law.” A “governmental investigation” into “potential criminal conduct” is “an ‘official proceeding’” within the meaning of subsection (e)(2). *See Comstock v. Aber*, 212 Cal. App. 4th 931, 943 (2012). This applies even if the subject of the investigation “was never formally charged with misconduct or a crime” and claims that the investigation was based on “allegedly false reports of criminal activity.” *See Hansen v. California Department of Corrections and Rehabilitation*, 171 Cal. App. 4th 1537, 1544–45 (2008).

2. Poulson’s reporting on the Incident Report were statements made in a place open to the public in connection with an issue of public interest under subsection (e)(3).

Poulson’s journalism also satisfies 425.16 (e)(3) as statements published “in a place open to the public or a public forum” and published “in connection with a public issue or issue of public interest.” CCP § 425.16 (e)(3).

(a) Poulson published the articles in a place open to the public.

Poulson published the articles through Substack, a publicly available website. Publicly available websites are considered “public forums” or “places open to the public” for the purposes of subsection (e)(3). *Wilbanks v. Wolk*, 121 Cal.App.4th 883, 895 (2004); *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1006-07 (2001). The articles “are accessible to anyone who chooses to visit the site, and thus they ‘hardly could be more public.’” *Kronemyer v. Internet Movie Database Inc.*, 150 Cal. App. 4th 941, 950 (2007) (quoting *Wilbanks*, 121 Cal. App. 4th at 895). Blackman does not argue otherwise.

(b) Poulson’s reporting of Blackman’s arrest was made in connection with an issue of public interest.

California courts use a two-step inquiry to determine whether a statement was made “in connection with an issue of public interest” for the purposes of subsection 425.16 (e)(3). *See Geiser*, 13 Cal. 5th at 1243 (interpreting the similar requirement of subsection (e)(4)). First, the court determines what public issue the speech implicates. *Id.* at 1243, 1249. Second, the court looks to make sure there is an “functional relationship”

between the speech and the public issue such that the speech contributes to public discussion of the issue. *Id.* at 1249. In each step, courts examine the full context in which the statements were made. *Id.*, at 1252. Like the anti-SLAPP statute as a whole, the “scope of the term ‘public interest[]’ is to be construed broadly.” *Brodeur v. Atlas Entertainment, Inc.*, 248 Cal. App. 4th 665, 674 (2016).

(i) Poulsons’ speech implicated numerous public issues.

An issue of public interest for the purposes of the anti-SLAPP statute is simply “any issue in which the public is interested.” *Nygård, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1042 (2008). The public interest determination is flexible, but courts have identified several factors that “generally tend to make a statement implicate a public interest” under the anti-SLAPP statute, including that the statement concerns “a person or entity in the public eye,” conduct and issues “that could directly affect a large number of people beyond the direct participants,” or a topic of widespread public interest, as may be evidenced by media coverage. *Dubac v. Itkoff*, 101 Cal. App. 5th 540, 548–49 (2024). In addition, all contextual factors are important, including “the audience, the location of the communication, and the purpose and timing of the communication.” *Id.*, at 549.

In the first sub-step, the statement need only broadly pertain to a matter of public interest, rather than the precise subject of the defendant’s speech. *Geiser*, 13 Cal. 5th at 1253. The “first step is satisfied so long as the challenged speech or conduct, considered in light of its context, may reasonably be understood to implicate a public issue, even if it also implicates a private dispute.” *Id.*

The public issues Poulson reported are the same ones discussed above in the First Amendment discussion of public concern: police arrests and responses to calls for assistance, reports of sexual assault, and the conduct of military contractors and their executives, each enhanced by Blackman’s status as a limited purpose public figure, and by each other.

Indeed, police and other governmental activities were the baseline for matters of public interest for the purposes of the anti-SLAPP statute; early cases interpreting the anti-SLAPP statute had to affirmatively explain that the statute could also apply to reporting of nongovernmental conduct. *See Du Charme v. Int’l Brotherhood of Electrical Workers*, 110 Cal. App. 4th 107, 115 (2003).

A statement remains made “in connection with an issue of public interest” for the purposes of subsection (e)(3) even if it is just one example of a newsworthy wrongful practice, and even if it involves non-public figures. *See M.G. v. Time Warner, Inc.*, 89 Cal. App. 4th 623, 629 (2001). In *Geiser*, the California Supreme Court found that a public protest about a real estate company’s eviction of two long-term residents from their home was in connection with the larger public issue of “foreclosures, evictions, and inadequate housing,” which were “major issues in communities throughout California.” *Geiser*, 13 Cal. 5th at 1251. And the Court disapproved of the reasoning of several Courts of Appeal cases that had seemingly required the statements themselves to refer to the larger issue and not just the specific example involving the plaintiffs. *See Id.* at 1248–49. Other courts have reached similar conclusions. In *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450, 468 (2012), the court found that the anti-SLAPP statute applied because the statements about the plaintiff’s individual actions as a volunteer youth

coach pertained to the more general public issues of “safety in youth sports” and “problem coaches/problem parents in youth sports.” And in *Terry v. Davis Community Church*, 131 Cal. App. 4th 1534, 1547 (2005), the court recognized that whether an adult church youth program leader engaged in an inappropriate relationship with any of the minors “is clearly a matter of public interest,” even though the speech at issue pertained only to the specific incidents involving the plaintiff and not the issue more broadly.

**(ii) Poulson’s reporting
contributed to the public
debate on those issues.**

The second sub-step is designed to distinguish public comments, such as news reporting, which attempt to contribute to public discussion, from purely private communications that were never designed or intended to reach the public. *Ojeh v. Brown*, 43 Cal. App. 5th 1027, 1042–44 (2019). This sub-step focuses on whether a defendant “participated in, or furthered, the discourse that makes an issue one of public interest” and is not concerned “with the social utility of the speech at issue, or the degree to which it propelled the conversation in any particular direction.” *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 151 (2019).

As set forth above, Poulson’s reporting directly contributed to the public discussion of the trustworthiness of military surveillance contractors, and their executives, and the need for greater transparency and oversight with respect to this industry. *See generally* 2 AA0353–82. The arrest of a prominent CEO in this industry for felony domestic violence is directly relevant to these issues, which Poulson frequently covered on *All-Source Intelligence*. *See Gilbert*, 147 Cal. App. 4th at 23–24 (reports that well-

respected plastic surgeon had botched procedures contributed to “public discussion about the benefits and risks of plastic surgery in general.”).

Poulson’s receipt of the Incident Report from the anonymous source is also functionally related to his contributing to the public discourse. Newsgathering and other acts of collecting information for the purposes of public reporting on an issue of public interest are “act[s] in furtherance” of the public issue. *See Ojje*, 43 Cal. App. 5th at 1039-42.

3. Poulson’s journalism also satisfies subsection (e)(4).

Subsection (e)(4)—“the catchall provision of the anti-SLAPP statute”—covers “any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” *Geiser*, 13 Cal. 5th at 1246 (quoting (CCP § 425.16 (e)(4))). The Legislature added this “catchall provision” to broaden the scope of the anti-SLAPP statute and ensure that all “expressive conduct” would be protected. *Id.* at 1252–53.

Poulson’s journalism satisfies (e)(4) for the same reasons that it satisfies (e)(3). And to the extent his receipt of the Incident Report, request for comment from the U.S. Special Operations Command, and other acts of newsgathering are not covered by subsection (e)(3), they are within subsection (e)(4). *See Ojje*, 43 Cal. App. 5th at 1039–42.

B. Poulson’s anti-SLAPP motion is not barred by *Flatley v. Mauro*.

The “narrow” exception for undisputed illegal activity recognized in *Flatley v. Mauro*, 39 Cal. 4th 299, 315–16 (2006) does not apply here. None of the alleged statutory violations Blackman cites as triggering the

Flatley exception—Penal Code sections 851.92(c), 11143, 13304, and 166, and Labor Code section 432.7(g)(3)— meet the requirements of *Flatley*.

1. Poulson’s First Amendment defense renders *Flatley* inapplicable.

Flatley applies only in “rare cases” in which the defendant’s conduct was conceded to be both criminal and not constitutionally protected as a matter of law. *Zucchet v. Galardi*, 229 Cal. App. 4th 1466, 1479 (2014). To defeat a defendant’s showing of protected activity under *Flatley*, the “conduct must be illegal *as a matter of law*.... The defendant must concede the point, or the evidence conclusively demonstrate it, for a claim of illegality to defeat an anti-SLAPP motion at the first step.” *City of Montebello v. Vasquez*, 1 Cal. 5th 409, 424 (2016).

Contrary to Blackman’s assertions, Opening Br., 31, the plaintiff bears the burden of conclusively proving the illegal conduct: a defendant does not have the burden to establish that his actions were constitutionally protected as a matter of. *Zucchet*, 229 Cal. App. 4th at 1478–79; *Cross v. Cooper*, 197 Cal. App. 4th 357, 385 (2011), *as modified on denial of reh’g* (Aug. 4, 2011); *Lieberman*, 110 Cal. App. 4th at 165–66.

Flatley thus only applies if Blackman can prove that Poulson’s conduct was criminal as a matter of law. *Geragos v. Abelyan*, 88 Cal. App. 5th 1005, 1025 (2023), *review denied* (June 14, 2023).

Blackman cannot satisfy this burden. The illegality of Poulson’s conduct has been neither conceded nor conclusively proven as a matter of law.

Indeed, Poulson disputes the illegality of his actions on numerous grounds.

As discussed above, Poulson had an affirmative First Amendment right to obtain the Incident Report from an anonymous source, verify its authenticity, seek out comment about it, report on its contents, and publish a copy. First Amendment-protected journalism cannot trigger criminal liability, and thus does not fall within the very narrow *Flatley* exception, even if it would otherwise violate a criminal statute. *Ass'n for L.A. Deputy Sheriffs v. L.A. Times*, 239 Cal. App. 4th 808, 817–20 (2015) (First Amendment protections for newsgathering rendered *Flatley* exception inapplicable); *see also Governor Gray Davis Com. v. Am. Taxpayers All.*, 102 Cal. App. 4th 449, 459–60 (2002); *Summit Bank*, 206 Cal. App. 4th at 683-84, 692. 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 the freedom of speech. *Mendoza v. ADP Screening & Selection Servs., Inc.*, 182 Cal. App. 4th 1644, 1654 (2010).

Thus, even if Judge Van Aken correctly found that Poulson violated Penal Code 851.92(c) in publishing the Incident Report after learning Blackman's arrest had been ordered sealed, she also correctly found that *Flatley* did not apply, and that Poulson could bear no liability, because Poulson's dissemination of the Incident Report was protected by the First Amendment.¹⁵ 4 AA0994, 4 AA0996–97.

¹⁵ The Superior Court correctly found that “Poulson did not violate any law in obtaining the Incident Report.” 4 AA0996.

2. Penal Code § 851.92(c) does not trigger *Flatley* because it imposes no criminal penalty.

Additionally, *Flatley* does not apply to the alleged violation of Penal Code section 851.92(c) because that law, despite its inclusion in the Penal Code, carries only the possibility of civil liability. Section 851.92(c) provides that one “who disseminates information relating to a sealed arrest is subject to a civil penalty.” Cal. Penal Code § 851.92(c).

“[T]he *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.” *Ass’n for L.A. Deputy Sheriffs*, 239 Cal. App. 4th at 817; *see also Bergstein v. Stroock & Stroock & Lavan LLP*, 236 Cal. App. 4th 793, 806 (2015) (collecting cases). Violations of non-criminal privacy provisions simply are “not the type of criminal activity” addressed in *Flatley*. *G.R. v. Intelligator*, 185 Cal. App. 4th 606, 616 (2010). Otherwise, “the broad protection the anti-SLAPP statute provides for constitutional rights would be significantly undermined if all statutory violations were exempt from the statute.” *Collier v. Harris*, 240 Cal. App. 4th 41, 55, 57 (2015), *as modified* (Sept. 1, 2015). California courts have roundly rejected arguments to the contrary. *Fremont Reorganizing Corp. v. Faigin*, 198 Cal. App. 4th 1153, 1169 (2011).

Thus, *Flatley* does not apply to an alleged violation of a penal code provision that carries no criminal penalties, where the violation is not defined as a misdemeanor or felony. *Mendoza*, 182 Cal. App. 4th at 1655; *Cross*, 197 Cal. App. 4th at 390. *Mendoza* and *Cross* held that *Flatley* did not apply to Cal. Penal Code § 290.46, because the statute contained “no language” which provides that a violation is a “misdemeanor or felony,”

and “expressly prescribes *civil* remedies.” *Mendoza*, 182 Cal. App. 4th at 1655; *see also Cross*, 197 Cal. App. 4th at 390.

Blackman fails to cite any case that applied *Flatley* to acts subjecting the violator to non-criminal penalties. *Flatley* itself involved criminal extortion. *Flatley*, 39 Cal. 4th at 333. Blackman wrongly asserts that *Paul for Council v. Hanyecz*, 85 Cal. App. 4th 1356 (2001), *overruled on related grounds by Equilon*, 29 Cal. 4th 53, “declin[ed] to apply section 425.16 to illegal speech that was neither a misdemeanor nor a felony.” Opening Br., 30. But *Paul for Council* dealt with conceded illegal campaign contributions in violation of the Political Reform Act of 1974, Cal. Gov. Code § 81000 *et seq.* *Paul for Council*, 85 Cal. App. 4th at 1361. Violations of the Political Reform Act are misdemeanors. Cal. Gov. Code § 91000(a). And *Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, 143 Cal. App. 4th 1284, 1289–91, 1296–97 (2006), another case Blackman relies on, involved a criminal conspiracy to physically attack, invade, and vandalize homes. *See Fremont Reorganizing Corp.*, 198 Cal. App. 4th at 1169 (describing the wrongful acts in both *Paul* and *Novartis* as criminal law violations).

3. Penal Code sections 11104 and 13304 and Labor Code section 432.7 do not apply to Poulson.

Nor can Penal Code sections 11143 and 13304 and Labor Code section 432.7(g)(3) trigger the *Flatley* exception; as detailed above, Poulson is a journalist exempt from each statute.

4. Penal Code section 11143 does not apply to the Incident Report.

Section 11143 also does not trigger the *Flatley* exception because it does not apply to the Incident Report at all. Section 11143 applies only to the knowing unauthorized receipt of “state summary criminal history information” maintained by the Department of Justice. Cal. Penal Code § 11140(a); The Incident Report is a San Francisco Police Department record and not a state record. 1 AA0308–12.

5. Penal Code section 166 does not apply to Poulson.

The alleged violation of the criminal contempt statute, Penal Code section 166, also does not trigger the *Flatley* exception.

First, as explained, above the copy of the Incident Report Poulson obtained and reported on was not sealed.

But even if it were, the “terms, as written” of Judge Gold’s sealing order did not require Poulson to do or not do anything. *See* Cal. Penal Code § 166(a)(4). Punishment for contempt “can rest only upon a clear, intentional violation of a specific, narrowly drawn order.” *People v. Moses*, 43 Cal. App. 4th 462, 468 (1996). Judge Gold’s sealing order, by its “terms, as written,” did not prohibit the publication of information by anyone not clearly identified in the order. 4 AA0855.¹⁶ Noncompliance with such an order cannot ground a charge of contempt. *See* 2 Witkin, Cal. Crim. Law 5th Crimes--Govt § 59 (2025.)

Further, there is no other “process or court order or out-of-state court

¹⁶ Nor could it have validly done so; an order that broadly proscribes all speech regarding a sealed arrest would violate the First Amendment. *Steiner v. Superior Ct.*, 220 Cal. App. 4th 1479, 1493 (2013), *as modified on denial of reh'g* (Nov. 26, 2013) (order was unlawful prior restraint).

order, lawfully issued by a court,” which names Poulson and requires obedience by Poulson with respect to his publication of the Incident Report in *All-Source Intelligence*. Cal. Penal Code § 166(a)(4). This was the import of Judge Van Aken emphasis of the fact that no one empowered by the statute brought an enforcement action against Poulson, to obtain any type of order that might have done so. 4 AA0995–96.

C. Blackman will be unable to show a probability of prevailing on his claims against Poulson.

The burden now shifts to Blackman to produce admissible evidence and demonstrate a probability of prevailing on each of his claims against Poulson. *Litinsky v. Kaplan*, 40 Cal. App. 5th 970, 979–80 (2019). “The plaintiff’s showing of facts must consist of evidence that would be admissible at trial.” *Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337, 1346 (2007). The court “must determine whether the plaintiff’s showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment.” *Baral*, 1 Cal. 5th at 396. “[T]hough the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant’s evidence supporting the motion defeats the plaintiff’s attempt to establish evidentiary support for the claim.” *Litinsky*, 40 Cal. App. 5th at 980 (citations omitted).

At this stage, it is “the plaintiff’s burden to establish that the acts are not protected by the First Amendment.” *Lieberman*, 110 Cal. App. 4th at 165. “[A]ny ‘claimed illegitimacy of the defendant’s acts is an issue which the plaintiff must raise *and* support in the context of the discharge of the plaintiff’s [secondary] burden to provide a prima facie showing of the

merits of the plaintiff's case.” *Wilson*, 7 Cal. 5th at 888 (quoting *Navellier*, 29 Cal. 4th at 94).

Blackman has not carried his burden of showing a likelihood of success. First, all of the claims are based on protected speech and newsgathering and are thus immunized by the First Amendment. Second, the claims all fail because Blackman cannot demonstrate the required elements of each.

1. Blackman cannot demonstrate that his claims have even minimal merit because the First Amendment bars them.

A plaintiff cannot show a probability of prevailing on claims that are subject to a valid First Amendment defense. *Bernardo v. Planned Parenthood Fed'n of Am.*, 115 Cal. App. 4th 322, 343 (2004). As the Superior Court correctly recognized, “the First Amendment’s protections for the publication of truthful speech concerning matters of public interest vitiate Blackman’s merits showing.”¹⁷ 4 AA0997–98.

As detailed above, Poulson’s journalism with respect to the Incident Report is protected by the First Amendment.

¹⁷ Blackman again attempts to shift his burden onto Defendants. Opening Br., 60–61. However, the law is clear that “[i]t is not the defendant’s burden in bringing a SLAPP motion to establish that the challenged cause of action is constitutionally protected as a matter of law.” *Lieberman*, 110 Cal. App. 4th at 165. Rather, it is “the plaintiff’s burden to establish that the acts are *not* protected by the First Amendment.” *Id.*

2. Each of Blackman’s claims fail on their merits.

Even if the First Amendment does not bar Blackman’s claims, Blackman has not demonstrated a possibility of establishing the elements of any of his claims against Poulson.

Blackman has not attempted to establish his actual claims in either the trial court or on appeal. His opening brief addresses the second step of the anti-SLAPP test, in which he bears the burden, only by rebutting Respondents’ defenses under the First Amendment and Section 230. Opening Br., 49–70.

When Blackman’s actual claims are examined, they are each clearly deficient.

Claims 1 (Negligence) and 2 (Gross Negligence) fail because Blackman’s Complaint nonspecifically alleges a duty of care and lack of reasonable care based on alleged violations of California Penal Code sections 851.91, 851.92, 11143, and 166, and Labor Code section 432.7(g)(3), Judge Gold’s sealing order, the California constitution, and California public policy.¹⁸

None of these purported violations give rise to any duty or breach.

Section 851.91 merely establishes a right to seal records of arrests that do not lead to conviction under certain circumstances and procedures for sealing such records. Cal. Penal Code § 852.91. It does not establish any duty for private third parties like Poulson.

¹⁸ For the first time on appeal, Blackman argues that Poulson also violated Penal Code section 13304, but this purported violation is not pled in the Complaint. In any case, this statute exempts journalists and thus does not apply to Poulson. Cal. Penal Code. § 13304.

As explained above, Penal Code section 11143 and Labor Code section 432.7(g)(3) do not apply to Blackman because he is an exempt journalist.

As explained above, Penal Code section 11143 does not apply because the Incident Report is not a covered state criminal record.

As explained above, Penal Code section 166(a) does not apply. Because Judge Gold's sealing order does not name Poulson or specifically require him to do or not do anything.

With respect to Penal Code section 851.92(c), Blackman has produced no evidence of Poulson's negligence, let alone gross negligence. The undisputed evidence is that the copy of Incident Report Poulson reported was not sealed, that Poulson verified the accuracy and authenticity of the Incident Report with the SFPD and was not informed by the SFPD that Blackman's arrest record had been ordered sealed. 2 AA0347, 1 AA0308-12.

Claim 3 (Intentional Interference with Prospective Economic Relations) is premised on these same alleged statutory violations, and thus these claims fail for the same reason. The tort of intentional interference with prospective economic relations requires conduct that is "wrongful by some independent legal measure, beyond interference." *Golden Eagle Land Inv., L.P. v. Rancho Santa Fe Assn.*, 19 Cal. App. 5th 399, 429-30 (2018). Moreover, Blackman has not identified a specific economic relationship that was intentionally disrupted. *See Id.* Poulson's un rebutted evidence shows that he reported the Incident Report because he deemed it relevant to his reporting on military intelligence contractors. 2 AA0348-49.

Claim 4 (Negligent Interference with Prospective Economic Relations) requires "an existing duty of care owed by the defendant to the

plaintiff.” *Golden Eagle Land Inv.*, 19 Cal. App. 5th at 429–30. As with his other negligence claims, Blackman tries and fails to rely on nonexistent statutory violations to establish duty and breach. AA0021–22.

Claim 5 (Intentional Interference with Contractual Relations)

Blackman’s claim for interference with contractual relations suffers from the same deficiencies as his claims for interference with prospective economic relations. Additionally, interference with contract requires proof of a legally binding contract. *See Kasparian v. Cnty. of Los Angeles*, 38 Cal. App. 4th 242, 260 (1995). Blackman generally alleges that he had a contract with his employer but provides no evidence of or further information about this contract. 1 AA0022–23.

Claim 9 (Intentional Infliction of Emotional Distress) “The tort of intentional infliction of emotional distress is comprised of three elements: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff suffered severe or extreme emotional distress; and (3) the plaintiff’s injuries were actually and proximately caused by the defendant’s outrageous conduct.” *Cochran v. Cochran*, 65 Cal. App. 4th 488, 494 (1998). Poulson’s routine newsgathering activities—receiving a newsworthy unsealed document from a source and reporting on it—is far from the “extreme” and “outrageous” conduct this tort requires.

Claim 10 (Negligent Infliction of Emotional Distress) Negligent infliction of emotional distress “is not an independent tort, but the tort of negligence, to which traditional elements of duty, breach of duty, causation, and damages apply.” *Downey v. City of Riverside*, 16 Cal. 5th 539, 547 (2024) (quotations omitted). Blackman’s claim for negligent infliction of emotional distress fails for the same reasons as his other negligence claims.

Claims 7 (False Light) and 11 (Defamation) fail because Poulson’s reporting was true, and falsity is an element of each claim. *Smith v. Maldonado*, 72 Cal. App. 4th 637, 646 (1999), *as modified* (June 23, 1999); *Aisenson v. Am. Broad. Co.*, 220 Cal. App. 3d 146, 161 (1990). As explained above, the legal fiction that a sealed arrest was “deemed” not have occurred cannot be the basis for a claim that requires a false statement. Nor does simply reporting on an arrest imply that charges were filed—let alone that the defendant was found guilty—especially where, as here, the reporting documents the key witness’s recantation, 4 AA0841. *See, e.g., Monterey Plaza Hotel v. Hotel Emps. & Rest. Emps.*, 69 Cal. App. 4th 1057, 1065–66 (1999), *as modified* (Feb. 4, 1999). These claims additionally fail because Blackman failed to carry his burden to present clear and convincing evidence of actual malice, that is, that Poulson intentionally published a statement he knew to be false. *Colt v. Freedom Commc’ns, Inc.*, 109 Cal. App. 4th 1551, 1560–61 (2003).

Claim 6 (Public Disclosure of Private Facts) fails because Blackman’s arrest for felony domestic violence was newsworthy as explained above; “*lack of newsworthiness*” is an element of this claim. *Shulman*, 18 Cal. 4th at 215 (emphasis added).

Claim 8 (Intrusion) fails because intrusion requires (1) an intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person. *Shulman*, 18 Cal. 4th at 231. Poulson did not intrude. He did not enter into a private place or interaction to obtain the Incident Report. It was an unsealed record given to him by an anonymous source. 2 AA0347.

Claim 13 (Cal. Const., Art. I, Sec. 1) fails because a violation of article I, section 1 of the California Constitution requires “(1) a legally

protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy.” *Pettus v. Cole*, 49 Cal. App. 4th 402, 439 (1996), *as modified on denial of reh’g* (Oct. 15, 1996) (quotation omitted). Once again, Poulson merely received a copy of a newsworthy, public document from a source and reported on it.

Claim 14 (Penal Code § 851.92) As set forth above, the copy of the Incident Report Poulson received and reported on was unsealed.

Claim 15 (Penal Code § 11143) fails because Poulson is an exempt journalist, and because the Incident Report is not a state record for the reasons explained above.

3. Section 230 bars Plaintiff’s claims against Poulson for Publishing the Incident Report.

Section 230(c)(1) bars Plaintiff’s claims that are premised on Poulson posting the Incident Report and discussing the information contained within the report online. *See* 47 U.S.C. § 230(c)(1). All of the allegedly tortious content Poulson posted was created by someone else, namely the SFPD. As a user of Substack, an interactive computer service, Poulson is entitled to immunity.

To evaluate whether a defendant meets the statutory requirements for Section 230(c)(1) immunity, California courts apply a three-factor test. *Delfino v. Agilent Technologies, Inc.*, 145 Cal. App. 4th 790, 804–05 (2006).

First, Poulson is a “user of an interactive computer service,” the online services Substack and Tech Inquiry. *See id.* While the term “user” is not defined in Section 230, “the statutory context makes it clear that

Congress simply meant someone who uses an interactive computer service.” *Barrett v. Rosenthal*, 40 Cal. 4th 33, 59 (2006) (granting Section 230(c)(1) immunity to defendant who posted someone else’s article about plaintiff to online newsgroups). Substack is an online service that provides writers and other content creators with a publishing platform, similar to a blogging platform, and allows them to monetize their content through paid subscriptions. Substack therefore enables multiple users to access their servers, while also providing software that “transmits” or “displays” content. *See* 47 U.S.C. § 230(f)(2) (definition of “interactive computer service”); 47 U.S.C. § 230(f)(4)(C) (definition of “access software provider”).

Second, most of Plaintiff’s claims treat Poulson “as a publisher or speaker of information.” *See Delfino*, 145 Cal. App. 4th at 806. As discussed above, many of Blackman’s claims arise from Poulson publishing the Incident Report and discussing the information contained within it. Section 230 provides immunity against state law claims. 47 U.S.C. § 230(e)(3). And Section 230(c)(1) specifically provides “broad immunity from tort liability for third[-]party speech.” *Hassell v. Bird*, 5 Cal.5th 522, 532 (2018) (citing *Barrett*, 40 Cal.4th 33).

Third, “the information at issue was provided by another information content provider.” *See Delfino*, 145 Cal. App. 4th at 807 (cleaned up). The Incident Report and the information contained within it were solely provided by a third party, the San Francisco Police.

It makes no difference that Poulson posted the PDF of the Incident Report and discussed its contents in the body of his articles—he has immunity for both.

Section 230(c)(1) protects the sharing of “any information” provided by someone else. 47 U.S.C. § 230(c)(1). While the term “any information” is undefined in the statute, the statute simply protects “the publication of someone else’s material.” *Phan v. Pham*, 182 Cal. App. 4th 323, 328 (2010).

The statute also protects “actively selected and republished information.” *Barrett*, 40 Cal. 4th at 62. “All republications involve a ‘transformation’ in some sense. A user who actively selects and posts material based on its content fits well within the traditional role of ‘publisher.’ Congress has exempted that role from liability.” *Id.*; *see also Hassell*, 5 Cal. 5th at 538–39 (rejecting a “constrained construction of the term ‘user’ ... that would distinguish between ‘passive’ users who could claim section 230 immunity and ‘active’ users who could not”). Section 230(c)(1) further immunizes the publication of third-party material that was preceded by the defendant’s own introductory language, where the defendant did not “materially contribute” to the third-party material itself. *Phan*, 182 Cal. App. 4th at 326–28. While Poulson posted and discussed the Incident Report in his articles, he did not “materially contribute” to the contents of the report, including the domestic violence allegations against and subsequent arrest of Plaintiff.

Poulson is still protected by Section 230(c)(1) even if the “offending content” was not the Incident Report’s domestic violence information, but instead the “disclosed confidential information itself.” *See F.T.C. v. Accusearch Inc.*, 570 F.3d 1187, 1199 (10th Cir. 2009). That is, even if the breach of confidentiality is the Section 230 issue, specifically “the conversion of the legally protected records from confidential material to publicly exposed information,” and not the substance of the information,

Poulson did not know the Incident Report was sealed. Thus, he did not “solicit” the Incident Report, and he did not “knowingly [seek] to transform virtually unknown information into a publicly available commodity.” *Id.*

And Poulson is still immunized by Section 230 even in light of Judge Gold’s order to seal. As the California Supreme Court held, even when parties have the responsibility to comply with a court order, “an order that treats an Internet intermediary ‘as the publisher or speaker of any information provided by another information content provider’ nevertheless falls within the parameters of section 230(c)(1).” *Hassell*, 5 Cal. 5th at 542. It cannot thus be the basis for liability imposed upon Poulson or the other respondents. Blackman’s reliance on the dissent in *Hassell* is telling; its reasoning was directly rejected by the Court’s majority. *Hassell*, 5 Cal. 5th at 543, 546–47.¹⁹

CONCLUSION

For the foregoing reasons, the ruling of the superior court granting Defendant Poulson’s Motion to Strike should be affirmed.

Dated: December 15, 2025

Respectfully submitted,

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¹⁹ Even though it was a plurality opinion, the concurring justice agreed that Section 230 would bar liability from any takedown order that seeks to hold someone liable for publishing someone else’s speech. *Hassell*, 5 Cal. 5th at 559 (Kruger, J., concurring).

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CERTIFICATE OF WORD COUNT

I, counsel for appellants, certify pursuant to California Rule of Court 8.204(c) that this Brief is proportionally spaced, has a typeface of 13 points or more, contains 13,048 words, excluding the cover, the tables, the signature block, verification, and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: December 15, 2025

/s/ Victoria J. Noble

CERTIFICATE OF SERVICE

I, Victoria Python, 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 815 Eddy Street, San Francisco, California 94109.

On December 15, 2025, I served the following documents:

**BRIEF OF DEFENDANT AND RESPONDENT JACK;
and
RESPONDENT JACK POULSON’S APPENDIX
VOL. 1 OF 1
RA0001-RA0103**

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, Dept. 301
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 15, 2025 at San Francisco, California.

/s/ Victoria Python