MAURY BLACKMAN,

Plaintiff and Appellant,

v.

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

Defendants and Respondents.

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

APPELLANT'S BRIEF OPPOSING RESPONDENTS' JOINT REQUEST FOR JUDICIAL NOTICE

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INTRODUCTION

Respondents jointly seek judicial notice of ten documents –eight of which are from other court cases unrelated to this action – claiming these materials are relevant to the issues on appeal although some were never even presented to the trial court. Most of the material is irrelevant to the dispositive issues on appeal, is being offered improperly for the truth of matters asserted, or constitutes evidence that Respondents failed to present to the trial court and now seek to introduce through the back door of judicial notice. Appellant Maury Blackman objects to specific documents because they exceed the permissible scope of judicial notice. This memorandum sets forth the legal grounds for denying or substantially limiting Respondents' request.

LEGAL STANDARD

"It is well recognized that the purpose of judicial notice is to expedite the production and introduction of otherwise admissible evidence." *Mozzetti v. City of Brisbane* (1977) 67 Cal. App. 3d 565. However, "[j]udicial notice may not be taken of any matter unless authorized or required by law." Evid. Code § 450. Matters to be judicially noticed are addressed in Evid. Code §§ 451 and 452. While the appellate court has the option to take judicial notice, it is not required to do so. See *Ragland v. U.S. Bank Nat'l Ass'n.* (2012) 209 Cal.App.4th 182, 193; see also Evid. Code § 459. This discretion is subject to several important limitations.

Appellate courts will not judicially notice matters irrelevant to the dispositive points on appeal. See *Ross v. Seyfarth Shaw LLP* (2023) 96 Cal.App.5 722, 745. A precondition to judicial notice is that the matter must be "relevant to a material issue." See *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal. 4th 415. It is not sufficient that evidence be relevant to Respondents' argument bur rather, "the evidence must be relevant to the disposition of the matter." *Save Berkeley's Neighborhoods v. Regents of Univ. Of Calif.* (2020) 51 Cal.App.5th 226, 241.

Moreover, even when judicial notice is taken of a court record, pleading, or other document, the court cannot take judicial notice of the truth of matters asserted or hearsay statements contained within it. See *Guarantee Forklift, Inc. v. Capacity of Texas, Inc.* (2017) 11 Cal.App.5th 1066, 1075; see also *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 ("While courts take judicial notice of public records, they do not take notice of the truth of the matter stated therein"); *Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903, 915 (noting court cannot, in judicially noticing the existence of a pleading filed in a case, also judicially notice the truth of allegations contained in it). Respondents' efforts to present this court with evidence for the truth of the matter should be rejected.

Additionally, appellate courts generally will not take judicial notice of matters that were not presented to the trial court absent "exceptional

circumstances." *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3. Accordingly, a court may properly decline to take notice of matters that should have been, but were not, presented in the first instance to the trial court. *Brosterhous v. State Bar of Calif.* (1995) 12 Cal.4th 315, 325. Appellate courts will not judicially notice evidentiary matters that cannot properly be considered on appeal. *Simmons v. Southern Pac. Transp. Co.* (1976) 62 Cal.App.3d 341*v*, 366–367.

ARGUMENT

I. Respondents Cannot Justify Judicial Notice of the Documents Attached to Noble's Declaration.

A. Documents from Blackman v. City and County of San Francisco Should Be Excluded or Limited.

Respondents seek judicial notice for five documents arising from Blackman's lawsuit against the City of San Francisco (*Blackman v. City of San Francisco* et al., CGC-25-624793, filed April 25, 2025) over the City's release of the Arrest Report after a court had ordered it sealed. These documents only came into existence after the trial court struck Blackman's Complaint in this underlying action and thus were never noticed below: (1) the Complaint (Decl. of Victoria Noble in Support of Respondents' Joint Motion for Judicial Notice dated December 15, 2025 ("Noble Decl. RJN"), Exh. A); (2) the Request for Judicial Notice made by the City of San Francisco

(the "City RJN") (Noble Decl. RJN, Exh. B); (3) the Declaration of Diane Bryan in Support of the City and County of San Francisco's Special Motion to Strike Plaintiff's Complaint (Noble Decl. RJN, Exh. C); (4) Notice of Entry of Order Granting in Part and Denying in Part City Respondents' Motion to Strike (Noble Decl. RJN, Exh. D); and (5) Request for Dismissal of the action (Noble Decl. RJN, Exh. H).

To justify their request for judicial notice, Respondents simply declare the documents are "highly material" but fail to explain why. RJN, p.4. Respondents argue the Complaint demonstrates that Blackman "admits the SFPD released the arrest report to a member of the public, and failed to effectuate the seal." RJN, p.3. There is no dispute that the arrest report was released one time pursuant to a California Public Records Act request in May 2022 when it should not have been. That Blackman alleged the City should bear some responsibility for that breach is not relevant to the question of whether Respondents' publication and repeated publications of the Sealed Report, even after knowledge of the sealing, was protected activity under the First Amendment or Section 230 of the Communications Decency Act. Further, Poulson has stated that the one individual who received the document in May 2022 was *not* Poulson's source. 2 AA0329. Indeed, as Judge Quinn recognized in his January 6, 2025 Order, "Here, Judge Gold's sealing order has been in place since 2022, and there's no substantial evidence that

information from the Incident Report was already in the public domain prior to her order." 3 AA0623. There is also no evidence that information from the Sealed Report, or the Report itself, was in the public domain prior to Poulson's September 24, 2023 blog post.

Respondents do not specify why they seek judicial notice for the Notice of Entry and Dismissal but it is presumably to suggest weakness in his claims or to impeach his credibility. Dismissal of a civil action can occur for numerous strategic, procedural, or financial reasons wholly unrelated to the merits of the claims asserted. The bare fact of dismissal, without context regarding the reasons, proves nothing, and the court may not take judicial notice of Respondents' interpretation of the facts. Generally, Respondents appear to argue that the documents can be used to demonstrate that "the SFPD unit responsible for sealing the record did not receive the order to do so until October 15, 2022, and did not actually seal the document until December 14, 2022." RJN, p. 3. The filing and outcome of the separate case certainly has no dispositive effect on the anti-SLAPP motion. *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 418 (denying judicial notice of decision in related federal proceeding because appeal from summary judgment invoked *de novo* standard of review and "[w]e therefore do not consider the ruling of another court on a related matter to be relevant to or helpful toward this task").

Generally, Respondents appear to argue that the documents can be used to demonstrate that "the SFPD unit responsible for sealing the record did not receive the order to do so until October 15, 2022, and did not actually seal the document until December 14, 2022." RJN, p. 3. Respondents fail to offer any argument as to how it is dispositive to an issue on appeal. See *Ross*, 96 Cal.App.5th at 745. However, even if this Court were to take judicial notice that the SFPD may have been delayed in processing the sealing order, this fact does not provide a defense to known publication of sealed information. The judicial order sealing the arrest report was entered and thus was legally effective on February 17, 2022. (3 AA0807) (the Sealing Order); *see* *Safeco Ins. Co. of Am. v. Superior Ct.* (2009) 173 Cal.App.4th 814, 826, citing *Badella v. Miller* (1955) 44 Cal.2d 81, 85 ("A written order becomes legally effective upon its filing in the case."). Thus, regardless of allegations of administrative processing delays within the SFPD, the legal obligation not to disseminate sealed information arose from the court order itself, not from internal police procedures.

Furthermore, Poulson did not initially receive and disseminate his blog posts and the Sealed Report until September 2023 – 20 months after the sealing order was entered and even 10 months after December 14, 2022 – the date that Respondents concede that the Incident Report was sealed – establishing unequivocally that the Incident Report was sealed before

Respondents initially received, possessed, or disseminated it. Also, as addressed herein, the SFPD only made one disclosure of the Sealed Report (other than to Blackman), and Poulson has stated that person was not his source, which makes it irrelevant *to this case* whether the SFPD effectuated Judge Gold's order in March or December 2022.

Respondents' attempt to judicially notice these documents only seeks to sow confusion about when legal obligations attached. Respondents intimate that the Incident Report was not sealed and/or was publicly available when Respondents initially received, possessed, and disseminated it, but that is plainly false. Moreover, it is patently irrelevant as the record demonstrates that Poulson did not receive the Sealed Report while it was "public" as Respondents define it nor through a CPRA request. See Appellant's Reply Brief dated March 6, 2026.

Relief Requested:

The Court should deny granting judicial notice of the three docket entries: (1) the Complaint (Noble Decl. RJN, Exh. A); (2) the Notice of Entry (Noble Decl. RJN, Exh. D); and (3) the Request for Dismissal (Noble Decl. RJN, Exh. H) because they are not dispositive to a material issue in the anti-SLAPP motion. The Court can judicially notice the existence of the City's RJN (and the Order to Seal attached to the RJN) and the Declaration of

Diane Bryan (Exh. B and C, Noble Decl. RJN) but cannot accept as true Respondents' arguments concerning the Order to Seal.

B. The Bureau of Justice Statistics on Criminal Victimization Is Irrelevant

Respondents seek judicial notice of a report on criminal victimization statistics published by the Bureau of Justice Statistics (Noble Decl. RJN, Exh. E), arguing it is relevant to "whether Respondents' speech about Blackman's domestic violence arrest was a matter of public interest." This is an opportunistic and exploitative attempt at misconstruing and mischaracterizing the speech at issue – which had nothing to do with the criminal victimization statistics. The statistics presented by Respondents address "criminal victimization," but here no criminal activity was determined to have occurred. 3 AA0807. Respondents' request that this Court take judicial notice of this document further shows that Respondents based their SLAPP motion argument on the mistaken contention that Blackman was guilty of felony domestic violence, a crime never even charged. Poulson RB, p. 35; AA0133 (Poulson intimating that no charges were brought against Blackman "due to the difficulty of prosecuting even meritorious cases"). Moreover, Poulson's blog does not address domestic violence. See Reply at p. 43. Indeed, Respondents' central argument, accepted by the trial court, that a two-year-old arrest that did not result in a conviction casts doubt on

Blackman's "integrity" and "trustworthiness" and evidence that he was "reckless" and put his colleagues in harms' way assumes Blackman's guilt, which is not permitted.

This type of report, while important for other reasons, is wholly irrelevant to the dispositive point on appeal: whether Respondents' speech about a two-year old, sealed arrest deemed by a court of law to have not occurred is considered protected activity. Criminal victimization statistics that could have been but were not presented to the trial court will not answer that question.

Relief Requested

The Court should deny granting judicial notice of Exhibit E as irrelevant and untimely, or at minimum clarify that general statistics about criminal victimization do not establish that this specific sealed arrest record was properly subject to public dissemination.

C. Blackman's Podcast Webpages Are Irrelevant Self-Promotion

Respondents also seek judicial notice of webpages promoting Blackman's podcast "Great Minds Think Data" (Noble Decl. RJN, Exh. F and G), arguing they establish Blackman as a "limited-purpose public figure." RJN, p. 10.

First, these materials were not presented to the trial court and are being introduced for the first time on appeal. While appellate courts have discretion to notice new materials, such notice should be limited to instances when "exceptional circumstances exist that would justify [it]." *Vons Companies, Inc. v. Seabest Foods, Inc.,* 14 Cal.4th at 444, fn. 3. They do not present such circumstances here. *Brosterhous v. State Bar of Calif.*, 12 Cal.4th at 325.

Second, the mere existence of a podcast does not establish public figure status. Public figure analysis requires examining whether the person voluntarily injected themselves into a public controversy and assumed a prominent role in attempting to resolve it. *Khawar v. Globe Internat., Inc.* (1998) 19 Cal.4th 254, 263, citing *Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 344. A business-focused podcast about data and technology does not transform someone into a public figure for purposes of domestic violence allegations.

Relief Requested:

The Court should deny judicial notice of Exhibits F and G as untimely, irrelevant, and not dispositive establishing public figure status.

II. The Court Should Deny Notice to the Documents in Poulson's Appendix

A. News Coverage and Articles are Not Dispositive Of Any Issues On Appeal

Respondents also seek judicial notice of articles from the internet about Blackman, his company, and his arrest (Exhibit B to Poulson's Appendix, RA00009 – RA0084 (excerpting Exhibits attached to Respondents' Motion to Strike presented to the trial court but never ruled on). Respondents argue courts may take judicial notice of "these news articles as 'evidence of public interest' in these matters." Resp. RJN, p. 9 citing *Sexton v. Apple Studios LLC* (2025) 110 Cal. App. 5th 183, 194. Respondents gloss over which "matters" are at issue in these articles because they cannot overcome the hurdle that there were no contemporaneous news articles regarding Blackman's 2021 arrest, Poulson's 2023 dissemination of the Sealed Report, and Blackman's subsequent termination.

Although *Sexton* permits the use of media coverage to show that public interest existed in a topic, Respondents go far beyond this narrow purpose. They seek to introduce these articles not merely to show that coverage occurred, but to establish facts asserted within the articles—including potentially defamatory statements about Blackman. News articles are hearsay and their contents cannot be accepted as true merely because they

were published. *Ragland*, 209 Cal.App.4th at 194. Courts consistently limit judicial notice of news articles to showing that something was published or that public interest existed, not to prove the truth of statements contained in the articles. Nor is it dispositive of the issue of whether Blackman is a limited public figure. See *Huitt v. Southern Calif. Gas Co.* (2010) 188 Cal.App.4th 1586, 1605 (noting "simply because information is on the Internet does not mean that it is not reasonably subject to dispute"). The articles are not dispositive of whether Respondents conduct was "in connection with a public issue or an issue of public interest."

Of the articles contained within Poulson's Appendix, Exhibit B are two articles (RA0016-33) written by Byron Tau dated June 24, 2021 and February 26, 2022. Neither article is relevant to this case. The June 24, 2021 article purports to describe portions of Premise Data's business – noting that Premise Data used mobile phones to collect data for consumer services businesses and the government. RA0018. According to the article, Premise Data collected "data available to anyone who has a cellphone" that "is not unique or secret." RA0020. This article does not report on "the need for greater oversight over private contractors' work for governments" or "numerous misdeeds by Premise and Blackman." Poulson RB p. 36. This article does not establish – and cannot possibly be used to establish – that Poulson's multiple blog posts that disseminated the Sealed Report were

newsworthy. It is not relevant to Poulson's blog posts published more than two years later.

The February 26, 2022 article reported on a false story that Premise Data was being used as a tool by Russia to locate Ukrainian targets. RA0028. This article – published after Blackman's arrest, and when Respondents claim the Incident Report was publicly available – did not report on Blackman's arrest or any "misdeeds by Premise or Blackman." It is not relevant to Poulson's blog posts published more than 20 months later.

Exhibit 4 (RA0034-55) consists of four articles from 2016-2018. These articles are about Blackman's former employer or his accepting a job at Premise Data. These articles cannot possibly have any relevance to the issues before this Court. Two of the articles are blurbs announcing that Premise Data hired Blackman in 2018. RA0047; RA0051-53.

Exhibit 5 (RA0057-65) is two articles written by Blackman – one published online in *The Press Enterprise* on May 14, 2014 (RA0057-9) and one published online in *Mediashift* on October 14, 2014 (RA0063-5). These online articles were published nearly ten years before Poulson's blog posts, do not concern any of the issues addressed in Poulson's blog posts, and cannot possibly be relevant to the case. Respondents make the preposterous and misleading argument that these two nearly ten-year old articles establish that Blackman was a public figure because he "frequently opined about

politics, public policy, and technology in national and international publications". Poulson RB, p. 38. The articles are not relevant to this contention, and they are not relevant to the dispositive issues before this Court.

Exhibit 6 (RA0067-084) is a series of articles that were published **after** Blackman commenced this lawsuit that reported on the First Amendment issues raised by Respondents' unlawful conduct. These post-litigation articles are not relevant to claims that Blackman's arrest or Poulson's blog posts were newsworthy prior to this litigation. See *Huitt v. Southern Calif. Gas Co.,* 188 Cal.App.4th at 1605, fn. 10. Any public interest in the debate between whether the First Amendment can eradicate privacy protections afforded those who are arrested by not convicted is not an indication of whether Blackman or his arrest was newsworthy. Further emphasizing how little dispositive this coverage is, the trial court did not rule on Respondents' Motion for Judicial Notice in making the determination.

Relief Requested:

The Court should deny each of these requests because none of these articles are relevant to the dispositive issues before this Court. If the Court does grant judicial notice of these articles, it should be only for the limited purpose of showing that these articles exist, and the articles may not be considered for the truth of any facts asserted within them and do not

establish that Poulson's blog posts or the Sealed Report at issue here were newsworthy.

B. Blackman's Declaration in Premise Data Litigation Is Improper

Respondents once again try to seek judicial notice of a declaration Blackman filed in the 2019 litigation of *Premise Data Corp. v. Pompe*, 19-CV-346678 consolidated with 21-CV-385478 – years before the events related to the underlying action – in his capacity as then CEO of Premise Data. See Poulson RB Appendix at Exhibit D at RA0096-0098. Respondents offer this document "for the purpose of showing Blackman's characterization of the work performed by his former company", asserting that courts may "accept [the truth] of statements... when made by a party." RJN, p. 5. While courts may notice the existence and filing of such documents, Respondents misstate the law regarding the permissible scope of judicial notice.

First, the cited case *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1103 stands for the narrow proposition that judicial admissions made by a party in litigation may bind that party. It does not support the broad proposition that any statement a party makes in unrelated litigation may be judicially noticed for its truth in a different case involving different claims and issues.

Second, the declaration relates to Premise Data's work, not to any issue directly relevant to this appeal concerning publication of sealed arrest information. Respondents are asking this court to take notice of Blackman's testimony "regarding the sensitive national security implications of Premise's work for the U.S. military, which bears on the public interest in incidents that reflect poorly on his fitness for such a position, such as his arrest for felony domestic violence." This is evidentiarily flawed reasoning because character evidence and public figure status must be proven through relevant, admissible evidence, not through judicial notice of tangential statements in unrelated litigation. Moreover, this is a continued example of how Respondents continue to ignore the many California protections afforded to individuals – regardless of their public figure status – arrested without conviction. That an individual holds what Respondents characterize as a sensitive and important job does not strip him of these protections. The Legislature sought to combat such stereotyping and did not create or intend such carve outs.

Further, this Declaration is irrelevant to the dispositive issues before this Court and was not noticed by the trial court despite Respondents seeking notice at that time.

Relief Requested:

The Court should deny judicial notice of this declaration because it is irrelevant or, alternatively, limit notice to the existence of the document only, not to the truth of statements contained therein.

C. The First Amendment Coalition Litigation Documents Involve Different Parties and Legal Issues and Cannot Be Judicially Noticed for the Truth of the Matters Asserted.

Respondents seek judicial notice of three documents from *First Amendment Coalition v. Chiu,* (N.D.Cal. 2024) No. 24-cv-08343: (1) the Complaint (Exh. 7, at AA0884–AA0906); (2) the Motion for Preliminary Injunction (Exh. 8, at AA0907–AA0932); and (3) Stipulated Judgment (Exh. 9, at AA0933–AA0937). Respondents claim they are relevant because they support the contention that Penal Code § 851.92(c) violates the First Amendment and the "top law enforcement in the state" agreed to a preliminary injunction. RJN, p. 12. The allegations and the stipulation are in no way relevant to or dispositive of issues on appeal.

The complaint in a separate, ongoing litigation between different parties cannot have a dispositive effect on any issue on appeal in this case. The claim that Penal Code § 851.92(c) is unconstitutional has not been resolved and therefore is not dispositive or conclusive. The Motion and the subsequent stipulated preliminary injunction in another proceeding are also

not relevant or helpful to the adjudication of Blackman's claims. See *Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 418 (denying judicial notice of decision in related federal proceeding because appeal from summary judgment invoked *de novo* standard of review and "[w]e therefore do not consider the ruling of another court on a related matter to be relevant to or helpful toward this task").

Moreover, the preliminary injunction binds only the specific Respondents (the Attorney General and San Francisco City Attorney). It does not provide Respondents in this appeal with any legal protection or defense. Further, the injunction specifically "is without prejudice to any position that any party may take in the remainder of the case," and therefore cannot be used to argue that Penal Code § 851.92(c) is unconstitutional.

Finally, a preliminary injunction does not constitute a final determination on the merits of the First Amendment challenges to Penal Code § 851.92(c). The stipulated nature of the injunction means there was no judicial finding that the statute is unconstitutional.

However, even if this court notices the existence of the current litigation and its current posture, Respondents are asking this court not only to accept as truth what is within those pleadings but rather Respondents' interpretation of those pleadings – that it is somehow a concession that the law is unenforceable. This is an inappropriate use of judicial notice.

Relief Requested:

The Court should limit judicial notice to the existence of the federal court proceedings and the narrow terms of the preliminary injunction, while rejecting any inference that it provides a defense or justification for Respondents' conduct in this case.

CONCLUSION

Many of the materials Respondents seek judicial notice for are being offered not to establish uncontroverted facts necessary to resolve the appeal, but rather to introduce evidence that Respondents failed to present below or to argue facts that should be established through admissible evidence, not through judicial notice.

The Court should:

1. Deny or strictly limit judicial notice the documents from Blackman v. City and County of San Francisco;
2. Deny judicial notice of Blackman's declaration in the Premise Data litigation;
3. Deny judicial notice of the criminal victimization statistical report;
4. Deny judicial notice of news articles or limit to recognizing their existence but not accepting them for the truth of any matters asserted and not noticing them for the interpretation forwarded by Respondents;
5. Deny judicial notice of the podcast webpages;

6. Deny judicial notice of the documents from the First Amendment Coalition litigation or limit notice to the existence of the litigation but not for the truth of the matters in the pleading nor for the conclusion that Penal Code § 851.92(c) is unconstitutional.

Dated: March 6, 2026 Respectfully submitted,

THE MAREK LAW FIRM, INC.

By: */s/David Marek*
David Marek
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rules 8.74(b) and 8.204(c)(1), the undersigned hereby certifies that this brief is produced using 13-point Century Schoolbook typeface, including footnotes, and contains 4,153 words, as counted by the word processing program used to create this document, excepting the tables, cover information, this certificate, the certificate of interested entities or persons, the signature block, and any attachments.

Dated: March 6, 2026 Respectfully submitted,

THE MAREK LAW FIRM, INC.

By: */s/David Marek*

David Marek

Attorney for Appellant
MAURY BLACKMAN

PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of 18, and not a party to the within action. My business address is 228 Hamilton Avenue Palo Alto, CA 94301.

On March 6, 2026, I served true and correct copies of the document(s) described as

Appellant's Brief Opposing Respondents' Joint Request for Judicial Notice

on the following interested parties:

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VIA TRUEFILING: A true and correct copy of the foregoing documents were electronically served on counsel of record by transmission through ImageSoft TrueFiling (*TrueFiling*) e-servicing.

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

Executed on March 6, 2026 at Palo Alto, California.

/s/ David Marek
David Marek