No. A173244

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

MAURY BLACKMAN,

Plaintiff and Appellant,

v.

SUBSTACK, INC.; JACK POULSON; 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 REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES

RULES

OTHER AUTHORITIES

INTRODUCTION

Defendants are not above the law. They have no right to continue to possess and disseminate a court-sealed document – conduct the California Legislature has specifically criminalized to protect the privacy interests of individuals arrested but not convicted. Defendants' SLAPP Motion is a backdoor attempt to vacate an unchallenged order entered by Judge Carolyn Gold (the "Sealing Order") that sealed the arrest report at issue (the "Sealed Report") without following the mandatory legal mechanisms required to undo such an order. In fact, Defendants do not even allege that they can meet the legal standard to undo the Sealing Order.

The U.S. Supreme Court has long held that the press is not exempt from laws of general applicability. The First Amendment provides no shield to any publication of the Sealed Report after Defendants became aware of the Sealing Order. In addition, the Sealed Report was never newsworthy. A two-year-old sealed record of arrest that did not lead to a conviction, was deemed not to have occurred, and never generated any press cannot – as a matter of law – be characterized as "newsworthy." Notably, such speech should not be used to cast doubt on Blackman's "integrity" and "trustworthiness," as that would suggest an assumption of guilt, which is not permitted. And even if this Court determines that Poulson's blog posts and the Sealed Report are newsworthy, California has established its compelling interest in protecting individuals from the stigmatization and assumption of guilt that

flow from a two-year-old report of an arrest that did not lead to a conviction.

Finally, because Defendants' ongoing conduct materially contributes to these statutory violations, they cannot seek immunity under Communications Decency Act ("CDA") § 230 ("Section 230").

Thus, this Court should reverse the trial court's Order Granting Motions to Strike Complaint by Defendants dated February 14, 2025. 1 AA0991-99. ("Order")

RESPONSE TO DEFENDANTS' SUMMARY OF ARGUMENTS

This is a joint Reply to all three of Defendants' responsive briefs, all of which rely on the same flawed arguments.

Defendants' arguments simply ignore that here, unlike in any case cited by Defendants, a valid, uncontested court order triggered the applicable statutes. And despite judicial instruction to do so (3 AA0622-25), Defendants failed to use the prescribed California legal mechanisms to challenge or undo the Sealing Order, choosing instead to act above the law.

Defendants do not make arguments that justify the trial court's finding that Blackman's claim arise from protected speech. The Order did not cite to *The Florida Star v. B.J.F.* (1989) 491 U.S. 524 lines of cases. Instead, the Order relied on *Jenni Rivera Enters., LLC v. Latin World Ent. Holdings, Inc.* (2019) 36 Cal.App.5th 766, 796 to hold that Defendants' conduct was protected by the First Amendment because their conduct after learning of the Sealing Order was not "sufficiently wrongful

or unlawful to overcome the First Amendment". 4 AA0996-7. Here, however, Defendants' repeated republication of the two-year-old Sealed Report *after notice of the Sealing Order* violated the Sealing Order and various statutes and is therefore sufficiently wrongful and unlawful.

Defendants' primary defense rests on *The Florida Star* lines of cases arguing the First Amendment provides a near-absolute shield for publishing truthful, lawfully obtained, newsworthy information. *Florida Star*, 491 U.S. at 533. However, this Reply will show that *Florida Star* is inapplicable, and the First Amendment does not protect Defendants in this instance.

First, Defendants are not excused from adherence to California's generally applicable law. *See Jenni Rivera*, 36 Cal.App.5th at 796, citing *Cohen v. Cowles Media Co.* (1991) 501 U.S. 663, 669 (the United States Supreme Court stated that "generally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news.").

Second, unlike the cases cited by Defendants, the Sealed Report was not publicly available when Defendants initially received and disseminated it. See e.g., *Florida Star*, 491 U.S. at 533; *Cox Broad. Corp. v. Cohn* (1975) 420 U.S. 469; *Landmark Communications, Inc. v. Virginia* (1978) 435 U.S. 829. California law and the trial court had long since extinguished any right of public access to this document. See Sealing Order; *Kinney v. Superior Court* (2022) 77 Cal.App.5th 168, 178-81 (limiting arrest information produced pursuant to a California Public Records Act

("CPRA") request "only to contemporaneous law enforcement information," defined as "11 to 12 months old"); Gov. Code § 7930.1110 (exempting from the CPRA requests reports on arrest that did not lead to conviction). Further, here, Poulson did not obtain the Sealed Report from the State or during the time that the Incident Report was accessible through a California Public Records Act ("CPRA") request. Rather, Poulson claims that he initially received and disseminated the Sealed Report nearly two years after the arrest and 20 months after the Sealing Order – and therefore long after the Court had extinguished any right of public access to the document.

Third, unlike *Florida Star*, a two-year-old sealed report of an arrest that did not lead to a conviction and was deemed not to have occurred is inherently not newsworthy. No press reported on it when it was public or even after Poulson's blog post disseminated it. There is no nexus between Poulson's blog and the Sealed Report. Each of Defendants' other arguments are unpersuasive – all arrests are not newsworthy, arrests for certain crimes are not always newsworthy, and arrests that do not lead to conviction are not newsworthy because they cast doubt on the individual's "integrity" and "trustworthiness."

Finally, Defendants' reliance on Section 230 fare no better. Section 230 is broad, but it does not shield "material contribution" to illegal conduct, including publicizing the Sealed Report. Because Blackman's claims arise principally from Defendants' duties under the Penal and Labor Codes, they are

not being sued merely as "publishers," but as active participants in statutory violations.

RESPONSE TO DEFENDANTS' STATEMENT OF FACTS

I. The Arrest Record Was Sealed Well Before Defendants Unlawfully Received, Possessed, and Disseminated It.

Defendants admit that they initially received the Sealed Report long after Judge Gold entered the Sealing Order. The Sealing Order was entered on February 17, 2022 – approximately 20 months **before** Poulson claims he initially received it. 1 AA0308-12; 1 AA0270. Defendants claim that the SFPD did not actually seal the record until December 14, 2022, and therefore the Incident Report was accessible through a CPRA request for ten months after the arrest. Poulson Respondent's Brief ("RB") RB, pp. 19-20; Tech Inquiry RB. 17.[1] Regardless of when the SFPD processed the Sealing Order, it is not disputed that Judge Gold entered the Order on February 17, 2022 and that the Incident Report had been sealed long before Defendants' initial receipt, possession, and dissemination.

[1] Defendants' argument ignores that, under California law, "[a] written order becomes legally effective upon its filing in the case." *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.

II. The Record Does Not Establish that Poulson Received the Sealed Report, Either Directly or Indirectly, Through a CPRA Request.

Poulson does not claim that he received the Sealed Report directly from the State through a CPRA request or otherwise. Rather, he contends that he received an *unredacted* copy of the Incident Report, including the name and identifying information of the victim and the witness, from an anonymous source via an encrypted messaging site. 1 AA0270.

Further, the record before this Court does not even establish that Poulson indirectly received the Incident Report through a CPRA request. Poulson RB, p. 21. The SFPD provided the Incident Report to only two people – Blackman and Newton Oldfather – prior to Poulson's initial receipt, possession, and dissemination of the Sealed Report. 3 AA0567; 3 AA0583. According to Poulson, neither Blackman nor Oldfather was Poulson's source. 2 AA0329.

LEGAL ARGUMENT

I. Defendants Failed to Meet Their Burden of Establishing that Blackman's Claims Arise from Defendants' Constitutional Free Speech Rights.

Blackman's claims arise from Defendants' ongoing statutory violations, which are not protected speech. Indeed, Defendants are actively violating the Sealing Order, Penal Code §§ 851.92(c), 166, 11143, 13303 and Labor Code § 432.7(g) – all of which are either criminal statutes or have criminal penalties or

both. Accordingly, Defendants have not and cannot meet their burden under the first prong of Section 425.16. Moreover, Defendants' argument that their ongoing illegal conduct is protected by the First Amendment must also be denied.

A. Blackman's Claims Do Not Arise From Protected Speech.

Defendants cannot establish that their claims arise from protected speech. Tech Inquiry argues that because Blackman's claims took place after Defendants' speech, his claims therefore arise from protected speech. Tech Inquiry RB, p. 34.[2] "The mere fact that an action was filed after protected speech took place does not mean the action arose from that activity for the purposes of the anti-SLAPP statute." *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062-3 "[T]he focus is on determining what the defendant's activity is that gives rise to his or her asserted liability". *Id.* (internal citations omitted). Here, Defendants had legal duties not to possess or disseminate the Sealed Report upon knowing of the preexisting Sealing Order. See *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1101–02 (distinguishing claims that arose from legal

[2] Tech Inquiry's argument that Blackman admitted his claims arise from protected speech is simply wrong. Tech Inquiry RB, p. 35. Courts "respect the distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim." *Park*, 2 Cal.5th at 1064. Here, Blackman's claim assert that Defendants' violations of the Sealing Order and statutes form the basis of the claim, even if the dissemination of the Sealed Report led to the liability and is evidence of the unlawful behavior.

obligations after notice); (internal citations omitted). Thus, Blackman's claims arise from Defendants' failure to comply with these duties – not from Defendants' speech.

Here, Defendants do not address the trial court's flawed reasoning. The trial court converted Defendants' ongoing illegal conduct into protected speech by finding that Defendants' conduct was not "sufficiently wrongful or unlawful to overcome the First Amendment newsgathering and broadcast privileges." 4 AA0997. The trial court reached this finding for two reasons: (i) the evidentiary record established that Defendants did not know the arrest report had been sealed before their initial publication, and (ii) Defendants conduct after notice was limited to "not taking down the arrest information." Id., citing *Jenni Rivera*, 36 Cal.App.5th at 800. The trial court erred by: (1) failing to accept as true all evidence favorable to Blackman, (2) failing to recognize the legal significance of Defendants' refusal to take down the Sealed Report, and (3) failing to recognize that each new republication of the Sealed Report – of which there were many – gives rise to a new cause of action.

In resolving the SLAPP motion, the court must "accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699 (because the SLAPP statute "limits opportunity to conduct discovery, the plaintiff's burden of establishing a probability of prevailing is not high").

Here, Defendants' First Amendment affirmative defense relies on Poulson's statements that the SFPD confirmed the events in the Sealed Report, and that Poulson was unaware the Report had been sealed prior to disseminating it. Poulson RB, p. 23. Based on Poulson's statement, the trial court concluded that Defendants' conduct was "not so wrongful or unlawful that [it is] not protected." 4 AA0997.

The trial court erred in accepting as true Poulson's self-serving statements that in September 2023 (prior to his initial publication), the SFPD provided him with information from a sealed arrest report and failed to notify him that the report had been sealed. 2 AA0348. Poulson's declaration, without more, cannot overcome the legal presumption that the SFPD followed the law that prohibited making these disclosures to Poulson. See AOB, p. 60. See *Hansen v. United States* (9th Cir.1993) 7 F.3d 137, 138 (a conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to establish facts are not in dispute). Here, Poulson's declaration lacks details including the date of the call, with whom he spoke, whether he took notes of this call, and whether there were any witnesses to the call.

Further, the Court also must consider that the record before it includes evidence that in October 2023 – nearly the exact same time that Poulson claims he made his phone call to the SFPD – seven requests were made to the SFPD for information concerning the Sealed Report and each was denied. 3 AA0583; see also Declaration of Victoria Noble in Support of

Defendants' Request for Judicial Notice dated December 15, 2025 ("Noble RJN Decl.") at Exhibit B.[3] Accordingly, this question of fact – whether the SFPD notified Poulson that the report had been sealed before Defendants initially disseminated it or whether Poulson knew from some other source – should not have been resolved by the trial court and cannot be resolved by this Court. If a jury finds that Defendants' initial dissemination of the Sealed Report occurred with knowledge that it had been sealed, Defendants' conduct is not protected speech.

Moreover, the record establishes that by no later than November 2023 (and at multiple times thereafter), Defendants were notified of the Sealing Order. 4 AA0791. Nevertheless, after Blackman notified Defendants that the Sealed Report had been sealed pursuant to the Sealing Order, Poulson published a blog post that linked to the Sealed Report and described its contents on November 20, 2023, December 19, 2023, January 6, 2024, April 25, 2024, and June 6, 2024. 4 AA0791. Even after the San Francisco City Attorney notified Defendants, they continued republishing the Sealed Report. 1 AA0799, 1 AA0802-3, 1 AA0806. Therefore, this record shows that, after Defendants were notified that the report had been sealed, they did far more than "not taking down the arrest information" – they republished it repeatedly. See *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1244 (each new publication gives rise to a new cause of action).

[3] Although Defendants Request for Judicial Notice has not been ruled on, Blackman may rely on the item sought to be judicially noticed in his brief. See 1st App.Dist.R. 6(b).

Finally, leaving the Sealed Report accessible to the public, after notification of its sealed status, is far more egregious than what occurred in *Jenni Rivera*. Refusing to take down the Sealed Report was itself a violation of various statutes and highly offensive. *See* *Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 232, 242 (recognizing that, even absent an independent crime or tort, "a highly offensive intrusion into a private place" cannot be justified "by the plea that the intruder hoped to get good material for a news story.") This intrusion by Defendants is "highly offensive" because Blackman had a settled legal expectation that this arrest "did not occur" and has now been denied his right to deny its occurrence. Reviving a non-conviction arrest two years later – long after it lost any contemporaneous relevance – heightens the offensiveness of the intrusion such that no "news story" plea can justify. *Kinney*, 77 Cal.App.5th at 183. Accordingly, each republication that occurred after notice is not protected speech.

B. Defendants' Ongoing Conduct In Violation of Penal Code § 851.92(c) Is Not Protected Activity.

Defendants do not and cannot dispute that they are presently disseminating the Sealed Report. Accordingly, the uncontroverted evidence – including findings by the trial court and formal warnings from the San Francisco City Attorney – establishes a statutory violation of Penal Code §851.92(c). See 1 AA0996 ("In disseminating the sealed Incident Report, the defendants' conduct violated Penal Code"); 1 AA0799, 1 AA0802-

3, 1 AA0806 (letters from SF City Attorney stating that Defendants are violating this statute); Tech Inquiry RB, p. 14 (recognizing that this law "does not provide an exception for a person who lawfully obtains a copy of the arrest report or when it involves a person or incident that is a matter of public concern."). Consequently, Section 425.16 does not apply. *Flatley v. Mauro* (2006) 39 Cal.4th 299, 316.

Defendants' attempt to narrow *Flatley* to only those penal provisions carrying specific "criminal penalties" is unsupported. See Poulson RB, p. 50; see also, Substack RB, p. 40. Defendants rely on *Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644 for this proposition; however, *Mendoza* does not reach this holding. See AOB, p. 32. There is simply no legal basis to exempt speech that is "illegal as a matter of law" from the *Flatley* doctrine simply because of the nature of the penalty.

Moreover, Defendants' violation of Section 851.92(c) is also a violation of Penal Code §166 because it is a willful disobedience of a valid, unchallenged court order. As the trial court explained, a "legal consequence" of Judge Gold's Sealing Order was that it triggered the dissemination ban in Section 851.92(c). See Penal Code § 851.92(a) ("This section applies when an arrest record is sealed pursuant to [Section 851.91]"); see also 3 AA0995; 2 AA0466. Because the Sealing Order is valid and uncontested, Defendants' continued dissemination of the report constitutes "willful disobedience of any process or order lawfully issued by any court" that is punishable as a misdemeanor. See Penal Code

166(a) ("a person guilty of any of the following contempts of court is guilty of a misdemeanor").

Defendants' argument that they cannot be in contempt of the order because the Sealing Order "did not require Poulson to do or not do anything" must be rejected. Poulson RB, p. 52. Under *In re Lennon* (1897) 166 U.S. 548, 554, an individual with notice of a court order is bound by it even if they were not a party to the original suit. Here, the Sealing Order, by direct reference and Legislative enactment, triggers Section 851.92(c) – a universal prohibition by any unauthorized individuals including Defendants. See Penal Code §§ 851.91, 851.92. Having received notice of the Order and the applicable law, Defendants' continued dissemination is a willful violation of both the statute and the judicial process.

C. Defendants Ongoing Conduct Violates Penal Code §§ 11143 and 13304.[4]

Defendants' ongoing possession and dissemination of the Sealed Report violate Penal Code §§ 11143 and 13304, which

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[4] Defendants contend in their responsive briefs that each of them was authorized to receive the Incident Report. Poulson RB, p. 20; Tech Inquiry RB, p. 17 (claiming that arrest report "qualif[ied] as a 'public record,' available to the public upon request."). Blackman disputes Defendants satisfy the definition of "authorized by law to receive a record" because they are not "authorized by a court, statute, or decisional law to receive a record." See Penal Code §11140(b). Nonetheless, to the extent this Court accepts Defendants' arguments that they were authorized to receive the record, Defendants' ongoing conduct of furnishing the Sealed Report to individuals who are not authorized to receive the record is "a misdemeanor." See Penal

prohibit unauthorized persons from knowingly receiving or possessing arrest records. Their defenses to these violations are legally and factually meritless.

First, Defendants argue that the arrest report is not a "record" within the meaning of Sections 11143 or 13304. Substack RB, pp. 41, 44-46. However, the California Supreme Court explicitly held that an arrest record is protected by Sections 11143 and 13304.[5] See *Loder v. Municipal Court* (1976) 17 Cal.3d 859. In *Loder* the Court noted that Sections 11143 and 13304

Code § 11142 (penalizing with a misdemeanor "[a]ny person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information"). After the SFPD effectuated the Sealing Order, however, members of the public were no longer authorized to receive the Sealed Order. See Penal Code §§ 851.91, 851.92.

[5] Substack also argued that Blackman waived arguments that Substack is in violation of Section 13304. Substack RB, p. 43, citing *Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771, 781. This argument must be rejected. "[A] litigant may raise for the first time on appeal a pure question of law which is presented by undisputed facts." *Hale v. Morgan* (1978) 22 Cal.3d 388, 394; see also *Ward v. Taggart* (1959) 51 Cal.2d 736, 742 ("it is settled that a change in theory is permitted on appeal when 'a question of law only is presented on the facts appearing in the record'"). Here, all of the relevant facts were pled and presented to the trial court - namely that Defendants violated a California criminal statute that prohibits the knowing receipt or possession of the Sealed Report. In addition, the California Supreme Court referred to Section 11143 and 13304 as "[e]ssentially identical legislation … enacted penalizing unauthorized dissemination of records compiled by local law enforcement agencies." *Loder*, 17 Cal.3d at 553. Accordingly, Defendants cannot – and do not – claim to have suffered any prejudice because they made the same arguments to the trial court in opposing Section 11143 that they would have made to oppose Section 13304.

make it a misdemeanor for any unauthorized person to knowingly buy, receive, or possess an arrest report that did not result in a conviction, explaining that such a report is "virtually treated as contraband". Consequently, the Sealed Report is a protected record under these criminal statutes.

Second, Defendants claim they lack the requisite "knowledge" because the arrest report "contained no indication that it was sealed" when Poulson initially received it. Substack RB, p. 44. This argument fails. These statutes criminalize both receipt and possession. Under standard rules of statutory construction, these terms are not synonymous and treating them as such would render the word possession surplusage. See *People v. Valencia* (2017) 3 Cal.5th 347, 357 ("[W]e generally must 'accord[ ] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose,") (internal citations omitted). Moreover, even if the initial receipt was unknowing, Defendants' continued possession of the Sealed Report for years after being formally notified of the Sealing Order is a knowing violation of these statutes.

Third, Defendants argue they are exempt from Section 11143 and 13304 under Evidence Code § 1070 because they are connected to "periodical publications." Poulson RB, p. 31; Tech Inquiry RB, p. 44. Substack does not claim that it is a journalist, but it argues, nevertheless, that it should be covered by Section 1070 because Poulson is a "reporter" and a "person connected with a periodical publication." Substack RB, p. 42. None of the Defendants can meet their burden of establishing that they are

journalists. See *Rancho Publications v. Superior Court* (1999) 68 Cal.App.4th 1538, 1546 (burden in on the journalist to "proved [that] all the requirements of the shield law have been met.").

Poulson's nascent, infrequent personal blog does not satisfy his burden of establishing that his blog was a "periodical publication." See *O'Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1432, 1464 (noting online publications that had been published daily for nearly 10 years, had hundreds of thousands of unique views, and had employee editors to be on the borderline of qualifying as "periodical publications"). Poulson's blog was five months old; he offered no credible evidence about its frequency of publication; and it had approximately 3,000 readers even after disseminating the Sealed Report for one year. 1 AA0266-7. A finding that Poulson's blog was a "periodical publication," based on the record before this court would expand the definition of this term beyond any case that has come before.

By its own admission, Tech Inquiry acted as "a passive host of Mr. Poulson's Substack posts and the Arrest Report" rather than an editor or publisher. Tech Inquiry RB, p. 55. Tech Inquiry has offered no evidence of regular publication or frequency that would qualify it as a periodical. Similarly, Poulson's claim that Tech Inquiry "provides government records, articles, and data investigating the intersection of surveillance and weapons companies with governments" does not meet the burden of establishing that Tech Inquiry is or is connected with a periodical publication. 1 AA0267.

Substack does not even claim to be a journalist or connected with a "periodical publication" but rather seeks to benefit from Poulson's purported status. Substack RB, p. 42. Even if Poulson were protected (he is not), Substack provides no legal support for that protection to extend to a third-party platform that was merely a passive host of the material. Substack RB, p. 52-3. Substack fails to meet its burden of establishing that it is protected under Evidence Code § 1070.

D. Defendants' Conduct Violates Labor Code § 432.7 and Is Not Protected Activity.

Defendants' ongoing possession and dissemination of the Sealed Report constitutes an "intentional violation" of Labor Code § 432.7, which is a misdemeanor. See Labor Code § 432.7(c). Labor Code Section 432.7(g)(3) prohibits any unauthorized person other than those referred to in Section 1070 of the Evidence Code from "receiv[ing] or possess[ing] criminal … justice records information maintained by local law enforcement … pertaining to an arrest … that did not result in a conviction."[6] As addressed in

[6] Once again, Defendants argue they were authorized by law to receive the arrest record despite failing to demonstrate they were "authorized by a court, statute, or decisional law to receive a record." *See* Penal Code § 11140(b). Although Blackman disputes this, to the extent this Court accepts that Defendants were authorized by law to receive the arrest record, Defendants nonetheless remain in violation of Labor Code § 432.7(g)(2) which makes it unlawful for "[a]ny other person authorized by law to receive criminal … record information maintained by a local law enforcement criminal … justice agency [to] knowingly disclose any information received pertaining to an arrest … that did not result in a conviction." Penal Code § 432.7(g)(2). By intentionally

the AOB and herein, Defendants have not established that they are journalists pursuant to Evidence Code § 1070. Accordingly, Defendants' ongoing conduct is an "intentional violation" of the Labor Code because they continued to possess and disseminate the report after being formally notified that the arrest did not lead to a conviction. Because this conduct is illegal as a matter of law, it cannot be classified as "protected activity" under the anti-SLAPP statute. See *Flatley*, 39 Cal.4th at 299. Even if this Court adopts Defendants' narrow interpretation of *Flatley* – limiting it only to speech that violates laws carrying criminal penalties – Defendants' conduct remains unprotected because Section 432.7(c) expressly criminalizes these acts as misdemeanors.

E. Defendants Have Not Established a First Amendment Defense.

Defendants argue that the First Amendment shields their ongoing illegal conduct, thus nullifying *Flatley*. Defendants fail in carrying their burden of proving every fact essential to their First Amendment affirmative defense. See Evidence Code § 500. See contra Poulson RB, p. 48 (incorrectly suggesting that Blackman has the burden of establishing that the Defendants' First Amendment defense does not apply); Substack RB, p. 43 (incorrectly suggesting that Blackman must provide "uncontroverted and conclusive evidence" that defeats Defendants' First Amendment defense). The First Amendment

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disseminating the report after learning its status, Defendants have violated the very statutory scheme they claim to operate within.

does not protect the ongoing dissemination of a two-year old, non-conviction arrest record that was sealed by an order which was never challenged and for an event that never attained newsworthy status. Defendants cannot point to a single analogous case and fail to acknowledge California's compelling interest in protecting the dissemination of reports of arrest that do not lead to conviction.

1. Defendants' Misuse of the SLAPP Statute Should Not Be Rewarded.

Defendants' SLAPP Motion is an improper end run around Judge Gold's Sealing Order.[7] Defendants find no support in case law for these facts and the line of cases they do rely upon, such as *Florida Star*, are distinguishable. Poulson RB, pp. 27; 33-23; Substack RB, p. 48. The Florida statute at issue in *Florida Star* was not a legal consequence of a specific court order, and Florida

[7] The Sealing Order was issued pursuant to either California Rules of Court Rule 2.550, which governs sealing documents, or as a matter of law. See AOB, pp. 51-54. In either event, Defendants have not argued, and cannot establish, that there is a basis to unseal the Incident Report. Under California Rules of Court, Rule 2.551(h), third parties seeking to unseal records must move to vacate the order based on changed circumstances. See CRC 2.551(h); see also *Mary R. v. B. & R. Corp.* (1983) 149 Cal.App.3d 308, 315 (sealing order can be attacked on fraud, collusion, mistake, or lack of jurisdiction). In fact, Defendants never challenged either the Sealing Order or Judge Quinn's Order. This is perhaps unsurprising because Defendants do not now have standing to appeal Judge Gold's Sealing Order. See *People v. Hernandez* (2009) 172 Cal.App.4th 715, 719-20 ("[A] nonparty that is aggrieved by a judgment or order may become a party of record and obtain a right to appeal by moving to vacate the judgment").

law did not have a specific legal framework for a third party to challenge the applicability of the statute on a case-by-case basis. *Florida Star*, 491 U.S. at 540. Here, Blackman secured a specific judicial order, which triggered Section 851.92(c), and that Sealing Order could only be unsealed pursuant to a specified legal procedure and standard.

Accordingly, Judge Quinn correctly explained when denying Defendants' separate attempt to unseal the record: (1) the trial court cannot undo Judge Gold's Sealing Order[8] even "on constitutional grounds" because the trial court cannot "undertake an independent constitutional analysis without regard to the California Rules of Court [Rule 2.551]"; (2) "[i]f Defendants believe changed circumstances justify vacatur of the [Sealing Order], they must address their argument to Judge Gold"; and (3) the Sealed Report did not become unsealed because it "is publicly available on Substack's website" because "there is no substantial evidence that information from the Incident Report was already in the public domain prior to her order." 3 AA0622-4.

Defendants failed to follow any procedural requirements to unseal the record, continued to violate the restrictions against dissemination of the Sealed Report and in the face of Blackman's attempt to vindicate his rights, filed their SLAPP Motion that seeks to undo Judge Gold's Order. Thus, because the Sealing Order "remains in force," its legal consequences – including the

[8] *See* *People v. Gonzalez* (1996) 12 Cal.4th 804, 812 ("a superior court has no appellate jurisdiction over orders of *another* superior court.").

criminal prohibitions on dissemination cannot be bypassed via Defendants' SLAPP Motion. *Id.* [9]

Accordingly, this has resulted in an absurd outcome. Blackman's attempt to vindicate his legally cognizable rights in the face of Defendants' abject failure to comply with the law resulted in Blackman being liable for Defendants' legal fees and costs in an amount greater than $400,000. The legislature did not contemplate such a misappropriation of the SLAPP statute.

2. The First Amendment Does Not Shield Violations of Generally Applicable Laws.

Defendants rely on a line of cases for the proposition that the press cannot be punished for publishing lawfully obtained, truthful information. *Florida Star*, 491 U.S. at 533; see also *Cox Broad. Corp.,* 420 U.S. at 469; *Landmark Communications,* 435 U.S. at 829; *Gates v. Discovery Communications, Inc.* (2004) 34 Cal.4th 679. However, the Supreme Court has made clear that

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[9] Poulson cites to *Worrell Newspapers of Indiana, Inc. v. Westhafer* (7th Cir. 1984) 739 F.2d 1219 for the proposition that the First Amendment "specifically protects the publication of sealed court records." Poulson RB, p. 28. Unlike the case before this Court, *Worrell* – a Seventh Circuit decision from 1984 – considered "the authority of a state to subject to criminal punishment any person who truthfully publishes the name of an individual against whom a sealed criminal indictment or information has been filed." *Id.* at 121. Here, that issue has not been presented to this Court. Further, in *Worrell*, the plaintiff did not simply disregard the court's sealing instruction; rather, the plaintiff challenged the court's order through the appropriate process. *Id.* Finally, the statute at issue in *Worrell* did not further a compelling state interest, as is the case here, nor did the court and law order the incident be deemed not to have occurred. *Id.*

the First Amendment "does not guarantee the press a constitutional right of special access to information not available to the public generally." *Branzburg v. Hayes* (1972) 408 U.S. 665 (press does not have a "special privilege to invade the rights and liberties of others.")

a. Section 851.92(c) is a Law of General Applicability.

Penal Code Section 851.92(c) is unquestionably a law of general applicability which "do[es] not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news". *Cohen,* 501 U.S. at 670 (First Amendment does not bar claims – like promissory estoppel – brought under laws of general applicability that apply to all citizens, do not "single out the press", and that created an independent duty not to publish certain information even where newspaper published lawfully obtained truthful information law). The press has no "special immunity from the application of general laws." *Id. See also Florida Star*, 491 U.S. at 540 (recognizing that when a State punishes truthful publication, "it must demonstrate its commitment to advancing the interest by applying the prohibition evenhandedly").

Here, Penal Code Section 851.92(c) applies evenhandedly to any person in possession of a sealed record, regardless of their status as a journalist. Accordingly, as a generally applicable law that applies to all citizens, Section 851.92(c) is more akin to Minnesota's doctrine of promissory estoppel at issue in *Cohen*

than to the Florida statute at issue in *Florida Star* where the restrictions targeted the press. *Florida Star*, 491 U.S. at 540 (statute prohibiting publication only in an "instrument of mass communication"). Moreover, unlike the statutes in *Florida Star* or *Daily Mail*, where the State defined specific content that triggered liability, here, Section 851.92(c) is a neutral legal consequence of a lawfully obtained and entered court order. See *Cohen*, 501 U.S. at 671. (recognizing in *Florida Star* or *Daily Mail,* "the State itself defined the content of the publications that would trigger liability."). Accordingly, Defendants are not entitled to the preferential treatment they seek to bypass California laws that bind all citizens.

b. The Information Was Not Publicly Available.

Defendants' reliance on cases like *Cox*, *Oklahoma Publishing Co. v. District Court in and for* Oklahoma County (1977) 430 US. 308, 310, and *Florida Star*, where the State sought to prohibit publication of contemporaneous information the State itself had made publicly available to the journalist is misplaced because the facts are incomparable. In *Cox*, the court identified the name of the victim in a public hearing. *Cox,* 420 U.S. at 472-3. In *Oklahoma*, the information at issue was "widely disseminated information obtained at court proceeding which were in fact open to the public." *Oklahoma,* 430 U.S. at 310. In *Florida Star*, the State put the identifying information in the pressroom. *Florida Star*, 491 U.S. at 527. Here, however, the Sealed Report was unequivocally not publicly available when

Defendants received and disseminated it. It was sealed by court order; records of arrest that do not lead to conviction are exempted from CPRA requests; see Gov. Code § 7930.1110; and arrest information that is more than 12 months old is also exempted from CPRA requests. See *Kinney* 77 Cal.App.5th at 178-81.[10] Further, the record does not establish that Poulson directly or indirectly received the Sealed Report because it was, at one time, publicly available. Accordingly, the record before this Court bears no resemblance to *Cox*, *Florida Star*, or *Oklahoma*, where the press received the contemporaneous information directly from the State and immediately published it.

Defendants' argument that the report was public for months before the Sealing Order is a red herring because there is simply no evidence that information from the Sealed Report was in the public domain either prior to the issuance of the Sealing Order *or* after the Sealing Order was entered but prior to Poulson's initial publication. Moreover, even if the report was briefly public before the Sealing Order, the court's statutory power to seal a once public arrest record, along with the exceptions to the CPRA, implicates the Legislature's desire to extinguish that public nature. No case cited by Defendants

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[10] Tech Inquiry's argument that the Sealed Report was "available to the public upon request" is misleading. Tech Inquiry RB, p. 17, citing Government Code §§ 7923.610 and 7923.615(a). The Sealed Report, in redacted form, might have been available prior to the Sealing Order being entered in March 2022, but any public access to the Report had been extinguished at least one year, if not more, prior to Defendants' initial receipt, possession, and dissemination.

stands for the proposition that the First Amendment prevents a court from sealing a document that was, at one time, public. Such a holding would interfere with the trial court's "broad discretion … to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart* (1984) 467 U.S. 20, 36.

c. Defendants Failed to Establish Newsworthiness.

Even under the *Florida Star* standard, Defendants' conduct is not protected by the First Amendment because neither Blackman's arrest nor Poulson's dissemination of the Sealed Report were newsworthy. Defendants fail to cite to any authority that a private citizen's domestic life becomes newsworthy simply because his employer has government contracts or he maintains low-level government clearance.

While Defendants define newsworthiness as any issue in which the "public is interested", they nonetheless offer no evidence of such interest here. See Substack RB, p. 30. In *Sexton v. Apple Studios LLC* (2025) 110 Cal.App.5th 183, 194, the court recognized that the existence of news articles on a topic is "evidence of public interest," and therefore the converse should also be accepted. If not one news outlet reports on a public event, that must evidence that the event is not newsworthy. Here, the record establishes that there were no news articles regarding Blackman's 2021 arrest, Poulson's 2023 dissemination of the

Sealed Report, and Blackman's subsequent termination.[11] Where these "sensational and injurious statements" generated no public interest, Defendants cannot claim these events are newsworthy. See *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.* (1985) 472 U.S. 749, 752 (the Supreme Court has recognized that that "[t]he more sensational and injurious a statement, the more 'public interest' it generates").[12]

Moreover, the cas es cited by Defendants involved matters of undeniable public magnitude and widespread media coverage. *Bartnicki v. Vopper* (2001) 532 U.S 514 involved threats to blow up the homes of public employees during a heated, publicized, ongoing school board negation. *Landmark Communications*, 435 U.S at 829 concerned information regarding ongoing proceedings before a state judicial review commission hearing complaints about a sitting judge's misconduct or disability. *Nicholson v. McClatchy Newspapers* (1986) 177 Cal.App.3d 509 concerned the qualifications of a judicial candidate who had recently campaigned for the position of Attorney General of the State of

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[11] Defendants argue that it is possible the arrest was not reported sooner because no journalists knew of the arrest. Substack RB, p. 34. This argument must be rejected because the arrest report was publicly available for many months before the Sealing Order went into effect. No one reported on the arrest when it was public, and no one reported on it even after Poulson disseminated the Sealed Report on his blog.

[12] To the extent that Defendants ask this Court to accept that the Sealed Report is newsworthy because Poulson disseminated it, this proposition has been rejected. See *Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 164 (recognizing that not all news reports concern a public issue or an issue of public interest).

California. The cases also involved people that held themselves out in the public eye. See *Jenni Rivera,* 36 Cal.App.5th at 766 (involving international celebrities); *Sipple v. Foundation for Nat'l Progress* (1999) 71 Cal.App.4th 226 (concerning alleged domestic abuse by a nationally known person involved in the national debate on the very issue of domestic violence). The case before this Court involves a private arrest in a private home that resulted in no charges and a sealed record. *See FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 152 ("Defendants cannot merely offer a "synecdoche theory" of public interest, defining their narrow dispute by its slight reference to the broader public interest.") Defendants' effort to define this narrow dispute as a matter of public significance must be rejected.

i. Blackman Is Not a Public Figure.

Defendants fail to meet their burden of proving Blackman "thrust himself into the public eye." *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 25-26. Courts require a nexus between the challenged speech and the controversy. *Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845-46 (finding speech must be "germane to plaintiff's participation in the controversy" such as an earthquake expert thrusting himself into a controversy on earthquake safety); *see also Gilbert*, 147 Cal.App.4th at 25-6 (finding a well-known plastic surgeon thrust himself into a controversy on plastic surgery).

There is no rational nexus between Blackman's career in data and a private, domestic interaction that resulted in no charges. Poulson's blog that "investigat[es] the intersection of

surveillance and weapons companies with government" and reports on "the connectedness of companies making surveillance and weapons technologies and the governments that contract with them" bears no connection to Blackman's Sealed Report. (2 AA0265-7; 1 AA0276-9; 1 AA0282-5) In fact, Poulson's blog was solely focused on the U.S. military's use of data collection companies. *Id.* Of note, Poulson did not report on issues of crime, police activity, gender, the #metoo movement, workplace issues at Premise Data, or the integrity of Premise Data executives. Thus, there is no nexus whatsoever between Poulson's blog and the Sealed Report.

Defendants' effort to create the existence of such a nexus included Tech Inquiries' repeated false claims to the trial court that Blackman, as CEO of Premise Data "failed to prevent the deaths of many of [Premise Data's] employees, including 19 who were pulled off a bus in Iraq and executed on the side of the road while performing as part of [Premise Data's] secretive military contracts." 2 AA0509-10 (Tech Inquiry's SLAPP Motion at Mem. of Points and Auth. filed Dec. 9, 2024, citing Poulson Decl. at ¶¶ 16-17). This false scandal created by the Poulson-led Tech Inquiry and included in papers submitted to the trial court to further its SLAPP argument were purportedly offered to show that Blackman "was a controversial and apparently reckless CEO" who put his employees in danger, which Defendants argued was therefore connected to the allegations in the Sealed Report. *Id.*; 1 AA0114 (Poulson's SLAPP Motion at Mem. of Points and Auth. filed Dec. 6, 2024) In reality, Defendants' utter

fabrications demonstrate the depths to which Defendants will go to mislead the Court into accepting this concocted claim about a connection between Poulson's blog posts and the Sealed Report.

In addition, Defendants' argument that Blackman is a public figure is based on various over-the-top proclamations about Blackman's public presence, none of which are supported by the record. Poulson RB, p. 26; Substack RB, p. 31. The actual record establishes that Blackman was not a high-powered "tech CEO" but rather the CEO of small private, unknown company with less than 100 employees. 3 AA0787. His "public presence" consisted of a personal website with limited engagement, a LinkedIn profile, and a podcast with fewer than 200 listeners. 4 AA0845. Poulson fails to successfully reinvent Blackman as a public person based on internet presence routine and expected for any modern professional. Defendants cited to two short online articles Blackman wrote in 2014 (RA0057-9; RA 0063-5) and an unsuccessful podcast that lasted five episodes and did not have an audience (Noble Decl. RJN, at Exh. G; see also 3 AA0787) as evidence that Blackman frequently opin[ed] about politics, public policy, and technology in national publications and on television programs." Substack RB, p. 31.

Unsurpisingly, the record is also undisputed that Blackman's arrest generated absolutely no interest at the time it occurred. Not even Poulson or *The Wall Street Journal*, who published articles about Blackman's employer on June 21, 2021 and February 26, 2022 (nine days after the Judge Gold entered the Sealing Order and during the time Defendants claim that the

Incident Report was publicly available) reported on the arrest. RA 0018-23; RA 0028-9; Poulson RB, p. 21. No one covered the arrest or Poulson's blog posts disseminating the Sealed Report. Poulson admitted the public was not interested in these issues. 3 AA0564; 3 AA0788.

At the time Poulson blogged, no Defendant even contends that Blackman had spoken publicly about this arrest, domestic violence, or wrongful arrests in general; and the arrest was deemed not to have occurred, and Blackman was legally instructed to deny that he had even been arrested. See Penal Code § 851.91.

ii. Arrests without Conviction are not Per Se Matters of Public Concern.

Defendants incorrectly argue – without support – that all police activity, arrests, and responses to reports of criminal activity remain a matter of public concern indefinitely. Poulson RB, p. 33. Defendants' reliance on *Leiberman* for this proposition is misapplied. See *Leiberman*, 110 Cal.App.4th at 164 (citing *Briscoe v. Reader's Dig. Ass'n, Inc.* (1971) 4 Cal.3d 529, 536). *Briscoe* addresses a convicted individual whose arrest and conviction were in the public record (see *Briscoe*, 4 Cal.3d at 536), and thus *Leiberman* cannot be interpreted to mean every arrest, regardless of the outcome, is a matter of public interest.

Similarly, the cases Defendants rely on to make their argument are inapplicable to the facts at issue. While *Florida Star* discussed the newsworthiness of "the commission and investigation" of a violent crime, that logic does not apply two

years later to an arrest that did not lead to a charge or investigation, let alone a conviction. See Poulson RB, p. 33 citing *Florida Star,* 491 U.S. at 536-7. Accordingly, the Supreme Court's recognition of the news media's role in reporting "accurately the proceedings of government," specifically "to guarantee the fairness of trials" is not justification for deeming all police activity as a matter of public concern. See *Cox,* 420 U.S. at 492. Nor does *Cox* support an argument that publication of a two-year old sealed arrest that had been dismissed affects the fairness of a trial.

Moreover, by enacting Section 851.91, the Legislature articulated that arrests that do not lead to a conviction subject to sealing are not newsworthy. To hold otherwise would allow the press to permanently "unseal" what the law has deemed "not to have occurred" and illegal to disseminate.

iii. All Incidents of Reported Alleged Domestic Violence are Not Matters of Public Concern.

Defendants' continued and intentional ignorance of the law's grant of privacy to victims of domestic violence and the fact that the reporting originally contained damaging identifying information of the victim demonstrate that their argument is an obvious exploitation to argue that all incidents of reported domestic violence are a matter of public concern. Poulson RB, p. 34; Substack RB, p. 33, citing to *Sipple*, 71 Cal.App.4th at 238 and *Carney v. Santa Cruz Women Against Rape* (1990) 221 Cal.App.3d 1009, 1021. Neither *Sipple* nor *Carney* – nor any

other case – stands for this proposition. The *Sipple* decision turned on Sipple - a public figure in the discussion of domestic violence - being accused of domestic violence himself, *Sipple,* 71 Cal.App.4th at 239; and the *Carney* decision turned on the "content, form, and context" of a publication by the Santa Clara Women Against Rape. *Carney,* 221 Cal.App.3d at 1021. Defendants' speech was not an example of speech about "domestic violence incidents involving executives." Poulson RB, p. 35. Accordingly, it does not contribute to or further the discussion around women in tech or domestic violence.

In addition, Defendants' argument shows just how dangerous it is to allow access to records of arrest that did not lead to a conviction. Blackman was not convicted; all charges were dropped; he was never even charged with felony domestic violence; and as a matter of law, the arrest did not even occur. Yet, Defendants ask this Court to accept that their speech should be protected because it is evidence of prosecutors' "failure to pursue felony domestic violence convictions." Poulson RB, p. 35. By this argument, Poulson puts on display his obvious presupposition that Blackman was guilty and the prosecutors simply *failed* to prosecute. 1 AA0133 (arguing that the prosecutors failed to bring charges against Blackman even though it likely was a "meritorious case"); Exhibit E to Declaration of Victoria Noble (Defendants offering as evidence domestic violence statistics). There is no basis for an argument premised on such a reckless implication that ignores a

fundamental and constitutional principle of our criminal justice system – that a person is innocent until proven guilty.

Defendants also argue that the Sealed Report is newsworthy because there is public interest "in journalism about the status of women in the technology sector generally." Substack RB, p. 33. There is no evidence at all that this incident involved a woman in the technology sector and surely Poulson's blog did not concern women in technology. To the contrary, he used his blog to publish private identifying information about the woman in question and depicted her in an unflattering light. 2 AA0268-9 (Poulson did not initially redact the woman's identifying information from his post, published without her consent); 2 AA0288-90 (post implies the woman lied to the police when she told them that "nothing happened").

iv. The Sealed Report Does Not Cast Doubt on Blackman's "Trustworthiness" or "Character."

Defendants argue that their speech was newsworthy because it casts doubt on Blackman's "character" and "trustworthiness" in his profession. Poulson RB, p. 35; Substack RB, p. 31.[13] Defendants argue, without any support, that

[13] Substack claimed without any support that "Blackman's integrity and character were also a matter of widespread public interest and concern because of his role as Premise Data's CEO and his Top Secret security clearance." Substack RB, p. 31. The record does not support this statement. See 3 AA0563 (it is not contested that Blackman had "the lowest level available" of security clearance) It should go without saying that if Blackman's integrity and character were of "widespread public interest and

"[c]ommon sense dictates that events depicted in the Arrest Report are relevant to Blackman's integrity" and "cast doubt on his trustworthiness". Substack RB, p. 32. However, a sealed arrest report that did not lead to a conviction and was deemed not to have occurred must not cast doubt on the integrity or trustworthiness of an employee. Labor Code § 432.7. Defendants cannot claim a "public interest" in using a record for a purpose the Legislature has strictly forbidden. Moreover, Poulson's blog was not about Blackman's personal life, which had no connection to whether the U.S. military used certain data.

Defendants also try to cast Blackman as a military operative. Poulson RB, p. 36; Substack RB, p. 31. Defendants cite to a Fourth Circuit case that addressed allegations of defamation brought by the organization that interrogated prisoners at the Abu Ghraib prison against a talk radio host who blamed the plaintiffs for the abuses that took place at Abu Ghraib. *CACI Premier Technology, Inc. v. Rhodes* (4th Cir. 2008) 536 F.3d 280. Here, Poulson's blog posts are not critical of an individual responsible for military operation. More importantly, in *CACI*, the case centered around these comments about the military contractor's performance of its role as a military contractor. *Id.* This case bears no resemblance to those facts because the speech at issue is not related to any work by Blackman.

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concern" and the Sealed Report shed light on his integrity and character, then Poulson would not have been the only person to write about and disseminate the Sealed Report or the consequences of Poulson's blog on Blackman's employment at Premise Data.

v. Defendants' Speech Did Not Contribute to the Public Debate On Any of these Issues.

Defendants claim that the speech "directly contributed to the public discussion on the trustworthiness of military surveillance contractors, and their executives, and the need for greater transparency and oversight with respect to this industry." Poulson RB, p. 46, citing *Gilbert*, 147 Cal.App.4th at 23-4.[14] However, publishing the Sealed Report does not contribute to this discussion, and Defendants do not offer any basis to justify this conclusion.

Defendants do not explain how the Sealed Report "directly contributed to the public discussion on the trustworthiness of military surveillance contractors," identify any public discussion on the trustworthiness of the military surveillance contractors, or state how the Sealed Report affects the trustworthiness of Blackman. If Poulson asks this court to accept he was writing a blog in 2023 that exposed the U.S. military's use of data collection

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[14] Substack argues that *FilmOn.com*'s requirement that Defendants establish the existence of a "functional relationship between the speech and the public conversation" only applies to Section 425.16(e)(4). Substack RB p. 30., citing *FilmOn.com Inc. v. DoubleVerify, Inc.* (2019) 7 Cal.5th 133, 149-50. The *FilmOn* Court gives meaning to the "in connection with" requirement, which can be found in Sections 425.16(e)(3) and (4). *Id.* ("a statement is made 'in connection with' a public issue when it contributes to – that is 'partipat[es]' in or furthers – some public conversation on the issue"). Thus, while *FilmOn* focused on Subsection (e)(4), its statutory interpretation applies equally to Subsection (e)(3).

vendors, then two-year old events from Blackman's personal life, that had been sealed and deemed not to have occurred, have no nexus to this blog.

Defendants also do not explain how Sealed Report "directly contributed to the public discussion on … the need for greater transparency and oversight with respect to this industry." This statement refers to Poulson's blog posts where he "exposed" the public relationships between the U.S. military and data collection companies, such as Premise Data. 2 AA0265. But Defendants make no argument that disseminating the Sealed Report contributes to a discussion on which companies the U.S. military is doing business with. Accordingly, publicizing the Sealed Report cannot possibly be part of a discussion on transparency or oversight. Defendants feign interest in greater transparency, integrity, and trustworthiness while fabricating an outrageous scandal that Blackman failed to prevent the deaths of 19 Premise Data employees to characterize Blackman as "reckless" and "controversial" to justify its illegal dissemination of the Sealed Report. This explicit hypocrisy must be rejected.

d. Sections 851.91 and 851.92 Further a State Interest of the Highest Order.

Even if the Court applies the *Florida Star* rubric (which it should not) and decides that the Sealed Report was a matter of public significance (which it is not), Defendants still failed to meet their burden of establishing a First Amendment defense because the laws at issue here further a state interest of the

highest order. Defendants never argued that the statutes at issue do not further a state interest of the highest order.

California's legislative scheme designed to protect individuals who are arrested without being convicted is an interest of the highest order. Legislative safeguard of records of arrest that do not lead to conviction evidence that this is an interest of the highest order. See *Florida Star*, 491 U.S. at 542 (concurring, J. Scalia) (recognizing that where the State imposes the obligation on all of its citizens, not just the press, it evidences "an interest of the highest order"). Blackman addressed the compelling interest the State has in the privacy interests of individuals who were arrested without a conviction. See AOB pp. 52-4. As further evidence of the compelling interest California has in protecting the privacy of such arrest reports, California law exempts from disclosure pursuant to the CPRA reports on arrest that did not lead to a conviction and reports on arrest that are more than one year old. *See Kinney,* 77 Cal.App.5th at 178-81; Gov. Code § 7930.1110

e. Defendants Cannot Overcome the Assumption that Section 851.92(c) is Constitutional.

Defendants Tech Inquiry and Poulson argue that Section 851.92(c) is unconstitutional. Tech Inquiry RB, p. 58-61. Defendants cannot, however, overcome the assumption of constitutionality of this statute. See *Punsly v. Ho* (2001) 87 Cal.App.4th 1099, 1103–04 ("The beginning premise of any determination regarding the constitutionality of a statute is an

assumption of its validity. [W]e resolve all doubts in favor of its constitutionality, and we uphold it unless it is in clear and unquestionable conflict with the state or federal Constitutions.") (internal citations omitted).

Further, Defendants' argument fails for two reasons. First, Defendants' argument that this statute must withstand strict scrutiny is incorrect. Justice Bryer explained in his *Bartnicki* concurrence that strict scrutiny is not the appropriate standard to apply when "important competing constitutional interests are implicated." *Bartnicki*, 532 U.S. at 536 (concurring, J. Bryer) (referring to the competing interests of privacy and the First Amendment). Here, like in *Bartnicki*, Section 851.92(c) "help[s] to protect personal privacy," including the "right to be let alone." *Id.* The privacy interest furthered by Section 851.92(c) must be viewed in light of the recognition that an arrest, even without a conviction, stigmatizes the individual. See *People v. Hadim* (2022) 82 Cal.App.5th Supp. 39, 47-8. Arrests, which disproportionately target disenfranchised communities, undermine employment, housing, and credit opportunities, and, especially because of the internet, destroy an individual's life without any legal basis. California Bill Analysis, S.B. 393 Assemb., 7/11/2017. Accordingly, Section 851.92(c) should be analyzed under the intermediate scrutiny standard. No argument is made that Section 851.92(c) would not pass the intermediate scrutiny test.

Second, even if the strict scrutiny standard is applied, Section 851.92(c) is constitutional because it is narrowly tailored

to promote a compelling government interest. For the reasons discussed herein and in the AOB at pp. 52-4, the record establishes that the government has a compelling interest in stopping the spread of a court ordered sealed document that describes an arrest that did not lead to a conviction.

Section 851.92(c) is narrowly tailored because it requires a court order before it is triggered.[15] *See also Seattle Times*, 467 U.S. at 36 (recognizing court's power to seal documents). Further, because Section 851.92(c) is triggered by a court's sealing order, the statute's enforceability can be challenged by any third party under either Rule 2.551(h) or the "history and utility" test. *See Electronic Frontier Foundation, Inc. v. Superior Court* (2022) 83 Cal.App.5th 407, 422, (applying the history and utility test to a request to unseal documents that "courts must keep confidential by law"). In addition, it is necessary that Section 851.92(c) applies to all unauthorized persons to stop the spread of sealed reports of arrest that did not lead to conviction because all such documents were, prior to sealing, available to the public under the CPRA. Without such a prohibition, records of arrest could be instantly disseminated online, and there would be no mechanism to stop such dissemination even after the sealing order was effectuated,

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[15]Pursuant to Rule 2.550(d) "The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." Rule 2.550(d).

which would undermine the entire legislative scheme designed to protect privacy and diminish the damage and stigmatization caused by arrests. This statutory framework renders the statute narrowly tailored.

Defendants also suggest misleadingly that California Attorney General Rob Bonta and San Francisco City Attorney David Chiu "agree that Penal Code Section 851.92(c) should not be enforced". Tech inquiry RB, p. 60. The record before this Court establishes that San Francisco City Attorney Chiu has notified the Defendants that they are in violation of Section 851.92(c) and demanded Defendants comply with this law. 3 AA0569-70; 3 AA0597-605. Further, the parties' stipulation in the case pending in the Northern District of California, pursuant to which all rights and arguments were retained, is not evidence that Section 851.92(c) is unconstitutional. 1 AA0935-37. In addition, neither Mr. Bonta nor Mr. Chiu have the authority to override the California legislature and deem a statute unconstitutional. See Cal. Const., art. III § 3.5 (prohibiting an administrative agency from declaring a statute unconstitutional).

F. Defendants Blog Posts Were Not in Connection with an Issue Under Consideration or Review by Any Official Proceeding Authorized by Law.

Poulson also argues that Poulson's blog posts are considered protected speech under Section 425.16(e)(2) because they were statements "made in connection with an issue under consideration or review by a legislative, executive, or judicial body." Poulson RB, p. 42.

Sections 425.16(e)(2) contemplate an "ongoing—or, at the very least, immediately pending—official proceeding." *Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 627 (collecting cases denying application of 425.16(e)(2) when no official proceeding was pending at the time of the speech); *see also Paul v. Friedman* (2002) 95 Cal.App.4th 853, 866 (requiring statements or writings in question occur in connection with "an issue under consideration or review" in the proceeding for anti-SLAPP protection); *Maranatha Corr., LLC v. Dep't of Corr. & Rehab.* (2008) 158 Cal.App.4th 1075, 1085 (a matter is under consideration if it is before the mind, given attentive thought, reflection, meditation. . . under review if subject to an inspection, examination.) (internal citations omitted). Here, Defendants' disclosures – more than 20 months after the proceeding ended – was not made in connection with any judicial proceeding. Moreover, Poulson's blog posts were not statement made in connection with any issue under consideration or review.

Poulson cites to *Comstock v. Aber*, although that case is not on point. Poulson RB, p. 42. In *Comstock*, Comstock alleged that her employer and co-workers, including Aber, sexually harassed her. *Comstock v. Aber* (2012) 212 Cal.App.4th 931*v*. Aber brought cross claims for defamation and intentional infliction of emotional distress arising from Comstock's statements to the police, healthcare practitioner, and colleagues alleging that Aber sexually harassed her. *Id.* at 941. Here, Poulson's blog posts were not statements to the police or any other mandated reporter, and they did not take place while a proceeding was pending. They

occurred 20 months after the arrest, and months after the court issued its final order sealing the arrest.

II. Blackman Met His Burden of Establishing a Likelihood of Success on the Merits Because Defendants Did Not Meet Their Burden to Establish Their Two Affirmative Defenses.

Defendants argue that Blackman cannot show a probability of prevailing on any of his claims because of Defendants' First Amendment and Section 230 defenses.[16] Poulson RB, p. 54.

A. Blackman's Claims Do Not Fail on Their Merits.

As an initial matter, Poulson waived his arguments that Blackman's claims fail on their merits because Poulson did not raise these issues with the trial court. Analyzing each claim alleged requires a fact-based analysis, which the Court of Appeal should not engage in when the arguments were not made to the trial court.

Moreover, Blackman properly pled his claims. To the extent that Poulson is raising concerns about the pleadings, Blackman disagrees (as discussed below), but Blackman also would request the right to amend his pleadings if necessary.

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[16] All Defendants argued that all of Blackman's claims are barred by their First Amendment defense. Substack and Tech Inquiry also argued that all of Blackman's claims are barred by the Section 230 defense, and Poulson argued that Blackman's claims that are premised on Poulson posting the Incident Report and discussing the information contained within the report online are barred by the Section 230 defense.

Claims 1 (Negligence), 2 (Gross Negligence), and 10 (Negligent Infliction of Emotional Distress).

In California a "[v]iolation of a statute embodying a public policy is generally actionable even though no specific remedy is provided in the statute[17]; any injured member of the public for whose benefit the statute was enacted may bring an action." *Castillo v. Friedman* (App. Dep't Super Ct. 1987) 197 Cal.App.3d Supp. 6, 14, *citing* *Wetherton v. Growers Farm Labor Assn.* (1969) 275 Cal.App.2d 168, 174; *Czap v. Credit Bureau of Santa Clara Valley* (1970) 7 Cal.App.3d 1, 6; 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, § 7, pp. 2307–2308. In addition, violation of the law raises a presumption that the violator was negligent. *See* *Jacobs Farm/Del Cabo, Inc. v. W. Farm Serv., Inc.* (2010) 190 Cal.App.4th 1502, 1526. Accordingly, Plaintiff is likely to succeed on the merits of his claims, all of which arise from Defendants' ongoing unlawful conduct

Here, Blackman pled and met his burden of establishing at this phase of the case that Defendants' ongoing conduct violates the Sealing Order and sections of the Penal and Labor Codes. These violations caused Blackman's injury, as the Sealed Report had not been disseminated prior to Defendants' actions, and the injury resulted from the kind of occurrence these statutes were

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[17] That statutes provide for criminal penalties for violations does not preclude a private cause of action. *Castillo v. Friedman*, 197 Cal.App.3d Supp. at 15 *citing* *Montalvo v. Zamora* (1970) 7 Cal.App.3d 69, 76 ("[V]iolations of public policy statutes ... have been declared justiciable in civil actions. This is true notwithstanding that criminal sanctions are provided.").

designed to prevent. And Blackman was one of the class of persons the statutes were intended to protect.

Claims 3 (Intentional Interference with Prospective Economic Relations), 4 (Negligent Interference with Prospective Economic Relations); 5 (Intentional Interference with Contractual Relations).

Blackman pled each element of each of these torts. 1 AA0020-1 (intentional interference with prospective economic relations); 1 AA0022 (negligent interference with prospective economic relations); 1 AA0022-3 (intentional interference with contractual relations). Here, Blackman pled, and presented evidence, that Defendants, including Poulson, interfered with Blackman's various professional relationships and his employment contract by engaging in unlawful conduct. *Id.*; see also 4 AA0794.

Further, contrary to Poulson's contention (Poulson RB, p - 56-57), Blackman has pled the existence of a relationship with Poulson. "The key component in determining whether the relationship between plaintiff and defendant in such cases gives rise to a duty of care is the foreseeability of the harm suffered by the plaintiff. Foreseeability is generally measured by the closeness of the connection or nexus between the defendant's conduct and risk of injury to the plaintiff". *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 349. Here, Blackman pled that it was certain, and at least foreseeable, that Poulson's ongoing violation of the Sealing Order and the law by disseminating the Sealed Report, even after Blackman and the San Francisco City

Attorney instructed Poulson to stop this conduct, would cause Blackman harm. 1 AA0021; 1 AA0022; 1 AA0023.

Blackman also pled that that Defendants knew of the contract between Blackman and his employer (1 AA0023), and Defendants, through its illegal conduct, "intended to disrupt the performance of this contract or knew that disruption of the performance was certain or substantially likely to occur." *Id.*

Claim 9 (Intentional Infliction of Emotional Distress).

Contrary to Poulson's argument, Blackman pled that Defendants' conduct, including its unlawful conduct that violated a court order, the California Constitution and California public policy, "was outrageous and so extreme as to exceed all bounds of that usually tolerated in a civilized society." 1 AA0026. Accordingly, this Court should reject Poulson's argument that disseminating and refusing to stop disseminating the Sealed Report, even after being put on notice by Blackman and the San Franciso City Attorney that his conduct was criminal, was not extreme and outrageous. Moreover, it is not appropriate for summary judgment and, in any event, must be rejected based on this record.

Claims 7 (False Light) and 11 (Defamation).

Blackman pled that Defendants' defamation arises principally from two false statements: (i) Defendants stated that the arrest was deemed to have occurred, when, as an unequivocal matter of law, it was deemed not to have occurred; and (ii) Poulson's blog posts falsely imply that Plaintiff was guilty of having engaged in felony domestic violence when the charges

against him had already been dropped and sealed. 1 AA0027. A series of truthful facts that imply a defamatory connection between them can create a defamatory implication. *See* *Weller v. Am. Broad. Companies, Inc.* (1991) 232 Cal.App.3d 991, 1003-1004. The "pertinent question" is whether a "reasonable fact finder" could conclude that the statements "as a whole, or any of its parts, directly made or sufficiently implied a false assertion of defamatory fact that tended to injure" plaintiff's reputation. *James v. San Jose Mercury News, Inc.* (1993) 17 Cal.App.4th 1, 13; *see also* *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883 (speech is not truthful if "a reasonable trier of fact could conclude that the published statements imply a provably false factual assertion.") Where a speaker states "incomplete" facts, the statements may imply a false assertion of fact. *Id.* at 903. Further, where the speaker "implies a knowledge of facts which may lead to a defamatory conclusion," the implied facts may constitute defamation. *Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359. Here, Poulson's statements falsely imply that Plaintiff was guilty of having engaged in felony domestic violence, and state falsely that the arrest was deemed to have occurred. 3 AA0810; 3 AA0789. Here, Poulson's blog posts – by their context, tone, omissions, and juxtapositions – are both false and create the false implication that Plaintiff was or might be guilty of felony domestic violence. (Id.)

Plaintiff has also pled a false light claim. 1 AA0024-5. *See* *Price v. Operating Eng'rs Local Union No. 3* (2011) 195 Cal.App.4th 962, 970. Here, Plaintiff pled that Defendants knew

or acted with reckless disregard for the truth that the challenged speech would create a false impression by implying that Plaintiff was or might be guilty of having engaged in felony domestic violence.

Claim 6 (Public Disclosure of Private Facts).

Poulson's only argument was that the Sealed Report was newsworthy. For the reasons discussed herein, Blackman's arrest was not newsworthy.

Claim 8 (Intrusion).

Poulson argues that he did not intrude into a private place because the Sealed Report "was an unsealed record given to him by an anonymous source." Poulson RB, p. 41. This statement is categorically false. Judge Gold entered the Sealing Order on February 17, 2022, nearly 20 months before Poulson's initial receipt. Further, the record does not support a finding that Poulson received the report directly or indirectly through a CPRA request. There is a also a question of fact that must not be decided at this stage of the case whether Defendants knew of the Sealing Order before the initial receipt and dissemination. Accordingly, Blackman met his burden of pleading a claim for intrusion.

Claim 13 (Cal. Const., Art. I, Sec. 1).

Blackman pled each element of this claim. 1 AA0029. Poulson's argument is that he "merely received a copy of a newsworthy, public document from a source and reported on it." Poulson RB, p. 59. For reasons addressed herein, this is a false

and misleading presentation of the facts pled by Blackman and established through this record.

Claim 14 (Penal Code § 851.92).

There is no dispute that Poulson is actively disseminating the Sealed Report, which violates Section 851.92(c).

Claim 15 (Penal Code § 11143).

Poulson argues that this claim should be dismissed because he is a journalist and the Incident Report is not a state record. Poulson RB p. 59. These incorrect arguments were addressed herein.

B. Blackman's Claims Are Not Barred by California's Fair Report Privilege.

Tech Inquiry alone argues that Blackman's claims are barred by California's Fair Report Privilege. Tech Inquiry RB, p. 55. Tech Inquiry's reliance on Civ. Code § 47(d) as an absolute privilege to report about official proceedings is completely unfounded. The law makes clear that any communication to a public journal that breaches a court order or that violates a requirement of confidentiality that is imposed by law is not privileged. *See* Cal. Civ. Code § 47(d)(2)(B), (C). As the trial court has already found, there existed - at the time that Poulson wrote his blogs and disseminated the Sealed Report - a valid court order sealing the information and a requirement of confidentiality imposed by law. Defendants' dissemination of the Sealed Report and the information within it is a breach of that court order and the legally imposed confidentiality and thereby loses the fair

report privilege articulated in Cal. Civ. Code § 47(d)(1). Accordingly, Tech Inquiry's reliance on the privilege applying in the context of confidential proceedings is unavailing since none of those cases involve reporting that breaches a valid court order and confidentiality imposed by law. It is notable that none of the other Defendants – including Poulson, asserted this defense.

C. Defendants Cannot Establish Their Affirmative Defenses.

1. Defendants Have the Burden of Establishing Affirmative Defenses.

Prong 2 is described as a "summary-judgement-like procedure". *Callister v. James B. Church & Associates, P.C.* (2025) 108 Cal.App.5th 185, 193-4. Accordingly – and contrary to Defendants' arguments – while the plaintiff has the burden of establishing a minimal level of sufficiency and triability of the claim, *Lin v. City of Pleasanton* (2009) 175 Cal.App.4th 1143, 425, Defendants have the burden of establishing their affirmative defenses. See *Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 285 ("[T]he defendant has the initial burden to show that undisputed facts support each element of the affirmative defense.").

Poulson mistakenly relied on *Navellier v. Sletten* to argue that it is Blackman's burden to establish that Defendants did not assert an affirmative First Amendment defense. Poulson RB, p. 53. *Navellier* held that Defendants do not have the burden *in prong 1* to establish a First Amendment defense. *Navellier v.*

Sletten (2002) 29 Cal.4th 82, 94-5 ("The Legislature did not intend that in order to invoke the special motion to strike the defendant must first establish her actions are constitutionally protected under the First Amendment as a matter of law."). In this case, where Defendants argue that Blackman cannot show a likelihood of success on the merits because of their affirmative defenses to his claims, Defendants bear the burden of establishing these affirmative defenses.

Similarly, Substack mistakenly argues that Blackman has the burden of establishing that Section 230 does not apply. Substack RB, p. 53 FN 10. But for the same reasons that Poulson was wrong, so is Substack. A party seeking to prevail on summary judgement based on an affirmative defense has the burden of establishing that defense.

2. Defendants Have Not Established Their First Amendment Affirmative Defense.

For the reasons discussed herein and in the opening brief, Defendants have not established and cannot prevail on a First Amendment defense.

3. Defendants Have Not Established an Affirmative Defense Under Section 230.

a. Defendants Function as Information Content Providers Because They Were Responsible In Part for Developing the Illegal Content.

Defendants concede that they are not entitled to Section 230 immunity if they function as an "information content provider." Substack RB, p. 58; see also CDA § 230(a)(1) ("No provider or user of an interactive service shall be treated as the publisher or speaker of any information provided by another information content provider"). A person or entity functions as an "information content provider" if they are "responsible, in whole or in part, for the creation or development of information provided through the Internet". CDA § 230(f)(3). *See also* *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC* (9th Cir. 2008) 521 F.3d 1157, 1162 (holding a person or entity that makes "a material contribution to the unlawfulness" functions as information content provider). Here, Defendants' conduct materially contributed to publicizing the Sealed Report, which remains legally prohibited from being exposed publicly. The only case that has addressed this issue – whether publicizing information that was required to remain confidential constitutes a material contribution to the unlawfulness – decided that publicizing confidential information is a material contribution to the unlawful activity. *F.T.C. v. Accusearch Inc.* (10th Cir. 2009) 570 F.3d 1187, 1197–8. Defendants do not and cannot dispute

this, and Defendants cannot cite to any case in California or elsewhere that reached a different conclusion when faced with this same issue. Accordingly, Defendants do not qualify for protection under Section 230.

The facts before this Court are more compelling than those in *Accusearch*. In *Accusearch*, the FTC alleged that Accusearch engaged in an unfair practice because its trade in telephone records violated the Telecommunications Act of 1996, § 702, 47 U.S.C. § 222 (2006) ("Section 702"). *Id.* 1190. That statute limits what a telecommunications carrier that receives customer information is permitted do with that information. *Id.* Unlike the laws at issue here, Section 702 did not criminalize receipt, possession, and dissemination of the information; it only deemed the information confidential. California's legislative scheme creates far greater legal restrictions on the possession and dissemination of the Sealed Report than Section 702's confidentiality provision.

Defendants argue that their conduct did not constitute unlawful development because "exposing information to public view is precisely what publishers do". Substack RB, p. 59. Defendants' argument ignores that Blackman's claims arise from Defendants' ongoing, unlawful possession and dissemination of the Sealed Report. See Court Order; Penal Code §§ 851.91, 851.92, 11143, 11304; Labor Code § 432.7. Thus, contrary to Defendants' claim, they are not doing what publishers do. In fact, they are doing explicitly what the law prohibits them from doing.

Defendants' reliance on *Gonzalez v. Google LLC* (9th Cir. 2021) 2 F.4th 871, 892 (quoting *Roommates*, 521 F.3d at 1167–68) is misplaced. In that case, ISIS used YouTube to recruit terrorists. *Id.* *Gonzalez* addressed a claim that "Google makes a material contribution to the unlawfulness of ISIS content by pairing it with selected advertising and other videos because 'pairing' enhances user engagement with the underlying content." *Id.* at 893. *Gonzalez* held that Section 230 protects content recommendations if the platform uses the same neutral criteria for both harmful and non-harmful third-party content. *Id.* That case, however, did not address publicizing information that had been deemed private by court order and law.

Substack also argues that Blackman waived this argument. Substack RB, p. 58-9. Blackman has always contended that Defendants' ongoing unlawful conduct contributed to the unlawfulness that led to the claims. 1 AA0019, AA0020, AA0021, AA0022, AA0029; AA0030. Further, as discussed herein at footnote 4, *Bogacki* addressed waiver "when the new theory depends on controverted factual questions whose relevance thereto was not made to appear at trial." *Bogacki,* 5 Cal.3d at 780. Blackman did not raise any new facts, and Defendants are not prejudiced in any way by this argument that addresses the interpretation of Section 230.

b. Blackman's Claims Against Defendants Do Not Treat Defendants as a Publisher or Speaker.

Defendants argue that this Court should not look to *Henderson v. The Source for Public Data, L.P.* (4th Cir. 2022) 53 F.4th 110, 122 because its holding is at odds with holdings by the California Supreme Court. Substack RB, p. 56. In fact, the California Supreme Court has not rejected *Henderson*'s reasoning. *Henderson*'s reasoning relies principally on the Restatement of Torts. *See* Restatement (Second) of Torts §558(a), at 155 (Am. L. Inst. 1965).

Defendants point to a footnote in *Prager Univ. v. Google LLC* (2022) 85 Cal.App.5th 1022 to argue that *Henderson* is at odds with the California Supreme Court's holdings. The *Prager* footnote suggests that "Henderson's narrow interpretation of section 230(c)(1) is in tension with the California Supreme Court's broader view [citing *Barrett v. Rosenthal* (2006) 40 Cal.4th 33 and *Hassell v. Bird* (2018) 5 Cal.5th 522]." *Id.* at FN3. However, the holding in neither *Barrett* nor *Hassell* distinguishes the *Henderson* Court's interpretation of Section 230(a)(1).[18] All of

[18] Both *Barrett* and *Hassell* addressed claims that arose from traditional duties of a publisher. Those cases concerned straightforward allegations of defamation. *Barrett*, 40 Cal.4th at 33; *Hassell*, 5 Cal.5th at 522. Neither of those cases included claims that flowed from violations of a court order or criminal and civil statutory requirements. Accordingly, while the California Supreme Court has indicated that Section 230 provides broad protection, that Court has also held that Section 230 only applies to claims that treat the defendant as a publisher.

these cases – including others cited by Blackman (AOB, pp. 67-9) – recognize that "not all legal duties owed by Internet intermediaries necessarily treat them as the publishers of third party content, even when these obligations are in some way associated with their publication of this material." *Hassell*, 5 Cal.5th at 542-43. Accordingly, Defendants' effort to simplify Section 230 into a statute that protects a defendant from any claim that includes publication on the internet must be rejected.

Further, Defendants argue that Blackman's claims treat Defendants as "publishers" because the claims seek to hold Defendants "liable for publishing improper content." Substack RB, p. 57. But Defendants misstate the duty from which Blackman's claims arise. Blackman's claims arise from duties that flow from Defendants' ongoing violations of and refusal to comply with the Sealing Order and various statutes that prohibit Defendants' receipt, possession, and dissemination of the Sealed Report. These duties – which might have the incidental effect of prohibiting publication – are not comparable to the duty of a publisher, who has liability because of the content of their speech.

Further, other courts have recognized that Section 230 does not apply to a claim that Defendants knowingly received, possessed and distributed illegal "contraband." *Doe #1 v. MG Freesites, LTD* (N.D. Ala. 2022) 676 F.Supp.3d 1136, 1169. As that court explained, Section 230 contemplated immunity against "lawful information provided by another information content provider". *Id.*, citing 47 U.S.C. § 230(f)(3). That Court explained that Section's 230's prohibition on service provider's being treated

as "speakers of information" is not implicated when the speech "is not protected speech and conveys no legally cognizable information." *Id.* Applying the same reasoning to these facts, Section 230 is not implicated here because Defendants' speech is illegal.

c. Poulson Is Not Protected By Section 230.

First, Poulson claims that his own words and diagrams that he created in his multiple blog posts are protected by Section 230 because Poulson "did not materially contribute to the contents of the report". Poulson RB, p. 61, citing *Phan v. Pham* (2010) 182 Cal.App.4th 323, 326-8. Poulson cannot compare these facts to those in *Phan*. In that case, the plaintiff wrote a one sentence introduction that "invited" the reader to read the attachment. *Id.* at 326. The introduction did not include or characterize the allegedly offensive comments. Here, Poulson created at least five blog posts (each one is multiple pages), often in a fictionalized narrative form to create the perspective that he had first-hand knowledge of what occurred in a private residence two years prior and included pictures and diagrams. 2 AA 0288-97; 319-41. Poulson's argument that his multiple blog posts, which included false intimations and omitted or deemphasized key facts, plainly constitute "creation or development" of the content.

Further, Poulson offered no evidence, and did not even argue, that the Sealed Report was provided to him "for use on the internet". *See Batzel v. Smith* (9th Cir. 2003) 333 F.3d 1018,

1033. Accordingly, for this reason along with the other reasons discussed in the AOB and herein, Poulson is not protected by Section 230 when he disseminates the Sealed Report.

In addition, Tech Inquiry claims that Poulson's actions are not imputed on Tech Inquiry because there was no evidence that Poulson "control[led]" Tech Inquiry. Tech Inquiry RB, p. 55. However, the record includes evidence that Poulson "founded and runs" Tech Inquiry and is its Executive Director. 1 AA0267. Contrary to Tech Inquiry's statement, to "run" an organization means to "control" it.

CONCLUSION

For all the reasons stated herein, Blackman respectfully requests that this Court vacate and reverse the trial court's Order granting Defendants' special motion to strike Blackman's Complaint.

Dated: March 6, 2026

Respectfully submitted,

THE MAREK LAW FIRM, INC.

By: */s/David Marek*

David Marek

Attorney for Appellant
MAURY BLACKMAN

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 13,979 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*

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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 REPLY BRIEF

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.

Honorable Christine Van Aken
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VIA USPS MAIL: I enclosed said documents in a sealed envelope, with delivery fees paid and provided for, and addressed to the persons at the addresses listed above. I placed the package for collection and overnight delivery at an office or a regularly utilized drop box of USPS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I also declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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

/s/ David Marek
David Marek