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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
11/13/2024
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JOHN DOE, an individual,	)	CASE NO.: CGC-24-618681
)	
Plaintiff,	)	DEFENDANT SUBSTACK, INC.'S
	)	OPPOSITION TO PLAINTIFF'S
v.	)	APPLICATION FOR ORDER TO SHOW
	)	CAUSE AND TEMPORARY
SUBSTACK, INC., a Delaware corporation;	)	RESTRAINING
AMAZON WEB SERVICES, INC., a	)	ORDER
Delaware corporation; JACK POULSON, an)	
individual; TECH INQUIRY, INC., a	)	Date: November 13, 2024
Delaware corporation; DOES 1-25, inclusive,	)	Time: 11:00 AM
	)	Dept.: 302
Defendants.	)	Before: Hon. Richard B. Ulmer, Jr.
)	
	)	Action Filed: October 3, 2024
	)	Trial Date: None Set

INTRODUCTION

Defendant Substack, Inc. (“Substack”) opposes Plaintiff “John Doe’s”¹ ex parte application for a temporary restraining order (“TRO”). This case is about Plaintiff’s effort to force Substack, an online publishing platform, to take down a police report that Jack Poulson published in *September 2023*. Plaintiff has long been aware of Mr. Poulson’s blog and first complained about it to Substack in *November 2023*. Yet Plaintiff waited *over a year* after Mr. Poulson’s blog post to file the Complaint. He then waited *over a month* after suing to file this application for a TRO. This timeline of events proves that there is no emergency. The TRO—and any follow-on request for a preliminary injunction—should be denied on this basis alone.

The TRO also fails on the merits. Section 230 of the Communications Decency Act is a complete defense to all of Plaintiff’s claims. (47 U.S.C. § 230(c).) Substack’s decision not to take down information posted by Mr. Poulson, even if the post violated state criminal law, is immunized by Section 230 and, as explained in co-defendant AWS’s opposition, the First Amendment.

Finally, the balance of harms leans heavily against granting a TRO in this case. Plaintiff will suffer no harm if the TRO is denied—the status quo of over a year will be maintained. In contrast, Substack’s rights under the First Amendment will be harmed if the Court enters a TRO requiring Substack to take down the report.

For each of these reasons, Substack respectfully requests that the Court deny Plaintiff’s ex parte application for a TRO.

¹ Plaintiff improperly proceeds anonymously without having sought leave of Court. A complaint “shall include the names of all the parties.” (Code Civ. Proc., § 422.40.) A party may depart from this rule “only in the rarest of circumstances.” (*Dep’t of Fair Emp. & Hous. v. Superior Court* (2022) 82 Cal.App.5th 105, 112.) Any such departure requires that a “party who wants to proceed anonymously” follow a specified procedure: it must “file the initial complaint or petition *conditionally* under a pseudonym and then move for an order granting permission to proceed that way.” (*Id.* at p. 111, fn. 1.) If the motion is granted, “the initial pleading can remain,” but if denied, “the pleading must be amended to state the party’s true name.” (*Ibid.*) Plaintiff entirely ignored the required procedure and should therefore be deemed to have forfeited his right to proceed anonymously.

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1 **II. PLAINTIFF HAS NO LIKELIHOOD OF SUCCESS ON THE MERITS OF HIS**
2 **CLAIMS**

3 **A. Section 230 Bars All of Plaintiff's Claims Against Substack²**

4 Plaintiff has no chance of success in his claims against Substack, all of which are barred
5 by Section 230 of the Communications Decency Act. (See 47 U.S.C. § 230(c)(1).) Section 230
6 provides expansive immunity to interactive computer services like Substack against claims based
7 on enabling third parties to publish content online, such as Poulsen's blog and the arrest report
8 linked therein. (See *Hassell v. Bird* (2018) 5 Cal.5th 522, 535, 538 [explaining that Section 230
9 immunity is "broad" and "quite robust"]; *Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 39 [Section
10 230 has "been widely and consistently interpreted to confer broad immunity against defamation
11 liability for those who use the Internet to publish information that originated from another
12 source."]. Indeed, just months ago, a court dismissed a complaint based on a Substack blog post
13 after finding Substack was "an interactive computer service" entitled to Section 230 immunity.
14 (*Smith v. Substack, Inc.* (N.D.Cal., Aug. 12, 2024, No. 24-cv-727-AGT) 2024 WL 3757501, at
15 *2, *5 ["Substack did not create the content nor decide to post material unintended for
16 publication. Substack merely decided whether or not to withdraw the post from publication,
17 which is lawfully within the purview of a publisher."].)

18 Plaintiff's arguments to the contrary are largely incoherent. (See Pl.'s TRO Br. at 7-8.)
19 Section 230 immunity covers "any activity that can be boiled down to deciding whether to
20 exclude material that third parties seek to post online," such as Substack's decision not to take
21 down Mr. Poulson's material here. (*Fair Hous. Council of San Fernando Valley v.*
22 *Roommates.com, LLC* (9th Cir. 2008) 521 F.3d 1157, 1170-71 (en banc).) The totality of
23 Plaintiff's complaint is that Substack did not make a decision he likes with respect to Mr.
24 Poulson's blog, but Section 230 gives Substack the discretion to make that decision.

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27 ² In addition, given the robust protections the First Amendment grants to journalists who
28 publish truthful information of public concern, there is reason to believe that the publications at
issue here were not unlawful. (See *Bartnicki v. Vopper* (2001) 532 U.S. 514, 535.) For a more
complete explanation, Substack refers to co-defendant AWS's opposition.

Moreover, Section 230 immunity applies “even if a service provider knows that third parties are using such tools to create illegal content.” (*Goddard v. Google, Inc.* (N.D.Cal., Dec. 17, 2008, No. C 08-2738 JF(PVT)) 2008 WL 5245490, at *3.) In that case, “the service’s provider’s failure to intervene is immunized.” (*Ibid.*; see also *Coffee v. Google, LLC* (N.D.Cal., Feb. 10, 2021, No. 20-CV-03901-BLF) 2021 WL 493387, at *8 [same]; *Voicenet Commc’ns, Inc. v. Corbett* (E.D.Pa., Aug. 30, 2006, No. 04-1318) 2006 WL 2506318, at *3-4 [“the plain language of the CDA provides internet service providers immunity from inconsistent state criminal laws”].) Plaintiff’s argument that Section 230 does not apply because he accuses Substack of violating a criminal law cannot survive contact with this overwhelming case law.

Finally, Plaintiff’s argument that Section 230 does not protect Substack here because this case is about Substack’s “illegal conduct” is incorrect. The only accusation against Substack is that it refuses to take down content posted by Mr. Poulson. “[D]eciding whether to publish or to withdraw from publication third-party content” is “*publishing conduct*” squarely protected by Section 230. (*Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1102-05 [“[Section 230](c)(1) . . . shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties.”].)

III. THE BALANCE OF HARMS WEIGHS AGAINST A TRO

The burden rests with Plaintiff to make an affirmative factual showing of “irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte.” (Cal. Rules of Court, rule 3.1202(c).) Plaintiff does not come close to meeting this burden. Though his arrest record has been publicly available for over a year, Plaintiff’s declaration offers *no explanation* for why he waited so long to sue. (See John Doe Decl. ¶ 14.) Plaintiff’s long delay before seeking injunctive relief “implies a lack of urgency and irreparable harm.” (*Oakland Trib., Inc. v. Chron. Publ’g Co.* (9th Cir. 1985) 762 F.2d 1374, 1377; accord *Garcia v. Google, Inc.* (9th Cir. 2015) 786 F.3d 733, 746 [affirming denial of preliminary injunction where plaintiff waited for months].)

Nor has Plaintiff established any immediate harm that flows from the continued presence of the police report in Mr. Poulson’s blog. He declares that, over the past month since he filed

1 suit, his case has garnered attention on X (formerly known as Twitter) and in the *San Francisco*
2 *Chronicle*, which have caused the police report to “spread to a much wider audience.” (John
3 Doe Decl. ¶ 13.) None of that is harm caused by Substack. Plaintiff has no one but himself to
4 blame for creating this supposed emergency and making his problem worse by filing this lawsuit.
5 (See *Davenport v. Blue Cross of Cal.* (1997) 52 Cal.App.4th 435, 455 “[P]laintiff cannot create
6 a justification for emergency relief by sitting on her rights until she creates an emergency
7 situation.”].) This case illustrates the so-called Streisand effect—i.e., “that efforts to suppress
8 information sometimes ha[ve] the opposite effect.” (*Cross-Fit, Inc. v. Nat’l Strength &*
9 *Conditioning Ass’n* (S.D.Cal., July 18, 2018, No. 14cv1191-JLS(KSC)) 2018 WL 3491854, at
10 *10.) A TRO should not issue against Substack based on an alleged injury caused by Plaintiff’s
11 own conduct.

12 Moreover, the additional media attention with respect to the police report caused by
13 Plaintiff shows that a TRO in this situation would be totally ineffectual. Even if the Court were
14 to enter a TRO that banished Mr. Poulson’s article from Substack, the same information is
15 widely available from a variety of sources who are not party to this litigation. This too counsels
16 against upsetting the status quo. In short, a TRO would do nothing to alleviate any alleged injury
17 to Plaintiff.

18 In contrast, a TRO would cause irreparable harm to Substack. Irreparable injury is
19 presumed where First Amendment rights are threatened. It is axiomatic that “[t]he loss of First
20 Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable
21 injury.” (*Elrod v. Burns* (1976) 427 U.S. 347, 373; accord *Smith v. Novato Unified Sch. Dist.*
22 (2007) 150 Cal.App.4th 1439, 1465.) Plaintiff’s claims—which seek to suppress an article
23 regarding an arrest record that Mr. Poulson published on Substack over a year ago—squarely
24 implicate Substack’s First Amendment rights. (See, e.g., *The Fla. Star v. B.J.F.* (1989) 491 U.S.
25 524, 524, 541 [“If a newspaper lawfully obtains truthful information about a matter of public
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1 significance then state officials may not constitutionally punish publication of the information,
2 absent a need to further a state interest of the highest order.”].)³

3 **CONCLUSION**

4 For the foregoing reasons, Substack respectfully requests that this Court deny Plaintiff’s
5 motion for a temporary restraining order.

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7 Dated: November 12, 2024

WILSON SONSINI GOODRICH & ROSATI
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9 By: /s/ Josh A. Baskin
Josh A. Baskin
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11 Attorney for Defendant
Substack, Inc.

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26 ³ Mr. Poulson concurrently files a declaration stating that he did not receive the arrest report
27 illegally. Regardless, Plaintiff does nowhere suggest that Substack took any unlawful steps to
28 obtain the report. (See *Bartnicki v. Vopper* (2001) 532 U.S. 514, 535 [holding news
organizations not liable for intentionally publishing recordings that were the product of unlawful
eavesdropping by a third party; “a stranger’s illegal conduct does not suffice to remove the First
Amendment shield from speech about a matter of public concern”].)

1 **PROOF OF SERVICE**

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3 I, Regina C. Glynn, declare:

4 I am employed in San Francisco County, State of California. I am over the age of 18

5 years and not a party to the within action. My business address is Wilson Sonsini Goodrich &

6 Rosati, 1 Market Plaza Spear Tower, Suite 3300, San Francisco, California 94105.

7 On this date, I served:

8 **DEFENDANT SUBSTACK, INC.'S OPPOSITION TO PLAINTIFF'S**

9 **APPLICATION FOR ORDER TO SHOW CAUSE AND TEMPORARY**

10 **RESTRAINING ORDER**

11 ☒ By forwarding the document(s) by electronic transmission on this date to the

12 Internet email address(es) listed below:

13 The Marek Law Firm, Inc.
14 David Marek
15 Ami Sanghvi
16 228 Hamilton Avenue
17 Palo Alto, CA 94301
18 Email: david@marekfirm.com
19 ami@marekfirm.com

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20 Attorney for Plaintiff John Doe

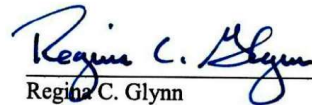
21 I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and

22 processing of documents for delivery according to instructions indicated above. In the ordinary

23 course of business, documents would be handled accordingly.

24 I declare under penalty of perjury under the laws of the State of California that the

25 foregoing is true and correct. Executed at Alameda, California on November 13, 2024.

26 
27 Regina C. Glynn