

1 THE MAREK LAW FIRM, INC.
2 DAVID MAREK (CA Bar No. 290686)
3 David@marekfirm.com
4 AMI SANGHVI (CA Bar No. 331801)
5 ami@marekfirm.com
6 228 Hamilton Avenue
7 Palo Alto, CA 94301
8 Phone: (650) 460-7148

9 BERMAN NORTH LLP
10 Stacy Y. North (CA Bar No. 219034)
11 stacy@bermannorth.com
12 2001 Van Ness, Suite 300
13 San Francisco, CA 94109
14 Phone: (650) 843-1988

15 *Attorneys for Plaintiff John Doe*

16 **SUPERIOR COURT OF STATE OF CALIFORNIA**
17 **COUNTY OF SAN FRANCISCO**
18 **UNLIMITED JURISDICTION**

19 JOHN DOE, an individual,

20 *Plaintiff,*

21 v.

22 SUBSTACK, INC., a Delaware
23 Corporation; JACK POULSON, an
24 individual; TECH INQUIRY; AMAZON
25 WEB SERVICES, INC., a corporation;
26 DOES 1-25, inclusive

27 *Defendants.*

Case No.: CGC-24-618681

**PLAINTIFF'S NOTICE OF MOTION
SEEKING PERMISSION FOR PLAINTIFF
TO PROCEED UNDER A FICTITIOUS
NAME;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT;**

**DECLARATION OF DAVID MAREK IN
SUPPORT OF MOTION**

Hearing Date: December 12, 2024
Time: 9:30 a.m.
Department: 302
Judge: Hon. Richard B. Ulmer, Jr.

Complaint Conditionally Filed: October 3, 2024

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
11/14/2024
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

**PLAINTIFF JOHN DOE’S NOTICE OF MOTION TO
PROCEED UNDER A FICTITIOUS NAME**

TO THE COURT, DEFENDANTS, AND ITS ATTORNEYS:

PLEASE TAKE NOTICE that on December 12, 2024, at 9:30 a.m., or as soon thereafter as the matter may be heard by The Hon. Richard B. Ulmer, Jr. in Department 302 of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102, Plaintiff John Doe (Plaintiff) will move this Court seeking permission to proceed in this Court under the fictitious name of “John Doe”. This request is based on this motion, the conditionally filed Complaint, filed on October 3, 2024, the Memorandum of Points and Authorities and the Declaration of David Marek in Support of the Motion dated November 14, 2024.

Dated: November 14, 2024

Respectfully Submitted,
THE MAREK LAW FIRM, INC.

BY: David Marek
David Marek
Attorney for Plaintiff

//

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

2 **I. INTRODUCTION**

3 Plaintiff moves this Court for permission to proceed under a fictitious name. Plaintiff, who
4 has already suffered severe emotional distress and monetary harm as a result of Defendants’
5 conduct brought this suit to address breaches of privacy relating to matters of a highly sensitive and
6 personal nature. *See Doe v. Sup.Ct. (Luster)* (2011) 194 Cal.App.4th 750, 754. Despite the
7 importance of the public’s right of access to court records, Plaintiff nonetheless seeks this
8 permission because of exceptional circumstances that justify protecting plaintiff’s true identity. *See*
9 *Cal. R. Ct. 2.550(c)*; *see also Doe v. Lincoln Unified School Dist.* (2010) 188 Cal.App.4th 758, 767.
10 Here, Plaintiff’s injury was caused by the unauthorized receipt, possession, and disclosure of a
11 sealed arrest record and other personal identifying information, such as Plaintiff’s picture and home
12 address. Plaintiff should be permitted to litigate this matter to protect his rights pursuant to a Court
13 order and California statutes without being forced to further erode his privacy rights. The
14 disclosure of Plaintiff’s true identity in the Complaint will result in a continuation of that very harm
15 Plaintiff is seeking to address. Here, Plaintiff can establish (1) that the overriding interest of
16 privacy will be prejudiced without use of a pseudonym; (2) it is not feasible to protect the interest
17 with less impact on the constitutional right of access; and (3) there will be no prejudice to the
18 Defendant or the public.

19 **II. FACTS**

20 Plaintiff conditionally filed this Complaint as a John Doe to protect his privacy, as this
21 matter deals with the ongoing unauthorized dissemination of a sealed arrest record (the “sealed
22 Incident Report”), its contents, and other personal identifying information, including Plaintiff’s
23 picture and home address. The Incident Report, which arose from an incident in December 2021,
24 was sealed pursuant to California Penal Code section 851.91 by an order entered by San
25 Francisco Superior Court Judge Carolyn Gold dated February 17, 2022 (the “Sealing Order”).
26 According to Section 851.91(e) and the Sealing Order, the arrest was “deemed not to have
27 occurred,” and Plaintiff was to answer “no” if asked if he had been arrested. After the Complaint
28 was filed on October 3, 2024, Poulson appears to have been involved in publicizing Plaintiff’s

1 actual identity. An article in the San Francisco Chronicle dated October 29, 2024, titled “Tech exec
2 sues journalist for \$25M for publishing his sealed arrest report,” which identified Plaintiff’s actual
3 name and connected him to the incidents described in the sealed arrest report, relied on information
4 that Plaintiff had only provided to Poulson, evidencing Poulson’s involvement in this article. The
5 California Supreme Court has held that an arrestee has a “legitimate concern to protect himself
6 from improper use of his record.” *Loder v Municipal Court* (1976) 17 Cal.3d 859, 868. The *Loder*
7 Court recognized that California has addressed this legitimate concern “by significant legislative
8 and executive action” designed to negate the adverse effects on an individual’s life of the improper
9 use of an arrest record. *Id.* Thus, the continued dissemination of the sealed Incident Report, its
10 contents, and Plaintiff’s personal identifying information is a violation of Plaintiff’s privacy. *See*
11 Cal. Const. Article 1, §1 (enumerating the “inalienable rights” of all Californians); *see also Hill v.*
12 *National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 15 (finding that California’s Constitutional
13 right to privacy applies to nongovernmental entities). Defendants’ conduct is also in direct
14 violation of California Penal Code section 851.92(c), which provides: “[u]nless specifically
15 authorized by this section, a person or entity, other than a criminal justice agency or the person
16 whose arrest was sealed, who disseminates information relating to a sealed arrest is subject to a
17 civil penalty of not less than five hundred dollars (\$500) and not more than two thousand five
18 hundred dollars (\$2,500) per violation. The civil penalty may be enforced by a city attorney,
19 district attorney, or the Attorney General. This subdivision does not limit any existing private right
20 of action. A civil penalty imposed under this section shall be cumulative to civil remedies or
21 penalties imposed under any other law.” Similarly, according to California Penal Code section
22 11143, “[a]ny person ... who, knowing he is not authorized by law to receive a record or
23 information obtained from a record, knowingly buys, receives, or possesses the record or
24 information is guilty of a misdemeanor,” and California Labor Code section 432.7(g)(3) states that,
25 “a person who is not authorized by law to receive or possess criminal or juvenile justice records
26 information maintained by a local law enforcement criminal or juvenile justice agency, pertaining
27 to an arrest or other proceeding that did not result in a conviction ... shall not knowingly receive or
28 possess that information.” Plaintiff alleges that the Defendants named in this action have

1 nonetheless received, possessed, and disseminated the sealed Incident Report, its contents, and
2 other personal identifying information causing Plaintiff severe harm.

3 **III. ARGUMENT**

4 **A. Legal Standard**

5 California courts recognize the judicial use of “Doe plaintiffs” to protect legitimate privacy
6 rights, particularly in light of disclosures on the internet. *See Starbucks Corp. v. Superior Court*
7 (2008) 168 Cal.App.4th 1436 (even in the absence of a statute that specifically allows for keeping
8 certain parties’ identities confidential, anonymity for parties may be granted when necessary to
9 preserve an important privacy interest). In *Starbucks*, the court recognized the appropriateness of
10 using a pseudonym like “John Doe” “to protect person convicted of minor marijuana offenses from
11 being further stigmatized.” *Id.* This case falls squarely in the realm of seeking to protect Plaintiff’s
12 legitimate privacy interest that has been exploited on the internet. California courts require “[a]
13 party’s request for anonymity should be granted only if the court finds that an overriding interest
14 will likely be prejudiced without use of a pseudonym, and that it is not feasible to protect the
15 interest with less impact on the constitutional right of access.” *Department of Fair Employment &*
16 *Housing v. Sup.Ct. (Cisco Systems, Inc.)* (2022) 82 Cal.App.5th 105, 111-112 (internal quotes and
17 footnote omitted). Courts often rely on federal court decisions to grant permission to proceed under
18 a fictitious name. *See Doe v. Lincoln Unified Sch. Dist.* (2010) 188 Cal.App.4th 758, 765 *citing*
19 *Does I thru XXIII v. Advanced Textile Corp.* (9th Cir.2000) 214 F.3d 1058, 1067 (noting federal
20 courts “have permitted plaintiffs to use pseudonyms in three situations: (1) when identification
21 creates a risk of retaliatory physical or mental harm [citations]; (2) when anonymity is necessary ‘to
22 preserve privacy in a matter of sensitive and highly personal nature,’ [citations]; and (3) when the
23 anonymous party is ‘compelled to admit [his or her] intention to engage in illegal conduct, thereby
24 risking criminal prosecution,’ [citations].”) Where one of those circumstances exists, a plaintiff
25 must demonstrate an overriding interest to proceed anonymously. *Id.*; *see also Doe v. Lincoln*
26 *Unified Sch. Dist.*, 188 Cal.App.4th at 767; *Jane Roes 1-2 v. SFBSC Mgmt., LLC* (N.D. Cal. 2015)
27 77 F. Supp. 3d 990, 994 (granting need for anonymity for dancers in a nightclub on grounds that
28 this district “has thus considered ‘social stigmatization’ among the “most compelling” reasons for

1 permitting anonymity.”).

2 Here, Plaintiff can demonstrate his special circumstances. The Sealing Order and Penal
3 Code section 851.91 expressly created a privacy right for Plaintiff that was so compelling
4 California law deems the arrest not to have occurred. Thus, Plaintiff’s need for anonymity
5 outweighs prejudice to the opposing party and the public’s interest in knowing the party’s identity.
6 Moreover, the social stigmatization associated with an arrest record, is the precise impetus for some
7 of the laws protecting those individuals able to meet the sealing requirements.

8 **B. Plaintiff’s Identification Creates a Risk of Retaliatory Harm.**

9 The risk of a plaintiff suffering retaliatory harm can justify granting a party anonymity. *See*
10 *Dep’t of Fair Emp. & Hous. v. Superior Ct. of Santa Clara Cnty.* (2022) 82 Cal.App.5th 105, 112
11 (granting a real party in interest the ability to proceed anonymously to avoid potential retaliatory
12 harm to his family in India). Here, Plaintiff has already been targeted by Defendants in their efforts
13 to publicize and disseminate facts that have been explicitly sealed by the Sealing Order and
14 pursuant to Penal Code section 851.91. Requiring Plaintiff to use his true identity in a legal
15 proceeding that will continue to draw attention to the fact that he was arrested and the record sealed
16 only opens him up to further attention on facts that should be – and in fact were – sealed from the
17 public’s record. This would eviscerate any benefit Plaintiff would enjoy if successful in enjoining
18 Defendants from continuing to publish his sealed Incident Report and further the damage that
19 Plaintiff seeks to address.

20 Where pseudonyms are used to shield the anonymous party from retaliation, the court
21 evaluates the following factors: “(1) the severity of the threatened harm [citation]; (2) the
22 reasonableness of the anonymous party’s fears, [citation]; and (3) the anonymous party’s
23 vulnerability to such retaliation [citations].” *Advanced Textile Corp.*, 214 F.3d at 1068–69. Here,
24 the publication of the sealed Incident Report has already resulted in Plaintiff’s loss of employment;
25 tarnished his reputation amongst his friends, family and business associates; caused severe
26 emotional distress; rendered Plaintiff unable to find subsequent employment, resulting in significant
27 lost employment compensation and benefits. (Compl. at ¶49). Moreover, Plaintiff’s fear of
28 retaliation is reasonable given the multiple requests to Defendants that have been ignored to cease

1 dissemination of the sealed Incident Report and evidence that Poulson has been involved in
2 publicizing Plaintiff's actual name since the Complaint was filed. (Compl. at ¶¶33, 34, 36, 37, 38,
3 41). Finally, Plaintiff is very vulnerable to retaliation because the Defendants have proven to be
4 unwavering in their position that they can act in direct violation of California law and public policy
5 by disseminating a clearly sealed Incident Report, and even refusing to remove Plaintiff's picture
6 and home address from the posts. Plaintiff's fear of retaliatory actions are reasonable in light of the
7 facts that have occurred to date. Anonymity in this proceeding could avoid the harm that would
8 result from such retaliation.

9 **C. Anonymity is necessary to preserve Plaintiff's privacy of matters sensitive and**
10 **highly personal**

11 Plaintiff successfully obtained a court order sealing the Incident Report that details the arrest
12 and the circumstances that gave rise to the arrest. (Compl. ¶19) This decision was made by Judge
13 Gold pursuant to California law. Those circumstances are therefore inherently private matters that
14 involve sensitive facts of a highly personal nature. Plaintiff, if successful in enjoining the
15 dissemination of that information, will only subject himself to further disclosure of these matters if
16 he is required to reveal his identity through this litigation. Allowing Plaintiff to proceed
17 anonymously allows Plaintiff to preserve privacy of matters that are sensitive and highly personal.

18 **D. Defendant Will Not Be Prejudiced.**

19 When the identity of the Plaintiff seeking to proceed anonymously is known to the
20 Defendants, no prejudice exists. *See Dep't of Fair Emp. & Hous. v. Superior Ct. of Santa Clara*
21 *Cnty.* (2022) 82 Cal.App.5th 105, 110 ("Since the [Plaintiff's] identity is known to the defendant,
22 proceeding anonymously would not similarly intrude on the defendant's rights.") Here, Defendants
23 can ascertain Plaintiff's identity from the Complaint, which pleads facts related to the publication
24 Defendants engaged in.

25 Moreover, allowing Plaintiff to proceed under a fictitious name will have no effect on
26 Defendants' ability to mount a defense to Plaintiff's claims. *Cf. Advanced Textile*, 214 F.3d at 1072
27 (noting that defendants might be prejudiced at later stage of litigation by inability to refute
28 individualized allegations by anonymous plaintiffs); *see also Publius v. Boyer-Vine* (E.D. Cal.

1 2017) 321 F.R.D. 358, 365 (finding defendant did not demonstrate that defense of the case required
2 disclosing Plaintiff's identity to nonparties to this suit). Defendants will not be prejudiced at any
3 stage of the litigation because the accusations of wrongdoing are not filed by an unidentifiable
4 individual. Rather, Defendants are very aware of the identity of the Plaintiff and the underlying
5 case is a dispute over the application of the law prohibiting the dissemination of sealed documents
6 as it applies to Defendants. Defendant suffers no prejudice in allowing Plaintiff to proceed under a
7 fictitious name.

8 **E. The Public Interest Will Be Satisfied Without Disclosure of Plaintiff's Name**

9 Weighing the public interest factor in *Advanced Textile*, the Ninth Circuit held that "[t]he
10 public's interest in this case can be satisfied without revealing the plaintiffs' identities." 214 F.3d
11 at 1069. The same is true here. Disclosure of the facts and circumstances in the sealed Incident
12 Report are not at all relevant to the Court's adjudication of Plaintiff's claims. Thus, there is no
13 legitimate public interest in connecting Plaintiff's identity with the facts herein. Moreover, a court
14 has already determined that there is no public interest that is served by disclosing Plaintiff's arrest
15 and the circumstances giving rise to it by virtue of the court order sealing the record. (*See* Compl.
16 at ¶19) The court found that Plaintiff was eligible for the sealing relief he requested and as a result
17 found "the record of [Plaintiff's] arrest ... shall be sealed under provisions of section 851.91 [of the
18 California Penal Code] and the arrest deemed not to have occurred." (*See id.*) Accordingly, the
19 public's interest can be satisfied by knowledge of how the court applies the law prohibiting the
20 dissemination of sealed records but does not require disclosure of the Plaintiff's identity. *See e.g.*,
21 *Doe v. Stegall* (5th Cir. 1981) 653 F.2d 180, 185 ("[p]arty anonymity does not obstruct the public's
22 view of the issues joined or the court's performance in resolving them. The assurance of fairness
23 preserved by public presence at a trial is not lost when one party's cause is pursued under a
24 fictitious name."). Requiring Plaintiff to proceed under his true name would needlessly expose him
25 to casual public viewing of his extremely personal information that is subject to a sealing Order.

26 Indeed, the public interest will be better served by allowing Plaintiff to proceed
27 anonymously than by requiring him to choose between pursuing his claims against Defendants and
28 forfeiting his privacy or disclosing that which he was able to protect.

1 **IV. CONCLUSION**

2 Because overriding interests justify anonymity, Plaintiff respectfully requests that his
3 motion to file his Complaint under a fictitious name be granted.

4 Dated: November 14, 2024

Respectfully Submitted,

5 THE MAREK LAW FIRM, INC.

6
7 BY: David Marek
8 David Marek
9 *Attorney for Plaintiff*

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EXHIBIT 1

THE MAREK LAW FIRM, INC.
DAVID MAREK (CA Bar No. 290686)
David@marekfirm.com
AMI SANGHVI (CA Bar No. 331801)
ami@marekfirm.com
228 Hamilton Avenue
Palo Alto, CA 94301
(650) 460-7148

BERMAN NORTH LLP
Stacy Y. North (CA Bar No. 219034)
stacy@bermannorth.com
2001 Van Ness, Suite 300
San Francisco, CA 94109
(650) 463-9158

Attorneys for Plaintiff John Doe

**SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
CIVIL UNLIMITED JURISDICTION**

CGC-24-618681

JOHN DOE, an individual,

Plaintiff,

v.

SUBSTACK, INC., a Delaware
Corporation; AMAZON WEB SERVICES,
INC., a Delaware corporation; JACK
POULSON, an individual; TECH
INQUIRY, INC., a Delaware corporation;
DOES 1-25, inclusive,

Defendants.

Case No.:

**PLAINTIFF'S COMPLAINT FOR DAMAGES
FOR:**

1. Negligence
2. Gross Negligence
3. Intentional Interference with Prospective Economic Relations
4. Negligent Interference with Prospective Economic Relations
5. Intentional Interference with Contractual Relations
6. Public Disclosure of Private Facts
7. False Light
8. Intrusion into Private Affairs
9. Intentional Infliction of Emotional Distress
10. Negligent Infliction of Emotional Distress
11. Defamation
12. Violation of Business & Professions Code Section 17200
13. Violation of California Constitution, Section 1
14. Violation of California Penal Code Section 851.92
15. Violation of California Penal Code Section 11143

Request for Punitive Damages

DEMAND FOR JURY TRIAL

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

10/03/2024
Clerk of the Court
BY: AUSTIN LAM

Deputy Clerk

1 PLAINTIFF JOHN DOE (“PLAINTIFF”) complains against DEFENDANTS SUBSTACK,
2 INC. (“SUBSTACK”), AMAZON WEB SERVICES, INC. (“AWS”), JACK POULSON
3 (“POULSON”), TECH INQUIRY, INC. (“TECH INQUIRY”), and DOES 1-25 hereby alleges as
4 follows:

5 **PARTIES**

6 1. PLAINTIFF is an individual and a resident of San Francisco, California. PLAINTIFF
7 files this Complaint as a John Doe to protect his privacy, as this matter deals with the ongoing
8 unauthorized dissemination of a sealed . As a result of the sensitive nature of the facts,
9 PLAINTIFF’S full identity has been concealed from public court filings in order to prevent those not
10 directly involved in this action from learning PLAINTIFF’S identity and making PLAINTIFF’S
11 identity public. In addition, PLAINTIFF refers to his employer, of which he was the Chief Executive
12 Officer and member of the Board of Directors, during the relevant time period as “PLAINTIFF’S
13 EMPLOYER” in an effort to protect PLAINTIFF’S privacy.

14 2. SUBSTACK is a global corporation organized under Delaware law with its
15 headquarters in San Francisco, California.

16 3. AWS is a global corporation organized under Delaware law with its headquarters in
17 Seattle, Washington.

18 4. POULSON is an individual and an independent journalist and Executive Director of
19 DEFENDANT TECH INQUIRY. POULSON has lived and worked in California and is essentially
20 made at home in California. In addition, POULSON has purposefully directed his activities at
21 residents of the forum, including PLAINTIFF and by using SUBSTACK, and this litigation results
22 from alleged injuries that “arise out of or relate to” those activities.”

23 5. TECH INQUIRY is a Delaware corporation. It holds itself out as a nonprofit company
24 of which POULSON is the Executive Director. Based on information on its website, Tech Inquiry is
25 essentially at home in California. According to its website, Tech Inquiry touts that “on a daily basis”
26 it does work “from the US (including California state)”. In addition, TECH INQUIRY has
27 purposefully directed its activities at residents of the forum, including PLAINTIFF, and this litigation
28 results from alleged injuries that “arise out of or relate to” those activities.”

1 6. PLAINTIFF does not know the true names and capacities of DEFENDANTS sued
2 herein as Does 1-25, and therefore sue these DEFENDANTS by fictitious names. PLAINTIFF will
3 amend this Complaint to state the true names and capacities when ascertained. PLAINTIFF is
4 informed and believes and thereon alleges that each of the fictitiously-named DEFENDANTS is
5 responsible in some manner for the occurrences alleged herein, and thereby proximately caused
6 Plaintiff's injuries and damages alleged herein.

7 7. At all times herein mentioned, the acts and omissions of various DEFENDANTS, and
8 each of them (including the DOES), concurred and contributed to the various acts and omissions of
9 each and all of the other DEFENDANTS in proximately causing the injuries and damages as herein
10 alleged.

11 **JURISDICTION AND VENUE**

12 8. PLAINTIFF brings this action pursuant to California law cited with particularity
13 below.

14 9. The amount in controversy as to each Cause of Action set forth below following the
15 factual allegations exceeds the minimum jurisdictional threshold of this Court.

16 10. Jurisdiction is proper pursuant to California Code of Civil Procedure § 410.10.

17 11. This Court has personal jurisdiction over each DEFENDANT because each
18 DEFENDANT had sufficient contacts with California. In addition, each DEFENDANT intentionally
19 availed itself or himself of the benefits of California by publishing and disseminating the statements
20 described herein; the controversy is related to the DEFENDANTS' contacts with California; and
21 asserting personal jurisdiction would be fair and substantial.

22 12. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395A
23 because the injuries described herein occurred in the County of San Francisco.

24 **STATEMENT OF FACTS**

25 13. PLAINTIFF is not a public figure.

26 14. On or about September 14, 2023, DEFENDANT POULSON, as an individual and in
27 his capacity as the Executive Director and Board member of TECH INQUIRY, through the
28 SUBSTACK and AWS platforms, first published a sealed arrest report (the "sealed Incident Report")

1 and information related to the sealed Incident Report relating to PLAINTIFF.

2 15. Upon information and belief, POULSON knew or should have known at all times that
3 the report had been sealed and that he was not authorized to disseminate it.

4 16. From September 14, 2023 through the present, DEFENDANTS have knowingly
5 possessed the sealed Incident Report and information related to the sealed Incident Report.

6 17. The issues contained in the sealed Incident Report do not concern matters of public
7 significance. The issues are personal in nature and concern only private individuals' private lives.
8 The issues do not relate to PLAINTIFF'S employment.

9 18. The sealed Incident Report published by DEFENDANTS included a unique
10 watermark identifier: "Retrieved by A07034 on 5/17/22 at 10:37:33 AM."

11 19. The sealed Incident Report was sealed by a court order entered three months earlier by
12 the Honorable Carolyn Gold dated February 17, 2022 (the "Court Order").

13 20. According to the Court Order, "the arrest [was] deemed not to have occurred."
14 Accordingly, any statement that the arrest did occur is, by operation of law, not truthful.

15 21. According to California Penal Code section 851.92(c), "Unless specifically authorized
16 by this section, a person or entity, other than a criminal justice agency or the person whose arrest was
17 sealed, who disseminates information relating to a sealed arrest is subject to a civil penalty of not less
18 than five hundred dollars (\$500) and not more than two thousand five hundred dollars (\$2,500) per
19 violation. The civil penalty may be enforced by a city attorney, district attorney, or the Attorney
20 General. This subdivision does not limit any existing private right of action. A civil penalty imposed
21 under this section shall be cumulative to civil remedies or penalties imposed under any other law."

22 22. According to California Penal Code section 11143, "[a]ny person ... who, knowing he
23 is not authorized by law to receive a record or information obtained from a record, knowingly buys,
24 receives, or possesses the record or information is guilty of a misdemeanor."

25 23. Upon information and belief, and based on facts alleged herein, POULSON knew or
26 should have known at all times, and knows as of the date of this filing, that the sealed Incident Report
27 was sealed, and therefore that he was not permitted to possess or disseminate the sealed Incident
28 Report or information related to it.

1 24. Despite this, DEFENDANTS repeatedly published and republished the sealed Incident
2 Report and information related to the sealed Incident Report on October 13, 2023, November 20,
3 2023, December 19, 2023, and June 3, 2024 to his Substack blog and published related articles,
4 causing the sealed Incident Report in his possession to be disseminated widely without legal
5 authorization.

6 25. In addition to the unauthorized publication and dissemination of the actual sealed
7 Incident Report, DEFENDANTS repeatedly published the contents of the sealed Incident Report. On
8 October 13, 2023, DEFENDANTS published the contents of the sealed Incident Report with direct
9 references to PLAINTIFF, PLAINTIFF’S EMPLOYER, and nearly every detail contained in the
10 sealed Incident Report. On November 20, 2023, DEFENDANTS again published a detailed
11 description of the contents of the sealed Incident Report underneath a picture of PLAINTIFF and
12 referring directly to PLAINTIFF by name and PLAINTIFF’S EMPLOYER.

13 26. DEFENDANT POULSON admits that in or around November 2023 he called a client
14 of PLAINTIFF’S EMPLOYER and an entity with whom PLAINTIFF had worked with and would
15 potentially work with in the future and disclosed the existence and contents of the sealed Incident
16 Report, expressly questioning whether this entity would continue to do business with PLAINTIFF
17 and/or PLAINTIFF’S EMPLOYER as a result of the sealed Incident Report. POULSON appears to
18 have taken this action for the express purpose of interfering with PLAINTIFF’S existing and potential
19 business relationships.

20 27. TECH INQUIRY and POULSON also published the sealed Incident Report and
21 information related to the sealed Incident Report on the TECH INQUIRY website. These
22 publications were made or appear to have been made on October 13, 2023, November 20, 2023,
23 December 19, 2023, and June 3, 2024.

24 28. Statements by POULSON that were published by all DEFENDANTS fail to state that
25 the arrest was deemed by a Court “not to have occurred.”

26 29. Statements by POULSON that were published by all DEFENDANTS create the false
27 and intentionally misleading understanding that PLAINTIFF was found guilty of the events described
28 in POULSON’S statements and in the sealed Incident Report. In POULSON’S initial publication on

1 September 14, 2023, POULSON did not indicate that the charges were dropped, but when
2 POULSON republished the sealed Incident Report, after receiving edits from SUBSTACK,
3 POULSON included language that the charges were dropped.

4 30. Statements by POULSON that were published by all DEFENDANTS on December
5 29, 2023 indicate that PLAINTIFF’S EMPLOYER until December 10, 2023 “demanded” that
6 PLAINTIFF separate from PLAINTIFF’S EMPLOYER because of a felony domestic arrest.
7 California Labor Code Section 432.7 prohibits an employer from taking any action against an
8 employee for an arrest that does not lead to a conviction. POULSON’S statements therefore
9 intentionally intimate that PLAINTIFF arrest led to a conviction.

10 31. At all times and at least prior to the filing of this Complaint, all DEFENDANTS knew
11 or should have known that PLAINTIFF was never charged with any crime and that PLAINTIFF was
12 not found guilty of any crime.

13 32. DEFENDANT SUBSTACK was involved in reviewing, editing, and deciding whether
14 to publish or withdraw from the publication of POULSON’S blog posts. In or around June 2024,
15 SUBSTACK, through its Trust & Safety Team and after a review of POULSON’S blog posts, twice
16 temporarily unpublished POULSON’S blogs on this topic and demanded that POULSON edit his
17 blog posts to remove PLAINTIFF’S address. POULSON’S SUBSTACK post expressly refers to
18 passages that were “censored by Substack.” Upon information and belief, SUBSTACK also was
19 involved in editing POULSON’S blogs by mandating or suggesting that he add language in 2024 that
20 “the charges were later dropped.” POULSON complied with SUBSTACK’S edits, and
21 DEFENDANTS immediately republished content related to the sealed Incident Report and a link to
22 the sealed Incident Report.

23 33. DEFENDANT SUBSTACK was informed multiple times, beginning in November
24 2023, about the illegal nature of the content. Among other communications, PLAINTIFF and/or
25 PLAINTIFF’S counsel sent SUBSTACK written communication on April 26, 2024, June 23, 2024,
26 and September 13 and 20, 2024 that being in possession of, disseminating, and failing to take down
27 the sealed Incident Report and information related to the sealed Incident Report violated the Court
28 Order and California Penal Code §§ 851.91 and 851.92, as well as its own policies that prohibit the

1 publication of illegal content. Despite PLAINTIFF’S repeated requests and that SUBSTACK was on
2 notice of its unlawful conduct that also violated its policies and was causing PLAINTIFF severe harm,
3 SUBSTACK failed to remove the content, allowing the illegal dissemination to continue, resulting in
4 significant harm to Plaintiff.

5 34. By letter dated September 19, 2024, the City and County of San Francisco, Office of
6 the City Attorney sent a letter to Substack titled “Notice of Publication of Sealed Document.” In this
7 letter, the Office of the City Attorney wrote to Substack:

8 It has come to our office’s attention that San Francisco Police Department ... Incident
9 Report as well as its contents have been published in multiple postings on your
10 website. The Incident Report was previously sealed by court order. ... Pursuant to
11 California Penal Code section 851.92(c) and your own “Acceptable Use Policy,” we
12 expect that you will immediately remove the Incident Report and its contents from
13 your website and ensure that the index to postings no longer allows for the Incident
14 Report to be viewed or downloaded. Please alert us when the documents and its
15 contents have been taken down from your website by no later than September 23,
16 2024. Finally, please refrain from publishing this material in the future.

17 35. Upon information and belief, DEFENDANT SUBSTACK gained a competitive
18 advantage over its competitors by unlawfully disseminating the sealed Incident Report and
19 information related to the sealed Incident Report.

20 36. PLAINTIFF also notified DEFENDANT AWS, which provides the hosting services
21 for SUBSTACK, on September 13 and 20, 2024, about the illegal nature of the content hosted on
22 Substack’s platform, which included the sealed Incident Report.

23 37. PLAINTIFF informed AWS that the content violated California Penal Code §§ 851.91
24 and 851.92, along with AWS’s Terms of Service that prohibit the use of its infrastructure for illegal
25 activities.

26 38. Despite being notified of the illegal content on September 13, 2024, AWS has failed to
27 act, continuing to provide hosting services that facilitate the ongoing illegal dissemination of the
28 sealed Incident Report and information related to the sealed Incident Report.

1 39. AWS’s ongoing provision of hosting services to DEFENDANT SUBSTACK, after
2 being informed of the illegal content on September 13, 2024, constitutes a violation of its own Terms
3 of Service, specifically in the areas of compliance with laws, prohibition on illegal content, and
4 violation of privacy rights.

5 40. Upon information and belief, DEFENDANT AWS gained a competitive advantage
6 over its competitors by unlawfully disseminating, through hosting SUBSTACK, the sealed Incident
7 Report and related information.

8 41. On September 16, 2024, PLAINTIFF notified DEFENDANTS POULSON and TECH
9 INQUIRY of their unlawful conduct with respect to their unauthorized possession and dissemination
10 of the sealed Incident Report and information related to the sealed Incident Report. PLAINTIFF
11 informed DEFENDANTS POULSON and TECH INQUIRY that is conduct violated California Penal
12 Code §§ 166(a)(4) and 851.92(b)(5) and (c), among other relevant laws. PLAINTIFF further
13 requested that POULSON and TECH INQUIRY immediately take down all references to the sealed
14 Incident Report and information related to the sealed Incident Report and that their conduct had
15 caused and was causing PLAINTIFF substantial harm.

16 42. POULSON and TECH INQUIRY failed and refused to remove any of the offensive
17 publications.

18 43. Newton Oldfather (“OLDFATHER”) appears to have played critical role in the
19 unlawful dissemination of the sealed Incident Report. OLDFATHER is currently a partner at the law
20 firm of Lewis & Llewellyn, LLP and, according to his firm biography, previously served as an
21 attorney for the San Francisco City Attorney’s Office and the Department of Police Accountability
22 (DPA), from November 2012 until April 2021.

23 44. On May 3, 2022, OLDFATHER, who was involved in a litigation against
24 PLAINTIFF’S EMPLOYER, initially requested the sealed Incident Report from the San Francisco
25 Police Department (SFPD), but his request was denied because he lacked authorization.

26 45. Despite this, OLDFATHER submitted a second request on May 9, 2022, which
27 resulted in the release of the sealed report by the SFPD.

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46. The sealed Incident Report sent by the SFPD to OLDFATHER had the same unique identifier watermark that is on the copy of the sealed Incident Report published by DEFENDANTS.

47. OLDFATHER was informed by the SFPD in July 2022 that the SFPD was not able to process his request for the Incident Report without authorization from the PLAINTIFF, which he did not have.

48. In POULSON'S June 3, 2024 publication, POULSON acknowledged that he had been following the litigation in which OLDFATHER represented parties adverse to PLAINTIFF'S EMPLOYER.

49. PLAINTIFF has suffered severe harm as a result of DEFENDANTS' actions described herein. Among other things, PLAINTIFF'S employment ended on December 10, 2023; PLAINTIFF'S reputation amongst his friends, family and business associates has been forever altered; PLAINTIFF has suffered severe emotional distress; PLAINTIFF has been unable to find subsequent employment, resulting in significant lost employment compensation and benefits; and PLAINTIFF has been forced to spend money to cure this situation that will haunt him the rest of his life.

FIRST CLAIM FOR RELIEF
Negligence against all DEFENDANTS

50. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

51. PLAINTIFF claims that PLAINTIFF was harmed by DEFENDANTS' negligence, including but not limited to DEFENDANTS' (a) failure to determine that the Incident Report at issue had been the subject of the Sealing Order, (b) possession and public dissemination of a sealed Incident Report and information related to the sealed Incident Report, (c) decision to allow the sealed Incident Report and information related to the sealed Incident Report to remain publicly accessible, and (d) refusal to remove the sealed Incident Report and information related to the sealed Incident Report. This conduct was in violation and total disregard of the Court Order, California statutes, the California constitution, and California public policy.

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1 52. DEFENDANTS had a duty to exercise reasonable care to PLAINTIFF, and
2 particularly a duty to abide by the Court Order, California statutes, the California constitution, and
3 California public policy.

4 53. DEFENDANTS were negligent for the reasons described herein, including but not
5 limited to acting in violation of and with total disregard for the Court Order, California statutes, the
6 California constitution, and California public policy intended to protect PLAINTIFF and that
7 expressly prohibited DEFENDANTS from being in possession of and/or disseminating the sealed
8 Incident Report or information related to the sealed Incident Report.

9 54. PLAINTIFF was harmed by DEFENDANTS' conduct.

10 55. DEFENDANTS' negligence was a substantial factor, as well as the proximate or legal
11 cause, in causing PLAINTIFF's harm.

12 56. As a result of DEFENDANTS' negligence, PLAINTIFF has suffered and will
13 continue to suffer severe harm, including but not limited to emotional harm, loss of income,
14 reputational harm, and additional economic damages to be presented at trial.

15 **SECOND CLAIM FOR RELIEF**
16 **Gross Negligence against all DEFENDANTS**

17 57. PLAINTIFF refers to and incorporates by reference each and every allegation
18 contained in the foregoing paragraphs as though set forth fully herein.

19 58. PLAINTIFF claims that PLAINTIFF was harmed by DEFENDANTS' negligence,
20 including but not limited to DEFENDANTS' (a) failure to determine that the Incident Report at issue
21 had been the subject of the Sealing Order, (b) possession and public dissemination of a sealed
22 Incident Report and information related to the sealed Incident Report, (c) decision to allow the sealed
23 Incident Report and information related to the sealed Incident Report to remain publicly accessible,
24 and (d) refusal to remove the sealed Incident Report and information related to the sealed Incident
25 Report. This conduct was in violation and total disregard of the Court Order, California statutes, the
26 California constitution, and California public policy.

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59. In addition, DEFENDANTS SUBSTACK and AWS acted in disregard of their respective Accessible Use Policies by refusing to remove the sealed Incident Report and information related to the sealed Incident Report, even after PLAINTIFF ensured each had notice of their conduct.

60. DEFENDANTS failed to exercise due care in a situation where the risk of harm is great and therefore gives rise to legal consequences harsher than those arising from negligence in less hazardous situations.

61. PLAINTIFF was harmed by DEFENDANTS' conduct.

62. DEFENDANTS' gross negligence was a substantial factor, as well as the proximate or legal cause, in causing PLAINTIFF's harm.

63. As a result of DEFENDANTS' gross negligence, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

64. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

THIRD CLAIM FOR RELIEF

Intentional Interference with Prospective Economic Relations against all DEFENDANTS

65. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

66. PLAINTIFF claims that DEFENDANTS intentionally interfered with an economic relationship between PLAINTIFF and PLAINTIFF'S EMPLOYER and members of the Board of Directors of and entities and individuals who invested in PLAINTIFF'S EMPLOYER that probably would have resulted in an economic benefit to PLAINTIFF.

67. PLAINTIFF and PLAINTIFF'S EMPLOYER and members of the Board of Directors of and entities and individuals who invested in PLAINTIFF'S EMPLOYER were in an economic relationship that probably would have resulted in an economic benefit to PLAINTIFF.

68. DEFENDANTS knew of these relationships.

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69. DEFENDANTS engaged in wrongful and improper conduct, including but not limited to DEFENDANTS' failure to determine that the report at issue had been the subject of the sealing order, possession and public dissemination of a sealed Incident Report and information related to the sealed Incident Report, allowing the sealed Incident Report and information related to the sealed Incident Report to remain publicly accessible, and refusing to remove the sealed Incident Report and information related to the sealed Incident Report. This conduct was in violation and total disregard of the Court Order, the California constitution, California public policy, and California statutes, including California Penal Code Sections 851.91, 851.92, and 11143, and California Labor Code Section 432.7(g)(3).

70. By their conduct, DEFENDANTS intended to disrupt PLAINTIFF'S relationships described herein or knew that disruption of the relationships was certain or substantially certain to occur.

71. PLAINTIFF'S relationships were disrupted.

72. PLAINTIFF was harmed.

73. DEFENDANTS' conduct described herein was a substantial factor in causing PLAINTIFF'S harm.

74. As a result of DEFENDANTS' intentional interference with PLAINTIFF'S prospective economic relations, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

75. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

FOURTH CLAIM FOR RELIEF

Negligent Interference with Prospective Economic Relations against all DEFENDANTS

76. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

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77. PLAINTIFF claims that DEFENDANTS negligently interfered with a relationship between PLAINTIFF and PLAINTIFF'S EMPLOYER and members of the Board of Directors of and entities and individuals who invested in PLAINTIFF'S EMPLOYER that probably would have resulted in an economic benefit to PLAINTIFF.

78. PLAINTIFF and PLAINTIFF'S EMPLOYER and members of the Board of Directors of and entities and individuals who invested in PLAINTIFF'S EMPLOYER were in an economic relationship that probably would have resulted in a future economic benefit to PLAINTIFF.

79. DEFENDANTS knew or should have known of these relationships.

80. DEFENDANTS knew or should have known that these relationships would be disrupted if DEFENDANTS failed to act with reasonable care.

81. DEFENDANTS failed to act with reasonable care.

82. DEFENDANTS engaged in wrongful and improper conduct by the conduct described herein that violated the Court Order, California statutes, the California constitution, and California public policy.

83. PLAINTIFF'S relationships were disrupted.

84. PLAINTIFF was harmed.

85. DEFENDANTS' wrongful conduct was a substantial factor in causing PLAINTIFF'S harm.

86. As a result of DEFENDANTS' negligent interference with PLAINTIFF'S prospective economic relations, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

FIFTH CLAIM FOR RELIEF

Intentional Interference with Contractual Relations against all DEFENDANTS

87. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

88. PLAINTIFF claims that DEFENDANTS intentionally interfered with the contract between PLAINTIFF and PLAINTIFF'S EMPLOYER.

89. There was a contract between PLAINTIFF and PLAINTIFF'S EMPLOYER.

90. DEFENDANTS knew of the contract between PLAINTIFF and PLAINTIFF'S
OYER.

91. DEFENDANTS' performance of the conduct described herein prevented performance contract or made performance of the contract more difficult by PLAINTIFF.

92. DEFENDANTS intended to disrupt the performance of this contract or knew that non-performance was certain or substantially likely to occur.

93. PLAINTIFF was harmed.

94. DEFENDANTS' conduct was a substantial fact in causing PLAINTIFF'S harm.

95. As a result of DEFENDANTS' intentional interference with PLAINTIFF'S actual relations, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages not presented at trial.

96. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, able, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby ing PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

SIXTH CLAIM FOR RELIEF

Public Disclosure of Private Facts against all DEFENDANTS

97. PLAINTIFF refers to and incorporates by reference each and every allegation
 98. set forth in the foregoing paragraphs as though set forth fully herein.

98. Pursuant to California Constitution, Article 1, Section 1, “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

99. PLAINTIFF claims that DEFENDANTS violated PLAINTIFF'S right to privacy.

100. DEFENDANTS publicized private information concerning PLAINTIFF.

101. A reasonable person in PLAINTIFF'S position would consider the publicity highly
ve.

102. DEFENDANT knew or acted with reckless disregard of the fact, that a reasonable person in PLAINTIFF'S position would consider the publicity highly offensive.

103. The private information was not of legitimate public concern and did not have a substantial connection to a matter of legitimate public concern.

104. PLAINTIFF was harmed.

105. DEFENDANTS' conduct in disseminating this information and refusing to take down this information was a substantial factor in causing PLAINTIFF'S harm.

106. As a result of DEFENDANTS' public disclosure of private facts, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

107. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

SEVENTH CLAIM FOR RELIEF
False Light against all DEFENDANTS

108. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

109. PLAINTIFF claims that DEFENDANTS violated PLAINTIFF'S right to privacy.

110. DEFENDANTS publicly disclosed information or material that showed PLAINTIFF in a false light.

111. The false light created by the disclosure would be highly offensive to a reasonable person in PLAINTIFF'S position.

112. There is clear and convincing evidence that DEFENDANTS knew the disclosure would create a false impression about PLAINTIFF or acted with disregard for the truth, including but not limited to PLAINTIFF'S notifying DEFENDANTS that the disclosure created a false impression about PLAINTIFF.

113. DEFENDANTS were negligent in determining the truth of the information or whether a false impression would be created by the disclosure.

114. PLAINTIFF was harmed.

115. PLAINTIFF sustained harm to his profession, occupation, and reputation, including but not limited to money spent as a result of the statement.

116. DEFENDANTS' conduct was a substantial factor in causing PLAINTIFF'S harm.

117. As a result of DEFENDANTS' depicting PLAINTIFF in a false light, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

118. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

EIGHTH CLAIM FOR RELIEF
Intrusion into Private Affairs against all DEFENDANTS

119. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

120. PLAINTIFF claims that DEFENDANTS violated PLAINTIFF'S right to privacy.

121. PLAINTIFF had a reasonable expectation of privacy in the sealed Incident Report and information related to the sealed Incident Report, the privacy of which was guaranteed to PLAINTIFF by the Court Order and applicable California statutes.

122. DEFENDANTS intentionally intruded in PLAINTIFF'S reasonable expectation of privacy in the sealed Incident Report and information related to the sealed Incident Report when DEFENDANTS publicly disseminated and refused to take down this information that DEFENDANTS were legally prohibited from having in their possession and disseminating.

123. DEFENDANTS' intrusion would be highly offensive to a reasonable person.

124. PLAINTIFF was harmed.

125. DEFENDANTS' conduct in disseminating this information and refusing to take down this information was a substantial factor in causing PLAINTIFF'S harm.

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126. As a result of DEFENDANTS' intrusion into private affairs, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

127. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

NINTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress against all DEFENDANTS

128. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

129. PLAINTIFF claims that DEFENDANTS conduct caused PLAINTIFF to suffer severe emotional distress.

130. DEFENDANTS' conduct was outrageous and so extreme as to exceed all bounds of that usually tolerated in a civilized community. Among other things, DEFENDANTS' conduct violated the Court Order, California statutes, and California public policy.

131. DEFENDANTS intended to cause PLAINTIFF emotional distress or acted with reckless disregard of the probability that PLAINTIFF would suffer emotional distress, knowing that PLAINTIFF was present when the conduct occurred.

132. PLAINTIFF suffered severe emotional distress.

133. DEFENDANTS' conduct was a substantial factor in causing PLAINTIFF'S severe emotional distress.

134. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

TENTH CLAIM FOR RELIEF
Negligent Infliction of Emotional Distress against all DEFENDANTS

135. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

1 136. DEFENDANTS were negligent in obtaining, disseminating, and refusing to take down
2 the sealed Incident Report and information related to the sealed Incident Report.

3 137. PLAINTIFF suffered serious emotional distress.

4 138. DEFENDANTS' negligence was a substantial factor in causing PLAINTIFF'S serious
5 emotional distress.

6 **ELEVENTH CLAIM FOR RELIEF**
7 **Defamation against all DEFENDANTS**

8 139. PLAINTIFF refers to and incorporates by reference each and every allegation
9 contained in the foregoing paragraphs as though set forth fully herein.

10 140. PLAINTIFF claims that DEFENDANTS harmed PLAINTIFF by making one or more
11 of the following statements: PLAINTIFF'S EMPLOYER demanded that PLAINTIFF separate from
12 his employment because of a felony domestic violence arrest, which, among other things, intimates
13 that PLAINTIFF was convicted of a crime; and DEFENDANTS stated that PLAINTIFF was
14 "arrested" when it was "deemed not to have occurred."

15 141. DEFENDANTS made one or more public statement to persons other than
16 PLAINTIFF, including but not limited to posts written, published, and republished by POULSON
17 and published and republished by SUBSTACK, AWS, and TECH INQUIRY dated October 13, 2023,
18 November 20, 2023, December 19, 2023, and June 3, 2024.

19 142. It was reasonably understood that these statements were about PLAINTIFF, who was
20 directly named and identified.

21 143. Persons reasonably understood the statements to mean that PLAINTIFF had
22 committed a crime that resulted in PLAINTIFF'S EMPLOYER demanding his separation from the
23 EMPLOYER and/or that PLAINTIFF's arrest had occurred.

24 144. DEFENDANTS' statements were reasonably understood to mean that PLAINTIFF
25 had committed a crime because California Labor Law Section prohibits an employer from taking any
26 action against an employee for an arrest that does not lead to a conviction.

27 145. DEFENDANTS' statements also state that the arrest occurred, when, according to the
28 Court Order, "the arrest is deemed not to have occurred."

146. DEFENDANTS failed to use reasonable care to determine the truth or falsity of the statement or DEFENDANTS knew their statements were false.

147. DEFENDANTS acted with actual malice because DEFENDANTS knew the statements were false or acted with reckless disregard of the statements' falsity.

148. As a result of DEFENDANTS' defamation, PLAINTIFF has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

149. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent, despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

TWELFTH CLAIM FOR RELIEF
Unfair Business Practices against all SUBSTACK and AWS

150. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

151. As set forth more fully herein, DEFENDANTS' conduct was unlawful, unfair, and constituted an unfair business practice in violation of California Business and Professions Code Section 17200.

152. Among other things, DEFENDANTS SUBSTACK and AWS conduct violated multiple California statutes, the California constitution, and the Court Order designed to protect PLAINTIFF'S privacy and safeguard his fundamental rights.

153. DEFENDANTS SUBSTACK’S and AWS’S practices described herein – including possessing and disseminating the sealed Incident Report and information related to the sealed Incident Report and refusal to remove this information – offended established public policy, that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, or has an impact on PLAINTIFF that outweighs DEFENDANTS’ reasons, justifications, and motives for the practice.

154. The public policy at issue here is tethered to California Constitution Article 1, Section 1 and the specific statutes addressed herein intended to protect the privacy of individuals who are

1 arrested and, in particular, protect those individuals from experiencing adverse employment acts
2 because of such arrests.

3 155. As a result of DEFENDANTS SUBSTACK’S and AWS’S unfair business practices,
4 PLAINTIFF suffered injury in fact, including but not limited to loss of money.

5 156. PLAINTIFF seeks to recover all available relief for violations of California Business
6 & Professions Code Section 17200, including but not limited to restitution, disgorgement of profits
7 and any amounts by which they have been unjustly enriched as a result of their wrongful conduct,
8 appoint of a receiver, constructive trust, and in injunction prohibiting SUBSTACK and AWS from
9 engaging in the unfair business practices alleged herein.

10 **THIRTEENTH CAUSE OF ACTION**
11 **Violation of California Constitution, Article I, § 1 against all DEFENDANTS**

12 157. PLAINTIFF refers to and incorporates by reference each and every allegation
13 contained in the foregoing paragraphs as though set forth fully herein.

14 158. “For every wrong there is a remedy.” (Civ.Code § 3523)

15 159. California’s Constitution guarantees all people certain “inalienable rights,” including
16 “pursuing and obtaining ... privacy.” Ca Const Art. 1, § 1.

17 160. Included in the protections afforded by the California Constitution is the individual
18 interest in avoiding disclosure of personal matters.

19 161. The sealed Incident Report and the contents of the sealed police contained intimate
20 facts of a personal nature well within the ambit of material entitled to privacy protection.

21 162. By virtue of the Court Order sealing the report, California Penal Code Section 851.92,
22 and the public policy of California, PLAINTIFF was entitled to privacy protection with respect to the
23 sealed Incident Report and its contents.

24 163. The sealed Incident Report and its contents were not a matter of public significance.

25 164. Accordingly, DEFENDANTS violated PLAINTIFF’S Constitutional right to privacy
26 when it disseminated the sealed Incident Report and its contents.

27 165. This violation has caused and continues to cause PLAINTIFF harm.

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FOURTEENTH CAUSE OF ACTION
Violation of California Penal Code Section 851.92(c) against all DEFENDANTS

166. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

167. “The violation of a statute gives to any person within the statute’s protection a right of action to recover damages caused by its violation.” *Palo Alto-Menlo Park Yellow Cab Co., v. Santa Clara County Transit Dist.* (1976) 65 Cal.App.3d 121, 131, 135 Cal.Rptr. 192.

168. Section 851.92(c) prohibits any unauthorized person or entity from disseminating information related to a sealed Incident Report.

169. In addition to the civil penalties described in Section 851.92(c), this Section also contemplates a private right of action stemming from the violation of this provision.

170. By the conduct described herein, DEFENDANTS violated Section 851.92(c) by disseminating the sealed Incident Report and information related to the sealed Incident Report.

171. DEFENDANTS’ conduct caused and continues to cause PLAINTIFF harm.

FIFTEENTH CAUSE OF ACTION
Violation of California Penal Code Section 11143 against all DEFENDANTS

172. PLAINTIFF refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

173. California Penal Code section 11143 makes it unlawful for any person who “knowingly buys, receives, or possesses [a sealed arrest record] or information”.

174. The California Supreme Court held that “such materials are virtually treated as contraband, as it is further declared that any unauthorized person who knowingly ‘buys, receives, or possesses’ such a record or information is also guilty of a misdemeanor. (s 11143.)” *Loder v. Mun Court*, 533 P.3d 624, 628-30 (Cal. 1976).

175. By the conduct described herein, Defendants violated this section because they received and are in possession of the sealed arrest record and information.

176. DEFENDANTS’ conduct caused and continues to cause PLAINTIFF harm.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF requests that this Court grant PLAINTIFF relief as follows:

- 1. Entry of a preliminary injunction, followed by a permanent injunction that:
 - i. Compels all DEFENDANTS to immediately remove the sealed police and all information related to the sealed Incident Report, including but not limited to its contents, and ensure that the index to postings no longer allows for the sealed Incident Report to be viewed or downloaded;
 - ii. Compels all DEFENDANTS to immediately remove and eliminate access to all URLs that include reference to the sealed Incident Report or information related to the sealed Incident Report;
- and
- iii. Enjoins all DEFENDANTS from disseminating directly or indirectly the sealed Incident Report or information related to the sealed Incident Report;
- 2. General damages for harm to reputation, humiliation mental anguish and emotional distress;
- 3. Compensatory damages for lost pay and benefits;
- 4. Disgorgement;
- 5. Liquidated damages;
- 6. Punitive damages;
- 7. Applicable interest on PLAINTIFF’S damages;
- 8. Attorney’s fees;
- 9. Costs of the suit;
- 10. Injunctive relief; and
- 11. Such relief as the Court may deem just and proper.

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JURY DEMAND

PLAINTIFF hereby respectfully demands a jury trial on each of the Causes of Action set forth above.

Dated: 2nd day of October 2024

Respectfully Submitted,
THE MAREK LAW FIRM, INC.

BY: David Marek
David Marek

Attorney for Plaintiff