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

JOHN DOE, an individual,

Plaintiff,

v.

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

Defendants.

Case No.: CGC-24-618681

**PLAINTIFF'S REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN FURTHER
SUPPORT OF PLAINTIFF'S MOTION FOR
PERMISSION TO PROCEED UNDER A
FICTITIOUS NAME**

Hearing Date: December 12, 2024
Time: 9:30 AM
Department: 302
Before: Hon. Richard B. Ulmer, Jr.

Complaint
Conditionally Filed: October 3, 2024
Trial Date: None Set

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1 “recognize[d] the *Ingraham* dilemma as a valid reason for permitting plaintiffs to proceed
2 anonymously.” *Id.* Here, like in *Ingraham*, Plaintiff commenced this action to protect his privacy
3 interest pursuant to the California Penal Code and a Court Order. Disclosing Plaintiff’s identity
4 before the adjudication on the merits would cause him to further suffer the very injury he is seeking
5 to avoid and cure. Moreover, in this case – unlike *Ingraham* – Plaintiff was only forced to litigate
6 because Defendants refused for more than a year to adhere to the Penal Code and the Court Order,
7 even after repeated requests to do so by both Plaintiff and the San Francisco City Attorney.¹ Thus,
8 Defendants’ Opposition ignored their unclean hands in this matter: Defendants first unlawfully
9 violated Plaintiff’s privacy, and now argue they should not have to abide by the Penal Code or the
10 Court Order because the “cat is out of the bag.”

11 **2. Plaintiff’s Lawsuit Concerns Matters That Are “Sensitive and Highly Personal.”**

12 Defendants argued that Plaintiff’s lawsuit does not concern matters that are “sensitive and
13 highly personal.” (Opposition, pp. 12-13) Defendants ask this Court to accept that Plaintiff cannot
14 have a legitimate privacy interest “when his identity has long been widely known,” and that, as a
15 matter of law, an arrest record is not sensitive and highly personal “when it was formerly a public
16 document.” (*Id.*) These arguments misstate the applicable law and fail to address the facts before
17 this Court.

18 As an initial matter, Defendants do not – and cannot – offer any support for their contention
19 that the arrest, the arrest record, and the contents of the arrest record are not matters that are
20 “sensitive and highly personal.” Defendants included in their Opposition that the sealed Arrest
21 Report includes Plaintiff’s age, the age of his girlfriend, and that he was allegedly arrested for
22 domestic violence. (Opposition, p. 7) The actual posts on Substack also include Plaintiff’s name,
23 picture, home address, and rendering of his apartment. (Complaint, ¶¶25, 32) Indeed, in a case
24 cited by Defendants, *Doe v. Corporate Security Solutions, Inc.*, 2024 WL 4342800 (E.D.N.C.

25 ¹ Courts have held when ruling on delays in seeking injunctive relief that “[w]e are reluctant to rule
26 as a matter of law that an aggrieved party must act immediately to seek an injunction. In view of
27 the congestion in our courts, we believe such a position would discourage informal resolution of
28 disputes.” *Youngblood v. Wilcox*, 207 Cal.App.3d 1368, 1377 (1989). Comparably, in this instance,
Plaintiff’s privacy rights should not be diminished because he tried to resolve this matter without
formal litigation.

1 2024),² the Court recognized that allegations of domestic violence (among other things) do qualify
2 as a matter of a “sensitive and highly personal nature.” *Id.* at *1-2.

3 Further, in a case Defendants do not address, the U.S. Supreme Court made clear that an
4 individual has a legitimate privacy interest in his criminal records, even when those records resulted
5 in conviction, had not been sealed, and were formerly a public document. *U.S. Department of*
6 *Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749, 762 (1989) (“Reporters
Committee”). In that case, the Supreme Court explained that:

7 both the common law and the literal understandings of privacy
8 encompass the individual’s control of information concerning his or
9 her person. In an organized society, there are few facts that are not at
10 one time or another divulged to another. Thus the extent of the
11 protection accorded a privacy right at common law rested in part on
12 the degree of dissemination of the allegedly private fact and the
13 extent to which the passage of time rendered it private. According to
Webster’s initial definition, information may be classified as
“private” if it is “intended for or restricted to the use of a particular
person or group or class of persons: not freely available to the
public.”

14 *Id.* at 763-4. Here, the arrest which was deemed not to have occurred, and the sealed Arrest Report
15 and its contents are therefore private, even if they had been unlawfully disclosed. The documents
16 and information were not “freely available,” as they were not even legally allowed to be possessed
17 or disseminated. Accordingly, the arrest record is sensitive and highly personal, even if it was
formerly a public document.

18 Further, matters that will result in social stigmatization are considered highly sensitive. *See*
19 *Rostker*, 89 F.R.D. at 161, 162 (“The most compelling situations involve matters which are highly
20 sensitive, such as social stigmatization ...”). It is acknowledged that an arrest – and surely one that
21 did not lead to conviction and was deemed not to have occurred – creates a stigma. *See People v.*
22 *Hadim*, 82 Cal.App.5th 39, 47-48 (2022) (recognizing that in enacting Section 851.91, “the
23 Legislature perceived an arrest, the fact a person was taken into custody, carried a severe stigma

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26 ² Defendants’ reliance on *Corporate Security Solutions, Inc* is misplaced. 2024 WL 4342800. In
27 that case, the North Carolina Court considered whether an expunged criminal record is of a
28 “sensitive and highly personal nature.” *Id.* at *2. That Court determined that while the plaintiff’s
criminal record is not of a sensitive and highly personal nature, allegations of domestic violence do
qualify as a matter of a “sensitive and highly personal nature.” *Id.* at *1-2.

1 with employers and landlords”). Accordingly, Plaintiff’s lawsuit concerns matters that are
2 “sensitive and highly personal.”

3 In addition, Defendants’ argument that Plaintiff cannot litigate anonymously because
4 Plaintiff’s “identity has long been widely known” fails. (Opposition, p. 12-13) Defendants,
5 ironically, based their argument on *Reed v. Paramo*, a case that supports Plaintiff’s argument. *Reed*
6 *v. Paramo*, CV 15-5636-CAS (JEM), 2018 WL 10562057 (C.D. Cal. Sept. 25, 2018). In *Reed*,
7 where the plaintiff “was tried publicly, was convicted of serious crimes, and is serving a lengthy
8 prison sentence,” the Court acknowledged its decision was based on the fact that the proceedings
9 had *not* been “sealed” and the trial evidence “is available electronically to the public.” *Id.* at *2.
10 Thus, the holding in that case – where the information was not sealed and legally available to the
11 public – does not support Substack’s argument. Rather, *Reed* supports Plaintiff’s argument to
12 proceed anonymously because the arrest was sealed and deemed not to have occurred. Moreover,
13 in this case, Defendants caused Plaintiff’s identity to be known and therefore cannot credibly argue
14 that, as a result of its own unlawful conduct, Plaintiff should be denied his request to litigate
15 anonymously.

16 Defendants’ argument also fails because there is no record that Plaintiff’s identity has long
17 been widely known. There is no record that Plaintiff’s arrest, which was a matter of public record
18 for several months until it was sealed, was newsworthy. Similarly, there is no record that the
19 Substack posts at issue were newsworthy or widely distributed. Rather, Plaintiff has alleged that he
20 has been denied personal and professional opportunities because, when someone searches for his
21 name online, the sealed Arrest Report and Poulson’s description of its contents are available.
22 Accordingly, the issue is not that Plaintiff’s identity was widely known as a result of Poulson’s
23 posts – it was not – but rather the posts and the sealed Arrest Report damaged, and continue to
24 damage, him when anyone conducts an online search of his name.

25 In fact, Defendants did not – and cannot – find one case where a request to proceed
26 anonymously was rejected in an analogous situation. Rather, Defendants relied primarily on cases
27 where individuals who had been convicted of crimes after public trials sought to litigate
28 anonymously. *See Reed*, 2018 WL 10562057; *Davall v. Cordero*, No. 20-CV-1968 JLS (KSC)),
2023 WL 3185781, at *2 (S.D.Cal. May 1, 2023). The facts before this Court are easily
distinguished from those cases. Plaintiff’s privacy interest far outweighs any prejudice to
Defendants because Plaintiff was not charged or convicted with the crime (and therefore had no
public trial), a San Francisco Superior Court Judge sealed the arrest record pursuant to Section

1 851.91, and the arrest itself was deemed not to have occurred well before the first blog posted was
2 disseminated. Thus, Substack's effort to find meaningful similarities between those cases and the
3 case before this Court must fail.

4 **3. Plaintiff Showed A Risk Of Retaliatory Harm.**

5 Defendants' Opposition misstates Plaintiff's position with respect to retaliation. Here,
6 Plaintiff needs to litigate anonymously to avoid being targeted by Defendants during this lawsuit.
7 Defendants have already used Plaintiff's lawsuit to further damage Plaintiff. *See Declaration of*
8 *Joshua A. Baskin In Support Of Defendants' Opposition to Plaintiff's Motion Seeking Permission*
9 *For Plaintiff To Proceed Under A Fictitious Name, Exhibit 2.* Exhibit 2 refers to a newspaper
10 article published in the San Francisco Chronicle titled "Tech exec sues journalist for \$25M for
11 publishing his sealed arrest report." The article's title refers to correspondence between Plaintiff
12 and Poulson, evidencing that Poulson was involved in outing Plaintiff's identity to this reporter for
13 broader dissemination of the sealed arrest report and its contents. Indeed, even in Defendants'
14 Opposition, Defendants referred to the crime for which Plaintiff was arrested and the detailed
15 allegations found in the sealed Arrest Report, although Defendants must know that arrest was
16 deemed not to have occurred and all information relating to it has been sealed. (Opposition, p. 7)
17 Thus, it is apparent that, if this motion is not granted, Defendants will continue to retaliate against
18 Plaintiff by using the litigation to further violate the laws intended to protect Plaintiff.

19 **4. Defendants Will Not Be Prejudiced If Plaintiff Proceeds Anonymously.**

20 Defendants argued that it would be prejudiced if Plaintiff litigates this case anonymously
21 because allowing Plaintiff to litigate anonymously "will impose costs on Defendant and will hobble
22 their ability to defend themselves throughout this matter." (Opposition, p. 14) The only actual
23 increased costs or prejudice Defendants could point to was the cost of presenting news articles to
24 the Court under seal. This same argument has been rejected. *See Doe v. U.S. Healthworks Inc.*,
25 No. CV1505689SJOAFMX, 2016 WL 11745513, at *5 (C.D. Cal. Feb. 4, 2016) (rejecting
26 defendant's argument that it would be prejudiced if Plaintiff litigated anonymously because of the
27 increased costs of filing under seal). In that case, where the defendant made the same argument
28 made by Defendants, the Court found "the prejudice Defendant would stand to suffer if Plaintiff is
permitted to proceed under a pseudonym to be minimal at this juncture" and that "this factor
[prejudice to defendant] does not weigh against allowing anonymity." *Id.*

Here, Defendants' argument also fails because the parties will have to file documents under
seal in this matter regardless of whether Plaintiff is permitted to proceed anonymously. The arrest,

1 the Arrest Report, and the contents of the Arrest Report are all subject to a Sealing Order and
2 protected by the California Penal Code.

3 **5. The Public Will Not Be Prejudiced If Plaintiff Proceeds Anonymously.**

4 Defendants argued that the public would be prejudiced because the public has a right to
5 know who is using their courts. (Opposition, p. 16) While this is the case in every lawsuit, the
6 courts nevertheless recognize a party's right to litigate anonymously in certain instances. *Does I*
7 *through XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). Moreover, the
8 public does not have a right to know about the arrest, the Arrest Report, or its contents because of
9 the Sealing Order. Accordingly, Plaintiff's privacy interest outweighs any interest the public has in
these issues.

10 Defendants argues that the public would be prejudiced in this case because Plaintiff is a
11 "technology executive ... filing a lawsuit demanding \$25 million in damages". (Opposition, p. 16)
12 But both of these facts are false, and, even if true, neither fact is meaningful to the analysis. First,
13 Plaintiff has not been a technology executive since late 2023, and Plaintiff's complaint did not
14 include a monetary demand in the amount of \$25 million. (See Complaint) Moreover, as
15 Defendants admitted, Plaintiff's arrest – which occurred when he was a technology executive – was
16 not newsworthy at the time it occurred and was available to the public, and was not newsworthy
17 during the year that the sealed report was illegally in the possession of Defendants and being
18 disseminated in violation of the law and a court order. Thus, Plaintiff's arrest was not, and is not,
newsworthy, and therefore the public is not prejudiced by enforcement of the Court's sealing order.

19 **6. Plaintiff's Motion Was Not Required To Be Filed When The Complaint Was Filed.**

20 Code of Civil Procedure Section 367 requires an "action must be prosecuted in the name of
21 the real party in interest, except as otherwise provided by statute." Code of Civ. Proc. §367. Courts
22 have interpreted this as requiring that a lawsuit be brought on behalf of a person having legal
23 standing to commence the action rather than as a control of whether pseudonym litigation is
24 appropriate. *See Doe v. Lincoln Unified Sch. Dist.*, 188 Cal. App. 4th 758, 767 (2010). Absent a
25 mechanism to file the Complaint conditionally, Plaintiff complied immediately with the Court's
26 request that Plaintiff file a motion seeking permission. Defendants do not cite any rules of civil or
27 court procedure that dictate the manner and timing of such a filing. *See Healthworks, Inc.*, 2016
28 WL 11745513, at *2 (explaining that in the Ninth Circuit a plaintiff may file the complaint under a
pseudonym, and may move to proceed under a pseudonym even after the defendant filed a motion
to dismiss). Moreover, Defendants cite to no cases that justify a denial of the motion on grounds

1 that it was filed one month after the initial filing. Indeed, until the issue was raised by the Court,
2 Defendants also did not raise any objection to the Complaint being filed under a pseudonym. The
3 timing of the motion is not a basis to deny Plaintiff's motion.

4 **CONCLUSION**

5 For the reasons stated herein and in Plaintiff's motion, Plaintiff respectfully requests that
6 this Court grant his Motion Seeking Permission For Plaintiff To Proceed Under A Fictitious Name.

7 Dated: December 5, 2024

Respectfully submitted,

8 THE MAREK LAW FIRM, INC.

9
10 By: David Marek
11 David Marek
12 Attorneys for Plaintiff
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