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Attorneys for Defendant
AMAZON WEB SERVICES, INC.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

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. CGC-24-618681

DEFENDANT AMAZON WEB SERVICES, INC.'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 425.16; MEMORANDUM OF POINTS AND AUTHORITIES

REDACTED.

[Request for Judicial Notice; Compendium of Evidence, and Application to Provisionally Seal Filed Concurrently]

Date: January 6, 2025
Time: 9:30 a.m.
Dept.: 302

Action Filed: October 3, 2024

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on January 6, 2025, at 9:30 a.m., or as soon thereafter as counsel may be heard in Department 302 of the Superior Court of California, County of San Francisco, located at 400 McAllister Street, San Francisco, CA 94102, Defendant Amazon Web Services, Inc. ("AWS"), will and hereby does move this Court, pursuant to California Code of Civil Procedure § 425.16 (the "SLAPP" statute), for an order striking the Complaint of Plaintiff John Doe, and all of its causes of action against AWS, with prejudice.

This Motion is made on the grounds that all of Plaintiff's claims against AWS are subject to a special motion to strike under the "SLAPP" statute because they arise from AWS's exercise of free speech rights in connection with official proceedings and other matters of public interest. *See* Memorandum, Section III. In particular, the claims are all based on AWS's hosting of a website Plaintiff alleges published news articles ("Articles") containing information about his December 2021 arrest for felony domestic violence and thus easily fall within Subsections 425.16(e)(2), (e)(3), and (e)(4) of the SLAPP statute. *See* Memorandum, Section III.

Because the SLAPP statute applies to Plaintiff's lawsuit, he has the burden of establishing a probability that he will prevail on each of his claims. *See* C.C.P. § 425.16(b)(1); Memorandum, Section IV. He cannot meet this burden, and the Court should strike all of his claims against AWS, for each of the following independent reasons:

1. All of Plaintiff's claims are barred by Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230, which broadly protects interactive computer service providers from civil liability arising from claims regarding third-party content they host.

2. All of Plaintiff's claims are barred because the challenged conduct—publication of an official arrest record and information from it on a matter of public interest—is protected by the First Amendment and the California Constitution.

3. Plaintiff's First Cause of Action, for Negligence, and Second Cause of Action, for Gross Negligence, are additionally barred because Plaintiff has not pled AWS owed him any cognizable duty.

4. Plaintiff's Third Cause of Action, for Intentional Interference with Prospective Economic Relations, and his Fifth Cause of Action, for Intentional Interference with Contractual Relations, are additionally barred because Plaintiff has not pled and cannot prove (a) AWS's knowledge of any contract or prospective business relationship; (b) that AWS took intentional acts designed to induce a breach or disruption of the contractual relationship or economic relationship; (c) that any acts by AWS resulted in breach or disruption of any contract or prospective business relationship; or (d) resulting damage.

5. Plaintiff's Fourth Cause of Action, for Negligent Interference with Prospective Economic Relations, and his Fifth Cause of Action, for Intentional Interference with Contractual Relations, are additionally barred because Plaintiff has not pled and cannot prove any independently wrongful act by AWS.

6. Plaintiff's Sixth Cause of Action, for Public Disclosure of Private Facts, and his Thirteenth Cause of Action, for Violation of California Constitution, Article I, § 1, are additionally barred because the Incident Report was a public record for three months before it was sealed, such that Plaintiff has not pled and cannot prove the disclosure of any private fact. They are additionally barred because the Articles concerned a newsworthy subject.

7. Plaintiff's Seventh Cause of Action, for False Light, and his Eleventh Cause of Action, for Defamation, are additionally barred because Plaintiff has not pled, and cannot prove, that the Articles contained any false statements of fact.

8. Plaintiff's Eighth Cause of Action, for Intrusion into Private Affairs, is additionally barred because it is based on the content of the Articles, which is not the type of conduct proscribed by the tort of intrusion.

9. Plaintiff's Ninth Cause of Action, for Intentional Infliction of Emotional Distress, and his Tenth Cause of Action, for Negligent Infliction of Emotional Distress, are additionally barred because Plaintiff has not pled, and cannot prove, that AWS engaged in any sufficiently egregious conduct.

10. Plaintiff's Tenth Cause of Action, for Negligent Infliction of Emotional Distress, is additionally barred because there is no such tort in California.

11. Plaintiff's Twelfth Cause of Action, for Unfair Business Practices, is additionally barred because the Articles are not commercial speech.

For each of these reasons, this Court should grant AWS's SLAPP Motion in its entirety, dismiss Plaintiff's Complaint and all of its causes of action with prejudice,[1] and award AWS its attorneys' fees and costs incurred in defending against this meritless lawsuit.[2]

This Motion is based on this Notice; the attached Memorandum Of Points And Authorities; the concurrently filed Compendium of Evidence containing the Declaration of Sarah E. Burns with Exhibits 1-6; the concurrently filed Request For Judicial Notice; all other matters of which this Court may take judicial notice; all pleadings, files, and records in this action; and on such other argument as may be received by this Court at the hearing on this Motion.

DATED: December 6, 2024

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP
SARAH E. BURNS
SAMUEL A. TURNER

By: /s/ Sarah E. Burns
Sarah E. Burns

Attorneys for Defendant
AMAZON WEB SERVICES, INC.

[1] Dismissals under the SLAPP statute must be with prejudice. *See Salma v. Capon*, 161 Cal. App. 4th 1275, 1293 (2008) ("When a cause of action is dismissed pursuant to section 425.16, the plaintiff has no right to amend the claim.").

[2] Code of Civil Procedure § 425.16(c) mandates that the prevailing defendant on a SLAPP motion "shall" recover that party's attorneys' fees and costs. If the Court grants this Motion, then AWS will file a separate fee motion and memorandum of costs. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1131-32 (2001).

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I. SUMMARY OF ARGUMENT

Proceeding as a Doe, technology executive [redacted] has sued Amazon Web Services, Inc. ("AWS") because it hosts a website that published news articles about his [redacted] arrest on suspicion of felony domestic violence. Plaintiff's bloated Complaint asserts fifteen causes of action, all claiming publication of the Articles was wrongful because the arrest report ("Incident Report") was later sealed. Plaintiff's spurious claims rest on the false premise that, because the Incident Report was sealed, the arrest literally never happened. Well-established principles bar all of Plaintiff's claims against AWS as a matter of law.

As a threshold matter, Plaintiff's claims are subject to California's SLAPP statute because they arise from the content of articles about matters of public interest, namely, police records about alleged domestic violence by a prominent executive and controversies related to his government-contracted tech company. C.C.P. § 425.16; Section III. Consequently, the burden shifts to Plaintiff to establish a probability of prevailing on his claims. He cannot.

First, all of Plaintiff's claims against AWS are barred by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, which provides immunity to services that host allegedly unlawful content created by third parties. Section III.A.

Second, the Incident Report was an official record obtained legally and the Articles addressed matters of public interest. They therefore cannot be the basis for liability under the First Amendment and the California Constitution. Section III.B. Because all of Plaintiff's claims are based on dissemination of the Articles, all the claims fail.

Third, the claims independently fail because none are sufficiently pled. Section IV.B.

For these reasons, AWS respectfully requests that its SLAPP Motion be granted in its entirety, and Plaintiff's claims against it be stricken with prejudice.

II. STATEMENT OF FACTS

Plaintiff's claims stem from a [redacted] arrest report in which Plaintiff was suspected of committing felony domestic violence ("Incident Report"). Ex. 2. Plaintiff does not dispute that he was arrested. Instead, he alleges the Incident Report was sealed by court order on February 17, 2022 under California Penal Code Sections 851.91, Compl. ¶ 19, ("Sealing

Order")[3], which permits a person who was arrested but not convicted to petition a court to seal his arrest records and for an order stating that the arrest is "deemed not to have occurred."

According to the Incident Report, [redacted]. Ex. 2. [redacted] *Id.* at 4-5. [redacted]. *Id.*

The Complaint alleges that co-Defendant Jack Poulson, an "independent journalist," Compl. ¶ 4, first published the Incident Report on his blog, Tech Inquiry, in September 2023, and published additional articles about the Incident Report or edits to the first Article between October 2023 and June 2024. *Id.* ¶¶ 14, 24-27. *See also* Ex. 1 (the "Articles"). Plaintiff has sued not only Poulson and Tech Inquiry, but also AWS and Substack, Inc., on the basis that AWS allegedly hosts Substack's website, to which Poulson posted the Articles. *Id.* ¶¶ 36, 38. Plaintiff does not allege AWS had any role in writing or editing or the Articles.

At the time of the arrest, Plaintiff was CEO of [redacted].

[3] The Sealing Order is attached as Exhibit A to the previously-filed Declaration of John Doe In Support Of Application For Order To Show Cause And Temporary Restraining Order.

[redacted]. Ex. 2. Poulson had been covering [redacted] before he wrote about the Incident Report. He reported on the company in August 2023, writing about [redacted]. Ex. 1.a. [redacted] *Id.*

The next month, Poulson published a second article about the company, reporting on [redacted] Ex. 1.b. That article, which is also not the subject of Plaintiff's claims, focused on [redacted].

On September 14, 2023, Poulson published the first article Plaintiff challenges. Compl. ¶ 14, Ex. 1.c. Plaintiff alleges that the Article, and other articles or edits to articles[4] that followed it on October 13, 2023, November 20, 2023, December 19, 2023, and June 3, 2024, contained information from the Incident Report and/or the Incident Report itself. *Id.* ¶ 24.

Poulson received the Incident Report via an unsolicited message on Signal from a confidential source in early September 2023. *See* Declaration Of Jack Poulson In Support Of Defendant Jack Poulson's Special Motion To Strike ("Poulson Decl.") ¶ 13. He contacted the San Francisco Police Department, which confirmed the details of the Incident Report. *Id.* ¶ 15. Plaintiff claims Poulson received the Incident Report from Newton Oldfather, who Plaintiff stated was an attorney for the San Francisco City Attorney's Office and the Department of Police Accountability. *See* Application For Order To Show Cause And Temporary Restraining Order at 1 n.2. *See also* Compl. ¶ 43. The version of the Incident Report Poulson published bears no indicia of sealing. Ex. 2. Since Plaintiff sued, multiple other entities, including *The San*

[4] Because the Complaint does not identify the Articles by URL, and some of the dates it provides do not appear to correspond to dates on which new articles were published, it is not entirely clear which articles, other than the September 14, 2204 Article, that Plaintiff bases his claims on.

Francisco Chronicle, *Daily Mail*, and *Yahoo!*, have published their own news articles about the Incident Report and this lawsuit, identifying Plaintiff by name. Ex. 6.

The Complaint asserts ***fifteen*** claims, all based on the dissemination of the Incident Report: defamation, false light, disclosure of private facts, violation of California Constitution, Article 1, § 1, intrusion, intentional and negligent infliction of emotional distress, negligence, gross negligence, intentional and negligent interference with prospective economic relations, intentional interference with contract, violation of California's Unfair Competition Law, and violation of Penal Code Sections 851.91-92 and 11143.

Plaintiff admits that he became aware of the first Article in September 2023. Doe Decl. ¶ 3. In November, five weeks after filing the Complaint, he filed an *ex parte* application for a TRO and mandatory injunction requiring AWS and its co-Defendants to remove all information related to the Incident Report ("Application"). On November 15, 2024, the Court denied the Application, finding Plaintiff must file a motion to proceed pseudonymously. Plaintiff filed that motion November 14, which is set to be heard December 12.

III. SECTION 425.16 APPLIES TO PLAINTIFF'S COMPLAINT

The Legislature enacted C.C.P. § 425.16 "to nip SLAPP litigation in the bud" by quickly disposing of claims that target the exercise of free speech rights and acts in furtherance of those rights. *Braun v. Chronicle Publ'g Co.*, 52 Cal. App. 4th 1036, 1042 (1997). To apply the law, courts decide "whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity" within the meaning of the statute. *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002). If so, the burden shifts to Plaintiff to show "a probability of prevailing." *Id.* Here, all of Plaintiff's claims against AWS arise from its alleged "dissemination" of the Articles,[5] and thus fall squarely within the SLAPP statute's broad scope.

[5] *E.g.*, Compl. ¶ 51 (negligence claim based on "public dissemination" of Incident Report); ¶ 58 (gross negligence claim based on "public dissemination" of, refusal to remove Report); ¶ 69 (intentional interference with prospective economic advantage claim based on "public dissemination" of Report); ¶ 82 (negligent interference with prospective economic advantage claim); ¶ 91 (intentional interference with contractual relations claim); ¶ 105 (disclosure of private facts claim); ¶ 110 (false light claim based on "public[] disclosure" of information from Report); ¶ 122 (alleging Defendants intruded by "publicly disseminat[ing]" Report); ¶ 130 (intentional infliction of emotional distress based on same conduct); ¶ 136 (alleging negligent infliction of emotional distress by "obtaining, disseminating, and refusing to take down the

See, e.g., *Braun*, 52 Cal. App. 4th at 1046 ("news reporting activity **is** 'free speech'") (emphasis added); *Sonoma Media Inv., LLC v. Super. Ct.*, 34 Cal. App. 5th 24, 33-34 (2019) (statute applied to claims arising from news articles); *Carver v. Bonds*, 135 Cal. App. 4th 328, 342-43 (2005) (same).

First, the claims fall within Subsection (e)(2), which applies to "any written or oral statement or writing made in connection with an issue under consideration or review by a … judicial body, or any other official proceeding authorized by law." C.C.P. § 425.16(e)(2). The Articles report on official police records related to Plaintiff's arrest on suspicion of felony domestic violence. Ex. 1. Courts have recognized that police investigations and police records are official proceedings. *Green v. Cortez*, 151 Cal. App. 3d 1068, 1073 (1984); *Hansen v. CDCR*, 171 Cal. App. 4th 1537, 1544 (2008) (applying *Green* in SLAPP case); *Comstock v. Aber*, 212 Cal. App. 4th 931, 941-42 (2012) (police records are official proceedings under SLAPP statute). Consequently, Section (e)(2) applies here. *See also Braun*, 52 Cal. App. 4th at 1048 (report about official proceeding falls under Subsection (e)(2)).

Second, Plaintiff's claims fall within Section 425.16(e)(3), which applies to writings "made in … a public forum in connection with an issue of public interest." Compl. ¶ 14 (alleging Articles were published to Substack); ¶ 24 (alleging Substack is a blog); ¶ 27 (alleging Articles were published on Tech Inquiry website). *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41 n.4 (2006) ("[w]eb sites accessible to the public … are 'public forums'" for purposes of the SLAPP statute). *See also Maloney v. T3Media, Inc.*, 853 F.3d 1004, 1009 n.3 (9th Cir. 2017) (posting photos to a site accessible to the public is a public forum for purposes of the anti-SLAPP statute).

Third, the claims fall within Subsection (e)(4), which applies to "conduct in furtherance of the exercise of the constitutional right … of free speech in connection with a public issue or an issue of public interest." C.C.P. § 425.16(e)(4). As courts have made clear, "news reporting is

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Sealed Incident Report"); ¶ 140 (alleging defamation claim based on statements in Articles); ¶ 153 (alleging AWS engaged in unfair business practices by "disseminating" Report); ¶ 164 (basing "Violation of California Constitution, Article I, § 1" claim on "dissemin[ation]" of Report); ¶ 170 (basing Penal Code Section 851.92(c) claim on "disseminating the sealed Incident Report and information related to the sealed Incident Report"); ¶ 175 (alleging violation of Penal Code Section 11143 based on "possession of the sealed arrest record").

free speech" for purposes of the SLAPP statute. *Sipple v. Found. for Nat'l Progress,* 71 Cal. App. 4th 226, 240 (1999).

Where, as here, the speech at issue relates to official proceedings, no further "public interest" showing is needed. *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th 728, 733-34 (2003). But that standard is satisfied easily here in any event. C.C.P. § 425.16(a) (definition of "a public issue or an issue of public interest" must "be construed broadly"). The Articles reported on the felony arrest of a high-powered tech CEO, and [redacted]. Ex. 1. The Articles further explore [redacted] *Id.* The SLAPP statute routinely is applied to news reports about such topics. *E.g., Lieberman v. KCOP Television, Inc.*, 110 Cal. App. 4th 156, 164 (2003) ("[n]ews reports concerning current criminal activity serve important public interests"); *Sipple*, 71 Cal. App. 4th at 238 (magazine article about domestic violence claims); *San Diegans for Open Gov't v. SDSU Rsch. Found.*, 11 Cal. App. 5th 477 (2017) (issue related to government contract covered by (e)(4)); *Gates v. Discovery Commc'ns, Inc.*, 34 Cal. 4th 679, 683-84 (2004) (program recreating crime that occurred 12 years earlier was of legitimate public interest); *Carney v. Santa Cruz Women Against Rape*, 221 Cal. App. 3d 1009, 1021 (1990) ("matters of sexual harassment and assault" are of public concern); *Todd v. Lovecruft*, No. 19-cv-01751-DMR, 2020 WL 60199, at *13 (N.D. Cal. Jan. 6, 2020) (SLAPP statute applied to claims based on statements accusing plaintiff of sexual harassment).

The public interest here is further shown by media coverage of [redacted] including Plaintiff's role as CEO, Exs. 3-4[6], as well as Plaintiff's own media presence as a tech expert. *See* Ex. 5; *Seelig v. Infinity Broad. Corp.*, 97 Cal. App. 4th 798, 807-08 (2002) (test met by plaintiff's voluntary TV appearance). Although Plaintiff claims he is "not a public figure," Compl. ¶ 13, that is irrelevant; the SLAPP statute's public interest analysis focuses on the "broad

[6] *E.g., Cross v. Cooper*, 197 Cal. App. 4th 357, 378 n.13 (2011) ("extensive media coverage" of speech established public interest); *Sipple*, 71 Cal. App. 4th at 238-39 ("public interest can be 'evidenced by media coverage'").

topics" of the speech at issue, and defendants are "not required to show a specific public interest" in the plaintiff. *Doe v. Gangland Prods., Inc.*, 730 F.3d 946, 956 (9th Cir. 2013). *Accord Tamkin v. CBS Broad., Inc.*, 193 Cal. App. 4th 133, 144 (2011) ("no requirement in the anti-SLAPP statute that the plaintiff's persona be a matter of public interest"). In short, the SLAPP statute's public interest requirement is easily met.

IV. PLAINTIFF CANNOT SHOW A PROBABILITY OF PREVAILING.

Because Plaintiff's claims fall within Section 425.16, he has the burden of presenting admissible evidence establishing a probability that he will prevail. C.C.P. § 425.16(b)(1); *Macias v. Hartwell*, 55 Cal. App. 4th 669, 675 (1997) (plaintiff must present "competent and admissible evidence"). He cannot meet his burden as to any of his claims.

A. Section 230 Bars All Of Plaintiff's Claims.

Section 230 forbids liability if the defendant is "(1) a provider or user of an interactive computer service (2) whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker (3) of information provided by another information content provider." *See Wozniak v. YouTube, LLC*, 100 Cal. App. 5th 893, 908 (2024) (citing *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01, 1102, 1105 (9th Cir. 2009)). Under Section 230, "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred." *Hassell v. Bird*, 5 Cal. 5th 522, 532 (2018) (Section 230 barred enjoining Yelp to remove user-generated content). Because each of the elements of Section 230 is met here, all of Plaintiffs' claims fail on this ground.

First, AWS provides an "interactive computer service" since it is an "access software provider" that allegedly provides websites "client or server software" to support publication of speech. 47 U.S.C. § 230(f)(2), (f)(4). "Courts typically have held that internet service providers, website exchange systems, online message boards, and search engines fall within this definition." *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 174 (2d Cir. 2016); *see also Rigsby v. GoDaddy Inc.*, 59 F.4th 998, 1008 (9th Cir. 2023) (domain name registrar and web hosting provider eligible for Section 230 immunity); *Medina v. Newfold Digital, Inc.*, No. 22-cv-01762-

VC, 2022 WL 2517247, at *1 (N.D. Cal. July 7, 2022) (web hosting and email services eligible). And at least one Court has held AWS eligible for Section 230's protections. *Parker v. Paypal*, Inc., No. CV 16-4786, 2017 WL 3508759, at *7 (E.D. Pa. Aug. 16, 2017) (refusing to hold AWS liable for misappropriation where it "merely hosted the offending work").

Second, Plaintiff unambiguously seeks to hold AWS liable as a publisher or speaker of content. *Barrett*, 40 Cal. 4th at 43. In his TRO Application, Plaintiff argued that Section 230 does not apply because California Penal Code § 11143 criminalizes only the *possession* of information and not its *publication*. App. at 7-8. That is irrelevant. "[W]hat matters is not the name of the cause of action" but rather "the conduct [the plaintiff] alleges is injurious" and the substantive "duty" the plaintiff seeks to impose on the defendant to remedy that injury. *Prager Univ. v. Google LLC*, 85 Cal. App. 5th 1022, 1033 (2022). Thus, in *Barnes*, Section 230 barred the plaintiff's negligent undertaking claim because it would have imposed on Yahoo! a duty to remove allegedly offensive content. 570 F.3d at 1103. *See also Klayman v. Zuckerberg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014) ("very essence of publishing is making the decision whether to print *or retract* a given piece of content") (emphasis added); *Prager*, 85 Cal. App. 5th at 1033 (plaintiff's claims failed because they sought to alter YouTube's editorial decisions to publish certain videos to certain audiences); *Wozniak*, 100 Cal. App. 5th at 909-18 (Section 230 barred negligent security, design defect, and failure-to-warn claims that would have required YouTube to screen for and block harmful content).

The same is true here. Plaintiff does not claim he was injured because AWS "possessed" the Incident Report; he claims he was injured because the Incident Report was "publicly disseminated," and asks the Court order AWS to "remove the content."[7] *See* Prayer for Relief ¶ 1. Any order requiring AWS to take down content necessarily treats it as a publisher and regulates AWS's publication activities. *See Hassell*, 5 Cal. 5th at 545-48; *Est. of Bride ex rel. Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1177 & n.3 (9th Cir. 2024) (Section 230 preempts any duty that "requires" a defendant to "moderate content to fulfill its duty").

Third, the content is "information provided by another information content provider" and

[7] Notably, Plaintiff does not ask that AWS be ordered to stop *possessing* the Incident Report. *Id.*

not AWS. *Murphy v. Twitter, Inc.*, 60 Cal. App. 5th 12, 24 (2021). Plaintiff does not allege AWS created the Incident Report or Articles. These are simply records created by police and posted online by an independent journalist to a website that AWS allegedly hosts. Compl. ¶¶ 33, 39. Section 230 bars all of Plaintiff's claims. *E.g.*, *Hassell*, 5 Cal. 5th at 540-41 (Section 230 barred claims for defamation, intentional infliction of emotional distress, and false light).

B. The First Amendment Protects Publication Of The Incident Report.

All of Plaintiff's claims additionally fail because all are premised on publication of lawfully obtained, truthful information on a matter of public interest, which is privileged under binding law. The U.S. Supreme Court consistently has held that the First Amendment protects a journalist's right to publish information about matters of public concern that it lawfully obtained through "routine newspaper reporting techniques." *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979). That protection applies even if state law mandates that the information be kept confidential, or the source of the information violated a legal obligation to keep it secret. As the Supreme Court has explained, the fact that a source may be obligated not to publicly disclose certain confidential information does not "make the newspaper's ensuing receipt of this information unlawful." *Florida Star v. B.J.F.*, 491 U.S. 524, 536 (1989).

It does not matter if a reporter "knew or had reason to know" the source of information was barred from disclosing it. *Bartnicki v. Vopper*, 532 U.S. 514, 519-20 (2001). Thus, courts nationwide have recognized that the First Amendment protects "routine" newsgathering, such as "asking questions of people with information ('including those with confidential or restricted information')." *Shulman v. Grp. W Prods., Inc.*, 18 Cal. 4th 207, 237 (1998) (citation omitted). As the *Bartnicki* Court explained, "a stranger's illegal conduct does not suffice to remove the First Amendment shield from speech about a matter of public concern." 532 U.S. at 535.

California courts have reached the same conclusion. *E.g.*, *Ass'n for L.A. Deputy Sheriffs v. L.A. Times Commc'ns LLC*, 239 Cal. App. 4th 808, 819-20 (2015) (no liability newspaper that received and published confidential law enforcement files); *Jenni Rivera Enters., LLC v. Latin World Ent.. Holdings, Inc.*, 36 Cal. App. 5th 766, 800 (2019) (applying *Bartnicki*, TV broadcaster not liable even if producer allegedly breached non-disclosure agreement). Such is

the case here. Plaintiff nowhere alleges that Defendants acquired the Incident Report illegally. Instead, he alleges that Poulson received the Incident Report from Newton Oldfather, who had access to it through his position on the San Francisco City Attorney's Office or the Department of Policy Accountability. Compl. ¶¶ 43-45. Because, as discussed above, Section III, the Articles are on matters of public interest, publication of the Incident Report is privileged.[8]

These privileges doom ***all*** of Plaintiff's claims. Where a plaintiff seeks reputational damages, "[l]iability cannot be imposed on any theory for what has been determined to be a constitutionally protected publication." *Reader's Digest Ass'n v. Super. Ct.*, 37 Cal. 3d 244, 265 (1984) (dismissing intentional infliction of emotional distress, false light, and intrusion claims). All of Plaintiffs' claims purport to be based on harm from the "dissemination" of the Incident Report and information. *E.g.*, ¶ 56 (negligence claim); ¶ 63 (gross negligence); ¶¶ 74, 86, 95, (interference); ¶¶ 105-106 (private facts claim); ¶¶ 110, 115 (false light); ¶¶ 112, 126 (intrusion); ¶¶ 130, 136 (emotional distress); ¶ 153 (unfair competition); ¶ 164 (constitutional privacy); ¶ 170 (Penal Code Sections 851.92(c))[9]. *See also Blatty v. N.Y. Times Co.*, 42 Cal. 3d 1033, 1042-43 (1986); *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 50, 54-56 (1988) (First Amendment barred emotional distress claim for same reasons as defamation claim); *ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1014 (2001) (rejecting interference with economic advantage claim); *Noel v. River Hills Wilsons, Inc.*, 113 Cal. App. 4th 1363, 1373 (2003) (negligence claim); *Amaretto Ranch Breedables, LLC v. Ozimals, Inc.*, No. CV 10-5696 CRB, 2013 WL 3460707, at *7-8 (N.D. Cal. July 9, 2013) (unfair competition claim); *Melaleuca, Inc. v. Clark*,

[8] *See also Gates v. Discovery Commc'ns, Inc.*, 34 Cal. 4th 679, 692 (2004) (First Amendment protected TV program about old court case); *Oklahoma Publ'g Co. v. Dist. Ct.*, 430 U.S. 308, 310 (1977) (state could not stop newspaper from publishing name of juvenile offender); *Smith*, 443 U.S. at 99-100 (newspaper could not be criminally punished for publishing name of a juvenile offender, confidential by statute); *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 838 (1978) (state may not impose criminal sanctions for disclosure of contents of confidential state review commission proceedings).

[9] Plaintiff's claim for violation of Penal Code Section 11143 purports to be premised only on the "possession" of the Incident Report. Compl. ¶ 175. But Plaintiff would have no injury but for the dissemination. *Globe Int'l, Inc. v. Super. Ct.*, 9 Cal. App. 4th 393, 400 (1992) (rejecting RICO claim; "[i]t is well established that First Amendment protections do not depend on the label attached to a cause of action").

66 Cal. App. 4th 1344, 1367 (1998) ("claims for invasion of [] relationship with its marketing executives").

Nicholson v. McClatchy Newspapers, 177 Cal. App. 3d 509 (1986), is particularly instructive. There, plaintiff's suit was based on a newspaper's publication of a State Bar determination that plaintiff was not qualified for judicial office, which was made confidential by statute. Plaintiff asserted ten causes of action against the newspaper including, among others, public disclosure of private facts, intrusion, breach of the right of privacy under the California Constitution, and intentional and negligent infliction of emotional distress. *Id.* at 514. The Court of Appeal found that "[a]lthough the legal theories asserted are different, all of the causes of action against the media defendants are based upon the fact that they obtained and published the fact that the State Bar rated plaintiff unqualified for judicial appointment" and that all were therefore protected under the First Amendment. *Id.* The same result follows here.

C. All of Plaintiffs' Claims Fail For Other Independent Reasons.

1. Plaintiff's Emotional Distress and Interference Claims Fail.

Plaintiff asserts two emotional distress claims, for negligent and intentional infliction of emotional distress, and three interference claims: two for intentional and negligent interference with prospective economic advantage and one for intentional interference with contract. All fail.

First, Plaintiff's intentional interference claims fail because Plaintiff has not sufficiently pled the majority of those claims' elements. To prevail on an interference with contract claim, Plaintiff must show: (1) there was a valid contract between him and a third party; (2) AWS's knowledge of this contract; (3) intentional acts by AWS designed to induce a breach; (4) actual breach; and (5) resulting damage. *Davis v. Nadrich*, 174 Cal. App. 4th 1, 10 (2009). An intentional interference with prospective economic advantage claim differs in one respect: rather than a valid contract, Plaintiff must show interference with an "'economic relationship between the plaintiff and some third party, [which carries] the probability of future economic benefit to the plaintiff.'" *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1141 (2020). The Complaint alleges that Plaintiff first informed AWS of the Articles' "illegal nature" in September 2024, Compl. ¶ 36, but that Plaintiff's contract with his employer ended, at the latest,

in December 2023. *Id.* ¶ 30. Plaintiff therefore has not shown that AWS was aware of Plaintiff, let alone his relationship with his employer, before the alleged breach or disruption occurred.

Second, Plaintiff's interference with prospective economic advantage claims additionally fail because Plaintiff does not allege independently wrongful conduct. *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 393 (1995) (establishing requirement). The only purported "wrong" against AWS is hosting the Articles, which again, is privileged.

Third, Plaintiff's emotional distress claims fail for the same reason. For such claims to survive, "the complained-of conduct must be outrageous, that is, beyond all bounds of reasonable decency." *Comstock v. Aber*, 212 Cal. App. 4th 931, 954 (2012). The conduct alleged here – the dissemination of First Amendment-protected speech – is not "beyond all bounds of reasonable decency" or "outrageous." *See also Snyder v. Phelps*, 562 U.S. 443, 451, 459-60 (2011) (First Amendment bars emotional distress claims arising from speech of public interest).

Fourth, Plaintiff's negligent infliction of emotional distress claim additionally fails because "there is no independent tort of negligent infliction of emotional distress" in California. *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 984 (1993).

2. Plaintiff's Defamation and Duplicative False Light Claims Fail.

In a defamation case, "the words constituting an alleged libel must be specifically identified, if not pleaded verbatim, in the complaint." *Kahn v. Bower*, 232 Cal. App. 3d 1599, 1612 n.5 (1991). Here, Plaintiff has not "pleaded verbatim" a single statement from the Articles that he claims is defamatory. *Cf. Vogel v. Felice*, 127 Cal. App. 4th 1006, 1017 n.3 (2005) (a court "would be justified in disregarding any evidence or argument concerning [allegedly defamatory] statements not explicitly set forth in the complaint"). Instead, his defamation claim alludes generally to two statements:

- "PLAINTIFF'S EMPLOYER demanded that PLAINTIFF separate from his employment because of a felony domestic violence arrest, which, among other things, intimates that PLAINTIFF was convicted of a crime"; and
- "[T]hat PLAINTIFF was 'arrested' when it was 'deemed not to have occurred.'"

Compl. ¶ 140. Plaintiff cannot add statements because, "[o]n review of a special motion to strike

pursuant to section 425.16, [the Court] must take the complaint as it is." *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1263 (2017) (plaintiff could not add statements for the first time in SLAPP opposition).

Neither statement is actionable. The statement that Plaintiff was arrested is true. Plaintiff does not dispute that the Incident Report is authentic. That the Sealing Order made the arrest a *legal* nullity does not change the *fact* that the arrest occurred, or change the events of the past. The statement is also, at the very least, substantially true. *Vogel*, 127 Cal. App. 4th at 1022-23 (statements that are "substantially true" are nonactionable). Furthermore, Plaintiff identifies just one Article that did not explicitly state that the charges were ultimately dropped, Ex. 1.c, and that Article was updated to reflect as much. Compl. ¶ 29. The Article also explained [redacted] Ex. 1.c. This statement is not actionable.

The other "statement" does not actually appear in any of the Articles. Instead, Plaintiff alleges that some of the Articles (without specifying which) ***imply*** that Plaintiff was convicted of a crime because they state that "PLAINTIFF'S EMPLOYER demanded that PLAINTIFF separate from his employment" as a result of the arrest, and employers are legally prohibited from making employment decisions based on arrests that do not lead to convictions. Compl. ¶ 140. The Article that discusses Plaintiff's separation from [redacted], Ex. 1.d, is not reasonably susceptible to this strained attempt to allege a libel claim. When considering a claim that a statement is implicitly libelous, the "whole scope and apparent object of the writer must be considered." *Id.* A "defamatory meaning must be found, if at all, in a reading of the publication as a whole," and "[d]efamation actions cannot be based on snippets taken out of context." *Balzaga v. Fox News Network, LLC*, 173 Cal. App. 4th 1325, 1337-38 (2009). Here, the Article [redacted] Courts "must . . . refrain from scrutinizing what is not said to find 'a defamatory meaning which the article does not convey to a lay reader.'" *Forsher v. Bugliosi*, 26 Cal. 3d 792, 803 (1980) (citation

omitted). Furthermore, Plaintiff does not deny that the arrest resulted in his separation from [redacted]. To the contrary, Plaintiff's Complaint alleges that Defendants' dissemination of the Incident Report disrupted Plaintiff's contract with his employer. Compl. ¶¶ 87-97. Any claim based on this statement also fails.[10]

3. Plaintiff's Privacy Claims Fail.

Plaintiff asserts three privacy claims: disclosure of private facts (Compl. ¶¶ 97-107), a claim under California Constitution Article I, § 1 (*id.* ¶¶ 157-165), and intrusion (*id.* ¶¶ 119-127). All three fail.

First, a disclosure of private facts claim requires pleading and proving "(1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern." *Shulman*, 18 Cal. 4th at 214-15. Plaintiff alleges the Incident Report was not sealed until February 2022, meaning it was a public record between December 2021 (when the arrest occurred) and then. Thus, the facts disclosed were no longer private when the Articles were published. *E.g.*, *Sipple*, 154 Cal. App. 3d at 1047 ("there is no liability when the defendant merely gives further publicity to information about the plaintiff which is already public"). In any event, the Articles' newsworthiness, *see* Section III, is "a complete bar to common law liability." *Shulman*, 18 Cal. 4th at 214-15.

Second, the constitutional privacy claim fails for the same reasons. *Int'l Fed'n of Prof'l & Technical Eng'rs, Local 21 v. Super. Ct.*, 42 Cal. 4th 319, 346 (2007). As the California Supreme Court has explained, "'[i]nvasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest.'" *Int'l Fed'n*, 42 Cal. 4th at 339 (citation omitted)). Here, the public had a strong interest in the information disclosed that outweighs any marginal privacy interests, which in any event, were obviated by the already-public nature of the Incident Report.

[10] Plaintiff's wholly duplicative false light claim (Compl. ¶¶ 108-118) fails for the same reasons. Where, as here, "a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous." *Eisenberg v. Alameda Newspapers, Inc.*, 74 Cal. App. 4th 1359, 1385 n.13 (1900). "[T]he collapse of the defamation claim spells the demise of all other causes of action in the [same complaint] which allegedly arise from the same publications." *Gilbert v. Sykes*, 147 Cal. App. 4th 13, 34 (2007).

Third, Plaintiff's claim for "intrusion" misapprehends the basic elements of that claim. Compl. ¶¶ 119-127. Intrusion claims arise from "unconsented-to physical intrusion into the home, hospital room or other place the privacy of which is legally recognized," or illegal newsgathering practices, like wiretapping. *Shulman*, 18 Cal. 4th at 230-31. The Complaint does not allege any such practices on behalf of *any* Defendant, and certainly not by AWS. Instead, the Complaint alleges that Defendants committed intrusion by "intentionally intrud[ing] in Plaintiff's reasonable expectation of privacy in the sealed Incident Report and information related to the sealed Incident Report" by disseminating it. Compl. ¶ 122. But intrusion addresses the *means* of acquiring information, not its *publication*. *Shulman*, 18 Cal. 4th at 240 ("The intrusion tort, unlike that for publication of private facts, does not subject the press to liability for the contents of its publications."). Because Plaintiff's allegations do not fit the elements of the intrusion claim, it fails. *See also Ault v. Hustler Mag., Inc.*, 860 F.2d 877, 882 (9th Cir. 1988) (dismissing intrusion claim based on portrayal of plaintiff in magazine; "the facts do not fit the elements of the tort of intrusion").

4. Plaintiff's Negligence and Unfair Business Practices Claims Fail.

Plaintiff's Causes of Action for negligence and gross negligence (Compl. ¶¶ 50-64) fail because Plaintiff has not pled any cognizable duty owed by AWS. *See Felton v. Schaeffer*, 229 Cal. App. 3d 229, 239 (1991) (declining to recognize "negligence duty" where claim was based on allegedly false publication); *Baugh v. CBS, Inc.*, 828 F. Supp. 745, 758 (N.D. Cal. 1993) (no legal duty owed by TV producers to interviewee who claimed producers negligently disclosed her private information). Plaintiff also stretches to concoct a claim based on Business & Professions Code §§ 17200, *et seq.*, California's unfair competition law. Compl. ¶¶ 150-156. The attempt fails at the jump because noncommercial speech – like the Articles– **cannot** be "unlawful, unfair or fraudulent" under the UCL. *Bernardo v. Planned Parenthood Fed'n of Am.*, 115 Cal. App. 4th 322, 350 (2004) (striking Section 17200 claim; finding statements were noncommercial speech, outside the scope of the false advertising law).

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Respectfully submitted,

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