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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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'S NOTICE OF
DEMURRER AND DEMURRER TO
PLAINTIFF'S COMPLAINT**

Date: January 6, 2025
Time: 9:30 AM
Dept.: 302
Before: Hon. Richard B. Ulmer, Jr.

Action Filed: October 3, 2024
Trial Date: None Set

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DEMURRER

Substack hereby demurs to Plaintiff's Complaint on the following grounds:

FIRST CAUSE OF ACTION: Plaintiff's cause of action for Negligence arises from Substack's alleged failure to prevent or take down the publication of First Amendment-protected information on the internet, and is thus barred by Section 230 of the Communications Decency Act, the First Amendment to the United States Constitution, and Article I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

SECOND CAUSE OF ACTION: Plaintiff's cause of action for Gross Negligence arises from Substack's alleged failure to prevent or take down the publication of First Amendment-protected information on the internet, and is thus barred by Section 230 of the Communications Decency Act, the First Amendment to the United States Constitution, and Article I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

THIRD CAUSE OF ACTION: Plaintiff's cause of action for Intentional Interference with Prospective Economic Relations arises from Substack's alleged failure to prevent or take down the publication of First Amendment-protected information on the internet, and is thus barred by Section 230 of the Communications Decency Act, the First Amendment to the United States Constitution, and Article I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

FOURTH CAUSE OF ACTION: Plaintiff's cause of action for Negligent Interference with Prospective Economic Relations arises from Substack's alleged failure to prevent or take down the publication of First Amendment-protected information on the internet, and is thus barred by Section 230 of the Communications Decency Act, the First Amendment to the United States Constitution, and Article I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

FIFTH CAUSE OF ACTION: Plaintiff's cause of action for Intentional Interference with Contractual Relations arises from Substack's alleged failure to prevent or take down the publication

1 of First Amendment-protected information on the internet, and is thus barred by Section 230 of the
2 Communications Decency Act, the First Amendment to the United States Constitution, and Article
3 I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a
4 cause of action. (Code Civ. Proc., § 430.10(e).)

5 SIXTH CAUSE OF ACTION: Plaintiff's cause of action for Public Disclosure of Private
6 Facts arises from Substack's alleged failure to prevent or take down the publication of First
7 Amendment-protected information on the internet, and is thus barred by Section 230 of the
8 Communications Decency Act, the First Amendment to the United States Constitution, and Article
9 I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a
10 cause of action. (Code Civ. Proc., § 430.10(e).)

11 SEVENTH CAUSE OF ACTION: Plaintiff's cause of action for False Light arises from
12 Substack's alleged failure to prevent or take down the publication of First Amendment-protected
13 information on the internet, and is thus barred by Section 230 of the Communications Decency Act,
14 the First Amendment to the United States Constitution, and Article I, Section 2 of the California
15 Constitution. It therefore fails to state facts sufficient to constitute a cause of action. (Code Civ.
16 Proc., § 430.10(e).)

17 EIGHTH CAUSE OF ACTION: Plaintiff's cause of action for Intrusion into Private Affairs
18 arises from Substack's alleged failure to prevent or take down the publication of First Amendment-
19 protected information on the internet, and is thus barred by Section 230 of the Communications
20 Decency Act, the First Amendment to the United States Constitution, and Article I, Section 2 of the
21 California Constitution. It therefore fails to state facts sufficient to constitute a cause of action. (Code
22 Civ. Proc., § 430.10(e).)

23 NINTH CAUSE OF ACTION: Plaintiff's cause of action for Intentional Infliction of
24 Emotional Distress arises from Substack's alleged failure to prevent or take down the publication
25 of First Amendment-protected information on the internet, and is thus barred by Section 230 of the
26 Communications Decency Act, the First Amendment to the United States Constitution, and Article
27 I, Section 2 of the California Constitution. (Code Civ. Proc., § 430.10(e).)

1 TENTH CAUSE OF ACTION: Plaintiff's cause of action for Negligent Infliction of
2 Emotional Distress arises from Substack's alleged failure to prevent or take down the publication
3 of First Amendment-protected information on the internet, and is thus barred by Section 230 of the
4 Communications Decency Act, the First Amendment to the United States Constitution, and Article
5 I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a
6 cause of action. (Code Civ. Proc., § 430.10(e).)

7 ELEVENTH CAUSE OF ACTION: Plaintiff's cause of action for Defamation arises from
8 Substack's alleged failure to prevent or take down the publication of First Amendment-protected
9 information on the internet, and is thus barred by Section 230 of the Communications Decency Act,
10 the First Amendment to the United States Constitution, and Article I, Section 2 of the California
11 Constitution. It therefore fails to state facts sufficient to constitute a cause of action. (Code Civ.
12 Proc., § 430.10(e).)

13 TWELFTH CAUSE OF ACTION: Plaintiff's cause of action for Violation of Business &
14 Professions Code Section 17200 arises from Substack's alleged failure to prevent or take down the
15 publication of First Amendment-protected information on the internet, and is thus barred by Section
16 230 of the Communications Decency Act, the First Amendment to the United States Constitution,
17 and Article I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to
18 constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

19 THIRTEENTH CAUSE OF ACTION: Plaintiff's cause of action for Violation of California
20 Constitution, Section 1 arises from Substack's alleged failure to prevent or take down the publication
21 of First Amendment-protected information on the internet, and is thus barred by Section 230 of the
22 Communications Decency Act, the First Amendment to the United States Constitution, and Article
23 I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to constitute a
24 cause of action. (Code Civ. Proc., § 430.10(e).)

25 FOURTEENTH CAUSE OF ACTION: Plaintiff's cause of action for Violation of California
26 Penal Code Section 851.92 arises from Substack's alleged failure to prevent or take down the
27 publication of First Amendment-protected information on the internet, and is thus barred by Section
28 230 of the Communications Decency Act, the First Amendment to the United States Constitution,

1 and Article I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to
2 constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

3 FIFTEENTH CAUSE OF ACTION: Plaintiff's cause of action for Violation of California
4 Penal Code Section 11143 arises from Substack's alleged failure to prevent or take down the
5 publication of First Amendment-protected information on the internet, and is thus barred by Section
6 230 of the Communications Decency Act, the First Amendment to the United States Constitution,
7 and Article I, Section 2 of the California Constitution. It therefore fails to state facts sufficient to
8 constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

9
10 Dated: December 6, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

11 By: /s/ Joshua A. Baskin
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14 Attorneys for Defendant
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1 **I. BACKGROUND**

2 Before the events giving rise to this case, Plaintiff was arrested by the San Francisco Police
3 Department in December 2021. (Pl.’s Mot. to Proceed under a Fictitious Name at 3; Compl. ¶¶ 14-
4 17, 24-25.) Plaintiff’s arrest was detailed in a police incident report, which was a public record for
5 nearly two months, from December 2021 until February 17, 2022, when a judge sealed the report at
6 Plaintiff’s request. (Pl.’s Mot. to Proceed under a Fictitious Name at 3; Compl. ¶ 17; see also Gov.
7 Code, §§ 7923.610, 7923.615(a) [mandating that arrest reports and incident reports are public
8 records].)

9 Defendant Jack Poulson, a journalist, published multiple articles on Substack about Plaintiff
10 and the technology company for which he was the chief executive officer. (Compl. ¶¶ 30, 34, 140.)
11 This was part of Plaintiff’s reporting on the role of American companies in intelligence operations
12 (Poulson Decl. ¶ 4), and in particular concerns about Plaintiff’s former company and Plaintiff’s
13 integrity in light of his U.S. security clearance and the work he and his company were performing
14 on behalf of the US Government. (See Baskin Decl. Exs. 3-6.) Some of Poulson’s articles included
15 a link to the Incident Report.³ (See Compl. ¶¶ 24, 29, 30, 34, 140; Baskin Decl. Ex. 1.) Poulson
16 obtained the Incident Report from a source, and did not know at the time that it had been sealed.
17 (Poulson Decl. ¶¶ 13-15.)

18 According to the December 21, 2021 police report (hereinafter, “Incident Report”), police
19 arrested Plaintiff, who was then 53 years old, after he became involved in an alleged domestic-
20 violence incident that injured his 25-year-old girlfriend and attracted the attention of a neighbor.
21 (Baskin Decl. Ex. 1.) Plaintiff was evidently not criminally charged over this incident, and at his
22 request, the San Francisco Superior Court sealed his Incident Report. (*Ibid.*; Mot. at 3.) Plaintiff
23 does not allege that Poulson or any of the other Defendants obtained the Incident Report unlawfully.

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25 _____
26 Cal.App.4th 841, 864-65.) Substack requests that the Court decide this demurrer only if it denies
Substack’s Anti-SLAPP motion.

27 ³ Plaintiff alternatively refers to the police report as an “arrest report” and an “incident report,”
28 both of which are presumptively public records under different sections of the Public Records Act.
(See Gov. Code, §§ 7923.610, 7923.615(a).) The report itself appears to be titled “Incident
Report.”

1 Nor does Plaintiff dispute that the copy of the Incident Report posted online was a true and
2 accurate representation of the original, or claim that Poulson’s stories contain any false statements.
3 Indeed, he does not even allege that the police description of events was false in the report itself.
4 Instead, without disputing that all relevant statements in Poulson’s articles are true, Plaintiff alleges
5 two theories of falsity that defy common sense.

6 *First*, Plaintiff alleges that unspecified “[s]tatements” by Poulson “create the false and
7 intentionally misleading understanding that PLAINTIFF was found guilty” of felony domestic
8 violence. (Compl. ¶ 29.) The only reason suggested for this is that Poulson’s articles did not initially
9 say expressly that Poulson was *not* found guilty. (*Ibid.*) But Plaintiff does not (and cannot) allege
10 that Poulson’s stories ever said that he was charged and brought to trial, much less found guilty.
11 Again, Plaintiff does not allege that Poulson made *any* false statement of fact.

12 *Second*, Plaintiff asserts that “any statement that the arrest did occur is, ***by operation of law,***
13 ***not truthful***” because a judge sealed the report in an order that stated in part that “the arrest [was]
14 ***deemed not to have occurred.***” (Compl. ¶ 20 [emphasis added].) But the sealing order does not
15 purport to have the Kafkaesque effect that Plaintiff suggests. (Baskin Decl. Ex. 2.) It is true that
16 Plaintiff was arrested on suspicion of felony domestic violence in 2022, and the sealing order does
17 not render it false. (*Ibid.*; cf. *G.D. v. Kenny* (N.J. 2011) 15 A.3d 300, 315-16.)⁴ This is clear from
18 the order itself, which is incorporated by reference in the Complaint. (Baskin Decl. Ex. 2.)⁵

19
20 ⁴ In a case involving an analogous statute, the New Jersey Supreme Court explained: “It is true
21 that under the expungement statute, as a matter of law, an expunged conviction is ‘deemed not to
22 have occurred,’ N.J.S.A. 2C:52–27. But the expungement statute does not transmute a once-true
23 fact into a falsehood.... It is not intended to create an Orwellian scheme whereby previously public
24 information—long maintained in official records—now becomes beyond the reach of public
discourse on penalty of a defamation action. Although our expungement statute generally permits
a person whose record has been expunged to misrepresent his past, it does not alter the
metaphysical truth of his past, nor does it impose a regime of silence on those who know the truth.”
(*G.D.*, 15 A.3d at 315-16.)

25 ⁵ The order makes clear that the *Court* deems the arrest not to have occurred, and restores to
26 Plaintiff certain privileges as a result, but it does not require parties not before the Court to pretend
27 that the arrest did not actually happen. (*Ibid.* [“The court GRANTS the petition. The record of
28 arrest in the following matter shall be sealed under the provisions of section 851.91, and the arrest
deemed not to have occurred[.]”]) The order goes on to explain what this means: while Plaintiff
“may answer any question relating to the sealed arrest as though it did not happen, and petitioner
is released from all penalties and disabilities resulting from the arrest,” there are exceptions. (*Ibid.*)
For example, “[t]he sealed arrest may be pleaded and proved in any later prosecution of the
(continued...) ”

1 **II. PROCEDURAL BACKGROUND**

2 On October 3, 2024, Plaintiff sued Poulson, Tech Inquiry, Substack, and AWS (collectively,
3 “Defendants”). (Compl. ¶ 1.) Every one of Plaintiff’s claims against Defendants arises from the
4 publication of the Incident Report that was a public record from December 2021 to February 2022—
5 with Poulson’s corresponding news articles—and Defendants’ purported failure to remove these
6 documents from Poulson’s online newsletter. (Compl. ¶¶ 50-176.) Yet the Complaint omits the
7 details of the Incident Report, and the order that sealed it in February 2022.

8 Throughout, Plaintiff has taken steps that have increased litigation costs on Defendants. At
9 the outset, he ignored the requirement that he seek leave of Court before filing under a fictitious
10 name (*Dep’t of Fair Emp. & Hous. v. Superior Court* (2022) 82 Cal.App.5th 105, 111, fn. 1), and
11 sued as a “John Doe” despite his name being publicized in the *San Francisco Chronicle* and
12 elsewhere on the internet (Compl. ¶ 1; Baskin Decl. Exs. 3-7). Defendants have accordingly had to
13 undertake expensive additional steps to oppose Plaintiff’s motion to proceed anonymously and
14 lodge documents tentatively under seal merely because they reflect Plaintiff’s (widely known)
15 identity. (Baskin Decl. ISO Mot. to Seal.)

16 Later, on November 12, 2024—over a year after Poulson’s first published the arrest report
17 and over a month after filing suit—Plaintiff sandbagged Defendants by filing an *ex parte* application
18 for a temporary restraining order (“TRO”). (Pl.’s App. for TRO.) The TRO sought to compel
19 Defendants to remove information about his arrest report from the internet. (*Ibid.*) This forced
20 Defendants to undertake an expensive round of overnight briefing and to prepare for argument the
21 next day. (See Def’s Opp’n to Pl.’s App. for TRO.) The TRO motion was futile: at the hearing, the
22 Court declined to reach the merits, instead ordering Plaintiff to do what he had been required to do
23 from the beginning: “Plaintiff should first file a regularly-noticed motion for Court authorization to
24 proceed in this action as a Doe plaintiff.” (Defs.’ Opp. to Pl.’s Mot. to Proceed under a Fictitious
25 Name at 8.) Plaintiff thereafter filed a belated motion to proceed under a pseudonym (Pl.’s Mot. to
26

27 _____
28 petitioner for any other offense.” (*Ibid.*) The order, by its terms, did not command any non-party
to do anything at all—and certainly did not purport to command journalists to censor themselves.

1 Proceed Under a Fictitious Name), which Defendants opposed (Defs.’ Opp. to Pl.’s Mot. to Proceed
2 under a Fictitious Name), and which remains pending.

3 Defendants, including Substack, are today bringing Anti-SLAPP motions to specially strike
4 Plaintiff’s complaint in its entirety. (See Code Civ. Proc., § 425.16.)

5 **III. LEGAL STANDARD**

6 “A demurrer tests the legal sufficiency of the complaint.” (*Hamilton v. Greenwich Invs.*
7 *XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1608.) Plaintiff must demonstrate that his Complaint
8 “alleges facts sufficient to establish every element of each cause of action.” (*Rakestraw v. Cal.*
9 *Physicians’ Serv.* (2000) 81 Cal.App.4th 39, 43.) Allegations must be “factual and specific, not
10 vague or conclusionary.” (*Id.* at 44.) A demurrer is proper where, as here, the Complaint does not
11 state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

12 **IV. ARGUMENT**

13 **A. SECTION 230 BARS PLAINTIFF’S CLAIMS AGAINST SUBSTACK.**

14 Plaintiff’s claims against Substack are barred by Section 230 of the Communications
15 Decency Act. (See 47 U.S.C. § 230(c)(1).) Section 230 provides expansive immunity to internet
16 service providers⁶ against claims based on enabling third parties to publish content online, such as
17 Poulson’s blog and the arrest report linked therein. (See *Hassell v. Bird* (2018) 5 Cal.5th 522, 535,
18 538 [California courts have also construed Section 230 to “afford[] interactive service providers
19 broad immunity from tort liability for third party speech”]; *Barrett v. Rosenthal* (2006) 40 Cal.4th
20 33, 39 [Section 230 has “been widely and consistently interpreted to confer broad immunity against
21 defamation liability for those who use the Internet to publish information that originated from
22 another source.”]). Indeed, just months ago, a court dismissed a complaint based on a Substack blog
23 post after finding Substack was “an interactive computer service” entitled to Section 230 immunity.
24 (*Smith*, 2024 WL 3757501, at *2-3, *5 [“Substack did not create the content nor decide to post
25

26
27 ⁶ Substack is a “provider ... of an interactive computer service,” and therefore entitled to
28 Section 230 immunity in appropriate circumstances. (47 U.S.C. § 230(c)(1); see *Smith v.*
Substack, Inc. (N.D.Cal., Aug. 12, 2024, No. 24-cv-727-AGT) 2024 WL 3757501, at *2 [“The
parties agree that Substack is a provider of an interactive computer service.”]).

1 material unintended for publication. Substack merely decided whether or not to withdraw the post
2 from publication, which is lawfully within the purview of a publisher.”].)

3 Section 230 states that “[n]o provider ... of an interactive computer service shall be treated
4 as the publisher or speaker of any information provided by another information content provider.”
5 (47 U.S.C. § 230(c)(1).) Congress enacted this provision because it “recognized the threat that tort-
6 based lawsuits pose to freedom of speech in the new and burgeoning Internet medium.” (*Hassell*, 5
7 Cal.5th at 536 [quoting *Zeran v. Am. Online, Inc.* (4th Cir. 1997) 129 F.3d 327, 330].) Section 230
8 aims “to maintain the robust nature of Internet communication and, accordingly, to keep government
9 interference in the medium to a minimum.” (*Ibid.*)

10 “[A]ny activity” by an internet service provider “that can be boiled down to deciding whether
11 to exclude material that third parties seek to post online is perforce immune under section 230.”
12 (*Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC* (9th Cir. 2008) 521 F.3d
13 1157, 1170-71 (en banc).) Substack’s decision not to take down Poulson’s material falls squarely
14 within this broad protection. This applies even if Plaintiff attempts to circumvent Section 230
15 immunity claiming that Substack is liable for “possession” of the Incident Report separate from any
16 publishing activity. (Compl. ¶ 58.) Not so: the only thing Substack allegedly did to harm Plaintiff
17 was enable publication of content by a third party (Poulson), and “possession” of Poulson’s content
18 on its servers is a necessary step in publishing that third-party content online—exactly what Section
19 230 protects. The totality of Plaintiff’s Complaint is that Substack did not make decisions he likes
20 with respect to Poulson’s blog, but Section 230 gives Substack the discretion to make that decision.⁷

21 Section 230 thus bars all of his claims regardless of labels, including: defamation (*Hassell*,
22 5 Cal.5th at 536), negligence (*Zeran*, 129 F.3d at 330 [holding that Section 230 immunity applies
23 where allegations of negligence require publication of another’s statement]; *Doe II v. MySpace Inc.*
24 (2009) 175 Cal.App.4th 561, 573 [holding that claims for gross negligence are barred by Section
25 230 where they are based on decisions to “restrict or make available certain material”]), privacy-

26
27 ⁷ This is true even if Substack allegedly requested edits to Poulson’s stories. (See
28 *Roommates.com*, 521 F.3d at 1169 (“A website operator who edits user-created content—such as
by correcting spelling, removing obscenity or trimming for length—retains his immunity for any
illegality in the user-created content, provided that the edits are unrelated to the illegality.”).)

1 related torts (*Caraccioli v. Facebook, Inc.* (2016) 167 F. Supp. 3d 1056, 1066 [holding that Section
2 230 bars claims for public disclosure of private facts, false light, intrusion into private affairs, and
3 intentional and negligent infliction of emotional distress], *affd.* (9th Cir. 2017) 700 F.App’x 588),
4 and business torts (*Jurin v. Google, Inc.* (E.D.Cal. 2010) 695 F.Supp.2d 1117, 1122 [holding that
5 Section 230 bars claims for negligent and intentional interference with prospective economic
6 relations and intentional interference with contractual relations]; *Gentry v. eBay, Inc.* (2002) 99
7 Cal.App.4th 816, 836 [barring plaintiff from bringing a cause of action against an interactive service
8 provider under unfair competition law when the information originated with a third party]). Section
9 230 also bars Plaintiff’s claims based on California criminal laws. (See *Voicenet Commc’ns, Inc. v.*
10 *Corbett* (E.D.Pa., Aug. 30, 2006, No. 04-1318) 2006 WL 2506318, at *3-4 [“the plain language of
11 the CDA provides internet service providers immunity from inconsistent state criminal laws”].)

12 Moreover, even if Plaintiff could show that Poulson violated the law by publishing the
13 Incident Report and stories about it online (he cannot), that would not pierce Substack’s immunity
14 under the CDA. Section 230 immunity applies “even if a service provider knows that third parties
15 are using such tools to create illegal content.” (*Goddard v. Google, Inc.* (N.D.Cal., Dec. 17, 2008,
16 No. C 08-2738JF(PVT)) 2008 WL 5245490, at *3.) In that case, “the service’s provider’s failure to
17 intervene is immunized.” (*Ibid.*; see also *Coffee v. Google, LLC* (N.D.Cal., Feb. 10, 2021, No. 20-
18 CV-03901-BLF) 2021 WL 493387, at *8 [same]; *Voicenet*, 2006 WL 2506318, at *3-4 [“the plain
19 language of the CDA provides internet service providers immunity from inconsistent state criminal
20 laws”].) Plaintiff simply has no viable argument that Section 230 does not apply because Poulson’s
21 content violated criminal law.

22 Plaintiff also cannot argue that Section 230 does not protect Substack because it was engaged
23 in illegal conduct. The only accusation against Substack is that it refuses to take down content posted
24 by Poulson. But “deciding whether to publish or to withdraw from publication third-party content”
25 is “*publishing conduct*” squarely protected by Section 230. (*Barnes v. Yahoo!, Inc.*, (9th Cir. 2009)
26 570 F.3d 1096, 1102-05 (“[Section 230](c)(1) ... shields from liability all publication decisions,
27 whether to edit, to remove, or to post, with respect to content generated entirely by third parties.”].)
28

1 Because all Plaintiff's claims against Substack arise from its publishing conduct with respect to a
2 third-party newsletter, they are all barred by Section 230.

3 **B. THE FIRST AMENDMENT BARS PLAINTIFF'S CLAIMS.**

4 The First Amendment⁸ bars Plaintiff's claims, all of which arise from the publication of
5 information Poulson lawfully obtained from a confidential source on a matter of public significance.

6 The Supreme Court has repeatedly reaffirmed that the First Amendment bars legal action
7 against media organizations for publishing lawfully obtained information that is a matter of public
8 significance, absent extraordinary circumstances. As the Court explained in a seminal case: "our
9 synthesis of prior cases involving attempts to punish truthful publication: '[I]f a newspaper lawfully
10 obtains truthful information about a matter of public significance then state officials may not
11 constitutionally punish publication of the information, absent a need to further a state interest of the
12 highest order.'" (*Florida Star v. B.J.F.* (1989) 491 U.S. 524, 533 [quoting *Smith v. Daily Mail Publ'g*
13 *Co.* (1979) 443 U.S. 97, 103].) Similarly, in *Cox Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469,
14 495, the Supreme Court held that the First Amendment barred civil damages against a television
15 station for broadcasting the name of a rape-murder victim lawfully obtained by a reporter from a
16 court proceeding because "[s]tates may not impose sanctions on the publication of truthful
17 information contained in official court records open to public inspection." (See also *Okla. Publ'g*
18 *Co. v. Okla. Cnty. Dist. Ct.* (1977) 430 U.S. 308 [First Amendment barred injunction blocking
19 publication of the name and photograph of minor charged in a juvenile proceeding lawfully obtained
20 by reporters]; *Daily Mail*, 443 U.S. at 103 [under First Amendment, statute barring publication of
21 information about juvenile criminal defendant could not be applied to newspaper publisher that
22 obtained information by monitoring police band and interviewing witnesses]; *Landmark Commc'ns,*
23 *Inc. v. Virginia* (1978) 435 U.S. 829 [striking down law criminalizing publication of information
24 from confidential judicial misconduct commission proceedings].)

25
26
27 ⁸ Substack uses "First Amendment" to refer both to the United States Constitution ((U.S. Const.
28 am. I ["Congress shall make no law ... abridging the freedom of speech, or of the press"]), and the
California Constitution (Cal. Const., art. I, § 2(a) ["A law may not restrain or abridge liberty of
speech or press."])).

1 In *Florida Star*, a local police department mistakenly released the name of a rape victim to
2 a reporter, who published the rape victim's name in the newspaper in violation of a state statute.
3 The Supreme Court held that the statute violated the First Amendment's protection for the press,
4 reaffirming that "where a newspaper publishes truthful information which it has lawfully obtained,
5 punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the
6 highest order, and that no such interest is satisfactorily served by imposing liability" on the press.
7 (491 U.S. at 541.) The Court held that the statute violated the First Amendment because the
8 newspaper lawfully obtained the rape victim's name from the police; its article concerned a matter
9 of public importance because it reported about "the commission, and investigation, of a violent
10 crime that had been reported to authorities" (*id.* at 525); and the rape victim had not shown that
11 imposing liability on the newspaper was a "punishment ... narrowly tailored to a state interest of
12 the highest order" (*id.* at 541).

13 These principles have been reaffirmed in the California courts. The California Supreme
14 Court has recognized that "state officials may not constitutionally punish publication of [truthful]
15 information" that "a newspaper lawfully obtains ... about a matter of public significance" absent "a
16 need to further a state interest of the highest order," and that the interest of alleged criminals and
17 crime victims in remaining anonymous is generally *not* a state interest "of the highest order." (See
18 *Gates v. Discovery Commc'ns, Inc.* (2004) 34 Cal.4th 679, 690, 692-93 & fn. 6 [quoting *Daily Mail*,
19 443 U.S. at 103].) Just as the United States Supreme Court did not prioritize the privacy and
20 anonymity interests of juvenile offenders in *Daily Mail*, or those of rape victims in *Cox* and *Florida*
21 *Star*, so too the California Supreme Court did not prioritize "the long-term anonymity of former
22 convicts." (*Id.* at 693.) All of these interests give way to the interest of the press in publishing truthful
23 stories on matters of public significance.

24 This case falls clearly within the principle expressed in *Florida Star*, *Daily Mail*, and *Gates*,
25 and Plaintiff's claims accordingly fail. All Plaintiff's claims arise from harm allegedly caused by
26 "disseminating the sealed Incident Report or information related to the sealed Incident Report."
27
28

1 (Compl. ¶ 53; see also *id.* ¶¶ 58, 69, 105, 110, 122, 136, 141, 153, 164, 170, 175.)⁹ There is no
2 dispute that the published information is truthful. Indeed, Plaintiff implicitly acknowledges that
3 Poulson published an accurate copy of the Incident Report. (See Compl. ¶ 14.) And he nowhere
4 alleges that any of the information is factually incorrect—despite his frivolous claim that “any
5 statement that the arrest did occur is, by operation of law, not truthful.” (Compl. ¶ 20.) Poulson also
6 lawfully obtained the Incident Report from a confidential source (Poulson Decl. ¶¶ 13-15), and
7 Plaintiff does not allege otherwise. Regardless, even if Plaintiff had alleged that Poulson obtained
8 the Incident Report in an unlawful manner (which, again, he does not), Plaintiff certainly does not—
9 and cannot—allege that **Substack** obtained the Incident Report unlawfully. Poulson’s reporting
10 about the Incident Report is also about a matter of public significance. The public significance of a
11 powerful man being arrested for felony domestic violence—without suffering job-related
12 consequences for his role as a CEO with government contracts and a role in national security—is
13 obvious. (See *ante*, at pp. 18-19.)

14 Further, the First Amendment protects one’s right to disclose material received from a source
15 regarding a matter of public concern even if the *source* obtained it unlawfully. (*Bartnicki v. Vopper*
16 (2001) 532 U.S. 514, 535). In *Bartnicki*, the U.S. Supreme Court held that the First Amendment
17 protected journalists who repeatedly reported the contents of a telephone conversation about a public
18 issue, which they obtained from a source who illegally intercepted the conversation. (*Id.* at 517-18.)
19 Despite the journalists knowing, or having reason to know, that their source obtained the
20 conversation unlawfully, they were free to disclose its contents because “a stranger’s illegal conduct
21 does not suffice to remove the First Amendment shield from speech about a matter of public
22 concern.” (*Id.* at 535; see also *Jean v. Mass. State Police* (1st Cir. 2007) 492 F.3d 24, 31-32 [holding
23 that defendants “made the decision to proceed with their disclosures knowing that the tape was
24 illegally intercepted, yet the Supreme Court held in *Bartnicki* that such a knowing disclosure is

25
26 ⁹ Plaintiff cannot evade the First Amendment by arguing that his claims do not arise from
27 publication, but rather “possession” of the Incident Report, “allow[ing] the sealed Incident
28 Report ... to remain publicly accessible,” or “refusal to remove” the report from the internet.
(Compl. ¶ 58.) Such actions and omissions—maintaining a digital copy of the information,
making it publicly accessible, and not subsequently removing it—are encompassed within the act
of publication.

1 protected by the First Amendment”]; *Democratic Nat’l Comm. v. Russian Fed’n* (S.D.N.Y. 2019)
2 392 F. Supp. 3d 410, 435-36, 449 [“A person is entitled [to] publish stolen documents that the
3 publisher requested from a source so long as the publisher did not participate in the theft.”)]; *Bowley*
4 *v. City of Uniontown Police Dep’t* (3d Cir. 2005) 404 F.3d 783, 787 [“[a]lthough [the source]
5 violated Pennsylvania law prohibiting the release of juvenile arrest records by doing so, his unlawful
6 release of the information does not make receipt of that information by the Herald Standard
7 unlawful”].)

8 *Bartnicki*, which itself dealt with a statutory command of secrecy, controls even if the
9 government requires that information be kept confidential. As the Court of Appeal has recognized,
10 “it may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy
11 information through routine reporting techniques,” which “of course, include asking persons
12 questions, including those with confidential or restricted information.” (*Nicholson v. McClatchy*
13 *Newspapers* (1986) 177 Cal.App.3d 509, 511, 519-20.) Plaintiff “cannot distinguish[] the ‘wealth
14 of both State and Federal case law, discussing the protection journalists and the press enjoy under
15 the First Amendment where there have been allegations that published or disclosed content had been
16 illegally obtained.’” (*Ass’n for L.A. Deputy Sheriffs v. L.A. Times Commc’ns LLC* (2015) 239
17 Cal.App.4th 808, 819-20 [collecting cases].)

18 Even considering Plaintiff’s self-serving allegations, the conduct of all Defendants—and
19 certainly Substack’s—falls squarely within *Bartnicki*’s protection. It is undisputed that Poulson
20 obtained the arrest report from a source. (Compl. ¶¶ 43, 46; Poulson Decl. ¶ 13.) Although the
21 Complaint advances the conclusory allegation that “[u]pon information and belief, POULSON knew
22 or should have known at all times that the report had been sealed” (Compl. ¶ 15), it is undisputed
23 that Poulson himself did not himself illegally obtain the report from the San Francisco Police
24 Department (Poulson Decl. ¶¶ 13-15). Nor did Poulson violate the law merely by receiving the
25 report from his source. Obtaining confidential information from a source is a constitutionally
26 protected newsgathering technique, and cannot be “stripped” of its constitutional shield by “calling”
27 it “tortious.” (*Ass’n for L.A. Deputy Sheriffs*, 239 Cal.App.4th at 819 [quoting *Nicholson*, 177
28 Cal.App.3d at 513].)

1 As for Substack, there are no allegations that it acted unlawfully to obtain the report either.
2 Their only alleged wrongdoing was to facilitate Poulson’s journalism generally and then not act to
3 take down the arrest report when posted online. (See Compl. ¶¶ 27, 32, 42, 141.)¹⁰ And Plaintiff
4 cannot evade Defendants’ First Amendment protections by claiming that even if Poulson is
5 protected for the act of writing news stories, the Defendants are not protected for their actions in
6 allowing the dissemination of those stories and the underlying Incident Report. Both “creation and
7 dissemination of information are speech within the meaning of the First Amendment.” (*Sorrell v.*
8 *IMS Health Inc.* (2011) 564 U.S. 552, 570.) And “[w]hether government regulation applies to
9 creating, distributing, or consuming speech makes no difference.” (*Brown v. Ent. Merchs. Ass’n*
10 (2011) 564 US 786, 792, fn. 1.)

11 Simply put, the First Amendment forecloses Plaintiff’s claims in light of *Florida Star* and
12 *Bartnicki*.

13 **V. CONCLUSION**

14 Substack respectfully requests that the Court sustain this Demurrer and dismiss the
15 Complaint with prejudice.

16
17 Dated: December 6, 2024

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26
27 ¹⁰ Substack was allegedly “involved in reviewing” and “editing” Poulson’s articles, but this is
28 not alleged to be wrongdoing. The only changes allegedly made by Substack were to remove
certain content or request that Poulson add the caveat that “the charges were later dropped.”
(Compl. ¶ 32.)