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FILED

*Superior Court of California,
County of San Francisco*

12/09/2024
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

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

**MEMORANDUM OF POINTS AND
AUTHORITES IN SUPPORT OF
DEFENDANT TECH INQUIRY, INC.'S
SPECIAL MOTION TO STRIKE
(CCP § 425.16)**

DATE: January 10, 2025

TIME: 9:30 a.m.

DEPT: 302

Judge: Hon. Richard B. Ulmer, Jr.

Action Filed: October 3, 2024

Trial Date: None set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This lawsuit is a SLAPP lawsuit. It seeks to chill defendant Tech Inquiry, Inc.’s speech
4 about the official actions of San Francisco police, their police report describing the felony arrest of
5 Plaintiff, a high-profile technology executive, for allegedly battering his girlfriend. Plaintiff alleges
6 that Tech Inquiry should be held liable because journalist Jack Poulson posted a copy of Plaintiff’s
7 arrest report and related articles on Tech Inquiry’s website in alleged violation of a new California
8 statute that makes it unlawful to publish an arrest report after it has been sealed by a court, as
9 Plaintiff’s arrest report was.

10 But Plaintiff’s claims and the statute, Penal Code § 851.92, are fatally flawed. All of
11 Plaintiff’s claims against Tech Inquiry arise from Tech Inquiry’s speech about official police
12 actions, Plaintiff’s official arrest report, and alleged domestic violence, which are matters of public
13 concern. Plaintiff’s claims therefore trigger the protection of C.C.P. § 415.16(2), (3), and (4) of
14 the anti-SLAPP statute. Plaintiff cannot meet his burden of showing a probability of prevailing on
15 any of his claims, as required by the anti-SLAPP statute. Plaintiff’s claims are barred by § 230 of
16 the Communications Decency Act, the absolute California fair report privilege, and the First
17 Amendment protection for news reports about lawfully obtained government records and bar
18 against prior restraint. This Court should therefore grant Tech Inquiry’s special motion to strike all
19 of Plaintiff’s claims against Tech Inquiry.

20 **II. FACTUAL BACKGROUND**

21 **A. Tech Inquiry Is a News Website That Passively Hosted the Incident Report**

22 Defendant Tech Inquiry, Inc. is a public website, <https://www.techinquiry.org>, that provides
23 the public with government records, news articles, data, and other information investigating the
24 intersection of surveillance and weapons companies with governments. Declaration of Jack Poulson
25 (“Poulson Decl.”) ¶ 2 (attached to Mr. Poulson’s concurrently Special Motion to Strike). Tech
26 Inquiry was founded by Mr. Poulson, who is the executive director of Tech Inquiry. *Id.* ¶ 2.

27 Mr. Poulson is an independent journalist focusing on the intersection of technology and
28 national security who reports primarily through his periodic newsletter, *All-Source Intelligence*,

1 published through Substack. *Id.* ¶ 1. His newsletter is publicly available on the internet at
2 <https://substack.com/@jackpoulson>. *Id.* ¶ 1. Mr. Poulson writes his Substack newsletter in his
3 personal capacity and not as an officer of Tech Inquiry. *Id.* ¶¶ 2, 21.

4 One the companies that Mr. Poulson has been reporting about in his Substack newsletter is a
5 tech company where Plaintiff worked as chief executive officer. *Id.* ¶ 4; Exhibit B. One of Mr.
6 Poulson’s Substack articles, published on September 1, 2023, discussed Plaintiff’s accidental public
7 confirmation of his company’s classified intelligence contracts in his declaration in a lawsuit. *Id.* ¶
8 7; Exhibit B.

9 On September 14, 2023, Mr. Poulson posted a newsletters on Substack to report that
10 Plaintiff, then-CEO of a tech company, had been arrested for alleged felony domestic abuse of his
11 girlfriend in San Francisco, “The Covert Gig-Work Surveillance CEO Arrested for Felony
12 Domestic Violence.” *Id.* ¶ 8; Exhibit C.

13 Mr. Poulson received the Incident Report through an unsolicited message on the end-to-end
14 encrypted messaging platform Signal from a confidential source in early September 2023. *Id.* ¶ 13.
15 Mr. Poulson had no prior relationship with the source and did not request or otherwise seek out the
16 Incident Report. *Id.* ¶ 13. Mr. Poulson was unaware that the Incident Report was sealed by a San
17 Francisco Superior Court when he received it, wrote about it, and posted it on Tech Inquiry. *Id.* ¶¶
18 14-15. There were no markings on the Incident Report indicating it was sealed and when Mr.
19 Poulson called the San Francisco Police Department’s Crime Information Services Unit, which
20 confirmed the accuracy of the Incident Report, police did not inform Mr. Poulson the report was
21 sealed. *Id.* ¶¶ 14-15.

22 When he posted his article about the Incident Report on Substack, Mr. Poulson included a
23 link to a redacted version of the Incident Report, which he had posted on the Tech Inquiry website
24 in his capacity as a Substack writer, not an executive of Tech Inquiry. *Id.* ¶ 21. Several months later,
25 Mr. Poulson removed the arrest report from Tech Inquiry. *Id.* ¶ 21.

26 Mr. Poulson decided to report about Plaintiff’s Incident Report because Plaintiff was a
27 controversial and apparently reckless CEO at his tech company, reportedly holding a government
28 security clearance granting him to access sensitive national security information, placing him in a

1 position of public trust; yet he had accidentally publicly revealed his company’s classified work
2 with U.S. government agencies in his public court declaration; hired gig workers who unknowingly
3 performed high-risk intelligence work overseas; whose company secretly pivoted to performing
4 military surveillance; and failed to prevent the deaths of many of the company’s employees,
5 including 19 who were pulled off a bus in Iraq and executed on the side of the road while
6 performing as part of the company’s secretive military contracts. *Id.* ¶¶ 16-17.

7 Mr. Poulson writes all of his Substack newsletters in his personal capacity, and not as an
8 officer of Tech Inquiry. Tech Inquiry’s only role in this matter is that Mr. Poulson initially stored a
9 redacted copy of Plaintiff’s Incident Report on Tech Inquiry’s server so that he could directly link
10 to the document in his Substack article about Plaintiff’s arrest, although Mr. Poulson subsequently
11 deleted the redacted Incident Report from Tech Inquiry’s server. *Id.* ¶ 21.

12 **B. Plaintiff Is a Public Figure Who Demanded that Tech Inquiry Remove the Incident**
13 **Report and Related Articles from the Website**

14 Plaintiff has repeatedly sought public attention as an American technology executive,
15 including by describing himself as a “prominent figure” in the industry; creating a personal website;
16 hosting podcasts with high-profile guests, including former U.S. Treasury Secretary Larry
17 Summers; creating a public LinkedIn profile; and working as a CEO at a company with U.S.
18 government and foreign government contracts. Declaration of Sarah Noble in Support of Jack
19 Poulson’s Special Motion to Strike; Exhibits A-I, concurrently filed.

20 On September 16, 2024, Plaintiff’s counsel sent a cease and desist letter and \$25-million
21 damages demand to Tech Inquiry, demanding it remove the Incident Report from its website, “all
22 references” to the Incident Report, and all “information related to the sealed Incident Report.”
23 Compl. ¶ 41. On October 3, 2024, Plaintiff filed suit against Tech Inquiry, Mr. Poulson, Substack,
24 and Amazon Web Services, Inc., alleging 14 claims against Tech Inquiry. Compl. ¶¶ 50-149, 157-
25 176, and seeking injunctive relief. Compl. p. 22.

1 **III. ARGUMENT**

2 **A. The Anti-SLAPP Statute Is Designed to Protect News Websites Such as Tech**
3 **Inquiry From Meritless Lawsuits Targeting Its Protected Speech**

4 The Legislature enacted Code of Civil Procedure § 415.16 to “provide[] a procedure for
5 weeding out, at an early stage, meritless claims arising from protected activity” of speech and
6 petitioning, known as SLAPP suits. *Baral v. Schnitt*, 1 Cal. 5th 376, 384 (2016). Special motions to
7 strike brought under § 425.16 are designed to provide “a fast and inexpensive unmasking and
8 dismissal” of lawsuits targeting protected speech or petitioning activity (*Wilcox v. Superior Court*,
9 27 Cal. App. 4th 809, 819, 823 (1994)), allowing the defendant to “nip SLAPP litigation in the
10 bud[.]” *Braun v. Chron. Publ’g Co.*, 52 Cal. App. 4th 1036, 1042 (1997)).

11 The statute permits a defendant to file a special motion strike any “cause of action against a
12 person arising from any act of that person in furtherance of the person’s right of petition or free
13 speech under the United States Constitution or the California Constitution in connection with a
14 public issue.” C.C.P. § 525.16(b)(1). The statute “requires a court to engage in a two-step process”
15 to analyze the defendant’s anti-SLAPP motion. *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th 728
16 (2003).

17 “First, the court decides whether the defendant has made a threshold showing that the
18 challenged cause of action is one arising from protected activity.” *Navellier v. Sletten*, 29 Cal.4th 82,
19 88 (2002) (citations omitted). A defendant meets this burden simply “by demonstrating that the act
20 underlying the plaintiffs’ cause of action fits one of the categories spelled out in section 425.16,
21 subdivision (e).” *Id* (citation omitted). The court is precluded during this first step from considering
22 whether the speech violates a civil statute or common law because doing so would be “placing the
23 cart before the horse.” *DuPont Merck Pharm. Co. v. Superior Ct.*, 78 Cal. App. 4th 562, 759 (2000).
24 Instead, the court must wait to consider the merit of the plaintiff’s claims “in the second part of the
25 analysis,” when deciding “whether there is a probability plaintiffs will prevail.” *Id*.

26 Second, if the court determines that the defendant has satisfied this first test, the burden
27 shifts to the plaintiff to demonstrate “a probability of prevailing on the claim[s].” *Id*. at 88. The
28 plaintiff must establish “that the complaint is legally sufficient and supported by a prima facie

1 showing of facts that, if proved at trial, would support a judgment in the plaintiff’s favor.” *Digerati*
2 *Holdings, LLC v. Young Money Entm’t, LLC*, 194 Cal. App. 4th 873, 884 (2011). The motion must
3 be granted if the “plaintiff fails to produce evidence to substantiate his claim or if the defendant has
4 shown that the plaintiff cannot prevail as a matter of law.” *Siam v. Kizilbash*, 130 Cal. App. 4th
5 1563, 1570 (2005).

6 The anti-SLAPP statute “may apply to *any* cause of action.” Burke, *Civil Litigation Series:*
7 *Anti-SLAPP Litigation* (The Rutter Group 2023) § 4:1, p.212 (emphasis in original). “Nothing in the
8 statute itself categorically excludes any particular type of action from its operation[.]” *Navellier*, 29
9 Cal. 4th at 92 (quoting *Calif. Teachers Assn v. Governing Bd. of Rialto Unified School Dist.*, 14 Cal.
10 4th 627, 633 (1997)). Courts have held that the anti-SLAPP statute applies to claims asserted by
11 Plaintiff, including claims for defamation (*Wilcox*, 30 Cal. App. 4th at 809); *Lafayette Morehouse,*
12 *Inc. v. Chronicle Publ’g Co.*, 37 Cal. App. 4th 855 (1995)); infliction of emotional distress (*Ketchum*
13 *v. Moses*, 24 Cal. 4th 1122 (2001)); disclosure of confidential information (*Fox Searchlight Pictures,*
14 *Inc. v. Paladino*, 89 Cal. App 4th 294 (2001)); interference with prospective economic advantage
15 (*Sipple v. Found. for Nat. Progress*, 71 Cal. App. 4th 226 (1999)); invasion of privacy (*Seelig v.*
16 *Infinity Broadcasting Corp.*, 97 Cal. App. 4th 798 (2002)); publication of private facts and intrusion
17 (*Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337 (2007)); false light (*Tamkin v. CBS*
18 *Broadcasting, Inc.*, 193 Cal. App. 4th 133 (2011); negligence (*Birkner v. Lam*, 156 Cal. App. 4th 275
19 (2007)); and various statutory violations (*Blue v. Office of Inspector General*, 23 Cal. App. 5th 138
20 (2018) (alleged violation Penal Code § 6126.5)).

21 **B. Plaintiff’s Claims Arise from Tech Inquiry’s Speech Protected by § 425(e)**

22 “A claim arises from protected activity when that activity underlies or forms the basis for the
23 claim.” *Park v. Bd. Of Trustees of Cal. State Univ.*, 2 Cal. 5th 1057, 1062 (2017). All of Plaintiffs
24 claims against Tech Inquiry arise from the website’s speech protected by the anti-SLAPP statute.

25 **1. Tech Inquiry’s Speech Is Protected by § 425(e)(2)**

26 All of Plaintiff’s claims against Tech Inquiry arise from its hosting of Plaintiff’s official
27 Incident Report by the San Francisco Police Department documenting Plaintiff’s arrest for alleged
28 felony domestic violence and related articles, which is speech “made in connection with an issue

1 under consideration by a ... executive, or judicial body, or any other official proceeding authorized
2 by law” protected by C. C .P.§ 425€(2). Compl. ¶ 27 (“Tech Inquiry ... published the sealed
3 Incident Report on the Tech Inquiry website”); ¶¶ 51, 58, 69 (negligence, gross negligence, and
4 intentional interference claims arise from Tech Inquiry’s “possession and public dissemination of a
5 sealed Incident Report and information related to the sealed Incident Report”); ¶ 100 (private facts
6 claim arises from Tech Inquiry’s “publiciz[ing] private information concerning Plaintiff”); ¶ 110
7 (false light claim arises from Tech Inquiry’s “publicly disclos[ing] information or material that
8 showed Plaintiff in a false light”) ¶ 112 (intrusion claim arises from Tech Inquiry “publicly
9 disseminat[ing] and refus[ing] to take down [from its website] “the sealed Incident Report and
10 information related to the sealed Incident Report”); ¶ 170 (Penal Code § 851.92(c) claim arises
11 from Tech Inquiry “disseminating the sealed Incident Report and information related to the sealed
12 Incident Report”); *see also* Compl. ¶¶ 76, 87, 128, 135 (other claims “refer[] to and incorporate[]”
13 the “allegations contained in the foregoing paragraphs” alleging that Tech Inquiry published
14 Plaintiff’s Incident Report and related information on its website).

15 A “governmental investigation” into “potential criminal conduct” is an “official proceeding”
16 under C.C.P. § 425(e)(2). *Comstock v. Aber*, 212 Ca. App. 4th 931, 943 (2012). The investigation is
17 an “official proceeding” even if the suspect was never charged with a crime.” *Hansen v. Calif.*
18 *Dept. of Corrections and Rehabilitation*, 171 Cal. App. 4th 1537, 1544 (2008). Here, the Incident
19 Report was an official writing that documented an official proceeding by the San Francisco Police
20 Department, and the Incident Report was also under consideration by the San Francisco County
21 Superior Court, which later sealed the Incident Report. Subsection 425(e)(2) does not require a
22 defendant to establish that its speech about an official proceeding is related to a matter of public
23 concern. *See Briggs v. Eden Council for Hope & Opportunity*, 18 Cal. 4th 1106, 1116 (1999).

24 **2. Tech Inquiry’s Speech Is Protected by C. C. P. § 425(e)(3)**

25 All of Plaintiff’s claims against Tech Inquiry arise from its hosting of Plaintiff’s official
26 police arrest report for alleged felony domestic violence, which is a matter of public interest, on
27 Tech Inquiry’s website, which is a public forum, all of which is speech protected by § 425(e)(3).
28 Compl. ¶¶ 27, 51, 58, 69, 76, 87, 100, 110, 112, 128, 135, 170. The California Supreme Court has

1 held that “Web sites accessible to the public ... are ‘public forums’ for purposes of the ... SLAPP
2 statute.” *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41, n. 4 (2006). *See also ComputerXpress, Inc. v.*
3 *Jackson*, 93 Cal. App. 4th 993, 1006 (2001) (same). Tech Inquiry publishes news to the public, an
4 activity protected by the anti-SLAPP statute. “[T]he language of the statute [is] broad enough to
5 cover news reporting activity,” “publishers,” and “media defendants” ... who regularly face libel
6 litigation[.]” *Sipple*, 71 Cal. App. 4th at 240. *See also Braun*, 52 Cal. App. 4th at 1045 (news
7 reporting is free speech and section 425.16 applies to media defendants in libel actions); *Assoc. for*
8 *Los Angeles Cnty Deputy Sheriff’s v. Los Angeles Times Comms., LLC*, 239 Cal. App. 4th 808, 816
9 (2015) (“*ALADS*”) (plaintiff’s cause of action arising from newspaper’s newsgathering of deputies’
10 confidential personnel files “[a]rises from the Times’s [p]rotected [a]ctivity: [n]ews [r]eporting”).

11 Media reports about the actions of law enforcement officers qualify as speech on a public
12 forum about a matter of public interest protected by § 425(e)(3). “The public has a strong interest in
13 the ... conduct of law enforcement officers.” *Id.* at 826. *See also Collondrez v. City of Rio Vista*, 61
14 Cal. App. 5th 1039, 1050 (2021) (conduct of police officer is “undoubtedly” an issue of public
15 interest pursuant to § 425(e)(3). *See generally Commission on Peace Officer Standards & Training v.*
16 *Superior Court*, 42 Cal. 4th 278, 297, 300 (2007) (“*POST*”) (“Peace officers ‘hold one of the most
17 powerful positions in our society; our dependence on them is high and the potential for abuse of
18 power is far from insignificant.’”) (citation and quotation marks omitted). News reports about
19 suspected criminal activity are considered a matter of public interest. *Lieberman v. KCOP*
20 *Television, Inc.*, 110 Cal. App. 4th 156 (2022). News reports about allegations of domestic abuse
21 contained in official records involving public figures also qualify as free speech about a matter of
22 public concern under the SLAPP statute. *Sipple*, 71 Cal. App. 4th at 238. “The ... topic of ...
23 domestic abuse is [an issue of] significant and of public interest” under the anti-SLAPP statute.
24 *M.G. v. Warner*, 89 Cal. App. 4th 623, 629 (2001).

25 Because all of Plaintiff’s claims against Tech Inquiry arise from its hosting of the Incident
26 Report and related articles, which is speech on a public forum about matters of public interest, all
27 of Plaintiff’s 14 claims against Tech Inquiry fall within the protection of § 425.16(e)(3).
28

1 **3. Tech Inquiry Speech Is Protected by § 425.16 e)(4)**

2 All of Plaintiff’s claims against Tech Inquiry arise from the website’s hosting of the Incident
3 Report and related news reports, which are matters of public interest within the catch-all protection
4 of § 425(e)(4). “The “free speech right to report the news” is protected by § 425.16(e)(4). *San*
5 *Diegans for Open Gov’t v. San Diego State Univ. Rsch. Found.*, 13 Cal. App. 5th 76, 101 (2017)
6 (citation omitted). The conduct of police officers is “undoubtedly” an issue of public interest.
7 *Collondrez*, 61 Cal. App. 5th at 1050. News reports about suspected criminal activity are a matter of
8 public interest. *Lieberman*, 110 Cal. App. 4th at 156. The arrest of a high-profile technology
9 executive for alleged felony domestic violence is also a matter of public interest. *Sipple*, 71 Cal.
10 App. 4th at 238; *M.G.*, 89 Cal. App. 4th at 629. Plaintiff’s 14 claims against Tech Inquiry therefore
11 fall within the protection of § 425.16(e)(4).

12 **C. Plaintiff Cannot Meet His Burden to Prove a Probability of Prevailing**

13 Because Plaintiff’s claims fall within subsection 425.16(e)(2), (e)(3), and (e)(4), the burden
14 shifts to Plaintiff “to establish[] that there is a probability that [he] will prevail” on each of his 14
15 claims against Tech Inquiry. C.C.P. § 425.16(b)(1). Plaintiff “may not rely solely on [his]
16 complaint, even if verified; instead, its proof must be made upon competent admissible evidence.”
17 *Sweetwater Union High School Dist. V. Gilbane Building Co.*, 6 Cal. 5th 931, 940 (2019) (quotation
18 marks and citation omitted). “Courts have long required that the evidence relied on by the plaintiff
19 must be admissible at trial.” *Id.* At 946. Declarations “must reflect that they were made by
20 competent witnesses with personal knowledge of the facts they swear to be true.” *Id.* at 945.

21 **1. Plaintiff’s Claims Are Barred by 47 U.S.C. § 230**

22 The Communications Decency Act, 47 U.S.C. § 230, “expressly preempts any state law”
23 claims arising from publication of third-party content on interactive computer service providers.
24 *Perfect 10, Inc. v. CCBill LLC*, 488 F. 3d 1102, 1118 (9th Cir. 2007). Websites are interactive
25 computer service providers. *Batzel*, 333 F.3d at 1031. The CDA “establishes broad federal
26 immunity to any cause of action that would make service providers liable for information
27 originating with a third-party user of the service.” *Id.* (internal quotation marks and citations
28 omitted). The Ninth Circuit has noted that “courts construing § 230 have recognized as critical in

1 applying the statute the concern that lawsuits could threaten the ‘freedom of speech in the new and
2 burgeoning Internet medium.’” *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir.2003) (quoting *Zeran*
3 *v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir.1997)). “Congress decided not to treat providers
4 of interactive computer services like other information providers such as newspapers, magazines or
5 television and radio stations, all of which may be held liable for publishing obscene or defamatory
6 material written or prepared by others.” *Id.* at 1026 (citing *Blumenthal v. Drudge*, 992 F. Supp. 44,
7 49 (D.D.C. 1998)).

8 Section 230 provides immunity for a broad variety of state law claims arising from allegedly
9 tortious publications posted on websites and other ISPs by third parties, including claims for
10 defamation (*Id.* at 1034-35; *Johnson v. Arden*, 614 F. 3d 785 (8th Cir. 2010); *Blumenthal v. Drudge*,
11 992 F. Supp. 44, 49-53 (D.D.C. 1998); *Global Royalties, Ltd. V. Xcentric Ventures, LLC*, 544 F.
12 Supp.2d 929 (D. Ariz. 2008); posting a false dating website profile (*Carafano v. Metrosplash.com,*
13 *Inc.*, 339 F.3d 1119 (9th Cir. 2003)); posting incorrect stock information (*Ben Ezra, Weinstein & Co.*
14 *v. America Online*, 206 F.3d 980, 984-985 (10th Cir. 2000)); negligence (*Doe v. America Online*,
15 783 So.2d 1010, 1013-1017 (Fl. 2001); infliction of emotional distress (*Doe One v. Oliver*, 755
16 A.2d 1000, 1003-1004 (Conn. Super. Ct. 2000); tortious interference (*Nemet Chevrolet Ltd. V.*
17 *ConsumerAffairs.com, Inc.*, 591 F.3d 250 (4th Cir. 2009); and alleged violations of state and federal
18 statutes (*Voicenet Communications, Inc. v. Corbett*, No. 04-1318, 2006 WL 2506318 (E.D. Pa. Aug.
19 30, 2006); *Doe v. Bates*, No. 5:05-CV-91-DF-CMC, 2006 WL 3813758 (E.D. Tex. Dec. 27, 2006)).

20 Tech Inquiry’s website is an interactive computer service provider protected by § 230. *See*
21 *Batzel*, 333 F.3d at 1031. The challenged material hosted by the website – the Incident Report, a
22 link to Mr. Poulson’s Substack article about the Incident Report, and links to articles by other
23 authors about the Incident Report – were “written or prepared by others.” *Id.* at 1026. Tech Inquiry
24 did not prepare the Incident Report, write Mr. Poulson’s Substack article about the Incident Report,
25 or the other articles about the Incident Report by other authors. When Mr. Poulson posted the
26 Incident Report and related Substack articles on Tech Inquiry, he did so in his capacity as a
27 Substack writer, not an executive for Tech Inquiry. Poulson Decl. ¶¶ 2, 21. For all of these reasons,
28 all of Plaintiff’s claims are barred by § 230.

1 **2. Plaintiff's Claims Are Barred by the California's Fair Report Privilege**

2 Plaintiff's claims also are all barred by California's statutory fair report privilege. Civil
3 Code § 47(d) provides an absolute bar against all content-based claims arising from substantially
4 accurate news reports about official government proceedings and documents. For example, in
5 *Jennings v. Telegram-Tribune Co.*, 164 Cal. App. 3d 119 (1985), the Court of Appeal held that a
6 newspaper story about a local architect's tax evasion court case was protected by the fair report
7 privilege and ordered the dismissal of the plaintiff's causes of action for libel, invasion of privacy,
8 intentional infliction of emotional distress, injurious falsehood, interference with contractual
9 relations, interference with prospective economic advantage, and violation of Civil Code § 1708. *Id.*
10 at 129. The fair report privilege immunizes news reports about arrest records. *Hayward v.*
11 *Watsonville Register-Pajaronian and Sun*, 265 Cal. App. 2d 255 (1968) ("crime reports of a police
12 department ... and upon which a criminal complaint is filed and a warrant of arrest is issued ... are
13 privileged" under Civil Code § 47(d)). The fair report privilege "does not require the reporter to
14 resolve the merits of the charges, nor does it require that he present the arrestee's version of the
15 facts." *Rollenhagen v. City of Orange*, 116 Cal. App. 3d 414, 427 (1981) (news report about
16 plaintiff's arrest protected by fair report privilege). The fair report privilege is absolute and protects
17 news reports even if the reporter or news organization published with ill will toward the plaintiff or
18 published with constitutional actual malice. *McClatchy Newspapers, Inc. v. Superior Court*, 189
19 Cal. App 3d 961, 974-75 (1987); *Howard v. Oakland Tribune*, 199 Cal. App. 3d 1124, 1128 (1988).

20 California's fair report privilege applies to news reports about official government
21 proceedings and records that are confidential by law. *Reeves v. American Broadcasting Companies,*
22 *Inc.*, 719 F.2d 602, 606 (2d Cir.1983) (California fair report privilege immunized press coverage of
23 grand jury proceedings even though they were secret by law); *Crane v. The Arizona Republic*, 972
24 F.2d 1511, 1518-19 (9th Cir.1992) (California fair report privilege immunized press coverage of
25 congressional investigation even though it was confidential; "Citizens cannot monitor their
26 government when it conducts business behind closed doors"); *Braun*, 52 Cal. App. 4th at 1052
27 (California fair report privilege immunized news report about confidential government audit).

1 Here, California's fair report privilege is an absolute bar to all of Plaintiff's claims against
2 Tech Inquiry. All of the claims arise from Tech Inquiry's publication of an exact copy of the
3 Incident Report, which provides far more than a substantially accurate summary of the arrest report.
4 Plaintiff alleges that Tech Inquiry's publication of the Incident Report and related "information"
5 falsely imply that Plaintiff was convicted of domestic abuse, but Plaintiff does not cite any
6 statements published by Tech Inquiry that contain that implication – because there are none.
7 Journalists routinely report about police arrests; their reports do not imply a conviction.

8 **3. Plaintiff's Claims Are Barred by the First Amendment Because Tech**
9 **Inquiry Lawfully Obtained the Incident Report, a Matter of Public Interest**

10 Plaintiff cannot show a probability of prevailing on his claims for the independent reason
11 that the First Amendment prohibits courts from punishing news organizations that have lawfully
12 obtained government records or information that are a matter of public interest, as here. The
13 Supreme Court's decision in *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989) is instructive. In that
14 case, a local sheriff's department mistakenly disclosed a rape victim's name in a police report
15 distributed to reporters, who published the name in violation of a Florida statute that made it
16 unlawful to "print, publish, or broadcast ... in any instrument of mass communication" the name of
17 the victim of a sexual offense. *Id.* at 527. The victim successfully sued the newspaper for
18 negligently violating the statute by revealing her identity. *Id.* at 527, 529. The Supreme Court
19 reversed, holding that "if a newspaper lawfully obtains truthful information about a matter of public
20 significance then state officials may not constitutionally punish publication of the information,
21 absent a need to further a state interest of the highest order." *Id.* at 533 (quoting *Smith v. Daily Mail*
22 *Publ'g Co*, 443 U.S. 97, 103 (1979)). The court also held that the Florida statute barring the
23 publication of the name of a rape victim was unconstitutional as applied to the newspaper. *Id.* at
24 541. The Supreme Court has repeatedly held that state laws barring the media from publishing
25 information from lawfully obtained official government records and proceedings violate the First
26 Amendment. *E.g.*, *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 469 (1975) (finding unconstitutional
27 a civil damages award entered against a television station for broadcasting the lawfully obtained
28 name of a rape-murder victim in violation of a state statute); *Daily Mail*, 443 U. S. at 103 (finding
unconstitutional indictment of two newspapers for violating state statute forbidding newspapers to

1 publish, without written approval of the juvenile court, lawfully obtained name of minor). *See also*
2 *Bartnicki v. Vopper*, 523 U.S. 514, 535 (2001) (First Amendment barred liability against radio
3 station for publishing illegal wiretaps of telephone calls on grounds that recordings were matter of
4 public concern and reporter was a passive recipient of records); *ALADS*, 239 Cal. App. 4th at 819
5 (““While the government may desire to keep some [government records] confidential and may
6 impose the duty upon [government employees] to maintain confidentiality, it may not impose
7 criminal or civil liability upon the press for obtaining and publishing newsworthy information
8 through routine reporting techniques.””) (*quoting Nicholson v. McClatchy Newspapers*, 177 Cal.
9 App. 3d 509, 519-20 (1986)).

10 **4. Plaintiff’s Claim Based on Penal Code Section § 851.92(c) Fails Because the** 11 **Statute Is Unconstitutional**

12 Penal Code § 851.92(c) prohibits almost any person or entity – including news websites
13 such as Tech Inquiry – from disseminating any information “relating to” a sealed arrest record. Penal
14 Code § 851.92(c). Plaintiff alleges that Tech Inquiry violated the statute by hosting the sealed Incident
15 Report and related “information.” Compl. ¶¶ 166-171. But the statute is unconstitutional, both facially
16 and as applied to Tech Inquiry. The statute is a content-based restriction, which is subject to strict
17 scrutiny. *Kasky v. Nike*, 27 Cal. 4th 939 (2002) (“a content-based regulation is valid under the First
18 Amendment only if it can withstand strict scrutiny, which requires that the regulation be narrowly
19 tailored (that is, the least restrictive means) to promote a compelling government interest”). The
20 statute fails strict scrutiny because the state has no compelling governmental interest in penalizing the
21 dissemination of lawfully obtained information about a sealed arrest report – an official government
22 report – that involves a matter of public concern, as here. Nor is the statute the least restrictive means
23 of achieving any government interest or narrowly tailored to address that interest. Plaintiff’s cause of
24 action for alleged violation for Penal Code section 851(c) fails because the statute is unconstitutional.

25 **5. Plaintiff Cannot Overcome the Constitutional Bar Against a Prior Restraint**

26 Plaintiff’s request for injunctive relief in his “Prayer for Relief,” ¶ 10, is barred by the First
27 Amendment. For more than 100 years, California and federal courts have struck down court orders
28 enjoining speech about a matter of public concern, known as prior restraints. The Supreme Court

1 has described a court order barring the press from publishing information about matters of public
2 concern “the essence of censorship.” *Near v. Minnesota*, 283 U.S. 713 (1931). “[P]rior restraints on
3 speech and publication are the most serious and the least tolerable infringement on First
4 Amendment rights.” *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1971). There is a “heavy
5 presumption” against the “constitutional validity” of prior restraints on expression. *Organization for*
6 *a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Not even when the Nixon Administration
7 warned that Daniel Ellsberg’s unauthorized disclosure to the press of the classified “Pentagon
8 Papers” about the disastrous Vietnam War posed a “grave and immediate danger” to national
9 security did the Supreme Court grant a prior restraint ordering the press to stop publishing the
10 leaked documents. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971).

11 Prior restraints are presumptively unconstitutional under the California Constitution. In
12 *Wilson v. Superior Court*, 13 Cal. 3d 652, 658 (1975), the California Supreme Court held that a
13 “preliminary injunction violated petitioner’s rights of freedom of expression under the United States
14 Constitution, and for an independent ground, under the broader terms of the California
15 Constitution.” *Id.* at 662. The court explained held the “state constitutional guarantee of the right of
16 free speech and press” is a “protective provision more definitive and inclusive than the First
17 Amendment.” *Id.* at 658. Section 2, Article 1(a) expressly provides that “[a] law may not restrain or
18 abridge liberty of speech or press.” *Id.* at 658 (quoting Cal. Const., art. I, § 2(a)). In *Freedom Comm.*
19 *v. Superior Court*, 167 Cal. App. 4th 160 (2008), the Court of Appeal noted that prior restraints are
20 barred by the California Constitution because it “provides an even broader guarantee of the right of
21 free speech and the press than does the First Amendment.” *Id.* at 154 (citation omitted). *Accord*
22 *ALADS*, 239 Cal. App. 4th at 823 (California Constitution ““provides an even broader guarantee of
23 the right of free speech and the press than does the First Amendment””) (citation omitted). In
24 *ALADS*, a labor union for rank-and-file deputies in the Los Angeles County Sheriff’s Department
25 asked a court to enjoin the *Los Angeles Times* from publishing confidential personnel files for 500
26 deputies. *Id.* at 811-12. The newspaper filed an anti-SLAPP motion, asserting that the union could
27 not establish a probability of prevailing because the requested injunction was a prior restraint that
28

1 violated both the state and federal constitutions, and the trial court and the Court of Appeal agreed,
2 with the latter affirming the dismissal of the lawsuit. *Id.* at 821, 824.

3 **IV. CONCLUSION**

4 The anti-SLAPP statute applies to all 14 of Plaintiff's claims against Tech Inquiry because
5 all the claims arise from Tech Inquiry's exercise of its constitutional free speech rights under
6 subsections 425.16(e)(2), (e)(3), and (e)(4). Plaintiff cannot show a probability of prevailing on any
7 of his claims because they are barred by Section 230 of the Communications Decency Act;
8 California's absolute fair report privilege; the First Amendment protection for the publication of
9 lawfully obtained government records about a matter of public concern; and constitutional bars
10 against prior restraints. Plaintiff's claims against Tech Inquiry should therefore be stricken without
11 leave to amend because no amendments can cure the fatal flaws in Plaintiff's claims. *See Simmons*
12 *v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068, 1073 (2001).

13 DATED: December 7, 2024

LAW OFFICE OF SUSAN E. SEAGER

14
15 /s/ Susan E. Seager

16 Susan E. Seager

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18 *Attorneys for Defendant Tech Inquiry, Inc.*
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