

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

9 BERMAN NORTH LLP  
10 Stacy Y. North (CA Bar No. 219034)  
11 stacy@bermannorth.com  
12 2001 Van Ness, Suite 300  
13 San Francisco, CA 94109  
14 (650) 463-9158

15 Attorneys for Plaintiff

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

19 MAURY BLACKMAN, an individual,

20 *Plaintiff,*

21 v.

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

28 *Defendants.*

Case No.: CGC-24-618681

**PLAINTIFF'S REPLY IN FURTHER  
SUPPORT OF PLAINTIFF'S MOTION TO  
SEAL**

DATE: January 6, 2025

TIME: 9:30 am

DEPT: 301

JUDGE: Hon. Rochelle C. East

Action Filed: October 3, 2024

Trial Date: None set

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**12/27/2024**  
**Clerk of the Court**

BY: JEFFREY FLORES  
Deputy Clerk

1 Defendants veil the argument as an Opposition to Plaintiff's Motion to Seal (the  
2 "Opposition"), when in fact it is an impermissible, inappropriate, and untimely request that this Court  
3 reverse Judge Gold's February 17, 2022 Sealing Order pursuant to Penal Code section 851.91 (the  
4 "Sealing Order") Judge Gold's Sealing Order that sealed an arrest that did not lead to conviction,  
5 however, was only entered after consideration of "interests of justice," California's strong public  
6 policy, and the applicable First Amendment interests. Further, in addition to the Sealing Order,  
7 California has both criminal and civil statutes that prohibit the dissemination of this document and  
8 related information. See Penal Code section 851.92(c); Labor Code section 432.7(g)(2), (3). This  
9 court does not have appellate oversight over Judge Gold, and, even if it did, it would have no basis in  
10 fact or law to entertain Defendants' arguments to reverse the Sealing Order and unseal this record.  
11 Unable to advance any legitimate bases for unsealing, Defendants now argue that the Sealed  
12 Document became unsealed when they illegally disseminated it and refused to stop doing so. By this  
13 theory, any party can reverse a sealing order by putting the sealed document on the internet, even  
14 when a statute prohibits that exact conduct. No court has ever held this to be the case. For the  
15 reasons set forth herein and all of the other papers before this Court, Plaintiff respectfully requests  
16 that this Court issue an order that requires Defendants to file the Sealed Report under seal in  
17 compliance with the Sealing Order and the applicable statutes.

## 18 **I. STATEMENT OF FACTS**

### 19 **A. Defendants' Illegal Dissemination Of A Sealed Report**

20 This case arose from Defendants' ongoing illegal dissemination of a document and related  
21 information (the "Sealed Report") that was sealed pursuant to a sealing order entered by San  
22 Francisco Superior Court Judge Carolyn Gold dated February 17, 2022. (Complaint, ¶19; see  
23 Declaration of Plaintiff In Further Support of Motion to Seal ("Plaintiff Decl."), ¶12, Exh. A) Judge  
24 Gold considered the record before that court, interests of justice, and First Amendment interests  
25 before entering the Sealing Order. (Plaintiff Decl., ¶¶10, 11) In fact, to protect the privacy of  
26 individuals arrested without a conviction and avoid the stigmatization of an arrest, the arrest was  
27 "deemed the arrest not to have occurred." See Sealing Order; Penal Code section 851.91(e). In  
28 addition to the Sealing Order, California has also criminalized the unauthorized dissemination of the  
Sealed Report under Penal Code section 851.92(c). See also Labor Code section 432.7(g).

1           **B. Defendant’s Arrest Was Never Newsworthy**

2           This matter was never newsworthy. In December 2021, after Plaintiff’s encounter with the  
3 police, the matter was public, yet no media reported on these events, even though at that time  
4 Plaintiff, the CEO of a private technology company, was petitioning the Court and making the  
5 requisite showing under Cal. Pen. Code §851.91 to seal the report. (Plaintiff Decl., ¶¶13-16)  
6 (Declaration of Jack Poulson In Support of Special Motion to Strike (“Poulson Decl.”), Exhs. D, I)  
7 When Judge Gold entered the Sealing Order on February 17, 2022, no media reported on the events,  
8 and no third parties challenged the Sealing Order, although they were permitted to do so pursuant to  
9 Rules of Court, Rule 2.551(h)(2). (Plaintiff Decl., ¶13-16) Even in September 2023, when Poulson  
10 disseminated the Sealed Report and described its contents in a false, unflattering way, failing to  
11 indicate the disposition of the arrest, no media reported on Poulson’s blog posts. (Poulson Decl., Exh.  
12 C) (Plaintiff Decl., ¶¶13-16) In December 2023, when Poulson wrote in his blog post that Plaintiff’s  
13 employment was terminated because of the Sealed Report (without indicating the disposition of the  
14 arrest), no media reported on either the termination or that Poulson’s dissemination of the Sealed  
15 Report and its contents caused the termination. (Poulson Decl., Exh. D) (Plaintiff Decl., ¶¶13-16) In  
16 fact, between December 2021 and October 3, 2024 (when this Complaint was filed), no one other  
17 than Defendants disseminated the Sealed Report or reported on it. (*Id.*) Only after the Complaint was  
18 filed did the San Francisco Chronicle first write a story on these issues that focused on the litigation’s  
19 legal issues. (Plaintiff Decl., ¶60)

20           **C. Misuse Of The Sealed Report In The Santa Clara County Litigation**

21           In 2019, Premise Data, Plaintiff’s employer at the time, commenced a civil lawsuit in Santa  
22 Clara County Superior Court (the “Santa Clara County Litigation”) against former employees  
23 alleging breach of contract and torts aimed at harming the company. (Plaintiff Decl., ¶23) No media  
24 other than Defendants reported on this civil litigation.<sup>1</sup> (Plaintiff Decl., ¶¶13-16)

25 \_\_\_\_\_  
26 <sup>1</sup>Poulson conceded the public was not interested in Premise Data even when journalist Byron Tau  
27 covered the company. (Poulson Decl., Exh. A, p. 4/5 “there appears to be little appetite in the U.S.  
28 media to interrogate the roles of Premise Data and Two Six Technologies in ongoing U.S.  
information operations.”; Exh I p. 3/10 “Despite journalist Byron Tau using primary sources to  
expose the California-based, gig-work information gathering company Premise Data in 2021 as a  
covert front for intelligence gathering for U.S. Special Operations Forces around the globe, the  
reporting never captured broad public attention.”; Exh. I, p. 8/10 “Despite the lack of public appetite,  
Tau dedicated a chapter to Premise in his recent book”).

1 One of the attorneys representing a former Premise Data employee, Newton Oldfather—who  
2 had spent a decade as a lawyer for San Francisco and the Department of Police Accountability before  
3 entering private practice—obtained the Sealed Report in March 2022 without authorization. (Plaintiff  
4 Decl., Exh., ¶¶24-25, Exh. B) During the Santa Clara County Litigation, the former employees did  
5 not produce the Sealed Report in discovery. (Plaintiff Decl., ¶¶33, 34) Instead, Oldfather concealed  
6 his possession of the Sealed Report for over 18 months (*id.*), only to weaponize it by disseminating it  
7 through Poulson on September 14, 2023, as the trial date approached, and then sought discovery  
8 concerning the Sealed Report, claiming it was related to the Santa Clara County Litigation. (Poulson  
9 Decl., Exh. C) The former employees used Defendants’ illegal dissemination of the Sealed Report to  
10 pressure Premise Data into a more favorable settlement for his client. (Poulson Decl., Exhs. H, I)

11 Poulson, acting to further this scheme, repeatedly disseminated the Sealed Report and his  
12 description of the events, disregarding both Plaintiff’s privacy and that of the woman involved.<sup>2</sup>  
13 (Poulson Decl., Exh. C, D, E, H, I, J) Poulson later gloated that his actions had successfully caused  
14 Plaintiff’s termination in December 2023 and forced Premise Data to settle the lawsuit in January  
15 2024. (Poulson Decl., Exhs. D, H, I) Thus, far from being a matter of public significance, the  
16 dissemination of the Sealed Report was a litigation tactic by a private attorney who used Poulson to  
17 leverage private, sealed information to get a better settlement for his client in a civil litigation.

#### 18 **D. Plaintiff’s Efforts To Remove The Sealed Report**

19 Since Plaintiff learned Defendants were disseminating the Sealed Report, he made repeated  
20 efforts to get it taken down. (Plaintiff Decl., ¶¶39-59) He reached out to Defendants, and sought legal  
21 protection in the Santa Clara County Litigation. (*Id.*) Between September 14, 2023, and October 3,  
22 2024, Plaintiff and the San Francisco City Attorney made repeated requests to Defendants to remove  
23 the Sealed Report and related information. (Plaintiff Decl., ¶¶53, 57) Defendants refused these  
24 requests, and continued to disseminate more information related to the Sealed Report, even long after  
25 Plaintiff’s employment terminated. (Plaintiff Decl., ¶58) Plaintiff, to seek enforcement of the Sealing  
26 Order and protect his privacy interests, commenced this litigation.

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27 <sup>2</sup> While Defendants argued in their anti-SLAPP motions that Poulson’s dissemination of the Sealed  
28 Report was part of the #MeToo movement, in fact Poulson included personal identifying information  
of the woman, as well as Plaintiff’s name and address. Poulson disseminated the woman’s age,  
birthdate, address, hair color, eye color, height, and relationship with Plaintiff. (Poulson Decl., Exh.  
C) He also seemed critical of her for being in a relationship with an older man and suggested that she  
lied to the police. (*Id.*)

1 **II. ARGUMENT**

2 **1. Defendants Presented No Evidence To Support Reversal Of The Sealing Order.**

3 Between December 2021 (when the incident occurred) and February 17, 2022, Judge Gold  
4 was required to and did consider the record presented to the Court and weigh the interests of justice  
5 and of the First Amendment before entering the Sealing Order pursuant to Penal Code section 851.91.  
6 California enacted Rules 2.550 and 2.551 to “provide a standard and procedures for courts to use  
7 when a request is made to seal a record.” The standard is based on *NBC Subsidiary (KNBC-TV), Inc.*  
8 *v. Superior Court*, 20 Cal.4th 1178, 1208-1209, fn. 25, 1217-1218 (1999) (requiring an overriding  
9 interest before closing a hearing or sealing a transcript in recognition of the First Amendment right of  
10 access to documents used at trial or as a basis of both civil and criminal adjudications). These rules  
11 “recognize the First Amendment right of access to documents used at trial or as a basis of  
12 adjudication.” See R.2.550 Advisory Committee Comment. Yet, under appropriate circumstances,  
13 various statutory privileges, trade secrets, and privacy interests may constitute “overriding interests.”  
14 (*Id.*) Thus, California law only permits a Court to seal documents after considering the First  
15 Amendment interests. Defendants do not and cannot – and should not be permitted to – intimate  
16 without any evidence that Judge Gold was derelict of her duties in issuing the Sealing Order.

17 The parameters, authority, and procedures to seek the sealing of arrest and related records  
18 when an arrest did not result in a conviction are explicitly set forth in the Penal Code. Pen. Code  
19 §§851.91; 851.92.<sup>3</sup> Here, Judge Gold, having considered the evidence presented, dismissed the  
20 charges against Plaintiff and upon Plaintiff’s successful sealing petition to the Court, sealed the  
21 records having considered both the First Amendment interests and interests of justice. Thus, Judge  
22 Gold already determined that the Sealed Report and related information should be sealed.<sup>4</sup> See

23 <sup>3</sup> The purpose of Sections 851.91 and 851.92 was to protect the privacy interests of individuals  
24 arrested without being convicted. “The intent [of Section 851.91] was to address the ‘serious  
25 consequences of arrest records and shortcomings of existing law in addressing those consequences.’  
26 (Assem. Com. on Judiciary, Analysis of SB 393 as amended June 28, 2017, p. 9, boldface & italics  
27 omitted.) The Legislature was aware that an arrest carries with it particularly negative connotations  
28 more negative than those that flow from even interactions with law enforcement which result in a  
temporary investigative detention.” *People v. Hadim*, 82 Cal. App. 5th Supp. 39, 47, 298 Cal. Rptr.  
3d 639, 645–46 (Cal. App. Dep’t Super. Ct. 2022), citing *Loder v. Municipal Court for the San Diego  
Judicial Dist.* (1976) 17 Cal.3d 859, 868–877.

<sup>4</sup> In *Phillips ex rel. Ests. of Byrd v. Gen. Motors Corp.*, the Ninth Circuit similarly recognized that  
“[w]hen a court grants a protective order for information produced during discovery, it already has  
determined that ‘good cause’ exists to protect this information from being disclosed to the public by

1 *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984) (the trial court has “broad discretion ... to  
2 decide when a protective order is appropriate and what degree of protection is required.”).  
3 Accordingly, there is no basis to belatedly attack Judge Gold’s assessment and determination in this  
4 matter. Judge Gold had access to the underlying issues that allowed that Court to enter the Sealing  
5 Order, whereas none of those issues have been presented to this Court. Thus, Defendants’ effort to  
6 attack the Sealing Order in this improper fashion must be rejected.

7 Moreover, the Sealing Order is consistent with California’s strong public policy that protects  
8 the privacy interests of individuals who are arrested without conviction. *See Loder v Municipal*  
9 *Court*, 17 Cal.3d 859, 868 (1976) (recognizing arrestee has a “legitimate concern to protect himself  
10 from improper use of his record” that California addressed “by significant legislative and executive  
11 action” designed to negate the adverse effects on an individual’s life of the improper use of an arrest  
12 record; and likening a sealed arrest report to “contraband” that is illegal to even possess); Assembly  
13 Committee on Judiciary (recognizing the “serious consequence of an arrest record” and need for a  
14 more effective mechanism to properly seal arrests); Labor Code §§ 432.7(g)(2), (3) <sup>5</sup> (prohibiting the  
15 dissemination, receipt, and possession of arrest records that did not lead to conviction). California  
16 courts have recognized that “dissemination of arrest records that contain nonconviction data” is a  
17 privacy interest protected by the California Constitution. *Central Valley Ch. 7th Sep Foundation, Inc.*  
18 *v. Younger*, 214 Cal.App.3d 145, 161-2 (1989). The U.S. Supreme Court has also “recognized the  
19 privacy interest of uncharged or acquitted targets”. *Illinois v. Abbott & Assocs., Inc.*, 460 U.S. 557,  
20 566–67 n. 11 (1983) (“grand jury secrecy has traditionally been invoked to justify the limited  
21 procedural safeguards available to witnesses and persons under investigation”). The sections of the  
22 Penal Code and Labor Code are consistent with this recognition that an individual has a compelling  
23 privacy interest in preventing the disclosure of allegations without conviction.

24 Where a document has already been sealed pursuant to a Court Order, as here, Rule 2.551(h)  
25 recognizes a mechanism to make a “petition to unseal records.” According to Rule 2.551(h)((2), “[a]  
26 balancing the needs for discovery against the need for confidentiality.” 307 F.3d 1206, 1213 (9th Cir.  
27 2002). Applying the exact same reasoning, this Court must recognize that Judge Gold’s Sealing Order  
28 establishes that the court already determined that the Sealed Report and related information should be  
sealed.

<sup>5</sup> Labor Code sections 432.7(g)(3) is not limited to employers or actions affecting employment. While  
(g)(1) is limited to law enforcement employees who act with an intent to affect employment, (g)(2)  
prohibits “any other person” from disclosing the information for any reason whatsoever and (g)(3)  
prohibits an unauthorized person from knowingly receiving or possessing the information.

1 party or member of the public may move, apply, or petition, or the court on its own motion may  
2 move, to unseal a record.” Defendants have never made a petition to unseal under this Rule.<sup>6</sup>

3 Further, Defendants have not advanced any legitimate arguments to attack the trial court’s  
4 decision to seal the record. *See Mary R. v. B & R Corp.*, 149 Cal. App. 3d 308, 315, (1983) (sealing  
5 order can be attacked on fraud, collusion, mistake, or lack of jurisdiction). Defendants have not  
6 argued the occurrence of any of these, or any other, legitimate reasons to attack the Sealing Order.

7 This Court does not have appellate authority to overrule the Sealing Order, nor does it possess  
8 the record that was before Judge Gold. However, if the Sealing Order was appealed, the appellate  
9 court would have reviewed it “under the abuse of discretion standard, and any factual determinations  
10 made in connection with that decision will be upheld if they are supported by substantial evidence.”  
11 *Oiye v. Fox*, 211 Cal.App.4th 1036, 1067 (2012). Thus, Defendants have presented no argument, let  
12 alone evidence at all, to support a finding that Judge Gold’s decision should be reversed, even if this  
Court had the power to hear such an appeal.

## 13 **2. The Sealed Report Is Required To Be Kept Confidential By Law.**

14 Because the Sealed Report is required to be confidential bylaw, the heightened standard for  
15 sealing documents set forth in Rule 2.550(d) does not apply in this instance. See Cal. Rules of Court,  
16 Rule 2.550(a)(2). Accordingly, no one has a right to access the Sealed Report.

## 17 **3. The Sealing Order Cannot Be Reversed Because Of Defendants Illegal Dissemination.**

18 Ignoring wholly the legal standard required to petition to unseal a document, Defendants  
19 argue that this Court should reverse the Sealing Order because Defendants’ illegal and unlawful  
20 conduct has resulted in publicizing the Sealed Document and related information. (Opposition, pp. 8-  
21 11) The doctrine of unclean hands prohibits such a result. A party cannot violate the Sealing Order,  
the Penal Code, and the Labor Law by continuing to disseminate a sealed document, and then claim

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23 <sup>6</sup> Although Defendants did not make such a petition, Defendants cited to cases where parties  
24 requested that the court unseal sealed records. In *Kamakan v. City and County of Honolulu*, 447 F.3d  
25 1172 (9th Cir. 2006), a newspaper moved to intervene in an action to seek “an order to release  
26 documents where were sealed under protective order.” In that case, unlike the case before this Court,  
27 the newspaper made substantive arguments that the order restricting access to the documents was  
28 made in error. *Id.* Similarly, *In re Copley Press*, 518 F.3d. 1022 (9<sup>th</sup> Cir. 2008), a media intervenor  
moved for an order to unseal documents. In that case, the media intervenor made substantive  
arguments that the court’s decision to seal documents was made in error. *Id.* Here, Defendants  
elected not to petition the court to unseal the Sealed Report after the Sealing Order and cannot do so  
in this fashion.

1 the document is no longer sealed as a result of its illegal activities. *Farahani v. San Diego Cmty.*  
2 *Coll. Dist.*, 175 Cal. App. 4th 1486, 1495–96 (2009) (“The doctrine of unclean hands rests on the  
3 maxim that ‘he who comes into equity must come with clean hands.’ It ... closes the doors of a court  
4 of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks  
5 relief, however improper may have been the behavior of the defendant.”) (internal citations omitted);  
6 *see also In re Tiffany G.*, 29 Cal.App.4th 443, 451 (1994) (holding that allowing an individual with  
7 access to confidential documents to disseminate them to anyone she pleases “would stand the  
8 confidentiality principle on its head, and disserve rather than support the principle of  
9 confidentiality.”). Indeed, Defendants’ argument yields an absurd outcome that would undermine  
and possibly eviscerate the Court’s power to seal documents.<sup>7</sup>

10 No case cited by Defendants stands for the proposition that the illegal dissemination of a  
11 document becomes legal by Defendants’ illegal conduct. Rather, Defendants cite to inapposite cases  
12 where a party made public a private document by filing a lawsuit. *See Estate of Hearst*, 67  
13 Cal.App.3d 777, 783-4 (1977) (holding the parties, who sought the sealing order, lost protection when  
14 they went to court on a different matter); *Green v. Uccelli*, 207 Cal.App.3d 1112, 1119-20 (1989)  
15 (holding that the party to a divorce proceeding should have realized that seeking a writ of mandate  
16 related to the dissolution of his marriage would result in records from the dissolution becoming  
17 public); *Register Div. of Freedom Newspapers v. County of Orange*, 158 Cal.App.3d 893, 902-3  
18 (1984) (party waived privacy of documents when the party brought an action regarding the private  
19 documents). Here, the document is only public because Defendants, as of September 14, 2023 and  
20 till the present, are illegally disseminating it. Thus, unlike any case cited by Defendants, the Sealed  
21 Report and related information are not public because of Plaintiff’s lawsuit; he brought the lawsuit  
because of Defendants’ ongoing illegal and unlawful dissemination.

#### 22 **4. There Is No Presumption Of Access To A Sealed Document.**

23 Defendants incorrectly argue that there is a presumption of access to the Sealed Report.  
24 (Opposition, pp. 7-8) No such presumption exists when the documents have already been sealed. *See*  
25 *e.g., Phillips ex rel. Ests. of Byrd*, 307 F.3d at 1213.

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26 <sup>7</sup> Defendants failed to recognize that “the First Amendment does not guarantee the press a  
27 constitutional right of special access to information not available to the public generally”. *Houchins v.*  
28 *KQED, Inc.*, 438 U.S. 1, 11 (1978), citing *Branzburg v. Hayes*, 408 U.S. 665, 64 (1972). Defendants  
had no right to access the Sealed Report and therefore their illegal dissemination of the Sealed Report  
cannot possibly have the effect of unsealing the Sealed Report.



1           **5. Defendants Cannot Distinguish *In re M.T.***

2           Defendants cannot distinguish *In re M.T.* 106 Cal.App.5th 322 (2024). Defendants argue that  
3 Plaintiff, unlike the plaintiff in *M.T.*, is “is not a private figure.”<sup>8</sup> (Opposition, p. 11) The U.S.  
4 Supreme Court defined two classes of public figures. *Gertz v. Robert Welch, Inc.*, 418 U.S. at p. 351.  
5 The first is the “all purpose” public figure who has “achiev[ed] such pervasive fame or notoriety that  
6 he becomes a public figure for all purposes and in all contexts.” *Id.* Plaintiff plainly does not fall into  
7 this category. The second category is that of the “limited purpose” public figure, an individual who  
8 “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a  
9 public figure for a limited range of issues.” *Id.* Unlike the “all purpose” public figure, the “limited  
10 purpose” public figure loses certain protection for his reputation only to the extent that the allegedly  
11 defamatory communication relates to his role in a public controversy.” *Id.* Plaintiff has not, and  
12 Defendants cannot claim that he has, voluntarily injected himself into these issues.

13           Moreover, not only was Plaintiff not a public person, but – more importantly – the Sealed  
14 Document and related information were neither “newsworthy” nor “matters of public significance.”  
15 *See Bartnicki v. Vopper*, 532 U.S. 514, 528 (2001). The undisputed record in this case belies any  
16 suggestion that the events at issue were newsworthy because at no time prior to the filing of the  
17 lawsuit, even when the record was public and before the charges were dismissed, did any media other  
18 than Defendants report on these events. Compare to *Bartnicki*, 532 U.S. at 518 (involving publication  
19 of illegally recorded conversation where union President made threatening comments to public  
20 School Board President during a highly publicized public union negotiation to blow up the Board  
21 members’ houses, leading the Supreme Court to conclude the illegally recorded conversation would  
22 have been newsworthy had it taken place in public); *New York Times Co. v. United States*, 403 U.S.  
23 713 (1971) (upholding the right of the press to publish “information of great public concern” like the  
24 Pentagon Papers<sup>9</sup>). Moreover, Defendants cannot establish that these events are a “matter of public

24           <sup>8</sup> In Defendants’ anti-SLAPP Opposition, cited to in the Opposition, Defendants rely on *Sipple v.*  
25 *Foundation for National Progress*, 71 Cal.App.4th 216 (1999) to argue that Plaintiff is a “public  
26 person.” (Poulson Anti-SLAPP Motion, p. 16) In that case, however, Sipple was a high-profile  
27 consultant to various nationally known elected official, and he injected himself into the issue of  
domestic violence when he put his views on domestic violence in the public record. *Id.* at 238.  
Defendants do not and cannot claim that Plaintiff worked in a high profile role as did Sipple or that  
Plaintiff’s role has any connection to the issue of domestic violence.

28           <sup>9</sup> Poulson called a comparison of his dissemination of the Sealed Report to the Pentagon Papers “an  
exaggerated claim.” (Poulson Decl., Exh I, p. 4/10)

1 significance”. *Bartnicki*, 532 U.S. at 518. A matter of public significance is “speech on public issues  
2 [that] occupies the highest rung of the hierarchy of First Amendment values.” *Dun & Bradstreet v.*  
3 *Greenmoss Builders*, 472 U.S. 749, 758–759 (1985). The events here occurred nearly two years  
4 before Poulson disseminated his blog post, concerned two non-public figures, did not lead to charges  
5 or a conviction, and were deemed not to have occurred. Rather, Poulson’s dissemination of the  
6 Sealed Report was part of a tactic by litigation counsel in the Santa Clara County Litigation to  
7 pressure Premise Data to settle a civil litigation.

8 **6. Defendants’ Argument Regarding Delay Is Nonsensical.**

9 Defendants argue that if the Sealed Report remained sealed that it would “cause serious  
10 harm on the right of press to obtain and report on exhibits containing Plaintiff’s arrest report”.  
11 (Opposition, p. 11) First, as discussed herein, the document was already sealed by Judge Gold’s  
12 Sealing Order dated February 16, 2022, and there has been no evidence presented to justify reversing  
13 this decision. Also as discussed herein, Plaintiff and his non-arrest was not newsworthy, and  
14 therefore no one reported on either the arrest or the Sealing Order or challenged the Sealing Order.  
15 Thus, there is no possible delay that could result from this Court maintaining the status quo that was  
16 effectuated by Judge Gold’s Sealing Order entered on February 17, 2022.

17 **7. Prior Restraint Is Permitted When The Conduct Is Illegal.**

18 To the extent Defendants’ argument that retaining the Sealing Order constitutes prior restraint,  
19 that argument must be rejected. The California Supreme Court has recognized that [a]n injunction  
20 may properly issue to prohibit the repetition or continuation of speech that the court has found to be  
21 unlawful. Such an injunction does not constitute an invalid prior restraint of speech.” The Rutter  
22 Group, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 9(II)-A [9:708], citing *Aguilar v. Avis A Car*  
23 *System, Inc.*, 21 Cal.4th 121, 140-142 (1999). The *Aguilar* Court found that “once a court has found  
24 that a specific pattern of speech is unlawful, an injunctive order prohibiting the repetition,  
25 perpetuation, or continuation of that practice is not a prior restraint of speech.” 21 Cal.4<sup>th</sup> at 140. See  
26 also, *In re Tiffany G.*, 29 Cal. App. 4th at 452–53 (rejecting argument of invalid prior restraint or First  
27 Amendment issues when court prohibited parties from disseminating confidential documents that  
28 were sealed by both court order and statute that prohibited dissemination). That court held that even  
if the recipients legally received the confidential documents, prohibiting their dissemination was not  
an invalid prior restraint.

1 **III. CONCLUSION**

2 For the reasons stated herein and in all of the other moving papers, Plaintiff's Declaration  
3 submitted hereto, and all other documents in this record, Plaintiff respectfully requests that this Court  
4 grant Plaintiff's motion to seal.

5 Dated: December 27, 2024

Respectfully Submitted,

6 THE MAREK LAW FIRM

7 By: /s/ David Marek

8 DAVID MAREK

9 Attorneys for Plaintiff  
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**PROOF OF SERVICE**

I, Christina Yanacek, declare as follows:

I am over eighteen years of age and not a party to the within action. I am employed in San Francisco County, California. My business address is 2001 Van Ness Avenue, Suite 300, San Francisco, CA 94109.

On the date set forth below, I served a copy of the following:

**PLAINTIFF'S REPLY IN FURTHER SUPPORT OF PLAINTIFF'S MOTION TO SEAL**


on the parties named below as follows:

- (X) **(BY EMAIL)** – by electronically mailing a true and correct copy through BERMAN NORTH LLP's electronic mail system to the email address(es) set forth below, or as stated in the attached service list per the parties' agreement.
- (X) **(BY E-SERVICE)** – by electronically serving the document(s) listed above and on the Transaction Receipt, which were e-filed with the San Francisco County Superior Court and e-served via the One Legal's electronic filing system, to the email address(es) of the party(ies) designated below in accordance with the San Francisco County Superior Court Local Rules.

I served the above document(s) on the following person(s):

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 27, 2024, at Long Beach, California.

  
\_\_\_\_\_  
Christina Yanacek

**SERVICE LIST**

Ambika Kumar  
Sarah E. Burns  
DAVIS WRIGHT TREMAINE LLP  
50 California Street, 23rd Floor  
San Francisco, CA 94111  
Phone: (206) 757-8030  
(415) 276-4892  
Email: ambikakumar@dwt.com;  
sarahburns@dwt.com  
cc: ryanrubio@dwt.com

**Counsel for Defendant  
Amazon Web Services, Inc.**

Joshua A. Baskin  
Thomas R. Wakefield  
Wilson Sonsini Goodrich & Rosati  
1 Market Plaza, Spear Tower, Suite 3300  
San Francisco, CA 94105  
Email: jbaskin@wsgr.com;  
twakefield@wsgr.com;  
Substack-Doe@wsgr.com  
cc: rglynn@wsgr.com

**Counsel for Defendant  
Substack, Inc.**

Susan E. Saeger  
The Office of Susan E. Saeger  
Phone: (310) 890-8991  
Email: susanseager1999@gmail.com

**Counsel for Defendant  
Tech Inquiry, Inc.**

David Greene  
Victoria Noble  
Electronic Frontier Foundation  
815 Eddy Street  
San Francisco, CA 94109  
Tel.: (415) 436-9333  
Fax: (415) 436-9993  
Email: davidg@eff.org;  
tori@eff.org;  
cc: victoria@eff.org

**Counsel for Jack Poulson**