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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 OPPOSITION TO
DEFENDANT SUBSTACK, INC.'S
DEMURRER TO PLAINTIFF'S COMPLAINT**

Date: January 6, 2025

Time: 9:30 AM

Dept.: 302

Judge: Hon. Richard B. Ulmer

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

12/20/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

I. RESERVATION OF RIGHTS

The parties reached an agreement via email dated December 13, 2024 that Defendants would change the hearing dates for their Anti-SLAPP motions and Substack’s demurrer from January 6, 2025 (the date noticed by Defendants) until February 4, 2026, and agreed on a briefing schedule that was intended to account for the multiple briefs and holidays. The parties drafted and executed a stipulation that memorialized their agreement.

On December 19, 2024, counsel for defendant Poulson filed a Joint Stipulation and Proposed Order Extending Time for Briefing and Hearing on Defendants’ Special Motions to Strike and Demurrer and the Parties Motions to Seal (the “Joint Stipulation”). Per the Joint Stipulation, which was signed by counsel for all parties, the parties agreed to move the hearing date on Defendants’ Anti-SLAPP Motions to February 4, 2025. With the new hearing date, Plaintiff’s Opposition to Defendants’ Anti-SLAPP Motions and Opposition to Substack’s Demurrer (collectively referred to as the “Oppositions”) would have been due on January 13, 2025. Without the extension, Plaintiff’s Oppositions to three of the four motions would be due on December 20.

At 2:51 p.m. on December 20, the Deputy Clerk emailed the parties’ Counsel that a rejection notice would be mailed stating, in part: “Defendants’ joint stipulation extending time for briefing and hearings is rejected. All defendants should file their own “Amended motion” to reflect the new hearing date with a code compliant date and new briefing should follow CCP based on the new hearing date.” Counsel for defendant Poulson promptly agreed to file an Amended Motion with the new date. However, defendant Substack’s Counsel emailed that Plaintiff must move ex parte for an order allowing the February 4 hearing date. Because the Oppositions were due on the same date the rejection notice was issued, and Plaintiff did not have time to seek ex parte relief before the deadline, Plaintiff files this Motion out of an abundance of caution while reserving Plaintiff’s right to file an Amended Opposition to Substack’s Demurrer if the hearing date is continued. Plaintiff intends to and will seek ex parte relief to amend the hearing date and briefing schedule as soon as possible.

Accordingly, today Plaintiff has filed three oppositions to Defendants’ anti-SLAPP motions, all noticed to be heard on January 6, 2025. At this time, Plaintiff’s Opposition to Substack’s Demurrer incorporates by reference and refers to the arguments in Plaintiff’s three oppositions to the

1 anti-SLAPP motions until such time as the hearing dates is amended and Plaintiff is given permission
2 to amend this Opposition.

3 **II. INTRODUCTION**

4 Plaintiff's claims arise from Defendants' ongoing possession and dissemination of a report
5 that was sealed by Court order pursuant Penal Code section 851.91. This conduct is criminalized by
6 the California Penal code, including section 851.92(c). Accordingly, neither of Substack's defenses
7 warrant granting this demurrer. Plaintiff's opposition is based on this Opposition and Plaintiff's
8 Oppositions to Defendants' Anti-SLAPP Motions.

9 **III. STATEMENT OF FACTS**

10 Plaintiff set forth the facts in the Complaint. In the Complaint, pled the following facts.
11 Plaintiff is not a public figure. He was arrested in December 2021 based on incident that occurred
12 between him and one other person in their residence. After the trial court considered the record,
13 charges were not filed, and he was not convicted. Plaintiff successfully petitioned the trial court to
14 seal the arrest (or incident) report pursuant to California Penal code Section 851.91 ("Section
15 851.91"). By ordered dated February 17, 2022, San Francisco Superior Court Judge Carolyn Gold
16 entered an order ("Sealing Order") sealing arrest (or incident) report number (the "Sealed Report")
17 and all information related to the Sealed Report (referred to as "related information"). According to
18 Section 851.91(e) and the Sealing Order, the "arrest was deemed not to have occurred," and Plaintiff
19 was to answer "no" if asked if he was arrested. Between December 2021 and February 17, 2022,
20 when the incident and report were public record, not one journalist or non-journalist reported on this
21 incident.

22 On September 14, 2023, 19 months after the Sealing Order, Defendant Jack Poulson
23 published a blog on Substack that included a link to the Sealed Report and described in detail the
24 events set forth in the Sealed Report. At this time, no one other than Poulson reported on the Sealed
25 Report or its contents. Poulson's blog post was written in a manner that indicated that Plaintiff was
26 found guilty of the criminal conduct. Poulson's blog posts did not address any issues pertaining to
27 women's rights, the #MeToo movement, Take Back the Night, or the general issue of male
28 technology executives abusing their power. (See Declaration of Poulson in Support of his anti-

1 SLAPP motion, (“Poulson Decl.”) Exh. A-J) Poulson’s blog posts included Plaintiff’s home address
2 and picture; information that could be used to identify the woman involved, including her age, year of
3 birth, eye color, hair color, address, and relationship with Plaintiff; and language that belittled the
4 woman involved by suggesting she lied to the police and was only involved with Plaintiff, an older
5 man, because he was rich. (*Id.*) Poulson also called the woman. (*Id.*) Poulson notified individuals
6 who Plaintiff worked with the Sealed Report and its contents. (*Id.*)

7 As a result of Poulson’s blog posts and Sealed Report, Plaintiff’s employer terminated his
8 employment effective December 2023. Other than Poulson’s blog post and a tweet by a colleague of
9 Poulson, Bryon Tau, no other journalist or non-journalist covered the termination.

10 When Plaintiff learned that Poulson had disseminated the Sealed Report and its contents on
11 his Substack blog, Plaintiff took steps to get it removed and keep the report confidential.

12 Between September 14, 2023 and June 2024, Poulson repeatedly disseminated the Sealed
13 Report and its contents on his Substack blog, which was hosted by Defendant AWS, and Tech
14 Inquiry. (Poulson Decl., Exh. A-J) Between September 14, 2023 and the date the Complaint was
15 filed on October 3, 2024, no media or journalists – or anyone else – covered or reported on Poulson’s
16 posts or the Sealed Report.

17 Prior to the filing of the Complaint, all the Defendants had knowledge that the report was
18 subject to a court’s Sealing Order. Each of the Defendants refused requests by Plaintiff to remove the
19 Sealed Report and its contents and stop possessing it. Poulson and Substack also refused requests
20 from the San Francisco City Attorney to remove the Sealed Report and its contents because it
21 violated Penal Code section 851.92(c) and Substack’s Terms of Use policy.

22 On October 3, 2024, Plaintiff, as a John Doe, commenced this litigation against Defendants
23 arising from their possession and dissemination of the Sealed Report and its contents, including
24 Poulson’s blog posts that described in his own words details and speculation about the Sealed Report.
25 Plaintiff sought injunctive relief, including taking down the Sealed Report and its contents, and
26 damages stemming from Defendants’ conduct. Plaintiff asserted tort claims that all arise from the
27 possession and dissemination of the Sealed Report and its contents.

28 //

1 **IV. ARGUMENT**

2 Substack’s demurrer should be denied.

3 **DEFENDANT SUBSTACK IS NOT IMMUNE UNDER SECTION 230**

4 Plaintiff incorporates by reference the arguments made in Plaintiff’s Opposition to
5 Defendants’ anti-SLAPP motions. While courts have held that Section 230 provides broad immunity
6 in certain circumstances, “this immunity is not limitless.” *Calise v. Meta Platforms, Inc.*, 103 F.4th
7 732, 739 (9th Cir. 2024) citing *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009) (Section
8 230(c)(1) does not “declare[] a general immunity from liability deriving from third-party content” and
9 reversing District Court’s finding of immunity under Section 230 because all of the plaintiffs’ claims
10 are premised on Meta’s publication of a third-party advertisement). Further, “[n]one of the policies
11 within section 230(b) state or suggest an express immunity from compliance with state court orders.”
12 *See Hassell v. Bird*, 5 Cal. 5th 522, 568; 571 (2018), (dissent disagreeing with “plurality opinion’s
13 conclusion that section 230 protects an Internet platform from complying with a state court order
14 simply because the platform operates as a publisher of third-party speech.”). As explained by the
15 dissent, Section 230(c)(2) “explains that providers or users of interactive computer services shall not
16 be liable for actions taken in good faith to restrict access to obscene, harassing, or objectionable
17 material, regardless of whether such material is constitutionally protected”. *Id.* This section,
18 however, “does not endow Internet platforms with a complete immunity from compliance with state
19 court orders.” *Id.*

20 Section 230(e) only prohibits causes of action from being brought and liability from being
21 imposed under state laws that are inconsistent with the section. (Section 230(e)(3)). Here, the state
22 laws at issue, which prohibit the possession and dissemination of court ordered sealed documents and
23 their contents, are not inconsistent with the section.

24 Substack and AWS cannot claim immunity under CDA Section 230 because their violation of
25 Penal Code section 11143 does not “seek to treat [Substack and AWS] as a publisher or speaker.”
26 *Calise*, 103 F.4th at 739, citing *Barnes*, 570 F.3d at 1100 (immunity to an interactive computer
27 service provider against claims that “seek to treat [the provider] as a publisher or speaker.”); *see also*
28 *In re Facebook Simulated Casino-Style Games Litig.*, No. 22-16888, 2024 WL 2287200, at *2 (9th

1 Cir. May 21, 2024) (“To determine whether a particular claim should be dismissed under Section
2 230, a court must identify “the underlying legal duty” and determine whether “it seek[s] to hold the
3 defendant liable as a ‘publisher or speaker’ of third-party content.”) citing *HomeAway.com, Inc. v.*
4 *City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019); *Doe v. Internet Brands* 824 F.3d 846, 851,
5 853(9th Cir. 2016); *Hassell v. Bird*, 5 Cal. 5th at 544 (“we recognize that not all legal duties owed by
6 Internet intermediaries necessarily treat them as the publishers of third party content, even when these
7 obligations are in some way associated with their publication of the material.”). Penal Code section
8 11143 has criminalized any unauthorized party from being in receipt or possession of a record or
9 information the party is not authorized to receive. *See Loder*, 17 Cal.3d at 873 (likening the sealed
10 arrest report to “contraband”). This illegal conduct forms the basis of their liability to Plaintiff
11 because the source of their duty to Plaintiff arises from the statutes they violated. *See In re Apple Inc.*
12 *App Store Simulated Casino-Style Games Litig.*, 625 F. Supp. 3d 971, 994 (N.D. Cal. 2022)
13 (permitting one theory of liability to proceed where Plaintiffs did not attempt to treat the Platforms as
14 “the publisher or speaker” of third-party content, but rather sought to hold the Platforms responsible
15 for their own illegal conduct), appeal dismissed and remanded sub nom. *In re Facebook Simulated*
16 *Casino-Style Games Litig.* (9th Cir. May 21, 2024) No. 22-16888, 2024 WL 2287200.

17 In addition, the record shows Substack “developed at least in part” Poulson’s posts. *Fair*
18 *Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157 (9th Cir. 2008).
19 Here, Substack instructed Poulson to make substantive edits to his posts to comply with legal and
20 policy requirements. (Poulson Decl., Exh C; Plaintiff Decl, ¶48; Exh I, showing Defendants tampered
21 with Poulson’s admission that Substack was involved in the development of the posts.) Accordingly,
22 by these acts to work with Poulson so that his posts would comply with the law and Substack policy,
23 Substack has developed at least in part the posts that constitute violations of the Penal Code.

24 **V. THE FIRST AMENDMENT DOES NOT BAR PLAINTIFF'S CLAIMS**

25 Plaintiff incorporates by reference the arguments made in Plaintiff’s Opposition to
26 Defendants’ anti-SLAPP motions. Substack is not entitled to First Amendment protection in this
27 instance. A trial court has already ordered that the report and its contents are sealed, and there is no
28 basis to attack this order. Moreover, the speech at issue is not a “matter of public significance,”

1 “newsworthy,” and an “issue of public interest.” In addition, the speech was not “truthful” because
2 the arrest was “deemed not to have occurred.” California also has a compelling need to protect the
3 privacy of sealed arrest reports and documents sealed by Court order.

4 **VI. CONCLUSION**

5 For the reasons set forth herein and in Plaintiff’s Oppositions to Defendants’ anti-SLAPP
6 motions filed on this same day, Plaintiff respectfully requests that the Court deny Substack’s
7 demurrer.

8
9 Dated: December 20, 2024

Respectfully submitted,

10 THE MAREK LAW FIRM, INC.

11
12 By: /s/ David Marek
13 David Marek
14 *Attorney for Plaintiff*

PROOF OF SERVICE

I, Jennifer Baker, 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 OPPOSITION TO DEFENDANT SUBSTACK, INC.'S DEMURRER TO PLAINTIFF'S COMPLAINT**

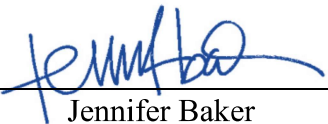
on the parties named below as follows:

- (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 20, 2024, at Redwood City, California.


Jennifer Baker

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