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

BERMAN NORTH LLP
Stacy Y. North (CA Bar No. 219034)
stacy@bermannorth.com
2001 Van Ness, Suite 300
San Francisco, CA 94109
(650) 843-1988

Attorneys for Plaintiff
MAURY BLACKMAN

SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
CIVIL UNLIMITED JURISDICTION

MAURY BLACKMAN, 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

PLAINTIFF'S OPPOSITION TO DEFENDANT JACK POULSON'S MOTION TO STRIKE UNDER THE ANTI-SLAPP STATUTE (CCP § 425.16)

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

TABLE OF CONTENTS

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, and agreed on a briefing schedule that was intended to account 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 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 if the hearing date is continued.

In addition, the parties agreed that Plaintiff would be permitted to have 30 pages to file one opposition to the four anti-SLAPP motions. This mechanism would promote efficiency for the Court and make it easier to follow the arguments, most of which are repetitive. Accordingly, Plaintiff has now filed three oppositions, all of which refer to sections in the other oppositions.

Introduction

Plaintiff opposes Defendants' Special Motions to Strike made pursuant to Code of Civ. Proc.

425.16. Defendants' anti-SLAPP motions must be rejected because illegal activities fall outside the protection of anti-SLAPP. Here, Defendants engaged in and continue to engage in illegal activities. In addition, Defendants' conduct is not protected by the First Amendment. A court already sealed on the documents and information at issues, and Defendants do not and cannot challenge that legitimate sealing order. Moreover, the speech at issue does not "concern a matter of public significance;" it was not "newsworthy;" and it is not an "interest of public interest." It is a non-event that was deemed not to have occurred, sealed pursuant to the Penal Code. Further, the speech is not truthful. California has compelling interest in protecting the privacy of individuals arrested who are not convicted and safeguarding Court ordered sealed arrest reports, like the one at issue here. For the same reasons that the First Amendment does not protect Defendants, the claims do not arise out of an act in furtherance of Defendants' right of free speech. Finally, Plaintiff has a probability of success on all claims, which stem from Defendants ongoing illegal conduct.

Statement of Facts

Plaintiff is not a public figure. (Plaintiff Decl., ¶3) He was arrested in December 2021 based on incident that occurred between him and one other person in their residence. (Plaintiff Decl., ¶9) After the trial court considered the record, charges were not filed, and he was not convicted. (Plaintiff Decl., ¶11) Plaintiff successfully petitioned the trial court to seal the arrest (or incident) report pursuant to California Penal code Section 851.91 ("Section 851.91"). (Plaintiff Decl., ¶12) By ordered dated February 17, 2022, San Francisco Superior Court Judge Carolyn Gold entered an order ("Sealing Order") sealing arrest (or incident) report number (the "Sealed Report") and all information related to the Sealed Report (referred to as "related information"). (Plaintiff Decl., ¶13; Exh, A.) According to Section 851.91(e) and the Sealing Order, the "arrest was deemed not to have occurred," and Plaintiff was to answer "no" if asked if he was arrested. (Plaintiff Decl., ¶16) Between December 2021 and February 17, 2022, when the incident and report were public record, not one journalist or non-journalist reported on this incident. (Plaintiff Decl., ¶14)

On September 14, 2023, 19 months after the Sealing Order, Defendant Jack Poulson published a blog on Substack that included a link to the Sealed Report and described in detail the events set forth in the Sealed Report. (Plaintiff Decl., ¶15) At this time, no one other than Poulson reported on

the Sealed Report or its contents. (Plaintiff Decl., ¶18) Poulson's blog post was written in a manner that indicated that Plaintiff was found guilty of the criminal conduct. (Plaintiff Decl., ¶ 15 Poulson's blog posts did not address any issues pertaining to women's rights, the #MeToo movement, Take Back the Night, or the general issue of male technology executives abusing their power. (See Declaration of Poulson, ("Poulson Decl.") Exh. A-J) Poulson's blog posts included Plaintiff's home address and picture; information that could be used to identify the woman involved, including her age, year of birth, eye color, hair color, address, and relationship with Plaintiff; and language that belittled the woman involved by suggesting she lied to the police and was only involved with Plaintiff, an older man, because he was rich. (*Id.*) Poulson also called the woman. (*Id.*) Poulson notified individuals who Plaintiff worked with the Sealed Report and its contents. (*Id.*)

As a result of Poulson's blog posts and Sealed Report, Plaintiff's employer terminated his employment effective December 2023. (Plaintiff Decl., ¶42) Other than Poulson's blog post and a tweet by a colleague of Poulson, Bryon Tau, no other journalist or non-journalist covered the termination. (Plaintiff Decl., ¶19) When Plaintiff learned that Poulson had disseminated the Sealed Report and its contents on his Substack blog, Plaintiff took steps to get it removed and keep the report confidential. (Plaintiff Decl., ¶¶ 37, 39, 54-56)

Between September 14, 2023 and June 2024, Poulson repeatedly disseminated the Sealed Report and its contents on his Substack blog, which was hosted by Defendant AWS, and Tech Inquiry. (Poulson Decl., Exh. A-J; Plaintiff Decl., ¶15, 36, 42, 43, 47) Between September 14, 2023 and the date the Complaint was filed on October 3, 2024, no media or journalists – or anyone else – covered or reported on Poulson's posts or the Sealed Report. (Plaintiff Decl., ¶18)

Prior to the filing of the Complaint, all the Defendants had knowledge that the report was subject to a court's Sealing Order. (Plaintiff Decl., ¶62) Each of the Defendants refused requests by Plaintiff to remove the Sealed Report and its contents and stop possessing it. (Id.) Poulson and Substack also refused requests from the San Francisco City Attorney to remove the Sealed Report and its contents because it violated Penal Code section 851.92(c) and Substack's Terms of Use policy. (Plaintiff Decl., ¶¶22, 23; Exh. F, G. H)

On October 3, 2024, Plaintiff, as a John Doe, commenced this litigation against Defendants

arising from their possession and dissemination of the Sealed Report and its contents, including Poulson's blog posts that described in his own words details and speculation about the Sealed Report. (Plaintiff Decl., ¶62) Plaintiff sought injunctive relief, including taking down the Sealed Report and its contents, and damages stemming from Defendants' conduct. Plaintiff asserted tort claims that arise from possession and dissemination of the Sealed Report and its contents. (Plaintiff Decl., ¶62)

ARGUMENT

I. The Anti-SLAPP Statute Does Not Apply.

A. Illegal Activities Fall Outside the Protection of Anti-SLAPP.

Speech that is "illegal as a matter of law" is not constitutionally protected and falls outside the protection of the anti-SLAPP statue. *Flatley v. Mauro*, 39 Cal.4th 299, 320 (2006). "If illegality is either conceded by the Defendant or conclusively proved, then the anti-SLAPP statute is not available." *See San Diegans for Open Gov't v. San Diego State Univ. Rsch. Found.*, 13 Cal.App.5th 76, 106 (2017), *as modified on denial of reh'g* (June 1, 2017) *citing Collier v. Harris*, 240 Cal.App.4th 41, 55 (2015). Here, the alleged criminal conduct does not fall within protected activity as defined by the anti-SLAPP statute. *Gerbosi v. Gaims, Weil, W. & Epstein, LLP*, 193 Cal. App. 4th 435, 444 (2011) (denying anti-SLAPP motion to strike where allegations of illegal wiretapping do not "arise from protected activity").

B. Defendants Conduct Violated And Continues To Violate Several Sections of the California Penal Code.

Plaintiff can conclusively establish that Defendants engaged in and continue to engage in conduct that violates – as a matter of law – California Penal Code sections 851.91, 851.92, 11143, and 166. Sections 851.91, 851.92, and 11143 are designed to protect an individual who suffered an arrest that did not result in a conviction and criminalize unauthorized parties' receipt, possession, and/or dissemination of these records and information. Section 166(a) makes it unlawful to disregard a court order. Here, the Complaint arises from Defendants' ongoing possession and dissemination of the Sealed Report and its contents in violation of the law. *Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, 143 Cal. App. 4th 1284, 1296 (2006) (finding organization not subject to anti-SLAPP protection for conspiratorial acts of criminal vandalism which were illegal as a matter of law).

It is undisputed that a February 2022 Sealing Order sealed Plaintiff's incident report pursuant to Pen. Code 851.91. This constituted a valid court order within the court's jurisdiction which subjects a person to contempt in the event of "willful disobedience of the terms, as written, of a process or court order . . . lawfully issued by a court". Cal. Penal Code § 166(a)(4)).[1] It is similarly undisputed that Defendants knew they were not, and still are not, authorized by law to possess the Sealed Report. Cal. Penal Code § 11143.[2] Additionally, it is also undisputed that Defendants began in September 2023 – and continue to – disseminate the Sealed Report despite explicit knowledge of the Sealing Order and Section 851.92(c)'s explicit language penalizing a person or entity who/that disseminates information relating to a sealed arrest. Accordingly, any defenses that Defendants have to Plaintiff's causes of action must be established by a procedural tool other than the anti-SLAPP procedure. *See Malin v. Singer*, 217 Cal. App. 4th 1283, 1304 (2013) citing *Gerbosi*, *supra*, 193 Cal.App.4th at pp. 446–447, 122 Cal.Rptr.3d 73.

C. The First Amendment Does Not Immunize Defendants' Illegal Activities.

Defendants argue that their conduct is not illegal because "the First Amendment protects the right to publish lawfully obtained, truthful, newsworthy information." (Poulson Motion, p. 18), citing *Bartnicki v. Vopper*, 532 U.S. 514, 528 (2001); *The Florida Star v. B.J.F.*, 491 U.S. 524, 533 (1989); *Smith v. Daily Mail*, 443 U.S. 97, 103 (1979). These Supreme Court cases, and others, reject the idea that the press can never be punished, criminally or civilly, for publishing the truth. *Florida Star*, 491 U.S. at 531, 541 ("[w]e do not hold that truthful publication is automatically constitutionally protected, or that there is no zone of personal privacy within which the State may protect the individual from intrusion by the press"). These cases recognize that the court must balance First Amendment interests

---

[1]Express statutory authorization for both contempt sanctions and criminal penalties exists for any willful violation of a court order. *See* Code Civ. Proc. § 1209 *et seq.*; Pen.Code § 166, subd. (a)(4); *see also Moss v. Superior Ct. (Ortiz)*, 17 Cal. 4th 396, 423 (1998).The elements of proof necessary to support punishment for contempt are: (1) a valid court order, (2) the alleged contemnor's knowledge of the order, and (3) noncompliance. *Koshak v. Malek*, 200 Cal. App. 4th 1540, 1548–49 (2011) (internal citations omitted).

[2] Defendant Poulson cites to Penal Code 11105(a) to limit the application of Pen. Code 11143 to only state summary criminal history information which he argues can only include information compiled by the Attorney General pertaining to the identification and criminal history of a person. This limitation seeks therefore to exclude the source information giving rise to those summary documents and thus completely negates the statute permitting information pertaining to arrest that did not lead to a conviction to be sealed. Defendant offers no justification for such a limited reading of the statutes, which are often interpreted together.

with other interests. These cases also establish the general rule that when the press "lawfully obtains *truthful* information about a matter of *public significance* then state officials may not constitutionally punish publication of the information, *absent a need to further a state interest of the highest order*." *Id*, 491 U.S. at 533. These circumstances are not present herein and thus the First Amendment does not protect Defendants. Moreover, "the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *See Houchins v. KQED, Inc.*, 438 U.S. 1, 11 (1978) citing *Branzburg v. Hayes*, 408 U.S. 665, 64 (1972).

1. The Sealing Order Is Binding Because The Trial Court Already Decided, After Weighing The First Amendment Issues, To Seal The Record.

California enacted Rules 2.550 and 2.551 to "provide a standard and procedures for courts to use when a request is made to seal a record." The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal.4th 1178, 1208-1209, fn. 25, 1217-1218 (1999) (requiring an overriding interest before closing a hearing or sealing a transcript in recognition of the First Amendment right of access to documents used at trial or as a basis of both civil and criminal adjudications). Indeed, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests may constitute "overriding interests." *See* R.2.550 Advisory Committee Comment.

The parameters, authority, and procedures to seek the sealing of arrest and related records when an arrest did not result in a conviction are explicitly set forth in the Penal Code and demonstrate an assessment of the "interest of justice." Pen. Code §§851.91; 851.92. Here, the court dismissed the charges against Plaintiff and upon Plaintiff's successful sealing petition to the Court, sealed the records having considered the interests of justice. Accordingly, there is no basis to belatedly attack the court's assessment and determination in this matter. The court's Sealing Order must remain undisturbed.

Moreover, this is consistent with California's strong public policy that protects the privacy interests of individuals who are arrested without conviction. *See Loder v Municipal Court*, 17 Cal.3d 859, 868 (1976) (recognizing arrestee has a "legitimate concern to protect himself from improper use of his record" that California addressed "by significant legislative and executive action" designed to negate the adverse effects on an individual's life of the improper use of an arrest record); *People v. Hadim*, 82 Cal.App.5th 39, 47-48 (2022) (recognizing that in enacting Section 851.91, "the Legislature perceived an arrest, the fact a person was taken into custody, carried a severe stigma with employers and landlords,

and took steps to make it difficult if not impossible for private entities to uncover an arrest by sealing police agency and court records pertaining to the arrest."); Assembly Committee on Judiciary (recognizing the "serious consequence of an arrest record" and need for a more effective mechanism to properly seal arrests). The demonization of Plaintiff and the assumption of his guilt based on the Sealed Report underlines the importance of the state interests in these protections. Defendants cannot justify an exception to these interests on grounds that Plaintiff was a CEO of a tech company.

Accordingly, here, the Court, by its February 17, 2022 Sealing Order, already determined, after considering the First Amendment right of access and weighing it against competing interests, that the incident report and its contents should not be disclosed. Defendants could have moved to challenge the Court's grant of sealing when it was considering the record and weighing the First Amendment right of access but they did not. *See* Rule 2.551(h)(1); *see also NBC Subsidiary*, 20 Cal.4th 1178. Defendants could have sought to unseal the Sealing Order but they did not. *See* Rule 2.551(h)(2). In fact, Defendants have not advanced any arguments to attack the trial court's decision to seal the record. See *Mary R. v. B & R Corp.*, 149 Cal. App. 3d 308315, (1983) (sealing order can be attacked on fraud, collusion, mistake, or lack of jurisdiction). Indeed, Defendants' dissemination of the Sealed Report and its contents more than 18 months after the Sealing Order was issued, having never challenged it prior, and their refusal to stop their unlawful dissemination, is therefore barred by the equitable doctrine of laches.

2. Defendants' Speech At Issue In This Matter Is Neither "Newsworthy" Nor A "Matter Of Public Significance".

The Supreme Court recognized that the First Amendment provides greater protection to speech that is "newsworthy" and "a matter of public significance." *See Bartnicki*, 532 U.S. at 528, citing to *New York Times Co. v. United States*, 403 U.S. 713 (1971) (upholding the right of the press to publish "information of great public concern" like the Pentagon Papers)[3]; *see also Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (noting less rigorous First Amendment protections for matters of purely private significance which do not implicate the same constitutional concerns as matters of public concern) citing *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 758–759 (1985) (recognizing not all speech is of equal First Amendment importance and "speech on public issues occupies the highest rung of the hierarchy of First Amendment values").

[3] Defendants' current comparisons of the Poulson's Substack blog posts disseminating the Sealed Report and its contents to the Pentagon Papers was rejected by Poulson, who wrote that comparing this matter to the Pentagon Papers was "an exaggerated claim." (Baskin Decl., Exh. 5, p. 3/7)

Bartnicki plainly dealt with "newsworthy" matters of the "highest rung of the hierarchy of First Amendment values." *Bartnicki*, 532 U.S. at 518 (involving publication of illegally recorded conversation where union President made threatening comments to School Board President during a highly publicized public union negotiation). The *Bartnicki* Court refused to determine broadly that truthful publication may never be punished, but it held that, after weighing the First Amendment interests against the competing interests, the interests served by law at issue do not justify restricting a journalist's "truthful" speech on a "matter of public significance." *Id*. The speech in *Bartnicki*, unlike Defendants' dissemination of the Sealed Report and its contents, was a newsworthy matter of public significance that concerned public issues; use of public funds; threats of violence against members of the School Board.

The Sealed Report and its contents are neither "newsworthy" nor "matters of public significance." This record establishes that, even when the incident and the report were public (prior to Judge Gold entering the Sealing Order) for nearly three months, not one journalist – or non-journalist – covered these events. (Poulson Decl., ¶14) This includes journalist Byron Tau who was covering Premise Data during the time that the incident and the report was public. If it was newsworthy, Tau could have written about it at that time, but did not do so. Further, after Poulson disseminated the Sealed Report and described its contents, and even after Poulson disclosed that Plaintiff's employment had been terminated, no other journalists – or non-journalists – covered these events. (Poulson Decl., ¶18) Again, even Tau, a journalist at the Wall Street Journal at that time, did not cover these events. (Id.) This, despite Defendants' assertions that Plaintiff was a "public person." (Poulson Motion, p. 16)

Furthermore, the Sealed Report and its contents are not matters of the "highest rung of the hierarchy of First Amendment values" evidenced by the fact that it was sealed by a court and that the incident took place 21 months prior to Poulson's first publication, which was 18 months after the case was closed without charges or conviction. Poulson repeatedly republished the Sealed Report and its contents even after Plaintiff was no longer CEO of Premise Data. In fact, Defendants do not – and cannot – even claim that Defendants' speech concerns "public affairs" or "is the essence of self-government." *Dun & Bradstreet*, 472 U.S. at 759. Similarly, the current assertion that the concern was to draw attention to domestic violence issues or police conduct is simply belied by the articles –

which demonstrate no concern for how readily identifiable the alleged victim is by virtue of publication of the Sealed Report.

In *Dun & Bradstreet*, the U.S. Supreme Court recognized that the state's interest in compensating private individuals for injury to their reputation is "strong and legitimate," even when weighed against the First Amendment interest in protecting this type of expression, if the statements "involve no issue of public concern." *Id.* at 757.

3. A "Matter Of Public Significance" Is Less Broad Than An "Issue Of Public Interest"

Unable to claim that the Sealed Report and its contents constitute a "matter of public significance," Defendants arguments that they are entitled to First Amendment protection often rely on claims that the Sealed Report and its contents constitute "an issue of public interest", as that term is used in Section 425.16(e)(3) and (4).

Speech that is "newsworthy" or a "matter of public significance" is less broad than speech "in connection with an issue of public interest." *See* Section 425.16(e); *see also Briggs v. Eden Council for Hope & Opportunity*, 19 Cal.App.4th 1106, 1117 (1999) ("Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning."). The phrase "public significance" as used in the anti-SLAPP statute's preamble is less broad than the phrase "issue of public interest" used in Subsections (e)(3) and (4). *Briggs*, 19 Cal.App.4th at 1118. The 1997 amendments to the anti-SLAPP statute's preamble underscores this point because it sought to require courts to interpret the statute more broadly in response to courts' broader interpretation of the phrase "public significance," in reliance on Supreme Court First Amendment jurisprudence. *Id.* at 1120.

Indeed, the dictionary definitions of the two words confirm this distinction: "significance" is defined as "the quality of being important," while "interest" is defined as "a feeling that accompanies or causes special attention to something or someone". (Websters Dictionary, 9th ed.) Therefore, a matter of public significance is far less broad than an issue of public interest. Accordingly, Defendants' arguments cannot argue that the First Amendment immunizes them because the Sealed Report and its contents concern an "issue of public interest" must be rejected.

D. The Sealed Report And Its Contents Are Not An Issue Of Public Interest.

Even if this Court accepts Defendants' contention that the Court should look to cases analyzing "issue of public interest" when determining if matters are of "public significance" for purposes of whether the First Amendment protects the speech, Defendants' arguments still must be rejected. The Sealed Report and its contents are not even an issue of public interest.

"The most commonly articulated definitions of 'statements made in connection with a public issue' focus on whether (1) the subject of the statement or activity precipitating the claim was a person or entity in the public eye; (2) the statement or activity precipitating the claim involved conduct that could affect large numbers of people beyond the direct participants; and (3) whether the statement or activity precipitating the claim involved a topic of widespread public interest." *Wilbanks v. Wolk*, 121 Cal.App. 4th 883, 898 (2004) (internal citations omitted), *see also Weinberg v. Feisel*, 110 Cal.App. 4th 1122, 1131–32 (2003) ("a 'public controversy' does not equate with any controversy of interest to the public"), citing *Time, Inc. v. Firestone*, 424 U.S. 448, 454 (1976) (holding that a divorce action between two well-known people may have piqued the public's interest but was not a public controversy.)

Here, the speech at issue is Poulson's repeated dissemination of the Sealed Report and its contents in his multiple Substack posts published between September 14, 2023 and June 3, 2024. This speech does not meet the criteria set forth in *Wilbanks* as Plaintiff is not in the public eye; the Sealed Report and its contents did not affect many people; and the Sealed Report and its contents are not, in and of themselves, a topic of widespread public interest.

1. Plaintiff Was Not And Is Not a Public Figure.

Plaintiff was not and is not a public figure, and Defendants do not argue that he is (or was). The U.S. Supreme Court defined two classes of public figures. *Gertz v. Robert Welch, Inc.*, 418 U.S. at p. 351. The first is the "all purpose" public figure who has "achiev[ed] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." Plaintiff plainly does not fall into this category.

The second category is that of the "limited purpose" or "vortex" public figure, an individual who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." *Id.* Unlike the "all purpose" public figure, the "limited

purpose" public figure loses certain protection for his reputation only to the extent that the allegedly defamatory communication relates to his role in a public controversy." *Id.*

> The cases decided since *New York Times* and *Gertz* make it clear that a person or group should not be considered a 'public figure' solely because that person or group is a criminal defendant; has sought certain relief through the courts; or merely happens to be involved in a controversy that is newsworthy. Rather, … a 'public figure' plaintiff must have undertaken some *voluntary* act through which he seeks to influence the resolution of the public issues involved. As such, the mere involvement of a person in a matter which the media deems to be of interest to the public does not, in and of itself, require that such a person become a public figure for the purpose of a subsequent libel action.

Reader's Digest Assn. v. Superior Court, 37 Cal.3d 244, 254 (1984) (citation omitted).

Defendants' arguments for why Plaintiff "is a public person" are unavailing. (*See e.g.*, Poulson Motion, p. 16) Defendants refer to Plaintiff's personal website, an article published on the *Government Technology* website in 2016, Plaintiff's LinkedIn profile, the webpage of Plaintiff's self-produced podcast, Plaintiff's blog, and an article Plaintiff published in 2020 on *The Africa Report* website. (Noble Decl. Exh. A-D) This evidence does not even come close to establishing Plaintiff is a "public figure." Plaintiff's website, blog, LinkedIn page, and podcast were created and maintained by Plaintiff, and had minimal engagement. What Defendants describe as an article about Plaintiff is a three-paragraph blurb dated March 20, 2016. (Noble Decl., Exh. B) Plaintiff's podcast had five episodes between July 17, 2022 and November 23, 2022 and was stopped because it had minimal engagement. (Noble Decl., Exh. D) Moreover, as of December 23, 2023, Plaintiff was no longer "a high-profile tech entrepreneur" and no longer the CEO of Premise Data[4]. (Poulson Decl., ¶19) Indeed, Defendants' argument that Plaintiff was a public person is undermined by the fact that when he was arrested in 2021, at which time he was the CEO of Premise Data, a small private company that Wall Street Journal journalist Byron Tau wrote about, not one journalist covered his arrest and the then-public incident report.[5]

---

[4]Premise Data's corporate activity was not an issue of public interest and as such Plaintiff's position as CEO did not elevate his status as a public figure. Premise Data was not a well-known company. In fact, Poulson concedes the public was not interested in Premise Data even when journalist Byron Tau covered the company. Baskin Decl., Exh. 5, p. 3/7 (noting a lack of public appetite on Tau's reporting on Premise Data which "never captured broad public attentions.").

[5] Assertions of "extensive media coverage of this case" are disingenuous. *See e.g.*, Substack Motion, p. 16. The article cited focuses on the First Amendment issues raised by this litigation and not the contents of the Sealed Report. (Baskin Decl., Exh. 7) Moreover, the article's inaccurate claim that Plaintiff sued Poulson for $25 million is a reference to a

Moreover, far from committing a *voluntary* act through which he seeks to influence the resolution of the public issues involved (namely, the Sealed Report and its contents), Plaintiff took all available steps to keep the Sealed Report and its contents private, including but not limited to seeking and obtaining a Sealing Order from Judge Gold pursuant to Section 851.91.[6] Defendants cannot cite to any voluntary act taken by Plaintiff by which he injected himself into the resolution of these issues.

2. Sealed Report And Its Contents Did Not Affect A Large Number Of People.

The Sealed Report and its contents did not affect a large number of people. This incident concerned two private people in the privacy of their home. Contrary to Defendants' argument that the Report and its contents affect more people because "criminal activity" or "domestic violence" are matters of public concern, neither criminal activity nor domestic violence occurred in this instance. The Penal Code and Court Order establish that, as a matter of law, the arrest was deemed not to have occurred. This establishes, at a minimum, the absence of criminal activity or domestic violence. Additionally, the articles were not made contemporaneous to the underlying incident and thus distinguishable from Defendants' misplaced reliance on cases like *Lieberman v. KCOP Television, Inc.* 110 Cal.App.4th 156, 164 (2003) which involved reporting on a doctor who was allegedly *presently* prescribing controlled substances without a legitimate medical purpose. Here, the incident had occurred 21 months before the speech, no one reported on the incident when it was public, and a Court determined the arrest was deemed not to have occurred, and therefore there was no criminal conduct whatsoever. Similarly, Defendants' reliance on *Sipple v. Foundation for National Progress*, 71 Cal.App.4th 216, 238 (1999) is equally misplaced. Plaintiff did not – like the Plaintiff in *Sipple*, a well-known strategist and advisor to politicians – put his views on domestic violence in the public record. The allegations against Sipple – which were not sealed – are distinguishable as a matter of public interest. *Sipple* does not stand for the proposition that any time an allegation of domestic violence is made, even if it is sealed and deemed not to have occurred, it is automatically a matter of public interest.

3. Sealed Report And Its Contents Are Not, In And Of Themselves, A Topic Of Widespread Public Interest.

---

settlement demand and take down letter that was sent only to Poulson prior to litigation suggests Poulson's involvement in the article.

[6] Poulson recognizes Plaintiff took affirmative steps to keep the Sealed Report and its contents private after Defendants publicized it. See Poulson Decl.

"[I]t is not enough that the statement refer to a subject of widespread public interest; the statement must in some manner itself contribute to the public debate." *Wilbanks*, 121 Cal.App.4th at 888, citing *Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107. "The fact that 'a broad and amorphous public interest' can be connected to a specific dispute is not sufficient to meet the statutory requirements of the anti-SLAPP statute. By focusing on society's general interest in the subject matter of the dispute instead of the specific speech or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called 'synecdoche theory of public issue in the anti-SLAPP statute,' where '[t]he part [is considered] synonymous with the greater whole.' In evaluating the first prong of the anti-SLAPP statute, we must focus on "the *specific nature of the speech* rather than the generalities that might be abstracted from it. [Citation.]" *World Fin. Grp., Inc. v. HBW Ins. & Fin. Servs., Inc.*, 172 Cal. App. 4th 1561, 1570 (2009), *as modified* (May 7, 2009).

Here, Poulson's Substack blog posts do not concern the issues of domestic violence, the status of women in the technology sector generally, or efforts to improve accountability for men who engage in abusive behavior toward women.[7] Rather, the newsletter "was part of Poulson's work exposing the surveillance tech industry, its shadowy relationships with governments and its general untrustworthiness and unaccountability, and in particular, about allegedly unethical practices while Plaintiff served as its CEO." (Poulson Motion, p. 16; *see also* Poulson Decl. at ¶1 (noting he "focused on the intersection of technology and national security.")). Thus, when he disseminated the Sealed Report and its contents on September 14, 2023, the focus was not on domestic violence but rather on Premise Data and Blackman having confirmed Premise's work with U.S. defense and intelligence agencies in a public court filing. Poulson's September 14, 2023 Substack blog post's only reference to domestic violence is in connection with the Sealed Report and its contents.

Unlike the anti-SLAPP motions submitted to this Court, Poulson does not cite to any statistics on domestic violence, address efforts to hold men accountability or the status of women in the

[7] Defendants misstate the issue. Defendants argued that "the context of Poulson's reporting of the Incident Report as part of his overall reporting on the surveillance tech industry and its relationship with governments contributes to the public debate on the issue by directly engaging the public with the issues." (Poulson Motion, p. 16-17, *citing Geiser*, 13 Cal. 5th at 12f56). Plaintiff's claims do not arise from Poulson's speech on the surveillance tech industry and its relationship with governments, and therefore it is not relevant whether Poulson's Substack's blog contribute to a public debate on that issue. Of significance, the Sealed Report and its contents are not related to any alleged public debated on the surveillance tech industry and its relationship with governments. And more importantly, Defendants' argument effectively concedes, as it must, that Poulson did not disseminate the Sealed Report and its contents to contribute to the public debate on criminal activity, domestic violence, or gender dynamics in the tech industry.

technology sector, or any issues of criminal justice.[8] In fact, Poulson's Substack blog post included identifying information about the woman referred to in the Sealed Report, including her age, a description of her appearance, her address, and her relationship with Plaintiff, making her easily identifiable. Poulson even casually mocked the woman by suggesting that she lied to the police, and that, because of her age, she was only in a relationship with Plaintiff for financial reasons. Indeed, if anything Poulson's publication of the Sealed Report evidences a disregard for the sensitive privacy issues related to making such complaints and indeed can serve to discourage such reports for fear of public exposure. This is inconsistent with a publication about the societal ill of domestic violence.

Moreover, because Poulson continued to disseminate the Sealed Report and its contents after Premise Data terminated Plaintiff's employment, Defendants cannot credibly argue that he did so to contribute to the debate on powerful men who work at technology companies accused of domestic violence. *See Cole v. Patricia A. Meyer & Associates, APC*, 206 Cal.App.4th 1095, 1121 (2012) (recognizing speech about defunct company could not still be an issue of widespread public interest at the time the speech was made). Accordingly, even if Poulson first disseminated the Sealed Report and its contents to contribute to the debate on powerful men in technology, his speech after December 2023 – the date Plaintiff's employment with Premise Data ended – cannot be classified in this manner.

E. Defendants' Speech Was Not "Truthful."

The arrest cannot have both occurred and not occurred. If it did not occur, then anyone who states that it did occur is not providing a truthful statement. Section 851.91(e) and the Court Order establish as a matter of law that the arrest is "deemed not to have occurred." Plaintiff is to answer "no," if asked if he was arrested. According to the legislative history, "it would be *inaccurate* for a consumer reporting agency to include information about a sealed arrest in a report about a consumer." (emphasis added). Therefore, statements by Defendants that the arrest did occur are, as a matter of law, untruthful. *See People v. Najera*, 138 Cal. App. 4th 212, 220–21 (2006), *as modified on denial of reh'g* (Apr. 20, 2006) citing Black's Law Dict. (8th ed.2004) p. 913, col. 1.) ("A legal fiction is an 'assumption that

[8] Poulson's Motion references "the issue of violence against women, both domestic and sexual violence," and referred to Take Back the Night Protests, Domestic Awareness Month, and statistics on sexual and physical violence." (p. 15) Poulson's grotesque effort to ratchet up the incident by adding "sexual violence" without any evidence or basis is both inappropriate and further evidence of why Plaintiff is entitled to the relief he seeks. Moreover, it again demonstrates a disregard for the other individual involved. Similarly, Substack argued that Poulson's Substack posts were "about the status of women in the technology sector generally, and efforts to accountability for men who engage in abuse behavior toward women" and "the #MeToo movement". (Substack Motion, p. 16) To be sure, Poulson's Substack blog posts include none of this information or in any way refer to any of these issues.

something is true even though it may be untrue, made esp. in judicial reasoning to alter how a legal rule operates; specif., a device by which a legal rule or institution is diverted from its original purpose to accomplish indirectly some other object.'"). For purposes of legal proceeding, including analyzing whether Defendants' speech is "truthful," an assumption must be made that the arrest did not occur.

F. California Has A Compelling Need To Protect The Privacy Of Sealed Arrest Reports And Sealed Documents.

Defendants make a variety of arguments suggesting that there exist no countervailing compelling interest to defeat a First Amendment challenge to the application and enforcement of the statutes permitting records to be sealed. This argument fails in that it does not account for the legislative purpose behind the legislation that allows individuals who have suffered an arrest but were not convicted to petition the court to seal the underlying records.

As an initial matter, laws that allow for expungement or sealing are not considered content-based restrictions that run afoul of the First Amendment. Section 851.91 and 851.92 provide specific parameters for who and how records can be sealed. The restriction of disseminating sealed information is not a content-based restriction because the restriction it is based on the statute the topic discussed or the idea or message expressed. Moreover, the Supreme Court has recognized explicitly "California could decide not to give out arrestee information at all without violating the First Amendment." *See Los Angeles Police Dep't v. United Reporting Pub. Corp.*, 528 U.S. 32, 40 (1999). It has done so here in contemplation of the collateral consequences suffered by individuals who are arrested but not convicted.

Here, the legislative history notes the protections provide a legal pathway for to sealing an arrest record from public view that if the arrest did not result in a conviction as a matter of right with specified exceptions and safeguards and with meaningful prohibitions on the dissemination of records that have been sealed. *See* 2017 California Senate Bill No. 393, California 2017-2018 Regular Session. Here, the legislature explicitly considered the right of public access to a record and determined that the rights of individuals arrested without conviction and the penalties in housing and employment opportunities that they suffer overcomes the right of public access to the record, particularly in light of how "these issues disproportionately affect communities of color." (*Id*. noting in 2017 the prevalence of background checks and that by 23 one in three Americans will have been arrested while nearly half of black males are arrested by age 23, and although representing only 14 percent of the population, African Americans account for 28 percent of all arrests.)

II. The Complaint Does Not Arise Out Of An Act In Furtherance Of Defendants' Right Of Petition Or Free Speech In Connection With A Public Issue And Therefore Defendants' Special Motion To Strike Should Be Denied.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

A. Poulson's Substack Posts Do Not Fall Under 425.16(e)(2).

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

B. Poulson's Substack Posts are Not Protected by 425.16(e)(3) or (4) Because They Do Not Concern Matters Of Public Interest.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

III. Plaintiff Has A Probability Of Success On His Claims.

A. The First Amendment Does Not Immunize Defendants.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

B. Plaintiff Is Entitled To Injunctive Relief Against All Defendants.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

C. Section 230 Does Not Immunize Defendants.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

1. Poulson Does Not Have Immunity Under Section 230.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

2. Substack And AWS Do Not Have Immunity Under Section 230.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

D. Defendants' Conduct Is Not Protected Newsgathering.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

IV. AWS's Arguments That Plaintiff's Claims Fail for Other Independent Reasons Should Be Rejected.

Plaintiff incorporates by references the arguments made in his Oppositions to all Defendants' anti-SLAPP motions.

Dated: December 20, 2024

Respectfully submitted,

THE MAREK LAW FIRM, INC.

By: David Marek
David Marek
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 JACK POULSON'S MOTION TO STRIKE UNDER THE ANTI-SLAPP STATUTE (CCP § 425.16)**

on the parties named below as follows:

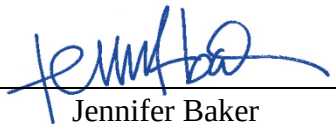
(X) **(BY EMAIL)** – by electronically mailing a true and correct copy through BERMAN NORTH LLP's electronic mail system to the email address(es) set forth below, or as stated in the attached service list per the parties' agreement.

(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

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**
Stacy Y. North BERMAN NORTH LLP 2001 Van Ness Avenue, Suite 300 San Francisco, CA 94109 Phone: (650) 463-9158 Email: stacy@bermannorth.com **Counsel for Plaintiff Maury Blackman**	