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**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 AMAZON WEB SERVICES,
INC.'S SPECIAL MOTION TO STRIKE TO
PLAINTIFF'S COMPLAINT**

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

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 to February 4, 2025, 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

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
12/23/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

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 Substack’s Demurrer would have been due on January 13, 2025. Without the extension, Plaintiff’s Oppositions to three of the four anti-SLAPP motions and Substack’s Demurrer 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 incorporates by references the arguments made in his Oppositions to all Defendants’ anti-SLAPP motions.

Statement of Facts

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

Argument

I. The Anti-SLAPP Statute Does Not Apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **E. Defendants’ Speech Was Not “Truthful.”**

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

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

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

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

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

13 **A. Poulson’s Substack Posts Do Not Fall Under 425.16(e)(2).**

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

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

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

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

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

23 **A. The First Amendment Does Not Immunize Defendants.**

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

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

27 Plaintiff incorporates by references the arguments made in his Oppositions to all
28 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 **1. Poulson Does Not Have Immunity Under Section 230.**

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

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

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

7 **D. Defendants’ Conduct Is Not Protected Newsgathering.**

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

10 **IV. AWS’s Arguments That Plaintiff’s Claims Fail for Other Independent Reasons**
11 **Should Be Rejected.**

12 AWS argued that Plaintiff’s tort claims fail to state viable causes of action or not supported by
13 the evidence. These arguments must fail.

14 **A. Plaintiff Is Likely To Succeed On His Claim For Intentional Interference With**
15 **Contractual Relations.**

16 AWS contends that the Complaint does not sufficiently plead that AWS was aware of
17 “Plaintiff, let alone his relationship with his employer, before the alleged breach or disruption
18 occurred.” (AWS Motion, p. 21) This argument must fail. In September and November 2023,
19 Poulson published blogs on Substack, hosted by AWS, that identified Plaintiff, his employer, and that
20 he was arrested for domestic violence without a conviction. AWS’s conclusory pleading that it was
21 not aware of the information it was hosting cannot be determined at this stage of the proceeding.

22 **B. Plaintiff Is Likely To Succeed On His Claim For Intentional Interference With**
23 **Prospective Economic Relations.**

24 AWS contends that Plaintiff did not plead independent wrongful conduct as required to state a
25 claim for intentional interference with prospective economic advantage. (AWS Motion, p. 21) A
26 plaintiff seeking to recover damages for interference with prospective economic advantage must
27 plead that the defendant’s conduct was “wrongful by some legal measure other than the fact of
28 interference itself.” *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393. An
act is independently wrongful “if it is unlawful, that is, if it is proscribed by some constitutional,
statutory, regulatory, common law, or other determinable legal standard.” *Korea Supply Co. v.*
Lockheed Martin Corp. (2003) 29 Cal.4th 1134, 1159 (citing *Della Penna, supra*, 11 Cal.4th at p.

1 408, 45 Cal.Rptr.2d 436, 902 P.2d 740 (conc. opn. of Mosk, J.) (“It follows that the tort may be
2 satisfied by intentional interference with prospective economic advantage by independently tortious
3 means ”.)

4 “Civil actions lie in favor of crime victims. Violation of a criminal statute embodying a public
5 policy is generally actionable even though no specific civil remedy is provided in the criminal statute.
6 [Citations.] Any injured member of the public for whose benefit the statute is enacted may bring an
7 action.” *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1224.

8 Here, Plaintiff pleads that Defendants’ possession and public dissemination of the Sealed
9 Report and information related to the Sealed, allowing the report and information related to the report
10 to remain publicly accessible, and refusing to remove them violated California Penal Code sections
11 851.91, 851.92, and 11143, and California Labor Code section 432.7(g)(3), in addition to the Court
12 Order and the California Constitution. (Complaint at ¶69) The “wrong” alleged is a straightforward
13 violation of law.

14 Plaintiff’s Eleventh Claim for Relief pleads another independently wrongful act. Defamation
15 is an “independent wrong” sufficient to meet the elements of a cause of action for interference with
16 prospective economic advantage. *Redfearn v. Trader Joe’s Co.* (2018) 20 Cal.App.5th 989, 1006, as
17 modified on denial of reh’g (Mar. 16, 2018) disapproved of on other grounds by *Ixchel Pharma, LLC*
18 *v. Biogen, Inc.* (2020) 9 Cal.5th 1130.

19 **C. Plaintiff Is Likely To Succeed On His Claim For Intentional Infliction Of**
20 **Emotional Distress.**

21 AWS argues that Plaintiff’s claim for intentional infliction of emotional distress fails because
22 the statement are protected the First Amendment and therefore not outrageous. (AWS Motion, p. 21).
23 For the reasons set forth herein, Defendants’ conduct is not protected by the First Amendment, and
24 therefore this argument must fail. Moreover, possessing, disseminating, and refusing to take a sealed
25 arrest report and blog posts that false report on an arrest that was deemed not to have occurred in an
26 malicious manner can be extreme and outrageous conduct.

27 **D. Plaintiff Is Likely To Succeed On His Claim For Negligent Infliction of Emotional**
28 **Distress.**

Defendants cite *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 984 for the
proposition that there is no independent tort of negligent infliction of emotional distress in California.
In fact, the cause of action for negligent infliction of emotional distress is a species of negligence.

1 *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. Defendants’ motion should be denied on
2 this ground.

3 **E. Plaintiff Is Likely To Succeed On His Claims For Defamation And False Light.**

4 AWS argues that Plaintiff has not pled a single statement from Poulson’s posts that are
5 defamatory. (AWS Motion, p. 21) Plaintiff alleged:

6 “In addition to the unauthorized publication and dissemination of the actual sealed Incident
7 Report, DEFENDANTS repeatedly published the contents of the sealed Incident Report.”
(P25)

8 The articles and the sealed Incident Report state that Plaintiff was subject to a “felony
9 domestic violence arrest,” while omitting the fact that “that the arrest was deemed by a Court
10 ‘not to have occurred’.” (PP140)

11 These allegations are more than sufficient to notify AWS which language Plaintiff is
12 challenging.

13 AWS also argues that the statements are truthful because Plaintiff was arrested for domestic
14 for felony domestic violence. (AWS Motion, p. 22) However, by statute and as a matter of legal
15 fiction, the arrest is “deemed not to have occurred.” The published statements to the contrary are
16 false as a matter of law and statute. Moreover, because AWS omitted this statutory conclusion from
17 the article, as well as the fact that all charges were dropped, AWS implied that Plaintiff was not only
18 arrested for felony domestic violence but was guilty of it.

19 For the same reason, Plaintiff properly states a claim for False Light. AWS also argues that
20 the False Light claim is “duplicative.” This is not a proper argument for an Anti-SLAPP Motion.
21 *Dickinson v. Cosby*, 17 Cal.App.5th 655, 692 (2017) (“an anti-SLAPP motion is not the correct
22 vehicle for asserting... false light claim is ‘surplusage’ because the complaint also contains a specific
23 cause of action for libel” and is “properly the subject of a demurrer”).

24 **F. Plaintiff Is Likely To Succeed On His Privacy Claims.**

25 Plaintiff alleges three privacy claims: disclosure of private facts, violation of California
26 Constitution Article I, § 1, and intrusion into private affairs.

27 Disclosure of Private Facts. AWS argues that, before the Incident Report was sealed by Court
28 order, it was “public information” and therefore, Plaintiff could not have any privacy interest in its
public dissemination. AWS offers no evidence that anyone publicly disclosed the Incident Report
before it was sealed. All evidence demonstrates that Defendants published it long afterwards.
California Penal Code §§ 851.91 and 851.92 establish by statute that arrestees have a protected

1 privacy interest in sealed arrest records. That is the whole point of the statute. That arrest records are
2 not born private, but only become private through a legislated process, does not vitiate the statutory
3 privacy protection. This argument applies with even greater force, where, as is the case here, the
4 record was never publicly disseminated before being sealed.

5 Constitutional Privacy Claim. AWS argues that the public's interest in sealed arrest records
6 outweighs the privacy rights afforded by statute and, therefore, Plaintiff cannot state a privacy claim
7 under California Constitution Article I, § 1. Here, the California legislature already determined that
8 the public has no protectible interest whatsoever in sealed arrest records. Likewise, it determined that
9 an arrestee's privacy interest is so high that disclosure of sealed arrest records is punishable by civil
10 penalties in addition to all other remedies. California Penal Code §§ 851.91 and 851.92. The
11 balancing does not apply in circumstances where the Legislature has already decided the privacy
12 interests bar disclosure. Moreover, any such balancing test would tilt ineluctably in favor of
13 protection.

14 Intrusion into Private Affairs. AWS argues that Plaintiff does not state a claim for intrusion
15 because Plaintiff does not allege that AWS did not illegally obtain the Incident Report. However,
16 AWS' possession of the Incident Report is illegal under California Penal Code §§ 851.91 and 851.92.
17 AWS intruded upon Plaintiff's private affairs by possessing and retaining the Incident Report.
18 Plaintiff alleges that Defendants committed intrusion by "intentionally intrud[ing] in Plaintiff's
19 reasonable expectation of privacy in the sealed Incident Report and information related to the sealed
20 Incident Report" by disseminating it. (Comp. P 122) Plaintiff properly states a claim for intrusion
21 into Private Affairs.

22 **G. Plaintiff Is Likely To Succeed On His Claim For Unfair Business Practices.**

23 AWS cites *Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th
24 322 for the proposition that "noncommercial speech" does not support a cause of action under
25 Business & Professions Code § 17200 (the "Unfair Competition Law" or "UCL"). In *Bernardo*, an
26 anti-abortion advocate challenged portions of a non-profit's web site discussing the safety of abortion
27 and presenting evidence opposing anti-choice beliefs. In granting an anti-SLAPP motion against the
28 plaintiff, the court noted that the materials presented on the website were all "educational in nature
and asserted Planned Parenthood's positions on disputed scientific and medical issues of public
interest," rather than making factual representations to an intended commercial audience. 115
Cal.App.4th at 344. The UCL "do[es] not suppress points of view but instead suppress[es] false and
misleading statements of fact." *Id.* at 348, citing *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 967.

1 Here, the articles Defendants published about Plaintiff assert themselves to be representations
2 of fact about Plaintiff's private life, rather than a genuine scientific debate or of a general educational
3 nature. All Defendants have commercial interests in promoting "clicks"; AWS has a commercial
4 interest in providing its cloud computing services to Substack and Tech Inquiry. Repetition of lurid or
5 alarming allegations to attempt to draw in readers is a well-known tactic for bloggers and "news"
6 publications alike. Because Defendants' speech here is clearly commercial, *Bernardo* is inapposite.

7 Section 17200 "borrows" violations of other laws and treats them as unlawful practices that
8 the unfair competition law makes independently actionable. *Bernardo* @ 352, quoting *Cel-Tech*
9 *Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180. An
10 "unlawful" business practice or act within the scope of the UCL is "an act or practice, committed
11 pursuant to business activity, that is at the same time forbidden by law." *Bernardo*, 115 Cal.App.4th at
12 351. In *Bernardo*, Planned Parenthood's anti-SLAPP motion was independently granted on the
13 ground that Bernardo failed to identify any statute, regulation or law she contended Planned
14 Parenthood had violated. *Id.* Here, Plaintiff has identified three separate Penal Code sections making
15 it unlawful for Defendants to possess or publish a sealed arrest record, all of which are independently
16 actionable under the UCL.

16 Plaintiff likewise identified discrete public policies it contended Defendants violated,
17 including policies protecting the privacy of individuals who are arrested and protecting individuals
18 from experiencing adverse employment acts because of such arrests. Plaintiff points to policies linked
19 to the California Constitution, Article I, Section I (guaranteeing all people 'inalienable rights'
20 including "pursuing and obtaining . . . privacy") to support his UCL claim. (Complaint ¶154)
21 Defendants' violation of these policies is also independently actionable under the UCL. Defendants'
22 motion to strike the Twelfth Cause of Action must be denied.

22 Dated: December 21, 2024

Respectfully submitted,

23 THE MAREK LAW FIRM, INC.

24
25 By: /s/ David Marek
26 David Marek
27 Attorney for Plaintiff
28

1 **PROOF OF SERVICE**

2 I, Jennifer Baker, declare as follows:

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

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

- 7 • **PLAINTIFF'S OPPOSITION TO DEFENDANT AMAZON WEB SERVICES, INC.'S**
8 **SPECIAL MOTION TO STRIKE TO PLAINTIFF'S COMPLAINT**

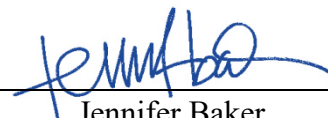
9
10 on the parties named below as follows:

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

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

20 **SEE ATTACHED SERVICE LIST**

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct and that this declaration was executed on December 21, 2024, at Redwood City,
23 California.

24 
25 _____
26 Jennifer Baker

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