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Attorneys for Defendant
AMAZON WEB SERVICES, INC.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

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

REPLY IN SUPPORT OF DEFENDANT AMAZON WEB SERVICES, INC.'S SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT

[Evidentiary Objections and Motion to Seal filed concurrently]

REDACTED.

Hearing Date: February 4, 2025
Time: 9:30 a.m.
Dept.: 301

Action Filed: October 3, 2024

Defendant Amazon Web Services, Inc. ("AWS") respectfully submits this Reply to Plaintiff's Opposition ("Opp.") to AWS's Special Motion To Strike Plaintiff's Complaint ("SLAPP Motion" or "Mot.").

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I. SUMMARY OF ARGUMENT

Plaintiff's Opposition largely sidesteps the Motion's detailed explanation of why his claims against AWS fail. It does not even attempt to distinguish most of the cases AWS cited, ignores well-established law to argue the SLAPP statute does not apply, opposes AWS's Section 230 defense using patently defective arguments, and makes the circular argument that the First Amendment privilege does not apply because disseminating the Incident Report is illegal. Plaintiff has not met his burden under the SLAPP statute.

II. SECTION 425.16 APPLIES TO PLAINTIFF'S COMPLAINT

Plaintiff's claims fall within 425.16(e)(2)-(4) of the SLAPP law. Plaintiff does not dispute that all his claims against AWS arise from its alleged "dissemination" of the Articles, that Substack is a "public forum" under 425.16(e)(3), or that his claims target "conduct in furtherance of the exercise of…free speech" under subsection (e)(4). Instead, Plaintiff attempts to narrow the SLAPP statute in a manner that contravenes well-established law.

First, Plaintiff's claims fall within Subsection (e)(2), which applies to "any written or oral statement or writing made in connection with an issue under consideration" by "a judicial body." C.C.P. § 425.16(e)(2). Plaintiff's assertion that (e)(2) does not apply where the relevant proceeding has ended is wrong. *E.g., Sipple v. Found. For Nat'l Progress*, 71 Cal. App. 4th 226, 235-37 (1999) (article reporting on five-year-old custody case came within (e)(2)). None of the cases Plaintiff cites are to the contrary.[1] In any event, the Articles reported on Premise Data's ongoing Santa Clara lawsuit. *See* Exs. 1.c-f.

Second, Plaintiff's attempt to narrowly cabin the SLAPP statute's "public interest" requirement misconstrues the law, which expressly requires a broad construction. C.C.P. § 425.16(a). Plaintiff primarily argues that there is no public interest in him or Premise Data.

[1] *Maranatha Corr., LLC v. CDCR*, 158 Cal. App. 4th 1075, 1085 (2008) concluded (e)(2) ***did*** apply and the line Plaintiff (selectively) quotes relates to whether (not when) an issue was ever under consideration. *Cole v. Patricia A. Meyer & Assocs., APC*, 206 Cal. App. 4th 1095 (2012), considered timing, but in dicta. *Id.* at 1121. In *Rand Resources, LLC v. City of Carson*, 6 Cal. 5th 610 (2019), the court found the statements were "unrelated" to any issue before the City Council, or were made "long **before**" the relevant issue was under review. *Id.* at 615-16 (emphasis added). It had no occasion to consider statements made after the relevant proceeding.

Opp. at 11-14. This ignores the evidence. Exs. 3-5.[2] Plaintiff also ignores that Mr. Poulson did not publish anything from the Incident Report until ***after*** he had already been reporting on Premise Data, and that Premise Data was subject to media attention ***before*** Poulson published anything, including in the *Wall Street Journal* and the *Economist*. Exs. 3-4.

Even absent public interest in Plaintiff or Premise Data, however, the "broad topic" of the Articles—the relevant query—are of public interest. *Doe v. Gangland Prods.*, 730 F.3d 946, 956 (9th Cir. 2013) (articulating "broad topic" standard). The Articles report on the felony arrest of the CEO of a company contracted by the federal government that was reportedly being used by Russia to target Ukrainians. Ex. 1. They also explore Premise Data's lawsuit against a former employee related to the government's termination of its contact with the company. The Articles raised important questions about domestic violence, who the federal government is entrusting with security clearances, and the companies it has trusted for secret missions. Ex. 1. Plaintiff simply ignores that the Articles cover more than his domestic violence arrest. Opp. at 11-14. *See also* Mot. at 14-15 (citing *San Diegans for Open Gov't v. SDSU Rsch. Found.*, 11 Cal. App. 5th 477 (2017) (issue related to government contract covered by (e)(4))).

In Opposition, Plaintiff does not cite a single case in which the SLAPP statute did not apply to claims like his and relies on easily distinguishable cases involving idiosyncratic business disputes and speech made entirely in private.[3] *FilmOn.com Inc. v. DoubleVerify Inc.*,

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[2] Plaintiff's "evidence" to the contrary is not evidence at all, but inadmissible legal conclusions. *See* concurrently-filed Evidentiary Objections.

[3] Plaintiff cites *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), for the proposition that "a divorce action between two well-known people may have piqued the public's interest but was not a public controversy," (Opp. at 11), but that case addresses the plaintiff's status as a "private figure" or a "public figure" under defamation law. *Id.* at 452-53. *Firestone* had nothing to do with the SLAPP statute, or whether the subject matter was of public interest. *World Financial Group, Inc. v. HBW Insurance & Financial Services, Inc.*, 172 Cal. App. 4th 1561, 1569 (2009), involved allegations that an insurance and financial services firm improperly solicited customers from a competitor. Similarly, *Weinberg v. Feisel*, 110 Cal. App. 4th 1122, 1132 (2003), involved a private dispute among a "small group" of coin collectors. *Rand Resources, LLC* concerned conversations about "who should be responsible for the ordinary functions associated with representing" a city in negotiations to build a stadium. 6 Cal. 5th at 616. *Dyer v. Childress*, 147 Cal. App. 4th 1273 (2007), has been repeatedly criticized and limited to its facts. *E.g.*, *Tamkin v. CBS Broad., Inc.*, 193 Cal. App. 4th 133, 144 (2011) (*Dyer* incorrectly "focused on the lack of a discernable public interest in Dyer's persona," whereas "the statutory language compels

7 Cal. 5th 133 (2019), for example, supports AWS. There, the critical fact was that the publication at issue was shared only with a private group. Moreover, the Supreme Court squarely held that the content and context of speech must be considered in analyzing (e)(4)'s application, including "the identity of the speaker, the audience, and the purpose of the speech." *Id.* at 140. Those favor a finding of public interest where, as here, the speaker is a media entity, and the challenged speech was "widely broadcasted and received." *Id.* at 145-46.

Plaintiff's effort to distinguish the cases showing public interest also fails. He brushes away many of them on the ground that "the challenged speech directly affected a large number of people." Opp. at 12. But courts frequently find the SLAPP statute applies to statements about a plaintiff's personal life when those statements are used as a "case study" for wider issues. *Taus v. Loftus*, 40 Cal. 4th 683, 712, 718 (2007) (statute applied to privacy and defamation claims based on publications and statements about Plaintiff's personal life as a "case study" for wider mental health issues); *Terry v. Davis Cmty. Church*, 131 Cal. App. 4th 1534, 1547-48 (2007) (statute applied to statements about plaintiffs' relationship with a minor in a youth group because "the broad topic … was the protection of children in church youth programs"). And as the many cases cited in the Motion show, domestic violence, and crime more generally, are qualifying wider issues. *E.g.*, *Carney v. Santa Cruz Women Against Rape*, 221 Cal. App. 3d 1009, 1021 (1990) (topic of "violence against women is of pressing public concern"). Thus, for example, although the plaintiff in *Sipple*, 71 Cal. App. 4th 226, may have been a public figure, the public interest in the topic of the report – alleged spousal abuse – was central to the court's holding that the SLAPP statute applied. *Id.* at 239. Plaintiff's argument that there is no public interest because his arrest occurred 18 months before the Articles were published is a red herring.[4] The Articles were plainly relevant to Plaintiff's fitness to serve as CEO of a government-contracted company and the company's fitness to be so contracted, issues which remained salient while

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us to focus on the conduct of the defendants"; there is "no requirement in the anti-SLAPP statute that the plaintiff's persona be a matter of public interest").

[4] Furthermore, the Supreme Court in *FilmOn* made clear that "whether the activity 'occur[red] in the context of an ongoing controversy, dispute or discussion'" is only one "consideration" in evaluating public interest. 7 Cal. 5th at 145; *see also Geiser v. Kuhns*, 13 Cal. 5th 1238, 1248-50 (2022).

Plaintiff was employed and in the aftermath of his termination. Ex. 1.

Third, the limited exception to the SLAPP statute for indisputably illegal conduct does not apply. In *Flatley v. Mauro*, 39 Cal. 4th 299 (2006), the Court declined to apply the SLAPP statute based on "specific and extreme circumstances" where there was no dispute that the defendant sent a criminally extortionate letter. *Id.* at 332 n.16. Subsequent courts have limited the case and the illegality exception to its "very narrow and extreme" facts. *Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 692 (2012). It "applies only 'where either the defendant concedes the illegality of its conduct or the illegality is conclusively shown by the evidence.'" *Finton Constr., Inc. v. Bidna & Keys, APLC*, 238 Cal. App. 4th 200, 210 (2015).

Here, AWS does not concede, and Plaintiff has not proven, illegal conduct. The conduct Plaintiff attributes to AWS is both protected by the First Amendment and immune from liability under Section 230. Mot. at 16-18. No court has applied this exception to a case even remotely similar to Plaintiff's claims against AWS; to the contrary, courts have made clear that the illegality exception does not apply where, as here, a publisher defendant argues that the alleged conduct was constitutionally protected.[5] Plaintiff also has not come close to "**conclusively proving** the illegal conduct." *Cross v. Cooper*, 197 Cal. App. 4th 357, 385 (2011) (emphasis added). Plaintiff does not offer any evidence that the illegality exception applies. *See* Opp. at 10. He offers no evidence to even show AWS in fact hosted the Articles and Incident Report, that AWS "possessed" either, that AWS had any knowledge whatsoever about either, or that Mr. Poulson illegally obtained the Incident Report. The *Flatley* exception applies only where "uncontested evidence…establishes the crime as a matter of law." *Cross*, 197 Cal. App. 4th at 386. Evidence is "contested" where a defendant disputes that it shows any legally actionable conduct, as AWS does here. *Id.* at 386-87. And the SLAPP statute clearly applies to claims like Plaintiff's that allege "illegal" conduct in the course of news reporting.[6]

[5] *E.g.*, *Ass'n for L.A. Deputy Sheriffs v. L.A. Times Commc'ns LLC*, 239 Cal. App. 4th 808, 818-19 (2015) ("*ALADS*") (exception did not apply to disputed allegations of illegal receipt of confidential police files); *Reed v. Gallagher*, 248 Cal. App. 4th 841, 854 (2016) ("rare" exception did not apply to defamation action where defendant argued no actual malice).

[6] *E.g.*, *Lieberman v. KCOP TV*, 110 Cal. App. 4th 156, 166 (2003) (law applied where "surreptitious recordings here were in aid of and were incorporated into a broadcast in

III. PLAINTIFF HAS NOT SHOWN A PROBABILITY OF PREVAILING

A. Section 230 Bars All Of Plaintiff's Claims.

AWS's Motion explained why Plaintiff's claims against it are barred by Section 230. Mot. at 16-18. Plaintiff does not distinguish a single case AWS cited. *Compare* Mot. at 16-18, *with* Opp. at 17-18. Plaintiff also does not dispute—and therefore concedes—that AWS satisfies the first element of immunity, i.e., it is an interactive computer service provider. Mot. at 16. The remaining two elements also are satisfied because Plaintiff's claims seek to hold AWS liable as a publisher of content created by third parties, namely the Articles and Incident Report. Mot. at 16-18; *see also* Opp. at 17 (agreeing on standard). Plaintiff argues half-heartedly that his claims target AWS's *possession* of the Incident Report, which, he argues, is not publisher conduct, and because AWS purportedly "'materially contribute[d]' to the illegality in question" by disseminating the Incident Report. Opp. at 17-18. Both arguments fail.

1. Plaintiff seeks to hold AWS liable as a publisher

Plaintiff's argument that he seeks to punish AWS "for being knowingly in *possession* of contraband," Opp. at 18, both misunderstands how Section 230 is applied and misrepresents his Complaint. As AWS explained, to determine whether a claim targets publisher conduct, courts look to the substantive duty the plaintiff seeks to impose on the defendant; a plaintiff's "framing" of his claims is irrelevant. *Prager Univ. v. Google LLC*, 85 Cal. App. 5th 1022, 1033 (2022). Where a claim would impose a duty to remove content, immunity applies. *E.g., Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009) (Section 230 barred negligent undertaking claim because it would have imposed a duty to remove allegedly offensive content). Such is the case here: Plaintiff asks the Court to order AWS to "remove the content," Prayer for Relief ¶ 1, and to enjoin AWS "from disseminating…the sealed Incident Report or information related to" it and nowhere asks that AWS be ordered to stop *possessing* the Incident Report. *See generally* Cmplt.

Plaintiff's possession argument also misrepresents his allegations. *Cf. Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1263 (2017) (court ruling on SLAPP motion "must take the

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connection of a public issue"); *Hall v. Time Warner, Inc.*, 153 Cal. App. 4th 1337, 1346-47 (2007) (same for trespass claims based on TV crew entering private room to conduct interview).

complaint as it is"; a plaintiff may not "amend[] the challenged complaint ... in response to the motion"). All but one of Plaintiff's claims are expressly premised on dissemination of the Articles and/or Incident Report. Mot. at 14 n.5. And the one cause of action that does not mention dissemination, Plaintiff's claim under Penal Code Section 11143,[7] alleges no injury flowing from possession, but instead claims vaguely that "Defendants' conduct caused and continues to cause Plaintiff harm." Compl. ¶ 176. That is also publisher conduct. *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 19-20 (1st Cir. 2016) (allegations treated defendant as publisher where "there would be no harm to [plaintiffs] but for the content of the postings").

The only case Plaintiff cites in support of his possession theory, *In re Apple Inc. App Store Simulated Casino-Style Games Litig.*, 625 F. Supp. 3d 971, 994 (N.D. Cal. 2022), is irrelevant[8]. That case did not consider whether a claim purportedly targeting possession in connection with publication should be treated differently than publication alone. *See id.* The court concluded that Section 230 did not provide immunity for defendants' "acts of selling gambling chips" in illegal social gambling applications. *Id.* at 993. That activity, the court concluded, "do not attempt to treat [defendants] as 'the publisher or speaker' of third-party content, but rather seek to hold [defendants] responsible for their own illegal conduct—the sale of gambling chips." *Id.* at 994.[9]

2. The Articles and Incident Report are "information provided by another information content provider," not AWS

Plaintiff does not dispute that AWS did not create the Incident Report or Articles. Nonetheless, Plaintiff claims immunity does not apply because AWS "'materially contribute[d]'

[7] That claim also is entirely untenable. Section 11143 does not apply to arrest reports kept by local law enforcement, like the Incident Report, but instead only to "state summary criminal history information," which is a comprehensive criminal record maintained by the Attorney General. *See* Cal. Penal Code §§ 11140(a), 11105(a)(2).

[8] Plaintiff also claims Section 230 does not apply where a defendant seeks "immunity from compliance with state court orders." *See* Pl.'s Opp. to Substack SLAPP Mot. at 21. But his sole support is the dissent from *Hassell v. Bird*, 5 Cal. 5th 522, 568, 571 (2018) (Cuéllar, J., dissenting). As Plaintiff notes, however, the binding plurality came to the ***opposite*** conclusion.

[9] In the cases where courts have considered a possession theory, they have rejected it. *See, e.g., Doe v. Bates*, 2006 WL 3813758, at *19 (E.D. Tex. Dec. 27, 2006) (rejecting argument that Section 230 did not apply to claims under a federal child pornography statute, where plaintiff's complaint "explicitly defines the damages sought in terms of the publication of the images" and sought "prevention of further publication").

to the illegality in question – namely the possession and dissemination of the Sealed Report." Opp. at 18. Plaintiff grossly misunderstands the material contribution exception to Section 230 immunity. A "website does not create or develop content when it merely provides a neutral means by which third parties can post information of their own independent choosing online." *Kimzey v. Yelp! Inc.*, 836 F.3d 1263 (9th Cir. 2016). Websites may lose immunity if they make "a material contribution" to "what makes the displayed content allegedly unlawful," *Jones v. Dirty World Ent. LLC*, 755 F.3d 398, 410 (6th Cir. 2014), but Plaintiff's Complaint is devoid of allegations that AWS contributed to the content of anything. Instead, the Complaint alleges AWS "hosted" Substack, precisely the kind of conduct Section 230 protects. *E.g., Fair Hous. Council of San Fernando Valley v. Roommates*, 521 F.3d 1157, 1162-63 (9th Cir. 2008) (website entitled to immunity for "[p]assively displaying content 'created entirely by third parties'").

Rigsby v. GoDaddy Inc., 59 F.4th 998, 1008-09 (9th Cir. 2023), which AWS cited in the Motion and Plaintiff does not distinguish, is on point. There, the plaintiff argued that GoDaddy was not immune under Section 230 because it made "the affirmative decision to publish" the allegedly harmful content by hosting it. The Ninth Circuit rejected that argument because, as here, the "complaint is devoid of allegations that GoDaddy contributed to the content of the gambling site" but rather "is offering only a domain name and a platform." *Id.* at 1008-09.[10]

B. The First Amendment Bars Plaintiff's Claims.

AWS conclusively showed in the Motion that all of Plaintiff's claims are barred by the First Amendment, which privileges publication of lawfully obtained, truthful information on a matter of public interest. Mot. at 18-20. Plaintiff does not engage with the vast majority of the dispositive cases AWS cited. *Compare* Mot. at 18-20, *with* Opp. at 14-17. Instead, he claims the Articles do not concern a "newsworthy" matter of "public significance" which Plaintiff strains to distinguish from a matter of "public interest." Opp. at 15-16 & n.2. Plaintiff cites no authority for this distinction other than Section 425.16(e), which does not so distinguish. C.C.P.

[10] *Roommates*, the only case Plaintiff cites, helps AWS. There, the Ninth Circuit found that portions of the Roommates.com website created by third parties were immune under Section 230, and other portions of the site created by the defendant were not. 521 F.3d at 1174-75. Here, ***all*** of the relevant content – the Articles and Incident Report– was created by others.

§ 425.16(e). In any event, the privilege has been applied to confidential police records, *e.g.*, *ALADS*, 239 Cal. App. 4th at 819-20, and as discussed above, Section II, courts routinely find crime, domestic violence, and government contract issues topics of public interest.

Plaintiff next claims the privilege does not apply because it is illegal to disseminate the Incident Report. Opp. at 16. This is a red herring. The whole point of the *Florida Star v. B.J.F.*, 491 U.S. 524 (1989), and *Bartnicki v. Vopper*, 532 U.S. 514 (2001), line of cases is that publication is privileged even if a state law purports to make the underlying records confidential. Also insufficient is Plaintiff's argument that this case is different because mere ***possession*** of the Incident Report is illegal; the court rejected the same argument in *ALADS*. 239 Cal. App. 4th at 819-20 (allegation that newspaper's "possession of the files constitutes the crime of receiving stolen property" insufficient to overcome First Amendment). *See also McClatchy*, 77 Cal. App. 3d at 513 (state "may not impose criminal or civil liability upon the press for **obtaining** and publishing newsworthy information").

Equally unavailing are Plaintiff's claims that the privilege does not apply because the Articles [redacted] Opp. at 16. The Articles never say Plaintiff was guilty of having engaged in felony domestic violence, and instead are careful to explain that the "alleged victim subsequently recant[ed] her initial statements…telling police that 'nothing happened.'" Ex. 1; Compl. ¶ 29[11]. Plaintiff does not engage with any of the cases AWS cited on this point. Instead, he relies on inadmissible testimony that he and a friend understood the Articles [redacted]. *See* Opp. at 16 (citing Scherer Decl. ¶¶10-13; Plaintiff Decl. ¶¶30-31)). At this stage, however, whether a statement can reasonably be read as implying something defamatory is for the Court to determine. *E.g., Barker v. Fox & Associates*, 240 Cal. App. 4th 333, 343 n.3 (2015) ("the court must determine, as a question of law, whether

[11] Plaintiff's citation to *Wilbanks v. Wolks*, 121 Cal. App. 4th 883, 903 (2004), for the proposition that "[w]here a speaker states 'incomplete' facts, the statements may imply a false assertion of fact" is disingenuous. Opp. at 16. There, the court was considering an opinion based on disclosed fact defense, not the standard for defamation by implication claims.

the defamatory matter is on its face or capable of the defamatory meaning"); *see also* Evidentiary Objections. And courts also routinely reject libel by implication claims based on this theory.[12]

Plaintiff last argues that allowing liability here would serve a state interest of the highest order and is permissible because the Supreme Court has recognized "California could decide not to give out arrestee information at all without violating the First Amendment.'" Opp. at 17 (quoting *Los Angeles Police Dep't v. United Reporting Pub. Corp.*, 528 U.S. 32, 40 (1999)). Plaintiff has it backwards: "While the government may desire to keep some proceedings confidential and may impose the duty upon participants to maintain confidentiality, it may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy information through routine reporting techniques." *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 519-20 (1986). *See also Florida Star*, 491 U.S. at 535 ("where the government has made certain information publicly available, it is highly anomalous to sanction persons other than the source of its release"). The privilege bars Plaintiff's complaint.

C. All of Plaintiff's Claims Fail For Other Independent Reasons.

Plaintiff's intentional interference claims fail because he alleges no facts to show AWS knew of his relationship with his employer at the time the alleged breach occurred. Mot. at 20-21. Plaintiff's boilerplate allegation (citing Compl. ¶ 90) that AWS was aware is not sufficient. *Mobley v. L.A. Unified Sch. Dist.*, 90 Cal. App. 4th 1221, 1239 (2001) (complaint "must contain factual allegations supporting the existence of all the essential elements of a known cause of action"). Plaintiff concedes there is no negligent infliction of emotional distress tort in California. Mot. at 21. Plaintiff's IIED claim also is defective because such a claim cannot be based on constitutionally-protected conduct. Plaintiff does not cite a single case finding this kind of journalistic activity is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency," as required to state an IIED claim. *Cochran v. Cochran*, 65 Cal. App. 4th 488, 496 (1998). Plaintiff's interference with prospective economic advantage claims

[12] *E.g., Rouch v. Enquirer & News of Battle Creek Mich.*, 487 N.W.2d 205, 217 (Mich. 1992) (rejecting libel claim based on report plaintiff was "charged" with sexual assault when he was never arraigned); *Tiwari v. NBC Universal, Inc.*, No. C-08-3988, 2011 WL 5079505, at *15 (N.D. Cal. Oct. 25, 2011) (broadcast was substantially true where it erroneously reported that plaintiff had been convicted of a felony rather than a misdemeanor).

additionally fail because Plaintiff does not allege independently wrongful conduct; the violations of "various sections of the Penal Code and Labor Code" Plaintiff alleges, Opp. at 18, are protected under both the First Amendment and Section 230. *See* Section III.A-B.

Plaintiff's defamation claim also fails. Mot. at 21-22. Again, Section III.B, Plaintiff has failed to plead, much less provide evidence of, falsity. Plaintiff claims the Articles "by their context, tone, omissions, and juxtapositions – are both actually false and create the false implication [redacted]" Opp. at 19. Considering the "full content of the" Articles, the Articles do not support Plaintiff's implication. *Balzaga v. Fox News Network*, 173 Cal. App. 4th 1325, 1338 (2009) ("publication in question must be considered in its entirety; '[i]t may not be divided into segments and each portion treated as a separate unit"). Plaintiff concedes his false light claim duplicates his libel claim; it fails for the same reasons. *See* Mot. at 23 n.10. The disclosure of private facts and constitutional claims fail because (1) the facts disclosed were not private, as the Incident Report was public for three months before it was sealed; and (2) the Articles were newsworthy. Mot. at 23. That the Incident Report is sealed, Opp. at 19-20, is irrelevant. *See* Section III.B; *see also Hurvitz v. Hoefflin*, 84 Cal. App. 4th 1232, 1245, 1247 (2000) (no privacy interest where declaration "was part of the public record for one day"); *Sipple*, 154 Cal. App. 3d at 1047 (no liability where "defendant merely gives further publicity to information…which is already public").

Plaintiff does not dispute that his intrusion claim fails. *See* Mot. at 24. He does dispute that his UCL claim fails, but cites no cases showing that the UCL does not apply to noncommercial speech like the Articles. *Compare* Mot. at 24, *with* Opp. at 20. Plaintiff also disputes that his negligence claim fails, Opp. at 20. But he fails to distinguish the cases in the Motion showing courts do not recognize a negligence duty where claims are based on constitutionally protected publications, Mot. at 24, and offers no argument or citation for why purported statutory violations should be different.

All of Plaintiff's claims against AWS should be stricken and his Complaint should be dismissed with prejudice.

DATED: February 5, 2025

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/ Sarah E. Burns
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AMAZON WEB SERVICES, INC.