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ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
04/11/2025
Clerk of the Court
BY: MELISSA DONG
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

PLAINTIFF/PETITIONER: MAURY BLACKMAN
DEFENDANT/RESPONDENT: SUBSTACK, INC., JACK POULSON, TECH INQUIRY, INC.

[x] NOTICE OF APPEAL [ ] CROSS-APPEAL
(UNLIMITED CIVIL CASE)

CASE NUMBER:
CGC-24-618681

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001-INFO) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that:
   a. *(Name)*: MAURY BLACKMAN appeals from a judgment or order in this case.
   b. The judgment or order was entered on *(list the date or dates the judgment and each order being appealed were entered):*
      FEBRUARY 24, 2025
   c. The appeal is from the following order or judgment *(check all that apply)*:
      - [ ] Judgment after jury trial
      - [ ] Judgment after court trial
      - [ ] Default judgment
      - [ ] Judgment after an order granting a summary judgment motion
      - [ ] Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
      - [ ] Judgment of dismissal after an order sustaining a demurrer
      - [ ] An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
      - [ ] An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
      - [x] Other *(describe and specify the code section or other authority that authorizes this appeal):*
        Pursuant to Code of Civ. P. 425.16(i), section 904.1(a)(13) authorizes appeal of an Order Granting Defendants' Motions to Strike the Complaint in its Entirety Pursuant to Code of Civ. Proc. 425.16
   d. [ ] The judgment or order being appealed directs payment of sanctions by an attorney for a party. The attorney *(name)*: appeals.
2. For cross-appeals only:
   a. Date notice of appeal was filed in original appeal:
   b. Date superior court clerk mailed notice of original appeal:
   c. Court of Appeal case number *(if known)*:
3. [x] The judgment or order being appealed is attached *(optional)*.

Date: April 11, 2025

David Marek
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. January 1, 2024]

NOTICE OF APPEAL/CROSS-APPEAL—UNLIMITED CIVIL CASE
(Appellate)

Cal. Rules of Court, rule 8.100
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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

JOINT NOTICE OF ENTRY OF ORDER

Dept.: 301
Before: Hon. Christine Van Aken

Action Filed: October 3, 2024 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 14, 2025, in Department 301 of the above-titled Court, located at Civic Center Courthouse, 400 McAllister Street, San Francisco, California 94102-4514, this Court entered an Order Granting Motions to Strike Complaint by Defendants Substack, Inc., Amazon Web Services, Inc., Jack Poulson, and Tech Inquiry, Inc. pursuant to Code of Civil Procedure § 425.16, striking the complaint in its entirety.

A copy of the Court's February 14, 2025 Order is attached as Exhibit A.

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Ex. A - Order

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

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

~~[PROPOSED]~~ **ORDER GRANTING MOTIONS TO STRIKE COMPLAINT BY SUBSTACK, INC., AMAZON WEB SERVICES, INC., JACK POULSON, AND TECH INQUIRY, INC.**

Date: February 4, 2025
Time: 9:00 AM
Dept.: 301
Before: Hon. Christine Van Aken

Action Filed: October 3, 2024
Trial Date: None Set

Plaintiff Maury Blackman has filed a 15-count complaint against Substack, Inc.; Amazon Web Services, Inc. (AWS), Jack Poulson, and Tech Inquiry, Inc. Each of these defendants now makes a special motion to strike the complaint in its entirety pursuant to CCP 425.16.

The complaint and declarations submitted by parties establish that Blackman was arrested in December 2021 for domestic violence at a time when he was the CEO of Premise Data, a private company. (Blackman Dec. paras. 4, 9.) As is customary, police officers prepared a report ("Incident Report") describing the incident and their encounters with Blackman and another person present. No charges were ultimately pursued against Blackman arising from the incident and the Superior Court entered an order sealing the arrest and related records under Penal Code sections 851.91 and 851.92 on February 15, 2022. (Blackman Dec. paras. 18-20; Baskin Dec. Ex. 2.)

In September 2023, after the sealing order, Poulson published a blog post reporting the arrest and relating what was described in the Incident Report. (Blackman Dec. 20.) Poulson later reported on his blog that Blackman was terminated in part because of the incident. (Blackman Dec. para. 20; Baskin Dec. Ex. 6.) Poulson had previously published other blog posts about Premise Data, including concerning (according to those posts) its contracts with U.S. Special Operations Forces for intelligence collection, its contracts with the United States Department of Defense, and Blackman's security clearance. (Poulson Dec. paras. 6-8; Baskin Dec. Exs. 3 and 4.)

Poulson's post about the arrest appeared on his newsletter, published by Substack. He also posted a redacted version of the Incident Report on an eponymous website owned by Tech Inquiry. The Tech Inquiry website is a source of articles and data about surveillance, weapons companies, and public contracts. (Poulson Dec. para. 2.) Poulson is the founder and executive director of Tech Inquiry. (*Id.*) Defendant AWS provides web hosting services for Substack. (Complaint paras. 36, 38.)

Blackman unsuccessfully attempted to have Poulson's posts removed based on the sealing order. (Blackman Dec. paras. 49-62.) Blackman has submitted a declaration describing financial and nonfinancial injuries from Poulson's blog posts. (Blackman Dec. paras. 74-76.) All of the claims asserted in the complaint relate to the blog posts and the effect of their publication on Blackman. The *San Francisco Chronicle* has covered Blackman's lawsuit. (Baskin Dec. Ex. 7.)

The four named defendants have now brought separate anti-SLAPP motions. As the court grants them for largely the same reasons, the court discusses them in tandem.

"Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 [internal citation omitted].)

To proceed with the first step: the anti-SLAPP statute reaches any "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue." (CCP 425.16(b)(1).) CCP 425.16(e) provides that such a protected act includes, inter alia, "(2) any written or oral statement or writing made in connection with an . . . official proceeding . . ., (3) any written or oral statement or writing made in . . . a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of . . . the constitutional right of free speech in connection with a public issue or an issue of public interest." The moving defendants contend that the claims here arise from Poulson's conduct as a journalist.

The court has little difficulty finding defendants succeed at the first step. Poulson was reporting on a blog post about Blackman, the CEO of a company with that Poulson had previously covered as part of his Substack newsletter, a public newsletter with at least 3,000 subscribers, concerning companies making surveillance technologies. (Poulson Dec. paras. 1, 4, 10.) This was a writing in a public forum. (*Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 897 ["the Web, as a whole, can be analogized to a public bulletin board"].) And it concerned the character and conduct of the CEO of a company with government contracts in the security and intelligence arena. (Poulson Dec. paras 6, 7, 11.) The character and trustworthiness of members of the business community have been held to be of public significance where business leaders hold themselves out as trustworthy and advertise their businesses to members of the public (see *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1146); the court cannot see how the character and trustworthiness of the leader of a business with contracts with the U.S. government and a security clearance can

be of any less public significance. Thus, defendants succeed under 425.16(e)(3), and the court need not analyze the other prongs of step one.

Blackman contends that Poulson's speech is outside the anti-SLAPP statute because it was illegal, regardless of its public significance. (Opp. to Poulson Mtn. to Strike at 10 [citing *Flatley v. Mauro* (2006) 39 Cal.4th 299, 320].) The speech at issue in *Flatley* was extortion, a threat to publicly accuse the plaintiff of rape unless the plaintiff paid money to the defendant. (*Id.* at 305, 320.) *Flatley* holds that the question whether speech is illegal is a first-step inquiry under the anti-SLAPP statute, *id.* at 320, but the First Amendment issues that inform this analysis will also be relevant at the second step.

To assess the argument that Poulson's speech was illegal, it is useful to review the law about sealing with some precision, because courts in California (and elsewhere) have recognized that there is a "continuum" of illegal acts by newsgatherers, and only wrongful conduct at the "extreme end" will overcome the First Amendment protection for reporting. (See *Jenni Rivera Enterprises, LLC v. Latin World Entertainment Holdings, Inc.* (2019) 36 Cal.App.5th 766, 798 ["*Jenni Rivera Enterprises*"] [" 'At one extreme, routine ... reporting techniques, such as asking questions of people with information (including those with confidential or restricted information) could rarely, if ever, be deemed an actionable intrusion. [Citations.] At the other extreme, violation of well-established legal areas of physical or sensory privacy—trespass into a home or tapping a personal telephone line, for example—could rarely, if ever, be justified by a reporter's need to get the story. Such acts would be deemed highly offensive even if the information sought was of weighty public concern; they would also be outside any protection the Constitution provides to newsgathering.' " [quoting *Shulman v. Group W Prods., Inc.* (1998) 18 Cal.4th 200, 237 [some internal quotation marks omitted]].]) Thus, it is worth understanding the statutory scheme in greater detail.

The record of Blackman's arrest was sealed pursuant to Penal Code section 851.91. That section permits "[a] person who has suffered an arrest that did not result in a conviction" to petition the court to have "arrest and related records sealed." (*Id.*, subd. (a).) When the court grants relief, as the Superior Court did here, provisions of Penal Code section 851.92 then apply.

Specifically, "[a]rrest records" and the incident reports that document the arrest that are sealed "shall not be disclosed to any person or entity except the person whose arrest was sealed or a criminal justice agency." (Penal Code 851.92(b)(5).) Once an arrest is sealed, it becomes unlawful for someone to "disseminate[] information relating to a sealed arrest." (Penal Code 851.92(c).) That provision is subject to a "civil penalty" enforceable by a public prosecutor, but not by the arrested person and not through criminal sanctions. (*Id.*) The arresting agency is supposed to stamp its digital or paper master copies of the incident report with stamped " 'ARREST SEALED: DO NOT RELEASE OUTSIDE THE CRIMINAL JUSTICE SECTOR.' " (*Id.* 851.92(b)(3).) In this case, either the arresting agency did not do so, or the copy of the Incident Report that Poulson received duplicated the master copy before the court issued its sealing order. It is undisputed that the copy of the Incident Report that Poulson received did not include any language indicating the arrest was sealed, and the police did not inform Poulson of this when he called to verify the authenticity of the report. (Poulson Dec. para. 15 & Ex. G.)

Blackman alleges that Poulson committed a misdemeanor by knowingly possessing the Incident Report, but he is incorrect even as to the period after Blackman made him aware that the arrest had been sealed. Penal Code 11143 makes it a misdemeanor for a member of the public to knowingly possess a "record." Record is defined in that statute as "state summary criminal history" (*id.* 11140(a)), a summary of all criminal history related to a particular person maintained by the state, which is distinct from the Incident Report alleged to have been unlawfully disseminated here. In any event, this provision exempts journalists, as does Labor Code 432.7(g), another provision Blackman relies on. (See Penal Code 11143; Labor Code 432.7(g)(3); Evidence Code 1070.)

Nor is Blackman correct that Poulson committed a violation of Penal Code 166 by disseminating the Incident Report related to a sealed arrest; as relevant, that statute prohibits "[w]illful disobedience of the terms, as written, of a . . . court order." (*Id.* subd. (a)(4).) The sealing order here (Blackman Dec. Ex. A) does not include written terms that, by themselves, create an obligation by Poulson or anyone else not to disseminate the Incident Report; those obligations are a legal consequence of granting relief pursuant to 851.91 and 851.92 but do not independently arise from the written terms of the Superior Court's February 15, 2022 order.

Thus, to summarize, Poulson did not violate any law in obtaining the Incident Report. There is no evidence that Poulson and the other defendants had reason to believe the Incident Report was sealed when Poulson first published his September 2023 post reporting the incident. In disseminating the sealed Incident Report, the defendants' conduct violated Penal Code 851.92(c), but no criminal liability attached to that conduct. Instead, civil penalties sought by the Attorney General or other public prosecutors were available, but there is no evidence that any public prosecutor ever sought penalties, although the San Francisco City Attorney did contact at least some of the defendants to request that they remove information about the Incident Report. Applying *Jenni Rivera Enterprises*'s "continuum," the court finds here that the Poulson's conduct was not at the "extreme end" of bad newsgatherer behavior. Indeed, it was farther from the extreme end than the conduct at issue in *Bartnicki v. Vopper* (2001) 532 U.S. 514. That case involved a federal law prohibiting disclosure of intercepted communications for which civil or criminal penalties were available. (*Id.* at pp. 517-18, 524.) The Supreme Court nonetheless concluded that to apply it to a truthful publication of an intercepted conversation concerning a matter of public significance would violate the First Amendment. (*Id.* at 527-528.) In any event, "the Supreme Court's use of the phrase 'illegal' [in *Flatley*] was intended to mean criminal, and not merely violative of a statute." (Mendoza v. ADP Screening & Selection Services, Inc. (2010) 182 Cal.App.4th 1644, 1654.)

Thus, to the extent Blackman claims that the speech was illegal and therefore did not satisfy the first prong of the SLAPP inquiry under *Flatley*, his claims are unpersuasive. Blackman's remaining contentions that the speech was unprotected by the First Amendment are better addressed at the second step.

The court now turns to that second step, where Blackman bears the burden of showing that his claims have a probability of success. At this stage, "[t]he court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law." (*Baral v. Schnitt*, *supra*, 1 Cal.5th at pp. 384–

385 [internal citations omitted].) Blackman need only show that his claims have "minimal merit" at this stage to defeat the anti-SLAPP motions. (*Id.* at p. 385.)

This court is persuaded that the First Amendment's protections for the publication of truthful speech concerning matters of public interest vitiate Blackman's merits showing. In *Jenni Rivera Enterprises*, the court found no minimal merit in a lawsuit against Univision for broadcasting a program based on confidential information about a celebrity that was obtained through a breached non-disclosure agreement ("NDA"). The plaintiff in that case showed sufficient merit at step two to proceed with its claims against the former manager who breached the NDA, and the producers of the program who knowingly induced the breach. (*Supra*, 36 Cal.App.5th at pp. 782-795.) But as to Univision, the court stated:

"It is uncontroverted Univision had no knowledge of the nondisclosure agreement at the time it entered into the license agreement with [the producers]. The evidence of Univision's actions, after it learned of the nondisclosure agreement, that arguably contributed to [the former manager's] continued breaches of the agreement consisted of continuing to pay license fees to [the producers] and promoting [the former manager's] involvement with the Series. Even if those actions were sufficient to serve as the basis of liability for tortious interference, they are not sufficiently 'wrongful' or 'unlawful' to overcome the First Amendment newsgathering and broadcast privileges. See *Bartnicki v. Vopper, supra*, 532 U.S. at p. 535 . . .; *Nicholson* [*v. McClatchy Newspapers* (1986)] . . . 177 Cal.App.3d [509,] . . . 519 . . ..) Therefore, the First Amendment protected Univision's use and broadcast of the Series." (*Id.* at p. 800.)

Similarly, in this case there is no evidence that Poulson and the other defendants knew the arrest was sealed before Poulson reported on it, and all defendants' actions in not taking down the arrest information after Blackman informed them of the sealing order was not so wrongful or unlawful that they are not protected.

Blackman further contends that Poulson's speech that he was arrested is false, and therefore not protected by the First Amendment, because an arrest is "deemed not to have occurred" when it is sealed. (Penal Code 851.91(e)(2)(B).) This contention is unpersuasive; the arrest occurred but Blackman has been exempted from some of the consequences of an arrest (although not all; law

enforcement officers, for instance, will still see the arrest if they run Blackman's name through the state criminal history database). (Penal Code 851.92(b)(6).) "Deemed not to have occurred" is language that effectuates this exemption from some of the consequences of the arrest, but it cannot alter how past events unfolded.

Blackman also argues that Poulson's speech is false because it misleadingly implied that Poulson was present and viewed the events instead of reporting observations by police officers, and further implied that Blackman was guilty of or convicted of a crime. This is not how falsity is assessed for purposes of First Amendment analysis; a journalist does not become subject to suit because he does not include every detail the subject of the piece would like him to include. Adopting Blackman's frame of analysis would greatly expand the potential liability of the press and chill protected speech.

In sum, Poulson's activity in writing about the Incident Report is directly protected by the First Amendment. AWS, Substack, and Tech Inquiry are publishers or aid in the publication of this protected activity. Each has shown that its conduct as described in the Complaint and the parties' declarations arises out of protected activity under the First Amendment that cannot be subject to civil liability without compromising well established speech protections.

Tech Inquiry raises a further argument that Penal Code 851.92(c)'s prohibition on dissemination of information relating to sealed arrest records is an unconstitutional content-based restriction on speech, which fails the strict scrutiny test applicable to content-based restrictions. (Tech Inquiry opening brief at 19.) Because the court finds that the First Amendment as applied to Blackman's claims defeats them, it has no occasion here to decide that the sealing statute is facially unconstitutional.

All defendants contend that the Communications Decency Act, 47 U.S.C. 230, immunizes claims arising from third-party content on interactive websites where the websites merely act as a publisher. The court finds that Blackman has not carried his burden of proving minimal merit as to AWS, Substack, and Tech Inquiry, which are immunized under the CDA. Blackman contends that these defendants' possession of the Incident Report is unlawful, and therefore they are not merely publishers but are held liable for the actions they have taken. But it is not possession of the

Incident Report that is prohibited by Penal Code 851.92; it is disclosure or dissemination, which is what the CDA immunizes. In any event, it is difficult to see how a publisher of a website could publish content without being in possession of it, and accordingly the court concludes that the conduct alleged in the complaint as to these defendants is immunized. As to Poulson, the complaint alleges that he is the creator of content, and thus the speaker rather than the publisher. The CDA does not immunize his conduct.

* * *

The Court exercises its discretion to hear Tech Inquiry's special motion to strike outside of the 60-day limit because the motion presents the same issues as the timely filed motions of other defendants. (CCP 425.16(f).)

SO ORDERED.

Dated: 2/11/2015

Hon. Christine Van Aken
JUDGE OF THE SUPERIOR COURT