

1 THE MAREK LAW FIRM, INC.
2 DAVID MAREK (CA Bar No. 290686)
3 David@marekfirm.com
4 AMI SANGHVI (CA Bar No. 331801)
5 ami@marekfirm.com
6 228 Hamilton Avenue
7 Palo Alto, CA 94301
8 (650) 460-7148

9 *Attorneys for Plaintiff*
10 *MAURY BLACKMAN*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/16/2025
Clerk of the Court
BY: BOWMAN LIU
Deputy Clerk

7 **SUPERIOR COURT OF STATE OF CALIFORNIA**
8 **COUNTY OF SAN FRANCISCO**
9 **CIVIL UNLIMITED JURISDICTION**

10 MAURY BLACKMAN, an individual,

11 *Plaintiff,*

12 v.

13 SUBSTACK, INC., a Delaware
14 Corporation; AMAZON WEB SERVICES,
15 INC., a Delaware corporation; JACK
16 POULSON, an individual; TECH
17 INQUIRY, INC., a Delaware corporation;
18 DOES 1-25, inclusive,

19 *Defendants.*

Case No.: CGC-24-618681

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS POULSON, SUBSTACK, INC.,
AND TECH INQUIRY MOTION TO
RECOVER FEES AND COSTS**

[C.C.P. 425.16(c)]

Date: July 29, 2025

Time: 9:00 AM

Dept.: 301

Judge: Hon. Christine Van Aken

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

PLAINTIFF’S OPPOSITION TO DEFENDANTS POULSON, SUBSTACK, INC., AND TECH INQUIRY MOTION TO RECOVER FEES AND COSTS 1

I. INTRODUCTION..... 5

II. PROCEDURAL HISTORY 5

III. ARGUMENT 7

 A. The Court Should Deny An Award of Fees Entirely Due to Special Circumstances. 7

 B. Defendant Substack’s unreasonably inflated fee request must be denied altogether 8

 C. Any Fee Award Must be Drastically Reduced. 9

 1. The Court Must Exclude 343.2 Hours (\$270,668.07) For Work Not Inextricably Intertwined With the Motion to Strike..... 10

 i. Exclude 264 hours (\$217,441.90) from Substack’s request..... 11

 ii. Exclude 58.1 hours (\$33,181.17) from Poulson’s request 12

 iii. Exclude 21.1 hours (\$20,045) from Tech Inquiry’s request 12

 2. The Court Must Exclude Hours for Duplicative and Inefficient Work. 12

 i. Overstaffing and vague, duplicative billing entries warrant a reduction in Substack’s hours..... 15

 ii. Poulson/Tech Inquiry 16

 D. The rates sought by Defendant Substack are unreasonable..... 17

 E. Defendant Substack Seeks Thousands in Costs Not Authorized by Statute. 18

 F. Defendants’ claim of advancing First Amendment rights ignores the rights trampled of individuals protected by the dismissed Penal Code provisions..... 19

IV. CONCLUSION 19

TABLE OF AUTHORITIES

Cases

<i>569 East Cnty. Blvd. LLC v. Backcountry Against the Dump, Inc.</i> (2016) 6 Cal. App. 5th 426	10
<i>AT&T Mobility LLC v. Yeager</i> , No. 2:13-CV-00007 KJM DB, 2018 WL 1567819, at *3 (E.D. Cal. Mar. 30, 2018)	9
<i>Barak v. Quisenberry Law Firm</i> (2006) 135 Cal.App.4th 654	13
<i>Christian Research Inst. v. Alnor</i> (2008) 165 Cal.App.4th 1315	9
<i>Copley Press, Inc. v. Superior Ct.</i> (2006) 39 Cal. 4th 1272	7
<i>Democratic Party of Wash. State v. Reed</i> (9th Cir.2004) 388 F.3d 1281	12
<i>Farris v. Cox</i> (N.D. Cal. 1981) 508 F. Supp. 222.....	8
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122	8, 9, 12, 17
<i>Ladas v. California State Auto. Assn.</i> (1993) 19 Cal.App.4th 761	18
<i>Lafayette Morehouse, Inc. v. Chronicle Publishing Co.</i> (1995) 39 Cal.App.4th 1379.....	10
<i>Lin v. Dignity Health-Methodist Hosp. of Sacramento</i> , No. S-14-0666 KJM CKD, 2014 WL 5698448	14
<i>Maughan v. Google Tech., Inc.</i> (2006) 143 Cal.App.4th 1242.....	14, 15
<i>Open Source Security, Inc. v. Perens</i> (N.D. Cal., June 9, 2018, No. 17-CV-04002-LB) 2018 WL 2762637	14
<i>People v. Hadim</i> (2022) 82 Cal.App.5th 39.....	19
<i>Peterson v. Sutter Medical Foundation</i> (N.D. Cal., Aug. 10, 2023, No. 3:21-CV-04908-WHO) 2023 WL 5181634, at *5, <i>aff'd</i> (9th Cir., July 2, 2025, No. 23-2911) 2025 WL 1823959	15
<i>PLCM Grp. v. Drexler</i> (2000) 22 Cal. 4th 1084.....	17
<i>Premier Medical Management Sys., Inc. v. California Ins. Guarantee Assn.</i> (2008) 163 Cal.App.4th 550	9
<i>Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.</i> (2008) 163 Cal.App.4th 550.....	13
<i>Resolute Forest Prods., Inc. v. Greenpeace Int’l</i> (N.D. Cal., April 22, 2020, No. 17-cv-02824-JST) 2020 WL 8877818	9
<i>Riley v. QuantumScape Corp.</i> (N.D. Cal., Aug. 15, 2023, No. 22-CV-03871-BLF) 2023 WL 5279810	18
<i>Robertson v. Rodriguez</i> (1995) 36 Cal. App. 4th 347.....	9
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	12
<i>Serrano v. Unruh</i> (1982) 32 Cal.3d 621	8
<i>Tahara v. Matson Terminals, Inc.</i> (9th Cir.2007) 511 F.3d 950	12
<i>Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi</i> (2006) 141 Cal.App.4th 15	10
<i>Wilkerson v. Sullivan</i> (2002) 99 Cal.App.4th 443	10

1	<i>Wynn v. Chanos</i> (N.D. Cal., June 19, 2015, No. 14-cv-04329-WHO) 2015 WL 3832561.....	9, 14
2	<i>Zwebner v. Coughlin</i> (S.D. Cal., Jan. 25, 2006, No. 05CV1263 JAH(AJB)), 2006 U.S. Dist. LEXIS 104701.....	11

4 **Statutes**

5	Code Civ. P. §1033.5	18
6	Code Civ. P. §425.16	8, 11
7	Labor Code §432.7.....	7
8	Penal Code §851.91	7
9	Penal Code §851.92	5, 7

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Plaintiff commenced this action because Defendants' ongoing conduct violated the Penal Code¹ and Judge Gold's sealing order entered on February 17, 2022.² He had a right to have those claims heard, as the California Supreme Court, the Penal Code, and the Labor Code have all recognized an individual's privacy interest in a two-year old sealed misdemeanor arrest report that did not lead to conviction. Even if this Court found that Defendants' unlawful conduct was not at the extreme end of the continuum of illegal acts, Plaintiff – who could not have known where this Court would have put his claims on that subjective continuum³ – did not bring these claims for an improper purpose. The penalty for bringing these claims cannot be that Plaintiff will be liable for nearly \$1 million in attorney's fees because Defendants successfully made one motion. Indeed, Defendants contend they are somehow entitled to fees for more than 950 hours of work spanning three law firms, seven attorneys (5 of which were either senior counsel or partners, 2 of whom profess to be experts in the field of First Amendment and anti-SLAPP), two law clerks, and a paralegal. Accordingly, Plaintiff requests this Court (1) deny the motion entirely as unjust; (2) alternatively, deny Substack's fee request for gross overreach and reduce the others; or (3) at a minimum, eliminate the non-compensable hours sought and reduce hours sought for duplicative work and unreasonable rates.

II. PROCEDURAL HISTORY

Plaintiff brought this action as a John Doe on October 3, 2024. (*See* Sanghvi Decl. at ¶2). Thereafter on November 12, 2024, Plaintiff moved for a TRO to enforce Judge Gold's Sealing Order. At the TRO hearing on November 13, 2024, the judge instructed Plaintiff to file a Motion to proceed

¹ This Court found that Defendants' conduct violated Penal Code §851.92(c). See Order Dismissing Plaintiff's Complaint, February 24, 2025, p. 6, lines 4-5.

² This Court found that disseminating the sealed arrest report and its contents violated Judge Gold's order, which this Court did not have the authority to undo for any reason, even on constitutional grounds. *See* Declaration of Ami Sanghvi in Support of Plaintiff's Opposition to Def. Motion to Recover Fees and Costs dated July 16, 2025 "Sanghvi Decl." at Exh. 1 (Order Granting Plaintiff's Motion to Seal, January 7, 2025).

³ Prior to this decision, no court had ever held that the dissemination of a court ordered sealed arrest report that did not result in a conviction was protected by the First Amendment. Further, this Court's Order Granting Plaintiff's Motion to Seal held that this Court did not even have the authority to undo Judge Gold's Sealing Order on constitutional grounds, further undermining any argument that Plaintiff's claims to enforce that Sealing Order were brought for an improper purpose.

1 pseudonymously (“Doe Motion”), which Plaintiff filed *the next day* on November 14, 2024. (Sanghvi
2 Decl. at ¶5; *see contra* Mem. of Pts. and Auth. in Support of Defendants Poulson, Substack, Inc. and
3 Tech Inquiry Motion to Recover Fees and Costs (“Def. MPA”) at 12 incorrectly representing to this
4 Court that Plaintiff “took another month before he filed that motion”). Defendants successfully
5 coordinated their opposition to Plaintiff’s Doe Motion in one brief. (*See* Decl. of David Greene in
6 Support of Motion for Attorneys’ Fees and Costs dated April 23, 2025 “Greene Decl.” at ¶4). The
7 denial of Plaintiff’s Doe Motion on December 13, 2024 (*see* Decl. of Joshua Baskin in Support of
8 Def. Motion to Recover Fees and Costs dated April 24, 2025 “Baskin Decl.” at Exh. F) was
9 inconsequential other than permitting use of Plaintiff’s name in the public filings since Defendants
10 were always aware of Plaintiff’s identity. By the time the Court had issued its order on Plaintiff’s
11 ability to proceed pseudonymously, each Defendant had already filed separate, albeit nearly identical,
12 Motions to Strike (Baskin Decl. at Exh. A at p.2) and Substack also filed a Demurrer that made the
13 same arguments it made in its anti-SLAPP motion. (*See* Baskin Decl. at Exh. H)

14 Defendants did not coordinate one another on their duplicative motions and exhibits. Rather,
15 each Defendant (excluding Tech Inquiry, who relied on exhibits filed by Poulson) filed a separate
16 document asking this to undo Judge Gold’s Sealing Order to permit the public disclosure of the
17 Sealed Report and its contents. *See* Sanghvi Decl. ¶8. Plaintiff opposed these efforts with its own
18 Motion to Seal filed December 16, 2024 which Tech Inquiry and Poulson opposed jointly. (Sanghvi
19 Decl. ¶¶ 9,10) By order dated January 7, 2025 the court granted Plaintiff’s Motion to Seal. (Sanghvi
20 Decl., Exh. 1) The Court determined the Incident Report and material contained in it – which was at
21 the heart of the litigation – had been sealed by Judge Gold and any “party seeking to publicly disclose
22 material from the Incident Report must first obtain an unsealing order from Judge Gold.” *Id.* The
23 court rejected Defendant’s argument that the court could undertake a constitutional analysis of the
24 sealing order and noted that “if Defendants want to undo Judge Gold’s order – whether on
25 constitutional, statutory, or common law grounds – they must address their request to Judge Gold.”
26 (*Id.*) Accordingly, Defendants were unsuccessful in their efforts to unseal and further publicize the
27 sealed documents. Defendants’ Special Motions to Strike were decided on February 14, 2025.

1 **III. ARGUMENT**

2 **A. The Court Should Deny An Award of Fees Entirely Due to Special Circumstances.**

3 The California Legislature also determined that it was a matter of public interest that
4 individuals like Plaintiff, who were arrested but never charged nor convicted of a crime, are not
5 permanently penalized in basic rights like housing or employment opportunities. Penal Code §851.91;
6 *see also* Labor Code §432.7 (prohibiting the possession or dissemination of an arrest report that did
7 not lead to conviction). Here, Plaintiff only sought to vindicate his rights pursuant to the sealing order
8 issued by Judge Gold and these statutes. Plaintiff did not seek to abuse the judicial process. Three
9 important issues – all recognized by this Court and undeniable – constitute undisputed law of this
10 case which illuminate Plaintiff’s predicament: (1) because the Incident Report was sealed by order of
11 Judge Gold and not subject to an “independent constitutional analysis”, public disclosure of it or
12 material from it required an unsealing order from Judge Gold that defendants did not have; (2) this
13 court lacked the authority to “undo Judge Gold’s [sealing] order – whether on constitutional,
14 statutory, or common law grounds ...”; and (3) “defendants’ conduct [of disseminating the sealed
15 Incident Report] violated Penal Code 851.92(c).”⁴ Plaintiff only sought to vindicate his rights under
16 the statute that this court recognized Defendants violated.

17 That the trial court’s appealable conclusion that the violation was not on the “extreme end” of
18 illegal acts and thus subject to First Amendment protections of greater import than those afforded to
19 Plaintiff by virtue of Penal Code §851.91, does not render Plaintiff’s lawsuit an abuse of judicial
20 process meant to chill the “valid” exercise of free speech.⁵ Given the findings of this court in this

21 _____
22 ⁴ Statutes are presumed to be constitutional, undermining any argument that Plaintiff’s claims arising
23 from Defendants’ judicially recognized violation of 851.92 was an abuse of process. *Copley Press,*
Inc. v. Superior Ct. (2006) 39 Cal. 4th 1272, 1302.

24 ⁵ Tech Inquiry and Poulson’s claim for attorneys’ fees and costs should also be denied in its entirety
25 because of conduct by Tech Inquiry who was controlled by Poulson. Tech Inquiry publicly filed **two**
26 versions of the anti-SLAPP motion that falsely declared, and made argument in reliance on, the
27 contention that Plaintiff failed to prevent the deaths of 19 Premise Data employees. Tech Inquiry
28 Motion at Mem. of Points and Auth. filed Dec. 9, 2024 at pp. 7-8 citing Poulson Decl. at ¶¶ 16-17.
These statements are knowingly false and malicious, and appear to have been submitted for improper
reasons. Defendants’ fabrication out of whole cloth a story that 19 Premise Data employees were
“pulled off a bus in Iraq and executed on the side of the road” to argue that the Sealed Report
concerned matters of public interest should prohibit Tech Inquiry and Poulson from being awarded
attorneys’ fees and costs.

1 litigation and notwithstanding this Court's determination that Defendants' conduct was not on the
2 extreme end of this continuum of illegal acts, Defendants are hard pressed to justify their request for
3 nearly \$1 million in fees and costs. Accordingly, these "special circumstances" of conflicting
4 interpretations of applicable law should render an award of attorney's fees to Defendants who were
5 found to have violated the law unjust. *See e.g., Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. The
6 unique circumstances of this case should exempt it from such an award of attorney's fees.

7 **B. Defendant Substack's unreasonably inflated fee request must be denied**
8 **altogether**

9 If the Court decides to award Defendants' attorney fees and costs pursuant to Code Civ. P.
10 §425.16(c), such an award is subject to limitations and cannot result in a windfall for overreaching
11 and inefficient attorneys. In determining the appropriate lodestar, courts reject exorbitant rates and
12 "padding" in the form of inefficient or duplicative efforts. *See Ketchum*, 24 Cal.4th at 1132 (citations
13 omitted). A fee request that "appears unreasonably inflated is a special circumstance permitting the
14 trial court to reduce the award *or deny one altogether*." *Id.* at 1137 quoting *Serrano v. Unruh* (1982)
15 32 Cal.3d 621, 639, fn. 29. This rule exists to discourage "greed" and unreasonably padded requests.
16 *See Serrano v. Unruh*, 32 Cal.3d at 635 ("If ... the Court were required to award a reasonable fee
17 when an outrageously unreasonable one has been asked for, claimants would be encouraged to make
18 unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be
19 reduction of their fee to what they should have asked in the first place.") (citations omitted); *see also*
20 *Farris v. Cox* (N.D. Cal. 1981) 508 F. Supp. 222, 227 (denying compensation for the 76.1 hours
21 billed for work on the fee petition as an appropriate remedy "to discourage such overreaching and
22 curb the practice of padding fee requests"). Here, Substack's request for over \$500,000 (70% of the
23 total amount sought) for 592.5 hours of work on a motion decided just four months into the case and
24 before any discovery is patently unreasonable. This request is so "outrageously unreasonable" that the
25 complete denial of fees to Substack is warranted to discourage such overreaching.

26 Defendants cannot point to one solitary case where a court has granted comparable fees.
27 Indeed, even the cases Defendants rely on to justify their exorbitant request (*see* Def. MPA at 10),
28 only further demonstrate the ridiculousness of this request and cannot stand as a reasonable

1 benchmark. *See e.g. Resolute Forest Prods., Inc. v. Greenpeace Int'l* (N.D. Cal., April 22, 2020, No.
2 17-cv-02824-JST) 2020 WL 8877818, at *4 (awarding \$545,572.36 in fees for FOUR years of
3 litigation in a complicated case involving a mix of both state and federal RICO claims by logging
4 companies against Greenpeace involving multiple attorneys and amici); *Wynn v. Chanos* (N.D. Cal.,
5 June 19, 2015, No. 14-cv-04329-WHO) 2015 WL 3832561, at *6, *aff'd.* (9th Cir. 2017) 685 F.App'x
6 578 (finding excessive request for 776.9 hours in case involving two motions to dismiss; two motions
7 to strike; a discovery motion; and two hearings and chastising sophisticated counsel billing at
8 substantial rates for not litigating more efficiently and instead seeking fees for “unreasonable staffing
9 of five skilled attorneys at high rates,” and “the duplication of efforts on preparing the motion to
10 dismiss and the motion to strike”); *Premier Medical Management Sys., Inc. v. California Ins.*
11 *Guarantee Assn.* (2008) 163 Cal.App.4th 550, 562 (affirming award of fees after years of litigation
12 and multiple appeals and a remand to multiple defendants – the largest award being only \$165,000 in
13 fees and \$1,871 in costs).

14 Moreover, Substack's request is nearly ten times that of co-defendants Tech Inquiry, who
15 achieved the exact same result with approximately 40 hours of work on the motion. (*See* Def. MPA at
16 19) In fact, Substack bills twice the amount of time Tech Inquiry spent on the anti-SLAPP just for the
17 attorney's fees motion. (*Compare* Sanghvi Decl. at 22; Exh. 11 to Declaration of Susan Seager in
18 Support of Def. Motion to Recover Fees and Costs dated April 23, 2025 “Seager Decl.” at ¶3)
19 Substack's request is even more absurd because Poulson was required by contract to indemnify
20 Substack in the event of any liability. Sanghvi Decl. at ¶26; Exh. 15.

21 **C. Any Fee Award Must be Drastically Reduced.**

22 Should the Court award fees, it must reduce the award to only what is *reasonable* and
23 Defendants bear the burden of documenting hours reasonably spent and justifying rates charged. *See*
24 *Christian Research Inst. v. Alnor* (2008) 165 Cal.App.4th 1315, 1320 citing *Ketchum*, 24 Cal.4th at
25 1131–1132; *see also Robertson v. Rodriguez* (1995) 36 Cal. App. 4th 347, 361 - 62 (disallowing a
26 court from rubber stamping unreasonable requests and must determine entitlement to *reasonable* fees
27 to limit the potential for abuse.); *AT&T Mobility LLC v. Yeager*, No. 2:13-CV-00007 KJM DB, 2018
28 WL 1567819, at *3 (E.D. Cal. Mar. 30, 2018) (finding a total of 74.8 hours “while on the high end, is

reasonable in the context of this heavily litigated case”). Here, the requested fees must be reduced to eliminate (1) fees for issues not inextricably intertwined with the motion to strike; (2) fees for inefficient and duplicative efforts, (3) unreasonable hourly rates and (4) impermissible costs.

Indeed, this case presents an obvious benchmark for what is a reasonable number of hours for a successful anti-SLAPP motion given the exact facts: Tech Inquiry billed approximately 40 hours dedicated to the anti-SLAPP motion. *See* Seager Decl. at ¶3. None of the three Defendants offer much explanation for why the other issues were inextricably intertwined with the anti-SLAPP and Defendants Poulson and Substack offer absolutely no justification for why they would be entitled to five to six times the number of hours for the anti-SLAPP motion involving essentially the same arguments and the exact same outcome as made and achieved by Tech Inquiry.

**1. The Court Must Exclude 343.2 Hours (\$270,668.07) For Work Not
Inextricably Intertwined With the Motion to Strike.**

“A prevailing defendant on an anti-SLAPP motion is entitled to seek fees and costs ‘incurred in connection with’ the anti-SLAPP motion itself, ***but is not entitled to an award of attorney fees and costs incurred for the entire action....*** a fee award under the anti-SLAPP statute may not include matters unrelated to the anti-SLAPP motion.” *569 East Cnty. Blvd. LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal. App. 5th 426, 433 (emphasis added); *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383 (legislative history shows CCP 425.16(c) was intended to allow only fees and costs incurred on the motion to strike – not the entire litigation). Defendants, relying on the complete dismissal of the entire action, ignore this clearly articulated standard and instead petition this court for unjustifiable fees and costs that were not “inextricably intertwined” with the anti-SLAPP motion and in no way related to the process of extracting themselves from the lawsuit. *Id.*; *see also* *Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 22 (construing statute as limiting recoverable expenses to prevailing defendant for expenses incurred in extracting themselves from a lawsuit); *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446. Defendants claim that spending 602.5 hours was reasonable because Plaintiff alleged 15 claims, but each claim arose from the same conduct.

1 Indeed, Defendants' argument that fees for the entirety of the case are warranted here because
2 the entire complaint was dismissed fails because Defendants cannot demonstrate how the matters for
3 which they seek compensation are inextricably intertwined to the anti-SLAPP. Defendants rely on
4 distinguishable cases to attempt this argument. For example, in a case the court deemed "complex"
5 that involved internet speech and an anti-SLAPP motion, the court justified fees and costs of 2
6 attorneys and a case assistant totaling approximately \$40K for matters that were "inextricably
7 intertwined" with the anti-SLAPP. *Zwebner v. Coughlin* (S.D. Cal., Jan. 25, 2006, No. 05CV1263
8 JAH(AJB)), 2006 U.S. Dist. LEXIS 104701, at *4.⁶ Here, Defendants seek more than 200% for more
9 than triple the staff for four months of litigation. This case only demonstrates that even a "complex"
10 anti-SLAPP motion (which this one does not constitute) does not justify this amount of
11 overlawyering. More than **35%** of the hours Defendants seek compensation for are not compensable
12 under Code Civ. P. §425.16(c). The following hours must be excluded for each Defendant.

13 *i. Exclude 264 hours (\$217,441.90) from Substack's request*

14 Specifically, Substack billed 12.2 hours (\$7,417.37) for matters before the case was even
15 filed; 45.3 hours (\$39,616.55) on case management which is a farce given the lack of coordination on
16 the anti-SLAPP motions; 33.5 hours (\$24,249.70) for the answer/CMC; 103.4 hours (\$89,469.56) for
17 the Doe motion which did not affect the litigation since Defendants always knew the identity of the
18 Plaintiff and it was not the basis of the court's grant of the motion⁷; 35 hours (\$31,583.11) for
19

20 ⁶ See also *Godinez v. Gateway Ins. Grp.* (Super Ct. Sacramento Cnty., Nov. 9, 2022, No. 34-2020-
21 00276019-CU-BC-GDS) 2022 Cal. Super. LEXIS 72926, at *7; *Nolan v. City of Corona* (Super. Ct.
22 Riverside Cnty., Aug. 13, 2019, No. RIC 1904098) 2019 Cal. Super. LEXIS 75165, at *4.
23 Defendants cite nonpublished cases in violation of Rule Cal. R. Ct. 8.1115. Plaintiff is only including
24 reference to them herein to offer a response. In *Godinez*, the Court in that case awarded the Gordon
Rees – an AmLaw top 50 law firm – fees of \$31,736.00 and costs of \$1,935.18 almost **three years**
after the case was initiated. In *Nolan*, the court awarded fees of \$22,200 for 55.5 hours of work at a
rate of \$400 one year after case initiation. These nonciteable cases do not support Defendants'
outrageous request for fees.

25 ⁷ Defendants argue that the fees for the Doe motion are warranted because Plaintiff engaged in
26 "gamesmanship" by initially filing as a Doe Plaintiff. The accusation is not only unwarranted, but
27 Defendants fail to provide legal support that it justifies anti-SLAPP fees. This argument is also
28 unsupported by this court's findings on the Doe motion itself. See Baskin Decl. Exh. F (recognizing
"[i]t might be one thing if Plaintiff's claims were limited to whether the media is (or should be)
prohibited from publishing facts taken exclusively from sealed criminal records and he was seeking
no personal relief."). Defendants claim falsely that "multiple news outlets had already published

opposing Plaintiff's TRO motion which was never even heard or decided; 15.1 hours (\$10,676.72) unsuccessfully opposing Plaintiff's motion to seal the Incident Report and the information contained in it from public disclosure; and 19.5 hours (\$14,428.89) trying to get a wholly unrelated appellate case published. *See* Sanghvi Decl. at ¶¶13-20; Exhs. 2 – 9. Accordingly, 264 hours (\$217,441.90) should be reduced from Substack's request for fees.

ii. Exclude 58.1 hours (\$33,181.17) from Poulson's request

Specifically, Poulson billed 37.75 hours (\$21,117.84) for issues related to the Motion to Seal, which was ultimately unsuccessful and in no way helpful or intertwined with the successful anti-SLAPP motion (*see* Sanghvi Decl. at ¶25; Exh. 14); 18.57 hours (\$11,187.08) for work on the TRO, which was never heard or decided (*See* Greene Decl. at Exh. A); and 1.78 in hours (\$876.25) for work on the Doe Motion (*id.*), which was primarily drafted by Substack but nonetheless not compensable. Accordingly, 58.1 hours (\$33,181.17) should be reduced from Poulson's request. *See* Sanghvi Decl. at ¶¶24-25; Exhs. 13-14.

iii. Exclude 21.1 hours (\$20,045) from Tech Inquiry's request

Specifically, Tech Inquiry billed 4.40 hours (\$4,180) for work on the TRO; 16.1 hours (\$15,295) related to the motions to seal; and 0.6 hours (\$570) opposing the notice of related case which had absolutely no effect on this case. *See* Seager Decl. at ¶¶3-4. Accordingly, 21.1 hours (\$20,045) should be reduced from Tech Inquiry's request.

2. The Court Must Exclude Hours for Duplicative and Inefficient Work.

Courts must exclude "padding" in the form of inefficient or duplicative efforts that are unnecessary or redundant. *See Ketchum*, 24 Cal.4th at 1132 *quoting Serrano v. Priest* (1977) 20 Cal.3d 25 *see also Democratic Party of Wash. State v. Reed* (9th Cir.2004) 388 F.3d 1281, 1286 (requiring courts "to examine with skepticism claims that several lawyers were needed to perform a task."); *Tahara v. Matson Terminals, Inc.* (9th Cir.2007) 511 F.3d 950, 955 (permitting exclusion of hours that are excessive, redundant, or otherwise unnecessary). Any defendant could have joined another defendant's anti-SLAPP motion without filing a separate motion because as evidenced by all

[Plaintiff's] name" before he sued as a John Doe. The first press article on Plaintiff's lawsuit was published on October 29, 2024, 26 days *after* the Complaint was filed. *See* Baskin Decl. at Exh.B.

1 their arguments, the complaint challenged a protected First Amendment activity. *See Barak v.*
2 *Quisenberry Law Firm* (2006) 135 Cal.App.4th 654, 660-661. Despite conceding the need for
3 efficiency and claiming they engaged in practices to promote efficiency, Defendants filed three nearly
4 identical anti-SLAPP motions that referenced the other briefs instead of a single joint motion, which
5 is clear evidence of inefficiency. *See* Def. MPA, p. 21 citing Greene Decl. ¶4 (referring to “[c]o-
6 defendants jointly filed wherever feasible, delegating work according to their respective expertise to
7 reduce the cost associated with litigating this matter.”); *see also* Substack Notice of Joinder dated
8 December 6, 2024 (incorporating the other Defendants’ anti-SLAPP motions evidencing no
9 conflicts). Each of Defendants’ motions made the same arguments and relied on the same general set
10 of cases.⁸ In addition, three of the four Defendants submitted their own compendium of evidence,
11 which included motions asking this Court to undo Judge Gold’s Sealing Order. All Defendants could
12 have used the same compendium of evidence and filed one unsuccessful motion asking this court to
13 undo Judge Gold’s Sealing Order. The Court’s ability to dispose of the issues raised by the
14 Defendants in four separate anti-SLAPP motions in one 7.5 page decision further demonstrates the
15 overlap in arguments. *See* Baskin Decl. at Exh. A. Accordingly, this court should not reward
16 duplication and inefficiency, which sends a dangerous message and unnecessarily strains resources.

17 Moreover, Defendants fail to provide a legitimate explanation for seeking fees for the filing of
18 these three nearly identical briefs nor do the billing records articulate the division of research and
19 writing. *See contra, Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.*
20 (2008) 163 Cal.App.4th 550, 562 (affirming grant of fees where billing records demonstrate counsel
21 for each Defendant were researching different issues in their presentation of a joint defense).
22 Similarly, the Defendants provide no justification for the need for “substantial time researching”
23 between the TRO motion filed in November and the anti-SLAPP motions filed in December 2024 –
24 which contained a majority of the same First Amendment cases and arguments that had already been
25

26 ⁸ In their motions to strike, all Defendants argued (1) Poulson’s dissemination of the Sealed Report
27 and its contents concerned “a matter of public significance” because, in some way, it concerned
28 whether he was fit to perform his job as CEO of a private company despite the existence of Labor
Code §432.7; (2) *Bartnicki* provided Defendants First Amendment protection, despite Penal Code §
851.92(c) violations; and (3) immunity under the C.D.A., 47 U.S.C. § 230(c)(1).

1 researched and communicated before the case even began.⁹ Between November 15th to February 4th,
2 Defendants jointly billed approximately 470 hours (199.4 + 243.68 + 26) hours for anti-SLAPP
3 research and drafting of two briefs between three firms. This translates to almost twelve 40-hour
4 weeks dedicated to solely this one motion. Defendants cannot justify such overbilling.

5 Furthermore, courts expect sophisticated counsel, like those involved in this case, to provide
6 quality representation which includes efficient billing. *Open Source Security, Inc. v. Perens* (N.D.
7 Cal., June 9, 2018, No. 17-CV-04002-LB) 2018 WL 2762637, at *6, aff'd (9th Cir. 2020) 803
8 Fed.Appx. 73 citing *Wynn*, 2015 WL 3832561, at *5–*6 (“given the sophistication of counsel and
9 their substantial billing rates, this case should have been litigated much more efficiently without
10 sacrificing quality;” noted the “unreasonable staffing of five skilled attorneys at high rates,” the
11 “relative simplicity of this case,” and “the duplication of efforts on preparing the motion to dismiss
12 and the motion to strike”); *Lin v. Dignity Health-Methodist Hosp. of Sacramento*, No. S-14-0666
13 KJM CKD, 2014 WL 5698448, at *6 (E.D. Cal. Nov. 3, 2014) (reducing anti-SLAPP fee award to
14 71.66 hours as reasonable where counsel had “extensive experience handling appellate and business
15 litigation matters” and specialized in healthcare (the subject matter of the suit) and anti-SLAPP
16 matters and noting anti-SLAPP awards typically range from 40 to 75 hours); *Maughan v. Google*
17 *Tech., Inc.* (2006) 143 Cal.App.4th 1242, 1251 (fee request for 200 hours of work on anti-SLAPP
18 motion was excessive where counsel had experience with anti-SLAPP matters; noted that the motion
19 “should not have been such a monumental undertaking”). Here, each Defendant was represented by
20 competent and experienced counsel, two of whom were “experienced litigators” with over 25 years of
21 experience and were nationally and internationally known as First Amendment experts. *See* Def.
22 MPA at 16, 18. Given this breadth of experience, Defendants billed inefficiently.

23 Indeed, here, a reasonable hour benchmark for an anti-SLAPP motion involving these exact
24 facts has been established by Tech Inquiry, which successfully litigated its motion in approximately
25 40 hours because she had “written numerous anti-SLAPP motion in [her] career, so [she] did not need
26 to ‘reinvent the wheel.’” *See* Seager Decl. at ¶4; *see also Maughan v. Google Tech., Inc.*, 143

27 ⁹ Contrary to Mr. Greene’s assertion in his affidavit that each defendant wrote their own opposition to
28 the TRO motion, Tech Inquiry and Poulson submitted a joint brief opposing Plaintiff’s motion for a
TRO. *See* Greene Decl. at ¶4.

1 Cal.App.4th at 1251 (affirming reduction of fees for anti-SLAPP motion made 6 months into the case
2 by counsel professing to be experts in area to approximately 50 hours because the trial court had
3 “trouble believing that these [anti-]SLAPP experts reasonably needed to spend 200 hours researching
4 the relevant law and drafting the [anti-]SLAPP motion.”); *Peterson v. Sutter Medical Foundation*
5 (N.D. Cal., Aug. 10, 2023, No. 3:21-CV-04908-WHO) 2023 WL 5181634, at *5, *aff’d* (9th Cir., July
6 2, 2025, No. 23-2911) 2025 WL 1823959 (finding 123.6 hours higher than hours typically awarded
7 for anti-SLAPP motions in this district and collecting cases showing lower range for anti-SLAPP
8 fees). Poulson (the Founder and Executive Director of Tech Inquiry) and Substack offer no
9 justification for why they required five to ten times as many hours to make the same arguments based
10 on the same set of facts and law. *See e.g.*, Def. MPA at p. 19. Accordingly, the additional hours billed
11 are grossly duplicative and should be reduced to the reasonable benchmark of 40 hours, shared
12 among all defendants.

13 *i. Overstaffing and vague, duplicative billing entries warrant a*
14 *reduction in Substack’s hours*

15 Substack did not need to submit its own brief as Poulson had agreed pursuant to the Substack
16 Terms of Use to indemnify Substack if Substack was subjected to any liability. *See* Sanghvi Decl. at
17 ¶26, Ex. 15) Here, all of Plaintiff’s claims against Substack arise from Poulson’s “use of Substack”
18 and Poulson’s “violation of these Terms,” which include a prohibition on violating the law. Thus,
19 while Substack might have wanted a lawyer to review Poulson’s filings, there was no need for
20 Substack to have submitted its own anti-SLAPP considering the experienced, qualified counsel hired
21 by Poulson and/or Tech Inquiry. Accordingly, Substack’s staffing decision to bill for 3 partners, a
22 Senior Counsel, 2 law clerks, and a paralegal does not demonstrate efficiency and stands in stark
23 contrast to its own co-Defendant, an expert in First Amendment and anti-SLAPP law, who billed 40
24 hours for one attorney for the anti-SLAPP motion. This level of overstaffing occurred even though
25 Substack was represented by a “premier legal advisor to technology, Internet, and other growth
26 enterprises worldwide,” and sophisticated counsel with “extensive experience” like Mr. Baskin and
27 Mr. Wakefield who “have roughly a decade of experience litigating at the intersection of technology
28 and the law” and who should have been very familiar with the arguments at issue here. (*See* Baskin

Decl. at ¶2; Def. MPA at p.20) Indeed, the billing records bely the assertion that Mr. Baskin and Mr. Wakefield limited their time to “formulating Substack’s litigation strategy and editing the briefing.” See Def. MPA at p.19 (demonstrating how Wakefield billed the greatest amount of hours at 157.6); see also Sanghvi Decl. at ¶23, Exh. 11. (Wakefield billed at least 19.1 hours (\$49,534.60) for research and writing related to the anti-SLAPP motion) Similarly, the billing records bely the claim that the Defendants efficiently coordinated since the lawyers – including senior attorneys – jointly spent over 42 hours preparing for oral argument when the bulk of Defendants’ argument was presented and argued by AWS’s counsel, Sarah Burns, with minimal input from the other Defendants when the Court afforded them the opportunity to speak. (See Baskin Decl. at Exh. J, pp. 17-18; Greene Decl., Exh. A; Seager Decl. Exh. A) For example, Mr. Wakefield spent 7.4 hours preparing for oral argument and indeed when asked if he had anything to add for Defendant, he simply alerted the Court that a separate lawsuit was brought challenging the application of the anti-dissemination statute – a fact that was already in Defendants’ reply and Substack itself argued was irrelevant when it opposed Plaintiff’s Notice of Related Case. Compare with Seager Decl., Exh. A (1 hour spent preparing for hearing on anti-SLAPP).

ii. Poulson/Tech Inquiry

Poulson is the Founder and Executive Director of Tech Inquiry. Accordingly, Defendants Poulson and Tech Inquiry are essentially the same actor and surely controlled by the same person: Poulson. Yet, Poulson “retained EFF to provide pro bono counsel in this matter because of EFF’s recognized expertise and experience in defending online speech.”¹⁰ The only justification Poulson offers as to why each defendant had to write their own motion to strike and reply is that “the arguments on the second part of the anti-SLAPP analysis were different for each defendant due to the distinct allegations against them.” (Greene Decl. at ¶4) This is inaccurate. Every cause of action not only stemmed from the same action – the possession, dissemination and publication of a sealed report – but 14 of the 15 causes of action were against ALL defendants. (See Complaint) Accordingly,

¹⁰ Of note, the Electronic Frontier Foundation (EFF) argued that Section 851.92(c) did not go far enough to protect individuals who were arrested without a conviction during discussions on this statute before it was passed.

1 Poulson and Tech Inquiry did not need separate counsel when the same person (Poulson), who did
2 not have a conflict with his own entity, controlled both defenses.

3 Additionally, significant inefficient billing is clear in Ms. Noble's billing records. Despite
4 working for an organization that prides itself as "champions [of] user privacy, free expression, and
5 innovation", and working under the direction of sophisticated counsel very familiar with litigating
6 First Amendment issues, Ms. Noble billed almost 200 hours on the anti-SLAPP motions alone.
7 Requiring Ms. Noble to seemingly start from scratch, billing substantial hours for legal research
8 connected to a motion to strike involving the First Amendment despite Mr. Greene's experience in
9 First Amendment law and anti-SLAPP law is not a demonstration of billing judgment and is not
10 reasonable. *See Wynn*, 2015 WL 3832561 at *5. Moreover, Tech Inquiry successfully struck the
11 Complaint with about 40 hours of work which in an efficient litigation would have been work that
12 was utilized by Poulson. Ms. Noble's failure to rely on the deep expertise within her office or her
13 client's other lawyer does not render the hours she spent reasonable.

14 **D. The rates sought by Defendant Substack¹¹ are unreasonable.**

15 Defendant Substack seeks unjustifiably high hourly rates that are not in line with the
16 prevailing rates in the community for similar work. *See Ketchum*, 24 Cal. 4th at 1133; *see also*
17 *PLCM Grp. v. Drexler* (2000) 22 Cal. 4th 1084, 1095, as modified (June 2, 2000). The
18 unreasonableness of Substack's rates is demonstrated by several key facts. First, Substack's attorneys
19 request substantially higher rates than their co-Defendants' despite co-counsel having significantly
20 more experience and being recognized as experts on First Amendment issues. *See Seager Decl.* at ¶8
21 (billing at \$950 after 25 years of experience as a media defense attorney litigating First Amendment
22 cases in state and federal courts; a professor, and a scholarly author and presenter); *Greene Decl.* at
23 ¶21 (billing at \$955 after 33 years of practice and recognition as a scholarly author, commentator,
24 public speaker, professor, and board member on First Amendment issues) The evidence submitted in
25 support of their own motion also contradicts the requested hourly rates. *See Greene Decl.* at ¶¶13-15.

26 Substack's counsel, Wilson Sonsini Goodrich & Rosati (WSGR), attempts to justify its rates
27 by referencing a PricewaterhouseCoopers' ("PwC") survey without actually providing the survey

28 ¹¹ Plaintiff does not contest the attorney rates for Defendant Tech Inquiry or Defendant Poulson.

1 data. Def. MPA at p.17; *see also* Baskin Decl. at ¶5. A court in the Northern District of California
2 recently rejected this exact tactic from WSGR and reduced the firm’s rates in a different case. *See*
3 *Riley v. QuantumScape Corp.* (N.D. Cal., Aug. 15, 2023, No. 22-CV-03871-BLF) 2023 WL
4 5279810, at *5 (noting defendant has not, through attorney’s affidavit, “demonstrated that its
5 requested rates are comparable to those prevailing in the community” and provided “no details about
6 what ‘comparable law firm’ means or what these comparable law firms charge. Nor does [WSGR
7 attorney] attach the [PWC] survey to her declaration.”). Accordingly, the rates should be reduced to
8 levels recently approved for WSGR as follows:

Name/Class	2024 Rate	2025 Rate	Recently approved WSGR rate
Coleen Bal, Partner Class of 1993	\$1,383	N/A	\$1050
Joshua A. Baskin, Partner Class of 2013	\$1,094	\$1,194	\$600
Thomas R. Wakefield, Partner Class of 2015	\$1,068	\$1,181	\$600
Benjamin Margo, Senior Counsel Class of 2014	\$1,041	\$1,138	\$600
Rasheed Evelyn, Law Clerk Class of 2024	\$499	N/A	\$240
Sophie Lombardo, Law Clerk Class of 2024	N/A	\$643	\$240
Mariana McNamara, Paralegal	\$446	N/A	\$240

17 **E. Defendant Substack Seeks Thousands in Costs Not Authorized by Statute.**

18 In addition to its exorbitant fees, Defendant Substack also seeks a shocking amount of costs
19 for four months of litigation totaling \$16,166.20. Defendant’s demand must be reduced by
20 \$15,016.20 because Defendant seeks the following costs that are not obviously tied to the anti -
21 SLAPP motion or not authorized under Code Civ. P. §1033.5 (setting forth allowable costs to
22 prevailing party in trial court).

- 23
- 24 - \$12,920.30 for generalized computer legal research across LEXIS and Westlaw: fees for
25 legal research, computer or otherwise, may not be recovered under CCP §1033.5 in this
26 instance. *See Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 776.

27 Defendant also fails to demonstrate how the research expense was reasonably necessary to
28 the anti-SLAPP motion.

- \$636.30 for reproduction and telephone costs: explicitly unauthorized under CCP §1033.5(b)(3).
- \$799.60 for “Deposition Transcripts” on 12/27/2024: unjustified in a case without depositions or discovery and where transcripts were not exhibits for the motions.
- \$660 for “Miscellaneous”: unjustifiable under CCP §1033.

Accordingly, this Court should only grant \$1,150 in costs to Defendant Substack.

F. Defendants’ claim of advancing First Amendment rights ignores the rights trampled of individuals protected by the dismissed Penal Code provisions.

Defendants’ argument that their exorbitant fee request is justified because they advanced First Amendment rights fails for two main reasons. Defendants conduct did not advance “the highest rung of First Amendment values.” Def. Mot. at p. 20 (internal citations omitted). Rather it undermined significant privacy protections the California Legislature created to shield individuals who were arrested without a conviction from stigma and harm. *See* Penal Code §§ 851.91, 851.92; Labor Code § 432.7; *Loder v. Municipal Court*, 17 Cal.3d 859, 868 (1976) (an arrestee has a “legitimate concern to protect himself from improper use of his record” and recognizing that California has addressed this legitimate concern “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* (2022) 82 Cal.App.5th 39, 47-48 (recognizing that in enacting Section 851.91, “the Legislature perceived an arrest, the fact a person was taken into custody, carried a severe stigma”). San Francisco District Attorney, George Gascón, the sponsor of the legislation seeking to codify Section 851.92(c) (which is presumed to be Constitutional), articulated its importance: “the fact that those merely arrested can have a more difficult time finding employment and housing opportunities than those convicted is unjust, and California needs to right this wrong to ensure individuals never convicted of a crime don’t live their lives in a paper prison.” California Bill Analysis, S.B. 393 Assemb., 7/11/2017.

IV. CONCLUSION

For the reasons stated herein and in conjunction with information set forth in Ami Sanghvi’s Declaration, Plaintiff asks this court: (1) deny all fees as unjust; or (2) alternatively, deny all fees to Substack given the unjustifiable and unreasonable request; or (3) alternatively reduce Defendant’s

1 hours by excluding all matters not inextricably intertwined with the anti-SLAPP motion and (4)
2 reduce Substack's hourly rates to rates more in line with the community – as evidenced by past law
3 and their own co-Defendants.

4 Dated: July 16, 2025

Respectfully submitted,

THE MAREK LAW FIRM, INC.

6 By: /s/ David Marek
7 David Marek
8 *Attorney for Plaintiff*

1 **PROOF OF SERVICE**

2 I, David Marek, 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 228 Hamilton Avenue, Palo Alto, CA 94301.

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

- 6 • **PLAINTIFF'S OPPOSITION TO DEFENDANTS POULSON, SUBSTACK, INC., AND**
7 **TECH INQUIRY MOTION TO RECOVER FEES AND COSTS**

8 on the parties named below as follows:

- 9 (X) **(BY EMAIL)** – by electronically mailing a true and correct copy through THE
10 MAREK LAW FIRM, INC.'s electronic mail system to the email address(es) set forth
below, or as stated in the attached service list per the parties' agreement.
- 11 (X) **(BY E-SERVICE)** – by electronically serving the document(s) listed above and on the
12 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
13 the party(ies) designated below in accordance with the San Francisco County Superior
Court Local Rules.

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

15 **SEE ATTACHED SERVICE LIST**

16
17 I declare under penalty of perjury under the laws of the State of California that the foregoing
18 is true and correct and that this declaration was executed on July 16, 2025.

19
20 /s/ David Marek

21 David Marek

SERVICE LIST

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.	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
Susan E. Saeger The Office of Susan E. Saeger Phone: (310) 890-8991 Email: susanseager1999@gmail.com Counsel for Defendant Tech Inquiry, Inc.	