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Attorneys for Defendant
SUBSTACK INC.

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 **DECLARATION OF BENJAMIN D. MARGO IN FURTHER SUPPORT OF MOTION OF DEFENDANTS POULSON, SUBSTACK INC., AND TECH INQUIRY TO RECOVER FEES AND COSTS** Date: July 29, 2025 Time: 9:00 AM Dept.: 301 Before: Hon. Christine Van Aken Action Filed: October 3, 2024 Trial Date: None Set

I, Benjamin Margo, declare:

1. I am an attorney admitted to practice before the courts of the State of California, Senior Counsel at Wilson Sonsini Goodrich & Rosati, P.C. ("WSGR"), and an attorney for Substack Inc. ("Substack") in the above-captioned action. I submit this declaration in further support of Defendants' Motion for Attorneys' Fees, following the Court's grant of Defendants' anti-SLAPP motions to strike and entry of judgment in Defendants' favor. The following facts are true of my own personal knowledge, and if called and sworn as a witness, I could competently testify to them.

2. In preparation for Substack's fees motion, I reviewed WSGR business records about the billing rates charged by the attorneys involved in this action, which are accurately reflected in Substack's opening brief at 17-18 and the Declaration of Joshua Baskin dated April 25, 2025 ("Baskin Declaration") at paragraph 5 and Exhibit G. I also reviewed market research data provided to WSGR about attorney billing rates by PwC (the firm formerly known as "Pricewaterhouse Coopers"). I specifically reviewed data regarding the rates charged by attorneys at large law firms for litigation in the San Francisco and Silicon Valley geographic markets in 2024. PwC provided data about these rates by calculating the median rates billed by various groups of law firms comparable to WSGR. In other words, PwC offered different metrics that could be used as a benchmark median billing rate. All of this data was consistent with the conclusion that the actual rates charged by WSGR to Substack in this action were below the median rates charged by comparable law firms.

3. One group of law firms for which I reviewed data was the AmLaw 50, a well-known group of 50 law firms ranked annually as the top firms by revenue in the United States by the publication The American Lawyer. For purposes of the fees motion, WSGR and Substack used the median rates billed by AmLaw 50 law firms, in the San Francisco and Silicon Valley geographic markets, for litigation that was not "intellectual property" litigation. These median rates were generally consistent with the other PwC metrics I reviewed, all of which showed that the rates actually charged by WSGR in this action were lower than the median billable rates

charged by similar firms. This data is accurately reflected in Substack's opening brief at 17-18 and the Baskin Declaration at paragraph 5 and Exhibit G.

4. I supervised the work of Rasheed Evelyn and Sophie Lombardo in this action. Both began as Law Clerks, a title indicating that they are junior associates who had not yet been admitted to the bar. Only one of them worked on this action at a time, first Evelyn and then Lombardo, each for a period of months. The exception is that both worked on the instant motion for attorneys' fees.

5. Substack received communications from Plaintiff Maury Blackman before he filed this action. I, and other WSGR attorneys, billed for legal work as a result of those pre-suit communications. The Declaration of Ami Sanghvi filed on July 16, 2025 in opposition to Defendants' fees motion ("Sanghvi Declaration") collects time entries associated with this work in Exhibit 3, which I have reviewed. All of this time was spent on work in anticipation of this litigation and involved communications with Blackman intended to avoid the lawsuit as well as work to develop the defenses that would later be used in Substack's anti-SLAPP motion and demurrer.

6. I reviewed Exhibit 4 of the Sanghvi Declaration. Therein, Plaintiff's attorney Ami Sanghvi associates $39,616.55 of WSGR's bills with what she calls "Case Management." However, I identified $28,951.66 worth of time entries on Exhibit 4 associated with legal research, writing, and strategy, including coordination with co-defendants on legal and strategic issues. Some of these time entries specifically reference substantive work on the anti-SLAPP motion itself. For example, Sanghvi characterizes the following time descriptions as "Case Management": "Strategize regarding response to complaint/motion," "Discuss strategy with Amazon," "Confer with case team regarding strategy for upcoming anti-SLAPP and demurrer motions."

7. I reviewed Exhibit 5 of the Sanghvi Declaration. Therein, Sanghvi associates $24,249.70 of WSGR's bills with the "Answer." Substack never filed an Answer in this action. $1,888.69 of this amount is associated with work on the Case Management Statement. The remainder is described as legal research and strategy, primarily associated with the demurrer.

Substack's demurrer was prepared efficiently—the hours necessary to prepare it were greatly reduced because the same issues were also addressed in the draft anti-SLAPP motion.

8. I attach as Exhibit A to this Declaration a true and correct copy of letter to the Second Appellate District requesting publication of *Nelson v. Bridgers*, dated November 19, 2024.

9. I attach as Exhibit B to this Declaration a true and correct copy of the unpublished California Court of Appeals opinion in *Nelson v. Bridgers*, dated October 30, 2024.

10. I attach as Exhibit C to this Declaration a true and correct copy of the complaint in *Blackman v. City and County of San Francisco, et al.*, filed April 25, 2025.

11. I reviewed the billing records from Westlaw and Lexis to WSGR, associated with the computer research for which $12,920.30 in costs are claimed in Defendants' fees motion. Those billing records indicate that these computer research costs were incurred searching for and viewing cases, treatises, or other legal resources for purposes related to this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 22, 2025 in Jersey City New Jersey.

Dated: July 22, 2025

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Benjamin D. Margo
Benjamin D. Margo
E-mail: bmargo@wsgr.com

Attorney for Defendant
Substack Inc.

EXHIBIT A

WILSON SONSINI

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November 19, 2024

Via Electronic Filing
Hon. Gregory J. Weingart
Hon. Helen I. Bendix
Hon. Frances Rothschild
California Court of Appeal
Second Appellate District, Division 1
300 S. Spring Street,
2nd Floor, North Tower
Los Angeles, CA 90013

Re: Nelson v. Bridgers, Case Nos. B325454, B328612 & B330346 (CA2/1)
Decision Filed Oct. 30, 2024

REQUEST FOR PUBLICATION OF OPINION

Dear Justices of the Court of Appeal:

We represent Substack, Inc. ("Substack"), which is not a party in this case. We write pursuant to California Rules of Court Rule 8.1120 to respectfully request certification for publication of the Court's opinion in the above-referenced case, which was filed on October 30, 2024 ("the Opinion").

Today, it is widely accepted that the public benefits from shedding light on the abuse of women—especially where that abuse would otherwise be hidden away in private workspaces and homes. This issue remains prominent and at the forefront of public discourse. Even after the #MeToo movement, in 2020, 48% of women working in the technology industry reported experiencing harassment. (Women Who Tech Startup & Tech Culture Survey, 2020.)[1] Enabling speech and journalism about this issue is more important now than ever.

In its unpublished opinion in this case, this Court made an important holding on the issue. The Court held that Bridgers's online posts about men's use of "psychological, economic, and other means of manipulation to gain control over, and abuse, women" implicated an "issue of public interest" under California's anti-SLAPP statute. (Code Civ. Proc., § 425.16(e)(3); *Nelson v. Bridgers* (Cal.App., Oct. 30, 2024, Nos. B325454, B328612, B330346) 2024 Cal. App. Unpub. LEXIS 6911, at *15, *17.) The recognition that this speech is a protected part of the public discourse makes it easier for victims to speak about their experiences without fear of retribution. (*Bridgers*, 2024 Cal. App. Unpub. LEXIS 6911, at *3.) While this holding may seem commonplace—and it reflects a broad public consensus—we have not identified any other published California decision that is as clear on this point.

[1] https://womenwhotech.org/sites/default/files/2020-09/WomenWhoTech_StartupAndTechSurvey2020.pdf

Rule 8.1105(c) provides that an opinion should be certified for publication in the Official Reports if it meets any of nine listed criteria in. The Court's opinion in this case squarely meets at least two criteria, because it:

> (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions; [or]
>
> * * *
>
> (6) Involves a legal issue of continuing public interest[.]

(Cal. Rules of Court, Rule 8.1105(c).)

First, the Opinion applies existing principles of California law to a situation increasingly relevant to public discourse, but not previously addressed in published decisions of this Court. The Court held that even where public statements about the abuse of women are focused on particular *instances* of abuse—which likely took place in private—they may be considered matters of public interest. (*Bridgers*, 2024 Cal. App. Unpub. LEXIS 6911, at *13.) While prior case law has held that speech relating to preventing *child* sexual abuse can be considered to be speech on a matter of public concern (*Cross v. Cooper* (2011) 197 Cal.App.4th 357) this opinion clarifies that speech about private instances of abuse, specifically where "men us[e] their power to abuse women" are also related to matters of public interest and worthy of protection under the anti-SLAPP statute. (*Bridgers*, 2024 Cal. App. Unpub. LEXIS 6911, at *3.) It is particularly important to have a published opinion on this point because parties resisting anti-SLAPP motions will argue that individual instances of abuse are a private matter, and thus non-public. This makes publication of the Opinion appropriate under Rule 8.1105(c)(2).

Second, the Opinion involves a legal issue of ongoing public interest. When individuals speak out about allegations of abuse, not only does it serve to further the discussion around specific claims, it emboldens other victims who may share similar experiences. When victims speak out about their experiences, it may give others the confidence to speak out without fear. The Opinion is therefore also appropriate for publication under Rule 8.1105(c)(6).

For these reasons, Substack respectfully requests that this Court certify its October 30, 2024 Opinion for publication.

Respectfully submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: */s/ Joshua A. Baskin*
Joshua A. Baskin

PROOF OF SERVICE

I, Shannon Hill, declare:

I am employed in Los Angeles County, State of California. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 953 East Third Street, Suite 100, Los Angeles, CA 90013.

On this date, I served:

LETTER TO SECOND DISTRICT SEEKING PUBLICATION

[X] E-SERVICE *via* the court's online True Filing System as follows:

CLARK HILL LLP
Bradford G. Hughes, Esq.
Richard H. Nakamura, Esq.
Tiffany B. Hunter, Esq.
555 South Flower Street, 24th Floor
Los Angeles, CA 90071
Telephone: 213-891-9100
Fax: 213-488-1178

bhughes@clarkhill.com
rnakamura@clarkhill.com
thunter@clarkhill.com

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of documents for delivery according to instructions indicated above. In the ordinary course of business, documents would be handled accordingly.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California on November 19, 2024.

Shannon Hill

EXHIBIT B

Filed 10/30/24 Nelson v. Bridgers CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CHRIS NELSON, Plaintiff and Appellant, v. PHOEBE BRIDGERS, Defendant and Respondent.	B325454 consolidated with B328612 and B330346 (Los Angeles County Super. Ct. No. 21STCV35635)

APPEALS from a judgment and orders of the Superior Court of Los Angeles County, Curtis A. Kin, Judge. Affirmed.

Clark Hill, Bradford G. Hughes, Richard H. Nakamura Jr., and Tiffany B. Hunter for Plaintiff and Appellant.

Jeffer Mangels Butler & Mitchell, Michael H. Strub, Jr., and Lena Streisand for Defendant and Respondent.

INTRODUCTION

Chris Nelson is a well-established music industry entrepreneur. Phoebe Bridgers is an acclaimed singer/songwriter who was formerly friendly with Nelson. Nelson sued Bridgers for defamation and related claims based on an October 2020 post Bridgers made to her Instagram account, which at the time had approximately 500,000 followers. Referencing an earlier Instagram post made about Nelson by another woman, Emily Bannon, Bridgers wrote, "I witnessed and can personally verify much of the abuse (grooming, stealing, violence) perpetuated by Chris Nelson, owner of a studio called Sound Space, that is being brought to light. For anyone who knows him, is considering working with him, or wants to know more, there is an articulate and mind blowing account on @emilybannon's page as a highlight. [¶] TRIGGER WARNING for basically everything triggering."

Bridgers responded to Nelson's lawsuit by filing a special motion to strike under Code of Civil Procedure section 425.16.[1] That statute "sets out a procedure for striking complaints in harassing lawsuits that are commonly known as SLAPP suits (strategic lawsuits against public participation), which are brought to challenge the exercise of constitutionally protected free speech rights."[2] (*Kibler v. Northern Inyo County Local*

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[1] Subsequent unspecified statutory references are to the Code of Civil Procedure.

[2] We refer to section 425.16 as the anti-SLAPP statute. For clarity, we refer to a SLAPP or anti-SLAPP motion as "a special motion to strike"—the language used in the statute (§ 425.16, subd. (b)(1)).

Hospital Dist. (2006) 39 Cal.4th 192, 196, fn. omitted.) The moving party must first demonstrate that the plaintiff's claim arises from an "act . . . in furtherance of [the defendant's] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (§ 425.16, subd. (b)(1).) If the moving party does so, then the opposing party must "establish[ ] that there is a probability that the plaintiff will prevail on the claim." (*Ibid*.) The trial court granted the motion, finding that Bridgers's post was made in a public forum and related to an issue of public interest, and that Nelson had not produced evidence showing a probability he would prevail on his claims. The court later awarded Bridgers attorney's fees under the anti-SLAPP statute.

Nelson appeals the dismissal of his claims and the award of attorney's fees. Nelson does not challenge the trial court's determination that he failed to make a sufficient evidentiary showing that his claims had minimal merit. Nelson focuses solely on the anti-SLAPP statute's first prong, arguing that Bridgers's post was not protected conduct. We affirm the granting of the special motion to strike and the related award of attorney's fees. The content and context of Bridgers's post shows it falls within the scope of conduct protected by the anti-SLAPP statute. The post related to public concerns, especially prevalent in light of the #MeToo movement, about men using their power to abuse women. It also provided consumer protection information about Nelson, who operated a substantial business selling musical instruments and recording equipment, as well as a recording studio. Lastly, it furthered public discourse by adding to an on-going discussion summarized in Bannon's post about Nelson's business practices and alleged abuse of young females.

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Nelson's operative complaint alleges he "is a well-established record producer, musician, and businessman" and that "[n]umerous well-known artists and musicians have worked with [him] or worked at [his studio] Sound Space." Nelson asserts he "is also a respected expert musical instrument collector, distributor and reseller of new, used, and vintage musical instruments and recording equipment. . . . . [Nelson]'s expertise in evaluating highly collectible guitars is sought by collectors . . . across the United States and abroad. [Nelson] has sold millions of dollars' worth in collectible musical instruments and recording equipment on Reverb.com, the largest online marketplace dedicated to buying and selling new, used, and vintage musical instruments and recording equipment."

Bridgers is a singer, songwriter, and guitarist. She is also a social advocate. Nelson alleges that "[a]mong other things, in approximately 2019, [Bridgers] detailed multiple accounts of alleged abuse by Ryan Adams, a singer-songwriter and record producer," including a post on her Instagram account. Other evidence showed Bridgers previously commented publicly on allegations of abuse made against the musician Marilyn Manson.

Nelson asserts that "in or around 2018, [he] and his girlfriend at the time, Emily Bannon . . . , began having consensual sexual encounters with . . . Bridgers." According to Nelson, he and Bannon ended their relationship "in or around the [F]all of 2019," but Bannon maintained her relationship with Bridgers.

In October 2020, Bannon made a lengthy post to Instagram summarizing negative experiences of persons doing business with

Nelson and of his romantic partners, and recounting her own bad experiences with him. The post included numerous screenshots of complaints from persons who had done business with Nelson and other women claiming he had abused them. According to Nelson's operative complaint, Bannon's post included the following "false and misleading statements": "a. [Nelson] 'beat a young Latinx man to death after provoking him with a racial slur'; [¶] b. [Nelson] 'killed the young man'; [¶] c. [Nelson] 'bludgeoned at least one other man with a baseball bat . . . and left him to bleed out in an alleyway'; [¶] d. [Nelson] committed racially-motivated hate crimes, including 'intentionally rear-end[ing] drivers of color and then challenging them to call the police, knowing that his white privilege would protect him from any consequences whatsoever but expose his victims to a prohibitive level of risk (of deportation, incarceration, or brutality) by forcing them to interact with cops'; [¶] e. [Nelson] 'defrauded [a] neighbor out of an estimated $100,000-$130,000'; [¶] f. [Nelson] 'forging [the neighbor's] signature and then stealing $50,000 from' the neighbor; [¶] g. [Nelson] 'robbed [a] storage unit of an estimated tens of thousands of dollars of belongings'; [¶] h. [Nelson] sells stolen gear and 'manufactures fake "rare" guitars to defraud collectors and museums . . . and uses all manners of devious engineering to trick unwitting . . . buyers into paying a premium for modified junk'; and [¶] i. [Nelson] 'was hacking [defendant Bannon] and other women's email accounts.' "

Less than two days later, Bridgers (who had substantially more followers on Instagram than did Bannon) made a post to her Instagram story stating the following: "I witnessed and can personally verify much of the abuse (grooming, stealing, violence)

perpetuated by Chris Nelson, owner of a studio called Sound Space, that is being brought to light. For anyone who knows him, is considering working with him, or wants to know more, there is an articulate and mind blowing account on @emilybannon's page as a highlight. [¶] TRIGGER WARNING for basically everything triggering."

B. Nelson Sues Bannon

Before suing Bridgers, Nelson separately sued Bannon for defamation and related claims based on her Instagram post. Bannon filed a special motion to strike, which the trial court (Judge Robert B. Broadbelt) denied. Our colleagues in Division Five reversed, finding Bannon's statements implicated public issues by warning others of misconduct by Nelson in his business and romantic dealings, and furthered public discussion of those issues. (*Nelson v. Bannon* (June 26, 2024, B319433) [nonpub. opn.].) The case was remanded for the trial court to assess whether Nelson could demonstrate a probability that he would prevail on his claims against Bannon. (*Ibid*.)

C. Nelson Sues Bridgers

Nelson later sued Bridgers for her Instagram post, asserting claims for defamation per se, defamation per quod, false light, and intentional infliction of emotional distress. Nelson sought compensatory and punitive damages and injunctive relief. Nelson alleged that "Bridgers maliciously and intentionally posted the false and defamatory statements about [Nelson] as part of a vendetta to destroy [Nelson]'s reputation that was enflamed by . . . Bridgers and Bannon's sexual relationship." Nelson alleged Bridgers's statements were false, and that she made them knowing they were false or having "serious doubts about" their truth. Nelson further averred that "[a]s a result of

. . . Bridgers'[s] statements, musicians and artists removed [Nelson] from their projects and stripped [Nelson] of credits that he had obtained in producing their music."

D. Bridgers's Special Motion to Strike

1. *The Motion*

Bridgers filed a special motion to strike, contending that her Instagram post was protected under the anti-SLAPP statute as a "writing made in a place open to the public or a public forum in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) As pertinent to this appeal, she asserted that Instagram is "a public forum." She contended that Nelson was a public figure based on his allegations he was "a well-established record producer, musician, and businessman," had worked with many "well-known artists," and was "a respected expert musical instrument collector" known in the United States and abroad, and that statements about a public figure concern "an issue of public interest." Bridgers also contended her statements concerned "a matter of public concern," namely, "[a]busive behavior toward women and minorities by figures within the entertainment industry." Bridgers averred that she is openly bisexual and has been an advocate for women's rights and a public critic of racist, xenophobic, and misogynistic conduct. Bridgers further contended her statements were intended to "warn[ ] consumers about doing business with . . . Nelson."

2. *Nelson's Opposition*

Nelson opposed the special motion to strike. Relevant to this appeal, Nelson contended that Bridgers's statements were not made in connection with an issue of public interest because he "is not a public figure and the specific subject matter of the

posts do not affect a broad segment of the population." Nelson argued that Bridgers's claim that her comments related to abuse of women in the music industry was belied by the fact that her statements "[did] not specifically identify the music industry." Nelson further argued that Bridgers did not post her statements for the purpose of warning others, but instead did so at Bannon's request and as part of Bannon's desire for revenge.

3. *Bridgers's Reply*

In reply, Bridgers claimed that Nelson had used her past positive social media posts about him to promote his business, and she decided to disassociate herself from him and warn others because of what she had learned about him. She also argued that the many articles published about the instant lawsuit showed he was a public figure because they described him as a well-established music producer and owner of a well-known recording studio.

4. *The Trial Court's Ruling*

After hearing argument and taking the matter under submission, the trial court (Judge Curtis A. Kin) issued an order granting the motion. The court found that Bridgers's statements in her Instagram post were "made in a place open to the public or a public forum" under section 425.16, subdivision (e)(3) and thus proceeded to analyze whether they were made "in connection with an issue of public interest" under that provision. The court applied the test stated in *Woodhill Ventures, LLC v. Yang* (2021) 68 Cal.App.5th 624, that a statement is made "in connection with an issue of 'public interest' " where it concerns "a person or entity in the public eye," "could directly affect a large number of persons beyond the direct participants," or "involv[es] a topic of widespread interest." (*Id.* at pp. 631-632, citing *Rand Resources,*

LLC v. City of Carson (2019) 6 Cal.5th 610, 621.) The court concluded that Bridgers's statements qualified for protection because they concerned a person "in the public eye in the music industry and the musical instrument collector community."

The court also concluded that Bridgers's statements were protected as affecting a large group of people because they provided "consumer information to musicians." The court relied on Bridgers's deposition testimony that she had a large following on Instagram, had endorsed Nelson's business on her account, wanted to make clear that she no longer endorsed him, and intended to provide information to other musicians so they could make an informed decision whether to work with him.

Nelson timely appealed following the court's entry of a judgment of dismissal.

E. Bridgers's Motion for Attorney's Fees

Bridgers thereafter filed a motion for $622,099 in attorney's fees under section 425.16, subdivision (c), which provides that a prevailing defendant on a special motion to strike is entitled to recover their fees. In opposition, Nelson contended that the amount of fees sought was unreasonable. In her reply, Bridgers withdrew her claim for certain fees and sought additional attorney's fees incurred on the fees motion, which when netted increased the total request to $670,512.

The trial court granted Bridgers's motion, reduced the amount of fees sought as excessive, and awarded her $493,135.60. Nelson appealed the court's order. After the trial court entered an amended judgment reflecting its award of fees and costs, Nelson also appealed the amended judgment. We consolidated Nelson's three appeals for purposes of decision.

DISCUSSION

A. Applicable Law and Standard of Review

"[The] anti-SLAPP statute makes available a special motion to strike meritless claims early in litigation—but only if the claims arise from acts in furtherance of a person's 'right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.' (§ 425.16, subd. (b).)" (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 139 (*FilmOn*).) Among other things, the statute identifies "any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest" as protected conduct. (§ 425.16, subd. (e)(3).) "If the defendant makes the required showing [that the challenged claim arises from protected conduct], 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.)

We review the trial court's decision to grant or deny a special motion to strike de novo. (*Musero v. Creative Artists Agency, LLC* (2021) 72 Cal.App.5th 802, 816.)

B. The Trial Court Did Not Err in Granting the Special Motion to Strike

1. *Nelson Contests Only the First Prong*

"[O]nly a claim ' "that satisfies *both* prongs of the anti-SLAPP statute . . . is a SLAPP, subject to being stricken under the statute." ' [Citation.]" (*Serova v. Sony Music Entertainment* (2022) 13 Cal.5th 859, 872.) Nelson's sole contention on appeal is that Bridgers's statements are not protected conduct under the first prong of the anti-SLAPP analysis. He does not challenge the

trial court's finding that he failed to establish a probability of success. Therefore, to the extent Bridgers's statements are protected conduct, Nelson concedes that his claims based on those statements must be stricken. Accordingly, his appeal rises or falls based on whether Bridgers's Instagram post was protected conduct under the first prong of the anti-SLAPP statute.

2. *Nelson's Claims Arise from Bridgers's Instagram Post and Not That of Bannon*

"The defendant's first-step burden is to identify the activity each challenged claim rests on and demonstrate that that activity is protected by the anti-SLAPP statute. A 'claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.' [Citation.] To determine whether a claim arises from protected activity, courts must 'consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.' [Citation.]" (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884.)

The parties agree that Nelson's claims all arise from Bridgers's statements in her Instagram post. Thus, the question we analyze is whether Bridgers's statements fall within section 425.16, subdivision (e). As noted above, Bannon's comments (on which Bridgers commented, and to which she directed readers) have already been held to be protected conduct under section 425.16, subdivision (e)(3). (*Nelson v. Bannon*, *supra*, B319433.) Neither party disputes that collateral estoppel dictates treating Bannon's Instagram post as protected conduct under section

425.16, subdivision (e)(3) for purposes of this appeal.[3] Bridgers further contends Nelson is collaterally estopped from denying other issues such as whether he is a public figure based on the decision in *Nelson v. Bannon*, *supra*, B319433. We need not address whether such additional issues were "necessarily decided in the previous suit" and "identical to the issue sought to be relitigated" in this appeal (*Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903, 910), because we independently conclude Bridgers's statements themselves are protected conduct.

3. *Bridgers's Instagram Post Was Made in a Public Forum in Connection with an Issue of Public Interest*

Bridgers contends that her post was subject to section 425.16, subdivision (e)(3) as a "writing made in . . . a public forum in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) Bridgers initially asserts, and Nelson does not contest, that her public Instagram account constitutes a "public forum." We agree. (See *Barrett v. Rosenthal*, *supra*, 40 Cal.4th at p. 41, fn. 4 ["Web sites accessible to the public . . . are 'public forums' for

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[3] We deny Nelson's request for judicial notice of an opinion in a third case in which Nelson accused another woman (Noel Wells) of defamation and other torts for sending an email to a music manager accusing Nelson of predatory behavior towards Wells and other young female musicians. (*Nelson v. Wells* (Oct. 27, 2023, B320223) [nonpub. opn.].) In *Nelson v. Wells*, our colleagues in Division Two found the private email at issue was not protected conduct under the anti-SLAPP law. (*Ibid.*) Although we deny the request for judicial notice, we have considered both *Nelson v. Wells* and *Nelson v. Bannon* to the extent they are relevant to the issue of collateral estoppel. (Cal. Rules of Ct., rule 8.1115(b)(1).)

purposes of the anti-SLAPP statute"]; *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1252 [posts on the defendant's Facebook page and Instagram account were "made 'in a place open to the public or a public forum' within the meaning of [§] 425.16, subd[.] (e)(3)"].)

The next question is whether Bridgers made her post "in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) This question involves two steps of its own. First, we must identify an "issue of public interest." Courts have generally recognized three types of statements as concerning "an issue of public interest": those relating to "a person or entity in the public eye," those which "could directly affect a large number of people beyond the direct participants," and those involving "a topic of widespread, public interest." (*Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924; see also *FilmOn*, *supra*, 7 Cal.5th at p. 149 [citing *Rivero* with approval].) The "first step [of identifying an issue of public interest] is satisfied so long as the challenged speech or conduct, considered in light of its context, may reasonably be understood to implicate a public issue, even if it also implicates a private dispute." (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1253; see also *FilmOn*, *supra*, at p. 149 ["if the social media era has taught us anything, it is that speech is rarely 'about' any single issue"].)

"Second, we look to the 'functional relationship' between the challenged activity and the 'public conversation' about that issue, and ask whether the activity ' "contribute[s]" ' to public discussion of the issue." (*Geiser v. Kuhns*, *supra*, 13 Cal.5th at p. 1249, quoting *FilmOn*, *supra*, 7 Cal.5th at pp. 149-150.) To determine whether an activity "contributes" to public discussion,

courts "examine whether a defendant—through [the activity]—participated in, or furthered, the discourse that makes an issue one of public interest." (*FilmOn*, at p. 151.)[4]

Finally, context, including "speaker, audience, and purpose," is an important consideration in both steps of analyzing whether Bridgers's Instagram post was "in connection with an issue of public interest" under section 425.16, subdivision (e). (*FilmOn*, *supra*, 7 Cal.5th at pp. 148, 150; see also *Geiser v. Kuhns*, *supra*, 13 Cal.5th at pp. 1253-1254.)

a. Bridgers's speech implicated issues of public interest.

Bridgers's post referred to "grooming" by Nelson "that is being brought to light." It then referred readers to Bannon's claims on her Instagram account, which Nelson alleges included the claim he "abuses women." Bannon's post referred to her being 11 years younger than Nelson when they began their relationship and how he took advantage of her, and further

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[4] Bridgers argues that *FilmOn*'s "functional relationship" test applies only to conduct covered by section 425.16, subdivision (e)(4), and not to statements potentially covered by section 425.16, subdivision (e)(3). We disagree. The *FilmOn* court based its "functional relationship" test, in part, on the phrase "in connection with," which appears in both subdivision (e)(3) and (e)(4). (*FilmOn*, *supra*, 7 Cal.5th at p. 151; see *Bernstein v. LaBeouf* (2019) 43 Cal.App.5th 15, 23, fn. 5 ["While *FilmOn* addressed the meaning of the phrase 'in connection with' as it is used in subdivision (e)(4) of section 425.16, we see no reason why the same analysis should not apply when determining whether a statement was made 'in connection with' a public issue or a matter of public interest for purposes of subdivision (e)(3) of section 425.16"].)

attached a screenshot of a text from another woman saying she later came to recognize Nelson's behavior as grooming. Given this context, Bridgers's post implicated the issue of men using psychological, economic, and other means of manipulation to gain control over, and abuse, women. This is a topic of widespread public interest. (E.g., *Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 238 ["[d]omesic violence is an extremely important public issue in our society" and constitutes an issue of public interest under § 425.16]; *Coleman v. Grand* (E.D.N.Y. 2021) 523 F.Supp.3d 244, 259 ["sexual impropriety and power dynamics in the music industry, as in others, were indisputably an issue of public interest"].)[5]

Bridgers's post further concerned an issue of public interest by warning those who might do business with Nelson about his alleged misconduct. Courts have found that providing such consumer protection information to the public can constitute protected conduct under section 425.16. "Consumer information . . . , at least when it affects a large number of persons, also generally is viewed as information concerning a matter of public interest." (*Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 898.) For example, in *Abir Cohen Treyzon Salo, LLP v. Lahiji* (2019) 40 Cal.App.5th 882, 888, the court held that statements critical of a law firm's performance which were posted on the Yelp and Ripoff

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[5] We reject Nelson's contention that Bridgers's argument that her post involved a topic of widespread public interest is too cursory for us to consider. (See *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979 [" 'This court is not required to discuss or consider points which are not argued or which are not supported by citation to authorities or the record' "].) Bridgers expressly and sufficiently raises the issue at multiple points in her brief.

Report Web sites, an online lawyer directory, and the law firm's Facebook page, were protected under section 425.16, subdivision (e)(3). (*Id.* at pp. 885-886, 887-888.) In *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, the court held the defendant's statements "posted to the Ripoff Report Web site about [the plaintiff]'s character and business practices" were protected conduct because they "plainly f[e]ll within the rubric of consumer information . . . and were intended to serve as a warning to consumers about [the plaintiff's] trustworthiness." (*Id.* at p. 1146.)

Bridgers's post asserted that Nelson engaged in "stealing" and "violence," and directed "anyone who . . . is considering working with [Nelson]" to Bannon's post. Bannon's post, in turn, asserted, among other things, that Nelson "sells stolen gear," " 'manufactures fake "rare" guitars to defraud collectors and museums . . . and uses all manners [*sic*] of devious engineering to trick unwitting . . . buyers into paying a premium for modified junk,' " had defrauded a neighbor and forged that neighbor's signature, and robbed a storage unit of its contents. It also included a screenshot from the Ripoff Report Web site about Nelson, the very same Web site mentioned in the cases cited above, along with screenshots from multiple other individuals accusing Nelson of dishonest business practices. Bannon's post also alleged that Nelson had committed multiple acts of violence.

The information provided by Bridgers affected the large number of people who might consider doing business with Nelson. Nelson alleges that he "has sold millions of dollars' worth in collectible musical instruments and recording equipment on Reverb.com, the largest online marketplace dedicated to buying and selling new, used, and vintage musical instruments and recording equipment," "maintain[ing] a monthly

average of $58,000 worth of musical equipment sales on Reverb.com over the majority of his five-year tenure on Reverb.com, [and] achieving over $100,000 a month on some occasions (e.g., $102,663 in August 2020)." In addition, Nelson operated a recording studio, alleging that he "is a well-established record producer," and that "[n]umerous well-known artists and musicians have worked with [him] or worked at [his recording studio]." Nelson's trustworthiness and character thus constitute an issue of public interest because it is of interest to the substantial number of people who might buy musical instruments or recording equipment from Nelson, and musicians considering using Nelson's studio to record.[6]

b. Bridgers participated in the discourse on issues of public interest.

A defendant's statement that implicates an issue of public interest (as Bridgers's post did here) constitutes protected activity when the defendant, through the statement, "participate[s] in, or further[s], the discourse that makes an issue one of public interest." (*FilmOn*, *supra*, 7 Cal.5th at p. 151.)

i. *Abuse*

Warning others about abusive conduct by an individual such as Nelson furthers the public discourse. *Cross v. Cooper* (2011) 197 Cal.App.4th 357, cited by the *FilmOn* court as an

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[6] Although we conclude that Nelson's character is an issue of public interest because of the scope of his business ventures, we reject Bridgers's contention that Nelson's allegations show he is a public figure to the extent that *any* information about him is of public interest even if unrelated to whether one should do business with him.

example of a defendant "participat[ing] in, or further[ing]" public discourse on an issue, is instructive. In *Cross*, a homeowner sued her tenant after the tenant thwarted the sale of the home by, among other things, disclosing to a buyer's agent that a convicted sex offender lived nearby. (*Cross v. Cooper*, at p. 366.) The court concluded the tenant's disclosure was protected under section 425.16 because "preventing child sexual abuse and protecting children from sexual predators are issues of widespread public interest. Thus, insofar as [the tenant]'s disclosure served those interests by alerting prospective buyers of the potential risk to children posed by a registered sex offender who lived nearby, his conduct involved a private communication directly related to an issue of considerable interest to the general public . . . ." (*Cross v. Cooper*, at p. 375; see also *Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1547 ["whether or not an adult who interacts with minors in a church youth program has engaged in an inappropriate relationship with any of the minors is clearly a matter of public interest"].)

Furthermore, Bridgers "participated in" and "furthered" the public discussion of abuse by commenting on Bannon's post, which itself was made in a public forum and was protected conduct. When public allegations of abuse are corroborated, it serves not only to further the discussion of the specific claims at issue, but also to embolden others who are being victimized to come forward. (See *Elliott v. Donegan* (E.D.N.Y. 2020) 469 F.Supp.3d 40, 51-52 [describing how "the #MeToo movement became a chorus bolstering the credibility of victims of sexual assault and harassment"].) Additionally, Bridgers had a history of publicly calling out abusive conduct by other men in the music industry, which placed the allegations against Nelson into a

broader discussion of abusive conduct by men in the music industry.

ii. *Theft and Violence*

Bridgers also participated in a public discussion of whether it was advisable to do business with Nelson. Her post was expressly directed at those who were "considering working with" Nelson and stated Bridgers had "witnessed" and could "personally verify" "stealing [and] violence." As with the issue of grooming, Bridgers's post added to the public discussion begun by Bannon. Furthermore, Bannon's post did not simply raise the issue of her own personal experience with Nelson, but instead accused him of theft and fraud in his dealings with others and included screenshots of numerous complaints made by other individuals about Nelson's business practices. (See *Woodhill Ventures, LLC v. Yang*, *supra*, 68 Cal.App.5th at p. 634 [consumer protection information is protected under § 425.16 "when the 'consumer information' goes beyond recounting a one-time dispute between a buyer and a seller"]; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1366 ["consumer information that goes beyond a particular interaction between the parties and implicates matters of public concern that can affect many people is generally deemed to involve an issue of public interest for purposes of the anti-SLAPP statute"].)[7]

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[7] Nelson distinguishes this case from *Wilbanks v. Wolk*, *supra*, 121 Cal.App.4th 883, which involved internet posts by an individual who made a business of providing consumer information. (*Id.* at p. 899.) However, *Wilbanks* does not suggest that providing consumer information is only protected if it is done in the course of a person's business, and other cases have found

Nelson apparently contends that, in deciding whether Bridgers participated in a public discussion of Nelson's trustworthiness and character, it is improper to consider the claims made in Bannon's post, in part because Nelson alleged that Bannon's claims were false. We disagree. First, Bridgers's post referenced and corroborated Bannon's post and thus Bannon's post provides critical context to determine what issues Bridgers's post implicated. Nelson provides no cogent argument to the contrary. Second, even if the truth of Bannon's claims were relevant to analyzing whether Bridgers's statements were protected conduct as opposed to analyzing the second prong of whether Nelson's claims have minimal merit, there was no evidence before the trial court that Bannon's claims were false.[8]

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consumer protection information provided by non-professionals to be protected conduct. (See *Abir Cohen Treyzon Salo, LLP v. Lahiji*, *supra*, 40 Cal.App.5th at pp. 885-886, 887-888 [posts about a law firm by a former client]; *Chaker v. Mateo*, *supra*, 209 Cal.App.4th at pp. 1141-1142, 1146 [posts by the mother of a woman who had been personally involved with the plaintiff].)

[8] Nelson makes the meritless argument that his complaint's *allegations* that Bannon's statements were false must be accepted as true in determining whether Bridgers's post constitutes protected activity. Section 425.16, subdivision (b)(2) expressly states to the contrary, and requires that "[i]n making its determination [whether to grant a special motion to strike], the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." This provision applies to the determination of whether a cause of action arises from activity protected by section 425.16. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

c. Nelson's allegations regarding Bridgers's motives.

Nelson argues that Bridgers's post was not made in connection with any issue of public interest because it was part of a personal vendetta by Bannon against Nelson, in which Bridgers participated because she had a relationship with Bannon.[9] Nelson fails to explain how the alleged motivation of Bridgers is relevant to whether, through her post, she participated in public debate. Nelson's argument would appear to relate more to whether the post by Bridgers implicated any issues of public interest in the first place, or whether it instead implicated only a private dispute. Our Supreme Court, however, has made clear that whether a statement implicates a public issue is determined by how the statement is reasonably understood by an "objective observer." (*Geiser v. Kuhns*, *supra*, 13 Cal.5th at p. 1254.) This step of the test "is satisfied so long as the challenged speech or conduct, considered in light of its context, may reasonably be understood to implicate a public issue, *even if it also implicates a private dispute*. Only when an expressive activity, viewed in context, cannot reasonably be understood as implicating a public issue does an anti-SLAPP motion fail at [this] step." (*Id.* at pp. 1253-1254, italics added.) As discussed above, we conclude

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[9] Nelson again relies on the *allegations* in his first amended complaint to support his contentions that Bannon had a vendetta against him. As discussed, Nelson's argument that we must accept these allegations as true at this stage of the analysis is meritless. In any event, we conclude that Nelson's argument fails even if we assume his allegations are true.

that Bridgers's post "may reasonably be understood to implicate" issues of public interest. (*Id.* at p. 1253.)[10]

4. *Conclusion*

For these reasons, we conclude Nelson's claims arose from Bridgers's Instagram post, and that her post constituted protected activity under section 425.16, subdivision (e)(3). As Nelson admittedly did not show a probability of succeeding on his claims, the trial court properly granted Bridgers's special motion to strike and dismissed Nelson's claims.

C. The Trial Court Did Not Err by Awarding Bridgers Attorney's Fees

Nelson does not challenge the trial court's attorney's fee award other than to contend we should reverse it if we reverse the granting of the special motion to strike. As we affirm the granting of the special motion to strike, we also affirm the attorney's fees award and the amended judgment incorporating that award.

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[10] Bridgers filed a motion requesting we take judicial notice of screenshots from a Web site allegedly belonging to Nelson and various documents related to an ex parte application and later motion Bridgers filed seeking to have the trial court order Nelson to remove material from his Instagram account. Bridgers contends these materials are relevant to Nelson's contention that his dispute with Bridgers is a "private matter." These materials all concern actions taken by Nelson after the trial court's ruling on the special motion to strike, and thus are not relevant to the issues presented in this appeal. Accordingly, we deny the motion. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

DISPOSITION

The trial court's amended judgment and orders, including the attorney's fees award, are affirmed. Bridgers is awarded her costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.

EXHIBIT C

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SUPERIOR COURT OF STATE OF CALIFORNIA

COUNT OF SAN FRANCISCO

[UNLIMITED JURISDICTION]

MAURY BLACKMAN, an individual,

Plaintiff,

v.

THE CITY AND COUNTY OF SAN FRANCISCO, DIANE BRYAN; and DOES 1-25, inclusive,

Defendants.

Case No.: **CGC-25-624793**

COMPLAINT FOR DAMAGES

1. Negligence Per Se – Breach of Duty to Perform Mandatory Duty – Violation of California Civil Code § 815.6
2. Negligence – Violation of California Civil Code § 815.2
3. Public Disclosure of Private Facts

DEMAND FOR JURY TRIAL

Plaintiff MAURY BLACKMAN ("Plaintiff") complains against Defendants THE CITY AND COUNTRY OF SAN FRANCISCO ("CITY"), DIANE BRYAN ("Bryan"), and DOES 1-25 (collectively "Defendants") hereby alleges as follows:

INTRODUCTION

1. Plaintiff commenced this action because Defendants repeatedly released a sealed arrest report or its contents to unauthorized individuals, including a former City employee who was engaged in an adversarial proceeding against Plaintiff's employer, in violation of California Penal Code §§ 851.91(b)(4) and (5), a valid Court Order sealing the arrest report, and the California Constitution.

2. The City concedes, as it must, that the arrest report had been sealed by a valid court order before it was released by Defendants to unauthorized persons, and that disclosing the sealed arrest

report and its contents "is contrary to California law." (*See First Amendment Coalition et al. v. David Chiu et al.*, Case No. 24-cv-08343-RFL, Doc. #17)

3. California's public policy, as set forth in the Penal Code, by the Supreme Court in cases such as *Loder v. Municipal Court*, 17 Cal.3d 859, 868 (1976), and in the California Labor Code §432.7, also recognizes the critical importance of safeguarding the rights of an individual who was arrested without a conviction, particularly – though not exclusively – when the arrest report was sealed by a court order.

4. Moreover, after Plaintiff notified Defendants of what had occurred, Defendants failed to appropriately investigate and refused to use the authority granted to them under Penal Code § 851.92(c) to punish the parties that engaged in the unlawful conduct and mitigate Plaintiff's damages.

5. Defendants' conduct has caused and will continue to cause Plaintiff irreparable damage, including substantial financial damage, damage to Plaintiff's reputation and mental health, and the permanent stigmatization of Plaintiff.

JURISDICTION AND VENUE

6. Plaintiff brings this action pursuant to California law cited with particularity below.

7. The amount in controversy as to each Cause of Action set forth below following the factual allegations exceeds the minimum jurisdictional threshold of this Court.

8. Jurisdiction is proper pursuant to California Code of Civil Procedure § 410.10.

9. This Court has personal jurisdiction over Defendants because each Defendant had sufficient contacts with California and intentionally availed itself of the benefits of California; and asserting personal jurisdiction would be fair and substantial.

10. Venue is proper in this Court pursuant to California Code of Civil Procedure § 395A because the injuries described herein occurred in the County of San Francisco.

PARTIES

11. Plaintiff Maury Blackman is an individual and a resident of San Francisco, California.

12. Defendant City and County of San Francisco is, and at all times relevant herein was, a public entity existing in the state of California. At all times relevant to this action, the San Francisco Police Department ("SFPD") is and was a part of the City.

13. Upon information and belief, Defendant Bryan is a resident of the State of California and of this judicial district. At all relevant times herein, Bryan was employed by the City and acting under color of law and in her individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City.

14. Plaintiff does not know the true names and capacities of Defendants sued herein as Does 1-25, including but not limited to members of the "investigative unit" who approved the release of the unredacted Sealed Report, and therefore sues these Defendants by fictitious names. Plaintiff will amend this Complaint to state the true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences alleged herein, and thereby proximately caused Plaintiff's injuries and damages alleged herein.

15. At all times herein mentioned, the acts and omissions of various Defendants, and each of them (including the Does), concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged.

GOVERNMENT CLAIMS

16. In accordance with the provisions of California Government Code § 910, on September 12, 2024, Plaintiff made a written Claim for Damages to the Defendant City.

17. By the Claim for Damages and correspondence sent by and on behalf of Plaintiff to the City, Plaintiff communicated in detail all relevant theories and facts of his claims.

- Plaintiff and representatives of Plaintiff notified the Defendant City through its employees in October 2023 and several times thereafter that Defendants disclosed the Sealed Report to an unauthorized person.
- By May 2024, as a result of Plaintiff's communication with the City about these issues, the City had commenced an investigation into Plaintiff's issues, including but not necessarily limited to an investigation by Investigator Teri Torgeson.
- By email dated June 30, 2024, Plaintiff notified Defendant City employees Lieutenant Lisa Springer, Officer-in-Charge, Internal Affairs Division; Alica Cabrera, City Attorney; and Lieutenant Christopher G. Beauchamp, SFPD, of all of the relevant

theories and facts of his claim arising from the City's disclosure of the Sealed Report to an unauthorized person.

- By email dated August 29, 2024, Plaintiff sent Lt. Beauchamp another detailed description of the underlying events concerning his Claim, and this email was forwarded to Springer, Cabrera, and Steven Betz.
- By letter dated September 19, 2024, Defendant City, through City Attorneys David Chiu and Jennifer Choi, notified Substack, the platform that was hosting the Sealed Report, that it was in violation of Penal Code § 851.92(c) and Substack's Acceptable Use Policy and instructed Substack to "immediately remove the Incident Report and its contents from your website and ensure that the index to postings no longer allows for the Incident Report to be viewed or downloaded … by no later than September 23, 2024." This letter from the Defendant City identifies the blog posts, which first appeared on September 14, 2023, that posted the Sealed Report.
- Between September 24 and 26, 2024, Plaintiff and Plaintiff's representative communicated to the City all relevant theories and facts of his claim, including correspondence on September 26, 2024 that laid out in detail all of the theories and facts.
- On October 3, 2024, Plaintiff's representative sent correspondence to David Chiu, the San Francisco City Attorney, that communicated the relevant theories and facts of Plaintiff's claims.
- By letters dated October 3, 2024, the Defendant City, through City Attorneys David Chiu and Jennifer Choi notified Substack and Jack Poulson, through their respective counsel, that they were violating the Penal Code. These letters specifically identified by URL Poulson's blog posts that disseminated the Sealed Report.

18. Accordingly, as of October 28, 2024, Defendant City had already been put on notice of Plaintiff's theories and the underlying facts such that Defendant City was able to fully investigate Plaintiff's claims.

19. On October 28, 2024, Plaintiff's Claim for Damages against Defendant City was "denied," and the City gave Plaintiff six months from October 28, 2024 to file a court action on this claim. Plaintiff commenced this action within that time period.

20. Defendant City did not notify Plaintiff that his Claim for Damages was insufficient or otherwise untimely. Accordingly, pursuant to Gov't Code §§ 911.3(a), (b), the City has waived any untimeliness defense that it might have had.

STATEMENT OF FACTS

The Sealing Order Was Entered On February 17, 2022

21. On February 17, 2022, The Honorable Carolyn Gold of San Francisco Superior Court entered an "Order to Seal Arrest and Related Records" pursuant to Penal Code §§ 851.91 and 851.92 (the "Sealing Order"). According to the Sealing Order, the arrest and related records (referred to as the "Sealed Report") "shall be sealed under the provisions of section 851.91, and the arrest deemed not to have occurred."

22. Pursuant to Penal Code § 851.92(b)(4) court records related to the sealed arrest "shall … be stamped 'ARREST SEALED: DO NOT RELEASE OUTSIDE OF THE CRIMINAL JUSTICE SECTOR' and shall note next to the stamp the date of the sealing and the section pursuant to which the arrest was sealed."

23. Pursuant to Penal Code § 851.92(b)(5): "Arrest records, police investigative reports, and court records that are sealed under this section shall not be disclosed to any person or entity except the person whose arrest was sealed or a criminal justice agency. Nothing shall prohibit disclosure of information between criminal history providers."

24. Based on the Sealing Order, the Penal Code, and California's public policy, Plaintiff had a reasonable expectation of privacy in the Sealed Report.

25. The City has acknowledged that "Courts recognize the compelling reasons in protecting the privacy and safety of those involved in the criminal justice system even when no specific statutory protection applies, as it does here." (*See First Amendment Coalition et al. v. David Chiu et al.*, Case No. 24-cv-08343-RFL, Doc. #17 (internal citations omitted))

26. The express language of the Sealing Order and the Penal Code make clear that the City was prohibited as an unequivocal matter of law from disseminating the arrest report to an

unauthorized person. Moreover, California's public policy safeguarding the privacy of an arrest that did not lead to a conviction is also set forth in Labor Code § 432.7 and by the California Supreme Court. *See Loder v. Municipal Court*, 17 Cal.3d 859, 868 (1976).

27. Pursuant to California Rule of Court, Rule 2.551(h)(1), "[a] sealed record must not be unsealed except on order of the court."

28. By Order of a California Court dated January 7, 2025, the Superior Court in San Francisco County held that "The Incident Report has already been sealed by order of Judge Gold. … Here, the Incident Report is sealed, thus it and material contained in it cannot be publicly disclosed in any court filing. Any party seeking to publicly disclose material from the Incident Report must first obtain an unsealing order from Judge Gold."

29. No party has ever sought to challenge or challenged Judge Gold's Sealing Order and it remains unchanged as of the date of this filing.

30. The Sealed Report included private, identifying information about Plaintiff, the woman identified in the Sealed Report, and a potential witness – including, names, email address, phone number, home address, and a physical description of both Blackman and the woman identified in the Sealed Report. Indeed, the City admitted that the Sealed Report included private, identifying information that was required as a matter of law to be sealed. (*See First Amendment Coalition et al. v. David Chiu et al.*, Case No. 24-cv-08343-RFL, Doc. #17)

Defendants Repeatedly Released The Sealed Report and/or Its Contents To Unauthorized Individuals.

31. Plaintiff did not know and could not have known that prior to May 3, 2022, Newton Oldfather, a private attorney at Lewis & Llewellyn, LLP involved at that time in an adversarial proceeding against Plaintiff's employer., who had served as an attorney for the San Francisco City Attorney's Office and the Department of Police Accountability from November 2012 until April 2021, obtained the case number of an incident in which Plaintiff was involved in 2021.

32. Upon information and belief, an employee of the City provided Oldfather with this case number.

33. Plaintiff did not know and could not have known that three months after the Sealing Order was issued, Defendants released the unredacted arrest report on May 17, 2022, without a stamp indicating that it was sealed, to Oldfather, who was not authorized to receive the Sealed Report.

34. At the time Defendants released the unredacted Sealed Report to Oldfather, Oldfather, along with attorney Kennith Nabity, was representing former employees of Plaintiff's prior employer in a civil action pending in Santa Clara County Superior Court against Plaintiff's employer (the "Santa Clara Litigation").

35. Oldfather requested *on two separate occasions* – first on May 3, 2022 (the "Initial Request") and then on May 9, 2022 (the "Second Request") – a copy of the sealed Report. Both requests included the case number, which upon information and belief was not publicly available at that time.

36. Oldfather made his Second Request before he received a response to his Initial Response.

37. Oldfather did not receive a response to his Initial Request (made on May 3) until July 21, 2022. On that day, Daniel Leung, of the SFPD, sent an email to Oldfather in connection with Oldfather's Initial Request for the Sealed Report that read: "Dear Newton Oldfather: We have received your request for Incident Report No. [XXX]. In order to process the request, please provide authorization from the party named in the report. Your request will be processed upon receipt."

38. Leung did not release the report to Oldfather, who did not have authorization from Plaintiff to make this Request.

39. This communication from Leung to Oldfather, in response to Oldfather's May 3, 2022 Initial Request for the arrest report, demonstrated that the City knew or should have known that the arrest report was not to be released to anyone without authorization.

40. However, on May 9, 2022, at 1:00 AM (*six days after Oldfather's initial request and prior to getting the response from Leung on July 21, 2022 to his Initial Request*), Oldfather made his Second Request to the SFPD for the Sealed Report.

41. Defendants have failed to provide any explanation for Oldfather's making a Second Request for the Sealed Report six days after his initial request and before the City responded to his Initial Request.

42. On May 16, 2022 (one week after the May 9 request and prior to the SFPD responding to Oldfather's May 3 request), Defendant Bryan wrote to Oldfather: "We have received your report request, but due to the nature of the report we must route the request to the investigative unit for final release/approval. Please be patient as this may add several days to our processing time."

43. Defendants have failed to provide any explanation as to why the investigative unit gave final release and approval to authorize the release of an unredacted Sealed Report to an unauthorized person.

44. On May 17, 2022, Bryan wrote to Oldfather that the SFPD received his request dated May 9, 2022, that his request has been processed, and that the documents he requested have been made available to him via the San Francisco Public Records Portal.

45. The Sealed Report that the SFPD provided to Oldfather was not redacted. Among other things, it included Plaintiff's name and personal identifying information; the name, home address, and physical identifying information of the woman referred to in the Sealed Report, and the name and home address of the woman who made the complaint to the SFPD.

46. Upon information and belief and based on the facts known to Plaintiff, the SFPD's policy and practice, consistent with California law, prohibit the SFPD from releasing identifying information about a potential victim and/or a witness to an unauthorized person.

47. California Penal Code §§ 832.7(b)(5) and (6) require sealing documents to remove personal data or information to preserve the anonymity of complainants and witnesses and to protect confidential information of which disclosure would cause an unwarranted invasion of personal privacy.

48. In pleadings filed in *First Amendment Coalition et al. v. David Chiu et al.*, Case No. 24-cv-08343-RFL, Doc. #17, the City asserted that the dissemination of the Sealed Report "is contrary to California law," referring to California Panel Code § 851.92(b)(2)(5).

49. The unredacted Sealed Report that the SFPD released to Oldfather had a unique watermark identifier, but it was *not* stamped "ARREST SEALED: DO NOT RELEASE OUTSIDE OF THE CRIMINAL JUSTICE SECTOR" or any words to that affect.

50. Bryan's correspondence with Oldfather made no reference to Oldfather's Initial Request or to Oldfather's needing authorization from Plaintiff to obtain the Sealed Report.

51. Defendants have never provided any explanation for the release of the unredacted Sealed Report to an unauthorized person.

52. According to a Sworn Declaration of Jack Poulson filed under seal in San Francisco Superior Court, after Poulson received the Sealed Report, in or around September 2023, he "phoned the San Francisco Police Department's Crime Information Services Unit at 415-575-7232 and, after providing the incident report number (210-844-280), asked for and received confirmation of each pertinent detail in the report, including: the name of the reporting officer, the street address and unit number at which the arrest took place, the names of the arrested individual and his alleged victim, as well as the alleged victim's age and statement to the police …. The SFPD did not inform [Poulson] that the Incident Report had been sealed."

53. On September 14, 2023, Poulson, who published a blog on Substack, disseminated the Sealed Report in its unredacted form. Prior to Poulson's publication, Plaintiff did not know, and could not have reasonably known, that Defendants had released the Sealed Report to anyone without Plaintiff's authorization.

54. Plaintiff had no knowledge at the time of Poulson's September 14, 2023 blog post how Poulson received and became in possession of the Sealed Report or that the City had disseminated the unredacted Sealed Report to any third party.

55. The Sealed Report included information in which Plaintiff had a reasonable expectation of privacy, including identifying information about Plaintiff and the woman who was also referred to in the Sealed Report, based on the Sealing Order, the applicable sections of the Penal Code, and California's Labor Code § 432.7, which prohibits the dissemination of documents or information concerning an arrest that did not lead to conviction.

56. As soon as Plaintiff learned of Poulson's post, he requested that Poulson and Substack remove the post, and he also requested that the City, through its power pursuant to Penal Code §851.92(c) among other things, fine Poulson and Substack if they fail to remove the Sealed Report and the information contained in it.

57. In or around late 2023 or early 2024, an acquaintance of Plaintiff inquired through the SFPD about the Sealed Report. The SFPD confirmed to this individual the existence of the Sealed Report and the contents of the Sealed Report.

58. In or around spring 2024, a family member of Plaintiff inquired through the SFPD about the Sealed Report. The SFPD confirmed to Plaintiff's daughter the existence of the Sealed Report and the contents of the Sealed Report.

59. Throughout 2024, Plaintiff made repeated requests, many of which are alleged herein, to the City and the SFPD to enforce the Sealing Order, pursuant to which the City was prohibited from releasing the Sealed Report, and to investigate the facts that led to the City unlawful release of the Sealed Report, including to a former City attorney.

60. In September 2024, Plaintiff and the woman identified in the Sealed Report jointly met with Sgt. Degand of the SFPD to request, on behalf of both of them, that the City take action to stop the dissemination of the Sealed Report. During this meeting, Sgt. Degand told Plaintiff and the woman identified in the Sealed Report that the City knew that the report had been sealed by the Sealing Order and that it and the information contained in it should not have been released to any unauthorized party.

61. In or around September 2024, the SFPD told Plaintiff and the woman identified in the Sealed Report that the SFPD would investigate the release of the Sealed Report and, in particular, its release to Oldfather.

62. In or around September 2024, Deputy City Attorney Alicia Cabrera committed to Plaintiff's counsel Jim Hunter that she would provide frequent updates regarding the investigation into the unauthorized release of the Sealed Report to a former City employee and that the investigation was only weeks away from completion.

63. Despite these representations to report back on investigatory findings, the City never provided Plaintiff or counsel any further updates on its investigation into the unlawful dissemination of this sealed information, including the dissemination to a former City employee.

64. In letters sent by the City to Substack and Poulson (referred to herein), the City recognized that Poulson and Substack were in violation of Penal Code § 851.92(c), but the City refused to fine either, even after Substack and Poulson refused to abide by the City's demand to remove the Sealed Report by a date certain.

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Plaintiff Was Forced To Commence A Legal Action To Try To Stop The Unlawful Dissemination Of The Sealed Report.

65. When the City failed to use its power under Penal Code § 851.92(c) to penalize the parties who were disseminating the Sealed Report, , on October 3, 2024, Plaintiff commenced an action in state court against Poulson, Tech Inquiry, Inc. (Poulson's website that publishes his blogs), Substack, and Amazon Web Services seeking enforcement of Judge Gold's Sealing Order, the removal of the Sealed Report, and damages flowing from these entities unlaw conduct.

66. A California State Court, after determining that Judge Gold's Sealing Order remained in effect, dismissed Plaintiff's claims against these entities for injunctive and monetary damages based on a determination that Plaintiff's claims were prohibited by California's anti-SLAPP statute (CCP § 425.16).

Plaintiff Has Suffered Severe Injuries.

67. Plaintiff has suffered severe harm as a result of Defendants' actions described herein. Amont other things, Plaintiff's employment ended on December 10, 2023; Plaintiff's reputation amongst his friends, family and business associates has been forever altered; Plaintiff has suffered severe emotional distress; Plaintiff has been unable to find subsequent comparable employment, resulting in significant lost employment compensation and benefits; and Plaintiff has been forced to spend money to cure this situation that will haunt him the rest of his life.

FIRST CLAIM FOR RELIEF

NEGLIGENCE PER SE – BREACH OF MANDATORY DUTIES

(Against All Defendants)

Pursuant to Gov. Code, §§ 815.6, 820

68. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

69. Defendants, and each of them, were at all times relevant herein, subject to mandatory and non-delegable duties, including but not limited to, duties set forth Penal Code § 851.92(b)(4), Penal Code § 852.92(b)(5) and in the Sealing Order.

70. California Penal Code § 851.92(b)(4) directs that "a police investigative report related to the sealed arrest ***shall***, only as to the person whose arrest was sealed, be stamped 'ARREST

SEALED: DO NOT RELEASE OUTSIDE THE CRIMINAL JUSTICE SEC TOR,' and shall note next to the stamp the date the arrest was sealed and the section pursuant to which the arrest was sealed." The responsible local law enforcement agency shall ensure that this note is included in all master copies, digital or otherwise, of the police investigative report related to the arrest that was sealed." Pen. Code 851.92(b)(3).

71. California Penal Code § 851.92(b)(5) provides that "Arrest records, police investigative reports, and court records that are sealed under this section shall not be disclosed to any person or entity except the person whose arrest was sealed or a criminal justice agency. Nothing shall prohibit disclosure of information between criminal history providers."

72. According to the Sealing Order, the Sealed Report "shall be sealed under the provisions of section 851.91, and the arrest deemed not to have occurred." California Penal Code § 166 prohibits any person from disobeying a court order.

73. The language of each Penal Code §§ 851.92(b)(4), 851.92(b)(5), and the Sealing Order affirmatively imposes a duty and provides implementing guidelines.

74. Defendants violated these provisions of the Penal Code by the conduct described herein. Specifically, and among other things, Defendants failed to include the required stamp and note on the Sealed Report when the unredacted Sealed Report was released to Oldfather; released the Sealed Report and its contents on multiple occasions to unauthorized individuals, including releasing the unredacted Sealed Report to Oldfather at or around the same time that Defendants acknowledged that Oldfather was not an authorized recipient and only after approval was sought and received from the "investigative unit"; and failing to abide by the Sealing Order by this same conduct.

75. The City failed and refused to enforce the prohibition on releasing the Sealed Report set forth in the Penal Code and the Sealing.

76. When Defendants violated these sections of the Penal Code and the Sealing Order, they were acting within the course of their employment.

77. Plaintiff is in the class of persons protected by these sections of the Penal Code and the Sealing Order.

78. Penal Code §§ 851.91 and 851.92 and the Sealing Order were enacted to protect individuals who were arrested without a conviction.

79. Had Defendants complied with the mandatory requirements of Penal Code §§851.92(b)(4) and (5) and the Sealing Order, the injuries Plaintiff has suffered and alleged herein would have been avoided, and Plaintiff would not have needlessly suffered the irreparable harm of the dissemination of these sealed documents and information.

80. These sections of the Penal Code are designed to protect the kind of injury complained of by Plaintiff.

81. Defendants' violation of Penal Code §§ 851.92(b)(4) and (5), and the Sealing Order, were a substantial factor in causing Plaintiff irreparable harm.

82. Defendants did not exercise reasonable diligence in discharging its ministerial duties established by these enactments. Among other things, Defendants repeatedly violated these sections of the Penal Code and did so after seeking and obtaining approval from the investigative unit, evidencing that it did not exercise reasonable diligence discharging these duties. In addition, Defendants' release of the unredacted Sealed Report to Oldfather, after his Initial Request was denied because he lacked authorization, demonstrates that the City, by its conduct or failure to enact sufficient safeguards, benefitted a former City employee to the detriment of Plaintiff, who was entitled to protection under the law.

83. Defendants' conduct described herein – including failing to stamp the Sealed Report, repeated disclosures of the Sealed Report, included in unredacted form, and the information contained in it to unauthorized individuals, and the violation of the Sealing Order – was not part of a deliberate and considered policy decision made by the City in which a conscious balancing of risks and advantages took place.

SECOND CLAIM FOR RELIEF

NEGLIGENCE

(Against All Individual Defendants)

Pursuant to Gov. Code, §§ 815.2, 820

84. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

85. Under Government Code § 815.2(a), the City is liable for acts and omissions of its employees under the doctrine of respondeat superior to the same extent as a private employer.

86. At all relevant times, the individuals responsible for the criminal acts described herein were employed by the City and SFPD and were under the City's and SFPD's direct supervision, employment, and control when they committed the criminal acts alleged herein.

87. Defendants owed Plaintiff a duty of care to take all reasonable steps to comply with Penal Code §§ 851.92 and the Sealing Order and to safeguard Plaintiff's privacy to protect him from the damages that flow from the release of this sealed information that was known to cause stigmatization.

88. Defendants breached their duty of care owed to Plaintiff by among other things repeatedly releasing the Sealed Report and information contained in it to unauthorized individuals and failing to take all possible action to retrieve the Sealed Report and information contained in it, including but not limited to releasing the Sealed Report to Oldfather, a former City employee, to be used against Plaintiff at the same time the City knew Oldfather needed but did not have authorization to obtain the Sealed Report.

89. As a direct, proximate, and legal result of Defendants' conduct, Plaintiff suffered the injuries described herein.

90. The acts and omissions of Defendants that proximately caused Plaintiff's injuries were within the scope of Defendants' employment with the City and the SFPD.

THIRD CLAIM FOR RELIEF

(Against All Defendants)

Public Disclosure of Private Facts

91. Plaintiff refers to and incorporates by reference each and every allegation contained in the foregoing paragraphs as though set forth fully herein.

92. As a result of Defendants' conduct described herein, Plaintiff was deprived of his right to privacy secured by the United State Constitution, and this deprivation was committed under color of state law.

93. Pursuant to California Constitution, Article 1, Section 1, "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

94. Defendants publicized private information concerning Plaintiff.

95. A reasonable person in Plaintiff's position would consider the publicity highly offensive.

96. Plaintiff's right to privacy includes, but is not limited to, his interest in avoiding disclosure of personal matters to unauthorized persons. Defendants' repeated disclosure to unauthorized persons of the Sealed Report and information contained in it in violation of the Sealing Order and Penal Code constitutes a violation of Plaintiff's privacy interest.

97. Courts recognize the compelling reasons in protecting the privacy and safety of those involved in the criminal justice system even when no specific statutory protection applies, as it does here.

98. Defendants knew or acted with reckless disregard of the fact that a reasonable person in Plaintiff's position would consider the publicity highly offensive.

99. Defendants disclosed this sealed information to a former City employee it knew or should have known was engaged in an adverse legal action against Plaintiff's employer.

100. Plaintiff was harmed.

101. Defendants' conduct in disseminating this information and refusing to take down this information was a substantial factor in causing Plaintiff's harm.

102. As a result of Defendants' public disclosure of private facts, Plaintiff has suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of income, reputational harm, and additional economic damages to be presented at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant Plaintiff relief as follows:

1. General damages for harm to reputation, humiliation mental anguish and emotional distress;
2. Compensatory damages for lost pay and benefits;
3. Applicable interest on Plaintiff's damages;
4. Attorney's fees;
5. Costs of the suit;
6. Enforcement of the Sealing Order; and

7. Such relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby respectfully demands a jury trial on each of the Causes of Action set forth above.

Dated: 25th day of April 2025

Respectfully Submitted,

THE MAREK LAW FIRM, INC.

BY: */s/ David Marek*
David Marek
Attorney for Plaintiff