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2 FOUNDATION FOR INDIVIDUAL RIGHTS
3 AND EXPRESSION
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18 David Snyder, Cal. Bar No. 262001
19 FIRST AMENDMENT COALITION
20 534 4th Street, Suite B
21 San Rafael, CA 94901-3334
22 Telephone: (415) 460-5060
23 Email: dloy@firstamendmentcoalition.org
24 Email: dsnyder@firstamendmentcoalition.org

25 *Attorneys for Plaintiffs*
26 * Pro hac vice application pending

27 **UNITED STATES DISTRICT COURT**
28 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

FIRST AMENDMENT COALITION,
VIRGINIA LAROE, and EUGENE
VOLOKH,

Plaintiffs,

v.

DAVID CHIU, in his official capacity as
City Attorney of San Francisco; and
ROB BONTA, in his official capacity as
Attorney General of California,

Defendants.

REDACTED — PUBLIC

Civil Case No. 3:24-cv-08343-TSH

**DECLARATION OF ADAM
STEINBAUGH IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 Under 28 U.S.C. § 1746, I, ADAM STEINBAUGH, declare as follows:

2 1. I am over the age of 18. I have personal knowledge of the facts set forth in
3 this declaration, and if called to testify as a witness, could do so competently under oath.

4 2. I am an attorney with the Foundation for Individual Rights and Expression,
5 counsel for Plaintiffs in this action. The sole purpose of this declaration is to offer
6 documentary evidence in support of Plaintiffs' motion for a preliminary injunction.

7 3. On November 8, 2024, I sent a request under the California Public Records
8 Act to the Office of the City Attorney of San Francisco.

9 4. On November 12, 2024, the Office of the City Attorney of San Francisco
10 produced records in response to my November 8 request. These records include Exhibits 1,
11 3–5, and 7–8.

12 5. A true and correct copy of email correspondence between Deputy City
13 Attorney Alicia Cabrera and attorney Jim Sutton, dated September 5, 6, and 23, 2024, is
14 attached as **Exhibit 1**.

15 6. A true and correct copy of a letter dated September 19, 2024, from Deputy
16 City Attorney Jennifer Choi to Substack, Inc., as publicly filed on November 11, 2024, as
17 Exhibit D to the Declaration of John Doe in *Doe v. Substack, Inc.*, San Francisco Superior
18 Court Case No. CGC-24-618681, is attached as **Exhibit 2**.

19 7. A true and correct copy of an email dated September 26, 2024, from David
20 Marek, attorney for [REDACTED], to Deputy City Attorney Jennifer Choi is attached as
21 **Exhibit 3**.

22 8. A true and correct copy of a letter dated October 3, 2024, from Deputy City
23 Attorney Jennifer Choi to Joshua C. Stokes, attorney for Jack Poulson, is attached as
24 **Exhibit 4**.

25 9. A true and correct copy of a letter dated October 3, 2024, from Deputy City
26 Attorney Jennifer Choi to Joshua A. Baskin, attorney for Substack, Inc., is attached as
27 **Exhibit 5**.

28

1 10. A true and correct copy of the Complaint publicly filed on October 3, 2024, in
2 *Doe v. Substack, Inc.*, San Francisco Superior Court Case No. CGC-24-618681, is attached
3 as **Exhibit 6**.

4 11. A true and correct copy of an email dated October 4, 2024, from David Marek
5 to Deputy City Attorney Jennifer Choi is attached as **Exhibit 7**.

6 12. A true and correct copy of the Declaration of Jack Poulson in Support of
7 Defendants Jack Poulson's and Tech Inquiry's Opposition to Plaintiff's Motion for
8 Temporary Restraining Order, publicly filed on November 13, 2024, in *Doe v. Substack,*
9 *Inc.*, San Francisco Superior Court Case No. CGC-24-618681, is attached as **Exhibit 8**.

10 13. A true and correct copy of the declaration of [REDACTED]
11 [REDACTED]'s Motion for Protective Order Limiting PMQ Deposition Topic
12 #11, publicly filed on [REDACTED] Santa Clara
13 County Superior Court Case No. [REDACTED] is attached as **Exhibit 9**.

14 14. A true and correct copy of the April 17, 2017, Senate Judiciary Committee
15 analysis of Senate Bill 393, as downloaded from the California State Senate website, is
16 attached as **Exhibit 10**.

17 15. A true and correct copy of Senate Bill 393 as introduced is attached as
18 **Exhibit 11**.

19
20 I declare under penalty of perjury under the laws of the United States of America
21 that the foregoing is true and correct and that this declaration was executed in
22 Philadelphia, Pennsylvania, on November 25, 2024.

23
24 
25 Adam Steinbaugh

Public.Records (CAT)

From: Cabrera, Alicia (CAT)
Sent: Monday, September 23, 2024 3:51 PM
To: 'Sutton, Jim'
Subject: RE: Setting up a time to talk

Yes, call the phone number listed below.



Alicia Cabrera
Deputy City Attorney
Office of City Attorney David Chiu
(415) 554-4673 **While I am working remotely, the best way to reach me is by e-mail.*
Pronouns: she/her/ella
Email: alicia.cabrera@sfcityatty.org

www.sfcityattorney.org

Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

The information in this email is confidential and may be protected by the attorney/client privilege and/or the attorney work product doctrine. If you are not the intended recipient of this email or received this email inadvertently, please notify the sender and delete it.

From: Sutton, Jim <jsutton@rutan.com>
Sent: Monday, September 23, 2024 3:05 PM
To: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>
Subject: RE: Setting up a time to talk
I'll call you at 5pm. Should I use the office line in your email signature?

Jim Sutton

150 Post Street, Suite 405 | San Francisco, CA 94108
O. (415) 732-7700 | D. (415) 732-4501 | M. (██████████)
jsutton@rutan.com | www.rutan.com



Privileged And Confidential Communication.

This electronic transmission, and any documents attached hereto, (a) are protected by the Electronic Communications Privacy Act (18 USC §§ 2510-2521), (b) may contain confidential and/or legally privileged information, and (c) are for the sole use of the intended recipient named above. If you have received this electronic message in error, please notify the sender and delete the electronic message. Any disclosure, copying, distribution, or use of the contents of the information received in error is strictly prohibited.

From: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>
Sent: Monday, September 23, 2024 1:54 PM
To: Sutton, Jim <jsutton@rutan.com>
Subject: RE: Setting up a time to talk

Hi Jim,

I am available to meet at 5 p.m. Although to be clear, I am not requesting a meeting. I simply used the email tread we previously used to communicate. But, I am happy to meet.

Thanks,
Alicia



Alicia Cabrera

Deputy City Attorney

Office of City Attorney David Chiu

(415) 554-4673 **While I am working remotely, the best way to reach me is by e-mail.*

Pronouns: she/her/ella

Email: alicia.cabrera@sfcityatty.org

www.sfcityattorney.org

Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

The information in this email is confidential and may be protected by the attorney/client privilege and/or the attorney work product doctrine. If you are not the intended recipient of this email or received this email inadvertently, please notify the sender and delete it.

From: Sutton, Jim <jsutton@rutan.com>

Sent: Monday, September 23, 2024 1:50 PM

To: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>

Subject: RE: Setting up a time to talk

Would 3pm or 5pm today work for you?

Jim Sutton

150 Post Street, Suite 405 | San Francisco, CA 94108

O. (415) 732-7700 | D. (415) 732-4501 | M. [REDACTED]

jsutton@rutan.com | www.rutan.com



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From: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>

Sent: Monday, September 23, 2024 1:20 PM

To: Sutton, Jim <jsutton@rutan.com>

Subject: RE: Setting up a time to talk

Hi Jim,

I want to follow up on our conversation. Attached is the letter we sent to Substack.

Best,

Alicia



Alicia Cabrera

Deputy City Attorney

Office of City Attorney David Chiu

(415) 554-4673 **While I am working remotely, the best way to reach me is by e-mail.*

Pronouns: she/her/ella

Email: alicia.cabrera@sfcityatty.org

www.sfcityattorney.org

Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

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From: Sutton, Jim <jsutton@rutan.com>

Sent: Friday, September 6, 2024 9:21 AM

To: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>

Subject: RE: Setting up a time to talk

Monday!

Jim Sutton

150 Post Street, Suite 405 | San Francisco, CA 94108

O. (415) 732-7700 | D. (415) 732-4501

jsutton@rutan.com | www.rutan.com



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From: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>

Sent: Friday, September 6, 2024 9:13 AM

To: Sutton, Jim <jsutton@rutan.com>

Subject: RE: Setting up a time to talk

You wrote Friday below but I am sure you meant Monday. Have a great weekend as well.

Alicia Cabrera

Deputy City Attorney

Office of the San Francisco City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Pronouns: she/her/ella

Tel: (415) 554-4673* *While I am working remotely, the best way to reach me is by e-mail.*

Email: alicia.cabrera@sfcityatty.org

The information in this email is confidential and may be protected by the attorney/client privilege and/or the attorney work product doctrine. If you are not the intended recipient of this email or received this email inadvertently, please notify the sender and delete it.

From: Sutton, Jim <jsutton@rutan.com>

Sent: Friday, September 6, 2024 9:12 AM

To: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>

Subject: RE: Setting up a time to talk

415/732-4501

Talk to you at 2:30pm on Friday, and have a nice weekend.

Jim Sutton

150 Post Street, Suite 405 | San Francisco, CA 94108

O. (415) 732-7700 | D. (415) 732-4501

jsutton@rutan.com | www.rutan.com



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intended recipient named above. If you have received this electronic message in error, please notify the sender and delete the electronic message. Any disclosure, copying, distribution, or use of the contents of the information received in error is strictly prohibited.

From: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>

Sent: Friday, September 6, 2024 8:24 AM

To: Sutton, Jim <jsutton@rutan.com>

Subject: RE: Setting up a time to talk

Good Morning,

Jenn Choi, Jim Hannawalt, and I are available to talk on Monday at 2:30. What phone number would you like us to call?

Thanks,

Alicia

Alicia Cabrera

Deputy City Attorney

Office of the San Francisco City Attorney

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Pronouns: she/her/ella

Tel: (415) 554-4673* *While I am working remotely, the best way to reach me is by e-mail.*

Email: alicia.cabrera@sfcityatty.org

The information in this email is confidential and may be protected by the attorney/client privilege and/or the attorney work product doctrine. If you are not the intended recipient of this email or received this email inadvertently, please notify the sender and delete it.

From: Sutton, Jim <jsutton@rutan.com>

Sent: Thursday, September 5, 2024 2:27 PM

To: Cabrera, Alicia (CAT) <Alicia.Cabrera@sfcityatty.org>

Subject: Setting up a time to talk

I could talk tomorrow (Friday) morning, or pretty much any time on Monday. Let me know what works for you.

Tx.

Jim Sutton

150 Post Street, Suite 405 | San Francisco, CA 94108

O. (415) 732-7700 | D. (415) 732-4501

jsutton@rutan.com | www.rutan.com



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CITY AND COUNTY OF SAN FRANCISCO



DAVID CHIU
City Attorney

OFFICE OF THE CITY ATTORNEY

JENNIFER CHOI
Deputy City Attorney

Direct Dial: (415) 554-3887
Email: jennifer.choi@sfcityattor.org

September 19, 2024

Via U. S. Mail and Electronic Mail

Substack
111 Sutter Street, 7th Flr.
San Francisco, CA 94104
["tos@substackinc.com"](mailto:tos@substackinc.com)

Re: Notice of Publication of Sealed Document

Dear Substack:

It has come to our office's attention that San Francisco Police Department incident report number [REDACTED] ("Incident Report") as well as its contents have been published in multiple postings on your website.¹ The Incident Report was previously sealed by court order. A copy of the court order sealing the report is attached.

Pursuant to California Penal Code section 851.92(c) and your own "Acceptable Use Policy," we expect that you will 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. Please alert us when the documents and its contents have been taken down from your website by no later than September 23, 2024. Finally, please refrain from publishing this material in the future.

If you would like to discuss further, please let us know. Thank you.

Very truly yours,

DAVID CHIU
City Attorney

JENNIFER E. CHOI
Deputy City Attorney

Encl.



From: [David Marek](#)
To: [Choi, Jennifer \(CAT\)](#)
Subject: Re: Substack Matter
Date: Thursday, September 26, 2024 11:22:16 AM
Attachments: [letter from Wilson Sonini 9-23-2024.pdf](#)
[Letter from Paulson attorney 9-25-2024.pdf](#)
[Response to Paulson Attorney 9-26-2024.pdf](#)
[2024_09_16_Take Down Demand Letter re \[REDACTED\] - Jack Paulson.pdf](#)

Jennifer

Thank you for speaking. Attached is (i) the response from Substack via Wilson Sonsini; (ii) our letter to Paulson; (iii) the response from Paulson's lawyer, Josh Stokes, and (iv) my response to Mr. Stokes.

Best,
David

On Thu, Sep 26, 2024 at 10:33 AM David Marek <david@marekfirm.com> wrote:

Jennifer

I can talk any time until 11:30. Please call me at 917-721-5042

I will send the substack correspondence shortly. I will also send the letter we got from Jack Paulson's attorney.

Thank you
David

David Marek
The Marek Law Firm
(650) 460-7148
(917) 721-5042
California • New York • Florida

On Sep 26, 2024, at 10:27 AM, Choi, Jennifer (CAT)
<Jennifer.Choi@sfcityatty.org> wrote:

Hi David,

I am happy to discuss. Do you mind sending the letter you sent to Substack and their response to your letter?

I have availability before 11:30 today, if you would like to give me a call at the number below.



Jennifer E. Choi

Chief Trial Deputy, Trial Team

Office of San Francisco City Attorney David Chiu

(415) 554-3887 Direct

www.sfcityattorney.org

Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

From: David Marek <david@marekfirm.com>
Sent: Wednesday, September 25, 2024 5:30 PM
To: Choi, Jennifer (CAT) <Jennifer.Choi@sfcityatty.org>
Subject: Fwd: Substack Matter

Jennifer

My email was bounced back, so I am trying again.

David

----- Forwarded message -----

From: David Marek <david@marekfirm.com>
Date: Wed, Sep 25, 2024 at 5:27 PM
Subject: Re: Substack Matter
To: [REDACTED]
Cc: Sutton, Jim <jsutton@rutan.com>, jennifer.choi@sfcityalty.org
<jennifer.choi@sfcityalty.org>

Jennifer

I am just following up on this. Is there a time we schedule to discuss these issues?

David

On Tue, Sep 24, 2024 at 12:10 PM David Marek <david@marekfirm.com> wrote:

Jennifer

Nice to meet you. Please let me know if there is a convenient time to connect.

David

On Tue, Sep 24, 2024 at 10:02 AM [REDACTED] wrote:

Jennifer,

Thank you for your continued efforts in notifying Substack about the court-ordered sealing of my incident, which [REDACTED]. Despite this clear legal directive, the document remains unlawfully hosted on both Substack's platform and their hosting provider, Amazon Web Services (AWS). David Marek (cc'd) recently sent another letter on my behalf to Substack, as well as other relevant parties.

Substack's legal representative has now responded, though disappointingly, they continue to assert that they are under no obligation to adhere to the court order. As you know, this is factually incorrect. I have attached their response for your reference.

Notably, their letter completely fails to acknowledge the existence of the court-ordered seal, which is the core issue here. Instead, they rely on generalized arguments about Section 230 protections, without any recognition of the specific legal obligations imposed by the court order.

If you don't mind, I would appreciate it if you could speak with Jim and David about this situation.

Best,

[REDACTED]

--

David Marek
The Marek Law Firm
o 650-460-7148
c 917-721-5042
California New York Florida

--

David Marek
The Marek Law Firm
o 650-460-7148
c 917-721-5042
California New York Florida

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The Marek Law Firm
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California New York Florida

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DAVID CHIU
City Attorney

JENNIFER CHOI
Deputy City Attorney

Direct Dial: (415) 554-3887
Email: jennifer.choi@sfcityattty.org

October 3, 2024

Via U. S. Mail and Electronic Mail

Joshua C. Stokes
Berry, Silberberg, & Stokes
11600 Washington Place, Suite 202C
Los Angeles, CA 90066
"jstokes@berrysilberberg.com"

Re: Notice of Publication of Sealed Document

Dear Mr. Stokes:

It has come to our office's attention that San Francisco Police Department incident report number [REDACTED] ("Incident Report") as well as its contents have been published in multiple postings on Substack by your client Jack Poulson.¹ The Incident Report was previously sealed by court order. A copy of the court order sealing the report is attached.

Pursuant to California Penal Code section 851.92(c) and Substack's "Acceptable Use Policy," we expect that you will immediately remove the Incident Report and its contents from Substack and ensure that the index to postings no longer allows for the Incident Report to be viewed or downloaded. Please alert us when the documents and its contents have been taken down from your website. Finally, please refrain from publishing this material in the future.

Thank you.

Very truly yours,

DAVID CHIU
City Attorney

JENNIFER E. CHOI
Deputy City Attorney

Encl.

¹ See [REDACTED]

also [REDACTED]

See

See also

See also

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



DAVID CHIU
City Attorney

JENNIFER CHOI
Deputy City Attorney

Direct Dial: (415) 554-3887
Email: jennifer.choi@sfcityattly.org

October 3, 2024

Via U. S. Mail and Electronic Mail

Joshua A. Baskin
Wilson Sonsini Goodrich & Rosati
One Market Plaza
Spear Tower, Suite 3300
San Francisco, CA 94105
"jbaskin@wsgr.com"

Re: Publication of Sealed Document by Substack

Dear Mr. Baskin:

On September 19, 2024, my office notified your client Substack in writing that it had published a sealed San Francisco Police Department incident report number [REDACTED] ("Incident Report") on its platform, in violation of a court order and Substack's own "Acceptable Use Policy." We demanded that Substack immediately remove the Incident Report and its contents from its website and ensure that the index to postings no longer allow for it to be downloaded. Substack failed to do so.

Instead, on September 24, 2024, you responded on behalf of Substack and advised that Section 230 of the Communications Decency Act bars Substack from liability for the content posted by its users. You then recommended that the City contact the post's publisher.

Your September 24, 2024 response is inadequate. Regardless of whether Substack has liability for continuing to post the Incident Report on its platform, Substack is now on notice that the posting of the Incident Report violates its own "Acceptable Use Policy" as well as a court order. Substack has also failed to remove what it now knows to be a posting that violates its own "Acceptable Use Policy" as well as a court order. Your September 24, 2024 letter also fails to state whether Substack has asked the author of the posts to comply with Substack's "Acceptable Use Policy" and take down the posts related to the Incident Report.

While the City will also contact the author of the posts, Substack has a separate duty to follow its own "Acceptable Use Policy" and court orders.

///
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CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Page 2

Please alert us when the Incident Report and its contents have been taken down from Substack's platform. As stated previously, please also refrain from publishing this material in the future.

Thank you.

Very truly yours,

DAVID CHIU
City Attorney

A handwritten signature in black ink, appearing to read "J Choi", with a long horizontal flourish extending to the right.

JENNIFER E. CHOI
Deputy City Attorney

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 BERMAN NORTH LLP
10 Stacy Y. North (CA Bar No. 219034)
11 stacy@bermannorth.com
12 2001 Van Ness, Suite 300
13 San Francisco, CA 94109
14 (650) 463-9158

15 *Attorneys for Plaintiff John Doe*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

10/03/2024
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

11 **SUPERIOR COURT OF STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**
13 **CIVIL UNLIMITED JURISDICTION**

CGC-24-618681

14 JOHN DOE, an individual,

15 *Plaintiff,*

16 v.

17 SUBSTACK, INC., a Delaware
18 Corporation; AMAZON WEB SERVICES,
19 INC., a Delaware corporation; JACK
20 POULSON, an individual; TECH
21 INQUIRY, INC., a Delaware corporation;
22 DOES 1-25, inclusive,

23 *Defendants.*

Case No.:

**PLAINTIFF'S COMPLAINT FOR DAMAGES
FOR:**

1. Negligence
2. Gross Negligence
3. Intentional Interference with Prospective Economic Relations
4. Negligent Interference with Prospective Economic Relations
5. Intentional Interference with Contractual Relations
6. Public Disclosure of Private Facts
7. False Light
8. Intrusion into Private Affairs
9. Intentional Infliction of Emotional Distress
10. Negligent Infliction of Emotional Distress
11. Defamation
12. Violation of Business & Professions Code Section 17200
13. Violation of California Constitution, Section 1
14. Violation of California Penal Code Section 851.92
15. Violation of California Penal Code Section 11143

Request for Punitive Damages

DEMAND FOR JURY TRIAL

1 PLAINTIFF JOHN DOE (“PLAINTIFF”) complains against DEFENDANTS SUBSTACK,
2 INC. (“SUBSTACK”), AMAZON WEB SERVICES, INC. (“AWS”), JACK POULSON
3 (“POULSON”), TECH INQUIRY, INC. (“TECH INQUIRY”), and DOES 1-25 hereby alleges as
4 follows:

5 **PARTIES**

6 1. PLAINTIFF is an individual and a resident of San Francisco, California. PLAINTIFF
7 files this Complaint as a John Doe to protect his privacy, as this matter deals with the ongoing
8 unauthorized dissemination of a sealed . As a result of the sensitive nature of the facts,
9 PLAINTIFF’S full identity has been concealed from public court filings in order to prevent those not
10 directly involved in this action from learning PLAINTIFF’S identity and making PLAINTIFF’S
11 identity public. In addition, PLAINTIFF refers to his employer, of which he was the Chief Executive
12 Officer and member of the Board of Directors, during the relevant time period as “PLAINTIFF’S
13 EMPLOYER” in an effort to protect PLAINTIFF’S privacy.

14 2. SUBSTACK is a global corporation organized under Delaware law with its
15 headquarters in San Francisco, California.

16 3. AWS is a global corporation organized under Delaware law with its headquarters in
17 Seattle, Washington.

18 4. POULSON is an individual and an independent journalist and Executive Director of
19 DEFENDANT TECH INQUIRY. POULSON has lived and worked in California and is essentially
20 made at home in California. In addition, POULSON has purposefully directed his activities at
21 residents of the forum, including PLAINTIFF and by using SUBSTACK, and this litigation results
22 from alleged injuries that “arise out of or relate to” those activities.”

23 5. TECH INQUIRY is a Delaware corporation. It holds itself out as a nonprofit company
24 of which POULSON is the Executive Director. Based on information on its website, Tech Inquiry is
25 essentially at home in California. According to its website, Tech Inquiry touts that “on a daily basis”
26 it does work “from the US (including California state)”. In addition, TECH INQUIRY has
27 purposefully directed its activities at residents of the forum, including PLAINTIFF, and this litigation
28 results from alleged injuries that “arise out of or relate to” those activities.”

1 6. PLAINTIFF does not know the true names and capacities of DEFENDANTS sued
2 herein as Does 1-25, and therefore sue these DEFENDANTS by fictitious names. PLAINTIFF will
3 amend this Complaint to state the true names and capacities when ascertained. PLAINTIFF is
4 informed and believes and thereon alleges that each of the fictitiously-named DEFENDANTS is
5 responsible in some manner for the occurrences alleged herein, and thereby proximately caused
6 Plaintiff’s injuries and damages alleged herein.

7 7. At all times herein mentioned, the acts and omissions of various DEFENDANTS, and
8 each of them (including the DOES), concurred and contributed to the various acts and omissions of
9 each and all of the other DEFENDANTS in proximately causing the injuries and damages as herein
10 alleged.

11 **JURISDICTION AND VENUE**

12 8. PLAINTIFF brings this action pursuant to California law cited with particularity
13 below.

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

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

17 11. This Court has personal jurisdiction over each DEFENDANT because each
18 DEFENDANT had sufficient contacts with California. In addition, each DEFENDANT intentionally
19 availed itself or himself of the benefits of California by publishing and disseminating the statements
20 described herein; the controversy is related to the DEFENDANTS’ contacts with California; and
21 asserting personal jurisdiction would be fair and substantial.

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

24 **STATEMENT OF FACTS**

25 13. PLAINTIFF is not a public figure.

26 14. On or about September 14, 2023, DEFENDANT POULSON, as an individual and in
27 his capacity as the Executive Director and Board member of TECH INQUIRY, through the
28 SUBSTACK and AWS platforms, first published a sealed arrest report (the “sealed Incident Report”)

1 and information related to the sealed Incident Report relating to PLAINTIFF.

2 15. Upon information and belief, POULSON knew or should have known at all times that
3 the report had been sealed and that he was not authorized to disseminate it.

4 16. From September 14, 2023 through the present, DEFENDANTS have knowingly
5 possessed the sealed Incident Report and information related to the sealed Incident Report.

6 17. The issues contained in the sealed Incident Report do not concern matters of public
7 significance. The issues are personal in nature and concern only private individuals' private lives.
8 The issues do not relate to PLAINTIFF'S employment.

9 18. The sealed Incident Report published by DEFENDANTS included a unique
10 watermark identifier: "Retrieved by A07034 on 5/17/22 at 10:37:33 AM."

11 19. The sealed Incident Report was sealed by a court order entered three months earlier by
12 the Honorable Carolyn Gold dated February 17, 2022 (the "Court Order").

13 20. According to the Court Order, "the arrest [was] deemed not to have occurred."
14 Accordingly, any statement that the arrest did occur is, by operation of law, not truthful.

15 21. According to California Penal Code section 851.92(c), "Unless specifically authorized
16 by this section, a person or entity, other than a criminal justice agency or the person whose arrest was
17 sealed, who disseminates information relating to a sealed arrest is subject to a civil penalty of not less
18 than five hundred dollars (\$500) and not more than two thousand five hundred dollars (\$2,500) per
19 violation. The civil penalty may be enforced by a city attorney, district attorney, or the Attorney
20 General. This subdivision does not limit any existing private right of action. A civil penalty imposed
21 under this section shall be cumulative to civil remedies or penalties imposed under any other law."

22 22. According to California Penal Code section 11143, "[a]ny person ... who, knowing he
23 is not authorized by law to receive a record or information obtained from a record, knowingly buys,
24 receives, or possesses the record or information is guilty of a misdemeanor."

25 23. Upon information and belief, and based on facts alleged herein, POULSON knew or
26 should have known at all times, and knows as of the date of this filing, that the sealed Incident Report
27 was sealed, and therefore that he was not permitted to possess or disseminate the sealed Incident
28 Report or information related to it.

1 24. Despite this, DEFENDANTS repeatedly published and republished the sealed Incident
2 Report and information related to the sealed Incident Report on October 13, 2023, November 20,
3 2023, December 19, 2023, and June 3, 2024 to his Substack blog and published related articles,
4 causing the sealed Incident Report in his possession to be disseminated widely without legal
5 authorization.

6 25. In addition to the unauthorized publication and dissemination of the actual sealed
7 Incident Report, DEFENDANTS repeatedly published the contents of the sealed Incident Report. On
8 October 13, 2023, DEFENDANTS published the contents of the sealed Incident Report with direct
9 references to PLAINTIFF, PLAINTIFF’S EMPLOYER, and nearly every detail contained in the
10 sealed Incident Report. On November 20, 2023, DEFENDANTS again published a detailed
11 description of the contents of the sealed Incident Report underneath a picture of PLAINTIFF and
12 referring directly to PLAINTIFF by name and PLAINTIFF’S EMPLOYER.

13 26. DEFENDANT POULSON admits that in or around November 2023 he called a client
14 of PLAINTIFF’S EMPLOYER and an entity with whom PLAINTIFF had worked with and would
15 potentially work with in the future and disclosed the existence and contents of the sealed Incident
16 Report, expressly questioning whether this entity would continue to do business with PLAINTIFF
17 and/or PLAINTIFF’S EMPLOYER as a result of the sealed Incident Report. POULSON appears to
18 have taken this action for the express purpose of interfering with PLAINTIFF’S existing and potential
19 business relationships.

20 27. TECH INQUIRY and POULSON also published the sealed Incident Report and
21 information related to the sealed Incident Report on the TECH INQUIRY website. These
22 publications were made or appear to have been made on October 13, 2023, November 20, 2023,
23 December 19, 2023, and June 3, 2024.

24 28. Statements by POULSON that were published by all DEFENDANTS fail to state that
25 the arrest was deemed by a Court “not to have occurred.”

26 29. Statements by POULSON that were published by all DEFENDANTS create the false
27 and intentionally misleading understanding that PLAINTIFF was found guilty of the events described
28 in POULSON’S statements and in the sealed Incident Report. In POULSON’S initial publication on

1 September 14, 2023, POULSON did not indicate that the charges were dropped, but when
2 POULSON republished the sealed Incident Report, after receiving edits from SUBSTACK,
3 POULSON included language that the charges were dropped.

4 30. Statements by POULSON that were published by all DEFENDANTS on December
5 29, 2023 indicate that PLAINTIFF’S EMPLOYER until December 10, 2023 “demanded” that
6 PLAINTIFF separate from PLAINTIFF’S EMPLOYER because of a felony domestic arrest.
7 California Labor Code Section 432.7 prohibits an employer from taking any action against an
8 employee for an arrest that does not lead to a conviction. POULSON’S statements therefore
9 intentionally intimate that PLAINTIFF arrest led to a conviction.

10 31. At all times and at least prior to the filing of this Complaint, all DEFENDANTS knew
11 or should have known that PLAINTIFF was never charged with any crime and that PLAINTIFF was
12 not found guilty of any crime.

13 32. DEFENDANT SUBSTACK was involved in reviewing, editing, and deciding whether
14 to publish or withdraw from the publication of POULSON’S blog posts. In or around June 2024,
15 SUBSTACK, through its Trust & Safety Team and after a review of POULSON’S blog posts, twice
16 temporarily unpublished POULSON’S blogs on this topic and demanded that POULSON edit his
17 blog posts to remove PLAINTIFF’S address. POULSON’S SUBSTACK post expressly refers to
18 passages that were “censored by Substack.” Upon information and belief, SUBSTACK also was
19 involved in editing POULSON’S blogs by mandating or suggesting that he add language in 2024 that
20 “the charges were later dropped.” POULSON complied with SUBSTACK’S edits, and
21 DEFENDANTS immediately republished content related to the sealed Incident Report and a link to
22 the sealed Incident Report.

23 33. DEFENDANT SUBSTACK was informed multiple times, beginning in November
24 2023, about the illegal nature of the content. Among other communications, PLAINTIFF and/or
25 PLAINTIFF’S counsel sent SUBSTACK written communication on April 26, 2024, June 23, 2024,
26 and September 13 and 20, 2024 that being in possession of, disseminating, and failing to take down
27 the sealed Incident Report and information related to the sealed Incident Report violated the Court
28 Order and California Penal Code §§ 851.91 and 851.92, as well as its own policies that prohibit the

1 publication of illegal content. Despite PLAINTIFF’S repeated requests and that SUBSTACK was on
2 notice of its unlawful conduct that also violated its policies and was causing PLAINTIFF severe harm,
3 SUBSTACK failed to remove the content, allowing the illegal dissemination to continue, resulting in
4 significant harm to Plaintiff.

5 34. By letter dated September 19, 2024, the City and County of San Francisco, Office of
6 the City Attorney sent a letter to Substack titled “Notice of Publication of Sealed Document.” In this
7 letter, the Office of the City Attorney wrote to Substack:

8 It has come to our office’s attention that San Francisco Police Department ... Incident
9 Report as well as its contents have been published in multiple postings on your
10 website. The Incident Report was previously sealed by court order. ... Pursuant to
11 California Penal Code section 851.92(c) and your own “Acceptable Use Policy,” we
12 expect that you will immediately remove the Incident Report and its contents from
13 your website and ensure that the index to postings no longer allows for the Incident
14 Report to be viewed or downloaded. Please alert us when the documents and its
15 contents have been taken down from your website by no later than September 23,
16 2024. Finally, please refrain from publishing this material in the future.

17 35. Upon information and belief, DEFENDANT SUBSTACK gained a competitive
18 advantage over its competitors by unlawfully disseminating the sealed Incident Report and
19 information related to the sealed Incident Report.

20 36. PLAINTIFF also notified DEFENDANT AWS, which provides the hosting services
21 for SUBSTACK, on September 13 and 20, 2024, about the illegal nature of the content hosted on
22 Substack’s platform, which included the sealed Incident Report.

23 37. PLAINTIFF informed AWS that the content violated California Penal Code §§ 851.91
24 and 851.92, along with AWS’s Terms of Service that prohibit the use of its infrastructure for illegal
25 activities.

26 38. Despite being notified of the illegal content on September 13, 2024, AWS has failed to
27 act, continuing to provide hosting services that facilitate the ongoing illegal dissemination of the
28 sealed Incident Report and information related to the sealed Incident Report.

1 39. AWS’s ongoing provision of hosting services to DEFENDANT SUBSTACK, after
2 being informed of the illegal content on September 13, 2024, constitutes a violation of its own Terms
3 of Service, specifically in the areas of compliance with laws, prohibition on illegal content, and
4 violation of privacy rights.

5 40. Upon information and belief, DEFENDANT AWS gained a competitive advantage
6 over its competitors by unlawfully disseminating, through hosting SUBSTACK, the sealed Incident
7 Report and related information.

8 41. On September 16, 2024, PLAINTIFF notified DEFENDANTS POULSON and TECH
9 INQUIRY of their unlawful conduct with respect to their unauthorized possession and dissemination
10 of the sealed Incident Report and information related to the sealed Incident Report. PLAINTIFF
11 informed DEFENDANTS POULSON and TECH INQUIRY that is conduct violated California Penal
12 Code §§ 166(a)(4) and 851.92(b)(5) and (c), among other relevant laws. PLAINTIFF further
13 requested that POULSON and TECH INQUIRY immediately take down all references to the sealed
14 Incident Report and information related to the sealed Incident Report and that their conduct had
15 caused and was causing PLAINTIFF substantial harm.

16 42. POULSON and TECH INQUIRY failed and refused to remove any of the offensive
17 publications.

18 43. Newton Oldfather (“OLDFATHER”) appears to have played critical role in the
19 unlawful dissemination of the sealed Incident Report. OLDFATHER is currently a partner at the law
20 firm of Lewis & Llewellyn, LLP and, according to his firm biography, previously served as an
21 attorney for the San Francisco City Attorney’s Office and the Department of Police Accountability
22 (DPA), from November 2012 until April 2021.

23 44. On May 3, 2022, OLDFATHER, who was involved in a litigation against
24 PLAINTIFF’S EMPLOYER, initially requested the sealed Incident Report from the San Francisco
25 Police Department (SFPD), but his request was denied because he lacked authorization.

26 45. Despite this, OLDFATHER submitted a second request on May 9, 2022, which
27 resulted in the release of the sealed report by the SFPD.

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1 46. The sealed Incident Report sent by the SFPD to OLDFATHER had the same unique
2 identifier watermark that is on the copy of the sealed Incident Report published by DEFENDANTS.

3 47. OLDFATHER was informed by the SFPD in July 2022 that the SFPD was not able to
4 process his request for the Incident Report without authorization from the PLAINTIFF, which he did
5 not have.

6 48. In POULSON’S June 3, 2024 publication, POULSON acknowledged that he had been
7 following the litigation in which OLDFATHER represented parties adverse to PLAINTIFF’S
8 EMPLOYER.

9 49. PLAINTIFF has suffered severe harm as a result of DEFENDANTS’ actions described
10 herein. Among other things, PLAINTIFF’S employment ended on December 10, 2023; PLAINTIFF’S
11 reputation amongst his friends, family and business associates has been forever altered; PLAINTIFF
12 has suffered severe emotional distress; PLAINTIFF has been unable to find subsequent employment,
13 resulting in significant lost employment compensation and benefits; and PLAINTIFF has been forced to
14 spend money to cure this situation that will haunt him the rest of his life.

15 **FIRST CLAIM FOR RELIEF**
16 **Negligence against all DEFENDANTS**

17 50. PLAINTIFF refers to and incorporates by reference each and every allegation
18 contained in the foregoing paragraphs as though set forth fully herein.

19 51. PLAINTIFF claims that PLAINTIFF was harmed by DEFENDANTS’ negligence,
20 including but not limited to DEFENDANTS’ (a) failure to determine that the Incident Report at issue
21 had been the subject of the Sealing Order, (b) possession and public dissemination of a sealed
22 Incident Report and information related to the sealed Incident Report, (c) decision to allow the sealed
23 Incident Report and information related to the sealed Incident Report to remain publicly accessible,
24 and (d) refusal to remove the sealed Incident Report and information related to the sealed Incident
25 Report. This conduct was in violation and total disregard of the Court Order, California statutes, the
26 California constitution, and California public policy.

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1 52. DEFENDANTS had a duty to exercise reasonable care to PLAINTIFF, and
2 particularly a duty to abide by the Court Order, California statutes, the California constitution, and
3 California public policy.

4 53. DEFENDANTS were negligent for the reasons described herein, including but not
5 limited to acting in violation of and with total disregard for the Court Order, California statutes, the
6 California constitution, and California public policy intended to protect PLAINTIFF and that
7 expressly prohibited DEFENDANTS from being in possession of and/or disseminating the sealed
8 Incident Report or information related to the sealed Incident Report.

9 54. PLAINTIFF was harmed by DEFENDANTS’ conduct.

10 55. DEFENDANTS’ negligence was a substantial factor, as well as the proximate or legal
11 cause, in causing PLAINTIFF’s harm.

12 56. As a result of DEFENDANTS’ negligence, PLAINTIFF has suffered and will
13 continue to suffer severe harm, including but not limited to emotional harm, loss of income,
14 reputational harm, and additional economic damages to be presented at trial.

15 **SECOND CLAIM FOR RELIEF**
16 **Gross Negligence against all DEFENDANTS**

17 57. PLAINTIFF refers to and incorporates by reference each and every allegation
18 contained in the foregoing paragraphs as though set forth fully herein.

19 58. PLAINTIFF claims that PLAINTIFF was harmed by DEFENDANTS’ negligence,
20 including but not limited to DEFENDANTS’ (a) failure to determine that the Incident Report at issue
21 had been the subject of the Sealing Order, (b) possession and public dissemination of a sealed
22 Incident Report and information related to the sealed Incident Report, (c) decision to allow the sealed
23 Incident Report and information related to the sealed Incident Report to remain publicly accessible,
24 and (d) refusal to remove the sealed Incident Report and information related to the sealed Incident
25 Report. This conduct was in violation and total disregard of the Court Order, California statutes, the
26 California constitution, and California public policy.

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1 77. PLAINTIFF claims that DEFENDANTS negligently interfered with a relationship
2 between PLAINTIFF and PLAINTIFF’S EMPLOYER and members of the Board of Directors of and
3 entities and individuals who invested in PLAINTIFF’S EMPLOYER that probably would have
4 resulted in an economic benefit to PLAINTIFF.

5 78. PLAINTIFF and PLAINTIFF’S EMPLOYER and members of the Board of Directors
6 of and entities and individuals who invested in PLAINTIFF’S EMPLOYER were in an economic
7 relationship that probably would have resulted in a future economic benefit to PLAINTIFF.

8 79. DEFENDANTS knew or should have known of these relationships.

9 80. DEFENDANTS knew or should have known that these relationships would be
10 disrupted if DEFENDANTS failed to act with reasonable care.

11 81. DEFENDANTS failed to act with reasonable care.

12 82. DEFENDANTS engaged in wrongful and improper conduct by the conduct described
13 herein that violated the Court Order, California statutes, the California constitution, and California
14 public policy.

15 83. PLAINTIFF’S relationships were disrupted.

16 84. PLAINTIFF was harmed.

17 85. DEFENDANTS’ wrongful conduct was a substantial factor in causing PLAINTIFF’S
18 harm.

19 86. As a result of DEFENDANTS’ negligent interference with PLAINTIFF’S prospective
20 economic relations, PLAINTIFF has suffered and will continue to suffer severe harm, including but
21 not limited to emotional harm, loss of income, reputational harm, and additional economic damages
22 to be presented at trial.

23 **FIFTH CLAIM FOR RELIEF**

24 **Intentional Interference with Contractual Relations against all DEFENDANTS**

25 87. PLAINTIFF refers to and incorporates by reference each and every allegation
26 contained in the foregoing paragraphs as though set forth fully herein.

27 88. PLAINTIFF claims that DEFENDANTS intentionally interfered with the contract
28 between PLAINTIFF and PLAINTIFF’S EMPLOYER.

1 89. There was a contract between PLAINTIFF and PLAINTIFF’S EMPLOYER.

2 90. DEFENDANTS knew of the contract between PLAINTIFF and PLAINTIFF’S
3 EMPLOYER.

4 91. DEFENDANTS’ performance of the conduct described herein prevented performance
5 of the contract or made performance of the contract more difficult by PLAINTIFF.

6 92. DEFENDANTS intended to disrupt the performance of this contract or knew that
7 disruption of performance was certain or substantially likely to occur.

8 93. PLAINTIFF was harmed.

9 94. DEFENDANTS’ conduct was a substantial fact in causing PLAINTIFF’S harm.

10 95. As a result of DEFENDANTS’ intentional interference with PLAINTIFF’S
11 contractual relations, PLAINTIFF has suffered and will continue to suffer severe harm, including but
12 not limited to emotional harm, loss of income, reputational harm, and additional economic damages
13 to be presented at trial.

14 96. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent,
15 despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby
16 entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

17 **SIXTH CLAIM FOR RELIEF**

18 **Public Disclosure of Private Facts against all DEFENDANTS**

19 97. PLAINTIFF refers to and incorporates by reference each and every allegation
20 contained in the foregoing paragraphs as though set forth fully herein.

21 98. Pursuant to California Constitution, Article 1, Section 1, “All people are by nature free
22 and independent and have inalienable rights. Among these are enjoying and defending life and
23 liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness,
24 and privacy.”

25 99. PLAINTIFF claims that DEFENDANTS violated PLAINTIFF’S right to privacy.

26 100. DEFENDANTS publicized private information concerning PLAINTIFF.

27 101. A reasonable person in PLAINTIFF’S position would consider the publicity highly
28 offensive.

1 114. PLAINTIFF was harmed.

2 115. PLAINTIFF sustained harm to his profession, occupation, and reputation, including
3 but not limited to money spent as a result of the statement.

4 116. DEFENDANTS’ conduct was a substantial factor in causing PLAINTIFF’S harm.

5 117. As a result of DEFENDANTS’ depicting PLAINTIFF in a false light, PLAINTIFF has
6 suffered and will continue to suffer severe harm, including but not limited to emotional harm, loss of
7 income, reputational harm, and additional economic damages to be presented at trial.

8 118. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent,
9 despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby
10 entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

11 **EIGHTH CLAIM FOR RELIEF**
12 **Intrusion into Private Affairs against all DEFENDANTS**

13 119. PLAINTIFF refers to and incorporates by reference each and every allegation
14 contained in the foregoing paragraphs as though set forth fully herein.

15 120. PLAINTIFF claims that DEFENDANTS violated PLAINTIFF’S right to privacy.

16 121. PLAINTIFF had a reasonable expectation of privacy in the sealed Incident Report and
17 information related to the sealed Incident Report, the privacy of which was guaranteed to
18 PLAINTIFF by the Court Order and applicable California statutes.

19 122. DEFENDANTS intentionally intruded in PLAINTIFF’S reasonable expectation of
20 privacy in the sealed Incident Report and information related to the sealed Incident Report when
21 DEFENDANTS publicly disseminated and refused to take down this information that
22 DEFENDANTS were legally prohibited from having in their possession and disseminating.

23 123. DEFENDANTS’ intrusion would be highly offensive to a reasonable person.

24 124. PLAINTIFF was harmed.

25 125. DEFENDANTS’ conduct in disseminating this information and refusing to take down
26 this information was a substantial factor in causing PLAINTIFF’S harm.

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1 146. DEFENDANTS failed to use reasonable care to determine the truth or falsity of the
2 statement or DEFENDANTS knew their statements were false.

3 147. DEFENDANTS acted with actual malice because DEFENDANTS knew the
4 statements were false or acted with reckless disregard of the statements' falsity.

5 148. As a result of DEFENDANTS' defamation, PLAINTIFF has suffered and will
6 continue to suffer severe harm, including but not limited to emotional harm, loss of income,
7 reputational harm, and additional economic damages to be presented at trial.

8 149. The conduct of DEFENDANTS as alleged above, was malicious, fraudulent,
9 despicable, and oppressive and was done with the wrongful intent of injuring PLAINTIFF, thereby
10 entitling PLAINTIFF to an award of punitive damages in amounts to be proved at trial.

11 **TWELFTH CLAIM FOR RELIEF**
12 **Unfair Business Practices against all SUBSTACK and AWS**

13 150. PLAINTIFF refers to and incorporates by reference each and every allegation
14 contained in the foregoing paragraphs as though set forth fully herein.

15 151. As set forth more fully herein, DEFENDANTS' conduct was unlawful, unfair, and
16 constituted an unfair business practice in violation of California Business and Professions Code
17 Section 17200.

18 152. Among other things, DEFENDANTS SUBSTACK and AWS conduct violated
19 multiple California statutes, the California constitution, and the Court Order designed to protect
20 PLAINTIFF'S privacy and safeguard his fundamental rights.

21 153. DEFENDANTS SUBSTACK'S and AWS'S practices described herein – including
22 possessing and disseminating the sealed Incident Report and information related to the sealed
23 Incident Report and refusal to remove this information – offended established public policy, that is
24 immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, or has an
25 impact on PLAINTIFF that outweighs DEFENDANTS' reasons, justifications, and motives for the
26 practice.

27 154. The public policy at issue here is tethered to California Constitution Article 1, Section
28 1 and the specific statutes addressed herein intended to protect the privacy of individuals who are

1 arrested and, in particular, protect those individuals from experiencing adverse employment acts
2 because of such arrests.

3 155. As a result of DEFENDANTS SUBSTACK’S and AWS’S unfair business practices,
4 PLAINTIFF suffered injury in fact, including but not limited to loss of money.

5 156. PLAINTIFF seeks to recover all available relief for violations of California Business
6 & Professions Code Section 17200, including but not limited to restitution, disgorgement of profits
7 and any amounts by which they have been unjustly enriched as a result of their wrongful conduct,
8 appoint of a receiver, constructive trust, and in injunction prohibiting SUBSTACK and AWS from
9 engaging in the unfair business practices alleged herein.

10 **THIRTEENTH CAUSE OF ACTION**

11 **Violation of California Constitution, Article I, § 1 against all DEFENDANTS**

12 157. PLAINTIFF refers to and incorporates by reference each and every allegation
13 contained in the foregoing paragraphs as though set forth fully herein.

14 158. “For every wrong there is a remedy.” (Civ.Code § 3523)

15 159. California’s Constitution guarantees all people certain “inalienable rights,” including
16 “pursuing and obtaining ... privacy.” Ca Const Art. 1, § 1.

17 160. Included in the protections afforded by the California Constitution is the individual
18 interest in avoiding disclosure of personal matters.

19 161. The sealed Incident Report and the contents of the sealed police contained intimate
20 facts of a personal nature well within the ambit of material entitled to privacy protection.

21 162. By virtue of the Court Order sealing the report, California Penal Code Section 851.92,
22 and the public policy of California, PLAINTIFF was entitled to privacy protection with respect to the
23 sealed Incident Report and its contents.

24 163. The sealed Incident Report and its contents were not a matter of public significance.

25 164. Accordingly, DEFENDANTS violated PLAINTIFF’S Constitutional right to privacy
26 when it disseminated the sealed Incident Report and its contents.

27 165. This violation has caused and continues to cause PLAINTIFF harm.

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FOURTEENTH CAUSE OF ACTION
Violation of California Penal Code Section 851.92(c) against all DEFENDANTS

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

167. “The violation of a statute gives to any person within the statute’s protection a right of action to recover damages caused by its violation.” *Palo Alto-Menlo Park Yellow Cab Co., v. Santa Clara County Transit Dist.* (1976) 65 Cal.App.3d 121, 131, 135 Cal.Rptr. 192.

168. Section 851.92(c) prohibits any unauthorized person or entity from disseminating information related to a sealed Incident Report.

169. In addition to the civil penalties described in Section 851.92(c), this Section also contemplates a private right of action stemming from the violation of this provision.

170. By the conduct described herein, DEFENDANTS violated Section 851.92(c) by disseminating the sealed Incident Report and information related to the sealed Incident Report.

171. DEFENDANTS’ conduct caused and continues to cause PLAINTIFF harm.

FIFTEENTH CAUSE OF ACTION
Violation of California Penal Code Section 11143 against all DEFENDANTS

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

173. California Penal Code section 11143 makes it unlawful for any person who “knowingly buys, receives, or possesses [a sealed arrest record] or information”.

174. The California Supreme Court held that “such materials are virtually treated as contraband, as it is further declared that any unauthorized person who knowingly ‘buys, receives, or possesses’ such a record or information is also guilty of a misdemeanor. (s 11143.)” *Loder v. Mun Court*, 533 P.3d 624, 628-30 (Cal. 1976).

175. By the conduct described herein, Defendants violated this section because they received and are in possession of the sealed arrest record and information.

176. DEFENDANTS’ conduct caused and continues to cause PLAINTIFF harm.

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PRAYER FOR RELIEF

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

- 1. Entry of a preliminary injunction, followed by a permanent injunction that:
 - i. Compels all DEFENDANTS to immediately remove the sealed police and all information related to the sealed Incident Report, including but not limited to its contents, and ensure that the index to postings no longer allows for the sealed Incident Report to be viewed or downloaded;
 - ii. Compels all DEFENDANTS to immediately remove and eliminate access to all URLs that include reference to the sealed Incident Report or information related to the sealed Incident Report;
 - and
 - iii. Enjoins all DEFENDANTS from disseminating directly or indirectly the sealed Incident Report or information related to the sealed Incident Report;
- 2. General damages for harm to reputation, humiliation mental anguish and emotional distress;
- 3. Compensatory damages for lost pay and benefits;
- 4. Disgorgement;
- 5. Liquidated damages;
- 6. Punitive damages;
- 7. Applicable interest on PLAINTIFF’S damages;
- 8. Attorney’s fees;
- 9. Costs of the suit;
- 10. Injunctive relief; and
- 11. Such relief as the Court may deem just and proper.

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JURY DEMAND

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

Dated: 2nd day of October 2024

Respectfully Submitted,
THE MAREK LAW FIRM, INC.

BY: *David Marek*
David Marek

Attorney for Plaintiff

From: [David Marek](#)
To: [Choi, Jennifer \(CAT\)](#)
Subject: Re: [REDACTED] sealed document
Date: Friday, October 4, 2024 10:27:51 AM

Thank you. It is very much appreciated.

On Fri, Oct 4, 2024 at 10:26 AM Choi, Jennifer (CAT) <Jennifer.Choi@sfcityatty.org> wrote:

David,

Attached are letters that the City sent to counsel for Substack and Poulson yesterday.



Jennifer E. Choi

Chief Trial Deputy, Trial Team

Office of San Francisco City Attorney David Chiu

(415) 554-3887 Direct

www.sfcityattorney.org

Find us on: [Facebook](#) [Twitter](#) [Instagram](#)

From: David Marek <david@marekfirm.com>
Sent: Friday, October 4, 2024 9:56 AM
To: Choi, Jennifer (CAT) <Jennifer.Choi@sfcityatty.org>
Subject: Fwd: [REDACTED] - sealed document

Jennifer

I wanted to notify you that yesterday we filed suit against Substack, AWS, and Poulson. We sought both damages and injunctive relief. Attached for your records is a copy of the complaint that was filed.

We continue to hope that your office will continue to help us in our efforts to enforce these various laws designed to protect Mr. [REDACTED]

Thank you

David

----- Forwarded message -----

From: **David Marek** <david@marekfirm.com>

Date: Thu, Oct 3, 2024 at 12:55 PM

Subject: [REDACTED] - sealed document

To: <david.chiu@sfcityatty.org>

Cc: Choi, Jennifer (CAT) <Jennifer.choi@sfcityatty.org>

Mr. Chiu

Please see the attached correspondence.

Best,

David

--

David Marek

The Marek Law Firm

228 Hamilton Avenue

Palo Alto, California 94301

o 650-460-7148

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California New York Florida

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2 Electronic Frontier Foundation
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tori@eff.org

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
11/13/2024
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

6
7 *Attorneys for Jack Poulson*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

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11 JOHN DOE, an individual,
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Plaintiff,

Case No.: CGC-24-618681

**DECLARATION OF JACK POULSON IN
SUPPORT OF DEFENDANTS JACK
POULSON’S AND TECH INQUIRY’S
OPPOSITION TO PLAINTIFF’S MOTION
FOR TEMPORARY RESTRAINING
ORDER**

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.

DATE: November 13, 2024
TIME: 11:00 a.m.
DEPT: 302

Judge: Richard B. Ulmer, Jr.
Action Filed: October 3, 2024
Trial Date:

DECLARATION OF JACK POULSON

I, JACK POULSON, declare as follows:

1. I am an independent journalist focused on the intersection of technology and national security. I currently write primarily through my newsletter published through Substack. I began the newsletter in April 2023. The newsletter currently has more than 2,900 subscribers. I publish approximately once per week. The newsletter can

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be found at [REDACTED]


2. I am also the executive director and founder of Tech Inquiry, which investigates the intersection of surveillance and weapons companies with governments. I founded Tech Inquiry in 2019. Tech Inquiry is an independent legal entity. I write the newsletter described in the preceding paragraph in my personal capacity and not as an officer of Tech Inquiry.
3. Prior to starting Tech Inquiry and my newsletter, I was a senior research scientist at Google Research. Prior to that I was an Assistant Professor of Mathematics at Stanford University and an Assistant Professor of Computational Science and Engineering at Georgia Tech.
4. In my newsletter, I have frequently reported on the connectedness of companies making surveillance and weapons technologies and the governments that contract with them. Among these companies is the one of which plaintiff Doe was formerly the chief executive officer. I wrote about this company because of its role as a human intelligence provider for U.S. Special Operations Command. This company has been the subject of seven articles in my newsletters.
5. I received the Incident Report that is the subject of this matter unsolicited from a confidential source. I did not request or otherwise seek out the Incident Report.
6. I was unaware that the Incident Report was sealed when I received it and wrote about it. There was no marking on the Incident Report that I understood to indicate it had been sealed. Upon receipt of the Incident Report, I communicated with the San Francisco Police Department to verify the authenticity of the Incident Report. The SFPD verified that the Incident Report was authentic that its contents were accurate. The SFPD did not inform me that the Incident Report had been sealed.

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7. I am currently in Lisbon, Portugal where I am speaking at a conference. I am nine hours ahead of Pacific Standard Time and have only intermittent internet access. The emergency nature of this proceeding without prior notice before November 12 has made it very difficult for me to fully participate in the preparation of the opposition papers.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 13 day of November 2024 in Lisbon, Portugal.



Jack Poulson

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on [REDACTED] 2023 [REDACTED]
Reviewed By: T. Phan
Case [REDACTED]
Envelope: [REDACTED]

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10 [REDACTED] Corporation

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CUPERTINO, CA 95014

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 [REDACTED]
14 [REDACTED] Corporation

15 Plaintiff,

16 v.

17 [REDACTED]
18 [REDACTED] inclusive,
19 Defendants.

Case No.: [REDACTED]
(consolidated with Case No.: [REDACTED])

**DECLARATION OF [REDACTED]
IN SUPPORT OF [REDACTED]
[REDACTED]'S MOTION FOR
PROTECTIVE ORDER LIMITING PMQ
DEPOSITION TOPIC #11**

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GRELLAS SHAH LLP
20400 STEVENS CREEK BLVD, SUITE 280
CUPERTINO, CA 95014

1 I, [REDACTED] declare as follows:

2 1. I am the Chief Executive Officer of [REDACTED]
3 [REDACTED] is the plaintiff in the above-captioned consolidated action
4 [REDACTED] Santa Clara Superior Court Case No. [REDACTED] (the "Consolidated
5 Action"). I have personal knowledge of the facts stated herein. If called upon as a witness, I
6 could and would testify competently to the following facts.

7 2. [REDACTED] has clients in the military and intelligence sectors, which represent a
8 portion of its overall client base.

9 3. [REDACTED]'s engagement agreements with clients in the military and intelligence
10 sectors contain strict confidentiality provisions which expressly prohibit [REDACTED] from
11 disclosing the engagement, including the identity of the client and the nature of the work
12 contemplated by the agreement. It is [REDACTED]'s understanding, based on communications with
13 these military and intelligence clients, that confidentiality of these engagements is critical
14 because many of [REDACTED]'s military and intelligence clients and projects deal with sensitive
15 and highly-confidential information relating to national security.

16 4. Key [REDACTED] personnel, including myself, hold security clearance with the
17 United States Department of Defense and a number of military and intelligence clients require
18 [REDACTED] personnel to maintain a security clearance for the exchange of information. [REDACTED]
19 itself holds a Facility Security Clearance (FCL), which allows it to perform contracts involving
20 access to classified information. [REDACTED] is required to maintain certain internal security
21 controls, including only discussing classified information within closed meetings of cleared
22 personnel, in order to maintain the FCL.

23 5. If [REDACTED] is unable to maintain the confidentiality of the identities of these
24 military and intelligence clients in this civil litigation, this would cause [REDACTED] incalculable
25 business harm because it is [REDACTED]'s understanding that its ability to obtain work from these
26 clients is conditioned on its ability to honor its commitment not to divulge this information
27 under any circumstances.

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GRELLAS SHAH LLP
20400 STEVENS CREEK BLVD, SUITE 280
CUPERTINO, CA 95014

1 6. Further, given that these secrecy and confidentiality requirements under which
2 [REDACTED] offers services to these clients are to safeguard national security, if [REDACTED] is required
3 by this Court to divulge such information, it could compromise national security.

4 7. Moreover, should this information be disclosed, it could directly endanger
5 [REDACTED]'s contributors around the world, who may be wrongly perceived as working for
6 military or intelligence clients simply by virtue of having the [REDACTED] app on their phones.

7 8. As a final point, beyond its confidentiality obligation to these clients and the
8 national security concerns, [REDACTED] maintains the identity of these clients and the work done
9 for them as a closely-guarded trade secret. That these particular clients have a need for the
10 data services [REDACTED] is providing and the exact scope of these services, as well as the manner
11 in which [REDACTED] provides services and meets the needs of these customers, is information that
12 derives its value from not being known to the public or [REDACTED]'s competitors because this
13 information can be used to validate non-public market or customer needs and aid competitors
14 in competing against [REDACTED].

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct and that this declaration [REDACTED] executed at San Francisco,
17 California, on [REDACTED] 2023. [REDACTED]

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SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2017-2018 Regular Session

SB 393 (Lara)
Version: April 17, 2017
Hearing Date: April 25, 2017
Fiscal: Yes
Urgency: No
CK

SUBJECT

Arrests: sealing

DESCRIPTION

This bill would provide a mechanism for a person to petition a court to seal records of arrests that did not result in a conviction, as defined, with certain exceptions. This bill would also provide for a universal process for accomplishing the sealing of records after such records are ordered sealed pursuant to a host of existing statutes. This bill would also restrict consumer reporting agencies from sharing information regarding certain arrests, require them to more thoroughly vet arrest information for accuracy and completeness, and provide for civil penalties against such agencies for violations of these provisions.

BACKGROUND

Consumer reporting agencies collect information and provide reports about individuals for clients. The Consumer Financial Protection Bureau recently released an index of the multitude of companies that have flooded this market. The clients often seek this background information in order to make decisions about whether to hire certain individuals, to extend them credit, to rent them a home, or to grant them a license or certificate. Much of the data used in these reports are gathered from public records or large databases based on such records. With rapid technological advancements, such information has become increasingly accessible over the last few decades, and often decision makers gather this data directly from the public records. In combination with how inexpensive they have become, these records have become incredibly attractive screening tools for these decision makers.

These reports and public records often contain information about a person's criminal background, including records of arrests. The issue is that often previous arrests that never resulted in a conviction will be included in these reports and records. Although not evidence of having committed any crime, this information can result in an applicant

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being denied by an employer or landlord, leading to devastating consequences for individuals who can be effectively shut out of employment or housing.

Forbes reports that 69 percent of employers run criminal background checks on all of their potential employees while the EEOC indicates that 87 percent of companies use background checks for at least some hiring decisions. The practice is also common for landlords, including subsidized housing providers. Importantly, this is an issue that can be faced by many Americans. Statistics from the Brennan Center indicate that by age 23 nearly one in three Americans will have been arrested. However, these issues disproportionately affect communities of color. Nearly half of black males are arrested by age 23, and although representing only 14 percent of the population, African Americans account for 28 percent of all arrests. Studies cited by the National Institute for Justice reveal that the “penalties” created by criminal records in the labor market disproportionately impact Latinos and African Americans. The Justice Department has confirmed that many individuals’ criminal records include arrests that never lead to a conviction, but are nevertheless included in overbroad background checks that then exclude applicants from jobs or housing.

Current law restricts the ability of employers and housing providers from using certain arrest information to deny applicants. In addition, consumer reporting agencies are restricted on what information they can provide about arrests that do not result in conviction. However, such information continues to get into the hands of these decision makers both through consumer reporting agencies and directly through public records.

This bill seeks to address these issues. It would provide a mechanism for a person to seal arrests that did not result in a conviction as a matter of right with specified exceptions and safeguards. This bill would also create a universal, thorough process for accomplishing the sealing of arrests pursuant to court orders. This includes prohibitions on the dissemination of records that have been sealed and penalties for doing so. This bill creates an obligation on consumer reporting agencies to destroy arrest records after discovering that such records have been sealed. Investigative consumer reporting agencies would also have to verify, on a weekly basis, whether arrests for which they have information have been sealed or did not result in a conviction.

CHANGES TO EXISTING LAW

Existing law prohibits an investigative consumer reporting agency from making or furnishing any investigate consumer report with certain items of information, including records of arrests and convictions for crimes that are more than seven years old or such records if it is learned that no conviction resulted or a full pardon has been granted. Relevant here, an investigative consumer reporting agency is also restricted from furnishing an investigative consumer report that includes information that is a matter of

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public record and that relates to an arrest, indictment, or conviction, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished. (Civ. Code Sec. 1786.18.)

Existing law prohibits a public agency or private individual or corporation from asking an applicant for employment to disclose information regarding an arrest or detention that did not result in a conviction or that was dismissed or ordered sealed, or any information regarding any pretrial or posttrial diversion programs. (Lab. Code Sec. 432.7.)

Existing law provides that a court may order arrest records and related court files to be sealed when (1) a person successfully completes a pre-filing diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading; (2) two years have passed since successful completion of the program; and (3) the court finds that doing so will be in furtherance of justice. A copy of the person's petition for sealing the arrest and associated files must be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense, and that prosecuting attorney and law enforcement agency may request a hearing on the petition at which they are permitted to present evidence to the court. (Pen. Code Sec. 851.87.)

Existing law provides that a court may order arrest records and related court files to be sealed whenever (1) a person is diverted to a drug diversion program administered by a superior court or is admitted to a deferred entry of judgment program; (2) the person successfully completes the program; and (3) the judge finds the interests of justice would be served by so sealing the records. (Pen. Code Sec. 851.90.)

Existing law provides that a court may order the records of an arrest to be sealed when a person has successfully completed a pretrial diversion program for a misdemeanor offense or a deferred entry of judgment program relating to a narcotics or drug abuse case. (Pen. Code Secs. 1000, 1000.4, 1001.1, 1001.9.)

This bill would additionally prohibit an investigative consumer reporting agency from making or furnishing any investigative consumer report that includes records of any arrest that did not result in an indictment, information, or misdemeanor complaint.

This bill would require an investigative consumer reporting agency to verify the completeness of any information regarding an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment. It would also provide that the duty to verify the accuracy and completeness of information relating to an arrest includes the duty to inquire with either the trial court in each county or the Department of Justice on a weekly basis to determine which, if any, arrests have been sealed or have resulted in a disposition other than a conviction.

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This bill would allow a person who has suffered an arrest that did not result in a conviction to petition the court to have the person's arrest and related records sealed. This bill would provide that an arrest did not result in a conviction under any of the following circumstances:

- the statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney of the city or county that would have had jurisdiction over the offense or offenses upon which the arrest was based has not filed an accusatory pleading based on the arrest;
- the prosecuting attorney filed an accusatory pleading based on the arrest, but no conviction occurred, all of the charges have been dismissed, and none of the charges may be refiled;
- the prosecuting attorney filed an accusatory pleading based on the arrest, but no conviction occurred and the arrestee has been acquitted of all of the charges; or
- the prosecuting attorney filed an accusatory pleading based on the arrest, a conviction or convictions occurred, but all of the convictions have been vacated or reversed on appeal and none of the charges may be refiled.

This bill would provide that a petition to seal an arrest that did not result in a conviction would need to meet all of the following requirements and such a petition could be denied by the court for failing to meet any of them:

- be verified;
- be filed in the appropriate court;
- be filed at least 15 days prior to the hearing on the petition;
- be served upon the specified prosecuting attorney and law enforcement agency at least 15 days prior to the hearing;
- include the person's name, date of birth, date of arrest, city and county where the arrest took place, the law enforcement agency that made the arrest, and other identifying information relating to the arrest, the offenses upon which the arrest was based or the charges that resulted;
- identify the basis upon which the person is eligible for relief; and
- include a statement that the person is entitled to have the arrest sealed either as a matter of right or if the request is based on the interests of justice, how the interest of justice would be served accompanied by supporting declarations.

This bill would provide that the petitioner, the prosecuting attorney, and the arresting agency may submit evidence to the court at a hearing on the petition and that the petitioner would have the initial burden of proof to establish eligibility.

This bill would entitle a petitioner to have such arrests sealed as a matter of right with certain exceptions. A petitioner would have to meet a higher standard by establishing that sealing the arrest would serve the interests of justice when the offense upon which the arrest is based or any of the resulting charges is one of the following:

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- domestic violence, if the petitioner's record demonstrates a pattern of domestic violence arrests, convictions, or both;
- child abuse, if the petitioner's record demonstrates a pattern of child abuse arrests, convictions, or both; or
- elder abuse, if the petitioner's record demonstrates a pattern of elder abuse arrests, convictions, or both.

This bill would define "pattern" as used in this exception as two or more convictions, or five or more arrests, for separate offenses occurring on separate occasions within three years from at least one of the other convictions or arrests.

This bill would provide that a court could consider any relevant factors in determining whether the interests of justice would be served by sealing an arrest including: (1) hardship to the petitioner, (2) evidence of the petitioner's good character, (3) evidence regarding the arrest, and (4) the petitioner's record of convictions.

This bill would provide a process for the court to follow when it grants a petition to seal an arrest that did not result in a conviction, which would include issuing a written ruling and order and provide it to the relevant parties. Such order would detail the implications and limitations of the sealing.

This bill would provide that a person is not eligible for the above relief if the person may still be charged with any of the offenses upon which the arrest was based or if any of the arrest charges or charges in the accusatory pleading is a charge of murder or any other crime without a statute of limitations, except when the person has been acquitted or found factually innocent of the charge. A person would also be ineligible for this relief if the person avoided prosecution by either absconding from the jurisdiction in which the arrest took place or by engaging in identity fraud.

This bill would create a new statute that provides the procedures for accomplishing the sealing of arrest records after a court has issued an order to seal an arrest pursuant to Sections 851.87, 851.90, 851.91, 1000.4, or 1001.9 of the Penal Code. Each of the specified sections will cross-reference this new section for the appropriate sealing process. The process and certain other requirements found in these other existing code sections would be supplanted in part.

This bill would provide that a sealing shall be accomplished as follows:

- the court must forward the sealing order to the Department of Justice and the appropriate law enforcement agencies, and copies must be given to the petitioner and the prosecuting attorney;
- the local summary criminal history information and the state summary criminal information must include a note next to the sealed arrest stating that the arrest was sealed, the date it was sealed, and the provision pursuant to which it was sealed;

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- all police investigative reports or court records related to the sealed arrest shall be stamped with a message that the arrest was sealed, and the documents should not be released outside of the criminal justice sector; and
- all arrest records, police investigative reports, and court records that are sealed must not be disclosed to the public, consumer reporting agencies, or any other person or entity except the person whose arrest was sealed and criminal justice agencies, as defined.

This bill would require a criminal justice agency to respond to any inquiry regarding the sealed arrest, or a request for associated, sealed records, received from the public, a consumer reporting agency, or any person or entity (except the person whose arrest was sealed or another criminal justice agency) with (1) a verbal statement that the arrest has been sealed and that no further information is available; and (2) written notice that the arrest has been sealed, is deemed to have never occurred, shall not be used in any way that could result in denial of any employment, benefit, license, or certificate, and that any records of the arrest in the possession of, or obtained from, a consumer reporting agency for the purpose of providing or obtaining background checks on the person whose arrest has been sealed must be destroyed and that a failure to so destroy them may subject the consumer reporting agency to criminal and civil liability.

This bill would require a consumer reporting agency, as defined, to inquire with the relevant criminal court whether any arrests with regard to which the agency possesses any record or information have been sealed. When a consumer reporting agency discovers that any such arrest has been sealed, it would have to delete and destroy all records relating to the sealed arrest and shall cease to pursue, store, or disseminate any information relating to the sealed arrest with one exception. The consumer reporting agency would be required to notify any person or entity to which it previously provided information relating to the arrest that the arrest has been sealed, is deemed not to have occurred, and shall not be used in any way that could result in the denial of any employment, benefit, license, or certificate.

This bill would subject consumer reporting agencies to civil penalties between \$500 and \$2,500, cumulative to other civil remedies and penalties, for each violation of these provisions to be enforced by the Attorney General, a city attorney, or a district attorney. This provision would not limit any existing private right of action that exists under current law.

This bill would not restrict a criminal justice agency's access to records of arrest.

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COMMENT

1. Stated need for the bill

According to the author:

Current record sealing procedures are ineffective and do not provide a mechanism to properly seal arrests from people's records. Some penal code sections provide for the sealing of local records, but do not affect state-level records, which are usually referenced in background checks. Records used for background checks can be outdated. Consumer reporting companies fail to update their databases to reflect court-ordered record sealing, which means that individuals are deprived of the very benefit that the court order is intended to provide.

SB 393 will:

- Establish a uniform legal process for sealing records relating to arrests that did not result in a conviction.
- Update criminal records at the California Department of Justice, by doing so consumer reporting agencies will provide updated background reports.
- By sealing records of arrest for those who have not been convicted of a crime, SB 393 will remove barriers that are holding back Californians from employment and housing opportunities.

2. Providing an efficient, streamlined process for accomplishing a sealing

Currently, Sections 851.87, 851.90, 1000.4, and 1001.9 of the Penal Code provide for the sealing of records in certain conditions. This bill would streamline the process for sealing arrest records by including a cross-reference in each of these sections to a new section, Section 851.92 of the Penal Code, that would detail one universal, thorough system. Section 851.92 would also govern the sealing of arrests under the newly created Section 851.91, which allows for the sealing of arrests that did not result in a conviction.

Currently, each relevant statute provides its own process in a silo, and each of these processes works independent of the others. This bill would resolve understandable confusion on how a sealing should be accomplished by providing a definitive and universal process. It will also ensure that information about the sealing of arrests gets to the Department of Justice, which is a main source for criminal record information for many consumer reporting agencies. This eliminates inefficiencies in the system and ensures the proper flow of information, hallmarks of effective legislation.

3. Providing an equitable opportunity to seal certain arrests

Evidence of previous arrests can jeopardize a person's ability to secure housing, employment, or other necessities in life. However, our criminal justice system is based

SB 393 (Lara)

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on the principle that one is innocent until proven guilty. Therefore, as a matter of public policy, arrests that do not result in convictions should not hang over individuals, essentially inflicting collateral punishment on them for crimes for which they were never convicted.

This bill would add Section 851.91 to the Penal Code to provide these individuals with a way out from under this burden. This new section would enable an individual to seal arrests where the statute of limitations has run, the charges have been dismissed, the individual was acquitted, or a conviction occurred but was vacated or reversed on appeal. A person would be entitled as a matter of right to seal all qualifying arrests upon a properly verified and supported petition. A court granting such a request would be required to issue a written ruling and order stating that the record of arrest has been sealed and that the arrest is deemed not to have occurred. This would enable the person to answer any question relating to the arrest accordingly, and would release the person from all penalties and disabilities resulting from the arrest.

The court would then provide a copy of this written ruling to the petitioner, to the prosecuting attorney, to the law enforcement agency that made the arrest, and to the Department of Justice and otherwise comply with the newly created Section 851.92, which would govern the process for effectuating a sealing. By mandating the information be circulated in this manner, public records and investigative consumer reports will be updated in a more efficient and timely manner. This ensures that information regarding arrests that have been sealed are not making it into the hands of employers and housing providers who should not be basing their decisions on such information.

This new entitlement to relief would also come with a number of safeguards on the system and a number of exceptions would apply to assuage concerns about public safety. The sealed arrest could still be pleaded and proved in a subsequent prosecution and would have the same effect as if it had not been sealed. Furthermore, the sealing would not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission. This maintains access to the arrest information for a host of entities where safety concerns might otherwise arise. The sealing would also not affect the person's authorization to own a firearm or any prohibition from holding public office that would otherwise apply as a result of the arrest.

Additionally, a number of exceptions would apply. For instance, any arrests where charges may still be filed or where there is no statute of limitations are not eligible to be sealed. Additionally, if the reason a person was not convicted was due to their evasion of authorities, the person would similarly not be eligible for relief.

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This bill would create a higher burden to seal arrests for certain offenses where the person has shown a pattern of arrests or convictions. If a person wishes to seal arrests based on domestic violence, child abuse, or elder abuse, and where the person's record demonstrates a pattern of arrests or convictions for such offenses, the person would have to prove to the court that sealing such arrests serves the interests of justice.

4. Providing restraints on consumer reporting agencies

The way information of arrests generally finds its way into the hands of potential employers, housing providers, and other decision makers is through background checks conducted by consumer reporting agencies. Therefore, ensuring that the sealing of an arrest is reflected in these reports, or keeping the information from entering into the reports in the first place, is vital for the effectiveness of this legislation and the protection of individuals whose arrests are sealed.

This bill would prohibit consumer reporting agencies from sharing information regarding arrests when it learns that such arrests and related records have been sealed. It would require the agencies to delete and destroy such records immediately after discovering such information. This bill would also require the consumer reporting agencies to notify those persons and entities to which they had already shared such information that the records have been subsequently sealed and cannot be used to deny employment, benefits, licenses, or certificates. It would subject any person that disseminates sealed information in violation of these provisions to civil penalties of \$500 to \$2,500. These provisions work towards ensuring the purpose of this bill is properly effectuated. However, this bill does not provide individuals harmed by violations of these provisions a right to bring their own action. It does make clear though that it does not limit any existing private right of action and that any civil penalties imposed would be cumulative to civil remedies or penalties imposed under any other law.

Furthermore, this bill would place the responsibility for verifying the accuracy and completeness of arrest information, including whether such arrests have been sealed, on investigative consumer reporting agencies, a subset of consumer reporting agencies, before sharing arrest information. Such agencies would be required to inquire with either the relevant trial court or the Department of Justice on a weekly basis as to whether any arrests have been sealed or have resulted in a disposition other than conviction.

This bill would also prohibit these investigative consumer reporting agencies from making and furnishing reports containing information regarding arrests for which charges were never pursued through an indictment, information, or misdemeanor complaint. However, the current language of the bill may lead to some confusion over exactly when arrest information can be provided by these agencies. The clarifying amendment below will make clear that a record of arrest cannot be included in an

SB 393 (Lara)
Page 10 of 10

investigative report unless and until an indictment, information, or misdemeanor complaint results. Such an arrest could be reported pending pronouncement of judgment on any resulting indictment, information, or misdemeanor complaint.

Clarifying Amendment

On page 3, line 20, delete “arrest,” and insert “an arrest that has resulted in an”

Support: Alliance for Boys and Men of Color; American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Catholic Conference; Californians for Safety and Justice; Firearms Policy Coalition; National Association of Social Workers

Opposition: None Known

HISTORY

Source: San Francisco District Attorney George Gascón

Related Pending Legislation: None Known

Prior Legislation:

SB 513 (Hancock, Ch. 798, Stats. 2013) added Section 851.87 to the Penal Code, providing for the sealing of records upon completion of a prefiling diversion program administered by a prosecuting attorney.

SB 599 (Perata, Ch. 792, Stats. 2003) added Section 851.90 to the Penal Code, providing for the sealing of records upon completion of a drug diversion program administered by a superior court or a deferred entry of judgment program.

Prior Vote: Senate Public Safety Committee (Ayes 6, Noes 1)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL**NO. 393****Introduced by Senators Lara and Mitchell****February 15, 2017**

An act to add Section 851.867 to the Penal Code, relating to arrests.

LEGISLATIVE COUNSEL'S DIGEST

SB 393, as introduced, Lara. Arrests: expungement.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty if he or she has fulfilled the conditions of probation for the entire period of probation, has been discharged prior to the termination of the period of probation, has been convicted of a **misdemeanor** and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or if a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief. In either case, existing law releases the defendant from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would authorize a person who has suffered an arrest that did not result in a conviction to petition the court to have his or her arrest expunged. Under the bill, a person would be ineligible for this relief if he or she may still be charged with any offense upon which the arrest was based or if any of the arrest charges or charges in the accusatory pleading based on the arrest, if filed, is a charge of murder or any other offense for which there is no statute of limitations, except when the person has been acquitted or found factually innocent of the charge.

The bill would provide that a person who is eligible for expungement of his or her arrest is entitled, as a matter of right, to that expungement unless the person has been charged with certain crimes, including, among others, an offense or charge based on physical violence by the petitioner against another person, in which case the person may obtain expungement of his or her arrest only upon a showing that the expungement would serve the interests of justice. The bill would specify that the petitioner has the initial burden of proof that he or she is either entitled to expungement of his or her arrest as a matter of right or that expungement would serve the interests of justice and, if the court finds that petitioner has satisfied his or her burden of proof, then the burden of proof shall shift to respondent prosecuting attorney.

The bill would require, if the petition is granted, the court to issue a written ruling and order that, among other things, states that the arrest is deemed not to have occurred and that, except as otherwise provided, the petitioner is released from all penalties and disabilities resulting from the arrest. The bill would prohibit the disclosure of the expunged arrest, or information about the expunged arrest that is contained in other records, from being disclosed to the public, consumer reporting agencies, or any other person or entity, except as specified.

The bill would make it a **misdemeanor** to disclose information relating to an expunged arrest, as specified. The bill would subject a person who is not authorized to have access to information relating to an expunged arrest and who disseminates that information to civil liability for invading the privacy of the petitioner. Because this bill would create a new crime and impose new duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 851.867 is added to the Penal Code, to read:

851.867. (a) (1) (A) A person who has suffered an arrest that did not result in a conviction may petition the court to have his or her arrest expunged.

(B) For purposes of this section, an arrest did not result in a conviction if any of the following are true:

(i) The statute of limitations has run on every offense upon which the arrest was based and the prosecuting attorney of the city or county that would have had jurisdiction over the offense or offenses upon which the arrest was based has not filed an accusatory pleading based on the arrest.

(ii) The prosecuting attorney filed an accusatory pleading based on the arrest, but no conviction occurred, all of the charges have been dismissed, and none of the charges may be refiled.

(iii) The prosecuting attorney filed an accusatory pleading based on the arrest, but no conviction occurred and the arrestee has been acquitted of all of the charges.

(iv) The prosecuting attorney filed an accusatory pleading based on the arrest, a conviction or convictions occurred, but all of the convictions have been vacated or reversed on appeal and none of the charges may be refiled.

(v) The prosecuting attorney filed an accusatory pleading based on the arrest, a conviction or convictions occurred, but the arrestee has been found factually innocent of all of the convictions.

(2) A person is not eligible for relief under this section in either of the following circumstances:

(A) He or she may still be charged with any of the offenses upon which the arrest was based.

(B) Any of the arrest charges, as specified by the law enforcement agency that conducted the arrest, or any of the charges in the accusatory pleading based on the arrest, if filed, is a charge of murder or any other offense for which there is no statute of limitations, except when the person has been acquitted or found factually innocent of the charge.

(b) (1) A petition for expungement of an arrest shall:

(A) Be verified.

(B) Be filed in the court in which the accusatory pleading based on the arrest was filed or, if no accusatory pleading was filed, in a court with criminal jurisdiction in the city or county in which the arrest occurred.

(C) Be filed at least 15 days prior to the hearing on the petition.

(D) Be served, by copy, upon the prosecuting attorney of the city or county in which the arrest occurred and upon the law enforcement agency that made the arrest at least 15 days prior to the hearing on the petition.

(E) Include all of the following information:

(i) The petitioner's name and date of birth.

(ii) The date of the arrest for which expungement is sought.

(iii) The city and county where the arrest took place.

(iv) The law enforcement agency that made the arrest.

(v) Any other information identifying the arrest that is available from the law enforcement agency that conducted the arrest or from the court in which the accusatory pleading based on the arrest was filed, including, but not limited to, the case number for the police investigative report documenting the arrest, the name of the arresting officer, and the court number under which the arrest was reviewed by the prosecuting attorney or under which the prosecuting attorney filed an accusatory pleading and court proceedings were initiated.

(vi) The offenses upon which the arrest was based or, if an accusatory pleading was filed based on the arrest, the charges in the accusatory pleading.

(vii) Upon which basis identified in subparagraph (B) of paragraph (1) of subdivision (a) the petitioner is eligible for relief.

(viii) A statement that the petitioner is entitled to an expungement as a matter of right or, if the petitioner is requesting expungement in the interests of justice, how the interests of justice would be served by granting the petition, accompanied by declarations made directly and verified by petitioner and his or her supporting declarants.

(2) The court may deny a petition for failing to meet any of the requirements described in paragraph (1).

(c) (1) At a hearing on a petition under this section, the petitioner, the prosecuting attorney, and, through the prosecuting attorney, the law enforcement agency that made the arrest, may present evidence to the court. Notwithstanding Section 1538.5 or 1539, the hearing may be heard and determined upon declarations, affidavits, police investigative reports, copies of state summary criminal history information and local summary criminal history information, or any other evidence submitted by the parties that is material, relevant, and reliable.

(2) The petitioner has the initial burden of proof that he or she is entitled to expungement of his or her arrest as a matter of right or that expungement would serve the interests of justice. If the court finds that petitioner has satisfied his or her burden of proof, then the burden of proof shall shift to respondent prosecuting attorney.

(3) The court shall not grant the petition unless the court finds that petitioner is entitled to relief as a matter of right or has proven that the interests of justice would be served by granting the petition.

(d) (1) A petitioner who is eligible for relief under subdivision (a) is entitled to expungement of his or her arrest as a matter of right unless he or she is subject to paragraph (2) or (3).

(2) (A) The petitioner may obtain expungement of his or her arrest only upon a showing that the expungement would serve the interests of justice if any of the offenses upon which the arrest was based, as specified by the law enforcement agency that made the arrest, or, if an accusatory pleading was filed, any of the charges in the accusatory pleading, was one of the following:

(i) Domestic violence, if the petitioner's record demonstrates a pattern of domestic violence arrests, convictions, or both.

(ii) Child abuse, if the petitioner's record demonstrates a pattern of child abuse arrests, convictions, or both.

(iii) Elder abuse, if the petitioner's record demonstrates a pattern of elder abuse arrests, convictions, or both.

(iv) An offense or charge based on physical violence by petitioner against another person.

(v) An offense or charge described in subparagraph (C) of paragraph (2) of subdivision (e) of Section 667, if the petitioner has been convicted, at any time before or after the arrest that is the subject of the petition, of a serious felony in this state or of any offense committed in another jurisdiction which would have been a serious felony if committed in this state.

(B) (i) The petitioner may show that the interests of justice would be served by granting his or her petition through the presentation of evidence.

(ii) If any of the offenses upon which the arrest was based, as specified by the law enforcement agency that made the arrest, or, if an accusatory pleading was filed, any of the charges in the accusatory pleading, was one of violence by petitioner against another person, the court shall provide meaningful opportunity for the prosecuting attorney to contact the victim and for the victim to respond to the petition. The court shall consider the victim's response or, the circumstances surrounding the lack thereof, in determining whether the interests of justice would be served by granting the petition.

(3) If the court finds at the hearing that either of the following circumstances is true, the court shall deny the petition:

(A) That the arrest did not result in a conviction because the petitioner absconded from the jurisdiction in which the arrest took place.

(B) That the arrest did not result in a conviction because the petitioner engaged in identity fraud.

(e) If the court grants a petition pursuant to this section, the court shall do all of the following:

(1) Issue a written ruling to the petitioner stating that the record of arrest is expunged as to petitioner, that the arrest is deemed not to have occurred, that petitioner may answer any question relating to the arrest accordingly, and that, except as provided in paragraph (3), the petitioner is released from all penalties and disabilities resulting from the arrest. The court shall give a copy of this written ruling to the petitioner, to the prosecuting attorney, to the law enforcement agency that made the arrest, and to the Department of Justice.

(2) Issue an order of expungement of arrest to the Department of Justice, to the law enforcement agency that made the arrest, to any other law enforcement agency that participated in the arrest, and to the law enforcement agency that administers the master local summary criminal history information that contains the arrest record for the arrest that is the subject of the petition. The court shall give a copy of this order to the petitioner, to the prosecuting attorney, and to any law enforcement agency to which the order is issued.

(3) The ruling and order shall state all of the following:

(A) The expunged arrest may be pleaded and proved in any subsequent prosecution of the petitioner for any other offense, and shall have the same effect as if it had not been expunged.

(B) The expungement of an arrest pursuant to this section does not relieve the petitioner of the obligation to disclose the arrest, if otherwise required by law, in response to any direct question contained in a questionnaire or application for public office, for employment as a peace officer, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(C) The expungement of an arrest pursuant to this section does not affect petitioner's authorization to own, possess, or have in his or her custody or control any firearm, or his or her susceptibility to conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, if the arrest would otherwise affect this authorization or susceptibility.

(D) The expungement of an arrest pursuant to this section does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.

(f) (1) (A) After the court has issued the order described in subdivision (e), the local summary criminal history information and the state summary criminal history information shall include a note in the arrest record for the arrest that was the subject of the petition that the arrest was expunged, the date that the court issued the order, and that the arrest was expunged pursuant to the provisions of this section. The responsible local law

enforcement agency and the Department of Justice shall ensure that all master copies of the arrest record contain this note.

(B) The expunged arrest, or information about an expunged arrest that is contained in other records, shall not be disclosed to the public, consumer reporting agencies, or any other person or entity except the petitioner or a criminal justice agency requiring the information or records in the course of its duties.

(C) An agency receiving an inquiry regarding the arrest from the public, a consumer reporting agency, or any person or entity except the petitioner or a criminal justice agency requiring the records in the course of its duties shall respond in one of the following ways:

(i) With a verbal statement that the arrest has been expunged and that no further information is available.

(ii) By providing a written notice that the arrest has been expunged pursuant to this section and that any records of the arrest in the possession of, or obtained from, a consumer reporting agency for the purpose of providing or obtaining background checks on the petitioner shall be destroyed and that the failure to destroy the records may subject the consumer reporting agency to criminal and civil liability.

(D) A criminal justice agency may continue to access and use information relating to an expunged arrest.

(2) (A) A law enforcement investigative report related to the arrest that was the subject of the petition shall, as to the petitioner only, be stamped "ARREST EXPUNGED: DO NOT RELEASE OUTSIDE THE CRIMINAL JUSTICE SECTOR," and noting next to the stamp the date of the expungement and that the arrest was expunged pursuant to the provisions of this section. The responsible local law enforcement agency shall ensure that all digital or master copies of the arrest record for the arrest that was the subject of the petition contain this note.

(B) A criminal justice agency may continue to access and use information in a law enforcement investigative report related to an expunged arrest.

(3) (A) A consumer reporting agency shall inquire with either the trial court in each county or the Department of Justice on a weekly basis to determine which, if any, arrests have been expunged. When a consumer reporting agency learns that a consumer for which it has a record has had an arrest expunged, the consumer reporting agency shall delete all records in its possession relating to the arrest, shall cease to pursue, store, or disseminate any information relating to the arrest, except that it shall notify any person to which it previously provided information relating to the arrest that the arrest has been expunged, is deemed not to have occurred, and that the arrestee has been released from all penalties or disabilities arising therefrom, except as otherwise specified in paragraph (3) of subdivision (e).

(B) Notwithstanding subparagraphs (B) and (C) of paragraph (1), the trial court and the Department of Justice shall provide information relating to an expunged arrest to consumer reporting agencies for the purpose of complying with this paragraph.

(4) For the purposes of this subdivision, a "consumer reporting agency" includes an investigative consumer reporting agency, as defined in Section 1786.2 of the Civil Code, and a consumer credit reporting agency, as defined in Section 1785.3 of the Civil Code.

(g) (1) Every person who is authorized to have access to information relating to an expunged arrest who disseminates information relating to an expunged arrest to a person who is not authorized to receive that information is guilty of a **misdemeanor**.

(2) (A) Every person who is not authorized to have access to information relating to an expunged arrest who disseminates that information is guilty of a **misdemeanor**.

(B) Every person who is not authorized to have access to information relating to an expunged arrest who disseminates that information is subject to civil liability for invading the privacy of the petitioner. In a successful action brought under this subparagraph, the petitioner, in addition to any special or general damages awarded, shall be awarded a minimum of two thousand five hundred dollars (\$2,500) in exemplary damages, attorney's fees, and any other litigation costs reasonably incurred in the suit. The right, remedy, and cause of action set forth in this section shall be nonexclusive and is in addition to all other rights, remedies, and causes of action for invasion of privacy.

(h) The Department of Justice shall furnish forms to be utilized by a person applying for expungement of an arrest pursuant to this section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.