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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

ARIEL ZVOLON AMITAY,

Plaintiff;

v.

JEWS FOR JESUS, a California nonprofit corporation, and DOES 1–50, inclusive,

Defendants.

Case No. 3:25-cv-01258

DEFENDANT'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE OR, IN THE ALTERNATIVE, TO DISMISS UNDER RULE 12(b)(6), PLAINTIFF'S COMPLAINT; MEMORANDUM OF POINTS & AUTHORITIES

[Fed. R. Civ. Pro. 12(b)(6) & Cal. Code Civ. Proc. § 425.16]

Judge: Maxine M. Chesney
Room: 07, 19th Floor
Hearing Date: April 25, 2025
Hearing Time: 9:00 a.m.

Action filed: December 24, 2024
Trial Date: TBD

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT ON April 25, 2025 at 9:00 a.m., or as soon thereafter as this motion may be heard in the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Courtroom 07, 19th Floor, Defendant JEWS FOR JESUS will and hereby does (1) move pursuant to California's anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16, to strike the Complaint; and (2), in the alternative, move under Fed. R. Civ. P. 12(b)(6) to dismiss the Complaint in its entirety for failure to state a claim upon which relief can be granted. Defendant also moves for an award of attorney's fees and costs pursuant to Cal. Civ. Proc. Code § 425.16.

Defendant's Motion is made pursuant to Cal. Civ. Proc. Code § 425.16 and Federal Rule of Civil Procedure 12(b)(6), and is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the exhibits, and Proposed Order, and all pleadings and papers on file in this matter, and on such other materials and evidence as may be presented to the Court.

Dated: March 14, 2025

Respectfully submitted,

/s/ Horatio G. Mihet

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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE ISSUES TO BE DECIDED

This Motion raises the following issues:

1. Whether Plaintiff's Complaint should be stricken as an improper "strategic lawsuit against public participation" ("SLAPP") under Cal. Code Civ. Proc. § 425.16; and

2. Whether Plaintiff's Complaint should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim, for the reasons set forth in Defendant's anti-SLAPP motion.

INTRODUCTION

This case is about an Orthodox Jewish plaintiff's theological opposition to a Christian ministry—and his baseless attempt to manufacture a lawsuit out of it. Plaintiff Ariel Amitay, a citizen of Israel, has "dedicated his life to the study of the Jewish Orthodox faith" (Compl. ¶ 12, Dkt. 1-1 at 4) and who, by his own telling, "has starkly different views from" Defendant Jews for Jesus, a Christian ministry devoted to sharing the Gospel with Jewish people (*Id*. ¶ 14). Amitay has never associated with Jews for Jesus, never endorsed Jews for Jesus, and, in his own words, "disagrees with their religious views." (*Id*.) Yet, in this lawsuit, he claims that Jews for Jesus used his image to suggest that he personally supports its mission. There is just one problem: None of it is true.

The image at issue—a widely available stock photograph of "a man with a beard" taken by photographer Levi Meir Clancy and uploaded (among millions of other stock images) to the public photo-sharing site Unsplash under a free-use license for anyone to download and use (Compl. Ex. B, Dkt. 1-1 at 16)—was not some carefully curated recruitment poster centered on the one-and-only Ariel Amitay. Instead, Jews for Jesus used the stock photo, pursuant to the free license provided by Unsplash, in a social media post highlighting its ministry efforts to share New Testaments in Israel following the October 7 attacks. Critically, Jews for Jesus *blurred the face* of the man in the photo, *never identified him* by name, and *never suggested* the unidentifiable "man with a beard" in the image was affiliated with or endorsed Jews for Jesus' mission. Indeed, as Amitay knows but failed to allege, Jews for Jesus clearly did not even know who he was given

that the stock image only described the unidentified soldier as "a man with a beard." (Compl. Ex. B, Dkt. 1-1 at 16.) That didn't stop Plaintiff from filing this lawsuit, though, claiming without any proof that he is the "man with a beard" in the photo, and further claiming that Jews for Jesus' use of this nameless, faceless stock photo made available for worldwide use by Unsplash somehow defamed *him*, cast *him* in a false light, and inflicted emotional distress upon *him*. And, to make matters worse, Plaintiff even alleges that Jews for Jesus somehow managed to do all of this intentionally, willfully, and maliciously, specifically to "disgrace, defame, and injure" *him*, despite not ever knowing of him. (Compl. ¶¶ 22–23.) All wrong.

Jews for Jesus moves to strike the Complaint under California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16. Amitay's attempt to weaponize defamation law against protected speech is a classic SLAPP and should be rejected as a matter of law. *First*, Jews for Jesus' social media posts are quintessential religious speech—which is entitled to the highest level of First Amendment protection. *See Cantwell v. State of Connecticut*, 310 U.S. 296, 307 (1940) ("The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that *freedom to communicate information and opinion be not abridged*." (emphasis added)). And religious advocacy, particularly regarding Jew for Jesus' humanitarian efforts in the aftermath of the October 7 massacres in Israel, constitutes speech on a matter of public concern. *See Snyder v. Phelps*, 562 U.S. 443, 453 (2011). *Second*, Amitay cannot establish a probability of prevailing on any of his claims. His defamation and false light claims fail outright because the social media posts were neither "of or concerning" him nor provably false statements of fact. *See Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1042 (1986). His emotional distress claims collapse for the same reason—nothing in Jews for Jesus' civil, unremarkable and ordinary posts about distribution of New Testaments in Israel, *using a freely available stock photo with a blurred image*, rises to the level of "outrageous conduct" necessary to sustain such a claim. Indeed, Amitay's entire theory is built on a stock photograph, freely available under a public-use license, of a blurred "man with a beard"—meaning there is no plausible basis for liability. For these reasons, the Court should strike the Complaint under California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, and hold that

Jews for Jesus is entitled to recover its attorney's fees and costs under Cal. Code Civ. Proc. § 425.16(c)(1).

In the alternative, the Court should dismiss the Complaint under Rule 12(b)(6) in its entirety, with prejudice, due to Amitay's failure to state any legally cognizable claim.

STATEMENT OF FACTS

This case begins not with Amitay, nor with Jews for Jesus, but with a photographer and a public image-sharing website. On May 5, 2022, a photographer named Levi Meir Clancy captured an image in Safed, Israel, depicting two Jewish men—one with a beard, the other wearing a hat—on Yom HaZikaron. (Compl., Ex. B, Dkt. 1-1 at 16.) Clancy then uploaded this image to Unsplash, an image-sharing platform, under the explicit designation: "Free to use under the Unsplash License." (*Id*.) And the world took notice: By the time this lawsuit was filed, the image had been viewed over 65,000 times and downloaded at least 518 times. (*Id*.)

Jews for Jesus is an organization dedicated to Christian outreach to Jewish people. (Compl. ¶ 10, Dkt. 1-1 at 4.) On or around December 30 and 31, 2023, Jews for Jesus posted a cropped and modified version of this widely available image on its social media accounts, including Facebook and Instagram. (Compl., Ex. A, Dkt. 1-1 at 11–14.) Jews for Jesus blurred the face of the "man with a beard" in the original image and included a message attributed to "Nachman, a young Haredi soldier." (*Id.*) Nachman's quoted statement read: "Thank you for leaving at my home a copy of the New Testament. I look forward to reading it when I return home from the war." (*Id*.) Jews for Jesus' caption framed the quote as part of its ministry efforts in Israel following the October 7 attacks, emphasizing that, through donations, the organization had provided copies of the New Testament to Nachman and over 1,000 other Israelis in 2023. (*See id*.)

Enter Amitay. He alleges that he is the "man with a beard," though conspicuously, nowhere in his Complaint does he actually affirm this fact, let alone provide any proof of it. (Compl. ¶ 14, Dkt. 1-1.) He falsely asserts that the photo "was taken by an unknown individual," even though the photographer is identified on Unsplash as Levi Meir Clancy. (Compl., Ex. B., Dkt. 1-1 at 16.) He asserts that he first became aware of the post when unidentified "friends" sent it to him (Compl.

¶ 15), even though he does not allege how they came across the image, or how they could possibly recognize him or anyone, since the face of the "man with a beard" was blurred, and since nothing in the post named or identified Amitay. And critically, he alleges no concrete facts showing that Jews for Jesus' posts were directly responsible for the supposed consequences that followed. Indeed, Amitay claims that upon seeing the post, his employer, an Israeli institution called "Educate the Young," immediately questioned him and then fired him. (Compl. ¶ 18.) According to Amitay, his employer expressed disapproval of Jews for Jesus and allegedly told him they "could not condone or be associated with someone involved with JFJ or their views." (*Id*.) Here, again, the Complaint is conspicuously silent. Amitay does not attach a termination letter, an email, or even a text message from his employer linking his termination to Jews for Jesus' posts. Nor does he allege that he attempted to explain to his employer *the truth*—that the image was a publicly available stock photo uploaded to Unsplash by Levi Meir Clancy, that Jews for Jesus downloaded and used a blurred version of the photo, and that Jews for Jesus simply quoted an individual named "Nachman" and in no way identified Amitay. That silence is deafening, and fatal to Amitay's claims.

And yet, despite these glaring omissions, Amitay claims the post "changed [his] life forever." (Compl. ¶ 13.) He asserts that the post subjected him to "shame and embarrassment amongst his friends," caused him to suffer "depression and mental suffering," and left him "unable to secure employment." (*Id*. ¶¶ 19, 23.) He seeks, among other things, no less than $5 million in punitive damages. (*Id*. at 8, Dkt. 1-1 at 9.) But for all its dramatic claims, Amitay's Complaint rests on an inherently flawed premise: that a publicly available photograph of an unidentified "man with a beard"—blurred, uncredited, and without his name—somehow constituted a deliberate effort to falsely associate *him* with Jews for Jesus. That premise is not only factually implausible; it is legally untenable. Consequently, and as the following sections will demonstrate, Amitay's Complaint does not withstand scrutiny under either federal pleading standards or California law.

ARGUMENT

I. Plaintiff's Complaint is a Strategic Lawsuit Against Public Participation and Thus Should Be Dismissed under Cal. Code Civ. Proc. § 425.16.

A. California's anti-SLAPP statute requires quick dismissal of meritless lawsuits targeting First Amendment-protected activity.

Amitay's Complaint should be stricken as an impermissible strategic lawsuit against public participation ("SLAPP") under California's anti-SLAPP statute. *See* Cal. Code Civ. Proc. § 425.16. SLAPPs "masquerade as ordinary lawsuits" but are intended to deter individuals and advocacy organizations "from exercising their political or legal rights or to punish them for doing so." *Batzel v. Smith*, 333 F.3d 1018, 1024 (9th Cir. 2003) (quoting *Wilcox v. Superior Court*, 27 Cal.App.4th 809 (1994)). California's anti-SLAPP statute allows a defendant to move to strike "[a] cause of action against a person arising from any act of that person in furtherance of that person's right of petition or free speech under the United States or California Constitution in connection with a public issue[.]" Cal. Code Civ. Proc. § 425.16(b)(1). "Motions to strike a state law claim under California's anti-SLAPP statute may be brought in federal court." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1109 (9th Cir. 2003).

Courts employ a two-step test in evaluating whether to grant a defendant's anti-SLAPP motion. *First*, "the moving defendant must make a prima facie showing that the plaintiff's suit arises from an act in furtherance of the defendant's constitutional right to free speech." *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 261 (9th Cir. 2013) (citing *Batzel*, 333 F.3d at 1024). *Second*, if the defendant makes the prima facie showing that the plaintiff's suit arises from conduct in furtherance of the defendant's free speech rights, then the burden then shifts to the plaintiff "to establish a reasonable probability that it will prevail on its claim in order for that claim to survive dismissal." *Makaeff*, 715 F.3d at 261 (citing Cal. Code Civ. Proc. § 425.16(b)(1)). "Under this standard, the claim should be dismissed if the plaintiff presents an insufficient legal basis for it, or if, on the basis of the facts shown by the plaintiff, 'no reasonable jury could find for the plaintiff.'" *Id.* (quoting *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 840 (9th Cir. 2001)).

Where, as here, "an anti-SLAPP motion to strike challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of Civil Procedure 12(b)(6) standard and consider whether a claim is properly stated." *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018), *amended*, 897 F.3d 1224 (9th Cir. 2018). Rule 12(b)(6) authorizes dismissal of a complaint "where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when a plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In reviewing the plausibility of a complaint, courts "accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nevertheless, courts do not "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).[1]

B. Jews for Jesus meets its burden under the first prong of the anti-SLAPP statute because Amitay's claims arise from an act in furtherance of Jews for Jesus' constitutional right to free speech.

Jews for Jesus has met its initial burden of showing that Amitay's claims arise from an act in furtherance of its free speech rights and, therefore, constitutes "protected activity" under the California anti-SLAPP statute. "California courts have interpreted this piece of the defendant's threshold showing rather loosely and have held that a court must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis, and then permit the

[1] Moreover, federal courts ruling on anti-SLAPP motions challenging the legal sufficiency of a claim only "may consider the complaint in its entirety, as well as [...] documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

parties to address the issue in the second step of the analysis, if necessary." *Greater Los Angeles Agency on Deafness, Inc. v. Cable News Network, Inc.*, 742 F.3d 414, 422 (9th Cir. 2014) (citing *Hilton v. Hallmark Cards*, 599 F.3d 894, 904 (9th Cir. 2010) and *City of Los Angeles v. Animal Def. League*, 135 Cal.App.4th 606, 621 (2006)) (cleaned up). A "protected activity" is an activity that falls within one of four categories including, as relevant here: "(3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest," or "(4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Cal. Code Civ. Proc. §425.16(e).

Jews for Jesus' social media posts easily qualify as protected speech under the First Amendment. *See, e.g.*, *Hernandez v. City of Phoenix*, 43 F.4th 966, 977 (9th Cir. 2022) (Facebook posts constitute protected First Amendment speech); *id.* at 978 ("publicly posting on social media suggests an intent to communicate to the public or to advance a political or social point of view"); *Grutzmacher v. Howard Cnty.*, 851 F.3d 332 (4th Cir. 2017) (Facebook postings are protected speech); *Keefe v. Adams*, 840 F.3d 523 (8th Cir. 2016) (Facebook postings are protected speech and "[t]he First Amendment fully applied to that speech").

Moreover, the posts certainly evince "[a]n intent to convey a particularized message ..., and in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it," *Spence v. Washington*, 418 U.S. 405, 410–11 (1974) (per curiam), and the posts were made in a public forum in connection with an issue of public interest. "The term 'public forum' includes forms of public communication other than those occurring in a physical setting." *Ampex Corp. v. Cargle*, 128 Cal. App. 4th 1569, 1576 (2005). "Thus the electronic communication media may constitute public forums." *Id*. "Web sites that are accessible free of charge to any member of the public where members of the public may read the views and information posted, and post their own opinions, meet the definition of a public forum for purposes of section 425.16." *Id*.; *cf. ComputerXpress, Inc. v. Jackson*, 93 Cal. App. 4th 993, 1007 (2001) (holding that web sites where business owners posted disparaging comments about publicly traded

company were "public forums" for purposes of owners' motion to dismiss company's resulting trade libel claim as a SLAPP, where sites were accessible free of charge to any member of the public). Facebook and Instagram comfortably meet this standard: They are free-to-access platforms where users publicly share posts, interact with other users, and engage in discussions, making them the modern equivalent of the public square. *Cf. Packingham v. North Carolina*, 582 U.S. 98, 107 (2017) ("Social media allows users to gain access to information and communicate with one another about it on any subject that might come to mind.").

Construing section 425.16(e)(4) "broadly in light of the statute's stated purpose to encourage participation in matters of public importance or consequence," *Hilton*, 599 F.3d at 906, Jews for Jesus' alleged conduct—posting a religious message with a publicly available photograph—constitutes religious speech and social commentary on the October 7 attacks in Israel, which is protected speech of public concern. Speech is "of public concern" when it can "be fairly considered as relating to any matter of political, social, or other concern to the community." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (citation omitted); *see id.* at 454 (holding that speech of church members who picketed near funeral of a military service member was of public concern and therefore was entitled to First Amendment protection with respect to tort liability of church and church members to service member's father for intentional infliction of emotional distress). Indeed, as the Ninth Circuit has held, "[m]ost speech falling outside that purely private realm will warrant at least some First Amendment protection and thus will qualify as speech on a matter of public concern." *Hernandez*, 43 F.4th at 977. Jews for Jesus' posts—expressing religious sentiments, engaging in humanitarian advocacy, and commenting on the Israel-Hamas war, a matter of global significance—fall squarely within the realm of protected speech on matters of "public concern." To hold otherwise would invite censorship of religious discourse and social commentary, a result squarely foreclosed by the First Amendment.

Even if Facebook and Instagram are not public fora, and they certainly are, "courts have affirmed that the anti-SLAPP statute can apply to private speech that implicates matters of public interest." *See* Thomas R. Burke, Anti-SLAPP Litigation § 3:18 (collecting cases); *see also*

Schwindt v. Flogging Molly, Inc., 2018 WL 6118434, *6 (C.D. Cal. Jan. 30. 2018) ("[T]he definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed to include ... private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity.") Here, the posts address a matter of public interest. For example, the caption accompanying the first image states: "This year, there have been unimaginable atrocities committed against the people of Israel. Over one thousand Israelis were murdered with thousands more injured and many communities decimated. The needs are overwhelming…." (Compl., Ex. A, Dkt. 1-1 at 11.) The second caption similarly discusses the ongoing crisis in Israel and emphasizes how "the generosity of people like you" has helped Jews for Jesus ease the suffering of God's chosen people. (Compl., Ex. B, Dkt. 1-1 at 12.) No doubt the October 7 terrorist attacks and the ongoing war in Israel are global issues of public concern, frequently discussed in the media and public discourse. In light of the widespread public attention to this issue, the social media posts clearly relate to a "public issue or an issue of public interest" under section 425.16(e).

Moreover, Jews for Jesus' posts are not only speech on a public issue—they are also acts "in furtherance of" the organization's constitutional right to free speech. Cal. Code Civ. Proc. § 425.16(e)(4). An act qualifies as "in furtherance of the right of free speech" if it "helps to advance that right or assists in the exercise of that right." *Greater Los Angeles Agency on Deafness*, 742 F.3d at 422 (quoting *Tamkin v. CBS Broad., Inc.*, 193 Cal. App. 4th 133, 143 (2011)). Here, the social media posts at issue did precisely that: they promoted and facilitated Jews for Jesus' religious advocacy, its education about its humanitarian efforts in Israel, and its engagement in public discourse about the Israel-Hamas war. Without question, that is "conduct in furtherance" of free speech. Additionally, Jews for Jesus' posts were intended to assist in raising funds to support its protected advocacy and mission. (Compl., Ex. A, Dkt. 1-1 at 11–14.) The use of social media posts to solicit and raise funds to support an organization's mission and advocacy are clearly acts in furtherance of constitutionally protected expression. *See Vill. of Schaumburg v. Citizens for a Better Env.*, 444 U.S. 620, 629 (1980) ("soliciting funds involves interests protected by the First

Amendment's guarantee of freedom of speech"); *Bates v. State Bar of Ariz.*, 433 U.S. 350, 363 (1977) ("our cases have long protected speech even though it is in the form of . . . solicitation to pay or contribute money").

C. Plaintiff cannot meet his burden under the second prong of the anti-SLAPP statute because the Complaint fails to plead any legally viable cause of action.

Because Amitay's causes of action arise from Jews for Jesus' protected activity, the anti-SLAPP statute shifts the burden to Plaintiff to establish a probability of success on his claims to avoid the striking of his Complaint. *See Makaeff*, 715 F.3d at 261. Amitay does not and cannot meet this burden.

1. Plaintiff fails to state a claim for defamation.

Amitay's defamation claim fails as a matter of law because, at a minimum: (a) the published social media posts are not "of and concerning" Amitay—they are about Jews for Jesus's religious messaging and advocacy—(b) Amitay has failed to plead any false statement of fact, and (c) the social media posts are protected by the common interest privilege.

"In California, defamation is a claim based on an injury to one's reputation," *Bowles v. Constellation Brands, Inc.*, 444 F. Supp. 3d 1161, 1172 (E.D. Cal. 2020), and "the injury may occur by means of libel or slander," *Shively v. Bozanich*, 31 Cal. 4th 1230, 1242 (2003) (citing Cal. Civ. Code § 44)). To state a defamation claim under California law, the plaintiff must plead facts to establish: "(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." *Redfearn v. Trader Joe's Co.*, 20 Cal. App. 5th 989, 1007 (2018) (cleaned up). "The publication must be an intentional publication of a statement of fact," and "[t]he defamatory statement ***must specifically refer to, or be of and concerning, the plaintiff***." *Id*. (emphasis added).

a. The allegedly social media posts are not "of and concerning" Plaintiff and thus are not defamatory.

Amitay cannot establish that the social media posts were "of and concerning" him. A defamation plaintiff must show that he was the "direct object of" the defamatory statement. *See*

Blatty v. New York Times Co., 42 Cal.3d 1033, 1044 (1986) (en banc) (explaining that this "specific reference requirements" prevents those "who merely complain of nonspecific statements that they believe cause them some hurt" from establishing a claim). As the California Supreme Court explained, "To allow a plaintiff who is not identified, either expressly or by clear implication, to institute such an action poses an unjustifiable threat to society." *Blatty*, 42 Cal. 3d at 1044; *accord Michigan United Conservation Clubs v. CBS News*, 485 F. Supp. 893, 900 (W.D. Mich. 1980) ("If plaintiffs were allowed to proceed with this claim, it could invite any number of vexatious lawsuits and seriously interfere with public discussion of issues, or groups, which are in the public eye. Statements about a religious, ethnic, or political group could invite thousands of lawsuits from disgruntled members of these groups claiming that the portrayal was inaccurate and thus libelous.").

Here Amitay has not even adduced any fact or evidence to show that he is actually the "man with a beard" whose face is blurred in the photograph, as opposed to a mere interloper who saw the blurred image online and sought to target Jews for Jesus for its religious beliefs and work. Putting that significant failure aside for present purposes, Amitay alleges that Jews for Jesus "show[ed] falsely that Plaintiff supported Defendant's religious views" (Compl. ¶ 25), yet nowhere in the social media posts is Amitay identified, quoted, or linked to Jews for Jesus in any way. He alleges that Jews for Jesus' use of the stock photo gave "the appearance that he supports JFJ's cause" (*id*. ¶ 14), yet the caption explicitly includes a quote by "Nachman, a young Haredi soldier," *not* Amitay. He alleges Jews for Jesus "intentionally published false post … to disgrace, defame, and injure" him (*id*. ¶ 22), but Defendant did nothing more than use a publicly available, freely licensed photograph of an unidentified soldier, in a post about relief efforts following a national tragedy, *and took the additional step of blurring the man's image so that his face was not identifiable by anyone*. In short, the social media posts do not mention Plaintiff's name anywhere. (Compl., Ex. A, 1-1 at 11–14.) The image does not show the unidentified "man with a beard['s]" face, as it is *blurred*. (*Id*.) And the caption attributes the message to "Nachman, a young Haredi soldier," which Plaintiff does not allege is his actual name or even an alias. Because the photo of

the "man with a beard" is blurred, anonymous, and captioned with a quote by "Nachman," the posts cannot reasonably be understood as referring to Amitay at all. Under the "specific reference" requirement, defamation must be explicitly directed *at the plaintiff*, not just a general statement that someone believes harmed them. *See Blatty*, 42 Cal. 3d at 1042. Without a clear reference or any specific means of identifying Amitay specifically, Amitay's defamation cause of action collapses under its own weight.

b. Amitay failed to plead that Defendant made a false statement of fact.

Amitay's defamation claim also fails because the post does not contain a verifiable statement of fact, much less a false statement. Instead, the posts are nonactionable opinion. "Because the challenged speech must be a statement of fact, the threshold question in every defamation suit is 'whether a reasonable factfinder could conclude that the [contested] statement implies an assertion of objective fact.'" *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1157 (9th Cir. 2021) (quoting *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1053 (9th Cir. 1990)). "If the answer is no, the claim is foreclosed by the First Amendment." *Gardner v. Martino*, 563 F.3d 981, 987 (9th Cir. 2009). The Ninth Circuit applies a three-factor test in resolving this question: "(1) whether the general tenor of the entire work negates the impression that the defendant was asserting an objective fact, (2) whether the defendant used figurative or hyperbolic language that negates that impression, and (3) whether the statement in question is susceptible of being proved true or false." *Partington v. Bugliosi*, 56 F.3d 1147, 1153 (9th Cir. 1995). Amitay fails all three.

First, the general tenor of the post negates any impression that Jews for Jesus asserted an objective fact *about Amitay* or anyone else. *See Partington*, 56 F.3d at 1153. Each post is an expression of religious advocacy about passing out copies of the New Testament to Israeli soldiers. Jews for Jesus' religious messaging—*e.g.*, "[o]ne of the ways that God provides for His people is through the generosity of other people around the world, like you"—cannot be viewed as asserting verifiable facts about Amitay or anyone else. (Compl., Ex. A, 1-1 at 11–14.) Simply put, no reasonable reader would interpret Jews for Jesus' posts as factual assertions about Ariel Amitay.

Second, the statements at issue are rhetorical and figurative, not a dry assertion of empirical fact. *See Partington*, 56 F.3d at 1153. The posts proclaim that "God's unwavering faithfulness to His chosen people demonstrates to the whole world that He keeps His promises." (Compl., Ex. A., Dkt. 1-1 at 12.) If ever there were a statement incapable of factual verification in a court of law, this is it. Courts do not sit as arbiters of theological doctrine, nor do they weigh in on the literal accuracy of religious proclamations. *Accord United States v. Ballard*, 322 U.S. 78, 86 (1944) ("Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs."). Moreover, the reference to a soldier named "Nachman" thanking Jews for Jesus for a New Testament is itself a form of rhetorical device—an illustrative anecdote about a pseudonymous caricature of a generic Israeli soldier in a fundraising appeal. (Compl., Ex. A., Dkt. 1-1 at 12.) In short, Jews for Jesus' posts are not factual claims about a specific person, much less Amitay, but a religious appeal contextualized within a broader mission to provide copies of the New Testament to Israeli soldiers during the Israel-Hamas war.

Third, the posts are not susceptible to being proven true or false. *See Partington*, 56 F.3d at 1153. The caption accompanying the posts does not purport to be a matter of objective fact but is a general expression of gratitude and religious sentiment. As noted above, that "Nachman, a young Haredi soldier" expressed thanks for receiving a New Testament is, at most, a generalized anecdote presented as part of a religious appeal. (Compl., Ex. A., Dkt. 1-1 at 12.)[2] Even if Amitay insists that he was the "man with a beard" depicted in the blurred image, which is neither established nor conceded, that does not transform the post into a factual assertion about *him*—particularly when the image portrays no identifiable individual at all, Amitay's name is *never mentioned*, and the caption includes a quote by a man with a different name, "Nachman." To the

[2] Religious and ideological speech is inherently subjective and not capable of verification, further foreclosing any defamation claim. *Accord Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("First Amendment values are plainly jeopardized when ... litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.").

extent that a reasonable viewer would believe that the image is meant to be this "Nachman," Amitay does not claim to be "Nachman."

At bottom, the post presents an illustrative example as part of a religious appeal—one that does not hinge on the identity of any particular individual. In other words, the post's display of "a man with a beard" and reference to "Nachman" is not an empirical claim subject to proof or disproof; it is part of a larger religious expression about the distribution of New Testament to Israeli soldiers. As the Ninth Circuit has recognized, statements that depend on personal perspective, interpretation, or unverifiable experiences are not actionable as defamation. *See Gardner*, 563 F.3d at 988–89 ("[I]f it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." (quoting *Haynes v. Alfred A. Knopf, Inc.,* 8 F.3d 1222, 1227 (7th Cir. 1993)). Thus, because the posts neither assert an objective fact about Amitay nor are capable of verification, they are not actionable as defamation.

c. The social media posts are protected by the "common interest" privilege.

Amitay's defamation claim also fails because the posts are privileged under Cal. Civ. Code § 47(c), the common-interest privilege. *See Lundquist v. Reusser*, 7 Cal. 4th 1193, 1196 (1994). The common-interest privilege "is provided to protect and to further the particular interests and activities safeguarded by the privilege. Those interests and activities are deemed to outweigh the correlative injury caused by their expression that is otherwise protected by the law of tort." *Deaile v. Gen. Tel. Co. of California*, 40 Cal. App. 3d 841, 849 (1974). Under this privilege, a "privileged publication" is one made "without malice[ ] to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information." Cal. Civ. Code § 47(c). Courts have emphasized that this privilege applies,

> where the communicator and the recipient have a common interest the communication is of a kind reasonably calculated to protect or further that interest, which must be something other than mere general or idle curiosity, such as where the parties to the communication share a contractual, business[,] or similar relationship or [where] the defendant is protecting his [or her] own pecuniary interest.

Cornell v. Berkeley Tennis Club, 18 Cal. App. 5th 908, 949 (2017) (cleaned up). Such relationships extend to the relationships between "members of religious, fraternal, charitable, or other non-profit associations." *Hicks v. Richard*, 39 Cal. App. 5th 578, 586 (2019) (quoting Restatement (Second) of Torts § 596 (1977) cmt e)).

Here, the common-interest privilege applies with full force. Jews for Jesus made the social media posts as part of its religious mission—a mission shared by its members, supporters, and social media followers who are interested in its outreach efforts. The posts were addressed to its engaged social media followers, who, by virtue of following its social media pages, have an interest in Jewish-Christian relations and more generally in Jews for Jesus' charitable activities. This is precisely the type of communication the common-interest privilege protects: a statement made among those with shared religious or ideological perspectives. *See Hicks*, 39 Cal. App. 5th at 586*; see also, e.g.*, *Brewer v. Second Baptist Church of Los Angeles*, 32 Cal. 2d 791, 796 (1948) ("Ordinarily, the common interest of the members of a church in church matters is sufficient to give rise to a qualified privilege to communications between members on subjects relating to the church's interest."); *Inst. of Athletic Motivation v. Univ. of Illinois*, 114 Cal. App. 3d 1, 12 (1980) (noting that "the communication was not directed toward the world at large, but mainly toward those involved as professionals in the field of athletics. And those to whom it was directed had a potential interest in the subject matter which went well beyond general or idle curiosity.")

Finally, Amitay cannot overcome the privilege without proving actual malice, "which is established by a showing that the publication was motivated by hatred or ill will towards the plaintiff *or* by a showing that the defendant lacked reasonable grounds for belief in the truth of the publication and therefore acted in reckless disregard of the plaintiff's rights." *Noel v. River Hills Wilsons, Inc.*, 113 Cal. App. 4th 1363, 1370 (2003). Beyond threadbare conclusions of law,

Plaintiff fails to allege any facts supporting an allegation of actual malice. Because the social media posts were made within a religious and charitable context to an audience with a shared faith-based interest, they fall within the common-interest privilege, barring Amitay's defamation claim as a matter of law.

2. Plaintiff fails to state a false light claim.

Amitay's false light claim is, at best, a mere echo of his defamation cause of action, and thus it should suffer the same fate. "California courts have held that "[w]hen a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action." *Karimi v. Golden Gate Sch. of L.*, 361 F. Supp. 3d 956, 977 (N.D. Cal. 2019), *aff'd*, 796 F. App'x 462 (9th Cir. 2020) (quoting *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1264 (2017)). Here, Plaintiff's defamation claim is dead on arrival—the published social media posts are not "of or concerning" Amitay; nor do they constitute a provably false assertion of fact; and they are privileged under Cal. Civ. Code § 47(c). These fatal flaws dispatch Amitay's false light claim with equal efficiency.

Moreover, even though Plaintiff's false light claim "is essentially superfluous," *McCloskey v. Humboldt Cnty. Sheriff's Dep't*, 2023 WL 7597215, at *7 (N.D. Cal. Nov. 14, 2023) (citation omitted), it still fails in its own right. To state a claim for the tort of false light invasion of privacy, a plaintiff must plead that the defendant "(1) caused to be generated publicity of the plaintiff that was false or misleading, and (2) the publicity was offensive to a reasonable person." *Burnell v. Marin Human Soc'y*, 2015 WL 6746818, *17 (N.D. Cal. Nov. 5, 2015) (quoting *Pacini v. Nationstar Mortg., LLC*, 2013 WL 2924441, at *9 (N.D. Cal. June 13, 2013)). A third element is also required: "that the defendant acted with actual malice." *Flores v. Von Kleist*, 739 F. Supp. 2d 1236, 1259 (E.D. Cal. 2010) (citation omitted). Plaintiff fails at every step.

First, and fatally, Amitay's false light claims fail for the same reason his defamation claim fails—Jews for Jesus is protected by the common interest privilege. *See Copp v. Paxton,* 45 Cal.App.4th 829, 52 Cal.Rptr.2d 831, 845 (1996) (noting that common interest privilege applies

to false light invasion of privacy claims). Thus, the false light claim is as barred as the defamation claim.

Amitay alleges that Jews for Jews showed him in a false light "by posting cropped photos of him" and "showing falsely that Plaintiff supported Defendant's religious views." (Compl. ¶ 25, Dkt. 1-1 at 7.) Let's start with the obvious: The image in question does not even depict the "man with a beard['s]" unaltered face—it is blurred. (Compl., Ex. A, Dkt. 1-1 at 11.) And even if someone could somehow unblur it with their mind's eye, the caption unequivocally implies that the image is of "Nachman, a young Haredi soldier"—not Amitay (*Id.*). How does one claim to be defamed by an image that neither shows their face nor bears their name? Amitay would have the Court believe that, despite these deliberate obfuscations, the post nonetheless created publicity about him. It didn't. Amitay nevertheless alleges that Jews for Jesus "knew its posts would create a false impression about Plaintiff." (Compl. ¶ 26). That is not a fact—it is a conclusory allegation, unsupported by a shred of truth—but directly contradicted by fact. *Cf. Conso v. City of Eureka*, 2022 WL 409958, at *5 (N.D. Cal. Feb. 10, 2022) ("[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions, threadbare recitals of the elements of a cause of action, and conclusory statements."). False light requires false or misleading publicity. But Amitay fails to allege a single verifiable statement from Jews for Jesus that was false or misleading—that is because there is none.

Finally, Amitay failed to plausibly plead actual malice. In defamation law, "actual malice" does not mean mere ill will. It means knowledge of falsity or reckless disregard for the truth. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964). Amitay, however, alleges nothing more than blanket allegations and threadbare conclusions of law to show that Jews for Jesus acted with actual malice. (Compl. ¶ 26 ["There is clear and convincing evidence that Defendant knew the posts would create a false impression about Plaintiff, and/or Defendant acted with reckless disregard for the truth."].) The only thing Jews for Jesus is guilty of is engaging in Christian advocacy—using a blurred, stock photograph in accordance with a public license—which is protected expression that Amitay simply doesn't like. (*See* Compl. ¶ 26 [stating that Plaintiff is a

"conservative Orthodox rabbi with starkly differing views from that of Defendant"].) That is not malice. That is speech protected by the First Amendment. The false light claim fails as a matter of law and, like its defamation counterpart, should be stricken and dismissed.

3. Plaintiff fails to state a claim for intentional infliction of emotional distress

Amitay's Intentional Infliction of Emotional Distress ("IIED") claim is nothing more than an overwrought attempt to monetize his subjective displeasure with Jews for Jesus' religious advocacy. The elements of an IIED claim for intentional infliction of emotional distress ("IIED") are: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct[.]" *King v. Facebook, Inc.*, 572 F. Supp. 3d 776, 785 (N.D. Cal. 2021) (quoting *Carlsen v. Koivumaki*, 227 Cal. App. 4th 879, 896 (2014)). "In order to be considered outrageous, the conduct must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Langan v. United Servs. Auto. Ass'n*, 69 F. Supp. 3d 965, 987–88 (N.D. Cal. 2014) (quoting *Tekle v. United States*, 511 F.3d 839, 855 (9th Cir. 2007)). This is not just hyperbole—it is the legal standard, and Plaintiff comes nowhere close to meeting it.

First, there is no extreme and outrageous conduct. Amitay's theory of outrageousness is that Jews for Jesus posted a blurred image, downloaded from an image-distribution website under a license to use worldwide, of an unidentified "man with a beard" and attributed a religious message to the name "Nachman." (Compl., Ex. A, Dkt. 1-1 at 11.) That is all. The entire purpose of blurring an image is to avoid identification. The entire point of using a different name is to attribute the quote to that person. Jews for Jesus did both. If this qualifies as "outrageous," then the word has lost all meaning. *Cf. Langan*, 69 F. Supp. 3d at 988 ("The court concludes that the operative complaint fails to raise the reasonable inference that the moving Defendants' conduct was 'outrageous' under California law. Langan's allegations on this issue are conclusory."). The

only conceivable injury that Amitay suffered was his indignation that Jews for Jesus reaches out to Jewish people, including to Orthodox Jews. But "[l]iability for IIED does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *King*, 572 F. Supp. 3d at 785–86 (quoting *Crouch v. Trinity Christian Ctr. of Santa Ana, Inc.*, 39 Cal. App. 5th 995, 1007 (2019)).

Second, Amitay failed to allege severe or extreme emotional distress. Even assuming Jews for Jesus' post was offensive to Amitay, that is not enough. Severe emotional distress is not ordinary annoyance or discomfort—it is distress so extreme that "no reasonable person in civilized society should be expected to endure it." *Hughes v. Pair*, 46 Cal. 4th 1035, 1051 (2009) (cleaned up). Amitay does not allege a single fact supporting the notion that he suffered severe, debilitating emotional distress. Further, "[t]o support an intentional infliction of emotional distress claim, the conduct must be more than 'intentional and outrageous. It must be conduct *directed at the plaintiff*, or *occur in the presence of a plaintiff* of whom the defendant is aware." *Flores v. EMC Mortg. Co.*, 997 F. Supp. 2d 1088, 1124 (E.D. Cal. 2014) (quoting *Christensen v. Superior Court,* 54 Cal.3d 868, 903 (1991)) (emphasis added). Again, Amitay fails to allege that the social media post was "directed" at him or occurred in his presence. Even if he suffered emotional distress (which is dubious), he must show that Defendant's conduct was the actual and proximate cause. But how could a blurred photo—without his name—plausibly cause severe emotional distress? Although he alleges that he lost his job, Amitay fails to allege *specific*, factual consequences that connect the dots from his alleged loss of employment and social alienation to Defendant's conduct. His claim is built on pure speculation and self-inflicted outrage. IIED is a high bar—not a catchall for subjective indignation. *See King*, 572 F. Supp. 3d at 785–86. Amitay's real complaint is that he, as an Orthodox Jewish rabbi, disagrees with Jews for Jesus' religious speech. That is not an IIED claim—it is a First Amendment issue. And the First Amendment wins.

Finally, even if Amitay had alleged an IIED claim—which he has not—that, too, would fail for the common interest privilege defense. *See Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 736 n.8 (9th Cir. 1999) (citing *Moore v. Brewster,* 96 F.3d 1240, 1246 (9th

Cir. 1996) (intentional infliction of emotional distress); *Rothman v. Jackson,* 49 Cal. App. 4th 1134 (1996) (intentional interference with existing and prospective economic relationships and intentional infliction of emotional distress)). Thus, Amitay's IIED claim is barred for the same reasons his defamation and false light claims are barred.

4. Plaintiff's claim for negligent infliction of emotional distress fails as a matter of law.

Amitay's cause of an action for negligent infliction of emotional distress ("NIED") also runs into a fatal problem: "Negligent infliction of emotional distress is not an independent tort, but rather is the tort of negligence and therefore involves the same general elements as a negligence claim." *Palm v. United States*, 835 F. Supp. 512, 519 (N.D. Cal. 1993) (citing 6 Witkin, Summary of California Law: Torts § 838 (9th ed. 1988)). Thus, to state a claim under this theory, Amitay "must allege: (1) a legal duty to use due care, (2) breach of such duty, (3) damage or injury to the plaintiff, and (4) a causal relationship between the breach and the resulting damage or injury." *Palm*, 835 F. Supp. at 519 (citation omitted). At a minimum, Amitay strikes out on elements one and two. Indeed, Amitay failed to allege any of the necessary elements of negligence to sustain his claim. In his Complaint, Amitay has alleged that Jews for Jesus "post[ed] Plaintiff's picture to tens of thousands of followers and falsely assert[ed] that Plaintiff supported Defendant's views." (Compl. ¶ 25, Dkt. 1-1 at 9.) Notwithstanding that such a characterization is false itself, as proven by the actual posts attached to the Complaint, Amitay does not and cannot establish that Jews for Jesus owed him a legal duty of care. Even if a duty existed (which it does not), Amitay fails to allege how Jews for Jesus breached any standard of care. Finally, even if there were a duty and breach (which there weren't), Amitay has not shown how Jews for Jesus' conduct actually caused him severe distress. Simply being offended by a social media post is not a legally cognizable injury. In short, Amitay's failure to allege a duty, breach, or cognizable harm requires dismissal of his NIED claim as a matter of law. *Cf. Bere v. MGA Healthcare Staffing Inc.*, 2016 WL 3078871, at *3 (N.D. Cal. June 1, 2016) ("Here, plaintiff has not alleged that defendant engaged in any negligent conduct. Plaintiff has also not alleged that defendant owed a duty to plaintiff.

Accordingly, defendant's motion to dismiss plaintiff's claim for negligent infliction of emotional distress is **GRANTED**.").

* * *

In the final analysis, Amitay's lawsuit is precisely the kind that California's anti-SLAPP statute was designed to stop in its tracks. His claims arise entirely from Jews for Jesus' exercise of its constitutionally protected right to free speech—religious advocacy, social commentary, and charitable solicitation. Under section 425.16's burden-shifting framework, Amitay cannot demonstrate a probability of prevailing on his claims because he failed to allege, and thus cannot prove, that Jews for Jesus' use of a blurred stock image depicting "a man with a beard" with a caption about "Nachman" was of and concerning him, or that Jews for Jesus made false and libelous statements about him. Nor can Amitay overcome the common-interest privilege, which shields Jews for Jesus' religious communications with its audience. The anti-SLAPP statute exists to ensure that lawsuits like Amitay's do not proceed past the pleading stage. Accordingly, the Court should grant the motion and strike the Complaint.

II. The Complaint Should be Dismissed in its Entirety under Rule 12(b)(6) for Failure to State a Claim.

In the alternative to Defendant's anti-SLAPP motion, the Complaint should be dismissed in its entirety pursuant to Rule 12(b)(6) for failure to state a claim, based on the same reasons provided above in Section I.C with respect to each of the causes of action. The test for legal sufficiency under the anti-SLAPP statute involves the same analysis as the test for dismissing a cause of action for failure to state a claim. *See Planned Parenthood*, *supra*, 890 F.3d at 834 ("If a defendant makes a special motion to strike based on alleged deficiencies in the plaintiff's complaint, the motion must be treated in the same manner as a motion under Rule 12(b)(6)….").

Accordingly, Amitay's claims should be dismissed for the reasons provided in Section I.C., because, as explained above, Amitay has failed to adequately plead any of his claims. *Cf. Trident E&P, LLC v. HP Inc.*, 2024 WL 3091969, at *1 (N.D. Cal. June 21, 2024) (granting the defendant's joint anti-SLAPP motion and Rule 12(b)(6) motion).

CONCLUSION

For the foregoing reasons, Plaintiff's Complaint should be stricken as a SLAPP under Cal. Code Civ. Proc. § 425.16, or, alternatively, dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Further, Defendant should be awarded its attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 425.16(c)(1).

Dated: March 14, 2025

Respectfully submitted,

/s/ Horatio G. Mihet

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CERTIFICATE OF SERVICE

I hereby certify that on **March 14, 2025**, I electronically filed the foregoing Notice of Motion and Motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

/s/ Horatio G. Mihet
Horatio G. Mihet

Attorney for Defendant Jews for Jesus

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARIEL ZVOLON AMITAY,
Plaintiff

v.

JEWS FOR JESUS, et al.
Defendants.

Case Number: 3:25-cv-01258-MMC

[PROPOSED] ORDER GRANTING DEFENDANT'S SPECIAL MOTION TO STRIKE AND TO DISMISS COMPLAINT

Before the Court is Defendant Jews for Jesus' Special Motion to Strike Plaintiff's Complaint under California's anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, and Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) (the "Motion"). Having read and considered the papers filed in support of the Motion, and heard argument of counsel, the Court deems the matter suitable for decision thereon, and rules as follows.

DISCUSSION

A. The Complaint is a SLAPP under California Law.

Plaintiff's Complaint arises from Jews for Jesus' protected speech under the First Amendment, including religious and public-issue advocacy, which qualifies for protection under California's anti-SLAPP statute. *See* Cal. Code Civ. Proc. § 425.16(e); *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 261 (9th Cir. 2013). Because Plaintiff's claims are based on Jews for Jesus' protected activity, the burden shifts to Plaintiff to establish a probability

of prevailing on the merits. *See Makaeff*, 715 F.3d at 261. Plaintiff fails to meet this burden.

Plaintiff fails to state claims for defamation and false light. The social media posts at issue are not defamatory as a matter of law. Plaintiff fails to establish that the statements are "of and concerning" him, much less that they contain a false statement of fact about him. *See Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1044 (1986); *Gardner v. Martino*, 563 F.3d 981, 987 (9th Cir. 2009). Plaintiff's defamation claim also fails because the posts are privileged under Cal. Civ. Code § 47(c), the common-interest privilege. *See Lundquist v. Reusser*, 7 Cal. 4th 1193, 1196 (1994). Similarly, Plaintiff's false light claim is duplicative of his defamation claim and likewise fails. *See Karimi v. Golden Gate Sch. of L.*, 361 F. Supp. 3d 956, 977 (N.D. Cal. 2019), *aff'd*, 796 F. App'x 462 (9th Cir. 2020).

Plaintiff's emotional distress claims also fail as a matter of law. The Complaint does not plead facts sufficient to establish a claim for intentional infliction of emotional distress (IIED) or negligent infliction of emotional distress (NIED). The alleged conduct—posting a blurred stock photograph in a social media post advocating for religious outreach—does not remotely rise to the level of "extreme and outrageous" conduct required for IIED. *See Hughes v. Pair*, 46 Cal. 4th 1035, 1051 (2009). Additionally, Plaintiff fails to establish any legal duty of care necessary for NIED. *See Palm v. United States*, 835 F. Supp. 512, 519 (N.D. Cal. 1993).

B. The Complaint is Dismissed Under Rule 12(b)(6) as an Alternative Basis.

Because Plaintiff fails to plead any legally cognizable claims, the Complaint is also subject to dismissal under Federal Rule of Civil Procedure 12(b)(6). *See Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018).

C. Attorney's Fees and Costs Awarded to Defendant.

As the prevailing party on its anti-SLAPP motion, Defendant Jews for Jesus is entitled to recover its reasonable attorney's fees and costs. *See* Cal. Code Civ. Proc. §

425.16(c)(1); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131 (2001). Defendant shall submit a fee application demonstrating the amount of fees and costs expended in defending against this lawsuit within twenty-one (21) days of this Order.

CONCLUSION

For the foregoing reasons, Defendant's Special Motion to Strike under Cal. Code Civ. Proc. § 425.16 and Motion to Dismiss under Rule 12(b)(6) are **GRANTED**, and Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated:

MAXINE M. CHESNEY
United States District Judge