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# IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ARIEL ZVOLON AMITAY,
*Plaintiff-Respondent*,
v.
JEWS FOR JESUS,
*Defendant-Appellant*.

After an Unpublished Opinion by the Court of Appeal
First Appellate District, Division Two
Case No. A174056

Appeal from the Superior Court, County of San Francisco
Hon. Harold E. Kahn
Case No. CGC-24-620902

## PETITION FOR REVIEW


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Whether a court, in determining whether a plaintiff has met his burden under the second prong of the anti-SLAPP analysis, is required to (a) decide the pure questions of law that the movant squarely presents for resolution; (b) draw only reasonable inferences in plaintiff's favor; and (c) credit the movant's unrebutted evidence negating an essential element of plaintiff's cause of action.

## PETITION FOR REVIEW

This petition concerns whether the First Amendment permits an Orthodox Jewish rabbi in Israel to recover under California law after allegedly being shunned by his religious community. More broadly, it concerns whether the "minimal merit" formulation this Court has adopted to describe a plaintiff's burden under California's anti-SLAPP statute (Code Civ. Proc., § 425.16) relieves lower courts of their "summary-judgment-like" obligation (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 788 (*Monster Energy*)) to weed out ultimately meritless suits before a defendant is "dragged through the courts" (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 193 (*Varian*)).

In 2023, Defendant-Petitioner Jews for Jesus published, on its own social-media pages and to its own supporters, an innocuous update about its ministry, illustrated with a free stock photo of an anonymous, deliberately blurred Israeli soldier and a benign quote attributed to a pseudonymous "Nachman." Plaintiff-Respondent Ariel Amitay, a rabbi, claims to be the soldier in the stock photo. Amitay claims his religious employer saw the posts and fired him after leaping to the conclusion that he, an Orthodox rabbi, supports Christianity. He similarly claims that his religious community and friends shunned him as an apostate. He now seeks to hold Jews for Jesus liable in tort for defamation, false light, and negligent infliction of emotional distress.

The threshold question is about a court's power to act. Neither a civil court nor a jury can decide whether a rabbi's perceived openness to Christianity, which allegedly rendered him an apostate under Orthodox Jewish traditions, is a cognizable reputational harm under American civil law. Courts confronting materially identical claims have dismissed them for lack of subject-matter jurisdiction, holding that the First Amendment forbids recovery in tort for reputational harms allegedly caused by religious disputes. (*Abdelhak v. Jewish Press Inc.* (N.J.Super.Ct.App.Div. 2009) 411 N.J.Super. 211; *Klagsbrun v. Va'ad Harabonim of Greater Monsey* (D.N.J. 1999) 53 F.Supp.2d 732, 741–742; *Goodman v. Temple Shir Ami, Inc.* (Fla.Dist.Ct.App. 1998) 712 So.2d 775, 777.)

The Court of Appeal acknowledged those decisions but nevertheless declined to follow course, concluding that the issue

was not raised below and therefore waived. (Opinion, at p. 23.)[1] But subject-matter jurisdiction cannot be waived—a court must resolve it once the issue comes to its attention. And under this Court's precedents, the absence of subject-matter jurisdiction is fatal under section 425.16's merits analysis: A plaintiff has no probability of prevailing on a claim the court has no power to decide. (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 324.)

Review is also warranted to settle an important question of law about the scope of this Court's "minimal merit" formulation. (Cal. Rules of Court, rule 8.500(b)(1).) As this Court observed, "[t]he protections afforded by the anti-SLAPP statute against the harassment and burdens of litigation are in large measure lost if the petitioner is forced to litigate a case to its conclusion before obtaining a definitive judgment through the appellate process." (*Varian*, *supra*, at p. 193, quoting *Fabre v. Walton* (2002) 436 Mass. 517, 781 N.E.2d 780, 784.) Absent this Court's guidance, however, the "minimal merit" standard as applied allows precisely that. It operates at such a rock-bottom threshold that defendants engaged in protected speech are forced to endure costly and burdensome discovery (in this case on two different

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[1] The Court of Appeal issued its Opinion on May 28, 2026. Appellant filed a petition for rehearing on June 12, 2026. The Opinion became final on June 27, 2026, and the Court of Appeal denied appellant's petition for rehearing on June 29, 2026. (Cal. Rules of Court, rule 8.264(b)(1).) This petition is timely under California Rules of Court, rule 8.500(e)(1). A copy of the Opinion is attached as Exhibit A.

continents), motion practice, and trial before they can obtain meaningful appellate review.

Consider this case. Against the overwhelming weight of authority and hornbook principles of defamation law, the Court of Appeal allowed Rabbi Amitay's suit to proceed. In doing so, it disregarded its affirmative duty to consider whether this case should be dismissed for lack of subject-matter jurisdiction. And it sidestepped the pure questions of law Jews for Jesus presented for resolution, drew even *un*reasonable inferences in Rabbi Amitay's favor, and ignored defendant's uncontradicted evidence negating essential elements of plaintiff's cause of action. The Court of Appeal simply concluded that, "based on our review of the evidence presented by Amitay … that Amitay has shown that his defamation claim has at least 'minimal merit' to survive an anti-SLAPP motion." (Opinion, at p. 16.)

Lacking this Court's clear guidance about the scope of its "minimal merit" formulation, the Court of Appeal reached a strikingly erroneous result. Because of the tension between that formulation and the Legislature's purpose for enacting section 425.16, Jews for Jesus must now navigate Hague Convention procedures and letters rogatory to conduct discovery 7,400 miles away, including wrangling with Hebrew-speaking witnesses who are hostile to its Christian beliefs. Section 425.16 was enacted to prevent such costly burdens on defendants engaged in protected speech.

This Court should grant-and-transfer this cause to the Court of Appeal so that the action may be dismissed for lack of

subject-matter jurisdiction. In the alternative, it should grant review and clarify its "minimal merit" standard so that defendants may not be subject to burdensome litigation even after making an uncontradicted showing negating the essential elements of plaintiff's claims.

## STATEMENT OF THE CASE

### A. Factual Background

Jews for Jesus is an international Christian ministry. (AA044:18–21.) In December 2023, the ministry launched a social-media campaign highlighting its outreach in Israel following the October 7 attacks. (AA048:1–5; AA079:23–24.) The ministry "wanted to show our supporters how their prayers and giving were making a real difference in a time of devastation." (AA079:24–27.)

To that end, Jews for Jesus published Facebook and Instagram posts (the "Challenged Posts" or "Posts") about its staff "ministering to Israeli civilians and soldiers, distributing copies of the New Testament, and providing comfort in the midst of trauma." (AA079:26–27.) The Posts included a quote from "a young Haredi soldier" who received a copy of the New Testament. (AA080:10.) To protect the real soldier's identity, the ministry used a pseudonym, "Nachman." (AA050:11–12; AA080:7–10.)

The Posts featured the following quote from "Nachman":

> 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.

(AA016.)

Below the "Nachman" quote, the Posts featured a benign message, including, for example:

> This past year has been unbelievably difficult, yet God's unwavering faithfulness to His chosen people demonstrates to the whole world that He keeps His promises. One of the ways that God provides for His people is through the generosity of other people around the world, like you. Because of your support, we were able to give a copy of the New Testament to Nachman and more than 1,000 Israelis in 2023!

(AA016–18.)

To illustrate the testimonial from the "young Haredi soldier," Jews for Jesus searched for an image on Unsplash, a free image-sharing website (AA049:6–7),[2] using the term "Israeli soldier" (AA049:17). The ministry selected a stock photo titled "a man with a beard and a man with a hat," which depicts "two Jewish men" smiling as they pose for a photograph. (AA049:9–24.) The image was taken by a freelance photographer named Levi Meir Clancy and uploaded to Unsplash in May 2022. (AA020.) By the time Amitay sued, the image had been downloaded at least 500 times. (AA020.)[3]

Jews for Jesus selected the image because "it seemed to match the story we were trying to share: delivering copies of the New Testament to Israeli soldiers." (AA049:25–26.) To "obscure"

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[2] Unsplash grants an irrevocable, royalty-free license allowing anyone to download, edit, and publish stock photographs for free, without the photographer's consent or attribution. (AA071.)

[3] See also AA202 fn. 2, citing Levi Meir Clancy, *a man with a beard and a man with a hat* (May 4, 2022) Unsplash <https://unsplash.com/photos/a-man-with-a-beard-and-a-man-with-a-hat-i9HGjnwk_Vs>.

the soldier's identity, and "to avoid suggesting that this individual had personally endorsed or interacted with Jews for Jesus in any way" (AA050:4–6), the team "intentionally blurred" his face (AA050:1).

Jews for Jesus "wanted an image of an Israeli soldier to be the main visual component of [its] posts" (AA221:4–5), so it cropped the image "to focus the viewer's attention on the image of the soldier in the photo and not on the man that he was standing next to" (AA221:1–2). The ministry based its decision to crop the image "entirely on visual and thematic considerations." (AA221:12–13.) Consistent with its protocol (AA050:2), "[a]t no point did Jews for Jesus intend to suggest that the soldier in the photo—blurred or not—had endorsed Jews for Jesus or our beliefs." (AA080:11–12.)

Plaintiff Ariel Amitay, an Israeli rabbi, claims to be the Israeli soldier in the Unsplash stock photo. (AA105.) Although his own exhibit identifies the photographer as Levi Meir Clancy (AA020), Rabbi Amitay asserts that the photo "was taken by an unknown individual, who never obtained Amitay's consent to post or disseminate online" (AA009).

Amitay alleges Jews for Jesus "posted a picture of [him] on their website giving the appearance that he supports JFJ's cause." (AA009.) Although the Posts quote the pseudonymous "Nachman" and refer to a "young Haredi soldier," Amitay also alleges "the post included a caption also falsely expressing that [he] supported JFJ's religious views." (AA009.) He further alleges Jews for Jesus "intentionally cropped the original photo to zoom

in on Amitay and exclude certain objects/elements (the Tefillin) which would inform viewers he is not a JFJ supporter." (AA009.)

Amitay alleges his religious employer, Educate the Young, "saw the pictures posted online," after which it "terminated" him. (AA009.) He contends that his employer "expressly stated" that it fired him because of "the posts online of him supporting JFJ." (AA009.) He further alleges he "has suffered shame and embarrassment amongst his friends, colleagues, and community." (AA010.)

### B. Procedural History

Rabbi Amitay filed suit in San Francisco Superior Court, asserting causes of action for defamation, false light, and both intentional and negligent infliction of emotional distress. (AA006.)[4] He also seeks at least $5 million in damages. (AA013.)

Jews for Jesus moved under Code of Civil Procedure section 425.16 to strike the complaint as a strategic lawsuit against participation ("SLAPP"). (AA021.) The ministry argued that Amitay's claims arose from acts in furtherance of its constitutional right to free speech (prong one) and that Amitay failed to show a probability of prevailing on the merits (prong two). (AA029–037.) As to the latter, the ministry argued that Amitay failed to state a defamation claim as a matter of law because the Challenged Posts were not "of and concerning" him (AA034), and that no reasonable follower of Jews for Jesus' social-

[4] Amitay voluntarily dismissed his Intentional Infliction of Emotional Distress claim without prejudice.

media pages would interpret them as stating a false and defamatory fact about him (AA036).

Jews for Jesus supported its motion with sworn declarations from its chief executive officer (AA044), its former communications director and current chief operating officer (AA048), and its social-media strategist (AA079), refuting Amitay's assertion that the ministry intended to imply that he supported the ministry or its religious views (AA010).

In opposition to the anti-SLAPP motion, Amitay did not rebut or otherwise contradict Jews for Jesus' sworn evidence negating the falsity element of his defamation claim. Instead, Amitay submitted his declaration (AA105), along with declarations from four non-party witnesses. Neither Amitay nor any of his witnesses testified that they follow Jews for Jesus on social media and thus saw the Posts when they were published in December 2023.

Rather than describing secular reputational harm, Amitay's own witnesses framed the alleged injury in explicitly religious terms. They characterized his conduct as a grave offense against Judaism, a betrayal of God, and a serious religious transgression that brought shame upon the community and rendered him unfit to remain within it or to continue in his religious role. (AA171; AA175; AA179; AA183.)

On June 20, 2025, the trial court held a hearing during which it denied the anti-SLAPP motion. (RT25:16–23.) At the hearing, the court ruled that Jews for Jesus satisfied prong one

(RT25:18), but ruled that Amitay had shown "minimal merit" on his causes of action and thus met prong two (RT25:18–22).

### C. The Court of Appeal's Opinion.

The Court of Appeal affirmed the trial court's order denying Jews for Jesus' anti-SLAPP motion. The Court stated "at this stage we draw inferences favorable to Amitay" (Opinion, at p. 12), and "based on our review of the evidence presented by Amitay," while completely disregarding Jews for Jesus' unrebutted evidence, it concluded "that Amitay has shown that his defamation claim has at least 'minimal merit' to survive an anti-SLAPP motion" (*id.* at p. 16).

The Court further rejected Jews for Jesus' pure legal argument that the First Amendment precludes civil courts from adjudicating whether a rabbi could recover in tort for being shunned by his religious community for perceived association with Christianity, concluding that the ministry waived that argument. (Opinion, at pp. 22–23.)

## REASONS FOR GRANTING REVIEW

### I. This Court should grant-and-transfer this cause so that this action may be dismissed for lack of subject-matter jurisdiction, because the First Amendment bars recovery in tort for harms arising from perceived apostasy and religious shunning.

Jews for Jesus argued on appeal and in its petition for rehearing that deciding whether the Challenged Posts harmed Amitay's reputation and standing in his religious community for his perceived apostasy would require the factfinder to improperly entangle itself in the tenets of Orthodox Judaism in violation of the First Amendment.[5]

The Court of Appeal refused to consider this question of law, stating that Jews for Jesus waived the First Amendment argument because it raised it for the first time on appeal. (Opinion, at pp. 22–23.) As courts uniformly hold, however, the waiver rule is not absolute. An appellate court "has discretion to consider issues raised for the first time on appeal where the relevant facts are undisputed and could not have been altered by the presentation of additional evidence." (*Saurman v. Peter's Landing Property Owner, LLC* (2024) 103 Cal.App.5th 1148, 1167; see also, e.g., *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 599 [same]; *Doe v. University of*

[5] Appellant preserved this ground for review under California Rules of Court, rule 8.500(c)(2). This Court should reach it now. If perceived openness to reading the New Testament (or even theological acceptance of Christianity) cannot be measured as reputational injury under the First Amendment, then Amitay cannot bring this case to trial.

*Southern California* (2018) 29 Cal.App.5th 1212, 1230 [same]; *American Indian Health & Services Corporation v. Kent* (2018) 24 Cal.App.5th 772, 789 [same].)

Whether adjudicating this claim would force a civil jury to resolve questions of Orthodox Jewish doctrine is a pure First Amendment question of law on an undisputed record. The Court of Appeal erred by not addressing it.

Numerous courts have addressed this question and reached the same result. In *Abdelhak v. Jewish Press Inc.*, *supra*, 411 N.J.Super. 211 (*Abdelhak*), the court affirmed the dismissal of a defamation claim on First Amendment religious-entanglement grounds. Plaintiff, an Orthodox Jew, alleged that a religious newspaper falsely reported that a rabbinical court had issued a contempt order directing members of the community to shun him for refusing to grant his wife a religious divorce (a *get*). (*Id.* at pp. 228–229.) Plaintiff alleged that the listing damaged his reputation and income as an obstetrician. (*Id.* at pp. 229–230.) The court held that the trial court lacked subject-matter jurisdiction over the defamation claim, because the jury would have to determine how such a contempt order, and a husband's refusal to grant a *get*, were viewed within the Orthodox Jewish community so as to determine the nature of the reputational harm. (*Ibid.*)

Similarly, in *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, *supra*, 53 F.Supp.2d 732 (*Klagsbrun*), plaintiff sued for defamation, alleging that a notice circulated by a council of Orthodox rabbis, which declared that he had violated religious

customs and called for "all possible social sanctions" against him until he complied, was false and had caused his community to shun him. (*Id.* at p. 736.) The court recharacterized the motion to dismiss as one for lack of subject-matter jurisdiction and dismissed the action on that ground (*id.* at p. 733), holding that, because the falsity of every challenged statement turned on religious doctrine, the claim was "uniquely religious in tenor and content, the resolution of which goes to the very heart of ecclesiastical concern, including discipline, faith, and religious rule, custom, and law," and thus no civil court had power to adjudicate it. (*Id.* at pp. 741–742.)

*Goodman v. Temple Shir Ami, Inc.*, *supra*, 712 So.2d 775, 777 (*Goodman*) arose from a congregation's decision not to retain its rabbi. The rabbi sued for defamation, and the trial court dismissed the claim for lack of subject-matter jurisdiction. (*Id.* at p. 777.) The court concluded that the trial court correctly dismissed the defamation claim because, to resolve that dispute, "it would have had to immerse itself in religious doctrines and concepts," and "[i]nquiring into the adequacy of the religious reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court." (*Ibid.*)

Amitay's own declarants affirm this case requires "[i]nquiring into the adequacy of the religious reasoning behind the dismissal of a spiritual leader," which "is not a proper task for a civil court." (*Goodman*, at p. 777.) His witnesses expounded how Amitay spoke "against Judaism in … a grave manner" (AA171); that he brought "shame on the community and the Seminary"

(AA171); that he acted "contrary to his role as a religious Jew" (AA175); that his "support in writing for Christianity" was "contrary to our faith" (AA179); that "faith in a false god … constitutes a betrayal of God," the "most serious sin in Judaism" (AA183); that "there is no place in the community for such a person or for his children" (AA183); and that "such a publication constitutes blasphemy of the Lord, something for which there is no redemption" (AA183).

Those statements are—beyond cavil—religious judgments. Determining whether Jews for Jesus caused Amitay cognizable injury would require a civil jury to decide whether his perceived openness to Christianity violated Orthodox Jewish law and customs and, if so, the extent of the resulting injury (including the loss of his job as a religious teacher at his religious school)—precisely the type of ecclesiastical determination the First Amendment forbids civil courts from making.

Despite finding that Jews for Jesus waived this non-waivable argument, the Court of Appeal rejected the ministry's reliance on *Abdelhak*, *Klagsbrun*, and *Goodman* on the grounds that each was dismissed for lack of subject-matter jurisdiction, which, the Court of Appeal noted, Jews for Jesus did not raise in the trial court or on appeal. (Opinion, at pp. 22–23.)

But whether Jews for Jesus raised the issue of subject-matter jurisdiction was beside the point. Having identified the jurisdictional issue, and given that the Opinion did not disagree with the holdings in *Abdelhak*, *Klagsbrun*, and *Goodman*, the Court of Appeal should have reversed and directed the trial court

to dismiss for lack of subject-matter jurisdiction. Subject-matter jurisdiction "concerns the basic power of a court to act." (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 807.) "The adequacy of the court's subject matter jurisdiction *must be addressed* whenever that issue *comes to the court's attention*." (*Keiffer v. Bechtel Corp.* (1998) 65 Cal.App.4th 893, 896, emphasis added.) And it "*can be raised at any time* (even on appeal) and *is not subject to forfeiture or waiver*." (*Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1347, emphasis added.)

The Court of Appeal, having raised the issue of subject-matter jurisdiction itself, refused to resolve it. But the moment the Opinion distinguished *Abdelhak*, *Klagsbrun*, and *Goodman* as having been dismissed for lack of subject-matter jurisdiction (Opinion, at p. 23), the question came "to the court's attention" (*Keiffer v. Bechtel Corp.*, *supra*, 65 Cal.App.4th 893, 896). The Court of Appeal was then bound to ask the question both those cases and Jews for Jesus posed: Can a civil court adjudicate Amitay's defamation claim without resolving matters of Orthodox doctrine beyond its power to decide? The answer is no.

Whether by granting review or by grant-and-transfer order, this Court should direct that this case be dismissed under section 425.16 for lack of subject-matter jurisdiction. (See *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544 fn.8, quoting 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 508, p. 494 ["A reviewing court has inherent power, on motion or its own motion, to dismiss an appeal which it cannot or should not hear

and determine."].) As this Court held, "failure of proof, or lack of substantive merit more generally, is not the only ground for striking a cause of action under Code of Civil Procedure section 425.16." (*Barry v. State Bar of California*, *supra*, 2 Cal.5th 318, 324.) "The pertinent question under the statute is simply whether the plaintiff has established a probability of prevailing on a 'claim ... alleged to justify a remedy.'" (*Ibid.*, quoting *Baral v. Schnitt* (2016) 1 Cal.5th 376, 395.) "While lack of substantive merit is one reason a plaintiff might fail to make the requisite showing, *lack of subject matter jurisdiction is another*." (*Id.*, emphasis added.) "A plaintiff cannot prevail on her claim unless the court has the power to grant the remedy she seeks." (*Ibid.*)

So whether a civil court can enter judgment for Amitay without adjudicating Orthodox doctrine was not a waivable defense Jews for Jesus had to assert below. Amitay had the burden to establish a probability of prevailing, which required showing that "the court has the power to grant the remedy [he] seeks." (*Barry v. State Bar of California*, *supra*, 2 Cal.5th at p. 324.) He cannot make that showing.

* * *

No civil court can adjudicate this claim without resolving whether Amitay's perceived openness to Christianity betrayed the tenets of Orthodox Judaism, thereby warranting his termination from his religious employer. That question lies beyond the subject-matter jurisdiction of a civil court. Amitay therefore has no probability of prevailing on his defamation claim.

## II. This Court should grant review to resolve the tension between its "minimal merit" standard and section 425.16's summary-judgment-like framework.

The California Legislature enacted Code of Civil Procedure section 425.16 so that a defendant engaging in speech-related conduct would not be "dragged through the courts" with time-consuming and costly litigation. (*Varian*, *supra*, at p. 193, citing *People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1317.) Section 425.16 thus "affords the defendant the opportunity, at the earliest stages of litigation, to have the claim stricken if the plaintiff is unable to demonstrate both that the claim is legally sufficient and that there is sufficient evidence to establish a prima facie case with respect to the claim." (*Taus v. Loftus* (2007) 40 Cal.4th 683, 714 (*Taus*).)

But the Court's anti-SLAPP framework currently rests on an unresolved structural tension. Although section 425.16 contemplates "a summary-judgment-like procedure" to swiftly eliminate meritless suits, the Court's "minimal merit" standard for evaluating a plaintiff's "probability" of prevailing on the challenged claim is strikingly permissive. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 825 (*Oasis*).) As interpreted in the SLAPP context, this standard allows lower courts to sidestep questions of law presented by a special motion to strike while drawing even unreasonable inferences in plaintiff's favor despite defendant's unrebutted evidence dispelling those inferences as a matter of law.

The consequence is that claims resting on legal deficiencies or speculative showings—which would easily be dispatched at

summary judgment—may survive under the "minimal merit" standard, thus forcing defendants engaged in protected speech to endure the very time-consuming and costly litigation that section 425.16 was enacted to prevent.

### A. Section 425.16's framework should allow a defendant's showing to defeat the essential elements of a plaintiff's claim as a matter of law.

Once the defendant has made a threshold showing that the challenged cause of action arises from protected activity, the burden shifts to plaintiff to establish that "there is a probability that [he] will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) Section 425.16 thus establishes "a summary-judgment-like procedure" (*Varian*, at p. 192), where an anti-SLAPP motion "operates like a 'motion for summary judgment in reverse,'" (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719).

To determine plaintiff's "probability" of prevailing, a court engages in two steps. First, it must decide whether plaintiff "substantiated a legally tenable claim through a facially sufficient evidentiary showing." (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821 (*Wilson*).) To that end, plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291, quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548.) As with summary judgment, the court

draws "nonspeculative inferences" in the light most favorable to plaintiff. (*Monster Energy*, at p. 795.)

Next, the court must decide whether "defendant's contrary showing, if any, … defeat[s] the plaintiff's as a matter of law." (*Wilson*, at p. 821; § 425.16, subd. (b)(2).) "[T]hough the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, *as a matter of law*, the defendant's evidence supporting the motion *defeats* the plaintiff's attempt to establish evidentiary support for the claim." (*Wilson*, at p. 821, emphasis added.)

Despite this summary-judgment-like framework, this Court appears to have lowered the threshold for a plaintiff to overcome an anti-SLAPP motion, holding that a plaintiff need only "demonstrate its claims have at least 'minimal merit.'" (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061, quoting *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89; see also, e.g., *Monster Energy*, at pp. 795–796; *Oasis*, at p. 825.) The Court has gone so far as to describe the "minimal merit" requirement as a "low standard." (*Oasis*, at p. 825.)

This Court's "minimal merit" interpretation appears to be in tension with the text of section 425.16 and its summary-judgment framework. In previous decisions, and "under settled principles of statutory construction" (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 421), the Court has read section 425.16(b)(1)'s "probability" to mean a "*reasonable* probability" (see, e.g., *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61, quoting *Fox Searchlight Pictures, Inc. v. Paladino*

(2001) 89 Cal.App.4th 294, 307 [it is "up to the plaintiff to rebut the presumption by showing a *reasonable probability* of success on the merits," emphasis added]; *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1065 [concluding that trial court "properly granted the anti-SLAPP motion" because it "correctly found that there was no *reasonable probability* [plaintiff's] abuse of process claim would prevail," emphasis added]).

While this Court has not expressly defined what "reasonable probability" means in the SLAPP context, one court of appeal observed that "[t]he adjective 'reasonable' requires the petitioner to do more than demonstrate some chance of winning; the petitioner must show that, given the evidence, he or she *has a substantial case*." (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 824, disapproved of on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 29 Cal.4th 53, quoting *Hung v. Wang* (1992) 8 Cal.App.4th 908, 929, emphasis added.)

In seeming tension with section 425.16, a mere "minimal merit" standard tolerates claims that are merely arguable. By contrast, a "reasonable probability" of prevailing connotes a predictive judgment about a claim's ultimate success, which necessarily excludes claims that fail as a matter of law either due to the application of settled law to the facts or the defendant's uncontradicted evidence. The problem is that a plaintiff who presents some admissible evidence supporting an element may demonstrate "minimal merit," yet still fall short of showing a "reasonable probability" that *each* element will be established at trial.

### B. The permissive determination of whether a claim has "minimal merit" displaces a court's obligation to resolve questions of law that defendant squarely raises.

The summary-judgment-like character of the anti-SLAPP second prong necessarily requires courts to resolve pure questions of law presented by the movant. But the "minimal merit" threshold, as shown in the Court of Appeal's Opinion, effectively precludes defendants from cutting through plaintiff's pleadings and evidence to show that the latter's claims are meritless. That interpretation cannot be reconciled with the statute's design or with this Court's instruction that a court must decide the legal questions the movant squarely presents. (See, e.g., *In re Edgar* (1897) 119 Cal. 123, 130 ["The question of jurisdiction is squarely presented, and must be met and decided, regardless of the particular matters of law or fact which are necessary to be considered in its determination."]; *Faus v. City of Los Angeles* (1967) 67 Cal.2d 350, 361 ["Plaintiff poses only the question whether that use sufficiently complies with the terms of the governing instruments to permit survival of the easements. That inquiry solely presents a question of law; this court must reach its own resolution of that question."].)

As with a motion for summary judgment, a court should grant an anti-SLAPP motion on the grounds that "plaintiff cannot establish at least one element of the cause of action—for example, that the plaintiff cannot prove element X." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853–854 (*Aguilar*).) To that end, defendant may present argument and evidence "that

conclusively negates an element of the plaintiff's cause of action." (*Id.* at p. 855.)

The "minimal merit" standard's permissive application has displaced this obligation. When courts treat the second prong as satisfied whenever a plaintiff produces *some* evidence that can be read favorably as to *some* elements, defendants are denied the opportunity to demonstrate that plaintiff cannot establish an essential element because the claim fails as a matter of law or because plaintiff lacks and cannot reasonably obtain the evidence needed to support it. (Accord, *Golin v. Allenby* (2010) 190 Cal.App.4th 616, 642 [that a vexatious litigant lacks a reasonable probability of success may be shown "by demonstrating that the plaintiff cannot prevail in the action as a matter of law"].)

This displacement is particularly evident where, as here, defendant's motion presents threshold legal questions that, if resolved in accordance with settled libel law, would end the litigation. For example, whether the publication at issue is "of and concerning" plaintiff, whether it states or implies a false statement of fact about him, and whether it is reasonably susceptible of a defamatory meaning are all questions of law that a reviewing court is required to resolve. (*Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 146 ["of and concerning" requirement]; *McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 113 [falsity]; *Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1339 [defamatory meaning].)

These questions—which include asking whether plaintiff's allegations are objectively reasonable from the perspective of a hypothetical reasonable reader to whom the publication was directed—are not factual questions, because "[t]he objectively reasonable standard is based on an analysis of case law and is a legal question, not a factual one." (*CalFarm Ins. Co. v. Krusiewicz* (2005) 131 Cal.App.4th 273, 277; *People v. Carreon* (2016) 248 Cal.App.4th 866, 876 ["What is objectively reasonable is a question of law, not fact."]; accord, *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 878 ["if the trial court determines that the prior action was objectively reasonable, the plaintiff has failed to meet the threshold requirement of demonstrating an absence of probable cause and the defendant is entitled to prevail"].)

When a court declines to determine these questions as questions of law and instead concludes only that plaintiff has shown "minimal merit" based on his proffered evidence, and without considering defendant's uncontradicted evidence, it has substituted a permissive standard for the rigorous legal analysis that section 425.16's summary-judgment-like procedure requires.

### C. A court must draw only reasonable inferences in plaintiff's favor and credit the moving party's unrebutted evidence that negates an essential element as a matter of law.

Courts applying this Court's permissive "minimal merit" standard in place of the more rigorous "reasonable probability" standard run a substantial risk of drawing every conceivable inference in plaintiff's favor rather than limiting themselves to those inferences that are genuinely reasonable. The distinction is critical. Although courts do not resolve or weigh any conflicts in evidence, they may draw inferences in plaintiff's favor—*so long as the inferences are reasonable*. (*Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898, 913.)

An inference is "reasonable" only if it "logically follow[s] from the preliminary facts" (31 Cal. Jur. 3d Evidence, § 144), and is not "based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work" (*People v. Raley* (1992) 2 Cal.4th 870, 891). When courts treat "minimal merit" as satisfied by any evidentiary showing of *some* possibility of success, however remote, they risk indulging inferences that would not survive scrutiny under a more rigorous standard.

This overbroad approach to inference-drawing has another direct consequence: it leads courts to overlook or discount defendant's unrebutted evidence that negates an essential element of plaintiff's claim. Under section 425.16's summary-judgment-like framework, a defendant that presents evidence that conclusively negates an element of the challenged cause of action—or presents necessary evidence that plaintiff does not

possess, and cannot reasonably obtain, to establish an element—is entitled to have that showing credited. (*Monster Energy*, at p. 788; *Aguilar*, at p. 854.) Moreover, when defendant's evidence is clear, positive, and uncontradicted, it may dispel even an otherwise permissible inference as a matter of law. (31 Cal. Jur. 3d Evidence, § 150; accord, *Hicks v. Reis* (1943) 21 Cal.2d 654, 660 [to "prevent[] the trier of the facts from running away with the case.... [it] may not indulge in the inference when that inference is rebutted by clear, positive and uncontradicted evidence of such a nature that it is not subject to doubt in the minds of reasonable men"].)

Yet courts operating under the "minimal merit" gloss are permitted to sidestep this analysis. Instead of asking whether defendant's evidence defeats plaintiff's evidentiary support as a matter of law, courts may ask only whether some inference favorable to plaintiff can be imagined. The result is that claims survive anti-SLAPP scrutiny even when defendant has made the precise showing that should require granting the motion. This practice not only departs from section 425.16's framework and erodes the early screening function the Legislature intended, but also conflicts with this Court's instruction that courts "should grant the [anti-SLAPP] motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." (*Wilson*, at p. 821; *Taus*, at p. 714; *Soukup v. Law Offices of Herbert Hafif*, *supra*, 39 Cal.4th 260, 291.)

## III. The Court of Appeal's decision was erroneous.

This case starkly illustrates how the "minimal merit" standard weakens section 425.16's rigorous summary-judgment-like framework, thereby leading to a manifestly unjust result. The Court of Appeal refused to determine as a matter of law whether an average follower of Jews for Jesus' social-media pages—the audience to whom the Challenged Posts were directed—would reasonably interpret the Posts to be false and defamatory statements about Rabbi Amitay. And it likewise failed to consider Jews for Jesus' uncontradicted evidence negating the essential elements of Amitay's defamation claim, which, if credited as required, demonstrated that Amitay's claim failed as a matter of law.

### A. The Court of Appeal failed to credit Jews for Jesus' uncontradicted evidence that negated essential elements of Amitay's defamation claim.

In the SLAPP context, the Fourth District Court of Appeal correctly stated a plaintiff's "burden to show a probability of prevailing" on their defamation claim: the court must "determine[] if there is sufficient evidence to show plaintiffs *can satisfy each element of their claim*." (*Balzaga v. Fox News Network, LLC*, *supra*, 173 Cal.App.4th 1325, 1336, emphasis added.) The Court of Appeal failed to consider Jews for Jesus' uncontradicted evidence proving that it neither stated nor implied any falsehood about anyone, much less Amitay.

Under California law, "[t]he tort of defamation 'involves (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.'" (*Taus*, at p. 720, quoting 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 529, p. 782, citing Civ. Code, §§ 45–46 and cases.) "The sine qua non of recovery for defamation ... is the existence of falsehood." (*McGarry v. University of San Diego*, *supra*, 154 Cal.App.4th 97, 112, quoting *Letter Carriers v. Austin* (1974) 418 U.S. 264, 283.) Because the Posts were about issues of public concern, they implicate the First Amendment's protections, so Amitay has the burden to show that the statements are provably false. (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1048, citation modified.)

The Court of Appeal concluded that "Amitay presented admissible evidence that the statements were false," citing his conclusory assertion that "I have never been associated with JFJ. I do not follow or agree with their views or beliefs, and any implication to the contrary is false." (Opinion, at p. 15.) But the Opinion's reasoning assumed its own conclusion. It presupposed that the Posts assert, as fact, that Amitay is "associated with" Jews for Jesus and "follow[s] or agree[s] with their views or beliefs," and then credits Amitay's denial of the assertion it has presupposed.

The antecedent question is one of law, which Jews for Jesus presented to the Court of Appeal: *As a matter of law*, do the Posts assert or imply any fact, much less a provably false fact, about Amitay at all? (*Baker v. Los Angeles Herald Examiner* (1986) 42

Cal.3d 254, 260 (*Baker*).) Remarkably, the Opinion never reached that question, much less resolved it.

The Court of Appeal also ignored Jews for Jesus' unrebutted declarations, sworn under oath, testifying that it had never heard of Amitay, had no intent to imply anything about him, and had no intent to imply that the blurred Israeli soldier supported Jews for Jesus or endorsed its religious activities, but instead merely sought to download and edit a generic stock photo to illustrate its testimonial about giving a copy of the New Testament to a real Israeli soldier. (AA050:2; AA080:11–12; AA221:1–2, 4–5, 12–13.) These unrebutted declarations negated the falsity element of Amitay's defamation claim, which should have resolved this appeal as a matter of law. (*Wilson*, at p. 821.)

Disregarding its obligation to resolve the question of falsity as a matter of law (*Baker*, at p. 260), the Court of Appeal further found that Amitay presented evidence that Jews for Jesus "failed to use reasonable care to determine the truth or falsity of its posts," reasoning that his beard, his yarmulke, his Tefillin, and the rabbi beside him in the uncropped photograph were "obvious indicators of his religious beliefs" (Opinion, at p. 15.) The Court of Appeal's disregard for Jews for Jesus' uncontradicted declarations refuting Amitay's "deceptive-cropping" theory is manifestly erroneous.

The ministry's unrebutted declarations established that it lawfully downloaded and used a free stock photograph of an "Israeli soldier" to illustrate its message, cropped it for visual reasons completely unrelated to the soldier's religious beliefs or

appearance, blurred the subject's face to anonymize him, had no intent to state or imply anything about the subject in the photograph, and attributed an innocuous quote to a pseudonym to shield the real soldier who had received a copy of the New Testament. (AA050:4–6; AA222:22–223:17.) That explanation is sworn under oath and uncontradicted. A moving party's uncontradicted declarations may be credited as a matter of law (*Litinsky v. Kaplan* (2019) 40 Cal.App.5th 970, 983), yet the Court of Appeal ignored them.

In addition to ignoring Jews for Jesus' unrebutted evidence as to falsity, the Court of Appeal ignored the ministry's uncontradicted evidence that its intended audience was its Christian supporters who follow it on Facebook and Instagram. Rather than evaluating the Posts from the perspective of the average follower of Jews for Jesus' social-media pages—the audience to whom the posts were actually directed—the Court of Appeal broadened that audience, concluding *sua sponte* that it "can reasonably infer from the evidence presented that the audience to whom posts by the 'Jews for Jesus Israel' account were directed included *people in Israel*." (Opinion, at p. 22, emphasis added.)

The error is clear—and prejudicial. By establishing *sua sponte* that the audience "included people in Israel," the Court ensured that extra-sensitive Orthodox Jews, including Amitay's proffered declarants—none of whom, the record shows, followed Jews for Jesus on any platform; none of whom, the record shows, saw the posts as published; and all of whom regard association

with Christianity as, in their own words, "the most serious sin in Judaism" (AA183)—could serve as a hypothetical reasonable reader. They cannot.

Indeed, the Court of Appeal's *sua sponte* broadening of the reasonable-reader standard to sweep in "people in Israel" conflicted with this Court's standard: The average reader is a reasonable member of the audience to which the material was originally addressed. (*Baker*, at p. 261 ["this court must determine whether the *average reader of Bunzel's column* could have reasonably understood the alleged defamatory statement to be one of fact," emphasis added].)

The average readers are not "people in Israel" but Christians who "follow" Jews for Jesus on social media because they support its mission of evangelizing Jews. Indeed, the ministry submitted unrebutted evidence that its social-media pages exist to connect with its supporters, solicit donations from those supporters, and update its supporters about the ministry's charitable and spiritual outreach. (AA050; AA079.) To that end, Jews for Jesus' social-media team declared under oath that the Posts were designed "to show our supporters how their prayers and giving were making a real difference in a time of devastation" (AA079, emphasis added), and "to invite our supporters to pray and give, just as they always do in response to our updates from the field" (AA050, emphasis added).[6]

[6] For this same reason, this Court should independently find that Amitay's claims are barred by the common-interest privilege. (Cf. *Taus v. Loftus* (2007) 40 Cal.4th 683, 720

The average reader is *not* a random citizen of Israel, nor a member of an Orthodox Jewish community in Tzfat, and certainly not someone who regards a Jews for Jesus publication as "blasphemy of the Lord, something for which there is no redemption." (AA183.) The conclusion that the relevant audience for a Jews for Jesus fundraising post is "people in Israel" simply has no basis in law or the record. (Opinion, at p. 22.)[7]

### B. The Court of Appeal failed to determine whether the Challenged Posts were reasonably susceptible of a defamatory meaning as a matter of law.

The Court of Appeal sidestepped the pure question of law that Jews for Jesus squarely presented: whether a follower of Jews for Jesus' social-media pages—the intended audience to whom the Posts were addressed—would reasonably understand the Posts to convey a false and defamatory statement about Amitay. Instead, the Court of Appeal concluded—in an extraordinary conflict with this Court's settled rule that the

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["In any event, we conclude that plaintiff failed to establish a prima facie case on the defamation claim ***in light of a factor not raised by the parties or considered by the Court of Appeal***—the qualified privilege to which the statements in question are entitled under the so-called common-interest privilege established by Civil Code section 47, subdivision (c)(1)," emphasis added.].) Jews for Jesus published the Posts directly to its Christian supporters on its social-media pages, which require a user to make the deliberate act of "following" Jews for Jesus.

[7] The Court of Appeal's creation of a *sua sponte* inference against Jews for Jesus is manifestly unjust because the ministry's unrebutted evidence dispels that very inference. (AA050; AA079.)

intended audience to whom the publication is directed is the hypothetical reasonable reader, not plaintiff's proffered declarants (*Baker*, at p. 261)—that "Amitay has presented admissible evidence that others understood the posts to have a defamatory meaning, namely, that Amitay was supporting JFJ or its faith." (Opinion, at p. 14.)

Without applying this Court's required totality-of-the-circumstances test (*Baker*, at p. 261), the Court of Appeal also concluded that "a hypothetical reasonable reader could be misled, that is, a reasonable reader of one of JFJ's posts could understand that the person in the photograph, namely, Amitay, provided the quote and was either endorsing JFJ's view that it was worthwhile to distribute the New Testament to people in Israel or was otherwise aiding JFJ." (Opinion, at p. 17.)

The Opinion provided no analysis about how a hypothetical reasonable reader—a Jews for Jesus social-media follower and supporter of its Christian ministry—could identify Amitay given that the Israeli soldier was a blurred stock photo downloaded from Unsplash. Nor did the Opinion provide any analysis about how implying that someone believes it is "worthwhile to distribute the New Testament to people in Israel or … otherwise aiding JFJ" is libelous within the meaning of Civil Code section 45. (Civ. Code, § 45; 5 Witkin, Summary of Cal. Law (11th ed. 2025) Torts, § 637 ["Despite its broad language, C.C. 45 is *limited* to statements that either directly or implicitly *disparage plaintiff personally*," emphasis added.].)

The Court of Appeal compounded its error by concluding that Amitay "presented admissible evidence that others understood the posts to have a defamatory meaning, namely, that Amitay was supporting JFJ or its faith," then catalogued those readers' reactions. (Opinion, at p. 14.) Given that whether a publication is reasonably susceptible of a false and defamatory meaning is a question of law for the court (*Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal.3d 596, 601), whether Amitay's proffered declarants "understood the posts to have a defamatory meaning" is the wrong test.[8] "The question is not one that is to be answered by taking a poll of readers but is to be answered by considering the entire context in which the offending material appears." (*San Francisco Bay Guardian, Inc. v. Superior Court* (1993) 17 Cal.App.4th 655, 660; cf. *id.* ["The fact that real party furnished declarations of a few people who stated that they did not recognize the letter as a joke does not raise a question of fact as to the view of the average reader."].) And as Jews for Jesus argued in its briefing (AOB21), Amitay presented *no evidence* that either he, his employer, or any of his acquaintances follow Jews for Jesus' social-media pages.

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[8] Even if a reasonable follower of Jews for Jesus' social-media pages would recognize Amitay behind the blurred face—a speculative leap that not a scintilla of evidence supports—and somehow attributes a quote from *Nachman* to Amitay, quoting or implying that someone said thanks for receiving a copy of the New Testament or expressing interest in reading it is *not objectively libelous* as a matter of law.

* * *

The Opinion's most glaring omission is that it did not resolve the central question of law in this case: How can social-media posts about passing out religious literature, which feature a blurred stock photo of a soldier and an innocuous quote from a pseudonymous "Nachman," be reasonably susceptible of a defamatory meaning of and concerning an unknown, unidentified rabbi? Jews for Jesus squarely presented that question to the Court of Appeal. Instead, the Court of Appeal simply concluded—*with zero analysis*—that "no extra sensitive perception or expertise would be required to infer a defamatory meaning from JFJ's juxtaposition of Amitay's photograph with the quote in the posts." (Opinion, at p. 22.) That was it. But section 425.16 requires a more thorough examination of plaintiff's reasonable probability of prevailing.

## CONCLUSION

This Court should grant-and-transfer this cause to the Court of Appeal; alternatively, it should grant this petition for review.

Dated: July 7, 2026

Respectfully submitted,

LAW OFFICE OF
NIC COCIS & ASSOC.

/S/ Horatio G. Mihet

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**CERTIFICATE OF COMPLIANCE**

**(Cal. Rules of Court, rule 8.504(d)(1).)**

This petition contains 8,166 words, including footnotes, as counted by Microsoft Word, which was used to prepare the petition.

Dated: July 7, 2026

LIBERTY COUNSEL

/S/ Horatio G. Mihet

Horatio G. Mihet

*Attorney for Defendant-Appellant*

**ATTACHMENT:**
**Order Affirming Denial of Anti-SLAPP Motion**

(A174056 - May 28, 2026)

Filed 5/28/26

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

| | |
|---|---|
| ARIEL ZVOLON AMITAY,<br>Plaintiff and Respondent,<br>v.<br>JEWS FOR JESUS,<br>Defendant and Appellant. | A174056<br><br>(San Francisco County Super. Ct. No. CGC-24-620902) |

Ariel Amitay, an Orthodox Jewish rabbi, sued defendant Jews for Jesus (or JFJ), an evangelistic Christian ministry, for defamation and related claims based on social media postings by defendant that featured his photograph. JFJ filed a special motion to strike the complaint under the anti-SLAPP statute (Code Civ. Proc., § 425.16).[1] The trial court denied the motion, finding that Amitay showed his claims had at least "minimal merit" to survive an anti-SLAPP motion. JFJ appeals. We find no error and affirm.

## BACKGROUND

Jews for Jesus describes itself as an "evangelistic" ministry that "shares the Gospel of Christ to [its] Jewish brothers and sisters, both here in

[1] " 'SLAPP' is an acronym for 'strategic lawsuit against public participation.' " (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 381, fn. 1 (*Baral*).)

the United States and around the world." According to JFJ's executive director, JFJ has expanded its "evangelistic" "outreach" to social media over the years.

In December 2023, JFJ posted on its social media pages, including on Facebook and Instagram, a blurred photograph of an Israeli soldier wearing a yarmulke. Above the photograph was the following text attributed to "Nachman": " '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' – Nachman, a young Haredi soldier."[2] [3]

Amitay filed a complaint against JFJ, attaching screenshots of JFJ's posts. He alleged that the photographs posted by JFJ were photographs of him, that they had been posted without his consent, and that defendant had defamed him, put him in a false light, and inflicted emotional distress. Amitay alleged that he was a Jewish Orthodox rabbi who had "dedicated his life to the study of the Jewish Orthodox faith and committed many years studying to become a rabbi," recounting about a dozen years of study. He had finally gotten a job teaching at an institution in Israel where he had worked for two years, a position he described as his "dream job." His job "suddenly came to an end as he was terminated . . . due to an egregious act by JFJ,"

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[2] "Hasid is the Hebrew word for 'pious.' Hasidic Jews, or Hasidim, are the largest sub-group of Haredi Jews. Haredim are sometimes referred to as 'ultra-Orthodox,' although this term may be considered objectionable." (*Young Advocates for Fair Education v. Cuomo* (E.D.N.Y. 2019) 359 F.Supp.3d 215, 221, fn. 4.)

[3] Some of the posts went on to state: "One of the ways that God provides for His people is through the generosity of other people around the World, like you. Because of your support, we were able to give a copy of the New Testament to Nachman and more than 1,000 Israelis in 2023!"

namely, "upload[ing] photos of Amitay on [its] social media pages." He alleged: "JFJ posted a picture of [him] on their website giving the appearance that he supports JFJ's cause. Not only was a photo uploaded, but the post included a caption also falsely expressing that [he] supported JFJ's religious views." Amitay alleged that he is "an Orthodox Jew, a more traditional branch of Judaism, which [has] starkly different views from JFJ." He "never before associated with JFJ and disagrees with their religious views."

Amitay alleged that he had not consented to the posting or online dissemination of his photograph, and JFJ "knew or should have known from Amitay's appearance in the photo that he did not support JFJ's views." He characterized his "demeanor" in the photograph, "including his long beard and black yarmulke," as being that of a "traditional and conservative follower of Judaism, which is someone who would certainly not have supported JFJ." He also noted that he "was wearing an army outfit." He further alleged that an original photograph of Amitay had been taken by an unknown individual and posted online,[4] and "JFJ intentionally cropped the original photo to zoom in on Amitay and exclude certain objects/elements (the Tefillin) which would inform viewers he is not a JFJ supporter."[5] In addition, the original photograph (Exhibit B) depicted Amitay standing next to a person who Amitay later described in his declaration as "visibly an Orthodox Jewish rabbi."

Amitay alleged that when his employer "saw the pictures posted online," they "expressly stated that his termination was due to the posts

[4] Amitay attached a screenshot showing this original photograph to his complaint as Exhibit B.

[5] Amitay's declaration describes Tefillin as "a holy instrument that Orthodox Jews use to pray every morning."

online of him supporting JFJ, and that they could not condone or be associated with someone involved with JFJ or their views." Amitay alleged that the posts were false because Amitay "has no affiliation with [JFJ] . . . and disagrees with [JFJ's] religious views." Amitay further alleged that he "was harmed as he lost his dream job and earnings," and JFJ's "conduct was a substantial factor in causing [Amitay's] harm."

JFJ filed an anti-SLAPP motion, arguing that Amitay's claims arose from protected free speech activity and Amitay could not show a probability of prevailing on the merits. In a supporting declaration, JFJ's executive director stated that "Jews for Jesus operates openly and transparently" and "speak[s] directly . . . and publicly about who we are and why we believe that Jesus is the Jewish Messiah foretold in the Scriptures." Its "posting on social media" is "aimed at opening the door to meaningful conversations about Jesus," its "evangelistic" "outreach" on Facebook or Instagram or elsewhere is "an expression of our faith and our desire to see all people, Jewish and Gentile alike, come to know the love of God through His Son," and JFJ has "expanded [its] efforts to digital platforms because that is where people are." JFJ's chief operating officer declared that its "standard protocol" is to "blur the faces of people in [its] content" to "obscure the identity of the person in the photo so as to avoid suggesting that this individual had personally endorsed or interacted with Jews for Jesus in any way."

In opposition to the anti-SLAPP motion, Amitay submitted declarations and exhibits. Amitay declared: "I have never been associated with JFJ. I do not follow or agree with their views or beliefs, and any implication to the contrary is false." Amitay declared that he "was terminated by [his] employer" and attached the termination letter he received from his former employer, which states: "Documents (Exhibit 1 attached hereto) which, on the

face of it, serve as testimony to your associations with Christian bodies contrary to our Jewish faith, and to your position in the Seminary as an educator responsible for educating towards a belief in one God. After a hearing, which did not satisfy us, we are notifying you of your immediate dismissal."[6] Amitay declared that he has "applied for work since [his] termination from employment, but [has] been unable to secure a job." He attached a letter from a potential employer, which states: "[H]aving heard of certain matters concerning you that have been made public, . . . we will not be able to accept you for work with us because your conduct is not in keeping with the spirit of the seminary." Contending that JFJ "knew or should have known prior to their posting that [he] did not support their views," Amitay declared that his "long beard and black yarmulke[] were those of a traditional and conservative Orthodox Hasidic follower of Judaism." He also declared that, in the original, uncropped photograph, he was standing next to a "visible Orthodox Jewish rabbi" and holding Tefillin, "a holy instrument that Orthodox Jews use to pray every morning."

Amitay also submitted third party declarations. Chaim Chadad, who described himself as "a friend and acquaintance," declared: "I saw the picture and it seems that [Amitay] writes there in favor of Christianity for a non-profit organization named Jews for Jesus." Another friend of Amitay, David Menachem Mundel Shaher, declared: "When I saw the picture of [Amitay] with a caption to the effect that he believed in a false god, I was shocked, and it is impossible to express the extent of my shock." A rabbi in the Israeli army declared: "I saw a picture of Ariel Amitay in the [social] media, and I

[6] Much of the evidence presented by Amitay, including this letter, was translated from Hebrew into English.

was shocked that an observant Jew would write in support of Christianity for all to see. . . . This is contrary to his role as a religious Jew . . . ."

At a hearing in June 2025, the trial court denied the anti-SLAPP motion, finding Amitay showed "there's minimal merit for all three of his claims."[7] The trial court also concluded that both parties' evidentiary "objections were highly technical and really were unnecessary," "maybe a tiny number" of the objections "had any merit," and the parties should assume that the trial court "consider[ed] everything, particularly the Hebrew translations."[8]

JFJ appealed.

## DISCUSSION

A. *Applicable Law and Standard of Review*

"The anti-SLAPP statute is 'designed to protect defendants from meritless lawsuits that might chill the exercise of their rights to speak and petition on matters of public concern. [Citations.] To that end, the statute authorizes a special motion to strike a claim "arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." ' " (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1008–1009 (*Bonni*).)

An anti-SLAPP motion involves a familiar two-step process. "First, 'the moving defendant bears the burden of establishing that the challenged

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[7] Amitay's cause of action for intentional infliction of emotional distress was dismissed without prejudice.

[8] JFJ sought to exclude "the entirety of [Amitay's] translated evidence" for asserted failure to comply with rules for authentication and translation of foreign language evidence. Those objections are not raised on appeal.

allegations or claims "aris[e] from" protected activity in which the defendant has engaged.' [Citation.] Second, for each claim that does arise from protected activity, the plaintiff must show the claim has 'at least "minimal merit." ' [Citation.] If the plaintiff cannot make this showing, the court will strike the claim." (*Bonni*, *supra*, 11 Cal.5th at p. 1009.)

The Supreme Court has "described this second step as a 'summary-judgment-like procedure.' [Citation.]" (*Baral*, *supra*, 1 Cal.5th at p. 384.) "The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] '[C]laims with the requisite minimal merit may proceed.' [Citation.]" (*Id.* at pp. 384–385.)

We review an order denying a motion to strike under section 425.16 de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) "[A] court evaluating a probability of success should draw any nonspeculative inferences favorable to the plaintiff." (*Monster Energy Co. v. Schechter* (2019) 7 Cal.5th 781, 795 (*Monster Energy*).)

B. *Analysis*

JFJ contends the trial court erred as a matter of law in ruling that Amitay established a reasonable probability of prevailing on the merits of his defamation claim under the second step of the anti-SLAPP analysis. JFJ essentially makes two arguments: Amitay failed to state a legally sufficient cause of action for defamation, and, even if he did, he failed to meet his

burden of showing with admissible evidence that his claims had minimal merit.[9] We turn to each argument.

1. Amitay Stated a Legally Sufficient Claim for Defamation

"The tort of defamation 'involves (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.' [Citation.]" (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.) "Defamation is effected by either of the following: (a) Libel. (b) Slander." (Civ. Code, § 44.) "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civ. Code, § 45.)

Here, Amitay has pleaded a legally sufficient claim by alleging that Amitay's employer "saw the pictures posted online"; Amitay's employer understood that the "posts online" were "of him"; Amitay's employer understood the posts to mean that Amitay was "supporting JFJ"; the posts were false because Amitay "has no affiliation with [JFJ] and . . . disagrees with [JFJ's] religious views"; and JFJ "knew or should have known from Amitay's appearance in the photo that he did not support [JFJ's] views." Amitay pleaded general damages, including "shame and embarrassment in the community," and special damages to his "profession[] or occupation" (see

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[9] Amitay contends the trial court ruling should also be affirmed on the ground the anti-SLAPP motion fails the first prong because the speech was not made in connection with a matter of public interest. Assuming without deciding that the first prong is satisfied, we need not revisit the trial court's first step analysis because, as we shall discuss, we conclude that Amitay has carried his burden of stating legally sufficient claims and showing that his claims have at least minimal merit.

Civ. Code, § 48a, subd. (d)(2)), namely, the loss of "his dream job and earnings."[10]

In essence, JFJ argues four reasons why Amitay's pleadings were insufficient.

First, JFJ argues that Amitay failed to plead the posts were published to a third person because "Amitay does not allege that his friends or employer followed Jews for Jesus' social-media pages, and thus . . . does not allege that the Posts were communicated 'toward' his friends or employer." This argument is not persuasive. JFJ cites no authority for the proposition that a social media post is published only to followers. (*Clary v. City of Crescent City* (2017) 11 Cal.App.5th 274, 294 [" ' "This court is not required to discuss or consider points . . . which are not supported by citation to authorities . . . ." ' [Citations.]"].) In any event, the complaint alleges that Amitay's employer, Educate the Young, "saw the pictures posted online" and "stated that his termination was due to the posts online of him supporting JFJ," and that is sufficient at this stage. In assessing whether a plaintiff has met his burden at the second step of the anti-SLAPP analysis, we accept the plaintiff's factual allegations and construe them liberally. (See *Premier Medical Management Systems, Inc. v. California Insurance Guarantee Assn.* (2006) 136 Cal.App.4th 464, 476 [recognizing the standard of review for an anti-SLAPP motion is akin to that of judgment on the pleadings]; *Tukes v. Richard* (2022) 81 Cal.App.5th 1, 18 [in reviewing ruling on a motion for

[10] Special damages are defined by statute as "all damages that plaintiff alleges and proves that he or she has suffered in respect to his or her property, business, trade, profession, or occupation, including the amounts of money the plaintiff alleges and proves he or she has expended as a result of the alleged libel." (Civ. Code, § 48a, subd. (d)(2); see also Civ. Code, § 45a ["Special damage is defined in Section 48a of this code"].)

judgment on the pleadings to determine whether the complaint states a cause of action, the court accepts as true the plaintiff's factual allegations and construes them liberally].)

JFJ's second argument is that the posts "do not reference Amitay . . . by clear implication" because JFJ "blurred [his] face;" in other words, Amitay fails to sufficiently allege that the posts are of and concerning him. We disagree. In order to satisfy the "of and concerning" requirement, "the plaintiff must effectively plead that the statement at issue either expressly mentions him or refers to him by reasonable implication." (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1046.) Here, as pleaded, the quote in the posts can be reasonably understood to refer to the person in the juxtaposed photograph, and Amitay has sufficiently alleged that he is the person in the photograph.

JFJ's third argument is that "[n]othing about that quote states or implies" support for "Jews for Jesus or its 'religious views.' " Again, we disagree. It is a reasonable implication that the person in the photograph provided the quote and was either endorsing JFJ's view that it was worthwhile to distribute the New Testament to people in Israel or was otherwise aiding JFJ.

JFJ's fourth argument is that Amitay failed to plead libel "per quod," which requires special damages. (See *Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 351.)[11] Here, Amitay has stated a legally sufficient claim by

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[11] While a " 'statement . . . defamatory *on its face* . . . is said to be libelous per se, and actionable without proof of special damage,' " " 'if the defamatory character is not apparent on its face and requires an explanation of the surrounding circumstances (the "innuendo") to make its meaning clear' " then the claim is " 'defamation per quod.' " (*Barker v. Fox & Associates*, *supra*, 240 Cal.App.4th at p. 351, italics omitted.) Defamation

alleging that he "lost his dream job and earnings," and that his employer "stated that his termination was due to the posts online of him supporting JFJ, and that they could not condone or be associated with someone involved with JFJ or their views." JFJ's reliance on *Anschutz Entertainment Group, Inc. v. Snepp*, (2009) 171 Cal.App.4th 598, is misplaced. In that case, the plaintiffs alleged that they " 'suffered damage to their reputations in an amount to be proven at trial,' " and the court concluded that "[t]hese general allegations are insufficient to meet the specific pleading requirement." (*Id.* at p. 643.) But Amitay alleged more than mere damage to his reputation; he alleged that "he lost his dream job and earnings." That is sufficient. (See Civ. Code, § 48a, subd. (d)(2) [" 'Special damages' means all damages that plaintiff alleges . . . that he . . . has suffered in respect to his . . . profession[] or occupation . . ."].)

JFJ contends that "libel per quod requires plaintiff to plead and prove that the publisher *intended* the words to impute wrongdoing to plaintiff[,]" citing *Palm Springs Tennis Club v. Rangel*, (1999) 73 Cal.App.4th 1. However, we decline to impose an intent requirement, which is contrary to "the great weight of authority" including our own prior decision. (See *White v. Valenta* (1965) 234 Cal.App.2d 243, 257, fn. 14 [requiring the plaintiff to prove the defendant *intended* the defamatory meaning "is contrary to other cases [citations] and the great weight of authority"]; *Carl v. McDougall* (1919) 43 Cal.App. 279, 281 ["If the words were slanderous, the intention with which they were used is immaterial . . ."].) Nor is *Rosenblatt v. Baer* (1966) 383 U.S. 75, to the contrary. JFJ quotes *Rosenblatt* for the principle that "[t]here must

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" 'per quod' " requires " 'pleading and proof of special damages.' " (*Ibid.*, italics omitted.)

be evidence showing that the attack was read as specifically directed at the plaintiff," but it does so out of context. Such evidence is required " 'to establish that an otherwise impersonal attack on governmental operations was a libel of an official responsible for those operations.' [Citation.]" (*Id.* at p. 81.) Thus, *Rosenblatt* cannot be said to require Amitay to prove, or plead, intent here.

2. Amitay Made a Sufficient Showing of Defamation at the Anti-SLAPP Stage

Next, JFJ contends Amitay failed to make a prima facie showing with admissible evidence to sustain a favorable judgment on his defamation claim.

As an initial matter, we address the specific evidentiary objections raised in JFJ's opening brief. Because those objections are unavailing, we reject JFJ's sweeping contention that, had the trial court sustained JFJ's objections to Amitay's declarations, "nothing would have remained to support either the 'of and concerning' requirement or the 'publication' element of Amitay's defamation claim." In its opening brief, JFJ reiterates only a few of its objections to the declarations of Chadad, Rabbi Eichel, and Shaher. For example, JFJ contends that Rabbi Eichel's statement that he "saw a picture of Ariel Amitay in the [social] media" " 'lacks foundation and is speculative as to whether the image he viewed is the same as the subject post at issue' " because he "did not identify where, when, or in what form he 'saw a picture of Ariel Amitay.' " But at this stage we draw inferences favorable to Amitay (see *Monster Energy*, *supra*, 7 Cal.5th at p. 795), and a reasonable inference is that Rabbi Eichel saw "a picture of Ariel Amitay in the [social] media" in one of JFJ's posts at or near the date when JFJ published the posts. JFJ's similar objections to the factual foundation of Chadad's statement that he "saw the picture and it seems that Ariel writes there in favor of Christianity"

and Shaher's statement that he "saw the picture of Ariel with a caption to the effect that he believed in a false god" are unavailing for the same reason. Accordingly, the trial court did not err in overruling JFJ's objections to these statements.

In its opening brief, JFJ raises hearsay and foundation objections to Amitay's statements in his declaration that "members of [his] community and [his] colleagues . . . saw the posts and informed [him] that they are shocked by the path [he] chose (associating with JFJ) and that [he] need[s] to be ashamed" and "several of [his] friends and acquaintances . . . informed [him] that they recognized [him] in the posts and criticized [his] association with JFJ and/or their views." Because these objected to statements are duplicative of other evidence, namely, non-hearsay statements in third party declarations submitted by Amitay, we need not consider the point further.

We next turn to the evidence and conclude that Amitay has shown there is at least minimal merit to his defamation claim.

First, Amitay has presented admissible evidence that JFJ made statements to third persons who reasonably understood the statements to be about Amitay. (See *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1242 ["each time the defamatory statement is communicated to a third person who understands its defamatory meaning as applied to the plaintiff, the statement is said to have been 'published' "].) As we have described, Chadad declared: "I saw the picture and it seems that Ariel writes there in favor of Christianity for a non-profit organization named Jews for Jesus." Rabbi Eichel declared: "I saw a picture of Ariel Amitay in the [social] media, and I was shocked that an observant Jew would write in support of Christianity for all to see." Shaher declared: "When I saw the picture of Ariel with a caption to the effect that he believed in a false god, I was shocked, and it is

impossible to express the extent of my shock." At this stage, we draw inferences favorable to Amitay (see *Monster Energy*, *supra*, 7 Cal.5th at p. 795), and the reasonable inference from each of these statements is that each of these individuals saw the picture of Amitay in one of JFJ's posts, recognized Amitay in the picture, and attributed to Amitay the words quoted ("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").

Second, Amitay has presented admissible evidence that others understood the posts to have a defamatory meaning, namely, that Amitay was supporting JFJ or its faith. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 720 ["The tort of defamation 'involves (a) a publication that is . . . (c) defamatory . . . .' [Citation.]"]; Civ. Code, § 45 ["Libel is a . . . publication . . . which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation"].) Chadad declared: "[I]t seems that [Amitay] writes there in favor of Christianity for a non-profit organization named Jews for Jesus. I . . . was surprised that an educator would speak against Judaism . . . . This is unacceptable . . . . This caused me to distance myself from him for a period . . . ." Rabbi Eichel stated: "I saw a picture of Ariel Amitay in the [social] media, and I was shocked that an observant Jew would write in support of Christianity for all to see. . . . This is contrary to his role as a religious Jew, and it is testimony to his mental instability." Shaher declared that he "saw the picture of Ariel with a caption to the effect that he believed in a false god" and "there is no place in the community for such a person or for his children." (Bolding omitted.) A reasonable inference is that Shaher understood the posts to mean that Amitay had expressed support for the evangelistic views of JFJ.

Third, Amitay has presented admissible evidence that the statements were false. (See *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 470 (*Hecimovich*) ["To prevail on a claim for defamation, plaintiff must show . . . that [the statements] were false"].) He declared: "I have never been associated with JFJ. I do not follow or agree with their views or beliefs, and any implication to the contrary is false."

Fourth, Amitay has presented admissible evidence supporting a finding that JFJ failed to use reasonable care to determine the truth or falsity of its posts. (See *Hecimovich*, *supra*, 203 Cal.App.4th at p. 470 ["To prevail on a claim for defamation, plaintiff must show . . . that defendants failed to use reasonable care to determine the truth or falsity"].) Identifying "obvious" indicators of his religious beliefs, Amitay declared that his "long beard and black yarmulke[] were those of a traditional and conservative Orthodox Hassidic follower of Judaism." He also stated that, in the original, uncropped photograph, he was holding Tefillin, "a holy instrument that Orthodox Jews use to pray every morning," and standing next to an "Orthodox Jewish rabbi." At this stage, we infer in Amitay's favor that his long beard, black yarmulke, Tefillin, and the Orthodox Jewish rabbi standing next to him were indications of Amitay's religious beliefs. (See *Monster Energy*, *supra*, 7 Cal.5th at p. 795.)

Fifth, Amitay has presented admissible evidence that he suffered harm to his profession or occupation. (See Civ. Code, § 48a, subd. (d)(2).) Amitay declared that he was terminated by his employer and has been unable to secure a job since then.

Finally, Amitay has presented admissible evidence that the posts were a substantial factor in causing his harm. (See Civ. Code, § 45a.) Amitay submitted the termination letter he received from his former employer, which

we have described, and which states in no uncertain terms why he was being terminated. Amitay also submitted a letter from a potential employer, which states: "[H]aving heard of certain matters concerning you that have been made public, . . . we will not be able to accept you for work with us because your conduct is not in keeping with the spirit of the seminary." Such "evidence may be considered at the anti-SLAPP motion stage if it is reasonably possible the evidence set out in supporting affidavits, declarations or their equivalent will be admissible at trial." (See *Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 947.)

Thus, based on our review of the evidence presented by Amitay, we conclude, as did the trial court, that Amitay has shown that his defamation claim has at least "minimal merit" to survive an anti-SLAPP motion. We are not persuaded by JFJ's principal arguments to the contrary, which we discuss below, that: (1) Amitay failed to show the posts were "of and concerning" him as a matter of law because they do not identify him expressly or by reasonable implication; (2) no reasonable reader would understand JFJ's posts as conveying a defamatory meaning; and (3) "deciding whether Jews for Jesus harmed Amitay's reputation and standing would require the factfinder to improperly entangle itself in the tenets of Orthodox Judaism."

3. Amitay Has Not Failed As a Matter of Law to Show the Posts Were "Of and Concerning" Him

First, JFJ contends that Amitay failed to show the posts were "of and concerning" him because they do not identify him expressly or by reasonable implication. We disagree. To support its argument, JFJ principally relies on four cases, only one of which applies California law. As we shall discuss,

none of these cases compels the conclusion that, as a matter of law, Amitay has failed to show that the posts were "of and concerning" him.

JFJ asserts that, "if plaintiff is not named, captioned, or expressly identified in connection with the allegedly defamatory publication, then the 'of and concerning' requirement is not satisfied as a matter of law." JFJ derives this proposition principally from a Texas state court case applying Texas law and affirming summary judgment, *Houseman v. Publicaciones Paso del Norte, S.A. DE C.V.* (Tex.App. 2007) 242 S.W.3d 518, but, there, the court suggested the opposite; for a publication to be " 'of and concerning the plaintiff,' " "[i]t isn't necessary that the plaintiff be named in the publication." (*Id.* at p. 525.) Even if we were to import principles from *Houseman* to this case, we would still conclude that Amitay has presented admissible evidence that the posts were "of and concerning" him. In *Houseman*, the defendant, a Spanish language newspaper publisher, published an article with the headline " 'Immigration Agent Accused of Drug Trafficking' " and a photograph of plaintiff Houseman working at a border check point with a police dog. (*Id.* at pp. 521-522.) The caption under the photograph stated: " 'Agent looks through the cars aided by a police dog.' " (*Id.* at p. 522.) The accused agent was named in the article; Houseman was not mentioned. (*Id.* at p. 521.) A few days later, the newspaper republished the photograph and included an explanatory note of retraction under the picture. (*Id.* at p. 522.) Plaintiff Houseman contended that the article suggested he was involved in narcotics trafficking and that he was associated with the conspiracy described in the article. (*Id.* at p. 522.) According to *Houseman*, under Texas law: "A true account that does not create a false impression by omitting material facts or suggestively juxtaposing them is not actionable, regardless of the conclusions that people may draw. [Citation.] But by omitting key

facts and falsely juxtaposing others, a publication may be both false and defamatory. [Citation.]" (*Id.* at p. 526.) Thus, in determining whether the "of and concerning" requirement is met under Texas law, a court reviews whether omission of material facts or suggestive juxtaposition creates a false impression. The appellate court concluded, as a matter of law, that the publication was not defamatory because a "hypothetical reasonable reader" would not be misled. (*Id.* at pp. 521, 527.) In the present case, a hypothetical reasonable reader *could* be misled, that is, a reasonable reader of one of JFJ's posts could understand that the person in the photograph, namely, Amitay, provided the quote and was either endorsing JFJ's view that it was worthwhile to distribute the New Testament to people in Israel or was otherwise aiding JFJ.

As JFJ notes, *Houseman* was distinguished by *Grimsley v. CBS Broadcasting Inc.* (D.S.C., Mar. 10, 2022, No. 2:21-CV-4008-DCN) 2022 WL 719610, a South Carolina federal district court case denying a motion to dismiss at the pleading stage. (*Id.* at p. *1.) In *Grimsley*, CBS published an article naming two deputies who had been fired in connection with the death of a mentally ill detainee. (*Ibid.*) Though plaintiff Grimsley was not one of the two named deputies, the article featured a photograph of him in uniform on a motorcycle on which his name could be seen. (*Ibid.*) Grimsley filed a complaint for defamation, and the district court denied CBS's motion to dismiss. (*Ibid.*) The district court observed that "the photo [was] zoomed in on [the plaintiff] and, in the light most favorable to Grimsley, would appear to have no relation to the article unless it was depicting one of the agents involved." (*Id.* at p. *3.) So too, here; the evidence shows that JFJ cropped the original photograph to zoom in on Amitay, and a reasonable reader of one

of JFJ's posts could understand that the photograph of Amitay would have no relation to the quote unless it was depicting the person quoted.

JFJ attempts to distinguish a federal case, *Manzari v. Associated Newspapers Ltd.*, (9th Cir. 2016) 830 F.3d 881, that affirmed the denial of an anti-SLAPP motion. (*Id.* at 893.) In *Manzari*, the defendant published an article with the headline, "PORN INDUSTRY SHUTS DOWN WITH IMMEDIATE EFFECT AFTER 'FEMALE PERFORMER' TESTS POSITIVE FOR HIV," a photograph of the plaintiff with her professional name written in neon lights, and a caption below the photograph that said: " 'Moratorium: The porn industry in California was shocked on Wednesday by the announcement that a performer had tested HIV positive.' " (*Id.* at pp. 884, 891.) The text of the article stated that the female performer who had tested positive for HIV " 'was not immediately identified' " and was " 'new to the industry.' " (*Id.* at p. 884.) The plaintiff, however, was described by the Ninth Circuit as "one of the most well-known and popular soft-core porn actresses in the world"; she had retired years earlier. (*Id.* at pp. 884, 890.) The Ninth Circuit held that a reasonable reader could infer that the article was about the plaintiff and that the plaintiff had presented sufficient evidence to defeat the anti-SLAPP motion. (*Id.* at pp. 889-890.) JFJ attempts to distinguish *Manzari* principally on "the critical fact—wholly absent here—that the 'picture includes her professional name "Danni" in neon lights behind her.' " (Italics omitted.) True enough. But, in arriving at its conclusion, the Ninth Circuit examined the " 'totality of the circumstances of the publication' " and "[c]onsider[ed] the article as a whole." (*Id.* at p. 890.) It rejected the publisher's argument that the text of the article (in particular, that the performer at issue was new to the industry and hadn't been immediately identified) was "logically inconsistent with the inference" that

the plaintiff was the female performer who had tested positive for HIV. (See *id.* at pp. 890-891.) Here, although Amitay's name was not in neon lights, the posts' attribution of the juxtaposed quote to Nachman was not so "logically inconsistent with the inference" by a reasonable reader that Amitay was the person quoted in JFJ's posts. (See *ibid.*) JFJ's chief operating officer's declaration in effect acknowledged that "blur[ring] the faces of people in [its] content" was necessary because juxtaposing a person's photograph with content might "suggest[] that this individual had personally endorsed or interacted with JFJ." But a reasonable reader seeing Amitay's blurred face in JFJ's posts could infer that Amity was the source of the quote, as Amitay's evidence showed here. At this stage, the reference to Nachman does not negate that reasonable inference.

JFJ attempts to liken this case to a federal case, *CoreCivic, Inc. v. Candide Group, LLC*, (9th Cir. 2022) 46 F.4th 1136, an anti-SLAPP appeal in which the Ninth Circuit held, among other things, that plaintiff CoreCivic, an operator of detention centers, had failed to "plausibly plead" a defamation by implication claim under the pleading standards of Federal Rule of Civil Procedure 12(b)(6). (*Id.* at pp. 1138, 1143.) JFJ contends that, "as in *CoreCivic*, the image [of Amitay] simply served as a 'visual component' to Jews for Jesus' message about distributing copies of the New Testament." But the quoted term, "visual component," comes from the declaration of JFJ's chief operating officer, not the Ninth Circuit. And the facts in *CoreCivic* are simply too dissimilar for the case to be instructive. In *CoreCivic*, the photograph was not even of plaintiff CoreCivic. (*Id.* at pp. 1145, 1139.) Here, the photograph is of Amitay himself. Because the facts in *CoreCivic* are nothing like this case, *CoreCivic* does not persuade us that Amitay failed to show the posts were "of or concerning" him as a matter of law.

Finally, JFJ contends that its posts cannot be "of and concerning" Amitay because they expressly identify the speaker as "Nachman." But a statement can be "of and concerning" a plaintiff even if attributed to a fictitious name. (See *Bindrim v. Mitchell* (1979) 92 Cal.App.3d 61, 75, disapproved of on other grounds by *McCoy v. Hearst Corp.* (1986) 42 Cal.3d 835 ["We cannot say . . . that no one who knew plaintiff . . . could reasonably identify him with the fictional character [in the book]. Plaintiff was identified as [the fictional character] by several witnesses . . ."].) Here, Amitay's evidentiary showing in support of his defamation claim does not fail as a matter of law just because JFJ attributed the quote in the posts to a fictitious name.

4. A Person Could Reasonably Understand the Posts' Defamatory Meaning

JFJ contends that, as a matter of law, no reasonable reader would read its posts as conveying a defamatory meaning. For this argument, JFJ relies on *Hoang v. Tran* (2021) 60 Cal.App.5th 513. But *Hoang* is distinguishable. In *Hoang*, one of the defendants posted an article about the plaintiff on Facebook that was republished on the " 'BBC Vietnamese Facebook Page.' " (*Id.* at p. 521.) The article stated that " '[s]ince the [19]90s, [the plaintiff] has flown to Shanghai, imported blood from China, then provided it to a number of large hospitals in the U.S., and he has thereby become a "billionaire".' " (*Ibid.*) The plaintiff sued the author of the article, BBC Global News, and other defendants. (*Id.* at p. 520.) Applying the totality of circumstances test to one of the allegedly defamatory statements, the court recited the principle that " ' "[t]he fact that some person might, with extra sensitive perception, understand such a [defamatory] meaning cannot compel this court to establish liability at so low a threshold." ' [Citation.]" (*Id.* at p. 520.) JFJ

relies on *Hoang* for that particular principle, but omits the sentences that immediately precede and follow the quoted statement. The court also stated: "The article 'must be viewed from the perspective of the average reader of [the BBC Vietnamese Facebook Page], not . . . [an] expert [on the global blood trade] who might view [it] as conveying some special meaning . . . .' [Citation.] The average reader of the BBC Vietnamese Facebook Page would not know that the export of blood from China to the United States was illegal." (*Id.* at p. 533.) The court concluded that the trial court should have granted the anti-SLAPP motion. (*Id.* at p. 520.)

Here, we can reasonably infer from the evidence presented that the audience to whom posts by the "Jews for Jesus Israel" account were directed included people in Israel, and no extra sensitive perception or expertise would be required to infer a defamatory meaning from JFJ's juxtaposition of Amitay's photograph with the quote in the posts. Whether that could be proven at trial is another question, but, at this stage, Amitay's defamation claim has at least the minimal merit required to survive an anti-SLAPP motion.

5. JFJ Waived Its Improper Entanglement Argument

JFJ contends for the first time on appeal that "deciding whether Jews for Jesus harmed Amitay's reputation and standing would require the factfinder to improperly entangle itself in the tenets of Orthodox Judaism." "As a general rule, 'issues not raised in the trial court cannot be raised for the first time on appeal.' [Citation.]" (*Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 417.) "Thus, 'we ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived. [Citations.]' " (*Newton v. Clemons* (2003) 110 Cal.App.4th

1, 11.) We see no reason here to depart from the general rule here. We conclude that JFJ waived this contention for purposes of its anti-SLAPP motion.

Even if we considered JFJ's untimely argument, the argument is not persuasive. JFJ principally relies on *Abdelhak v. Jewish Press Inc.*, (N.J.Super.Ct.App.Div. 2009) 411 N.J.Super. 211, a case easily distinguishable. In *Abdelhak*, a trial court in New Jersey granted the defendants' motions to dismiss for lack of subject matter jurisdiction because "adjudication of plaintiff's claims would require the court and jury to make no less than eleven determinations regarding questions grounded in religious doctrine[.]" (*Id.* at p. 221.) The appellate court affirmed because the "excessive entanglement that the Founders sought to avoid is squarely presented" where, "as here, a jury cannot evaluate plaintiff's defamation claim without developing a keen understanding of religious doctrine, and without applying such religious doctrine in a fact-sensitive and nuanced fashion." (*Id.* at p. 233.) *Abdelhak* is inapposite here, where JFJ has not contended, in the trial court or on appeal, that the trial court lacked subject matter jurisdiction.

For the same reason, JFJ misplaced its reliance on *Klagsbrun v. Va'ad Harabonim of Greater Monsey* (D.N.J. 1999) 53 F.Supp.2d 732, affd. *sub nom. Klagsbrun v. Vaad Harabonm of Greater Monsey* (3d Cir. 2001) 263 F.3d 158, and *Goodman v. Temple Shir Ami, Inc.* (Fla.Dist.Ct.App. 1998) 712 So.2d 775. (See *Klagsbrun, supra,* 53 F.Supp.2d at p. 742 [dismissing action for lack of subject matter jurisdiction because "the plaintiff's defamation claims raise inherently religious issues" and "are therefore not properly cognizable in this court"]; *Goodman, supra,* 712 So.2d at p. 776 [affirming the trial

court's dismissal of a defamation claim for lack of subject matter jurisdiction].)

6. Amitay's Other Claims Do Not Necessarily Fail

JFJ contends that, "[b]ecause Amitay's defamation claim fails as a matter of law, his derivative claims necessarily collapse as well." Because we conclude that Amitay's defamation claim does not fail as a matter of law, we reject JFJ's three sentence argument that Amitay's other claims necessarily fail.

## DISPOSITION

The challenged order is affirmed. Amitay shall recover his costs on appeal.

Miller, J.

WE CONCUR:

Richman, Acting P.J.

Desautels, J.

A174056, *Amitay v. Jews for Jesus*

**CERTIFICATE OF SERVICE**

*Ariel Zvolon Amitay v. Jews for Jesus*
Court of Appeal Case No. A174056
Superior Court Case No. CGC-24-620902

I, Horatio Mihet, am an attorney for Defendant-Appellant Jews for Jesus. I am over 18 years old and not a party to the action. My business address is P.O. Box 540774 Orlando, FL 32854. My electronic service address is hmihet@lc.org.

I hereby certify that on July 7, 2026, I caused to be electronically filed the foregoing PETITION FOR REVIEW through the Court's electronic filing system.

Furthermore, on July 7, 2026, I served a copy of the foregoing document by email to Raffi Kassabian at raffi@bezdikkassab.com, who is counsel for Plaintiff-Respondent Ariel Amitay.

Furthermore, on July 7, 2026, I caused to be served a copy of the petition to the superior court clerk via first-class mail pursuant to California Rules of Court, rule 8.500(f)(1).

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

Date: July 7, 2026

/S/ Horatio G. Mihet
Horatio G. Mihet