No. A174056

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 2

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

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

APPELLANT'S OPENING BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Cal. Rules of Court, rule 8.208(e)(3), there are no interested entities or persons to list in this Certificate.

Dated: October 15, 2025

/s/ Horatio G. Mihet
Horatio G. Mihet

Attorney for Defendant-Appellant

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INTRODUCTION

This is a lawsuit brought by an Orthodox rabbi against a Christian ministry. In 2023, appellant Jews for Jesus published two Facebook and Instagram posts highlighting its charitable work in Israel after the October 7 attacks. The posts quoted a pseudonymous "Nachman, a young Haredi soldier," who thanked the ministry for leaving a copy of the New Testament at his home. The posts also featured a royalty-free stock image of an "Israeli soldier," whose face Jews for Jesus intentionally blurred.

Respondent Ariel Amitay claims to be the soldier. He alleges that Jews for Jesus "intentionally" defamed him by "deceptively" using his image to imply that he, an Orthodox rabbi, supported a Christian ministry's "religious views." He further alleges that, because of the social-media posts, his employer fired him and his religious community shunned him.

Jews for Jesus moved to strike Amitay's complaint as a SLAPP under Code of Civil Procedure section 425.16, arguing that the social-media posts were protected speech on a matter of public interest and that his claims for defamation, false light, and emotional distress are legally insufficient and factually meritless. In support, Jews for Jesus submitted sworn declarations attesting that its communications team had never heard of Amitay, had no intent to imply that the blurred soldier endorsed its beliefs, and had simply used a free stock image to illustrate the posts.

Despite that unrebutted evidence, the trial court denied Jews for Jesus' anti-SLAPP motion. Although it agreed that

Amitay's suit targets protected activity under section 425.16's first prong, the court found "minimal merit" under prong two, ruling that the posts were "of and about" Amitay because they included his image and were false and defamatory because, from "Rabbi Amitay's position," they "align[ed] him with beliefs that are wholly contrary to his belief system."

The order should be reversed. As a matter of law, no ordinary reader would reasonably understand two social-media posts featuring a blurred stock image and a quotation by "Nachman" to be a false and defamatory statement about Amitay. And plaintiff failed to meet his evidentiary burden of proving otherwise.

Even accepting his allegations as true, Amitay merely seeks damages for an inadvertent happenstance and a hostile overreaction by some in his religious community who, by their own admission, are highly offended by Jews for Jesus' Christian beliefs. "The law, however, does not provide a remedy for all perceived human wrongs." (*Sandoval v. Pali Institute, Inc.* (2025) 113 Cal.App.5th 616.) Holding otherwise would invite frivolous suits over simple misunderstandings and theological differences while forcing ministries like Jews for Jesus to litigate against unknown claimants in distant countries over claims arising from their First Amendment-protected religious speech. California's anti-SLAPP statute was enacted to thwart such lawsuits.

The Court should reverse the ruling below and direct the trial court to strike Amitay's complaint in its entirety.

STATEMENT OF APPEALABILITY

An order denying a special motion to strike brought under Code of Civil Procedure section 425.16 is appealable pursuant to sections 904.1, subdivision (a)(13), and 425.16, subdivision (j).

STATEMENT OF FACTS

A. Factual Background

1. Jews for Jesus' social-media campaign highlighting its ministry work in Israel.

Jews for Jesus is an international Christian ministry devoted to sharing the Gospel with Jewish communities worldwide. (AA044:18–21.) In recent years, Jews for Jesus expanded its outreach and fundraising to social media. (AA045:1–2.) As the ministry's social-media strategist, Robbie McLaughlin, explained, the focus is on "delivering compelling, high-quality content that helps Jews for Jesus connect with Jewish people around the world—and those who care about our work—while promoting ministry efforts and humanitarian outreach." (AA079:17–22.)

In December 2023, Jews for Jesus' communications team launched a social-media campaign highlighting its outreach in Israel following the October 7 attacks. (AA048:1–5; AA079:23–24.) As McLaughlin put it, the team "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, the team created 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.)

To humanize the campaign, the team crafted a testimonial attributed to "Nachman, a young Haredi soldier." (AA050:9–12; AA080:7–8.) "Nachman" is a pseudonym. (AA050:11–12; AA080:9–10.) The team created the fictitious name to protect the real soldier's identity. (AA080:10.)

The Posts feature 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 included either of the following two messages:

> This year, there have been unimaginable atrocities committed against the people of Israel. Over one thousand Israelis were murdered, with thousands more injured and many communities decimated. The needs are overwhelming….

(AA015.)

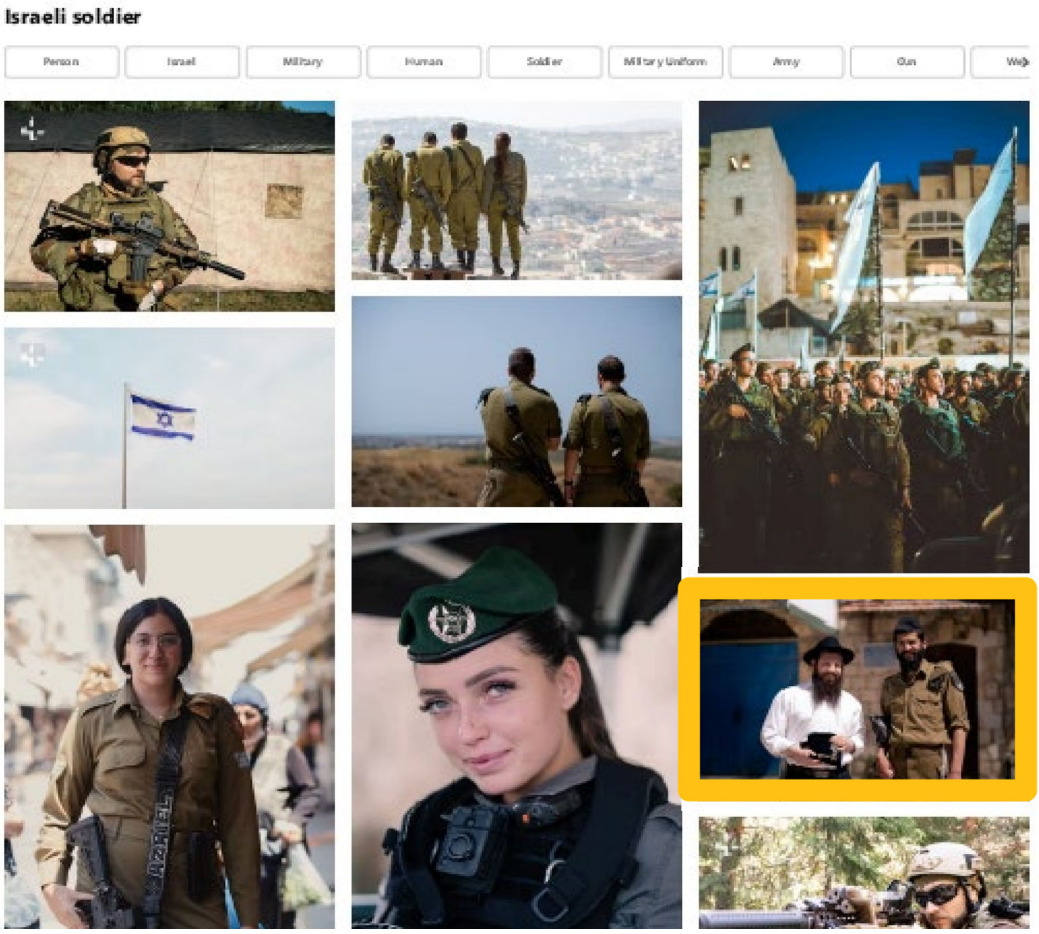
> This past year has been unbelievably difficult, yet God's unwavering faithfulness to His chosen people demonstrates to the whole world that He keeps His promises. One of the ways that God provides for His people is through the generosity of other people around the world, like you. Because of your support, 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 "Nachman" testimonial, Jews for Jesus' then-communications director, Arielle Randle, turned to Unsplash, a free image-sharing website that provides millions of

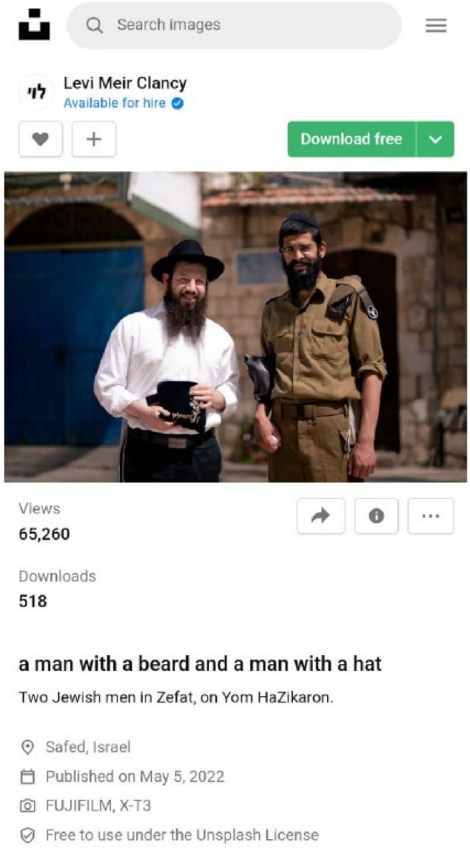
images to the public. (AA049:6–7.) Unsplash grants an irrevocable, royalty-free license permitting anyone to download, edit, and publish stock photographs for free, without the photographer's consent or attribution. (AA071.)

To find a photo that would illustrate a "young Haredi soldier," Randle searched Unsplash using the term "Israeli soldier" (AA049:17):



Unsplash's search results for "Israeli soldier." (AA073.)
The subject image is highlighted. (AA020.)

Randle chose a stock image 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.)



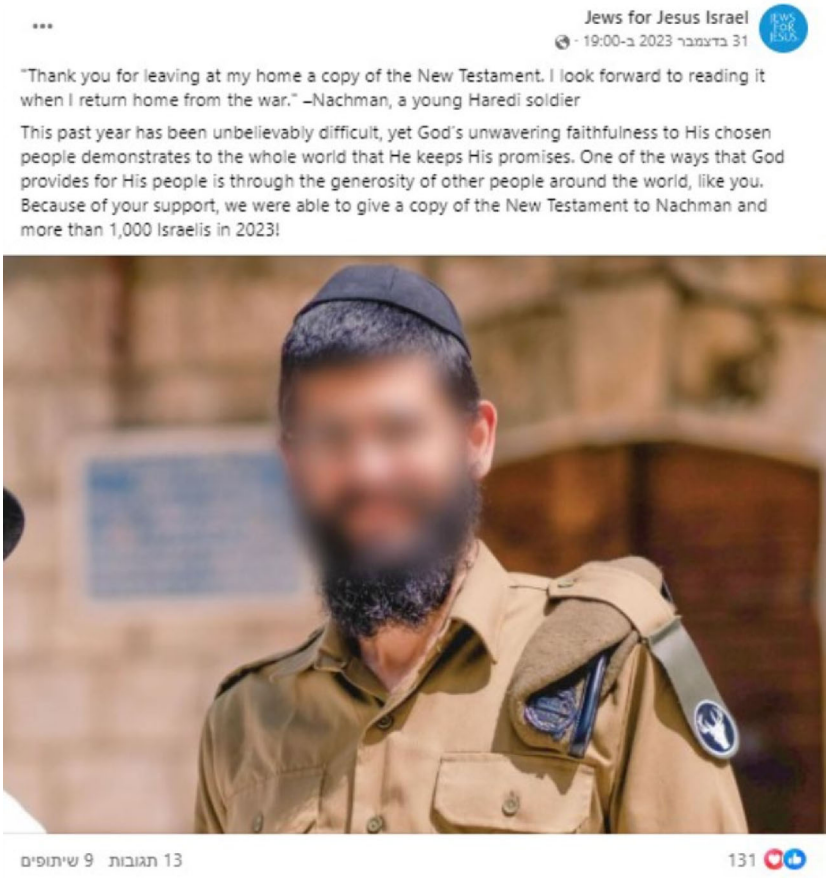
(AA020.) The man on the left appears to be a rabbi, and the man on the right appears to be a soldier. (AA049:22–24.) By the time Amitay sued, the image had been viewed more than 65,000 times on Unsplash and downloaded at least 500 times. (AA020.)[1]

[1] 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>.

Neither Randle nor McLaughlin had seen the "two Jewish men" before, and thus they had "no idea" who they were. (AA049:26; AA080:20.) Randle chose 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.) McLaughlin likewise testified that the image "was used in a symbolic way to reflect the kind of people we were reaching and serving: young Israelis struggling to process unimaginable trauma." (AA080:17–19.)

Because the team "wanted an image of an Israeli soldier to be the main visual component of [its] posts" (AA221:4–5), they 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). Randle testified that the decision to crop the image "was based entirely on visual and thematic considerations." (AA221:12–13.)

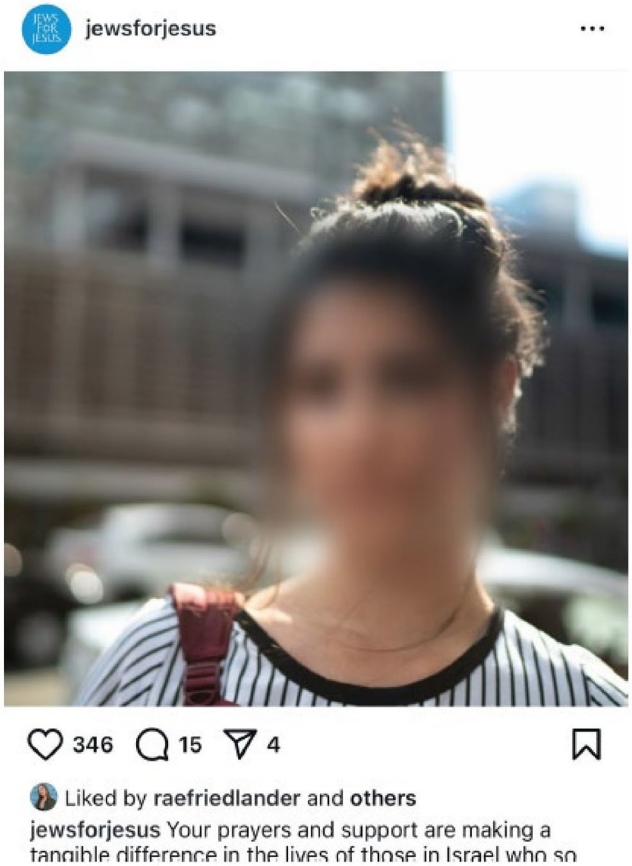
To "obscure" the soldier's identity, and "to avoid suggesting that this individual had personally endorsed or interacted with Jews for Jesus in any way" (AA050:4–6), the team "intentionally blurred" his face (AA050:1).



Facebook post (AA016.)

Instagram post (AA018.)

Blurring the faces of people in photographs is "standard protocol." (AA050:2.) Jews for Jesus' CEO, Aaron Abramson, explained that "[i]t is not the intent or practice of Jews for Jesus to imply that any individual supports our mission, beliefs, or activities without their knowledge or consent." (AA045:13–14.) The ministry thus "take[s] care to protect individuals' privacy and to avoid creating any impression that someone is affiliated with [it] unless that person has explicitly chosen to be identified as such." (AA045:17–18.) Here is another example of the ministry blurring the face of an image in a social-media post:



(AA076.)

Consistent with the ministry's protocol, "[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.) Instead, as Randle testified, the post "was intended to share a story about Jews for Jesus' ministry work in Israel, and to invite our supporters to pray and give, just as they always do in response to our updates from the field." (AA050:18.)

2. Amitay alleges Jews for Jesus "intentionally" published a blurred stock photo "to disgrace, defame, and injure" him.

Plaintiff Ariel Amitay, a citizen of Israel, claims to be the "man with a beard" in the stock photo. (AA105.) Although his own exhibit identifies the photographer as Levi Meir Clancy (AA020), 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 Challenged Posts quote the pseudonymous "Nachman," Amitay also alleges "the post included a caption also falsely expressing that [he] supported JFJ's religious views." (AA009.) He further alleges that, because he "was wearing an army outfit," Jews for Jesus "was intentionally, falsely, and deceptively showing that someone from the army supports JFJ." (AA009.) And he 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 he "first discovered the posts when his friends sent it to him" (AA009), though he does not allege how or when those "friends" came across them, or how they could recognize Amitay behind the blurred image. He next alleges his employer "saw the pictures posted online," after which it "questioned" him, and then "terminated" him. (AA009.) He contends that his employer "expressly stated" that it fired him because of "the posts online of him supporting JFJ." (AA009.)

Although Levi Meir Clancy uploaded the image to Unsplash in May 2022, and although the image had been downloaded over 500 times by the time he brought suit (AA020), Amitay alleges he "would not have lost his dream job" had Jews for Jesus "not uploaded these posts on their social media" (AA010). He further alleges he "has suffered shame and embarrassment amongst his friends, colleagues, and community," along with "depression and mental suffering." (AA010.)

B. Procedural History

Amitay filed suit on Christmas Eve 2024 in San Francisco Superior Court, asserting causes of action for defamation, false light, and both intentional and negligent infliction of emotional distress. (AA006.)[2] Amitay also seeks at least $5 million in damages. (AA013.)

On May 27, 2025, Jews for Jesus moved under Code of Civil Procedure section 425.16 to strike the complaint as a strategic

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

lawsuit against participation ("SLAPP"). (AA021.) Jews for Jesus 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 social-media user 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, or that it "intentionally published the false post on their social media pages to disgrace, defame, and injure Plaintiff" (AA010).

In opposition to the anti-SLAPP motion, Amitay contended that the Posts were "of and concerning" him because they featured a picture of him that "other people actually recognized" (AA090), and that they "implied a false fact because Amitay has no association with JFJ whatsoever" (AA090). Attempting to carry his evidentiary burden of defeating Jews for Jesus' motion to strike, Amitay submitted his declaration (AA105), along with four non-party witnesses, three of whom stated they "saw" the "picture" (AA171, AA175, AA183). Each of these declarations was

written in Hebrew and accompanied by uncertified translations.[3] Amitay also attached to his declaration photographs of untranslated documents, receipts, and various other records, including untranslated copies of what appear to be paystubs. (AA115–170.)

In response, Jews for Jesus filed thirty-two general and specific evidentiary objections to Amitay's proffered declarations and exhibits, contending that the evidentiary submissions largely consisted of inadmissible hearsay, lacked foundation, and were mostly irrelevant. (AA224.)[4]

On June 20, 2025, retired Judge Harold Kahn, filling in for the regular Law and Motion judge, held a hearing at which he 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).

Although it appeared to misunderstand whether the "of and concerning" requirement was a question of law (RT12:25–26), the court determined "as a matter of law, if that is the standard," that the posts were "of and about" Amitay (RT14:19–21), because they used "his photo" and "it's not entirely blurred" (RT10:7, 10). The court further held that the posts would be defamatory to "somebody in Rabbi Amitay's position" because "[i]t's aligning

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[3] After Jews for Jesus objected to the uncertified translations, Amitay submitted a supplemental declaration from the translator certifying the documents. (AA259.)

[4] Amitay also submitted six evidentiary objections to the Abramson, Randle, and McLaughlin declarations. (AA187–193.)

him with beliefs that are wholly contrary to his belief system" (RT16:2–5), and that the posts were likely "provably false" because "it basically is saying he is [an] adherent of Jews for Jesus' beliefs, and he isn't" (RT16:8–10).[5]

Finally, the trial court summarily overruled both parties' evidentiary objections, calling them "highly technical" although "maybe a tiny number that had any merit." (RT16:17–22.)

The trial court entered its order denying Jews for Jesus' special motion to strike on June 23, 2025 (AA266), and the ministry timely filed its notice of appeal on July 21, 2025 (AA270).

[5] The trial court also rejected Jews for Jesus' contention that the Challenged Posts were protected under Civil Code section 47, subdivision (c), the common-interest privilege. (RT20:13–23.) Because the dispositive issue is the absence of a provably false and defamatory publication "of and concerning" Amitay, the Court need not reach the privilege question to resolve this appeal, and thus Jews for Jesus does not address it in this brief. (Accord, Eisenberg et al., Cal. Prac. Guide Civ. App. & Writs Ch. 9-B, § 9:19.) Nevertheless, Jews for Jesus neither concedes nor waives the privilege's application to Amitay's claims.

STANDARDS OF REVIEW

1. The Court reviews the denial of an anti-SLAPP motion de novo. (*Hoang v. Tran* (2021) 60 Cal.App.5th 513, 526.) The Court thus "reviews the trial court's ruling and not its rationale." (*Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1336 (*Balzaga*).) To that end, the Court "review[s] the record independently to determine whether the asserted cause of action arises from activity protected under the statute and, if so, whether the plaintiff has shown a probability of prevailing on the merits." (*Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 675.)

2. The Court reviews a trial court's evidentiary rulings concerning an anti-SLAPP motion for an abuse of discretion. (*Sanchez v. Bezos* (2022) 80 Cal.App.5th 750, 763.)

ARGUMENT

I. The anti-SLAPP statute ensures quick dismissal of meritless suits that target First Amendment-protected expression.

Code of Civil Procedure section 425.16 prevents and deters meritless SLAPPs that are "brought primarily to chill the valid exercise … of freedom of speech." (Code Civ. Proc., § 425.16, subd. (a).) These suits "seek to deplete the defendant's energy and drain his or her resources" (*Cross v. Facebook, Inc.* (2017) 14 Cal.App.5th 190, 198, citation modified), and plaintiffs often seek damages that "would be ruinous to the defendants" (*Hoang v. Tran*, *supra*, 60 Cal.App.5th 513, 520 fn. 2, citation modified). The Legislature thus "sought to prevent SLAPPs by ending them

early and without great cost to [defendant]." (*Cross v. Facebook*, *supra*, 14 Cal.App.5th at p. 198, citation modified.)

Defamation is a "favored" cause of action in SLAPP suits. (*Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal.App.4th 1388, 1400, fn. 9.) "[A]lthough not every defamation case is subject to the anti-SLAPP statute, defamation claims necessarily involve speech and are therefore more commonly found to be SLAPPs." (*Laker v. Board of Trustees of California State University* (2019) 32 Cal.App.5th 745, 768.)

Section 425.16 is to be "construed broadly." (Code Civ. Proc., § 425.16, subd. (a).) In ruling on defendant's anti-SLAPP motion, the trial court engages in a two-step analysis. (*Balzaga*, *supra*, 173 Cal.App.4th 1325, 1336.) First, defendant must make a prima facie showing that the challenged claims arise from acts in furtherance of the right of free speech in connection with a public issue. (*Id.*) Second, if defendant makes that showing, then the court must strike the cause of action unless plaintiff meets his burden of demonstrating a probability of prevailing—specifically, that the complaint is both legally sufficient and supported by a prima facie evidentiary showing that would sustain a favorable judgment if credited. (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

II. The trial court correctly ruled that Jews for Jesus met its burden of demonstrating that Amitay's claims target "protected activity."

The trial court correctly ruled that Jews for Jesus met its threshold burden of showing that Amitay's claims arise from acts in furtherance of the ministry's free-speech rights and therefore constitute "protected activity" under section 425.16. (RT4:16 [remarking that it was "pretty obvious that Prong 1 applies"].)

Courts interpret defendant's threshold showing loosely: they "must generally presume the validity of the claimed constitutional right in the first step of the anti-SLAPP analysis, and then permit the parties to address the issue in the second step of the analysis, if necessary." (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1089.) Only a prima facie showing is required; defendant need not prove as a matter of law that the First Amendment protects the challenged conduct. (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1388.)

At the outset, "defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) Accordingly, Amitay's complaint alleges his causes of action arise from the following alleged acts:

- In 2023, Jews for Jesus "uploaded photos of Amitay on their social media pages, including Instagram and Facebook." (AA009.)
- Jews for Jesus "posted a picture of Amitay on their website giving the appearance that he supports [defendant's] cause." (AA009.)
- "[T]he post included a caption … falsely expressing that Amitay supported [defendant's] religious views." (AA009.)

- 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 [Jews for Jesus] supporter." (AA009.)
- Jews for Jesus "published information about Plaintiff which is false by posting cropped photos of Plaintiff on their social media pages, including a caption, showing falsely that Plaintiff supported Defendant's religious views." (AA010.)

Although Amitay's characterization of the Challenged Posts is incorrect, the conduct he alleges—publishing commentary and images on social-media platforms about a matter of public interest—squarely qualifies as "protected activity" under section 425.16, subdivisions (e)(3) and (4).

A. As Amitay conceded, the Challenged Posts are protected statements made in a public forum in connection with an issue of public interest.

Section 425.16, subdivision (e)(3) protects publications made in a "public forum in connection with an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(3).) Amitay did not dispute—and thus conceded—that the Challenged Posts are protected under subdivision (e)(3). (AA094.) Because of that concession, the only question on appeal is whether Amitay met his burden under prong two of the SLAPP analysis. (Cf. *Litinsky v. Kaplan* (2019) 40 Cal.App.5th 970, 980 ["[Plaintiff] does not dispute that this prior lawsuit amounted to petitioning activity that is protected under section 425.16, subdivision (e). Thus, on this appeal we consider only the second step of the anti-SLAPP procedure as applied to [plaintiff's] claim."].)

To the extent that this Court reviews de novo section 425.16, subdivision (e)(3)'s applicability, the Posts were made in a public forum—social media—in connection with an issue of public interest—the Israel-Hamas conflict. (See *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1252 [defendant's "postings on his Facebook page and Instagram account and his comments about [plaintiff] during a radio broadcast were all made "in a place open to the public or a public forum" within the meaning of section 425.16, subdivision (e)(3)"].)

Like defendant's postings in *Jackson*, the Posts were published on Jews for Jesus's Facebook and Instagram pages (AA015–018) and thus were made in a public forum. (Cf. *Daniel v. Wayans* (2017) 8 Cal.App.5th 367, 387 [internet posting of "juxtaposed picture[]" of plaintiff and accompanying caption on defendant's Twitter account, "a publicly accessible social media forum," was "statement made in a public forum"].) The Posts are also connected "with an issue of public interest." As the trial court correctly observed, they are "about Israeli soldiers who are suffering as a result of what had happened recently" (RT5:18–19) and Jews for Jesus' efforts "to relieve that suffering" (RT6:12), both of which are matters that fall squarely within section 425.16, subdivision (e)(3)'s protection.

B. Downloading, editing, and publishing the stock image is conduct in furtherance of Jews for Jesus' advocacy on an issue of public interest.

After conceding section 425.16, subdivision (e)(3), Amitay focused his opposition (AA094–095) on subdivision (e)(4), the catch-all provision, which protects "conduct in furtherance of the … constitutional right of free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(4).)

Subdivision (e)(4) is remarkably broad: By its terms, it extends beyond pure expression to *conduct* that facilitates or advances protected speech. (Burke, Anti-SLAPP Litigation (2024) § 3:129.) "*Furtherance* means *helping* to advance, *assisting*." (*Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 166.) Thus, "an act is in furtherance of the right of free speech if the act helps to advance that right or assists in the exercise of that right." (*Daniel v. Wayans*, *supra*, 8 Cal.App.5th 367, 385.)

Here, Jews for Jesus downloaded, edited, and published a stock image of the "man with a beard" to further its social-media campaign highlighting its humanitarian and spiritual outreach in Israel. (AA049:6–26.) As such, the editing and posting of the photo was "conduct in furtherance of" Jews for Jesus' expressive activity on a matter of public interest. (Cf. *Pott v. Lazarin* (2020) 47 Cal.App.5th 141, 148 [advocate's use of victim's name and likeness in social-media posts and at a press conference was in connection with an issue of public interest].)

* * *

"[T]he bar for an anti-SLAPP defendant to overcome is not a particularly demanding one." (*Daniel v. Wayans*, *supra*, 8 Cal.App.5th 367, 387; cf. *id.* at p. 388 [writer-performer's social media post that included photograph of actor in upcoming movie was a statement in connection with an issue of public interest].) Creating and publishing posts on Facebook and Instagram about charitable outreach during the Israel-Hamas war are protected activities under subdivisions (e)(3) and (4). The trial court correctly ruled that Jews for Jesus carried its burden under section 425.16's first prong.

III. 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.

Because Jews for Jesus established that the Challenged Posts are protected activity under section 425.16, the burden shifted to Amitay to show a "probability" of prevailing on his claims. (Code Civ. Proc., § 425.16, subd. (b).)

Courts have described the anti-SLAPP statute's second prong as a "motion for summary judgment in 'reverse.'" (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719.) "Rather than requiring the defendant to defeat the plaintiff's pleading by showing it is legally or factually meritless, the motion requires *the plaintiff* to demonstrate that he possesses a legally sufficient claim which is '*substantiated*,' that is, supported by competent, admissible evidence." (*Ibid.*, emphasis added.) Plaintiff thus cannot survive an anti-SLAPP motion by merely relying on unverified allegations, statements made on

information and belief, or inadmissible hearsay. (*Id.* at p. 719.) Amitay failed to meet that standard for his causes of action for defamation, false light, and intentional infliction of emotional distress.

A. A statement that cannot reasonably be understood as false and defamatory about plaintiff is not actionable as a matter of law.

Defamation is a reputational injury, committed by libel or slander. (Civ. Code, § 44.) "The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Hoang v. Tran*, *supra*, 60 Cal.App.5th 513, 531–532.)

Libel is defamation "by writing … picture … 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.) By definition, libel "assumes that the reader of a libel will recognize it as such." (*Barnes-Hind, Inc. v. Superior Court* (1986) 181 Cal.App.3d 377, 386.) If no reasonable reader would perceive a meaning that tends to injure plaintiff's reputation, then "there is no libel at all." (*Ibid.*)

Nor can plaintiff "constitutionally establish liability unless he proves that the contested statements are 'of and concerning,' him either by name or by 'clear implication.'" (*Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1404, quoting *Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1042–1044 (*Blatty*).) And where, as here, the allegedly defamatory statements involve

a matter of public concern, the First Amendment requires even a private-figure plaintiff to prove the statements were false. (*Melaleuca, Inc. v. Clark* (1998) 66 Cal.App.4th 1344, 1355.)

B. Amitay failed to state a legally sufficient cause of action for defamation.

Amitay's complaint is legally insufficient under either a libel per se or per quod theory.[6] In the SLAPP analysis, the allegations in the complaint define the acts underlying the claim. (*Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 883.) Although courts "assume the truth of the properly pleaded factual allegations, and facts that reasonably can be inferred from those expressly pleaded," they "do not assume the truth of contentions, deductions, or conclusions of law." (*Wozniak v. YouTube, LLC* (2024) 100 Cal.App.5th 893, 906, citation modified.) Nor do courts credit "adjectival descriptions or unsupported speculation." (*Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 398.)

As with a demurrer, plaintiff must plead facts establishing every element of the cause of action. (*Wozniak v. YouTube, supra*, 100 Cal.App.5th at p. 907.) If the pleadings are inadequate, then the claim cannot survive an anti-SLAPP motion. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 31.) The court therefore should grant

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[6] Amitay's complaint never specifies whether he is charging libel per se or libel per quod. "[E]ach requires a different standard of pleading." (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5.) Nevertheless, whether a statement is libel per se or per quod is a question of law for the court. (Speiser et al., 8A American Law of Torts, § 29:43.)

the special motion to strike when, as a matter of law, the properly pleaded facts do not support a claim for relief. (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 809.)

The gravamen of Amitay's complaint is that Jews for Jesus allegedly "published information about [him] which is false by posting cropped photos of [him] on their social media pages, including a caption, showing falsely that [he] supported Defendant's religious views." (AA010.) Although libel "can be charged by alleging the substance of the defamatory statement" (*Okun v. Superior Court* (1981) 29 Cal.3d 442, 458), Amitay's pleading "does not even come close to the specificity required to state an actionable libel claim" (*Gilbert v. Sykes*, *supra*, 147 Cal.App.4th at pp. 31–32).

1. Amitay failed to plead the Challenged Posts were published to a third person who understood their alleged defamatory meaning.

A defamation plaintiff must plead and later prove that the defamatory statement was "published"—that is, "communicated to some third person who understands its defamatory meaning and application to the plaintiff." (*Martinelli v. International House USA* (2008) 161 Cal.App.4th 1332, 1337, citation modified; accord, 5 Witkin, Summary of Cal. Law (11th ed. 2023) Torts, § 630.) Here, however, Amitay only alleges that he "first discovered the posts when his friends sent it to him" and that his employer "saw the pictures posted online." (AA009.) But "[t]he fact that defamatory matter is read by a third party does not necessarily mean that a publication has occurred." (5 Witkin, *supra*, Torts, § 631.) Instead, Amitay must plead and prove that the Posts were

"communicated *to*" someone who understood both the alleged defamatory meaning and their application to Amitay. (See *Martinelli v. International House*, *supra*, 161 Cal.App.4th at p. 1337, emphasis added.) The definition of "to" means "in one direction" or "toward a person or thing." (American Heritage Dict. (5th ed. 2022).) Yet Amitay does not allege that his friends or employer followed Jews for Jesus' social-media pages, and thus he does not allege that the Posts were communicated "toward" his friends or employer.

Bare allegations that Amitay's friends sent him the "posts" or that his employer "saw the pictures posted online" are insufficient to properly plead publication. Because the complaint identifies no social-media user who read the Challenged Posts *as published* by Jews for Jesus and understood them to defame Amitay, it fails at the threshold element of publication. (Cf. *Zimmerman v. Buttigieg* (M.D. Fla. 2021) 521 F.Supp.3d 1197, 1212 [plaintiff failed to adequately allege that politicians' allegedly defamatory social-media posts were published because, even though each post was accessible to millions of social-media users that followed politicians' accounts, plaintiff did not allege that either politician's post was communicated to a third-party].)

2. Amitay failed to sufficiently plead libel per se.

Amitay's complaint does not state a claim for libel per se. A statement is libelous per se if it is defamatory on its face without the need for explanatory matter. (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112, citing Civ. Code, § 45a.) A statement may also be libelous per se if it is defamatory by

implication, such that a reader could understand the statement's defamatory meaning without knowing "extrinsic explanatory matter." (*Ibid*.) When plaintiff asserts a defamation-by-implication claim, however, he must allege facts that make the claimed meaning apparent. (*Forsher v. Bugliosi* (1980) 26 Cal.3d 792, 803.)

On their face, the Challenged Posts do not reference Amitay by name or by clear implication. (*Blatty*, *supra*, 42 Cal.3d 1033, 1042–1044.) Although Amitay alleges he is the "man with a beard," Jews for Jesus *intentionally* blurred the man's face (AA050), and thus no reasonable reader would conclude that Jews for Jesus *intended* to refer to Amitay, much less defame him. (Cf. *Hayes v. Facebook* (N.D. Cal., Aug. 15, 2019) 2019 WL 5088805, at *5 [facts alleged in complaint did not plausibly show that statements referred to plaintiff by reasonable implication].)

Amitay further alleges the "caption … falsely express[es]" that he supports Jews for Jesus' views (AA009), yet he neither quotes the caption nor identifies what is false about it. That omission is unsurprising given that the text quoted not Amitay but the pseudonymous "Nachman," who simply thanks Jews for Jesus for leaving him a copy of the New Testament. (AA015.)

Indeed, when setting aside the complaint's speculative assertions and legal conclusions, the *worst* that could be inferred from the Posts is that "Nachman" expressed interest in reading the New Testament. (AA015.) But that harmless expression neither states nor implies that even this "Nachman"—let alone Amitay—"supported Defendant's religious views" or was a

"supporter of their faith and cause." (AA010.) "Support" means "to aid the cause, policy, or interests of," "to argue in favor of [or] advocate," or "to have an enthusiastic interest in." (American Heritage Dict. (5th ed. 2022).) Saying one looks forward to reading the New Testament is not an admission that he is aiding the cause or interests of a Christian ministry, nor does it express an enthusiastic interest in that ministry's religious views.

On the contrary, the quote simply suggests that "Nachman" said thanks for receiving a gift; and in gracious acknowledgment of that gift, politely expressed interest in learning more about the New Testament. (AA015.) Nothing about that quote states or implies that "Nachman" or the "man with a beard"—much less Amitay—"supports" Jews for Jesus or its "religious views." (AA010.) That deficiency is dispositive, because "plaintiff cannot get to trial by setting forth a publication of harmless language and alleging that it means something harmful." (5 Witkin, Cal. Proc. 6th Plead (2025) § 739; accord, *Issa v. Applegate* (2019) 31 Cal.App.5th 689, 707 [plaintiff cannot stretch non-defamatory words into a libel claim].)

Given that the quote by "Nachman" and the blurred face of the "man with a beard" explicitly refute Amitay's asserted implication that he "supports" Jews for Jesus and its "religious views" (AA010), the complaint is legally insufficient as a matter of law. (Cf. *Kavanagh v. Zwilling* (S.D.N.Y. 2014) 997 F.Supp.2d 241, 255 [allegedly defamatory statement explicitly refuted implication plaintiff claimed it had, and thus court "conclude[d] as a matter of law that it is not defamatory by implication" and

therefore plaintiff "failed to plead a necessary element of his claim"].) Amitay's *ipse dixit* to the contrary cannot override the unambiguous language and image in the Posts, which were attached to and incorporated into his complaint as the basis of his defamation claim. (AA015–018.)

3. Amitay failed to plead libel per quod.

Amitay's defamation cause of action fails to plead a legally sufficient libel per quod claim. A statement is libelous per quod if a reader would not understand the defamatory meaning unless he knew "specific facts and circumstances, extrinsic to the publication, which are not matters of common knowledge rationally attributable to all reasonable persons." (*Barnes–Hind v. Superior Court*, *supra*, 181 Cal.App.3d 377, 387; Civ. Code, § 45a.)

Establishing libel per quod requires plaintiff to plead and prove that the publisher *intended* the words to impute wrongdoing to plaintiff and that readers *actually* understood them that way. (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 7, citing *Martin v. Sutter* (1922) 60 Cal.App. 8, 13.) Plaintiff must also allege facts showing that "the readers … *to whom it was published* would understand it in that defamatory sense (the 'inducement')." (*Bartholomew v. YouTube, LLC* (2017) 17 Cal.App.5th 1217, 1227, emphasis added.) And plaintiff must allege and prove that he has suffered special damages. (Civ. Code, § 45a.)

Amitay alleges no such facts. He fails to plead that any follower of Jews for Jesus (to whom the Challenged Posts were

published) understood the Posts to have defamed him or that the ministry intended to impute wrongdoing to him, let alone portray him as a "supporter of [its] faith and cause." (AA010.) His bare assertion that his employer "saw the pictures posted online" and—unreasonably—concluded he was a Christian convert is insufficient to state a libel per quod claim. (AA009.)

Most fatal, Amitay failed to plead special damages. (See (Civ. Code, § 48a subd. (d)(2).). "Special damages *must* be specially pled in a defamation case." (*Anschutz Entertainment Group, Inc. v. Snepp* (2009) 171 Cal.App.4th 598, 643, emphasis added.) Yet here, Amitay simply alleges he "was harmed as he lost his dream job and earnings" and that "Defendant's conduct was a substantial factor in causing Plaintiff's harm." (AA010.) His request for "actual and compensatory damages, including general and special damages … in addition to punitive damages for … willful, malicious, and oppressive conduct" is boilerplate pleading, not a particularized allegation of special damages. (AA010.) "These general allegations are insufficient to meet the specific pleading requirement." (*Anschutz*, at p. 643; cf. *id.* [plaintiff failed to establish that its defamation claim had minimal merit in part due to failure to specifically plead special damages].)

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Because Amitay's complaint rests on conclusions and deductions rather than actual facts, it is legally insufficient as a matter of law. (Cf. *Cox v. Hatch* (Utah 1988) 761 P.2d 556, 562 (*Cox*) [plaintiffs offended by their photograph being used in political candidate's campaign material failed to state defamation claim, because, "[h]owever offensive the photograph … may have been to the plaintiffs, it could not, as a matter of law, have damaged their reputations or subjected them to 'public hatred, contempt or ridicule'"].)

C. Amitay failed to make a prima facie showing with admissible evidence to sustain a favorable judgment on his defamation claim.

Jews for Jesus submitted sworn declarations that negate, as a matter of law, any claim that the Challenged Posts stated or implied a false and defamatory statement about Amitay. (AA044, AA0048, AA079.) In opposition, Amitay offered only more deductions and speculation (AA094–100), not competent, admissible evidence. He therefore failed to carry his burden under section 425.16's second prong.

To determine whether plaintiff has made the requisite prima facie showing, the Court independently reviews the entire record (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 653–655), considering "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based" (Code Civ. Proc., § 425.16, subd. (b)). The procedure mirrors summary judgment: Plaintiff's showing must rest on competent, admissible evidence within the

declarant's personal knowledge. (*Church of Scientology*, at p. 654.) "Unverified allegations in the pleadings or averments made on information and belief cannot make the showing." (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1289.)

When assessing plaintiff's showing, the Court must consider defendant's evidence submitted with its anti-SLAPP motion. (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 585, citing § 425.16, subd. (b)(2).) Although it does not weigh the credibility or comparative probative strength of that evidence (*Wilson v. Parker, Covert & Chidester*, *supra*, 28 Cal.4th 811, 821), the Court should grant the anti-SLAPP motion if defendant's evidence "defeats the plaintiff's showing as a matter of law, such as by establishing a defense or the absence of a necessary element" (*1-800 Contacts*, at p. 585).

1. As a matter of law, the Challenged Posts are not "of and concerning" Amitay because they do not identify him expressly or by reasonable implication.

The trial court was uncertain about whether "of and concerning" is a legal question, but then found "as a matter of law, if that is the standard," that the Challenged Posts were "of and about" Amitay. (RT14:19–21.) That was error. Viewing the evidence in the light most favorable to plaintiff, Amitay failed to show that the Posts—which featured a blurred stock image with a quote from the pseudonymous "Nachman"—were about *him*, either specifically or by reasonable implication.

A libelous statement "must specifically refer to, or be 'of and concerning,'" plaintiff. (*Blatty*, *supra*, 42 Cal.3d 1033, 1042.)[7] To meet the "of and concerning" requirement, plaintiff must show that the statement "either expressly mentions him or refers to him by reasonable implication." (*Id.* at p. 1046.) Although plaintiff need not be named (Smolla, 1 Law of Defamation (2d ed.) § 4:40), the statement must "be understood by others as referring to [him]" (Leahy, *Cause of Action for Internet Defamation*, 32 Causes of Action 2d 281). In other words, plaintiff "must satisfy the court that it was understandable as *intended* to refer to himself." (Rest.2d Torts, § 613 com. d, emphasis added.) And "[i]t is not enough … that the defamatory matter is actually understood as intended to refer to the plaintiff; the interpretation *must be reasonable* in the light of all the circumstances." (Rest.2d, *supra*, Torts, § 564 com. b, emphasis added.)

"Whether defamatory statements can reasonably be interpreted as referring to plaintiffs is a question of law for the court." (*Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal. App. 4th 133, 146, citing *Alszeh v. Home Box Office* (1998) 67 Cal.App.4th 1456.)[8] To that end, the court must consider "the

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[7] The "of and concerning" requirement "limits the right of action for injurious falsehood, granting it to those who are the *direct object* of criticism and denying it to those who merely complain of nonspecific statements that they believe cause them some hurt." (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1044, emphasis added.)

[8] Due to an editing error, Jews for Jesus' anti-SLAPP motion quoted *Alszeh v. Home Box Office* (1998) 67 Cal.App.4th 1456 for the rule stated in *Tamkin v. CBS Broadcasting, Inc.* (2011) 193

totality of the circumstances," examining "the nature and full content of the communication and the knowledge and understanding of the audience to whom the publication was directed." (*Dickinson v. Cosby* (2019) 37 Cal.App.5th 1138, 1160, citation modified.)

Two decisions involving stock photographs illustrate the point. In *Houseman v. Publicaciones Paso del Norte, S.A. DE C.V.* (Tex. App. 2007) 242 S.W.3d 518 (*Houseman*), a newspaper published an article about a customs agent in McAllen, Texas, who accepted bribes from drug traffickers. (*Id.* at p. 521.) Below the headline, "Immigration Agent Accused of Drug Trafficking," and next to the article, which specifically named the accused agent, was a "file photo" that depicted plaintiff, a customs officer, working at a border checkpoint in El Paso. (*Id.* at p. 522.) Plaintiff sued the newspaper for libel, alleging that "the placement of his photo in conjunction with the headline, caption, and article created the impression to a person of ordinary intelligence that he was Lizandro Martinez, the accused customs agent." (*Id.* at p. 524.)

The court of appeals affirmed summary judgment for the newspaper. (*Houseman*, *supra*, 242 S.W.3d at p. 521.) The court rejected plaintiff's argument that "[t]hose who see his face in the photo alongside the drug trafficking article and then encounter

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Cal.App.4th 133, 146. (AA034.) *Tamkin* cites *Alszeh* for that rule, as has the Ninth Circuit. (See *SDV/ACCI, Inc. v. AT & T Corp.* (9th Cir. 2008) 522 F.3d 955, 959 [citing *Alszeh* for the rule that "whether statements can be reasonably interpreted as referring to plaintiffs is a question of law for the court"].)

him, presumably on the bridge, will identify him as the corrupt officer, exposing him to the hatred, ridicule, and contempt." (*Id.* at p. 525.) Instead, the court agreed with the newspaper's argument that whether "folks who knew" plaintiff recognized him in the photo was irrelevant "because, objectively, these hypothetical readers learned by reading the article that the narcotrafficker was Lizandro Martinez, not Houseman." (*Id.*)

The court noted that "the appropriate inquiry is objective, not subjective," and thus "the question is not whether some actual readers were mislead, as they inevitably will be, but whether the hypothetical reasonable reader could be." (*Houseman*, *supra*, 242 S.W.3d at pp. 525–526, citation omitted; *id.* at p. 524 [plaintiff's "opinion … has no bearing on whether the words or statements are actually defamatory"].) The court accordingly held that, based on the context of the photograph and article as a whole, no hypothetical reasonable reader would have been misled by the placement of an unidentified border-patrol agent's photograph below a headline and next to an article about another agent. (*Id.* at p. 526.)

The federal court in *Grimsley v. CBS Broadcasting Inc.* (D.S.C., Mar. 10, 2022) 2022 WL 719610 (*Grimsley*) confronted a different set of facts. There, CBS ran a story about two county sheriff's deputies who were fired in connection with the death of a mentally ill detainee. (*Id.*, at *2.) Below the headline, the article prominently featured an old stock photograph of plaintiff—who had previously worked at the sheriff's office—in uniform sitting on his motorcycle, on which his name, "*Sgt. Rob Grimsley*," could

be seen written in cursive on the front wheel fender. (*Id.*) The article identified the two deputies purportedly involved in the incident, neither of whom was plaintiff. (*Id.*)

Grimsley sued CBS for defamation, alleging the article "falsely portrayed the Plaintiff as one of the deputies who pepper-sprayed and tased a mentally ill detained," and by publishing his photograph, CBS "associated" him with the detainee's death. (*Grimsley*, *supra*, 2022 WL 719610, at *3.) CBS moved to dismiss, arguing that it was "merely using a 'stock photograph,'" and thus including plaintiff's picture and name did not mean the article is "of and concerning" him. (*Id.*)

The court rejected CBS's argument, noting that "the complication arises because the photograph *positively identified* Grimsley, and he has plausibly alleged that *featuring his name* in connection with the alleged abuse and death of a mentally ill detainee was defamatory." (*Grimsley*, *supra*, 2022 WL 719610, at *3, emphasis added.) The court distinguished the case from *Houseman*, *supra*, 242 S.W.3d 518, observing that the *Houseman* court "relied on the fact that the plaintiff was not specifically named in the article" and "that the article had only referred to the plaintiff as an 'agent' or 'the agent.'" (*Id.*) In contrast with *Houseman*, the court found, "Grimsley was identified by name in the photograph, making him far more ascertainable to a reader," and that "the picture in *Houseman* was a more generic photo and less likely to be considered depicting the culpable agent." (*Id.*)

Houseman and *Grimsley* thus instruct that in defamation cases involving stock photographs, courts may find the "of and

concerning" requirement met where the photograph or caption expressly identifies plaintiff and unmistakably conveys to a reasonable reader that *plaintiff* is the subject of the alleged wrongdoing. (*Grimsley*, *supra*, 2022 WL 719610, at *3.) But 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. (*Houseman*, *supra*, 242 S.W.3d at pp. 525–526.)

Courts consistently draw this line. (Contrast *Cheney v. Daily News L.P.* (3d Cir. 2016) 654 Fed.Appx. 578, 582 [a reasonable reader could conclude that inclusion of firefighter's name *and* photograph next to article about sex scandal at Philadelphia Fire Department meant to suggest that the article concerned him] and *Stanton v. Metro Corp.* (1st Cir. 2006) 438 F.3d 119, 128–129 [juxtaposition of plaintiff's unaltered photograph with article about teenage sexual promiscuity could lead reasonable reader to conclude that plaintiff is sexually promiscuous] with *Fogel v. Forbes, Inc.* (E.D. Pa. 1980) 500 F.Supp. 1081, 1085 [picture and article were incapable of defaming plaintiffs because they were not identified in article, and their appearance in photo was "incidental and [did] not in any manner imply that they [were] participating in the activity discussed in the article"] and *Reed v. Chamblee* (M.D. Fla., Sept. 27, 2023) 2023 WL 6292578, at *14 [no reasonable person would understand article as implicating plaintiff because article was not about him and "his photograph [was] incidental to its content"].)

Applying that principle here, when examining the Challenged Posts in their full context, Amitay's claim fails to meet the "of and concerning" requirement as a matter of law. Unlike the photograph in *Grimsley*, *supra*, which "positively identified" plaintiff (2022 WL 719610, at *3), the image did not name Amitay, did not caption him, nor otherwise identify him (AA015). Indeed, unlike in *Grimsley*, Jews for Jesus not only used the stock photograph without including Amitay's name but (a) intentionally blurred the face of the "man with a beard" (AA050), and (b) attributed the image and the accompanying quote accompanying it to "Nachman, a young Haredi soldier"—an entirely different person (AA015). No *reasonable* social-media follower who viewed the image with the naked eye could reasonably ascertain that the blurred person was the Orthodox rabbi named Ariel Amitay who taught at "Educate the Young." (AA009.) And if a nameless stock photo of a border patrol agent in *Houseman* was legally insufficient to make the picture and the article "of and concerning" plaintiff, then Jews for Jesus' use of a nameless stock photo of an Israeli soldier—*that was also blurred and attributed to a fictitious person other than Amitay*—must be triply insufficient as a matter of law.

Amitay's primary contention is that the Posts were "clearly of and concerning" him "because it was him!" (AA097.) That is not enough. "It is *necessary* that the *recipient* of the defamatory communication [must] understand it as *intended* to refer to the plaintiff." (Rest.2d, *supra*, Torts, § 564, com. a, emphasis added; accord, *Dickinson v. Cosby*, *supra*, 37 Cal.App.5th 1138, 1160

[court must consider the "the audience to whom the publication was directed"].) Just like "the onus" was on plaintiff in *John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300 "to introduce evidence that the recipients of the e-mails interpreted them as accusations of wrongful conduct" (*id.* at p. 1318), so too was Amitay required to adduce evidence that *followers* of Jews for Jesus' Facebook and Instagram pages understood *Amitay* to be the direct object of the Posts. That showing is absent here. Nor could such a showing be made considering the undisputed testimony that Jews for Jesus did not even know of Amitay (AA050:13–16; AA080:20–23), and thus could not have intended the Posts to be about him.

Amitay attempts to get around this requirement by declaring that his friend "saw it online" and that "the post" later "spread" on "WhatsApp groups" in his "community." (AA107.) But Amitay does not attest that his friend first saw this post on Jews for Jesus' Facebook or Instagram accounts. Nor does he substantiate that anyone in the WhatsApp groups follows Jews for Jesus on social media. "There must be evidence showing that the attack was read as *specifically directed* at the plaintiff." (*Rosenblatt v. Baer* (1966) 383 U.S. 75, 81, emphasis added.) Vague assertions lacking foundation and filtered through hearsay cannot satisfy plaintiff's obligation to show that *actual recipients* understood the Posts as referring to him. (Cf. *Alpha and Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal. App. 4th 656, 664 [when considering SLAPP plaintiff's probability of prevailing, courts disregard declarations that lack

foundation, or that are speculative, impermissible opinion, hearsay or conclusory].)

Amitay's third-party declarations suffer from the same defect. One Chaim Chadad declared he "saw the picture." (AA173.) A Rabbi Eichel declared he "saw a picture of Ariel Amitay in the [social] media." (AA177, brackets in original.)[9] And a David Menachem Mundel Shaher declared he "saw the picture of Ariel with a caption to the effect that he believed in a false god." (AA185.) But none of these declarants stated whether he personally viewed the Posts on Jews for Jesus' social-media pages—or if he first saw them on the "WhatsApp groups in [Amitay's] community" (AA107.) The declarations simply reflect the subjective reactions of acquaintances who claim to have seen something somewhere online. That is an insufficient evidentiary showing. (Cf. *San Francisco Bay Guardian, Inc. v. Superior Court* (1993) 17 Cal.App.4th 655, 660 ["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."].)

By contrast, Jews for Jesus presented sworn declarations that the Posts were not directed at Amitay, either specifically or by implication. (AA050:13–16; AA080:20–23.) Courts "may accept uncontradicted factual assertions in a moving party's

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[9] Neither the declaration nor the translation identifies who inserted the bracketed "[social]" into Rabbi Eichel's statement. (AA177.) Thus, it is unclear whether Rabbi Eichel saw the "picture" on "social media" or elsewhere.

declarations." (*Litinsky v. Kaplan*, *supra*, 40 Cal.App.5th 970, 983.) Accordingly, the record contained no evidence showing that the Posts were intentionally directed to Amitay or that he had any connection to them other than his claim that he is the blurred "man with a beard." In any event, the relevant inquiry is not whether Amitay or a handful of his acquaintances recognized him when they "saw" the blurred image, but whether the interpretation is "reasonable in the light of all the circumstances." (Rest.2d, *supra*, Torts, § 564 com. b.) "It may well be true that [Amitay's acquaintances] were mislead but … a hypothetical reasonable reader would not be." (*Houseman*, *supra*, 242 S.W.3d 518, 526.)

Most fatally, the Posts cannot be "of and concerning" Amitay because they expressly refer to, and focus on, someone else—Nachman. For a statement to be "of and concerning" plaintiff, it "must point to the plaintiff and *no one else*." (53 C.J.S. Libel & Slander, § 35, emphasis added.) Thus, if an allegedly libelous statement may "reasonably be interpreted as referring to someone other than the plaintiff, it cannot be actionable per se." (50 Am.Jur.2d Libel & Slander, § 224. Because the Posts expressly identify the speaker as "Nachman" (AA015), not Amitay, there is no legal path to make those words be about plaintiff.

2. As a matter of law, no follower of Jews for Jesus' social-media pages could reasonably understand the Challenged Posts to defame Amitay.

Even if the Challenged Posts were "of and concerning" Amitay, no reasonable reader would read them as conveying a defamatory meaning about him. First, the Posts' accompanying quotes and message are not reasonably susceptible of a defamatory meaning. Second, when viewing the image and message as a composite, the Posts cannot be reasonably interpreted to imply a defamatory meaning about Amitay. Third, whether an implication that a person of one faith is receptive to another faith is defamatory is an inherently religious question that is improper for a civil court or jury to decide.

Whether a statement is "reasonably susceptible of a defamatory meaning" is a question of law. (*Balzaga*, *supra*, 173 Cal.App.4th 1325, 1342.) Courts apply a two-step "totality of the circumstances" test. (*Id.* at p. 1337.) The court first examines "the language of the statement." (*Issa v. Applegate*, *supra*, 31 Cal.App.5th 689, 703.) The court places itself in the reader's situation and determines the statement's "sense or meaning … according to its natural and popular construction." (*Balzaga*, at p. 1338, citation modified.) The court then examines "the context in which the statement was made" (*Issa*, at p. 703), considering "the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed" (*Balzaga*, at p. 1338). Amitay's claim fails at each step.

a. The language of the Posts is not reasonably susceptible of a defamatory meaning.

For the Challenged Posts to be libelous, they must be understood in a defamatory sense. (*Seelig v. Infinity Broadcasting Corp.*, *supra*, 97 Cal.App.4th 798, 809–810; accord, Rest.2d, *supra*, Torts, § 559 com. d. [statement's "[defamatory] character depends upon its general tendency to have such an effect"].) Read naturally, the Posts state that Jews for Jesus distributed copies of the New Testament in Israel and that "Nachman, a young Haredi soldier," thanked the ministry and looked forward to reading it. (AA015.) Nothing in those words would expose anyone, much less Amitay, "to hatred, contempt, ridicule, or obloquy," causing him "to be shunned or avoided," or tending "to injure him in his occupation." (Civ. Code, § 45.)

At the hearing, the trial court observed that "[i]f you're somebody in Rabbi Amitay's position, it certainly is defamatory" because "[i]t's aligning him with beliefs that are wholly contrary to his belief system." (RT16:2–5.) That is the incorrect legal approach. "The test is what construction would be placed upon such language by the average reasonable person or the general public, *not by the plaintiff*." (50 Am.Jur.2d, *supra*, Libel & Slander, § 131, emphasis added.) Measured against that objective standard, the Posts are not susceptible of a defamatory meaning because an average reasonable person cannot read the Posts as exposing Amitay to ridicule, contempt, or shunning.

Amitay did not meaningfully dispute that no reasonable reader would interpret the Posts as being defamatory about him. (AA101.) Instead, he pressed that after his employers and

acquaintances "saw" the posts (AA108), they concluded that he has "ties with Christian entities" (AA108), were "shocked by the path [he] chose," and told him he "need[ed] to be ashamed" (AA107). But "a statement is not defamatory unless it is so understood by an average member of *the group* among whom the statement is *intended* to circulate." (53 C.J.S., *supra*, Libel & Slander, § 32, emphasis added.) Again, Amitay produced no evidence showing that his employers or friends followed Jews for Jesus' social-media pages and read the Posts as published. Nor did he adduce evidence showing that *any* followers of those pages—the audience to whom Posts were directed—understood the Posts as defaming him.

Even if Amitay's employers and friends reacted as alleged, their perception of the Posts was unreasonable. (See Rest.2d, *supra*, Torts, § 563 com. c ["If the defamatory meaning is not intended, it must be a reasonable construction of the language."].) "Although defamation is not a question of majority opinion, neither is it a question of the existence of some individual or individuals with views sufficiently peculiar to regard as derogatory what the vast majority of persons regard as innocent." (Rest.2d, *supra*, Torts, § 559 com. e.) The declarations on which Amitay relies show, at most, that a handful of acquaintances leapt to an irrational conclusion that could and should have been easily explained away by telling them the truth: that Levi Meir Clancy's photograph of the "two Jewish men" was uploaded to Unsplash, a free-to-use image-sharing platform, and that Jews for Jesus—as one of at least 518 other users—lawfully

downloaded the image under a fair-use license. (AA020.) "[T]hat a person who is prone to think evil of others, hearing words obviously intended to be innocent, by an unreasonable construction attaches to them a derogatory meaning, does not render the language defamatory." (See Rest.2d, *supra*, Torts, § 563 com. e.)

Given that Jews for Jesus did not intend to refer to Amitay, much less libel him, "it is not enough that the communication would be derogatory in the view of a single individual or a very small group of persons." (Rest.2d, *supra*, Torts, § 559 com. e.) Accordingly, Amitay cannot bootstrap liability from the unreasonable or mistaken inferences of employers, acquaintances, or fellow religious adherents. (See *Hoang v. Tran*, *supra*, 60 Cal.App.5th 513, 533 ["The 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 modified.)

What matters is whether the Challenged Posts, taken as a whole, reasonably conveyed a defamatory meaning to the average reader. Here, the only message a reasonable reader could glean is that "Nachman, a young Haredi soldier," politely thanked Jews for Jesus for leaving him a New Testament and expressed interest in reading it. (AA015.) The fact that a "Haredi soldier" thanks Jews for Jews for a copy of the New Testament may be "highly offensive" to Amitay (AA107), but mere offense is not actionable as defamation (see *Cox*, *supra*, 761 P.2d 556, 561 ["A publication is not defamatory simply because it is nettlesome or

embarrassing to a plaintiff, or even because it makes a false statement about the plaintiff."]).

The trial court thus erred in substituting Amitay's subjective sense of injury for the perspective of the reasonable reader. (Cf. *Cox*, *supra*, 761 P.2d at p. 562 ["However offensive the photograph in this case may have been to the plaintiffs, it could not, as a matter of law, have damaged their reputations or subjected them to "public hatred, contempt or ridicule."].)

b. Viewed in their full context, the Posts do not imply any libelous meaning.

When viewed as a whole (or even in part), the Challenged Posts do not imply *any* defamatory meaning about Amitay, much less imply that he "supported" Jews for Jesus and its "religious views." (AA010.) Of course, if a publisher uses a person's photograph to illustrate an article containing defamatory statements, then the "juxtaposition" of the photograph and the defamatory story could reasonably imply that plaintiff "is guilty of the defamatory wrongdoing described in the story." (Smolla, *supra*, 1 Law of Defamation, § 4:40.20.) Nevertheless, an allegedly defamatory publication "must be considered in its entirety." (*Balzaga*, *supra*, 173 Cal.App.4th 1325, 1338.) "[I]t may not be divided into segments," nor may "each portion [be] treated as a separate unit." (*Id.*) "This is a rule of reason. Defamation actions cannot be based on snippets taken out of context." (*Id.*)

Accordingly, in a libel action based on the publication of a photograph, the court must view "the photograph and its caption … as *a composite* to determine if the publication is defamatory." (50 Am.Jur.2d, *supra*, Libel & Slander, § 135, emphasis added.)

"When words and pictures are presented together, each is an important element of what, *in total*, constitutes the publication." (*Ibid*., emphasis added.)

Two Ninth Circuit decisions illustrate how courts apply the "totality of the circumstances" test to defamation claims involving stock photographs. In *Manzari v. Associated Newspapers Ltd.* (9th Cir. 2016) 830 F.3d 881, the primary case on which Amitay relied below (AA098), the Daily Mail ran an article with the headline "Porn Industry Shuts Down with Immediate Effect After 'Female Performer' Tests Positive for HIV." (*Id*. at p. 884.) After a few lines of text, the article featured a picture of Leah Manzari, a famous adult actress who performed under the name, Danni Ashe, lying suggestively across a bed with "*In Bed With Danni*" blazing in neon lights behind her. (*Id*.) Under her photograph was the caption: "Moratorium: The porn industry in California was shocked on Wednesday by the announcement that a performer had tested HIV positive." (*Id*.)

Manzari brought a libel and false light suit under California law against the Daily Mail's publisher, contending that "the juxtaposition of her image with the explosive headline and caption conveyed the impression that she is the performer who tested positive for HIV." (*Manzari*, *supra*, 830 F.3d at p. 885.) The publisher countered that it did not intend to convey the impression that the article was about Manzari but simply selected a stock photo to illustrate the article. (*Id*. at p. 886.) The district court denied the publisher's anti-SLAPP motion, determining that a jury could reasonably conclude that the

publishers intended to convey the false impression that Manzari had tested positive for HIV. (*Id.*)

The Ninth Circuit affirmed. Examining "the totality" of the article, the court found that the "bold headline and its content, juxtaposed with her photograph and yet another caption under her picture that said the industry was 'shocked' that a 'performer had tested HIV positive,' was sufficient for a reasonable reader to infer that Manzari was the performer who had tested positive for HIV." (*Manzari*, *supra*, 830 F.3d at p. 889.) The court noted that "a photograph itself can convey both an implicit and an explicit message and that the headline, caption and photograph taken together are also a statement." (*Id.* at p. 890.) "Considering the article as a whole," including the critical fact—wholly absent here—that the "picture *includes her professional name 'Danni' in neon lights behind her*" with the salacious caption underneath it, the court concluded that a reasonable reader could infer that the article is about Manzari. (*Id.*, emphasis added.)

In *CoreCivic, Inc. v. Candide Group, LLC* (9th Cir. 2022) 46 F.4th 1136, the Ninth Circuit similarly applied the "totality of the circumstances" to affirm the dismissal of a defamation claim alleging that defendant published several articles falsely implying that plaintiff detained children separated from their parents. As part of its claim, plaintiff pointed to a picture of marching protestors holding signs that was included in one article, which it contended "drove home the connection of CoreCivic to family separation and the detention of children visually." (*Id.* at p. 1145, citation modified.)

Citing *Manzari*, the Ninth Circuit noted that "a photograph can be the basis for a defamation by implication claim," but explained that *Manzari* was distinguishable in part because of critical facts present only in that case, including that "*the image visibly included her professional name*," the caption beneath that image stated that "a performer had tested HIV positive," and the headline stated that a "female performer" had tested positive for HIV. (*CoreCivic v. Candide Group*, *supra*, 46 F.4th at p. 1145, emphasis added.) The court thus concluded that *Manzari* "[bore] little resemblance to this case" because "none of the clearly visible signs explicitly reference the detention of children and nothing in the image references CoreCivic or private prisons more broadly." (*Id.*)

Unlike the article in *Manzari*, the Ninth Circuit observed, "neither the caption beneath the picture nor the headline of the article implies any connection to the supposedly implied defamatory statement." (*CoreCivic*, *supra*, 46 F.4th at p. 1145.) "Taking together the challenged statements, the image, and other relevant context," the court held that the articles "cannot reasonably be understood as implying that CoreCivic detained children separated from their parents in its facilities." (*Id.*)

Manzari and *CoreCivic* make clear why Amitay's defamation-by-implication theory collapses. Unlike in *Manzari*, where the headline, caption, and identifying photograph worked together to suggest that plaintiff was HIV positive (830 F.3d at p. 890), nothing in the Challenged Posts named Amitay nor suggested that the blurred "man with a beard" was him. Instead,

as in *CoreCivic*, the image simply served as a "visual component" to Jews for Jesus' message about distributing copies of the New Testament. (AA223:4–5.) The most that could be implied is that the "man with a beard" was "Nachman," who simply received a copy of the New Testament at his house. (AA015.) Such an implication is objectively harmless and not reasonably susceptible of a defamatory meaning. The absence of the identifiable *Manzari* features dictated dismissal in *CoreCivic* and does so with even greater force here.

In short, based on the totality of the circumstances, the Posts simply cannot be reasonably understood as asserting that *Amitay* supported Jews for Jesus or its religious views. (Cf. *Raymen v. United Senior Assn., Inc.* (D.D.C. 2006) 409 F.Supp.2d 15, 22 ["This Court simply cannot make the leap suggested by the plaintiffs that simply because their image was used in one portion of the advertisement that the advertisement implies that they themselves subscribe to the AARP's policy positions…. The link the plaintiffs are trying to make is simply too tenuous."].)

c. Allegedly implying that a plaintiff is receptive to reading a document from another religion does not impute disreputable conduct, nor is theological offense at such perceptions a reputational injury.

Recovery for libel requires a statement that "should be derogatory, degrading, and somewhat shocking, and contain elements of personal disgrace." (*Means v. ABCABCO, Inc.* (Tex. App. 2010) 315 S.W.3d 209, 214, citation modified.) Courts accordingly find liability in stock-photo cases when the

publication imputes objectively disreputable conduct or loathsome attributes. (See, e.g., *Manzari v. Associated Newspapers*, *supra*, 830 F.3d 881 [testing positive for HIV]; *Cheney v. Daily News* (3d Cir. 2016) 654 Fed.Appx. 578 [salacious sex scandal]; *Stanton v. Metro Corp.* (1st Cir. 2006) 438 F.3d 119, 128–129 [teenage sexual promiscuity]; *Grimsley v. CBS Broadcasting*, *supra*, 2022 WL 719610 [police brutality].) This case involves no such charge.

Stripped of its conclusory assertions and speculative inferences, Amitay's alleged harm arises from his religious community's mistaken impression and outrage about an anonymous Haredi soldier thanking a Christian ministry for receiving a copy of the New Testament. But misguided accusations of heresy, however embarrassing, are not the sort of reputational injury that defamation law recognizes. (See generally Sack, Defamation (4th ed. 2011) § 2.4.1 ["[A] communication that is merely unflattering, annoying, irksome, or embarrassing, or that hurts the plaintiff's feelings, without more, is not actionable."]; accord, *Cox*, *supra*, 761 P.2d 556, 562 ["[S]ome persons … [may] feel affronted if they are identified as being affiliated with another party. But such subjective perceptions and sensibilities have little to do with reputation, since reputation is based on a collective judgment of a large group of people."].)

Considering the nature of his religious community's alleged outrage at the Challenged Posts, 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. (Cf. *Abdelhak v. Jewish Press Inc.* (N.J. Super. Ct. App. Div. 2009) 411 N.J.Super. 211, 228–229 [determining whether allegedly defamatory listing in religious newspaper exposed an Orthodox Jewish husband to contempt or harmed his medical practice would excessively entangle jury in Orthodox Jewish tenets].)

Amitay's own declarants affirm this concern. They asseverate that he 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).

These submissions make clear that adjudicating Amitay's claims would require the factfinder to determine how an Orthodox Jewish community regards Christian evangelism in Israel, what practices it deems incompatible with its tenets, whether merely expressing gratitude for receiving a copy of a worldwide bestselling book is unforgivable heresy, and whether such perceived "support" for another faith naturally exposes a member to ridicule, loss of standing, or shunning. Each of those inquiries "is without analog in civil affairs, and cannot be

understood by a jury without a deep understanding of Orthodox Jewish tradition." (*Abdelhak v. Jewish Press*, *supra*, 411 N.J.Super. at p. 229.)[10]

Nor can Amitay avoid that entanglement by asserting that the factfinder need only determine whether the Posts were defamatory under Civil Code section 45. The *Abdelhak* court rejected that same argument, noting that "[n]o jury could possibly determine such questions without a deep understanding of the Orthodox Jewish practices and traditions." (411 N.J.Super. at p. 229.) And "the threshold issue of whether the statement was defamatory would entangle a jury excessively in religious questions." (*Id.*) Like plaintiff's defamation action in *Abdelhak*, allowing this suit to proceed would embroil the court in matters the civil law is not equipped to decide.

In short, no proper basis exists for a factfinder to conclude that the Posts, when viewed in context, are reasonably susceptible of the defamatory meaning Amitay ascribes to them. Even if the Posts were "highly offensive" to Amitay (AA106), or to some in his religious community, "plaintiff may not construct an actionable statement by reading whatever implication it wishes into the defendants' words" (*Issa v. Applegate*, *supra*, 31 Cal.App.5th 689, 707, quoting *Metabolife Intern. v. Wornick* (9th Cir. 2001) 264 F.3d 832, 839). Nor do feelings of shame,

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[10] See generally 81 A.L.R.6th 1 ["In addition to covering all areas of civil, criminal, and government law, Jewish law covers almost every other sphere of daily living, including many moral and ethical requirements which are foreign to the American legal system."].)

embarrassment, or offense give rise to an actionable defamation claim. (See *Cox*, *supra*, 761 P.2d 556, 561 ["[A]n embarrassing, even though false, statement that does not damage one's reputation is not actionable as libel or slander."].) And inquiring into the alleged reputational harms caused by the Posts would entangle the factfinder with religious laws and customs, which is not the proper role for either a court or a jury. (See *Abdelhak v. Jewish Press*, *supra*, 411 N.J.Super. 211, 229; see also, e.g., *Klagsbrun v. Va'ad Harabonim of Greater Monsey* (D.N.J. 1999) 53 F.Supp.2d 732, 741–742 [dismissing defamation action involving Orthodox rabbis because "issues raised are 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"]; *Goodman v. Temple Shir Ami, Inc.* (Fla. Dist. Ct. App. 1998) 712 So.2d 775, 777 [trial court had no jurisdiction over terminated rabbi's defamation claims because allegedly defamatory statements concerned religious dispute and would require "[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"].)

3. As a matter of law, the Challenged Posts neither declare nor imply a provably false assertion of fact about Amitay.

Amitay's defamation cause of action also fails because he has not proven that the Challenged Posts assert a false statement about him. "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.) To survive a First Amendment challenge, plaintiff "must present evidence of a statement of fact that is provably false." (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1048, citation modified.)

"Whether a statement declares or implies a provably false assertion of fact is generally a question of law to be decided by a court." (*Bishop v. The Bishop's School* (2022) 86 Cal.App.5th 893, 910.) To that end, courts again use the "totality of the circumstances" test. (*McGarry v. University of San Diego*, *supra*, 154 Cal.App.4th 97, 113.) A court accordingly "must put itself in the place of an average reader and determine the natural and probable effect of the statement, considering both the language and the context." (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1011.) The question is not whether the language can be characterized as fact or opinion in the abstract, but whether a reasonable factfinder could conclude that the publication, taken as a whole, made or implied a false assertion of defamatory fact. (*James v. San Jose Mercury News, Inc.* (1993) 17 Cal.App.4th 1, 13.)

Amitay failed to prove that the Posts falsely assert that he is a "supporter" of Jews for Jesus and its "religious views." (AA010.) As explained above (at pp. 49–50), no reasonable reader would understand the Posts to make *any* statements about Amitay. They did not name Amitay, did not quote him, and did not attribute to him any statement, belief, or conduct. (AA015.) A publication that cannot reasonably be interpreted as portraying

facts about plaintiff cannot damage his reputation. (*Dworkin v. Hustler Magazine, Inc.* (C.D. Cal. 1987) 668 F.Supp. 1408, 1415.)

Amitay contends that Jews for Jesus intentionally cropped the image to exclude religious objects that would have revealed his Orthodox Jewish beliefs. (AA009.) That conclusory allegation runs headlong into the actual Posts, which explicitly identify "Nachman" as "a young *Haredi* soldier." (AA015, emphasis added.) Haredi Judaism, often referred to as Ultra-Orthodox Judaism, denotes strict observance of Jewish religious law and social separation both from Gentiles and from less observant Jews. (See Encyclopaedia Britannica, *Ultra-Orthodox Judaism* (Aug. 13, 2025) <https://www.britannica.com/topic/ultra-Orthodox-Judaism> [as of Oct. 15, 2025].) Far from concealing anyone's religious affiliation, the quote plainly identifies the fictionalized "Nachman" as an adherent to Ultra-Orthodox Judaism, thus making clear the Posts did not attempt to obscure *any* religious beliefs. Amitay's "conjecture and supposition to the contrary is not sufficient to sustain his burden under step two of the anti-SLAPP process." (*Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 354.)

Perhaps recognizing the hole in that argument, Amitay tries the opposite tack, contending that Jews for Jesus "falsely impl[ied] to the public that someone as conservative as Amitay supported JFJ's differing religious views." (AA089.) Jews for Jesus' sworn declarations flatly refuted that allegation: Randle affirmed that she simply searched for an image of an "Israeli soldier" on Unsplash, selected the photograph uploaded by Levi

Meir Clancy, and edited it to fit with the "Nachman" story. (AA049:6–050:12; AA222:26–223:13.) Amitay offered no evidence rebutting those declarations. (Cf. *Trujillo v. First American Registry, Inc.* (2007) 157 Cal.App.4th 628, 636 [moving party's uncontradicted declarations—even if self-serving—may provide basis for summary judgment].)

At this stage, conclusory allegations are insufficient to survive an anti-SLAPP motion. Amitay was required to produce competent admissible evidence *defeating* Jews for Jesus' evidentiary showing. (See *Cross v. Facebook, supra,* 14 Cal.App.5th 190, 209 ["Whatever the complaint may allege, it is not sufficient to defeat an anti-SLAPP motion. The evidence is what counts."].) He did not, and therefore he failed to bear his burden that the Posts asserted a provably false statement of fact about him. (Cf. *Sonoma Media Investments, LLC v. Superior Court* (2019) 34 Cal.App.5th 24, 37 [plaintiffs failed to establish defamation claim against newspaper because their submitted declarations failed to demonstrate falsity of allegedly defamatory articles].)

D. Because Amitay failed to substantiate his defamation cause of action, his false-light and emotional-distress causes of action likewise fail.

The "collapse" of Amitay's defamation claim "spells the demise" of his companion claims for false light and negligent infliction of emotional distress (AA011–013), both of which allegedly arise from the Challenged Posts.(*Gilbert v. Sykes*, *supra*, 147 Cal.App.4th 13, 34.) "When claims for invasion of privacy and emotional distress are based on the same factual

allegations as those of a simultaneous libel claim, they are superfluous and must be dismissed." (*Couch v. San Juan Unified School Dist.* (1995) 33 Cal.App.4th 1491, 1504; accord, *Tamkin v. CBS Broadcasting, Inc.*, *supra*, 193 Cal.App.4th 133, 149 [false light claim "is in substance equivalent to the plaintiff's libel claim, and should meet the same requirements of the libel claim," citation modified].) Because Amitay's defamation claim fails as a matter of law, his derivative claims necessarily collapse as well.

IV. The trial court abused its discretion in overruling Jews for Jesus' evidentiary objections.

"An anti-SLAPP motion is an evidentiary motion." (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 118, citation modified.) As such, plaintiff must substantiate *each element* of his cause of action with competent, admissible evidence. (*Balzaga*, *supra*, 173 Cal.App.4th 1325, 1337; *Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, 713.) As Jews for Jesus noted in its evidentiary objections (AA223), Amitay failed to submit competent, admissible evidence proving that the *actual* Challenged Posts were communicated *to* someone who understood their defamatory meaning and application to Amitay. Instead, his evidentiary submissions were rife with hearsay, baseless conclusions, and ultimate facts with no established foundation. (AA105–110, AA171–183.)

The trial court nevertheless overruled Jews for Jesus' evidentiary objections *en masse* as "highly technical" and "unnecessary," while acknowledging that "maybe a tiny number

… had any merit." (RT16:15–22.) By not sustaining Jews for Jesus' objections to this evidence, the trial court abused its discretion. Indeed, had the trial court properly excluded Amitay's proffered declarations, "it is reasonably probable that a result more favorable to [Jews for Jesus] would have been reached in the absence of the error." (*Litinsky v. Kaplan*, *supra*, 40 Cal.App.5th 970, 988.)

To begin with, Amitay stated in his declaration that members of his "community" and "colleagues" "saw the posts" and informed him they were "shocked by the path [he] chose (associating with JFJ)" and that he needed to be "ashamed." (AA107.) He also declared that "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." (AA107.) Jews for Jesus objected to those statements as hearsay and lacking foundation under Evidence Code sections 1200 and 702 on the grounds that Amitay provided no sufficient context for when, where, or how these third parties made their alleged comments, nor does he establish that they had personal knowledge of the Posts or that their comments were genuinely based on them. (AA229.)

Amitay's proffered third-party declarations are similarly lacking in foundation and proof of the existence of a preliminary fact. (Evid. Code, §§ 403, 702, 800.) Chaim Chadad asserted only that "he saw the picture and it seems that Ariel writes there in favor of Christianity." (AA173.) But that statement fails to establish any foundational facts as to when Chadad allegedly saw

this "picture," where he saw it, on what platform or version he saw it, or whether he saw it when the Posts were published or only recently in connection with this litigation. (AA237.)

Rabbi Eichel likewise did not identify where, when, or in what form he "saw a picture of Ariel Amitay." (AA177.) Without this information, "the statement lacks foundation and is speculative as to whether the image he viewed is the same as the subject post at issue." (AA239.)

David Menachem Mundel Shaher claimed he "saw the picture of Ariel with a caption to the effect" that he "believed in a false god"—a mischaracterization of the actual posts, which contained no such statement. (AA185.) In conflict with Evidence Code sections 403, 702, and 800, Shaher does not identify which "picture" he saw, when he saw it, where he saw it, or whether it was accompanied by any caption or context. (AA241.) Without identifying the actual words, platform, timing, or author of the alleged "caption," the statement is devoid of any factual foundation and impossible to verify or rebut.

Nor did Amitay or his third-party declarants provide screenshots, text messages, WhatsApp logs, or any other means of affirming that what they "saw" were in fact the Posts published on Jews for Jesus' social-media pages. At most, these declarations show that a few individuals—perhaps after viewing the original unblurred image on Unsplash or seeing the image elsewhere—drew their own mistaken inferences. Had the trial court sustained Jews for Jesus' objections to these baseless declarations, nothing would have remained to support either the

"of and concerning" requirement or the "publication" element of Amitay's defamation claim.

The trial court's evidentiary ruling, consequently, was not only an abuse of discretion; it was prejudicial. (See *Litinsky v. Kaplan*, *supra*, 40 Cal.App.5th 970, 988.) Absent Amitay's baseless and conclusory proffered declarations, the record contains no admissible evidence to establish the "of and concerning" requirement and "publication" element of his defamation cause of action. The court thus permitted Amitay to defeat an anti-SLAPP motion with inadmissible evidence.

CONCLUSION

Although the Challenged Posts may be offensive to him and his religious community, Amitay failed to meet his burden of making a prima facie evidentiary showing that the Posts conveyed a provably false and defamatory statement about him. Because of the trial court's erroneous ruling, Jews for Jesus now faces the extraordinary expense and logistical hurdles of deposing potentially hostile witnesses in a different language 7,000 miles away in Israel—including navigating letters rogatory and Hague-Convention procedures to compel deposition testimony from adverse witnesses in a foreign country—and suffering the constitutional infirmity that those foreign witnesses cannot be compelled to appear at trial in San Francisco.

Requiring a California ministry to bear such burdens merely for engaging in First Amendment-protected speech on a matter of public concern undermines the Legislature's intent of deterring meritless SLAPP suits early and sparing defendants

the drain of protracted litigation. (See *Cross v. Facebook*, *supra*, 14 Cal.App.5th 190, 198.)

For the foregoing reasons, the Court should reverse the denial of Jews for Jesus' section 425.16 special motion to strike and direct the trial court to strike Amitay's complaint in its entirety.

Dated: October 15, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 13,968 words, including footnotes. In making this certification, I relied on the word count of Microsoft Word, which was used to prepare the brief.

Dated: October 15, 2025

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PROOF OF ELECTRONIC 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.

On October 15, 2025, I served a copy of the foregoing document, APPELLANT'S OPENING BRIEF, by electronic transmission to Raffi Kassabian at raffi@bezdikkassab.com, who is counsel for Plaintiff-Respondent Ariel Amitay.

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

Date: October 15, 2025

/S/ Horatio G. Mihet
Horatio G. Mihet