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, Presiding Judge
Case No. CGC-24-620902

APPELLANT'S PETITION FOR REHEARING

LAW OFFICE OF NIC COCIS & ASSOC.
Nicolaie Cocis (SBN 204703)
25026 Las Brisas Rd.
Murrieta, CA 92562
(951) 666-2600
nic@cocislaw.com

LIBERTY COUNSEL
Horatio G. Mihet*
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
hmihet@lc.org

**Admitted pro hac vice*

Attorneys for Defendant-Appellant

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: June 11, 2026

/s/ Horatio G. Mihet
Horatio G. Mihet

Attorney for Defendant-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Treatises

PETITION FOR REHEARING

Defendant-Appellant Jews for Jesus respectfully petitions for rehearing under California Rules of Court, rule 8.268.

The Court has allowed an Israeli rabbi's defamation suit against a Christian ministry to proceed after finding that Plaintiff-Respondent Ariel Amitay made an evidentiary showing that his claim has "minimal merit." But whether plaintiff has shown that his claim has "minimal merit" is just one component of the second prong of the SLAPP analysis. A court must also *resolve the questions of law* and evaluate *defendant's showing* to determine if it defeats plaintiff's claim as a matter of law. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 714 (*Taus*).) This the Court did not do.

Simply crediting Amitay's evidence and resolving all reasonable inferences in his favor did not relieve the Court of determining the threshold *questions of law* that would have resolved this case: whether, *as a matter of law*, Jews for Jesus' average social-media followers—the *intended audience* to whom its posts are directed—would *reasonably* understand the Challenged Posts to be a *false* and *defamatory* communication *about* Amitay.

The Opinion [hereinafter "Op."] moves around those dispositive questions but never determines them. The closest the Court gets is concluding that "people in Israel" (Op. 22) "could understand that the person in the photograph, namely, Amitay, provided the quote and was either endorsing JFJ's view that it

was worthwhile to distribute the New Testament to people in Israel or was otherwise aiding JFJ" (*id.* at p. 18).

But that conclusion—which is contrary to settled defamation law in its own right—exposes a fatal flaw in the Opinion. A court evaluates the merits prong of an anti-SLAPP motion like a motion for summary judgment (*Taus*, *supra*, 40 Cal.4th 683, 714), which requires courts to resolve questions of law (*Bass v. Pratt* (1986) 177 Cal.App.3d 129, 132). Here, however, the Court did not resolve, *as a matter of law*, whether the Posts in their *full context*—based on the *totality of the circumstances* and from the perspective of an average follower of Jews for Jesus' Facebook and Instagram pages—are reasonably susceptible of a *defamatory* meaning.

Nor did the Court resolve, *as a matter of law*, whether the Posts in their *full context*—based on the *totality of the circumstances*—assert or imply a *false* statement of fact about Amitay.

And the Court did not resolve, *as a matter of law*, whether an average follower of Jews for Jesus' social-media pages would reasonably understand posts that include a blurred image and a quote attributed to "Nachman, a young Haredi soldier," as *specifically referring* to Rabbi Ariel Amitay.

Those are not peripheral gaps in the Opinion. They are three *dispositive questions of law* that, when answered correctly, end this case.

The Court compounded its error by rejecting Jews for Jesus' evidentiary showing. As in summary judgment, a court

should grant an anti-SLAPP motion if, as a matter of law, defendant's evidence "negates an essential element of the plaintiff's claim" (*Nunez v. City of Redondo Beach* (2022) 81 Cal.App.5th 749, 756), or "defeats the plaintiff's attempt to establish evidentiary support for the claim" (*Taus*, *supra*, 40 Cal.4th at p. 714). And a moving party's uncontradicted declarations may be credited as a matter of law. (*Litinsky v. Kaplan* (2019) 40 Cal.App.5th 970, 983.)

The Opinion disregarded Jews for Jesus' *unrebutted* evidence unequivocally negating essential elements of Amitay's defamation claim, including the "of and concerning" requirement, the "falsity" element, and more broadly any libel per se theory of recovery. For example, Jews for Jesus' unrebutted declarations established that it illustrated its posts with a fair-use photograph downloaded from Unsplash, a public-image library; that it had never heard of Amitay; that the quoted statement belonged to a *real soldier* given the pseudonym "Nachman"; and that it cropped and blurred the image for reasons "nothing to do with hiding religious objects or manipulating viewers' perceptions of the soldier in the photograph" (AA222) and thus it had no intent to convey or imply *anything* about the person depicted, much less Amitay (AA049–050; AA080; AA222–223). These facts were uncontradicted and decisive, yet the Court passed over them.

The consequences of the Court's series of errors are not abstract, and they are why rehearing is urgent. The anti-SLAPP statute exists to weed out meritless defamation suits before defendants are subject to the expense of protracted litigation.

Here that expense has only begun. Jews for Jesus now must depose hostile witnesses 7,400 miles away in a foreign language under Hague Convention procedures, navigate letters rogatory, and wrangle with third parties no court can compel to appear at trial in San Francisco—all at a cost that would break many nonprofits.

And for what? For publishing, on its *own* pages and to its *own* supporters, an *utterly innocuous* update about its religious ministry, illustrated with a free-to-use stock photo of an anonymous, *deliberately blurred* soldier and a *benign* quote attributed to a *pseudonymous* "Nachman."

In light of the great weight of authority and hornbook defamation law, the Court should not have allowed this meritless suit to proceed. Left standing, the Opinion converts defamation from an intentional tort—one that requires a *provably false* and *defamatory* statement *of and concerning* a *real* plaintiff—into something close to strict liability: any user of a stock photograph in California may answer in tort the moment a handful of strangers, *applying religious standards no civil court may enforce*, draw an *absurd* conclusion no reasonable reader would ever reach. That is not the law.

The Court should grant rehearing, decide the questions of law it did not, correct its erroneous reasoning, and direct that the special motion to strike be granted.

REASONS FOR GRANTING THE PETITION

I. The Opinion does not determine—*as a matter of law*—whether social-media posts about passing out religious literature and featuring a blurred stock photo of a pseudonymous soldier is reasonably susceptible of a defamatory meaning.

The most glaring omission in the Opinion, and one that most plainly warrants rehearing, is that it did not resolve the central question of law: *How can social-media posts about passing out religious literature, which feature a blurred stock photo and an innocuous quote from a pseudonymous soldier named Nachman, be reasonably susceptible of a defamatory meaning about Amitay?*

The Opinion never addressed that dispositive question, which Jews for Jesus squarely presented for resolution. Instead, the Court simply concluded—with zero analysis—that "no extra sensitive perception or expertise would be required to infer a defamatory meaning from JFJ's juxtaposition of Amitay's photograph with the quote in the posts." (Op. at p. 22.)

That does not engage the question posed, and sidesteps the analysis. Whether a publication is reasonably susceptible of a defamatory meaning is *a question of law* for the court. (*Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1339, emphasis added (*Balzaga*).) The Court decides that question by applying "*a totality of the circumstances* test to *review the meaning of the language in context* and whether it is susceptible of a meaning alleged by the plaintiff." (*Balzaga*, *supra*, 173 Cal.App.4th at p. 1337.) If *no reasonable reader* would perceive such a meaning, "then there is *no libel* at all." (*Barnes-Hind, Inc.*

v. Superior Court (1986) 181 Cal.App.3d 377, 386, emphasis added.)

The Opinion did not apply "the totality of the circumstances" test. Nor did it "review the meaning of the [Posts] in context." And it did not meaningfully analyze whether the Posts are "susceptible of a meaning alleged by the plaintiff." (*Balzaga*, *supra*, 173 Cal.App.4th at p. 1337.) Instead, the Court simply held that Amitay "presented admissible evidence that others understood the posts to have a defamatory meaning, namely, that Amitay was supporting JFJ or its faith," then catalogued those readers' reactions. (Op. at p. 14.)

Whether "others understood the posts to have a defamatory meaning" is the *wrong test*. "The question is *not* one that is to be answered by taking a poll of readers but is to be answered by considering the *entire context* in which the offending material appears." (*San Francisco Bay Guardian, Inc. v. Superior Court* (1993) 17 Cal.App.4th 655, 660, emphasis added.)

As this Court found in *San Francisco Bay Guardian*, "[t]he 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*." (*Id.* at p. 660, emphasis added.)

That same reasoning applies here, and it warranted the same result. The fact that Amitay furnished declarations of a few people who leapt to the absurd conclusion that he was supporting Jews for Jesus simply because the ministry used a free stock photo (which is still available to download on Unsplash this very

day[1]) does not raise a question of fact as to the view of the average follower of Jews for Jesus' social-media pages. And, as Jews for Jesus argued in its briefing (AOB21), Amitay presented no evidence that either he, his employer, or any of his acquaintances follow Jews for Jesus' social-media pages.

Performed correctly, the analysis is not close. The Opinion's single attempt to name the defamatory proposition is this: a reasonable reader could understand that the person in the photograph "provided the quote and was either endorsing JFJ's view that it was worthwhile to distribute the New Testament to people in Israel or was otherwise aiding JFJ." (Op. at p. 18.)

Even accepting that framing, which is merely Amitay's theory of his case, the Court did not explain which part of stating or even implying that someone is "endorsing" the distribution of a book or "aiding" a charity is libelous.

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

That is what distinguishes this case from the authorities Jews for Jesus presented in its briefing. (AOB41–44.) "Despite its broad language, C.C. 45 is *limited* to statements that either

---

[1] AA202 fn. 2 [<https://unsplash.com/photos/a-man-with-a-beard-and-a-man-with-a-hat-i9HGjnwk_Vs>].

directly or *implicitly disparage plaintiff personally*." (5 Witkin, Summary of Cal. Law (11th ed. 2025) Torts, § 637, emphasis added.)

The stock-photograph cases that Jews for Jesus presented to the Court prove the point by contrast. Each imputed something objectively disgraceful and disparaging. In *Manzari v. Associated Newspapers Ltd.* (9th Cir. 2016) 830 F.3d 881, the juxtaposition implied that plaintiff had *tested positive for HIV*. In *Cheney v. Daily News L.P.* (3d Cir. 2016) 654 Fed.Appx. 578, it implied plaintiff's involvement in a *workplace sex scandal*. In *Stanton v. Metro Corp.* (1st Cir. 2006) 438 F.3d 119, it implied that plaintiff was *sexually promiscuous*. In *Grimsley v. CBS Broadcasting Inc.* (D.S.C. 2022) 2022 WL 719610, it implied that plaintiff had *brutalized a mentally ill detainee.* Each degrades the subject in the eyes of the general community.

What is *not* objectively defamatory is quoting a pseudonymous Israeli soldier who accepted a copy of the New Testament and said he is looking forward to reading it. That may "constitute[] a betrayal of God" and the "most serious sin in Judaism" to Amitay and his Orthodox community (AA183), but it is not even remotely damaging in the eyes of the rest of the world.

That some of Amitay's acquaintances and his religious employer somehow saw his (blurred) photograph in the Posts then leapt to the absurd conclusion that he was apostatizing is irrelevant to the questions of law that the Court was required to decide. Members of an insular Orthodox Jewish community in

Israel who regard even the faintest hint of perceived association with Christianity as, in their own words, "the most serious sin in Judaism," "betrayal of God," and "blasphemy of the Lord, something for which there is no redemption" *are not* the Posts' intended audience. And they are certainly *not* hypothetical reasonable readers required for the Court's analysis.

Indeed, the Court overlooked the decisive rule: "the fact that a communication tends to prejudice another in the eyes of even a substantial group *is not enough if the group is one whose standards are so anti-social that it is not proper for the courts to recognize them*." (Rest.2d Torts, § 559, com. e, emphasis added.) And "the fact that *some* person might, with extra sensitive perception, understand such a meaning cannot compel this court to establish liability *at so low a threshold*." (*Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 699, emphasis added.)

Yet here the Court established liability at an even lower threshold.

The correct inquiry, the one the Court avoided, asks whether Jews for Jesus' *average* social-media followers, *Christian supporters to whom* the Posts were directed, would *reasonably* understand the Posts as defaming *Amitay*. To *those* readers, and as a matter of law, posts about distributing copies of the New Testament, which included a blurred photograph and a quote from an Israeli soldier named "Nachman" accepting and expressing gratitude for a copy, is not even remotely scandalous, shameful, disgraceful, or insulting about anyone.

The Opinion's overlooking of this critical and dispositive argument warrants rehearing.

II. The Opinion does not identify whether—*as a matter of law*—Jews for Jesus asserted or implied a provably false statement of fact about Amitay, and disregarded the unrebutted evidence refuting an essential element of Amitay's defamation claim.

Falsity is "the *sine qua non* of recovery for defamation." (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112.)

The Opinion's treatment of this dispositive element is one sentence: Amitay "presented admissible evidence that the statements were false" because "[h]e declared: 'I have never been associated with JFJ. I do not follow or agree with their views or beliefs, and any implication to the contrary is false.'" (Op. at p. 15.)

That reasoning assumes its own conclusion. It presupposes that the Posts assert, *as fact*, that Amitay is "associated with" Jews for Jesus and "follow[s] or agree[s] with their views or beliefs," and then credits Amitay's denial of the assertion it has presupposed.

The antecedent question is one of law, which Jews for Jesus presented to this Court: *As a matter of law, do the Posts assert or imply any fact, much less a provably false fact, about Amitay at all?*

The Court never reaches that question, much less resolves it.

The Posts themselves and Jews for Jesus' *unrebutted declarations* answer it, which should have resolved this appeal.

Strip away Amitay's conclusory allegations—which the Court should have disregarded but did not—nothing remains that is capable of being true or false about him, because nothing in the Posts is about him at all. The Posts contain no statement of fact about Amitay, false or otherwise, and a defamation claim with no false fact at its core is not a claim the law permits to proceed.

Overlooking that settled principle, the Court found that Amitay presented evidence that Jews for Jesus "failed to use reasonable care to determine the truth or falsity of its posts," reasoning that his beard, his yarmulke, his Tefillin, and the rabbi beside him in the uncropped photograph were "obvious indicators of his religious beliefs." (Op. at p. 15.)

The Court's disregard for Jews for Jesus' *unrebutted* declarations refuting Amitay's "deceptive-cropping" theory is manifestly erroneous. Defendant's unrebutted declarations established that Jews for Jesus lawfully downloaded and used a *free stock photograph* of an "Israeli soldier" to illustrate its message, cropped it for *visual reasons completely and unequivocally unrelated to the soldier's religious beliefs or appearance*, *blurred the subject's face* to *anonymize* him, *had no intent to state or imply anything about the subject* in the photograph, and attributed an innocuous quote to a *pseudonym* to shield the *real* soldier who had received a copy of the New Testament. (AA050:4–6; AA222:22–223:17.) That explanation is

sworn under oath and *uncontradicted*. Although a moving party's uncontradicted declarations may be credited as a matter of law, (*Litinsky v. Kaplan*, *supra*, 40 Cal.App.5th 970, 983), the Court disregarded them.

Setting aside its disregard for Jews for Jesus' unrebutted evidence, the Court credited Amitay's wholly conclusory and speculative allegations without resolving the *contradiction* Jews for Jesus placed before it. (AOB63; ARB26.) Amitay alleges that the ministry cropped the photograph "to exclude the Tefillin" and conceal his Orthodox identity. (RB17–18.) In the same breath, he alleges that the ministry meant to broadcast "that someone as conservative as Amitay would still support" its missionary work. (AA009; RB18.) *Both cannot be true.* A Christian ministry bent on hiding his Orthodoxy would not attribute the quote to a "*Haredi* soldier"—because *Haredi* means *ultra-Orthodox*. (AOB63.) And a ministry bent on showcasing an Orthodox Jew's endorsement would not crop out the objects that mark him as Orthodox. Each theory negates the other. The Opinion brushed aside this dispositive argument and credited a speculative theory that the Posts refute on their face.

III. The Opinion erroneously disregarded that the hypothetical reasonable readers are Jews for Jesus' social-media followers, not "people in Israel" or Amitay's third-party declarants.

In addition to not evaluating whether the Posts were false and defamatory as a matter of law, the Opinion is based on a pervasively erroneous premise. Rather than evaluating the Posts from the perspective of the average follower of Jews for Jesus' social-media pages—*the audience to whom the posts were actually directed*—the Court broadened that audience, concluding *sua sponte* that it "can reasonably infer from the evidence presented that the audience to whom posts by the 'Jews for Jesus Israel' account were directed included *people in Israel*." (Op. at p. 22, emphasis added.)

The error is clear—and prejudicial. By establishing *sua sponte* that the audience "included people in Israel," the Court ensured that hypersensitive Orthodox Jews, including Amitay's proffered declarants—none of whom, the record shows, followed Jews for Jesus on any platform; none of whom, the record shows, saw the Posts as published;[2] and all of whom regard association with Christianity as, in their own words, "the most serious sin in Judaism"—could serve as a hypothetical reasonable reader. *They are not*.

---

[2] The Court observed that JFJ "cites no authority for the proposition that a social media post is published only to followers." (Op. at p. 9.) That observation has no bearing here. That the Posts may have ultimately reached non-followers through republication by others does not make those people the Posts' hypothetical average readers.

Indeed, the Court's capacious broadening of the reasonable-reader standard to sweep in "people in Israel" conflicts with the correct standard: "The 'average reader' is a reasonable member *of the audience to which the material was originally addressed*." (*Couch v. San Juan Unified School Dist.* (1995) 33 Cal.App.4th 1491, 1500, emphasis added.)

The Court accordingly must evaluate a publication from the perspective of the average reader *to whom it was directed*. (*Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 261 ["this court must determine whether *the average reader of Bunzel's column* could have reasonably understood the alleged defamatory statement to be one of fact," emphasis added]; *San Francisco Bay Guardian, Inc. v. Superior Court*, *supra*, 17 Cal.App.4th 655, 659–661; *Morningstar, Inc. v. Superior Court* (1994) 23 Cal.App.4th 676, 688; *Hoang v. Tran* (2021) 60 Cal.App.5th 513, 533.)

The average readers here are not "people in Israel" but *Christians* who "*follow*" Jews for Jesus on social media because they support its mission of sharing the Gospel with Jews.

Jews for Jesus submitted *unrebutted evidence* that its social-media pages exist to connect with its *supporters*, solicit donations from those *supporters*, and update its *supporters* about the ministry's charitable and spiritual outreach. (AA050; AA079.) To that end, Jews for Jesus' social-media team declared under oath that the Posts were designed "to show *our supporters* how *their prayers and giving* were making a real difference in a time of devastation" (AA079, emphasis added), and "to invite *our*

supporters to pray and give, *just as they always do* in response to our updates from the field" (AA050, emphasis added).

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

Moreover, the Court's novel "people in Israel" audience suffers from a logical impossibility. If merely having one's photograph available to download from a free-use image sharing platform and be used by a Christian organization is allegedly sufficient to end a rabbi's career and constitute an unforgivable act of heresy warranting eternal damnation, then any member of Amitay's community who "follows" Jews for Jesus on Facebook or Instagram would necessarily face the same fate—or worse. They too would be excommunicated for following Jews for Jesus' social media posts, which advance its mission and seek donations for its mission. They too would have "no place in the community for such a person or for his children." (AA185.)

Following that logic, and given that Amitay provided no evidence to the contrary, it is reasonable to infer that no member of Amitay's religious community "follows" Jews for Jesus on social media. The social consequences alone make that seemingly a logical impossibility. And if no member of his community follows Jews for Jesus on social media, then no member of Amitay's

community could be a hypothetical reasonable reader of the ministry's social-media posts.

Again, courts must look "to the knowledge and understanding of the audience to whom the publication was directed" (*Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 261), not to other readers who may have ultimately seen a downstream republication. The Opinion's speculative "people in Israel" audience simply cannot be squared with that standard, because the intended audience was Jews for Jesus' *supporters*, not an insular Orthodox community or Israelis more broadly.

The correct conclusion is that no reasonable social-media follower of Jews for Jesus would reasonably understand the Posts to state or imply any false and defamatory statement about Amitay. Just as in *Hoang v. Tran*, *supra*, 60 Cal.App.5th 513, 533, where "[t]he average reader of the BBC Vietnamese Facebook Page would not know that the export of blood from China to the United States was illegal," so too here the average follower of Jews for Jesus' social-media pages would not know—and not believe—that a soldier accepting a copy of the New Testament and thanking the ministry for it was anything other than exactly what the posts said it was: an innocuous story of charitable outreach "to Nachman and more than 1,000 Israelis" (AA018).

IV. The Opinion did not examine the totality of the circumstances to determine—*as a matter of law*—whether posts containing a blurred stock photo and a quote from "Nachman" were "of and concerning" Amitay.

The Court concluded that "a hypothetical reasonable reader could be misled, that is, a reasonable reader of one of JFJ's posts could understand that the person in the photograph, namely, Amitay, provided the quote and was either endorsing JFJ's view that it was worthwhile to distribute the New Testament to people in Israel or was otherwise aiding JFJ." (Op. at p. 18.)

The prejudicial damage inflicted on Jews for Jesus centers on two words the Opinion never justifies: "namely, Amitay." (Op. at p. 18.)

How could a hypothetical reasonable reader possibly know it was Amitay? The Court never answers that question, yet its entire holding depends on the answer.

The question before the Court was whether a reasonable follower of Jews for Jesus' social-media pages would understand the Posts to be "of and concerning" Amitay. In other words, the Court should have asked whether, *as a matter of law*, *Amitay* was the "*direct object*" of the Posts. (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1044, emphasis added.)

And to answer that question, the Court was required to consider "*the 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, emphasis added.)

The Court sidestepped *that analysis* by preemptively inserting "namely, Amitay" into its account of what a reasonable reader "could understand" (Op. at p. 18), but that inferential step contains a fatal flaw: A reasonable reader simply would not ascertain that the blurred "man with a beard" is Amitay.

In effect, the Court attributed its own knowledge (and Amitay's knowledge) to a hypothetical reasonable reader who, based on the *totality of the circumstances*, has *no way* of recognizing the blurred "man with a beard" and *reasonably* concluding that Posts quoting "Nachman, a young Haredi soldier" were "of and concerning" Ariel Amitay.

On rehearing, the Court should strip out "namely, Amitay," and ask what the reasonable reader *actually sees*. He sees a message about Jews for Jesus being "able to give a copy of the New Testament to Nachman and more than 1,000 Israelis in 2023." (AA016; AA018.) He sees a blurred face of an anonymous Israeli soldier. And he sees a quote attributed to "Nachman, a young Haredi soldier."

How does a follower of a Christian ministry look at a blurred, anonymous, unnamed image along with a quote by "Nachman" and arrive at "Ariel Amitay, the Orthodox rabbi who taught at Educate the Young in Tzfat"? The Posts contain not a single feature that would lead the hypothetical reasonable reader to Amitay. Not a name. Not a caption. Not a location. Not a profession. Not an unblurred face. *Nothing*.

Jews for Jesus presented numerous stock-photo cases to the Court to support this argument, yet the Court rejected them. In

Manzari v. Associated Newspapers Ltd., *supra*, 830 F.3d 881, for example, the reader could identify plaintiff because her face was *unblurred* and *her professional name* blazed in neon lights behind her. The Court's response: "True enough." (Op. at 19.) But, rather than accepting that Jews for Jesus' distinguishing of *Manzari* was sound, the Court instead found that it was "not so logically inconsistent" that "a reasonable reader" could infer that "Amitay was the person quoted" in *a quote directly attributed to Nachman*. (Op. at p. 20.)[3] Respectfully, the Opinion leaves unanswered how a reasonable reader could conclude that Amitay was the quoted speaker when the Posts expressly attributed the quote to Nachman and paired it with a blurred image.

---

[3] In support of that conclusion, the Court invoked the declaration of Jews for Jesus' COO, stating that he "in effect acknowledged" that blurring faces was necessary because juxtaposing a photograph with content might "suggest[] that this individual had personally endorsed or interacted with JFJ." (Op. at p. 20.) The Court thus took a sworn statement that *negated* Amitay's implied endorsement theory (and thus *negated* the falsity element of his defamation claim), and recast it as an "in effect" concession by Jews for Jesus that juxtaposition implies endorsement, and then turned the inverted version against defendant. While courts may draw their own reasonable inferences from the evidence, the Court should not convert a sworn refutation of Amitay's claims into a concession and then rely on that "concession" to find against defendant, despite the great weight of authority—including *Manzari*—supporting defendant's position. Restored to its actual terms, the COO declaration is unrebutted evidence that Jews for Jesus does not seek to state or imply that a subject in a photo endorses or is affiliated with Jews for Jesus. (AA045.)

Likewise, the Court's treatment of Jews for Jesus' citation to *Grimsley v. CBS Broadcasting Inc.* (D.S.C., Mar. 10, 2022) 2022 WL 719610, merits a second look. As Jews for Jesus explained, *Grimsley* cuts against Amitay because the photograph "positively identified" plaintiff because *his name*, "Sgt. Rob Grimsley," was *clearly visible* in the image, "making him far more ascertainable to a reader." (*Grimsley*, *supra*, 2022 WL 719610, at *2–3.) The court thus found, in contrast with *Houseman v. Publicaciones Paso del Norte, S.A. DE C.V.* (Tex. App. 2007) 242 S.W.3d 518, that a reasonable reader could interpret that plaintiff was the story's subject.

This Court overlooked those critical facts in *Grimsley* and instead seized on the decision's use of "zoomed in"—and then analogized it to buttress Amitay's meritless, logically inconsistent, and utterly refuted cropping theory. (Op. at p. 18.) But *Grimsley*'s "zoomed in" reasoning turned on a further fact absent here: the photograph "would appear to have no relation to the article unless it was depicting one of the agents involved." (*Grimsley*, *supra*, 2022 WL 719610, at *3.) Here, by contrast, a stock photograph of an "Israeli soldier" has an obvious thematic relation to posts about distributing copies of the New Testament to Israeli soldiers—but that is a far cry from identifying Amitay, attributing the quote to him, or making the Posts of and concerning him.

Critically, and what begs for rehearing and reversal, is that the Court did not explain how such a reasonable reader could identify Amitay. In both *Manzari* and *Grimsley*, the tell-tale

signs supplied the bridge from picture to person. Here there is no bridge. No reasonable reader could identify *Amitay* from a publication that blurred the face of the Israeli soldier and attributed an accompanying quote to "Nachman." And thus no reasonable reader could conclude that the Posts—when viewed as a whole and in their full context—specifically referred to, or were of and concerning, Amitay.

The Court's reasoning rests on another error: "as Amitay's evidence showed here." (Op. at p. 20.) Whether Amitay recognized himself, or whether his friends recognized him, *is beside the point*. The "of and concerning" requirement is not satisfied because plaintiff recognizes himself. It is satisfied only when the publication is "*understandable as intended to refer to*" plaintiff by an average reader to whom it was directed. (Rest.2d Torts, § 613, com. d.) And the interpretation "*must be reasonable in the light of all the circumstances*." (*Id*., § 564, com. b, emphasis added.) The Court measured from Amitay's vantage point and called it the reasonable reader's. It is not.

The Court's treatment of the Nachman attribution then turns the standard inside out. The Court reasoned that "the posts' attribution of the juxtaposed quote to Nachman was not so 'logically inconsistent with the inference' … that Amitay was the person quoted," and that "a reasonable reader seeing Amitay's blurred face in JFJ's posts could infer that Amity [*sic*] was the source of the quote." (Op. at p. 20.)

But how?

Setting aside that no reasonable reader could know it was "Amitay's blurred face" (Op. at p. 20), 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.)

The Posts name the quote's speaker: *Nachman.* They tell the reader, *in words*, who is talking: "*Nachman, a young Haredi soldier*." (AA015.) A reasonable reader does not look at an expressly attributed quote and then decide the named speaker and the accompanying photograph, which was deliberately blurred, is a decoy for an Orthodox rabbi named Ariel Amitay. He takes the attribution at face value, because that is what attributions are for.

The Opinion does not explain what would prompt the reader to do otherwise, because nothing in the Posts would. When viewing the Posts *in their full context* and *as a whole*, there is no wink, no clue, no contradiction between the quote and the blurred image that invites the reader to look past Nachman and hunt for the "real" speaker, who was not even Amitay but a real Israeli soldier. (AA050.)

The Court simply assumed the reader would make that leap and that the attribution to Nachman "does not negate" the inference that the speaker is really Amitay. (Op. at p. 20.) But the named attribution does not need to "negate" anything. It is affirmative evidence of who the speaker is—Nachman—and who the speaker is not—Amitay.

Citing *Bindrim v. Mitchell* (1979) 92 Cal.App.3d 61, the Court suggests that "[a] statement can be 'of and concerning' a

plaintiff even if attributed to a fictitious name." (Op. at p. 21.) Respectfully, *Bindrim* is wholly inapposite.

Bindrim is a case about a roman à clef, which is a "novel that has the extraliterary interest of *portraying well-known real people* more or less *thinly disguised as fictional characters*." (Encyclopedia Britannica, *Roman à Clef* (Apr. 3, 2025) <https://www.britannica.com/art/roman-a-clef> [as of June 3, 2026] (emphasis added).) Defendant, a novelist, attended plaintiff's nude-therapy marathon in person, signed a contract acknowledging plaintiff by name, and then wrote a novel whose central character reproduced plaintiff's distinctive therapy, his techniques, his setting, and his conduct in detail so exact that plaintiff's own tape recordings of the real sessions tracked the novel's dialogue line by line. (*Bindrim*, *supra*, 92 Cal.App.3d at pp. 69–71.)

The author knew plaintiff, and *she based her character entirely on him*. (*Bindrim*, *supra*, 92 Cal.App.3d at pp. 69–71.) The fictitious name was the only thing standing between the portrayal and plaintiff, and the court held that a thin coat of fiction could not undo an obvious identification the author had spent the entire novel constructing. In short, defendant set out to portray a real, identifiable person she had personally observed, dressed him in a fictional name, and was held liable because witnesses pierced the disguise and recognized the target.

Bindrim thus stands for the proposition that a defendant who *deliberately bases* a fictional character on *a real, known*

plaintiff when writing a roman à clef cannot escape liability by pointing to a fictitious name.

That proposition has no purchase here because its factual premise is absent. Jews for Jesus did not write a roman à clef. Jews for Jesus *never met Amitay*. It *never heard of him*. It did not even substitute "Nachman" for Amitay, because it *had no knowledge of Amitay* to begin with. (AA049.) The photograph was an anonymous, free-to-use stock image downloaded from an image-sharing website, depicting a man the ministry could not have named if its existence depended on it. Jews for Jesus' unrebutted declarations establish exactly that (AA049–050).

The settled rule confirms the point. Where the publication "*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, emphasis added.)

V. The Court has the jurisdictional duty to reach the inescapable conclusion that this case is a non-justiciable religious dispute wrapped up in a defamation claim.

The Court declined to reach Jews for Jesus' First Amendment entanglement argument, holding it "waived … for purposes of its anti-SLAPP motion" because it was raised first on appeal. (Op. at pp. 22–23.) But the waiver rule is not absolute. An appellate court "has discretion to consider issues raised for the first time on appeal where the relevant facts are undisputed and could not have been altered by the presentation of additional evidence," and is "most likely" to do so where "the issue involves important questions of public policy or public concern." (*Saurman*

v. Peter's Landing Property Owner, LLC (2024) 103 Cal.App.5th 1148, 1167.)

Whether adjudicating this claim would force a civil jury to resolve questions of Orthodox Jewish doctrine is a pure question of law on an undisputed record, and it implicates the First Amendment as to religious entanglement, which is indisputably a question of public policy and public concern.

The Court rejected *Abdelhak v. Jewish Press Inc.* (N.J.Super.Ct.App.Div. 2009) 411 N.J.Super. 211 (*Abdelhak*) on the grounds that it was resolved on a motion to dismiss for lack of subject-matter jurisdiction. (Op. at p. 23.) But that was all the more reason why the Court should have taken note of *Abdelhak* and reversed the decision below. Subject matter jurisdiction "concerns the basic power of a court to act." (*300 Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 807.) "The adequacy of the court's subject matter jurisdiction *must be addressed* whenever that issue *comes to the court's attention*." (*Keiffer v. Bechtel Corp.* (1998) 65 Cal.App.4th 893, 896, emphasis added.) And it "can be raised at any time (*even on appeal*) and is not subject to forfeiture or waiver." (*Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1347, emphasis added.)

The error is not that Jews for Jesus failed to raise subject-matter jurisdiction. It is that the Court, having raised it itself, refused to resolve it. The Court could not distinguish *Abdelhak*, *Klagsbrun v. Va'ad Harabonim of Greater Monsey* (D.N.J. 1999) 53 F.Supp.2d 732, and *Goodman v. Temple Shir Ami, Inc.*

(Fla.Dist.Ct.App. 1998) 712 So.2d 775, without confronting that each dismissed for lack of subject-matter jurisdiction—the Opinion says as much. (Op. at p. 23.) Yet the moment the Court invoked that ground to set those cases aside, the question came "to the court's attention" (*Keiffer v. Bechtel Corp.*, *supra*, 65 Cal.App.4th 893, 896), and the duty to decide it attached. The Court was then bound to ask the question those cases posed, and Jews for Jesus posed: can a civil court adjudicate Amitay's claim without resolving matters of Orthodox doctrine beyond its power to decide? The answer is no. The Court was not free to leave that question unanswered. It was bound to confront it and should do so on rehearing.

Setting aside *Abdelhak*'s procedural posture, that court's unassailably correct reasoning based on strikingly similar facts should have guided this Court to conclude that this dispute is inappropriate for a civil court to decide.

Abdelhak involved an Orthodox Jewish plaintiff. So does this case. The defamatory sting in *Abdelhak* came not from the words themselves but from the meaning an insular religious community ascribed to them. So too here. The *Abdelhak* plaintiff claimed the publication exposed him to "shame and condemnation within the Orthodox Jewish community." (*Abdelhak*, *supra*, 411 N.J.Super. 211, 232.) So too here. And the publication in *Abdelhak* was facially unremarkable to anyone outside an Orthodox community. So too here.

Where in *Abdelhak*, "to evaluate whether plaintiff's reputation suffered any injury, a jury would, of necessity, be

required to determine how a Seruv Listing is viewed within the Orthodox Jewish community and whether an Orthodox Jew would be offended by another's refusal to provide a Get" (*Abdelhak*, *supra*, at pp. 228–229), so too here would a jury be required to determine how the inclusion of a blurred photograph in a Christian publication "is viewed within the Orthodox Jewish community" and whether such an occurrence, even if purely coincidental, "exposes an Orthodox Jewish man, such as plaintiff, to ridicule, shame or opprobrium within the Orthodox community" (*id.* at p. 229). "To make that determination, a jury would be obliged to consider the intricacies of Jewish doctrine." (*Id.*)

The question the Court should consider on rehearing: If a jury cannot decide whether an Orthodox plaintiff was shamed within his religious community without immersing itself in religious doctrine, how can a California jury decide that these Posts shamed Amitay within his Orthodox community without offending the First Amendment?[4]

CONCLUSION

There is no libelous statement, no actionable innuendo, and no defamatory implication in this case. Most obvious, there is no

---

[4] This ground is preserved for review by the Supreme Court under California Rules of Court, rule 8.500(c)(2). (AOB, § III.C.2.c; ARB, § IV.) The Court should reach it now. If perceived openness to reading the New Testament (or even theological acceptance of Christianity) cannot be measured as reputational injury under the First Amendment, then Amitay cannot bring this case to trial.

false statement of fact about Amitay, as proven by Jews for Jesus' unrebutted declarations. There is only an innocuous publication about a ministry's charitable work and an offended insular community whose religious peculiarities the law does not recognize.

If this Court's Opinion stands, a California nonprofit will be dragged through the very burdens the anti-SLAPP statute was designed to prevent: deposing hostile witnesses across an ocean, in a foreign language, under Hague Convention procedures, at ruinous cost to a ministry that should never have been made to answer this suit in the first place. The statute exists to stop precisely this kind of abuse, at precisely this stage.

Jews for Jesus respectfully asks the Court to grant rehearing, apply the correct legal standards to each of the questions the Opinion did not resolve, and direct that the special motion to strike be granted.

Dated: June 11, 2026

Respectfully submitted,

LAW OFFICE OF
NIC COCIS & ASSOC.

Nicolaie Cocis
(SBN 204703)
25026 Las Brisas Rd.
Murrieta, CA 92562
(951) 666-2600
nic@cocislaw.com

LIBERTY COUNSEL

/S/ Horatio G. Mihet
Horatio G. Mihet*
P.O. Box 540774
Orlando, FL 32854
(407) 875-1776
hmihet@lc.org

* *Admitted pro hac vice*

Attorneys for Defendant-Appellant Jews for Jesus

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204 of the California Rules of Court, I hereby certify that this brief contains 6,795 words, including footnotes. In making this certification, I relied on the word count of Microsoft Word, which was used to prepare the brief.

Dated: June 11, 2026

LIBERTY COUNSEL

/S/ Horatio G. Mihet

Horatio G. Mihet

Attorney for Defendant-Appellant

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 June 11, 2026, I served a copy of the foregoing document, APPELLANT'S PETITION FOR REHEARING, 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: June 11, 2026

/S/ Horatio G. Mihet
Horatio G. Mihet