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** *Pro hac vice* application pending

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ARIEL ZVOLON AMITAY,

Plaintiff,

v.

JEWS FOR JESUS, et al.,

Defendants.

Case No.: CGC-24-620902

**DEFENDANT JEWS FOR JESUS' NOTICE
OF MOTION; MOTION TO STRIKE
PUNITIVE DAMAGES; AND
SUPPORTING MEMORANDUM OF LAW**

[C.C.P. §§ 435, 436]

DATE: December 4, 2026

TIME: 9:00 a.m.

DEPT: 302

Judge: Hon. A. Marisa Chun

Action Filed: December 24, 2024

Trial Date: (Unassigned)

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PLEASE TAKE NOTICE that on December 4, 2026, at 9:00 a.m., or as soon thereafter as this motion may be heard in the above-entitled Court, located at 400 McAllister St. San Francisco, CA 94102, Civic Center Courthouse, Courtroom 302, Defendant Jews for Jesus will and hereby does move this Court for an order striking the claim for punitive damages included in the Complaint, filed on December 24, 2024.

This motion is made pursuant to Code Civ. Proc. §§ 425.14 and 435–437 on the grounds that (1) Defendant Jews for Jesus is a religious corporation, and thus Section 425.14 bars the inclusion of claims for punitive damages against a religious corporation without leave of the court; (2) the Complaint fails to plead a prima facie claim for punitive damages under Civil Code section 3294, including both the failure to plead ultimate facts of malice, oppression, or fraud under subdivision (a) and the failure to plead the required corporate-employer liability under subdivision (b) (advance knowledge, authorization, ratification, or personal culpability of an officer, director, or managing agent); (3) the Complaint fails to plead actual malice, which it is required to plead because the allegedly defamatory statements involve a matter of public concern—humanitarian and religious outreach during the Israel-Hamas war; and (4) the Complaint improperly states an amount for punitive damages, in violation of Cal. Civ. Code § 3295, subdivision (e).

1. The allegation in Paragraph 22 that “Defendant acted with malice as it knew Plaintiff was not associated with Defendant and did not support its views, but on information and belief still intentionally published the false post on their social media pages to disgrace, defame, and injure Plaintiff.” (Complaint, p. 5, lines 20–23.)
2. The phrase “in addition to punitive damages for their willful, malicious, and oppressive conduct” in the last sentence of Paragraph 23. (Complaint, p. 5, lines 26–28.)
3. The phrase “in addition to punitive damages for their willful, malicious, and oppressive conduct” in the last sentence of Paragraph 27. (Complaint, p. 6, lines 19–21.)

4. The entire demand for “punitive and exemplary damages of at least \$5,000,000” set forth in the Prayer for Relief as Item D. (Complaint, p. 8, lines 9–10.)

This Motion is based on this Notice, the accompanying Memorandum of Points and Authorities, the Declaration of Horatio Mihet, and all pleadings and papers on file in this matter, and on such other materials and evidence as may be presented to the Court.

Dated: October 14, 2026

Respectfully submitted,

/s/ Horatio G. Mihet

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INTRODUCTION

Defendant Jews for Jesus moves under Code of Civil Procedure sections 435 and 436 to strike Plaintiff Ariel Amitay’s claim for punitive damages.

This is a defamation and related-torts action arising from social-media posts published by Jews for Jesus in late December 2023. The posts featured a publicly available stock photograph of an unidentified Israeli soldier, paired with a quote attributed to a pseudonymous “Nachman,” thanking the ministry for a copy of the New Testament. Plaintiff, a rabbi in Israel, alleges that the photograph depicts him, that the posts created a false impression that he supports Jews for Jesus, and that the posts caused him to lose his teaching position at his religious employer and to suffer “shame and embarrassment.” He seeks compensatory damages and, in addition, “punitive and exemplary damages of at least \$5,000,000.”

The claim for punitive damages is barred on four independent grounds and should be stricken. *First*, Code of Civil Procedure section 425.14 imposes a categorical prohibition: no claim for punitive or exemplary damages against a religious corporation may be included in a complaint unless the court has first entered an order authorizing an amended pleading that includes such a claim. (Code Civ. Proc., § 425.14.) Plaintiff himself alleges that Jews for Jesus “is a nonprofit religious corporation with its base of operations in San Francisco, California.” (Complaint [“Compl.”], ¶ 10.) He never filed a motion for leave under section 425.14, and no order permitting a punitive-damages claim has been entered. The claim therefore appears in the Complaint in direct violation of the statute and must be stricken.

Second, even if section 425.14 did not apply, the Complaint fails to plead a prima facie claim for punitive damages under Civil Code section 3294. (Civ. Code, § 3294.) A plaintiff must allege specific facts showing malice, oppression, or fraud under subdivision (a). The Complaint offers only conclusory labels—“malice,” “willful, malicious, and oppressive conduct”—without the required factual foundation. The concrete allegations describe ordinary editorial decisions: selecting a free stock photograph from Unsplash, cropping it, blurring the subject’s face, and attributing a quote to a “Nachman” (not to Amitay) in a year-end fundraising appeal about the distribution of religious literature. Those allegations, even accepted as true, do not establish an intent to injure Plaintiff,

1 despicable conduct undertaken with a willful and conscious disregard of his rights, cruel and unjust
2 hardship, or intentional misrepresentation or concealment. At most, they may suggest negligence,
3 which cannot support punitive damages. Moreover, the exhibits attached to the Complaint control
4 over the inconsistent allegations of intent and affirmatively show that Jews for Jesus took steps to
5 obscure the identity of the person depicted and referred to someone other than Plaintiff. Finally,
6 because Jews for Jesus is a corporation, Civil Code section 3294, subdivision (b), requires that any
7 oppression, fraud, or malice be committed, authorized, or ratified by an officer, director, or managing
8 agent, or that such a person had advance knowledge of an employee's unfitness. The Complaint
9 contains no such allegations.

10 *Third*, because the allegedly defamatory statements involve a matter of public concern—
11 humanitarian and religious outreach to Israelis during the Israel-Hamas war—even a private-figure
12 plaintiff must prove actual malice to recover punitive damages. (*Khawar v. Globe Intern., Inc.* (1998)
13 19 Cal.4th 254, 274.) The Complaint fails to plead actual malice. Its conclusory assertions of “malice”
14 and “reckless disregard” are insufficient, and the concrete allegations and exhibits affirmatively show
15 that Jews for Jesus took steps to anonymize the subject of the stock photograph and to attribute the
16 accompanying quotation to a pseudonym, negating any inference that the ministry knew the posts
17 were false or subjectively entertained serious doubts as to their truth. Again, the allegations at most
18 suggest negligence, which cannot establish actual malice.

19 *Fourth*, the Prayer for Relief independently violates Civil Code section 3295, subdivision (e),
20 which provides that “[n]o claim for exemplary damages shall state an amount or amounts.” (Civ.
21 Code, § 3295, subd. (e).) By demanding “punitive and exemplary damages of at least \$5,000,000,”
22 the Complaint directly contravenes the statute.

23 For each of these independent reasons, the Court should grant the motion and strike the
24 following matters:

- 25 1. The allegation in Paragraph 22 that “Defendant acted with malice as it knew Plaintiff was not
26 associated with Defendant and did not support its views, but on information and belief still
27 intentionally published the false post on their social media pages to disgrace, defame, and
28 injure Plaintiff.” (Compl., p. 5, lines 20–23.)

- 1 2. The phrase “in addition to punitive damages for their willful, malicious, and oppressive
2 conduct” in the last sentence of Paragraph 23. (Compl., p. 5, lines 26–28.)
- 3 3. The phrase “in addition to punitive damages for their willful, malicious, and oppressive
4 conduct” in the last sentence of Paragraph 27. (Compl., p. 6, lines 19–21.)
- 5 4. The entire demand for “punitive and exemplary damages of at least \$5,000,000” set forth in
6 the Prayer for Relief as Item D. (Compl., p. 8, lines 9–10.)

7 STATEMENT OF THE CASE

8 The facts below are drawn from the Complaint and its exhibits. Jews for Jesus assumes their
9 truth for purposes of this motion only, as the Court must. (*Clauson v. Superior Court* (1998) 67
10 Cal.App.4th 1253, 1255.) It does not concede them for any other purpose.

11 Plaintiff Ariel Zvolon Amitay is a rabbi who lives in Tzfat, Israel. (Compl., ¶ 1.) Defendant
12 Jews for Jesus is a California corporation with its principal place of business in San Francisco. (*Id.*, ¶
13 2.) Plaintiff alleges that Jews for Jesus “is a nonprofit religious corporation with its base of operations
14 in San Francisco, California,” and that it “exist[s] to support you in exploring Jewish life with faith
15 in Jesus.” (*Id.*, ¶ 10.) He alleges that it maintains social-media accounts on Instagram, Facebook,
16 YouTube, and X. (*Id.*, ¶ 11.)

17 Plaintiff alleges that on or about December 30 and 31, 2023, Jews for Jesus published posts
18 on its Instagram and Facebook accounts that included a photograph he claims depicts him. Exhibit B
19 is a listing from the stock-photography website Unsplash. (Compl., Exh. B.) Although Plaintiff
20 alleges that “[t]he photo was taken by an unknown individual, who never obtained Amitay’s consent
21 to post or disseminate online,” (*id.*, ¶ 15), Exhibit B credits the photographer as Levi Meir Clancy
22 and describes the image only as “a man with a beard and a man with a hat,” with the additional caption
23 “Two Jewish men in Zefat, on Yom HaZikaron” (*id.*, Exh. B.). The listing shows a publication date
24 of May 5, 2022, reports tens of thousands of views and hundreds of downloads, and states that the
25 image is “[f]ree to use under the Unsplash License.” (*Ibid.*) The listing does not name either of the
26 persons depicted. (*Ibid.*)

27 Jews for Jesus’ posts pair the photograph, which blurred the face of the soldier, with a
28 quotation: “Thank you for leaving at my home a copy of the New Testament. I look forward to reading

1 it when I return home from the war.” (Compl., ¶ 14 & Exh. A.) The posts identify the speaker as
2 “Nachman, a young Haredi soldier.” (*Ibid.*) The accompanying text describes the difficulties of the
3 preceding year in Israel, states that God “keeps His promises,” thanks readers for their support, and
4 reports that the ministry was able to distribute copies of the New Testament to “Nachman and more
5 than 1,000 Israelis in 2023.” (*Ibid.*) The posts do not name Plaintiff or any other individual depicted
6 in the photograph. (*Ibid.*)

7 Plaintiff alleges that he is the person in the photograph. (Compl., ¶ 14.) He alleges that the
8 posts gave the appearance that he supported Jews for Jesus’ cause. (*Ibid.*) He alleges that Jews for
9 Jesus “knew or should have known from Amitay’s appearance in the photo that he did not support
10 JFJ’s views,” citing his long beard, black yarmulke, and what he describes as an army outfit. (*Id.*, ¶
11 16.) In the same paragraph, and solely on information and belief, he alleges that “JFJ’s intention was
12 to assert that someone as conservative as Amitay would still support them.” (*Ibid.*) Although the
13 Complaint alleges no fact as to how Jews for Jesus would know of him given that it downloaded the
14 image from Unsplash, Plaintiff alleges that Jews for Jesus “intentionally cropped the original photo
15 to zoom in on Amitay and exclude certain objects/elements (the Tefillin) which would inform viewers
16 he is not a JFJ supporter.” (*Id.*, ¶ 17.)

17 Plaintiff alleges that his employer saw the posts, questioned him, and terminated him, and that
18 the employer stated the termination was due to the posts. (Compl., ¶ 18.) He further alleges that he
19 has suffered shame, embarrassment, and depression, and that he has been unable to secure other
20 employment. (*Id.*, ¶ 19.)

21 Plaintiff filed this action on December 24, 2024, asserting four causes of action: defamation,
22 false light, intentional infliction of emotional distress, and negligent infliction of emotional distress.
23 (Compl., pp. 1, 5–8.) He has since voluntarily dismissed the intentional-infliction claim.

24 In the defamation count, Plaintiff alleges that “Defendant acted with malice as it knew Plaintiff
25 was not associated with Defendant and did not support its views, but on information and belief still
26 intentionally published the false post on their social media pages to disgrace, defame, and injure
27 Plaintiff.” (Compl., ¶ 22.) He then seeks compensatory damages “in addition to punitive damages for
28 their willful, malicious, and oppressive conduct.” (*Id.*, ¶ 23.)

1 In the false-light count, Plaintiff alleges that “[t]here is clear and convincing evidence that
2 Defendant knew the posts would create a false impression about Plaintiff, and/or Defendant acted
3 with reckless disregard for the truth,” and that even if Defendant did not know of the falsity, “it was
4 at the very least negligent.” (Compl., ¶ 26.) The count concludes with the same demand for “punitive
5 damages for their willful, malicious, and oppressive conduct.” (*Id.*, ¶ 27.)

6 The surviving negligence count alleges that Jews for Jesus “knew or should have known that
7 Plaintiff would suffer emotional distress” (Compl., ¶ 36) and seeks only actual and compensatory
8 damages (*id.*, ¶ 39).

9 The Prayer demands “punitive and exemplary damages of at least \$5,000,000.” (Complaint,
10 Prayer, ¶ D.) It does not allocate that demand among the causes of action.

11 Plaintiff never moved for leave to plead a claim for punitive damages against Jews for Jesus
12 under Code of Civil Procedure section 425.14, and no order permitting such a claim has been entered.

13 LEGAL STANDARD

14 The court may, upon a motion or at any time in its discretion, and upon terms it deems proper,
15 strike improper matters contained in a pleading that do not conform to California law, including
16 improper allegations of punitive damages. (Code Civ. Proc. §§ 435 and 436.) “In passing on the
17 correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to a motion
18 to strike as a whole, all parts in their context, and assume their truth.” (*Clauson v. Superior Court*
19 (1998) 67 Cal.App.4th 1253, 1255 (*Clauson*).)

20 ARGUMENT

21 **A. Defendant has not waived its Motion to Strike, which is properly before the Court and**
22 **timely under Code of Civil Procedure section 435, subdivision (b).**

23 As revealed in the parties’ pre-filing meet-and-confer, Plaintiff intends to argue that Jews for
24 Jesus waived its right to file a motion to strike by removing the action to federal court, filing an anti-
25 SLAPP motion, and appealing the denial of that motion. That argument is legally unsupportable for
26 four independent reasons.

27 First, the statutory framework explicitly authorizes this pre-answer motion to strike. Under
28 Code of Civil Procedure section 435, subdivision (b)(1), a party may serve and file a motion to strike

1 within the time allowed to respond to a complaint, and section 472a, subdivision (d), directs the court
2 to grant defendant leave to answer if the motion to strike is denied. (Code Civ. Proc., §§ 435, subd.
3 (b)(1), Code Civ. Proc., § 472a, subd. (d).) Jews for Jesus has not answered in either federal court or
4 this Court. Because Jews for Jesus brings this motion prior to answering, the motion is timely under
5 section 435, subdivision (b)(1).

6 Second, Jews for Jesus raised these pleading defects at its first available procedural
7 opportunity. Jews for Jesus has not answered, the parties have conducted no discovery, and no trial
8 date has been set. Jews for Jesus' prior anti-SLAPP motion addressed a fundamentally different
9 question: whether claims arising from constitutionally protected activity possessed minimal
10 evidentiary merit. (Code Civ. Proc., § 425.16, subd. (b)(1).) Whether a punitive damages claim is
11 statutorily prohibited on the face of the pleading is an entirely separate threshold issue governed by
12 Code of Civil Procedure sections 435 and 436, which Jews for Jesus invoked at its first opportunity
13 to challenge the form of the pleading. In any event, a complaint that fails to state facts sufficient to
14 support punitive damages under Civil Code section 3294, fails to allege malice, oppression, or fraud
15 as defined by that statute, or impermissibly states a specific dollar amount in violation of Civil Code
16 section 3295, subdivision (e), is defective on its face whenever the defect is called to the Court's
17 attention.

18 Third, the timing of this motion directly follows from the statutory stay. When Jews for Jesus
19 appealed the denial of its anti-SLAPP motion, section 916, subdivision (a), automatically stayed all
20 further trial court proceedings upon the order appealed from or matters embraced therein. (Code Civ.
21 Proc., § 916, subd. (a); *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 186, 189, 191–
22 193.) Because an appeal from the denial of an anti-SLAPP motion divests the trial court of jurisdiction
23 over matters going to the merits of the affected causes of action, this Court lacked jurisdiction to hear
24 or rule on a motion to strike while the appeal was pending; indeed, any trial court judgment or order
25 entered in violation of the stay is void for want of subject-matter jurisdiction. (*Varian, supra*, 35
26 Cal.4th at p. 196.) Following the Court of Appeal's issuance of the remittitur on September 23, 2026,
27 jurisdiction re-vested in this Court. Jews for Jesus promptly met and conferred in good faith with
28

1 Plaintiff's counsel pursuant to Code of Civil Procedure section 435.5 and timely filed this motion.
2 Jews for Jesus could not have filed this motion any earlier.

3 Fourth, even setting aside timeliness under Code of Civil Procedure section 435, subdivision
4 (b), section 436, subdivision (b), grants the Court inherent authority to strike all or part of any pleading
5 "not drawn or filed in conformity with the laws of this state" "at any time in its discretion." (Code
6 Civ. Proc., § 436, subd. (b), emphasis added.) Exercising that discretion is particularly appropriate
7 here because Plaintiff's punitive damages demand violates two express California statutes on its face.
8 First, Code of Civil Procedure section 425.14 bars a claim for punitive damages against a religious
9 corporation unless the court first enters an order allowing an amended pleading—a determination the
10 court may make only upon supporting and opposing affidavits demonstrating that the plaintiff has
11 established evidence substantiating a probability of meeting the clear and convincing standard of
12 proof under Civil Code section 3294. Second, Civil Code section 3295, subdivision (e), strictly
13 prohibits stating a specific dollar amount for punitive damages in the pleading. Striking the
14 unauthorized demand causes no prejudice to Plaintiff, as section 425.14 provides the precise statutory
15 mechanism he must follow if he seeks to make the required evidentiary showing. Furthermore,
16 resolving this threshold pleading defect now avoids the substantial waste of judicial resources
17 involved in conducting discovery and preparing for trial on a claim the Legislature has explicitly
18 restricted. Accordingly, Jews for Jesus has not waived its objections, the motion is timely, and the
19 Court should reach the merits.

20 **B. Code of Civil Procedure Section 425.14 bars Amitay from pleading a claim for punitive**
21 **damages against Jews for Jesus, a religious corporation.**

22 The Court should strike Plaintiff's claim for punitive damages because Code of Civil
23 Procedure section 425.14 prohibits pleading such a claim against a **religious corporation** absent a
24 prior court order. Section 425.14 provides that "[n]o claim for punitive or exemplary damages against
25 a religious corporation or religious corporation sole shall be included in a complaint or other pleading
26 unless the court enters an order allowing an amended pleading that includes a claim for punitive or
27 exemplary damages to be filed." (Code Civ. Proc., § 425.14.) Section 425.14 "was intended to provide
28

1 to religious institutions a pretrial mechanism to eliminate unsubstantiated punitive damage claims.”
2 (*Little Co. of Mary Hospital v. Superior Court* (2008) 162 Cal.App.4th 261, 268.)

3 Here, Paragraph 10 alleges that “JFJ is a **nonprofit religious corporation** with its base of
4 operations in San Francisco, California.” (Compl., ¶ 10, emphasis added.) That allegation is assumed
5 true. (*Clauson, supra*, 67 Cal.App.4th 1253, 1255.) Plaintiff filed no motion for leave to plead
6 punitive damages, and no order permits the claim. The claim nonetheless appears in Prayer paragraph
7 D and in the averments at paragraphs 22, 23, and 27. (Compl., ¶¶ 22, 23, 27 & Prayer, ¶ D.) That
8 matter is improper under section 436, subdivision (a), and was not filed in conformity with California
9 law under subdivision (b). (Code Civ. Proc., § 436, subds. (a), (b).)

10 Nor would amendment be the proper remedy under section 425.14. The statute requires a
11 noticed motion supported by affidavits and resolved by a judicial finding. (Code Civ. Proc., § 425.14.)
12 Repleading the claim with additional detail is insufficient. In short, section 425.14 bars the inclusion
13 of a punitive damages claim, and Plaintiff did not obtain an order that would have permitted it. The
14 Court should strike Prayer paragraph D and the punitive damages averments in paragraphs 22, 23,
15 and 27, without leave to amend.

16 **C. The Complaint fails to plead a prima facie claim for punitive damages under Civil Code**
17 **section 3294.**

18 Even if Section 425.14 did not bar Amitay’s punitive damages claim, the claim is
19 independently defective under Civil Code section 3294. “[T]o state a prima facie claim for punitive
20 damages, a complaint must set forth the elements as stated in the general punitive damage statute,
21 Civil Code section 3294.” (*Turman v. Turning Point of Central California, Inc.* (2010) 191
22 Cal.App.4th 53, 63.) Section 3294, subdivision (a) provides: “In an action for the breach of an
23 obligation not arising from contract, where it is proven by clear and convincing evidence that the
24 defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual
25 damages, may recover damages for the sake of example and by way of punishing the defendant.”
26 (Civ. Code, § 3294, subd. (a).)

27 Malice means “conduct which is intended by the defendant to cause injury to the plaintiff or
28 despicable conduct which is carried on by the defendant with a willful and conscious disregard of the

1 rights or safety of others.” (Civ. Code, § 3294, subd. (c)(1).) Oppression means “despicable conduct
2 that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” (*Id.*,
3 subd. (c)(2).) Fraud means “an intentional misrepresentation, deceit, or concealment of a material fact
4 known to the defendant with the intention on the part of the defendant of thereby depriving a person
5 of property or legal rights or otherwise causing injury.” (*Id.*, subd. (c)(3).) A complaint must “include
6 *specific* factual allegations showing that defendant’s conduct was oppressive, fraudulent, or
7 malicious.” (*Today’s IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022)
8 83 Cal.App.5th 1137, 1193, emphasis added.) “Punitive damages may not be pleaded generally.”
9 (*Ibid.*)

10 The Complaint fails to sufficiently plead malice. Critically, Plaintiff may not rely on
11 conclusory allegations of “malice,” “intent to injure,” or “willful and conscious disregard.” The
12 complaint must plead *specific facts* showing either an intent to cause injury to the particular plaintiff
13 or despicable conduct undertaken with a willful and conscious disregard of his rights. (*College*
14 *Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725–726 (*College Hospital*); *American Airlines,*
15 *Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050–1051.) Here, the
16 Complaint’s sole allegation of malice is the formulaic assertion that Jews for Jesus “acted with malice
17 as it knew Plaintiff was not associated with Defendant and did not support its views, but on
18 information and belief still intentionally published the false post on their social media pages to
19 disgrace, defame, and injure Plaintiff.” (Complaint, ¶ 22.) Identical boilerplate appears in the
20 remaining causes of action. (*Id.*, ¶¶ 23, 27.) These are speculative conclusions, not facts.

21 The concrete allegations in the Complaint do not fill the gap. Plaintiff alleges that Jews for
22 Jesus selected a photograph of a person in military attire wearing a long beard and black yarmulke,
23 cropped it to exclude tefillin, **blurred the face**, and paired it with a quote attributed to a
24 pseudonymous “Nachman” (**not Plaintiff Amitay**) thanking the ministry for a copy of the New
25 Testament. (Compl., ¶¶ 14–17 & Exhs. A, B.) Plaintiff further alleges that Jews for Jesus “knew or
26 should have known from Amitay’s appearance” that the person depicted would not support the
27 ministry’s views, and that the ministry’s “intention was to assert that someone as conservative as
28 Amitay would still support them.” (*Id.*, ¶ 16.)

1 Even accepted as true, these allegations describe ordinary editorial decisions made in the
2 course of a year-end fundraising appeal about the distribution of religious literature. They do not
3 allege that Jews for Jesus knew Plaintiff's identity, sought him out, or intended to injure him.
4 "[A]bsent an intent to injure the plaintiff, 'malice' requires more than a 'willful and conscious'
5 disregard of the plaintiffs' interests. The additional component of "despicable conduct" must be
6 found." (*College Hospital, supra*, 8 Cal.4th 704, 725.) Allegations of knowledge that a stock
7 photograph depicts a person whose appearance is consistent with Orthodox Judaism is not the same
8 as an intent to cause injury to that particular individual. Nor does it constitute despicable conduct
9 carried on with a willful and conscious disregard of his rights. *At most*, the allegations might suggest
10 negligence or a failure to investigate (although that is by no means conceded)—but "mere negligence,
11 which—even if gross, or reckless—cannot justify punitive damages." (*Krusi v. Bear, Stearns & Co.*
12 (1983) 144 Cal.App.3d 664, 679; *Nolin v. National Convenience Stores, Inc.* (1979) 95 Cal.App.3d
13 279, 285–286 ["It has long been the rule that conduct classified only as unintentional carelessness,
14 while it may constitute negligence or even gross negligence, will not support an award of punitive
15 damages."].)

16 To withstand a motion to strike punitive damages, a plaintiff must plead "the ultimate facts
17 showing an entitlement to such relief." (*Clauson, supra*, 67 Cal.App.4th at p. 1255.) Because the
18 Complaint contains no specific facts demonstrating either an intent to injure Plaintiff or despicable
19 conduct undertaken with a willful and conscious disregard of his rights, it fails to plead malice as a
20 matter of law. The claim for punitive damages therefore should be stricken.

21 Plaintiff likewise fails to sufficiently plead oppression. The Complaint contains only
22 boilerplate assertions that Jews for Jesus engaged in "willful, malicious, and oppressive conduct."
23 (Compl., ¶¶ 23, 27.) It alleges no facts showing that the ministry subjected Plaintiff to "cruel and
24 unjust hardship" through despicable conduct undertaken in conscious disregard of his rights. The
25 concrete allegations describe the selection, cropping, and blurring of a publicly available stock
26 photograph, paired with a quote attributed to a pseudonymous "Nachman," in a year-end social-media
27 appeal about the distribution of religious literature. (*Id.*, ¶¶ 14–17 & Exhs. A, B.) Even if those acts
28 created a false impression of association with Jews for Jesus, they constitute ordinary editorial

1 decisions, not despicable conduct that subjects a person to cruel and unjust hardship. **There is no**
2 **allegation that Jews for Jesus knew Plaintiff's identity, targeted him, or acted with a conscious**
3 **disregard of rights rising to the level of oppression.**

4 The Complaint also fails to sufficiently plead fraud. Specific factual allegations of intentional
5 misrepresentation or concealment, made with the requisite intent, are required; general assertions of
6 "fraudulent" or "deceptive" conduct do not suffice. (*College Hospital, supra*, 8 Cal.4th at pp. 725–
7 726.) The Complaint contains no such allegations. It does not plead that Jews for Jesus made any
8 intentional misrepresentation or concealment of a material fact to Plaintiff, or to anyone else, with the
9 intention of depriving him of property or legal rights. Instead, it alleges that the ministry published a
10 cropped and blurred stock photograph accompanied by a quote attributed to "Nachman," and that it
11 "knew or should have known" from the subject's appearance that he would not support the ministry's
12 views. (Compl., ¶¶ 14–17.) These allegations describe, at most, an allegedly false implication arising
13 from an editorial decision (which is by no means conceded). They do not identify any intentional
14 misrepresentation or concealment directed at Plaintiff, nor any intent to deprive him of property or
15 legal rights. The Complaint's references to "intentionally, falsely, and deceptively showing" an
16 association (*Id.*, ¶ 16) remain conclusory and do not supply the specific facts required under section
17 3294, subd. (c)(3).

18 In any event, Plaintiff's own allegations and exhibits negate his allegations of intent. The
19 Court reads the pleading "as a whole, all parts in their context." (*Clauson, supra*, 67 Cal.App.4th at
20 p. 1255.) Where an exhibit contradicts an allegation, the exhibit controls. (*Jimenez v. Mrs. Gooch's*
21 *Natural Food Markets, Inc.* (2023) 95 Cal.App.5th 645, 653.) Here, the exhibits attached to the
22 Complaint themselves refute any claim of malice. **Exhibit A** consists of the social-media posts at
23 issue. Those posts feature a **deliberately blurred photograph** of a person in military attire and
24 attribute the accompanying quote to a pseudonymous "Nachman," described as "a young Haredi
25 soldier." The posts contain **no name, no identifying details, and no statement that the individual**
26 **depicted is Plaintiff** or endorses Jews for Jesus. **Exhibit B**, the original uncropped photograph,
27 confirms that Jews for Jesus downloaded the image from Unsplash, in the same way that hundreds of
28 others downloaded it.

1 Far from evidencing an intent to injure Plaintiff or a willful and conscious disregard of his
2 rights, the Exhibits demonstrate ordinary editorial practices: selection of a publicly available stock
3 image, cropping for visual focus, blurring to anonymize the subject, and attribution of the quote to
4 “Nachman,” not Plaintiff. These exhibits directly negate the Complaint’s conclusory allegations that
5 Jews for Jesus “knew Plaintiff was not associated with Defendant” and “intentionally published the
6 false post on their social media pages to disgrace, defame, and injure Plaintiff.” (Compl., ¶ 22.) The
7 posts themselves show that the ministry took affirmative steps to obscure the person’s identity and
8 attribute the statement to someone else—Nachman—**not Plaintiff**. No reasonable reading of the
9 Exhibits supports an inference of intent to cause injury to Plaintiff or despicable conduct carried on
10 with a willful and conscious disregard of his rights. Because the Exhibits control over the inconsistent
11 allegations of malice, the Complaint fails as a matter of law to plead the malice required for punitive
12 damages under Civil Code section 3294.

13 In sum, the Complaint fails to plead any of the three statutory predicates for punitive damages
14 under Civil Code section 3294, subdivision (a). It offers only conclusory assertions of malice,
15 oppression, and fraud, unsupported by specific facts showing an intent to injure Plaintiff, despicable
16 conduct undertaken with a willful and conscious disregard of his rights, cruel and unjust hardship, or
17 intentional misrepresentation or concealment directed at him. The concrete allegations describe
18 ordinary editorial decisions—selecting, cropping, and blurring a publicly available stock photograph
19 and attributing a quote to a pseudonym—in the course of a year-end fundraising appeal. Those
20 allegations, even accepted as true, rise at most to negligence and fall far short of the clear and
21 convincing standard required by section 3294. Moreover, the exhibits attached to the Complaint
22 control over the inconsistent allegations of intent and affirmatively demonstrate that Jews for Jesus
23 took steps to obscure the identity of the person in the photograph. Because the Complaint fails as a
24 matter of law to plead malice, oppression, or fraud under subdivision (a), the claim for punitive
25 damages should be stricken.

26 Independently, the claim also fails under Civil Code section 3294, subdivision (b). Jews for
27 Jesus is a corporation. (Compl., ¶ 10.) A corporate employer “shall not be liable for [punitive]
28 damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the

1 employer had advance knowledge of the unfitness of the employee and employed him or her with a
2 conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for
3 which the damages are awarded or was personally guilty of oppression, fraud, or malice.” (Civ. Code,
4 § 3294, subd. (b).) “With respect to a corporate employer, the advance knowledge and conscious
5 disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an
6 officer, director, or managing agent of the corporation.” (*Ibid.*; *White v. Ultramar, Inc.* (1999) 21
7 Cal.4th 563, 577 [“[T]o demonstrate that an employee is a true managing agent under section 3294,
8 subdivision (b), a plaintiff seeking punitive damages would have to show that the employee exercised
9 substantial discretionary authority over significant aspects of a corporation’s business.”].)

10 Here, the Complaint attributes the challenged social-media posts to the corporate defendant
11 but does not identify any individual who created or published them, much less allege that any officer,
12 director, or managing agent of Jews for Jesus authorized or ratified the posts, was personally guilty
13 of the claimed malice, oppression, or fraud, or had advance knowledge of any employee’s alleged
14 unfitness. Because a corporation can act only through its agents and employees, the absence of any
15 section 3294(b) allegations is fatal. Even if the Complaint had adequately pleaded the elements of
16 subdivision (a) (which it did not), the complete failure to plead the corporate-level culpability required
17 by subdivision (b) independently requires that the punitive-damages claim be stricken.

18 **D. Because the speech involves a matter of public concern, Plaintiff must plead and prove**
19 **actual malice to recover punitive damages.**

20 Even if section 425.14 did not bar the claim and even if the Complaint adequately pleaded the
21 statutory elements of malice, oppression, or fraud under Civil Code section 3294, the claim for
22 punitive damages would still fail for an independent, constitutional reason: the speech at issue
23 involves a matter of public concern, and Plaintiff therefore must plead and prove actual malice.

24 When a defamation claim involves a matter of public concern, even a private-figure plaintiff
25 must prove actual malice to recover punitive damages (or presumed damages). (*Khawar v. Globe*
26 *Intern., Inc.* (1998) 19 Cal.4th 254, 274 (*Khawar*); *Dun & Bradstreet, Inc. v. Greenmoss Builders,*
27 *Inc.* (1985) 472 U.S. 749, 761 (plur. opn. of Powell, J.); *Gertz v. Robert Welch, Inc.* (1974) 418 U.S.
28 323, 349.) The California Supreme Court has expressly adopted this rule: “to recover such damages,

1 even a private figure plaintiff must prove actual malice if the defamatory statement involves matters
2 of public concern.” (*Khawar, supra*, 19 Cal.4th at p. 274.)

3 The social-media posts at issue concern the distribution of religious literature and
4 humanitarian outreach to Israelis during the Israel-Hamas war—a matter of intense public concern
5 involving international armed conflict, religious liberty, and charitable activity. The posts themselves
6 describe that “This year, there have been unimaginable atrocities committed against the people of
7 Israel. Over one thousand Israelis were murdered, with thousands more injured and many
8 communities decimated. The needs are overwhelming.” (Compl., ¶ 14 & Exh. A.) Speech addressing
9 wartime conditions in Israel, the spiritual and material needs of soldiers and civilians, and a religious
10 organization’s responsive activities is quintessentially a matter of public concern.

11 In this context, actual malice means that the defamatory statement was made “with knowledge
12 that it was false or with reckless disregard of whether it was false or not.” (*New York Times Co. v.*
13 *Sullivan* (1964) 376 U.S. 254, 280; *Khawar, supra*, 19 Cal.4th at p. 275.) Reckless disregard, in turn,
14 means that the publisher “in fact entertained serious doubts as to the truth of his publication.” (*St.*
15 *Amant v. Thompson* (1968) 390 U.S. 727, 731; *Khawar*, at p. 275.) To prove actual malice, a plaintiff
16 must “demonstrate with clear and convincing evidence that the defendant realized that his statement
17 was false or that he subjectively entertained serious doubts as to the truth of his statement.” (*Bose*
18 *Corp. v. Consumers Union of U.S., Inc.* (1984) 466 U.S. 485, 511, fn. 30; *Khawar*, at pp. 275–276.)
19 Actual malice is judged by a subjective standard; “there must be sufficient evidence to permit the
20 conclusion that the defendant ... had a ‘high degree of awareness of ... probable falsity.’” (*Harte-*
21 *Hanks Communications, Inc. v. Connaughton* (1989) 491 U.S. 657, 688; *Khawar*, at p. 276.)

22 Importantly, “failure to investigate before publishing, even when a reasonably prudent person
23 would have done so, is not sufficient” to establish actual malice. (*Harte-Hanks, supra*, 491 U.S. at p.
24 688; *Khawar, supra*, 19 Cal.4th at p. 276.) Thus, mere negligence—or even gross or reckless
25 negligence—cannot support a finding of actual malice or an award of punitive damages. (*Khawar*, at
26 p. 276.)

27 The Complaint falls far short of pleading actual malice. Its allegations of “malice” and
28 “reckless disregard for the truth” are purely conclusory. (Compl., ¶¶ 22, 26.) It does not allege that

1 Jews for Jesus knew the posts were false or that the ministry subjectively entertained serious doubts
2 as to their truth. On the contrary, the concrete factual allegations and the exhibits attached to the
3 Complaint affirmatively negate any such state of mind. The ministry selected a free stock photograph
4 from Unsplash that did not identify any individual by name, deliberately cropped and **blurred the**
5 **subject’s face**, and attributed the accompanying quotation to a pseudonymous “Nachman,” described
6 only as “a young Haredi soldier,” **not to Plaintiff**. (*Id.*, ¶¶ 14–17; Exhs. A & B.) These editorial
7 choices demonstrate an intent to avoid identifying any particular person and to attribute the statement
8 to someone other than Plaintiff—the opposite of a reckless disregard of truth.

9 At most, the allegations suggest that Jews for Jesus “knew or should have known from
10 Amitay’s appearance” that the person depicted would not support the ministry’s views, or that the
11 ministry should have investigated further (although none of these claims are conceded). (Compl., ¶
12 16.) Those are classic allegations of negligence. They do not plead, and cannot establish, the
13 subjective awareness of probable falsity required for actual malice. (*Khawar, supra*, 19 Cal.4th at p.
14 276.) Because Plaintiff seeks punitive damages arising from speech on a matter of public concern, he
15 was required to plead actual malice with the requisite specificity. He did not. The claim for punitive
16 damages must therefore be stricken on this independent ground as well.

17 **E. The Complaint improperly states an amount for punitive damages.**

18 Civil Code section 3295 provides that “[n]o claim for exemplary damages shall state an
19 amount or amounts.” (Civ. Code, § 3295, subd. (e).) The prohibition is mandatory: “under Civil Code
20 section 3295, subdivision (e), a complaint may not state the amount of punitive damages sought.”
21 (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 398.) Plaintiff’s Prayer for Relief
22 violates this clear statutory command. Item D of the Prayer demands “punitive and exemplary
23 damages of at least \$5,000,000.” (Compl., p. 8, lines 9–10.) By specifying a numerical amount of
24 punitive damages, the Complaint directly contravenes section 3295, subd. (e).

25 The improper allegation of amount is subject to being stricken. The Court should therefore
26 strike all of Prayer ¶ D or, in the alternative, “of at least \$5,000,000.”

27 **CONCLUSION**

28 For the foregoing reasons, the Court should grant Defendant’s Motion to Strike.

1 Dated: October 14, 2026

Respectfully submitted,

2 /s/ Horatio G. Mihet

3 Horatio G. Mihet*

4 Daniel J. Piedra**

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13 ** *Pro hac vice* application pending

14 *Attorneys for Defendant Jews for Jesus*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

ARIEL ZVOLON AMITAY,

Plaintiff,

v.

JEWS FOR JESUS, et al.,

Defendants.

Case No.: CGC-24-620902

**DECLARATION OF HORATIO G. MIHET
IN SUPPORT OF DEFENDANT JEWS FOR JESUS'
MOTION TO STRIKE PUNITIVE DAMAGES**

I, HORATIO G. MIHET, declare as follows:

1. I am an attorney licensed to practice law in the State of Florida and have been admitted *pro hac vice* in this action. I am Vice President of Legal Affairs and Chief Litigation Counsel for Liberty Counsel, and I serve as counsel of record for Defendant Jews for Jesus ("Defendant" or "JFJ") in this matter, together with co-counsel. I have personal knowledge of the facts set forth in this Declaration, except as to those matters stated on information and belief, and as to those matters I believe them to be true. If called as a witness, I could and would competently testify thereto.

2. I submit this Declaration in support of Defendant Jews for Jesus' Motion to Strike Punitive Damages, filed concurrently herewith, and specifically to demonstrate compliance with the meet-and-confer requirements of California Code of Civil Procedure section 435.5.

3. Before filing the Motion to Strike Punitive Damages, I met and conferred with counsel for Plaintiff Ariel Zvolon Amitay in a good-faith effort to resolve the objections to be raised in the motion, as required by Code of Civil Procedure section 435.5, subdivision (a).

4. On September 29, 2026, at approximately 2:00 p.m. PST, I participated in a meet-and-confer conference with Mr. Raffi Kassabian, Esq., counsel for Plaintiff, by telephone conference. The conference lasted approximately fifteen (15) minutes.

1 5. Leading up to the conference, I sent an email to Mr. Kassabian, identifying the
2 following specific grounds for Defendant’s Motion to Strike Punitive Damages:

3 (a) That Code of Civil Procedure section 425.14 bars Plaintiff from including a claim
4 for punitive or exemplary damages against Jews for Jesus, a religious corporation,
5 without a prior court order authorizing an amended pleading that includes such a
6 claim, and that no such motion or order has been obtained;

7 (b) That the Complaint fails to plead ultimate facts showing that Defendant acted with
8 malice, oppression, or fraud as required by Civil Code section 3294, and instead
9 relies on conclusory labels;

10 (c) That because the allegedly defamatory statements involve a matter of public
11 concern—humanitarian and religious outreach during the Israel-Hamas war—
12 Plaintiff must plead and prove actual malice to recover punitive damages under
13 *Khawar v. Globe Intern., Inc.* (1998) 19 Cal.4th 254, and the Complaint fails to do
14 so; and

15 (d) That the Prayer for Relief improperly states a specific amount (“at least
16 \$5,000,000”) for punitive and exemplary damages, in violation of Civil Code
17 section 3295, subdivision (e).

18 6. During the conference, we discussed the foregoing grounds in detail, and I requested
19 that Plaintiff voluntarily withdraw or strike the punitive damages allegations (Complaint ¶¶ 22, 23,
20 27) and the demand for a specific dollar amount of punitive damages (Prayer ¶ D) from the Complaint.

21 7. Despite good-faith efforts to resolve the objections through the meet-and-confer
22 process, counsel for Plaintiff and I were unable to reach an agreement that would resolve all the issues
23 raised in the Motion to Strike.

24 8. Therefore, Plaintiff has not agreed to resolve the issues raised in the Motion to Strike,
25 and instead indicated that he will oppose the Motion and move to seek leave to plead punitive
26 damages.

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

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Executed in Orlando, Florida.

Respectfully submitted,

/s/ Horatio G. Mihet

Horatio G. Mihet

Counsel for Defendant

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