

Angel R. Sevilla (State Bar No. 239072)
Jessica C. Shafer (State Bar No. 297856)
Julianna Bramwell (State Bar No. 339794)
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, California 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
E-mail: Angel.Sevilla@jacksonlewis.com
E-mail: Jessica.Shafer@jacksonlewis.com
E-mail: Julianna.Bramwell@jacksonlewis.com

Attorneys for Defendant
CALIFORNIA COLLEGE OF THE ARTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAREN FISS,

Plaintiff,

v.

CALIFORNIA COLLEGE OF THE ARTS,

Defendant.

Case No. 4:24-cv-03415-HSG

**REPLY IN SUPPORT OF
DEFENDANT’S MOTION TO STRIKE
PREJUDICIAL STATEMENTS IN
PLAINTIFF’S OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS**

Federal Rules of Civil Procedure 12(f)

Date: January 9, 2025
Time: 2:00 p.m.
Ctrm.: 2 – 4th Floor
Judge: Hon. Haywood S. Gilliam, Jr.

Complaint: 6/6/24
1st Amended Complaint: 9/5/24
Trial Date: Not Set

I. INTRODUCTION

California College of the Arts (“Defendant” or “CCA”) filed a Motion to Strike (the “Motion”) four false, scandalous, and prejudicial statements about CCA, its faculty, and its students in Plaintiff Karen Fiss’ (“Plaintiff”) Opposition to CCA’s Motion to Dismiss Plaintiff’s First Amended Complaint (“FAC”). Specifically, Plaintiff characterized CCA’s “official orthodoxy,” as “publicly call[ing] for the murder of Jews in Israel” and accused CCA of “applauding the rape and murder of 1200 Israelis on October 7, 2023.” Plaintiff’s Opposition to Defendant’s Motion to Strike (the “Opposition” or “Opp.”) not only defends her use of these inflammatory statements, but also signals her intent to persist in making such assertions. Plaintiff’s latest accusation exemplifies this approach, as she claims CCA responded to the October 7, 2023 attack with “praise and applause” (Opp. at 6:18-19), allegedly due to its “insistence on maintaining its commitment to hatred of the Jewish state.” (Opp. At 8:27-9:1.)¹

These baseless allegations find no support in the plain language of the Instagram post, which contains no reference to hatred, violence, rape, or murder. In an attempt to defend these accusations, Plaintiff’s Opposition turns to the speculative and irrelevant declarations of Dr. Asaf Romirowsky and Jonathan Wornick, neither of which provides justification for Plaintiff’s egregious statements. Rule 12(f) provides a clear mechanism to strike such improper material, ensuring the case remains focused on legitimate legal questions. Striking these statements would have no impact on Plaintiff’s ability to adjudicate her claims against CCA, if the case is not dismissed. As such, the Court should grant CCA’s Motion.

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¹ To avoid duplicative motions, Defendant respectfully asks the Court to include these statements in this pending Motion to Strike or to strike this statement on its own under FRCP12(f)(1).

II. ARGUMENT

A. Plaintiff's Allegations Are Scandalous, Prejudicial, and Do Not Advance Her Title VII Claim.

1. Plaintiff Does Not Dispute that Her Allegations Are Scandalous and Prejudicial to CCA.

Plaintiff's Opposition incorrectly argues that her inflammatory allegations must be accepted as true. (Opp. at p. 4.) This conflates Rule 12(b)(6) with Rule 12(f). Under Rule 12(f), the Court has broad discretion to strike allegations that are scandalous, immaterial, or impertinent *regardless of their presumed truth*. See *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517 (1994). Courts routinely strike scandalous allegations under Rule 12(f) when their primary purpose is to inflame public opinion or unfairly prejudice the court. *Id.* Scandalous allegations include those that unfairly portray a party in a derogatory light without advancing the resolution of the dispute. See *Mireskandari v. Daily Mail & Gen. Tr. PLC.*, No. CV-12-02943 MMM (FFMx), 2013 U.S. Dist. LEXIS 194437, at *13 (C.D. Cal. July 13, 2013); see also *Shinde v. Nithyananda Found.*, No. 13-CV-0363 JGB SPX, 2013 U.S. Dist. LEXIS 70002, at *17-31 (C.D. Cal. May 10, 2013) (citing *Wilkerson v. Butler*, 229 F.R.D. 166, 170 (E.D. Cal. 2005), and *Talbot v. Robert Mathews Distrib. Co.*, 961 F.2d 654, 664 (7th Cir. 1992)).

Plaintiff's FAC and Opposition to Defendant's Motion to Dismiss (Dkt. No. 38) exemplify scandalous pleading.² The Instagram post in question, which states, "Decolonization is not a dinner party," contains no references to violence, rape, murder, or Hamas. Yet Plaintiff insists that Defendant "applauds" these atrocities, which allegations rest entirely on subjective and unsupported interpretations, untethered to the actual language of the post. These allegations are designed solely to cast Defendant in the most repugnant light possible, a fact that Plaintiff does not dispute. The Court should therefore strike them from the Complaint and Plaintiff's Opposition to Defendant's Motion to Dismiss.

² Defendant's Motion to Strike focused on statements made in Plaintiff's Opposition to Defendant's Motion to Dismiss, as well as scandalous statements made within Plaintiff's Complaint. (Motion to Strike ("Mot.") at p. 3.)

1 **2. Plaintiff's Allegations Do Not Advance Her Title VII Claim and Are**
 2 **Therefore Immaterial and Impertinent.**

3 Moreover, the challenged allegations do not advance Plaintiff's Title VII claim.
 4 In pleading her claims, Plaintiff must allege sufficient factual content to allow the Court to draw
 5 a reasonable inference of liability. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007);
 6 *see also Ashcroft v. Iqbal*, 556 U.S. 662 (2009). To state a plausible Title VII claim, Plaintiff
 7 must allege workplace conduct that is severe or pervasive enough to alter the conditions of her
 8 employment. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). The Instagram post,
 9 however, is not workplace-specific, does not reference Plaintiff or other employees, and fails to
 10 describe conduct that could plausibly support a hostile work environment claim. In an effort to
 11 meet this standard, Plaintiff grossly distorts the plain language of the Instagram post, rendering
 12 the challenged allegations both speculative and conclusory. Consequently, the allegations fail
 13 to meet the plausibility standard and to support her Title VII claim.

14 Because the challenged allegations lack a legitimate factual basis, they are both
 15 immaterial and impertinent to Plaintiff's claims. Their inclusion serves no purpose other than to
 16 prejudice Defendant and distract from the core legal issues. Therefore, they are properly subject
 17 to being stricken under Rule 12(f).

18 Plaintiff's reliance on *Kovalenko v. Kirkland & Ellis LLP*, No. 22-CV-05990-HSG,
 19 2023 U.S. Dist. LEXIS 148503 (N.D. Cal. Aug. 23, 2023) and *Guthey v. Cal. Dep't of Corr.*
 20 *And Rehab*, No. 1:10-cv-02177-OWW-GSA, 2011 U.S. Dist. LEXIS 33783 (E.D. Cal. Mar. 29,
 21 2011) is unpersuasive. In *Kovalenko*, the court allowed allegations describing patterns of
 22 gender-based discrimination, such as prioritizing male associates over female associates, to
 23 proceed because they directly supported a hostile work environment claim. In contrast, Plaintiff
 24 here does not allege a pattern of discriminatory behavior but instead misrepresents Defendant's
 25 verifiable words to depict Defendant in a negative light. Similarly, *Guthey* involved allegations
 26 that the defendant used racial slurs and took adverse actions motivated by race—clear factual
 27 claims supporting discriminatory intent. Unlike in *Guthey*, Plaintiff's allegations lack any
 28 factual basis linking the Instagram post to the extreme narrative she constructs.

1 Instead, she attempts to impose a meaning on the post that is neither explicit nor implicit,
 2 creating an inflammatory story designed to harm CCA. Such statements, which distort the
 3 record and prejudice Defendant, cannot meet the plausibility standard required at this stage and
 4 should be stricken.

5 **B. The Court Should Disregard the Declarations of Dr. Romirowsky and**
 6 **Jonathan Wornick.**

7 **1. The Declarations Are Procedurally Improper on a Motion to Strike.**

8 Plaintiff submits the Declarations of Dr. Asaf Romirowsky and Jonathan Wornick in an
 9 attempt to justify her scandalous allegations and statements. However, these declarations are
 10 inadmissible in the context of a Rule 12(f) motion to strike at the pleadings stage, which is
 11 confined to evaluating the sufficiency of the pleadings themselves—not extrinsic evidence.
 12 *See Fantasy, Inc., supra*, 984 F.2d at 1528 (9th Cir. 1993) (articulating that grounds for a
 13 motion to strike must be readily apparent from the face of the pleading or from materials that
 14 may be judicially noticed); *see also Gerritsen v. Warner Bros. Entm't Inc.*, 112 F. Supp. 3d
 15 1011, 1017 (C.D. Cal. 2015) (“In deciding a motion to dismiss, the court can consider only the
 16 pleadings and documents that are incorporated by reference therein or are properly the subject
 17 of judicial notice. Declarations can be used to bring materials that are properly considered to
 18 the attention of the court. Courts regularly decline to consider declarations and exhibits
 19 submitted in support of or opposition to a motion to dismiss, however, if they constitute
 20 evidence not referenced in the complaint or not a proper subject of judicial notice.”).

21 Plaintiff’s attempt to bolster her Complaint and Opposition to the Motion to Dismiss
 22 with extraneous materials undermines the well-established procedural rules governing motions
 23 to strike. The inclusion of a Petition to Modify Trust, attached to the Declaration of
 24 Jonathan Wornick, is particularly inappropriate. Nowhere in Plaintiff’s Complaint is this trust
 25 or its modification mentioned, nor is it relevant to Plaintiff’s claims. Mr. Wornick is not a party
 26 to this case, and his personal grievances bear no connection to the legal issues at hand.
 27 The inclusion of this extraneous material is not only irrelevant but appears to be a deliberate
 28 attempt to distract the Court from the core legal issues raised in Defendant’s Motion.

Given the improper nature of the submitted declarations, they should be disregarded in their entirety as beyond the permissible scope of the present Motion.

2. The Declarations Are Irrelevant and Disputed.

Even if the declarations were procedurally proper, their substantive points fail to support Plaintiff's claims and only highlight the speculative and irrelevant nature of her allegations. Neither Dr. Romirowsky's academic interpretation nor Mr. Wornick's personal grievances provide a factual basis for Plaintiff's assertions, and both declarations are riddled with deficiencies that undermine their credibility and relevance.

Dr. Romirowsky's interpretation of the term "decolonization" as inherently violent is drawn from academic theory and fails to address the actual content of the Instagram post. Even if "decolonization" could theoretically be interpreted as condoning violence, such a broad assertion does not support Plaintiff's extreme claim that CCA condoned the rape and murder of innocent civilians. Dr. Romirowsky's declaration fails to bridge the gap between his theoretical interpretation of the term "decolonization" and the specific allegations in the Complaint, rendering it unpersuasive.

Similarly, Mr. Wornick's declaration adds no substantive support to Plaintiff's claims. His focus on personal grievances and reactions as a donor to CCA is irrelevant to whether Plaintiff's allegations are scandalous or prejudicial. While Mr. Wornick expresses his disagreement with the Instagram post and shares his family's decision to withdraw financial support from CCA (which, contrary to Defendant's Opposition, CCA never claimed was a consequence of Plaintiff's inflammatory allegations), he does not provide any evidence to substantiate Plaintiff's claims that the post condoned the October 7 atrocities. His declaration is largely anecdotal and fails to connect his interpretations to the legal issues at hand. Moreover, his assertion that the San Mateo Superior Court "adopted" his views of CCA's actions is unsupported and misleading, as the court merely approved an unopposed trust amendment without reference to the Instagram post or any other information that this Court would accept as evidence.

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1 Plaintiff's attempt to use the Romirowsky and Wornick declarations to bolster her
 2 claims only underscores the speculative and unsupported nature of her allegations.
 3 The declarations fail to establish any connection between the Instagram post and the extreme
 4 claims of condoning violence made in the Complaint, rendering them unpersuasive and
 5 irrelevant. For these reasons, the substantive points raised in the declarations of
 6 Dr. Romirowsky and Mr. Wornick do not support Plaintiff's allegations and should not
 7 influence this Court's evaluation of Defendant's Motion.

8
 9 **C. Plaintiff Continues to Launch Scandalous and Prejudicial Accusations at**
 10 **Defendant, Which the Court Should Also Strike.**

11 Through her Opposition to this Motion, Plaintiff continues to plead scandalous and
 12 prejudicial accusations at Defendant which should be further stricken. Those statements include
 13 the following:

14 1. Opp. at pg. 1:20-21: "... Defendant's own Instagram post that openly celebrated
 15 after the October 7 Hamas massacre of Israeli civilians and argued that such actions were
 16 justified."

17 2. Opp. at pg. 6:18-19: "...the response to Hamas's attack on Israel on October 7th,
 18 2023 was praise and applause."

19 3. Opp. at pg. 7:4-6: "By trumpeting this phrase as a response to the events of
 20 October 7, 2023, CCA and those of its faculty, students, administrators and departments who
 21 'liked' that response, are stating explicitly that the atrocities committed by Hamas that day, in
 22 the course of which Hamas members and supports slaughtered 1200 human beings, were
 23 desirable, justified and praiseworthy events."

24 4. Opp. at pg. 8:27-9:1: "... insistence on maintaining its commitment to hatred of
 25 the Jewish state."

26 5. Wornick Decl. ¶ 6: "...the response to Hamas's attack on Israel on October 7th,
 27 2023 was praise and applause."

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6. Wornick Decl. ¶ 10: "...and that (b) violence, including torture, incineration, rape, murder, and kidnapping, are all justified as a means towards the goal of removing the Jews from the land."

7. Wornick Decl. ¶ 11: "By trumpeting this phrase as a response to the events of October 7, 2023, CCA and those of its faculty, students, administrators and departments who 'liked' that response, are stating explicitly that the atrocities committed by Hamas that day, in the course of which Hamas members and supports slaughtered 1200 human beings, were desirable, justified and praiseworthy events."

Each of these statements suffer from the same defect as those in Plaintiff's Opposition to the Motion to Dismiss in that they are scandalous, prejudicial, and immaterial to Plaintiff's claims. They illustrate an effort by Plaintiff to double down on her interpretation of the Instagram post as fact and insinuate that Defendant "celebrated" the death and torture of innocent civilians. Her continued insults add nothing to her claims. As such, Defendant requests that they be stricken.

III. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court grant its Motion to Strike the challenged allegations. Plaintiff's statements are scandalous, prejudicial, and immaterial, and her reliance on extrinsic declarations only underscores how inappropriate they are.

Dated: December 30, 2024

JACKSON LEWIS P.C.

By: 

Angel R. Sevilla
Jessica C. Shafer
Julianna Bramwell
Attorneys for Defendant
CALIFORNIA COLLEGE OF THE ARTS

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