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12 Attorneys for Defendant
13 CALIFORNIA COLLEGE OF THE ARTS

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

16 KAREN FISS,
17 Plaintiff,
18 v.
19 CALIFORNIA COLLEGE OF THE ARTS,
20 Defendant.

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

**DEFENDANT'S NOTICE OF MOTION
AND 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

1 TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on Thursday, January 9, 2025, at 2:00 p.m., or as soon
 3 thereafter as the matter may be heard by the Honorable Haywood Gilliam, Jr., in Courtroom 2,
 4 4th Floor of the United States District Court, Northern District of California located at 1301 Clay,
 5 Street, Oakland, California 94612, Defendant California College of the Arts (“Defendant” or
 6 “CCA”) will and hereby does move for an Order to strike four prejudicial statements in Plaintiff
 7 Karen Fiss’ (“Plaintiff”) Opposition to Defendant’s Motion to Dismiss, pursuant to Rule 12(f) of
 8 the Federal Rules of Civil Procedure.

9 This Motion is based on this Notice of Motion and Motion, the below Memorandum of
 10 Points and Authorities, all papers on file, and any authority or argument presented at the hearing.

11 **STATEMENT OF RELIEF SOUGHT**

12 Defendant respectfully asks the Court to Strike the following statements in Plaintiff’s
 13 Opposition to Defendant’s Motion to Dismiss (Dkt. No. 38), pursuant to Fed. R. Civ. P. 12(f):

14 ▪ **Pg. 1:23-24:** “CCA’s official orthodoxy is reflected in a public statement, joined
 15 in by numerous CCA departments, applauding the rape and murder of 1200 Israelis on October 7,
 16 2023.”

17 ▪ **Pg. 2:1-2:** “. . . and explained that the abominable acts committed on that day
 18 were necessary to end the existence of the Jewish State of Israel.”

19 ▪ **Pg. 3:5-7:** “CCA’s announcement that academic freedom protected those who
 20 publicly call for the murder of Jews in Israel.”

21 ▪ **Pg. 6:2-3:** “. . . who issued public statements praising Hamas’s murder of 1200
 22 Jews in Israel on October 7 . . .”

23 In addition, Fed. R. Civ. P. 12(f)(1) notes that the Court may “on its own” strike from a
 24 pleading any “scandalous matter.” To the extent that the First Amended Complaint (the “FAC”)

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1 includes similar verifiably false and prejudicial statements noted above, Defendant requests that
2 the Court elect to strike such statements as well.

3 Dated: November 19, 2024

JACKSON LEWIS P.C.

4
5 By: /s/ Jessica C. Shafer

6 Angel R. Sevilla

Jessica C. Shafer

7 Julianna Bramwell

Attorneys for Defendant

8 CALIFORNIA COLLEGE OF THE ARTS
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES

Whether the Court should strike the following statements in Plaintiff’s Opposition to Defendant’s Motion to Dismiss:

▪ ***Doc. No. 38, Pg. 1:23-24:*** “CCA’s official orthodoxy is reflected in a public statement, joined in by numerous CCA departments, applauding the rape and murder of 1200 Israelis on October 7, 2023.”

▪ ***Doc. No. 38, Pg. 2:1-2:*** “. . . and explained that the abominable acts committed on that day were necessary to end the existence of the Jewish State of Israel.”

▪ ***Doc. No. 38, Pg. 3:5-7:*** “In contrast to CCA’s announcement that academic freedom protected those who publicly call for the murder of Jews in Israel . . .”

▪ ***Doc No. 38, Pg. 6:2-3:*** “. . . who issued public statements praising Hamas’s murder of 1200 Jews in Israel on October 7 . . .”

II. INTRODUCTION

Plaintiff Karen Fiss’ (“Plaintiff”) Opposition to Defendant California College of the Arts (“Defendant” or “CCA”) Motion to Dismiss Plaintiff’s First Amended Complaint (“FAC”) contains highly inflammatory, scandalous, false, and ultimately prejudicial statements about CCA, its faculty, and students. First, Plaintiff states that CCA’s “official orthodoxy” is “applauding the rape and murder of 1200 Israelis on October 7, 2023.” (Dkt. No. 38 (“Opp.”) at 1:23-24.). Second, Plaintiff states that the relevant Instagram post “explained that the abominable acts committed [on October 7, 2023] were necessary to end the existence of the Jewish State of Israel.” (Opp. at 2:1-2.) Third, Plaintiff states that CCA protects “those who publicly call for the murder of Jews in Israel” under the guise of academic freedom. (Opp. at 3:5-7.) Finally, Plaintiff states that academics at CCA “issued public statements praising Hamas’s murder of 1200 Jews in Israel on October 7.” (Opp. at 6:2-3.)¹

¹ To be sure, CCA takes issue with several inflammatory statements about CCA’s students, faculty, and policies in Plaintiff’s Opposition, but in the interest of conserving the Court’s time, CCA brings the Court’s attention to the two especially inflammatory statements at issue in this motion.

1 These statements are not factual allegations for which Plaintiff is entitled to the
 2 presumption of truth. Rather, they are conclusory factual allegations and inaccurate
 3 characterizations of CCA's "official orthodoxy," which were borne from her disagreements with
 4 CCA's disciplinary actions against Plaintiff. Plaintiff has effectively accused CCA of "publicly
 5 call[ing] for the murder of Jews in Israel" and accuses CCA of "applauding the rape and murder
 6 of 1200 Israelis on October 7, 2023."

7 The question before the Court is whether these verifiably false statements aid in the
 8 Court's adjudication of CCA's Motion to Dismiss. They do not. These statements, now part of
 9 the public record, extend far beyond persuasive writing and are highly prejudicial to CCA.
 10 They impact CCA's admissions, funding, relationships with parents and the community, and the
 11 personal and professional reputation of its faculty and students. Furthermore, these statements
 12 serve only to project Plaintiff's conclusory opinions onto the Court and into public discourse.
 13 They exemplify "immaterial, impertinent, or scandalous matter," which the Court may strike
 14 under FRCP Rule 12(f).

15 **III. FACTUAL BACKGROUND**

16 California College of the Arts ("CCA") is a private arts college located in San Francisco,
 17 California. Plaintiff Karen Fiss ("Plaintiff") is a tenured faculty member at CCA. (FAC ¶ 3.)

18 Three days after the October 7, 2023 terrorist attack by Hamas on Israel, CCA's president
 19 issued a "[s]tatement of support and resources" about the "horrific and devastating events that
 20 unfolded over the weekend in Israel and Gaza." (FAC ¶ 64, Ex. E.) The statement recognized
 21 that "[f]aculty may be struggling with how to address this moment in their classrooms and
 22 studios" and that "[s]tudents may be experiencing anxiety in a violent and uncertain world."
 23 (*Id.* Ex. E.) It also presented community support resources for students and faculty alike. (*Id.*)

24 On October 11, 2023, an Instagram account known as "cca_critical_ethnic_studies"
 25 posted a photo of a protest in which a protestor holds a sign stating that "Decolonization Is Not a
 26 Dinner Party." (*Id.* ¶ 60, Ex. F.) The accompanying caption stated, "[o]ur program has a stellar
 27 record of teaching the historical and contemporary context of Israel's colonial legacy in
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1 Palestine.” (*Id.* Ex. F.) It stated further, “[w]e stand in solidarity with all of our community
2 members who strive for a peaceful world and mourn for all of the lives lost.” (*Id.*)

3 Plaintiff complained to CCA about the Instagram post on October 20, 2023. (*Id.* ¶ 65.)
4 Maira Lazdins, CCA’s Vice President of Human Resources, responded to Plaintiff that CCA
5 rejects “hate speech, antisemitism, and Islamophobia,” but recognizes that “diverging opinions
6 on substantive issues can coexist.” (*Id.* ¶ 66, Ex. H.) CCA thereafter retained an outside
7 investigator to investigate Plaintiff’s complaint. (*Id.* ¶ 68.) CCA removed the Instagram post at
8 the start of the investigation, a decision that became permanent. (*Id.* ¶ 68; *see also id.* Ex. J.)
9 Plaintiff spoke with the investigator on January 2, 2024. (*Id.*) On February 1, 2024, CCA notified
10 Plaintiff that it had concluded its investigation, finding that the Instagram post did not violate
11 CCA’s policies. (*Id.* ¶ 69.) CCA assured Plaintiff that it would take “additional proactive steps
12 to promote dialogue, and to offer additional support, to ensure that the CCA community can
13 continue to engage in open, respectful discourse.” (*Id.* Ex. J.)

14 CCA respectfully invites the Court to review the Instagram post at issue. The Instagram
15 post and CCA’s responses regarding the Instagram post did not condone the October 7 attack; did
16 not applaud rape, murder or violence; did not call for the destruction of the State of Israel; and
17 did not mention Hamas. The Instagram post was also not “CCA’s official orthodoxy,”
18 as Plaintiff claims.

19 **IV. PROCEDURAL BACKGROUND**

20 Plaintiff filed this lawsuit on June 6, 2024 (Dkt. No. 1), alleging discrimination,
21 harassment, and related employment claims in connection with CCA’s disciplinary action.
22 CCA filed a Motion to Dismiss Plaintiff’s Complaint on August 8, 2024. (Dkt. No. 19.)
23 Plaintiff thereafter filed the FAC on September 5, 2024. (Dkt. No. 30.) On October 15, 2024,
24 CCA filed a Motion to Dismiss the FAC. (Dkt. No. 35.) In Plaintiff’s Opposition (Dkt. No. 38),
25 filed on November 5, 2024, Plaintiff made the following statements:

26 ▪ *Doc. No. 38, Pg. 1:23-24*: “CCA’s official orthodoxy is reflected in a public
27 statement, joined in by numerous CCA departments, applauding the rape and murder of 1200
28 Israelis on October 7, 2023.”

1 ▪ *Doc. No. 38, Pg. 2:1-2*: “. . . and explained that the abominable acts committed
2 on that day were necessary to end the existence of the Jewish State of Israel.”

3 ▪ *Doc. No. 38, Pg. 3:5-7*: “CCA’s announcement that academic freedom protected
4 those who publicly call for the murder of Jews in Israel.”

5 ▪ *Doc No. 38, Pg. 6:2-3*: “. . . who issued public statements praising Hamas’s
6 murder of 1200 Jews in Israel on October 7 . . .”

7 Each of these statements refer to the October 11, 2023 Instagram post that is the subject
8 of Plaintiff’s FAC called “Decolonization Is Not a Dinner Party,” for which there is no evidence
9 that the statement represents “CCA’s official orthodoxy” and in no way refers to condoning rape
10 and murder of Israelis. Plaintiff has not pointed to any “announcement” that CCA cloaks those
11 who publicly call for the murder of Jews in Israel under the protection of academic freedom.

12 **V. LEGAL ARGUMENTS**

13 The Court may strike “from any pleading any insufficient defense or any redundant,
14 immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f); *Whittlestone, Inc. v.*
15 *Handi—Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (citation omitted). “Immaterial matter is
16 that which has no essential or important relationship to the claim for relief or the defenses being
17 pleaded. Impertinent matters consist of statements that do not pertain, and are not necessary, to
18 the issues in question.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on*
19 *other grounds, Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994). “A ‘scandalous matter’ improperly
20 casts a derogatory light on someone, usually a party.” *Wilkerson v. Butler*, 229 F.R.D. 166, 170
21 (E.D. Cal. 2005); *M.S. v. Angus*, No. CV 23-9957-MWF (MARx), 2024 U.S. Dist. LEXIS
22 142249, *17 (C.D. Cal., Aug. 8, 2024).

23 The statements at issue here are classic examples of a “scandalous matter” that must be
24 stricken from the pleading. Plaintiff has filed a public document that characterizes “CCA’s
25 official orthodoxy” is to “applaud[] the rape and murder of 1200 Israelis on October 7, 2023” and
26 that CCA allegedly protects those “who call for the murder of Jews in Israel.” These statements
27 should not be dismissed as mere hyperbole. These statements are egregious.

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1 Moreover, these statements add no value of the Court's adjudication of Defendant's
2 Motion to Dismiss. The issues before the Court in Defendant's Motion to Dismiss is whether
3 Plaintiff has sufficiently alleged facts which, if accepted as true, are sufficient to state a claim to
4 relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
5 Plaintiff's inaccurate and self-serving conclusions about "CCA's policy" in no way assist in the
6 Court's adjudication. They are not factual allegations that entitle Plaintiff to a presumption of
7 truth. It is well established that a court should disregard conclusory factual allegations and "draw
8 on its judicial experience and common sense" to determine whether a claim is plausible.
9 (*Id.* at 678-79.)

10 These allegations are also belied by Plaintiff's allegations in the FAC. Plaintiff reached
11 such absurd and harmful conclusions by ignoring the "[s]tatement of support and resources"
12 issued by CCA's president on October 10, 2023, about the "horrific and devastating events that
13 unfolded over the weekend in Israel and Gaza," and presented community support resources for
14 students and faculty alike. (FAC ¶ 64, Ex. E.) Moreover, the Instagram post called
15 "Decolonization Is Not a Dinner Party," contains no such statements as Plaintiff described.

16 The prejudicial impact of these statements to the reputation of CCA as an academic
17 institution, along with his faculty and students, cannot be overstated. Plaintiff has not only
18 mischaracterized CCA's policy, she has accused CCA's faculty and students of condoning rape
19 and murder. They pose extremely prejudicial impact to CCA's reputation as an academic
20 institution. They impact CCA's admissions, funding, relationships with parents and the
21 community, and the personal and professional reputation of its faculty and students.
22 As this circuit and others have held, it is the consideration of prejudice to the opposing party that
23 carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052
24 (9th Cir. 2003).

VI. CONCLUSION

For these reasons, the Court should strike pgs. 1:23-24, 2:1-2, 3:5-7, and 6:2-3 in Plaintiff's Opposition to Defendant's Motion to Dismiss.

Dated: November 19, 2024

JACKSON LEWIS P.C.

By: /s/ Jessica C. Shafer

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CALIFORNIA COLLEGE OF THE ARTS

4879-4011-5709, v. 2