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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

KAREN FISS,  
  
 Plaintiff,  
  
 v.  
 CALIFORNIA COLLEGE OF THE ARTS,  
  
 Defendant.

Case No.: 4:24-cv-3415-HSG

**PLAINTIFF’S MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 OPPOSITION TO DEFENDANT’S  
 MOTION TO STRIKE**

**I. INTRODUCTION**

Defendant’s Motion to Strike asks this Court to purge four allegedly scandalous statements from Plaintiff’s brief in opposition to the pending Motion to Dismiss. But Plaintiff’s statements at issue are accurate representations of Defendant’s own Instagram post that openly celebrated after the October 7 Hamas massacre of Israeli civilians and argued that such action was justified. The Court cannot take sides with competing characterizations of these events at the pleading stage. Defendant does not meet the high standard for a motion to strike Plaintiff’s proper explanation of what the post actually means. The declaration of Dr. Asaf Romirowsky, Ph.D., Executive Director of Scholars for Peace in the Middle East, provides context for what is meant by “decolonization” as it was used in Defendant’s post. Further,

the declaration of Jonathan Wornick, a previous donor to CCA, shows that Defendant misrepresents the cause of any damage Defendant faces, which is solely the result of its own inflammatory post and inadequate response, not Plaintiff's accurate explanation.

## II. LEGAL STANDARD

Motions to strike are governed by Rule 12(f) of the Federal Rules of Civil Procedure, which provides: "The court may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "As a rule, motions to strike are regarded with disfavor because striking is such a drastic remedy; as a result, such motions are infrequently granted." *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 301 F.R.D. 487, 489-90 (C.D. Cal. 2014) (citing *Freeman v. ABC Legal Servs., Inc.*, 877 F. Supp. 2d 919, 923 (N.D. Cal. 2012) (citing in turn *Stanbury Law Firm v. IRS*, 221 F.3d 1059, 1063 (8th Cir. 2000)). "[W]hen ruling on a motion to strike," the court accepts the challenged allegations as true and "must liberally construe" those allegations "in the light most favorable" to the non-moving pleader. *Stearns v. Select Comfort Retail Corp.*, 763 F. Supp. 2d 1128, 1140 (N.D. Cal. 2010).

## III. ARGUMENT

Defendant's Motion to Strike asks this Court to purge four statements from Plaintiff's brief in opposition to the pending Motion to Dismiss:

"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;"

CCA has "explained that the abominable acts committed on that day were necessary to end the existence of the Jewish State of Israel;"

"CCA's announcement that academic freedom protected those who publicly call for the murder of Jews in Israel;"

And

CCA personnel "issued public statements praising Hamas's murder of 1200 Jews in Israel on October 7."

1 The substance of these statements already appear in the original Complaint, with respect to  
 2 which no Motion to Strike has been filed. *See* Dkt. 1, ¶¶32, 41-42, 69, 71-73. Plaintiff's brief includes  
 3 these statements to illustrate, with reference to the First Amended Complaint, how Defendant's actions  
 4 created an environment overtly hostile to the Plaintiff, her religious commitments, her ethnic identity  
 5 and her national ancestry.

6 As we explained in our brief in opposition to the pending Motion to Dismiss,  
 7

8 When the workplace is permeated with discriminatory intimidation, ridicule, and insult,  
 9 that is sufficiently severe or pervasive to alter the conditions of the victim's employment  
 10 and create an abusive working environment, Title VII is violated." Harris v. Forklift Sys.,  
Inc., 510 U.S. 17, 21, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993) (internal quotation marks  
 and citations omitted).

11 *See* Dkt. 38, at p. 7 (citing *Sharp v. Activewear, L.L.C.* 69 F.4th 974, 978 (9th Cir 2023)).

12 “[W]orkplace conduct is to be viewed cumulatively and contextually, rather than in isolation. Reeves v.  
 13 C.H. Robinson Worldwide, Inc., 594 F.3d 798, 807 (11th Cir. 2010) (en banc). *Ibid.*

14 The statements in the Complaint, Amended Complaint, and Plaintiff's brief demonstrate that  
 15 CCA's campus is indeed “permeated” with hostility to Plaintiff's identity as a committed Jew, and in  
 16 particular to her identification as a member of the People of Israel, rooted in the land of Israel.

17 The focus of CCA's motion is, in part, on a statement, issued by CCA's largest academic  
 18 department and applauded by almost the entire rest of the College, that “Decolonization is not a dinner  
 19 party.” That statement defined Hamas's atrocities on October 7, 2023, as “collective resistance,” and  
 20 further stated, “You cannot use the term ‘decolonize’ without recognizing the toxicity and violence of  
 21 settler colonialism. Decolonization is not a metaphor. Solidarity is not passive.” FAC ¶60.  
 22

23 The Complaint alleges, in ¶62, that  
 24

25 Through this Instagram post and its endorsement by CCA leadership, the California  
 26 College of the Arts effectively took the official position that Hamas's actions were  
 27 legitimate and that the mutilation, murder, and rape of Israelis on October 7 was the fault  
 28 of the Israelis who were raped and murdered; and that the act the Jews had committed that  
 rendered them at fault was their decision to live as Jews in the state of Israel.

CCA’s Motion to Strike, at 6, contradicts this allegation. CCA says Plaintiff’s allegation is false:

The Instagram post and CCA’s responses regarding the Instagram post did not condone the October 7 attack; did not applaud rape, murder or violence; did not call for the destruction of the State of Israel; and did not mention Hamas. The Instagram post was also not “CCA’s official orthodoxy,” as Plaintiff claims.

Defendant’s Motion to Strike is thus filed in direct violation of the law governing motions under Rule 12(b)(6) of the Federal Rules of Civil Procedure, which require the court to take the Plaintiff’s allegations as true. *See, e.g. Kovalenko v. Kirkland & Ellis LLP*, No. 22-cv-05990-HSG, 2024 U.S. Dist. LEXIS 162848 at \*22-\*23, 2024 WL 4150451 (N.D. Cal. Sept. 10, 2024) (holding that Title VII Plaintiff’s allegations about content and meaning of conversations forming basis for claim must be accepted as true for purposes of a Motion to Dismiss); *Guthrey v. Cal. Dep’t of Corr. & Rehab.*, No. 1:10-cv-02177-OWW-GSA, 2011 U.S. Dist. LEXIS 33782 at \*9-\*10, 2011 WL 1259835 (E.D. Cal. March 29, 2011) (“Plaintiff’s allegations, accepted as true, give rise to an inference of unlawful discrimination...The credibility of Plaintiff’s theory is a matter for trial.”) (internal citations omitted).

Plaintiff believes it should be obvious that these phrases mean what Plaintiff alleges they mean, and that they constitute justifications for violence as alleged. Colonization is understood by these statements to be unjust. Decolonization is a rectification of that injustice. Saying that decolonization is “not a dinner party” means—the simple meaning of the words is—that although it is not a pleasant process, it is a necessary one. Indeed, CCA does not offer the Court its own, or any, interpretation of the phrase “Decolonization is not a dinner party,” or the claim that the atrocities committed by Hamas on October 7 were “collective resistance.” Neither does CCA offer any interpretation other than Plaintiff’s for any other phrases quoted in the Complaint or in Plaintiff’s brief.

To make clear that Plaintiff’s interpretation of these words is correct, we attach hereto the Declaration of Dr. Asaf Romirowsky, a scholar who has published widely on the subject of the rhetoric used by Israel’s Islamist enemies. Dr. Romirowsky explains:

1 “Colonization” is, according to the theorists who believe in it, the process by which land  
2 which, in justice, belongs to an original or indigenous people, is seized by some other and  
3 different people who invade, conquer the territory, and subjugate the original inhabitants.

4 “Decolonization” is, according to the theorists who believe in it, the reversal of that  
5 injustice, and constitutes the removal of the invaders and the recapture of land by its true  
6 owners. One of the principal advocates of this theory is Frantz Fanon, author of, among  
7 other works, *The Wretched of the Earth*. Fanon there explains that “decolonisation is  
8 always a violent phenomenon.” *Id.* at 27 (1961 ed.).

9 The assertion that “decolonization is not a dinner party” is the assertion that this  
10 rectification of injustice is, necessarily, violent, and that such violence is just and  
11 appropriate because it is simply the reversal of the violence by which colonization was  
12 effected in the first place.

13 The phrase itself “decolonization is not a dinner party” is a paraphrase of a statement made  
14 by Mao Tse Tung, the founder of Communist China, who wrote, in 1927, that “revolution  
15 is not a dinner party.” Mao went on to explain that “A revolution is an insurrection, an act  
16 of violence by which one class overthrows another.” “Report on an Investigation of the  
17 Peasant Movement in Hunan” (March 1927), *Selected Works*, Vol. I, p. 28.\*

18 In an often cited paper, “[Decolonization is Not a Metaphor](#),” academics Eve Tuck and K.  
19 Wayne Yang expound at length on the “entangled triad structure of settler-native-slave,”  
20 and the “the real and symbolic violence of settler colonialism.”

21 They posit decolonization as “a distinct project from other civil and human rights-based  
22 social justice projects, [one which] is far too often subsumed into the directives of these  
23 projects, with no regard for how decolonization wants something different than those forms  
24 of justice.” But they insist that “decolonization specifically requires the repatriation of  
25 Indigenous land and life.” According to these theorists, “decolonization is not obliged to  
26 answer” what methods are involved or what the future looks like for anyone.

27 The concept of decolonization dissolves fundamental international law categories of  
28 combatants and civilians. It legitimizes everything, including the abuse of corpses, and  
demands our acquiescence in the name of “resistance” and “liberation.”

Decolonization is thus an explicit license for ethnic cleansing and genocide, provided it is  
done by, and against, the proper people.

“Colonization” and “decolonization,” as descriptors of what occurred in Israel on October  
7, 2023, begins with the assertion that the Jewish presence, and Jewish sovereignty, in  
Israel constitutes “colonization” because, the theory posits, Jews are invaders and have  
seized land that truly belongs to someone else: the assertedly “indigenous” people who  
were there, allegedly, before the Jews. Asserting that Hamas’s actions constitute  
“decolonization” thus begins by denying the Jewish connection to the land of Israel—a  
commitment and connection intimately bound up with Jewish belief, Jewish tradition,  
Jewish ethnic identity and the shared national ancestry of the Jewish people.

Describing Hamas’ actions on October 7 as “decolonization” is the assertion that rape,  
murder, kidnapping, beheading, torture, and execution of hostages, are justified as  
necessary to reverse the unjust seizure of land by Jews from what are claimed to be the

1 “indigenous” holders of what is now the territory of the State of Israel. The purpose of this  
2 “decolonization,” is, simply, the extermination of the Jewish State of Israel.

3 *See* Declaration of Dr. Asaf Romirowsky ¶¶1-16. Dr. Romirowsky’s explanation makes clear  
4 that Plaintiff is correct—or at a bare, rock bottom minimum, that Plaintiff has set forth an entirely  
5 plausible allegation as to the meaning of the statements applauded and defended by CCA.

6 CCA has also claimed that the statements should be stricken because they have caused the  
7 College financial loss. As explained in the Declaration of Jonathan Wornick attached hereto, this claim  
8 is risibly false.

9 Mr. Wornick explains that his family had long been a major donor to CCA, but that the College’s  
10 response to Hamas’s slaughter of Jews on October 7, 2023, and particularly the College’s rigid defense  
11 of the statement “decolonization is not a dinner party,” along with its refusal to do anything to address  
12 the sea of Jew-hatred at the CCA campus, led Mr. Wornick and his family to cease all support for the  
13 college. *See* Declaration of Jonathan Wornick ¶¶1-21 (“Wornick Decl.”).

14  
15 Mr. Wornick explains:

16 Beginning in the fall of 2023, my family became deeply concerned about antisemitism at  
17 CCA.

18 This concern was created by the fact that, at CCA, the response to Hamas’s attack on Israel  
19 on October 7<sup>th</sup>, 2023 was praise and applause.

20 In particular, our family was deeply offended by an Instagram post issued by CCA’s  
21 Critical Ethnic Studies Department trumpeting the phrase “Decolonization is not a dinner  
22 party”; by CCA’s embrace of this post, and by its refusal to disavow it or the hatred that is  
23 expressed in this phrase.

24 I became aware of that Instagram post through an associate not affiliated with CCA on  
25 October 21, 2023.

26 This post was liked and retweeted by many faculty, students, administrators and entire  
27 departments at CCA.

28 The statement that “decolonization is not a dinner party” means that violence is justified as  
the appropriate and necessary solution for the injustice of colonization. When invoked  
about Israel, it constitutes the assertions that (a) the Jewish presence and Jewish

1 sovereignty in the land of Israel are acts of colonization—thus denying the deep historical  
2 connection between the Jewish people and the land of Israel and that (b) violence, including  
3 torture, incineration, rape, murder and kidnapping, are all justified as a means towards the  
4 goal of removing the Jews from that land.

5 By trumpeting this phrase as a response to the events of October 7, 2023, CCA, and those  
6 of its faculty, students, administrators and departments who “liked” that response, are  
7 stating explicitly that the atrocities committed by Hamas on that day, in the course of which  
8 Hamas members and supporters slaughtered 1200 human beings, were desirable, justified  
9 and praiseworthy actions. This is the simple and direct meaning of the statement that CCA,  
10 its faculty, students, administrators, and departments adopted as their own.

11 I confronted CCA's leadership, namely, CCA President, Stephen Beal via email on October  
12 21, 2023, when I learned of this post and its adoption by CCA, and demanded that it be  
13 taken down, and that CCA publicly reject the claims made therein. My demands were  
14 initially rebuffed. Several follow up in person discussions, phone calls, and Zoom meetings  
15 with various administration staff and CCA Board President Lorna Myers, proved entirely  
16 fruitless. On December 15, 2023, I had a Zoom meeting with the new CCA President,  
17 David Howse. On that call, he expressed that CCA saw no reason to remove the Instagram  
18 post, to apologize, or take any action, and fully understood that we might pull our family's  
19 funding and/or go public with the story.

20 As the result of CCA's response, On December 21, 2023, I published an article in the media  
21 outlet the *Times of Israel*, attached hereto as Exhibit 1, in which I explained my view that  
22 the phrase “decolonization is not a dinner party,” when used to describe and praise the  
23 actions of Hamas in Israel on October 7, 2023, was profoundly antisemitic.

24 As I explained in that article,

25 One week after the massacre in Israel. CCA's Critical Ethnic Studies  
26 department posted on Instagram their unwavering support for “resistance”  
27 against Israel's “colonial” legacy. The image included in the post is of a protest  
28 sign that reads, “DECOLONIZATION IS NOT A DINNER PARTY.” In other  
words, the October 7th massacre that included beheadings, rapes, and the taking  
of civilian hostages was justified. Get over it!

(citing Exhibit 1 attached to Wornick Decl. ¶¶13-14). I further explained that all parts of  
CCA supported and adopted and praised this idea:

This post came from an official Instagram account RUN BY THE SCHOOL,  
not from a professor's personal account. Adding insult to injury, it is “liked” by  
other CCA departments, including the Wattis Institute and the MFA Writing  
Department. See for yourself. It remains public here:  
<https://www.instagram.com/p/CyYkCFzIjHI/>.

In fact, CCA has refused to disavow these statements, although ultimately my family's  
threat of ceasing our donations perhaps directly resulted in CCA's taking the post down.  
But CCA has never acknowledged that the statement was morally wrong in any way.

1 As a result, despite the fact that the CCA wood furniture studio retains our name, and the  
2 endowed annual Wornick furniture scholarships continue, my family no longer financially  
3 supports CCA.

Wornick Decl. ¶15.

4 Indeed, Mr. Wornick explains that he and his siblings went to the significant effort of bringing a  
5 Petition in California Superior Court to change their parents' bequests in order to remove CCA as a  
6 beneficiary, thus redirecting a gift of \$2 million. As Mr. Wornick explains,

7 To enable my family to remove CCA from our parents' bequests, we brought a petition in  
8 California Superior Court in February of this year explaining that CCA's actions were  
9 profoundly antisemitic and that the entire CCA campus has become a hotbed of  
10 antisemitism; that our parents were committed Jews who would never have wanted to gift  
11 money to an institution that has behaved the way CCA has, and that is so completely tainted  
12 by hatred of the Jewish State and the Jewish people.

13 See Exhibit 2 attached to Wornick Decl. ¶18. The San Mateo Superior Court granted the Petition  
14 for the reasons set forth in the Petition, thereby adopting the Wornick family's claim that CCA has been  
15 fatally infected by antisemitism. See Exhibit 3 attached to Wornick Decl. ¶19.

16 This record makes clear that CCA has indeed suffered a very great financial loss. But, as Mr.  
17 Wornick explains, this was no fault of the Plaintiff or any of her filings in this case:

18 CCA is also correct that these statements, made and supported by CCA, have prejudiced  
19 CCA's funding. CCA's refusal to disavow these antisemitic statements was the cause for  
20 my family's decision (and other major Jewish donors) to cease supporting CCA. Those  
21 statements, and CCA's embrace of those statements, have indeed caused CCA a very  
22 substantial financial loss. However, no such loss was caused by any of the Plaintiff's filings  
23 in this case. By the time this case had been filed, damage to CCA had already been done.  
24 And it was entirely self-inflicted. Nothing stated by the Plaintiff in her filings in this case  
25 caused me or my family to reduce our financial support for CCA. In fact, I was unaware of  
26 the plight or even existence of Dr. Karen Fiss until well after my article appeared in the  
27 *Times of Israel*.

Wornick Decl. ¶21.

28 It is thus clear that nothing Plaintiff has said in this case, in her Complaint, First Amended  
Complaint, or in her briefs, is scandalous, and nothing she has said has caused any harm to the  
Defendant. The injury CCA has suffered is entirely self-inflicted. CCA's insistence on maintaining its

1 commitment to hatred of the Jewish state is the cause of its injury, as well as the precipitant for the filing  
2 of this case.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiff requests that the Court deny Defendant's Motion to Strike.

5 Dated: December 12, 2024

Respectfully submitted,

6 By: /s/ Mark L. Javitch

7 Mark L. Javitch (CA 323729)

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KAREN FISS

**CERTIFICATE OF SERVICE**

Filed electronically on December 12, 2024, with the United States District Court for the Northern District of California CM/ECF system.

Notification was therefore automatically sent through the CM/ECF system to:

United States District Court  
Northern District of California

And all counsel of record as recorded on the electronic service list.

Respectfully submitted,

By: /s/ Mark L. Javitch  
Mark L. Javitch