

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Daniel Alvarez v. Los Angeles County

Alvarez · No. 2:24-cv-01035-ODW (MARx) · Decided April 22, 2025

SUMMARY

The United States District Court for the Central District of California granted defendant Catie Reay’s special motion to strike under California’s anti-SLAPP statute and, alternatively, dismissed claims against her. The court struck the defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress claims with leave to amend, struck the negligence claim without leave to amend, and dismissed the federal equal protection and free speech claims without leave to amend. The court concluded that Reay’s TikTok activity constituted protected speech concerning a public interest and that the allegations did not establish state action.

OPINION

Daniel Alvarez v. Los Angeles County

PER CURIAM.

O 1 2 3 4 5 6 7 8 United States District Court 9 Central District of California 10 11 DANIEL
ALVAREZ, Case № 2:24-cv-01035-ODW (MARx) 12 Plaintiff, ORDER GRANTING

13 v. DEFENDANT’S SPECIAL MOTION

TO STRIKE, OR, IN THE

14 LOS ANGELES COUNTY et al., ALTERNATIVE, DISMISS THE

15 Defendants. FIRST AMENDED COMPLAINT

[31]

16

17 I. INTRODUCTION

18 Plaintiff Daniel Alvarez brings this action against Defendants Los Angeles 19 County (the
“County”), Los Angeles County Children and Family Services 20 (“LACFS”), and Catie Reay.
(First Am. Compl. (“FAC”), ECF No. 28.) Reay moves 21 to strike the First Amended Complaint
as asserted against her in its entirety pursuant 22 to California’s anti-SLAPP statute, Cal. Civ.
Proc. Code § 425.16, or, in the 23 alternative, to dismiss each cause of action asserted against her
pursuant to Federal 24 Rule of Civil Procedure (“Rule”) 12(b)(6). (Mot. Strike & Dismiss
 (“Motion” or 25 “Mot.”), ECF No. 31.) For the following reasons, the Court GRANTS the
Motion.¹ 26 27 28 1 Having carefully considered the papers filed in connection with the Motion,
the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78;
C.D. Cal. L.R. 7-15.

1 II. BACKGROUND2

2 Alvarez, a Hispanic homosexual male, holds a foster parent license issued by 3 LACFS. (FAC ¶¶ 14, 16.) In 2023, Alvarez became the foster parent of a Caucasian 4 baby boy. (Id. ¶ 15.) Excited to share his new journey into fatherhood, Alvarez 5 posted videos of himself with his foster baby on the social media platform TikTok. 6 (Id. ¶¶ 18–19.) Although Alvarez would sometimes post videos that were “a little 7 more risqué,” his foster baby never appeared in these videos. (Id. ¶ 20.) 8 Reay, who has never met Alvarez and does not know Alvarez personally, is a 9 TikTok user who came across Alvarez’s TikTok videos. (Id. ¶¶ 21–24.) Reay did not 10 like Alvarez’s “risqué” videos or his videos with his foster baby. (Id. ¶¶ 25–26.) To 11 express her distain, Reay reposted Alvarez’s TikTok videos on her own TikTok 12 account and added commentary “demonizing” Alvarez’s relationship with his foster 13 baby and stating that she feared for the baby’s safety. (Id. ¶¶ 27–28.) After Reay’s 14 TikTok videos went “viral,” she called on her viewers to contact social services 15 regarding Alvarez’s relationship with his foster baby. (Id. ¶¶ 29–31.) 16 Reay’s videos and the phone calls from her viewers prompted an investigation 17 into Alvarez’s parenthood and the safety of his foster baby. (Id. ¶¶ 32, 34.) On or 18 about September 22, 2023, West Hollywood Sheriff and Social Services, on behalf of 19 LACFS, arrived at Alvarez’s home, revoked his foster parent license, and removed the 20 foster baby from his custody. (Id. ¶¶ 36–37.) Alvarez was not provided a hearing 21 before LACFS revoked his foster parent license and removed the foster baby from his 22 care. (Id. ¶¶ 40–41.) 23 Based on the above allegations, Alvarez initiated this action against the County, 24 LACFS, and Reay. (Compl., ECF No. 1.) Alvarez asserts nine causes of action: 25 (1) defamation against Reay; (2) violation of the Fifth Amendment’s Due Process 26 Clause against the County and LACFS; (3) violation of the Fourteenth Amendment’s 27 2 All factual references derive from the First Amended Complaint or attached exhibits, unless 28 otherwise noted, and well-pleaded factual allegations are accepted as true for purposes of this Motion. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 1 Equal Protection Clause against all Defendants; (4) violation of the First 2 Amendment’s Right to Free Speech against all Defendants; (5) invasion of privacy 3 against the County and LACFS; (6) intentional infliction of emotional distress against 4 all Defendants; (7) negligence against all Defendants; (8) negligent infliction of 5 emotional distress against all Defendants; and (9) violation of Welfare and Institutions 6 Code section 366.26(n) against the County and LACFS. (FAC ¶¶ 42–204.) 7 Reay moves to strike the First Amended Complaint under California’s 8 anti-SLAPP Statute or, in the alternative, to dismiss all claims asserted against her 9 under Rule 12(b)(6). (Mot. 2.) The Motion is fully briefed. (Opp’n, ECF No. 35; 10 Reply, ECF No. 36.)

11 III. LEGAL STANDARD

12 California’s anti-SLAPP statute is the frontline defense against lawsuits that 13 “masquerade as ordinary lawsuits but are brought to deter common citizens from 14 exercising their political or legal rights or to punish them for doing so.” *Hilton v. 15 Hallmark Cards*, 599 F.3d 894, 902 (9th

Cir. 2010). SLAPPs—strategic lawsuits 16 against public participation—“are brought to obtain an economic advantage over the 17 defendant, not to vindicate a legally cognizable right of the plaintiff.” *Kajima Eng’g 18 and Constr., Inc. v. City of Los Angeles*, 95 Cal. App. 4th 921, 927 (2002). “SLAPP 19 plaintiffs do not intend to win their suits; rather, they are filed solely for delay and 20 distraction, and to punish activists by imposing litigation costs on them for exercising 21 their constitutional right to speak and petition the government for redress of 22 grievances.” *Id.* (internal citations omitted). 23 California’s anti-SLAPP statute states, 24 A cause of action against a person arising from any act of that person in 25 furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection 26 with a public issue shall be subject to a special motion to strike, unless 27 the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. 28 1 Cal. Civ. Proc. Code § 425.16(b)(1). The statute “shall be construed broadly.” *Id.* 2 § 425.16(a); see also *Mindys Cosms., Inc. v. Dakar*, 611 F.3d 590, 596 (9th Cir. 2010) 3 (“[W]e follow the California legislature’s direction that the anti-SLAPP statute be 4 ‘construed broadly.’”). 5 A defendant can bring anti-SLAPP motions in federal court for “California state 6 law claims asserted under either diversity jurisdiction or supplemental jurisdiction.” 7 *OneLegacy v. City of Monterey Park*, No. 2:19-cv-04911-AB (JPRx), 2019 WL 8 6729723, at *2 (C.D. Cal. Aug. 21, 2019). Where a federal court has jurisdiction to 9 hear an anti-SLAPP motion, the court is bound by decisions of the California Supreme 10 Court. See *Hilton*, 599 F.3d at 905 (federal courts evaluating claims brought under 11 state law “must begin with the pronouncements of the state’s highest court, which 12 bind us”). 13 “If a defendant makes a special motion to strike based on alleged deficiencies in 14 the plaintiff’s complaint, the motion must be treated in the same manner as a motion 15 under Rule 12(b)(6) except that the attorney’s fee provision of [section] 425.16(c) 16 applies.” *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 17 828, 834 (9th Cir. 2018). District courts are also to apply federal pleading standards, 18 including granting the plaintiff leave to amend. See *Verizon Del., Inc. v. Covad 19 Commc’ns Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004) (“[G]ranted a defendant’s 20 anti-SLAPP motion to strike a plaintiff’s initial complaint without granting the 21 plaintiff leave to amend would directly collide with [Rule] 15(a)’s policy favoring 22 liberal amendment.”). 23 Under Rule 12(b)(6), a court may dismiss a complaint for lack of a cognizable 24 legal theory or insufficient facts pleaded to support an otherwise cognizable legal 25 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To 26 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading 27 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v. 28 Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to 1 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 2 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual 3 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*, 4 556 U.S. at 678 (internal quotation marks omitted). The determination of whether a 5 complaint satisfies the plausibility standard is a

“context-specific task that requires the 6 reviewing court to draw on its judicial experience and common sense.” Id. at 679.

7 IV. SPECIAL MOTION TO STRIKE

8 The Court first addresses the Special Motion to Strike pursuant to California’s 9 anti-SLAPP statute, then turns to the Motion to Dismiss. 10 Reay moves to strike the First Amended Complaint as asserted against her in its 11 entirety under California’s anti-SLAPP statute. (Mot. 2.) As a preliminary matter, 12 California’s anti-SLAPP statute “does not apply to federal law causes of action.” 13 Hilton, 599 F.3d at 901. Therefore, the Court applies California’s anti-SLAPP statute 14 only to the state and common law claims asserted against Reay. 15 Resolution of an anti-SLAPP motion “requires the court to engage in a two-step 16 process.” *Equilon Enters. v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 67 (2002). First, 17 the defendant must make a prima facie showing that the conduct underlying the 18 plaintiff’s cause of action, or portions of the cause of action that are asserted as 19 grounds for relief, arises from the defendant’s constitutional rights of free speech or 20 petition. Id. Second, if the first prong is satisfied, the burden shifts to the plaintiff to 21 prove that he or she has a legally sufficient claim and to show a probability that the 22 plaintiff will prevail on the claim. Id. 23 A. “Arising from” Protected Activity 24 Reay must first make “a threshold showing that the challenged cause of action 25 is one arising from protected activity.” *Navellier v. Sletten*, 29 Cal. 4th 82, 88 (2002). 26 California’s anti-SLAPP statute delineates four broad categories of conduct that 27 constitute “act[s] in furtherance of a person’s right of petition or free speech under the 28 United States or California Constitution in connection with a public issue.” Cal. Civ. 1 Proc. Code § 425.16(e). Sections 425.16(e)(3) and (4) provides that protected activity 2 under the anti-SLAPP statute includes “any written or oral statement or writing made 3 in a place open to the public or a public forum in connection with an issue of public 4 interest” and “any other conduct in furtherance of the exercise of the constitutional 5 right . . . of free speech in connection with a public issue or an issue of public 6 interest.” 7 “On the ‘arising from’ requirement, the defendant must show ‘the defendant’s 8 act underlying the plaintiff’s cause of action [was] itself’ a protected act.” *Gaynor v. 9 Bulen*, 19 Cal. App. 5th 864, 877 (9th Cir. 2018) (alteration and emphasis in original) 10 (internal citations omitted) (quoting *City of Cotati v. Cashman*, 29 Cal. 4th 69, 78 11 (2002)). To determine whether the first prong of the anti-SLAPP statute is satisfied, 12 “the critical consideration is whether the cause of action is based on the defendant’s 13 protected free speech or petitioning activity.” *Navellier*, 29 Cal. 4th at 89 (emphasis 14 in original) (citing *City of Cotati*, 29 Cal. 4th at 76–78). The Court looks beyond the 15 face of the complaint to determine whether the causes of action arise from protected 16 activities. See *Stewart v. Rolling Stone LLC*, 181 Cal. App. 4th 664, 679 (2010) (“We 17 do not evaluate the first prong of the anti-SLAPP test solely through the lens of a 18 plaintiff’s cause of action.”) “[C]ourts should consider the elements of the challenged 19 claim and what actions by the defendant supply those elements and consequently form 20 the basis for liability.” *Park v. Bd. of Tr. of Cal. State Univ.*, 2 Cal. 5th 1057, 1063 21 (2017). 22 1. Claims at

Issue 23 Here, Alvarez asserts four state and common law causes of action against Reay, 24 for defamation, intentional infliction of emotional distress, negligence, and negligent 25 infliction of emotional distress. (FAC ¶¶ 42–49, 119–66.) These claims all arise from 26 statements that Reay made on TikTok. (Id. ¶¶ 27–31, 45, 136–37.) Having identified 27 the challenged causes of action and alleged activity at issue, the next inquiry is 28 whether the activity was in furtherance of Reay’s free speech rights. 1 2. In Furtherance of a Right of Free Speech 2 Reay argues that the statements are protected by section 425.16(e)(3), as they 3 are statements made on TikTok, a public forum, and concern the public’s interest in 4 protecting babies from predators.³ (Mot. 11–13.) Alternatively, Reay contends that 5 the statements fall under section 425.16(e)(4)’s “catchall” provision, as an exercise of 6 Reay’s constitutional right of free speech in connection with an issue of public 7 concern, specifically regarding sexual offense. (Id. at 13.) Alvarez argues that Reay’s 8 statements did not concern a public issue because Alvarez was not, and is not now, a 9 sexual predator. (Opp’n 6–7.) 10 A public forum “traditionally has been defined as a place that is open to the 11 public where information is freely exchanged.” *Nygard v. Uusi-Kerttula*, 159 Cal.

12 App. 4th 1027, 1036 (2008) (discussing section 425.16(e)(3)). TikTok, a website 13 accessible to the public, is a public forum for purposes of the anti-SLAPP statute. See 14 *Barrett v. Rosenthal*, 40 Cal. 4th 33, 41 n.4 (2006) (“Web sites accessible to the 15 public . . . are ‘public forums’ for purposes of the anti-SLAPP statute.”); see also 16 *Penrose Hill, Ltd. v. Mabray*, 479 F. Supp. 3d 840, 854 (N.D. Cal. 2020) (finding 17 Twitter to be a public forum and collecting cases finding social media platforms such 18 as Facebook and Instagram to be public forums). Alvarez does not dispute that 19 TikTok is a public forum. (See generally Opp’n.) 20 California courts have described three categories of statements that address 21 issues of public interest: (1) a statement that concerns “a person or entity in the public 22 eye”; (2) statements that “could directly affect a large number of people beyond the 23 direct participants”; and (3) statements that involve “a topic of widespread, public 24 interest.” *Rand Res., LLC v. City of Carson*, 6 Cal. 5th 610, 621 (2019). Here, Reay 25 26 3 The Court declines to address Reay’s argument that the claims are based on Reay’s statements to law enforcement. (Mot. 13.) The First Amended Complaint does not include allegations that Reay 27 made statements directly to law enforcement, (see generally FAC), and Alvarez concedes that the 28 claims are not based on Reay’s statements to law enforcement, (Opp’n 8). Accordingly, this argument of Reay’s is inapplicable. 1 contends her statements concern the “protection of vulnerable children from sexual 2 predators.” (Mot. 12.) “[P]reventing child sexual abuse and protecting children from 3 sexual predators are issues of widespread public interest.” *Cross v. Cooper*, 197 Cal.

4 App. 4th 357, 375 (2011).

5 Alvarez argues that he was not, and is not now, a sexual predator, that he did not 6 perform sexually inappropriate acts with his foster baby nor post such content online, 7 and that there was no danger. (Opp’n 6–7.) But “[i]t need not be proved that a 8 particular adult is in actuality a sexual predator in order for the matter to be a 9 legitimate subject of discussion.” *Terry v. Davis*

Cnty. Church, 131 Cal. App. 4th 10 1534, 1547 (2005). For example, in Terry, the plaintiff's actions with a minor gave 11 members of the church and parents of the youth group cause for concern, leading to 12 discussions in church meetings. Id. at 1548. The court in Terry found that, even 13 though the police later concluded that there was insufficient evidence to show plaintiff 14 committed any crime, id. at 1547, the plaintiff's actions still gave rise to an ongoing 15 discussion about protection of children that warranted protection by the statute, id. 16 at 1550. Accordingly, the court concluded the allegations arose from protected 17 activity. Id. at 1551. 18 Based on the allegations, Reay's statements⁴, on their face, concerned a public 19 interest to protect vulnerable children from sexual predators. Accordingly, the Court 20 finds she satisfies her burden of showing that Alvarez's first, sixth, seven, and eighth 21 causes of actions arise from protected activity. 22

B. Reasonable Probability of Prevailing 23 The burden now shifts to Alvarez to demonstrate "there is a probability that [he] 24 will prevail on the claim." Cal. Civ. Proc. Code § 425.26(b)(1). If Alvarez fails to 25 meet this burden, the anti-SLAPP motion must be granted and the claims dismissed. 26 Navellier, 29 Cal. 4th at 89. 27 4 The Court notes that the allegations do not specify what Reay said, verbatim, in her videos. 28 Alvarez generally alleges that Reay "vocalized her distain," made "commentary on the videos," and alleged "that she feared for the baby's safety." (FAC ¶¶ 27–28.) 1 Reay confines her anti-SLAPP motion to the "legal infirmities" in the First 2 Amended Complaint. Therefore, the Court applies the familiar standard of 3 Rule 12(b)(6) and considers whether the First Amended Complaint "contain[s] 4 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on 5 its face." CoreCivic, Inc. v. Candide Grp., LLC, 46 F.4th 1136, 1143 (9th Cir. 2022) 6 (quoting Iqbal, 556 U.S. at 678). 7 Reay argues that each of the four causes of action are deficient. First, she 8 argues Alvarez's defamation claim is deficient because (1) it is time-barred, 9 (2) Alvarez does not present a statement that is provably false, and (3) foster parenting 10 is not a business⁵ that is subject to a trade libel claim. (Mot. 14–15.) Second, she 11 contends Alvarez's intentional infliction of emotional distress claim fails as he does 12 not allege extreme and outrageous conduct. (Id. at 16.) Third, Reay argues Alvarez's 13 negligence claim is without merit as Reay does not owe a duty to him. (Id. at 17.) 14 Lastly, she contends Alvarez's negligent infliction of emotional distress fails because 15 California law does not permit such a claim absent physical injury. (Id. at 18.) The 16 Court considers each argument in turn. 17

1. First Cause of Action: Defamation 18 Under California law, a defamation action for libel or slander is subject to a 19 one-year statute of limitation. Cal. Civ. Pro. Code § 340(c). A claim for defamation 20 accrues when the defendant publishes a defamatory statement by communicating it to 21 a third person who "understands its defamatory meaning as applied to the plaintiff." 22 Shively v. Bozanich, 31 Cal. 4th 1230, 1242 (2003). 23

5 Alvarez argues California Code of Civil Procedure section 425.17 "prohibits anti-SLAPP motions 24 in response to certain actions against a business." (Opp'n 5.) Section 425.17 applies only if "the 25 statement or conduct consists of representations of fact about that person's . . . business operations, goods, or services, that is made for the purpose

of obtaining approval for, promoting, or securing sales . . . or commercial transactions in, the person's goods or services." Cal. Civ. Proc. Code § 425.17(c)(1). But Alvarez does not allege, nor does it appear, that he runs a foster care "business." (See generally FAC.) Instead, Alvarez alleges he fostered the baby because it "provided an alternative outlet to fatherhood." (Id. ¶ 16.) Accordingly, the Court declines to address this argument. As noted by Reay, Alvarez does not allege the date when the alleged defamation occurred. (Mot. 14; see generally FAC.) Rather than address this deficiency, Alvarez relies on the "discovery rule," arguing that the statute of limitation did not begin to run until he discovered the defamatory statement, and conclusively asserting that he filed suit within the statute of limitations. (Opp'n 8.) The discovery rule may apply if Alvarez "pleads and proves that a reasonable investigation at [the] time [when the statute of limitations began to run] would not have revealed a factual basis for th[e] particular cause of action." *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 803 (2005). But Alvarez does not plead the date he made the discovery or whether he made any investigation. (See generally FAC; Opp'n.) As asserted, the allegations do not provide the Court with sufficient facts to determine when the statute of limitations began to run or when Alvarez discovered the alleged defamatory statements. Accordingly, the Court GRANTS the Motion as to Alvarez's first cause of action for defamation against Reay. Although Alvarez fails to indicate in his opposition whether he can cure this deficiency, the cause of action is STRIKEN WITH LEAVE TO AMEND.

2. Sixth Cause of Action: Intentional Infliction of Emotional Distress To state a claim for intentional infliction of emotional distress, Alvarez must allege, among other things, "extreme and outrageous conduct causing [him] to suffer severe or extreme emotional distress. *The Kind & Compassionate v. City of Long Beach*, 2 Cal. App. 5th 116, 130 (2016). "A defendant's conduct is 'outrageous' when it is so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Hughes v. Pair*, 46 Cal. 4th 1035, 1050–51 (2009) (cleaned up). Reay argues Alvarez cannot demonstrate a probability that he will prevail on this claim because he does not plead facts showing extreme and outrageous conduct. (Mot. 16.) Alvarez alleges that Reay reposted his videos on her TikTok account, added commentary to demonize his relationship with his foster baby, and prompted viewers to contact social services. (FAC ¶¶ 27–31.) Reay contends these allegations do not rise to the level of extreme and outrageous conduct because she displayed Alvarez's own videos, and her commentaries discussed the safety of children. (Reply 8.) In his opposition, Alvarez provides no substantive response to Reay's argument. (See Opp'n 9.) Instead, he lists only the elements of a claim for intentional infliction of emotional distress. (Id.) Alvarez thus fails to carry his burden to demonstrate that he will prevail on this claim and appears to concede to this argument. See *Star Fabrics, Inc. v. Ross Stores, Inc.*, No. 2:17-cv-05877-PA (PLAx), 2017 WL 10439691, at *3 (C.D. Cal. Nov. 20, 2017) ("Where a party fails to oppose arguments made in a motion, a court may find that the party has conceded those arguments or otherwise consented to granting the motion."). Accordingly, the Court GRANTS the Motion and STRIKES Alvarez's sixth

cause of action for intentional infliction of emotional distress against Reay, WITH 15 LEAVE TO AMEND, to permit Alvarez to cure the deficiency. 16 3. Seventh Cause of Action: Negligence 17 “To state a cause of action for negligence, [Alvarez] must allege (1) [Reay] 18 owed [him] a duty of care, (2) [Reay] breached that duty, and (3) the breach 19 proximately caused [Alvarez’s] damages or injuries.” *Lueras v. BAC Home Loans 20 Servicing, LLP*, 221 Cal. App. 4th 49, 62 (2013). 21 Reay moves to dismiss Alvarez’s negligence claim because Alvarez fails to 22 show that Reay owed Alvarez a duty and breached that duty. (Mot. 17.) In his 23 opposition, Alvarez cites to inapplicable case law describing the duty of care owed by 24 corporate officers to third parties. (Opp’n 9–10.) Alvarez further states that Reay 25 owed a duty of care not to spread defaming rumors about him. (Id.) 26 Alvarez’s argument is duplicative of his defamation claim and he offers no 27 authority to establish the existence of a legal duty “not to spread defaming rumors.” 28 (See generally Opp’n.) Where, as here, “a negligence claim [is] premised on [a] 1 defamation claim . . . multiple courts have rejected such negligence claims as 2 duplicative.” *Harvey v. Netflix, Inc.*, No. 2:24-cv-04744-RGK (AJRx), 2024 WL 3 4536639, at *12 (C.D. Cal. Sept. 27, 2024), appeal filed, No. 24-6151 (9th Cir. Oct. 9, 4 2024); see also *Jacques v. Bank of Am. Corp.*, No. 1:12-cv-0821-LJO-SAB, 2014 WL 5 7272769, at *10 (E.D. Cal. Dec. 18, 2014) (same); *Schering Corp. v. First Databank 6 Inc.*, No. C 07-01142 WHA, 2007 WL 1068206, at *6–7 (N.D. Cal. Apr. 10, 2007) 7 (same). California courts have expressed concerns that permitting plaintiffs to sue in 8 negligence when the facts “may be actionable as libel or slander,” would allow 9 plaintiffs “to seek to evade the structures of libel law and avoid the applicable 10 defenses by framing all libel actions as negligence causes of action.” *Felton v. 11 Shaeffer*, 229 Cal. App. 3d 229, 238–39 (1991). 12 Accordingly, the Court GRANTS the Motion and STRIKES Alvarez’s seventh 13 cause of action against Reay as duplicative, WITHOUT LEAVE TO AMEND, 14 because the Court finds Alvarez cannot plead a duty owed separate from the duty 15 imposed by the law of defamation. 16 4. Eighth Cause of Action: Negligent Infliction of Emotional Distress 17 Lastly, Reay moves to dismiss Alvarez’s eight cause of action for negligent 18 infliction of emotional distress on the grounds that Alvarez fails to plead he was a 19 bystander to an injury or a direct victim of a breach of duty. (Mot. 18.) Alvarez does 20 not address this argument in his opposition and thus concedes the issue. (See 21 generally Opp’n); see also *Star Fabrics*, 2017 WL 10439691, at *3. 22 Accordingly, the Court GRANTS the Motion and STRIKES Alvarez’s eighth 23 cause of action, WITH LEAVE TO AMEND, to permit Alvarez to cure the 24 deficiency. 25 C. Conclusion—Special Motion to Strike 26 As described above, Reay makes a threshold showing that the first, sixth, 27 seventh, and eighth causes of action against her arise from protected activity, and 28 Alvarez fails to show a probability of prevailing on any of the four claims. 1 Accordingly, the Court STRIKES Alvarez’s first, sixth, and eighth causes of action, 2 WITH LEAVE TO AMEND. The Court STRIKES Alvarez’s seventh cause of 3 action WITHOUT LEAVE TO AMEND.

4 V. MOTION TO DISMISS

5 Having stricken the first, sixth, seventh, and eighth causes of action, the Court 6 turns to the Motion to Dismiss Alvarez’s remaining two federal claims against Reay. 7 Against Reay, Alvarez asserts his third cause of action for violation of Equal 8 Protection under the Fourteenth Amendment and fourth cause of action for violation 9 of his Right to Free Speech under the First Amendment. (FAC ¶¶ 77–110.) Reay 10 moves for dismissal of these two claims on the grounds that she is not a state actor. 11 (Mot. 16.) Alvarez argues that Reay may be liable as a joint actor. (Opp’n 9.) 12 The Fourth Amendment’s Equal Protection Clause prohibits discriminatory 13 action by the State, but does not protect against “private conduct, ‘however 14 discriminatory or wrongful.’” *Moose Lodge No. 107 v. Iris*, 407 U.S. 163, 172 15 (1972). Likewise, “[t]he Free Speech Clause of the First Amendment constrains 16 governmental actors and protects private actors.” *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019). To determine whether a private individual’s action 18 amounts to state action, the Supreme Court has identified the following four tests: 19 “(1) the public function test; (2) the joint action test; (3) the state compulsion test; and 20 (4) the governmental nexus test.” *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002). 21 Alvarez contends that Reay is a state actor under the joint action test. 22 (Opp’n 9.) The joint action test is satisfied when “the state has so far insinuated itself 23 into a position of interdependence with the private entity that it must be recognized as 24 a joint participant in the challenged activity.” *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 926 (9th Cir. 2011). “A plaintiff may demonstrate joint 26 action by proving the existence of a conspiracy or by showing that the private party 27 was ‘a willful participant in joint action with the State or its agents.’” *Franklin*, 28 312 F.2d at 445. 1 There is no evidence or factual allegations here to support that Reay acted in 2 concert with the County or LACFS. Alvarez contends that Reay spread false 3 statements and convinced her followers to contact LACFS. (Opp’n 9.) Based on this 4 conduct alone, Alvarez leaps to the conclusion that LACFS worked with Reay to 5 gather false information and to remove the foster baby from his care. (*Id.*) The 6 allegations do not show that Reay had any contact with LACFS or that LACFS 7 conspired with Reay to spread the alleged false statements. As Reay aptly notes, Reay 8 “does not work for the government” and “is not an informant for the [Los Angeles 9 Police Department] or [LACFS].” (Reply 7.) While LACFS may have later used 10 Reay’s videos and calls from her viewers to make a decision regarding Alvarez’s 11 ability to foster the baby, there are no facts to show that LACFS insinuated itself into 12 Reay’s TikTok posts to transform her actions into ones fairly attributable to the state. 13 Accordingly, the Court DISMISSES Alvarez’s third and fourth causes of 14 actions against Reay. This dismissal is WITHOUT LEAVE TO AMEND as the 15 Court finds that “the allegations of other facts consistent with the challenged pleading 16 could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture 17 Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

18 VI. CONCLUSION

19 For the reasons discussed above, the Court GRANTS Defendant’s Motion. 20 (ECF No. 31.) As described above, the Court STRIKES Plaintiff’s first, sixth, and 21 eighth causes of action

against Reay WITH LEAVE TO AMEND. In addition, the 22 Court STRIKES the seventh cause of action and DISMISSES the third and fourth 23 causes of action against Reay, WITHOUT LEAVE TO AMEND. 24 25 26 27 28 1 If Plaintiff chooses to amend, he must file his Second Amended Complaint by 2 | no later than fourteen (14) days from the date of this Order, in which case Defendants 3 || shall answer or otherwise respond within fourteen (14) days of the filing. If Plaintiff 4|| does not timely amend, this dismissal shall be deemed a dismissal with prejudice as to 5 || the first, sixth, and eighth causes of action against Reay, as of the lapse of the deadline 6 || to amend. 7 8 IT IS SO ORDERED. 9 N ;

10 April 22, 2025 bedi

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B OTIS D. WRIGHT, I

4 UNITED STATES DISTRICT JUDGE

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