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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 GENEVIEVE MAHONEY,
16 Plaintiff,
17 v.
18 FACEBOOK, INC.,
19 Defendant.

Case No. 3:22-cv-02873-JD

**DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S AMENDED COMPLAINT;
ANTI-SLAPP MOTION TO STRIKE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: August 21, 2023
Time: 10:30 a.m.
Courtroom: 11
Judge: Hon. James Donato

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NOTICE OF MOTION AND RELIEF SOUGHT

PLEASE TAKE NOTICE that August 21, 2023, at 10:30 a.m., or as soon thereafter as may be heard by the Honorable Judge James Donato, United States District Court, San Francisco Division, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Meta Platforms, Inc. will and hereby does move to dismiss Plaintiff’s First Amended Complaint on the grounds that Plaintiff fails to state a claim upon which relief can be granted and Plaintiff’s claims are barred by Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230(c)(1).

PLEASE TAKE FURTHER NOTICE that at the same date, time, and place, Defendant Meta Platforms, Inc. also will and hereby does move to strike Plaintiff’s Complaint. seeks an order pursuant to California Code of Civil Procedures § 425.16 striking all of Plaintiff’s claims in their entirety.

These motions are based upon this notice of motion and motion, the memorandum of points and authorities in support that follows, the proposed order filed concurrently herewith, all pleadings and papers on file in this action, the arguments of counsel, and upon such further oral and written argument and evidence as may be presented at or prior to the hearing on this motion.

Dated: March 31, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Jacob M. Heath
JACOB M. HEATH

Attorney for Defendant
META PLATFORMS, INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In light of the events on January 6, 2021 at the U.S. Capitol (“January 6 events”), Meta
4 Platforms, Inc. (f/k/a “Facebook, Inc.”) (“Meta”) published a global, “emergency news
5 statement” on Facebook addressing the steps that it was taking to identify and remove content on
6 the service relating to those events that risked inciting or encouraging further violence. Plaintiff
7 Genevieve Mahoney (“Plaintiff”) is a college student at Furman University who was present in
8 Washington D.C. near the Capitol on January 6 but alleges that she did not enter the Capitol
9 building or its grounds. In March 2023, Plaintiff filed her Amended Complaint¹ against Meta
10 alleging that by publishing its statement regarding the January 6 events (the “Emergency News
11 Statement”), Meta has somehow accused her of engaging in criminal activity by being present on
12 that day. Specifically, Plaintiff asserts a cause for defamation, alleging that Meta’s Emergency
13 News Statement—which *did not name her or anyone else*—implicitly accused her of engaging in
14 criminal activity at the Capitol. Plaintiff further alleges that a Furman University Instagram
15 account called @fur.meme “recognized” that the statement applied to her—even though *none of*
16 *the @fur.meme posts even reference Meta’s statement*. As established herein, Plaintiff’s
17 Amended Complaint fails to assert any viable cause of action and should be dismissed with
18 prejudice.

19 *First*, Plaintiff’s defamation claim fails for three independent reasons: (1) the Emergency
20 News Statement did not refer to Plaintiff, and Plaintiff has failed to plead any facts showing that a
21 reasonable person would have read the Emergency News Statement to refer to her; (2) Plaintiff has
22 failed to satisfy the requisite element of publication; (3) Meta’s Statement is not “susceptible to a
23 defamatory meaning,” because it was expressly directed at violent, not peaceful protestors.

24 *Second*, Plaintiff’s claim fails because it is barred by Section 230 of the Communications
25 Decency Act (“Section 230”), which protects interactive service providers like Meta from claims
26 that treat the service providers as publisher of third-party content. Despite attempts to evade

27 _____
28 ¹ Plaintiff filed her initial complaint against Meta in July 2021 in Tennessee state court. The action was
then removed, and ultimately transferred to this Court in May 2022. ECF No. 69. Meta agreed to allow
Plaintiff to amend her Complaint, *see* ECF No. 113.1.

1 Section 230, Plaintiff’s claim—at bottom—is that she was harmed by information published by
 2 the third-party @fur.meme account, not by Meta’s Emergency News Statement. The Amended
 3 Complaint satisfies thus all the requirements for Section 230(c)(1) protection.

4 *Third*, Plaintiff’s claims should also be struck under California’s anti-SLAPP statute,
 5 which permits early dismissal of lawsuits aimed at acts in furtherance of the right to speech.
 6 Meta’s decision to post the Emergency News Statement was a quintessential act in furtherance of
 7 the right to speak.

8 **II. BACKGROUND**

9 Plaintiff purports to be a college student at Furman University in South Carolina, and a
 10 “frequent user of Instagram.” Amended Complaint (“Compl.”) ¶¶ 20, 46. On January 6, 2021,
 11 Plaintiff attended what she describes as a “Rally” to protest the results of the 2020 United States
 12 presidential election. *Id.* ¶¶ 33, 59. On that same day, “some protestors other than Genevieve,”
 13 “commit[ted] crimes by breaching the Capitol and engaging in criminal activity.” Compl. ¶ 71.

14 Plaintiff alleges that at approximately 2:00 pm on January 6, 2021, she posted a picture to
 15 her Instagram account of the protest at the Capitol building. *Id.* ¶ 62. The picture included the
 16 caption “Our Capitol.” *Id.* Plaintiff further alleges that, at about 7:00 pm, Meta published the
 17 Emergency News Statement “to the public and groups and communities” on Facebook related to
 18 the events at the Capitol. *Id.* ¶ 86. The Complaint excerpts the Emergency News Statement:

19 ...We are appalled by the *violence at the Capitol today*. We are
 20 treating *these events as an emergency*...For those of you who are
 21 wondering, here are the actions we’re taking: First, we have been
 22 *searching for and removing the following content*:

- 23 • Praise and support of the *storming of the Capitol*.
- 24 • *Calls to bring weapons* to locations across the US—not just
 25 in Washington but anywhere in the US—including protests.
- 26 • *Incitement or encouragement of the events at the Capitol*,
 27 including videos and photos from the protestors. At this
 28 point they represent *promotion of criminal activity* which
 violates our policies.
- Calls for protests—even peaceful ones—if they *violate
 curfew* in DC.

- Attempts to *restage violence* tomorrow or in the coming days.

Id. (emphases added). Plaintiff alleges that the third bullet of Meta’s Emergency News Statement purportedly connected her to those who committed crimes at the Capitol by implying that all January 6 protestors were engaging in criminal conduct. *Id.* ¶¶ 92, 99, 102. Plaintiff does not allege that the Emergency News Statement explicitly referred to her. Rather, the Complaint alleges that Plaintiff’s Instagram account was “disabled and deleted” almost a full week after the January 6 protests. *Id.* ¶ 90.

One of the “groups” that purportedly received the Emergency News Statement was an Instagram account called @fur.meme in which Plaintiff alleges she was a member. *Id.* ¶ 92. According to the Complaint, an anonymous student from Furman University operates the @fur.meme account, and the account is “well-followed” by students, faculty, school officials, and alumni. *Id.* ¶ 54. Plaintiff alleges that “@fur.meme posted a series of posts recognizing the Emergency News Statement was referring to Genevieve and her ‘Our Capitol’ photograph.” *Id.* ¶ 98. But crucially, *none* of the eleven screenshots of @fur.meme’s Instagram posts included in the Complaint mention the Emergency News Statement. *Id.* ¶ 104. In fact, Plaintiff does not allege that the Emergency News Statement was published in any form on *Instagram* itself. Rather, the Complaint points to a hyperlink of the Emergency News Statement on *Facebook’s* website available to the general public. *See Id.* ¶ 85. Further, one of the @fur.meme posts expressly states that @fur.meme knew about Plaintiff’s attendance at the January 6 protest because of “pictures [she had] shared on [her] public Instagram account[.]” @fur.meme does not mention the Emergency News Statement. *Id.* ¶ 104, p. 18. Plaintiff claims that @fur.meme’s posts about her “severely damage[d]” her “reputation within the Furman community.” *Id.* ¶ 108.

III. LEGAL STANDARD

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Dismissal is appropriate “where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendiondo v.*

1 *Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). In conducting a Rule 12(b)(6)
 2 analysis, the court may consider the complaint, material relied upon in the complaint, and
 3 material subject to judicial notice. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir.
 4 2001). The court must accept “well-pleaded factual allegations” as true, but need not “accept as
 5 true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 664, 678.

6 **IV. ARGUMENT**

7 **A. The Complaint Fails To State A Claim For Defamation *Per Se*.**

8 Plaintiff brings a lone claim for defamation *per se*. To prevail on a claim for defamation
 9 *per se*, the plaintiff must prove that “a defendant published a false statement to another person or
 10 persons, that those persons reasonably understood the statements to be about the plaintiff, that the
 11 statements were defamatory on their face [], and that the defendant failed to use reasonable care
 12 to determine the truth or falsity of the statement.” *Ellis v. Starbucks Corp.*, 2015 WL 5240042, at
 13 *4 (N.D. Cal. Sept. 5, 2015). In addition, the First Amendment “requires that the statement on
 14 which the claim is based must specifically refer to, or be ‘of and concerning,’ the plaintiff in some
 15 way.” *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1042 (1986). Plaintiff’s defamation claim
 16 must be dismissed with prejudice for at least three independent reasons: (1) Meta’s Emergency
 17 News Statement did not refer to Plaintiff, (2) Meta’s Emergency News Statement was not
 18 published to a third party who reasonably understood its allegedly defamatory meaning or
 19 applicability to Plaintiff, and (3) Meta’s Emergency News Statement was not false or reasonably
 20 susceptible to a defamatory meaning.

21 **1. Meta’s Emergency News Statement Was Not Of Or Concerning 22 Plaintiff.**

23 Ms. Mahoney concedes that to state a defamation claim, the statement on “which the claim
 24 is based must specifically refer to, or be ‘of and concerning,’ the plaintiff in some way.” *Blatty v.*
 25 *N.Y. Times Co.*, 42 Cal. 3d 1033, 1042 (1986); *see* Compl. ¶ 153. Plaintiff contends that the
 26 following portion of the Emergency News Statement was somehow “of and concerning” her:
 27 “Incitement or encouragement of the events at the Capitol, including videos and photos from the
 28 protestors. At this point they represent promotion of criminal activity which violates our policies.”
 Compl. ¶ 157. While Plaintiff also concedes that the Emergency News Statement does not identify

1 her by name (Compl. ¶ 158), she argues that it refers to her by “reasonable implication” because it
 2 was “understood within Instagram’s @fur.meme group and the Furman community” to refer to her.
 3 This argument fails.

4 “[F]or a claim based on an ‘alleged injurious falsehood of a statement,’ such as libel, ‘the
 5 plaintiff must effectively plead that the statement at issue either expressly mentions him or refers
 6 to him by reasonable implication.’” *Eastman v. Apple, Inc.*, 2019 WL 3934805, at *7 (N.D. Cal.
 7 Aug. 20, 2019).² The requirement that the statement be “of and concerning” the plaintiff “limits the
 8 right of action for injurious falsehood, granting it to those who are the direct object of criticism and
 9 denying it to those who merely complain of nonspecific statements that they believe cause them
 10 some hurt.” *Blatty*, 42 Cal. 3d at 1044. Moreover, where the allegedly defamatory statement
 11 concerns a group, “the plaintiff faces a difficult and sometimes insurmountable task...where the
 12 group is large—in general, any group numbering over twenty-five members—the courts in
 13 California and other states have consistently held that plaintiffs cannot show that the statements were
 14 of and concerning them.” *Blatty*, 42 Cal. 3d at 1046 (collecting cases).

15 Plaintiff fails to plead facts from which the Court can infer that Meta’s Emergency News
 16 Statement is “of and concerning” her. Rather, Plaintiff concedes that Meta’s Emergency News
 17 Statement *does not refer to Plaintiff expressly whatsoever*, see Compl. ¶ 86, and the Emergency
 18 News Statement cannot be reasonably understood to refer to her by implication. *Id.* ¶ 158; *see, e.g.*,
 19 *Hayes v. Facebook, Inc.*, 2019 WL 5088805, at *7 (N.D. Cal. Aug. 15, 2019) (dismissing
 20 defamation claim where warning notice on plaintiff’s Facebook page could not reasonably be
 21 interpreted as being about plaintiff personally). Plaintiff’s theory is that the Emergency News
 22 Statement defamed *every person* who attended the January 6 protest and did not engage in violence
 23 or other criminal behavior. But the introductory paragraphs of the Emergency News Statement
 24 expressly indicate that the “events” it is referring to are those surrounding the “violence at the
 25 Capitol today,” and the context makes clear that Meta was “searching for and removing” only those

26 _____
 27 ² As explained further below (*see* Section IV.A.2 *infra*), “a defamatory statement that is ambiguous as to its
 28 target not only must be capable of being understood to refer to the plaintiff, but also must be shown actually
 to have been so understood by a third party.” *SDV/ACCI, Inc. v. AT & T Corp.*, 522 F.3d 955, 960 (9th Cir.
 2008). Here, Plaintiff has failed to sufficiently allege that any person understood the Emergency News
 Statement to refer to her.

1 “videos and photos” that “[i]ncite[] or encourage[]” those events. *Id.* ¶ 86-87.

2 Moreover, Plaintiff argues that the Emergency News Statement “referred to [her] by
3 reasonable implication” because she was one of two members on the @fur.meme Instagram
4 “group” who were “protestors near the Capitol Breach...posting photos on the Internet.” Compl.
5 ¶ 160. Her argument is misguided. Nothing in the Emergency News Statement referred to
6 @fur.meme at all. Compl. ¶ 157. Instead, the challenged portion of the Emergency News Statement
7 referred to “videos and photos from the protestors”—a group so large that the “of and concerning”
8 requirement could not plausibly be met. Indeed, the Complaint itself expressly alleges that
9 “*thousands* of people across the country traveled to the Ellipse in D.C. on January 6, 2021, to have
10 their voices heard and to peacefully and lawfully protest the Election and Certification Count.”
11 Compl. ¶ 37 (emphasis added). Thus, the group allegedly referred to by implication *well exceeds*
12 the threshold of twenty-five members that California courts have held is too large to support a
13 defamation claim. *See, e.g., Eastman*, 2019 WL 3934805, at *7 (dismissing defamation claim where
14 “every other person” who was not named on a patent was too large a group to support the plaintiff’s
15 claim); *Bartholomew v. YouTube, LLC*, 17 Cal. App. 5th 1217 (2017) (dismissing defamation
16 claims where plaintiff provided no theory as to how the generalized statements on YouTube’s
17 Community Guidelines page were ascribed in any particular way to *her.*). Plaintiff’s failure to
18 adequately allege that the Statement identifies or concerns her is fatal to her defamation claim.

19 **2. Meta’s Emergency News Statement Was Not Published To A Third**
20 **Party Who Understood Its Allegedly Defamatory Meaning Or**
21 **Applicability To Plaintiff.**

22 To state a claim for defamation, Plaintiff is also required to plead “publication,” which
23 California courts define as a “communication to some third person who understands both the
24 defamatory meaning of the statement and its application to the person to whom reference is
25 made.” *Ringler Assocs. Inc.*, 80 Cal. App. 4th at 1179 (2000). Plaintiff contends that Meta
26 published the Emergency News Statement on Facebook “to the general public on the Internet
27
28

1 through its Facebook platform including the @fur.meme Instagram group.”³ Compl. ¶ 155
 2 (emphasis added). But crucially, Plaintiff does not identify *a single person* who actually (1) saw
 3 the Emergency News Statement, much less understood its allegedly defamatory meaning towards
 4 Plaintiff and (2) legitimately read that allegedly defamatory meaning as applying to Plaintiff.
 5 Plaintiff instead attempts to support her defamation claim by alleging that the @fur.meme
 6 account “published a series of posts recognizing the Emergency News Statement was referring”
 7 to her. Compl. ¶ 98. But the posts in the Complaint show nothing of the sort. Critically, none of
 8 the eleven screenshots says *a single word* about Meta’s Emergency News Statement—there is
 9 simply no plausible allegation that the Furman student who operates the @fur.meme Instagram
 10 account “recognized”—let alone even saw—the Emergency News Statement, which was
 11 published on *Facebook*. Compl. ¶¶ 15, 98; *see, e.g., Sieler v. Atieva Inc.*, 2022 WL 18402494, at
 12 *5 (N.D. Cal. Dec. 16, 2022) (finding conclusory allegations that “[p]rofessionals in the
 13 automotive lighting community would and have interpreted” the defamatory statement as
 14 referring to Plaintiff insufficient); *Fitbit, Inc. v. Laguna 2, LLC*, 2018 WL 306724, at *8 (N.D.
 15 Cal. Jan. 5, 2018) (“It is hard to see how a party unidentified and unknown to the audience of the
 16 alleged defamation can claim it was defamed and injured.”).⁴

17 **3. Meta’s Emergency News Statement Is Neither False Nor Is It** 18 **Susceptible To A Defamatory Meaning.**

19 Plaintiff asserts that the Emergency News Statement is “provably false” because Plaintiff
 20 “has never been charged with a crime related to her ‘Our Capitol photo.’” Compl. ¶ 164. This
 21 argument erroneously assumes that the statement is plausibly “of and concerning” Plaintiff, which
 22 it is not, *see* Section IV.A.1, *supra*. Read as a whole, the Emergency News Statement is neither
 23 false nor susceptible to defamatory meaning. Indeed, to state a claim for defamation, “defamatory

24 ³ Notably, Plaintiff does not allege that the Emergency News Statement was published directly to the
 25 @fur.meme Instagram account or even to the Instagram service. Rather, she merely cites a hyperlink to it
 26 on Meta’s website that was published on January 6, 2021 and made available to the general public.
 Compl. ¶¶ 49.

27 ⁴ Indeed, Plaintiff’s allegation that @fur.meme recognized Meta’s Emergency News Statement is wholly
 28 contradicted by the initial @fur.meme post, which indicates that the Furman student learned of Plaintiff’s
 attendance at the January 6 protest directly from Ms. Mahoney’s own activity on Instagram. Compl. ¶ 68
 (“@genmahoney19 [has] attended this violent, pro-Trump event. This information is known by pictures
 [she has] shared on [her] public Instagram account[.]”).

1 meaning must be found, if at all, in a reading of the publication as a whole...Defamation actions
2 cannot be based on snippets taken out of context.” *Crowe v. County of San Diego*, 608 F.3d 406,
3 443 (9th Cir. 2010). “The defamatory character of language is measured ‘according to the sense and
4 meaning . . . which such language may fairly be presumed to have conveyed to those to whom it
5 was published.’” *Balzaga v. Fox News Network, LLC*, 173 Cal. App. 4th 1325, 1337 (2009)
6 (affirming ruling that no reasonable viewer of news program could have understood it to have
7 defamatory meaning). If no “reasonable viewer could have reasonably understood the statement in
8 the alleged defamatory sense, the matter may be decided as a question of law.” *Id.*

9 Here, Plaintiff has failed to sufficiently allege that any of the Emergency News Statement is
10 susceptible to defamatory meaning. Plaintiff claims that the Emergency News Statement was “false
11 and untrue” because her photo did not “represent promotion of criminal activity,” but the statement
12 noted that Meta was searching for and removing content that represents “promotion of criminal
13 activity.” Compl. ¶ 163. She thus alleges that the Emergency News Statement is defamatory
14 because, in her view, it sweeps in not only criminal conduct at the Capitol but also peaceful
15 protestors like herself. *See* Compl. ¶¶ 164-65. But to the contrary, *no reasonable person* would
16 construe Meta’s statement to have a defamatory meaning as to Plaintiff’s purported peaceful
17 protesting. Rather, the language of Meta’s Emergency News Statement, read as a whole, shows that
18 the Statement was directed exclusively at *content* posted on Meta’s services that could have the
19 effect of *promoting violence*.

20 For example, the introductory paragraph states that “[w]e are appalled by the **violence** in the
21 Capitol today. We are treating these **events** as an emergency.” *Id.* ¶ 86 (emphasis added). Meta’s
22 Statement thereby defined “events” in terms of “violence at the Capitol.” The clear implication is
23 that the phrase “events at the Capitol” in the allegedly defamatory statement referred only to
24 violence, and the “videos and photos from the protestors” that were the focus of the statement were
25 those that could “incite or encourage” violence at the Capitol. *See id.* This conclusion is reinforced
26 by the phrase “including videos and photos from the protestors,” whereby Meta identified videos
27 and photos from the protestors as one category of content that could violate Facebook’s policies
28 against inciting violence. *See id.* And the Emergency News Statement was directed not at “all the

1 protestors posting photographs” as Plaintiff alleges, *id.* ¶ 144, but rather only at the content that
2 risked inciting or encouraging violence.

3 Additionally, all of the other bullet points in Meta’s Emergency News Statement made clear
4 that it was concerned about posts encouraging violent or criminal conduct: “[p]raise and support of
5 the storming of the Capitol”; “[c]alls to bring weapons to locations across the US . . . including
6 protests”; [c]alls for protests . . . if they violate curfew in DC”; and “[a]ttempts to restage violence
7 tomorrow or in the coming days.” Compl. ¶ 86. Reading Meta’s Emergency News Statement as a
8 whole makes clear that it was directed at content that could incite violence. *See, e.g., Sidense Corp.*
9 *v. Kilopass Tech Inc.*, 2012 WL 3545289, at *5 (N.D. Cal. Aug. 16, 2012) (finding statement not
10 defamatory when read in context). Plaintiff’s allegation that one of these bullet points was somehow
11 directed at posts by peaceful protestors is not a reasonable construction based on the totality of the
12 circumstances. *Balzaga*, 173 Cal. App. 4th at 1337 (applying totality of circumstances test to review
13 allegedly defamatory language).

14 **B. Section 230 Of The Communications Decency Act Bars Plaintiff’s Claims**

15 Even if Plaintiff had pled facts sufficient to state a claim against Meta—which she has
16 not—her claim still fails for the independent reason that it is barred as a matter of law under
17 Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230 *et seq.* Meta does not
18 contend that Section 230 immunizes it from liability for its own statements. However, Plaintiff’s
19 claim is that she was harmed by information published by the @fur.meme account, not directly
20 by the Emergency News Statement (which plainly cannot be read to apply to her, *see* Section
21 V.A.1, *supra*). The elements of Section 230(c) are satisfied here, and her claims must be
22 dismissed.

23 Section 230 “protects certain internet-based actors from certain kinds of lawsuits.”
24 *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099 (9th Cir. 2009). Section 230 “establish[es] broad
25 federal immunity to any cause of action that would make service providers liable for information
26 originating with a third-party user of the service.” *Perfect 10, Inc. v. CCBill LLC*, 481 F.3d 751,
27 767 (9th Cir. 2007), *opinion amended and superseded on denial of reh’g*, 488 F.3d 1102 (9th Cir.
28 2007). Section 230 is to be “construed broadly, ‘to protect websites not merely from ultimate

1 liability, but from having to fight costly and protracted legal battles.’” *Cross v. Facebook, Inc.*, 14
 2 Cal. App. 5th 190, 206 (2017). Crucially, Section 230 bars claims based on a service provider’s
 3 decisions about “reviewing, editing, and deciding whether to publish or to withdraw from
 4 publication third-party content.” *Barnes*, 570 F.3d at 1099. Under Section 230(c)(1), a claim
 5 should be dismissed if (1) the defendant is a “provider . . . of an interactive computer service[;]”
 6 (2) the allegedly offending content was “provided by another information content provider[;]”
 7 and (3) Plaintiffs’ claims treat the defendant as the “publisher” of that content. 47 U.S.C. §
 8 230(c)(1). Plaintiff’s claims meet all three of these elements.

9 **1. Meta is an interactive computer service provider.**

10 Section 230 defines an interactive computer service provider as “any information service,
 11 system, or access software provider that provides or enables computer access by multiple users to
 12 a computer server.” 47 U.S.C. § 230(f)(2). California and federal courts have uniformly held that
 13 Meta meets Section 230’s “interactive computer service provider” definition. *See e.g., Sikhs for*
 14 *Justice, Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088 (N.D. Cal. 2015), *aff’d*, 697 Fed. Appx. 526
 15 (“it is undisputed that Facebook is an interactive computer service provider”); *Caraccioli v.*
 16 *Facebook, Inc.*, 700 F. App’x 588 (9th Cir. 2017) (affirming dismissal of claims based on Section
 17 230 and finding that Facebook is an interactive computer service provider); *Lloyd v. Facebook,*
 18 *Inc.*, 2022 WL 4913347, at *8 (N.D. Cal. Oct. 3, 2022) (“Meta and/or Facebook is an interactive
 19 computer service provider”); *Calise v. Meta Platforms, Inc.*, 2022 WL 1240860, at *2 (N.D. Cal.
 20 April 27, 2022) (same). Accordingly, Section 230(c)(1)’s first requirement is met.

21 **2. The content was provided by another information content provider.**

22 The information for which Plaintiff seeks to hold Defendants liable must come from an
 23 “information content provider” that is not Meta. 47 U.S.C. § 230(c)(1). Here, it is clear from the
 24 Complaint that Plaintiff seeks to hold Meta liable for information published by @fur.meme.
 25 Despite her attempts at artful pleading, she concedes that it was @fur.meme’s posts that
 26 “severely damaged” her reputation “within the Furman community.” Compl. ¶ 108. And as
 27 discussed above, Plaintiff fails to make any plausible factual allegations that Meta contributed “in
 28 whole or in part” to the creation or development of @fur.meme’s posts. *See Fair Hous. Council,*

1 521 F.3d at 1162. Accordingly, Section 230(c)(1)'s second requirement is met. *See, e.g., Lloyd*,
 2 2022 WL 4913347, at *8; *Igbonwa v. Facebook, Inc.*, 2018 WL 4907632, at *6 (N.D. Cal. Oct. 9,
 3 2018) (finding content was created by “another content provider” where Plaintiff alleged that
 4 Facebook users made the offensive post).

5 **3. Plaintiff's claims seek to treat Facebook as a “publisher.”**

6 Under Section 230, a plaintiff's claim treats a defendant as a “publisher” when it seeks to
 7 hold a service provider liable for its purported exercise of “editorial functions”—such as
 8 “deciding whether to publish, withdraw, postpone or alter content.” *Barnes*, 570 F.3d 1096,
 9 1101–1102; *Lewis v. Google LLC*, 461 F. Supp. 3d 938, 954 (N.D. Cal. 2020) (holding plaintiff's
 10 claims that the defendants “wrongfully ... restrict[ed] and remov[ed] his videos” constituted
 11 publishing functions under Section 230). Plaintiff's claim falls squarely within the third Section
 12 230(c) element because it seeks to hold Meta liable as the publisher or speaker of @fur.meme's
 13 posts. For this element, “[w]hat matters here is not the “name of the cause of action,” but
 14 “whether the duty that the plaintiff alleges the defendant violated derives from the defendant's
 15 status or conduct as a ‘publisher or speaker.’ If it does, Section 230(c)(1) precludes liability.”
 16 *Barnes*, 570 F.3d at 1101–02.

17 Here, Plaintiff's claim for defamation necessarily treats Meta as the publisher or speaker
 18 of @fur.meme's content on Instagram by asserting that it was @fur.meme's posts on Instagram
 19 that caused the asserted harm to Plaintiff. *See* Compl. ¶¶ 104, 108 (“@fur.meme made the
 20 following series of posts on Instagram...and it has severely damaged Genevieve's reputation
 21 within the Furman community”). Despite Plaintiff's blatant attempts to avoid Section 230, at its
 22 core, Plaintiff's Complaint seeks to hold Meta liable for allowing allegedly defamatory content—
 23 created and posted by @fur.meme—on Instagram. *See, e.g., Caraccioli*, 167 F. Supp. 3d at 1066
 24 (dismissing claims premised on Facebook's alleged failure to remove content); *Calise*, 2022 WL
 25 1240860, at *4 (dismissing breach of contract claim for allowing purportedly fraudulent ads on
 26 Facebook); *Morton v. Twitter, Inc.*, 2021 WL 1181753, at *4 (C.D. Cal. Feb. 19, 2021)
 27 (dismissing claims where they sought to treat Twitter as publisher of objectionable content by a
 28 third-party).

1 In short, Section 230 precludes Plaintiff from bringing a claim against Meta for content
2 published by the @fur.meme account. Plaintiff’s claims must be dismissed with prejudice.

3 **C. Plaintiff’s Complaint Should Be Struck Under The Anti-Slapp Statute.**

4 Meta also moves to strike Plaintiff’s claims under California’s anti-SLAPP statute, Cal.
5 Civ. Proc. Code § 425.16(b). To succeed on an anti-SLAPP motion, the defendant must show the
6 challenged claim is one “arising from” protected activity by demonstrating that the conduct
7 underlying the claim fits within one of Section 425.16’s categories of protections, including “any
8 written or oral statement or writing made in a place open to the public or a public forum in
9 connection with an issue of public interest.” CCP § 425.16(b)(1). In assessing whether a claim
10 arises from protected activity, the court disregards labeling and instead examines “the principal
11 thrust or gravamen of a plaintiff’s cause of action ... by identifying the allegedly wrongful and
12 injury-producing conduct ... that provides the foundation for the claim.” *Hunter v. CBS Broad.,*
13 *Inc.*, 221 Cal. App. 4th 1510, 1520 (2013). Thus, under the statute, a plaintiff’s state law claims
14 are struck if (1) the defendant makes a *prima facie* showing that the claims arise from “protected
15 activity” and (2) the plaintiff fails to demonstrate that her claims are legally sufficient. *See, e.g.,*
16 *Sarver v. Chartier*, 813 F.3d 891, 901 (9th Cir. 2016). Both conditions are present here.

17 **1. Meta’s content is protected activity.**

18 The anti-SLAPP statute protects, among other things, any conduct “in furtherance of
19 [Meta’s] right of free speech, including “any written or oral statement or writing made in a place
20 open to the public or a public forum in connection with an issue of public interest.” Cal. Civ.
21 Proc. § 425.16(e). “[W]here ... an action directly targets the way a content provider chooses to
22 deliver, present, or publish news content on matters of public interest, that action...must
23 withstand scrutiny under California’s anti-SLAPP statute.” *Greater Los Angeles Age. on*
24 *Deafness v. Cable News*, 742 F.3d 414, 424–425 (9th Cir. 2014). Here, Plaintiff’s Complaint
25 targets Meta’s decision to deliver the Emergency News Statement regarding the January 6 events.
26 The anti-SLAPP statute protects Meta’s alleged conduct because (1) Meta’s decision to post a
27 timely statement on Facebook, a public forum, is an act that furthers the right to speak and (2)
28 Meta’s decisions relate to the events of January 6, 2021 at the U.S. Capitol, which is manifestly

1 an issue of public interest.

2 **First**, Meta’s post on its own service occurred in a “place open to the public” because
 3 “websites [that] are accessible to the public,” including Facebook, are considered “open to the
 4 public” for the purposes of the anti-SLAPP statute. *Jackson v. Mayweather*, 10 Cal. App. 5th
 5 1240, 1252 (2017) (statements made on Facebook meet the definition of “public forum” for
 6 purposes of anti-SLAPP statute); *Cross*, 14 Cal. App. 5th at 197 (affirming Facebook meets anti-
 7 SLAPP definition); *see also Todd v. Lovecruft*, 2020 WL 60199, at *13 (N.D. Cal. Jan. 6, 2020)
 8 (“Twitter is a public forum for the purposes of the anti-SLAPP statute.”).

9 **Second**, there is simply no question that the January 6 event is a matter of public interest.
 10 *Albert v. Seal*, 2018 WL 1163852, at *4 (4th Dist. March 6, 2018) (“there is, of course, no
 11 question that political rallies and proposed legislation are matters of public interest under the anti-
 12 SLAPP statute”). Plaintiff concedes as much in her Complaint—she acknowledges that she
 13 “never in her wildest dreams imagined how something so uniquely American as free speech and
 14 the right to peacefully and lawfully assemble in accordance with the First Amendment would turn
 15 into an event marred by violence and unlawful behavior by some protestors in breaching the
 16 Capitol.” Compl. ¶ 75. This event is akin to other major national events, such as Presidential
 17 elections, rallies, and protests, which courts have considered matters of public interest for the
 18 purposes of anti-SLAPP. *See, e.g., Browne v. McCain*, 611 F. Supp. 2d 1062, 1068 (finding 2008
 19 presidential candidates and their energy policies were issues of public interest); *Royal Holdings*
 20 *Techs. Corp. v. IP Video Market Info Inc.*, 2020 WL 8225666, at *4 (C.D. Cal. Dec. 18, 2020)
 21 (finding efficacy of vaccine during pandemic of public interest).

22 **2. Plaintiff cannot show the probability of prevailing on claims.**

23 “The burden then shifts to [Plaintiff] to establish a reasonable probability that it will
 24 prevail on its claim[s].” *Makaeff v. Trump Univ. LLC*, 715 F.3d 254, 261 (9th Cir. 2013). If an
 25 anti-SLAPP motion is “based on alleged deficiencies in the plaintiff’s complaint”—like this one
 26 is—then it “must be treated in the same manner as a motion under Rule 12(b)(6) except that the
 27 attorney’s fee provision of § 425.16(c) applies.” *Planned Parenthood Fed’n of Am., Inc. v. Ctr.*
 28 *for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018). This motion asserts the same deficiencies

1 as those outlined in the motion to dismiss for failure to state a claim. *See* Section IV *supra*.
 2 Specifically, Plaintiff’s defamation claim fails as a matter of law because: (1) Plaintiff has failed
 3 to plead sufficient facts showing that a reasonable person would have read the Emergency News
 4 Statement to refer to her; (2) Plaintiff failed to satisfy the requisite element of publication; (3)
 5 Meta’s Emergency News Statement is not “susceptible to a defamatory meaning,” because it was
 6 expressly directed at violent, not peaceful protestors. *See* Section IV.A *supra*. Moreover,
 7 Plaintiff’s claim fails for the additional reason that it is barred by Section 230. *See* Section IV.B,
 8 *supra*.

9 **D. Plaintiff Should Not Be Granted Leave To Amend.**

10 Leave to amend is inappropriate if “the pleading could not possibly be cured by the
 11 allegations of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). Here,
 12 leave to amend would be inappropriate for three reasons.

13 **First**, as established above (*see* Section IV.A, *supra*), Plaintiff’s lone remaining claim
 14 suffers fatal deficiencies that she cannot overcome with further amendments. **Second**, Plaintiff’s
 15 claims will be barred by Section 230(c)(1) no matter what additional facts she pleads (*see* Section
 16 IV.B, *supra*)— which is why courts generally deny leave to amend when “there is CDA
 17 immunity.” *King v. Facebook, Inc.*, 572 F. Supp. 3d 776 (2021) (dismissing claims barred by
 18 Section 230 with prejudice because “it would be futile for [Plaintiff] to try to amend the
 19 claim[s]”). And **third**, leave to amend is inappropriate after a successful anti-SLAPP motion.
 20 *Smith v. Santa Rosa Press Democrat*, No. 11-CV-2411, 2011 WL 5006463, at *7 (N.D. Cal. Oct.
 21 20, 2011) (finding because the purpose of anti-SLAPP is “to provide for a speedy resolution of
 22 claims which impinge on speech protected by the First Amendment,” “leave to amend is not
 23 necessary or appropriate.”); *Flores v. Emerich & Fike*, 2006 WL 2536615, at *10 (E.D. Cal. Aug.
 24 31, 2006) (“To allow amendment after an anti-SLAPP motion to strike has been granted
 25 eviscerates the purpose of the anti-SLAPP statute.”).

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V. CONCLUSION

For the foregoing reasons, Meta respectfully requests that the Court dismiss or strike the Complaint with prejudice.

Dated: March 31, 2023

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