

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GENEVIEVE MAHONEY,
Plaintiff,
v.
META PLATFORMS, INC.,
Defendant.

Case No. 22-cv-02873-AMO

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 115

This is a defamation case against Defendant Meta Platforms, Inc. (“Meta”). Before the Court is Meta’s Motion to Dismiss, which was heard before this Court on November 2, 2023. Having read the papers filed by the parties and carefully considered their arguments therein and those made at the hearing, as well as the relevant legal authority, the Court hereby **GRANTS** the Motion, for the following reasons.

BACKGROUND

A. Factual History

Plaintiff Genevieve Mahoney is a college student at Furman University who has an Instagram account with the username @genmahoney19. Mahoney attended what she describes as a “Rally” to protest the results of the 2020 United States presidential election. First Amended Complaint (“FAC”) ¶¶ 33, 59. On January 6, 2021, at approximately 2:00 p.m. Eastern Time,¹ Mahoney posted on her Instagram account the single image reproduced below and captioned it “Our Capitol.”

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¹ All references to times herein are to Eastern Time.

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“Our Capitol”

FAC ¶¶ 62-63.

On that same day, “some protestors other than Genevieve,” “commit[ted] crimes by breaching the Capitol and engaging in criminal activity.” FAC ¶ 71. At about 7:00 p.m., Meta published an “Emergency News Statement” “to the public and groups and communities” on Facebook related to the events at the Capitol. FAC ¶ 86. Meta’s Emergency News Statement read, in relevant part:

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

- Praise and support of the storming of the Capitol.
- Calls to bring weapons to locations across the US—not just in Washington but anywhere in the US—including protests.
- Incitement or encouragement of the events at the Capitol, including videos and photos from the protestors. At this 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.

FAC ¶ 86. Mahoney alleges that the third bullet of the Emergency News Statement, particularly suggesting that images from the protest “represent promotion of criminal activity,” connected her to those who committed crimes at the Capitol by implying that all January 6 event attendees were engaging in criminal conduct. FAC ¶¶ 92, 99, 102. Meta “disabled and deleted” Mahoney’s

1 Instagram account almost a full week after the January 6 protests. FAC ¶ 90.

2 One of the “groups” that purportedly received the Emergency News Statement was an
 3 Instagram account called @fur.meme. FAC ¶ 92. An anonymous student from Furman
 4 University operates the @fur.meme account, and the account is “well-followed” by students,
 5 faculty, school officials, and alumni. FAC ¶ 54. Mahoney alleges that “@fur.meme posted a
 6 series of posts recognizing the Emergency News Statement was referring to Genevieve and her
 7 ‘Our Capitol’ photograph.” FAC ¶ 98. The FAC goes on to reproduce 11 screenshots of
 8 @fur.meme’s Instagram posts in the hours following the Emergency News Statement. FAC ¶ 104
 9 (*see* ECF 114 at 18-28). One of the screenshots of @fur.meme’s Instagram posts identifies
 10 Mahoney by her Instagram handle, @genmahoney19, as having “attended this violent, pro-Trump
 11 event” based on pictures she shared on her public Instagram account.



25 FAC ¶ 104.

26 None of the 11 screenshots of @fur.meme’s Instagram posts mention the Emergency News
 27 Statement. FAC ¶ 104. Plaintiff claims that @fur.meme’s posts about her “severely damage[d]”
 28 her “reputation within the Furman community.” FAC ¶ 108.

1 **B. Procedural History**

2 Mahoney originally filed this case in Tennessee state court on July 1, 2021, advancing
3 causes of action for (1) defamation (libel), (2) defamation (libel by implication), (3) defamation
4 (false light invasion of privacy), and (4) negligent infliction of emotional distress. ECF 1-1. Meta
5 removed the case to U.S. District Court for the Middle District of Tennessee on August 4, 2021.
6 ECF 1. While in that District, Meta moved to dismiss the complaint. ECF 19, ECF 20.
7 Concurrent with its motion to dismiss, Meta moved to transfer the case to this district. ECF 13,
8 ECF 14. Additionally, Plaintiff filed a motion to remand the case to state court. ECF 24, ECF 28.
9 The Honorable William L. Campbell, Jr., of the Middle District of Tennessee denied Plaintiff's
10 motion to remand and granted Meta's motion to transfer the case to this district. ECF 68, ECF 69.
11 In that order, he did not reach the motion to dismiss.

12 Following transfer, Judge Donato permitted Mahoney to file an amended complaint. ECF
13 113. Mahoney filed the FAC on March 2, 2023 (ECF 114), and Meta filed the instant Motion to
14 Dismiss on March 31, 2023 (ECF 115). The case was reassigned to the undersigned during
15 briefing on the motion to dismiss. ECF 117.

16 **DISCUSSION**

17 Meta's motion seeks dismissal of the FAC on any of the following three independent
18 bases: (1) Mahoney fails to state a claim for defamation, (2) Meta's conduct is immunized under
19 Section 230 of the Communications Decency Act, and (3) Mahoney's claim for defamation should
20 be stricken under California's anti-SLAPP statute because it seeks to punish Meta for its protected
21 speech activity. Because the Court determines that Mahoney fails to state a claim for defamation,
22 it does not reach the parties' arguments regarding applicability of Section 230 of the
23 Communications Decency Act and defers ruling on the Anti-SLAPP motion.

24 **A. Legal Standard**

25 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests for the legal
26 sufficiency of the claims alleged in the complaint. *Ileto v. Glock*, 349 F.3d 1191, 1199-1200 (9th
27 Cir. 2003). Under Federal Rule of Civil Procedure 8, which requires that a complaint include a
28 "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ.

1 P. 8(a)(2), a complaint may be dismissed under Rule 12(b)(6) if the plaintiff fails to state a
 2 cognizable legal theory, or has not alleged sufficient facts to support a cognizable legal theory.
 3 *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013).

4 While the court is to accept as true all the factual allegations in the complaint, legally
 5 conclusory statements, not supported by actual factual allegations, need not be accepted. *Ashcroft*
 6 *v. Iqbal*, 556 U.S. 662, 678-79 (2009). The complaint must proffer sufficient facts to state a claim
 7 for relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 558-59
 8 (2007) (citations and quotations omitted). “A claim has facial plausibility when the plaintiff
 9 pleads factual content that allows the court to draw the reasonable inference that the defendant is
 10 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted). “[W]here the well-
 11 pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the
 12 complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Id.* at 679.

13 Review is generally limited to the contents of the complaint, although the court can also
 14 consider a document on which the complaint relies if the document is central to the claims asserted
 15 in the complaint, and no party questions the authenticity of the document. *See Sanders v. Brown*,
 16 504 F.3d 903, 910 (9th Cir. 2007). The court may consider matters that are properly the subject of
 17 judicial notice, *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005); *Lee v. City of Los Angeles*,
 18 250 F.3d 668, 688-89 (9th Cir. 2001), and may also consider documents referenced extensively in
 19 the complaint and documents that form the basis of the plaintiffs’ claims. *See No. 84 Emp’r-
 20 Teamster Jt. Council Pension Tr. Fund v. Am. W. Holding Corp.*, 320 F.3d 920, 925 n.2 (9th Cir.
 21 2003). If dismissal is warranted, it is generally without prejudice, unless it is clear that the
 22 complaint cannot be saved by any amendment. *Sparling v. Daou*, 411 F.3d 1006, 1013 (9th Cir.
 23 2005).

24 **B. Defamation**

25 “Defamation is an invasion of the interest in reputation.” *Smith v. Maldonado*, 72 Cal.
 26 App. 4th 637, 645 (1999). A defamatory statement may be either written (libel) or oral (slander).
 27 Cal. Civ. Code §§ 44, 45, 46. Here, Mahoney alleges that Meta’s written Emergency News
 28 Statement, by attributing criminality to the events at the Capitol, constitutes defamation per se

1 because it is defamatory on its face “without the necessity of explanatory matter.” Cal. Civ. Code
 2 § 45a. To prevail on a claim for defamation per se, Mahoney must prove that “a defendant
 3 published a false statement to another person or persons, that those persons reasonably understood
 4 the statements to be about the plaintiff, that the statements were defamatory on their face [], and
 5 that the defendant failed to use reasonable care to determine the truth or falsity of the statement.”
 6 *Ellis v. Starbucks Corp.*, 2015 WL 5240042, at *4 (N.D. Cal. Sept. 5, 2015).

7 Meta argues that Mahoney’s defamation claim falls short on three bases: (a) Meta’s
 8 Emergency News Statement did not refer to Mahoney, (b) Meta’s Emergency News Statement
 9 was not published to a third party who reasonably understood its allegedly defamatory meaning or
 10 applicability to Mahoney, and (c) Meta’s Emergency News Statement was not false or reasonably
 11 susceptible to a defamatory meaning. The Court addresses these three sub-points in turn.

12 **1. Reference to Mahoney**

13 To state a defamation claim, the statement on “which the claim is based must specifically
 14 refer to, or be ‘of and concerning,’ the plaintiff in some way.” *Blatty v. N.Y. Times Co.*, 42 Cal.3d
 15 1033, 1042 (1986). “In order to satisfy this requirement, the plaintiff must effectively plead that
 16 the statement at issue either expressly mentions [her] or refers to [her] by reasonable implication.”
 17 *Id.* at 1046 (citations omitted). Under reference by reasonable implication, “a defamatory
 18 statement that is ambiguous as to its target not only must be capable of being understood to refer
 19 to the plaintiff, but also must be shown actually to have been so understood by a third party.”
 20 *SDV/ACCI, Inc. v. AT&T Corp.*, 522 F.3d 955, 959 (9th Cir. 2008). Further, where the
 21 purportedly defamatory statement refers to a large group of persons, California courts have
 22 determined that “plaintiffs cannot show that the statements were ‘of and concerning them,’”
 23 especially where the group includes more than 25 members. *Blatty*, 42 Cal.3d at 1046 (collecting
 24 cases). The issue of whether a statement can be reasonably interpreted as referring to a plaintiff is
 25 a question of law for the court. *SDV/ACCI, Inc.*, 522 F.3d at 959.

26 Here, Mahoney admits that she was not identified in the Emergency News Statement but
 27 nevertheless claims it referred to her by reasonable implication because it identified “persons at
 28 the January 6 protest and events at the Capitol earlier that day who engaged in specific behavior:

1 protestors who posted photos on Meta’s social media platforms.” Opp. at 14 (ECF 116 at 14).
 2 The challenged portion of the Emergency News Statement, however, referred to “videos and
 3 photos from the protestors” – a group so large that the “of and concerning” requirement could not
 4 plausibly be met under California law. *Cf. Blatty*, 42 Cal.3d at 1046 (stating that plaintiffs cannot
 5 show that allegedly defamatory statements were “of and concerning them” when the statements
 6 refer to a group or more than 25). Indeed, Mahoney describes in her pleading that “thousands of
 7 people across the country traveled to the Ellipse in D.C. on January 6, 2021, to have their voices
 8 heard and to peacefully and lawfully protest the Election and Certification Count.” FAC ¶ 37.
 9 Mahoney’s claim fails because the Emergency News Statement refers to a group so large that it
 10 cannot be construed as “of or concerning” her in any way. *Blatty*, 42 Cal.3d 1033, 1042.

11 Mahoney’s argument additionally fails because she does not show that a third party
 12 actually understood the Emergency News Statement to describe her photo as a representation or
 13 “promotion of criminal activity.” *See SDV/ACCI, Inc.*, 522 F.3d at 959; FAC ¶ 86. Mahoney does
 14 not allege that the Emergency News Statement was published in any form on Instagram itself.
 15 Further, Mahoney fails to draw any connection between Meta’s statement on Facebook and
 16 @fur.meme’s statements on Instagram, much less that @fur.meme and other members of the
 17 Furman University community understood Meta’s statement to refer to her at all. In sum,
 18 Mahoney fails to establish that Meta’s Emergency News Statement specifically referred to her or
 19 was understood by any third party as referring to her. Her defamation claim fails on this element
 20 alone.

21 **2. Publication to a third party who understood the statement as defaming**
 22 **Mahoney**

23 California courts define “publication” as a “communication to some third person who
 24 understands both the defamatory meaning of the statement and its application to the person to
 25 whom reference is made.” *Ringler Assocs. Inc. v. Maryland Cas. Co.*, 80 Cal. App. 4th 1165,
 26 1179 (2000).

27 Mahoney contends that Meta published the Emergency News Statement on Facebook “to
 28 the general public on the Internet through its Facebook platform including the @fur.meme

1 Instagram group.” FAC ¶ 155. Mahoney complains that the @fur.meme account “published a
2 series of posts recognizing the Emergency News Statement was referring” to her. FAC ¶ 98. But
3 the posts reproduced in the FAC show nothing of the sort. FAC ¶ 104.

4 Mahoney fails to draw a nexus between (1) the Emergency News Statement and (2) the
5 @fur.meme Instagram posts that identified her as having attended events at the Capitol on January
6 6, 2021. Mahoney argues in significant part that when Meta posted in its “Emergency News
7 Statement that protestors’ photos at the Capitol events ‘represent promotion of criminal activity,’
8 @fur.meme and others in this Instagram group seized upon the statement since it *linked* the
9 posting of photos at the U.S. Capitol with the ‘promotion of criminal activity.’” Opp. at 15 (ECF
10 116 at 15, emphasis in original). But the FAC falls well short of alleging that @fur.meme and
11 others on the Instagram platform “seized” upon the Statement or even that they saw the Statement
12 issued on a different platform, Facebook. Mahoney does not allege that the Emergency News
13 Statement was published directly to the @fur.meme Instagram account or even to the Instagram
14 platform. Mahoney does not allege that the @fur.meme Instagram posts make any reference to
15 the Emergency News Statement, and the posts themselves show the opposite. The @fur.meme
16 posts state that Mahoney was known to have attended the “violent, pro-Trump event” based on
17 “pictures [she] shared on [her] public Instagram account[.]” FAC ¶ 104. The posts do not refer to
18 the Emergency News Statement, and it is not clear that the person(s) behind @fur.meme saw
19 Meta’s statement at all. FAC ¶ 104. Mahoney does not allege that a single person (1) saw the
20 Emergency News Statement, much less understood its allegedly defamatory meaning towards her,
21 or who (2) legitimately read that allegedly defamatory meaning as applying to her. Mahoney’s
22 defamation claim fails on this second prong as well.

23 3. Falsity or susceptibility to a defamatory meaning

24 To state a claim for defamation, “defamatory meaning must be found, if at all, in a reading
25 of the publication as a whole . . . Defamation actions cannot be based on snippets taken out of
26 context.” *Crowe v. County of San Diego*, 608 F.3d 406, 443 (9th Cir. 2010). “The defamatory
27 character of language is measured ‘according to the sense and meaning . . . which such language
28 may fairly be presumed to have conveyed to those to whom it was published.’” *Balzaga v. Fox*

1 *News Network, LLC*, 173 Cal. App. 4th 1325, 1337 (2009). If no “reasonable viewer could have
2 reasonably understood the statement in the alleged defamatory sense, the matter may be decided as
3 a question of law.” *Id.*

4 Mahoney contends that the Emergency News Statement is not only false, but libel per se
5 because it essentially accuses her of a crime. *See* ECF 116 at 16 (“[p]erhaps the clearest example
6 of libel per se is an accusation of crime.”) (quoting *Barnes-Hind, Inc. v. Superior Ct.*, 181 Cal.
7 App. 3d 377, 385 (1986)). Particularly, Mahoney claims that the Emergency News Statement
8 was “false and untrue” because her photo did not “represent promotion of criminal activity.” FAC
9 ¶ 163. She alleges that the Emergency News Statement is defamatory because, in her view, it
10 sweeps in not only criminal conduct at the Capitol but also peaceful protestors like herself. *See*
11 FAC ¶¶ 164-65.

12 However, Mahoney fails to allege that any person would have reasonably “understood the
13 statement in the alleged defamatory sense” – i.e., that everybody who posted photos from the
14 protest was a criminal. *Balzaga*, 173 Cal. App. 4th at 1337 (affirming ruling that no reasonable
15 viewer of news program could have understood it to have defamatory meaning). Meta’s statement
16 does not accuse Mahoney of a crime because it does not refer to her at all. No reasonable reader
17 could have reasonably understood the Emergency News Statement in the alleged defamatory
18 sense, and the claim for defamation must be dismissed on this third basis as well.

19 **C. Anti-SLAPP Motion**

20 “Under California’s anti-SLAPP statute, a defendant may bring a special motion to strike a
21 cause of action arising from constitutionally protected speech or petitioning activity.” *Barry v.*
22 *State Bar of California*, 2 Cal.5th 318, 320 (2017); Cal. Code Civ. Pro. § 425.16. California
23 courts generally apply a two-step process for analyzing an anti-SLAPP motion. *Hilton v.*
24 *Hallmark Cards*, 599 F.3d 894, 903 (9th Cir. 2010). “At the first step, the moving defendant bears
25 the burden of identifying all allegations of protected activity, and the claims for relief supported by
26 them.” *Baral v. Schnitt*, 1 Cal.5th 376, 396 (2016). Only “[i]f the court determines that relief is
27 sought based on allegations arising from activity protected by the statute” is the second step
28 reached. *Id.* At the second step, “the burden shifts to the plaintiff to demonstrate that each

1 challenged claim based on protected activity is legally sufficient and factually substantiated.”
2 *Baral*, 1 Cal.5th at 396; *see also Hilton*, 599 F.3d at 903.

3 Meta brings a special motion to strike Mahoney’s defamation claim because the claim
4 arises from the company’s protected speech activity. Mahoney initially opposes Meta’s anti-
5 SLAPP motion on the basis that California procedural mechanisms are disallowed in federal court.
6 Mahoney ignores well-settled Ninth Circuit precedent on the issue. An anti-SLAPP motion may
7 be brought against state law claims pending in federal court. *See Gunn v. Drage*, 65 F.4th 1109,
8 1119 (9th Cir. 2023) (“[W]e have repeatedly affirmed the applicability of California’s anti-SLAPP
9 statute in diversity cases.”); *Planned Parenthood Fed’n of Am. v. Ctr. for Med. Progress*, 890 F.
10 3d 828, 834 (9th. Cir. 2018). Mahoney is therefore incorrect regarding the availability of the
11 special motion to strike.

12 However, while California’s anti-SLAPP provisions generally permit defendants to head
13 off lawsuits that challenge their protected activity in the early stages of a case by striking the
14 complaint without leave to amend, the procedural rules require a slightly different outcome in
15 federal court. The Ninth Circuit has held that “granting a defendant’s anti-SLAPP motion to strike
16 a plaintiff’s initial complaint without granting the plaintiff leave to amend would directly collide
17 with Fed. R. Civ. P. 15(a)’s policy favoring liberal amendment.” *Verizon Delaware, Inc. v. Covad*
18 *Commc’ns Co.*, 377 F.3d 1081, 1091 (9th Cir. 2004). If the court finds deficiencies in the claims
19 as pleaded, it may defer consideration of the anti-SLAPP motion pending the filing of an amended
20 complaint. *See Verizon*, 377 F.3d at 1091 (holding that the district court did not err in deferring
21 consideration of anti-SLAPP motion pending receipt of an amended complaint and affirming
22 denial of anti-SLAPP motion to strike original complaint).

23 Here, the Court finds that Mahoney fails to state a claim for defamation. Mahoney
24 requested leave to amend, and such amendment is not clearly futile at this stage. Accordingly, the
25 Court defers consideration of Meta’s anti-SLAPP motion pending the filing of an amended
26 pleading. *See Verizon*, 377 F.3d at 1091 (“If the offending claims remain in the first amended
27 complaint, the anti-SLAPP remedies remain available to defendants.”).

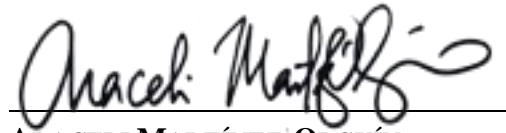
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CONCLUSION

For the foregoing reasons, the Court hereby **GRANTS** Meta’s motion to dismiss the operative complaint for Mahoney’s failure to state a claim for defamation. The Court **DEFERS** ruling on the anti-SLAPP motion in favor of granting leave to amend. Mahoney’s amended pleading, if any, shall be filed no later than February 8, 2024. No additional parties or claims may be added without leave of Court or stipulation of Defendant.

IT IS SO ORDERED.

Dated: January 6, 2024


ARACELI MARTÍNEZ-OLGUÍN
United States District Judge

United States District Court
Northern District of California

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