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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21 NADIA NAFFE, an individual,
22
23 Plaintiff,

24 v.

25 JOHN PATRICK FREY, an individual,
26 and the COUNTY OF LOS ANGELES,
27 a municipal entity,
28 Defendants.

Case No.: CV12-08443-GW (MRWx)
Judge: Hon. George H. Wu

DEFENDANT JOHN PATRICK
FREY'S REPLY IN SUPPORT OF
MOTION TO DISMISS SECOND
THROUGH SEVENTH CAUSES OF
ACTION OF THE FIRST AMEND
COMPLAINT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(1)

Hearing Date: April 18, 2013
Time: 8:30 a.m.
Courtroom: 10

Complaint Filed: October 2, 2012



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court, acting *sua sponte*, raised the question whether Plaintiff Nadia Naffe’s original complaint was supported by diversity jurisdiction, suggesting that its allegations might not support damages over the jurisdictional threshold. (Tentative Ruling at 3 – 5.) In his Motion to Dismiss for Lack of Jurisdiction, Defendant John Patrick Frey (“Mr. Frey”) demonstrated that Plaintiff’s First Amended Complaint (“FAC”) does *not* in fact support a claim for damages that meets the \$75,000 threshold. Plaintiff’s meager Opposition shows that she did not take either the Court’s question or Mr. Frey’s Motion seriously. In support of the contention that her patchwork of imaginative claims (arising from merely being disagreed with in public) is entitled to a federal forum, Plaintiff’s Opposition does not offer a single rebuttal to the legal authority cited by Mr. Frey. It does not even cite a single case or statute to support its own arguments. Instead of providing points and authorities, the Opposition relies entirely on sophistry, coupled with a two-page, seven-paragraph declaration by Plaintiff which is vague, conclusory, and rife with hearsay. Her opposition fails utterly to carry Plaintiff’s legal and factual burden to prove damages above the jurisdictional threshold by a preponderance of the evidence. The Court should therefore dismiss the Second through Seventh Causes of Action to the extent they rely upon diversity jurisdiction.

II. ARGUMENT

Mr. Frey established in his Motion that Plaintiff has the burden to prove, by preponderance of the evidence, facts in support of a quantum of damages that would satisfy the jurisdictional threshold. *Gaus v. Miles, Inc.* 980 F.2d 564, 567 (9th Cir. 1992), citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936). Mr. Frey also established that he may rely on extrinsic evidence in challenging jurisdiction. *Warren v. Fox Family Worldwide, Inc.* 328 F.3d 1136, 1141 n.5 (9th Cir.



1 2003). Plaintiff argues no contrary authority. In fact, she offers no authority at all.
2 Instead, Plaintiff relies on mischaracterizing Mr. Frey’s arguments.

3
4 ***Plaintiff’s Claim of Emotional Damages Is Insufficient***

5 With respect to her claims of damages resulting from emotional distress,
6 Plaintiff insists theatrically that Mr. Frey “invokes stereotypes of gender roles and
7 ‘proper’ feminine behavior.” Opposition at 1. This is cynical nonsense, a mere attempt
8 to fill the complete vacuum of legal justification for her opposition to this motion by
9 claiming victimization. Not a word in Mr. Frey’s submissions makes an argument that
10 relates to Plaintiff’s gender. Mr. Frey’s argument is based on evidence that, before she
11 decided to plead under Rule 11 and declare under oath that Mr. Frey had chilled her
12 and forced her to close her blog and that she was traumatized by his criticism, she
13 publicly said the exact opposite. Perjury is not gendered. Neither are the legal
14 standards by which this motion will be decided.

15 Mr. Frey presented evidence that, despite her claim that she was traumatized
16 and forced to close her blog because of Mr. Frey’s criticism and posting of her
17 deposition transcripts, Plaintiff in fact continued to blog openly and defiantly. Quoting
18 her words again:

19 Patrick Frey may have believed that posting my Social Security
20 Number and medical records online to his blog, in retaliation,
21 would intimidate and stop me from telling the truth about O'keefe
22 [sic], chill my First Amendment right and dissuade me from
23 coming forward to report a crime committed in his jurisdiction.
24 Though, what he has accomplished is precisely the opposite.
25 These two civil servants, both deputy district attorney's [sic] in Los
26 Angles [sic] County, in the past were able to bully and harass
27 private individuals, with impunity. But their patent on intimidation
28 and retribution expired when they came to me. The Frey's [sic] are



1 the poster children for the type of rampant corruption Carmen
2 Trutanich, Alan Jackson and Danette Myers [*sic*] have each spoken
3 out against. (Exhibit LL at 268-269.)

4 The point demonstrated by this excerpt of Plaintiff’s own words – that despite
5 her claim in this action, she was not the least bit “intimidated” by Mr. Frey – was
6 **central to Mr. Frey’s Motion**. Yet Plaintiff could not bring herself to mention it, let
7 alone rebut it factually or otherwise question its significance. Nor did she address the
8 evidence of her sneering, unintimidated tweet “Perhaps, it’s best to ignore Patterico &
9 move on. There is no common ground. I have much larger fish to fry.” Frey Decl. at ¶
10 39(g).

11 Similarly, Plaintiff completely ignores another point in Mr. Frey’s moving
12 papers, nearly as central and every bit as devastating to her maintenance of this action:
13 The evidence that she bragged of how she would use this vindictive and frivolous
14 lawsuit, not to vindicate the supposed “damages” she has suffered, but to abuse the
15 discovery process by inquiring into (1) how Mr. Frey and his wife afforded their
16 house; (2) an unrelated incident in which Mr. Frey was the victim of a false police
17 report; and (3) the identity of an unrelated anonymous blogger. Frey Decl. at ¶¶ 37 -
18 38; Exhibits LL, MM to Frey Decl.

19 Plaintiff has not even troubled herself to distinguish this case from those the
20 Court cited in its tentative ruling for a fundamental proposition: Emotional distress
21 resulting from mere offense cannot satisfy the jurisdictional threshold for damages.
22 *See, e.g., Christensen v. Nw. Airlines, Inc.*, 633 F.2d 529, 530-31 (9th Cir. 1980)
23 (discourteous and rude conduct of airline staff could not create damages satisfying
24 jurisdictional threshold). Plaintiff, naturally, does not address this case or any of those
25 authorities.

26 Factually – months after filing this lawsuit, and months after first being placed
27 on notice of this issue – what does Plaintiff offer the Court as proof that she has met
28 the \$75,000 jurisdictional threshold? Merely a declaration including *two conclusory*

1 *sentences* that she has suffered health problems and “great distress” including a
 2 bleeding ulcer, depression, severe migraines, and difficulty studying. (Naffe Decl. at ¶
 3 5.) She offers no other evidence – records of treatment costs, medical reports,
 4 prognoses, or medical testimony – supporting this assertion. Nor does her Opposition
 5 cite any authority for the proposition that such a weak gesture could ever be sufficient
 6 to prove the required quantum of damages by a preponderance of the evidence.

7 Even if this subjective and vague medical miscellany could be construed at
 8 meeting that standard, Plaintiff does not so much as hint as to what portion of her
 9 alleged distress arose from even arguably actionable conduct by Mr. Frey. Moreover,
 10 even taking Plaintiff’s tepid “causation” arguments at face value, the very exercise of
 11 placing them in the context of the unrebutted facts already before the Court on this
 12 motion results in their complete evaporation. For example, Plaintiff believes she is
 13 entitled to compensation for being called “callous and self-absorbed.” FAC at ¶¶ 42,
 14 8. But Mr. Frey established that he called her that because she made a heart attack
 15 joke about his friend, Andrew Breitbart, mere hours after he had died of a heart attack.
 16 Frey Decl. at ¶ 16. Plaintiff did not rebut this. Similarly Plaintiff complains that she
 17 has been called a liar – but Mr. Frey offered irrefutable evidence that she *did* lie, in the
 18 form of a preliminary hearing transcript in which she testifies under oath in a manner
 19 completely inconsistent with her subsequent claims about the “Barn Incident.” Frey
 20 Decl. at ¶¶ 11-15, and Exhibits Y, Z, AA to Frey Decl. As to these contradictions,
 21 Plaintiff provides nothing -- no rebuttal and no explanation whatsoever. Plaintiff does
 22 not even attempt to differentiate between distress allegedly resulting from being
 23 accurately identified as a cad and a liar – which, under the First Amendment, cannot
 24 be compensable – and distress allegedly resulting from (for instance) the unintentional
 25 re-publication of the Social Security Number she had allowed to remain in the public
 26 record for seven years.

27 Plaintiff also asserts, in two conclusory sentences, that Mr. Frey’s statements
 28 about her have “provoked his unstable fans” to “harass and threaten” her, and claims



1 she has had to move twice because of “death threats.” Plaintiff does not specify a
2 single word in this claim: Not “provoked” (i.e., the content or nature of the alleged
3 threats or harassment), “his” (i.e., any link between threats she may have received and
4 Plaintiff), “unstable” (i.e., any evidence of so-called instability on the part of such
5 people), or “fans” (i.e., in addition to the foregoing, who she is talking about). The
6 same applies to the alleged “death threats.” No specifics are offered here either: Who
7 made them, when they were made, or how often they were made. She does not
8 identify what the alleged death threats were, whether they were reported to authorities,
9 what about them led her to move, or what costs she incurred in moving.

10 At the end of the day, even crediting these gauzy accusations, which are several
11 degrees beyond “plausible,” Plaintiff fails to meet the legal requirement of connecting
12 these supposed occurrences with *tortious or unlawful conduct by Mr. Frey*. She does
13 not even pretend to explain how she can tell that they contacted her because of
14 anything *wrongful* Mr. Frey did. She does not so much as address the equally likely
15 possibility that these alleged communications may have occurred because Mr. Frey
16 exercised his First Amendment right to truthfully describe her as the sort of person
17 who makes heart attack jokes about people on the day they die. She never deigns to
18 consider that she may have gotten nasty emails because Mr. Frey demonstrated, as is
19 his constitutional right to do, that she is the sort of person who makes scurrilous
20 accusations of sexual assault after having earlier testified under oath in an entirely
21 contradictory fashion.

22 In short, Plaintiff does not come close to meeting her burden to demonstrate
23 that she has suffered \$75,000 in damages as a result of some tortious conduct alleged
24 here by a preponderance of the evidence – particularly so given her tattered
25 credibility, but even giving full credence to the shallow, vague and conclusive claims
26 she bothered to stitch into two sentences in her declaration filed in opposition to this
27 Motion.



1 ***Plaintiff’s Claim of Identity Theft Damages Is Insufficient***

2 In his Motion, Mr. Frey argued and cited authority establishing that as a matter
3 of law, Plaintiff could not be held liable for any alleged identify theft committed using
4 her Social Security number regardless of what damages may have arisen from such
5 theft. Once again, Plaintiff ignored the authority and the argument. Relying solely on
6 hearsay, and without any supporting documentary evidence, Plaintiff claims that
7 changes were made to her credit report; that individuals used her Social Security
8 Number to report income; and that a car dealership called her to verify that she was
9 buying a car. (Naffe Decl. at ¶¶ 2-4.) But Plaintiff makes no effort whatsoever to so
10 much as describe, much less quantify, any harm – legally cognizable or otherwise –
11 she has suffered as a result of these supposed events. These vague assertions do not
12 bring Plaintiff one dollar closer to meeting her burden of proof on this Motion that she
13 suffered more than \$75,000 in damages, either legally or factually.

14
15 ***Plaintiff’s Claim of Harm to Reputation Is Insufficient***

16 Plaintiff also claims that Mr. Frey has “ruined [her] reputation, making it
17 exceedingly difficult for [her] to find any employment.” (Naffe Decl. at ¶ 7.) A few
18 paragraphs earlier, however, Plaintiff admits that she is a full time student and does
19 not earn income. (Naffe Decl. at ¶ 3.) But Plaintiff states no facts whatsoever to
20 establish what the quality of her reputation was beforehand. She does not describe the
21 nature of the employment to which she believes herself entitled based on her
22 qualifications, or what such jobs would pay. Nor does she allege that she has applied
23 for a job or specify ones to which she was supposedly entitled and yet barred from due
24 to Mr. Frey – not a single fact showing that anything Mr. Frey has written has had any
25 impact on any employer’s consideration of her. She complains that Mr. Frey’s words
26 – his expression of his First Amendment rights – are easily found by a Google search.
27 And, once again, she makes no attempt to show that any alleged harm resulted from
28 allegedly *wrongful* conduct by Mr. Frey, as opposed to resulting from conduct that is

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1 indisputably protected by the First Amendment, such as identifying her as someone
2 who makes heart attack jokes the day someone died, or offering the transcript of a
3 public hearing directing contradicting her accusations about a public figure. Indeed,
4 given her justified reputation as someone who did just that, Plaintiff has failed to
5 demonstrate how it would even be possible to make that reputation even worse. In an
6 environment where people have difficulty finding employment, even when (unlike
7 Plaintiff) they have *not* brought notoriety upon themselves, Plaintiff has failed to
8 demonstrate why she is entitled to be offered a job at all.

9 In short, Plaintiff does not carry her burden of proving, by preponderance of the
10 evidence, damage to reputation exceeding the jurisdictional threshold.

11 **III. CONCLUSION**

12 Based on the foregoing, in the event Plaintiff’s Second through Seventh causes
13 of action survive Mr. Frey’s Renewed Motion to Strike, this Court should dismiss
14 them for lack of diversity jurisdiction, in light of the Court’s previously expressed
15 decision to decline to exercise jurisdiction over them under 28 U.S.C. § 1367(c)(2).

16 DATED: March 4, 2013

17 Respectfully submitted,
GOETZ FITZPATRICK LLP LLP

18
19 By s/Ronald D. Coleman

20 RONALD D. COLEMAN
21 Attorneys for Defendant
JOHN PATRICK FREY

22
23 DATED: March 4, 2013

24 Respectfully submitted,
BROWN WHITE & NEWHOUSE LLP

25 By s/Kenneth P. White

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27 Attorneys for Defendant
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