

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALEJANDRO EVARISTO PEREZ,
Plaintiff,
v.
LINKEDIN CORPORATION,
Defendant.

Case No. [5:20-cv-07238-EJD](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS; DENYING
PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. Nos. 27, 28

Pending before the Court are the parties’ respective motions addressing Plaintiff Alejandro E. Perez’s (“Perez”) claims brought under California’s anti-SLAPP statute. Defendant LinkedIn Corporation (“LinkedIn”) moves to dismiss Perez’s claims under Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 28 (“Mot.”). Perez, in turn, has moved for summary judgment on all of his claims. Dkt. No. 27 (“MSJ”).

The Court takes the motions under submission without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons set forth below, LinkedIn’s motion to dismiss is GRANTED, and Perez’s motion for summary judgment is DENIED as moot.

I. BACKGROUND

A. Factual Background

The case before the Court is a topical one pertaining to the monitoring of speech on social media platforms. LinkedIn is a social networking website designed for professionals to search and review job opportunities, research issues of public interest, and network with other professionals. Dkt. No. 19, Amended Complaint (“Complaint”) ¶ 10. LinkedIn users must create a profile to

1 access this functionality. *Id.* ¶ 8. Every LinkedIn user must also agree to the company’s terms of
 2 service before creating a profile. Dkt. No. 29, Request for Judicial Notice (“RJN”), Ex. 2 at 2-3.¹
 3 Once the user creates a profile, they may choose to associate with other LinkedIn users.
 4 Complaint ¶ 8. These “associations” may engage with one another via private messages, public
 5 messages, and other forms of engagement. *Id.* ¶ 15.

6 Perez created a LinkedIn profile and eventually grew his connections to “7,000 consenting
 7 associations . . . includ[ing] US government leaders and US military leaders.” *Id.* In May of
 8 2020, LinkedIn removed several of Perez’s posts for violating its terms of use. RJN, Ex. 2 at 3.
 9 Shortly after, LinkedIn suspended Perez’s account. *Id.* Since then, Perez cannot access his
 10 account nor engage with his prior “associations” on the LinkedIn site. *Id.*

11 **B. Procedural Background**

12 Perez, acting pro se, first filed this action in the Southern District of Texas claiming that
 13 LinkedIn had violated his First Amendment rights. *Id.* LinkedIn moved to dismiss Perez’s
 14 complaint for failure to state a claim and, alternatively, moved to transfer the case to the Northern
 15 District of California. *Id.* The Southern District of Texas granted LinkedIn’s motion to dismiss
 16 without prejudice and ordered that the case be transferred to the Northern District of California.
 17 *Id.* at 15.

18 In October of 2020, Perez, again acting pro se, filed this case before the Court. Perez now
 19 alleges that LinkedIn has violated “his right of Free Speech” under California state law.
 20 Complaint ¶¶ 16, 20. LinkedIn filed a Motion to Dismiss Perez’s Amended Complaint for failure
 21 to state a substantive cause of action. Dkt. No. 28 (“Mot.”). Perez opposed the Motion to
 22

23 ¹ In connection with its motion to dismiss, LinkedIn requests that the Court take judicial notice of
 24 two documents: (1) the Complaint filed by Plaintiff in *Perez v. LinkedIn Corp.*, (S.D. Tex. No.
 25 4:20-cv-2188-NFA filed June 22, 2020, (“Ex. 1”) and (2) the Southern District of Texas
 26 Memorandum and Order ruling on LinkedIn’s Motion to Dismiss and Motion to Transfer venue
 27 (“Ex. 2”). A court may take judicial notice of adjudicative facts “not subject to reasonable dispute
 28 in that [they are] . . . capable of accurate and ready determination by resort to sources whose
 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Court filings and other
 matters of public record are proper for judicial notice. *See Holder v. Holder*, 305 F.3d 854, 866
 (9th Cir. 2002). LinkedIn’s request for judicial notice is GRANTED.

1 Dismiss, to which LinkedIn has filed a reply. Dkt. Nos. 30 (“Opp.”), 33 (“Reply”).

2 **II. LEGAL STANDARD**

3 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient
 4 specificity to “give the defendant fair notice of what the . . . claim is and the grounds upon which
 5 it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929
 6 (2007) (internal quotations omitted). A complaint which falls short of the Rule 8(a) standard may
 7 be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).
 8 A dismissal under Rule 12(b)(6) for failure to state a claim can be based on either (1) the lack of a
 9 cognizable legal theory or (2) insufficient facts to support a cognizable legal claim. *Balistreri v.*
 10 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

11 Pleadings filed by a plaintiff proceeding pro se, as here, must be construed liberally.
 12 *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). In doing so, the court “need not give a
 13 plaintiff the benefit of every conceivable doubt” but “is required only to draw every reasonable or
 14 warranted factual inference in the plaintiff’s favor.” *McKinney v. De Bord*, 507 F.2d 501, 504 (9th
 15 Cir. 1974). The court “should use common sense in interpreting the frequently diffuse pleadings
 16 of pro se complainants.” *Id.* A pro se complaint should not be dismissed unless the court finds it
 17 “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would
 18 entitle him to relief.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972).

19 **III. DISCUSSION**

20 Perez advances two claims against LinkedIn for violating “Anti-SLAPP laws by censoring
 21 and destroying the Plaintiff’s LinkedIn account” under California Code of Civil Procedure Section
 22 425.16(e). Complaint ¶ 6. Perez further alleges that LinkedIn’s violations of the anti-SLAPP laws
 23 amount to “gross intentional infliction of emotional distress.” Complaint ¶¶ 16, 20. The Court
 24 will address these allegations separately, as well as consider potential First Amendment claims
 25 consistent with the forgiving standard afforded to pro se litigants.

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1 **A. Anti-SLAPP Claims**

2 A strategic lawsuit against public participation, or SLAPP suit, is one that utilizes the
3 judicial process to “chill or punish a party’s exercise of constitutional rights to free speech.”
4 *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1055 (2006). To combat the rise of such antagonistic suits,
5 California Code of Civil Procedure Section 425.16 created a “procedure for filing a special motion
6 . . . for the early dismissal of SLAPP suits.” *Kibler v. N. Inyo Cty. Local Hosp. Dist.*, 39 Cal. 4th
7 192, 197 (2006), *as modified* (July 20, 2006). This special motion to strike is triggered when a
8 plaintiff files “[a] cause of action against a person arising from any act of that person in
9 furtherance of the person’s right of petition or free speech under the United States Constitution or
10 the California Constitution in connection with a public issue.” Cal. Civ. Proc. Code § 425.16(b).
11 Ultimately, the anti-SLAPP statute is a procedural device to screen out meritless claims,” and does
12 not provide any substantive rights to litigants. *Kibler*, 39 Cal. at 202. *See also Makaeff v. Trump*
13 *Univ.*, 715 F.3d 254, 273 (9th Cir. 2013) (Kozinski, C.J., concurrence) (“The statute deals only
14 with the conduct of the lawsuit; it creates no rights independent of existing litigation; and its only
15 purpose is the swift termination of certain lawsuits”).

16 LinkedIn argues both claims should be dismissed because Perez “cannot proceed on a
17 ‘claim’ that is actually a procedural device to be utilized by a defendant.” Mot. at 5. Perez
18 contends LinkedIn is misrepresenting the law because such procedural language is “not found in
19 [the] actual text.” Opp. at 12.

20 The Court finds LinkedIn’s arguments persuasive. The language of the statute, as well as
21 the caselaw, demonstrate the anti-SLAPP law was designed to eliminate suits that seek to chill
22 constitutionally protected speech and “deplete ‘the defendant’s energy’ and drain ‘his or her
23 resources’” *Kibler*, 39 Cal. at 197 (citing *Simmons v. Allstate Ins. Co.*, 92 Cal. App. 4th 1068,
24 1074 (2001)). The statute is inapplicable here because LinkedIn has not initiated any suit against
25 Perez to chill constitutionally protected speech. At most, Perez alleges that LinkedIn has chilled
26 his alleged constitutionally protected speech by “wast[ing] a lot of time with judicial processes,”

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1 “misrepresenting law cases,” and refusing “multiple attempts to peacefully settle.” Opp. at 9, 12.
 2 However, the anti-SLAPP applies against a party pursuing litigation and is designed to protect
 3 *defendants* from vexatious and suppressive litigation. *Kibler*, 39 Cal. at 197. The statute does not
 4 provide a basis for a plaintiff to bring an affirmative suit for substantive relief. *Id.* at 202. Here,
 5 Perez is the *plaintiff* bringing this case, not LinkedIn. Moreover, LinkedIn’s allegedly suppressive
 6 acts are merely examples of defensive legal strategy employed in response to Perez’s lawsuit.
 7 While the legislature intended the anti-SLAPP law to be “construed broadly,” it does not provide a
 8 basis for relief in this case. The Complaint fails to state a cognizable claim under California’s anti-
 9 SLAPP statute.

10 **B. Intentional Infliction of Emotional Distress**

11 Perez also alleges in both claims that LinkedIn’s “unethical, unpatriotic, and illegal actions
 12 on behalf of the Chinese Communist Party . . . are cause for action as gross intentional infliction of
 13 emotional distress.” Complaint ¶¶ 16, 20. In order to state a claim for intentional infliction of
 14 emotional distress, however, a plaintiff must show “(1) outrageous conduct by the defendant, (2)
 15 intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe
 16 emotional suffering and (4) actual and proximate causation of the emotional distress.” *Schneider*
 17 *v. TRW, Inc.*, 938 F.2d 986, 992 (9th Cir. 1991). The core of this claim lies in “conduct . . . so
 18 extreme as to exceed all bounds of that usually tolerated in a civilized community.” *Huber v.*
 19 *Standard Ins. Co.*, 841 F.2d 980, 986 (9th Cir. 1988) (citing *Davidson v. City of Westminster*, 32
 20 Cal. 3d 197, 209 (1982)).

21 In the present case, Perez does not outline any of the required elements beyond conclusory
 22 statements of emotional distress. Perez does not put forth any facts regarding intentional, or at
 23 least reckless conduct, on the part of LinkedIn. Furthermore, as LinkedIn argues, “[a] private
 24 party simply choosing to not provide access to its platform” does not meet the threshold of
 25 extreme conduct exceeding the boundaries of a civilized society. Reply at 5; *See Schneider*, 938
 26 F.2d at 992 (incidents perceived to display mere rudeness or insensitivity do not rise to the level of

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1 outrageous conduct).

2 Given these deficiencies, the Court finds that Perez cannot support a prima facie claim of
3 intentional infliction of emotional distress.

4 **C. First Amendment Claim**

5 Although Perez does not bring a claim under the First Amendment, Perez does allege that
6 the termination of his LinkedIn account prevented him from “exercis[ing] his [sic] right to Free
7 Speech or Petition with his 7,000 consenting associations.” Complaint ¶ 17. To the extent Perez
8 might be asserting a First Amendment claim against LinkedIn, the Court finds that such a claim is
9 also not legally cognizable under the facts of this case.

10 The First Amendment provides that “Congress shall make no law . . . abridging the
11 freedom of Speech. U.S. Const. amend. I. A fundamental precept of the First Amendment
12 establishes “that the Free Speech Clause prohibits only governmental abridgment of speech.”
13 *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019). The First Amendment
14 does not prohibit a private entity’s abridgment of speech. *Denver Area Educ. Telecommunications*
15 *Consortium, Inc. v. F.C.C.*, 518 U.S. 727, 737 (1996). This separation of constitutional
16 enforcement between state actors and private individuals actually “protects a robust sphere of
17 individual liberty.” *Manhattan Cmty. Access Corp.*, 139 S. Ct. at 1928. Courts across the country
18 have found social media companies are private, not state actors. *See Young v. Facebook, Inc.*, No.
19 5:10-CV-03579-JF/PVT, 2010 WL 4169304, at *3 (N.D. Cal. Oct. 25, 2010); *Shulman v.*
20 *Facebook.com*, No. CV 17-764 (JMV), 2017 WL 5129885, at *4 (D.N.J. Nov. 6, 2017).

21 Here, Perez has not put forth any facts or caselaw to suggest LinkedIn is a state actor
22 subject to the First Amendment.

23 **IV. CONCLUSION**

24 In sum, Perez has failed to state a claim under both prongs of Rule 12(b)(6). As such, the
25 Court GRANTS LinkedIn’s Motion to Dismiss with prejudice.

26 Under Federal Rule of Civil Procedure 15(a), leave to amend “should be freely granted

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when justice so requires.” When dismissing a complaint for failure to state a claim, a court should grant leave to amend “unless it determines that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). Perez has been granted several opportunities to plead his claim. The Southern District of Texas dismissed Perez’s claims with leave to amend. In this proceeding, the Court granted him the opportunity to amend his complaint. Further amendments would be futile. Therefore, Perez’s claims are DISMISSED without leave to amend.

It is further ordered that Perez’s Motion for Summary Judgment is DENIED as moot. This order effectively terminates this case. The clerk shall therefore close this file.

IT IS SO ORDERED.

Dated: February 5, 2021



EDWARD J. DAVILA
United States District Judge