

No.

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# In the Supreme Court of the United States

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ALEJANDRO EVARISTO PEREZ, HONORABLE US WAR VETERAN,  
PRO SE PETITIONER

v.

LINKEDIN CORPORATION,  
RESPONDER

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT (#21-15234)

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## PETITION FOR A WRIT OF CERTIORARI

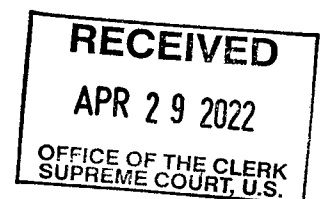
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## **I. Questions Presented**

Whether the excommunication of an Honorable US War Veteran (and paying customer) by Fallen Federal Judges and unpatriotic Corporatistas for the evil Chinese Communist Party is a California Anti-SLAPP violation or Federal Treason? And how many thousands of Americans have to die from a CCP bioweapon pandemic developed in the Wuhan P4 Virology Center before Fallen Federal Judges acknowledge it as a “Topic of Public Issue/Interest”? And did such suppression aid the CCP’s bioweapon pandemic further infesting and killings thousands of Americans? What will our Supreme Court Justices have to say about such terrible actions by Fallen Judges of the Ninth Circuit and CAND? So, it is California Anti-SLAPP violations or Federal Treason? Or will they enlighten us all with this judicial wisdom? Or will the Fallen Judges and unethical Corporatistas finally apologize profusely, return the US War Hero’s LinkedIn account with all 7,000 consenting contacts, provide a \$2BN check as a just reward, resign due to public safety, and avoid wasting the time of the brightest minds in the land?

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### III. Table of Authorities

<b>US Laws / FCRP / Case Law</b> Based on Hierarchy & Relevance: (1.) US Codes (2.) FRCP (3.) Case Law	<b>Page(s)</b>
<b>Title 5 U.S. Code 3331 “Military Officer Oath”</b> – “support and defend the Constitution of the United States against all enemies, foreign and domestic”	4, 7, 9, 10, 16, 18
<b>US Code 18 Section 2381 “Treason”</b> – “giving enemies aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States.”	2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16
<b>2022 Code of Civil Procedure – Section 425.16 California’s Anti-SLAPP Law (a)</b> – “ ... The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.” [same legal text as the 2015 version]	2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16
<b>2022 Code of Civil Procedure – Section 425.16 California’s Anti-SLAPP Law (e) (3) &amp; (4)</b> – “As used in this section, ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: ... (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” [same legal text as the 2015 version]	2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16
<b>“CALVARY CHAPEL DAYTON VALLEY V. STEVE SISOLAK, GOVERNOR OF NEVADA, ET AL.”, US Supreme Court, No. 19A1070 [2020]</b> - “This is a case about the CCP’s COVID19 bioweapon pandemic and the Supreme Court denying a request from Calvary Chapel Dayton Valley to hold religious services on the same terms as other facilities in the state (such as casinos). In other words, the US Supreme Court intervene in the name of ‘Public Safety’ to reduce the CCP bioweapon pandemic’s dead tolls.”	4, 6, 7
<b>“ALEJANDRO EVARISTO PEREZ V. LINKEDIN CORPORATION”, TXSD Federal Court, 4:20-cv-02188 [2020]</b> - “The excommunication of an Honorable US Military Officer from a Social Media Platform on behalf of the Chinese Communist Party is not “Free of Speech” violation, because the US Constitution limits the US Federal Government, not US Corporations, even if COVID19 bioweapon pandemic was created by the Chinese Communist Party as part of the ‘Unrestricted Warfare’ Multi Domain Doctrine.”	4, 6

<b>“ALEJANDRO EVARISTO PEREZ V. LINKEDIN CORPORATION”, CAND Federal Court, 5:20-cv-07238-EJD [2020]; 9th Circuit Appeal Court, No. 21-15234 [2021]</b> - “Pro Se Party appeals Judge’s 2015 California Anti-SLAPP Decision due to both substantive flaws and procedural flaws like obsolete case law, gross misrepresentation of law, flawed arguments, avoided addressing the CCP’s COVID19 bioweapon pandemic as a topic of public interest, and incorrect motion usage. The Fallen Judges’ PREJUDICE and these corrupt actions can constitute Federal Treason for both Fallen Judges and unpatriotic Defendants. Pro Se Plaintiff files a Petition of Writ of Certiorari for guidance.”	1, 4, 6
<b>“SCHNEIDER V. TRW, INC.”, 9th Circuit Appeal Court, 938 F. 2d 986, 992, [1991]</b> - “4 Elements Criteria for “Intentional Infliction of Emotional Distress (IIED).”	4, 8, 14
<b>“HAINES V. KERNER”, US Supreme Court, No. 70-5025, 404 U.S. 519, 521 [1972]</b> - “Pro Se Party’s pleadings, requests, and motions should be entertained by all Federal Judges.”	4, 17
<b>“RESNICK V. HAYES”, 9th Circuit Appeal Court, 213 F.3d 443, 447, [2000]</b> - “Pro Se Party must be construed liberally.”	4, 16
<b>“MCKINNEY V. DE BORD”, 9th Circuit Appeal Court, 507 F.2d 501, 504, [1974]</b> - “Every reasonable or warranted factual inference in the Pro Se Party favor.”	4, 16

#### **IV. Petition for Writ Of Certiorari**

Alejandro Evaristo Perez, the Pro Se Petitioner, respectfully petitions for a writ of certiorari to review the unjust judgment of Fallen Federal Judges that happen to work in the United States Court of Appeals for the Ninth Circuit and the Federal District Court of the Central District of California.

#### **V. Opinion Below**

The opinion of the Fallen Judges (App. A) in the Ninth Circuit is reported at 9<sup>th</sup> Cir. 21-15234 as mentioned in the Table of Authorities. The opinion of the district court (App. B) is reported at CAND 5:20-cv-07238-EJD.

## **VI. Jurisdiction & Interested Parties**

The Ninth Circuit entered judgment on March 03, 2022, and denied a timely combined petition for panel rehearing and rehearing en banc on March 03, 2022 (App. C). This Court has jurisdiction under 28 U.S.C. Section 1254(1) “Courts of appeals; Certiorari; Certified Questions”. Alejandro Evaristo Perez is the Pro Se Petitioner. IAW US Supreme Court Rule 29.6 “corporate disclosure statement”, on 14 August 2020 in TXSD 4:20-cv-02188 with a Certificate of Service, the Responder, LinkedIn Corporation, declared that it is a Delaware corporation that is a wholly-owned subsidiary of Microsoft Corporation, a publicly-held corporation. Microsoft has no parent company, and no publicly held corporation owns more than 10% of its stock.

## **VII. Statutes & Rules Provisions Involved**

The Table of Authorities (above) have a snapshot and synopsis as a reminder to our Supreme Court Justices of following Statutes, Rules, and Case Law. To be fair, the Pro Se Petitioner will mention that the Pro Se Petitioner removed the Responder’s obsolete caselaw and Fallen Judges’ “out of scope” caselaw in order to facilitate the communication and avoid their legal ruses. It is very offensive to cite “sex-related” caselaw when this case is about an excommunication of an Honorable US War Veteran on behalf of CCP when warning about the CCP’s bioweapon pandemic that is killing thousands of Americans and infesting millions more, which is the topic of public interest. It would be ideal to talk about caselaw that is relate to COVID19 bioweapon from the P4 Wuhan Laboratory like recent “CALVARY CHAPEL

DAYTON VALLEY v. STEVE SISOLAK, GOVERNOR OF NEVADA, ET AL.” US Supreme Court, No. 19A1070 [July 24, 2020]. The Supreme Court intervene in the name of “Public Safety”, so..... why not our Federal case?

### **VIII. Introduction & Oath**

On May of 2020, the Responder committed treason against the Pro Se Petitioner (a US Army Officer with an ETS for the year of 2059; and an Honorable War Veteran) when destroying the Pro Se Petitioner’s LinkedIn Profile on behalf of the evil Chinese Communist Party in order to stop any criticism and warnings of the COVID19 bioweapons created by Peter Daszak, a DARPA-Grant Reject, with the financial assistant from Anthony Fauci (NIH director) and the CCP’s P4 Wuhan Virus Laboratory. As of 08 March 2022, the COVID19 bioweapon created by Peter Daszak within the CCP territory has killed over 6 million civilians (as of 25APR22); and thus, a “Topic of Public Issue” and “National Security” in US soil. In the US alone, the CCP’s COVID19 bioweapon pandemic has killed over 990,208 American Citizens and infested over 80,869,032 American Citizens. The Pro Se Petitioner is a cool US Army Officer, Honorable War Veteran with a good heart, and, by coincidence, also a DARPA-Grant Reject for “Ghosts Invisibility Program: Invisible Equipment via Mesh Video Streaming for Invisible Cloaks, Armors, Drones, and Vehicles” as a military multi domain doctrine (BAA - HR001118S0028 # FP-30). American Author Mark Twain did claim that the “truth is stranger than fiction”. For those reasons, our good hearted Pro Se Petitioner prefers to “construed broadly” the new California’s Anti-

SLAPP Law claims as peaceful civic remedy and avoid hurting unpatriotic unethical treasonous Americans (the Responder and our Fallen Judges). Thus, treasonous Responder violated the new California's Anti-SLAPP Law (e)(3) & (4) by excommunicating the Pro Se Petitioner's LinkedIn account on behalf of the evil Chinese Communist Party. The Responder's treacherous actions are the reasons the Pro Se Petitioner claimed the new California's Anti-SLAPP Law violations with "Intentional Infliction of Emotion Distress" (IIED) as the "Course of Action" as a civic remedy. The IIED claims are based on 4 Elements Criteria set in "SCHNEIDER V. TRW, INC.". On November of 2020, our Fallen Judge Canby, our Fallen Judge Tashima, and our Fallen Judge Miller affirmed the our Fallen Judge Davila's Federal Decision of favoring the treacherous Responder's case based on obsolete law, obsolete case law, flipping narratives, displaying complete disregard for actual language of the law, openly violated the "*shall be construed broadly*" mandate in the new 2015/2022 Anti-SLAPP laws, and technically cheating the Pro Se Petitioner from a peaceful civic resolution. How far have our Fallen Judges lowered themselves? Regardless of the treasonous Responder's excellent legal rhetoric (*the art of persuading Judges by telling them what they want to hear, instead of what is morally right and just.*), the end result is still the destruction and excommunication of the Pro Se Responder's LinkedIn Profile on behalf of the evil Chinese Communist Party, which is fundamentally wrong. It is true that harming, excommunicating, and denying services to Honorable American Heroes or any American in US soil on behalf of the evil Chinese Communist Party is wrong. If the Fallen Judge William C. Canby,



the Fallen Judge Atsushi Tashima, our Fallen Judge Eric D. Miller, and Fallen Judge Edward J. Davila continue to fail the “*shall be construed broadly*” mandate required in the new California Anti-SLAPP laws and continue to use illegal ruses (ex. quoting obsolete case law from 2006), then the Pro Se Petitioner will be force to recommend to any Federal District Attorney Office enforce the US Code 18 Section 2381 “Treason” to all and any parties who showed PREJUDICE and agreed in aiding the enemies of the United States of America in excommunication activities. What else is an US Army Officer with an ETS of 2059 supposed to do with arrogant CCP saboteurs regardless of civic post? In 2009 and as commissioned by the President of the United States Barack Obama, the Pro Se Petitioner pledged to the Oath of Commissioned Officers, which is as follows:

*I, Alejandro Evaristo Perez, do solemnly swear that I will support and defend the Constitution of the United States against **all enemies**, foreign and **domestic**; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God. (Title 5 U.S. Code 3331, an individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services)*

## **IX. Statement Of The Case**

On 23 NOV 2021, the Pro Se Petitioner politely petitioned our unethical Responder, Fallen Judge Canby, our Fallen Judge Tashima, our Fallen Judge Miller, and our Fallen Judge Davila via petition of en bank and for panel rehearsing. The petition offered another chance of a positive change of heart, align with the new California Anti-SLAPP laws, and to apologize to their cool US Army Hero. Otherwise, the Pro Se Petitioner will be forced by sacred oath to hand any treacherous parties to the Federal District Attorney Offices to enforce the US Code 18 Section 2381 "Treason", since it has been over 650 days of oppression for the CCP. Those horrible actions are unpatriotic, offensive, and, above all, Federal treason. Instead of apologizing, on 03MAR2022, the Fallen Judges fell to lower standards by voting the denial of the petitions and refusing change their treasonous decisions. Those treasonous action can constitute aiding the CCP bioweapon pandemic and disinformation IAW with 'Unrestricted Warfare" Multi Domain Doctrine. USAF Ret. General Robert Spalding address the CCP's military doctrine in his Amazon book, "Stealth War" (2019), which includes censorship in US soil via bribing US Corporations and even retaliating against US celebrities that accepted the existence of Taiwan as a Independent Republic. The Pro Se Petitioner writes this PETITION FOR WRIT OF CERTIORARI with a good heart. Maybe their US Supreme Court Judges need to have a nice talk with our treasonous Responder and our sad Fallen Judges regarding California Anti-SLAPP Laws or US Code 18 Section 2381 "Treason". IAW United States Court Of Appeals For The Ninth Circuit's "*After*

*Opening Your Appeal: What You Need to Know PRO SE Appeals*" Guide (December 2019, edition), the Pro Se Petitioner has 90 days from that denial order or new decision to petition the U.S. Supreme Court to hear the case via Petition for Writ of Certiorari. The Pro Se Petitioner is doing so with this petition. It is happening. You are currently reading it. Therefore, our brave Pro Se Petitioner provides a Notice of Petition for Writ of Certiorari to our sad Fallen Judges, who refused to change their dark hearts. The Pro Se Petitioner requests the resignation of our Fallen Judges, continues to offer to peacefully settle, and places the question of "*California Anti-SLAPP Laws and Federal Treason?*" on the hands of the Supreme Court, our professed that they are the brightest minds of the Land.

**1) CHOICE 1: California Anti-SLAPP Law Violation (e) 3 & 4?**

The Pro Se Petitioner is assuming that he is talking with the brightest minds in the Land, so let's focus get down to business. What are the PROS and CONS that Californians have with their new Anti-SLAPP Laws? So... let's do some of that "shall be construed broadly" mandated by our Californianos? Especially when compared to Texas Anti-SLAPP laws, which are very strict in scope. Yes, only about "Motions to Strike" for Texans and thus jailed already for treason by such treasonous actions.

**PROS of California Anti-SLAPP Laws:** (1) Happier Informed Californians, because they technically have the best "Free Speech" Tort Defense Armory regard Public Issues; (2) Less unpatriotic Californians in Federal jails for treason, because these laws are an alternative tort remedy to Federal crime of treason. This benefit is

technically why the Responder and the Fallen Judges are not in jail right now by the DAs. So yeah, it's a real benefit for them are currently experiencing; (3) Increase Efficiency of California Courts by removes Censorship-Focus lawsuits (lawsuits meant to chill free speech and create chaos over free speech). (4) Californians can be proud they are leading the Free World with the highest standards of Free Speech in protection and administrative cleansing in order to focus on more important topics.

**CONS of California Anti-SLAPP Laws:** (1) Lack of Enforcement. Laws are only work when enforced. The Fallen Judges in California do not want to enforce their own new Anti-SLAPP laws due to monetary concerns, lack of patriotism, and due to catering to unethical corporatists, instead of been faithful to their own high standards. (2) Open Scopes confuses lesser minds. The multiple declarations, "shall be construed broadly" mandate, and "Topics of Public Interest" in the new California Anti-SLAPP Laws are very open in scope and open to interpretations, which can create confusion for lesser minds. In comparison, Texas Anti-SLAPP laws are strictly in scope and confined to "Motions to Strike", which is the false argument that the Responder and the Fallen Judges are making to the detriment of the new California Anti-SLAPP laws. Lesser minds that are confused on "open scopes" will swim to familiar shores. However, the Responder and Fallen Judges failed, because they are comparing a cheap row boat to a luxury yacht. Will the Fallen Judges make all Californians trade their luxury yachts for cheap row boats in the "Seas of Treason"?

**Anti-SLAPP Law Topics Avoided:** The 2015 and 2022 California Anti-SLAPP Laws are practically the same regarding Section 425.16(a) and (e). Our beloved

Californios could have changed their Anti-SLAPP Laws and try to mimic the Texan's Anti-SLAPP Laws, but did not. Our Californians doubled-down on "shall be construed broadly" in both the 2015 version and the 2022 version against the Fallen Judges. The Responder and the Fallen Judges intentionally ignoring the 10 points below.

1. Attacking US Customers in US soil on behalf of the enemies of the United States is fundamentally wrong and dangerous to all Americans.
2. Anti-SLAPP Laws changed in 2015 and 2022, which supersede prior laws and supersede obsolete caselaw. In fact, the Californians Legislation keep the same language of the law with its "Construe Broadly" mandate.
3. The Responder quoted the obsolete version of Anti-SLAPP Laws and obsolete cases to attack Appellant's 2015 & 2022 Anti-SLAPP Claims.
4. "Motions to Dismiss" does not equal "Motion to Strike".
5. The Responder filed the wrong motion (a Motion to Dismiss) citing "Anti-SLAPP are Motions to Strike" false logic. The Petitioner claims are still alive.
6. The multiple motions in CAND District Court Docket validate that the Petitioners logic of "Anti-SLAPP Law Armory" with multiple declarations and "Open Scope" mandate of "Construe Broadly".
7. This Case is a "Matter of 1st Impression" regarding the new Anti-SLAPP Summary Judgement with a real Public Issue of a Global Pandemic.
8. The new Anti-SLAPP "Language of the Law" and its "Open Scope" mandate of "Construe Broadly" are above the Responder's obsolete caselaw, "Only a Motion to Strike" misinterpretations, and false limits.

9. The District Court Judge ignored obvious facts, limited the new California Anti-SLAPP laws, and jeopardized US National Security.

10. IIED - Intentional censoring of US military communities to help the enemies of the United States to facilitate a global pandemic does exceed all bounds tolerated by a civilized society based on "SCHNEIDER V. TRW, INC.".

## **2) CHOICE 2: Federal Treason?**

If excommunicating an Honorable US War Veteran for the evil Chinese Communist Party is not a violation of the new California Anti-SLAPP, then the other option is Federal treason, which is the scope of Criminal Law. If the Supreme Court agrees that the wrongful actions by the unethical Responder and the Fallen Judges are treason by aiding the evil Chinese Communist Party during a bioweapon deployment via censorship of Honorable US War Heroes warning about the CCP's bioweapon pandemic, then the Pro Se Petitioner will hand the traitors to the District Attorneys to be prosecuted under Criminal Law.

## **XIII. Reasons For Granting The Writ**

The US Supreme Court may want to avoid the jailing 4 Fallen Judges and (x) number of unpatriotic Corporatistas (starting with Ryan Roslansky, the CEO of LinkedIn) for treason while simultaneously reinforcing New California Anti-SLAPP Laws, which is currently the Free World's "Free Speech" highest standards and most diverse Tort Armory regard Public Issues and Topics of Public Interest. **IF THE SUPREME COURT DENIES THIS RIGHTEOUS PETITION, THE PRO SE**

PETITIONER WILL ASSUME THAT THE UNETHICAL RESPONDER AND THE  
FALLEN JUDGES' WRONGFUL ACTIONS ARE FEDERAL TREASON, THAT  
THE SUPREME COURT DOES NOT WANT TO WASTE THEIR TIME ON  
TRAITORS, AND THAT THE PRO SE HAS EVERY RIGHT TO HAND THE  
TRAITORS TO THEIR RESPECTIVE DISTRICT ATTORNEYS TO BEGIN  
CRIMINAL PROSECUTION FOR TREASON ON TREASONOUS US CIVILIANS.

If the Supreme Court is uncomfortable with choices presented, then please take your grievances to US President Joe Biden and/or US President Barack Obama who commissioned the Pro Se Petitioner as a US Army Military Officer in 2009 with an ETS date of 2059. US Senator John Cornyn (Texas - Republican) [Dallas\_Office@cornyn.senate.gov] and US Congresswoman Lizzie Fletcher (Texas - Democrat) [Fletcher.Office@mail.house.gov] have been informed regarding LinkedIn's oppressive activities and our sad Fallen Judges, since they are the Petitioners' civilian jurisdictional leadership due to current location (Houston, TX – District 7). The District Attorneys (Kim Ogg, Dan Satterberg, and Jeff Rosen) have been inform via da@dao.hctx.net, smckee@redmond.gov, jrosen@dao.sccgov.org, and prosecuting.Attorney@kingcounty.gov.

## **XI. Conclusion**

The Supreme Court has to decide on the “California Anti-SLAPP Law violation or Federal Treason?” question. Did the Responder and Fallen Judges commit Federal Treason or a California Anti-SLAPP Law violation when excommunicating our Heroic

Pro Se Petitioner for the evil Chinese Communist Party and aided the CCP bioweapon pandemic? If the petition is denied, the Pro Se Petitioner will assume the correct choice is Federal Treason and demand the jailing of the Fallen Judges and treasonous Responders' stakeholders as required by US Military Officer Oath, Presidential Commission, and vows to God, the Creator of the Universe. After all, God, the Presidents of the United States of America, and the vow of the US Military Officer Oath are above the Fallen Judges and unpatriotic Responder. Ideally, the Responders and Fallen Judges would apologize profusely, return the Pro Se Petitioner's LinkedIn Account with all 7,000 consenting contacts, and reward the Pro Se Petitioner the \$2BN check for his patience, coolness, and good-heart. Or they can go to Federal jail for 5-years for FREE to wish they should have peacefully settled and to wish that they never excommunicated an Honorable US Army Officer for the evil Chinese Communist Party. Again. If you have a problem with this humble US Supreme Court petition, take it up with the Presidents of the United States of America. The Pro Se Petitioner has vow that he made to God and to the Presidents of the United States, which has to be fulfilled...preferably peacefully.

## **XII. Appendix & Admin Requirements**

Appendix below are the different decisions and administrative items (ex. Proof of Service, Motion for Leave to Proceed as a Veteran, etc....). The Pro Se Petitioner thanks our Supreme Court Clerk Team for generously applying "RESNICK V. HAYES" where "Pro Se Party must be construed liberally", "MCKINNEY V. DE BORD" where "every reasonable or warranted factual inference in the Pro Se Party's



favor", and "HAINES V. KERNER" where "Pro Se Party's pleadings, requests, and motions should entertained by all Federal Judges". These "Pro Se Friendly" case law and waivers includes all paperwork, administrative requirements, and processing. These case law includes the Pro Se Petitioner's attempts to follow our US Supreme Court Rule 29 "Filing and Service of Documents; Special Notifications; Corporate Listing"; Rule 33.2 "Document Preparation: Booklet Format: 8 1/2 - by 11 inch Paper Format", Rule 34 "Document Preparation: General Requirements", and the use of Rule 40 "Veterans, Seamen, and Military Cases" to comply for Rule 38 "Fees" and Rule 43 "Costs". All Parties, Fallen Judges, and a range of stakeholders are aware and/or have been made aware of this petitioning to the US Supreme Court. The petition meets the limits of the "under-40 opaque, unglazed white pages" with around 4,176 words IAW Rule 33.

As required by US Supreme Court Rule 33.2, the original of any such document shall be signed (electronically for simplicity) by the party proceeding Pro Se (which is the case) or under any other applicable federal statute (Title 5 U.S. Code 3331 "US Military Officer Oath").

God bless America,

By:  s/Alejandro Evaristo Perez

Alejandro Evaristo Perez

PRO SE PETITIONER

HONORABLE US WAR VETERAN

US ARMY MILITARY OFFICER

29APR2022

Date

APPENDIX A

OPINION BY THE FALLEN JUDGES WHO HAPPEN TO WORK AT THE NINTH  
CIRCUIT COURT OF APPEALS (#21-15234)

## NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ALEJANDRO EVARISTO PEREZ,

No. 21-15234

Plaintiff-Appellant,

D.C. No. 5:20-cv-07238-EJD

v.

MEMORANDUM\*

LINKEDIN CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court  
for the Northern District of California  
Edward J. Davila, District Judge, Presiding

Submitted November 8, 2021\*\*

Before: CANBY, TASHIMA, and MILLER, Circuit Judges.

Alejandro Evaristo Perez appeals pro se from the district court's judgment dismissing his action alleging First Amendment and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Cervantes v.*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011). We affirm.

The district court properly dismissed Perez's action because Perez failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are liberally construed, a plaintiff must allege facts sufficient to state a plausible claim); *see also Prager U. v. Google LLC*, 951 F.3d 991, 996-97 (9th Cir. 2020) (internet media websites are not government actors under the First Amendment); *Hughes v. Pair*, 209 P.3d 963, 976 (Cal. 2009) (elements of claim for intentional infliction of emotional distress); *Kibler v. N. Inyo County Loc. Hosp. Dist.*, 138 P.3d 193, 198 (Cal. 2006) (California's Anti-SLAPP statute does not provide a separate cause of action).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**

**APPENDIX B**

**OPINION BY THE FALLEN JUDGE EDWARD DAVILA WHO HAPPENS TO  
WORK AT THE NORTHERN DISTRICT OF CALIFORNIA (CAND 5:20-CV-07236)**

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

CASE NO.: 5:20-CV-07238-EJD  
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

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

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

#### **B. Procedural Background**

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

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

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<sup>1</sup> In connection with its motion to dismiss, LinkedIn requests that the Court take judicial notice of two documents: (1) the Complaint filed by Plaintiff in *Perez v. LinkedIn Corp.*, (S.D. Tex. No. 4:20-cv-2188-NFA filed June 22, 2020, ("Ex. 1") and (2) the Southern District of Texas Memorandum and Order ruling on LinkedIn's Motion to Dismiss and Motion to Transfer venue ("Ex. 2"). A court may take judicial notice of adjudicative facts "not subject to reasonable dispute 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.

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

## II. LEGAL STANDARD

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

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

## III. DISCUSSION

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

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**A. Anti-SLAPP Claims**

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

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

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

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

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

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

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

outrageous conduct).

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

### C. First Amendment Claim

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

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

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

### IV. CONCLUSION

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

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

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

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

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11 **IT IS SO ORDERED.**

12 Dated: February 5, 2021

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14 EDWARD J. DAVILA  
15 United States District Judge  
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APPENDIX C

THE DENIAL OF COMBINED PETITION FOR PANEL REHERING AND  
REHARING EN BANC BY THE FALLEN JUDGES WHO HAPPEN TO WORK AT  
THE NINTH CIRCUIT COURT OF APPEALS (#21-15234)

UNITED STATES COURT OF APPEALS

**FILED**

FOR THE NINTH CIRCUIT

MAR 3 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ALEJANDRO EVARISTO PEREZ,

Plaintiff-Appellant,

v.

LINKEDIN CORPORATION,

Defendant-Appellee.

No. 21-15234

D.C. No. 5:20-cv-07238-EJD  
Northern District of California,  
San Jose

ORDER

Before: CANBY, TASHIMA, and MILLER, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Perez's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 18) are denied.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

MAR 11 2022

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ALEJANDRO EVARISTO PEREZ,

Plaintiff - Appellant,

v.

LINKEDIN CORPORATION,

Defendant - Appellee.

No. 21-15234

D.C. No. 5:20-cv-07238-EJD

U.S. District Court for Northern  
California, San Jose

**MANDATE**

The judgment of this Court, entered November 18, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Rhonda Roberts  
Deputy Clerk  
Ninth Circuit Rule 27-7