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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

LISA KARLAN, CORY MAC A'GHOBHAINN, and AMY JEAN DAVIS,

Plaintiffs,

v.

CITY OF LOS ANGELES, LOS ANGELES POLICE CAPTAIN PAUL VERNON, HEBREW DISCOVERY CENTER, NETANEL LOUIE, and DOES 1-10,

Defendants.

Case No. BS 174454

[Assigned to Hon. Robert B. Broadbelt Department 53]

DEFENDANTS' OPPOSITION AND RESPONSE TO PLAINTIFF LISA KARLAN'S MOTION FOR PRELIMINARY INJUNCTION WITH MEMORANDUM OF POINTS AND AUTHORITIES

Date: **July 24, 2020**
Time: **8:30 a.m.**
Dept.: **53**

[Request for Judicial Notice and (Proposed) Order filed concurrently]

Action Filed: July 19, 2018
Trial Date: Not yet set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

In what has become a yearly tradition as the Jewish high holy days approach, Plaintiff's attorneys are again asking a court for injunctive relief against a synagogue in southern California. Plaintiff Karlan's Motion for Preliminary Injunction ("Mot.") is her counsel's **tenth** attempt in the past five years to seek an injunction against the two-thousand-year-old atonement ritual of a small Orthodox Jewish synagogue. Each time, after reviewing the merits, courts ultimately declined to issue the injunction. This Court should do the same.

Defendants Hebrew Discovery Center (an Orthodox Jewish synagogue) and Rabbi Netanel Louie (the synagogue's rabbi) (collectively, "HDC Defendants") conduct a humane and lawful atonement ritual involving the Kosher killing of chickens along with the recitation of prayers. Plaintiff Lisa Karlan seeks to eradicate this centuries-old religious practice using the power of the courts to harass HDC Defendants. Her attorneys have a pattern of targeting Orthodox Jewish synagogues with frivolous lawsuits in an attempt to stop a minority religious practice they oppose. This case is no exception.

While seeking to eradicate a religious practice using the power of the courts raises significant constitutional issues, Plaintiff's Motion fails for even more basic reasons. *First*, Plaintiff has not established a likelihood of success on the merits. As a federal court and two state courts recently have held, HDC Defendants' religious ritual is not a "business practice" that can be regulated under California's Unfair Competition Law ("UCL"). And even if a synagogue's religious ritual could be a "business practice," Plaintiff lacks standing to bring a UCL claim because the causation standard is not met. *Second*, Plaintiff's Motion completely ignores the "irreparable interim harm" preliminary injunction element. Because Plaintiff makes no argument at all with respect to this element, Plaintiff has failed to meet her burden and the injunction must be denied. *See, e.g.*, *Choice-in-Educ. League v. L.A. Unified Sch. Dist.* (1993) 17 Cal.App.4th 415, 431 (reversing a grant of a motion for preliminary injunction because plaintiffs made "no showing of irreparable interim harm"). Perhaps Plaintiff does not address the irreparable harm element because she can not establish that she will suffer *any* harm to herself. By contrast,

granting a preliminary injunction against the ancient religious ritual of a synagogue would cause irreparable harm to HDC by violating its First Amendment rights. *See Elrod v. Burns* (1976) 427 U.S. 347, 373 (holding that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury").

Except in extreme circumstances, trial courts will not issue preliminary injunctions that alter the status quo. Instead, the Court can fully address the issue of whether to grant an injunction on its own time after full development of the record. Accordingly, Plaintiff's Motion should be denied.

II. FACTUAL BACKGROUND

A. HDC Defendants' Humane and Lawful Ritual

Hebrew Discovery Center ("HDC") is an Orthodox Jewish synagogue and a 501(c)(3) nonprofit religious organization with Rabbi Netanel Louie serving as its Head Rabbi. Ex. A, Declaration of Rabbi Netanel Louie ("Louie Decl.") ¶ 2. HDC is not a business. *Id.* ¶ 8. HDC performs the Kapparot religious atonement ceremony for religious reasons in accordance with its religious beliefs. *Id.* ¶ 3. Kapparot is an ancient religious ritual that has been practiced by Orthodox Jews since at least the seventh century. *Id.* ¶ 4. Performed during the Jewish high holy days (between Rosh Hashanah and Yom Kippur), the ritual is meant to provide for atonement of sins. *Id.* ¶ 5. Kapparot is an exercise of sincerely held religious beliefs that historically incorporates chickens as a central part of the ritual. *Id.* ¶ 6. Specifically, to perform the Kapparot ritual, an individual gently rotates a live chicken over the individual's head while reciting Hebrew prayers and reflecting on human frailty, mortality, and the gift of life. *Id.* The chicken is then slaughtered in a ritual (Kosher) manner by a ritual slaughterer in accordance with Jewish law. *Id.* At all times, HDC treats chickens humanely and in accordance with California law and California regulations. *Id.* When HDC performs the atonement ceremony, it does so without causing waste in accordance with the religious requirements of the Torah. *Id.* ¶ 7.

HDC does not practice Kapparot for profit or fundraising. *Id.* ¶ 8. HDC accepts monetary donations for Kapparot because this offering itself, as a personal sacrifice, is part of the Kapparot

atonement ritual. *Id.* ¶ 9. While participants may make a donation, there is no set fee for participation. *Id.* ¶ 10. In 2019, for instance, HDC provided the ritual for a suggested donation of $26, as the number 26 signifies G-d in Orthodox Judaism. *Id.* If a participant does not have the means to donate, he or she may participate in the other aspects of the Kapparot ritual without offering a monetary donation. *Id.* HDC incurs significant costs because it performs Kapparot. *Id.* ¶ 11. In fact, it is unlikely that HDC receives donations in excess of its costs for conducting the Kapparot ritual. *Id.* ¶ 12. Even though HDC is likely to lose money from the ceremony, it believes the ceremony is an important ritual for the Orthodox Jewish community. *Id.* ¶ 13.

B. Plaintiff's Counsel's Harassment of Southern California Synagogues

Over the last five years, Plaintiff's attorneys have filed no fewer than five lawsuits and no fewer than ten motions for injunctive relief against synagogues in southern California (including several against HDC Defendants) seeking to eradicate the synagogues' Kapparot ritual, all of which were ultimately unsuccessful.

Each of the previous four frivolous lawsuits, intended only to harass Orthodox Jewish groups in southern California, were ultimately rejected by courts:

- On August 26, 2015, just weeks before Rosh Hashanah, Plaintiff's counsel sued several Orthodox Jewish groups in southern California (including HDC Defendants) under the UCL, seeking to enjoin their annual Kapparot ritual. *See* Compl., *United Poultry Concerns, Inc. v. Bait Aaron, Inc.* ("*Bait Aaron*"), No. BC592712 (Cal. Super. Ct.) (Exhibit 1 to RJN).[1] The court sustained a demurrer to the complaint, holding that the "use of chickens in Kapparot is not a business act or practice within the meaning of the UCL." *See* Exhibit 2 to RJN at 16.
- On September 11, 2015, just two days before Rosh Hashanah, Plaintiff's counsel sued the Chabad of Irvine, seeking to enjoin its Kapparot ritual. *See* Compl., *Animal Prot. & Rescue League, Inc. v. Chabad of Irvine* ("*APRL v. Chabad*"), No. 30-2015-00809469-CU-BT-CJC (Cal. Super. Ct.) (Exhibit 3 to RJN). On June 23, 2017, after a one-day trial,

[1] Copies of the relevant pleadings and orders in the related actions brought by Plaintiff's attorneys are attached as Exhibits to the Request for Judicial Notice filed concurrently herewith ("RJN").

the court entered judgment in favor of the Chabad of Irvine, holding that Kapparot "is a religious practice—a religious ritual of atonement—not a 'business practice' that comes within the ambit of Section 17200." *See* Exhibit 4 to RJN at 8.

- Frustrated with the pace of the state court case against the Chabad of Irvine, on September 29, 2016, just three days before Rosh Hashanah, Plaintiff's counsel filed a suit against the Chabad of Irvine in federal court. *See* Compl., *United Poultry Concerns v. Chabad of Irvine* ("*UPC v. Chabad*"), No. 16-cv-01810-AB (C.D. Cal.) (Exhibit 5 to RJN). The federal district court dismissed the complaint, holding that "Defendant Chabad of Irvine does not participate nor compete as a business in the commercial market by performing a religious atonement ritual that involves donations." *See United Poultry Concerns v. Chabad of Irvine* (C.D. Cal. May 12, 2017) No. CV 16-01810-AB(GJSx), 2017 WL 2903263, at *6. When Plaintiff's attorneys appealed, the Ninth Circuit remanded the case to the district court to dismiss for lack of Article III standing. *United Poultry Concerns v. Chabad of Irvine* (9th Cir. 2018) 743 F.App'x 130.
- On September 12, 2017, just eight days before Rosh Hashanah, Plaintiff's counsel brought suit in federal district court seeking in a circuitous way to enjoin the Kapparot ritual performed by HDC Defendants. *See* Compl., *Animal Prot. & Rescue League v. City of L.A.*, No. 8:17-cv-01581-AB (C.D. Cal.) (Exhibit 6 to RJN). The court determined that the plaintiffs lacked standing and their claims lacked merit. *See* Exhibit 7 to RJN.

These lawsuits were often accompanied by *ex parte* requests for temporary restraining orders ("TRO") against Kapparot rituals filed on the cusp of the Jewish high holy days (often without notice to the synagogues). In fact, Plaintiff's attorneys have now attempted ten different times to manufacture emergencies and use the power of the courts to stop a religious practice they do not like, even in the face of every court rejecting their argument:

- On September 2, 2015, less than two weeks before Rosh Hashanah, Plaintiff's counsel filed an *ex parte* application for a TRO in *Bait Aaron*, which the court denied because there was "no emergency." *See* Exhibit 8 to RJN.

- On September 16, 2015, during the high holy days, Plaintiff's counsel filed an *ex parte* application for a TRO in *APRL v. Chabad*, which the court denied two days later. *See* Exhibit 9 to RJN.
- On September 29, 2016, just three days before Rosh Hashanah, Plaintiff's counsel filed an *ex parte* application for a TRO in *UPC v. Chabad*. Before the Chabad of Irvine appeared, the district court entered a TRO against the synagogue. After holding a hearing on the merits, the district court dissolved the TRO against the synagogue a mere four days after it was entered.[2] *See* Exhibit 10 to RJN.
- On August 18, 2017, about a month before Rosh Hashanah, because the Ninth Circuit had not yet ruled on its appeal of the district court's dismissal of the *UPC v. Chabad* complaint, Plaintiff's counsel petitioned the court of appeals for an injunction pending appeal to halt the Chabad of Irvine's 2017 Kapparot ceremony. The Ninth Circuit denied the motion for an injunction on September 14, 2017. *See* Exhibit 11 to RJN.
- On July 24, 2019, about two months before Rosh Hashanah, Plaintiff's counsel filed an *ex parte* application for a TRO in a case against the City of Los Angeles related to HDC Defendants' 2018 Kapparot ceremony, *Animal Protection & Rescue League, Inc., v. City of L.A.*, No. 19STCV24522 (Cal. Super. Ct.) ("*City Case*").[3] The court denied the application, as Plaintiff's counsel had provided insufficient notice to HDC Defendants. *See* Exhibit 13 to RJN.

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[2] Plaintiff's counsel touts the TRO they obtained in *UPC v. Chabad*. *See* Mot. at 6:21-24. The Motion fails to state that the TRO was dissolved just four days after it was entered.

[3] In the First Amended Complaint in this action, Plaintiffs added allegations related to HDC Defendants' 2018 Kapparot ceremony. HDC Defendants filed a motion to strike all allegations of the FAC related to the 2018 ceremony under C.C.P. § 464(a), as they postdated the filing of the initial complaint. Plaintiffs eventually filed a Second Amended Complaint in this action that did not include allegations related to the 2018 Kapparot ritual and also filed the *City Case*, a separate lawsuit that related to HDC Defendants' 2018 Kapparot ritual but did not name HDC Defendants as defendants. The *City Case* court eventually sustained a demurrer without leave to amend, noting that "instead of maintaining an enforcement action directly against the Hebrew Discovery Center where they allege the cruel acts occurred, [plaintiffs] are instead trying to accomplish the same end by suing the City to force it to proceed against the Center and its members." *See* Exhibit 12 to RJN at 9-10.

- A few days later, Plaintiff's counsel filed another *ex parte* application for a TRO in the *City Case*, this time providing notice to HDC Defendants. The court denied the application on August 5, 2019, holding that Plaintiffs had not "demonstrated or presented any evidence that there is an emergency." *See* Exhibit 14 to RJN.
- Later that month, Plaintiff's counsel filed yet another *ex parte* application for a TRO in the *City Case*. The court denied the application yet again, holding that it was procedurally defective. *See* Exhibit 15 to RJN.
- On September 9, 2019, twenty days before Rosh Hashanah, Plaintiff's counsel filed an *ex parte* application for a TRO in this case. Judge Strobel denied the application on September 11, 2019, holding that it was "an ex parte application for reconsideration of Judge Chalfant's ruling of August 5, 2019" in the *City Case*. *See* Exhibit 16 to RJN.
- On October 2, 2019, during the high holy days, Plaintiff's counsel filed their fourth *ex parte* application for a TRO in as many months in the *City Case*. No notice was given to HDC Defendants. The court denied the application as to the "issues raised concerning the unlawful slaughtering of chickens" because the "Real Party-in-Interest did not receive notice" of the proceedings. *See* Exhibit 17 to RJN.

This tenth request for injunctive relief in Plaintiff's counsel's fifth lawsuit against Orthodox Jewish synagogues in southern California in the last five years is just the 2020 version of these previous failed attempts.

III. LEGAL STANDARD

"A trial court must weigh two interrelated factors when deciding whether to grant a plaintiff's motion for a preliminary injunction: (1) the likelihood that the plaintiff will prevail on the merits at trial, and (2) the relative interim harm to the parties from the issuance or nonissuance of the injunction, that is, the interim harm the plaintiff is likely to sustain if the injunction is denied as compared to the harm the defendant is likely to suffer if the preliminary injunction is issued." *SB Liberty, LLC v. Isla Verde Ass'n, Inc.* (2013) 217 Cal.App.4th 272, 280. The "general purpose of a preliminary injunction is to preserve the status quo pending a determination

on the merits of the action." *Id.* Indeed, a trial court can only issue a preliminary injunction that changes the status quo in those "extreme cases where the right thereto is clearly established." *Brown v. Pacifica Found., Inc.* (2019) 34 Cal.App.5th 915, 925 (internal quotation marks omitted). "The burden is on the party seeking the preliminary injunction to show all of the elements necessary to support issuance of a stay." *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 856.

IV. PLAINTIFF CANNOT DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS

To begin, by its terms, Plaintiff's Motion is seeking an injunction against conduct that is not in fact happening. According to the Motion, Plaintiff seeks a preliminary injunction against HDC Defendants "to enjoin them from selling tickets to the public to watch chickens be killed in a parking lot and discarded in the trash to be picked up by LA Sanitation." Mot. at 4:3-6. As explained above, HDC does not "sell tickets" to a Kapparot ritual. Instead, the synagogue provides the atonement ceremony for its congregants. Louie Decl. ¶ 10. Participants may make a donation to the synagogue, but there is no required fee for participation. *Id.* In fact, if a participant does not have the means to donate, he or she may participate in the other aspects of the Kapparot ritual without offering a monetary donation. *Id.* Further, the ceremony is conducted without causing waste in accordance with the religious requirements of the Torah. *Id.* ¶ 7.

Despite Plaintiff's Motion's express terms being targeted at a fabricated version of HDC Defendants' ceremony, it is clear that Plaintiff is attempting to eradicate HDC Defendants' humane and lawful atonement ritual through the power of the courts. Plaintiff is unlikely to succeed on the merits, however, because the UCL does not apply to the religious ritual of a synagogue and Plaintiff cannot establish UCL standing.

A. Plaintiff is Unlikely to Succeed on Her UCL Claim, as the UCL Does Not Apply to the Religious Ritual of a Synagogue

As outlined in HDC Defendants' demurrer to the Second Amended Complaint ("SAC"), Plaintiff is not likely to succeed on her UCL cause of action because she has not alleged facts

sufficient to state a claim—nor could she. California's UCL prohibits "unfair competition," which is defined as "any unlawful, unfair or fraudulent *business* act or practice." *In re Pomona Valley Med. Grp., Inc.* (9th Cir. 2007) 476 F.3d 665, 674 (quoting Cal. Bus. & Prof. Code §§ 17200, *et seq.*) (emphasis added). In order to succeed on the merits of her UCL claim, Plaintiff must show that the act or practice at issue was "committed pursuant to business activity." *Pinel v. Aurora Loan Servs., LLC* (N.D. Cal. 2011) 814 F.Supp.2d 930, 937. The UCL was designed "to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320 (citing *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949). Courts, therefore, do not apply a broad construction of the word "business." *That v. Alders Maint. Ass'n* (2012) 206 Cal.App.4th 1419, 1427. By its terms, the UCL applies only to traditional "business act[s]," not religious rituals. Cal. Bus. & Prof. Code § 17200.

HDC is an Orthodox Jewish synagogue, and Kapparot is a religious atonement ritual—not a business act. *See* Louie Decl. ¶¶ 2, 3, 8, 10; *see also United Poultry Concerns*, 743 F.App'x at 130 n.1 (Kapparot is "an atonement ritual that involves recitation of prayer and results in the Kosher killing of chickens."). Several courts have acknowledged that donations in connection with Kapparot are not "business act[s]" within the ambit of the UCL. *See United Poultry Concerns*, 2017 WL 2903263, at *6 ("[T]he Court finds that Defendant Chabad of Irvine does not participate nor compete as a business in the commercial market by performing a religious atonement ritual that involves donations."), *vacated on other grounds*, 743 F.App'x 130 (9th Cir. 2018) (remanding to dismiss for lack of Article III standing); *Animal Prot. & Rescue League, Inc. v. Chabad of Irvine*, No. 30-2015-00809469 (Cal. Super. Ct. June 23, 2017) (Exhibit 4 to RJN), at 8 (Kapparot "is a religious practice—a religious ritual of atonement—not a 'business practice' that comes within the ambit of Section 17200."); *United Poultry Concerns v. Bait Aaron*, No. BC592712 (Cal. Super. Ct. July 6, 2016), at 12-13 (Exhibit 2 to RJN) ("[A] review of the index of the entirety of the California Business & Professions Code yields no section subjecting rabbis (or other religious leaders such as priests, ministers, imams, monks, or the like) or synagogues (or

churches, temples, or mosques) to its 'unfair competition' laws vis a vis religious practices or rituals.").[4] Plaintiff cannot cite a single case to the contrary.

Indeed, the cases upon which Plaintiff relies, *see* Mot. at 10:18-24, do not support her attempt to broaden the scope of the UCL to cover donations at the religious services of houses of worship. First, *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1203-04, stands for the unremarkable (and irrelevant) proposition that charter schools *can* be subject to the UCL. Plaintiff's reliance on the case ignores the fact that the UCL is only implicated when the charter school (or other non-profit) is engaged in a *business* act or practice. Cal. Bus. & Prof. Code § 17200. Second, in *Executive Committee Representing the Signing Petitioners of the Archdiocese of the Western United States v. Kaplan* (C.D. Cal. Sept. 16, 2004), No. CV 03-8947 FMC (MANx), 2004 WL 6084228, the court held that the defendants who fraudulently solicited money for a non-church charity and fraudulently pocketed the money could be subject to the UCL. The court notably distinguished the defendants from the Church. *Id.* at *4 ("[T]he Church, a legitimate organization existing independently from the Defendants, was used by the Defendants to conduct a pattern of racketeering activity."). Thus, Plaintiff's attempt to equate the commercial solicitation in *Kaplan* to a synagogue receiving a donation for a religious ritual fails to appreciate that the court specifically distinguished the Church from the commercial fundraisers who were subject to the UCL. Neither of these cases involve the situation at issue: donations made in connection with a religious ritual.

And, as a matter of common sense, the mere fact that money is donated in connection with a religious atonement ritual does not transform that religious ritual into a business practice. Plaintiff's proposed interpretation of the UCL as covering such conduct would transform all religious rituals into business activities subject not only to government regulation but also private lawsuits like this one. For example, donations to purchase prayer candles or donations placed in an offering plate during church services where sacramental bread is provided would suddenly be

[4] The Court may take judicial notice of unpublished California cases and find the reasoning helpful in the application of Section 17200 in this action. *See Gilbert v. Master Washer & Stamping Co., Inc.* (2001) 87 Cal.App.4th 212, 218 n.14 (taking judicial notice of an unpublished California state court opinion).

subject to the UCL, thereby injecting courts into disputes between religious participants and houses of worship.[5] These core religious activities cannot be seen as "business acts" even when a participant is asked to provide a voluntary donation. To rule otherwise would create a strong likelihood of interfering with the principle of separation of church and state. *Cf. Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC* (2012) 565 U.S. 171, 186; *Our Lady of Guadalupe Sch. v. Morrissey-Berru* (July 8, 2020) __ S.Ct. __, 2020 WL 3808420, at *7 (holding that the First Amendment forbids "any attempt by government to dictate or even to influence" matters of "faith or doctrine" (internal quotation marks omitted)). Accordingly, a religious ritual is not a "business act" and Plaintiff's UCL claim is unlikely to succeed.

Further, even if HDC Defendants' religious ritual could be considered a "business act," Plaintiff is unlikely to succeed on the merits because she cannot establish that HDC Defendants' conduct constitutes an "unlawful, unfair or fraudulent" business practice under Penal Code Section 597(a). *See* Mot. at 13:13-26. Section 597(a) prohibits the *malicious* and intentional killing of an animal. "Malicious" is a *mens rea* element necessary so that only those with the culpable "intent" to do something "wrongful" can be punished under the criminal code. Cal. Penal Code § 7(4). In other words, "malice" requires a culpable state of mind or a wish to do something because of its wrongfulness.[6] The SAC has no allegation of such a state of mind by HDC Defendants here. By contrast, state and federal law consider Kosher slaughter practices to be humane. *See, e.g.*, Cal. Code Regs. Tit. 3, § 1246.15(a) ("Where a method of slaughter is prescribed by Kosher … it shall be considered a humane method of slaughter."); 7 U.S.C.

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[5] Indeed, during oral argument before the Ninth Circuit in *UPC v. Chabad*, Plaintiff's counsel conceded that this was the implication of his theory. *See* Audio Recording of Oral Argument, *United Poultry Concerns v. Chabad of Irvine*, 743 F.App'x 130 (9th Cir. 2018) at 24:00-24:41, *available at* https://www.ca9.uscourts.gov/media/view.php?pk_id=0000033182 (Q: "So if I go into church … and I want to light a candle for someone and I pay $5 for the candle … that's a business practice with the church?" A: "That would be a business practice with the church.")

[6] Plaintiffs argue that "malicious" merely means having no legal justification. *See* Mot. at 13:13-17. Plaintiffs' argument fails under this approach as well—numerous state and federal laws regard Kosher killings as humane acts and not malicious. *See, e.g.*, Cal. Code Regs. Tit. 3, § 1246.15(a); Cal. Food & Agric. Code § 19501(b)(2); 7 U.S.C. § 1902(b); 7 U.S.C. § 1906. Simply stated, conducting a Kosher killing of chickens during a synagogue's Kapparot atonement ceremony is regarded as humane and not malicious by federal and California laws.

§ 1902(b) ("slaughtering in accordance with the ritual requirements of the Jewish faith" is a humane method of slaughter); *see also* Cal. Food & Agric. Code § 19501(b)(2); 7 U.S.C. § 1906.[7]

B. Plaintiff is Unlikely to Establish Standing Under the UCL

Moreover, even if the UCL could apply to donations given to a synagogue in connection with a humane religious ritual, which it does not, Plaintiff lacks standing. "After Proposition 64, a private person has standing to sue under the UCL for unfair competition only if he or she 'has suffered injury in fact and has lost money or property *as a result* of such unfair competition.'" *Daro v. Superior Court* (2007) 151 Cal.App.4th 1079, 1086 (quoting Cal. Bus. & Prof. Code § 17204) (emphasis in original). "Plaintiffs cannot establish standing to pursue a UCL claim based on expenses incurred in order to bring their UCL claim. If they could, the requirement that individuals show they lost money or property 'as a result' of the challenged practice in order to have standing to sue under the UCL would be meaningless." *Two Jinn, Inc. v. Gov't Payment Serv., Inc.* (2015) 233 Cal.App.4th 1321, 1334 (quoting *Robinson v. HSBC Bank USA* (N.D.Cal. 2010) 732 F.Supp.2d 976, 989). A plaintiff does not suffer injury in fact by merely "purchas[ing] the defendant's product for the purpose of establishing standing." *Id.* at 1336.

The SAC does not allege facts to establish that any allegedly unlawful act of the synagogue *caused* Plaintiff to lose funds. The SAC, in fact, admits that Plaintiff chose to make a donation to "document" the ritual in 2017. SAC ¶ 132.[8] And in her Motion, Plaintiff admits that she never intended to participate in the religious ritual; her donation was solely for the purpose of trying to shut it down. *See, e.g.*, Mot. at 11:3-5 ("Karlan purchased tickets … so that she could see for herself what was occurring, discuss the matter at [Los Angeles Animal Services]

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[7] Plaintiff submits two declarations purportedly featuring "expert opinions that killing and discarding animals to 'visualize death' violates Penal Code § 597(a)." Mot. at 14:14-17. An expert witness "may not testify about issues of law or draw legal conclusions." *Nevarrez v. San Marino Skilled Nursing Wellness Centre, LLC* (2013) 221 Cal.App.4th 102, 122. "Courts must be cautious where an expert offers legal conclusions as to ultimate facts in the guise of an expert opinion." *Benavidez v. San Jose Police Dep't* (1999) 71 Cal.App.4th 853, 865. In fact, courts should reject declarations that draw such legal conclusions. *Id.*

[8] Plaintiff's allegation that she "purchased a ticket for $35.00 from HDC and LOUIE" in 2016, *see* SAC ¶ 38, is irrelevant for the purposes of standing because the SAC fails to include any allegations of any "unlawful, unfair or fraudulent business act or practice" that transpired in 2016. Cal. Bus. & Prof. Code § 17200.

meetings, and seek official enforcement action."). Spending money to document a practice for the purposes of gathering evidence is exactly the type of expense that California courts have held does not confer UCL standing. *Two Jinn*, 233 Cal.App.4th at 1334 (finding a plaintiff lacked standing when the expenses were incurred "to generate evidence"). If Plaintiff suffered any injury, it was self-inflicted, which breaks the causal chain required to establish standing. *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 326 (holding that plaintiffs must satisfy Article III's injury-in-fact requirements with the added requirement of an actual economic injury-in-fact); *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest* (9th Cir. 2010) 624 F.3d 1083, 1088 (holding that self-inflicted injuries do not satisfy Article III's injury-in-fact requirement as they break the causal chain). Therefore, the SAC lacks sufficient facts to support standing under the UCL and Plaintiff is unlikely to establish standing to bring her suit.[9]

V. AN INJUNCTION WOULD INFLICT IRREPARABLE INJURY ON HDC DEFENDANTS

Despite the burden being on Plaintiff to show all of the elements necessary to support issuance of an injunction, *Saltonstall*, 231 Cal.App.4th at 857, Plaintiff's Motion provides no argument about the second factor relevant to analyzing a motion for a preliminary injunction: the relative interim harm to the parties from the issuance or nonissuance of the injunction, *see SB Liberty*, 217 Cal.App.4th at 280. The lack of any argument as to this factor is reason enough to deny Plaintiff's motion. *See, e.g.*, *Choice-in-Educ. League*, 17 Cal.App.4th at 431 (reversing a grant of a motion for preliminary injunction because plaintiffs made "no showing of irreparable interim harm").

Nor could Plaintiff credibly argue that she would suffer any harm from the nonissuance of an injunction that would outweigh the harm that an injunction would inflict on HDC Defendants. The United States Supreme Court has held that the "loss of First Amendment freedoms, for even

[9] The SAC's summary legal conclusion that Plaintiff's payment "was not for purposes of pursuing litigation," SAC ¶ 129; *see also* Mot. at 11:14-16, should be disregarded. *See Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. In any event, even if the donation were not made for the purpose of pursuing litigation, Plaintiff Karlan does not allege how the synagogue's religious ritual *caused* her to lose money.

minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*, 427 U.S. at 373. An injunction would cause HDC Defendants to lose the right to celebrate the Jewish high holy days according to their sincerely-held religious beliefs. This restriction on HDC Defendants' religious practices thus constitutes irreparable harm. Further, "the fact that a case raises serious First Amendment questions compels a finding that … the balance of hardships tips sharply in" favor of the party whose First Amendment rights are being violated. *Sammartano v. First Judicial Dist. Court, in and for Cty. of Carson City* (9th Cir. 2002) 303 F.3d 959, 973 (internal quotation marks omitted). Here, the balance tips completely in HDC Defendants' favor given that Plaintiff proffers no argument about any harm to her whatsoever.

Indeed, Plaintiff's Motion is a microcosm for a broader problem with her claim in general: she seeks to target a particular religious practice for extinction. If she is permitted to stand in the shoes of the government, wielding the force of law as a private attorney general and targeting synagogues that perform Kapparot with chickens, it would violate the Free Exercise Clauses of the United States and California Constitutions.[10] As the Ninth Circuit has highlighted, the United States Supreme Court's decision in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, holds that a law is not generally applicable "if its prohibitions substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect." *Stormans, Inc. v. Wiesman* (9th Cir. 2015) 794 F.3d 1064, 1079 (citing *Lukumi*, 508 U.S. at 542-46). Penal Code § 597(a) is just that kind of law: its prohibitions substantially underinclude non-religiously motivated conduct by permitting the killing of animals (the very thing the law is designed to stop) in a variety of circumstances (e.g., hunting, pest control, or killing dangerous animals). Because § 597(a) is not generally applicable, it must be evaluated under strict scrutiny to the extent it is applied to burden (or, in this case, extinguish) a religious practice. *See Lukumi*, 508 U.S. at 546 ("A law burdening religious

[10] Article I, section 4 of the California Constitution states: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed." The California Supreme Court has noted that it treats "the state and federal free exercise clauses as interchangeable." *Smith v. Fair Emp't & Housing Comm'n* (1996) 12 Cal.4th 1143, 1177. Thus, for the same reasons that this action would violate the free exercise clause of the United States Constitution, it would violate the free exercise clause of the California Constitution.

practice that is not neutral or not of general application must undergo the most rigorous of scrutiny.").

Plaintiff can make no serious argument that her claim could survive if this Court applies strict scrutiny. Rather than furthering a compelling interest by the least restrictive means, *Bernal v. Fainter* (1984) 467 U.S. 216, Plaintiff seeks to stand in the shoes of the government through a private attorney general action and target Defendants to end the use of chickens in their Kapparot ritual. *See, e.g.*, SAC ¶ 33 (advocating for "using coins instead of chickens in the Kapparot ritual"). Indeed, Plaintiff's entire Motion appears to be premised on how Plaintiff, a Jewish woman herself (*see* Mot. at 5:26-6:11), believes HDC Defendants should practice their religion differently. But it is well established that Plaintiff cannot dictate what HDC Defendants' religion requires or how they should practice their religious rites. As the United States Supreme Court has consistently held, "it is not within the judicial function and judicial competence to inquire [which of two people has] more correctly perceived the commands of their common faith" because courts "are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.* (1981) 450 U.S. 707, 716; *see also Holt v. Hobbs* (2015) 574 U.S. 352, 362; *Burwell v. Hobby Lobby Stores Inc.* (2014) 573 U.S. 682, 725; *Hernandez v. Comm'r, IRS* (1989) 490 U.S. 680, 699. Although some Orthodox Jewish congregations may hold beliefs differing from those of other Orthodox Jewish congregations about how Kapparot should be performed, *see, e.g.*, Mot. at 7:7-9 (alleging that "several entities that were previously killing and discarding chickens for Kapparot rituals [that] have since stopped voluntarily"), the Court may not make any holding as to which perspective in the religious debate is correct. The Court may not allow Plaintiffs to coopt the government's power to compel their preferred interpretation.

Indeed, Plaintiff's Motion shows that she fundamentally misunderstands the Free Exercise issues at play.[11] Contrary to her assertion, HDC Defendants' position is not that *Lukumi* requires

[11] For instance, Plaintiff's citation to *South Bay United Pentecostal Church v. Newsom* (2020) 140 S.Ct. 1613 (Roberts, J., concurring in denial of application for injunctive relief) is inapposite. Opinions accompanying a denial of Supreme Court review have no precedential value, *see Teague v. Lane* (1989) 489 U.S. 288, 296, and, either way, the Chief Justice's opinion was clear that it was merely denying "emergency relief in an interlocutory posture" during the COVID-19 pandemic, *see South Bay*, 140 S.Ct. at 1614.

the court to "insert religious exceptions into neutral laws of general applicability." Mot. at 15:1-2. Rather, the existence of many exceptions, like in Penal Code § 597(a), renders a law not "generally applicable." *See Emp't Div., Dep't of Human Resources of Ore. v. Smith* (1990) 494 U.S. 872, 884 (the statute at issue in *Sherbert v. Verner* (1963) 374 U.S. 398 was not generally applicable because it allowed "at least some" exceptions). When a law is not generally applicable, that only triggers a certain type of review (strict scrutiny); it does not dictate the *outcome* in any particular case. *See Stormans*, 794 F.3d at 1076 ("For laws that are not neutral or not generally applicable, strict scrutiny applies."). In this instance and under these facts, Plaintiff's claims could not survive the required strict scrutiny, as Plaintiff could not meet her burden of establishing that enjoining the religious ceremony furthers a compelling interest and is the least restrictive means of accomplishing that interest.

VI. CONCLUSION

For the foregoing reasons, the court should maintain the status quo and deny Plaintiff's motion for a preliminary injunction.

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