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F I L E D
Clerk of the Superior Court

AUG 28 2018

By: I. QUIRARTE, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO —CENTRAL DIVISION

11 NOEL GORGIS,
12 Plaintiff,

13 v.

14 CHALDEAN CATHOLIC DIOCESE OF
ST. PETER THE APOSTLE a/k/a CHALDEAN
15 CATHOLIC EPARCHY OF SAINT PETER
THE APOSTLE; SHLEMON WARDUNI, as
16 Bishop; LOUIS SAKO, and Does 1 through 30,
inclusive,

17 Defendant.
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) CASE NO.: 37-2017-00049655-CU-BC-CTL

IMAGED FILE

**[Proposed] PARTIAL
JUDGMENT OF DISMISSAL**

Judge: Hon. Timothy B. Taylor
Dept.: C-72
Action filed: December 28, 2017

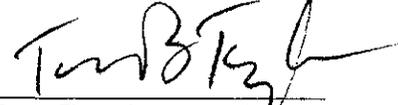
1 Defendant Chaldean Catholic Diocese of St. Peter the Apostle, a/k/a Chaldean Catholic
2 Eparchy of St. Peter the Apostle ("the Eparchy") brought a special anti-SLAPP motion to strike to
3 Plaintiff Noel Gorgis's ("Fr. Gorgis") fourth cause of action for defamation, brought a demurrer to
4 Fr. Gorgis's third cause of action for retirement benefits, and brought a conventional motion to
5 strike Fr. Gorgis's prayer for attorneys' fees. Those three motions came on regularly for hearing on
6 August 3, 2018, in Department C-72 of the above-entitled court, the Honorable Timothy B. Taylor
7 presiding. Paul M. Jonna of LiMandri & Jonna LLP appeared on behalf of the Eparchy. Ruben F.
8 Arizmendi of the Arizmendi Law Firm appeared on behalf of Fr. Gorgis.

9 Having considered the papers submitted by the parties and the argument of counsel, the
10 court issued the attached ruling, granted the special anti-SLAPP motion to strike in full, sustained
11 the demurrer in full without leave to amend (except to the extent it was mooted by the ruling on the
12 anti-SLAPP motion), and granted the conventional motion to strike in full (except to the extent it
13 was mooted by the ruling on the demurrer). The court's ruling fully disposes of the fourth cause of
14 action for defamation, the third cause of action for retirement benefits, and the prayer for attorneys'
15 fees.

16 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

- 17 1. Judgment on Fr. Gorgis's fourth cause of action for defamation, third cause of action for
18 retirement benefits, and prayer for attorneys' fees, is entered in favor of the Eparchy;
19 2. Fr. Gorgis shall take nothing on his fourth cause of action for defamation, third cause of
20 action for retirement benefits, and prayer for attorneys' fees; and
21 3. The Eparchy shall recover from Fr. Gorgis reasonable attorneys' fees in the amount of
22 _____ and costs of suit in the amount of _____.

23
24
25 Dated: 8/28/18

By: 
Hon. Timothy B. Taylor
Judge of the Superior Court

ATTACHMENT

complaint was filed December 26, 2017. ROA 1.

Defendant demurred to the third count in the complaint, relating to the retirement pay, and sought to strike certain elements of the complaint regarding an unexecuted settlement agreement and attorneys' fees. ROA 12-21. The demurrer and motion to strike provided March 14, 2018 service by US mail and electronic mail on counsel for plaintiff in accordance with Code of Civil Procedure section 1005(b). ROA 17, 21. On April 13, 2018, defendant filed a notice of non-opposition to the demurrer and motion to strike. ROA 25-27. Later the same day, plaintiff filed tardy opposition to the demurrer (ROA 29), which led to defendant filing an objection to the tardy opposition (ROA 28). Concurrently with filing his tardy opposition to the demurrer, plaintiff filed a motion for leave to file a first amended complaint (FAC), scheduled for May 25, 2018. ROA 30-32. The court reviewed all of the foregoing, and on April 20, 2018, sustained the demurrer, granted the motion to strike, and (having given leave to amend) took the May 25, 2018 motion off calendar. ROA 40.

The verified FAC was thereafter filed, adding several defendants and at least one new claim for defamation. ROA 48. Defendant now attacks the FAC with a special motion to strike, a demurrer, and a motion to strike. ROA 49-62. The special motion to strike attacks count four; the demurrer attacks counts three and four; the motion to strike attacks the attorneys' fees allegations and count three. Plaintiff filed opposition to all motions. ROA 73-76. Defendant filed reply. ROA 77-84. The court has reviewed the papers.

At a CMC, the court set the case for trial in February, 2019. ROA 67-71.

2. Applicable Standards.

A. The Legislature enacted Code of Civil Procedure section 425.16 to deter lawsuits "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." Code of Civil Procedure § 425.16(a). "Because these meritless lawsuits seek to deplete 'the defendant's energy' and drain 'his or her resources' [citation], the Legislature sought 'to prevent SLAPPs by ending them early and without great cost to the SLAPP target.'" " *Flatley v. Mauro* (2006) 39 Cal.4th 299, 312.

Under section 425.16, a court "shall" grant a defendant's motion to strike a cause of action "arising from" an act "in furtherance of" the defendant's constitutional petition or free speech rights unless the plaintiff establishes a probability of prevailing on the claim. Code of Civil Procedure § 425.16(b)(1). To achieve the goal of encouraging participation in matters of public significance, the Legislature has mandated that courts construe this statute "broadly" in favor of the moving party. Code of Civil Procedure § 425.16(a); *Kibler v. Northern Inyo County Local Hosp. Dist.* (2006) 39 Cal.4th 192, 197.

In ruling on a special motion to strike, the trial court engages in a multistep process. First, the court must determine whether the defendant met its burden to show the challenged cause of action arises from constitutionally protected activity as defined in the statute. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*). If this burden is met and the plaintiff asserts his action and/or claim is exempt under the commercial speech or public interest exemptions set forth in section 425.17, the plaintiff then has the burden to show the applicability of these exemptions. See *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 22-26; *Rivera v. First DataBank, Inc.* (2010) 187 Cal.App.4th 709, 717. If the plaintiff does not make this showing, the plaintiff must then meet his burden to establish a probability of prevailing on the claim. *Navellier, supra*, 29 Cal.4th at 88.

Subdivision (e) of section 425.16 sets out four categories of activities that are "in furtherance of" a defendant's free speech or petition rights under the United States or California Constitution in connection with a public issue. These acts are (1) written or oral statements made before a legislative, executive, or judicial proceeding; (2) written or oral statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body; (3) written or oral statements made in a place open to the public or in 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 free speech in connection with a public issue or an issue of public interest. Code of Civil Procedure § 425.16(e).

B. In determining whether a claim arises from protected activity [the first step of the analysis], a court must "disregard the labeling of the claim . . . and instead 'examine the *principal thrust* or *gravamen* of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies. Courts assess the principal thrust by identifying '[t]he allegedly wrongful and injury-producing conduct . . . that provides the foundation for the claim.' [Citation.]" *Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264, 1271-1272, italics added; see also *Tuszynska v. Cunningham* (2011) 199 Cal.App.4th 257, 269-270. "The anti-SLAPP statute's definitional focus is [on] the defendant's *activity* that gives rise to his or her asserted liability-and whether that activity constitutes protected speech or petitioning." *Navellier, supra*, 29 Cal.4th at 92.

This threshold "arising from" or "gravamen" or "principal thrust" analysis has proven to be quite thorny and difficult. Trial courts and even courts of appeal have struggled with it; certainly this court is among them. *But see Chaker v. Mateo* (2012) 209 Cal.App.4th 1138; *Yee v. Cheung*, (2013) 220 Cal.App.4th 184.

The Supreme Court has added significant gloss to the SLAPP jurisprudence in recent years. In *Baral v. Schnitt* (2016) 1 Cal.5th 376, the High Court held that trial courts may strike out lines and paragraphs of complaints, even if doing so does not defeat an entire pleaded "mixed" cause of action. And in *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060, the Supreme Court held as follows:

"What nexus must a defendant show between a challenged claim and the defendant's protected activity for the claim to be struck? As we explain, a claim is not subject to a motion to strike simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted."

C. Turning to the second step of the analysis: to establish a probability of prevailing under Code of Civil Procedure section 425.16, a plaintiff must make a prima facie showing of facts that would, if proved at trial, support a judgment in its favor. *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1010. The plaintiff " "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence ... is credited." " *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 20.

In making this showing, the plaintiff cannot rely solely on the allegations in the complaint and must present evidence that would be admissible at trial. *ComputerXpress, supra*, 93 Cal.App.4th at 1010; see *Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 679. However, the plaintiff's burden to show a "probability of prevailing is not high: We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's

evidence only to determine if it defeats the plaintiff's submission as a matter of law." *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700.

In deciding whether a prima facie case has been established, the court considers the pleading and evidentiary submissions of both parties. *Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 105. A plaintiff meets his burden to show a probability of prevailing on a cause of action if any part of a claim has merit. *Id.* at 100, 106. The standard is really one of "minimal merit." *Navellier, supra*, 29 Cal.4th at 89.

D. A demurrer may only be sustained if the complaint fails to state a cause of action under any possible legal theory. *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810; *McCall v. PacifiCare of California, Inc.* (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. Moreover, "[r]egardless of whether a request therefore was made, unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion." *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322. The courts of appeal give the complaint a reasonable interpretation, "treat[ing] the demurrer as admitting all material facts properly pleaded," but do not "assume the truth of contentions, deductions or conclusions of law." *Aubry v. Tri-City Hospital Dist., supra*, 2 Cal.4th at 967; *Zelig v. County of Los Angeles* (2000) 27 Cal.4th 1112, 1126. Courts must liberally construe the pleading with a view to substantial justice between the parties. Code of Civil Procedure § 452; *Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1120.

E. A motion to strike lies either to strike any "irrelevant, false, or improper matter inserted into any pleading" or to strike any pleading or part thereof "not drawn or filed in conformity with the laws of this State, a court rule or order of court." Code of Civil Procedure § 436. As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice (e.g. the court's own files or records). Code of Civil Procedure § 437. As with demurrers, motions to strike are disfavored; the policy of the law is to construe pleadings liberally with a view to substantial justice. Code of Civil Procedure § 452. When ruling on a motion to strike, in the absence of contradictory facts that the court is required to take judicial notice of, the factual allegations set forth in a complaint must be construed as true. *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255. When granting a motion to strike, a court may allow an amended complaint upon such terms as may be just. Code of Civil Procedure § 472a(d); *Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519 n. 12.

F. In order to establish a breach of contract (FAC, counts one, two, and three), plaintiff must demonstrate the existence of a contract that he performed or was excused from performing; that the contract was breached; and that damages resulted from the breach. *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga*, 175 Cal. App. 4th 1306, 1332 (2009); *Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1178.

G. The special motion to strike attacks the newly added claim for defamation (FAC, count four). "Defamation is effected by libel or slander (Civ. Code, § 44). ... 'Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.' (Civ. Code, § 45.) Slander is a false and unprivileged publication, orally uttered, which among other things, tends directly to injure one in respect to his office (Civ. Code, § 46). Common to both torts are falsity and lack of privilege." *Kelly v. William Morrow & Co.* (1986) 186 Cal.App.3d 1625, 1632.

H. Some internal affairs of religious institutions are beyond the reach of the civil courts. "[T]here is a ministerial exception grounded in the Religion Clauses of the First Amendment". *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* (2012) 565 US 171, 190. The "ministerial exception" precludes courts from exercising jurisdiction in lawsuits concerning issues of religious doctrine or church governance, including the appointment of clergy. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America* (1952) 344 US 94, 116. The "ministerial exception" is an affirmative defense to a claim, not a jurisdictional bar. *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC, supra*, 565 US at 195. The "ministerial exception" is not subject to a "rigid formula". *Id.* at 190. The "ministerial exception" is not limited to the head of a religious congregation, but may apply to other employees serving a ministerial role. *Id.*

"The ministerial exception doctrine is based on the notion a church's appointment of its clergy, along with such closely related issues as clerical salaries, assignments, working conditions and termination of employment, is an inherently religious function because clergy are such an integral part of a church's functioning as a religious institution. [Citation.]" *Henry v. Red Hill Evangelical Lutheran Church of Tustin* (2011) 201 Cal.App.4th 1041, quoting *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, 433.

"As long as civil or property rights are involved, the courts will entertain jurisdiction of controversies in religious bodies although some ecclesiastical matters are incidentally involved... However, ... the supervisory power of the civil tribunals may not be invoked when the only property involved is the loss of clerical office and the salary incident thereto." *Higgins v. Maher* (4th DCA, Div. 1, 1989) 210 Cal.App.3d 1168, 1174, internal quotes and citations omitted.

I. Evidence Code section 1152 provides:

"(a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it.

(b) In the event that evidence of an offer to compromise is admitted in an action for breach of the covenant of good faith and fair dealing or violation of subdivision (h) of Section 790.03 of the Insurance Code, then at the request of the party against whom the evidence is admitted, or at the request of the party who made the offer to compromise that was admitted, evidence relating to any other offer or counteroffer to compromise the same or substantially the same claimed loss or damage shall also be admissible for the same purpose as the initial evidence regarding settlement. Other than as may be admitted in an action for breach of the covenant of good faith and fair dealing or violation of subdivision (h) of Section 790.03 of the Insurance Code, evidence of settlement offers shall not be admitted in a motion for a new trial, in any proceeding involving an additur or remittitur, or on appeal.

(c) This section does not affect the admissibility of evidence of any of the following:

(1) Partial satisfaction of an asserted claim or demand without questioning its validity when such evidence is offered to prove the validity of the claim.

(2) A debtor's payment or promise to pay all or a part of his or her preexisting debt when such evidence is offered to prove the creation of a new duty on his or her part or a revival of his or her preexisting duty."

J. California follows the "American rule," under which each party to a lawsuit ordinarily must pay his, her or its own attorney fees. *Trope v. Katz* (1995) 11 Cal.4th 274, 278; *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 504. Code of Civil Procedure section 1021 codifies the rule, providing that the measure and mode of attorney compensation is left to the agreement of the parties "[e]xcept as attorney's fees are specifically provided for by statute."

3. Request for Judicial Notice.

Included with the original demurrer was a request for judicial notice of four canons of the *Code of Canon Law for the Oriental Churches* and defendant's *Diocesan Charter & Policies*. ROA 15. Judicial notice was sought pursuant to Evidence Code section 452(h) ("[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.") The court granted the request (ROA 40), and the contents of ROA 15 are once again relied upon in the current round of briefing.

4. Evidentiary Objections.

Defendant filed eleven evidentiary objections (ROA 79, 82) to plaintiff's declarations in opposition to the special motion to strike and demurrer (ROA 74-75). The objections provide a proposed order for ruling on the objections. See CRC 3.1354(c) (proposed order requirement in summary judgment context).

The court has ruled separately on the objections, sustaining the objections. For instance, evidence is improper in adjudication of a demurrer since a demurrer only challenges defects on the face of the pleading or matters judicially noticeable. *Blank v. Kirwin* (1985) 39 Cal.3d 311, 318. Plaintiff did not request judicial notice.

5. Discussion and Rulings.

A. The special motion to strike count four in the FAC for defamation is granted.

Count four concerns defendant's conduct in furtherance of its constitutional right to engage in free speech in connection with an issue of public interest under Code of Civil Procedure section 425.16(e)(4). As such, defendant meets its initial burden to invoke the protection of the anti-SLAPP statute as for count four.

In this regard, count four pertains to defamatory statements that defendant allegedly made about plaintiff. See FAC, paragraphs 47-61. The statements stem from a controversy between plaintiff and defendant (along with the Catholic clergy), which has been the subject of at least thirteen articles discussing the controversy. See ROA 51, Jonna declaration, paragraphs 2-8 and Exhibits 1-8 attached thereto (the thirteen articles). Also, plaintiff concedes this lawsuit is a matter of public interest. See ROA 72, opposition memorandum, p. 2:24-26 ("...this instant case became a matter of public interest when Defendant ordered Plaintiff to fly back to Iraq, ...") Thus, defendant meets its initial burden to invoke the protection of the anti-SLAPP statute.

To the extent plaintiff suggests that his defamation claim is not within the scope of the anti-SLAPP statute, he is mistaken. See ROA 72, opposition memorandum, p. 3:16-20. Speech or activity "must be illegal as a matter of law to defeat a defendant's showing of protected activity. The defendant must concede the point, or the evidence conclusively demonstrate it, for a claim of illegality to defeat an

anti-SLAPP motion at the first step." See *City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 424; see also *Flatley v. Mauro*, *supra*, 39 Cal.4th at 320. Here, there is no evidence that defendant's conduct is unlawful. Moreover, allegations of unlawful conduct in the FAC are insufficient to render defendant's alleged actions outside the protection of the anti-SLAPP statute. See *Dwight R. v. Christy B.* (2013) 212 Cal.App.4th 697, 712. Count four is within the scope of the anti-SLAPP statute.

Turning to the second step in the analysis, plaintiff cannot establish a probability of prevailing on count four against defendant.

An action for libel or slander must be brought "[w]ithin one year." "As a general rule a cause of action for libel accrues when the defamatory matter is published." See Code of Civil Procedure § 340(c); see also *Schneider v. United Airlines, Inc.* (1989) 208 Cal.App.3d 71, 76.

Count four identifies nine statements that it contends are defamatory. See FAC, paragraphs 47-48, 50, 53, 56-60. All nine statements were made more than one year before plaintiff filed his FAC (May 22, 2018) and more than one year before plaintiff filed his complaint (December 26, 2017). As such, count four is barred by the applicable statute of limitations.

In his opposition, plaintiff narrows count four to three allegedly defamatory statements: (1) "plaintiff took advantage of his priesthood and the podium"; (2) "[p]laintiff cannot testify to Christ and spread God's word"; and (3) "[p]laintiff is Satan." See ROA 72, opposition memorandum, pp. 7:14-8:28. The opposition also includes a November 12, 2016 letter attached as Exhibit 1 to plaintiff's declaration (ROA 74) as an alleged defamatory statement. Plaintiff cannot establish a probability of prevailing on count four against defendant on the three alleged statements or the letter.

The three statements are time-barred by Code of Civil Procedure section 340(c). In this regard, the first statement that "plaintiff took advantage of his priesthood and the podium" was published in an online article dated July 28, 2016. See ROA 72, opposition memorandum, p. 4:6-7; see also FAC, paragraph 57. The second statement that "[p]laintiff cannot testify to Christ and spread God's word" was published in an online statement on September 22, 2016. See, FAC, paragraph 58. The third statement that "[p]laintiff is Satan" was made on May 11, 2016. See FAC, paragraph 53. Also, the three statements are not mentioned in plaintiff's opposition declaration (ROA 74). As for the July 28, 2016 letter, it is time-barred by section 340(c) as well. Further, the letter does not mention plaintiff by name and is not defamatory. Rather, it states one attending a mass held by a priest "who is not in communion with his" bishop "shall rupture his or her relationship with the Catholic Church."

Thus, plaintiff cannot establish a probability of prevailing on count four against defendant, as pled in the FAC and as narrowed by the opposition.

Toward the end of his opposition memorandum, plaintiff requests the court "stay its ruling pending limited discovery." See ROA 72, opposition memorandum, p. 8:5-6. The request is denied.

Plaintiff should have had admissible evidence to support his defamation claim when he filed this action in late December, 2017 or when he filed the FAC in May. Our legal system presupposes adequate pre-filing legal research and factual investigation. See, e.g. Code of Civil Procedure section 128.7(b). Plaintiff seeks to turn this foundational notion on its head by seeking leave to conduct discovery after filing the complaint and FAC. Further, plaintiff fails to identify the particular discovery needed to develop his defamation claim. Moreover, he should have filed a noticed motion for discovery and continuance. See Code of Civil Procedure § 425.16(g) ("All discovery proceedings in the action shall be stayed upon

the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.") The request for a stay of the ruling on the special motion to strike "pending limited discovery" is denied.

Accordingly, the special motion to strike count four in the FAC is granted.

Defendant, as the prevailing party on the special motion to strike, is entitled to an award of reasonable award of attorneys' fees and costs. An award of attorneys' fees and costs may be addressed in a future noticed motion.

Having resolved the special motion to strike on the foregoing grounds, it is not necessary for the court to consider the other grounds presented in the motion. *Compare Natter v. Palm Desert Rent Review Commission* (1987) 190 Cal.App.3d 994, 1001; *Young v. Three for One Oil Royalties* (1934) 1 Cal.2d 639, 647-648. The "cardinal principle of judicial restraint" is that "if it is not necessary to decide more, it is necessary not to decide more." *PK Labs., Inc. v. Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.D.C. 2004) (Roberts, J., concurring in part and concurring in judgment).

B. The demurrer to count three is sustained without leave to amend. Plaintiff still asserts a right to an employment benefit, i.e., a pension paid for retired priests, in count three. See FAC, paragraphs 18, 40-43. The claim, although dressed up as one for "breach of oral contract/bailment," is barred by the "ministerial exception" given it concerns a right to an employment benefit, an ecclesiastical matter. Courts will not interfere with a church's ecclesiastical matters. E.g., *Henry v. Red Hill Evangelical Lutheran Church of Tustin* (2011) 201 Cal.App.4th 1041; and *Higgins v. Maher* (4th DCA, Div. 1 1989) 210 Cal.App.3d 1168, 1174. Moreover, the Catholic Church has Canons that address the concern at issue in the third count. See defendant's ROA 15, Exhibits B through E, Canons 297, 390, 1021, and 1446. Plaintiff has had one chance to amend, and did so in a disingenuous way. Further leave is denied.

The demurrer to count four is moot by virtue of the foregoing special motion to strike ruling.

C. The motion to strike is granted in its entirety, to the extent it is not mooted by the demurrer ruling. The original complaint attached as Exhibit E a settlement offer purportedly made by defendant that was never signed by the parties, evidently as to the claims in the first and second counts. The complaint suggested Exhibit E shows liability on behalf of defendant. See complaint, e.g., paragraph 13. Exhibit E was an improper attachment, and plaintiff did not fix this by merely referring to it in paragraph 16 of the FAC. It cannot be used (whether attached or simply by reference) to show or suggest liability on the part of the party offering the offer to compromise, purportedly defendant. See Evidence Code § 1152(a). Nor may an unsigned draft settlement agreement be used to trigger an entitlement to attorneys' fees.

D. Defense counsel is ordered to submit a form of judgment of dismissal of counts three and four in the FAC, along with the prayer for attorneys' fees, consistent with the foregoing.



Judge Timothy Taylor

COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO - CENTRAL DIVISION		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) Noel Gorgis v. The Chaldean Catholic Diocese of St. Peter the Apostle		
ATTORNEY(S) NAME AND ADDRESS Charles S. LiMandri, SBN 110841 Paul M. Jonna, SBN 265389 LiMANDRI & JONNA LLP P.O. Box 9120 Rancho Santa Fe, California 92067 Tele: (858) 759-9930; Fax: (858) 759-9938		
ATTORNEY(S) FOR: Defendant The Chaldean Catholic Diocese of St. Peter the Apostle	HEARING Dept. C-72 Trial Date:	CASE NO.: 37-2017-00049655-CU-BC-CTL JUDGE: Hon. Timothy Taylor

PROOF OF SERVICE

I, Kathy Denworth, declare that: I am over the age of 18 years and not a party to the action; I am employed in, or am a resident of the County of San Diego, California; where the mailing occurs; and my business address is P.O. Box 9120, Rancho Santa Fe, CA 92067, Telephone number (858) 759-9930; Facsimile number (858) 759-9938. I further declare that I served the following document(s) on the parties in this action:

- **[Proposed] PARTIAL JUDGMENT OF DISMISSAL**

by one or more of the following methods of service to:

Ruben Arizmendi, Esq.
Arizmendi Law Firm
2667 Camino del Rio South, Ste. 306
San Diego, CA 92108
Tel.: (619) 231-0460; Fax.: (619) 231-1899
E-Mail: ruben@arizmendlawfirm.com
Attorneys for Plaintiff Noel Gorgis

X **(BY U.S. MAIL)** I caused such document(s) to be sealed in envelopes, and with the correct postage thereon fully prepaid, either deposited in the United States Postal Service or placed for collection and mailing following ordinary business practices.

X **(BY ELECTRONIC FILING/SERVICE)** I caused such document(s) to be Electronically Filed and/or Service through the One Legal System.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 21, 2018.



 Kathy Denworth