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12

13

UNITED STATES DISTRICT COURT

14

NORTHERN DISTRICT OF CALIFORNIA

15

16 KIARA ROBLES,

17 Plaintiff,

18 vs.

19 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, BERKELEY, *et al.*

20 Defendants.
21

CASE No. 4:17-CV-03235-CW

**NOTICE OF MOTION AND MOTION TO
DISMISS FILED BY DEFENDANT
GEORGE SOROS; (PROPOSED) ORDER**

DATE: September 5, 2017

TIME: 2:30 pm

JUDGE: Hon. Claudia Wilken

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION.....	1
II. SUMMARY OF ARGUMENT	1
III. STATEMENT OF FACTS.....	3
A. Allegations In The Instant Action	3
B. Plaintiff’s Counsel’s History Of Using The Court System To Harass Mr. Soros.....	4
IV. ARGUMENT	5
A. Plaintiff Lacks Standing	5
B. Plaintiff Fails To State A Claim Against Mr. Soros	8
1. Plaintiff Fails To State A Claim For Assault	8
2. Plaintiff Fails To State A Claim For Battery.....	10
3. Plaintiff Fails To State A Claim For Negligent Infliction Of Emotional Distress	11
4. Plaintiff Fails To State A Claim For Intentional Infliction Of Emotional Distress	13
5. Plaintiff Fails To State A Claim For The Violation Of A State Protected Right Under Cal. Civ. Code § 52.1 – The Bane Act.....	15
C. The Complaint Must Be Dismissed For Lack of Personal Jurisdiction	16
V. CONCLUSION	18

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>Case</u>	<u>Page(s)</u>
<i>AccuImage Diagnostics Corp v. Terarecon, Inc.</i> , 260 F. Supp. 2d 941 (N.D. Cal. 2003)	7
<i>Am. Exp. Travel Related Servs. Co. v. D & A Corp.</i> , No. CV-F-04-6737OWW/TAG, 2007 WL 3217565 (E.D. Cal. Oct. 29, 2007)	7
<i>Angle v. Alameda Cty. Med. Ctr.</i> , No. C 07-250 SI, 2008 WL 413738 (N.D. Cal. Feb. 13, 2008)	12
<i>Arpin v. Santa Clara Valley Transp. Agency</i> , 261 F.3d 912 (9th Cir. 2001)	10, 11
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	8, 9
<i>Avina v. United States</i> , 681 F.3d 1127 (9th Cir. 2012)	8-9, 13
<i>Baca Gardening & Landscaping, Inc. v. Prizm Vinyl Corp.</i> , No. EDCV 08-1328VAP(JCX), 2008 WL 4889030 (C.D. Cal. Nov. 12, 2008)	18
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007)	8
<i>Benton v. Baker Hughes</i> , No. CV 12-07735-MMM (MRWx), 2013 WL 3353636 (C.D. Cal. June 30, 2013) ...	13-14
<i>Bickoff v. Wells Fargo Bank N.A.</i> , No. 14-cv-1065, 2016 WL 687640 (S.D. Cal. Feb. 19, 2016)	7
<i>Campbell v. Feld Entm't, Inc.</i> , 75 F. Supp. 3d 1193 (N.D. Cal. 2014)	15
<i>Cantu v. United States</i> , No. CV 14-00219 MMM (JCGX), 2015 WL 4720580 (C.D. Cal. Aug. 7, 2015)	12
<i>Chan Tang v. Bank of Am., N.A.</i> , No. SACV 11-2048 DOC (DTBx), 2012 WL 960373 (C.D. Cal. Mar. 19, 2012)	14
<i>Core-Vent Corp. v. Nobel Industries AB</i> , 11 F.3d 1482 (9th Cir. 1993)	16
<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746 (2014)	16

1 *Davis v. F.E.C.*,
 2 554 U.S. 724 (2008) 5

3 *Doe v. Gangland Productions, Inc.*,
 4 730 F.3d 946 (9th Cir. 2013)..... 11

5 *Green v. ADT, LLC*,
 6 No. 16-cv-02227-LB, 2016 WL 5339800 (N.D. Cal. Sept. 23, 2016)..... 12

7 *Hassman v. Rabbinical Assembly of Am.*,
 8 No. CV 16-4188-DOC (JEM), 2016 WL 6635622 (C.D. Cal. Nov. 9, 2016) 14

9 *Helicopteros Nacionales de Colombia, S.A. v. Hall*,
 10 466 U.S. 408 (1984) 16

11 *Hughes v. Pair*,
 12 46 Cal. 4th 1035, 209 P.3d 963, 95 Cal. Rptr. 636 (2009)..... 13, 15

13 *Lopez v. Cty. of Los Angeles*,
 14 No. CV 15-01745 MMM (MANx), 2015 WL 3913263 (C.D. Cal. June 25, 2015) 13

15 *Lujan v. Defs. of Wildlife*,
 16 504 U.S. 555 (1992) 5, 6

17 *Maya v. Centex Corp.*,
 18 658 F.3d 1060 (9th Cir. 2011)..... 6

19 *MCI Commc’ns Servs., Inc. v. City of Eugene, OR*,
 20 359 F. App’x 692 (9th Cir. 2009)..... 5

21 *Mitan v. Feeney*,
 22 497 F. Supp. 2d 1113 (C.D. Cal. 2007)..... 14

23 *McKinzy v. Nat’l R.R. Passenger Corp.*,
 24 836 F. Supp. 2d 1014 (N.D. Cal. 2011) 8

25 *Mulato v. WMC Mortg. Corp.*,
 26 No. C 09-03443 CW, 2009 WL 3561536 (N.D. Cal. Oct. 27, 2009)..... 12

27 *Murphy v. American Gen. Life Ins. Co.*,
 28 74 F. Supp. 3d 1267 (C.D. Cal. 2015)..... 9

Navarro v. Sage Point Lender Services, LLC,
 No. CV-14-4585-JFW (JCx), 2014 WL 12603214 (C.D. Cal. Aug. 12, 2014) 13

Nichols v. Brown,
 859 F. Supp. 2d 1118 (C.D. Cal. 2012)..... 7

Panavision Int’l, L.P. v. Toebben,
 141 F.3d 1316 (9th Cir. 1998)..... 16, 18

1 *Picot v. Weston*,
 780 F.3d 1206 (9th Cir. 2015)..... 17

2

3 *Pistor v. Garcia*,
 791 F.3d 1104 (9th Cir. 2015)..... 5

4

5 *Potter v. Firestone Tire & Rubber Co.*,
 6 Cal. 4th 965, 863 P.2d 795, 25 Cal. Rptr. 2d 550 (1993)..... 11

6 *Reimer v. Corporacion De Viajes Mundiales S.A.*,
 No. 14-CV-00147-EDL, 2014 WL 5492774 (N.D. Cal. Oct. 30, 2014)..... 17-18

7

8 *Revelles v. Stout*,
 103 F. App'x 622 (9th Cir. 2004) 10

9

10 *Rosen v. Terapeak, Inc.*,
 No. CV-15-00112-MWF (Ex), 2015 WL 12724071 (C.D. Cal. Apr. 28, 2015)..... 16, 17

11 *Scottsdale Ins. Co. v. Mendoza*,
 No. C-11-04398 DMR, 2012 WL 12921067 (N.D. Cal. July 23, 2012)..... 10

12

13 *Schneider v. TRW, Inc.*,
 938 F.2d 986 (9th Cir. 1991)..... 15

14 *Schwarzenegger v. Fred Martin Motor Co.*,
 374 F.3d 797 (9th Cir. 2004)..... 16, 17

15

16 *Spokeo v. Robins*,
 136 S. Ct. 1540 (2016) 5

17

18 *Swipe & Bite, Inc. v. Chow*,
 147 F. Supp. 3d 924 (N.D. Cal. 2015) 9

19 *Toomer v. United States*,
 615 F.3d 1233 (9th Cir. 2010)..... 11

20

21 *Varnado v. Midland Funding LLC*,
 43 F. Supp. 3d 985 (N.D. Cal. 2014) 11

22

23 *Vasilenko v. Grace Family Church*,
 248 Cal. App. 4th 146, 203 Cal. Rptr. 3d 536 (2016)..... 11, 12

24

25 *Warth v. Seldin*,
 422 U.S. 490 (1975) 5

26 *Wells v. Regents of the Univ. of California*,
 No. 15-cv-01700-SI, 2015 WL 6746820 (N.D. Cal. Nov. 5, 2015)..... 13

27

28 *Wong v. Tai Jing*,
 189 Cal. App. 4th 1354, 117 Cal. Rptr. 3d 747 (2010)..... 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 16

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Defendant George Soros respectfully moves this Court to dismiss all of the causes of
5 action asserted by Plaintiff Kiara Robles (“Plaintiff”) against him in Plaintiff’s Complaint, dated
6 June 5, 2017 (the “Complaint”), pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6) of the Federal
7 Rules of Civil Procedure.

8 **II.**

9 **SUMMARY OF ARGUMENT**

10 The Complaint, as it pertains to Mr. Soros, is the latest chapter in Plaintiff’s counsel’s
11 long-running attempt to use the federal courts to prosecute frivolous, unsubstantiated claims
12 against Mr. Soros. This is the fourth case that Plaintiff’s counsel has filed against Mr. Soros in the
13 past twelve months, each of which is based on vague and conclusory allegations of a conspiracy,
14 funded by Mr. Soros, that contain no factual allegations connecting Mr. Soros to the plaintiff’s
15 alleged injury. The first three cases, each of which has been dismissed, contain virtually identical
16 factual allegations in relation to Mr. Soros. The object of these alleged conspiracies has ranged
17 from “fomenting a racial war in America” to seeking to “delegitimize and destroy the presidency
18 of Donald J. Trump and to destabilize American society and reconstruct it to [Defendants’] own
19 design.” What was absent from each of these previous complaints were any factual allegations
20 linking Mr. Soros to any other defendant or any plaintiff’s alleged injuries.

21 The Complaint in this action is more of the same. As in the previous actions filed by
22 Plaintiff’s counsel, Larry Klayman, it appears that Mr. Soros is named as a defendant in an attempt
23 to make headlines rather than assert legally cognizable causes of action. The allegations of
24 Plaintiff’s injury are straightforward: while Plaintiff was attempting to attend a speech by Milo
25 Yiannopoulos, unnamed individuals who were protesting the event allegedly sprayed Plaintiff
26 with pepper-spray and bear mace. Defendant Ian Dabney Miller then allegedly struck Plaintiff in
27 the face and body with flagpoles.

1 The sole allegations in the Complaint relating to Mr. Soros are that he (1) “funded
2 numerous radical, left wing groups, including Defendant Refuse Fascism and Black Lives
3 Matter;” and (2) funds the Tides Foundation, a non-profit organization which allegedly contributes
4 money to Alliance for Global Justice (“AGJ”), and AGJ “sponsors” Defendant Refuse Fascism,
5 who helped to organize the protests at the University of California, Berkeley. There are no
6 allegations that Mr. Soros knew, directed, or spoke to Plaintiff’s alleged assailants. There are
7 similarly no allegations that Mr. Soros even had any role in organizing the protests at the
8 University of California, Berkeley. Nevertheless, Plaintiff has asserted claims against Mr. Soros
9 for assault, battery, negligent infliction of emotional distress (“NIED”), intentional infliction of
10 emotional distress (“IIED”), and violation of state protected rights under Cal. Civ. Code § 52.1 –
11 the Bane Act. Plaintiff is seeking general, special, actual and compensatory damages “in excess of
12 \$3,000,000,” and punitive damages “in excess of \$20,000,000.”

13 As a threshold matter, Plaintiff’s claims should be dismissed because she lacks standing as
14 to Mr. Soros. To adequately plead standing, a plaintiff must plausibly allege causation – that is,
15 that her injuries are “fairly traceable” to the conduct of the defendant. Here, the Complaint fails to
16 meet that requirement, alleging only that Mr. Soros made donations to certain non-profit
17 organizations, who then made donations to organizations that participated in the protest at the
18 University of California, Berkeley. That allegation of financial support has absolutely nothing to
19 do with the incident that allegedly took place at the event – which Plaintiff concedes was the act of
20 a third-party – or any injury allegedly suffered by Plaintiff. Further, Plaintiff does not even claim
21 that any member of the organizations that allegedly received donations from Mr. Soros caused
22 Plaintiff’s injuries.

23 Even if Plaintiff had standing, which she does not, she has failed to plead any conduct by
24 Mr. Soros that would support a claim. The allegations that Mr. Soros donated money to various
25 organizations – the sole non-conclusory allegations as to Mr. Soros – plainly do not state a claim
26 for assault, battery, NIED, IIED, or violation of the Bane Act. Nor can Plaintiff save her deficient
27 allegations by repeating the conclusory allegations that the various Defendants “acted in concert.”
28 Plaintiff is required to plead claims with sufficient particularity to state claims that are plausible,

1 and not merely conceivable. Plaintiff’s factual allegations that Mr. Soros donated money to non-
 2 profits plainly do not satisfy that standard, and the conclusory allegation that Defendants “acted in
 3 concert” does not bring the Complaint any closer to successfully stating a claim.

4 Finally, Plaintiff bears the burden of pleading facts sufficient to establish personal
 5 jurisdiction and has failed to meet that burden. Mr. Soros is a resident of New York and Plaintiff
 6 fails to allege any actions taken by Mr. Soros in or directed at California, much less any action that
 7 would subject Mr. Soros to specific jurisdiction in this case. Accordingly, the Complaint should
 8 be dismissed in its entirety as to Mr. Soros.

9 III.

10 STATEMENT OF FACTS

11 A. Allegations In The Instant Action

12 Plaintiff filed the Complaint on June 5, 2017 against 16 named defendants: the Regents of
 13 the University of California, Berkeley; Janet Napolitano; Monica Lozano; Nicholas Dirks; the
 14 Coalition to Defend Affirmative Action, Integration, & Immigrant Rights, and Fight for Equality
 15 by Any Means Necessary (“BAMN”); Ian Dabney Miller; Raha Mirabdal; Jesse Arreguin;
 16 University of California Police Department; Margo Bennett; City of Berkeley Police Department;
 17 Andrew Greenwood; John Burton; Nancy Pelosi; George Soros; and In the Name of Humanity,
 18 We Refuse to Accept A Fascist America (“Refuse Fascism”), as well as John Does 1-20. The
 19 Complaint asserts five claims against Mr. Soros: (1) assault, (2) battery, (3) negligent infliction of
 20 emotional distress, (4) intentional infliction of emotional distress, and (5) violation of state
 21 protected rights under the Bane Act. (Complaint ¶¶ 126 – 148.)

22 Plaintiff alleges that she was injured in an incident that took place at the University of
 23 California, Berkeley on February 1, 2017, during a protest related to a speaking appearance by
 24 Milo Yiannopoulos, a well-known conservative media personality. Plaintiff alleges that
 25 Defendant Mirabdal and “several unknown assailants” surrounded Plaintiff “combatively” and
 26 shined a flashlight in her face, “placing her in fear and apprehension of harm.” (*Id.* ¶ 77.) Shortly
 27 after Plaintiff finished a television interview, unknown assailants allegedly sprayed her with
 28 pepper spray and bear mace. (*Id.* ¶ 62-63.) Soon thereafter, Plaintiff alleges she was physically

1 attacked by Defendant Miller, who she claims struck her with flagpoles. (*Id.* ¶ 68.) Plaintiff
 2 claims that these alleged incidents caused her to suffer “severe emotional distress.” (*Id.* ¶¶ 128,
 3 132.) Plaintiff alleges that the “unknown assailants who sprayed Plaintiff Robles” acted “at the
 4 direction of BAMN and in concert with each and every defendant,” (*Id.* ¶ 64), and that Defendants
 5 Miller and Mirabdal carried out the battery and assault on Plaintiff Robles “at the direction of
 6 BAMN and in concert with each and every Defendant.” (*Id.* ¶¶ 70, 76.)

7 The Complaint contains only scant allegations regarding supposed conduct by Mr. Soros.
 8 Plaintiff alleges that Refuse Fascism “receive[d] funds from umbrella companies and subsidiaries”
 9 of Open Society Foundations, a philanthropic organization founded by Mr. Soros. (*Id.* ¶ 31.)
 10 Plaintiff further alleges that Refuse Fascism is “sponsored” by Alliance for Global Justice
 11 (“AGJ”), and that AGJ receives grants from the Open Society Institute, “a non-profit funded by
 12 Soros.” (*Id.* ¶ 32.) Plaintiff also alleges that Mr. Soros has funded numerous supposedly “radical,
 13 left wing groups,” including Refuse Fascism and Black Lives Matter. (*Id.* ¶ 25.) Plaintiff does not
 14 allege that Mr. Soros knew or communicated with the alleged assailants, the protestors, or any
 15 other Defendant, and does not allege any other facts linking Mr. Soros to the acts that caused her
 16 harm.

17 Plaintiff seeks “general (non-economic), special (economic), actual and compensatory
 18 damages in excess of \$3,000,000,” as well as punitive damages “in excess of \$20,000,000.” (*Id.* at
 19 p. 36 (“Prayer for Relief”).)

20 **B. Plaintiff’s Counsel’s History Of Using The Court System To Harass Mr. Soros**

21 Plaintiff’s counsel has an extensive and well-documented history of using the judicial
 22 system to air his political and social grievances, as detailed in Mr. Soros’ concurrently-filed
 23 Motion to Revoke *Pro Hac Vice* Admission of Larry Klayman. This is the fourth such lawsuit Mr.
 24 Klayman, acting as plaintiff or counsel, has filed against Mr. Soros in the last 12 months. The
 25 allegations in the Complaint concerning the alleged conduct by Mr. Soros are strikingly similar to
 26 the allegations in three other recently dismissed actions filed by Mr. Klayman against Mr. Soros.
 27 Two of those matters were in the Northern District of Texas, Dallas Division, *Klayman v. Obama,*
 28 *et. al.*, 3:16-CV-02010-L (N.D. Tex.), filed on July 9, 2016, and *Zamarripa v. Farrakhan, et. al.*,

1 3:16-cv-03109-N (N.D. Tex.), filed on November 7, 2016, and one was filed in the Central
 2 District of California, *Klayman v. ACLU, et al.*, 2:17-cv-01703-JAK-JEM. Each of the Texas
 3 actions, which alleged a conspiracy to foment a race war in America, were dismissed. *Klayman v.*
 4 *ACLU*, which alleged a conspiracy to “delegitimize and destroy the presidency of Donald J.
 5 Trump and to destabilize American society” was voluntarily dismissed by Mr. Klayman.

6 IV.

7 ARGUMENT

8 The claims asserted against Mr. Soros are subject to dismissal on various clear legal
 9 grounds. Each of these grounds, set forth below, provides an independent and sufficient basis to
 10 dismiss the claims asserted in the Complaint as against Mr. Soros.

11 A. Plaintiff Lacks Standing

12 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows a party to challenge the
 13 subject matter jurisdiction of a federal court. Article III of the United States Constitution limits
 14 the federal courts to adjudicating cases or controversies. *Davis v. F.E.C.*, 554 U.S. 724, 732
 15 (2008). This requirement is the “threshold question in every federal case.” *Warth v. Seldin*, 422
 16 U.S. 490, 498 (1975). “The party asserting jurisdiction bears the burden of establishing subject
 17 matter jurisdiction on a Rule 12(b)(1) motion to dismiss.” *MCI Commc’ns Servs., Inc. v. City of*
 18 *Eugene, OR*, 359 F. App’x 692, 697 (9th Cir. 2009). “[W]hen a federal court ... lacks subject-
 19 matter jurisdiction, the court must dismiss the complaint.” *Pistor v. Garcia*, 791 F.3d 1104, 1111
 20 (9th Cir. 2015) (internal quotations omitted).

21 The “irreducible constitutional minimum” of standing has three elements: (1) the plaintiff
 22 must suffer an “injury in fact,” meaning the injury must be “an invasion of a legally protected
 23 interest” and must be “concrete and particularized” and “actual or imminent, not conjectural or
 24 hypothetical;” (2) causation, meaning the injury must be “fairly...trace[able] to the challenged
 25 action of the defendant;” and (3) redressability, meaning that there is a likelihood that the
 26 requested relief will address the alleged injury. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560
 27 (1992). When a case is at the pleading stage, “the plaintiff must ‘clearly...allege facts
 28 demonstrating’ each element.” *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016) (emphasis added).

1 Without conceding that Plaintiff can meet the injury-in-fact or redressability elements, the
2 Complaint should be dismissed because it fails to adequately allege causation. Plaintiff must
3 allege a “causal connection between the [alleged] injury and the conduct complained of – the
4 injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant.’” *Lujan*, 504 U.S.
5 at 560. “To survive a motion to dismiss for lack of constitutional standing, plaintiffs must
6 establish a ‘line of causation’ between defendants’ action and their alleged harm that is more than
7 ‘attenuated.’” *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011). “In cases where a
8 chain of causation involves numerous third parties whose independent decisions collectively have
9 a significant effect on plaintiffs’ injuries, the Supreme Court and [the Ninth Circuit] have found
10 the causal chain too weak to support standing at the pleading stage.” *Id.* (internal citation
11 omitted).

12 The only allegations in the Complaint of any actions taken by Mr. Soros are that he (1)
13 “funded numerous radical, left wing groups, including Defendant Refuse Fascism and Black Lives
14 Matter;” and (2) funds the Tides Foundation, a non-profit organization which allegedly contributes
15 money to AGJ, and AGJ “sponsors” Refuse Fascism. (Complaint ¶¶ 25, 32.) Nowhere in the
16 Complaint does Plaintiff provide factual allegations capable of showing that her alleged attack and
17 injury is fairly traceable to Mr. Soros. In fact, Mr. Soros is several steps removed – with no
18 connecting factual allegations – from Plaintiff’s alleged assault and resulting injuries. Plaintiff’s
19 allegations essentially amount to: Mr. Soros donated money to the Tides Foundation, which
20 donated money to AGJ, which donated money to Refuse Fascism, which organized protests at the
21 Milo Yiannopolous event at UC Berkeley. Plaintiff does not even allege that Refuse Fascism, the
22 final link in this tortured chain of causation, had any connection to Plaintiff’s assailants.

23 The Northern District of Texas recently dismissed another case brought by Mr. Klayman
24 against Mr. Soros and a number of other defendants that involved similar barebones allegations of
25 a “conspiracy” supposedly funded by Mr. Soros. *Zamarripa v. Farrakhan*, 3:16-cv-03109-N
26 (N.D. Tex.), ECF NO. 63. Like here, the Complaint merely alleged that the assailant acted “under
27 direction from” the defendants, including Mr. Soros, but contained no factual allegations linking
28 the alleged assailant to Mr. Soros. The court found that the plaintiff lacked standing because he

1 had not adequately alleged causation since his “allegations are wholly conclusory and fail to
2 reasonably trace the words and actions” of Mr. Soros to the plaintiff’s injury. *Zamarripa v.*
3 *Farrakhan*, 3:16-cv-03109-N (N.D. Tex.), ECF NO. 63, at 8. The court held that “other than
4 conclusory statements, [plaintiff] has not pled any facts that suggest [the assailant’s] conduct was
5 dependent on the actions of the Defendants,” and dismissed the case. *Id.* at 9.

6 The same result should follow here. The line of causation in Plaintiff’s Complaint is not
7 merely attenuated, it is non-existent. The Complaint should be dismissed for lack of standing.
8 *Bickoff v. Wells Fargo Bank N.A.*, No. 14-CV-1065 (WVG), 2016 WL 687640, at *3 (S.D. Cal.
9 Feb. 19, 2016) (dismissing for lack of standing where defendant’s conduct “may or may not have”
10 caused plaintiff’s injury but was “simply too speculative as plead.”); *Nichols v. Brown*, 859 F.
11 Supp. 2d 1118, 1130 (C.D. Cal. 2012) (“[I]f it appears that plaintiff’s alleged injuries are the result
12 of conduct of a third person not a party-defendant, or the result of other circumstances not within
13 the control of the defendant, there can be no finding that a sufficient causal nexus exists between
14 the plaintiff’s alleged injuries and the defendant’s challenged conduct.”).¹

15 _____
16 ¹ Plaintiff also makes certain allegations regarding actions purportedly taken by the “Open Society
17 Foundation” [sic] and the Open Society Institute, including allegations that Open Society
18 Foundations donates money to Refuse Fascism and that Open Society Institute provides grant
19 money to AGJ and AGJ “sponsors” Refuse Fascism. (Complaint ¶¶ 31-32.) As an initial matter,
20 Plaintiff offers no factual allegations to tie these alleged donations by Open Society Foundations
21 and Open Society Institute to the events alleged in the Complaint. In any case, Open Society
22 Institute and its various affiliates are not named as defendants here (Open Society Foundations is
23 not even a legal entity). Even assuming Plaintiff’s allegations to be true for purposes of this
24 Motion, the actions of OSI and its affiliates cannot, based on the allegations within the complaint,
25 be imputed to Mr. Soros as support for Plaintiff’s claim under any theory of transferred liability.
26 *See AccuImage Diagnostics Corp v. Terarecon, Inc.*, 260 F. Supp. 2d 941, 950 (N.D. Cal. 2003)
27 (noting that even for a corporate officer or director, a “corporate director or officer’s status neither
28 immunizes such person from personal liability for tortious conduct nor subjects him or her to
vicarious liability for such acts.”) (internal citations and quotations omitted); *Am. Exp. Travel
Related Servs. Co. v. D & A Corp.*, No. CV-F-04-6737OWW/TAG, 2007 WL 3217565, at *33
(E.D. Cal. Oct. 29, 2007) (noting that to establish alter ego liability, “[i]t must be made to appear
that the corporation is not only influenced and governed by that person [or other entity], but that
there is such a unity of interest and ownership that the individuality, or separateness, of such
person and corporation has ceased, and the facts are such that an adherence to the fiction of the
separate existence of the corporation would, under the particular circumstances, sanction a fraud
or promote injustice.”) (internal quotations omitted).

1 **B. Plaintiff Fails To State A Claim Against Mr. Soros**

2 Dismissal is proper under Rule 12(b)(6) if a complaint does not allege facts to support its
 3 claim for relief. “To survive a motion to dismiss, a complaint must contain sufficient factual
 4 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
 5 556 U.S. 662, 678 (2009). “A claim has facial plausibility when the plaintiff pleads factual
 6 content that allows the court to draw the reasonable inference that the defendant is liable for the
 7 misconduct alleged.” *Id.* “[T]he tenet that a court must accept as true all of the allegations
 8 contained in a complaint is inapplicable to legal conclusions.” *Id.* Similarly, “[t]hreadbare recitals
 9 of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” *id.*,
 10 and the complaint’s “[f]actual allegations must be enough to raise a right to relief above the
 11 speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). If the factual
 12 allegations in the complaint fail to “nudge[] their claims across the line from conceivable to
 13 plausible, [the] complaint must be dismissed.” *Id.* at 570.

14 The only factual allegations in the Complaint relating to actions taken by Mr. Soros are
 15 that he (1) “funded numerous radical, left wing groups, including Defendant Refuse Fascism and
 16 Black Lives Matter;” and (2) funds the Tides Foundation, a non-profit organization which
 17 allegedly contributes money to AGJ, and AGJ, in turn, “sponsors” Refuse Fascism. (Complaint ¶¶
 18 25, 32.) None of these allegations have any connection to the alleged incident at the University of
 19 California, Berkeley, where Plaintiff claims to have been injured. (*Id.* ¶¶ 57-79.) Plaintiff has not
 20 pled – and cannot plead – that Mr. Soros engaged in any conduct that would permit him to be held
 21 liable for any of the alleged claims.

22 **1. Plaintiff Fails To State A Claim For Assault**

23 Under California law, assault “is an act committed by a defendant with the intent to cause
 24 apprehension of an immediate injury coupled with a reasonable apprehension of an immediate
 25 touching.” *McKinzy v. Nat’l R.R. Passenger Corp.*, 836 F. Supp. 2d 1014, 1029 (N.D. Cal. 2011)
 26 (Wilken, J.). To adequately plead a claim for assault in California, a plaintiff must show that “(1)
 27 the defendant threatened to touch the plaintiff in a harmful or offensive manner; (2) it reasonably
 28 appeared to the plaintiff that the defendant was about to carry out the threat; (3) the plaintiff did

1 not consent to the defendant's conduct; (4) the plaintiff was harmed; and (5) the defendant's
2 conduct was a substantial factor in causing the plaintiff's harm." *Avina v. United States*, 681 F.3d
3 1127, 1130 (9th Cir. 2012).

4 The Complaint is entirely devoid of allegations that could state a claim against Mr. Soros
5 for assault. The only specific allegations relating to Mr. Soros – which allege that donations were
6 made to various organizations – are plainly unrelated to Plaintiff's alleged assault. There are no
7 allegations of even a single statement made or threatening action taken by Mr. Soros toward
8 Plaintiff (or anyone else), much less any statement or action that could be characterized as a threat
9 that would create a fear of imminent violence. There are similarly no allegations that any conduct
10 of Mr. Soros was a "substantial factor" in causing Plaintiff's alleged harm.

11 In what is presumably an attempt to plead around that fact and hold Mr. Soros liable for
12 the alleged conduct of individuals he does not know and has never met, Plaintiff makes the
13 conclusory allegation that her alleged assailants acted "at the direction of BAMN and in concert
14 with each and every Defendant." (Complaint ¶ 76.) That conclusory allegation cannot save
15 Plaintiff's claim against Mr. Soros. It is precisely the type of "threadbare recital[] of the elements
16 of a cause of action, supported by mere conclusory statements" that the Supreme Court has stated
17 is insufficient to adequately state a claim. *Iqbal*, 556 U.S. at 678; *see also Murphy v. American*
18 *Gen. Life Ins. Co.*, 74 F. Supp. 3d 1267, 1288 (C.D. Cal. 2015) (dismissing conspiracy claim
19 based on "conclusory allegations" where there were "no allegations concerning when or where
20 such a conspiracy was conceived" and no allegations concerning who "conceived of, entered into
21 or carried out the conspiracy."); *Swipe & Bite, Inc. v. Chow*, 147 F. Supp. 3d 924, 936 (N.D. Cal.
22 2015) ("A bare allegation that a conspiracy existed does not suffice.")²

23 Because Plaintiff has pled no conduct by Mr. Soros that could constitute assault, and has
24 failed to plead any non-conclusory allegations that could create liability for Mr. Soros due to the
25 actions of the assailants, her claim against Mr. Soros should be dismissed.

26
27 ² For the same reasons, Plaintiff similarly fails to adequately plead a conspiracy as to any of her
28 other alleged claims against Mr. Soros.

1 **2. Plaintiff Fails To State A Claim For Battery**

2 In California, a plaintiff must show three elements in order to state a claim for civil battery:
3 “(1) the defendant intentionally performed an act which resulted in a harmful or offensive contact
4 with the plaintiff’s person; (2) the plaintiff did not consent to the contact; and (3) the harmful or
5 offensive contact caused injury, damage, loss, or harm to the defendant[s].” *Scottsdale Ins. Co. v.*
6 *Mendoza*, No. C-11-04398 DMR, 2012 WL 12921067, at *5 (N.D. Cal. July 23, 2012). Civil
7 battery requires intent, which may be established if the plaintiff shows that the “defendant acted
8 with a ‘willful disregard’ of the plaintiff’s rights.” *Id.*

9 Plaintiff has pled no allegations whatsoever that could plausibly sustain a claim against
10 Mr. Soros for battery. Specifically, Plaintiff fails to allege that Mr. Soros intentionally performed
11 any act that resulted in contact with the Plaintiff – harmful or otherwise. Plaintiff’s own
12 allegations demonstrate how far removed Mr. Soros’ actions are from Plaintiff’s alleged injuries.
13 The Complaint specifically alleges that Plaintiff’s assailants were defendants “Miller, Mirabdal,
14 BAMN, and other assailants to be named in discovery.” (Complaint ¶ 140.) Mr. Soros is not
15 alleged to be Plaintiff’s assailant. There are also no allegations in the Complaint that any of the
16 alleged assailants are affiliated with Mr. Soros, known to Mr. Soros, or have ever spoken to Mr.
17 Soros. Indeed, the sole allegation against Mr. Soros in relation to this claim is the non-sequitur
18 that “Refuse Fascism receives funds from umbrella companies and subsidiaries of Soros’ Open
19 Society Foundation [sic], a network of foundations, partners, and projects that funds Soros’
20 political interests.” (Complaint ¶ 139.) That allegation, of course, has nothing to do with the
21 alleged battery of Plaintiff since the Complaint does not allege that Refuse Fascism or any of its
22 members were among Plaintiff’s assailants. Plaintiff’s claim for battery lacks even a single
23 relevant factual allegation relating to Mr. Soros and should be dismissed. *See Revelles v. Stout*,
24 103 F. App’x 622, 624 (9th Cir. 2004) (dismissing battery claim for failure to sufficiently allege a
25 causal link between the defendant and the actor that made contact with the plaintiff because
26 plaintiff “did not allege either that [defendant] used force against him or that [defendant] caused
27 [the individual who committed battery] to use force.”); *Arpin v. Santa Clara Valley Transp.*
28 *Agency*, 261 F.3d 912, 926 (9th Cir. 2001) (dismissing battery claim where plaintiff only alleged

1 harmful contact from a third-party and failed to allege any offensive contact between plaintiff and
2 defendant).

3 **3. Plaintiff Fails To State A Claim For Negligent Infliction Of Emotional Distress**

4 In California, “[t]here is no independent tort of negligent infliction of emotional distress.”
5 *Doe v. Gangland Productions, Inc.*, 730 F.3d 946, 961 (9th Cir. 2013); *see also Varnado v.*
6 *Midland Funding LLC*, 43 F. Supp. 3d 985, 990 (N.D. Cal. 2014). NIED is a “form of the tort of
7 negligence, to which the elements of duty, breach of duty, causation and damages apply.” *Id.*
8 Plaintiff has failed to adequately allege duty, breach, or causation, each of which is required to
9 establish an NIED claim against Mr. Soros.

10 First, Plaintiff fails to plead that Mr. Soros owed a duty of care to Plaintiff. “[U]nless the
11 defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an
12 object, recovery is available only if the emotional distress arises out of the defendant's breach of
13 some other legal duty and emotional distress is proximately caused by that breach of duty.” *Potter*
14 *v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 985, 863 P.2d 795, 807-808, 25 Cal.Rptr.2d 550,
15 562-65 (1993); *Varnado*, 43 F. Supp. 3d at 990 (“The existence of a duty of care owed by a
16 defendant to a plaintiff is a prerequisite to establishing a claim of negligence. Absent a duty, the
17 defendant’s care, or lack of care, is irrelevant.”) (internal citations omitted). The Complaint does
18 not allege that Mr. Soros owed a duty to Plaintiff. In fact, the only duty identified in the
19 Complaint is the alleged duty “to properly maintain a safe venue for attendees of the Milo
20 Yiannopolous event hosted on UC Berkeley campus.” (Complaint ¶ 127.) That is plainly not a
21 duty that Mr. Soros owes to Plaintiff. There are no allegations in the Complaint, nor could there
22 be, that Mr. Soros is affiliated with the University of California, Berkeley in any way, and thus, by
23 definition he did not owe a duty to Plaintiff to maintain the safety of the campus. *Toomer v.*
24 *United States*, 615 F.3d 1233, 1236 (9th Cir. 2010) (finding that, since the defendant did not own
25 or control the property on which the defendant was injured, the defendant owed no duty to the
26 plaintiff to keep the premises safe and therefore was not liable); *Vasilenko v. Grace Family*
27 *Church*, 248 Cal. App. 4th 146, 152, 203 Cal.Rptr.3d 536, 540 (2016) (“In most instances, where
28

1 there is no control over the premises, there is no duty to exercise reasonable care to prevent
2 injury”).

3 Second, Plaintiff fails to plead any breach of duty by Mr. Soros. As an initial matter,
4 because Plaintiff has not alleged any duty owed by Mr. Soros to Plaintiff, by definition, Mr. Soros
5 cannot have breached his duty. *Mulato v. WMC Mortg. Corp.*, No. C 09-03443 CW, 2009 WL
6 3561536, at *3 (N.D. Cal. Oct. 27, 2009) (Wilken, J.) (dismissing negligence claim because
7 plaintiff failed to allege defendant owed plaintiff a duty of care); *Green v. ADT, LLC*, No. 16-CV-
8 02227-LB, 2016 WL 5339800, at *2 (N.D. Cal. Sept. 23, 2016) (dismissing negligence claim for
9 failing to allege a viable duty of care). In any event, even if Mr. Soros did owe a duty to Plaintiff
10 – which he does not – Plaintiff has not alleged any action by Mr. Soros that could plausibly
11 evidence a “failure to exercise reasonable care in the circumstances” such that he would have
12 breached a duty. *Vasilenko*, 248 Cal. App. 4th at 152, 203 Cal.Rptr.3d at 540.

13 Finally, Plaintiff cannot satisfy the causation requirement of her negligence claim. To
14 prove causation for a negligence claim, a plaintiff must show “(1) that the defendant's breach of
15 duty was a cause in fact of his injury; and (2) that defendant's breach was the proximate, or legal,
16 cause of the injury.” *Cantu v. United States*, No. CV 14-00219 MMM (JCGX), 2015 WL
17 4720580, at *23 (C.D. Cal. Aug. 7, 2015) (internal citations omitted). Plaintiff’s complaint fails
18 on both counts. Given that Plaintiff alleges that she was assaulted by members of BAMN and
19 other unknown assailants, and there are no allegations in the Complaint that Mr. Soros knew,
20 spoke to, or otherwise had any connection to these alleged assailants, there is no plausible scenario
21 in which Mr. Soros is the “but for” cause of Plaintiff’s alleged injury. *Angle v. Alameda Cty. Med.*
22 *Ctr.*, No. C 07-250 SI, 2008 WL 413738, at *4 (N.D. Cal. Feb. 13, 2008) (dismissing claims
23 because, *inter alia*, the defendants’ alleged actions were not the cause-in-fact or proximate cause
24 of the plaintiff’s injury and “intentional tortious or criminal [conduct] was an unforeseeable
25 intervening event that broke any causal chain.”). Moreover, for the reasons discussed above in
26 Part IV(A), Plaintiff fails to show that there is any degree of connection at all between Mr. Soros’
27 alleged conduct and Plaintiff’s alleged injury. Accordingly, Plaintiff does not state a claim for
28 negligent infliction of emotional distress.

1 **4. Plaintiff Fails To State A Claim For Intentional Infliction Of Emotional**
2 **Distress**

3 To state a claim for IIED, Plaintiff must plead: “(1) extreme and outrageous conduct by the
4 defendant with the intention of causing, or reckless disregard of the probability of causing
5 emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual
6 and proximate causation of the emotional distress by the defendant’s outrageous conduct.” *Avina*,
7 681 F.3d at 1131; *Wells v. Regents of the Univ. of California*, No. 15-CV-01700-SI, 2015 WL
8 6746820, at *7 (N.D. Cal. Nov. 5, 2015).

9 Plaintiff fails to adequately plead any of the four elements of a claim for intentional
10 infliction of emotional distress against Mr. Soros. As described above, the only allegations in the
11 Complaint relating to Mr. Soros are that he donated money to “left wing” groups and the non-
12 profit organization the Tides Foundation. (Complaint ¶¶ 25, 31-32.)

13 *First*, nothing about this alleged conduct – i.e., donating money – even suggests that Mr.
14 Soros was acting intentionally or recklessly to cause Plaintiff emotional distress. An IIED claim
15 requires that a “defendant’s conduct [is] intended to inflict injury or engaged in with the
16 realization that injury will result.” *Hughes v. Pair*, 46 Cal.4th 1035, 1051, 209 P.3d 963, 970, 95
17 Cal.Rptr.3d 636, 651 (2009) (internal quotations omitted). Additionally, “it is not enough that the
18 conduct be intentional...[i]t must be directed at the plaintiff, or occur in the presence of a plaintiff
19 of whom the defendant is aware.” *Navarro v. Sage Point Lender Services, LLC*, No. CV-14-4585-
20 JFW (JCx), 2014 WL 12603214, at *4 (C.D. Cal. Aug. 12, 2014). There are no factual allegations
21 in the Complaint that the intended consequence of the alleged donations by Mr. Soros was to
22 cause the emotional distress of Plaintiff arising from the alleged incident at the University of
23 California, Berkeley. Indeed, there are no allegations in the Complaint that Mr. Soros even knew
24 who Plaintiff was or that she would be at the event in Berkeley, prior to the filing of this lawsuit.
25 That is fatal to Plaintiff’s IIED claim. *Lopez v. Cty. of Los Angeles*, No. CV 15-01745 MMM
26 (MANx), 2015 WL 3913263, at *12 (C.D. Cal. June 25, 2015) (dismissing IIED claim where
27 “plaintiffs fail[ed] to allege facts suggesting that defendants’ conduct was directed towards
28 them”); *Benton v. Baker Hughes*, No. CV 12-07735-MMM (MRWx), 2013 WL 3353636, at *8

1 (C.D. Cal. June 30, 2013) (dismissing IIED claim where plaintiff pled “no facts...that would
2 support a finding that defendants acted with intent to cause him emotional distress” or “any motive
3 defendants might have had to act in a way that would cause him emotional distress.”).

4 *Second*, the alleged conduct of Mr. Soros does not even remotely approach the level of
5 “extreme and outrageous” conduct that is required to plead a claim for intentional infliction of
6 emotional distress. *Hassman v. Rabbinical Assembly of Am.*, No. CV 16-4188-DOC (JEM), 2016
7 WL 6635622, at *6 (C.D. Cal. Nov. 9, 2016) (the conduct must be “so outrageous in character,
8 and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as
9 atrocious, and utterly intolerable in a civilized community.”) (internal quotations omitted).

10 *Third*, Plaintiff has not pled any facts to show that the conduct of Mr. Soros caused
11 Plaintiff emotional distress. In fact, the Complaint contains no allegations specific to Mr. Soros
12 on this point. Instead, the Complaint only alleges that “Plaintiff Robles suffered severe emotional
13 distress directly and proximately caused by Defendants’ intentional decision to withhold proper
14 protection” and that “Defendants’ intentional decision to withhold proper protection for pro-
15 President Trump/pro-Milo Yiannopoulos supporters during the Milo Yiannopoulos event was a
16 substantial factor in causing Plaintiff Robles’ emotional distress.” (Complaint ¶¶ 130-132.) There
17 is no allegation that Mr. Soros, who is not affiliated with the University of California, Berkeley,
18 had anything at all to do with the decision to withhold protection, let alone that he was the cause
19 of Plaintiff’s emotional distress. Further, Plaintiff’s other, non-specific allegations about
20 “Defendants” are merely conclusory statements that simply parrot the elements of the claim, and
21 do not adequately state a claim. *Chan Tang v. Bank of Am., N.A.*, No. SACV 11-2048 DOC
22 (DTBx), 2012 WL 960373, at *16 (C.D. Cal. Mar. 19, 2012) (dismissing IIED claim because,
23 *inter alia*, plaintiffs “have not shown how [defendant’s] conduct caused them to suffer emotional
24 distress . . . and they have not offered facts showing causation.”); *Mitan v. Feeney*, 497 F. Supp.
25 2d 1113, 1126 (C.D. Cal. 2007) (dismissing IIED claim because “Plaintiff’s allegation of causation
26 is [] conclusory rather than factual, and this Court need not accept mere labels and conclusions.
27 Nowhere in the complaint does Plaintiff allege any facts to suggest how Defendant’s alleged
28 conduct caused his distress; he merely alleges the conclusion of causation itself.”).

1 *Fourth*, the Complaint contains no allegations that any distress suffered by Plaintiff was
 2 severe. A claim for IIED requires that the distress be “*severe* and not trivial or transient.” *Wong*
 3 *v. Tai Jing*, 189 Cal. App. 4th 1354, 1376, 117 Cal.Rptr.3d 747, 766 (2010). The California
 4 Supreme Court has set a “high bar” to show severe emotional distress. *Hughes*, 46 Cal. 4th at
 5 1051, 209 P.3d at 976, 95 Cal.Rptr. at 651. Severe emotional distress means “emotional distress
 6 of such substantial quality or enduring quality that no reasonable person in civilized society should
 7 be expected to endure it.” *Id.*; *see also Schneider v. TRW, Inc.*, 938 F.2d 986, 992 (9th Cir. 1991).
 8 In *Hughes*, the Court found that Plaintiff’s allegations of emotional distress resulting in
 9 discomfort, worry, anxiety, upset stomach, concern, and agitation were not severe enough to state
 10 a claim for IIED. *Hughes*, 46 Cal. 4th at 1051, 209 P.3d at 976, 95 Cal.Rptr. at 651. Here,
 11 Plaintiff has not even pled the level of distress that was insufficient in *Hughes*. Indeed, Plaintiff
 12 has pled no specifics whatsoever, offering only the conclusory statement that “Plaintiff Robles has
 13 suffered severe emotional distress.” (Complaint ¶ 132.) That is not sufficient and Plaintiff’s claim
 14 for IIED must be dismissed.

15 **5. Plaintiff Fails To State A Claim For The Violation Of A State Protected Right**
 16 **Under Cal. Civ. Code § 52.1 – The Bane Act**

17 To state a claim under the Bane Act, a plaintiff must show that “(1) Defendants interfered
 18 with [Plaintiff’s] constitutional or statutory rights; and (2) that interference was accompanied by
 19 actual or attempted threats, intimidation, or coercion.” *Campbell v. Feld Entm’t, Inc.*, 75 F. Supp.
 20 3d 1193, 1211 (N.D. Cal. 2014) (citations omitted). “Only if [Plaintiff] can first establish that
 21 Defendants violated a constitutional or statutory right can the Court consider whether such
 22 interference was the product of threats, intimidation, or coercion.” *Id.*

23 Here, Plaintiff has failed to allege that Mr. Soros actually or attempted to threaten,
 24 intimidate, or coerce Plaintiff at all, let alone in her exercise of constitutional rights. Again,
 25 Plaintiff makes no allegations against Mr. Soros pertaining to this point. Instead, Plaintiff alleges
 26 that Defendants “Miller, Mirabdal, BAMN, and unknown assailants” committed acts that
 27 interfered with Plaintiff’s ability to exercise rights protected by the California constitution.
 28 (Complaint ¶¶ 144-148.) Nowhere is it alleged that these defendants are in any way affiliated with

1 Mr. Soros. As before, Plaintiff attempts to salvage her claim as to Mr. Soros by simply stating
2 that the named defendants “act[ed] in concert with each and every Defendant.” (Complaint ¶¶
3 144-148). Yet no theory of conspiracy or vicarious liability is advanced. Such conclusory claims
4 are insufficient to state a claim under the Bane Act as to Mr. Soros.

5 **C. The Complaint Must Be Dismissed For Lack of Personal Jurisdiction**

6 Where a defendant moves to dismiss pursuant to Rule 12(b)(2) for lack of personal
7 jurisdiction, “the plaintiff bears the burden of demonstrating that jurisdiction is appropriate.”
8 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). “[M]ere bare
9 bones assertions of minimum contacts with the forum or legal conclusions unsupported by factual
10 allegations will not satisfy a plaintiff’s pleading burden.” *Rosen v. Terapeak, Inc.*, No. CV-15-
11 00112-MWF (Ex), 2015 WL 12724071, at *3 (C.D. Cal. Apr. 28, 2015).

12 “Where, as here, there is no applicable federal statute governing personal jurisdiction, the
13 law of the state in which the district court sits applies.” *Core-Vent Corp. v. Nobel Industries AB*,
14 11 F.3d 1482, 1484 (9th Cir. 1993). “California’s long-arm statute permits a court to exercise
15 personal jurisdiction over a defendant to the extent permitted by the Due Process Clause of the
16 Constitution.” *Panavision Int’l, L.P. v. Toepfen*, 141 F.3d 1316, 1320 (9th Cir. 1998). Thus, the
17 Court “need only determine whether personal jurisdiction in this case would meet the
18 requirements of due process.” *Core-Vent Corp.*, 11 F.3d at 1484.

19 The Due Process Clause “operates to limit the power of a State to assert in personam
20 jurisdiction over a nonresident defendant.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*,
21 466 U.S. 408, 413-14 (1984). Before a court may exercise jurisdiction over an out-of-state
22 defendant, the defendant must have “minimum contacts” with the forum state such that the
23 exercise of jurisdiction does not “offend traditional notions of fair play and substantial justice.”
24 *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (internal quotations omitted). The defendant’s
25 contacts with the forum must be such that it is foreseeable that the defendant could “reasonably
26 anticipate being haled into court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S.
27 286, 287 (1980). “Personal jurisdiction may be founded on either general jurisdiction or specific
28 jurisdiction.” *Panavision*, 141 F.3d at 1320.

1 The Complaint contains no allegations that would support a finding that Mr. Soros is
2 subject to general jurisdiction in California, which requires activities in the state that “are
3 ‘substantial’ or ‘continuous and systematic,’” *Id.* at 1320, and requires that the contacts
4 “approximate physical presence in the forum state.” *Schwarzenegger*, 374 F.3d at 801. The Ninth
5 Circuit has established a three-prong test for establishing specific jurisdiction: “(1) the non-
6 resident defendant must purposefully direct his activities or consummate some transaction with the
7 forum or resident thereof; or perform some act by which he purposefully avails himself of the
8 privilege of conducting activities in the forum, thereby invoking the benefits and protections of its
9 laws; (2) the claim must be one which arises out of or relates to the defendant's forum-related
10 activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice,
11 i.e. it must be reasonable.” *Schwarzenegger*, 374 F.3d at 802. “The plaintiff bears the burden of
12 satisfying the first two prongs of the test” and only if plaintiff “succeeds in satisfying both of the
13 first two prongs, the burden then shifts to the defendant to ‘present a compelling case’ that the
14 exercise of jurisdiction would not be reasonable.” *Id.*

15 Plaintiff cannot satisfy either of the first two prongs. To evaluate whether Plaintiff has
16 satisfied the first prong, “the Court applies the ‘effects’ test first established by the Supreme Court
17 in *Calder v. Jones*,” which requires that the defendant “(1) committed an intentional act, which
18 was (2) expressly aimed at the forum state, and (3) caused harm that the defendant knows is likely
19 to be suffered in the forum state.” *Rosen*, 2015 WL 12724071, at *3. The only intentional acts
20 allegedly undertaken by Mr. Soros in the Complaint are (a) donating money to various “radical,
21 left wing groups;” and (b) making donations to the Tides Foundation. (Complaint ¶¶ 25, 31-32.)
22 Nowhere in the Complaint does Plaintiff allege that any of those acts were expressly aimed at
23 California. *See Picot v. Weston*, 780 F.3d 1206 (9th Cir. 2015) (dismissing for lack of personal
24 jurisdiction where defendant’s allegedly tortious conduct was done in another state, “without
25 entering California, contacting any person in California, or otherwise reaching out to California.”).
26 Nor is the alleged harm suffered by Plaintiff in California the foreseeable consequence of any of
27 the acts allegedly undertaken by Mr. Soros. *Reimer v. Corporacion De Viajes Mundiales S.A.*,
28 No. 14-CV-00147-EDL, 2014 WL 5492774, at *7 (N.D. Cal. Oct. 30, 2014) (dismissing for lack

1 of personal jurisdiction because plaintiff failed to show that defendant “caused harm that
2 [defendant] knew would likely be suffered in the forum state[.]”). Accordingly, Plaintiff has failed
3 to satisfy the first prong of the *Calder* test.

4 The second prong, which considers whether Plaintiff’s claims arise out of or relate to the
5 Defendants’ forum-related activities, requires Plaintiff to show that he would not have been
6 injured “but for” the actions of Mr. Soros that were directed toward Plaintiff in California.
7 *Panavision*, 141 F.3d at 1322. As an initial matter, as discussed above, Plaintiff has not pled any
8 forum-related activities by Mr. Soros, and so this element cannot be satisfied. Moreover,
9 Plaintiff’s alleged injury is the result of an act by assailants that, according to the Complaint,
10 either acted at the direction of BAMN – a group unaffiliated with Mr. Soros – or are completely
11 unknown and unnamed. It is never alleged that any of the assailants acted at the direction of, or
12 were even known to, Mr. Soros. There is nothing in Plaintiff’s Complaint to support a claim that
13 “but for” some action in California by Mr. Soros, Plaintiff would not have suffered her alleged
14 injury. *Baca Gardening & Landscaping, Inc. v. Prizm Vinyl Corp.*, No. EDCV 08-
15 1328VAP(JCX), 2008 WL 4889030, at *6 (C.D. Cal. Nov. 12, 2008) (dismissing for lack of
16 personal jurisdiction where plaintiff “failed to demonstrate how Defendants’ forum-related
17 activities...could have had a causal connection to Plaintiff’s alleged injury.”).

18 Put simply, Plaintiff’s threadbare allegations provide no basis for finding that Mr. Soros is
19 subject to general or specific jurisdiction in California.

20 V.

21 **CONCLUSION**

22 For the foregoing reasons, Defendant George Soros respectfully requests this Court to
23 dismiss the Complaint in its entirety with prejudice as to Plaintiff’s claims against him, and for
24 any and further relief, at law or in equity, to which he is justly entitled.

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Respectfully submitted,

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