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Superior Court of California
County of Los Angeles

DEC 20 2017

Sherri R. Carter, Executive Officer/Clerk
By I. Perez, Deputy
I. Perez

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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12 **PEOPLE OF THE STATE OF CALIFORNIA,**

13 Plaintiff,

14
15 v.

16
17 **MARK LUCIAN FEIGIN**
(DOB: 3/20/1976),

18 Defendant.
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20
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Case No. BA443892

**PEOPLE'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
COUNT 2 AS UNCONSTITUTIONAL AS
APPLIED**

Date: January 2, 2018

Time: 8:30 a.m.

Dept.: 113

22
23 The People present the following Opposition to Defendant's Motion to Dismiss Count 2 as
24 Unconstitutional as Applied. This Opposition is based upon the attached Points and Authorities,
25 the transcript and exhibits from the Preliminary Hearing, and any evidence to be presented at the
26 hearing on the motion.

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STATEMENT OF FACTS

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2 Kristin Stangas is the Communications Coordinator for the Islamic Center of Southern
3 California (hereafter "ICSC"). RT 16:7-8. One of her job responsibilities for the ICSC is to
4 monitor the internet which includes Facebook and Twitter. RT 16:14-15

5 Between September 17, 2016 through September 25, 2016, Defendant made several posts
6 to the ICSC's Facebook page. RT 17:8-28, Exhibit 1. ICSC Communication Coordinator Kristin
7 Stangas kept copies of the Facebook posts and produced those to LAPD Det. Ken Bryant. RT
8 17:1-28. A review of the Facebook posts shows the following:

9 On September 17, 2016, in response to a post about an ICSC "Sunset Hike," Defendant
10 posted "THE TERROR HIKE...SOUNDS LIKE FUN." RT 17:8-28, Exhibit 1.

11 On September 18, 2016, in response to an ICSC post about LA Poet Laurete Luis
12 Rodriguez sharing poetry, Defendant posted "THE MORE MUSLIMS WE ALLOW INTO
13 AMERICA THE MORE TERROR WE WILL SEE." RT 17:8-28, Exhibit 1.

14 On September 24, 2016, Defendant posted "PRACTICING ISLAM CAN SLOW OR
15 EVEN REVERSE THE PROCESS OF HUMAN EVOLUTION." RT 17:8-28, Exhibit 1.

16 On September 25, 2016, around 4:24 p.m., Defendant posted "Islam is dangerous – fact: the
17 more muslim savages we allow into america – the more terror we will see – this is a face which is
18 undeniable." RT 17:8-28, Exhibit 1

19 On September 25, 2016, around 5:08 p.m., Defendant posted "Filthy muslim shit has no
20 place in western civilization." RT 17:8-28, Exhibit 1.

21 On October 19, 2016, Defendant was arrested and interviewed by LAPD. During that
22 interview, Defendant admitted to making the Facebook posts. RT 18:1-7. Defendant further
23 stated he was blocked from the ICSC Facebook page shortly after the posts. RT 55:7-11

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1 **I. PC 653m(b) IS NOT UNCONSTITUTIONAL AS APPLIED IN THE PRESENT**
2 **CASE AND THUS DEFENDANT’S MOTION TO DISMISS SHOULD BE DENIED**

3 Pen C § 653m, subds. (a), (b), prohibiting annoying and obscene or threatening telephone
4 calls, do not prohibit lawful speech in violation of U.S. Const., 1st Amend., or Cal. Const., art. I,
5 § 2. The protection of innocent individuals from fear, abuse, or annoyance at the hands of
6 persons who employ the telephone, not to communicate, but for other unjustifiable motives, is a
7 compelling government interest. Further, the subdivisions forbid conduct rather than pure speech,
8 and are not directed at particular groups or viewpoints. It is unlikely that a person could engage in
9 the proscribed conduct and still enjoy constitutional protection. *People v. Hernandez (Cal. App.*
10 *2d Dist. June 28, 1991), 231 Cal. App. 3d 1376, 283 Cal. Rptr. 81, 1991 Cal. App. LEXIS 744.*

11 In the present case, Defendant is charged with a violation of PC 653m(b) for multiple posts
12 he made on the Facebook page of the Islamic Center of Southern California. Those posts were:

- 13 • THE TERROR HIKE...SOUNDS LIKE FUN (September 17, 2016)
- 14 • THE MORE MUSLIMS WE ALLOW INTO AMERICA THE MORE TERROR WE
15 WILL SEE. (September 18, 2016)
- 16 • PRACTICING ISLAM CAN SLOW OR EVEN REVERSE THE PROCESS OF HUMAN
17 EVOLUTION. (September 24, 2016)
- 18 • Islam is dangerous – fact: the more muslim savages we allow into america – the more
19 terror we will see – this is a fact which is undeniable. (September 25, 2016)
- 20 • Filthy muslim shit has no place in western civilization. (September 25, 2016)

21 In his *Motion to Dismiss*, Defendant argues that rhetoric like his was common during the
22 heated election season in the fall of 2016. Defendant references a Washington Post
23 article about then-candidate Trump’s comments on Islam and Muslims in an attempt to normalize
24 his posts on the ICSC’s Facebook page. This argument by the Defendant does not transform the
25 language he used in those posts into protected political speech nor does it change the fact that his
26 repeated annoying and harassing posts on the ICSC Facebook page were made with the specific
27 intent to annoy and harass the members of the ICSC.

28 ////

1 Next, Defendant argues that he was trying to engage in political discussion. However, he
2 then argues that there was no “individual” he was communicating with on the ICSC Facebook
3 page. So, which is it? If Defendant wants to argue that the ICSC Facebook is not an individual
4 and there was no one there to respond, then Defendant’s argument that he was trying to engage in
5 public discussions on political issues fails. It is clear from the language of the posts that
6 Defendant was not trying to engage in any kind of political discussion but instead trying to vex
7 members of the ICSC with his thoughts about their religion.

8 Finally, Defendant argues that Facebook page is a public forum for First Amendment
9 purposes. The reality is that Defendant can post whatever he pleases on his *own* Facebook page.
10 However, Defendant cannot go to *another* Facebook page and post whatever he likes, free of
11 consequence for his actions. Therefore, the criminal charge of PC 653m(b) as applied to the facts
12 of this case does not violate the U.S. Constitution or the First Amendment and Defendant’s
13 *Motion to Dismiss* must be denied.

14 **II. THE ICSC HAS A PRIVACY INTEREST IN MAINTAINING THEIR FACEBOOK**
15 **PAGE AND BEING FREE FROM ANNOYING AND HARASSING COMMENTS**

16 In his *Motion to Dismiss*, Defendant argues that the ICSC can have no privacy interest in
17 their Facebook page. This argument not only goes against the Community Standards created by
18 Facebook so that each member can feel safe, but it also goes against common sense.

19 Facebook is a community where individuals can create pages for themselves, businesses or
20 events and engage with others. Facebook “want[s] people to feel safe when using
21 Facebook....[so they’ve] developed a set of Community Standards.”
22 <http://www.facebook.com/communitystandards>. Facebook does not differentiate between the
23 page of a person or a business. Anyone using Facebook must adhere to their Community
24 Standards. To make individuals feel safe while using Facebook, Facebook allows the creator of a
25 page to choose to make it public or private. Facebook further allows for the “ability to customize
26 and control what you use by unfollowing, blocking, and hiding the posts, people, Pages, and
27 applications you don’t want to see.” <http://www.facebook.com/communitystandards>. Individuals
28 using and posting on Facebook have no greater right to access a business’s Facebook page than

1 an individual's personal Facebook page and, at any time, a user can be blocked or have their posts
2 hidden.

3 While the ICSC Facebook page is open to anyone who wishes to view it and comment, that
4 openness to the public on Facebook does not translate into requiring ICSC or its members to
5 sustain repeated harassment from those who wish to mock and disparage their religion. Rather
6 than attempt to engage in discussion or debate, Defendant's posts are cruel and pointedly aimed at
7 dismissing an entire religion and those who practice it.

8 In *People v. Astalis*, the Court determined that the government had a very legitimate in
9 interest in protecting individuals from unwanted online communication. *People v. Astalis (2014)*
10 *116 Cal. App. 4th Supp. 1*. Protecting individuals from unwanted calls and contact in the present
11 version of the statute—which applies to both making repeated telephone calls and making
12 repeated contact by means of electronic communication devices, including sending text messages
13 and leaving messages on the Internet (see Pen. Code, § 653m, subd. (g))—is also a compelling
14 government interest. The government has an important interest in protecting the substantial
15 privacy interests of individuals from being invaded in an **intolerable** manner. (See *Cohen v.*
16 *California (1971) 403 U.S. 15, 21 [29 L. Ed. 2d 284, 91 S. Ct. 1780] emphasis added*) ““The
17 purpose of [Penal Code] section 653m is to deter people from making harassing
18 [communications] with the intent to annoy and thus, to secure an individual's right to privacy
19 against unwanted intrusion.’ [Citation.]” (*People v. Powers (2011) 193 Cal.App.4th 158, 164*
20 *[122 Cal. Rptr. 3d 709].” People v. Astalis (2014) 116 Cal. App. 4th Supp. 1, 7.*

21 What could be more “intolerable” than for ICSC Communications Director Kristin Stangas
22 to check the ICSC's Facebook page and discover that someone has written “PRACTICING
23 ISLAM CAN SLOW OR EVEN REVERSE THE PROCESS OF HUMAN EVOLUTION” as the
24 Defendant in this case did on September 24, 2016. Or how about on September 25, 2016, when
25 the Defendant posted “Filthy muslim shit has no place in western civilization.” This is exactly the
26 kind of repeated, annoying, and harassing electronic communication that PC 653m(b) is meant to
27 deter. Protected speech? Political speech? Defendant's posts on the ICSC Facebook page are
28 neither of those things.

1 The ICSC has a very real privacy interest in their Facebook page and Defendant does not
2 have the right to target the ICSC Facebook page to post annoying and harassing messages under
3 the guise of First Amendment protections. Defendant's repeated annoying and harassing posts on
4 the ICSC's Facebook page were a violation of PC 653m(b) and not protected speech under the
5 First Amendment and therefore the Court should deny Defendant's *Motion to Dismiss*.

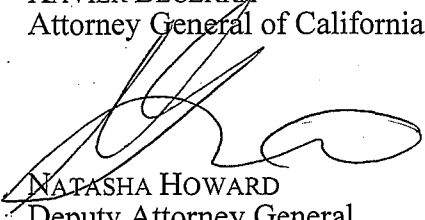
6 **CONCLUSION**

7 For the foregoing reasons, the People respectfully request the Court deny Defendant's
8 Motion to Dismiss Count 2 as Unconstitutional as Applied.

9 Date: December 20, 2017

Respectfully Submitted,

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11 XAVIER BECERRA
Attorney General of California

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14 NATASHA HOWARD
Deputy Attorney General
15 *Attorney for People*

DECLARATION OF SERVICE BY E-MAIL

Case Name: **People v. Mark Lucian Feigin**
Case No.: **BA443892**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General

On December 20, 2017, I served the attached **PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COUNT 2 AS UNCONSTITUTIONAL AS APPLIED** by transmitting a true copy via electronic mail.

Caleb Mason
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Los Angeles, CA 90017
E-mail Address: cmason@brownwhitelaw.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2017, at Los Angeles, California.

Reina Velasco
Declarant

Reina Velasco
Signature