UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RUDERMAN FAMILY FOUNDATION, **Plaintiff,** **v.** **JUBILARIA MEDIA LLC and GREGORY HADDOCK,** **Defendants.**	**C.A. No. 1:25-cv-13110**

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR RELIEF UNDER FED. R. CIV. P. 12(b)(6)

Defendants (hereinafter separately referenced as "Jubilaria" and "Haddock") have moved to dismiss all of Plaintiff's Counts for relief under Fed. R. Civ. P. 12(b)(6) because the facts alleged fail to support the claims asserted.[1]

INTRODUCTION

Plaintiff Ruderman Family Foundation reached out to Defendants Jubilaria and Greg Haddock to procure their services to create a test podcast in 2025. (Doc. 1 at ¶¶ 28-29. Plaintiff contracted with Defendant Jubilaria Media to produce a test podcast. *Id*. at ¶ 32. Plaintiff provided a sample podcast that has content about combatting antisemitism (Exhibit A),[2] as did its

[1] Additionally, Defendants have separately moved to dismiss Count III pursuant to Fed. R. Civ. P. 12(b)(1)&(3).

[2] The contract and the sample podcasts that were embedded in the contract are attached herein as Exhibit A. Courts may consider documents attached to a motion to dismiss without converting it into a motion for summary judgment under Rule 56 under made narrow exceptions for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint. *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993). The problem that arises when a court reviews statements extraneous to a complaint generally is the lack of notice to the plaintiff, but where plaintiff has actual notice and has relied upon these documents in framing the complaint the necessity of translating a Rule 12(b)(6) motion into one under Rule 56 is largely dissipated. *Id*. at 4.

website about the podcast. *Id*. at ¶¶26-27. Defendant Jubilaria entered into a contract with Plaintiff knowing that Plaintiff supported efforts to combat antisemitism. *Id*. at ¶¶30-32.

Defendants produced a test podcast and performed the contract to completion. *Id*. at ¶33. Prior to completing the contract, Plaintiff requested a meeting with Defendants to "align values, intentions, and process" and "discuss Antisemitism." *Id*. at ¶34. The Defendants agreed to meet, and were willing and excited to enter into a new contract to produce additional podcasts with the understanding that there would be a discussion about antisemitism first. *Id*. at ¶¶34-37.

Plaintiff's Producer "spoke" with Haddock asserting Plaintiff wanted guests vetted in a certain way to exclude people it was defining as "antisemitic" including vetting their social media. *Id*. at ¶38. Afterwards, Haddock mailed a letter to Plaintiff stating he had made the decision not to work with Plaintiff for political reasons ("taking a stance on the occupation of Palestine and its people" and "the destruction of the native people and culture of Palestine"), not due to Plaintiff's race or ethnicity.[3] (*Id*. at ¶38, ¶¶41-42 and Exhibit B). Haddock wrote,

[3] Letter attached herein as Exhibit **B**. This letter should be considered by this Court without converting the motion into a motion for summary judgment under Rule 56 because its authenticity is not disputed by the parties; it is central to plaintiffs' claim; or it is sufficiently referred to in the complaint. *Watterson v. Page*, 987 F.2d at 3. The letter specifically states that Defendants oppose antisemitism. It states as follows:

> The foundation's sincere and clear love of activism and advancement of social issues is the main reason we eagerly gravitated toward the opportunity to be your production partner for your podcast, All About Change. Our shared passions for climate change solutions, indigenous rights and sovereignty, racial and social equity, disability inclusion, and more, are values we also passionately believe in. These issues were the impetus for us establishing Jubilaria; an opportunity to do impact work that moves society closer to making the planet a healthier, safer, and more loving place for everyone. That means that we must take a stance on the occupation of Palestine and its people.
>
> It is not our intention to mischaracterize your foundation in any way, and this letter is in no way a condoning of antisemitism. ***Antisemitism is quite clearly wrong and something we detest and will continue to stand up against – as a company and as individuals. It is abhorrent, and history and the arc of justice will side with those who know that, just as they will for those who will not remain silent in the midst of the destruction of the native people and culture of Palestine.***

Exhibit B (emphasis added). Notably, in a not well-veiled effort to appear to meet this standard, Plaintiff have offered only parts of certain materials, failing, for example, to disclose the entirety

"Antisemitism is quite clearly wrong and something we detest and will continue to stand up against – as a company and as individuals. It is abhorrent, and history and the arc of justice will side with those who know that, just as they will for those who will not remain silent in the midst of the destruction of the native people and culture of Palestine." Exhibit B. Nothing in his statements is antisemitic or supports an inference that he refused to contract based solely on race.

The First Circuit has ruled that pro-Palestinian speech is not antisemitic. *Stand With US Ctr. for Legal Just. v. Massachusetts Inst. of Tech.,* 158 F.4th 1,18-19 (1st Cir. 2025) (rejecting the claim that supporting the Palestinian cause or opposing Israeli actions in Gaza is antisemitic).

Although Plaintiff alleged it did not tell Defendants that it would pursue podcast topics that were hostile to Palestine or to the people who live in Gaza or the West Bank (Doc. 1 at ¶ 44), it is suing Defendants for mentioning the occupation of Palestine and its people, and the destruction of the native people and culture of Palestine, and from that it could be inferred Plaintiff made new demands of Defendants that were contrary to Defendants' political beliefs. *Id.* at ¶ 43. This is political speech protected by the First Amendment. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 371 (2010); *See also Fed. Election Comm'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 457 (2007) (First Amendment requires courts to err on the side of protecting political speech rather than suppressing it); *see also Am. Ass'n of Univ. Professors v. Rubio*, 780 F. Supp. 3d 350, 362, 384 (D. Mass. 2025) (denying motion to dismiss claims in which speech "supportive of Palestinian human rights or critical of Israel's military actions in Gaza" was political speech protected by the First Amendment).

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of the Defendants' letter explaining their reasons for not agreeing to contract further, and only a portion of the IHRA definition of antisemitism, ignoring the fact that its mandate to Defendants was far more exclusive than disclosed in the Complaint. *See* FN. 8 at pages 9-10 *infra.*

I. LEGAL STANDARD TO APPLY TO A MOTION TO DISMISS

A motion to dismiss should be granted "if the complaint does not set forth 'factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.'" *Hammond v. Kmart Corp.*, 733 F.3d 360, 362 (1st Cir. 2013), *quoting United States ex rel. Hutcheson v. Blackstone Med., Inc.,* 647 F.3d 377, 384 (1st Cir. 2011). *Ergo,* "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.*, *quoting Ashcroft v. Iqbal,* 556 U.S. 662 (2009).

II. THE COURT MUST FIND FOR THE DEFENDANTS ON PLAINTIFF'S COUNT I FOR SEVERAL REASONS

A. The Elements Of A Section 1981 Claim.

42 U.S.C. § 1981 (hereinafter "Section 1981") provides in relevant part: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens...." To establish a claim under Section Section 1981 the Plaintiff must demonstrate: (1) it is ***a person who is a member of a racial minority***; (2) the Defendants or one of them ***intended to discriminate on the basis of race***; ***and*** (3) the discrimination concerned one or more of the statute's protected activities, such as contract formation. *Hammond v. Kmart Corp.*, 733 F.3d 360, 362 (1st Cir. 2013). "To prevail, a plaintiff must initially plead and ultimately prove that, but for race, it would not have suffered the loss of a legally protected right." *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 341 (2020). "If the defendant would have responded the same way to the plaintiff even if he had been white, an ordinary speaker of English would say that the plaintiff received the 'same' legally protected right as a white person." *Id*. at 333.

Congress intended for Section 1981 to protect from discrimination only identifiable classes of persons who are subjected to intentional discrimination ***solely*** because of their ancestry or ethnic characteristics. *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987) (holding that Al-Khazraji must show on remand that he was subjected to intentional discrimination based on the fact that he was born an Arab, rather than solely on the place or nation of his origin, or his religion to make out a case under Section 1981).[4]

Ultimately, a Section 1981 plaintiff "first must show that he was deprived of the protected right and then establish causation—and that these two steps are analytically distinct." *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. at 339. Under Section 1981, "a plaintiff bears the burden of showing that race was a but-for cause of its injury." *Id. at* 333. Notably, a plaintiff's feelings of disappointment resulting from its unwarranted hopes or expectations are not a legally recognized injury.

B. The Facts Pleaded Establish That The Defendants Were Motivated Exclusively By Considerations Other Than Race In Determining Not To Contract A Second Time With Plaintiff.

The facts pleaded by the Plaintiff fail to make out a Section 1981 claim. To prevail, Plaintiff must plausibly plead that Defendants ***intended*** to discriminate on the basis of race in refusing to enter into a second contract. *Hammond v. Kmart Corp.*, 733 F.3d at 362. And that the intent to discriminate based on race was the ***sole*** cause of Defendants' refusal to contract a second time. Saint F*rancis Coll. v. Al-Khazraji*, 481 U.S. at 613. Defendants' speech and actions do not reflect an intent to discriminate based solely on race or ethnicity, but instead a decision not to contract a second time because Plaintiff made a demand for the first time that under the

[4] The Court therein determined Section 1981 protected only groups cognizable at the time of its 1866 enactment. *See* fn. 14 at p. 13.

second contract Defendants' prerogative to invite people or groups who have a certain viewpoint would be curtailed.[5] Hence, the sole reason Defendants refused to contract again with Plaintiff was based on political speech, not Plaintiff's race or ethnicity.

Defendants agreed to contract with Plaintiff to produce one test podcast (*Id*. at ¶32, and Exhibit A). In contracting, Plaintiff provided a sample podcast that has content about combatting antisemitism (Exhibit A), as did its website about the podcast (*Id*. at ¶¶26-27). Defendant Jubilaria produced a test podcast, and performed the contract to completion (*Id*. at ¶30-33). Prior to completing the contract, Plaintiff requested a meeting with Defendants to "align values, intentions, and process" and "discuss Antisemitism" (*Id*. at ¶34). The Defendants agreed to meet and were willing and excited to contract to produce additional podcasts with the understanding there would be a discussion about antisemitism first (*Id*. at ¶¶34-37). Plaintiff's Producer "spoke" with Haddock, and allegedly wanted guests vetted in a certain way to exclude people it was defining as "antisemitic," including vetting their social media. (*Id*. at ¶38).

Afterwards, Haddock mailed a letter to Plaintiff stating he had made the decision not to work with Plaintiff for political reasons ("taking a stance on the occupation of Palestine and its people" and "the destruction of the native people and culture of Palestine"). *Id*. at ¶38, ¶¶41-42 and Exhibit B. Defendants did not state or even remotely suggest they were unwilling to enter into an additional contract due to Plaintiff's race or ethnicity; quite to the contrary, Defendants stated unequivocally in writing that they were opposed to antisemitism as strongly as they supported the human rights of the Palestinian people. Exhibit B, quoted at p. 2 *supra.*

[5] For one example, Defendants would have to decline to invite any person or group that held the political view that Israel's actions in Gaza were genocidal, a view Plaintiffs would classify as antisemitic under the IHFA definition, even if the person or entity were invited to speak about the ethics of medical experiments on pets.

Defendants had agreed to contract once with Plaintiff, with information in the contract that made indicating that Plaintiff was concerned with combatting antisemitism, and Defendants completed that contract. Defendants were willing to contract again with Plaintiff, knowing there would be a discussion on antisemitism. Plaintiff then placed additional demands that would require Defendants to violate their political beliefs. Being concerned about the human rights of Palestinians does not make Defendants antisemitic, and it does not support a Section 1981 claim for discrimination based solely on Plaintiff's race or ethnicity.

Plaintiff is relying on Defendants' pro-Palestinian statements to infer an antisemitic intent. The First Circuit has ruled that such language is not inherently antisemitic. *Stand With US Ctr. for Legal Just.* 158 F.4th at 18-19 (rejecting the plaintiffs' claim that supporting the Palestinian cause or opposing Israeli actions in Gaza is antisemitic). The Court ruled, "Plaintiffs allege no facts plausibly establishing that the protestors, as a group, opposed Israeli actions in Gaza or supported the Palestinian cause because of antisemitic animus." *Id*. at 18. Nor do plaintiffs allege facts plausibly showing that the protestors as a group shared plaintiffs' view that anti-Zionism was inherently antisemitic. *Id*. The Court also rejected plaintiffs' "implicit contention" that the choice to criticize Israel's actions in Gaza necessarily manifests antisemitism. *Id*. Furthermore, the Court rejected the argument that accusing Israel of committing genocide against Palestinians is antisemitic, noting that "even prominent Israelis have lodged the same accusation." (references omitted)." *Id*. at 19. The Court additionally declined to hold that speech was antisemitic "merely because it was stridently pro-Palestinian and anti-Zionist." *Id*.

The Court in *Stand With Us* further pronounced:

> Plaintiffs are entitled to their own interpretive lens equating anti-Zionism (as they define it) and antisemitism. But it is another matter altogether to insist that others must be bound by plaintiffs' view.

Id. at 28;

> And we do not find it dispositive that the United States Department of State has defined antisemitism as "[d]enying the **Jewish** people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor." Office of the Special Envoy to Monitor and Combat Antisemitism, Defining Antisemitism, U.S. Dep't of State https://www.state.gov/ defining-antisemitism [https://perma.cc/2KZF-TRBY] (last visited Sept. 29, 2025). As the Supreme Court has repeatedly emphasized, "new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated." Brown v. Ent. Merchs. Ass'n, 564 U.S. 786, 791, 131 S.Ct. 2729, 180 L.Ed.2d 708 (2011) (citing United States v. Stevens, 559 U.S. 460, 469– 472, 130 S.Ct. 1577, 176 L.Ed.2d 435 (2010)).

Id. at 29;

> We decline to interpret Title VI as arming either side of that debate with the powers of a censor.

Id. at 30, and

> Nor do plaintiffs allege facts that, if true, would otherwise permit the inference that in these specific circumstances the protestors' strident criticisms of Israel were driven by antisemitism. Without such an inference, the protestors' speech cannot constitute racial harassment for Title VI purposes. See Goodman v. Bowdoin Coll., 380 F.3d 33, 43 (1st Cir. 2004) (observing that "racial animus" is "a necessary component of ... claims under" Title VI); Doe v. Brown Univ., 43 F.4th 195, 208 (1st Cir. 2022) ("To succeed on his race-based claims, [plaintiff] must show, among other things, that [defendant] acted with **discriminatory** *intent."). Here, plaintiffs proffer only conclusory allegations of antisemitic* animus that are "not entitled to be assumed."
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> For these reasons, we decline plaintiffs' invitation to hold that the protestors' speech constituted antisemitic harassment actionable under Title VI merely because it was stridently pro-Palestinian and anti-Zionist.[6]

Id. at 33.[7]

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[6] Notably, a citizen's right to criticize the actions of the State of Israel is equal to the right to criticize the actions of the government of the United States. That the State of Israel is comprised, in large part, of people who are Jewish does not equate criticism of Israel with the criticism of Jews. Any such connection would be patently unconstitutional.

[7] Additionally, the Court rejected plaintiffs' "implicit contention that the choice to criticize Israel's actions in Gaza -- rather than, for example, choosing to criticize some other alleged atrocity elsewhere in the world -- necessarily manifests antisemitism." Id. at *12. The Court also rejected the argument that accusing Israel of committing genocide against Palestinians is antisemitic, noting that "even prominent Israelis have lodged the same accusation. See, e.g., Omer Bartov, Opinion, I'm a Genocide Scholar. I

Despite this binding precedent, Plaintiff insisted on relying on the International Holocaust Remembrance Alliance[8] ("IHRA") definition of antisemitism to allege "antizionism [sic] is a form of antisemitism." (Doc. 1 at ¶ 52). In contrast, the First Circuit ruled that speech is not antisemitic merely for being stridently pro-Palestinian and anti-Zionist. *Stand With US Ctr. for Legal Just.,* 158 F.4th at 18-19. Plaintiff alleged that antisemitic intent could be inferred from the words, "destruction of the native people and culture of Palestine," because ***to the Plaintiff***, the

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Know It When I See It., N.Y. Times (July 15, 2025), https://www.nytimes.com/2025/07/15/opinion/israel-gaza-holocaust-genocide-palestinians.html [https://perma.cc/P9GM-3RRX]." *Id.* The Court held that speech was not antisemitic merely for being stridently pro-Palestinian and anti-Zionist. *Id.*

[8] The Court can take judicial notice of the IHRA definition and examples given, in their entirety, none of which are present in this case:

> The term 'Antisemitism' shall mean a certain perception of Jews, which may be expressed as hatred toward Jews. Examples of what constitutes antisemitism: that is, hate of Jewish people include, but are not limited to:
>
> 1. Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
> 2. Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
> 3. Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
> 4. Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
> 5. Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
> 6. Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
> 7. Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
> 8. Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
> 9. Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
> 10. Drawing comparisons of contemporary Israeli policy to that of the Nazis.
> 11. Holding Jews collectively responsible for actions of the state of Israel."

words imply that Jews were not native to the land of Israel. (Doc. 1 at ¶ 46). This is yet another contention the First Circuit has rejected.

C. **Defendants' Speech is Protected Political Speech**

The rights conveyed by Section 1981 are curtailed by the Constitution, in particular, the First Amendment. *Masterpiece Cakeshop v. Colorado Civil Rights Commission,* 584 U.S. 617 (2018). While Defendants' speech is protected by the First Amendment. *Citizens United* , 558 U.S. at, 371; *See also Fed. Election Comm'n v.* 551 U.S. at 457 (First Amendment requires courts to err on the side of protecting political speech rather than suppressing it); *see also Am. Ass'n of Univ. Professors*, 780 F. Supp. at 362, 384) (denying motion to dismiss claims in which speech "supportive of Palestinian human rights or critical of Israel's military actions in Gaza" was political speech protected by the First Amendment). - First Amendment protection extends to corporations. *Citizens United*, 558 U.S. at 342.

Far more so than baking a cake, publishing a podcast is pure speech, and the Defendants have a First Amendment right to refuse to contract to censor speech in a manner to which they are morally opposed, and which would have the effect of silencing their own political views. *Masterpiece Cakeshop,* 584 U.S. 617) (concerning the Colorado Anti-Discrimination Act and the First Amendment Free Exercise Clause);[9] *see also, 303 Creative LLC v. Elenis*, 600 U.S. 570, 588 (2023) (holding that a government (in this case Colorado) cannot force an individual to contract with gay and lesbian clients because it infringed on her First Amendment rights by

[9] There are major differences, aside from the jurisdictional ones, that distinguish this case from *Masterpiece Cakeshop.* That case involved a refusal of a public accommodation based on the First Amendment religion clause; this case alleges only a refusal to enter into a contract (1981) based on political grounds, despite the fact that Defendants were exercising their free speech rights. Plaintiff's position in *Masterpiece Cakeshop* was stronger because that case involved ***public*** accommodations, whereas this case involves ***private*** contracting, i.e. *Masterpiece Cakeshop* held out to the public that it makes cakes for events while Defendants here do not. They are private actors, free to contract with whom they please.

forcing her to speak in ways that defy her conscience about a matter of major significance. *303 Creative LLC*, 600 U.S. at 602–03.

In summary, Section 1981 requires evidence of intentional racial discrimination, and that, "but for" their race, the Defendants would not have refused to contract. *Anderson v. J.P. Morgan Chase Bank*, 2024 WL 1363468 (E.D. Pa. March 29, 2024), aff'd 2024 4182179 (3rd. Cir. September 13, 2024); *Addison v. Signet Jewelers Ltd.*, 2025 WL 1766119 (D. N.J.) (6/26/25); *Armstrong v. WB Studio Enters., Inc*., 2025 WL 3002614 (9th Cir.) (10/2725). Not only has Plaintiff failed to alleged facts sufficient to support its claim that Defendants refused to contract with Plaintiff ***solely*** based on the race of the Foundation and its principals and employees (Doc. 1 at ¶ 63), Plaintiff concedes it set new conditions, including but not limited to the demand for vetting of guests (Doc. 1 at ¶ 38), that led Defendants to refuse to enter a new contract based on their political views. *Id*. at ¶¶ 42-43 and Exhibit B.

B. The Plaintiff Is Not A Race Protected Under Section 1981, As Are Those Practicing The Jewish Religion, Israelis, And The State of Israel Also Not Protected Thereunder.

"Jew or Jewish race," "Judaism or the Jewish religion," "Israeli" and "Israel" are three different words/phrases with three distinct meanings. One can be of the Jewish race, but not practice the Jewish religion, *vice versa*, or both. One can be Israeli and be both, one or neither of those mentioned above. Of the four, only the first, race, is protected under Section 1981.[10]

[10] Defendants acknowledge that Jews are a protected group. *See Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987).* They also acknowledge that some Circuit Courts have held that a corporate entity may claim the protection of the Statute. *White Glove Staffing v. Methodist Hospitals of Dallas, 947 F.3d (5th Cir. 2020).* The Courts designated Jews and corporations as such because the legislative history and historical definitions of race at the time of the statute's enactment included Jews as a distinct group, thereby affording them protection under Section 1981, and because Section 1981 references "all persons." *United States v. Nelson, 277 F.3d 164, St. Francis College v. Al-Khazraji, 481 U.S. 604, United States v. Bowers, 495 F. Supp. 3d 362.* This broad understanding of "race" was not limited to biological or anthropological definitions but included ethnic and ancestral distinctions. *Abdullahi v. Prada USA Corp*., 520 F.3d 710; *Pourghoraishi v. Flying J, Inc*., 449 F.3d 751. The Court, however, declined to grant such

Section 1981 bars discrimination based on race or ethnicity—not religion. See *Saint Francis Coll*., 481 U.S. at 606, 613, 107 S.Ct. at 2024, 2028; *Runyon*, 427U.S. at 167, 96 S.Ct. at 2593; *Sibley v. Touro LCMC Health,* No. 24-30189, 2024 WL 5118489, at *4 (5th Cir. Dec. 16, 2024) (per curiam) ("[Section] 1981 'does not protect against religious discrimination.' " (quoting *McCoy v. Homestead Studio Suites Hotels,* 177 F. App'x 442, 445 n.2 (5th Cir. 2006) (per curiam)); *see also Domanic v. Christian Bros. Auto. Corp.,* WL 2774235 (S.D. Texas, Houston Div.) (09-26-25). It likewise does not protect against nationality or national origin. And it does not protect nation-states.

Plaintiff makes conclusory allegations to the effect that Defendants were motivated not to enter into further business dealings with the Foundation ***because of its race or ethnicity***. Doc. 1, ¶¶ 1, 63, 70. However, Plaintiff does not assert a single fact to the effect it is of the Jewish race; indeed, it only alleges that it is: "…[g]uided by our Jewish values…" ¶ 22. Races do not have "values" or ideologies, but religions do.[11] *Ergo,* the Complaint, despite alleging in a purely conclusory way that Defendants discriminated based on its race, really only alleges that the Foundation has Jewish values, religious beliefs, and not that it has any race at all.

> "[t]he Ruderman Family Foundation is a non-profit, private philanthropic organization which operates in the United States and also grants philanthropic funds to organizations in Israel. It has two main areas of focus: (*i*) the mental health of young adults; and (*ii*) strengthening the relationship between Israel and the American Jewish community through strategic philanthropy.

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designations to groups that were not so identified at the time of the statute's enactment. Indeed, the case law supports a contrary conclusion. *Id.*

[11] Rather, races have "… characteristics, such as being part of a physiognomically or ethnically distinctive subgroup of humanity." *Pourghoraishi*, 449 F.3d at 757; *see also St. Francis College*, 481 U.S. 604. 449 F.3 a7 757 ("Iranians are indistinguishable from other persons who are labeled "white" is inconsequential for purposes of evaluating whether he has met the first prong of the *Morris* test, as are all other definitions of race that require distinctive physiognomy, or strict adherence to taxonomical, biological or anthropological definitions." *Pourghoraishi*, 449 F.3d at 757; *see also St. Francis College* , 481 U.S. 604.

¶2. Plaintiff further alleges that, by describing the Palestinians in the Occupied Territories as "native," Defendants are "implying" Jews are not. Complaint, P. 46. The one does not follow from the other. Furthermore, it cannot be denied that the vast majority of Jews in Israel immigrated there during the last one hundred years.

III. IF COUNT I IS DISMISSED, THE COURT SHOULD DECLINE TO ENTERTAIN THE STATE LAW CLAIMS

If Count I is dismissed, the Court should not exercise jurisdiction over the remaining state law counts. There is no allegation that the Plaintiff suffered harm in the required statutory amount. 28 U.S.C. §1332. And, there is no reason for the Court to exercise pendent jurisdiction over Plaintiff's state law claims. 28 U.S.C. §1367(a).

IV. THE COURT MUST FIND FOR THE DEFENDANTS ON PLAINTIFF'S COUNT II FOR SEVERAL REASONS

Plaintiff asserted a claim under Mass. Gen. Laws c. 93 § 102, alleging that Defendants discriminated against Plaintiff, which is expressly a Jewish organization and associated with Israel, by refusing to enter into a contract based on the race and national origin of Plaintiff and its principals and employees. (Doc. 1 at ¶¶65-70. As it pertains to the Complaint in this case, M.G.L. ch. 93, Section102(a) provides language similar to Section 1981:

> All persons within the commonwealth, regardless of … race …or national origin, shall have, ***except as is otherwise provided or permitted by law***, the same rights enjoyed by white male citizens, to make … contracts …

M.G.L. ch 93, Section 102(a).

In construing the equal rights act, "[w]e look to the cognate Federal provision[s] [42 U.S.C. §§ 1981 & 1982] for guidance." *Currier v. Nat'l Bd. of Med. Examiners*, 462 Mass. 1, 14, 965 N.E.2d 829, 839 (2012)*, quoting LaCava v. Lucander*, 58 Mass. App. Ct. 527, 535, 791 N.E.2d 358, 366 (2003). Only discrimination that is both ***purposeful and based on*** sex, ***race***, color, creed or national origin comes within the reach of the statute. *LaCava*, 791 N.E.2d at 366

(2003) (holding that complaint failed because even a generous reading does not permit the possibility of proving the commission's action was based on sex, race, color, creed, or national origin, or that it was purposefully discriminative). If any element is missing, a claim under the statute fails. *Id*., *citing Dartmouth Review v. Dartmouth College,* 889 F.2d 13, 17 (1st Cir.1989) (construing 42 U.S.C. §1981).

Count II of the Complaint cursorily alleges that there has been nationality discrimination as well as racial discrimination. (Doc. 1 at ¶70). It does not allege that the Foundation has any nationality other than the United States. Doc. 1 at ¶10. It does not allege that it was incorporated in Israel. *Id.* By its own admission, it is not an Israeli organization. *Id.* Having some Israeli employees or engaging in grant making to organizations in Israel does not make Plaintiff of Israeli national origin (*Id*. at ¶¶10, 67). There is no legal authority that allows a U.S. foundation to claim it is of Israeli national origin simply because some of its employees are Israeli. Any claim of purposeful discrimination based on national origin should fail for that reason alone.

In addition, there are no allegations that support an inference that Defendants refused to contract because some of Plaintiff's employees are Israeli. In fact, Defendants contracted with Plaintiff under those circumstances; fulfilled the contract; and engaged in discussions to enter a second contract. Plaintiff failed to allege any facts that would support purposeful discrimination against the Plaintiff because it employed some Israeli citizens.

As concerns alleged racial discrimination, this claim should be dismissed for the same reasons that Count I should be dismissed. As discussed *supra,* the facts alleged in the Complaint do not support the proposition that Defendants discriminated against any racial group.

Furthermore, there is no allegation of fact, just a conclusory assertion, that the Defendants caused damage in excess $75,000 to the Plaintiff (Doc. 1 at ¶14 under jurisdiction). If the first claim is dismissed, there is no jurisdiction to consider this pendent claim.

V. THE COURT MUST FIND FOR THE DEFENDANTS ON PLAINTIFF'S COUNT III FOR SEVERAL REASONS

Plaintiff alleged Defendants engaged in trade or commerce under Mass. Gen. Laws ch. 93A, and that their acts or omissions constitute unfair and deceptive trade practices, all of which occurred within or were directed to the Commonwealth of Massachusetts (Doc. 1 at ¶¶ 73-74). Specifically, Plaintiff alleged Defendants' refusal to contract with Plaintiff was for the discriminatory and unlawful reasons, as described in relation to its first two claims (*Id*. at ¶ 74). Plaintiff alleged that these trade practices were willful and intentional. (*Id*. at ¶ 75).

Mass. Gen. Laws Ann. ch. 93A, § 2(a) provides that "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Section 2 further provides:

> It is the intent of the legislature that in construing paragraph (a) of this section in actions brought under sections four, nine and eleven, the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

Mass. Gen. Laws. Ann. ch. 93A, § 2(b).

M.G.L. ch. 93A, § 11 provides:

> No action shall be brought or maintained under this section unless the actions and transactions constituting the alleged unfair method of competition or the unfair or deceptive act or practice occurred ***primarily and substantially*** within the commonwealth. For the purposes of this paragraph, the burden of proof shall be upon the person claiming that such transactions and actions did not occur primarily and substantially within the commonwealth.

(emphasis added).

Section 11 is the enforcement mechanism. To prevail thereunder, a plaintiff must prove that an act or practice is unfair or deceptive. The Plaintiff failed to point to any regulations under Chapter 93A that would apply here. The Attorney General has issued regulations under Chapter 93A. They are comprehensive and detailed, yet nothing resembling the conduct alleged in this Complaint is described anywhere therein. The only language in the regulations that could be considered as a possibility for a Section 1981, Section 102 type violation is found in 3:16, which provides in relevant part:

> Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of M.G.L. c.93A, § 2 if: (1) It is **oppressive or otherwise unconscionable** in any respect; or … (3) It **fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare** promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection …

940 Mass. Code Regs. 3.16.

Plaintiff did not allege any conduct that could be considered oppressive or unconscionable. Refusing to enter into a second contract with Plaintiff does not constitute an "oppressive or otherwise unconscionable" trade practice. Plaintiff did not allege that refusing to contract to produce podcasts somehow endangered public health, safety, or welfare.

Furthermore, Plaintiff's Complaint does not describe any deceptive practice. Plaintiff alleged that "the parties entered into an Agency Client Agreement and a Statement of Work for a test episode of the Podcast and social media assets about the episode … which ***could*** lead to a longer-term contractual relationship for additional episodes" (Doc. 1 at ¶ 32) (emphasis supplied). There was no promise that the parties would enter into a longer-term contractual relationship.[12]

[12] Furthermore, Plaintiff added additional terms or requirements in proposing a second contract by requesting that Jubilaria vet prospective guests to avoid people it considered antisemitic and vet their

In the context of disputes among businesses, where both parties are sophisticated commercial players, the "objectionable conduct must attain a level of rascality that would raise an eyebrow to the rough and tumble of the world of commerce." *Ora Catering, Inc. v. Northland Ins. Co.*, 57 F. Supp. 3d 102, 110 (D. Mass. 2014), *citing Levings v. Forbes & Wallace, Inc.,* 8 Mass.App.Ct. 498, 396 N.E.2d 149, 153 (1979); *see Madan v. Royal Indemnity Co.,* 26 Mass.App.Ct. 756, 532 N.E.2d 1214, 1217 n. 7 (1989) (citations omitted) (noting higher standard of unfairness under Section 11). Thus, in order to prove a violation of Chapter 93A, plaintiff must show that defendant's conduct fell within "the penumbra" of some "established concept of unfairness" or was "immoral, unethical, oppressive or unscrupulous." *Ora Catering, Inc.*, 57 F. Supp. 3d at 110; *quoting Boyle v. Int'l Truck & Engine Corp.,* 369 F.3d 9, 15 (1st Cir. 2004). [13]

Conduct is "deceptive" when "it has the capacity to mislead consumers, acting reasonably under the circumstances, to act differently than they otherwise would have acted." *Hanrahran v. Specialized Loan Servicing*, *LLC,* 54 F. Supp. 3d 149, 154 (D. Mass. 2014), *quoting Aspinall v. Philip Morris Cos., Inc.,* 442 Mass. 381, 813 N.E.2d 476, 488 (2004). In the Present Case, there are no allegations that Defendant acted in a "deceptive" manner or that Plaintiff would have acted differently than they otherwise acted (Doc. 1 at ¶¶ 72-75).

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social media (*Id*. at ¶38). Defendants responded that they did not want to enter into a second contract for reasons that it explained. Exhibit B. From the Defendants' response rejecting a second contract, it could be inferred that Plaintiff requested additional requirements that were unacceptable to the Defendants. Refusing to contract under those circumstances is neither deceptive, nor unfair.

[13] The question in *Ora Catering* was whether the defendant's reading of the contract, and its explanation for its denial, was somehow so "immoral, unethical, oppressive or unscrupulous" as to demonstrate a violation of Chapter 93A. *Ora Catering, Inc.*, 57 F. Supp. 3d at 111. The Court concluded that defendant's interpretation of the insurance policy in the denial letter did not rise to that standard. Id. "Typically, situations where the parties have a 'genuine difference of opinion' are merely 'ordinary disputes' that lack conduct sufficient to implicate Chapter 93A." *Id*., *quoting*, *Duclersaint v. Fed. Nat'l Mortg. Ass'n,* 427 Mass. 809, 696 N.E.2d 536, 540 (1998) ("a good faith dispute as to whether money is owed ... is not the stuff of which a c. 93A claim is made"). Plaintiff has done nothing more than describe an "ordinary dispute" and difference of opinion that led Defendants to decide not to enter into a second contract.

Similarly, to determine whether conduct is "unfair" for purposes of Chapter 93A, courts consider several factors: (1) whether the practice is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) ***whether it is immoral, unethical, oppressive, or unscrupulous; and*** (3) ***whether it causes substantial injury to consumers*** (or competitors or other businessmen). *Hanrahran,* 54 F. Supp. 3d at 154, *citing Massachusetts Eye & Ear Infirmary v. QLT Phototherapeutics, Inc.*, 552 F.3d 47, 69 (1st Cir.), *decision clarified on denial of reh'g*, 559 F.3d 1 (1st Cir. 2009). ***There are no allegations that Defendants' refusal to contract with Plaintiff is immoral, unethical, oppressive, or unscrupulous, and there are no allegations that it caused substantial injury to consumers or the Plaintiff***. There are no allegations of any injury to Plaintiff from Defendants' refusal to contract with Plaintiff, let alone allegations of "substantial injury." (Doc. 1 at ¶¶ 72-75). Plaintiff has not and cannot plausibly plead a Chapter 93A claim.

Courts must also "evaluate the equities between the parties." *Hanrahran,* 54 F. Supp. 3d at 154. Plaintiff employs a "substantial number" of people (Doc. 1 at ¶¶ 59), whereas Defendant Jubilaria employs Gregory Haddock and one other person (*Id*. at ¶10). The express purpose of the statute is to protect consumers in their relationship with businesses, and to protect small businesses from oppressive tactics of larger ones: that is, those who cannot otherwise protect themselves in a free market. Plaintiff is not seeking protection, but instead to use the Consumer Protection law as a sword to punish and silence Defendants for their political beliefs.

VI. ADDITIONALLY, ALL OF PLAINTIFF'S COUNTS SHOULD BE DISMISSED BECAUSE IT SIGNED AN INDEMNIFICATION CLAUSE THAT APPLIES HERE

All of Plaintiff's claims should be dismissed because Plaintiff signed an indemnification clause with Defendants. Pursuant to this clause, "Client [Plaintiff] agrees to indemnify and hold

harmless Agency [Defendants] of and from ***any and all claims***, demands, losses, ***causes of action***, damage, ***lawsuits***, judgments, including attorney's fees and costs, to the extent caused by or arising out of or relating to the work of the Agency." Exhibit A at pages 4-5 (emphasis added).

Under Massachusetts law, where material facts are not in dispute, interpretation of an indemnity clause is an issue of law. *Caldwell Tanks, Inc. v. Haley & Ward, Inc.*, 471 F.3d 210, 215 (1st Cir.2006).[14] Unambiguous contract language must be interpreted according to its plain terms. *Id.* Furthermore, ambiguous language should be interpreted strictly against its author. ***J. D'amico, Inc. V. Boston***, 345 Mass. 218, 186 N.E.2d 716 (1962).[15]

In their complaint, Plaintiff alleged that "the parties entered into an Agency Client Agreement and a Statement of Work for a test episode of the Podcast and social media assets about the episode. The parties expected that the test episode would allow them to produce an episode of the Podcast together, which could lead to a longer-term contractual relationship for additional episodes." (Doc. 1 at ¶ 32). Under the plain meaning of the terms, Plaintiff signed the contract, Exhibit A, with an indemnification clause in which it promised to indemnify and hold Defendants harmless ***with the expectation that it would "lead to a longer-term contractual relationship for additional episodes***" and that under those circumstances, Plaintiff agreed to indemnify and hold Defendants harmless "from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorney's fees and costs, to the extent caused by

[14] Indemnification clauses are "to be interpreted like any other contract, with attention to language, background, and purpose." *Hayes v. CRGE Foxborough, LLC*, 167 F. Supp. 3d 229, 248 (D. Mass. 2016), *quoting Herson v. New Boston Garden Corp.*, 40 Mass.App.Ct. 779, 782, 667 N.E.2d 907 (1996). Such clauses are to be fairly and reasonably construed in order to ascertain the intention of the parties and to effectuate the purpose sought to be accomplished. *Hayes v. CRGE Foxborough, LLC*, 167 F. Supp. 3d at 248.

[15] While this doctrine, *contra preferentum*, is considered one of last resort between two sophisticated businesses, it is widely used where the parties, as they are here, have disproportionate resources. *See Principal Mutual Life Ins. Co. v. Racal-Datacom, Inc.,* 233 F.3d 1, 2000 WL 1716483, *4 (1st Cir.. 2000).

or arising out of or relating to the work of the Agency." Exhibit A at pp. 4-5 (emphasis added). Plaintiff is now suing Defendants for alleged losses "caused by or arising out of or relating to the work of the Agency" because its expectation of a "longer-term contractual relationship" did not come to fruition. **Exhibit A** at pages 4-5. For this additional reason, all of Plaintiff's claims should be dismissed.

CONCLUSION

WHEREFORE, Defendants respectfully request this Court grant this motion and dismiss the Plaintiff's claims with prejudice, and grant such further relief as the Court finds just and equitable.

Respectfully submitted,
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Dated: December 15, 2025

The participation of Attorney Cheryl Trine of Colorado is noted.

CERTIFICATE OF SERVICE

I, Mark D. Stern, served the above Motion for Relief under Fed. R. Civ. P. 12 by e-filing and by e-mailing a copy to Matthew P. Horvitz, Attorney for Plaintiff, at Goulston & Storrs P.C. One Post Office Square, Boston, Massachusetts 02109 on the above date.

Signed.
ss: // *Mark D. Stern* //
Mark Stern