**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF FLORIDA**

Civil Action No. 20-cv-81163-Middlebrooks/Brannon

JEFFREY LAGRASSO and DEBORAH LAGRASSO,

*Plaintiffs*,

v.

SEVEN BRIDGES HOMEOWNERS ASSOCIATION, INC. and RACHEL ABOUD TANNENHOLZ,

*Defendants*.

**MOTION TO DISMISS**

Defendant Rachel Aboud Tannenholz ("Tannenholz"), by and through her undersigned attorneys and pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and S.D. Fla. Local Rule 7.1 hereby moves to dismiss Count III of the Complaint [D.E. 1] brought by plaintiffs Jeffrey LaGrasso and Deborah LaGrasso (collectively, the "LaGrassos") for intentional infliction of emotional distress, and in support states as follows.

**INTRODUCTION**

The LaGrassos are residents of the Seven Bridges community in Palm Beach County. This lawsuit stems from an incident that occurred on the Seven Bridges tennis courts on November 22, 2019 in which plaintiff Deborah LaGrasso ("Deborah") was accused of physically assaulting several non-party Seven Bridges residents. [D.E. No. 7, ¶¶ 20-24] According to the Complaint and the exhibits attached thereto, over the next several months, various actions were

taken against Deborah by defendant Seven Bridges Homeowners Association, Inc. ("HOA") as a result of this incident, including the proposed suspension of Deborah's membership privileges for three months. [D.E. No. 7, ¶¶ 25-27 and Exhibit G]. After a decision by the HOA on February 13, 2020 to affirm the suspension, plaintiffs allege the defendant HOA "embarked on a concerted effort to stigmatize and alienate the LaGrasso family." [D.E. No. 7, ¶ 29]. Plaintiffs complain that a "second round of sanctioning" by the HOA began in June 2020 when the HOA issued a $5,000 fine and imposed a 330 day suspension upon Deborah, citing among things Deborah's Facebook posts which contained "factually incorrect, derogatory, anti-Semitic and morally repugnant comments about the Association, its officers, directors, committee members, management and vendors. . . ." [D.E. No. 7, ¶¶ 48 - 54]. Deborah and her husband are suing the HOA in Counts I and II of their Complaint, and claiming that the aforementioned actions taken against Deborah constitute "post-acquisition housing discrimination on the basis of religion" under the Fair Housing Act.

Defendant Rachel Aboud Tannenholz ("Tannenholz"), also a resident of Seven Bridges, is not alleged in the Complaint to have been involved in any way with the tennis incident; nor is she alleged to have served at any time as a member of the HOA or as an officer, director, committee member, or part of management. Rather, plaintiffs have named Tannenholz as a party to this lawsuit because of purported comments and conduct undertaken by Tannenholz six months after the tennis incident in May 2020. The complained of actions purportedly undertaken over a five day period in May consists of a handful of alleged "hateful" Facebook comments, so-called text messages, and verbal exchanges and confrontations between Deborah and Tannenholz which the Complaint describes as "personally attacking Mrs. LaGrasso and her Christian faith." (Complaint at ¶¶ 35- 44). Based on these alleged occurrences, plaintiffs have asserted

Count III against Tannenholz for intentional infliction of emotional distress.

Even accepting for the purposes of this Motion that all of plaintiffs' allegations involving Tannenholz are true, Count III must be dismissed because this Court lacks jurisdiction over plaintiffs' single state law claim. As set forth in more detail below, the intentional infliction of emotional distress claim against Tannenholz has little, if any, connection to the Fair Housing Act claims against the HOA and may not properly be considered "part of the same case or controversy." Accordingly, supplemental jurisdiction over the intentional infliction of emotional distress claim is lacking. Moreover, even assuming this Court concludes it has jurisdiction to consider plaintiffs' state law claim, Count III must be dismissed because the conduct at issue does not rise to level of outrageous conduct necessary for a claim for intentional infliction of emotional distress nor is the emotional distress purportedly suffered by plaintiffs sufficiently severe under Florida law. For all of these reasons, Count III against Tannenholz must be dismissed as a matter of law.

## LEGAL STANDARD

A. Motion to Dismiss under Rule 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) allows for dismissal of a case when the court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). A defendant can move to dismiss a complaint under Rule 12(b)(1) for lack of subject matter jurisdiction by either facial or factual attack. *Gonzalez v. Batmasian*, 239 F. Supp. 3d 1363, 1365 (S.D. Fla. 2017)(citing *McElmurray v. Consolidated Gov't of Augusta-Richmond County*, 501 F.3d 1244, 1251 (11th Cir. 2007). "A facial attack on the complaint requires the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are

taken as true for the purposes of the motion." *Id*. (quotations and citations omitted). By contrast, a factual attack on a complaint challenges the existence of subject matter jurisdiction using extrinsic evidence, such as affidavits or testimony. *Id*. The burden for establishing federal subject matter jurisdiction rests with the party bringing the claim. *Id*. (citing *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002)). Once a federal court determines that it is without subject matter jurisdiction, "the court is powerless to continue." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005).

B. Motion to Dismiss under Rule 12(b)(6).

As a general rule, when reviewing a motion to dismiss, a district court must accept plaintiffs' allegations as true and evaluate all plausible inferences derived from those facts in favor of the plaintiff. *See Chaparro v. Carnival Corp*., 693 F.3d 1333, 1337 (11th Cir. 2012). When a complaint fails "to state a claim upon which relief can be granted," it should be dismissed. Fed. R. Civ. P. 12(b)(6). Thus, to 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." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). However, pleadings that "are no more than conclusions are not entitled to the assumption of truth." *Pincus v. Am. Traffic Sols.,* No. 18-cv-80864-MIDDLEBROOKS, 2019 U.S. Dist. LEXIS 232266 at *4-5 (S.D. Fla. Jan. 11, 2019)(quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* Plaintiffs' "obligation to provide the 'grounds' of [their] entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id*. (citation omitted). "Factual allegations must be enough to raise plaintiffs' right to relief

above the speculative level, on the assumption that all of the allegations in the complaint are true." *Id.*

## MEMORANDUM OF LAW

### I. This Court Lacks Jurisdiction Over Plaintiffs' State Law Claim Against Tannenholz.

Plaintiffs allege that this Court has original jurisdiction over their Fair Housing Act ("FHA") discrimination claims against the defendant HOA pursuant to 42 U.S.C. § 3613(a), and that supplemental jurisdiction exists over the state law claim against defendant Tannenholz for intentional infliction of emotional distress pursuant to 28 U.S.C. § 1367(a). Because the operative facts upon which plaintiffs' FHA claims against the HOA do not derive from "the same common nucleus of operative facts" as those giving rise to plaintiffs' claim against Tannenholz for intentional infliction of emotional distress, this Court lacks jurisdiction over the state law claim and Count III must be dismissed.

A district court's power to exercise supplemental jurisdiction over a state law claim has been codified in 28 U.S.C. § 1367(a) which provides in pertinent part:

> Except as provided in subsections (b) and (c) . . . in any civil action wove which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to that claim that they form part of the same case or controversy under Article III of the United States Constitution.

The test for determining whether the constitutional "case or controversy" standard has been met is whether the federal law claims derive from "a common nucleus of operative fact" with those on which the state law claim is based, and "are such that one would ordinarily expect them to be tried in one judicial proceeding." *See Hammett v. Bellsouth Telcoms, LLC*, No. 18-62156-CIV-

DIMITROULEAS, 2018 U.S. Dist. LEXIS 224095 (S.D. Fla. Oct. 15, 2018); *Torres v. Maucar United States, Ltd. Liab. Co.*, No. 17-cv-60476-WPD, 2017 U.S. Dist. LEXIS 221505 (S.D. Fla. May 22, 2017); *Hunters Run Prop. Owners Ass'n v. Centerline Real Estate, LLC*, No. 18-80407-CIV, 2018 U.S. Dist. LEXIS 215423 (S.D. Fla. Dec. 22, 2018). As the phrase "common nucleus of operative fact" plainly suggests, courts must look to the alleged facts to determine whether claims arise out of a common nucleus of operative fact. *Largent v. Thermocarbon, Inc.*, No. 6:11-cv-335-Orl-19DAB, 2011 U.S. Dist. LEXIS 168276 (M.D. Fla. Apr. 15, 2011). Claims arising from a "common nucleus of operative fact" necessarily involve "the same witnesses, presentation of the same evidence, and determination of the same, or very similar, facts." *Palmer v. Hosp. Auth. of Randolph Cty.*, 22 F.3d 1559, 1563-64 (11th Cir. 1994); *Hudson v. Delta Air Lines, Inc*., 90 F.3d 451, 456 (11th Cir. 1996) ("In deciding whether a state law claim is part of the same case or controversy as a federal issue, we look to whether the claims arise from the same facts, or involve similar occurrences, witnesses or evidence.") Absent a "sufficient nexus" between the federal and state claims, no supplemental jurisdiction exists. *Hudson*, 90 F.3d at 456.

The exercise of supplemental jurisdiction involves a court's discretion, and that discretion "should be used narrowly, for supplemental jurisdiction does not license federal courts to transform themselves into courts of general jurisdiction." *Rollin v. Kimberly Clark Tissue Co.*, 211 F.R.D. 670 (S.D. Ala. 2001) (citing *Aldinger v. Howard*, 427 U.S. 1, 15 (1976)(noting, prior to the codification of supplemental jurisdiction, that "the addition of a completely new party would run counter to the well-established principle that federal courts, as opposed to state trial courts of general jurisdiction, are courts of limited jurisdiction marked out by Congress"). When

exercising such discretion, federal district courts must also consider concerns of judicial economy, convenience, fairness, and comity. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966).

In the instant case, plaintiffs have alleged violations of two provisions of the FHA. As the Eleventh Circuit explained in *Bonasera v. Copy of Norcross*, 342 F. App'x 581, 583 (11th Cir. 2009),

> In order to prevail on a claim under the FHA, a plaintiff must demonstrate "unequal treatment on the basis of race that affects the availability of housing. *Jackson v. Okaloosa County, Fla.*, 21 F.3d 1531, 1542 (11th Cir 1994). A plaintiff can establish a violation under the FHA by proving (1) intentional discrimination, (2) discriminatory impact, or (3) a refusal to make a reasonable accommodation. (Internal citation omitted)

To prove intentional discrimination, "a plaintiff has the burden of showing that the defendants actually intended or were improperly motivated in their decision to discriminate against persons protected by the FHA. *Fair Hous. Ctr. Of the Greater Palm Beaches, Inc. v. Beigel,* No. 18-80206-CIV-DIMITROULEAS, 2019 U.S. Dist. LEXIS 50563 (S.D. Fla. March 25, 2019); (quoting *Bonsara*, 342 F. App'x 581,584 (11th Cir. 2009)).

Here, the HOA's liability under the FHA hinges on the actions, or inactions, of the HOA, and whether the members of the Board of the HOA intended to, or were improperly motivated to, discriminate against plaintiffs by allegedly "accusing and sanctioning" Deborah for violations arising out of the tennis incident in November 2019, Deborah's purportedly derogatory and anti-Semitic Facebook posts and Deborah's verbal assaults. The Complaint does not allege, nor is it true, that defendant Tannenholz is or has ever been a member of the HOA, acted on its behalf, or participated in any of its decision making processes. Any examination of what the HOA

intended, or how the HOA treated plaintiffs, would necessarily involve testimony and evidence from members of the Board of the HOA, not Tannenholz.

The operative facts giving rise to plaintiffs' claims for discrimination ***by the HOA*** do not derive from the same facts which give rise to a claim for intentional infliction of emotional distress ***by Tannenholz.*** The claim against Tannenholz for intentional infliction of emotional distress is based on the purported conduct of Tannenholz alone, not the HOA. Not only are the claims against different parties, they are temporally distinct and based on entirely separate sets of events. As discussed in more detail below, plaintiffs' state law claim against Tannenholz is based on comments, texts and actions allegedly undertaken over a five day period in May 2020 — many months after the tennis incident and the actions taken by the HOA in December 2019 and February 2020. Additionally, all conduct attributable to Tannenholz as part of the intentional infliction of emotional distress claim ceased in May 2020, before the HOA commenced its so-called second round of attacks against plaintiffs beginning in June 2020. Clearly, the FHA claims and the intentional infliction of emotional distress claim would not involve the "same witnesses, presentation of the same evidence, and determination of the same, or very similar, facts." Because plaintiffs' claim against Tannenholz is not so intimately connected with plaintiffs' claims against the HOA so as to form the same case or controversy, supplemental jurisdiction lacking.

Even assuming that this Court has the *power* to exercise supplemental jurisdiction over the state law claim under § 1367(a), the Court should decline to exercise such jurisdiction over Count III. "[O]nce a district court determines 'that it has power to exercise supplemental jurisdiction under § 1367(a), the court should exercise that jurisdiction, unless § 1367(b) or (c)

applies to limit the exercise.'" *Milan Exp., Inc. v. Averitt Exp., Inc*., 208 F.3d 975, 980 (11th Cir. 2000) (quoting *Baggett v. First Nat'l Bank of Gainesville*, 117 F.3d 1342, 1352 (11th Cir. 1997)). Section 1367(b) has no applicability here because this case does not involve diversity jurisdiction. Section 1367(c), however, enumerates four occasions when a federal district court may decline to exercise supplemental jurisdiction over a claim, including where the district court has dismissed all claims over which it has original jurisdiction (Section 1367(c)(3)), and where there are other "compelling reasons" for declining jurisdiction in "exceptional circumstances" (Section 1367(c)(4)).

The HOA has moved to dismiss the two counts in the Complaint over which this Court has original jurisdiction. Should this Court dismiss the federal discrimination claims against the HOA, the Court should decline to exercise supplemental jurisdiction over plaintiffs' state law claim against Tannenholz pursuant to Section 1367(c)(3).

As to Section 1367(c)(4), courts have determined that "compelling" and "exceptional" circumstances exist where identical claims are pending in both federal and state court because it "would be a pointless waste of judicial resources" to evaluate the claims in federal court. *McGuire v. Citizens Prop. Ins. Corp.*, No. 8:17-cv-299-T-23TBM, 2017 U.S. Dist. LEXIS 52907 (M.D. Fla. Apr. 6, 2017)((citing *Hays County Guardian v. Supple*, 969 F.2d 111, 125 (5th Cir. 1992); *see also Berry v. Lewis Trucking & Grading*, No. 1:06-CV-0041-JEC/AJB, 2007 U.S. Dist. LEXIS 117036 (N.D. Ga. Mar. 23, 2007)(citing *W. Coast, Inc. v. Snohomish County*, 33 F. Supp. 2d 924, 925-26 (W.D. Wash. 1999) (declining to exercise supplemental jurisdiction under § 1367(c)(4) for state law claims in federal court that were similar to those in state court to avoid "duplicative litigation, wasted judicial resources, needless expenditures for both parties,

conflicting case schedules, a potential race to judgment, and/or the possibility of inconsistent verdicts")).

Compelling reasons and exceptional circumstances favor declining the exercise of supplemental jurisdiction in the instant clase. The subject matter of plaintiffs' intentional infliction of emotional distress claims, namely the social media posts by Tannenholz in May 2020 and by Deborah in May and June 2020 and the verbal exchanges and confrontations between them in connection therewith, is the subject matter of a pending lawsuit filed by Rachel Tannenholz against Deborah LaGrasso in the Circuit Court in and for Palm Beach County, Case No. 50-2020-CA-007982-XXXX-MB, filed on July 29, 2020. A copy of the complaint is attached as Exhibit A. Multiple attempts to serve Deborah LaGrasso with the complaint have been unsuccessful, and accordingly, Deborah has yet to file her response and/or counterclaim in the state court action. Even though the claims in the state court action are not identical to those alleged in this Court, the very Facebook postings, confrontations, and recorded phone conversations that are at issue in Count III are the subject of the pending state court action. There is no reason why this federal district court needs to expend further judicial resources on a state law claim involving similar facts and circumstances that are properly before the state court. Thus, in the interest of comity, saving judicial resources, and potentially avoiding conflicting opinions, supplemental jurisdiction should not be exercised under § 1367(c)(4).

Because this Court does not have the power to exercise supplemental jurisdiction under § 1367(a) over plaintiffs' claim for intentional infliction of emotional distress, and because even if the Court did have such power, numerous factors favor declining the exercise of supplemental jurisdiction, Count III of the Complaint must be dismissed.

## II. Plaintiffs Have Failed to State a Cause of Action for Intentional infliction of Emotional Distress.

Even assuming that this Court concludes it has jurisdiction to consider plaintiffs' state law claim, Count III must be dismissed because plaintiffs have failed to state a cause of action for intentional infliction of emotional distress. The Florida Supreme Court recognized the tort of intentional infliction of emotional distress in *Metropolitan Life Ins. Co. v. McCarson*, 467 So. 2d 277 (Fla. 1985), and adopted the standard of Section 46, Restatement (Second) of Torts as the appropriate benchmark for the cause of action. *Id*. at 278-79. To state a cause of action for intentional infliction of emotional distress under Florida law, a complaint must allege four elements: (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe. *Pena v. Marcus*, 715 F. App'x 981 (11th Cir. 2017); *Rubio v. Lopez*, 445 F. App'x 170 (11th Cir. 2011). At a minimum, plaintiffs have failed to establish the second and fourth elements.

### A. Plaintiffs fail to allege sufficient outrageous conduct that is actionable under Florida law.

"Outrageous conduct" has been defined as conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Vamper,* 14 F Supp. 2d at 1306 (quoting *McCarson*, 467 So 2d at 278-79); *see also Williams v. Southeast Florida Cable, Inc*., 782 So. 2d 988 (Fla. 4th DCA 2001) (holding trial court did not err in dismissing claim for intentional infliction of emotional distress where the alleged conduct did not rise to the level of outrageousness required under Florida law); *Ponton v. Scarfone*, 468 So.2d 1009, 1011 (Fla. 2d DCA 1985). The Restatement (Second) of Torts and Florida courts have noted that:

> It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort.

Restatement (Second) of Torts, § 46, cmt. d; *Wu v. NCL (Bah.) Ltd.*, Civil Action No. 16-22270-Civ-Scola, 2017 U.S. Dist. LEXIS 55206 (S.D. Fla. Apr. 10, 2017).

The tort of intentional infliction of emotional distress is sparingly recognized by Florida courts. *Vamper*, 14 F. Supp. 2d at 1306. A plaintiff alleging this tort faces an extremely high burden as Florida courts have repeatedly found a wide spectrum of behavior insufficiently "outrageous." *Wu*, 2017 U.S. Dist. LEXIS 55206 at *6-7 (citing *Rubio*, 445 Fed. Appx. at 175) (finding failure to allege sufficient outrageous conduct where drunk arrestee was hobble-tied on hot pavement, resulting in second-degree burns to face and chest); *Wallis v. Princess Cruises, Inc.*, 306 F.3d 827, 842 (9th Cir. 2002)(finding no outrageous conduct where crew member on cruise ship remarked in the plaintiff's hearing after her husband fell overboard that her husband was probably dead and that his body would be sucked under the ship, chopped up by the propellers, and would probably not be recovered); *Garcia v. Carnival Corp.*, 838 F.Supp.2d 1334, 1339 (S.D. Fla. 2012)(finding no outrageous conduct where crew members allegedly kicked and punched plaintiff, threw her to the ground multiple times, handcuffed her in a "harmful manner," dragged her across the floor while handcuffed, and then confined her to her cabin)); *see also Williams v. Worldwide Flight Servs., Inc.*, 877 So. 2d 869, 870-71 (Fla. 3d DCA 2004)(constant use of derogatory racial terms like "nigger" and "monkey" in front of employee and other employees, and false accusations do not rise to level of outrageous conduct for intentional infliction of emotional distress); *Legrande v. Emmanuel*, 889 So. 2d 991, 995 (Fla. 3d

DCA 2004)(clergyman falsely branded a thief in front of parishioners failed to state claim of intentional infliction of emotional distress).

In considering the outrageousness of the conduct, "the subjective response of the person who is the target of the actor's conduct does not control the question of whether the tort of intentional infliction of emotional distress occurred." *Kingston Square Tenants Ass'n v. Tuskegee Gardens, Ltd*., 792 F. Supp. 1566 (S.D. Fla. 1992)(citing *Ponton*, 468 So.2d at 1011)). "Rather, the court must evaluate the conduct as objectively as is possible to determine whether it is 'atrocious, and utterly intolerable in a civilized community.'" *Id*. (internal citations omitted).

Whether conduct is outrageous enough to support a claim for intentional infliction of emotional distress is a question of law, not a question of fact. *See Vamper*, 14 F. Supp. 2d at 1306; *see also Paul v. Humana Med. Plan*, 682 So. 2d 1119 (Fla. 4th DCA 1996); *Baker v. Florida Nat. Bank*, 559 So. 2d 284, 287 (Fla. 4th DCA 1990)("The issue of whether or not the activities of the defendant rise to the level of being extreme and outrageous so as to permit a claim for intentional infliction of emotional distress is a legal question in the first instance for the court to decide as a matter of law.").

Liability does not extend to "mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. . . ." *Scheller v. Am. Med. Int'l, Inc*., 502 So.2d 1268, 1271 (Fla. 4th DCA 1987). As noted in the Restatement, plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and "to occasional acts that are definitely inconsiderate and unkind." *Metropolitan Life*, 467 So. 2d at 279 (citing Restatement (Second) of Torts § 46 cmt. d)); *Albert*, 874 F. Supp. at 1331 (quoting this language). Courts will not intervene "where some one's feelings are hurt" and the law must allow some safety valve

"through which irascible tempers may blow off steam." *Scheller*, 502 So.2d at 1271 (quoting Restatement).

In *Vamper v. UPS*, 14 F. Supp. 2d 1301 (S.D. Fla. 1998), this Court dismissed the intentional infliction of emotional distress claim of a UPS driver who had filed a complaint against his employer based on race discrimination and against his supervisors for intentional discrimination and a host of state law claims, including intentional infliction of emotional distress. As for the acts allegedly comprising the intentional infliction of emotional distress claim, plaintiff alleged that UPS fabricated a reckless driving charge in an attempt to terminate him; that his supervisor told a false story about him to another employee and referred to him as a "nigger" in Spanish; that he did not receive pay and bonuses other drivers received; that he was threatened with termination; that he was unjustifiably suspended and demoted; and that plaintiff was physically struck from behind by his supervisor. This Court found that "[w]hile these allegations, if true, constitute objectionable and offensive behavior, they do not rise to the level of relentless physical and verbal harassment necessary to state a claim for intentional infliction of emotional distress." *See also Brown v. Zaveri*, 164 F. Supp. 2d 1354 (S.D. Fla. 2001)(holding that allegations that defendant threatened plaintiff and called him a 'nigger' were outrageous, malicious, and willful, "this legal conclusion is insufficient to support a claim for intentional infliction of emotional distress" because "[w]hile the Court in no way condones the actions, alleged by Plaintiff in the Complaint, the Court finds that they do not rise to the level of 'outrageousness necessary to state a claim for intentional infliction of emotional distress, upon which relief may be granted").

Here, the conduct alleged, if true,[1] does not meet the standard of being "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious, and utterly intolerable in a civilized community." The purported conduct of defendant Tannenholz is alleged in ten (10) paragraphs, numbered 35 through 44 in the Complaint. According to these 10 paragraphs, the alleged outrageous conduct took place over a five (5) day period in May 2020 and is comprised in total of the following purported statements and actions of Tannenholz:

- a comment on Deborah's Facebook page saying "move out you stupid Shikska";
- a May 18 text to Deborah stating "[b]usted . . . [s]ooo busted . . . I suggest you follow the real 7b residents page and you will see your name plastered on there";
- a May 18 text to Deborah stating "Wassup Deborah . . . looking for a designer you available";
- a comment on another Facebook page stating "[s]o apparently there is this new page up that is bashing the [Seven Bridges] community and the owner of it is a true anti Semite. After much research, it was found that the page is owned by a Deborah LaGrasso that lives on Labelle Court";
- a May 18 visit to plaintiffs' home where Tannenholz allegedly repeatedly rang the doorbell and knocked loudly on the front door yelling "come outside";
- a May 19 drive by plaintiffs' home during which "move out, bitch" was yelled; and
- a May 20 telephone call between Deborah and Tannenholz during which Tannenholz allegedly stated "you moved in somewhere which is 80% Jewish and you do not belong here," "move to a Klan neighborhood, that's where you need to move to a white supremacist area," "If I was hated as much as you I would move out," "I would not want to live where I could not walk out with everybody looking at me like I'm fucking crazy and that is the current situation whether you like it or not," Move the fuck out. It's over for you".

Even taking every statement and action attributed to Tannenholz as true, this alleged conduct is not such that it "goes beyond all possible bounds of decency and is regarded as

[1] It should be noted for the record that Tannenholz denies making a number of the statements attributed to her in the Complaint and intends to establish that one or more of exhibits attached to the Complaint has been fabricated, but for the purposes of this Motion to Dismiss Tannenholz accepts each of the allegations as true.

atrocious and utterly intolerable in a civilized community." *See Rubio*, 445 Fed. Appx. at 175. At most, these words may be considered "insults, indignities, threats, annoyances, petty oppressions or other trivialities," but such conduct is not actionable under Florida law. Because plaintiffs' allegations simply do not rise to the level of outrageousness required by the applicable case law, the Court must grant the defendant's motion to dismiss Count III of the Complaint.

B. The emotional distress purportedly suffered by plaintiffs is not sufficiently severe to state a cause of action for intentional infliction of emotional distress.

In addition to failing to allege sufficient facts to meet the requisite standard of outrageous behavior, plaintiffs similarly cannot demonstrate that the conduct alleged in Count III would cause a reasonable person to experience the type of "severe" emotional distress required to state a claim for intentional infliction of emotional distress. In a decision rendered earlier this month, the Eleventh Circuit held that to qualify as "severe", emotional distress must be "of such a substantial quality or enduring quality that no reasonable person in a civilized society should be expected to endure it." *Hammer v. Sorensen*, 2020 U.S. App. LEXIS 25313 *11 (11th Cir. August 11, 2020)(citing *Kim v. Jung Hyun Chang*, 249 So.3d 1300 (Fla. 2d. DCA 2018). The Eleventh Circuit further held that in evaluating the severity of an incident, the intensity and the duration of the distress are relevant factors, noting that the "standard to satisfy 'severity' is 'high' to 'prevent the tort from becoming a venue for litigation over every emotional injury.'" *Id*. As stated in *Kim*, 249 So.3d at 1306, the fact remains that "significant feelings of fright, shame, worry, and humiliation — and others besides — are an unavoidable part of living in society." *Id*. (citing *Rogers v. Louisville Land Co*., 367 S.W.3d 196, 209 (Tenn. 2012)("[S]ome degree of emotional

disturbance, even significant disturbance, is part of the price of living in a complex and interactive society."))

The allegations in Count III regarding the emotional distress suffered by plaintiffs are sparse. Indeed, the only allegations in Count III concerning emotional distress are found in the last two paragraphs which baldly allege that that the conduct of Tannenholz "caused emotional distress to Mrs. LaGrasso and the LaGrasso family" and the "emotional distress is severe such that the LaGrasso family is concerned about their safety and well being." [D.E. 7, ¶¶ 80-81]. Plaintiffs also state in their Prayer for Relief that they are seeking compensatory damages that will compensate them for their "shock, humiliation, embarrassment and inconvenience."

Even taking these allegations as true, they amount to nothing more than the type of emotional injury that the Eleventh Circuit has rejected so as to avoid litigating over distress that is considered an unavoidable part of living in a complex and interactive society. Particularly given the limited duration of the alleged conduct of Tannenholz, the claimed distress certainly does not rise to the level of severity that is necessary to satisfy the high burden under Florida law of establishing distress of such a "substantial quality or enduring quality that no reasonable person in a civilized society should be expected to endure."

**CONCLUSION**

For the foregoing reasons, this Motion to Dismiss should be granted, and Count III against Tannenholz for intentional infliction of emotional distress should be dismissed with prejudice.

**CERTIFICATION**

I hereby certify that on the 25th day of August, 2020, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system, and notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

/s/Debra D. Klingsberg

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