SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

SIMON BRONNER, MICHAEL ROCKLAND, CHARLES D. KUPFER, and MICHAEL L. BARTON, Plaintiffs, v. LISA DUGGAN, CURTIS MAREZ, NEFERTI TADIAR, SUNAINA MAIRA, CHANDAN REDDY, J. KEHAULANI KAUANUI, JASBIR PUAR, STEVEN SALAITA, JOHN STEPHENS, and THE AMERICAN STUDIES ASSOCIATION, Defendants.	Case No. 2019 CA 001712 B Judge Robert R. Rigsby Civil 2, Calendar 10 Next Court Date: June 14, 2019, 10 a.m. Event: Initial Scheduling Conference

DEFENDANT STEVEN SALAITA'S UNOPPOSED MOTION FOR LEAVE TO FILE MOTION IN EXCESS OF FIFTEEN PAGES

Pursuant to Section III of the Supplement to General Order on Trial Procedures of Judge Robert R. Rigsby, Defendant Steven Salaita hereby moves for leave to exceed fifteen (15) pages in length in his Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.*, and in the Alternative, Motion to Dismiss Pursuant to Super. Ct. Civ. R. 12 (b), filed herewith. Dr. Salaita seeks leave to file a Motion of thirty (30) pages. Pursuant to D.C. Super. Ct. Civ. R. 12-I, Defendant Salaita certifies that Plaintiffs have affirmed via an e-mail exchange of May 6, 2019 that they consent to the relief sought in this Motion – a Motion to exceed 15 pages, but no more than 30 pages.

Defendant Steven Salaita's Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.*, and in the Alternative, Motion to Dismiss Pursuant to Super. Ct.

Civ. R. 12 (b) responds to Plaintiffs' 167-page Complaint, which includes 343 paragraphs, twelve counts, and exhibits. In the interest of efficiency, Dr. Salaita seeks leave to combine his Special Motion Pursuant to D.C. Code § 16-5501, *et seq.* with his Motion to Dismiss Pursuant to Super. Ct. Civ. R. 12 (b), and file one combined over-length Motion of thirty (30) pages. Moreover, Dr. Salaita's Special Motion to Dismiss and Motion to Dismiss includes multiple grounds for dismissal, requiring more than the fifteen (15) pages permitted by this Court's Rules.

Dated: May 6, 2019

Respectfully Submitted,

/s/ Shayana Kadidal

Shayana Kadidal (D.C. Bar No. 454248)
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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SIMON BRONNER, MICHAEL ROCKLAND, CHARLES D. KUPFER, and MICHAEL L. BARTON, Plaintiffs, v. LISA DUGGAN, CURTIS MAREZ, NEFERTI TADIAR, SUNAINA MAIRA, CHANDAN REDDY, J. KEHAULANI KAUANUI, JASBIR PUAR, STEVEN SALAITA, JOHN STEPHENS, and THE AMERICAN STUDIES ASSOCIATION, Defendants.	Case No. 2019 CA 001712 B Judge Robert R. Rigsby Civil 2, Calendar 10 Next Court Date: June 14, 2019, 10 a.m. Event: Initial Scheduling Conference

[PROPOSED] ORDER
GRANTING DEFENDANT STEVEN SALAITA'S UNOPPOSED MOTION FOR LEAVE TO FILE MOTION IN EXCESS OF FIFTEEN PAGES

Upon consideration of Defendant Steven Salaita's Unopposed Motion for Leave to File a Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.*, and in the Alternative, Motion to Dismiss Pursuant to Super. Ct. Civ. R. 12 (b), in Excess of Fifteen Pages, and up to thirty (30) pages, it is hereby

ORDERED that the Motion is GRANTED; and

ORDERED that leave is GRANTED for Defendant Steven Salaita's Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.*, and in the Alternative, Motion to Dismiss Pursuant to Super. Ct. Civ. R. 12 (b), to exceed fifteen pages in length and it is hereby accepted as filed.

No scheduling dates will be affected by this Order, as the Initial Scheduling Conference remains scheduled for June 14, 2019.

IT IS SO ORDERED.

Dated: May ___, 2019

_____
Robert R. Rigsby
Superior Court Judge

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

SIMON BRONNER, MICHAEL ROCKLAND, CHARLES D. KUPFER, and MICHAEL L. BARTON, Plaintiffs, v. LISA DUGGAN, CURTIS MAREZ, NEFERTI TADIAR, SUNAINA MAIRA, CHANDAN REDDY, J. KEHAULANI KAUANUI, JASBIR PUAR, STEVEN SALAITA, JOHN STEPHENS, and THE AMERICAN STUDIES ASSOCIATION, Defendants.	Case No. 2019 CA 001712 B Judge Robert R. Rigsby Civil 2, Calendar 10 Next Court Date: June 14, 2019, 10 a.m. Event: Initial Scheduling Conference

STEVEN SALAITA'S OPPOSED SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO D.C. CODE § 16-5501, *et seq.*, AND IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO SUPER. CT. CIV. R. 12 (b)

Defendant Steven Salaita, by and through the undersigned counsel, and pursuant to the District of Columbia Anti-SLAPP Act, D.C. Code § 16-5501 *et seq.*, and Super. Ct. Civ. R. 12 (b)(1), (b)(2), and (b)(6), hereby moves to dismiss Plaintiffs' Complaint. In support thereof, Dr. Salaita states as follows: Pursuant to Rule 12-I, the undersigned affirms that on May 6, 2019, an e-mail was sent to Plaintiffs' counsel, seeking consent for this Motion. Plaintiffs declined to consent, thereby necessitating the filing of this Motion. Dr. Salaita also adopts and incorporates the arguments put forth in other Defendants' motions to dismiss in this litigation, to the extent not inconsistent with the arguments contained herein.

INTRODUCTION

Dr. Salaita specially moves this Court to dismiss Plaintiffs' Complaint ("Compl.") against him pursuant to the District of Columbia Anti-SLAPP Act of 2010 ("Anti-SLAPP Act"), which requires dismissal where there is "a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest," unless Plaintiffs "demonstrate that the claim is likely to succeed on the merits". D.C. Code § 16-5502 (b) (2019). Plaintiffs' case against Dr. Steven Salaita is the quintessential Strategic Lawsuit Against Public Participation (SLAPP), aimed at punishing his advocacy on an issue of public interest: boycotts for Palestinian rights.

Plaintiffs' claims fail on numerous grounds. Plaintiffs fail to allege any facts that would support personal jurisdiction over Dr. Salaita (save their knowingly false allegation that he resides in the District of Columbia), or subject matter jurisdiction over the claims of Plaintiffs Rockland, Kupfer, and Barton, who lack standing. Plaintiffs also fail to state any cognizable or timely claim against Dr. Salaita. Plaintiffs' specific allegations expose the reason Dr. Salaita is being targeted here—his outspoken advocacy for the rights of Palestinians and the right to boycott Israel to enforce those rights. Plaintiffs' meritless, harassing lawsuit against Dr. Salaita

should be dismissed pursuant to the District of Columbia Anti-SLAPP Act, and in the alternative, under D.C. Super. Ct. Civ. R. 12 (b)(1), 12 (b)(2), and 12 (b)(6).

STATEMENT OF FACTS

In 2013, the American Studies Association ("ASA") adopted a public Resolution endorsing the call of Palestinian civil society for a boycott of Israeli academic institutions (the "Resolution"). *See, e.g.*, Compl. ¶¶ 4, 5; *see also Boycott of Israeli Academic Institutions*, AM. STUDIES ASS'N (Dec. 4, 2013), https://www.theasa.net/about/advocacy/resolutions-actions/resolutions/boycott-israeli-academic-institutions. Defendant Dr. Steven Salaita's term on the ASA's National Council began July 1, 2015, Complaint ¶ 26, long after the 2013 Resolution was adopted and the majority of the conduct complained of took place. *See, e.g.*, Compl. ¶¶ 28-161. Dr. Salaita's term ended June 30, 2018.[1] Compl. ¶ 26.

Plaintiffs incorrectly allege (on "information and belief") that Dr. Salaita is a resident of the District of Columbia. Compl. ¶ 26. Plaintiffs are well aware that Dr. Salaita resides not in D.C., but in the Commonwealth of Virginia: the caption of the Complaint lists his Virginia address, and Virginia is where they served him in this case, and where they served him in 2018 in the federal litigation. Aff. of Service of Summons & Compl., Mar. 27, 2019; Return of Service/Aff. of Summons & Compl. Executed, Apr. 5, 2018, *Bronner v. Duggan*, 364 F. Supp. 3d 9 (D.D.C. 2019) (No. 16-0740), *appeal docketed*, No. 19-7017 (D.C. Cir. Mar. 5, 2019), ECF No. 84.

In addition to the paragraph identifying Dr. Salaita as a party, Complaint ¶ 26, the only other three paragraphs in the Complaint that mention Dr. Salaita each explicitly relate to advocacy he conducted on an issue of public interest, before he was even a member of the

[1] Plaintiffs incorrectly allege elsewhere that Dr. Salaita is currently a National Council member. Compl. ¶¶ 26, 46.

National Council. One allegation contains an excerpt from an opinion piece written by Dr. Salaita and published March 1, 2014, prior to his tenure on the National Council, entitled "Anti-BDS activism and the appeal to authority," in which he states that he worked with the United States Campaign for the Academic and Cultural Boycott of Israel (USACBI) "for around five years—closely during the process to pass the American Studies Association resolution." Compl. ¶ 46. That allegation's corresponding footnote contains extraneous information about Dr. Salaita's termination by the University of Illinois due to his tweets criticizing Israel (*see* Compl. ¶ 46 n. 5), tweets that a federal court found were "a matter of public concern" and "implicate every 'central concern' of the First Amendment." *Salaita v. Kennedy*, 118 F. Supp. 3d 1068, 1083-84 (N.D. Ill. 2015).

Another allegation states that Stephen (sic) Salaita was on email communications with some defendants when he was part of the USACBI Organizing Collective, also prior to his tenure on the ASA National Council, and that a "subset of the Organizing Collective was involved in 'organizing' the movement to adopt the USACBI Platform and Boycott" at the ASA. Compl. ¶ 99. The last allegation regarding Dr. Salaita states that he "acknowledged publicly that he was heavily involved in the effort to pass the Academic Boycott before he was a member of the National Council," Complaint ¶ 337, apparently referencing the above-mentioned opinion piece. The Complaint goes on to state a legal conclusion that Dr. Salaita's "substantial assistance, also knowing that the Academic Boycott would cause great damage" to the ASA constitutes aiding and abetting breach of fiduciary duty. Compl. ¶ 337. Dr. Salaita is not mentioned in any other allegation in the 343-paragraph Complaint. Plaintiffs have clearly targeted Dr. Salaita only for his advocacy of a boycott of Israel.

The only allegation Plaintiffs make that Dr. Salaita had any responsibility for the events they complain of while he was a National Council member is in the section of the Complaint identifying the parties, alleging that Dr. Salaita "was a member of the National Council" when the ASA's bylaws "were changed to allow large withdrawals" from the ASA's Trust and Development Fund, and "when large withdrawals were taken to cover expenses related to the Academic Boycott." Compl. ¶ 26. Such withdrawals were allegedly taken to defend the ASA against litigation related to the Resolution.[2] Compl. ¶ 175. Plaintiffs do not, however, allege that Dr. Salaita had any personal involvement in amending the bylaws or withdrawing funds to pay Resolution-related expenses, or otherwise misusing ASA assets. Of the dozens of National Council members who served from 2015-2018 (as Dr. Salaita did), or from 2014-2017, 2016-2019, or 2017-2020, and who, therefore, according to Plaintiffs' allegations, could bear the same responsibility as Dr. Salaita, Plaintiffs chose to sue only one in their lawsuit—Dr. Salaita. Compl. ¶¶ 19-27; *see also* Compl., Ex. B, Bylaws of the Am. Studies Ass'n, Art. V § 1. Even Plaintiff Bronner served on the National Council from 2011-2016, albeit as an *ex officio* member. Compl. ¶¶ 14, 198, 243, 331.

Dr. Salaita is not mentioned in any other allegation in the Complaint, including with regards to Plaintiff Bronner's allegations that his contract with the ASA was not renewed at the end of his term as editor of the Encyclopedia of American Studies ("Encyclopedia"), and that the editor position ceased to be an *ex officio* officer and non-voting National Council member. Compl. at Count 10.

[2] Plaintiffs contradictorily allege both that they cannot "determine whether funds were withdrawn" from the ASA Trust Fund to cover Resolution-related expenses, Compl. ¶ 193, and that "it is clear…that the withdrawals from the Trust Fund in 2016 and 2017 did cover Resolution-related expenses to some extent." Compl. ¶ 196 (citing to Compl. ¶¶ 162-171).

On April 20, 2016, Plaintiffs filed a very similar lawsuit against the ASA and some of its members in the U.S. District Court for the District of Columbia. Compl., *Bronner, supra*, 364 F. Supp. 3d 9, ECF No. 1. On March 31, 2017, the District Court (Contreras, J.) granted in part Defendants' Motion to Dismiss, dismissing all Plaintiffs' derivative claims on the grounds that the statutory notice had not been provided to the ASA and because demand was not futile as a matter of law, and also dismissing Plaintiffs' *ultra vires* claim because they failed to allege facts showing that the boycott resolution was expressly prohibited by any statute or ASA bylaw. *Bronner v. Duggan*, 249 F. Supp. 3d 27, 42-50 (D.D.C. 2017). On March 6, 2018, Plaintiffs filed a Second Amended Complaint, adding to their lawsuit four new defendants, including Dr. Salaita, who had joined the ASA National Council *after* adoption of the Resolution. Second Am. Compl., *Bronner, supra*, 364 F. Supp. 3d 9, ECF No. 81. In February 2019, the District Court dismissed the lawsuit for lack of subject matter jurisdiction, finding that Plaintiffs lacked standing to seek damages for the ASA's alleged injuries, and that they failed to meet the amount in controversy necessary to pursue their action in federal court. *Bronner, supra*, 364 F. Supp. 3d 9. Plaintiffs have appealed the dismissal, and brought this case in Superior Court. Plaintiffs have filed and served a redacted Complaint, and moved to file an unredacted Complaint under seal, which Plaintiffs have not yet seen. Pls.' Mot. to File Unredacted Compl. Under Seal, Mar. 20, 2019.

ARGUMENT

I. THE ANTI-SLAPP ACT APPLIES TO PLAINTIFFS' CLAIMS.

a. The Purpose of the Anti-SLAPP Act.

The District of Columbia's Anti-SLAPP Act provides protections from claims, like those brought by Plaintiffs against Dr. Salaita, which "aris[e] from an act in furtherance of the right of

advocacy on issues of public interest." D.C. Code § 16-5502 (a) (2019). Plaintiffs' lawsuit arises from the ASA Resolution, which is clearly an act in furtherance of advocacy on an issue of public interest. Specifically, Plaintiffs' claims against Dr. Salaita arise from his advocacy in favor of the Resolution. The purpose of the Anti-SLAPP Act is to ensure that defendants have the "'ability to fend off'" lawsuits "'filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view.'" *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1226 (D.C. 2016), *as amended* (Dec. 13, 2018) (quoting D.C. Council, Report of Comm. on Pub. Safety & Judiciary on Bill 18–893 at 1 (Nov. 18, 2010) ("Report on Bill 18–893"). The D.C. Anti-SLAPP Act's protections are "broad." *Farah v. Esquire Magazine, Inc.*, 863 F. Supp. 2d 29, 36 (D.D.C. 2012), *aff'd sub nom. Farah v. Esquire Magazine*, 407 U.S. App. D.C. 208, 736 F.3d 528 (2013). This lawsuit brought by Plaintiffs, political opponents of boycotts of Israel (*see, e.g.*, Compl. ¶¶ 108, 132, 200, 200 n.11), is a prototypical SLAPP, which the D.C. Legislature intended to address:

> Such cases are often without merit, but achieve their filer's intention of punishing or preventing opposing points of view, resulting in a chilling effect on the exercise of constitutionally protected rights. Further, defendants of a SLAPP must dedicate a substantially [sic] amount of money, time, and legal resources. The impact is not limited to named defendants willingness to speak out, but prevents others from voicing concerns as well.

Report on Bill 18–893 at 1.

Once Dr. Salaita shows that the claims arise from an act in furtherance of the right of advocacy on an issue of public interest, Plaintiffs bear a heavy burden in overcoming the protections of the Anti-SLAPP Act: they must show that they are "likely to succeed on the merits" of their claims. D.C. Code § 16-5502 (b) (2019).

A. The Claims against Dr. Salaita Arise from an Act in Furtherance of the Right of Advocacy.

The claims against Dr. Salaita arise out of the ASA's passage of a Resolution endorsing a call to boycott Israeli academic institutions, and Dr. Salaita's advocacy for the boycott. Both of these are acts in furtherance of the right of advocacy under D.C. Code § 16-5501 (1). As described above, the four paragraphs of allegations in this Complaint that mention Dr. Salaita boil down to two allegations: that Dr. Salaita was associated with efforts to pass the ASA's boycott Resolution before he was on the National Council and that he was a member of the ASA National Council when the ASA made expenditures to defend against litigation targeting the ASA for the boycott Resolution. *See supra* Statement of Facts at 2-4.

Like the boycotts at issue in *NAACP v. Claiborne Hardware Co.*, endorsement of a boycott of Israeli academic institutions is "designed to force governmental and economic change and to effectuate rights…." 458 U.S. 886 (1982). The ASA Resolution was widely publicized in public fora. For example, the ASA published on its website the Resolution,[3] a Council Statement on the Resolution,[4] and an FAQ, "What Does the Boycott Mean?"[5] The Resolution itself is therefore protected by the Anti-SLAPP Act as a "written or oral statement made...[i]n a place open to the public or a public forum in connection with an issue of public interest" (D.C. Code § 16-5501 (1)(A)(ii) (2019)) and an "expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest." D.C. Code § 16-5501 (1)(B) (2019). *See Abbas v. Foreign Policy Grp., LLC,*

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[3] *Boycott of Israeli Academic Institutions*, AM. STUDIES ASS'N (Dec. 4, 2013), https://www.theasa.net/about/advocacy/resolutions-actions/resolutions/boycott-israeli-academic-institutions

[4] *Council Statement on the Resolution*, AM. STUDIES ASS'N, https://www.theasa.net/node/4804 (last visited May 6, 2019).

[5] *What Does the Boycott Mean?*, AM. STUDIES ASS'N, https://www.theasa.net/node/4805 (last visited May 6, 2019).

975 F. Supp. 2d 1, 11 (D.D.C. 2013), *aff'd*, 414 U.S. App. D.C. 465, 783 F.3d 1328 (2015) (a public "website is a 'place open to the public,' because anyone with a working internet connection or access to one can view it."). Likewise, Dr. Salaita's advocacy of boycotts, including the op-ed that Plaintiffs point to, also undeniably qualifies as an act in furtherance of the right of advocacy as an "expression or expressive conduct that involves…communicating views to members of the public" and a "written or oral statement made...[i]n a place open to the public or a public forum in connection with an issue of public interest" D.C. Code §§ 16-5501 (1)(A)(ii), 16-5501 (1)(B) (2019). And finally, defending the Resolution, including by expending funds to defend against lawsuits challenging the Resolution, is protected under the Anti-SLAPP Act as "expression or expressive conduct that involves petitioning the government…in connection with an issue of public interest." D.C. Code §§ 16-5501 (1)(A), (1)(B) (2019). *See Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011) ("the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes."). Plaintiffs' claims against Dr. Salaita unequivocally arise from alleged acts in furtherance of the right of advocacy.

B. A Boycott of Israeli Academic Institutions Is An Issue of Public Interest.

Boycotts motivated by a concern for Palestinian rights are unquestionably an issue of public interest. D.C. Code § 16-5501 (3) ("'Issue of public interest' means an issue related to health or safety; environmental, economic, or community well-being…or a good, product, or service in the market place"). An "issue of public interest" includes statements "commenting on or sharing information about a matter of public significance," as opposed to statements "protecting the speaker's commercial interests". *Id.* Stemming from a commitment to "the pursuit of social justice," the ASA Resolution endorsed "the call of Palestinian civil society for a

boycott of Israeli academic institutions" in an effort to advocate for the "well-being, the exercise of political and human rights, the freedom of movement, and the educational opportunities of Palestinians."[6] The Supreme Court has held that a peaceful politically-motivated boycott is protected under the First Amendment, describing it as an "effort to change the social, political, and economic structure of a local environment," *Claiborne*, *supra*, 458 U.S. at 933. Other courts have held that boycotts related to Israel are undeniably an issue of public interest. *See Jordahl v. Brnovich*, 336 F. Supp. 3d 1016, 1047 (D. Ariz. 2018), *appeal docketed*, No. 18-16896 (9th Cir. Oct. 3, 2018) (preliminarily enjoining Arizona law targeting companies that engage in boycotts against Israel which "unquestionably touches on matters of public concern"); *Davis v. Cox*, 180 Wash. App. 514, 531, 325 P.3d 255, 265 (Wash. Ct. App. 2014), *rev'd on other grounds*, 183 Wash. 2d 269, 351 P.3d 862 (Wash. 2015) (granting Anti-SLAPP motion and dismissing case challenging food co-op's decision to boycott Israeli products, finding it was "in connection with an issue of public concern"). *See also Salaita v. Kennedy*, *supra*, 118 F. Supp. 3d at 1084 (tweets criticizing Israel were "a matter of public concern").

C. Plaintiffs Cannot Demonstrate That Their Claims Are Likely to Succeed on the Merits.

The Anti-SLAPP Act requires dismissal if there is "a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest," unless Plaintiffs "demonstrate that the claim is likely to succeed on the merits". D.C. Code § 16-5502 (b) (2019). This Court should evaluate "the likely success of the claim by asking whether a jury properly instructed on the applicable legal and constitutional standards could reasonably find that the claim is supported in light of the evidence that has been produced or proffered in connection with the motion." *Competitive Enter. Inst.*, *supra*, 150 A.3d at 1232. Because

[6] *Boycott of Israeli Academic Institutions*, *supra* note 3.

Plaintiffs are unable to meet this burden with regard to their claims against Dr. Salaita, the Anti-SLAPP Act requires that they be dismissed with prejudice, and that costs be awarded to Dr. Salaita.

Dr. Salaita also moves to dismiss this action pursuant to D.C. Super. Ct. Civ. R. 12 (b)(1) for lack of personal jurisdiction, (b)(2) for lack of subject matter jurisdiction as to Plaintiffs Rockland, Kupfer, and Barton for lack of standing, and (b)(6) for "failure to state a claim upon which relief can be granted," including that most if not all claims are time-barred. D.C. Super. Ct. Civ. R. 12 (b)(1), 12 (b)(2), and 12 (b)(6). To the extent that dismissal is warranted under Rule 12 (b), however, it means that Plaintiffs are not "likely" to succeed, and Dr. Salaita respectfully submits that he is entitled to the additional relief mandated by the Anti-SLAPP Act.

II. PLAINTIFFS' CLAIMS AGAINST DR. SALAITA ARE NOT LIKELY TO SUCCEED AND SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION.

Plaintiffs bear the burden of establishing personal jurisdiction over Dr. Salaita. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 269 (D.C. 2001). "In order to meet [their] burden, plaintiff[s] must allege specific facts on which personal jurisdiction can be based; [they] cannot rely on conclusory allegations." *D'Onofrio v. SFX Sports Grp., Inc.*, 534 F. Supp. 2d 86, 89 (D.D.C. 2008). Plaintiffs do not allege one single fact to establish personal jurisdiction over Dr. Salaita, leaving aside their false allegation that he resides in the District of Columbia; Dr. Salaita lives in Virginia, as Plaintiffs are aware, given that they served him at his home there.[7] *See* Aff. of Service of Summons & Compl., Mar. 27, 2019; *see also* Va. Code Ann. § 8.01-296 (2018).

[7] In Plaintiffs' federal case, they also alleged that Dr. Salaita resided in the District of Columbia (Second Am. Compl. ¶ 26, *Bronner, supra*, 364 F. Supp. 3d 9, ECF No. 81), and then served him at his home in Virginia. *See* Return of Serv./Aff. of Summons & Compl. Executed, *Bronner, supra*, 364 F. Supp. 3d 9, ECF No. 84 (the process server's Aff. of Posting the Summons at Dr. Salaita's place of abode in Springfield, Va.). Plaintiffs then took umbrage when Dr. Salaita

To exercise personal jurisdiction, the Court must "determine whether jurisdiction over a party is proper under the applicable local long-arm statute and whether it accords with the demands of due process." *United States v. Ferrara*, 311 U.S. App. D.C. 421, 424, 54 F.3d 825, 828 (1995). Given that Plaintiffs allege no contact that Dr. Salaita has had with the District, they can neither establish general jurisdiction (requiring continuous and systematic contacts), nor can they establish specific jurisdiction, which requires that a "controversy is related to or 'arises out of' a defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (internal quotation omitted).

To establish specific jurisdiction, there must be "'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws,'" to ensure that jurisdiction is not based solely on random, fortuitous, or attenuated contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). In relevant part, the District of Columbia's long-arm statute permits personal jurisdiction over a non-resident defendant "as to a claim for relief arising from the person's…transacting any business in the District of Columbia" or "causing tortious injury in the District of Columbia by an act or omission in the District of Columbia." D.C. Code §§ 13-423 (a)(1); (a)(3) (2019). Jurisdiction is only proper "where the contacts proximately result from actions by the defendant *himself* that create a

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pointed out that their allegation regarding his residence was false, claiming they did not know when they filed (in 2018). Pls.' Opp'n to Mots. to Dismiss Second Am. Compl. by Defs. Kauanui, Puar, & Salaita 8-9, *Bronner*, *supra*, 364 F. Supp. 3d 9, ECF No. 113. Plaintiffs have now repeated that same false allegation here in their Superior Court Complaint, which they again served on Dr. Salaita in Virginia. Aff. of Service of Summons & Compl., Mar. 27, 2019. Plaintiffs can no longer claim they did not know Dr. Salaita does not reside in the District of Columbia, or that they had any good faith basis for believing he did.

'substantial connection' with the forum." *Burger King*, *supra*, 471 U.S. at 475 (emphasis in original).

Plaintiffs have failed to make one single factual allegation that Dr. Salaita had any contact with the forum, much less a substantial connection. Plaintiffs have not even alleged that Dr. Salaita was personally involved in any decision to amend the bylaws in March or November 2016, to withdraw Trust Funds, or in any actions regarding the editor of the Encyclopedia position, much less that he did so in the District of Columbia. Nor do Plaintiffs allege that any involvement he might have had in the effort to pass the ASA Resolution before he was a member of the National Council occurred in D.C.

Bronner v. Duggan, which was decided before Dr. Salaita was added as a defendant in that case, is not to the contrary. 249 F. Supp. 3d at 40 (finding personal jurisdiction over other individual defendants who "allegedly took part in the purportedly injurious activities of the ASA in the District of Columbia").[8] Dr. Salaita is not alleged to have engaged in any conduct in the District, much less a wrongful act that is the basis for Plaintiffs' claims against him. He was not a National Council member (nor did he have any other position charging him with "leading the

[8] Nor are the cases *Bronner* relies on to the contrary. In *Daley v. Alpha Kappa Alpha Sorority, Inc.*, plaintiffs alleged that the defendant members of the Directorate had engaged in managerial wrongdoing at a week-long meeting in the District of Columbia at which all of the named defendants "voluntarily participated" in the meetings "or the actions relating thereto." 26 A.3d 723, 728 (D.C. 2011). In *Family Fed'n for World Peace & Unification Int'l v. Hyun Jin Moon*, defendant directors took over a D.C. non-membership nonprofit that was established for the benefit of Reverend Moon's Unification Church and amended its articles of incorporation to fundamentally alter its purpose to no longer support the Church, and defendant Preston Moon engaged in self-dealing to divert UCI's assets for his own interests. 129 A.3d 234, 241-42 (D.C. 2015). The court found that "the allegedly wrongful amendment of the Articles of Incorporation, indubitably occurred within the District by filing here." *Id.* at 243. In this case, however, Plaintiffs allege (albeit inadequately) wrongful amendment of the ASA's Bylaws, which, unlike amendment of Articles of Incorporation, do not require filing in the District of Columbia. *Compare* D.C. Code § 29-408.06 (2019) *with* D.C. Code § 29-408.20 (2019).

ASA") in 2013 when the annual ASA meeting was held in the District of Columbia. Because Plaintiffs have alleged nothing to connect Dr. Salaita to the District of Columbia other than that he was on the National Council of a D.C. nonprofit corporation[9] (and their false allegation that he resides in D.C.), they have failed to meet their burden of establishing personal jurisdiction, and the case against him should be dismissed under Super. Ct. Civ. R. 12 (b)(2).

III. BECAUSE PLAINTIFFS ROCKLAND, KUPFER, AND BARTON LACK STANDING, THEIR CLAIMS ARE NOT LIKELY TO SUCCEED AND SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION.

To satisfy the requirements for standing, Plaintiffs must show: "(1) an injury in fact; (2) a causal connection between the injury and the conduct of which the party complains; and (3) redressability." *Padou v. District of Columbia Alcoholic Beverage Control Bd.*, 70 A.3d 208, 211 (D.C. 2013). The injury must be "attributable to the defendant." *Id*. (quotations omitted). Plaintiffs Rockland and Kupfer are each mentioned in two paragraphs in the entire Complaint, (Compl. ¶¶ 15, 17, 248), where Plaintiffs do not allege that they have suffered any concrete injury. As decided by the court in the federal litigation, Plaintiffs cannot seek relief for injuries

[9] Dr. Salaita's former role as an ASA National Council member is insufficient to establish this Court's jurisdiction over him. "Personal jurisdiction over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the forum and not their acts and contacts carried out solely in a corporate capacity." *Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 163 (D.C. 2000). "Just because Defendants were employed by, or were members of the board of directors of, a company which does business in the District, is not by itself sufficient to establish minimum contacts." *NAWA USA, Inc. v. Bottler*, 533 F. Supp. 2d 52, 57 (D.D.C. 2008). In *NAWA USA, Inc.*, the court lacked personal jurisdiction because plaintiff failed to allege "specific facts demonstrating that each defendant had a 'substantial connection' with the District of Columbia," even though the corporation's principal place of business was in D.C. and former directors who assumed their responsibilities at a board meeting in D.C. allegedly misappropriated its funds. *Id. See also Quinto v. Legal Times of Wash., Inc.*, 506 F. Supp. 554, 558 (D.D.C. 1981) (finding no personal jurisdiction over corporate officers and part-owners of a parent company of a District of Columbia corporation because while they "may have conducted substantial business in the District of Columbia, their activities were conducted on behalf of the corporation").

suffered by the ASA. *Bronner*, *supra*, 364 F. Supp. 3d 9.[10] Members of a corporation can only bring claims on their own behalf for relief from "a special injury…not suffered equally by all." *Jackson v. George*, 146 A.3d 405, 415 (D.C. 2016) (internal quotations omitted). They have alleged no special injury that would not have been suffered by all ASA members generally, and they have alleged no injury arising from a violation of the bylaws or their contractual rights. Plaintiff Barton has alleged that he was denied a right to vote, but that injury is not traceable to any action that Dr. Salaita might have taken as it occurred before Dr. Salaita was a member of the National Council. In fact, the federal court found that although Plaintiffs included conclusory allegations that they had suffered some damages, "nowhere in Plaintiffs' complaint or briefing do they explain what that damage is." *Bronner*, *supra*, 364 F. Supp. 3d at 21. Plaintiffs' Complaint filed in this Court is almost identical to the complaint that was filed in federal court, with the exception of the allegations related to non-reappointment of Plaintiff Bronner as editor of the Encyclopedia and the removal of that position as *ex officio* officer and National Council member. None of the allegations related to those claims state an injury to Plaintiffs Rockland, Kupfer, and Barton. In fact, Plaintiffs' Prayer for Relief only seeks damages for injury to Plaintiff Bronner for any claim; it does not seek any damages for any of the other Plaintiffs.

[10] Collateral estoppel precludes Plaintiffs from relitigating issues in this Court that were previously litigated in the federal litigation. *See, e.g., Hogue v. Hopper*, 728 A.2d 611, 614 (D.C. 1999) (internal quotations omitted) (collateral estoppel or issue preclusion bars relitigation of an issue when "(1) the issue is actually litigated[;] ... (2) determined by a valid, final judgment on the merits; (3) after a full and fair opportunity for litigation by the parties or their privies; [and] (4) under circumstances where the determination was essential to the judgment, and not merely dictum.") Collateral estoppel prevents relitigation of issues that a federal court resolved of necessity even where it dismissed the complaint for lack of subject matter jurisdiction. *Keene Corp. v. United States*, 591 F. Supp. 1340, 1346 (D.D.C. 1984), *aff'd sub nom. GAF Corp. v. United States*, 260 U.S. App. D.C. 252, 818 F.2d 901 (1987). Moreover, an "order is 'final' for *res judicata* purposes even though it is pending on appeal". *El-Amin v. Virgilio*, 251 F. Supp. 3d 208, 211 (D.D.C. 2017) (quotations omitted).

Compl. 117-18. As these Plaintiffs lack standing, their claims against Dr. Salaita should be dismissed for lack of subject matter jurisdiction.

IV. PLAINTIFFS' CLAIMS ARE NOT LIKELY TO SUCCEED AND SHOULD BE DISMISSED BECAUSE THEY FAIL TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED.

Where a complaint does not contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" dismissal is appropriate under Rule 12 (b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must demonstrate "more than a sheer possibility that a defendant has acted unlawfully." *Id*. Plaintiffs have not come close to sufficiently alleging that Dr. Salaita has acted unlawfully. Their Complaint fails to state a claim for relief against Dr. Salaita, and therefore Plaintiffs cannot succeed on the merits of their claims. Their claims against Dr. Salaita should therefore be dismissed under D.C. Code § 16-5502 (b) and Super. Ct. Civ. R. 12 (b)(6).

A) Counts Three Through Eight Irrefutably Do Not State a Claim against Dr. Salaita Because They Were Not Brought Against Him or They Are Based on Conduct that Preceded his Tenure and are Time-Barred.

All of the alleged conduct underlying Counts Three, Four, and Five, which are each *ultra vires* and breach of contract claims, occurred before Dr. Salaita became a member of the ASA National Council in July 2015, so they must be dismissed for failing to state a claim against him. Compl. ¶¶ 268-98. Count Three, for "Failure to Nominate Officers and National Council Reflecting Diversity of Membership," alleges conduct prior to adoption of the 2013 Resolution. Compl. 94. Count Four, for "Freezing Membership Rolls to Prohibit Voting" alleges conduct prior to the 2013 vote. Compl. ¶ 281. And Count Five, for efforts to influence legislation constituting a "substantial part" of the ASA's activities, alleges conduct "at least with respect to"

Fiscal Years 2012 and 2013, and "from approximately July 2013 until at least June of 2015". Compl. ¶¶ 290-1.[11]

Moreover, because all of the conduct alleged in Counts Three, Four, and Five occurred prior to June 2015, and most of it in 2013, Plaintiffs' claims are barred by the statute of limitations.[12] D.C. Code §§ 12-301 (7), (8) (2019). *Wright v. Howard Univ.*, 60 A.3d 749, 751 (D.C. 2013) (applying three year statute of limitations to breach of contract claim).

Even if Plaintiffs' *ultra vires* claims did not precede Dr. Salaita's time on the National Council, and even if they were not time-barred, they still fail, as members cannot bring direct (as opposed to derivative) *ultra vires* claims against individual directors. D.C. Code § 29-403.04 (b) (2019).

Finally, Plaintiffs *ultra vires* claims fail because they do not allege actions that were "'expressly prohibited by statute or by-law' or outside the powers conferred upon it by its articles of incorporation". *Bronner*, *supra*, 249 F. Supp. 3d at 47.

Count Six (for Breach of Contract for the Voting Process), Count Seven (for breach of the D.C. Nonprofit Corporation Act), and Count Eight (for Breach of Contract for the Denial of Right to Vote), are brought against Defendant ASA only, not against Dr. Salaita. *See* Compl. ¶¶ 291-313.

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[11] Plaintiffs' allegations regarding the ASA's efforts to defend itself against legislation (Compl. ¶¶ 153-161) also fail because § 501(c)(3) organizations are not "influenc[ing] legislation" when they oppose legislation that "might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization." 26 U.S.C. § 4945 (e)(2); *see also* 26 U.S.C. § 4911 (d)(2)(c) (2019).

[12] All allegations in Counts Three, Four, and Five arise out of the ASA Resolution, and the allegations of influencing or opposing legislation irrefutably arise out of an act in furtherance of the right of advocacy, namely the ASA's alleged efforts to oppose "an issue under consideration or review by a legislative, executive, or judicial body" that might affect the organization. D.C. Code § 16-5501 (1)(A)(i) (2019).

B) Plaintiffs Are Not Likely to Succeed Under Counts One, Two and Nine Related to Use of ASA Funds for Legal Services Because Plaintiffs Allege No Special Injury and Otherwise Fail to State a Claim.

The only aspects of Counts One and Two for breach of fiduciary duty and Count Nine for corporate waste that apply to Dr. Salaita all relate to Resolution-related expenditures by the ASA. Compl. ¶¶ 260-7. These claims related to the ASA's expenditure of funds to defend its decision to pass the Resolution is an act in furtherance of the right of advocacy: defending against lawsuits arising from the Resolution is protected petitioning activity, and otherwise publicly supporting the Resolution is also protected. D.C. Code §§ 16-5501 (1)(A), (1)(B) (2019). Because Plaintiffs cannot state a claim against Dr. Salaita under these Counts, they are not "likely" to succeed on the merits, and should be dismissed under the Anti-SLAPP Act.

As decided by the federal court, Plaintiffs cannot bring claims for the ASA's injuries. *Bronner*, *supra*, 364 F. Supp. 3d 9. Therefore, to succeed on Counts One, Two or Nine against Dr. Salaita, Plaintiffs must show that they suffered a special injury (not suffered by all members) that affected their individual rights, and is traceable to Dr. Salaita. *Jackson*, *supra*, 146 A.3d at 415. Plaintiffs do not allege that they suffered any special injury, and cannot show that their individual rights were affected.

Plaintiffs' allegations that the ASA violated its Bylaws when it amended them with regard to the Trust and Development Fund fail as a matter of law on the face of the Bylaws. Plaintiffs complain about amendments to the Bylaws that removed the word "small" to describe grants that could be made from the Trust and Development Fund, and that permitted expenditure of Trust Fund assets. Compl. ¶¶ 169-74. Although Plaintiffs allege that the National Council "did not inform the full membership" about these proposed changes to the Bylaws, Compl. ¶174, neither notification to nor approval by the membership was required, as the National Council is

authorized to amend the Bylaws. Compl., Ex A, ASA Constitution & Bylaws, Bylaws, Art. XIII § 1.

Even if Plaintiffs were to allege injuries related to these counts, those injuries cannot be traceable to Dr. Salaita any more than they are traceable to Plaintiff Bronner, who was also a National Council member until November 2016. In roughly 17 pages of allegations related to these Counts, Plaintiffs fail to mention Dr. Salaita even once: he is not alleged to have been involved in any decision regarding the amendment of the bylaws, in informing the membership about the amendment, in any decision related to the use of ASA funds, or in any public accounting of the funds (which is the responsibility of the Board of Trustees, not Dr. Salaita). Compl. ¶¶ 162-96; 260-7; 314-8.

The only aspects of Count Two and Nine that arise out of expenditures alleged to have been incurred during Dr. Salaita's term on the National Council that even arguably relate to the resolution are the ASA's "substantial legal costs defending the Resolution" (Compl. ¶187),[13] but Plaintiffs cannot prevail on this claim, for even if the defensive expenditure of legal costs could be considered an injury, it was an injury to the ASA, not to Plaintiffs. Plaintiffs not only suffered no special injury from the ASA's expenditure of legal fees, they actually caused any such injury,

[13] Although Plaintiffs do not, and cannot, allege that the new website was a Resolution-related expense (Compl. ¶¶ 175), they do allege that the ASA incurred Resolution-related expenses to retain a media strategist and Public Relations consultant and "arguably" for payments around the 2014 ASA meeting, but these expenditures were made prior to July 2015 when Dr. Salaita joined the National Council. Compl. ¶ 186. They are also time-barred for that reason. D.C. Code § 12-301(8) (2019); *Duggan v. Keto*, 554 A.2d 1126, 1144 (D.C. 1989) (applying three year state of limitations to breach of fiduciary duty claim). Plaintiffs also allege the ASA incurred insurance costs "arising from the Resolution." Compl. ¶ 190. But the insurance purchase is alleged to have been approved by the Executive Committee, of which Dr. Salaita was not a member, not the National Council on which Dr. Salaita served. Compl. ¶ 190. Also, if Plaintiffs are suggesting that the ASA purchased Directors and Officers Liability coverage insurance in response to the lawsuit that Plaintiffs themselves brought, their claim fails for the same bootstrapping reason as the legal expenses, explained below.

as it is their lawsuit that is being defended against. Plaintiffs cannot bootstrap an injury of their own making.[14]

C) Plaintiffs are Not Likely to Succeed and Fail to State a Claim Against Dr. Salaita Under Counts Ten And Eleven Related To Non-Reappointment of Plaintiff Bronner and Removal of the Editor as *Ex Officio* Officer and Member of National Council.

Counts Ten for Breach of Fiduciary Duty and Eleven for "Tortious Interference With Contractual Business Relations" boil down to the same set of allegations: Plaintiff Bronner was not reappointed as editor of the Encyclopedia of American Studies after his contractual term ended on December 2016, and the ASA bylaws were amended in November 2016 to remove the position of editor of the Encyclopedia as an *ex officio* officer and National Council member.[15] Compl. ¶¶ 314-26. Plaintiffs Rockland, Kupfer, and Barton lack standing to bring these claims as they have not alleged that they suffered any injury under Counts Ten or Eleven, and cannot allege any injury as a result of Plaintiff Bronner no longer being editor of the Encyclopedia, or by the current editor not being an *ex officio* officer or member of the National Council. Compl. ¶¶ 268-270. *See, supra,* Sec. III. Plaintiff Bronner's claim that he was not reappointed editor is

[14] Shareholders' claims against officers of a corporation are consistently "foreclosed when they merely allege damages based on the potential costs of investigating, defending, or satisfying a judgment or settlement for what might be unlawful conduct." *In re Cray Inc. Derivative Litig*., 431 F. Supp. 2d 1114, 1134 (W.D. Wash. 2006) (citing cases in finding that derivative claim for costs of litigation are insufficient to state a claim for relief). *See also In re Symbol Techs. Sec. Litig.*, 762 F. Supp. 510, 516 (E.D.N.Y. 1991) ("defendants cannot be held liable for the costs of defending a potentially baseless suit."); 3A WILLIAM FLETCHER, FLETCHER'S CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 1112 (West 2019) ("the payment of an attorney for legal services performed for the company is not improper."). Moreover, "[d]irectors and officers usually have a duty to engage lawyers to defend the corporation even if they individually have failed to perform in some way that caused the litigation." *Kaplan v. First Hartford Corp.*, 484 F. Supp. 2d 131, 144 (D. Me. 2007).

[15] Plaintiffs have included several placeholders in their Complaint, labeled "REDACTED," in the sections related to these claims. Dr. Salaita reserves the right to amend this Motion if and when he is served with Plaintiffs' unredacted Complaint, and reserves the right to treat the unredacted Complaint as an Amended Complaint.

time-barred, as he alleges that some Defendants sought to remove him "from his position as editor of the Encyclopedia as early as December 2013," and "decided they would not renew his contract" as "early as 2014." Compl. ¶¶ 227, 329. *See* D.C. Code § 12-301(8) (2019); *Duggan v. Keto*, *supra* note 13, 554 A.2d at 1144. Moreover, Dr. Salaita was not even on the National Council until July 2015.

1. Plaintiff Bronner Has Not Alleged and Cannot Allege that Dr. Salaita Owed Him a Fiduciary Duty, or Breached Any Fiduciary Duty.

Plaintiff Bronner cannot succeed on Count Ten against Dr. Salaita for breach of fiduciary duty, which requires him to show that "(1) defendant owed plaintiff a fiduciary duty; (2) defendant breached that duty; and (3) to the extent plaintiff seeks compensatory damages—the breach proximately caused an injury." *Henok v. Chase Home Fin., LLC*, 915 F. Supp. 2d 162, 168 (D.D.C. 2013) (quotations omitted). "[B]reach of fiduciary duty is not actionable unless injury accrues to the beneficiary or the fiduciary profits thereby." *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702, 709 (D.C. 2009) (internal quotation omitted).

Plaintiffs do not allege that Dr. Salaita owed Plaintiff Bronner a fiduciary duty, or that he breached any such duty—there is no mention of him at all in roughly 20 pages of allegations regarding this claim, much less any mention of actions he took to breach a fiduciary duty. Even if the claim is not time-barred, Plaintiffs do not allege any specific fiduciary duty that may have been breached when Plaintiff Bronner's term as editor of the Encyclopedia of American Studies was not renewed. Compl. ¶¶ 197-259. It is not a breach of fiduciary duty to choose not to renew a contract.[16]

[16] Dr. Salaita could not have breached a fiduciary duty even under the former bylaws, as his only role as National Council member would have been to ratify the Executive Committee's

Plaintiffs also do not allege a breach of fiduciary duty when the bylaws were amended to remove the position of editor as *ex officio* officer and non-voting member of the National Council. Compl. ¶¶ 243-6. The Bylaws plainly allow such an amendment and do not require notice of the change to be sent to the full membership, so Plaintiffs' allegation that such a notice was not sent is immaterial. Compl. Ex. B, Bylaws of the Am. Studies Assoc., Art. XIV; Compl. ¶ 248. To the extent that another Defendant did not notify Plaintiff Bronner, who was a non-voting member, Plaintiffs do not allege that it was any more Dr. Salaita's duty to provide notice than it was Plaintiff Bronner's, who was also on the National Council. Compl. ¶ 257. Regardless, Plaintiffs do not allege that Plaintiff Bronner was injured as a result of this amendment. Compl. ¶¶ 257-59 (alleging damages arising out of end of tenure as editor, but not as a result of amendment); ¶ 247 (alleging that, far from being injured, Plaintiff Bronner did not even realize that the amendment had in any way impacted the position of editor until years after his tenure as editor).

Finally, Dr. Salaita did not owe a fiduciary duty to Plaintiff Bronner as a fellow National Council member, so Plaintiff Bronner cannot satisfy the first element required to make out a claim against Dr. Salaita. "Officers and directors of a corporation owe a fiduciary duty to the corporation and to its shareholders," *Wisconsin Ave. Assocs., Inc. v. 2720 Wisconsin Ave. Co-op. Ass'n, Inc.*, 441 A.2d 956, 962 (D.C. 1982), and not to other directors, officers, or employees. *See, e.g., Treadway Cos., Inc. v. Care Corp.,* 638 F.2d 357, 377 (2d Cir. 1980) (a director does not owe fiduciary duties to other directors of a corporation); *Byington v. Vega Biotechnologies, Inc.,* 869 F. Supp. 338, 345 (D. Md. 1994) ("Delaware cases speak only of the fiduciary duty owed by directors to the corporation itself and its shareholders," and not to its employees, as

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designation of Plaintiff Bronner as editor. Compl. Ex. B, Art. V, § 1(g). The Executive Committee is not alleged to have designated Plaintiff Bronner.

"[a]ny contrary rule would place intolerable and irreconcilable conflicts of interest upon the directors"). Because Plaintiff Bronner is bringing this claim on his own behalf for the injuries he allegedly suffered personally as an editor, *ex officio* officer, and National Council member, Plaintiff Bronner cannot prevail as Dr. Salaita did not owe him a fiduciary duty.

2. Plaintiff Bronner Has Not Alleged and Cannot Allege That Dr. Salaita Tortiously Interfered in His Relationship with the ASA as Plaintiff Bronner Was Not Entitled to Reappointment as Editor and Dr. Salaita Cannot as a Matter of Law Interfere in the Relationship.

Plaintiff Bronner also cannot succeed on Count Eleven for "Tortious Interference With Contractual Business Relations." Compl. ¶¶. 327-34. A prima facie case of tortious interference with a contractual or business relation requires "(1) existence of a valid contractual or other business relationship; (2) the defendant's knowledge of the relationship; (3) intentional interference with that relationship by the defendant; and (4) resulting damages." *Onyeoziri v. Spivok*, 44 A.3d 279, 286 (D.C. 2012) (quotations omitted). Plaintiff Bronner does not state a claim for tortious interference against Dr. Salaita for the amendment of the ASA's bylaws because he does not allege any damages resulted from removal of the editor position as an *ex officio* officer and National Council member. Compl. ¶¶ 257-9 (alleging damages to Plaintiff Bronner); ¶ 247 (Plaintiff Bronner did not realize that the amendment impacted the editor position until years after his tenure). What remains is the claim for tortious interference resulting in the ASA's decision to not renew Plaintiff Bronner's contract as editor of the Encyclopedia, which is time-barred, as noted above.

In any case, Plaintiff Bronner does not—and cannot—allege facts to show that Dr. Salaita interfered with any relations between Plaintiff Bronner and the ASA. Again, in roughly 20 pages of allegations regarding this claim, Defendant Salaita is not mentioned once. Compl. ¶¶ 197-270;

330-345. Indeed, Plaintiffs allege that any plans to remove Plaintiff Bronner—which were allegedly made in 2013 and 2014 before Dr. Salaita was a member of the National Council—were hidden "from anyone not carrying them out," Compl. ¶¶ 201(d), 227, 329, which Dr. Salaita is not alleged to have done. Dr. Salaita is not alleged to have interfered as a member of the National Council, or prior to becoming a member. Because Plaintiffs have not and cannot allege that Dr. Salaita interfered, Plaintiff Bronner cannot make out a claim against Dr. Salaita for tortious interference with contractual or business relations.

Plaintiff Bronner's claim also fails because he did not have a contractual right to be re-hired as editor of the Encyclopedia, nor did he have a reasonable expectation that he would be. *Robertson v. Cartinhour*, 867 F. Supp. 2d 37, 60 (D.D.C. 2012), *aff'd*, 553 F. App'x 1 (D.C. Cir. 2014) (internal quotations omitted) ("To state a claim for tortious interference in the District of Columbia, the business expectancy must be "commercially reasonable to anticipate" and "requires a probability of future contractual or economic relationship and not a mere possibility."). Plaintiff Bronner alleges he was "stripped" of his position and "removed"—he was not; his term as editor of the Encyclopedia came to an end in December 2016 as provided for in his contract. Compl. ¶ 331. Plaintiff Bronner cannot succeed on a claim for tortious interference simply because he was not re-hired as editor. *See Paul v. Howard Univ.*, 754 A.2d 297 (D.C. 2000) (plaintiff "had no contractual right to indefinite tenure; hence the [defendants] could not have interfered with her contractual relations").[17]

[17] *See also, Montes v. Cicero Pub. Sch. Dist. No. 99*, 141 F. Supp. 3d 885, 900 (N.D. Ill. 2015) (where employer had not renewed employment contract with plaintiff, "the mere hope of continued employment, without more, does not, in our opinion, constitute a reasonable expectancy" sufficient to state a cause of action for intentional interference with business expectancy against third party defendants).

Finally, as a matter of law, Plaintiffs cannot succeed on a claim that Dr. Salaita interfered in Plaintiff Bronner's relationship with the ASA simply by virtue of being a National Council member starting in 2015, as a claim of tortious interference must be asserted against a defendant who is not a party to the contract or business relationship. *See Donohoe v. Watt*, 546 F. Supp. 753, 757 (D.D.C. 1982), *aff'd*, 230 U.S. App. D.C. 70, 713 F.2d 864 (1983) ("It is a well settled principle of law that this tort arises only when there is an interference with a contract between the plaintiff and a third party"). As a member of the National Council, Dr. Salaita was a director of the ASA, and he cannot be held liable for tortiously interfering in a relationship between the ASA and another. *See, e.g., Paul, supra*, 754 A.2d at 309 (officers of a University act as the University's agents and thus cannot be held liable for tortiously interfering with a contract between the University and a third party).[18]

D) Plaintiffs Are Not "Likely" to Succeed Against Dr. Salaita on Count Twelve for Aiding and Abetting Breach of Fiduciary Duty Because it is Time-barred, Fails to State a Claim, and Targets Protected Advocacy.

Count Twelve for Aiding and Abetting Breach of Fiduciary Duty arises out of Dr. Salaita's "heav[y] involve[ment] in the effort to pass the academic boycott." Compl. ¶ 348. Advocacy for the Resolution is unquestionably an act in furtherance of the right of advocacy. D.C. Code § 16-5501 (1) (2019). Plaintiffs' claim fails because it is time-barred, because Plaintiffs have not alleged that Dr. Salaita knowingly and substantially assisted in breaching any fiduciary duty, and because Dr. Salaita's advocacy is protected by the First Amendment.

[18]"[I]n order to recover for interference with contractual relations by a supervisor *who is not an officer*, a plaintiff must present evidence that the supervisor acted with malice.") (emphasis added). *Id; but see Nickens v. Labor Agency of Metro. Wash.*, 600 A.2d 813, 820 (D.C. 1991) ("we hold that a corporate officer may be held liable for interfering with the contract of an employee of the corporation provided he is shown to have acted maliciously or for his own benefit, rather than for the benefit of the corporation."). Regardless, Plaintiffs have not alleged that Dr. Salaita acted at all, much less maliciously or for his own benefit.

Plaintiffs' claim that Dr. Salaita aided and abetted a breach of fiduciary duty through his involvement in an effort to pass the Resolution before he was on the National Council is barred by the three year statute of limitations because the Resolution passed in 2013. Compl. ¶ 337; DC Code § 12-301(7); *Duggan v. Keto, supra,* 554 A.2d at 1144 (applying three year state of limitations to claim of breach of fiduciary duty).[19] Count Twelve is time-barred, as the statute of limitations expired at latest in 2016. D.C. Code § 12-301 (2019) (statute of limitation begins to run "from the time the right to maintain the action accrues").

Even if this claim were timely, it would still fail. A cause of action for aiding and abetting breach of fiduciary duty has not expressly been recognized in the District of Columbia. *See Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 711 (D.C. 2013); *Lannan Found. v. Gingold*, 300 F. Supp. 3d 1, 29–30 (D.D.C. 2017). Jurisdictions that have recognized the tort require plaintiffs to show: "(1) a fiduciary duty on the part of the primary wrongdoer, (2) a breach of this fiduciary duty, (3) knowledge of this breach by the alleged aider and abettor, and (4) the aider and abettor's substantial assistance or encouragement of the wrongdoing." *Pietrangelo, supra,* 68 A.3d at 711 (quotation omitted). Even if Plaintiffs could show a breach of fiduciary duty, which they have not, Plaintiffs have failed to allege that Dr. Salaita had knowledge of any such breach, or that he substantially assisted the wrongdoing. That Dr. Salaita "was heavily involved in the effort to pass the Academic Boycott before he was a

[19] Plaintiffs' untimeliness is not excused just because they filed a similar case earlier in federal court. *See Bond v. Serano*, 566 A.2d 47, 56 (D.C. 1989) (statute of limitations on personal injury lawsuit in state court was not tolled by the pendency of a suit which was filed earlier in federal court and then dismissed for lack of subject matter jurisdiction); *Curtis v. Aluminum Ass'n.*, 607 A.2d 509 (D.C. 1992) (where plaintiff's suit in U.S. District Court was dismissed because of lack of complete diversity between the parties, his subsequent suit in the Superior Court was properly dismissed as time-barred); *Johnson v. Long Beach Mortg. Loan Trust 2001-4*, 451 F. Supp. 2d 16, 52–53 (D.D.C. 2006) ("District of Columbia precedent firmly holds that statutes of limitations are not equitably tolled when a similar cause of action, filed within the limitations period, has been dismissed for lack of subject matter jurisdiction.").

member of the National Council," Compl. ¶ 337, is irrelevant as the Resolution itself is not alleged to be a breach of a fiduciary duty, nor could it be. And alleging a legal conclusion—that his "substantial assistance, also knowing" that the Resolution "would cause great damage" to the ASA—does not make it so, and still does not allege he knew of a breach or that he substantially assisted it.

Finally, the First Amendment protects any peaceful advocacy Dr. Salaita conducted prior to his term on the National Council. *See, e.g., Snyder v. Phelps*, 562 U.S. 443, 460 (2011) (finding that the First Amendment bars liability for state torts, including "civil conspiracy based on those torts," for peaceful picketing on a matter of public concern). *See also, Claiborne*, *supra*, 458 U.S. at 913 (peaceful political boycotts constitute "expression on public issues" and therefore "rest[] on the highest rung of the hierarchy of First Amendment values." (internal quotations omitted)); *Jordahl*, *supra*, 336 F. Supp. 3d at 1043 (a "restriction of one's ability to participate in collective calls to oppose Israel unquestionably burdens the protected expression of [those] wishing to engage in such a boycott").

Plaintiffs do not, and under the First Amendment cannot, allege that Dr. Salaita knew about or substantially assisted in any breach of another Defendant's fiduciary duty simply because he was associated with efforts to pass the boycott Resolution. *See Claiborne*, *supra*, 458 U.S. at 920 ("For liability to be imposed by reason of association alone, it is necessary to establish that the group itself possessed unlawful goals and that the individual held a specific intent to further those illegal aims."). Dr. Salaita is not alleged to have substantially assisted in any specific underlying breach of fiduciary duty. Under the First Amendment, it cannot be that *anyone* who advocates for the boycott Resolution is liable for aiding and abetting any alleged breach of fiduciary duties by other Defendants.

1. Dr. Salaita is Immune from Liability for Plaintiffs' Claims.

a. The D.C. Code Immunizes Dr. Salaita from Liability for Plaintiffs' Claims.

Dr. Salaita is immunized from liability for "damages for any action taken, or any failure to take any action" as a director of a charitable organization, except for, in relevant part, an "intentional infliction of harm." D.C. Code § 29-406.31 (d) (2019). As argued above, Dr. Salaita, who was a volunteer National Council member, is not alleged to have been personally involved in amending the Bylaws and withdrawing funds to defend the ASA from legal attack, or doing anything in relation to Plaintiff Bronner's tenure as editor, much less doing so to intentionally inflict harm on Plaintiffs or the ASA.[20]

Dr. Salaita is also immune under D.C. Code § 29-406.90, which immunizes corporate volunteers from civil liability unless the injury was a result of willful misconduct, a crime, a transaction resulting in improper personal benefit, or a bad faith act beyond the scope of the corporation's authority, as long as the ASA's liability insurance coverage is statutorily sufficient. D.C. Code § 29-406.90(b) and (c). Similarly, Plaintiffs fail to allege that Dr. Salaita engaged in any conduct that would exempt him from the protection of D.C. Code § 29-406.90. Dr. Salaita is therefore immune from liability for Plaintiffs' claims against him under D.C. Code §§ 29-406.31(d) and 29-406.90.

[20] The District Court's finding (prior to Dr. Salaita being named as a Defendant in that litigation) that Plaintiffs had plausibly alleged that the "Individual Defendants acted with an intent to harm the ASA" is not to the contrary. *Bronner*, 317 F. Supp. 3d at 293. As argued above, the Complaint does not allege that Dr. Salaita, who was not a party to the federal subject matter jurisdiction briefing, acted with any intent to harm, and certainly does not make any specific factual allegations that would support such a conclusory allegation. The federal court's prior findings regarding other defendants with different allegations against them, before Dr. Salaita was even a party to the case, cannot bind Dr. Salaita. *See, e.g.*, *Hoffman v. District of Columbia*, 730 F. Supp. 2d 109, 116 (D.D.C. 2010) (citing *Taylor v. Sturgell*, 553 U.S. 880 (2008)) ("neither claim preclusion nor issue preclusion may be used against a party that was not a party to the prior proceeding or in privity with a party to the prior proceeding").

b. The Volunteer Protection Act Immunizes Dr. Salaita from Liability for Plaintiffs' Claims.

Under the Volunteer Protection Act, in relevant part, "no volunteer of a nonprofit organization…shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization" if they were "acting within the scope of the volunteer's responsibilities" and "the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer." 42 U.S.C. §§ 14501 et seq., § 14503(a) (2018). Dr. Salaita was a volunteer member of the ASA's National Council from July 2015-June 2018, and although Plaintiffs do not allege Dr. Salaita engaged in any particular acts as a National Council member, any acts or omissions alleged by Plaintiffs would have been taken on behalf of the ASA and within the scope of his responsibilities. Compl. ¶ 26. Again, the expenditure of legal fees to defend the ASA cannot be considered harm, but even if it were, it "was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed." 42 U.S.C. § 14503(a). Accordingly, the Volunteer Protection Act immunizes Dr. Salaita from liability for Plaintiffs' claims against him.

c. Plaintiffs' Fiduciary Duty and Waste Claims Should Be Dismissed under the Business Judgment Rule.

The Business Judgment Rule is a ""presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'" *Behradrezaee v. Dashtara*, 910 A.2d 349, 361 (D.C. 2006) (quoting *Willens v. 2720 Wis. Ave. Coop. Ass'n, Inc.*, 844 A.2d 1126, 1137 (D.C. 2004)). "Absent an abuse of discretion, that judgment will be respected by the courts. The burden is on the party challenging the decision to establish facts rebutting the presumption." *Id.*

"In practical terms, the business judgment rule means that 'directors' decisions will be respected by courts unless the directors are interested or lack independence relative to the decision, do not act in good faith, act in a manner that cannot be attributed to a rational business purpose or reach their decision by a grossly negligent process that includes the failure to consider all material facts reasonably available.'" *Willens*, *supra*, 844 A.2d at 1137 (citing *Brehm v. Eisner*, 746 A.2d 244, 264 n.66 (Del. 2000)). Plaintiffs do not allege that Dr. Salaita had any financial interest at stake, or that defending the ASA against Plaintiffs' lawsuit or anything that might have been done with respect to Plaintiff Bronner's tenure as editor was in bad faith, irrational, uninformed, or not in the best interests of the ASA. Plaintiffs' claims should be dismissed under the Business Judgment Rule.

V. PLAINTIFFS' CLAIMS AGAINST DR. SALAITA SHOULD BE DISMISSED UNDER THE ANTI-SLAPP ACT AND HE SHOULD BE AWARDED THE COSTS OF LITIGATION, INCLUDING REASONABLE ATTORNEY FEES.

Because Dr. Salaita has shown that Plaintiffs' claims arise "from an act in furtherance of the right of advocacy on issues of public interest," and Plaintiffs cannot "demonstrate[] that the claim is likely to succeed on the merits," this Court must dismiss Plaintiffs' claims against Dr. Salaita under the Anti-SLAPP Act with prejudice. D.C. Code § 16-5502 (b).[21] If Plaintiffs' claims against Dr. Salaita are dismissed under the Anti-SLAPP Act, he is entitled to recover costs and attorneys fees. D.C. Code Ann. § 16-5504 (under the Anti-SLAPP Act, this Court "may award a moving party who prevails, in whole or in part…the costs of litigation, including

[21] *See, e.g., Metabolife Int'l, Inc. v. Wornick*, 72 F. Supp. 2d 1160, 1162 (S.D. Cal. 1999), *aff'd in part, rev'd in part*, 264 F.3d 832 (9th Cir. 2001) (addressing anti-SLAPP motions before addressing motions to dismiss for lack of personal jurisdiction, and dismissing on anti-SLAPP grounds); *Harmoni Int'l Spice, Inc. v. Bai*, No. CV 16-00614-BRO (ASx), 2016 WL 6542731, at *13 (C.D. Cal. May 24, 2016) (dismissing claims for lack of personal jurisdiction and subsequently addressing whether defendants' anti-SLAPP motion would prevail).

reasonable attorney fees." *See also, Doe v. Burke*, 133 A.3d 569, 574 (D.C. 2016) (for costs to be awarded under § 16-5504(a) of the Anti-SLAPP Act, the lawsuit does not have to be a "classic" SLAPP suit, and "frivolousness or wrongful motivation" on the part of the plaintiff is not required).[22] Dr. Salaita must be relieved of the heavy burden of defending himself against the meritless but unrelenting efforts by Plaintiffs to silence him through litigation—in this Court, in U.S. district court, and potentially in future actions elsewhere.[23]

CONCLUSION

Dr. Salaita respectfully requests that this Court dismiss Plaintiffs' Complaint against him in its entirety, with prejudice, and seeks costs, attorneys' fees and any other relief the Court deems appropriate.

Dated: May 6, 2019

Respectfully Submitted,

/s/ Shayana Kadidal

Shayana Kadidal (D.C. Bar No. 454248)
Maria C. LaHood (*pro hac vice* app. submitted)
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Counsel for Defendant Steven Salaita

[22] There may also be grounds for sanctions here. *See, e.g.,* Super. Ct. Civ. R. 11(c) (award of sanctions against attorney may be available for a pleading that is used "for any improper purpose, such as to harass" (Super. Ct. Civ. R. 11(b)(1)), or if "the factual contentions [lack] evidentiary support". Super. Ct. Civ. R. 11(b)(3). *See also Jones v. Campbell Univ.,* 322 F. Supp. 3d 106, 109 (D.D.C. 2018) (ordering monetary sanctions against plaintiff's counsel under Fed. R. Civ. Pro. 11 for personal jurisdiction arguments, after finding that court did not have personal jurisdiction over defendants).

[23] In the alternative, Plaintiffs' claims against Dr. Salaita must be dismissed under Super. Ct. Civ. R. 12(b)(1), 12(b)(2), or 12(b)(6).

Points and Authorities

1. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)
2. *Behradrezaee v. Dashtara*, 910 A.2d 349 (D.C. 2006)
3. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)
4. *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011)
5. *Bronner v. Duggan*, 249 F. Supp. 3d 27 (D.D.C. 2017)
6. *Bronner v. Duggan*, 364 F. Supp. 3d 9 (D.D.C. 2019), *appeal docketed*, No. 19-7017 (D.C. Cir. Mar. 5, 2019)
7. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)
8. *Byington v. Vega Biotechnologies, Inc.*, 869 F. Supp. 338 (D. Md. 1994)
9. *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213 (D.C. 2016), *as amended* (Dec. 13, 2018)
10. *D'Onofrio v. SFX Sports Grp., Inc.*, 534 F. Supp. 2d 86 (D.D.C. 2008)
11. *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723 (D.C. 2011)
12. *Davis v. Cox*, 180 Wash. App. 514, 531, 325 P.3d 255 (Wash. Ct. App. 2014), *rev'd on other grounds*, 183 Wash. 2d 269, 351 P.3d 862 (Wash. 2015)
13. *Doe v. Burke*, 133 A.3d 569 (D.C. 2016)
14. *Donohoe v. Watt*, 546 F. Supp. 753 (D.D.C. 1982), *aff'd*, 230 U.S. App. D.C. 70, 713 F.2d 864 (1983)
15. *Duggan v. Keto*, 554 A.2d 1126 (D.C. 1989)
16. *El-Amin v. Virgilio*, 251 F. Supp. 3d 208 (D.D.C. 2017)
17. *Family Fed'n for World Peace & Unification Int'l v. Hyun Jin Moon*, 129 A.3d 234 (D.C. 2015)
18. *Farah v. Esquire Magazine, Inc.*, 863 F. Supp. 2d 29 (D.D.C. 2012), *aff'd sub nom. Farah v. Esquire Magazine*, 407 U.S. App. D.C. 208, 736 F.3d 528 (2013)
19. *Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147 (D.C. 2000)
20. *Harmoni Int'l Spice, Inc. v. Bai*, No. CV 16-00614-BRO (ASX), 2016 WL 6542731 (C.D. Cal. May 24, 2016)

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

22. *Henok v. Chase Home Fin., LLC*, 915 F. Supp. 2d 162 (D.D.C. 2013)

23. *Hoffman v. District of Columbia*, 730 F. Supp. 2d 109 (D.D.C. 2010)

24. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264 (D.C. 2001)

25. *In re Symbol Techs. Sec. Litig.*, 762 F. Supp. 510 (E.D.N.Y. 1991)

26. *In re Cray Inc. Derivative Litig*., 431 F. Supp. 2d 1114 (W.D. Wash. 2006)

27. *Jackson v. George*, 146 A.3d 405 (D.C. 2016)

28. *Jones v. Campbell Univ.*, 322 F. Supp. 3d 106 (D.D.C. 2018)

29. *Jordahl v. Brnovich*, 336 F. Supp. 3d 1016 (D. Ariz. 2018), *appeal docketed*, No. 18-16896 (9th Cir. Oct. 3, 2018)

30. *Kaplan v. First Hartford Corp.*, 484 F. Supp. 2d 131 (D. Me. 2007).

31. *Keene Corp. v. United States*, 591 F. Supp. 1340 (D.D.C. 1984), *aff'd sub nom. GAF Corp. v. United States*, 260 U.S. App. D.C. 252, 818 F.2d 901 (1987)

32. *Lannan Found. v. Gingold*, 300 F. Supp. 3d 1 (D.D.C. 2017)

33. *Metabolife Int'l, Inc. v. Wornick*, 72 F. Supp. 2d 1160 (S.D. Cal. 1999), *aff'd in part, rev'd in part*, 264 F.3d 832 (9th Cir. 2001)

34. *Montes v. Cicero Pub. Sch. Dist. No. 99*, 141 F. Supp. 3d 885 (N.D. Ill. 2015)

35. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982)

36. *NAWA USA, Inc. v. Bottler*, 533 F. Supp. 2d 52 (D.D.C. 2008)

37. *Nickens v. Labor Agency of Metro. Wash.*, 600 A.2d 813 (D.C. 1991)

38. *Snyder v. Phelps*, 562 U.S. 443 (2011)

39. *Onyeoziri v. Spivok*, 44 A.3d 279 (D.C. 2012)

40. *Padou v. District of Columbia Alcoholic Beverage Control Bd.*, 70 A.3d 208 (D.C. 2013)

41. *Paul v. Howard Univ.*, 754 A.2d 297 (D.C. 2000)

42. *Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697 (D.C. 2013)

43. *Quinto v. Legal Times of Wash., Inc.*, 506 F. Supp. 554 (D.D.C. 1981)

44. *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702 (D.C. 2009)

45. *Robertson v. Cartinhour*, 867 F. Supp. 2d 37 (D.D.C. 2012), *aff'd*, 553 F. App'x 1 (D.C. Cir. 2014)

46. *Salaita v. Kennedy*, 118 F. Supp. 3d 1068 (N.D. Ill. 2015).

47. *Treadway Cos., Inc. v. Care Corp.*, 638 F.2d 357 (2d Cir. 1980)

48. *United States v. Ferrara*, 311 U.S. App. D.C. 421, 54 F.3d 825 (1995)

49. *Willens v. 2720 Wis. Ave. Coop. Ass'n, Inc.*, 844 A.2d 1126 (D.C. 2004)

50. *Wis. Ave. Assocs., Inc. v. 2720 Wis. Ave. Co-op. Ass'n, Inc.*, 441 A.2d 956 (D.C. 1982)

51. *Wright v. Howard Univ.*, 60 A.3d 749 (D.C. 2013)

52. 3A WILLIAM FLETCHER, FLETCHER'S CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 1112

53. 26 U.S.C. § 4911

54. 26 U.S.C. § 4945

55. 42 U.S.C. § 14501 et seq.

56. 42 U.S.C. § 14503

57. D.C. Code § 12-301

58. D.C. Code § 16-5501

59. D.C. Code § 16-5502

60. D.C. Code § 29-403.04

61. D.C. Code § 29-406.31

62. D.C. Code § 29-406.90

63. D.C. Code § 29-408.06

64. D.C. Code § 29-408.20

65. Super. Ct. Civ. R. 12 (b)(1)

66. Super. Ct. Civ. R. 12 (b)(2)

67. Super. Ct. Civ. R. 12 (b)(6)

68. Va. Code Ann. § 8.01-296

69. *Boycott of Israeli Academic Institutions*, AM. STUDIES ASS'N (Dec. 4, 2013), https://www.theasa.net/about/advocacy/resolutions-actions/resolutions/boycott-israeli-academic-institutions

70. *Council Statement on the Resolution*, AM. STUDIES ASS'N, https://www.theasa.net/node/4804

71. *What Does the Boycott Mean?*, AM. STUDIES ASS'N, https://www.theasa.net/node/4805

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

SIMON BRONNER, MICHAEL ROCKLAND, CHARLES D. KUPFER, and MICHAEL L. BARTON, Plaintiffs, v. LISA DUGGAN, CURTIS MAREZ, NEFERTI TADIAR, SUNAINA MAIRA, CHANDAN REDDY, J. KEHAULANI KAUANUI, JASBIR PUAR, STEVEN SALAITA, JOHN STEPHENS, and THE AMERICAN STUDIES ASSOCIATION, Defendants.	Case No. 2019 CA 001712 B Judge Robert R. Rigsby Civil 2, Calendar 10 Next Court Date: June 14, 2019, 10 a.m. Event: Initial Scheduling Conference

[PROPOSED] ORDER GRANTING DEFENDANT STEVEN SALAITA'S SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO D.C. CODE § 16-5501, *et seq*.,

Upon consideration of Defendant Steven Salaita's Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.*, and in the Alternative, Motion to Dismiss Pursuant to Super. Ct. Civ. R. 12 (b), Plaintiffs' opposition brief, and Defendant Salaita's Reply brief, it is hereby

ORDERED that Defendant Salaita's Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.*, is GRANTED in its entirety, and that all claims for relief against Defendant Salaita are hereby DISMISSED with prejudice and without leave to amend; and

ORDERED that pursuant to D.C. Code § 16-5504 (a), Defendant Salaita, as the prevailing party, may be awarded the costs of litigation, including reasonable attorneys' fees, which the Court will consider upon a Motion for costs and fees.

IT IS SO ORDERED.

Dated: _____, 2019

_____
Robert R. Rigsby
Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2019, I electronically filed the foregoing Unopposed Motion to File Motion in Excess of Fifteen Pages, together with the Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.*, and in the Alternative, Motion to Dismiss Pursuant to Super. Ct. Civ. R. 12 (b) and proposed orders for each Motion, through the CaseFileXpress system, which sends notification to counsel of record who have entered appearances.

/s/ Shayana Kadidal
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[redacted]