Filed
D.C. Superior Court
05/27/2022 16:38PM
Clerk of the Court

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: October 27, 2022, 3:30 p.m. Event: Motion Hearing

STEVEN SALAITA'S SUPPLEMENTAL REPLY MEMORANDUM IN SUPPORT OF HIS SPECIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO D.C. CODE § 16-5501, *et seq.*

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INTRODUCTION

Plaintiffs' Opposition reveals their fundamental misapprehension of the District of Columbia Anti-SLAPP Act of 2010 ("Anti-SLAPP Act" or "Act"), D.C. Code § 16-5501, *et seq.*, and the Court of Appeals' opinion interpreting it in this case, *American Studies Ass'n v. Bronner*, 259 A.3d 728 (D.C. 2021). Dr. Salaita's Supplemental Memorandum in Support of his Special Motion to Dismiss Plaintiffs' Complaint ("Salaita Mem.") addressed each count separately, identifying statements or expressions forming the basis of each claim, and laying out why Plaintiffs are not likely to succeed on the merits of each claim against him. Plaintiffs' Opposition does not mention Dr. Salaita, does not address his arguments or cited legal authority, and does not proffer any evidence. Instead, Plaintiffs seem to argue that if there is a potential legal claim, a cause of action must survive the Anti-SLAPP Act without regard to whether it is based on protected activity, whether it states a claim against a defendant, or whether there is any evidence to support it. That is not the law. Dr. Salaita has made a prima facie showing that each claim against him is based on protected activity under the Anti-SLAPP Act, and Plaintiffs have failed to meet their burden to proffer evidence to demonstrate that they are likely to succeed on the merits. D.C. Code § 16-5502(b). Dr. Salaita's Anti-SLAPP Motion must therefore be granted in its entirety.[1]

ARGUMENT

I. The Correct Application of the D.C. Anti-SLAPP Act.

Dr. Salaita has made "a prima facie showing that the claim[s] at issue arise[] from an act in furtherance of the right of advocacy on issues of public interest," *id.*, by showing that each "claim at issue 'arises from' some form of speech—a 'written or oral statement' or other 'expression or expressive conduct.'" *Bronner*, 259 A.3d at 744; *see* Salaita Mem. 4–19. Rather

[1] Dr. Salaita again adopts and incorporates the arguments set forth in his co-Defendants' Reply memoranda, to the extent they are consistent with his arguments.

than attempting to refute that showing under the first prong of the Anti-SLAPP Act, Plaintiffs make illogical arguments not supported in the law.

Contrary to Plaintiffs' suggestion, the Anti-SLAPP Act does not automatically exempt "garden variety claim[s] regarding corporate governance" just because a legal claim might exist in theory. Pls.' Mem. on Remand ("Opp'n") 4; *see also id.* at 6 ("corporate governance"); *id.* at 8–9 (*ultra vires* lobbying claims). The Anti-SLAPP Act permits dismissal of "*any* claim arising from an act in furtherance of the right of advocacy on issues of public interest." D.C. Code § 16-5502(a) (emphasis added). As the Court of Appeals made clear, the Anti-SLAPP Act is not limited to specific types of claims, but applies when protected activity is "the subject of the claim or an element of the cause of action asserted." *Bronner,* 259 A.3d at 746. Plaintiffs' argument has also been rejected by California courts, which the Court of Appeals looked to in *Bronner*. *Id.* "[A] plaintiff cannot avoid operation of the anti-SLAPP statute by attempting, through artifices of pleading, to characterize an action as a 'garden variety breach of contract [or] fraud claim' when in fact the liability claim is based on protected speech or conduct." *Collondrez v. City of Rio Vista*, 275 Cal. Rptr. 3d 895, 902 (Cal. Ct. App. 2021), *review denied* (June 30, 2021) (citing *Martinez v. Metabolife Int'l, Inc.*, 6 Cal. Rptr. 3d 494, 499 (Cal. Ct. App. 2003)).[2]

Plaintiffs also argue that something about the "content" of the speech must be the basis for the claim, so that the claim must be because of "*what* the defendant said." Opp'n 3. But the Court of Appeals set forth no such requirement. The only "content" requirement in the Anti-SLAPP Act is that the advocacy be on an issue of public interest, and even that requirement is satisfied when

[2] *See also Davis v. Cox,* 325 P.3d 255, 261, 265 (Wash. Ct. App. 2014), *rev'd on other grounds*, 351 P.3d 862 (Wash. 2015) (en banc) (affirming district court's granting of anti-SLAPP motion to dismiss *ultra vires* and fiduciary breach claims challenging non-profit's decision to boycott Israeli products).

statements are made "[i]n connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." D.C. Code § 16-5501(1)(A)(i); *see also id.* § 16-5501(1)(B) (petitioning the government). For example, with regard to lobbying or litigation, the content of the advocacy is immaterial; it is protected because it is in connection with an issue under consideration by a legislative or judicial body. Speech that forms the basis of a cause of action or of one of its elements might be "tortious, or violate[] a contract's prohibition," *Bronner*, 259 A.3d at 746, for reasons other than its "content."

Despite Plaintiffs' assertion that the Court of Appeals cast "serious doubt on the possibility that several of plaintiffs' claims could have arisen from acts of advocacy," Opp'n 2, the Court of Appeals' comments related to whether the claims could be based on the 2013 Resolution, as this Court had found, not on any other protected activity that is the basis of Plaintiffs' claims. *Bronner*, 259 A.3d at 749. The Court of Appeals explicitly stated that it "express[es] no view at this time as to whether the ASA defendants met their burden of showing that any of the plaintiffs' claims arise from acts in furtherance of the right of advocacy on issues of public interest." *Id.* at 750.

Because Dr. Salaita has made his prima facie showing, the Anti-SLAPP Motion "shall be granted" unless Plaintiffs meet their burden to demonstrate that their claims are "likely to succeed on the merits." D.C. Code § 16-5502(b); *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1232 (D.C. 2016), *as amended* (Dec. 13, 2018). To meet this burden under the second prong, the Anti-SLAPP Act "mandates the production or proffer of evidence that supports the claim." *Id.* at 1233. Plaintiffs have failed to proffer a single piece of "admissible, credible" evidence to support their claims against Dr. Salaita, *Bronner*, 259 A.3d at 740, much less show that they are "likely to succeed." That failure is fatal to Plaintiffs' claims against him, which must therefore be dismissed under the Anti-SLAPP Act.

II. Each Count Against Dr. Salaita Must Be Dismissed Under the Anti-SLAPP Act.

A. Count I: Breach of Fiduciary Duty for Material Misrepresentations and Omissions

Plaintiffs argue that despite the fact that Count I is based on their allegation that Defendants misrepresented or did not disclose their views on an issue of public interest, a breach of fiduciary claim based on failure to disclose a material fact could "***never*** involve . . . any protected expressive activity." Opp'n 5. That is wrong. Plaintiffs ignore Supreme Court and Anti-SLAPP authority that decisions about what *not* to say are protected speech, including in the context of failure to disclose allegations. Salaita Mem. 4–5 (citing cases). Instead, Plaintiffs inexplicably rely on one irrelevant unpublished Delaware opinion that has nothing to do with anti-SLAPP law, in which the court dismissed claims for failure to disclose material facts because they were not, in fact, material. Opp'n 5, citing *Franchi v. Firestone,* No. 2020-0503-KSJM, 2021 WL 5991886 (Del. Ch. May 10, 2021). Plaintiffs complain that Defendants' written statements did not include their views on the American Studies Association ("ASA") passing a Resolution supporting an academic boycott of Israel, concededly an issue of public interest.[3] Count I therefore arises from an act in furtherance of the right of advocacy.

Plaintiffs' assertion that "[m]ateriality is a question of fact for the factfinder" and that it has "plausibly[] been alleged here," Opp'n 6, is irrelevant to the first prong of the Anti-SLAPP Act, and misapprehends the second prong. As discussed, plausible allegations are insufficient to defend against an anti-SLAPP motion; Plaintiffs must submit evidence, and they have not done so. Under the Anti-SLAPP Act, it is the Court's role to review "the legal sufficiency of the

[3] Plaintiffs' argument that the nominations committee did not disclose its "explicit goal . . . to elect council members who support BDS" fails for the same reasons. Opp'n 5–6 (citing Plaintiffs' Unredacted Complaint ("Compl.") ¶ 74). Moreover, Dr. Salaita was not on the nominations committee or the National Council at the time.

evidence, consistent with First Amendment principles," to determine whether a jury could reasonably find that a claim is supported in light of the proffered evidence. *Mann*, 150 A.3d at 1233. As this Court already found, Count I is unlikely to succeed against Dr. Salaita because he was not alleged to have made any misrepresentations when he ran for his position. Amended Order of Dec. 12, 2019 ("Am. Order") 29. Moreover, Plaintiffs have submitted no evidence to substantiate their claim against Dr. Salaita.

B. Count II: Breach of Fiduciary Duty for Misuse of ASA Assets

Plaintiffs fail to respond to Dr. Salaita's arguments that their claims under Count II arise from expression protected under the first prong of the Anti-SLAPP Act. First, Plaintiffs state that Count II alleges that Defendants improperly used ASA funds on (1) "public relations," (2) "lobbying," and (3) "legal fees" which they admit were expended on "this case." Opp'n 3. Of these, only litigation expenditures are alleged to have been made during Dr. Salaita's tenure on the National Council, and as such any claims against him under this Count can only arise out of those litigation expenditures. Salaita Mem. 6–7. But Plaintiffs fail to address Dr. Salaita's argument that litigation funding is protected expression, which the D.C. Court of Appeals stated "may be correct." *Bronner*, 259 A.3d at 745 n.62; *see also* Salaita Mem. 6–8.

Though occurring before Dr. Salaita's tenure on the National Council, the use of ASA resources on public relations and lobbying is also protected. Just as any restriction on expenditures on speech is a restriction on the speech itself, any claim that alleges liability based on the funding of speech arises from the speech itself. *See, e.g., Citizens United v. FCC*, 558 U.S. 310, 339 (2010) ("prohibition on corporate independent expenditures [on political speech] is thus a ban on speech."); *Buckley v. Valeo*, 424 U.S. 1, 16 (1976) (per curiam) ("this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment . . . "),

superseded by statute on other grounds, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). As Dr. Salaita has argued, the use of ASA resources for "public relations" related to the Resolution, including the use of websites and other tools to communicate with the public, are protected under the Act. Salaita Mem. 6 n.4. It is unclear what "lobbying" activities Plaintiffs allege ASA funds were used for: this is the first time they make this claim, and they have not alleged in their Complaint—much less proffered any evidence to demonstrate—specific expenditures related to lobbying. Regardless, even a claim that arises from the funding of lobbying necessarily arises from lobbying itself and is protected under the Anti-SLAPP Act as "expressive conduct that involves petitioning the government," D.C. Code § 16-5501(1)(B), and statements "[i]n connection with an issue under consideration or review by a legislative . . . body." D.C. Code § 16-5501(1)(A)(i). *See infra* Section II.E*,* Count V.[4]

Plaintiffs quote a footnote from the D.C. Court of Appeals stating that it is "implausible . . . that the Anti-SLAPP Act enables a defendant sued for embezzling or misappropriating entrusted funds to file a special motion to dismiss based on a showing that the funds were used in furtherance of the right of advocacy on an issue of public interest." *Bronner*, 259 A.3d at 747 n.78; Opp'n 3. But Plaintiffs here have not alleged funds were embezzled, and they have not alleged that there was an independent violation of the law when ASA funds were misappropriated, and *then* those

[4] Plaintiffs now argue that this Count also arises from the payment of travel expenses for a "Palestinian advocate[]" to speak at the 2013 annual meeting (which also occurred before Dr. Salaita was a fiduciary). Opp'n 6; Compl. ¶ 92. They say this is "no different than it would be if access to a corporation's assets were allocated to favored family members at the expense of other non-family members . . . ." Opp'n 6. But that is wrong. This claim arises from the ASA allocating resources for an individual *to speak* about human rights in Palestine, an issue of public interest, at an ASA-wide event. That Defendants may have agreed with that speaker's viewpoint and Plaintiffs did not does not change that the claim arises from speech protected under the Anti-SLAPP Act. D.C. Code §§ 16-5501(1)(A)(ii), (1)(B). And that the speech was dependent on expenditures does not by itself "introduce a nonspeech element." *Buckley*, 424 U.S. at 16.

funds were incidentally used for expression.[5] Plaintiffs allege instead that it was a breach of fiduciary duty to use the funds to defend litigation (or for public relations, or lobbying) related to the Resolution. That is protected activity. Plaintiffs' claims here arise from litigation, communications to the public, and now, apparently, lobbying; that the speech was dependent on expenditures does not by itself "introduce a nonspeech element." *Buckley*, 424 U.S. at 16.[6]

Plaintiffs fail to proffer any evidence (or even respond to Dr. Salaita's arguments) to satisfy their burden under the second prong of the Anti-SLAPP Act. Salaita Mem. 8–10. First, Plaintiffs fail to present evidence of Dr. Salaita's involvement in decisions related to the use of ASA funds, *id.* at 10, or evidence that he was responsible for actions before he was a member of the National Council. *Id.* at 8–9. Second, they fail to present evidence that they suffered any injury through the use of those funds: none of them have shown that they have paid membership dues since 2014. *Id.* at 9–10. Third, they fail to present evidence or argument to overcome the presumption that the claims that arise from acts occurring before March 2016—including all of the voting-related claims—fail because they are time-barred. *Id*. at 8. Finally, they fail to respond to the argument that there is no breach of fiduciary duty as a matter of law when directors use funds to defend the corporation in litigation. *Id*. at 9.

[5] Plaintiffs state in a footnote that Defendants "alter[ed] the ASA's by-laws, without notice to the ASA membership," but do not claim that this violates any law. Opp'n 4 n.1. In fact, such an amendment was proper, as the ASA Bylaws did not require the National Council to notify the membership before amendment. Compl., Ex. A, ASA Constitution & Bylaws, Bylaws Art. XIII § 1 (May 2013).

[6] Plaintiffs also argue that part of Count II is also related to whether "the ASA followed its own rules" on voting. Opp'n 7. But Plaintiffs do not respond to Dr. Salaita's argument that this claim against him can only arise out of expression that involved "communicating views to members of the public in connection with an issue of public interest," D.C. Code § 16-5501(1)(B), as the only allegation related to him from the relevant time period is that he advocated for the Boycott Resolution. Compl. ¶¶ 26, 46; Salaita Mem. 11.

C. Count III: *Ultra Vires* and Breach of Contract for Failure to Nominate Officers and National Council Reflecting Diversity of Membership

Under Count III, Plaintiffs' one and only response is that it was Defendants who "suppressed speech but [sic] not allowing anyone whose views differed from theirs to be nominated (or even heard)." Opp'n 7. But Plaintiffs' claim, which they brought against all Defendants, is that the nominees did not represent the diversity of the ASA's membership *because* too many of them had endorsed the United States Campaign for the Academic and Cultural Boycott of Israel ("USACBI"), Compl. ¶¶ 62–65, 72, 269, or, in other words, they had "communicat[ed] views to members of the public in connection with an issue of public interest." D.C. Code § 16-5501(1)(B). The only allegation against Dr. Salaita around the time candidates were nominated is that he advocated for the Boycott Resolution. So Count III is either based on Dr. Salaita's communicating his views in support of the Boycott, D.C. Code § 16-5501(1)(B), or it has no factual basis against Dr. Salaita, in which case it is frivolous and subject to Rule 11. D.C. Super. Ct. Civ. R. 11(b).

Count III is not likely to succeed because it is barred by the statute of limitations, as this Court has found. Am. Order 22. It is also not likely to succeed against Dr. Salaita because Plaintiffs failed to submit any evidence to support their claim (nor does their Complaint even allege) that he had any involvement in any failure to nominate people for ASA positions (since he was not even on the National Council), or that failing to nominate candidates opposed to the Boycott meant that they failed to represent "the diversity of the association's membership," resulting in an *ultra vires* act or a breach of contract.

D. Count IV: *Ultra Vires* and Breach of Contract for Freezing Membership Rolls to Prohibit Voting

Plaintiffs seem to argue that the Anti-SLAPP Act does not apply to Count IV because voting questions are routinely resolved by courts, Opp'n 7, again demonstrating their fundamental misunderstanding of the Anti-SLAPP Act. The question is not whether a claim is justiciable; it is whether it is based on protected activity, and whether it is likely to succeed. Plaintiffs' only allegation against Dr. Salaita around the time membership rolls were frozen is that he advocated for the Boycott Resolution. Compl. ¶ 46. So Count IV is either based on Dr. Salaita's communicating his views in support of the Boycott, D.C. Code § 16-5501(1)(B), or it has no factual basis whatsoever, in which case it is frivolous and subject to Rule 11. D.C. Super. Ct. Civ. R. 11(b). Count IV is not likely to succeed because it is barred by the statute of limitations, as this Court found. Am. Order 22. It is also not likely to succeed against Dr. Salaita because Plaintiffs failed to submit any evidence to support their claim.

E. Count V: *Ultra Vires* and Breach of Contract for Substantial Part of Activities Attempting to Influence Legislation

Rather than addressing the first prong of the Anti-SLAPP Act, Plaintiffs instead assert that because *ultra vires* activity can be challenged, and because lobbying restrictions[7] for 501(c)(3) tax-exempt organizations exist and do not violate the First Amendment, then they must be enforceable,[8] and therefore the Anti-SLAPP Act cannot apply. Opp'n 8–9. This is wrong and

[7] Plaintiffs incorrectly assert that federal tax exemption law and the ASA's "organic documents" "preclude" it from attempting to influence legislation. Opp'n 8 (without citation). There is no "ban" on lobbying; the ASA's Statement of Election, which mirrors § 501(c)(3) of the Internal Revenue Code, Compl. ¶ 32, states that no "substantial part" of corporate activities should attempt to influence legislation. Pls.' Omnibus Opp'n to Defs.' Mots. to Dismiss (June 14, 2019), Ex. C, Statement of Election to Accept of ASA ¶ 3, § 4.

[8] Plaintiffs incorrectly cite *Family Trust of Massachusetts, Inc. v. United States,* 892 F. Supp. 2d 149 (D.D.C. 2012), *aff'd,* 722 F.3d 355 (D.C. Cir. 2013), claiming that the court enforced the "ban on non-profits' engaging in lobbying." Opp'n 8. In that case, a special needs trust sought

nonsensical. Defendants brought an anti-SLAPP motion, not a First Amendment challenge to lobbying restrictions. Under Plaintiffs' argument, anti-SLAPP laws would serve no purpose, as they could only apply to claims brought under laws that violate the First Amendment. As explained in Dr. Salaita's Supplemental Memorandum, any attempts to influence legislation by Defendants are protected by the Anti-SLAPP Act not only because they were based on the 2013 Resolution, *Bronner*, 259 A.3d at 749, but because such advocacy was comprised of statements "[i]n connection with an issue under consideration or review by a legislative . . . body." D.C. Code § 16-5501(1)(A)(i); Salaita Mem. 12 (citing *Abbas v. Foreign Policy Grp., LLC*, 975 F. Supp. 2d 1, 13 (D.D.C. 2013), *aff'd on other grounds*, 783 F.3d 1328 (D.C. Cir. 2015)); *see also* D.C. Code § 16-5501(1)(B) (petitioning the government). Count V therefore arises from an act in furtherance of the right of advocacy.[9]

Count V is not likely to succeed against Dr. Salaita because it is barred by the statute of limitations, as previously found by this Court, Am. Order 22–23, and also because Plaintiffs have submitted no evidence to support their claim against Dr. Salaita, including that he engaged in any lobbying (much less that he did so on behalf of the ASA, when he was not even on the National Council), or that lobbying was a "substantial part" of the ASA's activities.

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tax-exemption, but was found to operate for commercial purposes. *Family Trust of Mass.*, 892 F. Supp. 2d at 159, 161. The IRS did "not contend that the FTM is an organization that seeks to influence legislation." *Id.* at 155. Plaintiffs are correct, however, that the case had nothing to do with protected speech activity—it is therefore irrelevant.

[9] Plaintiffs' assertion that enforcement "does not relate to the content of speech but simply to whether lobbying" was engaged in, Opp'n 9, is inapposite—the Anti-SLAPP Act permits dismissal of statements made in "connection with an issue under consideration or review by a legislative . . . body." D.C. Code § 16-5501(1)(A)(i). The content of the statements is irrelevant for this provision of the Anti-SLAPP Act.

F. Count IX: Corporate Waste

Plaintiffs fail to respond to Dr. Salaita's argument that claims under Count IX for corporate waste arise from acts that are protected under the Anti-SLAPP Act: namely the funding of litigation, public communications, and lobbying. *See supra* Section II.B, Count II. Moreover, as the D.C. Court of Appeals noted, Count IX for the "use of funds to 'declare enacted' the 2013 Resolution" does "appear to be based on the 2013 Resolution," and is therefore likely protected under the Anti-SLAPP Act. *Bronner*, 259 A.3d at 749. Plaintiffs do not address this point.

As in Count II, Plaintiffs fail under the second prong, too: they proffer no evidence tying Dr. Salaita to any improper use of ASA funds or showing that they suffered any injury (paid any dues), nor do they address Dr. Salaita's arguments that claims against directors for using funds to defend the corporation in litigation fail as a matter of law. Salaita Mem. 14.

G. Count X: Breach of Fiduciary Duty for "Removal" of Plaintiff Bronner

Plaintiffs do not respond to Dr. Salaita's argument that the claim under this Count that Defendants breached their fiduciary duties by "spreading false information" through emails arises from a "written or oral statement" that is protected under the first prong of the Anti-SLAPP Act. Salaita Mem. 15. They also do not respond to Dr. Salaita's argument that the claim that Defendants breached their fiduciary duties by "shutting down the Encyclopedia" is protected under the Anti-SLAPP Act, as the decision not to publish written entries is itself a form of expression. *Id*. By arguing that liability based on Defendants' choice to refrain from speaking is categorically different from liability based on Defendants' choice to speak, Opp'n 4–5, Plaintiffs ignore Supreme Court precedent that "in the context of protected speech, the difference [between compelled speech and compelled silence] is without constitutional significance." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796–97 (1988).

Plaintiffs also fail to proffer evidence demonstrating that they are likely to succeed on the merits. They have presented no evidence that Dr. Salaita made any statements related to Bronner's tenure as editor, or participated in any decision on Bronner's (or anyone else's) appointment or on whether to continue publishing Encyclopedia entries. Salaita Mem. 16.

H. Count XI: Tortious Interference with Contractual Business Relations

Similar to Count X, Plaintiffs fail to respond to Dr. Salaita's argument that the claim that Defendants tortiously interfered with Plaintiff Bronner's contract in part "by making false and pejorative statements about him to the entire National Council, and to others," Compl. ¶¶ 329, 331, is protected under the first prong of the Anti-SLAPP Act. Salaita Mem. 16–17.

Plaintiffs also fail to satisfy their burden under the second prong. Despite acknowledging that Count XI can only be based on actions taken when Dr. Salaita was not a fiduciary, Compl. ¶ 332, Plaintiffs do not present any evidence showing that Dr. Salaita took any actions related to Plaintiff Bronner before his tenure on the National Council began in July 2015. Salaita Mem. 17. They also do not proffer any evidence to show why Plaintiff Bronner might have had an expectation that the ASA would renew his contract as editor of the Encyclopedia despite his suing the ASA. Salaita Mem. 17–18.

I. Count XII: Aiding and Abetting Breach of Fiduciary Duty

Plaintiffs' one and only response regarding Count XII is that it relates to Plaintiff Bronner and the non-renewal of his contract, so it does not relate to Defendants' speech. Opp'n 9. But Plaintiffs' Count XII against Dr. Salaita, which is brought by all Plaintiffs, has absolutely nothing to do with Plaintiff Bronner or his contract. Plaintiffs' claim against Dr. Salaita is 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," and that this "substantial assistance . . . constitutes aiding and abetting breach of fiduciary duty." Compl. ¶ 337. Count XII against Dr.

Salaita is unquestioningly based on acts in furtherance of the right of advocacy—his statements supporting adoption of a boycott "communicat[ed] views to members of the public in connection with an issue of public interest." D.C. Code § 16-5501(1)(B).

As we have argued, Salaita Mem. 19–20, Count XII is not likely to succeed against Dr. Salaita because it is barred by the statute of limitations, and because Plaintiffs failed to submit any evidence to support their aiding and abetting claim against him, including that he was "generally aware of his role as part of an overall illegal or tortious activity at the time that he provide[d] the assistance" and that he "knowingly and substantially assist[ed] the principal violation." *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983).

III. Plaintiffs' Argument on Equitable Tolling Fails.

Plaintiffs argue that this Court should revisit its ruling dismissing some claims under D.C. Superior Court Rule of Civil Procedure 12(b)(6), Am. Order 20–24, as time-barred. Opp'n 9–11. The D.C. Court of Appeals' opinion also requires this Court to rule that time-barred claims are not likely to succeed under the second prong of the Anti-SLAPP Act. *Bronner*, 259 A.3d at 741. Plaintiffs disingenuously argue that *Neill v. District of Columbia Public Employee Relations Board*, 234 A.3d 177 (D.C. 2020), "ma[kes] clear" that its ruling in *Bond v. Serano*, 566 A.2d 47, 49 (D.C. 1989) (per curiam), where it held that the statute of limitations is not tolled by the pendency of a suit filed earlier in federal court and dismissed for lack of subject matter jurisdiction, is no longer "in force in this jurisdiction." Opp'n 10. But the Court of Appeals in *Neill* does not mention *Bond*, much less overrule it; nor is *Neill* relevant to the question of whether the statute of limitations should be equitably tolled in such circumstances. The excerpt that Plaintiffs quote from *Neill* is simply the court's restatement (quoting a 2017 case) of the general standard that courts use to determine the appropriateness of equitable tolling in any case. *Id.*; *see also Neill*, 234 A.3d at

186. But the Court of Appeals has already expressly answered whether equitable tolling is appropriate in cases such as Plaintiffs' here, ruling in *Bond* that it is not.[10] 566 A.2d at 49.

CONCLUSION

Dr. Salaita respectfully requests dismissal of Plaintiffs' claims against him under the Anti-SLAPP Act, with prejudice, and seeks costs, attorneys' fees and any other appropriate relief.

Dated: May 27, 2022

Respectfully Submitted,

/s/Maria C. LaHood

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[10] Even if equitable tolling were to apply here, it would not toll the claims against Dr. Salaita, who was not sued until the Second Amended Complaint was filed on March 6, 2018, nearly five years after the Resolution was passed. Second Am. Compl., *Bronner v. Duggan*, 364 F. Supp. 3d 9 (D.D.C. 2019) (No. 16-0740 (RC)), ECF No. 81.

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2022, I electronically filed Defendant Salaita's Supplemental Reply Memorandum in Support of his Special Motion to Dismiss Plaintiffs' Complaint Pursuant to D.C. Code § 16-5501, *et seq.* through the CaseFileXpress system, which sends notification to counsel of record who have entered appearances:

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