

**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

**DEFENDANT DR. STEVEN SALAITA'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

I. BACKGROUND

This matter comes before the Court on Defendant Dr. Salaita's Special Motion to Dismiss Plaintiffs' Complaint pursuant to the District of Columbia Anti-SLAPP Act of 2010 ("Anti-SLAPP Act" or "Act"), D.C. Code § 16-5501, *et seq.* Supplemental briefing on the Motion was completed on May 27, 2022,¹ and a hearing was held on October 27, 2022. The following exhibit was submitted as evidence by Defendants American Studies Association ("ASA"), et al.: American Studies Association Editor Agreement effective as of January 1, 2014. In opposing Defendants' Anti-SLAPP Motions, Plaintiffs did not present one piece of evidence.

Plaintiffs have not presented any evidence against Dr. Salaita (or any Defendants) despite two rounds of Anti-SLAPP briefing. At the hearing on October 27, 2022, Plaintiffs argued that their Complaint refers to excerpts of documents that Plaintiffs claim to have, suggesting that this Court should accept that as a proffer of evidence. But they have not actually proffered these documents: they have not attached them to their motions, and they have not provided either the Court or Defendants with the opportunity to verify that the excerpts in Plaintiffs' have in their Complaint are accurate or complete, or to rebut them with evidence. What Plaintiffs have presented are mere allegations, which, needless to say, do not qualify as evidence for purposes of an Anti-SLAPP motion. *See Newton v. Office of the Architect of the Capitol*, 840 F. Supp. 2d 384, 397 (D.D.C. 2012) (allegations in a complaint are not evidence for purposes of a summary judgment motion).

¹ This Court held an initial hearing on the Motion on July 17, 2019 and issued an order denying the Motion on November 15, 2019, which it amended on December 12, 2019. Dr. Salaita and other Defendants appealed. The D.C. Court of Appeals vacated the denial of the Special Motion to Dismiss and remanded the case for further proceedings consistent with its opinion on September 30, 2021.

Dr. Salaita therefore does not concede that any of these Proposed Findings of Fact are supported by evidence or that they are undisputed, but simply that these are the facts alleged by Plaintiffs that are relevant to their claims against Dr. Salaita. *See* D.C. Super. Ct. Civ. R. 52(a)(5) (“A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.”). Dr. Salaita also adopts and incorporates the Proposed Findings of Fact and Conclusions of Law put forth by other Defendants in this litigation, to the extent not inconsistent with the arguments contained herein.

The issues before the Court are (1) whether Plaintiffs’ claims against Dr. Salaita under Counts I, II, III, IV, V, IX, X, XI, and XII arise from acts in furtherance of the right of advocacy on issues of public interest; and (2) whether Plaintiffs have demonstrated that they are likely to succeed on the merits of those claims against Dr. Salaita. D.C. Code § 16-5502.

II. PROPOSED FINDINGS OF FACT

1. In December 2013, the American Studies Association adopted a public Resolution endorsing the call of Palestinian civil society for a boycott of Israeli academic institutions (the “Resolution” or “Boycott Resolution”). Compl. ¶ 4.

2. Defendant Dr. Steven Salaita’s term on the ASA National Council began July 1, 2015, a year and a half after the Resolution was adopted, and ended June 30, 2018. *Id.* at ¶ 26.

3. The National Council serves as the Board of Directors of the ASA and consists of over 20 members. Compl. Ex. C., ASA Bylaws, art. V, § 1-2.

4. Plaintiffs allege that before Dr. Salaita was on the National Council, he advocated for the Boycott Resolution. Compl. ¶¶ 26, 46. In an op-ed published in 2014, Dr. Salaita stated 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.” *Id.* at ¶ 46; *see also* ¶ 337.

5. USACBI is a “United States-based campaign focused on a boycott of Israeli academic and cultural institutions.” *Id.* at ¶ 35. It “lobbies organizations to boycott Israeli academic and cultural institutions as a form of protest against the state’s treatment of Palestinians.” *Am. Studies Ass’n v. Bronner*, 259 A.3d 728, 735 (D.C. 2021).

6. Plaintiffs allege that Dr. Salaita was a member of the National Council “when large withdrawals were taken” from the ASA Trust and Development Fund (the “Trust Fund”) “to cover expenses related to the Academic Boycott.” *Id.* at ¶ 26. Such withdrawals were allegedly taken to defend the ASA against litigation related to the Resolution. *Id.* at ¶ 175.

7. The ASA Trust Fund is administered by a Board of Trustees, an entity that is separate from the National Council. Compl. Ex. A, ASA Constitution & Bylaws, Constitution art. VIII, § 6; Compl. Ex. C, ASA Bylaws, art. XIII, § 2.

8. During the relevant time period, ASA owned the Encyclopedia of American Studies (the “Encyclopedia”). *See* Supplemental Mem. of Law in Supp. of Defs. ASA et al.’s Mot. to Dismiss Under Anti-SLAPP Act, Apr. 1, 2022, Ex. A, ASA Editor Agreement (“Editor Agreement”) at 1. The purpose of the Encyclopedia is to “serve the needs of scholars, graduate students, college students and a high school audience [and] cover the range of American history, philosophy, arts, and cultures from various perspectives,” covering a range of topics including the environment, education, medicine, public figures, and social reform. *History of the Encyclopedia of American Studies*, JOHNS HOPKINS UNIV. PRESS, <https://eas-ref.press.jhu.edu/about/history.html> (last visited Nov. 17, 2022).

9. Plaintiff Bronner’s contract as editor of the Encyclopedia ended on December 31, 2016, after he completed his term. *See* Editor Agreement at 1.

10. Plaintiffs do not allege any facts and have not presented evidence to show that Dr. Salaita was personally involved in any decision to withdraw ASA funds or in anything related to Plaintiff Bronner’s contract as editor.

11. There is no allegation or evidence to support that Plaintiffs have paid membership dues since at least 2014. Compl. ¶¶ 16-17. Additionally, there is no allegation or evidence that Plaintiffs Bronner and Rockland ever paid membership dues since they are honorary lifetime ASA members. Compl. ¶¶ 14-15; Compl. Ex. A, ASA Constitution & Bylaws, Constitution, art. II, § 1(c); Compl. Ex. C, ASA Bylaws, art. II, § 1(c).

12. Plaintiffs have not alleged or demonstrated any other facts related to Dr. Salaita.

III. PROPOSED CONCLUSIONS OF LAW

A. The Anti-SLAPP Act.

13. The Anti-SLAPP Act provides protections from claims that “aris[e] from an act in furtherance of the right of advocacy on issues of public interest.” D.C. Code § 16-5502(a). Under the Anti-SLAPP Act, Dr. Salaita must first meet his burden by showing that the claims against him have “a substantial connection or nexus to a protected act.” *Bronner*, 259 A.3d at 746. Or in other words, “that some form of speech within the Anti-SLAPP Act’s protection is the basis of the asserted cause of action.” *Id.* The Anti-SLAPP statute itself defines what acts are protected. D.C. Code § 16-5501.

14. Once Dr. Salaita satisfies this burden, the burden shifts to Plaintiffs to show they are likely to succeed on the merits of their claims. D.C. Code § 16-5502(b). This “requires more than mere reliance on allegations in the complaint, and mandates the production or proffer of

evidence that supports the claim.” *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1233 (D.C. 2016), *as amended* (Dec. 13, 2018). When deciding on an Anti-SLAPP motion, a court must not weigh the evidence itself, *id.* at 1236, but must instead evaluate whether the evidence presented is “legally sufficient to permit a jury properly instructed on the applicable constitutional standards to reasonably find in the plaintiff’s favor.” *Id.* at 1221.

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

15. This Court will examine each of Plaintiffs’ Counts—those already dismissed by this Court’s order on December 12, 2019 under Super. Ct. Civ. R. 12(b)(6) and those not dismissed under 12(b)(6)—using the Anti-SLAPP standard clarified by the D.C. Court of Appeals. *Bronner*, 259 A.3d at 749–50.

i. Counts I, III, IV, V, and Parts of Counts II and IX All Arise from Dr. Salaita’s Pre-July 2015 Advocacy, Which is Protected Under the Anti-SLAPP Act, and are Not Likely to Succeed on the Merits.

16. Plaintiffs’ claims under those Counts (Counts I, III, IV, V, and parts of Counts II and IX) that this Court has already dismissed under the 12(b)(6) standard, and therefore fail the second prong of the Anti-SLAPP Act, *Bronner*, 259 A.3d at 734, are all related to events that occurred before Dr. Salaita’s tenure on the National Council began in July 2015. The only allegation related to Dr. Salaita that relates to this time period is that, through USACBI, he advocated that the ASA should endorse the call for a boycott of Israeli academic institutions. Compl. ¶¶ 26, 46, 99, 337. Since the only allegation related to Dr. Salaita before July 2015 is this expression of support for the Boycott Resolution, it is the only thing that can be “the basis of the asserted cause of action” against Dr. Salaita. *Bronner*, 259 A.3d at 746.

17. In other words, Plaintiffs take issue with the fact that Dr. Salaita expressed support for the Boycott Resolution (which Plaintiffs have not contested is an issue of public interest) to

members of the ASA when he was not a fiduciary of the ASA. Plaintiffs have not identified any other action Dr. Salaita took prior to his tenure on the National Council.

18. Dr. Salaita's advocacy in support of the ASA Resolution, his attempts to advocate his views on the importance of academic boycotts, is protected under the Anti-SLAPP Act as expression that involves "communicating views to members of the public in connection with an issue of public interest." D.C. Code § 16-5501(1)(B).

19. Plaintiffs also claim that Defendants generally, though not Dr. Salaita specifically, engaged in other acts that form the basis of these and all other Counts. This Court is persuaded, for the reasons that follow, that those acts are also protected under the Anti-SLAPP Act and that Plaintiffs' claims are not likely to succeed on the merits.

ii. Count I Arises from Acts in Furtherance of the Right of Advocacy and is Not Likely to Succeed on the Merits.

20. Under Count I (breach of fiduciary duty for material misrepresentations and omissions in connection with elections to office and seeking member approval of the academic boycott), Plaintiffs allege that Defendants generally, though not Dr. Salaita specifically, breached their fiduciary duties in connection with the 2013 ASA elections by failing to disclose their political agenda to endorse a boycott of Israeli academic institutions, alleging that some Defendants failed to sufficiently mention USACBI, Israel, and/or academic boycotts in their written candidate statements that went to approximately 4,000 ASA members. Compl. ¶¶ 64, 66, 67, 262. Also under Count I, Plaintiffs claim that Defendants generally, though not Dr. Salaita specifically, withheld information and dissenting viewpoints in connection with the vote on the Boycott Resolution, and that they did not tell members that the ASA would be "widely attacked" because of the resolution. *Id.* at ¶ 113. *See also id.* at ¶¶ 101, 105, 117, 262. They allege Defendants

disseminated “pro-boycott propaganda,” *id.* at ¶ 117, on the ASA’s website, as well as directly to the ASA membership, the academic community, and the press. *Id.* at ¶¶ 114, 119, 120.

21. This Court is persuaded that the Anti-SLAPP Act protects both expression and what is omitted from expression, as the U.S. Supreme Court has held that Constitutional protections on speech also protect decisions of what not to say. *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 797 (1988) (“freedom of speech” is “a term necessarily comprising the decision of both what to say and what not to say”); *see also Lawless v. Mulder*, No. 2021 SC3 000441, 2021 WL 4854260, at *3 (D.C. Super. Ct. Oct. 5, 2021) (editorial decision not to publish certain information is protected under D.C. Anti-SLAPP Act); *Navellier v. Sletten*, 52 P.3d 703, 709 (Cal. 2002) (protecting misrepresentations, failure to disclose, and omissions under California’s anti-SLAPP act).

22. Any claim based on what was said (or not said) to members of the ASA, through candidate statements or otherwise, in relation to Israel, academic boycotts generally, or the Boycott Resolution (which Plaintiffs concede is an issue of public interest), constitutes expressions that involve “communicating views to members of the public in connection with an issue of public interest.” D.C. Code § 16-5501(1)(B).

23. What was posted on (or omitted from) the ASA website, which is accessible to the public, regarding the Resolution or academic boycotts generally also constitutes statements 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).

24. Any statements made (or withheld) in connection with the ASA election or vote for the Resolution were also made “[i]n connection with an issue under consideration” by an “official proceeding authorized by law,” *id.* at § 16-5501(1)(A)(i), namely proceedings authorized by the

D.C. Nonprofit Corporation Act, D.C. Code §§ 29-405.20–26 (voting procedures), 29-405.27 (voting for directors).

25. Because Dr. Salaita has satisfied his burden under the first prong of the Anti-SLAPP Act with regard to Count I, the burden shifts to Plaintiffs to demonstrate that they are likely to succeed on the merits of their claims. *Mann*, 150 A.3d at 1233.

26. Plaintiffs cannot succeed on the merits of their claims against Dr. Salaita under Count I because this Court has already ruled that Plaintiffs have not alleged any misrepresentations by Dr. Salaita when he ran for office. Am. Order, Dec. 12, 2019, at 29; *Bronner*, 259 A.3d at 734.

27. Accordingly, Dr. Salaita’s Special Motion is granted as to Count I.

iii. Count II and Count IX Arise from Acts in Furtherance of the Right of Advocacy and are Not Likely to Succeed on the Merits.

28. Under Counts II (breach of fiduciary duty for misuse of assets) and IX (corporate waste), Plaintiffs claim that Dr. Salaita was on the National Council when funds were withdrawn from the ASA Trust Fund to cover expenditures related to the Resolution. Compl. ¶¶ 26, 266, 316. The only expenditures that were allegedly made during Dr. Salaita’s tenure on the National Council that are related to the Resolution are legal fees for defending against Plaintiffs’ own lawsuit, Compl. ¶ 187, so these expenditures are the only basis of the claims against him.

29. This Court is persuaded that expenditures on litigation are protected under the Anti-SLAPP Act as “expressive conduct that involves petitioning the government” or a “statement made . . . [i]n connection with an issue under . . . review by a . . . judicial body.” D.C. Code §§ 16-5501(1)(A)(i), (1)(B).

30. The U.S. Supreme Court has held that expenditures on expression are protected as expression. *See, e.g., Citizens United v. Fed. Election Comm.*, 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). It has also held, in a case involving the NAACP’s solicitation and financing of litigation, that those activities are a form of “expression . . . protected by the [First Amendment].” *NAACP v. Button*, 371 U.S. 415, 428-29 (1963).

31. California courts have also found that funding litigation is “communicative conduct” protected under a similar provision of the California’s anti-SLAPP statute. *See Rusheen v. Cohen*, 128 P.3d 713, 718 (Cal. 2006) (funding a civil action is “communicative conduct” protected under anti-SLAPP statute); *Sheley v. Harrop*, 9 Cal. App. 5th 1147, 1166 (Cal. Ct. App. 2017) (litigation funding decisions by majority shareholders in a corporation fall under anti-SLAPP provision that protects any statement “made in connection with an issue under consideration or review by a . . . judicial body.”).

32. Plaintiffs counter that this claim presents a simple “question[] of . . . whether access to the corporation’s assets was allocated fairly.” Pls.’ Mem. on Remand, May 6, 2022, at 6. But the basis of Plaintiffs’ claims is that the allocation of ASA assets was unlawful *because* they were used for litigation—expression—related to the Resolution. The Court is persuaded therefore that these claims arise from that expression.

33. Plaintiffs also argue that their claims under these Counts against Defendants generally arise from the use of ASA resources on the ASA website, “public relations,” and “lobbying.” Pls.’ Mem. on Remand 3. This Court is persuaded that these are also protected under

the Anti-SLAPP Act for the same reason as expenditures on litigation: namely, that Plaintiffs' claims arise from the underlying expression.

34. Plaintiffs' claims regarding the website and "public relations" are based on Defendants' alleged use of the ASA website and other communication tools, which Plaintiffs acknowledge is a "valuable vehicle of communication," Compl. ¶ 83, to "spread their message" about the Resolution. *Id.* at ¶ 76. *See also id.* at ¶¶ 83, 86, 186. This is protected as expression that involves "communicating views to members of the public in connection with an issue of public interest," and "written or oral statements 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), (1)(B).

35. Lobbying is also protected 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).

36. Finally, the D.C. Court of Appeals also stated that any claim under Count IX related to the use of ASA funds to "declare enacted" the Resolution, Compl. ¶ 316, arises from the Resolution, which is protected. *Bronner*, 259 A.3d at 749. Similarly, any claim related to the use of funds to "advocate" the Resolution, Compl. ¶ 316, arises from the Resolution, which is protected.

37. Since Dr. Salaita has met his burden under the Anti-SLAPP Act, the burden shifts to Plaintiffs to present evidence to show that their claims are likely to succeed on the merits. *Mann*, 150 A.3d at 1221.

38. This Court has already ruled that parts of Counts II and IX that are related to events that occurred before March 2016 are time-barred, Am. Order 21, 24, and therefore they are not likely to succeed on the merits. *Bronner*, 259 A.3d at 741.²

39. As to the remaining parts of Count II and IX, Plaintiffs have proffered no evidence to support their claims against Dr. Salaita, despite having had two opportunities to do so: one in opposition to the original Anti-SLAPP Motion, and one on this round of briefing, after the Court of Appeals affirmed the requirement that Plaintiffs must proffer “admissible, credible evidence.” *Bronner*, 259 A.3d at 740.

40. Under Counts II and IX, Plaintiffs have not alleged any facts, much less proffered evidence, that Dr. Salaita had any role in withdrawals from the ASA Trust Fund. Crucially, the Trust Fund is administered by the Board of Trustees (which Dr. Salaita was not on), not by the National Council (which Dr. Salaita was on). Compl. Ex. A, ASA Constitution & Bylaws, Constitution art. VIII, § 6; Compl. Ex. C, ASA Bylaws, art. XIII, § 2.

41. Even if Plaintiffs had proffered sufficient evidence against Dr. Salaita, which they have not, this Court is still not persuaded that their claims could succeed on the merits because Plaintiffs have not demonstrated that they have suffered any injury by the use of ASA assets: none of the Plaintiffs presented evidence that they have paid any membership dues since 2014. *See* Compl. ¶¶ 14-17 (no allegation that any Plaintiffs have paid dues since 2014); *contra Daley v.*

² There were parts of Count II alleged to occur prior to March 2016 that the Court found were preserved by the discovery rule, Am. Order 20, but this cannot apply to Dr. Salaita, because as Plaintiffs allege, he had publicly made his involvement in advocating for the Resolution clear in a 2014 op-ed, when he stated that he had worked with USACBI “closely during the process to pass” the ASA Resolution. Compl. ¶ 46. Plaintiffs have not demonstrated they recently discovered information essential to an element of their claims against Dr. Salaita, so the discovery rule does not preserve those parts of Counts II related to events before March 2016.

Alpha Kappa Alpha Sorority, Inc., 26 A.3d 723, 729 (D.C. 2011) (dues-paying members of non-profit have standing to complain when non-profit's funds are spent in violation of law).

42. Finally, it is not a breach of fiduciary duty or corporate waste to defend the corporation against litigation (which, in this case, Plaintiffs themselves brought). 3A FLETCHER CYC. CORP. § 1112 (West 2022) (“the payment of an attorney for legal services performed for the company is not improper.”); *Kaplan v. First Hartford Corp.*, 484 F. Supp. 2d 131, 144 (D. Me. 2007) (“Directors 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”); *In re Cray Inc. Derivative Litig.*, 431 F. Supp. 2d 1114, 1134 (W.D. Wash. 2006) (citing cases finding that derivative claim for potential costs of litigation are insufficient to state claims for breach of fiduciary duty and corporate waste).

43. Accordingly, Dr. Salaita's Special Motion is granted as to Counts II and IX.

iv. Count III Arises from an Act in Furtherance of the Right of Advocacy and is Not Likely to Succeed on the Merits.

44. Under Count III (ultra vires and breach of contract for failure to nominate officers and National Council reflecting diversity of membership), Plaintiffs allege that Defendants generally violated the ASA constitution when, in the lead up to the vote on the Resolution, some of them nominated too many candidates, some of whom are Defendants in this litigation, Compl. ¶¶ 53-55, who endorsed—or publicly stated their support for—USACBI. Compl. ¶¶ 62-65, 269. This Count therefore arises from those Defendants' public expressions about USACBI and academic boycotts, which is “expression that involves . . . communicating views to members of the public in connection with an issue of public interest.” D.C. Code § 16-5501(1)(B).

45. Plaintiffs cannot succeed on the merits of their claims against Dr. Salaita under Count III because this Court has already ruled it is time-barred. Am. Order 22; *Bronner*, 259 A.3d at 741.

46. Accordingly, Dr. Salaita's Special Motion is granted as to Count III.

v. Count IV Arises from an Act in Furtherance of the Right of Advocacy and is Not Likely to Succeed on the Merits.

47. Under Count IV (*ultra vires* and breach of contract for freezing membership rolls to prohibit voting), Plaintiffs assert that Defendants acted *ultra vires* and in violation of the ASA constitution when they denied Plaintiff Barton (and other lapsed or new ASA members) the right to vote solely because they opposed the Boycott Resolution. Compl. ¶¶ 128, 281, 283. The only allegation against Dr. Salaita related to the time period in which membership rolls were frozen is that through USACBI, he advocated that the ASA should endorse the call for a boycott of Israeli academic institutions. *Id.* at ¶¶ 26, 46. Dr. Salaita's advocacy for the Resolution must therefore be the basis for his asserted liability under Count IV. His advocacy is protected under the Anti-SLAPP Act as expressions that involved "communicating views to members of the public in connection with an issue of public interest." D.C. Code § 16-5501(1)(B); *see supra*, Section III(B)(i).

48. Plaintiffs cannot succeed on the merits of their claims against Dr. Salaita under Count IV because this Court has already ruled it is time-barred. Am. Order 22; *Bronner*, 259 A.3d at 741.

49. Accordingly, Dr. Salaita's Special Motion is granted as to Count IV.

vi. Count V Arises from an Act in Furtherance of the Right of Advocacy and is Not Likely to Succeed on the Merits.

50. Under Count V (*ultra vires* and breach of contract for substantial part of activities attempting to influence legislation), Plaintiffs allege that Defendants generally, through the

Resolution itself and otherwise, attempted to influence or oppose legislation, Compl. ¶ 153, in violation of the ASA’s Statement of Election. *Id.* at ¶¶ 289-92. As the D.C. Court of Appeals stated, this claim casts the Resolution itself as an attempt to influence legislation, and is therefore based on the Resolution, which is protected under the Anti-SLAPP Act. *Bronner*, 259 A.3d at 749. Additionally, any claim of influencing or opposing legislation arises out of expression, namely the ASA’s efforts to oppose “an issue under consideration or review by a legislative . . . body” that might affect the organization, D.C. Code § 16-5501(1)(A)(i), and as “[a]ny other expression . . . that involves petitioning the government.” D.C. Code § 16-5501(1)(B). At the hearing on October 27, 2022, counsel for Plaintiffs conceded that lobbying is protected. Hr’g, Oct. 27, 2022 (Counsel for Plaintiffs, Jerome Marcus).

51. Plaintiffs cannot succeed on the merits of their claims against Dr. Salaita under Count V because this Court has already ruled that it is time-barred. Am. Order 22-23; *Bronner*, 259 A.3d at 741.

52. Accordingly, Dr. Salaita’s Special Motion is granted as to Count V.

vii. Counts X and XI Arise from Acts in Furtherance of the Right of Advocacy and are Not Likely to Succeed on the Merits.

53. Under Counts X (breach of fiduciary duty) and XI (tortious interference), Plaintiffs claim that some Defendants “spread[] false information” about Plaintiff Bronner which they “widely shared” to “the National Council and outside of the National Council,” Compl. ¶¶ 324, 329, 334, and which resulted in a decision by the ASA to not enter into a new contract with him as editor of the Encyclopedia after his contract expired on December 31, 2016.³ Compl. ¶¶ 324, 331.

³ Plaintiffs do not claim that Dr. Salaita had the authority to renew Plaintiff Bronner’s contract, so any claim against him cannot possibly arise from the non-renewal of the contract.

54. This Court is persuaded that this claim arises out of expression protected under the Anti-SLAPP Act. The information that Defendants shared “widely” about Plaintiff Bronner was allegedly about his opposition to the Resolution, which is an issue of public interest, and Defendants’ perceptions of his efforts to undermine the ASA after the vote on the Resolution. Compl. ¶¶ 201(b), 205 n. 13. And any claim based on “spreading false information” that is “widely shared,” through emails and otherwise, arises from a “written or oral statement” or “expression . . . that involves . . . communicating views to members of the public.” D.C. Code §§ 16–5501(A), (1)(B). *See Bronner*, 259 A.3d at 744 (describing cases where direct link between claims and speech are apparent).

55. Plaintiffs also claim that the Encyclopedia was “shut down” because Defendants did not publish entries on the Encyclopedia. Compl. ¶¶ 234, 236–38.

56. This claim arises out of expression protected under the Anti-SLAPP Act, as the decision not to publish entries in the Encyclopedia is itself a form of expression. *Riley*, 487 U.S. 797 (“freedom of speech” is “a term necessarily comprising the decision of both what to say and what not to say.”); *Lawless*, 2021 WL 4854260, at *3 (editorial decision not to publish certain information is protected under D.C. Anti-SLAPP Act). The Encyclopedia is a website that is “open to the public,” D.C. Code § 16–5501(1)(A)(ii), and that “communicat[es] views to members of the public in connection with an issue of public interest.” D.C. Code § 16–5501(1)(B).⁴

57. Since Dr. Salaita has met his burden under the Anti-SLAPP Act, the burden shifts to Plaintiffs to present evidence to show they are likely to succeed on the merits. But under Count

⁴ *History of the Encyclopedia of American Studies*, JOHNS HOPKINS UNIV. PRESS, <https://eas-ref.press.jhu.edu/about/history.html> (last visited Nov. 17, 2022) (purpose of the Encyclopedia is to “serve the needs of scholars, graduate students, college students and a high school audience [and] cover the range of American history, philosophy, arts, and cultures from various perspectives.”).

X and XI, Plaintiffs have not alleged any facts, and have proffered no evidence to show, that Dr. Salaita himself was personally involved in anything related to Bronner and his contract as editor of the Encyclopedia; in the ASA's decision to not enter into a new contract with Bronner (or that any member of the National Council would have the authority to make this decision); or in anything related to the Encyclopedia itself. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted) (“‘naked assertion[s]’ devoid of ‘further factual enhancement . . .’” cannot state a claim for relief). Additionally, Count XI for tortious interference with contractual business relations can only be based on actions Dr. Salaita took before he became a fiduciary in July 2015, as Plaintiffs acknowledge in their allegations, Compl. ¶ 332, so it is barred by the three-year statute of limitations.

58. And finally, Plaintiffs have not proffered evidence to show that it is a breach of fiduciary duty for the ASA to not enter into a contract with an individual who is in active litigation against it. Similarly, they have not shown that Plaintiff Bronner would have a reasonable expectation that his contract would be renewed when he was in active litigation against the ASA.

59. Accordingly, Dr. Salaita's Special Motion is granted as to Counts X and XI.

viii. Count XII Arises from an Act in Furtherance of the Right of Advocacy and is Not Likely to Succeed on the Merits.

60. Under Count XII, Plaintiffs claim that Dr. Salaita “acknowledged publicly that he was heavily involved in the effort to pass the [Boycott Resolution] before he was a member of the National Council,” and that this “substantial assistance . . . constitutes aiding and abetting breach of fiduciary duty.” Compl. ¶ 337.

61. According to Plaintiffs, this “substantial assistance” is described in Dr. Salaita's 2014 op-ed, in which he wrote that he worked with USACBI “closely during the process to pass” the ASA Resolution. Compl. ¶ 46. USACBI is a “United States-based campaign focused on a

boycott of Israeli academic and cultural institutions.” *Id.* at ¶ 35. It “lobbies organizations to boycott Israeli academic and cultural institutions as a form of protest against the state’s treatment of Palestinians.” *Bronner*, 259 A.3d at 735.

62. This Count is therefore based on expression, as Plaintiffs allege that Dr. Salaita’s advocacy—his speech supporting a boycott—aided and abetted passage of the ASA Resolution. Dr. Salaita’s advocacy to the public, which included ASA members, constituted “communicating views to members of the public in connection with an issue of public interest.” D.C. Code § 16-5501(1)(B). And the Resolution itself is, of course, a written or oral statement made in a public place “in connection with an issue of public interest.” D.C. Code § 16-5501(1)(A)(ii).

63. Since Dr. Salaita has met his burden under the Anti-SLAPP Act, the burden shifts to Plaintiffs to present evidence to show that they are likely to succeed on the merits. But under Count XII, Plaintiffs have not alleged any facts, much less proffered evidence, to show that Dr. Salaita (1) knew of any breach of fiduciary duty by other Defendants before he was even a member of the National Council, *Bereston v. UHS of Delaware, Inc.*, 180 A.3d 95, 99 (D.C. 2018) (“allegations of . . . knowledge . . . must be supported by well pleaded factual allegations in order to be accorded the presumption of veracity”); or that he in any way (2) substantially assisted that breach, which Plaintiffs would be required to prove in any aiding and abetting claim. *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983); *see also Iqbal*, 556 U.S. at 678 (quotation omitted) (“A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’”) Plaintiffs have only alleged that Dr. Salaita acknowledged in an op-ed that he worked with USACBI closely while advocating with the ASA to pass the Resolution. This does not support a claim for aiding and abetting breach of fiduciary duty.

64. Plaintiffs have also not demonstrated that this claim is not time-barred. The only factual allegation supporting Plaintiffs' claim against Dr. Salaita is based on his 2014 public op-ed. Compl. ¶¶ 46, 337. Plaintiffs have thus had notice of his role since 2014. Plaintiffs have not demonstrated that they subsequently obtained information necessary to bring this claim against him, and so their claim cannot be preserved by the discovery rule.

65. Accordingly, Dr. Salaita's Special Motion is granted as to Count XII.

IV. CONCLUSION

66. Dr. Salaita has made a prima facie showing that each of Plaintiffs' claims against him arise from acts in furtherance of the right of advocacy on issues of public interest. Because Plaintiffs have not proffered any evidence, and the D.C. Court of Appeals has repeatedly held that this is required to defeat an anti-SLAPP motion, Plaintiffs have failed to satisfy their burden under D.C. Code § 16-5502(b). *Mann*, 150 A.3d at 1221; *Bronner*, 259 A.3d at 740.

Accordingly, and based on the entire record herein, it is this ____ day of _____,

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;

ORDERED that pursuant to D.C. Code § 16-5504(a), Defendant Salaita, as the prevailing party, is awarded the costs of litigation, including reasonable attorneys' fees;

ORDERED that within thirty days of this order, Defendant Salaita shall submit a motion setting forth the amount of fees sought;

ORDERED that the Court shall retain jurisdiction for the purposes of adjudicating the amount of costs and fees to be awarded to Defendant Salaita; and it is

FURTHER ORDERED that the above-captioned matter is DISMISSED WITH PREJUDICE.

Dated: November 17, 2022

Respectfully Submitted,

/s/Astha Sharma Pokharel

Astha Sharma Pokharel (admitted *pro hac vice*)

Maria C. LaHood (admitted *pro hac vice*)

Shayana Kadidal (D.C. Bar No. 454248)

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A large black rectangular redaction box covering the signature and name of the attorney.

Counsel for Defendant Steven Salaita

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2022, I electronically filed Defendant Salaita's Proposed Findings of Fact and Conclusions of Law through the eFileDC system, which sends notification to counsel of record who have entered appearances, and also electronically served the following.

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