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14 **UNITED STATES DISTRICT COURT**  
15 **DISTRICT OF NEVADA**

16 COREY GERWASKI,

17 Plaintiff,

18 vs.

19 STATE OF NEVADA, ex rel. BOARD OF  
20 REGENTS of the NEVADA SYSTEM OF  
21 HIGHER EDUCATION, on behalf of the  
22 UNIVERSITY OF NEVADA, LAS VEGAS;  
23 KEITH WHITFIELD, individually; AJP  
24 EDUCATIONAL FOUNDATION INC., a  
25 California Non-Profit Corporation; STUDENTS  
FOR JUSTICE OF PALESTINE-UNLV;  
NATIONAL STUDENTS FOR JUSTICE OF  
PALESTINE; NEVADANS FOR  
PALESTINIAN LIBERATION; DOES I-XX  
and ROE entities I-XX,

Defendants.

Case No.: 2:24-cv-00985-APG-MDC

**DEFENDANT STUDENTS FOR JUSTICE  
IN PALESTINE – UNLV’S  
SPECIAL MOTION TO DISMISS  
PURSUANT TO NRS 41.660**

**[ORAL ARGUMENT REQUESTED]**

Defendant Students for Justice in Palestine, University of Nevada, Las Vegas (“Students for Justice in Palestine – UNLV” or “SJP UNLV”) moves to dismiss Plaintiff’s Intentional Infliction of Emotion Distress (“IIED”) claim against SJP UNLV pursuant to NRS 41.660, which is Nevada’s Anti-SLAPP statute. SJP UNLV also moves for attorney fees, costs, and any monetary award it is entitled to under NRS 41.670(1)(b).

1 Dated: April 11, 2025

2 **ACLU OF NEVADA**

3 /s/ Christopher Peterson

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14 Laura Silver, et al. *Majority in U.S. say Israel has valid reason for filing; fewer say the same about  
 15 Hamas*, Pew Research Center (March 21, 2024) ..... 5

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 25 including East Jerusalem*, United Nations Relief and Works Agency for Palestine Refugees in  
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 Trump jostle for an edge*, AP News (October 21, 2024) ..... 6

**MEMORANDUM OF POINTS AND AUTHORITIES**<sup>1</sup>

**I. INTRODUCTION**

Plaintiff Gerwaski sued SJP UNLV to silence SJP UNLV’s political speech. His motivation is obvious from the allegations in his complaint. He does not accuse SJP UNLV of engaging in violence or vandalism. He does not accuse SJP UNLV of threatening him or doing anything else directly to him. Rather, he is angry that SJP UNLV criticizes and advocates against Israel’s military campaign against the Palestinians and wants to stop its social media activity, protests, and petitions to UNLV’s leadership.

Gerwaski has the right to disagree with SJP UNLV. He has the right to argue that the organization’s statements are antisemitic. He has the right to protest that the organization’s advocacy and claim that SJP UNLV’s efforts benefit bad actors. He does not have the right to sue SJP UNLV for engaging in nonviolent political advocacy he is offended by.

Gerwaski’s suit violates Nevada’s anti-Strategic Lawsuits Against Public Participation (‘anti-SLAPP’) laws. The communications Gerwaski puts at issue, SJP UNLV’s social media posts, protests, and petitions to UNLV, are precisely to type of communications entitled to anti-SLAPP protections, and he never alleges that these communications were false and made with knowledge of falsity. As previously discussed in SJP UNLV’s motion to dismiss filed on March 5, 2025, this suit has no probability of success because Gerwaski has failed to adequately plead any claim against SJP UNLV, including his IIED claim, and his claims are generally barred by the First Amendment.

Nevada’s anti-SLAPP provisions require this Court to dismiss Gerwaski’s anti-SLAPP claim. They also entitle SJP UNLV to fees, costs, and other relief as appropriate.

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<sup>1</sup> The extent relevant, Defendant SJP UNLV incorporates its points and authorities offered in support of its Motion to Dismiss filed March 5, 2025, in support of this motion as well. Defendant Students for Justice in Palestine UNLV’s Motion to Dismiss (March 5, 2025), ECF No. 51 (“SJP UNLV Mot. to Dismiss”).

## II. FACTS AND PROCEDURAL HISTORY

### A. October 7, 2023, attack by Hamas and the Israeli response

On October 7, 2023, Hamas attacked the nation of Israel, killing approximately 1,200 people and taking 251 hostages.<sup>2</sup> The Israeli government responded by invading Gaza.<sup>3</sup> According to the United Nations, 48,503 Palestinians have been killed, 111,927 injured, and 1.9 million displaced due to the conflict as of March 15, 2025.<sup>4</sup> The U.N. has also described the situation in Gaza as a humanitarian crisis and has accused both Hamas and Israel of war crimes related to the conflict.<sup>5</sup>

### B. The war's impact on the American public, media, and elections

The American public immediately had a strong, visceral reaction to the conflict, and while Americans were unified in their condemnation of Hamas's October 7<sup>th</sup> attack, Israel's subsequent military actions polarized the nation.<sup>6</sup> Since the conflict's instigation, American news media has provided daily coverage.<sup>7</sup> Protests have erupted across the country both on and off university

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<sup>2</sup> *Statement by Secretary of Defense Lloyd J. Austin III Marking One Year Since Hamas's October 7th Terrorist Assault on the State of Israel*, United States Department of Defense (October 7, 2024), available at <https://www.defense.gov/News/Releases/Release/Article/3927710/statement-by-secretary-of-defense-lloyd-j-austin-iii-marking-one-year-since-ham/> (last visited March 18, 2025).

<sup>3</sup> *Israel-Gaza war: A timeline of key events*, Reuters (March 18, 2025), available at <https://www.reuters.com/world/middle-east/major-moments-israel-gaza-war-2025-01-15/> (last visited March 18, 2025).

<sup>4</sup> *UNRWA situation report #168 on the humanitarian crisis in the Gaza strip and the West Bank, including East Jerusalem*, United Nations Relief and Works Agency for Palestine Refugees in the Near East (March 15, 2025), available at <https://www.unrwa.org/resources/reports/unrwa-situation-report-163-situation-gaza-strip-and-west-bank-including-east-jerusalem> (last visited March 18, 2025).

<sup>5</sup> *Id.*; *UN Commission finds war crimes and crimes against humanity in Israeli attacks on Gaza health facilities and treatment of detainees, hostages*, United Nations Human Rights Council (October 10, 2024), available at <https://www.ohchr.org/en/press-releases/2024/10/un-commission-finds-war-crimes-and-crimes-against-humanity-israeli-attacks> (last visited March 18, 2025).

<sup>6</sup> Laura Silver, et al. *Majority in U.S. say Israel has valid reason for filing; fewer say the same about Hamas*, Pew Research Center (March 21, 2024), available at <https://www.pewresearch.org/2024/03/21/majority-in-u-s-say-israel-has-valid-reasons-for-fighting-fewer-say-the-same-about-hamas/> (discussing polling related to conflict, including the American public's reaction to Hamas's attack, perspective on Israel's military response, and emotional response to Gaza conflict) (last visited March 18, 2025).

<sup>7</sup> *See, e.g., Top Headlines on Israel and Hamas at war*, Reuters (daily news stories provided by

1 campuses criticizing Israel’s conduct in Gaza, spurring widespread backlash including  
 2 counterprotests in favor of Israel.<sup>8</sup> Both Presidents Biden and Trump repeatedly asserted their  
 3 respective positions on the conflict, and both presidencies provided material aid to Israel’s forces  
 4 fighting in Palestine.<sup>9</sup> The war in Gaza and the Biden administration’s response may have even  
 5 determined the outcome of the 2024 American presidential election.<sup>10</sup>

### 6 C. SJP UNLV’s advocacy and Plaintiff’s related state law claim

7 SJP UNLV is a Registered Student Organization (RSO) on the UNLV campus.<sup>11</sup> The  
 8 organization is “a diverse group of activists and organizers dedicated to advancing the cause for  
 9 Palestinian justice and liberation by organizing community activities, educational events, and  
 10 advocacy actions to build awareness, solidarity, and a network of community organizers.”<sup>12</sup> Its  
 11 constitution, contact information, faculty advisor, and student point of contact can be found on

12 \_\_\_\_\_  
 13 Reuters related to the Gaza conflict), available at <https://www.reuters.com/world/israel-hamas/> (last  
 14 visited March 15, 2025); *Israel-Hamas War*, AP News (daily news stories provided by AP News  
 15 related to the Gaza conflict), available at <https://apnews.com/hub/israel-hamas-war> (last visited  
 16 March 15, 2025).

17 <sup>8</sup> See, e.g. Erica Chenoweth, et al., *Protests in the United States on Palestine and Israel, 2023-2024*,  
 18 *Social Movement Studies*, 1–14 (2024). (reporting that Harvard Kennedy School’s Crowd Counting  
 19 Consortium recorded approximately 12,400 pro-Palestine protests and 2,000 pro-Israel protests  
 20 between October 7, 2023, and June 7, 2024).

21 <sup>9</sup> *Biden administration notifies Congress of planned \$8 billion in weapons sale to Israel*, PBS News  
 22 (January 4, 2025), available at [https://www.pbs.org/newshour/world/biden-administration-notifies-](https://www.pbs.org/newshour/world/biden-administration-notifies-congress-of-planned-8-billion-weapons-sale-to-israel)  
 23 [congress-of-planned-8-billion-weapons-sale-to-israel](https://www.pbs.org/newshour/world/biden-administration-notifies-congress-of-planned-8-billion-weapons-sale-to-israel) (last visited March 15, 2025); *Military*  
 24 *Assistance to Israel*, United States Department of State (March 1, 2025) (expediting delivery of \$4  
 25 billion in military assistance to Israel by the Trump administration), available at  
<https://www.state.gov/military-assistance-to-israel/> (last visited March 15, 2025).

26 <sup>10</sup> Zeke Miller & Joey Cappelletti, *Mideast conflict looms over US presidential election as Harris*  
 27 *and Trump jostle for an edge*, AP News (October 21, 2024); Sahil Kapur & Yamiche Alcindor,  
 28 *‘Uncommitted’ leaders stand by 2024 strategy after Trump floats Gaza takeover*, NBC News  
 29 (February 5, 2025), available at [https://www.nbcnews.com/politics/donald-trump/uncommitted-](https://www.nbcnews.com/politics/donald-trump/uncommitted-leaders-stand-2024-strategy-trump-floats-gaza-takeover-rcna190782)  
 30 [leaders-stand-2024-strategy-trump-floats-gaza-takeover-rcna190782](https://www.nbcnews.com/politics/donald-trump/uncommitted-leaders-stand-2024-strategy-trump-floats-gaza-takeover-rcna190782) (last visited March 15, 2024).

31 <sup>11</sup> See, e.g. Students for Justice In Palestine, Organizations, UNLV Involvement Center, available at  
 32 <https://involvementcenter.unlv.edu/organization/sjp> (last visited March 5, 2025); Exhibit A, Sworn  
 33 Declaration of Alexa M. Hayden (“Hayden Decl.”), ¶¶ 5; Exhibit B, Sworn Declaration of Matthew  
 34 Mondschein (“Mondschein Decl.”), ¶¶ 5.

35 <sup>12</sup> See, e.g. Students for Justice In Palestine, Organizations, UNLV Involvement Center, available at  
 36 <https://involvementcenter.unlv.edu/organization/sjp> (last visited March 5, 2025); See Hayden Decl.,  
 37 ¶¶ 7.

1 UNLV's website.<sup>13</sup>

2 Among his claims against SJP UNLV, Plaintiff seeks to hold SJP UNLV liable under  
3 Nevada's common law doctrine of intentional infliction of emotional distress. First Amended  
4 Complaint, at ¶¶ 363–368, ECF No. 6 (August 9, 2024) (“Amend. Compl.”). Plaintiff relies on SJP  
5 UNLV's communications, specifically social media posts, nonviolent protests, and petitions to  
6 UNLV's president as the basis for this claim. *See* Amend. Compl. at ¶¶ 42, 59, 97, 101, 102, 114,  
7 186, 192, 198 (social media posts); Amend. Compl. at ¶¶ 73–75, 191 (protests); Amend. Compl. ¶¶  
8 194–96 (in person petition to President Whitfield); Ex. A, Sworn Declaration of Alexa M. Hayden  
9 (“Hayden Decl.”), ¶¶ 24, 26, 31–33, 35, 37–38; Ex. B, Sworn Declaration of Matthew Mondschein  
10 (“Mondschein Decl.”), ¶¶ 10–13. Every SJP UNLV communication cited by Plaintiff in his complaint  
11 relate to SJP UNLV's beliefs and political activity related to the Israel-Palestine conflict, including  
12 SJP UNLV criticism Israel's military action in Gaza, advocacy for the Palestinian people impact for  
13 the war, petitioning UNLV to financially divest from companies supporting Israel's war effort, or  
14 publicly organizing boycotts to place political pressure on Israel to end the war. Hayden Decl., ¶¶ 13–  
15 14, 26, 31–33, 35; Mondschein Decl., ¶¶ 10, 11.

16 SJP UNLV's social media posts at issue were published on SJP UNLV's public social media  
17 account. Amend. Compl. at ¶¶ 42, 59, 97, 101, 102, 114, 186, 192, 198; Hayden Decl., ¶¶ 28–33. SJP  
18 UNLV's protests at issue were held in public spaces both on and off campus. Amend. Compl. at ¶¶  
19 73–74; Hayden Decl., ¶¶ 22–25.

20 SJP UNLV's in person communications with UNLV President Whitfield were all aimed at  
21 procuring action from UNLV, specifically increased transparency from UNLV regarding its  
22 investments, divestment from entities supporting violence against Palestinians, and a statement

23 \_\_\_\_\_  
24 <sup>13</sup> *See, e.g.* Students for Justice In Palestine, Organizations, UNLV Involvement Center, *available at*  
25 <https://involvementcenter.unlv.edu/organization/sjp> (last visited March 5, 2025) (the student point of  
contact information is available under “Full Roster”); Hayden Decl., ¶¶ 9.

1 establishing that Palestinian and Arab students would receive the same protection as other students  
2 on campus. Amend Compl. ¶¶ 194–95; Hayden Decl., ¶¶ 26, 35, 36; Mondschein Decl., ¶¶ 10-12. As  
3 Plaintiff’s own complaint acknowledges and UNLV Defendants’ responses confirm, UNLV is a  
4 governmental entity, and President Whitfield is a government employee. Amend Compl., ¶¶ 9, 12;  
5 First Amended Complaint, at ¶¶ 363–368, ECF No. 6 (August 9, 2024) (“Amend. Compl.”);  
6 Defendant Keith Whitfield’s Motion to Dismiss at 3:25-26, 13:4-20, 14:5-6, ECF No. 12 (September  
7 18, 2024) (“Def. Whitfield Mot. to Dismiss”); Defendant UNLV’s Motion to Dismiss at 14:21, ECF  
8 No. 35 (November 12, 2024) (“Def. UNLV Mot. to Dismiss”); *see also* Mondschein Decl., ¶¶ 7–9.  
9 SJP UNLV made these requests to Whitfield because he was the head of UNLV at the time. Hayden  
10 Decl., ¶¶ 35; Mondschein Decl., ¶¶ 8, 13.

11 Plaintiff believes SJP UNLV’s communications are antisemitic, create a hostile environment  
12 for Jewish students on UNLV’s campus, and ultimately assist Hamas; the claims he brings against  
13 SJP UNLV, including his IIED claim, hinge on these beliefs. *See, e.g.*, Amend Compl., ¶¶ 74–75,  
14 116–17, 194, 198, 209. However, Plaintiff does not allege that SJP UNLV itself has engaged in any  
15 violence, vandalism, or other noncommunicative activity. *See generally* Amend Compl.; Hayden  
16 Decl., ¶¶ 37-40. Plaintiff also does not allege that SJP UNLV has had any contact with him or vice  
17 versa. *See generally* Amend Compl. Plaintiff does not complain that SJP UNLV’s methods of  
18 communication i.e. posting on social media, protesting in public spaces, or petitioning UNLV  
19 leadership in person, are inherently harmful or violate the law. *Id.*

20 In describing his claim for intentional infliction of emotional distress, Plaintiff claims to suffer  
21 “severe and extreme emotional distress manifested as great humiliation, embarrassment, shame, and  
22 other pain.” *Id.* ¶ 365. He does not provide any other information to clarify why those emotions  
23 qualify as severe and extreme emotional distress such as physical symptoms, related medical  
24 treatment, or a psychiatric diagnosis.

1                   **D. Procedural posture**

2                   Plaintiff filed this action on May 26, 2024. ECF No. 1. This Court issued summonses on May  
3 28, 2024. ECF No. 4. Plaintiff amended his complaint on August 9, 2024. ECF No. 6. Plaintiff served  
4 SJP UNLV the summons and First Amended Complaint on February 12, 2025. ECF No. 48. SJP  
5 UNLV responded with a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) on March 5, 2025.  
6 ECF No. 51. SJP UNLV now files this timely special motion to dismiss pursuant to NRS 41.660.

7                   **III. LEGAL STANDARD**

8                   Pursuant to NRS 41.650, “[a] person who engages in a good faith communication in  
9 furtherance of the right to petition or the right to free speech in direct connection with an issue of  
10 public concern is immune from any civil action for claims based upon the communication.” NRS  
11 41.650. NRS 41.637 details what constitutes a communication that qualifies for protection. NRS  
12 41.660 explains how an anti-SLAPP motion is adjudicated including timeline and evidentiary  
13 burdens.

14                   **A. Defendant’s initial burden**

15                   In an anti-SLAPP proceeding, a defendant first bears the burden to establish by preponderance  
16 of the evidence that the Plaintiff’s claim is based upon “a good faith communication in furtherance  
17 of the right to petition or the right to free speech in direct connection with an issue of public concern  
18 is immune from any civil action for claims based upon the communication.” NRS 41.660(3)(a). NRS  
19 41.637 defines what communications are protected, which include:

- 20                   • “Communication that is aimed at procuring any governmental or electoral action, result or  
21 outcome”;
- 22                   • “Communication of information or a complaint to a Legislator, officer or employee of the  
23 Federal Government, this state or a political subdivision of this state, regarding a matter  
24 reasonably of concern to the respective governmental entity”; and
- 25                   • “Communication made in direct connection with an issue of public interest in a place open to  
the public or in a public forum.”

1 NRS 41.637(1); NRS 41.637(2); NRS 41.637(4). A defendant must also show that the communication  
2 was made in good faith by establishing the statements were “truthful or [ ] made without knowledge  
3 of its falsehood.” NRS 41.637. A signed, sworn declaration is sufficient to satisfy a defendant’s initial  
4 burden of proof. *See Stark v. Lackey*, 136 Nev. 38, 43, 458 P.3d 342 (2020) (“[W]e have previously  
5 held that a sworn declaration like Stark's is sufficient evidence that the statements were truthful or  
6 made without knowledge of their falsehood.”).

### 7 **B. Plaintiff’s subsequent burden**

8 Once a defendant satisfies their burden, the burden shifts to the plaintiff to offer *prima facie*  
9 evidence establishing a probability of prevailing on their claim. NRS 41.660(3)(b). To satisfy this  
10 burden, “the plaintiff must show that his claim has at least minimal merit,” which “exists when the  
11 plaintiff makes a sufficient *prima facie* showing of facts to sustain a favorable judgment if the  
12 evidence submitted by the plaintiff is credited.” *Wynn v. AP*, 555 P.3d 272, 278 (Nev. 2024)  
13 (quotation omitted).

14 In determining whether a plaintiff has made a *prima facie* showing regarding their claim,  
15 courts may apply the same standard as Federal Rule of Civil Procedure 12(b)(6) to determine whether  
16 plaintiff has stated a claim. *See Smith v. Craig*, 2020 U.S. Dist. LEXIS 38774, \*19 (D. Nev. March  
17 4, 2020) (finding that plaintiff did not satisfy burden to show probability of success because “the  
18 Complaint [did] not provide sufficient factual allegations to show how Defendant's disclosure of  
19 Plaintiff's settlement agreement and medical records could plausibly support her claims for relief.”).  
20 To avoid dismissal pursuant to Rule 12(b)(6), a plaintiff must make sufficient factual allegations to  
21 establish a plausible entitlement to belief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct.  
22 1955 (2007). “In assessing whether a party has stated a claim upon which relief can be granted, a  
23 court must take all allegations of material fact as true and construe them in the light most favorable  
24 to the nonmoving party.” *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1096 (9th Cir. 2017).

1 "[C]onclusory allegations of law and unwarranted inferences, however, are insufficient to avoid  
2 dismissal." *Id.* As such "allegations must amount to 'more than labels and conclusions, [or] a  
3 formulaic recitation of the elements of a cause of action.'" *Coleman v. Telles*, No. 2:24-cv-00930-  
4 APG-MDC, 2025 U.S. Dist. LEXIS 21413, at \*3 (D. Nev. Feb. 5, 2025) (quoting *Bell Atl. Corp.*, 550  
5 U.S. at 556). After separating out any well-plead factual allegations from plaintiff's legal conclusions  
6 and unwarranted inferences, the Court must then determine "whether [the factual allegations]  
7 plausibly give rise to an entitlement to relief." *Kwan*, 854 F.3d at 1096. "This plausibility standard  
8 requires more than a sheer possibility that a defendant has acted unlawfully"; rather "[a] claim has  
9 facial plausibility when the plaintiff pleads content that allows the court to draw the reasonable  
10 inference that the defendant is liable for the misconduct alleged." *Id.*

#### 11 **IV. ARGUMENT**

12 Plaintiff's claims against SJP UNLV rely entirely on communications by SJP UNLV  
13 protected under Nevada's anti-SLAPP laws including the organization's posts on public social media,  
14 protests in public spaces, and petition to UNLV President Whitfield. As Plaintiff brings his IIED  
15 claim in response to SJP UNLV's protected good faith communications, and Plaintiff cannot establish  
16 a probability of succeeding on his claim, SJP UNLV is entitled to dismissal pursuant to NRS 41.660,  
17 and attorney fees, costs, and a monetary award as defined by NRS 41.670. NRS 41.660; NRS 41.670.

##### 18 **A. SJP UNLV's communications at issue are entitled to protection.**

19 Plaintiffs based his IIED claim upon SJP UNLV's social media posts, protests, and petition  
20 to UNLV President Whitfield. Plaintiff does not condemn social media posts, protests, or meeting  
21 with university officials in general; rather Plaintiff has sued SJP UNLV because the organization  
22 advocated for Palestine and against Israel's war effort in Gaza in each of these communications.

23 However, each communication placed at issue by Plaintiff satisfies the definition of a "good  
24 faith communication in furtherance of the right to petition or the right to free speech in direct  
25

1 connection with an issue of public concern” as defined by NRS 41.637. NRS 41.637. SJP UNLV’s  
2 social media posts and protests were communications directly connected to an issue of public concern  
3 in a place open to the public or in a public forum. SJP UNLV’s communications to President  
4 Whitfield were aimed at procuring a governmental action, and these communications also provided  
5 both information and complaints regarding a matter of concern to the UNLV to an employee of the  
6 university (i.e. Whitfield). SJP UNLV made all these communications in good faith as defined by  
7 NRS 41.637. *Id.*

8 **1. SJP UNLV’s social media posts and protests satisfy NRS 41.637(4).**

9 “Communication made in direct connection with an issue of public interest in a place open  
10 to the public or in a public forum” is identified by NRS 41.637(4) as a protected communication.

11 All of SJP UNLV’s protests and social media posts are directly connected to an issue of public  
12 interest as they are all related to the war in Gaza. For determining whether a communication is “an  
13 issue of public interest” under NRS 41.467(4), the Nevada Supreme Court provides the following  
14 guidance:

15 (1) "public interest" does not equate with mere curiosity;

16 (2) a matter of public interest should be something of concern  
to a substantial number of people; a matter of concern to a speaker and  
17 a relatively small specific audience is not a matter of public interest;

18 (3) there should be some degree of closeness between the  
challenged statements and the asserted public interest—the assertion of  
a broad and amorphous public interest is not sufficient;

19 (4) the focus of the speaker's conduct should be the public  
20 interest rather than a mere effort to gather ammunition for another  
round of private controversy; and

21 (5) a person cannot turn otherwise private information into a  
22 matter of public interest simply by communicating it to a large number  
of people.

23 *Stark v. Lackey*, 136 Nev. 38, 41-42, 458 P.3d 342, 346 (2020). SJP UNLV’s communications easily  
24 satisfy each of these factors. As to the first and second factors, as seen by polling, news coverage,  
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1 nationwide protests, and nationwide backlash to those protests, it is clear that the war in Gaza is more  
2 than a “mere curiosity” to the public and has impacted every person in America in some fashion. In  
3 turn, SJP UNLV’s communication are directly related to the war – they are responding to Israel’s  
4 invasion of Gaza and the collateral impact on the Palestinians living there. Occurring on public social  
5 media pages and in public spaces, SJP UNLV’s posts and protests are by their very nature public  
6 communications; in fact, Plaintiff’s claims are premised on the idea that the communications were  
7 not directed at a few individuals but rather meant to reach the entire UNLV community.

8 In addition to direct connection to an issue of public concern, all of SJP UNLV’s protests and  
9 posts took place in public spaces. SJP UNLV communications on social media were on the  
10 organization’s public pages, and under Nevada’s Anti-SLAPP law, posts made on public social media  
11 pages are considered made in a public forum. *See Stark v. Lackey*, 136 Nev. 38, 41 n.2, 458 P.3d 342,  
12 345 (2020) (“We note that the parties do not dispute, and we agree, that [defendant’s] Facebook page  
13 is a public forum.”) (citing *Barrett v. Rosenthal*, 40 Cal. 4th 33, 51 Cal. Rptr. 3d 55, 146 P.3d 510,  
14 514 n.4 (Cal. 2006) (“Web sites accessible to the public . . . are ‘public forums’ for the purposes of  
15 the anti-SLAPP statute.”)). SJP UNLV’s protests outside of cyberspace all took place on sidewalks,  
16 streets, and locations on UNLV’s campus such as the university amphitheater where the public could  
17 attend. Hayden Decl., ¶¶ 22-25, 28-33.

18 As communications made in public about an issue of public interest, SJP UNLV’s protests  
19 and posts are protected under Nevada’s anti-SLAPP provisions.

20 **2. SJP UNLV’s communications during its meeting with President**  
21 **Whitfield are protected under NRS 41.637(1) and NRS 41.637(2).**

22 Communications “aimed at procuring any governmental or electoral action, result or  
23 outcome” and “of information or a complaint to a Legislator, officer or employee of the Federal  
24 Government, this state or a political subdivision of this state, regarding a matter reasonably of concern  
25 to the respective governmental entity” are protected under NRS 41.637(1) and NRS 41.637(2)

1 respectively.

2 No party disputes that UNLV is a government entity. As such, SJP UNLV's meeting with  
3 UNLV's president and social media posts advocating for UNLV to financially divest were aimed at  
4 procuring government action, i.e. increased transparency, divestment from companies supporting the  
5 war in Gaza, and a statement assuring that Palestinian and Arab students will be protected. Hayden  
6 Decl., ¶¶ 35; Mondschein Decl., ¶¶ 10-12. Though Plaintiff may be staunchly against the requested  
7 actions, transparency, divestment and providing a statement were actions within UNLV's power.

8 Turning to NRS 41.637(2), Whitfield was an employee of a Nevadan political subdivision,  
9 i.e. UNLV, at the time SJP UNLV met with him. Amend Compl., ¶¶ 9, 12; Def. Whitfield Mot. To  
10 Dismiss at 13:4-20, 14:5-6. SJP UNLV met with Whitfield to discuss "matter[s] reasonably of  
11 concern to" UNLV, i.e. UNLV's financial investments in particular companies and the safety of  
12 UNLV's Palestinian and Arab students. Hayden Decl., ¶¶ 35; Mondschein Decl., ¶¶ 10-12. In  
13 communicating with a government employee about a matter of concern to the employee's political  
14 subdivision, SJP UNLV's communications are protected under NRS 41.637(2).

### 15 **3. SJP UNLV's communications were all made in good faith.**

16 Pursuant to NRS 41.637, a communication is in good faith when it "is truthful or is made  
17 without knowledge of falsehood." An affidavit by a defendant affirming that the statements at issue  
18 are true, were made without knowledge of falsehood, or are statements of opinion is sufficient to  
19 show good faith. *Stark*, 136 Nev. at 43, 458 P.3d at 347 (cited by *Williams v. Lazer*, 137 Nev. 437,  
20 440, 495 P.3d 93, 97 (2021)). Whether a defendant made a statement in good faith is dependent on  
21 the defendant's subjective beliefs rather than whether the statement was objectively true. *Williams*,  
22 137 Nev. at 442, 495 P.3d at 98 (determining defendant's statements were made in good faith despite  
23 evidence her statements were inaccurate because plaintiff did not offer evidence disputing that  
24 defendant's statements accurately reflected defendant's "subjective belief"). "Opinion statements are  
25

1 incapable of being false [under Nevada’s Anti-SLAPP provision], as there is no such thing as a false  
2 idea.” *Id.*, 137 Nev. at 440–41, 495 P.3d at 97–98 (determining that defendant’s statements that  
3 plaintiff was racist, sexist, unprofessional, and unethical were opinions incapable of being false)  
4 (citation omitted).

5 SJP UNLV has not communicated anything that it knew to be false, and to its knowledge has  
6 only made truthful statements or offered opinions. Hayden Decl., ¶¶ 27, 34; Mondschein Decl., ¶¶  
7 14. Furthermore, the communications identified in Plaintiff’s complaint clearly express SJP UNLV’s  
8 opinions about the war in Gaza, Israeli’s policies towards Palestinians living in Gaza, or how UNLV  
9 should respond to the Israel-Palestine conflict. Hayden Decl., ¶¶ 13, 14, 26 31-35; Mondschein Decl.,  
10 ¶¶ 10-12. As opinions, these communications could not be knowingly false. To the extent the SJP  
11 UNLV’s statements are deemed to offer facts, Plaintiff has not accused SJP UNLV of lying, only that  
12 Plaintiff believes SJP UNLV’s statements are antisemitic and benefit Hamas.

13 As SJP UNLV made its communications in good faith, they satisfy NRS 41.637 and are  
14 entitled to protection under NRS 41.660. NRS 41.637; NRS 41.660.

15 **B. Plaintiff cannot show a probability of success on his IIED claim.**

16 A plaintiff who fails to offer an evidentiary basis to establish a *prima facie* claim or fails to  
17 state a claim pursuant to Rule 12(b)(6) cannot show a probability of success on their claim. *Wynn*,  
18 555 P.3d at 278; *see Smith*, 2020 U.S. Dist. LEXIS 38774 at \*19 (“[T]he Complaint [did] not provide  
19 sufficient factual allegations to show how Defendant’s disclosure of Plaintiff’s settlement agreement  
20 and medical records could plausibly support her claims for relief.”). Likewise, a plaintiff whose claim  
21 is barred by law cannot show a probability of success. *See Williams*, 137 Nev. at 443, 495 P.3d at 99  
22 (“[A] plaintiff cannot show a probability of prevailing on his claim if a privilege applies to preclude  
23 the defendant’s liability.”). Plaintiff Gerwaski cannot show a probability of success on his IIED claim  
24 because he has not adequately pled that SJP UNLV’s behavior was extreme or outrageous, the  
25

1 organization intended to harm him, or he suffered a cognizable injury under Nevada’s IIED law. He  
 2 also cannot show a probability of success because the First Amendment bars his IIED claim.

3 **1. Failure to adequately plead an IIED claim<sup>14</sup>**

4 “In order to prevail in an IIED claim, a plaintiff must show (1) extreme and outrageous  
 5 conduct on the part of the defendant; (2) intent to cause emotional distress or reckless disregard for  
 6 causing emotional distress; (3) that the plaintiff actually suffered extreme or severe emotional  
 7 distress; and (4) causation.” *Miller v. Jones*, 114 Nev. 1291, 1299-300, 970 P.2d 571, 577 (1998)  
 8 (quoted by *Blige v. Terry*, 540 P.3d 421, 432 (Nev. 2023)). Here Plaintiff has failed to plead sufficient  
 9 factual allegations for an IIED claim. First, Plaintiff failed to plead sufficient facts establishing SJP  
 10 UNLV engaged in “extreme or outrageous” behavior; all actions ascribed to SJP UNLV in the  
 11 complaint are typical, legal First Amendment activities that occur in regularly in public across the  
 12 country. Second, Plaintiff failed to plead any facts establishing that SJP UNLV intended to cause him  
 13 emotional distress or recklessly disregarded the possibility that its actions would cause him distress,  
 14 especially since Plaintiff offers no facts that he ever came into direct contact with SJP UNLV or its  
 15 messaging. Finally, Plaintiff failed to plead facts establishing he suffered extreme or severe emotional  
 16 distress because he has only alleged general emotional discomfort.

17 **i. Inadequate allegation of “extreme and outrageous” conduct**

18 An “IIED [claim] requires a showing of conduct that no reasonable person could be expected  
 19 to endure.” *Hale v. NV Prop. 1, LLC*, No. 22-16274, 2024 U.S. App. LEXIS 6389, at \*3 (9th Cir.  
 20 Mar. 18, 2024). “IIED liability does not extend to mere insults, indignities, threats, annoyances, petty  
 21

22 <sup>14</sup> Plaintiff also fails to adequately plead his federal law claim pursuant to the Anti-Terrorism Act.  
 23 See SJP UNLV Mot. to Dismiss, 12:2–15:10. However, a motion to dismiss pursuant to NRS 41.660  
 24 is typically restricted to Nevada state law claims, and Plaintiff’s IIED claim is the only claim asserted  
 25 against SJP UNLV pursuant to state law. *ProCare Hospice of Nev. LLC v. OneCare Hospice, LLC*,  
 340 F.R.D. 174, 178 (D. Nev. 2021) (“The Ninth Circuit has made clear that a state’s anti-SLAPP law  
 does not apply to the federal causes of action in cases involving both state and federal claims.”).

1 oppressions, or other trivialities." *Id.*

2 Plaintiff alleges that SJP UNLV called for economic boycotts via social media and nonviolent  
3 protests, petitioned a state-run university to financially divest from a foreign country due to that  
4 country's military action, and organized protests with other advocacy groups on and off campus  
5 where people chanted "From the River to the Sea" and "Long live the intifada." However, Plaintiff  
6 does not accuse SJP UNLV of violating any restrictions imposed by UNLV on SJP UNLV's  
7 expressive activities or engaging in vandalism or violence. Political advocacy, even on controversial  
8 topics, conducted in a peaceful manner in public spaces cannot be considered "extreme and  
9 outrageous" without banning this protected activity entirely from public view. *See Ortberg v.*  
10 *Goldman Sachs Group*, 64 A.3d 158, 163–64 (D.C. 2013) (in the context of an IIED claim,  
11 determining that protests consisting of "chanting slogans and vague threats" performed on public  
12 streets are "part and parcel of the frictions and irritations and clashing of temperaments incident to  
13 participation in a community life, especially life in a society that recognizes a right to public political  
14 protest."). Without more, Plaintiff has failed to plead any "extreme or outrageous" conduct on the  
15 part of SJP UNLV.

16 **ii. Inadequate allegation of intent or reckless disregard**

17 A plaintiff raising an IIED claim must establish that "the defendant either intended to cause  
18 the plaintiff emotional distress or demonstrated reckless disregard for the probability of causing  
19 emotional distress." *Westbrook v. DTG Operations, Inc.*, No. 2:05-CV-00789-KJD-PAL, 2007 U.S.  
20 Dist. LEXIS 14653, at \*20 (D. Nev. Feb. 28, 2007).

21 Plaintiff has not alleged he ever interacted with SJP UNLV, SJP UNLV directed any of its  
22 actions towards him, or even that he saw any of SJP UNLV's social media posts or witnessed any of  
23 its protests. Plaintiff has also not sufficiently alleged that SJP UNLV recklessly disregarded the  
24 probability of causing him distress as SJP UNLV could not have known that Plaintiff might be harmed  
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1 if they did not know he existed. Setting aside that Plaintiff has only accused SJP UNLV of nonviolent  
2 political advocacy, as SJP UNLV was unaware of Plaintiff during the relevant time period in the  
3 complaint, SJP UNLV could not have been aware that its actions would potentially, let alone  
4 probably, distress him.

5 **iii. Inadequate allegation of severe or extreme emotional distress**

6 To establish that he suffered severe or extreme emotional distress, a plaintiff must offer  
7 “objectively verifiable indicia of the severity of his emotional distress.” *See Miller v. Jones*, 114 Nev.  
8 at 1300, 970 P.2d at 577. “Conclusory allegations of ‘shock’ and extreme anxiety, sleeplessness,  
9 depression, nausea, pain, illness, and discomfort are not enough to meet the standard of severe or  
10 extreme emotional distress.” *Soto v. Infinity Hospice Care, LLC*, No. 2:22-cv-00632- BNW, 2023  
11 U.S. Dist. LEXIS 225263, at \*10 (D. Nev. Dec. 19, 2023). Rather, “[t]he stress must be so severe and  
12 of such intensity that no reasonable person could be expected to endure it.” *Id.* Merely “citing a list  
13 of physical symptoms” without providing “facts that show these symptoms were of such intensity  
14 that no reasonable person could be expected to endure such stress” is insufficient. *Id.*

15 Additionally, “in cases where emotional distress damages are not secondary to physical  
16 injuries, but rather, precipitate physical symptoms, either a physical impact must have occurred or,  
17 in the absence of a physical impact, proof of serious emotional distress causing physical injury or  
18 illness must be presented.” *Coleman*, No. 2:24-cv-00930-APG-MDC, 2025 U.S. Dist. LEXIS 21413,  
19 at \*6-7. “The physical impact requirement may not be satisfied by pleading general physical or  
20 emotional discomfort.” *Id.* (quotation omitted).

21 In describing his alleged harm, Plaintiff has only plead that he suffered “great humiliation,  
22 embarrassment, shame, and other pain and suffering.” Amend. Cmpl. ¶ 365. These are only general  
23 statements of emotional discomfort and are insufficient to establish severe or extreme emotional  
24 distress. As Plaintiff pleads no facts alleging objective indicia of severe and extreme emotional  
25



1 political purpose).

2 Plaintiff cannot dispute that his claim against SJP UNLV is premised on the viewpoint  
3 expressed in the organization’s messaging. *See Snyder*, 562 U.S. at 457 (emphasizing that “that any  
4 distress occasioned by [the defendant]’s picketing turned on the content and viewpoint of the message  
5 conveyed” in determining that the First Amendment barred plaintiff’s claims). Plaintiff’s claims are  
6 based on the Plaintiff’s belief that SJP UNLV’s messages are antisemitic and, by advocating against  
7 Israel’s actions in Gaza, assist Hamas. This is necessarily viewpoint discrimination: if SJP UNLV  
8 engaged in the exact same conduct (i.e. organizing protests, petitioning UNLV, and calling for  
9 boycotts) in favor of Israel rather than Palestine, Plaintiff would likely promote SJP UNLV rather  
10 than sue them. *See Snyder*, 562 U.S. at 457 (considering whether an uncontroversial message  
11 conveyed by the defendant in the same manner would have resulted in liability in determining  
12 whether claims were content based).

13 As currently pled, Plaintiff seeks to hold SJP UNLV liable solely due to SJP UNLV’s  
14 statements presenting a particular viewpoint on a matter of public concern, but such claims are barred  
15 by the First Amendment. As such, Plaintiff does not have a probability of success in his IIED claim.

## 17 CONCLUSION

18 Plaintiff’s IIED claim is based entirely on communications by SJP UNLV that are protected  
19 by Nevada’s anti-SLAPP laws. All relevant communications by SJP UNLV were made in good faith.  
20 All social media posts and protests made by SJP UNLV were directly connected with an issue of  
21 public concern and occurred in public fora or spaces open to the public. The other relevant  
22 communication, i.e. the organization’s petition to UNLV President Whitfield, was made in an effort  
23 to procure action by UNLV. In doing so, SJP UNLV also communicated information and a complaint  
24 to a government employee, i.e. Whitfield, about matters of reasonable concern to UNLV, i.e. the  
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1 university's financial investments and the safety of its students. As such, all communications at issue  
2 were protected under NRS 41.660.

3 Plaintiff cannot demonstrate a probability of prevailing on his IIED claim because he has  
4 failed to adequately allege his claim and his claim as alleged is barred by the First Amendment.

5 For these reasons, SJP UNLV respectfully requests that this Court dismiss Plaintiff's IIED  
6 claim in full and award SJP UNLV reasonable costs, attorney fees, and other monetary relief as  
7 provided by statute.

8 Dated: April 11, 2025

9 **ACLU OF NEVADA**

10 /s/ Christopher Peterson

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **Defendant Students for Justice in Palestine – UNLV’s Special Motion to Dismiss Pursuant to NRS 41.660**. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

- CM/ECF
- Electronic mail; or
- US Mail or Carrier Service

/s/Suzanne Lara  
An employee of ACLU of Nevada