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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 REPLY IN
SUPPORT OF
MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

[ORAL ARGUMENT REQUESTED]

Defendant Students for Justice in Palestine (“SJP UNLV”) offers this reply is support of their Motion to Dismiss Plaintiff’s Second Amended Complaint (ECF No. 94) and in response to Plaintiff’s opposition (ECF No. 101). In his reply, Gerwaski fails to address how he has adequately pled his claims against SJP UNLV or why the First Amendment does not bar his claims. As Gerwaski has not offered any proposed amendments to his complaint, any amendment would be futile, and this matter should be denied with prejudice.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant SJP UNLV offers the following additional points and authorities to support its
3 motion to dismiss and rebut Gerwaski’s opposition. As discussed below, Gerwaski fails to address
4 SJP UNLV’s arguments that he has inadequately pled his claim pursuant to the Anti-Terrorism Act
5 (“ATA”) under federal law or his civil conspiracy claim raised pursuant to Nevada common law. He
6 misconstrues *Holder* and otherwise fails to explain why SJP UNLV’s actions, which he acknowledges
7 would require strict scrutiny to restrict, are not protected by the First Amendment. Finally, he yet
8 again repeatedly and misleadingly attempts to ascribe the alleged misconduct of other parties to SJP
9 UNLV without explaining why SJP UNLV should be liable for the actions of these third parties.

10 As Gerwaski does not explain what, if any, amendments he might make to salvage his
11 complaint, he should be denied leave to amend and his claims denied with prejudice.

12 **I. Gerwaski has not adequately alleged an ATA claim against SJP UNLV in his Second Amended Complaint.**

13 In so many words, Gerwaski rehashes his arguments defending his ATA claim in his First
14 Amended Complaint, *compare* ECF No. 101 at 8:8–8:13 *with* ECF No. 53 at 18:9–24, claiming that
15 he was injured by the October 7, 2023, attack by Hamas and that SJP UNLV supported that attack.
16 Gerwaski’s arguments were unpersuasive then and are similarly unpersuasive now.

17 First, Gerwaski admits that the act of terrorism he predicates his ATA claim on is the October
18 7, 2023, attack that occurred Israel, ECF No. 101 at 18:14 – 16 (explaining that his conspiracy claim
19 is predicated on the ATA, and October 7, 2023, is the predicate act of international terrorism for that
20 claim), yet he again fails to explain how he was injured by Hamas during the October 7, 2023, attack.
21 Instead he again blames SJP UNLV’s and other Defendant’s actions on UNLV’s campus for his
22 injuries, not the attack that occurred in Israel. *Id.* at 18:17 – 19 (“The SAC alleges that SJP UNLV’s
23 coordinated activities amplified the threat environment created by that attack, directly causing
24 Plaintiff severe damages, physical illness (Bell’s Palsy), and educational setbacks.”). Nothing that
25

1 Gerwaski alleges occurred on UNLV's campus would constitute an act of international terrorism as
2 (1) UNLV is in the United States and (2) Gerwaski does not claim anything violent occurred on the
3 UNLV campus.

4 Second, Gerwaski continues to have a timeline problem. For a third party to be held liable for
5 an act of terrorism under the ATA, the plaintiff must establish that "the defendant consciously and
6 culpably participated in a wrongful act so as to help make it succeed." 18 U.S.C. § 2333(d)(2);
7 *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 493 (2023). This, of course, would require the plaintiff to
8 show that the third party provided the assistance prior to the act of terrorism. As observed before and
9 unrefuted by Gerwaski, the Second Amended Complaint does not identify *any* actions undertaken by
10 SJP UNLV prior to October 7, 2023, let alone actions that "substantially assisted" Hamas. Gerwaski
11 protests (inaccurately) that "[t]he instant SAC addresses that the Defendants' conduct *after* the
12 October 7, 2023 [sic] has substantially assisted Hamas," ECF No. 101 at 10:18–20 (emphasis added),
13 but actions occurring after October 7, 2023, would not have contributed to the attack itself.

14 Third, Gerwaski yet again offers no actual factual allegations connecting SJP UNLV to Hamas
15 in any way. If a terrorist organization tangentially benefits from a third party's advocacy, that does
16 not subject the innocent advocate to liability – the third party must knowingly provide assistance to
17 the terrorist organization. 18 U.S.C. § 2333(d)(2); *Twitter, Inc.*, 598 U.S. at 483 – 84. Here Gerwaski
18 must offer factual allegations to show SJP UNLV knowingly provided assistance to Hamas, and that
19 SJP UNLV knew that its assistance would be used to carry out the October 7, 2023 attack. Instead of
20 establishing the necessary relationship, Gerwaski alleges that NSJP, not Hamas, created a social
21 media toolkit using inflammatory language and SJP UNLV used that toolkit in some capacity. This
22 is woefully inadequate to show knowing assistance to an act of international terrorism carried out by
23 Hamas.

24 Gerwaski has failed to allege a claim pursuant to the ATA, and his claim must be dismissed.
25

1 **II. Gerwaski has not adequately alleged a conspiracy claim against SJP UNLV.**

2 First, Gerwaski admits that his conspiracy claim is premised on his ATA claim. ECF No. 101
3 at 17:11. As discussed above, his ATA claim is inadequately pled so his conspiracy claim necessarily
4 fails as well.

5 Second, Gerwaski also fails to allege a civil conspiracy claim because Gerwaski fails to show
6 that SJP UNLV agreed to act in concert with NSJP to commit a violation of the ATA. Setting aside
7 mere speculation and legal conclusions, Gerwaski offers only two connections between the
8 organizations: (1) NSJP authored and published a social media toolkit that SJP UNLV used, and (2)
9 NSJP and SJP UNLV have “communicated” with each other, though Gerwaski does not provide the
10 substance of those conversations. ECF No. 101 at 18:12. The only groups that Gerwaski actually
11 accuses SJP UNLV of working in concert with are other local Nevada protest organizations. *Id.* at
12 17:17–25:1–3 And though his claim is premised on the theory that NSJP and SJP UNLV conspired
13 to violate the ATA, he does not offer any details establishing such an agreement.

14 Finally, Gerwaski fails to adequately connect SJP UNLV’s activities in Nevada to his injuries.
15 He never alleges to have interacted with SJP UNLV either in person or through social media. Instead
16 Gerwaski argues that SJP UNLV “amplified the threat environment” that caused his “physical illness
17 (Bell’s Palsy) and educational setbacks,” ECF No. 101 at 18:17–19, but he fails to offer a concrete
18 causal chain between any specific action taken by SJP UNLV and his alleged injuries.

19 Gerwaski has failed to adequately allege a civil conspiracy claim against SJP UNLV, and his
20 claim must be dismissed.

21 **III. Gerwaski effectively admits his suit is premised on SJP UNLV’s protected First
22 Amendment activities.**

23 Gerwaski openly admits in his reply that his claims are premised activities SJP UNLV’s First
24 Amendment activities. Instead of alleging any illegal activity, Gerwaski acknowledges that he
25 premises his theory of liability on SJP UNLV’s “organization of protests using NSJP messaging,

1 mobilization of students, and promotion of Hamas-aligned slogans [. . .]”. ECF No. 101 at 18:19–21.
2 Yet protests, and in particular political protests, are core, traditional First Amendment activities.
3 *Carey v. Brown*, 447 U.S. 455, 467 (1980) (“Public-issue picketing [. . .] has always rested on the
4 highest rung of the hierarchy of First Amendment value.”). In this country the right to publicly and
5 loudly criticize governments, both domestic and foreign, is constitutionally protected.

6 Gerwaski again errs in relying on *Holder* to claim that SJP UNLV’s conduct is not protected
7 under the First Amendment. ECF No. 101 at 12:5 – 8. As SJP UNLV observed previously, *Holder*
8 explicitly rejected Gerwaski’s position that all activities that assist terrorist organizations are
9 unprotected under the First Amendment. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 27,
10 130 S. Ct. 2705, 2723 (2010) (“The Government is wrong that the only thing actually at issue in this
11 litigation is conduct [. . .] § 2339B regulates speech on the basis of its content.”). Rather *Holder*
12 hinged on whether a restriction on “a narrow category of speech” providing material support to
13 terrorist organizations “under the direction of, or in coordination with foreign groups that the speaker
14 knows to be a terrorist organization,” could survive First Amendment scrutiny. *Id.* at 26. *Holder* also
15 made clear that its ruling “in no way suggest[ed] that a regulation of independent speech would pass
16 constitutional muster, even if the Government were to show that such speech benefits foreign terrorist
17 organizations.” *Id.* at 561 U.S. at 37–39. Even if this Court accepts Gerwaski’s conjecture that SJP
18 UNLV’s expressive activities somehow benefitted Hamas, *Holder* still recognizes that SJP UNLV’s
19 activities are protected under the First Amendment as independent advocacy. Gerwaski cannot just
20 speculate that SJP UNLV conspired with Hamas, he must allege with specific facts that SJP UNLV
21 acted at the “direction of, or in coordination with” Hamas; allegations that SJP UNLV used a social
22 media toolkit published by NSJP (which is not a terrorist organization) in a way that indirectly
23 benefited Hamas are not sufficient.

24 And as he did defending against SJP UNLV’s first successful motion to dismiss, Gerwaski
25

1 drags in activities occurring at other universities by other people to justify his suit against SJP UNLV
2 despite this Court’s clear admonishment that those activities are not relevant to this case. ECF No.
3 101 at 13:13–16:22; Order Granting Defendants AJP Educational Foundation and SJP-UNLV’s
4 Motions to Dismiss, ECF No. 71 at 16:3–7. As SJP UNLV has said before, SJP UNLV is not the
5 same entity as other student organizations located at other universities in other states, and SJP UNLV
6 has no control over those organization’s actions. SJP UNLV is responsible for its own actions. SJP
7 UNLV has never blocked anyone from accessing public property, set up any encampments on
8 university property, or vandalized anything. SJP UNLV cannot be held liable here for what has
9 happened at other universities by other people, even if Gerwaski wishes otherwise. Parsing out actions
10 taken by SJP UNLV as described in Gerwaski’s complaint and opposition versus those actions
11 attributable to other parties, Gerwaski has failed to state a claim against SJP UNLV, and his claims
12 violate SJP UNLV’s rights under the First Amendment.

13 **IV. Gerwaski should not be granted yet another chance to amend his complaint and prolong**
14 **this matter further.**

15 Once a plaintiff is served a responsive pleading and 21 days pass, he “may amend [his]
16 pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a).
17 While a “court should freely give leave when justice so requires,” Fed. R. Civ. P. 15(a)(1)(B)(2),
18 “leave to amend is not to be granted automatically.” *Jackson v. Bank of Haw.*, 902 F.2d 1385, 1387
19 (9th Cir. 1990) (quoted by *Taylor v. Hiromichi Kobayashi*, No. 22-16017, 2023 U.S. App. LEXIS
20 5518, at *4 (9th Cir. Mar. 8, 2023)). “A trial court may deny such a motion if permitting an
21 amendment would [. . .] result in futility for lack of merit.” *Jackson*, 902 F.2d at 1387.

22 Yet again in moving for the opportunity to amend, Gerwaski has not provided a proposed
23 amendment for review required by LR 15–1(a). Fed. R. Civ. P. 15(a)(2). He has not explained in his
24 opposition what, if any, additional factual allegations he could make to save his claims against SJP
25 UNLV. *See Taylor*, 2023 U.S. App. LEXIS 5518, at *4 (finding that trial court properly denied leave

1 to amend when party “failed to set forth any facts [. . .] which they could add to save their
2 complaint.”). At some point, Gerwaski should not receive another chance to drag out these
3 proceedings; his claims must be dismissed with prejudice.

4
5 **CONCLUSION**

6 For the aforementioned reasons, Defendant SJP UNLV respectfully requests that this Court
7 dismiss all of Gerwaski’s claims with prejudice.

8
9 Dated: August 22, 2025

10 **ACLU OF NEVADA**

11 /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 Reply in Support of Motion to Dismiss Second Amended Complaint** with the Clerk of the Court for the United States District Court of Nevada by using the court’s CM/ECF system on August 22, 2025. 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