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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

COREY GERWASKI,

Plaintiff,

vs.

STATE OF NEVADA, ex rel. BOARD OF
REGENTS of the NEVADA SYSTEM OF
HIGHER EDUCATION, on behalf of the
UNIVERSITY OF NEVADA, LAS VEGAS;
KEITH WHITFIELD, individually; AJP
EDUCATIONAL FOUNDATION INC., a
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
MOTION TO DISMISS**

[ORAL ARGUMENT REQUESTED]

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1 Defendant Students for Justice in Palestine, University of Nevada, Las Vegas (“Students for
2 Justice in Palestine UNLV” or “SJP UNLV”) moves to dismiss this case pursuant to Federal Rule of
3 Civil Procedure 12(b)(6). In his Second Amended Complaint, Plaintiff has failed to plead a valid
4 legal theory and sufficient facts to state his claims against SJP UNLV and Plaintiff’s claims against
5 SJP UNLV are barred by the First Amendment.

6 Dated: August 1, 2025

7 **ACLU OF NEVADA**

8 /s/ Jacob T. S. Valentine

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TABLE OF CONTENTS

TABLE OF CONTENTS	III
TABLE OF AUTHORITIES	IV
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION.....	1
II. FACTS AND PROCEDURAL HISTORY	2
A. Factual allegations related to SJP UNLV’s conduct in Plaintiff’s Second Amended Complaint that identical to the allegations in his First Amended Complaint.	3
B. Factual allegation new to Gerwaski’s Second Amended Complaint.	5
C. Factual allegations related to Gerwaski’s injuries.....	5
D. Procedural posture.....	6
III. LEGAL STANDARD	6
IV. ARGUMENT	7
A. Gerwaski’s claims against SJP UNLV are barred by the First Amendment.....	7
B. Gerwaski failed to adequately plead that he was injured by an act of international terrorism.	10
C. Gerwaski fails to adequately allege that SJP UNLV knowingly aided and abetted any act of international terrorism.....	11
D. Gerwaski fails to adequately state any viable claim of civil conspiracy against SJP UNLV.....	13
CONCLUSION	15

TABLE OF AUTHORITIES

Cases

<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 129 S. Ct. 1937 (2009)	13, 14
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 127 S. Ct. 1955 (2007).	6, 13
<i>Carey v. Brown</i> , 447 U.S. 455, 100 S. Ct. 2286 (1980)	9
<i>Coleman v. Telles</i> , No. 2:24-cv-00930-APG-MDC, 2025 U.S. Dist. LEXIS 21413 (D. Nev. Feb. 5, 2025).....	7
<i>Consol. Generator-Nevada, Inc. v. Cummins Engine Co.</i> , 971 P.2d 1251 (Nev. 1998).....	13
<i>Flowers v. Carville</i> , 266 F. Supp. 2d 1245 (D. Nev. 2003)	13
<i>Guilfoyle v. Olde Monmouth Stock Transfer Co.</i> , 130 Nev. 801 (2014).....	14
<i>Kwan v. SanMedica Int'l</i> , 854 F.3d 1088 (9th Cir. 2017)	6, 7
<i>Leisrael v. Educ. for A Just Peace in the Middle E.</i> , 460 U.S. App. D.C. 490, 66 F.4th 1007 (2023)	12
<i>NAACP v. Claiborne Hardward Co.</i> , 458 U.S. 886 (1982)	9
<i>Roberts v. United States Jaycees</i> , 468 U.S. 609, 104 S. Ct. 3244 (1984)	9
<i>Rosenberger v. Rector & Visitors of the Univ. of Va.</i> , 515 U.S. 819, 115 S. Ct. 2510 (1995)	1
<i>Sahara Gaming Corp. v. Culinary Workers Union Local 226</i> , 115 Nev. 212, 984 P.2d 164 (Nev. 1999).....	14
<i>Snyder v. Phelps</i> , 562 U.S. 443, 131 S. Ct. 1207 (2011)	8, 10
<i>Tracht Gut, LLC v. L.A. Cnty. Treasurer & Tax Collector</i> , 836 F.3d 1146 (9th Cir. 2016).....	6
<i>Vested Hous. Grp., Ltd. Liab. Co. v. Principal Real Estate Inv'rs, Ltd. Liab. Co.</i> , 648 F. App'x 646, 649 (9th Cir. 2016)	13
<i>Warren v. Dollar Tree</i> , No. 2:23-cv-01377-APG-EJY, 2024 U.S. Dist. LEXIS 6692, (D. Nev. Jan. 11, 2024).....	13

Statutes

18 USC § 2331(1).....	10, 11
18 USC § 2333	2

Rules

Fed. R. Civ. P. 12(b)(6)	6
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Other Authorities

Nathan J. Brown, <i>The Polarization of U.S. Campus Protests</i> , Carnegie Endowment for International Peace (May 6, 2024).....	9
Shibley Telhami, <i>Is the Israel-Gaza war changing US public attitudes</i> , Brookings Institute (November 2, 2023)	9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The “chilling of individual thought and expression,” is a danger “especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 835, 115 S. Ct. 2510, 2520 (1995). If viewpoint suppression is allowed on American campuses, this restriction “risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation’s intellectual life, its college and university campuses.” *Id.* Yet that is precisely Plaintiff Gerwaski’s objective, weaponizing the legal system to have either this Court or his university silence a viewpoint he disagrees with.

Students for Justice in Palestine at the University of Nevada Las Vegas (“SJP UNLV”) is a student group at UNLV that advocates against Israel’s military activities in Palestine. It organizes protests on and off campus and posts social media messages criticizing Israeli’s campaigns against the Palestinians. It also petitions UNLV to divest from companies supporting the Israeli military operations in Gaza. In carrying out this advocacy, SJP UNLV has never engaged in violence or vandalism. To its knowledge, SJP UNLV has complied with all university rules and applicable laws while advocating for their beliefs.

Gerwaski, a fellow student at UNLV, clearly disagrees with SJP UNLV’s views on the war in Palestine. However, instead of countering SJP UNLV’s non-violent, lawful advocacy with his own, Gerwaski sued SJP UNLV under the federal Anti-Terrorism Act (“ATA”) and Nevada tort law for civil conspiracy. He bases his claims against SJP UNLV entirely upon the content of the organization’s message, and for relief, he seeks to punish SJP UNLV for holding a viewpoint he disagrees with by demanding that this Court ban SJP UNLV from the UNLV campus and order the organization to pay both compensatory and punitive damages. He has also sued UNLV for not

engaging in viewpoint discrimination on a matter of public importance, which would violate the First Amendment.

This Court previously dismissed Gerwaski's First Amended Complaint, and his Second Amended Complaint deserves the same treatment as it raises effectively identical allegations. As with his First Amended Complaint, Gerwaski fails to explain how he was injured by an act of international terrorism or how SJP UNLV's advocacy aided and abetted such an act as required by the ATA. He now fails to state a claim alleging that SJP UNLV committed civil conspiracy in that he fails to describe a cognizable legal theory to support this claim or factual allegations to support any its elements. Perhaps most important, Plaintiff's action against SJP UNLV violates the First Amendment as it premises liability entirely upon SJP UNLVs protected First Amendment activities.

SJP UNLV respectfully requests that this Court dismiss Plaintiff's claims against the organization in their entirety, this time with prejudice.

II. FACTS AND PROCEDURAL HISTORY

SJP UNLV is a Registered Student Organization (RSO) on the UNLV campus. *See* Students for Justice in Palestine, Organizations, UNLV Involvement Center (last visited March 5, 2025), *available at* <https://involvementcenter.unlv.edu/organization/sjp>. The organization is "a diverse group of activists and organizers dedicated to advancing the cause for Palestinian justice and liberation by organizing community activities, educational events, and advocacy actions to build awareness, solidarity, and a network of community organizers." *Id.* Its constitution, contact information, faculty advisor, and student point of contact can be found on UNLV's website. *Id.* (the student point of contact information is available under "Full Roster").

In his Second Amended Complaint, Plaintiff Gerwaski brings two claims, one old, one new, against SJP UNLV under 18 USC § 2383 of the ATA and Nevada's common law tort of civil conspiracy. Second Amended Complaint, ¶¶ 237–258, 362–368. ECF No. 79 (June 3, 2025) ("SAC").

1 In his Second Amended Complaint Plaintiff once again makes wide-ranging accusations against
 2 multiple parties. *See generally* SAC. Parsing through those accusations, Plaintiff offers the following
 3 factual allegations against SJP UNLV.

4 **A. Factual allegations related to SJP UNLV’s conduct in Plaintiff’s Second**
 5 **Amended Complaint that identical to the allegations in his First Amended**
 6 **Complaint.**

7 The allegations against SJP UNLV in Gerwaski’s Second Amended Complaint are practically
 8 identical to the allegations in his dismissed First Amended Complaint. *Compare* SAC *with* First
 9 Amended Complaint, ECF No. 6 (August 9, 2024).

10 Like his First Amended Complaint, Gerwaski alleges that SJP UNLV’s constitution calls for
 11 a one state solution with that state being under Palestinian control. *Id.* ¶ 64. As he said in his First
 12 Amended Complaint, it is Gerwaski’s opinion that this statement demonstrates SJP UNLV’s
 13 “genocidal intent” but offers no allegation, citation, or evidence that SJP UNLV advocates for
 14 violence in its constitution. *Id.*

15 Yet again, Gerwaski alleges that SJP UNLV has posted on social media. As before,
 16 Gerwaski’s complaint cites to advertisements for protests on UNLV’s campus, descriptions of SJP
 17 UNLV’s mission as an organization, statements related to that mission such as “UNLV you will see
 18 Palestine will be free,” and an announcement about a National Students for Justice in Palestine
 19 (“NSJP”) program “Popular University for Gaza Campaign”. *Id.* ¶¶ 73, 79, 123, 206. Other posts
 20 from SJP UNLV in Gerwaski’s complaint included a petition to UNLV to financially divest from
 21 Israel and a call for economic boycotts to support Palestine. *Id.* ¶¶ 118, 122, 134, 209, 212, 218. None
 22 of SJP UNLV’s posts cited by Gerwaski advocate for violence or refer to Hamas. All of the posts
 23 cited in Gerwaski’s Second Amended Complaint were cited in his First Amended Complaint. *Id.* ¶¶
 24 66, 73, 80, 91, 118, 122, 134.

25 Yet again, Gerwaski alleges that SJP UNLV coordinated off and on campus protests with
 other local advocacy groups including Nevadans for Palestinian Liberation, the Fifth Sun Project, and

Red Desert Collective. *Id.* ¶¶ 93–94. Parroting his First Amended Complaint, Gerwaski alleges that SJP UNLV has “incorporated” local advocacy groups to “join ‘the resistance’” and insinuates that this “resistance” is violent, but he does not allege that SJP UNLV engaged in any violent activity. *Id.* ¶¶ 99–100. Gerwaski only alleges, as he did in the First Amended Complaint, that SJP UNLV “takes instruction” from the National Students for Justice in Palestine (“NSJP”) to engage in “antisemitic protests” on UNLV’s campus and organized actions where protesters chanted the phrases “From the river to the sea, Palestine will be free” and “Long live the intifada”, which Gerwaski considers to be rhetoric espousing violence against Israel. *Id.* ¶ 95, 211. Gerwaski does not allege that Hamas contacted SJP UNLV or vice versa, nor does he claim that any of SJP UNLV’s protests were violent or caused property damage.

Finally, Gerwaski alleges, as he did before, that SJP UNLV met in person with UNLV’s president to petition for the university to financially divest from Israel and discuss the safety of people participating in the protests. *Id.* ¶¶ 214–215. Gerwaski does not allege that SJP UNLV threatened, harassed, or otherwise acted inappropriately while meeting with the president. Instead, he expresses anger that the UNLV’s president would meet with SJP UNLV at all or SJP UNLV should expect to protest safely considering their message. *Id.* ¶¶ 214, 217.

Though he was provided yet another opportunity to do so, Gerwaski still does not allege he ever personally encountered SJP UNLV, witnessed the organization’s protests, viewed its social media, or otherwise interacted with SJP UNLV in any way. *See generally id.* According to his complaint, Gerwaski has only interacted with “groups” of protesters, but not SJP UNLV specifically. *Id.* ¶¶ 44–46.¹ Nowhere in his complaint does Gerwaski allege that SJP UNLV took any action, lawful or otherwise, prior to October 7, 2023, let alone that the organization aided Hamas in its attack on

¹ Note that Plaintiff’s first amended complaint identifies this “group” as Nevada Palestine Liberation, but the Second Amended Complaint replaces the organizations name with “groups.” Compare First Amended Complaint ¶ 244 with Second Amended Complaint ¶ 44

1 that day. *See generally id.*

2 **B. Factual allegation new to Gerwaski’s Second Amended Complaint.**

3 Although Gerwaski directly references SJP UNLV more frequently in his Second Amended
 4 Complaint than in his First Amended Complaint, Gerwaski only provides one new factual allegation
 5 regarding SJP UNLV, saying that SJP UNLV communicates with NSJP and that SJP UNLV “utilized
 6 a NSJP Toolkit in its activities.” *Id.* ¶ 98. Gerwaski does not explain what exactly he is accusing SJP
 7 UNLV of communicating to NSJP or how SJP UNLV “utilized” NSJP’s toolkit in a manner that
 8 violated Nevada or federal law. Instead Gerwaski only asserts that the NSJP Toolkit compels SJP
 9 UNLV to “provide ‘real’ support to Hamas through ‘confrontation’ that according to Gerwaski
 10 includes ‘armed struggle’ and violence.” *Id.* ¶ 99. Of course, Gerwaski does not explain how SJP
 11 UNLV was compelled to do anything by a document posted publicly on the internet, and again,
 12 Gerwaski never alleges that SJP UNLV engaged in armed struggle or violence. In fact, according to
 13 Mr. Gerwaski’s complaint SJP UNLV has only engaged non-violent, unarmed advocacy, i.e. protests,
 14 social media posts, and petitions. *Id.* ¶¶ 66, 73, 80, 91, 118, 122, 134.

15 Otherwise Gerwaski’s Second Amended Complaint only refers to SJP UNLV in conclusory
 16 statements unsupported by any factual allegations. *See, e.g., Id.* ¶¶ 245, 257, 363.

17 **C. Factual allegations related to Gerwaski’s injuries.**

18 In pursuing his claim under 18 USC § 2333 of the ATA, Gerwaski states he is in a state of
 19 fear and anxiety, collapsed in his calculus class, was diagnosed with an extreme stress disorder, was
 20 diagnosed with Bell’s Palsy, and had to drop two summer courses. *Id.* ¶ 246. He blames “the ever-
 21 present and real threats posed by said Defendants” for these injuries. *Id.* The October 7, 2023, terrorist
 22 attack is still the only act of international terrorism described in his complaint, *Id.* ¶¶ 173–174, and
 23 Gerwaski again fails to explain how that attack has caused his alleged injuries. *See generally id.*

24 In describing his claim for civil conspiracy, Gerwaski only claims that “Plaintiff suffered
 25

damages”, and does not explain what, if any, of his injuries were caused by the alleged conspiracy. *Id.* ¶ 363.

D. Procedural posture

Gerwaski filed this action on May 26, 2024. ECF No. 1. This Court issued summonses on May 28, 2024. ECF No. 4. Gerwaski amended his complaint on August 9, 2024. ECF No. 6. Gerwaski served SJP UNLV the summons and First Amended Complaint on February 12, 2025. ECF No. 48. SJP UNLV filed a motion to dismiss on March 5, 2025, as well as a special motion to dismiss on April 11, 2025. ECF No. 51; ECF No. 61. The Court granted both SJP UNLV motions to dismiss on May 5, 2025, dismissing Gerwaski’s IIED claim with prejudice and Gerwaski’s Antiterrorism Act claim without prejudice. ECF No. 71. In granting the motions to dismiss, the Court determined that all of SJP UNLV’s actions described in Gerwaski’s First Amended Complaint were protected activities pursuant to the First Amendment. *Id.* pg. 21. Gerwaski filed a Second Amended Complaint on June 3, 2025. ECF No. 79. SJP UNLV now timely seeks to dismiss Gerwaski’s Second Amended Complaint.

III. LEGAL STANDARD

To avoid dismissal pursuant to Rule 12(b)(6), a plaintiff must make sufficient factual allegations to establish a plausible entitlement to belief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955 (2007). A plaintiff must also plead a cognizable legal theory for each of his claims. *Tracht Gut, LLC v. L.A. Cnty. Treasurer & Tax Collector*, 836 F.3d 1146, 1151 (9th Cir. 2016). (“A dismissal under Rule 12(b)(6) may therefore be based on either the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory...”.) “In assessing whether a party has stated a claim upon which relief can be granted, a court must take all allegations of material fact as true and construe them in the light most favorable to the nonmoving party.” *Kwan v. SanMedica Int’l*, 854 F.3d 1088, 1096 (9th Cir. 2017). “[C]onclusory allegations of

1 law and unwarranted inferences, however, are insufficient to avoid dismissal.” *Id.* As such
2 “allegations must amount to ‘more than labels and conclusions, [or] a formulaic recitation of the
3 elements of a cause of action.’” *Coleman v. Telles*, No. 2:24-cv-00930-APG-MDC, 2025 U.S. Dist.
4 LEXIS 21413, at *3 (D. Nev. Feb. 5, 2025) (quoting *Bell Atl. Corp.*, 550 U.S. at 556).

5 After separating out any well-plead factual allegations from plaintiff’s legal conclusions and
6 unwarranted inferences, the Court must then determine “whether [the factual allegations] plausibly
7 give rise to an entitlement to relief.” *Kwan*, 854 F.3d at 1096. “This plausibility standard requires
8 more than a sheer possibility that a defendant has acted unlawfully”; rather “[a] claim has facial
9 plausibility when the plaintiff pleads content that allows the court to draw the reasonable inference
10 that the defendant is liable for the misconduct alleged.” *Id.*

11 **IV. ARGUMENT**

12 In his Second Amended Complaint Plaintiff Gerwaski raises two claims against SJP UNLV:
13 one under the 18 USC § 2333 of the American Terrorist Act and the other for civil conspiracy. As it
14 was true for the claims raised in his First Amended Complaint, both of Gerwaski’s claims are barred
15 by the First Amendment as they are premised on the content of SJP UNLV’s speech. As was the case
16 for his ATA claim pled in his First Amended Complaint, Gerwaski’s ATA claim must again be
17 dismissed because he again fails to adequately allege an injury caused by an act of international
18 terrorism or to adequately allege that SJP UNLV aided and abetted such an act. As for his new civil
19 conspiracy claim, Gerwaski fails to offer a cognizable legal theory, sufficient factual allegations, or
20 even a predicate offense to support his claim. As such, Gerwaski’s claims against SJP UNLV must
21 again be dismissed in their entirety.

22 **A. Gerwaski’s claims against SJP UNLV are barred by the First Amendment.**

23 The First Amendment can serve as a defense in tort suits; whether the Free Speech Clause
24 shields a defendant “turns largely on whether [the defendant’s] speech is of public or private
25

1 concern.” *Snyder v. Phelps*, 562 U.S. 443, 451, 131 S. Ct. 1207, 1215 (2011).

2 As the Supreme Court observed in *Snyder v. Phelps*, “[t]he First Amendment reflects a
3 profound national commitment to the principle that debate on public issues should be uninhibited,
4 robust, and wide-open.” 562 U.S. at 452. Because “speech concerning public affairs [. . .] is the
5 essence of self-government,” it “occupies the highest rung of the hierarchy of First Amendment
6 values, and is entitled to special protection.” *Id.* (quotation omitted). “Speech deals with matters of
7 public concern,” and so entitled to special protection, “when it can be fairly considered as relating to
8 any matter of political, social, or other concern to the community, or when it is a subject of legitimate
9 news interest; that is, a subject of general interest and of value and concern to the public.” *Id.* at 453
10 (quotations omitted). Whether expressive conduct is “inappropriate or controversial [. . .] is irrelevant
11 to the question whether it deals with a matter of public concern.” *Id.* If a plaintiff seeks to hold a
12 defendant liable for the content of speech related to a matter public concern rather than that “of purely
13 private significance,” the plaintiff’s claims are barred by the First Amendment. *Id.*, 56 U.S. at 460–
14 61 (barring the plaintiff’s claims of intentional infliction of emotional distress and civil conspiracy as
15 they were based entirely upon content of the defendant’s speech related to a matter of public concern).

16 This Court has already determined that SJP-UNLV’s conduct at issue was protected by the
17 First Amendment. ECF No. 71 pg. 13-16. Gerwaski has not remedied this deficiency in his Second
18 Amended Complaint in that he premises SJP UNLV’s liability on the same activities identified in his
19 First Amended Complaint and subject to this Court’s May 5, 2025, order: (1) non-violent protests
20 organized by SJP UNLV on and off campus advocating a pro Palestine position related to that war,
21 (2) SJP UNLV’s association with other advocacy groups to protest Israel’s actions during the war,
22 (3) SJP UNLV’s petitions to a state-run university to divest from Israel due to that country’s actions
23 during the war, and (4) SJP UNLV’s social media posts criticizing the war and calling for economic
24 boycotts.

1 SJP UNLV's activities at issue are entitled to the strongest protections under the First
 2 Amendment. *Carey v. Brown*, 447 U.S. 455, 466-67, 100 S. Ct. 2286, 2293 (1980) ("Public-issue
 3 picketing, an exercise of . . . basic constitutional rights in their most pristine and classic form, has
 4 always rested on the highest rung of the hierarchy of First Amendment values." (ellipsis in the
 5 original)); *Roberts v. United States Jaycees*, 468 U.S. 609, 622, 104 S. Ct. 3244, 3252 (1984) ("[W]e
 6 have long understood as implicit in the right to engage in activities protected by the First Amendment
 7 a corresponding right to associate with others in pursuit of a wide variety of political, social,
 8 economic, educational, religious, and cultural ends."); *NAACP v. Claiborne Hardware Co.*, 458 U.S.
 9 886, 911 (1982) (finding "[t]he established elements of speech, assembly, association, and petition"
 10 inseparable from the right to organize a non-violent economic boycott to serve a political purpose).
 11 SJP UNLV engaged in all these activities in relation to a matter of public concern as all were about
 12 the war in Gaza. Plaintiff cannot meaningfully dispute that the war in Gaza is a matter of public
 13 concern, dividing the American public, impacting American politics, and filling American news
 14 coverage. *See, e.g.*, Shibley Telhami, *Is the Israel-Gaza war changing US public attitudes*, Brookings
 15 Institute (November 2, 2023) (discussing the American public's response to Israel's intervention in
 16 Gaza and the potential impact on the 2024 presidential election), available at
 17 <https://www.brookings.edu/articles/is-the-israel-gaza-war-changing-us-public-attitudes/>; Nathan J.
 18 Brown, *The Polarization of U.S. Campus Protests*, Carnegie Endowment for International Peace (May
 19 6, 2024) (discussing the protests over Israeli's actions in Gaza and public response to those protests),
 20 available at [https://carnegieendowment.org/emissary/2024/05/the-polarization-of-us-campus-](https://carnegieendowment.org/emissary/2024/05/the-polarization-of-us-campus-protests?lang=en)
 21 [protests?lang=en](https://carnegieendowment.org/emissary/2024/05/the-polarization-of-us-campus-protests?lang=en). In fact, his own claims depend on it, with his complaint emphasizing widespread
 22 protests across the country related to the conflict. *See* SAC ¶ 133 (alleging that protests related to the
 23 conflict "erupted across American cities").

24 Gerwaski cannot dispute that his claims against SJP UNLV are based entirely upon the
 25

organization's views and the content of SJP UNLV's messages about the Gaza conflict. *See Snyder*, 562 U.S. at 457 (emphasizing that "that any distress occasioned by [the defendant]'s picketing turned on the content and viewpoint of the message conveyed" in determining that the First Amendment barred plaintiff's claims). Gerwaski's claims are based purely upon the content of SJP UNLV's message, specifically that the message's viewpoint is antisemitic and, by advocating against Israel's actions in Gaza, SJP UNLV's views assists Hamas. After all, if SJP UNLV engaged in the exact same conduct (i.e. organizing protests, petitioning UNLV, and calling for boycotts) in favor of Israel rather than Palestine, Gerwaski would not be asking this Court to ban SJP UNLV from campus or demanding damages. *See Snyder*, 562 U.S. at 457 (considering whether a different message conveyed by the defendant in the same manner would have resulted in liability in determining whether claims were content based).

As currently pled, Gerwaski seeks to hold SJP UNLV liable solely due to SJP UNLV's viewpoint. As the First Amendment bars such actions, Gerwaski's claims against SJP UNLV must be dismissed.

B. Gerwaski failed to adequately plead that he was injured by an act of international terrorism.

Before asserting a claim under 18 USC § 2333(d)(2), a plaintiff must satisfy the prerequisites of 18 USC § 2333(a) by identifying an act of international terrorism and then pleading sufficient allegations to establishing that act injured his "person, property, or business." 18 USC § 2333(d)(2) (authorizing secondary liability "[i]n an action under [18 USC § 2333(a)] for an injury arising from an act of international terrorism."); *See Taamneh*, 598 U.S. at 483 ("those injured by an act of international terrorism can sue [. . .]").

Not every action undertaken by an entity designated as a terrorist organization is an "act of international terrorism"; rather such acts are defined by 18 USC § 2331(1). Such an act necessarily (1) involves violence, (2) violates "the criminal laws of the United States or any State", (3) is made

1 with the intent to intimidate or coerce a government or civilian population, and (4) “occurs primarily
 2 outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of
 3 the means by which they are accomplished.” 18 USC § 2331(1).

4 In his Second Amended Complaint, Gerwaski has provided more information about his
 5 alleged injuries than he did in his First Amended Complaint, but he not explained how a specific act
 6 of international terrorism caused those injuries. The October 7, 2023, attack by Hamas against Israel
 7 is the only act referenced in Gerwaski’s complaint qualifying as an “act of international terrorism”.
 8 See SAC ¶¶ 173–174 (discussing Hamas’s attack on October 7, 2023). However, though he
 9 repeatedly references the October 7, 2023, attack in his complaint, Gerwaski never alleges the attack
 10 caused an injury his “person, property, or business.” *See generally id.* Rather, Gerwaski only yet
 11 again alleges he was injured by the Defendant’s actions on UNLV’s campus, which were non-violent
 12 activities occurring exclusively within the United States such as political advocacy he disagrees with
 13 and adverse employment decisions. *See, e.g. id.* ¶ 246 (alleging that Gerwaski’s emotional distress
 14 stemmed from the Defendants’ actions, not terrorist activity by Hamas). These actions are, by
 15 definition, not acts of international terrorism. As Gerwaski has failed to satisfy the requirements set
 16 forth in 18 USC § 2333(a), he is barred from holding anyone liable under 18 USC § 2333(d)(2).

17 **C. Gerwaski fails to adequately allege that SJP UNLV knowingly aided and**
 18 **abetted any act of international terrorism.**

19 Even if a plaintiff establishes that he was injured by an act of international terrorism as
 20 required by 18 USC §2333(a), 18 USC § 2333(d)(2) still requires the plaintiff to also show that the
 21 defendants “aided and abetted the act of international terrorism that injured [him].” *Twitter, Inc. v.*
 22 *Taamneh*, 598 U.S. 471, 497, 143 S. Ct. 1206, 1225 (2023). Furthermore, to satisfy the “aiding and
 23 abetting” requirement, a plaintiff must show that the defendant was “generally aware of his role as
 24 part of an overall illegal or tortious activity at the time that he provides the assistance” and “knowingly
 25 and substantially assist[ed] the principal violation.” *Leisrael v. Educ. for A Just Peace in the Middle*

1 *E.*, 460 U.S. App. D.C. 490, 499, 66 F.4th 1007, 1016 (2023).

2 As stated above, the only act identified in Gerwaski's Second Amended Complaint that might
3 satisfy the definition of "an act of international terrorism" occurred on October 7, 2023, well before
4 any of the alleged actions taken by SJP UNLV in Gerwaski's complaint. SJP UNLV's protests,
5 petitions, and social media posts cited in Gerwaski's complaint are all responding to Israel's military
6 actions in Gaza in response to the October 7, 2023, attack. As such, Gerwaski fails to identify any
7 action SJP UNLV took to aid and abet the sole act of international terrorism identified in his
8 complaint.

9 Gerwaski also fails to adequately plead SJP UNLV knowingly supported Hamas in doing
10 anything, act of terrorism or otherwise. Setting aside his unsupported conclusions, Gerwaski has pled
11 no facts establishing any communication between SJP UNLV and Hamas or vice versa. As laid out
12 in Gerwaski's factual allegations, the only relevant organizations that SJP UNLV had contact with
13 either in person or via social media during the relevant period were (1) NSJP, (2) UNLV
14 administration, and (3) protest organizations located here in Nevada. While Gerwaski makes broad
15 claims that all Defendants are "aware" that their actions support Hamas based upon statements
16 Gerwaski attributes to NSJP, *see, e.g.* SAC ¶ 249, he offers no concrete allegations, in the form of
17 communications, transactions, or even statements by SJP UNLV, to support the conclusion that SJP
18 UNLV knowingly worked on Hamas's behalf. Instead, Gerwaski appears to suggest that SJP UNLV's
19 political advocacy criticizing and challenging Israel's military action, the very content of SJP
20 UNLV's protected speech, is unlawful because it somehow assists Hamas. This cannot be sufficient
21 to establish a claim under the ATA against SJP UNLV; to find otherwise would place the ATA in
22 direct conflict with the First Amendment.

23 Gerwaski fails to offer any facts that SJP UNLV undertook any action to aid and abet an act
24 of international terrorism. He also fails to offer factual allegations that SJP UNLV knowingly had
25

any connection at all to Hamas. For these reasons, among others, his ATA claim against SJP UNLV must be dismissed.

D. Gerwaski fails to adequately state any viable claim of civil conspiracy against SJP UNLV.

“Mere recitals of the elements of a cause of action, supported only by conclusory statements, are not sufficient” to establish a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009); *Warren v. Dollar Tree*, No. 2:23-cv-01377-APG-EJY, 2024 U.S. Dist. LEXIS 6692, at *8 (D. Nev. Jan. 11, 2024). Gerwaski’s ninth cause of action, titled “Civil Conspiracy”, fails to meaningfully provide a legal theory (i.e. what facts theoretically apply to this claim) let alone sufficient facts to support the claim. *See* SAC ¶¶ 362-368.

Gerwaski relies on Nevada’s common law tort of civil conspiracy for his ninth cause of action, *see* SAC ¶¶ 362-368, and he fails to adequately plead such a claim. When pleading conspiracy “enough facts to raise a reasonable expectation that discovery will reveal evidence” of a conspiracy must be plead. *Twombly* 550 U.S. at 556. An actionable civil conspiracy claim under Nevada law “consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts.” *Compare Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 971 P.2d 1251, 1256 (Nev. 1998) *with* SAC ¶¶ 363 (accusing SJP in “combination with two or more persons” of engaging in “concerted action . . . intended to accomplish an unlawful objective” for “the purpose of harming” another person, i.e. “Jewish students at UNLV”). The underlying harm or damages are the “essence of civil conspiracy” claims. *Flowers v. Carville*, 266 F. Supp. 2d 1245, 1249 (D. Nev. 2003). Gerwaski offers no substance to support his civil conspiracy claim beyond restating the elements above. He fails to identify a valid underlying civil wrong to serve as predicate for his conspiracy, he offers nothing but conclusory statements to claim the existence of an agreement to perpetuate a civil wrong, and he fails to explain what, if any, damages he suffered as a direct result of his alleged

1 conspiracy.

2 Under Nevada law, civil conspiracy claims cannot standalone and require an underlying civil
3 wrong. *Vested Hous. Grp., Ltd. Liab. Co. v. Principal Real Estate Inv'rs, Ltd. Liab. Co.*, 648 F. App'x
4 646, 649 (9th Cir. 2016); *see also Sahara Gaming Corp. v. Culinary Workers Union Local 226*, 115
5 Nev. 212, 984 P.2d 164, 168 (Nev. 1999) (dismissing a civil conspiracy claim because the underlying
6 defamation claim was dismissed). The underlying civil wrong Gerwaski alleges to have been
7 perpetrated by the alleged conspiracy is, in his words, “furthering the terrorist organization of Hamas
8 and antisemitic conduct at UNLV for the purpose of harming Jewish students at UNLV.” SAC ¶ 363.
9 This is simply inadequate to establish a civil conspiracy claim.

10 First, this claim is conclusory and unsupported by any actual factual allegation. Asserting that
11 SJP UNLV is “furthering the terrorist organization Hamas and antisemitic conduct at UNLV” is a
12 conclusion that does not satisfy the requirements imposed by Rule 12(b)(6). *Iqbal*, 556 U.S. at 678.
13 According to the facts actually alleged by Gerwaski, SJP UNLV is a student group that advocates for
14 the Palestinians living in Gaza, not Hamas, and against Israel’s military campaign against those
15 people. Gerwaski does not identify a single time where SJP UNLV intended to help Hamas or
16 encourage discrimination in any form. Furthermore, Gerwaski does not specify what, if any, law his
17 vague accusation would violate. Perhaps Gerwaski is implicitly predicating his conspiracy claim on
18 the ATA, but as his ATA claim is not viable therefore his conspiracy claim is not viable.

19 Second, in pursuing a claim of civil conspiracy, a plaintiff must show “an explicit or tacit
20 agreement between the conspirators” and the intent was to “harm the plaintiff.” *Guilfoyle v. Olde*
21 *Monmouth Stock Transfer Co.*, 130 Nev. 801, 813 (2014). He offered no facts establishing that SJP
22 UNLV had any agreement whatsoever with NSJP or AMP. In describing his claim, Gerwaski only
23 states that “AMP, SJP-UNLV, NSJP” engaged in “concerted action” to further “the terrorist
24 organization of Hamas and antisemitic conduct at UNLV for the purpose of harming Jewish students
25

1 at UNLV”, this is a conclusion rather than a factual allegation, and otherwise sends SJP UNLV to
2 hunt through the rest of his complaint to guess at the factual basis for this allegation. *Id.* ¶ 362-363.
3 As far as SJP UNLV can divine, Gerwaski’s “agreement” allegation hinges on SJP UNLV “utilizing”
4 a publicly available social media toolkit and “communicating” with NSJP. Neither of these are
5 activities require that the parties reach an agreement of any sort, and certainly not one to harm
6 Gerwaski or any other UNLV student.

7 Finally, a plaintiff must show he was actually damaged by the alleged conspiracy to raise a
8 civil conspiracy claim. All Gerwaski offers for damages is that he “suffered damages.” SAC ¶ 363.
9 Self-fulfilling conclusions are not factual allegations.

10 Relying on insinuations rather than objective facts is inappropriate and legally insufficient for
11 a complaint filed in a United States federal district court. Given a second opportunity to bring claims
12 against SJP-UNLV, Gerwaski was obligated to explain what, if any, factual allegations supported
13 each element of his civil conspiracy claim, and he has, once again, offered nothing but conclusory
14 statements and innuendos in an effort to subject SJP UNLV to liability.

15 CONCLUSION

16 Gerwaski has not pled sufficient factual allegations to support either of his claims against SJP
17 UNLV. Gerwaski has not identified an act of international terrorism that has caused him harm, nor
18 has he alleged that SJP UNLV aided and abetted such an act. Gerwaski has failed to plead a
19 cognizable claim under “civil conspiracy” and fails to identify an actual civil wrong sought by the
20 conspiracy, that there was an agreement between the alleged conspirators, or that he was harmed by
21 his theoretical conspiracy.

22 While these reasons are by themselves enough to dismiss Gerwaski’s claims, it is perhaps
23 most important to recognize that Gerwaski’s action against SJP UNLV must be dismissed because
24 Gerwaski’s claims violate the Constitution. Gerwaski asks this Court to punish SJP UNLV because
25

1 SJP UNLV has spoken out about a matter of public concern. The war in Gaza has killed thousands
2 of people and has polarized the American public; Gerwaski and SJP UNLV clearly sit at opposing
3 poles. Gerwaski now sues SJP UNLV not because SJP UNLV has advocated in a way that violates
4 the law but because Gerwaski finds SJP UNLV's message itself repugnant. To ensure open and public
5 dialogue and debate about issues that are important but controversial, the First Amendment
6 necessarily bans such efforts. Defendant SJP UNLV respectfully requests that this Court dismiss all
7 of Gerwaski's claims against it with prejudice.

8 Dated: August 1, 2025

9
10 **ACLU OF NEVADA**

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Defendant Students for Justice in Palestine UNLV's Motion to Dismiss** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on August 1, 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/ Jacob T. S. Valentine
An employee of ACLU of Nevada