**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK**

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TIM DOE, ANDREW DOE, MICHAEL DOE, WILLIAM DOE, and ERIC DOE, on behalf of themselves and all others similarly situated,

Index No. 157032/2024

Plaintiffs,

-against-

**ORAL ARGUMENT REQUESTED**

MARYAM ALWAN, as representative/lead organizer of Columbia Students for Justice in Palestine; CAMERON JONES, as representative/lead organizer of Columbia–Barnard Jewish Voice for Peace; JULIA BANNON, as representative/president of Student Workers of Columbia–United Auto Workers Local 2710; JOSEPH HOWLEY, as representative/lead organizer of Faculty and Staff for Justice in Palestine at Columbia, Barnard, and Teachers College; DAVID LURIE, as representative/president of Columbia/Barnard Chapter of the American Association of University Professors; Wespac Foundation, as treasurer for NATIONAL STUDENTS FOR JUSTICE IN PALESTINE; WESPAC FOUNDATION INC.; NERDEEN KISWANI, as representative/president of Within Our Lifetime; THE PEOPLE'S FORUM INC.; SHAWN FAIN, as representative/president of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW); MARYAM ALWAN, GRANT MINER, CAMERON JONES, MAHMOUD KHALIL, JOSEPH HOWLEY, NERDEEN KISWANI, MANOLO DE LOS SANTOS, BRANDON MANCILLA, ALEXANDRIA OCASIO-CORTEZ, ILHAN OMAR, and JAMAAL BOWMAN,

Defendants,

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# MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT COLUMBIA-AAUP'S MOTION TO DISMISS PURSUANT TO CPLR 3211(a)(7) and (g) AND FOR SANCTIONS PURSUANT TO NYCRR 130-1.1

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Defendant David Lurie, as representative of the Columbia University Chapter of the American Association of University Professors ("Columbia-AAUP"), submits this memorandum of law in support of his motion for an order (1) dismissing the claims against Columbia-AAUP pursuant to CPLR 3211(a)(7) and (g) and Civ. Rights L. §§70-a,76-a; (2) ordering Plaintiffs to pay attorney's fees and costs pursuant to Civ. Rights L. §70-a; and (3) awarding sanctions against Plaintiffs' counsel pursuant to 22 NYCRR 130-1.1.[1]

## INTRODUCTION

This is a classic "SLAPP" suit[2] brought to harass and punish Columbia-AAUP, an organization of Columbia University faculty, for engaging in First Amendment-protected speech. In spring 2024, during student protests over the Israel-Hamas war, Columbia-AAUP spoke publicly in defense of students' rights to free speech and protest and in condemnation of what it deemed Columbia University's harsh and punitive response. In response, Plaintiffs—five current and former Columbia students—filed this lawsuit against Columbia-AAUP and twenty other Defendants asserting a bewildering array of tort claims and seeking punitive damages. The crux of Plaintiffs' lawsuit is that Columbia-AAUP's statements somehow caused whatever injuries Plaintiffs purport to have suffered as a result of *Columbia University*'s decisions to move classes online, restrict campus access, and cancel commencement in response to the protests.

Plaintiffs' lawsuit is frivolous. It is precisely the type of vindictive and meritless action that New York's anti-SLAPP law was designed to dismiss and deter. Every allegation against Columbia-AAUP takes aim at speech at the heart of the First Amendment—statements on matters

[1] Plaintiffs incorrectly name Defendant as "David Lurie, as representative/president of Columbia/Barnard Chapter of the American Association of University Professors." The AAUP has separate Columbia University and Barnard College chapters. Lurie served as the President of the Columbia-AAUP until May 2024. In May 2024, before this lawsuit was filed, Reinhold Martin became President of the Columbia-AAUP.

[2] Strategic lawsuit against public participation

of public concern. These statements concern activities on Columbia's campus that have drawn intense national and international attention. Plaintiffs seek to force upon Columbia-AAUP the high cost of defending this lawsuit and to expose Columbia-AAUP to substantial and potentially ruinous financial penalty. Their goal is not only to attack Columbia-AAUP's speech about the protests but to chill future speech by Columbia-AAUP and others.

Plaintiffs' claims fail as a matter of law. The Complaint does not, because it cannot, plead any plausible connection between Columbia-AAUP's speech and Plaintiffs' purported injuries, which stem from Columbia University's reactions to the student protests. The First Amendment separately shields Columbia-AAUP's speech from tort liability. Because Plaintiffs' claims fail, the anti-SLAPP law mandatorily awards Columbia-AAUP attorney's fees and costs. Given the patently frivolous nature of Plaintiffs' claims, the Court should further sanction Plaintiffs' counsel.

## FACTUAL BACKGROUND

### A. Israel-Hamas War

On October 7, 2023, Hamas launched an attack on Israeli soil, killing approximately 1,200 people and taking over 250 hostages.[3] In response, the Israeli government launched a military operation in the Gaza Strip.[4] By April 2024, the Israeli government's military response had killed more than 33,000 Palestinians in the Gaza Strip and caused the displacement of more than 1.7 million people.[5]

The humanitarian catastrophe in Gaza and the U.S. government's support for the Israeli government triggered widespread protests around the world.[6]

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[3] https://www.state.gov/anniversary-of-october-7th-attack

[4] https://www.washingtonpost.com/world/2024/04/07/israel-hamas-gaza-war-timeline-anniversary

[5] https://apnews.com/article/israel-hamas-gaza-war-statistics-95a6407fac94e9d589be234708cd5005

[6] https://www.aljazeera.com/news/2024/2/17/thousands-take-part-in-pro-palestine-protests-across-the-world

**B. Student Protests at Columbia University and Columbia's Response**

On April 17, 2024, hundreds of Columbia students established a "Gaza Solidarity" encampment, pitching tents on campus and calling for Columbia's divestment from companies with ties to Israel.[7] The next day, then-University President Minouche Shafik authorized the New York City Police Department ("NYPD") to enter campus and clear the encampment.[8] NYPD officers arrested over 100 students.[9]

On April 21, students re-erected the encampment.[10] Columbia subsequently announced that all courses, except in the Medical and Arts programs, would move online from April 23 to April 29.[11]

On April 29, Columbia began distributing suspension notifications at the encampment, informing students that they had until 2 p.m. that afternoon to vacate the lawn.[12] At 2 p.m., the encampment remained, and hundreds of students began picketing in support of the encampment.[13]

On April 30, students occupied Hamilton Hall.[14] In response, Columbia announced that it would be closing campus buildings and restricting access to the Morningside campus to students residing in on-campus residence halls and essential personnel.[15]

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[7] Am. Compl. ¶¶41, 44, Docket No. 42.

[8] *Id*. ¶52

[9] *Id*. ¶54

[10] *See id.* ¶¶59–60

[11] *Id*. ¶357

[12] *Id*. ¶75

[13] *Id*. ¶¶206–08

[14] *Id*. ¶76

[15] *Id*. ¶¶325–27

That same day, Shafik authorized the NYPD to clear Hamilton Hall and the encampment.[16] That evening, NYPD officers entered campus to conduct mass arrests.[17]

On May 7, Columbia announced it was canceling its main university-wide commencement ceremony.[18]

**C. The Columbia University Chapter of the AAUP**

Founded in 1915, the American Association of University Professors is a nonprofit membership association of academic professionals, with members and chapters at colleges and universities across the country.[19] The AAUP works to define professional values and standards for higher education; advance the rights of academics, particularly related to academic freedom and shared governance; and promote higher education teaching and research.[20] AAUP chapters advance that mission through advocacy, organizing, and, in some cases, collective bargaining.[21] Columbia University's chapter was re-established on December 13, 2021.[22]

**D. Columbia-AAUP's Statements**

During the student protests, Columbia-AAUP issued statements supporting students' rights to free speech and protest and condemning Columbia's response, including its use of the NYPD against protesting students. Plaintiffs' factual allegations against Columbia-AAUP, which focus exclusively on that speech, comprise these eleven paragraphs:[23]

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[16] *Id.* ¶80

[17] *Id*.

[18] *Id*. ¶94

[19] https://www.aaup.org/about-aaup

[20] *Id*.

[21] *Id*.

[22] https://www.aaupcu.org/. The chapter was previously active but went dormant in the 1980s.

[23] Columbia-AAUP takes these allegations as true for purposes of this motion but reserves its right to challenge any inaccuracies therein in any further proceedings.

(1) "On October 25, 2023, the C/B-AAUP issued a letter expressing its 'grave concern' about Columbia's suspension of CSJP and C/B JVP. 'We are concerned that senior administrators are exercising emergency powers outside the ordinary process clearly laid out in the University statutes. One egregious example is allowing the [NYPD] on and around campus over several weeks. . .'"[24]

(2) "On December 14, 2023, the C/B-AAUP issued a statement that began, 'Since October 7, 2023, Columbia University has experienced extraordinary, even unprecedented, challenges to academic freedom and violations of faculty governance.' Its criticisms included, 'on-campus and helicopter policing and surveillance by the NYPD.'"[25]

(3) "On April 19, 2024, the C/B-AAUP put out a statement criticizing the university's 'unilateral and wildly disproportionate punishment of peacefully protesting students.' The statement described the NYPD's April 17th clearing of the encampment as an 'attack' on 'over one hundred students for engaging in a peaceful protest.' It closed, 'AAUP Barnard and Columbia pledge continued support for our students' right to protest and to speak freely.'"[26]

(4) "On Friday afternoon [of April 19, 2024], more than 300 faculty members across the Columbia and Barnard communities convened in an emergency Zoom meeting to discuss pressing issues. The meeting, organized by the University's [AAUP] chapter, served as an open forum to share thoughts about the recent congressional hearing, police presence, and mass arrests and suspensions."[27]

(5) "Later on April 19, 2024, the C/B-AAUP put out a 'declaration' following a 'mass emergency meeting of the faculty' stating, 'We condemn in the strongest possible terms the Administration's suspension of students engaged in peaceful protest and their arrest by the [NYPD].'"[28]

(6) "On April 19, 2024, the national AAUP put out a statement criticizing Columbia's decision to clear campus protestors on April 17: 'Shafik trampled on students' associational and free speech rights by declaring a peaceful, outdoor protest a 'clear and present danger to the substantial functioning of the University.' . . . President Shafik's silencing of peaceful protesters and having them hauled off to jail does a grave disservice to Columbia's reputation and will be a permanent stain on her presidential legacy.' The Columbia/Barnard AAUP's website states: 'The national AAUP has released a statement in response to events on campuses across the country, co-authored and signed by our Columbia Chapter.'"[29]

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[24] Am. Compl. ¶128

[25] *Id.* ¶129

[26] *Id.* ¶130

[27] *Id.* ¶132

[28] *Id.* ¶131

[29] *Id.* ¶133

(7) "Sometime shortly after April 19, the C/B-AAUP submitted a 'Resolution of Censure of President Shafik, her Administration, and the Co-chairs of the Board of Trustees.' Commenting on the student protests and NYPD response, the resolution states, 'Her actions have endangered these students' welfare, and her draconian and disproportionate punishments have endangered their futures.'"[30]

(8) "On April 22, 2024, the C/B-AAUP held a 'Rally to Support our Students and Reclaim our University.' Over 100 members or supporters of AAUP attended, many dressed in their academic regalia. 'Faculty in the Barnard and Columbia chapter of the [AAUP] voiced support for students' freedom of assembly and condemned the suspensions and arrests of 'peaceful' protesters. At around 2:40 p.m., faculty members marched in a procession toward Barnard to deliver a letter to Barnard President Laura Rosenbury and Dean Leslie Grinage demanding that Barnard lift all student suspensions.'"[31]

(9) "On April 29, 2024, the national AAUP posted a statement signed by multiple AAUP chapters, including the Columbia AAUP, stating, 'The AAUP and its chapters defend the right to free speech and peaceful protest on university campuses, condemn the militarized response by institutional leaders to these activities, and vehemently oppose the politically motivated assault on higher education. . . . We condemn, in the strongest possible terms, the heavy-handed, militaristic response to student activism that we are seeing across the country. At this critical moment, too many cowardly university leaders are responding to largely peaceful, outdoor protests by inviting law enforcement in riot gear to campus and condoning violent arrests. These administrators are failing in their duty to their institutions, their faculty, their students, and their central obligation to our democratic society. When university administrators limit when, where, and how free speech may be exercised, and require advanced applications for permission of such expression, they effectively gut the right itself. To insist that harsh discipline and violent repression are necessary to combat hate on a college campus is a pretext to suppress protest and silence speech.'"[32]

(10) "On April 30, at 8pm, the C/B-AAUP issued a statement: 'At this hour, the NYPD is massing on barricaded streets outside the gates of Columbia University. Columbia faculty have spent the day offering our help to defuse the situation on Columbia's campus and have been rebuffed or ignored. We have been locked out of our campus and have demanded to be allowed back in, and have been rebuffed or ignored. This is not new. Columbia faculty have attempted for the past two weeks to intervene in the situation, only to be shut out by senior University leadership.'"[33]

(11) "On May 2, 2024, the C/B-AAUP issued a statement: 'We unequivocally condemn the decision taken by President Shafik, the Board of Trustees, the Chief Operating Officer, and associated administrators on April 30 to summon the [NYPD] to remove student protesters

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[30] *Id.* ¶134

[31] *Id.* ¶65

[32] *Id.* ¶135

[33] *Id.* ¶136

from campus. This decision . . . flew in the face of efforts by the AAUP and faculty trusted by the student protesters to de-escalate the situation on campus and to serve as observers in negotiations . . . Faculty, staff, and students were locked out of our own campus even prior to the police raid and remain locked out as of this writing: from their offices, labs, and libraries for the first time in Columbia history.'"[34]

**E. Claims Against Columbia-AAUP**

On July 26, 2024, Plaintiffs filed this lawsuit against twenty-one defendants, including Columbia-AAUP. Complaint, Docket No. 2. Plaintiffs assert seven causes of action in the Complaint, but it is unclear which causes of action they assert against Columbia-AAUP. *Compare* Am. Compl. ¶¶437, 474, 519, 531–33 (Causes of Action) *with id.* at pp. 111–12 (Prayer For Relief). Columbia-AAUP's motion to dismiss nonetheless addresses all four causes of action arguably asserted against Columbia-AAUP: (1) negligence, (2) tortious interference with a contract, (3) civil conspiracy, and (4) aiding and abetting a tort.

## STANDARD OF REVIEW

A court must dismiss a complaint for failure to state a claim pursuant to CPLR 3211(a)(7) if the facts alleged fail to "fit within any cognizable legal theory." *Nonnon v. City of New York*, 874 N.E.2d 720, 722 (2007) (citation omitted). However, pursuant to CPLR 3211(g), where a defendant demonstrates that the lawsuit involves "public petition and participation," the complaint must meet "a heightened standard of proof to avoid dismissal." *Hariri v. Amper*, 854 N.Y.S.2d 126, 4 (1st Dep't 2008) (citation omitted). In this type of "strategic lawsuit against public participation," *see Gottwald v. Sebert*, 220 N.E.3d 621, 626–27 (2023), a court must dismiss the complaint unless the plaintiff demonstrates that "the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law." CPLR 3211(g)(1); *see also Reeves v. Associated Newspapers, Ltd.*, 218 N.Y.S.3d 19, 25 (1st Dep't 2024) ("CPLR

[34] *Id.* ¶137

3211(g) . . . establish[es] a new standard designed to ensure that baseless SLAPP suits do not advance beyond the pleadings." (footnote omitted)). CPLR 3211(g) therefore "flip[s] the burden of proof ordinarily applied in CPLR 3211(a)(7) motions to dismiss . . . : once the movant establishes that the plaintiff's action is a SLAPP suit, the motion to dismiss 'shall' be granted unless the plaintiff demonstrates that the cause of action has a substantial basis." *Reeves*, 218 N.Y.S.3d at 25. Thus, a motion to dismiss "anti-SLAPP-inspired causes of action such as . . . tortious interference with contractual relations" is "to be more readily granted than . . . a motion to dismiss other claims, to protect defendants from actions involving public petition and participation." *VIP Pet Grooming Studio, Inc. v. Sproule*, 203 N.Y.S.3d 681, 685–86 (2d Dep't 2024) (citations omitted).

## ARGUMENT

### I. NEW YORK'S ANTI-SLAPP LAW APPLIES TO THIS CASE.

In 2020, the New York State Legislature amended the anti-SLAPP law to "protect citizens from frivolous litigation that is intended to silence their exercise of the rights of free speech and petition about matters of public interest." Sponsor's Mem., L. 2020, ch. 250, B. Jacket, at 5. The amendments significantly expanded the definition of an "action involving public petition and participation" to encompass claims based upon: (1) "any communication in a place open to the public or a public forum in connection with an issue of public interest" or (2) "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest." Civ. Rights L. §76-a(1)(a). They further instructed that "'public interest' shall be construed broadly, and shall mean any subject other than a purely private matter." *Id.* §76-a(1)(d). "Simply put, the 2020 amendments expanded the scope of anti-SLAPP protections to encompass all public communications on any nonprivate matter." *Reeves*, 218 N.Y.S.3d at 26.

This case is an "action involving public petition and participation" under the anti-SLAPP law because it asserts tort claims predicated on Columbia-AAUP's "communication[s] in a place open to the public or a public forum in connection with an issue of public interest." *See* Civ. Rights L. §76-a(1)(a).

**"Communications":** Each of the Complaint's allegations against Columbia-AAUP is based on Columbia-AAUP's communications:

(1) "[T]he C/B-AAUP *issued a letter* . . . .";

(2) "[T]he C/B-AAUP *issued a statement* . . . .";

(3) "[T]he C/B-AAUP *put out a statement* . . . .";

(4) "[M]ore than 300 faculty members . . . convened in an emergency Zoom meeting *to discuss* pressing issues.";

(5) "[T]he C/B AAUP *put out a 'declaration'* . . . .";

(6) "[T]he national AAUP *put out a statement* . . . .";

(7) "[T]he C/B-AAUP *submitted a 'Resolution of Censure* . . . .";

(8) "[T]he C/B-AAUP held a 'Rally to Support our Students and Reclaim our University.' . . . 'Faculty . . . *voiced support* for students' freedom of assembly and *condemned* the suspensions and arrests of 'peaceful' protestors.'";

(9) "[T]he national AAUP *posted a statement* signed by multiple AAUP chapters, including the Columbia AAUP . . . .";

(10) "[T]he C/B-AAUP *issued a statement* . . . .";

(11) "[T]he C/B-AAUP *issued a statement* . . . ."

Am. Compl. ¶¶65, 128–37 (emphasis added). As the italicized language illustrates, Plaintiffs' claims against Columbia-AAUP rest squarely on Columbia-AAUP's "statement[s]," "writing[s]," or "other expression," and therefore attack its communications. Civ. Rights L. §76-a(1)(c).

**"In a place open to the public or a public forum":** Each of Columbia-AAUP's communications occurred "in a place open to the public or a public forum." Civ. Rights L. §76-a(1)(a)(1). Nine of Plaintiffs' eleven allegations concern written statements ((1)–(3), (5)–(7), (9)–(11) above). Each statement was published on the Columbia-AAUP website, which is "a place open to the public" under a plain reading of those words: the website is publicly available—i.e. not behind a paywall or otherwise inaccessible to the public.[35]

The Columbia-AAUP website is also a "public forum." Since New York amended its anti-SLAPP law in 2020, courts have interpreted "public forum" broadly to include social media platforms,[36] *Nelson v. Ardery*, 216 N.Y.S.3d 646, 648–49 (2d Dep't 2024); news media websites, *Reeves*, 218 N.Y.S.3d at 27; customer review websites, *Great Wall Med. P.C. v. Levine*, 74 Misc. 3d 1224(A), at *1 (Sup. Ct., N.Y. Cnty. 2022); GoFundMe pages, *Watson v. NY Doe 1*, No. 19-cv-533, 2023 WL 6540662, at *4 (S.D.N.Y. Oct. 6, 2023); and podcasts, *Gillespie v. Kling*, 192 N.Y.S.3d 78, 80 (1st Dep't 2023). In *Nelson*, where the Appellate Division held that social media platforms constitute a public forum, the court took into consideration that

> California courts, when applying their state's anti-SLAPP statute, which is similar to New York's anti-SLAPP statute in language and intent, have followed an almost 20-year precedent in that state that *all "[w]eb sites accessible to the public . . . are 'public forums' for purposes of the anti-SLAPP statute*."[37]

216 N.Y.S.3d at 649–50 (alteration in original) (emphasis added) (quoting *Barrett v. Rosenthal*, 146 P.3d 510, 514 n.4 (Cal. 2006), and citing *Huntingdon Life Sciences, Inc. v. Stop Huntingdon*

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[35] *See* https://www.aaupcu.org/campaigns.

[36] Columbia-AAUP also published some of the statements on the social media platform X (formerly Twitter). *See* https://x.com/AAUPCU/status/1786036861552439513; https://x.com/AAUPCU/status/1784973284355805205.

[37] California's anti-SLAPP statute uses nearly identical language to New York's to describe covered speech and conduct. *See* Cal. Civ. Proc. Code § 425.16(e) (covering "any written or oral statement . . . made in a place open to the public or a public forum in connection with an issue of public interest" and "any other conduct in furtherance of the exercise of the constitutional right of petition or . . . free speech in connection with a public issue or an issue of public interest").

*Animal Cruelty USA, Inc.*, 29 Cal. Rptr. 3d 521, 536 (Cal Ct. App. 2005) ("Statements on [defendant's] Web site are accessible to anyone who chooses to visit the site, and thus they 'hardly could be more public.'" (citation omitted))); *see also Am. Muckrakers PAC, Inc. v. Boebert*, No. 23-cv-01463, 2024 WL 3738932, at *8 (D. Colo. June 9, 2024) ("Many courts have deemed . . . websites places open to the public or public fora for anti-SLAPP purposes.") (collecting cases from various jurisdictions).

Any doubt that Columbia-AAUP's written communications were made "in a place open to the public or a public forum" is further dispelled by the public-facing nature of its communications: the Complaint asserts each communication was a "letter," "statement," "declaration," or "resolution" that was "issued," "put out," "submitted," or "posted" by Columbia-AAUP. *See supra* 9. Thus, Plaintiffs themselves recognize that Columbia-AAUP sought to make its views public through these communications. *See Nelson*, 216 N.Y.S.3d at 648–49 ("open letter" published on Facebook covered by anti-SLAPP statute); *Kajeet, Inc. v. Qustodio, LLC*, No. 18-cv-1519, 2019 WL 13149928, at *6 (C.D. Cal. Aug. 22, 2019) ("the Press Release was a communication to the public by its nature, with the intention of causing those who read it to engage in a dialogue and take other actions"). Indeed, many of Columbia-AAUP's statements received significant media attention and were quoted by news outlets.[38]

The remaining two allegations concern Columbia-AAUP's oral statements, at a rally and during a Zoom meeting ((4) and (8) above), both of which took place in public forums. The rally was held outdoors on the Columbia campus, *see Widmar v. Vincent*, 454 U.S. 263, 267 n.5 (1981) (recognizing that the university campus "possesses many of the characteristics of a public forum"),

[38] *See, e.g.*, https://www.cnn.com/2024/04/22/us/columbia-university-protests-hybrid-classes-passover-tuesday/index.html; https://www.nytimes.com/2024/04/19/nyregion/columbia-campus-protest-gaza-war.html.

and was subject to wide-ranging media coverage.[39] Moreover, the rally included "a procession toward Barnard," which required traversing Broadway, a busy public street. *See Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939) ("[S]treets . . . have immemorially been held in trust for the use of the public.").

As for the Zoom meeting, the Complaint itself alleges that the meeting "served as an open forum." Am. Compl. ¶132. Moreover, the Complaint's description of the meeting appears to be pulled verbatim from an online article by BWOG, a student-run news organization, buttressing Plaintiffs' description of the meeting as an "open forum."[40] The open nature of the meeting, which also "served as a place for open discussion," rendered it a public forum for purposes of New York's anti-SLAPP law. *Damon v. Ocean Hill Journalism Club*, 102 Cal. Rptr. 2d 205, 210 (Cal. Ct. App. 2000).[41]

**"In connection with an issue of public interest":** Finally, each of Columbia-AAUP's communications easily satisfies the anti–SLAPP law's "public interest" requirement. Courts interpret this term broadly, to "include matters of political, social, or other concern to the community, even those that do not affect the general population." *Aristocrat Plastic Surgery v. Silva*, 169 N.Y.S.3d 272, 275 (1st Dep't 2022) (citation omitted); *see also Kesner v. Buhl*, 590 F.

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[39] *See, e.g.*, https://www.cnn.com/business/live-news/columbia-yale-protests-passover-04-22-24#h_ec2e7b8c7dc8b0db4071786c5c1ec6ce; https://www.theguardian.com/us-news/2024/apr/22/columbia-university-protests-shutdown. Video of the rally—including Columbia-AAUP's statement at the rally—is also publicly available. *See, e.g.*, https://www.youtube.com/watch?v=sEC6fNyELb4.

[40] *See* https://bwog.com/2024/04/mayor-eric-adams-nypd-and-columbia-university-professors-hold-press-conferences-regarding-recent-student-arrests/.

[41] To the extent Plaintiffs also attack Defendant's convening of a rally and Zoom meeting, those gatherings are likewise covered by the anti-SLAPP law because they are "lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest," *see* Civ. Rights L. §76-a(1)(a)(2), i.e., the rally and Zoom meeting facilitated the statements made there and the Zoom meeting further facilitated the statement that was published shortly thereafter. *See* Am. Compl. ¶¶ 65, 131–32; *see also Ojjeh v. Brown*, 257 Cal. Rptr. 3d 146, 155 (Cal. Ct. App. 2019) ("An act is in furtherance of the right of free speech if the act helps to advance that right or assists in the exercise of that right.") (internal citation omitted).

Supp. 3d 680, 693 (S.D.N.Y. 2022) ("'In light of the extremely broad interpretation [of what qualifies as public interest] by New York courts,' cases where 'the subject matter was not a matter of legitimate public concern are extremely rare.'" (citation omitted)). The student protests over the Israel-Hamas war and Columbia's response to those protests were matters of immense political and social concern. Indeed, many major media outlets covered the protests and the NYPD crackdown of student protestors.[42]

## II. PLAINTIFFS' CLAIMS AGAINST COLUMBIA-AAUP HAVE NO SUBSTANTIAL BASIS IN LAW.

Plaintiffs' claims against Columbia-AAUP fail as a matter of law because Plaintiffs fail to identify any acts or omissions that could form the basis of a tort claim. Even if the court liberally construes the complaint under the CPLR 3211(a)(7) standard—accepting all alleged facts as true and according Plaintiffs every possible favorable inference—"the facts as alleged fit" no "cognizable legal theory." *Nonnon*, 874 N.E.2d at 722 (citation omitted). It is even clearer that Plaintiffs cannot meet their burden under the heightened standard required by the anti-SLAPP law to "demonstrate[] that the cause of action has a substantial basis in law." CPLR 3211(g).

### A. Negligence

"To establish a cause of action sounding in negligence, a plaintiff must establish the existence of a duty on defendant's part to plaintiff, breach of the duty and damages." *Greenberg, Trager & Herbst, LLP v. HSBC Bank USA*, 958 N.E.2d 77, 82 (2011). The "threshold question" is whether the defendant owed "a legally recognized duty of care" to the plaintiff. *Davis v. S. Nassau Cmtys. Hosp.*, 46 N.E.3d 614, 618 (2015) (citation omitted). Courts resolve this question "by resort to common concepts of morality, logic and consideration of the social consequences of imposing

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[42] *See, e.g.*, https://www.nytimes.com/2024/04/18/nyregion/columbia-university-tent-city-palestinian-protest.html; https://www.foxnews.com/us/nypd-columbia-university-remove-zip-tied-anti-israel-protesters-president.

the duty," giving "critical consideration" to "whether 'the defendant's relationship with . . . the plaintiff places the defendant in the best position to protect against the risk of harm." *Id*. (internal citations and quotations omitted). Courts "have historically proceeded carefully and with reluctance to expand an existing duty of care." *Id*. at 619.

Plaintiffs cannot establish any duty of care owed to them by Columbia-AAUP. They allege that Columbia-AAUP "owed a duty to the Plaintiffs and the Plaintiff class, their students" to "not break[] or incit[e] others to break university rules in ways that cause substantial and foreseeable damage to those students." Am. Compl. ¶437. But while courts have recognized that an individual teacher may owe students whom they teach or supervise a duty of care, *see, e.g.*, *Gonzalez v. Mackler*, 241 N.Y.S.2d 254, 256 (1st Dep't 1963), no case remotely supports the distinct proposition that a *faculty organization* owes a duty to *any student* who attends that school. *Cf. Davis*, 46 N.E.3d at 619 ("[W]e declined to impose a broad duty of care extending from physicians past their patients 'to members of the . . . community individually.'" (quoting *Eiseman v. State*, 511 N.E.2d 1128, 1135 (1987)).

Nor should the Court impose such a duty. Under Plaintiffs' theory, a faculty organization's failure to adhere to "university rules" or its "incit[ement]" to break them should expose it "to limitless liability to an indeterminate class of [students] conceivably injured by any negligence in that act." *Eiseman*, 511 N.E.2d at 1135. Not only is the "pool of possible plaintiffs . . . very large"—Columbia's undergraduate body alone is nearly 10,000 students[43]—but Columbia-AAUP was not "realistically in a position to prevent the wrongs" alleged by Plaintiffs. *Hamilton v. Beretta U.S.A. Corp.*, 750 N.E.2d 1055, 1062 (2001). The actor "in the best position to protect against the risk of harm" alleged by Plaintiffs—moving classes online, restricting access to campus, canceling

[43] https://opir.columbia.edu/sites/default/files/content/Statistical%20Abstract/opir_enrollment_history.pdf

commencement—was Columbia University itself, which took each of these actions. *Davis,* 46 N.E.3d at 618 (citation omitted).

Even if Columbia-AAUP did owe some duty to Plaintiffs and that duty required adherence to university rules, Plaintiffs never allege that Columbia-AAUP broke any university rule or incited anyone to do so. Most of the university policies Plaintiffs cite do not apply to Columbia-AAUP. *See, e.g.*, Am. Compl. ¶339 (Columbia obligation), ¶341 (President's duties), ¶348 (student behavior violations). For those that might conceivably apply, Plaintiffs do not allege that Columbia-AAUP violated them. For example, Plaintiffs allege that Columbia-AAUP held a rally, *id.* ¶65, but do not allege that the rally violated any university rules, *see id*. ¶340. Nor do they allege that Columbia-AAUP's speech induced others to break university rules. Indeed, Columbia-AAUP's statements commented on events that had already transpired, rather than calling for some future—much less rule-breaking—action. *See, e.g.*, Am. Compl. ¶133 (describing "statement criticizing Columbia's decision to clear campus protestors"), ¶134 (describing resolution "[c]ommenting on the student protests and NYPD response").

Plaintiffs also fail to state a negligence claim because the alleged facts cannot establish causation, i.e., "that the negligence was a proximate, or legal, cause of the event that produced the harm sustained by the plaintiff." *Hain v. Jamison*, 68 N.E.3d 1233, 1237 (2016). A defendant's negligence qualifies as a proximate cause where "it is a substantial cause of the events which produced the injury," and typically "turns upon questions of foreseeability." *Id*. (internal citation omitted). Although proximate cause is generally a question "for the factfinder," it "can be determined as a matter of law" where "only one conclusion may be drawn from the established facts." *Id.* at 1238 (internal citation omitted). Proximate cause "will be found lacking where the

original negligent act merely furnished the occasion for—but did not cause—an unrelated act to cause injuries not ordinarily anticipated." *Id*. (internal citation omitted).

Here, Columbia-AAUP's communications did not even "furnish the occasion for"—much less cause—Plaintiffs' alleged injuries. Those alleged injuries flow directly from Columbia's actions, and Columbia's actions were in direct response to the student protests, not to Columbia-AAUP's speech. Tellingly, Plaintiffs' negligence claim homes in on "the encampment" as the essential "breach" of duty. Am. Compl. ¶¶ 438–39. Columbia-AAUP had nothing to do with the encampment; it merely spoke about it. It defies reason to suggest that Columbia's decisions to move classes online, restrict access to campus, or cancel commencement were "a normal or foreseeable consequence" of these communications. *Derdiarian v. Felix Contr. Corp.*, 414 N.E.2d 666, 670 (1980). Any "risk of harm created by" Columbia-AAUP's speech simply does not "correspond[] to that which actually result[ed]." *Hain*, 28 68 N.E.3d at 1238.

**B. Tortious Interference with Contract**

"Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom." *Lama Holding Co. v. Smith Barney*, 668 N.E.2d 1370, 1375 (1996). Plaintiffs' tortious interference claim fails because Plaintiffs do not allege that Columbia-AAUP intentionally procured Columbia's breach of its contract with Plaintiffs. Plaintiffs allege that "Columbia breached its contract with the Plaintiffs . . . by failing to provide in-person learning, failing to provide access to a safe campus, and failing to provide a commencement ceremony." Am. Compl. ¶478. But as to Columbia-AAUP's role in this purported breach, Plaintiffs allege only that "Defendants intentionally procured" the breach "by violating the

law and Columbia's rules with the encampment to the point where Columbia" was forced to take these actions. *Id.* ¶475. As discussed above, Plaintiffs never allege that Columbia-AAUP broke any university rule, let alone the law. *See supra* 15. Nor do they allege how any such violation would have "induce[d]" Columbia to breach its contract with Plaintiffs. *Hornstein v. Podwitz*, 174 N.E. 674, 675 (1930). Plaintiffs' conclusory allegations without factual support are "insufficient to state a cause of action." *Burrowes v. Combs*, 808 N.Y.S.2d 50, 53 (1st Dep't 2006).[44]

**C. Civil Conspiracy**

"New York does not recognize an independent cause of action for civil conspiracy." *Cohen Bros. Realty Corp. v. Mapes*, 119 N.Y.S.3d 478, 482 (1st Dep't 2020). Rather, "allegations of civil conspiracy are permitted 'to connect the actions of separate defendants with an otherwise actionable tort.'" *Id.* (quoting *Alexander & Alexander of N.Y. v. Fritzen*, 503 N.E.2d 102, 103 (1986)). To establish the claim, "the plaintiff must demonstrate the primary tort, plus the following four elements: an agreement between two or more parties; an overt act in furtherance of the agreement; the parties' intentional participation in the furtherance of a plan or purpose; and resulting damage or injury." *Id.*

Even if Plaintiffs had properly pled a primary tort, which they do not, their conspiracy claim still fails because they allege no facts establishing that Columbia-AAUP entered into any agreement with any other party. The only gesture at an agreement is the conclusory allegation that "[t]he Defendants agreed in and amongst themselves to undertake these torts." Am. Compl. ¶520. This "bare conclusory allegation" is "insufficient" and nothing but "the barest of legal

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[44] Plaintiffs also fail to allege an actual breach of contract. Plaintiffs do not allege that Columbia contracted to provide exclusively in-person learning, access to the physical campus, or a commencement ceremony. *See Croce v. St. Joseph's Coll. of N.Y.*, 195 N.Y.S.3d 210, 213 (2d Dep't 2023) (breach-of-contract claim failed where complaint contained "only conclusory allegations of an implied contract to provide exclusive in-person learning[,] unsupported by any specific promise that is material to the plaintiff's relationship with the college").

conclusions." *Goldstein v. Siegel*, 244 N.Y.S.2d 378, 382 (1st Dep't 1963). And without properly alleging an agreement, Plaintiffs cannot allege Columbia-AAUP undertook an overt act or intentionally participated in furtherance of an agreement, or that any such actions caused damage to Plaintiffs.

### D. Aiding and Abetting a Tort

To state a claim for aiding and abetting a tort, a plaintiff "must allege the existence of the underlying" tort, *Oster v. Kirschner*, 906 N.Y.S.2d 69, 72 (1st Dep't 2010), in addition to "knowledge of the alleged tortious conduct" and "substantial assistance . . . in the achievement of the tortious conduct," *Land v. Forgione*, 114 N.Y.S.3d 464, 466 (2d Dep't 2019). As above, even if Plaintiffs had adequately pled a primary tort, which they do not, their claim for aiding-and-abetting still fails because they fail to allege Columbia-AAUP substantially assisted in perpetrating tortious conduct. The Complaint alleges only that Columbia-AAUP made various communications. *See supra* 5–7, 9. It fails to connect this speech to "assist[ing], help[ing] conceal, or [a] fail[ure] to act when required to do so" that "enable[d]" any of the purported torts to occur. *Stanfield Offshore Leveraged Assets, Ltd. v. Metropolitan Life Ins. Co.*, 883 N.Y.S.2d 486, 489 (1st Dep't 2009).[45]

## III. THE FIRST AMENDMENT SHIELDS COLUMBIA-AAUP FROM TORT LIABILITY FOR ITS SPEECH.

Even if Plaintiffs' claims against Columbia-AAUP did not fail for the reasons described above, the First Amendment independently bars them. The United States Supreme Court has

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[45] Plaintiffs' recitation of the aiding-and-abetting cause of action states that "Howley, [Columbia-AAUP], and FSJP-CBT lent substantial assistance and encouragement to the encampment sponsors and participants by coordinating faculty members and vests to protect their tortious encampment from police or public safety" and "providing 'observers' at negotiations with university officials." Am. Compl. ¶533. But Plaintiffs assert no facts with respect to this alleged conduct, which therefore cannot form the basis of an aiding-and-abetting claim against Columbia-AAUP. *Connaughton v. Chipotle Mexican Grill, Inc.*, 75 N.E.3d 1159, 1162 (2017) ("Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim.").

recognized that the First Amendment "can serve as a defense in state tort suits." *Snyder v. Phelps*, 562 U.S. 443, 451 (2011). Notwithstanding their various labels, Plaintiffs' claims are all "formulae for the repression of expression" and "can claim no talismanic immunity from constitutional limitations." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). "Whether the First Amendment prohibits holding [a defendant] liable for its speech . . . turns largely on whether that speech is of public or private concern." *Snyder*, 562 U.S. at 451. The First Amendment embodies "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open." *N.Y. Times*, 376 U.S. at 270. Accordingly, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder*, 562 U.S. at 452 (internal citation omitted).

"Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community." *Id*. at 453 (internal citation omitted). As discussed above, *see supra* 12–13, Columbia-AAUP's speech about the student protests and Columbia's response "plainly relates to broad issues of interest to society at large," *id*. at 454. Moreover, Columbia-AAUP spoke "on matters of public concern at . . . public place[s]"—on its public website, at a public rally, and in an open forum, *see supra* 10–12—which occupy a "special position in terms of First Amendment protection." *Id*. at 456 (internal citation omitted).

Because Columbia-AAUP's speech "was at a public place on a matter of public concern, [it] is entitled to 'special protection' under the First Amendment," *id*. at 458, and cannot be subject to tort liability, *see Snyder*, 563 U.S. 443 (applying First Amendment to shield speech from claims of intentional infliction of emotional distress and civil conspiracy); *N.Y. Times*, 376 U.S. at 283 (same, with defamation); *Cousins v. Goodier*, 283 A.3d 1140, 1160–63, 1162-63 nn.137–40 (Del.

2022) (same, with tortious interference with contract) (collecting cases).[46] Columbia-AAUP's speech "cannot be restricted simply because it is upsetting or arouses contempt." *Snyder*, 562 U.S. at 458. Indeed, Plaintiffs' Complaint makes clear that their tort claims turn on "the content and viewpoint of the message conveyed," *id*. at 457, rather than any relationship between that message and Plaintiffs' purported injuries, *see supra* 15–16. In short, "[i]t was what [Columbia-AAUP] said that exposed it to tort damages." *Id*. The First Amendment does not permit Plaintiffs to "react" to that speech "by punishing the speaker." *Id*. at 461.

## IV. THE COURT SHOULD AWARD FEES AND COSTS.

For the reasons described above, Plaintiffs' claims against Columbia-AAUP involve "public petition and participation" and have no "substantial basis in law." CPLR 3211(g). Pursuant to Civ. Rights L. §70-a(1)(a), upon the granting of a motion to dismiss under CPLR 3211(g), "costs and attorney's fees shall be recovered," and that recovery is "mandatory, not discretionary," *Reeves*, 218 N.Y.S.3d at 26; *see also Goldman v. Abraham Heschel Sch.*, 227 A.D.3d 544, 545–46 (1st Dep't 2024). Because Columbia-AAUP has demonstrated that none of Plaintiffs' claims against it has a "substantial basis in law," the Court should order Plaintiffs to pay Columbia-AAUP's attorney's fees and costs arising from this SLAPP suit.[47]

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[46] The First Amendment also shields Columbia-AAUP from liability for any purported negligence for a separate reason. In *Counterman v. Colorado*, 600 U.S. 66, 81 (2023), the Supreme Court recognized that in the context of "protests against the government and prevailing social order," the First Amendment will not countenance punishing a speaker on a showing of mere negligence. Rather, there must be "a showing of intent." *Id*. That "strong intent requirement," the Court explained, "ensure[s] that efforts" to hold protestors—and surely those, like Columbia-AAUP, who defend them—liable do "not bleed over" to silencing "dissenting political speech at the First Amendment's core." *Id*. Thus, the First Amendment precludes Plaintiffs' negligence claim.

[47] Columbia-AAUP will submit documentation of its fees and costs at the appropriate juncture so the Court may determine the amount of its award. While a successful CPLR 3211(g) motion is sufficient for a mandatory award of fees and costs, should the Court believe that Columbia-AAUP must assert a Counterclaim in order to recover fees and costs, Columbia-AAUP requests leave to do so.

## V. THE COURT SHOULD SANCTION PLAINTIFFS' COUNSEL FOR THIS FRIVOLOUS ACTION.

Pursuant to the Rules of the Chief Administrator of the Courts, "the court, in its discretion, may award to any party or attorney . . . costs . . . and reasonable attorney's fees, resulting from frivolous conduct", and "impose financial sanctions upon any party or attorney . . . who engages in frivolous conduct." 22 NYCRR 130–1.1(a). "The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both." 22 NYCRR 130–1.1(b). Conduct is "frivolous" if it is "completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." 22 NYCRR 130–1.1(c).

The claims Plaintiffs assert against Columbia-AAUP are "completely without merit in law." Each of the allegations involving Columbia-AAUP attacks public statements on matters of public interest—quintessentially the type of speech the anti-SLAPP law was amended to protect. And each of the torts alleged against Columbia-AAUP fails for multiple and obvious reasons. *See supra* 13–20. Indeed, this Court put Plaintiffs' counsel on clear notice of the applicability of the anti-SLAPP law—and its remedies—by issuing, *sua sponte*, an order on September 5, 2024, stating: "Upon further review of plaintiffs' complaint . . . and given the severe nature of potential remedies in New York against actions subsequently found to be without good faith or as strategic litigation against public participation, the Court will require additional submissions by counsel regarding this action." Docket No. 37. Yet, Plaintiffs' attorneys have continued to prosecute this case, including by filing an Amended Complaint that doubles down on the deficiencies of the original.

The Court should not countenance this abuse of the judicial system. It should exercise its discretion to award sanctions against Plaintiffs' attorneys of record such that they are jointly and

severally liable, along with Plaintiffs, to reimburse Columbia-AAUP for all attorney's fees and costs from defending this frivolous action. This award is appropriate due to the frivolous nature of this lawsuit, counsel's continued actions even after being put on notice by the Court, the strong public policy against SLAPP suits of this nature, and the possibility that Plaintiffs—current and recent college students—may be fully or partially judgment-proof, rendering ordinary fee-shifting insufficient to deter this type of vexatious litigation. *See 13 E. 124 LLC v. J&M Realty Servs. Corp.*, 202 N.Y.S.3d 31, 33 (1st Dep't 2023) ("Rule 130 sanctions 'are retributive, in that they punish past conduct. They are also goal oriented, in that they are useful in deterring future frivolous conduct not only by the particular parties, but also by the [B]ar at large." (alteration in original)); *Bennett v. Towers*, 982 N.Y.S.2d 843, 851 (Sup. Ct., Nassau Cnty. 2014) (awarding sanctions against counsel in addition to anti-SLAPP fee-shifting because "plaintiffs' attorney should have known that the complaint he endorsed and presumably drafted constituted a SLAPP suit pleading" and "continue[d] to press forward").

## CONCLUSION

For all of these reasons, the Court should grant Columbia-AAUP's motion to dismiss, order Plaintiffs to pay attorney's fees and costs, and sanction Plaintiffs' counsel.

Dated: January 10, 2025
New York, New York

Respectfully submitted,

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**ATTORNEY CERTIFICATION PURSUANT TO UNIFORM CIVIL RULE 202.8-b**

I, Scarlet Kim, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify that this memorandum of law complies with the word count limit set forth in Section 202.8-b(a) of the Uniform Civil Rules for the Supreme Court and the County Court (22 NYCRR 202.8-b) because it contains 6934 words, not including the parts of the memorandum excluded under Section 202.8-b(b). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum.

Dated: January 10, 2025
New York, New York

/s/ *Scarlet Kim*
Scarlet Kim