

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31

Justice

-----X

MOHAMED ABDOU,

Plaintiff,

- v -

COLUMBIA UNIVERSITY, MINOUCHE SHAFIK

Defendant.

-----X

INDEX NO. 157845/2024

MOTION DATE 12/13/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion by defendants Columbia University (“Columbia”) and Minouche Shafik (“Dr. Shafik”) for an order, pursuant to CPLR 3211(a)(1) and (7), and CPLR 3211(g), dismissing the complaint is granted and the complaint is dismissed.

Background

The Complaint

Plaintiff Mohamed Abdou (“Professor Abdou”) is a North African-Egyptian Muslim scholar in the field of Cultural Studies, who was employed as a visiting professor at Columbia for the Spring 2024 academic term; his employment term end date was May 31, 2024. On April 17, 2024, Dr. Shafik, the former Columbia President, testified before the U.S. House Committee on Education and the Workforce (the “House Committee”). During the House Committee hearing, members of Congress questioned university presidents, including Dr. Shafik, about pro-Palestinian activism on campuses (NYSCEF Doc. No. 1, ¶ 11, 28-30). Following Dr. Shafik’s testimony, Professor Abdou commenced this action against Columbia alleging, *inter alia*, discrimination, defamation, and a hostile work environment. According to the complaint:

During the hearing, [Rep. Elise] Stefanik referenced pro-Palestinian tweets posted by [Professor Abdou] on X, and asked [Dr.] Shafik whether [Professor Abdou] will face consequences for his First Amendment protected speech, which occurred wholly outside the University setting.

Specifically, [Dr.] Shafik stated, “he will never work at Columbia again,” referring to [Professor Abdou], and further stated, “he has been terminated and not just terminated, but his files will show that he will never work at

Columbia again. ... he is grading his students' papers and will never teach at Columbia again and that will be on his permanent record."

(*id.* ¶ 35, 37, 19). The complaint alleges that Dr. Shafik's statement "was in direct violation of Columbia's own process for faculty suspension and dismissal as listed in the University Statutes" (*id.* ¶ 38); and that, following Dr. Shafik's testimony at the hearing, Professor Abdou has been subjected to "harassment, death threats, and racially motivated hate mail" (*id.* ¶ 21). The complaint also alleges that Shai Davidai ("Professor Davidai"), a business professor at Columbia, doxed¹ Professor Abdou, targeted him to receive threats by third persons, and otherwise harassed him:

[Professor] Davidai, in targeting and doxxing [Professor Abdou], intends to encourage his social media followers to target [Professor Abdou] with threats of murder and violence against him, to obtain harassment against Columbia administrators, including [Dr.] Shafik, and pressure [Professor Abdou] and administrators to resign.

[Professor] Davidai weaponizes the false assertion that all criticism of Israel is antisemitic to target [Professor Abdou] and other pro-Palestine advocates, including Columbia students.

(NYSCEF Doc. No. 1, ¶ 41, 43). The complaint further alleges that:

[Professor] Davidai has posted on social media that "Professors like Dr. Abdou are extremists whose only role at @Columbia is to radicalize students", with the intention of inviting his followers to target, harass, and threaten [Professor Abdou], which they have done.

[Professor] Davidai accused [Professor Abdou] of "indoctrination" and of [Professor Abdou]'s department, the Middle East Institute at Columbia, of being "a real who's-who of the most rabid antisemites at @Columbia."

[Professor] Davidai referred to [Professor Abdou] on social media as "Dr. Mohamed 'praise to Hamas' Abdou," further attempting to garner and direct hate against [Professor Abdou] all because of [Professor Abdou]'s criticisms of Israel.

(*id.* ¶ 47-49).

¹ The complaint defines "doxxing" as "the act of publicly targeting an individual for their political speech or affiliation, inviting others to direct hostility and threats toward the victim, and oftentimes pressure the victim's employer or institution to fire or suspend them simply for their political speech..." (NYSCEF Doc. No. 1, ¶ 42).

The complaint asserts seven causes of action – prima facie tort (first cause of action); intentional infliction of emotional distress (second cause of action); a “*Monell*” claim (third cause of action); violations of New York Human Rights Law § 291 (fourth cause of action); violations of New York City Admin. Code § 8-107(4) (fifth cause of action); defamation (sixth cause of action); and a “*Tedeschi* rights” claim (seventh cause of action).

The Instant Motion

Columbia and Dr. Shafik now move to dismiss the complaint pursuant to CPLR 3211(a)(1), based on documentary evidence, and CPLR 3211(a)(7) and CPLR 3211(g), for failure to state a cause of action. In support of their motion, Columbia and Dr. Shafik submit an article highlighting Professor Abdou’s alleged public comments in support of Hamas (NYSCEF Doc. No. 12); an excerpt of the transcript from the April 17, 2024 House Committee hearing (NYSCEF Doc. No. 13); and an excerpt from Columbia’s Faculty Handbook (NYSCEF Doc. No. 14).

Columbia and Dr. Shafik argue that Professor Abdou’s claims based upon Dr. Shafik’s testimony at the hearing should be dismissed because: (1) such testimony was made in a public forum in connection with an issue of public interest, New York’s Anti-SLAAP statute applies to these public statements and Professor Abdou fails to establish the statements were made with actual malice as required under the Anti-SLAAP statute; (2) the complaint, which alleges that Dr. Shafik asserted in her testimony that Professor Abdou is an antisemite, fails to state any actual words accusing Professor Abdou of antisemitism, and the transcript makes clear that Dr. Shafik made no such statement; and (3) even if Dr. Shafik called Professor Abdou an antisemite, the complaint still fails to state a claim since Dr. Shafik’s statements are privileged as they were made before Congress, the statements constitute a non-actionable opinion, and Professor Abdou fails to adequately allege actual malice.

Columbia and Dr. Shafik argue that Professor Abdou’s intentional infliction of emotional distress and prima facie tort claims should be dismissed as duplicative of his defamation claim because such claims are based upon the same allegations. They also assert that these claims should be dismissed on the merits since Professor Abdou fails to plead the requisite intent and, with respect to the intentional infliction of emotional distress claim, Dr. Shafik’s testimony is neither sufficiently extreme nor outrageous. As to the prima facie tort claim, the complaint fails to allege special damages as well as an act that would otherwise be lawful.

Columbia and Dr. Shafik further assert that the claims based upon alleged harassment should be dismissed because the complaint fails to: (1) identify any underlying constitutional violation giving rise to a *Monell* claim under *Monell v Department of Social Services*, 436 US 658 (1978), and, even if the complaint did so, Columbia is a private institution which falls outside the scope of constitutional claims; (2) articulate how Professor Abdou was denied “accommodations, advantages, services, facilities, or privileges of the place or provider of a public accommodation” under the New York City Admin. Code; (3) sufficiently plead harassment based upon membership in a protected class and fails to provide a basis for imputing liability on Columbia; and (4) properly plead claims against Dr. Shafik under the New York

Human Rights Law or the New York City Admin. Code as she is not an employer and did not aid, abet, or participate in the alleged discrimination.

Finally, Columbia and Dr. Shafik allege that there is no such thing as a *Tedeschi* rights claim, and case law is clear that the requirement of substantial compliance with university policies under *Tedeschi v Wagner College*, 49 NY2d 652 (1980) is relevant to special proceedings under Article 78 of the CPLR. Even if a *Tedeschi* rights claim could be maintained, Columbia and Dr. Shafik contend that they complied with the Columbia's Faculty Handbook, which provides that faculty appointed for a single term, such as Professor Abdou, are informed of the date on which their appointments will end in their offer letters and, therefore, do not receive notice of non-renewal (NYSCEF Doc. No. 14).

Professor Abdou opposes the motion contending that defendants are improperly asking the court to resolve disputed fact issues under the guise of a motion to dismiss. He further contends that the motion should be denied because the transcript submitted in support is comprised of "grandiose statements and lies by Congresspeople" which cannot "be used to establish the truth of anything asserted, and is therefore not 'documentary' for the purposes of CPLR Section 3211(a)(1)." Professor Abdou submits the full transcript from the April 17, 2024 hearing (NYSCEF Doc. No. 16), excerpts of which were not included in the complaint.

Additionally, Professor Abdou asserts that: (1) the *Tedeschi* rights claim should be liberally construed as sufficiently pleading a cause of action for breach of contract; (2) Dr. Shafik is entitled to limited privilege, rather than absolute privilege, for her testimony, and qualified privilege is not properly raised on a motion to dismiss; (3) Dr. Shafik's testimony did not concern a matter of public interest for the purposes of New York's Anti-SLAAP statute as the testimony concerned a private matter; and (4) Dr. Shafik made false statements of fact – namely, that he is an antisemite and supported terrorism – rather than opinion which resulted in "a terrifying flood of death threats and hate speech, and made finding new employment between difficult and impossible" (NYSCEF Doc. No. 15 at 13).

Professor Abdou also maintains that the complaint sufficiently states a claim for: (1) discrimination, as racial stereotyping based upon Professor Abdou's Arab ethnicity and Egyptian national origin "leads to an inference of discrimination"; (2) hostile work environment, by way of Dr. Shafik's testimony in alleged agreement with "a racist, stereotypical evaluation of" Professor Abdou that resulted in threats and hate mail without any protective intervention by Columbia, and by way of alleged pressure upon Columbia from the House Committee and media outlets; and (3) prima facie tort, based upon his claim of a hostile work environment. Professor Abdou further asserts that Dr. Shafik made two defamatory statements about him – namely, that he is an antisemite and that he supported terrorism. Moreover, Professor Abdou disputes defendants' contention that Dr. Shafik's statements are non-actionable opinion because the statements resulted in death threats and negatively impacted his career.

Professor Abdou's papers in opposition of the motion do not address Columbia's and Dr. Shafik's arguments with respect to the *Monell* and intentional infliction of emotional distress claims.

Discussion

On a motion to dismiss based upon documentary evidence, the complaint should be liberally construed, the facts presumed to be true, and the pleading accorded the benefit of every possible favorable inference (*see e.g. Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Dismissal under CPLR 3211(a)(1) is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (*id.*; citing *Heaney v Purdy*, 29 NY2d 157 [1971]; *see also Alden Glob. Value Recovery Master Fund, L.P. v KeyBank Nat'l Ass'n*, 159 AD3d 618, 621 [1st Dept 2018]). Documentary evidence is “unambiguous, authentic, and undeniable”; however, affidavits, deposition testimony, and letters are not considered documentary evidence for the purposes of a motion to dismiss under CPLR 3211(a)(1) (*Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 996-97 [2d Dept 2010]; *see also GEM Holdco, LLC v Changing World Technologies, L.P.*, 127 AD3d 598, 599 [1st Dept 2015]).

On a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the complaint is likewise afforded the benefits of liberal construction, a presumption of truth, and any favorable inference (*see e.g. M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020]). The motion must be denied if, from the four corners of the pleadings, “factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed provided that, “when the plaintiff’s allegations are given the benefit of every possible inference, a cause of action exists,” and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

Prima Facie Tort

The prima facie tort claim (first cause of action) must be dismissed for failure to allege special damages. “The requisite elements for a cause of action sounding in prima facie tort include (1) intentional infliction of harm, (2) resulting in special damages, (3) without excuse or justification, (4) by an act or series of acts which are otherwise legal. An element of a prima facie tort cause of action is that the complaining party suffered specific and measurable loss, which requires an allegation of special damages” (*Diorio v Ossining Union Free School Dist.*, 96 AD3d 710, 712 [2d Dept 2012] [internal citation omitted]). Special damages “must be alleged with sufficient particularity to identify actual losses and be related causally to the alleged tortious acts” (*Frank D. Nastasi Trust v Bloomberg, L.P.*, 224 AD3d 804, 809 [2d Dept 2024] quoting *Shahid v Slochowsky & Slochowsky, LLP* 208 AD3d 1381 [2d Dept 2022]). The loss must be specific and measurable (*Freihofer v Hearst Corp.*, 65 NY2d 135, 143 [1985]; *Lewis v Pierce Bainbridge Beck Price Hecht LLP*, 195 AD3d 518, 519 [1st Dept 2021] [“vague allegation that plaintiff sustained irreparable harm to his reputation and career is insufficient to allege the requisite special damages so as to assert a prima facie tort claim”] [internal quotations omitted]).

The complaint alleges that Dr. Shafik’s testimony at the House Committee hearing regarding Professor Abdou’s alleged wrongful and “malicious public” termination “was made with the intention to inflict harm, including public condemnation and job loss,” lacked justification, and, as a result thereof, resulted in special damages, “including an onslaught of

public hostility and the loss of his financial security and job as a professor at Columbia.” (*id.* ¶ 51-54). However, the losses identified as special damages are vague claims of reputational harm and are neither specific nor measurable. Professor Abdou does not allege his visiting professorship ended or was terminated prior to the scheduled end date set forth in his hiring letter. Consequently, the damages pled in the complaint do not constitute special damages as required to assert a prima facie tort claim, and the claim must be dismissed.

Intentional Infliction of Emotional Distress Claim

Professor Abdou’s intentional infliction of emotional distress claim (second cause of action) is dismissed as abandoned and duplicative of his defamation claim.

Initially, Professor Abdou’s failure to oppose dismissal of his intentional infliction of emotional distress claim constitutes abandonment of the claim and dismissal of the claim is warranted on that basis (*see generally Raia v Potoschnig*, 170 AD3d 433 [1st Dept 2019]).

On the merits, the intentional infliction of emotional distress claim is also duplicative of Professor Abdou’s defamation claim. At bottom, Professor Abdou contends that Dr. Shafik falsely accused him of antisemitism, crimes, and supporting terrorism, that these false accusations were extreme and outrageous, such false statements are intolerable in a civilized society and, therefore, Dr. Shafik intentionally intended to cause Professor Abdou emotional distress. However, this claim is based upon the same House Committee testimony by Dr. Shafik underpinning Professor Abdou’s defamation claim (*see Defamation infra*). Where the same act gives rise to both a defamation and intentional infliction of emotion distress claim, the intentional infliction of emotional distress claim is properly dismissed as duplicative of the defamation claim (*Matthaus v Hadjedj*, 148 AD3d 425 [1st Dept 2017]; *Reeves*, 232 AD3d at 24 [intentional infliction of emotional distress claim correctly dismissed as duplicative of defamation claim]; *Fleischer v NYP Holdings, Inc.*, 104 AD3d 536, 538-39 [1st Dept 2013] [intentional infliction of emotional distress properly dismissed as duplicative as “underlying allegations fall within the ambit of other traditional tort liability, namely, plaintiff’s cause of action sounding in defamation”]). Accordingly, the intentional infliction of emotional distress claim is also dismissed as duplicative of the defamation claim.

Defamation

Professor Abdou’s defamation claim (sixth cause of action) fails to state a cause of action and is dismissed.

CPLR 3016(a) requires that a complaint asserting defamation must state the allegedly defamatory words; where the particular words complained of are not provided in the complaint, dismissal of the claim is appropriate (*Hammond v Equinox Holdings LLC*, 219 AD3d 406, 408 [1st Dept 2023] ; *Gardner v Virtuoso Ltd*, 204 AD3d 514, 514-15 [1st Dept 2022]). “A false statement that tends to expose a person to public contempt, hatred, ridicule, aversion or disgrace constitutes defamation” and “only statements alleging facts may be subject to a defamation claim as falsity is a “necessary element of a defamation cause of action and only facts are capable of being proven false” (*Davis v Boenheim*, 24 NY3d 262, 268 [2014] [internal quotation marks and citations omitted]).

The complaint references two specific complained of statements by Dr. Shafik regarding Professor Abdou: “he will never work at Columbia again” and “he has been terminated and not just terminated, but his files will show that he will never work at Columbia again.... he is grading his students’ papers and will never teach at Columbia against and that will be on his permanent record” (NYSCEF Doc. No. 1 at ¶ 37 [ellipses in original]). Professor Abdou contends that these statements falsely assert he is an antisemite.

However, the complaint does not contain an express statement by Dr. Shafik that Professor Abdou is an antisemite, or even words from which it could be inferred that Professor Abdou is an antisemite. The complaint sets forth only Dr. Shafik’s statement that Professor Abdou has been terminated from his position at Columbia and that he will never work at the university again (¶ 19 and 37). Both of these statements are non-actionable true statements of fact (*see Diaz v Espada*, 8 AD3d 49, 50 [1st Dept 2004] [“Truth is a complete defense to a claim of defamation”]). Consequently, because the statements are true, the complaint does not set forth any defamatory statements and dismissal of the defamation cause of action is warranted.

In an effort to avoid dismissal of the defamation claim, Professor Abdou’s opposition papers supplement the complaint by citing Dr. Shafik’s agreement with Congressperson Stefanik’s apparent opinion that Professor Abdou’s social media posts stating that he is “with Hamas and Hezbollah and Islamic Jihad” are repugnant (NYSCEF Doc. No. 15). Specifically, Professor Abdou points to Dr. Shafik’s statement that “I share with you, your repugnance at those remarks. I completely understand that. On my watch faculty who make remarks that cross the line, in terms of antisemitism, there will be consequences for that” as defamatory (*id.*).

Although Professor Abdou may cure defects in his complaint through affidavits (*see e.g. Rovello v Orofino Realty Co., Inc.*, 40 NY2d 633, 635-36 [1976]), the supplement regarding Dr. Shafik’s “repugnance” at Professor Abdou’s social media posts amounts to, at best, an expression of Dr. Shafik’s opinion, not an assertion of fact. Statements of opinions are “deemed privileged and, no matter how offensive, cannot be the subject of an action for defamation” (*Mann v Abel*, 10 NY3d 271, 276 [2008]; *see also Davis*, 24 NY3d at 268). Similarly, Dr. Shafik’s statement that “[o]n my watch faculty who make remarks that cross the line, in terms of antisemitism, there will be consequences for that,” viewed in the full context of the communication and surrounding circumstances “signals. . . that what is being read or heard is likely to be opinion, not fact” (*Mann*, 10 NY3d at 276 [internal citations omitted]). Notably, this statement does not identify Professor Abdou as having “cross[ed] the line”; however, to the extent that the statement may be understood to implicitly refer to Professor Abdou, the statement would appear to the reasonable listener as an opinion, and not fact, much like the non-actionable statements of opinion in *Mann*, in which the plaintiff was described in a newspaper article published during a “heated local election” “as a ‘political hatchet Mann’ and ‘one of the biggest powers behind the throne’ in the Town of Rye government (*Mann*, at 276-77 [court held that a reasonable reader would conclude that the statements were opinion and the article constituted an expression of opinion]).

While the Court takes seriously claims that a party’s career has been negatively impacted, Professor Abdou’s complaint, even as supplemented, does not state a cause of action for defamation. The House Committee hearing transcript makes clear that Dr. Shafik’s opinion

statements were in response to Professor Abdou's specific social media posts highlighted by Congressperson Stefanik, the content of which Professor Abdou did not dispute (*Bacon v Nygard*, 189 AD3d 530, 531 [1st Dept 2020] [motion court properly dismissed alleged defamatory statements "as the author disclosed the basis for his opinion that plaintiff is racist, and plaintiff did not dispute the underlying facts or quotes attributed to him"]). Accordingly, the defamation claim is dismissed.

Monell Claim

The *Monell* (third cause of action) claim is dismissed as abandoned and on the merits.

Initially, Professor Abdou's failure to oppose dismissal of his *Monell* claim constitutes abandonment of the claim and dismissal is warranted on that basis (*see generally Raia*, 170 AD3d 433).

Dismissal of the *Monell* claim is also warranted on the merits, as *Monell* applies to municipalities, not private colleges, and does not create a separate cause of action. The United States Supreme Court held in *Monell v Department of Social Servs.*, that a municipality may be liable for violation of Federal civil rights by its municipal employees, under 42 USC § 1983, where the employee's violative act was causally connected to a municipal policy, custom, failure to train employees (436 US 658 [1978]; *see also Ramos v City of New York*, 285 AD2d 284, 302 [1st Dept 2001]). However, "*Monell* does not provide a separate cause of action for the failure by the government to train its employees; it *extends* liability to a municipal organization where that organization's failure to train, or the policies or customs that it has sanctioned, led to an independent constitutional violation" (*Segal v City of New York*, 459 F.3d 207 [2d Cir 2006] [emphasis in original]).

Professor Abdou's claim is predicated upon the allegation that Columbia had notice that Professor Davidai was "intentionally procuring true threats against [Professor Abdou] from third parties," but did not take any protective measures, thereby creating and tolerating "an environment biased against professors and students of Palestinian and Arab nationality and those supporting them in criticizing Israel and advocating for Palestine" and that such behavior has become Columbia's "custom and practice" (NYSCEF Doc. No. 1 ¶ 63-69). As a result, Professor Abdou alleges he has been damaged "by Columbia's breach, including by physical suffering, loss of academic freedom, reputation, safety, peace of mind, and the ability to concentrate and to perform studies and services without malicious interruption" (*id.* at ¶ 69).

Columbia, however, is a private university and "[n]either private universities nor their employees are state actors for the purpose of constitutional claims, including claims alleging violation of the right to free speech" (*see generally Mitchell v New York Univ.*, 129 AD3d 542, 543 [1st Dept 2015] [internal quotations and citations omitted]). Professor Abdou cites no authority which permits a standalone *Monell* claim against a non-state actor. Consequently, the *Monell* (third cause of action) claim must be dismissed on the merits and as abandoned.

New York State and City Human Rights Law

Professor Abdou's claims under the New York State and City Human Rights Law are dismissed.³ He alleges defendants violated § 291(2) of the New York State Human Rights Law, which provides:

The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability, as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right

as well as New York City Admin. Code § 8-107(4), which provides:

4. Public accommodations. a. It shall be unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent, or employee of any place or provider of public accommodation:

(1) Because of any person's actual or perceived race, creed, color, national origin, age gender, disability, marital status, partnership status, sexual orientation, uniformed service, height, weight, or immigration or citizenship status, directly or indirectly:

(a) To refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities, or privileges of the place or provider of public accommodation.

Professor Abdou's complaint alleges that he suffered discrimination and harassment by Professor Davidai because of his criticism of Israel, that defendants had actual notice of the discrimination and harassment, and that defendants failed to take steps to control or remediate the situation causing a hostile work environment. On this motion, Professor Abdou alleges that he has sufficiently alleged discrimination based upon his national origin and ethnicity because he observed Dr. Shafik agree "with a racist, stereotypical evaluation of him" at the House Committee hearing (NYSCEF Doc. No. 15 at 15), and defendants failed to take any protective measures regarding the alleged threats and hate mail that ensued, creating a hostile work environment. Whether based upon Professor Davidai's conduct or Dr. Shafik's Congressional testimony, Professor Abdou fails to state a claim under the New York State and City Human Rights Law.

³ While the liberal construction afforded to the New York City Human Rights Law under the Local Civil Rights Restoration Act of 2025 may require a separate analysis of hostile work environment claims brought under the New York City Human Rights Law from those brought under the New York State Human Rights Law (*Hernandez v Kaisman*, 103 AD3d 106 [1st Dept 2012]), a separate analysis is unnecessary here as the complaint fails to identify any disparate or offending conduct based upon a protected class (*Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]; *Whitfield-Ortiz v Department of Educ. of City of N.Y.*, 116 AD3d 580, 581 [1st Dept 2014]).

Professor Abdou's allegations of a hostile work environment and discrimination based upon Professor Davidai's conduct fail to plead the required discriminatory animus. The complaint alleges that Professors Abdou and Davidai have divergent views on issues surrounding Hamas, Israel, and Palestine, and that Professor Davidai publicly targeted Professor Abdou, inviting others to direct hostility towards Professor Abdou, based upon his views. However, the complaint does not allege that Professor Davidai's conduct was based upon Professor Abdou's perceived race or religion and instead is solely based upon Professor Abdou's criticism of Israel; indeed, the complaint alleges Davidai targeted all critics of Israel, including Jewish critics (NYSCEF Doc. No. 1 at ¶¶ 44, 45). In other words, the complaint does not allege discrimination or a hostile work environment based upon Professor Abdou's perceived race, creed, color, national origin, age, sex, gender, disability, marital status, partnership status, sexual orientation, uniformed service, height, weight, or immigration or citizenship status, as is necessary to maintain an action under the New York State and City Human Rights Law (*Whitfield-Ortiz v Department of Educ. of City of N.Y.*, 116 AD3d 580, 581 [1st Dept 2014] [failure to plead discriminatory animus is fatal to discrimination and hostile work environment claims]). In the absence of a concrete factual allegation that defendants were motivated by bias against a protected class, Professor Abdou's claim of discrimination and hostile work environment constitutes a bare legal conclusion and dismissal is warranted (*id.*; see also *Askin v Department of Educ. of the City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]).

Professor Abdou's new theory of liability raised for the first time on this motion, that Dr. Shafik's House Committee testimony agreed with racist or stereotypical tropes directed at Professor Abdou, and that this agreement constitutes discrimination and a hostile work environment, does not avoid dismissal of his New York State and City Human Rights Law claims. He contends that the Congressional transcript is "chock full of racist stereotypes" and that Dr. Shafik "leaned into and endorsed this racism" (NYSCEF Doc. No. 15 at 3 and 5). However, Professor Abdou does not identify any portions of the Congressional transcript attributable to Dr. Shafik; instead, he identifies statements made by various legislators. The transcript shows that Dr. Shafik expressed disapproval of Professor Abdou's statements in support of foreign terrorist organizations and stated that he would not work at Columbia again, but Dr. Shafik's testimony does not contain an endorsement of racism, as Professor Abdou contends:

Rep. Stefanki: But I'm talking about the faculty members who are supporting terror, and it's not just that case. Let me bring your attention to Mohammad Abdou who was hired after the October 7th terrorist attack against Israel. He on October 11th, posted, "Yes. I'm with Hamas and Hezbollah and Islamic Jihad." He also decried false reports accusing Arabs and Muslims of decapitating the heads of children and being rapists.

We know that there were decapitations of babies, of innocent Israeli citizens, of seniors, of women, there were rapes, and yet Columbia hired this individual as a professor. How did that hiring process work? Were you aware of those statements before the hiring?

Dr. Shafik: I share with you, your repugnance at those remarks. I completely understand that. On my watch faculty who make remarks that cross the line, in terms of antisemitism, there will be consequences for that.

[...]

Dr. Shafik: He will never work at Columbia again.

Rep. Stefanki: So he has been terminated?

Dr. Shafik: He has been terminated. He has – not just terminated, but his files will show that he will never work at Columbia again.

(NYSCEF Doc. No. 16 at 38-39).

Professor Abdou provides no authority which stands for the proposition that expressing disapproval of a foreign terrorist organization in a Congressional hearing amounts to discrimination or creates a hostile work environment under the New York State and City Human Rights Law. The cases he relies on are readily distinguishable, involving sexually explicit emails and statements, physical inappropriate touching of an employee, mocking an Arabic greeting while eating bacon, and comments about Arabic and Islamic holidays when denying time off requests (*Hernandez v Kaisman*, 103 AD3d 106 [1st Dept 2012]; *Nofal v Jumeirah Essex House*, 2013 NY Slip Op 31161[U] [Sup Ct Queens Cty, 2013] [Golia, J.]).

Nor does Professor Abdou's argument that the Court should take "judicial notice of the important historical backdrop against which this case is being litigated" find support in the cases cited (NYSCEF Doc. No. 15 at 6). The cases cited are largely non-binding dissents and discuss consideration of legislative history within the context of statutory and Constitutional interpretation; these cases do not take judicial notice of geo-political history or current events (see e.g. *Matter of Avella v City of New York*, 29 NY3d 425, 449 [2017 DiFiore C.J., dissenting]; *Matter of Hoffman v New York State Ind. Redistricting Commn.*, 41 NY 341, 387 [2023, Cannataro, J., dissenting]; *Stefanik v Hochul*, 229 AD3d 79 [3d Dept 2024]; *Matter of Riches v New York City Council*, 75 AD3d 33 [1st Dept 2010 Catterson, J., dissenting] appeal dismissed 15 NY3d 735 [2010]).

Accordingly, the New York State and City Human Rights Law claims are dismissed.

Tedeschi Rights Claim

Professor Abdou's *Tedeschi* rights claim (seventh cause of action) is dismissed.

The Court of Appeals in *Tedeschi v Wagner College* determined that where a private college has adopted a rule or guideline, it is bound to follow its own guideline in suspending or expelling students, including any review process thereof (49 NY2d 652 [1980]). Ms. Tedeschi was a student at Wagner College who was suspended following, *inter alia*, her disruptions to a Latin course and final exam. Although she also experienced some academic issues, her suspension was not wholly based upon her academic performance. The Wagner College

guidelines in effect at the time distinguished between discharge for poor academic performance and suspension or expulsion for non-academic reasons. As was relevant in that matter, a student suspended for non-academic reasons was entitled to be heard by the Student-Faculty Hearing Board; Ms. Tedeschi had not been afforded such an opportunity to be heard prior to her suspension. The Court of Appeals determined that Wagner College was required to follow its own guidelines and, therefore, reinstated Ms. Tedeschi as a student until a hearing had been completed in accordance with the guidelines.

However, *Tedeschi* does not create a separate contractual cause of action for monetary damages against a college; the Court of Appeals limited the relief to reinstatement of Ms. Tedeschi as a student, and affirmed the denial of her request for monetary damages (*id.*). Subsequent Court of Appeals decisions have reiterated that a separate cause of action for monetary damages was not created by *Tedeschi* (*Mason v Cent. Suffolk Hosp.*, 3 NY3d 343, 349 [2004]; *Maas v Cornell Univ.*, 94 NY2d 87 [1999]). Instead, challenges to a university's procedures should be brought via an Article 78 proceeding because "the administrative decisions of educational institutions involve the exercise of highly specialized professional judgment" and an Article 78 proceeding "ensure[s] that the over-all integrity of the educational institution is maintained" (*Meisner v Hamilton, Fulton, Montgomery Bd. of Coop. Educ. Servs.*, 175 AD3d 1653, 1655 [3d Dept 2019] quoting *Maas v Cornell Univ.*, 94 NY2d 87, 92 [1999]). [W]hen litigants fail to avail themselves of the CPLR article 78 avenue, courts may justifiably dismiss plenary claims premised upon alleged failures to follow applicable principles set forth in employee or student handbooks" (*id.*; *Monaco v New York Univ.*, 145 AD3d 567, 568 [1st Dept 2016] ["university's academic and administrative decisions require professional judgment and may only be reviewed by way of an article 78 proceeding to ensure that such decisions are not violative of the institution's own rules and neither arbitrary nor irrational"]). Thus, Professor Abdou's claim for "*Tedeschi* rights," which seeks only monetary damages, must be dismissed as *Tedeschi* does create a cause of action for monetary damages.

Assuming *arguendo* that a cause of action for breach of contract had been pled under Professor Abdou's claim for "*Tedeschi* rights," he has failed to provide the contract in question or the provisions of the alleged charters, statutes, and faculty manual under which Columbia allegedly failed to perform. A breach of contract claim is properly dismissed for failure to identify the contractual provisions which were allegedly breached (*Manipal Educ. Americas, LLC v Taufiq*, 203 AD3d 662, 663 [1st Dept 2022]). Defendants have provided Columbia's Faculty Handbook which flatly rebuts Professor Abdou's claim that he was entitled to a non-renewal notice under Columbia's policies. It is undisputed that he was a visiting professor for a single academic term and Columbia's Faculty Handbook provides that professors appointed for a single term are not entitled to non-renewal notices:

Some full-time instructional officers are appointed for a single term. Faculty with these appointments are informed in their offer letters of the date on which their appointments will end. They, therefore, do not need additional notice according to the schedule described above.

(NYSCEF Doc. No. 14).

Accordingly, the *Tedeschi* claim is dismissed as not representing a cognizable claim, not permitting recovery of money damages, and as refuted by documentary evidence.

Dismissal under Anti-SLAPP Statute

Given the dismissal of the complaint under CPLR 3211(a)(7), the Court need not address dismissal under the more stringent standard set forth in CPLR 3211(g), related to NY Civil Rights Law § 70-a(1)(a), New York's anti-SLAPP statute.

Were the Court to reach this issue, it would find that Dr. Shafik's comments to Congress were made in a public forum (Civil Rights Law § 76-a[1][d]; *Nelson v Ardrey*, 231 AD3d 179 [2d Dept 2024]), in connection with an issue of public interest or concern (*Aristocrat Plastic Surgery, P.C. v Silva*, 206 AD3d 26, 29-30 [1st Dept 2022]), and that Professor Abdou's claims for prima facie tort, defamation, and intentional infliction of emotional distress are based upon Dr. Shafik's congressional comments and are, therefore, within the scope of the anti-SLAPP law (Civil Rights Law § 76-a). Accordingly, the burden shifts to Professor Abdou to demonstrate a substantial basis in law for these claims (CPLR 3211[g]; *Reeves v Associated Newspapers, Ltd.*, 232 AD3d 10, 12 [1st Dept 2024]). Given that the substantial basis in law standard is more exacting than the usual pleading standard under CPLR 3211(a)(7), the aforementioned reasons supporting dismissal under CPLR 3211(a)(7) also support dismissal under the anti-SLAPP law and CPLR 3211(g), and those claims would be dismissed on that basis.

Accordingly, it is hereby

ORDERED that defendants' motion is granted and the complaint is dismissed.

8/13/2026

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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SETTLE ORDER

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Kathleen Waterman Marshall

KATHLEEN WATERMAN-MARSHALL,
J.S.C.