

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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JEFFREY LAX, SUSAN ARANOFF, RINA YARMISH,  
MICHAEL GOLDSTEIN and MICHELLE DAVIDOWITZ,

Plaintiffs,

-against-

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THE CITY UNIVERSITY OF NEW YORK,  
THE PROFESSIONAL STAFF CONGRESS,  
THE NEW CAUCUS OF THE PROFESSIONAL STAFF  
CONGRESS, MICHAEL SPEAR, MARGARET FEELEY,  
DOMINIC WETZEL, EMILY SCHNEE, BARBARA BOWEN,  
MATTHEW GARTNER, ANTHONY ALESSANDRINI,  
ELIZABETH DILL, KATHERINE PEREA, LIBBY GARLAND,  
and PATRICK LLOYD,

Defendants.

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**ANSWER WITH CROSS-CLAIMS AND COUNTER-CLAIMS**

Defendant Katherine Perea, by their attorney Jonathan Wallace Esq., answers the Complaint as follows:

1. Denies knowledge and information sufficient to form a belief as to the truth or falsity of paragraphs 2, 3, 4, 5, 6, 7, 8, 14, 15, 16, 17, 18, 19, 23, 26, 27, 28, 29, 35, 41, 44, 45, 46, 48, 49, 50, 51, 52, 53-88, 95, 108, 111, 112, 113, 114, 119, 120, 121, 127, 128, 129, 133, 137, 138, 150, 151, and 153.
2. Denies all of the assertions of paragraphs 13, 21, 24, 30, 32, 36, 39, 42, 47, 99, 100, 109, 139, 140, 152, 158, and 159.
3. Denies all of the assertions of the following paragraphs insofar as intended by Plaintiff or otherwise construed or appearing to refer to this Defendant, and denies knowledge and information sufficient to form a belief as to their truth or falsity otherwise: 90, 91, 92, 93, 96, 126, 144, 145, 146, and 157. Defendant notes that with one exception, Plaintiffs have failed to state which causes of action are applicable to which defendants.

4. Denies all of the assertions of Paragraph 20, except admits Defendant is a Kingsborough professor.
5. Denies knowledge and information necessary to form a belief as to the truth or falsity of the assertions set forth in Paragraph 89, but states on information and belief that a number of the Defendants herein, accused by Plaintiff of anti-Semitism, are Jewish, that of these, some may fit the definition offered in the Paragraph of “Observant Jew”, while others may regard themselves as observing their religion without meeting all (or, indeed, any) of Plaintiff's proposed criteria.
6. Denies all of the assertions of paragraph 94.
7. Denies Plaintiff Lax's self-description as a “progressive” in paragraph 98, and states that the Plaintiff has a pattern and practice of requesting inclusion in groups and activities he opposes and wishes to disrupt or chill, as a pretended basis for bringing a series of administrative proceedings and law suits, including this one, when the individuals he is targeting exercise their First Amendment freedom of association to exclude him.  
  
Defendant denies knowledge and information sufficient to form a belief as to the truth or falsity of the assertion that “The other Plaintiffs were also interested in joining the PFC”. Defendant further notes that the Progressive Faculty Caucus or PFC was a loose, informal, private, off-campus grouping of individuals exercising their First Amendment rights of freedom of association. It was not a membership association or public accomodation, nor an official Kingsborough entity. Its email list resided on a private commercial server. The PFC is now defunct as a result of years of relentless pressure and First Amendment retaliation exerted by Plaintiffs via administrative proceedings and litigation. Defendant further asserts that Plaintiffs' references to the PFC throughout the Complaint are vague, misleading, improperly advocate for collective guilt by holding all participants responsible for the alleged speech of any, and in many cases assert

“scandalous and prejudicial matter” under CPLR Section 3024. Defendant also notes that Plaintiff’s refer to the PFC 64 times in the Complaint. The comments in this Paragraph are intended to be generally applicable to all references.

8. Denies all of the assertions of paragraph 101, except states that defendant Kingsborough College is a 24/7 school in which classes are also scheduled sometimes on Friday nights. The event, which involved discrimination against LBGT people, was then canceled in response to the pressure applied by Plaintiffs, in derogation of the Defendant’s First Amendment rights.
9. Defendant denies knowledge and information sufficient to form a belief as to the truth or falsity of the assertions of paragraph 102, except calls this Court’s attention to the fact that Plaintiffs are complaining that they were harmed by Professor Dill’s exercise of their academic freedom and First Amendment rights, and further that they were harmed by their alleged failure to extend the discussion to another topic of Plaintiff’s proposing-- which would in fact constitute forced speech and censorship under the First Amendment if they used seniority and power to dictate what other professors and groups could or could not say on campus.
10. Defendant denies the assertions of paragraph 103, except states that again, Plaintiffs are alleging they were harmed by the exercise of the academic freedom and First Amendment rights of the Defendants in allegedly declining to include a topic of Defendant’s choosing in their own event.
11. Defendant denies the assertions of paragraph 104, except states that again, Plaintiffs are alleging they were harmed by the exercise of the academic freedom and First Amendment rights of the Defendants in allegedly declining to include a topic of Defendant’s choosing in their own event. Plaintiffs are in fact arguing that an event regarding discrimination against LBGT people should have been expanded to include

- anti-Semitism, and that the reasonable suggestion that Plaintiffs schedule their own event somehow constituted discrimination and caused them damage cognizable at law.
12. Defendant denies the assertions of paragraph 105, except states that again, Plaintiffs are alleging they were harmed by the exercise of the academic freedom and First Amendment rights of the Defendants in allegedly declining to include a topic of Defendant's choosing in their own event.
13. Defendant denies knowledge and information sufficient to form a belief as to the truth or falsity of the assertions of paragraph 106, except denies that Defendant or any one else of whom Defendant had knowledge was responsible for any such incidents, or encouraged or approved them. Further, Defendant asserts that the inclusion of alleged anti-Semitic incidents committed by other unknown individuals, and therefore unlinked to any cause of action or specific assertion against any Defendant herein, constitutes as “scandalous and prejudicial matter” under CPLR Section 3024.
14. Regarding paragraph 107, Defendant admits complaining to Plaintiff Lax as Goldstein's department chair about certain offensive social media posts made by Goldstein, but denies that they acted “in a malicious and relentless” fashion. Defendant otherwise denies the assertions of paragraph 107. Further, Defendant asserts that the inclusion of the words “The day before the aforementioned vandalized picture was found”, constitutes “scandalous and prejudicial matter” under CPLR Section 3024, insofar as they suggest a linkage between Defendant and an alleged incident with which they had no connection.
15. Regarding paragraph 110, Defendant denies knowledge and information sufficient to form a belief as to the truth or falsity of the assertions therein, except admits receiving a letter from an organization which stated that it was acting on behalf of one or more of the Plaintiffs. Defendant also denies in its entirety, and as to all its improper nuances, the

assertion: “The uncanny timing, obvious coordination, and sheer frequency of these attacks against Plaintiff Goldstein’s and Plaintiff Lax’s property are chilling when it is observed that they began occurring after PFC and New Caucus member threats to 'bring violence to the Zionists' on Kingsborough’s campus and in close proximity to other attacks against Plaintiff Goldstein”. Defendant further asserts that this phrase constitutes “scandalous and prejudicial matter” under CPLR Section 3024.

16. Defendant denies all of the assertions of paragraph 115, except admits attending the event, and further notes that Plaintiff Lax is asserting that an alleged failure by Defendant to shake his hand caused him damage cognizable at law.
17. Defendant denies all of the assertions of paragraph 116, and notes that Plaintiff is asserting that the routine exercise of all the individual Defendants' First Amendment rights to campaign, advocate or run against any other candidate in a union election, caused the Plaintiff damage cognizable at law.
18. Defendant denies all of the assertions of paragraph 117, and again notes that Plaintiff is asserting that the routine exercise of the Defendants' First Amendment rights including freedom of association, to decide whom to invite to run with them on their New Caucus slate, caused the Plaintiff damage cognizable at law.
19. Defendant denies all of the assertions of paragraph 118, except admits that they did not invite Plaintiff Lax to participate in the event. Defendant asserts that paragraph 118 describes an instance of Lax's malicious pattern and practice of demanding inclusion in activities and events which he opposes and wishes to cancel, then falsely claiming anti-Semitism when others exercise their First Amendment right of freedom of association.
20. Defendant denies all of the assertions of paragraph 122, except admits attending events at which there were free, First Amendment-protected exchanges of differing and opposing views between participants, including on subject matters such as privilege.

21. Defendant denies knowledge and information sufficient to form a belief as to the truth or falsity of the assertions of paragraph 123, except denies that Defendant or any one else of whom Defendant had knowledge was either responsible for any such incidents, encouraged or approved them. Further, Defendant asserts that the inclusion of alleged anti-Semitic incidents committed by other unknown individuals, and therefore unlinked to any cause of action or specific assertion against any Defendant herein, constitutes “scandalous and prejudicial matter” under CPLR Section 3024.
22. Defendant denies all of the assertions of paragraph 124 pertaining or appearing or to be construed as pertaining to them or the PFC (for the reasons set forth in Paragraph 7) , and otherwise denies knowledge and information. Defendant further notes they never received notice of or an opportunity to be heard in the EEOC proceeding; and denies knowledge and information as to the alleged Jackson Lewis report.
23. Regarding paragraph 125, Defendant states that the proposed resolution described in this paragraph constituted a perfectly reasonable proposed conflict of interest rule, as well as an exercise of academic freedom and First Amendment rights by the proponents.
24. Defendant denies knowledge and information sufficient to form a belief as to the truth or falsity of the assertions of paragraph 130, and further notes that Plaintiff Lax is asserting that an alleged failure by Defendant Wetzel to shake his hand constituted an act of discrimination, and caused him damage cognizable at law.
25. Defendant denies all of the assertions pertaining to them or to the PFC (for the reasons set forth in Paragraph 7) contained in paragraph 131. Defendant notes that they neither received notice of or an opportunity to be heard in the EEOC proceeding; on information and belief, neither did the other individual Professor Defendants. Therefore the quoted EEOC letter constitutes mere hearsay regarding Defendant, and may not be offered as probative of the truth of any assertions made therein.

26. Defendant denies all of the assertions pertaining to them or the PFC (for the reasons set forth in Paragraph 7) contained in paragraph 132, and otherwise denies information and knowledge.
27. Defendant denies all of the assertions of Paragraphs 161 and 162, except admits attending the event.
28. Paragraphs 135, 136 , 142, 143, 148, 149, 155, and 156 are purported statements of applicable law, which Defendant leaves to this Court to determine.
29. Defendant demands trial by jury.

**FIRST AFFIRMATIVE DEFENSE**

30. The Complaint fails to state a cause of action.

**SECOND AFFIRMATIVE DEFENSE**

31. Defendant, as a co-worker junior to Plaintiffs is not a covered person who can be held liable for discrimination under the New York State and New York City Human Rights Laws.

**THIRD AFFIRMATIVE DEFENSE**

32. Defendant's words and actions complained of herein are First Amendment-protected speech, symbolic speech, and exercises of the right of free association.

**FOURTH AFFIRMATIVE DEFENSE**

33. The claims asserted in the Fifth Cause of Action are barred by the Statute of Limitations.

**FIFTH AFFIRMATIVE DEFENSE**

34. There is no private right of action for false imprisonment by one citizen against another, as set forth in the Fifth Cause of Action, in the absence of a related arrest by a law enforcement officer.

**SIXTH AFFIRMATIVE DEFENSE**

35. The action is in whole or part res judicata.

**SEVENTH AFFIRMATIVE DEFENSE**

36. There is a prior pending action.

**EIGHTH AFFIRMATIVE DEFENSE**

37. The Plaintiffs acted in bad faith in bringing this action.

**FIRST CROSS-CLAIM--CUNY--Indemnity**

38. Paragraphs 1-37 are re-alleged.

39. Defendant at all relevant times was an employee of co-Defendant City University of New York (“CUNY”).

40. Plaintiffs sue Defendant in their capacity as a co-worker, professor and employee of CUNY.

41. Given the relationship that exists between Defendant and CUNY, CUNY is obligated by contract, operation of law and otherwise to indemnify and hold harmless Defendant from all claims, which are the subject of this lawsuit.

**SECOND CROSS-CLAIM--CUNY—First Amendment**

42. Paragraphs 1-41 are re-alleged.

43. CUNY is a government entity directly subject to the First Amendment to the US Constitution.

44. Additionally, CUNY has promised to protect the Defendant's academic freedom and freedom of speech in assertions made in its contract with them, in its faculty handbook, on its website, and elsewhere—on all of which promises, Defendant has relied, to their detriment.

45. Plaintiffs are senior employees of CUNY who are in positions of authority and power, as tenured professors, department heads and otherwise.

46. Plaintiffs conceived an intense personal dislike of Defendant due to their use of



academic freedom and First Amendment rights to utter progressive political views, and criticism of Plaintiff Goldstein.

47. Defendant believed and stated to Plaintiffs that certain public social media postings by Goldstein expressed bias against constitutionally protected groups.

48. Plaintiff Lax immediately began accusing Defendant publicly and by name of anti-Semitism, including in the media, in apparent retaliation for their private criticism of Goldstein.

49. Plaintiffs assert that any political criticism of the state of Israel is anti-Semitic.

50. Defendant's political criticism of the state of Israel is not anti-Semitic.

51. Defendant is not an anti-Semite.

52. The specific assertions of anti-Semitism made in the Complaint are patently, facially frivolous: that Defendants wouldn't give Plaintiffs access to a private off-campus email list of friends and acquaintances; failed to invite them to be candidates on a union slate whose values they did not share; and were involved in arranging a Friday night event in a university in which classes are taught on Friday nights.

53. Plaintiffs have incessantly complained of Defendant to CUNY using available processes and procedures, such as administrative complaints of discrimination, being a security risk, and breaching other CUNY codes and rules.

54. CUNY appears to be frightened of Plaintiffs or is at least curiously passive and inactive in dealing with their frivolous accusations against Defendant, and other faculty and staff, and the ensuing disruptions to the campus community.

55. Plaintiffs have, across a long series of lawsuits, EEOC complaints and media interviews, accused CUNY of being a highly anti-Semitic environment.

56. CUNY is not an anti-Semitic environment.

57. Incidentally, on information and belief, many of the faculty and staff Plaintiffs accuse of

anti-Semitism themselves are Jewish, including several of the defendants herein.

58. Plaintiffs' intentions motivating all of their initiatives against Defendant are to punish them and retaliate for their politically progressive views and criticism of Goldstein.
59. CUNY has permitted and facilitated such retaliation by its failure to supervise Plaintiffs and to protect Defendant's academic freedom. For example, when Plaintiffs have filed EEOC complaints including frivolous accusations implicating Defendant, such as that regarding the Friday night meeting, above, CUNY failed to give Defendant notice these had been filed.
60. On information and belief, CUNY also failed assertively to protect Defendant's interests and academic freedom at EEOC.
61. Plaintiffs' retaliatory measures carried out with CUNY's complicity have succeeded in shutting down Defendant's free speech and academic freedom; for example, the Friday night event was cancelled, and the mailing list became inactive, under Plaintiffs' relentless attacks and pressure, and CUNY's constant failures to protect Defendant.

### **THIRD CROSS-CLAIM--CUNY—Breach of Contract**

62. Paragraphs 1-61 are re-alleged.
63. Defendant is contractually employed by CUNY as a professor.
64. Pursuant to that contract, CUNY has a duty to assure and protect Defendant's academic freedom and to assure them a safe and protective academic environment, free from harassment and threats.
65. CUNY has breached that contract by its failure to supervise Plaintiffs and to intervene to stop and prevent Plaintiffs' relentless false and malicious accusations and incessant solicitation of threats and violence against Defendant.
66. Defendant has been damaged by CUNY's breach, including by their loss of academic freedom, reputation, safety, peace of mind, and the ability to concentrate and to perform

services without malicious interruption.

**FIRST COUNTERCLAIM—All Plaintiffs—Interference With Contractual Relations**

67. Paragraphs 1-66 are re-alleged.

68. At all relevant times, Defendant had a valid contract with CUNY as a professor.

69. Plaintiffs, also employees of CUNY, knew quite well of the existence and general terms of Defendant's contract.

70. Plaintiffs' false, malicious public denunciations of Defendant as an anti-Semite in the CUNY environment were intended to procure a breach of Defendant's contract by CUNY.

71. Plaintiffs' false, malicious public denunciations of Defendant as an anti-Semite in the CUNY environment included verbal statements and emails, both on information and belief uttered or directed privately to other CUNY employees (including persons with authority over Defendant), and publicly to the entire CUNY community or large portions thereof; filing administrative complaints against Defendant with various CUNY offices and entities, including assertions that Defendant was an anti-Semite and even, falsely and incredibly, that they represented a danger or security risk to Plaintiffs and the CUNY community.

72. Plaintiffs also made such false, malicious public denunciations of Defendant as an anti-Semite in public media and forums intended to be seen (and which were seen) by the CUNY community, including press interviews and social media postings.

73. Plaintiffs' false, malicious public denunciations of Defendant as an anti-Semite in the CUNY environment succeeded in procuring a breach of Defendant's contract by SUNY.

74. CUNY as a direct result of Plaintiff's malicious, false accusations breached its contractual obligations to Defendant to assure their academic freedom, to protect them against harassment by other employees, and to intervene to stop other employees from

soliciting violence against them.

75. Defendant has been harmed and damaged as a direct result of Plaintiffs' procurement of breach, by their loss of academic freedom and safety in the CUNY workplace.

**SECOND COUNTERCLAIM—All Plaintiffs—Prima Facie Tort**

76. Paragraphs 1-75 are re-alleged.

77. Plaintiffs' false, malicious public denunciations of Defendant as an anti-Semite in the CUNY environment constituted a prima facie tort.

78. Plaintiffs' false, malicious public denunciations of Defendant as an anti-Semite in the CUNY environment were maliciously intended to harm them.

79. Plaintiffs' false, malicious public denunciations of Defendant as an anti-Semite in the CUNY environment were without justification.

80. Plaintiffs' false assertions about Defendant caused them special damage, including time and expense defending against administrative claims and loss of financial opportunity.

**THIRD COUNTERCLAIM—All Plaintiffs—SLAPP**

81. Paragraphs 1-80 are re-alleged.

82. Defendant's statements expressing politically progressive views were communications in places open to the public and in public forums in connection with issues of public interest.

83. Plaintiff's Complaint herein, as pertaining to the claims asserted individually against Defendant, constitute a strategic lawsuit against public participation, in that it was commenced without a substantial basis in fact and law and cannot be supported by a substantial argument for the extension, modification or reversal of existing law.

84. This action was commenced for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the above-described and other free exercise of speech, petition and association rights by the Defendant.

85. This action was commenced for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting Defendant's free exercise of speech, petition and association rights.

WHEREFORE, as to their Answer to the Defendant demands dismissal of this action in its entirety; as to all Cross-Claims and Counter-Claims, damages in an amount to be determined by this Court; together with such other and further relief as is just and proper, and the costs, disbursements, and legal fees incurred in this action.

DATED: Amagansett NY  
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/s/ Jonathan Wallace  
PO #728  
Amagansett NY 11930  
917-359-6234  
jonathan.wallace80@gmail.com  
Attorney for Defendant Perea