

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ALEXANDER KESTENBAUM and
STUDENTS AGAINST ANTISEMITISM,
INC.,

Plaintiffs,

v.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE,

Defendant.

Case No. 1:24-cv-10092-RGS

**JOINT MOTION FOR ENTRY OF ORDER OF DISMISSAL WITH PREJUDICE
PURSUANT TO RULE 41(A)(2)**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), and by joint motion, Plaintiff Students Against Antisemitism Inc. (“SAA”) and Defendant President and Fellows of Harvard College (“Harvard,” and, with SAA, the “Settling Parties”) hereby move for an order dismissing SAA’s claims against Harvard with prejudice, and respectfully request that the Court enter the attached Proposed Order of Dismissal with Prejudice.

In support of this motion, the Settling Parties state that Harvard and SAA have entered into a confidential settlement agreement that fully and finally resolves all claims between them. Harvard has also entered into a separate confidential settlement agreement with The Louis D. Brandeis Center for Human Rights Under Law and the Brandeis Center’s membership group, Jewish Americans for Fairness in Education, which fully and finally resolves all claims in the related litigation pending before this Court: *The Louis D. Brandeis Center for Human Rights Under Law and Jewish Americans for Fairness in Education v. President and Fellows of Harvard College*, No. 1:24-cv-11354-RGS (D. Mass.). The parties to that case have filed a

Stipulation of Dismissal in that case today. Public announcements detailing the terms of these settlements are attached to this motion as Exhibits A and B.

These settlements reflect a commitment by Harvard to undertake important actions to combat antisemitism on its campus, building on measures it has implemented over the past year. The settlements align with Harvard's commitment to combating antisemitism and ensuring that its Jewish and Israeli students are welcome and able to thrive on its campus and that complaints of discrimination and harassment against Jewish and Israeli students are treated in the same manner and with the same urgency as all protected groups.

In accordance with this commitment and consistent with Harvard's existing Non-Discrimination and Anti-Bullying Policies ("NDAB"), which prohibit discrimination on the basis of ancestry, religion, national origin, or political beliefs, the settlement agreements incorporate as the governing definition of antisemitism the International Holocaust Remembrance Alliance ("IHRA") definition including the accompanying examples applied in the manner described in guidance issued by the Department of Education's Office for Civil Rights in 2021 and 2024. Harvard will also issue a Frequently Asked Questions document that will provide examples of conduct—including discriminatory or harassing conduct that targets Jews, Israelis, or Zionists—that may violate the NDAB.

Harvard has further agreed to prepare a public annual report covering Harvard's response to discrimination or harassment based on Title VI-protected traits (the first of which will include a lookback at disciplinary responses to NDAB complaints based on allegations of antisemitism since October 2023), and to hire a designated individual within its Office for Community Conduct ("OCC") who will consult on all complaints of antisemitism and supervise the preparation of the annual reports required under both settlements, which will catalog Harvard's

response to complaints based on allegations of antisemitism, consistent with FERPA, and assess Harvard's treatment of such complaints against its treatment of complaints based on allegations of other forms of bias. The OCC director will also ensure that Title VI and Harvard's NDAB policies will be enforced equally, applying a single standard for all students, including Jewish and Israeli students

Pursuant to the agreements, Harvard will also commit additional resources to the study of antisemitism including by hosting an annual symposium on the topic of antisemitism at American universities and establishing an official partnership with a university in Israel, in addition to the programs the University currently has in place with Israeli universities; conduct training for both students and staff on how to recognize and combat antisemitism, including expert training addressing the IHRA definition of antisemitism including accompanying examples to all OCC staff involved in reviewing complaints of discrimination; and provide monetary relief to certain SAA members.

Harvard has not admitted to any wrongdoing or liability in resolving either litigation.

Plaintiff Alexander (Shabbos) Kestenbaum, who is represented by new counsel, is not a party to either settlement; his claim for compensatory damages remains pending but he "lacks standing to pursue prospective injunctive relief." *See* Dkt. No. 93 at 10 & n.7.

NOW, THEREFORE, pursuant to Federal Rule of Civil Procedure 41(a)(2), the Settling Parties hereby move, by and through their respective counsel, that SAA's claims against Harvard be dismissed with prejudice.

Dated: January 21, 2025

Respectfully submitted,

By: /s/ Felicia H. Ellsworth

By: /s/ Marc E. Kasowitz

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LOCAL RULE 7.1 CERTIFICATION

The undersigned hereby certifies that on January 20, 2025, counsel for Harvard conferred with counsel for Plaintiff Alexander Kestenbaum in a good faith attempt to resolve or narrow the issues involved in this motion, and that the parties did not reach an agreement.

/s/ Felicia H. Ellsworth

Felicia H. Ellsworth

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2025, I caused this document to be filed through the CM/ECF system, where it will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Felicia H. Ellsworth

Felicia H. Ellsworth