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10 Attorneys For Plaintiffs JESSICA FELBER and BRIAN MAISSY

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

13 JESSICA FELBER
14 and BRIAN MAISSY

15 Plaintiffs,
16 vs.

17 MARK G. YUDOF, PRESIDENT OF
18 THE REGENTS OF THE UNIVERSITY
19 OF CALIFORNIA, BERKELEY, in his
20 individual capacity only as to damages,
21 and in his official capacity as to injunctive
22 and declaratory relief; THE REGENTS
23 OF THE UNIVERSITY OF
24 CALIFORNIA; ROBERT J.
25 BIRGENEAU, CHANCELLOR OF THE
26 UNIVERSITY OF CALIFORNIA,
27 BERKELEY, in his individual capacity,
28 as to damages, and in his official capacity
as to injunctive and declaratory relief;
JONATHAN POUILLARD, DEAN OF
STUDENTS OF THE UNIVERSITY OF
CALIFORNIA, BERKELEY, in his
individual capacity, as to damages, and in
his official capacity as to injunctive and
declaratory relief; ASSOCIATED
STUDENTS UNIVERSITY OF
CALIFORNIA (ASUC),

Defendants.

Case No. CV 11-1012 RS

**DECLARATION OF MEL GORDON
IN OPPOSITION TO DEFENDANTS'
12(b)(6) MOTION**

Date: September 22, 2011
Time: 1:30 p.m.
Dept: Courtroom 3, 17th Floor
Judge: Honorable Richard Seeborg

Complaint Filed: March 4, 2011

1 I, Mel Gordon, declare:

2 1. I am not a party to this action although I have personal knowledge of the facts
3 stated herein. If called as a witness I would truthfully and competently testify as follows.

4 2. I am a tenured faculty member of the University of California, Berkeley. I have
5 been on the faculty as Professor of the Department of Theater, Dance and Performance Studies
6 since 1990. I am the senior faculty member of my department.

7 3. In January 2009, I wrote a letter to Chancellor of the University, Robert
8 Birgenau. I sent this letter to Chancellor Birgenau via campus mail in January 2009. Attached
9 is a true and correct copy of the letter that I wrote and posted to Chancellor Birgenau. The top
10 of the letter has a date of November 22, 2008. That date refers to an incident on campus
11 regarding the Students for Justice in Palestine. As I say, I wrote and sent Chancellor Birgenau
12 this letter in January 2009. The chancellor never responded to my letter.

13 4. I wrote Chancellor Birgenau this letter in January 2009, because of an event that
14 I had heard about on campus which occurred in late November 2008, which sounded very
15 much like an incident that happened to me in 2001.

16 5. On April 24, 2001 at 4:00 p.m., I was physically assaulted and beaten up by a
17 member of the SJP in front of Wheeler Hall on my way to class, while I was carrying a slide
18 projector and bag of slides. At that time, there was an unannounced strike by the SJP. The SJP
19 was conducting an action outside of Wheeler Hall. They shut down Wheeler Hall for
20 approximately five hours. As I approached the building, I could see that there was an action
21 going on. I could also see that members of my class had apparently made it in the building and
22 were sitting in my classroom waiting me to come in and teach the class. I asked a campus
23 police officer if there was any way into the building. He directed me to a way to the building.
24 As stated in the letter, I was savagely beaten and spit upon as I tried to enter the building to
25 teach my class. One SJP member later identified as Hussain Mohsen, struck me so hard in the
26 stomach that I required medical attention from a physician. Campus police took photographs
27 of my serious injuries that evening and later attempted to arrest Mr. Mohsen who refused to
28 comply with their order and ran away with the assistance of other SJP supporters. I filed a

1 report of the incident with UC Campus Police. As stated the Campus police came to me later
2 that evening and photographed my injuries from the 2001 incident.

3 6. After I returned to my house on the evening of April 24, 2001, the campus
4 police telephoned me and requested that I appear promptly at their station in Sproul Hall. I did
5 so and photographs of my injuries were taken. Additionally, I gave a detailed statement about
6 the assault. Sergeant James West prepared the report of the attack on me, which he told me
7 would be forwarded to campus authorities. At that time, I was also informed that the campus
8 police had taken five hours of video footage of the SJP violent demonstration. Since my
9 injuries required immediate attention, I was advised to seek a physician. Dr. Michael Thaler
10 treated my wounds that evening and checked on my progress over the next few days.

11 Sergeant West, that week, called me with some unsettling news: the only segment that
12 was not included in the five-hour video was the actual assault on me. The officer told me that
13 the official Campus Police videographer was so "astounded" by the beating of me, that he put
14 down his camera and did not film that part of the demonstration.

15 7. The April 2001 attack against me ended up in the Alameda County Superior
16 Court on October 22-24, 2001. Campus police officers were called as witnesses to the
17 Alameda County Superior Court action. Because of the menacing atmosphere in the courtroom
18 gallery, I was present only during the first day of the three-day trial when I testified in the
19 morning session.

20 8. As the Undergraduate Advisor in my department, I frequently solicit personal
21 information from students about their overall welfare and academic progress. On a half-dozen
22 occasions, I have heard complaints about some of the Intifada demonstrations ("Apartheid
23 Week"). In general, Berkeley undergraduates are reluctant to voice fear or irritation about any
24 campus political activity but these protests, where ranting demonstrators wave "toy-guns" and
25 threaten to block access, seem unusually intimidating. Although I have advised students to
26 register their grievances with the campus Ombudsman, I doubt that any have done that in the
27 past.

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1 As a professor of theater, I am familiar with agitprop theater demonstrations. In my
2 view, and the view of students with whom I have spoken with, these apartheid week incidents
3 with students brandishing realistic looking weapons are menacing and intimidating. In light of
4 unfortunate incidents of campus violence at such places like Virginia Tech University and
5 Columbine, it is especially intimidating.

6 9. Members of SJP presented to the Alameda County Superior Court a video tape
7 which they claimed identified me as an aggressor casing the incident. The court determined
8 that the video tape had been "doctored" and edited and that ultimately, a member of the SJP
9 was convicted and restitution was awarded to me for my injuries. Despite the outcome of the
10 action in the Superior Court determining that at least one member of the SJP was involved in
11 violence on campus, to my knowledge there was no discipline or suspension of the RSO
12 privileges of the SJP.

13 10. Following the outcome of the Alameda Superior Court trial, I received for
14 weeks, threatening phone calls and harassment from persons who I believe were associated
15 with the SJP.

16 11. No member of the University, regents or administration ever contacted me
17 following the April 2001 incident regarding the violence and intimidation that occurred against
18 me by SJP on campus, despite the fact that I had reported the incident to the University Police,
19 who assured me taht they would notify the administration.

20 12. About seven years later, another incident occurred on campus which was
21 strikingly similar to the incident that occurred to me in April 2001. I learned that there was an
22 altercation between Jewish students and members of Students for Justice in Palestine in or
23 around 2008. I read that there was a dispute about who the initial aggressors were in that
24 incident. Apparently that incident surrounded SJP hanging a Palestinian flag at a Jewish
25 student Hip Hop dance. The Jewish students claimed that hanging any flag was a violation of
26 campus rules. Apparently an altercation regarding the flag ensued.

27 13. The issue struck a memory for me because the SJP claimed that they had a video
28 which showed that they were not the initial aggressors. I remembered the events from 2001,

1 where the SJP made the same claim, and an Alameda County Superior Court District Attorney
2 determined that the SJP video was fraudulent.

3 14. This prompted me to write to the Chancellor Birgenau on or about January 2009
4 although the attached letter is dated November 22, 2008. I posted the letter in the campus mail
5 system. I have never received any complaint that the campus mail system is not efficient .

6 15. Despite my having written to the Chancellor Birgenau of this incident, he never
7 responded to me. The SJP assault on Jessica Felber occurred after my notifying Chancellor
8 Birgenau of my experience of being physically attacked on campus by an SJP member.

9 I declare under penalty of perjury under the laws of the State of California, that the
10 foregoing is true and correct, and that I signed this declaration on August 3, 2011, in Berkeley,
11 California.

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13 MEL GORDON
14 Professor at University of California Berkeley
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CONCERNING THE STUDENTS FOR JUSTICE IN PALESTINE

22 November 2008

Re: Campus activities of the Students for Justice in Palestine

Dear Chancellor Robert Birgeneau,

Since 1990, I have been Professor of Theater in the Department of Theater, Dance, and Performance Studies and am currently the senior faculty member in my department.

I was not at the recent episode between members of the Students for Justice in Palestine and the Jewish students from Tikvah who were accused of some violent acts.

I do have an unpleasant history with the Students for Justice in Palestine (SJP), however, that involved physical violence against me on our campus and false testimony in Superior Court. Happily, all court proceedings against the local SJP were adjudicated in my favor.

On April 24, 2001 at 4 pm, I was assaulted by members of the SPJ in front of Wheeler Hall on my way to class, while I was carrying a slide projector and a bag of slides. I was savagely beaten and spit upon during their unannounced strike. One SPJ member, later identified as Hussain Mohsen, struck me so hard in the stomach that I required medical attention from a physician. (Campus police took photographs of my serious injuries that evening and later attempted to arrest Mr. Mohsen, who refused to comply with their order and ran away with the assistance of other SJP supporters.)

I immediately filed a complaint with the UC Berkeley campus police and the case was brought before the Superior Court of Alameda County on October 22, 2001. During the three-day trial, the SJP submitted their private videotape of the incident, which the District Attorney Annie Saadi demonstrated to the jury was reedited and doctored. The fraudulent recording reversed the chronology of events to show me as the initial aggressor, when, in fact, I was following a campus police officer to the

open door of Wheeler Hall and then defended myself against their group attack on me.

The Students for Justice in Palestine's videotape was so obviously phony and distorted that their attorney, Jon Sternberg, did not challenge the DA's characterization of it as a "sham" depiction.

On November 13, 2001, Ms. Saadi notified me that we won the case and I would receive full restitution for my injuries. Unfortunately, I received several death-threats in unidentified telephone calls during the weeks that followed and had cars honk in front of my house in the middle of the night. (Mr. Sternberg admitted to me that he "unintentionally" failed to remove my telephone number and address from the courthouse documents.)

In the past, the Students for Justice in Palestine on the UC Berkeley campus has been found by the US Superior Court to be engaged in physical intimidation, violent activity, and legal deceit.

I hope you will take this into consideration regarding the current accusation that the SJP recently made.

Kindly acknowledge your receipt of this letter. I would be happy to discuss my 2001 interaction with the Students for Justice in Palestine with you, or failing that, with other interested parties.

Sincerely,

Mel Gordon
Professor of Theater Arts

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CERTIFICATE OF SERVICE
WHEN ALL CASE PARTICIPANTS
ARE CM/ECF PARTICIPANTS

I hereby certify that on August 9, 2011, I caused to be electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District of California, San Francisco Division by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/

JOEL H. SIEGAL