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

JESSICA FELBER and BRIAN MAISSY Plaintiffs, vs. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Defendant.	No. CV 11-1012 RS PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S (UC REGENTS)** RULE 12(b)(6) MOTION [SAC] Date: March 15, 2012 Time: 1:30 p.m. Dept: Courtroom 3, 17th Floor Judge: Honorable Richard Seeborg Complaint Filed: March 4, 2011 Second Amended Complaint Filed: Jan. 6, 2012

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I. BY AUTHORIZING THE MSU/SJP "APARTHEID WEEK" "CHECKPOINT" DEMONSTRATIONS, THE REGENTS HAVE PRIMA FACIA VIOLATED TITLE VI, SINCE THESE ANNUAL DEMONSTRATIONS EMBODY RACIST HATE SPEECH AND CONDUCT NOT PROTECTED BY THE FIRST AMENDMENT

First, it is expressly alleged in the Second Amended Complaint that UC Berkeley Dean Poullard admitted that UC directly participated in the design, staging, form, and content of the "checkpoint" demonstrations. (Second Amended Complaint (hereinafter "SAC"), ¶11, endorsed at 4:19-27 of Defendant's Memorandum (hereinafter "Def. Memo").) Hands-on approval by UC Berkeley Police of the "imitation" AK47 firearms brandished at the Sproul Plaza "checkpoint" is admitted. These props are "content" that has the fingerprints of UC all over it.

Second, it is not denied that the content of the "checkpoint" demonstrations is hate speech, equal in legal odiousness to use of the "N" word, or similar racist and sexist expressions. The Defendant does not deny that the entire MSA/SJP "checkpoint" presentation is a racist passion play of the worst sort, which like the notorious anti-Semitic performances of Oberammergau, Bavaria: "portray Jews as bloodthirsty and treacherous villains. . ." Oberammergau, James Shapiro (2000) at page ix. However, unlike the Oberammergau Passion Play, which is performed on a traditional pay-to-view stage setting, the Regents have allowed the MSA/SJP to present their racist performance in the midst of an important public campus crossroads, and to include interaction, confrontation and violence against students who like these Plaintiffs, did not choose to "buy a ticket" in order to experience the performance.

Plaintiffs are as entitled to their day in court regarding this Regents' sponsored racist hostile environment, just as the many Black, female, and gay students, who have received a full judicial hearing when they have complained under Title VI and IX racism and harassment directed by fellow students.

Recent decisions of the Ninth Circuit and other federal courts clearly confirm a liberal view in favor of the complaining students having their day in court on disputed issues of school administration "deliberate indifference" and the actionable nature of the alleged Title VI or IX hostile environment. *Monteiro v. The Tempe Union H.S. Dist.* (9th Cir. 1998) 158 F.3d 1022, 1032-1035; *Flores v. Morgan Hill USD* (9th Cir. 2003) 324 F.3d 1130; *Vance v. Spencer County*

Pub. Sch. Dist. (6th Cir. 2000) 231 F.3d 253, 262; and *Jones v. Indiana Area Sch. Dist.* (W.D. Pa. 2005) 397 F.Supp.2d 628, 644-46. This line of cases followed the Supreme Court decision of *Davis v. Monroe County Bd. of Educ.* (1999) 526 U.S. 629, 649, which defined a "reasonable" standard for the test of "deliberate indifference." At least one federal court has expressed that "deliberate indifference" is a "fact-laden question for which bright line rules are ill-suited." *Tesoriora v. Syosset Central Sch. Dist.* (E.D.N.Y. 2005) 382 F.Supp. 2d 387, 399. *Vance v. Spencer County Pub. Sch. Dist., supra,* 231 F.3d 253 at 260-262.

The expressions of concern reflected in letters and public statement attached to the Regents' current Request to Take Judicial Notice fall far short of what is required for a school administrator to avoid liability under the deliberate indifference standard. *Vance v. Spencer County Pub. Sch. Dist., supra,* 231 F.3d 253, 260-262

The MSA/SJP checkpoint is slyly embedded in an alleged "agitprop" theatrical reenactment, which only as part of a course curriculum, might validly enjoy First Amendment Protection even with its racist content. *Monteiro v. The Tempe Union H.S. Dist., supra,* 158 F.3d 1022 at 1026-1032. However, it is not entitled to such status in the form it takes on the UC Berkeley Campus. Dean Pollard's 3/29/11 email confirmed the physical presentation ensnared a wheelchair bound student, and does not deny that the checkpoint activists confronted and brandished their weapons against Jewish and other students in a violent and hostile manner as alleged in the Second Amended Complaint. Felber was assaulted at that event (SAC ¶12). Fine distinctions as to the legal status of such conduct, such as the differences between spitting at or on another student, or pointing a wooden AK47-look-alike- weapon at a student or actually poking them with it, do not excuse the fact of the hostile environment presented by the frenzied moblike "checkpoint," as confirmed in the photos attached to the Second Amended Complaint and alleged more fully by Plaintiffs therein.

Defendant asserts that this Court is powerless to stop this conduct, claiming that these student groups have "First Amendment Rights." But the Defendant has an equal obligation to protect the health and safety of Jewish students under Title VI. See *Nicole M. v. Martinez Unif. Sch. Dist.,* 964 F.Supp.1369 (ND, Cal. 1997, Patel, J.)

Courts have long allowed the Regents to create and enforce regulations which prohibit "conduct that threatens or endangers the health and safety of any person" on their campuses. *Healy v. James,* 408 U.S. 169 (1972); *Goldberg v. Regents of the Univ. of California,* 248 Cal.App.2d 867 (1967).

Magistrate Brazil, in *College Republicans at San Francisco State v. Reed,* 523 F.Supp.2d 1005 (ND Cal. 2007), concluded that California Code Regs. Title 5, Section 41301(b)(7), a statute written specifically for regulations upon California state colleges, passed Constitutional muster regarding conduct on a university campus which constitutes "intimidation" and "harassment" and threatens health and safety is a valid regulation.

> "With its reach limited to intimidation or harassment that threatens or endangers health or safety, we are inclined to believe that the vast majority of the conduct that this provision would prohibit would not fall within the sphere that the First Amendment prohibits the government from suppressing. Instead, it seems likely that most of the conduct that this regulation prohibits either would have no expressive component or that any such component would be so overshadowed by the risk that the conduct would cause serious harm that First Amendment concerns would have to give way. It is difficult to imagine a substantial sphere of expressive conduct that reasonable people would conclude both (1) constituted "intimidation" or "harassment" and (2) threatened health or safety but that nonetheless deserved protection under the Constitution." [Emphasis in original.]

College Republicans at San Francisco State v. Reed, supra, at 1023.

The promulgation and application of public university rules limiting student free speech activities have for years been upheld by the federal courts. See, e.g., *Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819* (1995); *Widmar v. Vincent,* 454 U.S. 263 (1981); and *Healy v. James,* 408 U.S. 169 (1972).

The MSA, which in connection with the SJP, put on the annual "Apartheid Week" Sproul Plaza checkpoint, is an organization founded by the Muslim Brotherhood. Prerequisite of membership into the Muslim Brotherhood is membership in the MSA. (While the Muslim Brotherhood itself is not on the U.S. Department of State's Foreign Terrorist Organizations list, Hamas is. Hamas indicates in its charter that it is a branch of the Muslim Brotherhood.) The New York City Police Department has indicated that the MSA is a spawning ground of

domestic violence and terror activities. (See Declaration of Ronald Sandee, previously filed herein..)

> "[I]nvestigators have revealed how terrorist groups systematically conceal their activities behind charitable, social, and political fronts."

M. Levitt, Hamas: Politics, Charity, and Terrorism in the Service of Jihad, 2-3 (2006) (Yale University Press), quoted by Chief Justice Roberts in *Holder v. Humanitarian Law Project* (2010) 561 U.S. ____ at ___; 130 S.Ct. 2705 at 2725.

In *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503 (1969), the Supreme Court held that public schools can prohibit free speech if it "would substantially disrupt or interfere with the work of the school or the rights of other students." See also, *Saxe v. State College Area School District* (3rd Cir. 2001) 240 F.3d 200, at 211; *College Republicans at SF State University v. Reed, supra,* 523 F.Supp.2d 1005, 1023; *Healy v. James,* supra.

Whether or not the Regents have met these guidelines are legal issues raised under Title VI. *University of California Regents v. Bakke* (1978) 438 U.S. 265; Title VI, 42 U.S.C. §2000d, *et. seq*.; *Nicole M. v. Martinez Unif. Sch. Dist.,* 964 F.Supp.1369 (ND, Cal.1997, Patel, J.).

II. ALLEGATIONS THAT FELBER PREMATURELY WITHDREW FROM ATTENDING UC BERKELEY AFTER SHE WAS ASSAULTED IN MARCH 2010 AMPLY SUPPORT HER TITLE VI CLAIM

In her May 13, 2011 Statement before the U.S. Commission on Civil Rights, R. Ali, Assistant Secretary, Office for Civil Rights of the U.S. Department of Education, confirmed that a Title VI unlawful "hostile environment"

> "which is tolerated doesn't just hurt the students of the harassment. It . . . poisons the school climate. Harassment can directly affect students' education—grades may do down and students may feel forced to withdraw from school programs. . . ." [Emphasis added.]

In *Williams v. Bd. of Regents of the Univ. System of GA* (11th Cir. 2007) 477 F.3d 1282, 1297, the court held that Title IX hostile environment discrimination can occur even after a student withdraws from school where the university fails to timely respond or take precautions to prevent further attacks.

Under these cases, Felber's added allegations in the Second Amended Complaint confirm she has stated a Claim for Relief under Title VI even if she is no longer enrolled in the UC system, because the alleged hostile environment, threats and assault drove her from further affiliation with UC (SAC, ¶50).

The test enunciated by the Supreme Court is whether the unremedied harassment "detracted from [Felber's] educational experience [such] that [she was] effectively denied equal access to an institution's resources and opportunities." *Davis v. Monroe County Bd. of Ed.,* 526 U.S. 629 at 651. She need not "show physical exclusion" from school, but clearly being assaulted as she was during an authorized on-campus demonstration endorsed by the Regents, her allegation is virtually the same thing.

III. THIS COURT CAN FOLLOW SETTLED FEDERAL RULES FOR JUDICIAL OVERSIGHT OF ON CAMPUS VIOLENCE AND HOSTILE ENVIRONMENT HARASSMENT COMMITTED FOR YEARS BY UC AND ASUC REGISTERED AND SUBSIDIZED STUDENT ORGANIZATIONS WHICH INTERFERE WITH THE RIGHTS OF JEWISH STUDENTS, WHICH SUBSTANTIALLY DISRUPT UNIVERSITY OPERATIONS, AND INTRUDE UPON THE PROGRAMS OF THE UNIVERSITY AND THE RIGHTS OF OTHER STUDENTS

A. THE COMPLAINED OF SPEECH AND CONDUCT HERE IS NOT PURE INDEPENDENT STUDENT SPEECH BUT RATHER IS CONDUCT AND HATE SPEECH REASONABLY PERCEIVED TO BEAR THE IMPRIMATUR OF THE DEFENDANT

Justice (then Circuit Judge) Alito quoted the Supreme Court stating that such school-sponsored speech includes "school-sponsored publications, theatrical productions, and other expressive activities that students, parents and members of the public might reasonably perceive to bear the imprimatur of the school." *Saxe v. State College Area School District, supra,* 240 F.3d 200, 213-214, quoting *Hazelwood Sch. Dist. v. Kuhlmeier,* 484 U.S. 260, 270-271 (1988)

The agitprop pseudo "Israeli" checkpoint reenactments, blockages, and religious and racial interrogations conducted in Sproul Plaza annually for the past four years, fall in that category.

First, the sponsoring organizations conducting those activities are not independent student groups, but instead "registered student organizations" (RSOs) licensed and supported financially

by mandatory UC imposed fees on registered students. See ASUC Request for Judicial Notice, Doc.25, Exhibits A-F.

Second, the specific Apartheid Week checkpoint actions are permitted and licensed by UC officials, including UC campus police, as admitted by Dean Poullard.

These RSOs are expressly authorized by the Defendant not just to conduct their disruptive "checkpoint" demonstrations for the past four or five years, but also to display realistic looking assault weapons as part of the event. Under California Penal Code §12556(a): "No person may openly display or expose any imitation firearm . . . in a public place." However their use by these RSOs has been expressly allowed and funded by Defendant for the past four years, presumably under exceptions (d)(3) or (d)(9) of §12556:

> "(d)(3) Used in a theatrical production . . ."
>
> "(d)(9) Used for public displays authorized by public or private schools . . ." (Emphasis added.)

Any argument that Defendant has no actual notice of the intimidating display of imitation assault weapons at the Sproul Plaza checkpoints is contradicted by the actual event photographs which show the presence of campus police talking to imitation-weapon-wielding student activists during the several events in question.

The Regents have for years been directly notified about the excessive and violent Sproul Plaza and other on-campus actions of the SJP and the MSA, but have done nothing to stop them. See, *Monteiro v. The Tempe Union H.S. Dist., supra,* 158 F.3d 1022, at 1034. Defendant received a letter from a leading Jewish civil rights group in 2008, which expressly detailed the same violent SJP and MSA conduct complained of here. (Zionist Organization of America to Chancellor Robert Birgeneau letter dated 12/30/08 (SAC, ¶32).

The Defendant must therefore accept responsibility for authorizing the display of these weapons. Whether as a "theatrical production" conducted on University premises, under §12556(d)(3) or under (d)(9), the display of the imitation assault weapons must be presumed to be "authorized" by Defendant. Therefore this Court should find that the annual Sproul Plaza "checkpoint" activities complained of in the Second Amended Complaint are activities which

students and members of the public "reasonably perceive to bear the imprimatur of the school." *Hazelwood School District v. Kuhlmeier, supra,* 484 U.S. at 271.

The failure to control and ban such activities is clearly subject to federal court review under Title VI. See, *Hazelwood Sch. Dist. v. Kuhlmeier, supra,* 484 U.S. 260 (1988); and *Bethel School District v. Fraser,* 478 U.S. 675 (1986).

B. THE COMPLAINED OF SPEECH AND CONDUCT EVEN IF HELD TO BE PURELY STUDENT SPEECH CAN STILL BE HELD AS THE BASIS OF A TITLE VI PRIVATE RIGHT OF ACTION AGAINST THE DEFENDANT BECAUSE IT ENDANGERED THE SAFETY OF OTHER STUDENTS, INTERFERED WITH THE RIGHTS OF OTHER STUDENTS, SUBSTANTIALLY DISRUPTED UNIVERSITY OPERATIONS, AND INTRUDED UPON THE PROGRAMS OF THE UNIVERSITY

These guidelines for permissible regulated student speech and conduct are discussed and set forth by Justice Alito in the *Saxe* opinion. See also, *Nicole M. v. Martinez Unif. Sch. Dist., supra,* 964 F.Supp.1369; and *College Republicans at SF State University v. Charles B. Reed* (ND Cal. 2007, W. Brazil, USMJ) 523 F.Supp.2d 1005.

Under these guidelines, it is clear that the conduct of the RSOs during recent Apartheid Week at the Sproul Plaza checkpoints is speech and conduct which the Defendant failed to control, and which clearly constituted actionable "hostile environment" harassment.

The clearest examples are the repeated incidences of interrogation of students as to their religion, race and national origin ("Are you Jewish") by RSO student activists brandishing "imitation" but realistic looking assault weapons. (See photos attached to SAC; see also the Declarations of Jessica Felber and Brian Maissy incorporated into the SAC as exhibits.) This conduct exceeds by orders of magnitude the level of objectionable anti-Semitic harassment cited as a threshold example by the Office of Civil Rights-United States Department of Education in its "Dear Colleague" letter dated 10/26/2010 cited in UC's original brief.

Moreover, Felber herself was actually assaulted by one of the student activists, was spit on, and another student was seen entangled in passageway tape/barbed wires used in the demonstration.

IV. THE UC REGENTS AND OFFICIALS ATTACK ON THE PLAINTIFFS' CLAIMS FOR RELIEF ARE WITHOUT MERIT AND SHOULD BE OVERRULED

A. THE ELEVENTH AMENDMENT DOES NOT PROVIDE THE REGENTS ABSOLUTE IMMUNITY IN THIS CASE, AND CERTAINLY NOT FROM THE PLAINTIFFS' TITLE VI CLAIMS

At least three reported federal cases not cited by the Regents confirm that the University's 11th Amendment Immunity is not absolute.

Two of these cases are cited with approval by the *U.S. Supreme Court in Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 427 fn.2 (1997). These cases in which the Regents' 11th Amendment Defense was denied were: *Genetech, Inc. v. Eli Lilly & Co.,* 998 F.2d 931, 940-941 (9th Cir. 1993), and *In re Holoholo,* 512 F.Supp. 889 (D.Ha. 1981).

With regard to Plaintiffs' Title VI claims, the Regents have no sovereign immunity defense since Congress abrogated the States' sovereign immunity for violations of Title VI that occur after October 21, 1986. 42 U.S.C. §2000d-7(b). *Emma C. v. Eastin* (ND Ca. 1987) 985 F.Supp.940; *Lovell v. Chandler* (9th Cir. 2002) 303 F.3d 1039.

Title VI of the landmark 1964 Civil Rights Act on which this action is grounded provides:

> "No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §2000d.

42 U.S.C. §2000d-4a provides that the Regents/UC are clearly bound by §2000d:

> "The term 'program or activity' and the term 'program' mean all of the operations of -
>
> * * *
>
> "(2)(A) a college, university or other post secondary institution or a public system of higher education;. . . ."

Paragraph 4 of the Second Amended Complaint alleges that the Regents are "the recipient of federal funds. . ." and that allegation is not denied.

The plain language of §2000d applies to federal program participants wherever enrolled the same guaranty of equal protection of the law set forth in the 14th Amendment. In 1986 the Supreme Court held apart from Title VI, that a State could not hide behind the shield of the 11th Amendment from federal court oversight over a racially biased administration of state education programs federally funded and endowed by a federal land grant program going back to the earliest days of the United States. *Papasan v. Allain,* 478 U.S. 265 (1986). This ruling was based on the equal protection guaranty of the 14th Amendment. *Id.* See also, *Clark v. State of California* (9th Cir. 1997) 123 F.3d 1267, cert.den. 524 U.S. 937.

B. THE REGENTS HAD CONTINUING MULTIPLE NOTICES OF THE COMPLAINED OF HOSTILE ENVIRONMENT

The history of the MSA and SJP programs on the Berkeley, Irvine, and Santa Cruz campuses confirm that the Regents and administrators Yudof, Birgeneau and Poullard all had actual and recurring specific notice of the repeated misbehavior by the MSA and SJP. See, *Monteiro v. The Tempe Union H.S. Dist., supra,* 158 F.3d 1022 at 1034. Defendant's admission that UC Police responded to many of these incidents only confirms their actual notice of these events. Moreover, prior to commencement of this action, Plaintiff Maissy exchanged detailed email communications with Dean Poullard endeavoring to induce a suitable and adequate response to the present crisis.

President Yudof and Chancellor Birgeneau were also sent a detailed letter from a leading Jewish civil rights organization, the Zionist Organization of America (ZOA) on December 30, 2008 detailing the same SJP/MSA misconduct as complained of here. (Zionist Organization of America to Chancellor Robert Birgeneau letter dated 12/30/08. (SAC ¶32.)

The Regents' responses fall far short of what Title VI mandates university administrators must do when faced with such allegations. This is clear from the October 26, 2010 "Dear Colleague" letter in which the U.S. Department of Education, Assistant Secretary for Civil Rights, Russlynn H. Ali, sets out in detail a high school scenario of an anti-Jewish hostile environment, including graffiti, swastikas, name calling and racist remarks. Ali confirms that Title VI protects Jewish students on the basis not:

> "solely on religion" but also "on the basis of actual or perceived shared ancestry or ethnic characteristics. . . . These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics." *Id.*

Ali explains that such harassment cited "negatively affected the ability and willingness of Jewish students to participate fully in the school's educational programs and activities." Noting that in the example, the school officials wrongly deemed the harassment "teasing" (as here, Poullard persists in deeming the brandishing of assault weapons at Sproul Plaza to be "protected free speech"), Ali suggests a minimum course of corrective action including: "counseling the perpetrators, publicly labeling the incidents as anti-Semitic, publicizing the means by which students may report harassment, providing teacher training, and creating adopting courses on the history and dangers of anti-Semitism." *Id.* at page 6. Nothing like this is present in the Regents' responses.

Unfortunately, Dean Poullard, President Yudof and Chancellor Birgeneau have persisted not only in denial of the crisis of anti-Semitic conduct on campus, but in actively and intentionally allowing its worst manifestations to continue unabated.

As alleged in detail in the SAC and the attached photographs, the Defendant has allowed at least four years of "Apartheid Week"–Sproul Plaza–MSA and SJP activities in which those students were authorized under California Penal Code §12556 to openly brandish "imitation" but realistic looking assault weapons, while aggressively confronting and interrogating students with a challenge: "Are you Jewish?" Such conduct is *prima facia* "severe, pervasive and objectively offensive harassment" which no student at UC of any ethnic, racial or religious affiliation should have to endure. Far more than "deliberate indifference" to serious acts of harassment and violence has been alleged and will be proven here on the parts of the Defendant. *Davis v. Monroe County Bd. of Ed.,* 526 U.S. 629 at 650 (1999).

The Defendant's argument that they have no duty to protect Plaintiffs from "third-party" interference with their constitutional rights is completely without merit. *DeShaney v. Winnegago County Dept. of Social Services,* 489 U.S. 189 (1989), confirmed state officials have such a duty when the violent actor is in state custody. Here the duty arises from the fact that the violent

actors are on University of California land over which the University has ultimate control, and that the SJP and MSA are subject to the Regents control and enrollment discipline.

In their moving papers, defense counsel belittle the severity of the conduct complained of, and also belittle Plaintiffs' claims by arguing their "religious practice" or "beliefs" were not impacted. The MSA and SJP armed challenge "Are you Jewish" and the two assaults on Felber, who was identified to her assailant as Jewish by her T-shirt and placard, are offensive and hostile environment misconduct that goes to the heart of unlawful religious and racial endangerment and interference.

C. THE ACTIONS AND DELIBERATE INDIFFERENCE OF THE UC DEFENDANTS HAVE VIOLATED PLAINTIFFS' FEDERAL CONSTITUTIONAL RIGHTS

Plaintiffs' rights to be free from prejudice and violence while themselves lawfully studying, and moving about the UC Campus, are rights enshrined in the Equal Protection Clause of the Fourteenth Amendment. To be free from violence and harassment based on their Jewish identity, while lawfully on a UC campus, are rights guaranteed by the rights to freedom of religion and to the equal protection of the law. *University of California Regents v. Bakke* (1978) 438 U.S. 265, affirming and reversing *Bakke v. University of California* (1976) 18 C3d 34; and Prop. 209 (California Civil Rights Initiative); California Constitution, Art.I, §31(a) and 31(f).

The equal protection clause of the Fourteenth Amendment bars States from discrimination based on race in federally funded and engendered educational programs. *Papasan v. Allain,* 478 U.S. 265 (1986). See also, *Loving v. Virginia* (1967) 388 U.S. 1 (race not a permissible inquiry on a state marriage license application); and *Shelley v. Kraemer* (1948) 344 U.S. 1 (race not a permissible issue for real property ownership in California).

Brown v. Board of Education (1954) 347 U.C. 483, held that race was not a legitimate factor in public school admission, under the equal protection clause of the Fourteenth Amendment. UC students cannot be interrogated at gun point on campus as to their religion, or racial or national identity under the Equal Protection Clause.

The *DeShaney v. Winnegago County Dept. of Social Services, supra,* line of cases cited by Defendant are inapplicable here, because the violent conduct complained of was and continues to be committed on UC-controlled premises, by UC students, and pursuant to UC/ASUC registration and authorization under their own detailed MOUs, Rules, funding, and permission. See, ASUC Request for Judicial Notice, previously filed, and California Penal Code §12556.

In the Second Amended Complaint it is also alleged that Plaintiff Felber was targeted for violent attack because she wore a Jewish identity T-shirt and held a pro-Israel placard in Sproul Plaza. Those non-threatening displays were protected free speech and free exercise activities and should not have led to physical attacks against her. Since they issued campus demonstration and "imitation" firearm display permits to the MSA and SJP activities for their Sproul Plaza actions, the UC Defendants also were violating Felber's rights under the free speech and free exercise clauses.

Respectfully submitted,

Dated: February 1, 2012 By: /S/
JOEL H. SIEGAL
Attorneys For Plaintiffs

CERTIFICATE OF SERVICE

WHEN ALL CASE PARTICIPANTS

ARE CM/ECF PARTICIPANTS

I hereby certify that on February 1, 2012, 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