

# **EXHIBIT “I”**

**Declaration of Ronald Sandee**

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

27 Defendants.  
28

Case No. CV 11-1012 RS

**DECLARATION OF RONALD SANDEE  
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, Ronald Sandee, 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 have reviewed the First Amended Complaint and the exhibits attached thereto  
5 in contemplation for this declaration.

6 3. I am the Director of Research & Analysis for the NEFA Foundation. The NEFA  
7 Foundation is a NGO which focuses on the research of terrorism and radicalization processes.  
8 As a research director I frequently publish about the activities of the Muslim Brotherhood  
9 worldwide. Before I joined the NEFA Foundation, I worked for more than a decade at the  
10 Defence Intelligence and Security Service (DISS) with the Ministry of Defense in the  
11 Netherlands. Within the DISS I was working as a Senior Analyst within the Counterterrorism  
12 Branch of the Counter Intelligence Department. In this capacity I was also following  
13 organizations like the Muslim Brotherhood.

14 4. Attached hereto as Exhibit 1 is a true and correct copy of my current curriculum  
15 vitae.

16 5. Attached hereto as Exhibit 2 a true and correct copy of introductory information  
17 about my current employer, the NEFA Foundation.

18 6. I have been asked to render a preliminary opinion as to the connection of either  
19 of the two mentioned RSO's in the First Amended Complaint [Students For Justice in Palestine  
20 ("SJP") and/or Muslim Student Association ("MSA")] have any connection to organizations on  
21 the United States Terror List. To render such a preliminary analysis, I reviewed the only  
22 documents provided by Plaintiff thus far, i.e., the First Amended Complaint, and I also  
23 reviewed the mound of research materials available to me at our organization, and the mound  
24 of material that I have previously written and spoken about, including all exhibits from the  
25 *Holy Land Foundation* case and also the Foreign Terror Organization list, 62 Fed. Reg. 52650.

26 7. My preliminary conclusion is as follows regarding the Muslim Students  
27 Association and the Muslim Brotherhood:

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1 In the case against the Holy Land Foundation (HLF) and its top officials in mid-2007  
2 prosecutors released scores of internal documents of the Muslim Brotherhood (MB) activities  
3 in the U.S. These documents became the exhibits in the case and were not disputed by the  
4 defendants. The exhibits provided an unprecedented insight into a wide ranging web of  
5 connections tying together a handful of alleged Hamas front groups operating on American soil  
6 throughout the 1990s and beyond and shedding new light on the history of the Muslim  
7 Brotherhood's network in the U.S.

8 In multiple documents the Muslim Students Union is being mentioned as the starting  
9 point of Muslim Brotherhood activities in the U.S. In a document called Work Paper #1 a  
10 historical outline is given.<sup>1</sup> In this outline it is clear that the leadership of the Muslim  
11 Brotherhood in the U.S. sees the founding of the Muslim Students Union in the early 1960s as  
12 the beginning of the activities of the Muslim Brotherhood in the U.S. The document reads: "In  
13 1962, the Muslim Students Union was founded by a group of the first Ikhwan in North  
14 America and the meetings of the Ikhwan became conferences and Student Union camps."<sup>2</sup>  
15 Ikhwan is the Arabic word for brother; it is also the Arabic name of the Muslim Brotherhood  
16 (Ikhwan al-Muslimin).

17 The same document goes on "In 1969, the first organizational meeting for the Ikhwan  
18 separate from the Students Union was held but the meetings of the Ikhwan continued  
19 concurrently with the conferences of the Students Union."<sup>3</sup> Then in 1980 "the Muslim  
20 Students was developed into the Islamic Society in North America (ISNA) to include all the  
21 Muslim congregations from immigrants and citizens, and to be a nucleus for the Islamic  
22 Movement in North America."<sup>4</sup> In another document used as an exhibit in the case against the  
23 Holy Land Foundation one of the leaders of the Muslim Brotherhood, Zeid al-Noman, spoke  
24 about the history of the MB in the U.S. again the Muslim students play an important role. "As  
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26 <sup>1</sup> *United States of America v. Holy Land Foundation for Relief and Development et al;*  
27 Government Exhibit 003-0003; 3:04-CR-340-G, page 4.

28 <sup>2</sup> Idem.

<sup>3</sup> Ibidem.

<sup>4</sup> Idem.

1 for recruitment in the ranks of this Movement, its main condition was that a brother . . . , was  
 2 that a brother must be active in the general activism in the MSA (. . . )”<sup>5</sup> He continues “And we  
 3 said that recruitment used to take place in the following format: attending the MSA conferences  
 4 and choosing active Arab elements and approaching them to join the Ikhwans.”<sup>6</sup>

5 As it is clear from this that the MSA was used as a fertile ground for recruiting into the  
 6 Muslim Brotherhood a recent report by the NYPD Intelligence Division sees the Muslim  
 7 Student Associations as an incubator for radicalization and recruitment. The report states  
 8 “Among the social networks of the local university population, there appears to be a growing  
 9 trend of Salafi-based radicalization that the permeated some Muslim student associations  
 10 (MSA’s). Extremists have used these university-based organizations as forums for the  
 11 development and recruitment of likeminded individuals – providing a receptive platform for  
 12 younger, American-born imams, to present a radical message in a way that resonates with  
 13 students.”<sup>7</sup>

14 The MSA has been in the past and is still a threshold to enter the Muslim Brotherhood  
 15 network in the U.S. Although the MB is not a forbidden organization in the United States it is  
 16 often acting in a covert way by trying to hide its real intentions. The U.S. network of Muslim  
 17 Brotherhood organizations<sup>8</sup> has always sought way to actively support the USG designated  
 18 terrorist organization HAMAS. HAMAS is part of the Muslim Brotherhood, as it is stated in  
 19 article two of HAMAS’ bylaws. One of the former leaders within the Muslim Brotherhood in  
 20 the U.S. is now the deputy political leader of HAMAS, Musa Abu Marzook.

21 8. Attached hereto for the Court’s further consideration is an article dated October  
 22 26, 2007, that I co-authored with Douglas Farah and Josh Lefkowitz, "The Muslim  
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24 <sup>5</sup> *United States of America v. Holy Land Foundation for Relief and Development et al;*  
 25 Government Exhibit 003-0089; 3:04-CR-340-G, page 3.

26 <sup>6</sup> Idem.

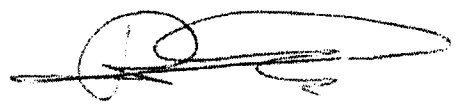
27 <sup>7</sup> Mitchell D. Silber and Arvin Bhatt, NYPD Intelligence Division, *Radicalization in the*  
 28 *West: The Homegrown Threat* (2007) page 70

<sup>8</sup> For an extensive analysis on network of the Muslim Brotherhood in US read, Steven  
 Merley, *The Muslim Brotherhood in the United States*, Research Monographs on the Muslim  
 World, Series No 2, Paper No 3, April, 2009, Hudson Institute.

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Brotherhood in the United States: A brief History.” Also attached is the cited report from the New York City Police Department entitled “Radicalization in the West: The Homegrown Threat,” which describes the role of the Muslim Student Association in Terror organization.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, and that I signed this declaration on August 2, 2011, in Charleston, South Carolina.



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RONALD SANDEE

# **EXHIBIT “J”**

**ZOA October 11, 2004 Complaint**



# ZIONIST ORGANIZATION OF AMERICA

4 EAST 34TH STREET 3RD FLOOR, NEW YORK, N.Y. 10016

TEL: (212) 481-1500 | FAX: (212) 481-1515 | WWW.ZOA.ORG

**SUSAN B. TUCHMAN, ESQ.**  
Director of the Center for Law and Justice

October 11, 2004

**BY FACSIMILE ([415] 437-7783) AND CERTIFIED MAIL**

San Francisco Office  
Office for Civil Rights  
U.S. Department of Education  
Old Federal Building  
50 United Nations Plaza, Room 239  
San Francisco, CA 94102-4102

Dear Sir or Madam:

I am the Director of the Zionist Organization of America's Center for Law and Justice, and am writing to complain about a long pattern of discrimination against Jewish students at the University of California, Irvine (UCI) - a public university which receives federal financial assistance - in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d ("Title VI"). As the following facts show, Jewish students at UCI have been subjected to longstanding and pervasive hostility and intimidation on campus that have interfered with their ability to participate in or benefit from UCI's programs and activities. The university administration has been aware of this serious problem since it started, but, for the most part, has accepted it and remained silent; at times, the administration has been complicit in the conduct. When pressured to do so, UCI has taken superficial and token steps to change a campus environment in which the demonization and spreading of lies about Jews and Israel have been overwhelmingly tolerated and accepted by the administration, and impermissibly justified as an expression of free speech. On behalf of Jewish students at UCI who have been the subject of harassment and intimidation, I demand that you enforce the law and require the university to take all steps necessary to ensure them a nondiscriminatory educational environment in accordance with the requirements of Title VI.

\* The Zionist Organization of America (ZOA), founded in 1897, is the oldest pro-Israel organization in the United States and a charter member of the Conference of Presidents of Major American Jewish Organizations. With a national membership of more than 40,000, and active chapters throughout the United States, the ZOA works to strengthen U.S.-Israel relations, it educates the American public and Congress about the dangers that Israel faces, and it combats anti-Israel bias in the media and on college campuses. The ZOA's past presidents include Supreme Court Justice Louis Brandeis, Rabbi Dr. Abba Hillel Silver and Rabbi Stephen Wise. The ZOA's Center for Law and Justice was established to meet the need for greater organizational involvement in legal matters that affect relations among the United States, Israel and the Jewish people.



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Discrimination against Jewish students at UCI began almost three years ago, when student groups registered with and supported by the university began presenting speakers and publishing information on campus that were plainly intended to incite hatred of Jews and of Israel. The following early examples are important because they demonstrate that the administration's complete indifference to this problem led to difficulties for Jewish students in 2001 and 2002, which accelerated (except for a brief and tenuous respite in 2003) to a real crisis on campus in the spring of 2004. By that time, Jewish students felt so threatened and intimidated that several actually feared for their physical safety.

### ANTI-SEMITISM AT UCI IN 2001 AND 2002

In February 2001, the university hosted Imam Muhammad al-Asi, at the invitation of a registered student organization at UCI called the Muslim Student Union. As reported in *FrontPage Magazine.com* (Apr. 4, 2003), this speaker told his audience that "[t]he Zionist-Israeli lobby, referred to by the Jews themselves as the Jewish lobby in this country, is taking the United States government and the United States people to the abyss. We have a psychosis in the Jewish community that is unable to co-exist equally and brotherly with other human beings. You can take a Jew out of the ghetto, but you cannot take the ghetto out of the Jew." The UCI administration provided a forum for this speaker's hateful lies, and never condemned or countered these outrageous anti-Semitic statements that were undoubtedly intended to incite hatred of Jews and of Israel.

The administration also remained silent in the face of anti-Semitic articles published in *Alkalima*, the Muslim student newspaper at UCI. According to the newspaper's website, the term "alkalima" (which apparently means "the word" in Arabic) "connotes a sense of honesty, integrity of form, and responsibility in presentation." But the paper has hardly been a model of honest and responsible reporting. In July 2002, as confirmed in a report by a professor at UCI, the newspaper featured a cover portrait that morphed together the faces of Israeli Prime Minister Ariel Sharon and Adolph Hitler, with the caption "History Repeats Itself," as well as several articles claiming to reveal "fundamental" similarities between Nazism and Zionism. Making this comparison was not only factually and historically wrong, but also morally reprehensible, and a university newspaper printing such lies and deliberately inflammatory, hateful statements should have been immediately condemned by the administration. The UCI administration said and did absolutely nothing, however, in response.

The newspaper printed more of the same in February of 2002, when it published "Zionism: The Forgotten Apartheid." According to *The Jerusalem Post*, the writers of the article praised Hamas and Hizbollah as "the resistance movements against Zionist aggression." These so-called heroes are actually terrorist groups that are responsible for the deaths and maiming of thousands of innocent men, women and children – including American citizens – and have been designated by our own government as foreign terrorist

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organizations. The authors justified their report, stating, among other things, that "Zionist-controlled world media has been purposefully distorting and misconstruing world events too long." The UCI administration never condemned the publication of these outrageous lies or the glorification of murderers who target Israeli Jews. Indeed, the administration has continued to permit the publishers to use the university's newsstands on campus in order to make the newspaper available and accessible to the entire campus community.

In March 2002, the Muslim Student Union posted a sign on Ring Road (the road that rings the UCI campus) that read, "Israelis Love to Kill Innocent Children." When Jewish students objected to the sign, the Dean of Students met with the president of the Muslim Student Union, purportedly to request that it be removed. The sign was not disposed of, but rather was simply relocated to another part of the campus, on the table for the Society of Arab Students, another registered student organization at UCI. When the Dean of Students asked this group to take down the sign, it refused, indicating that the sign was a valuable source of advertising for them. Despite the fact that the sign contained a completely false and hostile message – and was intended to incite hatred of Jews and of Israel – UCI did nothing to protect its Jewish students. The sign with the false message continued to be displayed and not a peep was uttered by the university administration.

When a Jewish student approached the table of one of the Muslim groups and discussed the sign with a Muslim group member, she was so distraught over what was said to her that she left the UCI campus in tears. Indeed, she was so traumatized that she was unable to return to campus for a week. This incident was reported to the Dean of Students, but the administration did nothing. Other UCI students were also intimidated by the sign, and altered their behavior as a result; some stopped wearing jewelry and clothing that identified them as Jews, or chose to take other than their usual routes to their classes in order to avoid the table and the sign.

Tensions at UCI escalated in 2002 to the point that there was actually a physical confrontation outside the Biological Sciences (now Schneiderman) Lecture Hall in April of that year. On the evening of April 18, 2002, a pro-Israel organization presented a lecture at Schneiderman. A large group of Muslim Student Union and Society of Arab Students members protested outside the lecture hall, and a confrontation ensued between a member of one of those groups and a supporter of Israel. The police had to intervene, and one of the police officers had to physically contain a Muslim student with a baton in order to prevent a fight.

Anti-Semitism has also run rampant at UCI's so-called "Zionist Awareness Week," an annual event sponsored by the Muslim Student Union. This event runs for one school week on campus, presenting speakers and programs that spread lies about Jews, Israel and Zionism, and that even condone terrorism. During Zionist Awareness Week in

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May 2002, as well as during the celebration of Israel Independence Day in the same month, Muslim student groups carried signs on campus with slogans like "Zionism is Nazism" and "Why Do Israelis Love to Kill Innocent Children?" (with blood dripping from the words "Israelis" and "Kill"). There were posters equating Prime Minister Sharon with Adolph Hitler, and posters calling Sharon a war criminal. These groups also displayed an actual Israeli flag with blood dripping from it. The UCI administration uttered not one word condemning this conduct.

This pattern of the administration turning a blind eye to the hate and hostility directed toward Jews and Israel led to a crisis on campus in the spring of 2004. Despite persistent outcry for help from Jewish students at UCI, the administration continued not only to ignore the problem, but also to contribute to and exacerbate it.

#### ANTI-SEMITISM AT UCI IN 2004

In February 2004, the Muslim Student Union sponsored "Anti-Oppression Week," and invited Amir Abdel Malik Ali to speak to students at a seminar entitled "America Under Siege: The Hidden Agenda of Zionism." As reported in *The Jerusalem Post* (Jul. 27, 2004), Ali told his audience that Zionism combines "chosen people-ness with white supremacy," and that Zionists have "Congress, the media and the FBI in their back pocket." Ali also said that if Al Gore became president, the Mossad [Israel's intelligence agency] would have him assassinated so that Joseph Lieberman – a Jew – could assume the presidency.

The obvious intention of this lie-filled, hateful speech was to demonize Jews and Israel, and incite hatred for them among students on campus. Yet the UCI administration did nothing and said nothing to correct or condemn these outrageous statements. In fact, Ali delivered his speech from a lectern emblazoned with the UCI emblem, thereby giving it the imprimatur of the university.

By the spring of 2004, tensions had escalated on campus, and many Jewish students were increasingly frightened and worried. The Muslim Student Union held its fourth annual Zionist Awareness Week at UCI from May 17-21, 2004. This year's event was called "Tragedy in the Holy Land - 56 Years of Terrorism." It covered such topics as "Ethnic Cleansing, Israeli Style," "IDF [the Israeli Defense Forces]: Israeli Terrorist Forces," and "Zionism: America's Disease." Among the speakers at the event was Amir Abdel Malik Ali (discussed above), an open and vocal supporter of Hamas, which has been designated as a foreign terrorist organization by our government. The Muslim Student Union also hosted a speaker on campus – publicized as an "anti-Zionist Jewish Rabbi" – who claimed in his speech that Zionists caused the Holocaust. During that week, the Muslim Student Union displayed posters depicting Prime Minister Sharon with the caption "Wanted: Dead or Alive," and equating the Star of David with the swastika. The Society of Arab Students constructed a wall intended to represent the security fence

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being erected in Israel to protect innocent people from being murdered in terror attacks. In addition, the group created a mock checkpoint to simulate the checkpoints that Israel has been forced to set up also to protect its citizens from being murdered. One Muslim Student Union member dressed as an Israeli soldier and "beat" another member dressed as a pregnant Palestinian Arab woman. All of these actions caused many Jewish students to feel hated and intimidated, and they became afraid for their physical safety. The UCI administration did not condemn this hostility displayed toward Jews and Israel, nor did it issue any statement or make any effort to stop this conduct, to reassure Jewish students, or to address their concerns in any way.

It should be pointed out that the Muslim Student Union's stated purpose as a registered UCI student organization is to promote the Islamic culture. Much of its focus, however - typified by the "Zionist Awareness Week" it runs annually - has been on negative, hateful and factually inaccurate programming about Jews and Israel. The Society of Arab Students, which was responsible for erecting the wall and creating the mock checkpoint, describes its mission as "unit[ing] Arab and non-Arab students at UCI and beyond to maintain cultural identity and educate ourselves of the current Arab issues. We hope to dispel stereotypes and promote Arab cultural heritage in the UCI community by offering students the opportunity to experience and celebrate Arab heritage through exciting and educational and social events." Yet this student group has run few, if any positive events for the university community to promote its Arab heritage, and it certainly has not lived up to its mission to unite with non-Arab students when those students are Jews. Rather, the group's programming has been completely hostile and hateful toward Jews and Israel. UCI permits these student groups to exist, allows their programs to run, provides them with facilities and other support, and makes university funds available to them. Despite the concerns and fears expressed by Jewish students, the administration has never tried to stop any of the anti-Semitic, anti-Israel programs on campus, nor has it ever condemned them or the messages they convey to students about Jews and about Israel.

Approximately two weeks after Zionist Awareness Week in May 2004, at least one Jewish student leader was followed to a meeting on campus, which caused her to feel intimidated and concerned about her physical safety. Other physically threatening and intimidating incidents occurred during this tension-filled spring semester. In January 2004, a Jewish student who was wearing a tee shirt that said, "Everybody loves a Jewish boy," was walking by a table on the campus where members of the Muslim Student Union were handing out their flyers. Rocks covered the flyers to keep them from blowing away. As the Jewish student passed the table, a rock flew right in front of his face, barely missing him. The student turned and saw a member of the Muslim Student Union holding a young child and saying, in a very sarcastic voice, "Don't do that, that's not right!" The Jewish student said nothing and just kept walking. But the experience made him afraid to wear a "Jewish" or pro-Israel tee shirt ever again on campus. This student also notified the administration about the incident. Characteristically, the administration

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turned a blind eye and took no action to demonstrate that the university would not tolerate hateful, threatening or violent conduct toward Jews.

In or about February 2004, a Jewish UCI student (who is of Sephardic descent and speaks and understands Arabic) was bringing a box of pro-Israel items to the Dean of Students' office. He was wearing a pin on his sweatshirt that said, "United We Stand," with an imprint of the American and Israeli flags. He passed two Arab students who stared at his pin and said, "Ee Bakh al Yahud," which means "Slaughter the Jews" in Arabic. The Jewish student ignored the comment and kept walking. When he was at the bottom of the stairs, one of the Arab students shouted at him, "Palestine for life, you Israeli bitch." The Jewish student responded that there is no country called "Palestine." The Arab students followed him into the Dean of Students' office where approximately 10 other students were completing their Islamic prayers. The two original Arab students yelled, "What did you say, you little racist bitch," and several of the students circled the Jewish student. The Jewish student said, "I am not racist," and then, in Arabic, he said, "I am Arab, I am Egyptian." One of the Arab students responded, "You are not Arab, you f\_cking Israeli. I am going to kill you, you f\_cking Jewish bitch, unless you apologize. You are a traitor to all Egyptians." The Jewish student was very frightened, but said, "I am not going to apologize. Do whatever the f\_ck you want to do. I am Egyptian," and walked through the circle of threatening students and out the door. On his way out, one of the Arab students yelled, "We are going to get you, bitch." The Jewish student filed a police report and also reported the incident to the administration. The administration did absolutely nothing.

In or about March 2004, this same Jewish student was wearing a yarmulke and carrying a prayer book while walking toward UCI's science library. He walked by a familiar-looking Arab student and said, "What's up?" The Arab student made an obscene gesture toward the Jewish student and his prayer book. The Jewish student became angry and asked why the gesture had been made. The Arab student replied, "Because you are a dirty Israeli." An argument ensued, during which the Arab student yelled horrible racial slurs such as "dirty Jew," and said that he was going to get a nuclear bomb and blow up Israel. Several of the Jewish students' friends intervened and prevented a fight. As the two were separated, the Arab student yelled, "F\_ck you, my cousin's in Hamas [the terror group responsible for killing and maiming thousands of Jews]. He killed enough of you pigs." When a UCI dean heard about this incident, he called the Jewish student in for a meeting. The Jewish student identified the Arab student who had attacked him and the dean responded that the student had been given a "warning," whatever that means. There was no other follow-up by the administration, and no repercussions for the Arab student other than the "warning." The Jewish student no longer feels safe on the UCI campus and is spending this semester elsewhere, hoping to transfer eventually to another university.

Even ordinary university facilities are being used in a way that contributes to the hostile and threatening educational environment for Jewish students. The Dean of Students' office at UCI is a focal point for many students. It is the place where they

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must go to make copies, obtain supplies and accomplish much of their work on behalf of their student organizations; also, the mailboxes for the student organizations are located in the office. Everyday, members of the Muslim Student Union congregate in this office and pray right outside, often wearing green armbands like those worn by members of the terror group Hamas. In addition, the Muslim Student Union holds many of its meetings in the office, without reserving the space in accordance with university rules. Both Jewish and non-Jewish students feel threatened and intimidated walking through this throng of people in order to enter the Dean of Students' office. The UCI administration has been made aware of their feelings, but has passively responded that there is nothing that can be done about it, when that is plainly not the case. There are many other places that this group can regularly congregate on campus, and certainly many other, more appropriate locations to hold their prayer sessions.

**UCI HAS FAILED AND REFUSED TO PROTECT JEWISH STUDENTS FROM HARASSMENT, INTIMIDATION AND DISCRIMINATION**

The UCI administration has been overwhelmingly silent in the face of all of the speech and conduct on campus that is hateful, hostile and threatening to Jewish students and to Israel. Some halfhearted efforts have been made to deal with the rising tensions on campus, but they were never designed or implemented so as to correct the problem. In September 2002, the administration set up "rules of dialogue" for members of the Muslim Student Union, the Society of Arab Students, Hillel and Anteaters For Israel (a pro-Israel organization bearing the name of the university mascot) to follow, which, if broken, would result in repercussions for the rule-breakers. Among the rules was that posters would not equate Zionism with Nazism, or equate the Star of David with the swastika, as they were offensive or hurtful to Jewish students. The Muslim Student Union and Society of Arab Students likewise identified certain matters offensive to them that the other student groups agreed not to exploit. Another rule required that all of these student groups maintain an open dialogue and keep one another informed.

The Jewish student groups faithfully adhered to the rules set by the UCI administration. Muslim student groups violated them, however, during the fourth annual Zionist Awareness Week in May 2004, by displaying signs and posters equating the swastika with the Star of David. In addition, the Society of Arab Students decided to institute a "no dialogue" policy, refusing to talk to Jewish student groups about what was happening on campus. The UCI administration took no action to enforce its own rules, lamely contending that since the Muslim student group leadership had changed since the rules were made, the new group leaders could not be held to them. The administration not only failed to condemn the Muslim student groups' hateful conduct toward Jews and Israel, it also refused to enforce its own rules expressly prohibiting the conduct.

The administration did react in a clear and unambiguous way, however, when the wall built by the Society of Arab Students during Zionist Awareness Week in May 2004 (discussed above) was burned to the ground. The wall was intended to represent the

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security fence being erected in Israel to protect innocent people from being maimed and murdered by Arab terrorists. The UCI administration instituted an investigation of the incident and classified it as a hate crime. In addition, the Chancellor posted a message about the destruction of the wall on the university's website and e-mailed the message to the entire university community, condemning the incident and emphasizing "in no uncertain terms that there will be consequences for anyone who initiates such activities on this campus."

The university's strong response was a stark contrast to the one that followed the destruction of a Holocaust memorial at UCI, in the spring of 2003. The administration never even completed an investigation of the incident, never classified it as a hate crime, and never condemned the violence. A candlelight vigil was held at the same time to commemorate the Holocaust. Jewish student groups placed their materials on several tables in the open area on the Student Center terrace. After the vigil, a Jewish student discovered that a swastika had been drawn on one of the tables. This hate incident was reported to the police and all campus procedures were followed, but nothing was done about it. As was its usual response, the administration was silent and took no action to support and protect its Jewish students.

After the wall was destroyed, the Society of Arab Students organized a university-wide anti-hate rally on the UCI campus and invited all student organizations to attend. When the Jewish student groups (i.e., Hillel, Anteaters for Israel, and the Jewish-interest sorority and fraternity) expressed their interest in participating in the rally in solidarity with the rest of the university community, they alone were expressly prohibited from participating. Rather than suspend this "solidarity" rally unless all UCI students were permitted to participate, or at least publicly condemn this overt display of hostility and discrimination against Jewish students, the UCI administration not only remained silent. It became complicit in the conduct by actively participating in the rally. The university's Vice Chancellor spoke there and in fact, indicated that he was speaking for all of the organizations and the entire community present. The administration thus expressly endorsed and approved the rally and actively participated in a so-called campus-wide event that deliberately excluded Jews.

By late May 2004, the hostility toward Jewish students reached a crescendo when graduating Muslim students at UCI encouraged other graduates to wear sashes displaying the "Shahada," the Islamic declaration of faith, at the university's commencement ceremony. Many Jewish students at UCI and several Jewish organizations - including this one - understood that the "Shahada" is a declaration of one's faith in Allah, but that the word also has another, more sinister meaning. It also means "martyrdom" and is a concept that has been used not only to rationalize, but also to glorify terrorism and suicide bombings. Given the Muslim Student Union's recent conduct during its "Anti-Zionism Week" - wearing the green Hamas-like armbands; praising Hamas, a terror organization, as heroic freedom fighters; and glorifying known terrorists and killers of Jews as heroes and martyrs - it was hard to believe that public display of the "Shahada" was simply an

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innocent declaration of Islamic faith. But whatever the meaning and connotation of "Shahada," what is important for purposes of this complaint is UCI's utter failure to respond to the hostility and intimidation that Jewish students experienced during the ensuing controversy. In fact, the UCI administration exacerbated the problem.

Jewish student group leaders organized two meetings with the administration to voice their fears and concerns about the hatred on campus directed against them and against Israel. These group leaders cited examples of anti-Semitism on other campuses, and said that they wanted to work with the UCI administration to effect change on their own campus so that it would not remain so hostile and divided.

The administration did not respond to these students' feelings of harassment, intimidation and discrimination. Indeed, the second meeting with the administration did not even address the concerns that the Jewish students had raised. It turned instead into a discussion about the "Shahada" sashes. At the meeting, a member of the administration pressured Jewish student group leaders to issue a statement about the sashes – that Muslim students had a right to wear them and that the Jewish student groups wanted a safe graduation. Given their understanding of the connotation of the word "Shahada," the Jewish student leaders declined to issue a statement supporting the sashes. The Associate Dean of Students angrily responded to their decision. He told the Jewish leaders that he was speaking for the Chancellor and the Vice Chancellor, that he was deeply disappointed in the Jewish student leaders, and that their refusal to issue a statement supporting the sashes spoke to the character of their organizations.

This same dean cut short the meeting with Jewish students, without addressing any of their concerns, in order to be interviewed about the sash controversy on a local radio show. Once on the air, he knowingly and deliberately misrepresented the sentiments of the Jewish students at UCI, stating that they were not upset about the wearing of the sashes, when in fact he knew that they were extremely upset and felt very threatened. The university thus not only disregarded and took no action to address the issues raised by Jewish students about the sashes; their concerns were actually demeaned by the administration, and knowingly and publicly misrepresented. Significantly, no apology has come from the administration for this dean's inappropriate comments during the meeting, or for his egregious conduct on the radio.

In the face of all of this hate and hostility on campus directed against Jews and Israel, UCI will, in all likelihood, contend that its hands are tied, that it may not restrict speech and other forms of expression on campus on First Amendment grounds. But there is no legal principle that supports or justifies UCI's silence and inaction in the face of blatant anti-Jewish, anti-Israel hostility and incitement on campus that has made Jewish students feel intimidated, afraid and unsafe. Title VI requires UCI to protect Jewish students from harassment, intimidation and discrimination, and all this time, the administration should have done so by, first, publicly and unequivocally rejecting and condemning the views and the conduct expressed, and second, by refusing to furnish



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financial, material or any other support for them, and refusing to provide a forum for the hate and the lies on campus. By remaining silent (and, at times, by participating), UCI's administration has given legitimacy to the anti-Semitic conduct on campus, and thus has compounded the fear and vulnerability that many Jewish students have experienced from the conduct itself.

The UCI administration may also contend that it has made efforts to deal with the problem of anti-Semitism on campus. But like the so-called "rules of dialogue" (which turned out not to be enforceable rules at all), the administration's more recent efforts have been mere token gestures. The administration set up a meeting between Muslim and Jewish students at the end of July 2004. Only members of the Muslim Student Union attended on behalf of Muslim students (the Society of Arab Students did not attend). At the meeting, the problems on campus were not even discussed; rather, the students simply talked about their majors and where they were from. The administration also expressed an interest in scheduling a class on "conflict escalation" in the fall 2004. This would be equally unlikely to produce any meaningful change or improvement in the environment for Jewish students on campus. The Society of Arab Students has a "no-dialogue" policy, which means that it refused to attend the meeting in late July and will not participate in any other discussions that are intended to improve the hostile and threatening environment for Jews on campus. If the university were truly committed to protecting Jewish students from harassment, discrimination and intimidation, it would, at a minimum, revoke this group's recognition as a registered UCI organization, and the Society of Arab Students would no longer receive any acknowledgement or support from the university because of its divisive, inciting and hateful position toward Jews. The administration should be showing students, who are being given the privilege of attending this publicly-supported university, that anti-Semitism in any form – whether expressed directly against Jews or couched in distorted accusations and outright lies about Israel – is wrong and will not be tolerated at UCI.

What is happening at UCI is frightening, but not unique; it is also occurring at other college campuses in this country. Student groups are lying about and demonizing Israel and the Jews, and going way beyond mere criticism and healthy debate about the situation in the Middle East. Years ago, Dr. Martin Luther King recognized that "[w]hen people criticize Zionists, they mean Jews, you are talking anti-Semitism." In September 2002, the President of Harvard University expressed a similar sentiment. While acknowledging the importance of protecting the freedom to debate in our academic communities, Harvard's President emphasized that actions that are anti-Israel "are anti-Semitic in their effect if not their intent." Recently, the Catholic Church issued a similar statement, condemning anti-Zionism as "a manifestation of anti-Semitism."

UCI, like other colleges and universities, needs to understand that there are serious legal consequences for perpetuating this problem and permitting Jewish students to be subjected to hatred, hostility and intimidation because of their ancestry, their

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ethnicity, their religious and cultural traditions, or their support for their Jewish homeland. I thank you in advance for your attention to this critical matter and for the steps you take to enforce the law and protect the right of Jewish students at UCI to an educational environment that is safe and free from harassment and discrimination. If you have any questions or need additional information, please contact me at (212) 481-1500. There are several current and former UCI students, as well as documentary evidence, to substantiate fully the university's longstanding and egregious violation of Title VI.

Very truly yours,



Susan B. Tuchman

# **EXHIBIT “K”**

**ZOA December 30, 2008 Letter**



# ZIONIST ORGANIZATION OF AMERICA

JACOB AND LIBBY GOODMAN ZOA HOUSE  
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December 30, 2008

Chancellor Robert J. Birgeneau  
Office of the Chancellor  
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University of California  
Berkeley, CA 94720-1500

Dear Chancellor Birgeneau:

We write on behalf of the Zionist Organization of America, the oldest pro-Israel organization in the United States,<sup>1</sup> because of troubling reports from several Jewish students at UC Berkeley that they have been harassed, verbally and physically intimidated, and discriminated against on campus. Students have reported these problems to the university administration, but the administration has failed to correct them. We are concerned that Jewish and pro-Israel students are being deprived of a campus environment free from anti-Semitic hostility as required by Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S. C. § 2000d *et seq.* We urge you to take the steps described in this letter, to ensure that the problems are finally confronted and resolved.

As you may know, Title VI requires that recipients of federal funding (such as UC Berkeley) ensure that their programs and activities are free from racial and ethnic discrimination. The United States Commission on Civil Rights – an independent bipartisan federal agency that studies discrimination and civil rights issues and reports on them to the President and Congress – examined anti-Semitism on college campuses at a 2005 hearing. The Commission found that campus anti-Semitism is “a serious problem.” It concluded that the U.S. Department of Education’s Office for Civil Rights (the federal agency responsible for enforcing Title VI) should vigorously enforce Title VI to ensure that Jewish students are protected from anti-Semitic harassment.

Our government has recognized that anti-Semitism does not only mean the use of slurs, the vandalism of property, or physical threats and assaults against Jews. Anti-

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<sup>1</sup> The ZOA, founded in 1897, is a charter member of the Conference of Presidents of Major American Jewish Organizations. With a national membership of over 30,000, and active chapters throughout the United States, the ZOA works to strengthen U.S.-Israel relations, it educates the American public and Congress about the dangers that Israel faces, and it combats anti-Israel bias in the media and on college campuses. The ZOA’s past presidents include U.S. Supreme Court Justice Louis Brandeis, Rabbi Dr. Abba Hillel Silver and Rabbi Stephen Wise. The ZOA’s Center for Law and Justice was established to meet the need for greater organizational involvement in legal matters that affect relations among the United States, Israel and the Jewish people.

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Zionism and anti-Israel sentiment can also cross the line into anti-Semitism. The U.S. State Department issued a detailed report on contemporary global anti-Semitism last March (see <http://www.state.gov/g/drl/rls/102406.htm>). According to the State Department, the “new anti-Semitism” is “characterized by anti-Zionist and anti-Israel criticism that is anti-Semitic in its effect – whether or not in its intent.” Of course, not all criticism of Israel is anti-Semitic. But as the State Department recognizes, “disproportionate criticism of the Jewish State and/or Israelis and demonizing them as barbaric, unprincipled, selfish, inhumane, etc. is anti-Semitic and has the effect of causing global audiences to associate those bad attributes with Jews in general.”

Forty years before the State Department issued its report, Nobel Peace Prize winner and civil rights leader, the Reverend Martin Luther King, Jr., reached the same conclusion. In 1968, Reverend King said, “When people criticize Zionists, they mean Jews. You are talking anti-Semitism.”

Likewise, the U.S. Commission on Civil Rights recognized that anti-Zionism and anti-Israelism that, for example, “exploit[] ancient stereotypes of Jews as greedy, aggressive, overly powerful, or conspiratorial . . . should be distinguished from legitimate discourse regarding foreign policy.” According to the Commission, “[a]nti-Semitic bigotry is no less morally deplorable when couched as anti-Israelism or anti-Zionism.”

You are surely aware of the problems of anti-Semitism, including Israel-bashing, that have been plaguing another UC campus, in Irvine. Triggered by a complaint that the ZOA filed on behalf of Jewish students on that campus, the Office for Civil Rights has been investigating whether UC Irvine violated Title VI by failing to respond effectively to anti-Semitic harassment and intimidation. An investigation into UC Irvine’s conduct by the Office for Civil Rights is open and ongoing.

We would like to see the problems at UC Berkeley addressed and resolved before such formal legal steps need to be taken. We are encouraged by the way you responded to the anti-Semitic vandalism that occurred adjacent to the campus last September. You issued a clear and unequivocal message to the university community, condemning the vandalism as an “anti-Semitic obscenity” that was “deeply hurtful to our Jewish students.” We commend you for this appropriate response and urge you to take the same clear and decisive stance against the pattern of hostility that Jewish and pro-Israel students have been facing on your campus.

#### Jewish Students have been Verbally and Physically Harassed and Intimidated

Several students have reported to us that they have been verbally and physically harassed and intimidated by members and supporters of a university-approved student group that calls itself “Students for Justice in Palestine” (SJP). We are told that the SJP routinely constructs a mock checkpoint on campus to simulate Israel’s security measures (that protect innocent civilians from Palestinian Arab terrorism). The SJP’s checkpoint

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obstructs the campus walkway and is set up in a central area on campus, so that it is virtually impossible for students to avoid. At the checkpoint, SJP members and supporters harass and intimidate students who are walking by. They ask passers-by if they are Jewish; those who say yes are permitted to walk through the checkpoint. Passers-by who say that they are Arabs or Muslims are told to lie on the ground, and they are searched and asked for identification.

SJP members have held imitation guns at its checkpoints that look authentic – a frightening tactic that violates school policy and the law. After students complained to the administration about the SJP's use of these guns, the SJP stopped using them, but only temporarily. Eventually, the SJP began using imitation guns again, a deliberate infraction of the rules and the law, which the university administration has reportedly ignored.

One Jewish student told us that when he passed by the checkpoint while walking to class, he was confronted and poked in the chest by what turned out to be an imitation gun, by a male dressed in a military uniform (presumably posing as a member of the Israel Defense Forces). When the Jewish student told the male "soldier" to move out of his way because he needed to get to class, the "soldier" berated him about the so-called Israeli "occupation." A shouting match ensued, a crowd gathered, and the Jewish student was verbally assaulted and accused of being, among other things, a "Nazi."

On March 3, 2008, the SJP sponsored a "die-in" purportedly in response to Israel's decision to defend its people against Kassam rockets that Palestinian Arabs have been launching into Israeli towns from Gaza. The number of rockets fired into Israel has now reached 10,000. During the die-in, approximately 30 to 40 SJP members lay on the ground on Sproul Plaza, obstructing traffic and blocking the walkway. SJP members were holding signs falsely and absurdly accusing Israel of starting another Holocaust. Their signs were also racist, equating Israelis with Nazis. Students tell us that the SJP also displays signs accusing Israel of being an apartheid state. The charge is not only false, but also ridiculous. Israel is the only established democracy in the Middle East where citizens of every color, creed and religion have equal rights, including the rights to vote, to freedom of speech, to practice their religion, to education, to be represented in the Israeli government, and to full access to the courts.

When the SJP has held anti-Israel rallies and events on the UC Berkeley campus, Jewish students have peacefully gathered and held up signs to counter the false and hateful messages that the SJP promotes about Jews, Zionism and Israel. Without question, these Jewish students have every right to be there, exercising their First Amendment rights to assembly and free expression. But the SJP has deliberately interfered with those rights, blocking the Jewish students' signs and attempting to destroy them. At the "die-in" in March, Jewish students were holding a sign that said "Victims of Palestinian Terror" – a reference to the innocent Israeli civilians who live in constant daily fear of Kassam rockets that are being launched at them from Gaza. An SJP

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supporter began cursing at the Jewish students and tried to tear down their sign, ripping it in the process. A male SJP member physically pushed a female Jewish student holding the sign.

In violation of university policy, the SJP used a loudspeaker at the event, blocked the walkway, and harassed and intimidated the Jewish students by encircling them. SJP members came up to Jewish students, got in their faces, and shouted, "'F\_\_k you, take your sign and get the hell out of here.'" When the Jewish students tried to move to another location, the SJP members followed them and continued to encircle them in a threatening and harassing manner, repeatedly shouting "F\_\_k you" and "Get the f\_\_k away."

Some SJP members made anti-Semitic comments such as, "The Jews are the chosen people, they don't care about anyone else, they only care about themselves. You think you have everything and that you can do whatever you want. You think you can just kill people." One supporter yelled to a Jewish student that the student did not know what the Holocaust is because otherwise the student would not be doing what she is doing in Gaza – as if she were personally responsible for what is happening in Gaza. Jewish students felt threatened and intimidated, which is exactly what the SJP intended. Some Jewish students feared for their physical safety. There are Jewish students who are now afraid or reluctant to wear anything that would identify them as Jewish or pro-Israel.

One Jewish student who often wears a yarmulke on campus reported to us that on three separate occasions, he has been verbally attacked with racial epithets by what he has called a verbal "hit and run" assailant. His assailant(s) called him a "kike" and another ethnic slur and then ran away.

#### Jews have been Physically Assaulted

On November 13, 2008, a university-approved student group called the Zionist Freedom Alliance (ZFA), with the help of another approved student group called Tikvah: Students for Israel (Tikvah), organized a hip-hop concert at UC Berkeley as part of "Israel Liberation Week." Members of the SJP deliberately disrupted the concert by draping two Palestinian flags from the Eshleman Hall balcony directly over the stage.

University policy required that the SJP obtain prior approval for using Eshleman Hall for this purpose. On information and belief, the SJP failed to do so, and also violated the student government's (ASUC) banner regulations.

There can be no question about the SJP's motivations: This group was plainly seeking to disrupt the concert, to upset and offend those who were there in solidarity with the State of Israel, and to provoke a response. The SJP accomplished all three. John Moghtader, a UC Berkeley student and a senator in the student government (ASUC); Gabe Weiner, a recent graduate of UC Berkeley; and Yehuda De sa, a performer at the

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concert, went up to the balcony to request that the SJP remove its flags. One of the leaders of the SJP instigated a fight by hitting Mr. Weiner on the head. A scuffle ensued as Mr. Weiner defended himself and Mr. De sa came to his aid. John Moghtader did not participate in the scuffle; he reportedly broke it up.

We understand that the SJP is claiming that they displayed the Palestinian flags in response to offensive anti-Arab remarks at the concert. The reports we have received are consistent: The SJP's claim is a complete fabrication; no anti-Arab remarks were made at the concert.

The truth about what happened at the concert will hopefully be revealed in a fair and impartial investigation. But in the meantime, this incident is emblematic of a larger problem of anti-Semitic harassment, intimidation and discrimination on campus that the university administration knows about but has not effectively addressed.

A Jewish Student Leader of the Pro-Israel Group on Campus  
has been Unfairly Targeted and Maligned

One Jewish and pro-Israel student in particular has recently become the focal point for the anti-Israel hostility that pervades the campus: John Moghtader, a senator in the student senate and also a founder and the president of the pro-Israel group called Tikvah, has been subjected to what students have described as a "witch hunt." Mr. Moghtader reportedly was not involved in the altercation on November 13<sup>th</sup>; indeed, witnesses say that he broke up the scuffle. Yet he has been publicly and falsely maligned in the student paper, *The Daily Californian*. And he has been unfairly targeted in a petition to the student body that seeks to recall him from the ASUC Senate.

In its first story about the incident at the concert on November 13<sup>th</sup>, *The Daily Californian* inaccurately reported that John Moghtader and Yehuda De sa were "handcuffed and cited by the UCPD [campus police] for battery." In fact, neither of these individuals was handcuffed or charged with battery. The article reported that SJP leader Husam Zakharia was "hit in the face during the altercation." But the article failed to mention that Gabe Weiner had been assaulted – and that he reportedly was attacked first – or that Mr. Weiner had reacted in self-defense. The article also made a provocative comment about the individuals who went up to the balcony, stating that "[a]ll three men are Jewish." Whether the men were Jewish or not was irrelevant to the reporting of what occurred. The article did not label anyone else as "Christian," or "Muslim" or "Hindu." The article concluded with the sentiments of an ASUC senator, which called for disciplinary action in response to the violence against the SJP members. Misleadingly, the article failed to identify the senator as an SJP member who should not have been expected to be impartial about which parties should be disciplined.

After complaints were made about this article's bias and inaccuracy, the editor-in-chief of *The Daily Californian* acknowledged "serious factual inaccuracies" and issued



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an apology and a replacement article that was supposed to be correct. But factual errors and bias remained. The article specifically named Gabe Weiner as one of the students cited for battery, but Mr. Weiner is not even a student at UC Berkeley; he graduated last year. Again, the article noted that Husam Zakharia had been hit in the face, without also noting witness reports that he provoked the fight, and that if he was hit, it was in self-defense. The article again included the biased commentary from the ASUC senator who also happens to be an SJP member, not surprisingly calling for disciplinary action against anyone who might have attacked members of the SJP. And the inflammatory and irrelevant comment about the students who went up to the balcony – that “all three men are Jewish” – was repeated, without also including the religious persuasions of any of the other participants in the incident.

The first article libeled the Jewish individuals involved and wrongly misled the entire campus community to believe that Mr. Weiner, Mr. Moghtader and Mr. De sa were at fault. The second, allegedly more accurate article, did little to apprise the community of the facts, and indeed, simply reinforced their misunderstanding of what occurred.

*The Daily Californian's* reporting was biased, inaccurate and contributed to the hostile environment on campus for Jewish and pro-Israel students. The university administration should criticize the paper for deliberately false reporting that smacks of anti-Semitism, and urge the editors to ensure that the paper meets journalistic standards of fairness, accuracy and completeness.

In addition to the student paper's news reports that wrongly maligned John Moghtader and others, there is an ugly online petition in progress, advocating that Mr. Moghtader be recalled from the student senate. The online petition self-righteously states that “we think it is important that all public figures on campus . . . be held to the highest standards of conduct.” Yet there is no indication that Mr. Moghtader has failed to conform to such standards.

Ironically, the petition against Mr. Moghtader was sponsored by five students at Berkeley's law school, at least one of whom reportedly was a member of the SJP. Apparently these law students have failed to absorb several fundamental underpinnings of our system of justice, which apply equally on your campus – that an individual must be informed of the charges against him in a clear and unambiguous way so that he/she can be in a position to answer them; that an individual is presumed innocent until proven guilty by the evidence; and that the evidence cannot be based on rumor or innuendo. By proceeding with this petition, UC Berkeley students are shamefully seeking to punish Mr. Moghtader based on vague accusations, without any proof of wrongdoing on his part.

It is our understanding that Mr. Moghtader has been unflinchingly vocal in his support for the State of Israel, and has been criticized by other students for his beliefs and opinions. It is appalling – and unacceptable – to think that he is being publicly maligned and penalized for his beliefs and the exercise of his First Amendment freedoms.

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The Administration Knows About the Anti-Semitic Hostility But Has Not Remedied It

There is no question that the UC Berkeley administration is aware of the problems we have described above. Students have complained about the SJP's threatening and intimidating conduct, and about the group's violations of UC Berkeley's Code of Student Conduct, to Dean of Students Jonathan Poullard. Indeed, several Jewish students spoke up at an ASUC senate meeting on March 3, 2008, at which Dean Poullard was present. As the meeting minutes reflect, student after student described being harassed and intimidated by members of the SJP. They described the SJP's repeated violation of university policy and Jewish students' rights. They described the SJP's refusal to follow multiple requests by police and faculty to stop their intimidating tactics. And they described how unsafe they felt on their own campus.

According to the minutes from this meeting, Dean Poullard acknowledged that those who violated Jewish students' personal space and jeopardized their personal safety engaged in a Student Conduct violation. These infractions have occurred repeatedly. Then why have no disciplinary proceedings been instituted?

Dean Poullard also appropriately acknowledged that it "probably was" hateful for SJP members to shout "F\_\_k Israel." But oddly, the dean concluded that it is also hateful to say the words "Palestinian terror." Why would that statement constitute hate speech? Terrorist attacks by Palestinian Arabs, including suicide bombings, committed against Israeli civilians – on buses, in restaurants, in shopping malls, in yeshivas, and other locations – are an indisputable fact about the Middle East conflict and an essential component of an honest discussion about the conflict. That Dean Poullard would put the phrase "Palestinian terror" in the same category as the phrase "F\_\_k Israel" reflects a lack of understanding that Palestinian Arab terrorism is tragically an accurate component of the Middle East conflict. Acknowledging the fact of Palestinian terror is not hate speech. Dean Poullard's comments suggest that he is not the right individual to respond to the anti-Semitic hostility on the campus.

Our concerns about Dean Poullard's ability to respond to the hostility are compounded by the way in which he handled another incident involving Tikvah. In October 2008, the SJP sponsored a presentation by Norman Finkelstein and John Dugard. Finkelstein is a Holocaust minimizer and the author of a book that *The New York Times* described as "verg[ing] on paranoia and . . . serv[ing] anti-Semites around the world." A small group of students – some of whom were Tikvah members – went to the Finkelstein event and publicly voiced their opposition to Finkelstein and his opinions. They disrupted the presentation for about 30 seconds and then left peacefully and of their own volition. They were gone before the police could be summoned, and Finkelstein's speech proceeded without a problem.

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This was not the first time that students at UC Berkeley had used this form of protest. Indeed, the SJP has itself used it, albeit in a more intensive and intrusive way. Last year, when Arab speaker Nonie Darwish – who spoke about her experiences growing up in Egypt and immigrating to the United States – was brought to campus and the film “Obsession” (about the rise and dangers of radical Islam) was screened, the SJP repeatedly interrupted her speech. According to *The Daily Californian*, Ms. Darwish could not even begin her speech for about a minute because of the heckling. The student paper noted that university police had to escort several “loud opponents” out of the lecture hall at various points during the event. People who could not get into the event were beating on the walls outside the lecture hall. This was a major disruption, but reportedly, there was never any administrative response to the SJP’s conduct, and certainly no condemnation of it.

The SJP staged an even greater spectacle when Middle East scholar, Dr. Daniel Pipes, was invited to speak at UC Berkeley in 2004. We understand that signs were posted outside the lecture hall, warning that no banners, signs, shouting or violence would be permitted. No matter to the SJP. Members of the group practically drowned out Dr. Pipes’ speech several times, by chanting and jeering hateful anti-Semitic terms and slogans, including “Death to Zionism,” “Zionism is racism,” and “Israel out of Palestine.” The protestors screamed “Zionist Jew” and “racist” at Dr. Pipes, and “racist Jews” at the audience. Some who were present at the event reported that “Seig Heil” was chanted, along with the Nazi salute. The disruptions continued until the campus police finally had to eject the protestors.

The administration’s response to the disruptive conduct was expressly non-punitive. In fact, your predecessor, Chancellor Berdahl, concluded that the conduct was not actionable: “Uncivil behavior, lamentable as it is, is not a crime, nor is it a violation of the Code of Student Conduct. No matter how ugly and hurtful may be the comments of those who dissent from the opinions of the speaker, those comments are also protected by the First Amendment, and they are punishable only when those who make them refuse to leave when asked to do so by the police.”

At the Finkelstein event last October, Tikvah did not sponsor or endorse the disruption of the Finkelstein speech. Tikvah’s response to the event was to hand out flyers and hold up posters outside. Despite these facts, Dean Poullard publicly lambasted Tikvah in an e-message to the entire university community, stating that the disruption was a “direct violation of the Code of Student Conduct.”

On its face, the Dean’s actions were improper, because he publicly pronounced Tikvah’s guilt before any charges against the group could be investigated and properly determined. The Code of Student Conduct sets forth detailed processes and procedures for handling alleged code violations, including a specific provision that students charged are presumed to be innocent unless it is proven otherwise or the student admits responsibility – neither of which had happened here when the Dean unilaterally and

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publicly “convicted” Tikvah of wrongdoing. The code also provides for a specific informal resolution process or a more formal one, neither of which had been undertaken before the Dean’s pronouncement of Tikvah’s guilt. Appallingly, the dean condemned Tikvah based on hearsay alone.

Dean Poullard’s conduct was wrong for a second reason. It completely contradicted Chancellor Berdahl’s prior determination (a precedent that was never reversed or modified to our knowledge) that the disruption of a speaking event was protected speech and does not violate the student conduct code. The SJP’s disruptions of the Nonie Darwish and Daniel Pipes events were extreme and unrelenting, requiring police intervention and the removal of shouting and jeering individuals from the room. The administration did not take action against the SJP for its conduct. Yet Dean Poullard publicly condemned Tikvah for the Finkelstein disruption, when Tikvah did not sponsor it, the disruption lasted for just seconds, and the protestors left without police intervention and before the police were even at the scene.

It is our understanding that Dean Poullard has never condemned any of the SJP’s conduct or investigated any of the complaints against the group that have been lodged with him, as required by university policy. Despite acknowledging at the senate meeting on November 19<sup>th</sup> that the SJP had committed infractions of the rules, the dean has never held the group accountable. Indeed, immediately after the concert on November 13<sup>th</sup>, at which an SJP leader reportedly provoked a fight, the dean arrived on the scene and initially commented on the SJP’s involvement in the scuffle, only to immediately correct himself by saying that it was individuals members who were involved – as if that meant that the group was not behind the provocation and should not be held responsible. Apparently, Jewish and pro-Israel actions that do not violate the code of conduct are to be condemned, but Palestinian Arab actions that do violate the code are to be ignored and tolerated. The administration’s conduct, at the expense of Jewish students’ physical and emotional well-being, must not continue.

#### Proposed Remedies

We presume from an open letter sent to the campus community by you and other administrators on November 18, 2008, that the administration plans to take “vigorous steps” to address the anti-Semitic hostility. But one event that was held out as a positive step is actually part of the problem: The open letter characterized the recent “Peace Not Prejudice” event as promoting “civil dialogue between people with differences.” Nothing could be further from the truth.

“Peace Not Prejudice,” sponsored by a coalition of many different student groups, sounds positive in the abstract. But according to several reports from Jewish and pro-Israel students, it ends up becoming another organized attack against the State of Israel. Tikvah was not even invited to participate in the event, which is hardly consistent with its objective – to promote peace instead of prejudice on campus.

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When the event took place a few weeks ago, students and other members of the university community were dancing together in Sproul Plaza, but not with flags of nations around the world as one would reasonably expect in the spirit of peace not prejudice. Instead, only Palestinian flags were on display. A Jewish and pro-Israel student stood on the other side of Sproul Plaza where Tikvah was tabling. He was waving an Israeli flag. He was reluctant to go over to join the group of dancers because he was concerned that that might lead to an unpleasant confrontation. Someone came over to him and snatched the Israeli flag he was holding. In a gesture toward peace and solidarity, the Jewish/pro-Israel student decided to join the group of dancers. But the group shut him out of the circle as they were chanting, "Palestina, Arabiya," which the Jewish/pro-Israel student understood to mean "Palestine is Arab," advocating for the destruction of the State of Israel. Then someone took the Jewish/pro-Israel student aside and told him that if he wanted to wave the flag he would have to issue a public apology on behalf of the pro-Israel community.

The Jewish/pro-Israel student returned to the Tikvah table, near tears because of the prejudice he had encountered. In light of his experience, the administration should think twice before touting "Peace Not Prejudice" as a positive, tension-reducing initiative, since it has not served that purpose on the campus.

We recommend that the following steps be taken. They are specifically geared to reducing the anti-Semitic hostility that Jewish students are facing.

First, we urge you to meet with students in Tikvah and the ZFA to discuss the harassment, threats and intimidation they have been facing, which have led some of them to fear for their physical safety. Respectfully, Dean Poullard should not participate in these meetings; based on his conduct, he does not have the group members' trust. The meetings should be focused on specific ways in which UC Berkeley can ensure that its programs and activities are free from racial and ethnic harassment, intimidation and discrimination, in accordance with Title VI. This means ensuring that any student or student group that engages in a violation of the Code of Student Conduct, including by threatening, harassing, or intimidating Jewish and pro-Israel students, will be held accountable and disciplined, if the evidence warrants.

Second, we urge you to publicly denounce hateful anti-Semitic and Israel-bashing speech and conduct on your campus whenever it occurs, by naming the offending speakers and programs, as well as the student groups that are sponsoring them. This way, the university community, and especially the perpetrators, will appreciate what is wrong and why, and the perpetrators will understand that they are the problem. You rightly issued a clear condemnation of the anti-Semitic vandalism that occurred near the campus last September, recognizing its hurtful impact on Jewish students. Other perhaps more subtle expressions of anti-Semitism occurring directly on your campus must also be condemned; the pain they inflict on Jewish students is no less.

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The U.S. Commission on Civil Rights has recommended that university leaders “set a moral example by denouncing anti-Semitic and other hate speech, while safeguarding all rights protected under the First Amendment and under basic principles of academic freedom.” The American Association of University Professors and the American Civil Liberties Union also advocate that university administrators speak out and forcefully condemn expressions of anti-Semitic bigotry.

Last May, U.S. Congressman Brad Sherman (D-CA) wrote to UC Irvine’s Chancellor to express his concern about a student group’s campus event comparing Israeli policies to the Holocaust – similar to some of the SJP’s conduct on your campus. The Congressman characterized this event as “clearly anti-Semitic. It wholly demeans the Jewish victims of the *Holocaust* and vilifies the Jewish citizens of Israel.” Congressman Sherman called on UC Irvine’s Chancellor to condemn such programs and speakers, saying, “While I strongly support the First Amendment rights of individuals to speak freely and without impediment on your campus, I hope that you share my belief that we all have a moral responsibility to denounce speech that is clearly and unambiguously hateful in nature. As an American, you have a right to speak out. As Chancellor, it is your duty to condemn anti-Semitism, especially when it occurs at [your] campus.” Respectfully, this same directive applies equally to you.

Third, Dean Poullard should be required to issue a public statement to the university community retracting his public condemnation of Tikvah for the disruption of the Finkelstein event. The dean should note Chancellor Berdahl’s specific determination that such disruptions do not violate student conduct rules and are protected by the First Amendment, and that other student groups have used precisely this form of protest – and much worse – without condemnation or penalty. The dean should also issue a public apology to Tikvah for maligning the group unjustly and without cause. Although the damage has been done – the dean has blackened Tikvah’s reputation – he can at least undo some of the damage by setting the record straight that Tikvah is innocent of any infraction of university rules.

Fourth, we urge you to ensure that the investigation of the November 13<sup>th</sup> incident is handled fairly and in accordance with university rules and policies. We also ask that Dean Poullard recuse himself, or be removed from the process, because he has evidenced a lack of impartiality and a bias against one group in favor of another.

Fifth, *The Daily Californian’s* bigotry and lack of professionalism and integrity must be addressed because they have contributed to the hostile environment that Jewish/pro-Israel students have been facing. We understand that this paper is an independent student-run publication. But its reporting on the November 13<sup>th</sup> incident was riddled with bias and inaccuracy, even bordering on anti-Semitism. The editors of the paper will surely work harder to ensure that their news reporting is more careful, thorough and free from bias if the paper is publicly rebuked by the head of the university.

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Finally, you must put a stop to the witch hunt against John Moghtader. Recently, *The Daily Californian* published an editorial condemning the petition to recall Mr. Moghtader from his position as an ASUC senator. As the paper properly noted (but did not emphasize nearly enough) the petition is "too preemptive." But the editors were as much concerned with the financial costs of the recall election as with its patent unfairness. And the editors took an unnecessary and inappropriate jab at Mr. Moghtader, noting that his views, "as much as they invite fervent disagreement," are not sufficient reasons for his removal." Why are Mr. Moghtader's views even worth mentioning? Is the paper implying that his views are offensive or vulgar in some way? Mr. Moghtader's sole "transgression" appears to be his belief in the Jewish people's legal, historic and religious right to sovereignty in their homeland, in the Land of Israel. The evidence suggests that it is for this reason that he is being publicly maligned and possibly stripped of his office. *The Daily Californian* did little to challenge these hostile, anti-Semitic actions.

We understand that at least one student contacted you and objected to the recall process based on what he called "spurious allegations." Harry LeGrande, Vice Chancellor for Student Affairs, responded on your behalf, informing this student that the university would not get involved. According to Mr. LeGrande, "the University Administration does not inject itself into the internal issues of the ASUC." It is difficult to believe that the university would take this stance regardless of the circumstances. If an African American or Hispanic student senator was being singled out and targeted by a recall petition based on vague accusations and no proof of wrongdoing, the university would surely speak out and not permit a fundamentally unfair process to run its course.

UC Berkeley has been given the public's trust to guide and educate its students, which includes guiding and educating them about the principles of justice, fairness and tolerance. If any student or student group is engaging in conduct that fails to reflect these principles, then your administration is obliged to exercise its moral leadership and weigh in on the matter. The UC Berkeley administration should not sidestep responding to student conduct that is hateful, intolerant or unjust. It should certainly respond here.

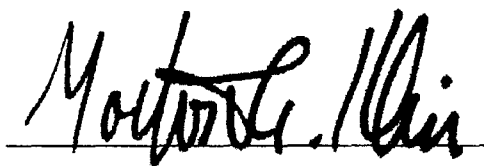
We hope you will take the steps that we have recommended to rectify the anti-Semitic hostility on campus, without further action on our part. We are committed to

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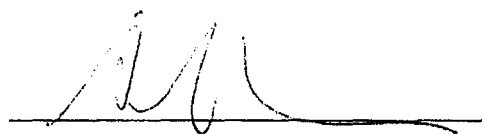
ensuring that the rights of Jewish and pro-Israel students are protected, and request that you inform us about how you intend to proceed as soon as possible.

Thank you.

Very truly yours,



Morton A. Klein  
National President



Susan B. Tuchman, Esq.  
Director, Center for Law and Justice

cc: UC President Mark G. Yudof  
Governor Arnold Schwarzenegger  
U.S. Senator Barbara Boxer  
U.S. Senator Dianne Feinstein  
U.S. Representative Barbara Lee, 9<sup>th</sup> Congressional District  
California Members of Congress  
Rabbi Marvin Hier, Dean and Founder of the Simon Wiesenthal Center  
Rabbi Abraham Cooper, Associate Dean of the Simon Wiesenthal Center  
Mr. David A. Harris, Executive Director, American Jewish Committee  
Mr. Abraham H. Foxman, National Director, Anti-Defamation League  
Mr. Jonathan Bernstein, Regional Director, Anti-Defamation League



# **EXHIBIT “L”**

**Declaration of Jessica Felber**

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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

Case No. CV 11-1012 RS

15 Plaintiffs,  
16 vs.

**DECLARATION OF JESSICA FELBER  
IN OPPOSITION TO DEFENDANTS'  
12(b)(6) MOTION**

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

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

Complaint Filed: March 4, 2011

27 Defendants.  
28

1 I, Jessica Felber, declare:

2 1. I am a plaintiff in this case. I have personal knowledge of the facts stated  
3 herein. If called to testify, I would truthfully and competently testify as follows.

4 2. I graduated from the University of California at Berkeley in December 2010.  
5 Because of my experiences on campus described here I was very anxious to graduate from  
6 college and leave the Berkeley campus.

7 3. I enrolled and began my studies at Berkeley in August 2007. At the time that  
8 I began my studies I was only 17 years old. I am from Southern California. Coming to  
9 Berkeley was the first time that I had ever lived away from home on a somewhat permanent  
10 basis. For me, as for many of my friends, moving away from home and going to college and  
11 leaving my parents' home was both exciting and frightening. I am approximately 5'3" tall and  
12 I weigh approximately 110 pounds.

13 4. From the time that I arrived on campus I experienced situations that made me  
14 feel not only uncomfortable, but also fearful because of my religion and Jewish background.  
15 Many things occurred on campus that made me feel physically unsafe and adversely affected  
16 my ability to study and function on campus.

17 5. Early in my time on campus, I was walking on a major campus plaza and there  
18 was a political event occurring. Students for Justice in Palestine were holding a "die in" in  
19 Sproul Plaza. I had been walking on my way to class. I was wearing a sweatshirt that had  
20 Hebrew letters on it and a Jewish Star of David. The leader of the Student for Justice in  
21 Palestine demonstration stopped his speech, pointed at me, and starting yelling in a loud and  
22 menacing voice, "terrorist supporter," while pointing to me because of my sweatshirt. Since  
23 there were approximately 100 people attending this "die in" that I merely happened to walk  
24 through between classes, I felt myself in danger. I did not see any campus police at that  
25 particular event. I was very frightened by that student's taunt of me. I took off my sweatshirt,  
26 and realized that I should not wear a sweatshirt with Hebrew letters or any Star of David  
27 identifying myself as Jewish in public on campus unless I happened to be at a venue for an  
28 exclusively Jewish event.

1           6.       During my time on campus, I observed approximately two dozen incidents  
2 where there was graffiti on campus with either a swastika alone or a swastika equaling a Jewish  
3 star. The graffiti that I noticed was in dorm halls, rooms, campus bus stops, and other places on  
4 campus. As a Jewish person who has learned about the Holocaust, and as someone who has  
5 heard of family members perishing in the Holocaust, seeing swastikas on campus is frightening  
6 and terrifying. This is especially true as I had learned from other Jewish students, and had read  
7 that when Daniel Pipes had visited the Berkeley campus in 2004, students primarily from the  
8 Muslim Student Association and Students for Justice in Palestine had reacted by chanting Sieg  
9 Heil, and giving Nazi salutes. (First Amended Complaint (FAC) ¶54.) I had also learned that in  
10 1995 on campus the MSA sponsored a rally supporting Hamas, and that students carried  
11 swastikas and “volunteered” to serve as suicide bombers killing Jews. (FAC ¶42.) I also  
12 learned that in December 2001, a member of Chabad, a Jewish organization, was assaulted on  
13 campus, and during the spring break of 2002, a window at a Jewish house Hillel was smashed  
14 and vandalized with graffiti stating “fuck the Jews.” (FAC ¶44.) I learned that on other UC  
15 campuses, including Santa Cruz and Irvine, there were other incidents of public anti-Semitism.  
16 (FAC ¶¶43 and 45.)

17           7.       As described truthfully in the First Amended Complaint, paragraph 21, in or  
18 around January 2009, Husam Zakharia, the apparent head of Students for Justice in Palestine,  
19 saw me and yelled at me that I was “disgusting.” At the same moment that he yelled at me, he  
20 spit at me. The matter was brought to the attention of the Dean of Students, Jonathan Poullard.  
21 While I was recounting the incident, Dean Poullard stopped me and wanted clarification  
22 whether Zakharia spit at me or on me. I answered Dean Poullard stating that I didn’t really  
23 know that there was a difference if someone spits at you or on you. Dean Poullard responded  
24 that spitting at someone is very different than spitting on someone. Spitting on someone is a  
25 big deal. Dean Poullard’s comments to me cheapened and humiliated me. He made me feel  
26 that simply because Zakharia had not hit me directly in my face with his spit, that my personal  
27 space and dignity were not violated on campus. The Dean’s inaction amplified my sense of  
28 fear.

1           8.       I have examined all of the exhibits to the First Amended Complaint. I cannot  
2 comment on the events of Apartheid Week in 2011, because by that time I was already off  
3 campus. However, all of the other photos of Apartheid Week depicted in the First Amended  
4 Complaint accurately reflect the things that I saw and observed at Apartheid Weeks.

5           9.       The first Apartheid Week that I was witness to was in March 2008.  
6 I subsequently observed Apartheid Week in 2009 and 2010. The description of Apartheid  
7 Week in the First Amended Complaint is accurate, however, I would add that the frenzy of  
8 those wearing military uniforms and carrying realistic assault weapons is even more  
9 pronounced than described in the First Amended Complaint. The "soldiers" holding realistic  
10 looking assault weapons, and other participants, shout and yell at passing students: "prepare to  
11 be stopped", "what is your religion", "are you Jewish?"

12           10.      The first time I was stopped I was absolutely terrified. I did not know how to  
13 respond. No one before had ever stopped me while carrying an assault rifle, and yelling at me.  
14 This happened right on campus. I was ashamed and I was afraid to answer that I was Jewish.  
15 That was perhaps the first time in my life that I had to consciously consider lying about my  
16 identity. Rather than answering I turned my head down and walked away as quickly as  
17 possible. I was terrified. I was terrified for weeks. For the next few weeks following  
18 Apartheid Week, I was very conscious about hiding my Jewish star necklace and any other  
19 identifying Jewish item.

20           11.      During my remaining years on the campus, I observed two more Apartheid  
21 Week events during the month of March in 2009 and 2010. Each year the same things  
22 occurred. The photos attached to the First Amended Complaint accurately depict the scene of  
23 Apartheid Week, although as I say, it was even more outrageous than demonstrated by the  
24 photos.

25           12.      I never felt like I had any support from the University or ASUC when faced with  
26 these situations. I called the UCPD every year to report the use of realistic looking weapons on  
27 campus. The UCPD never did anything to stop it. One year, I complained directly to the Dean  
28 of Students, who still did nothing. Nothing was done to assure safety. The University's lack of

1 response only served to heighten my feelings of insecurity on campus. I felt terrified that if  
2 things amplified, the University would not be there to protect me. Other Jewish students at  
3 Berkeley have repeatedly told me they felt the same way.

4 13. In March 2010, Husam Zakharia assaulted me on campus as described in the  
5 First Amended Complaint. I was seen at campus urgent care for my physical injuries. I  
6 attended therapy at the Social Services Department of Student Health Services for the  
7 remainder of the semester. I was afraid to leave my home alone at night. If I did not have a  
8 friend to escort me to wherever I wanted to go, i.e., the library, a night class, or a show or  
9 lecture on campus, I would not go. The following semester I did not enroll in night classes on  
10 campus because of the possibility that I would have to walk alone. On occasion, I did not  
11 attend the Jewish religious Friday night services because of fear to go out. I left Berkeley as  
12 often as I could, about three weekends every month, to try to escape the fear that I felt during  
13 the week. I believe that I missed many Jewish Friday night events on campus during that  
14 period of time. The assault solidified my decision to graduate early and leave the campus.

15 14. Have these events affected my grades or academic performance? I cannot say.  
16 I was especially terrified following the assault. The last semester of one's college years, I am  
17 told should be a time when you participate fully in the college experience. My time however  
18 was inhibited because of the events on campus as described here.

19 I declare under penalty of perjury under the laws of the State of California, that the  
20 foregoing is true and correct, and that I signed this declaration on July 18, 2011, in Berkeley,  
21 California.

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23   
24 JESSICA FELBER

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

I hereby certify that on January 6, 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