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10 Attorneys For Plaintiffs JESSICA FELBER and BRIAN MAISSY

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

13 JESSICA FELBER
14 and BRIAN MAISSY

15 Plaintiffs,
16 vs.

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

28 Defendants.

Case No. CV 11-1012 RS

**DECLARATION OF JESSICA FELBER
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, 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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24 JESSICA FELBER

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

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

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

/s/

JOEL H. SIEGAL