

1 JOEL H. SIEGAL, ESQ. [SBN: 117044]
Attorney at Law
2 703 Market Street, Suite 801
San Francisco, CA 94103
3 Telephone: (415) 777-5547
Facsimile: (415) 777-5247
4 Email: joelsiegel@yahoo.com

5 NEAL M. SHER, ESQ. [New York Bar # 1092329]
Attorney at Law
6 551 Fifth Avenue, 31st Floor
New York, NY 10176
7 Telephone: (646) 201-8841
8 Email: nealsher@gmail.com

Attorneys For Plaintiffs JESSICA FELBER and BRIAN MAISSY

9
10 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 JESSICA FELBER)
and BRIAN MAISSY)

13)
14 Plaintiffs,)

vs.)

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

26 Defendants.)
27)
28)

No. CV 11-1012 RS

PLAINTIFFS' MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
DEFENDANT **THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA'S
(UC REGENTS) RULE 12(b)(6) MOTION**

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

Complaint Filed: March 4, 2011

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

TABLE OF AUTHORITIES iii-v

I. INTRODUCTION AND SUMMARY OF CASE 1

II. THIS COURT CAN FOLLOW SETTLED FEDERAL RULES FOR JUDICIAL
OVERSIGHT OF ON CAMPUS VIOLENCE AND HOSTILE ENVIRONMENT
HARASSMENT COMMITTED FOR YEARS BY UC AND ASUC REGISTERED
AND SUBSIDIZED STUDENT ORGANIZATIONS WHICH INTERFERE WITH THE
RIGHTS OF JEWISH STUDENTS, WHICH SUBSTANTIALLY DISRUPT
UNIVERSITY OPERATIONS, AND INTRUDE UPON THE PROGRAMS OF THE
UNIVERSITY AND THE RIGHTS OF OTHER STUDENTS 4

A. THE COMPLAINED OF SPEECH AND CONDUCT HERE IS NOT
PURE INDEPENDENT STUDENT SPEECH BUT RATHER IS
CONDUCT AND HATE SPEECH REASONABLY PERCEIVED TO
BEAR THE IMPRIMATUR OF THE DEFENDANTS THEMSELVES 5

B. THE COMPLAINED OF SPEECH AND CONDUCT EVEN IF HELD
TO BE PURELY STUDENT SPEECH CAN STILL BE HELD AS THE
BASIS OF A TITLE VI PRIVATE RIGHT OF ACTION AGAINST THE
DEFENDANTS BECAUSE IT ENDANGERED THE SAFETY OF
OTHER STUDENTS, INTERFERED WITH THE RIGHTS OF OTHER
STUDENTS, SUBSTANTIALLY DISRUPTED UNIVERSITY
OPERATIONS, AND INTRUDED UPON THE PROGRAMS OF THE
UNIVERSITY 7

III. THE UC REGENTS AND OFFICIALS ATTACK ON THE PLAINTIFFS’ CLAIMS
FOR RELIEF ARE WITHOUT MERIT AND SHOULD BE OVERRULED 10

A. THE ELEVENTH AMENDMENT DOES NOT PROVIDE THE
REGENTS ABSOLUTE IMMUNITY IN THIS CASE, AND
CERTAINLY NOT FROM THE PLAINTIFFS’ TITLE VI CLAIMS 10

B. THE ALLEGED CONDUCT BY THE REGENTS/UC DEFENDANTS
CONSISTS OF INTENTIONAL ACTS OF DISCRIMINATION
SUFFICIENT TO SUPPORT THE PLAINTIFFS’ LEGAL CLAIMS 11

C. PLAINTIFFS HAVE ALLEGED A STRONG CLAIM FOR RELIEF
UNDER §1983 14

D. THE ACTIONS AND DELIBERATE INDIFFERENCE OF THE UC
DEFENDANTS HAVE VIOLATED PLAINTIFFS’ FEDERAL AND STATE
CONSTITUTIONAL RIGHTS 15

E. THE FIRST AMENDED COMPLAINT STATES PENDANT
JURISDICTION CLAIMS FOR RELIEF UNDER CALIFORNIA CIVIL
CODE §§ 51, 52 16

1 IV. PLAINTIFFS SEEK RELIEF UNDER TITLE IV, THE UNRUH ACT, AND 42 U.S.C.
2 §1983 FOR DAMAGES AND FOR CORRECTIVE INJUNCTIVE RELIEF IMPOSING
3 LIMITS ON RSO VIOLENT AND DISRUPTIVE CONDUCT SIMILAR TO THOSE
4 IMPLEMENTED AT OTHER UNIVERSITIES AND PUBLIC VENUES 17
5 A. DAMAGES AND LEGAL FEES SHOULD BE AWARDED IN THIS
6 CASE 17
7 B. UNDER TITLE VI, A SUITABLE REMEDY SHOULD BE CRAFTED
8 LIKE THE ONE RECENTLY ADOPTED BY YALE UNIVERSITY
9 FOLLOWING ITS FINDINGS OF HOSTILE ENVIRONMENT UNDER
10 TITLE IX 17
11 C. ASUC FUNDED RSOs SHOULD BE RESTRICTED IN THEIR ON-
12 CAMPUS POLITICAL ACTIONS FROM SIMILAR MISCONDUCT AS
13 BARRED AT THE SAN FRANCISCO INTERNATIONAL AIRPORT 18

14 CERTIFICATE OF SERVICE WHEN ALL CASE PARTICIPANTS
15 ARE CM/ECF PARTICIPANTS last page
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

		<u>Page(s)</u>
1		
2		
3	<u>Cases</u>	
4	<i>Ashcroft v. Iqbal</i> , ___ U.S. ___, 129 S.Ct. 1937 (2009)	14
5	<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	14
6	<i>Bethel School District v. Fraser</i> , 478 U.S. 675 (1986)	6
7	<i>Brown v. Board of Education</i> (1954) 347 U.C. 483	16
8	<i>Clark v. State of California</i> (9th Cir. 1997) 123 F.3d 1267,	
9	cert.den. 524 U.S. 937	11
10	<i>College Republicans at San Francisco State v. Reed</i> ,	
11	523 F.Supp.2d 1005 (ND Cal. 2007)	2-4, 7
12	<i>Davis v. Monroe County Bd. of Ed.</i> , 526 U.S. 629 (1999)	13
13	<i>DeShaney v. Winnegago County Dept. of Social Services</i> , 489 U.S. 189 (1989)	13, 16
14	<i>Doe v. Petaluma City School District (Petaluma I)</i> ,	
15	830 F.Supp.1560 (N.D. Ca. 1993)	16
16	<i>Dubner v. City & Cnty. of San Francisco</i> , 266 F.3d 959 (9th Cir.2001)	15
17	<i>Emma C. v. Eastin</i> (ND Ca. 1987) 985 F.Supp.940	10
18	<i>Genetech, Inc. v. Eli Lilly & Co.</i> , 998 F.2d 931 (9th Cir. 1993)	10
19	<i>Goldberg v. Regents of the University of California</i> , 248 Cal.App.2d 867 (1967)	2, 17, 19
20	<i>Green v. Kennedy</i> (DC DC 1970) 309 F.Supp.1127	17
21	<i>Hansen v. Black</i> , 885 F.2d 642 (9th Cir. 1989)	15
22	<i>Hazelwood School District v. Kuhlmeier</i> , 484 U.S. 260 (1988)	5, 6
23	<i>Healy v. James</i> , 408 U.S. 169 (1972)	2-4, 17, 19
24	<i>Holder v. Humanitarian Law Project</i> (2010) 561 U.S. ___ at ___; 130 S.Ct. 2705	3
25	<i>Howard v. Feliciano</i> , 583 F.Supp. 252 (D. Puerto Rico 2008)	17
26	<i>Ibister v. Boy’s Club of Santa Cruz, Inc.</i> , 40 Cal.3d 72 (1985)	16
27	<i>In re Holoholo</i> , 512 F.Supp. 889 (D.Ha. 1981)	10
28	<i>LaVine v. Blaine School District</i> (9 th Cir. 2001) 257 F.3d 981	4, 17

1	<i>Los Angeles County Metro Transit Auth. v. Superior Court</i>	
2	(2004) 123 CA4th 261	17
3	<i>Lovell v. Chandler</i> (9th Cir. 2002) 303 F.3d 1039	10
4	<i>Loving v. Virginia</i> (1967) 388 U.S. 1	15
5	<i>Nicole M. v. Martinez Unif. Sch. Dist.</i> , 964 F.Supp.1369	
6	(ND, Cal. 1997, Patel, J.)	2, 4, 7, 15-17
7	<i>Papasan v. Allain</i> , 478 U.S. 265 (1986)	11, 15
8	<i>Rosenberger v. Rector and Visitors of Univ. of Va.</i> , 515 U.S. 819 (1995)	3
9	<i>Saxe v. State College Area School District</i> (3rd Cir. 2001) 240 F.3d 200	4, 5, 7
10	<i>Shelley v. Kraemer</i> (1948) 344 U.S. 1	15
11	<i>Starr v. Baca</i> , 633 F.3d 1191 (9th Cir. 2011)	14, 15
12	<i>Sullivan v. Vallejo City Unified School District</i> , 731 F.Supp. 947 (E.D. Ca. 1990)	16
13	<i>Tinker v. Des Moines Independent Community School District</i> ,	
14	393 U.S. 503 (1969)	4
15	<i>U.S. Supreme Court in Regents of the Univ. of Cal. v. Doe</i> ,	
16	519 U.S. 425 (1997)	10
17	<i>U.S. v. Holy Land Foundation</i> (5 th Cir. 2010) 624 F.3d 685	8
18	<i>University of California Regents v. Bakke</i> (1978) 438 U.S. 265,	
19	affirming and reversing <i>Bakke v. University of California</i> (1976) 18 C3d 34	4, 15
20	<i>Watkins v. City of Oakland</i> , 145 F.3d 1087 (9th Cir. 1998)	15
21	<i>Widmar v. Vincent</i> , 454 U.S. 263 (1981)	3
22	<u>Codes</u>	
23	42 U.S.C. §1983	passim
24	42 U.S.C. §2000d, <i>et. seq.</i> , Title VI	passim
25	42 U.S.C. §2000d-4a	10
26	42 U.S.C. §2000d-7(b)	10
27	California Civil Code §§ 51, 52, 52(a) (Unruh Civil Rights Act)	passim
28	California Code Regs. Title 5, Section 41301(b)(7)	2

1 California Penal Code §12556 1, 13, 16

2 California Penal Code §12556(a) 5

3 California Penal Code §12556(d)(3) 5, 6

4 California Penal Code §12556(d)(9) 5, 6

5 Miscellaneous

6 California Constitution, Art.I, §31(a) and 31(f) 15

7 Federal Rule 8(a) 14

8 Prop. 209 (California Civil Rights Initiative) 15

9 San Francisco International Airport—Rules and Regulations, Rule 13.7 18

10 “Dear Colleague” letter, 10/26/2010, U.S. Dept. of Education—Office of Civil Rights .. 7, 12, 13

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION AND SUMMARY OF CASE**

2 Defendants Mark Yudof and The Regents of the University of California’s (“Regents”)
3 statement, at the very beginning of their motion asserting that: “[T]his lawsuit is in substance an
4 attempt by Plaintiffs to compel UC to restrict the freedom of speech and assembly of its other
5 students, in violation of their FIRST AMENDMENT RIGHTS. . . .,” completely
6 mischaracterizes this case.

7 This case is indeed about Jessica Felber, who was physically and emotionally injured as a
8 result of being assaulted on the University of California, Berkeley campus, during violent,
9 unsupervised but UC authorized “Apartheid Week” demonstrations. Ms. Felber's injuries were
10 so substantial that she was terrified to walk on campus alone for months and missed campus and
11 school events. (See Declaration of Jessica Felber served and filed herewith.)¹ This case is also
12 about Brian Maissy, a current UC Berkeley student, who has feared for his safety for weeks
13 following the “Apartheid Week” disruptive checkpoints. Mr. Maissy fears wearing his skull cap
14 and fringed garments as part of his religious observance, fearing he will be viewed as one of the
15 activists who these Defendants have for years allowed to dress and act like storm trooping
16 soldiers intimidating students at checkpoints where they have brandished realistic-looking assault
17 weapons, placed barbed wire on campus walkways, and interrogated students as they pass
18 regarding their religion. [See First Amended Complaint (“FAC”) ¶¶ 59-60.]

19 “59. . . . Defendants' condoning the establishment of
20 “checkpoints,” where students dress as soldiers, carry
21 realistic-looking assault weapons, lay barbed wire on heavily
22 traveled campus walkways, and interrogate others about their
23 religious affiliation and national origins, goes beyond free speech
24 protection. It is terrifying, especially to 17 year old students, and it
25 endangers the health and safety of Jewish students. Indeed it
26 violates California Penal Code §12556, and Berkeley Campus
27 Regulations Implementing University Policy sections 211, 312, and
28 321.”

26 ^{1/} Also filed and served herewith are: Plaintiffs' Request for Judicial Notice of Adjudicative
27 Facts [Federal Rules of Evidence, Rule 201] and Declaration of Joel H. Siegal (“Siegal
28 Declaration”), each with identical Exhibits 1 through 11 as part of Plaintiffs’ Opposition to
Defendants’ Rule 12(b)(6) Motions.

1 “60. The aforesaid conduct, acts and omissions of defendants, and
2 each of them, to tolerate and condone the aggressive and violent
3 and threatening on-campus activities of the MSA and SJP against
4 plaintiffs and other students of Jewish religion and ancestry is
5 particularly ominous because defendants' actions and omissions
6 present a disturbing echo of incitement, intimidation, harassment
7 and violence carried out under the Nazi regime and those of its
8 allies in Europe against Jewish students and scholars in the leading
9 universities of those countries during the turbulent years leading up
10 to and including the Holocaust.”

11 Exhibits B-H of the First Amended Complaint consist of photographs of Sproul Plaza
12 from the past four years. Obviously the UC Defendants knew and fully condoned and supported
13 these demonstrations depicted in the photographs of Sproul Plaza, where members of the UC
14 Registered Student Organizations (RSOs), the Students for Justice in Palestine (“SJP”), and the
15 Muslim Student Association (“MSA”) (also known as the “Muslim Students Union”) brandished
16 realistic looking assault weapons yelling, terrorizing, interrogating, harassing and intimidating
17 students.

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

22 The law has long allowed this University to create and enforce regulations which prohibit
23 “conduct that threatens or endangers the health and safety of any person.” *Healy v. James*, 408
24 U.S. 169 (1972); *Goldberg v. Regents of the Univ. of California*, 248 Cal.App.2d 867 (1967).

25 Recently, Magistrate Wayne Brazil, in *College Republicans at San Francisco State v.*
26 *Reed*, 523 F.Supp.2d 1005 (ND Cal. 2007), concluded that California Code Regs. Title 5, Section
27 41301(b)(7), a statute written specifically for regulations upon California state colleges, passed
28 Constitutional muster regarding conduct on a university campus which constitutes “intimidation”
and “harassment” and threatens health and safety is a valid regulation.

“With its reach limited to intimidation or harassment that
threatens or endangers health or safety, we are inclined to believe
that the vast majority of the conduct that this provision would
prohibit would not fall within the sphere that the First Amendment
prohibits the government from suppressing. Instead, it seems

1 likely that most of the conduct that this regulation prohibits either
2 would have no expressive component or that any such component
3 would be so overshadowed by the risk that the conduct would
4 cause serious harm that First Amendment concerns would have to
5 give way. It is difficult to imagine a substantial sphere of
6 expressive conduct that reasonable people would conclude both (1)
7 constituted “intimidation” or “harassment” and (2) threatened
8 health or safety but that nonetheless deserved protection under the
9 Constitution.” [Emphasis in original.]

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

11 These cases confirm that issues of the promulgation and application of public university
12 rules limiting student free speech activities have for years been the business of the federal court
13 system. Federal question jurisdiction over such issues is beyond dispute. See, also, *Rosenberger*
14 *v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995); *Widmar v. Vincent*, 454 U.S. 263
15 (1981); and *Healy v. James*, 408 U.S. 169 (1972). (SDS)

16 Here, in their First Amended Complaint, Plaintiffs allege that Defendants have authorized
17 and funded the Students for Justice in Palestine, and the Muslim Student Association (also
18 known as the “Muslim Students Union”), which for years have and continue to intimidate,
19 harass, threaten and endanger the health and safety of Jewish students at the University of
20 California (“UC”). (FAC ¶¶ 11-12, 24, 33)

21 The MSA, which in connection with the SJP, put on the annual “Apartheid Week” Sproul
22 Plaza checkpoint, is an organization founded by the Muslim Brotherhood. Prerequisite of
23 membership into the Muslim Brotherhood is membership in the MSA. (While the Muslim
24 Brotherhood itself is not on the U.S. Department of State’s Foreign Terrorist Organizations list,
25 Hamas is. Hamas indicates in its charter that it is a branch of the Muslim Brotherhood.) The
26 New York City Police Department has indicated that the MSA is a spawning ground of domestic
27 violence and terror activities. (See Declaration of Ronald Sandee served and filed herewith.)

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

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

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

6 Whether or not the Regents and named administrators sued herein have met these
7 guidelines are legal issues raised in the Declaratory Relief, Title VI and Unruh claims for relief in
8 the First Amended Complaint. *University of California Regents v. Bakke* (1978) 438 U.S. 265
9 (1978); Title VI, 42 U.S.C. §2000d, *et. seq.*; *Nicole M. v. Martinez Unif. Sch. Dist.*, 964
10 F.Supp.1369 (ND, Cal.1997, Patel, J.). These cases affirm federal question jurisdiction by an
11 injured aggrieved student subjected to patterns of racial, religious or other unlawful harassment
12 or discrimination under the cited federal civil rights statutes, including Title VI, 42 U.S.C. §1983,
13 and the California Unruh Act under the doctrine of pendant jurisdiction. *Id.*

14 In their brief the Defendants contend that the Plaintiffs’ remedies lie not under federal but
15 under state law and that they should have brought their cases not here but in the State Courts.

16 However, the cases cited above and elsewhere in this brief confirm that the issues in this
17 case are properly before this Court, and that the Defendants’ Rule 12(b)(6) Motions should be
18 denied.

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

27 The applicable law of this case is cogently and accurately reviewed and restated by
28 Justice Alito in *Saxe v. State College Area School District* (3rd Cir. 2001) 240 F.3d 200. See
also, *LaVine v. Blaine School District* (9th Cir. 2001) 257 F.3d 981. Under the guidelines stated
there, it is clear that the Plaintiffs here have stated valid federal claims for relief under Title VI
and the Defendants’ Rule 12(b)(6) Motions should be denied.

1 **A. THE COMPLAINED OF SPEECH AND CONDUCT HERE**
2 **IS NOT PURE INDEPENDENT STUDENT SPEECH BUT**
3 **RATHER IS CONDUCT AND HATE SPEECH**
4 **REASONABLY PERCEIVED TO BEAR THE**
5 **IMPRIMATUR OF THE DEFENDANTS THEMSELVES**

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

11 The complained of conduct here, the agitprop pseudo “Israeli” checkpoint reenactments,
12 blockages, and religious and racial interrogations conducted in Sproul Plaza annually for the past
13 four years, and documented by the photos attached to the First Amended Complaint, fall in that
14 category.

15 First, the sponsoring organizations conducting those activities are not non-campus
16 independent student groups, but instead “registered student organizations” (RSOs) licensed and
17 supported financially by mandatory UC imposed fees on registered students. See ASUC Request
18 for Judicial Notice, Doc.25, Exhibits A-F.

19 Second, the specific Apartheid Week checkpoint actions are permitted and licensed by
20 Defendant UC officials, including UC campus police and the ASUC.

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

27 “(d)(3) Used in a theatrical production . . .”

28 “(d)(9) Used for public displays authorized by public or private
 schools . . .” (Emphasis added.)

1 Any argument that Defendants have no actual notice of the intimidating display of imitation
2 assault weapons at the Sproul Plaza checkpoints is contradicted by the actual event photographs
3 which show the presence of campus police talking to imitation-weapon-wielding student activists
4 during the several events in question. There is also a photograph of a Palestinian flag flying from
5 the Sproul Plaza flagpole during one of the Apartheid Week demonstrations.

6 Defendants Yudof, Poullard and Birgeneau have for years been directly notified about the
7 excessive and violent Sproul Plaza and on-campus actions of the SJP and the MSA, but have
8 done nothing to stop them. Defendants admit multiple campus police responses in their Brief. In
9 addition, Campus Police and University counsel were involved in response to the 2001 beating of
10 Professor Mel Gordon (see Declaration of Mel Gordon served and filed herewith). Defendants
11 also received a letter from a leading Jewish civil rights group in 2008, which expressly detailed
12 the same violent SJP and MSA conduct complained of here. (Zionist Organization of America to
13 Chancellor Robert Birgeneau letter dated 12/30/08 attached as Exhibit 10 to the Siegal
14 Declaration.)

15 The Defendants must therefore accept responsibility for authorizing the display of these
16 weapons. Whether as a “theatrical production” conducted on University premises, under
17 §12556(d)(3) or under (d)(9), the display of the imitation assault weapons must be presumed to
18 be “authorized” by Defendants. Therefore this Court must find that the annual Sproul Plaza
19 “checkpoint” activities complained of in the First Amended Complaint are activities which
20 students and members of the public “reasonably perceive to bear the imprimatur of the school.”
21 *Hazelwood School District v. Kuhlmeier, supra*, 484 U.S. at 271.

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

25 ///

26 ///

27 ///

28 ///

1 **B. THE COMPLAINED OF SPEECH AND CONDUCT EVEN**
2 **IF HELD TO BE PURELY STUDENT SPEECH CAN STILL**
3 **BE HELD AS THE BASIS OF A TITLE VI PRIVATE**
4 **RIGHT OF ACTION AGAINST THE DEFENDANTS**
5 **BECAUSE IT ENDANGERED THE SAFETY OF OTHER**
6 **STUDENTS, INTERFERED WITH THE RIGHTS OF**
7 **OTHER STUDENTS, SUBSTANTIALLY DISRUPTED**
8 **UNIVERSITY OPERATIONS, AND INTRUDED UPON THE**
9 **PROGRAMS OF THE UNIVERSITY**

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

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

13 The clearest examples are the repeated incidences of interrogation of students as to their
14 religion, race and national origin (“Are you Jewish”) by RSO student activists brandishing
15 “imitation” but realistic looking assault weapons. (See photos attached to FAC; see also the
16 Declarations of Jessica Felber and Brian Maissy served and filed herewith.) This conduct
17 exceeds by orders of magnitude the level of objectionable anti-Semitic harassment cited as a
18 threshold example by the Office of Civil Rights-United States Department of Education in its
19 “Dear Colleague” letter dated 10/26/2010 cited in the UC Brief (attached as Exhibit 1 to Siegal
20 Declaration).

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

24 Other serious UC-tolerated events by these same RSOs on the UC Berkeley campus and
25 other UC campuses alleged in the First Amended Complaint, included:

- 26 • On or about April 24, 2001, thirty-two members of SJP obstructed access to Wheeler Hall
27 on the UC Berkeley Campus during a six hour siege. The students chained closed nine of
28 the twelve doors to the building in violation of fire codes. (FAC ¶28)

- 1 • Later that year, during another obstructive MSA/SJP demonstration, Berkeley Professor
2 of Theater, Mel Gordon, was savagely beaten by a member of the SJP. That violent
3 demonstration outside of Wheeler Hall where Professor Gordon was assaulted was filmed
4 by the University of California Police. They advised Professor Gordon that they were
5 reporting the incident to University officials. (See Declaration of Mel Gordon.)
6 Professor Gordon, who has taught theater at the University of California, Berkeley, for
7 over twenty years, states in his declaration that the Apartheid Week checkpoints from
8 2007-2011 with students brandishing realistic looking assault rifles and yelling at
9 students, and demanding to know “Are you Jewish?” is “terrifying and intimidating”
10 especially in light of such events such as Columbine and the University of Virginia
11 shootings.
- 12 • In January 2011, SJP and MSA protestors were so disruptive at a speech given by the
13 Israeli Ambassador Michael Oren, that the District Attorney of Orange County has
14 brought conspiracy indictments against eleven students. (FAC ¶29; also see, Siegal
15 Declaration, Exhibit 7 thereto contains a certified copy of the indictments brought by the
16 Orange County District Attorney.) Overt Act 7 of that indictment alleges that one of the
17 eleven defendants told the others that their planned disruption “of the Israeli
18 Ambassador’s speech was to be portrayed as done by individuals not the Muslim Students
19 Union in order to ‘put up an obstacle’ against the UCI administration in case it was to
20 ‘come after MSU’ after.” *Id.*
- 21 • The MSA has supported the Holy Land Foundation, five of whose leaders were convicted
22 in 2008 on 108 separate charges (e.g., 18 USC §2339(b) and 50 USC §§ 1701-1706), that
23 they funneled more than twelve million dollars to Hamas, a USA-listed terrorist group.
24 (FAC ¶35; see Exhibit 11 to Siegal Declaration.) (See also, *U.S. v. Holy Land Foundation*
25 (5th Cir. 2010) 624 F.3d 685; see Declaration of Ronald Sandee.)
- 26 • November 2008, members of the SJP and MSA lead by Zakaria disrupted a concert put
27 on by Jewish students at the UC Berkeley Campus. (FAC ¶41)
- 28

- 1 • February 24, 1995, at the UC Berkeley Campus the MSA conducted a rally in support of
2 Hamas, a group on the U.S. Department of State's Foreign Terrorist Organizations list.
3 (FAC ¶42)
- 4 • December 2001, a member of Chabad, a Jewish religious group on the UC Berkeley
5 Campus was assaulted near the Chabad House. (FAC ¶44)
- 6 • During Spring break 2002, the window at Hillel House at Berkeley was smashed and
7 graffiti stating "fuck the Jews" was painted on the Building. (FAC ¶44)
- 8 • April 15, 2002 (and continuing), Al-Talib the MSA/SJP news magazine at UCLA, and Al
9 Kalima, the Muslim news magazine at UC Irvine lauds and promotes both Hamas and
10 Hezbollah as legitimate and noteworthy resistance movements, the magazine is also
11 distributed at UC San Diego. (FAC ¶46)
- 12 • On March 3, 2008, the SJP sponsored a "die in" on Sproul Plaza. Approximately 30-40
13 SJP students obstructed foot traffic and blocked the walkways. SJP activist held signs
14 accusing Israel of starting another Holocaust and equating Israel with Nazis. Jewish
15 students held counter signs, yet those signs were ripped from their hands. (FAC ¶48)
- 16 • Jewish students complained to Dean Poullard at an ASUC meeting, in or about March
17 2008, about SJP's tactics and how the UC Police or faculty did not stop the SJP terrorism
18 of Jewish students, and how unsafe they as Jewish students felt on their own campus.
19 (FAC ¶50) Plaintiff Maissy also has complained to Dean Pollard, also to no avail.
20 (Declaration of Brian Maissy).

21 Following numerous complaints, the Office of Civil Rights-United States Department of
22 Education has commenced official investigations of these anti-Semitic campaigns at the
23 University of California Santa Cruz and Irvine campuses [Title VI complaints, Exhibits 2-5
24 Siegal Declaration].

25 ///
26 ///
27 ///
28 ///

1 **III. THE UC REGENTS AND OFFICIALS ATTACK ON THE**
2 **PLAINTIFFS' CLAIMS FOR RELIEF ARE WITHOUT MERIT**
3 **AND SHOULD BE OVERRULED**

4 The 27 pages of attacks on the legal bases of Plaintiffs' pleaded seven claims for relief are
5 without merit.

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

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

12 Two of these cases are cited with approval by the *U.S. Supreme Court in Regents of the*
13 *Univ. of Cal. v. Doe*, 519 U.S. 425, 427 fn.2 (1997). These cases in which the Regents' 11th
14 Amendment Defense was denied were: *Genetech, Inc. v. Eli Lilly & Co.*, 998 F.2d 931, 940-941
15 (9th Cir. 1993), and *In re Holoholo*, 512 F.Supp. 889 (D.Ha. 1981).

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

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

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

26 42 U.S.C. §2000d-4a provides that the Regents/UC are clearly bound by §2000d:

27 "The term 'program or activity' and the term 'program' mean all of
28 the operations of -

* * *

"(2)(A) a college, university or other post secondary institution or a
public system of higher education;. . ."

Paragraph 4 of the First Amended Complaint alleges that the Regents/UC are "the
recipient of federal funds. . ." and that allegation is not denied by the Regents/UC in its Motion.

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

9 These cases confirm that the Regents/UC can be questioned in this federal forum as to
10 whether their programs, allowing violent and threatening anti-Jewish conduct by certain students,
11 and their RSOs, giving them free reign on UC campuses, runs afoul of applicable federal and
12 state law.

13 **B. THE ALLEGED CONDUCT BY THE REGENTS/UC**
14 **DEFENDANTS CONSISTS OF INTENTIONAL ACTS OF**
15 **DISCRIMINATION SUFFICIENT TO SUPPORT THE**
16 **PLAINTIFFS' LEGAL CLAIMS**

17 Counsel for the UC Defendants, Yudof, Birgeneau, Poullard, and the Regents, wrongly
18 contends that these Defendants had no personal participation in the alleged discriminatory
19 conduct, and/or that their actions and omissions were merely negligent and not actionable in this
20 case.

21 These Defendants also assert that they had no prior knowledge of the alleged
22 discriminatory conduct and that in any case the response of UC campus police to specific
23 incidents as they occurred is a sufficient excuse and defense under Title VI and other applicable
24 law.

25 It is clear, first of all, that a defense of ignorance of the many years of anti-Jewish
26 violence, harassment and hostile environment cannot be sustained. The alleged history of these
27 events on the Berkeley, Irvine, and Santa Cruz campuses confirm that the Regents and
28 administrators Yudof, Birgeneau and Poullard all had actual and recurring specific notice of the
repeated misbehavior by the MSA and SJP. Defendants' admission that UC Police responded to

1 many of these incidents only confirms their actual notice of these events. Moreover, prior to
2 commencement of this action, Plaintiff Maissy exchanged detailed e-mail communications with
3 Defendant Poullard endeavoring to induce a suitable and adequate response to the present crisis.
4 Poullard's cavalier answers are set forth in the Declaration of Brian Maissy. His attitude is an
5 actionable "deliberate indifference."

6 Defendants Yudof and Birgeneau also were sent a detailed letter from a leading Jewish
7 civil rights organization, the Zionist Organization of America (ZOA) on December 30, 2008
8 detailing the same SJP/MSA misconduct as complained of here. (Zionist Organization of
9 America to Chancellor Robert Birgeneau letter dated 12/30/08 attached as Exhibit 10 to the
10 Siegal Declaration.)

11 That the UC responses fall short of what Title VI mandates university administrators are
12 to do when faced with these allegations cannot be seriously doubted. This is clear from the
13 October 26, 2010 "Dear Colleague" letter cited at fn.10 to the UC Brief at pages 4-6, U.S. Dept.
14 of Education, Asst. Secretary for Civil Rights R. Ali sets out in detail a high school scenario of
15 an anti-Jewish hostile environment, including graffiti, swastikas, name calling and racist
16 remarks. Ali confirms that Title VI protects Jewish students on the basis not

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

20 Ali continued, stating that the harassment cited "negatively affected the ability and
21 willingness of Jewish students to participate fully in the school's educational programs and
22 activities." These sentiments are echoed by Plaintiffs here in their FAC and their filed
23 Declarations. Noting that in the example, the school officials wrongly deemed the harassment
24 "teasing" (as here, Poullard persists in deeming the brandishing of assault weapons at Sproul
25 Plaza to be "protected free speech"), Ali prescribes a course of corrective action to include:
26 "counseling the perpetrators, publicly labeling the incidents as anti-Semitic, publicizing the
27 means by which students may report harassment, providing teacher training, and creating
28

1 adopting courses on the history and dangers of anti-Semitism.” *Id.* at page 6. See also, response
2 of Yale to recent Title IX issues, discussed below.

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

6 As alleged in detail in the FAC and the attached photographs, these Defendants have
7 allowed at least four years of “Apartheid Week”–Sproul Plaza–MSA and SJP activities in which
8 those students were authorized under California Penal Code §12556 to openly brandish
9 “imitation” but realistic looking assault weapons, while aggressively confronting and
10 interrogating students with a challenge: “Are you Jewish?” Such conduct is *prima facie* “severe,
11 pervasive and objectively offensive harassment” which no student at UC of any ethnic, racial or
12 religious affiliation should have to endure. It is believed at this stage of the litigation, and will be
13 proven through discovery, that each of these annual “Apartheid Week”, Sproul Plaza, actions was
14 UC permitted, scheduled and “authorized” by Defendants Poullard, Yudof and Birgeneau, and
15 their agents and employees. They have also allowed the SJP and MSA to fly the Palestinian flag
16 from a UC-Sproul Plaza flagpole. Far more than “deliberate indifference” to serious acts of
17 harassment and violence has been alleged and will be proven here on the parts of these
18 defendants. *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 at 650 (1999).

19 The response of the Defendants to these recurring student complaints has been the
20 equivalent of a “teasing” dismissal rejected in the Office of Civil Rights-United States
21 Department of Education’s “Dear Colleague” letter (Exhibit 1 to Siegal Declaration). The
22 Defendants’ argument (Regents Brief, page 10) that they have no duty to protect Plaintiffs from
23 “third-party” interference with their constitutional rights is completely without merit. *DeShaney*
24 *v. Winnegago County Dept. of Social Services*, 489 U.S. 189 (1989), cited by Defendants,
25 confirmed state officials have such a duty when the violent actor is in state custody. Here the
26 duty arises from the fact that the violent actors are on University of California land over which
27 the University has ultimate control, and that the SJP and MSA are subject to UC and ASUC
28 control.

1 In their moving papers, UC defense counsel not only belittles the severity of the conduct
2 complained of, but she also belittles Plaintiffs' claims by suggesting their "religious practice" or
3 "beliefs" were not impacted. (Regents Brief, pp. 8-9.) As alleged, the UC permitted MSA and
4 SJP armed challenge "Are you Jewish" and the two assaults on Plaintiff Felber, who was
5 identified to her assailant as Jewish by her T-shirt and placard, are offensive and hostile
6 environment misconduct that goes to the heart of unlawful religious and racial endangerment and
7 interference. It is because the UC defendants still do not "get it" that the Plaintiffs have no other
8 recourse than to seek the intervention of the federal judicial branch to enforce their rights to
9 simply be Jewish students, free from violence and threats, at any UC campus, as guaranteed by
10 the First and Fourteenth Amendments and under Title VI, 42 U.S.C. §2000d.

11 **C. PLAINTIFFS HAVE ALLEGED A STRONG CLAIM**
12 **FOR RELIEF UNDER §1983**

13 The Ninth Circuit has recently analyzed the standard of review for §1983 cases. In
14 *Starr v. Baca*, 633 F.3d 1191 (9th Cir. 2011), the court reversed the District Court's dismissal
15 from a 12(b)6 motion, and confirmed a liberal pleading policy for §1983 cases and under Federal
16 Rule 8(a), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

17 The *Starr* plaintiff was given several chances (three amended complaints)² to plead his
18 cause of actions against Los Angeles County Sheriff Baca, under 42 USC §1983. On appeal,
19 Starr contended that the district court erred in dismissing his claim against Sheriff Baca on the
20 issue of §1983 supervisory liability under *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S.Ct. 1937 (2009).

21 In determining the nature of supervisor liability in a §1983 "deliberate indifference case,
22 the *Starr* court said:

23 _____
24 ^{2/} Plaintiffs note for the record that after Jessica Felber filed her initial Complaint on March
25 4, 2011, regarding her assault during "Apartheid Week" in 2010, a subsequent UC "Apartheid
26 Week" was held. Brian Maissy came forward describing the events that he witnesses at
27 "Apartheid Week" 2011 and described his fears and intimidation each year connected to
28 "Apartheid Week." [See Declaration of Brian Massy.] Maissy is a current UC Berkeley student.
He was named as an additional plaintiff and request for injunctive relief against violent
intimidation conduct during "Apartheid Week" was requested. The First Amended Complaint
was drafted and filed prior to any dispositive motion being prepared by any Defendant.

1 “A defendant may be held liable as a supervisor under § 1983 “if
2 there exists either (1) his or her personal involvement in the
3 constitutional deprivation, or (2) a sufficient causal connection
4 between the supervisor's wrongful conduct and the constitutional
5 violation.” *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989).
6 “[A] plaintiff must show the supervisor breached a duty to plaintiff
which was the proximate cause of the injury. The law clearly
allows actions against supervisors under section 1983 as long as a
sufficient causal connection is present and the plaintiff was
deprived under color of law of a federally secured right.” *Redman*,
942 F.2d at 1447 (internal quotation marks omitted).

* * *

7 “The requisite causal connection can be established ... by setting in
8 motion a series of acts by others.” . . . or by “knowingly refus[ing]
9 to terminate a series of acts by others, which [the supervisor] knew
10 or reasonably should have known would cause others to inflict a
11 constitutional injury,” *Dubner v. City & Cnty. of San Francisco*,
12 266 F.3d 959, 968 (9th Cir.2001). “A supervisor can be liable in
his individual capacity for his own culpable action or inaction in
the training, supervision, or control of his subordinates; for his
acquiescence in the constitutional deprivation; or for conduct that
showed a reckless or callous indifference to the rights of others.”
Watkins v. City of Oakland, 145 F.3d 1087, 1093 (9th Cir. 1998)”

13 *Starr v. Baca*, *supra*, 633 F.3d at 1197-1198. See also, *Nicole M. v. Martinez Unif. Sch. Dist.*,
14 *supra*, 964 F.Supp.1369 at 1378 ff..

15 **D. THE ACTIONS AND DELIBERATE INDIFFERENCE OF THE UC**
16 **DEFENDANTS HAVE VIOLATED PLAINTIFFS’ FEDERAL AND STATE**
CONSTITUTIONAL RIGHTS

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

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

1 U.S. 1 (race not a permissible issue for real property ownership in California). The UC sponsored
2 and permitted interrogation of UC students on campus, conducted at gun point, is equally
3 unlawful and unconstitutional.

4 In *Brown v. Board of Education* (1954) 347 U.C. 483, the Supreme Court held that race
5 was not a legitimate factor in public school admission, under the equal protection clause of the
6 Fourteenth Amendment. Clearly, UC students cannot be interrogated at gun point on campus as
7 to their religion, or racial or national identity under the federal or state constitutions.

8 As stated above, the *DeShaney v. Winnebago County Dept. of Social Services, supra*, line
9 of cases cited by Defendants are completely inapplicable here, because the violent conduct
10 complained of was and continues to be committed on UC-controlled premises, by UC students,
11 and pursuant to UC/ASUC registration and authorization under their own detailed MOUs, Rules,
12 funding, and permission. See, ASUC Request for Judicial Notice; Penal Code §12556.

13 In the First Amended Complaint it is also alleged that Plaintiff Felber was targeted for
14 violent attack because she wore a Jewish identity T-shirt and held a pro-Israel placard in Sproul
15 Plaza. Those non-threatening displays were protected free speech and free exercise activities and
16 should not have led to physical attacks against her. Since they issued campus demonstration and
17 “imitation” firearm display permits to the MSA and SJP activities for their Sproul Plaza actions,
18 the UC Defendants also were violating Felber’s rights under the free speech and free exercise
19 clauses of the California and United States Constitutions.

20 **E. THE FIRST AMENDED COMPLAINT STATES PENDANT**
21 **JURISDICTION CLAIMS FOR RELIEF UNDER**
22 **CALIFORNIA CIVIL CODE §§ 51, 52**

23 It is settled law that, contrary to the UC’s contentions, California public schools,
24 including the University of California, are deemed “business establishments” within the meaning
25 of the Unruh Act. *Sullivan v. Vallejo City Unified School District*, 731 F.Supp. 947, 952 (E.D.
26 Ca. 1990); *Doe v. Petaluma City School District (Petaluma I)*, 830 F.Supp.1560, 1581-82 (N.D.
27 Ca. 1993); and *Nicole M. v. Martinez Unif. Sch. Dist., supra*, 964 F.Supp. at 1388; *Ibister v.*
28 *Boy’s Club of Santa Cruz, Inc.*, 40 Cal.3d 72, 78 (1985) (nonprofit is an Unruh Act “business
enterprise”). UC administrators can be held liable under the Unruh Act for a hostile and

1 harassing educational environment. *Nicole M. v. Martinez Unif. Sch. Dist., supra*, 964
2 F.Supp.1369, 1388-89.

3 **IV. PLAINTIFFS SEEK RELIEF UNDER TITLE IV, THE UNRUH ACT, AND**
4 **42 U.S.C. §1983 FOR DAMAGES AND FOR CORRECTIVE INJUNCTIVE**
5 **RELIEF IMPOSING LIMITS ON RSO VIOLENT AND DISRUPTIVE**
6 **CONDUCT SIMILAR TO THOSE IMPLEMENTED AT OTHER**
7 **UNIVERSITIES AND PUBLIC VENUES**

8 **A. DAMAGES AND LEGAL FEES SHOULD BE AWARDED**
9 **IN THIS CASE**

10 *Nicole M. v. Martinez Unif. Sch. Dist., supra*, 964 F.Supp. at 1369; *Howard v. Feliciano*,
11 583 F.Supp. 252 (D. Puerto Rico 2008); California Civil Code §52(a) (“Unruh Act”); *Los*
12 *Angeles County Metro Transit Auth. v. Superior Court* (2004) 123 CA4th 261.

13 **B. UNDER TITLE VI, A SUITABLE REMEDY SHOULD BE**
14 **CRAFTED LIKE THE ONE RECENTLY ADOPTED BY**
15 **YALE UNIVERSITY FOLLOWING ITS FINDINGS OF**
16 **HOSTILE ENVIRONMENT UNDER TITLE IX**

17 First, UC and the ASUC should be enjoined to impose a five-year ban on the SJP and
18 MSA conducting recruiting activities on campus and/or using UC e-mail to communicate with
19 members. Their ASUC funding should be cut off for five years. Moreover, these groups should
20 be forever banned from using “imitation” firearms or obstructive tape in any Sproul Plaza events.
21 Yale University imposed a similar 5-year ban on a non-RSO fraternity, DKE, whose offense was
22 only to have its pledges chant “No means yes, yes means anal” on campus (Yale Alumni
23 Magazine, July/Aug. 2011, pp. 41-42, attached as Exhibit 9 to Siegal Declaration). See also,
24 *LaVine v. Blaine Sch. Dist., supra*, 257 F.3d 981 (9th Cir. 2001), upholding expulsion of students
25 who expressed violent threats.

26 It has been long recognized that the UC Regents have inherent powers to suspend or
27 expel students who are disruptive, violate rules for permissible speech, or may threaten other
28 students. *Goldberg v. Regents of the Univ. of California*, 248 Cal.App.2d 867 (1967); *Healy v.*
James, supra. This Court can issue appropriate equitable relief in a Title VI case. *Green v.*
Kennedy (DC DC 1970) 309 F.Supp.1127.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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