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28 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ENOSH BAKER, DAVID BUSCHO, ALYSON
COOK, ADAM FETTERMAN, SARENA
GROSSJAN, DEANNA JOHNSON, SOPHIA
KAMRAN, ELIZABETH LARA, IAN LEE, SOO
LEE, EVAN LOKER, THOMAS MATZAT,
DARREN NEWELL, CHARLES PARKER,
WILLIAM ROBERTS, FATIMA SBEIH, EVKA
WHALEY-MAYDA, KASE WHEATLEY,
EDWARD GEOFFREY WILDANGER, NOAH
WILEY, and JORDAN WILHEIM, and all others
similarly situated,

Plaintiffs,

vs.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Defendant.

FILED

SEP 27 2012

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

Case No. 2:12-CV-00450-JAM-EFB

~~PROPOSED~~ **SECOND AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES FOR
VIOLATION OF CIVIL RIGHTS WITH
SUPPLEMENTAL CLAIMS FOR
VIOLATION OF THE CALIFORNIA STATE
CONSTITUTION AND STATUTES**

JURY TRIAL DEMANDED

INTRODUCTION

On November 18, 2011, University of California at Davis campus police attacked a peaceful assembly at the center of the campus quad, arresting many students without probable cause and shooting high-concentration pepper spray directly into the faces of students who were engaging in nonviolent protest. The actions of the police provoked shock and outrage nationally, in part because the video footage was so reminiscent of the infamous images of police in the South using fire hoses to spray and disperse nonviolent student sit-ins during the civil rights movement.

The 21 plaintiffs in this action, as well as all others similarly situated, were protesting university privatization, distribution of resources, tuition hikes, police brutality and other onerous public policies adopted by the University administration and the Board of Regents. Their protest was an integral part of continuing, vigorous assembly and free speech activities which had been conducted by students for weeks at the same time the nationwide Occupy Wall Street movement mobilized thousands nationwide. Nineteen of the named plaintiffs were U.C. Davis students at the time; the other two were recent graduates.

This action seeks the following relief: a declaration from the Court that campus policies and practices that led to the abuse of the plaintiffs and others offend both the state and federal constitutional guarantees of the rights to free speech and assembly and that the pepper-spraying and arrests of plaintiffs violated their state and federal constitutional rights; an injunction to prevent repetition of such a response to a non-violent protest; and compensatory and punitive damages against the individual perpetrators of the illegal acts and their superiors who ordered, directed and/or condoned this outrageous conduct.

I. JURISDICTION AND VENUE

1. Because this civil-rights action arises under the United States Constitution, this Court has jurisdiction under 28 U.S.C. §§ 1331 and, 1343(a)(3), (4). This Court has supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367.

2. At all times pertinent to this Complaint and in taking all of the actions described in this Complaint, Defendant, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (hereinafter sometimes referred to as “THE REGENTS” or “REGENTS”) and those operating under their direction

1 and control , acted and threatened to act under color of state law.

2
3 3. The events giving rise to this action occurring in Yolo County, California which is located
4 within this district.

5 **II. PARTIES AND INVOLVED PERSONS**

6 4. Plaintiff ENOSH BAKER graduated from U.C. Davis in 2009 and, at all times material to
7 this Complaint, was teaching on campus and awaiting decision on his graduate program application. He
8 was participating in a peaceful demonstration on the U.C. Davis campus on November 18, 2011, when he
9 was picked up by U.C. Davis police officers, thrown forcefully to the ground, handcuffed behind his
10 back, and illegally arrested. His head struck a sprinkler head during the arrest.

11 5. Plaintiff DAVID BUSCHO was a student at U.C. Davis who, while participating in a
12 peaceful assembly on U.C. Davis campus on November 18, 2011, was sprayed repeatedly with pepper
13 spray by U.C. Davis police officers Lt. John Pike and/or Officer Alexander Lee without legal cause or
14 justification.

15 6. Plaintiff ALYSON COOK was a student at U.C. Davis who was participating in a
16 peaceful assembly on the U.C. Davis campus on November 18, 2011, when she was illegally arrested,
17 handcuffed behind her back by U.C. Davis police officers and transported to the campus jail.

18 7. Plaintiff ADAM FETTERMAN was a U.C. Davis student who was participating in a
19 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when he was pepper sprayed
20 without legal cause or justification by U.C. Davis police officer Lt. John Pike and/or Officer Alexander
21 Lee.

22 8. Plaintiff SARENA GROSSJAN was a U.C. Davis student who was participating in a
23 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when she was pepper sprayed
24 without legal cause or justification by U.C. Davis police officer Lt. John Pike and/or Officer Alexander
25 Lee.

26
27 9. Plaintiff DEANNA JOHNSON was a student at U.C. Davis who was participating in a
28 peaceful demonstration on U.C. Davis campus on November 18, 2011, when she was pepper sprayed

1 without legal cause or justification by U.C. Davis police officer Lt. John Pike and/or Officer Alexander
2 Lee.

3
4 10. Plaintiff SOPHIA KAMRAN was a student at U.C. Davis who was participating in a
5 peaceful demonstration on U.C. Davis campus on November 18, 2011, when she was pepper sprayed
6 without legal cause or justification by U.C. Davis police officer Lt. John Pike and/or Officer Alexander
7 Lee.

8 11. Plaintiff ELIZABETH LARA was a student at U.C. Davis who was participating in a
9 peaceful assembly on the U.C. Davis campus on November 18, 2011, when she was illegally arrested by
10 U.C. Davis police officers, handcuffed painfully behind her back and transported to the campus jail.

11 12. Plaintiff IAN LEE was a student at U.C. Davis who was participating in a peaceful
12 demonstration on the U.C. Davis campus on November 18, 2011, when he was pepper sprayed by U.C.
13 Davis police officer Lt. John Pike and/or Officer Alexander Lee without legal cause or justification and
14 then pinned to the ground by defendant Pike.

15 13. Plaintiff SOO LEE was a student at U.C. Davis who was participating in a peaceful
16 demonstration on the U.C. Davis campus on November 18, 2011, when she was pepper sprayed by U.C.
17 Davis police officer Lt. John Pike and/or Officer Alexander Lee without legal cause or justification.

18
19 14. Plaintiff EVAN LOKER was a student at U.C. Davis and was participating in a peaceful
20 demonstration on the U.C. Davis campus on November 18, 2011, when he was pepper sprayed by U.C.
21 Davis police officer Lt. John Pike and/or Officer Alexander Lee without legal cause or justification.

22 15. Plaintiff THOMAS MATZAT was a student at U.C. Davis who was participating in a
23 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when he was selected for
24 illegal arrest, then handcuffed painfully behind his back and grabbed and dragged by U.C. Davis police
25 officers to a police car and transported to campus jail.

26 16. Plaintiff DARREN NEWELL was a student at U.C. Davis who was participating in a
27 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when he was targeted for
28 illegal arrest. Two U.C. Davis police officers had him stand up and they then handcuffed his hands

1 behind his back, put him into a patrol car and transported him to jail.

2
3 17. Plaintiff CHARLES PARKER was a student at U.C. Davis who was participating in a
4 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when he was targeted for
5 illegal arrest. Three U.C. Davis police officers, slammed him to the ground, kned him and kneeled on
6 him, then handcuffed him behind his back and dragged him to a police car in which he was placed and
7 then driven to the campus jail. He was denied medical assistance and access to medication while
8 detained in the campus jail.

9 18. Plaintiff WILLIAM ROBERTS was a student at U.C. Davis and was participating in a
10 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when he was pepper-sprayed
11 without legal cause or justification by U.C. Davis police officer Lt. John Pike and/or Officer Alexander
12 Lee.

13 19. Plaintiff FATIMA SBEIH was a student at U.C. Davis and was participating in a peaceful
14 demonstration on the U.C. Davis campus on November 18, 2011, when she was pepper sprayed, without
15 legal cause or justification, by U.C. Davis police officer Lt. John Pike and/or Officer Alexander Lee.

16 20. Plaintiff EVKA WHALEY-MAYDA was a student at U.C. Davis and was participating in
17 a peaceful demonstration on the U.C. Davis campus on November 18, 2011, when she was pepper-
18 sprayed, without legal cause or justification, by U.C. Davis police officer Lt. John Pike and/or Officer
19 Alexander Lee.

20
21 21. Plaintiff KASE WHEATLEY was a student at U.C. Davis and was participating in a
22 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when he was pepper sprayed,
23 without legal cause or justification, by U.C. Davis police officer Lt. John Pike and/or Officer Alexander
24 Lee, then handcuffed behind his back and falsely arrested by U.C. Davis police officers, placed into a
25 police car and transported to the campus jail.

26 22. Plaintiff EDWARD WILDANGER was a student at U.C. Davis and was participating in a
27 peaceful demonstration on the U.C. Davis campus on November 18, 2011, when, without legal cause or
28 justification, he was pepper sprayed by U.C. Davis police officer Lt. John Pike and/or Officer Alexander

1 Lee.

2
3 23. Plaintiff NOAH WILEY was a student at U.C. Davis and was participating in a peaceful
4 demonstration on the U.C. Davis campus on November 18, 2011, when he was pepper sprayed without
5 legal cause or justification by U.C. Davis police officer Lt. John Pike and/or Officer Alexander Lee, then
6 falsely arrested by U.C. Davis police officers and transported to the campus jail.

7 24. Plaintiff JORDAN WILHEIM is a U.C. Davis alumnus who was graduated in the spring
8 of 2011 and was visiting campus on November 18, 2011, when he witnessed and participated in a
9 peaceful demonstration on the U.C. Davis campus. During that demonstration he was handcuffed behind
10 his back and falsely arrested by U.C. Davis police officers and then transported to campus jail.

11 25. Plaintiff CLASS MEMBERS are all of those persons, other than and in addition to those
12 persons named as plaintiffs herein, who were present on the U.C. Davis Quad on the afternoon of
13 November 18, 2011, who were either arrested or directly sprayed with pepper spray by one of the U.C.
14 Davis campus police officers.

15 26. Defendant REGENTS is an agent and instrumentality of the State of California, composed
16 of a 26 member board, which is responsible for all of the acts and omissions of the Chancellors of the
17 various campuses of the University of California, including the University of California at Davis, and of
18 the acts and omissions of all agents and employees of the University of California at Davis, including all
19 of those individuals named in paragraphs 27 through 34 of this Second Amended Complaint.

20
21 27. LINDA KATEHI is the Chancellor of the University of California at Davis. She operates
22 under the control and direction and pursuant to the policies, practices and procedures of Defendant
23 REGENTS which is liable for her acts and omissions.

24 28. RALPH J. HEXTER is the Provost and Executive Vice Chancellor of the University of
25 California at Davis. He operates under the control and direction and pursuant to the policies, practices
26 and procedures of Defendant REGENTS which is liable for his acts and omissions.

27 29. FRED WOOD is the Vice Chancellor for Student Affairs at the University of California at
28 Davis. He operates under the control and direction and pursuant to the policies, practices and procedures

1 of Defendant REGENTS which is liable for his acts and omissions.

2
3 30. JOHN MEYER is the Vice Chancellor of Administration and Resource Management at
4 the University of California at Davis, and as such exercises administrative responsibility over the
5 University of California at Davis Police Department. He operates under the control and direction and
6 pursuant to the policies, practices and procedures of Defendant REGENTS which is liable for his acts
7 and omissions.

8 31. ANNETTE SPICUZZA, at all times material hereto, was the Chief of the University of
9 California at Davis Police Department. As a result of the actions described in this complaint,
10 SPICUZZA was placed on leave by the University. She operates under the control and direction and
11 pursuant to the policies, practices and procedures of Defendant REGENTS which is liable for her acts
12 and omissions.

13 32. JOHN PIKE is or was a Lieutenant in the University of California at Davis Police
14 Department. As a result of the actions described in this complaint Defendant PIKE was placed on leave
15 by the University. He operates under the control and direction and pursuant to the policies, practices and
16 procedures of Defendant REGENTS which is liable for his acts and omissions.

17 33. BARRY SWARTWOOD is a Lieutenant in the University of California at Davis Police
18 Department. On information and belief, Lt. SWARTWOOD was the Incident Commander for the
19 November 18, 2011 operation. He operates under the control and direction and pursuant to the policies,
20 practices and procedures of Defendant REGENTS which is liable for his acts and omissions.

21 34. ALEXANDER LEE is a police officer in the University of California at Davis Police
22 Department. He operates under the control and direction and pursuant to the policies, practices and
23 procedures of Defendant REGENTS which is liable for his acts and omissions.

24
25 35. All of the police officers, administrators, and/or other personnel employed by Defendant
26 REGENTS and/or the University of California at Davis who are identified in this complaint and or were
27 responsible for the acts alleged herein, at all times material to this complaint, were acting within the
28 course and scope of their employment and were directly involved in the actions which caused injury and

1 damages to plaintiffs herein.

2 **III. STATEMENT OF FACTS**

3 36. On November 16, U.C. Davis students joined others in San Francisco to demonstrate at a
4 scheduled Board of Regents meeting, protesting university privatization, tuition increases, and the brutal
5 treatment of demonstrators on Berkeley's campus the previous week. They returned to campus and, on
6 November 17, a general assembly of students agreed to set up symbolic tents on the quad and to continue
7 to meet openly, to "occupy the quad" to discuss and study university privatization, tuition hikes, and their
8 relation to other issues of macro political and social importance, and to consider what they could do to
9 change conditions which had brought people together in support of the Occupy Wall Street Movement.
10

11 37. A group of students set up tents on the quad and the "Occupation of the Quad" began.
12 Shortly after the first tents were erected, U.C. Davis administrative employees delivered to some of the
13 students on the quad a notice that included a campus "no overnight camping" policy. The notice was
14 discussed and the group concluded that they were symbolically "occupying the quad" in support of and
15 in solidarity with the 99% championed by the Occupy Wall Street movement.

16 38. On the evening of November 17, the Associated Students of the University of California
17 at Davis (ASUCD) endorsed the "occupation of the quad."

18 39. On November 18, in the afternoon, Police Chief SPICUZZZA, accompanied by another
19 campus agent or employee, delivered a letter from Chancellor KATEHI directing students to remove the
20 tents by 3:00 p.m. "in interest of safety, respect for our campus environment and in accordance with our
21 Principles of Community."

22 40. Students held another assembly, discussed the letter the Chancellor had delivered, and
23 many decided to remove their tents and did so. Others resolved to remain.

24 41. Shortly before 3:00 p.m., a large number of police in riot gear armed with long batons,
25 pepper-ball guns and other weapons were seen massing in formation adjacent to the quad. The students
26 moved the remaining tents to the circle on the Centennial Walk, a concrete pathway in the middle of the
27 campus quad, and stood around them.
28

1 42. The officers advanced on the students as can be seen on any number of videotapes. They
2 began pushing students away, or throwing them to the ground. Some of the officers disassembled or
3 destroyed the tents. As the tents were being removed, students sat down in a large circle. Classes were
4 letting out and hundreds of additional students swarmed out of their buildings to watch what was
5 happening.

6 43. The campus officers pointed to specific students, arrested them and began grabbing them
7 and hauling them off to jail. Plaintiff BAKER was the first to be grabbed and thrown to the ground by
8 two police officers. He hit his head on a sprinkler fixture as he was thrown to the ground and his hands
9 were tightly zip tied together behind his back as he was taken into custody and placed into a police car.
10

11 44. Plaintiff PARKER was targeted by three police officers and grabbed. His hands were
12 painfully zip tied behind his back, exacerbating a prior military combat injury, and he was placed into a
13 police car where he joined plaintiff BAKER and plaintiff LARA.

14 45. Plaintiff LARA had arrived immediately prior to the police advancing on those students
15 standing around the circle and joined the circle. When the police reached the crowd she was thrown to
16 the ground by police officers, her hands were zip tied behind her, and she was arrested and taken to the
17 police car which then transported her, PARKER and BAKER to the police station. Plaintiffs' hands were
18 all zip tied, some zip ties were particularly tight, cutting off blood flow, but the jailers did not have the
19 special equipment needed to cut the plastic ties. Eventually, the zip ties were cut and removed.

20 46. When the officers started to encircle the group of protesters, Plaintiff COOK was tapped
21 on the head by an officer who instructed other officers to "take her." She was pushed to the ground by an
22 officer, her arms were bent behind her back and zip-tie restraints were applied to her hands. She was left
23 lying on the ground for a few minutes before being placed in a vehicle and transported to the campus
24 police station.

25 47. As the group of students was being pushed by officers, students began to sit down in a
26 line. Officers were stepping over the seated students, who did nothing to stop them. Then PIKE ordered
27 the students to leave or stated they would be "shot." As is discernible from audio tapes of his reaction,
28

1 Plaintiff WHEATLEY responded: "You're going to shoot us if we don't leave?"

2
3 48. PIKE then shook a canister of pepper spray like a can of aerosol paint, stepped over the
4 line of sitting, crouching students and walked up and down the line repeatedly dousing Plaintiffs with
5 orange colored pepper spray, mostly from a distance of one-to-two feet. Students watching the scene
6 screamed or shouted: "Shame."

7 49. Another officer, ALEXANDER LEE, then approached the line of seated demonstrators
8 from behind and began spraying them with a separate canister of pepper spray. On information and
9 belief, LEE was ordered to do so by PIKE.

10 50. Documents that the University of California has subsequently released in response to a
11 request for public records indicate that the substance used was Defense Technology's MK-9 Magnum
12 spray, with a major Capsaicinoid concentration of .7%. The single page of manufacturer's information
13 that the University was able to provide states that the minimum recommended distance for this
14 formulation is 6 feet. The University states that it has no other package inserts, warnings, or instructions
15 relating to this product, although California law requires that all such substances sold in California be
16 accompanied by printed instructions for use, first aid information, and safety information. *See* Cal. Penal
17 Code § 22810(e)(4), (f) (former § 12403.7).

18 51. Plaintiff MATZAT's hands were zip-tied behind his back and he was arrested along with
19 Plaintiff WHEATLEY who had been pepper-sprayed and both had been transferred to jail by several
20 campus police officers.

21 52. Plaintiffs BUSCHO, FETTERMAN, GROSSJAN, JOHNSON, KAMRAN, IAN LEE,
22 SOO LEE, LOKER, ROBERTS, SBEIH, WHALEY-MAYDA, WILDANGER and CLASS MEMBERS
23 were pepper sprayed by PIKE, LEE, and other officers and left to deal with their burning eyes, faces and
24 skin. Neither the University nor the police provided adequate medical attention on the scene to any of
25 the students who had been sprayed.

26 53. Members of the campus student body administered first aid to Plaintiffs who could not see
27 and were disoriented. Plaintiff WHALEY-MAYDA was transported by ambulance to the hospital where
28

1 her eyes were irrigated and a skin rash from the pepper spray was treated.

2
3 54. As reported by the University, ten persons were arrested, all on the same charges: Failure
4 to Disperse from an Unlawful Assembly (Cal. Penal Code § 409). They were released after several hours
5 and all were assigned the same court date for arraignment, January 31, 2012. Prior to that date, however,
6 the District Attorney of Yolo County announced that no complaints would be filed against any of the
7 persons arrested. As of the filing of this complaint none of the plaintiffs has been charged with any
8 crime arising out of the November 18 protest.

9 55. At the time campus police started arresting people, a large number of students had
10 gathered in a non-violent assemblage, which remained so but for the violence used by campus police
11 officers, PIKE, SWARTWOOD, LEE and other campus police officers, inclusive, to arrest non-resisting
12 persons. All of those persons, who assembled, including plaintiffs who were pepper sprayed, were
13 illegally required to disperse from the campus quad by helmeted police enforcing their erroneous
14 decision that the gathering was unlawful.

15 56. Defendant REGENTS and KATEHI, HEXTER, WOOD, MEYER, and SPICUZZA are
16 responsible for making decisions which set in motion an operation, executed by PIKE, SWARTWOOD,
17 LEE and other campus police officers, that any reasonable person in their positions would have known
18 would lead to the unlawful use of force against, and arrest or dispersal of, the demonstrators, including
19 Plaintiffs. Specifically, each of these named agents and employees of THE REGENTS was a part of an
20 administrative team at U.C. Davis that collectively made decisions that led to the violations, including
21 but not limited to the decision to dispatch the police to remove the tents and demonstrators without legal
22 authority to do so, and the decision that the operation take place in mid-afternoon, when large crowds of
23 students were likely to gather in response to the police actions, even though they had been advised that
24 the operation should occur at night.

25 57. Defendant REGENTS, and KATEHI, MEYER and SPICUZZA had an affirmative duty to
26 properly screen, train and supervise defendants PIKE, SWARTWOOD, LEE and the other campus police
27 officers involved in the incident, but failed to do so, resulting in the actions and violations of the rights of
28 Plaintiffs and others described herein.

1 58. Defendant REGENTS and SPICUZZA are responsible for supervising and controlling the
2 actions of police officers PIKE, SWARTWOOD, LEE and all other unnamed campus police officers.
3 Defendant REGENTS and SPICUZZA are liable for all injuries described herein for acquiescing to
4 police officers' choice to wear riot gear and carry pepper spray which she knew or should have known
5 would lead to the excessive use of force against protestors, and for failing to stop the officers under their
6 command from violating the rights of Plaintiffs and others.

7
8 59. SPICUZZA, PIKE, and SWARTWOOD were present when the violations took place and
9 were responsible for supervising and controlling the actions of subordinate police officers and had a duty
10 to intervene and stop the unlawful conduct. Their failure to do this resulted in the actions and violations
11 of the rights of Plaintiffs and others described herein.

12 60. PIKE and LEE are responsible for pepper-spraying the students and are liable for the
13 damages caused thereby; Pike is also liable for ordering LEE to use the pepper spray.

14 61. KATEHI, MEYER and SPICUZZA failed properly to investigate the background of
15 PIKE, who was not qualified for the position he held, and failed to terminate him or take other
16 appropriate action when his lack of qualifications became known; as a result of the negligent hiring and
17 retention of PIKE he was enabled personally to commit the violations described herein and to supervise
18 and direct LEE and other campus police officers in the commission of the acts and violations described
19 herein.

20 62. All of the plaintiffs, and the CLASS MEMBERS were injured by being deprived of their
21 rights to assemble and to speak freely, and by being arrested and/or pepper sprayed and subjected to
22 other acts of excessive force by Defendant REGENTS and those operating under their direction and
23 control and/or pursuant to policies, practices and procedures of The REGENTS and each of them. Such
24 injuries included physical pain and suffering, deprivations of liberty, and infliction of emotional distress.

25
26 63. On information and belief, the actions of Defendant REGENTS, and each of the persons
27 operating under Defendant REGENTS' direction and control, were intentional and malicious in that the
28 pepper spraying and arrest of peacefully assembled students on their college campus was so clearly in

1 violation of established state and federal law that no inference other than that the Defendant REGENTS
2 acted maliciously with intent to injure and to deprive plaintiffs of their constitutional rights can be
3 drawn, entitling Plaintiffs, and each of them, to awards of punitive damages in amounts to be determined
4 at trial.

5
6 64. On information and belief, certain plaintiffs were targeted by the police for forcible arrests
7 based on their past political activism and associations at the University.

8 65. The actions of Defendant REGENTS, and each of their agents and employees, have had a
9 chilling effect on the willingness of Plaintiffs to exercise their free-speech rights in areas under
10 Defendant's control, causing Plaintiffs continuing injury that cannot be redressed by damages.

11 IV. CLASS CLAIMS

12 66. The arrest and pepper-spraying to which named individual Plaintiffs and the CLASS
13 MEMBERS were subjected were performed pursuant to policies, practices and procedures of Defendant
14 REGENTS. The named individual Plaintiffs and the CLASS MEMBERS seek a declaration from the
15 Court that campus policies and practices that led to the abuse of the protesters and others offend both the
16 state and federal constitutional guarantees of the rights to free speech and assembly and that the pepper-
17 spraying and arrests violated their state and federal constitutional rights; an injunction to prevent
18 repetition of such a response to a non-violent protest; and compensatory and punitive damages against
19 Defendant REGENTS.

20 67. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly
21 situated (CLASS MEMBERS) pursuant to Rule 23, Federal Rules of Civil Procedure and California
22 Code of Civil Procedure Sec. 382.

23 V. CLASS DEFINITIONS

24 68. The class is defined to include all persons, other than and in addition to those individual
25 plaintiffs named in this Second Amended Complaint, who, in the afternoon of November 18, 2011, while
26 participating in a protest on the University of California at Davis Quad, were arrested and/or directly
27 sprayed with pepper spray by a campus police officer.
28

1 69. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the class
2 are so numerous that joinder of all members is impractical. Plaintiffs do not know the exact number of
3 class members but plaintiffs are informed and believe, and thereupon allege, that the number of
4 individually named plaintiffs together with the CLASS MEMBERS exceeds 25 persons.

5 70. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are informed
6 and believe, and thereupon allege, that there are many questions of fact common to the class including,
7 but not limited to: (1) whether Defendant REGENTS knew or believed that unaffiliated persons were
8 associated with or participating in the November 18, 2011, protest; (2) whether there was any indication
9 or evidence that the health or safety of students was endangered by the protest; (3) whether any of the
10 protesters had occupied a tent or “camped” out during the night of November 17, 2011; whether any act
11 had occurred which could be used as a basis for declaring the protest to be an “unlawful assembly;” (4)
12 whether protesters represented a threat to campus police officers before they were arrested and/or pepper-
13 sprayed; and (5) whether the pepper spray used against the protesters was authorized as a weapon to be
14 used by campus police officers.

15 71. In accordance with Federal Rules of Civil Procedure, Rule 23(a), plaintiffs are informed
16 and believe, and thereupon allege, that there are many questions of law common to the class including,
17 but not limited to: (1) whether the protest on the Quad on November 18, 2011, was an unlawful
18 assembly; (2) whether the arrests of plaintiffs were lawful; (3) whether the use of pepper-spray was
19 excessive force; (4) whether the policies, practices and/or procedures of the Defendant REGENTS
20 pursuant to which the acts of November 18, 2011, were taken, were constitutional under the state and
21 federal constitutions; and (5) whether the arrests and/or pepper-spraying of plaintiffs and CLASS
22 MEMBERS on November 18, 2011, violated the state and federal constitutional rights of the persons
23 arrested and/or pepper sprayed.

24 72. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the representative
25 plaintiffs who are the individually named plaintiffs in this Second Amended Complaint, have claims that
26 are typical of the CLASS MEMBERS whom they represent. They have the same interests and suffered
27 the same type of injuries as all of the CLASS MEMBERS. The Representative Plaintiffs’ claims arose
28

1 because of Defendant's policies, practices and procedures and their claims are based upon the same legal
2 theories as the claims of the CLASS MEMBERS. The actual damages suffered by Representative
3 Plaintiffs are similar in type and amount to the actual damages suffered by each CLASS MEMBER. In
4 accordance with Federal Rules of Civil Procedure, Rule 23(a), the Representative Plaintiffs will fairly
5 and adequately protect the class interests. Representative Plaintiffs' interests are consistent with and not
6 antagonistic to the interests of the class.

7
8 73. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(A), prosecutions of
9 separate actions by individual members of the class could create a risk that inconsistent or varying
10 adjudications with respect to individual members of the class would establish incompatible standards of
11 conduct for the parties opposing the class.

12 74. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(B), prosecutions of
13 separate actions by individual members of the class would create a risk of inconsistent adjudications with
14 respect to individual members of the class which would, as a practical matter, substantially impair or
15 impede the interests of the other members of the class to protect their interests.

16 75. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2), plaintiffs are
17 informed and believe, and thereupon allege, that defendants have acted on grounds generally applicable
18 to the class, thereby making appropriate the final injunctive or declaratory relief with respect to the class
19 as a whole.

20 76. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this class action is
21 superior to other available methods for the fair and equitable adjudication of the controversy between the
22 parties. Plaintiffs are informed and believe, and thereupon allege, that the interests of members of the
23 class in individually controlling the prosecution of a separate action is low in that most unnamed class
24 members would be unable individually to prosecute any action at all. Plaintiffs are informed and believe,
25 and thereupon allege, that the amounts at stake for individuals make separate suits impracticable.
26 Plaintiffs are informed and believe, and thereupon allege, that most members of the class will not be able
27 to find counsel to represent them. Plaintiffs are informed and believe, and thereupon allege, that it is
28 desirable to concentrate all litigation in one forum because all of the claims arise in the same location, i.e.

1 in the City of Davis, County of Yolo. It will promote judicial efficiency to resolve the common
2 questions of law and fact in one forum, rather than in multiple courts.

3
4 77. Plaintiffs do not know the identities of all of the CLASS MEMBERS but are informed
5 and believe that the identities of the CLASS MEMBERS may be ascertained from close inspection of
6 photographs and video footage taken during the November 18, 2011, event which is the subject of this
7 litigation.

8 78. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), CLASS MEMBERS
9 must be furnished with the best notice practicable under the circumstances. Plaintiffs are informed and
10 believe, and thereupon allege, that Defendant's records contain a contact e-mail address for all students
11 enrolled at U.C. Davis during the semester which includes November 18, 2011, and that notice of the
12 pendency of this action may be e-mailed to all such student enrollees. Plaintiffs contemplate that notice
13 will be published, as well as e-mailed, and that notice will inform class members of the following:

- 14 i. The pendency of the class action and the issues common to the class;
15 ii. The nature of the action;
16
17 iii. Their right to 'opt out' of the action within a given time, in which event they will
18 not be bound by a decision rendered in the class action;
19
20 iv. Their right, if they do not "opt out," to be represented by their own counsel and to
21 enter an appearance in the case; otherwise they will be represented by the named
22 class plaintiffs and their counsel; and
23
24 v. Their right, if they do not "opt out," to share in any recovery in favor of the class,
25 and conversely to be bound by any judgment on the common issues adverse to the
26 class.

27 VI. COUNT ONE

28 **Violation of the First Amendment to the United States Constitution (42 U.S.C. § 1983)**

79. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
allegations contained in paragraphs 1 through 78, inclusive.

1 80. In prior years, Defendant and its agents and employees, as well as their predecessors in
2 their positions, permitted assemblies, demonstrations and protests on campus which included the erection
3 of structures such as tents and domes, when the message and speakers were less controversial. In
4 contrast, Defendant and its agents and employees, and each of them, took the actions to disperse the
5 lawful assembly on November 18, 2011, and to pepper spray and arrest students because of the
6 demonstration's message and who was delivering it.

7
8 81. By interfering, including through the use of excessive force, with Plaintiffs' peaceful
9 protest, the actions of Defendant and its agents and employees, and each of them, violated the rights of
10 Plaintiffs and each of them guaranteed to them by the First Amendment to the United States Constitution
11 and caused them on-going irreparable injury and damage, as stated above.

12 82. WHEREFORE, Plaintiffs pray for relief as stated below.

13 **VII. COUNT TWO**

14 **Violation of the Fourth Amendment to the United States Constitution (42 U.S.C. § 1983)**

15 83. Plaintiffs reallege and incorporate herein, as if stated in full, each and every of the
16 allegations contained in paragraphs 1 through 78, inclusive.

17 84. In ordering, directing, approving, condoning, acquiescing to, and executing the pepper
18 spraying of Plaintiffs, the arrest of Plaintiffs, the physical removal of Plaintiffs, and/or the use of
19 excessive force against Plaintiffs, the Defendant and its agents and employees, and each of them, violated
20 the prohibitions contained in the Fourth Amendment to the United States Constitution against
21 unreasonable search or seizure, as a result of which plaintiffs, and each of them, were injured as stated
22 above.

23 85. WHEREFORE, Plaintiffs pray for relief as stated below.

24 **VIII. COUNT THREE**

25 **Violation of the 14th Amendment to the United States Constitution (42 U.S.C. § 1983)**

26 86. Plaintiffs reallege and incorporate herein by this reference, as if set out in full, each and
27 every allegation contained in paragraphs 1 through 78, inclusive.

28 87. Personal possessions of Plaintiffs, including tents, were taken and/or destroyed by

1 Defendant and its agents and employees, and each of them, without due process in violation of the 14th
2 Amendment to the United States Constitution which prohibits the taking of property without due process
3 of law.

4
5 88. WHEREFORE, plaintiffs pray for relief as stated below.

6 **IX. COUNT FOUR**

7 **Violation of Article 1 §§ 2 of the California State Constitution – Freedom of Speech**

8 89. Plaintiffs reallege and incorporate herein by this reference, as if set out in full, each and
9 every allegation contained in paragraphs 1 through 78, inclusive.

10 90. Article 1 § 2 of the California State Constitution guarantees the right to speak freely. By
11 committing the acts alleged herein, Defendant and its agents and employees, and each of them, violated
12 the rights of Plaintiffs herein to free speech.

13 91. WHEREFORE, Plaintiffs pray for relief as stated below.

14 **X. COUNT FIVE**

15 **Violation of Article 1 § 3 of the California State Constitution – Freedom of Petition & Assembly**

16 92. Plaintiffs reallege and incorporate herein by this reference, as if set out in full, each and
17 every allegation contained in paragraphs 1 through 78, inclusive.

18 93. Article 1 § 3 of the California State Constitution guarantees the People the right to
19 freedom of assembly and to petition for redress. By committing the acts alleged herein, Defendant and
20 their agents and employees, and each of them, violated the rights of Plaintiffs herein to freely assemble
21 and to petition.

22 94. WHEREFORE, Plaintiffs pray for relief as stated below.

23 **XI. COUNT SIX**

24 **Violation Article 1 § 13 of the California State Constitution – Unlawful Seizure**

25 95. Plaintiffs reallege and incorporate herein by this reference, as if set out in full, each and
26 every allegation contained in paragraphs 1 through 78, inclusive.
27
28

1 96. In ordering, directing, approving, condoning, acquiescing to, and executing the pepper
2 spraying of Plaintiffs, the arrest of Plaintiffs, the physical removal of Plaintiffs, and/or the use of
3 excessive force against Plaintiffs, the Defendant and its agents and employees, and each of them, violated
4 the prohibitions contained in Article 1, Section 13 of the California Constitution against unreasonable
5 search or seizure, as a result of which plaintiffs, and each of them, were injured as stated above..

6
7 97. WHEREFORE Plaintiffs pray for relief as stated below.

8 **XII. COUNT SEVEN**

9 **False Arrest/Imprisonment and Violation of § 836(a) of the California Penal Code**

10 98. Plaintiffs reallege and incorporate herein by this reference, as if set out in full, each and
11 every allegation contained in paragraphs 1 through 78, inclusive.

12 99. By arresting Plaintiffs without probable cause and for misdemeanor offenses not
13 committed in the presence of the arresting officer at the time of the offense, Defendant and its agents and
14 employees, violated Plaintiffs rights under California law.

15 100. WHEREFORE Plaintiffs pray for relief as stated below.

16 **XIII. COUNT EIGHT**

17 **Violation of § 52.1 of the California Civil Code (Bane Act)**

18
19 101. Plaintiffs reallege and incorporate herein by this reference, as if set out in full, each and
20 every allegation contained in paragraphs 1 through 78, inclusive.

21 102. By dispersing the student assembly on the U.C. Davis quad on November 18, and by
22 pepper spraying and/or falsely arresting Plaintiffs, Defendant and its agents and employees, and each of
23 them, through coercive force, violated federal and state constitutional and statutory rights guaranteed to
24 Plaintiffs and thereby became liable for the damages Plaintiffs suffered, as well as treble damages,
25 statutory damages, penalties, and attorneys' fees.

26 103. WHEREFORE Plaintiffs pray for relief as stated below.

27 **XIV. COUNT NINE**

28 **Violation of § 845.6 of the California Government Code – failure to provide medical care**

104. Plaintiffs reallege and incorporate herein by this reference, as if set out in full, each and every allegation contained in paragraphs 1 through 78, inclusive.

105. By failing to provide or summon medical care for persons whom they had taken to jail and who they had reason to know needed immediate medical care, Defendant and its agents and employees, and each of them, violated Plaintiffs' rights under § 845.6 of the California Government Code.

106. WHEREFORE Plaintiffs pray for the following relief:

XV. PRAYER

1. Injunctive relief under federal law;
2. Declaratory relief under federal law;
3. Compensatory Damages under state and federal law;
4. Punitive, Exemplary, and Statutory Damages under state and federal law;
5. Attorney's Fees under state and federal law;
6. Costs under state and federal law; and
7. Such other and further relief as to this Court may deem just and proper.

XVI. JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial in this action.

DATED: September 26, 2012

Respectfully Submitted,

/s/ "Mark E. Merin"

By:

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