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17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 KIARA ROBLES,

20 Plaintiff,

21 v.

22 THE REGENTS OF THE UNIVERSITY OF  
23 CALIFORNIA, BERKELEY, et al.

24 Defendants.

Case No.: 4:17-cv-04864

**PLAINTIFF'S OPPOSITION TO MOTION  
TO DISMISS COMPLAINT**

Date: November 14, 2017  
Time: 2:30 p.m.  
Crtrm: TBD

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Plaintiff Kiara Robles ("Plaintiff"), through her counsel Mr. Larry Klayman ("Mr. Klayman") hereby submit the following in opposition to the Regents of the University of California's (the "Regents") Motion Dismiss Complaint.

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1 MEMORANDUM OF LAW

2 **I. INTRODUCTION**

3 This Complaint is based on the Defendants’ – including the Regents – steadfast refusal to  
4 permit speech and other expression that they do not agree with. Acting in concert with We  
5 RESUFE to Accept a Fascist America (“ANTIFA”), the Regents - along with each and every  
6 other named Defendant - have subjected UC Berkeley students and invitees who do not subscribe  
7 to the radical, left wing philosophies sanctioned by Defendants to severe violence and bodily  
8 harm for merely expressing a differing viewpoint and sexual preference, in clear contravention of  
9 their rights under the First Amendment to the U.S. Constitution. Plaintiff Kiara Robles  
10 (“Robles”) just happened to be one of those individuals.

11 On February 1, 2017, Plaintiff Robles attended a planned speech by Milo Yiannopoulos  
12 (“Mr. Yiannopoulos”), a media personality and political commentator, hosted on the UC  
13 Berkeley campus. On the day of Mr. Yiannopoulos’ speech, however, over 1,500 “protestors”  
14 gathered at UC Berkeley’s Sproul Plaza and the “protestors” erupted into violence just fifteen  
15 minutes after Plaintiff’s arrival onto the UC Berkeley campus. The violence was primarily  
16 orchestrated by ANTIFA and its members, in an effort to disrupt, if not kill, the event. Several  
17 people, including Plaintiff, were intentionally and violently attacked by both masked and  
18 unmasked defendant assailants, including Ian Dabney Miller and Raha Mirabdal, and the UC  
19 Berkeley campus incurred over \$100,000 worth of damage. Plaintiff was attacked with extremely  
20 painful pepper spray and bear mace by masked assailants amongst the “protestors” because she  
21 chose to exercise her right to freedom of speech and show support for Mr. Yiannopoulos.

22 Shockingly, while Plaintiff and others were being violently attacked and assaulted by  
23 ANTIFA members, nearly 100 campus police and SWAT members waited in the Student Union  
24 building, within eyesight of the violence happening outside on the alleged direction of the  
25 Defendants. They did nothing except watch the chaos and violence unfold outside.

26 It is undisputable that the Regents oversee and are responsible for the actions and  
27 inactions of UC Berkeley, as well as its police force, UCPD. It is also undisputable that those in  
28 positions of power and authority at UC Berkeley have made their ultra-leftist beliefs, which

1 happen to oppose Plaintiff and Mr. Yiannopoulos, widely know. 68. For instance, Nicholas  
2 Dirks, the former Chancellor of UC Berkeley, has called Milo Yiannopoulos “a troll and  
3 provocateur who uses odious behavior in part to ‘entertain,’ but also to deflect any serious  
4 engagement with ideas. Comp. ¶ 68. Furthermore, as set forth in the Complaint, “UC Berkeley  
5 regularly provides police protection for politically charged events and protests on its campus  
6 without incident.” Comp. at 5. However, despite the fact that it was more than “reasonably  
7 foreseeable” – it was almost certain – that violence would erupt at the Mr. Yiannopoulos event,  
8 the Regents ordered the withholding of police protection and left UC Berkeley’s students and  
9 invitees who happen to fall within the minority, such as Plaintiff, to be violently assaulted by  
10 ANTIFA members with no assistance. The Regents made an affirmative choice and took  
11 affirmative action to withhold police protection – in effect ordering a stand-down – knowing full  
12 well that persons attending the Mr. Yiannopoulos event would be severely injured.

13 This is not a one-off event. The Regents have carefully constructed an environment  
14 where Republicans and conservatives are regularly singled out and targeted for their beliefs with  
15 absolutely no repercussions. One individual articulated that, “[p]eople feel like Republicans  
16 don’t have a home here, and it’s a little bit intimidating to have people walk by and want to yell  
17 at you or denounce your beliefs, simply because you’re sitting out there identifying as a  
18 Republican [...] there’s a complete lack of tolerance for an idea that any member of the Berkeley  
19 community could hold the beliefs that we do”.<sup>1</sup> Republican students receive online threats and  
20 hear from other students that “[t]hey’re going to come after us, we don’t belong on this campus,  
21 we don’t have a place on this campus.”<sup>2</sup> Specifically, choosing to openly support President  
22 Trump “kind of puts a target on your head.”<sup>3</sup> Comp. at 7. A majority of the Berkeley College  
23 Republicans, the school group that organized the Milo Yiannopoulos event, feel “reluctant to  
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25 <sup>1</sup> Ian Hanchett, *CNN Report: Berkeley Republicans Insulted for Supporting Trump, Campus*  
26 *‘Uncomfortable’ With Dissenting Opinions*, Breitbart, September 7, 2016, available at:  
27 [http://www.breitbart.com/video/2016/09/07/cnn-report-berkeley-republicans-insulted-for-](http://www.breitbart.com/video/2016/09/07/cnn-report-berkeley-republicans-insulted-for-supporting-trump-campus-uncomfortable-with-dissenting-opinions/)  
28 [supporting-trump-campus-uncomfortable-with-dissenting-opinions/](http://www.breitbart.com/video/2016/09/07/cnn-report-berkeley-republicans-insulted-for-supporting-trump-campus-uncomfortable-with-dissenting-opinions/).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

1 share their political beliefs on campus.”<sup>4</sup> CNN anchor Kyung Lah noted “[t]he irony runs thick to  
2 these students, a place that forged free speech on campus, uncomfortable with political speech  
3 with which they disagree.”<sup>5</sup> Furthermore, during a meeting of the Berkeley College Republicans  
4 in 2016, a group of protestors confronted their club table and “proceeded to snatch and attempt to  
5 rip up [their] Donald Trump cut-out [...] the group of protestors then circled [them] and began  
6 yelling slurs at [them] in reference to Donald Trump. Slurs such as ‘racists,’ ‘bigots,’ and ‘pieces  
7 of shit’ were yelled out by the protestors”<sup>6</sup> A Berkeley College Republican member was  
8 physically assaulted by a protestor while attempting to film the incident.<sup>7</sup> Witnesses to the event  
9 complained that the campus police officers on the scene were otherwise unhelpful, saying that  
10 they merely “sat around” while the group was attacked.<sup>8</sup> The student that destroyed the cutout of  
11 President Trump boasted “yeah I did it [...] it will happen again [...] there’s just four of you all  
12 [College Republicans] and we will come back with 1,000 of us.”<sup>9</sup> The offending student admitted  
13 this in front of campus police but no action was taken against him.<sup>10</sup> The sentiment among the  
14 Berkeley College Republicans is that if they had done the same to other political clubs, “there is  
15 no doubt that we would have been escorted off campus, but nothing will happen to the people  
16 who interrupted us today.”<sup>11</sup> After the incident, one Berkeley College Republican member said,  
17 “I now know that UC Berkeley—the birthplace of the Free Speech Movement—is not a place I  
18 can safely exercise my constitutionally protected right to free speech.”<sup>12</sup>

19 In furtherance of this patent bias against those who do not proscribe to their own ultra-  
20 leftist, radical beliefs, the Regents now have directly caused the serious injuries suffered by

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21 <sup>4</sup> *Id.*

22 <sup>5</sup> *Id.*

23 <sup>6</sup> Stephen Frank, *UC Administrators Allow Violence Against Republicans on UC Berkeley*  
*Campus*, California Political Review, September 9, 2016, available at:  
24 <http://www.capoliticalreview.com/capoliticalnewsandviews/uc-administrators-allow-violence-against-republicans-on-uc-berkeley-campus/>.

25 <sup>7</sup> *Id.*

26 <sup>8</sup> *Id.*

27 <sup>9</sup> *Id.*

28 <sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

1 Plaintiff and others at the Mr. Yiannopoulos event by directing and ordering the conscious  
2 withholding of police protection with the actual knowledge, if not intent, that they would be  
3 severely injured by ANTIFA rioters. This behavior is not only unconstitutional, as it effectively  
4 cuts off First Amendment rights, but is also extremely dangerous. While fortunately no one was  
5 killed by ANTIFA rioters this time, it is only a matter of time before someone is, given that their  
6 assaults are carried out with deadly weapons, such as flagpoles. It is shocking to think that the  
7 Regents, who are entrusted with administering to the safety of UC Berkeley students and  
8 invitees, would think so little of those that happen to hold different beliefs that they would dare  
9 risk their lives. This callous, tortious, and discriminatory behavior must be put to an end, and  
10 those who have been injured, such as Plaintiff, must be given legal recourse.

## 11 II. LEGAL STANDARD

12 Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain “a short and plain  
13 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To  
14 defeat a motion to dismiss under Rule 12(b)(6), a claim must contain “enough factual matter  
15 (taken as true) to suggest that an agreement was made,” explaining that “[a]sking for plausible  
16 grounds to infer an agreement does not impose a probability requirement at the pleading state; it  
17 simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence  
18 of illegal agreement.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The *Twombly*  
19 Court also explained, more generally, that “. . . a complaint attacked by a Rule 12(b)(6) motion  
20 to dismiss does not need detailed factual allegations,” yet “must be enough to raise a right to  
21 relief above the speculative level” and give the defendant fair notice of what the claim is and the  
22 grounds upon which it rests. *Id.* at 555. In other words, Plaintiffs here need only allege “enough  
23 facts to state a claim to relief that is plausible on its face” and to “nudge[] the[] claims[] across  
24 the line from conceivable to plausible.” *Id.* at 570.

25 Subsequently, in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), the U.S. Supreme Court  
26 elaborated. There, the Court held that a pretrial detainee alleging various unconstitutional actions  
27 in connection with his confinement failed to plead sufficient facts to state a claim of unlawful  
28 discrimination. The Court stated that the claim for relief must be “plausible on its face,” *i.e.*, the

1 plaintiff must plead “factual content that allows the court to draw the reasonable inference that  
2 the defendant is liable for the misconduct alleged.” *Id.* at 1949. In this regard, determining  
3 whether a complaint states a plausible claim for relief is necessarily “a context-specific task.” *Id.*  
4 at 1950. Therefore, if a complaint alleges enough facts to state a claim for relief that is plausible  
5 on its face, such as here, a complaint may not be dismissed for failing to allege additional facts  
6 that the plaintiff would need to prevail at trial. *Twombly*, 550 U.S. at 570; *see also Erickson v.*  
7 *Pardus*, 551 U.S. 89, 93 (2007) (plaintiff need not allege specific facts, the facts alleged must be  
8 accepted as true, and the facts need only give defendant “fair notice of what the \*\*\* claim is and  
9 the grounds upon which it rests” (quoting *Twombly*, 550 U.S. at 555). grounds upon which it  
10 rests” (quoting *Twombly*, 550 U.S. at 555).

11 Where the requirements of Rule 8(a) are satisfied, even “claims lacking merit may be  
12 dealt with through summary judgment.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002).  
13 In this regard, “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual  
14 proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Twombly*,  
15 550 U.S. at 556. Indeed, “[t]he Federal Rules of Civil Procedure erect a powerful presumption  
16 against rejecting pleadings for failure to state a claim.” *Cotrell, Ltd. V. Biotrol Int’l, Inc.*, 191  
17 F.3d 1248, 1251 (10th Cir. 1999).

### 18 **III. THE LAW**

#### 19 **a. Eleventh Amendment**

20 “We apply a five-factor analysis to determine whether the University, acting in a  
21 managerial capacity for the Laboratory, is an arm of the state and thus entitled  
22 to Eleventh Amendment immunity from suit in federal court.” *Doe v. Lawrence Livermore Nat’l*  
23 *Lab.*, 65 F.3d 771, 774 (9th Cir. 1995). “The five factors are: [1] whether a money judgment  
24 would be satisfied out of state funds, [2] whether the entity performs central governmental  
25 functions, [3] whether the entity may sue or be sued, [4] whether the entity has power to take  
26 property in its own name or only the name of the state, and [5] the corporate status of the entity.”  
27 *Id.* The *Doe* Court initially found that four of the 5 five factors weighed against the finding of  
28



1 immunity, with only the second factor weighing in favor.<sup>13</sup> However, despite the Supreme  
2 Court’s eventual partial reversal, the *Doe* Court’s reasoning that “[t]he University is an enormous  
3 entity which functions in various capacities and which is not entitled to Eleventh Amendment  
4 immunity for all of its functions” is not affected. *Id.* at 775.

5 Here, the Regents were not functioning as an “arm of the state” in its intentional  
6 withholding of police protection during the Mr. Yiannopoulos event. Indeed, as pled in the  
7 Complaint, the reason for this is that Mr. Yiannopoulos and his supporters, such as Plaintiff,  
8 happen to hold different ideological beliefs from them, personally. Their actions have nothing to  
9 do with their official functions as the Regents. Instead, they are based on their own, personally  
10 held beliefs. Thus, this Court should, upon examination of the actual function that the Regents  
11 were performing when they withheld police protection, find that Eleventh Amendment immunity  
12 does not apply.<sup>14</sup>

13 **b. State Law Claims**

14 The Regents falsely asserts that Plaintiff’s claims are precluded by Cal. Gov’t Code §  
15 815(a) and Cal. Gov’t Code § 845 and that Plaintiff did not properly allege a cause of action  
16 under the Bane Act. As set forth below, these contentions are false, and must be ignored.

17 *First*, to any extent that Cal. Gov’t Code § 815(a) applies, it clearly is limited solely to  
18 Plaintiff’s tort claims. As such, Plaintiff’s First, Second, Tenth, and Twelfth causes of Action  
19 against the Regents are immediately not under consideration. Furthermore, Plaintiff’s Fifth  
20 Cause of Action for Premises Liability is expressly permitted by Cal. Gov’t Code § 835(b),  
21 which states:

22 a public entity is liable for injury caused by a dangerous condition of its property  
23 if the plaintiff establishes that the property was in a dangerous condition at the

24 <sup>13</sup> The Supreme Court eventually reversed the Ninth Circuit’s finding as to only the first factor,  
25 and held that the Ninth Circuit improperly considered the fact that any judgment would  
26 ultimately be paid by the Department of Energy and therefore have no effect upon the treasury of  
the State of California. *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 431 (1997).

27 <sup>14</sup> In the event that this Court finds that the Regents enjoy Eleventh Amendment immunity,  
28 Plaintiff respectfully requests that this Court grant leave to amend to add the individual decision  
and policy makers responsible for ordering the stand-down to UCPD during the Mr.  
Yiannopoulos event.

1 time of the injury, that the injury was proximately caused by the dangerous  
2 condition, that the dangerous condition created a reasonably foreseeable risk of  
3 the kind of injury which was incurred, and that... [t]he public entity had actual or  
4 constructive notice of the dangerous condition under Section 835.2 a sufficient  
5 time prior to the injury to have taken measures to protect against the dangerous  
6 condition.

7 Plaintiff's Complaint properly alleges a claim for premises liability against the Regents  
8 that falls squarely within section 835. The Complaint expressly alleges that the Regents  
9 controlled the U.S. Berkeley property and were negligent in the use of maintenance of the  
10 property by failing to adequately secure and monitor a known hostile campus environment for  
11 pro-President Trump/pro-Milo Yiannopoulos attendees. Comp. ¶ 105. Furthermore, the  
12 Complaint alleges that "The Regents intentionally withheld police protection for...Plaintiff  
13 Robles, despite the fact that it was, at a minimum, reasonably foreseeable that the Milo  
14 Yiannopolous event would erupt in violence from 'protestors.'" Comp. ¶17. The eruption of  
15 violence that directly and proximately caused Plaintiff's significant injures, which was clearly  
16 present at the time Plaintiff was injured, was reasonably foreseeable, if not actually known  
17 and/or calculated to occur, based on the string of violent protest that had broken out at similar  
18 events, including those that had been on UC Berkeley's campus. Comp. ¶¶ 27-42. Simply put,  
19 knowing full well that violence would almost certainly erupt, the Regents made the intentional  
20 decision to withhold police protection with the clear goal of curtailing free speech expressing a  
21 viewpoint that they did not agree with. As such, Plaintiff's Fifth Cause of Action against the  
22 Regents must be allowed to proceed.

23 *Second*, Cal. Gov't Code § 845 is inapplicable, as the Complaint sets clearly sets forth  
24 that the "failure to provide police services" involved here "do not involve the kind of 'budgetary  
25 and political decisions which are involved in hiring and deploying a police force.'" *Zuniga v.*  
26 *Hous. Auth.*, 41 Cal. App. 4th 82, 100 (1995) (internal quotations omitted). Indeed, as pled in the  
27 Complaint, the police officers were actually physically present at the scene, Comp. ¶¶ 53-54, but  
28 on order and direction from the Regents, stood there and simply watched individuals, including  
29 Plaintiff, get violently assaulted and did nothing. Thus, the fundamental purpose of Section 845,  
30 to "protect the budgetary and political decisions which are involved in hiring and deploying a

1 police force” is simply not at play here. *Lopez v. S. Cal. Rapid Transit Dist.*, 40 Cal. 3d 780, 792  
2 (1985).

3 In fact, in *Lopez*, the Supreme Court of California found that Section 845 was not  
4 implicated when the Complaint pled more than the simple fact that the public entity was  
5 “negligent in failing to provide police personnel or armed guards on board its buses.” *Id.*  
6 “Rather, the gravamen of plaintiffs' complaint is that the bus driver, who was already hired by  
7 RTD and was present on the scene and aware of the violent disturbance, did absolutely nothing  
8 to protect plaintiffs, but simply continued to drive the bus as if nothing was was wrong.” *Id.* This  
9 is precisely the situation that was pled in the Complaint. UCPD was present at the seen and  
10 witnessed Plaintiff being violently assaulted, but still simply stood in the Student Union Building  
11 and did nothing. Comp. ¶ 53. Thus, Section 845 is inapplicable.

12 *Third*, the Regents assertion that Plaintiff’s Bane Act claim should be dismissed because  
13 Plaintiff does not make any assertion that the Regents threatened or committed violent acts  
14 against her must fail. Indeed, the Regents even concede that Plaintiff alleged that the Regents  
15 acted in concert with each and every Defendant to threaten or commit violent acts against her.  
16 Def’s Mtn. at 13. This assertion is far from conclusory. It is clearly set forth in the Complaint  
17 that the Regents intentionally furthered violence against Plaintiff and others because they  
18 happened to harbor different political and other viewpoints from Plaintiff. Comp. ¶ 67. This is no  
19 secret. “Nicholas Dirks, the former Chancellor of UC Berkeley, has called Milo Yiannopoulos ‘a  
20 troll and provocateur who uses odious behavior in part to “entertain,” but also to deflect any  
21 serious engagement with ideas.’” Comp. ¶ 68. Thus, the Complaint not only sets forth not only  
22 how the Regents furthered violence against Plaintiff – by ordering UCPD to withhold police  
23 protection while she was violently assaulted – but also sets forth in extreme detail the why – a  
24 long, disturbing history of curtailing viewpoints that they do not agree with. Thus, Plaintiff’s  
25 BANE Act claim is pled with more than the requisite specificity and must be allowed to proceed.

### 26 **c. Injunctive Relief**

27 The Regents also falsely claim that Plaintiff’s claim for injunctive relief must fail because  
28 she does not demonstrate a sufficient likelihood that she will again be wronged in a similar way.

1 Def's Mtn. at 13. This is patently false. Indeed, as set forth in the Complaint, even after the  
2 events that directly gave rise to Plaintiff's serious injuries and her claims, the Regents still  
3 actively curtail viewpoints that they do not agree with personally:

4 Even now, after Plaintiff Robles was violently assaulted at the Milo Yiannopolous  
5 event, the Regents again have refused to provide a "proper time and venue" for  
6 conservative undit Ann Coulter to speak at UC Berkeley. Ann Coulter stated on  
7 The Sean Hannity Show, "You cannot impose arbitrary and harassing restrictions  
8 on the exercise of a constitutional right...None of this has to do with security.  
9 Indeed, the Regents, on information and belief, cancelled Ann Coulter's  
scheduled speech because they disagree with her politically conservative  
viewpoints, in furtherance of their pattern and practice of squashing free speech  
that they disagree with. The Regents disingenuously offered Ann Coulter a  
speaking time on May 2, during Dead Week, where there are no classes and  
students are studying for final exams.

10 Comp. ¶¶ 69-72. Thus, even after the Yiannopoulos incident, the Regents still actively restrict  
11 free speech, which in turn, control the actions and inactions of the UCPD and BPD. Thus, it is  
12 likely that Plaintiff will suffer harm in the future if injunctive relief is not granted, given that  
13 Plaintiff will no longer be able to attend events that showcase differing viewpoints without the  
14 very real probability that she will be again violently assaulted and denied police protection.

#### 15 **d. First Amendment Claim**

16 The Regents intentionally misstate the facts that clearly give rise to a valid First  
17 Amendment claim. The Regents attempt to disingenuously couch their actions as a mere failure  
18 to protect Plaintiff's First Amendment rights. This is not what happened, and it is not what was  
19 alleged. Instead, the Complaint clearly alleges that the the Regents took affirmative steps to  
20 prevent Plaintiff from exercising her First Amendment rights. The Regents "willfully withheld  
21 police officers to protect pro-President Trump/pro-Milo Yiannopoulos attendees at an event  
22 which it knew was to most likely become hostile and violent because these pro-President  
23 Trump/pro-Milo Yiannopoulos attendees represented political beliefs that went against the  
24 popular sentiment of Defendants and most UC Berkeley's administration and students." Comp. ¶  
25 79. Indeed, the police were actually physically present during the riots, but, under the affirmative  
26 direction of the Regents, simply sat by idly and watched Plaintiff and others get violently  
27 assaulted. Comp. ¶ 53. The Regents admit that "the First Amendment ... limits a state's power to  
28 deprive individuals of free speech rights." Def's Mtn. at 15 (internal quotations and citations

1 omitted). This is exactly what happened here. Simply put, the Regents did not simply sit by  
2 while Plaintiff was deprived of her First Amendment rights. Instead, the Regents took  
3 affirmative steps – ordering that police protection be withheld – to actively ensure that Plaintiff  
4 would not be able to exercise her First Amendment rights. The distinction is critical and it  
5 mandates the survival of Plaintiff’s First Amendment claims.

6 **e. Equal Protection Claim**

7 The Regents falsely claim that Plaintiff fails to properly allege the Regents’ failure to  
8 provide proper police protection and enforce UC Berkeley’s antidiscrimination policies. Def’s.  
9 Mtn. at 16. However, Plaintiff clearly states in her Complaint that the Regents “willfully  
10 withheld their police manpower from protecting students and event attendees because the  
11 speaker and his supporters went against the political beliefs of the majority of UC Berkeley’s  
12 students and its administration.” Comp. at 5-6. Plaintiff also alleges that the Regents  
13 “intentionally discriminated against Plaintiff Robles as a gay individual and a female individual  
14 [...] in doing so, the Regents [...] failed to enforce UC Berkeley’s Non-Discrimination Policy.”  
15 *Id.* at 6. Thus, Plaintiff properly alleged how the Regents failed to provide proper police  
16 protection to Plaintiff Robles, who they discriminated against based on her political beliefs,  
17 gender, and sexual orientation.

18 Defendant further asserts that in order support an Equal Protection Claim, Plaintiff must  
19 establish that she was treated differently from other similarly situated individuals with respect to  
20 a government, act, statute, or regulation. Def’s. Mtn. at 17. Plaintiff fulfills these criteria in her  
21 Complaint by alleging that UC Berkeley regularly provides adequate police protection for  
22 politically charged events and protests on its campus without incident, but purposely withheld  
23 protection of Plaintiff and other attendees of the Milo Yiannopolous event based on their  
24 political beliefs and sexual orientation. Comp. at 5-6. Plaintiff’s makes this distinction  
25 abundantly clear in her Complaint, which Defendant conveniently chooses to overlook.

26 Next, Defendant claims that Plaintiff fails to allege any facts demonstrating that the  
27 Regent actually knew Plaintiff’s sexual orientation or political views. Def’ s. Mtn. at 17.  
28 Plaintiff states in her Complaint that “[i]t was the intentional and conscious decision and

1 direction of the Regents [...] to withhold effective police protection of politically conservative  
2 attendees of the Milo Yiannopolous event because Milo Yiannopolous and a large number of his  
3 supporters, including Plaintiff Robles, are gay.” Comp. at 6. Defendant knew that Milo  
4 Yiannopolous supporters would clearly be politically conservative, and that they would very  
5 likely be gay or support the gay community, as he is a conservative, gay activist. Therefore, they  
6 chose to withhold proper police protection for these attendees that were at odds with the beliefs  
7 of the majority of UC Berkeley’s students and administration. As such, Plaintiff has properly  
8 pled facts sufficient to support its Equal Protection Claim and the Regent’s motion in this regard  
9 should be denied.

#### 10 **IV. CONCLUSION**

11 At the heart and soul of this Complaint is this: should public universities, such as UC  
12 Berkeley, be safe places for all individuals to express their ideological viewpoints, or should only  
13 those who are in the leftist majority be tolerated? The answer to this question would and should  
14 seem simple, but the environment fostered and carefully crafted by the Regents has become one  
15 of exclusion, not inclusion. Even then, it is one thing for those in the ideological minority to face  
16 social backlash. It is another thing altogether for them to face violent assault and the possibility  
17 of death for simply exercising their views under the First Amendment. Sadly, the latter is the  
18 state of UC Berkeley and its Regents today as a direct and proximate result of the actions and  
19 inactions of the Regents.

20 It is now therefore incumbent upon this Court to act. America’s universities have long  
21 been places where individuals can express ideological differences safely and freely exchange  
22 thoughts and ideas with people from different backgrounds and cultures. When espousing views  
23 dissimilar to Defendants’ leftist ideology and practice, this no longer appears to be the case at  
24 UC Berkeley, at the direction of the Regents. Plaintiff must therefore be allowed her due process  
25 to pursue her claims, or otherwise, Sproul Plaza - the birthplace of what came to be known as  
26 the Free Speech Movement in 1964 – will regrettably, in 2017 become its final resting place.

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