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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND
Miss
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Attorneys for Plaintiffs
CALLIE MAIDHOF, *et al.*, and on
behalf of the proposed class

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CALLIE MAIDHOF, ZACHARY
SOLOMON MILLER, BRIAN
GLASSCOCK, LAURA ZELKO, JOSHUA
CLOVER, LUZILDA CARRILLO,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

MITCHELL CELAYA and HARRY
LEGRANDE in their individual and official
capacities; MARC DECOULODE, in his
individual capacity; and ROBERT J.
BIRGENEAU, in his official capacity,

Defendants.

Case No. **C11-04971** LB

COMPLAINT

CLASS ACTION

Civil Rights

DEMAND FOR JURY TRIAL

1 Plaintiffs complain against defendants MITCHELL CELAYA, HARRY
2 LEGRANDE, MARC DECOULODE, and ROBERT J. BIRGENEAU as follows:

3 **INTRODUCTION**

4
5 1. Plaintiffs on behalf of themselves and all other similarly situated
6 individuals bring this action against defendants MARC DECOULODE, MITCHELL
7 CELAYA, and HARRY LEGRANDE for damages for violations of the Fourth
8 Amendment.

9
10 2. Plaintiffs on behalf of themselves and all other similarly situated
11 individuals bring this action against defendants ROBERT J. BIRGENEAU, CELAYA,
12 and LEGRANDE, in their official capacities, for injunctive relief. Plaintiffs seek to
13 permanently enjoin BIRGENEAU, CELAYA, and LEGRANDE from continuing the
14 pattern, practice, tradition, custom, usage, and policy of sending non-violent detainees
15 who are taken into custody during campus protests to the Alameda County Jail instead
16 of citing and releasing them. The policy of jailing non-violent protestors is punitive and
17 a violation of the protestors' rights to freedom of speech and assembly.

18
19 3. Plaintiffs are present or former students of the University of California
20 (UC) system and other concerned members of the community who set up a twenty-four
21 hour a day informational session, entitled Open University, in Wheeler Hall on the
22 University of California, Berkeley (Berkeley) campus. The Open University was to last
23 five days and draw attention to the recent budget cuts and tuition hikes as well as the
24 misplaced priorities of the UC administration.

25
26 4. The UC Berkeley administration agreed to allow the students to hold the
27 week-long event. However, after allowing the event to continue without incident for four
28 days, the police arrested all the participants at 4:00 a.m. on December 11, 2009. The

1 arrests were made without warning, while the students slept in the auditorium. At no
2 time was the administration's rescission of its permission to allow the event to proceed
3 communicated to the students. The students were handcuffed and interrogated for
4 several hours.

5
6 5. The UC Berkeley Police Department, acting pursuant to University policy,
7 custom or practice, did not cite and release the protestors but rather had them
8 transported to the Alameda County Jail.

9
10 **JURISDICTION**

11 6. This action arises under a federal statute, 42 U.S.C. § 1983, to redress
12 actions under color of state law which violated the plaintiffs' constitutional rights. The
13 Court has jurisdiction over this matter under 28 U.S.C. § 1343.

14 **VENUE**

15 7. Venue is proper in the Northern District because a substantial part of the
16 events or omissions giving rise to the claim occurred in this District.

17 **INTRADISTRICT ASSIGNMENT**

18
19 8. A substantial part of the events or omissions giving rise to the claim
20 occurred in the City of Berkeley in the County of Alameda.

21 **PARTIES**

22 9. At all times relevant hereto, plaintiff ZACHARY SOLOMON MILLER was
23 a student at the University of California, Berkeley, and a resident of Alameda County.

24 10. At all times relevant hereto, plaintiff BRIAN GLASSCOCK was a student at
25 the University of California, Santa Cruz, and a resident of Santa Cruz County.

26 11. At all times relevant hereto, plaintiff LAURA ZELKO was a student at the
27 University of California, Berkeley, and a resident of Alameda County.
28

1 12. At all times relevant hereto, plaintiff JOSHUA CLOVER was a professor at
2 the University of California, Davis, and a resident of Yolo County.

3 13. At all times relevant hereto, plaintiff LUZILDA CARRILLO was a student
4 at the University of California, Berkeley, and a resident of Alameda County.

5 14. At all times relevant hereto, plaintiff CALLIE MAIDHOF was a student at
6 the University of California, Berkeley, and a resident of Alameda County.

7 15. At all times relevant hereto, defendant MITCHELL CELAYA was employed
8 by the University of California, Berkeley, as Chief of Police and was involved in the
9 University administration's decision making regarding the Wheeler Hall protest.
10 Plaintiffs bring this action against CELAYA in his individual capacity for damages and in
11 his official capacity for injunctive relief.
12
13

14 16. At all times relevant hereto, defendant MARC DECOULODE was
15 employed by the University of California, Berkeley, as a police officer and was involved
16 in arresting the protestors in Wheeler Hall. Plaintiffs bring this action against
17 DECOULODE in his individual capacity for damages.
18

19 17. At all times relevant hereto, defendant HARRY LEGRANDE was employed
20 by the University of California at Berkeley as Vice Chancellor for Student Affairs and
21 was involved in the University administration's decision making regarding the Wheeler
22 Hall protest. Plaintiffs bring this action against LEGRANDE in his individual capacity
23 for damages and in his official capacity for injunctive relief.
24

25 18. At all times relevant hereto, defendant ROBERT J. BIRGENEAU was
26 employed by the University of California, Berkeley, as Chancellor. As Chancellor,
27 BIRGENEAU is responsible for the policies, practices, and customs underling this
28

1 action. Plaintiffs bring this action against BIRGENEAU in his official capacity for
2 injunctive relief.

3
4 **CLASS ALLEGATIONS**

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6 19. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil
7 Procedure on behalf of a class of all people arrested by University of California police on
8 December 11, 2009, in Wheeler Hall.

9
10 20. There are 66 members of this class, making it sufficiently numerous that
11 joinder of all class members is impractical. The identities of all class members are
12 ascertainable through the records of the University of California Police Department.

13 21. There are questions of law and fact common to the class, and these
14 questions predominate over individual questions. Such questions include, without
15 limitation, whether the University administration permitted the class members to use
16 Wheeler Hall, whether the class members were arrested without probable cause,
17 whether the class members were transported to jail without probable cause, and
18 whether the transportation of class members to jail was reasonable.

19
20 22. The claims alleged by the named plaintiffs are typical of the class.

21 23. Named plaintiffs will fairly and adequately represent and protect the
22 interests of the class.

23
24 24. This action is properly maintainable under Federal Rule of Civil Procedure
25 23(b) under subparagraphs (2) and (3) because defendants have acted or refused to act
26 on grounds generally applicable to the class, thereby making appropriate final injunctive
27 relief or corresponding declarative relief with respect to the class as a whole, and
28 because questions of law and fact common to the class predominate over any questions

1 affecting only individual members, and a class action is superior to other available
2 methods for the fair and efficient adjudication of this case.

3
4
5 **STATEMENT OF CLAIM**

6 25. On Monday December 7, 2009, nearly one hundred students, including
7 plaintiffs ZAK SOLOMON, BRIAN GLASSCOCK, LAURA ZELKO, JOSHUA CLOVER,
8 LUZILDA CARRILLO, and CALLIE MAIDHOF entered Wheeler Hall on the University
9 of California, Berkeley campus in order to hold a five day teach-in entitled "Open
10 University."

11
12 26. The Open University was to be held during the week-long study period
13 preceding final exams, known as "dead week." Dead week is a period of time when no
14 classes are held and students are given free time to study.

15 27. The students planned to discuss the ongoing University budget cuts,
16 tuition increases, and the impact of lack of funding on the state and education in
17 general. The Open University was intended to highlight the skewed priorities of the
18 University of California system.

19
20 28. According to documents obtained by a Freedom of Information Act
21 request, University officials, including but not limited to defendants MITCHELL
22 CELAYA and HARRY LEGRANDE, were aware of plans for the Open University before
23 the beginning of the program. University officials discussed the upcoming use of
24 Wheeler Hall and decided not to prevent the students from setting up in Wheeler Hall.

25
26 29. At 2:00 p.m. on December 7, 2009, around a dozen people entered
27 Wheeler Hall and began to set up for the Open University. The students did not disturb
28 study sessions that were in progress or make any attempt to barricade the doors to

1 Wheeler Hall. The students passed out fliers and invited the entire campus community
2 to participate in the Open University.

3 30. Because classrooms were being used for study sessions, the students set up
4 a table in the lobby and expressed their concerns about the University administration's
5 priorities. After the classrooms emptied out, the protestors moved into the main
6 auditorium.

7
8 31. University police were present almost immediately after the students
9 entered Wheeler Hall. When the students moved into the auditorium, the police
10 approached the students to hold a discussion. The police did not tell the students to
11 leave, but told them to clean up and that they had to leave by 7:00 p.m., when the
12 building closed.

13
14 32. The students refused to leave at 7:00 p.m. and reached an agreement with
15 Police Lieutenant Marc Decoulode. The agreement was that the students could stay the
16 night as long as they kept the area clean and allowed access for the janitorial staff and
17 for the scheduled study sessions during the day.

18
19 33. On the night of December 7, 2009, the campus police stationed two
20 officers in the lobby of Wheeler Hall to monitor the students. The police left the doors
21 open all night so students could come and go as they pleased to participate in the Open
22 University. No arrests were made and no one was prevented from entering the building.

23
24 34. University officials, including but not limited to defendants MITCHELL
25 CELAYA and HARRY LEGRANDE, held a meeting and agreed to allow the students to
26 conduct the Open University as long as they vacated Wheeler Hall on Saturday morning.

27
28 35. Sometime on December 8, 2009, the students, including ZAK SOLOMON,
had another meeting with Lieutenant Decoulode. Decoulode informed the students that

1 the University administration had discussed the Open University and that the students
2 would be given informal sanction and would be allowed to conduct the Open University
3 in Wheeler Hall for the remainder of the week.

4
5 36. The students believed that they had permission from the University
6 administration to remain in Wheeler Hall until Saturday morning as long as they
7 vacated before finals were held.

8
9 37. On December 9, 2009, the campus police informed the students that
10 because there was a final exam to be given in Wheeler Hall on Saturday, December 12,
11 the Open University must end by Saturday morning before finals began.

12
13 38. The students continued discussions with police requesting that more
14 classrooms in Wheeler Hall be unlocked. The police agreed and opened up additional
15 classrooms for use by the Open University.

16
17 39. On December 10, 2009, University officials found out there were plans to
18 hold a concert in Wheeler Hall to celebrate the end of the Open University. Meetings
19 were held between representatives of the students and the University to discuss ideas
20 about how to manage the concert.

21
22 40. According to documents obtained by a Freedom of Information Act
23 request, the University administration held another private meeting at which the
24 concert was discussed. Several options for how to proceed were discussed about, from
25 allowing the concert to go forward with help from the University's Cal Performances, to
26 immediate arrest. During this meeting, University officials decided to ignore their
27 previous agreement with the students and have all the participants in the Open
28 University arrested.

1 41. The rescission of permission for the students to remain in Wheeler Hall
2 until Saturday morning was never communicated to the plaintiffs.

3 42. Around 10:00 p.m. on the night of December 10, 2009, a University police
4 officer read a dispersal order to the students. This was the same dispersal order that had
5 been read on other nights, however, the police indicated that it was a formality and that
6 the students' activities were sanctioned by the administration.

7 43. Students were allowed to enter Wheeler Hall after the dispersal order was
8 read, and many students were not present when the police read the dispersal order.

9 44. Somewhere between 4:00 a.m. and 5:00 a.m. on the morning of December
10 11, the police sealed off Wheeler Hall by placing handcuffs on the exit doors. The police
11 began to handcuff students as they slept and arrested 66 people who had been
12 participating in the Open University. No dispersal order was given prior to the arrests.
13 The students were not given the chance to leave peacefully prior to the arrests.

14 45. All 66 students were herded into the basement, processed, interrogated,
15 and, after several hours, transported to the Alameda County Jail instead of being issued
16 citations and released.

17 46. The UC Berkeley Police Department has a policy, pattern, practice,
18 tradition, custom, and/or usage of taking protestors to the county jail instead of issuing
19 citations and releasing them.

20 47. Plaintiffs contend, on information and belief, that UC Berkeley has a
21 policy, pattern, practice, tradition, custom, and/or usage of transporting protestors to
22 the county jail for punitive reasons, including but not limited to the purpose of deterring
23 future unfavored protests. This policy, pattern, practice, tradition, custom, and/or
24 usage is carried out with the approval and under the authority of the Chancellor.

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2 ///

3 **FIRST CLAIM FOR RELIEF**

4 **VIOLATION OF THE FOURTH AMENDMENT**

5 (42 U.S.C. § 1983)

6 (Against all defendants)

7
8 48. Plaintiffs reallege and fully incorporate herein paragraphs 1- 47 above.

9 49. By virtue of the foregoing, defendants MITCHELL CELAYA, HARRY
10 LEGRANDE, and MARC DECOULODE, acting under color of state law, wrongfully
11 violated the rights of the plaintiffs and of all others similarly situated, protected by the
12 Fourth Amendment to the Constitution of the United States of America.

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14 50. By virtue of the foregoing, defendants MITCHELL CELAYA, HARRY
15 LEGRANDE, and ROBERT J. BIRGENEAU, acting in their official capacities,
16 wrongfully violated the rights of the plaintiffs and of all others similarly situated to be
17 free of unreasonable search and seizure protected by the Fourth Amendment to the
18 Constitution of the United States of America. Plaintiffs seek to permanently enjoin said
19 defendants from continuing the pattern, practice, tradition, custom, and usage of the
20 policy to send non-violent detainees arrested during campus protests to the Alameda
21 County jail instead of citing and releasing them.

22
23 **SECOND CLAIM FOR RELIEF**

24 **VIOLATION OF FIRST AMENDMENT**

25 (42 U.S.C., § 1983)

26 (Against all defendants)

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28 51. Plaintiffs reallege and fully incorporate herein paragraphs 1- 50 above.

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Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: October 5, 2011

SIEGEL & YEE

By: 
Dan Siegel

Attorneys for Plaintiffs
CALLIE MAIDHOF, *et al.*