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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
6 [EXEMPT FROM FEES - GOV. CODE, § 6103]

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10
11 THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,

12 Plaintiff,

13 v.

14 DAVID GALLOWAY; COLIN SCHEHL;
15 and DOES 1 through 50, inclusive,

16 Defendants.

CASE NO. RG 07345190

**DECLARATION OF D. WADE MACADAM
IN SUPPORT OF EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER, ORDER TO SHOW CAUSE AND
MOTION FOR PRELIMINARY
INJUNCTION**

Date: September 11, 2007

Time: 1:30 p.m.

Dept.: 31

Hon. Frank Roesch

Date Action Filed: September 10, 2007

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20 I, D. WADE MACADAM, declare:

21 1. I am a Detective with the University of California, Berkeley Police
22 Department. I have been with the Department since 1999. I make this declaration in support of
23 The Regents' Ex Parte Application for Temporary Restraining Order and Order to Show Cause, as
24 well as its Motion for Preliminary Injunction. Except as qualified, I have personal and first hand
25 knowledge of the facts set forth in this declaration and, if called as a witness, could and would
26 competently testify thereto under oath.

27 2. I am familiar with defendants DAVID GALLOWAY and COLIN
28 SCHEHL.

1 3. On December 5 of last year, I was assigned to a crime involving individuals
2 who were lodging, trespassing, and creating a nuisance in a grove of trees located on the west side
3 of the UC Berkeley Memorial Stadium on Piedmont Avenue, all of which constitutes property
4 owned and maintained by The Regents and commonly known as the "Memorial Stadium Oak
5 Grove."

6 4. I understand, based on what I have been told and read, that these
7 individuals first ascended the trees on or about December 2, 2006.

8 5. These individuals never had the permission of The Regents or its agents to
9 lodge in, or sit or otherwise occupy the trees and have been informed repeatedly by me and other
10 campus police officers that they do not have permission to lodge there or occupy the trees and are
11 doing so in violation of the State Penal Code (illegal lodging) and University regulations, and
12 trespassing (Berkeley Municipal Code). They also have been repeatedly instructed to vacate the
13 trees. They have refused to do so. They have come and gone. While in the trees, which I and
14 other officers have kept a daily record of, some have remained for several days, camping over
15 night in the trees. Some have left but have later returned and resumed their vigil.

16 **The Encampment Grows Over Time**

17 6. Defendants' presence in the trees has expanded over time since
18 December 2.

19 7. We are unable to determine precisely how many defendants are in the trees
20 presently or at any particular point in time. Depending on the time of day, many of the defendants
21 may be sleeping or hiding from me. Based on my long involvement in this case, defendants are
22 aware of me, as well as my routine welfare inspections of the Oak Grove. I am often unable to
23 identify defendants because they either hide from me or disguise their identities by wearing masks
24 over their faces. In addition, they have constructed tarped walls around each of their sites to hide
25 their presence.

26 8. By December 15, a total of 4 sites had been erected. Since I was assigned
27 this case on December 5, I have kept a daily record of their activities and the status of the Oak
28 Grove and their presence in the trees.

1 9. Defendants have been lodging in the trees in makeshift structures,
2 constructed of wooden platforms, hammocks, ropes and other materials, fastened to the branches
3 high above the floor of the Oak Grove.

4 10. Defendants have lodged in the trees for various periods of time. Based on
5 my personal observations, as well as those of other officers, I believe that no single defendant has
6 lodged in the trees for the entire period of time that defendants' encampment has been in
7 existence. Defendants come and go, for various lengths of time but, when they do so, they remain
8 overnight, many of them for significant periods of time, lodging.

9 11. I and other officers in the UC Berkeley Police Department have attempted
10 to dismantle the sites on several occasions and, in a few cases, defendants rebuilt the structures.
11 In one case, they actively interfered with our efforts to dismantle a site. When another officer and
12 I accompanied two University employees with the Physical Plant – Campus Services (PPCS)
13 Department on April 25, 2007, one of the defendants traversed a rope defendants maintain to
14 connect their sites, and poured a bottle of urine towards me, another officer, and a PPCS
15 employee, while he forcefully took a PPCS ladder from the employee, which to this day is affixed
16 to a tree adjacent to one of defendants' suspended sites.

17 12. As August 30, 2007, one of the defendants emptied a bottle of urine onto a
18 Police Department power generator (used for lighting the area at night for safety purposes).

19 13. As of August 31, 2007, I have counted a total of 12 sites that have been
20 constructed and maintained by defendants in the trees in the Oak Grove.

21 14. The sites are connected by ropes, which defendants traverse, at perilously
22 high heights above the ground, to move from site to site. Two of the sites are connected by a rope
23 bridge approximately 50-feet long from tree to tree, constructed of a precarious floor made of
24 suspended two-by-four or two-by-six narrow planks, which defendants walk along high above the
25 Oak Grove floor.

26 15. I believe that defendants have no intention of leaving the trees and will
27 resist any efforts to remove them. In my daily observations, I have counted a total of 4 "sleeping
28 dragons," which are steel tubes commonly used by individuals who do not want to be removed

1 from a site they are inhabiting. In my experience, such individuals place both of their arms
2 through the ends of such a steel tube and then chain their hands together in the center while they
3 are wrapped around the branch or the trunk of the tree from which they do not want to be
4 removed. They cannot be cut without risking severe injury to the individual's arm.

5 16. Our department does not believe that, under the circumstances (how high
6 above the ground defendants are sitting, the precarious structures they have constructed, the
7 efforts they have demonstrated to resist any actions on the part of my department to remove their
8 sites, as well as the presence of "sleeping dragons"), we are able safely to remove defendants from
9 the Oak Grove trees.

10 **Defendants Are Not Simply Lodging and Have Created**
11 **a Health, Fire & Safety Hazard**

12 17. Defendants are not simply sleeping in the trees.

13 18. At great danger to themselves and to the neighboring community,
14 defendants are preparing meals with open flames in the trees. Defendants have placed in their
15 sites in the trees two propane tanks (one large tank, of the kind typically seen on the back of an
16 RV; and one small Coleman tank) and open flame gas stove tops, one measuring approximately 6
17 square feet in size, according to my estimate having eyeballed the object from the ground. The
18 Oak Grove contains not only Oak trees but also Cedars, and I understand from the Campus
19 Landscape Architect (Jim Horner) that Cedar leaves contain highly volatile and combustible oils.
20 I also understand from Mr. Horner that the floor of the Grove contains Oak leaves, wood chip,
21 and mulch, all of which is highly flammable. The floor of the Grove also contains defendants'
22 garbage.

23 19. On September 1, one of the defendants threw a lit firecracker at me while I
24 was standing below the trees. The leaves on the ground caught fire, which I had to extinguish by
25 stomping it out with my foot. The University has been forced to maintain approximately a dozen
26 fire extinguishers near the Oak Grove to respond to any fires set by defendants.

27 20. Defendants are also eliminating their body waste while lodging in the trees.
28 The trees are littered with large clear plastic containers filled with urine. From time to time,

1 defendants simply drop them to the ground, expecting University employees to dispose of them.
2 In addition, defendants have been defecating from the trees, again expecting University
3 employees to dispose of their fecal waste. Some of this waste is consumed by squirrels and other
4 wildlife in the area, which I have observed.

5 21. Defendants also have been yelling and playing musical instruments at
6 excessive volumes. Numerous faculty and staff in nearby University offices have complained to
7 the UC Berkeley Police Department about the excessive noise and their inability to perform their
8 University-related duties.

9 22. To protect members of the campus community from being injured by
10 debris and other falling objects, the University was forced to construct a fence around the trees,
11 hampering the ability of members of the campus community to use the Oak Grove. Individuals
12 commonly traverse the Grove to get to and from University offices, parking spaces, and housing
13 located in and around the Memorial Stadium. The fence rendered unusable approximately a
14 dozen University parking spaces reserved for the Haas School of Business, which is located
15 across the street from the Oak Grove. Football season began a week ago and the fence has
16 required that we keep locked four gates that are typically used for fans entering and leaving the
17 Stadium. In the event of an emergency, those gates will have to be unlocked to allow fleeing fans
18 a means to exit the Stadium. This has created a risk for public safety.

19 23. The dangerous condition defendants have created does not stop there. On
20 January 3, during an examination of the site, I found an imitation firearm. It was a toy pistol with
21 a red tip which had illegally been painted black to imitate a real weapon. On June 24, an officer
22 found a kitchen knife with a 10-inch long blade and a pair of scissors with 4-inch blades. On June
23 14, PPCS workers found an illegal "gravity" knife (butterfly style) in their cleanup of the site the
24 floor of the Grove.

25 24. Several defendants have been arrested for public intoxication.

26 25. On May 22, while I was attempting to remove one of the defendants, he bit
27 me.

28 26. On July 6, I found near the site the remnants of a burnt American flag.

1 27. On August 30, two of our officers were battered by a defendant resisting
2 arrest for trespassing.

3 28. On or about June 3, a Rottweiler belonging to one of the defendants bit
4 another defendant, causing four puncture wounds in her upper left thigh. The aggressive dog was
5 transported to Animal Control.

6 29. Several of the defendants have been taken into custody and subjected to
7 mandatory psychiatric evaluations.

8 30. One of the officers saw one of the defendants using an axe to carve
9 something into concrete steps leading to the Memorial Stadium near the trees.

10 31. On at least three occasions, I have observed a minor among defendants (a
11 total of 3 minors).

12 **Someone Already Has Fallen Out of the Trees**

13 32. Defendants' makeshift wooden platforms in the trees are situated high
14 above the ground. I understand from the Campus Landscape Architect (Jim Horner) that the
15 highest site defendants have built is over 80 feet above the floor of the Oak Grove.

16 33. On June 11, just after midnight, one of defendants fell out of a tree and had
17 to be hospitalized at Highland Hospital. I understand that she broke both of her wrists as a result
18 of the fall.

19 34. On August 9, I had to rescue another defendant when she lost her footing
20 and was hanging upside down on a climbing rope and was in danger of falling.

21 **Defendants Are Warned Repeatedly But Continue To Lodge In The Trees**

22 35. Between December 2, 2006 and the present, defendants have been warned
23 on a daily basis by me and other University Police that they are not permitted to lodge in the trees
24 in the Oak Grove and that they are trespassing.

25 36. On these occasions, defendants were told that they did not have permission
26 to lodge in the trees, that it was illegal to lodge there, that it was illegal to sleep on University
27 property, that they were violating the Penal Code, that they would be subject to arrest or citation if
28 they did not stop lodging in the trees, that they were trespassing, and that they had to come out of

1 the trees.

2 37. Defendants have ignored the orders of the campus police. Repeatedly, I
3 and other University Police have had to wake defendants and repeat these warnings. They have
4 refused to leave.

5 38. A number of defendants who have been apprehended when they came out
6 of the trees have returned to the trees, ignoring warnings by me and other University Police.

7 **Photographs**

8 39. During my welfare checks of the Oak Grove site, I and other officers have
9 taken photographs of defendants and their encampment. Attached are either photographs I
10 personally have taken or photographs that were taken by another officer while I was present and I
11 can testify accurately depict the image they show (except for the first attachment, which is not a
12 photograph but an architectural drawing of the Oak Grove I obtained from the UC Berkeley
13 Capital Projects Department – and which, based on my numerous visits to the site since
14 December, I can testify accurately represents the site – and onto which I have marked the places
15 of defendants' tree camps, denoted by the red numbered circles).

16 a. Exhibit A: architectural plan of the Oak Grove and the vicinity,
17 with red numbered circles denoting the location of defendants' tree camps

18 b. Exhibit B: a 16 year old boy whom I have observed in the tree on
19 numerous days

20 c. Exhibit C: I have named this the "crow's nest" because of its
21 height. This is the site the Campus Landscape Architect has testified is approximately 80
22 feet from the ground.

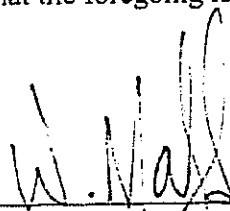
23 d. Exhibit D: a defendant wearing a mask and hanging on a traverse
24 wire going from one tree encampment to another tree encampment

25 e. Exhibit E: a tree encampment with approximately 6 tree platforms
26 in it from which defendants commonly recruit others to join them, with an unsafe rope
27 ladder; this was a tree in which a defendant attempted to climb a rope but became stranded
28 and I had to rescue her

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- f. Exhibit F: a typical encampment; shows unlawful living environment, including a hanging bottle filled with urine
- g. Exhibit G: a tree with the PPCS ladder defendants stole from PPCS employees
- h. Exhibit H: a defendant cooking over an open flame
- i. Exhibit I: a defendant perched above a sign in the trees without a support a line, wearing a mask to hide his identity
- j. Exhibit J: a bottle of urine and container of feces, an example of what defendants drop or throw from their tree platforms
- k. Exhibit K: another tree encampment, showing a bottle of urine and a feces container
- l. Exhibit L: showing the height of some of the encampments, far above the floor of the Oak Grove
- m. Exhibit M: a tree "topped" (top removed for construction of a platform) by defendants
- n. Exhibit N: defendant Colin Schehl in a tree encampment
- o. Exhibit O: defendant David Galloway
- p. Exhibit P: another picture showing the height of the "crow's nest"
- q. Exhibit Q: the "rope bridge" connecting two sites (4 pictures)
- r. Exhibit R: the "RV" propane tank and 2' x 3' cook top

I declare under penalty of perjury that the foregoing is true and correct. Executed at Berkeley, California on September 10TH, 2007.

 #81

D. Wade MacAdam

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