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November 7, 2007

VIA FACSIMILE

The Honorable Barbara J. Miller
ALAMEDA COUNTY SUPERIOR COURT
Department 512
Hayward Hall of Justice
24405 Amador Street
Hayward, CA 94544

**Re: Case No: RG06-301644
RG06-302934
RG06-302967**

Dear Judge Miller:

As you will recall, on August 28, 2007, we wrote to inform you that the University of California, Berkeley campus, at the advice of its Associate Vice Chancellor of Public Safety/Chief of Police, intended to implement certain safety measures in the vicinity of California Memorial Stadium, including a limited amount of fencing around some of the trees west of California Memorial Stadium that were occupied by protestors. As you will also recall, Petitioners filed an ex parte Application for Order Enforcing Preliminary Injunction, alleging that construction of fencing violated the Court's February 9, 2007, Order Granting Petitioners' Motions for Preliminary Injunction. On August 30, 2007, this Court issued its Order Denying Petitioners' Ex Parte Application, finding that although the security fencing constituted a change or alteration to the physical environment within the Project boundaries, it did not implement the enjoined projects and therefore did not violate the terms of the Court's February 9, 2007, Order. (A copy of the Court's August 30, 2007, Order is attached.)

As you may also be aware, on October 29, 2007, the Honorable Richard O. Keller modified the preliminary injunction he originally issued concerning the protestors. The amended Order granting Preliminary Injunction provides that "It is hereby ordered that, pending trial in this action, defendants, and each of them, and all other persons acting in concert or participating with them, or any of them, shall be and are hereby enjoined from lodging in, scaling, climbing, or hanging or sitting or standing on or in, any of the trees in the Memorial Stadium Oak Grove on the University of California, Berkeley campus, or placing or maintaining any objects in those

S A N G E R & O L S O N

The Honorable Barbara J. Miller
November 7, 2007
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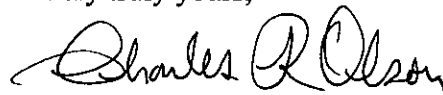
trees, including, but not limited to, platforms, hammocks, receptacles containing human waste, bar-b-ques or other devices for preparing food with the use of fire, or ropes.

Failure to comply with this Order constitutes civil contempt, punishable up to a \$1,000 fine or 5 days in jail, or both, as well as an order to pay reasonable attorney's fees and costs incurred by The Regents in initiating the contempt proceedings." (A copy of Judge Keller's Order is attached.)

We are writing once again, as a courtesy to the Court, to inform you that based upon the advice of UC Berkeley campus Chief of Police Victoria Harrison, the University intends to install additional fencing to secure the site prior to the removal of the tree sitters. The current extent of fencing has proven inadequate to prohibit the movement of persons and supplies from the interior of the fenced area to the exterior and vice versa. In order to remove the tree sitters from the trees and dismantle their living structures and circulation devices without unnecessary risk to the protestors or University security personnel, Chief Harrison believes it is essential to establish a security perimeter that is larger than the currently existing perimeter. Every action that may be taken by the University will be directly related to public safety and life safety concerns. None of the activities will be actions implementing the Southeast Campus Integrated Projects. As before, we therefore deem these activities to be outside the scope of the Court's February 9, 2007, Order and to be consistent with the Court's August 30, 2007, Order.

If the Court desires to discuss this issue further, we are available at your request.

Very truly yours,



Charles R. Olson

CRO:eag

Enclosure

cc: Michael R. Lozeau, Esq.
Harriet A. Steiner, Esq.
Stephan C. Volker Esq.
Kelly L. Drumm, Esq.
Ms. Jennifer McDougall
Mr. Bob Milano

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8 Attorneys for Plaintiff
9 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
10 [EXEMPT FROM FEES - GOV. CODE, § 6103]

ENDORSED
FILED
ALAMEDA COUNTY

OCT 29 2007

CLERK OF THE SUPERIOR COURT
By CYNTHIA EUGENE Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 THE REGENTS OF THE UNIVERSITY
14 OF CALIFORNIA,
15 Plaintiff,
16 v.
17 DAVID GALLOWAY; COLIN SCHEHL;
18 and DOES 1 through 50, inclusive,
19 Defendants.

CASE NO. RG 07345190
~~PROPOSED~~ AMENDED ORDER
GRANTING PRELIMINARY INJUNCTION
Date: October 29, 2007
Time: 2:30 p.m.
Dept.: 607
Hon. Richard O. Keller
Date Action Filed: September 10, 2007

20 This matter originally came on for hearing on October 1, 2007, pursuant to an
21 order to defendants to show cause why a preliminary injunction should not issue. This matter
22 came on for further hearing on October 29, 2007, on a motion by plaintiff The Regents of the
23 University of California for reconsideration or, in the alternative, to modify the preliminary
24 injunction. The Regents was represented by Michael Goldstein. Defendants were represented by
25 Dennis Cunningham.

26 Based upon the papers submitted by both sides and argument of counsel, and
27 GOOD CAUSE APPEARING THEREFOR,
28 IT IS HEREBY ORDERED that, pending trial in this action, defendants, and each
of them, and all other persons acting in concert or participating with them, or any of them, shall
be and are hereby enjoined from lodging in, scaling, climbing, or hanging or sitting or standing on

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or in, any of the trees in the Memorial Stadium Oak Grove on the University of California, Berkeley campus, or placing or maintaining any objects in those trees including, but not limited to, platforms, hammocks, receptacles containing human waste, bar-b-ques or other devices for preparing food with the use of fire, or ropes.

Failure to comply with this Order constitutes civil contempt, punishable up to a \$1,000 fine or 5 days in jail, or both, as well as an order to pay reasonable attorney's fees and costs incurred by The Regents in initiating the contempt proceedings.

No bond or undertaking – public entity plaintiff. (Code Civ. Proc., § 529(b)(3).)

Dated: October 29, 2007

RICHARD O. KELLER

Judge of the Superior Court

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AUG-30-2007 THU 05:32 PM Sanger & Olson

FAX NO. 415 693 9322

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08-30-07 04:58pm From-SUPERIOR COURT HAYWARD HALL OF JUSTICE

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T-084 P.002/006 F-122



FILED
ALAMEDA COUNTY

AUG 30 2007

CLERK OF THE SUPERIOR COURT
By Nancy A. Rose
Nancy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PANORAMIC HILL ASSOCIATION,

Petitioner,

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Respondents.

No. RG06-301644

ORDER DENYING
PETITIONERS' EX PARTE
APPLICATION FOR ORDER
ENFORCING PRELIMINARY
INJUNCTION

AND CONSOLIDATED CASES

The ex parte Application of Petitioners California Oak Foundation and Panoramic Hill Association for an "Order Enforcing Preliminary Injunction" came on for hearing on August 30, 2007 in Department 512 of the above-entitled court, the Honorable Barbara J. Miller presiding. Stephan Volker, Esq. and Michael Lozeau, Esq. appeared on behalf of Petitioners California Oak Foundation and Panoramic Hill Association, respectively. Charles Olson, Esq. of Sanger & Olson appeared on behalf of Respondents Regents of the University of California, et al.

The Court has considered all of the papers filed in connection with the Application and the arguments of counsel, and, good cause appearing, HEREBY ORDERS that Petitioners' Application is DENIED.

On August 29, 2007, Respondents began construction of a chain link fence encircling a portion of the oak grove bordering Memorial Stadium. Petitioners contend that this construction violates the Court's Order dated February 9, 2007 granting Petitioners' Motions for Preliminary Injunction. That Order provided, in part, that Respondents were enjoined "*from taking any further action to implement the Southeast Campus Integrated Projects ("Project") including, without limitation, the construction of the first phase of the California Memorial Stadium Project, known as the Student Athlete High Performance Center, if such action would result in change or alteration to the physical environment within the Project boundaries . . .*" [Emphasis added.]

Petitioners argue that construction of a chain link fence around the oak grove constitutes a "change or alteration to the physical environment within the Project boundaries". That is true. However, not every alteration to the physical environment within the Project boundaries is enjoined by the Court's February 9, 2007 Order. Rather, only those alterations to the physical environment that "implement the Project" are enjoined by that Order.

Petitioners present no evidence that a chain link fence around the oak grove has ever been part of the Project, or that construction of the fence in any

way "implements" the Project. The mere fact that some people who are opposed to the Project congregate in the area now surrounded by the fence does not mean that the fence "implements" the Project. The Court's February 9, 2007 Order did not in any way address what actions Respondents are or are not allowed to take in response to the ongoing presence of protesters in the oak grove. Nor did that Order enjoin Respondents from undertaking public safety measures they deem necessary to prevent problems from arising in or around the oak grove.

Petitioners contend that construction of the fence infringes on their constitutionally protected right of free speech. The Court notes, however, that this consolidated action involves Petitioners' claim that Respondents' Project violates the California Environmental Quality Act. Petitioners have not brought any claims based on alleged infringements of their rights of free speech or expression, or based on the construction of the fence. Quite simply, Petitioners' free speech claims are not properly before the Court based on the pleadings that have been filed in this action.

Even if Petitioners' free speech claims were properly before the Court, it is well established that property owners and governmental entities may establish reasonable time, place, and manner restrictions on the exercise of free speech. Respondents have presented evidence that the protesters' conduct violates Berkeley Campus Regulations, Section 321, which provides such time, place, and manner restrictions on public expression. (See Declaration of Victoria Harrison,

paragraphs 5-8.) The Court also notes that, based on the evidence submitted by Respondents, the protesters' conduct would also potentially appear to violate, *inter alia*, Penal Code § 626.8. Respondents have presented evidence that the protesters have been involved in at least 155 alleged legal violations at the oak grove since the protests began, resulting in 98 arrests or citations. Those alleged violations include trespass, assault with a deadly weapon, and robbery. (See Declaration of Victoria Harrison, paragraph 5.) Therefore, even if Petitioners' free speech rights were properly before the Court, the Court would not be inclined to find, based on the present state of the evidence, that Respondents' construction of the fence violated those rights.

However, as noted above, Petitioners' pleadings have not asserted any claims based on their free speech rights, nor did the Court's February 9, 2007 Order address that issue. Therefore, the Court is not making any ruling as to whether or not the protesters can remain in the oak grove, or whether or not those who support the protesters can continue to supply them with food, water, and other necessities. The Court is simply finding that Respondents' recent construction of the chain link fence does not violate the terms of the Court's February 9, 2007 Order.

August 30, 2007
Date

Barbara J. Miller
Barbara J. Miller
Judge of the Superior Court