

October 17, 2013

BY E-MAIL

San Francisco Office
Office for Civil Rights
U.S. Department of Education
Old Federal Building
50 United Nations Plaza, Room 239
San Francisco, CA 94102-4102

Dear Mr. Zeidman:

I am writing to appeal the decision of the Office of Civil Rights to close my complaint (case no. 09-09-2145), which was sent in a letter to me dated Aug. 19, 2013. I believe that the decision was not at all justified, for the following reasons:

1. The events that your letter states were part of my complaint are both incorrect and incomplete

1.1. Your letter attributed five allegations to me

According to your letter, I made five separate allegations that were considered in your investigation, two of which were made in the complaint itself, which was filed on June 25, 2009, and three of which were made to you after you began investigating the complaint in March 2011. Here is how you portrayed these five alleged allegations in your letter to me:

- **Allegation 1:** "First, the complaint alleged that an event in January 2009 entitled 'A Pulse on Palestine,' that included a film and a panel discussion between two external guest speakers that was moderated by a University professor created a hostile environment for Jewish students at the University."
- **Allegation 2:** "Second, the complaint alleged that a 'teach in' entitled 'Understanding Gaza,' that was scheduled to take place in March 2009 'will undoubtedly be highly offensive and hurtful to many Jewish students on our campus.' The complaint alleged that the teach-in will be a 'one-sided politically motivated event in which both speakers will undoubtedly vilify and demonize the Jewish State.'"
- **Allegation 3:** "After the complaint was filed, you further alleged that the University's sponsorship of a program that was scheduled to take place in April 2010 entitled "Costs of War on Israeli Society: Two Unheard Perspectives" would be 'deeply offensive and hurtful to many Jewish students on our campus.' "
- **Allegation 4:** "You alleged that you sent a 'strictly informational' e-mail to the

University to make the University aware of the effect that an event, entitled 'Truth and Consequences of Israel's Gaza Invasion,' scheduled to take place on May 10, 2012 [sic - the event was scheduled to take place on May 12, 2010] and sponsored by a student organization, would have on Jewish students."

- **Allegation 5:** "Finally, you alleged that the University failed to respond promptly and effectively to several reported incidents concerning anti-Semitic graffiti on campus."

1.2. Your statement of my allegations is incorrect

Although I will dispute below your characterization of Allegations 1, 2, and 5 above, I do affirm that in my original 6/25/09 complaint I discussed the January 2009 event "A Pulse on Palestine" (Allegation 1) and the event "Understanding Gaza," which was scheduled to take place in March 2009 (Allegation 2), and I affirm that after my complaint was opened for investigation I sent emails to your office on 3/21/11, 4/15/11, 5/8/11, and 11/30/11, each entitled "more information relevant to my case (09-09-2145)," and each alleging that University officials had not dealt appropriately with incidents of antisemitic graffiti (Allegation 3).

However, while it is true that I wrote emails to UCSC administrators on 4/16/10 and 5/10/10 regarding the events you mentioned in Allegations 3 and 4 respectively -- emails which you quote from in your letter to me -- I dispute the fact that I ever forwarded these emails to your office, and I deny that I ever asked that you add these events to my case. In other words, *Allegations 3 and 4 were never alleged by me to your office.*

Indeed, since the event that you alleged I complained about in Allegation 3 was cancelled after I had written an email to University administrators about the problematic nature of Cowell and Oakes Colleges sponsoring the event on 4/16/10 (almost a year before you opened your investigation of my complaint), and the event that you alleged I complained about in Allegation 4 was a wholly student-sponsored event and did not have any official University sponsorship, there would have been no reason for me to add these allegations to my case, since they were not relevant to the issues I had raised in my original complaint.

Given that I did not send you the emails you quoted in the two allegations which you falsely attributed to me, I can only assume that my emails to the University about these two events were forwarded to your office by a UCSC administrator, and that you wrongly attributed them to me and incorrectly presumed that I wanted these allegations investigated as part of my complaint. Not only was your presumption incorrect, but I believe that the improper addition of these two false allegations to my case served to weaken my overall complaint and contributed to its dismissal.

1.3 Your statement of my allegations is incomplete

Moreover, not only were two of the five allegations (40%) that you cited in your letter as

the basis for your investigation never alleged by me to your office, but at least three other allegations (besides those concerning antisemitic graffiti) that I specifically told your office were relevant to my complaint and/or asked your office to add to my complaint after your investigation of it was launched, were never acknowledged in your 8/19/13 letter to me and presumably never considered as part of your investigation into my complaint. All of them focused on university-sponsored events or incidents that occurred after your investigation had already begun and that I believed (and individual students confirmed) contributed to a hostile environment for Jewish students at UCSC:

1.3.1. "A Teach in on Islamophobia" - 6/1/11

I sent you two separate emails regarding the university's response to an event that took place on June 1, 2011 entitled "A Teach in on Islamophobia: Between the War on Terror and Arab Revolution."

On 6/12/11, I sent an email to Laura Welp and Jenny Moon, whose subject heading was "more information relevant to my case (09-09-2145), and which began with the sentence: "I wanted to apprise you of another recent event at UC Santa Cruz that I feel gives further evidence of the hostile environment for Jewish students that has been created by university faculty and administrators on my campus."

I pointed out in my email that the "Teach in on Islamophobia," a two-person panel discussion which was advertised widely via university list serves by UCSC literature professor Christine J. Hong, was sponsored by two official UCSC academic units - the Asian Diasporas Research Cluster of the Institute for Humanities Research and the UC Center for New Racial Studies -- as well as by several student groups and a community group, all known for hosting virulently anti-Israel events. I also noted that two of the organizations, the student group Committee for Justice in Palestine and the Resource Center for Non-Violence, were both co-sponsors of the January 2009 event "Pulse on Palestine," which was at the heart of the primary allegation in my original complaint. Furthermore, I wrote that several Jewish students had expressed their concern to me that this departmentally-sponsored event would include a demonization of the Jewish state and its supporters.

My email to your office also included a description of this departmentally-sponsored event, which I attended, and I documented the following:

- UCSC Literature Professor Hong, who introduced the event, made reference to my Title VI complaint and implied that it contributed to Islamophobia and a climate of "fear and hostility when it comes to critical discourse on Palestine."
- Both of the event's panelists blamed Israel and American Zionist organizations and individuals for contributing to Islamophobia in order to silence all criticism of Israel.
- Snehal Sengavi, one of the two panelists, used language that demonized and

delegitimized the Jewish state and denied Jews their right to self-determination, falsely alleging that Israel is a "colonial settler state" based on a Zionist ideology that promotes "ethnic cleansing" and "apartheid," calling Gaza an "open air concentration camp," and denying that Zionism is in any way connected to Judaism. Furthermore, Sengavi suggested that anyone who challenged these "truths" is engaging in Islamophobia and racism.

- At the event there was a large table containing material advertising and promoting the U.S. Boat to Gaza, one of the boats participating in the "Freedom Flotilla II," whose goal was to "end the blockade of Gaza and the illegal occupation of Palestine." (The main organizers of Flotilla II were the IHH (Turkey), ECESG (Europe), and the Free Gaza Movement (America), groups affiliated with radical Islam, primarily the Muslim Brotherhood, and/or the radical left, all with ties to terrorist organizations including Hamas, which calls for the murder of Jews and the destruction of Israel). Sitting behind the table was Debra Ellis, the UCSC administrator responsible for coordinating educational events at Cowell College -- the same administrator who had organized the Cowell College-sponsored "Pulse on Palestine" event in Jan. 2009. Ms. Ellis was giving out a letter she had written encouraging students to: a) go to the official U.S. Boat to Gaza website; b) endorse the effort to launch a U.S. boat to Gaza; c) write "letters to Gaza" that would be transported on the boat; d) write federal, state and city representatives, whose names and contact information were attached to the letter, and encourage them to endorse the campaign.

In my email to your office, I argued that this event, which bore the sponsorship of at least two official academic units as well as major participation from at least one UCSC faculty member and one administrator, could not help but contribute to the hostile environment for Jewish students at UCSC. In particular, I contended that the event gave academic and institutional legitimacy and approval to the following:

- student and community organizations that have hosted antisemitic events and fomented anti-Jewish animus at UCSC, which have in turn resulted in the intimidation and harassment of Jewish students;
- a demonization and delegitimization of the Jewish state and American Jews who identify with Zionism or Israel, including Jewish students at UCSC, with rhetoric that meets the working definition of antisemitism accepted by the U.S. Department of State;
- campaigns to harm the Jewish state, such as the U.S. Boat to Gaza, and organizations directly or indirectly linked to terrorist actions against Jews and the Jewish state;
- the labeling as "Islamophobic" and "racist" -- with an implicit vilification -- of any individual or group that attempts to discuss or address efforts to harm the Jewish state or Jews, including efforts to protect Jewish students at UCSC from

harassment and intimidation. Jewish students at UCSC will now find it extremely difficult, if not impossible, to speak up about their experiences of anti-Semitic harassment and intimidation on campus, lest they, too, be labeled "Islamophobic" or "racist."

On 7/5/11, I sent an email to Laura Welp and Jenny Moon, whose subject heading was "more information relevant to my case (09-09-2145)," in which I documented a correspondence between the Zionist Organization of America (ZOA) and UCSC regarding the June 1st event "Teach-In on Islamophobia." I wrote, "I believe that this letter exchange is relevant to the claims made in my Title VI complaint."

The correspondence, which I attached to my email to your office, consisted of three letters from ZOA to UCSC Chancellor Blumenthal (dated 6/7/11, 6/23/11, and 6/24/11) and a response to ZOA from UCSC Counsel Carole Rossi, dated 6/27/11. I pointed out that each of ZOA's three letters had raised serious and legitimate concerns about whether UCSC had participated in conduct that may well violate U.S. criminal laws. In her response letter to ZOA, Ms. Rossi rationalized and defended the conduct of the university staff who participated in the event, denied the university's culpability in illegal activity, and was not willing to investigate the matter further.

I wrote in my letter to your office that I believed the university's dismissive response to the serious concerns raised by ZOA to be directly relevant to the claims made in my Title VI complaint:

"The complaint alleges that UCSC has engaged in a pattern of conduct that minimizes and whitewashes concerns affecting Jewish students, thereby helping to create a hostile environment for them. Ms. Rossi's defense of the June 1st event in general, as well as her specifically lauding the faculty organizer of the event and condoning the behavior of a university administrator who used university property and a university-sponsored event to promote a campaign designed to harm the Jewish state, is further evidence of the university's insensitivity to Jewish students at UCSC and its disregard of Jewish students' concerns."

I further suggested that Ms. Rossi's dismissive response "conveyed a lack of interest in and sensitivity to how this anti-Israel conduct would affect Jewish students, especially when the conduct was promoted by a professor, and undertaken by a university administrator at a program sponsored by UCSC."

I concluded my email to you by writing:

"I believe the administration's response to ZOA's letters is more evidence of a pervasive and persistent pattern of whitewashing and even condoning anti-Israel conduct, which helps fuel a hostile environment for Jewish students. I hope you will consider this as additional evidence in support of my Title VI claims."

I know that both of my emails to your office were received by you, as within a day of my sending them Ms. Welp wrote to me thanking me for them. For example, on 6/13/11 Ms. Welp wrote in a reply message to my email of 6/12/11: "Thank you for this additional information. We appreciate it. Please keep us apprised of any additional developments you feel should be brought to our attention in this investigation."

Given the relevance of this additional allegation to my original complaint in so many of its aspects, it is astonishing and distressing that you did not acknowledge this allegation in your 8/19/13 letter to me, nor, apparently, did you investigate it as part of my complaint.

1.3.2. "Between Two Worlds" - 11/16/11

On 12/29/11, I sent to Laura Welp and Jenny Moon (copying you) an email whose subject heading was "more information relevant to my case (09-09-2145)." That email began with the sentence, "I would like to add the following to my Title VI complaint:".

My email contained a description of the troubling interaction between UCSC Jewish students and College and University administrators about an event sponsored by Colleges 9 and 10 that featured a screening of the film, *Between Two Worlds*, followed by Q & A with the filmmakers, Deborah Kaufman and Alan Snitow. The facts I documented in my email included the following:

- About a month before the event, a Jewish UCSC student (hereafter known as Student X), who had seen the widespread publicity for the event, expressed to me his concern about the impact this event would have on the pro-Israel Jewish community on campus. He knew that the film focused on in-fighting in the Jewish community, particularly between Jews who support Israel and those who seek to harm it through boycotts and other means, and that the film paints pro-Israel Jews such as himself as extremists who are seeking to silence legitimate criticism of Israel. The student was particularly upset that the event was solely sponsored by two UCSC colleges, both well-known for sponsoring anti-Israel events and for ignoring student complaints about them. Student X felt that College administrators were using the film as a way to marginalize and silence pro-Israel Jewish students who were critical of College administrators for misusing the University to promote their own anti-Israel political agenda.
- About two weeks before the event was to take place, Student X initiated a correspondence with Wendy Baxter, Director of Academic and CoCurricular Programs for Colleges 9&10, which was copied to Colleges 9&10 Provost Helen Shapiro and to UCSC chancellor George Blumenthal. In a series of four emails, the student explained that he believed the screening of the film *Between Two Worlds* would delegitimize the serious concerns of some Jewish students and incite further hostility towards them, and he requested that the Colleges remove their names and support from the event. In her responses to him, Ms. Baxter wholly ignored Student X's concerns, defended the right of Colleges 9&10 to

screen such a film, and refused the student's request to remove the Colleges' names from the event. At least two other Jewish UCSC students who had watched the movie, one of them an observant Jew, sent emails to Ms. Baxter echoing Student X's concerns and adding some of their own -- including the belief that the movie vilifies observant Jews -- and asking that Colleges 9&10 remove their names and sponsorship from the event. In each case, Ms. Baxter responded to them as she had previously.

- Three days before the event was to take place, Student X emailed to Ms. Baxter and copied Provost Shapiro and Chancellor Blumenthal a petition signed by 70 UCSC students, which read:

“We, the undersigned, are appalled that Colleges 9 and 10 are sponsoring the screening of the film "Between Two Worlds"--a film that falsely portrays Jews who support Israel as extremists seeking to stifle free speech and all criticism of Israel. We believe the screening of this film is intended to vilify, delegitimize, and silence many Jewish students who feel that the campus climate is hostile towards them because they identify with Israel. Not to mention, the deeper and more disturbing messages in the film seem to state that an adherence to many traditional Jewish values is antiquated and of little or no use to “modern” Jews. Such an obvious slap in the face of the Jewish community is hard to ignore. The fact that residential colleges, including Colleges 9&10, support such positions and the incitement of hostility by sponsoring this and similar events which demonize and delegitimize Israel and Jewish students on campus who support Israel is horrifying to say the least. As UCSC students, we support the right of all students to stand up for what they believe in, and we find it highly inappropriate for a College to portray Jewish supporters of Israel as extremists and Jewish values as antiquated.”

In her emailed response to the petition, Ms. Baxter once again did not address the serious concerns of the 70 students who signed the statement, but rather reiterated the Colleges' right to show the film.

- Two days before the event, UCSC Associate Chancellor Ashish Sahni wrote the following in an email to Student X: "You may also want to use <http://reporhate.ucsc.edu/> to register your complaint regarding Colleges 9/10 event that you have copied Chancellor on in your e-mails." That day, the student filed an on-line hate/bias report about the event.
- One day before the event, Student X sent an email directly to Chancellor Blumenthal and Provost Shapiro, asking if they supported Wendy Baxter's refusal to rescind Colleges 9&10's sponsorship of the *Between Two Worlds* event. Vice Chancellor Sahni responded on behalf of Chancellor Blumenthal, supporting Ms. Baxter's position and reiterating his suggestion that Student X should fill out a hate/bias complaint about the event. In an email copied to Chancellor Blumenthal

and Provost Shapiro, Student X replied to Mr. Sahni that he had indeed already filed a hate/bias report.

- Some of the students who had signed the petition, including the three Jewish students who had corresponded with administrators about the event, attended the screening of *Between Two Worlds* and the post-film discussion with the filmmakers. I spoke with four of them, who all felt that their concerns were well founded, that the event delegitimized Jews like themselves who support and identify with the Jewish state, and that it was an attempt to silence their voices.
- At the conclusion of the event, Student X expressed his feelings to Provost Shapiro, who was also present that evening. She defended the event and said that she saw nothing wrong with it. After speaking with Student X, Provost Shapiro, who was at the time a member of the Santa Cruz Hillel's board of directors, talked with Hillel Executive Director Samuel Krentzman, who was also in attendance at the event. Immediately afterwards, Mr. Krentzman approached Student X, asked him if he had filed a hate/bias complaint about the event, and expressed displeasure when Student X answered in the affirmative. A few days later, Student X was informed that at a recent meeting of the Hillel board of directors his hate/bias complaint had been discussed. In addition, Student X informed me that a few students who were active with the campus Hillel also had asked him about his complaint and why he had filed it, even though he had not shared with them the fact that he had done so. Student X told me that he felt his privacy had been egregiously violated and he was very upset. Believing that Provost Shapiro had inappropriately shared information with the Hillel leadership about his having filed a hate/bias report, on December 2 Student X sent an email to the Provost, which he copied to Chancellor Blumenthal and to other top UCSC administrators. In that email, he asked Provost Shapiro why she had shared his confidential information with other Hillel board members and expressed feeling "extremely disrespected and violated" at the fact that his hate/bias report had not been kept confidential. Two days later, Provost Shapiro responded to the student by email, denying that she had revealed confidential information to the Hillel Board but affirming that she had shared with them that it was her understanding that hate/bias reports had been filed.
- On December 14, I was forwarded an email containing the most recent monthly newsletter of filmmakers Deborah Kaufman and Alan Snitow, following the progress of the national tour of their film *Between Two Worlds*. Under the heading, "The construction of a McCarthyite network inside the Jewish community," the filmmakers complain about Jewish groups receiving "massive funding...that oppose any criticism of Israel," and imply that this is what happened at UC Santa Cruz. (The email later appeared on-line as part of the filmmakers' website). Kaufman and Snitow wrote:

"Between Two Worlds encountered this [McCarthyite] network at UC Santa Cruz where a group petitioned the university not to sponsor a

screening of our film. The would-be censors are connected to a larger campaign trying to use the U.S. Civil Rights Act to silence debate, claiming films like ours create a hostile environment for students. The screening took place as scheduled, was a big success, and the film got a great review in the Jewish student magazine. But the University Chancellor and legal department have had to deal with a 'bias complaint' for showing the film!"

I wrote in my email to you that I believed that Colleges 9&10 administrators inappropriately shared with the filmmakers the fact that Jewish students had submitted a petition and filed a hate/bias report regarding the Colleges' sponsorship of the film, and as a result, these students were being further vilified and demonized via email and the internet.

I summarized my allegation in this way:

"I believe that UCSC College administrators sponsored an event intended to delegitimize and silence students (and faculty like myself) who have been vocal about the harmful effects of the anti-Israel bias of professors and administrators (including at Colleges 9&10) on Jewish students. Colleges 9&10 administrators and other UCSC officials ignored the multiple complaints they received from students prior to the event and their pleas to have the Colleges remove their sponsorship. (It's important to point out that at no time did the students ask that the event be canceled, only that it not bear the official sponsorship of the University). In addition, at least one University administrator inappropriately revealed the fact that hate/bias complaints had been filed about the event, and may also have revealed the name of a student who had filed one."

I concluded my email to you by writing:

"These incidents, which target Jewish students who identify with the Jewish state, appear to be retaliatory in nature and have undoubtedly contributed to the hostile environment that many Jewish students feel at UCSC. I believe they are appropriate for inclusion in my Title VI complaint."

(The full email correspondence between the three Jewish students and College and University administrators, as well as the student petition with 70 signatures, was appended to my email to your office).

On 1/26/12, almost a month after I had sent the previous email with my allegation about this event and UCSC administrators' inadequate response to multiple student complaints about it, I had not received confirmation that my email had been received by your office. Therefore I sent an email to Laura Welp and Jenny Moon asking if my email had been received by them, and Ms. Welp responded the next day, writing, "We did, in fact receive your December 29, 2011 email and the accompanying attachments."

On 1/3/13, I sent an email to Ms. Welp and Ms. Moon documenting the correspondence between Student X and the UCSC Dean of Students, Alma Sifuentes, regarding the hate/bias complaint that Student X had filed on 11/15/12 in connection with the upcoming Between Two Worlds event presented by Colleges 9&10. On his hate/bias complaint, Student X had indicated that he wanted to speak with the Dean of Students about the matter. Although Dean Sifuentes contacted Student X on the following day, a few hours before the event, she wrote: "I would like to schedule time to meet to discuss your concerns with the film screening. Lucy [the Dean's assistant] will follow up to schedule a meeting." That follow-up email to Student X was not sent until more than three months later, on 2/22/12, a few hours before Student X was to speak about his experiences of antisemitism at UCSC as part of a panel discussion on campus antisemitism in the Stevenson College Core class.

It is important to point out that Colleges 9&10, which are the focus of this allegation, were also the focus of Allegation 2 in my Title VI complaint for similarly refusing to remove their sponsorship of an event, "Understanding Gaza," even after numerous students and a faculty member had complained to the same College administrator, Wendy Baxter, and other University administrators, arguing that such an event would contribute to a hostile environment for Jewish students and that it was highly inappropriate for Colleges 9&10 to be sponsoring it.

Once again, an allegation that was clearly relevant to my original complaint in so many of its aspects was inexplicably not mentioned in your 8/19/13 letter to me, and apparently not investigated as part of my complaint.

1.3.3. "UCSC Feminist Studies Class"

On January 4, 2013, I sent to Jenny Moon and copied to Laura Welp and you an email whose subject heading was "UCSC Feminist Studies class relevant to my case (09-09-2145)," and the same day received a confirmation email from Ms. Moon stating, "Thank you for putting this information together." In my email, I forwarded the statement of a Jewish student in a Feminist Studies class on race and gender. In her statement, the student expressed feeling very disturbed by the anti-Zionist nature of the readings and some of the lectures in that class, writing that she "was shocked to find Zionism explicitly described as synonymous to racism in one of my first classes," that the class was "given texts equating Zionism to colonialism with no articles resembling an unbiased or pro-Israel view," and that she had "never felt as hurt and lost as in this class." I also informed you that the student in question was not willing to file a complaint about the course or the professor, because she believed that doing so would hurt her academically.

In addition, I attached to my email the syllabus for the Feminist Studies class, a table of contents for the course reader, and four articles from the course reader, the only ones in the reader that dealt with Zionism, Zionists and Israel, with those sections of the articles that I believed promoted an anti-Zionist agenda and/or anti-Zionist political activism highlighted. I also summarized the articles as follows:

- "Meeting Asian/Arab American Studies: Thinking Race, Empire, and Zionism in the U.S." - The authors argue that anti-Zionism, like anti-racism and anti-imperialism, should be embraced as a legitimate project of both Asian American and Arab American studies.
- "The Forgotten "-ism:" An Arab American Women's Perspective on Zionism, Racism and Sexism" - The authors interviewed Arab American women activists about how "Zionist racism affects our lives in America", and conclude that Zionism and Zionists are the source of the marginalization and oppression of Arab women in America and call for "igniting a radical, transnational feminist movement fighting for global, national and social justice".
- "Palestine Statement: Justice for Palestine: A Call to Action from Indigenous and Women of Color Feminists" - 11 anti-Zionist feminist academics (including 2 UCSC professors) who visited "Palestine" issue a statement calling for the boycott of Israel.
- "Palestinian Women's Disappearing Act: The Suicide Bomber Through Western Feminist Eyes" - The author critiques Western feminist representations of female Palestinian suicide bombers as victims of their own Palestinian culture and instead argues that female suicide bombers are "political agents" engaged in (legitimate) political violence against the Israeli oppressor.

I argued that these four articles were "unabashedly anti-Zionist or anti-Israel, three of them encourage anti-Israel activism, and one of them, arguably, condones terrorism against Israel." I suggested that besides corroborating the student's perception about the anti-Zionist nature of the course readings, they also helped to show "how deeply embedded an antipathy towards Zionism, Zionists and Israel is in the curriculum of certain disciplines in the university, such as Women's Studies, making it extremely difficult, if not impossible, for most students to come forward and express their feelings."

As you know, my Title VI complaint included several examples of faculty who had used their classrooms or class resources to promote their own animus towards the Jewish state, and I documented how this, in turn, had contributed to a hostile environment for many Jewish students at the university. Indeed, this was an important aspect of my Title VI complaint. Nevertheless, in your 8/19/13 letter you ignored my third new allegation, which spoke directly to this issue, and presumably you did not investigate it.

Even though your office sent me return emails acknowledging receipt of, and thanking me for, my letters providing these additional allegations, you chose to ignore all three of them in your 8/19/13 letter to me. I firmly believe a consideration of these three additional allegations would have strengthened my case considerably. Moreover, the fact that you did not include these three additional allegations in your letter to me gave the mistaken impression that my complaint was based on a paucity of events/incidents, some of which -- namely, those allegations which you falsely attributed to me but which I

never made -- were easily dismissed by you.

2. The OCR's characterization of my complaint is false, inaccurate and misleading

In your 8/19/13 letter's description of the five allegations that you allege I made to you (two of them incorrectly so), you mischaracterize my complaint in two egregiously incorrect and misleading ways, which I believe has led not only to the dismissal of my complaint, but to false and harmful public perceptions about my complaint and about me and others who have invoked Title VI in order to protect Jewish students from a longstanding and pervasive pattern of discrimination.

2.1. You falsely imply that my complaint is about the impact of events and incidents, per se, on Jewish students

First, you imply that my complaint claims that the events or incidents involved in my purported allegations, per se, have created a hostile environment for Jewish students at UCSC. However, at no time did I claim that an event or incident, per se, created a hostile environment for Jewish students. Rather, my complaint has always been based on the following two arguments, which I stated specifically and unambiguously in my original complaint, as well as in my correspondence with you following the submission of my complaint:

2.1.1. My complaint's primary focus is on the University's sponsorship of events

The primary focus of my original complaint was on "professors, academic departments and residential colleges at UCSC" that "promote and encourage anti-Israel, anti-Zionist and anti-Jewish views and behavior...in UCSC classrooms and at numerous events sponsored and funded by academic and administrative units on campus," and its enormous and deleterious impact on Jewish students. In particular, I claim that University-sponsored and promoted discourse and behavior "is tantamount to institutional discrimination against Jewish students and has resulted in their intellectual and emotional harassment and intimidation, which has adversely affected their educational experience at the University."

At no time in my original complaint did I ever state, or even imply, that anti-Israel or antisemitic views and behavior themselves created a hostile environment for Jewish students; rather I wrote, again and again, that I believed it was the official university sponsorship or promotion of such rhetoric or behavior -- in the classroom or at departmentally or College-sponsored events -- that created the hostile environment for Jewish students.

2.1.1.1. You mischaracterized Allegation 1

With respect to Allegation 1 above, you wrote in your 8/19/13 letter to me:

"First, the complaint alleged that an event in January 2009 entitled 'A Pulse on Palestine,' that included a film and a panel discussion between two external guest speakers that was moderated by a University professor created a hostile environment for Jewish students at the University."

That is simply untrue. In fact, in my original complaint I took great pains to indicate that my allegation regarding "A Pulse on Palestine" was *not* about the event itself, but rather about the fact that the event was being sponsored, funded and promoted by a residential college. For example:

- The title of the section in my complaint dealing with this event (pgs 3 - 7) was "Cowell College's Sponsorship of the Anti-Semitic 'Pulse on Palestine' ."
- Two of the three subsections of my complaint dealing with "Pulse on Palestine" were about efforts to get Cowell College to remove its sponsorship of the event: "1. My Efforts to Get the College to Withdraw its Sponsorship of the Event" (pg. 3) and "2. Jewish Students' Efforts to Have Cowell College Rescind its Sponsorship of the Event" (pg. 4). (The third subsection presented evidence of the antisemitic nature of the Cowell College-sponsored event).
- Here is what I wrote in my complaint about the reason for my allegation, always emphasizing that it was Cowell College's sponsorship of the event, and *not* the event itself, that was at issue:

"I was deeply concerned about Cowell College sponsoring this event...I understood that this event was not going to educate students about the complicated situation in the Middle East. It was a platform for anti-Israel propaganda. But because Cowell College was sponsoring it, the event would be perceived by students and members of the University community as giving legitimacy to the demonization of the Jewish State and those who defend it.

"[In sharing my concerns with College administrators] I emphasized that many Jewish students would be deeply offended by the College's sponsorship of an event so clearly intended to demonize the Jewish State, and by the College's partnership with organizations who had a history of anti-Semitic activity.

"I also pointed out that Cowell College had never, and most likely would never, sponsor an event that was homophobic or racist, out of deference to the feelings of students who would be rightfully offended by such an event. Jewish students, however, were not being afforded the same respect and sensitivity, which was discriminatory."

- The student testimony and petition about this event, which were an important focus of your investigation, also emphasized that the problem was not the event

itself, but rather the College's sponsorship of the event. Included in my complaint (pg. 5) was an email from a Jewish student to Cowell College administrators before the event was to take place. In relevant part, she wrote:

"While I respect the right of student groups to host politically controversial events, I believe that Cowell College has made a grave mistake in sponsoring A Pulse On Palestine...Cowell's sponsorship of this event is more than hurtful, it's absolutely unsettling. My trust in UCSC as a non-discriminatory academic environment has been damaged."

In addition, the petition, signed by 90 Jewish students simply requested that Cowell College not "sponsor the event A Pulse on Palestine because it is politically biased and discriminates against the Jewish student population"; the petitioning students never asked that the event itself be cancelled, nor implied that the event itself was discriminatory.

2.1.1.2. You mischaracterized Allegation 2

With respect to Allegation 2 above, you wrote in your 8/19/13 letter to me:

"Second, the complaint alleged that a 'teach in' entitled 'Understanding Gaza,' that was scheduled to take place in March 2009 'will undoubtedly be highly offensive and hurtful to many Jewish students on our campus.' The complaint alleged that the teach-in will be a 'one-sided politically motivated event in which both speakers will undoubtedly vilify and demonize the Jewish State.'"

Your characterization of my allegation is both inaccurate and misleading.

Once again, in my own description of my allegation regarding the "Understanding Gaza" event in my original complaint (pgs. 7 - 9), I make perfectly clear that the issue is not about the hurtful, offensive, biased and politically-motivated nature of the event, but rather about the sponsorship of such an event by Colleges 9&10. For example:

- The title of the section in my complaint dealing with this event (pgs 3 - 7) was "Colleges Nine and Ten's Sponsorship of the Anti-Semitic 'Understanding Gaza'."
- Both of the subsections of my complaint dealing with "Understanding Gaza" were about efforts to get Colleges Nine and Ten to remove their sponsorship of the event: "1. My Efforts to Get the Colleges to Withdraw its Sponsorship of the Event" (pg. 7) and "2. Jewish Students Call on the Colleges to Rescind Their Sponsorship of the Anti-Semitic Program" (pg. 8).
- Although nowhere in my original complaint did I write that the event "Understanding Gaza...will undoubtedly be highly offensive and hurtful to many Jewish students on our campus," or that it would be a "one-sided politically motivated event in which both speakers will undoubtedly vilify and demonize the

Jewish state," I did document the following from an email sent by a Jewish student to Colleges 9 & 10 administrators:

"I would like to express how College Nine and Ten's sponsorship of the upcoming event 'Understanding Gaza' is hurtful and offensive to myself and the others belonging to the Jewish student population at UCSC...It is outrageous for Colleges Nine and Ten to create a precedent for UCSC to sponsor politically-motivated, imbalanced, and implicitly racist events such as "Understanding Gaza." Please reconsider College Nine and Ten's sponsorship of this event as it violates UCSC's supposed standards of academia and community." (pgs. 8 - 9)

The student who wrote this email makes quite clear that what she is upset about is the *colleges' sponsorship* of a "hurtful," "offensive," "politically-motivated," "imbalanced," and "implicitly racist" event, not the event itself.

Not only have you misquoted my complaint, but you have used that misquote to falsely and misleadingly imply that my allegation is about the event itself and not about Colleges 9&10's sponsorship of the event, a fact which, astonishingly, you never even mention in your letter.

2.1.1.3. You ignored my subsequent correspondence with your office warning against mischaracterizing my complaint

Furthermore, in January 2011, after having submitted my complaint, but two months prior to your opening it for investigation, I sent to Michael Hing, an attorney in your office, the following email:

From: Tammi Benjamin <tbenjami@ucsc.edu>
Date: January 3, 2011 2:46:06 PM PST
To: Michael Hing <Michael.Hing@ed.gov>
Subject: Fwd: U.S. Department of Education, OCR

Michael,

One more thing: I just wanted to reiterate and emphasize that my complaint is not about the event per se, but rather about the university's sponsorship and promotion of the event, which is what I believe has caused a hostile, discriminatory environment for Jewish students at UCSC.

Thank you,

Tammi

Clearly, even before my complaint was opened for investigation, I was concerned about

the possibility of my complaint being misconstrued as focusing on specific events and incidents rather than on the university's sponsorship and promotion of these events. Nevertheless, in your 8/19/13 letter you never once mention that the university's sponsorship and promotion of events was the main focus of my complaint. Rather, you falsely, inaccurately and misleadingly implied that my complaint was only about specific "anti-Israel" events and incidents and their impact on Jewish students, thus severely weakening my complaint and contributing to your dismissal of it.

2.2. You falsely characterized my allegation regarding antisemitic graffiti

2.2.1. You ignored my focus on the anti-Jewish double standard of UCSC administrators with respect to antisemitic graffiti

With regard to my allegation of antisemitic graffiti on campus, one instance of which I mention in my original complaint (on pgs. 22 - 23) and two instances of which I mention in emails sent to your office on 3/21/11, 4/15/11, 5/8/11, and 11/30/11, you state in your 8/19/13 letter that I allege "that the University failed to respond promptly and effectively to several reported incidents concerning antisemitic graffiti on campus." That is simply untrue. Rather, in each of the three instances mentioned, I claimed that the University did not respond to each instance of antisemitic graffiti with the same immediacy and forcefulness as it had treated other documented cases of bigoted graffiti which targeted other minorities, and in each of the three incidents I provided an example of the University responding publicly, immediately and forcefully to cases of bigoted graffiti targeting other ethnic minorities. In other words, *my allegation was that the University was applying a double standard when it came to anti-Jewish graffiti, and it was this double standard which caused Jewish students to feel discriminated against by University administrators.*

2.2.1.1. You mischaracterized the first incident of antisemitic graffiti

On pages 22 – 23 of my original complaint, I prefaced a description of the first instance of graffiti with the following:

"The double standard that UCSC applies to the detriment of Jewish students recently played out in April 2008, when anti-Semitic graffiti defaced the hallway outside of a Community Studies classroom at Oakes College. A picture was drawn on the wall with black permanent marker, depicting a plane flying into what appeared to be the Twin Towers, with a large Jewish star between them. Underneath the towers was the number '666.' "

I had emailed a photograph of the graffiti to UCSC Chancellor Blumenthal, and asked him and other administrators to publicly decry the antisemitic act and label it morally reprehensible. Although the Provost of Oakes College responded to me the next day by email, writing that the graffiti was "unacceptable" and had been painted over, neither he, the Chancellor, nor any other UCSC administrator was willing to publicly label this as an

antisemitic act nor to publicly condemn it.

One week later, I wrote to Chancellor Blumenthal, reminding him of his own immediate and unequivocal condemnation of anti-African American graffiti that had defaced the campus the previous year. In response to the anti-African American graffiti the Chancellor had sent an email to the entire campus community, writing: "I want to communicate in the strongest terms possible that this type of hateful vandalism deeply disturbs many in our community and we will not tolerate such behavior...As a campus, we must reject and denounce these offensive activities." I called on the Chancellor to respond similarly to the antisemitic graffiti that had recently been discovered, and he never responded to my email.

In my complaint I noted:

"Several Jewish students expressed to me their distress at the Chancellor's double standard, given that he had publicly decried the anti-African American graffiti, but refused to do the same for the anti-Semitic graffiti. These students reported feeling discriminated against as Jews."

Since this incident happened more than 180 days before I submitted my original complaint in June 2009, I was aware that you would not investigate my allegation about it. However, I did submit to you two other similar instances of a double standard shown by university administrators towards antisemitic graffiti, that occurred after my complaint had been opened for investigation.

2.2.1.2. You mischaracterized the second incident of antisemitic graffiti

On 3/21/11, I sent a letter to Michael Hing, whose subject line was "more information relevant to my case (09-09-2145)." In that email, I noted that there had been three incidents of swastika-related graffiti at UCSC which had occurred the previous week, and that the first mention of the graffiti was on Wednesday, March 16, in a *Santa Cruz Sentinel* article about my Title VI complaint. In that article, the reporter wondered whether graffiti found in a restroom on Tuesday, -- which included the threatening message "Blood will be shed @ UCSC on 4/20/11" and was accompanied by at least two swastikas -- was in any way linked to my complaint.

I also reported in my email that on Thursday March 17th, Chancellor Blumenthal sent out an email to the entire UCSC community describing several incidents of swastika graffiti that had appeared on campus beginning on Monday March 14th. (I forwarded the Chancellor's email in my email to Mr. Hing). With regard to Chancellor Blumenthal's email, I noted: "Nowhere in the Chancellor's letter does he call the graffiti anti-Semitic or anti-Jewish, nor does he show any particular sensitivity to Jewish students, one of whom contacted me and said she found the graffiti 'really unnerving'."

Furthermore, in my 3/21/11 to Mr. Hing I wrote the following:

“Also, if you compare Chancellor Blumenthal's message about the swastikas to one that he sent out a year ago (3/1/10) after noose-related graffiti was found in a bathroom on campus (see email forwarded below), you will see a clear double standard: the email denouncing the anti-African American graffiti was sent out within hours of its discovery, whereas the one decrying the swastikas was sent out a few days later, and then only after mention of the graffiti had been made in the local newspaper, and it therefore could not be ignored. Moreover, in last year's message Chancellor Blumenthal unambiguously referred to the graffiti as racist, whereas he said nothing about the connection between the swastikas and anti-Semitism or the incredible offensiveness and hurtfulness of that symbol for Jewish members of the campus community.

“On pages 22 - 23 of my Title VI complaint, I raise the issue of the double standard applied by university administrators to anti-Semitic graffiti that appeared in 2008, and I argue that such a double standard has helped to create a hostile environment for Jewish students on my campus.”

I provided another example of the University's double standard with respect to antisemitic graffiti in an email to Laura Welp and Jenny Moon dated 5/8/11:

“The following [forwarded email] is an email that was sent to the entire UCSC community by Chancellor Blumenthal about anti-Mexican graffiti that was found in a men's restroom on campus on Friday (5/6/11). Please note that the email was sent out on the same day as the graffiti was discovered, and please compare that with the fact that when a rash of swastikas and at least one threatening message appeared on campus beginning 3/14/11, it wasn't until 3/17/11 that the Chancellor sent out an email to the campus community about it, and then only after an article mentioning the swastikas appeared in the local Santa Cruz newspaper the day before. (See my previous email below).

“I believe this is further evidence of a double standard in the administration's treatment of anti-Semitic bigotry, which contributes to the hostile environment for Jewish students at UCSC.”

As you can see, this second incident of antisemitic graffiti at UCSC was provided as evidence of my allegation precisely because it supported the claim, raised in my initial complaint, that the University had applied a double standard to how it treated antisemitic graffiti and how it treated bigoted graffiti directed at other ethnic minorities, and that this discriminatory double standard -- not the graffiti per se or the University's response to it - had contributed to a hostile environment for Jewish students.

2.2.1.3. You mischaracterized the third incident of antisemitic graffiti

In an email to Ms. Welp and Ms. Moon, whose subject line was "more information relevant to my case (09-09-2145)" and whose first line read "I would like to add the following incident and email exchange to my Title VI complaint," I provided yet a third

example of the discriminatory double standard of University administrators with respect to antisemitic graffiti and its impact on Jewish students. In relevant part I wrote:

"On November 9...a 4th year Jewish student at UCSC discovered a swastika drawn on the door of a bathroom stall in an academic building at Stevenson College, one of the 10 residential colleges at the University. Soon after, [the student] sent an email to UCSC Chancellor George Blumenthal, which included a photo of the graffiti and a request that the Chancellor make a public statement condemning the graffiti as an anti-Semitic act. (See Email #1 below).

"Later that day, [the student] received a response to his email from Assistant Chancellor Ashish Sahni, informing him that steps would be taken to remove the "offensive graffiti" but indicating that no public statement would be forthcoming from the Chancellor about the anti-Semitic graffiti. Rather, the student was directed to a generic, campus-wide message that the Chancellor had sent out earlier in the month, praising UCSC's Principles of Community and denouncing "hateful graffiti." (See Email #2 below). After receiving Ashish Sahni's response, [the student] expressed to me that he was deeply disappointed that the Chancellor had refused to acknowledge the swastika as a specifically anti-Semitic act, directed primarily at Jewish students, in light of the fact that the Chancellor had previously sent out campus-wide emails on a few occasions condemning anti-African American graffiti...

"I believe that this incident serves as further evidence of the discriminatory way in which the UCSC administration treats Jewish students and their concerns about anti-Jewish bigotry. It is quite similar to the experience that I describe on pgs. 22-23 of my Title VI complaint regarding Chancellor Blumenthal's unwillingness to publicly acknowledge and condemn a large anti-Semitic picture drawn in the hallway of an academic building at Oakes College."

I make perfectly clear in my original complaint and subsequent emails to you that all three of these incidents of antisemitic graffiti are offered not as incidents per se or examples of the university's non-responsiveness to the graffiti, but rather as examples of an anti-Jewish double standard which has had a harmful effect on Jewish students. However, not once in your 8/19/13 letter to me do you make mention of this double standard. Rather your mischaracterization of my allegation, which implies that I am wrongly claiming the administration has not responded at all to the graffiti, can't help but have weakened my complaint and contributed to its dismissal

2.3. You falsely imply that my complaint violates the First Amendment

In your 8/19/13 letter to me, you take great pains to emphasize that the OCR's enforcement of federal statutes and regulations does not violate the First Amendment, writing:

"OCR has consistently maintained that the statutes and regulations that it enforces protect students from prohibited discrimination, and do not restrict the exercise of expressive activities or speech that are protected under the First Amendment of the U.S. Constitution...In addressing allegations of harassment, OCR recognizes that in order to be prohibited by the statutes and regulations that OCR enforces, the harassment must include something beyond the mere expression of views, words, symbols or thought that a student finds personally offensive."

In other words, you are clearly suggesting that "the mere expression of views, words, symbols or thought that a student finds personally offensive" is protected under the First Amendment, and therefore cannot be "prohibited by the statutes and regulations that that OCR enforces." Furthermore, it stands to reason that any allegation which is based on "the mere expression of views, words, symbols or thought that a student finds personally offensive" will be seen by the OCR as violating expression protected under the First Amendment, and dismissed by your office.

As I have argued at length above, you have falsely and misleadingly characterized the first four of my alleged allegations -- two of which I deny ever alleging -- as being about the impact of events and incidents, per se, on Jewish students. Based on your false and misleading characterization of these allegations, it is no surprise that you would conclude that my alleged allegations are based on "the mere expression of views, words, symbols or thought that a student finds personally offensive," and you would summarily dismiss them. This indeed is consistent with your justification for dismissing my complaint:

"All these events [that are at the heart of four of my alleged allegations] constituted (or would have constituted) expression on matters of public concern directed to the University community. In the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience. In this context, the events that you described do not constitute actionable harassment."

Your justification for dismissing my complaint is very troubling for the following reasons:

2.3.1. Your implication that my complaint violates the First Amendment is incorrect

As I have argued at length above, my complaint was not at all about the effect of events or incidents, per se, on Jewish students. Rather, in those allegations that involved an event, I argued that it was the university-sponsorship and promotion of that event by faculty and administrators acting as employees of the university that contributed to the hostile environment experienced by Jewish students. As such, my allegations do not involve "the mere expression of views, words, symbols or thought that a student finds personally offensive."

On the other hand, my allegations *do* involve the potential abuse of university employment and resources to promote a personal and political agenda, an abuse which I argue (and document) has caused Jewish students to feel intellectually and emotionally harassed and intimidated and has adversely affected their educational experience at the University. Moreover, not only does the expression of university employees in the execution of their employment not have the same First Amendment protections as the same expression by non-employees, or even by university employees acting outside of the terms of their employment, such university-sponsored expression is subject to both university policy and state law, and is arguably in violation of both. (Please see Appendix 1 and Appendix 2 for the University of California policies and the California State laws which limit the expression of UC faculty and administrators).

2.3.2. Your use of the First Amendment to dismiss my case suggests that a discriminatory double standard is being employed by the OCR

Although First Amendment considerations were invoked and applied in the case of my Title VI complaint and unfairly used as grounds for its dismissal, in your office's handling of a somewhat similar complaint filed against a University of California campus less than one year after my own complaint, First Amendment considerations were not even mentioned.

On March 11, 2010, the U.S. Department of Justice invoked civil rights laws, including Title VI of the Civil Rights Act of 1964, to open an investigation of the University of California San Diego for allegations of racial harassment of black students attending that university. (Within a few weeks, your office followed suit with its own investigation of potential Title VI violations). According to the letter sent from the DOJ to UCSD:

"It has come to our attention that there have been allegations of racial harassment of black students attending school at the University of California San Diego. Specifically, according to media reports, students at the University of California San Diego ("UCSD") organized a social event off campus calling it a "Compton Cookout" and promised to expose guests to "life in the ghetto." See Larry Gordon, "Students Walk Out of UC San Diego Teach-In," *Los Angeles Times*, February 25, 2010. Additionally, it has been reported that the school also found a cardboard sign with the words "Compton Lynching" at one of the school's radio stations and that students working at the school sponsored radio station were accused of using racial slurs on the air. Finally, there was another incident involving a student hanging a noose in the campus library at UCSD."

Leaving aside the fact that at least some of these allegations were made before the facts about them became known and demonstrated that the allegedly racist incidents were grossly mischaracterized, at least three of the allegations centered around incidents which are seemingly expressions of constitutionally-protected free speech -- the "Compton Cookout," the sign bearing the words "Compton Lynching," and the "racial slurs" made by students on a radio program aired on the school-sponsored station. Indeed, on the face of it, these are classic cases of the "mere expression of views, words, symbols or thought

that a student finds personally offensive," which are protected under the First Amendment.

It is astonishing, therefore, that nowhere in the DOJ's letter to UCSD are these obvious First Amendment considerations even mentioned, let alone addressed. Nor are First Amendment considerations mentioned at all in your office's "Compliance Review" letter¹ sent to UCSD President Maryanne Fox on April 12, 2012, which contains an even clearer description of the DOJ and DOE's allegations of racial harassment and an even more compelling case for at least considering First Amendment protections of expression when investigating these allegations. Similarly, the Resolution Agreement² between UCSD and the DOJ and DOE, signed by you on 4/13/12, includes no cautionary note to UCSD administrators, warning them that in executing the many terms of the agreement they "do not restrict the exercise of expressive activities or speech that are protected under the First Amendment of the U.S. Constitution." Indeed, these omissions of First Amendment considerations are particularly surprising in light the OCR's 2003 "Dear Colleague" letter³ "clarifying OCR's enforcement standards in light of First Amendment protections."

Interestingly, not only were First Amendment considerations invoked in my complaint and wrongly used as justification for its dismissal, the exact same language regarding the OCR's commitment to not restricting "expressive activities or speech that are protected under the First Amendment of the U.S. Constitution" was used in the OCR's dismissal letters of the two other Title VI complaints filed on behalf of Jewish students at UC Berkeley and UC Irvine, which were dismissed on the exact same day as my own Title VI complaint. Moreover, the exact same language stating that some of our allegations "constituted expression on matters of public concern directed to the University community," and were therefore protected under the First Amendment, was used as grounds for dismissing allegations of all three of our complaints.

It appears that your office has a discriminatory double standard. You invoke the First Amendment for complaints alleging the harassment of Jewish students on three UC campuses -- even when, as in my case, the First Amendment clearly does not apply -- but never even mention the First Amendment in connection with a contemporaneous complaint alleging racial harassment of black students on another UC campus, despite there being strong prima facie evidence that most of the complaint's allegations "constituted expression on matters of public concern directed to the University community."

2.3.3. Disturbingly, your invoking the First Amendment to unjustly dismiss my Title VI complaint closely echoes the misleading language and spurious reasoning of several anti-Zionist Muslim and pro-Palestinian student groups and the legal, civil rights and advocacy organizations supporting them, who waged a massive targeted campaign to compel your office to dismiss my complaint.

¹ <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/09116901-a.html>

² <http://www2.ed.gov/about/offices/list/ocr/docs/investigations/09116901-b.html>

³ <http://www2.ed.gov/about/offices/list/ocr/firstamend.html>

As you are undoubtedly aware, about a year ago members of the Students for Justice in Palestine (SJP) and the Muslim Students Association (MSA) at the University of California launched a well-coordinated campaign, supported by several legal, civil rights and anti-Zionist organizations that champion Muslim and Arab rights, claiming that all three of the Title VI complaints filed on behalf of Jewish UC students were politically-motivated attempts to shut down the freedom of speech of Arab and Muslim students and "Palestinian human rights activists." In the case of my complaint, that charge was absolutely and patently false, as my allegations were wholly centered on UCSC faculty and administrators and never challenged the speech of students. Nevertheless, from the beginning of their campaign, my complaint was falsely charged with having violated the First Amendment rights of Muslim, Arab and pro-Palestinian students.

Here are some highlights of that campaign:

- On October 11, 2012, SJP West, a coalition of West Coast SJP chapters, published on their website a poster⁴ entitled "The University of California Record of Censorship," which included my picture and name, and insinuated that my having petitioned the U.S. Department of Education to "investigate 'anti-Israel' discourse at UC Santa Cruz" was an attempt to "censor students and faculty who stand up for human rights on UC campuses." Linked to that webpage was a downloadable "fact sheet"⁵ entitled "The Systematic Attempt to Shut Down Student Speech at the University of California." That sheet included the following language:

"Free speech is being attacked throughout the University of California ("U.C.") and at public and private college campuses across the country. Speech and association rights of the student groups Students for Justice in Palestine ("SJP") and the Muslim Student Association ("MSA") are being threatened by University administrators, a baseless lawsuit, and problematic Department of Education investigations. Speech activities clearly protected by the First Amendment that grapple with important political questions relating to Israel's policies are being improperly characterized as anti-Semitic. These "legal bullying" tactics must be recognized and stopped. The University of California has once again become a battleground for free speech. Stand on the right side of history and fight for students' right to speak freely and critically about important human rights issues."

The "fact sheet" specifically named my Title VI complaint as one of five federal complaints that was part of the attack on the free speech of SJP and MSA students.

⁴ <http://sjpwest.org/2012/10/11/timeline-the-university-of-california-record/>

⁵ http://sjpwest.org/wp-content/uploads/2012/10/FACT-SHEET-Shutting-Down-Student-Speech-at-U.C._fn_DISTRIBUTE.pdf

- On November 7, 2012, 23 MSA and SJP groups from California universities (including 14 MSA and SJP groups from 8 UC campuses) sent a letter⁶ to the U.S. Commission on Civil Rights decrying the "abuse of Title VI to silence political groups and marginalize Arab and Muslim students," specifically mentioning my complaint at UC Santa Cruz as one of three "baseless, Islamophobic Title VI complaints" on UC campuses. They wrote:

"The Department of Education should be protecting our rights, but its investigations of UC Berkeley, UC Santa Cruz, and UC Irvine may harm them if they are undertaken in a politicized manner under pressure from lobby groups. We are confident that the USCCR will adopt a strong position in favor of freedom of speech about legitimate political issues and that it will support us as we face a campaign that marginalizes communities that have faced intolerance, violence, and bigotry since 9/11, including on campuses."

- On December 10, 2012, the American Civil Liberties Union (ACLU) of Northern California sent a letter to your office, focusing on the Title VI complaint alleging the harassment of Jewish students at UC Berkeley. The ACLU claimed that that complaint "targets core political speech in violation of fundamental First Amendment principles." At the end of their seven-page letter, the ACLU disingenuously targeted my Title VI complaint for similar First Amendment violations:

"OCR has been investigating allegations of an anti-Semitic educational environment at UC Santa Cruz since March 2011. That investigation is based on a 29-page complaint that almost exclusively references expressive activities and campus debate about the Israeli-Palestinian conflict. That such protected free speech activities have been part of an investigation for 20 months is disturbing in view of the chilling effect that it can have on students who want to join, or continue to participate in, similar political activities in the future."

- On December 12, 2012, five pro-Palestinian legal and civil rights organizations -- Asian Law Caucus, American Muslims for Palestine, Council on American Islamic Relations-San Francisco Bay Area, Center for Constitutional Rights, and National Lawyers Guild, International Committee -- submitted an Issue Statement entitled "The Misuse of United States Law to Silence Pro-Palestinian Students' Speech,"⁷ to the United Nations Human Rights Committee. These five organizations claimed that pro-Israel organizations were abusing Title VI

⁶ http://sjpwest.org/wp-content/uploads/2012/11/UC-MSA-SJP-Letter-to-USCCR-11.8.2012-Final-Version_corrected.pdf

⁷ http://www2.ohchr.org/English/bodies/hrc/docs/NGOs/26-USHRNetwork_AsianLawCaucusCoalition.pdf

complaints as part of a coordinated campaign to trample the free speech of Palestinian “human rights” activists on college campuses, and that this campaign was creating a hostile environment for Arab and Muslim students. Furthermore, the legal group claimed that the U.S. Department of Education was complicit in this abuse of Title VI to silence pro-Palestinian voices, and they called on the U.N. Human Rights Committee to intervene. Their letter includes the following:

"The report will outline ways in which the US Department of Education is misusing Title VI of the 1964 Civil Rights Act to conduct investigations into Palestine solidarity activism on college campuses...As of December 2012, there are no less than four separate Title VI complaints being investigated by the DOE (a fifth was thrown out in 2012) that allege that speech critical of the state of Israel is anti-Semitic and creates a hostile environment for Jewish students; these complaints are against the University of California (“UC”) at Berkeley, UC Irvine, UC Santa Cruz, and Rutgers University. These government investigations have, as a consequence, significantly chilled the speech and expression of student groups who wish to draw attention to issues of major public concern."

These five organizations concluded their "Issue Statement" with a set of questions directed at the UN Human Rights Committee General, the final one asking how that official international body would ensure that Title VI and other U.S. laws are not misused in a manner that violate the "freedom of opinion and freedom of expression provisions" of Article 19, which is roughly the international equivalent of the First Amendment.

- On May 13, 2013, your office was sent a letter⁸ entitled "Pending Title VI Investigations Leading to the Chilling of Student Speech," signed by seven pro-Palestinian legal, civil rights, and advocacy organizations: American-Arab Anti-Discrimination Committee, American Muslims for Palestine, Asian Law Caucus, Center for Constitutional Rights, Council on American-Islamic Relations - California, Jewish Voice for Peace, National Lawyers Guild. These organizations wrote:

"We are concerned, however, that politically motivated complaints – specifically by those who seek to quell speech on campuses that is critical of Israeli policies – have been filed with your office. These investigations, which are detailed further below, are having the effect of chilling student speech.

“...Three complaints filed against the University of California (UC) are

⁸http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC4QFjAA&url=http://ccrjustice.org/files/2013_05_14_LTR_to_SF_OCR_w_ATTACHMENTS.pdf&ei=2IVdUo_mAsj1igK65YGYAQ&usg=AFQjCNEXvpgTkVNHfAjnS5vaZ03fgEJBjA&sig2=JP_skh-_MtNI3vxKzRTHZg&bvm=bv.54176721,d.cGE

based on the faulty premise that political speech and expressive activity critical of Israel constitute anti-Semitic harassment. All three are currently under investigation by your office.

“We are concerned that these investigations are inadvertently contravening the purposes of Title VI, which prohibits educational institutions that receive federal financial assistance from discriminating against students based on their race, color, or national origin. This law was certainly not intended to suppress constitutionally protected speech, nor is it the mission or purpose of OCR to limit this type of protected speech.

“The investigations at the University of California are causing a demonstrated chilling of student speech.”

The seven organizations requested that your office meet with them and "impacted students," so that they could "convey to your office in fuller detail the harms caused by these investigations...and hopefully work together toward an expeditious resolution of these investigations."

- On May 14, 2013, the same seven organizations that had signed the letter to your office sent the day before, sent a letter⁹ to Seth Galanter, Acting Assistant Secretary for Civil Rights of the US Department of Education, entitled "OCR Policies, Practices and Procedures That Are Violating the First Amendment Speech Rights of College and University Students." Indicating that they were primarily interested in the Title VI complaints being investigated at UC Berkeley, UC Irvine, and UC Santa Cruz, the organizational signatories stated that they were concerned "that OCR policies are being used by outside groups to stifle student speech about contentious political issues on the basis of its content," as well as that the OCR's policies "are being exploited by outside groups to violate the civil rights of the very students the DOE is charged with protecting." The letter included a false and defamatory statement about Jewish organizations that had advocated for the protection of Jewish students under Title VI anti-discrimination statute, writing:

"Indeed, these shifts [in the OCR's policy to include Jewish students under Title VI protection] and the complaints [at UC Berkeley, UC Irvine, and UC Santa Cruz] we refer to did not occur in a vacuum. They were the product of years of lobbying efforts by groups who vigorously oppose the message of student groups such as Students for Justice in Palestine and Muslim Student Unions/Associations that exist on many campuses. These lobby groups pushed for the new policies to further their goals of limiting speech on campuses that is critical of Israel".

⁹http://www.adc.org/fileadmin/ADC/2013_05_14_LTR_to_DOE_HQ_w_ATTACHMENTS.pdf

The letter's signatories urged "DOE Headquarters" to "take action to ensure OCR policies, practices, and procedures do not stifle students' speech rights" and requested that DOE "meet with impacted student groups and civil rights organizations to discuss the manner in which OCR policies and practices are impeding students' civil and constitutional rights."

The striking similarity between your false characterization of my complaint as a violation of the First Amendment and the malicious mischaracterization of my complaint by Muslim and pro-Palestinian student groups and the legal, civil rights, and advocacy groups supporting them -- all groups that have been part of a massive campaign to compel your office to dismiss my complaint -- is deeply troubling. It suggests that your invoking of First Amendment considerations in my complaint, and perhaps in the other two complaints filed on behalf of Jewish students as well, is a direct response to pressure brought by organizations who themselves have engaged in and supported the emotional, intellectual, and physical harassment of Jewish students on UC campuses.

2.4. Your mischaracterization of my complaint has led to a distorted and harmful public perception of my complaint, and will undoubtedly result in Jewish students feeling more vulnerable and less safe on university and college campuses across the country

Your false, inaccurate and misleading characterization of my allegations in your 8/19/13 letter to me, an almost identical copy of which the UCSC administration put on-line¹⁰ has fostered the public perception that my complaint is trivial and frivolous, as well as an illegitimate attempt to censor protected speech, especially of students. Even worse, your mischaracterization has been seized upon by those groups that sought my complaint's dismissal, either as justification for turning a blind eye to anti-Jewish harassment, or for its perpetration:

- A press release¹¹ issued by the UCSC administration shortly after receiving your 8/19/13 letter exploited your mischaracterization of my complaint, disingenuously reducing it to the objection to speech critical of Israel and the mere presence of antisemitic graffiti, insinuating that my allegations violate students' civil rights, and absolving themselves of any responsibility for either contributing to, or addressing, the hostile environment experienced by Jewish students at UCSC:

"A complaint against UC Santa Cruz, alleging that the campus created a hostile environment for Jewish students, has been dismissed by the U.S. Department of Education's Office of Civil Rights. The investigation, opened in March 2011, focused on two events on campus where speakers were critical of Israeli policies, on two other talks that had been planned

¹⁰ http://news.ucsc.edu/2013/08/images/OCR_letter-of-findings.pdf

¹¹ <http://news.ucsc.edu/2013/08/ocr-closure.html>

but never took place, and on several incidents of anti-Semitic graffiti...

“This campus values the free and open expression of ideas, and we diligently safeguard our students’ civil rights,” Santa Cruz Chancellor George Blumenthal said. ‘We are, therefore, pleased that these allegations have been thoroughly investigated and dismissed.’”

- On 9/3/13, SJP West, the student organization that initiated the campaign to delegitimize my Title VI complaint and demonize me (see above), put out a statement¹² that echoed your letter's false characterization of my allegations, claiming that, along with the other two Title VI complaints, mine alleged that "activism supportive of Palestinian human rights creates a hostile environment for Jewish students", implying that my complaint is "a perversion of the law and the cause of equality and justice that undergirds it," and using your false characterization of my complaint as an excuse for stepping up their campaigns to boycott the Jewish state:

"Students for Justice in Palestine (SJP) chapters on the West Coast celebrate the U.S. Department of Education’s (DOE’s) dismissal of Title VI claims against three University of California schools, UC Berkeley, UC Santa Cruz, and UC Irvine, alleging that activism supportive of Palestinian human rights creates a hostile educational environment for Jewish students...

"We view this attempt to use the Civil Rights Act to limit students’ ability to speak out for the rights of oppressed groups as a perversion of the spirit of the law and the cause of equality and justice that undergirds it. We are pleased that the Department of Education dismissed all three cases, finding that the allegations either lacked merit or were examples of speech “that a reasonable student in higher education may experience...

"[W]e are confident that the anti-Palestinian groups that filed these claims can neither successfully silence us nor present the campus community with a viable argument for Israel’s policies of occupation and discrimination. We therefore reaffirm our commitment to speak out for justice in Palestine and will continue to work towards the day that the UC system cuts its financial ties to corporations that profit from the oppression of the Palestinian people."

- On 8/28/13, the ACLU of Northern California issued a statement¹³ that not only echoed your untrue portrayal of my allegations as opposing constitutionally-

¹² <http://sjpwest.org/2013/09/03/sjp-west-statement-on-dismissal-of-title-vi-claims-at-3-uc-schools/>

¹³ <https://www.aclunc.org/blog/right-protest-protected-uc-campuses>

protected speech, but even seemed to take responsibility for influencing your decision to dismiss all three complaints, including my own, on the grounds that "the government cannot abridge the expression of political views":

"The ACLU-NC determined that these complaints [at UC Berkeley, UC Irvine, and UC Santa Cruz] were based on the constitutionally protected speech activities of students who were expressing their strong opposition to the policies of the state of Israel, speech that lies at the heart of the First Amendment. In correspondence with the Office of Civil Rights of the Department of Education, the ACLU asserted that the government cannot abridge the expression of political viewpoints, even if controversial and even if some students find the speech upsetting or offensive, especially at a public university which should be a true market place of ideas...

"The Office of Civil Rights dismissed all three complaints on the grounds that the "mere expression of views, words, symbols or thought that a student finds personally offensive" is not sufficient to violate federal civil rights laws. This important decision sends a message to universities and colleges around the country: that the campus must continue to serve its traditional role as a place where student activists can speak out strongly on controversial issues without facing discipline or arrest."

- On 8/29/13, the National Lawyers Guild (NLG) put out a press release¹⁴ on behalf of "a number of legal and advocacy groups" that were part of the campaign to pressure your office into dismissing all three of the Title VI complaints alleging anti-Jewish harassment, reporting that they are celebrating the "victory for student free speech" that resulted from the dismissal of these three complaints. Here again, these groups took as their starting point your 8/19/13 letter's false and misleading portrayal of my complaint, erroneously claiming that my complaint, along with the other two Title VI complaints, "falsely alleged" that "advocating for Palestinian human rights," per se, had created a hostile environment for Jewish students and opposed "freedom of expression." The press release concluded with the following:

"While there continue to be threats of Title VI complaints [alleging anti-Jewish harassment] against other universities, we are confident that OCR recognizes these claims as attempts to silence certain speech on Israel/Palestine, and do not present viable claims of discrimination against Jewish students."

In other words, after considering your office's dismissal of the three Title VI complaints alleging anti-Jewish harassment -- a dismissal that was unjustified, at least in my case -- these groups, all of whom strongly lobbied your office to dismiss the three complaints, are now confident that you will similarly dismiss all future Title VI complaints alleging anti-Jewish harassment. Indeed, your

¹⁴ <https://www.nlg.org/news/releases/student-free-speech>

dismissal of our complaints has undoubtedly encouraged these groups to step up their efforts to ensure that civil rights and Title VI protection are denied to Jewish students all over the country.

3. The OCR's process for collecting data to investigate my complaint was flawed; the data collected are incomplete, inadequate, and misleading; and the conclusions drawn from the data are specious.

According to your 8/19/13 letter to me, your primary reason for dismissing four of the five allegations you attribute to me -- two of them erroneously so -- is because "the events [I] describe do not constitute actionable harassment." That conclusion was based in part on your determination that "actionable harassment" had not occurred, a determination which was largely arrived at through an evaluation of the following three kinds of data collected by your office:

- The results of a survey regarding students' experiences surrounding the 2009 "Pulse on Palestine" event, which your office sent to 87 of the 91 students who had signed a petition protesting Cowell College's sponsorship of the event. You reported that your office received four responses to the surveys, with two responders stating that they believed there was a hostile environment for Jewish students at UCSC, and two responders stating that they did not feel there was a hostile environment for Jewish students at the University.
- Interviews you conducted with the only two respondents to your survey who then responded to a request for an interview, as well as a UCSC alumna who had signed the petition but did not respond to the survey. You reported that neither of the interviewees who had taken the survey felt discriminated against by the University, while the interviewee who had not taken the survey said that she felt "completely failed by my school" when the University sponsored "Pulse on Palestine," and that it was "hurtful" that the University would sponsor such events.
- Your review of a list provided by the University of the on-going campus events and conferences related to Judaism, Israel, Palestine and/or Islam that took place during the 2008-2009 academic year. You reported that of a total of 42 events held, 27 were sponsored or co-sponsored by Jewish student groups or faculty, and 15 were sponsored or co-sponsored by Muslim student groups or faculty.

Presumably, based primarily on your review of the above data, which were the only pieces of evidence you presented in your letter, you determined that there had been no "actionable harassment" in four of the five alleged allegations of my complaint, and therefore no legally sufficient basis to establish the hostile environment for Jewish students that I had claimed.

However, I believe that the conclusions you drew from the above data are specious and that these data cannot support your claim that no actionable harassment occurred, for the

following reasons:

3.1. Your sample sizes were far too small

Your sample sizes -- n = 4 for the survey respondents; n = 3 for the interviewees -- were far too small to draw any reliable conclusions about whether a significant number of Jewish students felt that professors, academic departments and residential colleges that had promoted and encouraged anti-Israel, anti-Zionist and anti-Jewish views and behavior in classrooms and at University-sponsored events created a hostile environment for Jewish students. How, for instance, does one interpret the fact that two of four respondents to the survey -- 50% --reported that there was a hostile environment at UCSC, or that one in three of those interviewed -- 33.3% -- said that she felt "completely failed" by the University? Although not conclusive, to me these data certainly suggest that there may be a hostile environment for at least some Jewish students, but to know more conclusively -- conclusively enough to determine that there was no actionable harassment and to dismiss a federal complaint -- one would be obliged to collect far more data from Jewish students. Nevertheless, you based the conclusions that led to your dismissal of my complaint, in part, on these extremely small and highly unreliable samples.

3.2. You could easily have increased the sample sizes of your respondents and interviewees, thereby making your data more reliable, but surprisingly, you chose not to.

For one thing, instead of sending out the survey to the 87 petition-signers just once, you could have sent it out to those who hadn't responded at least once or twice more, assuming that most students will not pay attention to a long survey the first time around. (In fact, when I recently asked two students whom I know had signed the petition if they had received and filled out the survey you sent, they both said that they remembered receiving it and intending to fill it out, but had forgotten about it after a while. Resending the survey could well have resulting in these two students responding to it and increasing your survey sample size).

Moreover, on two occasions you specifically asked me to send you names and current email addresses of students who had signed the petition and whom you could contact for interviews, and each time I responded with the names and current email addresses of several students who had signed the petition. The first occasion you asked me for names was not long after my complaint was opened for investigation, and in response to your request, on 5/17/11, I sent an email to Laura Welp and Jenny Moon, whose subject heading was "student contact info relevant to my case (09-09-2145)," which contained the names and current email addresses of six students who had signed the petition, and who were ready and willing to speak with you about the allegations in my complaint. I recently contacted all six of the former students on the list I had sent, and five of them indicated that they never received an email from your office requesting to interview them about my complaint. One student did receive an email from Ms. Welp on 5/27/11 stating, in relevant part, the following:

"As you may know, OCR recently opened an investigation of the University regarding allegations that the University failed to take steps in a matter consistent with the requirements of Title VI of the Civil Rights Act of 1964 to respond to notice of a then existing hostile environment (in June 2009) for Jewish students based on their actual or perceived shared ancestry or ethnic characteristics.

"We would like to interview you at some point during the summer about your experiences at UCSC. Please let me know if you would be willing to speak with us. If so, we would like to contact you later to set up a time and date that is convenient to talk, and ask that you confirm what email address or phone number we should use to reach you during the summer."

Although the student responded by email that same day indicating that he would be happy to speak with Ms. Welp, Ms. Welp did not respond to the student's email to set up an interview with him until 4/3/12, more than ten months later. In that email, Ms. Welp apologized for the delay in getting back to the student regarding an interview, stated that she was still very interested in speaking with him, and provided day and time options for the interview. The student responded with a day and time that he was available later that month, and Ms. Welp confirmed that day and time for the interview. However, a day before the interview was to take place, Ms. Welp emailed the student to say that she needed to reschedule the interview, but she failed to do so, and the student never spoke with anyone in your office.

On 2/16/12, Ms. Welp sent me an email with a list of 42 names of students who had signed the "Pulse on Palestine" petition and whom the OCR had been trying to contact, asking for my help in finding current contact information. Ms. Welp wrote, "Any help you can provide would be greatly appreciated." On 2/27/12 I sent an email to Ms. Welp and copied Ms. Moon with current emails for four of the students on the petition list. Ms. Welp responded that same day, writing: "Thank you very much! We really appreciate it." On 3/1/12 I sent an email to Ms. Welp and copied Ms. Moon with the name and email address of another student signatory, and Ms. Welp responded that same day with an email thanking me. However, when I recently contacted those five former students whose names and current email addresses I had provided Ms. Welp, all five reported that no one from your office had ever contacted them for an interview about my complaint.

In summary: at your request, I provided you with the names and email addresses of 11 students who had agreed to be interviewed by your office. Ten of them never received any communication from you. The one who did receive an email from you requesting an interview, and who responded to your email and even confirmed an interview day and time with you, was never actually interviewed because Ms. Welp cancelled the appointment and never bothered to reschedule the interview. Had your office interviewed all of the 11 students whose names and email addresses I provided, and who were all ready and willing to be interviewed by you, the sample size of your interviewees would have almost quadrupled.

The fact that you chose not to follow up on my successful efforts to find students whom

you could interview, efforts which your office had requested, strongly suggests that you were not really interested in increasing the sample size of Jewish students you interviewed before determining that there was no "actionable harassment" and closing my complaint.

3.3. You ignored further evidence I sent you that Jewish students at UCSC were reporting a hostile and discriminatory environment

3.3.1. Student email

[Information sent to the OCR but removed for presentation to the public in order to protect the student's identity]

3.3.2. UC Jewish Student Campus Climate

Furthermore, on 7/16/12 I sent to Ms. Welp and copied you on an email containing a copy of the University of California Jewish Student Campus Climate report, which had been made public the week before. I wrote in my email to Ms. Welp:

"I am attaching to this email the Jewish Student Campus Climate report, written by Richard Barton and Alice Huffman, two members of the UC Advisory Council on Campus Climate, Culture and Inclusion, who were commissioned by UC President Mark Yudof to undertake a fact-finding mission about campus climate issues for Jewish students on 7 UC campuses, including UC Santa Cruz. I believe that in several of its aspects, the report's findings support claims that I have made in Title VI complaint."

Here are some excerpts from that report, which I believe provide very important background and support for the allegations that I made in my complaint:

"Jewish students are confronting significant and difficult climate issues as a result of activities on campus which focus specifically on Israel, its right to exist and its treatment of Palestinians. The anti-Zionism and Boycott, Divestment and Sanctions (BDS) movement and other manifestations of anti-Israel sentiment and activity create significant issues through themes and language which portray Israel and, many times, Jews in ways which project hostility, engender a feeling of isolation, and undermine Jewish students' sense of belonging and engagement with outside communities. The issue of anti-Zionism activities was a focal point of our discussions with all of the students, Jewish organizations, faculty and administration."

"What came through in our discussions...was a sense from Jewish students and others of a double standard when it comes to the themes and language used by those protesting Israel and its policies. Specifically, Jewish students described the use of language and imagery which they believe would not be tolerated by faculty

and administration, or would at least be denounced with more force, if similar themes and language were directed at other groups on campus."

"The Team found that on UC campuses there is a movement which targets Israel and Zionism through an ongoing campaign of protests, anti-Israel/anti-Zionism "weeks", and, on some campuses, the use of academic platforms to denounce the Israel and Jewish nationalist aspirations."

"On every campus pro-Zionist Jewish students described an environment in which they feel isolated and many times harassed and intimidated by students, faculty and outsiders who participate in this activities. Most often students expressed the perception of a double standard, insensitivity, and a lack of understanding on the part of faculty and administrators regarding the depth of what Jewish students experience as a result of a movement that is directed at Israel using imagery and accusations evocative of historical campaigns against Jews."

"Students also described encounters with faculty in class and outside which they believe raise serious questions regarding faculty members' objectivity regarding the conflict in the Middle East. They described instances of overt hostility toward Jewish or other students who try to express contrary viewpoints on the subject. Students questioned how these activities can be reconciled with the desire of the universities to promote scholarship and Principles of Community."

"One of the most significant issues expressed by Jewish students, faculty and community members is their difficulty with sponsorship of university departments, campus organizations and others of events which are very clearly designed to promote themes which are biased and unbalanced in their portrayal of Zionism and Israel. The students indicated that University administrative offices, such as the multicultural or cross cultural centers, sponsor student organization events that are dominated by groups adopting anti-Zionist platforms. Others indicated that they were doubtful that academic departments exhibited balance in their sponsorship or hosting of events -- symposiums, speaker series, etc. -- as they related to Israel and Zionism."

"In the Team's assessment it is clear that for many Jewish students, their cultural and religious identity cannot be separated from their identity with Israel. Therefore, pro-Zionist students see an attack on the State of Israel as an attack on the individual and personal identity. It is important for faculty and administrators to understand why some Jewish students and the Jewish community cannot simply dismiss the allegations directed toward Israel during "Justice for Palestine" or "Anti-Apartheid" weeks as simply a geopolitical "discussion" to address the plight of the Palestinians. This requires particular sensitivity as identity development and affirmation is so profound during a student's college years. Routine accusation that Israeli treatment of the Palestinians is comparable to Nazi treatment of Jews has outraged pro-Zionist Jewish students and faculty, and increased frustration as they are defended as an exercise of free speech or

academic freedom."

"All [student participants] stated that they appreciate the distinction between criticism of Israel and anti-Semitism. One of the tools used to dismiss the concerns expressed by Jewish students is the accusation that supporters of Israel are unwilling to tolerate any criticism of Israel and that the charge of anti-Semitism is used in a manner to suppress that criticism. The Team's conversations with students revealed no such confusion or effort to curtail First Amendment rights."

"Notwithstanding, pro-Zionist Jewish students and faculty perceive a difference in how the movement against Israel and Zionism is viewed and addressed by those in faculty and administration responsible for dealing with campus climate. There is a perceived gap in the level of appreciation by administrators for how the Jewish community sees these protests, that is reflected in the absence of Jewish student representation on most of the individual campus Climate Councils."

Although you provide as one of the three kinds of data your office collected in its investigation of my complaint a review of a list of events provided by the university -- information which I will show below to be completely irrelevant to my complaint -- you do not reference the UC Jewish Campus Climate report even once in your 8/19/13 letter to me, even though it is clearly information not only highly relevant to my complaint, but strongly supportive of my allegations.

3.4 You included data that was irrelevant and misleading

As I noted above, besides describing the survey you sent out and the interviews you conducted, the only other kind of empirical data you offered was your review of a list provided by the University of 42 events related to Judaism, Israel, Palestine and/or Islam that took place 2008 - 2009, reporting that 27 (64%) were sponsored or co-sponsored by Jewish student groups or faculty and 15 (36%) by Muslim student groups or faculty. Although you do not draw any specific conclusions from the data you presented, it is clear from the very fact that these data are contained in your letter to me, that you sought to use the significantly greater number of events sponsored by Jewish groups or faculty as evidence that there is no hostile environment for Jewish students at UCSC.

However, the data you provided do not show anything of the kind, for a few reasons.

First, as you know, I never alleged that events, per se, have created a hostile environment for Jewish students at UCSC, but rather have always claimed that it is departmental or college sponsorship of virulently anti-Israel events that has created the hostile environment. Therefore, I am not at all interested in the events that are sponsored by student groups alone; I am only interested in those events whose sponsorship includes departments or colleges (i.e. University-sponsored events). However, it is impossible to determine from the data you presented how many of the 42 events had University-

sponsorship and how many had only student group sponsorship.

Second, without knowing the nature of the 42 events, it is impossible to fairly compare those events you indicate were sponsored by "Jewish student groups or faculty" to those events that were sponsored by "Muslim student groups or faculty." For instance, can you honestly compare a Jewish Studies-sponsored conference on "Russia, Jews and the Arts" with an anti-Zionist conference sponsored by the Muslim Studies department (assuming one existed at UCSC in 2008, which it did not) in which each of the conference's five speakers argues that Zionism is an illegitimate ideology and Israel has no right to exist as a Jewish state, with one speaker even promoting the boycott of Israel in her talk? Do you truly believe that the first event can possibly "balance" the second or mitigate the hostile environment it creates for Jewish students? A comparison of the nature of these two events underscores why it is impossible to tell anything about "actionable harassment" and "hostile environment" from only considering the number of events and their respective sponsorship.

Finally, the categories of "Jewish faculty" and "Muslim faculty" are highly problematic and ultimately meaningless in your analysis. No UCSC event that I know of has been sponsored by individual faculty members, so I can only assume that these terms refer to "Jewish departments" and "Muslim departments." In the case of "Jewish departments," you can only mean the Jewish Studies program. But given that no Muslim, Arab or Middle East studies program existed at UCSC in 2008, to what departments are you referring? Furthermore, as I documented in my complaint, the events that I argue have created a hostile environment for Jewish students were either sponsored by residential colleges or departments, such as Community Studies, Women's Studies, Politics, etc. However, the anti-Israel events sponsored by these departments, although crucial for assessing "actionable harassment" or "hostile environment," would not have appeared in the list you received from the University.

It is understandable why the university would provide you with such a list of events and their sponsorship, but it is hard to understand why you would consider such irrelevant and problematic data as part of your investigation and use such information as evidence that Jewish students are not experiencing a hostile environment at UCSC.

For all of these reasons, I believe that your investigation of my complaint was deeply flawed and does not at all support your justification for dismissing my complaint on the grounds that my allegations "do not constitute actionable harassment."

4. Conclusions

The OCR's 8/19/13 letter to me suggests more than sloppiness or negligence in its pursuit of an investigation into my complaint. Rather, the egregiously incorrect and incomplete statement of my allegations; the egregiously inaccurate and misleading characterization

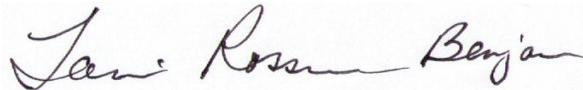
of my complaint; the egregiously incomplete and inadequate data collected in your investigation of my complaint and the specious conclusions you drew from them -- all of these suggest a clear intent on your part to dismiss my complaint out of hand, without considering the true merits of my allegations, and without a fair consideration of the hostile and discriminatory environment that many Jewish students face at UCSC.

Moreover, your seeming capitulation to the demands of Muslim and pro-Palestinian student groups and the legal, civil rights, and advocacy groups that support them -- groups that have clearly demonstrated their desire to delegitimize all Title VI complaints alleging anti-Jewish harassment, including my own, and to defame any organization or individual that files them, including me -- is deeply troubling. Indeed, it strongly suggests that your office may no longer be willing to protect Jewish students from a hostile and antisemitic campus environment.

Finally, the contrast between your willingness to invoke federal law so forcefully and immediately to protect African American students at UC San Diego from a hostile environment after a few instances of alleged racial harassment, but your unwillingness to consider the longstanding, pervasive and well-documented harassment of Jewish students at UC Berkeley, UC Irvine, and UC Santa Cruz, itself suggests that the OCR is engaging in a discriminatory double standard against Jewish students that is antisemitic in effect if not in intent.

For the reasons I have set forth in this Appeal, I urge you to re-open my complaint.

Sincerely,

A handwritten signature in cursive script that reads "Tammi Rossman Benjamin". The signature is written in black ink on a white background.

Tammi Rossman-Benjamin

tammibenjamin@gmail.com

Appendix 1

University of California Policies that Limit the Expression of UC Faculty and Administrators (Emphasis added)

- 1) **Directive issued by Clark Kerr, President of the University of California, September, 1961: "University facilities and the name of the University must not be used in ways which will involve the University *as an institution* in the political, religious, and other controversial issues of the day".**
- 2) **The Policy on Course Content of The Regents of the University of California, approved June 19, 1970 and amended September 22, 2005: "They (The Regents) are responsible to ensure that public confidence in the University is justified. And they are responsible to see that the University remain aloof from politics and never function as an instrument for the advance of partisan interest. **Misuse of the classroom by, for example, allowing it to be used for political indoctrination... constitutes misuse of the University as an institution.**"**
- 3) **Directive issued by Charles J. Hitch, President of the University of California, September 18, 1970, "Restrictions on the Use of University Resources and Facilities for Political Activities" (still in effect) "The name, insignia, seal, or address of the University or any of its offices or units shall not be used for or in connection with political purposes or activity except as consistent with University regulations."**
- 4) **Academic Personnel Policy (APM) 015 - Faculty Code of Conduct: Types of unacceptable conduct: "Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes."**

Appendix 2

California State Laws that Limit the Expression of UC Faculty and Administrators (Emphasis added)

- 1) **Article IX, Section 9, of the California Constitution** (since 1879) provides that the University "shall be entirely independent of all **political** and sectarian influence."
- 2) **California Education Code Section 92000:**
 - a) The name "University of California" is the property of the state. **No person shall, without the permission of the Regents of the University of California, use this name**, or any abbreviation of it or any name of which these words are a part, in any of the following ways:
 - 1) To designate any business, social, political, religious, or other organization, including, but not limited to, any corporation, firm, partnership, association, group, activity, or enterprise.
 - 2) To imply, indicate or otherwise suggest that any such organization, or any product or service of such organization is connected or affiliated with, or is endorsed, favored, or supported by, or is opposed by the University of California.
 - 3) **To display, advertise, or announce this name publicly at, or in connection with, any meeting, assembly, or demonstration, or any propaganda, advertising, or promotional activity of any kind which has for its purpose or any part of its purpose the support, endorsement, advancement, opposition, or defeat of any strike, lockout, or boycott or of any political, religious, sociological, or economic movement, activity, or program.**
 - b) Nothing in this section shall interfere with or restrict the right of any person to make a true and accurate statement of his or her present or former relationship or connection with, his or her employment by, or his or her enrollment in, the University of California in the course of stating his or her experience or qualifications for any academic, governmental, business, or professional credit or enrollment, or in connection with any academic, governmental, professional, or other employment whatsoever.
 - c) Every person violating the provisions of this section is guilty of a misdemeanor.
- 3) **California Govt. Code 8314** states that "[i]t is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law." The statute proceeds to define its terms. In pertinent part:

- “use” is defined as “a use of public resources which is substantial enough to result in gain or advantage to the user or a loss to the state or any local agency for which monetary value may be estimated.”
- “public resources” is defined as “any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time.”
- “personal . . . purposes” is defined to include “an outside endeavor not related to state business” and expressly it excludes incidental uses.