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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 ALEXANDER STERN,

13 Plaintiff,

14 v.

15 THE REGENTS OF THE
16 UNIVERSITY OF CALIFORNIA et
17 al.,

18 Defendants.

19 Case No. CV11-08418PSG(MRWX)

20 ANSWER OF DEFENDANTS
21 THE REGENTS OF THE
22 UNIVERSITY OF CALIFORNIA,
23 GARY WHITE, WANDA
24 THOMAS, JON SNYDER,
25 VALENTINA PADULA, AND
26 CAMILLA FIORINA TO
27 COMPLAINT FOR DAMAGES
28 DECLARATORY AND
INJUNCTIVE RELIEF;
DEMAND FOR JURY TRIAL

23 COME NOW Defendants THE REGENTS OF THE UNIVERSITY
24 OF CALIFORNIA, GARY WHITE, WANDA THOMAS, JON SNYDER,
25 VALENTINA PADULA, and CAMILLA FIORINA and, in answer to
26 Plaintiff's Complaint For Damages, Declaratory, and Injunctive Relief (the
27 Complaint), admit, deny, and allege as follows:
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1 1. Answering paragraphs 4, 14, 16, 17, 18, 20, 28, 29, 30, 38, 48,
2 51, 52, 53, 54, 71, 75, 76, 80, 81, 82, 88, 89, 91, 95, 96, 101, 104, 105, and
3 110 of the Complaint, Defendants admit the allegations of said paragraphs.

4 2. Answering paragraphs 24, 25, 26, 27, 34, 35, 39, 41, 43, 47, 56,
5 57, 58, 59, 60, 61, 62, 63, 64, 65, 70, 72, 73, 74, 77, 78, 83, 84, 85, 90, 93,
6 97, 98, 99, 102, 107, 108, 112, 114, 115, 116, 117, and 118 of the
7 Complaint, Defendants deny each and every allegation contained therein.

8 3. Answering paragraphs 12, 22, 31, 40, 46, 49, 50, 66, 67, 86, 87,
9 92, 94, 100, 103, 109, 111, and 113 of the Complaint, Defendants are
10 without sufficient knowledge or information to form a belief as to the truth
11 of the allegations contained in said paragraphs, and on that basis deny each
12 and every allegation contained therein.

13 4. Answering paragraph 1 of the Complaint, Defendants admit
14 that this Court has subject matter jurisdiction over federal claims pursuant to
15 28 U.S.C. § 1331 and original jurisdiction over claims arising under 42
16 U.S.C. § 1983; the Americans with Disabilities Act (42 U.S.C. § 12101 et
17 seq.); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).

18 5. Answering paragraph 2 of the Complaint, Defendants admit
19 that this Court has supplemental jurisdiction over pendent state-law claims
20 pursuant to 28 U.S.C. § 1367.

21 6. Answering paragraph 3 of the Complaint, Defendants admit
22 that Plaintiff is an undergraduate student at the University of California
23 Santa Barbara, a campus of the University of California and deny each and
24 every other allegation contained therein.

25 7. Answering paragraph 5 of the Complaint, Defendants admit
26 that Plaintiff has learning disabilities and is a resident of Santa Barbara
27 County and Los Angeles County and deny each and every other allegation
28 contained therein.

1 8. Answering paragraph 6 of the Complaint, Defendants admit
2 that the University of California is a public university with multiple
3 campuses across the state including the campus at Santa Barbara which
4 Plaintiff attends. The Regents of the University of California is a
5 constitutionally-created corporation with full powers of organization and
6 government to administer the University of California.

7 9. Answering paragraph 7 of the Complaint, Defendants admit
8 that Defendant Gary White is the Director of UCSB's Disabled Students
9 Program and deny each and every other allegation contained therein.

10 10. Answering paragraph 8 of the Complaint, Defendants admit
11 that Defendant Wanda Thomas is the Support Services Coordinator at
12 UCSB's Disabled Students Program and that her job duties include
13 supervising the administrative staff and overseeing student note takers,
14 readers and test proctors and deny each and every other allegation contained
15 therein.

16 11. Answering paragraph 9 of the Complaint, Defendants admit
17 that Defendant Jon Snyder is the Chair of UCSB's Department of French
18 and Italian and deny each and every other allegation contained therein.

19 12. Answering paragraph 10 of the Complaint, Defendants admit
20 that Defendant Valentina Padula is the Coordinator of UCSB's Italian
21 Language Program and that she agreed to review -- and did review --
22 Plaintiff's grades in his Italian 6 course and his final grade of B+ and deny
23 each and every other allegation contained therein.

24 13. Answering paragraph 11 of the Complaint, Defendants admit
25 that Defendant Camilla Fiorina is a Lecturer at UCSB and was Plaintiff's
26 instructor in his Italian 6 course and deny each and every other allegation
27 contained therein.

28 14. Answering paragraph 13 of the Complaint, Defendants admit

1 that Plaintiff has learning disabilities and are without sufficient knowledge
2 or information to form a belief as to the truth of the other allegations
3 contained in said paragraph, and on that basis deny each and every other
4 allegation contained therein.

5 15. Answering paragraph 15 of the Complaint, Defendants admit
6 that Plaintiff has submitted records of impairment that were accepted by
7 Defendant The Regents of the University of California that were accepted as
8 proving that Plaintiff has learning disabilities and deny each and every other
9 allegation contained therein.

10 16. Answering paragraph 19 of the Complaint, Defendants admit
11 that the student test proctors hired by UCSB's Disabled Students Program,
12 as part of their duties, monitor examinations taken by students receiving
13 examination accommodations through the Disabled Students Program to
14 ensure that the students do not cheat or commit other acts of academic
15 dishonesty during the examination and deny each and every other allegation
16 contained therein.

17 17. Answering paragraph 21 of the Complaint, Defendants admit
18 that the student test proctors hired by UCSB's Disabled Students Program
19 are offered the opportunity to sign up for various proctoring assignments
20 throughout the academic year and are without sufficient knowledge or
21 information to form a belief as to the truth of the other allegations contained
22 in said paragraph, and on that basis deny each and every other allegation
23 contained therein.

24 18. Answering paragraph 23 of the Complaint, Defendants admit
25 that students are directed to apply for the test proctor and note taker
26 positions offered by the Disabled Students Program by completing an on-
27 line application accessible through the Disabled Students Program's internet
28 website and are without sufficient knowledge or information to form a

1 belief as to the truth of the other allegations contained in said paragraph,
2 and on that basis deny each and every other allegation contained therein.

3 19. Answering paragraph 32 of the Complaint, Defendants admit
4 that on June 2, 2011, Plaintiff emailed Defendant Gary White and requested
5 to meet with him to discuss disability-related concerns and deny each and
6 every other allegation contained therein.

7 20. Answering paragraph 33 of the Complaint, Defendants admit
8 that on June 7, 2011, Plaintiff and Defendant Gary White met in person and
9 discussed Plaintiff's concerns about his Italian 6 grade and the Disabled
10 Students Program's student hiring practices and deny each and every other
11 allegation contained therein.

12 21. Answering paragraph 36 of the Complaint, Defendants admit
13 that Plaintiff complained about disability discrimination to Gary White and
14 mentioned both the Americans with Disabilities Act and the Teamsters v.
15 United States decision and deny each and every other allegation contained
16 therein.

17 22. Answering paragraph 37 of the Complaint, Defendants admit
18 that Gary White told Plaintiff that the Disabled Students Program had a
19 continuing practice of not hiring students receiving note taking or test
20 proctoring services through the Disabled Students Program to perform those
21 services for other students and deny each and every other allegation
22 contained therein.

23 23. Answering paragraph 42 of the Complaint, Defendants admit
24 that Gary White expressed to Plaintiff a concern that students receiving note
25 taking or test proctoring services through the Disabled Students Program
26 receive the full benefit of these services and deny each and every other
27 allegation contained therein.

28 24. Answering paragraph 44 of the Complaint, Defendants admit

1 that Gary White expressed to Plaintiff a concern that students receiving note
2 taking or test proctoring services through the Disabled Students Program
3 receive the full benefit of these services and deny each and every other
4 allegation contained therein.

5 25. Answering paragraph 45 of the Complaint, Defendants admit
6 that the student test proctors hired by UCSB's Disabled Students Program
7 are offered the opportunity to sign up for various proctoring assignments
8 throughout the academic year and can therefore schedule their assignments
9 around their own exams and commitments and are without sufficient
10 knowledge or information to form a belief as to the truth of the other
11 allegations contained in said paragraph, and on that basis deny each and
12 every other allegation contained therein.

13 26. Answering paragraph 55 of the Complaint, Defendants admit
14 that Defendant Camilla Fiorina was aware of the accommodation approved
15 for Plaintiff and that, upon request by a student, the Disabled Students
16 Program informs instructors of the accommodations approved for that
17 student and deny each and every other allegation contained therein.

18 27. Answering paragraph 68 of the Complaint, Defendants admit
19 that during Plaintiff's June 7, 2011, meeting with Defendant Gary White,
20 Plaintiff complained that Defendant Camilla Fiorina had not given him his
21 approved accommodations and deny each and every other allegation
22 contained therein.

23 28. Answering paragraph 69 of the Complaint, Defendants admit
24 that Plaintiff complained to Gary White about his Italian 6 grades and deny
25 each and every other allegation contained therein.

26 29. Answering paragraph 106 of the Complaint, Defendants admit
27 that Plaintiff has learning disabilities and deny each and every other
28 allegation contained therein.

1 **FIRST AFFIRMATIVE DEFENSE**

2 30. As an affirmative defense, Defendants allege that the
3 Complaint fails to state facts sufficient to state a claim for relief against
4 Defendants.

5 **SECOND AFFIRMATIVE DEFENSE**

6 31. As an affirmative defense, Defendants allege that Plaintiff's
7 claims are barred because Plaintiff's own actions and conduct directly and
8 proximately caused Plaintiff's injuries and/or damages, if any. Therefore,
9 Plaintiff is not entitled to damages or any other relief from Defendants, or in
10 the alternative, Plaintiff's recovery, if any, must be reduced by the amount
11 or percentage that Plaintiff's actions and conduct caused or contributed to
12 the alleged damages, should they be proven.

13 **THIRD AFFIRMATIVE DEFENSE**

14 32. As an affirmative defense, Defendants allege that the conduct,
15 misconduct and/or negligence of Plaintiff caused and contributed to any
16 alleged damages which may have been sustained by Plaintiff, and by reason
17 thereof, Plaintiff should be barred from recovery

18 **FOURTH AFFIRMATIVE DEFENSE**

19 33. As an affirmative defense, Defendants allege that The Regents
20 of the University of California and its employees sued in their official
21 capacities are entitled to sovereign immunity from suit under the Eleventh
22 Amendment.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 39. As an affirmative defense, Defendants allege that the individual
25 Defendants, sued in their personal capacities, are entitled to qualified
26 immunity from suit because they acted in good faith and their conduct did
27 not violate clearly established statutory or constitutional rights of which a
28 reasonable person would have known.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 40. As an affirmative defense, Defendants allege that Plaintiff
3 lacks standing to sue, and Plaintiff is not entitled to prospective declaratory
4 relief because no substantial justiciable controversy exists between the
5 parties.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 41. As an affirmative defense, Defendants allege that Plaintiff
8 lacks standing to sue, and Plaintiff is not entitled to prospective injunctive
9 relief because there exists no real and immediate threat of future harm to
10 Plaintiff.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 42. As an affirmative defense, Defendants allege that Plaintiff
13 failed to exhaust the administrative remedies available to him through the
14 University of California, including but not limited to the appeal procedures
15 for grades are set forth in the Academic Senate Manual at Appendix V,
16 "Student Appeal Procedures."

17 **NINTH AFFIRMATIVE DEFENSE**

18 43. As an affirmative defense, Defendants allege that Plaintiff
19 failed to exhaust the administrative remedies available to him through the
20 Equal Employment Opportunities Commission.

21 **TENTH AFFIRMATIVE DEFENSE**

22 44. As an affirmative defense, Defendants allege that, pursuant to
23 California Government Code sections 815.2 and 820.2, a public entity and
24 its employees, officers and agents are not responsible for injury or damage
25 resulting from an act of omission that was a result of the exercise of
26 discretion vested in such officer, agent or employee, whether or not such
27 discretion was abused.

28

ELEVENTH AFFIRMATIVE DEFENSE

45. As an affirmative defense, Defendants allege that Defendants are not liable for the damages, if any, alleged in the complaint by reason of the provisions of California Government Code section 815.2(a) and (b), in that a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

TWELFTH AFFIRMATIVE DEFENSE

46. As an affirmative defense, Defendants allege that under the primary jurisdiction doctrine the Regents of the University of California has primary jurisdiction to determine academic matters.

THIRTEENTH AFFIRMATIVE DEFENSE

47. As an affirmative defense, Defendants allege that Plaintiff is barred from recovery herein, in whole or in part, by reason of failure to mitigate damages


FOURTEENTH AFFIRMATIVE DEFENSE

48. As an affirmative defense, Defendants allege that The Regents of the University of California and its employees sued in their official capacities are not subject to claims for punitive damages.

WHEREFORE, Defendants pray that Plaintiff take nothing by way of his complaint and that Defendants be dismissed and awarded their costs of suit and such other and further relief as the Court deems just and proper.

DATED: March 13, 2012

NYE, PEABODY, STIRLING, HALE &
MILLER, LLP

By: 

Karen K. Peabody
Attorney for Defendants

DEMAND FOR JURY TRIAL

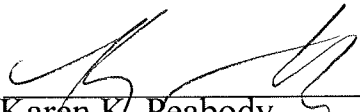
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Defendants hereby demand trial of this matter by jury pursuant to Federal Rules of Civil Procedure, Rule 38(b) and Local Rule 38-1.

DATED: March 13, 2012

NYE, PEABODY, STIRLING, HALE &
MILLER, LLP

By:



Karen K. Peabody
Attorney for Defendants

PROOF OF SERVICE

RE: STERN VS REGENTS OF THE UNIVERSITY OF CA, ET AL CASE # CV11-08418PSG (MRWX)

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen years and not a party to this action. My business address is 33 West Mission, Suite 201, Santa Barbara, California 93101.

On the date stated below, I served the following documents: **DEFENDANTS' RESPONSE TO COMPLAINT** on the interested parties in this action:

Andrew R Stern, Esq 31659 Sea Level Dr. Malibu, Ca 90265	Attorney for Plaintiff, ALEXANDER STERN
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[By Express Service Carrier] I provided such envelope(s) to a driver employed by California Overnight, an express service carrier, on March 13, 2012, with delivery fees paid or provided for, for next business morning deliveries.

[By Mail] I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Santa Barbara, California on March 13, 2012.


[By Personal Service] I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s) on March 13, 2012.

[By Fax Service] I caused such document(s) to be sent via facsimile transmission on March 13, 2012.

[By Electronic Service] I caused such document(s) to be sent electronically on March 13, 2012 in accordance with the Court's electronic filing ("ECF") rules, pursuant to which registered ECF users receive service copies by e-mail delivery. A courtesy copy will follow as stated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 13, 2012



Brenda Rosales