

**Date: October 11, 2012**

***NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
REGARDING NOVEMBER 18, 2011, ARREST AND PEPPER SPRAY INCIDENT  
ON THE UC DAVIS QUAD***

**This notice may affect your legal rights  
Please read it carefully.**

**To: All persons who were on the UC Davis Quad on the afternoon of Friday, November 18, 2011, and were arrested or were directly sprayed with pepper spray by UC Davis Police:**

This Notice is being given by Order of the Court to individuals who may be members of a class of persons affected by the settlement of a class action lawsuit called *Baker, et al. v. The Regents of the University of California*, Case Number 12-CV-00450-JAM-EFB (U.S. District Court, Eastern District of California).

The lawsuit claims that members of the Administration and Police Department at UC Davis violated the civil rights of those persons who were arrested and/or directly sprayed with pepper spray by UC Davis Police officers on the afternoon of Friday, November 18, 2011. The defendants in the lawsuit have denied that their actions violated any civil rights or otherwise gave rise to legal liability for the claims alleged in the lawsuit. The Court has not held a trial or made any findings regarding the claims and defenses in the lawsuit.

The District Court has scheduled a Final Approval Hearing to consider the settlement on January 9, 2013, at 9:30 a.m. in Courtroom No. 6, at the United States District Court, 501 "I" Street, 14<sup>th</sup> Floor, Sacramento, 95814. If the District Court approves this settlement, all claims by class members in connection with the arrests and use of pepper spray on the UC Davis Quad on November 18, 2011, will be finally resolved in accordance with the terms of the settlement.

**The purpose of this notice is to inform you of:**

- **The nature of the lawsuit;**
- **The proposed settlement, and who is a member of the class;**
- **Your right to object to the settlement or to opt out of the class;**
- **How to find out more information about the proposed settlement.**

**THE LAWSUIT AND THE CLASS**

The lawsuit was filed February 22, 2012, by various individuals who were present on the Quad at the University of California, Davis, on the afternoon of Friday, November 18, 2011, and were arrested or directly sprayed with pepper spray by officers of the UC Davis Police Department. Plaintiffs allege that, as part of a broader Occupy Wall Street movement, they had set up symbolic tents on the Quad in protest against university privatization, tuition increases, and the treatment of protesters at the University of California, Berkeley. On Friday, November 18, 2011, members of the UC Administration directed the protesters to remove the tents from the Quad by 3:00 p.m. At about 3:00 p.m., members of the UC Davis Police Department declared the

protest an unlawful assembly, ordered those assembled to disperse, and commenced to remove the tents from the Quad, arresting and pepper-spraying protesters, including Plaintiffs. Plaintiffs allege that they and others similarly situated were deprived of their civil rights under the First, Fourth, and Fourteenth Amendments of the U.S. Constitution by being subjected to unlawful arrest and/or excessive force (including pepper spray) by or at the direction of agents or employees of the Regents of the University of California (“Regents”). The Complaint seeks compensatory, statutory and punitive damages, declaratory and injunctive relief, plus attorneys’ fees and costs.

The Regents has denied and continues to deny the claims alleged in the lawsuit. It contends that the administrators and police officers who were involved in the incident acted reasonably and in good faith to address legitimate health and safety risks associated with the presence of an unpermitted encampment on the Quad, and not out of any intent to suppress debate and protest, or to deprive Plaintiffs of their civil rights.

The Court has not held a trial or made any order or rulings granting or denying relief, or determining whether the plaintiffs or defendants are right in their contentions.

### **THE SETTLEMENT AND THE CLASS**

In a Stipulation for Settlement dated September 26, 2012, the named parties in the lawsuit agreed to settle all claims that were or could have been asserted against the Regents, or any agent or employee of the Regents, as well as any person or entity claimed to have been acting under the authority of, at the direction of, or in concert with the Regents, directly or indirectly, in any manner whatsoever, in connection with the arrests and use of pepper spray on the UC Davis Quad on the afternoon of November 18, 2011.

On September 27, 2012, the Court granted preliminary approval to the settlement and to the issuance of this notice.

The Court preliminarily approved the certification of a Settlement Class consisting of all persons who were present on the UC Davis Quad on the afternoon of November 18, 2011, and who were either arrested or directly sprayed with pepper spray by one of the police officers.

The Court has appointed the following individuals as Class Representatives: Enosh Baker, David Buscho, Alyson Cook, Adam Fetterman, Sarena Grossjan, Deanna Johnson, Sophia Kamran, Elizabeth Lara, Ian Lee, Soo Lee, Evan Loker, Thomas Matzat, Darren Newell, Charles Parker, William Roberts, Fatima Sbeih, Evka Whaley-Mayda, Kase Wheatley, Edward Geoffrey Wildanger, Noah Wiley, and Jordan Wilhelm.

The Court has ordered that the following attorneys are to act as counsel for the class:

Mark E. Merin  
Law Offices of Mark E. Merin  
1010 F. Street, Suite 300  
Sacramento, CA 95814

(916) 443-6911  
E-mail: mark@markmerin.com

Alan L. Schlosser  
Michael T. Risher  
Linda Lye  
Novella Coleman  
American Civil Liberties Union Foundation of Northern California  
39 Drumm Street  
San Francisco, CA 94111  
(415) 621-2493  
aschlosser@aclunc.org  
mrisher@aclunc.org  
llye@aclunc.org  
[ncoleman@aclunc.org](mailto:ncoleman@aclunc.org)

Meredith Wallis  
1057 East 33<sup>rd</sup> Street  
Oakland, California 94610  
(713) 724-4047  
mewallis@standord.edu

If the Court approves the settlement, the Regents will pay the sum of \$30,000.00 (thirty thousand dollars), to each of the 21 Class Representatives for a total of \$630,000 (six hundred thirty thousand dollars). To each additional Class Member other than the Representative Plaintiffs who submits an Approved Claim within 30 (thirty) days of the date hereof, the Regents will pay the sum of \$20,000 (twenty thousand dollars); provided, however, that if there are more than five total Approved Claims, the amount paid in settlement of each Approved Claim shall be reduced proportionally so that the total amount paid for all Approved Claims does not exceed \$100,000 (one hundred thousand dollars). Claims will be approved only from individuals who were either arrested or directly sprayed with pepper spray by one of the police officers. The approval and disapproval of claims will be decided by a committee consisting of one person designated by the Plaintiffs' Counsel and one person designated by the Regents, subject to final determination by Magistrate Judge Edmund F. Brennan in the event of disagreement.

In addition to the foregoing payments, as part of the settlement, the Regents has agreed to provide plaintiffs' attorneys from the American Civil Liberties Union Foundation of Northern California a fair and adequate opportunity to review, comment, and provide input, prior to their adoption, on any new or revised written Davis campus policies, including the Regents' written policies applicable to the Davis campus, pertaining to the use of force by police, the handling of student demonstrations, and crowd control, and to reimburse up to \$20,000 (twenty thousand dollars) for reasonable attorneys' fees and costs incurred by the ACLU in this review.

As part of the settlement, U.C. Davis University Chancellor Linda Katehi will write personal, individual apologies to each of the Class Representatives and to any other Class Member who submits an Approved Claim Form for the incident and the injuries and damages they suffered.

As part of the settlement, Student Affairs representative on the Davis campus will provide reasonable assistance and counseling to Plaintiffs with academic performance issues that allegedly arose as a result of the incident. Under the University of California's system of shared governance, the Academic Senate and the faculty of the University of California are accorded the authority for evaluating student academic performance, and The Regents make no promise or commitment that any individual will be granted an exception to policies or will receive a grade change.

In exchange for the payments and other consideration provided by the Regents, the Plaintiffs and all Class Members will release any and all claims that they may have against the Regents and its employees and agents (including UC Davis administrators and police officers), as well as any person or entity claimed to have been acting under the authority of, at the direction of, or in concert with the Defendants, directly or indirectly, in any manner whatsoever, in connection with the events on the Quad on November 18, 2011.

In addition to the foregoing, the Regents has agreed to pay, and Plaintiffs' counsel has agreed to accept, the sum of \$250,000 (two hundred fifty thousand dollars) for all attorneys' fees and costs incurred in connection with the prosecution of the lawsuit and the administration of the settlement. The Court must review and approve the award of attorneys' fees and costs to Plaintiffs' counsel.

### **YOUR RIGHTS AND RESPONSIBILITIES IF YOU ARE A CLASS MEMBER**

If you are a member of the Settlement Class (*i.e.*, someone who was arrested or directly sprayed with pepper spray on the UC Davis Quad on November 18, 2011) there are four things that you can do in response to this notice. Each of the four alternatives has legal consequences, so please read this section carefully.

#### *1. Submit a Claim*

If you are a member of the Settlement Class, you may submit a Claim Form for compensation within 33 (thirty-three) days of the date hereof. To submit a claim, simply request a Claim Form from any of the attorneys listed above as Class Counsel or go to the ACLU's web site [https://www.aclunc.org/cases/active\\_cases/baker\\_v\\_katehi.shtml](https://www.aclunc.org/cases/active_cases/baker_v_katehi.shtml) and download and print a Claim Form, and, by no later than November 13, 2012 personally deliver or mail, by first class mail, your completed Claim Form to the following address:

ADMINISTRATOR OF BAKER V. THE REGENTS SETTLEMENT  
PORTER SCOTT LAW OFFICE  
350 UNIVERSITY AVENUE, SUITE 200  
SACRAMENTO, CA 95825

If your claim is not received or post-marked by November 13, 2012 it will not be considered and you will not receive any compensation.

You may be asked to provide photographic identification and to identify yourself on photograph or video images taken during the incident or to submit additional documents or information in support of your claim.

## *2. Opt Out of the Settlement*

You may choose to be excluded from the Settlement Class. This is called “opting out.” If you opt out of the Settlement Class, you will not be bound by any judgment or other final disposition of this lawsuit. You will retain any claims against the Regents and others that you might have. To request exclusion, you must state in writing your desire to be excluded from the Settlement Class. You must sign your request for exclusion personally or by legal counsel. Your request must include: (1) your full name and current address; (2) your signature; and (3) a specific statement that “I want to be excluded from the Settlement Class in *Baker v. Katehi*.” **The request for exclusion must be sent by first class mail, postmarked on or before November 13, 2012**, addressed to:

Mark E. Merin  
Law Offices of Mark E. Merin  
1010 F. Street, Suite 300  
Sacramento, CA 95814

## *3. Object to the Settlement*

Any Class Member may submit written objections to the proposed settlement, or appear in Court at the Final Approval Hearing on January 9, 2013 and speak to the Court about your objections. (You may not raise objections to the settlement if you opt out of the Settlement Class.) If you wish to object to the proposed settlement, you must comply with the following requirements:

- On or before November 13, 2012 you must file with the Clerk of the United States District Court, 501 "I" Street, Sacramento, 95814, a personally signed notice of your intention to appear (or a notice of intention signed by an authorized representative) at the Final Approval Hearing together with a statement setting forth objections to the matters to be considered and the basis for those objections, together with any documentation that you intend to rely upon at the Final Approval Hearing; and
- Send copies of all such materials by First-Class mail, postage-prepaid, or by hand delivery to the following counsel:

Mark E. Merin  
Law Offices of Mark E. Merin  
1010 F. Street, Suite 300  
Sacramento, CA 95814

Alan L. Schlosser  
Michael T. Risher  
American Civil Liberties Union  
Foundation of Northern California  
39 Drumm Street  
San Francisco, CA 94111

J. Daniel Sharp  
Crowell & Moring LLP  
275 Battery Street, 23rd Floor  
San Francisco, CA 94111

Nancy J. Sheehan  
Porter Scott APC  
350 University Avenue, Suite 200  
Sacramento, California 95825

- If the Representative Plaintiffs or the Regents file any response to your filing, you may supplement your filing by [date]. Any supplemental filing must be served in the manner and upon the counsel described above.

If you do not comply with the foregoing procedure and deadlines for submitting written objections and/or appearing at the Final Approval Hearing, you may lose substantial legal rights, including, the right to appear and be heard at the Final Approval Hearing and the right to contest approval of the proposed settlement or for an award of attorneys' fees, costs and expenses to Plaintiffs' counsel.

If the Court does not approve the proposed settlement, the settlement will be null and void and the litigation will proceed towards a trial and judgment. If there are further actions taken in the litigation that affect your rights, you will receive such notice, if any, as may be determined by the Court or required by law.

#### *4. Do Nothing*

If you are a member of the Settlement Class and do nothing in response to this Notice, you will not receive compensation and your claims for compensation or other relief may be released and extinguished by the Settlement.

*Summary of Options for Class Members*

<b>OPTIONS IF YOU ARE A CLASS MEMBER</b>	
<b>Do Nothing</b>	If you do nothing, you will not receive a settlement payment, but you will release and extinguish any legal claims relating to this case if the settlement is approved by the Court. In other words, you will be giving up your right to sue for any losses or injuries you suffered as a result of the incident on the U.C. Davis Quad on November 18, 2011.
<b>Submit a Claim</b>	If you file a Claim Form and your claim is approved, you will be eligible to receive up to \$20,000 (twenty thousand dollars) in compensation. The payment and total amount of compensation will depend on the total number of approved claims that are submitted, and whether the settlement receives final court approval. If your claim is not approved, you will get no benefit.
<b>Exclude Yourself (“Opt out”)</b>	If you “opt out” of the settlement, you will not receive a settlement payment, and your ability to assert claims against the Regents or other parties will not be affected. This is the only option that allows you ever to be part of any other lawsuit against the Regents or any police officer or other person who may have violated your civil rights or otherwise harmed you in connection with the events of November 18, 2011.
<b>Object</b>	You may write to the Court about why you do not like the settlement, or ask to speak in Court about the fairness of the settlement when it is before the Court for final approval.

**HOW TO OBTAIN MORE INFORMATION**

This notice is a summary and does not contain all details of the settlement or the proceedings in the lawsuit. If you have any questions or desire more information, please contact Class Counsel Mark E. Merin at the Law Offices of Mark E. Merin, 1010 F. Street, Suite 300 Sacramento, CA 95814, telephone (916) 443-6911, email: mark@markmerin.com or Michael T. Risher, American Civil Liberties Union Foundation of Northern California, 39 Drumm Street, San Francisco, CA 94111, telephone (415) 621-2493, email: mrisher@aclunc.org. **Please do not contact the District Court or the Court Clerk’s Office regarding this settlement or the procedures for making claims and objections.**

Dated: October 11, 2012

BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA