

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is between Young Americans for Liberty at Montclair State University, and Mena Botros (“Plaintiffs”), and Rose L. Cali, Mary A. Comito, Dr. Francis M.C. Cuss, George J. Hiltzik, Lawrence R. Inserra, Jr., Douglas L. Kennedy, Ralph A. LaRossa, Jean Marc De Grandpre, John L. McGoldrick, William T. Mullen, Preston D. Pinkett III, Kent Sluyter, Nikita Williams, Susan A. Cole, Karen Pennington, Margaree Coleman-Carter, Paul M. Cell, Kaluba Chipepo, Yolanda Alvarez, and Hamal Strayhorn (“University Defendants”), and The Student Government Association of Montclair State University Inc. (the “SGA”). All persons above will also be referred to as “the Parties.”

A. The Parties dispute the legality of the University Defendants’ actions in enforcing its Demonstrations and Assemblies Policy on campus on September 10, 2019 with regard to Plaintiffs, the University Defendants’ Bias Education Response Taskforce, and the SGA’s regulations on recognizing student organizations and disbursing mandatory student fees to those organizations. Plaintiffs filed a lawsuit, *Young Americans for Liberty, et al. v. Trustees of Montclair State Univ., et al.*, in the United States District Court of the District of New Jersey, No. 2:20-cv-508-BRM-JAD (the “Litigation”), against the University Defendants and the SGA challenging the constitutionality of those actions and regulations under the First and Fourteenth Amendments to the United States Constitution.

B. The Parties’ decision to enter into this Agreement represents a compromise of disputed claims in the Litigation and creates the framework for the parties to move forward without the disruption and cost of litigation. Defendants deny all liability to the claims asserted by Plaintiffs.

C. The Parties to this Agreement wish to resolve all claims Plaintiffs have or could allege against Defendants related to these events.

NOW THEREFORE, in consideration of the foregoing and the terms and conditions contained in this Agreement, the Parties agree as follows:

1. Upon execution of this Agreement by all parties, Defendants agree as follows:

a. Repeal and replace the Demonstrations and Assemblies Policy. The University Defendants will repeal the existing Demonstrations and Assemblies Policy and replace it with the Expressive Activity Policy, attached as Exhibit 1.

b. Abolish the Bias Education Response Taskforce. The University Defendants will abolish their Bias Education Response Taskforce (“BERT”) and all BERT “bias incident” regulations on reporting, investigating, and making decisions on any alleged “bias incidents.”

c. Student organization recognition and funding policies. The SGA will enact legislation, policies, procedures, and forms to replace the existing Class I-IV charter system and funding system with “shall recognize” and “shall fund” policies, according to the terms set forth in Exhibit 2.

d. Payment to Plaintiffs’ attorneys. Within sixty (60) days of executing this Agreement and providing an executed State of New Jersey W-9 form, the University Defendants will make a payment of \$28,000 and the SGA will make a payment of \$14,000 by check to “Alliance Defending Freedom (IOLTA).”

2. Dismissal of the Litigation. Once Defendants make the changes in Paragraphs 1.a and 1.b, and Alliance Defending Freedom receives \$42,000 in accordance with Paragraph 1.d, Plaintiffs will promptly file the Joint Stipulation of Dismissal, attached as Exhibit 3.

3. Release. In consideration of Defendants’ actions specified in Paragraph 1 and subject to the terms of the following paragraph, Plaintiffs hereby fully release, acquit, and forever discharge Defendants, their agents, assigns, and employees, from any and all claims, liabilities, causes of action, damages, costs, attorneys’ fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that Plaintiffs may now have, have ever had, or hereafter may have (i) relating directly or indirectly to the allegations in Paragraph A of this Agreement, Plaintiff’s complaint or this Litigation, (ii) which arise from actions taken by Defendants prior to the date of this Agreement, and (iii) that arise from any challenge of the Expressive Activity Policy in Paragraph 1.a of this Agreement regarding its constitutionality or legality. This release and waiver covers all claims and demands for relief, damages, costs, expenses, and causes of action of any kind or character (whether known or unknown or foreseeable or unforeseeable) under federal and state law, as of the date of this Agreement

In consideration for Defendants’ promise in paragraph 1.c. above to enact new student organization chartering and funding policies, Plaintiffs agree to dismiss without prejudice the claims challenging such policies. If the SGA fails to enact new policies consistent with the terms of Paragraph 1.c and that are acceptable to Plaintiffs, Plaintiffs reserve the right to file a lawsuit against the SGA challenging the chartering and funding policies, including seeking damages incurred as a result of the policies that were challenged in the Lawsuit.

4. Entire Agreement. This Agreement contains the entire understanding of the Parties and supersedes all previous oral and written agreements; there are no other agreements, representations, or understandings not set forth herein. Plaintiffs acknowledge that neither Defendants, nor any of their agents, representatives, employees, or attorneys, have made any representations to them concerning the terms or effects of this Agreement other than those contained in it.

Further, this Agreement can be modified only by a written agreement signed by the Parties.

5. Savings Clause and Waiver. If any portion of this Agreement is found to be invalid or unenforceable for any reason, any court or other tribunal adjudicating the rights and duties of the parties under this Agreement shall alter, modify and/or strike portions of the Agreement so that it shall be enforceable to the fullest extent permitted by law. In the event that any provision of this Agreement (or any portion thereof) is found invalid or unenforceable, the remainder of that provision and the remainder of this Agreement shall be valid, binding, and enforceable. The waiver of a breach of any term or provision of this Agreement shall not operate or be construed to be a waiver of any other or subsequent breach of this Agreement.

6. Non-admission. This Agreement in no way shall be construed as an admission by Defendants that they acted wrongfully toward or failed to act lawfully with regard to Plaintiffs. Likewise, by entering into this Agreement, Plaintiffs neither recognize the validity of any defense Defendants may have asserted nor provide any assurance or certification that all aspects of Defendants' expressive activity regulations fully comply with the United States Constitution or other applicable law.

7. Taxes. Plaintiffs shall be solely responsible for the payment of appropriate taxes on this settlement, if any, and agree and understand that Defendants have not made any representation to them regarding the tax treatment of the sums paid pursuant to this agreement. In the event a claim for such taxes, and/or penalties and interest, is assessed by any taxing authority, Plaintiffs agree to, and do hereby hold Defendants harmless and indemnify Defendants against any and all tax liability, interest and/or penalties as due thereon from Plaintiffs.

8. Liens. Plaintiffs shall be solely responsible for the payment of any claims or liens that may be asserted against the proceeds of this settlement. In the event a claim for such payment is asserted by anyone, including Medicare and/or Medicaid, Plaintiffs agree to make those payments and do hereby hold Defendants harmless and indemnify Defendants against any and all liability for same.

9. Counsel Fees. This Agreement includes all claims for attorneys' fees and costs.

10. Non-Assignment. I acknowledge that none of the proceeds given herein have been assigned.

11. State Liens. Plaintiffs acknowledge that if a debt/lien is owed to the State, its agencies or departments, such debt/lien shall be deducted from the payment prior to its disbursement to them. The holders of these liens/debts include, but are not limited to, Office of the Public Defender, the Motor Vehicle Commission, Division of Taxation, Division of Developmental Disabilities, Department of Corrections, Department of Children and Families, the Probation Division of the Administrative Office of the Courts, and the State Parole Board.

12. Who Is Bound. Plaintiffs and Defendants are bound by this Agreement. Anyone who succeeds to their rights and responsibilities, such as their heirs or the executor of their estates, are also bound. This Agreement is made for their benefit and all who succeed to their rights and responsibilities, such as their heirs or the executor of their estates.

13. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey. Any proceedings related to or arising out of this Agreement shall only be commenced, prosecuted, or continued in a court of competent jurisdiction situated in the State of New Jersey.

14. Voluntary Execution. Plaintiffs acknowledge that they have read this Agreement, understand its terms, and have entered into it voluntarily. Plaintiffs acknowledge that they have been given a reasonable period of time within which to consider this Agreement and its waiver and release of claims. Plaintiffs further acknowledge that they have consulted with their attorney before signing this and entering into this Agreement.

15. Counterparts/Signatures. The Parties agree that this Agreement may be executed in counterparts, all of which shall constitute one agreement. The parties further agree that copies of signatures shall be sufficient to bind the parties to this Agreement.

Date: June 15, 2021

Date: June 15, 2021

Date: June 16, 2021

Date: June 16, 2021

Plaintiffs:

Mena Botros
Mena Botros, individually

Mena Botros
Mena Botros, as President of
Young Americans for Liberty
at Montclair State University

Attorneys for Plaintiffs

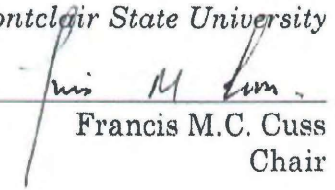
Michael Ross
Michael Ross
ALLIANCE DEFENDING FREEDOM

Michael P. Laffey
Michael P. Laffey

University Defendants


*Board of Trustees of
Montclair State University*

Date: 5/12/21



Francis M.C. Cuss
Chair

Individual Defendants

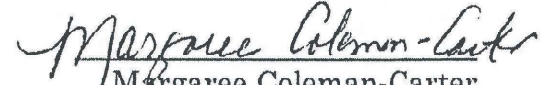
Date: 4/27/21


Susan A. Cole
President

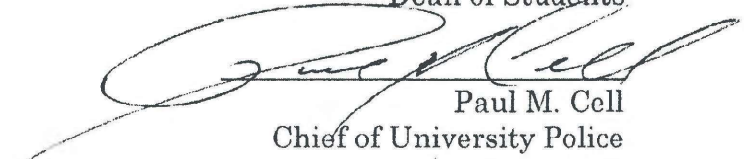
Date: March 30, 2021


Karen Pennington
Vice President of Student Development &
Campus Life

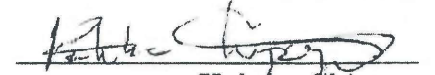
Date: March 30, 2021


Margaree Coleman-Carter
Associate Vice President and
Dean of Students

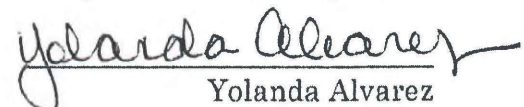
Date: MAY 6, 2021


Paul M. Cell
Chief of University Police

Date: 5/6/21

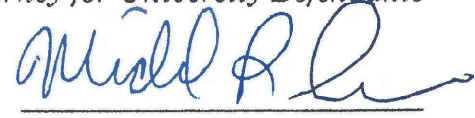

Kaluba Chipepo
Sergeant of University Police

Date: March 30, 2021


Yolanda Alvarez
Chair of Bias Education Response Taskforce

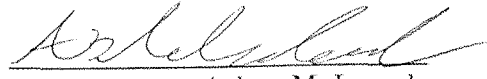
Attorney for University Defendants

Date: 6/15/21


Michael R. Sarno

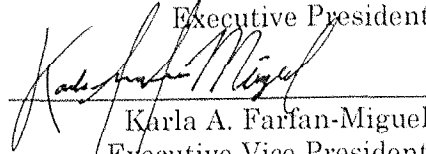
Defendant the Student Government Association
of Montclair State University, Inc.

Date: 6/17/21



Ashon M. Lanada
Executive President

Date: 6/17/21



Karla A. Farfan-Miguel
Executive Vice President

Date: 06/17/21



Guillermo E. Estrada
Executive Treasurer

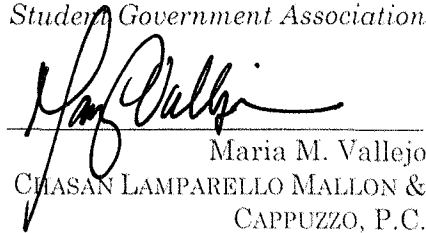
Date: 06/17/21



Christie A. Rosales-Herrera
Executive Secretary

Attorneys for the Student Government Association

Date: 6/17/21



Maria M. Vallejo
CHASAN LAMPARELLO MALLON &
CAPPUZZO, P.C.

Date: 06/17/2021



Ronald Botelho
CHASAN LAMPARELLO MALLON &
CAPPUZZO, P.C.

Exhibit 1

I. Policy on Expressive Activity.

This policy applies to all buildings, grounds, and other spaces owned or controlled by Montclair State University. The term "Expressive Activity" includes:

1. Meetings and other group activities of students and student organizations;
2. Speeches, performances, demonstrations, rallies, vigils, and other events by students, student organizations, and outside groups invited by student organizations;
3. Distributions of literature, such as leafleting and pamphleting; and
4. Any other expression protected by the First Amendment to the U.S. Constitution.

II. Policy Statement.

Montclair State University property is primarily dedicated to academic, student life and administrative functions. But it also represents the "marketplace of ideas," and especially for students, many areas of campus represent a public forum for speech and other Expressive Activities. For students and student organizations, the outdoor areas of campus are venues for free expression, including speeches, demonstrations, and the distribution of literature.

Montclair State University shall not consider the content or viewpoint of the expression or the possible reaction to that expression in applying this policy. The University shall not impose restrictions on students, student organizations, or university employees on the basis of the content or viewpoint of their expression or the possible reaction to that expression. In the event that other persons react negatively to a student's, student organization's, or university employee's expression, the University (including University Police) shall take all necessary steps to ensure public safety while allowing the Expressive Activity to continue.

No event or Expressive Activity shall be permitted to violate or hinder the rights of others within the campus community. No event or Expressive Activity shall prevent others from pursuing their work or studies or other campus activities, nor in any way threaten or intimidate others.

Montclair State University does not assume any obligation or responsibility for the content of the materials distributed.

III. Rules and Regulations.

A. General Rules.

Subject to the additional rules set forth herein, students and student organizations shall be allowed to conduct Expressive Activities on University property as long as such activity:

1. Does not block access to campus buildings or obstruct or interfere with university-related or university-sponsored activities.
2. Does not obstruct vehicular or pedestrian traffic.
3. Does not constitute unlawful activity.
4. Does not create a clear and present threat to public safety.

5. Does not take place in a location that has been reserved by another student organization or University group.
6. Does not include physically attaching materials to University property.
7. Is conducted by a non-commercial entity.
8. Takes place during hours when the University is open.
9. Distribution of printed materials must be done in person.
10. Individuals and/or groups engaged in Expressive Activity are responsible for picking up any printed materials dropped on the ground around the areas of distribution or other litter resulting from the activity. The University may charge such individuals and/or groups a reasonable clean up fee if they fail to do so.
11. Individuals and/or groups engaging in Expressive Activity agree to pay for any damages to University property that is caused by their use of such property.
12. No use of amplification devices in outdoor locations is permitted outside of the common hour on campus, to avoid interference with classes. No amplification is permitted inside buildings at any time to avoid interference with offices, classes and programs.

This policy shall not apply to any person or organizations desiring to sell merchandise or services on campus. Any person or organization desiring to sell merchandise or services on campus should contact the Office of Campus Business Services.

B. Outdoor Locations.

For outdoor campus facilities and areas, students, student organizations, and their sponsored guests may freely engage in spontaneous Expressive Activities provided that such activities are in compliance with all other provisions of this policy.

C. Indoor Locations.

For indoor campus facilities and areas, students, student organizations, and their sponsored guests may freely engage in spontaneous Expressive Activities subject to the following conditions:

1. Distribution of written or printed materials, such as leafleting or pamphleting, and petitioning for signatures may only be conducted at one of the following locations:
(a) University Hall or (b) Student Center
2. The Expressive Activities are in compliance with all other provisions of this policy.

D. Reserving Campus Facilities:

1. If students, student organizations, or university employees desire to reserve indoor or outdoor campus facilities, they shall submit their application for reservation to the Dean of Students four business days prior to the Student reservation date. The University will respond to the reservation application within two business days

2. External individuals or organizations may be sponsored by University students, employees or organizations, in which case the reservation must be made by the University sponsor. In the event that a non-community member's reservation conflicts with a University community member's application, the reservations will be given in the priority listed in footnote 1.

3. Reservation requests will be processed and granted on a first-come, first-served basis, consistent with the priority listed in footnote 1. These requests may be denied for the following reasons only:

- a. The requested venue is a facility that the university has designated as not available for Expressive Activity under this policy;
- b. The requested venue is a facility and the request conflicts with restrictions enacted pursuant to this policy;
- c. The venue is already reserved for another event¹;
- d. The activity will attract a crowd larger than the venue can safely contain;
- e. The activity is a clear and present threat to public safety, according to the university's police department, including the inability to schedule sufficient personnel/police within the necessary time frame;
- f. The activity will occur during college examination periods or during other major campus events, such as convocations; home-coming or heavily-attended athletic competitions or performances; or
- g. The activity is unlawful.

4. During an event, the student, student organization, or university employee requesting the reservation is responsible for preserving and maintaining the facility it reserved. If it causes any damage to those facilities, the person(s) or organization (and its officers, if applicable) shall assume responsibility.

¹ In the event that multiple individuals or organizations submit conflicting reservation requests, the following order of precedence shall govern: (1) official university sponsored or contracted

activities and events; (2) recognized student organization activities and events; (3) student activities and events; and (4) all other activities and events.

Exhibit 2

A. Recognition of Organizations

1. The SGA has suspended the chartering and re-chartering system. The chartering system of recognizing organizations will be replaced with a registration system for the fall 2021 semester.
2. The SGA will replace the existing “Class I-IV” chartering system in Article Five of its Statutes with a “shall recognize” system for recognizing student organizations. It is agreed the following criteria shall not be permitted:
 - a. Non-comprehensive or vague language or “catch-all” language giving discretion to the SGA to deny recognition for a reason that is not enumerated in the statute/policy/form (i.e. all requirements for recognition must be in the written statute and the SGA shall recognize the organization unless it fails to meet the criteria in the policy);
 - b. Criteria that refers to the organization’s viewpoint, popularity, appeal or the like;
 - c. A requirement that the organization or its activities benefit all students;
or
 - d. Consideration of the organization’s tenure on campus.
3. The SGA will cause its university advisors and legal counsel to be available to address legal questions and Constitutional issues that arise during the implementation period.

B. Funding of Organizations

1. The SGA shall immediately transition to funding student organizations based on enumerated, viewpoint neutral and clear criteria for full implementation for the fall 2021 semester.
2. The SGA will replace the existing financial policies with a “shall fund” system for recognizing student organizations. It is agreed the following criteria shall not be permitted:
 - a. Non-comprehensive or vague language or “catch-all” language giving discretion to the SGA to deny funding for a reason that is not enumerated in the statute/policy/form (i.e. all requirements for funding must be in the written statute and the SGA shall fund the organization’s request unless it fails to meet the criteria in the policy);

- b. Criteria that refers to the organization's viewpoint, popularity, appeal or the like;
 - c. A requirement that the organization or its activities benefit all students;
or
 - d. Consideration of the organization's tenure on campus.
3. All student organizations will have access to a uniform base budget and access to additional appropriations to fund their activities and programs through individual appropriations on a first come/first serve basis for the 2021-2022 fiscal year forward.
4. The SGA will cause its university advisors and legal counsel to be available to address legal questions and constitutional issues that arise during the implementation period.

C. Ancillary Statutes

1. The SGA will update all statutes, policies, procedures and forms containing numerous sections that describe the authority and responsibilities of various appointees, elected officers, legislators, cabinet members, and paid staff, but do not expressly govern the recognition or funding of student organizations to conform to the newly adopted "shall recognize" and "shall fund" policies outlined above. To accomplish this, the SGA convened a committee consisting of its incoming and outgoing executive board members, its university advisors and its legal counsel, and charged the committee with the responsibility to review all statutes against the newly adopted "shall recognize" and "shall fund" policies, and to prepare, introduce and vote upon legislation by the end of the spring semester 2021 to amend all such ancillary statutes to eliminate or clarify provisions which could be read in conflict with the new "shall recognize" and "shall fund" policies. The committee completed its work on May 14, 2021 and provided its counsel with recommended policies for legal review.
2. The SGA will cause its university advisors and legal counsel to be available to address legal questions and constitutional issues that arise during the implementation period.

D. Timeline for final implementation

1. Legal counsel for the SGA will submit the proposed revisions of the SGA statutes regarding Sections A through C above to the Plaintiffs' counsel by July 1, 2021, for review of Constitutional compliance.
2. Legal counsel for the Plaintiffs and the SGA will make themselves available to confer during the month of July regarding additional revisions, if any.
3. By July 31, 2021, the revised policies, procedures and forms for the “shall recognize” and “shall fund” policies and all ancillary statutes will be made available to all students, to provide time for those wishing to be recognized as an organization to complete the new registration process for the start of the fall 2021 semester, and to receive a budget, and request appropriations for the 2021-2022 academic year.
4. Plaintiffs will execute a stipulation of dismissal with prejudice or otherwise move to reinstate their case by September 15, 2021.

Exhibit 3

MICHAEL P. LAFFEY
MESSINA LAW FIRM, P.C.
961 Holmdel Road
Holmdel, NJ 07733
(732) 332-9300
mlaffey@messinalawfirm.com

MICHAEL R. ROSS*
TYSON C. LANGHOFER*
ALLIANCE DEFENDING FREEDOM
CENTER FOR ACADEMIC FREEDOM
20116 Ashbrook Place, Suite 250
Ashburn, VA 20147
(480) 444-0020
mross@ADFlegal.org
tlanghofer@ADFlegal.org

Counsel for Plaintiffs

**Admitted pro hac vice.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**YOUNG AMERICANS FOR LIBERTY AT
MONTCLAIR STATE UNIVERSITY, and MENA
BOTROS;**

Plaintiffs,

v.

**The Trustees of Montclair State University—
ROSE L. CALI, MARY A. COMITO, VICE-CHAIR
DR. FRANCIS M. C. CUSS, CHAIR GEORGE J.
HILTZIK, LAWRENCE R. INSERRA, JR.,
DOUGLAS L. KENNEDY, RALPH A. LAROSSA,
JEAN MARC DE GRANDPRE, JOHN L.
MCGOLDRICK, WILLIAM T. MULLEN,
PRESTON D. PINKETT III, SECRETARY KENT
SLUYTER, and STUDENT NIKITA WILLIAMS—
all individually and all in their official
capacities as members of the Montclair State
University Board of Trustees; SUSAN A. COLE,
President of Montclair State University, in her
official and individual capacities; KAREN
PENNINGTON, Vice President of Student
Development & Campus Life of Montclair
State University, in her official and individual**

**Civil No. 2:20-cv-00508-
BRM-JAD**

capacities; **MARGAREE COLEMAN-CARTER**,
Dean of Students of Montclair State
University, in her official and individual
capacities; **PAUL M. CELL**, Chief of Police of
Montclair State University, in his official and
individual capacities; **KALUBA CHIPEPO**,
Sergeant of Campus Police for Montclair State
University, in his official and individual
capacities; **YOLANDA ALVAREZ**, Chair of Bias
Education Response Taskforce of Montclair
State University, in her official and individual
capacities; **HAMAL STRAYHORN**, Co-Chair of
Bias Education Response Taskforce of
Montclair State University, in her official and
individual capacities; **THE STUDENT
GOVERNMENT ASSOCIATION OF MONTCLAIR
STATE UNIVERSITY INC.**,

Defendants.

JOINT STIPULATION OF DISMISSAL

NOW COME the Plaintiffs and Defendants and jointly stipulate to the dismissal of this action. In support thereof, the parties state as follows:

1. The parties have reached a resolution in this case that resolves all claims.
2. The parties stipulate that Counts I, III, IV, and VI of this lawsuit should be dismissed with prejudice and that Counts II and V should be dismissed without prejudice.
3. The parties stipulate that each party will bear its own costs.
4. This is not a class action lawsuit, no receiver has been appointed, and no federal statute that requires a court order for dismissing a case governs this lawsuit.
5. Plaintiffs have not previously dismissed any federal or state-court suit based on or including the same claims as those presented in this case.

Respectfully submitted this day, June __, 2021.

s/ Michael Laffey

MICHAEL P. LAFFEY
MESSINA LAW FIRM, P.C.
961 Holmdel Road
Holmdel, NJ 07733
(732) 332-9300
mlaffey@messinainlawfirm.com

MICHAEL R. ROSS*
TYSON C. LANGHOFER*
ALLIANCE DEFENDING FREEDOM
CENTER FOR ACADEMIC FREEDOM
20116 Ashbrook Place, Suite 250
Ashburn, VA 20147
(480) 444-0020
mross@ADFlegal.org
tlanghofer@ADFlegal.org

Counsel for Plaintiffs

**Admitted pro hac vice.*

s/ Michael R. Sarno

Deputy Attorney General
Office of the NJ Attorney General
25 Market Street, P.O. Box 116
Trenton, New Jersey 08625
(609) 376-2819
Michael.Sarno@law.njoag.gov

Counsel for MSU Defendants

s/ Maria Vallejo

MARIA P. VALLEJO
RONALD P. BOTELHO
CHASAN LAMPARELLO MALLON &
CAPPUZZO, P.C.
300 Lighting Way, Suite 200
Secaucus, NJ 07094
(201) 348-6000
MVallejo@chasanlaw.com
RBotelho@chasanlaw.com

*Counsel for Defendant The Student
Government Association of Montclair
State University, Inc.*