

**CONFIDENTIAL**

**INVESTIGATION REPORT**

**Diversity Caucus (Complainant)**

**Students for Justice in Palestine (Complainant)**

**[REDACTED], in [REDACTED] capacity as GSA President (Respondent)**

Discrimination Prevention Office

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**\*\*\* CONFIDENTIAL \*\*\***

TO: Maria Blandizzi, Dean of Students  
Robert Williams, Executive Director ASUCLA

FROM: Discrimination Prevention Office  
Office of Equity, Diversity and Inclusion

DATE: June 29, 2016

RE: Investigation Report Regarding Complaints of Violation of Policies  
Requiring Viewpoint-Neutral Allocation of Mandatory Student Fees by  
Students for Justice in Palestine and the Diversity Caucus against [REDACTED]  
[REDACTED] as Graduate Students Association President

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**I. INTRODUCTION.**

DPO investigated a report that UCLA Graduate Students Association (GSA) President [REDACTED] ({the GSA President}) violated University policy requiring viewpoint neutrality in allocation of mandatory student fees. This investigation concerns only conduct by {the GSA President} in [REDACTED] capacity as GSA President, and conduct related to the complaint and {the GSA President}'s responses to it.

**II. ALLEGATIONS.**

Two registered UCLA student organizations, the Diversity Caucus and Students for Justice in Palestine (SJP), reported that {the GSA President} placed a stipulation on funding for a Diversity Caucus event that took place on campus on November 5, 2015. They alleged that this stipulation violated University policy.

**III. APPLICABLE POLICIES AND STANDARD OF REVIEW.**

All the relevant policies appear in the Policies Applying to Campus Activities, Organizations and Students (PACAOS), which is a compendium of policies that govern the activities of students throughout the entire University of California system.

**A. UC PACAOS 60.00 Policy on Student Governments.**

This policy provides that “the University's purposes for student governments” include “[t]o provide a forum for the discussion of issues and ideas of interest, importance, and/or of concern to students; To provide financial and other tangible support for student activities and organizations *on a viewpoint-neutral basis*, consistent with the provisions of Section 86.00 of these Policies, in order to foster a sense of community and to further discussion among students of the broadest range of ideas.” Sections 61.10; 6.12-6.13, available at <http://policy.ucop.edu/doc/2710526/PACAOS-60> (emphasis added).

**B. UC PACAOS 70.00 Policy on Registered Campus Organizations.**

This policy provides that activities of registered campus organizations can be supported with mandatory student fees when done with a reallocation process through student government, not through a referendum. It further specifies that any reallocations must “employ *solely viewpoint-neutral criteria* as set forth in Section 86.30 of these Policies.” Sections 70.80; 70.81, 70.82, available at <http://policy.ucop.edu/doc/2710527/PACAOS-70> (emphasis added).

**C. UC PACAOS 80.00 Policy on Compulsory Campus-Based Student Fees.**

The policy contains several provisions requiring viewpoint neutrality in the allocation of mandatory student fees. Sections 86.10-86.40, available at <http://policy.ucop.edu/doc/2710528/PACAOS-80> (emphases added). These provisions include the statement that “[t]he University’s educational purposes are served when reallocations by a student government or other campus entity of compulsory campus-based student fees . . . are made . . . to stimulate on-campus discussion and debate on a wide range of issues from a variety of viewpoints. . . . In addition, allocation decisions to provide such support must be made *without regard to the viewpoint* of a particular Registered Campus Organization or Registered Campus Organization-related program or activity. . . .” Section 86.20. “[C]ampuses shall have responsibility for ensuring that student governments . . . maintain procedures and criteria for making specific reallocation decisions . . . . Such procedures and criteria *must be viewpoint-neutral* in their nature; that is, they must be based upon considerations which do not include approval or disapproval of the viewpoint of the Registered Campus Organization or any of its related programs or activities.” Section 86.30.

This policy gives some examples of viewpoint-neutral allocation criteria such as the organizational needs of the organization, event costs, etc. and also states that “[s]uch sponsored events supported in whole or in part by compulsory campus-based student fees need not avoid controversial political, religious, or ideological content, subject to the understanding that under current University policy (see Section 30.20 of the Policy on Speech and Advocacy) campuses have a responsibility to assure an ongoing opportunity for the expression of a variety of viewpoints.” Section 86.31.

This policy further includes the requirement that “student governments or other campus entities responsible for reallocating compulsory campus-based student fees must publicize widely and regularly to Registered Campus Organizations the availability of such funds to support Registered Campus Organizations *on a viewpoint-neutral basis*, as well as the *viewpoint-neutral criteria* on the basis of which such funds will be reallocated.” Section 86.32.

#### **D. Standard of Proof.**

In determining whether University policy was violated, the applicable standard is a “preponderance of the evidence.” This means that the totality of the evidence must demonstrate that it is *more likely than not* that the alleged conduct occurred in violation of the applicable policy.

#### **IV. SUMMARY OF FINDINGS.**

The preponderance of the evidence supports the finding that {the GSA President}, in ■■■ role as GSA President, violated University policy requiring viewpoint neutrality in the allocation of mandatory student fees.

#### **V. INVESTIGATION.**

##### **A. Witnesses.**

The complainants and respondent were interviewed, as were fourteen additional witnesses. Unless indicated otherwise on the chart below, all interviews were in-person.

The GSA is an independent student government organization, with registered representatives from different schools and departments across the University. The GSA is divided into the Cabinet (executive branch) and the Forum (legislative branch). At the relevant time,<sup>1</sup> the GSA Cabinet comprised twelve students--four Officers<sup>2</sup> and eight Directors,<sup>3</sup> all of whom DPO interviewed. DPO also interviewed one member of the GSA Forum. Finally, DPO interviewed two University staff members who play an advisory role to the GSA.

The chart below lists the interviewees, their positions, and the date of interviews.

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<sup>1</sup> Two people subsequently resigned. Also, one of the Director positions, the Election Commissioner, has historically been treated as a regular voting member of the Cabinet, and was treated as such at the time of the funding allocation. The Election Commissioner was later told that under the GSA Constitution ■■■ was not a full voting member. Although ■■■ stopped voting at that point, ■■■ had voted on the funding allocation and other related votes discussed here.

<sup>2</sup> The Officers are the president ({the GSA President}) and three vice-presidents.

<sup>3</sup> The exact number of Directors varies from year to year.

Diversity Caucus (██████████) and SJP (██████████)	Complainants, Registered Student Organizations	March 7, 2016
{The GSA President}	Respondent, GSA President	April 28, 2016 <sup>4</sup> (Also present, ██████████ ██████████ attorney.)
██████████	Staff, (██████████ ██████████)	April 12, 2016; May 12, 2016 (brief phone call)
██████████	Staff (██████████)	April 8, 2016
██████████	Cabinet Member - Officer	April 14, 2016; April 29, 2016 (phone)
██████████	Cabinet Member - Officer	May 3, 2016
██████████	Cabinet Member - Officer	April 6, 2016
██████████	Cabinet Member	April 12, 2016
██████████	Cabinet Member	April 15, 2016
██████████	Cabinet Member	May 12, 2016 (phone)
██████████	Cabinet Member	May 10, 2016
██████████	Cabinet Member	April 14, 2016
██████████	Cabinet Member	April 11, 2016
██████████	Cabinet Member	April 11, 2016
██████████	Cabinet Member	May 11, 2016 (phone)
██████████	Forum Member	April 18, 2016

**B. Other Evidence.**

DPO staff reviewed extensive documentation provided by the interviewees. This included email correspondence, meeting minutes, *Daily Bruin* and other media articles, and hundreds of pages of supporting materials. All parties and witnesses were given ample opportunity to provide any and all relevant evidence in whatever form. On no occasion was any proffered evidence declined for consideration. DPO also conducted independent research concerning GSA and University operations and policies.

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<sup>4</sup> It is DPO's practice to interview respondents promptly. {The GSA President} was contacted on March 22, 2016 to request an interview. ██████████ rescheduled the first two interviews that were set before rescheduling again for April 28, 2016.

## VI. SUMMARY OF EVIDENCE.

The information obtained in the investigation is synthesized and summarized below. This information was obtained by reviewing the extensive email record documenting much of the background and communications relevant to this matter, by reviewing GSA meeting minutes, and by reviewing additional documents provided by interviewees, and from the interviewees' reports. Because the interviewees' reports, particularly the witness reports, were largely duplicative, DPO has generally aggregated the information obtained during the interviews. DPO has indicated wherever there was an important disagreement or discrepancy and where necessary, has resolved these factual questions, on the basis of witness credibility and the totality of evidence.

### A. Background.

In late September 2015, UCLA graduate student [REDACTED] [REDACTED] (the Diversity Caucus Representative) approached {the GSA President} on behalf of a student organization, the Diversity Caucus, to request assistance for a town hall event it was planning for November 5, 2015. Diversity Caucus is a registered student group at UCLA that is an umbrella organization for student groups interested in diversity and campus climate issues. The town hall event was designed to allow different student organizations to set up tables, discuss their organization with other campus community members, and discuss diversity issues on campus, with a keynote speech by Vice Chancellor for Equity, Diversity and Inclusion Jerry Kang.

From approximately September 30, 2015 to October 15, 2015, {the Diversity Caucus Representative} and {the GSA President} corresponded about this event, including possible funding options. {The GSA President} introduced {the Diversity Caucus Representative} to the Undergraduate Student Association Council (USAC) [REDACTED], so {the Diversity Caucus Representative} could pursue USAC as an additional possible source of funding and support for the event. {The GSA President} also corresponded with [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) to clarify the possibility of GSA funding.

Graduate student organizations can apply for event funding through the GSA Discretionary Fund. However, the Diversity Caucus's request, which was for \$2,000, went beyond the maximum grant amount. {The GSA President}, in consultation with staff advisors [REDACTED] and [REDACTED], determined that Cabinet Surplus funds were a potential alternative source of funding. These funds usually become available in November, after certain expenses are allocated. In recent years the amount of money available in this pool has been sizable. {The GSA President} was informed by the advisors that there was at least \$30,000 available at that time, and significantly more became available later. The source of the money is mandatory graduate student fees.

The Cabinet Surplus funds are typically used for GSA operating expenses (e.g. office equipment, social event expenses). But they could also be used to help student organizations hold events, for example, if an organization has exhausted the money available to it from the GSA Discretionary Fund. Witnesses familiar with GSA processes and history reported that unlike for the Discretionary Fund, guidelines for the use of Cabinet Surplus money are not clearly codified.<sup>5</sup> Cabinet was told that it had to allocate the money for the benefit of the students from which it was collected, and that allocation simply requires a majority vote of the Cabinet. The GSA Cabinet reported not being aware of the PACAOS requirements requiring viewpoint-neutrality. In addition, information about this funding source is not widely presented to student organizations.

{The GSA President} told {the Diversity Caucus Representative} to attend a GSA Cabinet meeting that was to take place in mid-October to present [REDACTED] funding request to GSA. Later, {the GSA President} told {the Diversity Caucus Representative} that the voting would happen electronically rather than at a meeting.<sup>6</sup>

**B. Placement and Notification of the Stipulation.**

**1. Oct. 16, 1:48 am: GSA Allocation Vote.**

On October 16, 2015, about 1:48 am, {the GSA President} sent a Doodle poll (a convenient way to collect votes online) to the GSA Cabinet for voting on the funding allocation. The actual Doodle poll had no stipulation regarding divestment or issues concerning Israel-Palestine. The email stated, “I need your urgent vote on the following items: [link to Doodle poll].” There were two items to be voted on, one of which was the Diversity Caucus allocation:

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<sup>5</sup> [REDACTED] and [REDACTED] reported that further guidelines are currently being formulated and codified regarding allocation of these funds and to make existing UCLA and UCOP policies more easily available to GSA.

<sup>6</sup> Witnesses reported that Doodle polls were often used for GSA voting rather than meetings because they avoided the scheduling difficulty of holding a meeting. In using online voting, they discussed that the cost of not being able to discuss the issue collectively was often outweighed by the benefit of convenience. A few Cabinet members mentioned preferring in-meeting votes to allow for discussion. For this particular vote, there was also a tight timeline in order to approve funding in time for the event. Many witnesses attributed this to the Diversity Caucus’s late request, although a few witnesses pointed out that the availability of Cabinet Surplus funds for events is not well-advertised and is difficult for organizations to learn about.

At Cabinet, we discussed about a student-hosted Town Hall meeting being held with Vice Chancellor of Diversity, Jerry Kang. A similar event was hosted last year in which 350 students attended. 40% of attendees were graduate students, 30% were undergraduate, and 30% were faculty/staff. A similar breakdown is expected for this year. The organizers have secured \$2,000 from the VC's office, and \$300 from GSRC. They're seeking \$2,000 from GSA and \$2,000 from USAC. This will be an opportunity for GSA-USAC to co-program on an important diversity initiative.

Hence, we're holding a vote for \$2,000 of GSA funding to finance this event. ...

Please email me if you have any questions. Otherwise, please submit your vote ASAP.

Nine of the twelve Cabinet members voted for the allocation. Three Cabinet members did not vote at all. Of those three, two said they abstained because they did not understand the issue. The third said [REDACTED] did not have the time to vote, but would have voted "yes." Of those who voted, all said they understood the vote to be solely about providing money to the event based on its likely interest and value to the campus community. No one who voted understood the vote to include any stipulation regarding divestment or issues concerning Israel-Palestine.<sup>7</sup>

**2. Oct. 16, 10:45 am: Notice to Diversity Caucus of Funding Vote with Stipulation.**

On October 16, 10:45 am, {the GSA President} sent an email to {the Diversity Caucus Representative} informing [REDACTED] that the \$2,000 funding request from the Diversity Caucus had been granted. In that email, however, were two stipulations. The first of the

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<sup>7</sup> [REDACTED]

stipulations concerned the use of the GSA name or logo in marketing and program materials and acknowledgment of GSA’s sponsorship for the event. This stipulation is not at issue here. It is the second stipulation that is relevant for this investigation, and what is meant by all references to “the stipulation” in this report. This is the first written record of the stipulation collected in all the evidence. This email was not copied to the GSA Cabinet or staff advisors. It was, however, copied to other Diversity Caucus and USAC representatives [REDACTED]. The stipulation stated (emphasis in original):

We understand that your organization has zero connection with ‘Divest from Israel’ or any equivalent movement/organization. Hence, we approved your funding.

I did want to reiterate that GSA leadership has a zero engagement/endorsement policy towards Divest from Israel or any related movement/organization. I am confident that this won’t be the case, but if we are aware that the Diversity Caucus is engaging with any such movement—directly or indirectly—in the organization of this event, we’ll have to withdraw or recoup our allocation. I know this isn’t the case, but I wanted to put our policy out there.

Of course, we respect the First Amendment rights of individual students. Nonetheless, GSA—as an organization—doesn’t want to sponsor/engage in this cause. Again, I know we are good here.

**3. Oct. 16, 11:03 am: Notice to GSA Cabinet of Funding Vote with Stipulation.**

On October 16, 2015 at 11:03 am, soon after notifying the Diversity Caucus of the funding vote, {the GSA President} emailed the GSA Cabinet informing them of the voting results. In that communication, [REDACTED] included the stipulation (emphasis in original):

The funding for VC Kang’s town hall was approved by cabinet, though we still have a few outstanding votes. Nonetheless, because the diversity caucus needs immediate help from USAC, I informed them about the approval. I did want to bring up a separate point. GSA leadership has a policy not to engage/endorse in Israel-Palestine politics. This is a sensitive topic, and we feel its [sic] inappropriate to be engage [sic] in this discussion as an inclusive organization. With undergraduates and outside organizations being involved in this town hall, a few of you privately expressed concerns about “Divest from Israel” or any related movement being involved in organizing this event. It is my understanding these

organizations will have **zero engagement** in the organization/hosting of this event.

Nevertheless, to ensure that these organizations are not involved, I've included a stipulation with the allocation (please see below). If the Diversity Caucus is found to engage with any such movement/organization—directly or indirectly—in the organization of the event, we'll withdraw or recoup our allocation. Again, though this shouldn't be the case, I included this stipulation for GSA protection.

All but three Cabinet members could not recall seeing this email at the time. One reported reading it at the time and assuming it just referred to GSA not taking an official position, not tied to funding. Two could not recall details but remembered not understanding the email communications surrounding this issue. The others reported that they did not recall noticing the stipulation. Several explained that there is a high volume of GSA email. When they received this email, they just scanned it briefly as notification that the vote had concluded in favor of funding. Neither Cabinet nor advisors were copied on the October 16, 10:45 am notification email from {the GSA President} to the Diversity Caucus.

#### **4. Oct.18, 2015: Clarification of Stipulation.**

After receiving the original email notifying ■ that the Diversity Caucus funding request had been granted, {the Diversity Caucus Representative} and {the GSA President} had a phone call in which {the Diversity Caucus Representative} requested more information on the stipulation. On October 18, 2015, {the GSA President} responded in an email (which was not copied to the Cabinet or staff advisors):

GSA has a policy not to engage with a UCLA movement/organization called “Divest from Israel,[sic]” When we were voting on your funding, some members were concerned about this movement being involved in the organization of your event. For your funding to be approved, cabinet requested this stipulation to be inserted. I don't want to give names...

Basically, the stipulation is that if “Divest from Israel” is involved with the organization of this event, or the Diversity Caucus endorses their position at the event, GSA won't be able to provide funding. My understanding is that this won't be the case.

Of course, if private students have their opinion on this situation, their first amendment rights allow them to express that opinion. Nonetheless, if organizations are engaged that have a stance on ‘Divest from Israel,’ they

are welcomed to help co-sponsor/organize your event; GSA just won't be able to provide any funds."

#### **5. Oct. 19, 2015: Acceptance of Funding.**

On October 19, 2015, {the Diversity Caucus Representative} emailed {the GSA President} accepting the funding and agreeing to the stipulation. The agreement stated:

We also agree to your stipulations. As an organization that aims to promote dialogue and conversations among individuals and organizations of various affiliations and backgrounds, we take a neutral stance. The Diversity Caucus does not have connections to the "Divest from Israel" Organization. To our knowledge, no organizations that are cosponsoring or assisting with organizing are affiliated with "Divest from Israel."

However, the stipulation caused {the Diversity Caucus Representative} concern. On October 23, 2015, {the Diversity Caucus Representative} included in an email to Vice Chancellor Kang a query about the permissibility of the stipulation, but got no response to that question. [REDACTED]

#### **6. Oct. 29, 2015: SJP Concern and Response.**

On approximately October 29, 2015, the student group SJP found out about the stipulation from the Diversity Caucus. SJP was concerned because the stipulation seemed to target them specifically, given their pro-divestment from Israel stance.

SJP stated that they considered approaching advisor [REDACTED] with their concerns, but felt afraid to do so because they did not want to jeopardize the funding for the Diversity Caucus event. They were not even sure whether they were potentially jeopardizing the funding by discussing the stipulation with {the Diversity Caucus Representative}.

SJP clarified that their fear and concern was largely motivated by the stipulation's reference to an official GSA policy, which made it seem like a systemic issue. This was exacerbated by the students' perception that the administration was not responding to their concerns about the unfairness of the stipulation based on their repeated attempts to pursue the matter with Student Affairs, the Dean of Students, Legal Affairs, and the Office of Equity, Diversity and Inclusion. From their perspective, they understood that the stipulation had been explicitly approved by GSA Cabinet and blessed by the University.

The complainants were also concerned because the stipulation seemed very vague and very broad, possibly encompassing a wide range of restrictions. They focused on phrases such as “if we are aware that the Diversity Caucus is engaging with any such movement—directly or indirectly—in the organization of this event . . . .” What would it mean to “engage with a movement?” What kind of association was being prohibited? Would having a conversation with a pro-divestment group to hear what they had to say count? They even wondered how a restriction on direct or indirect engagement would be enforced. For example, would it include reading the organization’s email?

On November 5, 2015, the Diversity Caucus town hall event was held, with GSA’s financial contribution. It was a networking event with 28 organizations, each given a table, and a chance to meet people, pass out flyers, and meet other students and leaders. Although SJP was one of the organizations that participated in the event, the complainants were still concerned about what they understood as an official University policy singling out one viewpoint as unfundable.

## **7. Legal Demands and Escalation.**

In mid-November several legal organizations, including the ACLU and Palestine Legal wrote a demand letter, on behalf of SJP, to the UCLA administration expressing concern about the stipulation. {The GSA President} soon obtained legal representation and made demands on the administration as well. These demands on both sides, which were publicly circulated, raised the issue’s profile and triggered emails, letters, posts, and phone calls to the administration. Spirited commentary based on radically different assumptions about both facts and policies circulated through various media.

Although GSA made some internal attempts to find resolution, no entirely satisfying result materialized. On the one hand, {the GSA President} was upset at what ■ saw as an overly aggressive response that unfairly accused ■ of wrongful behavior. {The GSA President} reported that if SJP had approached ■ with their concerns, ■ could have addressed them before things escalated. On the other hand, SJP felt it was portrayed unfairly as bullying and overly legalistic by people who didn’t recognize that in its view, it had exhausted other potential avenues to challenge the stipulation. SJP also felt that they were being unfairly targeted as the source of the escalation when {the GSA President} was also bringing in attorneys and legal support letters and speaking to the media. Throughout the process, many GSA Cabinet members became worried that they had done something wrong, and were potentially in legal trouble, and felt confused and uncertain about how to proceed. Many Forum members and graduate students similarly felt upset about the distraction and divisiveness of the issue. Several students reported wishing they had more guidance from the University about how to proceed in this unfamiliar and stressful territory.

On February 29, 2016, the complainants filed a complaint with the Discrimination Prevention Office. The Office immediately initiated a careful and impartial investigation, which has culminated in this report. There are media portrayals that contain inaccurate and inflammatory information about the DPO investigation. All external attempts to sway and influence this independent investigation have been vigorously rejected.

## **VII. ANALYSIS AND FINDINGS.**

### **A. Policy.**

It is undisputed that the University policies listed (Part III, above) require Cabinet Surplus funds to be allocated in a viewpoint neutral manner. Student governments must reallocate mandatory student fees with procedures and criteria that are “viewpoint-neutral in their nature; that is, they must be based upon considerations which do not include approval or disapproval of the viewpoint of the Registered Campus Organization or any of its related programs or activities.” PACAOS 86.30. Regardless of one’s views on whether this is a wise policy or not, whether this is constitutionally mandatory or not, the simple truth is that it is the official governing policy of the University of California.

The purpose of these policies is to “foster a sense of community” (PACAOS 60.00, Section 61.13), “further discussion among students of the broadest range of ideas,” (*id.*) and to further the University’s “responsibility to assure an ongoing opportunity for the expression of a variety of viewpoints.” (PACAOS 80.00, Section 86.31).

Thus the key question is whether the stipulation constraining the funds constitutes viewpoint discrimination, which would violate policy. Or, was the stipulation merely an even-handed constraint that prevented addressing any side of any divestment issue concerning Israel, which we assume for the limited purposes of this analysis would *not* have violated University policy.

### **B. Findings.**

In order to answer this central question, some preliminary factual disputes need to be resolved.

#### **1. Was there a GSA Policy against funding all divestment-related organizations or programming, regardless of viewpoint? No.**

If GSA had a formal policy prohibiting funding of any divestment-related programming, regardless of the specific viewpoint, such a policy would help guide the interpretation of the stipulation and subsequent communication regarding the funding grant. In [REDACTED] emails, including those sent to the Diversity Caucus and to the Cabinet, {the GSA President} acting in [REDACTED] official capacity repeatedly referred to GSA policy against engagement with organizations related to “Divest from Israel.”

In public statements on and around November 20, 2015, GSA definitively denied that any such policy existed. In [REDACTED] interview with DPO, {the GSA President} claimed that the then-current Cabinet members had formal and informal meetings at which they discussed the desire to avoid Israel-Palestine politics. But all Cabinet members denied any prior discussion that quarter related to divestment, Israel-Palestine, or the specific issue of a GSA stipulation on funding related to this issue. In fact, several Cabinet members reported not knowing anything at all about divestment or SJP until the discussion of the stipulation became public. Several Cabinet members also pointed out that this stipulation issue arose in the fall, relatively soon after the school year started, and GSA had not met often and had not conducted much substantive business. A review of the GSA Cabinet official minutes from October 7 and October 27, 2015<sup>8</sup>, and the GSA Forum official minutes from October 14, 2015 and November 4, 2015 reveals no reference to these issues prior to the Diversity Caucus funding request and the town hall event.

Several witnesses pointed out that in 2014, divestment from Israel had been a contentious campus issue within undergraduate student government but that the GSA at that time had avoided controversy. In this sense, perhaps GSA could be said to have had a practice of avoiding the issue. {The GSA President} was in GSA in 2014-15 also, so this past practice may have been known to [REDACTED]. But a practice does not mean there exists an official policy with respect to funding. Subsequent events suggest that {the GSA President} understood this distinction.

On October 24, 2015, at approximately 4:47 pm -- 8 days after the initial email in which {the GSA President} claimed that there was a GSA policy -- {the GSA President} sent an email to Cabinet about a separate matter, concerning the Statement of Principles Against Intolerance to be considered by the UC Regents. Referring to conversations [REDACTED] had with some student groups, [REDACTED] wrote: "I laid down my policy on this issue to them (please see below). As members of my administration, I request you to follow this policy during the year. If there's an issue, please call me or we can discuss it during cabinet." The email then provides quotes that describe this policy:

The Divestment resolution (and Israel-Palestine Situation) is a very sensitive topic for our student body. GSA--as a governing body--will not be taking any stance on this issue. If GSA takes a stance on this issue, we will

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8 [REDACTED]



As a threshold matter, it is unclear why this should matter to this investigation. The fact that {the GSA President} may have received bad advice or that other Cabinet members are additionally responsible does not alter the fact that {the GSA President}, acting in [REDACTED] official capacity as GSA President, included the stipulation in the funding decision.

That said, DPO wanted to verify this allegation for its potential to help interpret the stipulation, and to understand the context in which the stipulation was added. When asked for the identities of these Cabinet members, {the GSA President} refused to provide them. [REDACTED] did use the pronoun “he” when describing the Cabinet member who requested the stipulation, and said that at least one other Cabinet member also wanted the stipulation. {The GSA President} said that [REDACTED] drafted the stipulation with assistance from three other Cabinet members. However, {the GSA President} steadfastly refused to provide names--even after DPO pointed out that, by [REDACTED] own description, the Doodle poll along with any discussion that took place regarding the stipulation, e.g. phone calls that took place in that approximately nine-hour window between the 1:48 and 10:45am emails substituted for an in-person meeting, and that in-person Cabinet meetings produce minutes that are publically available.

DPO interviewed all Cabinet members. Contrary to {the GSA President}'s assertions, no Cabinet member reported knowing about the stipulation before the vote, let alone requesting them or helping to draft them. All but one Cabinet member reported either seeing the stipulation for the first time in the email from {the GSA President} to Cabinet that is discussed immediately below, or much later when the stipulation gained publicity after the ACLU wrote a letter to UCLA protesting the stipulation in mid-November. One Cabinet member reported first seeing the stipulation on a requisition form submitted by the Diversity Caucus. This form is dated October 27, 2015, well after the October 16, 2015 vote.

It is possible that up to three Cabinet members are lying or misremembering their involvement. But, weighing the credibility of the interviewees, DPO finds that no other Cabinet member knew about or participated in drafting the stipulation.

### **3. Did GSA advisors approve of the stipulation? No.**

{The GSA President} also claimed that staff advisors [REDACTED] and [REDACTED] approved the wording of the stipulation. There are two separate claims of approval.

First, {the GSA President} claims that [REDACTED] provided the advisors email notice and because there was no response, the advisors must have approved. Both advisors claim that they did not see the email or wording of the stipulation until well after that first email

was sent to the Diversity Caucus. In their capacity as advisors to GSA, they explained that they are not involved in day-to-day operations. They see their role as being available to answer questions, advise, provide information and historical and administrative context, but not to insert themselves in all aspects of the student government. They both pointed out that if it were true that they were copied on an email with the stipulation, that would not mean that they had in fact read it.<sup>10</sup>

Second, {the GSA President} claims that there was more explicit and affirmative approval, beyond just the tacit approval of not responding to an email. In a January 27, 2016 email to GSA Forum, {the GSA President} claimed that █████ specifically and affirmatively approved the stipulation:

Moreover, when I heard faint rumors of legal action, the first person I ran to was █████. I asked █████ about whether the stipulation should be removed. █████ responded that (1) the stipulation did not have to be withdrawn, (2) that GSA could subsequently recoup funds from the event organizer if the stipulation was violated, and (3) that GSA cabinet has the authority to include such stipulations. Since █████ is our advisor, we chose to follow █████ advice.

█████ claims that this characterization is inaccurate. Although █████ did not recall the exact chronology, █████ remembers speaking to {the GSA President} about the event less than a week before the event. According to {the GSA President}, they had two brief conversations, one in late October, after {the GSA President} “caught” an attorney from a pro-Palestinian legal organization looking at █████ LinkedIn profile, and then again on November 5, the day of the event, when {the GSA President} heard a rumor of a potential lawsuit. {The GSA President} asked if it would be a problem if divestment came up at the event and GSA as a co-sponsor would be seen as endorsing the position. █████ reports telling {the GSA President} that █████ did not have to worry about that issue. █████ recalls telling {the GSA President} that █████ thought it would not be a concern relevant to this particular event. █████ reports encouraging {the GSA President} to go to the event, telling █████ that GSA should support the event, and stating that if there were any problems, it would be possible to handle it after the fact. █████ reports no discussion of

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<sup>10</sup> For example, in an October 27, 2015 email from {the Diversity Caucus Representative} to █████ about how to access the funds that had been allocated, the stipulation is included at the end of a long email chain but not referred to in {the Diversity Caucus Representative}'s main query. █████ would have no reason to page through to the end of the chain to read the stipulation.

the actual wording or content of the stipulation. [REDACTED] also reports never stating that Cabinet has authority to include the stipulation.<sup>11</sup>

It's difficult to determine with certitude who said what in these oral conversations. And it's quite possible that each party had sincerely different understandings of what was being specifically discussed. That said, it's not clear that this matters to the question of *whether* {the GSA President} conditioned funding on a viewpoint neutral basis. It might explain *why* [REDACTED] did so—e.g., by relying on the counsel of an advisor--but not whether. The “why” might be relevant to setting an appropriate penalty in some disciplinary proceeding. But this investigation is not a disciplinary proceeding.

In the end, however, DPO finds it more likely than not that [REDACTED] did not specifically and affirmatively approve the wording of the stipulation.

**4. Would an objective reader view the stipulation as viewpoint-based? Yes.**

In determining whether a reasonable person would interpret the stipulation as viewpoint-based, it is useful to consider the wording of the stipulation. The relevant material includes the original October 16, 2015 notification and the October 18, 2015 clarification emails sent to the Diversity Caucus as well as other communications between {the GSA President} and the Diversity Caucus concerning the stipulation.

**a. Plain language of the stipulation in the Oct. 16 and 18 emails from {the GSA President} to the Diversity Caucus.**

The October 16, 2015 email sent to the Diversity Caucus stated:

“We understand that your organization has zero connection with ‘Divest from Israel’ or any equivalent movement/organization. Hence, we approved your funding.”

“I did want to reiterate that GSA leadership has a zero engagement/endorsement policy towards ‘Divest from Israel’ or any related movement/organization. . . . if we are aware that the Diversity

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<sup>11</sup> In early October, when {the GSA President} was emailing with [REDACTED] and [REDACTED] about the possibility of using Surplus funds, they both told [REDACTED] that Cabinet had discretion about what they wanted to spend the money on.

Caucus is engaging with any such movement—directly or indirectly—in the organization of this event, we’ll have to withdraw or recoup our allocation. I know this isn’t the case, but I wanted to put our policy out there.”

If {the GSA President} intended viewpoint-neutrality, ■ could have drafted the stipulation far more clearly. Instead of, “Divest from Israel,” ■ could have written “any organization taking a stance on any aspect of the Israel-Palestine conflict.” Or in ■ various emails, ■ could have referred to organization names like “Invest in Israel” instead of repeating solely “Divest from Israel.”

{The GSA President} responds that terms ■ used such as “equivalent movement/organization” and “related organization” were meant to refer to just such organizations, to cover either side of this issue. However, this interpretation does not readily comport with the way that these words are commonly used or understood. The word “equivalent” means something like “functionally the same,” and “related” means something like “connected” or “belonging to the same group.” It would have been simple enough for {the GSA President} to use language such as “groups on either side of the divestment issue” or “groups that are either for or against divestment,” or other similar language that could have expressly pointed out that the restriction was viewpoint-neutral.

{The GSA President} and {the Diversity Caucus Representative} also spoke on the phone shortly after this October 16 email message. {The GSA President} reports that in this phone call ■ clarified the viewpoint-neutral nature of the stipulation. However, {the Diversity Caucus Representative} interpreted the conversation to tie the funding to a prohibition on the pro-divestment viewpoint. There is no contemporaneous written record of the conversation. But {the Diversity Caucus Representative} felt uncertain enough about the stipulation to ask for further clarification.

{The GSA President}’s October 18, 2015 clarification email to {the Diversity Caucus Representative} further supports the conclusion that a reasonable person would understand the stipulation as restricting only one particular viewpoint. For example, one relevant excerpt is:

GSA has a policy not to engage with a UCLA movement/organization called “Divest from Israel.” When we were voting on your funding, some members were concerned about this movement being involved in the organization of your event. For your funding to be approved, cabinet requested this stipulation to be inserted. I don’t want to give names...

This excerpt specifically refers to GSA policy not to engage with “Divest from Israel” and refers to concern about involvement of this organization. Although there is no

student organization with the name “Divest from Israel,” this section points quite directly to a pro-divestment position and only to pro-divestment as the restricted “movement.” Also, although it is possible that {the GSA President} was trying to protect other students, the emphasis on secrecy – “I don’t want to give names” – suggests that the stipulation was viewpoint-based; a more generic request for viewpoint-neutral disengagement on Israel-Palestine issues would have less need for secrecy. This is especially so given the Cabinet members’ reports about the placement of the stipulation, and the lack of evidentiary support for a request by Cabinet members for the stipulation.

This impression is strengthened by this further explanation of the stipulation from that email: “Basically, the stipulation is that if ‘Divest from Israel’ is involved with the organization of this event, or the Diversity Caucus endorses their position at the event, GSA won’t be able to provide funding. My understanding is that this won’t be the case.” Again, pro-divestment—labeled “*their* position” (emphasis added)—is specifically identified as prohibited.

Referring to ■ October 18 email, {the GSA President} claims ■ use of the phrase “a stance” in the following excerpt from that email makes clear that the stipulation refers to either side of this issue:

Of course, if private students have their opinion on this situation, their first amendment rights allow them to express that opinion. Nonetheless, if organizations are engaged that have a stance on "Divest from Israel," they are welcomed to help co-sponsor/organize your event; GSA just won't be able to provide any funds.

It is true that “a stance” could mean something like “any stance” and therefore encompass either a pro- or anti-divestment stance (or even also a neutral stance). {The GSA President}’s interpretation is reasonable when ‘stance’ is read in isolation. But when taken in context of the entire communication, which repeatedly refers to “Divest from Israel” in the paragraphs preceding this excerpt, the more reasonable interpretation is that “a stance” refers to organizations that support divestment.

Finally, it is probative to report what the GSA Cabinet itself thought about the language of the stipulation. All witnesses--except for two Cabinet members--reported feeling that the stipulation’s wording was viewpoint-based, restricting only those in favor of divestment and not those against. This was true even of Cabinet members who were generally positive about the idea of GSA neutrality and {the GSA President}’s motivation. One Cabinet member disagreed and stated that the wording accurately reflected the desired goal to be viewpoint neutral. To another member, the wording seemed plausibly viewpoint neutral, but ■ also reported feeling that ■ did not fully understand the issue.

**b. Subsequent communications between {the GSA President} and the Diversity Caucus regarding the interpretation of the stipulation.**

{The GSA President} claims that the viewpoint-neutral nature of the stipulation is demonstrated in {the Diversity Caucus Representative}'s October 19 email accepting the original funding and stipulation. In this email, {the Diversity Caucus Representative} stated that the Diversity Caucus has a "neutral stance" in compliance with the stipulation. However, a statement that a neutral stance complies with the stipulation is entirely consistent with an interpretation in which the stipulation only prevents funding a pro-divestment position.

{The Diversity Caucus Representative} and {the GSA President} also had an in-person discussion of the stipulation on October 20, 2016 after a chance meeting on campus. {The GSA President} claims that [REDACTED] clarified that the stipulation was viewpoint-neutral, while {the Diversity Caucus Representative} claims to have come away from the conversation still believing that the stipulation targeted the pro-divestment viewpoint. There is no record of this conversation so it is difficult to assess the reasonableness of either interpretation.

{The GSA President} and {the Diversity Caucus Representative} also corresponded about the stipulation on November 5, 2015, just a few hours before the event, in phone calls, text messages and email. This correspondence included texts from {the GSA President} to {the Diversity Caucus Representative} that said: "Our members want to refrain from Israel-Palestine politics, as its [sic] a sensitive topic that will alienate a group on campus. Hence we sent that stipulation, that applied to both sides." The text messages also referred to possibly freezing funding for the event. {The GSA President} followed this by email:

If GSA is informed about potential legal action regarding its support of an event, we have the right to consider freezing or pulling funding, in order to investigate the situation and ensure that we are not violating any rules with our actions.

Since you want to use this email as a record, I'm going to clarify our stipulation. The GSA Cabinet has adopted the following resolution: Under this resolution, the UCLA Graduate Student Association--as a governing body--will abstain from taking any stances or engaging in any discussion in regards to Israel-Palestine Politics.

When we provide funding, we have the right to add stipulations. Our cabinet does not want to co-program with Divest from Israel, as we believe we'll be sponsoring a position that will alienate a substantial portion of our constituents. As I clarified to you over the phone, we also don't want to co program with any counterorganization to Divest from Israel, because that will alienate a significant portion of students, as well. GSA wants to remain neutral in Israel-Palestine politics, as described above.

The stipulations we included does not violate the law, or GSA/UCLA codes. I'm sorry to hear that you have a personal disagreement with these stipulations. The Diversity Caucus is always welcome to reject funding if it's not comfortable with these stipulations[.]

We are **not** going to cancel your funding.

Among all the descriptions of the stipulation, these November 5, 2015 communications sound most viewpoint-neutral. And if this type of language had been initially used to articulate the stipulation, there would be little reason to think that viewpoint-neutrality had been violated. But this language comes just a few hours before the event, long after the Diversity Caucus had accepted the stipulation's terms. Moreover, in this correspondence chain, {the GSA President} specifically refers to an attorney from a pro-Palestine legal organization looking at [REDACTED] LinkedIn profile, and to hearing from what [REDACTED] believed was a reliable source<sup>12</sup> that legal action was being threatened regarding the stipulation. Taken in the context of {the GSA President}'s fear of a lawsuit, the timing of these communications, and prior communications regarding the stipulation, the totality of the evidence does not support an interpretation that the later-issued statements accurately reflect the nature and scope of the stipulation.

A further communication regarding the interpretation of the stipulation came still later on November 25, 2015, after the legal demands and escalation when {the GSA President} emailed {the Diversity Caucus Representative}. This email was not copied to GSA Cabinet or staff and contains the following excerpt which does describe the stipulation as being viewpoint-neutral:

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<sup>12</sup> In [REDACTED] interview, {the GSA President} declined to name the source of the rumor of a threat of legal action but said it was a [REDACTED] who was also an [REDACTED].

Based on images posted on the Daily Bruin, its [sic] obvious that emails were leaked. This is only confirmed by a circulated letter referencing emails to which only you were copied. I don't want to get into the specifics of the leakage because it's a moot issue.

When we were approving your sponsorship, you and I had a conversation over the phone. I mentioned--several times--that the stipulation applies not only to BDS, but any countermovement to BDS. It was after this conversation that you accepted GSA's funding.

With the leaked emails, people are having the misconception that the stipulation was one-sided, only applying to the BDS issue. We obviously had a phone conversation that this was not the case.

If you can send a brief email confirming that we had this phone conversation, I would greatly appreciate it. It would save you and I a lot of heartache.

However, this is nearly three weeks after the town hall event, and is after the ACLU demand letter, increasing the appearance of this being an attempt to reframe the stipulation after the fact.

Moreover, this email refers to the October 16 and 18 emails having been "leaked" by {the Diversity Caucus Representative}. The repeated emphasis on secrecy – regarding an official funding decision made by GSA, communicated by {the GSA President} in [REDACTED] capacity as President, regarding a large, public event – provides further reason to think that the stipulation contained in those emails were not meant to be viewpoint-neutral. If the stipulation was based on GSA's desire to remain neutral on a controversial issue, there would be little reason to try to maintain secrecy over such a decision.

Furthermore, {the GSA President} copied this email to {the Diversity Caucus Representative}'s work supervisor for [REDACTED] on-campus job. In [REDACTED] interview, {the GSA President} says that [REDACTED] copied {the Diversity Caucus Representative}'s work supervisor because the supervisor was the Diversity Caucus advisor.<sup>13</sup> However, {the GSA

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<sup>13</sup> At this point in the interview, {the GSA President} was raising [REDACTED] voice and appeared to be angry, and it was somewhat difficult to understand [REDACTED], but that is DPO's best understanding of what [REDACTED] said. According to the official minutes of the {the GSA President} April 13, 2016 GSA Forum meeting, at that meeting [REDACTED] stated that {the

President} received an email from [REDACTED] on October 5, 2015 and from {the Diversity Caucus Representative} on November 4, 2015, stating that a different person was the group’s advisor. {The Diversity Caucus Representative}’s supervisor is not on the list of student organization advisors, and is not listed on the SOLE website as the Diversity Caucus’s advisor. The inclusion of {the Diversity Caucus Representative}’s supervisor in the message that claims that {the Diversity Caucus Representative} “leaked” email in which the stipulations was presented, and that [REDACTED] had misrepresented the stipulation by failing to disclose certain information, makes this email appear to be an attempt to pressure {the Diversity Caucus Representative} into agreeing that the stipulation was viewpoint-neutral.

Based on a preponderance of the evidence, DPO finds that a reasonable person would understand the stipulation as viewpoint-based, not viewpoint-neutral. It may not have been what {the GSA President} intended, but that was the objectively reasonable meaning [REDACTED] conveyed.

### **VIII. DID THE STIPULATION NEGATIVELY AFFECT CAMPUS CLIMATE?**

The stipulation and the events surrounding it negatively affected campus climate in several ways.

PACAOS 60.00 (Part III, above) provides that it is a purpose of student governments “[t]o provide financial and other tangible support for student activities and organizations on a viewpoint-neutral basis . . . in order to foster a sense of community and to further discussion among students of the broadest range of ideas.” Sections 61.10; 6.13. By tying funding to a specific viewpoint, the stipulation had the opposite effect: it made certain students – in particular, those who favored divestment -- feel unwelcome and unable to express their political viewpoints. This, in turn, made the Diversity Caucus uncomfortable as a group focused on improving the campus climate; they were also concerned about the restriction’s broad scope limiting their own ability to engage with certain groups. SJP felt specifically targeted and afraid of what appeared to be an attempt to single them out because of their organization’s connection to the restricted viewpoint. SJP and other pro-divestment students reported feeling singled out because the stipulation targeted one issue, while not mentioning neutrality in other controversial issues.

It is important to note that SJP’s participation in the town hall event, and the funding grant to Diversity Caucus despite the stipulation, do not cure the stipulation’s

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Diversity Caucus Representative}’s supervisor was the Diversity Caucus’s “faculty advisor.” However, this is not true.

negative effect. Although it would have been worse if SJP had been blocked from attending the town hall event or if Diversity Caucus had not received funding, the chilling effect of the stipulation persisted. The students still felt uncertain and scared about restrictions on their expression, and about the scope of the stipulation. Worse, given frequent mentions of an official GSA policy that never existed, students felt that the University Administration had ratified a policy of viewpoint-based discrimination.

The unfortunate escalation and aftermath of the stipulation also negatively affected campus climate. Many witnesses, including GSA members were unhappy that fellow graduate students had been confused and hurt by the stipulation. They wished that {the GSA President} and Cabinet would apologize for any misunderstandings or errors, and explain that their goal had been simply for GSA itself not to express an opinion on the topic. The complainants and student witnesses were confused and surprised by the intensity that this issue developed.<sup>14</sup> Many also reported that it was stressful to have lawyers involved, to be afraid of saying the wrong thing. Two GSA members reported that the issue had significantly interfered with their academic work. Two students reported requiring mental health treatment because of the stress they experienced because of this issue. Many reported frustration at the great deal of time and energy that was spent on this issue, greatly interfering with GSA operations, limiting the ability of GSA to hold other events and deal with other issues of interest to graduate students.

## **IX. CONCLUSION.**

For the foregoing reasons, by a preponderance of the evidence, DPO finds that {the GSA President}, acting in [REDACTED] official capacity as GSA President, violated

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<sup>14</sup> For example, many Cabinet members referred to the tension created in Cabinet by a very heated Cabinet meeting that took place on November 24, 2015 and events that followed that meeting. Former Cabinet member [REDACTED] pushed for a GSA meeting in late November, against {the GSA President}'s wishes. At that meeting, [REDACTED] argued with {the GSA President} about the stipulation, the October 24 neutrality resolution and {the GSA President}'s conduct surrounding these issue, and then resigned publicly claiming in a *Daily Bruin* opinion column that {the GSA President} had used the guise of neutrality to institute an anti-divestment resolution. After that, in January 2016, {the GSA President} emailed Cabinet and accused [REDACTED] of improper use of GSA funds for a trip. These accusations arose many months after the trip, which staff advisors report was properly authorized.

University policy requiring viewpoint neutrality in the allocation of mandatory student fees. DPO further finds that this policy violation had a negative effect on campus climate.