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BY FAX AND MAIL

The American Studies Association
1120 19th Street N.W., Suite 301
Washington, D.C. 20036

Professor Elizabeth A Duggan
President Elect
The American Studies Association
c/o New York University Faculty of Arts and Science
20 Cooper Square, Floor 4
New York, New York 10003

Re: American Studies Association's Participation in the
Unlawful Boycott of Israeli Institutions and Academics

Dear Professor Duggan,

Shurat HaDin—The Israel Law Center is an organization dedicated to enforcing basic human rights through the legal system, and represents victims of terrorism and other illegal anti-Semitic activity in courtrooms around the world. We write to you as Shurat HaDin's American and Israeli counsel.

At present we represent Israeli professors who are preparing to take legal action against the organization you head, the American Studies Association ("ASA").

It has come to our attention that you and the ASA have participated in and/or publicly supported the global movement for boycotts, divestment, and sanctions against Israel and Israeli-related business, academic and cultural persons and organizations ("BDS Movement") in New York and other jurisdictions. This letter is a demand that you and the ASA immediately cease and desist from your unlawful boycott efforts against Israeli institutions and Israeli academics.

In particular, on or about December 4, 2013, the ASA National Council voted unanimously to endorse a resolution calling for an academic boycott of Israel (the “ASA Boycott Resolution”) by the ASA and its members. On or about December 17, 2013, the ASA’s membership voted to endorse the resolution.

We wish to put you on notice that the BDS movement’s academic boycott and your December 17, 2013 resolution implementing it, is unlawful racial discrimination on the basis of national origin and/or race, creed and religion under the International Convention on the Elimination of All Forms of Racial Discrimination (“Anti-Racism Convention”) and numerous American state and federal statutes.

**The BDS Academic Boycott Implemented by the ASA
Is Unlawful Racial Discrimination**

1. The BDS Academic Boycott Is Racial Discrimination Prohibited by the Anti-Racism Convention

The BDS Movement’s academic boycott is racial discrimination under Article 1.1 of the Anti-Racism Convention, which was ratified by the United States in 1994 and provides:

In this Convention the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Id.

The BDS Movement, by its very definition, seeks to make distinctions between, impose restrictions on, and imposes adverse preferences based on the Israeli national origin of goods, services, persons and organizations. It also in effect makes a distinction between, imposes restrictions on, and imposes adverse preference based Jewish racial and ethnic origin and the Israeli ethnic origin.

Participants in the BDS Movement act with the clear purpose and actual effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of the human rights and/or fundamental freedoms in the political, economic, social, cultural fields of those persons and organizations whom they seek to boycott, divest from and sanction.

2. The BDS Academic Boycott Implemented by the ASA Is Unlawful Racial Discrimination in Violation of the American State and Federal Law

The BDS academic boycott being implemented by the ASA is unlawful racial discrimination under N.Y. Exec. Law, Article 15 § 296(13) which makes it an unlawful discriminatory practice:

for any person to boycott or blacklist, or to refuse to buy from, sell to or trade with, or otherwise discriminate against any person, because of the race, creed, color, national origin, sexual orientation, military status, sex, or disability of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action.

Id.

Additionally, the BDS academic boycott being implemented by the ASA is unlawful racial discrimination under New York City Admin. Code § 8-107(18) makes it an unlawful discriminatory practice:

for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived race, creed, color, national origin, gender, disability, age, marital status, partnership status, sexual orientation or alienage or citizenship status or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action.

Id.

As such, the BDS academic boycott being implemented by the ASA is unlawful racial discrimination under 42 U.S.C. § 2000e-2(a) makes it unlawful for an employer:

to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Id.

Moreover, the BDS academic boycott which the ASA is implementing is also unlawful racial discrimination under:

- a. 42 USC § 2000e-3(b);
- b. N.Y. Exec. Law, Article 15 § 296(1)(a);
- c. New York City Admin. Code §8-107(1)(a);
- d. N.Y. Exec. Law, Article 15 § 296(1)(d);
- e. New York City Admin. Code §8-107(1)(d);
- f. N.Y. Exec. Law, Article 15 § 296(2)(a); and
- g. New York City Admin. Code §8-107(4).

3. The BDS Academic Boycott Implemented by the ASA Is Not Protected Free Speech

The BDS academic boycott is not protected by the First Amendment protections of freedom of speech because:

- a. a boycott is not speech, it is action;
- b. calls for and instruction in implementing unlawful actions are not protected speech (see *Holder v. Humanitarian Law Project*, 561 U.S. ___, 130 S. Ct. 2705 (2010));
- c. the BDS academic boycott infringes academic freedom and the freedom of speech of Israeli academics and US academics wishing to interact with them;
- d. incitement of the BDS academic boycott being implemented by the ASA is racist hate speech which is not legitimate free speech.

4. The BDS Academic Boycott Implemented by the ASA Is Itself Anti-Semitic and Racist

The real reason for all BDS boycotts is thinly disguised anti-Semitism. Indeed the targeting of people or organizations for harm simply because they are Jewish is a classic definition of anti-Semitism. Calling for boycotts of Israel and Israeli organizations, as practiced by the BDS Movement and being implemented by the ASA has been recently identified as anti-Semitism by two of the most well-respected international organizations confronting anti-Semitism today: the Anti-Defamation League (“ADL”) and the Simon Wiesenthal Center.

According to the ADL: “The BDS movement at its very core is anti-Semitic.” Moreover, the Simon Wiesenthal Center has recently published a report, entitled “Boycott Divestment Sanctions (BDS) Against Israel: An Anti-Semitic, Anti-Peace Poison Pill,” which states that the

BDS Movement “presents itself as a pro-peace initiative but in reality is a thinly-veiled, anti-Israel, anti-Semitic ‘poison pill,’ whose goal is the demonization, delegitimization, and ultimate demise of the Jewish State.”

Planned Legal Action

In light of the above, you, the ASA, its officers, and its membership are requested to immediately take all necessary steps to cancel the boycott of Israeli institutions and academics set out and called for in your December 17, 2013 resolution. It is further demanded that you, the ASA, its membership, chapters, and affiliates take no additional steps to engage in or implement any boycott against Israeli institutions and/or academics.

Please provide prompt written confirmation that that you have implemented the above. Please take careful note that in the event of your failure to comply with the above our clients will take all steps permitted by law to enforce their rights, including without limitation filing legal action without further notice.

Very truly yours,



Robert J. Tolchin, Esq.

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