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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION
19

20 CHARLENE NGOUN, by and
21 through her next friend, CRYSTAL
22 CHHUN, and the GAY-STRAIGHT
23 ALLIANCE NETWORK,

24 Plaintiffs,
25 vs.

26 BEN WOLF, Principal of Santiago
27 High School, in his official and
28 personal capacity, LAURA
SCHWALM, Superintendent of the
Garden Grove Unified School
District, in her official and personal
capacity, KENT BAIRD, Assistant
Superintendent of the Garden Grove
Unified School District, in his

) Case No.:

) **COMPLAINT FOR INJUNCTIVE
) AND DECLARATORY RELIEF,
) AND DAMAGES**

1 official and personal capacity,)
GARY LEWIS, Assistant)
2 Superintendent of the Garden Grove)
Unified School District, in his)
3 official and personal capacity,)
LINDA REED, President of the)
4 Garden Grove Unified School)
District Board of Education, in her)
5 official capacity, LAN QUOC)
NGUYEN, Vice President of the)
6 Garden Grove Unified School)
District Board of Education, in his)
7 official capacity, BOB HARDEN, a)
8 member of Garden Grove Unified)
School District Board of Education,)
9 in his official capacity, TRUNG)
NGUYEN, a member of the Garden)
10 Grove Unified School District Board)
of Education, in his official capacity,)
11 KIMOANH NGUYEN-LAM, a)
member of the Garden Grove)
12 Unified School District Board of)
Education, in her official capacity,)
13 GARDEN GROVE UNIFIED)
SCHOOL DISTRICT BOARD OF)
14 EDUCATION, an entity, and DOES)
1-10, in their personal and official)
capacities, inclusive.

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16 Defendants.

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JURISDICTION AND VENUE

1. Plaintiffs’ claims for declaratory, injunctive and monetary relief are brought pursuant to the First and Fourteenth Amendments to the Constitution of the United States; 42 U.S.C. § 1983; Art. I, §§ 1, 2, 3(b)(4), 7(a) and (b), Art. IV, § 16(a) of the California Constitution; California Education Code §§ 200, 201, 220; and California Civil Code §§ 51 and 52(a).

2. This Court has jurisdiction over plaintiffs’ federal civil rights claims under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States. Declaratory relief is authorized under 28 U.S.C. §§ 2201 and 2202. This Court has supplemental jurisdiction over plaintiffs’ state-law claims arising from the same factual circumstances, events, and transactions, under 28 U.S.C. § 1367(a).

3. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the defendants reside in, and all incidents, events, and occurrences giving rise to this action occurred in, Orange County, California.

INTRODUCTION

1. This is a civil rights case on behalf of Charlene Nguon, a 17-year-old, straight-A student at Santiago High School (“Santiago High”) in the Garden Grove Unified School District (the “District”). Charlene is, in all respects, an ideal student and one who would make any parent proud. Charlene is an outstanding student academically, taking multiple Advanced Placement courses and achieving a class rank of 20 out of 421 students through her first semester of her junior year. Charlene is also an active participant in numerous campus clubs, including the French club, the Key club, and the California Scholarship Federation club. In addition to her academic excellence and her involvement in school activities, Charlene’s teachers have consistently praised her character, commenting on her report card that Charlene is “very cooperative,” has a “good attitude,” and “works very hard.” Given that Charlene was assessed to have limited English proficiency

1 during elementary school, since Charlene's family speaks primarily Thai at home,
2 her accomplishments are all the more impressive.

3 2. Unfortunately, for Principal Ben Wolf and other staff at Santiago
4 High, all of Charlene's accomplishments and exemplary qualities are
5 overshadowed by one fact: that she is a lesbian. As set forth below, during this
6 past school year, Charlene's junior year, Principal Wolf has repeatedly punished
7 Charlene and derailed her academic success, all because she dared to be openly
8 lesbian on campus. These acts by Principal Wolf include suspending Charlene for
9 hugging and affectionately kissing her girlfriend while ignoring similar behavior
10 by heterosexual students and bluntly revealing Charlene's sexual orientation to her
11 parents without Charlene's permission or prior knowledge. Even worse, when
12 those tactics did not work, Principal Wolf told Charlene and her mother that he
13 wanted to split up Charlene and her girlfriend and that one of them had to leave
14 Santiago High. As a result, Charlene left Santiago, which is within walking
15 distance from her home, to finish her junior year at Bolsa Grande High School,
16 which she attended by riding her bike 4 ½ miles each way.

17 3. Principal Wolf's discriminatory conduct had, and will continue to
18 have, drastic consequences for Charlene and her academic success, particularly
19 with respect to her grades. Through the first semester of her junior year at
20 Santiago High, Charlene had an academically-weighted grade point average of
21 3.93. But as a result of the discrimination against her and the fact that she had to
22 enroll in a new school in the middle of the semester, Charlene's grades for the
23 second semester of her junior year were markedly less impressive. In AP
24 Calculus, for example, because the Bolsa Grande class was one chapter ahead of
25 Santiago High's class and because of the emotional distress caused by Principal
26 Wolf's actions, Charlene's grade dropped from an "A" her junior year first
27 semester to a "C-" her second. Similarly, in AP History, her grade dropped from
28 an "A" to a "B."

1 4. The record of the discipline imposed by Principal Wolf also
2 significantly harms Charlene’s upcoming college and scholarship applications.
3 Numerous colleges that Charlene is considering applying to, including University
4 of Southern California, Stanford University, and Loyola Marymount University,
5 require disclosure of suspensions and other discipline. In addition, upon
6 information and belief, in or about March 2005, Charlene’s invitation to the
7 National Honor Society was withdrawn because of the discriminatory suspensions
8 imposed by Principal Wolf.

9 5. Charlene is not the first lesbian or gay student to whom the Santiago
10 High administration has displayed animus. The Santiago High administration has
11 repeatedly rebuffed efforts by students to establish a gay-straight alliance club (a
12 “GSA club”), a club that provides a supportive space for gay and lesbian students
13 and their straight allies. As recently as 2003, Principal Wolf refused to permit the
14 formation of a GSA club, claiming that there was “no need” for the club at the
15 school--in direct contravention to the federal Equal Access Act and to the school’s
16 affirmative California duty to ensure a safe and equal learning environment for all
17 students.

18 6. Under the United States and California constitutions, as well as under
19 parallel federal and state laws, school officials may not deprive gay and lesbian
20 students of equal educational opportunities. Nor may school officials impose and
21 enforce a different set of rules against gay and lesbian students in an effort to
22 penalize them for being visible and open about their sexual orientation on campus.
23 By this action, plaintiffs seek an order requiring defendants to fulfill their
24 responsibility to provide a learning environment that is free from discrimination
25 by school administrators who illegally prioritize their personal prejudices over the
26 education of their students.

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PARTIES

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2 7. Plaintiff CHARLENE NGUON was a student at Santiago High
3 School from her freshman year to near the end of the third quarter of her junior
4 year, at which time she became a student at Bolsa Grande High School, also in the
5 Garden Grove Unified School District. Very recently, and subsequent to
6 plaintiffs’ demand letter to the defendants, Charlene was permitted by the District
7 to re-enroll in Santiago High School, which she plans to attend beginning on
8 September 8, 2005, the first day of school for the 2005-2006 academic year.
9 Charlene appears in this action by and through her next friend, her mother, Crystal
10 Chhun.

11 8. Plaintiff GAY-STRAIGHT ALLIANCE NETWORK (“GSA
12 Network”) sues both on behalf of its members and to protect its own interests.
13 The GSA Network is a youth-led nonprofit organization made up of gay, lesbian,
14 bisexual, transgender, and heterosexual students and supportive adults who are
15 dedicated to eliminating homophobia and intolerance in schools. The GSA
16 Network is a project of the Tides Center in San Francisco, which is a 501(c)(3)
17 nonprofit organization. The GSA Network is headquartered in San Francisco,
18 California, and has an office in Los Angeles, California, by which it monitors
19 homophobia and intolerance in schools throughout southern California, including
20 Santiago High School. At present, there are 18 gay-straight alliance clubs
21 registered in Orange County. The GSA Network has members who are current
22 and prospective students at Santiago High School, who have suffered or will suffer
23 harassment and discrimination based on their actual or perceived sexual
24 orientation. The GSA Network also includes heterosexual youth and adult
25 members who strongly believe that the discrimination, harassment, and hostility
26 against students attending Santiago High School harms the entire community, not
27 just those community members who are gay, lesbian, or bisexual.
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1 9. Defendant BEN WOLF is the Principal of Santiago High School in
2 the Garden Grove Unified School District. He is sued in both his official and
3 personal capacities. All actions taken by defendant Wolf while working as a
4 Principal at Santiago High were taken in the course and scope of his employment
5 and were taken under color of state law.

6 10. Defendant LAURA SCHWALM is the Superintendent of the Garden
7 Grove Unified School District. She is sued in both her official and personal
8 capacities. All actions taken by defendant Schwalm while working as
9 Superintendent were taken in the course and scope of her employment and were
10 taken under color of state law. Defendant Schwalm is responsible for setting and
11 enforcing policies and practices of the Garden Grove Unified School District and
12 Santiago High that continue to harm or threaten to harm plaintiffs.

13 11. Defendant KENT BAIRD is an Assistant Superintendent of the
14 Garden Grove Unified School District. He is sued in both his official and personal
15 capacities. All actions taken by defendant Baird while working as Assistant
16 Superintendent were taken in the course and scope of his employment and were
17 taken under color of state law. Defendant Baird is responsible for setting and
18 enforcing policies and practices of the Garden Grove Unified School District and
19 Santiago High that continue to harm or threaten to harm plaintiffs.

20 12. Defendant GARY LEWIS is an Assistant Superintendent of the
21 Garden Grove Unified School District. He is sued in both his official and personal
22 capacities. All actions taken by defendant Lewis while working as Assistant
23 Superintendent were taken in the course and scope of his employment and were
24 taken under color of state law. Defendant Lewis is responsible for setting and
25 enforcing policies and practices of the Garden Grove Unified School District and
26 Santiago High that continue to harm or threaten to harm plaintiffs.

27 13. Defendant LINDA REED, President, defendant LAN QUOC
28 NGUYEN, Vice President, and defendants BOB HARDEN, TRUNG NGUYEN

1 and KIMOANH NGUYEN-LAM (collectively, “Individual Board Defendants”)
2 are members of and, along with defendant SCHWALM, constitute the Garden
3 Grove Unified School District Board of Education. Said board member
4 defendants are sued in their official capacities. These defendants are, and at all
5 relevant times were, responsible for promulgating and enforcing policies and
6 practices applicable to students of Santiago High and within the Garden Grove
7 Unified School District. At all times relevant to this action, all actions taken or
8 failures to act by these defendants, while acting as members of the Garden Grove
9 Unified Board of Education, were taken while acting in the course and scope of
10 their duties as Board members and were taken under color of state law.

11 14. Defendant the GARDEN GROVE UNIFIED SCHOOL DISTRICT
12 BOARD OF EDUCATION (“Board of Education”) is the school board for the
13 Garden Grove Unified School District and, among its many duties, is responsible
14 for establishing policies applicable to students at Santiago High and within the
15 Garden Grove Unified School District.

16 15. Upon information and belief, each of the defendants, including
17 defendants DOES 1 through 10, performed, participated in, aided and/or abetted,
18 or was deliberately indifferent to the acts averred herein, proximately caused the
19 damages averred below, and is liable to plaintiffs for the damages and other relief
20 sought herein. The true names and official capacities of defendants designated as
21 DOES 1 through 10, inclusive, are unknown to plaintiffs, who therefore sue these
22 defendants by such fictitious names. Plaintiffs will seek leave of Court to amend
23 their complaint to show the true names and capacities of these defendants when
24 they have been ascertained.

25 16. Upon information and belief, and at all relevant times, each of
26 defendants was acting as an employee or agent of each of the other defendants or
27 with the consent, permission, and/or authorization of each of the other defendants.
28 Upon information and belief, all actions of each defendant were ratified and

1 approved by every other defendant. Further, upon information and belief, all of
2 the actions alleged in this complaint were taken pursuant to the customs, policies,
3 and practices of the Garden Grove Unified School District Board of Education and
4 defendants have been, are presently, and will be acting under the color and
5 authority of the laws of the United States and the State of California.

6 **STATEMENT OF FACTS**

7 17. Since kindergarten, plaintiff Charlene Nguon has attended schools in
8 the Garden Grove Unified School District. Despite being assessed with limited
9 English language skills in elementary school, Charlene has excelled at all subjects
10 and at all stages of her education.

11 18. Near the beginning of her junior year, Charlene began to date another
12 Santiago High female student. Prior to that time, she had never had a girlfriend.

13 19. Defendants' efforts to stop Charlene from being openly lesbian began
14 in the fall semester of Charlene's junior year. The first incident occurred in or
15 about December 2004, when Charlene and her girlfriend were sitting with their
16 arms around each other in the school's parking lot. Despite the fact that numerous
17 heterosexual couples were engaging in the same behavior, a school staff member
18 singled Charlene and her girlfriend out and said words to the effect of, "it's getting
19 hot and heavy, huh?" Minutes later, Principal Wolf approached them and told
20 Charlene and her girlfriend that they were not permitted to hug each other on
21 campus.

22 20. Upon information and belief, neither Santiago High School nor
23 Garden Grove Unified School District has a written policy forbidding or
24 specifying inappropriate public displays of affection. Upon information and
25 belief, neither Santiago High School nor Garden Grove Unified School District
26 has provided its administrators and staff with proper, nondiscriminatory guidelines
27 for disciplining students for inappropriate public displays of affection.
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1 21. The next incident occurred on or about December 10, 2005 when
2 Charlene and her girlfriend were sitting with their arms around each other and
3 talking with a heterosexual student couple and another student near the Santiago
4 High parking lot. A school monitor approached the group and told the couples to
5 report to Principal Wolf's office. At the office, Principal Wolf disciplined
6 Charlene and her girlfriend by assigning them to Saturday school. Principal Wolf
7 also gave Saturday school to the heterosexual couple that Charlene and her
8 girlfriend had been talking with. After the incident, the heterosexual couple and
9 the other student remarked that they thought it was strange that they had received
10 the discipline for their behavior, since they had never heard of a school rule
11 against public displays of affection and the heterosexual couple regularly and
12 openly engaged in affectionate behavior without reproach. The couple and the
13 friend concluded that the real reason behind the discipline was because the
14 Principal was targeting Charlene and her girlfriend, and the heterosexual couple
15 had been talking with them. At this time, in December 2004, Charlene's friend
16 decided to document the harassment and discrimination against Charlene by taking
17 photos of heterosexual couples on campus kissing and being affectionate towards
18 one another in plain view of Santiago High staff and school offices. (The photos
19 are attached as Exhibit A to this Complaint.) Upon information and belief, none
20 of the students in the photographs were disciplined for being affectionate, and
21 many other heterosexual couples in general have engaged in similar behavior,
22 been seen by staff, and not been disciplined by the defendants.

23 22. In addition to Saturday school, Principal Wolf called Charlene's
24 mother to inform her that Charlene was "constantly" kissing another girl on
25 campus. In disclosing Charlene's sexual orientation to her mother, Principal Wolf
26 gave no regard to whether Charlene had disclosed this private information to her
27 family or to what the repercussions would be to Charlene at home.

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1 23. About a week later, Charlene and her girlfriend gave each other a
2 quick kiss after school while they were waiting for her girlfriend's bus. After
3 Charlene's girlfriend got on the bus, a school monitor came up to Charlene and
4 told her to report to Principal Wolf's office. When Charlene reported to Principal
5 Wolf's office, he yelled words to the effect of, "Would your parents want you
6 doing this?" When Charlene asked why he kept singling her out, Principal Wolf
7 responded with words to the effect of, "don't play that card with me." Principal
8 Wolf also said that he was "doing [Charlene's] parents a favor," and gave
9 Charlene a one-day suspension. Charlene's girlfriend received the same
10 punishment.

11 24. In or about March 2005, a school counselor called Charlene and
12 Charlene's girlfriend into her office for separate meetings. The counselor told
13 Charlene to stop expressing affection towards her girlfriend, and stated words to
14 the effect of, "the staff doesn't appreciate it." Upon information and belief, the
15 counselor gave a similar admonition to Charlene's girlfriend.

16 25. Subsequently, in or about March 2005, Charlene and her girlfriend
17 were hugging and kissing each other on the cheek during the sixth period break
18 when a vice principal came up to them and said words to the effect of, "oh, are you
19 guys the infamous kissing girls?" and "this is the last time, right, girls?"

20 26. Next, in or about March 2005, Charlene and her girlfriend were
21 sitting with their arms around each other and giving each other affectionate kisses
22 in the Santiago High parking lot during the sixth period break. A school monitor
23 and a vice principal came up to them and told them to report to Principal Wolf's
24 office. At the office, Principal Wolf told Charlene and her girlfriend that he was
25 going to suspend them again. Charlene's girlfriend pleaded with him not to
26 impose the suspension because the girlfriend's father doesn't like that she is a
27 lesbian. He then proceeded to yell at them and threatened that he could expel
28

1 them for what they were doing. Both Charlene and her girlfriend received a week-
2 long suspension for “defiance.”

3 27. Principal Wolf then called Charlene’s mother and asked her to pick
4 Charlene up. When Charlene’s mother arrived at the office, Principal Wolf told
5 her that Charlene doesn't listen and that she had kissed the same girl again.
6 Principal Wolf explained that he had to separate the two of them and that he
7 needed one of them to transfer out of Santiago High. When Principal Wolf left the
8 room, Charlene told her mother that she would volunteer to leave the school.

9 28. While Charlene was serving her one-week suspension in or about
10 March 2005, Principal Wolf called her and her mother in for a meeting at the
11 school. At the meeting, Principal Wolf threatened to expel Charlene for an off-
12 campus “blog,” an online journal entry, wherein Charlene had criticized another
13 student for being materialistic and criticized teachers for favoring that student. He
14 also threatened that he could have Charlene arrested and her computer confiscated
15 for the blog entry, but none of those things happened.

16 29. After this meeting, for several weeks in or about March and April
17 2005, Charlene’s older sister, who helps take care of Charlene because their
18 mother has limited English skills, attempted to find a new school for Charlene.
19 Due to Charlene’s academically demanding schedule and her need to complete her
20 Advanced Placement courses, it was difficult to place Charlene in a new school
21 mid-semester. Charlene’s family even tried enrolling her in out-of-district high
22 schools that appeared to meet her academic needs, despite the fact that they would
23 have required Charlene to move in with her aunt. Even those attempts failed, as it
24 turned out that one school was “full” and the other’s Advanced Placement classes
25 did not fit into Charlene’s schedule.

26 30. After several frustrating weeks of trying to find a new school for
27 Charlene, Charlene’s older sister called Principal Wolf’s office to ask if Charlene
28 could complete her junior year at Santiago, since there were only a couple of

1 months left. When Principal Wolf did not return her phone call after a day or two,
2 Charlene's sister tried to reach him again. The person who answered the phone
3 said that Principal Wolf had instructed her to tell Charlene's sister that Charlene
4 could not return to Santiago, and that Charlene should attend Bolsa Grande High
5 School instead.

6 31. Bolsa Grande High School is over four miles from Charlene's home.
7 For the first few days or so, because Charlene does not drive, Charlene's older
8 sister drove from her home in Laguna Hills to take Charlene to school and then
9 drove from her office in Irvine, where she works as an accountant, to pick
10 Charlene up from school. But this schedule was untenable, so after that first week,
11 Charlene's older sister bought Charlene a bike and a helmet so Charlene could ride
12 to Bolsa Grande. While her family was relieved to find a new school for Charlene,
13 because of the absence of bike lanes on Charlene's route to Bolsa, they were also
14 concerned for her safety. But having no other viable options, Charlene completed
15 her junior year at Bolsa Grande. When Charlene's family attempted to re-enroll
16 Charlene into Santiago High over the summer, in July 2005, they were informed
17 by a District administrator that the school was "full."

18 32. On or about July 22, 2005, plaintiffs' counsel sent a demand letter to
19 Principal Wolf and the Superintendent of Garden Grove Unified School District,
20 Laura Schwalm, seeking *inter alia* Charlene's return to Santiago High School and
21 an expungement of the discriminatory discipline from her school record. That
22 same day, plaintiffs also made a written request pursuant to the California Public
23 Records Act for Santiago High and District policies and regulations on public
24 displays of affection and information about the enforcement of those policies.
25 Plaintiffs' counsel met with representatives of the District, defendants Baird and
26 Lewis, on August 16, 2005, but were unable to reach an informal resolution. By
27 letter dated August 17, 2005, pursuant to California Civil Code §§ 810 *et seq.*,
28 plaintiffs' counsel submitted a claim to defendant Schwalm seeking damages for

1 Charlene's state law claims. The parties met on August 24, 2005 for
2 approximately 4 ½ hours, but again were unable to reach an informal resolution.
3 Recently, on or about August 29, 2005, plaintiff Nguon was permitted to re-enroll
4 at Santiago High, where she intends on completing her senior year.

5 **CAUSES OF ACTION**

6 **FIRST CLAIM FOR RELIEF**

7 (42 U.S.C. § 1983; Equal Protection Under U.S. Constitution Amend. XIV)

8 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
9 and personal capacities, the Individual Board Defendants in their official
10 capacities, and the Board of Education]

11 33. Plaintiffs reallege and replead all the allegations of the preceding
12 paragraphs of this Complaint and incorporate them herein by reference.

13 34. Defendants have repeatedly harassed, discriminated, and/or
14 selectively enforced rules against plaintiff Charlene Nguon on the basis of her
15 sexual orientation. Because she is a lesbian, defendants have disciplined Nguon
16 for behavior that is not against school rules and/or selectively enforced those
17 unwritten rules against her but not heterosexual students engaged in similar
18 behavior, which has caused and continues to cause her substantial harm.

19 Defendants' acts also substantially harm the ability of the Gay-Straight Alliance
20 Network to accomplish its organizational goals, which include providing a safe
21 space for lesbian and gay students and their heterosexual peers to discuss openly
22 issues regarding sexual orientation and eliminating discrimination towards lesbian
23 and gay students at schools within the Garden Grove Unified School District.

24 35. In addition, defendants have no adequate formal or informal policy to
25 ensure that Santiago High is providing a learning environment free from
26 discrimination and harassment for students who, like plaintiff Charlene Nguon, are
27 or are perceived to be gay, lesbian, or bisexual. When Charlene complained to
28 Superintendent Schwalm about the unequal treatment that she received at Santiago

1 High, neither Schwalm, Baird, Lewis, the Individual Board members, nor the
2 Board of Education took action to remedy or stop the harassment and
3 discrimination against her.

4 36. The harassment, discriminatory treatment, and punishment of plaintiff
5 Nguon because of her sexual orientation violates the Fourteenth Amendment to
6 the United States Constitution and 42 U.S.C. § 1983. At all times, defendants
7 have been, are presently, and will be acting under the color and authority of the
8 laws of the United States and the State of California.

9 37. Plaintiffs have no adequate remedy at law to redress the wrongs
10 herein alleged. Unless enjoined by this Court, defendants will continue to violate
11 their rights to equal protection, which will continue to cause them irreparable
12 harm. Unless enjoined by this Court, defendants' action will also continue to
13 substantially harm the ability of plaintiff GSA Network to achieve its
14 organizational purposes, which will continue to cause it irreparable harm.

15 38. Plaintiffs seek a judgment declaring that the acts and/or failures to act
16 described above regarding defendants' harassment and discrimination on the basis
17 of actual or perceived sexual orientation are prohibited by the Equal Protection
18 Clause of the Fourteenth Amendment to the United States Constitution and 42
19 U.S.C. § 1983 and seek the injunctive relief set forth in the prayer for relief.

20 39. As a result of the acts and/or failures to act described above regarding
21 defendants' harassment and discrimination on the basis of actual or perceived
22 sexual orientation, plaintiffs have suffered economic and non-economic damages
23 in an amount to be determined at trial.

24 **SECOND CLAIM FOR RELIEF**

25 (42 U.S.C. § 1983; Freedom of Expression Under U.S. Constitution Amend. I)

26 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
27 and personal capacities, the Individual Board Defendants in their official
28 capacities, and the Board of Education]

1 40. Plaintiffs reallege and replead all the allegations of the preceding
2 paragraphs of this Complaint and incorporate them herein by reference.

3 41. Defendants have impermissibly suppressed the expression of plaintiff
4 Nguon on the basis of her viewpoint. Defendants have disciplined Nguon for
5 expressive conduct that is not similarly punished when engaged in by students
6 who are not gay, lesbian, or bisexual. Defendants' acts have caused and continue
7 to cause Nguon substantial harm. Defendants' acts also substantially harm the
8 ability of the Gay-Straight Alliance Network to accomplish its organizational
9 goals, which include providing a safe space for lesbian and gay students and their
10 heterosexual peers to discuss openly issues regarding sexual orientation and
11 eliminating discrimination towards lesbian and gay students at schools within the
12 Garden Grove Unified School District.

13 42. In addition, defendants have no adequate formal or informal policy to
14 ensure that Santiago High administrators are not impermissibly engaging in
15 viewpoint-based censorship against students who, like plaintiff Charlene Nguon,
16 are or are perceived to be gay, lesbian, or bisexual. When Charlene complained to
17 Superintendent Schwalm about the unequal treatment that she received at Santiago
18 High, neither Schwalm, Baird, Lewis, the Individual Board members, nor the
19 Board of Education took action to remedy or stop the viewpoint-based censorship
20 against her.

21 43. The suppression of plaintiff Nguon's expressive conduct on the basis
22 of her viewpoint violates the First Amendment to the United States Constitution
23 and 42 U.S.C. § 1983. At all times, defendants have been, are presently, and will
24 be acting under the color and authority of the laws of the United States and the
25 State of California.

26 44. Plaintiffs have no adequate remedy at law to redress the wrongs
27 herein alleged. Unless enjoined by this Court, defendants will continue to violate
28 their rights to free expression, which will continue to cause them irreparable harm.

1 Unless enjoined by this Court, defendants' action will also continue to
2 substantially harm the ability of plaintiff GSA Network to achieve its
3 organizational purposes, which will continue to cause it irreparable harm.

4 45. Plaintiffs seek a judgment declaring that the acts and/or failures to act
5 described above regarding defendants' impermissible viewpoint-based censorship
6 are prohibited by the Freedom of Expression Clause of the First Amendment to the
7 United States Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set
8 forth in the prayer for relief.

9 46. As a result of the acts and/or failures to act described above regarding
10 defendants' impermissible viewpoint-based censorship, plaintiffs have suffered
11 economic and non-economic damages in an amount to be determined at trial.

12 **THIRD CLAIM FOR RELIEF**

13 (42 U.S.C. § 1983; Privacy Under U.S. Constitution Amends. I, IV, IX, and XIV)
14 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
15 and personal capacities, the Individual Board Defendants in their official
16 capacities, and the Board of Education]

17 47. Plaintiffs reallege and replead all the allegations of the preceding
18 paragraphs of this Complaint and incorporate them herein by reference.

19 48. The constitutional right to privacy respects not only an individual's
20 autonomy in intimate matters, but also an individual's interest in controlling
21 divulgence of highly personal information. Defendant Wolf violated Nguon's
22 privacy right when he disclosed her sexual orientation without her permission
23 because there was no genuine, legitimate, and compelling governmental interest in
24 the disclosure. Defendant Wolf's act caused and continues to cause Nguon
25 substantial harm. Defendant Wolf's act also substantially harmed the ability of the
26 Gay-Straight Alliance Network to accomplish its organizational goals, which
27 include creating safe environments for lesbian and gay students at schools within
28 the Garden Grove Unified School District.

1 49. In addition, defendants have no adequate formal or informal policy to
2 ensure that Santiago High administrators do not violate the privacy rights of their
3 students. When Charlene complained to Superintendent Schwalm about the
4 wrongful disclosure of her sexual orientation by Principal Wolf, neither Schwalm,
5 Baird, Lewis, the Individual Board members, nor the Board of Education took
6 action to remedy the privacy violation against her or the potential violations
7 against other students.

8 50. The disclosure of plaintiff Nguon's sexual orientation without a
9 genuine, legitimate, and compelling governmental interest violated the First,
10 Fourth, Ninth, and Fourteenth Amendments to the United States Constitution and
11 42 U.S.C. § 1983. At all times, defendants have been, are presently, and will be
12 acting under the color and authority of the laws of the United States and the State
13 of California.

14 51. Plaintiffs have no adequate remedy at law to redress the wrongs
15 herein alleged. Unless enjoined by this Court, defendants will continue to violate
16 their rights to privacy, which will continue to cause them irreparable harm. Unless
17 enjoined by this Court, defendants' action will also continue to substantially harm
18 the ability of plaintiff GSA Network to achieve its organizational purposes, which
19 will continue to cause it irreparable harm.

20 52. Plaintiffs seek a judgment declaring that the acts and/or failures to act
21 described above regarding defendants' violation of privacy rights are prohibited
22 by the First, Fourth, Ninth, and Fourteenth Amendments to the United States
23 Constitution and 42 U.S.C. § 1983 and seek the injunctive relief set forth in the
24 prayer for relief.

25 53. As a result of the acts and/or failures to act described above regarding
26 defendants' violation of privacy rights, plaintiffs have suffered economic and non-
27 economic damages in an amount to be determined at trial.

28

1 **FOURTH CLAIM FOR RELIEF**

2 (Equal Protection Under California Constitution Art. I, §§ 3(b)(4), 7(a) and (b),
3 Art. IV, § 16(a))

4 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
5 and personal capacities, the Individual Board Defendants in their official
6 capacities, and the Board of Education]

7 54. Plaintiffs reallege and plead all the allegations of the preceding
8 paragraphs of this Complaint and incorporate them herein by reference.

9 55. Defendants have repeatedly harassed, discriminated, and/or
10 selectively enforced rules against plaintiff Charlene Nguon on the basis of her
11 sexual orientation. Because she is a lesbian, defendants have disciplined Nguon
12 for behavior that is not against school rules and/or selectively enforced those
13 unwritten rules against her but not heterosexual students engaged in similar
14 behavior, which has caused and continues to cause her substantial harm.
15 Defendants' acts also substantially harm the ability of the Gay-Straight Alliance
16 Network to accomplish its organizational goals, which include eliminating
17 discrimination towards lesbian and gay students at schools within the Garden
18 Grove Unified School District.

19 56. In addition, defendants have no adequate formal or informal policy to
20 ensure that Santiago High is providing a learning environment free from
21 discrimination and harassment for students who, like plaintiff Charlene Nguon, are
22 or are perceived to be gay, lesbian, or bisexual. When Charlene complained to
23 Superintendent Schwalm about the unequal treatment that she received at Santiago
24 High, neither Schwalm, Baird, Lewis, the Individual Board members, nor the
25 Board of Education took action to remedy or stop the harassment and
26 discrimination against her.

27 57. The harassment, discriminatory treatment, and punishment of plaintiff
28 Nguon because of her sexual orientation violates the guarantee of equal protection

1 in the California Constitution under Article I, §§ 3(b)(4), 7(a) and (b), and Article
2 IV, § 16(a). At all times, defendants have been, are presently, and will be acting
3 under the color and authority of the laws of the United States and the State of
4 California.

5 58. Plaintiffs have no adequate remedy at law to redress the wrongs
6 herein alleged. Unless enjoined by this Court, defendants will continue to violate
7 their rights to equal protection, which will continue to cause them irreparable
8 harm. Unless enjoined by this Court, defendants' action will also continue to
9 substantially harm the ability of plaintiff GSA Network to achieve its
10 organizational purposes, which will continue to cause it irreparable harm.

11 59. Plaintiffs seek a judgment declaring that the acts and/or failures to act
12 described above regarding defendants' harassment and discrimination on the basis
13 of actual or perceived sexual orientation are prohibited by the guarantee of equal
14 protection in the California Constitution under Article I, §§ 3(b)(4), 7(a) and (b),
15 and Article IV, § 16(a) and seek the injunctive relief set forth in the prayer for
16 relief.

17 60. As a result of the acts and/or failures to act described above regarding
18 defendants' harassment and discrimination on the basis of actual or perceived
19 sexual orientation, plaintiffs have suffered economic and non-economic damages
20 in an amount to be determined at trial.

21 **FIFTH CLAIM FOR RELIEF**

22 (Freedom of Expression Under California Constitution Art. I, § 2)

23 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
24 and personal capacities, the Individual Board Defendants in their official
25 capacities, and the Board of Education]

26 61. Plaintiffs reallege and replead all the allegations of the preceding
27 paragraphs of this Complaint and incorporate them herein by reference.

28

1 62. Defendants have impermissibly suppressed the expression of plaintiff
2 Nguon on the basis of her viewpoint. Defendants have disciplined Nguon for
3 expressive conduct that is not similarly punished when engaged in by students
4 who are not gay, lesbian, or bisexual. Defendants' acts have caused and continues
5 to cause Nguon substantial harm. Defendants' acts also substantially harm the
6 ability of the Gay-Straight Alliance Network to accomplish its organizational
7 goals, which include eliminating discrimination towards lesbian and gay students
8 at schools within the Garden Grove Unified School District.

9 63. In addition, defendants have no adequate formal or informal policy to
10 ensure that Santiago High administrators are not impermissibly engaging in
11 viewpoint-based censorship against students who, like plaintiff Charlene Nguon,
12 are or are perceived to be gay, lesbian, or bisexual. When Charlene complained to
13 Superintendent Schwalm about the unequal treatment that she received at Santiago
14 High, neither Schwalm, Baird, Lewis, the Individual Board members, nor the
15 Board of Education took action to remedy or stop the viewpoint-based censorship
16 against her.

17 64. The suppression of plaintiff Nguon's expressive conduct on the basis
18 of her viewpoint violates Article I, § 2 of the California Constitution. At all times,
19 defendants have been, are presently, and will be acting under the color and
20 authority of the laws of the United States and the State of California.

21 65. Plaintiffs have no adequate remedy at law to redress the wrongs
22 herein alleged. Unless enjoined by this Court, defendants will continue to violate
23 their rights to free expression, which will continue to cause them irreparable harm.
24 Unless enjoined by this Court, defendants' action will also continue to
25 substantially harm the ability of plaintiff GSA Network to achieve its
26 organizational purposes, which will continue to cause it irreparable harm.

27 66. Plaintiffs seek a judgment declaring that the the acts and/or failures to
28 act described above regarding defendants' impermissible viewpoint-based

1 censorship are prohibited by Article I, § 2 of the California Constitution and seek
2 the injunctive relief set forth in the prayer for relief.

3 67. As a result of the acts and/or failures to act described above regarding
4 defendants' impermissible viewpoint discrimination, plaintiffs have suffered
5 economic and non-economic damages in an amount to be determined at trial.

6 **SIXTH CLAIM FOR RELIEF**

7 (Right to Privacy Under California Constitution Art. I, § 1)

8 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
9 and personal capacities, the Individual Board Defendants in their official
10 capacities, and the Board of Education]

11 68. Plaintiffs reallege and replead all the allegations of the preceding
12 paragraphs of this Complaint and incorporate them herein by reference.

13 69. The constitutional right to privacy respects not only an individual's
14 autonomy in intimate matters, but also an individual's interest in controlling
15 divulgence of highly personal information. Defendant Wolf violated Nguon's
16 privacy right when he disclosed her sexual orientation without her permission
17 because there was no genuine, legitimate, and compelling governmental interest in
18 the disclosure. Defendant Wolf's act have caused and continues to cause Nguon
19 substantial harm. Defendant Wolf's act also substantially harm the ability of the
20 Gay-Straight Alliance Network to accomplish its organizational goals, which
21 include creating safe environments for lesbian and gay students at schools within
22 the Garden Grove Unified School District.

23 70. In addition, defendants have no adequate formal or informal policy to
24 ensure that Santiago High administrators do not violate the privacy rights of their
25 students. When Charlene complained to Superintendent Schwalm about the
26 wrongful disclosure of her sexual orientation by Principal Wolf, neither Schwalm,
27 Baird, Lewis, the Individual Board members, nor the Board of Education took
28

1 action to remedy the privacy violation against her or potential violations against
2 other students.

3 71. The disclosure of plaintiff Nguon’s sexual orientation without a
4 genuine, legitimate, and compelling governmental interest violated Article I, § 2 of
5 the California Constitution. At all times, defendants have been, are presently, and
6 will be acting under the color and authority of the laws of the United States and
7 the State of California.

8 72. Plaintiffs have no adequate remedy at law to redress the wrongs
9 herein alleged. Unless enjoined by this Court, defendants will continue to violate
10 their rights to privacy, which will continue to cause them irreparable harm. Unless
11 enjoined by this Court, defendants’ action will also continue to substantially harm
12 the ability of plaintiff GSA Network to achieve its organizational purposes, which
13 will continue to cause it irreparable harm.

14 73. Plaintiffs seek a judgment declaring that the acts and/or failures to act
15 described above regarding defendants’ violation of privacy rights are prohibited
16 by Article I, § 2 of the California Constitution and seek the injunctive relief set
17 forth in the prayer for relief.

18 74. As a result of the acts and/or failures to act described above regarding
19 defendants’ violation of privacy rights, plaintiffs have suffered economic and non-
20 economic damages in an amount to be determined at trial.

21 **SEVENTH CLAIM FOR RELIEF**

22 (California Education Code §§ 200, 201, 220)

23 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
24 and personal capacities, the Individual Board Defendants in their official
25 capacities, and the Board of Education]

26 75. Plaintiffs reallege and replead all the allegations of the preceding
27 paragraphs of this Complaint and incorporate them herein by reference.

28

1 76. California Education Code §§ 200, 201, and 220 specifically prohibit
2 discrimination on the basis of actual or perceived sexual orientation, and
3 California regulations require defendant Garden Grove Unified School District to
4 implement policies to prevent acts of harassment and discrimination in schools.

5 77. Defendants have repeatedly harassed, discriminated, and/or
6 selectively enforced rules against plaintiff Charlene Nguon on the basis of her
7 sexual orientation. Because she is a lesbian, defendants have disciplined Nguon
8 for behavior that is not against school rules and/or selectively enforced those
9 unwritten rules against her but not heterosexual students engaged in similar
10 behavior, which has caused and continues to cause her substantial harm.
11 Defendants' acts also substantially harm the ability of the Gay-Straight Alliance
12 Network to accomplish its organizational goals, which include eliminating
13 discrimination towards lesbian and gay students at schools within the Garden
14 Grove Unified School District.

15 78. In addition, defendants have no adequate formal or informal policy to
16 ensure that Santiago High is providing a learning environment free from
17 discrimination and harassment for students who, like plaintiff Charlene Nguon, are
18 or are perceived to be gay, lesbian, or bisexual. When Charlene complained to
19 Superintendent Schwalm about the unequal treatment that she received at Santiago
20 High, neither Schwalm, Baird, Lewis, the Individual Board members, nor the
21 Board of Education took action to remedy or stop the harassment and
22 discrimination against her.

23 79. The harassment, discriminatory treatment, and punishment of plaintiff
24 Nguon because of her sexual orientation violates California Education Code §§
25 200, 201, and 220. At all times, defendants have been, are presently, and will be
26 acting under the color and authority of the laws of the United States and the State
27 of California.

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1 enforced those unwritten rules against her but not heterosexual students engaged
2 in similar behavior, which has caused and continues to cause her substantial harm.
3 Defendants' acts also substantially harm the ability of the Gay-Straight Alliance
4 Network to accomplish its organizational goals, which include eliminating
5 discrimination towards lesbian and gay students at schools within the Garden
6 Grove Unified School District.

7 86. Defendants' actions and/or failure to act has been carried out because
8 of plaintiff Nguon's actual or perceived sexual orientation. These actions and/or
9 failures to act, denied plaintiffs the full and equal accommodations, advantages,
10 facilities, privileges, and services in a business and accommodation under Civil
11 Code §§ 51 and 52(a). As a result, plaintiffs have suffered economic and non-
12 economic damages in an amount to be determined at trial.

13 **NINTH CLAIM FOR RELIEF**

14 (Declaratory Relief)

15 [By all Plaintiffs against Defendants Wolf, Baird, Lewis, Schwalm in their official
16 and personal capacities, the Individual Board Defendants in their official
17 capacities, and the Board of Education]

18 87. Plaintiffs reallege and replead all the allegations of the preceding
19 paragraphs of this Complaint and incorporate them herein by reference.

20 88. There exists an actual, present and justiciable controversy between
21 plaintiffs and defendants concerning their rights and duties with respect to
22 defendants' conduct described herein. Plaintiffs contend that defendants violated
23 plaintiffs' rights under the constitutions and laws of the United States and the state
24 of California. On information and belief, defendants deny that their conduct
25 violated plaintiffs' rights under the constitutions and laws of the United States and
26 the State of California. Plaintiffs fear that they will again be subjected to such
27 unlawful and unconstitutional actions, and seek a judicial declaration that
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1 defendants' conduct deprived plaintiffs of their rights under the constitutions and
2 laws of the United States and the State of California.

3 89. This controversy is ripe for judicial decision, and declaratory relief is
4 necessary and appropriate so that the parties may know the legal obligations that
5 govern their present and future conduct.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiffs pray that this Court:

8 90. Issue a declaratory judgment that defendants' conduct as complained
9 of herein was a violation of plaintiffs' rights under the constitutions and laws of
10 the United States and the State of California;

11 91. Issue an injunction prohibiting defendants and all those acting in
12 concert with them or acting under their supervision or control from discriminating
13 and harassing plaintiffs on the basis of actual or perceived sexual orientation;

14 92. Issue an injunction prohibiting defendants and all those acting in
15 concert with them or acting under their supervision or control from selectively
16 enforcing disciplinary rules on the basis of actual or perceived sexual orientation;

17 93. Issue an injunction prohibiting defendants and all those acting in
18 concert with them or acting under their supervision or control from viewpoint-
19 based censorship against students who engage in gay, lesbian, or bisexual
20 expressive conduct;

21 94. Issue an injunction prohibiting defendants and all those acting in
22 concert with them or acting under their supervision or control from disclosing the
23 sexual orientation or other private information of students without a genuine,
24 legitimate, and compelling governmental interest;

25 95. Issue an injunction requiring the defendants to expunge immediately
26 all records pertaining to discipline imposed against plaintiff Nguon related to her
27 expression of affection to her girlfriend;

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JAMES D. ESSEKS
AMERICAN CIVIL LIBERTIES
UNION, LESBIAN & GAY RIGHTS
PROJECT

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