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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF SHASTA

12 UNLIMITED JURISDICTION

13 BENJAMIN BROWN, a minor, by and
14 through his parent and guardian *ad litem*,
DEBORAH BROWN; DEBORAH BROWN,
15 individually and on behalf of her minor son,
BENJAMIN BROWN; KENNETH
16 BROWN; BRITTANY DALTON, a minor,
by and through her parent and guardian *ad*
17 *litem*, JOHN DALTON; JOHN DALTON,
individually and on behalf of his minor
18 daughter, BRITTANY DALTON; JESSE
SIMONIS, a minor, by and through his parent
19 and guardian *ad litem*, ROBERT SIMONIS,

20 Plaintiffs,

21 vs.

22 SHASTA UNION HIGH SCHOOL
DISTRICT; JIM CLONEY, in his official
23 capacity as Superintendent of Shasta Union
High School District; SHASTA UNION
24 HIGH SCHOOL DISTRICT BOARD OF
TRUSTEES; BEV STUPEK, KRISTEN
25 SCHREDER, JAMES SCHWERDT,
CHARLES HAASE, and CONSTANCE
26 PEPPLE, in their official capacities as
Trustees of the Shasta Union High School
District; and DOES 1 through 20, inclusive,

27 Defendants.

Case No. 164933

VERIFIED FIRST AMENDED
COMPLAINT FOR PERMANENT
AND PROVISIONAL INJUNCTIVE
RELIEF AND FOR DECLARATORY
RELIEF FOR VIOLATION OF
ARTICLE I, SECTIONS 1, 7, AND 13
OF THE CONSTITUTION OF THE
STATE OF CALIFORNIA

1 **INTRODUCTION**

2 1. Defendant Shasta Union High School District (the “District”) has recently
3 begun to require all students who want to participate fully in a wide variety of non-athletic
4 curricular, cocurricular, and extracurricular activities to submit to suspicionless, random
5 urinalysis to detect the presence of nicotine, alcohol, and other drugs. Plaintiffs, who are
6 students affected by the policy and their parents, seek a declaration that this new District
7 policy violates the California Constitution’s protections of privacy and equal protection, as
8 well as its protections against unreasonable searches and seizures. Plaintiffs further seek
9 injunctive relief protecting the student Plaintiffs from suspension from the competitive or
10 performance aspects of their courses and from suspension from or limitation of non-athletic
11 student activities, and from any other punishment, due to Plaintiffs’ refusal to consent to, or
12 pay for, any form of random suspicionless drug testing.

13 2. For years, students at the District’s high schools have participated in a wide
14 variety of non-athletic curricular, cocurricular and school sponsored activities such as band,
15 photography club, choir, and math club. Over half of the District’s students participate in
16 such curricular, cocurricular or extracurricular activities, and the District and the legislature
17 both explicitly recognize that even extracurricular activities are an integral part of the
18 school curriculum. Of course, classes such as band and choir are actually a part of the
19 school curriculum and thus provide students with academic credits that they need to
20 graduate from high school as well as the visual or performing arts credits students need in
21 order to be admitted to the California State University or the University of California. All
22 such activities, even those that are extracurricular, are critical to students’ successful
23 application to colleges and universities. Until this year, students could take classes and
24 participate in non-athletic cocurricular and extracurricular activities without having to
25 consent to suspicionless drug testing.

26 3. Beginning in August of 2008, the District imposed a new requirement on
27 students engaged in such non-athletic curricular, cocurricular, and extracurricular activities.
28 Under the new Competitive Representational Activities Code (hereinafter “Drug Testing

1 Policy”), a true and correct copy of which is attached hereto as Exhibit A and incorporated
2 herein by reference, the District now requires all students who participate in “Competitive
3 Representational Activities” (a term vaguely defined by the District, so that affected
4 students and parents are reasonably and necessarily unsure as to what activities will subject
5 participants to testing) to submit to suspicionless urinalysis to test for illegal drugs,
6 prescription drugs, nicotine, and alcohol. The Drug Testing Policy applies not only to
7 student athletes – a practice not challenged here by Plaintiffs– but also to students in non-
8 athletic “representational” and “competitive” academic classes and student activities. For
9 example, students in band class (a part of the school’s regular curriculum, a course that
10 fulfills a student’s mandatory fine arts graduation requirement, and a course that fulfills a
11 requirement for admission to the University of California and California State University)
12 receive graded credit for performing with the band, and any student in band class who
13 refuses to consent to suspicionless urinalysis cannot participate fully in band.

14

15

PARTIES

16 4. Plaintiff Benjamin Brown (“Ben”) is a minor and is now, and was at all
17 times mentioned in this Complaint, a resident of Shasta County, California. Ben is
18 currently a senior at Enterprise High School, one of the District’s three high schools. Ben
19 participates in Symphonic Band, Chamber Choir, Jazz Band, Jazz Choir, and Enterprise
20 Starship (a show choir that competes and performs all over the United States and
21 worldwide). These are all curricular courses within the meaning of Education Code section
22 35160.5(a)(4). He has a 3.5 grade point average and is on the Honor Roll. Ben brings this
23 suit through his mother and guardian *ad litem* Deborah Brown.

24 5. Plaintiff Deborah Brown is an individual and is now, and was at all times
25 mentioned in this Complaint, a taxpayer and resident of Shasta County, California.
26 Deborah Brown co-owns with Kenneth Brown realty situated in Shasta County, California
27 and within the District and has been assessed and has paid property taxes on said realty

28

1 within the past year. Deborah Brown is the mother of Ben. Plaintiff Deborah Brown
2 appears herein both as Plaintiff in her own right, and on behalf of her minor son Ben.

3 6. Plaintiff Kenneth Brown is an individual and is now, and was at all times
4 mentioned in this Complaint, a taxpayer and resident of Shasta County, California.
5 Kenneth Brown co-owns with Deborah Brown realty situated in Shasta County, California
6 and within the District and has been assessed and has paid property taxes on said realty
7 within the past year. Kenneth Brown is the father of Ben.

8 7. Plaintiff Brittany Dalton (“Brittany”) is a minor and is now, and was at all
9 times mentioned in this Complaint, a resident of Shasta County, California. Brittany is
10 currently a senior at Enterprise High School. Brittany participates in Symphonic Band,
11 Marching Band, Pep Band, and a competing flute ensemble, all of which are curricular
12 activities within the meaning of Education Code section 35160.5(a)(4). She is one of the
13 uniform managers for the Marching Band. Brittany also works at the Round Table Pizza in
14 Redding, California five days per week. Brittany brings this suit through her father and
15 guardian *ad litem* John Dalton.

16 8. Plaintiff John Dalton is an individual and is now, and was at all times
17 mentioned in the Complaint, a taxpayer and resident of Shasta County, California. John
18 Dalton owns realty situated in Shasta County, California and within the District and has
19 been assessed and has paid property taxes on said realty within the past year. John Dalton
20 is the father of Brittany. Plaintiff John Dalton appears herein both as Plaintiff in his own
21 right, and on behalf of his minor daughter Brittany.

22 9. Plaintiff Jesse Simonis (“Jesse”) is a minor and is now, and was at all times
23 mentioned in the Complaint, a resident of Shasta County, California. Jesse is a sophomore
24 at Foothill High School. Jesse takes a course called Integrated Agricultural Biology which
25 meets University of California and California State University requirements. A
26 requirement of the course is that students participate in Future Farmers of America
27 (“FFA”). As alleged in more detail below, Jesse was drug tested on March 27, 2009 under
28

1 the Drug Testing Policy because of his involvement with FFA. Jesse has a 3.0 grade point
2 average. Jesse brings this suit through his father and guardian *ad litem* Robert Simonis.

3 10. Robert Simonis is an individual and is now, and was at all times mentioned
4 in the Complaint, a resident of Shasta County, California. Robert Simonis is the father of
5 Jesse.

6 11. Plaintiffs are informed and believe and on that basis allege that the District
7 is, and was at all relevant times, a public entity located in Shasta County, State of California
8 and organized under California law. The District has oversight responsibility for all schools
9 and all school employees in the District and is directly responsible for approving and
10 encouraging the policies, practices, and actions of which Plaintiffs complain. The District
11 owns, operates, and controls Enterprise High School and Foothill High School.

12 12. Plaintiffs are informed and believe and on that basis allege that Defendant
13 Jim Cloney (“Cloney”) is the Superintendent of the District and, in such capacity, is directly
14 responsible for implementing the policies, practices, and actions of which Plaintiffs
15 complain.

16 13. Plaintiffs are informed and believe and on that basis allege that the Board of
17 Trustees (the “Board”) is, and was at all relevant times, a public entity located in Shasta
18 County, State of California and organized under California law. The Board of Trustees is
19 the governing Board of the District in accordance with the provisions of the Education
20 Code, and the District operates under the Board’s plenary control.

21 14. Plaintiffs are informed and believe and on that basis allege that defendants
22 Bev Stupek, Kristen Schreder, James Schwerdt, Charles Haase, and Constance Pepple
23 (collectively referred to as “Trustees”) are members of the Board of Trustees and, in such
24 capacity, are responsible for the policies, practices, and actions of which Plaintiffs
25 complain.

26 15. Plaintiffs are ignorant of the true names or capacities of the Defendants sued
27 herein under the fictitious names DOES 1 through 20, inclusive, and therefore sue such
28 Defendants by such fictitious names. Plaintiffs are informed and believe, and on that basis

1 allege, that such fictitiously named Defendants are responsible in some way for the damage
2 and legal injury sustained by Plaintiffs as alleged herein.

3 16. During all times mentioned in the Complaint, each of the Defendants was
4 acting under color of local and state law.

5 17. Defendants the District, the Board, and Cloney and the Trustees (in their
6 representative capacities) have the responsibility for directing the actions of District
7 employees, including principals and assistant principals, administrative assistants,
8 counselors, teachers, and other school personnel.

9 18. Defendants Cloney and the Board have constitutional and statutory
10 responsibility for the policies, practices, and procedures of the District, and are responsible
11 for maintaining the District in conformity with law.

12 19. Plaintiffs are informed and believe, and on that basis allege, that at all times
13 mentioned herein, all Defendants, and each of them, were the agents, co-conspirators,
14 employees, officers, principals, or representatives of each of the other Defendants herein;
15 that in doing the things herein set forth, Defendants were acting within the course and scope
16 of such relationship and with the permission, consent, and ratification of each of the other
17 Defendants; and that Plaintiffs' injuries as herein alleged were proximately caused by the
18 conduct of all Defendants.

19
20 **VENUE AND JURISDICTION**

21 20. This Court has jurisdiction over this case under Article VI, Section 10 of the
22 California Constitution and Code of Civil Procedure Section 410.10.

23 21. Venue is proper in this Court pursuant to Code of Civil Procedure
24 Section 395 because the District and the Board are located in Shasta County, and because
25 all of the conduct alleged herein occurred in Shasta County. In addition, each of the natural
26 persons named as Defendants either is employed by the District or serves as a trustee of the
27 Board. Plaintiffs are informed and believe, and on that basis allege, that some or all of the
28 natural persons named as Defendants also reside in Shasta County.

1 22. Plaintiffs have standing because they are directly affected by the
2 Defendants' unconstitutional policies and as taxpayers under Code of Civil Procedure
3 Section 526a.

4
5 **FACTUAL BACKGROUND**

6 **Courses and Non-Athletic Student Activities Before Enactment of the**
7 **Drug Testing Policy**

8 23. The high schools that comprise the District offer a host of extracurricular
9 and cocurricular activities that complement the standard academic curriculum within the
10 meaning of Education Code section 35160.5(a)(1)-(3). Students are able to participate in
11 activities ranging from Dance Team to the Future Farmers of America to the debate and
12 math teams.

13 24. The high schools also offer a variety of graded courses designed to satisfy
14 the entrance requirements for admission to the California State University and the
15 University of California, which each require one year of visual and performing arts (visual
16 art, dance, drama/theater, or music). For example, the District has award-winning band and
17 choir programs which satisfy this requirement. The competitive or performance aspects of
18 such courses are graded and are required activities for the courses. As such, these courses,
19 including their performance aspect, are not cocurricular or extracurricular, as defined by
20 Education Code section 35160.5(a)(4), which states that: "Any teacher graded or required
21 program or activity for a course that satisfies the entrance requirements for admission to the
22 California State University or the University of California is not an extracurricular or
23 cocurricular activity as defined by this section."

24 25. Prior to August 2008, the requirements at the high schools within the District
25 for joining non-athletic cocurricular and extracurricular activities depended on a student's
26 academic performance, interest, and the specific nature of each individual activity. All
27 students who attend the high schools are required to fill out a health form that includes
28 questions about any medications they are taking, but students who do not participate in

1 athletics are not required to undergo physical or medical tests. Further, in contrast to
2 athletic teams, non-athletic curricular, cocurricular, and extracurricular activities – such as
3 band, choir, and the like – have never required communal undress or other reductions in
4 privacy.

5

6 **Events Leading to Enactment of the Drug Testing Policy**

7 26. According to the *California Healthy Kids Survey* (administered by the
8 California Department of Education) and the *California Student Survey* (administered by
9 the California Attorney General’s Office pursuant to Health and Safety Code § 11605), the
10 rate of student drug use in the District is approximately the same as the statewide average,
11 and slightly lower than in the other school districts in Shasta County.

12 27. In its grant application for federal funding for the expanded Drug Testing
13 Policy, the District erroneously claimed that student drug use within the District exceeds
14 national averages at every grade level for both any illicit drug use and past 30 day illicit
15 drug use, when in fact on information and belief the District came to this conclusion by
16 comparing numbers from the *California Healthy Kids Survey* of District students who self-
17 reported using both illicit drugs and alcohol with national numbers from the 2007
18 *Monitoring the Future* report in which students self-reported only illicit drug use. As many
19 more students try alcohol than experiment with illicit drugs, the District’s including in its
20 grant application numbers for self-reported alcohol use grossly inflated the District’s
21 numbers, when in fact District students use both illicit drugs and alcohol at rates on par
22 with the national average. Thus, when the District claims in its application that: “District
23 results are higher than national statistics at every grade level for both lifetime and 30 day
24 drug use,” this statement is flatly untrue.

25 28. In its grant application, the District also points out that it is located on the I-5
26 corridor between Mexico and Canada and that the county is designated a “High Intensity
27 Drug Trafficking Area” by the Office of National Drug Control Policy. But while certain
28 segments of the community at large may have a problem with drugs, this does not mean

1 that District students have a problem with drugs. For example, the grant application points
2 out that there is a task force in Shasta County to deal with the manufacture, sale and use of
3 methamphetamine, but in the District's Summary of Counseled Students with Self-reported
4 Substance Use, only one student reported using "Amphetamines," which may or may not
5 mean methamphetamine. While methamphetamine may be a problem with the community
6 at large, it does not appear to currently be a problem at District schools.

7 29. The reality is that drug use among high school students throughout the
8 nation has steadily declined since the mid-1990s. Students who engage in
9 school-sponsored activities such as band, orchestra, or chorus are substantially less likely to
10 use drugs than are other students. No evidence suggests that the District diverges from
11 these national trends. Indeed the students who participate in non-athletic student activities
12 at District high schools do not, as a group, have a reputation for drug or alcohol use.

13 30. District parents have never publicly asked the District to adopt the new Drug
14 Testing Policy, and some District parents who would have liked to have input into the
15 Policy before it was implemented felt blindsided when it was first announced after the
16 District had been developing the Policy for at least a year.

17

18

Provisions of the Drug Testing Policy

19 31. Enacted in August 2008, the Drug Testing Policy created a mandatory,
20 suspicionless and random testing for drugs, nicotine, and alcohol "[i]n order to provide for
21 the health and safety of the Participants, to provide a legitimate reason for students to say
22 "no" to drug use, and to provide an opportunity for those taking drugs to receive help in
23 locating a program of assistance...." Despite these stated goals, students who "attend an
24 illegal activity (where drugs or alcohol are served to minors)," whether or not such
25 "activity" is school-related, are subject to the Drug Testing Policy even if they do not use
26 drugs or alcohol themselves.

27 32. In order to obtain parental and student consent for the new Drug Testing
28 Policy, the District gave all students a form called the "Parent and Student

1 Acknowledgment Form 2008-09” that both parent and student had to sign in order for the
2 student to be able to participate in competitive representational activities *and* for the student
3 to have access to school computers. The form stated: “Completion and return of this form
4 are required for students to have access to school computers and to be eligible for
5 participation in all representational (cocurricular and extracurricular) activities.” The form
6 also indicated that signing the form meant a parent authorized their student to be included
7 in the drug/alcohol random testing pool. On information and belief, some teachers gave
8 students extra-credit in their classes for turning in the form the day after it was handed out.
9 The form gave parents no option to consent to their child having access to school computers
10 but not to random drug testing.

11 33. “Competitive Representational Activities” are defined by the District in the
12 Drug Testing Policy as follows:

13 All activities sanctioned by and under the control and jurisdiction of the
14 Shasta Union High School District that are competitive, extracurricular or
15 cocurricular. These activities do not occur during the regular course of the
school day, and include Competitive Representational Activities which occur
during summer vacation.

16 Although on June 23, 2008, the District created a draft list of Competitive Representational
17 Activities, it has never published a final list of such activities, leaving parents and students
18 unsure of which non-athletic curricular, cocurricular and extracurricular activities will
19 subject students to random, suspicionless drug testing. Aside from competitive athletics,
20 the District’s draft list included eight courses within the meaning of Education Code section
21 35160.5(a)(4), including: Accapella, Band 1 & 2, Choir/Pop/Jazz, Choraliers, Jazz
22 Ensemble, Jazz Band, Mixed Choir, and Vocal Jazz. The District’s draft list also included
23 thirteen extracurricular activities, including Cheerleading, Bowling Club, Chess Club,
24 Dance Team, Future Business Leaders of America, Future Farmers of America, Math Club,
25 Mathalon, Mock Trial, NJROTC 1, NJROTC 2, Photography Club, and Science Bowl.

26 34. The academic year for students attending District high schools is divided
27 into four seasons: fall (August 1 – December 1), winter (November 1 – March 31), spring
28 (February 1 – the last day of school), and summer (the day after the last day of school –

1 July 31). The 2008-2009 Student/Parent handbook explains that: “Official seasons will be
2 the same for all Competitive Representational Activities.” The Handbook also explains
3 that: “Random testing will be conducted during the Season.” As such, it is unclear whether
4 students will be subject to mandatory random and suspicionless drug testing only during the
5 Season in which they compete in a representational activity or during all Seasons, whether
6 or not they will be competing as part of their activity or course during that particular
7 Season. It is also unclear what activities or courses are both competitive and
8 representational such that they will subject students to the District’s illegal testing.

9 35. The drug panel to be tested consists of Methamphetamine, Chlorochromate,
10 Amphetamine, Phencyclidine, Cocaine, Marijuana, Methadone, Barbiturates,
11 Benzodiazepines, Opiates, Oxycodone, Nicotine, and Alcohol. According to the District’s
12 federal grant application, a drug testing lab obtains the students’ urine samples by taking
13 them to restrooms on campus. The Assistant Principal listens to the sounds of the students’
14 urination outside the restroom door as they provide the sample. On information and belief,
15 students are pulled from their classes in order to provide a urine sample.

16 36. According to the Drug Testing Policy, if a student tests positive for drugs,
17 the student’s parent or guardian must provide prescription information for the student and a
18 prescription number that matches the substance found to a Medical Review Officer, or the
19 student will be penalized for a positive test.

20 37. According to the Drug Testing Policy, a single positive test results in
21 parental notification, a mandatory five-week counseling program at the student’s expense or
22 the District’s drug diversion program, and either a two-week suspension from all
23 Competitive Representational Activities and six weekly drug tests at the student’s expense
24 (any positive results are considered a second offense) or a nine-week suspension from
25 activities. If the student chooses a nine-week suspension from activities rather than six
26 drug tests at their own expense, the student will be re-tested before beginning the next
27 activity for which he or she is eligible. A second positive test leads to a ban on
28 participation in any Competitive Representational Activities for the remainder of the

1 current Season. The student will be re-tested before beginning the next activity for which
2 the student is eligible. A third positive test makes the student ineligible for any activity
3 until she or he has had twelve months of negative urine tests at her or his own expense.
4 Any further positive tests will result in a permanent ban from all covered activities.
5 Furthermore, if a student chooses to stop participating in a Competitive Representational
6 Activity before the Season ends, that student will not be eligible to participate in another
7 Competitive Representational Activity until the next Season.

8 38. According to the Drug Testing Policy, any student participating in a
9 curricular, representative, competitive activity who refuses to be tested for drugs, alcohol,
10 or nicotine or who tests positive for drugs, nicotine, or alcohol must perform an alternate
11 assignment selected by their instructor for credit rather than participating in the
12 performance aspect of their class.

13

14 **Jesse is Subjected to Unlawful, Suspicionless Drug Testing by the District**

15 39. On or about March 24, 2009, Jesse was attending his third period class at
16 Foothill High School when he received a call slip directing him to report to the attendance
17 office immediately. Jesse did not know why he was being pulled from class, as he waited
18 in line with about twenty (20) other students. When Jesse reached the front of the line, the
19 principal of Foothill High School, Mr. Bartow, informed Jesse that he had to sign a form,
20 but did not inform Jesse what the form was for. When Jesse asked Mr. Bartow about what
21 he was signing, Mr. Bartow told him it was to obtain a urine sample for a random drug test.
22 During the entire time of Jesse's interaction with Mr. Bartow, a Shasta County Sheriff's
23 Deputy was sitting to the Principal's left.

24 40. Jesse was surprised to be asked to provide a urine sample and told Mr.
25 Bartow that he needed to speak with his parents first. Jesse went to the attendance office
26 and called his mother, who wrote out a call slip so that he could leave school and go home.

27 41. The next day, March 25, 2009, Jesse was in Agricultural Biology class when
28 he received another call slip telling him to go to Assistant Vice Principal Greene's office at

1 Foothill High School. Upon meeting him, Assistant Vice Principal Greene told Jesse that
2 he had to take a drug test, or he could no longer participate in FFA and also would be
3 kicked out of Agricultural Biology class. Mr. Greene informed Jesse that if he had not
4 submitted to a drug test by Friday (March 27) at 5:00 p.m., Jesse would be out of FFA. Mr.
5 Greene gave Jesse a card with the name of Compliance Associates on it and told Jesse that
6 he had to arrange to get drug tested through that company by the Friday deadline.

7 42. The next day, Thursday, March 26, 2009, Jesse was eating lunch in the
8 Foothill High School cafeteria when Assistant Vice Principal Greene came over to his table.
9 Jesse moved to a new table because he was still upset about his meeting with Mr. Greene
10 the previous day.

11 43. Mr. Greene followed Jesse to the new lunch table. Then, in front of
12 everyone at the table, Mr. Greene asked Jesse if he had taken his drug test yet. Jesse did not
13 reply. Then Mr. Greene announced, in front of all of the people sitting at the table, that if
14 Jesse had not taken a drug test by the next day, he would be kicked out of FFA.

15 44. To avoid any more repercussions, Jesse provided a urine sample to the
16 District's testing company (Compliance Associates) on March 27, 2009.

17

18

The Effects of the Drug Testing Policy

19 45. The Drug Testing Policy infringes on District students' families' privacy in
20 multiple ways, including by forcing parents to provide their children's prescription drug
21 information to third parties and by forcing parents, through the District's drug diversion
22 program (the only drug program that they do not have to pay for) to discuss their family life
23 with District selected drug counselors in the presence of other District families.

24 46. As previously alleged, Defendants here have not demonstrated that students
25 at District high schools use drugs at a rate greater than students at high schools nationwide.

26 47. Likewise, the District has not exhausted other, less-intrusive methods of
27 combating any drug or substance abuse problem that high schools within the District do

28

1 have. Many school districts have found that a drug testing program based on individualized
2 suspicion is adequate to detect and prevent drug use.

3 48. There is no evidence that suspicionless drug testing programs deter student
4 drug use, and in fact there are studies that show that they do not deter student drug use. By
5 targeting those least likely to abuse drugs, the Drug Testing Policy expresses only a
6 symbolic opposition to student drug use. Further, the testing methods used by the District
7 are virtually useless in detecting past use of alcohol, inhalants, and other commonly abused
8 drugs that clear the human body quickly. Thus, the testing regime implemented under the
9 Drug Testing Policy may in fact lead District students to abuse such less readily detectable
10 substances.

11 49. By targeting a group of students who are relatively unlikely to use illicit
12 drugs on the basis of their participation in activities that pose no special risks or physical
13 dangers, the Drug Testing Policy neither addresses a proven problem nor promises to bring
14 any benefit to students or to the District. The Drug Testing Policy discourages participation
15 in student activities and classes by individuals who would otherwise benefit from
16 participating in such classes and activities. Exclusion of students from these activities and
17 courses will seriously interfere with their ability to gain college or university admission and
18 adversely affect their future employment, income, skills, and abilities. Without a solid
19 record of activities, even a student with excellent grades will be turned away from
20 competitive universities. The District itself acknowledges in the Student/Parent Handbook
21 that: "Involvement in clubs and sports activities is a source of life-long memories and pride
22 [and] is also the greatest key to your future success."

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1 **INJUNCTIVE AND DECLARATORY RELIEF ALLEGATIONS**

2 50. An actual, existing, and substantial controversy exists between Plaintiffs and
3 Defendants as to their rights and responsibilities with respect to the Drug Testing Policy.
4 Plaintiffs contend that the Drug Testing Policy violates their rights under the California
5 Constitution and that District expenditures made in connection with the institution,
6 implementation, and enforcement of the Drug Testing Policy constitute an illegal
7 expenditure and a waste of public funds. Defendants dispute these contentions, and
8 contend instead that the Drug Testing Policy comports with applicable law. Unless the
9 Court issues an appropriate declaration of the respective rights and responsibilities of the
10 parties with reference to the Drug Testing Policy, the legal status of Defendants' actions in
11 instituting, implementing, and enforcing the Drug Testing Policy will remain uncertain, and
12 there will continue to be disputes and controversies surrounding the institution,
13 implementation, and enforcement of the Drug Testing Policy. Declaratory relief is
14 therefore necessary and appropriate under Code of Civil Procedure section 1060.

15 51. By instituting, implementing and/or enforcing the Drug Testing Policy,
16 Defendants have violated and continue to violate the student Plaintiffs' right to privacy,
17 their right to equal protection, and their right to be free from unreasonable searches and
18 seizures as guaranteed by Article I Sections 1, 7 and 13 of the California Constitution.

19 52. Defendants' willful disregard of the student Plaintiffs' constitutional rights
20 has resulted in irreparable harm to the student Plaintiffs, and unless Defendants' conduct is
21 enjoined, Defendants will continue to inflict irreparable harm.

22 53. By instituting, implementing and/or enforcing the Drug Testing Policy,
23 Defendants Jim Cloney and the Trustees (collectively, the "Individual Defendants") have
24 illegally and wastefully expended public funds in violation of Article I, Sections 1, 7, and
25 13 of the California Constitution.

26 54. Plaintiffs Deborah Brown, Kenneth Brown, and John Dalton, as taxpayers, are
27 therefore entitled to a permanent injunction under Code of Civil Procedure Section 526a to
28 prevent, restrain, and enjoin said ongoing illegal expenditures of public funds.

1 55. If not enjoined by this Court, Defendants will continue to implement and
2 enforce the Drug Testing Policy in derogation of Plaintiffs' rights, and if Defendants are not
3 preliminarily and permanently enjoined, the student Plaintiffs will continue to suffer
4 irreparable harm because their rights to privacy and equal protection as well as their right to
5 be free from unreasonable searches and seizures under Article I, Sections 1, 7, and 13 of the
6 California Constitution will be violated. Injunctive relief is therefore appropriate under
7 Civil Code section 3422 and Code of Civil Procedure sections 526 and 527.

8 56. The student Plaintiffs have no adequate remedy at law for the injuries
9 suffered, and to be suffered in the future, in part because it is impossible for the student
10 Plaintiffs to calculate a sum of money damages that will compensate them for the loss of
11 their rights to privacy and equal protection or for the loss of their right to be free from
12 unreasonable searches and seizures.

13
14 **FIRST CAUSE OF ACTION**

15 **(California Constitution, Article I, Section 1)**

16 **Violation of the Right to Privacy Guaranteed by the California Constitution**

17 (Plaintiffs Benjamin Brown, Brittany Dalton, and Jesse Simonis Against All Defendants)

18 57. Plaintiffs incorporate herein by reference the allegations of paragraphs 1
19 through 56 above, as if set forth in full.

20 58. Article I, Section 1 of the California Constitution provides that “[a]ll people
21 are by nature free and independent and have inalienable rights.... [and that] [a]mong these
22 are.... pursuing and obtaining safety, happiness, and privacy.” This provision creates a
23 right to privacy more protective than the implicit privacy protections in the United States
24 Constitution. *In re Carmen M.* (2006) 141 Cal.App.4th 478. This “vitally important” right
25 extends to minor high-school students. *In re William G.* (1985) 40 Cal.3d 550, 562.

26 59. The Drug Testing Policy impinges upon students' fundamental right to an
27 education. *Butt v. State of California* (1992) 4 Cal.4th 668, 693 (education is a fundamental
28 interest under the California equal protection guaranties). Classes such as band and choir,

1 including the graded and required performance aspects of such classes, are a regular part of
2 District schools' curriculum and are not cocurricular or extracurricular activities within the
3 meaning of Education Code section 35160.5(a)(4). Such classes allow District students to
4 fulfill necessary requirements for graduation and are the source of the year of visual and
5 performing arts credit that students need in order to be eligible for admission to California
6 State University and the University of California. Thus, the Drug Testing Policy effectively
7 applies to parts of a public school's legally-required function – the education of its students.

8 60. The right to privacy protects the right to informational privacy, the right to
9 be free from government intrusion into our private lives, and the right to be left alone. *Hill*
10 *v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1. The Drug Testing Policy infringes
11 upon all three of these interests.

12 61. The Drug Testing Policy violates the student Plaintiffs' fundamental right to
13 privacy. Forcing students to provide samples of their urine for testing while an assistant
14 principal listens for the sounds of their urination outside the restroom door impacts several
15 legally protected privacy interests: the student Plaintiffs' right to informational privacy,
16 their right to be free from governmental intrusion into their private lives, and their right to
17 be left alone. Moreover, the Drug Testing Policy applies to students in the privacy of their
18 own homes, to students eighteen and over who lawfully smoke tobacco when not at school,
19 and to students who drink wine as part of religious ceremonies.

20 62. By instituting, implementing, and/or enforcing the Drug Testing Policy,
21 Defendants have interfered with and continue to interfere with the exercise and enjoyment
22 of the student Plaintiffs' rights to privacy as guaranteed by Article I, Section 1 of the
23 California Constitution.

24 63. As a direct and proximate consequence of Defendants' implementing and
25 enforcing the Drug Testing Policy in derogation of their rights, the student Plaintiffs have
26 suffered, and will continue to suffer, irreparable injury, for which they are entitled to
27 declaratory and injunctive relief, as previously alleged herein.

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SECOND CAUSE OF ACTION

(California Constitution, Article I, Section 13)

**Violation of the Right to be Free from Unreasonable Searches and Seizures
Guaranteed by the California Constitution**

(Plaintiffs Benjamin Brown, Brittany Dalton, and Jesse Simonis Against All Defendants)

64. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 56 and paragraph 58 above, as if set forth in full.

65. Article I, Section 13 of the California Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.”

66. It is well established that forcing a person to provide a urine sample for the purpose of drug testing constitutes a search. *Loder v. City of Glendale* (1997) 14 Cal.4th 846, 867 (lead opn. of George, C.J.).

67. Article I, Section 13 of the California Constitution prohibits the suspicionless search of high school students. To pass constitutional muster, any search requires a reasonable suspicion that the student has committed a violation of law or of a school rule or regulation. *In re William G.* (1985) 40 Cal.3d 550, 564.

68. By instituting, implementing, and/or enforcing the Drug Testing Policy, Defendants have interfered with and continue to interfere with the exercise and enjoyment of the student Plaintiffs’ rights to be free from unreasonable searches and seizures as guaranteed by Article I, Section 13 of the California Constitution.

69. As a direct and proximate consequence of Defendants’ implementing and enforcing the Drug Testing Policy in derogation of their rights, the student Plaintiffs have suffered and will continue to suffer irreparable injury, for which they are entitled to declaratory and injunctive relief, as previously alleged herein.

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THIRD CAUSE OF ACTION

(California Constitution, Article I, Section 7)

Violation of the Equal Protection Clause of the California Constitution

(Plaintiffs Benjamin Brown, Brittany Dalton and Jesse Simonis Against All Defendants)

70. Plaintiffs incorporate herein by reference the allegations of paragraphs 1 through 56 and paragraph 58 above, as if set forth in full.

71. Article I, Section 7 of the California Constitution provides that “[a] person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws....”

72. As previously alleged herein, the Drug Testing Policy violates Plaintiffs’ fundamental right to privacy under Article I, Section 1 of the California Constitution.

73. Defendants have not identified any special need, any compelling need, or even any rational basis for targeting students who do not participate in athletic activities for drug and alcohol testing.

74. By instituting, implementing, and/or enforcing the Drug Testing Policy, Defendants have interfered with and continue to interfere with the exercise and enjoyment of the student Plaintiffs’ right to equal protection as guaranteed by Article I, Section 7 of the California Constitution.

75. As a direct and proximate consequence of Defendants’ implementing and enforcing the Drug Testing Policy in derogation of their rights, the student Plaintiffs have suffered and will continue to suffer irreparable injury, for which they are entitled to declaratory and injunctive relief, as previously alleged herein.

1 **FOURTH CAUSE OF ACTION**

2 **(Code of Civil Procedure section 526a)**

3 **The Illegal and Wasteful Expenditure of Public Funds in Violation of Article I,**

4 **Sections 1, 7, and 13 of the California Constitution**

5 (Plaintiffs Deborah Brown, Kenneth Brown, and John Dalton Against Defendants Jim
6 Cloney, Bev Stupek, Kristin Schreder, James Schwerdt, Charles Haase, and
7 Constance Pepple)

8 76. Plaintiffs incorporate herein by reference the allegations of paragraphs 1
9 through 56, paragraphs 58-63, paragraphs 65-69, and paragraphs 71-75 above, as if set forth
10 in full.

11 77. Code of Civil Procedure section 526a provides that a taxpayer has standing
12 to sue to prevent a public official from the waste or illegal expenditure of public funds.

13 78. In their representative capacities, the Individual Defendants have wasted and
14 unlawfully used public funds, and injured the public fisc, and threaten to continue wasting
15 and unlawfully using public funds and injuring the public fisc, by implementing and
16 enforcing the Drug Testing Policy in violation of Sections 1, 7, and 13 of Article I of the
17 California Constitution.

18 79. As a direct and proximate consequence of the Individual Defendants'
19 expending public funds to implement and enforce the Drug Testing Policy in violation of
20 the California Constitution, Plaintiff taxpayers are entitled to permanent injunctive and
21 declaratory relief, as previously alleged herein.

22
23 W h e r e f o r e, Plaintiffs pray for entry of judgment in their favor and against
24 Defendants as follows:

25 a. For a preliminary and permanent injunction enjoining each of
26 Defendants, each of their agents, employees, assigns, and all other persons
27 acting in concert or participating with any of them from (1) enforcing the
28 provisions of the Drug Testing Policy for suspicionless testing of District

1 students engaged in any non-athletic activity, (2) taking any other measure to
2 subject either the student Plaintiffs, or any other District students seeking to
3 participate in non-athletic curricular, cocurricular or extracurricular activities,
4 to tests for detection of prohibited substances except upon individualized,
5 reasonable suspicion that a particular student has consumed, or is under the
6 influence of, a prohibited substance, and/or (3) expending public funds to
7 administer, evaluate, and act upon the results of random drug testing of
8 District students engaged in any non-athletic curricular, cocurricular or
9 extracurricular activities;

10 b. For a declaration by this Court that the Drug Testing Policy is
11 unconstitutional under Sections 1, 7, and 13 of Article I of the California
12 Constitution, both facially and as applied to each of the three student
13 Plaintiffs;

14 c. For Plaintiffs' costs of suit incurred herein, including
15 attorneys' fees pursuant to Code of Civil Procedure Section 1021.5;

16 e. For such other and further relief as this Court may deem just
17 and proper.

18 Dated: April 9, 2009.

19 MICHAEL T. RISHER
20 American Civil Liberties Union Foundation
of Northern California
21 39 Drumm Street
San Francisco, California 94111

22 PILLSBURY WINTHROP SHAW PITTMAN LLP
23 THOMAS V. LORAN III
MARLEY DEGNER
24 50 Fremont Street, Fifth Floor
San Francisco, CA 94015

25
26 By: Thomas V. Loran III
Thomas V. Loran III

27 Attorneys for Plaintiffs

1 **VERIFICATION**

2 I, DEBORAH BROWN, declare as follows:

3 I am a Plaintiff in this action. I have read the foregoing VERIFIED FIRST
4 AMENDED COMPLAINT FOR PERMANENT AND PROVISIONAL INJUNCTIVE
5 RELIEF AND FOR DECLARATORY RELIEF FOR VIOLATION OF ARTICLE I,
6 SECTIONS 1, 7, AND 13 OF THE CONSTITUTION OF THE STATE OF CALIFORNIA
7 and know its contents. I declare that the same is true and correct to the best of my
8 knowledge, except as to those matters alleged therein on information and belief or that
9 concern other of the Plaintiffs, which matters I believe to be true.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 Dated: April 5, 2009.

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14 Deborah Brown
15 Deborah Brown
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