

ENDORSED

MAR 19 2007

Clerk of the Napa Superior Court
By: J. OLIVER
Deputy

1 PILLSBURY WINTHROP SHAW PITTMAN LLP
THOMAS V. LORAN III #95255
2 SHARON L. O'GRADY #102356
JOHN E. JANHUNEN #229504
3 ALEX A. L. PONCE DE LEÓN #247427
50 Fremont Street
4 Post Office Box 7880
San Francisco, CA 94120-7880
5 Telephone: (415) 983-1000
Facsimile: (415) 983-1200

CASE MANAGEMENT CONFERENCE
DATE: 3-27-07
TIME: 8:30am
PLACE: Courtroom A
825 Brown Street, Napa CA 94559

6 JULIA HARUMI MASS #189649
7 ANNE BRICK #65296
American Civil Liberties Union Foundation of Northern California
8 39 Drumm Street
San Francisco, California 94111
9 Telephone: (415) 621-2493
Facsimile: (415) 255-8437

DELAY REDUCTION CASE

10
11 Attorneys for Plaintiffs

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF NAPA

14 _____
15 TONI KAY SCOTT, a minor, by and through)
her parent and guardian *ad litem*, DONNELL)
16 SCOTT; SYDNI SCOTT, a minor, by and)
through her parent and guardian *ad litem*,)
DONNELL SCOTT; DONNELL SCOTT,)
17 individually and on behalf of her minor)
daughters, TONI KAY SCOTT and SYDNI)
18 SCOTT; PATRICK T. SCOTT; JACOB)
SANTOS, a minor, by and through his parent)
19 and guardian *ad litem*, REBECCA SANTOS;)
REBECCA SANTOS, individually and on)
20 behalf of her minor son, JACOB SANTOS;)
JEFF SANTOS; MELISSA PHAN, a minor,)
21 by and through her aunt and guardian *ad*)
litem, KIM SHIN; KIM SHIN, individually)
22 and on behalf of her minor niece MELISSA)
PHAN; DELANEY KIEHL, a minor, by and)
23 through her parent and guardian *ad litem*,)
DIANE DANDINI; DIANE DANDINI,)
24 individually and on behalf of her minor)
daughter DELANEY KIEHL; MICHAEL)
25 DANDINI;)
_____)

Case No.: 26 - 37082

VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF FOR VIOLATION OF FIRST
AND FOURTEENTH AMENDMENT
RIGHTS UNDER THE UNITED
STATES CONSTITUTION (pursuant to
Title 42, United States Code § 1983);
VIOLATION OF FREE SPEECH
RIGHTS UNDER THE CALIFORNIA
STATE CONSTITUTION; and
VIOLATION OF CALIFORNIA
EDUCATION CODE (Educ. Code
§§ 35183 and 48907)

DEMAND FOR JURY TRIAL

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1 KYLE FITZPATRICK, a minor, by and)
through his parent and guardian *ad litem*,)
2 DOROTHY FITZPATRICK; DOROTHY)
FITZPATRICK, individually and on behalf)
3 of her minor son KYLE FITZPATRICK;)
SHAWN FITZPATRICK,)
4)
Plaintiffs,)

5 v:)
6)

7 NAPA VALLEY UNIFIED SCHOOL)
DISTRICT; JOHN GLASER in his official)
capacity as Superintendent of Napa Valley)
8 Unified School District; NAPA VALLEY)
UNIFIED SCHOOL DISTRICT BOARD OF)
9 EDUCATION; JACKIE DICKSON, ALAN)
MURRAY, TOM KENSOK, MICHAEL)
10 DOUGLAS, FRANCES ORTIZ-CHAVEZ,)
ROBERT FELDER and JOSE HURTADO,)
11 in their official capacities as Trustees of the)
Napa Valley Unified School District Board of)
12 Education; REDWOOD MIDDLE SCHOOL;)
MICHAEL PEARSON in his official)
13 capacity as Principal of Redwood Middle)
School; and DOES 1 through 20, inclusive,)
14)
Defendants.)

15
16 **INTRODUCTION**

17 1. Plaintiffs seek judicial relief from the unconstitutionally vague, overbroad,
18 and restrictive uniform dress code policy, entitled the “Appropriate Attire Policy,” that
19 Redwood Middle School (“RMS”) and the Napa Valley Unified School District
20 (“NVUSD”) Board of Education (“the Board”) have adopted and implemented for RMS
21 students (hereinafter, the “Redwood Uniform Dress Policy”). The Redwood Uniform Dress
22 Policy prohibits students from wearing, *inter alia*, clothing or apparel with any writing,
23 insignia, pictures, words or lettering of any type, and only permits students to wear solid
24 colors of blue, white, green, yellow, khaki, grey, brown, and black. Students may not wear
25 any amount of red, orange, pink, or purple and may not wear flower or other prints, stripes,
26 plaid, polyester, nylon, or denim. They may not wear pictures of cartoon characters or real
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1 people on their apparel or items that show brand names. Students also are precluded from
2 wearing tee shirts with political, religious, humorous, literary, or any other kind of message.

3 2. The United States Supreme Court has long held that students do not “shed
4 their constitutional rights to freedom of speech of expression at the schoolhouse gate.”
5 When schools seek to restrict students’ expression, the First Amendment demands that the
6 restriction be targeted at speech that would “materially and substantially interfere with the
7 requirements of appropriate discipline in the operation of the school.” RMS’s ban on
8 lettering, pictures or insignia denies students the ability to engage in any expressive conduct
9 through their attire and therefore violates their rights to free expression under the First and
10 Fourteenth Amendments of the United States Constitution and by Article I, Section 2 of the
11 Constitution of the State of California.

12 3. In addition, the Redwood Uniform Dress Policy constitutes, in substance, a
13 school uniform policy, but fails to provide a method for parents to exempt their children
14 from compliance with the uniform policy, in violation of the California Education Code.
15 Although the California legislature has authorized school districts to establish “reasonable
16 dress code policies” in order to address safety concerns related to the presence of gangs and
17 gang-related apparel on school campuses, that authority has been carefully circumscribed.
18 Dress code policies must be supported by genuine safety and health needs and schoolwide
19 uniform policies must include provisions for individual families to opt-out of participation.
20 The Legislature did not contemplate, or authorize, the type of action Plaintiffs challenge
21 here, i.e. forced aesthetic conformity among middle school students.

22 4. Not only is the Redwood Uniform Dress Policy on its face unlawfully
23 restrictive, but also its application and enforcement at RMS has been arbitrary, capricious,
24 and inconsistent. Faculty and staff have taken wildly disparate stances over when and how
25 to mete out punishment for perceived violations of the Redwood Uniform Dress Policy.
26 Some students have been cited (either by receiving a written citation, or by being ordered to
27 change or remove clothing, or by being subjected to some other form of discipline), for
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1 such minor violations as a small logo on an otherwise solid-colored shirt, while other
2 students may not even be given a warning for similar or more egregious violations.

3 5. Some of the citations appear retaliatory; faculty and staff appear to have
4 targeted students who assert their rights to free speech by vocally expressing their
5 opposition to the Redwood Uniform Dress Policy. Plaintiffs are informed and believe, and
6 on that basis allege, that RMS employees have informed students that their families' efforts
7 to stand up for their free speech rights have caused the school to terminate the practice of
8 having "free dress" days when students are permitted to wear jeans.

9 6. Rather than promote a more cooperative learning environment, the Redwood
10 Uniform Dress Policy has caused unnecessary disruption and distraction, pulling students
11 out of class and wasting teachers' time and attention on trivial minutiae of student attire. In
12 implementing this policy, the NVUSD and RMS have elevated form over substance,
13 exceeding their lawful authority over the RMS students and losing sight of their primary
14 purpose of fostering a productive learning environment.

15 7. By engaging in these actions, Defendants have acted under color of law to
16 violate the constitutional and statutory rights of Plaintiffs. For these reasons, Plaintiffs seek
17 an injunction prohibiting Defendants from enforcing the Redwood Uniform Dress Policy
18 or, alternatively, requiring Defendants to allow parents of Redwood students to exempt
19 their children from compliance with the Redwood Uniform Dress Policy. Plaintiffs further
20 seek a declaration that the Redwood Uniform Dress Policy, in its present form and absent
21 an exemption provision, is unconstitutional under both the United States and California
22 Constitutions and is in violation of the California Education Code.

23 **JURISDICTION AND VENUE**

24 8. Jurisdiction is proper in this Court pursuant to Code of Civil Procedure
25 section 410.10, because RMS and NVUSD are located in Napa County, and because all of
26 the conduct alleged herein occurred in Napa County. In addition, each of the natural
27 persons named as defendants either is employed by RMS or NVUSD or serves as a trustee
28 for the Board of Education for NVUSD. Plaintiffs are informed and believe, and on that

1 basis allege, that some or all of the natural persons named as defendants also reside in Napa
2 County.

3 **PARTIES**

4 9. Plaintiff Toni Kay Scott (“T.K.”) is a minor and is now, and was at all times
5 mentioned in this Complaint, a resident of Napa County, California. T.K. is currently
6 enrolled as an eighth grade student at Defendant RMS. T.K. participates in athletics at
7 RMS and maintains a high grade point average, earning mostly A grades. T.K. is also on
8 the honor roll and was named “student of the month” at RMS for January 2007. T.K.
9 brings this suit through her mother, Donnell Scott; for purposes of this action, a guardian *ad*
10 *litem* application is being filed simultaneously herewith for Donnell Scott’s appointment as
11 guardian *ad litem* of Plaintiff T.K., a minor.

12 10. Plaintiff Sydni Scott (“Sydni”) is a minor and is now, and was at all times
13 mentioned in this Complaint, a resident of Napa County, California. Sydni is currently
14 enrolled as a sixth grade student at Defendant RMS. Sydni is active in local athletic
15 leagues, participating in softball, basketball, soccer, and tae kwon do. Sydni is also on the
16 honor roll and was named “student of the month” at RMS for December 2006. Sydni
17 brings this suit through her mother, Donnell Scott; for purposes of this action, a guardian *ad*
18 *litem* application is being filed simultaneously herewith for Donnell Scott’s appointment as
19 guardian *ad litem* of Plaintiff Sydni, a minor.

20 11. Plaintiff Donnell Scott is an individual and is now, and was at all times
21 mentioned in this Complaint, a resident of Napa County, California. Donnell Scott is the
22 mother of T.K. and Sydni. Plaintiff Donnell Scott appears herein both as plaintiff in her
23 own right, and on behalf her minor daughters T.K. and Sydni.

24 12. Plaintiff Patrick T. Scott is an individual and is now, and was at all times
25 mentioned in this Complaint, a resident of Napa County, California. Patrick T. Scott is the
26 father of T.K. and Sydni.

27 13. Plaintiff Jacob Santos (“Jacob”) is a minor and is now, and was at all times
28 mentioned in this Complaint, a resident of Napa County, California. Jacob is currently

1 enrolled as an eighth grade student at Defendant RMS. Jacob is a high academic achiever
2 and earns mostly A grades. Jacob is active in his community and participates in local
3 athletic leagues. Jacob is an accomplished athlete who recently placed first in the region in
4 dirt-track motocross. Jacob brings this suit through his mother, Rebecca Santos; for
5 purposes of this action, a guardian *ad litem* application is being filed simultaneously
6 herewith for Rebecca Santos's appointment as guardian *ad litem* of Plaintiff Jacob, a minor.

7 14. Plaintiff Rebecca Santos is an individual and is now, and was at all times
8 mentioned in this Complaint, a resident of Napa County, California. Rebecca Santos is the
9 mother of Jacob. Plaintiff Rebecca Santos appears herein both as plaintiff in her own right,
10 and on behalf her minor son Jacob.

11 15. Plaintiff Jeff Santos is an individual and is now, and was at all times
12 mentioned in this Complaint, a resident of Napa County, California. Jeff Santos is the
13 father of Jacob.

14 16. Plaintiff Melissa Phan ("Melissa") is a minor and is now, and was at all
15 times mentioned in this Complaint, a resident of Napa County, California. Melissa is
16 currently enrolled as an eighth grade student at Defendant RMS. Melissa is on the honor
17 roll at RMS and is active in her church and her community. Melissa brings this suit through
18 her aunt (and legal guardian), Kim Shin; for purposes of this action, a guardian *ad litem*
19 application is being filed simultaneously herewith for Kim Shin's appointment as guardian
20 *ad litem* of Plaintiff Melissa, a minor.

21 17. Plaintiff Kim Shin is an individual and is now, and was at all times
22 mentioned in this Complaint, a resident of Napa County, California. Kim Shin is the aunt
23 and legal guardian of Melissa. Plaintiff Kim Shin appears herein both as plaintiff in her
24 own right, and on behalf her minor niece Melissa.

25 18. Plaintiff Delaney Kiehl ("Delaney") is a minor and is now, and was at all
26 times mentioned in this Complaint, a resident of Napa County, California. Delaney is
27 currently enrolled as a seventh grade student at Defendant RMS. Delaney earns mostly A
28 grades and also participates in community sports leagues. Delaney brings this suit through

1 her mother, Diane Dandini; for purposes of this action, a guardian *ad litem* application is
2 being filed simultaneously herewith for Diane Dandini's appointment as guardian *ad litem*
3 of Plaintiff Delaney, a minor.

4 19. Plaintiff Diane Dandini is an individual and is now, and was at all times
5 mentioned in this Complaint, a resident of Napa County, California. Diane Dandini is the
6 mother of Delaney. Plaintiff Diane Dandini appears herein both as plaintiff in her own
7 right, and on behalf her minor daughter Delaney.

8 20. Plaintiff Michael Dandini is an individual and is now, and was at all times
9 mentioned in this Complaint, a resident of Napa County, California. Michael Dandini is the
10 stepfather of Delaney, and her de facto father.

11 21. Plaintiff Kyle Fitzpatrick ("Kyle") is a minor and is now, and was at all
12 times mentioned in this Complaint, a resident of Napa County, California. Kyle is currently
13 enrolled as an eighth grade student at Defendant RMS. Kyle is an accomplished student
14 and almost all of his grades are A's. He is also active in the community and plays
15 basketball in the local sports league and at RMS. Kyle brings this suit through his mother,
16 Dorothy Fitzpatrick; for purposes of this action, a guardian *ad litem* application is being
17 filed simultaneously herewith for Dorothy Fitzpatrick's appointment as guardian *ad litem* of
18 Plaintiff Kyle, a minor.

19 22. Plaintiff Dorothy Fitzpatrick is an individual and is now, and was at all times
20 mentioned in this Complaint, a resident of Napa County, California. Dorothy Fitzpatrick is
21 the mother of Kyle. Plaintiff Dorothy Fitzpatrick appears herein both as plaintiff in her
22 own right, and on behalf her minor son Kyle.

23 23. Plaintiff Shawn Fitzpatrick is an individual and is now, and was at all times
24 mentioned in this Complaint, a resident of Napa County, California. Shawn Fitzpatrick is
25 the father of Kyle.

26 24. Defendant NVUSD is a California public entity located in Napa County,
27 California and organized under California state law. NVUSD is an administrative body
28 with oversight responsibility for all schools and all school employees in the NVUSD and

1 direct responsibility for approving and encouraging the policies, practices, and actions
2 complained of by Plaintiffs. NVUSD owns, operates and controls defendant RMS.

3 25. Defendant John Glaser (“Glaser”) is the Superintendent of Napa Valley
4 Unified School District, and, as such, is directly responsible for implementing the policies,
5 practices, and actions complained of by Plaintiffs.

6 26. Defendants Jackie Dickson, Alan Murray, Tom Kensok, Michael Douglas,
7 Frances Ortiz-Chavez, Robert Felder and Jose Hurtado (collectively referred to as “Board”)
8 are Trustees of the Board of Education for the Napa Valley Unified School District, and, as
9 such, are responsible for the policies, practices and actions complained of by Plaintiffs.

10 27. Defendant RMS is a public middle school located within the Napa Valley
11 Unified School District.

12 28. Defendant Michael Pearson (“Pearson”) is the Principal of RMS and, as
13 such, is directly responsible for implementing the policies, practices, and actions
14 complained of by Plaintiffs.

15 29. Plaintiffs are ignorant of the true names or capacities of the Defendants sued
16 herein under the fictitious names DOES 1 through 20 and therefore sues such defendants by
17 such fictitious names. Plaintiffs are informed and believe, and on that basis allege, that
18 such fictitiously named defendants are responsible in some way for the damage and legal
19 injury sustained by Plaintiffs as alleged herein.

20 30. During all times mentioned in this Complaint, each of the Defendants was
21 acting under color of local and state law.

22 31. Defendants NVUSD, Glaser and the Board have the responsibility for
23 directing the actions of School District employees, including principals and assistant
24 principals, administrative assistants, counselors, teachers, and other school personnel.

25 32. Defendants NVUSD, Glaser and the Board have constitutional and statutory
26 responsibility for the policies, practices, and procedures of the NVUSD, and are responsible
27 for maintaining the NVUSD in conformity with law.

28

1 36. RMS employees are responsible for enforcing the Redwood Uniform Dress
2 Policy.

3 37. During the 2005-2006 and 2006-2007 school years, RMS employees,
4 including Defendant Pearson, have interpreted the Redwood Uniform Dress Policy
5 inconsistently. Clothing considered acceptable under the Redwood Uniform Dress Policy
6 on one day or for one student has later been cited as a violation of the Redwood Uniform
7 Dress Policy on a different day or for a different student.

8 38. RMS students found to have violated the Redwood Uniform Dress Policy
9 are subject to progressive discipline, up to and including forfeiture of extracurricular
10 activities, public humiliation, detention and suspension from school. Some students who
11 are found to have violated the Redwood Uniform Dress Policy are sent to RMS's in-school
12 suspension program called Students With Attitude Problems ("S.W.A.P.").

13 39. Students who are found to have violated the Redwood Uniform Dress Policy
14 may be required to remove clothing that is in violation of the Redwood Uniform Dress
15 Policy and change into their gym clothes (shorts and tee shirt). If their gym clothes are not
16 available, students may be required to wear dirty gym clothes from a container at RMS that
17 holds lost and unclaimed gym clothes.

18 40. In August 2005, approximately one week before the first day of the school
19 year, Plaintiffs Donnell Scott, Rebecca Santos and Kim Shin submitted waiver requests
20 pursuant to California Education Code section 35183 for the purpose of exempting their
21 children, -- Plaintiffs T.K., Jacob and Melissa -- from compliance with the Redwood
22 Uniform Dress Policy.

23 41. Despite the waiver requests submitted by their parents, on the first day of the
24 2005-2006 school year, T.K., Jacob and Melissa were removed from class for violations of
25 the Redwood Uniform Dress Policy. T.K. and Melissa were escorted by a uniformed Napa
26 police officer to the principal's office. T.K. was wearing a denim skirt, long socks with a
27 picture of the Winnie-the-Pooh character Tigger, and a brown shirt with a pink border.
28 Melissa was wearing blue jeans. Jacob was wearing denim jeans and a plain white tee shirt.

1 Jacob presented a copy of his waiver request form to Defendant Pearson, who threw the
2 waiver request form into a wastepaper basket. T.K., Jacob and Melissa were sent to
3 S.W.A.P. and each missed significant class time.

4 42. During the 2005-2006 and 2006-2007 school years, Plaintiff T.K. was
5 disciplined for dress code violations on several other occasions, including but not limited to
6 the following:

- 7 • During the 2005-2006 school year, T.K. was disciplined for violating the
8 Redwood Uniform Dress Policy for wearing a shirt with a small flamingo
9 rhinestone logo, for which T.K. was sent to the office and missed class time.
10 T.K. also was cited for wearing a shirt with a small butterfly emblem, for which
11 she again was sent to the office and missed class time.
- 12 • In the fall of 2006, T.K. was cited for wearing a tee shirt which displayed the
13 message "D.A.R.E. to keep kids off drugs."
- 14 • In the fall of 2006, T.K. was cited by Defendant Pearson for wearing a pink
15 tennis shoe and told not to wear pink shoes again. She wore the same pink
16 tennis shoe in January 2007. When she refused to change shoes, Pearson
17 informed T.K. that she was being cited, and sent her home from school.
- 18 • On or about February 23, 2007, T.K. was cited for wearing a tee shirt which
19 displayed the message "Sweet Tart." When she refused to put on gym clothes,
20 she was sent home from school.

21 43. T.K. would like to wear clothing with expressive content but for the most
22 part refrains from doing so to avoid disciplinary action.

23 44. During the 2006-2007 school year, Plaintiff Sydni was cited twice for
24 violations of the Redwood Uniform Dress Policy. In the Fall of 2006, Sydni was given a
25 warning for wearing light pink socks. On or about February 23, 2007, Sydni was cited for
26 wearing a tee shirt which displayed the message "Jesus Freak," which T.K. had purchased
27 at a Christian rock concert. On the latter occasion, Sydni was sent to the principal's office
28 for violating the Redwood Uniform Dress Policy.

1 45. Sydni would like to wear clothing with expressive content but for the most
2 part refrains from doing so to avoid disciplinary action.

3 46. During the 2005-2006 school year, Plaintiff Jacob was cited for wearing blue
4 jeans. Also during the 2005-2006 school year, Jacob received a warning for wearing shoes
5 having a small amount of red. In addition, Jacob received several other warnings for
6 violations of the Redwood Uniform Dress Policy.

7 47. During the 2006-2007 school year, Jacob received several warnings for
8 violations of the Redwood Uniform Dress Policy.

9 48. Jacob would like to wear clothing with expressive content but for the most
10 part refrains from doing so to avoid disciplinary action.

11 49. During the 2005-2006 school year, Plaintiff Melissa was cited for violating
12 the Redwood Uniform Dress Policy on three separate occasions: (1) having a back pack
13 which said "Jansport" in red letters; (2) wearing khaki pants which had red writing on them;
14 and (3) wearing shoes which had a small pink stripe on them. On each occasion, Melissa
15 missed class time as a result of being cited.

16 50. During the 2006-2007 school year, Melissa was cited for violating the
17 Redwood Uniform Dress Policy for wearing jeans at an after-school athletic game, for
18 wearing a ribbon in her hair and for wearing a sweatshirt containing the message "Vintage
19 High School." Her sister attends Vintage High School in Napa Valley.

20 51. In the fall of 2006, Melissa was cited for wearing an American Cancer
21 Society pink ribbon pin in support of breast cancer awareness. A teacher ordered her to
22 remove the ribbon during milk-break recess.

23 52. The students were told that they could wear red or pink for Valentine's Day
24 2007, provided that the clothing contained a heart or a Valentine-related message. On
25 February 14, 2007, Melissa was cited for violating the Redwood Uniform Dress Policy
26 because the heart sticker on her red sweatshirt was not sewn onto her shirt.

27 53. Melissa would like to wear clothing with expressive content but for the most
28 part refrains from doing so to avoid disciplinary action.

1 54. Plaintiff Delaney has violated the Redwood Uniform Dress Policy by
2 regularly wearing clothes with logos and a jacket with a stitched logo but has never been
3 cited for these infractions. Delaney would like to wear clothing with expressive content but
4 refrains from doing so to avoid disciplinary action.

5 55. Plaintiff Kyle has violated the Redwood Uniform Dress Policy by wearing
6 pants with knitting on the sides containing the message "Levi's Warehouse 1853" but has
7 never been cited for it. On the last school day before the 2006 Christmas holiday, Kyle was
8 cited for wearing blue jeans and was required to change his clothes. Kyle would like to
9 wear clothing with expressive content but for the most part refrains from doing so to avoid
10 disciplinary action.

11 56. Numerous other students have been cited and punished for violations of the
12 Redwood Uniform Dress Policy.

13 57. Plaintiffs are informed and believe, and on that basis allege, that in the fall of
14 2005, RMS, NVUSD or both received numerous complaints from RMS parents concerning
15 the Redwood Uniform Dress Policy.

16 58. During the fall of 2005, RMS gave bracelets to all RMS students, including
17 Plaintiffs T.K., Jacob, Melissa, Delaney and Kyle, which would allow them to wear jeans
18 on Wednesdays. Plaintiffs are informed and believe, and on that basis allege, that
19 Defendant Pearson subsequently revoked the Wednesday-jeans day policy in retaliation for
20 parent complaints about the Redwood Uniform Dress Policy. In the fall of 2005, RMS and
21 the NVUSD represented that they intended to engage the community and parents in an
22 intensive review of the Redwood Uniform Dress Policy.

23 59. In or around November 2005, RMS and the NVUSD created an
24 "Appropriate Attire Policy Committee" (hereinafter the "AAPC") to review the Redwood
25 Uniform Dress Policy. The AAPC consisted of Defendant Glaser, Defendant Pearson, and
26 six parents of students at RMS, including Plaintiff Donnell Scott. Plaintiffs are informed
27 and believe, and on that basis allege, that Defendant Pearson selected the six parents based
28 on their acknowledged stance of the dress code policy. Plaintiff Donnell Scott was the only

1 opponent of the Redwood Uniform Dress Policy permitted to participate in the AAPC.
2 AAPC meetings were closed to the remainder of the community.

3 60. During the 2005-2006 school year, the AAPC held four closed meetings at
4 which the Committee members discussed whether and how the Redwood Uniform Dress
5 Policy should be changed for the 2006-2007 school year. At these meetings, Plaintiff
6 Donnell Scott specifically requested from RMS and the NVUSD evidence regarding the
7 health and safety concerns allegedly justifying the Redwood Uniform Dress Policy. RMS
8 and the NVUSD did not provide any such evidence to the members of the AAPC. Donnell
9 Scott asked to be permitted to bring to one of the meetings a member of the Napa Valley
10 Police Department and an individual who worked with troubled youths in Napa County, to
11 provide advice and information on the subject of gangs in Napa County. Her request was
12 denied.

13 61. In April 2006, the NVUSD Board of Education changed the Redwood
14 Uniform Dress Policy in minor respects, as described in paragraphs 36 and 37 above.

15 62. Plaintiffs T.K., Sydni, Jacob, Melissa, Delaney and Kyle (collectively, the
16 “Student Plaintiffs”) desire to exercise their rights to freedom of speech by wearing
17 clothing with expressive content, including but not limited to clothing with writing,
18 insignia, pictures, words, lettering, political content and/or religious content. The Student
19 Plaintiffs would exercise such rights, but are prevented from exercising their rights because
20 doing so would violate the Redwood Uniform Dress Policy and would cause the Student
21 Plaintiffs to face disciplinary measures, including but not limited to being sent to SWAP,
22 missing class time, being sent to detention, being suspended, and being prohibited from
23 participating in school activities such as school sports teams and dances. The Students
24 Plaintiffs have suffered and will continue to suffer the constitutionally recognized injury of
25 self-censorship.

26 63. Plaintiffs Donnell Scott, Patrick T. Scott, Rebecca Santos, Jeff Santos, Kim
27 Shin, Diane Dandini, Michael Dandini, Dorothy Fitzpatrick and Shawn Fitzpatrick
28 (collectively, the “Parent Plaintiffs”), desire to exempt their children from the Redwood

1 Uniform Dress Policy, and would so exempt their children, but are prevented from doing so
2 because RMS has not provided a method for such exemption.

3 64. If allowed to continue, the disciplinary actions taken against the Student
4 Plaintiffs for violating the Redwood Uniform Dress Policy would constitute a permanent
5 part of their scholastic records and would serve as a basis for additional and escalating
6 disciplinary actions by Defendants against the Student Plaintiffs.

7 65. If allowed to continue, the disciplinary actions taken against the Student
8 Plaintiffs for violating the Redwood Uniform Dress Policy would cause them to miss
9 educational opportunities including valuable classroom time due to detention and other
10 discipline imposed by the Defendants. In addition, such disciplinary action would serve as
11 a basis to exclude the Student Plaintiffs from extra-curricular activities in which they now
12 participate or wish to participate.

13 **INJUNCTIVE AND DECLARATORY RELIEF ALLEGATIONS**

14 66. An actual and substantial controversy exists between Plaintiffs and
15 Defendants as to their rights and responsibilities with respect to the Redwood Uniform
16 Dress Policy. Plaintiffs contend that the policy violates their rights under the United States
17 and California Constitutions and the California Education Code. Defendants dispute these
18 contentions, and contend instead that the Redwood Uniform Dress Policy comports with
19 applicable law. Unless the Court issues an appropriate declaration of rights, the parties will
20 not know whether the Defendants' actions in instituting, implementing, and enforcing the
21 Redwood Uniform Dress Policy comply with the law, and there will continue to be disputes
22 and controversy surrounding the institution, implementation and enforcement of the
23 Redwood Uniform Dress Policy. Declaratory relief is appropriate under Code of Civil
24 Procedure section 1060.

25 67. By instituting, implementing and/or enforcing the Redwood Uniform Dress
26 Policy, Defendants have violated and continue to violate the Student Plaintiffs' rights to
27 free speech and free expression as guaranteed by the First and Fourteenth Amendments to
28 the United States Constitution and Education Code section 48907. The conduct of the

1 Defendants was calculated to and did suppress, chill and punish conduct and speech that
2 was so protected and their conduct continues to have that effect each school day. In
3 addition, by instituting, implementing and/or enforcing the Redwood Uniform Dress Policy,
4 Defendants have violated and continue to violate the Student Plaintiffs' statutory rights
5 under Education Code section 35183. Defendants' willful disregard of the Student
6 Plaintiffs' constitutional and statutory rights has resulted in irreparable harm to the Student
7 Plaintiffs, and unless Defendants conduct is enjoined, will continue to inflict irreparable
8 harm.

9 68. By instituting, implementing and/or enforcing the Redwood Uniform Dress
10 Policy, Defendants have violated and continue to violate the Parent Plaintiffs' statutory
11 rights under Education Code section 35183. The conduct of the Defendants was calculated
12 to and did deprive the Parent Plaintiffs of their right to exempt their children from the
13 Redwood Uniform Dress Policy and Defendants' conduct continues to have that effect each
14 school day. Defendants' willful disregard of the Parent Plaintiffs' statutory rights has
15 resulted in irreparable harm to the Parent Plaintiffs, and unless Defendants conduct is
16 enjoined, will continue to inflict irreparable harm.

17 69. If not preliminarily and permanently enjoined by the Court, Defendants will
18 continue to implement and enforce the Redwood Uniform Dress Policy in derogation of
19 Plaintiffs' rights and Plaintiffs will continue to suffer irreparable harm by being restrained
20 from exercising and enjoying their rights to free speech and free expression as guaranteed
21 by the First and Fourteenth Amendments to the United States Constitution, Article 1,
22 Section 2 of the California Constitution and section 48907 of the Education Code and in
23 violation of the limits on authority set forth in Education Code sections 35183 and 32282.
24 Injunctive relief is appropriate under Civil Code sections 52.1 and 52, and 3422, Code of
25 Civil Procedure sections 526 and 527, and 42 U.S.C. section 1983.

26 70. Plaintiffs have no adequate remedy at law for the injuries suffered, and to be
27 suffered in the future, in that it is impossible for Plaintiffs to calculate a sum of money
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1 damages that will compensate them for the loss of their rights to freedom of speech and
2 expression.

3 **FIRST CAUSE OF ACTION**

4 **(Title 42, United States Code, Section 1983)**

5 **Violation of right to freedom of speech guaranteed by the**

6 **First and Fourteenth Amendments to the United States Constitution**

7 (Plaintiffs Toni Kay Scott, Sydni Scott, Jacob Santos, Melissa Phan, Delaney Kiehl and
8 Kyle Fitzpatrick Against All Defendants)

9 71. Plaintiffs incorporate herein by reference paragraphs 1 through 70 above, as
10 if set forth in full.

11 72. Defendants acted under color and authority of state law when they
12 implemented and enforced, as alleged herein, the policies and practices to enforce the
13 Redwood Uniform Dress Policy.

14 73. Defendants' actions as alleged herein have abridged the Student Plaintiffs'
15 right to freedom of expression, as guaranteed by the First and Fourteenth Amendments to
16 the Constitution of the United States, in violation of the protections of 42 U.S.C. section
17 1983.

18 74. Regulation of student expression violates the First Amendment to the United
19 States Constitution unless it is justified by a showing that the students' activities would
20 materially and substantially disrupt the work and discipline of the school. The Redwood
21 Uniform Dress Policy, both on its face and as applied to the Student Plaintiffs, is
22 unconstitutionally vague and overbroad in that it completely bans all clothing and apparel
23 with writing, insignias, pictures, words and/or lettering (with the exception of the school
24 name, school logo or school insignia).

25 75. The Redwood Uniform Dress Policy prohibits expression that would not
26 result in a material and substantial disruption of the work and discipline of RMS. In
27 addition, there has been no threat of material and substantial disruption to RMS to support a
28 blanket ban on all expressive apparel.

1 enjoyment of the Student Plaintiffs' rights to free speech and free expression as guaranteed
2 by Article I, Section 2 of the California Constitution.

3 82. As a direct and proximate consequence of Defendants' implementing and
4 enforcing the Redwood Uniform Dress Policy in derogation of the Student Plaintiffs' rights,
5 the Student Plaintiffs have suffered and will continue to suffer irreparable injury for which
6 they are entitled to relief.

7 **THIRD CAUSE OF ACTION**

8 **(California Education Code Section 48907)**

9 **Violation of Right to Freedom of Speech**

10 **Guaranteed by Statute**

11 (Plaintiffs Toni Kay Scott, Sydni Scott, Jacob Santos, Melissa Phan, Delaney Kiehl and
12 Kyle Fitzpatrick Against All Defendants)

13 83. Plaintiffs incorporate herein by reference paragraphs 1 through 70,
14 paragraph 72, paragraphs 75 and 76, and paragraphs 79 through 81 above, as if set forth in
15 full.

16 84. Education Code section 48907 provides that: "Students of the public
17 schools shall have the right to exercise freedom of speech . . . including, but not limited
18 to... the wearing of buttons, badges, and other insignia."

19 85. The provisions of the Redwood Uniform Dress Policy do not constitute
20 reasonable time, place and manner restrictions on Plaintiffs' rights to exercise freedom of
21 speech and freedom of expression. The Redwood Uniform Dress Policy bans speech that is
22 not obscene, libelous or slanderous and speech that is not subject to prohibition as creating
23 a clear and present danger of inciting violations of school rules or disruption. *See* Educ.
24 Code §§ 48907.

25 86. By instituting, implementing and/or enforcing the Redwood Uniform Dress
26 Policy, Defendants have violated and continue to violate the Student Plaintiffs' free speech
27 and free expression rights protected by Education Code section 48907.

28

1 threaten the health and safety of the school environment.” *See* Educ. Code §§ 32282,
2 35183.

3 92. As a direct and proximate consequence of Defendants’ implementing and
4 enforcing the Redwood Uniform Dress Policy in derogation of the Student Plaintiffs’ rights,
5 the Student Plaintiffs have suffered and will continue to suffer irreparable injury for which
6 they are entitled to relief.

7 **FIFTH CAUSE OF ACTION**

8 **(California Education Code, Section 35183)**

9 **Violation of Exemption Requirement for School Uniform Policies**

10 (Plaintiffs Donnell Scott, Patrick T. Scott, Rebecca Santos, Jeff Santos, Kim Shin, Diane
11 Dandini, Michael Dandini, Dorothy Fitzpatrick and Shawn Fitzpatrick Against All
12 Defendants)

13 93. Plaintiffs incorporate herein by reference paragraphs 1 through 70 above, as
14 if set forth in full.

15 94. If a school district or school adopts a dress code policy that requires pupils to
16 wear a uniform, the school district must provide a method whereby parents may choose not
17 to have their children comply with the uniform policy and must provide six months’ notice
18 prior to implementation of the policy. *See* Educ. Code §§ 35183(e).

19 95. The Redwood Uniform Dress Policy demands that all students, including the
20 Student Plaintiffs, wear only certain colors, patterns, fabrics, and forbids presenting an
21 unvaried appearance and thus constitutes a school uniform policy.

22 96. The Redwood Uniform Dress Policy does not provide for a method whereby
23 parents may choose to exempt their children from complying with the policy.

24 97. The Parent Plaintiffs seek to exempt their children from compliance with the
25 Redwood Uniform Dress Policy and are prevented from doing so because there is no
26 exemption provision in the above-mentioned policy.

27
28

1 Phan, Delaney Kiehl and Kyle Fitzpatrick, does not constitute a reasonable dress code
2 policy under Education Code section 35183;

3 e. For a declaration by the Court that Defendants' failure to provide a
4 procedure by which parents may exempt their children from the Redwood Uniform Dress
5 Policy violates Education Code section 35183 and that Plaintiffs Donnell Scott, Patrick T.
6 Scott, Rebecca Santos, Jeff Santos, Kim Shin, Diane Dandini, Michael Dandini, Dorothy
7 Fitzpatrick and Shawn Fitzpatrick are entitled to exempt their children from the Redwood
8 Uniform Dress Policy;

9 f. For reasonable attorneys' fees incurred herein pursuant to 42 U.S.C. section
10 1988, Civil Code section 52(b)(3), and Code of Civil Procedure section 1021;

11 g. For costs of suit incurred herein; and

12 h. For such other and further relief as this Court may deem to be just and
13 proper.

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15 Dated: March 19, 2007.

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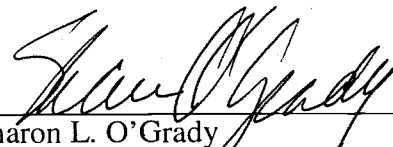
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PILLSBURY WINTHROP SHAW
PITTMAN LLP
THOMAS V. LORAN III
SHARON L. O'GRADY
JOHN E. JANHUNEN
ALEX A. L. PONCE DE LEÓN
50 Fremont Street
Post Office Box 7880
San Francisco, CA 94120-7880

By: 
Sharon L. O'Grady
Attorneys for Plaintiffs

VERIFICATION

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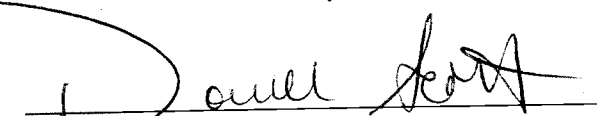
I, DONNELL SCOTT, declare as follows:

I am a Plaintiff in this action and, as such, I am authorized to execute this Verification.

I have read the foregoing Verified Complaint and know its contents. I declare that the same is true and correct to the best of my knowledge, except as to those matters alleged therein on information and belief, which matters I believe to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18 day of March 2007 at Ngaa, California.



Donnell Scott

EXHIBIT A

English

En español

REDWOOD MIDDLE SCHOOL
APPROPRIATE ATTIRE POLICY

2006-2007

This policy was developed to insure the safety and protect the instructional time of *all* students and is part of a larger 'positive and safe school climate' program which includes discipline, facilities, school day and curriculum. Nothing which promotes drugs, alcohol, violence, gangs, racist, immoral ideas, profane or inappropriate ideas may be worn at any time.

APPROPRIATE ATTIRE PROCEDURES

- **All clothes will be plain (no pictures, patterns, stripes or logos of any size or kind) and must fit appropriately.**
- **COLORS – SOLID COLORS ONLY - Acceptable colors are blue, white, green, yellow, khaki, gray, brown and black for all apparel including jackets (students are encouraged to also not dress in the same color i.e. all black or all blue). School colors apply to all items of clothing or accessories including shoes, shoelaces, socks, belts, scarves, mufflers, hair ties, etc.**
- **FABRICS – No jeans, denim, denim-looking, sweat pants, sports-nylon or fleece material may be worn. All pants, shorts, skirts or dresses must be cotton twill, chino or corduroy.**
- **SHIRTS – Must have sleeves that cover a student's shoulder and the mid part of an upper arm, be long enough to be tucked in and remain tucked in with normal movement and not display any cleavage. Shirts must not be oversized. Shirts must be worn right side out and can not be turned inside out to hide a graphic.**
- **PANTS/SHORTS/SKIRTS – Must fit appropriately in the waist and the length (i.e.**

appropriate size for the students' height and weight) be fitted at the waist and/or hips and must not sag or drag and must be hemmed. Shorts and skirts must be no higher than mid thigh.

- **SHOES** – All shoes and shoelaces must follow the school colors. The heels of shoes must NOT be higher than 2”, as measured by the back of the heel, and must have a back or strap. Shoes may not have any red/pink/burgundy, gang symbols or numbers on them. Sandals or flip flops are not considered shoes.
- **SWEATERS/SWEATSHIRTS/VESTS** – Must follow all dress code rules regarding colors and logos. Sweatshirts and sweaters may not be worn inside out.
- **JACKETS** – All jackets must follow the school colors and fabrics outlined above. Jackets may have a college or ‘small’ brand logo. They must not contain ANY red or burgundy inside or out. Jackets and sweatshirts may not hide non-dress acceptable items or be worn inside out. A jacket is classified as any material other than cotton/polyester that has a full zipper or set of buttons and is usually waist long. Cotton/polyester sweatshirts or sweaters with a zipper ARE NOT considered a jacket. Jean jackets are not allowed.
- **BACKPACKS** – All backpacks must follow the school colors outlined above and must be solid colors (i.e. blue, white, green, yellow, gray, khaki, brown and black).
- **ANY REDWOOD SCHOOL, REDWOOD TEAM LOGO or RMS club activity CLOTHING IS ACCEPTABLE.**
- **RESTRICTED ITEMS – PROFESSIONAL SPORTS TEAMS** and any **GANG SYMBOLS** such as, but not limited to, bandanas or rags, belt buckles with the initials S, N, West Side or BP clothing with old English style writing, low riders, drama masks, laugh now-cry later, prison insignia, tears, the numbers 13, 14, XIV, XIII and the brand names or clothing tags with the words Homey, No Fear, Eight Ball, BK, CK, *Ben Davis* and *Dickey* are not permitted.
- **OTHER RESTRICTED ITEMS** – Black trench coats, non-authorized *hats or head coverings, any unusual/unnatural (non-traditional) hair color or hair style that is distractive to the learning environment or takes away from the educational process, hair nets, excessive piercing such as nose, eyebrow, lip, tongue and chin, shaved eyebrows, spiked jewelry, hanging belts or chains, graffiti, patches or writing on backpacks, buttons or jewelry with pictures, colors, sayings or

writing which cause or threaten to cause a disruption of the educational process or school activities are prohibited.

*Appropriate school hats which follow the school attire policy may be worn during PE or other non-protected outside activities.

Financial support for school clothes is available through the Redwood Middle School Parent Faculty Club Scholarship Clothing Fund. Applications are available in the front office.

(Revised 4/01/06)

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ESCUELA INTERMEDIA REDWOOD

NORMAS DE VESTUARIO ADECUADO

2006-2007

Estas normas han sido desarrolladas para garantizar y proteger el tiempo de instrucción de *todos* los estudiantes, y forma parte de un programa mayor de 'clima escolar positivo y seguro' que incluye disciplina, día lectivo y currículo. Nada que promueva las drogas, el alcohol, la violencia, las bandas, el racismo, las ideas inmorales, profanas o inadecuadas puede ser parte de la indumentaria en ningún momento.

PROCEDIMIENTOS DE VESTUARIO ADECUADO

- **Toda la ropa ha de ser sencilla (no se permiten dibujos, patrones, rayas ni logos), y deben ser de la talla adecuada.**
- **COLORES – SÓLO COLORES SÓLIDOS – Los colores aceptables son el azul, blanco, verde, amarillo, beige, marrón y negro para toda la ropa, incluyendo chaquetas (se anima a los estudiantes a que no se vistan sólo de un color, por ejemplo, sólo de negro o sólo de azul). Los colores propios de la escuela se aplican a todos las prendas de vestir o accesorios, como calzado, cordones de los zapatos, calcetines, cinturones, bufandas, cintas para el pelo, etc.**
- **TEJIDOS – No se permiten vaqueros, denim, materiales parecidos al denim, pantalones de**

chándal, ni pantalones de deporte de nylon. Todos los pantalones, pantalones cortos, faldas o vestidos han de ser de algodón, chinos o *corduroy*.

- **CAMISAS** – Deben tener mangas que cubran hasta el hombro del estudiante, y hasta el antebrazo, han de ser suficientemente largas y no mostrar nada. Las camisetas no pueden ser demasiado grandes. Las camisetas deben vestirse del derecho, y no se les puede dar la vuelta del revés para ocultar un dibujo.
- **PANTALONES/PANTALONES CORTOS/FALDAS** – Deben ceñirse adecuadamente a la cintura y ser de la longitud adecuada (del tamaño adecuado para la altura y peso del estudiante), no pueden “hacer saco”, y deben estar bien abrochados. Los pantalones cortos y las faldas deben cubrir la mitad del muslo.
- **CALZADO** – Todos los zapatos y cordones del calzado deben cumplir las normas de colores de la escuela. Los tacones NO deben ser mayores de 2”, medidos en la parte posterior del tacón, y deben proteger el talón. El calzado no puede tener los colores rojo/rosa/granate, ni símbolos de bandas ni números. Las sandalias o *flip flops* no se considera calzado.
- **JERSÉIS/SUDADERAS/VESTIDOS** – Deben seguir todas las normas del código de vestuario en referencia a colores y logos. Los jerséis y sudaderas no pueden llevarse del revés.
- **CAZADORAS** – Todas las cazadoras ha de seguir las normas de colores adecuados y tejidos mencionadas anteriormente. Las cazadoras pueden tener un pequeño logo de universidad o de marca. No pueden tener NADA de rojo ni granate, ni en el exterior ni el interior. Las cazadoras y sudaderas no pueden ocultar ropa no aceptable ni llevarse del revés. Se considera que una cazadora está hecha de cualquier otro material que no sea algodón ni poliéster, que tiene cremallera o botones y usualmente llega hasta la cintura. Las cazadoras de algodón o poliéster o sudaderas con cremalleras NO SON consideradas cazadoras. No se permiten cazadoras vaqueras.
- **MOCHILAS** – Todas las mochilas deben seguir las normas de colores adecuados mencionadas anteriormente, y deben ser de colores sólidos (azul, blanco, verde, amarillo, gris, beige, marrón y negro).
- **CUALQUIER ROPA CON LOGOS DE LA ESCUELA REDWOOD, EQUIPO DE**

REDWOOD o actividad de club RMS ES ACEPTABLE.

- **OBJETOS RESTRINGIDOS – EQUIPOS DEPORTIVOS PROFESIONALES** y cualquier **SÍMBOLO DE BANDAS** como (pero no limitado a) bandanas o cintas, hebillas de cinturón con las iniciales S, N, West Side o ropa BP con caligrafía inglesa de estilo antiguo, *low riders*, máscaras, *laugh now-cry later*, insignias de prisiones, lágrimas, los números 13, 14, XIV, XIII y los nombres de marcas o ropa con las palabras *Homey, No Fear, Eight Ball, BK, CK, Ben Davis* y *Dickey* no se permiten.
- **OTROS OBJETOS RESTRINGIDOS** – Trenzas de color negro, sombreros* no autorizados o cualquier cosa que cubra la cabeza, cualquier color de pelo (que no sea por motivo de tradición) que no sea natural o cuyo estilo suponga una distracción para el entorno de aprendizaje, redes para el pelo, pendientes excesivos (nariz, cejas, lengua y barbilla), cejas afeitadas, joyería con puntas, cinturones holgados o cadenas, graffiti, parches o escritura en las mochilas, botones o joyería con dibujos, colores, dichos o escritura que supongan una amenaza de ser disruptivos para el proceso educativo o las actividades escolares están terminantemente prohibidos.

*Los sombreros que sigan las normas de vestuario escolar pueden llevarse durante EF u otras actividades al aire libre.

El apoyo financiero a la escuela mediante artículos de ropa está disponible en el Fondo de Becas del Club de Padres y Maestros de la Escuela Intermedia Redwood. Hay hojas de solicitud en la oficina.

(Revisado 4/01/06)

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