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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

MEJ

18 **C 03 - 0392**
19 Case No.

20 BRIAN BENITEZ, a minor, by BENJAMIN
21 BENITEZ, his guardian ad litem; VICTOR
22 MUNOZ, a minor, by ANGELA MUNOZ, his
23 guardian ad litem; and JESSICA PRENTICE, a
24 minor, by RONALD PRENTICE, her guardian ad
25 litem

26 Plaintiffs,

27 vs.

28 DON MONTOYA, Principal Logan High School,
in his personal and official capacities; SUSAN
SPEAKMAN Acting Superintendent, New Haven
Unified School District, in her official capacity;
GWEN ESTES, President, New Haven Unified
School District Board Of Education, in her
personal and official capacities; BARBARA
AROVALLE, JONAS DIÑO, LINDA
FERNANDES, JIM NAVARRO, Members, and
CATHY KELLEY, Former Member, New Haven
Unified School District Board Of Education, in
their personal and official capacities; RUTH ANN
MCKENNA, Former Superintendent, New Haven
Unified School District, in her personal capacity;

**CLASS ACTION COMPLAINT FOR
DECLARATORY RELIEF, INJUNCTIVE
RELIEF, AND DAMAGES**

1 LORRIE BARRERA, Logan High School House)
Three Principal in her personal and official)
2 capacities; CRAIG LANG, Logan High School)
House Principal in his personal and official)
3 capacities; JESUS VARELA, Logan High School)
House Principal in his personal and official)
4 capacities; JASON ROBARGE, Logan High)
School Former Assistant Principal, Activities, in)
5 his personal and official capacities; DAN)
FOWLER, Logan High School Assistant Principal)
6 in his personal and official capacities; CITY OF)
UNION CITY; RANDY ULIBARRI, Police)
7 Chief, City Of Union City, in his personal and)
official capacities; UNION CITY POLICE)
8 OFFICERS BERNARD, JEFFREY BILODEAU,)
BLACKWELL, CESAR, RAOUL GALINDO,)
9 GOUGH, GLORIA LOPEZ-VAUGHN, BOB)
MARTIN, RAY MUNOZ, DEAN SATO and)
10 BRIAN SIMON, in their personal and official)
capacities; and DOES 1-50, in their personal and)
11 official capacities, inclusive,)
)

12 Defendants.

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1 **INTRODUCTION**

2 1. On or about February 22, 2002, Don Montoya, the principal of James Logan High School
3 in Union City, California, other school officials, and Union City Police Department officers, acting
4 without lawful justification, rounded up approximately 60 students of James Logan High School and
5 ordered them into empty classrooms where they were detained against their will. The students and their
6 personal belongings were searched, and items of their personal property were seized. In addition the
7 Union City police officers who participated in the round up interrogated and photographed the students
8 and, plaintiffs are informed and believe, retained the information obtained from students in police
9 investigative files and a “gang database” maintained and operated by the Union City Police Department.
10 The round up was purportedly conducted to curtail gang activity at the school.

11 2. Plaintiffs were included in the round up, detained, searched, interrogated, photographed,
12 and, on information and belief, included in the gang database, even though school officials have
13 admitted to plaintiffs that they knew that plaintiffs were not gang members or involved in gang activity.

14 3. By the complaint in this case, plaintiffs, each of whom was a victim of the illegal forced
15 detention, searches, seizures, interrogations, photographing, and, on information and belief, inclusion in
16 a gang database, seek judicial redress for violations of their civil rights. This action is for damages and
17 for declaratory and injunctive relief arising out of the unlawful violations of plaintiffs’ civil rights by
18 school officials and Union City police officers, and the improper collection and retention of personal
19 information by the Union City Police Department.

20 4. Plaintiffs bring their claims pursuant to the Fourth and Fourteenth Amendments of the
21 United States Constitution and Article I, Sections 1, 7(a), and 13 of the California Constitution, as well
22 as pursuant to the statutory and common law of California. Plaintiffs have sought unsuccessfully to
23 persuade defendants to discontinue these unconstitutional practices and now require the aid of this court
24 in securing and enforcing their rights.

25 **JURISDICTION**

26 5. Plaintiffs’ claims for declaratory, injunctive and monetary relief are brought pursuant to
27 the Fourth and Fourteenth Amendments to the Constitution of the United States; 42 U.S.C. section 1983;
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1 Article 1, Sections 1, 7(a) and 13 of the California Constitution; California Civil Code Section 52.1; and
2 California common law.

3 6. Jurisdiction of this Court arises under 28 U.S.C. sections 1331, 1343, and 2201. The
4 Court has supplemental jurisdiction over the state law claims alleged in this complaint pursuant to 28
5 U.S.C. section 1367. Declaratory relief is authorized under 28 U.S.C. sections 2201 and 2202.

6 7. All administrative remedies have been exhausted. Plaintiffs Benitez, Munoz, and
7 Prentice have filed administrative claims for damages under the California Tort Claim Act, and those
8 claims have been denied.

9 8. A substantial part of the events giving rise to the claims alleged in this Complaint arose in
10 the County of Alameda, California. Venue is proper in the Northern District of California.

11 **THE PARTIES**

12 9. Plaintiff Brian Benitez is and was at all relevant times a student at James Logan High
13 School in Union City, California, and intends to continue his attendance at the school until he graduates
14 in 2004. Plaintiff Benitez, as well as his proposed guardian ad litem, is a resident of the County of
15 Alameda, California.

16 10. Benjamin Benitez is Plaintiff Benitez' father and, by petition to this court, has requested
17 appointment as his guardian ad litem.

18 11. Plaintiff Victor Munoz is and was at all relevant times a student at James Logan High
19 School in Union City, California, and intends to continue his attendance at the school until he graduates
20 in 2005. Plaintiff Munoz, as well as his proposed guardian ad litem, is a resident of the County of
21 Alameda, California.

22 12. Angela Munoz is Plaintiff Munoz' mother and, by petition to this court, has requested
23 appointment as his guardian ad litem.

24 13. Plaintiff Jessica Prentice is and was at all relevant times a student at James Logan High
25 School in Union City, California, and intends to continue her enrollment at the school until she
26 graduates in 2004. Plaintiff Prentice, as well as her proposed guardian ad litem, is a resident of the
27 County of Alameda, California.

1 14. Ronald Prentice is Plaintiff Prentice’s father and, by petition to this court, has requested
2 appointment as her guardian ad litem.

3 15. Defendant Don Montoya, sued in both his official and personal capacities, is and was at
4 all relevant times employed by the New Haven Unified School District as Principal at James Logan
5 High School. All actions taken by Defendant Montoya while working as a Principal at James Logan
6 High School were taken in the course and scope of his employment and were taken under color of state
7 law.

8 16. Defendant Susan Speakman is the current acting Superintendent of the New Haven
9 Unified School District, and is sued in her official capacity. Defendant Speakman is responsible for
10 carrying out and setting policies of the New Haven Unified School District which continue to harm or
11 threaten to harm plaintiffs. All actions taken by Defendant Speakman while working as the
12 Superintendent of the New Haven Unified School District were taken in the course and scope of her
13 employment and were taken under color of state law.

14 17. Defendant Gwen Estes, president, and defendants Barbara Aro-Valle, Jonas Diño, Linda
15 Fernandes, and Jim Navarro are members of and constitute the New Haven Unified School District
16 Board of Education, the governing body of the New Haven Unified School District. Said board
17 member defendants are sued in both their personal and official capacities. These defendants are, and at
18 all relevant times were, responsible for promulgating policies, rules and regulations applicable to
19 students of James Logan High School. All actions taken by these defendants, while acting as members
20 of the New Haven Unified School District Board of Education, were taken while acting in the course
21 and scope of their duties as Board members and were taken under color of state law.

22 18. Defendant Cathy Kelly, sued in her personal capacity, was at all relevant times a member
23 of the New Haven Unified School District Board of Education. All actions taken by Defendant Kelly
24 while acting as a member of the New Haven Unified School District Board of education were taken
25 while acting in the course and scope of her duties as a Board member and were taken under color of
26 state law.

1 19. Defendant Ruth Ann McKenna, sued in her personal capacity, was at all relevant times
2 employed by, and was Superintendent of, the New Haven Unified School District. All actions taken by
3 Defendant McKenna while working as Superintendent of the New Haven Unified School District were
4 taken while acting in the course and scope of her employment and were taken under color of state law.

5 20. Defendant Lorrie Barrera, sued in both her official and personal capacities, is and was at
6 all relevant times, employed by the New Haven Unified School District as a House Principal at James
7 Logan High School. All actions taken by Defendant Barrera while working as a House Principal at
8 James Logan High School were taken while acting in the course and scope of her employment and were
9 taken under color of state law.

10 21. Defendant Craig Lang, sued in both his personal and official capacities, is and was at all
11 relevant times, employed by the New Haven Unified School District as a House Principal at James
12 Logan High School. All actions taken by Defendant Lang while working as a House Principal at James
13 Logan High School were taken while acting in the course and scope of his employment and were taken
14 under color of state law.

15 22. Defendant Jesus Varela, sued in both his personal and official capacities, is and was at all
16 relevant times, employed by the New Haven Unified School District as a House Principal at James
17 Logan High School. All actions taken by Defendant Varela while working as a House Principal at
18 James Logan High School were taken while acting in the course and scope of his employment and were
19 taken under color of state law.

20 23. Defendant Jason Robarge, sued in his personal capacity, was at all relevant times,
21 employed by the New Haven Unified School District as the Assistant Principal, Activities, at James
22 Logan High School. All actions taken by Defendant Robarge while working as Assistant Principal,
23 Activities, at James Logan High School were taken while acting in the course and scope of his
24 employment and were taken under color of state law.

25 24. Defendant Dan Fowler, sued in both his personal and official capacities, is and was at all
26 relevant times, employed by the New Haven Unified School District as an Assistant Principal at James
27 Logan High School. All actions taken by Defendant Fowler while working as a House Principal at
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1 James Logan High School were taken while acting in the course and scope of his employment and were
2 taken under color of state law.

3 25. Plaintiffs are informed and believe that Doe defendants 1 through 25 are all officials
4 employed by the New Haven Unified School District and were at all relevant times acting in the course
5 and scope of their employment and acting under color of state law. Upon information and belief, each
6 of the Doe defendants 1 through 25 participated in or supervised those who participated in the detention,
7 search, seizure, interrogation and/or collection and maintenance of personal data relating to the
8 plaintiffs. Defendants 1 through 25 are sued in their personal and official capacities. The true names of
9 these defendants are unknown to plaintiffs. In due course, plaintiffs will amend this complaint to
10 identify these defendants' true names when they have been ascertained.

11 26. Defendant City of Union City is a municipality incorporated under the laws of the State
12 of California and is responsible for the maintenance, control and supervision of the Union City Police
13 Department and for establishing the policies, procedures and customs by which its employees conduct
14 their official duties.

15 27. Defendant Randy Ulibarri, sued in his personal and official capacities, is and at all
16 relevant times was Chief of Police of the Union City Police Department ("UCPD") and is responsible
17 for the maintenance, control and supervision of law enforcement personnel employed by the Union City
18 Police Department.

19 28. Defendant Union City Police Officers Bernard, Jeffrey Bilodeau, Blackwell, Cesar, Raoul
20 Galindo, Gough, Gloria Lopez-Vaughn, Bob Martin, Ray Munoz, Dean Sato and Brian Simon, sued in
21 their personal and official capacities, are and at all relevant times were, duly appointed and employed by
22 the Union City Police Department and were at all relevant times acting in the course and scope of their
23 employment and acting under color of state law. As more fully set forth herein, plaintiffs are informed
24 and believe that each of these defendants participated in the seizure, search, detention, interrogation,
25 and/or collection and maintenance of personal data relating to one or more of the plaintiffs.

26 29. Plaintiffs are informed and believe that Doe defendants 26 through 50 are all officers
27 duly appointed and employed by the Union City Police Department and were at all relevant times acting
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1 in the course and scope of their employment and acting under color of state law. Upon information and
2 belief, each of the Doe defendants 26 through 50 participated in or supervised those who participated in
3 the detention, search, seizure, interrogation, and collection and maintenance of personal data relating to
4 the plaintiffs. Defendants 26 through 50 are sued in their personal and official capacities. The true
5 names of these defendants are unknown to plaintiffs. In due course, plaintiffs will amend this complaint
6 to identify these defendants' true names when they have been ascertained.

7 30. Upon information and belief, at all relevant times each defendant was the agent and/or
8 employee of each of the remaining defendants, and in doing the things herein alleged was acting within
9 the course and scope of his or her employment and under color of state law. Each of the defendants has
10 caused, and is responsible for, the unlawful conduct described herein. Each defendant is responsible for
11 plaintiffs' injuries by personally participating in the unlawful conduct or in acting jointly and in concert
12 with others who did so; authorizing, acquiescing or failing to take action to prevent the unlawful
13 conduct; promulgating policies and procedures pursuant to which the unlawful conduct occurred; failing
14 and refusing, with deliberate indifference, to implement and maintain adequate training and supervision;
15 and/or by ratifying the unlawful conduct.

16 FACTS

17 The Round Up

18 31. James Logan High School is a public high school located in Union City California,
19 within the New Haven Unified School District. It has a student body population of approximately 4200
20 students, the vast majority of whom are identified as Asian American, Latino and African American.

21 32. On the morning of February 22, 2002, Defendant Don Montoya, principal of James
22 Logan High School, disseminated a memorandum to the Superintendent of the New Haven Unified
23 School District, Ruth McKenna, other school district officials and staff at James Logan High School,
24 among others, explaining that later that day the "admin team" and others would be "rounding up"
25 students "we believe to be involved" in gang activity to give them a "gang intervention meeting."

26 33. During the school lunch period on February 22, 2002, Defendants Montoya and Barrera,
27 and, plaintiffs are informed and believe, defendants, Fowler, Lang, Robarge, Varela, Bernard, Bilodeau,
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1 Blackwell, Cesar, Galindo, Gough, Lopez-Vaughn, Martin, Munoz, Sato and Simon and several
2 unknown Doe defendants, without lawful justification, rounded up and detained approximately 60
3 students, all of whom were on school property and engaged in ordinary and proper activities associated
4 with attending school.

5 34. Defendant school officials and defendant Union City police officers approached a large
6 group of students who were eating lunch on school grounds outside the school building and ordered all
7 of the students to gather up their belongings and return to the school building. Other students were
8 selected while eating lunch outside the school, waiting in line for lunch at the school cafeteria, or while
9 walking through the corridors of the school. Students were then ordered to go to certain classrooms,
10 with students of Latino descent ordered into one classroom and students of Asian descent ordered into
11 another. The perimeter of each room was ringed with police officers and school administrators and the
12 doors of the classrooms were locked.

13 35. Once the students were in the classrooms, defendant school administrators and/or
14 defendant Union City police officers ordered each student to remove his or her personal belongings and
15 place such belongings on desks or under or beside their chairs. Defendants, acting without lawful
16 justification and without the consent of the students, patted students down and/or ordered them to empty
17 their pockets. Defendants also searched the students' personal belongings, such as backpacks and
18 notebooks. Defendant Montoya told the students that they had been rounded up because of the school's
19 concern about gangs. He warned the students not to participate in gangs or to wear gang colors.
20 Defendant Montoya told students in the room of predominantly Latino students that they were forbidden
21 to wear the color red. He told students in the room of predominantly Asian American students that they
22 were forbidden to wear the colors blue and/or green. Plaintiffs are informed and believe that these
23 prohibitions do not apply to the general school population. The official school colors for James Logan
24 High School are red and black.

25 36. Students were told that if they did not cooperate with the activities being carried on in the
26 classroom where they were being detained, they would be suspended from school. Defendant school
27 officials and Union City police officers also made other intimidating statements or gestures to the
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1 students. Such statements and actions were made to intimidate students and obtain compliance with
2 Defendants' commands, and caused great fear and distress among the plaintiffs.

3 37. In addition, defendant Union City police officers, acting without lawful justification and
4 without the students' consent, interrogated each student, including plaintiffs, requiring each student to
5 provide his or her name, address, telephone number, date of birth, height, and weight. All of this
6 information was recorded by defendant Union City Police officers on index cards. Defendant Union
7 City police officers also recorded any distinctive characteristics of each student, such as tattoos or
8 piercings and asked each student whether he or she was a member of a gang. That information, too, was
9 recorded.

10 38. Defendant Union City police officers, acting without lawful justification and without the
11 students' consent, then called the students up one by one to be photographed. Some students were
12 photographed only from the front; others were also photographed in profile, and, in some cases,
13 additional photographs were taken of students' hairstyles.

14 39. Plaintiffs are informed and believe that the information and photographs obtained by
15 defendant Union City Police officers was used to create or was added to a gang database or "gang book"
16 kept by the Union City Police Department.

17 40. All in all, defendant school administrators and defendant Union City Police officers
18 detained the students for up to two hours.

19 41. On February 22, 2002, the date of the round up, Plaintiff Brian Benitez was walking
20 through the corridors of the school with two Filipino friends during fifth period lunch when, by chance,
21 he and his friends encountered Defendant Lorrie Barrera, a House Principal at James Logan High
22 School, and one of the defendant Union City police officers, whose name is currently unknown to
23 plaintiff. Plaintiff Benitez and his friends were on their way to lunch. Barrera and the police officer
24 were escorting a group of students. Barrera and the Union City police officer stopped in front of
25 Plaintiff Benitez and his friends and ordered them to follow the group. When Benitez protested that he
26 had not done anything, Defendants responded that if he did not follow their instructions he would be
27 forcibly taken with them. At the time, Plaintiff Benitez was wearing only black, white, and gray.
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1 Plaintiffs are informed and believe that defendants included Plaintiff Benitez in the round up solely
2 because he is of Asian ancestry.

3 42. During fifth period lunch on February 22, 2002, Plaintiff Victor Munoz was playing
4 cards with friends at a table outside the school building when one of the defendant school administrators
5 and one or more of the defendant Union City police officers, whose names are currently unknown to
6 plaintiff Munoz, ordered him, his friends, and the entire group of students in the area, to follow them
7 inside the building. At the time, Plaintiff Munoz was wearing black jeans, white shoes, a black belt with
8 his initial "V," and a gray polo shirt. Plaintiffs are informed and believe that defendants included
9 Plaintiff Munoz in the round up solely because he is of Latino ancestry.

10 43. On February 22, 2002, during fifth period lunch Plaintiff Jessica Prentice was eating with
11 her friends at a group of tables outside the school cafeteria when Defendant Montoya, accompanied by
12 one of the defendant school administrators and one or more of the defendant Union City police officers,
13 whose names are currently unknown to plaintiff Prentice, ordered all of the students at the lunch tables
14 and in the surrounding area to collect their personal belongings and come with defendants. Defendants
15 also ordered the students to bring along the backpacks and other personal belongings of other students
16 that had been left in the area by their owners. At the time she was rounded up, Plaintiff Prentice was
17 wearing a red shirt and blue jeans. Red is one of the official school colors of Logan High School.
18 Plaintiffs are informed and believe that defendants included Plaintiff Prentice in the round up because
19 she was associating with persons of Latino ancestry.

20 44. Plaintiff Benitez was taken to a classroom along with other students who were rounded
21 up who were primarily of Asian descent. Plaintiff Munoz, who is a Latino, and Plaintiff Prentice, who is
22 white, were taken to a classroom along with other students who were rounded up who were primarily of
23 Latino descent.

24 45. By virtue of the actions of the police officers, acting in concert with the school officials,
25 none of the plaintiffs believed that he or she was free to leave the classroom where he or she was
26 detained and confined at risk of being physically restrained and/or removed to a jail facility and/or
27 suspended from school if he or she attempted to leave or in any way protest his or her confinement.
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1 46. Plaintiffs Benitez, Munoz, and Prentice, like the other students who had been rounded up,
2 were ordered to submit to a search. Each of them was either patted down by one of the defendants
3 and/or ordered to empty his or her pockets and back packs and place the contents on a desk or chair.
4 Defendant school administrators and/or defendant Union City police officers also searched their
5 backpacks and other personal belongings.

6 47. After searching Plaintiff Munoz, defendant Dan Fowler took some of Plaintiff Munoz's
7 drawings and threw them away. In addition, one of the defendants, whose identity is unknown to
8 Plaintiff Munoz, confiscated a blue highlighter and a yellow highlighter that Plaintiff Munoz had in his
9 possession and used for studying.

10 48. At the time Plaintiff Prentice was searched, Defendant Barrera found a red bandanna in
11 her pocket. The bandanna was completely contained within her pocket, however, and could not be seen
12 by others. Defendant Montoya ordered that Plaintiff Prentice be suspended for having the bandana in
13 her pocket. He also ordered defendant Prentice to refrain from wearing anything red, including red nail
14 polish. Defendant Montoya also seized a number of photographs from Plaintiff Prentice's binder. He
15 told her to put her name on the back of each photograph and then confiscated them. Some days after the
16 round up, Defendant Montoya ordered Plaintiff Prentice suspended for two additional days for wearing a
17 red shirt to school.

18 49. Neither school officials nor Union City police officers informed plaintiffs of the basis for
19 the searches, nor did they seek or obtain consent for the searches and in fact such searches were done
20 without any lawful basis, without lawful consent and under duress.

21 50. Defendant Union City police officers interrogated each of the plaintiffs and required each
22 plaintiff to provide personal information such as his or her full name, any nicknames, street address,
23 telephone number, height and weight. The defendant Union City police officers who interrogated each
24 plaintiff, and whose names are currently unknown to plaintiffs, asked each plaintiff whether he or she
25 was a member of a gang. Each of the plaintiffs stated that he or she is not a member of a gang.
26 Defendant Union City police officers solicited such personal information in plain view and within
27 hearing of other students and recorded the responses of each student in writing, including each of the
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1 plaintiffs named herein. The defendant Union City police officers retained the documents on which this
2 information was recorded and, upon information and belief, later included the information about each of
3 the students, including each of the plaintiffs herein, in a gang database maintained by the Union City
4 Police Department.

5 51. Defendant Union City police officers then called each of the plaintiffs by name, and in
6 full view of other students and school officials, ordered each of the plaintiffs to pose for one or more
7 photographs. Plaintiffs are informed and believe that these photographs were made part of gang
8 database base maintained by the Union City Police Department.

9 52. Some students who objected to the searches, interrogation or photographs or otherwise
10 were not fully cooperative were led out of the room by school officials in view of other students and,
11 upon information and belief, received additional punishment, including but not limited to suspensions
12 from school, for their refusal to submit to the demands of school officials and Union City police officers.

13 53. After the detention, search, interrogation and photographing of each student, school
14 officials and police officers ordered the students, including each of the plaintiffs, to their respective
15 “house offices” at James Logan High School to meet with the House Principals. During these meetings
16 some school officials admitted that they knew that plaintiffs had not in fact done anything that would
17 have justified the treatment they had received.

18 54. Defendant Barrera called Plaintiff Munoz’s mother, Angela Munoz and informed her that
19 Victor was included in the round up and had been photographed by the police but assured her that Victor
20 was a “good kid” and was not in any trouble.

21 55. Defendant Lang called Plaintiff Prentice’s parents and told them that Jessica just got
22 caught up in the sweep and that he knew that she was not a member of a gang. Nevertheless, Plaintiff
23 Prentice was given a three-day home suspension for being in possession of a red bandana and was given
24 an additional two-day in school detention for wearing a red shirt, even though other students at the
25 school were and are permitted to wear the color red.

26 56. One or more of the defendants who participated in the round up selected each of the
27 plaintiffs as part of the round up. Neither the defendant police officers nor the defendant school officials
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1 had any reason to believe that any of the plaintiffs had violated any school policy, rule or regulation or
2 had otherwise engaged in any unlawful conduct. Plaintiffs are informed and believe that all or some of
3 the defendant school administrators, and in particular their House Principals, knew that none of the
4 plaintiffs is a member of gang.

5 57. Like the other students who were victims of the round up, Plaintiffs Benitez, Munoz, and
6 Prentice were detained for up to two hours in locked rooms surrounded by police officers. The detention
7 of each of the plaintiffs was arbitrary and capricious and without any lawful justification.

8 58. The personal information improperly and unlawfully obtained by Union City police
9 officers from plaintiffs and other James Logan High School students during the “round up” has been
10 retained by the Union City Police Department and upon information and belief, included within various
11 investigative files and in a gang database relating to street gangs that is maintained by the Union City
12 Police Department.

13 59. The comprehensive personal information obtained by Union City police officers from
14 plaintiffs and other James Logan High School students during the “round up” was obtained through
15 improper means, without lawful justification, and is inaccurate, incomplete and falsely characterizes
16 plaintiffs as members of street “gangs.”

17 60. Following the searches and detentions, Defendant Montoya and/or other school
18 administrators acting upon his direction, entered notations in the files of many of the students who had
19 been included in the round up, including in the files of plaintiffs Benitez and Munoz, indicating that they
20 had been part of the “gang intervention” round up. Notations were made in Plaintiff Prentice’s school
21 file indicating that she had been suspended for wearing the color red. The notations placed in the files of
22 plaintiffs Benitez , Munoz and Prentice were inaccurate, incomplete and falsely characterized them as
23 members of street “gangs.” At the request of some parents or on his own initiative, Defendant Montoya
24 has directed that the notations be removed from the files of several students, apparently in recognition
25 that such students were wrongfully rounded up. Nevertheless, the notations remained in the students
26 files for some period of time after February 22, 2002, and may have been observed by other school
27 officials or teachers who may have taken actions adverse to or have formed opinions adverse to said
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1 students based on the notations. In addition, school officials, including the defendants herein, have
2 refused to remove from the files of other students notations indicating that they were included in the
3 round up.

4 61. Following the searches and detentions, Defendant Montoya, who is still employed as
5 Principal at James Logan High School, has stated that in the future he intends to conduct additional
6 “round ups” similar to the one described herein.

7 The School’s “Gang Apparel Policy”

8 62. On or about March 1, 1994, the New Haven Unified School District Board of Education,
9 as the policy-making authority for the New Haven Unified School District, promulgated New Haven
10 Unified School District Board Policy S-5136, which provides in part as follows: “The Board prohibits
11 the presence of any apparel, jewelry, accessory, notebook or manner of grooming which, by virtue of its
12 color, arrangement, trademark or any other attribute, denotes membership in gangs which advocate drug
13 use, violence, or disruptive behavior. This policy shall be applied at the principal’s discretion, after
14 consultation with the Superintendent or designee, as the need for it arises at individual school sites.”
15 Defendant Board members Estes, Aro-Valle, Dino, Fernandez, and Navarro have ratified the
16 promulgation and enforcement of this policy.

17 63. At a date unknown to plaintiffs, but prior to February 22, 2002, the defendant school
18 board members and/or defendant McKenna promulgated, and/or ratified the enforcement of, the Student
19 Code of Conduct set forth in the “New Haven Unified School District Parent Handbook, 2001-2002,”
20 which was applicable to students of James Logan High School during the 2001-2002 academic year, and
21 which, at paragraph 40, lists as a disciplinary offense: “Gang affiliation and activity – any wearing,
22 carrying, or displaying gang paraphernalia, graffiti, colors, making gestures which symbolize gang
23 membership, or causing an incident affecting the school attendance of another student.”

24 64. At a date unknown to plaintiffs, the defendant school board members and/or defendant
25 McKenna promulgated, and/or ratified the enforcement of, the “New Haven Unified School District
26 Parent Handbook, 2002-2003” which is currently applicable to students of James Logan High School.
27 That Handbook defines “gang related conduct/activity” as including “symbols, graffiti, apparel, colors,
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1 hazing/initiations, and gang fighting.” The Handbook also prohibits the wearing of “inappropriate”
2 clothing, including “gang insignias or colors,” and “any clothing that would disrupt the education
3 process.”

4 65. New Haven Unified School District Board Policy #S-5136, New Haven Unified School
5 District Student Code of Conduct, paragraph 40 from the 2001-2002 New Haven Unified School District
6 Parent Handbook, and the definitions of “gang related conduct/activity” and “inappropriate clothing” in
7 the New Haven Unified School District 2002-2003 Parent Handbook were and are void on their face
8 because they are so vague that they violate the due process clause of the Fourteenth Amendment in that
9 they:

- 10 a. fail to define prohibited activity clearly so that ordinary people can understand
11 what conduct is prohibited; and
12 b. fail to provide guidelines to school officials and law enforcement personnel to
13 prevent the possibility of arbitrary and discriminatory enforcement.

14 66. As a result of the promulgation of Policy S-5136 and the student Code of Conduct in the
15 2001-2002 Parent Handbook, and their enforcement by Defendant Montoya and those acting at his
16 direction, and as a result of the edict issued on February 22, 2002, by defendant Montoya prohibiting
17 plaintiff Prentice from wearing the color red, plaintiff Prentice has been disciplined for wearing the color
18 red, which is one of the official school colors for Logan High School. Plaintiff Prentice has observed
19 other students frequently wearing red apparel and accessories, without any apparent disciplinary action
20 against them. In addition Plaintiff Prentice was disciplined for having a bandana in her possession
21 although out of sight. The imposition of such discipline was discriminatory, arbitrary and capricious.

22 67. Plaintiffs Prentice and Munoz and members of the class they represent continue to be at
23 risk of discipline because of the enforcement of Board Policy #S-5136, the 2002-2003 Parent Handbook,
24 and defendant Montoya’s unlawful edict prohibiting them from wearing the color red. Plaintiff Benitez,
25 and the members of the class he represents, continue to be at risk of discipline because of the
26 enforcement of Board Policy #S-5136, the 2002-2003 Parent Handbook, and defendant Montoya’s
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1 unlawful edict prohibiting him from wearing the colors blue and green, although other students at James
2 Logan High School are permitted to wear these colors without risk of discipline. The continued
3 enforcement of Board Policy #S5136, the 2002-2003 Parent Handbook, and defendant Montoya's edicts
4 is discriminatory and arbitrary and capricious.

5 CLASS ACTION ALLEGATIONS

6 68. For the purposes of all declaratory and injunctive relief sought in this case, Plaintiffs
7 Benitez, Munoz and Prentice and their guardians ad litem bring this action pursuant to Federal Rule of
8 Civil Procedure 23(b)(2) on behalf of themselves and all others persons similarly situated. Each of these
9 individual class representatives was and is a student at Logan High School or the parent of a student at
10 Logan High School at all times relevant herein, who was detained, search, interrogated and
11 photographed on February 22, 2002, and who remains apprehensive and distressed as a result of the
12 actions taken by defendants as described herein. The class which plaintiffs seek to represent consists of
13 all students at Logan High school who, by virtue of being included in the round up on February 22, 2002
14 or in a similar future round up, were, or may in the future be, unlawfully detained, searched, interrogated
15 and photographed and who have had, or in the future may have, personal information about them,
16 including a photograph, entered into a police database base of gang members, and who are, or in the
17 future may be subjected to vague definitions by defendants of what constitutes "gang" activity or
18 conduct or of what constitutes "inappropriate" or "gang" apparel. The subclass which Plaintiffs Benitez
19 and Munoz seek to represent consists of all students at Logan High School who, by virtue of their race,
20 ancestry, or national origin, have been, or may in the future be, discriminated against by being identified
21 as gang members or as persons participating in gang activities by virtue of their race, ancestry, or
22 national origin and who have been, are, or in the future may be, discriminated against by the defendant
23 school officials by being forbidden to wear clothing of certain colors solely on account of their race,
24 ancestry, or national origin or perceived membership in a gang, while other students are permitted to
25 wear clothing of said colors. The members of this subclass are victims of defendants' racially motivated
26 and illegal pattern and practice of discrimination in enforcing school rules and regulations and in
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1 targeting members of the subclass for detention, search, interrogation, photographing, and inclusion in a
2 gang database as part of round ups such as the one complained of herein.

3 69. The class and subclass of persons defined in paragraph 68 is so numerous that joinder of
4 all members in one action is impracticable.

5 70. There are questions of law and fact common to all members of the class and subclass,
6 because all class and subclass members have been, or will be, adversely affected by the challenged
7 actions of the defendants. Common questions of fact and law include, but are not limited to: whether the
8 detention, search, interrogation, photographing, and inclusion in a gang database of students included in
9 the class violated the rights of those students to be free of unlawful searches and seizures in violation of
10 federal and state Constitutions and civil rights and privacy laws, and whether the school official
11 defendants' definitions of "gang" activity or conduct and "inappropriate" or "gang" apparel are
12 unconstitutionally vague in violation of the federal Constitution; and whether students included in the
13 subclass are subject to discrimination in the enforcement of school rules and in being targeted for
14 detention, search, interrogation, photographing, and being included in a gang database as part of round
15 ups such as the one complained of herein. in violation of their rights under the federal and state
16 Constitutions and federal and state civil rights laws

17 71. The claims of the representative plaintiffs are typical of the class as a whole in the
18 manner in which they were rounded up, detained, searched, interrogated, photographed and included in a
19 gang database without lawful justification and in the manner in which they were and are subjected to the
20 arbitrary and capricious enforcement of defendant school officials' unconstitutionally vague definitions
21 of "gang" activity or conduct and of "inappropriate" or "gang" apparel. They are also representative of
22 the subclass of students who are continually discriminated against on account of their race, ancestry, or
23 national origin in the enforcement of school rules and regulations and in being targeted for detention,
24 search, interrogation, photographing, and being included in a gang database as part of round ups such as
25 the one complained of herein. The experiences of the plaintiffs at the hands of the defendants resulted
26 from the defendants' policies and conduct, making their claims typical of those held by the class and
27 subclass they seek to represent.

1 72. Plaintiffs can and will fairly and adequately protect the interests of the members of the
2 class and subclass. Plaintiffs will be adequate representatives of the class and subclass in that all of the
3 relevant questions of fact and law applicable to the class and subclass also apply to them.

4 73. Plaintiffs have retained counsel who are familiar with the applicable law and experienced
5 in class action litigation, as well as litigation involving constitutional and civil rights. Counsel for
6 plaintiffs have the resources necessary to pursue this litigation.

7 74. This action is properly maintained as a class action. The defendants have acted or
8 refused to act on grounds generally applicable to the class and subclass, thereby making appropriate
9 final injunctive relief or corresponding declaratory relief with respect to the class and subclass as a
10 whole. Plaintiffs know of no difficulty to be encountered in the management of this action that would
11 preclude its maintenance as a class action.

12 75. The prosecution of separate actions by individual class and subclass members would
13 create a risk of inconsistent and varying adjudication concerning the subject of this action, and such
14 adjudication could establish incompatible standards of conduct for defendants under the laws alleged
15 herein.

16 **REQUISITES FOR RELIEF**

17 76. As a direct and proximate result of the conduct of defendants described above, plaintiffs
18 have been denied their constitutional and statutory rights as stated below and have been damaged in an
19 amount which is not yet known. Plaintiffs will seek leave of Court to amend this Complaint to conform
20 to proof at time of trial. Plaintiffs have suffered and continue to suffer mental and emotional distress,
21 humiliation, embarrassment, discomfort and anxiety.

22 77. Defendants' acts were willful, wanton, malicious, oppressive and done with conscious
23 disregard and deliberate indifference for plaintiffs' rights. Therefore, defendants' actions justify an
24 award to plaintiffs of punitive damages in an amount to be determined at trial.

25 78. Defendants' policies, practices, conduct and acts alleged herein have resulted and will
26 continue to result in irreparable injury to plaintiffs, including but not limited to further violations of their
27 statutory and constitutional rights. Plaintiffs have no plain, adequate or complete remedy at law to
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1 address the wrongs described herein. Plaintiffs therefore seek injunctive relief restraining defendants
2 from continuing to engage in and enforce the unconstitutional and illegal policies, practices, conduct and
3 acts described herein.

4 79. Defendants acted with discriminatory intent in violation of plaintiffs' legal and
5 constitutional rights, and have directly and proximately caused plaintiffs' humiliation, mental pain and
6 suffering. As a direct, legal and proximate result of defendants' violations of plaintiffs' statutory,
7 constitutional and common law rights, plaintiffs have been damaged in an amount which is not yet
8 known. Plaintiffs will seek leave of Court to amend this Complaint to conform to proof at time of trial.

9 80. At all times herein mentioned, defendants had an obligation to comply with federal and
10 state laws regarding racial discrimination. Defendants failed to meet these obligations..

11 81. Defendants, in various personal and official capacities acting under color of law,
12 instituted, authorized, tolerated, ratified, permitted and acquiesced in policies, practices and customs of
13 detentions, interrogations, searches and seizures, photographing, and including students in gang
14 databases without probable cause or reasonable suspicion that such actions would reveal any evidence
15 that the plaintiffs had violated or were violating any laws or any valid rules of the school. Defendants in
16 various ways have indicated they intend to continue such policies and practices.

17 82. Defendants have acted with deliberate indifference to the rights of plaintiffs.

18 **FIRST CLAIM FOR RELIEF**

19 Unlawful Search and Seizure
20 Infringement of Fourth and Fourteenth Amendment Rights
21 Violation of 42 U.S.C. Section 1983
22 (Against all Defendants in their personal and official capacities)

23 83. Plaintiffs repeat and re-allege paragraphs 1 through 82, above.

24 84. Defendants, acting under color of law and in concert with one another, have violated
25 plaintiffs' right to be free from unreasonable searches and seizures under the Fourth and Fourteenth
26 Amendments to the United States Constitution as described below. Namely, Defendants subjected
27 plaintiffs to lengthy detentions, interrogations, searches and seizures, photographing, and inclusion in a
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1 gang database without probable cause or reasonable suspicion that plaintiffs had committed any crime,
2 violated any school rule, possessed any contraband or had otherwise engaged in wrongful activity.

3 85. Defendants' conduct violates the Fourth Amendment guarantee against unreasonable
4 searches and seizures and gives rise to plaintiffs' claims pursuant to the Fourteenth Amendment and 42
5 U.S.C. Section 1983.

6 **SECOND CLAIM FOR RELIEF**

7 Infringement of Due Process Rights
8 Violation of 42 U.S.C. Section 1983

9 (Against defendant members of the New Haven Unified School
10 District Board of Education and defendants McKenna, Speakman,
11 and Montoya in their personal and official capacities.)

12 86. Plaintiffs repeat and re-allege paragraphs 1 through 82, above.

13 87. In enacting and enforcing New Haven Unified School District Board Policy #S-5136,
14 paragraph 40 of the New Haven Unified School District Student Code of Conduct contained in the "New
15 Haven Unified School District Parent Handbook, 2001-2002," and the provisions defining "gang
16 activity/conduct" and "inappropriate" or "gang" apparel as contained in the "New Haven Unified School
17 District Parent Handbook, 2002-2003," Defendants, acting under color of law and in concert with one
18 another, have violated and continue to violate plaintiffs' rights of due process giving rise to plaintiffs'
19 claims pursuant to the Fourteenth Amendment and 42 U.S.C Section 1983.

20 **THIRD CLAIM FOR RELIEF**

21 Discrimination on Account of Race, Ancestry and National Origin
22 Violation of the 14th Amendment to the United States Constitution and 42 U.S.C. Section 1983
23 (Against all Defendants in their personal and official capacities)

24 88. Plaintiffs repeat and re-allege paragraphs 1 through 82 above.

25 89. Plaintiffs are informed and believe that they were included in the round up, and thereafter
26 detained, searched, interrogated, photographed, forbidden from wearing particular colors, and included
27 in the UCPD's gang database because of the race, ancestry, or national origin of Plaintiffs Benitez and
28 Munoz and because Plaintiff Prentice associated with persons of Latino or Hispanic ancestry or national
origin.

1 90. Defendants have violated plaintiffs’ right to be free of discrimination on account of race,
2 ancestry, and national origin as guaranteed by Fourteenth Amendment to the United States Constitution
3 and by 42 U.S.C. Section 1983.

4 **FOURTH CLAIM FOR RELIEF**

5 Discrimination on Account of Race, Ancestry, and National Origin
6 Violation of Article 1, Section 7, of the California Constitution
7 (Against all Defendants in their personal and official capacities)

8 91. Plaintiffs repeat and re-allege paragraphs 1 through 82 above.

9 92. Plaintiffs are informed and believe that they were included in the round up, and thereafter
10 detained, searched, interrogated, photographed, forbidden from wearing particular colors, and included
11 in the UCPD’s gang database, because of the race, ancestry, or national origin of Plaintiffs Benitez and
12 Munoz and because Plaintiff Prentice associated with persons of Latino or Hispanic ancestry or national
13 origin.

14 93. Defendants have violated plaintiffs’ right to be free of discrimination on account of race,
15 ancestry, and national origin as guaranteed by Article 1, Section 7(a) of the California Constitution.

16 **FIFTH CLAIM FOR RELIEF**

17 Right to Informational Privacy
18 Violation of Article I, Section 1 of the California Constitution
19 (Against all Defendants in their personal and official capacities)

20 94. Plaintiffs repeat and re-allege paragraphs 1 through 82.

21 95. Defendants Bernard, Blackwell, Cesar, Gough, Lopez and Does 26-50, acting pursuant to
22 policies and customs of the City of Union City and under the instructions of defendant Ulibarri,
23 interrogated and photographed plaintiffs for the purpose of obtaining personal and private information
24 and the Union City Police Department has retained custody of this information.

25 96. By obtaining such personal and private information from plaintiffs through unlawful
26 means and retaining such information for improper purposes, knowing that such information is
27 incomplete, inaccurate and false, defendants have violated plaintiffs’ rights of privacy pursuant to
28 Article I, Section 1 of the California Constitution.

1 104. Defendants Montoya, Barrera, Lang, Varela, Robarge, Fowler, Bernard, Bilodeau,
2 Blackwell, Cesar, Galindo, Gough, Lopez, Martin, Munoz, Sato and Simon and Does 1-50 intended to
3 confine plaintiffs and did confine plaintiffs.

4 105. Plaintiffs were conscious of such confinement and the confinement was not otherwise
5 privileged.

6 106. Defendant's conduct proximately caused plaintiffs humiliation, mental pain and suffering
7 and emotional distress.

8 107. These actions constitute false imprisonment under the laws of the State of California.

9 **NINTH CLAIM FOR RELIEF**

10 Intentional Infliction of Emotional Distress
11 (Against Defendant Union City and Defendants Montoya, Barrera, Lang, Varela,
12 Robarge, Fowler, Bernard, Bilodeau, Blackwell, Cesar, Galindo, Gough, Lopez,
13 Martin, Munoz, Sato and Simon and Does 1-50 in their personal capacities)

14 108. Plaintiffs repeat and re-allege paragraphs 1 through 82.

15 109. During the detention and search of plaintiffs, defendants Montoya, Barrera, Lang, Varela
16 Robarge, Fowler, Bernard, Bilodeau, Blackwell, Cesar, Galindo, Gough, Lopez, Martin, Munoz, Sato
17 and Simon and Does 1-50 intentionally and purposefully acted in a manner to harass, intimidate, and
18 frighten plaintiffs in order to cause them to submit to the will of said defendants which they knew was
19 likely to cause injury to the plaintiffs.

20 110. Plaintiffs are informed and believe that Defendants acted in such manner because they
21 knew that their conduct in detaining, searching, seizing, interrogating, photographing, including
22 plaintiffs in a gang database, and subjecting plaintiffs to restrictions on the colors they are permitted to
23 wear was unjustified and was in violation of the rights of plaintiffs, and defendants were anxious that no
24 student assert his or her rights in a manner that would cause other students also to assert their rights and
25 thereupon require defendants to desist in their illegal and unconstitutional activity.

26 111. As a result of the detention, search, creation of a file in the police gang database base, and
27 imposition of restrictions on the colors plaintiffs are permitted to wear, plaintiffs are in a constant state
28 of apprehension, fear and stress, for fear that if they associate with friends, attempt to leave their homes

1 or otherwise engage in any activity at school or outside their homes which may be perceived by school
2 officials or police as suspicious, or wear the prohibited colors to school, they will be subject to further
3 detentions and searches and similar forms of harassment.

4 **TENTH CLAIM FOR RELIEF**

5 Negligent Infliction of Emotional Distress
6 (Against Defendant Union City and Defendants Montoya, Barrera, Lang, Varela,
7 Robarge, Fowler, Bernard, Bilodeau, Blackwell, Cesar, Galindo, Gough, Lopez,
8 Martin, Munoz, Sato and Simon and Does 1-50 in their personal capacities)

9 112. Plaintiffs repeat and re-allege paragraphs 1 through 82 and paragraphs 110 and 111.

10 113. At all times mentioned herein defendants Montoya, Barrera, Lang, Varela Robarge,
11 Fowler, Bernard, Bilodeau, Blackwell, Cesar, Galindo, Gough, Lopez, Martin, Munoz, Sato and Simon
12 and Does 1-50 knew, or in the exercise of due care and diligence should have known, would violate
13 some or all of plaintiffs' rights under the Constitution and laws of the United States and the State of
14 California that would cause injury to plaintiffs

15 114. Defendants' conduct was of such a nature that a reasonable person in plaintiffs' position
16 would sustain serious emotional distress as a result of said conduct and plaintiffs did in fact incur great
17 mental, nervous and emotional pain and suffering in an amount and duration subject to proof at trial.

18 **ELEVENTH CLAIM FOR RELIEF**

19 Declaratory Relief
20 (Against all defendants in their personal and official capacities)

21 115. Plaintiffs repeat and re-allege paragraphs 1 through 82.

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

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

4 **REQUESTED RELIEF**

5 WHEREFORE, plaintiffs respectfully pray that this Court:

6 1. Issue a declaratory judgment that defendants' conduct as complained of herein was a
7 violation of plaintiffs' rights under the constitutions and laws of the United States and the state of
8 California;

9 2. Issue an injunction

10 (a) prohibiting defendants, and all those acting in concert with them or acting under
11 their supervision or control, from detaining, searching, seizing the belongings of, interrogating, or
12 photographing students at James Logan High School without probable cause or reasonable suspicion to
13 believe that the student has violated a valid school rule or has violated the law, and further prohibiting
14 defendants from including any James Logan High School students in any database or other record
15 indicating that said student is a member of a prohibited gang without probable cause to believe that such
16 student is in fact a member of a prohibited gang;

17 (b) prohibiting the New Haven Unified School District defendants, including the
18 James Logan High School defendants, and all those acting in concert with them or acting under their
19 supervision or control, from enforcing the paragraph titled "Gang Activity/Affiliation" found at page 11
20 of the New Haven Unified School District Parent Handbook, 2002-2003 and the paragraph titled
21 "Student Dress" at page 11 of the New Haven Unified School District Parent Handbook, 2002-2003 or
22 any other rules or regulations that purport to define gang related conduct, activity, or affiliation or that
23 prohibit the wearing of any clothing or other apparel or any symbols or insignias that defendants contend
24 constitute a declaration that the wearer is a member of a prohibited gang to the extent that such rules
25 and/or regulations fail to give adequate notice of what they prohibit and/or to the extent such rules
26 and/or regulations are, or are capable of being, applied in an arbitrary or discriminatory manner;
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1 (c) requiring defendants City of Union City, Ulibarri, Bernard, Bilodeau, Blackwell,
2 Cesar, Galindo, Gough, Lopez, Martin, Munoz, Sato and Simon, and all those acting in concert with
3 them or acting under their supervision or control, to remove from all records maintained by the City of
4 Union City, including but not limited to all records maintained by the Union City Police Department,
5 any statement or other notation of any kind indicating that a James Logan High School student is a
6 member of a gang, and further requiring them to return to plaintiffs and to the members of the plaintiff
7 class any and all photographs taken of said students in connection with the round up described herein,
8 and prohibiting defendants from keeping any copies of said photographs;

9 (d) requiring the New Haven Unified School District defendants, including the James
10 Logan High School defendants, and all those acting in concert with them or acting under their
11 supervision or control, to remove from the school records of plaintiffs and members of the plaintiff class
12 any statement or notation of any kind concerning the round up described herein, and further requiring
13 said defendants to remove any statement or notation of any kind reflecting that Plaintiff Prentice or any
14 other member of the plaintiff class was disciplined in any way as a result of Defendant Montoya's edicts
15 that those who were subjected to the rounded up not wear certain colors.

16 3. Award compensatory and general damages, in an amount to be proven at trial, against the
17 City of Union City and against each of the individual defendants sued in his or her personal capacity;

18 4. Award exemplary and punitive damages, in an amount to be proven at trial, against the
19 City of Union City and against each of the individual defendants sued in his or her personal capacity;

20 5. Award statutory damages and penalties pursuant to California Civil Code §§ 52 and
21 52.1(b) against the City of Union City and against each of the individual defendants sued in his or her
22 personal capacity;

23 6. Award plaintiffs their costs, expenses and reasonable attorneys' fees pursuant to 42
24 U.S.C. § 1988, California Civil Codes §§ 52(b) and 52.1(h) and California Code of Civil Procedure §
25 1021.5; and
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1 7. Grant such other and further relief as the Court may deem just and proper.

2 Date: January 30, 2003

Ann Brick
Alan L. Schlosser
American Civil Liberties Union Foundation
of Northern California

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5 John T. Hansen
NOSSAMAN GUTHNER KNOX & ELLIOTT LLP

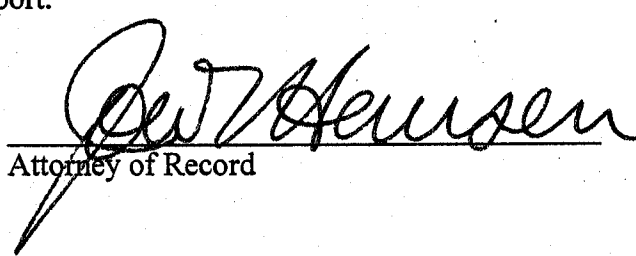
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8 By: 

John T. Hansen
Counsel for Plaintiffs

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11 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

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13 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
14 named parties, there is no such interest to report.

15
16 Dated January 29, 2003


Attorney of Record