

1 DARRYL D. YORKEY (SBN 280351)
P.O. Box 9636
Berkeley, California 94709
2 Telephone: (510) 221-6874
3 Fax: (888) 491-5926
Email: dyorkey@gmail.com

4 ALAN BECK (SBN 276646)
2962 Harcourt Drive
5 San Diego, California 92123
6 Telephone: (619) 905-9105
Email: alan.alexander.beck@gmail.com

7 Attorneys for Plaintiffs:
Philip Shen, Nima Kormi, Michael Bales, and Kevin Chen
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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 **PHILIP SHEN**, through his Guardian John)
13 Shen; **NIMA KORMI**, through his)
Guardian Ellie Kormi; **MICHAEL BALES**,)
14 through his Guardian Patricia Mingucci; and)
KEVIN CHEN, through his Guardian Kai)
15 Dong Chen,)
16 Plaintiffs,)

Case No.

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

- 1. Violation of the First Amendment
- 2. Violation of California Law
- 3. Violation of the Fourteenth Amendment –
Due Process
- 4. Violation of the Fourth Amendment
- 5. Violation of the Fourteenth Amendment –
Unreasonable Mistreatment

17 v.)
18)
19 **ALBANY UNIFIED SCHOOL**)
DISTRICT; ALBANY HIGH SCHOOL;)
20 **VALERIE WILLIAMS**, in her personal)
and official capacities as Superintendent of)
21 the Albany Unified School District; **JEFF**)
ANDERSON, in his personal and official)
22 capacities as Principal of Albany High)
School; **MELISA PFOHL**, in her personal)
23 and Official capacities as Assistant)
Principal of Albany High School;)
24 **SUZANNE YOUNG**, in her personal and)
25 official capacities as Instructor at Albany)
High School; and **DOES 1-50**,)
26)
27 Defendants.)
_____)
_____)

1
2 **COMPLAINT FOR DAMAGES AND DECLARATORY AND INJUNCTIVE RELIEF**

3 COME NOW the Plaintiffs, Philip Shen, Nima Kormi, Michael Bales, and Kevin Chen
4 (“Plaintiffs”), by and through their undersigned counsel, and complain of the Defendants as follows:

5 **PARTIES**

6 1. Plaintiff Phillip Shen, by and through his guardian and father John Shen, is a minor.
7 He is a natural person and a citizen of the United States and State of California, residing in Alameda
8 County. He is a student at Albany High School and is the victim of the policies complained about
9 below.

10 2. Plaintiff Nima Kormi, by and through his guardian and mother Ellie Kormi, is a minor.
11 He is a natural person and a citizen of the United States and State of California, residing in Alameda
12 County. He is a student at Albany High School and is the victim of the policies complained about
13 below.

14 3. Plaintiff Michael Bales, by and through his guardian and mother Patricia Mingucci, is
15 a minor. He is a natural person and a citizen of the United States and State of California, residing in
16 Alameda County. He is a student at Albany High School and is the victim of the policies complained
17 about below.

18 4. Plaintiff Kevin Chen, by and through his guardian and father Kai Dong Chen, is a
19 minor. He is a natural person and a citizen of the United States and State of California, residing in
20 Alameda County. He is a student at Albany High School and is the victim of the policies complained
21 about below.

22 5. On information and belief, Defendant Albany Unified School District (“AUSD”) is a
23 public entity in the State of California duly organized under the laws of the State of California, and
24 more particularly the provisions of the Education Code, to provide, among other things, education to
25 minors in public schools within the District. AUSD has, and at all times mentioned herein has had, its
26 principle place of business in Alameda County, California. Defendant AUSD is responsible for
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1 enacting and enforcing its customs, policies, practices and laws related to the suspensions and student
2 discipline complained about below.

3 6. On information and belief, Defendant Albany High School is a comprehensive public
4 high school located in Albany, California. It is part of the Albany Unified School District. Defendant
5 Albany High School is responsible for enacting and enforcing its customs, policies, practices and laws
6 related to the suspensions complained about below.

7 7. On information and belief, Defendant Valerie Williams is a natural person and a citizen
8 of the United States and the State of California. Ms. Williams, sued both in her personal and official
9 capacity, is the Superintendent of AUSD.

10 8. On information and belief, Defendant Jeff Anderson is a natural person and a citizen
11 of the United States and the State of California. Mr. Anderson, sued both in his personal and official
12 capacity, is the Principal of Albany High School, a constituent entity of AUSD.

13 9. On information and belief, Defendant Melisa Pfohl is a natural person and a citizen of
14 the United States and the State of California. Ms. Pfohl, sued both in her personal and official capacity,
15 is the Assistant Principal of Albany High School, a constituent entity of AUSD.

16 10. On information and belief, Defendant Suzanne Young is a natural person and a citizen
17 of the United States and the State of California. Ms. Young, sued both in her personal and official
18 capacity, is an Instructor in the Mathematics Department of Albany High School, a constituent entity
19 of AUSD.

20 11. Defendants Does 1-50 are sued in both their personal and official capacity as
21 administrators and/or instructors of Albany High School and AUSD. Does 1-50 are responsible for
22 executing, maintaining and administering the customs complained about below and may be
23 participants in the unconstitutional acts and practices discussed within this complaint.

24 12. Defendants Does 1-50, because of their improper enforcement and disciplinary actions,
25 are accordingly liable to Plaintiffs for damages and other relief as set forth in this Complaint.

26 13. Plaintiffs have reviewed all documents available to them and have made a diligent and
27 good faith effort to ascertain said persons' full names and identities.

1 14. Employees of Albany High School and/or AUSD enforced the policies complained
2 about below.

3 **JURISDICTION AND VENUE**

4 15. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
5 1331, 1343, 1367, 2201, 2202 and 42 U.S.C. § 1983 and § 1988.

6 16. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

7 **STATEMENT OF FACTS**

8 **The First Amendment**

9 17. The First Amendment to the United States Constitution provides: "Congress shall make
10 no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging
11 the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition
12 the Government for a redress of grievances..."

13 18. In *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819
14 (1995), the Supreme Court declared: "Discrimination against speech because of its message is
15 presumed to be unconstitutional". The First Amendment guarantees individuals a fundamental right
16 to freedom of expression and speech. *Tinker v. Des Moines School. Dist.*, 393 U.S. 503 (1969).

17 19. The First Amendment extends to all forms of expressive speech. This includes internet
18 "likes" and comments. *Bland v. Roberts*, 730 F.3d 368 (4th Cir. 2013).

19 20. Under the First Amendment schools may only prohibit speech if it creates a substantial
20 disruption to school activities and when said conduct is done within the school or school sponsored
21 activity. *Morse v. Frederick*, 551 U.S. 393 (2007)

22 **CA State Law**

23 21. Article 1, § 2, of the California Constitution provides: "Every person may freely speak,
24 write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A
25 law may not restrain or abridge liberty of speech or press." The California Constitution's protections
26 to speech are at times greater than the federal constitution's protection to speech. *The Pruneyard*
27 *Shopping Ctr. v. Robins*, 447 U.S. 74 (1980).

1 22. Cal. Educ. Code Sec. 48950(a) provides that “A school district operating one or more
2 high schools, a charter school, or a private secondary school shall not make or enforce a rule subjecting
3 a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other
4 communication that, when engaged in outside of the campus, is protected from governmental
5 restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the
6 California Constitution.

7 **14th Amendment**

8 23. The 14th Amendment of the U.S. Constitution provides that “All persons born or
9 naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States
10 and of the State wherein they reside. No State shall make or enforce any law which shall abridge the
11 privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,
12 liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal
13 protection of the laws.”

14 24. “The State is constrained to recognize a student's legitimate entitlement to a public
15 education as a property interest which is protected by the Due Process Clause and which may not be
16 taken away for misconduct without adherence to the minimum procedures required by that Clause.
17 The Due Process Clause also forbids arbitrary deprivations of liberty.” *Goss v. Lopez*, 419 U.S. 565
18 (1975).

19 **Fourth Amendment**

20 25. The Fourth Amendment of the U.S. Constitution provides that “the right of the people
21 to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,
22 shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or
23 affirmation, and particularly describing the place to be searched, and the persons or things to be
24 seized”.

25 26. The right of the people to be secure in their persons includes a right to be secure from
26 excessive force. *Graham v. Connor*, 490 U.S. 386 (1989)

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1 **Instagram**

2 27. Instagram is a mobile photo-sharing application and service platform that allows users
3 to share pictures and videos either publicly or privately on the service platform, as well as through a
4 variety of other social networking platforms, such as Facebook, Twitter, Tumblr, and Flickr.

5 28. Instagram allows its users to comment on, “like” images and posts, as well as to
6 passively “follow” the commentary of other Instagram users.

7 29. On or about November 2016 through January 2017 a number of images with prejudiced
8 and potentially bigoted overtones were uploaded to Instagram by a student who was attending Albany
9 High School. This student uploaded these images to his private, personal account that had no
10 connection with any official school activity or any official school account on any other social media
11 platform.

12 30. At the time that this student posted these images, a number of his friends and
13 acquaintances, also students at Albany High School, who had previously “followed” this student
14 through his private Instagram account were, consequently, passively following his page, commentary,
15 and posts.

16 31. A number of students that were following this student’s Instagram page commented on
17 or “liked” the images that the student had posted.

18 32. On or about March 2017 and on information and belief, a female student at Albany
19 High School commandeered the mobile phone of a male student that had “followed” the student’s
20 Instagram page. This female student viewed the male student’s Instagram page from his mobile phone,
21 took screen grabs of the male student’s Instagram account, and either directly or indirectly caused
22 these screen grabs to be forwarded to administrators of the Albany High School and AUSD.

23 33. These screen grabs and consequently the posted images, comments, “likes”, and even
24 the simple act of passively following the student’s Instagram account was subsequently deemed
25 objectionable by officials of Albany High School and AUSD, resulting in formal discipline for all
26 students implicated.

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1 **Suspension, Incendiary School Emails, Student Demonstration, and Assault and Battery**

2 34. When AUSD became aware of the images that had been posted to Instagram, AUSD
3 or its officials felt that it was within their purview to punish the students that had posted the images or
4 any other students that were in any way connected to the postings. Each and every student that had
5 posted, commented, “liked” the images, or had simply passively followed the account of the student
6 who had originally posted the images were either suspended or were suspended pending expulsion.
7 AUSD proffered a “zero tolerance approach” to justify their actions despite even attenuated
8 connections Plaintiffs had with the images that AUSD and its administrators considered offensive.
9 The students’ suspensions, including the Plaintiffs, commenced on or about March 23, 2017.

10 35. When the decisions of AUSD regarding formal discipline in the form of suspensions
11 and expulsions were officially handed down, the suspended students were notified by Defendant Pfohl,
12 the Assistant Principal of the Albany High School, that the official policy of AUSD was to only confer
13 two (2) day suspensions, but that the “egregious” nature of the violations necessitated that the school
14 board deviate from normal procedure and that administrators had been given wider latitude to hand
15 down heftier punishments. Accordingly, Plaintiffs’ suspensions were increased from two (2) day
16 suspensions to five (5) day suspensions, and, in the case of Kevin Chen, converted to an indefinite
17 duration pending an expulsion hearing.

18 36. On or about March 28, 2017, Defendant Williams, the Superintendent of AUSD, and
19 Defendant Anderson, Principal of the Albany High School, commenced a series of poorly thought out
20 and incendiary emails directed to the students and parents of AUSD as well as the community at large.
21 These emails painted Plaintiffs and several other students as “racists” and “harmers.” These emails
22 also documented and reported other “racist activities” at the school and the school’s current crack
23 down on these discovered activities.

24 37. On or about March 30, 2017, this series of emails culminated in an unsubstantiated and
25 irresponsible claim that a “noose” had been discovered in a neighboring park. The “noose” was later
26 discovered to be a broken swing that children had been playing on in the park the day before. The
27 effect of these incendiary emails was simply to foment community uproar, stir local media coverage,
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1 and become the impetus for subsequent violent altercation(s) among student demonstrators against the
2 Plaintiff Shen.

3 38. When formal discipline and punishments had concluded and the suspended students
4 were allowed to return to school on March 30, 2017, Plaintiffs, excluding Chen, were forced to take
5 part in several “healing” exercises throughout the day.

6 39. On the morning of March 30, 2017, the Plaintiffs, excluding Chen, and the other
7 suspended students were forced to march through the high school and were lined up in full view of all
8 or most of the student body. School administrators allowed the student body to hurl obscenities, scream
9 profanities, and jeer at the Plaintiffs and the other suspended students, who were all not allowed to
10 leave what the school considered an act of “atonement” but was rather a thinly veiled form of public
11 shaming. Plaintiffs and the other suspended students were forced to endure this berating and emotional
12 abuse until one of their parents, who was present, finally objected vehemently to school officials.

13 40. On the afternoon of March 30, 2017, AUSD scheduled for a “voluntary” restorative
14 justice session with the Plaintiffs, excluding Chen, and the other suspended students. This session was
15 conducted by a local organization called SEEDS. During the activity, a few hundred incensed students,
16 individuals, and news media, who had been notified of the meeting by school administrators in email
17 and encouraged to demonstrate, began to gather outside of the meeting room where parents,
18 Plaintiff(s), and the other suspended students were present. As the session was coming to a close, the
19 Plaintiff(s), other suspended students, as well the parents in attendance came to fear for their physical
20 safety and requested that the school provide security or call the local police to escort them from the
21 building. The school administrator present, Defendant Anderson, declined and insinuated that they
22 had to fend themselves and provide for their own safety. Eventually, one plain clothes detective of the
23 Albany Police Department arrived after one of parents in attendance called and frantically requested
24 protection. Having been briefed by AUSD officials, the officer declined to offer protective services
25 told Plaintiff(s) and their parents in attendance “you caused this.”

26 41. Although the Plaintiff(s), other suspended students, and parents in attendance tried to
27 escape the building quickly, two of the students were struck in the head by an enraged demonstrator,
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1 one sustaining bruising and scrapes to his head and side of his face and the other a broken nose and
2 other lacerations to his head and face. Several of the students and parents were forced to hide in locked
3 vehicles to prevent further violence.

4 42. On the following day, March 31, 2017, the Albany High School allowed all of the
5 previously suspended students 20 days of independent study so that they would not have to return to
6 school immediately, if they feared for their safety. This plan for independent study was poorly
7 conceived and provided little insight as to how the students would receive instruction, prepare, or turn
8 in assigned course materials. In fact, AUSD was so poorly prepared for this foreseeable situation that
9 it was forced to forgo its normal policies and procedures to provide this remedy to the students to
10 ensure their protection. Plaintiffs chose not to return to school on the following Monday, April 3, 2017.

11 43. Other similarly situated students that did choose to return to school on April 3, 2017
12 were provided with body guards by the school district to escort them to and from classes to ensure
13 their continued protection.

14 44. Since Plaintiffs, except, returned from their suspensions, AUSD and Williams have had
15 a series of town hall style Board meetings allowing the general public to showcase their feelings about
16 the matter. These Board meetings have not only been poorly run and conceived, they have served only
17 to further throw gasoline on a sensitive topic, dispel any hope of an objective and unbiased resolution
18 from an elected school board, and further target Plaintiffs amongst their peers and the community in
19 general

20 45. Plaintiffs have all have suffered emotional distress due to these incidents. Including
21 anxiety, fear, insomnia and other distress.

22 **Plaintiff Phillip Shen.**

23 46. Plaintiff Philip Shen is a minor and a student at Albany High School.

24 47. On or about December 2016 or January 2017, Philip Shen came upon one of the images
25 posted on Instagram by another student and made a responsive comment of “yep” to another previous
26 comment.

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1 48. On or about March 23, 2017, Philip Shen was called to the Principal’s office and
2 questioned in the presence of two Albany police officers without his parents present. Philip was
3 subsequently suspended for five (5) days due for posting “yep” in response to the original post.

4 49. On or about March 24, 2017, Philip Shen and a friend were playing tennis on a
5 municipal tennis court, and otherwise abiding by the terms of their suspensions as these terms had
6 been previously described to them during their disciplinary meeting earlier the same day. Three school
7 administrators, Defendant Pfohl, Tami Benau, and Darren McNally, began berating the students while
8 on the tennis court, and threatened to have them removed by the police.

9 50. On or about March 31, 2017, Defendant Pfohl told Philip Shen and his father, John
10 Shen, that the school was, at that moment, declining to levy further disciplinary action because they
11 were too busy dealing with the “peaceful demonstration” that had gotten violent the day before.
12 Defendant Pfohl clearly stated that the school would revisit the issue of additional discipline if and
13 when it chose to do so.

14 51. In or about the week of March 27, 2017, Philip Shen was denied the ability to take a
15 math examination by his teacher defendant Young. Upon request to make-up the examination, AUSD
16 and Administrators of the Albany High School notified Philip and his parents that permission to make-
17 up the missed examination was discretionary upon Defendant Young. Defendant Young has failed to
18 allow Philip to make-up this examination, thus impacting Philip’s grade in the math course.

19 52. Philip Shen has received a permanent mark on his high school transcript for the
20 suspension. This will negatively affect his ability to apply to colleges, scholarships and other post-
21 secondary opportunities.

22 53. When returning to school on March 30, 2017, Philip Shen and others were forced to
23 march through the school in full view of all or most of the student body as “atonement” and as a form
24 of shaming for his single comment on a single image that was posted by someone else.

25 54. On or about the afternoon of March 30, 2017, Philip Shen felt coerced to participate in
26 a restorative justice session that was planned and promoted by AUSD, he was assaulted and battered
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1 by an incensed, fellow student who was participating in an uncontrolled and poorly planned,
2 “peaceful” demonstration as he was try to escape from the school property.

3 **Plaintiff Nima Kormi.**

4 55. Plaintiff Nima Kormi is a minor and a student at Albany High School.

5 56. On or about December 2016 or January 2017, Nima Kormi came upon one of the
6 images posted on Instagram by another student, commented “this account is only targeting black
7 people.”

8 57. On or about March 23, 2017, Nima was called to the Principal’s office and questioned
9 in the presence of two Albany police officers without his parents present. Nima was subsequently
10 suspended for five (5) days for posting his criticism of the image posted to the Instagram account.

11 58. Nima Kormi has received a permanent mark on his high school transcript for the
12 suspension. This will negatively affect his ability to apply to colleges, scholarships and other post-
13 secondary opportunities.

14 59. When returning to school on March 30, 2017, Nima Kormi and others were forced to
15 march through the school in full view of all or most of the student body as “atonement” and as a form
16 of shaming for his single comment on the single image on the private Instagram page.

17 60. On or about the afternoon of March 30, 2017 and after Nima was coerced to participated
18 in a restorative justice session that was planned and promoted by the school district.

19 **Plaintiff Michael Bales.**

20 61. Plaintiff Michael Bales is a minor and a student at Albany High School.

21 62. Michael Bales “followed” another student on Instagram. At some point he made a
22 sarcastic remark to one of the images that had been posted to the Instagram account and “liked” a few
23 posted images on the private account.

24 63. On or about March 23, 2017, Michael was called to the Principal’s office and
25 questioned in the presence of two Albany police officers without his parents present. Michael was
26 subsequently suspended for five (5) days because he had been passively following the posts of the
27 other student despite having made no responsive comments to posted images.

1 64. Michael Bales has received a permanent mark on his high school transcript for the
2 suspension. This will negatively affect his ability to apply to colleges, scholarships and other post-
3 secondary opportunities.

4 65. When returning to school on March 30, 2017, Michael Bales and others were forced to
5 march through the school in full view of all or most of the student body as “atonement” and as a form
6 of shaming for having passively followed the Instagram account of another student.

7 66. On or about the afternoon of March 30, 2017 and Michael felt coerced to participated
8 in a restorative justice session that was planned and promoted by the school district, Michael was
9 forced to escape from school property to avoid an uncontrolled and poorly planned, “peaceful”
10 demonstration, where fellow students were assaulted and battered.

11 **Plaintiff Kevin Chen.**

12 67. Plaintiff Kevin Chen is a minor and a student at Albany High School.

13 68. On or about December 2016 or January 2017, Kevin Chen came upon several images
14 that were posted on Instagram by another student on his private account. Kevin “liked” several of the
15 images and was responsive to comments previously made on two.

16 69. On or about December 2016 or January 2017, Kevin Chen posted a picture to his Snap
17 Chat account. At some point during the approximate five seconds that the image was live, another
18 student commandeered the image with a screenshot and posted the image to his private Instagram
19 account, adding somewhat objectionable commentary and thereby changing the context of the image.
20 Kevin Chen did not play in part in posting or republishing the image and furthermore did not instigate
21 dialogue regarding the image.

22 70. On or about March 20, 2017, AUSD and Albany High School administrators were
23 made aware of the image as well as a number of other images posted to the private Instagram account
24 of a student at Albany high School and called the City of Albany Police Department.

25 71. On or about March 21, 2017, Kevin Chen was interrogated by Defendant Jeff Anderson
26 in the presence of Albany Police Officers.

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1 72. During the interrogation, Kevin Chen was questioned regarding “likes,” “following,”
2 and comments that he made on the private Instagram account of another student. Kevin was accused
3 of providing an image that was subsequently republished by another student along with objectionable
4 commentary (not provided by Kevin) to that student’s Instagram account as well as “following,”
5 “liking,” and commenting on the other student’s social media page.

6 73. Despite being outside of Albany High School and unrelated to any activity sponsored
7 by the school, Kevin Chen’s social media habits and largely, passive following of other accounts was
8 deemed objectionable by Defendant Jeff Anderson and Defendant AUSD.

9 74. On or about March 21, 2017, Defendant Jeff Anderson suspended Kevin Chen for five
10 days.

11 75. On or about March 24, 2017 and during his original suspension, Defendant Jeff
12 Anderson called an additional meeting with Kevin Chen and his father Kai Dong Chen and thereafter
13 recommended Kevin for expulsion and made his suspension indefinite pending an expulsion hearing.

14 76. Since March 24, 2017, Kevin Chen has been prohibited from returning to school. He
15 has been prohibited from receiving an education from AUSD and the Albany High School. Kevin has
16 been prohibited from participating in classes, taking any tests, quizzes, performing any laboratory
17 exercises, being involved in any extracurricular activities, and, consequently, has missed three
18 Advance Placement (AP) examinations that he was scheduled to complete and that cannot be
19 rescheduled.

20 77. On or about April 22, 2017, Kevin Chen received notice from Albany High School of
21 a proposed date for his expulsion hearing. Specifically, Kevin was accused of “following the
22 [Instagram] account [of another student], liking and commenting on ... material that was posted to the
23 account.”

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FIRST CAUSE OF ACTION

**(Violation of the First Amendment to the United States Constitution,
42 U.S.C. § 1983 - Against All Defendants)**

78. Plaintiffs repeat and re-plead Paragraphs 1 through 77, inclusive, and incorporate the same herein by reference.

79. The Defendants suspended Plaintiffs based upon conduct protected by the First Amendment of the United States. As such it violates Plaintiffs’ First Amendment rights.

80. The original images posted and commented on were expressive/political speech.

81. Plaintiffs comments and “likes” of the image(s) are also protected speech.

82. The commenting/liking of the image occurred completely outside of school and school functions.

83. Thus, Defendants had no authority to punish Plaintiffs based upon constitutionally protected conduct.

84. Thus, Defendants violated Plaintiffs First Amendment rights.

SECOND CAUSE OF ACTION

**(Interference with Rights Secured by the Constitution or Laws of the State of California
Violation of Cal. Educ. Code Sec. 48950(a) - Against All Defendants)**

85. Plaintiffs repeat and re-plead Paragraphs 1 through 84, inclusive, and incorporate the same herein by reference.

86. The Defendants suspended Plaintiffs based upon conduct protected by the First Amendment to the United States Constitution. Consequently, this conduct is also protected under California law.

87. The original image(s) commented on were expressive/political speech.

88. Plaintiffs’ comments and “likes” of the image(s) are also protected speech.

89. The commenting/liking of the image(s) occurred completely outside of school and school functions.

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1 90. Thus, Defendants had no authority to punish Plaintiffs based upon constitutionally
2 protected conduct.

3 91. Thus, Defendants violated Plaintiffs' civil rights under California law.

4 **THIRD CAUSE OF ACTION**

5 **(Violation of 14th Amendment - Right to Due Process –**
6 **Against All Defendants Except Young)**

7 92. Plaintiffs repeat and re-plead Paragraphs 1 through 91, inclusive, and incorporate the
8 same herein by reference.

9 93. The Albany High School Code of Discipline allow for a suspension of no more than
10 two days for behavior of this nature. Attached hereto as Exhibit A is a true and correct copy of the
11 Albany High School Code of Discipline.

12 94. Plaintiffs' suspensions were arbitrarily and capriciously extended beyond the duration
13 specified in the AUSD disciplinary manual by administrators for Albany High School.

14 95. This is a clear violation of Plaintiffs' right to Due Process under the 14th Amendment.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of 4th Amendment Right to Liberty –**
17 **All Plaintiffs Except Chen Against All Defendants)**

18 96. Plaintiffs repeat and re-plead Paragraphs 1 through 95, inclusive, and incorporate the
19 same herein by reference.

20 97. The right to be free from search and seizures includes a right to be free from excessive
21 force. *Graham v. Connor*, 490 U.S. 386 (1989).

22 98. Excessive force is to be decided on an objective reasonableness standards. *Id.*

23 99. Defendants have a duty of care over their students which include all Plaintiffs.

24 100. On or about early March of 2017, AUSD, Defendant Williams, and Defendant
25 Anderson investigated the personal Instagram accounts of several students. Their investigation
26 uncovered posts made by one student that had racist and bigoted overtones. These posts were made
27 on a private account, outside of the confines of the school, and unrelated to any school sanctioned
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1 activity. Nonetheless, AUSD, Defendant Williams, and Defendant Anderson enacted disciplinary
2 action upon any student for this protected speech despite their level of involvement after having been
3 interrogated by school officials and two Albany City Police Officers, notably without the notification
4 or permission of their parents. Plaintiffs' role in these posts were innocuous at best, with one even
5 rebuking a post for its subject matter. Plaintiffs were all suspended for five (5) days, a punishment
6 excessive in light of the AUSD's common practices.

7 101. On or about March 28, 2017, Defendant Williams and Defendant Anderson began an
8 email campaign regarding racism in the school district and the city of Albany that were directed to the
9 students and parents of AUSD as well as the community at large. These emails painted Plaintiffs and
10 several other students as "racists" and "harmers." These emails also documented and reported other
11 "racist activities" at the school and the school's current crack down on these discovered activities.
12 Some of the facts that were conveyed in these emails were false, and, at best, cast Plaintiffs in a false
13 light. The emails and their contents demonstrated a fundamental lack of good judgment on the part of
14 the school administrators. Defendants have exacerbated a minor issue for their own notoriety and
15 spotlight and have fomented hatred, fear, and violence of the student body and community against
16 Plaintiffs.

17 102. On or about the morning of March 30, 2017, the Plaintiffs and the other suspended
18 students were forced to march through the high school and were lined up in full view of all or most of
19 the student body where the student body was allowed to hurl obscenities, scream profanities, and jeer
20 at the Plaintiffs. Plaintiffs were identified as "racists" and "harmers," berated, and scorned in a public
21 forum as "atonement" for their accused conduct.

22 103. Defendants breached that duty of care by forcing Plaintiffs to walk through the high
23 school in clear view of the student body and labeling them as "racists" and "harmers." Defendants'
24 forcible detentions of Plaintiffs were arbitrary, capricious, and done with the purpose of restraining
25 Plaintiffs' activities on campus as students and as a form of punishment and public shaming.

26 104. At no time did Plaintiffs or their parents' consent to any of these acts of Defendants
27 alleged herein.

1 105. On or about the afternoon of March 30, 2017, Plaintiffs were lured to a “restorative
2 justice session” while AUSD, Defendant Williams, and Defendant Anderson emailed the student body
3 and the general public inciting a demonstration immediately outside. AUSD, Defendant Williams, and
4 Defendant Anderson failed to provide any means of crowd control or protection for Plaintiffs and other
5 similarly situated students, despite the appeals of the students and parents to do so. Consequently,
6 Plaintiffs had to escape in fear for their safety.

7 106. Plaintiff Philip Shen and another student were, in fact, battered by another student when
8 they were attempting to escape and thereby sustained physical injured. All Plaintiffs were placed in
9 fear for their life and safety.

10 107. Defendants knew or should have known that this would place Plaintiffs in harm’s way.

11 108. Defendants again breached that duty of care by luring the Plaintiffs to a restorative
12 justice meeting and with reckless indifference publishing the time and whereabouts of this meeting to
13 the student body and public at large after they had labeled the Plaintiffs as “racists” and “harmers,”
14 thereby encouraging other students and the public to organize and participate in demonstrations
15 without prior, responsible planning for any sort of crowd control or Plaintiffs’ safety.

16 109. Defendants further violated this duty of care when Defendant Anderson refused to call
17 the police when Plaintiffs and their parents repeatedly and vehemently asked and begged him to do
18 so.

19 110. Defendants, and all of them, acting in the course and scope of their employment with
20 AUSD failed to use ordinary care in the supervision of their staff, administrators, students, and acted
21 with indifference and conscious disregard for the rights, safety, and well-being of Plaintiffs.

22 111. Defendants’ breach of their duty of care caused Plaintiffs to suffer both physical and
23 emotional injury in violation of the 14th Amendment.

24 112. After returning to school, Plaintiffs were prevented from making up examinations and
25 other coursework during their suspensions. Although AUSD’s policy is that teachers have the
26 discretion as to whether students under suspension have the ability to make up course work, Defendant
27 Pfohl and AUSD officials lobbied their teachers to prevent Plaintiffs from making up this work.

1 113. Furthermore, as a school district, the AUSD has a special relationship to the students
2 in the district schools, including Plaintiffs. As a result of this special relationship, AUSD has a duty to
3 ensure the safety of its students and the competence of its employees in their interactions with the
4 students. AUSD's duty thus requires that it use reasonable care in supervising its employees.

5 114. Competent school employees should not be inciting unruly assemblies by authoring
6 haphazard emails preying upon societal prejudices and hatred or that single out specific students for
7 retribution, ostracism, or public rebuke. Competent school employees should not be lining students up
8 in front of their peers for the purpose of humiliation and public shaming as a form of disciplinary
9 action. Competent school employees should not be putting students at risk of physical harm, emotional
10 damage, social ostracism, and criminal prosecution. Competent school employees should not be
11 placing students in any kind of risk without first notifying the students' parents and obtaining
12 permission from them. Competent school administrators should not deviate from published
13 disciplinary policies and standard procedures, despite their personal feelings and moralities.
14 Competent school administration should train their staff to abide by the law, utilize proper procedures
15 to investigate suspected criminal wrongdoing on campus, and to avoid placing students in situations
16 in which their integrity as members of the student body are compromised and they are subject to
17 ostracism and potential danger. Defendants AUSD, Albany High School, Williams, Anderson, and
18 Pfohl engaged in all of these actions.

19 115. AUSD has repeatedly failed to properly and adequately supervise Defendants, and all
20 of them, despite numerous acts of willful, negligent, and outrageous character. AUSD knew, or in the
21 exercise of reasonable diligence should have known, that AUSD's failure to adequately train and
22 supervise Defendants, and all of them, would cause foreseeable injuries to Plaintiffs. Had Defendants,
23 and all of them, been properly trained and adequately supervised, their poor judgment in all facets of
24 this chain of events would have been readily apparent.

25 116. Defendants conduct during these proceedings was not objectively reasonable and
26 caused plaintiffs both emotional and physical injury.

27 117. Thus, a violation of the 4th Amendment occurred.

FIFTH CAUSE OF ACTION

**(Violation of 14th Amendment - Unreasonable Mistreatment –
All Plaintiffs Except Chen Against All Defendants)**

118. Plaintiffs repeat and re-plead Paragraphs 1 through 117, inclusive, and incorporate the same herein by reference.

119. The right to Due Process includes a right to be free from excessive force. *Graham v. Connor*, 490 U.S. 386 (1989)

120. Defendants intentionally created a situation where they knew or should have known that Plaintiffs would sustain physical harm or were in immediate peril of physical harm.

121. The events that trigger Defendants’ 14th Amendment claims under this cause of action are the same as alleged in the fourth cause of action.

122. Defendants did so maliciously in order to punish Plaintiffs for their perceived racism.

123. This constitutes a violation of the 14th Amendment’s right to be free from excessive force.

LEAVE TO AMEND

Plaintiffs find it necessary to file on their constitutional claims immediately in order to stave off immediate and irreparable harm. A full accounting of this irreparable harm is detailed out in the attached motion for preliminary injunction. Plaintiffs have a number of state tort claims for damages which they wish this Court to address. However, prior to presenting these matters to this Court, Plaintiffs are bound to comply with the California Tort Claims Act. Assuming, the State denies their claims, Plaintiffs expressly reserve leave to amend in order to present those claims to this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

1. An order preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual

Exhibit A

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