

MAR 16 2023

1 RON BAMIEH (SBN 159413)
rbamieh@bamiehdesmeth.com
2 DANIELLE DE SMETH (SBN 263309)
ddesmeth@bamiehdesmeth.com
3 ALEX DE ARANA-LEMICH (SBN 321390)
adearana@bamiehdesmeth.com
4 **BAMIEH & DE SMETH, PLC**
5 692 E. THOMPSON BOULEVARD
6 VENTURA, CA 93001
T: (805) 643-5555 | F: (805) 643-5558

7 Attorneys for Plaintiffs: P.K., a minor by and through her parent and proposed guardian ad litem; and
8 G.K., a minor by and through his parent and proposed guardian ad litem.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF VENTURA

11 P.K., a minor individual by and through her
parent and proposed guardian ad litem
12 BETHANEE KUSHNER; G.K., a minor
individual by and through his parent and proposed
13 guardian ad litem BETHANEE KUSHNER.

14 Plaintiffs,

15 vs.

16 VENTURA UNIFIED SCHOOL DISTRICT a
public entity; LORELLE DAWES, an individual;
17 JENNIFER BRANSTETTER, an individual; and
DOES 1 through 10, Inclusive,

18 Defendants.
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Case No.:

COMPLAINT FOR DAMAGES

- 1. Violation of First Amendment Rights, as applied to the states under the Fourteenth Amendment
- 2. Violation of Article I, Section 2(a) of California State Constitution
- 3. Violation of Section 48907 of California Education Code

DEMAND FOR JURY TRIAL

Complaint filed:
Assigned to:
Trial date: None set.

21 P.K. a minor by and through her proposed parent and guardian ad litem BETHANEE
22 KUSHNER, and G.K., a minor by and through his proposed parent and guardian ad litem BETHANEE
23 KUSHNER hereby brings the following Complaint for injuries and damages against Defendant, Ventura
24 Unified School District (referred to as "Ventura Unified," or "VUSD"), a public entity, LORELLE
25 DAWES, an individual, JENNIFER BRANSTETTER, an individual and other as of yet unknown
26 entities and individuals.

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1 **PARTIES AND JURISDICTION**

2 1. At all times relevant to the claims asserted herein, Plaintiffs P.K. and G.K. were minor
3 students residing in the county of Ventura, California, and within the jurisdiction of the Ventura Unified
4 School District. At all times relevant to the claims asserted herein, P.K and G.K. were minor students
5 attending Cabrillo Middle School, a public educational institution within the Ventura Unified School
6 District located in the County of Ventura, California. As students at Cabrillo Middle School, Plaintiffs
7 P.K. and G.K. are subject to the authority and directives of Defendants.

8 2. At the time of filing of this Complaint, P.K. and G.K. have not yet attained the age of
9 majority and are still attending Cabrillo Middle School. Their identities should not be made public due
10 to their young ages. Plaintiffs' identities have been disclosed to Defendant simultaneous to the service of
11 this Complaint on a separate document that should not be made a part of the public file.

12 3. P.K. a minor, brings this complaint, by and through her parent and proposed guardian ad
13 litem, BETHANEE KUSHNER.

14 4. G.K. a minor, brings this complaint, by and through his parent and proposed guardian ad
15 litem, BETHANEE KUSHNER.

16 5. Plaintiffs' claims are timely as prescribed by California Government Code § 910 as they
17 have been filed within six months of Defendant's rejection of their submitted tort claims.

18 6. At all times relevant to this action, Defendant VENTURA UNIFIED SCHOOL
19 DISTRICT ("VUSD") was and is a school district headquartered in Ventura County, California. VUSD
20 is a "State" as defined by the California Constitution, Article 1, Section 31, subdivision (f), organized
21 pursuant to the laws of California. VUSD received and continues to receive state and federal financial
22 assistance. Further, VUSD is the legal entity responsible for provision of educational services to students
23 residing within their jurisdiction.

24 7. Defendant LORELLE DAWES is an individual who at all times mentioned herein was a
25 resident of Ventura County working the Principal of Cabrillo Middle School. She is vested with the
26 authority to discipline students at Cabrillo Middle School at her discretion and to enforce the policies of
27 Cabrillo Middle School and the VUSD.

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1 8. **Defendant JENNIFER BRANSTETTER is an individual who at all times mentioned**
2 **herein was the Vice Principal at Cabrillo Middle School. She is vested with the authority to discipline**
3 **students at Cabrillo Middle School at her discretion and to enforce the policies of Cabrillo Middle**
4 **School and the Ventura Unified School District.**

5 9. **At all times relevant hereto, VUSD and its employees, directors, and agents, including**
6 **without limitation Defendants JENNIFER BRANSTETTER and LORELLE DAWES, were acting in**
7 **their individual and official capacities and under the color of law of the state of California.**

8 10. **Plaintiffs assert that California Government Code § 815.2(a) provides a statutory basis**
9 **for the causes of action sounding in tort. Government Code § 815.2(a) states, "A public entity is liable**
10 **for injury proximately caused by an act or omission of an employee of the public entity within the scope**
11 **of his employment if the act or omission would, apart from this section, have given rise to a cause of**
12 **action against that employee or his personal representative."**

13 11. **The true names and capacities, whether individual, corporate, associate or otherwise, of**
14 **Defendants and Does 1 through 100, inclusive, are unknown to Plaintiff, who therefore sues said**
15 **Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of**
16 **the Defendants fictitiously named herein as a Doe is legally responsible in some manner for the events**
17 **and happenings hereinafter referred to and proximately thereby caused the injuries and damages to**
18 **Plaintiff as hereinafter alleged. Plaintiff will seek leave of Court to amend this Complaint to set forth the**
19 **true names and capacities of said fictitiously named Defendants when the same shall have been**
20 **ascertained.**

21 12. **Plaintiff is informed and believes and thereon alleges that at all times mentioned herein,**
22 **Defendants, and each of them, including DOES 1 through 100, inclusive, were the owners, agents,**
23 **servants, employees and/or joint venturers of each co-defendant and were, as such, acting within the**
24 **course, scope and authority of said agency, employment and/or joint venture, and that each and every**
25 **Defendant as aforesaid, when acting as a principal, was negligent in the selection and hiring of each and**
26 **every other Defendant as an agent, employee and/or joint venturer.**

27 13. **The actions complained of herein occurred with the State of California, County of**
28 **Ventura.**

1 FACTUAL HISTORY AND GENERAL ALLEGATIONS

2 14. At all relevant times hereto, Defendant Ventura Unified School District had the duty and
3 authority to effectuate the policies and customs of VUSD and to implement and execute all federal, state
4 and VUSD regulations and/or policies relevant to the operation of a public school.

5 15. On or about March 18, 2022, a group of Cabrillo Middle School students wanted to have
6 a lunchtime concert at school and play an anti-crack cocaine song they had written. The leader of the
7 band purporting to play the song identifies himself as "Lil Pickle."

8 16. When the Cabrillo Middle School staff and administrators observed a large group of
9 students headed to one outdoor location on campus, they summoned the police, believing something
10 nefarious was taking place. Upon viewing the spontaneous performance, the administration dispersed
11 the crowd and sent "Lil Pickle" home for the day. School administrators confiscated students' phones
12 and attempted to persuade students to delete any recordings or photographs of the performance from
13 their phones or else face detention or other administrative punishment.

14 17. The weekend following the incident at the school, Plaintiff G.K. borrowed a friend's
15 computer and a t-shirt heat-press and made t-shirts with the slogan "Justice for Lil Pickle" to sell and
16 distribute via social media to his peers. He sold approximately 40 of the t-shirts to students and teachers.

17 18. On March 21, 2022, G.K. and his younger sister, Plaintiff P.K., wore their "Justice for Lil
18 Pickle" t-shirts to school, along with 5 to 10 other students who had already received their t-shirts.

19 19. When the vice principal, Defendant JENNIFER BRANSTETTER, saw the "Justice for
20 Lil Pickle " shirts, she approached G.K. during nutrition and demanded that he either remove the t-shirt
21 or be sent home from school.

22 20. G.K. refused to remove the t-shirt. So, JENNIFER BRANSTETTER called his father, a
23 Santa Barbara Police Department (SBPD) Captain, who informed JENNIFER BRANSTETTER that he
24 supported whatever decision that G.K. wanted to make. G.K. ultimately decided to put a sweatshirt over
25 his t-shirt and go take his math test.

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1 21. Defendant LORELLE DAWES soon realized that many other students were wearing
2 "Justice for Lil Pickle" t-shirts and instructed those students to remove the t-shirts or cover them.
3 Approximately six students complied with the principal's wishes and wore gym shirts for the rest of the
4 day, except for P.K.

5 22. P.K. refused to cover her t-shirt and exercised her first amendment right to free speech.

6 23. Vice principal JENNIFER BRANSTETTER told P.K. that if she continued to refuse to
7 cover her t-shirt or remove it, she would be sent home. She still refused and her parents were called to
8 pick her up.

9 24. Plaintiffs are informed and believe and based thereon allege that Defendant LORELLE
10 DAWES found issue with the use of the term "Pickle" while Defendant JENNIFER BRANSTETTER
11 was personally offended with use of the word "Justice" related to the individuals in the performance and
12 the conduct the school took regarding the performance.

13 25. Nothing in VUSD's published dress code prohibits students from wearing t-shirts like
14 those which Plaintiffs wore, as they were not disturbing class work.

15 26. Defendants, and each of them, continue to insist on banning any dress or attire that relates
16 to or mentions the Lil' Pickle incident. An actual controversy now exists over the rights of Plaintiffs to
17 express themselves through their choice of dress.

18 27. In the weeks that followed, the Defendants LORELLE DAWES AND JENNIFER
19 BANSTETTER banned the use of the word "pickle" and the display of pickle-related imagery from
20 school and threatened to discipline students who displayed pickle insignia on pins and face paint as
21 some had begun to do for fun.

22 28. In the months that followed the incident Plaintiffs became the targets for undue and
23 heightened scrutiny for their innocuous daily activities. For example, Plaintiff G.K. was threatened with
24 detention for eating in a certain sector of the school and was told by a school administrator that they
25 would make sure any misconduct on his part followed him to high school.

26 29. As a direct and proximate result of Defendants' conduct, Plaintiffs have lost educational
27 opportunities, lost the freedom to exercise their First Amendment rights, lost educational instruction
28 time, and suffered emotional distress in an amount to be proven at trial.

1 **FIRST CAUSE OF ACTION**

2 **Violation of Constitutional Right to Freedom of Speech**

3 **United States Constitution, First Amendment; 42 U.S.C. § 1983**

4 **(Against All Defendants)**

5 30. Plaintiffs re-allege and incorporate by this reference all of the preceding paragraphs in
6 this Complaint as though fully set forth.

7 31. The U.S. Constitution grants citizens protections for free speech under the First
8 Amendment to the U.S. Constitution, which are enforced via 42 USC § 1983.

9 32. Defendants, and each of them, have deprived, and are continuing to deprive, Plaintiffs of
10 their rights to free speech, secured to them by the First Amendment of the United States Constitution.

11 33. By instructing G.K. and P.K. that they are prohibited from wearing non-vulgar clothing
12 expressing messages about their friend's freedom to play music on campus, Defendants, and each of
13 them, violated, and are continuing to violate, Plaintiffs' rights to free speech and expression, as
14 guaranteed by the U.S. Constitution.

15 34. In depriving Plaintiffs of these rights, Defendants, and each of them, acted under color of
16 state law. This deprivation under color of state law is actionable under and may be redressed by 42
17 U.S.C. § 1983.

18 35. An actual controversy now exists over the rights of Plaintiffs to express themselves
19 through their choice of dress and Plaintiffs seek a declaration of their rights as well as an injunction
20 against Defendants' continued efforts to limit their freedom of expression. Moreover, as a direct and
21 proximate result of Defendants' conduct alleged herein, Plaintiffs have lost educational opportunities,
22 lost the freedom to exercise their First Amendment rights, lost educational instruction time, and suffered
23 emotional distress due in part to public humiliation by the Defendants in an amount to be proven at trial.

24 **SECOND CAUSE OF ACTION**

25 **Violation of Constitutional Right to Freedom of Speech**

26 **Article I, Section 2(a) of the California State Constitution**

27 **(Against All Defendants)**

28 36. Plaintiffs re-allege and incorporate all of the preceding paragraphs in this Complaint.

1 3. An order directing Defendants to take such affirmative steps necessary to remediate the
2 past restraints to Plaintiff's expression through the statement on her shirt, including, but not limited to
3 notifying in writing and training the Cabrillo Middle School student body and school officials within the
4 Ventura Unified School District that all students are permitted to wear a shirt, button, or sticker that
5 states "Justice for Lil Pickle," or similar expressions, pursuant to reasonable time, place, and manner
6 restrictions;

7 4. An order enjoining Defendants and their officers, agents, affiliates, subsidiaries, servants,
8 employees and all other persons or entities in active concert or privity or participation with them, from
9 taking retaliatory action against Plaintiffs or their parents for bringing this lawsuit or for advocating for
10 their free speech rights;

11 5. For compensatory damages according to proof.

12 6. An award to Plaintiff of reasonable attorneys' fees and costs incurred in connection with
13 this action from Defendants;

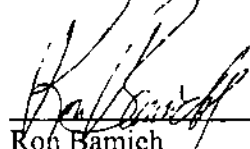
14 7. An order granting such further and different relief as this Court may deem just and proper
15 or that is necessary to make the Plaintiff whole.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs demands a jury trial on all causes of action for which a jury is available under the law.

18 Dated: March 16, 2023

BAMIEH & DE SMETH, PLC

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21 _____
22 Ron Bamieh
23 Danielle De Smeth
24 Alex De Arana-Lemich
25 Attorneys for Plaintiffs
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