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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JANE DOE, a minor, by John Doe, her guardian
ad litem; and JASON ROE, a minor, by David
Roe, his guardian ad litem, on behalf of themselves
and similarly situated public school students in the
State of California,

Plaintiffs,

v.

THE STATE OF CALIFORNIA; TOM
TORLAKSON, in his official capacity as the
Superintendent of Public Instruction; THE
CALIFORNIA DEPARTMENT OF
EDUCATION; THE STATE BOARD OF
EDUCATION; and DOES 1 through 100
inclusive,

Defendants.

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 07 2011

John A. Clarke, Executive Officer/ Clk.

By C. PIEDRA, Deputy

Case No. BC445151

Assigned for all purposes to:
Honorable Carl J. West

[CLASS ACTION]

FIRST AMENDED COMPLAINT

Date: N/A

Time: N/A

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Date Action Filed: September 10, 2010

Trial date: None

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1 INTRODUCTION

2 1. Our nation’s public schools represent the highest and most revolutionary ideal of
3 American democracy — that through education open on an equal basis to all, every child can
4 achieve his or her full potential as consequence of merit and hard work. The California
5 Constitution, like the constitutions of every state in the Union, accordingly entitles the children of
6 this State to a free and equal education. But there is no system of free public education in
7 California: public schools throughout the State unabashedly trample upon this constitutional right
8 by requiring students to pay fees and purchase assigned materials for courses for academic credit.
9 Plaintiffs Jane Doe and Jason Roe are just two of thousands of public school students whose
10 constitutionally guaranteed education has been and is being improperly conditioned upon the
11 payment of fees. Despite its clear constitutional duty to provide free and equal education, the
12 State has stood idly by in the face of this rampant and blatant charging of illegal fees. The State
13 instead operates by winks and nods, failing completely to monitor and ensure its public school
14 districts’ compliance with the free education guarantee.

15 2. As early as 1879, the People of this State recognized that “[a] general diffusion of
16 knowledge and intelligence [is] essential to the preservation of the rights and liberties of the
17 people.” Cal. Const. art IX, § 1. Accordingly, they amended the California Constitution to
18 require the State to “provide for a system of common schools by which a *free school* shall be kept
19 up and supported in each district.” Cal. Const. art. IX, § 5 (emphasis added). As our
20 Supreme Court has unequivocally pronounced: “This provision entitles ‘the youth of the State . . .
21 to be educated at the public expense.’” *Hartzell v. Connell*, 35 Cal. 3d 899, 905 (1984) (quoting
22 *Ward v. Flood*, 48 Cal. 36, 51 (1874)). “A school which [sic] conditions a student’s participation
23 in educational activities upon the payment of a fee clearly is *not* a ‘free school.’” *Id.* at 911.
24 Thus, the right to a free public education in California was established well over a century ago.

25 3. Despite the right’s venerable vintage, the State has done nothing as its public
26 school districts blatantly violate the free school guarantee by requiring students to pay fees and
27 purchase assigned materials for credit courses. For example, Plaintiff Jane Doe’s public high
28 school requires students to purchase textbooks, workbooks and assigned novels for credit courses.

1 Her school also charges students to take an Advanced Placement (“AP”) exam, even though
2 completing the exam is a course requirement and affects the student’s grade. Likewise, Plaintiff
3 Jason Roe’s public high school requires students to purchase workbooks, lab manuals, and
4 physical education uniforms for credit courses and also requires students to purchase locks and
5 student agendas as a general requirement for enrollment at the school.

6 4. Students who are unable to pay the fees or purchase the materials are
7 disadvantaged academically and overtly humiliated by teachers and school officials. For
8 example, Jane’s Spanish teacher wrote her name on the class whiteboard because she could not
9 pay for assigned workbooks. Her English teacher instructed her not to highlight or take notes in
10 borrowed books that Jane could not afford to purchase. And in the middle of taking her AP
11 United States History exam, the proctor approached Jane, indentified her by name and asked if
12 she had a check for the exam fee, stating that the person at the school charged with collecting
13 money wanted to see her immediately after the exam. Jason was required to purchase an English
14 workbook, a Chemistry lab manual, a Spanish language workbook, and a student agenda. Jason’s
15 mother was informed by a school official that, if Jason did not purchase an English workbook, the
16 only way he could access a school-provided copy to complete homework assignments was by
17 going to the school library after school. Because Jason’s family could afford to pay only a
18 portion of the fees for these required materials, Jason was compelled to start school without his
19 Chemistry manual and Spanish workbook.

20 5. The State’s failure to uphold the free school guarantee is not even remotely
21 isolated to Jane’s and Jason’s public high schools; it is systemic and widespread throughout
22 California. Countless public schools throughout California baldly publicize on their websites that
23 they require students to pay fees for courses and educational activities. Schools list fees they
24 charge students for credit courses in not less than 32 school districts, including Anaheim Union
25 High School District, Anderson Union High School District, Arcadia Unified School District,
26 Berkeley Unified School District, Beverly Hills Unified School District, Bonita Unified School
27 District, Burbank Unified School District, Cabrillo Unified School District, Calaveras Unified
28 School District, Capistrano Unified School District, Chaffey Joint Union High School District,

1 Conejo Valley Unified School District, Davis Joint Unified School District, Firebaugh-Las Deltas
2 Unified School District, Folsom Cordova Unified School District, Irvine Unified School District,
3 Long Beach Unified School District, Los Alamitos Unified School District, Mountain View/Los
4 Altos Union School District, Napa Valley Unified School District, New Haven Unified School
5 District, Orange Unified School District, Palo Alto Unified School District, Petaluma Joint Union
6 High School District, Sacramento City Unified School District, San Ramon Valley Unified
7 School District, Santa Monica-Malibu Unified School District, Sierra Sands Unified School
8 District, Temecula Valley Unified School District, Tustin Unified School District, and Walnut
9 Valley Unified School District. It is the State's failure to monitor and ensure its public school
10 districts' compliance with the free school guarantee that has allowed — indeed, encouraged —
11 this brazen constitutional violation to proliferate.

12 6. The State's failure has also deprived students who are unable to pay mandatory
13 fees of their "fundamental right" to "basic educational equality" under the California
14 Constitution. *Butt v. California*, 4 Cal. 4th 668, 685-86 (1992); Cal. Const. art. I, § 7(a) & art. IV,
15 § 16(a). "The State itself bears the ultimate authority and responsibility to ensure that its district-
16 based system of common schools provides basic equality of educational opportunity." *Butt*,
17 4 Cal. 4th at 685. By allowing its public school districts to condition access to educational
18 services and the quality of educational services offered to students dependent upon payment of
19 student fees, the State has failed to perform its constitutional duty of ensuring basic educational
20 equality irrespective of economic status. It thereby sanctions a dual school system which
21 deliberately favors students from families of means over students from disadvantaged households.

22 7. Although the State may currently be operating under difficult budgetary
23 constraints, "financial hardship is no defense to a violation of the free school guarantee."
24 *Hartzell*, 35 Cal. 3d at 912. The California Constitution's guarantee to a free and equal public
25 education is absolute and cannot be qualified by the finances of either the State or the students'
26 families.

1 concerning education. In his official capacity, Defendant Torlakson's legal residence is
2 Sacramento County. *See* Cal. Gov. Code §§ 1060, 11151.

3 15. Defendant State Department of Education is responsible for administering and
4 enforcing State laws concerning education. *See* Cal. Ed. Code §§ 33306, 33308. It is the State
5 department charged with revising and updating budget manuals, forms, and guidelines;
6 cooperating with federal and state agencies in prescribing rules and regulations, and instructions
7 required by those agencies; and assessing the needs and methods of collecting and disseminating
8 financial information. *See* Cal. Ed. Code § 33316. Defendant State Department of Education's
9 legal residence is Sacramento County. *See* Cal. Gov. Code § 11151.

10 16. Defendant State Board of Education is the governing and policy-determining body
11 of the State Department of Education. *See* Cal. Ed. Code § 33301. It is the State agency charged
12 with determining educational policy; adopting rules and regulations governing public education;
13 studying the State's educational conditions and needs; and making plans to improve the
14 administration and efficiency of public schools. *See* Cal. Ed. Code §§ 33030-33032. Defendant
15 State Board of Education is responsible for supervising and ensuring public school districts'
16 compliance with State laws concerning education. Plaintiffs are informed and believe that
17 Defendant State Board of Education's legal residence is Sacramento County.

18 17. Plaintiffs are ignorant of the names or capacities of other defendants responsible
19 for the wrongs described in this Complaint and, pursuant to California Code of Civil Procedure
20 section 474, sue such defendants under the fictitious names Does 1 through 100 inclusive.

21 VENUE

22 18. Los Angeles County is a proper venue for this action under California Code of
23 Civil Procedure section 401, which provides that an action against the State of California (or its
24 departments, boards, or officers) that may be brought in Sacramento County may be brought
25 instead in any county of this State in which the State Attorney General has an office.

26 19. This action may be brought in Sacramento County under Code of Civil Procedure
27 section 395 because at least some of the Defendants, if not all of them, reside there.

28 20. The State Attorney General has an office in Los Angeles County.

1 to a violation of the free school guarantee.” *Id.* The California Constitution’s guarantee to a free
2 and equal public education is absolute and cannot be qualified by the finances of either the State
3 or the students’ families.

4 26. The equal protection clauses of the California Constitution (Cal. Const. art. I,
5 § 7(a) & art. IV, § 16(a)) also prohibit conditioning public education on the payment of student
6 fees. “Basic educational equality” is a “fundamental right” under the California Constitution, and
7 any disparate treatment having a real and appreciable impact on it is subject to “strict and
8 searching judicial scrutiny.” *Butt*, 4 Cal. 4th at 683-86 (quoting *Serrano v. Priest (Serrano II)*,
9 18 Cal. 3d 728, 767-68 (1976)). Moreover, disparate treatment based on “wealth,” at least in the
10 context of public education, is subject to strict scrutiny as a “suspect classification.” *See Serrano*
11 *II*, 18 Cal. 3d at 765-66. Thus, the California Constitution forbids conditioning access to
12 educational activities or varying the quality of public education opportunities offered to students
13 based on students’ ability to pay fees.

14 27. Consistent with these constitutional mandates, several California statutes and
15 regulations independently prohibit charging fees for public education. Enacted in 1976,
16 California Education Code section 51004 reiterates that a state-provided “educational
17 opportunity” is “a right to be enjoyed without regard to . . . economic status.” Enacted
18 concurrently with section 51004, Education Code section 60070 provides that “[n]o school
19 official shall require any pupil . . . to purchase any instructional material for the pupils’ use in
20 school.” And Title 5, section 350 of the California Code of Regulations provides more broadly
21 that “[a] pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge
22 not specifically authorized by law.”

23 28. Finally, the responsibility to provide a free and equal education lies squarely with
24 the State. *Butt*, 4 Cal. 4th at 680-81. “Public education is an obligation which the State assumed
25 by the adoption of the Constitution.” *Butt*, 4 Cal. 4th at 680. “Local districts are the State’s
26 agents for local operation of the common school system, and the State’s ultimate responsibility
27 for public education cannot be delegated to any other entity.” *Id.* at 681. “The State itself bears
28

1 the ultimate authority and responsibility to ensure that its district-based system of common
2 schools provides basic equality of educational opportunity.” *Id.* at 685.

3 **PLAINTIFF JANE DOE’S PUBLIC HIGH SCHOOL CHARGES**

4 **STUDENTS NUMEROUS ILLEGAL FEES**

5 29. Plaintiff Jane Doe is a sixteen-year-old student attending a public high school in
6 Orange County. She finished her freshman and sophomore years at the school, and intends to
7 complete her junior and senior years there. Jane fully intends on pursuing a college education
8 after graduating from high school.

9 30. Jane’s high school violates her constitutional right to a free and equal public
10 education by charging numerous illegal fees. Even before her enrollment as a freshman, the
11 school required that Jane pay a mandatory fee to be eligible to enroll in any class. She was again
12 required to pay this enrollment fee before her sophomore year. The school also requires students
13 to pay fees and purchase assigned materials for credit courses.

14 31. Jane’s family, however, has been unable to pay these fees and purchase the
15 required course materials. This has caused both Jane and her family much hardship and
16 heartache. Jane’s father (“Mr. Doe”) has discussed the unconstitutionality of the student fees
17 with both the school’s principal and assistant principal on multiple occasions. During these
18 discussions, both school officials acknowledged that the student fees charged by the school are
19 illegal.

20 32. The school’s principal told Mr. Doe that Jane will not have to pay the illegal fees
21 that other students are required to pay, essentially creating an informal fee waiver for her. He has
22 assured Mr. Doe that Jane will not have to purchase school books, and that the school will
23 provide the books to Jane in a discreet and timely manner so as not to disadvantage or embarrass
24 her. But a fee waiver for students who are unable to pay required fees or purchase assigned
25 materials does not remedy the constitutional defect of such fees. *Hartzell*, 35 Cal. 3d at 913.
26 Regardless of the principal’s informal fee-waiver arrangement with Mr. Doe, the fees that the
27 school charges Jane and her schoolmates are unconstitutional.

28

1 33. Moreover, despite this informal prospective fee-waiver arrangement, Jane's high
2 school has required her on several occasions to pay for course registration, textbooks, workbooks,
3 assigned novels and AP exams. These illegal fees harmed Jane both academically and
4 emotionally.

5 34. Jane took Spanish as a freshman and sophomore. In both years, the Spanish
6 teacher required that students purchase workbooks. In her freshman year, Jane had to tell the
7 teacher that she could not afford to buy the workbook and that the principal had told her father
8 that she did not have to pay for school books. Jane did not receive her workbook until two days
9 after the rest of the class.

10 35. Jane's experience in her sophomore Spanish class was even worse. Because her
11 family again could not afford to buy the workbook, Jane did not have the book for the first several
12 weeks of the class. During that time, the Spanish teacher wrote the names of students who had
13 not yet purchased workbooks on the class whiteboard for the entire class to see. Jane's name was
14 initially one of four on the whiteboard, but later one of only two. She was humiliated in front of
15 the entire class. After suffering two or three weeks without the workbook, Jane went to the
16 school library and had to explain yet again that she could not afford to buy the book. Jane was
17 the last student in the entire class to receive the workbook.

18 36. Jane took Honors English, a prerequisite for AP English, as a freshman and
19 sophomore. On the first day of class in both years, the English teacher distributed order forms for
20 students to purchase assigned books from the school library. The teacher also required that
21 students buy a grammar book. In her freshman year, Jane had no choice but to ask, during class
22 and in front of her classmates, how she could get the books given that her family could not afford
23 to buy them. She told the teacher that the principal had told her father that she did not have to
24 pay for school books. The teacher responded that Jane could borrow the books, but that she could
25 not highlight or take notes in them because they were school property. During exams, the teacher
26 allowed students to use their books to cite passages. Not being able to mark her borrowed books
27 disadvantaged Jane relative to her classmates, who were able to use the highlighting and notes in
28 their purchased books to find the relevant passages more quickly.

1 37. Because of the academic handicap that Jane experienced in her freshman Honors
2 English class, her family had no choice but to purchase, with great difficulty, all but one of the
3 books assigned in her sophomore honors English class.

4 38. Planning to attend college after high school, Jane took AP United States History as
5 a sophomore. On the first day of class, the history teacher informed the students that they were
6 required to purchase an expensive textbook. Jane once again had to tell the teacher that she could
7 not afford to buy the textbook and that the principal had told her father that she did not have to
8 pay for school books. It took about a week for Jane's school-provided textbook to arrive; in the
9 meanwhile, Jane was forced to ask classmates to borrow theirs so that she could keep up with
10 class assignments. When the textbook finally arrived, the teacher told Jane that she could not
11 highlight or take notes in the book because it was school property. Not being able to use
12 highlighting and margin notes as study aids put Jane at a disadvantage both in the class and the
13 AP exam.

14 39. Jane took the AP United States History exam at the end of her sophomore year.
15 Knowing that a good exam score would help her get into college, Jane studied intensely for
16 several weeks to prepare for the exam. Jane's school requires that students pay a fee to take an
17 AP exam. Jane had not yet been able to pay the fee at the time of her AP United States History
18 exam. While Jane was taking the time-intensive exam, the proctor approached Jane, identified
19 her by name, and asked if she had a check for the exam fee, stating that the person at the school
20 charged with collecting money wanted to see Jane immediately after the exam. The interruption
21 broke Jane's focus and cost her valuable exam time. After the exam, Jane went to see the person
22 at the school charged with collecting money only to find that she was not even in her office.

23 40. Jane's public high school knowingly violates students' right to a free and equal
24 education by requiring them to pay fees and purchase assigned materials for credit courses,
25 including even core academic courses necessary for class progression and ultimately graduation.¹

26 _____
27 ¹ Jane's public middle school similarly required her to pay illegal fees as a student there.
28 The school required that Jane pay more than \$440 annually in course and uniform fees for her
physical education class and musical instrument rental fees for her music class. In some classes,
(Footnote continues on next page.)

1 **PLAINTIFF JASON ROE’S PUBLIC HIGH SCHOOL CHARGES**
2 **STUDENTS NUMEROUS ILLEGAL FEES**

3 41. Plaintiff Jason Roe is a fourteen-year-old student attending a public high school in
4 Orange County. He completed eighth grade last year and has just begun his freshman year at the
5 school. Jason fully intends on pursuing a college education after graduating from high school.

6 42. Jason’s high school also violates his constitutional right to a free and equal public
7 education by charging numerous illegal fees. The school provided Jason’s family a registration
8 checklist that details assigned materials for credit courses that students must purchase, including a
9 workbook for 9th Grade English, foreign language workbooks, science lab manuals, a school-
10 issued agenda and organizer, and a physical education uniform.²

11 43. Jason, however, has been unable to purchase all of the required course materials,
12 and the school refused to waive the fees for Jason. This has forced Jason and his family to make
13 difficult choices about which educational items to prioritize. When Jason’s family learned of the
14 fees that he would be required to pay prior to the start of the school year, his mother went to the
15 school to inquire about obtaining the materials without paying the fees. A school employee
16 provided her a fee waiver form, but only students who qualify for free-or-reduced-price lunch are
17 eligible under that fee-waiver process.

18 44. Because Jason was not eligible for the fee waiver, his mother asked the school
19 employee if Jason could use school-issued copies of the English workbook. Although school
20 copies are available to students in the school’s library after school, the school does not allow
21 students to check out the English workbook and take it home to complete assigned homework.

22
23 (Footnote continued from previous page.)

24 teachers made class grades partially dependent on the students’ payment of course fees or
awarded extra credit to students who bought \$20 t-shirts.

25 ² The school also requires students to purchase a school-issued lock for their lockers and
26 will not allow students to use less expensive locks from other sources. Jason did not have to
27 purchase a lock this year only because he was allowed to trade in a lock he had purchased the
previous year at his middle school. Jason did not have to purchase a physical education uniform
because he is a member of the football team.

1 The school employee told Jason's mother that if students cannot afford the workbook, they must
2 complete all homework assignments in the library after school. Because Jason plays football and
3 has afterschool practice that runs until the time that the school library closes, his mother
4 justifiably was concerned that he might have to choose between completing his homework and
5 attending practice.

6 45. Accordingly, when Jason's mother received a small bonus from her employer just
7 before the start of the school year, she immediately went to the school to purchase the workbook
8 and the school-issued agenda. Although Jason also needed to purchase a lab manual for his AP
9 Chemistry class and a workbook for his Honors Spanish class, his mother was not able to
10 purchase them at that time. Thus, Jason started school without required materials in two of his
11 classes because he could not afford to pay the mandated fees. Jason was able to purchase his lab
12 manual with money that his grandmother gave him as a present on the third day of school, but he
13 still has been unable to purchase his Spanish workbook.

14 46. Jason's public high school knowingly violates students' right to a free and equal
15 education by requiring them to pay fees and purchase assigned materials for credit courses,
16 including even core academic courses necessary for class progression and ultimately graduation.³

17 **COUNTLESS PUBLIC SCHOOLS THROUGHOUT CALIFORNIA**

18 **OPENLY PUBLICIZE THEIR ILLEGAL STUDENT FEES**

19 47. Defendants' failure to guarantee a free and equal education is not limited to Jane's
20 and Jason's public high schools. The charging of illegal student fees is endemic throughout
21 California. Countless public schools throughout California list on their websites mandatory
22

23 ³ Jason's public middle school similarly required him to purchase a student planner and a
24 school-issued uniform for physical education class. If he did not wear the uniform to physical
25 education class, he was docked points on his final grade. Additionally, he was docked points in
his Spanish class because his family could not afford to purchase the required materials to create
a class notebook.

26 Finally, Jason has younger siblings who attend elementary school in his school district.
27 The elementary school requires parents to purchase materials and supplies, like tissue paper and
writing materials, to contribute to the class stocks.

28

1 student fees for courses and educational activities. The following are just a few examples of
2 illegal student fees posted on websites, as of August 27, 2010:

- 3 a. All public high schools in the Tustin Unified School District in Orange County
4 charge students fees for art courses, music courses, automotive technology, fashion
5 design, interior design, and website development (www.tustin.k12.ca.us);
- 6 b. Anderson Union High School (Anderson Union High Sch. Dist.) in Shasta County
7 charges students fees for a medical career course (www.andersoncubs.com);
- 8 c. Arcadia High School (Arcadia Unified Sch. Dist.) in Los Angeles County charges
9 students fees for art and music courses (ahs.ausd.net);
- 10 d. Berkeley High School (Berkeley Unified Sch. Dist.) in Alameda County charges
11 students fees for AP Chemistry, AP Environmental Science, and AP Biology and
12 requires students to purchase a graphing calculator for certain math classes
13 (www.bhs.berkeley.net);
- 14 e. Beverly Hills High School (Beverly Hills Unified Sch. Dist.) in Los Angeles
15 County charges students fees for art courses and home economics
16 (bhhs.bhusd.org);
- 17 f. Bonita High School (Bonita Unified Sch. Dist.) in Los Angeles County charges
18 students fees for video and fashion classes (www.bonita.k12.ca.us);
- 19 g. Burroughs High School (Sierra Sands Unified Sch. Dist.) in Kern County charges
20 students fees for art courses (burroughs.ssusdschools.org);
- 21 h. Calaveras High School (Calaveras Unified Sch. Dist.) in Calaveras County charges
22 students fees for AP calculus, AP biology, AP chemistry, anatomy & physiology,
23 art courses, music courses, agricultural technology, automotive technology,
24 architecture design, and mechanical engineering
25 (www.calaveras.k12.ca.us.07%20schools/chs/index.htm);
- 26 i. California Academy of Math & Science (Long Beach Unified Sch. Dist.) in Los
27 Angeles County charges students fees for PE uniforms that they are required to
28 wear (www.californiaacademy.org);

- 1 j. California High School (San Ramon Valley Unified Sch. Dist.) in Contra Costa
2 County requires students to purchase foreign language workbooks and a locker
3 lock from the school (www.calhigh.net);
- 4 k. Capistrano Valley High School (Capistrano Unified Sch. Dist.) in Orange County
5 requires students enrolled in the Academy of Technology, Math, and Science, a
6 program for college bound students, to complete geometry prior to ninth grade or
7 to enroll in a summer program at their own expense (www.cvhs.com);
- 8 l. Chaparral High School (Temecula Valley Unified Sch. Dist.) in Riverside County
9 requires students to pay AP exam fee in order to enroll in AP classes
10 (chs.tvusd.k12.ca.us);
- 11 m. C.K. McClatchy High School (Sacramento City Unified Sch. Dist.) in Sacramento
12 County charges students fees for art courses and requires students to purchase PE
13 uniforms (www.mcclatchyhs.net);
- 14 n. Colony High School (Chaffey Union High Sch. Dist.) in San Bernardino County
15 charges students fees for art, dance, drama, and music classes and requires students
16 enrolled in PE to purchase PE uniforms from the school (www.cjuhsd.k12.ca.us);
- 17 o. Creekside High School (Irvine Unified Sch. Dist.) in Orange County charges
18 students fees for art courses (www.iusd.org/chs/);
- 19 p. Dana Hills High School (Capistrano Unified Sch. Dist.) in Orange County requires
20 students to purchase books and a subscription to a news magazine for AP
21 Government (www.dhs.net);
- 22 q. Davis Senior High School (Davis Joint Unified Sch. Dist.) in Yolo County charges
23 students fees for art and home economics (dhs.djUSD.k12.ca.us);
- 24 r. Dougherty Valley High School (San Ramon Unified Sch. Dist.) in Contra Costa
25 County requires students to purchase foreign language workbooks, PE uniforms,
26 and a locker lock from the school (doughertyvalleyhs.revtrak.net);
- 27 s. Firebaugh High School (Firebaugh-Las Deltas Unified Sch. Dist.) in Fresno
28 County charges students fees for PE uniforms (fhs-fldUSD-ca.schoolloop.com);

- 1 t. Folsom High School (Folsom Cordova Unified Sch. Dist.) in Sacramento County
2 charges students fees for foreign language courses (e.g., AP French, AP German,
3 AP Spanish), art courses, television production, and home economics
4 (www.edline.net/pages/Folsom_HS);
- 5 u. Half Moon Bay High School (Cabrillo Unified Sch. Dist.) in San Mateo County
6 requires students enrolled in Physical Education to purchase a lock from the school
7 (www.cabrillo.k12.ca.us);
- 8 v. Irvine High School (Irvine Unified Sch. Dist.) in Orange County charges students
9 fees for AP biology, AP chemistry, AP physics, art courses, drama courses, and
10 music courses (www.irvinehigh.org);
- 11 w. John Burroughs High School (Burbank Unified Sch. Dist.) in Los Angeles County
12 charges students fees for art and music courses
13 (teachers.yourhomework.com/eurioste/);
- 14 x. Logan High School (New Haven Unified Sch. Dist.) in Alameda County charges
15 students fees for AP studio art and requires students to pay the AP examination
16 and complete the exam to receive additional credit on their GPA
17 (loganweb.nhusd.k12.ca.us);
- 18 y. Los Alamitos High School (Los Alamitos Unified Sch. Dist.) in Orange County
19 charges students fees for art courses and requires them to purchase foreign
20 language workbooks (www.losal.org/lahs/);
- 21 z. Los Altos High School (Mountain View/Los Altos Union Sch. Dist.) in Santa
22 Clara County charges students fees for art courses (www.mvla.net/lahs/);
- 23 aa. Malibu High School (Santa Monica-Malibu Unified Sch. Dist.) in Los Angeles
24 County charges students fees for AP studio art (www.malibuhigh.org);
- 25 bb. Mountain View High School (Mountain View/Los Altos Union Sch. Dist.) in
26 Santa Clara County charges students fees for art courses and requires them to
27 purchase PE uniforms (www.mvla.net/mvhs/);
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- 1 cc. Northwood High School (Irvine Unified Sch. Dist.) in Orange County charges
2 students fees for AP biology, AP chemistry, AP environmental science, AP
3 physics, art courses, website development, accounting, and finance
4 (www.northwoodhigh.org);
- 5 dd. Oxford Academy (Anaheim Union Sch. Dist.) in Orange County requires students
6 to purchase a student ID, charges fees for physical education uniforms and lockers,
7 and requires students to purchase graphing calculators for certain math classes and
8 a USB flash drive from computer classes (www.oxfordacademy.us);
- 9 ee. Palo Alto High School (Palo Alto Unified Sch. Dist.) in San Mateo County
10 charges students fees for home economics courses (www.paly.net);
- 11 ff. Petaluma High School (Petaluma Joint Union High Sch. Dist.) in Sonoma County
12 charges students fees for art classes
13 (216.82.92.50/Visual_and_Performing_Arts_Catalog.asp);
- 14 gg. Rosemont High School (Sacramento City Unified Sch. Dist.) in Sacramento
15 County charges students fees for ceramics classes (schools.scusd.edu/rhs);
- 16 hh. San Clemente High School (Capistrano Unified Sch. Dist.) in Orange County
17 requires students to purchase books for English classes (www.sctritons.com);
- 18 ii. University High School (Irvine Unified Sch. Dist.) in Orange County charges
19 students fees for AP biology, art courses, anatomy & physiology, automotive
20 technology, computer programming, and typing (www.iusd.k12.ca.us/uhs/);
- 21 jj. Villa Park High School (Orange Unified Sch. Dist.) in Orange County charges
22 students fees for art courses and science labs
23 (webstores.activenetwork.com/school-software/villa_park_hs__onlin/);
- 24 kk. Walnut High School (Walnut Valley Unified Sch. Dist.) in Los Angeles County
25 charges students fees for all AP classes, IB classes, and computer classes
26 (whs.wvusd.k12.ca.us);
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- 1 ll. Westlake High School (Conejo Valley Unified Sch. Dist.) in Ventura County
2 requires all students to purchase a student ID and academic planner and charges
3 fees for physical education uniforms and locks (westlakehs.revtrak.net); and
4 mm. Woodbridge High School (Irvine United Sch. Dist.) in Orange County charges
5 students fees for art courses and automotive technology, and requires them to
6 purchase accounting working papers and algebra/geometry workbooks
7 (www.woodbridgehigh.org).

8 48. This list is only a small sample from those public schools that publish online at
9 least some of the illegal fees that they charge students for credit courses. It is just the proverbial
10 tip of the iceberg. The blame for this rampant constitutional deprivation lies squarely with
11 Defendants. Despite their constitutional mandate, Defendants have failed to monitor and ensure
12 public school districts' compliance with the free school guarantee.

13 **THE STATE OF CALIFORNIA IS ULTIMATELY RESPONSIBLE FOR ENSURING**
14 **THE RIGHT TO A FREE PUBLIC EDUCATION IS NOT VIOLATED.**

15 49. For decades, Defendant State of California and its public officials, agencies and
16 other entities responsible for promulgating and/or enforcing laws or policies relevant to the public
17 school system have by their actions acknowledged the State's ultimate responsibility for ensuring
18 that local education agencies do not charge illegal student fees. Specifically, the Legislature, state
19 agencies, and state officials have exercised their legal authority both to enact statutes and
20 regulations related to student fees and to provide legal and policy guidance to local school
21 districts with respect to the free school guarantee.

22 50. The Legislature has enacted numerous statutes regulating the imposition of student
23 fees by school districts and other local education agencies, in some cases restricting the
24 imposition of student fees explicitly, *see, e.g.*, Cal. Educ. Code §§ 38118 & 60070, or implicitly,
25 *see* Cal. Educ. Code § 51004, and in other cases purporting to authorize certain student fees, *see,*
26 *e.g.*, Cal. Educ. Code §§ 32221, 35330, 35331 & 35335.

1 51. More than seventy years ago, Defendant State Board of Education enacted Title 5,
2 section 350 of the California Code of Regulations, which provides: “A pupil enrolled in a school
3 shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.”

4 52. During its November 2010 meeting, Defendant State Board of Education
5 addressed the issue of student fees by considering a staff recommendation that the State Board of
6 Education President and the Superintendent of Public Instruction jointly draft a letter to California
7 public school districts informing them that charging mandatory student fees for educational
8 activities violates the California Constitution and state laws and requesting that they review their
9 policies to ensure that no illegal student fees are charged. Defendant State Board of Education
10 voted unanimously to approve the motion.

11 53. On December 17, 2010, then-Governor Arnold Schwarzenegger sent a letter to all
12 County and local public school superintendents in which he expressed concern about the
13 allegations raised in this lawsuit and urged the recipients to review policies and the practices of
14 the districts’ schools to ensure that students are not charged any illegal fees. The letter provided
15 an overview of relevant legal authority regarding student fees and stated that his administration
16 was “evaluating options to establish a state-level process that will help identify impermissible
17 fees to help ensure that districts and schools honor the free schools guarantee.” Governor
18 Schwarzenegger sent a revised letter with attachments that had not been included with the
19 original letter on December 30, 2010. These letters were sent as part of a proposed settlement
20 that was not finalized among the parties.

21 54. Based on information and belief, Defendant California Department of Education
22 issued a position paper in 1979 stating that requiring students to pay membership fees as a
23 condition of participation in athletics or other educational activities violates the “free school”
24 guarantee. In 1997, Defendant California Department of Education published Fiscal Management
25 Advisory 97-02 (dated October 30, 1997), regarding “Fees, Deposits, and Other Charges.” This
26 Advisory analyzed various student fees and provided legal guidance on the scope of the free
27 school guarantee. Based on information and belief, Defendant California Department of
28

1 Education was in the process of revising the guidance and planned to issue a revised version of
2 the guidance at the time that this suit was filed.

3 55. As the chief law officer of the state, the California Attorney General provides
4 formal legal opinions upon request to designated state and local public officials and government
5 agencies on issues arising in the course of their duties, and these formal legal opinions have been
6 accorded “great respect” and “great weight” by the courts. Over the years, the California
7 Attorney General has issued several opinions regarding student fees. *See, e.g.*, 87 Ops. Cal. Atty.
8 Gen. 132 (2004); 81 Ops. Cal. Atty. Gen. 153 (1998). As far back as 1942, the Attorney General
9 issued an opinion concluding that school districts may not require security deposits for locks,
10 lockers, books, class apparatus, musical instruments, uniforms, or other equipment, and that
11 students may not be required to pay membership fees in any student body organization as a
12 condition of participation in curricular or extracurricular activities. These formal opinions not
13 only summarize existing case law and statutory and regulatory authority, but they also expand
14 upon and interpret existing legal authority as they apply to specific student fees.

15 56. The California Legislative Counsel has also provided legal guidance regarding the
16 right to a free public education. For example, Legislative Counsel issued an opinion in 1976
17 concluding that fees for musical instruments used in extracurricular band programs, special
18 uniforms used in extracurricular activities, club dues, and fees for extracurricular athletic teams
19 violate Title 5, section 350 of the California Code of Regulations and the “free school guarantee.”
20 Ops. Cal. Leg. Counsel No. 17036 (November 16, 1979). In 1982, Legislative Counsel issued
21 another opinion interpreting Title 5, section 350 of the California Code of Regulations, in which it
22 concluded that fees for school-sponsored extracurricular activities are unconstitutional, reasoning
23 that even though such programs are not required by law, “once the programs are provided, the
24 governing board has no authority to impose a fee, charge or deposit for the program.” Ops. Cal.
25 Leg. Counsel No. 18293 (October 13, 1982).

26 57. The Fiscal Crisis and Management Assistance Team (FCMAT) was created in
27 1991 by the enactment of Assembly Bill 1200. FCMAT is an independent agency with the
28 mission of helping local educational agencies fulfill their financial and management

1 responsibilities by providing expedient fiscal advice, management assistance, training and other
2 related school business services. Since its creation, FCMAT has drafted and disseminated
3 numerous articles on the free schools guarantee and responded to specific inquiries from local
4 educational agencies and public school personnel related to student fees.

5 58. As the foregoing examples demonstrate, Defendant State of California, through the
6 Legislature and various public officials and agencies established under the California Constitution
7 or by statute, has consistently regulated and provided guidance to school districts and other local
8 education agencies related to student fees and the free schools guarantee, confirming Defendants'
9 ultimate responsibility for maintaining a system of free public schools as required by the
10 California Constitution.

11 59. Nonetheless, as outlined above, California's public schools are engaging in a
12 pervasive and public practice of charging students illegal fees, in violation of the free schools
13 guarantee. Accordingly, Defendant State of California and the other Defendants named in this
14 action have a duty to develop and maintain a monitoring and enforcement system to ensure that
15 public schools comply with the free school guarantee.

16 **CLASS ACTION ALLEGATIONS**

17 60. This action may be maintained as a class action under California Code of Civil
18 Procedure section 382.

19 61. Plaintiffs Jane Doe and Jason Roe represent an ascertainable class of all current
20 and future students in California public schools who have been or will be required to pay fees or
21 purchase materials for courses for academic credit.

22 62. The numerous and substantial questions of law and fact common to the class
23 predominate over any questions that may affect individual class members. The only substantial
24 question of fact — whether there is a statewide practice of California public school districts
25 requiring students to pay fees and purchase materials for credit courses — is common to the class.
26 All of the substantial questions of law are common to the class and include, without limitation,
27 the following:
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- 1 a. Whether Defendants' acts or omissions violate the free school clause of the
- 2 California Constitution (Cal. Const. art. IX, § 5);
- 3 b. Whether Defendants' acts or omissions violate the equal protection clauses of the
- 4 California Constitution (Cal. Const. art. I, § 7(a) & art. IV, § 16(a)), which
- 5 guarantee basic educational equality;
- 6 c. Whether Defendants' acts or omissions violate California Education Code
- 7 section 51004;
- 8 d. Whether Defendants' acts or omissions violate California Education Code
- 9 section 60070; and
- 10 e. Whether Defendants' acts or omissions violate title 5, section 350 of the California
- 11 Code of Regulations.

12 63. Plaintiffs Jane Doe and Jason Roe are members of the class that they seek to

13 represent, and their claims are typical of those of the class. Defendants' actions or omissions

14 result in Jane, Jason, and class members being denied a free and equal public education, in

15 violation of their constitutional and statutory rights.

16 64. Plaintiffs Jane Doe and Jason Roe can and will fairly and adequately represent the

17 class. They have retained counsel with substantial experience in prosecuting education reform

18 cases and class actions. Jane, Jason, and their counsel are committed to vigorously prosecuting

19 this action on behalf of the class and have the financial resources necessary to do so. Jane, Jason,

20 and their counsel have no interest adverse to those of the class.

21 65. Because the class is numerous and includes future students in California public

22 schools, it is impracticable (if not impossible) to bring them all before the Court. The expense

23 and burden of individual litigation would make it prohibitively difficult for individual class

24 members to redress the harm done to them. The burden on the courts from such individual

25 litigation would be substantial. Individual litigation would also present the potential for

26 inconsistent or contradictory judgments, which would magnify the delay and cost to the parties

27 and the courts. Accordingly, a class action presents fewer management difficulties, conserves the

28 resources of the parties and the courts, and better protects the rights of class members.

1 § 7(a) & art. IV, § 16(a)) prohibit varying the quality of public education based on students'
2 ability to pay fees or obtain waivers.

3 73. Defendants have violated and continue to violate Plaintiff Jane Doe's, Plaintiff
4 Jason Roe's, and class members' right to basic educational equality under the California
5 Constitution by failing to ensure that public school districts do not vary the quality of public
6 education based on students' ability to pay fees or obtain waivers.

7 74. Unless enjoined, Defendants will continue to violate the right to basic educational
8 equality under the California Constitution, and Plaintiff class members and the general public will
9 suffer irreparable harm.

10 75. Declaratory relief is proper here because Plaintiffs are informed and believe that
11 Defendants will deny that they have violated and continue to violate the right to basic educational
12 equality under the California Constitution.

13 **Third Cause of Action for Declaratory and Injunctive Relief Against All Defendants**

14 **(Wealth Discrimination; Cal. Const. art. I, § 7(a) & art. IV, § 16(a))**

15 76. Plaintiffs by this reference incorporate the foregoing paragraphs of this Complaint
16 as though fully set forth here.

17 77. Under the equal protection clauses of the California Constitution (Cal. Const.
18 art. I, § 7(a) & art. IV, § 16(a)), disparate treatment based on "wealth," at least in the context of
19 public education, is subject to strict scrutiny as a "suspect classification." *Serrano II*, 18 Cal. 3d
20 at 765-66. The equal protection clauses prohibit, as impermissible wealth-based discrimination,
21 varying the quality of public education based on students' ability to pay fees or obtain waivers.

22 78. Defendants have violated and continue to violate Plaintiff Jane Doe's, Plaintiff
23 Jason Roe's, and class members' right to receive equal protection of the laws under the California
24 Constitution by failing to ensure that public school districts do not vary the quality of public
25 education based on students' ability to pay fees or obtain waivers, resulting in impermissible
26 wealth-based discrimination.

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1 88. Defendants have violated and continue to violate section 60070 by failing to
2 ensure that public school districts do not require Plaintiff Jane Doe, Plaintiff Jason Roe, and class
3 members to purchase instructional materials for use in school.

4 89. Unless enjoined, Defendants will continue to violate section 60070, and Plaintiff
5 class members and the general public will suffer irreparable harm.

6 90. Declaratory relief is proper here because Plaintiffs are informed and believe that
7 Defendants will deny that they have violated and continue to violate section 60070.

8 **Sixth Cause of Action for Declaratory and Injunctive Relief Against All Defendants**

9 **(Cal. Code. Regs. tit. 5, § 350)**

10 91. Plaintiffs by this reference incorporate the foregoing paragraphs of this Complaint
11 as though fully set forth here.

12 92. Title 5, section 350 of the California Code of Regulations provides that “[a] pupil
13 enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically
14 authorized by law.”

15 93. Defendants have violated and continue to violate Title 5, section 350 by failing to
16 ensure that public school districts do not require Plaintiff Jane Doe, Plaintiff Jason Roe, and class
17 members to pay fees not specifically authorized by law.

18 94. Unless enjoined, Defendants will continue to violate Title 5, section 350, and
19 Plaintiff class members and the general public will suffer irreparable harm.

20 95. Declaratory relief is proper here because Plaintiffs are informed and believe that
21 Defendants will deny that they have violated and continue to violate Title 5, section 350.

22 **REQUEST FOR RELIEF**

23 Plaintiff Jane Doe, Plaintiff Jason Roe, and class members respectfully request the
24 following relief:

25 96. A determination that this action may be maintained as a class action;

26 97. A determination that this action may be maintained as a taxpayer action;


27 98. A declaratory judgment that Defendants’ conduct described in this Complaint
28 violate the following laws:

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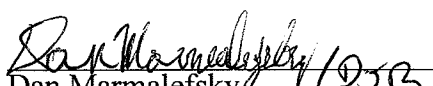
- a. Article IX, section 5 of the California Constitution,
 - b. Article I, section 7(a) and article IV, section 16(a) of the California Constitution,
 - c. Section 51004 of the California Education Code,
 - d. Section 60070 of the California Education Code, and
 - e. Title 5, section 350 of the California Code of Regulations;
99. An injunction directing Defendants to develop a monitoring and enforcement system to prevent the imposition of unconstitutional student fees for courses for academic credit;
100. An award of reasonable attorney fees to Plaintiffs' counsel;
101. Costs of suit; and
102. Any other equitable or legal relief that the Court deems just and proper.

Dated: April 7, 2011

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