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2 PLAINTIFF'S COMPLAINT AND APPLICATION FOR
3 INJUNCTIVE AND DECLARATORY RELIEF
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5 Plaintiff JOHN E. PELOZA, by and through his attorney
6 Cyrus Zal of The Rutherford Institute of California, complains of
7 the Defendants and alleges as follows:
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9 PRELIMINARY STATEMENT
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11 1. This is an action for declaratory and injunctive
12 relief and for damages, arising out of a controversy and dispute
13 between Plaintiff, who is a biology teacher in a public high
14 school, and the school district which employs him. The
15 controversy and dispute arises from Plaintiff's method of
16 teaching on the subject of the origins of life and of the
17 universe. There are basically two world views on the subject of
18 the origins of life and of the universe: the belief system of
19 evolutionism is based on the assumption that life and the
20 universe evolved randomly and by chance and with no Creator
21 involved in the process. The world view and belief system of
22 creationism is based on the assumption that a Creator created all
23 life and the entire universe. More particularly, the belief
24 system of evolutionism, also known as macro-evolution, postulates
25 that the "higher" life forms, such as human beings, evolved
26 from the "lower" life forms, such as the one-called amoeba and
27 that life itself "evolved" from non-living matter. The belief
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1 system of creationism, on the other hand, postulates that none of
2 the life forms evolved from any of the other life forms, but
3 appeared abruptly as separate and distinct life forms and that
4 there has never been any evolution of one life form into a
5 distinctly different life form. Both evolutionism and
6 creationism are religious belief systems in that the underlying
7 assumptions or postulates that each belief is based upon occurred
8 in the non-observable and non-recreatable past and hence are not
9 subject to scientific observation. Thus evolutionism, as well
10 as creationism, both represent historical, philosophical, and
11 religious belief systems, and neither one is a valid scientific
12 theory. In this action, Plaintiff is not seeking either
13 "balanced treatment" or "equal time" in the classroom for the
14 religious belief system of creationism. Plaintiff is seeking to
15 be free from pressure from Defendants, who are seeking to force
16 Plaintiff into the proselytizing of evolutionism upon his
17 students under the guise of a valid scientific theory. Plaintiff
18 desires his classroom to be void of the imposition of any
19 philosophical and religious belief systems, including
20 evolutionism and creationism, presented under the guise of
21 science. Plaintiff seeks the freedom to teach his students to
22 differentiate between a philosophical, religious belief system
23 on the one hand and a true scientific theory on the other, and
24 further seeks to teach his students the difference between
25 indoctrination and education. The religious belief systems of
26 evolutionism and creationism clearly conflict with each other in
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1 their philosophies: Plaintiff desires not to promote either
2 philosophy or belief system in teaching his biology class.
3 Defendants are pressuring Plaintiff to present the religious
4 belief system of evolutionism as a valid scientific theory:
5 however, evolutionism cannot be directly observed or re-created
6 in the laboratory in a scientific manner and hence it is not a
7 valid scientific theory. Defendants cannot provide valid
8 scientific evidence to support the religious belief system of
9 evolutionism. Defendants are attempting to disguise the
10 philosophical and religious belief system of evolutionism as a
11 valid scientific theory and are pressuring Plaintiff to teach it
12 as a valid scientific theory and Plaintiff is resistance to this
13 attempt by Defendants to teach the religious belief system of
14 evolutionism as a valid scientific theory. The school district
15 has issued a formal, written reprimand to Plaintiff as a result
16 of Plaintiff's resistance to the school district's pressure to
17 teach the religious belief system of evolutionism as a valid
18 scientific theory. It is Plaintiff's position that forcing him
19 to teach the religious belief system of evolutionism as a valid
20 scientific theory would force him to become an unwilling agent of
21 the school district in the establishment of the religion of
22 secular humanism, in violation of the First Amendment to the
23 United States Constitution. The general acceptance of the
24 religious belief system of evolutionism in academic circles does
25 not qualify it or validate it as a valid scientific theory.
26 Plaintiff seeks to vindicate, among other rights, his First
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2 Amendment rights to freedom of speech and to academic freedom to
3 teach the truth in the classroom, and to teach science in the
4 classroom, and the academic freedom rights of his students to be
5 taught the truth.

6 2. Defendants have conspired to deny Plaintiff his
7 First, Fifth and Fourteenth Amendment rights by engaging in
8 actions designed to destroy and damage Plaintiff's professional
9 reputation, career, and position as a public high school teacher.
10 Plaintiff believes that Defendants seek to dismiss him from his
11 position as a public high school teacher due to Plaintiff's
12 refusal to teach the religious belief system of evolutionism as a
13 valid scientific theory. Plaintiff also believes that Defendants
14 have engaged in a conspiracy to deny him his First, Fifth and
15 Fourteenth Amendment rights on the basis of his religious faith
16 of Christianity.

17 3. Finally, the school district has defined
18 "instructional time" as encompassing the entire time that
19 Plaintiff is on the school campus and has directed Plaintiff not
20 to discuss any religious matters during any of this
21 "instructional time", including student-initiated conversations
22 regarding religion during lunch, class breaks, and before and
23 after school hours. Plaintiff seeks a declaration that under his
24 First Amendment rights he is entitled to privately discuss
25 religion in conversations initiated by students during private,
26 non-instructional time on the school campus.

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4 THE PARTIES

5 4. Plaintiff is a resident and citizen of the City of
6 Dana Point, Orange County, California.

7 5. Defendant CAPISTRANO UNIFIED SCHOOL DISTRICT
8 (hereinafter "Defendant SCHOOL DISTRICT") is an independent
9 school district, organized and existing under the Constitution
10 and the laws of the State of California, for public secondary
11 school purposes, and is managed, governed and controlled by
12 Defendant BOARD OF TRUSTEES OF THE CAPISTRANO UNIFIED SCHOOL
13 DISTRICT (hereinafter "Defendant BOARD OF TRUSTEES").

14 6. Defendants PAUL B. HASEMAN, CRYSTAL KOCHENDORFER,
15 MARLENE M. DRAPER, ANNETTE B. GUDE, KATHRYN I. ITZEL, E.G. KOPP,
16 and A. EDWARD WESTBERG are members of the Board of Trustees of
17 Defendant SCHOOL DISTRICT . These named Defendants are all
18 residents of Orange County, California, and are sued in their
19 official capacities only.

20 7. Defendant JEROME R. THORNSLEY, (hereinafter
21 "Defendant THORNSLEY"), a resident of Orange County, California,
22 was, at certain times relevant to the matters alleged in this
23 complaint, the Superintendent of Defendant SCHOOL DISTRICT and is
24 sued in his individual and official capacity.

25 8. Defendant WILLIAM D. ELLER (hereinafter "Defendant
26 ELLER"), a resident of Orange County, California, is the
27 Assistant Superintendent, Instructional Operations, of Defendant
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2 9. Defendant GERALDINE JAFFE (hereinafter "Defendant
3 JAFFE"), a resident of Orange County, California, is an attorney
4 employed by the Orange County Department of Education and is sued
5 in her individual and official capacity.

6 10. Defendant THOMAS R. ANTHONY (hereinafter
7 "Defendant ANTHONY"), a resident of Orange County, California, is
8 the Principal of Capistrano Valley High School and is sued in his
9 individual and official capacity.

10 11. Defendant ROSS VELDERRAINE (hereinafter "Defendant
11 VELDERRAINE"), a resident of Orange County, California, is the
12 Vice Principal of Capistrano Valley High School and is sued in
13 his individual and official capacity.

14 12. Defendant JAMES CORBETT (hereinafter "Defendant
15 CORBETT"), a resident of Orange County, California, is a teacher
16 at Capistrano Valley High School and is sued in his individual
17 and official capacity.

18 13. Defendant PAUL PFLUEGER (hereinafter "Defendant
19 PFLUEGER"), a resident of Orange County, California, is a teacher
20 at Capistrano Valley High School and is sued in his individual
21 and official capacity.

22 14. Defendant RAY PANICI (hereinafter "Defendant
23 PANICI"), a resident of Orange County, California, is a teacher
24 at Capistrano Valley High School and is sued in his individual
25 and official capacity.

26 15. Defendant TIM DUNN (hereinafter "Defendant DUNN"),
27 a resident of Orange County, California, is a teacher at Dana
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1 Hills High School and is sued in his individual and official
2 capacity.
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4 16. Defendant WILLIAM REDDING (hereinafter "Defendant
5 REDDING"), a resident of Orange County, California, is a teacher
6 at Capistrano Valley High School and is sued in his individual
7 and official capacity.

8 17. Plaintiff is informed and believes and thereupon
9 alleges that at all times mentioned herein, except where alleged
10 to the contrary, Defendants, and each of them, were acting for
11 and on behalf of each of the other Defendants as their agents,
12 servants, representatives and/or employees and all acts, conduct,
13 and omissions herein alleged were perpetrated while said
14 Defendants were acting within the authorized course and scope of
15 said agency and employment.

16 18. Plaintiff is informed and believes and thereupon
17 alleges that at all times mentioned herein except when alleged to
18 the contrary, Defendants, and each of them, were the agents,
19 servants, employees and/or representatives of the remaining
20 Defendants and were at all times material hereto acting within
21 the authorized course, scope and purpose of said agency and
22 employment and/or that all of said acts were subsequently
23 ratified by the respective principals and benefits thereof
24 accepted by said principals.

25 19. Plaintiff is ignorant of the true names and
26 capacities of Defendants DOES 1 through 200, inclusive, and
27 therefore sues said Defendants by such fictitious names.
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1 Plaintiff will seek leave of the court to amend this complaint to
2 include the true names and capacities of said Defendants when
3 they have been ascertained. Plaintiff is informed and believes
4 and thereon alleges that each of the Defendants fictitiously
5 named herein as DOE is legally responsible, negligently or in
6 some other actual manner, for the events and happenings
7 hereinafter referred to and thereby proximately caused the
8 injuries and damages to the Plaintiff as hereinafter alleged.

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10 20. Whenever the term "DEFENDANTS" is used, it
11 includes all named Defendants and all DOES.

12 JURISDICTION AND VENUE

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14 21. This Court has jurisdiction of the subject matter
15 of this action under 28 U.S.C. Section 1331 in that Plaintiff
16 alleges violations of Federal law, particularly the First, Fifth
17 and Fourteenth Amendments to the United States Constitution. In
18 addition, jurisdiction is proper under 42 U.S.C. Sections 1981,
19 1983, 1985(3), 28 U.S.C. Section 1343 and the doctrine of pendent
20 jurisdiction. Declaratory relief is authorized by 28 U.S.C.
21 Sections 2201 and 2202 and Rule 57, Federal Rules of Civil
22 Procedure.

23 22. Venue in this District is proper under 28 U.S.C.
24 Section 1391(b) because the claims arise here.

25 FACTS COMMON TO ALL CAUSES OF ACTION

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27 23. Plaintiff hereby realleges paragraphs 1 through
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2 FACTS COMMON TO ALL CAUSES OF ACTION

3 23. Plaintiff hereby realleges paragraphs 1 through
4 22 and incorporates them herein as though set forth in full.

5 24. Within one year after sustaining the damages
6 hereinafter alleged, the Plaintiff presented a written claim to
7 Defendant SCHOOL DISTRICT pursuant to Government Code Section 910
8 et. seq.

9 25. After the claim was filed but less than 6 months
10 prior to the filing of this lawsuit, Defendant School District
11 rejected the Plaintiff's claim in its entirety.

12 26. On or about February 7, 1991, Defendant ANTHONY
13 issued a formal written reprimand to Plaintiff, wrongly accusing
14 Plaintiff of proselytizing students in the classroom and wrongly
15 accusing Plaintiff of teaching religion in the classroom. The
16 formal written reprimand incorporated a letter dated October 11,
17 1990, from Defendant VELDERRAINE to Plaintiff. The entire
18 contents of the February 7, 1991 written reprimand and the
19 October 11, 1990 letter from Defendant VELDERRAINE to Plaintiff
20 are incorporated herein as giving rise to Plaintiff's causes of
21 action as stated below.

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23 27. On or about February 12, 1991, Defendant ANTHONY
24 wrote a letter to Plaintiff in response to Plaintiff's inquiry to
25 Defendant ANTHONY regarding whether or not Defendant SCHOOL
26 DISTRICT was directing Plaintiff to teach evolution as "fact".
27 Defendant ANTHONY failed and refused to give a direct answer to
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1 Plaintiff's said inquiry.

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3 28. On or about February 13, 1991, or February 14,
4 1991, Plaintiff wrote a letter to Defendant ANTHONY requesting
5 written clarification regarding whether Defendant SCHOOL DISTRICT
6 was directing Plaintiff to teach evolution as the only valid
7 scientific theory. On or about February 19, 1991, Defendant
8 ANTHONY, in response to Plaintiff's inquiry, failed and refused
9 to give a direct and valid response to Plaintiff's said inquiry.

10 29. On or about February 25, 1991, Defendant ANTHONY
11 wrote a Memorandum to Plaintiff regarding the use of school
12 letterhead and teacher's mailboxes. The Memorandum stated that
13 "past practice has been that all materials distributed must
14 either be approved by school administration or District
15 administration. Also, the use of school letterhead is
16 inappropriate unless you have my permission." Plaintiff is
17 informed and believes, and thereupon alleges, that other teachers
18 have been allowed to distribute materials in the teachers'
19 mailboxes without prior school administration or District
20 administration approval and that other teachers have used the
21 school letterhead without the permission of Defendant ANTHONY.

22 30. On various dates beginning on or about February
23 7, 1991, and including March 11, 1991, and continuing on various
24 dates after that, Defendant ANTHONY spoke in person and by
25 telephone to various individuals, including CATHY BERGESON,
26 regarding Plaintiff. Defendant ANTHONY spoke to CATHY BERGESON
27 on March 11, 1991, regarding Plaintiff. Defendant ANTHONY made
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1 statements to these individuals, including CATHY BERGESON, which
2 are summarized and paraphrased as follows: "Creation should not
3 be taught in a Biology class. The issue is not Creation but a
4 personnel problem with Plaintiff that has existed for years,
5 involving the way Plaintiff has been conducting himself during
6 school hours. An incident had occurred in the classroom between
7 Plaintiff and a student. It was not a sexual encounter but
8 details cannot be revealed because it is a personnel problem."
9 Plaintiff denies that he has ever taught religion creationism in
10 his class.

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12 31. On or about March 15, 1991, Defendant ANTHONY
13 wrote a Memorandum to Plaintiff regarding Plaintiff's informal
14 grievance of alleged violations of the Collective Bargaining
15 Agreement existing between Plaintiff's Union and Defendant SCHOOL
16 DISTRICT. In the Memorandum dated March 15, 1991, from Defendant
17 ANTHONY to Plaintiff, Defendant ANTHONY wrongly asserted that the
18 Collective Bargaining Agreement had not been violated by
19 Defendant SCHOOL DISTRICT in the issuing of the formal written
20 reprimand to Plaintiff dated February 7, 1991.

21 32. On or about March 15, 1991, Defendant ANTHONY
22 wrote a memorandum to Plaintiff regarding Plaintiff's inquiries
23 he had made of Defendant ANTHONY on March 15, 1991. The
24 Memorandum of Defendant ANTHONY dated March 15, 1991, was a
25 complete stonewall of questions that Plaintiff had asked
26 Defendant ANTHONY and Defendant ANTHONY purported not to know
27 what terms such as "outside instructional time," or "origins," or
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1 "macro-evolution" meant. The entire contents of Defendant
2 ANTHONY's Memorandum to Plaintiff dated March 15, 1991, are
3 incorporated herein.
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5 33. On or about March 6, 1991, Defendant ANTHONY
6 stated to Mr. Schmitz that he very much wanted Plaintiff to lose
7 his job.

8 34. On or about April 10, 1991, Defendant PFLUEGER,
9 who is a teacher at Capistrano Valley High School, gave the
10 following question as a test to his student: "Why is Mr. Pelozo's
11 [the Plaintiff] reasoning that his First Amendment freedom of
12 speech is being taken away off base?" The students were required
13 by Defendant PFLUEGER to write an answer during class time and in
14 the classroom.

15 35. On or about February 16, 1991, a story was
16 published in the Orange County Register, a newspaper of general
17 circulation, in which Defendant THORNSLEY was stated to be the
18 source of the following information: 1) that Plaintiff had been
19 reprimanded and advised to teach according to school district
20 guidelines; 2) that the school district was continuing to
21 monitor Plaintiff, partly to build a case for a possible
22 dismissal hearing; and 3) that it was not Plaintiff's right to
23 not teach what he was employed to teach in the school district.

24 36. In the above-referenced February 16, 1991 news
25 story, Defendant PANICI, a teacher at Capistrano Valley High
26 School, was stated to be the source of the following information:
27 1) that Plaintiff was hurting his students; and 2) that
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1 Plaintiff's teaching in the evolution unit did not belong in the
2 science classroom.

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4 37. In the above-referenced February 16, 1991 news
5 story, Defendant DUNN, a teacher at Dana Hills High School, was
6 stated to be the source of the following information: that
7 Plaintiff was out to discredit evolution theory in order to
8 support creationism.

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10 38. On or about March 7, 1991, a story was published
11 in the Orange County Register, in which Defendant THORNSLEY was
12 stated to be the source of the following information: 1) that
13 Plaintiff was being investigated for teaching "creationism," 2)
14 that Plaintiff was being investigated for trying to convert non-
15 Christians to Christianity; and 3) that Plaintiff had been
16 reprimanded and eventually could face dismissal if he did not
17 adjust his teaching.

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19 39. On or about March 15, 1991, an article entitled
20 "Opinion: Religion Dominates Science in Pelosa's Classroom" was
21 published in Paw Prints, the Capistrano Valley High School
22 newspaper. Defendant CORBETT is the faculty advisor for Paw
23 Prints. The article wrongly accused Plaintiff of teaching
24 religion in his science class.

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26 40. On or about April 2, 1991, a story was published
27 in the Los Angeles Times, Orange County Edition, a newspaper of
28 general circulation, in which Defendant ELLER, the assistant
superintendent for instructional operations, was stated to be the
source of the following information: 1) that if a teacher

1 [referring to Plaintiff] constantly refutes evolution while
2 referring to an alternative religious perspective, then that is
3 clearly a violation of the state framework and clearly
4 inappropriate, because of the First Amendment's requirement that
5 church and state be separated; and 2) that Plaintiff's theories
6 do not meet scientific standards.
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8 41. In the above-referenced story of April 2, 1991,
9 Defendant JAFFE, an attorney for the Orange County Department of
10 Education, was stated to be the source of the following
11 information: 1) that despite Plaintiff's denials, he was
12 teaching creationism; 2) that creationism is not a scientific
13 theory, it is a religious belief; and 3) that it is
14 inappropriate to teach religion in a science class.

15 42. On or about May 13, 1991, Defendant ANTHONY
16 issued a formal written reprimand to Plaintiff, wrongly accusing
17 Plaintiff of proselytizing students in the classroom and wrongly
18 accusing Plaintiff of teaching religion in the classroom. The
19 written reprimand also directed Plaintiff as follows: "If a
20 student does ask you a question about religion, you are directed
21 to refer them to their parents or to their own clergy person for
22 guidance." The written reprimand also stated:

23 "You are further directed to teach evolution as a valid
24 scientific theory and to refrain from any teaching of
25 creationism as a valid scientific theory... your
26 refusal to teach evolution can be construed to
27 constitute persistent failure to obey local and state
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2 43. On or about May 13, 1991, Defendant ANTHONY
3 issued a formal written warning to Plaintiff, in which it was
4 stated:

5 "You are hereby directed to refrain from any attempt to
6 convert students to Christianity or initiating
7 conversations about your religious beliefs during
8 instructional time, which the District believes
9 includes any time students are required to be on campus
10 as well as the time students immediately arrive for the
11 purposes of attending school for instruction, lunch
12 time, and the time immediately prior to students'
13 departure after the instructional day. Please be
14 advised that should you fail to comply with these
15 written directives or should there be any additional
16 incidents of this kind, further disciplinary action
17 will be considered."

18 44. On or about May 23, 1991, Plaintiff was in the
19 teacher's lounge. On that date, Defendant CORBETT dropped a
20 piece of paper on the table and commented to Plaintiff:
21 "Congratulations on receiving your M.S. in biology." Defendant
22 CORBETT then walked away.

23 45. Also on or about May 23, 1991, Defendant
24 REDDING, in the presence of Plaintiff's students as they were
25 entering Plaintiff's class, made the following remarks to
26 Plaintiff: "John, I consider this offensive when you say you
27 have an M.S. in biology and you do not. John, you are
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2 dishonest." Defendant REDDING was holding out a piece of paper
3 while making these remarks to Plaintiff. The piece of paper was
4 an event program which had mistakenly stated that Plaintiff had
5 an M.S. in biology. At the event in question, an announcement
6 was made to the audience that the program had mistakenly listed
7 Plaintiff's master's degree to be in biology rather than in
8 physical education. Both Defendant CORBETT and Defendant REDDING
9 were aware that an announcement had been made correcting the
10 mistake in the program at the time the above-described incidents
11 took place.

12 46. Also on or about May 23, 1991, Defendant REDDING
13 wrongly harassed Plaintiff in the teacher's lounge regarding the
14 event program which had mistakenly stated that Plaintiff had an
15 M.S. in Biology.

16 47. On various dates in 1991, Defendant PFLUEGER, a
17 teacher at Capistrano Valley High School, has continually
18 criticized Plaintiff to his students and has proselytized his
19 students against Plaintiff in the classroom regarding the matters
20 which are the subject of this action. Defendant PFLUEGER has
21 encouraged his students to write letters to newspapers
22 criticizing Plaintiff and has offered his students extra credit
23 for having their letters of criticism regarding Plaintiff
24 published in the Los Angeles Times, a newspaper of general
25 circulation.

26 48. In or about May of 1991, Plaintiff received an
27 evaluation report from the Capistrano Unified School District for
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2 the report period of 1990 to 1991. The evaluation report was
3 unsigned and undated. The evaluation report contained "needs
4 improvement" and "unsatisfactory" evaluations of Plaintiff that
5 were not substantiated by any first-hand evidence but were based
6 on Defendants' desire to pressure Plaintiff into teaching the
7 religious belief system of evolutionism as a valid scientific
8 theory. The evaluation report is also evidence of discrimination
9 against Plaintiff based on his religion of Christianity.

10 49. On or about June 14, 1991, an article entitled
11 "Editorial: Show Cougar Courage" was published in Paw Prints,
12 the Capistrano Valley High School newspaper. Defendant CORBETT
13 is the faculty advisor for Paw Prints. The editorial represented
14 an attempt and an invitation by Defendants to enlist the entire
15 student body in the conspiracy to destroy and damage Plaintiff's
16 professional reputation, career, and position as a teacher.

17 50. On or about June 13, 1991, and other dates in
18 1991, Defendant PANICI, a teacher at Capistrano Valley High
19 School, circulated a petition among faculty members at Capistrano
20 Valley High School for them to sign, which stated:

21 "WE, the undersigned faculty members, find the
22 intimidation tactics employed by Mr. Peloza and his attorney(s)
23 to be repugnant and deleterious to the atmosphere of educational
24 freedom at Capistrano Valley High School.

25 WE strongly oppose the threat of litigation over the
26 rights of faculty members to speak freely to the news
27 media and each other.
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2 WE strongly support the rights of Mr. Peloza and all
3 faculty members to espouse their opinions in all forums
4 of discussion outside of the classroom.

5 WE unequivocally support our fellow faculty member's,
6 named in the claim filed against the district, right to
7 free speech outside of the classroom. They nor any of
8 us should become potential victims in a law suit [sic]
9 by exercising their inalienable rights."

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11 FIRST CAUSE OF ACTION

12 (Violation of Federal Rights under Section 1983,

13 Title 42 of United States Code)

14 (Against all Defendants)

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17 51. Plaintiff hereby realleges paragraphs 1 through
18 50, and incorporates them herein as though set forth in full.

19 52. This cause of action arises out of the United
20 States Constitution, particularly under the provisions of the
21 First, Fifth and Fourteenth Amendments to the Constitution of the
22 United States, and under Federal law, particularly Title 42 of
23 the United States Code, Section 1983. Each and all of the acts
24 of Defendants alleged herein in paragraphs 23 through 50 above in
25 depriving and conspiring to deprive Plaintiff of his First,
26 Fifth, and Fourteenth Amendment rights by pressuring and
27 requiring him to teach evolutionism, a religious belief system,
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1 as a valid scientific theory, were done by Defendants, and each
2 of them, not only as individuals, but under the color and
3 pretense of the statutes, ordinances, regulations, customs,
4 policy and usages of Defendant SCHOOL DISTRICT, and under the
5 authority of their office as administrators and employees for
6 such school district.
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8 53. Plaintiff is informed and believes and thereupon
9 alleges that Defendant SCHOOL DISTRICT's customs, usages, and
10 policy with respect to Plaintiff was to have Defendants deprive
11 and conspire to deprive Plaintiff of his First, Fifth, and
12 Fourteenth Amendment rights by the acts alleged in paragraphs 23
13 through 50 above by pressuring and requiring Plaintiff to teach
14 evolutionism, a religious belief system, as a valid scientific
15 theory.

16 54. The conduct of Defendants, and each of them, as
17 alleged herein, deprived Plaintiff of the following rights,
18 privileges and immunities secured to him by the Constitution of
19 the United States:

20 (A) The right of Plaintiff to be free from being
21 forced by Defendant SCHOOL DISTRICT to be an agent for the
22 establishment of the religious belief system of evolutionism and
23 secular humanism under the First and Fourteenth Amendments to the
24 Constitution of the United States;

25 (B) The right of Plaintiff to freedom of speech and
26 academic freedom under the First and Fourteenth Amendments to the
27 Constitution of the United States;
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1 (C) The right of Plaintiff not to be deprived of
2 life, liberty, or property without due process of law under the
3 Fifth and Fourteenth Amendments of the United States
4 Constitution; and
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6 (D) The right of Plaintiff to the equal protection of
7 the laws, secured by the Fourteenth Amendment to the Constitution
8 of the United States.

9 55. As a proximate result of the aforescribed
10 conduct of the Defendants, and each of them, Plaintiff has
11 suffered shock and injuries to his nervous system, all of which
12 injuries have caused and continue to cause Plaintiff great mental
13 and nervous pain and suffering, and Plaintiff was further
14 deprived of his United States Constitutional substantive rights
15 of speech, religion, due process, and equal protection, all to
16 his general damage in a sum which will be stated according to
17 proof at trial.

18 56. The acts of Defendants, and each of them, with
19 the exception of Defendants SCHOOL DISTRICT and BOARD OF
20 TRUSTEES, were willful, wanton, malicious, oppressive and
21 designed to injure Plaintiff, and justify an award of exemplary
22 damages against all Defendants except Defendants SCHOOL DISTRICT
23 and BOARD OF TRUSTEES.

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27 SECOND CAUSE OF ACTION
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2 (Violation of Federal Rights under Section 1985,
3 Title 42 of United States Code)
4 (Against all Defendants)
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6 57. Plaintiff hereby realleges paragraphs 1 through
7 56, and incorporates them herein as though set forth in full.

8 58. This cause of action arises out of the United
9 States Constitution, particularly under the provisions of the
10 Fifth and Fourteenth Amendments to the Constitution of the United
11 States, and under Federal law, particularly Title 42 of the
12 United States Code, Section 1985. Each and all of the acts of
13 Defendants alleged herein in paragraphs 23 through 50 above in
14 depriving and conspiring to deprive Plaintiff of his First
15 Amendment rights by pressuring and requiring him to teach
16 evolutionism, a religious belief system, as a valid scientific
17 theory, were done by Defendants, and each of them, not only as
18 individuals, but under the color and pretense of the statutes,
19 ordinances, regulations, customs, policy and usages of Defendant
20 SCHOOL DISTRICT, and under the authority of their office as
21 administrators and employees for such school district.

22 59. Plaintiff is informed and believes and thereupon
23 alleges that Defendant SCHOOL DISTRICT's customs, usages, and
24 policy with respect to Plaintiff was to have Defendants deprive
25 and conspire to deprive Plaintiff of his First, Fifth and
26 Fourteenth Amendment rights by the acts alleged in paragraphs 23
27 through 50 above by pressuring and requiring Plaintiff to teach
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2 evolutionism, a religious belief system, as a valid scientific
3 theory.

4 60. Plaintiff is informed and believes, and
5 thereupon alleges, that Defendants, and each of them, have
6 engaged in acts of abuse, harassment, defamation, and
7 intimidation by the alleged acts in paragraphs 23 through 50
8 above because Plaintiff belongs to the class of individuals who
9 are practicing Christians and who refuse to accept the world view
10 and religious belief system of evolutionism. Defendants, and
11 each of them, harbor ill-will and malice against Plaintiff
12 because he belongs to the said class of persons.

13 61. In or about 1990 and 1991, and within one year
14 of the filing of this action, Defendants, and each of them,
15 entered into an Agreement or mutual understanding with each other
16 and with others presently unknown to Plaintiff, whereby they
17 would seek to harass, intimidate, abuse, and defame Plaintiff and
18 otherwise interfere with the liberty of, and otherwise deny equal
19 protection of the laws, to Plaintiff.

20 62. In furtherance of the said conspiracy,
21 Defendants committed the overt acts alleged above in paragraphs
22 23 through 50, among others.

23 63. As a direct and proximate result of said
24 conspiracy, Plaintiff has suffered injuries and damages as
25 alleged below in violation of 42 U.S.C. Section 1985.

26 64. The conduct of Defendants, and each of them, as
27 alleged herein, deprived Plaintiff of the following rights,
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2 privileges and immunities secured to him by the Constitution of
3 the United States:

4 (A) The right of Plaintiff to be free from being
5 forced by Defendant SCHOOL DISTRICT to be an agent for the
6 establishment of the religious belief system of evolutionism and
7 secular humanism under the First and Fourteenth Amendments to the
8 Constitution of the United States;

9 (B) The right of Plaintiff to freedom of speech and
10 academic freedom under the First and Fourteenth Amendments to the
11 Constitution of the United States;

12 (C) The right of Plaintiff not to be deprived of
13 life, liberty, or property without due process of law under the
14 Fifth and Fourteenth Amendments of the United States
15 Constitution; and

16 (D) The right of Plaintiff to the equal protection of
17 the laws, secured by the Fourteenth Amendment to the Constitution
18 of the United States.

19 65. As a proximate result of the aforescribed
20 conduct of the Defendants, and each of them, Plaintiff has
21 suffered shock and injuries to his nervous system, all of which
22 injuries have caused and continue to cause Plaintiff great mental
23 and nervous pain and suffering, and Plaintiff was further
24 deprived of his United States Constitutional substantive rights
25 of speech, religion, due process, and equal protection, all to
26 his general damage in a sum which will be stated according to
27 proof at trial.
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2 66. The acts of Defendants, and each of them, with
3 the exception of Defendants SCHOOL DISTRICT and BOARD OF
4 TRUSTEES, were willful, wanton, malicious, oppressive and
5 designed to injure Plaintiff, and justify an award of exemplary
6 damages against all Defendants except Defendants SCHOOL DISTRICT
7 and BOARD OF TRUSTEES.
8

9 THIRD CAUSE OF ACTION

10 (Injunctive Relief Against All Defendants)
11

12 67. Plaintiff hereby realleges paragraphs 1 through
13 66 and incorporates them as though set forth in full.

14 68. Plaintiff hereby requests this court for a
15 preliminary and permanent injunction to grant him injunctive
16 relief to prevent the immediate and irreparable injury, loss or
17 damage that will result if Defendants continue to violate
18 Plaintiff's rights, privileges, and immunities secured to him
19 under the First, Fifth and Fourteenth Amendments to the United
20 States Constitution by the acts alleged above. Plaintiff has no
21 adequate remedy at law for Defendants' violation of these rights.
22

23 FOURTH CAUSE OF ACTION

24 (Declaratory Relief)

25 (Against All Defendants)
26

27 69. Plaintiff hereby realleges paragraphs 1 through
28

68 and incorporates them herein as though set forth in full.

70. Plaintiff further invokes the jurisdiction of this Court pursuant to the Federal Declaratory Judgment Act and asks this Court to order, adjudge and declare that the Defendants' actions in requiring Plaintiff to teach the religious belief system of evolutionism as a valid scientific theory violates the First and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1881. Plaintiff further seeks to be awarded his costs and reasonable attorneys fees necessarily incurred in pursuing this action pursuant to the Federal Declaratory Judgment Act and 42 U.S.C. Section 1988.

FIFTH CAUSE OF ACTION

(Violation of the Tom Bane Civil Rights Act)

(Against All Defendants)

71. Plaintiff hereby realleges paragraphs 1 through 70 and incorporates them herein as though set forth in full.

72. The acts of Defendants, as alleged above in paragraph 23 through 50, jointly and individually violate the Tom Bane Civil Rights Act as codified in California Civil Code Section 52.1 in that Defendants have, by threat, intimidation or coercion, interfered with or attempted to interfere with Plaintiff's exercise and/or enjoyment of rights secured by the Constitution and laws of the United States and the Constitution and laws of the State of California.

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2 73. As a result of the aforesaid actions by
3 Defendants, Plaintiff has suffered damages in an amount to be
4 determined by proof at trial. Defendants' actions, with the
5 exception of Defendants SCHOOL DISTRICT and BOARD OF TRUSTEES
6 were willful and malicious. Thus, Plaintiff is entitled to
7 punitive damages from all Defendants except Defendants SCHOOL
8 DISTRICT and BOARD OF TRUSTEES.

9
10 SIXTH CAUSE OF ACTION

11 (Intentional Infliction of Emotional Harm)

12 (Against All Defendants)

13
14 74. Plaintiff hereby realleges paragraph 1 through
15 73 and incorporates them as though set forth in full

16 75. The actions of Defendants, jointly and
17 individually, constitute tortious intentional infliction of
18 emotional harm on Plaintiff.

19 76. As a result of the aforesaid actions by
20 Defendants, Plaintiff has suffered damages in an amount to be
21 determined by proof at trial. Defendants' actions, with the
22 exception of Defendants SCHOOL DISTRICT and BOARD OF TRUSTEES,
23 were willful and malicious. Thus, Plaintiff is entitled to
24 punitive damages against all Defendants except Defendants SCHOOL
25 DISTRICT and BOARD OF TRUSTEES.
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1
2 PRAYER

3 WHEREFORE, Plaintiff prays judgment against Defendants,
4 together with costs, fees and disbursements of this action as
5 follows:

6 1. Declaring that Defendants' conduct complained of
7 is violative of Plaintiff's First, Fifth, and Fourteenth
8 Amendment rights under the United States Constitution;

9 2. Declaring that Defendants' conduct complained of
10 is violative of Plaintiff's rights under California Civil Code
11 Section 52.1 to be free from threat, intimidated or coercion in
12 the exercise or enjoyment of rights secured to all persons;

13 3. Granting Plaintiff a preliminary and permanent
14 injunction restraining and enjoining the Defendants, the
15 officers, directors, agents and representatives of Defendants,
16 and all other persons whomsoever, known or unknown, acting on
17 their own behalf or in concert with them, in any manner or by any
18 means from:

19 A. Depriving Plaintiff of his First, Fifth, and
20 Amendment rights

21 under the United States Constitution to freedom of
22 speech, academic freedom, freedom of religion, due
23 process and equal protection of the laws by requiring
24 Plaintiff to teach the religious belief system of
25 evolutionism as a valid scientific theory;

26 B. Depriving Plaintiff of his First, Fifth, and
27 Fourteenth Amendment rights under the United States
28

1 Constitution to freedom of speech, academic freedom,
2 freedom of religion, due process and equal protection
3 of the laws by prohibiting Plaintiff from responding to
4 student-initiated inquiries to Plaintiff regarding
5 religion during non-instructional time on the school
6 campus;

7
8 4. Granting general, compensatory and punitive
9 damages;

10 5. Granting Plaintiff's reasonable attorney's fees,
11 pursuant to, among other things, 42 U.S.C. Section 1988; and

12 6. Granting such other and further relief as the
13 Court deems just and proper.

14
15
16 DATED: September 30, 1991

17
18 Respectfully Submitted,

19 THE RUTHERFORD INSTITUTE
20 OF CALIFORNIA

21
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23 By:

24 
CYRUS ZAL,
ATTORNEY FOR PLAINTIFF
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2 DEMAND FOR JURY TRAIL

3 The Plaintiff in the above-entitled action requests a
4 trial by jury as provided by Amendment VII of the United States
5 Constitution and by Rule 38 of the Federal Rules of The Civil
6 Procedure.

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8 Dated: September 30, 1991

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11 CYRUS GAL,
12 ATTORNEY FOR PLAINTIFF
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