

LARRY CALDWELL, SBN 88867
1380 Lead Hill Boulevard Suite 106
Roseville, CA 95661
(916)774-4667
(916)797-4954

Plaintiff, In Pro Per

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY CALDWELL,

Plaintiff,

vs.

**ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT; JAMES JOINER;
R. JAN PINNEY; TONY MONETTI;
STEVEN LAWRENCE; DONALD
GENASCI; RONALD SEVERSON,**

Defendants.

Case No. 2:05-CV-00061-FCD-JFM

**AMENDED COMPLAINT FOR: (1)
VIOLATION OF CIVIL RIGHTS: FREE
SPEECH [42 U.S.C. §1983; First
Amendment, United States
Constitution; Fourteenth
Amendment, United States
Constitution; California Constitution];
(2) VIOLATION OF CIVIL RIGHTS:
ESTABLISHMENT CLAUSE [42 U.S.C.
§1983; First Amendment, United
States Constitution; Fourteenth
Amendment, United States
Constitution; California Constitution];
(3) VIOLATION OF CIVIL RIGHTS:
EQUAL PROTECTION [42 U.S.C.
§1983; Fourteenth Amendment,
United States Constitution; California
Constitution];**

REQUEST FOR JURY TRIAL

PARTIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

1. Plaintiff, Larry Caldwell (“Caldwell”), an individual, is a resident of Placer County, California, who is, and at all times relevant to this action has been, a parent and taxpayer in the Roseville Joint Union High School District. Caldwell has three children, a daughter who presently attends Granite Bay High School in the Roseville Joint Union High School District, a son who is presently in the seventh grade who will be attending high school in the Roseville Joint Union High School District commencing with the 2006-2007 school year, and a two-year old daughter who also will attend high school in the Roseville Joint Union High School District in the future, when she reaches high school age. Caldwell has paid taxes to Placer County and the State of California, both as a business owner and as an individual resident. Caldwell alleges on information and belief that the District and/or the State of California have spent public money on instructional materials used in biology classes in the District.

2. Defendant, Roseville Joint Union High School District (the “District” or “RJUHSD”), is a local school district, organized under the laws of the State of California, and whose district is located in Placer County, California and Sacramento County, California.

3. Defendant, James Joiner, also known as Jim Joiner (“Joiner”), is an individual who is being sued in his individual capacity and is a resident of Placer County, California. Joiner is, and at all times relevant to this action has been, a member of the Board of Trustees of the District. Joiner is also a licensed attorney.

4. Defendant, R. Jan Pinney also known as Jan Pinney (“Pinney”), is an individual who is being sued in his individual capacity and is a resident of Placer County, California. Pinney is, and at all times relevant to this action has been, a member of the Board of Trustees of the District.

5. Defendant, Tony Monetti (“Monetti”), is an individual who is being sued in his individual capacity and is a resident of Placer County, California. Monetti is, and at all times relevant to this action has been, the Superintendent for the District.

6. Defendant, Steven Lawrence (“Lawrence”), is an individual who is being sued in his individual capacity and is a resident of Placer County, California. Lawrence

1 is, and at all times relevant to this action has been, the Assistant Superintendent for
2 Curriculum and Instruction for the District.

3 7. Defendant, Donald Genasci also known as Don Genasci (“Genasci”), is an
4 individual who is being sued in his individual capacity and is believed to be a resident of
5 Placer County, California. Genasci is, and at all times relevant to this action has been,
6 the Deputy Superintendent for Personnel and chief compliance officer for the District.

7 8. Defendant, Ronald Severson, also known as Ron Severson (“Severson”),
8 is an individual who is being sued in his individual capacity and is a resident of Placer
9 County, California. Severson is, and at all times relevant to this action has been, a
10 member of the District’s administration and is the principal of Granite Bay High School.

11 **JURISDICTION**

12 9. This court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and
13 1343 over plaintiff’s claims arising under the First and Fourteenth Amendments to the
14 United States Constitution, 42 U.S.C. §1983, and the Declaratory Judgment Act, 28
15 U.S.C. §§ 2201 and 2202. This court has ancillary jurisdiction pursuant to 28 U.S.C.
16 §1367 over each of plaintiff’s claims, to the extent they arise under the California
17 Constitution.

18 **VENUE**

19 10. Venue is proper in the Eastern District of California, in Sacramento, under
20 28 U.S.C. §1391(b) based on the fact that one or more of the defendants resides in the
21 Eastern District, based upon the fact that all of the defendants reside in the State of
22 California, and based on the fact that most if not all of the events and conduct on which
23 the claims are based occurred, or are occurring, in the Eastern District.

24 **COMMON ALLEGATIONS**

25 **A. Introduction and Background**

26 11. Plaintiff, Larry Caldwell, is a parent and taxpayer in the Roseville Joint
27 Union High School District (the “District”). Headquartered in Roseville, California (a
28 suburb of Sacramento), the District serves parts of south Placer County and
29 Northeastern Sacramento County. In June of 2003, Caldwell learned that the District’s
30 Board of Trustees (“School Board”) would be considering a new biology textbook for

1 adoption. The School Board was to make its final vote for approval of the biology
2 textbook at a July 1, 2003 public meeting. Caldwell decided to exercise his right as a
3 citizen to be involved in the textbook selection process. California's statutory
4 scheme requires local school districts to promote involvement by parents and other
5 interested community members in the selection of all instructional materials used in
6 public high schools. (Cal. Ed. Code §60002.)

7 12. California Education Code §60400 makes it illegal for the governing board
8 of a California high school district to adopt a textbook for use as a basic instructional
9 material without first making a determination that the textbook's presentation of its
10 subject matter is "accurate, objective and current," as required by California Education
11 Code §60045. Education Code §60046 grants high school governing boards authority
12 to conduct investigations of a proposed textbook's compliance with the statutory
13 requirements. According to the California Department of Education, textbooks are
14 responsible for 80% of student learning in classrooms, which makes it critical for public
15 high school Districts to adopt only textbooks that present their subject matter
16 "accurate[ly], objective[ly] and "current[ly]."

17 13. Commencing in the Spring of 2003, the District's Assistant Superintendent
18 for Curriculum and Instruction, defendant Lawrence, determined that the District needed
19 to adopt a new textbook as the basic instructional material for biology classes in the
20 District. The District appointed a district-wide committee of science teachers (the
21 "Textbook Screening Committee") to identify, evaluate and recommend a biology
22 textbook for adoption by the School Board. The Textbook Screening Committee
23 identified three proposed biology textbooks as finalists, and from the three finalists, a
24 single biology textbook was selected by the Textbook Screening Committee and
25 recommended to the School Board for adoption as the basic instructional material for
26 biology classes throughout the District. The biology textbook selected by the Textbook
27 Screening Committee and recommended to the School Board for adoption was *Holt*
28 *Biology*, by George B. Johnson and Peter H. Raven, published by Holt, Rhinehart and
29 Winston (2004) (the "Holt Biology Textbook")

30 14. A major topic of discussion –perhaps the most prominently and frequently

1 discussed topic– in the Holt Biology Textbook is the subject of *evolution*, including
2 Charles Darwin’s well-known theory of evolution by natural selection, and related
3 theories, such as the “chemical evolution” theory regarding how non-living matter
4 spontaneously turned itself into the first living cell on earth. Two out of eighteen
5 chapters in the Holt Biology Textbook, Chapters 12 and 13, are devoted exclusively to
6 evolution, and evolution provides a “unifying theme” and context for nearly all of the
7 other subjects discussed in the Holt Biology Textbook. Chapter 12, entitled “History of
8 Life on Earth,” which includes Section 1: “How Did Life Begin”, traces scientific theories
9 of the evolution of life on earth commencing with a discussion of “chemical evolution,”
10 regarding scientific theories for how the basic chemicals of life came into existence,
11 followed by a discussion of scientific theories for how these chemicals developed
12 naturally into the first cells on earth, and then how cells evolved into increasingly more
13 complex forms of life on earth. Chapter 13, entitled “Theory of Evolution,” commences
14 with a discussion of Darwin’s theory of evolution by natural selection, followed by
15 discussions of “Evidence of Evolution,” and “Examples of Evolution.” Evolution is
16 discussed as a central theme throughout the remainder of the Holt Biology Textbook,
17 which is not surprising in light of the claims often made in science to the effect that
18 “evolution is the unifying theme of biology,” and that “nothing makes sense in biology
19 without evolution.”

20 15. Notwithstanding the fact that evolution is the central unifying theme of the
21 Holt Biology Textbook, plaintiff is informed and believes that the Textbook Screening
22 Committee performed absolutely no assessment of whether the Holt Biology Textbook’s
23 presentation of evolution was “objective” in compliance with Education Code §60045,
24 before recommending the Holt Biology Textbook to the Board of Trustees for adoption.
25 Plaintiff also alleges that the science teachers on the Textbook Screening Committee
26 lacked the professional qualifications and competence to do a reasonably sufficient
27 assessment of whether the Holt Biology Textbook’s discussion of evolution is “objective”
28 in compliance with Ed. Code Sec. 60045.¹

¹Some of the science teacher who assessed the proposed biology textbook before

1 16. Plaintiff is also informed and believes that the Textbook Screening
2 Committee did not make a reasonably satisfactory analysis and determination that the
3 Holt Biology Textbook’s presentation of evolutionary was “accurate,” before
4 recommending the Holt Biology Textbook to the School Board for adoption. At most,
5 the Textbook Screening Committee appears to have done only a very cursory review of
6 the overall accuracy of the Holt Biology Textbook. In this regard, based upon the
7 subsequent admission by the science teachers comprising the Textbook Screening
8 Committee that they are not qualified to assess the scientific merits of a discussion of
9 evolution, without relying on outside science experts, it appears that a thorough
10 assessment of the accuracy of the Holt Biology Textbook’s presentation of evolution by
11 the Textbook Screening Committee would not have been reliable in any event, absent
12 reliance on expert opinions from qualified –and unbiased– outside scientists. There is
13 no evidence the Textbook Screening Committee sought or relied on such expert opinion
14 before recommending the Holt Biology Textbook to the School Board for adoption.

15 17. Notwithstanding California’s statutory requirements for adoption of
16 instructional materials, as of the July 1, 2003 School Board meeting at which the School
17 Board was to take its final vote on adoption of the biology textbook, the District’s School
18 Board, administration and staff had conducted *no* investigation or determination of the
19 “objectiveness” of the proposed biology textbook, and had conducted only a cursory
20 investigation and determination of the “accuracy” and “currentness” of the proposed
21 biology textbook.

22 18. The District’s policy and staff rule regarding the adoption of textbooks
23 grants citizens the right to submit comments regarding the proposed textbook during the
24 time period between the “first reading” and initial vote on adoption of a proposed
25 textbook at a School Board meeting, and the “final vote” on adoption of a proposed
26 textbook at a subsequent School Board meeting, which is usually approximately 30
27 days later. In this case, the School Board conducted the “first reading” and initial vote
28 on adoption of the proposed biology textbook at its June 3, 2003 regular public School

presenting it to the School Board later admitted that they are not appropriately qualified to make
a scientific assessment of the biology textbook and other instructional materials.

1 Board meeting, and the School Board scheduled its final vote on adoption of the
2 proposed biology textbook at its July 1, 2003 regular public meeting.

3 19. Prior to the July 1, 2003 School Board Meeting, Caldwell, arranged for a
4 science expert, Cornelius G. Hunter, who holds a Ph.D. in biophysics from the
5 University of Illinois, to review the biology textbook and provide an expert scientific
6 opinion regarding whether the Holt Biology Textbook's presentation of the theory of
7 evolution was "accurate, objective and current," as required by California Education
8 Code §60045. Dr. Hunter produced a written expert opinion that concluded, in effect,
9 that the Holt Biology Textbook's presentation of evolution was neither "accurate",
10 "objective" nor "current." More specifically, Dr. Hunter concluded:

11 "This is a high-quality textbook that teaches biology from a strict evolution
12 perspective. As such the text should be useful in preparing the students for
13 further education or employment where knowledge of this perspective is
14 required. Unfortunately, because the text is strongly committed to the evolution
15 perspective the science is badly compromised. Students are consistently misled
16 with incomplete, misleading or even false science, and are not encouraged to
17 think scientifically about the subject (despite critical thinking exercises
18 throughout).

19 "In Unit 3 there are glaring scientific problems and mistakes with the presentation
20 of evolution. These can be found on nearly every page of Chapters 12 and 13.
21 In later units, evolutionary concepts, images and language are used uncritically
22 and unnecessarily. *While understanding the evolution perspective is important in
23 today's society, it is simply not good science or good education to present such a
24 misleading view of biology. If this text is used, it should be supplemented with a
25 scientific criticism of evolution.*" (Emphasis added.)

26 20. At the July 1, 2003 meeting of the School Board, Caldwell presented Dr.
27 Hunter's written expert opinion, along with live expert testimony by Dr. Hunter, and
28 Caldwell also provided testimony regarding the proposed adoption. In light of Dr.
29 Hunter's expert opinion to the effect that the Holt Biology Textbook is not "accurate",
30 "objective" and "current," Caldwell and Dr. Hunter urged the School Board to condition

1 its adoption of the Holt Biology Textbook on adoption of additional instructional
2 materials to be used in conjunction with the biology textbook, so that, together, the
3 textbook and additional instructional materials would comprise an “accurate,” “objective”
4 and “current” presentation of the evolution. Dr. Hunter’s expert opinion was the only
5 competent science evidence on “accuracy, objective[ty] and current[ness]” presented to
6 the School Board at or before the July 1, 2003 School Board meeting.

7 21. On July 1, 2003, the School Board voted to adopt the Holt Biology
8 Textbook –without adopting any additional instructional materials for biology as
9 recommended by Dr. Hunter. The School Board did so even though the only competent
10 science evidence before the School Board was that the biology textbook *was not*
11 accurate, objective and current, and therefore *was not* in compliance with the
12 requirements of the California Education Code. The School Board indicated that it
13 would consider adoption of additional instructional materials for biology, but at the
14 request of the teachers’ union representative, the School Board agreed to delay
15 consideration of such additional instructional materials until a later meeting, when the
16 science teachers would be back from their summer break and able to participate in the
17 decision.

18 22. Following the July 1, 2003 School Board meeting, Caldwell remained
19 concerned that the School Board’s adoption and use in classrooms of a biology
20 textbook that is not “accurate, objective and current” would result in students receiving a
21 biology education that is not “accurate, objective or current.” In this regard, it is often
22 said by biologists that evolution is the “unifying theme” of biology, without which “nothing
23 makes sense in biology.” Caldwell alleges it is important that such a central theme of
24 biology should be presented in an accurate, objective and current manner. Since the
25 District’s new biology textbook is defective in failing to comply with these statutory
26 requirements, Caldwell decided to make two proposals to the District to cure the defects
27 in the textbook, as well as utilizing a District procedure for public challenges to already
28 adopted textbooks.

29 23. The first proposal Caldwell decided to recommend to the District was for
30 the School Board to adopt a School Board policy on the teaching of evolution that later

1 came to be known as the “Quality Science Education Policy.” (Sometimes referred to
2 as the “QSE Policy”). The Quality Science Education Policy, as originally proposed,
3 provides:

4 “Because ‘nothing in science or in any other field of knowledge shall be taught
5 dogmatically’ and ‘scientific theories are constantly subject to testing,
6 modification, and refutation as new evidence and new ideas emerge’ (1),
7 teachers in the Roseville Joint Union High School District are expected to help
8 students analyze the scientific strengths and weaknesses of existing scientific
9 theories, including the theory of evolution.”

10 “(1) California State Board of Education Policy on the Teaching of Natural
11 Sciences (1989).”

12 24. A second proposal Caldwell decided to recommend to the District was for
13 the School Board to adopt one or both of two sets of additional instructional materials
14 that were designed to cure the defect in the biology textbook.

15 25. In addition to these two proposals, Caldwell also initiated a third procedure
16 to attempt to remedy the problems with the Holt Biology Textbook: an instructional
17 materials challenge to the textbook under a District procedure for parents to assert
18 challenges to adopted textbooks and other instructional materials (referred to as the
19 “Textbook Challenge”).

20 26. At the direction of the School Board at its September 2, 2003 Board
21 Meeting, Caldwell also attempted to initiate a fourth procedure to bring his science
22 education proposals before the public and District decision makers, by seeking to have
23 his science education proposals placed on the agenda for public discussion at meetings
24 of the Curriculum Instruction Team of his daughter’s high school, Granite Bay High
25 School (the “Granite Bay CIT”). The Granite Bay CIT is publicly promoted by Severson,
26 the principal of Granite Bay High School, as a forum in which parents and other
27 community members can allegedly have input on school policy issues for Granite Bay
28 High School. The Granite Bay CIT holds monthly public meetings during September
29 through May of each school year.

30 27. As described in detail below, over the twelve month period from

1 approximately June 1, 2003 through June 1, 2004, Caldwell sought to exercise his
2 constitutional rights, statutory rights and District procedures to bring these two
3 proposals for improvement of science education and the textbook challenge before the
4 District's decision makers for consideration and approval. However, as alleged in detail
5 below, the District, acting through certain of its school board members, certain members
6 of its administration, and certain members of its staff, rejected Caldwell's science
7 education proposals, and in the process, violated Caldwell's right to equal protection
8 under the Fourteen Amendment to the United States Constitution, violated Caldwell's
9 right to free speech protected under the First Amendment to the United States
10 Constitution, as well as under the free speech provisions of the California Constitution,
11 and violated Caldwell's freedom of religion rights protected under the Establishment
12 Clause of the First Amendment to the United States Constitution, and under the relevant
13 religious freedom clauses of the California Constitution.

14 **B. Definitions of Certain Terms**

15 28. As used throughout this complaint, the term *evolution* includes Darwin's
16 original theory of natural selection as an explanation of the history and diversity of life
17 on earth, as well as the current neo-Darwinian synthesis of Darwin's original theory,
18 including such additions to the theory as genetic drift and punctuated equilibrium, as
19 well as scientific theories regarding the origins of the very first life and living cells on
20 earth, such as "chemical evolution", since this full spectrum of evolutionary theories is
21 discussed in the biology textbook adopted by RJUHSD.

22 29. The term *Majority Scientific Viewpoint* refers to the scientific viewpoint that
23 *evolution* is a scientific theory that is so well-established by allegedly overwhelming
24 scientific evidence as to be a fact that is beyond any debate or criticism by scientists,
25 science teachers, students, or rational people generally. One corollary of the Majority
26 Scientific Viewpoint on Evolution is that there is no scientific evidence that calls into
27 question the validity of *evolution*, and that any arguments questioning the validity of
28 *evolution* are necessarily unscientific argument. For purposes of this complaint, an
29 important corollary to the *Majority Scientific Viewpoint* is the educational viewpoint that
30 no scientific criticism of *evolution* and no scientific evidence posing challenges to

1 *evolution* should be presented to students in high school biology classes, that students
2 in biology classes should not be encouraged to question or debate the validity of
3 *evolution* in biology classes, and that students should not be taught to approach
4 *evolution* with an open mind in biology classes, nor should students be taught to
5 develop critical thinking skills regarding *evolution* in biology classes. Caldwell alleges
6 that the viewpoint regarding science education advocated by proponents of teaching
7 only the *Majority Scientific Viewpoint* is at odds with the role of public education under
8 the California Constitution and United States Constitution. Advocates of teaching only
9 the *Majority Scientific Viewpoint* –and censoring any discussion or presentation of the
10 *Minority Scientific Viewpoint* from biology classes-- seek to cast a “pall of orthodoxy”
11 over the teaching of biological evolution in public high schools –by indoctrinating
12 students in the *Majority Scientific Viewpoint*--, rather than exposing students to “the
13 clash of ideas in the marketplace.”

14 30. The term *Minority Scientific Viewpoint* refers to the scientific viewpoint
15 held by a growing minority of credentialed professional scientists who are skeptical of
16 the ability of random mutation and natural selection –the center piece of Darwin’s
17 original theory of evolution– to account for the complexity of life, who are of the opinion
18 that there exists valid scientific evidence that poses challenges and limitations to the
19 explanatory power of *evolution* as a scientific theory, and who are of the opinion that
20 careful examination of the scientific evidence regarding *evolution* should be
21 encouraged. The *Minority Scientific Viewpoint* further holds that there are legitimate
22 scientific arguments questioning the validity of *evolution*. For purposes of this
23 complaint, an important corollary of the *Minority Scientific Viewpoint* is the viewpoint that
24 some of the important scientific weaknesses of *evolution* should be taught in high
25 school biology classes along with the scientific strengths of *evolution*, so that students
26 will be able to develop their critical thinking skills with regard to *evolution*, and with
27 regard to scientific theories generally. This viewpoint on science education is consistent
28 with the with the role of public education under the California Constitution and United
29 States Constitution, by seeking to expose students to “the clash of ideas in the
30 marketplace,” rather than indoctrinating students in a single scientific viewpoint on

1 evolution.

2 **C. Caldwell’s Efforts to Place His Proposed Quality Science**
3 **Education Policy on the School Board’s Agenda**

4 31. On July 1, 2003, as part of his efforts to persuade RJUHSD to include the
5 *Minority Scientific Viewpoint on Evolution* in its biology classes, Caldwell decided to
6 present to the School Board a proposed policy, which was later named the *Quality*
7 *Science Education Policy* and was also sometimes referred to as the *QSE Policy*. The
8 *QSE Policy* provides as follows:

9 Because ‘nothing in science or in any other field of knowledge shall be
10 taught dogmatically’ and ‘scientific theories are constantly subject to
11 testing, modification, and refutation as new evidence and new ideas
12 emerge’ (1), teachers in the Roseville Joint Union High School District are
13 expected to help students analyze the scientific strengths and weaknesses
14 of existing scientific theories, including the theory of evolution.”

15 32. As indicated by the internal quotation marks in the proposed policy, the
16 *QSE Policy* was derived in large part from the “California State Board of Education
17 Policy on the Teaching of Natural Sciences” (1989), which encourages local
18 school districts to adopt policies such as the *QSE Policy*.

19 33. Caldwell intended the *QSE Policy* to improve science education in
20 RJUHSD by including the *Minority Scientific Viewpoint* in biology classes along
21 with the *Majority Scientific Viewpoint* that is already being presented, with the
22 goal of enhancing the ability of students to develop critical thinking skills about
23 *evolution*. It was Caldwell’s opinion that introducing students to scientific evidence
24 posing challenges to *evolution*, as well as scientific evidence supporting *evolution*
25 would provide them with a *quality* science education. In contrast, students in the
26 District are presently given what amounts to a science *indoctrination* in the *Majority*
27 *Scientific Viewpoint*, which results from the dogmatic mode of teaching only the
28 *Majority Scientific Viewpoint* on *evolution*, without presenting any criticism of the theory,
29 nor any of the scientific evidence that poses challenges to the explanatory power of

1 *evolution*, and without even informing students that there are scientists who question
2 the explanatory ability of *evolution*. The presentation of *evolution* in the Holt Biology
3 Textbook epitomizes the dogmatic approach to *evolution* education that is advocated by
4 proponents of the *Majority Viewpoint on Evolution*.

5 34. Caldwell's *QSE Policy* was strictly a science education policy that
6 concerned presenting another legitimate scientific viewpoint on *evolution* in biology
7 classes in the District. Caldwell contended and contends that the incorporation of the
8 *Minority Scientific Viewpoint* into biology classes and instructional materials is
9 necessary to bring the District's presentation of *evolution* in biology into legal
10 compliance with the California Education Code requirement that instructional materials
11 be "accurate, objective and up to date, and the California State Science Standards
12 requirements that biology be presented to students in a way that helps students
13 recognize the, "usefulness and limitations" of *evolution* and other "models and theories
14 as scientific representations of reality," and the requirement that biology be presented in
15 a way that teaches students to "develop their own questions" about *evolution* and other
16 scientific theories, as a "basis for understanding [the] concept" that "scientific progress
17 is made by asking meaningful questions and conducting careful investigations."

18 35. The *QSE Policy* was also intended by Caldwell to incorporate into biology
19 classes and instructional materials the recommendation in a United States
20 Congressional Conference Committee Report that science educators include a "range
21 of scientific viewpoints" on evolution in biology classes, and the California Board of
22 Education recommendation that evolution and other scientific theories should not be
23 taught "dogmatically."

24 36. As the District and its decision makers know, Caldwell's *QSE Policy* has
25 been endorsed by well-credentialed scientists including National Academy of Science
26 member Phillip S. Skell, Ph.D., Professor Emeritus of Penn State University, as well as
27 Caldwell's primary science expert, Cornelius G. Hunter, Ph.D., of Cameron Park,
28 California, who holds a Ph.D. in biophysics from the University of Illinois. As the District
29 and its decision makers know, the *QSE Policy* was also supported by a legal opinion
30 from constitutional law expert, David K. DeWolf. J.D., Professor of Law at Gonzaga

1 University Law School.

2 37. Caldwell never suggested that the District should omit or lessen
3 presentation of *evolution* from biology classes and instructional materials. To the
4 contrary, Caldwell consistently recommended that the district teach *more* about
5 *evolution*, not less.

6 38. Caldwell also never intended the *QSE Policy* to require the presentation of
7 any religious ideas or beliefs in biology classes, nor in instructional materials to be used
8 in biology classes, and Caldwell never asked the District to present any religious ideas,
9 beliefs or materials in biology classes. Caldwell also never intended the *QSE Policy* to
10 require the presentation of intelligent design theory in biology classes, nor in
11 instructional materials to be used in biology classes. Yet, as alleged below, the public
12 debate regarding the *QSE Policy*, as framed by the District and its decision-makers and
13 others was improperly dominated by accusations and discriminatory treatment relating
14 to Caldwell's Christian religious beliefs, false accusations regarding the presumed
15 religious motivations that Caldwell supposedly had for advocating the *QSE Policy* as a
16 result of his Christian religious beliefs, false characterizations of the science opinion
17 offered in support of the *QSE Policy* by Dr. Hunter as "religious" opinion rather than
18 "scientific" opinion, based on Dr. Hunter's personal Christian religious beliefs, and false
19 characterization of the *QSE Policy* itself as being a surreptitious effort by Caldwell to
20 insert religious beliefs, ideas and materials into biology classes, and as supposedly
21 being automatically lacking in any scientific or educational substance or merit, on the
22 basis of Caldwell's Christian religious beliefs, as well as the religious motivations that
23 the District's decision-makers presumed to flow from Caldwell's Christian religious
24 beliefs.

25 39. As alleged in detail below, Caldwell alleges that the District and its
26 decision-makers, including Joiner, Pinney, Monetti, Genasci and Severson, disagreed
27 with Caldwell's secular viewpoint on science education, as stated in and exemplified by
28 the *QSE Policy*, and that these decision-makers were motivated by their opposition to
29 Caldwell's viewpoints to violate his civil rights protected by the United States and
30 California Constitutions, in an effort to prevent Caldwell from securing public debate and

1 potential of dynamic political action on his viewpoint on science education, as
2 expressed in the *QSE Policy*. Caldwell alleges on information and belief that the District
3 and its decision-makers, acting on behalf of other employees of the District as well as
4 the District, attempted to censor Caldwell's viewpoint from public debate for the ultimate
5 purpose of censoring and excluding the *Minority Scientific Viewpoint* from biology
6 classes and instructional materials.

7 40. Caldwell originally told all five members of the School Board of his
8 proposed *QSE Policy* at the July 1, 2003 Regular Meeting of the School Board, during
9 Caldwell's remarks concerning the School Board's adoption of *Holt Biology* textbook.²
10 The *QSE Policy* was not on the agenda for that meeting, so it could not be debated nor
11 considered by the School Board for potential adoption.

12 41. Between July 1, 2003 and August 15, 2003, Caldwell personally met
13 separately with three of the five board members –Joiner, Dean Forman ("Forman"), and
14 Kelly Lafferty ("Lafferty") to discuss his proposed *QSE Policy*. During those individual
15 meetings, Caldwell provided each of these board members with a copy of the *QSE*
16 *Policy*.³ It was Caldwell's understanding that Forman and Lafferty would be making
17 arrangements with Pinney, who was then board president, and Superintendent Monetti
18 to place the *QSE Policy* on the agenda of a regular board meeting in September for
19 public debate and consideration by the School Board. Caldwell alleges on information
20 and belief that Lafferty or Forman, or both of them, did in fact provide a copy of the *QSE*

²Superintendent Monetti and Assistant Superintendent Lawrence were present at that meeting when Caldwell read the *QSE Policy* to the School Board.

³On August 8, 2003, Caldwell had also met individually with Lawrence, who is a member, along with Superintendent Monetti and others, of the administrative "Cabinet" of RJUHSD. During that meeting, Caldwell provided a copy of the *QSE Policy* to Lawrence to ask whether he would support it. Lawrence told Caldwell the *QSE Policy* was a matter that would have to be decided by the School Board. Caldwell left that meeting with the assumption that Lawrence would be presenting the *QSE Policy* through the proper channels to bring it before the School Board for public debate and consideration.

1 *Policy* to Pinney, and that Lafferty and/or Forman did in fact receive a commitment from
2 Pinney that the *QSE Policy* would be included on the agenda of a regular board meeting
3 in September of 2003.⁴

4 42. For his part, Joiner admitted in a newspaper article published the day
5 before the September 2, 2003 board meeting that he knew that Caldwell had requested
6 that the *QSE Policy* be included on the agenda of that board meeting in advance of the
7 meeting, and that Joiner opposed putting the *QSE Policy* on the agenda, since he did
8 not believe it was a subject that the School Board ought to be debating or considering
9 for adoption.

10 43. Based upon the foregoing, Caldwell alleges on information and belief that,
11 at least ten working days prior to the September 2nd meeting, Superintendent Monetti
12 and Board President Pinney had in fact received, from one or more sources, a copy of
13 the *QSE Policy*, along with notice that Caldwell was requesting that the *QSE Policy* be
14 put on the agenda of a regular school board meeting in September for public debate
15 and potential adoption by the School Board.⁵

⁴Originally, Caldwell had wanted to place his *QSE Policy* on the School Board's agenda for a board meeting in July or August. However, at the July 1, 2003 Board Meeting, the union representative for the science teachers had requested that Board Action on *evolution* curriculum or policy be delayed until the September regular board meeting, so that all of the science teachers would be back from summer break and able to participate in the public debate on these matters. In deference to this request by the teachers' union representative, Caldwell had agreed to delay putting his *QSE Policy* on the School Board's agenda until September.

⁵Pursuant to the School Board's Bylaw on Board Agendas, Bylaw 9365, a request by one or both of Board Members Lafferty and Forman, on behalf of Caldwell, to place the *QSE Policy* on the agenda also triggered a mandatory duty on the part of the Board President and Superintendent to place the *QSE Policy* on the agenda of the particular meeting requested by the Board Member, unless the request was submitted by the Board Meeting "less than one week before the scheduled meeting date," in which the Board President and Superintendent had discretion to postpone the item until a later meeting. Caldwell alleges on information and belief

1 44. The first regular board meeting in September was held on September 2,
2 2003. Just prior to the September 2, 2003 Board Meeting, Caldwell learned that, in fact,
3 the *QSE Policy* was not included on the agenda for the meeting. Instead, the
4 September 2, 2003 board meeting included an “information item” on the agenda
5 indicating that Lawrence would be making a presentation to the School Board about
6 what a great job the science teachers in the District allegedly were doing in teaching
7 *evolution* to their students: about the alleged sensitivity of the science teachers to
8 religious concerns raised by students in biology classes, and about the District’s
9 procedure for adopting supplementary instructional materials used in classrooms.

10 45. At the outset of the September 2, 2003, meeting, Caldwell addressed the
11 School Board during the “audience to visitor” portion of the meeting to note that the
12 *QSE Policy* was not on the agenda as Caldwell had expected. School Board President
13 Pinney responded by stating, “We did that on purpose.”⁶

14 46. During his remarks during the September 2, 2003, Joiner also admitted he
15 was aware that Lafferty and Forman had in fact submitted Caldwell’s request for the
16 *QSE Policy* to be included on the board’s agenda, but that Joiner was opposed to
17 inclusion of the proposal on its agenda, since he didn’t think it was a subject the School
18 Board ought to be discussing or considering for adoption.

19 47. During his remarks, Joiner stated his opinion and belief that the *QSE*
20 *Policy* was intended by Caldwell as an effort to bring additional *science* information into
21 biology classrooms, and that, based upon his conversations with Caldwell Joiner, did
22 not believe that the *QSE Policy* was intended by Caldwell as a means to bring intelligent
23 design or religious beliefs or materials into biology classes.⁷

that Lafferty and/or Forman submitted the *QSE Policy* more than one week before the September 2, 2003 School Board Meeting.

⁶Superintendent Monetti was present during this portion of the September 2, 2003 board meeting and presumably heard this discussion.

⁷However, as alleged below, Joiner followed this admission with a vicious anti-Christian attack on Caldwell, Caldwell’s *QSE Policy* proposal, and Joiner’s fellow board members who

1 48. At each School Board Meeting, the RJUHSD School Board distributes an
2 informational brochure to members of the public in attendance at meetings, entitled,
3 *Welcome to a Meeting of the Board of Trustees.*” (the “School Board Welcome
4 Brochure”) The *School Board Welcome Brochure* contains a written code of conduct for
5 School Board Meetings which admonishes citizens in attendance at School Board
6 Meetings that “It is expected that individuals who speak during the public meeting will be
7 courteous and *avoid remarks that reflect adversely on the character or motives of any*
8 *person, or his or her race, religious, political views or economic status.*” (Emphasis
9 added.) This rule was not enforced at the September 2, 2003 School Board Meeting,
10 resulting in a number of anti-religious statements by audience members.

11 49. Then, during the School Board Member discussion period of the meeting
12 that followed the public debate, Joiner purposely fanned the flames of anti-Christian
13 attitudes in the audience by hurling his own anti-Christian attacks against Caldwell, his
14 church –which was identified by name–, and others in the community who had
15 expressed support for Caldwell’s science education proposals. Joiner’s comments
16 about Caldwell’s policy proposal, which Caldwell perceived as being very anti-Christian,
17 discriminatory and hostile towards his Christian religious beliefs, included, *inter alia*, the
18 following:

19 a. Joiner accused Lafferty and Forman –both of whom are Christians–
20 of basing their support for Caldwell’s proposed science education policy on an alleged
21 “personal religious and moral agenda.”

22 b. Joiner repeated a false rumor he said he had heard in the
23 community that Caldwell’s church and another large Christian church in the district were
24 behind the “personal religious and moral agenda” of those who supported Caldwell’s
25 proposal. Caldwell alleges on information and belief that Joiner did not believe those
26 rumors to be true at the time he repeated them, since Joiner admitted the rumors were
27 not true when he repeated them.

28 c. Joiner compared Caldwell’s proposed science education policy to a
29 hypothetical effort by RJUHSD to tell Caldwell’s church what to teach in its Sunday

had expressed support for the *QSE Policy*.

1 School classes, and implied that adoption of Caldwell's proposed policy would be the
2 equivalent of letting a Christian pastor tell the school district what to teach in biology.

3 d. Joiner characterized Caldwell's proposal as part of a religiously
4 motivated agenda by Christians to impose Christian morality on the students in the
5 district.

6 50. Caldwell alleges on information and belief that Joiner's anti-Christian
7 comments at the September 2, 2003 Board Meeting were carefully planned and pre-
8 meditated by Joiner, since he read them from a written statement. Caldwell further
9 alleges that Joiner made his comments with the specific intent of whipping up and
10 exploiting anti-Christian prejudice and hostility in the administration members in
11 attendance, in the science teachers and other RJUHSD employees in attendance, and
12 in the members of public in attendance at the meeting, with the intent to inspire religious
13 discrimination against Caldwell among those in attendance, as well as in the media in
14 attendance, which included a reporter from the Sacramento Bee. Joiner's anti-Christian
15 remarks at the September 2, 2003 School Board Meeting were heard by, *inter alia*, fifty
16 or more high school students who were in attendance at the meeting.

17 51. Caldwell further alleges that Joiner made these ant-Christian remarks with
18 the purpose and effect of attempting to prevent, or at least materially interfere with,
19 Caldwell's constitutionally protected free speech right to a public debate and potential
20 dynamic political action on Caldwell's secular viewpoint on science education, as
21 expressed in the *QSE Policy*.

22 52. Indeed, Caldwell alleges on information and belief that the real purpose of
23 the refusal by Pinney and Monetti to place Caldwell's *QSE Policy* on the School Board's
24 agenda as an official agenda item, and defendants' inclusion of the counterfeit agenda
25 item regarding evolution that was placed on the agenda instead of Caldwell's *QSE*
26 *Policy*, combined with Joiner's scathing anti-religious attacks on Caldwell and his
27 proposed policy at the September 2, 2003 Board Meeting, was to *kill* Caldwell's *QSE*
28 *Policy* before it ever had a chance to be publicly debated and officially considered by
29 the School Board.

30 53. Caldwell further alleges that Joiner made these carefully planned anti-

1 Christian statements aimed at Caldwell, his proposal, and his supporters, including
2 Joiner's Christian fellow board members, with a different audience and a broader
3 purpose in mind, as well. Joiner's comments during the September 2, 2003 were being
4 videotaped by a crew from the Granite Bay High School media department that included
5 its faculty advisor, Marty Newcomb ("Newcomb"). Newcomb later caused, authorized or
6 permitted an edited version of the video of the September 2, 2003 meeting, including
7 Joiner's anti-Christian statements, to be broadcast over the closed in-house broadcast
8 system at Granite Bay High School District, at the end of the school day, when many
9 teachers and some students were present to watch Joiner's speech. Caldwell alleges
10 on information and belief that Joiner, in concert and in conspiracy with Severson,
11 Newcomb, Chet Dickson, who is a science teacher at Granite Bay High School, and
12 perhaps other employees of RJUHSD whose identities are unknown to Caldwell,
13 planned in advance for Joiner's anti-Christian comments at the September 2, 2003
14 meeting to be broadcast to teachers and students at Granite Bay High School, with the
15 intent to prevent Caldwell from enjoying, or to significantly interfere with, Caldwell's
16 constitutionally and statutorily protected right to have Caldwell's secular viewpoint on
17 science education, as expressed in the *QSE Policy*, from being officially placed on the
18 agenda of a School Board Meeting for public debate and adoption, or other potential
19 dynamic political action.

20 54. Caldwell is informed and believes that a central purpose of Joiner and his
21 co-conspirators in re-broadcasting this message at Granite Bay High School was to
22 persuade teachers, students and adult citizens in the District that the community ought
23 to reject Caldwell's science education policy proposals on the grounds of Caldwell's
24 Christian beliefs and on the presumed Christian motives and agenda that allegedly flow
25 from such religious beliefs.

26 55. Joiner's anti-Christian comments at the September 2, 2003 stood in stark
27 contrast with the School Board's own written code of conduct for School Board
28 Meetings in the *School Board Welcome Brochure*. To the contrary, Caldwell alleges on
29 information and belief that Joiner's anti-Christian diatribe was intended by Joiner to
30 send, and did send a message, to attendees of School Board Meetings, as well as to

1 the broader teacher, student and parent community, that the RJUHSD School Board
2 tolerates, and even encourages, anti-Christian attacks aimed at Christian citizens who
3 advocate what Joiner perceives as Christian viewpoints on public policy issues in the
4 District. Joiner, through his diatribe at the September 2nd Board Meeting, sent a
5 corollary message to Christian citizens that they are not welcome to participate in public
6 policy debates in the District, and that, if Christian citizens do attempt to participate, they
7 can expect to be subjected to anti-Christian attacks from audience members and even
8 School Board members.⁸

9 56. Shortly after the September 2, 2003 meeting, Caldwell sent a written
10 complaint to the School Board and Superintendent Monetti about Board Trustee
11 Joiner's anti-Christian comments at the September 2, 2003 Board Meeting. The School
12 Board and Superintendent Monetti never responded to Caldwell's written complaint.
13 Caldwell alleges on information and belief that the School Board and Superintendent
14 Monetti took no action to investigate, re-mediate, or prevent future repetition of the anti-
15 Christian conduct by Joiner.

16 57. In failing to take any action on Caldwell's complaint about Joiner's conduct
17 at the September 2, 2003 School Board Meeting, Superintendent Monetti, acting on
18 behalf of the RJUHSD, failed to follow the District's own administrative procedures for
19 investigating and responding to allegations of discrimination and violation of its rules or
20 state or federal laws. Caldwell alleges on information and belief that Board President
21 Pinney and Board Member Joiner also took no action to request Superintendent Monetti
22 or other members of the District administration to take any action on Caldwell's
23 complaint, and thereby acquiesced in and ratified the District's inaction on Caldwell's

⁸Joiner's vitriolic attacks on the Christian religious beliefs of his fellow board members also sent a message to Christian citizens in the RJUHSD that they are not welcome on the RJUHSD School Board, and that they are certainly not welcome on the School Board, if their personal Christian religious beliefs inform their position on public policy issues in the District. Caldwell alleges on information and belief that Joiner's comments were intended by Joiner to send this message to Christian citizens in the community.

1 complaint.

2 58. Caldwell alleges on information and belief that the failure of the District
3 administration and School Board Members Pinney and Joiner to take any action in
4 response to Caldwell's written complaint regarding Joiner's anti-Christian diatribe at the
5 September 2, 2003 School Board Meeting was motivated by their disapproval of
6 Caldwell's secular viewpoint on science education, as expressed in and represented by
7 the *QSE Policy*, and in hostility to Caldwell's Christian religious beliefs , which
8 defendants falsely presumed to provide the actual motivation for Caldwell's science
9 education proposal.

10 59. Within a few days after the September 2, 2003, Caldwell learned that an
11 edited video of the September 2, 2003 School Board Meeting featuring Joiner's anti-
12 Christian comments had been re-broadcast to teachers and some students at Granite
13 Bay High School on the school's in-house broadcast system at a time immediately after
14 school when some students were still in classrooms. Caldwell alleges on information
15 and belief that this re-broadcast of Joiner's anti-Christian diatribe was a purposeful effort
16 by Joiner, acting in concert with Severson, the principal of Granite Bay High School,
17 Dickson, and Newcomb, the faculty member in charge of the Granite Bay High School
18 Media Department, to spread and inflame anti-Christian discrimination and bigotry
19 against Caldwell and against the two Christian School Board members, Forman and
20 Lafferty, who had voiced support for Caldwell's *QSE Policy*.⁹

21 60. On the same day he learned of the re-broadcast at GBHS, Caldwell sent a
22 written complaint about the re-broadcast to Severson, Monetti and the School Board.
23 Once again, no one from the District ever responded to Caldwell's complaint. Since

⁹Caldwell alleges on information and belief that another purpose of Joiner and his co-conspirators in creating and re-broadcasting this video to teachers and some students was for the illegal purpose of using District resources for political purposes, in an effort to affect the School Board's decision on Caldwell's *QSE Policy* and his proposal to include the *Minority Scientific Viewpoint on Evolution* in biology classes, and in an effort to affect the outcome of upcoming school board elections in the District.

1 Caldwell alleges on information and belief that the District administration took absolutely
2 no action to investigate or take action on Caldwell's written complaint, this was another
3 instance in which Superintendent Monetti and the administration of the District violated
4 the District's own procedures for investigating citizen complaints about alleged
5 discrimination and/or other unlawful conduct. Caldwell alleges on information and belief
6 that Board President Pinney and Board Member Joiner also took no action to request
7 Superintendent Monetti or other members of the District administration to take any
8 action on Caldwell's complaint, and thereby acquiesced in and ratified the conduct
9 complained of, as well as the District's failure to take any action on Caldwell's
10 complaint.

11 61. Caldwell alleges on information and belief that the failure of the District
12 administration and School Board Members Pinney and Joiner to take any action in
13 response to Caldwell's written complaint regarding the re-broadcast of Joiner's anti-
14 Christian diatribe was motivated by their disapproval of Caldwell's secular viewpoint on
15 science education, as expressed in the *QSE Policy*, and based on their hostility to and
16 disapproval of Caldwell's Christian religious beliefs, which defendants falsely presumed
17 to provide the actual motivation for Caldwell's science education proposal.

18 62. At the end of the September 2, 2003 board meeting, Board President
19 Pinney informed Caldwell that Caldwell would be required to present and gain approval
20 of his *QSE Policy* by the governing administrative body of each of the individual high
21 schools in the District before he would be permitted to place the *QSE Policy* on the
22 agenda of a school board meeting for public debate and potential adoption by the
23 School Board. Pinney also made a comment to the effect that he was going to leave it
24 up to the science teachers to decide whether they wanted any supplemental materials
25 to use in conjunction with the *Holt Biology Textbook*, and whether the teachers wanted
26 any input from the board or public on what supplemental instructional materials should
27 be used in biology classes.

28 63. Unbeknownst to Caldwell at that time, he had an absolute right under
29 California Education Code §35145.5 to place his *QSE Policy* on the agenda of *any*
30 regular meeting of the School Board, simply by submitting a request for it to be included

1 on the agenda ten business days in advance of the board meeting in question, which
2 Caldwell had already done prior to the September 2, 2003 School Board Meeting. This
3 statutory right is acknowledged in the District's own written policy regarding the right of
4 citizens to place items on the agenda of regular school board meetings. Caldwell
5 alleges on information and belief that Superintendent Monetti had to have known about
6 this statutory and administrative right of citizens, and that Pinney and Joiner, as long-
7 time school board members, also had to have known about this statutory and
8 administrative right of citizens. Yet, at the September 2, 2003 School Board Meeting,
9 with actual knowledge of this right, Pinney admitted to Caldwell that Pinney had
10 purposely left Caldwell's *QSE Policy* off of the agenda. Then, instead of disclosing this
11 right to Caldwell, Pinney –with no objection or correction by Joiner or Monetti–
12 affirmatively misrepresented to Caldwell that he would have to take his proposed policy
13 through a series of individual high school approval processes before he had a right to
14 bring it before the School Board for public debate and potential adoption.

15 64. Pinney's requirement that Caldwell *jump through additional bureaucratic*
16 *hoops* in order to realize his right to have his proposed *QSE Policy* placed on the
17 School Board's agenda amounted to an illegal, *underground* regulation on the part of
18 RJUHSD, acting through Pinney, under color of state law, which was directly contrary to
19 California law, which exceeded RJUHSD's legal authority under the California
20 Education Code to impose conditions on the right of citizens to place items on the
21 agenda of regular school board meetings, and which even contradicted RJUHSD's own
22 written procedures for inclusion of agenda items submitted by citizens. Consistent with
23 Education Code §35145.5, RJUHSD's own written procedure in effect at all times
24 relevant to this lawsuit only placed two conditions on a citizen's right to place an item on
25 the agenda of a regular School Board meeting: (1) that the subject of the proposed item
26 be a subject that is within the subject matter of the School District's jurisdiction, and (2)
27 that a written description of the proposed agenda item be received by Superintendent
28 Monetti at least ten working days before the regular board meeting in which the agenda
29 item is to be included. Caldwell had complied with this requirement by submitting the
30 *QSE Policy* to two board members more than three weeks before the September 2,

1 2003 board meeting, as discussed above, with the understanding that one or both of
2 them would be submitting the *QSE Policy* to Superintendent Monetti and board
3 president Pinney for inclusion on the agenda, and to board member Joiner more than
4 two weeks before that meeting.

5 65. Caldwell alleges on information and belief that Pinney and Monetti, acting
6 in conjunction with and/or in conspiracy with Joiner, and perhaps other school officials
7 whose identities are presently unknown to Caldwell, made the decision not to put the
8 *QSE Policy* on the public agenda of the September 2, 2003 board meeting.. Caldwell
9 further alleges that the decision by these school officials to purposely leave the *QSE*
10 *Policy* off the board agenda, and to replace it with the staff presentation discussed
11 above, was a purposeful attempt to substitute –in place of a public debate on and
12 School Board consideration of Caldwell’s *QSE Policy*– a public “discussion artificially
13 geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful
14 public dialogue and, ultimately, dynamic political change.”

15 66. Caldwell further alleges on information and belief that the refusal of
16 Pinney, as Board President, and Monetti, as Superintendent, to include Caldwell’s
17 proposed *QSE Policy* on the agenda for the September 2, 2003 School Board Meeting
18 and subsequent regular school board meetings, was in furtherance of an established
19 District policy, practice and custom of refusing to put agenda items submitted by citizens
20 on the agenda. Caldwell further alleges that the District, acting through Monetti and
21 others, has used and uses this unwritten policy to engage in viewpoint discrimination
22 against citizen proposals which Monetti and the District administration disagree with.

23 67. Caldwell contends that this omission of the *QSE Policy* from the School
24 Board’s meeting constituted a violation of Caldwell’s civil rights, as guaranteed by the
25 First and Fourteenth Amendment of the United States Constitution, as discussed below,
26 and as guaranteed by various California statutes, including Education Code §35145.5,
27 and California’s Brown Act “open meeting” statute, and by the District’s own written
28 administrative procedures, which are mandated by Education Code §35145.5.

29 68. During the eight months following September 2, 2003, RJUHSD never did
30 place the *QSE Policy* on the School Board’s agenda for public debate and possible

1 adoption by the School Board. Caldwell further alleges on information and belief that,
2 prior to April 20, 2004, defendants had no intention of ever putting the *QSE Policy* on
3 the School Board's agenda.

4 69. This was the first time in his life that Caldwell had ever attempted to place
5 an item on a local school board's agenda. Prior to approximately February 15, 2004,
6 Caldwell was not aware of his statutory rights under Education Code §35145.5 and
7 California's Brown Act to place his *QSE Policy* on the agenda of a School Board regular
8 meeting for public debate and consideration by the School Board, and Caldwell did not
9 realize that his rights in that regard were also protected by the First Amendment of the
10 United States Constitution, nor that RJUHSD had a written procedure guaranteeing a
11 citizen's right to place an item on the School Board's agenda.

12 70. Prior to February 15, 2004, none of the defendants named in this claim,
13 nor anyone else at the District, had ever informed Caldwell of his constitutional,
14 statutory and regulatory right to place his *QSE Policy* on the agenda of any regular
15 School Board meeting for public discussion and potential adoption by the School Board.
16 Caldwell alleges on information and belief that the failure by these defendants to inform
17 Caldwell of these rights was a purposeful attempt by these defendants to conceal these
18 rights from Caldwell, with the hope that he wouldn't learn of them, and that the *QSE*
19 *Policy* would never make its way onto the School Board's agenda. In this regard,
20 Caldwell alleges on information and belief that Pinney and Monetti, in conspiracy with
21 Joiner, made a conscious decision to ignore Caldwell's rights.

22 71. On February 18, 2004, shortly after learning of his statutory right to place
23 the *QSE Policy* on the School Board's agenda, Caldwell submitted a letter to
24 Superintendent Monetti containing an administrative complaint regarding RJUHSD's
25 refusal to place the *QSE Policy* on the agenda in September, as he had originally
26 requested. ("Caldwell's Individual Administrative Complaint") In the letter, Caldwell also
27 made a new request for the *QSE Policy* to be placed on the agenda for the School
28 Board's April regular board meeting.

29 72. On February 25, 2004, Caldwell met with Genasci and attorney Phillip
30 Trujillo ("Trujillo") during the evidentiary meeting on Caldwell's Individual Administrative

1 Complaint and on the Class Administrative Complaint that Caldwell was handling as
2 attorney for the class (the “Evidentiary Meeting”). Caldwell is informed and believes that
3 Monetti had delegated responsibility for representing RJUHSD at the Evidence Hearing
4 to Genasci and Trujillo, and Caldwell is informed and believes that Monetti retained
5 Trujillo and his law firm, Girard and Vinson, to represent RJUHSD in the Evidentiary
6 Meeting, and to give legal advice to Genasci in connection with *Caldwell’s Individual*
7 *Complaint* and the *Class Administrative Complaint*. During the Evidentiary Meeting,
8 Caldwell inquired whether RJUHSD intended to honor his request to place the *QSE*
9 *Policy* on the agenda for the School Board’s April regular meeting. Genasci and Trujillo
10 stated that the district *would not* be placing the *QSE Policy* on the board’s agenda as
11 requested for three reasons.

12 73. First, Genasci and Trujillo told Caldwell that RJUHSD refused to honor his
13 request to place the *QSE Policy* on a School Board agenda while the administrative
14 complaints were pending. Caldwell alleges on information and belief that this stated
15 refusal by RJUHSD constituted retaliation against Caldwell by RJUHSD, Monetti and
16 Genasci for Caldwell’s exercise of his right to act as the attorney for the class on the
17 *Class Administrative Complaint*, as well as retaliation against Caldwell for exercising his
18 right to file his own *Individual Administrative Complaint*. Caldwell alleges that such
19 retaliatory conduct by RJUHSD, Monetti and Genasci was a violation of Caldwell’s
20 constitutional right to equal protection under the law guaranteed by the Fourteenth
21 Amendment, and constitutional rights guaranteed by the Free Speech and
22 Establishment Clauses of the First Amendment to the United States Constitution,
23 particularly since this retaliatory conduct appeared to be yet another effort by school
24 officials to censor Caldwell’s proposal to bring the *Minority Scientific Viewpoint* into
25 biology classes from public debate and potential adoption.

26 74. Second, Genasci, speaking on behalf of Monetti and RJUHSD, stated that
27 the reason why my *QSE Policy* was not included on the School Board’s agenda in
28 September was because, according to Genasci, only one man in the District –
29 Superintendent Monetti– decides what goes on the School Board’s agenda, and Monetti
30 had not given his approval to placing the *QSE Policy* on the School Board’s agenda.

1 Caldwell pointed out to Genasci that such a policy by Superintendent Monetti was illegal
2 under California law, in view of Caldwell's statutory right as a citizen to place items on
3 the School Board's agenda.

4 75. Third, Trujillo, speaking on behalf of the District, claimed that RJUHSD
5 had the right to revise a citizen's proposed agenda item, so that the District's discussion
6 of the substitute topic at the September 2, 2003 School Board meeting allegedly
7 complied with the District's duty to comply with my request to place my *QSE Policy* on
8 the agenda. Applicable case law on this subject is contrary to Trujillo's representation.
9 Caldwell alleges on information and belief that Trujillo, who is an experienced partner of
10 a law firm whose practice is mainly devoted to representing California school districts,
11 knew that applicable law was contrary to his representation, but made the
12 representation to Caldwell as a further effort by RJUHSD and Monetti, acting in
13 conspiracy with Genasci and Trujillo, to deprive Caldwell of his constitutional and
14 statutory rights to have his *QSE Policy* placed on the agenda of a regular board meeting
15 for public debate and potential adoption exactly as Caldwell had written it, without
16 revision or editing by RJUHSD, Monetti, Pinney, or any other District officials. Caldwell
17 alleges on information and belief that this was simply a continuation of the effort by
18 defendants, which had been started by Pinney and Monetti, acting in concert with
19 Joiner, back in September of 2003, to deprive Caldwell of his constitutionally and
20 statutorily protected rights, by substituting –in place of a public debate on and School
21 Board consideration of Caldwell's *QSE Policy*– a public “discussion artificially geared
22 toward praising (and maintaining) the status quo [regarding presentation of *evolution* to
23 students, thereby foreclosing meaningful public dialogue and, ultimately, dynamic
24 political change.” Caldwell alleges that this violation of his civil rights was motivated by
25 defendants' disapproval of and hostility towards his secular viewpoint regarding science
26 education, as well as by defendants' disapproval of and hostility towards Caldwell's
27 Christian religious beliefs and his perceived religious motivations.

28 76. On April 9, 2004, Genasci, acting on behalf of Monetti and RJUHSD,
29 issued the District's Written Decision on *Caldwell's Individual Administrative Complaint*
30 and on the *Class Administrative Complaint* (the “District's Administrative Decision”) In

1 the *District Administrative Decision*, Genasci made no attempt to rectify Monetti and
2 Pinney's violation of Caldwell's constitutional and statutory rights in refusing to place the
3 *QSE Policy* on the School Board's agenda. Instead, Genasci, acting on behalf of
4 Monetti and the RJUHSD, ratified and attempted to justify these violations by (1) falsely
5 claiming –*for the very first time*– that Superintendent Monetti had in fact not received
6 notification of Caldwell's request to place the *QSE Policy* on the School Board's agenda
7 in time to require placement of the item on the School Board's agenda; and (2) claiming,
8 without justification and supporting legal authority, that the decision by Pinney and
9 Monetti to place the substitute agenda item on the agenda of the September 2, 2003
10 School Board meeting in place of Caldwell's *QSE Policy* purportedly fulfilled RJUHSD's
11 legal duties to Caldwell's request to place the *QSE Policy* on the agenda.

12 77. Caldwell alleges on information and belief that the *District's Administrative*
13 *Decision*, was simply a transparent effort by the ongoing conspiring among Pinney,
14 Monetti and Joiner, which had now been joined by Genasci, to exclude the *QSE Policy*
15 from public debate and potential adoption at a School Board Meeting, and to thereby
16 censor the *Minority Scientific Viewpoint on Evolution* from biology classes in the District.
17 Caldwell further alleges on information and belief that this effort by Genasci and the
18 other co-conspirators was based on their disapproval of and hostility towards Caldwell's
19 viewpoint on science education, as well as by their disapproval of and hostility to
20 Caldwell's Christian religious beliefs and his presumed religious motives.

21 78. On or about April 13, 2004, Caldwell sent a letter to Monetti again
22 demanding that his *QSE Policy* be placed on the agenda of the School Board's regular
23 board meeting; this time, for the board meeting scheduled for May 18, 2004.

24 79. Caldwell needed to know exactly if and when the district would place the
25 *QSE Policy* on the agenda for a board meeting, since he knew he would need to
26 persuade a large number of parents and other community members to attend a board
27 meeting, in order to demonstrate community support for the proposal to the School
28 Board, and Caldwell did not want to have to spend the time and effort necessary to turn
29 out community support at a School Board Meeting unless he knew for certain that the
30 District would indeed be officially placing the *QSE Policy* on the agenda for public

1 debate and board consideration. Caldwell alleges that it is not easy to convince citizens
2 to interrupt their busy lives and give up a Tuesday evening to attend a school board
3 meeting. For this reason, –and in the context of the District’s past failure to honor his
4 constitutional and statutory rights in this regard– in his April 13th letter, Caldwell
5 requested that Monetti provide him with written confirmation, within ten (10) days, that
6 the District would actually be placing the *QSE Policy* on the agenda when requested.

7 80. On April 16, 2004, Monetti sent a letter to Caldwell that was vague and
8 non-committal regarding whether the district would actually be placing the *QSE Policy* on
9 the agenda for the School Board’s May 18th Meeting.

10 81. On April 19, 2004, Caldwell sent a letter to Monetti repeating his demand
11 for the *QSE Policy* to be included on the agenda for the School Board’s May 18th
12 Meeting, and informing Monetti that Caldwell’s right to have his *QSE Policy* placed on
13 the agenda, without any modification, editing, or substitution by counterfeit agenda
14 items, was also protected by the Free Speech Clause of the First Amendment of the
15 United States Constitution, according to a decision by the United States District Court
16 for the Southern District of California. On April 20, 2004, Caldwell sent an offer to
17 Monetti to dismiss his Individual Administrative Complaint if the District would agree to
18 place the *QSE Policy* on the agenda of the May 18, 2004 regular board meeting.

19 82. On April 20, 2004, Monetti, acting in the course and scope of his authority
20 as Superintendent, communicated the District’s agreement to place the *QSE Policy* on
21 the agenda for a regular School Board Meeting in May, but Monetti asked whether
22 Caldwell would agree to placement of the *QSE Policy* on the agenda of the School
23 Board’s May 4, 2004 meeting, rather than the May 18 2004 meeting, since, according to
24 Monetti, not all of the board members would be available to attend the May 18th
25 meeting. Caldwell felt that this proposed schedule was going to make it more
26 challenging to mobilize public support at the May 4th meeting, particularly since Caldwell
27 was already having to prepare for a presentation and public show of support related to
28 the Class Administrative Complaint for the Board Meeting that was held that night –April
29 20, 2004, and since Caldwell planned to be out of town from April 21 - 25, 2004.
30 Nevertheless, Caldwell agreed that the *QSE Policy* could be placed on the agenda of

1 the May 4th Board Meeting, instead of the May 18th Board Meeting, and that such
2 placement would be deemed by him to comply with the District's constitutional and
3 statutory duties..

4 83. At the Board Meeting on April 20, 2004, Caldwell had arranged for a
5 number of parents and citizens to appear at the meeting, since the agenda included the
6 School Board's decision regarding whether to accept Caldwell's appeal from the
7 *District's Administrative Decision*. Caldwell told all of those people in attendance that
8 the *QSE Policy* would be on the agenda of the School Board's May 4th Meeting.
9 However, half way through the meeting, Monetti informed Caldwell that May 4th would
10 not be a good evening to place the *QSE Policy* on the agenda after all, since one or
11 more board members were allegedly unable to attend on May 4th. Monetti proposed
12 that he get back to Caldwell with an alternative date for the meeting later in May or in
13 early June. Caldwell told Monetti he would be out of town the rest of the week, but that
14 he would be checking voice mail to learn of the new date for the meeting. Based upon
15 this information, Caldwell informed all of his public supporters in attendance at the April
16 20th Meeting that they wouldn't need to come to the May 4th Board Meeting after all and
17 would most likely be scheduled during the later part of May.

18 84. On or about April 23, 2004, while Caldwell was out of town, Monetti's
19 assistant called to inform Caldwell that Monetti had decided to place the *QSE Policy* on
20 the agenda of the May 4, 2004 School Board Meeting after all.

21 85. Caldwell alleges on information and belief that Monetti and one or more of
22 his co-conspirators scheduled the public debate on the *QSE Policy* in this manner in an
23 effort to further interfere with Caldwell's right to have a meaningful public debate and
24 potential dynamic political action on his proposal, since they believed that Caldwell
25 would have more difficulty getting out public support for the measure on such short
26 notice. This short notice did in fact entail extra work and stress for Caldwell, since all of
27 the people in attendance at the April 20th Meeting had to be re-contacted and informed
28 of the May 4th Meeting.

29 86. On May 4, 2004, after an eight month delay, the *QSE Policy* was finally
30 placed on the agenda for the School Board Meeting. Notwithstanding the scheduling

1 games by Monetti, Caldwell was able to mobilize approximately 100 community
2 members and three expert science witnesses to attend the meeting in support of his
3 *QSE Policy*. A number of teachers employed by the District and a few non-employee
4 citizens who were opposed to the *QSE Policy* also attended the meeting, as well as
5 reporters from *The Sacramento Bee* and *The Roseville Press Tribune*, and a television
6 news crew from News10.¹⁰

7 87. At the May of 2004 School Board Meeting, the viewpoint discrimination
8 and anti-religious discrimination against Caldwell continued in full force. The evening
9 provided graphic confirmation that school officials in the RJUHSD in general, and Joiner
10 and Monetti, in particular, were still very much actively involved in intentionally
11 depriving Caldwell of his constitutionally and statutorily protected rights to enjoy a
12 meaningful public debate and dynamic political action on his *QSE Policy*.

13 88. Prior to the meeting, Caldwell had sent a private e-mail to a fellow
14 member of his church, who is also a teacher employed at Granite Bay High School in
15 RJUHSD. In the private e-mail, Caldwell had stated, among other things, the following
16 expressions of his Christian belief and faith: (1) he expressed praise to God that the
17 *QSE Policy* had finally been placed on the School Board's agenda for public debate and
18 possible adoption, after a substantial delay; (2) he requested prayer for success at the
19 meeting; and (3) he wrote "In His Service" at the end of the e-mail as a reference to
20 Caldwell's religious belief in Jesus Christ.

21 89. Caldwell alleges on information and belief that one or more employees of
22 the RJUHSD used District computers and/or other District resources and/or personnel
23 to distribute Caldwell's private e-mail to Board Member Joiner, as well as to other
24 employees and administrators of RJUHSD. Caldwell alleges on information and belief
25 that Joiner conspired with one or more other persons who are employees and/or
26 administrators of RJUHSD to use Caldwell's private expressions of religious faith in the

¹⁰To add insult to injury, after illegally delaying the School Board's consideration of Caldwell's *QSE Policy* for eight months, Joiner then used the amount of time that had elapsed since September as one of the arguments for why the School Board should reject the proposal.

1 e-mail in the public portion of the May 4, 2004 School Board Meeting, in a further effort
2 by Joiner to censor, discredit and suppress Caldwell's secular viewpoint on science
3 education, even though, as Joiner knew, Caldwell's private religious beliefs and
4 practices were totally irrelevant to the public policy debate regarding his science
5 education proposals. Caldwell contends that Joiner's improper purpose and intent in
6 drawing public attention to Caldwell's private expressions of religious faith and practice
7 was to incite and exploit religious bigotry and discrimination against Caldwell in an effort
8 to persuade other board members and the public and media of the false impression that
9 Caldwell's *QSE Policy* and proposed Additional Instructional Materials really were
10 religious materials rather than science materials, and that Caldwell's real purpose in
11 proposing the *QSE Policy* and the Additional Instructional Materials was to
12 surreptitiously insert religious ideas and beliefs into biology classes, as part of a
13 supposed surreptitious religious agenda by Caldwell and other Christians. Caldwell
14 also alleges that Joiner and his co-conspirators had a further intent of trying to cause
15 public embarrassment and humiliation to Caldwell by publicly exposing his private
16 expressions of religious beliefs and practices, in an effort to intimidate and dissuade
17 Caldwell and other Christians from participating in public political debates at School
18 Board Meetings.

19 90. During his comments on the *QSE Policy*, Joiner read these private
20 expressions of Christian faith by Caldwell and offered them as proof that the *QSE Policy*
21 and Caldwell's proposed Additional Instructional Materials really were religious rather
22 than scientific, and that Caldwell was submitting these policy and materials in
23 furtherance of a religious motivation and agenda, rather than a legitimate scientific or
24 educational purpose. Joiner knew that Caldwell's *QSE Policy* was not in fact intended
25 to insert religious beliefs or materials into biology classes, and that the proposed
26 Additional Instructional Materials included absolutely no references to religious beliefs.

27 91. Shockingly, Joiner went on to state that he would like for Superintendent
28 Monetti to direct the district's attorney, Trujillo, to look into whether the District could file
29 a lawsuit against Caldwell in retaliation for his exercise of his rights as a citizen to
30 participate in public processes and debates regarding science education. Caldwell

1 alleges on information and belief that Joiner's purpose in making this statement was as
2 a thinly veiled threat to try to intimidate Caldwell into not continuing to exercise his
3 political rights in the District, based on Joiner's disagreement with Caldwell's secular
4 viewpoint on science education and Joiner's disapproval of Caldwell's religious beliefs
5 and presumed religious motivations, and to intimidate and dissuade other citizens who
6 share Caldwell's viewpoint on science education from participating in the public policy
7 making processes of the District.

8 92. Joiner further stated that, in the future, any citizens who support the *QSE*
9 *Policy* would not be welcome to send any communications to him, and that instead,
10 those citizens would be required to send their communications to the District's attorney,
11 Trujillo.

12 93. Caldwell alleges on information and belief that Joiner's threat of retaliatory
13 litigation by the District –together with Joiner's statement that communications to him
14 from his constituents who supported the *QSE Policy* would accorded discriminatory
15 treatment by him– were intended as another effort by Joiner to send the message to
16 citizens who supported reform of *evolution* education in the District that Joiner and the
17 district did not approve of the scientific, educational, political, and actual and presumed
18 religious viewpoints of those citizens; that those citizens would be discriminated against
19 and treated unequally by Joiner on the basis of those viewpoints; and that, at Joiner's
20 direction, the District was going to start actively retaliating against such citizens who did
21 continue to exercise their civil rights by using District resources to ***sue them!***

22 94. On May 6, 2004, Caldwell sent a written complaint to Joiner via e-mail in
23 which Caldwell complained about Joiner's misuse of Caldwell's private expressions of
24 religious faith to a fellow Christian at the May 4, 2004 School Board Meeting in an effort
25 to incite anti-Christian bigotry and discrimination against Caldwell and his *QSE Policy*
26 and his proposed Additional Instructional Materials (as described below). Caldwell had
27 intended his e-mail to Joiner to remain private as between Caldwell and Joiner, and had
28 assumed that Joiner would treat it as such.

29 95. Joiner did not respond to Caldwell's written complaint directly, and he
30 certainly didn't keep Caldwell's e-mail private. Instead, Joiner forwarded a copy of

1 Caldwell's e-mail to Superintendent Monetti, with a carbon copy to Caldwell, the School
2 Board, other members of the District administration, and a number of district employees
3 who had no apparent official reason for being copied on Joiner's e-mail. Caldwell
4 alleges on information and belief that Joiner intentionally copied Caldwell's e-mail and
5 Joiner's response to these other district employees for the purpose of *grandstanding* for
6 the benefit of those employees, and for the additional purpose and effect of inciting
7 additional anti-Christian hostility towards Caldwell and his science education proposals
8 among the District's administration and teaching staff. Joiner's e-mail message to
9 Superintendent Monetti accompanying Caldwell's original e-mail message made good
10 on Joiner's threat at the May 4, 2004 Board Meeting that he would only communicate
11 with citizens who supported Caldwell's *QSE Policy* through the District's outside
12 attorneys, by directing Superintendent Monetti to forward Caldwell's e-mail to that
13 attorney.

14 96. Perhaps even more disturbing, in his e-mail message to Superintendent
15 Monetti that accompanied the copy of Caldwell's e-mail complaint, Joiner also
16 attempted to follow through on his threat to persuade the District to sue citizens such as
17 Caldwell in retaliation against them for exercising their civil rights to participate in public
18 policy debates in the District, and in retaliation against them for exercising their right to
19 complaint to District officials about discrimination against them. In this regard, Joiner
20 wrote, "Please ask Mr. Trujillo [the District's attorney] to review anti-SLAPP legislation
21 and *SLAPP back litigation should Mr. Caldwell continue to pursue this matter.*"
22 (Emphasis added.)

23 97. On May 6, 2004, Joiner responded to a written complaint to
24 Superintendent Monetti and the School Board (including Joiner) from another District
25 citizen who is a parent in exactly the same way. In his written complaint to
26 Superintendent Monetti and the School Board, that citizen had expressed concern
27 about the discriminatory and anti-Christian nature of Joiner's remarks at the May 4,
28 2004 School Board Meeting.

29 98. Caldwell alleges on information and belief that Joiner had a discriminatory
30 purpose in refusing to respond to e-mail messages from Caldwell and the other parent,

1 and in repeating his threat for the District to use litigation to retaliate against citizens
2 supporting the *QSE Policy* who choose to participate in District processes and
3 meetings, and that, through such “bully” tactics, Joiner hoped to intimidate Caldwell and
4 other citizens sharing Caldwell’s viewpoint from exercising their right to place items on
5 the School Board’s agenda, and from otherwise participating in public debates and
6 political processes in the District. Caldwell alleges on information and belief that Joiner,
7 through these strong-arm tactics, hoped to chill public support for Caldwell’s *QSE Policy*
8 and the proposed Additional Instructional Materials. In other words, Joiner’s action was
9 the type of State action designed to retaliate against and chill political expression that
10 strikes at the heart of the First Amendment.

11 99. Joiner’s e-mails to Monetti and the others regarding Caldwell and the
12 other parent, in conjunction with Joiner’s anti-Christian statements at the May 4, 2004
13 School Board Meeting, also sent the strong message to Caldwell, other parents and
14 citizens, and the administrators and staff members who received Joiner’s e-mails that
15 Joiner and the District disapproved of Caldwell’s and other parents’ Christian beliefs,
16 and that Joiner and the District disapproved of and sought to discourage such Christian
17 citizens from participating in policy-making processes in the District.

18 100. Other than the carbon copy of Joiner’s two e-mail messages to Monetti, no
19 one from the School Board or the District ever responded to the written complaint
20 regarding Joiner’s anti-Christian comments at the May 4, 2004 School Board Meeting.
21 Caldwell alleges on information and belief that Superintendent Monetti and RJUHSD
22 took no action on Caldwell’s complaint, either to investigate the problem addressed in
23 the complaint, nor to recommend or take any corrective steps to address the problem.

24 101. In failing to take any action on Caldwell’s complaint, Superintendent
25 Monetti, acting on behalf of the RJUHSD, failed to follow its own administrative
26 procedures for investigating and responding to allegations of discrimination and
27 violation of its rules or state or federal laws. Caldwell alleges on information and belief
28 that Board President Pinney and Board Member Joiner also took no action to request
29 Superintendent Monetti or other members of the District administration to take any
30 action on Caldwell’s complaint, and thereby acquiesced in and ratified the District’s

1 inaction on Caldwell's complaint.

2 102. Caldwell alleges on information and belief that the failure of the District
3 administration and School Board Members Pinney and Joiner to take any corrective
4 action in response to Caldwell's written complaint regarding Joiner's anti-Christian
5 attack on Caldwell at the May 4, 2004 School Board Meeting was motivated by their
6 hostility to Caldwell's political viewpoint on science education, as expressed in the *QSE*
7 *Policy*, and in hostility to Caldwell's Christian religious beliefs, which defendants
8 presumed to provide the motivation for Caldwell's science education proposal.

9 103. At the May 4, 2004 School Board Meeting, Superintendent Monetti also
10 engaged in an additional activity that materially interfered with Caldwell's constitution,
11 statutory, and regulatory rights to enjoy *real* public debate on his proposed *QSE Policy*,
12 including the potential of *dynamic political* action on the proposal. The School Board
13 appeared to be on the verge of voting in favor of adopting an amended version of
14 Caldwell's *QSE Policy* when Superintendent Monetti asserted what Caldwell alleges
15 was a legally meritless procedural objection to the imminent Board action, which
16 succeeded in spooking the School Board Members into delaying their vote on the
17 amended version of the *QSE Policy* to a future school board meeting. Superintendent
18 Monetti represented to the School Board that California's Brown Act opening meeting
19 law purportedly made it unlawful for the Board to vote on the revised *QSE Policy* at the
20 May 4, 2004 Board Meeting. Caldwell alleges on information and belief that this was a
21 false representation by Superintendent Monetti, and that Superintendent Monetti either
22 knew it was false, or had no reasonable basis for believing it to be true, when he made
23 it.

24 104. Caldwell alleges on information and belief that Superintendent Monetti's
25 true intention in asserting the alleged "legal" objection, was to interfere with Caldwell's
26 constitutionally and statutorily protected right to enjoy real debate and dynamic political
27 action on his proposed policy to improve science education in the District, by preventing
28 what Caldwell alleges would have been a positive vote by the Board on a revised
29 version of his *QSE Policy*. In this regard, immediately after the May 4, 2004 Board
30 Meeting, Caldwell was told by Joiner and Board Member Forman that there would have
31 been a 4 to 1 vote in favor of the amended version of the *QSE Policy* at the May 4, 2004
32 School Board Meeting, if the board vote had gone forward at that time.

1 105. Unfortunately, Superintendent Monetti's assertion of a legally meritless
2 procedural objection succeeded in scaring the lay School Board Members who favored
3 the proposal out of voting on the *QSE Policy* at the May 4, 2004 Board Meeting. When
4 the revised *QSE Policy* was ultimately voted on by the Board at the June 1, 2004 Board
5 Meeting, the proposal was defeated.

6 106. Caldwell alleges that Superintendent Monetti's assertion of the meritless
7 procedural objection was motivated by Superintendent Monetti's opposition to
8 Caldwell's political viewpoint on science education, as reflected in the *QSE Policy*.
9 Caldwell alleges on information and belief that Superintendent Monetti's action in this
10 regard was also motivated by Monetti's hostility towards and disapproval of Caldwell's
11 Christian religious beliefs and Superintendent Monetti's presumption that Caldwell's
12 *QSE Policy* was motivated by those religious beliefs.

13 **D. Caldwell's Efforts to Present His Science Education**
14 **Proposals on the Agenda of Granite Bay High**
15 **School's Curriculum Instruction Team Meetings**

16 107. As alleged above, at the end of the September 2, 2003 Board Meeting,
17 then board president Pinney had falsely misrepresented to Caldwell that he was
18 required to present his *QSE Policy* to the site councils of each of the local high schools
19 and win approval for the proposal at that level at each of the high schools before he
20 would be permitted to place the *QSE Policy* on the agenda of the School Board for
21 public debate and potential adoption by the board. Defendant Severson was in
22 attendance at the September 2, 2003 Board Meeting when Pinney made this comment.
23 Caldwell alleges on information and belief that Pinney's real purpose in making this
24 false misrepresentation to Caldwell was to cause Caldwell's *QSE Policy* to be buried in
25 an endless bureaucratic merry-go-round from which the policy would never escape.
26 Caldwell further alleges on information and belief that Joiner and Monetti conspired with
27 Pinney in devising this scheme for killing Caldwell's proposal before it ever made it to
28 the school board's agenda.

29 108. At that point in time, in September of 2003, Caldwell did not realize that he
30 had a constitutional, statutory and administrative right, as alleged above, to place the
31 agenda directly on the School Board's agenda, without "jumping through additional
32 bureaucratic hoops" first. As a result, Caldwell decided he to attempt to comply with the

1 School Board’s illegal requirement that he gain approval of his *QSE Policy* at the site
2 council of each of the high schools before bringing the policy to the School Board.

3 109. Shortly after the September 2, 2003 School Board Meeting, Caldwell, as
4 the parent of a daughter at Granite Bay High School, received a copy of a newsletter
5 called *From the Den* that is authored by Severson, as principal of Granite Bay High
6 School, and is mailed to all of the parents in the District. That edition of *From the Den*
7 included an article on an organization called the Granite Bay High School Curriculum
8 Instruction Team (the “GBHS CIT”), which was described as a group open to all parents
9 in the District which meets monthly with Severson and other administrators and
10 teachers of Granite Bay High School in public meetings to discuss school policy at
11 Granite Bay High School. The *From the Den* article invited parents to attend and
12 participate in the GBHS CIT as a means of engaging in discussion –and having input
13 on– school policy at Granite Bay High School and gave examples of the types of
14 subjects that could be discussed at CIT meetings. As relevant to the complaint, one of
15 the examples given of a subject that was open for discussion at CIT meetings was
16 “Have questions about how evolution is taught?” Caldwell alleges on information and
17 belief that the public meetings of the CIT are a limited public forum that is open to all
18 parents and community members in the District.

19 110. Caldwell understood the *From the Den* article to mean that Severson and
20 the administration of Granite Bay High School were inviting all parents at the high
21 school to come discuss their proposals and concerns regarding evolution education at
22 CIT meetings. Caldwell further understood that the GBHS CIT was the only site council
23 at Granite Bay High School at which parents were permitted to provide public input and
24 participate in public debates regarding school policy at Granite Bay High School, and
25 Caldwell alleges that to be the case. Thus, the CIT appeared to be the kind of site
26 council Board President Pinney had been referring to when he misrepresented to
27 Caldwell at the September 2, 2003 School Board Meeting that Caldwell would be
28 required to take his *QSE Policy* to each of the high school site councils before he would
29 be permitted to bring the policy before the School Board for possible adoption.

30 111. In September of 2003, shortly after reading the *From the Den*, Caldwell
31 sent an e-mail correspondence to Severson in which Caldwell asked Severson whether
32 the GBHS CIT would be the appropriate forum at Granite Bay High School in which to

1 present his *QSE Policy* for public debate and possible approval at Granite Bay High
2 School. Severson promptly sent an e-mail back to Caldwell in which he informed
3 Caldwell that the GBHS CIT *would not be* an appropriate forum in which to present his
4 *QSE Policy* for public debate. Caldwell alleges on information and belief that
5 Severson's motive in telling Caldwell he was not welcome to put his *QSE Policy* on the
6 agenda of a CIT meeting for public debate was to discriminate against and censor
7 Caldwell's viewpoint on science education, as expressed in the *QSE Policy*, from public
8 debate at GBHS CIT meetings, and to prevent Caldwell from gaining public support and
9 potential approval of his *QSE Policy* at Granite Bay High School. Since Severson knew
10 that approval of the *QSE Policy* by the site council of each of the high schools was a
11 condition Pinney had placed on Caldwell's ability to put the *QSE Policy* on the School
12 Board's agenda, Caldwell alleges on information and belief that Severson also denied
13 Caldwell's request to put the *QSE Policy* on the agenda for public debate at a GBHS
14 CIT meeting with the intent of censoring Caldwell's viewpoint as expressed in the *QSE*
15 *Policy* from public debate and possible enactment at a School Board meeting. Caldwell
16 further alleges on information and belief that Severson was motivated in telling Caldwell
17 he was not welcome to place the *QSE Policy* on the agenda of a GBHS CIT meeting by
18 Severson's hostility to and disapproval of Caldwell's personal Christian religious beliefs
19 and by Severson's accompanying hostility to and disapproval of the religious motivation
20 which Severson presumed to flow from Caldwell's Christian religious beliefs. Caldwell
21 further alleges, based upon statements made to Caldwell by Severson, that Severson
22 was motivated in telling Caldwell he was not welcome to bring his *QSE Policy* before
23 the GBHS CIT for public debate by Severson's disagreement with and hostility towards
24 Caldwell's political viewpoint that parents should play a proactive and meaningful role in
25 the determination of curriculum and selection of instructional materials in science class.
26 Caldwell further alleges on information and belief that Severson was motivated in telling
27 Caldwell he was not welcome to bring his *QSE Policy* before the GBHS CIT for public
28 debate by Severson's desire to shield himself, the administrators and teachers at
29 Granite Bay High School from public criticism, and to limit public discussions at GBHS
30 CIT meetings to "discussion artificially geared toward praising (and maintaining) the
31 status quo, thereby foreclosing meaningful public dialogue and, ultimately, dynamic
32 political change."

1 112. In a cruel irony, after being told by the School Board at the September 2,
2 2003 School Board Meeting that his science education proposals would need to be
3 considered at the local level at each high school before they could be considered on a
4 district-wide basis by the School Board, later in September of 2003, Severson told
5 Caldwell that, in fact, his science education proposals –including his *QSE Policy*– were
6 District-wide “policy” issues that were *not* appropriate for discussion or adoption at the
7 local high school level, and would instead need to be discussed and adopted on a
8 “district” level by the district’s Curriculum and Instruction department that was headed
9 up by Lawrence, as Assistant Superintendent.

10 113. At this point, Caldwell was beginning to realize that he was taking a
11 second trip around the “bureaucratic” merry-go-around, which would be a constant
12 theme during his year-long-effort to seek approval of his science education proposals.
13 Severson’s advice was doubly ironic since Caldwell had already attempted to present
14 his *QSE Policy* at the local high school administration level in early August, by
15 proposing his *QSE Policy* to Severson, as his daughter’s high school principal. In that
16 telephonic conversation, Severson had advised Caldwell that his *QSE Policy* was a
17 district-wide curriculum policy issue that needed to be presented to Lawrence and his
18 Curriculum and Instruction Department. Caldwell had followed Severson’s advice at
19 that time and had scheduled a meeting with Lawrence in August, in which Lawrence
20 had told Caldwell that the *QSE Policy* was a “school board policy” issue that needed to
21 be presented to the School Board for potential adoption. Then, as alleged above, Board
22 President Pinney and Superintendent Monetti had illegally refused to place his *QSE*
23 *Policy* on the School Board’s agenda and Pinney had advised Caldwell that his policy
24 needed to be considered at the local high school level before it could be decided on a
25 district-wide policy basis.¹¹

¹¹As alleged below, this would not be Caldwell’s last trip back to the local high school level as, in April of 2004, the District, in its Administrative Decision described below, advised Caldwell –after Caldwell had presented his instructional materials challenge to the Holt Biology Textbook to a District-Wide Committee of science teachers that had been convened by Lawrence– that, in fact, Caldwell would need to present his instructional materials challenge to the Holt Biology Textbook on a teacher by teacher basis at each of the high schools. Based upon

1 114. Nevertheless, in light of Severson's e-mail informing Caldwell that he was
2 not welcome to put his *QSE Policy* on the agenda of a GBHS CIT Meeting for public
3 discussion and that his science education proposals were district-wide curriculum policy
4 issues within Lawrence's jurisdiction, later in September, Caldwell followed up with
5 further discussions with Lawrence that led to Caldwell initiating procedures overseen by
6 Lawrence, including an instructional materials challenge to the Holt Biology Textbook,
7 and proposing additional instructional materials for adoption as *instructional materials*
8 for biology class. As alleged in detail below, those processes took place in the period
9 for October through December.

10 115. In light of Severson's advice to Caldwell in September that his science
11 education proposals were not welcome subjects at GBHS CIT Meetings, Caldwell was
12 surprised when he received, on or about December 1, 2003, a copy of the agenda for
13 the December 3, 2003 GBHS CIT meeting indicating that the agenda included a
14 discussion of Caldwell's instructional challenge to the Holt Biology Textbook and
15 Caldwell's proposed Additional Instructional Materials for biology class. Caldwell
16 arranged for approximately 10 to 20 parents and other community members in the
17 District who supported Caldwell's science education proposals to attend the December
18 3, 2003 GBHS CIT meeting.

19 116. Upon seeing Caldwell and his supporters in attendance at the December
20 3, 2003 GBHS CIT meeting, Severson addressed the crowd at the outset of the meeting
21 and announced that Caldwell's evolution education proposals would not be discussed or
22 publicly debated at the meeting after all. Severson refused to permit those parents and
23 community members in attendance to discuss the evolution issue at that meeting. In
24 response to complaints from Caldwell's supporters in attendance about not getting an
25 opportunity to discuss the subject, Severson falsely represented to those in attendance

Caldwell's experience, he alleges on information and belief that, when a citizen attempts to present a policy proposal to the District for possible adoption that the District's administration doesn't agree with, the District's School Board and administrators, including Monetti, Lawrence and Severson, have a custom and practice of preventing the policy from ever seeing the light of public debate or adoption by putting the citizen and his policy proposal on an endless ride on their bureaucratic merry-go-round.

1 at the meeting, *inter alia*, that parents and other community members don't have a legal
2 right to participate in the process of selection of *supplementary instructional materials*,
3 and that they have no right to participate in public debates regarding whether such
4 *supplementary instructional materials* should be adopted. Severson also explained that
5 Caldwell's instructional challenge to the Holt Biology Textbook and his proposed
6 Additional Instructional Materials had been sent out to science experts at universities for
7 evaluation before the District-Wide Committee of science teachers made their decision
8 on Caldwell's proposals, since, at a meeting of the District-Wide Committee [referred to
9 below as the "October Meeting"], the science teachers had realized that they were not
10 qualified to evaluate the scientific validity of Dr. Hunter's critique of the "accuracy,
11 objectivity and currentness" of the Holt Biology Textbook, and of the Additional
12 Instructional Materials [as described below] that Caldwell was proposing for adoption.
13 Severson went on to describe Caldwell's proposal to include presentation of the
14 scientific weakness of evolution in biology class to a parent who asks the history
15 department not to teach about the Holocaust because that parent does not believe the
16 Holocaust happened.

17 117. Caldwell alleges on information and belief that Severson was motivated to
18 cancel the planned discussion of Caldwell's evolution education proposals at the
19 December 3, 2003 GBHS CIT meeting for the same reasons that had motivated
20 Severson in September to tell Caldwell that his *QSE Policy* was not welcome on the
21 agenda for the GBHS CIT. Caldwell further alleges on information and belief that
22 Severson's conduct in this regard is part of an established custom and practice by the
23 administration of Granite Bay High School to censor public debate and discussion at
24 GBHS CIT meetings for the unconstitutional purposes of shielding the administration
25 and staff from public criticism, by censoring viewpoints with which Severson disagrees,
26 including, in particular, Caldwell's viewpoint that the *Minority Scientific Viewpoint* should
27 be included in biology classes, and to limit public discussions at GBHS CIT meetings to
28 "discussion artificially geared toward praising (and maintaining) the status quo, thereby
29 foreclosing meaningful public dialogue and, ultimately, dynamic political change." In this
30 regard, even though Severson refused to permit the public to discuss Caldwell's science
31 education proposals during the December 3, 2003 GBHS CIT Meeting, Severson used
32 the written notification of the agenda for the January of 2004 GBHS CIT Meeting as a

1 forum in which to convey his viewpoint on Caldwell's science education proposals to
2 GBHS CIT participants without permitting Caldwell or other members of the public to
3 provide any input to GBHS CIT participants on that subject. In this regard, even though
4 Severson used the written notification of the agenda for the January meeting to express
5 his viewpoint on the issue, Severson still did not place the item actually on the agenda
6 of items that would be open for discussion and public input at that meeting. Caldwell
7 also alleges on information and belief that Severson's conduct in this regard was
8 motivated by his hostility to and disapproval of Caldwell's Christian religious belief and
9 Severson's hostility to and disapproval of the Christian religious motivations that
10 Severson presumed to flow from Caldwell's Christian beliefs.

11 118. Promptly after the December 3, 2003, GBHS CIT Meeting, Caldwell sent
12 written complaints about Severson's conduct at the meeting to Severson, to Monetti,
13 and to each of the members of the School Board, including Pinney and Joiner. Caldwell
14 alleges on information and belief that Monetti and the School Board never investigated
15 Severson's conduct at the meeting, and that Monetti and the School Board never
16 reprimanded Severson for his conduct during the meeting. To the contrary, Pinney,
17 who was then Board President, sent an e-mail to Severson complimenting him on his
18 handling of the meeting! For his part, Severson sent an e-mail response to Caldwell,
19 which was copied to others in the District, in which Severson conveyed his approval of
20 the parents in attendance at the December 3, 2003 GBHS CIT meeting other than
21 Caldwell and his supporters, and in which Severson conveyed his disapproval of
22 Caldwell and his supporters.

23 119. As alleged in detail below, later in December of 2003, Caldwell filed an
24 administrative complaint with the District administration on behalf of parents, students
25 and taxpayers in the District regarding the Districts' response to his attempts to gain
26 approval of Caldwell's science education proposals. In an amendment to that
27 administrative complaint dated February 24, 2004, Caldwell added allegations of
28 constitutional and statutory violations regarding Severson's conduct at December 3,
29 2003 Granite Bay High School CIT meeting. Caldwell included a complaint about the
30 fact that Severson never did put Caldwell's evolution education proposals on the
31 agenda for public discussion at Granite Bay High School CIT meetings during the 2003-
32 2004 school year.

1 120. In its Administrative Decision on that administrative complaint dated April
2 9, 2004, defendant Genasci, acting on behalf of the District, ratified Severson’s refusal
3 to place Caldwell’s evolution education proposals on the agenda for discussion at
4 meetings of the Granite Bay High School CIT, in part, and stated that Severson’s refusal
5 to put Caldwell’s evolution education proposals on the agenda for discussion at any of
6 the meetings after December of 2003 was based on the fact that Caldwell had
7 presented the administrative complaint to the District in late December of 2003. In other
8 words, the District admitted in its Administrative Decision that Severson had retaliated
9 against Caldwell for making use of the District’s administrative complaint process to
10 complain about deprivations of the constitutional rights in connection with the December
11 3, 2003 CIT Meeting by refusing to put Caldwell’s proposal on the agenda at meetings
12 after that point. The District, acting through Genasci, ratified Severson’s conduct in that
13 regard, by stating that the District viewed such retaliation by Severson as a valid
14 justification for Severson’s continuing violation of Caldwell’s constitutional rights during
15 the period between January and April of 2004, during which time Severson held monthly
16 meetings of the GBHS CIT Meeting but declined to put Caldwell’s science education
17 proposals on the agenda for public discussion at any of those meetings.

18 121. Caldwell alleges on information and belief that during the time period
19 between June 3, 2003 and the present time, Severson, and/or other members of the
20 administration and staff of Granite Bay High School have made other statements and
21 have engaged in other conduct that has sent a message to student, parents and
22 employees of Granite Bay High School that Granite Bay High School disapproves of
23 Caldwell’s Christian religious beliefs and disapproves of the religious motives that are
24 presumed to flow from those Christian beliefs.

25 **E. Caldwell’s “Instructional Materials Challenge”**
26 **to the Holt Biology Textbook**

27 122. As discussed above, in September of 2003, after Caldwell had been told
28 by Severson that his *QSE Policy* was a district-wide policy that was not appropriate for
29 public debate at the local high school level, Caldwell contacted Lawrence to find out
30 what procedures Caldwell could use to bring his concerns about the Holt Biology
31 Textbook, and his desire for the District to adopt additional instructional materials to
32 meet those concerns, before district decision makers for action.

1 123. Lawrence advised Caldwell in an e-mail message that the only procedure
2 available to him was an instructional materials challenge to the Holt Biology Textbook.
3 Lawrence further advised Caldwell that the District's written procedure for selection of
4 *supplementary instructional materials* did not provide for any role or involvement by
5 parents such as Caldwell.

6 124. Caldwell responded to Lawrence's advice by sending an e-mail in which
7 Caldwell pointed out the mandatory public involvement requirements of California
8 Education Code §60002, and pointed out that the District's written procedure for
9 selection of supplementary instructional materials cited by Lawrence was in violation
10 with this statute, and Caldwell requested that the District make available to him a
11 procedure for being pro-actively involved in recommending *additional instructional*
12 *materials* regarding evolution to the District's science departments.

13 125. In this e-mail, Caldwell also objected to the fact that the District's policy on
14 instructional materials challenges, Board Policy 6521 and Staff Rule 6521, did not
15 contain any provision for a district-wide instructional materials challenge to an
16 instructional material such as the Holt Biology Textbook, that is used on a district-wide
17 basis, but instead required a parent to make a separate instructional materials
18 challenge to each individual science teacher using the book, each of which would then
19 have to go through a separate review and appeal process up the chain. Caldwell
20 pointed out that it appeared to be a waste of time and effort for himself and the District
21 to have to file a number of separate challenges to one textbook, rather than one,
22 district-wide challenge.

23 126. Towards the end of September of 2003, Lawrence telephoned Caldwell
24 and informed him that he would be convening a district-wide committee of science
25 teachers from each of the high schools (the "District-Wide Committee") to jointly
26 consider Caldwell's instructional materials challenge to the Holt Biology Textbook, as
27 well as any additional instructional materials that Caldwell wished to propose for
28 adoption and use in biology classes. As alleged above, around this same time,
29 Severson had also advised Caldwell that his proposals regarding evolution education
30 appeared to be suited to a district-wide procedure, and not a high school by high school
31 procedure.

32 127. A meeting of the District-Wide Committee was set for October 29, 2003

1 (the “October Meeting”). Caldwell spent a number of hours of time preparing for and
2 making his presentation at the October Meeting, which focused on a discussion of the
3 law applicable to selection and adoption of textbooks and other instructional materials,
4 including the requirement that textbooks provide an “accurate, objective and current”
5 presentation of their subject matter. Caldwell arranged for Dr. Hunter to present an
6 extensive power point presentation and oral testimony at the October Meeting, which
7 involved many hours of Dr. Hunter’s time. Dr. Hunter’s extensive power point
8 presentation focused on aspects of the Holt Biology Textbook’s presentation of
9 evolution that were not “accurate, objective and current,” and proposed written
10 additional instructional materials that could be used to augment the textbook so that, if
11 used together, the Holt Biology Textbook and Dr. Hunter’s written additional
12 instructional materials would comprise a *basic instructional material* for biology class
13 that provided an “accurate, objective and current” presentation of evolution.

14 128. By all appearances, the October Meeting was an official meeting of the
15 District by a district-wide committee that had been appointed by Lawrence on behalf of
16 the District. Caldwell made all arrangements for the October Meeting through
17 Lawrence. Lawrence hosted the October Meeting of the District-Wide Committee,
18 which was held at the District’s headquarters, and Lawrence, acting on behalf of the
19 District in his official role as Assistant Superintendent for Curriculum and Instruction,
20 presided over the October Meeting as its chair person.

21 129. Other details of the October Meeting are alleged below in paragraphs 180
22 through 197 and 214 below. Among other things, in the course of the October Meeting,
23 the science teachers in attendance stated that they lacked sufficient scientific expertise
24 to do a competent evaluation of Dr. Hunter’s power point presentation.

25 130. At the end of the October Meeting, it was Caldwell’s understanding from
26 Lawrence that, in view of the science teachers’ acknowledged lack of competence, the
27 District-Wide Committee was going to obtain expert scientific opinions regarding Dr.
28 Hunter’s critiques of the Holt Biology Textbook that were included in his power point
29 presentation, on which the science teachers in the District-Wide Committee would then
30 base their decision on Caldwell’s instructional materials challenge to the Holt Biology
31 Textbook. As alleged above, Severson, who was in attendance at the October Meeting,
32 confirmed the accuracy of this understanding in statements he made to the GBHS CIT

1 in December of 2003 and January of 2004. Lawrence did not specify a particular
2 deadline or time frame for the District-Wide Committee's decision.

3 131. Following the October Meeting, but before the District-Wide Committee
4 had rendered its decision on Caldwell's instructional materials challenge, Caldwell sent
5 an e-mail correspondence to Lawrence in which he asked Lawrence for the courtesy of
6 giving Caldwell an opportunity to present Dr. Hunter's written reply to the outside
7 reviewers' critiques of Dr. Hunter's power point presentation to the District-Wide
8 Committee for its consideration in making its decision.

9 132. On December 16, 2003, Caldwell learned through a third party that the
10 District-Wide Committee had rendered its final decision on Caldwell's instructional
11 materials challenge to the Holt Biology Textbook and Caldwell's proposed additional
12 instructional materials, and that Lawrence had also made a decision and
13 recommendation to the School Board on the basis of the District-Wide Committee's
14 decision. Lawrence did not contact Caldwell to inform him of either decision. Lawrence
15 and the District-Wide Committee also did not provide Caldwell with copies of the outside
16 science reviews before making their decision, and Lawrence and the District-Wide
17 Committee did not give Caldwell an opportunity to obtain and submit replies to the
18 outside science reviews from Dr. Hunter, as the author of the Hunter Written Materials,
19 and from Coldwater Media, the producer/distributor of the video instructional materials
20 that were included in the proposed additional instructional materials.

21 133. Apparently, Lawrence told Laurel Rosen ("Rosen"), a reporter for The
22 Sacramento Bee about the decisions –even though Lawrence hadn't written Caldwell to
23 inform him of the decision nor called Caldwell-, because Caldwell received a call from
24 Rosen, on December 32, 2003. She said she was calling to get Caldwell's reaction to
25 Lawrence's decision, which she said she had been told about by Lawrence.

26 134. On December 32, 2003, after speaking to the reporter, Caldwell
27 telephoned Lawrence to discuss his decision. During that conversation, Lawrence
28 acknowledged that, prior to the recommendation from the District-Wide Science
29 Teachers' Committee and Lawrence's own decision, he had received Caldwell's
30 requests for Dr. Hunter and Coldwater Media to be given a chance to submit a response
31 to the outside critiques of their Additional Materials and critiques of Dr. Hunter's critique
32 of the Holt Biology Textbook before rendering a decision was made on the matter, but

1 chose to permit the teachers to make their decision and made his own decision before
2 giving Dr. Hunter and Coldwater Media a chance to submit those responses. Caldwell
3 reminded Lawrence that he had previously told Caldwell that the decision of the District-
4 Wide Committee was to have been submitted to each of the high schools for review and
5 action by the principal at each site. Lawrence acknowledged that he had said that, but
6 said that, since the District-Wide Committee had unanimously rejected Caldwell's
7 challenge to the Holt Biology Textbook and his proposed additional instructional
8 materials, there was no point in sending the matter back to the high school principals for
9 action.

10 135. In Caldwell's December 33rd E-Mail to Lawrence, Caldwell asked
11 Lawrence about the next step in the process Specifically, Caldwell asked two questions:
12 "Does the District have a procedure for an appeal from, or request for
13 reconsideration of, the District's decision on this matter?
14 "If so, *please advise me of that procedure, what District paperwork, if any, I am*
15 *required to submit in order to start the appeal/reconsideration process, and my*
16 *deadline for submitting the application for appeal/reconsideration and supporting*
17 *documentation."* (Emphasis added.)

18 136. On December 34, 2003, Lawrence e-mailed this response to Caldwell's
19 questions:
20 "I sent you an e-mail reviewing the process that we would be going through as
21 well as providing you with the Board policy that governs textbook selection,
22 supplemental materials, and the challenge process. I also reviewed what the
23 process would be prior to you and Dr. Hunter leaving your presentation with the
24 science teachers. I believe these provide you with all of the information that you
25 need."

26 137. On December 38, 2003, The Sacramento Bee reported that The
27 Sacramento Bee, Lawrence described the District's decision on the matter to be final,
28 and "that the months-long debate over how to teach evolution in Roseville high schools
29 had come to an end." That same article accurately reported that Caldwell had said that
30 he would like the teachers' decision reconsidered and was looking into the district's
31 procedures for appeals.

32 138. At that point, Caldwell followed Lawrence's advice and re-read

1 Lawrence's prior e-mail dated September 12, 2003, in which Lawrence had referred
2 Caldwell to the Board Policy 6521 and Staff Rule 6521, which govern instructional
3 material challenges. When Caldwell looked at Staff Rule 6521, he remained confused
4 about what he needed to do next to proceed with the remaining levels of review and
5 appeal on his instructional materials challenge to the Holt-Biology Textbook.

6 139. The District's standard procedure for instructional material challenges, set
7 forth in Board Policy 6521 and Staff Rule 6521, contains four levels of review of the
8 issue.

9 140. At the first level, the parent discussed his concerns with the instructional
10 material in question with the individual teacher.

11 141. At the second level if the parent cannot resolve the issue with the
12 individual teacher, then the parent's concerns are referred to the principal of that high
13 school for the second level of review.

14 142. If the principal cannot resolve the parent's concerns, then the matter
15 proceeds to a third level of review. In this level, the matter is referred to Lawrence, as
16 the Assistant Superintendent for Curriculum and Instruction. Lawrence is then required
17 to convene a "Review Committee" consisting of the following: (1) the assistant
18 superintendent, as committee chair; (2) two teachers of the same department where the
19 material is being used or the librarian' (3) two parents; (4) the principal of the school
20 involved; and (5) one school board member. In the third level of review, the Review
21 Committee is to comply with the following procedure:

22 "4.1 Committee members will receive copies of the statement questioning the
23 instructional material. 4.2 Opportunity shall be afforded those persons or groups
24 questioning the materials to meet with the committee and to present their
25 opinions. The teacher and any other person involved in the selection or use of
26 the questioned material shall also have an opportunity to meet with the
27 committee to present their positions in the matter. 4.3 The committee will review
28 the material in question and form opinions based on the material taken as a
29 whole and not on passages taken out of context. 4.4 The committee will
30 formulate its recommendations and prepare a written report for the assistant
31 superintendent who will make a final determination for action." The assistant
32 superintendent is then required to provide a written communication of the final

1 decision made to the person who presented the instructional materials challenge.

2 143. If the parent is still not satisfied, the District's standard procedure provides
3 for a fourth level of appeal, in which the parent is entitled to appeal the final decision
4 directly to the District superintendent, Monetti.

5 144. In September, when Lawrence proposed the District-Wide Committee to
6 Caldwell, Lawrence had not explained how the district-wide committee of science
7 teachers would fit into the usual procedure for handling instructional materials
8 challenges. Lawrence never asked Caldwell whether he was willing to waive any of his
9 rights under the standard District procedure regarding instructional material challenges.
10 Caldwell never agreed to waive his rights under the usual instructional materials
11 challenge procedure and certainly never agreed to waive any of his rights to review or
12 appeal under that procedure, and Caldwell never agreed to waive his right under the
13 standard procedure to have board members as well as members of the public involved
14 in the review and appeal process, nor did he agree to waive his right to have public
15 input into the process.

16 145. It had been Caldwell's understanding that the District-Wide Committee of
17 Science Teachers was to replace the first level of review in the District's standard
18 instructional materials challenge procedure and would consolidate Caldwell's separate
19 instructional materials to each of the science teachers in the District into one
20 consolidated district-wide instructional materials challenge to the Holt Biology Textbook.
21 For this reason, Caldwell had not proceeded with individual instructional materials
22 challenges to the Holt Biology Textbook with each of the science teachers in the District,
23 since it was his understanding that they would all be attending his presentation to the
24 District-Wide Committee in any event, so that such individual presentations would have
25 been redundant and would have defeated what Caldwell understood to be Lawrence's
26 purpose in convening the District-Wide Committee: to eliminate the need for
27 approximately twenty separate presentations to individual science teachers.

28 146. It was Caldwell's assumption and understanding that the decision by the
29 District-Wide Committee, if unacceptable to Caldwell, would then proceed on a
30 consolidated basis through the other remaining levels of review and appeal available to
31 parents under the District's instructional material challenges procedure. This
32 assumption and understanding was reasonably based upon the statements by

1 Lawrence and Severson that the District officials were of the view that Caldwell's
2 instructional materials challenge to the Holt Biology Textbook should be handled on a
3 district-wide basis, rather than on a high school by high school basis and Lawrence's
4 proposal of the District-Wide Committee of science teachers to be convened and
5 overseen by Lawrence.

6 147. Caldwell further understood that the District-Wide Committee would be
7 performing a parallel role of evaluating and considering for adoption the additional
8 instructional materials that Caldwell intended to propose. As alleged in more detail
9 below, the purpose of these additional instructional materials was to remedy the
10 deficiencies in the Holt Biology Textbook, so that, if used together, the Holt Biology
11 Textbook and the additional instructional materials would comprise a *basic instructional*
12 *material* for biology that contained an "accurate, objective and current" presentation of
13 evolution.

14 148. Based upon Lawrence's statement in The Sacramento Bee, it was obvious
15 to Caldwell that Lawrence and the District did not intend to take any further action on his
16 instructional materials challenge to the Holt Biology Textbook, and in fact, Lawrence
17 and the District took no further action on Caldwell's instructional materials challenge to
18 the Holt Biology Textbook.

19 149. On December 30, 2003, Caldwell filed an administrative complaint with the
20 District on behalf of a class consisting of parents, students and other citizens, as
21 discussed elsewhere in this complaint (the "Class Administrative Complaint"). On
22 February 24, 2004, Caldwell added an administrative claim to that Class Administrative
23 Complaint that included a claim that the District had violated the constitutional, statutory,
24 and regulatory rights of parents and other citizens in the District by failing to comply with
25 its review and appeal procedures with regard to Caldwell's instructional material
26 challenge to the Holt Biology Textbook. Caldwell discussed these allegations in detail
27 during the "evidentiary meeting" on the administrative complaint that was held by
28 Genasci on behalf of the District on February 25, 2004.

29 150. Caldwell alleges that he substantially complied with the procedural
30 requirements for requesting and fulfilling the first level of review of his instructional
31 materials challenge to the Holt Biology Textbook through his correspondence with
32 Severson and Lawrence that led to the October Meeting of the District-Wide Committee

1 and his presentation to the District-Wide Committee at the October Meeting.

2 151. Caldwell further alleges that he substantially complied with the procedural
3 requirements for triggering the second level of review of his instructional materials
4 challenge –i.e., review by the respective principals of each of the high schools in the
5 District– through his December 32, 2003 telephone conversation with Lawrence, his
6 December 33, 2003 e-mail correspondence to Lawrence, Caldwell’s desire for a review
7 of the District-Wide Committee’s decision on his challenge to the Holt Biology Textbook
8 that was reported in the December 38, 2003 article in *The Sacramento Bee*, in the
9 February 24, 2004 amendment to the Class Administrative Complaint, as described
10 above, and in Caldwell’s comments regarding the instructional materials challenge
11 during the February 25, 2004 “evidentiary meeting.”

12 152. At all times between December 32, 2003, and April 9, 2004, it was obvious
13 to Lawrence and the District administration that Caldwell desired a review and appeal
14 from the District-Wide Committee’s decision on his instructional materials challenge to
15 the Holt Biology Textbook.

16 153. However, Lawrence and the District never conducted any further review or
17 appeal of Caldwell’s instructional materials challenge to the Holt Biology Textbook, as
18 required by Board Policy 6521 and Staff Policy 6521. Caldwell alleges on information
19 and belief that the District, acting through Lawrence, Severson, Monetti, and others,
20 refused to conducted the second, third and fourth levels of review and appeal from
21 Caldwell’s instructional materials challenge, in a further effort to censor and suppress
22 Caldwell’s viewpoint regarding science education from public debate and District
23 consideration, and in an effort to deprive Caldwell of equal protection under the law with
24 respect to the instructional materials challenge, based upon defendants’ disagreement
25 with and hostility to Caldwell’s viewpoint, and based upon hostility to and disapproval of
26 Caldwell’s Christian religious beliefs and the presumed religious motivations that
27 defendants inferred from Caldwell’s Christian religious beliefs.

28 154. On April 9, 2004, the District, acting through Genasci, ratified the refusal of
29 Lawrence, Severson, Monetti and other District officials to accord Caldwell his rights to
30 review and appeal under the District’s instructional materials challenge procedure, by
31 refusing in the District’s Administrative Complaint to take action to correct such refusal.
32 Incredibly, the District, acting through Genasci, attempted to justify the District’s refusal

1 to conduct reviews and appeals of Caldwell’s challenge to the Holt Biology Textbook on
2 the grounds that Caldwell purportedly “did not initiate” an instructional materials
3 challenge to the Holt Biology Textbook. According to Genasci, the District purportedly
4 relied on Caldwell’s failure to complete a “Request for Reconsideration of Instructional
5 Materials” form in assuming that Caldwell allegedly did not wish to pursue an
6 instructional materials challenge to the Holt Biology Textbook. Prior to April 9, 2004, no
7 one at the District had ever informed Caldwell that the District did not perceive that
8 Caldwell was pursuing an instructional materials challenge to the Holt Biology Textbook,
9 and no one at the District had ever informed Caldwell that the District was waiting to
10 receiving a completed “Request for Reconsideration of Instructional Materials” form
11 from Caldwell before proceeding with the next level of review of his instructional
12 materials challenge.

13 155. Caldwell alleges on information and belief that the position taken by
14 Genasci, acting on behalf of the District, in the Administrative Decision, was just a
15 pretext for ratifying the conduct of Lawrence, Severson, the other high school principals,
16 and Monetti, in refusing to accord Caldwell the usual procedural due process with
17 regard to his instructional materials challenge to the Holt Biology Textbook. Caldwell
18 further alleges that Genasci’s action in authoring and issuing that portion of the
19 Administrative Decision was a further effort by the District and other defendants to
20 censor Caldwell’s viewpoint regarding science education, as expressed in his various
21 proposals, from public debate and political action, and which was also based upon
22 defendants’ hostility to and disapproval of Caldwell’s Christian religious beliefs.

23 156. On April 20, 2004, the School Board, including Pinney and Joiner,
24 declined to hear an appeal from the District’s Administrative Decision, which had the
25 legal affect of finalizing and thereby ratifying the misconduct alleged in the Class
26 Administrative Complaint.

27 **F. Caldwell’s Efforts to Persuade the District to Adopt**
28 **the Proposed Additional Instructional Materials**

29 157. Under California’s statutory scheme, decisions regarding the selection and
30 adoption of instructional materials for use in public high schools are made at the local
31 school district level, by their respective school board. Before adopting a particular
32 instructional material, the local school board must make a determination to its

1 satisfaction that the instructional material complies with various California statutory
2 requirements, including California Education Code §60045's requirement that all such
3 instructional materials must be "accurate, objective and current."

4 158. California's statutory scheme also requires local school districts to
5 promote involvement by parents and other interested community members in the
6 selection of all instructional materials used in public high schools. (Cal. Ed. Code
7 §60002.)

8 159. *Instructional materials*, as defined in Cal. Ed. Code §60010, is a very
9 broad term, that means "all materials that are designed for use by pupils and their
10 teachers as a learning resource and help pupils to acquire facts, skills, or opinions or to
11 develop cognitive processes. Instructional materials may be printed or nonprinted, and
12 may include textbooks, technology-based materials, other educational materials, and
13 tests." *Instructional Materials* includes the subcategories of *basic instructional*
14 *materials*, *supplementary instructional materials*, and *technology-based materials*.

15 160. *Basic instructional materials*, as defined in Cal. Ed. Code §60010, means
16 "instructional materials that are designed for use by pupils as a principal learning
17 resource and that meet in organization and content the basic requirements of the
18 intended course." *Basic Instructional Materials* includes, but is not limited to textbooks
19 used in classrooms.

20 161. *Supplementary instructional materials*, as defined in Cal. Ed. Code
21 §60010, means "instructional materials designed to serve, but not limited to, one or
22 more of the following purposes, at a given grade level:

- 23 (1) To provide more complete coverage of a subject or subjects included in a
24 given course (4) To provide for meeting the diverse educational needs of
25 pupils reflective of a condition of cultural plurality."

26 162. *Technological instructional materials*, as defined in Cal. Ed. Code §60010,
27 means "those basic or supplemental instructional materials that are designed for use by
28 pupils and teachers as learning resources and that require the availability of electronic
29 equipment in order to be used as a learning resource. Technology-based materials
30 include, but are not limited to, software programs, video disks, optical disks, video and
31 audio tapes, lesson plans, and data bases. Technology-based materials do not include
32 the equipment required to make use of those materials."

1 163. Commencing in September of 2003, Caldwell attempted to exercise his
2 right under Education Code §60002 to participate in the selection of instructional
3 materials for biology in the District by requesting that the District consider certain
4 additional instructional materials for adoption as approved instructional materials for use
5 in biology classes throughout the District (the “Additional Instructional Materials”).

6 164. The Additional Instructional Materials included written instructional
7 materials authored by Cornelius G. Hunter, Ph.D. (the “Hunter Written Materials”). Dr.
8 Hunter is a highly qualified professional scientist, who holds a Ph.D. in Biophysics and
9 Computational Biology from the University of Illinois, and a B.S, and Masters’ Degree in
10 engineering from the University of Michigan. Dr. Hunter is currently a senior scientist at
11 a high-tech research firm. Dr. Hunter’s research work includes the analysis of protein
12 structure, sequence and folding, and the optimal estimation and control of nonlinear
13 control systems. Dr. Hunter has published several papers on these topics in
14 mainstream scientific journals and conferences.

15 165. The Additional Instructional Materials also included video instructional
16 materials entitled the “Icons of Evolution” video curriculum modules that were
17 produced by Coldwater Media (the “Coldwater Media Video Materials”). The ColdWater
18 Media Video Materials consist of six short segments on the following evidences relating
19 to biological evolution: Haeckel’s Embryos; The Galapagos Finches; Four-Winged Fruit
20 Flies; Antibiotic Resistance of Bacteria; Homology; and The Cambrian Explosion. Four
21 of the segments are under five minutes in length, a fifth segment is under six minutes
22 long, and the sixth segment is just over eleven minutes long.

23 166. As described by Coldwater Media, in a letter to the District dated February
24 12, 2004:

25 *“Icons of Evolution* and the accompanying study modules were created
26 and funded by ColdWater Media, not The Discovery Institute. The purpose of the
27 documentary was to cover some of the growing *scientific* debate over modern
28 evolutionary theory that most students are never allowed to learn about. The
29 video modules adapted from the documentary were designed to supplement
30 rather than replace basic instructional materials for biology. Biology textbooks
31 already extensively cover evidence that supports Darwin’s theory of evolution,
32 which is perfectly appropriate since Darwin’s theory is the majority view in

1 science. However, students are also entitled to hear about the areas of
2 Darwinian theory that remain subject to genuine scientific disagreement. The
3 *Icons* modules are an effort to help school districts and biology teachers provide
4 students with a deeper and richer understanding of evolutionary theory, including
5 the scientific problems with that theory that are currently discussed in peer-
6 reviewed science publications.

7 To ensure scientific accuracy, a number of scientists reviewed all or a part
8 of the script for the *Icons* project. These experts included a Ph.D. biologist, a
9 Ph.D. microbiologist, a Ph.D. philosopher of biology, and a Ph.D. historian of
10 science. Although the purpose of the *Icons* documentary and supplementary
11 modules is to present scientific information and viewpoints not adequately
12 addressed in most textbooks, ColdWater believes that it is important to provide
13 context to these views by also presenting the views of proponents of Darwinian
14 evolution. Hence, in addition to scientific critics of neo-Darwinism, the *Icons*
15 project also presents the contrary views of prominent evolutionists such as
16 Kenneth Miller, Eugenie Scott, and James Valentine.”

17 167. Caldwell wished to have both categories of Additional Instructional
18 Materials considered for adoption by the District as approved instructional materials for
19 use in biology classes in the District, either as a part of the *basic instructional materials*
20 for biology, or as *supplementary instructional materials* for biology.

21 168. As alleged above, Caldwell made an inquiry to Lawrence in September of
22 2003 regarding whether the District had a procedure for him to utilize in seeking
23 adoption of the Additional Instructional Materials. Initially, Lawrence informed Caldwell
24 that the District had no procedure available for him to seek adoption of the Additional
25 Instructional Materials on a district-wide basis.¹² Indeed, Caldwell was informed by
26 Lawrence that with regard to *supplementary instructional materials*, the District’s
27 procedure for selection and adoption did not include *any* provision for involvement by
28 parents or other community members in the selection process –Caldwell was informed
29 that selection and adoption of *supplementary instructional materials* is made solely by

¹²As discussed below, Caldwell was informed that the only procedure available to him was the instructional materials challenge procedure.

1 teachers and principals at each site (i.e., each high school).

2 169. Caldwell pointed out to Lawrence that since California Education Code
3 §60002 mandates that local school districts promote involvement by parents and other
4 community members in the selection of *instructional materials* used in schools, the
5 District's procedure for selection of *supplementary instructional materials* did not appear
6 to be in compliance with California law.

7 170. Later in September of 2003, Lawrence responded by telephoning Caldwell
8 and stating that the District would convene a district-wide committee, consisting of all of
9 the biology teachers in the District (the "District-Wide Committee") to consider and act
10 on Caldwell's request for adoption of the Additional Instructional Materials as part of the
11 *basic instructional materials* for biology, or as *supplementary instructional materials* for
12 biology.¹³ Based upon Lawrence's representations during this telephone conversation,
13 it was Caldwell's understanding that the District-Wide Committee was to be created,
14 appointed and chaired by Lawrence, in his official capacity as Assistant Superintendent
15 for Curriculum and Instruction for the District, acting on direction given to Lawrence by
16 the School Board at its September 2, 2003 School Board Meeting.

17 171. Caldwell alleges on information and belief that the District made no effort
18 to promote involvement by other parents and community members in the District's
19 deliberation and decision-making process regarding the Additional Instructional
20 Materials, in compliance with California Education Code §60002. In this regard,
21 Lawrence did not appoint any members of the public to the District-Wide Committee,
22 even though, in September, at least two parents and members of the community had
23 expressly requested that they be included on any District committee convened to
24 determine whether the Holt Biology Textbook should be supplemented with additional

¹³As discussed above, it was Caldwell's understanding that the District was proposing that the District-Wide Committee would also be considering the first level of Caldwell's Instructional Materials Challenge to the Holt Biology Textbook on a district-wide basis, as an alternative to a series of individual instructional materials challenges being presented to each of the science teachers in the District. Lawrence never asked Caldwell to waive his rights under the District's standard four-level review procedure for instructional materials challenges, and Caldwell never agreed to waive any of his rights under that procedure.

1 instructional materials regarding biological evolution. To the contrary, Caldwell alleges
2 on information and belief that Lawrence informed those two parents that the public had
3 no right to participate in the process.

4 172. The District-Wide Committee held at least two meetings to consider
5 adoption of the Additional Instructional Materials as approved instructional materials, in
6 October and December of 2003. The District did not post a public agenda for either
7 meeting of the District-Wide Committee. The District-Wide Committee did not permit
8 any members of the public to attend the October meeting of the District-Wide
9 Committee other than Caldwell and Dr. Hunter, and did not permit the media to attend
10 the meeting, despite a request by Rosen, the reporter for the Sacramento Bee, to attend
11 the meeting. The District-Wide Committee did not solicit nor accept input from any
12 members of the public other than Caldwell and Dr. Hunter.

13 173. The District-Wide Committee did not permit Caldwell or any members of
14 the public to attend the December meeting and also did not permit the media to attend
15 that meeting. Indeed, the fact the December meeting was even taking place was only
16 reported by the District after the fact, after the District-Wide Committee had already
17 made its decision and recommendation to Lawrence.

18 174. In this regard, as discussed above, on December 3, 2003, approximately
19 to 20 parents and community members who supported adoption of the Additional
20 Instructional Materials attended the CIT Meeting of Granite Bay High School in
21 response to an agenda item indicating that the "Science Curriculum Update" would be
22 discussed. When these parents and community members arrived at the CIT Meeting,
23 they were informed by Severson, the principal of Granite Bay High School, and a
24 member of the District's Leadership Team, that, in fact, this item was being taken off the
25 agenda, and that there would be no discussion of the subject at the meeting. When one
26 of the parents in attendance asked when parents and community members would get
27 an opportunity to participate in the debate regarding whether the Additional Instructional
28 Materials should be adopted as instructional materials for biology, Severson informed
29 the parent that the District does not permit parents and other community members to be
30 involved in that process prior to the Board of Trustees level, since, at the school level,
31 deliberations and decisions solely involve teachers and principals.

32 175. On December 4, 2003, a parent in the District sent an e-mail to Lawrence

1 and the District leadership complaining about the fact that deliberations and decisions
2 regarding the Additional Instructional Materials and the related textbook challenge were
3 being conducted behind closed doors, asking to be informed in advance when such
4 meetings occurred, and asking when the public was going to get an opportunity to be
5 involved in the debate and decision-making process.

6 176. Caldwell is informed and believes that Lawrence responded to the parent
7 in an e-mail in which Dr, Lawrence explained that the District does not permit parents
8 and other community members to participate in the selection of supplementary
9 instructional materials. Lawrence did not inform the parent of his right under Education
10 Code §60002, as a parent and community member, to be “involved in the selection” of
11 *all* instructional materials used in biology classrooms. Lawrence clearly knew about the
12 public’s rights under Education Code §60002, since he had been informed of them by
13 Caldwell in an e-mail dated September 18, 2003. Lawrence also did not inform the
14 parent of his rights under the Brown Act with regard to meetings held to make factual
15 investigations and decisions regarding selection of instructional materials, even though,
16 as a member of the Cabinet and leadership teams of the District, Lawrence presumably
17 knows about the open meeting requirements of the Brown Act.

18 177. Caldwell alleges on information and belief that Lawrence and the District’s
19 leadership did not want parents and community members who share Caldwell’s
20 viewpoints and beliefs to be aware of their rights under California law. It can be inferred
21 from Lawrence’s concealment of these rights from such parents, and from Lawrence’s
22 affirmative misrepresentation that parents had no such rights with regard to
23 supplementary instructional materials, that the District’s leadership did not want parents
24 and other community members who share Caldwell’s viewpoints and beliefs to know
25 about their right under California law to be involved in the selection of instructional
26 materials, and to attend and speak at all meetings at which facts are investigated or
27 decisions are made with regard to the selection process. It can also be inferred that
28 one purpose of the District’s active concealment of these rights was to advance its
29 intention to censor the *Minority Scientific Viewpoint* from biology classes in the District,
30 and to thereby deprive Caldwell and other parents who supported his science education
31 proposals from the opportunity to enjoy their statutory and constitutional rights to have
32 public debates on those educational proposals with the potential of dynamic political

1 action on such proposals.

2 178. In this regard, the District has in place a Board Policy and Staff Rule that
3 the District uses to justify and enforce its refusal to permit parents and other community
4 members to be involved in the selection of supplementary instructional materials, as
5 guaranteed by Education Code §60002 and the open meeting requirements of the
6 Brown Act. Board Policy 6512 and the accompanying Staff Rule 6512 provide for the
7 selection of supplementary instructional materials to be made by teachers and
8 principals at each of the high schools with *no involvement by parents or other members*
9 *of the community* in the selection process. Complainants argue that this procedure is
10 illegal under California law, since it does not comply with Education Code §60002's
11 mandate for local school boards to involve parents and other community members in
12 the selection of all instructional materials used in that district. Complainants allege that
13 the procedure in Board Policy 6512 and Staff Rule 6512 is also contrary to California
14 law, because it does not provide for open public meetings and decision making in
15 connection with the selection process in compliance with the open meeting laws of
16 California's Brown Act.

17 179. The District also does not comply with Education Code §6002's mandate
18 that it actively *promote* such involvement of parents and other community members in
19 the selection of supplementary instructional materials. To the contrary, the Board Policy
20 that expressly addresses "Parent & Community Involvement", Board Policy 1221, *does*
21 *not even mention* the public's right to be involved in the selection process, even though
22 it does list a number of other ways in which parents and community members are to be
23 encouraged to be involved in the District. Caldwell alleges on information and belief
24 that the District's failure to mention the public's statutory right to participate in the
25 selection of supplementary instructional materials is part of a purposeful policy and
26 practice to conceal this right from the public, and to dissuade the public from exercising
27 that right.

28 180. In the case of biology classes, Caldwell is informed and believes that the
29 District's administration uses the illegal procedure for selection of supplementary
30 instructional materials, as set forth in Board Policy 6512 and Staff Rule 6512, as a tool
31 to exclude ideas and viewpoints that are contrary to the staff's viewpoint –such as the
32 *Minority Scientific Viewpoint*– from the instructional materials used in the classroom,

1 and to ensure that only the *Majority Scientific Viewpoint* is taught in biology classes.

2 **1. The October 2003 Meeting**

3 181. The first meeting of the District-Wide Committee was held on October 29,
4 2003 (the “October Meeting”) in a conference room at the District’s headquarters. It
5 was chaired by Lawrence, acting in his official role as Assistant Superintendent for
6 Superintendent for Curriculum and Instruction for the District. Severson was also in
7 attendance at the October Meeting, in his official capacity as an administrator of the
8 District and high school principal.

9 182. In October, just prior to the October Meeting, copies of the Coldwater
10 Media Video Materials and the Hunter Written Materials were submitted to the District-
11 Wide Committee.

12 183. At the October meeting, Dr. Hunter made an oral presentation to the
13 District-Wide Committee regarding the Hunter Written Materials, as well as his critique
14 of the Holt Biology Textbook. Dr. Hunter’s oral presentation was accompanied by an
15 extensive slide show presentation on PowerPoint (the “Hunter Slide Show
16 Presentation”). The Hunter Slide Show Presentation included, *inter alia*, the Hunter
17 Written Materials which Dr. Hunter was recommending to the District to make its
18 teaching of evolutionary theory reasonably accurate, objective and current. At the
19 October meeting, the Hunter Written Materials were also provided to the District-Wide
20 Committee in the form of a Word document, consisting of excerpts from the Hunter
21 Slide Show Presentation regarding recommended written text supplements that had
22 been compiled by Dr. Hunter and Caldwell. As discussed above, previously, in June of
23 2003, Dr. Hunter had prepared an initial written critique of the presentation of biological
24 evolution in the Holt Biology Textbook (the “Original Hunter Review of the Textbook”),
25 which originally had been submitted to the District at the July 1, 2003 Board Meeting. A
26 copy of the Original Hunter Review of the Textbook, in Word format, was e-mailed to
27 Lawrence in advance of the October meeting, for distribution to members of the District-
28 Wide Committee prior to the October Meeting.

29 184. Caldwell also made an oral presentation to the District-Wide Committee at
30 the October Meeting, accompanied by a slide show presentation, on selected aspects of
31 California law that bear on the selection of textbooks and other instructional materials.

32 185. The segment of the Coldwater Media Video Materials on “bacterial

1 resistance to antibiotics” was also shown during the October Meeting

2 186. Following the presentations by Dr. Hunter and Caldwell, each of the
3 science teachers and others in attendance at the October Meeting was given an
4 opportunity to speak.

5 187. Lawrence asked whether the producer of the Coldwater Media Video
6 Materials could provide citations to peer-reviewed science articles for every statement
7 made in each of the video segments, together with a copy of the actual science articles
8 themselves. He claimed that before the District could show any segment of the
9 Coldwater Media Video Materials in a biology class, the District would have to have all
10 of these references and science articles available, in case any student wanted to review
11 the actual article.

12 188. Caldwell alleges on information and belief that Lawrence’s request for
13 supporting references and actual science articles is a requirement which the District had
14 not required for any of the other *supplementary instructional materials* that were being
15 used in biology classes in the District at that time, and which the District does not
16 routinely require for any other *supplementary instructional materials* that are proposed
17 for use in science classes in the District.

18 189. One of the reasons Caldwell had chosen to propose the Coldwater Media
19 Video Materials was that he knew from his daughter’s recent experience at Granite Bay
20 High School that videos are routinely used as *supplementary instructional materials* to
21 aid in the teaching of *evolution* in biology classes in the District. Three such videos
22 regarding *evolution* were shown in his daughter’s biology class during the spring
23 semester of 2003. Caldwell also alleges on information and belief that one or more
24 videos on evolution have been shown in biology classes in District during the fall
25 semester of 2003, and during each of the semesters since then. Caldwell alleges on
26 information and believe that the District does not have the citations to science articles
27 and supporting science articles for each of these videos on *evolution* that are currently
28 used in biology classes that Lawrence said he would require for the Coldwater Media
29 Video Materials before authorizing their use in any classroom in the District.

30 190. Caldwell allege on information and belief that the Coldwater Media Video
31 Materials were held to a stricter standard in this regard, because the predominant
32 message on these videos is of the *Minority Scientific Viewpoint*, rather than the *Majority*

1 *Scientific Viewpoint*. Caldwell is informed and believes that the higher standard was
2 being imposed on the Coldwater Media Video Materials by Lawrence and the District as
3 a pretext for excluding the *Minority Scientific Viewpoint* in the Coldwater Media Video
4 Materials from biology classrooms. Caldwell alleges on information and belief that
5 Lawrence imposed this additional requirement on the Additional Instructional Materials
6 based upon Lawrence’s disagreement with the *Minority Scientific Viewpoint* and a
7 desire to censor that scientific viewpoint from biology classes, rather than upon
8 legitimate scientific and educational considerations. Caldwell further alleges on
9 information and belief that such efforts at censorship were also motivated by
10 Lawrence’s hostility to and disapproval of Caldwell’s Christian beliefs..

11 191. One of the members of the District-Wide Committee, Dickson asked
12 questions at the October Meeting which – when considered along with public
13 statements Dickson made at Board Meetings before and after the October Meeting, and
14 statements Dickson has made in The Sacramento Bee and other media before and
15 after the October Meeting, indicate that at least some members of the District-Wide
16 Committee appear to have based their decision to deny approval of the Additional
17 Instructional Materials for inclusion in either the *basic instructional materials* or
18 *supplementary instructional materials* for biology classes in the District taken in part on
19 an improper consideration of the perceived religious beliefs and motivations of Caldwell
20 and parents and other community members who supported adoption of the Additional
21 Instructional Materials; of Dr. Hunter; of the scientists depicted in the ColdWater Media
22 Video Materials and its producer and distributor; and of The Discovery Institute.

23 192. For example, at the September 2nd Board Meeting, Dickson stated that the
24 *Icons of Evolution* video (from which the Coldwater Media Video Materials were derived)
25 should be disqualified for use in biology classes, because The Discovery Institute, a
26 think-tank with which several of the scholars on the Coldwater Media Video are affiliated
27 professionally, is the producer of a video on Intelligent Design called *Unlocking the*
28 *Mysteries of Life*, which Dickson equated with “creationism.” During the September
29 Board Meeting, Dickson also equated the request by Caldwell and others of the
30 Complainants to include the *Minority Scientific Viewpoint* in biology classes to a request
31 by a parent to include “The Book of Mormon” in biology classes, or a citizen request to
32 use a publication of the Watchtower Society in biology classrooms.

1 193. During the October Meeting, Dickson asked Dr. Hunter a series of
2 questions relating to whether two books Dr. Hunter has authored on Darwin’s theory of
3 evolution are published by a “Christian” publisher, even though those books were not
4 being proposed for adoption as approved instructional materials. It was clear from
5 Dickson’s questions at the October Meeting that he felt that Dr. Hunter’s status as a
6 member of the Christian faith somehow disqualified him as an author of secular
7 instructional materials on biology, and that Dr. Hunter’s status as a Christian was
8 evidence that Dr. Hunter must have a hidden religious motivation that required greater
9 scrutiny of the Hunter Written Materials than would otherwise be accorded to science
10 education materials authored by a non-Christian, or by a Christian with different
11 denominational beliefs.

12 194. As Dickson later explained in a November 6, 2003 article in The
13 Sacramento Bee, “[I] questioned Hunter about his books, which are published by
14 Brazos Press, a company that describes itself on its Web site as a publisher of
15 ‘unapologetic theology’ based on the Christian belief.” In the same article in the
16 Sacramento Bee, Dickson was quoted as explaining his contention that “challenging
17 evolution was the first step on the path to religious teachings. ‘The Discovery Institute
18 wants the debate to extend from how (evolution) happens to whether or not evolution
19 happens,’ he said. The wedge strategy is to do this – to bring out materials that set up
20 a doubt about whether evolution happened, and then to fill in that doubt with some kind
21 of creationist explanation.”¹⁴

22 195. At no time during the October Meeting did Lawrence, as the administrator
23 chairing the meeting, seek to stop Dickson’s line of questioning regarding the perceived

¹⁴Dickson continued to make statements at subsequent School Board Meetings in April, May and June of 2004 that confirmed that the Christian religious beliefs of Caldwell, Dr. Hunter and others had been an important factor Dickson considered in voting to reject Caldwell’s Additional Instructional Materials for use in biology classes. Other members of the District-Wide Committee have also made comments in School Board Meetings and in the press since the October Meeting that indicate that the Christian religious beliefs of Caldwell, Dr. Hunter and others played an important part in their decision to vote to reject the proposed Additional Instructional Materials.

1 religious beliefs and motivations of Dr. Hunter and The Discovery Institute with regard to
2 the Additional Instructional Materials. Severson, another administrator in attendance,
3 also voiced no objection to this line of questioning. The failure of these District
4 administrators to object to this line of questioning that the District's administration
5 communicated District approval of the propriety of basing a decision regarding whether
6 to adopt instructional materials for a biology class on the perceived religious beliefs and
7 motivations of those associated with the authorship, production and distribution of the
8 instructional materials, and of those parents and community members who favor
9 adoption of the instructional materials in biology classes, rather than solely on the basis
10 of the scientific and educational merits proposed materials.

11 196. In this regard, Caldwell further alleges on information and belief that Joiner
12 also participated in, encouraged, authorized, or at least gave tacit approval to, the
13 District administration's consideration of perceived religious belief and motivations in
14 making its decision, and in the District administration's intent to exclude the *Minority
15 Scientific Viewpoint* in the Additional Instructional Materials from biology classes. As
16 evidence of Joiner's apparent approval, encouragement, or actual involvement in the
17 District's intent and decision to exclude the *Minority Scientific Viewpoint* from biology
18 classrooms, two days before the October Meeting, Joiner telephoned Caldwell and tried
19 to persuade him not to present Dr. Hunter and Hunter's Slide Show Presentation at the
20 October Meeting, because, according to Joiner, the contents of Dr. Hunter's planned
21 presentation was considered too contentious and controversial by members of the
22 District-Wide Committee. At the time, Caldwell viewed Joiner's call as an attempt to
23 interfere with Caldwell's free speech rights by trying to coerce Caldwell into censoring
24 Dr. Hunter's presentation and the *Minority Scientific Viewpoint* from Caldwell's
25 presentation at the October Meeting.

26 197. The science teachers in attendance at the October Meeting expressed the
27 opinion that they, as science teachers, were not qualified to pass judgment on the
28 scientific merits of the Hunter Written Materials or the Coldwater Media Video Materials,
29 and that they would need to rely on the opinions of professional scientists to make such
30 a judgment. Lawrence stated that he was going to send the Hunter Written Materials
31 and the ColdWater Media Video Materials to outside science professors for an outside
32 review of their scientific validity.

1 198. In an E-Mail to Lawrence dated November 7, 2003, Caldwell asked
2 whether “it was accurate to assume that all of the instructional materials presently
3 being used in our District’s biology classes went through an equivalently rigorous
4 scientific review process before being adopted and used in classrooms? If so, did the
5 review process for those instructional materials include review by scientists and science
6 organizations that are known to be more critical of evolutionary theory, as well as by
7 scientists and organizations who are known to be strong proponents of evolutionary
8 theory?”

9 199. In an E-Mail from Lawrence to Caldwell dated November 10, 2003,
10 Lawrence acknowledged that no such outside review process is required for other
11 supplementary instructional materials used in science classes, but that, instead,
12 teachers “may choose whether or not to utilize” supplementary materials without
13 obtaining such outside science reviews.

14 **2. The Biased and Anti-Christian Outside Reviews**

15 200. Following the October Meeting, Lawrence sent the Hunter Written
16 Materials to six science professors for review, and Lawrence solicited reviews of the
17 ColdWater Media Video Materials from two other professors.

18 201. All eight of the outside science professors are strong proponents of the
19 *Majority Scientific Viewpoint*, and are equally strong proponents of teaching only the
20 *Majority Scientific Viewpoint* in public schools, and of censoring the *Minority Scientific*
21 *Viewpoint* from public high school classrooms.

22 202. Of the eight, four of the outside professors are admittedly affiliated with the
23 National Center for Science Education (“NCSE”), which is the primary national
24 advocacy group for teaching only the *Majority Scientific Viewpoint* in high school biology
25 classes, and for totally censoring the *Minority Scientific Viewpoint* from high school
26 classrooms. One of the outside reviewers, Duane Jeffrey, Ph.D., of Brigham Young
27 University, is on the Board of Directors of NCSE. A second reviewer, Arthur Shapiro,
28 Ph.D., of University of California, Davis, expressly admitted in his written review that “I
29 have been asked by NCSE to review the evolutionary material in Johnson/Raven, Holt
30 Biology; the critique of same by Dr. Cornelius G. Hunter; and the “Suggested Text
31 Supplements” by Hunter and Larry Caldwell.” A third reviewer, Michael Turelli, Ph.D., of
32 University of California, Davis, acknowledged his cozy relationship with NCSE in his

1 written report by urging Lawrence “to contact the folks at ‘National Center for Science
2 Education.’ It is their goal to collect information *to help folks in your situation.*”
3 (Emphasis added.) A fourth reviewer, Kenneth Miller, Ph.D., of Brown University, also
4 advised Lawrence that “the folks at the National Center for Science Education in
5 Berkeley, California, can probably help you on this,” and Dr. Miller directed Lawrence to
6 the NCSE website. The NCSE website lists Dr. Miller as one of its supporters.

7 203. Lawrence had to have known that the NCSE is an advocacy group that
8 had already publicly expressed its opposition to Caldwell’s proposal to bring the *Minority
9 Scientific Viewpoint* into biology classes in the District, *before* Lawrence sent the
10 Additional Instructional Materials for the outside reviews. In a July 3, 2003 article in The
11 Sacramento Bee, Skip Evans, a spokesman for NCSE, had been quoted as saying that,
12 “Rebutting evolution, however, is simply a wedge for intelligent design believers
13 to introduce religious ideas into science classes. . . .” In that same article, Evans
14 was also quoted as saying “‘It’s really an attempt to cast doubt in students’ minds
15 on the level of support evolution has in the scientific community,’ he said, if they
16 can cast doubt in students’ minds, then they stand a chance of converting
17 students to their own particular belief system.”

18 204. The other four outside reviewers are all professors or assistant professors
19 in the biology department of California State University, Sacramento. Lawrence had to
20 have known that they were already committed to opposing the Additional Instructional
21 Materials even before he sent the materials to them for review, since the *entire
22 department* had previously signed a letter to the District in September or early October
23 in which they had stated their opposition to Caldwell’s proposal to bring the *Minority
24 Scientific Viewpoint* into the classroom.

25 205. Lawrence did not send the Additional Instructional Materials to *any*
26 scientists known to be advocates of the *Minority Scientific Viewpoint* on biological
27 evolution. There was no reasonable attempt by Lawrence to obtain a fair, impartial and
28 balanced outside scientific review of the Additional Instructional Materials.

29 206. Even if somehow Lawrence was not aware of the bias of the outside
30 reviewers before he sought reviews from them, as a Ph.D. trained professional
31 educator, Lawrence could not have missed the bias that was evident in the written
32 reviews produced by those reviewers. Yet, Lawrence permitted the District-Wide

1 Committee to base its decision on the Additional Instructional Materials on these highly
2 biased outside reviews, and Lawrence based his own final decision on behalf of the
3 District on these biased reviews, without making an effort to obtain a single review from
4 a scientist who is an advocate of the *Minority Scientific Viewpoint*.

5 207. The written reviews obtained from seven of the eight outside reviewers
6 contained anti-Christian statements making it abundantly clear that the outside
7 reviewers had based their recommendations in large part on their hostility towards the
8 presumed religious beliefs and motivations of the authors and producers of the
9 Additional Instructional Materials, and other proponents of the *Minority Scientific*
10 *Viewpoint* expressed in the Additional Instructional Materials.

11 208. Professor Turelli accused Dr. Hunter of the “usual creationist tricks.”

12 209. Professor Miller falsely referred to the producer of the ColdWater Media
13 Video Materials [the name of which Miller didn’t even get right] as “an organization that
14 is dedicated to winning young people to Christ by talking about the scientific evidence
15 for God, and for creation –in effect, they are an evangelical organization seeking to win
16 converts, and that clearly is the purpose of this video, and I can only assume that they
17 invented a name Illustra Media to try to make the connections to this overtly religious
18 organization a little more difficult to discern.”¹⁵

19 210. Professor Shapiro compared Dr. Hunter and the points raised in his Slide
20 Show Presentation to “religiously-motivated students who could not pass a Bio 1 exam
21 (with no evolutionary content!) [who] tell me that they understand the laws of
22 thermodynamics better than I do and that they make evolution impossible.”

23 211. Professor Jeffery said that Dr. Hunter’s and Caldwell’s “concerns stem not
24 from the science involved here but from personal philosophical/religious issues. That
25 has long been clear in these discussion. . . .”

26 212. Michael F. Baad, Ph.D. and Nicholas N. Ewing, Ph.D., of California State
27 University, Sacramento, in their joint review, complained about being “forced to
28 constantly put out curricular brush fires ignited by Creationists at the secondary school

¹⁵Caldwell is informed and believes, and on that basis alleges, that Miller had not even actually viewed the Coldwater Media Video Materials that were submitted to the District for potential adoption before giving his telephonic “scientific” review of them.

1 level,” and referred to the Coldwater Media Video Materials as “a vehicle to introduce
2 intelligent design and creation science dogma into a scientific curriculum, [and that] this
3 effort should be recognized for what it is, and moved instead into a class in comparative
4 religious philosophies.”

5 213. William Avery, Ph.D., of California State University, Sacramento, referred
6 to the scientists advocating the *Minority Scientific Viewpoint* on the ColdWater Media
7 Video Curriculum Modules as “creation scientists,” and said the video segments were
8 examples of “how ‘creation science’ misuses science and reasoning to try to defeat
9 science and reasoning. . . .”

10 214. In spite of these derogatory references to the presumed religious beliefs
11 and motivations of Dr. Hunter, of the authors, producers and distributors of the videos,
12 and of Caldwell, Lawrence permitted the District-Wide Committee to rely on these
13 outside reviews in making its decision to reject the Additional Instructional Materials for
14 approval as instructional materials for biology class. Since the science teachers on the
15 District-Wide Committee had stated at the October Meeting that they were not qualified
16 to determine the scientific validity of the Additional Instructional Materials on their own,
17 the members of the District-Wide Committee must have relied heavily upon the biased
18 and obviously anti-Christian reviews by the outside science professors in making their
19 decision. Caldwell contends that the fact that the District-Wide Committee relied heavily
20 on these tainted outside reviews, together with the statements about perceived
21 religious motives by at least one of the members of the District-Wide Committee without
22 any objection from District administrators in attendance, presents strong evidence that
23 the District and the District-Wide Committee based its decision on the Additional
24 Instructional Materials on such perceived religious beliefs and motivations, rather than
25 on the substantive scientific and educational merits of these materials. Lawrence’s and
26 Severson’s failure to object to the line of questioning at the October Meeting regarding
27 religious motivations also evidences their tacit approval, or even advance authorization,
28 for the District-Wide Committee to consider such religious beliefs and perceived
29 motivations in making its decision. Lawrence, on behalf of the District administration,
30 further ratified the District-Wide Committee’s improper consideration of religious beliefs
31 and presumed motives when he later ratified the District-Wide Committee’s decision on
32 the Additional Instructional Materials, even though Lawrence had actual knowledge of

1 the anti-religious statements in nearly all of the outside reviews, as well as actual
2 knowledge that the members of the District-Wide Committee had relied on these tainted
3 outside reviews in making their decision.

4 215. After the October Meeting, Caldwell made requests to Lawrence on two
5 occasions to permit Dr. Hunter and Coldwater Media the professional courtesy of
6 submitting responses to the outside reviews before the District-Wide Committee made
7 its decision. After all, this same courtesy had been extended to the publisher of the Holt
8 Biology textbook. In a December 15, 2003 report to the Board, Lawrence admits having
9 received these requests.

10 216. However, the District-Wide Committee and Lawrence proceeded to make
11 their final decision without giving Dr. Hunter and Coldwater Media a chance to provide
12 responses to the outside reviews. Caldwell subsequently submitted or caused to be
13 submitted to Lawrence and the District additional documentary evidence in support of
14 the Additional Instructional Materials from, *inter alia*, a number of college science
15 professors and other scientists, from Dr. Hunter, from Coldwater Media, and from
16 Discovery Institute. These materials included, *inter alia*, the detailed citations to science
17 articles regarding the Coldwater Media Video Materials that had been demanded by
18 Lawrence at the October Meeting. However, the District refused to delay its decision on
19 the Additional Materials so that it could take into consideration these materials in
20 making its decision, and the District refused to re-consider its decision on the Additional
21 Materials in light of this additional relevant scientific evidence. Caldwell alleges that the
22 refusal by Lawrence and the District to consider this relevant scientific evidence in
23 support of the Additional Instructional Materials is additional evidence that the District's
24 decision on the Additional Instructional Materials was not a good faith decision on the
25 merits, but instead was motivated by the hostility by defendants to the *Minority Scientific*
26 *Viewpoint* expressed in the Additional Instructional Materials, and was also motivated by
27 defendants' hostility towards and disapproval of the presumed Christian beliefs and
28 motivations of the proponents, authors and publishers of the Additional Instructional
29 Materials.

30 217. In a Memorandum dated December 15, 2003 to "District Leadership", the
31 District-Wide Committee announced its recommendation that the District reject approval
32 of the Additional Instructional Materials for use as *instructional materials* in biology

1 classes. The Memorandum admitted that the science teachers had relied, in making
2 their recommendation, on the biased and religiously discriminatory outside science
3 reviews.

4 218. On December 15, 2003, Lawrence, acting on behalf of the District in his
5 official capacity as Assistant Superintendent for Curriculum and Instruction, sent a
6 report to the Board of Trustees recommending that the District-Wide Committee's
7 decision and recommendations "be supported." Lawrence thereby ratified the decision
8 by the District-Wide Committee that was based on the biased and religiously
9 discriminatory outside reviews, and which appears to have been motivated by an intent
10 to censor and exclude the *Minority Scientific Viewpoint* from biology classes throughout
11 the District.

12 219. Lawrence did not notify Caldwell of the District-Wide Committee's decision
13 on the Additional Instructional Materials, nor of Lawrence's own decision and report to
14 the Board on the matter.

15 220. On December 33, 2003, Caldwell sent an e-mail to Lawrence asking him
16 whether there was a "procedure for an appeal from, or request for reconsideration of,
17 the District's decision on this matter? If so, please advise me of the procedure, what
18 District paperwork, if any, I am required to submit in order to start the
19 appeal/reconsideration process, and my deadline for submitting the application for
20 appeal/reconsideration and supporting documentation."

21 221. On December 34, 2003, Lawrence sent an e-mail response in which he
22 declined to provide Caldwell with any additional information about the appeal procedure,
23 processes and paperwork.

24 222. On December 38, 2003, The Sacramento Bee reported that Lawrence
25 described the District's decision on the matter to be final, and quoted Lawrence as
26 stating "that the months-long debate over how to teach evolution in Roseville high
27 schools had come to an end."

28 223. On December 30, 2003, Caldwell, acting as the attorney on behalf of
29 taxpayers, parent and students in the District, filed an administrative complaint pursuant
30 to the District's Uniform Complaint Procedure and the California Government Code (the
31 "Class Administrative Complaint"). Originally, this complaint included a single claim
32 arising out of the School Board's adoption of the Holt Biology Textbook on July 1, 2003

1 without making a determination that the textbook complied with the “objectivity,
2 accuracy and current[ness]” requirements of Education Code §60045, as required by
3 Education Code §60400.

4 224. On February 24, 2004, Caldwell filed an Amendment to the Class
5 Administrative Complaint which added a second administrative claim relating to the
6 District’s December 15, 2003 Decision to deny approval of the Additional Instructional
7 Materials for use in biology classes in the District.

8 225. As mandated by applicable California statutory and administrative
9 provisions, the District’s Board Policy and Staff Rule on Uniform Complaints required
10 the District to conduct an investigation and to render a decision on all citizen complaints.
11 The District designated one of its Assistant Superintendents, defendant Genasci, as its
12 hearing officer for the Class Administrative Complaint.

13 226. On February 25, 2004, as part of its investigation, the District required
14 Caldwell to attend an “evidentiary meeting” at which Caldwell presented himself for
15 testimony and questions regarding the Class Administrative Complaint and Caldwell’s
16 Individual Administrative Complaint regarding the District’s refusal to put Caldwell’s
17 *Quality Science Education Policy* on the agenda of a School Board Meeting. Under the
18 District’s applicable Board Policy and Staff Rules, the District was also supposed to
19 present its witnesses regarding the Class Administrative Complaint at the evidentiary
20 meeting for questioning by Caldwell. However, the District did not present any of its
21 administrators, staff, or other witnesses at the evidentiary hearing, so that Caldwell was
22 never given an opportunity to question them. Later, Caldwell expressly requested such
23 an opportunity, but his request was denied. As part of Genasci’s investigation, the
24 District, acting through Genasci and the District’s attorney, Trujillo, also required
25 Caldwell to produce copies of all documentary evidence relevant to the administrative
26 complaints, but the District never produced its documentary evidence to Caldwell.

27 227. On April 9, 2004, Genasci, acting on behalf of the District, issued the
28 District’s formal Decision on the Class Administrative Complaint (the “Administrative
29 Decision”). In the Administrative Decision, the District, acting through Genasci, ratified
30 all of the above-alleged conduct by the District acting through the other defendants and
31 the members of the District-Wide Committee with regard to the Additional Instructional
32 Materials, by denying that the District or any of its administrators or staff had violated

1 any constitutional rights, California statutes, or deviated from any District procedures

2 228. Caldwell alleges that the Administrative Decision was the product of
3 viewpoint discrimination towards Caldwell's secular viewpoint on science education, as
4 well as by hostility towards and disapproval of Caldwell's Christian religious beliefs. In
5 this regard, in the Administrative Decision, the District admitted that its decision makers
6 had considered Caldwell's Christian religious beliefs and presumed religious
7 motivations in making its decision on the Additional Instructional Materials. Instead of
8 acknowledging that such consideration is illegal and taking appropriate corrective action
9 to address such illegal conduct, Genasci, acting on behalf of the District, attempted to
10 justify such discriminatory consideration of Caldwell's religious beliefs. In support of this
11 attempt, the District relied on blatantly false information which the District failed to
12 investigate and substantiate before relying on it and repeating it in the Administrative
13 Decision, and the District failed to give Caldwell any opportunity to challenge or rebut
14 this false information until after the Decision had been issued. In particular, as evidence
15 that allegedly justified the District's focus on Caldwell's religious beliefs and presumed
16 religious motivations, the Administrative Decision falsely stated that Caldwell had
17 allegedly handed a blatantly Christian religious tract to Severson, the principal of
18 Granite Bay High School, at the December 3, 2003 meeting of the Granite Bay High
19 School CIT described above, and that Caldwell had allegedly asked Severson to
20 distribute the religious tract to those in attendance at that public meeting (the same
21 meeting at which Severson denied Caldwell's supporters the opportunity to participate
22 in a debate on Caldwell's science education proposals). Caldwell alleges on
23 information and belief that the factual allegations for this portion of the Administrative
24 Decision were provided to Genasci by Severson. At the time of the December meeting
25 in question, Severson knew Caldwell by name and by face. Severson also knew that
26 Caldwell had not handed Severson any religious tracts at the CIT meeting and had not
27 asked Severson to distribute the religious tract at the meeting. After the District issued
28 its Administrative Decision, Caldwell complained to Genasci about this false allegation
29 and requested a retraction. Genasci provided a written response to Caldwell's request
30 in which Genasci and the District admitted that Severson's allegation about Caldwell
31 handing him a religious tract and asking him to distribute it had been untrue. The

1 District admitted that *no one* at the meeting had handed Severson the religious tract in
2 question, and that *no one* had asked Severson to distribute the religious tract at the
3 meeting. More importantly, the District admitted that Caldwell had not handed the
4 religious tract to him, and that Caldwell had not asked Severson to distribute the
5 religious tract at the meeting.

6 229. Caldwell alleges on information and belief that Severson knowingly and
7 wilfully fabricated this blatantly falsely allegation about Caldwell in furtherance of the
8 effort by the District , individual defendants, and other employees to discredit the
9 legitimacy of Caldwell's science education and further interfere with Caldwell's right as a
10 citizen to present proposals for science education to the District. Caldwell further
11 alleges that Genasci, with knowledge that Caldwell is a licensed California attorney, did
12 not have a good faith belief in the truth of this fabricated allegation when he decided to
13 include this allegation in the Administrative Decision, and to base the District's decision
14 on the allegation. In this regard, Caldwell alleges that Genasci failed to conduct a
15 reasonable investigation to corroborate the truth of this allegation before including it in
16 the Administrative Decision and basing the District's decision on it. Genasci did not
17 even contact Caldwell to get his testimony regarding this inherently unbelievable
18 allegation. Caldwell further alleges on information and belief that one of defendants'
19 primary purposes in including this fabricated allegation in the Administrative Decision
20 was an intentional effort to falsely portray and stereotype Caldwell to the public and
21 media as a religious extremist who was attempting to persuade school officials to
22 disseminate blatantly religious materials in the schools, and thereby generate religious
23 bigotry and discrimination towards Caldwell and his science education proposal among
24 students, parents and community members in the District which defendants hoped
25 would further their scheme and conspiracy to use religious bigotry and discrimination to
26 discredit Caldwell's science education proposals.

27 230. Even after the District had admitted that this allegation had been a
28 fabrication and retracted it, Genasci and the District did not amend the Administration
29 Decision to delete the reference to it. Caldwell alleges that Genasci and the District
30 purposely chose not to delete this fabrication from the Administrative Decision so that
31 the Administrative Decision would continue to portray Caldwell as someone who had
32 attempted to induce a school official to disseminate a blatantly religious tract, which

1 portrayal defendants believed would discredit the legitimacy of Caldwell’s science
2 education proposals. Caldwell further alleges on information and belief that the District,
3 with actual knowledge of this material fabrication of facts by Severson, never took any
4 action to reprimand Severson for his misconduct in providing the fabrication to the
5 District.

6 231. In the Administrative Decision, the District also refused to acknowledge
7 that its procedure for selecting supplementary instructional materials is in violation of
8 California Education Code §60002's mandate that local school districts must promote
9 involvement by parents and other community members in the selection of all
10 instructional materials used in classrooms. In a perversion of the English language, the
11 District explained that the word “selection,” as used in Education Code sec. 60002, can
12 purportedly have the very limited meaning of a citizen’s right to object to instructional
13 materials after the fact, rather than an opportunity to participate before the fact in the
14 selection of instructional materials. Caldwell alleges on information and belief that the
15 real reason the District refuses to acknowledge that its policy for selecting
16 *supplementary instructional materials* is in violation of applicable California law and
17 refuses to amend the policy to bring it into compliance with California law is that the
18 District and individual defendants use the existing District policy as a tool for
19 discriminating against and excluding citizen viewpoints on instructional materials with
20 which the District administration and staff disagree, and as a tool for discriminating
21 against and excluding from classrooms viewpoints in instructional materials with which
22 the District administration and staff disagree. Caldwell further alleges on information
23 and belief that the District and individual defendants have a well-established custom
24 and practice of using this policy as a weapon to exclude citizens such as Caldwell from
25 being involved in the selection of all *instructional materials* in the District, as required by
26 California law, and that such custom and practice is motivated by defendants’
27 disagreement with and attempt to suppress from public debate viewpoints on
28 instructional materials and educational policy with which defendants disagree.

29 232. Following the District’s issuance of its Administrative Decision, Caldwell
30 acting on behalf of himself and the complainants in the Class Administrative Complaint,
31 exercised their right to request that the School Board hear an appeal from the
32 Administrative Decision, which the School Board has discretion to do under its own

1 procedures and applicable California statutes and regulations. The School Board
2 considered the requested appeal in School Board Meeting held in April of 2004. The
3 School Board, including Joiner and Pinney, voted not to hear an appeal from the
4 Administrative Decision, which had the legal effect of ratifying and making final the
5 District's decision on the administrative complaints, as set forth in the Administrative
6 Complaint. Prior to the School Board's decision not hear an appeal, Caldwell
7 addressed the School Board, which included Joiner and Pinney in attendance, and
8 informed the School Board of the violations of constitutional, statutory and procedural
9 rights that had given rise to the administrative complaints.

10 233. Caldwell alleges on information and belief that the School Board, including
11 Joiner and Pinney, as well as Superintendent Monetti, with actual knowledge of all of
12 the allegations in the administrative complaints, took no action to request that the
13 Administration take corrective action to remediate and prevent present and future
14 violations of constitutional, statutory, and administrative rights of citizens in the District,
15 as documented in the administrative complaints and supporting documentation.
16 Caldwell alleges on information and belief that the failure of Joiner, Pinney and
17 Superintendent Monetti to take any action to remediate or prevent present and future
18 violations of the constitutional, statutory and administrative rights of Caldwell and other
19 citizens was motivated by their disagreement with and hostility to Caldwell's viewpoint
20 on science education, as well as on their hostility towards and disapproval of Caldwell's
21 personal religious beliefs.

22 **FIRST CLAIM FOR RELIEF**

23 FOR VIOLATION OF CALDWELL'S RIGHTS UNDER
24 THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT
25 OF THE UNITED STATES CONSTITUTION AND THE
26 FREE SPEECH CLAUSE OF THE CALIFORNIA CONSTITUTION

27 **(42 U.S.C. §1983)**

28 234. Caldwell repeats, re-alleges and incorporates by reference the allegations
29 in paragraphs 1 through 233 above.

30 235. Defendants Joiner, Pinney, Monetti, Lawrence, Genasci and Severson
31 are being sued as individual defendants in their personal capacity with respect to their
32 individual liability under 42 U.S.C. §1983 for their conduct under color of state law that

1 resulted in the violation of Caldwell's civil rights as alleged below in this claim.

2 236. Defendant RJUHSD is sued under 42 U.S.C. §1983 for the official
3 capacity liability for the conduct by Joiner, Pinney, Monetti, Lawrence, Genasci,
4 Severson, and other employees that resulted in the violation of Caldwell's civil rights as
5 alleged throughout this claim. Caldwell alleges on information and belief that some or
6 all of the respective conduct by these individual defendants and other District
7 employees, who are and were officials of the District during the time frame relevant to
8 this complaint, was performed pursuant to established policies, practices or customs of
9 RJUHSD.

10 237. Plaintiff alleges on information and belief that all of the defendants
11 conspired with each other, with other administrators and staff members, and with other
12 persons, in carrying out the constitutional violations alleged in this claim, and Caldwell
13 alleges that each of the individual defendants is therefore individually liable on a
14 conspiracy theory under 42 USC §1985.

15 238. The actions of defendants, as alleged in detail in this complaint, entitle
16 Caldwell to relief under 42 U.S.C. §1983, because defendants, acting under color of
17 law, subjected and continue to subject Caldwell to deprivation of his rights under the
18 Free Speech Clause of the First Amendment to the United States Constitution, as
19 applied to the states by the Fourteenth Amendment to the United States Constitution,
20 and under the Free Speech Clause of the California Constitution. In this regard,
21 defendants violated and interfered with Caldwell's constitutional right to free speech,
22 *inter alia*, as follows:

23 239. The District's conduct, acting through Pinney and Monetti, in refusing to
24 place Caldwell's *Quality Science Education Policy* on the agenda of any of the regular
25 board meetings of the School Board during the eight month period between August,
26 2003 through May 2004, followed by Monetti's material interference with Caldwell's
27 enjoyment of his free speech rights during the May 4, 2004 School Board meeting, as
28 alleged above, including, *inter alia*, the action by Genasci, on or about February 25,
29 2004, in telling Caldwell he had no right to place the item on the agenda, and telling that
30 the District would continue to refuse to place Caldwell's *QSE Policy* on the School
31 Board's agenda as long as the Class Administrative Complaint was pending. Caldwell
32 further alleges on information and belief that defendant Joiner was involved in the

1 decision by Pinney and Monetti to deny Caldwell access to the School Board's agenda
2 for his *QSE Policy*. Caldwell also alleges on information and belief that Joiner
3 attempted to interfere with Caldwell's enjoyment of his free speech rights at School
4 Board meetings by conduct including subjecting Caldwell to anti-religious attacks during
5 School Board Meetings, and by threatening to use the District's resources to sue
6 Caldwell if he continued to exercise his right to use District procedures and proceedings
7 to express his viewpoint on science education;

8 240. The District's conduct, acting through Severson, as alleged in detail
9 above, with regard to GBHS CIT Meeting, including, *inter alia*, Severson's conduct in
10 refusing to place Caldwell's science education proposals on the agenda of GBHS CIT
11 meetings and in denying Caldwell and his supporters an opportunity to participate in
12 public debate on Caldwell's proposals even after Severson had placed them on the
13 agenda of the December 3, 2003 GBHS CIT Meeting. Caldwell alleges that Pinney
14 expressly ratified Severson's conduct at the December 3, 2003 GBHS CIT Meeting by
15 complimenting him on his handling of the meeting, that Monetti impliedly ratified
16 Severson's conduct at the meeting by failing to take any action in response to
17 Caldwell's notification to Monetti of Severson's conduct at the December 3, 2003 GBHS
18 CIT Meeting, and that Genasci ratified Severson's conduct in relation to GBHS CIT
19 Meetings by authoring the District's Administrative Decision in which the District refused
20 to take any corrective action in response to a formal administrative complaint about
21 Severson's conduct at the meeting;

22 241. The District's conduct, acting through Lawrence and the members of the
23 District-Wide Committee, in rejecting approval of Caldwell's proposed Additional
24 Instructional Materials, which Caldwell alleges was based on their disagreement with
25 and hostility towards the *Minority Scientific Viewpoint* expressed in the Additional
26 Instructional Materials, rather than on the basis of legitimate scientific and educational
27 reasons. In this regard, Caldwell alleges that Joiner interfered with his enjoyment of his
28 free speech rights in relation to the District-Wide Committee by calling Caldwell shortly
29 before the October Meeting and attempting to coerce Caldwell into censoring his
30 message at the meeting, and by refusing, in violation of the California Education Code
31 to permit other members of the public to be involved in the decision of whether to adopt
32 the Additional Instructional Materials, which deprived Caldwell of his right to have open

1 public debate on his proposed Additional Instructional Materials.

2 242. The District's conduct, acting primarily through Lawrence, but also through
3 Monetti, in refusing to afford Caldwell three levels of review and appeal of his
4 instructional materials challenge to the Holt Biology Textbook, which deprived Caldwell
5 of an opportunity for public debate and input on his challenge that he would have
6 enjoyed if the District had submitted Caldwell's challenge to a properly constituted
7 Review Committee including members of the public and board members.

8 243. Caldwell alleges on information and belief that all of such conduct was
9 motivated by defendants' hostility towards and attempt to discriminate against and
10 censor Caldwell's viewpoint on science education and the *Minority Scientific Viewpoint*
11 on Evolution expressed in the Additional Instructional Materials, which Caldwell hoped
12 would be included in biology classes pursuant to his proposed *QSE Policy*.

13 244. Another example of viewpoint discrimination by the District is discussed
14 below in relation to the District's introduction into biology classes of the subject of the
15 historical relationship between religious beliefs and Darwin's theory of evolution, as
16 discussed in the Holt Biology Textbook, while censoring from biology class as "religious
17 material" a discussion by Dr. Hunter of the same subject matter from a different
18 scholarly viewpoint. Both the Holt Biology Textbook and Dr. Hunter were discussing the
19 same subject, but the District, acting through defendants and the members of the
20 District-Wide Committee, has chosen to include the viewpoint on the subject expressed
21 in the Holt Biology Textbook, while the District, acting through defendants and the
22 members of the District-Wide Committee, has chosen to censor and exclude Dr,
23 Hunter's viewpoint on this same subject from biology classes. Caldwell alleges on
24 information and belief that the District's decision to include the one viewpoint and to
25 exclude the other viewpoint was based on the District's subjective agreement with one
26 viewpoint and opposition to the other viewpoint, rather than on any legitimate scientific,
27 educational or legal rationale.

28 245. Caldwell further alleges on information and belief that defendants' violation
29 of and interference with his free speech rights was motivated by defendants' hostility
30 and disapproval of Caldwell's Christian religious beliefs and the religious viewpoint and
31 motivations that defendants presumed to flow from those Christian religious beliefs.

32 246. Caldwell alleges that Genasci ratified all of the conduct of the other

1 individual defendants by authoring and issuing the District's Administrative Decision in
2 which Genasci failed to acknowledge any wrongdoing by the District and refused to take
3 any corrective action to address the violation of the constitutional rights of Caldwell and
4 other citizens of the District.

5 247. As a result of defendants' violation of Caldwell's free speech rights, as
6 guaranteed by the United States Constitution and the California Constitution, Caldwell
7 feels harmed, intimidated, distressed and harassed and seeks general damages for
8 such feelings of harm, intimidation, distress and harassment, in an amount to be proven
9 at trial, as well as nominal damages.

10 248. As a result of defendants' violation of Caldwell's free speech rights, as
11 guaranteed by the United States Constitution and the California Constitution, Caldwell
12 has also suffered, and will continue to suffer, irreparable harm. Based upon defendants'
13 past conduct, Caldwell faces the prospect of continuing and future violations of his
14 constitutional right to free speech, as guaranteed by the United States Constitution and
15 the California Constitution, which entitles him to declaratory and injunctive relief to
16 prevent such continuing and future violations.

17 **SECOND CLAIM FOR RELIEF**

18 FOR VIOLATION OF CALDWELL'S RIGHTS UNDER THE
19 ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT
20 OF THE UNITED STATES CONSTITUTION AND THE
21 RELIGIOUS FREEDOM PROVISIONS
22 OF THE CALIFORNIA CONSTITUTION

23 **(42 U.S.C. §1983)**

24 249. Caldwell repeats, re-alleges and incorporates by reference the allegations
25 in paragraphs 1 through 233 above.

26 250. Defendants Joiner, Monetti, Lawrence, Genasci and Severson are being
27 sued as individual defendants in their personal capacity with respect to their individual
28 liability under 42 U.S.C. §1983 for their conduct under color of state law that resulted in
29 the violation of Caldwell's civil rights as alleged below in this claim.

30 251. Defendant RJUHSD is sued under 42 U.S.C. §1983 for the official
31 capacity liability for the conduct by Joiner, Pinney, Monetti, Lawrence, Genasci,
32 Severson, and other employees that resulted in the violation of Caldwell's civil rights as

1 alleged throughout this claim. Caldwell alleges on information and belief that some or
2 all of the respective conduct by these individual defendants and other District
3 employees, who are and were officials of the District during the time frame relevant to
4 this complaint, was performed pursuant to established policies, practices or customs of
5 RJUHSD.

6 252. Plaintiff alleges on information and belief that all of the defendants
7 conspired with each other, with other administrators and staff members, and with other
8 persons, in carrying out the constitutional violations alleged in this claim, and Caldwell
9 alleges that each of the individual defendants is therefore individually liable on a
10 conspiracy theory under 42 USC §1985.

11 253. The actions of defendants, as alleged in detail in this complaint, entitle
12 Caldwell to relief under 42 U.S.C. §1983, because defendants, acting under color of
13 law, subjected and continue to subject Caldwell to deprivation of his rights under the
14 Establishment Clause of the First Amendment to the United States Constitution, as
15 applied to the states by the Fourteenth Amendment to the United States Constitution,
16 and under the religious freedom provisions of the California Constitution. In this regard,
17 defendants violated and interfered with Caldwell's constitutional rights under the
18 Establishment Clause, *inter alia*, as follows:

19 254. Joiner subjected Caldwell to anti-Christian religious discrimination at the
20 September 2, 2003 School Board Meeting and the May 4, 2004 School Board Meeting
21 through his derogatory references to Caldwell's religious beliefs and Caldwell's church.
22 Joiner's anti-Christian comments at the September 2, 2003 were re-broadcast by the
23 District to teachers and students at Granite Bay High School, through its non-public in-
24 house television system, with either the advance approval for such re-broadcast or
25 ratification after the fact by Severson and other members of the District administration.
26 The effect of Joiner's anti-Christian comments about Caldwell was to send a message
27 to parents, students and teachers in the District that the District disapproves of
28 Caldwell's Christian religious beliefs, and that the District disapproves of Caldwell's
29 *QSE Policy*, Caldwell's proposed Additional Instructional Materials, and inclusion of the
30 *Minority Scientific Viewpoint* in biology classes, primarily on the basis of the District's
31 disapproval of the Christian religious beliefs of Caldwell and others. In this regard,
32 Caldwell alleges that shortly before the June 1, 2004 School Board Meeting, a student

1 daily bulletin broadcast over the same in-house television system referred to the
2 *Minority Scientific Viewpoint* that Caldwell was proposing to be included in biology
3 classes as “creationist” materials. Caldwell further alleges that Joiner demonstrated
4 approval of non-religion and religious beliefs that consider evolution to be consistent
5 with Christianity and disapproval of Caldwell’s Christian religious beliefs, by urging
6 administration, staff and fellow board members to base decisions on Caldwell’s *QSE*
7 *Policy*, textbook challenge, and Additional Instructional Materials on the religious beliefs
8 of Caldwell and Dr. Hunter, while failing to investigate or take into consideration the
9 non-religious or religious beliefs of the scientists and citizens who opposed adoption of
10 Caldwell’s *QSE Policy*, adoption of Caldwell’s proposed Additional Instructional
11 Materials, and inclusion of the *Minority Scientific Viewpoint* in biology classes.

12 255. One or more members of the District-Wide Committee, including Dickson
13 in particular, improperly considered the Christian religious beliefs of Caldwell and Dr.
14 Hunter –and the perceived Christian religious beliefs of persons and organizations
15 thought to be affiliated with the making and distribution of the Coldwater Media Video
16 Materials –in making their decision on whether to approve the Additional Instructional
17 Materials for use in biology classes in the District, as well as their decision on Caldwell’s
18 instructional materials challenge to the Holt Biology Textbook, and the District-Wide
19 Committee based its decisions on the outside “science” reviews that were filled with
20 anti-Christian invectives aimed at Caldwell, Dr. Hunter and others associated with (or
21 perceived as being associated with) the Additional Instructional Materials. Though
22 Lawrence and Severson were in attendance at the October Meeting of the District-Wide
23 Committee, neither of them took any action to prevent members of the District-Wide
24 Committee from proceeding with inappropriate questions to Dr. Hunter, such as
25 questions by Dickson about Dr. Hunter’s authorship of books, allegedly published by a
26 Christian publisher. Caldwell alleges that these questions by Dickson sent the clear
27 message that the fact that Dr. Hunter is a Christian and that he has authored books
28 published by a Christian publisher means that, to Dickson, Dr. Hunter’s scientific opinion
29 and instructional materials on science education should not be viewed as legitimate
30 scientific material, but instead, should be viewed as “religious materials,” and that
31 materials authored by Christian scientists and authors such as Dr. Hunter should be
32 subjected to greater scrutiny than materials authored by scientists and authors holding

1 other non-religious and religious beliefs. For example, Caldwell alleges on information
2 and belief that, in contrast to Dickson's apparently keen interest in the religious beliefs
3 and allegedly religious publications by Dr. Hunter, Dr. Kenneth Brown's authorship of a
4 theology book whose premise is that Christian beliefs and the theory of evolution are
5 not in conflict was not deemed by Dickson and other members of the District-Wide
6 Committee as being relevant to the committee members' decision on the Additional
7 Instructional Materials, even though the District-Wide Committee relied on a science
8 opinion by Dr. Brown in evaluating the Coldwater Media Video Materials. Caldwell
9 alleges on information and belief that the members of the District-Wide Committee also
10 did not take into consideration, nor consider relevant, the religious or non-religious
11 beliefs of the outside proponents of evolutionary theory on which they based their
12 decisions. Through this conduct, in only investigating and taking into consideration the
13 Christian religious beliefs and presumed religious motivations of Caldwell and Dr.
14 Hunter, and not the religious or non-religious beliefs of others, the District-Wide
15 Committee sent the clear message to Caldwell, Dr. Hunter, and to others in the
16 administration, staff, parents, students and other community members in the District,
17 that the District disapproves of the Christian beliefs of Caldwell and Dr. Hunter, since
18 their Christian religious belief is perceived as causing disbelief or skepticism in the
19 theory of evolution, and that the District approves of non-religious beliefs and religious
20 beliefs that result in a belief in the theory of evolution. The District, acting through the
21 District-Wide Committee, under the supervision of Lawrence, also sent a clear message
22 that *instructional materials* for biology that are authored by Christian authors and/or
23 proposed by Christian parents in the District will be subjected to much greater scrutiny
24 before adoption, either as *basic instructional materials* or *supplementary instructional*
25 *materials*, than *instructional materials* submitted by authors holding other religious or
26 non-religious beliefs, and/or which are proposed by parents holding other religious or
27 non-religious beliefs.

28 256. Dickson and other members of the District-Wide Committee also have
29 made public statements in Board Meetings and in the media that send a clear message
30 that their opposition to Caldwell's science education proposals and opposition to
31 Caldwell's proposed inclusion of the *Minority Scientific Viewpoint* in biology classes is
32 based in large part on their disapproval of the Christian beliefs of Caldwell, Dr. Hunter

1 and others. This message of disapproval of the Christian beliefs of Caldwell and Dr.
2 Hunter was further disseminated by Severson to parents and students in the District
3 when he distributed copies of the outside science opinions to parents –including the
4 numerous anti-Christian comments in those opinions– with the representation that these
5 were the “expert” opinions on which the District-Wide Committee and the District were
6 basing their decisions on the Additional Instructional Materials and Caldwell’s proposal
7 to include the *Minority Scientific Viewpoint* in biology classes.

8 257. Caldwell further alleges that the message that the District’s decision on –
9 and the opposition by many in the District’s administration and staff– to Caldwell’s
10 science education proposals was based in large part on their disapproval of the
11 Christian religious beliefs of Caldwell, and Dr. Hunter, and others, was further conveyed
12 by the District, acting through Severson and other members of the administration and
13 staff at Granite Bay High School. As alleged above, Severson’s misconduct towards
14 Caldwell and his supporters at the December 3, 2003 GBHS CIT Meeting –including his
15 comparison of Caldwell’s effort to reform science education to a parent who does not
16 believe the Holocaust occurred (i.e., a derogatory implication by Severson that Caldwell
17 is like a parent who is anti-Semitic)-- together with Severson’s subsequent fabrication of
18 the allegation that Caldwell had asked him to distribute a blatantly religious tract at the
19 meeting, sent a very clear message from Severson to those citizens, and to other
20 administrators, teachers and citizens in attendance at that meeting, that Severson does
21 not approve of the Christian beliefs of Caldwell and the presumed Christian religious
22 beliefs of Caldwell’s supporters in attendance at the meeting, and that persons holding
23 such religious beliefs are not welcome to attend and participate in GBHS CIT Meetings.
24 As discussed above, the re-broadcast at Granite Bay High School of Joiner’s anti-
25 Christian remarks to teachers and students at Granite Bay High School further
26 contributed to the message to students, teachers, and parents at that school that the
27 leadership of the District opposed Caldwell’s science education proposals in large part
28 based upon the District leadership’s disapproval of the Christian religious beliefs of
29 Caldwell, Dr. Hunter and others.

30 258. Caldwell alleges that the totality of conduct and statements by defendants
31 and others in the District’s administration and staff, as alleged in detail in this complaint,
32 sent and continues to send a message to parents, teachers, students and community

1 members that the District disapproves of the Christian religious beliefs held by Caldwell
2 and Dr. Hunter, and that the District based its rejection of Caldwell's science education
3 proposals on the District's disapproval of those religious beliefs.

4 259. Caldwell further alleges that the District, acting through defendants and
5 the District-Wide Committee, had no valid secular reason for rejecting approval of the
6 Additional Instruction Materials for use in biology classes in the District.

7 260. Caldwell further alleges that the District's investigation into the religious
8 beliefs and (actual or presumed) religious motives of private citizens such as Caldwell,
9 who present science education proposals and curriculum to the District for potential
10 adoption and use, as well as investigation by the District into the religious beliefs and
11 (actual or presumed) religious motives of the authors, creators, publishers and
12 producers of instructional materials for science class, unconstitutionally involves the
13 District in entanglement of government with religion and non-religion, and of one
14 religious viewpoint over others.

15 261. Defendants' conduct as alleged in this claim results in sending a
16 governmental message to Caldwell and other citizens that the District disapproves of
17 Caldwell's own religious beliefs, while impliedly promoting non-religious beliefs and
18 religious beliefs that are not adhered to by Caldwell or his children and thereby invades
19 Caldwell's prerogative to instruct his children about their religious beliefs. Caldwell
20 perceives the District's action as conveying a governmental message that Caldwell's
21 Christian religious beliefs, views and presumed motivations are disapproved of by the
22 state, and that students should not subscribe to Caldwell's religious belief and views,
23 but instead, should adhere to other non-religious and religious beliefs and views that are
24 favored by the state.

25 262. Caldwell alleges that Genasci ratified all of the conduct of the other
26 individual defendants by authoring and issuing the District's Administrative Decision in
27 which Genasci failed to acknowledge any wrongdoing by the District and refused to take
28 any corrective action to address the violation of the constitutional rights of Caldwell and
29 other citizens of the District.

30 263. Caldwell feels harmed, intimidated, distressed and harassed by
31 defendants' disapproval of his religious beliefs and viewpoint, with its inherent
32 endorsement and promotion of other non-religious and religious beliefs and viewpoints,

1 and Caldwell seeks general damages for such feelings of harm, intimidation, distress
2 and harassment, in an amount to be proven at trial, as well as nominal damages.

3 264. Defendants' conduct and policies violate Caldwell's rights under the
4 Establishment Clause, and under the religious liberty provisions of the California
5 Constitution, by subjecting Caldwell to unwelcome governmental disapproval of his
6 religious beliefs that has caused and continues to cause irreparable harm to Caldwell.
7 To avoid this harm, Caldwell would have to move out of the District, or would have to
8 arrange for private education for his children.

9 265. As a result of these past, current and continuing violations of Caldwell's
10 rights under the Establishment Clause, and under the religious freedom provisions of
11 the California Constitution, Caldwell is entitled to declaratory and injunctive relief.

12 **THIRD CLAIM FOR RELIEF**

13 FOR VIOLATION OF CALDWELL'S CONSTITUTIONAL
14 RIGHT TO EQUAL PROTECTION UNDER THE LAW
15 GUARANTEED BY THE FOURTEENTH AMENDMENT
16 OF THE UNITED STATES CONSTITUTION

17 **(42 U.S.C. §1983)**

18 266. Caldwell repeats, re-alleges and incorporates by reference the allegations
19 in paragraphs 1 through 265 above.

20 267. Defendants Pinney, Joiner, Monetti, Lawrence Genasci and Severson are
21 being sued as individual defendants in their personal capacity with respect to their
22 individual liability under 42 U.S.C. §1983 for their conduct under color of state law that
23 resulted in the violation of Caldwell's civil rights as alleged below in this claim.

24 268. Defendant RJUHSD is sued under 42 U.S.C. §1983 for the official
25 capacity liability for the conduct by Joiner, Pinney, Monetti, Lawrence, Genasci,
26 Severson, and other employees that resulted in the violation of Caldwell's civil rights as
27 alleged throughout this claim. Caldwell alleges on information and belief that some or
28 all of the respective conduct by these individual defendants and other District
29 employees, who are and were officials of the District during the time frame relevant to
30 this complaint, was performed pursuant to established policies, practices or customs of
31 RJUHSD.

32 269. Plaintiff alleges on information and belief that all of the defendants

1 conspired with each other, with other administrators and staff members, and with other
2 persons, in carrying out the constitutional violations alleged in this claim, and Caldwell
3 alleges that each of the individual defendants is therefore individually liable on a
4 conspiracy theory under 42 USC §1985.

5 270. The actions of defendants, as alleged in detail in this complaint, entitle
6 Caldwell to relief under 42 U.S.C. §1983, because defendants, acting under color of
7 law, subjected and continue to subject Caldwell to deprivation of his right to equal
8 protection under the law guaranteed by the Fourteenth Amendment of the United States
9 Constitution.

10 271. As alleged in detail above, defendants have denied Caldwell equal
11 protection and privileges under, *inter alia*, the United States Constitution, the California
12 Constitution, applicable provisions of the California Education Code, and various board
13 policies, staff rules and procedures of the District in the course of Caldwell's year-long
14 effort to persuade the District to adopt his science education proposals. Caldwell
15 alleges on information and belief that defendants' denial of equal protection to Caldwell
16 was motivated by defendants' hostility to and disapproval of Caldwell's Christian
17 religious beliefs and viewpoints, in addition to hostility to and discrimination against
18 Caldwell's political viewpoint on science education.

19 272. Caldwell alleges that Genasci ratified all of the conduct of the other
20 individual defendants by authoring and issuing the District's Administrative Decision in
21 which Genasci failed to acknowledge any wrongdoing by the District and refused to take
22 any corrective action to address the violation of the constitutional rights of Caldwell and
23 other citizens of the District, and Genasci also inflicted additional lack of equal
24 protection under the law to Caldwell with regard to the manner in which Genasci
25 conducted his investigation of and decision on the administrative complaints.

26 273. As a result of defendants' violation of Caldwell's right to equal protection
27 under the law, as guaranteed by the United States Constitution, Caldwell feels harmed,
28 intimidated, distressed and harassed and seeks general damages for such feelings of
29 harm, intimidation, as well as nominal damages.

30 274. As a result of defendants' denial of equal protection under the law to
31 Caldwell, Caldwell has also suffered, and will continue to suffer, irreparable harm.
32 Based upon defendants' past conduct, Caldwell faces the prospect of continuing and

1 future violations of his constitutional right to equal protection under the law, as
2 guaranteed by the United States Constitution and the California Constitution, which
3 entitles him to declaratory and injunctive relief to prevent such continuing and future
4 violations.

5 **PRAYERS FOR RELIEF**

6 WHEREFORE, plaintiff requests judgment against defendants as follows:

7 **On the First Claim for Relief:**

8 1. For appropriate injunctive relief ordering the District and defendants to
9 adopt appropriate procedures and policies to ensure that citizens of all viewpoints will
10 enjoy their constitutional right to Free Speech under the United States Constitution and
11 the California Constitution to place items on the agenda of regular meetings of the
12 District’s School Board pursuant to California Education Code §35145.5, without
13 censorship or delay by the District and defendants, and that once such items are on the
14 agenda, citizens of all viewpoints will enjoy their constitutional right to full public debate
15 on their agenda item in such school board meeting, including the potential of dynamic
16 political action on such agenda item.

17 2. For appropriate injunctive relief ordering the District and defendants to
18 adopt appropriate procedures and policies to ensure that citizens of all viewpoints will
19 enjoy their constitutional right to Free Speech under the United States Constitution and
20 the California Constitution with regard to agendas and meetings of the Granite Bay High
21 School Curriculum Instruction Team and of equivalent citizen participation councils at
22 each of the other high schools in the District, and that citizens of all viewpoints will
23 enjoy their constitutional right to full public debate on all agenda items in such citizen
24 participation councils, including the potential of dynamic political action on such agenda
25 items.

26 3. For appropriate injunctive relief ordering the District and defendants to
27 adopt appropriate procedures and policies to enable citizens of all viewpoints to be
28 involved, in a meaningful, pro-active manner, in the selection of all *instructional*
29 *materials* [as defined in California Education Code §60010] used in the District to the full
30 extent contemplated by California Education Code §60002, to ensure that all meetings
31 and proceedings by the District board, administration and staff in relation to the
32 selection of *instructional materials* be conducted in an open, public manner that

1 safeguards the right of the public to attend and provide public input into such selection
2 process, and to ensure that citizens of all viewpoints will enjoy their constitutional right
3 to Free Speech under the United States Constitution and the California Constitution in
4 the course of such *instructional materials* selection process.

5 4. For appropriate injunctive relief ordering the District and defendants to
6 adopt appropriate procedures and policies to ensure that citizens of all viewpoints will
7 be able to utilize the District's instructional materials challenge process pursuant to
8 Board Policy 6521 and Staff Rule 6521, so that such citizens will enjoy their
9 constitutional right to Free Speech under the United States Constitution and the
10 California Constitution in the course of pursuing such instructional materials challenges.

11 5. For a declaration that the District and defendants have violated the
12 constitutional Free Speech right of Caldwell, as guaranteed by the United States
13 Constitution and California Constitution, by censoring and excluding the *Minority
14 Scientific Viewpoint* from *instructional materials* used in biology classes in the District,
15 based on the disagreement by the District and its decision makers with the *Minority
16 Scientific Viewpoint*, rather than on the basis of legitimate scientific and educational
17 reasons, and appropriate injunctive relief ordering the District to take appropriate steps
18 to end such censorship of the *Minority Scientific Viewpoint* from biology classes in the
19 District.

20 6. For appropriate injunctive relief ordering the District and defendants to
21 adopt appropriate procedures and policies to ensure that all *instructional materials* for
22 use in biology class are selected on the basis of the scientific and educational merits of
23 *instructional materials* proposed for adoption as *basic instructional materials*,
24 *supplementary instructional materials*, or *technological instructional materials* for biology
25 class, and that no *instructional materials* will be excluded from adoption by the District
26 for biology classes based on disagreement by the District or its decision makers with the
27 scientific viewpoint expressed in such *instructional materials*, rather than on the basis of
28 legitimate scientific and educational reasons.

29 7. For appropriate relief ordering the District and defendants to re-consider
30 the Additional Instructional Materials for adoption as *instructional materials* for biology
31 classes in the District in a manner that ensures that such Additional Instructional
32 Materials will be evaluated solely on the basis of legitimate scientific and educational

1 considerations, and that ensures that any disagreement by the District or its decision-
2 makers with the *Minority Scientific Viewpoint* expressed in the Additional Instructional
3 Materials shall not be considered in making the District's decision on adoption.

4 8. For such other equitable relief as this court deems to be appropriate in the
5 interests of justice.

6 9. For general damages against the District and all defendants for the
7 feelings of harm, intimidation and distress Caldwell has suffered as a result of the
8 violation of his constitutional rights, in an amount to proven at trial, or for nominal
9 damages.

10 **On the Second Claim for Relief:**

11 10. For appropriate injunctive relief ordering the District and defendants to
12 adopt appropriate procedures and policies to ensure that citizens of all religious and
13 non-religious beliefs and viewpoints will enjoy their constitutional right to religious
14 freedom under the Establishment Clause of the First Amendment of the United States
15 Constitution, and under the religious freedom provisions of the California Constitution,
16 with regard to such citizens' right to place items on the agenda of regular meetings of
17 the District's School Board pursuant to California Education Code §35145.5, and to
18 enjoy full public debate on their agenda item in such school board meeting, including
19 the potential of dynamic political action on such agenda item, without religious
20 discrimination or harassment by the District and defendants, and without any
21 communication of disapproval of such citizen's religious or non-religious beliefs by the
22 District, and its school board, administration and staff.

23 11. For appropriate injunctive relief ordering the District and defendants to
24 adopt appropriate procedures and policies to ensure that citizens of all religious and
25 non-religious beliefs and viewpoints will enjoy their constitutional right to religious
26 freedom under the Establishment Clause of the First Amendment of the United States
27 Constitution, and under the religious freedom provisions of the California Constitution,
28 with regard to such citizens' right to participate in meetings of the Granite Bay High
29 School Curriculum Instruction Team and with regard to such citizens' rights to
30 participate in public meetings of equivalent citizen participation councils at each of the
31 other high schools in the District, and to enjoy their constitutional right to participate in
32 public debates on all agenda items in such citizen participation councils, including the

1 potential of dynamic political action on such agenda item, without religious
2 discrimination or harassment by the District and defendants, and without any
3 communication of disapproval of such citizen's religious or non-religious beliefs by the
4 District, and its school board, administration and staff.

5 12. For appropriate injunctive relief ordering the District and defendants to
6 adopt appropriate procedures and policies to enable citizens of all religious or non-
7 religious beliefs and viewpoints to be involved, in a meaningful, pro-active manner, in
8 the selection of all *instructional materials* [as defined in California Education Code
9 §60010] used in the District to the full extent contemplated by California Education Code
10 §60002, without religious discrimination or harassment by the District and defendants,
11 and without any communication of disapproval of such citizen's religious or non-
12 religious beliefs by the District, and its school board, administration and staff.

13 13. For appropriate injunctive relief ordering the District and defendants to
14 adopt appropriate procedures and policies to ensure that citizens of all religious or non-
15 religious beliefs and viewpoints will be able to utilize the District's instructional materials
16 challenge process pursuant to Board Policy 6521 and Staff Rule 6521, without religious
17 discrimination or harassment by the District and defendants, and without any
18 communication of disapproval of such citizen's religious or non-religious beliefs by the
19 District, and its school board, administration and staff.

20 14. For a declaration that the District and defendants have violated Caldwell's
21 constitutional right to religious freedoms guaranteed by the Establishment Clause of the
22 First Amendment of the United States Constitution, and by the religious freedom
23 provisions of the California Constitution, by censoring and excluding the *Minority*
24 *Scientific Viewpoint* from *instructional materials* used in biology classes in the District,
25 on the basis of disapproval, by the District, defendants, and the District's other decision
26 makers, to the Christian religious beliefs and viewpoint of Caldwell, Dr. Hunter and
27 others, thereby communicating the District's disapproval of such Christian religious
28 beliefs and viewpoints.

29 15. For appropriate injunctive relief ordering the District and defendants to
30 adopt appropriate procedures and policies to ensure that all *instructional materials* for
31 use in biology class are selected on the basis of the scientific and educational merits of
32 *instructional materials* proposed for adoption as *basic instructional materials*,

1 *supplementary instructional materials, or technological instructional materials* for biology
2 class, and that no *instructional materials* will be excluded from adoption by the District
3 for biology classes based on consideration by the District or its decision makers or the
4 religious or non-religious beliefs or viewpoints or motivations of any private person or
5 organization.

6 16. For appropriate relief ordering the District and defendants to re-consider
7 the Additional Instructional Materials for adoption as *instructional materials* for biology
8 classes in the District in a manner that ensures that such Additional Instructional
9 Materials will be evaluated solely on the basis of legitimate scientific and educational
10 considerations, and without any consideration by the District or its decision-makers of
11 the religious or non-religious beliefs or viewpoints or motivations of any private person
12 or organization.

13 17. For such other equitable relief as this court deems to be appropriate in the
14 interests of justice.

15 18. For general damages against the District and all defendants for the
16 feelings of harm, intimidation and distress Caldwell has suffered as a result of the
17 violation of his constitutional rights, in an amount to proven at trial, or for nominal
18 damages.

19 **On the Third Claim for Relief:**

20 19. For appropriate injunctive relief ordering the District and defendants to
21 adopt appropriate procedures and policies to ensure that citizens of all religious and
22 non-religious beliefs and viewpoints and all political viewpoints will enjoy their
23 constitutional right to religious freedom under the Establishment Clause of the First
24 Amendment of the United States Constitution, and under the religious freedom
25 provisions of the California Constitution, with regard to such citizens' right to place
26 items on the agenda of regular meetings of the District's School Board pursuant to
27 California Education Code §35145.5, and to enjoy full public debate on their agenda
28 item in such school board meeting, including the potential of dynamic political action on
29 such agenda item, without religious discrimination or harassment by the District and
30 defendants, and without any communication of disapproval of such citizen's religious or
31 non-religious beliefs by the District, and its school board, administration and staff.

32 20. For appropriate injunctive relief ordering the District and defendants to

1 adopt appropriate procedures and policies to ensure that citizens of all religious and
2 non-religious beliefs and viewpoints and all political viewpoints will enjoy their
3 constitutional right to religious freedom under the Establishment Clause of the First
4 Amendment of the United States Constitution, and under the religious freedom
5 provisions of the California Constitution, with regard to such citizens' right to participate
6 in meetings of the Granite Bay High School Curriculum Instruction Team and with
7 regard to such citizens' rights to participate in public meetings of equivalent citizen
8 participation councils at each of the other high schools in the District, and to enjoy their
9 constitutional right to participate in public debates on all agenda items in such citizen
10 participation councils, including the potential of dynamic political action on such agenda
11 item, without religious discrimination or harassment by the District and defendants, and
12 without any communication of disapproval of such citizen's religious or non-religious
13 beliefs by the District, and its school board, administration and staff.

14 21. For appropriate injunctive relief ordering the District and defendants to
15 adopt appropriate procedures and policies to enable citizens of all religious or non-
16 religious beliefs and viewpoints and all political viewpoints to be involved, in a
17 meaningful, pro-active manner, in the selection of all *instructional materials* [as defined
18 in California Education Code §60010] used in the District to the full extent contemplated
19 by California Education Code §60002, without religious discrimination or harassment by
20 the District and defendants, and without any communication of disapproval of such
21 citizen's religious or non-religious beliefs by the District, and its school board,
22 administration and staff.

23 22. For appropriate injunctive relief ordering the District and defendants to
24 adopt appropriate procedures and policies to ensure that citizens of all religious or non-
25 religious beliefs and viewpoints and all political viewpoints will be able to utilize the
26 District's instructional materials challenge process pursuant to Board Policy 6521 and
27 Staff Rule 6521, without religious discrimination or harassment by the District and
28 defendants, without any communication of disapproval of such citizen's religious or non-
29 religious beliefs by the District, and its school board, administration and staff.

30 23. For a declaration that the District and defendants, by their conduct alleged
31 in this complaint, have violated Caldwell's right to equal protection under the law as
32 guaranteed by the Fourteenth Amendment of the United States Constitution.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

REQUEST FOR JURY TRIAL

Caldwell requests trial by jury of each of his claims, to the extent available under law.

DATED: January 18, 2005

By: /s/ Larry Caldwell
Larry Caldwell, Esq.,
Plaintiff in Pro Per