

1 GARY L. BOSTWICK, Cal. Bar No. 79000
JEAN-PAUL JASSY, Cal. Bar No. 205513
2 **BOSTWICK & JASSY LLP**
12400 Wilshire Boulevard, Suite 400
3 Los Angeles, California 90025
Telephone: 310-979-6059
4 Facsimile: 310-314-8401
E-mail: jpjassy@bostwickjassy.com

5 DAVID BLAIR-LOY, Cal. Bar No. 229235
6 **ACLU FOUNDATION OF SAN DIEGO &
IMPERIAL COUNTIES**
7 PO Box 87131
San Diego, CA 92138-7131
8 Telephone: 619-232-2121
Facsimile: 619-232-0036
9 E-mail: dblairloy@aclusandiego.org

10 Attorneys for Plaintiffs

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**
13 **NORTH COUNTY DIVISION**

14 CHANTAL ARIOSTA, an individual;
MARGARET DUPES, an individual;
15 DANIELA ROGULJ, an individual;
AMBER McCracken, a minor, by her
16 guardian ad litem, STACEY MARTIN;
NICOLE WALKER, a minor, by her
17 guardian ad litem, TIMOTHY D. WALKER;
DAVID EVANS, an individual,

18 Plaintiffs,

19 v.

20 FALLBROOK UNION HIGH SCHOOL
21 DISTRICT, an entity; ROD KING, Principal
of Fallbrook High School, in his individual
22 and official capacities; and DOES 1 through
23 25, inclusive,

24 Defendants.

CASE NO.:

COMPLAINT FOR:

- (1) **VIOLATION OF EDUCATION
CODE § 48907;**
- (2) **VIOLATION OF CALIFORNIA
CONSTITUTION, ARTICLE I, §
2(a);**
- (3) **VIOLATION OF FIRST
AMENDMENT TO UNITED
STATES CONSTITUTION [42
U.S.C. § 1983];**
- (4) **VIOLATION OF FIRST
AMENDMENT TO UNITED
STATES CONSTITUTION [42
U.S.C. § 1983];**
- (5) **VIOLATION OF LABOR CODE
§ 1102.5; AND**
- (6) **DECLARATORY RELIEF
[C.C.P. § 1060]**

1 Plaintiffs allege as follows:

2 **THE PARTIES**

3 1. Plaintiffs Chantal Ariosta (“Ariosta”), Margaret Dupes (“Dupes”) and
4 Daniela Rogulj (“Rogulj”) (sometimes referred to collectively hereinafter as the
5 “Alumnae”) all attended Fallbrook High School (“FHS”), graduating in 2008. Each of the
6 Alumnae is 18 or more years old. In their senior year, the 2007-2008 academic year, the
7 Alumnae were all students in the journalism class at FHS.

8 2. Plaintiff Amber McCracken (“McCracken”) resides in Fallbrook, California
9 with her family. McCracken is currently in 11th grade at FHS. McCracken was one of
10 approximately two dozen FHS students who had registered for and planned to participate
11 in the journalism class at FHS in the 2008-2009 academic year. Filed concurrently with
12 this Complaint is a petition for Stacey Martin, McCracken’s mother, to act as McCracken’s
13 guardian ad litem in this action.

14 3. Plaintiff Nicole Walker (“Walker”) resides in Fallbrook, California with her
15 family. Walker is currently in 12th grade at FHS. Walker was one of approximately two
16 dozen FHS students who had registered for and planned to participate in the journalism
17 class at FHS in the 2008-2009 academic year. Filed concurrently with this Complaint is a
18 petition for Timothy Walker, Walker’s father, to act as Walker’s guardian ad litem in this
19 action.

20 4. Plaintiff David Evans (“Evans”) resides in Temecula, California. Evans is a
21 teacher at FHS. For the past three academic years, 2005-06, 2006-07, and 2007-08, Evans
22 was the advisor to the journalism class at FHS and the FHS newspaper, *The Tomahawk*.

23 5. Defendant Fallbrook Union High School District (the “District” or
24 “FUHSD”) is a school district established by the State of California and funded by the
25 State and by San Diego County. The District operates secondary public schools in San
26 Diego County, including FHS.

27 6. Defendant Rod King (“King”) is the Principal of FHS. He is sued in both his
28 individual and official capacities. As Principal of FHS, he is and was at all relevant times

1 acting under color of state law and within the course and scope of his employment by the
2 District. As Principal of FHS, he is and was at all relevant times authorized to speak and
3 act for and on behalf of the District.

4 7. The true names or capacities, whether individual, corporate or otherwise, of
5 the defendants named herein as DOES 1 through 25, inclusive, are unknown to the
6 Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs reserve
7 the right to ask leave of court to amend this complaint and insert the true names and
8 capacities of said defendants when the same have been ascertained.

9 8. Plaintiffs are informed and believe, and on that basis allege, that each of the
10 defendants designated herein as a "DOE" is legally responsible in some manner for the
11 events and happenings herein alleged, and that Plaintiffs' harm and damages as alleged
12 herein were proximately caused by such defendants.

13 **JURISDICTION AND VENUE**

14 9. This Court has jurisdiction over this action pursuant to Code of Civil
15 Procedure §§ 410.10, 410.50, 526, and 1060.

16 10. Venue is proper in this Court pursuant to Code of Civil Procedure §§ 393(b)
17 and 395(a).

18 **GENERAL ALLEGATIONS**

19 11. Evans is employed by the District as a teacher at FHS. Before June 2008,
20 Evans was faculty advisor to the journalism class for three academic years, receiving a
21 stipend of \$2,862 per year in addition to his base teaching salary. The FHS journalism
22 class published a school newspaper entitled *The Tomahawk*. *The Tomahawk* thrived under
23 Evans's stewardship. During the last academic year, *The Tomahawk* placed second in a
24 national competition sponsored by the American Scholastic Press Association.

25 12. In or about November 2007, Ariosta, an FHS senior in the journalism class at
26 the time, wrote an article regarding the alleged refusal of former FUHSD Superintendent
27 Tom Anthony to comply with a request from the fire marshal to close the school for use as
28 an evacuation center during the wildfires of October 2007, and the FUHSD's subsequent

1 buyout of Mr. Anthony’s contract (the “Article”). The Article was to appear in the
2 December 2007 issue of *The Tomahawk*.

3 13. Before the December 2007 issue went to press, Evans delivered a draft copy
4 of the issue to the FHS principal, Rod King, for his review. King ordered Evans to remove
5 the Article in its entirety from the paper. Evans told King that removing the Article would
6 be illegal. King removed the Article or caused the Article to be removed from the
7 December 2007 issue of *The Tomahawk*, which was printed and distributed without the
8 Article.

9 14. In Spring 2008, Evans and student editors Rogulj and Dupes decided to
10 include an editorial in the “Senior Sendoff” issue of *The Tomahawk*, to be published in
11 May 2008. Dupes, then a senior at FHS, wrote the editorial, which was a critique of the
12 Bush Administration’s abstinence-only policy for sex education (the “Editorial”). The
13 Editorial was written in response to an assembly sponsored by FHS promoting abstinence-
14 only sex education that was held earlier in the school year. Rogulj, also an FHS senior at
15 the time, collaborated with Dupes and, as the Opinion Page Editor, Rogulj edited and
16 placed the Editorial on page two of the newspaper.

17 15. The Editorial maintained professional standards of English and journalism.
18 It was not lurid in any way. It was an appropriate and reasonable editorial response to the
19 abstinence-only policies of the Bush administration, as advanced by the FHS
20 administration. It also conformed to California public policy. Under state law, high
21 schools teaching sex education must provide “medically accurate information on other
22 methods of preventing pregnancy and sexually transmitted diseases ... the effectiveness
23 and safety of all federal Food and Drug Administration (FDA) approved methods of
24 reducing the risk of contracting sexually transmitted diseases,” and “the effectiveness and
25 safety of all FDA-approved contraceptive methods in preventing pregnancy, including, but
26 not limited to, emergency contraception.” Educ. Code § 51933(b)(8)-(10).

27 16. Evans delivered a draft copy of the May 2008 issue of *The Tomahawk* to
28 King for his review before it went to press. On or about May 21, 2008, King informed

1 Evans that he was uncomfortable with the Editorial. Evans told King that removing the
2 Editorial would be illegal, but King refused to allow the Editorial to be published.
3 Subsequently, King removed the Editorial or caused the Editorial to be removed from the
4 May 2008 issue of *The Tomahawk*, which was printed and distributed without the
5 Editorial.

6 17. On or about June 4, 2008, Evans attended a retirement luncheon at which he
7 encountered the president of the FUHSD board of trustees, Bill O'Connor ("O'Connor").
8 Evans spoke to O'Connor about the events described in the preceding paragraphs,
9 including King's censorship of the Article and Editorial. Evans asked O'Connor to
10 encourage King and interim FUHSD Superintendent Robert L. French ("French") to
11 engage in discussions regarding the foregoing events with Evans and the affected students
12 and parents.

13 18. The next day, on or about June 5, 2008, King called Evans into his office.
14 An assistant principal, Nicole Miller ("Miller"), was also present. During the meeting,
15 King and Miller expressed displeasure that Evans had spoken to O'Connor about the
16 Article and Editorial. They chastised Evans for "doing an end run" around King. At the
17 same meeting, King informed Evans that he was canceling the journalism class, thus
18 terminating publication of *The Tomahawk* as a curricular activity, and removing Evans as
19 faculty advisor. King and Miller stated that the decision to cancel the journalism class and
20 remove Evans as advisor was made the previous afternoon after a meeting with O'Connor
21 and French.

22 19. On or about July 7, 2008, Evans sent French a letter informing him of the
23 foregoing events and asking for reinstatement of the journalism class and also asking that
24 the school administrators apologize for their actions. Later that same day, French
25 responded summarily by stating in pertinent part: "the District has reviewed the matters
26 you presented and will provide no further response to your request."

27 20. In censoring and prohibiting publication of the Article and/or Editorial and in
28 canceling the journalism class and removing Evans as advisor to the class, King and/or

1 Does 1-25 knew that such conduct was unlawful yet nonetheless acted with oppression,
2 fraud, or malice, with evil motive or intent, and/or with reckless or callous indifference to
3 the constitutional rights of Plaintiffs. King’s actions were consistent with a pattern and
4 practice of unlawful censorship and prior restraint.

5 21. The Alumnae and Evans have submitted notices of claim to the District
6 pursuant to Government Code §§ 900, *et seq.* Those claims are pending.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Education Code § 48907)**

9 **(Plaintiffs Ariosta, Dupes and Rogulj Against All Defendants)**

10 22. Plaintiffs Ariosta, Dupes and Rogulj (the “Alumnae”) reallege and
11 incorporate by reference each and every allegation in paragraphs 1 through 21, inclusive.

12 23. Defendants, acting under color of state law, prohibited the publication and
13 distribution of the Article and Editorial based on their content and/or viewpoint. Neither
14 the Article nor the Editorial was obscene, libelous, or slanderous; nor did either incite
15 students so as to create a clear and present danger of the commission of unlawful acts on
16 school premises or the violation of lawful school regulations, or the substantial disruption
17 of the orderly operation of the school.

18 24. Defendants’ censorship of the Article and the Editorial, and each of them,
19 constituted unlawful prior restraints of expression in violation of Education Code § 48907.
20 In committing the acts herein alleged, King acted for and on behalf of the District. These
21 violations of the Alumnae’s rights are the result of decisions by school personnel,
22 including King, which the District has refused to reverse and thereby endorses and ratifies,
23 and thus constitute official policy of the District. The District is also vicariously liable for
24 the acts of King as its agent, officer, and/or employee.

25 25. The Alumnae have no adequate remedy at law to redress the wrongs herein
26 alleged. Unless enjoined by this Court, Defendants will continue to violate their legal
27 rights, which will continue to cause them irreparable harm.

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1 **FOURTH CAUSE OF ACTION**

2 **(Violation of U.S. Constitution, First Amendment, pursuant to 42 U.S.C. § 1983)**

3 **(Plaintiff Evans Against King and Does 1-25)**

4 37. Plaintiffs reallege and incorporate by reference each and every allegation in
5 paragraphs 1 through 36, inclusive.

6 38. King and/or Does 1-25 violated Evans’s free speech and/or free press rights
7 guaranteed by the First Amendment to the United States Constitution, as applied via the
8 Fourteenth Amendment to the United States Constitution, as follows:

- 9 (a) Evans engaged in constitutionally protected speech on a matter of
10 public concern, not pursuant to his official duties as an employee of
11 the District, and the interests of the District do not outweigh Evans’s
12 right to speak on matters of public concern;
- 13 (b) King and/or Does 1-25 took adverse employment action against Evans
14 by, including but not necessarily limited to, canceling the journalism
15 class at FHS; removing Evans as advisor to the journalism class; and
16 thereby denying Evans the stipend he had previously received as
17 advisor to the journalism class at FHS; and
- 18 (c) Evans’s constitutionally protected speech was a substantial or
19 motivating factor in said adverse employment action.

20 39. Evans has no adequate remedy at law to redress the wrongs herein alleged.
21 Unless enjoined by this Court, King and/or Does 1-25 will continue to violate his
22 constitutional rights, which will continue to cause him irreparable harm.

23 40. As a result of the unconstitutional acts of King and/or Does 1-25, Evans
24 suffered damages in an amount to be determined at trial. For purposes of this cause of
25 action, damages are sought against King and/or Does 1-25 in their individual capacity.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violation of Labor Code §§ 1102.5(b) and/or 1102.5(c))**

3 **(Plaintiff Evans Against Fallbrook Union High School District)**

4 41. Plaintiff Evans realleges and incorporates by reference each and every
5 allegation in paragraphs 1 through 40, inclusive.

6 42. Evans had reasonable cause to believe that King had violated state and/or
7 federal law by censoring and prohibiting the publication or distribution of the Article and
8 Editorial. Evans refused to participate in King’s decisions to censor the Article and
9 Editorial, which violated state and/or federal law. Following King’s decision to censor the
10 Article and the Editorial, Evans engaged in the protected activity of reporting King’s
11 actions to O’Connor. The day after Evans disclosed to O’Connor that King had violated
12 state and/or federal law, Defendants subjected Evans to adverse employment action and
13 retaliated against Evans by, including but not necessarily limited to, canceling the
14 journalism class at FHS; removing Evans as advisor to the journalism class; and thereby
15 denying Evans the stipend he had previously received as advisor to the journalism class at
16 FHS. The foregoing actions constitute retaliation and were reasonably likely to, and did,
17 adversely and materially affect Evans’s job performance and his opportunity for
18 advancement in his career. There was a causal link between the adverse action against
19 Evans and Evans’s disclosure to O’Connor and/or Evans’s refusal to participate in the
20 censorship of the Article and Editorial. Defendants have no legitimate, non-retaliatory
21 explanation for their acts. Any claimed non-retaliatory explanation Defendants may offer
22 is a pretext for retaliation against Evans.

23 43. In committing the acts herein alleged, King acted for and on behalf of the
24 District. The District is responsible for the actions of King under Labor Code § 1104.
25 These violations were the result of decisions by school personnel, including King, which
26 the District has refused to reverse and thereby endorses and ratifies, and thus constitute
27 official policy of the District. The District is also vicariously liable for the acts of King as
28 its agent, officer, and/or employee.

