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13 **MARTINEZ** and **MYRNA**
14 **MARTINEZ**

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 I. M., a minor by and through his parents
18 ALEX MARTINEZ and MYRNA
19 MARTINEZ,

20 Plaintiffs,

21 vs.

22 WEST COVINA UNIFIED SCHOOL
23 DISTRICT; GORDON PFITZER,
24 individually and in his official capacity as
25 an employee of West Covina Unified
26 School District; SHERYL LESIKAR,
27 individually and in her official capacity as
28 an employee of West Covina Unified
School District; and DOES 1 through 10,
Inclusive,

Defendants.

LAW OFFICES OF NIC COCIS &
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Case No.:

COMPLAINT FOR :

1. **Violation of Free Speech under Federal Constitution**
2. **Violation of the Establishment Clause**
3. **Violation of Free Speech under State Constitution**
3. **Violation of Cal. Ed. Code § 48907(a)**

DEMAND FOR JURY TRIAL

1 COME NOW Plaintiffs, by and through counsel, and allege the following:

2 **INTRODUCTION**

3 1. This civil action is necessary because Defendants have in the past, and
4 continue in the present, to prohibit students enrolled in Merced Elementary School from
5 expressing religious viewpoints, distributing materials mentioning the name of Jesus to
6 other students while on school property during a time set aside for communicating
7 messages and exchanging gifts. In addition, Defendants have failed to act neutrally
8 toward religion, have shown hostility toward religion and has favored non-religion over
9 religion.

10 2. This is a suit for a preliminary and permanent injunction, declaratory
11 judgment, actual damages, nominal damages, and to recover attorney's fees and costs.
12 Plaintiffs seek a declaratory judgment that the policies, customs, practices, usages,
13 rules, procedure and conduct of the Defendants, as enforced by Defendants and school
14 officials, is a violation of the United States Constitution. Plaintiffs seek a preliminary
15 and permanent injunction from the Court prohibiting the illegal and unlawful acts of the
16 Defendants. In addition, Plaintiffs seek actual damages, nominal damages, attorneys'
17 fees, and costs

18 **JURISDICTION**

19 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
20 and § 1343 for the reason that this action arises under the Constitution and laws of the
21 United States and is an action to recover nominal and actual damages for injury to a
22 person because of a deprivation of a right or privilege of a citizen of the United States
23 and is an action for declaratory relief concerning a policy, practice, custom, and usage
24 in violation of 42 U.S.C. §1983. This action arises, inter alia, under the First
25 Amendment and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §
26 1983 and 28 U.S.C. §§ 2201 and 2202.

27 4. In addition to being a suit for recovery of actual and nominal damages, this
28 is a suit for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202, and a

1 preliminary and permanent injunction in that a policy, practice, custom, usage, rule,
2 procedure or conduct of the Defendants violates the Constitutional rights of the
3 Plaintiffs as guaranteed to them by the First and Fourteenth Amendments to the United
4 States Constitution and is further guaranteed pursuant to Plaintiffs' rights as citizens
5 and individuals under 42 U.S.C. § 1983.

6 5. This Court is authorized to grant Plaintiffs' prayer for relief regarding
7 costs, including a reasonable attorney's fee under 42 U.S.C. § 1988.

8 **VENUE**

9 6. Under 28 U.S.C. § 1391(b), venue is proper in the United States District
10 Court for the Central District of California because a substantial part of the events
11 giving rise to the claim occurred in the City of West Covina, County of Los Angeles,
12 California, which is within the Central District of California.

13 **IDENTIFICATION OF THE PLAINTIFFS**

14 7. Plaintiff I.M., a minor, is and was at all times relevant to this Complaint a
15 student at Merced Elementary School and a resident of West Covina, California.

16 8. Plaintiffs ALEX MARTINEZ and MYRNA MARTINEZ are the parents
17 of I. M. and presently reside in West Covina, California.

18 **IDENTIFICATION OF THE DEFENDANTS**

19 9. Defendant WEST COVINA UNIFIED SCHOOL DISTRICT is a
20 California public entity established, organized, and authorized under and pursuant to the
21 laws of California, with the authority to sue and be sued in its own name.

22 10. Defendant GORDON PFITZER is, and at all times relevant herein was, an
23 employee for the West Covina Unified School District, and was at all times relevant
24 hereto the principal of Merced Elementary School. This Defendant is sued both
25 individually and in his official capacity.

26 11. The true names and capacities, whether individual, corporate, partnership,
27 associate or otherwise, of Defendants DOES 1 through 20 inclusive, and each of them,
28 are unknown to the Plaintiffs who, therefore, sue them by such fictitious names.

1 Plaintiffs will seek leave to amend this Complaint to show the true names and capacities
2 of DOES 1 through 20 when they have discovered them. Plaintiffs allege that, at all
3 times mentioned herein, all of the Defendants acted or participated in some manner in
4 the acts alleged herein, and in some way caused and are responsible for Plaintiffs'
5 damages. All references to the named Defendants shall include, without limitation,
6 DOES 1 through 20 inclusive.

7 **FACTUAL ALLEGATIONS**

8 12. Valerie Lu ("Ms. Lu") is a first grade teacher at Merced Elementary
9 School in the West Covina Unified School District.

10 13. I. M. ("I. M.") is a 7-year-old second grader at Merced Elementary School.

11 14. Alexandra Cantu ("Alexandra") is I. M.'s 22 year-old sister.

12 15. I. M. and his family are Christians who adhere firmly to the Christian faith
13 and practice its tenets.

14 16. On or about December 11, 2013 I. M. spoke with his sister, Alexandra,
15 about giving candy canes to his classmates as Christmas gifts and attaching the legend
16 of the candy cane.

17 17. On Thursday, December 12, 2013, Alexandra assisted I. M. in purchasing
18 candy canes, printing the candy cane legend, and tying a copy of the legend to each
19 candy cane in order to give one to each of his 24 classmates, to his first grade teacher
20 and to the classroom parent. Once the candy canes were ready, they were placed in a
21 box for I. M. to take to school.

22 18. The attachment read as follows:

23 "A candy maker wanted to make a candy that would be a
24 witness, so he made the CHRISTmas Candy Cane to
25 incorporate several symbols for the birth, ministry, and death of
26 Jesus Christ.

27 He began with a stick of pure white, hard candy. White,
28 to symbolize the Virgin Birth, the sinless nature of Jesus, and

1 hard to symbolize the Solid Rock, the foundation of the church,
2 and firmness of the promises of God.

3 The candy maker made the candy in the form of a “J” to
4 represent the precious name of Jesus, who came to earth as our
5 savior. It also represents the staff of the “Good Shepherd” with
6 which He reaches down into the ditches of the world to lift out
7 the fallen lambs who, like all sheep, have gone astray.

8 The candy maker stained it with red stripes. He used the
9 three small stripes to show the stripes of the scourging Jesus
10 received by which we are healed. The large red stripe was for
11 the blood shed by Jesus on the Cross so that we could have the
12 promise of eternal life, if only we put our faith and trust in Him.

13 Unfortunately, the candy became known as a Candy
14 Cane—a meaningless decoration seen at Christmas time. But the
15 meaning is still there for those who “have eyes to see and ears
16 to hear”.

17 I pray that this symbol will again be used to witness to
18 the Wonder of Jesus and His Great Love that came down at
19 Christmas and remains the ultimate and dominant force in the
20 universe today.”

21 19. On Friday, December 13, 2013, I. M. took the box to school asked his
22 teacher Ms. Lu if he could pass out the candy canes. Ms. Lu took possession of the box,
23 and once she saw that the candy canes had a religious message attached she told I. M.
24 that he could not pass out that candy canes at that time, and that she would have to
25 check with Mr. Gordon Pfitzer, the school’s principal.

26 20. Ms. Lu then communicated with Mr. Pfitzer, to determine whether I. M.
27 would be permitted to distribute the candy canes to his classmates.

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1 21. Ms. Lu prevented I. M. from distributing his gifts pending a decision from
2 Mr. Pfitzer.

3 22. Approximately five days later, on December 18, 2013, Ms. Lu spoke to
4 Mr. Pfitzer who instructed Ms. Lu that I. M. was not permitted to distribute the candy
5 canes because they contained a religious message.

6 23. Ms. Lu then spoke to I. M. and told him that he could not distribute the
7 candy canes with the religious messages and further commented that “Jesus is not
8 allowed at school.”

9 24. I. M. was in fear that he was in some sort of trouble because he wanted to
10 hand out the candy canes with a religious message. I. M. watched as Ms. Lu proceeded
11 to rip the candy cane legend off of each candy cane and then throw the Christian
12 messages back in to the box.

13 25. I. M. then watched as Ms. Lu threw the box and messages into the trash.

14 26. Ms. Lu then told I. M. that he could distribute the candy canes now that the
15 Christian messages were eliminated.

16 27. Ms. Lu was acting on the explicit instructions of her supervisor, Mr. Pfitzer
17 and school administration.

18 28. Later that day, I. M. relayed these events to Alexandra and to his parents,
19 Alex and Myrna.

20 29. Alex telephoned the school office and asked to speak with Ms. Lu about
21 the situation.

22 30. He was transferred to a voice mail wherein he left a message, only to learn
23 later that the receptionist had transferred him to the wrong teacher’s voicemail.

24 31. On December 19, 2013, Alexandra spoke to Ms. Lu about the situation.

25 32. Ms. Lu stated that she had sought direction from Mr. Pfitzer because of the
26 religious content of the candy cane messages.

27 33. Ms. Lu also stated that she was instructed by Mr. Pfitzer that no religious
28 material was allowed to be distributed by students on school grounds.

1 34. Mr. Pfitzer further told Ms. Lu to prohibit the distribution of the candy
2 cane message.

3 35. On December 20, 2013, Ms. Lu had set aside time for the students to have
4 a Christmas party at which students would be permitted to exchange gifts. No
5 communication was given to the students or parents concerning any guidelines, rules or
6 policies that applied to the gift exchange. More specifically, no limitations as to the
7 content and messages of the gift or the gift wrapping was communicated to the parents
8 or students.

9 36. During the evening of Thursday, December 19, 2013, Alexandra asked I.
10 M. if he wanted to distribute the candy cane gift as previously intended since the
11 classroom Christmas party and gift exchange would occur the following day.

12 37. I. M. expressed that he desired to hand out the messages with the candy
13 canes so that he could share the Christian meaning behind Christmas and the candy
14 cane with his fellow students.

15 38. Alexandra and I. M. then acquired and assembled more candy canes and
16 attached the legend of the candy cane to each candy cane.

17 39. Alexandra informed I. M. that she would contact the principal the next day
18 in order to ensure that he would be able to hand out his candy cane gifts.

19 40. On Friday, December 20, 2013, Alexandra contacted Mr. Pfitzer.
20 Mr. Pfitzer told Alexandra that he consulted with the school district administration by
21 speaking with Ms. Sheryl Lesikar with regard to whether I. M. would be permitted to
22 hand out the Christmas gift at school.

23 41. Mr. Pfitzer told Alexandra that pursuant to his discussion with Ms.
24 Lesikar, that neither he nor the school district would permit I. M. to distribute the candy
25 cane legend because of its religious content.

26 42. Mr. Pfitzer further informed Alexandra that Ms. Lesikar had sent an email
27 to I. M.'s parents explaining that I. M. was not permitted to distribute the Christmas gift
28 or any religious materials on school grounds.

1 43. Alexandra informed Mr. Pfitzer that no such email had been received and
2 that Alexandra believed I. M.'s constitutional rights were being infringed upon as a
3 result of the District's religious censorship.

4 44. On behalf of I. M., Alexandra demanded that Mr. Pfitzer and the school
5 district respect I. M.'s rights to free speech and free exercise of religion as December
6 20, 2013 was the last day of school before the Christmas vacation began.

7 45. As Alexandra was speaking to Mr. Pfitzer, the classroom Christmas party
8 was occurring.

9 46. Mr. Pfitzer reaffirmed that I. M. was not permitted to hand out religious
10 messages on school property, but could hand out the messages off campus as students
11 left the school. At that time, only ten minutes were left in the school day.

12 47. Alexandra then spoke to Ms. Lu who instructed Alexandra to take I. M.
13 outside the gates of the school just before the end of the school day in order to distribute
14 the candy canes as children left the school.

15 48. Alexandra then took I. M. outside the schoolhouse gate and he attempted
16 to distribute his candy canes to the students from his class.

17 49. He was not entirely successful because many other students were leaving
18 school at the same time, parents were rushing their kids from campus, and some
19 students remained inside the schoolhouse gates.

20 50. During the classroom Christmas party, other students in I. M.'s class were
21 permitted to hand out Christmas gifts to their fellow classmates.

22 51. Some of these gifts permitted to be exchanged expressed secular messages
23 concerning Christmas and were packaged with images of Santa Claus, penguins with
24 Santa hats, Christmas trees, and other secular messages through images and writings.

25 52. One student was permitted to hand out a package that was wrapped in
26 paper wherein its contents were not visible until unwrapped. Ironically, this gift
27 included a candy cane and the legend of the candy cane, with a similar Christian
28 message.

CLAIMS FOR RELIEF

FIRST CLAIM: VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION UNDER 42 U.S.C § 1983.

58. Plaintiffs re-allege and incorporate herein by reference each foregoing paragraphs as through set forth in full, and further allege as follows:

59. Defendants violated Plaintiffs’ First Amendment right to freedom of speech by preventing Plaintiff from handing out his candy canes and the attached religious message to his 24 elementary school classmates, to his teacher and to his classroom parent in the classroom during the gift exchange.

60. I. M.’s giving of the candy canes and attached religious message is speech protected by the First Amendment to the U.S. Constitution.

61. Defendants have denied Plaintiff the right to freedom of speech by discriminating against Plaintiff on the basis of the religious message conveyed by the candy canes and their attachments.

62. Plaintiff never engaged in classroom speech inconsistent with the educational mission of Merced Elementary School.

63. I. M. wanted to distribute his candy canes at a time and place designated by Merced Elementary School and his teacher Ms. Lu as a time for exchanging Christmas gifts and other views concerning Christmas.

64. Plaintiff’s free speech right to give the candy canes and attached religious message outweighed any interest of the Defendants in suppressing that speech.

65. Plaintiff will be restricted in handing out the candy canes with the religious message during his tenure within the school district because the District’s School Board made the final policy decision on March 14, 2014, through official action of the school board, that the District will only allow I. M. to hand out the candy cane with the legend so long as it is handed out before school, during lunch or after dismissal. Further, I. M. is required to place his name on the message or otherwise ensure that it is clear that the

1 gift is not from the school or endorsed by the school. No other students or gifts are
2 required by the School District to comply with such requirements.

3 66. Defendants' policies are unreasonable and impose unlawful restrictions on
4 constitutionally protected speech.

5 67. Defendants' actions were unreasonable and imposed unlawful restrictions
6 on constitutionally protected speech.

7 68. Defendants acted intentionally and with callous disregard for I. M.'s
8 clearly established constitutional rights.

9 **SECOND CLAIM: VIOLATION OF THE ESTABLISHMENT CLAUSE OF**
10 **THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**
11 **UNDER 42 U.S.C § 1983.**

12 69. Plaintiffs re-allege and incorporate herein by reference each foregoing
13 paragraphs as though fully set forth herein, and further allege as follows:

14 70. Defendants' policies and actions in prohibiting religious messages to be
15 distributed on school grounds are not neutral toward religion and favor nonreligion over
16 religion.

17 71. Defendants' policies and actions in prohibiting religious messages to be
18 distributed on school grounds are not neutral towards religion and express hostility
19 towards religion and religious messages.

20 72. Therefore, Defendants have violated the Establishment Clause of the
21 United States Constitution.

22 **THIRD CLAIM FOR RELIEF: VIOLATION OF THE FREE SPEECH CLAUSE**
23 **OF ARTICLE I § 2 OF THE CALIFORNIA CONSTITUTION.**

24 73. Plaintiffs re-allege and incorporate herein by reference each foregoing
25 paragraphs as though fully set forth herein, and further allege as follows:

26 74. Article I section 2 of the California Constitution states "Every person may
27 freely speak. . . . A law may not restrain or abridge liberty of speech or press."

28 ///

1 75. I. M. sought to distribute candy canes with messages attached
2 communicating his religious belief about Christmas.

3 76. I. M. wanted to distribute his candy canes at a time and place designated by
4 Merced Elementary School and his teacher Ms. Lu as a time for exchanging Christmas
5 gifts and other views concerning Christmas.

6 77. Mr. Pfitzer, acting with consultation and direction from Ms. Lesikar and
7 the West Covina School District, and according to School District policy, refused to
8 allow I. M. to distribute his candy canes with his Christmas message attached, solely
9 based on the content of the message attached to the candy canes.

10 78. Defendants violated Plaintiffs' rights under Article I section 2 of the
11 California Constitution by preventing Plaintiff from handing out his candy canes and
12 the attached religious message to his 24 elementary school classmates, to his teacher
13 and to his classroom parent in the classroom during the gift exchange.

14 79. Defendants have denied Plaintiff the right to freedom of speech by
15 discriminating against Plaintiff on the basis of the religious message conveyed by the
16 candy canes and their attachments.

17 80. Plaintiff never engaged in classroom speech inconsistent with the
18 educational mission of Merced Elementary School.

19 81. Plaintiff's free speech right to give the candy canes and attached religious
20 message outweighed any interest of the Defendants in suppressing that speech.

21 82. Plaintiff will be restricted in handing out the candy canes with the religious
22 message during his tenure within the school district because the District's School Board
23 made the final policy decision on March 14, 2014, through official action of the school
24 board, that the District will only allow I. M. to hand out the candy cane with the legend
25 so long as it is handed out before school, during lunch or after dismissal. Further, I. M.
26 is required to place his name on the message or otherwise ensure that it is clear that the
27 gift is not from the school or endorsed by the school. No other students or gifts are
28 required by the School District to comply with such requirements.

1 83. Defendants' policies are unreasonable and impose unlawful restrictions on
2 constitutionally protected speech.

3 84. Defendants' actions were unreasonable and imposed unlawful restrictions
4 on constitutionally protected speech.

5 85. Defendants acted intentionally and with callous disregard for I. M.'s
6 clearly established constitutional rights.

7 86. Other students were permitted to distribute nonreligious messages about
8 Christmas inside the classroom and at least one other student was permitted to
9 communicate a religious message about Christmas inside the classroom but only
10 because the message was hidden from view.

11 87. Restricting I. M.'s speech solely based on the content of the message
12 attached to the candy canes violated I. M.'s free speech rights under Article I section 2
13 of the California Constitution.

14 **FOURTH CLAIM: VIOLATION OF THE CALIFORNIA EDUCATION CODE**
15 **SECTION 48907(A).**

16 88. Plaintiffs re-allege and incorporate herein by reference each foregoing
17 paragraphs as through set forth in full, and further allege as follows:

18 89. California Education Code section 48907(A) provides as follows:

19 “(a) Pupils of the public schools, including charter schools,
20 shall have the right to exercise freedom of speech and of the
21 press including, but not limited to, the use of bulletin boards,
22 the distribution of printed materials or petitions, the wearing of
23 buttons, badges, and other insignia, and the right of expression
24 in official publications, whether or not the publications or other
25 means of expression are supported financially by the school or
26 by use of school facilities, except that expression shall be
27 prohibited which is obscene, libelous, or slanderous. Also
28 prohibited shall be material that so incites pupils as to create a

1 clear and present danger of the commission of unlawful acts on
2 school premises or the violation of lawful school regulations, or
3 the substantial disruption of the orderly operation of the
4 school.”

5 90. This section protects students’ rights to free speech at least to the same
6 extent as the First Amendment. *Lovell By & Through Lovell v. Poway Unified Sch.*
7 *Dist.*, 90 F.3d 367, 371 (9th Cir. 1996)

8 91. Defendants violated Plaintiffs’ right to freedom of speech under the
9 California Education Code by preventing Plaintiff from handing out his candy canes
10 and the attached religious message to his 24 elementary school classmates, to his
11 teacher and to his classroom parent in the classroom during the gift exchange.

12 92. I. M.’s giving of the candy canes and attached religious message is speech
13 protected by the First Amendment to the U.S. Constitution and the California Education
14 Code.

15 93. Defendants have denied Plaintiff the right to freedom of speech by
16 discriminating against Plaintiff on the basis of the religious message conveyed by the
17 candy canes and their attachments.

18 94. Plaintiff never engaged in classroom speech inconsistent with the
19 educational mission of Merced Elementary School.

20 95. I. M. wanted to distribute his candy canes at a time and place designated by
21 Merced Elementary School and his teacher Ms. Lu as a time for exchanging Christmas
22 gifts and other views concerning Christmas.

23 96. Plaintiff’s free speech right to give the candy canes and attached religious
24 message outweighed any interest of the Defendants in suppressing that speech.

25 97. Plaintiff will be restricted in handing out the candy canes with the religious
26 message during his tenure within the school district because the District’s School Board
27 made the final policy decision on March 14, 2014, through official action of the school
28 board, that the District will only allow I. M. to hand out the candy cane with the legend

1 so long as it is handed out before school, during lunch or after dismissal. Further, I. M.
2 is required to place his name on the message or otherwise ensure that it is clear that the
3 gift is not from the school or endorsed by the school. No other students or gifts are
4 required by the School District to comply with such requirements.

5 98. Defendants' policies are unreasonable and impose unlawful restrictions on
6 protected speech.

7 99. Defendants' actions were unreasonable and imposed unlawful restrictions
8 on protected speech.

9 100. Defendants acted intentionally and with callous disregard for I. M.'s
10 clearly established constitutional rights.

11 **DAMAGES**

12 101. As a result of the conduct alleged above, Plaintiffs have suffered, and
13 continued to suffer damage including but not limited to humiliation, distrust of teachers,
14 distrust of the public school system, feelings of lessened worth, and feelings that their
15 beliefs are not as important as non-religious beliefs.

16 102. The actions taken by the West Covina School District, Ms. Lesikar and
17 Mr. Pfitzer, as well as the policies and procedures of the West Covina School District,
18 and the lack of training provided to teachers concerning the constitutional rights of
19 students, are the direct and proximate cause of Plaintiffs' damages.

20 WHEREFORE, the Plaintiffs respectfully pray that the Court grant the equitable
21 and legal relief set forth hereinafter in the prayer for relief.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs respectfully request the following relief:

24 **UNDER THE FIRST CLAIM: VIOLATION OF THE FREE SPEECH CLAUSE**
25 **OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION**
26 **UNDER 42 U.S.C § 1983.**

27 a. That this Court permanently enjoin Defendants, their agents, servants,
28 employees, officials, or any other person acting in concert with them or on their behalf,

1 from prohibiting I. M. and other students from communicating religious messages on
2 school grounds;

3 b. That this Court enter a Declaratory Judgment stating that Defendants'
4 policy or practice of censoring religious messages, or not permitting religious speech on
5 school grounds violates the First Amendment to the United States Constitution and
6 Article I § 2 of the California Constitution;

7 c. That I. M. be allowed to distribute the candy canes, with the legends
8 attached, to his classmates on campus at Merced Elementary during noninstructional
9 time, whether it be inside the classroom or outside the classroom, and during school
10 hours;

11 d. That this Court grant Plaintiffs an award of nominal damages against
12 Mr. Pfitzer and Ms. Lesikar, in their individual capacity;

13 **UNDER THE SECOND CLAIM: VIOLATION OF THE ESTABLISHMENT**
14 **CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES**
15 **CONSTITUTION UNDER 42 U.S.C § 1983.**

16 a. That this Court permanently enjoin Defendants, their agents, servants,
17 employees, officials, or any other person acting in concert with them or on their behalf,
18 from continuing take actions or making statements in the classroom that are hostile
19 towards religion and favor non-religion over religion;

20 b. That this Court enter a Declaratory Judgment stating that Defendants'
21 policy or practice of acting with hostility towards religion and favoring non-religion
22 over religion violates the First Amendment to the United States Constitution;

23 c. That I. M. be allowed to distribute the candy canes, with the legends
24 attached, to his classmates on campus at Merced Elementary during noninstructional
25 time, whether it be inside the classroom or outside the classroom, and during school
26 hours;

27 d. That this Court grant Plaintiffs an award of nominal damages against
28 Mr. Pfitzer and Ms. Lesikar, in their individual capacity;

1 **UNDER THE THIRD CLAIM: VIOLATION OF THE FREE SPEECH CLAUSE**
2 **OF ARTICLE I § 2 OF THE CALIFORNIA CONSTITUTION.**

3 a. That this Court permanently enjoin Defendants Pfitzer and Lesikar in their
4 individual capacity from prohibiting I. M. and other students from communicating
5 religious messages on school grounds;

6 b. That this Court enter a Declaratory Judgment stating that Defendant
7 Pfitzer's and Lesikar's policy or practice of censoring religious messages, or not
8 permitting religious speech on school grounds violates the First Amendment to the
9 United States Constitution and Article I § 2 of the California Constitution;

10 c. That I. M. be allowed to distribute the candy canes, with the legends
11 attached, to his classmates on campus at Merced Elementary during noninstructional
12 time, whether it be inside the classroom or outside the classroom, and during school
13 hours;

14 **UNDER THE FOURTH CLAIM: VIOLATION OF CALIFORNIA EDUCATION**
15 **CODE SECTION 48907(A)**

16 a. That this Court permanently enjoin Defendants Pfitzer and Lesikar in their
17 individual capacity from prohibiting I. M. and other students from communicating
18 religious messages on school grounds;

19 b. That this Court enter a Declaratory Judgment stating that Defendant
20 Pfitzer's and Lesikar's policy or practice of censoring religious messages, or not
21 permitting religious speech on school grounds violates the First Amendment to the
22 United States Constitution and Article I § 2 of the California Constitution;

23 c. That I. M. be allowed to distribute the candy canes, with the legends
24 attached, to his classmates on campus at Merced Elementary during noninstructional
25 time, whether it be inside the classroom or outside the classroom, and during school
26 hours;

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28 ///

1 **ON ALL CLAIMS**

2 d. That this Court award the Plaintiffs' costs and expenses of this action,
3 including a reasonable attorneys' fee award, in accordance with 42 U.S.C. § 1988 and
4 other applicable law against all Defendants;

5 e. That this Court grant such other and further relief against Defendants as the
6 Court deems equitable, just, and proper, including but not limited to requiring the
7 School District to institute a training and monitoring program;

8 f. That this Court adjudge, decree, and declare the rights and other legal
9 relations of the parties to the subject matter here in controversy, in order that such
10 declarations shall have the force and effect of final judgment; and

11 g. That this Court retain jurisdiction of this matter as necessary to enforce the
12 Court's orders.

13 **JURY DEMAND**

14 Plaintiffs hereby demand a jury trial.

15
16 Respectfully submitted,
17 TYLER & BURSCH, LLP

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19 Dated: September 8, 2014

20 By: _____
21 Robert H. Tyler, Esq.
22 Attorneys for Plaintiffs, **I. M.; ALEX**
23 **MARTINEZ** and **MYRNA**
24 **MARTINEZ**
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