

Courtney Bowie*
Ayirini Fonseca-Sabune*
ACLU Foundation, Inc.
125 Broad Street, Floor 18
New York, New York 10004
Telephone: (212) 549-2500
Facsimile: (212) 549-2654
cbowie@aclu.org
afonseca-sabune@aclu.org
**admitted pro hac vice*

John Mejia (USB No. 13965)
Leah Farrell (USB No. 13696)
ACLU of Utah Foundation, Inc.
355 North 300 West
Salt Lake City, Utah 84103
Telephone: (801) 521-9862
Facsimile: (801) 532-2850
jmejia@acluutah.org
lfarrell@acluutah.org

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH CENTRAL DIVISION

KEVIN WINSTON, on behalf of his minor son K.W., GLORIA URCINO, on behalf of her minor daughter, Y.A., ANGELICA ESTRADA, on behalf of her minor daughter A.P., and a class of all similarly situated individuals.

PLAINTIFFS,

vs.

SALT LAKE CITY THROUGH THE SALT LAKE CITY POLICE DEPARTMENT; WEST VALLY CITY THROUGH THE WEST VALLEY POLICE DEPARTMENT;
WEST JORDAN CITY THROUGH THE WEST JORDAN POLICE DEPARTMENT;
SALT LAKE CITY SCHOOL DISTRICT by and through its board; SALT LAKE CITY CHIEF OF POLICE CHRISTOPHER BURBANK, in his official capacity; ACTING WEST VALLEY POLICE DEPARTMENT CHIEF OF POLICE ANITA SCHWEMMER, in her official capacity; WEST JORDAN POLICE DEPARTMENT CHIEF OF POLICE DOUG DIAMOND, in his official capacity; SALT LAKE CITY SCHOOL DISTRICT SUPERINTENDENT MCKELL WITHERS, in his official capacity; SALT LAKE CITY BOARD OF EDUCATION AND ITS MEMBERS in their official capacities; WEST HIGH SCHOOL PRINCIPAL PARLEY JACOBS, in his official and personal capacities; LYMAN SMITH; NATHAN

Case No. 2:12-cv-01134 TS-PMW

SECOND AMENDED PROPOSED
CLASS ACTION COMPLAINT

WILEY; ALMA SWEENEY; DOE DEFENDANTS
1-8 in their official and personal capacities; and
DOE DEFENDANT 9 in his official capacity,

Defendants.

PRELIMINARY STATEMENT

Plaintiffs Kevin Winston, on behalf of his minor son K.W. (hereinafter “K.W.”), Gloria Ursino, on behalf of her minor daughter Y.A. (hereinafter “Y.A.”), Angelica Estrada on behalf of her minor daughter A.P. (hereinafter “A.P.”) and all similarly situated individuals in the Salt Lake City School District, by their attorneys, complain as follows:

1. This case involves an ill-conceived and unconstitutional plan for a gang task force made up of about 16 police officers to enter West High School and round up students for detention, interrogation, photographing, and inclusion in a police database as gang members. During the event, officers picked up Latino, African American and Pacific Islander students who were attending school, questioned them and photographed them for placement in a police database as self-proclaimed gang members, all while still in the school, regardless of whether or not the students had any actual gang membership. Only students of color were targeted by the task force. This fact is no coincidence: as one of the officers explained to K.W.’s mother, the operation was meant to address a “problem with the Mexicans” at West High School.

2. On top of the myriad constitutional violations and common law torts spawned by these events, this action sent all students of color a clear message: you are suspected gang members, even if all you are doing is going to school.

Moreover, the incident signaled to non-white students that even school can be turned into a police station. These messages are especially harmful at a time when Utah is struggling to increase graduation rates for high school students, especially minority students. Through this lawsuit, the Plaintiffs seek to put an end to the practices and policies that led to the operation, to stop the use of the database to store information about minors who have committed no crimes, and to protect the rights of all students.

3. On or about December 16, 2010, at the invitation of Salt Lake City Public School District (“SLCSD”) West High School administration, officers from the Salt Lake City Police Department (“SLCPD”) gang unit, together with officers in the newly formed Safe Streets Task Force (“SSTF”) (hereinafter the SLCPD gang unit and SSTF are jointly referred to as the “Task Force”) launched a gang sweep of West High School in Salt Lake City, Utah. The SSTF is a joint task force made up of thirty individuals, including all fifteen of the officers from the Salt Lake City Police Department’s (“SLCPD’s”) gang unit, along with officers from the West Valley City Police Department (the “WVCPD”), the West Jordan Police Department (the “WJPD”), the Sandy City Police Department (the “SCPD”), and

the former Midvale City Police Department (“MCPD”). The SSTF did not exist prior to October 2010.

4. School Resource Officers (“SROs”), that is, SLCPD officers assigned to duty in and around West High School, were also involved in the sweep that day.

5. Task Force officers entered the school early in the day and remained there for several hours. In the course of the sweep, officers contacted at least twenty-six West High School students without lawful justification, escorted each to the In-School Detention classroom, and held each against his or her will. At least some of the students and their personal belongings were searched without consent. In addition, Task Force officers interrogated and photographed the students. The Task Force officers retained the information obtained from students in police investigative files.

6. All students subjected to the sweep were non-white. The majority of the students were Latino and a smaller number were African American or Pacific Islander. Photographs and information obtained from students were remotely uploaded into an electronic records-keeping database, Versadex, which is maintained and operated by the SLCPD.

7. The SLCPD and the Task Force continue to hold records on students detained in the roundup, without probable cause or reasonable suspicion of criminal activity and without regard to whether the student has ever been convicted

of a crime, gang-related or otherwise. Once information is entered into the Versadex system, it is available to the SLCPD and informally available to law enforcement throughout the state and country.

8. Administrators at West High School invited the Task Force to the school without notice to parents or students.

9. West High School administrators and SROs at West High School identified West High School students as potential gang members for the Task Force. On information and belief, staff also identified students as suspected gang members. On information and belief, Task Force officers also walked the school halls and grounds identifying students for detention and questioning who had not been identified as potential gang members.

10. K.W., Y.A., and A.P., along with at least 24 others, were identified in the sweep, detained, interrogated, photographed, labeled as gang members, and included in the police database. K.W.'s possessions were searched. Many of these students were identified as self-proclaimed gang members even though they both denied gang membership and had no criminal or juvenile delinquency convictions or prosecutions that predicated their identification or resulted from the sweep.

11. K.W., Y.A., A.P. and the Plaintiff class were victims of the illegal forced detention, searches, seizures, interrogations, photographing, and inclusion in Versadex as self-proclaimed gang members. They seek judicial redress for

violations of their civil rights and the rights of the class. This action is for declaratory and injunctive relief arising out of the unlawful violations of Plaintiffs' civil rights. K.W., Y.A., and A.P. also seek nominal damages for the violations of their rights and the tortious behavior of some of the officers involved. Y.A. and A.P. seek only nominal damages for the violations of their rights.

12. K.W., Y.A., and A.P., on behalf of themselves and a similarly situated class, bring their claims pursuant to the First, Fourth, and Fourteenth Amendments of the United States Constitution, Article I §§ 7, 14, and 24 of the Utah Constitution, and Utah statutory and common law.

JURISDICTION AND VENUE

13. This is a police misconduct and race discrimination case brought pursuant to 42 U.S.C. § 1983, the United States Constitution and state statutory and common law.

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 & 1343. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. Venue is proper in this district pursuant to the general venue provision 29 U.S.C. § 1391.

15. The events giving rise to the claim alleged in this Complaint arose in Salt Lake City, Utah. Venue is proper in the Central District of Utah.

PARTIES

I. NAMED PLAINTIFFS

16. Plaintiff Kevin Winston, on behalf of his African American minor son, K.W., is a resident of Salt Lake City, Utah. K.W. attends West High School in Salt Lake City and was a 14 year-old freshman at West High School during the 2010-2011 school year. K.W. intends to remain a student at West High School until he graduates in 2014.

17. Plaintiff Gloria Urcino, on behalf of her Hispanic minor daughter, Y.A., is a resident of Salt Lake City, Utah. Y.A. attends West High School in Salt Lake City and was a 15 year-old freshman at West High School during the 2010-2011 school year. Y.A. intends to remain a student at West High School until she graduates in 2014.

18. Plaintiff Angelica Estrada, on behalf of her Hispanic minor daughter, A.P., is a resident of Salt Lake City, Utah. A.P. currently attends Horizonte High School in Salt Lake City. She was a 15 year-old freshman at West High School during the 2010-2011 school year.

II. DEFENDANTS

A. SALT LAKE CITY

19. Defendant Salt Lake City is a municipality incorporated under the laws of the State of Utah and is responsible for the maintenance, control, and supervision

of the SLCPD and for establishing policies, procedures, and customs by which its employees conduct their official duties.

20. Defendant Christopher Burbank, sued in his official capacity, is and at all relevant times was Chief of Police of the SLCPD and is responsible for the maintenance, control and supervision of law enforcement personnel employed by the SLCPD. The SLCPD's gang unit officers make up half of the officers in the SSTF.

21. On information and belief, Chief Burbank was responsible for approving the use of the SLCPD officers in the SSTF, and assigned subordinates to directly supervise the activities of the SLCPD officers on the SSTF. The Task Force's actions in the December 16, 2010 gang sweep were foreseeable and the Task Force was deliberately indifferent to the likely violation of constitutional rights.

22. On information and belief, Chief Burbank is also a part of the SSTF executive board.

B. WEST VALLEY CITY

23. Defendant West Valley City is a municipality incorporated under the laws of the State of Utah and is responsible for the maintenance, control, and supervision of the WVCPD and for establishing policies, procedures and customs by which its employees conduct their official duties.

24. Defendant Anita Schwemmer, sued in her official capacity, is the acting Chief of Police of the WVCPD and is responsible for the maintenance, control and supervision of law enforcement personnel employed by the WVCPD. On information and belief, acting Chief Schwemmer's immediate predecessor, Chief Thayle Nielson, was responsible for approving the use of WVCPD officers in the Task Force. The Task Force and the WVCPD's actions in the December 16, 2010 gang sweep were foreseeable and the WVCPD was deliberately indifferent to the likely violation of constitutional rights.

25. On information and belief, Chief Nielson was also part of the SSTF executive board at the time of the relevant events, and West Valley maintains a representative on that board at this time.

D. WEST JORDAN CITY

26. West Jordan City is a municipality incorporated under the laws of the State of Utah and is responsible for the maintenance, control, and supervision of the WJPD and for establishing policies, procedures, and customs by which its employees conduct their official duties.

27. Defendant Doug Diamond, sued in his official capacity, is the Chief of Police of the West Jordan Police Department and is responsible for the maintenance, control, and supervision of law enforcement personnel employed by the WJPD. On information and belief, Chief Diamond's immediate predecessor

was responsible for approving the use of WJPD officers in the SSTF. The Task Force's and the WJPD's actions in the December 16, 2010 gang sweep were foreseeable and the WJPD was deliberately indifferent to the likely violation of constitutional rights.

28. On information and belief, Chief Diamond and his immediate predecessor are members of the SSTF executive board.

E. OFFICER AND DOE DEFENDANTS

29. Defendant Lyman Smith was a SRO employed by the SLCPD on December 16, 2010 who was assigned to West High School and was working there for most of the time relevant to this Complaint. Defendant Smith wrongly identified Y.A. and other students as suspected gang members and initiated their detention, interrogation, and photographing. He is sued in his personal capacity.

30. Defendant Alma Sweeny is an SLCPD officer who is also a member of the Task Force. He was assigned to the Task Force gang sweep on December 16, 2010. Defendant Sweeny was dressed as a plainclothes police officer and initially approached, detained, interrogated, and assaulted K.W. on December 16, 2010. He is sued in his personal capacity.

31. Defendant Nathan Wiley is an SLCPD officer who is also a member of the Task Force. He was assigned to the Task Force gang sweep on December 16, 2010. Defendant Wiley was dressed as a plainclothes police officer and initially

approached, detained, interrogated, and assaulted K.W. on December 16, 2010. He is sued in his personal capacity.

32. Plaintiffs are informed and believe that Doe Defendants #1 through #4 are all officers duly appointed and employed by the SLCPD and/or the WVCPD and/or the WJPD and/or the MCPD and/or the SCPD and were at all relevant times acting in the course and scope of their employment and acting under color of state law.

33. Upon information and belief, each of the Doe Defendants #1 through #4 participated in the seizure, search, detention, interrogation, and/or collection and maintenance of personal data relating to one or more of the Plaintiffs.

34. Doe Defendants #1 through #4 are sued in their personal and official capacities. The true names of these Defendants are unknown to Plaintiffs. In due course, Plaintiffs will amend this complaint to identify these Defendants' true names.

35. Plaintiffs are informed and believe that Doe Defendants #5 through #8 are and were at all relevant times employed by the Salt Lake City School District as campus security officers at West High School and were at all relevant times acting in the course and scope of their employment and under color of state law.

36. Upon information and belief, each of the Doe Defendants #5 through #8 provided assistance to the Task Force in conducting the sweep on December 16,

2010. Defendants #5 through #8 are sued in their personal and official capacities. The true names of these Defendants are unknown to Plaintiffs. In due course, Plaintiffs will amend this complaint to identify these Defendants' true names.

37. Plaintiffs are informed and believe that Doe Defendant #10 is and was at all relevant times employed by the Salt Lake City School District as an administrator at West High School and was at all relevant times acting in the course and scope of his or her employment and under color of state law.

38. Upon information and belief, Doe Defendant #10 provided assistance to the Task Force in conducting the roundup on December 16, 2010. Defendant #10 is sued in his or her official capacity.

39. The true name of this Defendant is unknown to Plaintiffs. In due course, Plaintiffs will amend this complaint to identify the Defendant's true name.

F. SALT LAKE CITY SCHOOL DISTRICT BY AND THROUGH SALT LAKE CITY SCHOOL DISTRICT BOARD OF EDUCATION

40. Defendant Salt Lake City School District is sued by and through its Board of Education. Hereinafter, the Salt Lake City Board of Education will be referred to as the "School Board."

41. Defendant McKell Withers is the current Superintendent of the Salt Lake City School District ("SLCSD") by and through its school board and is sued in his official capacity. Defendant Withers is responsible for carrying out and setting policies of the SLCSD that continue to harm or threaten to harm the Plaintiffs. All

actions taken by Defendant Withers while acting as the Superintendent of the SLCS D were taken in the course and scope of his employment and under color of state law.

42. School Board Defendants Kristi Swett (president), Amanda Thorderson, Alama Uluave, Douglas Nelson, Rosemary Emery, Heather Bennett, Laurel Heath Young, and Martine Cao, are members of and constitute the School Board, the governing body of the SLCS D. Said board member Defendants are sued in their official capacities.

43. The School Board Defendants are, and at all relevant times were, responsible for promulgating policies, rules, and regulations applicable to students of West High School and throughout the SLCS D. All actions taken by these Defendants, while acting as members of the School Board, were taken in the course and scope of their duties as School Board members and under color of state law.

44. Defendant Parley Jacobs, sued in his personal and official capacities, is and was at all relevant times, employed by the SLCS D by and through its school board as the Principal of West High School. All actions taken by Defendant Jacobs while working as Principal at West High School were taken in the course and scope of his employment and under color of state law.

CLASS ACTION ALLEGATIONS

45. For the purposes of all declaratory and injunctive relief sought in this case, Plaintiffs K.W., Y.A. and A.P., through their parents, bring this action pursuant to Federal Rules of Civil Procedure 23(b)(2) on behalf of themselves and all Latino, African American, and Pacific Islander public school students who were enrolled in December 2010 and are enrolled in the public schools in the Salt Lake City School District, as well as all future Latino, African American, and Pacific Islander students who will enroll in Salt Lake City School District public schools.

46. The members of the class are so numerous that joinder of all members is impracticable. According to the most recent data available for fall 2012, Salt Lake City School District has 1033 African American students, 968 Pacific Islander students, and 9964 Hispanic students. In 2010, West High School alone enrolled a total of 2443 students. Of those students, 119 were identified as African American, 1031 as Hispanic, and 100 as Pacific Islander. The number of such students who will enroll in the future cannot be determined at this time.

47. There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual members. Common questions include, among others:

- whether the School Board Defendants' definition of "gang activity" and "gang-related dress" are unconstitutionally vague in violation of the federal and state Constitutions;

- whether detaining, searching, interrogating, and photographing high school students at school with the sole purpose of including students in a police database violated the rights of the Plaintiff class members to be free of unlawful searches and seizures under the federal and state Constitutions;
- whether the decision by various Defendants to allow a task force of about 16 police officers to enter a school during school hours to carry out these activities violated the federal and state Constitutions;
- whether students included in the Plaintiff class are subjected to racial profiling and discrimination in being targeted for detention, search, interrogation, photographing, and inclusion in the gang database because of their race, ancestry, or national origin in violation of their rights under the federal and state Constitutions and state statutory and common laws; and
- whether Defendants' current policies, practices, and or/customs continue to put the Plaintiff class at risk of future violations of their civil rights, including continuing to be unlawfully targeted due to their race.

48. The representative Plaintiffs' claims are typical of the class. K.W., Y.A., and A.P., the named Plaintiffs, were identified, detained, searched, interrogated, photographed, and included in a police database as gang members without any lawful justification.

49. The named Plaintiffs have been and will likely again be subjected to the wrongful customs, policies, practices, procedures, and/or customs of the Salt Lake City School District by and through its School Board, the Task Force, the SLCPD, the WVCPD, and the WJPD.

50. The legal theories under which the named Plaintiffs seek declaratory and injunctive relief are the same as those on which all members of the class will rely, and the harms suffered by the named Plaintiffs are typical of the harms suffered by the class members.

51. The representative Plaintiffs will fairly and adequately protect the interests of the members of the class. The Plaintiffs are Hispanic and African American and as such, like Pacific Islander students in the Salt Lake City School District, remain at risk of being disciplined or referred to the police because of the Task Force and the SLCS D's gang policies and of being illegally detained, searched, interrogated, photographed, and entered into the police database.

52. The Plaintiffs have retained counsel competent and experienced in complex class action and constitutional and civil rights litigation and with the resources to zealously represent the class. K.W. is seeking compensatory and punitive damages only on an individual basis. Y.A. and A.P. seek only nominal damages.

53. K.W. seeks compensatory and punitive damages for the violations of his civil rights and for the tortious behavior of certain Defendants against him on an

individual basis. K.W., Y.A., and A.P. seek to represent a class only for injunctive and/or declaratory relief. This action is properly maintained as a class action pursuant to Rule 23(b)(2). The Defendants have acted or refused to act on grounds generally applicable to the class as a whole.

FACTS

I. The December 16, 2010 Sweep of West High School

54. West High School is a public high school located in Salt Lake City, Utah within the Salt Lake City School District. In 2010, West High School had a student body population of approximately 2443 students. Forty-two percent of those students were Hispanic (1031 students); 40 percent were Caucasian (965); 5 percent were African American (119 students); 4 percent were Pacific Islanders (100 students); and 3 students identified as multi-racial. One hundred percent of the students impacted by the gang sweep were non-white. Specifically, the students targeted were Latino, African American or Pacific Islander.

55. On information and belief, in the weeks leading up to December 16, 2010, school administrators from West High School, campus security personnel, and SLCPD SROs operating out of West High School discussed what they described as an increase in gang activity in the school and in the community. As evidence of perceived gang activity, Defendant Principal Parley Jacobs cites tagging, gang attire, and gang symbols. A list of students, described as “known gang members,”

was generated by school administrators and SROs to be provided to the SLCPD.

The SROs then made contact with Officer Smith of the Task Force. Thereafter, the Task Force developed an operational plan for the sweep of West High School to be conducted on December 16, 2010.

56. On the morning of December 16, 2010, Task Force officers descended upon West High School and began rounding up students by removing students from their classrooms, approaching students while detained in in-school detention (“ISD”), and approaching students in the hallways, cafeteria, and other common areas. Task Force officers including, upon information and belief, Alma Sweeny, Nathan Wiley, N. Warrick, Justin Wyckoff, K. Ford, L. Wills, B. Evans, T. Tueller, Lorenzo Leuluai, K. Schofield, Michael Fullwood, J. Miller, Jeremy Sayes, and several unknown Doe Defendant Task Force officers, were assigned to patrol hallways, common areas, and the parking lot. Defendant Task Force officers, without lawful justification, detained and interrogated students and then escorted students to the ISD room, if not already held there for in-school detention, and detained students there for further interrogations and searches.

57. Over the course of the day on December 16, 2010, Defendant Task Force officers, without lawful justification, detained at least 26 students, all of whom were on school property and engaged in ordinary and proper activities associated

with attending school. All of the students detained were Latino, Pacific Islander, or African American.

58. Defendant Task Force officers detained students in the ISD room. Students were escorted in and out of the room throughout the day. Upon information and belief, Officer M. Johnson, Officer M. Voorhees and two unidentified Doe Defendant officers were positioned at computers in the ISD room. Approximately nine other unidentified Task Force officers and three unidentified campus security officers were also in the room. Defendant Task Force officers denied students' requests to make phone calls to their parents and ignored students' requests to leave the ISD room. A row of police cars was also visible outside the front of the school.

59. By virtue of the actions of the police officers, acting with the assistance of the school officials, none of the students believed that he or she was free to leave the ISD room. Students feared being physically restrained, arrested, or otherwise further punished if they attempted to leave.

60. Moreover, relevant school policies, city and county ordinances, and state statutes prohibited students from disobeying the instructions of the Task Force officers, SROs, campus security officers, and school staff and administration while the students were at school.

61. At least one student, A.P., refused a command by an officer involved in the sweep to come with him to the ISD room and simply walked into class.

62. Not long after class started, a SRO came to class and insisted that A.P. go to the ISD room. The SRO told her that she could have gotten detention for refusing the other officer's command.

63. Not all students approached and initially questioned by officers involved in the operation were taken to the ISD room. Some students were simply asked to show their belts and then go on their way. At least one student had their belt confiscated by officers.

64. Once students were detained in the ISD room, Defendant Task Force officers, acting without lawful justification and without the consent of the students, searched students' backpacks and other personal property, such as notebooks. Defendant Task Force officers physically seized students' property and took pictures of notebook pages. Neither school officials nor Task Force officers informed students of the basis for the searches.

65. Defendant Task Force officers, acting without lawful justification and without the students' consent, removed students individually from the ISD room and detained them in an adjacent security office to have their pictures taken. Students were interrogated in the ISD room. In all instances, interrogations were conducted within earshot of other students. Defendant Task Force officers

interrogated students about whether they were in gangs and whether they knew anyone in gangs.

66. In many instances, the interrogation was actually a simple repeated accusation of gang membership, with reference to a specific subset of a specific gang. Students were repeatedly asked the same questions, and were told that they were lying when they denied involvement with a gang.

67. Defendant Task Force officers also made other intimidating statements or gestures directed at students. On information and belief, most if not all officers had their guns visible. Such statements and actions were made to intimidate students and obtain compliance with Defendants' commands, and caused great fear and distress among Plaintiffs.

68. In addition, Defendant Task Force officers acting without lawful justification and without the students' consent, required students to divulge personal identifying information, including students' names, races, and dates of birth, and recorded these along with the students' purported gang affiliation and nicknames on whiteboards.

69. On information and belief, officers involved in the operation also obtained personal information on students from the confidential school records, having been given access to those records by school administration. Defendants then, without lawful justification and without the students' consent, required students to have

their photographs taken holding up whiteboards identifying them as gang members.

70. Photographing minors is prohibited under SLCPD policy except in certain express circumstances, none of which applied to any of the students of whom photographs were taken.

71. Defendants Officer M. Johnson, Officer M. Voorhees, and two unidentified Doe Defendant officers entered information obtained through interrogations of some of the students into an electronic “field card.”

72. For many of the students on whom a “field card” was prepared, Officer Voorhees marked a box that indicated that the student had “self proclaimed” as a gang member. Officer Voorhees marked this box even when it was clear from the interrogation of the student and the narrative portion of the “field card” that the student had expressly and repeatedly denied gang membership.

73. Upon information and belief, the information and photographs obtained by Defendant Task Force officers were entered into an electronic database known as Versadex, maintained and operated by the SLCPD. The “field card(s)” being collected by Task Force officers were placed into the SLCPD Versadex system.

74. Some students were not informed that their personal information was being placed into a police database. Some students were informed that their names would be removed from the database in four years if they stayed out of trouble.

Other students were informed that their names would be removed from the database in two years if they stayed out of trouble. Students were not provided any further information about the database.

75. On information and belief, Versadex is formally accessible to the SLCPD and other authorized users, and is accessible to law enforcement personnel throughout the state of Utah on an informal basis. Moreover, on information and belief, some information from this database is available to law enforcement officers throughout the country because it is given a National Crime Information Center (“NCIC”) code, making it potentially part of a federal database available to police across the country.

76. The students were placed in Versadex without lawful justification, without having committed crimes, or without having been convicted of any offense. On information and belief, the students are now subjected to additional police scrutiny and potential negative consequences as a result of being included in Versadex as gang members.

77. Defendant Task Force officers detained students in the ISD room for varying times, from ten minutes to up to two hours.

78. Upon information and belief, all students detained during the roundup are Latino, with the exception of some Pacific Islander students and K.W., who is African American.

79. In one instance, one or more of the Defendant Task Force officers and/or Defendant school officials brought a white student into the ISD room, who began to curse at the officers in the room. When the officer(s) who brought the white student in explained that it was a “practical joke,” and that the student had been coached to act up, Defendant police officers and school officials in the ISD room laughed. This racially motivated “joke” was visible and audible to all students present in the ISD room, causing the students great humiliation and distress and clearly signaling to the students that the targets of the sweep were students from certain minority groups.

80. On information and belief, the officers conducting the sweep played at least one other “practical joke” at the expense of the students in the ISD room, reflecting a lack of professionalism and disregard for the well-being of the students.

II. Facts Relating to the Individual Named Plaintiffs K.W., Y.A., and A.P.

A. K.W.

81. During the lunch period on December 16, 2010, K.W. was sitting at a lunch table with four friends, three Caucasian students and one Asian student, waiting to begin his part-time work shift at the cafeteria.

82. K.W. was approached by Defendants Sweeny and Wiley, who were in plain clothes. These Defendants asked if they could speak with K.W., telling K.W. that they would make him “look cool.” K.W. thought that the men were teachers and

that he had been selected for an award. K.W. went with the officers to a small room adjacent to the entryway of the cafeteria.

83. Once in the small room, the officers accused K.W. of vandalizing the school with graffiti. K.W. denied the allegations and asked the officers why they were questioning him.

84. The officers told K.W. that a teacher had identified him as a gang member, but refused to state which teacher had identified him. K.W. became upset, announced to the officers he was returning to the cafeteria table and attempted to do so.

85. As K.W. attempted to move, one of the officers told K.W. to “quit acting tough” and grabbed his arm, leaving a small red bruise that remained there that day. K.W. told the officer not to touch him. One of the officers then told K.W. if he wanted to “act tough,” he could “go to ISD.”

86. K.W., believing that school representatives in the ISD room would help him resolve the baseless accusations and clarify for him what was going on, said he would go to ISD. As K.W. walked to the room, the two officers closely followed him, ensuring that he would actually go there.

87. At the time the officers approached him in the lunch room, K.W. was wearing a blue hooded sweatshirt, black jeans, Nike socks, sneakers, and a backpack designed by the manufacturer to include blue and yellow graffiti-style

writing. One other student sitting at the table with K.W. had hand-drawn graffiti on her backpack, but neither she nor any of the other students K.W. was with were detained or interrogated.

88. Once he arrived at the ISD room, K.W. asked if he could leave. An unidentified officer told him that he should cooperate with them first. K.W. asked for permission to call his mother. An unidentified Task Force officer told K.W. that he would need to cooperate and answer questions before he could call his mother.

89. In the ISD room, K.W., like other students rounded up, was made to submit to a search. An unidentified Task Force officer asked K.W. if he could inspect the contents of his backpack, but grabbed the items without waiting for a reply and proceeded to closely examine everything in the backpack.

90. After emptying K.W.'s backpack, the officer went through K.W.'s class notebooks, including a notebook for art class, and photographed several pages. The officer told K.W. that the notebooks, including K.W.'s art notebook, had gang drawings in them.

91. During and after the non-consensual search of his backpack, K.W. was interrogated by Defendant Task Force officers. At first, K.W. tried not to respond to the police officers' questions. Defendant Task Force officers told K.W. that

they only wanted to ask a few questions and that it would not hurt. K.W. feared that he would be arrested if he did not cooperate with the officers.

92. The Task Force officers repeatedly asked K.W. whether he was in a gang and which gang he was in. When K.W. repeatedly responded that he was not in a gang, the police officers told him that they were going to mark him down as a “tagger.” The Task Force officers asked K.W. for personal identifying information, including his name, race, and birthdate. K.W. responded and officers wrote the information down on a whiteboard, including his response that his race was “black and white,” along with the phrase “gang tagger.”

93. Defendant Task Force officers then required K.W. to stand to have his photograph taken while holding the whiteboard identifying him as a “gang tagger.” When K.W. hesitated and did not move quickly enough, a police officer forcibly positioned K.W. to be photographed.

94. After they took his photograph, Task Force officers informed K.W. that his information was going to be placed in a gang database.

95. It was only after they took his photograph that the officers told K.W. that he could leave the ISD room.

96. K.W. was detained for at least an hour and held in the ISD room surrounded by police officers. The detention of K.W. was arbitrary and capricious and without

any lawful justification. During this time, he was not permitted to call his parents or leave the room.

97. Defendant Task Force officers released K.W. after his detention, interrogation, and photographing, and provided him a note to excuse his late arrival at class. While detained, K.W. missed working his shift in the cafeteria as well as his next period class.

98. Upon release, K.W., shaken and extremely upset, called his mother from the student services office. Unable even to talk about what had occurred, K.W. managed to say that he had an emergency and asked his mother to pick him up.

99. After calling his mother, K.W. waited outside to be picked up. K.W. was visibly distraught and crying when two Task Force officers exited the building and noticed him. One of the officers who had earlier assaulted him proceeded to taunt K.W., saying words to the effect of, “look at the tough guy; you’re not so tough anymore.”

100. Soon after, Kevin Winston, K.W.’s father, arrived to pick him up after being contacted by K.W.’s mother. Kevin Winston then dropped K.W. off at his home.

101. K.W. was greeted by his mother, Lisa Winston, upon returning home. Lisa Winston had never seen K.W. so upset. He appeared traumatized and could not talk about what had happened to him. K.W. eventually handed Lisa Winston the note that the police gave him and described what had occurred.

102. After learning what had happened to her son, Lisa Winston called the school administration to ask for an explanation. Not satisfied with the response from the school official, she took K.W. back to West High School intending to ask school officials what K.W. had done to warrant being detained and interrogated by police. K.W. also wanted to pick up his schoolwork for the afternoon.

103. When they got to school, Lisa Winston and K.W. approached a group of approximately 16 police officers and/or school security personnel standing throughout the entry hallway of West High School, near the ISD room and the security office.

104. Lisa Winston asked why the police were at West High School, to which a Defendant Lyman Smith replied words to the effect of “there’s a problem with the Mexicans.” Defendant Task Force officers were visibly shocked when Lisa Winston, who is Caucasian, informed them that she was K.W.’s mother.

105. K.W. heard police officers tell his mother that “she had her head up her ass” if she thought that K.W. was not a gang tagger, because K.W. had adopted the “tagger name” of “Maze” and had been vandalizing the school with graffiti and had been lying to her about his criminal activities. These allegations were completely baseless.

106. When asked by Lisa Winston why the officers thought K.W. was in a gang, one of the Defendant officers responded by stating it must have been because he

“looks Mexican.” Others asserted that K.W. would wear “gang clothes” while at school, then change clothes on the way home to fool his parents. This allegation was untrue.

107. Defendant Task Force officers refused to provide Lisa Winston with the photograph of K.W. and told her that they were not required to provide her with any information. They further told Lisa Winston that K.W. would be included in a gang database and would be removed after two years if he behaved.

108. Later the same afternoon, Lisa Winston spoke with West High School Assistant Principal Ken DeVries. DeVries assured Lisa Winston that K.W. never should have been detained by the police, and assured her he would find out what had gone wrong. DeVries told Lisa Winston that he had called Defendant SLCSO Superintendent McKell Withers to inquire about the incident. Lisa Winston did not receive any further contact from DeVries regarding the December 16, 2010 incident.

109. At a later time after the date of the incident, through counsel, Lisa Winston again attempted to obtain a copy of the photograph of K.W. and any records that the Task Force had generated regarding K.W. Lisa Winston was told by Defendant SLCPD that any records regarding K.W. had been destroyed when they realized that K.W. was not actually a gang member.

110. As a result of Defendants' actions, K.W. experienced emotional difficulties, stress, embarrassment, anxiety, and humiliation. He temporarily transferred out of West High School following the incident for the spring 2011 semester in order to avoid harassment from the SROs and the hostile environment at the school. K.W. no longer trusts teachers or school administrators and constantly fears getting in trouble. Even though he is a talented artist, he stopped drawing altogether and is pursuing photography in order to avoid being mislabeled.

111. In fact, although K.W. had never been in serious trouble in school before the December 16, 2010 incident, K.W. was again targeted for search and interrogation after returning to West High School in the fall of 2011.

112. At that time, a teaching assistant witnessed K.W. and another student exchange a "fist bump" greeting at the start of class and reported K.W. and the other student to the principal as engaging in a drug transaction. K.W. and the other student were called to the security room where Defendant Smith made K.W. empty his pockets and the other student was patted down. The other student's hands were also sniffed. No drugs were found.

113. K.W. fears that he will continue to be accused of wrongdoing, detained and searched by police and school officials. Defendant Smith has attempted to ticket K.W. away from school on another occasion without any reasonable suspicion or probable cause.

114. K.W. also refused to carry a notebook and even resisted carrying a backpack for several months after the incident and his mother had to write a note explaining this to teachers. K.W.'s grades have fallen.

115. K.W.'s self-esteem has suffered as a result of Defendants' actions. K.W. has refused to draw since the incident, fearing that his drawings would be found and used to accuse him of being a gang tagger.

116. After the incident, K.W. feels that his teachers look at him as if he were a criminal. K.W. told his parents that he hates being black. K.W. is seeking counseling to help him cope with the emotional and psychological effects of being racially profiled and targeted for police interrogation and detention.

B. Y.A.

117. Y.A. was attending classes at West High School on December 16, 2010. She had just turned 15 less than a few weeks before and was a freshman.

118. During a mid-morning break, Y.A. was walking down the hall of the school toward a class.

119. As she was walking, Defendant SRO Smith told Y.A. to "Hey Y., come into the ISD room. Don't worry, you're not in trouble, just come in and sit down."

Y.A. was surprised that SRO Smith singled her out since she had not previously been in any type of trouble.

120. Once Y.A. went into the room and sat down, unidentified Task Force members told her that she was a gang member, belonging either to the “MS13” or the “Tepa” gangs. These allegations were completely false.

121. The officers did not listen to Y.A.’s denials that she belonged to a gang. Once she realized that they were not going to listen to her, Y.A. simply stopped making denials and became silent, since she did not want to be in the room any longer than necessary.

122. On information and belief, the Defendant Task Force officers had Y.A.’s confidential student records pulled up on a computer in the ISD room and the officers were using the information for their purposes. Neither Y.A. nor her parents had consented to police using her confidential school records.

123. The Task Force officers filled out a whiteboard on which they put Y.A.’s name, ethnicity, date of birth, purported “gang moniker,” and alleged gang affiliation. The Task Force officers did not ask Y.A. any of her identifying information for inclusion on the whiteboard.

124. Because Y.A. is a pleasant and friendly young woman who is quick with a smile, she had been nicknamed “Smiley.”

125. Defendant Task Force officers falsely claimed that “Smiley” was YA’s “gang moniker” and placed that name on the whiteboard and in her “field card.”

126. The Task Force officers commanded Y.A. to have her picture taken with the whiteboard. They did not ask her permission to do so, but they did so anyway.

127. After her picture was taken, Y.A. was told to leave, which she did. The Defendant Task Force officers did not tell Y.A. that her name was going to be placed indefinitely in the Versadex system, or anything else about what they were going to do with the information they obtained about her and the information they fabricated about her purported gang name and membership.

128. Y.A. was held in the room for about ten minutes.

129. On the field card prepared for Y.A., Officer Voorhees falsely checked the box saying that Y.A. had “self proclaimed” as a gang member. He did so despite Y.A.’s denials that she was in a gang, but her denials are clearly outlined in the narrative section of the “field card.”

130. Task Force officers did not have reasonable suspicion or probable cause to believe that Y.A. had been involved in any crime that would have justified their detention, interrogation, and photographing of her.

131. On information and belief, Y.A.’s “field card” and photograph of her holding the whiteboard stating that she is a member of “MS13” or “Tepa” are still available on the Versadex system.

132. Y.A. plans to attend college and seek employment after graduation. She brings this suit in part to demand that the SLCPD remove the “field card”

identifying her as, among other things, a self-proclaimed gang member, from the Versadex system. She is reasonably fearful that someone with formal or informal access to that system will pull her record and that the fabricated information about her will affect her prospects for the future.

C. A.P.

133. A.P. was a 15-year old freshman at West High School attending classes there on December 16, 2010.

134. Early in the day, A.P. was walking out of gym class with a friend and was walking from the gymnasium to the main building, when she saw police outside.

135. A.P. was dressed in “preppy” clothes that day: skinny jeans, a shirt, and a scarf.

136. The police began to speak to A.P.’s friend. Eventually, the police asked A.P.’s name. When she responded, the police said something to the effect of “Oh, you’re A.? Come with us.”

137. Because she had not engaged in any criminal conduct and she did not want to miss her next class, A.P. did not comply with the police officer’s command. Instead, she went to class.

138. About ten or fifteen minutes into class, a West High School security guard who the students called “Mo” came to A.P.’s classroom and told A.P. that she was

required to report to the ISD room. Because she believed that she must be in trouble, she complied.

139. Once A.P. went to the ISD room, the police officer whose order she had previously disregarded told A.P. that she could have gotten detention for not complying with his order. The officer told her to sit and wait.

140. A.P. saw about 20 students in the room, about 16 or 17 Hispanic students and 3 or 4 Pacific Islander students. A.P. was the only female in the room at the time.

141. A.P. saw that one by one, the police officers were calling students' names. Often in voices loud enough to be heard by other students, the police asked the students what gang they belonged to or were affiliated with. A.P. saw police write down information about each student on a whiteboard and take pictures of the students.

142. A.P. began to speak to other students in the room. One police officer told her that she had to be quiet, and that if she did not, she would be forced to lie face down on the ground.

143. After what she estimates was an hour, the police began to interrogate A.P. Police asked A.P. what gang she was in. Because she was not in a gang, A.P. vehemently denied being in a gang. The police then asked A.P. what gang she

hung out with. A.P. said that she did have some friends who spoke to people in gangs. When they asked what gang her friends were with, she said “Southsiders.”

144. The police then asked A.P. what her friends called her. A.P. did not have a nickname, so said “They don’t call me anything.”

145. Police then wrote A.P.’s name on a whiteboard, along with “Affiliate of Surenos” and other information. The police physically touched A.P.’s shoulders to put her in place while a photograph of her was taken. She recalls that when police were taking this picture, she was in full view of the other students in the ISD room.

146. At that time, A.P. wanted to leave to attend class. The police in the room did not allow her to leave. They told her she was going to have to wait until the class period ended.

147. As she left the ISD room, A.P. asked officers what they intended to do with the picture they had taken of her. The officers replied that the police were going to keep the photo and that if she was ever stopped by police, her picture would pop up to show that she was affiliated with a gang.

148. A.P. had been involved in an altercation with other students either shortly before or after December 16, 2010. The officers in the ISD room, however, did not ask A.P. anything about that altercation.

149. A.P. recalls being told by an SRO sometime before December 16, 2010 that the gang unit planned to go to the school.

150. Like Y.A., A.P. seeks to have herself removed from Versadex as a self-proclaimed gang member. She will soon graduate and is fearful that the fabricated information on the police database will harm her in the future.

II. The Sweep of West High School was Conducted Pursuant to Defendants' Policies, Practices, and/or Customs

A. Policies, Practices, and/or Customs of the SSTF, the SLCPD, the WVCPD, and the WJPD

151. Defendant Task Force officers implemented and enforced a policy, practice and/or custom of detaining, interrogating, searching, seizing property from, and creating police database files purporting to document students as gang members while students are on school grounds. This policy, practice and/or custom violates the Fourth Amendment and the Equal Protection Clause of the Fourteenth Amendment. This unconstitutional conduct is a direct and proximate result of policies, practices and/or customs of the Task Force, along with the WVCPD, and the WJPD.

152. The unconstitutional conduct of Task Force officers in the course of the sweep of West High School was engaged in pursuant to the formal operational plan titled "Targeted Gang Enforcement/West High School/December 16, 2010." This formal plan was printed on SLCPD letterhead and constitutes an official policy of the Task Force and the SLCPD. The plan assigned and authorized officers to enter West High School for the purpose of criminal investigation. It called for the

coordination of officers from across different city police departments and defined the scope and conduct of the mission. Furthermore, when a parent complained about the conduct of the officers, the Deputy Chief of the SLCPD was called to the scene. He is responsible for the SLCPD gang unit and not a member of the SSTF.

153. The plan was designed to “outline a detailed deployment strategy . . . supervisory and reporting guidelines, rules of engagement, and contingency strategies.” This plan was implemented by Task Force officers.

154. The Targeted Gang Enforcement policy directly and proximately caused injury to K.W.’s, Y.A.’s, A.P.’s. and the Plaintiff classes’ constitutional rights and the rights of students subjected to Task Force action on December 16, 2010. The policy directed Task Force officers to enter West High School without probable cause or even reasonable suspicion. Officers were not responding to an immediate threat.

155. Task Force officers did not enter West High School with an expectation that criminal activity was afoot. To the contrary, according to the operational plan for the gang sweep, “arrest[ing] violations of law where observed” appears fourth on the list of mission priorities, and Plaintiffs are unaware of any arrest of any student that day.

156. The Task Force's primary objectives that day were to "document known gang members," "gather gang intelligence," and arrest students with outstanding warrants.

157. The Task Force's mission was structured so as to intimidate, harass, and shame targeted West High School students. The mission explicitly calls for gang enforcement activities to be of "high visibility."

158. On information and belief, the police did not attempt to contact any targeted student's parents or guardians before, during, or after the sweep. This lack of contact suggests that Defendants knew parents and guardians would object to the planned conduct during the gang sweep; indeed Mr. Winston, Ms. Urcino, and Ms. Estrada are all extremely troubled that their children were accused of gang membership while at school under the circumstances in this case. The failure to contact parents also belies that the sweep was meant to be of any long term assistance to any child suspected of possible gang involvement.

159. On information and belief, none of the students targeted that day were referred to "Colors of Success," a project at West High aimed at preventing students from engaging in criminal activity. The Defendants' failure to mention this program to targeted students further undermines an argument that the operation was meant to help students police believed to be at risk of criminal behavior.

160. The Targeted Gang Enforcement policy directly and proximately caused K.W., Y.A., A.P. and other students like them to be unlawfully seized, searched, interrogated, and to have their photographs and information retained. The Targeted Gang Enforcement policy instructed Task Force officers to identify “potential and known gang members from the student body” without suspicion of criminal activity. The policy further required Task Force officers to detain identified students, to “field card and document” the students, to “interview these gang members for additional gang intelligence,” and to photograph students, all without suspicion of criminal activity.

161. On information and belief, the Task Force officers from the SLCPD, the WVCPCD and the WJPD were told that in addition to following the Targeted Gang Enforcement plan, they were expected to follow their own departments’ policies, practices and/or customs as well. At the time, it unclear whether any formal SSTF policies, practices and/or customs existed.

162. The unlawful seizure, search, interrogation, and inclusion of students in a police database as gang members was also conducted pursuant to and is indicative of the policy, practice, and/or custom of the Task Force, including the SLCPD, along with the WVCPCD, and the WJPD.

163. Field carding, photographing, and retention in a police database as gang members without requisite suspicion of criminal activity are officially endorsed

policies of the SSTF and SLCPD. The SLCPD, the WVCPD, and the WJPD all have representatives on the executive board of the SSTF.

164. The policies, practices, and/or customs of the Task Force, including the SLCPD, the WVCPD, and the WJPD, all make it substantially likely that members of the Plaintiff class will suffer civil rights violations in the future.

165. Seizing and interrogating students on school grounds for the purpose of criminal investigation without probable cause was and continues to be a sanctioned practice of the SLCPD because it has an ongoing physical presence in the Salt Lake City public schools, i.e., SROs. The presence of the SROs makes such illegal searches and seizures likely to reoccur, as follows.

166. Each Task Force officer is assigned the duty to be a liaison with schools in the Salt Lake City School District.

167. As part of this relationship, SROs from schools in the District provide Task Force officers with information about which students are purported gang members and what activity is purported gang activity.

168. Task Force officers then conduct activities that impact these students, including, on information and belief, detaining, interrogating, photographing, and including these students on Versadex or other databases as gang members. On information and belief, Task Force officers continue to take these actions against students both on and off of school grounds in District schools.

169. Because SLCPD criteria for gang membership and gang activity are vague, SRO identification of students is likely to lead to K.W., Y.A., A.P. and the Plaintiff class members to be detained, interrogated, photographed, and documented in a police database as gang members without reasonable suspicion or probable cause by Task Force officers.

170. Moreover, vagueness in SSTF, SLCPD, WVCPD, and WJPD gang criteria definitions is likely to continue to lead SROs and Task Force officers to improperly rely on students' Latino, Pacific Islander, or African American race or ethnicity as a factor in identifying K.W., A.P., Y.A., and Plaintiff class members as suspected gang members.

171. Because the SSTF and SLCPD have a policy, practice, and/or custom of recording that students have self proclaimed as gang members even when those students deny gang membership, it is likely that K.W., A.P., Y.A., and Plaintiff class members will be included in Versadex or other police databases as self proclaimed class members after any interaction with a Task Force officer.

172. Because the SSTF and the SLCPD have a practice and/or custom of photographing minors in violation of SLCPD policy, it is likely that K.W., A.P., Y.A., and Plaintiff class members will be photographed with whiteboards for inclusion in Versadex.

173. Because SROs, the Task Force, and SLCPD continue a working relationship, it is likely that K.W., A.P., Y.A., and members of the Plaintiff class will face heightened scrutiny at school from SROs and school administration and staff.

174. The risk of such scrutiny is apparent; as detailed above, K.W. has already been placed under suspicion by SROs and school staff.

175. Inclusion in police databases as a self proclaimed gang member poses a continuing risk to Y.A., A.P. and other Plaintiff class members.

B. The School District Defendants

176. Defendant Principal Jacobs and other school district employees (hereinafter “school district Defendants”) acted in concert with the Task Force to implement the December 16, 2010 gang sweep and have continued to implement, enforce, encourage and sanction a practice and/or custom of assisting, cooperating with, and/or failing to act in opposition to Defendant SLCPD and/or Task Force officers in violating the rights of students at West High School.

177. The unconstitutional conduct of the school district Defendants is a direct and proximate result of policies, practices and/or customs of the Salt Lake City School District and the Salt Lake City School District Board of Education.

178. Defendant Principal Jacobs’s decision to permit the Task Force to enter the school was unrelated to any school purpose. Principal Jacobs indicated that no school records were made, no information was gathered, and no information was

kept by or at the school in relation to the gang sweep. Principal Jacobs permitted the Task Force to conduct a sweep of the school despite the lack of any imminent threat of criminal activity or physical danger. The impetus identified by Principal Jacobs as stated in the operational plan was “tagging, gang attire, gang symbols, etc. in the school and in the community.”

179. The school district Defendants each knew, or should have known, that as a direct and proximate result of the policies, practices and/or customs described herein, the constitutional rights of approximately fifty students, particularly Latino, African American, and Pacific Islander students, would be violated. Despite this knowledge, the school district Defendants acted with deliberate indifference to and reckless disregard for the constitutional rights of the students; school district Defendants have implemented, enforced, encouraged, sanctioned and failed to rectify such policies, practices and/or customs. On information and belief, school administrators and staff in the Salt Lake City School District still regularly make requests for intervention by the SLCPD and Task Force officers to investigate students they believe are involved in gang activity, whether directly or through SROs.

C. West High School’s Prohibition on Gang Activity

180. Salt Lake City School District has a gang policy that is unconstitutionally vague because it does not adequately define for students or their parents what

conduct is prohibited. In spite of its flaws, the policy did have some protections for students that West High administration disregarded in inviting the police to the school to conduct an intrusive sweep of its non-white students, but it did not provide those protections. The vagueness of the policy and school administration's failure to provide proper protections led to administrators and staff developing a list of only non-white students to be targeted by the Task Force's gang sweep. These shortcomings also led to members of the Task Force roaming the halls of West High School and stopping and questioning students of color for pretextual reasons.

181. On December 7, 2010, the Salt Lake City School Board, as the policy-making authority for the Salt Lake City School District, promulgated Salt Lake City School District Board Policy S-3, which prohibits "gang activity, including the possession, use, wearing or displaying of any gang apparel or manner of grooming," as well as "supporting, encouraging, and assisting in activities that violate this policy." The administrative procedures attached to Policy S-3 direct schools to develop implementing rules and procedures to be published in a handbook made readily available to students.

182. In June 2005, West High School issued its Dress Code Policy, included in the Student Handbook, which was in effect on December 16, 2010. The Dress Code Policy states: "Clothing or accessories that might endanger the safety and

welfare of self and others (including symbols/colors which the Salt Lake Area Gang Task Force has indicated are related to gangs) will not be allowed.” The clarification of the policy states: “No gang-related dress. No bandanas of any color or design will be allowed. Bandanas will be confiscated by security personnel. No sagging will be allowed. All pants are to be worn at the waist. This includes any clothing worn by a student which gives the obvious appearance of sagging . . . Military style or ‘webbed’ belts, if worn, must be in the belt loops, not hanging. Belt buckles must NOT have initials on them. They will be confiscated.”

183. The West High School Student Handbook also includes what it describes as a summary of Salt Lake City School District Student Discipline Policy, which states: “You **MAY** be removed from school for . . . gang-related attire or activity.” The decision to remove, and the type and the length of discipline is left to school administrators.

184. On August 6, 2010, the Salt Lake City School Board, as the policy-making authority for the Salt Lake City School District, promulgated Administrative Procedures for Policy S-3. The Administrative Procedures are not made available to students or parents. The Administrative Procedures define a gang as “[a]ny organization, association, or group of three or more persons, whether formal or informal, which has a common name, a common identity, or a common sign or symbol, where members engage in or have engaged in, a pattern of criminal

activity.” The Administrative Procedures further instruct that students may be suspended for up to five days for “gang-related attire or gang-involved activity that is dangerous or disruptive.” However, the definition of gang-involved violations does not include an element of dangerousness or disruptiveness. It states:

“Violations include wearing any attire or engaging in any activity, including posturing and ‘mad-dogging’, which is determined to be related to or affiliated with any known or unknown gang. In addition, wearing, possessing, using, distributing, displaying or selling any clothing, jewelry, apparel, emblems, badges, tattoos, or manner of grooming, accessories, symbols, signs or other thing, which is evidence of membership in, or affiliation with, any gang, is prohibited.”

185. Salt Lake City School District Board Policy S-3, Salt Lake City School District Administrative Procedures for Policy S-3 and the Dress Code Policy, as pertains to gang-related attire, on pages 9 and 10 of the 2010-2011 of the West High School Student Handbook were and are void on their face because they are so vague that they violate the due process clause of the Fourteenth Amendment in that they: (a) fail to define prohibited activity clearly so that the ordinary person can understand what conduct is prohibited; and (b) fail to provide guidelines to school officials and law enforcement personnel to prevent the possibility of arbitrary and discriminatory enforcement.

186. Salt Lake City School District policy – vague as it is – clearly makes so-called “gang activity” an offense punishable by suspension. Instead of pursuing such discipline against its students, the district instead opted to subject its students to the Task Force, as described herein.

187. Furthermore, the Salt Lake City District Policy requires that the school have a “legal order” or “exigent circumstances” before subjecting its students to law enforcement. And even in those cases, the school officials should “always attempt to contact and seek the advice and consent of a parent” prior to doing so.

However, despite knowing that a group of all non-white students would be subjected to interrogation at the hands of the Task Force, the school officials failed to follow their own policy and deliberately permitted the rights of the students to be violated.

188. The Salt Lake City School District Policy regarding the police in schools is clear and is described as follows. On January 5, 2010, the Salt Lake City School Board, as the policy-making authority for the Salt Lake City School District, promulgated Salt Lake City School District Board Policy S-7. Policy S-7 states: “in the absence of either a legal order or exigent circumstances, school officials should always attempt to contact and seek the advice and consent of a parent or legal guardian before allowing law enforcement access to a student at school.” Policy S-7 states further: “SROs have many functions, including school safety,

student discipline, and law enforcement. When SROs are investigating alleged crimes for law enforcement agencies, they should be treated as law enforcement officers, not as school employees.”

189. The West High School Student Handbook issued for the 2010-2011 school year states that violations of school policy may result in “possible law enforcement referral” at the second offense, and at the third offense “possible Resource Officer (police) referral.” The school district Defendants blatantly disregarded their own policy and referred students to the Task Force prior to any documented school offenses.

190. On July 28, 2010, the Salt Lake City School Board, as the policy-making authority for the Salt Lake City School District, promulgated Administrative Procedures for Board Policy S-7. The Administrative Procedures are not made available to students or parents. The Administrative Procedures for Policy S-7 state: “School officials should provide immediate access to students for law enforcement interview under the following conditions: (a) The law enforcement officer presents a warrant, subpoena, or legal order; (b) Exigent circumstances exist, such as when police are in pursuit of a suspect on school property, when any student is in serious imminent danger, or when police indicate that a student has run away from parents or legal guardians.” Administrative Procedures for Policy S-7 consider School Resource Officers to be acting as law enforcement officers

when they act for the purpose of criminal investigation and prosecution, but not when SROs act “for the purpose of maintaining ordinary safety and student discipline or for other educational reasons.” Administrative Procedures for Policy S-7 instruct that the “principal or other school official should request that the law enforcement interviewer inform the student if the student is a suspect of a crime or if the student becomes a suspect of a crime during the course of the interview.” Further, the “principal or other school official should request a termination of the interview if the student requests that the interview be terminated.” Despite this policy, the practice and custom of SLCSD is to permit law enforcement such as the Task Force unfettered access to students and their records without justification or parental notification or protection.

D. The School District Defendants’ Unlawful Policies, Practices, and/or Customs

191. The unconstitutional practices of the school district Defendants described herein are a direct and proximate result of policies, practices and/or customs devised, implemented, enforced and sanctioned by the school district Defendants with the direct knowledge that such policies, practices and/or customs would lead to violations of the Fourth and Fourteenth Amendments.

192. The practices described herein constitute official policy of the Salt Lake City School District and the Salt Lake City Board of Education because they are

longstanding and widespread practices about which the Board and Defendant Superintendent knew or should have known, but failed to remedy.

193. Alternatively, these practices constitute official policy of the Salt Lake City School District and the Salt Lake City Board of Education because they were promulgated by the Defendant Superintendent and Defendant Principal, who have final policy making authority on school disciplinary matters pursuant to state law; and/or to whom such authority has been delegated by the Board of Education.

194. Alternatively, these practices constitute official policy of the Salt Lake City School District and the Salt Lake City Board of Education because they were undertaken pursuant to official policy promulgated by the Board.

195. Alternatively, the school district Defendants are liable for these practices because they have a policy of failing to adequately train or supervise Salt Lake City School District officials in the administration of discipline or police access to students, which foreseeably resulted in the harms described herein. On information and belief, Salt Lake City School District and the Salt Lake City Board of Education never provided Defendant Superintendent and Defendant Principal with any form of training or supervision regarding the administration of the relationship with SLCPD officers and Task Force officers within the Salt Lake City schools.

196. K.W., A.P., Y.A., and the Plaintiff Class have no adequate remedy at law.

III. The Challenged Actions and Inactions as to Defendant SLCPD

197. For all purposes relevant to this Complaint, all Defendants have acted and continue to act with the intent to discriminate against K.W., A.P., Y.A., and members of the Plaintiff Class.

198. The practices described herein constitute official policy of the Task Force including the SLCPD because they are longstanding and widespread practices about which the Chief of Police knew or should have known, but failed to remedy.

199. Alternatively, these practices constitute official policy of the SLCPD because they were promulgated by the Chief of Police, who has final policy making authority on law enforcement matters within Salt Lake City.

200. Alternatively, these practices constitute official policy of the SLCPD because they were undertaken pursuant to official policy promulgated by the SLCPD.

201. Alternatively, the SLCPD is liable for these practices because they have a policy of failing to adequately train or supervise SLCPD officers in law enforcement practices related to juveniles and students, which foreseeably resulted in the harms described herein.

202. On information and belief, the SLCPD did not provide SROs or other officers with adequate training or supervision regarding their actions and inactions within Salt Lake City School District schools.

203. Alternatively, the SLCPD is liable for these practices because it has a member on the executive board of the SSTF.

204. K.W., A.P., Y.A., and the Plaintiff Class have no adequate remedy at law.

IV. The Challenged Actions and Inactions as to Defendant West Valley City Police Department

205. For all purposes relevant to this Complaint, all Defendants have acted and continue to act with the intent to discriminate against K.W., A.P., Y.A. and members of the Plaintiff Class.

206. The practices described herein constitute official policy of the WVCPD because they are longstanding and widespread practices about which its Chief of Police knew or should have known, but failed to remedy.

207. Alternatively, these practices constitute official policy of the WVCPD because they were promulgated by its Chief of Police, who has final policy making authority on law enforcement matters within West Valley City.

208. Alternatively, these practices constitute official policy of the WVCPD because they were undertaken pursuant to official policy promulgated by the WVCPD.

209. Alternatively, the WVCPD is liable for these practices because they have a policy of failing to adequately train or supervise WVCPD officers in law enforcement practices related to juveniles and students, which foreseeably resulted in the harms described herein.

210. Alternatively, the WVCPD is liable for these practices because they have a member on the executive board of the SSTF.

211. K.W., A.P., Y.A., and the Plaintiff Class have no adequate remedy at law.

J. The Challenged Actions and Inactions as to Defendant West Jordan Police Department

212. For all purposes relevant to this Complaint, Defendants have acted and continue to act with the intent to discriminate against K.W., A.P., Y.A. and members of the Plaintiff Class.

213. The practices described herein constitute official policy of the WJPD because they are longstanding and widespread practices about which its Chief of Police knew or should have known, but failed to remedy.

214. Alternatively, these practices constitute official policy of the WJPD because they were promulgated by its Chief of Police, who has final policy making authority on law enforcement matters within West Jordan City.

215. Alternatively, these practices constitute official policy of the WJPD because they were undertaken pursuant to official policy promulgated by the WJPD.

216. Alternatively, the WJPD is liable for these practices because they have a policy of failing to adequately train or supervise WJPD officers in law enforcement practices related to juveniles and students, which foreseeably resulted in the harms described herein.

217. Alternatively, the WJPD is liable for these practices because they have a member on the executive board of the SSTF.

218. K.W., A.P., Y.A., and the Plaintiff Class have no adequate remedy at law.

NATURE OF RELIEF SOUGHT

219. As a direct and proximate result of the conduct of described above Defendants violated the constitutional and statutory rights of K.W., A.P., Y.A., and the Plaintiff Class. K.W., A.P., and Y.A. have also been damaged in an amount which is not yet known. K.W., A.P., and Y.A. will seek leave of Court to amend this Complaint to conform to proof at time of trial. K.W., A.P., Y.A., and individuals in the Plaintiff Class have suffered and continue to suffer mental and emotional distress, humiliation, embarrassment, stress, and anxiety.

220. Defendants' collective acts were willful, wanton, malicious, and oppressive and done with conscious disregard and deliberate indifference for Plaintiffs' rights. Therefore, Defendants' actions justify an award to the named Plaintiffs K.W., A.P., and Y.A. of punitive damages in an amount to be determined at trial. The Plaintiffs do not seek punitive damages on behalf of the class.

221. Defendants' policies, practices, conduct, and acts alleged herein have resulted and will continue to result in irreparable injury to Plaintiffs, including but not limited to further violations of their statutory and constitutional rights. Plaintiffs have no plain, adequate, or complete remedy at law to address the

wrongs described herein. Plaintiffs therefore seek declaratory and injunctive relief restraining Defendants from continuing to engage in and enforce the unconstitutional and illegal policies, practices, conduct, and acts described herein.

222. At all times herein mentioned, Defendants had an obligation to comply with federal and state laws regarding racial discrimination. Defendants failed to meet these obligations.

223. Defendants, in various official capacities acting under color of state law instituted, authorized, tolerated, ratified, permitted, and acquiesced in policies, practices, and customs of detentions, interrogations, searches and seizures, photographing, and including students in a police database without probable cause or reasonable suspicion that such actions would reveal any evidence that the Plaintiffs had violated or were violating any laws or any valid school rules. Defendants in various ways have indicated they intend to continue such policies and practices.

224. Defendants have acted with deliberate indifference to the rights of K.W., A.P., Y.A., and the Plaintiff Class.

FIRST CLAIM FOR RELIEF: FOURTH AMENDMENT CLAIM

225. All proceeding paragraphs are incorporated herein by reference the same as if pleaded in full.

226. The pattern, practice, and/or customs of all Defendants not sued in their personal capacity, as alleged in this Complaint have violated rights guaranteed to Plaintiffs by 42 U.S.C. § 1983 and the Fourth Amendment to the United States Constitution, which prohibits unreasonable search and seizure. Unless they are enjoined, these policies, practices, and customs are substantially likely to lead to future violations.

227. The actions of those Defendants sued in their personal capacity as described above violated rights guaranteed to K.W., Y.A. and A.P. by 42 U.S.C. § 1983 and by the Fourth Amendment to the United States Constitution, which prohibits unreasonable search and seizure.

SECOND CLAIM FOR RELIEF:

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAIM

228. All proceeding paragraphs are incorporated herein by reference the same as if pleaded in full.

229. The pattern, practice, and/or customs of all Defendants not sued in their personal capacity as alleged in this Complaint violated rights guaranteed to Plaintiffs by 42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which prohibits discrimination on the basis of race, ancestry or national origin. Their actions were taken with a discriminatory purpose and had a discriminatory impact on Plaintiffs K.W., A.P.,

Y.A., and similarly situated individuals. Unless they are enjoined, these policies, practices and customs are substantially likely to lead to future violations.

230. The actions of the Defendants sued in their personal capacity as alleged in this Complaint violated rights guaranteed to Plaintiffs by 42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which prohibits discrimination on the basis of race, ancestry or national origin. Their actions were taken with a discriminatory purpose and had a discriminatory impact on Plaintiffs K.W., A.P., and Y.A. and similarly situated individuals. Unless they are enjoined these practices, policies, and customs are substantially likely to lead to future violations.

THIRD CLAIM FOR RELIEF:

**FOURTEENTH AMENDMENT DUE PROCESS CLAIM AND FIRST
AMENDMENT CLAIM**

231. All proceeding paragraphs are incorporated herein by reference the same as if pleaded in full.

232. The pattern, practice, and/or customs of all Defendants not sued in their personal capacity as alleged in this Complaint have violated rights guaranteed to Plaintiffs by 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution, which

prohibits the enactment of overly vague laws. Unless they are enjoined, these policies, practices and customs are substantially likely to lead to future violations.

FOURTH CLAIM FOR RELIEF:

PROCEDURAL AND SUBSTANTIVE DUE PROCESS

233. All proceeding paragraphs are incorporated herein by reference the same as if pleaded in full.

234. The pattern, practice, and/or customs of all Defendants not sued in their personal capacity as alleged in this Complaint violated the rights guaranteed to the Plaintiffs by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution, which prohibit governmental action without justification and without process and action that shocks the conscience. Unless they are enjoined, these policies, practices and customs are substantially likely to lead to future violations.

235. The actions of the Defendants sued in their individual capacities as alleged in this Complaint violated the rights of K.W., Y.A., and A.P. under the Fifth and Fourteenth Amendments to the United States Constitution, which prohibit governmental action without justification and without process and action that shocks the conscience.

FIFTH CLAIM FOR RELIEF

UTAH CONSTITUTION ARTICLE I § 14 CLAIM

236. All proceeding paragraphs are incorporated herein by reference the same as if pleaded in full.

237. The pattern, practice, and/or customs of all Defendants not sued in their personal capacity as alleged in this Complaint violated rights guaranteed to Plaintiffs by Article I § 14 of the Utah Constitution, which prohibits unreasonable search and seizure. Unless they are enjoined, these policies, practices and customs are substantially likely to lead to future violations.

238. The actions of the Defendants sued in their personal capacity as alleged in this Complaint violated rights guaranteed to K.W., Y.A. and A.P. by Article I § 14 of the Utah Constitution, which prohibits unreasonable search and seizure. Unless they are enjoined, these policies, practices and customs are substantially likely to lead to future violations.

SIXTH CLAIM FOR RELIEF:

UTAH CONSTITUTION ARTICLE I § 24 CLAIM

239. All preceding paragraphs are incorporated herein by reference the same as if pleaded in full.

240. The pattern, practice, and/or customs of all Defendants not sued in their personal capacity as alleged in this Complaint have violated rights guaranteed to Plaintiffs by Article I § 24 of the Utah Constitution, which prohibits discrimination

on the basis of race, ancestry or national origin. Unless they are enjoined, these policies, practices and customs are substantially likely to lead to future violations.

241. The actions of Defendants sued in their personal capacity as alleged in this Complaint have violated rights guaranteed to K.W., Y.A. and A.P. by Article I § 24 of the Utah Constitution, which prohibits discrimination on the basis of race, ancestry or national origin.

SEVENTH CLAIM FOR RELIEF:

UTAH CONSTITUTION ARTICLE I § 7 CLAIM

242. All preceding paragraphs are incorporated herein by reference the same as if pleaded in full.

243. The pattern, practice, and/or customs of all Defendants not sued in their personal capacity as alleged in this Complaint violated rights guaranteed to Plaintiffs by Article I § 7 of the Utah Constitution, which prohibits the enactment of overly vague laws. Unless they are enjoined, these policies, practices and customs are substantially likely to lead to future violations.

EIGHTH CLAIM FOR RELIEF:

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

244. All preceding paragraphs are incorporated herein by reference the same as if pleaded in full.

245. By taunting K.W., Officer Sweeny or, in the alternative, Officer Wiley is liable for Intentional Infliction of Emotional Distress. The officer's conduct in taunting K.W. was outrageous; it was intended to cause and/or it recklessly disregarded the probability of causing K.W. severe emotional distress; and it did cause K.W. severe emotional distress.

NINTH CLAIM FOR RELIEF:

ASSAULT

246. All preceding paragraphs are incorporated herein by reference the same as if pleaded in full.

247. By grabbing K.W., Officer Sweeny, or in the alternative, Officer Wiley, assaulted K.W. and caused him bodily injury, in violation of § 76-5-102 of the Utah Criminal Code and Utah common law.

TENTH CLAIM FOR RELIEF:

CONSPIRACY TO DEPRIVE PLAINTIFFS OF

CONSTITUTIONAL RIGHTS

248. All preceding paragraphs are incorporated herein by reference the same as if pleaded in full.

249. Defendants' actions, pattern, practice, and customs as alleged in this Complaint have violated rights guaranteed to Plaintiffs by 42 U.S.C. § 1985 through a conspiracy to deprive K.W., Y.A., A.P., and the Plaintiff Class of equal

protection of the law through the Task Force's December 16, 2010 gang sweep at West High School. The conspiracy resulted in injury to K.W., A.P., Y.A., and the Plaintiff Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Certify this action as a class pursuant to Fed. R. Civ. P. 23(b)(2);
2. Declare Defendants' collective actions and inactions, including the identification, detention, search, seizure, interrogation, photographing, and inclusion of students in a police database as gang members violate the rights guaranteed to Plaintiff Class by 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 7, 14, and 24 of the Utah Constitution.
3. Enjoin any further violation of Named Plaintiffs' and the Plaintiff Class's constitutional and statutory rights;
4. Order the SLCPD, WVCPD, and WJPD to expunge from all records in their custody or under their control information unlawfully obtained from K.W., A.P., Y.A., and other members of the Plaintiff Class;
5. Issue an injunction prohibiting
 - a. the Salt Lake City School District by and through its school board, including West High School and all those acting under their

supervision or control, from enforcing Policy S-3 prohibiting gang-related attire or any rules that purport to define gang related conduct, activity or affiliation and activity to the extent that such rules and/or regulations are, or are capable of being, applied in an arbitrary or discriminatory manner;

- b. the Task Force Defendants, in concert with Salt Lake City School District by and through its school board, and all those acting under their supervision or control, from detaining, searching, seizing the belongings of, interrogating, or photographing students in the Salt Lake City School District without probable cause or reasonable suspicion to believe that the student violated a valid school rule or has violated the law, and further prohibiting the Task Force Defendants from including any Salt Lake City School District student in any database or other record indicating that said student is a member of a prohibited gang without probable cause to believe that such student is in fact a member of a prohibited gang;
6. Award nominal damages to K.W., A.P., and Y.A. for the violation of their constitutional rights.
7. Award compensatory and general damages to K.W. in an amount to be proven at trial, against the Salt Lake City School District by and through its

school board, the City of Salt Lake, the Task Force Defendants, and against each of the individual Defendants sued in his or her personal capacity;

8. Award exemplary and punitive damages to K.W. in an amount to be proven at trial, against the Salt Lake City School District by and through its school board, the City of Salt Lake, the Task Force Defendants, and against each of the individual Defendants sued in his or her personal capacity;
9. Award Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
10. Grant any other relief the Court deems necessary and proper.

Dated this 17th day of June, 2013.

Respectfully submitted,

/s/ Courtney A. Bowie

John Mejia, Esq. (USB No. 13965)
Leah Farrell, Esq. (USB No. 13696)
American Civil Liberties of Utah Foundation, Inc.
355 North 300 West St.
Salt Lake City, Utah 84103
Tel: 801-521-9862
Fax: 801-532-2850
jmejia@acluutah.org
lfarrell@acluutah.org

Courtney A. Bowie, Esq.*
Ayirini Fonseca-Sabune, Esq.*
American Civil Liberties Union Foundation
125 Broad St.
New York, NY

Tel: (212) 549-2500

Fax: (212) 549-2654

cbowie@aclu.org

afonseca-sabune@aclu.org

**pro hac vice application to follow*