

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT FOR THE STATE OF
OREGON

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No: 02-CV-877-KI
CLASS ACTION ALLEGATION
SECOND AMENDED COMPLAINT
INJUNCTIVE RELIEF AND DAMAGES
(28 U.S.C. § 1331)
(28 U.S.C. § 1343)

: (42 U.S.C. § 1983)

BETH WADE, Plaintiff,vs.OREGON : JURY DEMAND
HEALTH AND SCIENCE
UNIVERSITY,LINN GOLDBERG, :
M.D., DIANE ELLIOT, :
M.D.,KERRY KUEHL, M.D., :
ESTER MOE, M.D., :
DAVIDMACKINNON, M.D., :
OAKRIDGE SCHOOL DISTRICT
76, LARRY HORTON, individually :
and in his official capacity as
Superintendent of Oakridge School :
District 76, LINCOLN COUNTY
SCHOOL DISTRICT, JACK :
STOOPS, individually and in his
Official Capacity asSuperintendent :
of Lincoln County School District,
MONROE SCHOOL DISTRICT 1J, :
TERRY MAHLER, Individually and
in his official capacity as Principal :
ofMonroe High School and
Superintendent of Monroe School :
District 1J, ASTORIA SCHOOL
DISTRICT 1, LARRY McMACKEN, :
M.D., individually and in his
officialcapacity as Superintendent of :
Astoria School District 1, LARRY
LOCKETT, individually and in his :
official capacity as Principal of
Astoria High School, DALLAS :
SCHOOL DISTRICT 2, DAVE
BOWES, individually andin his :
official capacity as Principal of Dallas
High School, GRANT BALSTEAD, :

individually and in his official capacity as athletic director of Dallas High School, DAVE NOVOTNEY, individually and in his official capacity as Superintendent of Dallas School District 1, SANTIAM CANYON SCHOOL DISTRICT 129J, BRAD YATES,individually and in his official capacity as Superintendent of Santiam Canyon School District 129J, DAVE PLOTTS, individually and in his official capacity as Principal of Santiam High School, MCKENZIE SCHOOL DISTRICT 68, RON HITCHCOCK, individually and in his official capacity as Superintendent of McKenzie School District, CRESWELL SCHOOL DISTRICT 40, RICK STUBER, M.D., individually and in his official capacity as Superintendent of Creswell School District, SCIO SCHOOL DISTRICT 95, JAMES THOMAS, individually and in his official capacity as Superintendent of Scio School District, GARY TEMPEL, individually and in his official capacity as Principal of Scio High School, SILVER FALLS SCHOOL DISTRICT 4J, CRAIG ROESSLER, individually and in his official capacity as Superintendent of Silver Falls School District 4J, DALE KOLGER, individually and in his

**official capacity as Principal of :
Silverton High :
School,WARRENTON- HAMMOND :
SCHOOL DISTRICT 30, CRAIG :
BREWINGTON, individually and in :
his official capacity as :
Superintendent of Warrenton- :
Hammond School District 30, :
GERVAIS SCHOOL DISTRICT 1, :
DAVID NUSS, individually and in :
his official capacity as :
Superintendent of Gervais School :
District 1, MIKE SOLEM, :
individually and in his official :
capacity as Principal of Gervais High :
School, SHERMAN COUNTY :
SCHOOL DISTRICT, RICHARD A. :
WOLD, individually and in his :
official capacity as Superintendent of :
Sherman County School District, :
PHILOMATH SCHOOL DISTRICT :
17J, TERRY KNEISLER, :
individually and in his official :
capacity as Superintendent of :
Philomath School District 17J, and :
JOHN DOES 1 through 12 as :
individual members of the :
Institutional Review Board of the :
OREGON HEALTH AND SCIENCE :
UNIVERSITY. Defendants.**

Defendants.

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INTRODUCTION

1. Plaintiff Beth Wade (“Wade”) brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on her own behalf and as representative of a class of persons consisting of all high school students who participated in an experiment called the Student Athletic Testing Using Random Notification (“SATURN”) in the State of Oregon (the “experiment”).2. SATURN is a federally funded experiment, under the project title: Student Athlete Drug Surveillance Trial funded by a grant from the National Institute of Health, in which high school student-athletes and their parents are forced to sign informed consent documents prior to these students playing in sports at their high school and prior to each student being drug tested, without warning or cause for suspicion.3. Plaintiff brings this action individually and as class representative to recover damages against the defendants identified below who approved, implemented, created and took part in SATURN (the “experiment”) and harassed and intimidated those students who refused to participate in the experiment.

PARTIES AND VENUE4. Plaintiff Beth Wade is a resident and citizen of the State of Oregon and was a student at Dallas High School in Dallas, Oregon when she was forced to participate in the experiment.5. The plaintiff Class consists of all Oregon high school student athletes who participated in the experiment.6. Defendant Oregon Health and Science University (“OHSU”) is located at 3181 S.W. Sam Jackson Park Rd., Portland, OR 97201-3098 and was and is responsible for administering the experiment. At all times relevant in the Complaint, OHSU acted under color of state law.7. The SATURN research team consists of defendants Linn Goldberg, principal investigator and Diane Elliott, Kerry Kuehl, Ester Moe and David MacKinnon, co-investigators. Except for David MacKinnon they are citizens of the state of Oregon, and at all times relevant, were acting under color of state law.8. Defendants Oakridge School District 76, Lincoln County School District, Monroe School District 1J, Astoria School District 1, Dallas School District 2, Santiam Canyon School District 129J,

Mckenzie School District 68, Creswell School District 40, Scio School District 95, Silver Falls School District 4J, Warrenton-Hammond School District 30, Gervais School District 1, Sherman County School District and Philomath School District 17J are all school districts who received funds to participate in the experiment and forced their high school student athletes to participate in the experiment (collectively referred to as the “Oregon School District Defendants”). The Oregon School District Defendants were at all times acting under color of state law.⁹ Defendants Terry Mahler, Larry McMacken, Jack Stoops, Larry Lockett, Dave Bowes, Grant Balstead, Dave Novotney, Brad Yates, Dave Plotts, Ron Hitchcock, Rick Stuber, James Thomas, Gary Tempel, Craig Roessler, Dale Kolger, Craig Brewington, David Nuss, Mike Solem, Richard A. Wold, Larry Horton and Terry Kneisler are all residents of the state of Oregon who acted as either superintendents, principals or athletic directors and were responsible for implementing the experiment. At all times relevant, they were acting under color of state law.¹⁰ Defendants John Does 1 through 12 are individual members of the Institutional Review Board of OHSU ("IRB Defendants") whose names and addresses are currently unknown at this time.^{JURISDICTION}¹¹. This Court has original jurisdiction based upon 28 U.S.C. § 1331 for cases involving a federal question and 28 U.S.C. § 1343 for civil rights violations and 42 U.S.C. § 1983 in order to redress the deprivations under color of state law, custom, and/or usage of rights privileges and immunities guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.¹² This Court has supplemental jurisdiction based upon 28 U.S.C. § 1367 over state law claims arising from the same transactions or occurrences.¹³ The amount in controversy is in excess of Seventy-Five Thousand Dollars (\$75,000.00).¹⁴ This Court is the proper venue pursuant to 28 U.S.C. § 1391(b) as a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.¹⁵ All acts complained in this Complaint occurred in the State of Oregon. They were not random,

unpredictable or unauthorized acts. The actions complained of were a series of deliberate decisions that resulted in repeated violations of the United States Constitution and Federal and State law.¹⁶ Plaintiff attended public high school in Oregon and holds sincere moral beliefs and has a right to be treated with dignity, a right to privacy and bodily integrity, freedom from unreasonable searches and seizures and liberty. These rights are guaranteed under the United States Constitution.¹⁷ Defendants, through their personally invasive drug testing experiments and psychological examinations and questionnaires and acts of retaliation and harassment against other high school students exercising their fundamental rights by not participating in the experiment, have coercively intruded upon and have burdened plaintiff's rights herein.

CLASS ACTION ALLEGATIONS¹⁸. Plaintiff brings this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on her own behalf and as representative of the following class of individuals: All high school student athletes who participated in the experiment, SATURN, in the State of Oregon (the "Research Subjects").¹⁹ Plaintiff and the Class bring this action for damages pursuant to Rule 23 of the Federal Rules of Civil Procedure.²⁰ The Research Subjects have suffered an invasion of privacy, humiliation and embarrassment as a direct and proximate result of defendants' actions herein.²¹ The named plaintiff herein is a member of the Class she seeks to represent.²² The Class includes thousands of student athletes in the State of Oregon, and therefore the members of the Class are each so numerous that joinder is impracticable.²³ There are questions of law and fact common to the class including, but not limited to:

- a. whether defendants failed to follow and abide by the Nuremberg Code, the Belmont Report, the Declaration of Helsinki and 45 CFR § 46;
- b. whether defendants failed to obtain proper informed consent of minor children before using them as subjects in a human research experiment;
- c. whether defendants committed common law fraud in intentionally misrepresenting the scope and legitimacy of the experiment;
- d. whether defendants'

misrepresentations set forth above were done with the knowledge that they were false when made;e. whether defendants engaged in unconscionable, deceptive and/or unreasonable business practices and conduct;f. whether defendants knowingly, or intentionally concealed, suppressed or omitted material information intended to be relied upon by others in connection with the experiment;g. whether the class has been injured by virtue of defendants' intentional, reckless, careless and/or unconscionable and/or deceptive business practices and conduct;h. whether defendants earned substantial profits as a result of their conduct herein;i. whether defendants obtained proper IRB approval in accordance with 45 CFR § 46,24. These and other questions of law and/or fact are common to the class and predominate over any questions affecting only individual class members.25. The claims of the named plaintiff are typical of the claims of the class she seeks to represent, in that the named plaintiff and all members of the proposed class participated in the experiment.26. The proposed class seeks damages as a result of injuries they have sustained as a result of defendants' conduct. Thus, the pursuit of damages by the class representative for her injuries and losses will work to benefit the entire proposed class she seeks to represent.27. Plaintiff will fairly and adequately represent and protect the interests of the members of the class she represents. The named plaintiff has retained local counsel and out of state counsel competent to and experienced in complex class actions and litigation involving clinical research to represent her and the members of the class. Accordingly, the interests of the class will be adequately protected and advanced. In addition, there is no conflict of interest between the named plaintiff and the members of the class. The interests of the named plaintiff are aligned because the members of the class have an interest in securing their right to compensatory damages as a consequence of any injuries caused by defendants' conduct.28. Notice can be provided to class members by a combination of published notice and first class mail since defendants are in possession of many if not all of the addresses of those individuals

who participated in the experiment.²⁹ Certification of the class is appropriate because the questions of law and fact common to the members of the class predominate over any questions affecting only individual members. This class action is superior to other available remedies for the fair and efficient adjudication of this controversy.**FACTUAL BACKGROUND**The Experiment³⁰. SATURN is a three-year federal health study being funded with a \$3.6 million grant from the National Institutes of Drug Addiction and the National Institutes of Health.³¹ The experiment is being administered through OHSU in Portland, Oregon.³² The defendants contend that, in Oregon, public school districts could, if they chose, and if they had evidence of drug use, institute a program of drug testing for students who participate in extra curricular sports.³³ The premise of this experiment is that researchers do not know if drug testing reduces drug use and believe the experiment will yield an answer, one way or the other, to that question.³⁴ This experiment was and is being conducted on athletes in eighteen (18) Oregon public high schools.³⁵ Student athletes represent about 60% of the student populations.³⁶ Schools were encouraged by Dr. Linn Goldberg, the lead investigator, to drug test their athletes that participate in extracurricular sports.³⁷ OHSU researchers are doing the student drug tests on 30% - 50% of these high school student athletes.³⁸ SATURN researches selected high school student athletes in the State of Oregon because they believe Oregon law gives them an advantage to recruit test subjects and overcome objections they had encountered in other states.³⁹ The ruling to allow drug testing in Oregon (under the Oregon Constitution) is currently being challenged by the ACLU, in the action entitled: John and Shannon Weber, Guardians ad litem for Ginelle Weber, a minor v. Oakridge School District 76, CA No. A114141, TC No. 160021584 currently pending before the Court of Appeals of the State of Oregon⁴⁰. The States of New Jersey and Washington have declined to participate in these experiments because this would violate state laws.⁴¹ In order for students to become eligible to play sports at their high

school they must submit to a drug test as part of the experiment.⁴². In order for the students to even be eligible for the drug test and participation in sports at their school, they must first sign a consent form that ostensibly permits the use of the results of the student drug test by the SATURN researchers.⁴³ If students refuse to submit to the experiment, they will not receive a drug test and will be prohibited from playing any sports at their high school.⁴⁴ If students drop out from the experiment, they are also prohibited from playing sports.⁴⁵ If students desire to play any sport at their high school, they must take part in this experiment.⁴⁶ While student athletes in Oregon may be required by their school to submit to drug testing, there is no law that requires them to be subjects in human research as to whether drug testing achieves its goals.⁴⁷ Student athletes have no choice but to participate in the experiment as there is no option to consent to the drug test without consenting to the experiment.⁴⁸ Defendants OHSU and the Saturn Research Team have created a research environment of coercion and peer pressure in the participating high schools in order to get students, parents, educators, coaches and administrators to submit to the Saturn experiment.⁴⁹ Student athletes in the experiment are subjected to drug testing at all times of the year.⁵⁰ Most public schools in the experiment have never had a drug testing policy.⁵¹ At least some of the schools in the experiment have no history or evidence of drug problems with students.⁵² The experiment's protocol counts a test subject's refusal to provide a urine sample as an automatic positive drug test result.⁵³ The experiment has caused psychological, social and economic harm to the students, parents and communities of Oregon.⁵⁴ The informed consent forms that the student athletes were forced to sign were misleading and inconsistent; some consent forms failed to state that drug testing was part of the experiment.⁵⁵ The defendants knew that the students could not refuse to sign the informed consent documents if they wanted to participate in sports.⁵⁶ The defendants have also made numerous personal attacks on parents and students who have either questioned the legality of the

experiment or have refused to participate in the experiment.⁵⁷ Apart from the actual drug tests, personal surveys were handed out to the general population of students as part of the experiment.⁵⁸ These questionnaires and surveys were handed out without any express written consent from the parents in violation of 20 U.S.C. § 1232h.⁵⁹ When one parent found out about the illegal and intrusive surveys and tried to retrieve their daughter's completed copy, Dr. Goldberg attacked the parent for invading the privacy of her daughter and referred her to his legal department.⁶⁰ The defendants have falsely claimed that financial support for the high school sports programs would be threatened as a result of a family's dissent toward the experiment.

FIRST CLAIM FOR RELIEF⁴² U.S.C. § 1983⁶¹. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein and further alleges as follows on behalf of herself and all others similarly situated.⁶² Defendants in designing, implementing and conducting the experiment acted at all times under color of state law.⁶³ Defendants by such actions caused plaintiff and thousands of Oregon high school student athletes to either participate in an unlawful experiment in order to play sports at their high school, or forego the opportunity to play such sports.⁶⁴ The actions of defendants were thus in violation of the guarantees of the Fourteenth Amendment to bodily integrity, privacy and the essential right to human dignity in the context of human subject research; such actions were also in violation of 45 C.F.R. § 46 and other regulations and standards governing human subject research.⁶⁵ Students who refused to participate in defendants' experiment were subjected to retaliation, harassment and intimidation at the hands of the defendants.⁶⁶ Such retaliation places a chilling effect on the exercise of free speech.⁶⁷ The defendants have no compelling state interest in subjecting plaintiff to physically intrusive testing and personally intrusive examinations or to acts of retaliation, intimidation or harassment.⁶⁸ These acts of retaliation committed by defendants were done under color of state law.⁶⁹ The actions of the

defendants have caused plaintiff to suffer physical and emotional distress, have damaged plaintiff's reputation, and have breached her right to essential human dignity in the context of human subject research.⁷⁰ Also as a result of said unlawful acts, plaintiff has suffered humiliation, embarrassment, mental and emotional distress and anguish and loss of self-esteem.⁷¹ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.

SECOND CLAIM FOR RELIEFBREACH OF RIGHT TO PRIVACY⁷². Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein and further alleges as follows on behalf of herself and all others similarly situated.⁷³ The intentional design of the experiment by the defendants, including forcing students to sign informed consent documents and submit to drug tests and answer surveys reflects defendants' intentional and purposeful invasion of plaintiff's constitutionally protected privacy.⁷⁴ These personally intrusive surveys and tests when conducted in an experimental setting breached the plaintiff's right to privacy, which is guaranteed by the United States Constitution.⁷⁵ Defendants have also violated federal law.⁷⁶ Defendants, as state actors for purposes of 42 U.S.C. § 1983, have no compelling state interest in invading the constitutionally protected rights held by plaintiff.⁷⁷ The actions of the defendants has caused plaintiff to suffer physical and emotional distress and have damaged plaintiff's reputation and have breached her right to essential human dignity.⁷⁸ Also as a result of said unlawful acts, plaintiff has suffered humiliation, embarrassment, mental and emotional distress and anguish and loss of self-esteem.⁷⁹ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.

THIRD CLAIM FOR RELIEFBREACH OF THE RIGHT TO BE TREATED WITH DIGNITY⁸⁰. Plaintiff incorporates by reference all other paragraphs of this complaint as

if fully set forth herein and further alleges as follows on behalf of herself and all others similarly situated.⁸¹ The Nuremberg Code and the Declaration of Helsinki are the minimum United States and international standards of conduct governing biomedical research on human subjects; they are in essence world statutes to which the citizens of all nations are subject.⁸² The Nuremberg Code, drafted in response to the horrors of Nazi experimentation on human subjects, set forth basic principals “to satisfy moral ethical and legal concepts.”⁸³ The Nuremberg Code provides in pertinent part: The voluntary consent of the human subject is absolutely essential. before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment. . . . The experiment should be designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment. . . . The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment. . . . Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death. . . . The experiment should be conducted only by scientifically qualified persons.

84. The World Health Organization established the Declaration of Helsinki to further the goals of the Nuremberg Code and to set the minimum acceptable standards in all nations in which human clinical trials are conducted. These include: Biomedical research involving human subjects must conform to generally accepted scientific principles and should be based on adequately performed laboratory and animal experimentation and on a thorough

knowledge of the scientific literature.. .The design and performance of each experimental procedure involving human subjects should be clearly formulated in an experimental protocol which should be transmitted to a specially appointed independent committee for consideration, comment and guidance.. .

.Biomedical research involving human subjects should be conducted only by scientifically qualified persons and under the supervision of a clinically competent medical person.. .

.Biomedical research involving human subjects cannot legitimately be carried out unless the importance of the objectives is in proportion to the inherent risk to the subject.. .Concern for the interests of the subject must always prevail over the interest of science and society.. .The right of the research subject to safeguard his or her integrity must always be respected.. .Doctors should abstain from engaging in research projects involving human subjects unless they are satisfied that the hazards involved are believed to be predictable.. .In any research on human beings, each potential subject must be adequately informed of the aims, methods, anticipated benefits and potential hazards of the study and the discomfort it may entail.

85. The common law has recognized such standards as a source of the right of every human subject to be treated with dignity in the conduct of a clinical trial; such a right is a right of all citizens of the United States under the Constitution of the United States.⁸⁶ Defendants' actions, as set forth above, fell below the minimum standards of conduct governing human subject protection guaranteed by the laws of the United States and Oregon and were a breach of the right of plaintiff and the members of the class to be treated with dignity.⁸⁷ The actions of the defendants have caused plaintiff to suffer physical and emotional distress and have damaged plaintiff's reputation.⁸⁸ Also as a result of said unlawful acts, plaintiff has suffered humiliation, embarrassment, mental and emotional distress and anguish and loss of self-esteem.⁸⁹ As a result of all of which Plaintiff and other members of the class have

been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.

FOURTH CLAIM FOR RELIEF THE BELMONT REPORT Breach of the Assurance Agreement⁹⁰. Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein and further alleges as follows on behalf of herself and all others similarly situated.⁹¹ Defendant Investigators and OHSU agreed that all human research at the Center would be conducted in accordance with the Belmont Report.⁹² The Belmont Report is contained in a document known as the “Multiple Project Assurance Of Compliance With DHHS Regulations For Protection Of Human Research Subjects” (“Assurance Agreement”).⁹³ This Assurance Agreement in essence is a contract between those defendants and the Department of Health and Human Services; plaintiff and the other members of the class were third party beneficiaries to this agreement in that the purpose of the agreement was to protect all participants in clinical trials conducted by OHSU.⁹⁴ As set forth above, defendants breached this agreement by failing to follow the ethical principals in the Belmont Report and the requirements of 45 CFR § 46.⁹⁵ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00.

FIFTH CLAIM FOR RELIEF COMMON LAW FRAUD/INTENTIONAL MISREPRESENTATION⁹⁶. Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein and further alleges as follows on behalf of herself and all others similarly situated.⁹⁷ Defendants committed common law fraud by intentionally misrepresenting the nature of participating in the experiment and the scope and legitimacy of the experiment.⁹⁸ The misrepresentations set forth above were done with the knowledge that they were false when made.⁹⁹ Plaintiff and the members of the class justifiably relied upon the above stated misrepresentations in making the decisions to participate and continue in the experiment.¹⁰⁰ As a direct and proximate result of defendants’ intentional and material misrepresentations as set forth above,

plaintiff and other members of the class either were unable to participate in high school sports or participated and continued in the experiment to their detriment.¹⁰¹ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.**SIXTH CLAIM FOR RELIEF**LACK OF INFORMED CONSENT¹⁰². Plaintiff incorporates by reference all other paragraphs of this complaint as if fully set forth herein and alleges as follows on behalf of herself and all others similarly situated.¹⁰³ Defendants and each of them respectively, failed to provide plaintiff and other members of the class the opportunity to make an informed voluntary decision as to their participation in the experiment.¹⁰⁴ The actions of the defendants have caused plaintiff to suffer physical and emotional distress, have damaged plaintiff's reputation, and have breached her right to essential human dignity in the context of human subject research.¹⁰⁵ Also as a result of said unlawful acts, plaintiff has suffered humiliation, embarrassment, mental and emotional distress and anguish and loss of self-esteem.¹⁰⁶ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.**SEVENTH CLAIM FOR RELIEF**FOURTH AMENDMENT¹⁰⁷. Plaintiff hereby incorporates all of the above paragraphs as if each were set forth in full herein and further alleges as follows on behalf of herself and all others similarly situated.¹⁰⁸ At all relevant times, defendants were acting under color of state law.¹⁰⁹ Plaintiff Wade was forced to urinate into a cup and have her urine tested for drugs as part of the experiment and as a precondition for them to participate in sports.¹¹⁰ Defendants' experiment constituted an unconstitutional search and seizure and served no compelling government purpose.¹¹¹ The actions of the defendants have caused plaintiff to suffer physical and emotional distress and have damaged plaintiff's reputation and has breached her right to

essential human dignity in the context of human subject research.¹¹² Also as a result of said unlawful acts, plaintiff has suffered humiliation, embarrassment, mental and emotional distress and anguish and loss of self-esteem.¹¹³ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.

EIGHTH CLAIM FOR RELIEF
RIGHT TO BODILY INTEGRITY¹¹⁴. Plaintiff hereby incorporates all of the above paragraphs as if each were set forth in full herein and further alleges as follows on behalf of herself and all others similarly situated.¹¹⁵ At all relevant times, defendants were acting under color of state law.¹¹⁶ Plaintiff Wade was forced to urinate into a cup and have her urine tested for drugs as part of the experiment and as a precondition for her to participate in sports.¹¹⁷ Defendants' experiment constituted an unconstitutional breach of plaintiff's right to bodily integrity.¹¹⁸ The actions of the defendants have caused plaintiff to suffer physical and emotional distress and have damaged plaintiff's reputations and have breached her rights to essential human dignity in the context of human subject research.¹¹⁹ Also as a result of said unlawful acts, plaintiff has suffered humiliation, embarrassment, mental and emotional distress and anguish and loss of self-esteem.¹²⁰ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.

NINTH CLAIM FOR RELIEF
NEGLIGENCE¹²¹. Plaintiff hereby incorporates the allegations of the above paragraphs as if each were set forth in full and further alleges as follows on behalf of herself and all others similarly situated.¹²² The IRB Defendants who approved the experiment had a duty to protect plaintiff and other members of the class from unethical research practices.¹²³ The IRB Defendants were negligent in approving the design of the

experiment; in approving the informed consent documents; and in failing to appropriately monitor the informed consent process and the conduct of the experiment.¹²⁴ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.

TENTH CLAIM FOR RELIEF CONSPIRACY¹²⁵. Plaintiff hereby incorporates the allegations of the above paragraphs as if each were set forth in full.¹²⁶ The actions of the defendants described in the preceding paragraphs were taken under color of state law and constituted an unlawful combination and conspiracy for the purpose of conducting the experiment in violation of plaintiff's rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.¹²⁷ Defendants' actions in retaliating against plaintiff were taken with malice and ill will toward plaintiff, and with reckless disregard for plaintiff's rights and have breached her right to essential human dignity in the context of human subject research.¹²⁸ Defendants' actions have caused plaintiff to suffer physical and emotional distress, and have damaged plaintiff's personal reputation.¹²⁹ As a result of all of which Plaintiff and other members of the class have been damaged in a sum in excess of \$100,000.00, and they are entitled to an award of punitive damages for a sum in excess of \$1,000,000.00.

PRAYER FOR RELIEF WHEREFORE, Plaintiff and the plaintiff Class pray for relief as follows:

- A. That this action be certified as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. That plaintiff and the Class members be awarded damages;
- C. That plaintiff and the Class members be awarded punitive damages;
- C. That plaintiff and the Class members be awarded their actual and reasonable attorneys' fees, expenses and costs of this action, as provided by applicable law; and
- D. That defendants be enjoined

from using any data collected and/or obtained from the experiment, including, but not limited to, publishing results therefrom. E. That plaintiff and the Class members be awarded any other relief in law or equity to which the plaintiff and the members of the plaintiff Class are entitled. JURY DEMAND Plaintiff demands a trial by jury of all issues so triable. August ____, 2002 Respectfully submitted,

**Robert Swider, OSB #82127 (Local
Counsel) of Attorneys for
Plaintiff**

**Jay M. Schornstein, OSB #96421
(Local Counsel) of Attorneys for
Plaintiff**

**Sherman, Silverstein, Kohl, Rose
& Podolsky, P.A. Alan C. Milstein, Esq.
(Pro Hac Vice Counsel) of Attorneys for
Plaintiff**