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10

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF SAN BERNARDINO  
14

15 JANE RLK DOE, an individual;

16 Plaintiff,

17 v.

18 REDLANDS UNIFIED SCHOOL DISTRICT  
19 a business entity of form unknown; JOSEPH  
20 NARDELLA, an individual; and DOES 1  
21 through 100

22 Defendants.  
23  
24  
25  
26  
27  
28

FILED  
SUPERIOR COURT  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

MAY 11 2022

*Amador Sanchez*  
Amador Sanchez

\$ - 2022 - 32517 A.S.  
\$435.00 BY FAX

CIV SB 2209719

Case No.: \_\_\_\_\_  
Judge: \_\_\_\_\_  
Dept.: \_\_\_\_\_

COMPLAINT FOR DAMAGES FOR:

- 1) NEGLIGENCE;
- 2) NEGLIGENT SUPERVISION;
- 3) NEGLIGENT HIRING/RETENTION;
- 4) NEGLIGENT FAILURE TO WARN, TRAIN OR EDUCATE;
- 5) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- 6) ASSAULT;
- 7) SEXUAL BATTERY (C.C. § 1708.5);
- 8) SEXUAL HARASSMENT (C.C. § 51.9);
- 9) GENDER VIOLENCE (C.C. § 52.4);
- 10) SEXUAL ABUSE AND HARASSMENT IN THE EDUCATIONAL ENVIRONMENT (EDUCATION CODE § 220);
- 11) BREACH OF FIDUCIARY DUTY;
- 12) CONSTRUCTIVE FRAUD (C.C. § 1573)

[DEMAND FOR JURY TRIAL]  
[Filed pursuant to AB 218(C.C.P. §340.1)]

**RECEIVED**

**MAY 11 2022**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT**

COMES NOW, Plaintiff JANE RLK DOE, an individual who for her Complaint, complains and alleges as follows:

### INTRODUCTION

1. REDLANDS UNIFIED SCHOOL DISTRICT's pattern and practice continues to be to engage in protracted litigation and attempts to shame sexual assault victims in the hopes of dissuading victims.

2. REDLANDS UNIFIED SCHOOL DISTRICT's egregious behavior has, in fact, led to the reverse, its perpetrating of its continuing behavior towards victims has emboldened victims to stand against the District for the 30 plus years of failures towards minors within its District.

3. This case is one such instance of REDLANDS UNIFIED SCHOOL DISTRICT's decade long failures that it could and should have addressed.

4. Defendant TIMOTHY ROCHESTER ("ROCHESTER"), upon information and belief, has operated at Clement Middle School alongside alleged predators Joseph Nardella, Kevin Kirkland and Sean Lopez.

5. In fact administrators at Clement Middle School, including Kevin Kirkland, Marilyn Kemple, John Massie and Wes Cullen are alleged to have repeatedly ignored sexual predators on their campuses, allowing repeated and continuous sexual predation of students at a single middle school.

6. At no time did a single one of these Administrators and staff undertake to make a mandated report, *as was their legal duty*, on ROCHESTER.

### GENERAL ALLEGATIONS AS TO THE PARTIES

7. Plaintiff JANE RLK DOE, an individual (hereinafter "JANE RLK DOE" and/or "Plaintiff") is a resident of the County of San Bernardino, State of California and was so at the time of the abuse alleged herein. The name used by JANE RLK DOE in this Complaint is not the actual name of JANE RLK DOE, but is a fictitious name utilized to protect the privacy of JANE RLK DOE, a victim of childhood sexual harassment, molestation and abuse. Plaintiff JANE RLK DOE is a female, born in August, 1989, and was a minor during the time of the sexual misconduct alleged herein. Beginning in approximately 2003, at Clement Middle School and continuing

thereafter, Plaintiff was sexually harassed, assaulted and abused by his Clement Middle School teacher, Defendant TIMOTHY ROCHESTER, current employee and agent of Defendant REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School. Plaintiff was middle school age when the alleged abuse began.

8. The Plaintiff claims all arise out of sexual abuse and sexual assault claims that occurred during the time periods of approximately 2003 and thereafter. In 2019, the California State legislature enacted Assembly Bill No. 281, which was signed by the Governor on October 13, 2019. This law, as enacted, went into effect on January 1, 2020. Among other things, this law amended statutory code sections Code of Civil Procedure section 340.1; Code of Civil Procedure section 1002 and Government Code section 905.

9. The amendments, among other things, extended the statute of limitations for childhood sexual assault, inclusive of claims against persons or entities who owed duties of care to Plaintiff, premised upon wrongful or negligent acts by those persons or entities.

10. As amended, Code of Civil Procedure section 340.1(q), further provides:

Notwithstanding any other provision of law, any claim for damages described in paragraphs (1) through (3), inclusive, of subdivision (a) that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, claim presentation deadline, or any other time limit had expired, is revived, and these claims may be commenced within three years of January 1, 2020. A plaintiff shall have the later of the three-year time period under this subdivision or the time period under subdivision (a) as amended by the act that added this subdivision.

11. As amended, Government Code section 905(m), exempts out any requirement that a Plaintiff asserting a claim for the recovery of damages suffered as a result of childhood sexual assault make a government tort claim prior to filing litigation.

12. Upon information and belief, REDLANDS UNIFIED SCHOOL DISTRICT has used loopholes in the prior law to prohibit legitimate claims, including the claims of these Plaintiff from having been brought forth for resolution.

13. Pursuant to the Assembly Bill No. 218, and changes to Code of Civil Procedure section 340.1; Code of Civil Procedure section 1002 and Government Code section 905, Plaintiff may now bring forward her legitimate claims.

14. Under the terms of RUSD Board Bylaw 3310, regarding suspension of policies, the

1 Bylaws hold: "No Board policy, bylaw, or administrative regulation, or any portion thereof,  
 2 shall be operative if it is found to be in conflict with applicable federal or state law or  
 3 regulations or court decisions. If any portion of a policy is found to be invalid, that invalidity  
 4 shall not affect other provisions of the policy."

5 15. Pursuant to the Board Bylaws, the law with respect to Government Code section  
 6 905(m) changed rendering any board policy that would bar the instant claims as not operative,  
 7 due to nonconformance with the law, and the failure to conduct any changes to these requirements  
 8 to conform with the law.

9 16. Defendant REDLANDS UNIFIED SCHOOL DISTRICT (hereinafter the "REDLANDS  
 10 UNIFIED SCHOOL DISTRICT" and/or "RUSD"), at all times mentioned herein was and is, a  
 11 business entity of form unknown, having its principal place of business in the County of San  
 12 Bernardino, State of California. The REDLANDS UNIFIED SCHOOL DISTRICT purposely  
 13 conducts substantial educational business activities in the State of California, and was the primary  
 14 entity owning, operating and controlling Clement Middle School, employing TIMOTHY  
 15 ROCHESTER and responsible for monitoring and controlling his activities and behavior.

16 17. Clement Middle School (hereinafter "Clement Middle School") is a public educational  
 17 institution in the REDLANDS UNIFIED SCHOOL DISTRICT, operating as a Middle School for  
 18 students approximately 11 years of age through approximately 14 years of age.

19 18. Defendant TIMOTHY ROCHESTER (hereinafter "ROCHESTER") at all times  
 20 mentioned herein was and is an adult male individual, who Plaintiff is informed and believes, and  
 21 on that basis alleges, currently resides in the County of San Bernardino, in the State of California.  
 22 During the period of time in which the childhood sexual harassment and abuse of Plaintiff, alleged  
 23 herein, took place, ROCHESTER was a teacher, mentor, and advisor at Clement Middle School;  
 24 employed by both the REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School.  
 25 At all times herein alleged, ROCHESTER was an employee, agent, and/or servant of the  
 26 REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School, and was under their  
 27 complete control and/or active supervision.  
 28

1 19. Upon information and belief, ROCHESTER is under law enforcement investigation in  
2 anticipation of prosecution for his crimes against minors. Upon information and belief,  
3 ROCHESTER is on suspension from REDLANDS UNIFIED SCHOOL DISTRICT due to the  
4 presence of allegations against him.

5 20. Defendants DOES 1 through 100, inclusive, and each of them, are sued herein under said  
6 fictitious names. Plaintiff is ignorant as to the true names and capacities of DOE Defendants,  
7 whether individual, corporate, associate, or otherwise, and therefore sue said Defendants by such  
8 fictitious names. When their true names and capacities are ascertained, Plaintiff will request leave  
9 of Court to amend this Complaint to state their true names and capacities herein.

10 21. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned  
11 herein, each Defendant was responsible in some manner or capacity for the occurrences herein  
12 alleged, and that Plaintiff's damages, as herein alleged, were proximately caused by all said  
13 Defendants. Defendants REDLANDS UNIFIED SCHOOL DISTRICT, ROCHESTER and DOES  
14 1-100 are sometimes collectively referred to herein as "Defendants" and/or as "All Defendants";  
15 such collective reference refers to all specifically named Defendants.

16 22. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned  
17 herein, there existed a unity of interest and ownership among Defendants and each of them, such  
18 that any individuality and separateness between Defendants, and each of them, ceased to exist.  
19 Defendants and each of them, were the successors-in-interest and/or alter egos of the other  
20 Defendants, and each of them, in that they purchased, controlled, dominated and operated each  
21 other without any separate identity, observation of formalities, or other manner of division. To  
22 continue maintaining the facade of a separate and individual existence between and among  
23 Defendants, and each of them, would serve to perpetrate a fraud and an injustice.

24 23. At all times mentioned herein, ROCHESTER was an adult teacher, mentor, and advisor  
25 employee of both the REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School,  
26 acting as an employee, agent, and/or servant of such and/or was under their complete control  
27 and/or supervision, as well as the complete control of the Board, Superintendent and Assistant  
28 Superintendents of REDLANDS UNIFIED SCHOOL DISTRICT. ROCHESTER was employed

as a teacher at the REDLANDS UNIFIED SCHOOL DISTRICT and/or Clement Middle School. ROCHESTER was hired by the REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School to serve as a teacher, mentor, and advisor to minor school students at Clement Middle School. In so doing, the REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School held ROCHESTER out to the public, Plaintiff and Plaintiff's family to be of high ethical and moral repute, and to be in good standing with the REDLANDS UNIFIED SCHOOL DISTRICT, Clement Middle School, the State of California, and the public in general. In this capacity, ROCHESTER taught, mentored, and advised students regarding personal issues, academics, future employment prospects, and general emotional and psychological issues. Both the REDLANDS UNIFIED SCHOOL DISTRICT, and Clement Middle School held ROCHESTER out to the public, Plaintiff and Plaintiff's parents to be a highly-qualified teacher, mentor, and advisor who could and would assist Plaintiff with working through personal and academic issues she faced. Inherent in this representation was the understanding that ROCHESTER was a person of high ethical and moral standing, selected to provide leadership, guidance, mentoring, and advising to students, including Plaintiff. Plaintiff and his family reasonably assumed that ROCHESTER was a person worthy of their trust.

24. Upon information and belief, ROCHESTER was at some time investigated by Clement Middle School, during the course of the abuse for sexual misconduct, however, REDLANDS UNIFIED SCHOOL DISTRICT undertook no controls or methods to prevent ROCHESTER from accessing Plaintiff both on and off campus during and following this investigation, and he continued to use his position within REDLANDS UNIFIED SCHOOL DISTRICT to abuse Plaintiff. Upon information and belief, REDLANDS UNIFIED SCHOOL DISTRICT undertook no actions to prevent ROCHESTER from teaching, being around students, abusing and assaulting Plaintiff.

25. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned herein, Defendants and each of them, and ROCHESTER were the agents, representatives and/or employees of each and every other Defendant. In doing the things hereinafter alleged, Defendants and each of them, and ROCHESTER, were acting within the course and scope of said alternative

1 personality, capacity, identity, agency, representation and/or employment and were within the  
2 scope of their authority, whether actual or apparent.

3 26. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned  
4 herein, Defendants and each of them, and ROCHESTER were the trustees, partners, servants, joint  
5 venturers, shareholders, contractors, and/or employees of each and every other Defendant, and the  
6 acts and omissions herein alleged were done by them, acting individually, through such capacity  
7 and within the scope of their authority, and with the permission and consent of each and every  
8 other Defendant and that said conduct was thereafter ratified by each and every other Defendant,  
9 and that each of them is jointly and severally liable to Plaintiff.

10 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

11 **I. PRIOR NOTICE THAT ROCHESTER AND OTHER STAFF PRESENTED A RISK OF**  
12 **SEXUAL PROPENSITIES BY REDLANDS UNIFIED SCHOOL DISTRICT AT**  
13 **CLEMENT MIDDLE SCHOOL**

14 27. Plaintiff, upon information and belief, allege that prior to the date of reporting of his  
15 abuse, REDLANDS UNIFIED SCHOOL DISTRICT knew or had reason to know of  
16 ROCHESTER's sexual misconduct with minors at Clement Middle School.

17 28. During ROCHESTER's term of employment at Clement Middle School, ROCHESTER  
18 did and would frequently invite female minors into his classroom during passing periods, lunch  
19 periods and after class and school hours. During these time periods, ROCHESTER would engage  
20 the minors, aged 11 through 14 in sexual discussions, and discussions of engaging in dating with  
21 students and asserting inappropriate comments to female students.

22 29. Upon information and belief, the explicit sexual discussions being held by ROCHESTER  
23 with minor students at Clement Middle School were reported to the Administration of  
24 REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School, specifically and  
25 including at the relevant time period, Wes Cullen, the Administrator at Clement Middle School.

26 30. Upon information and belief, and consistent with Clement Middle School's handling, the  
27 students reporting ROCHESTER's abusive conduct were disciplined instead of ROCHESTER.  
28 This is conduct reminiscent of the behavior of Marilyn Kemple's threats to students reporting  
Lopez's sexually inappropriate conduct.

1 31. Upon information and belief, ROCHESTER has been questioned regarding this conduct  
2 and behavior with students and warned about inappropriate behavior with students, but was  
3 permitted to continue in his position at Clement.

4 32. Upon information and belief, despite the clear knowledge that ROCHESTER was a risk  
5 and acting sexually inappropriate with minor males, REDLANDS UNIFIED SCHOOL  
6 DISTRICT, Clement Middle School and the Administration of same, failed to:

- 7 a. Mandatorily report ROCHESTER to law enforcement and/or child protective
- 8 services despite the existence of "reasonable suspicion";
- 9 b. Remove ROCHESTER from the school environment;
- 10 c. Recognize the existence of grooming behavior by ROCHESTER that was a
- 11 predicate to his ultimate sexual assault and sexual abuse of minor Plaintiff.

12 33. Despite the recognition that ROCHESTER's behavior discussing sexual acts and sexual  
13 touching and other behavior with minor students during the course of their investigation,  
14 REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School undertook no  
15 corrective measures and allowed ROCHESTER to remain in the school classroom and school  
16 environment.

17 34. Upon information and belief, Clement Middle School was permitted, to proliferate as  
18 a sexual abuse breeding ground for teachers and staff of REDLANDS UNIFIED SCHOOL  
19 DISTRICT.

20 35. In 2004, REDLANDS UNIFIED SCHOOL DISTRICT placed serial pedophile Kevin  
21 Patrick Kirkland as an Assistant Principal at Clement Middle School. In the few years that  
22 Kirkland was placed at Clement Middle School, he managed to begin a reign of sexual assaults,  
23 beginning with middle school students that spanned more than a 10 year period of time and dozens  
24 of students.

25 36. Among other things that were discovered in litigation involving Kirkland, was the fact  
26 that he was commonly referred to as a child molester openly by students while on school  
27 campuses; and that he touched and attempted to touch multiple students at the school.

28 37. Upon information and belief, Clement Middle School had other known and suspected

child abusers in the educational environment during the times of ROCHESTER and Kirkland, yet failed to undertake to cease these behaviors, instead moving those educators into other roles and other locations. Upon information and belief, this was REDLANDS UNIFIED SCHOOL DISTRICT's pattern and practice and continues to be so to this date.

**II. FACTUAL ALLEGATIONS RELATIVE TO REDLANDS UNIFIED SCHOOL DISTRICT RELATIVE TO SEXUAL ASSAULTS AND FAILURES TO REPORT AND ATTEMPTS TO BLOCK THE INVESTIGATION OF SEXUAL ABUSE**

38. Upon information and belief, REDLANDS UNIFIED SCHOOL DISTRICT, has a history of failing to protect students from sexual misconduct of its staff members, teachers and employees.

39. Upon information and belief, Clement Middle School, by way of example had no less than 4 teachers alleged to have committed sexual assault within a ten year period. It is believed that REDLANDS UNIFIED SCHOOL DISTRICT has had a higher percentage of sexual abusing employees than comparable districts of the same size, reflecting upon the failures in the Administration and the allowances of abusers to proliferate within the District.

40. Publicly, REDLANDS UNIFIED SCHOOL DISTRICT professes that it seeks to rid its schools from any threats to students. In public proclamations, the REDLANDS UNIFIED SCHOOL DISTRICT asserts statements such as:

- a. "If there is one thing every teacher and every administrator understands, it is our responsibility to report any reasonable suspicion of abuse."

**Redlands Unified School District, School Board President, Donna West, July 9, 2013** (Statement in response to the Whitehurst sexual abuse case).

- b. "We must do everything we can in the future to try and prevent any improper treatment of students by adults employed by the school district."

**Redlands Unified School District, School Board President, Donna West, July 9, 2013** (Statement in response to the Whitehurst sexual abuse case).

- c. "Student safety is a priority in our school district and for the members of the Board of Education."

**Redlands Unified School District, School Board President, Patty Holohan, May 24, 2016** (Statement in response to the Kirkland sexual abuse case).

- d. "Our leadership team has been working closely with the Redlands Police Department to get to the bottom of this unfortunate situation."

**Redlands Unified School District, School Board President, Patty Holohan, May 24, 2016** (Statement in response to the Kirkland sexual abuse case).

- e. "Our job now is to help the police do their job moving forward. The Redlands PD is still conducting an ongoing investigation into this incident and the school district is cooperating fully in that investigation."

**Redlands Unified School District, School Board President, Patty Holohan, May 24, 2016** (Statement in response to the Kirkland sexual abuse case).

- d. "In the Redlands Unified School District, the safety and well-being of our students and staff continue to be a high priority."

**Redlands Unified School District, Superintendent, Mauricio Arellano, January 16, 2020** (Statement in response to the Lopez sexual abuse case).

41. The truth is that these statements are empty platitudes to present a cooperative face to the general public. Upon information and belief, REDLANDS UNIFIED SCHOOL DISTRICT, as illustrated further, hides information, destroys evidence, blocks investigation and mis-represents information to law enforcement to shield the liability of the district and its employees.

42. REDLANDS UNIFIED SCHOOL DISTRICT ranks amongst the worst school districts with significant serial pedophiles, yet REDLANDS UNIFIED SCHOOL DISTRICT has yet to meaningfully address the administrators that allowed such abuse to happen, continuing to employ several. REDLANDS UNIFIED SCHOOL DISTRICT therefore ratifies the behavior of those administrators that failed in the ROCHESTER case.

43. Rather than support, recognize and acknowledge victims, REDLANDS UNIFIED SCHOOL DISTRICT has a history of threatening victims (Lopez case), destroying evidence of sexual assault (Whitehurst case), refusing to cooperate with law enforcement investigations (Whitehurst case) and repeatedly giving warnings without ever taking action against pedophiles (Kirkland case).

44. The failures to address pedophiles within the school district, upon information and belief, fall upon the human resources department of REDLANDS UNIFIED SCHOOL DISTRICT.

45. Upon information and belief, the Administrators of REDLANDS UNIFIED SCHOOL DISTRICT refuse to undertake remedial measures within the human resources department, including, but not limited to, the termination of individuals within that department for fear of being

sued by those individuals. Such affirmations of conduct, place the monetary needs of the District, over that of the safety of the students and show reckless indifference to the suffering of both known and unknown victims.

46. Upon information and belief, this failure to act, REDLANDS UNIFIED SCHOOL DISTRICT or its employees have been repeatedly investigated on whether they should be criminally charged in failing to protect its students, and/or for obstruction of justice.

47. As a result of these failures, REDLANDS UNIFIED SCHOOL DISTRICT has paid in excess of 40 million, yet refuses and fails to address the Administrative failures within the school district.

48. Publicly, despite the destruction of evidence, blocking the investigation and refusing to cooperate, the REDLANDS SCHOOL DISTRICT professed publicly that they were cooperating with all investigations.

49. School Board President, Donna West has publicly professed that REDLANDS UNIFIED SCHOOL DISTRICT would do everything to protect students and that the employees and staff knew that they had an obligation to report suspicions of child abuse.

50. Rather, the correlations between the Lopez, Whitehurst, Nardella, ROCHESTER and Kirkland's allegations are stark and alarming, and show that the REDLANDS UNIFIED SCHOOL DISTRICT continues its pattern and practice of protection of predators over students. ROCHESTER evidences that the REDLANDS UNIFIED SCHOOL DISTRICT has historically failed to protect the lives of its students going back more than twenty years, and yet has on an ongoing basis continually failed in the protection of those minors with whom they are entrusted.

51. Upon information and belief, REDLANDS UNIFIED SCHOOL DISTRICT failed to, among other things:

- a. Recognize the abuse that ROCHESTER was undertaking against students;
- b. Report the abuse that ROCHESTER was undertaking against students in their roles as mandatory reporters;
- c. Failed to monitor ROCHESTER;
- d. Disrupted an investigation of ROCHESTER;

e. Actively dissuaded victims from airing their abuse;

f. Destroyed evidence relative to abuse.

52. REDLANDS UNIFIED SCHOOL DISTRICT did nothing to change the environment in which it operated from 1999 to 2020, rather, the Administration has simply reinforced the practices that existed then and continue to exist today, creating a present and ongoing risk to those who attend schools within REDLANDS UNIFIED SCHOOL DISTRICT.

53. In or about 2021, the San Bernardino Superior Court's Civil Grand Jury conducted an investigation of Redlands Unified School District, finding uniform failures in the handling, training and prevention of childhood sexual abuse within the District.

54. Upon information and belief, RUSD was investigated by the California Attorney General's office subsequent to the Grand Jury's findings.

55. Upon information and belief, RUSD has done nothing to change the environment cited by the Grand Jury in its findings.

### III.

#### FACTUAL ALLEGATIONS RELATIVE TO ROCHESTER AND PLAINTIFF

56. At all times material hereto, Plaintiff was a student at Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT, and was under its complete control and supervision.

57. At all times material hereto, ROCHESTER was employed by Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT as a teacher, mentor, coach, and advisor and/or retained the power and control entrusted to him by Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT. In such capacities, ROCHESTER was under the direct supervision, employ, agency, and control of the REDLANDS UNIFIED SCHOOL DISTRICT, Clement Middle School and DOES 1-100. His employment duties and responsibilities with the named Defendants included, in part, providing for the mentoring, advisory, educational, and emotional needs and well-being of students of Clement Middle School and other children, including Plaintiff.

58. Within Clement Middle School, ROCHESTER was known to broach subjects with students that were sexual and inappropriate. Clement Middle School operated as a nothing more

1 than a grooming opportunity for his sexual desires with young boys, like Plaintiff and other  
2 individuals.

3 59. Through his positions with Clement Middle School and the REDLANDS UNIFIED  
4 SCHOOL DISTRICT, ROCHESTER was put into direct contact with Plaintiff, a student at  
5 Clement Middle School. ROCHESTER was assigned to teach, mentor, and advise Plaintiff. It is  
6 under these circumstances that Plaintiff came to be under the direction and control of  
7 ROCHESTER, who used his position of authority and trust over Plaintiff to sexually abuse and  
8 harass her.

9 60. ROCHESTER, with the express approval of REDLANDS UNIFIED SCHOOL  
10 DISTRICT ingratiated himself with the young girls, including Plaintiff, using the predicate of  
11 sexually inappropriate discussions to make contact in a sexual manner.

12 61. ROCHESTER did sexually harass, molest, and abuse Plaintiff, who was a minor at the  
13 time. Such conduct was done for ROCHESTER's sexual gratification, and which was performed  
14 on Plaintiff without his free consent, as Plaintiff was a mere minor and thus unable to give valid,  
15 legal consent to such sexual acts. These actions upon Plaintiff constituted conduct that is believed  
16 to be in violation of California Penal Code §§ 261.5(c), 288a(b)(1), 288.2(a)(2), 647.6(a)(1), and  
17 potentially other provisions.

18 62. As student at Clement Middle School and the REDLANDS UNIFIED SCHOOL  
19 DISTRICT, where ROCHESTER was employed and worked, Plaintiff was under ROCHESTER's  
20 direct supervision, care and control, thus creating a special relationship, fiduciary relationship,  
21 and/or special care relationship with Defendants, and each of them.

22 63. Additionally, as a minor child under the custody, care and control of Defendants,  
23 Defendants stood in loco parentis with respect to Plaintiff while she was attending school and  
24 school-related functions at Clement Middle School and the REDLANDS UNIFIED SCHOOL  
25 DISTRICT. As the responsible parties and/or employers controlling ROCHESTER, Defendants  
26 were also in a special relationship with Plaintiff, and owed special duties to Plaintiff.

27 64. Plaintiff is informed and believes, and on that basis alleges, that Defendants, knew or  
28 should have known that ROCHESTER had engaged in unlawful sexually-related conduct with

minors in the past, and/or was continuing to engage in such conduct with Plaintiff. Defendants had a duty to disclose to these facts to Plaintiff, her parents and others, but negligently and/or intentionally suppressed, concealed or failed to disclose this information. The duty to disclose this information arose by the special, trusting, confidential, fiduciary, and/or *in loco parentis* relationship between Defendants and Plaintiff.

65. Clement Middle School, and the REDLANDS UNIFIED SCHOOL DISTRICT, knew or should have known, of the sexual abuse of minors within its care, including individuals such as Plaintiff. Further, upon information and belief, staff within the REDLANDS UNIFIED SCHOOL DISTRICT, knew or should have known that ROCHESTER had expressed such propensities of sexual abuse, sexual misconduct and sexual harassment and directed them towards minor students and therefore had an obligation of notice, and choose to act negligently and/or wrongfully in their duties towards the Plaintiff.

66. Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT, knew or should have known, of the sexual abuse of minors within its care, including individuals such as Plaintiff. Plaintiff is informed, believes and thereon alleges that during the period of time in which ROCHESTER worked at Clement Middle School for REDLANDS UNIFIED SCHOOL DISTRICT, the administration, staff and district received notice as detailed herein and above, regarding ROCHESTER. Upon information and belief, despite such notice and knowledge, REDLANDS UNIFIED SCHOOL DISTRICT hid the process of the investigation from parents and the public, amounting to a cover up for which treble damages are warranted.

67. Plaintiff, upon information and belief, and thereon allege that Defendant REDLANDS UNIFIED SCHOOL DISTRICT knew or should have known of the sexual abuse of Plaintiff by ROCHESTER.

68. Defendants failed to take reasonable steps and/or implement reasonable safeguards to avoid acts of unlawful sexual conduct by ROCHESTER, including, but not limited to preventing abuse of Plaintiff by ROCHESTER avoiding placement of ROCHESTER in a function or environment in which contact with children is an inherent part of that function or environment. Instead, Defendants ignored and/or concealed the sexual harassment and abuse of Plaintiff and others by ROCHESTER that had already occurred. Plaintiff is informed and believes, and on that

1 basis alleges, that Defendants and each of them were given notice of incidents of inappropriate  
2 conduct by ROCHESTER, including such facts as those set forth in this Complaint.

3 69. Plaintiff is informed and believes, on that basis alleges, that prior to and during the sexual  
4 harassment, assault and abuse of Plaintiff, Defendants knew or should have known that  
5 ROCHESTER had violated his role as a teacher, mentor, advisor and faculty member, and used  
6 this position of authority and trust acting on behalf of Defendants to gain access to children,  
7 including Plaintiff, on and off the school facilities and grounds, in which he engaged in sexual  
8 misconduct, harassment and abuse, with such children including Plaintiff.

9 70. With actual or constructive knowledge that Defendant ROCHESTER had previously  
10 engaged in dangerous and inappropriate conduct, including sexually harassing and abusing other  
11 minors at Clement Middle School and other minors, Defendants conspired to and did knowingly  
12 fail to take reasonable steps, and failed to implement reasonable safeguards to avoid acts of  
13 unlawful sexual conduct in the future by ROCHESTER, including, but not limited to, preventing  
14 or avoiding placement of ROCHESTER in a function or environment in which contact with  
15 children is an inherent aspect of that function or environment.

16 71. The Defendants and each of them, and in particular, upon information and belief, Kemple,  
17 Rivera, Massie, Clarey, Cullen, Sabine and REDLANDS UNIFIED SCHOOL DISTRICT upon  
18 information and belief, have a history of the covering up of sexual abuse claims, including, in  
19 particular the alleged destruction of evidence that has arisen in past instances of sexual abuse cases  
20 involving employees of REDLANDS UNIFIED SCHOOL DISTRICT. Upon information and  
21 belief, this is a basis for the application of treble damages against REDLANDS UNIFIED  
22 SCHOOL DISTRICT.

23 72. Plaintiff further alleges that Defendants failed to report and did hide and conceal from  
24 students, parents, teachers, law enforcement authorities, civil authorities and others, the true facts  
25 and relevant information necessary to bring ROCHESTER to justice for the sexual misconduct he  
26 committed with minors, as well as protect their fiduciaries, including Plaintiff. Defendants also  
27 implemented various measures designed to, or which effectively, made ROCHESTER's conduct  
28 harder to detect including, but not limited to:

- a. Permitting ROCHESTER to remain in a position of authority and trust after Defendants knew or should have known that ROCHESTER was sexually abusing, assaulting and/or harassing students;
- b. Placing ROCHESTER in a separate and secluded environment, including placing him in charge of children, mentoring programs, advising programs, and youth programs where they purported to supervise the children, which allowed him to sexually interact with and sexually assault and abuse children, including Plaintiff;
- c. Allowing ROCHESTER to come into contact with minors, including Plaintiff, without adequate supervision;
- d. Failing to inform, or concealing from Plaintiff's parents and law enforcement officials the fact that Plaintiff and others were or may have been sexually abused, after Defendants knew or should have known that ROCHESTER may have been sexually abusive and harassing towards Plaintiff or others, thereby enabling Plaintiff to continue to be endangered and sexually harassed, abused, and/or creating the circumstance where Plaintiff and others were less likely to receive medical/mental health care and treatment, thus exacerbating the harm to Plaintiff;
- e. Holding out ROCHESTER to Plaintiff and their parents, students, and to the school community as being in good standing and trustworthy;
- f. Failing to take reasonable steps, and to implement reasonable safeguards to avoid acts of unlawful sexual conduct by ROCHESTER with students, who were minor children;
- g. Removing complaining students from ROCHESTER's presence and threatening them with reporting without addressing ROCHESTER's inappropriate and sexual misconduct;
- h. Reprimanding, without reporting or removing ROCHESTER for his sexual misconduct with male students; and
- i. Failing to put in place a system or procedure to supervise or monitor employees, volunteers, representatives or agents to insure that they did not harass or abuse minors in Defendants' care, including Plaintiff.

73. By his position within the Defendants' institutions, Defendants and ROCHESTER demanded and required that Plaintiff respect ROCHESTER in his position of teacher, mentor, and advisor at Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT.

74. ROCHESTER engaged in open and obvious grooming behavior with Plaintiff, that should have and would have placed REDLANDS UNIFIED SCHOOL DISTRICT on notice of sexual misconduct by ROCHESTER.

75. The Administration, upon information and belief, silenced those that reported ROCHESTER by threatening them with discipline.

76. Upon information and belief, the Administration only suspended ROCHESTER when the

complaints became significant enough that they could not silence his victims further.

77. It is alleged, upon information and belief, that ROCHESTER had other victims of abuse at Clement Middle School.

78. It is alleged, upon information and belief, that ROCHESTER conspired with other perpetrators, including, but not limited to, Kirkland, Nardella and Lopez to assist in the covering of each others abuse.

79. Upon information and belief, REDLANDS UNIFIED SCHOOL DISTRICT hid the abuses by ROCHESTER

80. ROCHESTER abused Plaintiff in his classroom.

81. The incidents of abuse outlined herein took place while Plaintiff was under the control of ROCHESTER, in his capacity and position as a teacher, mentor, and advisor at Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT, and while acting specifically on behalf of Defendants, including, but not limited to, the following:

- a. ROCHESTER was at all times relevant to this Complaint a teacher, mentor, and advisor at Clement Middle School, an institution wholly operated by REDLANDS UNIFIED SCHOOL DISTRICT.
- b. While ROCHESTER sexually harassed and abused Plaintiff, Defendants were well aware that ROCHESTER took an unusual interest, and spent an inordinate amount of time with Plaintiff.
- c. Beginning in or around 2003 and continuing thereafter, the perpetrator ROCHESTER sexually abused, harassed and molested the Plaintiff within a Clement Middle School classroom.

82. As set forth more fully herein above, ROCHESTER did sexually harass and abuse Plaintiff, who was a minor at the time. Plaintiff is informed and believes, and on that basis alleges, that such conduct by Defendant ROCHESTER was based upon Plaintiff's gender, and was done for his sexual gratification. These actions upon Plaintiff was performed by Defendant ROCHESTER without the free consent of Plaintiff, who was a minor during most of the abuse period.

83. Plaintiff is informed and believes, and on that basis alleges, that Defendants and each of them should have been aware of ROCHESTER's wrongful conduct at or about the time it was occurring, and thereafter, but took no action to obstruct, inhibit or stop such continuing conduct, or

to help Plaintiff endure the trauma from such conduct. Despite the authority and ability to do so, these Defendants negligently and/or willfully refused to, and/or did not, act effectively to stop the sexual assaults on Plaintiff, to inhibit or obstruct such abuse, or to protect Plaintiff from the results of that trauma.

84. During the period of abuse of Plaintiff at the hands of ROCHESTER, Defendants REDLANDS UNIFIED SCHOOL DISTRICT had the authority and the ability to obstruct or stop ROCHESTER's sexual assaults on Plaintiff, but negligently and/or willfully failed to do so, thereby allowing the abuse to occur and to continue unabated. This failure was a part of Defendants' plan and arrangement to conceal wrongful acts, to avoid and inhibit detection, to block public disclosure, to avoid scandal, to avoid the disclosure of their tolerance of child sexual harassment and abuse, to preserve a false appearance of propriety, and to avoid investigation and action by public authority including law enforcement. Plaintiff is informed and believes, and on that basis alleges, that such actions were motivated by a desire to protect the reputation of Defendants and each of them, and to protect the monetary support of Defendants while fostering an environment where such abuse could continue to occur.

85. Subsequent to his sexual abuse at the hands of ROCHESTER, Plaintiff began to experience multiple mental, emotional and psychological problems, due to the sexual harassment and abuse they suffered at the hands of ROCHESTER, including, but not limited to: Plaintiff being angry; Plaintiff experiencing frequent anxiety; Plaintiff experiencing depression; Plaintiff feeling helpless; Plaintiff experiencing sleeplessness; and Plaintiff having significant trust and control issues.

86. As a direct result of the sexual harassment and abuse of Plaintiff by ROCHESTER, Plaintiff has had difficulty in reasonably or meaningfully interacting with others, including those in positions of authority over Plaintiff, including supervisors, and in intimate, confidential and familial relationships, due to the trauma of childhood sexual harassment, assault and abuse inflicted upon them by ROCHESTER. This inability to interact creates conflict with Plaintiff's values of trust and confidence in others, and has caused Plaintiff substantial emotional distress, anxiety, nervousness and fear. As a direct result of Plaintiff's abuse and harassment by

1 ROCHESTER, Plaintiff experienced severe issues with his personal lives, including issues with  
2 trust and difficulties in maintaining meaningful relationships, and difficulty with school. These  
3 feelings have caused Plaintiff substantial emotional distress, anxiety, nervousness and fear.

4 87. As a direct and proximate result of the Defendants' tortuous acts, omissions, wrongful  
5 conduct and/or breaches of their duties, whether willful or negligent, Plaintiff's employment and  
6 personal development has or will be adversely affected. Plaintiff has or will lose wages as a result  
7 of the abuse they suffered at the hands of Defendants, and will continue to lose wages in an  
8 amount to be determined at trial. Plaintiff have suffered economic injury, all to Plaintiff's general,  
9 special and consequential damage in an amount to be proven at trial, but in no event less than the  
10 minimum jurisdictional amount of this Court.

11 88. As is set forth herein, Defendants and each of them have failed to uphold numerous  
12 mandatory duties imposed upon them by state and federal law, and by written policies and  
13 procedures applicable to Defendants, including but not limited to the following:

- 14 \* Duty to use reasonable care to protect students from known or foreseeable dangers  
(Government Code §§ 820, 815.2);
- 15 \* Duty to refrain from taking official action that contradicts the provisions of Article  
16 1, section 28(c) of the California Constitution;
- 17 \* Duty to enact policies and procedures that are not in contravention of the Federal  
18 Civil Rights Act, section 1983, and the 14th Amendment of the United States  
Constitution;
- 19 \* Duty to protect students and staff, and provide adequate supervision;
- 20 \* Duty to ensure that any direction given to faculty and students is lawful, and that  
adults act fairly, responsibly and respectfully towards faculty and students;
- 21 \* Duty to properly train teachers, athletic directors, athletic coaches, youth  
22 counselors, mentors, administrators, and staff so that they are aware of their  
individual responsibility for creating and maintaining a safe environment;
- 23 \* Duty to supervise faculty and students and enforce rules and regulations prescribed  
24 for schools, exercise reasonable control over students as is reasonably necessary to  
25 maintain order, protect property, or protect the health and safety of faculty and  
students or to maintain proper and appropriate conditions conducive to learning;
- 26 \* Duty to exercise careful supervision of the moral conditions in the school;
- 27 \* Duty to hold pupils to a strict account for their conduct on the way to and from  
28 school, on the playgrounds or during recess;

- \* Duty to properly monitor students, prevent or correct harmful situations or call for help when a situation is beyond their control;
- \* Duty to ensure that personnel are actually on hand and supervising students;
- \* Duty to provide enough supervision to students;
- \* Duty to supervise diligently;
- \* Duty to act promptly and diligently and not ignore or minimize problems;
- \* Duty to refrain from violating Plaintiff's right to protection from bodily restraint or harm, from personal insult, from defamation, and from injury to their personal relations (Civil Code § 43);
- \* Duty to abstain from injuring the person or property of Plaintiff, or infringing upon any of their rights (Civil Code § 1708);
- \* Duty to report suspected incidents of child abuse and more specifically childhood sexual abuse (Penal Code §§ 11166, 11167); and
- \* Duty to prevent discrimination or sexual harassment and abuse from occurring in public educational facilities (Education Code § 200, et seq.); and
- \* Duty to not violate Title IX of the Education Amendments of 1972.

89. Compulsory education laws create a special relationship between students and Defendants, and students have a constitutional guarantee to a safe, secure and peaceful school environment. Defendants and each of them failed to acknowledge unsafe conditions, and therefore failed to guarantee safe surroundings in an environment in which Plaintiff was not free to leave, specifically including but not limited to allowing ROCHESTER to take children for purposes of sexual activity and allowing ROCHESTER to operate isolated environments, incapable of monitoring from the outside, wherein ROCHESTER sexually harassed and abused Plaintiff and others.

90. Defendants and each of them had and have a duty to protect students, including Plaintiff. Defendants were required, and failed, to provide adequate campus and off-site school event supervision, and failed to be properly vigilant in seeing that supervision was sufficient to ensure the safety of Plaintiff and others.

91. Defendants and each of them lodged with ROCHESTER the color of authority, by which he was able to influence, direct and abuse Plaintiff and others, and to act illegally, unreasonably and without respect for the person and safety of Plaintiff.

92. Defendants and each of them had a duty to and failed to adequately train and supervise all advisors, teachers, mentors and staff to create a positive, safe, spiritual and educational environment, specifically including training to perceive, report and stop inappropriate conduct by other members of the staff, specifically including ROCHESTER, with children.

93. Defendants and each of them had a duty to and failed to enact and enforce rules and regulations prescribed for schools, and execute reasonable control over students necessary to protect the health and safety of the student and maintain proper and appropriate conditions conducive to learning.

94. Defendants and each of them were required to and failed to exercise careful supervision of the moral conditions in their school, and provide supervision before and after school. This duty extended beyond the classroom.

95. In subjecting Plaintiff to the wrongful treatment herein described and the cover up, ROCHESTER acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, so as to constitute malice and/or oppression under California Civil Code section 3294. Plaintiff is therefore entitled, to the recovery of punitive damages, in an amount to be determined by the court, against ROCHESTER, in a sum to be shown according to proof. Further, in an action for damages against this defendant based upon that defendant's commission of a felony offense for which that defendant has been convicted, the court may, upon motion, award reasonable attorney's fees to the prevailing plaintiff against this defendant who has been convicted of the felony pursuant to Code of Civil Procedure section 1021.4. Plaintiff reserves the right to request attorney's fees from this defendant pursuant to this code section, based upon ROCHESTER's felony convictions, for any felony criminal acts perpetrated against Plaintiff.

96. In subjecting Plaintiff to the negligent and wrongful treatment herein described and the cover up of same, REDLANDS UNIFIED SCHOOL DISTRICT, and ROCHESTER are liable for treble damages as to this Plaintiff.

**FIRST CAUSE OF ACTION**  
**NEGLIGENCE**

(Against all Defendants and Does 1 through 100)

97. Plaintiff re-alleges and incorporates by reference herein each and every allegation

1 contained herein above as though fully set forth and brought in this cause of action.

2 98. Plaintiff is informed and believes, and on that basis alleges that prior to and after the  
3 first incident of ROCHESTER's sexual harassment, molestation, and abuse of Plaintiff, through  
4 the present, Defendants, knew or should have reasonably known that ROCHESTER had or was  
5 capable of sexually, and/or sexually abusing Plaintiff or other victims.

6 99. Defendants and each of them had special duties to protect the minor Plaintiff and the  
7 other students within Clement Middle School and the REDLANDS UNIFIED SCHOOL  
8 DISTRICT, when such students were entrusted to their care by their parents. Plaintiff's care,  
9 welfare and/or physical custody was entrusted to Defendants. Defendants voluntarily accepted the  
10 entrusted care of Plaintiff. As such, Defendants owed Plaintiff, minor children, a special duty of  
11 care, in addition to a duty of ordinary care, and owed Plaintiff the higher duty of care that adults  
12 dealing with children owe to protect them from harm. The duty to protect and warn arose from the  
13 special, trusting, confidential, and/or fiduciary relationship between Defendants and Plaintiff.  
14 Plaintiff felt great trust, faith and confidence in Defendants, and in ROCHESTER as their teacher,  
15 adviser and mentor.

16 100. Plaintiff is informed and believes, and on that basis alleges, that Defendants breached  
17 their duties of care to the minor Plaintiff by allowing ROCHESTER to come into contact with the  
18 minor Plaintiff and other students, without supervision; by failing to adequately hire, supervise  
19 and/or retain ROCHESTER who they permitted and enabled to have access to Plaintiff; by failing  
20 to investigate or otherwise confirm or deny such facts about ROCHESTER; by failing to tell or  
21 concealing from Plaintiff, their parents, guardians and law enforcement officials that  
22 ROCHESTER was or may have been sexually harassing and abusing minors; by failing to tell or  
23 concealing from Plaintiff's parents, guardians or law enforcement officials that Plaintiff was or  
24 may have been sexually harassed, assaulted and abused after Defendants knew or should have  
25 known that ROCHESTER may have sexually harassed and abused Plaintiff or others, thereby  
26 enabling Plaintiff to continue to be endangered and sexually harassed, and abused, and/or creating  
27 the circumstance where Plaintiff was less likely to receive medical/mental health care or treatment,  
28 thus exacerbating the harm done to Plaintiff; and/or by holding out ROCHESTER to Plaintiff and

to his parents as being in good standing and trustworthy. Defendants cloaked within the facade of normalcy, Defendants' conduct, contact and actions with Plaintiff and/or disguised the nature of the sexual harassment and abuse and contact.

101. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to investigate or otherwise confirm or deny such facts, failing to reveal such facts to Plaintiff, the community of the school, students, minors, and law enforcement agencies, placing and continuing to place ROCHESTER in positions of trust and authority within Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT, and holding out, and continuing to hold out ROCHESTER to Plaintiff, the public, the community of the school, students, minors, and law enforcement agencies as being in good standing and trustworthy.

102. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to adequately monitor and supervise ROCHESTER and/or stopping ROCHESTER from committing wrongful sexual acts with minors including Plaintiff. This belief is founded on the fact that Plaintiff was informed and believed that the Principal and other faculty members at the Clement Middle School and District officials, including REDLANDS UNIFIED SCHOOL DISTRICT had suspected the abuse and/or harassment was occurring at the time, and failed to investigate into the matter further despite the knowledge of the impropriety of the acts of ROCHESTER. Based on these facts, Defendants knew and/or should have known of ROCHESTER's incapacity to supervise and/or stop employees of Defendants from committing wrongful sexual acts with minors.

103. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through their employees and agents, were child care custodians and were under a statutory duty to report known or suspected incidents of sexual harassment or abuse of minors to a child protective agency, pursuant to California Penal Code § 11166, and/or not to impede the filing of any such report.

104. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew or should have known that ROCHESTER, their agent, teacher, advisor, mentor and other counselors, advisors, coaches, teachers and staff of Defendants had sexually abused, or harassed, or caused harm, and other injuries to minors, including Plaintiff, giving rise to a duty to report such conduct under California Penal Code § 11166.

105. Plaintiff is informed and believes, and on that basis alleges, that Defendants also knew, or should have known in the exercise of reasonable diligence, that an undue risk to minors, including Plaintiff, existed because Defendants did not comply with California's mandatory reporting requirements.

106. By failing to report the continuing harassment and abuse, which Defendants and each of them knew or should have known, and by ignoring the fulfillment of the mandated compliance with the reporting requirements provided under California Penal Code § 11166, Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual harassment and abuse.

107. Plaintiff was a member of the class of persons for whose protection California Penal Code § 11166 was specifically adopted to protect.

108. Had Defendants adequately reported the abuse and harassment of Plaintiff and other minors as required by California Penal Code § 11166, further harm to Plaintiff and other minors would have been avoided.

109. As a proximate result of Defendants' failure to follow the mandatory reporting requirements of California Penal Code § 11166, Defendants wrongfully denied Plaintiff and other minors, the intervention of child protection services. Such public agencies would have changed the then-existing arrangements and conditions that provided the access and opportunities for the abuse and sexual harassment of Plaintiff by ROCHESTER.

110. The physical, mental, and emotional damages and injuries resulting from the sexual abuse and harassment of Plaintiff by ROCHESTER, were the type of occurrence and injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.

111. As a result, Defendants' failure to comply with the mandatory reporting requirements of California Penal Code section 11166 also constituted a per se breach of Defendants' duties to Plaintiff.

112. As a result of the above-described conduct, Plaintiff have suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of

emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**SECOND CAUSE OF ACTION**  
**NEGLIGENT SUPERVISION**

(Against Defendant REDLANDS UNIFIED SCHOOL DISTRICT Only and Does 1 through 100)

113. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

114. As an educational institution for minors, where all of the students are entrusted to the counselors, advisors, mentors, coaches, faculty members, administrators and teachers, Defendants expressly and implicitly represented that these individuals, including ROCHESTER, were not a sexual threat to children and others who would fall under ROCHESTER's influence, control, direction, and guidance.

115. Defendants negligently failed to supervise ROCHESTER in his position of trust and authority as a teacher, advisor and mentor, and/or other authority figure, where he was able to commit wrongful acts against the Plaintiff. Defendants failed to provide reasonable supervision of ROCHESTER. Defendants further failed to take reasonable measures to prevent sexual harassment, molestation, and abuse of minors, including Plaintiff.

116. Plaintiff is informed and believes, and on that basis alleges, that at no time during the periods of time alleged did Defendants have in place a system or procedure to reasonably investigate, supervise and/or monitor teachers, including ROCHESTER, to prevent pre-sexual grooming and/or sexual harassment, and abuse of children, nor did they implement a system or procedure to oversee or monitor conduct toward minors, students and others in Defendants' care.

117. Defendants and each of them were or should have been aware and understood how vulnerable children were to sexual harassment and abuse by counselors, advisors, mentors, coaches, teachers and other persons of authority within Defendants.

118. Defendants' conduct was a breach of their duties to Plaintiff.

119. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through their employees and agents, were child care custodians and were under a statutory duty to report known or suspected incidents of sexual abuse of minors to a child protective agency, pursuant to California Penal Code section 11166, and/or not to impede the filing of any such report.

120. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew or should have known that their agent, counselor, advisor, and mentor ROCHESTER, and other teachers and staff of Defendants, had sexually abused or caused harm, and other injuries to minors, including Plaintiff, giving rise to a duty to report such conduct under California Penal Code section 11166.

121. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew, or should have known in the exercise of reasonable diligence, that an undue risk to minors, including Plaintiff, existed because Defendants did not comply with California's mandatory reporting requirements.

122. By failing to report the continuing abuse, which Defendants and each of them knew or should have known, and by ignoring the fulfillment of the mandated compliance with the reporting requirements provided under California Penal Code section 11166, Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual harassment and abuse.

123. Plaintiff was a member of the class of persons for whose protection California Penal Code section 11166 was specifically adopted to protect.

124. Had Defendants adequately reported the sexual abuse and harassment of Plaintiff and other minors as required by California Penal Code section 11166, further harm to Plaintiff would have been avoided.

125. As a proximate result of Defendants' failure to follow the mandatory reporting requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and other minors the intervention of child protection services. Such public agencies would have

1 changed the then-existing arrangements and conditions that provided the access and opportunities  
2 for the sexual harassment and abuse of Plaintiff by ROCHESTER.

3 126. The physical, mental, and emotional damages and injuries resulting from the sexual  
4 harassment and abuse of Plaintiff by ROCHESTER, were the type of occurrence and injuries that  
5 the Child Abuse and Neglect Reporting Act was designed to prevent.

6 127. As a result, Defendants' failure to comply with the mandatory reporting requirements of  
7 California Penal Code section 11166 also constituted a per se breach of Defendants' duties to  
8 Plaintiff.

9 128. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to  
10 adequately monitor and supervise ROCHESTER and/or stopping ROCHESTER from committing  
11 wrongful sexual harassment and abuse of minors including Plaintiff. This belief is founded on the  
12 fact that Plaintiff was informed and believed that the administration at Clement Middle School and  
13 REDLANDS UNIFIED SCHOOL DISTRICT had suspected the abuse was occurring at the time,  
14 and failed to investigate into the matter further. Based on these facts, Defendants knew and/or  
15 should have known of ROCHESTER's incapacity to supervise and/or stop employees of  
16 Defendants from committing wrongful sexual acts with minors.

17 129. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer  
18 great pain of mind and body, shock, emotional distress, physical manifestations of emotional  
19 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;  
20 has suffered and continues to suffer and was prevented and will continue to be prevented from  
21 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings  
22 and earning capacity, and/or has incurred and will continue to incur expenses for medical and  
23 psychological treatment, therapy, and counseling.

24 **THIRD CAUSE OF ACTION**  
**NEGLIGENT HIRING/RETENTION**

25 (Against Defendant REDLANDS UNIFIED SCHOOL DISTRICT Only and Does 1 through 100)

26 130. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
27 contained herein above as though fully set forth and brought in this cause of action.

28 131. By virtue of Plaintiff's special relationship with Defendants and each of them, and

1 Defendants' relation to ROCHESTER, Defendants owed Plaintiff a duty to not hire and/or retain  
2 ROCHESTER, given his dangerous and exploitive propensities, which Defendants knew or  
3 reasonably should have known had they engaged in a meaningful and adequate investigation of his  
4 background prior to hiring him.

5 132. As an educational institution and operator of a school, where all of the students are  
6 minors entrusted to the schools and its employees and agents, Defendants expressly and implicitly  
7 represented that the counselors, advisors, mentors, coaches, teachers and others, including  
8 ROCHESTER, were not a sexual threat to children and others who would fall under  
9 ROCHESTER's influence, control, direction, and guidance.

10 133. Plaintiff is informed and believes, and on that basis alleges, that at no time during the  
11 periods of time alleged did Defendants have in place a system or procedure to reasonably  
12 investigate, supervise and/or monitor teachers, including ROCHESTER, to prevent pre-sexual  
13 grooming and/or sexual harassment and abuse of children, nor did they implement a system or  
14 procedure to oversee or monitor conduct toward minors, students and others in Defendants' care.

15 134. Defendants and each of them were or should have been aware and understood how  
16 vulnerable children were to sexual harassment, and abuse by teachers and other persons of  
17 authority within the control of Defendants.

18 135. Plaintiff is informed, and believes, and on that basis alleges, that the Defendants were  
19 put on notice, and should have known that ROCHESTER had previously engaged in dangerous  
20 and inappropriate conduct, and that it was, or should have been foreseeable that he was engaging,  
21 or would engage in illicit sexual activities with Plaintiff, and others, under the cloak of his  
22 authority, confidence, and trust, bestowed upon him through Defendants.

23 136. Defendants were placed on actual and/or constructive notice that ROCHESTER had  
24 engaged in dangerous and inappropriate conduct, both before his employment within Defendants,  
25 and during that employment. Plaintiff is informed, and thereon alleges, that other third parties,  
26 minors, students, law enforcement officials and/or parents informed Defendants of inappropriate  
27 conduct committed by ROCHESTER.

28 137. Even though Defendants knew or should have known of these activities by

1 ROCHESTER, Plaintiff is informed that Defendants failed to use reasonable care in investigating  
2 ROCHESTER and did nothing to investigate, supervise or monitor ROCHESTER to ensure the  
3 safety of the minor students.

4 138. Defendants' conduct was a breach of their duty to Plaintiff.

5 139. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through their  
6 employees and agents, were child care custodians and were under a statutory duty to report known  
7 or suspected incidents of sexual abuse of minors to a child protective agency, pursuant to  
8 California Penal Code section 11166, and/or not to impede the filing of any such report.

9 140. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew or  
10 should have known that their agent, counselor, advisor and mentor, ROCHESTER, and other  
11 employees, agents, teachers and staff within Defendants, had sexually abused or caused harm, and  
12 other injuries to minors, including Plaintiff, giving rise to a duty to report such conduct under  
13 California Penal Code section 11166.

14 141. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew, or  
15 should have known in the exercise of reasonable diligence, that an undue risk to minors, including  
16 Plaintiff, existed because Defendants did not comply with California's mandatory reporting  
17 requirements.

18 142. By failing to report the continuing harassment and abuse, which Defendants and each of  
19 them knew or should have known, and by ignoring the fulfillment of the mandated compliance  
20 with the reporting requirements provided under California Penal Code section 11166, Defendants  
21 created the risk and danger contemplated by the Child Abuse and Neglect Reporting Act, and as a  
22 result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual harassment and  
23 abuse.

24 143. Plaintiff was a member of the class of persons for whose protection California Penal  
25 Code section 11166 was specifically adopted to protect.

26 144. Had Defendants adequately reported the sexual harassment and abuse of Plaintiff and  
27 other minors as required by California Penal Code section 11166, further harm to Plaintiff and  
28 other minors would have been avoided.

145. As a proximate result of Defendants' failure to follow the mandatory reporting requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and other minors the intervention of child protection services. Such public agencies would have changed the then-existing arrangements and conditions that provided the access and opportunities for the harassment and abuse of Plaintiff by ROCHESTER.

146. The physical, mental, and emotional damages and injuries resulting from the harassment and abuse of Plaintiff by ROCHESTER, were the type of occurrence and injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.

147. As a result, Defendants' failure to comply with the mandatory reporting requirements of California Penal Code section 11166 also constituted a per se breach of Defendants' duties to Plaintiff.

148. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

#### **FOURTH CAUSE OF ACTION** **NEGLIGENT FAILURE TO WARN, TRAIN OR EDUCATE**

(Against Defendant REDLANDS UNIFIED SCHOOL DISTRICT Only and Does 1 through 100)

149. Plaintiff re-alleges and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

150. Defendants owed Plaintiff a duty to take reasonable protective measures to protect Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and abuse by ROCHESTER by properly warning, training or educating Plaintiff and other students about how to avoid such a risk.

151. Defendants breached their duty to take reasonable protective measures to protect Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and

1 abuse by ROCHESTER, such as the failure to properly warn, train or educate Plaintiff and other  
2 students about how to avoid such a particular risk that ROCHESTER posed-of sexual misconduct.

3 152. Defendants breached their duty to take reasonable protective measures to protect  
4 Plaintiff and other minor students from the risk of childhood sexual harassment, molestation,  
5 assault and abuse by ROCHESTER, by failing to supervise and stop employees of Defendants,  
6 including ROCHESTER, from committing wrongful sexual acts with minors, including Plaintiff.

7 153. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through their  
8 employees and agents, were child care custodians and were under a statutory duty to report known  
9 or suspected incidents of sexual molestation or abuse of minors to a child protective agency,  
10 pursuant to California Penal Code section 11166, and not to impede the filing of any such report.

11 154. Defendants knew or should have known that their agent, teacher, tutor, advisor,  
12 counselor and mentor, ROCHESTER, and other teachers and staff of Defendants, had sexually  
13 molested, abused or caused touching, battery, harm, and other injuries to minors, including  
14 Plaintiff, giving rise to a duty to report such conduct under Penal Code section 11166.

15 155. Defendants knew or should have known in the exercise of reasonable diligence, that an  
16 undue risk to minors, including Plaintiff, existed because Defendants did not comply with  
17 California's mandatory reporting requirements.

18 156. By failing to report the continuing molestations and abuse, which Defendants knew or  
19 should have known about, and by ignoring the fulfillment of the mandated compliance with the  
20 reporting requirements provided under Penal Code section 11166, Defendants created the risk and  
21 danger contemplated by the Child Abuse and Neglect Reporting Act, and as a result, unreasonably  
22 and wrongfully exposed Plaintiff and other minors to sexual molestation and abuse.

23 157. Plaintiff was a member of the class of persons for whose protection Penal Code section  
24 11166 was specifically adopted to protect.

25 158. Had Defendants adequately reported the molestation of Plaintiff and other minors as  
26 required by Penal Code section 11166, further harm to Plaintiff and other minors would have been  
27 avoided.  
28

159. As a proximate result of Defendants' failure to follow the mandatory reporting requirements of Penal Code section 11166, Defendants wrongfully denied Plaintiff and other minors the intervention of child protection services. Such public agencies would have changed the then-existing arrangements and conditions that provided the access and opportunities for the molestation of Plaintiff by ROCHESTER.

160. The physical, mental, and emotional damages and injuries resulting from the sexual molestation of Plaintiff by ROCHESTER, were the type of occurrence and injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.

161. As a result of Defendants' failure to comply with the mandatory reporting requirements of California Penal Code section 11166, also constitutes a per se breach of Defendants' duties to Plaintiff.

162. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**FIFTH CAUSE OF ACTION**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

(Against All Defendants and Does 1 through 100)

163. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

164. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme. Among other things, Defendants tolerated and permitted an individual in the position of ROCHESTER to:

- a. Close and lock his door with male students present therein, including Plaintiff;
- b. Permitting ROCHESTER to have students in his classroom, excused from other classrooms;

- c. To drive students home and off campus from the Clement Middle School campus;
- d. Permitting ROCHESTER to discuss sex and sexual topics with minors in an effort to groom them;
- e. Permitting ROCHESTER to take students on dates;
- f. With knowledge of ROCHESTER's dangerous propensities for sexual misconduct, removing the complaining students, but allowing ROCHESTER to remain in his position as a teacher.

165. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme.

Among other things, Defendants tolerated and permitted individuals in Administration to:

- a. Dissuade victims from reporting or going to the police;
- b. Dissuade victims from going to the press;
- c. Destroying evidence or failing to preserve evidence;
- d. Allowing a perpetrator to remain in his position with no warning, after questioning him and students about sexual misconduct with students; and
- e. Allowing students to break the rules in order to be abused by ROCHESTER.

166. A reasonable person would not expect or tolerate the sexual harassment and abuse of Plaintiff by ROCHESTER. Plaintiff had great trust, faith and confidence in ROCHESTER and in Defendants, which, by virtue of ROCHESTER's and Defendants' wrongful conduct, turned to fear.

167. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme.

168. A reasonable person would not expect or tolerate Defendants putting ROCHESTER in a position of authority at Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT, which enabled ROCHESTER to have access to minor students so that he could commit wrongful sexual acts, including the conduct described herein, with minors, including Plaintiff. Plaintiff had great trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

169. A reasonable person would not expect or tolerate Defendants to be incapable of supervising and/or stopping employees of Defendants, including ROCHESTER, from committing wrongful sexual acts with minors, including Plaintiff, or to supervise ROCHESTER. Plaintiff had great trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

170. ROCHESTER's and Defendants' conduct described herein was intentional and malicious and done for the purpose of causing or with the substantial certainty that Plaintiff would suffer humiliation, mental anguish, and emotional and physical distress.

171. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

172. Plaintiff is informed and based thereon alleges that the conduct of ROCHESTER was oppressive, malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of others, and was carried out with a conscious disregard of Plaintiff's right to be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages against this Defendant in an amount appropriate to punish and set an example of ROCHESTER.

#### **SIXTH CAUSE OF ACTION** **ASSAULT**

(Against Defendant ROCHESTER Only and Does 1 through 100)

173. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

174. Defendant ROCHESTER, in doing the things herein alleged all while ROCHESTER was acting in the course and scope of his agency/employment with Defendants, put Plaintiff in imminent apprehension of such contact or was intended to put Plaintiff in imminent apprehension of such contact.

175. In doing the things herein alleged, Plaintiff was put in imminent apprehension of a harmful or offensive contact by ROCHESTER, and actually believed ROCHESTER had the ability to make harmful or offensive contact with Plaintiff's person.

176. Plaintiff did not consent to ROCHESTER's intended harmful or offensive contact with Plaintiff's person, or intent to put Plaintiff in imminent apprehension of such contact. Additionally, because Plaintiff was a minor during the time herein alleged, they lacked the ability to consent to sexual contact with any person, especially with a mentor, teacher, coach and counselor at the school they attended.

177. In doing the things herein alleged, ROCHESTER violated Plaintiff's rights, pursuant to Civil Code section 43, of protection from bodily restraint or harm, and from personal insult. In doing the things herein alleged, ROCHESTER violated his duty, pursuant to Civil Code section 1708, to abstain from injuring the person of Plaintiff or infringing upon their rights.

178. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

179. Plaintiff is informed and based thereon alleges that the conduct of Defendant ROCHESTER was oppressive, malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of others, and was carried out with a conscious disregard of Plaintiff's right to be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages against this Defendant in an amount appropriate to punish and set an example of him.

**SEVENTH CAUSE OF ACTION**  
**SEXUAL BATTERY (C.C. §1708.5)**

(Against Defendant ROCHESTER Only and Does 1 through 100)

180. Plaintiff re-allege and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

181. During Plaintiff's time as minor students at REDLANDS UNIFIED SCHOOL DISTRICT, Clement Middle School and DOES 1 through 100, Defendant ROCHESTER intentionally, recklessly and wantonly did acts which were intended to, and did result in harmful and offensive contact with intimate parts of Plaintiff's persons, including but not limited to Defendant ROCHESTER: engaging in sexual touching, contact, and conduct with the Plaintiff.

182. Defendant ROCHESTER did the aforementioned acts with the intent to cause a harmful or offensive contact with an intimate part of Plaintiff's persons, and would offend a reasonable sense of personal dignity. Further, said acts did cause a harmful or offensive contact with an intimate part of Plaintiff's person that would offend a reasonable sense of personal dignity.

183. Because of ROCHESTER's position of authority over Plaintiff, and Plaintiff's mental and emotional state, and Plaintiff's young age, under the age of consent, Plaintiff was unable to, and did not, give meaningful consent to such acts.

184. As a direct, legal and proximate result of the acts of Defendant ROCHESTER, Plaintiff sustained serious and permanent injuries to his person, all to his damage in an amount to be shown according to proof and within the jurisdiction of the Court.

185. As a direct result of the sexual abuse by ROCHESTER, Plaintiff has difficulty in reasonably or meaningfully interacting with others, including those in positions of authority over Plaintiff including supervisors, and in intimate, confidential and familial relationships, due to the trauma of childhood sexual abuse inflicted upon them by Defendants. This inability to interact creates conflict with Plaintiff's values of trust and confidence in others, and has caused Plaintiff substantial emotional distress, anxiety, nervousness and fear. As a direct result of the molestation by ROCHESTER, Plaintiff have had issues with his personal lives, as Plaintiff have issues with trust and have difficulty maintaining relationships. These feelings have caused Plaintiff substantial emotional distress, anxiety, nervousness and fear.

186. Plaintiff is informed and based thereon allege that the conduct of Defendant was oppressive, malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of others, and was carried out with a conscious disregard of his right to be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to

California Civil Code section 3294, entitling Plaintiff to punitive damages against Defendant in an amount appropriate to punish and set an example of ROCHESTER.

**EIGHTH CAUSE OF ACTION**  
**SEXUAL HARASSMENT: (C.C. § 51.9)**

(Against All Defendants and Does 1 through 100)

187. Plaintiff re-allege and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

188. Education Code section 220 states "No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid."

189. Education Code section 201 states "All pupils have the right to participate fully in the educational process, free from discrimination and harassment [...] California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity [...] Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution [...] There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools [...] It is the intent of the Legislature that this chapter shall be interpreted as consistent with [...] Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.) [...] the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes."

190. The California Supreme Court has determined: "Responsibility for the safety of public school students is not borne solely by instructional personnel. School principals and other

supervisory employees, to the extent their duties include overseeing the educational environment and the performance of teachers and counselors, also have the responsibility of taking reasonable measures to guard pupils against harassment . . .” C.A. v. William S. Hart Union High School Dist. et. al., (2012) 53 Cal. 4th 861, 871.

191. “A principal is liable when it ratifies an originally unauthorized tort. The failure to discharge an agent or employee may be evidence of ratification. . . If the employer, after knowledge or opportunity to learn of the agent's misconduct, continues the wrongdoer in service, the employer may become an abettor and may make himself liable in punitive damages.” Murillo v. Rite Stuff Foods Inc., (1998) 65 Cal. App. 4th 833, 852 (internal citations omitted).

192. During Plaintiff's time as a student at Clement Middle School, Defendant ROCHESTER intentionally, recklessly and wantonly made sexual advances, solicitations, requests, demands for sexual compliance of a hostile nature based on Plaintiff's gender that were unwelcome, pervasive and severe, including but not limited to Defendant ROCHESTER: sexually abusing, molesting and touching the Plaintiff, all while ROCHESTER was acting in the course and scope of his agency/employment with Defendants, and each of them.

193. The incidents of abuse outlined herein above took place while Plaintiff was under the control of ROCHESTER, in his capacity and position teacher, advisor and mentor and while acting specifically on behalf of Defendants.

194. During Plaintiff's time as a student at Clement Middle School, Defendant ROCHESTER, intentionally, recklessly and wantonly did acts which resulted in psychological harm to the Plaintiff, including but not limited to, using his position as a teacher, coach, advisor, and mentor to sexually harass and abuse the Plaintiff, and to use his authority and position of trust to exploit the Plaintiff emotionally.

195. Because of Plaintiff's relationship with ROCHESTER as a student at Clement Middle School and the REDLANDS UNIFIED SCHOOL DISTRICT, and Plaintiff's young age as a minor student, Plaintiff was unable to easily terminate the student-teacher, student-advisor, and student-mentor relationships they had with Defendant ROCHESTER.

196. Because of ROCHESTER's position of authority over Plaintiff, and Plaintiff's mental and emotional state, and Plaintiff's young age under the age of consent, Plaintiff was unable to, and did not give meaningful consent to such acts.

197. Even though the Defendants knew or should have known of these activities by Defendant ROCHESTER, Defendants did nothing to investigate, supervise or monitor Defendant ROCHESTER to ensure the safety of the minor students, but instead ratified such conduct by retaining ROCHESTER in employment and retaining the benefits of his employment.

198. Defendants' conduct was a breach of their duties to Plaintiff. Defendant REDLANDS UNIFIED SCHOOL DISTRICT and Clement Middle School ratified ROCHESTER's illicit sexual harassment of Plaintiff by retaining him in employment despite having knowledge (either constructive and/or actual) that the sexual harassment and/or abuse was occurring.

199. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

200. The aforesaid acts directed towards the Plaintiff was carried out with a conscious disregard of Plaintiff's right to be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages against Defendants ROCHESTER in an amount appropriate to punish and set an example of them, and also pursuant to Civil Code section 52. Plaintiff is also entitled to attorney's fees and costs from Defendants ROCHESTER and REDLANDS UNIFIED SCHOOL DISTRICT pursuant to Civil Code section 52, especially given REDLANDS UNIFIED SCHOOL DISTRICT's authorization or ratification of such acts by its managing agents, officers or directors. Plaintiff is also entitled to treble damages for cover ups of the crimes of ROCHESTER.

**NINTH CAUSE OF ACTION**  
**GENDER VIOLENCE: (C.C. § 52.4)**

(Against Defendant ROCHESTER Only and Does 1 through 100)

201. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

202. Defendants' acts committed against Plaintiff, as alleged herein, including the sexual harassment and abuse of the minor Plaintiff constitute gender violence and a form of sex discrimination in that one or more of Defendants' acts would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person of another, committed at least in part based on the gender of the victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

203. Defendants' acts committed against Plaintiff, as alleged herein, including the sexual harassment and abuse of the minor Plaintiff constitutes gender violence and a form of sex discrimination in that Defendants' conduct caused a threatened physical intrusion or physical invasion of a sexual nature upon Plaintiff under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

204. As a proximate result of Defendant ROCHESTER's acts, Plaintiff is entitled to actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief pursuant to Civil Code section 3294 and Civil Code section 53. Plaintiff is also entitled to an award of attorney's fees and costs pursuant to Civil Code § 52.4, against Defendant ROCHESTER.

**TENTH CAUSE OF ACTION**  
**SEXUAL ABUSE AND HARASSMENT IN THE EDUCATIONAL ENVIRONMENT**  
**(EDUCATIONAL CODE § 220)**

(Against REDLANDS UNIFIED SCHOOL DISTRICT Only and Does 1 through 100)

205. The Plaintiff re-allege and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

206. The Plaintiff was harmed by being subjected to harassment at Defendant REDLANDS UNIFIED SCHOOL DISTRICT and under administrators and DOES 1 through 100 because of their gender and Defendants are responsible for that harm.

207. The Plaintiff suffered harassment that was so severe, pervasive, and offensive that it effectively deprived the Plaintiff of the right of equal access to educational benefits and opportunities.

208. Plaintiff is informed and believes, and on that basis alleges, that Defendants had actual knowledge that this sexual harassment, abuse, and molestation was occurring. Specifically, Defendants had knowledge of the following facts:

- a. REDLANDS UNIFIED SCHOOL DISTRICT's notice of the danger presented by ROCHESTER;
- b. Defendant ROCHESTER's investigation by REDLANDS UNIFIED SCHOOL DISTRICT for sexual misconduct involving minors;
- c. Defendant ROCHESTER's propensity to discuss sex with minors;
- d. Defendant ROCHESTER having students in his classroom at all hours.

209. In the face of this knowledge of sexual abuse, harassment, and molestation that was being perpetrated upon the Plaintiff by ROCHESTER (as described above), Defendants REDLANDS UNIFIED SCHOOL DISTRICT and ROCHESTER acted with deliberate indifference towards responding to these alarms and preventing further abuse. Defendants REDLANDS UNIFIED SCHOOL DISTRICT allowed ROCHESTER to remain in contact with minor children, in order to sexually harass and abuse the Plaintiff. It was not until the Plaintiff and others came forward and reported ROCHESTER to law enforcement that ROCHESTER was removed from the school environment, and eventually arrested.

210. As a result of the above-described conduct, the Plaintiff suffered and continue to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

**ELEVENTH CAUSE OF ACTION**  
**BREACH OF FIDUCIARY DUTY**

(Against all Defendants and Does 1 through 100)

1 211. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
2 contained herein above as though fully set forth and brought in this cause of action.

3 212. Defendants, as school teachers, staff, faculty, administrators and/or REDLANDS  
4 UNIFIED SCHOOL DISTRICT and/or Clement Middle School officials were in a fiduciary  
5 relationship with Plaintiff, owing them a special duty of due care. All Defendants (by and  
6 through their agents) are mandated reporters with respect to claims of child abuse and child safety.

7 213. Moreover, Defendants owed the parents of the Plaintiff a statutory, common law and  
8 constitutional duty to protect them and guarantee their safety at school. The parents of the Plaintiff  
9 also have a constitutionally guaranteed interest in the rearing and upbringing of their minor  
10 children, including but not limited to, the ability to ensure their child's safety both at home and at  
11 school.

12 214. The Defendants also owed a special duty to the parents of the Plaintiff. As direct victims  
13 for failure to notify of abuse of their minor children (See, Phyllis P. v. Claremont Unified School  
14 District, 183 Cal. App. 3d at 1193) which held that a school district had a special relationship with  
15 a parent because the parent was the "real and foreseeable" victim of the defendants' negligent  
16 conduct. Direct victims may bring claims where there was a negligent breach of a duty arising out  
17 of a preexisting relationship. Any breach committed by the Defendants violates this special  
18 relationship and duty owed to the parents of the Plaintiff.

19 215. Defendants breached their fiduciary duty by failing to properly supervise ROCHESTER  
20 and take appropriate steps to prevent the lewd and lascivious conduct perpetrated by  
21 ROCHESTER against the Plaintiff. Defendants also failed to report ROCHESTER pursuant to  
22 Defendants' policy. In addition, Defendants failed to report ROCHESTER's abuse or promptly  
23 notify the parents of the Plaintiff or their minor children.

24 216. As a result of the above-described conduct, Plaintiff suffered and continues to suffer  
25 great pain of mind and body, shock, emotional distress, physical manifestations of emotional  
26 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life;  
27 has suffered and continues to suffer and were prevented and will continue to be prevented from  
28 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings

and earning capacity, and have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

217. In subjecting the Plaintiff to the wrongful treatment herein described, Defendants ROCHESTER acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, so as to constitute malice and oppression under California Civil Code § 3294. The Plaintiff is therefore entitled to the recovery of punitive damages, in an amount to be determined by the court, against ROCHESTER, in a sum to be shown according to proof.

**TWELFTH CAUSE OF ACTION**  
**CONSTRUCTIVE FRAUD: (C.C. § 1573)**

(Against all Defendants and Does 1 through 100)

218. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

219. By holding themselves out as qualified institutions of learning for children, by holding ROCHESTER out as an agent of Defendants, and by allowing undertaking the academic, psychological and emotional instruction and guidance of the minor Plaintiff through the actions of ROCHESTER, Defendants entered into a fiduciary, special and confidential relationship with Plaintiff.

220. Defendants breached their fiduciary, special and confidential duties to the Plaintiff by the wrongful and negligent conduct described herein above, and by so doing gained an advantage over the Plaintiff in matters relating to their safety, security and health. In breaching such duties, Defendants were able to sustain their status as institutions of high moral repute, preserve their reputation in the community, including their administrators and staff, all at the expense of Plaintiff's further injury and in violation of Defendants' mandatory duties.

221. By virtue of their fiduciary relationship and special relationship with Plaintiff, Defendants owed the Plaintiff a duty to:

- a. Investigate or otherwise confirm or deny such claims of sexual abuse;
- b. Reveal such facts to the Plaintiff, their parents, and caretakers, the school community, and law enforcement agencies;
- c. Refuse to place ROCHESTER and other molesters in positions of trust and authority within Defendants' institutions;

- d. Refuse to hold out ROCHESTER to the school community, students, minors, parents and law enforcement agencies as being in good standing and, trustworthy in keeping with his and their position as a teacher, counselor, advisor, mentor and authority figure;
- e. Refuse to assign ROCHESTER to positions of power within the school and over minor students; and
- f. Disclose to the Plaintiff and their parents, the public, the community, the school, students, minors, and law enforcement agencies the wrongful, tortious, and criminal acts of ROCHESTER.

222. Defendants' breached their respective duties by:

- a. Making no or inadequate investigations of ROCHESTER;
- b. Issuing no warnings about ROCHESTER;
- c. Permitting ROCHESTER to routinely be alone and in control of minors, unsupervised;
- d. Not having adopted a policy to prevent ROCHESTER from routinely having minors and minor students in his unsupervised control;
- e. Making no reports of any allegations of ROCHESTER's dangerous and inappropriate conduct prior to and during his employment at Defendants; and
- f. Assigning and continuing to assign ROCHESTER to duties which placed him in positions of authority and trust over minors, positions in which ROCHESTER could easily isolate and sexually abuse minors.

223. At the time that Defendants engaged in such suppression and concealment of acts, such acts were done for the purpose of causing the Plaintiff to forbear on their rights.

224. Defendants' misconduct did reasonably cause Plaintiff to forbear on their rights.

225. The misrepresentation, suppression and concealment of facts were likely to mislead the Plaintiff and others to believe that Defendants had no knowledge of any charges, or that there were no other charges of unlawful and sexual misconduct against ROCHESTER or others and that there was no need for them to take further action or precaution.

226. The misrepresentation, suppression and concealment of facts by Defendants was likely to mislead the Plaintiff and others to believe that Defendants had no knowledge of the fact that ROCHESTER was a danger to students.

1 227. Defendants knew or should have known at the time they suppressed and concealed the  
2 true facts regarding ROCHESTER and others' dangerous and inappropriate conduct that the  
3 resulting impressions were misleading.

4 228. Defendants suppressed and concealed the true facts with the purpose of: preventing  
5 Plaintiff, his parents, and others, from learning that ROCHESTER and others had been engaging in  
6 dangerous and inappropriate conduct and were continuing to sexually harass, molest and abuse  
7 minors and others under ROCHESTER's and Defendants' control, direction, and guidance, with  
8 complete impunity; inducing people, including the Plaintiff and other benefactors and donors to  
9 participate and financially support Defendants' school and other enterprises of Defendants;  
10 preventing further reports and outside investigations into ROCHESTER's and Defendants'  
11 conduct; preventing discovery of Defendants' own conduct; avoiding damage to the reputations of  
12 Defendants; protecting Defendants' power and status in the community and the academic  
13 community; avoiding damage to the reputation of Defendants and Defendants' institutions; and  
14 avoiding the civil and criminal liability of Defendants, of ROCHESTER, and of others.

15 229. Defendants, with knowledge of the tortious nature of their own and each others' conduct,  
16 gave each other substantial assistance to perpetrate the misrepresentations, fraud and deceit alleged  
17 herein.

18 230. Defendants' suppression and concealment of facts, and in reliance thereon, were induced  
19 to act or induced not to act, exactly as intended by Defendants. Specifically, Plaintiff was induced  
20 to believe that there were no allegations of dangerous or inappropriate behavior of ROCHESTER.  
21 Had Plaintiff and his parents or others known the true facts, they would have not participated  
22 further nor continued to financially support the Defendants' activities alleged herein; they would  
23 have reported the matters to the proper authorities, to other students and their parents so as to  
24 prevent future recurrences; they would not have allowed children, including the Plaintiff, to be  
25 alone with, or have any relationship with ROCHESTER; they would not have allowed children,  
26 including the Plaintiff, to attend or be under the control of Defendants; they would have  
27 undertaken their own investigations which would have led to discovery of the true facts; and they  
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1 would have sought psychological counseling for the Plaintiff, and for other children molested and  
2 abused by ROCHESTER.

3 231. By giving ROCHESTER the position of teacher, counselor, advisor and mentor,  
4 Defendants impliedly represented that ROCHESTER was safe and morally fit to give children  
5 instruction, direction and guidance.

6 232. When Defendants made these representations or non-disclosure of material facts,  
7 Defendants knew or should have known that the facts were otherwise. Defendants knowingly and  
8 intentionally suppressed the material facts that ROCHESTER had engaged in dangerous and  
9 inappropriate conduct, and knew of or learned of conduct, or should have learned of conduct by  
10 ROCHESTER which placed Defendants on notice that ROCHESTER was likely abusing children.  
11 In fact, Defendants had in place a policy and procedure for concealing child abusers as well as  
12 failing to document or report such abuse in direct violation of their mandatory legal duties and  
13 obligations.

14 233. Because of the Plaintiff's young age, and because of the status of ROCHESTER as an  
15 authority figure to the Plaintiff and their parents, Plaintiff was vulnerable to ROCHESTER.  
16 ROCHESTER sought the Plaintiff out, and was empowered by and accepted Plaintiff's  
17 vulnerability. Plaintiff's vulnerability also prevented the Plaintiff from effectively protecting  
18 themselves from the sexual advances of ROCHESTER. The Plaintiff's parent's vulnerability also  
19 prevented them from effectively protecting their child from the sexual advances of ROCHESTER.

20 234. Defendants had the duty to obtain and disclose information relating to misconduct of  
21 ROCHESTER.

22 235. Defendants misrepresented, concealed or failed to disclose information relating to  
23 misconduct of ROCHESTER.

24 236. Defendants knew that they had misrepresented, concealed or failed to disclose  
25 information related to misconduct of ROCHESTER.

26 237. Plaintiff justifiably relied upon Defendants for information relating to misconduct of  
27 ROCHESTER.  
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238. Defendants, in concert with each other and with the intent to conceal and defraud, conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to disclose information relating to the misconduct of ROCHESTER, the inability of Defendants to supervise or stop ROCHESTER from sexually harassing, molesting and abusing the Plaintiff, and their own failure to properly investigate, supervise and monitor his conduct with minors and students.

239. By so concealing, Defendants committed at least one act in furtherance of the conspiracy.

240. As a result of the above-described conduct, Plaintiff have suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

241. In addition, when Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, Plaintiff experienced recurrences of the above-described injuries. In addition, when the Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, the Plaintiff experienced extreme and severe mental anguish and emotional distress that the Plaintiff had been the victim of Defendants' fraud; that Plaintiff had not been able to help other minors being molested because of the fraud, and that the Plaintiff had not been able because of the fraud to receive timely medical treatment needed to deal with the problems the Plaintiff has suffered and continues to suffer as a result of the sexual harassment, molestation and abuse.

242. As a result of the above-described conduct, the Plaintiff suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered ad continues to suffer and were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings

and earning capacity, and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

243. In subjecting Plaintiff to the wrongful treatment herein described, Defendants ROCHESTER acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, so as to constitute malice and oppression under California Civil Code §3294. Plaintiff is therefore entitled to the recovery of punitive damages, in an amount to be determined by the court, against ROCHESTER, in a sum to be shown according to proof.

WHEREFORE, Plaintiff pray for a jury trial and for judgment against Defendants, and each of them, as follows:

#### FOR ALL CAUSES OF ACTION

1. For past, present and future general damages in an amount to be determined at trial;
2. For past, present and future special damages, including but not limited to past, present and future lost earnings, economic damages and others, in an amount to be determined at trial;
3. For appropriate punitive or exemplary damages against Defendant ROCHESTER;
4. For appropriate treble damages for a cover up against REDLANDS UNIFIED SCHOOL DISTRICT;
5. Any appropriate statutory damages;
6. For costs of suit;
7. For interest as allowed by law;
8. For attorney's fees and costs as applicable pursuant to California Code of Civil Procedure §§ 52.4, 1021.4 and 1021.5 against Defendant ROCHESTER; Civil Code §52 against Defendants ROCHESTER and REDLANDS UNIFIED SCHOOL DISTRICT, or otherwise as allowable by law and against REDLANDS UNIFIED SCHOOL DISTRICT pursuant to Title IX;
9. For such other and further relief as the court may deem proper.

1 Dated: May 9, 2022

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MANLY, STEWART &amp; FINALDI

By: Morgan A. Stewart  
MORGAN A. STEWART  
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