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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 **PETER COLOMBO,**

12 Plaintiff,

13 v.

14 **PALO ALTO UNIFIED SCHOOL**
15 **DISTRICT, DON AUSTIN, Individually**
16 **and as Superintendent for PAUSD, LISA**
17 **HICKEY, Individually and as Director of**
18 **Certificated Human Resources for**
19 **PAUSD, AMANDA BARK, Individually**
20 **and as Manager, Policy and Legal**
21 **Compliance for PAUSD, and TRENT**
22 **BAHADURSINGH, individually and as**
23 **Chief of Staff for PAUSD,**

24 Defendants.

Case No. 5:24-cv-909

SECOND AMENDED COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

- 1. Title 42 USC §1983 – Deprivation of Federal Civil Rights
- 2. [Reserved Pending Motion]
- 3. Discrimination Under Title VII
- 4. Discrimination Under FEHA

25 Plaintiff alleges the following Complaint:

INTRODUCTION

26 1. Defendants discriminated against Plaintiff both (1) as a male accused of sexual
27 misconduct by a female accuser and (2) as a white male teacher Defendants wanted to replace
28 with a teacher to advance their Equity Plan.

2. The individual defendants in their individual capacities are sued under Section 1983
for their conduct, which violates Plaintiff’s established federal rights to Due Process under the 5th

1 and 14th Amendments, Due Process under Title IX, and to not be discriminated against based on
2 gender or race under Title IX and Title VII.

3 3. The Court ruled that Defendant Palo Alto Unified School District and the individual
4 defendants sued in their official capacities are entitled to Eleventh Amendment Sovereign
5 Immunity and, therefore, these Section 1983 claims are not alleged against those defendants and
6 in those capacities.

7 4. Sovereign Immunity is waived under Title IX, Title VII and FEHA, so the remaining
8 claims are alleged against all Defendants including the individual defendants in both their official
9 and individual capacities.

10 **PARTIES**

11 5. Plaintiff Peter Colombo is a resident of the State of California who at all relevant
12 times worked as a tenured, certificated teacher and coach for PAUSD in Santa Clara County.

13 6. Defendant PAUSD resides and operates in Santa Clara County.

14 7. Defendant Don Austin is, and all relevant times was, Superintendent at PAUSD and
15 lives and works in Santa Clara County.

16 8. Defendant Lisa Hickey worked at relevant times as Director of Certificated Human
17 Resources for PAUSD in Santa Clara County.

18 9. Defendant Amanda Bark is, and at all relevant times was Manager, Policy and Legal
19 Compliance at PAUSD in Santa Clara County.

20 10. Defendant Trent Bahadursingh is, and at relevant times was, Chief of Staff and
21 Deputy Superintendent of Human Resources at PAUSD in Santa Clara County.

22 11. At all times herein mentioned, Defendants, and each of them, were the supervisors,
23 agents, servants, employees, and joint venturers of each of the remaining Defendants, and were at
24 all times herein mentioned acting within the course, scope, and purpose of said agency,
25 employment, business, and joint venture.

26 12. To the extent that the conduct and omissions alleged herein were perpetrated by one
27 or more of the Defendants, the remaining Defendants confirmed and ratified said conduct and
28 omissions. All allegations made in this complaint to any act or omission on the part of a

1 Defendant or Defendants shall also be deemed to refer to the act and/or omission of each
2 Defendant. At all relevant times, Defendants and each of them were the knowing agents and/or
3 alter egos of one another.

4 13. Defendants and each of their officers, directors and managing agents directed,
5 approved and/or ratified the conduct of each other and of their co-defendants, agents and
6 employees.

7 JURISDICTION

8 14. This action arises under Title 42 of the United States Code, Section 1983 (“Section
9 1983”), Title 42 of the United States Code, Sections 2000e *et seq.* (“Title VII”) and Title 20 of the
10 United States Code, Section 1681 *et seq.* (“Title IX”). Jurisdiction is conferred upon this Court by
11 Title 28 of the United States Code, Sections 1291, 1331, and 1343 under federal question
12 jurisdiction. Supplemental jurisdiction for the claim arising under California Government Code
13 §§ 12900 *et seq.* (“FEHA”) is conferred by Title 28 of the United States Code, Section 1367 in
14 order to conform with “values of judicial economy, convenience, fairness and comity.” *Nishimoto*
15 *v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 715 (9th Cir. 1990).

16 15. The unlawful acts and practices alleged herein occurred in the County of Santa Clara,
17 which is within this judicial district.

18 VENUE

19 16. Plaintiff and Defendants reside and/or work or operate within Santa Clara County,
20 which is also where the actions giving rise to the claims occurred. Venue is proper in the United
21 States District Court for the Northern District of California.

22 DIVISIONAL ASSIGNMENT

23 17. This action should be assigned, and has been assigned, to the San Jose Division,
24 pursuant to Civ. L.R. 3-2 subds. (c) and (e), as this action arises in Santa Clara County.

25 COMMON FACTS

26 18. Defendant PAUSD is a state actor and has adopted policies to discriminate against
27 male teachers, including through actions designed to deprive them of due process mandated under
28 the Education Code and board policies.

1 19. Defendant Austin (Superintendent), Defendant Bahadursingh (Chief of Staff and
2 Asst. Superintendent of Human Resources), Defendant Hickey (Director of Certificated Human
3 Resources), and Defendant Bark (Manager, Policy and Legal Compliance were all state actors in
4 supervisory/managerial positions for Defendant PAUSD.

5 20. Upon information and belief, Defendants, and each of them, discriminated against
6 Plaintiff, based on improper gender bias towards him as a male tenured teacher of 26 years at
7 PAUSD and 28 years as a successful teacher/coach. In so doing, Defendants and each of them
8 breached their duty as public officers to exercise the powers conferred on them with
9 “disinterested skill, zeal, and diligence” (*Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152,
10 1170 (1996) citing *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928)), and also violated the
11 common law, which prohibits public officials from placing their political or personal interests in
12 conflict with their official duties (64 Ops. Cal. Atty. Gen. 795, 797 (1981)).

13 21. Plaintiff Peter Colombo is a tenured certificated teacher and coach with a stellar
14 teaching and coaching history.

15 22. In January of 2022, a report surfaced from the spouse of a former student, which
16 wrongly accused Plaintiff of raping his spouse as a 6th grade student in 2001-2002.

17 23. The accuser stated that the attack occurred some 20 years prior, in the girls locker
18 room at Jordan Middle School (now called Greene Middle School), after her PE class, during
19 lunch period. She further stated the attacker approached her from behind, pinning her underneath
20 him on the narrow wooden bench in the locker room. She said that she did not see nor hear her
21 alleged attacker.

22 24. The accuser testified that she thought Plaintiff was her 6th grade PE teacher. She
23 described her PE teacher as having short hair. Plaintiff was and still is bald. Other PE teachers at
24 Jordan/Greene had short hair at that time. When questioned whether her PE teacher might have
25 been someone other than Plaintiff, she stated “I don’t know. Maybe. I don’t think so.” Bill
26 Giardano, a male PE teacher during the 2001-2002 year was convicted of several counts of
27 student rape that occurred at Jordan/Greene during the 2001-2002 school year. Defendants knew
28 that Giardano’s *modus operandi* was similar to the specifics of the claim asserted by the accuser.

1 25. The accuser's version of the facts changed in significant details over time.

2 26. Defendants knew or should have known, based on evidence readily within their
3 possession, that the report was false, that the described events were improbable and/or that even
4 the preponderance of evidence standard for a Title IX investigation would not be met, due to the
5 following:

- 6 a. The female PE teachers in charge of the girls' PE locker room at Jordan/Greene
7 during the 2001-2002 timeframe, who are still employed at the District, all state
8 the accuser's report is impossible. At the start of the lunch hour they cleared the
9 locker room, locked the doors and worked in their locker room office. At other
10 times, at least one or more of the four female PE teachers were in and around the
11 locker room. Boys/men were never allowed in the girls' locker room.
- 12 b. These female PE teachers also confirm that Plaintiff never engaged in any type of
13 inappropriate sexual conduct towards students and there certainly was never any
14 report of such.
- 15 c. District records evidence that during the 2001-2002 school year, Plaintiff taught
16 6th grade PE at Terman Middle School (now named Fletcher), not at Jordan.
17 However, one or more male teachers with short hair taught 6th grade PE at Jordan.
- 18 d. Upon information and belief, the accuser's 6th grade report card shows that a
19 different male PE teacher was the accuser's 6th grade PE teacher in 2001-2002.
20 This teacher had short hair. Defendants concealed the report card which they
21 described as "deleted by staff" and which has never been produced. District
22 document retention policies maintain that student records dating back into the
23 early 1900s, including grade reports, are preserved in both physical archives and
24 electronic files to ensure that they are available for production to those who have a
25 right to access them.

26 27. Defendants are obligated under federal law to immediately conduct a Title IX
27 investigation regarding alleged sexual misconduct. Such investigations are required to be
28 conducted expeditiously, typically within 60 days, notwithstanding any ongoing criminal

1 investigation. They knew or should have known of this requirement because it was, and still is,
2 incorporated into the District's Board Policies and was further mandated as part of a Department
3 of Education, Office of Civil Rights ("OCR") Audit Resolution Agreement resulting from OCR's
4 audit of the District's prior failures to comply with Title IX required investigations.

5 28. Upon information and belief, Defendants complied with the investigation
6 requirements under Title IX and board policies for every other serious allegation of sexual
7 misconduct against a male accused that they received between 2016 and present, but intentionally
8 and/or recklessly did not investigate in compliance with federal law and board policies in this
9 instance, because they knew it would likely exonerate Plaintiff, a male accused of sexual
10 misconduct, even under the relaxed preponderance of the evidence standard, and thereby prevent
11 any criminal or further administrative proceedings against him.

12 29. Upon information and belief, had there been any substantial evidence to support the
13 false rape claim against Plaintiff, or any similar claim made against a male accused of sexual
14 misconduct, Defendants would have conducted the required investigation to support criminal and
15 further administrative proceedings. Defendants wrongfully chose to ignore their investigation
16 obligations here because not conducting the investigation would better support the female
17 accuser. This tainted process was purposely designed to deny Plaintiff of due process and his
18 presumed innocence because he is a male accused by a female.

19 30. As alleged in greater specific factual detail below, external pressures, internal pattern
20 and practice of bias and specific instances of bias in this case confirm that Defendants engaged in
21 discrimination under Title IX depriving Plaintiff of significant federal rights.

22 31. Defendants engaged in discrimination under Title VII and FEHA both (1) by the
23 manner in which they treated him as a male accused of sexual misconduct by a female accuser
24 and (2) upon information and belief, as a white male teacher Defendants wanted to replace to
25 advance their Equity Plan.

26 32. On January 25, 2024, Defendants' investigator finally interviewed Plaintiff as the last
27 step in the District's investigation and stated that "obviously, there is no way [she] could make a
28 finding that the alleged sexual assault had even occurred." The investigator made this conclusion

1 without having contacted the female PE teachers in charge of the girls' locker room in 2001-
2 2002, without knowing Plaintiff taught three 6th grade PE classes at a different school that year
3 and without knowing that his 6th grade PE classes at Jordan/Greene were taught by a different
4 male PE teacher.

5 33. In the substantial 20 years of experience of the District's investigator, a female former
6 sheriff, sexual misconduct by staff against students always involves significant grooming
7 activities to gain trust and establish a relationship/. N none exists in the accuser's story. She also
8 stated that such misconduct is not carried out through a violent, unsolicited event during school
9 hours where students and teachers would be very likely to witness it.

10 34. Plaintiff filed this action on February 15, 2024, alleging discrimination and violations
11 of his federal rights.

12 35. Because Plaintiff filed this discrimination lawsuit, Defendants did not formally close
13 the investigation until May 28, 2024 even though, upon information and belief, nothing further
14 was done ---the female PE teachers were not contacted, the grade report was not provided to her,
15 etc.; they concealed the investigator's clearly stated findings exonerating him; they did not
16 provide a complete report of the investigation findings and conclusions based thereon as
17 mandated under board policies and federal law as part of mandatory due process; they kept
18 Plaintiff on forced administrative leave for several more months until July 30, 2024; and
19 Defendants then transferred Plaintiff into a non-teaching position that violates the Collective
20 Bargaining Agreement, the California Education Code and anti-retaliation laws.

21 36. The non-teaching position Defendants forced Plaintiff into after he filed the instant
22 discrimination complaint should have been posted or advertised and made available to those who
23 wanted to apply for it. Instead, the position did not even exist when Plaintiff was notified he was
24 being coerced into it. Metadata on the position description, which was provided to Plaintiff one
25 week after he asked for it following being told he had been transferred, shows that a prior position
26 posting from June 9, 2021 was used on August 7, 2024 to create the new position description and
27 comparison to the June 9, 2021 posting on EdJoin reveals the description for Plaintiff's sham,
28 non-teaching position contained no changes from the June 9, 2021 position description. The

1 position description does not even mention PE and discusses curriculum changes for other
2 subjects (e.g., English, Math), and lists required qualifications Plaintiff does not possess.

3 37. Defendants took adverse employment actions against Plaintiff including:

- 4 a. unreasonably extending forced leave for more than 2.5 years;
- 5 b. preventing him from working in his chosen profession;
- 6 c. precluding opportunities to maintain or advance his career;
- 7 d. not paying stipends for coaching and teaching summer school which he
8 consistently previously earned and would have earned but for the unreasonably
9 extended forced leave;
- 10 e. not paying for three months of salary during the delay in CTC's renewal of his
11 credential the delay of which Defendants' conduct caused by their impeding prior
12 investigations, concealing evidence, etc. but while still requiring Plaintiff to
13 comply with all of the terms of his paid leave such as remaining at home waiting
14 for assignment;
- 15 f. forcing to transfer into a non-teaching assignment that he did not apply for, for
16 which he does not meet the listed required qualifications, that is described as
17 having nothing to do with his experience teaching PE, and which is being made up
18 *ad hoc* similar to a "banishment room" punishment in retaliation for filing the
19 instant discrimination complaint. The duties of this include among other things:
20 checking on pool depths, monitoring sand deliveries, picking up shakes for others
21 in the administration office, putting away soccer goals when community teams fail
22 to properly do so following practice--- nothing related to his PE teaching
23 experience and teaching credential.

24 38. In order to deprive Plaintiff of due process guaranteed under federal laws, Defendants
25 ignored and/or recklessly suppressed exculpatory evidence from the female PE teachers in charge
26 of the girls' locker room, records showing another male PE teacher taught Plaintiff's 6th grade PE
27 classes at Jordan/Greene in 2001-2002, the accuser's grade report likely showing Plaintiff was not
28 her 6th grade PE teacher, and delayed then concealed exonerating investigative findings that

1 “obviously there is no way to make a finding that the sexual assault occurred” even under the
2 relaxed preponderance of evidence standard.

3 39. Defendants knew or should have known, based on the suppressed evidence and
4 concealed investigative findings, that Plaintiff is innocent, yet they provided information to the
5 press designed to present the appearance of guilt, which was provided in published comments, in
6 secret discussions as demonstrated in Public Records Act (“PRA”) responses, and in other forms
7 such as overproduction of materials in PRA responses provided to the media that violate
8 Plaintiff’s Constitutional and PRA privacy rights.

9 40. Defendants knew or should have known, based on the suppressed evidence and
10 concealed investigative findings, that Plaintiff is actually innocent, yet their actions since January
11 of 2022 treat Plaintiff as though he were guilty in violation of his right to presumption of
12 innocence and to be treated accordingly.

13 41. Defendants’ unfair and unlawful treatment of Plaintiff, including deprivation of due
14 process and his right to presumption of innocence, and the consequent adverse employment
15 actions is motivated by (1) his being a male accused of sexual misconduct by a female accuser (in
16 line with misandrist policies such as the “Believe Women” Resolution) and (2) his being a white
17 male teacher targeted for an unlawfully pressured early retirement to accelerate the District’s
18 Equity Plan hoping to replace him with a new teacher fitting the District’s desired Equity Profile.

19 42. Defendant’s violations of Plaintiff’s rights under color of state law (as a public school
20 district, school district supervisors/managers, school board members and/or as co-conspirators)
21 resulted in reasonably certain and intended consequences including placing Plaintiff in a state
22 created danger (known severe physical abuse of, and high suicide rates for, incarcerated accused
23 child sex offenders), false imprisonment (solitary confinement in prison, home detention, and
24 continued forced home confinement and prohibiting return to work), wrongful termination of his
25 teaching position, and interference with his career making it impossible for Plaintiff to seek or
26 obtain employment as a school teacher at any other District due to the false rape stain
27 Defendants’ created and refuse to dispel through publishing of the concealed evidence and
28 exonerating investigative findings.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

43. Plaintiff need not exhaust administrative remedies prior to filing his 42 U.S.C § 1983 claims. *Monroe v. Pape*, 365 U.S. 167, 183 (1961) (rev'd on other grounds); *McNeese v. Board of Education*, 373 U.S. 668 (1963); *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982).

44. Right to Sue Letters have been obtained from both federal (EEOC/DOJ) and state (DFEH/CRD) agencies relating to Plaintiff's discrimination claims, and compliance with other government notice of claims procedures are not required. *Williams v. Horvath*, 16 Cal. 3d 834, 842 (1976); *Shah v. County of L.A. Dep't of Health Servs.*, 2008 WL 2676533 (C.D. CA 2008) (citing *Williams v. Horvath*).

45. The Department of Education does not assist claimants with complaints for personal damages under Title IX and does not issue Right to Sue Letters, so there is similarly no exhaustion of administrative remedies requirement for Title IX claims. See *Cannon v. Univ. of Chicago*, 441 U.S. 677, 706 n.41 (1979).

STATUTE OF LIMITATIONS

46. Section 1983 claims, such as those asserted herein, are governed by the two-year statute of limitations for personal injury claims as set forth in California Code of Civil Procedure section 335.1. *Maldonado v. Harris*, 370 F. 3d 945, 954-55 (9th Cir. 2004).

47. Accrual of §1983 claims is governed by federal law. *Wallace v. Kato*, 549 U.S. 384, 388 S. Ct. 1091 (2007). Under federal law, malicious prosecution claims accrue when there are no charges pending against a plaintiff and there is no conviction or relevant finding of misconduct against them. *Roberts v. City of Fairbanks*, 947 F.3d 1191, 1203 (2020); *McDonough v. Smith*, 588 U.S. 109 (2019).

48. Plaintiff's claims, therefore, did not finally and completely accrue until May 28, 2024 when Defendants ultimately notified him that their investigation against him relating to the false rape claim was concluded without any finding of misconduct.

49. The continuing violation doctrine extends the statutes of limitations as Plaintiff alleges (1) a policy and practice of discrimination and (2) a series of related discriminatory acts. See *Green v. L.A. County Superintendent of Sch.*, 883 F. 2d 1472, 1480 (9th Cir. 1989).

1 **COMMON SCHEME**

2 50. Defendants, and each of them, shared in the common objectives of two discrimination
3 schemes against Plaintiff: (1) to deprive Plaintiff of due process and his presumption of
4 innocence, including through fabrication/suppression of evidence and other conduct, because he
5 was a male accused of sexual misconduct by a female (following misandrist notions as expressed,
6 in part, in the “Believe Women” Resolution) and (2) to use the duress created by the claim, which
7 they knew or should have known to be false, and the threat of malicious criminal prosecution and
8 wrongful use of administrative actions to unlawfully coerce or extort Plaintiff, a white male
9 teacher, into early retirement to replace him with a teacher that would accelerate their Equity
10 Plan.

11 51. It is not relevant that any particular Defendant did not know all the details of the
12 conspiracy, or that they did not take part in some of the due process violations. *United*
13 *Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540–41 (9th Cir. 1989) (en banc) (It
14 is sufficient that Defendants “share[d] the common objective of the conspiracy.”)

15 **STATE ACTOR**

16 52. Each Defendant is, and at all relevant times was, a state actor as a local government
17 agency or a state or local government official; and further, since each Defendant conspired with
18 other government officials to deprive Plaintiff of his constitutional rights, they acted under color
19 of state law in doing so. *Tower v. Glover*, 467 U.S. 914, 920 (1984); *Dennis v. Sparks*, 449 U.S.
20 24, 27–28 (1980); *Lugar v. Edmondson*, 457 U.S. 922 (1982). The individual Defendants are sued
21 both in their official and in their individual capacities.

22 **FIRST CLAIM**

23 42 U.S.C. § 1983 – Deprivation of Federal Civil Rights
(Procedural and Substantive Due Process)

24 [Against Each Individual Defendant in Their Individual Capacities]

25 53. Plaintiff re-alleges and incorporates Paragraphs 1-52, as though set forth herein.

26 54. Under Title 42 of the United States Code, Section 1983, Plaintiff asserts violations of
27 the 5th and 14th Amendments to the US Constitution, as depriving Plaintiff of due process of law,
28

1 both procedural and substantive.

2 55. Plaintiff was entitled to a presumption of innocence and to not be discriminatorily
3 prosecuted based on a false accusation totally lacking in evidentiary support.

4 56. Defendants' intentionally and/or recklessly concealed and suppressed exculpatory
5 evidence: (i) the testimony from female PE teachers still employed by the District, who were in
6 charge of the girls' locker room during the relevant 2001-2002 time period and all state the rape
7 claim was false, (ii) Plaintiff's assignment records and related information showing his transfer to
8 a different school to teach three classes of 6th grade PE such that a different male PE taught 6th
9 grade PE classes at Jordan/Green in 2001-2002, and (iii) deleting the accuser's student file with
10 her grade report that likely shows Plaintiff was not her 6th grade PE teacher despite District
11 document retention policies requiring retention of such student files in both electronic and hard
12 copy archives. Further related attempts to fabricate false evidence through: (i) the statement that
13 "staff deleted" the accuser's student file to try and implicate Plaintiff in the destruction of key
14 evidence even though he had no access to it, and (ii) sponsoring the "Unfit to Teach" article to try
15 and portray guilt to the public, as also discussed below, are *per se* violations of Plaintiff's due
16 process rights because of their undue influence and deleterious impact on his right to a fair trial
17 and fair proceedings. *Richards v. County of San Bernadino*, 39 F. 4th 562, 572 (9th Cir. 2022)
18 affirms a right under the Fourteenth Amendment when a plaintiff has been denied their due
19 process right to a fair trial, which is implicated by concealment or suppression of favorable
20 (exculpatory) evidence and/or fabrication of false evidence, and/or when the state actors act in
21 such a way that prejudicial or unequal treatment results and Title IX requires an expeditious,
22 thorough and impartial investigation, which was never provided.

23 57. In January of 2022, a report surfaced from the spouse of a former student, which
24 wrongly accused Plaintiff of raping his spouse as a 6th grade student in 2001-2002.

25 58. The accuser stated the attack occurred 20 years prior, in the girl's locker room at
26 Jordan Middle School (now called Greene Middle School), after her PE class, during lunch
27 period. She stated the attacker approached her from behind, pinning her underneath him on the
28 narrow wooden bench in the locker room. She said she did not see nor hear her alleged attacker.

1 59. The accuser testified that she thought Plaintiff was her 6th grade PE teacher. She
2 described her PE teacher as having short hair. Plaintiff was and still is bald. Other male PE
3 teachers at Jordan/Greene had short hair at that time. When questioned whether her PE teacher
4 might have been someone other than Plaintiff, she stated “I don’t know. Maybe. I don’t think so.”
5 Bill Giardano, a male PE teacher during the 2001-2002 year was convicted of several counts of
6 student rape that occurred at Jordan/Greene during the 2001-2002 school year. Defendants knew
7 that Giardano’s *modus operandi* was similar to the specifics of the claim asserted by the accuser.

8 60. The accuser’s version of the facts changed in significant details over time.

9 61. Defendants knew or should have known, based on evidence readily within their
10 possession, that the report was false, that the described events were extremely unlikely to have
11 occurred and/or that even the preponderance of evidence standard under a Title IX investigation
12 would not be met, due to the following:

- 13 a. The female PE teachers in charge of the girls’ PE locker room at Jordan/Greene
14 during the 2001-2002 timeframe, who are still employed at the District, all state
15 the accuser’s report is impossible. At the start of the lunch hour they cleared the
16 locker room, locked the doors and worked in their locker room office. At other
17 times, at least one or more of the four female PE teachers were in and around the
18 locker room. Boys/men were never allowed in the girls’ locker room.
- 19 b. These female PE teachers also confirm that Plaintiff never engaged in any type of
20 inappropriate sexual conduct towards students and there certainly was never any
21 report of such.
- 22 c. District records evidence that during the 2001-2002 school year, Plaintiff taught
23 6th grade PE at Terman Middle School (now named Fletcher), not at Jordan.
24 However, one or more male teachers with short hair taught 6th grade PE at Jordan.
- 25 d. Upon information and belief, the accuser’s 6th grade report card shows that a
26 different male PE teacher was the accuser’s 6th grade PE teacher in 2001-2002.
27 This teacher had short hair. Defendants concealed the report card which they
28 described as “deleted by staff” and which has never been produced. District

1 document retention policies maintain that student records dating back into the
2 early 1900s, including grade reports, are preserved in both physical archives and
3 electronic files to ensure that they are available for production to those who have a
4 right to access them; and

5 e. Numerous other facts reported by the accuser that are inconsistent with readily
6 discernible facts.

7 62. Defendants had obligations under federal law to immediately conduct a Title IX
8 investigation regarding the alleged sexual misconduct against a staff member who was still
9 employed at the District and including serious allegations that might impact the safety of current
10 students and/or staff. PAUSD Administrative Regulation 5145.71 AR states, “Even if the alleged
11 victim chooses to not file a formal complaint, the Title IX Coordinator shall file a formal
12 complaint in situations in which a safety threat exists.” According to Defendant Don Austin in his
13 public comments this was the precise reason for placing Plaintiff on forced administrative leave.
14 He specifically stated, “The day the allegations came forward, Mr. Colombo was removed from
15 his teaching position [and placed] on paid administrative leave, for the protection of students . . .”

16 63. Accordingly, the investigation was required to have been conducted expeditiously,
17 typically within 60 days notwithstanding any ongoing criminal investigation. Defendants knew
18 or should have known of this requirement because it was, and still is, incorporated into District
19 Board Policies and was further mandated as part of an Office of Civil Rights (“OCR”) Audit
20 Resolution Agreement resulting from OCR’s audit of the District’s prior failures to comply with
21 Title IX in relation to required investigations.

22 64. Upon information and belief, Defendants complied with the investigation
23 requirements under Title IX and board policies for every other serious allegation of sexual
24 misconduct against a male accused that they received between 2016 and present, but intentionally
25 and/or recklessly did not investigate in compliance with federal law and board policies in this
26 instance, because they knew it would likely exonerate Plaintiff, a male accused of sexual
27 misconduct and would thereby potentially inhibit any criminal prosecution or further
28 administrative proceedings against him.

1 65. Defendants wrongfully chose to ignore their investigation obligations here because
2 conducting the investigation, which would result in obtaining exonerating findings in favor of
3 Plaintiff, would not allow them to tilt the process in favor of the female accuser through a tainted
4 criminal investigation and prosecution designed to deny Plaintiff due process and his presumed
5 innocence because he is a male accused of sexual misconduct by a female accuser.

6 66. As alleged in greater specific factual detail below, external pressures, internal pattern
7 and practice of bias and specific instances of bias in this case show Defendants engaged in
8 discrimination, which has deprived Plaintiff of significant federal rights.

9 67. On January 25, 2024, Defendants' investigator finally interviewed Plaintiff as the last
10 step in the District's investigation and stated that "obviously, there is no way [she] could make a
11 finding that the alleged sexual assault had even occurred." The investigator made this conclusion
12 without having contacted the female PE teachers in charge of the girls' locker room in 2001-
13 2002, without knowing Plaintiff taught three 6th grade PE classes at a different school that year
14 and without knowing that his 6th grade PE classes at Jordan/Greene were taught by a different
15 male PE teacher.

16 68. In the substantial 20 years of experience of the District's investigator, a female former
17 sheriff, sexual misconduct by staff against students always involves significant grooming
18 activities to gain trust and establish a relationship/. N none exists in the accuser's story. She also
19 stated that such misconduct is not carried out through a violent, unsolicited event during school
20 hours where students and teachers would be very likely to witness it.

21 69. On May 28, 2024 Defendants' finally terminated their investigation but concealed the
22 investigator's findings exonerating him, which she stated during her interview of Plaintiff; they
23 did not provide a complete report of the investigation findings and conclusions based thereon as
24 mandated under board policies and federal law as part of mandatory due process (See e.g., 1312.3
25 AR, 1312.3 BP, 5145.71 AR, 5145.7 BP and federal statutes and case law cited therein); and, they
26 kept Plaintiff on forced administrative leave for several more months until July 30, 2024.

27 70. In order to deprive Plaintiff of due process guaranteed under federal laws, Defendants
28 ignored and/or recklessly suppressed exculpatory evidence from the female PE teachers in charge

1 of the girls' locker room, records and related information showing another male PE teacher taught
2 Plaintiff's 6th grade PE classes at Jordan/Greene in 2001-2002, the accuser's grade report likely
3 showing Plaintiff was not her 6th grade PE teacher, and first delayed and then concealed
4 exonerating investigative findings that "obviously there is no way to make a finding that the
5 sexual assault occurred" even under the relaxed preponderance of evidence standard.

6 71. Plaintiff is entitled to a presumption of innocence and Defendants knew or should
7 have known, based on the suppressed evidence and concealed investigative findings, that Plaintiff
8 is innocent, yet they provided information to the press designed to present the appearance of guilt,
9 which was provided in published comments, in secret discussions as demonstrated in Public
10 Records Act ("PRA") responses, and in other forms such as overproduction of materials in PRA
11 responses provided to the media that violate Plaintiff's Constitutional and PRA privacy rights.

12 72. Defendants knew or should have known, based on the suppressed evidence and
13 concealed investigative findings, that Plaintiff is actually innocent, yet their actions, beginning in
14 January of 2022 and continuing to present, treat Plaintiff as though he were guilty in violation of
15 his right to presumption of innocence and to be treated accordingly.

16 73. Defendants also sponsored a false light media campaign against Plaintiff by:

- 17 a. Upon information and belief, providing financial support to the media outlet to
18 gain their assistance in publishing an article with severely negative treatment of
19 Plaintiff designed to malign him and lend an appearance of guilt for the wrongful
20 criminal charges;
- 21 b. engaging in open and secretive discussions with reporters in violation of due
22 process under Title IX and board policies; and
- 23 c. violating the required balancing test set forth in Gov.'t Code §7922.000 by
24 releasing records to a reporter in response to a Public Records Act request that are
25 protected from disclosure by rights to privacy of information under the California
26 Constitution, Article I – see *Braun v. City of Taft*, 154 Cal.App.3d 332 (1984) and
27 further shielded as private, medical or similar records protected from unwarranted
28 invasion of privacy under the PRA – see e.g., *Versaci v. Superior Court*, 127

1 Cal.App.4th 805 (2005))

2 74. Defendants' unfair and unlawful treatment of Plaintiff, including deprivation of due
3 process and his right to presumption of innocence, and the consequent adverse employment
4 actions is motivated by (1) his being a male accused of sexual misconduct by a female accuser (in
5 line with misandrist policies such as the "Believe Women" Resolution) and (2) his being a white
6 male teacher targeted for an unlawfully pressured early retirement to accelerate the District's
7 Equity Plan hoping to replace him with a new teacher fitting the District's desired Equity Profile.

8 75. The same external pressures impacting how schools conducted investigations of
9 alleged sexual misconduct in the reported cases of *Doe v. Regents of the Univ. of Cal.*, 23 F.4th
10 930 (2022) and *Schwake v. Ariz. Bd. of Regents*, 967 F.3d 940 (2020) apply here, including:

- 11 a. The April 2011, "Dear Colleague" letter (the "DCL") from the Department of
12 Education directing schools to take "immediate action" to eliminate sexual
13 harassment (which the court in *Schwake*, 967 F.3d at 948, noted "may be relevant"
14 in evaluating the plausibility of a Title IX claim, even though it wasn't alleged
15 there) (upon information and belief, Ms. Dauber was an influential contributor to
16 the DCL letter);
- 17 b. An investigative report by National Public Radio regarding struggles facing sexual
18 assault victims which prompted the DCL;
- 19 c. The OCR audits of the District from 2016 to 2020 about lack of response to
20 address investigation of claims;
- 21 d. An April 29, 2014, guidance document from DOE regarding sexual misconduct
22 policies in which it noted that the due process rights of the respondent should not
23 unnecessarily delay the protections provided by Title IX to the complainant; and
- 24 e. An April 2014 White House report and the June 2014 Senate testimony by then-
25 Assistant Secretary of Education Catherine Lhamon, both warning that schools
26 violating Title IX could lose federal funding.

27 76. The Resolution to Believe Women was on the Santa Clara County Democratic
28 Central Committee Agenda for June 4, 2020, and was submitted by Michele Dauber, Shae

1 Clausen and others, stating:

- 2 a. **“Whereas** survivors and allies are tired of seeing powerful individuals, especially
3 men, commit abuse freely without consequences; and injustices and violence
4 against the less powerful, especially women, have galvanized a popular uprising in
5 recent years, from the Ya Basta movement against the sexual abuse and
6 exploitation of immigrant women workers in the janitorial industry; to the first
7 Women’s March in 2017; to the consciousness-raising of the #MeToo movement,
8 where millions of women shared their stories as survivors of harassment and
9 assault; to the national horror of a partisan Senate voting to confirm Brett
10 Kavanaugh as a Supreme Court Justice even though three women had accused him
11 of sexual assault” (bold in original); and
- 12 b. **“Whereas** per our platform the Santa Clara County Democratic Party strongly
13 opposes all gender-based discrimination, including misogyny, sexual harassment
14 and sexual violence . . .” (bold in original.)

15 77. This resolution singles out men as being especially powerful and abusive without
16 being held accountable for the consequences of their conduct and women accusers are portrayed
17 as being especially less powerful than male accused and exploited by men. The resolution also
18 calls out misogyny, sexual harassment and sexual violence as involving gender-based
19 discrimination while misandry, or discrimination against men, is notably ignored.

20 78. Michele Dauber is not only a submitter of this resolution, but she is also the spouse of
21 Defendant District’s 2022 Board of Education President, Ken Dauber, and principal activist for
22 the successful politically motivated recall campaign against Judge Aaron Persky (former Santa
23 Clara County Superior Court Judge); she is a professor of law and social policy at Stanford
24 University; she and her husband live in the community, her children attended schools in the
25 District, upon information and belief she and her husband were significantly responsible for the
26 OCR audits of PAUSD Title IX investigation procedures in 2016 through 2020, she and her
27 husband have been activists in the inner workings of the District since 2011, and she is a publicly
28 known social media misandrist who has posted statements, including:

- 1 a. About Plaintiff – “I was really disturbed by the number of people claiming to be
2 Palo Altans defending this guy. Then I remembered how many of you supported
3 Mike Airo, Mr. G, and even Brock Turner. There is a segment of this community
4 that believes rape myths and blames victims. Mostly affluent, mostly older, mostly
5 lawyers, mostly Stanford affiliated. Mostly wrong. Mostly jerks.” 3:40 p.m. on
6 February 17, 2023;
- 7 b. About Plaintiff – “I can only imagine young women who have been assaulted or
8 abused reading this bulls— and thinking ‘If that’s sobriety I want nothing to do
9 with it.’ So thanks but no thanks save your lectures for the other bleeding Deacons
10 on your soapbox. The ladies know exactly what I am saying.” 8:08 p.m. on
11 February 17, 2023;
- 12 c. About Plaintiff – I am quite certain that the victim knew exactly who assaulted her
13 by the time Columbo was charged. The idea that this was mistaken identity is anti-
14 survivor.” 1:01 p.m. on February 18, 2022;
- 15 d. And she was the first to post a comment to the “Unfit to Teach” hit piece against
16 Plaintiff, at 8:13 a.m. the day it was published, February 17, 2023;
- 17 e. Upon information and belief, Ms. Dauber participated in both the drafting of the
18 “Unfit to Teach” article and the investigation and proceedings against Plaintiff that
19 ultimately lasted in excess of 2.5 years;
- 20 f. In tweets – “Happy International Men’s Day to the misogynists who bullied
21 women into accepting that there should be a day dedicated to **rapists** and wife
22 beaters.” (bold in original.) November 19, 2021;
- 23 g. In tweets – “It’s almost as if men are rapists waiting for the chance to do it with
24 impunity such as that provided by war.” April 12, 2022;
- 25 h. In tweets – In answer to another’s question “How can sexual assault at festivals be
26 stopped”, she responded, “Is the answer ‘stop selling tickets to **men**?’” (bold in
27 original.) July 3, 2019;
- 28 i. She drew substantial criticism by taking Amber Heard’s side against Johnny Depp,

1 using her typically acerbic and misandrist voice to call Mr. Depp’s female defense
2 attorney a “pick me girl” trying to curry favor with male partners at her law firm
3 solely because she chose to represent a man against a woman in a lawsuit (a
4 lawsuit which proved that Ms. Heard was more of an abuser in the relationship
5 than Mr. Depp);

6 j. Distinctly missing from any of these messages is any concern for due process and
7 the right to presumption of innocence or creating a level playing field; it is all
8 about tipping the scales in favor of a female accuser against a male accused.

9 79. Shae Clausen (aka Shae Franco-Clausen) is not only co-submitter of the Resolution to
10 Believe Women with Ms. Dauber, but the spouse of Detective Yolanda Franco-Clausen the Palo
11 Alto Police Department (“PAPD”) Detective who was assigned to investigate the false rape claim
12 and who drafted investigation procedures for the PAPD which she proceeded to ignore during her
13 investigation of Plaintiff, including but not limited to:

- 14 a. Conducting all witness interviews by telephone, excepting only the interview of
15 Plaintiff, which was done in person;
- 16 b. Told the accuser which witnesses she was going to contact and allowed the accuser
17 to call the witnesses first and let them know the detective would be calling them.

18 80. Jennifer DiBrienza is a Board Member for Defendant PAUSD and a Democratic
19 Party Delegate for California who has sponsored and/or submitted resolutions relating to Race
20 Equity (Diversity, Equity and Inclusion) for local Democratic Committee’s, and upon information
21 and belief, helped develop, implement and accelerate Defendant District’s Equity Plan including
22 by serving on its Equity Plan Committee.

23 81. Upon information and belief, Defendants, and each of them, have participated in
24 policies and procedures that target white male teachers to unlawfully coerce them into early
25 retirement, or to otherwise leave the District, to accelerate the District’s Equity Plan “numbers”
26 by replacing those white male teachers with new teachers who fit the Equity Plan Profile.
27 PAUSD’s plan directs the use of “[h]iring practices that attract, develop, and retain best-in-class
28 talent that is culturally and linguistically diverse" utilizing “Data-driven decision making." See

1 PAUSD Equity Plan dated December 14, 2021 “A Systemwide Integrated Framework for
2 Transformation: A Vision for Diversity, Equity and Inclusion in PAUSD 2021-24” identifying
3 persons responsible for such hiring practices as Defendants “Deputy Superintendent [Trent
4 Bahadursingh], HR Directors [Lisa Hickey] and staff.”

5 82. Instead of immediately conducting a thorough and impartial investigation, Defendants
6 used duress caused by a criminal investigation and prosecution supported by their suppression
7 and concealment of exonerating evidence and factual findings, the “Unfit to Teach” article they
8 sponsored, the threat of continued administrative actions and disciplinary proceedings, all in an
9 attempt to coerce Plaintiff into early retirement, even though they knew or should have known
10 that he was actually innocent, in addition to the legal mandate that he be presumed innocent.

11 83. In December of 2022 and January of 2023, just prior to publication of the “Unfit to
12 Teach” article on February 17, 2023, Defendants posted a middle school PE teaching position and
13 hired a new teacher fitting their Equity profile for that position. According to California
14 Education Code and related board policies, that teaching position should have been retained for
15 Plaintiff during his forced administrative leave by hiring a PE teacher on a temporary basis until
16 Plaintiff’s return from the forced administrative leave.

17 84. After Plaintiff filed this lawsuit alleging discrimination, Defendants intentionally kept
18 the investigation against Plaintiff open for four additional months while they did nothing (they
19 did not contact the female PE teachers who testify the accuser’s claim was false, they did not
20 chase down the accuser’s 6th grade report card or seek information from surrogate sources (other
21 6th grader’s report cards, conduct a forensic audit to see who deleted the electronic student file,
22 etc.) to prove who was accuser’s 6th grade PE teacher, etc.

23 85. Also in retaliation for filing this discrimination lawsuit, Defendants have refused to
24 provide the details required by due process under Title IX and board policies relating to their
25 investigation of the alleged sexual misconduct that posed a potential threat to current students
26 (1312.3 AR, 1312.3 BP, 5145.71 AR, 5145.7 BP and federal statutes and case law cited therein),
27 including a list of the evidence reviewed, the investigator’s findings, and conclusions based on
28 those findings. Instead, they sent a letter on May 28, 2024 with a one-sentence summary, “The

1 Investigator determined that the allegation was not substantiated due to a lack of evidence,
2 including but not limited to, the absence of a direct statement from the alleged victim to support
3 the claim,” which is quite different than the findings stated by the investigator during the
4 interview of Plaintiff.

5 86. Defendants refuse to return Plaintiff to his middle school PE teaching position,
6 instead forcing him to transfer into a non-teaching position that is a “banishment room” type
7 punishment, as discussed above, in further retaliation for filing the present discrimination lawsuit.

8 87. *Freedman v. Maryland*, 380 U.S. 51, 59 (1965) defined a person’s right to be free
9 from acts of deterrence, including harassing and retaliatory conduct, intended to chill exercise of
10 constitutional rights such as rights to non-discriminatory employment and due process; and,
11 actionable “chilling” conduct includes (1) abusive investigative activities that result in
12 reputational damage (*Riggs v. City of Albuquerque*, 916 F.2d 582 (10th Cir. 1990); (2) use of
13 threats of prosecution (*Polykoff v. Collins*, 816 F.2d 1326, 1331 (9th Cir. 1987)); and (3) use of
14 discretionary governmental actions (*Smith v. Brady*, 972 F.2d 1095, 1097-98 (9th Cir. 1992)).

15 88. Defendant’s violations of Plaintiff’s rights under color of state law (as school district
16 supervisors/managers, school board members and/or as co-conspirators) resulted in reasonably
17 certain and intended consequences including placing Plaintiff in a state created danger (known
18 severe physical abuse of, and high suicide rates for, incarcerated accused child sex offenders),
19 false imprisonment (solitary confinement in prison, home detention, and continued forced home
20 confinement and prohibiting return to work), wrongful termination of his teaching position, and
21 interference with his career making it impossible for Plaintiff to seek or obtain employment as a
22 school teacher at any other District due to the false rape stain Defendants’ created and refuse to
23 dispel through publishing of the concealed evidence and exonerating investigative findings.

24 89. As a direct, legal and proximate result of Defendants’ conduct, false charges were
25 initiated against Plaintiff, he was placed in danger through incarceration, was forced to endure
26 solitary confinement, has lost salaries and stipends, was forced to pay attorneys’ fees, has been
27 portrayed in a despicable false light in the community in addition to other damages.

28 90. As a direct, legal and proximate result of Defendants’ conduct, Plaintiff has suffered

1 lost salary, lost stipends, irreversible damage to his reputation, extreme emotional and
2 psychological distress. He has lost the remainder of his successful career as a teacher and coach
3 along with the related compensations, significantly, retirement and medical benefits including the
4 now vital medical-psychological benefits required as a result of Defendants' conduct. Defendants
5 have created deplorable working conditions including forcing him into a "banishment room" type
6 non-teaching position. Seeking employment in another district is not feasible as he would lose
7 his tenure and seniority. Further, the false rape stain prevents rehiring. The compensatory value
8 of these losses and damages will be proven at trial.

9 91. Each Defendants' conduct was malicious, oppressive or in reckless disregard of
10 Plaintiff's rights, as set forth above.

11 **RESERVED PENDING MOTION**

12 Discrimination Under Title IX

13 Title 20 of the United States Code, Section 1681 *et seq.*

14 [Against All Defendants]

15 92. Plaintiffs re-allege and incorporate Paragraphs 1-91, as though set forth herein.

16 93. Under Title 20 of the United States Code, Section 1681 *et seq.* ("Title IX"), Plaintiff
17 asserts a claim for discrimination on the basis of gender in the Title IX investigation and
18 disciplinary proceeding context. *See Doe v. Regents of the Univ. of Cal.*, 23 F.4th 930 (2022) and
19 in *Schwake v. Ariz. Bd. of Regents*, 967 F.3d 940 (2020).

20 94. As alleged in specific factual detail above, external pressures (¶¶ 78-83), internal
21 pattern and practice of bias (¶¶ 41, 50-51, 76-82) and specific instances of bias (¶¶ 20, 26-40, 55-
22 56, 61-74, 82-83, 86, 89) in this case show Defendants engaged in discrimination, which has
23 deprived Plaintiff of significant federal rights.

24 95. The external pressures discussed in ¶¶ 78-83 are incorporated here by specific
25 reference.

26 96. The internal patterns and practices of bias discussed in ¶¶ 41, 50-51, and 76-82 are
27 incorporated here by specific reference.

28 97. The specific instances of bias discussed in ¶¶ 20, 26-40, 55-56, 61-74, 82-83, 86, and

1 89 are incorporated here by specific reference.

2 98. Defendants’ retaliation against Plaintiff for filing this discrimination lawsuit
3 discussed in ¶¶ 34-36, 69, 84-89 are incorporated here by specific reference.

4 99. Adverse employment actions taken against Plaintiff as discussed in ¶¶ 37 and 38 are
5 incorporated here by specific reference. In *Muldrow v. City of St. Louis*, 144 S. Ct. 967, 974
6 (2024), the United States Supreme Court recently ruled that an adverse employment action is
7 anything that constitutes a “disadvantageous” change in an employment term or condition.

8 100. Damages caused by Defendants’ discriminatory conduct towards Plaintiff, as
9 discussed in ¶¶ 37, 42, and 88-90 are incorporated here by specific reference.

10 101. Each individual Defendants’ conduct was also malicious, oppressive or in reckless
11 disregard of Plaintiff’s rights, as set forth above.

12 **THIRD CLAIM**

13 Discrimination Under Title VII

14 Title 42 of the United States Code, Sections 2000e *et seq.*

15 [Against All Defendants]

16 102. Plaintiff realleges and incorporates Paragraphs 1 to 101 as though set forth herein.

17 103. Under Title 42 of the United States Code, Sections 2000e *et seq.* (“Title VII”),
18 Plaintiff asserts a claim for discrimination on the basis of gender and race.

19 104. *Freedman v. Maryland*, 380 U.S. 51, 59 (1965) defined a person’s right to be free
20 from acts of deterrence, such as harassing and retaliatory conduct, intended to chill exercise of
21 constitutional rights such as rights to non-discriminatory employment and due process; and,
22 actionable “chilling” conduct includes (1) abusive investigative activities that result in reputational
23 damage (*Riggs v. City of Albuquerque*, 916 F.2d 582 (10th Cir. 1990)); (2) use of threats of
24 prosecution (*Polykoff v. Collins*, 816 F.2d 1326, 1331 (9th Cir. 1987)); and (3) use of discretionary
25 governmental actions (*Smith v. Brady*, 972 F.2d 1095, 1097-98 (9th Cir. 1992)).

26 105. Title VII makes it unlawful for an employer to discriminate against any individual
27 with respect to his compensation, terms, conditions, or privileges of employment, because of such
28 individual’s race, color, religion, sex, or national origin. *Muldrow, supra*, 144 S. Ct. at 974.

1 106. Moreover, it is a violation of Title VII under federal law, to not presume a criminal
2 arrestee to be innocent.

3 107. Plaintiff was discriminated against, denied due process, kept on forced administrative
4 leave for more than 2.5 years on false charges lacking any quantum of credible evidentiary
5 support, had adverse employment actions taken against him based on an arrest without conviction
6 with no finding of misconduct underlying the arrest, has been repeatedly subject to open-ended
7 “investigations”, has not been returned to positions as a teacher and coach, and has had his
8 teaching career destroyed.

9 108. Plaintiff’s gender was a motivating factor and/or cause of Defendants’ direct conduct
10 and conspiracy to discriminate against him, deny due process, portray him in a false light,
11 actively support prosecution on false charges lacking any quantum of credible evidentiary
12 support, take adverse employment actions him, to repeatedly subject him to open-ended
13 continuous “investigations”, to not return him to his positions as a teacher and coach and to create
14 an atmosphere so intolerable as to constructively terminate Plaintiff’s protected employment
15 position as a tenured, credentialed teacher and successful coach.

16 109. Plaintiff was qualified for his positions as a teacher and coach as demonstrated by his
17 exemplary performance reviews and accolades.

18 110. Upon information and belief, similarly situated non-white male individuals are not
19 discriminated against, denied due process, prosecuted on false charges lacking any quantum of
20 credible evidentiary support, repeatedly subject to open-ended continuous “investigations” and
21 are not deprived of their right to return to positions as a teacher and coach.

22 111. Plaintiff opposed an unlawful employment practice, that is discrimination against
23 him based on his gender.

24 112. Defendants’ employer, including all Defendants as supervisory/managerial
25 employees of Defendant PAUSD as Plaintiff’s employer (and/or as co-conspirators with PAUSD
26 and the other Defendants) and the PAUSD Board through direction, approval and/or ratification
27 subjected Plaintiff to adverse employment action, including placing him on paid and unpaid
28 admin leaves and refusing to return him to his teaching and coaching positions and creating an

1 atmosphere so intolerable that it has resulted in a constructive termination of Plaintiff from his
2 protected position as a tenured, credentialed teacher and successful coach, all through the pretext
3 of sponsoring the false accusation levied against Plaintiff in the manner described herein.

4 113. Plaintiff was subjected to adverse employment action after he opposed an unlawful
5 employment practice, that is discrimination against him based on his gender.

6 114. As alleged in specific factual detail above, external pressures (¶¶ 78-83), internal
7 pattern and practice of bias (¶¶ 41, 50-51, 76-82) and specific instances of bias (¶¶ 20, 26-40, 55-
8 56, 61-74, 82-83, 86, 89) in this case show Defendants discriminated against Plaintiff in violation
9 of Title VII.

10 115. The external pressures discussed in ¶¶ 78-83 are incorporated here by specific
11 reference.

12 116. The internal patterns and practices of bias discussed in ¶¶ 41, 50-51, and 76-82 are
13 incorporated here by specific reference.

14 117. The specific instances of bias discussed in ¶¶ 20, 26-40, 55-56, 61-74, 82-83, 86,
15 and 89 are incorporated here by specific reference.

16 118. Defendants' retaliation against Plaintiff for filing this discrimination lawsuit
17 discussed in ¶¶ 34-36, 69, 84-89 are incorporated here by specific reference.

18 119. Adverse employment actions taken against Plaintiff as discussed in ¶¶ 37 and 38 are
19 incorporated here by specific reference. (*Muldrow v. City of St. Louis*, 144 S. Ct. 967, 974 (2024)
20 (an adverse employment action is anything that constitutes a "disadvantageous" change in an
21 employment term or condition.)).

22 120. Damages caused by Defendants' discriminatory conduct towards Plaintiff, as
23 discussed in ¶¶ 37, 42, and 88-90 are incorporated here by specific reference.

24 121. Each individual Defendants' conduct was also malicious, oppressive or in reckless
25 disregard of Plaintiff's rights, as set forth above.

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FOURTH CLAIM

Discrimination Under FEHA
California Government Code §§ 12900 *et seq*

[Against All Defendants]

122. Plaintiff realleges and incorporates Paragraphs 1 to 121 as though set forth herein.

123. Under California Government Code §§ 12900 *et seq* (“FEHA”), Plaintiff asserts a claim for discrimination on the basis of gender and race.

124. Defendant PAUSD is, and at all relevant times was, an employer governed by California’s Fair Employment and Housing Act (“FEHA”).

125. Plaintiff is, and all relevant times was, employed by Defendant PAUSD.

126. Defendants’ employer, including all Defendants as supervisory/managerial employees of Defendant PAUSD (and/or as co-conspirators with PAUSD) and the PAUSD Board through direction, approval and/or ratification, subjected Plaintiff to adverse employment action, including the manner in which he was placed on paid and unpaid admin leaves and refusing to return him to his teaching and coaching positions and creating an atmosphere so intolerable that it has resulted in a destruction of Plaintiff’s protected position as a tenured, credentialed teacher and successful coach, all through the pretext of sponsoring the false accusation levied against Plaintiff in the manner described herein.

127. Defendants used an arrest without conviction (and with no finding of misconduct underlying the arrest), either in actuality or as pretext, to conduct an open-ended investigation with its initial scope not being circumscribed by an attempt to discern whether there was a finding of any actual misconduct underlying the arrest.

128. Defendants considered the arrest without conviction in making employment decisions adverse to Plaintiff.

129. Plaintiff’s gender and race was each a substantial motivating reason for subjecting Plaintiff to adverse employment action, including the manner in which he was placed on paid and unpaid admin leaves and refusing to return him to his teaching and coaching positions and creating an atmosphere so intolerable that it has resulted in a constructive termination of

1 Plaintiff's position as a tenured, credentialed teacher and successful coach, all through the pretext
2 of sponsoring the false accusation levied against Plaintiff in the manner described herein.

3 130. As a direct, legal and proximate result of Defendants' discriminatory conduct,
4 Plaintiff has suffered lost salary and stipends, irreversible damage to his reputation, extreme
5 emotional distress, and loss of the remainder of his teaching/coaching career with concomitant
6 compensation and benefits, all of which will be proven at trial.

7 131. Plaintiff was subjected to adverse employment action after he opposed an unlawful
8 employment practice, that is discrimination against him based on his gender.

9 132. As alleged in specific factual detail above, external pressures (¶¶ 78-83), internal
10 pattern and practice of bias (¶¶ 41, 50-51, 76-82) and specific instances of bias (¶¶ 20, 26-40, 55-
11 56, 61-74, 82-83, 86, 89) in this case show Defendants discriminated against Plaintiff in violation
12 of Title VII.

13 133. The external pressures discussed in ¶¶ 78-83 are incorporated here by specific
14 reference.

15 134. The internal patterns and practices of bias discussed in ¶¶ 41, 50-51, and 76-82 are
16 incorporated here by specific reference.

17 135. The specific instances of bias discussed in ¶¶ 20, 26-40, 55-56, 61-74, 82-83, 86,
18 and 89 are incorporated here by specific reference.

19 136. Defendants' retaliation against Plaintiff for filing this discrimination lawsuit
20 discussed in ¶¶ 34-36, 69, 84-89 are incorporated here by specific reference.

21 137. Adverse employment actions taken against Plaintiff as discussed in ¶¶ 37 and 38 are
22 incorporated here by specific reference.

23 138. Damages caused by Defendants' discriminatory conduct towards Plaintiff, as
24 discussed in ¶¶ 37, 42, and 88-90 are incorporated here by specific reference.

25 139. Each individual Defendants' conduct was malicious, oppressive or in reckless
26 disregard of Plaintiff's rights, as set forth above.

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PRAYER FOR RELIEF


Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. Economic damages (special damages) to recover compensation for lost salaries, stipends, benefits, etc. for the remainder of Plaintiff’s teaching and coaching career and to recover attorneys’ fees expended in defending against the Defendant-sponsored false criminal charges and wrongful use of administrative proceedings;
2. Non-economic damages (emotional distress, compensation for rights violations, etc.);
3. Exemplary damages against all Defendants except Defendant PAUSD;
4. Prejudgment and post-judgment interest;
5. Attorneys’ fees, expert fees and all costs of litigation, pursuant to 42 U.S.C. § 1988;
6. Costs of suit; and
7. Such other relief as the Court deems just and proper.

Dated: September 24, 2024

Respectfully submitted,

LAW OFFICE OF EVAN C. NELSON

By: 
EVAN C. NELSON
Attorneys for Plaintiffs

REQUEST FOR JURY TRIAL

Plaintiff requests a jury trial. Fed. R. Civ. Proc. 38(b).

Dated: September 24, 2024

Respectfully submitted,

LAW OFFICE OF EVAN C. NELSON

By: 
EVAN C. NELSON
Attorneys for Plaintiff