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Superior Court of California
County of Santa Barbara
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA BARBARA

JANE OB DOE, an individual,

Plaintiff,

v.

SANTA BARBARA UNIFIED SCHOOL
DISTRICT; a business entity of form
unknown; MATEF HARMACHIS, an
individual; and DOES 1 through 100,

Defendants.

Case No.: 20CV03946

Judge: _____

Dept.: _____

COMPLAINT FOR DAMAGES FOR:

- 1) **NEGLIGENCE;**
- 2) **NEGLIGENT SUPERVISION;**
- 3) **NEGLIGENT HIRING/RETENTION;**
- 4) **NEGLIGENT FAILURE TO WARN
TRAIN OR EDUCATE;**
- 5) **NEGLIGENCE PER SE;**
- 6) **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**
- 7) **ASSAULT;**
- 8) **SEXUAL BATTERY (C.C. § 1708.5);**
- 9) **SEXUAL HARASSMENT (C.C. § 51.9)**
- 10) **GENDER VIOLENCE (C.C. § 52.4);**
- 11) **BREACH OF FIDUCIARY DUTY;**
- 12) **CONSTRUCTIVE FRAUD (C.C. §
1573);**
- 13) **PUBLIC ENTITY LIABILITY FOR
FAILURE TO PERFORM
MANDATORY DUTY**

[DEMAND FOR JURY TRIAL]

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

GENERAL ALLEGATIONS AS TO THE PARTIES

THE PARTIES

(PLAINTIFF)

1. Plaintiff JANE OB DOE (hereinafter "Plaintiff") is a resident of the County of Santa Barbara, State of California and was so at the time of the abuse alleged herein. The name used by JANE OB DOE in this Complaint is not the actual name of JANE OB DOE, but is a fictitious name utilized to protect the privacy of JANE OB DOE, a victim of childhood sexual harassment and molestation. Plaintiff JANE OB DOE is a female, born on February 3, 2000, and was a minor during the time of the sexual misconduct alleged herein. Plaintiff JANE OB DOE was a minor at the time of all incidents alleged herein.

2. All pertinent claims arising out of the sexual abuse occurred after January 1, 2009. Pursuant to Government Code section 905(m), Plaintiff's claim is timely and exempted from the government tort-claim filing requirement. As such, pursuant to California Government Code § 905(m), Plaintiff JANE OB DOE is specifically exempted from the claims presentation requirements for her claims against Defendant SANTA BARBARA UNIFIED SCHOOL DISTRICT ("SBUSD"), for the sexual harassment, molestation and abuse she suffered at the hands of Defendants.

(DEFENDANTS)

3. Defendant SANTA BARBARA UNIFIED SCHOOL DISTRICT (hereinafter the "SBUSD"), at all times mentioned herein was and is, a business entity of form unknown, having its principal place of business in the County of Santa Barbara, State of California. The SBUSD purposely conducts substantial educational business activities in the State of California, and was the primary entity owning, operating and controlling Santa Barbara High School, employing Defendant MATEF HARMACHIS, and responsible for monitoring and controlling his and other employees activities and behavior.

4. Santa Barbara High School is a public educational institution in the SBUSD, operating as a High School for students approximately 14 years of age through approximately 18 years of age.

5. Defendant MATEF HARMACHIS (hereinafter "HARMACHIS") at all times mentioned herein was and is an adult male individual, who Plaintiff is informed and believes, and on that basis alleges, currently resides in the County of Santa Barbara, in the State of California. During the period of time in which the childhood sexual harassment and abuse of Plaintiff JANE OB DOE, alleged herein, took place, HARMACHIS was a teacher, mentor, and advisor at Santa Barbara High School; employed by both the SBUSD and Santa Barbara High School. At all times herein alleged, HARMACHIS was an employee, agent, and/or servant of the SBUSD and Santa Barbara High School, and was under their complete control and/or active supervision.

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

7. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned herein, each Defendant was responsible in some manner or capacity for the occurrences herein alleged, and that Plaintiff's damages, as herein alleged, were proximately caused by all said Defendants. Defendants SBUSD, HARMACHIS, and DOES 1-100 are sometimes collectively referred to herein as "Defendants" and/or as "All Defendants"; such collective reference refers to all specifically named Defendants.

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

1 Defendants, and each of them, would serve to perpetrate a fraud and an injustice.

2 9. At all times mentioned herein, HARMACHIS was an adult teacher, mentor, and advisor
3 employee of both the SBUSD and Santa Barbara High School, acting as an employee, agent,
4 and/or servant of such and/or was under their complete control and/or supervision, as well as the
5 complete control of all administrative personnel of SBUSD and Santa Barbara High School.
6 HARMACHIS was employed as a teacher at the SBUSD and/or Santa Barbara High School.
7 HARMACHIS was hired by the SBUSD and Santa Barbara High School to serve as a teacher,
8 mentor, and advisor to minor high school students at Santa Barbara High School. In so doing, the
9 SBUSD and Santa Barbara High School held HARMACHIS out to the public, Plaintiff and
10 Plaintiff's family to be of high ethical and moral repute, and to be in good standing with the
11 SBUSD, Santa Barbara High School, the State of California, and the public in general. In this
12 capacity, HARMACHIS taught, mentored, and advised students regarding personal issues,
13 academics, future employment prospects, and general emotional and psychological issues. Both
14 the SBUSD and Santa Barbara High School held HARMACHIS out to the public, Plaintiff and
15 Plaintiff's parents to be a highly-qualified teacher, mentor, and advisor who could and would
16 assist Plaintiff JANE OB DOE with working through personal and academic issues she faced.
17 Inherent in this representation was the understanding that HARMACHIS was a person of high
18 ethical and moral standing, selected to provide leadership, guidance, mentoring, and advising to
19 students, including Plaintiff JANE OB DOE. Plaintiff JANE OB DOE and her family reasonably
20 assumed that HARMACHIS was a person worthy of their trust.

21 10. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned
22 herein, Defendants and each of them, were the agents, representatives and/or employees of each
23 and every other Defendant. In doing the things hereinafter alleged, Defendants and each of them,
24 were acting within the course and scope of said alternative personality, capacity, identity, agency,
25 representation and/or employment and were within the scope of their authority, whether actual or
26 apparent.

27 11. Plaintiffs are informed and believe, and on that basis alleges, that at all times mentioned
28 herein, Defendants and each of them, were the trustees, partners, servants, joint venturers,

shareholders, contractors, and/or employees of each and every other Defendant, and the acts and omissions herein alleged were done by them, acting individually, through such capacity and within the scope of their authority, and with the permission and consent of each and every other Defendant and that said conduct was thereafter ratified by each and every other Defendant, and that each of them is jointly and severally liable to Plaintiff.

FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

12. At all times material hereto, Plaintiff was a student attending Santa Barbara High School within the SBUSD.

13. At all times material here to, Plaintiff was a student that lives within the school district operated by SBUSD.

14. Upon information and belief, SBUSD hired HARMACHIS as a teacher to work at Santa Barbara High School, and appointed him as a teacher for classes, including history, government, and/or economics. It is through that position with SBUSD that he came to interact with Plaintiff JANE OB DOE.

15. Upon information and belief, HARMACHIS was supervised by, among others, SBUSD Superintendent Cary Matsuoka, SBUSD Assistant Superintendent Dr. Frann Wageneck, Santa Barbara High School Principal Alicia Saballa-Santana, Santa Barbara High School Interim Principal Michael Gonzalez, and other Administrators.

16. At all times material hereto, HARMACHIS was employed by Santa Barbara High School and the SBUSD as a teacher, mentor, and advisor. In such capacities, HARMACHIS was under the direct supervision, employ, agency, and control of the SBUSD, Santa Barbara High 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 Santa Barbara High School and other children, including Plaintiff JANE OB DOE.

17. On information and belief, HARMACHIS has an extensive history of disciplinary issues within SBUSD related to inappropriate conduct with students. Specifically, in or around 2004 while HARMACHIS teaching at Dos Pueblos High School, he was involved in an altercation with

1 a student. During the investigation into this incident, it was discovered that HARMACHIS had
2 made several inappropriate sexual comments to various female students during the 2003-2004
3 school year. Thereafter, in or around 2005, SBUSD gave HARMACHIS a notice of
4 unprofessional conduct and unsatisfactory performance. Rather than terminating HARMACHIS,
5 SBUSD transferred HARMACHIS to Santa Barbara High School. In or around January 2005,
6 HARMACHIS again was disciplined for threatening a student and making inappropriate sexual
7 comments to numerous female students. On information and belief, it was at this time that SBUSD
8 was made aware that HARMACHIS was sexually grooming and abusing female students. In fact,
9 former SBUSD Superintendent, Brian Sarvis, publicly criticized HARMACHIS, calling him “a
10 detriment to students” and noting, “we cannot have Matef teaching high school students.”

11 18. Specifically, on information and belief, by and through its investigation of
12 HARMACHIS, SBUSD knew or reasonably should have known that HARMACHIS was:

- 13 a. Making sexually explicit and/or inappropriate comments to female students;
- 14 b. Touching female students inappropriately;
- 15 c. Hugging female students;
- 16 d. Informing male students of what HARMACHIS could do with the female
17 students in his class “if [he] wanted to;” and
- 18 e. Openly encouraging female students to not wear bras to school;

19 19. In or around April 2005, SBUSD initiated proceedings seeking to dismiss HARMACHIS.
20 Although SBUSD reportedly spent nearly \$1 million in the case against HARMACHIS,
21 ultimately, the Commission on Professional Competence determined that dismissal of
22 HARMACHIS was not warranted and HARMACHIS was reinstated at Santa Barbara High
23 School.

24 20. On information and belief, long before the sexual assault of Plaintiff, SBUSD knew or
25 reasonably should have known that HARMACHIS presented a danger to students and needed to
26 be removed from the classroom; however, SBUSD Administrators chose to ignore their legal,
27 ethical, and moral obligation to protect Plaintiff and other vulnerable students. Having already
28 spent nearly \$1 million in an effort to dismiss HARMACHIS, SBUSD was no longer willing to

1 expend time or resources dealing with HARMACHIS. Accordingly, rather than segregating
2 HARMACHIS away from students, placing him in an administrative position, or placing
3 HARMACHIS under supervision, SBUSD permitted HARMACHIS to remain in the classroom
4 with students, wholly unsupervised. On information and belief, throughout his continued tenure at
5 Santa Barbara High School, SBUSD ignored continued reports of misconduct and predatory
6 behavior by HARMACHIS.

7 21. Through his positions with Santa Barbara High School and the SBUSD, HARMACHIS
8 was put into direct contact with Plaintiff JANE OB DOE, a student at Santa Barbara High School.
9 HARMACHIS was assigned to teach, mentor, and advise Plaintiff JANE OB DOE. It is under
10 these circumstances that Plaintiff came to be under the direction and control of HARMACHIS,
11 who used his position of authority and trust over Plaintiff JANE OB DOE to sexually abuse and
12 harass her.

13 22. On or around March 8, 2020, following the sexual assault and harassment of Plaintiff,
14 HARMACHIS' educator's credentials were revoked due to misconduct.

15 23. At no point prior to the date of his arrest, did SBUSD, the Board of Education, and/or the
16 Superintendent undertake to:

- 17 a. Report HARMACHIS to Child Protective Services, as per the law;
- 18 b. Report HARMACHIS to law enforcement, as per the law;
- 19 c. Protect students from HARMACHIS' sexual misconduct and behavior.

20 24. Instead of reporting, removing, or ceasing HARMACHIS' behavior, SBUSD's lack of
21 actions effectively emboldened HARMACHIS to engage in continued sexually inappropriate and
22 predatory behavior with female students.

23 25. Upon information and belief, SBUSD investigated HARMACHIS for sexual misconduct,
24 determined he was "a detriment to students," but made the conscious choice to leave him in the
25 classroom around minors, providing him with the means and opportunity to sexually abuse,
26 assault, and harass female students, including the Plaintiff, on an ongoing basis.

27 **FACTUAL ALLEGATIONS APPLICABLE TO THE PLAINTIFF**

1 26. HARMACHIS did sexually harass, molest, and abuse Plaintiff JANE OB DOE, who was
2 a minor at the time. Such conduct was done for HARMACHIS' sexual gratification, and was
3 performed on Plaintiff without her free consent, as Plaintiff JANE OB DOE was a minor and thus
4 unable to give valid, legal consent to such sexual acts. These actions upon Plaintiff JANE OB
5 DOE constituted conduct that is believed to be in violation of California Penal Code §§ 288(b)(1),
6 647.6(a)(1), and potentially other provisions. HARMACHIS has been placed on administrative
7 leave and has been formally charged with the crimes that he committed against Plaintiff JANE OB
8 DOE.

9 27. As a student at Santa Barbara High School and the SBUSD, where HARMACHIS was
10 employed and worked, Plaintiff JANE OB DOE was under HARMACHIS' direct supervision,
11 care and control, thus creating a special relationship, fiduciary relationship, and/or special care
12 relationship with Defendants, and each of them. Additionally, as a minor child under the custody,
13 care and control of Defendants SBUSD, Defendant SBUSD stood *in loco parentis* with respect to
14 Plaintiff JANE OB DOE while she was attending school and school-related functions at Santa
15 Barbara High School and the SBUSD. As the responsible parties and/or employers controlling
16 HARMACHIS, Defendant SBUSD was also in a special relationship with Plaintiff, and owed
17 special duties to Plaintiff JANE OB DOE.

18 28. Plaintiff is informed and believes, and on that basis allege, that Defendant SBUSD, knew
19 or should have known that HARMACHIS had engaged in unlawful sexually-related conduct with
20 minors in the past, and/or was continuing to engage in such conduct with Plaintiff JANE OB
21 DOE. Defendant SBUSD had a duty to disclose these facts to Plaintiff JANE OB DOE, her
22 parents and others, but negligently and/or intentionally suppressed, concealed or failed to disclose
23 this information. The duty to disclose this information arose by the special, trusting, confidential,
24 fiduciary, and/or *in loco parentis* relationship between Defendants and Plaintiffs.

25 29. Defendant SBUSD failed to take reasonable steps and/or implement reasonable safeguards
26 to avoid acts of unlawful sexual conduct by HARMACHIS, including, but not limited to
27 preventing abuse of Plaintiff JANE OB DOE by HARMACHIS avoiding placement of
28 HARMACHIS in a function or environment in which contact with children is an inherent part of

1 that function or environment. Instead, Defendant SBUSD ignored and/or concealed the sexual
2 harassment and abuse of Plaintiff JANE OB DOE and others by HARMACHIS that had already
3 occurred. Plaintiff JANE OB DOE is informed and believes, and on that basis alleges, that
4 Defendants and each of them were given notice of incidents of inappropriate conduct by
5 HARMACHIS, including such facts as those set forth in this Complaint.

6 30. Plaintiff is informed and believes, on that basis allege, that prior to and during the sexual
7 harassment and abuse of Plaintiff JANE OB DOE, Defendants knew or should have known that
8 HARMACHIS had violated his role as a teacher, mentor, advisor and faculty member, and used
9 his position of authority and trust acting on behalf of Defendants to gain access to children,
10 including Plaintiff JANE OB DOE, on and off the school facilities and grounds of Santa Barbara
11 High School, in which he engaged in sexual misconduct, harassment and abuse, with such
12 children including Plaintiff JANE OB DOE.

13 31. With actual or constructive knowledge that Defendant HARMACHIS had previously
14 engaged in dangerous and inappropriate conduct, including sexually harassing and abusing other
15 minors at Santa Barbara High School and other minors, Defendants conspired to and did
16 knowingly fail to take reasonable steps, and failed to implement reasonable safeguards to avoid
17 acts of unlawful sexual conduct in the future by HARMACHIS, including, but not limited to,
18 preventing or avoiding placement of HARMACHIS in a function or environment in which contact
19 with children is an inherent aspect of that function or environment.

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

- 26 a. Permitting HARMACHIS to remain in a position of authority and trust after
27 Defendants knew or should have known that HARMACHIS was sexually abusing
28 and/or harassing students;

- b. Placing HARMACHIS 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 abuse children, including Plaintiff;
- c. Allowing HARMACHIS 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 HARMACHIS 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 HARMACHIS to Plaintiff and her 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 HARMACHIS with students, who were minor children; and
- g. 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.

33. By his position within the Defendants' institutions, Defendants and HARMACHIS demanded and required that Plaintiff respect HARMACHIS in his position of teacher, mentor, and advisor at Santa Barbara High School and the SBUSD.

34. The incidents of abuse outlined herein took place while Plaintiff was under the control of HARMACHIS, in his capacity and position as a teacher, mentor, and advisor at Santa Barbara High School and the SBUSD, and while acting specifically on behalf of Defendants, including, but not limited to, the following:

- a. HARMACHIS was at all times relevant to this Complaint a teacher, mentor, and advisor at Santa Barbara High School, an institution wholly operated by SBUSD.
- b. While HARMACHIS sexually harassed and abused Plaintiff, Defendants were well aware that HARMACHIS took an unusual interest, and spent an inordinate amount of time with Plaintiff.
- c. Beginning in or around 2016 through 2017, the perpetrator HARMACHIS sexually abused, harassed and molested the Plaintiff on the school premises, including within his Santa Barbara High School classroom. This sexual abuse included, but is not limited to: sexual talk and innuendo by HARMACHIS, biting Plaintiff's ear, hugging Plaintiff, and groping Plaintiff's buttocks.

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

36. Plaintiff is informed and believes, and on that basis alleges, that Defendants and each of them should have been aware of HARMACHIS' 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 JANE OB DOE 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 JANE OB DOE, to inhibit or obstruct such abuse, or to protect Plaintiff JANE OB DOE from the results of that trauma.

37. During the period of abuse of Plaintiff at the hands of HARMACHIS, Defendants had the authority and the ability to obstruct or stop HARMACHIS' sexual assaults on Plaintiff JANE OB DOE, 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

1 the disclosure of their tolerance of child sexual harassment and abuse, to preserve a false
2 appearance of propriety, and to avoid investigation and action by public authority including law
3 enforcement. Plaintiff JANE OB DOE is informed and believes, and on that basis alleges, that
4 such actions were motivated by a desire to protect the reputation of Defendants and each of them,
5 and to protect the monetary support of Defendants while fostering an environment where such
6 abuse could continue to occur.

7 38. Subsequent to his sexual abuse at the hands of HARMACHIS, Plaintiff began to
8 experience multiple mental, emotional and psychological problems, due to the sexual harassment
9 and abuse she suffered at the hands of HARMACHIS, including, but not limited to: Plaintiff
10 JANE OB DOE being angry; Plaintiff JANE OB DOE experiencing frequent anxiety; Plaintiff
11 JANE OB DOE experiencing depression; Plaintiff JANE OB DOE feeling helpless; Plaintiff
12 JANE OB DOE experiencing sleeplessness; and Plaintiff JANE OB DOE having significant trust
13 and control issues.

14 39. As a direct result of the sexual harassment and abuse of Plaintiff JANE OB DOE by
15 HARMACHIS, Plaintiff JANE OB DOE has difficulty in reasonably or meaningfully interacting
16 with others, including those in positions of authority over Plaintiff JANE OB DOE, including
17 supervisors, and in intimate, confidential and familial relationships, due to the trauma of childhood
18 sexual harassment and abuse inflicted upon her by HARMACHIS. This inability to interact creates
19 conflict with Plaintiff JANE OB DOE's values of trust and confidence in others, and has caused
20 Plaintiff JANE OB DOE substantial emotional distress, anxiety, nervousness and fear. As a direct
21 result of Plaintiff's abuse and harassment by HARMACHIS, Plaintiff JANE OB DOE experienced
22 severe issues with her personal life, including issues with trust and difficulties in maintaining
23 meaningful relationships, and difficulty with school. These feelings have caused Plaintiff JANE
24 OB DOE substantial emotional distress, anxiety, nervousness and fear.

25 40. As a direct and proximate result of the Defendants' tortuous acts, omissions, wrongful
26 conduct and/or breaches of their duties, whether willful or negligent, Plaintiff JANE OB DOE's
27 employment and personal development has or will be adversely affected. Plaintiff JANE OB
28 DOE has or will lose wages as a result of the abuse she suffered at the hands of Defendants, and
will continue to lose wages in an amount to be determined at trial. Plaintiff JANE OB DOE has

suffered economic injury, all to Plaintiff JANE OB DOE's general, special and consequential damage in an amount to be proven at trial, but in no event less than the minimum jurisdictional amount of this Court.

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

- * Duty to use reasonable care to protect students from known or foreseeable dangers (Government Code §§ 820, 815.2);
- * Duty to refrain from taking official action that contradicts the provisions of Article 1, section 28(c) of the California Constitution;
- * Duty to enact policies and procedures that are not in contravention of the Federal Civil Rights Act, section 1983, and the 14th Amendment of the United States Constitution;
- * Duty to protect students and staff, and provide adequate supervision;
- * 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;
- * Duty to properly train teachers, athletic directors, athletic coaches, youth counselors, mentors, administrators, and staff so that they are aware of their individual responsibility for creating and maintaining a safe environment;
- * Duty to supervise faculty and students and enforce rules and regulations prescribed for schools, exercise reasonable control over students as is reasonably necessary to maintain order, protect property, or protect the health and safety of faculty and students or to maintain proper and appropriate conditions conducive to learning;
- * Duty to exercise careful supervision of the moral conditions in the school;
- * Duty to hold pupils to a strict account for their conduct on the way to and from 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 her personal relations (Civil Code § 43);
- * Duty to abstain from injuring the person or property of Plaintiff, or infringing upon any of her 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.).

42. 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 HARMACHIS to take children for purposes of sexual activity and allowing HARMACHIS to operate isolated environments, incapable of monitoring from the outside, wherein HARMACHIS sexually harassed and abused Plaintiff and others.

43. 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.

44. Defendants and each of them lodged with HARMACHIS the color of authority, by which she was able to influence, direct and abuse Plaintiff JANE OB DOE and others, and to act illegally, unreasonably and without respect for the person and safety of Plaintiff JANE OB DOE.

45. 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 HARMACHIS, with children.

46. 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.

47. 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.

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

STATUTE OF LIMITATIONS AND ASSEMBLY BILL-218

49. Effective January 1, 2020, California's statute of limitations for childhood sexual assault cases has been amended pursuant to Assembly Bill 218, providing for a three (3) year window for any and all claims of childhood sexual assault, which have not already been finally adjudicated, to be brought. This lawsuit, involving acts of childhood sexual assault perpetrated by HARMACHIS, an agent, employee, and/or servant of SBUSD and Santa Barbara High School, falls within the scope of Code of Civil Procedure §340.1, thus, is timely as an "action commenced on or after the date of enactment of that act, and to any action filed before the date of enactment, and still pending on that date, including any action or causes of action that would have been barred by the laws in effect before the date of enactment." Code of Civil Procedure §340.1(r). Regardless of the Plaintiff's age or date upon which the Plaintiff discovers or "reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual

1 assault...”, the Plaintiff’s action is timely as it is pending before the Court and has been filed prior
2 to January 1, 2023.

3 50. It is upon information, and therefore belief, that the sexual assault perpetrated upon the
4 Plaintiff as a child (as more fully described *supra*), was the result of a “cover-up” or a “a
5 concerted effort to hide evidence relating to childhood sexual assault.” See Code of Civil
6 Procedure §340.1(b). Specifically, it is based upon information and therefore belief, that the
7 Defendant SBUSD engaged in conduct to conceal the sexually inappropriate behavior of
8 HARMACHIS and to hide facts from the Plaintiff, which would have apprised the Plaintiff, her
9 family, and those who could have intervened in HARMACHIS’ abusive behavior (including but
10 not limited to law enforcement, administrative authorities, and child protective agencies) and
11 prevented the Plaintiff’s sexual assault as a child.

12 51. Further, it is upon information, and therefore belief, that the Defendants SBUSD and
13 DOES 1 through 100, were specifically aware, or based on the availability of information to them
14 had reason to know, that HARMACHIS was a sexual threat to children in his presence, including
15 the Plaintiff.

16 52. Despite having this knowledge and prior warning HARMACHIS risk of childhood sexual
17 assault posed to children, Defendant SBUSD and DOES 1 through 100 did nothing to protect the
18 Plaintiff, inform her of the risk that she was placed at, and further, actively concealed this
19 information from the Plaintiff and her family. Regardless of its knowledge about the danger posed
20 to the Plaintiff (and other minors) by HARMACHIS, Defendant SBUSD and DOES 1 through 100
21 refused to inform the Plaintiff about the danger that HARMACHIS posed to her.

22 53. This conduct constituted a “cover up” under the meaning of Code of Civil Procedure
23 §340.1(b)(1) and (b)(2). Therefore, the Plaintiff is entitled to the enhanced remedy provided for in
24 Code of Civil Procedure §340.1(b)(1) and may recover up to treble damages.

25 FIRST CAUSE OF ACTION

26 NEGLIGENCE

27 (Plaintiff Against Defendant SBUSD and Does 1 through 100)
28

1 54. 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 55. Plaintiff is informed and believes, and on that basis alleges that prior to and after the first
4 incident of HARMACHIS' sexual harassment, molestation, and abuse of Plaintiff, through the
5 present, Defendants, knew or should have reasonably known that HARMACHIS had or was
6 capable of sexually, and/or sexually abusing Plaintiff or other victims.

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

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

1 and trustworthy. Defendants cloaked within the facade of normalcy, Defendants' conduct, contact
2 and actions with Plaintiff and/or disguised the nature of the sexual harassment and abuse and
3 contact.

4 58. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to
5 investigate or otherwise confirm or deny such facts, failing to reveal such facts to Plaintiff, the
6 community of the school, students, minors, and law enforcement agencies, placing and continuing
7 to place HARMACHIS in positions of trust and authority within Santa Barbara High School and
8 the SBUSD, and holding out, and continuing to hold out HARMACHIS to Plaintiff, the public, the
9 community of the school, students, minors, and law enforcement agencies as being in good
10 standing and trustworthy.

11 59. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to
12 adequately monitor and supervise HARMACHIS and/or stopping HARMACHIS from committing
13 wrongful sexual acts with minors, including Plaintiff. This belief is founded on the fact that
14 Plaintiff was informed and believed that the Principal and other faculty members at the Santa
15 Barbara High School and District officials, including SBUSD had suspected the abuse and/or
16 harassment was occurring at the time, and failed to investigate into the matter further despite the
17 knowledge of the impropriety of the acts of HARMACHIS. Based on these facts, Defendants
18 knew and/or should have known of HARMACHIS' incapacity to supervise and/or stop employees
19 of Defendants from committing wrongful sexual acts with minors.

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

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

62. 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.

63. 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.

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

65. 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.

66. 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 HARMACHIS.

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

68. 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 Plaintiffs.

69. 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

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

6 **SECOND CAUSE OF ACTION**

7 **NEGLIGENT SUPERVISION**

8 (Plaintiff Against Defendant SBUSD Only and Does 1 through 100)

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

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

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

21 73. As a separate basis, Defendants negligently failed to supervise HARMACHIS in his
22 position of trust and authority as a teacher, advisor and mentor, and/or other authority figure,
23 where he was able to commit wrongful acts against the Plaintiff. Defendants failed to provide
24 reasonable supervision of HARMACHIS. Defendants further failed to take reasonable measures
25 to prevent sexual harassment, molestation, and abuse of minors, including Plaintiff JANE OB
26 DOE.

27 74. Plaintiff is informed and believes, and on that basis allege, that at no time during the
28 periods of time alleged did Defendants have in place a system or procedure to reasonably

1 investigate, supervise and/or monitor teachers, including HARMACHIS, to prevent pre-sexual
2 grooming and/or sexual harassment, and abuse of children, nor did they implement a system or
3 procedure to oversee or monitor conduct toward minors, students and others in Defendants' care.

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

7 76. Defendants' conduct was a breach of their duties to Plaintiffs.

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

12 78. Plaintiff is informed and believe, and on that basis allege, that Defendants knew or should
13 have known that their agent, counselor, advisor, and mentor HARMACHIS had sexually abused
14 or caused harm, and other injuries to minors, including Plaintiff, giving rise to a duty to report
15 such conduct under California Penal Code section 11166.

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

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

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

27 82. Had Defendants adequately reported the sexual abuse and harassment of Plaintiffs and
28 other minors as required by California Penal Code section 11166, further harm to Plaintiffs would

1 have been avoided.

2 83. As a proximate result of Defendants' failure to follow the mandatory reporting
3 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and
4 other minors and their parents the intervention of child protection services. Such public agencies
5 would have changed the then-existing arrangements and conditions that provided the access and
6 opportunities for the sexual harassment and abuse of Plaintiff JANE OB DOE by HARMACHIS.

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

10 85. As a result, Defendants' failure to comply with the mandatory reporting requirements of
11 California Penal Code section 11166 also constituted a per se breach of Defendants' duties to
12 Plaintiffs.

13 86. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to
14 adequately monitor and supervise HARMACHIS and/or stopping HARMACHIS from committing
15 wrongful sexual harassment and abuse of minors, including Plaintiff. This belief is founded on the
16 fact that Plaintiff is informed and believed that the administration at Santa Barbara High School
17 and SBUSD knew or should have known that the abuse was occurring at the time, and failed to
18 investigate into the matter further. Based on these facts, Defendants knew and/or should have
19 known of HARMACHIS' incapacity to supervise and/or stop employees of Defendants from
20 committing wrongful sexual acts with minors.

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

28 **THIRD CAUSE OF ACTION**

1 **NEGLIGENT HIRING/RETENTION**

2 (Plaintiff Against Defendant SBUSD Only and Does 1 through 100)

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

5 89. By virtue of Plaintiff's special relationship with Defendants and each of them, and
6 Defendants' relation to HARMACHIS, Defendants owed Plaintiff a duty to not hire and/or retain
7 HARMACHIS, given his dangerous and exploitive propensities, which Defendants knew or
8 reasonably should have known had they engaged in a meaningful and adequate investigation of his
9 background prior to hiring him.

10 90. By virtue of Plaintiff's special relationship with Defendants and each of them, and
11 Defendants' relation to HARMACHIS, Defendants owed Plaintiff a duty to not hire and/or retain
12 HARMACHIS, given their dangerous propensities in relation to students, abuse and failures to
13 report and/or cover up evidence, which Defendants knew or reasonably should have known had
14 they engaged in a meaningful and adequate investigation of her background prior to hiring him.

15 91. As an educational institution and operator of a school, where all of the students are minors
16 entrusted to the schools and its employees and agents, Defendants expressly and implicitly
17 represented that the counselors, advisors, mentors, coaches, teachers and others, including
18 HARMACHIS, were not a sexual threat to children and others who would fall under
19 HARMACHIS' influence, control, direction, and guidance.

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

25 93. Defendants and each of them were or should have been aware and understood how
26 vulnerable children were to sexual harassment, and abuse by teachers and other persons of
27 authority within the control of Defendants.

28 94. Plaintiff is informed, and believes, and on that basis alleges, that the Defendants

1 were put on notice, and should have known that HARMACHIS had previously engaged in
2 dangerous and inappropriate conduct, and that it was, or should have been foreseeable that he was
3 engaging, or would engage in illicit sexual activities with Plaintiff, and others, under the cloak of
4 his authority, confidence, and trust, bestowed upon him through Defendants.

5 95. Defendants were placed on actual and/or constructive notice that HARMACHIS had
6 engaged in dangerous and inappropriate conduct, both before his employment within Defendants,
7 and during that employment. Plaintiff is informed, and thereon alleges, that other third parties,
8 minors, students, law enforcement officials and/or parents informed Defendants of inappropriate
9 conduct committed by HARMACHIS.

10 96. Even though Defendants knew or should have known of these activities by
11 HARMACHIS, Plaintiff is informed that Defendants failed to use reasonable care in investigating
12 HARMACHIS and did nothing to investigate, supervise or monitor HARMACHIS to ensure the
13 safety of the minor students.

14 97. Defendants' conduct was a breach of their duty to Plaintiff.

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

19 99. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew or
20 should have known that their agent, counselor, advisor and mentor, HARMACHIS, and other
21 employees, agents, teachers and staff within Defendants, had sexually abused or caused harm, and
22 other injuries to minors, including Plaintiff, giving rise to a duty to report such conduct under
23 California Penal Code section 11166.

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

28 101. By failing to report the continuing harassment and abuse, which Defendants and

1 each of them knew or should have known, and by ignoring the fulfillment of the mandated
2 compliance with the reporting requirements provided under California Penal Code section 11166,
3 Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting
4 Act, and as a result, unreasonably and wrongfully exposed Plaintiffs and other minors to sexual
5 harassment and abuse.

6 102. Plaintiffs were members of the class of persons for whose protection California
7 Penal Code section 11166 was specifically adopted to protect.

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

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

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

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

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

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

(Plaintiff Against Defendant SBUSD Only and Does 1 through 100)

108. 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.

109. 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 HARMACHIS by properly warning, training or educating Plaintiff and other students about how to avoid such a risk.

110. 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 abuse by HARMACHIS, such as the failure to properly warn, train or educate Plaintiffs and other students about how to avoid such a risk.

111. Defendants breached their duty to take reasonable protective measures to protect Minor Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and abuse by HARMACHIS, by failing to supervising and stop employees of Defendants, including HARMACHIS, from committing wrongful sexual acts with minors, including Plaintiffs.

FIFTH CAUSE OF ACTION**NEGLIGENCE PER SE**

(Plaintiff Against All Defendants and Does 1 through 100)

112. 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.

113. Under CANRA, Defendants were child care custodians and were under a statutory duty to report known or suspected incidents of sexual molestation 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.

114. Defendants knew or should have known that their agent, employee, counselor, advisor and mentor, HARMACHIS had sexually molested, abused or caused touching, battery, harm, and

other injuries to minors, including Plaintiff, giving rise to a duty to report such conduct under California Penal Code § 11166.

115. 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.

116. By failing to report the continuing molestations and abuse, which Defendants knew of or should have known of, 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 CANRA, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual molestation and abuse.

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

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

119. 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 molestation of Plaintiff by HARMACHIS.

120. The physical, mental, and emotional damages and injuries resulting from the sexual molestation of Plaintiff by HARMACHIS, was the type of occurrence and injuries that the CANRA were designed to prevent.

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

SIXTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Plaintiff Against All Defendants and Does 1 through 100)

122. 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.

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

- a. Close his door with female students present therein, including Plaintiff;
- b. Permitting HARMACHIS to have female students alone in his classroom;
- c. Permitting HARMACHIS to remain in close contact with minor students, including Plaintiff, despite numerous allegations of inappropriate physical and sexual misconduct;
- d. Permitting HARMACHIS access to private student information in order to determine whether or not they were vulnerable, including private medical information, prior abuse information, and discipline issues;
- e. With knowledge of HARMACHIS' dangerous propensities for physical and sexual misconduct, allowing HARMACHIS to remain in his position as a teacher.

124. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme. Among other things, Defendants tolerated and permitted an individual in the position of HARMACHIS and 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 despite his known dangerous propensities for physical and sexual misconduct.

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

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

127. A reasonable person would not expect or tolerate Defendants putting HARMACHIS in a

position of authority at Santa Barbara High School and the SBUSD, which enabled HARMACHIS 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.

128. A reasonable person would not expect or tolerate Defendants putting HARMACHIS in a position of authority at Santa Barbara High School and the SBUSD, which enabled the abuse and conduct against Plaintiff. Plaintiff had great trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

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

130. HARMACHIS 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.

131. 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.

132. Plaintiff is informed and based thereon alleges that the conduct of HARMACHIS 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 HARMACHIS.

SEVENTH CAUSE OF ACTION

ASSAULT

(Plaintiff Against Defendant HARMACHIS Only and Does 1 through 100)

133. 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.

134. Defendant HARMACHIS, in doing the things herein alleged all while HARMACHIS 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.

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

136. Plaintiff did not consent to HARMACHIS' 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, she lacked the ability to consent to sexual contact with any person, especially with a mentor, teacher, coach and counselor at the school she attended.

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

138. 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.

139. Plaintiff is informed and based thereon alleges that the conduct of Defendant HARMACHIS 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.

EIGHTH CAUSE OF ACTION

SEXUAL BATTERY (C.C. §1708.5)

(Plaintiff Against Defendant HARMACHIS Only and Does 1 through 100)

140. 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.

141. During Plaintiff's time as a minor student at SBUSD, Santa Barbara High School and DOES 1 through 100, Defendant HARMACHIS 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 HARMACHIS: engaging in sexual harassment, sexual touching, contact, and conduct with the Plaintiff JANE OB DOE.

142. Defendant HARMACHIS 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.

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

144. As a direct, legal and proximate result of the acts of Defendant HARMACHIS, Plaintiff sustained serious and permanent injuries to her person, all to their damage in an amount to be

shown according to proof and within the jurisdiction of the Court.

145. As a direct result of the sexual abuse by HARMACHIS, 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 her by Defendant HARMACHIS. 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 HARMACHIS, Plaintiff has had issues with her personal life, as Plaintiff has issues with trust and is unable to maintain relationships. These feelings have caused Plaintiff substantial emotional distress, anxiety, nervousness and fear.

146. Plaintiff is informed and based thereon allege that the conduct of Defendant HARMACHIS 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 HARMACHIS.

NINTH CAUSE OF ACTION

SEXUAL HARASSMENT: (C.C. § 51.9)

(Plaintiff Against All Defendants and Does 1 through 100)

147. 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.

148. 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."

149. 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.”

150. 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.

151. “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).

152. During Plaintiff's time as a student at Santa Barbara High School, Defendant HARMACHIS 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 HARMACHIS: sexually

1 abusing, molesting and touching the Plaintiff, all while HARMACHIS was acting in the course
2 and scope of his agency/ employment with Defendants, and each of them.

3 153. The incidents of abuse outlined herein above took place while Plaintiff was under the
4 control of HARMACHIS in his capacity and position as teacher, advisor and mentor and while
5 acting specifically on behalf of Defendants.

6 154. During Plaintiff's time as a student at Santa Barbara High School, Defendant
7 HARMACHIS intentionally, recklessly and wantonly did acts which resulted in psychological
8 harm to the Plaintiff, including but not limited to, using his position as a teacher, advisor, and
9 mentor to sexually harass and abuse the Plaintiff, and to use his authority and position of trust to
10 exploit the Plaintiff emotionally.

11 155. Because of Plaintiff's relationship with HARMACHIS as a student at Santa Barbara High
12 School and the SBUSD, and Plaintiff's young age as a minor student, and her mental incapacity
13 and deficits, Plaintiff was unable to easily terminate the student-teacher, student-advisor, and
14 student-mentor relationships she had with Defendant HARMACHIS.

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

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

22 158. Defendants' conduct was a breach of their duties to Plaintiff. Defendant SBUSD and
23 Santa Barbara High School ratified HARMACHIS' illicit sexual harassment of Plaintiff by
24 retaining him in employment despite having knowledge (either constructive and/or actual) that the
25 sexual harassment and/or abuse was occurring.

26 159. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer
27 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
28 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.

160. The aforesaid acts directed towards the Plaintiff were 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 Defendant HARMACHIS in an amount appropriate to punish and set an example of him, and also pursuant to Civil Code section 52. Plaintiff is also entitled to attorney's fees and costs from Defendants HARMACHIS and SBUSD pursuant to Civil Code section 52, especially given SBUSD's authorization or ratification of such acts by its managing agents, officers or directors.

TENTH CAUSE OF ACTION

GENDER VIOLENCE: (C.C. § 52.4)

(Plaintiff Against Defendant HARMACHIS Only and Does 1 through 100)

161. 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.

162. 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.

163. 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.

164. As a proximate result of Defendant HARMACHIS' 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 section 52.4, against Defendant HARMACHIS.

ELEVENTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(Plaintiff Against All Defendants and Does 1 through 100)

165. 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.

166. Defendants, as school teachers, staff, faculty, administrators and/or SBUSD and/or Santa Barbara High School officials were in a fiduciary relationship with Plaintiff, owing her a special duty of due care. All Defendants (by and through their agents) are mandated reporters with respect to claims of child abuse and child safety.

167. Moreover, Defendants owed the Plaintiff a statutory, common law and constitutional duty to protect her and guarantee her safety at school.

168. Defendants breached their fiduciary duty by failing to properly supervise HARMACHIS and take appropriate steps to prevent the lewd and lascivious conduct perpetrated by HARMACHIS against the Plaintiff. Defendants also failed to report HARMACHIS pursuant to Defendants' policy. In addition, Defendants failed to report HARMACHIS' abuse.

169. As a result of the above-described conduct, 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 and 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 have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

170. In subjecting the Plaintiff to the wrongful treatment herein described, Defendant

HARMACHIS 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 HARMACHIS, in a sum to be shown according to proof.

TWELFTH CAUSE OF ACTION

CONSTRUCTIVE FRAUD: (C.C. § 1573)

(All Plaintiffs Against All Defendants and Does 1 through 100)

171. 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.

172. By holding themselves out as qualified institutions of learning for children, by holding HARMACHIS 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 HARMACHIS, Defendants entered into a fiduciary, special and confidential relationship with Plaintiff.

173. 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.

174. 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, her parents, and caretakers, the school community, and law enforcement agencies;
- c. Refuse to place HARMACHIS and other molesters in positions of trust and authority within Defendants' institutions;
- d. Refuse to hold out HARMACHIS 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 HARMACHIS to positions of power within the school and over minor students; and
- f. Disclose to the Plaintiff and her parents, the public, the community, the school, students, minors, and law enforcement agencies the wrongful, tortious, and criminal acts of HARMACHIS.

175. Defendants' breached their respective duties by:

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

176. 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.

177. Defendants' misconduct did reasonably cause Plaintiff to forbear on her rights.

178. 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 HARMACHIS or others and that there was no need for them to take further action or precaution.

179. 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 HARMACHIS was a danger to students.

180. Defendants knew or should have known at the time they suppressed and concealed the true facts regarding HARMACHIS and others' dangerous and inappropriate conduct that the resulting impressions were misleading.

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

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

183. Defendants' suppression and concealment of facts, and in reliance thereon, were induced to act or induced not to act, exactly as intended by Defendants. Had Plaintiff and her parents or others known the true facts, they would have not participated further nor continued to financially support the Defendants' activities alleged herein; they would have reported the matters to the proper authorities, to other students and their parents so as to prevent future recurrences; they would not have allowed children, including the Plaintiff, to be alone with, or have any relationship with HARMACHIS; they would not have allowed children, including the Plaintiff, to attend or be under the control of Defendants; they would have undertaken her own investigations which would

1 have led to discovery of the true facts; and they would have sought psychological counseling for
2 the Plaintiff, and for other children molested and abused by HARMACHIS.

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

6 185. 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 HARMACHIS had engaged in dangerous and
9 inappropriate conduct, and knew of or learned of conduct, or should have learned of conduct by
10 HARMACHIS which placed Defendants on notice that HARMACHIS was likely abusing
11 children.

12 186. Because of the Plaintiff's young age, her mental incapacity, and because of the status of
13 HARMACHIS as an authority figure to the Plaintiff, Plaintiff was vulnerable to HARMACHIS.
14 HARMACHIS sought the Plaintiff out, and was empowered by and accepted Plaintiff's
15 vulnerability. Plaintiff's vulnerability also prevented the Plaintiff from effectively protecting
16 herself from the sexual advances of HARMACHIS.

17 187. Defendants had the duty to obtain and disclose information relating to misconduct of
18 HARMACHIS.

19 188. Defendants misrepresented, concealed or failed to disclose information relating to
20 misconduct of HARMACHIS.

21 189. Defendants knew that they had misrepresented, concealed or failed to disclose
22 information related to misconduct of HARMACHIS.

23 190. Plaintiff justifiably relied upon Defendants for information relating to misconduct of
24 HARMACHIS.

25 191. Defendants, in concert with each other and with the intent to conceal and defraud,
26 conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to
27 disclose information relating to the misconduct of HARMACHIS, the inability of Defendants to
28 supervise or stop HARMACHIS from sexually harassing, molesting and abusing the Plaintiff, and

1 their own failure to properly investigate, supervise and monitor his conduct with minors and
2 students.

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

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

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

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

26 196. In subjecting Plaintiff to the wrongful treatment herein described, Defendant
27 HARMACHIS acted willfully and maliciously with the intent to harm Plaintiff, and in conscious
28 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 HARMACHIS, in a sum to be shown according to proof.

FOURTEENTH CAUSE OF ACTION

PUBLIC ENTITY LIABILITY FOR FAILURE TO PERFORM MANDATORY DUTY

(Plaintiff Against Defendants SBUSD Only and Does 1 through 100)

197. 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.

198. The following mandatory duties are pled as having been violated by SBUSD:

Government Code 815.6 and Penal Code section 11165 *et seq.*

199. SBUSD on its own behalf and on behalf of its administrators and supervisory personnel, pursuant to Government Code section 815.2, failed to report sexual abuse.

200. SBUSD violated its mandatory duties by the failure of these administrators and staff to comply with Penal Code section 11166, which ***mandates*** that certain reporters, including staff and administrators of public educational institutions report sexual abuse of minors or reasonable suspicion of sexual abuse.

201. Plaintiff was further harmed because Defendant SBUSD violated the following statutes, which state (with relevant provisions cited below):

- a. Education Code §200: "It is the policy of the State of California to afford all persons in public schools, regardless of their 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, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor."
- b. Education Code §201(a): "All pupils have the right to participate fully in the educational process, free from discrimination and harassment."
- c. Education Code §201(b): "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."
- d. Education Code §201(c): "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."
- e. Education Code §201(d): "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.

- f. Education Code §201(e): "There is an urgent need to teach and inform pupils in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase pupils' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in public schools and in society as a means of responding to potential harassment and hate violence."
- g. Education Code §201(f): "It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity."
- h. Civil Code §51.9: "(a) A person is liable in a cause of action for sexual harassment under this section when the plaintiff proves all of the following elements:
 - (1) There is a business, service, or professional relationship between the plaintiff and defendant. Such a relationship may exist between a plaintiff and a person, including, but not limited to, any of the following persons:
 - (A) Physician, psychotherapist, or dentist. For purposes of this section, "psychotherapist" has the same meaning as set forth in paragraph (1) of subdivision (c) of Section 728 of the Business and Professions Code.
 - (B) Attorney, holder of a master's degree in social work, real estate agent, real estate appraiser, accountant, banker, trust officer, financial planner loan officer, collection service, building contractor, or escrow loan officer.
 - (C) Executor, trustee, or administrator.
 - (D) Landlord or property manager.
 - (E) Teacher.
 - (F) A relationship that is substantially similar to any of the above.
 - (2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.
 - (3) There is an inability by the plaintiff to easily terminate the relationship.
 - (4) The plaintiff has suffered or will suffer economic loss or is advantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2)."
- i. Title IX of 20 U.S.C. §1681: "...No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

202. As a result of allowing HARMACHIS to sexually abuse, molest, and harass minor students, including the Plaintiff, Defendant SBUSD violated Penal Code section 11165 et seq. and

Government Code section 815.6, which were mandatory duties to report and comply with the law to protect victims against sexual abuse.

203. As a result of Defendant SBUSD's failure to perform these mandatory duties, Plaintiff suffered immense harm.

204. Defendant SBUSD's failure to perform these mandatory duties, was a substantial factor in causing the harm suffered by Plaintiff.

205. As a result of the above-described conduct, 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; have 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 have incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

WHEREFORE, Plaintiff prays 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. Any appropriate punitive or exemplary damages against Defendant HARMACHIS;
4. Any appropriate statutory damages;
5. For costs of suit;
6. For interest as allowed by law;
7. For attorney's fees and costs as applicable pursuant to California Code of Civil Procedure §§ 52.4, 1021.4 and 1021.5 against Defendant HARMACHIS; Civil Code §52 against Defendants HARMACHIS and SBUSD, or otherwise as allowable by law and against SBUSD pursuant to Title IX;
8. For such other and further relief as the court may deem proper.

1 Dated: November 30, 2020

MANLY, STEWART & FINALDI

2 By: Courtney P. Pendry
3 MORGAN A. STEWART
4 COURTNEY P. PENDRY
5 Attorneys for Plaintiff,
6 JANE OB DOE
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