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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 10/4/2023 4:11 PM
By: Agnes Nazarian, Deputy

6 Attorneys for Plaintiff,
7 JANE DOE

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF MONTEREY**

11 JANE DOE,

12 Plaintiff,

13 vs.

14 CARMEL UNIFIED SCHOOL DISTRICT;
15 ROEL MARTINEZ; and DOES 1 through
16 50, inclusive,

Defendants.

Case No.: 23CV003225

INDIVIDUAL ACTION

**COMPLAINT FOR DAMAGES AND
CIVIL PENALTIES**

DEMAND FOR JURY

17 Plaintiff JANE DOE, complains and alleges against the above-captioned Defendants as
18 follows:

19 1. Plaintiff JANE DOE (“Plaintiff”) is a competent adult who is, and at all times
20 mentioned in this complaint has been, a resident of Monterey County, California. Plaintiff has
21 been employed as a Custodian since July 1999, and continues to be employed in the same
22 position. Plaintiff is, and at all relevant times was, an individual as defined in Business and
23 Professions Code §§ 17201 and 17204.

24 2. Defendant CARMEL UNIFIED SCHOOL DISTRICT (“CUSD”) is and was a
25 special district duly organized and existing under and by virtue of the laws of the State of
26 California.

27 3. Defendant ROEL MARTINEZ (“Martinez”) served as the Lead Custodian for
28

1 CUSD. MARTINEZ's unlawful conduct occurred in the State of California. At all relevant
2 times herein referenced, MARTINEZ was a supervisor as defined by California Government
3 Code §12926, subdivision (t).

4 4. Plaintiff is ignorant of the true names, identities, capacities and relationships of
5 the Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these
6 Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges,
7 that each of these fictitiously named Defendants are responsible in some manner for the
8 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately
9 caused by DOES 1 through 50. Plaintiff will amend this Complaint to allege the true names
10 and capacities of said DOE Defendants when such information is ascertained. Each reference
11 to "Defendants," and each reference to any particular Defendant herein, shall be construed to
12 refer to all Defendants, including, but not limited to, all of those fictitiously named herein as a
13 "DOE" Defendant, and each of them.

14 5. Plaintiff is informed and believes, and thereon alleges, that each of the
15 Defendants herein was at all times relevant to this action the agent, employee, representative,
16 partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of
17 the Defendants herein was at all times acting within the course and scope of that relationship.
18 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
19 herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants
20 herein. The conduct of each of the Defendants was at all times herein in accordance with and
21 represents the official policy of Defendants. Additionally, at all times herein mentioned,
22 Defendants, and each of them, aided and abetted the acts and omissions of each and all of the
23 other Defendants, which proximately caused the damages herein alleged. Plaintiff is further
24 informed and believes, and thereon alleges, that all of the Defendants jointly employed the
25 Plaintiff herein and/or carried out a joint scheme, business plan and/or uniform policy, and the
26 acts and omissions of each Defendant are legally attributable to the other Defendants such that
27 they are deemed a single integrated enterprise and agents of one another so that all Defendants
28 are each jointly and severally liable for the acts and omissions hereinafter alleged.

1 6. Defendants CUSD, Martinez, and DOES 1 through 50 (collectively referred to
2 herein as “Defendants”) are, and at all times herein were, “persons” as defined in California
3 Business and Professions Code § 17201.

4 **JURISDICTION AND VENUE**

5 7. Jurisdiction and venue are proper in this Court because Plaintiff worked in this
6 County. Moreover, jurisdiction and venue are proper in this Court pursuant to the California
7 Fair Employment and Housing Act (the “FEHA”), California Government Code Section
8 12965(c) because unlawful employment actions occurred in this County.

9 **FACTUAL ALLEGATIONS**

10 8. Plaintiff was hired by CUSD in July 1999, and she has worked there for more
11 than 24 years as a Custodian. Plaintiff is a good and very hard-working employee, and she
12 enjoys doing her work. During the course of her employment, Plaintiff was subjected to
13 harassment and discrimination based on her sex/gender (female) and she was subjected to
14 pervasive sexual harassment, which significantly altered the conditions of her employment and
15 created a hostile working environment. Plaintiff is the only female custodian working for the
16 CUSD.

17 9. Approximately five years ago, MARTINEZ was promoted to Lead Custodian
18 and he became the Plaintiff’s direct supervisor. MARTINEZ subjected Plaintiff to pervasive
19 sexual harassment, as well as harassment and discrimination based on her sex/gender (female).
20 Both CUSD and MARTINEZ retaliated against Plaintiff after she spoke up about the
21 harassment and/or others complained on her behalf.

22 10. Plaintiff was afraid to complain about the workplace harassment she suffered
23 from her supervisor for fear of retaliation, and because nothing had been done by CUSD in
24 response to her complaints (more than five years ago) of sexual harassment and/or gender
25 discrimination. For example, many years prior, another custodian came from behind and
26 grabbed Plaintiff’s buttocks and breasts. Plaintiff was shocked and traumatized and did not
27 know to make a written complaint. She told other District employees of the severity of the
28 harassment, and nothing was done. Moreover, after MARTINEZ became her supervisor

1 (within the last 5 years approximately), Plaintiff did not know how to make a complaint about
2 her direct supervisor.

3 11. The harassment was so bad that other co-workers notified CUSD about the
4 treatment that Plaintiff suffered. For example, on July 30, 2020, a custodian co-worker
5 notified CUSD of “unprofessionalism and sexual harassment” occurring at Carmel High
6 School. In an email entitled “Sexual harassment,” the co-worker said, “I have witnessed my
7 coworker [Plaintiff], being belittled and harassed by our lead Custodian.” The co-worker gave
8 quotes and examples and he reported that the “work place is getting so overwhelming and
9 uncomfortable with what is allowed to be said and the behavior that is being conducted by
10 Roel [MARTINEZ], which is having a problematic effect on the crew and the way we
11 communicate with each other.” The co-worker documented that MARTINEZ made an
12 inappropriate comment to Plaintiff about needing a “rape whistle.”

13 12. Plaintiff reported that MARTINEZ made inappropriate and sexually harassing
14 comments about women and female students. He made harassing statements with sexual
15 innuendo to Plaintiff: He asked Plaintiff if she wanted to “sit on [his] ball.” He harassed
16 Plaintiff about trimming the “bush” and leaving the “bush” alone so it could grow. He called
17 female students “whores” and “sluts.” He called a teacher’s daughter a “whore” and said
18 another teacher must have a “big schlong” because his wife was really pretty. He called other
19 female employees “bitches” and commented inappropriately on their physical appearances,
20 such as, “bitch better not be fat.”

21 13. Following the co-worker’s report of harassment, CUSD failed to investigate and
22 failed to protect or prevent further harassment of Plaintiff. Mr. Bob Gruber, the District’s
23 Director of Maintenance and Operations, told Plaintiff that the behavior was not sexual
24 harassment. Plaintiff told Mr. Gruber that there were more incidents than the report from the
25 co-worker, but Mr. Gruber did not investigate further. He said all he could do was send
26 MARTINEZ to a sexual harassment class. Thereafter, Plaintiff is informed and believes that
27 MARTINEZ received no reprimand or discipline, and MARTINEZ continued to be Plaintiff’s
28 supervisor. MARTINEZ continued to mistreat and retaliate against Plaintiff. Mr. Gruber told

1 another district employee that the best part of his day was “fucking with [Plaintiff].” During a
2 sexual harassment prevention training, Mr. Gruber mocked the female victim in the training
3 video and said to Plaintiff and others, “See that lady there, she now owns the company.”
4 Plaintiff and another custodial employee heard him. Plaintiff continued to be harassed and
5 discriminated against by Defendants.

6 14. On or about September 21, 2021, Plaintiff returned from an injury leave and
7 noticed her personal items and tools had been thrown away. MARTINEZ was still her
8 supervisor, and he continued to harass and belittle her. MARTINEZ continued his behavior
9 which Plaintiff characterized as “disgusting.” In front of Plaintiff, MARTINEZ would talk
10 about women’s and girls’ bodies and sexual orientations, and he was overly familiar with
11 many of the high school girls’ names, appearances, and which sports or afterschool activities
12 they participated in. He spoke about the female high school students inappropriately and in a
13 way that made Plaintiff very uncomfortable. He would call them “little whores” and “sluts,”
14 and he talked graphically about what the girls were wearing. MARTINEZ spoke
15 disrespectfully about women regularly, and he continued to specifically belittle and degrade
16 Plaintiff since she was a female. He regularly used inappropriate sexual innuendo in his
17 comments to Plaintiff.

18 15. In addition, within the last three years, Plaintiff has complained to district
19 employees that CUSD are retaliating against her (the only female custodian) by requiring her
20 to perform more work than any other custodian. She has requested additional staff and/or
21 equipment to try to meet the work demands. CUSD continually deny her requests for
22 assistance, or ignore her requests by telling her that they are working on it. On or about
23 November 4, 2021, Plaintiff met with district employee Mr. Craig Tuana, then assistant
24 principal of Carmel High School, and reported the ongoing sexual harassment and
25 mistreatment based on her sex/gender (female). On or about December 7, 2021, Plaintiff met
26 with district employee Mr. Jon Lyons and reported continuing harassment by MARTINEZ and
27 retaliation, lack of investigation and lack of protection by the District. On or about January
28 18, 2022, Plaintiff reported to district employee Mr. Craig Chavez the pervasive harassment

1 and mistreatment she continued to suffer from MARTINEZ, and the retaliation, lack of
2 investigation, and lack of protection by the District. Mr. Chavez said that he would be
3 launching a “formal investigation.”

4 16. On January 19, 2022, Plaintiff requested access to the district’s catastrophic
5 leave bank (sick leave donation program), to move her gravely disabled sister into a long-term
6 care facility (Plaintiff was guardian/next of kin/power of attorney). CUSD denied Plaintiff’s
7 request, which Plaintiff is informed and believes was granted for other employees to care for
8 their siblings.

9 17. On February 11, 2022, the district’s investigator, in an email entitled ‘Formal
10 Complaint,’ said to Plaintiff, “My understanding is that you have not yet filed a formal
11 complaint form, and I am attaching it below so that you can fill out this document.” On
12 February 15, 2022, Plaintiff attached an incomplete timeline of prior notes. The District
13 proceeded with its investigation and provided Plaintiff with an outcome letter on March 28,
14 2022.

15 18. In the fall of 2022, CUSD Board President Karl Pallastrini and Plaintiff had a
16 conversation at a Carmel High School Football game. Plaintiff asked Mr. Pallastrini why
17 MARTINEZ didn’t get fired. Mr. Pallastrini said, “Ted [Mr. Knight] thought he
18 [MARTINEZ] could be rehabilitated.” Mr. Pallastrini told Plaintiff, “You need to just get
19 over this.” Plaintiff was shocked and appalled, and said to Mr. Pallastrini, “Do you know what
20 this has done to me?”

21 19. On information and belief, CUSD’s mishandling and failure to investigate the
22 reports of harassment and discrimination against Plaintiff, contributed to the termination
23 and/or early retirement of Carmel High School Principal Jonathan Lyons and CUSD
24 Superintendent Ted Knight. Plaintiff is so traumatized by CUSD’s failure to protect her, that
25 she finds it excruciating and debilitating to participate in the district’s sexual harassment
26 prevention training. The training presentation completely triggers Plaintiff, because CUSD
27 utterly failed to respond, allowed the prohibited conduct to continue, and failed to prevent
28 harassment and discrimination against Plaintiff.

1 20. Notwithstanding the above, CUSD has continued to this date to subject Plaintiff
2 to unwarranted reprimands, unreasonable work demands, and disparately harsh treatment from
3 district employees. CUSD has continued to harass and retaliate against Plaintiff by launching
4 reprisal complaints and investigations against her. CUSD has allowed and continues to
5 investigate a complaint made by MARTINEZ against Plaintiff, even though CUSD concluded
6 in 2022, that Plaintiff's complaints regarding MARTINEZ were justified and MARTINEZ
7 subjected Plaintiff to sexual harassment. Moreover, CUSD continues to discriminate against
8 Plaintiff (the only female custodian) by assigning her to do more work, by herself, for more
9 District employees and students, than any male custodian is required to perform. Plaintiff
10 continues to suffer severe trauma and distress from this situation, with catastrophic
11 consequences to her physical and mental health.

FIRST CAUSE OF ACTION

**Sexual Harassment in Violation of the FEHA
(Plaintiff against Defendants)**

14 21. Plaintiff alleges and incorporates by reference all of the allegations contained in
15 the preceding paragraphs as though fully set forth herein.

16 22. At all times herein mentioned, the FEHA was in full force and effect and was
17 fully binding upon Defendants. Specifically, California Government Code section 12940(j)
18 prohibits an employer from sexually harassing an employee on the basis of his/her sex or
19 gender.

20 23. The actions of MARTINEZ towards Plaintiff as described herein, created a
21 hostile sexual environment which materially altered Plaintiff's working conditions, and which
22 constituted sexual harassment in violation of Government Code section 12940(j)(1).

23 24. As a direct, foreseeable and proximate result of the unlawful actions of
24 MARTINEZ and CUSD, Plaintiff has suffered and continue to suffer compensatory damages,
25 including without limitation, lost wages, loss of future earnings, emotional distress, mental
26 anguish, embarrassment, humiliation, loss of future advancement, and damage to her
27 reputation in the business community, in the amount of at least \$25,000.00, according to proof
28 at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify

1 as an unlimited civil action. Plaintiff claims such amounts as damages, together with
2 prejudgment interest accruing from the date of the filing of this action pursuant to California
3 Civil Code sections 3281 and/or 3288, and/or any other provision of law providing for
4 prejudgment interest.

5 25. As a direct, foreseeable and proximate result of the unlawful actions of
6 MARTINEZ and CUSD, Plaintiffs have been forced to hire attorneys to prosecute the claims
7 alleged herein and has incurred and is expected to continue to incur attorneys' fees. Pursuant
8 to California Government Code section 12965(b), Plaintiffs request the award of attorneys'
9 fees against Defendants.

10 26. MARTINEZ committed the acts alleged herein maliciously, fraudulently, and
11 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
12 conscious disregard of Plaintiff's rights and safety. The outrageousness of MARTINEZ's
13 conduct is amplified due to MARTINEZ's abuse of his position with actual and apparent
14 authority over Plaintiff, such as is commonly found in employment relationships, and which is
15 further amplified in this case given MARTINEZ's authority. As such, Plaintiff is entitled to an
16 award of punitive damages against MARTINEZ in an amount according to proof.

17 **SECOND CAUSE OF ACTION**

18 **Sex Discrimination in Violation of the FEHA
19 (Plaintiff against Defendants)**

20 27. Plaintiff alleges and incorporates by reference all of the allegations contained in
21 the preceding paragraphs as though fully set forth herein.

22 28. California Government Code section 12940(a) prohibits an employer from
23 discriminating against an employee on the basis of his/her sex or gender.

24 29. CUSD discriminated against Plaintiff on account of her sex/gender. As described
25 above, Plaintiff suffered adverse employment action in the form of workplace harassment
26 which was motivated by her sex/gender, and those adverse employment actions materially
27 affected the terms and conditions of Plaintiff's employment. Sexual harassment is a form of
28 gender discrimination.

30. As a direct, foreseeable and proximate result of CUSD's unlawful actions,

1 Plaintiff has suffered and continues to suffer compensatory damages, including, without
2 limitation, lost wages, loss of future earnings, emotional distress, mental anguish,
3 embarrassment, humiliation, loss of future advancement, and damage to her reputation in the
4 business community, in the amount of at least \$25,000.00, according to proof at the time of
5 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
6 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
7 interest accruing from the date of the filing of this action pursuant to California Civil Code
8 sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment
9 interest.

10 31. As a direct, foreseeable, and proximate result of CUSD's unlawful actions,
11 Plaintiff has been forced to hire attorneys to prosecute the claims alleged herein and has
12 incurred and is expected to continue to incur attorneys' fees. Pursuant to California
13 Government Code section 12965(b), Plaintiffs request the award of attorneys' fees against the
14 CUSD.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Investigate and Prevent Harassment and Retaliation in Violation of FEHA
17 (Plaintiff against Defendants)**

18 32. Plaintiff alleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs as though fully set forth herein.

20 33. Pursuant to the FEHA, CUSD was required to take reasonable steps to prevent
21 sexual harassment and retaliation, as mandated by Government Code Section 12940(k). As
22 alleged herein, CUSD failed to take all reasonable steps necessary to prevent such unlawful
23 conduct from occurring.

24 34. As alleged above, Plaintiff was repeatedly subjected to unabated sexual
25 harassment by her superior, MARTINEZ, that significantly altered the conditions of Plaintiff's
26 employment and created an abusive working environment. CUSD, however, did nothing to
27 rectify the unlawful conduct despite having received at least one or more reports concerning
28 MARTINEZ's inappropriate behavior. Because of CUSD's failure to act, the sexual
harassment against Plaintiff persisted. Even after CUSD finally investigated the matter and

1 found that MARTINEZ had engaged in the reported behavior, in violation of the CUSD's
2 sexual harassment policy, there was no indication that any action had been taken against
3 MARTINEZ.

4 35. As a result, CUSD violated Section 12940(k) by not taking all reasonable steps
5 to prevent harassment and retaliation from occurring and, thus, is liable for violation of the
6 FEHA.

7 36. As a proximate result of CUSD's failure to take reasonable steps to prevent
8 sexual harassment and retaliation, Plaintiff has suffered and continues to suffer compensatory
9 damages, including without limitation, lost wages, loss of future earnings, emotional distress,
10 mental anguish, embarrassment, humiliation, loss of future advancement, and damage to her
11 reputation in the business community, in the amount of at least \$25,000.00, according to proof
12 at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify
13 as an unlimited civil action. Plaintiff claims such amounts as damages, together with
14 prejudgment interest accruing from the date of the filing of this action pursuant to California
15 Civil Code sections 3281 and/or 3288, and/or any other provision of law providing for
16 prejudgment interest.

17 37. As a proximate result of CUSD's failure to prevent discrimination and retaliation
18 in the workplace, Plaintiff has been forced to hire attorneys to prosecute the claims alleged
19 herein and has incurred and is expected to continue to incur attorneys' fees. Pursuant to
20 California Government Code section 12965(b), Plaintiff requests the award of attorneys' fees
21 against CUSD.

22 **FOURTH CAUSE OF ACTION**
23 **Retaliation in Violation of the FEHA**
(Government Code § 12940(m)(2))
24 **(Plaintiff against Defendants)**

25 38. Plaintiff alleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth herein.

27 39. California Government Code section 12940(m) prohibits employers from
28 retaliating against an employee.

40. As a proximate result of CUSD's retaliation against Plaintiff, she has suffered

1 and continues to suffer compensatory damages, including without limitation, lost wages, loss
2 of future earnings and earning capacity, loss of bonuses, emotional distress, mental anguish,
3 embarrassment, humiliation, loss of future advancement, and damage to her reputation in the
4 business community, in the amount of at least \$25,000.00, according to proof at the time of
5 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
6 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
7 interest accruing from the date of the filing of this action pursuant to California Civil Code §§
8 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

9 41. As a proximate result of CUSD's retaliation against Plaintiff, she has been
10 forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is
11 expected to continue to incur attorneys' fees. Pursuant to California Government Code §
12 12965(b), Plaintiff requests the award of attorneys' fees against defendants.

13 42. The above-mentioned actions of CUSD was done with malice, fraud, and/or
14 oppression, and in conscious disregard of Plaintiff's rights. The actions were also done with
15 the intent to vex, injure, and annoy Plaintiff. As such, Plaintiff is entitled to an award of
16 punitive damages from CUSD in an amount according to proof.

17 **FIFTH CAUSE OF ACTION**
18 **Retaliation**
(California Labor Code § 1102.5)
(Plaintiff against Defendants)

19 43. Plaintiff alleges and incorporates by reference all of the allegations contained in
20 the preceding paragraphs as though fully set forth herein.

21 44. Labor Code § 1102.5(b) states in relevant part that an employer "shall not
22 retaliate against an employee for disclosing information. . . to a person with authority over the
23 employee or another employee who has the authority to investigate, discover, or correct the
24 violation or noncompliance . . . if the employee has reasonable cause to believe that the
25 information discloses a violation of state or federal statute..."

26 45. As alleged above, Plaintiff complained about having been subject to unlawful
27 sexual harassment and retaliation on the basis of her sex/gender by MARTINEZ.

28 46. As a proximate result of CUSD's retaliation against Plaintiff, she has suffered

1 and continues to suffer compensatory damages, including without limitation, lost wages, loss
2 of future earnings and earning capacity, loss of bonuses, commissions, emotional distress,
3 mental anguish, embarrassment, humiliation, loss of future advancement, and damage to her
4 reputation in the business community, in the amount of at least \$25,000.00, according to proof
5 at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify
6 as an unlimited civil action. Plaintiff claims such amounts as damages, together with
7 prejudgment interest accruing from the date of the filing of this action pursuant to California
8 Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for
9 prejudgment interest.

10 47. As a proximate result of CUSD retaliation against Plaintiff, she has been forced
11 to hire attorneys to prosecute the claims alleged herein and have incurred, and is expected to
12 continue to incur, attorneys' fees. Pursuant to California Labor Code 1102.5(j), Plaintiff
13 requests the award of attorneys' fees against CUSD.

14 48. CUSD committed the acts alleged herein maliciously, fraudulently, and
15 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
16 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
17 punitive damages in an amount according to proof.

18 **SIXTH CAUSE OF ACTION**
19 **Intentional Infliction of Emotional Distress**
20 **(Plaintiff against Defendants)**

21 49. Plaintiff alleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth herein.

23 50. When CUSD committed the acts described above, it did so deliberately and
24 intentionally to cause Plaintiff to suffer humiliation, mental anguish, and emotional distress.
25 The outrageousness of the above-described conduct is amplified due to upper management's
26 abuse of their positions with actual and apparent authority over Plaintiff, such as is commonly
27 found in employment relationships. CUSD was aware that its unlawful acts would cause
28 Plaintiff to suffer extreme emotional distress and other consequential damages.

51. The above-said acts of CUSD constituted intentional infliction of emotional

1 distress against Plaintiff and such conduct of Defendants was a substantial or determining
2 factor in causing damage and injury to Plaintiff.

3 52. As a result of CUSD's intentional infliction of emotional distress, Plaintiff has
4 suffered and continues to suffer substantial loss and damages including, loss of salary, future
5 advancement, benefits, embarrassment, humiliation, and mental anguish in an amount to be
6 determined at trial.

7 53. CUSD committed said intentional infliction of emotional distress alleged herein
8 against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of
9 injuring Plaintiff for an improper and evil motive which constitutes a malicious and conscious
10 disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from CUSD in
11 an amount to be determined at trial.

12 **SEVENTH CAUSE OF ACTION**
13 **Negligent Infliction of Emotional Distress**
14 **(Plaintiff against Defendants)**

15 54. Plaintiff alleges and incorporates by reference all of the allegations contained in
16 the preceding paragraphs as though fully set forth herein.

17 55. When CUSD committed the acts described above, it knew, or should have
18 known, that its failure to exercise due care in the performance of its role as employer would
19 cause Plaintiff to suffer emotional distress. CUSD knew or should have known that its failure
20 to conduct a good faith investigation into Plaintiff's claims of workplace harassment; and
21 otherwise essentially ignore Plaintiff's complaints would cause Plaintiff severe emotional
22 distress.

23 56. The above-said acts of CUSD constituted negligent infliction of emotional
24 distress against Plaintiff, and such conduct of Defendants was a substantial or determining
25 factor in causing damage and injury to Plaintiff.

26 57. As a result of CUSD's negligent infliction of emotional distress, Plaintiff has
27 suffered and continues to suffer substantial loss and damages, including, loss of salary, future
28 advancement, benefits, embarrassment, humiliation, and mental anguish in an amount to be
determined at trial.

1 58. CUSD committed said negligent infliction of emotional distress alleged herein
2 against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of
3 injuring Plaintiff for an improper and evil motive which constitutes a malicious and conscious
4 disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from CUSD in
5 an amount to be determined at trial.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for and requests relief as follows:

8 1. As to the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Causes of
9 Action, for special and general damages, back pay, front pay, exemplary and punitive
10 damages, and prejudgment interest;

11 2. As to All Causes of Action, for attorneys' fees and costs provided by Labor
12 Code §§ 218.5, 226, 1102.5(j), and 1194, Government Code § 12965(b), and Code of Civil
13 Procedure § 1021.5; and

14 3. For such other and further relief as the Court may deem equitable and
15 appropriate.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands trial of her individual claims by jury to the extent authorized
18 by law.

19 Dated: October 4, 2023

FITZPATRICK & SWANSTON

20 By: /s/ B. James Fitzpatrick
21 B. James Fitzpatrick
22 Attorneys for Plaintiff
23 JANE DOE
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EXHIBIT A



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

September 28, 2023

[REDACTED]

c/o Fitzpatrick & Swanston, 555 S Main Street
Salinas, CA 93901

RE: Notice of Case Closure and Right to Sue
CRD Matter Number: 202309-22136928
Right to Sue: [REDACTED] / Carmel Unified School District

Dear [REDACTED]:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective September 28, 2023 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **Civil Rights Department**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 [REDACTED]

CRD No. 202309-22136928

8 Complainant,

9 vs.

10 Carmel Unified School District
11 4380 Carmel Valley Road
12 Carmel, CA 93923

13 Respondents

14
15 **1. Respondent Carmel Unified School District is an employer subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).**

16 **2. Complainant [REDACTED], resides in the City of Salinas, State of CA.**

17 **3. Complainant alleges that on or about September 27, 2023, respondent took the following adverse actions:**

18 **Complainant was harassed** because of complainant's sex/gender.

19 **Complainant experienced retaliation** because complainant reported or resisted any form of discrimination or harassment and as a result was reprimanded.

20
21 **Additional Complaint Details:** Complainant [REDACTED] ("Complainant") was hired by
22 Respondent Carmel Unified School District in July 1999, and she has worked there for more
23 than 24 years as a Custodian. Complainant is a good and very hard-working employee, and
24 she enjoys doing her work. During the course of her employment, Complainant was
25 subjected to harassment and discrimination based on her sex/gender (female) and she was
26 subjected to pervasive sexual harassment, which significantly altered the conditions of her
27 employment and created a hostile working environment. Complainant is the only female
28 custodian working for the Respondent District.

1 Approximately five years ago, Respondent Roel Martinez was promoted to Lead Custodian
2 and he became the Complainant's direct supervisor. Respondent Roel Martinez subjected
3 Complainant to pervasive sexual harassment, as well as harassment and discrimination
4 based on her sex/gender (female). Both Respondents retaliated against Complainant after
she spoke up about the harassment and/or others complained on her behalf.

5 Complainant was afraid to complain about the workplace harassment she suffered from her
6 supervisor for fear of retaliation, and because nothing had been done by the District in
7 response to her complaints (more than five years ago) of sexual harassment and/or gender
8 discrimination. For example, many years prior, another custodian came from behind and
9 grabbed Complainant's breasts. Complainant was shocked and traumatized and did not
know to make a written complaint. She told other District employees of the severity of the
harassment, and nothing was done. Moreover, after Respondent Martinez became her
supervisor (within the last 5 years approximately), Complainant did not know how to make a
complaint about her direct supervisor.

10 The harassment was so bad that other co-workers notified Respondent District about the
11 treatment that Complainant suffered. For example, on July 30, 2020, a custodian co-worker
12 notified Respondent District of "unprofessionalism and sexual harassment" occurring at
13 Carmel High School. In an email entitled "Sexual harassment," the co-worker said, "I have
14 witnessed my coworker [REDACTED], being belittled and harassed by our lead
Custodian." The co-worker gave quotes and examples and he reported that the "work place
is getting so overwhelming and uncomfortable with what is allowed to be said and the
behavior that is being conducted by Roel, which is having a problematic effect on the crew
and the way we communicate with each other."

15 Following the co-worker's report of harassment, Respondent District failed to investigate and
16 failed to protect or prevent further harassment of Complainant. Mr. Bob Gruber, the
17 District's Director of Maintenance and Operations, told Complainant that the behavior was
18 not sexual harassment. Complainant tried to explain to Mr. Gruber that there were more
19 incidents (than the brief report from the co-worker), but Mr. Gruber did not listen. He said all
20 he could do was send Mr. Martinez to a sexual harassment class. Thereafter, Complainant
21 is informed and believes that Respondent Martinez received no reprimand or discipline, and
Respondent Martinez continued to be Complainant's supervisor. Respondent Martinez
continued to mistreat and retaliate against Complainant for speaking up about the
harassment. Mr. Gruber told another district employee that the best part of his day was
"fucking with [REDACTED]."

22 On or about September 21, 2021, Complainant returned from an injury leave and noticed
23 her personal items and tools had been thrown away. Mr. Martinez was still her supervisor,
24 and he continued to harass and belittle her. Mr. Martinez continued his behavior which
25 Complainant characterized as "disgusting." In front of Complainant, Respondent Martinez
would talk about women's and girls' bodies and sexual orientations, and he was overly
familiar with many of the high school girls' names, appearances, and which sports or
afterschool activities they participated in. He spoke about the female high school students

1 inappropriately and in a way that made Complainant very uncomfortable. He would call
2 them “little whores” and “sluts,” and he talked graphically about what the girls were wearing.
3 Respondent Martinez spoke disrespectfully about women regularly, and he continued to
specifically belittle and degrade Complainant since she was a female. He regularly used
inappropriate sexual innuendo in his comments to Complainant.

4 In addition, within the last three years, Complainant has complained to district employees
5 that Respondents are retaliating against her (the only female custodian) by requiring her to
6 perform more work than any other custodian. She has requested additional staff and/or
7 equipment to try to meet the work demands. Respondents continually deny her requests for
8 assistance, or ignore her requests by telling her that they are working on it. On or about
9 November 4, 2021, Complainant met with district employee Mr. Craig Tuana, then assistant
10 principal of Carmel High School, and reported the ongoing sexual harassment and
11 mistreatment based on her sex/gender (female). On or about December 7, 2021,
Complainant met with district employee Mr. Jon Lyons and reported continuing harassment
by Respondent Martinez and retaliation, lack of investigation and lack of protection by the
District. On or about January 18, 2022, Complainant reported to district employee Mr. Craig
Chavez the pervasive harassment and mistreatment she continued to suffer from
Respondent Martinez, and the retaliation, lack of investigation, and lack of protection by the
District. Mr. Chavez said that he would be launching a “formal investigation.”

12 On January 19, 2022, Complainant requested access to the district’s catastrophic leave
13 bank (sick leave donation program), to move her gravely disabled sister into a long-term
14 care facility (complainant was guardian/next of kin/power of attorney). Respondent District
denied Complainant’s request, which Complainant is informed and believes was granted for
other employees to care for their siblings.

15 On February 11, 2022, the district’s investigator, in an email entitled ‘Formal Complaint,’ said
16 to Complainant, “My understanding is that you have not yet filed a formal complaint form,
17 and I am attaching it below so that you can fill out this document.” On February 15, 2022,
Complainant attached an incomplete timeline of prior notes. The District proceeded with its
investigation and provided Complainant with an outcome letter on March 28, 2022.

18 The Respondent District has continued to subject Complainant to unwarranted reprimands,
19 unreasonable work demands, and disparately harsh treatment from district employees.
20 Respondents have continued to harass and retaliate against Complainant by launching
21 reprisal complaints and investigations against her. Moreover, Respondent District continues
22 to discriminate against Complainant (the only female custodian) by assigning her to do more
23 work, by herself, for more District employees and students, than any male custodian is
24 required to perform. Complainant continues to suffer severe trauma and distress from this
25 situation, with catastrophic consequences to her physical and mental health.

1 VERIFICATION

2 I, **B. James Fitzpatrick**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On September 28, 2023, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

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