

1 PETER W. ALFERT, SBN 83139  
HINTON ALFERT & KAHN LLP  
2 200 Pringle Ave., Suite 450  
Walnut Creek, California 94596  
3 Telephone: (925) 279-3009  
Facsimile: (925) 279-3342

4 TODD BOLEY, SBN 68119  
5 ZOYA YARNYKH, SBN 258062  
2381 Mariner Square Drive, Suite 280  
6 Alameda, CA 94501  
Telephone: (510) 836-4500  
7 Facsimile: (510) 649-5170

8 Attorneys for PLAINTIFFS

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 MICHAEL GAREDAKIS, TAMARA  
GAREDAKIS, and M.G., a minor by and  
12 through his guardian ad litem MICHAEL  
GAREDAKIS, YOLANDA JACKSON, and  
13 A.G., a minor by and through her guardian ad  
litem YOLANDA, LAWRENCE GULLO,  
14 DANIELLE GULLO, and B.G., a minor by and  
through his guardian ad litem DANIELLE  
15 GULLO, KATHRYN MAGUIRE, and M.R., a  
minor by and through his guardian ad litem  
16 KATHYRN MAGUIRE, VIVIANA ROSE, and  
B.R., a minor by and through his guardian ad  
17 litem VIVIANA ROSE, AHMAD RAZAQI,  
DANIA RAZAQI and E.R., a minor by and  
18 through his guardian ad litem DANIA RAZAQI,

19 Plaintiffs,

20 v.

21 BRENTWOOD UNION SCHOOL DISTRICT,  
DINA HOLDER, LAURI JAMES, BRIAN  
22 JONES, JEAN ANTHONY, MARGO OLSON,  
MARGARET KRUSE, MERRILL GRANT, and  
DOES 1-30,

23 Defendants.

No. 4:14-CV-04799 PJH

**THIRD AMENDED COMPLAINT  
FOR DAMAGES**

[JURY DEMANDED]

24 Plaintiffs MICHAEL GAREDAKIS, TAMARA GAREDAKIS, and M.G., a minor by and  
25 through his guardian ad litem MICHAEL GAREDAKIS (hereinafter "M.G."), YOLANDA  
26 JACKSON, and A.G., a minor by and through her guardian ad litem YOLANDA JACKSON  
27 (hereinafter "A.G."), LAWRENCE GULLO, DANIELLE GULLO, and B.G., a minor by and  
28 through his guardian ad litem DANIELLE GULLO (hereinafter "B.G."), KATHRYN MAGUIRE,

1 and M.R., a minor by and through his guardian ad litem KATHYRN MAGUIRE (hereinafter  
2 "M.R."), VIVIANA ROSE, and B.R., a minor by and through his guardian ad litem VIVIANA  
3 ROSE ("hereinafter "B.R."), AHMAD RAZAQI, DANIA RAZAQI, and E.R., a minor by his  
4 guardian ad litem DANIA RAZAQI (hereinafter "E.R."), allege as follows:

5 **PARTIES**

6 1. Plaintiff MICHAEL GAREDAKIS is a resident of Douglas County, Nevada. He brings this  
7 action on his own behalf and as guardian ad litem for his son, M.G.

8 2. Plaintiff TAMARA GAREDAKIS is a resident of Douglas County, Nevada. She brings this  
9 action on her own behalf.

10 3. Plaintiff M.G. is a minor and a resident of Douglas County, Nevada.

11 4. Plaintiff YOLANDA JACKSON is a resident of Contra Costa County, California. She brings  
12 this action on her own behalf and as guardian ad litem for her daughter, A.G.

13 5. Plaintiff A.G. is a minor and resident of Contra Costa County, California.

14 6. Plaintiff LAWRENCE GULLO is a resident of Contra Costa County, California.

15 7. Plaintiff DANIELLE GULLO is a resident of Contra Costa County, California. She brings  
16 this action on her own behalf and as guardian ad litem for her son, B.G..

17 8. Plaintiff B.G. is a minor and resident of Contra Costa County, California.

18 9. Plaintiff KATHYRN MAGUIRE is a resident of Contra Costa County, California. She  
19 brings this action on her own behalf and as guardian ad litem for her son, M.R.

20 10. Plaintiff M.R. is a minor and resident of Contra Costa County, California.

21 11. Plaintiff VIVIANA ROSE is a resident of Contra Costa County, California. She brings this  
22 action on her own behalf and as guardian ad litem for her son, B.R.

23 12. Plaintiff B.R. is a minor and resident of Contra Costa County, California.

24 13. Plaintiff AHMAD RAZAQI is a resident of Contra Costa County, California. He brings  
25 this action on his own behalf.

26 14. Plaintiff DANIA RAZAQI is a resident of Contra Costa County, California. She brings this  
27 action on her own behalf and as guardian ad litem for her son, E.R.

28 15. Plaintiff E.R. is a minor and resident of Contra Costa County, California.

1 16. Defendant DINA HOLDER ("Holder") is a former teacher employed by the Brentwood  
2 Union School District ("BUSD"). All actions alleged herein by Holder were taken under color of  
3 state law and in the course and scope of her employment with BUSD.

4 17. Defendant LAURI JAMES ("James") is the former principal of Loma Vista Elementary  
5 School in the BUSD, Brentwood, California. All actions alleged herein by James were taken under  
6 color of state law and in the scope of her employment.

7 18. Defendant JEAN ANTHONY ("Anthony") is the former Director of Special Education at  
8 BUSD. All actions alleged herein by Anthony were taken under color of state law and in the scope  
9 of her employment with BUSD.

10 19. Defendant MARGO OLSON ("Olson") is the director of Special Education and  
11 Interventions at BUSD. All actions alleged herein by Olson were taken under color of state law and  
12 in the scope of her employment with BUSD.

13 20. Defendant MARGARET KRUSE ("Kruse") is the Assistant Superintendent at BUSD. All  
14 actions alleged herein by Kruse were taken under color of state law and in the scope of her  
15 employment with BUSD.

16 21. Defendant MERRILL GRANT ("Grant") is the former Superintendent at BUSD. All  
17 actions alleged herein by Grant were taken under color of state law and in the scope of his  
18 employment with BUSD.

19 22. Defendant BRIAN JONES ("Jones") is the principal of Krey Elementary School in  
20 Brentwood, California ("Krey"). All action alleged herein by Jones were taken under color of state  
21 law and in the course and scope of her employment with BUSD.

22 23. BUSD is a public entity duly incorporated and operating under California law as a school  
23 district. BUSD is a public entity subject to Title II of the Americans with Disabilities Act of 1990,  
24 the requirements of the Rehabilitation Act of 1973, the requirements of California state law  
25 requiring full and equal access to public facilities pursuant to Government Code §§ 11135 and  
26 4450, et seq., and to all other legal requirements referred to in this Complaint.

27 24. In enacting Title II of the Americans with Disabilities Act Congress validly abrogated state  
28 sovereign immunity, and thus BUSD may be sued pursuant to Title II. *Hason v. Med. Bd. of*

1 *California*, 279 F.3d 1167, 1170 (9th Cir. 2002). By accepting Federal Rehabilitation Act funds,  
2 BUSD waived its sovereign immunity under the Eleventh Amendment to claims brought pursuant  
3 to § 504 of the Rehabilitation Act of 1973. *Pugliese v. Dillenberg*, 346 F.3d 937 (9th Cir. 2003).

4 25. The true names and capacities of defendants sued as DOES 1 through 30 are unknown to  
5 Plaintiffs and Plaintiffs pray leave to amend to allege the true names and capacities when they are  
6 ascertained.

7 26. At all relevant times set forth herein, all Defendants acted in concert and as the agent of one  
8 another.

### 9 **FACTUAL ALLEGATIONS**

#### 10 **A. ALLEGATIONS COMMON TO ALL PLAINTIFFS**

11 27. Plaintiffs have complied with all procedural requirements of the California Government  
12 Tort Claims Act, Cal. Gov. Code §§ 810 *et seq.*

13 28. Defendant Holder was a special education teacher in special day classes in the BUSD from  
14 1996 to 2012. She taught at Loma Vista Elementary School until May, 2010 when she was  
15 removed and transferred to Krey to begin the 2010-2011 school year. She eventually resigned  
16 from the BUSD as part of the terms of a settlement reached in a lawsuit filed in this court, *Kevin*  
17 *Phelan, et. al. v. Dina Holder, et. al.*, Case Number C12-00465 LB. Holder's teaching credentials  
18 were revoked by the California Commission on Teacher Credentialing on February 21, 2013.

19 29. Defendant Holder subjected the students in her classroom to ongoing verbal, psychological  
20 and physical abuse. The students were all disabled and some were nonverbal. They ranged in age  
21 from three to six.

22 30. At least as early as 2008, employees of BUSD, including but not limited to Defendants  
23 James, Jones, Olson, Anthony, Kruse and Grant and employees Samantha Sheldon, Heidi Vincent,  
24 Janice Lopez, Kelly Knapp and Stacy Carpenetti, observed or had knowledge that students in  
25 Holder's classroom were being subjected to an unhealthy educational environment which included  
26 verbal, psychological and physical abuse.

27 31. Defendants Olson, Anthony, Kruse and Grant all had the obligation to protect the children  
28 and the responsibility to discipline Holder and/or terminate her employment, but instead they did

1 nothing. Defendants Olson, Anthony, Kruse and Grant instead concealed the abuse from law  
2 enforcement and parents.

3 32. Defendants James, Jones, Olson, Anthony, Kruse and Grant and employees Samantha  
4 Sheldon, Heidi Vincent, Janice Lopez, Kelly Knapp and Stacy Carpenetti observed or had  
5 knowledge of information giving rise to a reasonable suspicion that Holder had committed acts of  
6 child abuse or neglect as defined by Penal Code §11165.3 against students in her classroom. Each  
7 of these employees were mandated reporters as defined by Penal Code §1165.7, but did not report  
8 the abuse or neglect to an agency defined in Penal Code §11165.9.

9 33. BUSD's training of its employees was woefully inadequate. For instance, it employed out  
10 of date training materials which failed to inform staff that classroom aides were mandated reporters  
11 under state law. BUSD trained its staff to report suspected abuse internally rather than to law  
12 enforcement as required by state law. Defendants James, Jones, Olson, Anthony, Kruse and Grant  
13 were aware of these deficiencies and took no steps to correct them.

14 34. BUSD's supervision of the special education program was also inadequate. Even though  
15 she lacked the credentials required by state law to teach students with autism, BUSD administrators  
16 twice assigned defendant Holder to teach special education classes which were comprised mostly  
17 of students with autism. The teacher and paraprofessionals in these classrooms all lacked the  
18 training necessary to work with disabled students, including students with autism and speech  
19 delays. These employees developed inappropriate responses to disabled students, including verbal,  
20 psychological and physical abuse. Defendants James, Jones, Olson, Anthony, Kruse and Grant  
21 were aware of these deficiencies and took no steps to correct them.

22 35. According to the California Commission on Teacher Credentialing, Defendant Holder, the  
23 only credentialed teacher in the special education classes at both Loma Vista and Krey, did not  
24 hold the required credential to teach children with autism. Defendants James, Jones, Olson,  
25 Anthony, Kruse and Grant were aware of these deficiencies and took no steps to correct them.

26 36. Policymakers of BUSD, including but not limited to the individually named defendants,  
27 were aware that Holder was physically, psychologically and verbally abusive towards her special  
28 education students. Defendants failed to take any steps to remove her from the classroom. In fact,

1 defendants failed to comply with state law in their supervision of Holder. Despite numerous  
2 reports of abusive conduct, defendants did not visit Holder's classroom as required by state law and  
3 did not undertake the observation or evaluations of Holder as required by state law.

4 37. The failure by BUSD and the individual defendants to take any steps in response to reports  
5 of abuse by Holder caused other employees to conclude that there was no point in reporting future  
6 incidents of abuse and led to a belief among staff that reporting abuse by Holder would negatively  
7 impact an employee's job prospects. Some of the aides in the classroom were afraid to report  
8 Holder's abusive conduct.

9 38. L.L. was a special education student starting in defendant Holder's special day class at  
10 Loma Vista Elementary during the 2007 - 2008 school year. On or around March 4, 2008, L.L.'s  
11 mother brought her son to Holder's class. L.L.'s mother momentarily stepped out of the class and  
12 when she returned a few minutes later, she observed Holder and her son from a few feet away  
13 through a window in the classroom door. She observed Holder shaking her son violently by the  
14 shoulders so that his head was jerking forward and backwards.

15 39. L.L.'s mother quickly opened the door and confronted Holder about what she had seen.  
16 Holder first claimed not to know what the mother was talking about and then stated "you'll never  
17 be able to prove anything."

18 40. Holder later testified at a deposition that she was sitting behind L.L. with her arms at either  
19 side of the student. Holder claims she did not touch the student and that the student's head was  
20 moving because he was shaking his head "no." Holder claimed that her version of events was  
21 supported by her aide, Janice Lopez, who was sitting across the table from her.

22 41. At her deposition, Lopez testified that she saw Holder's hands on the student's shoulders,  
23 but only to "comfort" the student.

24 42. Ms. Lark promptly reported to James and Anthony the physical abuse she had observed.  
25 Defendant Anthony, on behalf of BUSD, wrote L.L.'s mother stating that their investigation found  
26 no violation of policy or wrong doing on the part of district employees. In fact, neither Anthony,  
27 James, nor any other employee of BUSD conducted any investigation and none of them  
28 interviewed Lopez.

1 43. L.L.'s mother contacted the police who, upon learning of BUSD's "investigation", did not  
2 conduct an independent investigation.

3 44. During a portion of the 2008 - 2009 school year, K.G. was a pre-kindergarten student at  
4 Loma Vista in Holder's Special Day Class. Throughout this period, K.G. was subjected to regular  
5 acts of child abuse or neglect and observed acts of child abuse or neglect being inflicted on other  
6 special needs children in his classroom, including, but not limited to, yelling, swearing and  
7 inappropriately aggressive physical contact. K.G. was also struck in the face by Holder and he  
8 regularly observed Holder hitting other students in the classroom.

9 45. On May 19, 2008, K.G. came home very upset and began crying and he had a red welt on  
10 his cheek. He complained to his grandmother that he had been slapped twice at school by an adult.  
11 The grandmother contacted K.G.'s mother who then immediately went to the school where, based  
12 on K.G.'s very specific description, was able to determine that the adult who had slapped her son  
13 was defendant Holder. K.G.'s mother promptly reported the incident to James in person that day.

14 46. Defendant James spoke to K.G. and his mother about the incident. K.G. had limited verbal  
15 abilities, but he was able to make a slapping motion toward his face to demonstrate what had  
16 occurred. In addition, he was able to accurately describe Holder and the clothes she was wearing  
17 that day. James did not contact the police department so K.G.'s mother contacted the police on her  
18 own.

19 47. There were crucial misstatements and omissions in the information provided by school  
20 personnel to the police. James did not describe the slapping motion K.G. demonstrated to her and  
21 the aides claimed that Holder never raises her voice with children. In addition, James conveyed to  
22 the police that K.G. could not speak and therefore could not corroborate the battery. The District  
23 Attorney did not pursue the investigation given that there were no apparent witnesses to the battery.

24 48. The physical and verbal abuse by Holder continued following these incidents. The  
25 conditions in Holder's classroom were, to use the words of one of her aides, "horrendous."

26 49. Ms. Holder regularly referred to students as "little shits." She routinely yelled "shut up!" at  
27 students so loudly that she could be heard in an adjoining classroom. She was overheard yelling,  
28 "get your butt here." During "circle time," when the students read or play games, Holder yelled at

1 and berated children who were unable to verbalize a response. She would “get in the face” of  
2 children who were struggling to speak and she would yell at and berate them.

3 50. Holder routinely forced very young children down into chairs and moved them by  
4 forcefully grabbing their arms. Holder restrained young children by fastening them to chairs. One  
5 parent observed Holder pulling a child by the arm and dragging him across the floor of the  
6 classroom on a number of occasions. The staff psychologist and speech pathologist worked with  
7 Holder to adopt more appropriate classroom management techniques, but she never adopted them.  
8 The school psychologist visited Holder’s classroom once a week and observed Holder’s  
9 inappropriate, physically aggressive behavior “pretty much every week.”

10 51. Eventually, Holder essentially stopped teaching. She routinely arrived late only to sit at her  
11 desk playing computer solitaire and paying bills. She had no clear instructional program and was  
12 unprepared when she attended students’ IEP meetings. Instructional aides, with no formal training  
13 in education, took over lesson planning and teaching duties. The aides, rather than Holder, handled  
14 the instruction. These conditions were known to everyone on the preschool staff and, according to  
15 one aide, the conditions of the classroom were “common knowledge” at Loma Vista.

16 52. The conditions in the classroom were extremely detrimental to students. One aide  
17 described the atmosphere as “chaotic and tense.” She also stated that the children were “working  
18 out of fear.” Speech and language therapists and aides observed that students stopped responding  
19 in Holder’s classroom. Children who were supposed to be receiving assistance with language were  
20 instead regressing and stopped talking.

21 53. In addition to being abusive, Holder failed to provide minimally effective instruction in the  
22 classroom. In early June, 2010, the District found that:

- 23 • Holder did not interact with the students, but instead sat at her desk and yelled  
24 across the room; “barked orders” to her aides;
- 25 • The overall classroom program was unstructured with no clear instructional  
26 program being led by her; that there was a “lack of teaching and a lack of a  
27 behavior management program resulting in a classroom environment that was  
28 chaotic and tense;



- 1 • Holder did not have a lesson plan or an organized instructional program for her
- 2 students, and as a result, uncertificated aides prepared the lesson plan and did
- 3 instruction without supervision;
- 4 • Holder was often unprepared at the IEP meetings, did not know the child's goals or
- 5 whether they were progressing toward those goals; and
- 6 • Holder's lack of instruction limited the academic progress of the children.

7 54. In addition to complete lack of appropriate instruction in the classroom, psychologists,  
8 speech therapists, speech pathology aides, instructional aides and other employees reported to  
9 James, Jones, Anthony, Olson, Kruse and Grant their concerns about verbal and physical abuse  
10 they observed in Holder's classroom. James, Jones, Anthony, Olson, Kruse and Grant had the  
11 ability to discipline Holder or terminate her employment, but instead they did nothing to protect the  
12 young vulnerable students in classroom. This repeated failure to act constitutes deliberate  
13 indifference on the part of James, Jones, Olson, Anthony, Kruse, and Grant.

14 55. "J.P." was a five year old autistic student assigned by BUSD to the special day class of  
15 Holder at Loma Vista. On May 25, 2010, Holder and three instructional aides were preparing the  
16 class for circle time. J.P. was cutting out paper for a project and did not immediately comply with  
17 Holder's request that he join the rest of the class. Holder grabbed J.P. by the arm and forcefully  
18 pulled him out of his chair. J.P. fell to the floor and was lying prone on his side when Holder  
19 began kicking him forcefully in the lower back and buttocks.

20 56. The attack was observed by at least two of the instructional aides, who describe her as  
21 yelling aggressively at the student to get up and go to the circle. One stated that she kicked the  
22 student "like you would kick a dog out of the way." One of the aides yelled at Holder to stop and  
23 pulled her off of the student. Holder stopped kicking the student and as she walked away she  
24 called him a "stupid son of a bitch." She said the epithet loudly enough that all of the instructional  
25 aides and the students, including "J.P.", were able to hear it.

26 57. That afternoon, one of the aides contacted Connie Forrest, a Special Day Class teacher in  
27 the room next door. Ms. Forrest is the former Coordinator of Special Education for the District.  
28 Ms. Forrest told the aide she must "resolve the issue" with Holder directly. Forrest advised the

1 aide she should only contact the school principal and other authorities if she could not “resolve” the  
2 issue with Holder herself.

3 58. Ms. Forrest then spoke to Holder. Ms. Forrest asked Holder if she intended to speak to  
4 principal James or “J.P.”’s parents; Holder replied that she “would think about it.”

5 59. The next day, one of the aides reported the incident to a school psychologist who informed  
6 Principal James of the incident.

7 60. The aides and all of the employees who learned of Holder’s battery on the student were  
8 mandated reporters as defined by Penal Code §1165.7, but none of them reported the abuse to an  
9 agency defined in Penal Code §11165.9. In fact, the employees believed incorrectly that the  
10 instructional aides were not legally obligated to report abuse.

11 61. Kruse and James interviewed employees regarding the May 25, 2010 battery and conditions  
12 in Holder’s classroom. That investigation documented the ongoing verbal and physical abuse to  
13 which Holder subjected her students.

14 62. BUSD issued a Letter of Unprofessional Conduct to Holder, concluding that her classroom  
15 was an unhealthy environment for children due to repeated incidents of verbal and physical abuse.  
16 Yet rather than terminating her employment, BUSD transferred Holder from Loma Vista to Krey  
17 Elementary School. BUSD again placed her in a classroom of children – many with autism – and  
18 most with limited verbal abilities. Incredibly, BUSD reclassified Holder as a “highly qualified  
19 teacher” so as to cover up BUSD’s failure to properly supervise Holder.

20 63. The school district waited seven days before finally, on June 1, 2010, Principal James and  
21 defendant Kruse finally informed the parents of J.P. who was battered by Holder on May 25, 2010.  
22 J.P.’s parents were unaware of the incident although J.P. had a bruise on his back and was resisting  
23 returning to school. Neither James nor Kruse informed the parents that Holder had sworn at their  
24 son or that they had concluded that Holder’s classroom was an unhealthy environment for her  
25 students because of ongoing verbal and physical abuse.

26 64. When the parents asked if the school intended to contact the police, Kruse stated that  
27 BUSD would not contact the police and would instead treat the incident as an internal, confidential  
28 matter. Dissatisfied with this response, the parents contacted the Brentwood Police Department.

1 The police department conducted an investigation and contacted Kruse, James and other BUSD  
2 employees. None of the employees informed the police about the findings of the BUSD  
3 investigation that Holder had subjected students to verbal and physical abuse. Instead, acting in  
4 concert, the employees conveyed the impression that Holder was a good teacher and that the  
5 battery on May 25, 2010 was an aberrant act on Holder's part.

6 65. BUSD continued to assign very young students with disabilities to Holder's classroom after  
7 her reassignment to Krey Elementary. Holder continued to subject students to ongoing verbal,  
8 psychological and physical abuse.

9 66. No one at BUSD notified parents of children who were subjected to Holder's abuse of the  
10 findings of their investigation, or the reasons for Holder's transfer to Krey. In fact, when parents  
11 questioned Holder's sudden appearance at Krey and when they expressed concerns about  
12 conditions in the classroom, BUSD discouraged parents from removing their children from  
13 Holder's classroom and represented time and again that Holder was a good and well qualified  
14 teacher.

15 67. Despite the findings made in the Letter of Unprofessional Conduct that was issued prior to  
16 her transfer to Krey, the deficiencies in Holder's classroom remained virtually unchanged. BUSD's  
17 documents show that Holder did not understand the curriculum she was supposed to be teaching, or  
18 have the appropriate materials to teach it even if she understood it. Holder failed to follow  
19 directives that she teach in small groups with instruction designed for the ability levels and  
20 individual needs of the students and instead had all of the students perform the same task insuring  
21 that students would not receive the instruction they needed to overcome their individual disability.  
22 The District found "there is little evidence that the instruction that you plan meets the needs of each  
23 student and their individual goals." The District also concluded that Holder had failed to  
24 implement behavior plans and that in many cases, students had made "partial or no progress" in  
25 meeting their individual goals. In March, 2012, the District issued an evaluation finding her  
26 performance "unsatisfactory" on every element of the evaluation. The principal at Krey testified  
27 that he had never seen a performance evaluation that was so consistently negative.

28 68. BUSD, its administrators, and supervisory school personnel were deliberately indifferent to

1 the fact that Holder was not teaching her students, was not providing instruction designed to meet  
2 the individual needs of each student, did not know the students' individual goals, and continued to  
3 be unable to provide parents with progress reports during IEP meetings. It took the District over 2  
4 years to inquire as to whether Holder had the appropriate curriculum. In the 2011-2012 school  
5 year, no one from the District visited Holder's classroom for over seven months despite her known  
6 deficiencies. In fact, the District did not move toward terminating Holder's employment until after  
7 it was served with the lawsuit filed by J.P.'s parents.

8 69. On February 24, 2011, the District Attorney filed a criminal complaint charging Holder  
9 with Cruelty to a Child, a violation of Penal Code §273a. On October 6, 2011, Holder pled no  
10 contest to the charge and was sentenced to 4 year court probation, a 1 year child abuse treatment  
11 program, a requirement that she have an adult with her whenever dealing with children, and a  
12 protective order to stay away from the victim.

13 70. Kruse, James and Grant were aware of the criminal complaint and the plea of no contest.  
14 Even though she was no longer entitled to hold a teaching credential, they allowed Holder to  
15 continue teaching. They did not inform parents of the charges, the plea of no contest or the  
16 condition that she could not be alone with a child.

17 **B. ALLEGATIONS RELATED TO PLAINTIFF M.G.**

18 71. M.G. was born on March 18, 2005 and has been diagnosed with autism -- non-verbal.  
19 Michael and Tamara Garedakis are his parents.

20 72. M.G. began school at the Loma Vista Elementary School at the age of three-and-a-half.  
21 Thus, in the fall of 2008, M.G. began pre-school with Holder as his teacher.

22 73. During the 2008-09 school year, M.G. and other special needs students were subjected to  
23 ongoing verbal and physical abuse in Holder's classroom.

24 74. Prior to the 2008-09 school year, M.G. was a generally happy child, but during his time in  
25 Holder's classroom he became increasingly reluctant to go to school, became agitated and started  
26 to lash out at his family. He also had terrible tantrums which grew worse while attending Loma  
27 Vista.

28 75. Both parents noticed this change in behavior in their child and expressed their concerns to

1 Holder, classroom aides and Margaret Olson. They were constantly rebuffed and given a multitude  
2 of excuses. M.G. came home with red marks on his arms on several occasions. However, due to  
3 his disability he was unable to communicate to explain what was happening to him. Michael and  
4 Tamara Garedakis could not explain what was happening to their son.

5 76. During his time in Holder's classroom, the adults introduced a "game" which resulted in  
6 M.G. becoming sexually aroused by the sight of toes. When confronted by Mr. and Mrs.  
7 Garedakis, Holder laughed and said M.G. was "becoming a little man." The parents became  
8 increasingly concerned, but Margaret Olson assured them that everything was okay and that his  
9 behaviors were normal. The communications that the parents received from the school prevented  
10 them from learning the true cause of M.G.'s behavioral changes and from obtaining appropriate  
11 therapies to address them.

12 77. M.G. suffers from trauma as a result of his exposure to Holder's classroom and is still  
13 fixated on feet. This behavior is still so serious that the family cannot go out into public places  
14 with M.G. This has proven to also be a source of great embarrassment for his parents. His  
15 behavioral changes can be attributed to the mental and/or physical abuse he experienced and  
16 witnessed in Holder's classroom.

17 78. Similar to other parents' experience, Holder either brushed away their concerns or offered  
18 various excuses for the trouble their son was experiencing in her classroom. They felt helpless and  
19 could not comfort M.G. when he needed it the most. M.G. grew increasingly reluctant to go to  
20 school, became more agitated, and started to lash out at his family. This was never before seen  
21 behavior.

22 79. In 2011, prior to any disclosures regarding the conditions in Holder's classroom, M.G. and  
23 his family left California and moved to Nevada. In February of 2014, M.G.'s parents became  
24 aware of the Brentwood lawsuit against Holder via a posting on a disability webpage.

25 80. Prior to February of 2014, M.G.'s parents did not suspect and had no reason to suspect that  
26 Holder had been the subject of prior complaints of her physically and verbally abusing her  
27 students. Nor did they know that Holder's classroom was an unhealthy educational setting for  
28 M.G. and a hostile environment based on his disability.

1 81. The discovery of the history of abuse by Holder caused M.G.'s parents additional emotional  
2 distress. M.G.'s parents were deprived of the ability to comfort their son or to provide appropriate  
3 counseling, medical and/or psychological care. The failure to advise M.G.'s parents promptly gave  
4 rise to the severe emotional distress in that they suffered a loss of trust in school officials and felt  
5 betrayed that they did not learn what their child had experienced at the time of the injuries when  
6 they could have responded immediately with appropriate parental support and care.

7 **C. ALLEGATIONS RELATING TO PLAINTIFF A.G.**

8 82. A.G. was born on October 20, 2004 and has been diagnosed with Downs Syndrome  
9 (Trisomy 21). There were substantial delays in A.G.'s development and at the time she started  
10 school under Holder, she was not very verbal. Her mother is YOLANDA JACKSON.

11 83. A.G. was a student of Holder for approximately three-and-half years: (1) 2008-09 as a pre-  
12 kindergartner at Loma Vista, (2) 2010-11 as a first grader at Krey Elementary School, and (3)  
13 2011-13 as a second grader at Krey Elementary School.

14 84. During the above period, A.G. was subjected to and observed other children being verbally  
15 and physically abused by Holder.

16 85. Upon beginning pre-school in Holder's classroom, A.G. was a fun-loving child who looked  
17 forward to school. Upon entering pre-school, A.G. almost immediately started having difficulty  
18 sleeping which included sleepwalking. She was also withdrawn around Holder and no longer  
19 wanted to go to school. A.G.'s mother was concerned about her daughter, but had no reason to  
20 suspect that her daughter was being abused by Holder. It was also about this same time that A.G.  
21 started talking to imaginary friends.

22 86. In Kindergarten at Krey Elementary, A.G.'s teacher was Mrs. Poole. At this time, A.G. once  
23 again enjoyed and looked forward to going to school.

24 87. A.G. was scheduled to "follow" Mrs. Poole and be a student in her first grade class;  
25 however, A.G.'s mother learned on the first day of class that Holder would be A.G.'s teacher. Upon  
26 hearing this news, A.G. started crying.

27 88. During the second year with Holder, A.G.'s symptoms worsened -- she no longer liked  
28 school, was afraid of teachers, cried constantly, and clung to her mother's leg. In contrast, when a

1 student of Mrs. Poole, A.G. exhibited none of this fear.

2 89. A.G.'s mother spoke with Krey Elementary School Principal Brian Jones regarding her  
3 concerns about Holder's classroom, but he denied any knowledge of difficulties with Holder.

4 90. A.G. is now able to communicate that Holder was mean and hit kids. A.G. has detached  
5 herself emotionally and will need therapy to her address her fears and develop appropriate social  
6 interactions. She sees monsters in her room and is afraid to sleep alone. She continues to rely on  
7 imaginary friends who will "protect" her from the abusive conditions she experienced in Holder's  
8 classroom.

9 91. This experience caused A.G. very significant emotional distress.

10 92. A.G. was not able to understand that the conditions in Holder's classroom were wrongful  
11 and was unable to communicate the source of his distress to her parents. The BUSD withheld  
12 information from the parents as to Holder's history of abuse and withheld critical information as to  
13 the conditions in A.G.'s classroom.

14 93. In mid-January 2013, A.G.'s mother became aware of news reports that Holder had settled  
15 with parents of a student because of mistreatment. When A.G. saw the picture of Holder in the  
16 newspaper, she said that "that was the mean one mommy." Prior to this time, A.G.'s mother had no  
17 reason to believe that Holder had been the subject of prior complaints of her physically and  
18 verbally abusing her students. The discovery of the history of abuse by Holder caused A.G.'s  
19 mother additional emotional distress.

20 **D. ALLEGATION PERTAINING TO PLAINTIFF B.G.**

21 94. B.G. was born on June 16, 2006 and has been diagnosed with Autism Spectrum-like  
22 symptoms and, at the time he entered school, had significant speech delays. DANIELLE and  
23 LAWRENCE GULLO are his parents.

24 95. B.G was in Holder's class for a two year period beginning in 2009. B.G.'s parents noticed  
25 that shortly after beginning pre-school, B.G. became more sensitive to yelling and more aggressive  
26 -- hitting not just himself but others. He also was prone to lying on the floor and covering his head.

27 96. Though B.G. is a shy and quiet child, when the subject of Holder is brought up, he has  
28 multiple symptoms of a stress response such as hypervigilance, anxiety, and irritability. B.G. has

1 communicated that Holder would yell at the class and tell them to shut up. As a result, B.G.'s  
2 development was delayed during the period he was in Holder's class.

3 97. B.G.'s parents state that they felt uncomfortable leaving B.G. in Holder's pre-school class  
4 because Holder did not encourage parental involvement and kept parents at a distance. Moreover,  
5 B.G.'s parents watched their son change from a quiet and well-mannered child to one who exhibits  
6 symptoms of extreme stress.

7 98. Consequently, B.G.'s parents felt helpless and could not comfort their son when he needed  
8 it the most. Nor could they provide appropriate counseling, medical and/or psychological care. The  
9 failure of BUSD employees to advise B.G.'s parents of Holder's abuse caused both parents to suffer  
10 severe emotional distress, a loss of trust in school officials, and profound sense of helplessness  
11 when their son needed them most.

12 99. The damage to B.G. and his parents could have been mitigated -- if not prevented -- if  
13 BUSD employees had fulfilled their mandatory duty to report prior incidents of child abuse by  
14 Holder.

15 100. In mid-January 2013, B.G.'s mother became aware of news reports that Holder had settled  
16 with parents of a student because of mistreatment. . Prior to mid-January, 2013, B.G.'s parents had  
17 no reason to believe that Holder had been the subject of prior complaints due to her physical and  
18 verbal abuse of students. The discovery of the history of abuse by Holder caused B.G.'s parents  
19 additional emotional distress.

20 **E. ALLEGATIONS PERTAINING TO M.R.**

21 101. M.R. was born on January 13, 2006 and has been diagnosed with Autism Spectrum  
22 Disorder. M.R.'s mother is KATHYRN MAGUIRE.

23 102. M.R. was in Holder's class at Loma Vista Elementary School from approximately the  
24 Spring of 2008 to Spring of 2010.

25 103. During the above period, M.R. was subjected to and observed other children being  
26 verbally and physically abused by Holder.

27 104. Prior to starting in Holder's classroom, BUSD officials told M.R.'s mother that the Loma  
28 Vista program with Holder was the best choice for her son, she asked if there were any other



1 options, and was told that there were none.

2 105. From the first day she took him to Ms. Holder's class, M.R.'s mother noticed that Ms.  
3 Holder seemed reluctant to have her present. Subsequently, M.R. arrived home from school with a  
4 huge bruise on his arm. When questioned, Holder denied having any responsibility for the injury.

5 106. M.R.'s mother witnessed changes in her son while in Holder's class -- increased  
6 aggressiveness, nightmares, and suspicious injuries. M.R. behaviors regressed during his time in  
7 Holder's classroom, including abusive behavior directed at family members. Like other students in  
8 Holder's classroom, M.R. began diving under a table when he heard a loud noise. M.R.'s family  
9 did not observe this behavior before he became a student in Holder's classroom. M.R. remembers  
10 being screamed at and unable to find a quiet place. He experiences anxiety, fears, and symptoms of  
11 Post-Traumatic Stress Disorder which can be traced back to his experience in Holder's class.

12 107. M.R.'s mother noticed bruises and scratches on M.R. Similar to other parents' experience,  
13 Holder either brushed away concerns and/or prohibited her from observing the class. M.R.'s mother  
14 felt helpless and could not comfort M.R. when he needed it the most. Nor could she provide  
15 appropriate counseling, medical and/or psychological care.

16 108. The failure of BUSD employees to advise M.R.'s parents of Holder's abuse caused both  
17 parents to suffer severe emotional distress, a loss of trust in school officials, and profound sense of  
18 helplessness when their son needed them most. The damage to M.R. and themselves could have  
19 been mitigated -- if not prevented -- if BUSD employees had fulfilled their mandatory duty to  
20 report prior incidents of child abuse by Holder.

21 109. In mid-January, 2013, M.R.'s mother became aware of news reports regarding claims that  
22 Holder had mistreated other students in her class. Prior to mid-January, 2013, M.R.'s mother had  
23 no reason to believe that M.R. was being abused or that Holder had been the subject of prior  
24 complaints due to her physical and verbal abuse of students.

25 **F. ALLEGATIONS RELATING TO B.R.**

26 110. B.R. was born on September 15, 2004 and has been diagnosed with Pervasive  
27 Developmental Delay and Autism. VIVIANA ROSE is his mother.

28 111. B.R. attended a kindergarten class in the BUSD. He enjoyed school and enjoyed his

1 teacher. B.R.'s mother expected him to return to the same teacher for First Grade for the 2010-  
2 2011 school year. However on the first day of the 2010-2011 school year, B.R. and his mother  
3 learned that he would be in Holder's class instead. At this point B.R.'s mother had no knowledge  
4 of any prior incidents of abuse by Ms. Holder.

5 112. B.R. was in Holder's class for the entire 2010-2011 school year. On one occasion when  
6 B.R.'s mother picked him up from school he was very quiet and looked afraid. She asked him  
7 what was wrong and he repeated that he didn't want to tell. Eventually he reported Holder grabbed  
8 him at the shoulder and neck and shoved him into a chair because he wasn't listening.

9 113. Subsequently, B.R. arrived home from school with a large bruise on his arm. When  
10 questioned, Holder and an aide stated that non-verbal students are more physical. B.R.'s mother  
11 was concerned about Holder's classroom and she contacted Krey Elementary School Principal  
12 Jones with her concerns. When she questioned him if there had ever been other complaints against  
13 Holder, he denied any and explained that everything is fine it's just a "misunderstanding".

14 114. On several occasions, Holder grabbed B.R. by the arm hard enough to cause pain and to  
15 leave a bruise. B.R. kept his distance from the teacher in order to prevent further injury. He  
16 observed Holder physically and verbally abusing other classmates.

17 115. B.R.'s mother was concerned after the first day because she noticed that Holder was  
18 reluctant to have her present. B.R.'s mother also heard shouts and screams coming from the  
19 classroom.

20 116. B.R.'s mother witnessed changes in son while in Holder's class -- increased  
21 aggressiveness, nightmares, and suspicious injuries. B.R. remembers being screamed at and unable  
22 to find a quiet place. He began to exhibit aggression toward family members. As a means of  
23 coping with the abusive conditions in Holder's classroom, he began to imagine that super heroes  
24 would come to his rescue. While he was in Holder's classroom, his ability to communicate  
25 regressed dramatically. He still experiences anxiety, fears, and symptoms of Post-Traumatic Stress  
26 Disorder which can be traced back to his experience in Holder's class.

### 27 **G. ALLEGATIONS RELATING TO E.R.**

28 117. E.R. was born on November 11, 2006 and has been diagnosed with autism with delays in

1 speaking and making eye contact. AHMAD RAZAQI and DANIA RAZAQI are his parents.

2 118. E.R. enrolled in BUSD in December, 2011. E.R.'s mother was told by BUSD staff that  
3 there was an excellent class at Krey Elementary School, headed by Dina Holder. Relying on this  
4 recommendation, E.R.'s mother agreed to place E.R. in Holder's classroom.

5 119. E.R.'s parents noticed their son's behavior change almost immediately after starting school  
6 with Holder -- he was very sad and crying. Very concerned about this change in behavior, E.R.'s  
7 mother contacted Krey Elementary Principal Jones who assured her that Holder was an excellent  
8 teacher, and to not be worried.

9 120. In approximately April, 2012, E.R. told his mother that the reason that he was so sad was  
10 because Holder called him "stupid." He also said that Holder pushed him or shoved him. E.R.'s  
11 mother confronted Jones and Director of Special Education Olson about her concerns that Holder  
12 was verbally abusive toward students in the classroom. Both Jones and Olson denied that E.R.'s  
13 mother had anything to worry about.

14 121. Unsatisfied with the response that she received from Jones and Olson, E.R.'s mother  
15 removed E.R. from Holder's classroom. Eventually, Jones agreed to place E.R. with another  
16 teacher at Krey Elementary School.

17 122. During the time that he was in Holder's classroom, E.R. was subjected to and observed  
18 other classmates being subjected to physical and verbal abuse by Holder.

19 123. E.R.'s mother witnessed changes in her son while in Holder's class -- increased  
20 aggressiveness, loss of language skills, sadness, and crying. E.R. remembers being screamed at and  
21 being called stupid. He experiences anxiety, fears, and symptoms of Post-Traumatic Stress  
22 Disorder which can be traced back to his experience in Holder's class. He also became physically  
23 aggressive towards members of his family.

24 124. Similar to other parents' experience, Holder either brushed away concerns and/or  
25 prohibited E.R.'s mother from observing her class. E.R.'s mother felt helpless and could not  
26 comfort her son when he needed it the most. Nor could she provide appropriate counseling,  
27 medical and/or psychological care.

28 125. The failure of BUSD employees to advise E.R.'s parents of Holder's abuse caused them to

1 suffer severe emotional distress, a loss of trust in school officials, and a profound sense of  
2 helplessness when E.R. needed them most. The damage to E.R. and the parents could have been  
3 mitigated -- if not prevented -- if BUSD employees had fulfilled their mandatory duty to report  
4 prior incidents of child abuse by Holder.

5 **FIRST CLAIM FOR RELIEF**

6 **(Violation of Constitutional Rights, 42 U.S.C. § 1983; Plaintiffs B.R. and E.R. vs. Defendants**  
7 **Holder, Jones, Olson, Anthony, Kruse and Grant)**

8 This claim has been dismissed (Docket No. 69).

9 **SECOND CLAIM FOR RELIEF**

10 **(Discrimination in Violation of the Americans With Disabilities Act; Plaintiffs M.G., A.G.,**  
11 **B.G., M.R., B.R., and E.R. vs. BUSD)**

12 Plaintiffs M.G., A.G., B.G., M.R., B.R., and E.R. incorporate and reallege by reference all the  
13 foregoing paragraphs as if they were fully set forth herein.

14 126. Effective January 26, 1992, Plaintiffs M.G., A.G., B.G., M.R., B.R., and E.R. were  
15 entitled to the protections of the "Public Services" provision of Title II of the Americans with  
16 Disabilities Act of 1990. Title II, Subpart A prohibits discrimination by any "public entity,"  
17 including any state or local government, as defined by 42 USC § 12131, section 201 of the ADA.

18 127. Pursuant to 42 USC § 12132, Section 202 of Title II, no qualified individual with a  
19 disability shall, by reason of such disability, be excluded from participation in or be denied the  
20 benefits of the services, programs or activities of a public entity, or be subjected to discrimination  
21 by any such entity. Plaintiffs M.G., A.G., B.G., M.R., B.R., and E.R. were at all times relevant  
22 herein a qualified individual with a disability as therein defined.

23 128. BUSD has failed in its responsibilities under Title II to provide its services, programs and  
24 activities in a full and equal manner to disabled persons as described hereinabove, including failing  
25 to ensure that educational services are provided on an equal basis to children with disabilities and  
26 free of hostility toward their disability.

27 129. BUSD has further failed in its responsibilities under Title II to provide its services,  
28 programs and activities in a full and equal manner to disabled persons as described hereinabove by

1 subjecting plaintiffs to a hostile educational environment. Holder's actions were clearly motivated  
 2 by obvious animus toward the disabled minor Plaintiffs. The teaching was often left up to the aides  
 3 while Holder routinely was late for work, did not provide any instruction, and spent the majority of  
 4 her time on the computer and paying bills. She directed epithets toward the minor Plaintiffs  
 5 denigrating their intelligence and their disabilities. All of the minor Plaintiffs were in a state of  
 6 constant fear that Holder would direct abuse at them or their classmates. Children without  
 7 disabilities at Loma Vista and Krey Elementary Schools were not subjected to abusive classroom  
 8 conditions as were the minor Plaintiffs.

9 130. James, Jones, Olson, Anthony, Kruse, and Grant were deliberately indifferent to the  
 10 complaints of abuse committed by Holder. They have received numerous instances of reports of  
 11 the conditions in the classroom from the aides, knew that the abuse was likely to continue, yet  
 12 failed to act upon it. This deliberate indifference by the employees gives rise to respondeat superior  
 13 liability of BUSD. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1141 (9th Cir. 2001).

14 131. As a result of BUSD's failure to comply with its duty under Title II, Plaintiffs M.G., A.G.,  
 15 B.G., M.R., B.R., and E.R. have suffered damages including special and general damages  
 16 according to proof.

17 132. A violation of the ADA is, by statutory definition, a violation of both the Unruh Civil  
 18 Rights Act ("Unruh") and the California Disabled Persons Act ("DPA"). Cal. Civ. Code §§ 51(f),  
 19 54.1(d).

20 133. Plaintiffs are not required to prove that the discrimination was intentional when seeking  
 21 damages for ADA violations under the Unruh Act. *Munson v. DelTaco*, 46 Cal.4th 661 (2009).

### 22 **THIRD CLAIM FOR RELIEF**

23 **(Violation of § 504 of the Rehabilitation Act of 1973; Plaintiffs M.G., A.G., B.G., M.R., B.R.,**

24 **E.R. vs. BUSD)**

25 Plaintiffs M.G., A.G., B.G., M.R., B.R., and E.R. incorporate and reallege by reference all  
 26 the foregoing paragraphs as if they were fully set forth herein.

27 134. Plaintiffs M.G., A.G., B.G., M.R., B.R., and E.R. are informed and believe and therefore  
 28 allege that BUSD is and has been at all relevant times the recipient of federal financial assistance,

1 and that part of that financial assistance has been used to fund the operations, construction and/or  
2 maintenance of the specific public facilities described herein and the activities that take place  
3 therein.

4 135. Section 504 provides: “No otherwise qualified individual with a disability ... shall, solely  
5 by reason of her or his disability, be excluded from the participation in, be denied the benefits of,  
6 or be subjected to discrimination under any program or activity receiving Federal financial  
7 assistance....” 29 U.S.C. § 794(a).

8 136. The U.S. Department of Education's § 504 regulations require recipients of federal funds  
9 to “provide a free appropriate public education to each qualified handicapped person,” and define  
10 “appropriate education” as “regular or special education and related aids and services that . . . are  
11 designed to meet individual educational needs of handicapped persons as adequately as the needs  
12 of nonhandicapped persons are met.” 34 C.F.R. § 104.33 (a)(b)

13 137. Section 504 allows students who are denied meaningful access to state educational  
14 benefits to seek “the full panoply of remedies, including equitable relief and [compensatory]  
15 damages.” *Mark H. v. Lemahieu*, 513 F.3d 922, 938 (9th Cir. 2008). A school district that fails to  
16 provide meaningful access to public education to disabled students is thereby liable in damages.  
17 *Mark H. v. Hamamoto*, 620 F.3d 1090, 1097 (9th Cir. 2010)

18 138. The minor Plaintiffs were denied meaningful access to a public education as compared to  
19 nondisabled persons. The denial of meaningful access occurred as the result of several factors.  
20 Defendants failed to implement the minor Plaintiffs' IEPs as designed, failed to implement  
21 reasonable accommodations for their disabilities by failing to provide instruction designed to meet  
22 their individualized educational needs necessary to overcome their disabilities, failed to provide  
23 instruction by a properly credentialed teacher and instead left instruction to unqualified aides,  
24 subjected the minor Plaintiffs to a classroom headed by a teacher who performed unsatisfactorily  
25 on every measure of teacher competence, and failed to provide instruction consistent with the  
26 district curriculum provided to nondisabled students. Holder, the BUSD and its administrators were  
27 deliberately indifferent to this discrimination and failure to accommodate, thereby violating DOE's  
28 regulations and denying FAPE to the minor Plaintiffs.

1 139. By their actions or inactions in denying equal access to educational services and by  
2 subjecting plaintiffs M.G., A.G., B.G., M.R., B.R., and E.R. to a hostile educational environment,  
3 defendant has violated plaintiff M.G., A.G., B.G., M.R., B.R., and E.R.'s rights under § 504 of the  
4 Rehabilitation Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder.

5 140. As a result of BUSD's failure to comply with its duty under § 504 of the Rehabilitation  
6 Act of 1973, 29 U.S.C. § 794, and the regulations promulgated thereunder, plaintiffs M.G., A.G.,  
7 B.G., M.R., B.R., and E.R. have suffered damages including special and general damages  
8 according to proof.

9 141. BUSD is vicariously liable for the actions or inactions of its employees. James, Jones,  
10 Olson, Anthony, Kruse, and Grant were deliberately indifferent to the abuse committed by Holder.  
11 They had actual knowledge of the hostile conditions in the classroom, knew that Holder was likely  
12 to continue abusing the disabled children, but failed to act upon it.

13 **FOURTH CLAIM FOR RELIEF**

14 **(Violation of California Civil Code § 52.1; M.G., A.G., B.G., M.R., B.R., E.R. vs. Defendants**  
15 **Holder and BUSD)**

16 Plaintiffs incorporate and reallege by reference all the foregoing paragraphs, as if they were  
17 fully set forth herein.

18 142. The actions of Defendant Holder, as alleged herein, constituted interference with  
19 Plaintiffs' rights under the Constitution and laws of the state of California by threats, intimidation,  
20 and/or coercion in violation of Cal.Civ. Code § 52.1. Defendant Holder abused the minor Plaintiffs  
21 physically, verbally, and emotionally. Young children stopped trusting their parents who brought  
22 them into the abusive environment, which interfered with the child-parent relationship between the  
23 parent Plaintiffs and minor Plaintiffs.

24 143. M.G., A.G., B.G., M.R., B.R., E.R. lived in constant fear of Holder because she  
25 threatened and actually committed physical abuse.

26 144. BUSD is vicariously liable for the acts of Holder committed during the course and scope  
27 of her employment. *Venegas v. County of Los Angeles*, 32 Cal.4<sup>th</sup> 820, 841-843 (2004).

28 145. As a proximate result of Defendant Holder's violation of § 52.1, minor Plaintiffs have

1 suffered damages as alleged heretofore.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Battery; Plaintiffs M.G., A.G., B.G., M.R., B.R. E.R. vs. Defendant Holder)**

4 Plaintiffs M.G., A.G., B.G., M.R., B.R and E.R incorporate and reallege by reference all the  
5 foregoing paragraphs, as if they were fully set forth herein.

6 146. The use of force, as alleged herein, by Defendant Holder against Plaintiffs M.G., A.G.,  
7 B.G., M.R., B.R, and E.R. constituted a battery.

8 147. As a proximate result of Defendant Holder’s illegal battery, the minor Plaintiffs suffered  
9 damages as alleged heretofore.

10 **SIXTH CLAIM FOR RELIEF**

11 **(Intentional Infliction of Emotional Distress; All Plaintiffs vs. All Defendants)**

12 Plaintiffs incorporate and reallege by reference all the foregoing paragraphs, as if they were  
13 fully set forth herein.

14 148. The actions of Defendants as alleged herein were outrageous, malicious, and intended to  
15 and did inflict emotional distress and humiliation upon Plaintiffs.

16 149. James, Jones, Olson, Anthony, Kruse and Grant each had a duty to inform the parents  
17 after learning about the abuse, and it was foreseeable that withholding the information from them  
18 parents would cause more emotional distress than informing them in the first place.

19 150. Defendants’ conduct was intentional and outrageous, in that after learning about the  
20 abuse, Defendants continued to assign highly vulnerable children to Holder’s care. Later,  
21 Defendants simply transferred Holder to another elementary school, Krey, without informing  
22 parents of the fact that BUSD had concluded that her classroom was an unhealthy environment for  
23 children. Such conduct was specifically directed at the special needs children at Krey and their  
24 parents. BUSD is vicariously liable for the acts of its employees under Cal. Govt. Code § 815.2.  
25 The decision to transfer Holder to another elementary school cannot be characterized as discretion,  
26 but rather was an attempt to conceal the abuse and “sweep it under the rug.” Previous complaints  
27 and investigation of Holder was never disclosed to parents.

28 151. BUSD is vicariously liable for the intentional torts of its employees pursuant to Cal.



1 Gov't Code § 815.2.

2 152. As a proximate result of Defendants' intentional acts, Plaintiffs have incurred damages as  
3 alleged heretofore.

4 **SEVENTH CLAIM FOR RELIEF**

5 **(Negligence; All Plaintiffs vs. All Defendants)**

6 Plaintiffs incorporate and reallege by reference all the foregoing paragraphs, as if they were  
7 fully set forth herein.

8 153. Defendants owed Plaintiffs a duty to exercise reasonable care in their interactions with  
9 them. These Defendants failed to exercise reasonable care in their actions as alleged herein.

10 154. As a proximate result of Defendants' negligent acts, Plaintiffs have incurred damages as  
11 alleged heretofore.

12 **EIGHTH CLAIM FOR RELIEF**

13 **(Negligent Supervision; All Plaintiffs vs. All Defendants)**

14 Plaintiffs incorporate and reallege by reference all the foregoing paragraphs, as if they were  
15 fully set forth herein.

16 155. School personnel Defendants owe students under their supervision a protective duty of  
17 ordinary care, for breach of which BUSD is vicariously liable.

18 156. School principals and other supervisory employees, to the extent their duties include  
19 overseeing the educational environment and the performance of teachers and counselors, owe a  
20 duty of care to take reasonable measures to guard students against harassment and abuse from  
21 foreseeable sources, including any teachers or counselors they know or have reason to know are  
22 prone to such abuse. James, Jones, Anthony, Olson, Kruse, and Grant were all aware of Holder's  
23 propensity to abuse students.

24 157. As a proximate result of Defendants' negligent supervision of Defendant Holder,  
25 Plaintiffs have incurred damages as alleged heretofore.

26 **NINTH CLAIM FOR RELIEF**

27 **(Violation of Mandatory Duty; Minor Plaintiffs vs. All Defendants)**

28 Plaintiffs incorporate and reallege by reference all the foregoing paragraphs, as if they were

1 fully set forth herein.

2 158. Teachers, instructional aides, classified personnel and administrative officers of the  
3 BUSD are mandatory reporters as defined by Penal Code § 11165.7. As such, they were under a  
4 mandatory duty to report to an agency specified in § 11165.9 whenever, in his or her professional  
5 capacity or within the scope of his or her employment, has knowledge of or observes a child whom  
6 the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.  
7 Penal Code § 11166. A mandatory reporter is required to report suspected child abuse immediately  
8 or as soon as practicably possible by telephone and the mandated reporter shall prepare and send,  
9 fax, or electronically transmit a written follow-up report thereof within 36 hours. *Ibid*

10 159. Teachers, instructional aides, classified personnel and/or administrative officers of BUSD  
11 were aware that children in Holder's classroom were victims of abuse as defined by Penal Code §§  
12 11165.3 and 11165.4. However, none of these mandatory reporters employed by the District  
13 complied with their duty to report the abuse to an agency specified in Penal Code § 11165.9.

14 160. Obviously, the mandatory reporter statutes impose a mandatory duty to report suspected  
15 or actual child abuse. Furthermore, the statutes were enacted to protect minors from abuse such as  
16 the one suffered by the minor Plaintiffs in this case, and the breach in complying with the  
17 mandatory duty to report caused the minor Plaintiffs' injuries.

18 161. As a proximate result of Defendants' actions, Plaintiffs have incurred damages as alleged  
19 heretofore.

20 **TENTH CLAIM FOR RELIEF**

21 **(Violation of the Unruh Civil Rights Act, Civil Code Section 51, et seq.; All Plaintiffs v.**  
22 **All Defendants)**

23 Plaintiffs incorporate and reallege by reference all the foregoing paragraphs, as if they were  
24 fully set forth herein.

25 162. The Unruh Civil Act, Cal. Civ. Code § 51 *et seq.*, provides that all persons are entitled to  
26 full and equal services in all business establishments no matter what their, *inter alia*, disability, and  
27 that no business establishment shall discriminate against persons based on disability.

28 163. Civil Code § 52(a) state that whoever denies, aids or incites a denial, or makes any

1 discrimination or distinction contrary to Section 51 . . . is liable for each and every offense.

2 164. The minor Plaintiffs, based on their disabilities, were deprived of advantages, privileges  
3 and services of their schools. BUSD and the individual defendants were aware of this  
4 discrimination, which was intentional. Holder exhibited disdain and contempt toward her special  
5 needs students, and her actions were motivated by her hatred.

6 165. The abuse by Holder caused minor Plaintiffs severe psychological and physical trauma.

7 166. Parent Plaintiffs have also suffered severe psychological distress because they could not  
8 protect their children from the abuse, or provide support, treatment and counseling at a time that it  
9 was needed the most.

10 167. BUSD and its officials, as well as school personnel, were aware of the abuse perpetrated  
11 by Holder and did nothing to prevent it, which constitutes willful and affirmative misconduct.

12 168. As a proximate result of Defendants' negligent supervision of Defendant Holder,  
13 Plaintiffs have incurred damages as alleged heretofore.

14 169. A violation of the ADA is, by statutory definition, a violation of both the Unruh Civil  
15 Rights Act ("Unruh") and the California Disabled Persons Act ("DPA"). Cal. Civ. Code §§ 51(f),  
16 54.1(d).

17 170. Plaintiffs are not required to prove that the discrimination was intentional when seeking  
18 damages for ADA violations under the Unruh Act. *Munson v. DelTaco*, 46 Cal.4th 661 (2009).

19 **ELEVENTH CAUSE OF ACTION**

20 **(Violation of Education Code § 220; Minor Plaintiffs vs. BUSD)**

21 Plaintiffs incorporate and reallege by reference all the foregoing paragraphs, as if they were  
22 fully set forth herein.

23 171. Section 220 of the Education Code provides: "[n]o person shall be subjected to  
24 discrimination on the basis of disability....in any program or activity conducted by an educational  
25 institution that receives, or benefits from, state financial assistance or enrolls pupils who receive  
26 state student financial aid."

27 172. A plaintiff may maintain an action for monetary damages against a school district when  
28 the plaintiff alleges that she suffered severe, pervasive conduct that effectively deprived the

1 plaintiff of the right of equal access to educational benefits and opportunities; the school had actual  
2 knowledge of the conduct; and the school responded with deliberate indifference. *See, e.g.*  
3 *Donovan v. Poway Unified School Dist.*, 167 Cal.App.4th 567, 603-09 (2008).

4 173. Holder subjected the minor Plaintiffs to severe and pervasive verbal and physical abuse.

5 174. Holder's conduct denied minor Plaintiffs of the right to equal access to the educational  
6 benefits and opportunities (minor Plaintiffs started refusing going to school, and regressed  
7 developmentally while in Holder's classroom).

8 175. BUSD had actual knowledge of Holder's abuse of special education students. Parents  
9 and staff informed BUSD that Holder was abusing children in her class, but BUSD was  
10 deliberately indifferent to the abuse when it took no action to prevent the abuse. -Additionally,  
11 BUSD was deliberately indifferent when it decided to transfer her to another location after learning  
12 that she had committed abuse and knowing that she would continue her pattern of abuse there.

13 **JURY DEMAND**

14 Plaintiffs hereby demands that this matter be tried to a jury.

15 **PRAYER**

16 WHEREFORE, Plaintiffs prays for judgment as follows:

- 17 1. Compensatory damages to Plaintiffs for injury, emotional distress and for medical  
18 expenses;
- 19 2. Punitive damages against Defendants Holder, James, Jones, Olson, Anthony, Kruse and  
20 Grant;
- 21 3. Attorney's fees and costs; and
- 22 4. Such other and further relief as the court deems just and proper.

23  
24 Dated: October 21, 2015

25  
26 By: \_\_\_\_\_ /s/  
TODD BOLEY  
27 Attorneys for Plaintiffs  
28