

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 64119
5 1212 Broadway, 16th Floor
Oakland, CA 94612
6 Telephone: (510) 836-4500
Facsimile: (510) 649-5170

7 Attorneys for PLAINTIFFS

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ALPHONSO GUERRERO, IRENE
11 GUERRERO, A.G., a minor by and through his
guardian ad litem ALPHONSO GUERRERO,
12 JEFF MCDOUGAL, CINDY MCDOUGAL,
A.M., a minor by and through his guardian ad
13 litem, JEFF MCDOUGAL, CLAY PLUMMER,
JENNIFER PLUMMER, J.P., a minor by and
14 through her guardian ad litem CLAY
PLUMMER, JOHN REYNOLDS, CINDY
15 REYNOLDS, P.R., a minor by and through her
guardian ad litem JOHN REYNOLDS, PHILIP
16 RODRIGUEZ, JENNIFER RODRIGUEZ, R.R.,
a minor by and through her guardian ad litem
17 PHILIP RODRIGUEZ, TANIA STREETE, B.S.,
a minor by and through his guardian ad litem
18 TANIA STREETE, K.G., a minor by and
through his guardian ad litem SYLVIA
19 GALLEGOS, L.L., a minor by and through his
guardian ad litem JIM LARK,

20 Plaintiffs,

21 v.

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

24 Defendants.

No.
COMPLAINT FOR DAMAGES
[JURY DEMANDED]

25 Plaintiffs ALPHONSO GUERRERO, IRENE GUERRERO, and A.G., a minor by and
26 through his guardian ad litem ALPHONSO GUERRERO (hereinafter "A.G."), JEFF
27 MCDOUGAL, CINDY MCDOUGAL, and A.M., a minor by and through his guardian ad litem
28 JEFF MCDOUGAL (hereinafter "A.M."), CLAY PLUMMER, JENNIFER PLUMMER, and J.P.,

1 a minor by and through her guardian ad litem CLAY PLUMMER (hereinafter “J.P.”), JOHN
2 REYNOLDS, CINDY REYNOLDS and P.R., a minor by and through her guardian ad litem JOHN
3 REYNOLDS (hereinafter “P.R.”), PHILIP RODRIGUEZ, JENNIFER RODRIGUEZ, and R.R., a
4 minor by and through her guardian ad litem PHILIP RODRIGUEZ (hereinafter “R.R.”), TANIA
5 STREETE and B.S., a minor by and through his guardian ad litem TANIA STREETE (hereinafter
6 “B.S.”), K.G., a minor by and through his guardian ad litem SYLVIA GALLEGOS (hereinafter
7 “K.G.”) and L.L., a minor by and through his guardian ad litem JIM LARK (hereinafter “L.L.”),
8 allege as follows:

9 JURISDICTION AND VENUE

10 1. Jurisdiction over Plaintiffs’ federal law claims is founded upon 28 U.S.C. § 1331
11 [federal question jurisdiction] and 28 U.S.C. § 1343(a)(3) [federal civil rights jurisdiction]. All
12 claims for violation of Plaintiffs’ rights under the laws and the constitution of the United States are
13 brought pursuant to 42 U.S. C. § 1983.

14 INTRADISTRICT ASSIGNMENT

15 2. This case arose in Contra Costa County, California and, pursuant to Rule 3-3(c) of
16 the Local Rules of the Northern District of California, should be assigned to either the San
17 Francisco or Oakland Division of the Northern District.

18 PARTIES

19 3. Plaintiff ALPHONSO GUERRERO is a resident of Contra Costa County,
20 California. He brings this action on his own behalf and as guardian ad litem for his son, A.G.

21 4. Plaintiff IRENE GUERRERO is a resident of Contra Costa County, California. She
22 brings this action on her own behalf.

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

24 6. Plaintiff JEFF MCDOUGAL is a resident of Contra Costa County, California. He
25 brings this action on his own behalf and as guardian ad litem for his son, A.M.

26 7. Plaintiff CINDY MCDOUGAL is a resident of Contra Costa County, California.
27 She brings this action on her own behalf.

28 8. Plaintiff A.M. is a minor and a resident of Contra Costa County, California.

1 9. Plaintiff CLAY PLUMMER is a resident of Contra Costa County, California. He
2 brings this action on his own behalf and as guardian ad litem for his son, J.P.

3 10. Plaintiff JENNIFER PLUMMER is a resident of Contra Costa County, California.
4 She brings this action on her own behalf.

5 11. Plaintiff J.P. is a minor and a resident of Contra Costa County, California.

6 12. Plaintiff JOHN REYNOLDS is a resident of Contra Costa County, California. He
7 brings this action on his own behalf and as guardian ad litem for his daughter, P.R.

8 13. Plaintiff CINDY REYNOLDS is a resident of Contra Costa County, California. She
9 brings this action on her own behalf.

10 14. P.R. is a minor and a resident of Contra Costa County, California.

11 15. PHILIP RODRIGUEZ is a resident of Contra Costa County, California. He brings
12 this action on his own behalf and as guardian ad litem for his daughter, R.R.

13 16. JENNIFER RODRIGUEZ is a resident of Contra Costa County, California. She
14 brings this action on her own behalf.

15 17. R.R. is a minor and a resident of Contra Costa County, California.

16 18. TANIA STREETE is a resident of Contra Costa, California. She brings this action
17 on her own behalf and as guardian ad litem for her son, B.S.

18 19. B.S. is a minor and a resident of Contra Costa, California.

19 20. SYLVIA GALLEGOS is a resident of Contra Costa County, California. She brings
20 this action as guardian ad litem on behalf of her son, K.G.

21 21. K.G. is a resident of Contra Costa County, California.

22 22. JIM LARK is a resident of Contra Costa County, California. He brings this action as
23 guardian ad litem on behalf of his son, L.L.

24 23. L.L. is a minor and a resident of Contra Costa, County.

25 24. Defendant DINA HOLDER (“Holder”) is a teacher employed by the Brentwood
26 Union School District (“BUSD”). All actions alleged herein by Holder were taken under color of
27 state law and in the course and scope of her employment with BUSD.

28 25. Defendant LAURI JAMES (“James”) is the principal of Loma Vista School in the

1 BUSD, Brentwood, California. All actions alleged herein by James were taken under color of state
2 law and in the course and scope of her employment with BUSD.

3 26. Defendant JEAN ANTHONY (“Anthony”) is the former Director of Special
4 Education at BUSD. All actions alleged herein by Anthony were taken under color of state law and
5 in the course and scope of his employment with BUSD.

6 27. Defendant MARGO OLSON (“Olson”) is the Director of Special Education at
7 BUSD. All actions alleged herein by Olson were taken under color of state law and in the course
8 and scope of her employment with BUSD.

9 28. Defendant MARGARET KRUSE (“Kruse”) is the Assistant Superintendent at
10 BUSD. All actions alleged herein by Kruse were taken under color of state law and in the course
11 and scope of her employment with BUSD.

12 29. Defendant MERRILL GRANT (“Grant”) is the Superintendent at BUSD. All
13 actions alleged herein by Grant were taken under color of state law and in the course and scope of
14 his employment with BUSD.

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

20 31. In enacting Title II of the Americans with Disabilities Act Congress validly
21 abrogated state sovereign immunity, and thus AUSD may be sued pursuant to Title II. *Hason v.*
22 *Med. Bd. of California*, 279 F.3d 1167, 1170 (9th Cir. 2002). By accepting Federal Rehabilitation
23 Act funds, AUSD waived its sovereign immunity under the Eleventh Amendment to claims
24 brought pursuant to § 504 of the Rehabilitation Act of 1973. *Pugliese v. Dillenberg*, 346 F.3d 937
25 (9th Cir. 2003)

26 32. The true names and capacities of defendants sued as DOES 1 through 30 are
27 unknown to Plaintiffs and Plaintiffs pray leave to amend to allege the true names and capacities
28 when they are ascertained.

1 33. At all relevant times set forth herein, all Defendants acted in concert and as the
2 agent of one another.

3 FACTUAL ALLEGATIONS

4 A. ALLEGATIONS COMMON TO ALL PLAINTIFFS

5 34. Defendant Holder was a special education teacher in special day classes in the
6 BUSD from 1996 to 2012. She taught at Loma Vista Elementary School until May 2010 and then
7 was transferred to Krey School beginning in the 2010-2011 school year. She resigned from the
8 BUSD as part of the settlement of a lawsuit filed in this court, Kevin Phelan, et. al. v. Dina Holder,
9 et. al., case number C12-00465 LB.

10 35. Defendant Holder subjected the students in her classroom to ongoing verbal and
11 physical abuse. The students were all disabled and some were nonverbal. They ranged in age from
12 three to six.

13 36. At least as early as 2008, employees of BUSD, including James, Olson, Anthony,
14 Kruse and Grant observed or had knowledge of information that students in Holder’s classroom
15 were being subjected to verbal and physical abuse. These employees had the ability to discipline
16 Holder or terminate her employment, but they did nothing. Instead, the employees concealed the
17 abuse from law enforcement officials and parents.

18 37. The employees referred to in the previous paragraph observed or had knowledge of
19 information giving rise to a reasonable suspicion that Holder had committed acts of child abuse or
20 neglect as defined by Penal Code §11165.3 against students in her classroom. These employees
21 were mandated reporters as defined by Penal Code §1165.7, but did not report the abuse or neglect
22 to an agency defined in Penal Code §11165.9.

23 38. On March 4, 2011, PAIGE LARK brought her son to visit Holder’s class. Ms. Lark
24 momentarily stepped out of the class. When she returned a few minutes later, she observed Holder
25 and her son from a few feet away through a window in the classroom door. She observed Holder
26 shaking her soon violently by the shoulders so that his head was moving “like a bobble head.”

27 39. PAIGE LARK then quickly opened the door and ran into the classroom. She
28 confronted Holder, who claimed not to know what the mother was talking about. Holder also said,

1 “you’ll never be able to prove anything.”

2 40. Holder testified at a deposition that she was sitting behind the student with her arms
3 at either side of the student. Holder claims she did not touch the student and that the student’s head
4 was moving because he was shaking his head “no.” Holder claimed that her version of events was
5 supported by her aide, Janice Lopez, who was sitting across the table from her.

6 41. At her deposition, Ms. Lopez testified that she saw Holder’s hands on the student’s
7 shoulders, but only to “comfort” the student.

8 42. Ms. Lark complained to Ms. James and Ms. Anthony about the abuse of L.L. Ms.
9 Anthony, on behalf of BUSD, wrote L.L.’s mother, stating that their investigation found no
10 violation of policy or wrong doing on the part of district employees. In fact, neither Anthony,
11 James, nor any other employee of BUSD conducted any investigation and none of them
12 interviewed Lopez.

13 43. L.L.’s mother contacted the police, who did not conduct an independent
14 investigation after learning of BUSD’s “investigation.”

15 44. During a portion of the 2008 to 2009 school year, K.G. was a pre-kindergarten
16 student at Loma Vista Elementary School in Holder’s Special Day Class. Throughout this period,
17 he was subject to regular acts of child abuse or neglect and observed acts of child abuse or neglect
18 being inflicted on other special needs children in his classroom, including, but not limited to,
19 yelling, swearing and inappropriately aggressive physical contact. He was struck by Holder and he
20 observed Holder hitting other children.

21 45. On May 19, 2008, K.G. came home very upset and began crying. He complained to
22 his grandmother that he had been slapped twice at school by an adult and that he had a red welt on
23 his cheek. The grandmother contacted K.G.’s mother, SYLVIA GALLEGOS, who immediately
24 went to the school where she determined that the adult who had slapped her son was Holder.
25 K.G.’s mother reported the incident to James in person that day.

26 46. James spoke to K.G. and his mother about the incident. K.G. had limited speaking
27 ability, but he made did make a slapping motion toward his face. In addition, he was able to
28 accurately describe Holder and the clothes she was wearing. James did not contact the police

1 department and K.G.'s mother contacted the police on her own.

2 47. There were crucial misstatements and omissions in the information provided by
3 school personnel to the police. James did not describe the slapping motion she saw and the aides
4 claimed that Holder never raises her voice with children. In addition, James conveyed to the police
5 that K.G. could not speak and therefore could not corroborate the battery. The District Attorney
6 did not pursue the investigation given that there were no witnesses to the battery.

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

9 49. Ms. Holder regularly referred to students as "little shits." She routinely yelled "shut
10 up!" at students so loudly that she could be heard in an adjoining classroom. She was overheard
11 yelling, "get your butt here." During "circle time," when the students read or play games, Ms.
12 Holder yelled at or berated children who do not verbalize a response. She would "get in the face"
13 of children who were struggling to speak and yell, "You can say it" or otherwise berate them.

14 50. Ms. Holder routinely forced very young children into chairs and moved them by
15 grabbing their arms. One parent observed Ms. Holder pulling a child by the arm and dragging him
16 across the floor of the classroom on many occasions. The staff psychologist and speech pathologist
17 worked with Ms. Holder to adopt appropriate classroom management techniques, but she never
18 adopted them. The school psychologist visited Holder's classroom once a week and observed
19 physically aggressive behavior "pretty much every week."

20 51. Eventually, Ms. Holder essentially stopped teaching. She routinely arrived late only
21 to sit at her desk playing computer solitaire and paying bills. She had no clear instructional
22 program and was unprepared when she attended students' IEP meetings. Instructional aides, with
23 no formal training in education, took over lesson planning and teaching duties. The aides, rather
24 than Ms. Holder, did the instruction. These conditions were known to everyone on the preschool
25 staff and, according to one aide, was "common knowledge" in the school.

26 52. The conditions in the classroom were extremely detrimental to students. One aide
27 described the atmosphere as "chaotic and tense." She also stated that the children were "working
28 out of fear." Speech and language therapists and aides observed that students stopped responding

1 in Ms. Holder's classroom. Children who were supposed to be receiving assistance with language
2 were instead regressing and stopped talking.

3 53. Psychologists, speech therapists, speech pathology aides, instructional aides and
4 other employees reported to James, Anthony, Olsen, Kruse and Grant their concerns about verbal
5 and physical abuse they observed in Holder's classroom. James, Anthony, Olsen, Kruse and Grant
6 had the ability to discipline Holder or terminate her employment, but did nothing.

7 54. On May 25, 2010, Ms. Holder, three instructional aides were preparing the class for
8 circle time. A student was cutting out paper for a project and did not comply with Ms. Holder's
9 request that he join the rest of the class. Ms. Holder grabbed the student by the arm and pulled him
10 out of the chair. The student fell to the ground and was lying prone on his side. Ms. Holder
11 forcefully kicked him in the lower back or buttocks to move him toward the circle area.

12 55. The attack was observed by two of the instructional aides, who describe her as
13 yelling aggressively at the student to get up and go to the circle. One stated that she kicked the
14 student "like you would kick a dog out of the way." One of the aides yelled at Ms. Holder to stop
15 and pulled her off of the student. Ms. Holder stopped kicking the student and as she walked away,
16 she called him a "stupid son of a bitch." She said the epithet loudly enough that all of the
17 instructional aides and the students were able to hear it.

18 56. That afternoon, one of the aides contacted Connie Forrest, a Special Day Class
19 teacher in the room next door. Ms. Forrest is the former Coordinator of Special Education for the
20 District. Ms. Forrest told the aide to "resolve the issue" with Ms. Holder directly. She advised the
21 aide to contact the school principal and other authorities only if she could not "resolve" the issue
22 with Ms. Holder.

23 57. Ms. Forrest then spoke to Ms. Holder. Ms. Forrest asked Ms. Holder if she intended
24 to speak to the principal or J.P.' parents; Ms. Holder replied that she "would think about it."

25 58. The next day, one of the aides contacted a school psychologist who informed James
26 of the incident.

27 59. The aides and all of the employees who learned of Holder's battery on the student
28 were mandated reporters as defined by Penal Code §1165.7, but none of them reported the abuse or

1 neglect to an agency defined in Penal Code §11165.9. In fact, the employees believed incorrectly
2 that the instructional aides were not legally obligated to report abuse.

3 60. Kruse and James interviewed employees regarding the May 25 battery and
4 conditions in Holder's classroom. That investigation documented the ongoing verbal and physical
5 abuse to which Holder subjected her students.

6 61. BUSD issued a Letter of Unprofessional Conduct to Holder, concluding that her
7 classroom was an unhealthy environment for children due to repeated incidents of verbal and
8 physical abuse. Yet rather than terminating her employment, BUSD transferred Holder from Loma
9 Vista School to Krey Elementary School.

10 62. James and Kruse informed the parents of the child who was battered by Holder on
11 May 25, 2010 about the incident. They did not inform the parents that Holder had sworn at their
12 son or that they had concluded that Holder's classroom was an unhealthy environment for her
13 students because of ongoing verbal and physical abuse.

14 63. When the parents asked if the school intended to contact the police, Kruse stated
15 that BUSD would not contact the police and would instead treat the incident as an internal,
16 confidential matter. Dissatisfied with this response, the parents contacted the Brentwood Police
17 Department. The police department conducted an investigation and contacted Kruse, James and
18 other BUSD employees. None of the employees informed the police about the findings of the
19 BUSD investigation that Holder had subjected students to verbal and physical abuse. Instead, the
20 employees conveyed the impression that Holder was a good teacher and that the battery on May
21 25, 2010 was an aberrant act on Holder's part.

22 64. BUSD continued to assign very young students with disabilities to Holder's
23 classroom after her reassignment to Krey Elementary. No one at BUSD notified parents of the
24 findings of their investigation, the reasons for Holder's transfer to Krey or provided adequate
25 monitoring to insure that the unhealthy environment in Holder's classroom would not continue.
26 Holder continued to subject students to ongoing verbal and physical abuse and neglect.

27 65. On February 24, 2011, the District Attorney filed a criminal complaint charging
28 Holder with Cruelty to a Child, a violation of Penal Code §273a. On October 6, 2011, Ms. Holder

1 pled no contest to the charge and was sentenced to 4 year court probation, a 1 year child abuse
2 treatment program, a requirement that she have an adult with her when dealing with children, and a
3 protective order to stay away from the victim.

4 66. Kruse, James and Grant were aware of the criminal complaint and the plea of no
5 contest. Even though she was no longer entitled to hold a teaching credential, they allowed Holder
6 to continue teaching. They did not inform anyone, including BUSD staff or parents, of the charges
7 and the plea of no contest.

8 67. The parents of the student injured in the May 25, 2010 incident filed a lawsuit filed
9 in this court, Kevin Phelan, et. al. v. Dina Holder, et. al., case number C12-00465 LB. That
10 lawsuit was settled on December 21, 2012. The plaintiffs agreed to accept the total sum of
11 \$950,000 in exchange for a release of all claims against all defendants. In addition, Ms. Holder
12 agreed to resign from employment on June 6, 2013 and to accept an immediate reassignment to a
13 non-classroom setting.

14 68. The settlement of the Phelan lawsuit was widely reported in the media in mid-
15 January, 2013. This was the first notice to parents of Holder's students that their children had been
16 subjected to verbal and physical abuse in her classroom.

17 **B. ALLEGATIONS RELATING TO PLAINTIFF A.G.**

18 69. A.G. was born on April 17, 2004 and has been diagnosed with autism. Alphonso
19 and Irene Guerrero are his parents.

20 70. At the beginning of the 2010 – 2011 school year, A.G. was scheduled to attend
21 kindergarten with Melissa Poole as his teacher. On the first day of class, A.G.'s parents were
22 informed by employees of BUSD that, instead, A.G. would be taught by Holder. A.G.'s parents
23 were assured by Margo Olsen that Holder held the required credential to teach children on the
24 autism spectrum.

25 71. Plaintiffs are informed and believe and thereon allege that during the 2010-2011
26 school year, A.G. and other special needs students were subjected to ongoing verbal and physical
27 abuse and neglect in Holder's classroom.

28 72. Prior to the 2010-2011 school year, A.G. had been eager to attend and enjoyed

1 school. While in Holder's classroom, A.G.'s behavior underwent very significant adverse changes.
2 He became fearful, withdrawn and cried before going to school. These were behaviors that A.G.
3 had not previously displayed and were not previously observed by his parents. A.G.'s parents
4 became very concerned about his reaction to school, but A.G. was unable to describe what was
5 happening to him in Holder's classroom.

6 73. Concerned that A.G. was not progressing as he had in the past, A.G.'s parents met
7 with Ms. Olsen, Brian Jones and other employees of BUSD on multiple occasions about their
8 concerns regarding A.G. At no time did any employee of BUSD ever provide any information to
9 the parents about Holder's history of abusing children in her classroom. This experience caused
10 A.G.'s parents significant emotional distress.

11 74. A.G. was not able to understand the conditions in Holder's classroom were
12 wrongful nor was he able to communicate the source of his distress to his parents. BUSD withheld
13 information from the parents as to Holder's history of abuse and withheld critical information as to
14 the conditions in Holder's classroom.

15 75. In mid-January 2013, A.G.'s parents became aware of news reports that Holder had
16 pled nolo contendere to child abuse charges stemming from a May 2010 incident and that had had
17 received a Letter of Unprofessional Conduct relating to the unhealthy conditions in her classroom
18 at Loma Vista Elementary School.

19 76. Prior to mid-January 2013, A.G.'s parents did not suspect and had no reason to
20 suspect that Holder had been the subject of prior complaints of her physically and verbally abusing
21 her students. Nor did they know that Holder's classroom was an unhealthy educational setting for
22 A.G. and a hostile environment based on his disability.

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

1 C. ALLEGATIONS RELATING TO PLAINTIFF A.M.

2 78. A.M. was born on March 25, 2004 and has been diagnosed with Recombinant 8
3 Syndrome. He has experienced significant delays in acquiring and utilizing verbal skills. JEFF
4 MCDUGAL and CINDY MCDUGAL are his parents.

5 79. At the beginning of the 2011-2012 school year, A.M. was placed in a classroom
6 with Holder as the teacher for a portion of the day.

7 80. During the period A.M. was a student in Holder's class, A.M. was subjected to and
8 observed other children being subjected to verbal and physical abuse and neglect by Holder.

9 81. A.M. began exhibiting unusually severe and frequent outbursts of aggressive
10 behavior. A.M.'s parents observed that A.M. was not progressing as he had in the past, but they did
11 not have reason to believe that mental or physical abuse was the source of his problems.

12 82. A.M.'s parents met with Margo Olsen, Brian Jones and other employees of the
13 BUSD on multiple occasions about their concerns regarding A.M., but no BUSD employee ever
14 provided any information to the parents about Holder's history of abusing children in her
15 classroom. This experience caused A.M.'s parents very significant emotional distress.

16 83. A.M. was not able to understand that the conditions in Holder's classroom were
17 wrongful and was unable to communicate the source of his distress to his parents. The BUSD
18 withheld information from the parents as to Holder's history of abuse and withheld critical
19 information as to the conditions in A.M.'s classroom.

20 84. In mid-January 2013, A.M.'s parents became aware of news reports that Holder had
21 pled nolo contendere to child abuse charges stemming from a May 2010 incident and had received
22 a Letter of Unprofessional Conduct relating to the unhealthy conditions in her classroom at Loma
23 Vista Elementary School.

24 85. Prior to mid-January 2013, A.M.'s parents had no reason to believe that Holder had
25 been the subject of prior complaints of her physically and verbally abusing her students.

26 86. The discovery of the history of abuse by Holder caused A.M.'s parents additional
27 emotional distress. A.M.'s parents were deprived on the ability to comfort their son or to provide
28 appropriate counseling, medical and/or psychological care. The failure to advise A.M.'s parents

1 promptly gave rise to severe emotional distress in that they suffered a loss of trust in school
2 officials and felt betrayed that they did not learn what their child had experienced at the time of the
3 injuries when they could have responded immediately with appropriate parental support and care.

4 D. ALLEGATIONS RELATING TO PLAINTIFF J.P.

5 87. J.P. was born on October 28, 2004 and has been diagnosed with Cornella de Lange
6 Syndrome. CLAY PLUMMER and JENNIFER PLUMMER are her parents.

7 88. During the 2008-2009 school year, J.P. was a pre-kindergarten student at Loma
8 Vista Elementary School in Holder's Special Day Class. Throughout the year, she was subjected to
9 regular acts of child abuse or neglect and observed acts of child abuse or neglect being inflicted on
10 other special needs children in her classroom, including, but not limited to, yelling, swearing and
11 inappropriately aggressive physical conduct.

12 89. At the beginning of the 2010-2011 school year, the BUSD made a last minute
13 change and assigned J.P. to a kindergarten class taught by Holder. During the 2010-2011 school
14 year, J.P. was subjected to and observed other children being subjected to verbal and physical
15 abuse and neglect by Holder.

16 90. J.P. suffered many unexplained injuries while a student in Holder's classroom. She
17 sustained bruises on her arm consistent with being grabbed by the arm and on her knees and back.
18 She also sustained deep scratches and a serious cut to her chin which left a permanent scar. She
19 became much more aggressive and engaged in self-injurious behavior during the time she was a
20 student in Holder's classroom. J.P. became withdrawn and nonverbal during the time she was a
21 student in Holder's classroom. She continues to suffer emotional injuries as a result of her time in
22 Holder's classroom.

23 91. The unhealthy conditions in Holder's classroom cause J.P. to suffer physical injury,
24 pain and emotional distress. Holder and employees of BUSD compounded the injury by failing to
25 promptly report the abuse to J.P.'s parents or to responsible officials. As a result, J.P.'s parents were
26 deprived of the ability to comfort her or to provide appropriate counseling, medical and/or
27 psychological care.

28 92. The failure to advise J.P.'s parents promptly gave rise to both parents suffering

1 severe emotional distress in that they suffered a loss of trust in school officials and felt betrayed
2 that they did not learn what their daughter had experienced at the time of the injuries when they
3 could have responded immediately with appropriate parental support and care.

4 93. Had mandated reporters employed by BUSD performed their mandatory duty to
5 report the prior incidents of child abuse or neglect by Holder, the foregoing damages would not
6 have been suffered.

7 94. J.P. was not able to understand that the conditions in Holder's classroom were
8 wrongful and was unable to communicate the source of her distress to her parents. The BUSD
9 withheld information from the parents as to Holder's history of abuse and as to the conditions in
10 J.P.'s classroom.

11 95. In mid-January 2013, J.P.'s parents became aware of news reports that Holder had
12 pled nolo contendere to child abuse charges stemming from a May 2010 incident and that she had
13 received a Letter of Unprofessional Conduct relating to the unhealthy conditions in her classroom
14 at Loma Vista School. Prior to mid-January 2013, the parents had no reason to believe that Holder
15 had been the subject of prior complaints of her physically and verbally abusing her students.

16 96. The discovery of the history of abuse by Holder caused the parents additional
17 emotional distress. J.P.'s parents were deprived of the ability to comfort their daughter or to
18 provide appropriate counseling, medical and/or psychological care. The failure to advise the
19 parents promptly gave rise to the severe emotional distress in that they suffered a loss of trust in
20 school officials and felt betrayed that they did not learn what their child had experienced at the
21 time of the injuries when they could have responded immediately with appropriate parental support
22 and care.

23 E. ALLEGATIONS RELATING TO PLAINTIFF P.R.

24 97. P.R. was born on July 4, 2006 and has been diagnosed with Chromosome 22q13
25 Deletion Syndrome. JOHN REYNOLDS and CINDY REYNOLDS are her parents.

26 98. During the 2009 to 2010 school year, P.R. was a pre-kindergarten student at Loma
27 Vista Elementary School in Holder's Special Day Class.

28 99. Throughout the year, she was subjected to regular acts of child abuse or neglect and

1 observed acts of child abuse or neglect being inflicted on other special needs children in her
2 classroom, including, but not limited to, yelling, swearing and inappropriately aggressive physical
3 contact.

4 100. Among other incidents, P.R. was present on May 25, 2010 when Holder grabbed
5 another student by the arm, brought him to the ground and kicked him repeatedly in the back while
6 yelling “stupid son of a bitch.”

7 101. Because of their age and developmental limitations, none of the students, including
8 P.R., told their parents about the kicking incident or the child abuse and neglect that students
9 suffered throughout the school year. James, other teachers, the director of special education, the
10 school psychologist, speech therapists, speech pathology aides, instructional aides and other
11 employees failed to report the incident as required by Penal Code §11166. No employee of BUSD
12 informed the parents about earlier incidents of child abuse or neglect involving Holder or the
13 unhealthy learning environment in Holder’s classroom.

14 102. P.R.’s behavior changed drastically while in Holder’s classroom. She became very
15 aggressive and began engaging in behavior such as scratching. This behavior abated after leaving
16 Holder’s classroom, but she continues to suffer emotional injuries as a result of her time in
17 Holder’s classroom.

18 103. The unhealthy conditions in Holder’s classroom caused J.P. to suffer physical
19 injury, pain and emotional distress. Holder and employees of BUSD compounded the injury by
20 failing to promptly report it to her parents or to responsible officials. As a result, her parents were
21 deprived of the ability to comfort her or to provide appropriate counseling, medical and/or
22 psychological care.

23 104. The failure to advise P.R.’s parents promptly gave rise to both parents suffering
24 severe emotional distress in that they suffered a loss of trust in school officials and felt betrayed
25 that they did not learn what their daughter had experienced at the time of the injuries, when they
26 could have responded immediately with appropriate parental support and care.

27 105. Had mandated reporters employed by BUSD performed their mandatory duty to
28 report the prior incidents of child abuse or neglect by Holder, the foregoing damages would not

1 have been suffered.

2 106. P.R. was not able to understand that the conditions in Holder's classroom were
3 wrongful and did not communicate the source of her distress to her parents. BUSD withheld
4 information from the parents as to Holder's history of abuse and as to the conditions in their
5 daughter's classroom.

6 107. In January 2013, the parents became aware of news reports that Holder had pled
7 nolo contendere to child abuse charges stemming from the May 2010 incident and that she had
8 received a Letter of Unprofessional Conduct relating to the unhealthy conditions in her classroom
9 at Loma Vista School.

10 108. Prior to January 2013, P.R.'s parents did not suspect and had no reason to suspect
11 that BUSD was intentionally failing to provide information concerning their daughter's injuries or
12 the hostile and unhealthy education environment in Holder's classroom.

13 109. The discovery of the conditions in Holder's classroom caused the parents additional
14 emotional distress. The parents were deprived of the ability to comfort their daughter or to provide
15 appropriate counseling, medical and/or psychological care. The failure to advise the parents
16 promptly gave rise to the severe emotional distress in that they suffered a loss of trust in school
17 officials and felt betrayed that they did not learn what their child had experienced at the time of the
18 injuries when they could have responded immediately with appropriate parental support and care.

19 **F. ALLEGATIONS RELATING TO PLAINTIFF R.R.**

20 110. R.R. was born on March 9, 2006 and has been diagnosed with autism. PHILIP
21 RODRIGUEZ and JENNIFER RODRIGUEZ are her parents.

22 111. From approximately March 2009 to May 2010, R.R. was a pre-kindergarten student
23 at Loma Vista Elementary School in Holder's Special Day Class.

24 112. Throughout the year, she was subjected to regular acts of child abuse or neglect and
25 observed acts of child abuse or neglect being inflicted on other special needs children in her
26 classroom including, but not limited to, yelling, swearing and inappropriately aggressive physical
27 contact.

28 113. Among other incidents, she was present on May 25, 2010, when Holder grabbed

1 another student by the arm, brought him to the ground and kicked him repeatedly in the back while
2 yelling “stupid son of a bitch.”

3 114. Because of their age and developmental limitations, none of the students, including
4 R.R., told their parents about the kicking incident or the child abuse and neglect that students
5 suffered throughout the school year.

6 115. James, other teachers, the director of special education, the school psychologist,
7 speech therapists, speech pathology aides, instructional aides and other employees failed to report
8 the incident as required by Penal Code §11166. No employee of BUSD informed the parents about
9 earlier incidents of BUSD informed the parents about earlier incidents of child abuse or neglect
10 involving Holder or the unhealthy learning environment in Holder’s classroom.

11 116. R.R. suffered many unexplained injuries while a student in Holder’s classroom. She
12 sustained bruises on her arm consistent with being grabbed by the arm and on her knee and back.
13 She also sustained a bite injury that was not reported to her parents by any school employee.

14 117. R.R.’s behavior changed drastically while in Holder’s classroom. She became much
15 more aggressive and began using profanity. This behavior abated after leaving Holder’s classroom,
16 but she continues to suffer emotional injuries as a result of her time in Holder’s classroom.

17 118. The unhealthy conditions in Holder’s classroom caused R.R. to suffer physical
18 injury, pain and emotional distress. Holder and other employees of BUSD compounded the injury
19 by failing to promptly report it to her parents or to responsible officials.

20 119. As a result, her parents were deprived of the ability to comfort her or to provide
21 appropriate counseling, medical and or/psychological care.

22 120. The failure to advise R.R.’s parents promptly gave rise to both parents suffering
23 severe emotional distress in that they suffered a loss of trust in school officials and felt betrayed
24 that they did not learn what their daughter had experienced at the time of the injuries when they
25 could have responded immediately with appropriate parental support and care.

26 121. Had mandated reporters employed by BUSD performed their mandatory duty to
27 report the prior incidents of child abuse or neglect by Holder, the foregoing damages would not
28 have been suffered.

1 122. R.R. was not able to understand that the conditions in Holder’s classroom were
2 wrongful or to communicate the source of her distress to her parents. BUSD withheld information
3 from the parents as to Holder’s history of abuse and as to the conditions in their daughter’s
4 classroom.

5 123. In January 2013, the parents became aware of news reports that Holder had pled
6 nolo contendere to child abuse charges stemming from the May 2010 incident and that she had
7 received a Letter of Unprofessional Conduct relating to the unhealthy conditions in her classroom
8 at Loma Vista School. Prior to January 2013, the parents had no reason to believe that Holder had
9 been the subject of prior complaints regarding her conduct with students.

10 124. The discovery of the history of abuse by Holder caused the parents additional
11 emotional distress. The parents were deprived of the ability to comfort their daughter or to provide
12 appropriate counseling, medical and/or psychological care.

13 125. The failure to advise the parents promptly gave rise to the severe emotional distress
14 in that they suffered a loss of trust in school officials and felt betrayed that they did not learn what
15 their child had experienced at the time of the injuries when they could have responded immediately
16 with appropriate parent support and care.

17 G. ALLEGATIONS RELATING TO PLAINTIFF B.S.

18 126. B.S. was born on June 16, 2005 and has been diagnosed with Down Syndrome.
19 TANIA STREETE is his mother.

20 127. During the 2009 to 2010 school year, B.S. was a pre-kindergarten student at Loma
21 Vista Elementary School in Holder’s Special Day Class. Throughout the year, he was subject to
22 regular acts of child abuse or neglect and observed acts of child abuse or neglect being inflicted on
23 other special needs children in his classroom, including, but not limited to, yelling, swearing and
24 inappropriately aggressive physical contact.

25 128. Among other incidents, he was present on May 25, 2010, when Holder grabbed
26 another student by the arm, brought him to the ground and kicked him repeatedly in the back while
27 yelling “stupid son of a bitch.”

28 129. Because of their age and developmental limitations, none of the students, including

1 B.S., told their parents about the kicking incident or the child abuse and neglect that students
2 suffered throughout the school year.

3 130. James, other teachers, the director of special education, the school psychologist,
4 speech therapists, speech pathology aides, instructional aides and other employees failed to report
5 the incident as required by penal code §11166. No employee of BUSD informed the parents about
6 earlier incidents of child abuse or neglect involving Holder or the unhealthy learning environment
7 in Holder's classroom.

8 131. B.S.'s behavior changed drastically while in Holder's classroom. He developed a
9 problem with hiding under the table in Holder's classroom and often came home with bruises or
10 scratches. B.S. continues to suffer emotional injuries as a result of his time in Holder's classroom.

11 132. The unhealthy conditions in Holder's classroom caused B.S. to suffer physical
12 injury, pain and emotional distress. Holder and employees of BUSD compounded the injury by
13 failing to promptly report it to his parents or to responsible officials. As a result, B.S.'s mother was
14 deprived of the ability to comfort him or to provide appropriate counseling, medical and/or
15 psychological care.

16 133. The failure to advise B.S.'s mother promptly gave rise to her suffering severe
17 emotional distress in that she suffered a loss of trust in school officials and felt betrayed that she
18 did not learn what her son had experienced at the time of the injuries when she could have
19 responded immediately with appropriate parental support and care.

20 134. Had mandated reporters employed at BUSD performed their mandatory duty to
21 report the prior incidents of child abuse or neglect by Holder, the foregoing damages would not
22 have been suffered.

23 135. B.S. was not able to understand that the conditions in Holder's classroom were
24 wrongful or to communicate the source of his distress to his mother. BUSD withheld information
25 from B.S.'s mother as to Holder's history of abuse and as to the conditions in her son's classroom.

26 136. In January 2013, B.S.'s mother became aware of news reports that Holder had pled
27 nolo contendere to child abuse charges stemming from the May 2010 incident and that she had
28 received a Letter of Unprofessional Conduct relating to the unhealthy conditions in her classroom

1 at Loma Vista School.

2 137. Prior to January 2013, B.S.'s mother had no reason to believe that Holder had
3 subjected her son to the injury causing conditions described above.

4 138. The discovery of the conditions in Holder's classroom caused TANIA STREETE
5 additional emotional distress. She was deprived of the ability to comfort her son or to provide
6 appropriate counseling, medical and/or psychological care.

7 H. ALLEGATIONS RELATING TO PLAINTIFF K.G.

8 139. K.G. was born on September 1, 2003 and has been diagnosed with
9 Neurofibromatosis. SYLVIA GALLEGOS is his mother.

10 140. K. G. incorporates and hereby realleges by reference the foregoing paragraphs 44 to
11 47.

12 141. In addition to the physical pain which K.G. suffered as a result of Holder's actions,
13 he also developed a fear of being hit. According to his mother, K.G.'s hands would sweat before
14 going to school.

15 142. The unhealthy conditions in Holder's classroom caused K.G. to suffer physical
16 injury, pain and emotional distress.

17 143. Had mandated reporters employed at BUSD performed their mandatory duty to
18 report the prior incidents of child abuse or neglect by Holder, the foregoing damages would not
19 have been suffered.

20 144. As a proximate result of Holder's actions as alleged herein Plaintiff K.G. has
21 suffered physical injury and pain and emotional distress and suffering.

22 I. ALLEGATIONS RELATING TO L.L.

23 145. L.L. was born on March 1, 2005 and has been diagnosed with Down Syndrome. JIM
24 LARK and PAIGE LARK are his parents.

25 146. L.L. incorporates and hereby realleges by reference the foregoing paragraphs 38 to
26 43.

27 147. As a proximate result of Holder's actions as alleged herein, Plaintiff L.L. has
28 suffered physical injury and pain and emotional distress and suffering.

1 148. The unhealthy conditions in Holder's classroom caused L.L. to suffer physical
2 injury, pain and emotional distress. Holder and employees of BUSD compounded the injury by
3 failing to promptly report it to responsible officials.

4 149. Had mandated reporters employed at BUSD performed their mandatory duty to
5 report the child abuse by Holder, the foregoing damages would not have been suffered.

6 150. As a proximate result of Holder's actions as alleged herein Plaintiff L.L. has
7 suffered physical injury and pain and emotional distress and suffering.

8 FIRST CLAIM FOR RELIEF

9 (Violation of Constitutional Rights, 42 U.S.C. § 1983; All Plaintiffs vs. Defendants

10 Holder, James, Olsen, Anthony, Kruse and Grant)

11 151. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through
12 150 inclusive, as if they were fully set forth herein.

13 152. Defendant Holder violated minor Plaintiffs A.G., A.M., J.P., P.R., R.R., B.S., K.G.
14 and L.L.'s rights under the Fourth Amendment to the United States Constitution by actions,
15 including but not limited to utilizing unjustified and unreasonable force against minor Plaintiffs.

16 153. Defendant James, Olsen, Anthony, Kruse and Grant violated minor Plaintiffs A.G.,
17 A.M., J.P., P.R., R.R. B.S., K.G. and L.L.'s rights under the Fourth Amendment to the United
18 States Constitution by actions, including but not limited to, acting with deliberate indifference to
19 the risk of harm to plaintiffs from Holder.

20 154. Defendants Holder, James, Olsen, Anthony, Kruse and Grant violated Plaintiffs
21 ALPHONSO GUERRERO, IRENE GUERERO, JEFF MCDOUGAL, CINDY MCDOUGAL,
22 CLAY PLUMMER, JENNIFER PLUMMER, JOHN REYNOLDS, CINDY REYNOLDS, PHILIP
23 RODRIGUEZ, JENNIFER RODRIGUEZ, TANIA STREETE and A.G., A.M., J.P., P.R., R.R. and
24 B.S.'s rights under the Due Process Clause to the Fourteenth Amendment to the United States
25 Constitution by actions, including but not limited to:

26 a. Intentionally interfering with the parent child relationship by concealing information
27 regarding the physical and emotional trauma inflicted on A.G., A.M., J.P., P.R., R.R. and B.S. by
28 Holder.

1 b. Intentionally interfering with ALPHONSO GUERRERO, IRENE GUERRERO,
2 JEFF MCDUGAL, CINDY MCDUGAL, CLAY PLUMMER, JENNIFER PLUMMER, JOHN
3 REYNOLDS, CINDY REYNOLDS, PHILIP RODRIGUEZ, JENNIFER RODRIGUEZ, TANIA
4 STREETE and A.G., A.M., J.P., P.R., R.R. and B.S.'s right to provide and receive nurture, support
5 and comfort regarding highly traumatic events.

6 155. As a proximate result of the violations alleged in paragraphs 34 - 154, Plaintiffs
7 have suffered damages as heretofore alleged.
8

9 SECOND CLAIM FOR RELIEF

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

12 156. Plaintiffs A.G., A.M., J.P., P.R., R.R., B.S. and K.G. incorporate and reallege by
13 reference the foregoing paragraphs 1 through 155, inclusive, as if they were fully set forth herein.

14 157. Effective January 26, 1992, Plaintiffs A.G., A.M., J.P., P.R., R.R., B.S. and K.G.
15 were 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.

18 158. 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 A.G., A.M., J.P., P.R., R.R., B.S. and K.G. were at all times relevant
22 herein a qualified individual with a disability as therein defined.

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

27 160. 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 plaintiff to a hostile educational environment.

2 161. As a result of BUSD's failure to comply with its duty under Title II, Plaintiffs A.G.,
3 A.M., J.P., P.R., R.R., B.S. and K.G. have suffered damages including special and general damages
4 according to proof.

5
6 THIRD CLAIM FOR RELIEF

7 (Violation of § 504 of the Rehabilitation Act of 1973; Plaintiffs A.G., A.M., J.P., P.R.,
8 R.R., B.S. AND K.G. vs. BUSD)

9 162. Plaintiffs A.G., A.M., J.P., P.R., R.R., B.S. and K.G. incorporate and reallege by
10 reference the foregoing paragraphs 1 through 161, inclusive, as if they were fully set forth herein.

11 163. Plaintiffs A.G., A.M., J.P., P.R., R.R., B.S. and K.G. are informed and believe and
12 therefore allege that BUSD is and has been at all relevant times the recipient of federal financial
13 assistance, and that part of that financial assistance has been used to fund the operations,
14 construction and/or maintenance of the specific public facilities described herein and the activities
15 that take place therein.

16 164. By their actions or inactions in denying equal access to educational services and by
17 subjecting plaintiffs A.G., A.M., J.P., P.R., R.R., B.S. and K.G. to a hostile educational
18 environment, defendant has violated plaintiff A.G., A.M., J.P., P.R., R.R., B.S., K.G.'s rights
19 under § 504 of the Rehabilitation Act of 1973, 29 USC § 794, and the regulations promulgated
20 thereunder.

21 165. As a result of BUSD's failure to comply with its duty under § 504 of the
22 Rehabilitation Act of 1973, 29 USC § 794, and the regulations promulgated thereunder, plaintiffs
23 A.G., A.M., J.P., P.R., R.R., B.S., K.G. have suffered damages including special and general
24 damages according to proof.

25 JURY DEMAND

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

27 PRAYER

28 WHEREFORE, Plaintiffs prays for judgment as follows:

- 1 1. Compensatory damages to Plaintiffs for injury, emotional distress and for medical
- 2 expenses;
- 3 2. Punitive damages against Defendants HOLDER and JAMES;
- 4 3. Attorney's fees and costs; and
- 5 4. Such other and further relief as the court deems just and proper.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 21, 2013

HINTON ALFERT & KAHN LLP

By: _____ /s/
PETER W. ALFERT
Attorneys for Plaintiffs

Dated: August 21, 2013

LAW OFFICE OF TODD BOLEY

By: _____ /s/
TODD BOLEY
Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS ALPHONSO GUERRERO, et al.,</p> <p>(b) County of Residence of First Listed Plaintiff <u>CONTRA COSTA</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Peter W. Alfert, Esq. HINTON ALFERT & KAHN LLP 200 Pringle Ave., Suite 450 Walnut Creek, CA 94596 (925) 279-3009</p>	<p>DEFENDANTS BRENTWOOD UNION SCHOOL DISTRICT, et al.,</p> <p>County of Residence of First Listed Defendant <u>CONTRA COSTA</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §1983; 42 U.S.C. § 12132; 29 USC § 794

Brief description of cause:
Violation of Fourth Amendment by public school teacher; Excessive Force by public school teacher; Creation of hostile educational environment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)
 (Place an "X" in One Box Only) (X) SAN FRANCISCO/OAKLAND () SAN JOSE () EUREKA

DATE: August 21, 2013 SIGNATURE OF ATTORNEY OF RECORD: /s/ Peter W. Alfert

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.