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Superior Court of California,
County of Monterey
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Attorneys for Plaintiff,
JANE DOE

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

JANE DOE,

Plaintiff,

vs.

CARMEL UNIFIED SCHOOL DISTRICT;
GUSTAVO ALVARADO; ROEL
MARTINEZ; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 23CV003505

INDIVIDUAL ACTION

**COMPLAINT FOR DAMAGES AND
CIVIL PENALTIES**

DEMAND FOR JURY

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

1. Plaintiff JANE DOE ("Plaintiff") is a competent adult who is, and at all times mentioned in this complaint has been, a resident of Monterey County, California. Plaintiff was employed from 2019 to October 2022. Plaintiff is, and at all relevant times was, an individual as defined in Business and Professions Code §§ 17201 and 17204.

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

3. Defendant GUSTAVO ALVARADO ("ALVARADO") served as the Lead Custodian for CUSD. ALVARADO's unlawful conduct occurred in the State of California. At

1 all relevant times herein referenced, ALVARADO was a supervisor as defined by California
2 Government Code §12926, subdivision (t).

3 4. Defendant ROEL MARTINEZ (“MARTINEZ”) served as the Lead Custodian
4 for CUSD. MARTINEZ’s unlawful conduct occurred in the State of California. At all relevant
5 times herein referenced, MARTINEZ was a supervisor as defined by California Government
6 Code §12926, subdivision (t).

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

17 6. Plaintiff is informed and believes, and thereon alleges, that each of the
18 Defendants herein was at all times relevant to this action the agent, employee, representative,
19 partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of
20 the Defendants herein was at all times acting within the course and scope of that relationship.
21 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
22 herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants
23 herein. The conduct of each of the Defendants was at all times herein in accordance with and
24 represents the official policy of Defendants. Additionally, at all times herein mentioned,
25 Defendants, and each of them, aided and abetted the acts and omissions of each and all of the
26 other Defendants, which proximately caused the damages herein alleged. Plaintiff is further
27 informed and believes, and thereon alleges, that all of the Defendants jointly employed the
28 Plaintiff herein and/or carried out a joint scheme, business plan and/or uniform policy, and the

1 acts and omissions of each Defendant are legally attributable to the other Defendants such that
2 they are deemed a single integrated enterprise and agents of one another so that all Defendants
3 are each jointly and severally liable for the acts and omissions hereinafter alleged.

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

7 **JURISDICTION AND VENUE**

8 8. Jurisdiction and venue are proper in this Court because Plaintiff worked in this
9 County. Moreover, jurisdiction and venue are proper in this Court pursuant to the California
10 Fair Employment and Housing Act (the “FEHA”), California Government Code Section
11 12965(c) because unlawful employment actions occurred in this County.

12 **ADMINISTRATIVE PROCEEDINGS**

13 9. Plaintiff has met all the jurisdictional requirements for proceeding with her
14 claims under the FEHA, including without limitation, California Government Code Sections
15 12960 and 12965, by timely filing an administrative complaint with the California Civil Rights
16 Department (the “CRD”) on October 26, 2023. A true and correct copy of Plaintiff’s
17 complaint and right-to-sue letter is attached hereto as **Exhibit A**.

18 **FACTUAL ALLEGATIONS**

19 10. Plaintiff was hired by CUSD on or about late 2019, as a substitute custodian. She
20 worked intermittently as needed at different schools throughout the school district. Plaintiff
21 was a good and hardworking employee and received positive feedback until she rejected and
22 resisted harassment from the individual defendants.

23 11. In the summer of 2021, Plaintiff (still a substitute custodian) was assigned to
24 work at Carmel High School for the summer cleanup. MARTINEZ, Lead Custodian, was
25 supervising the summer cleaning work at Carmel High School. MARTINEZ subjected
26 Plaintiff to egregious and pervasive sexual harassment.

27 12. Plaintiff was afraid to say anything or report the workplace harassment she
28 suffered from her supervisor for fear of retaliation. Plaintiff was hoping to apply for a

1 permanent position with CUSD and she was afraid they wouldn't hire her and would find her
2 problematic or a troublemaker if she reported the harassment. Plaintiff was also aware of news
3 stories that CUSD was unresponsive to complaints of sexual harassment in the past and had
4 failed to investigate or prevent sexual harassment.

5 13. In front of Plaintiff, MARTINEZ would frequently talk about sex. This
6 happened multiple times daily on the occasions when Plaintiff worked in the same area as
7 MARTINEZ. If female teachers walked by, MARTINEZ would make inappropriate comments
8 about the teachers' bodies and physical appearances.

9 14. During the summer cleanup, one of the areas where Plaintiff was assigned to
10 work was the girl's locker room. On more than one occasion, MARTINEZ overtly and
11 explicitly sexually harassed Plaintiff when he encountered her in the gym/locker room area.
12 Plaintiff was tasked with emptying the lockers of clothes left behind by the girls. On more than
13 one occasion, when MARTINEZ saw panties (girls/women's underwear) in the lockers or in
14 the clothes piles, he would throw them at Plaintiff and say suggestive things in a sexual
15 manner, such as: "Try them on!", "Let's see how you look in these", or "these would look
16 good on you!" Another time, Plaintiff was bending over, sweeping into a dustpan, when
17 MARTINEZ walked past Plaintiff and spanked her on her buttocks. He said suggestively,
18 "Careful—that's how the devil lost." The saying referred to a woman losing her virginity to
19 the devil while being bent over. When Plaintiff protested or indicated her disapproval,
20 MARTINEZ said something "like no one will every believe you, but they always believe us."

21 15. Plaintiff was upset, distressed, and felt uncomfortable and unsafe working
22 around MARTINEZ. But she was too afraid to mention his behavior because she did not want
23 to jeopardize her work opportunities with CUSD, and she was afraid no one would believe her
24 anyway, like her supervisor said.

25 16. As a substitute custodian, Plaintiff had also been assigned to work at Carmel
26 Middle School, where ALVARADO was the Lead Custodian. Plaintiff felt uncomfortable
27 working with ALVARADO because he asked intrusive personal questions such as: "Where do
28 you live?", "Do you have kids/ how many?", and "Are you in a relationship?" When Plaintiff

1 answered his questions, he responded unprofessionally and inappropriately. He said things
2 like, "You're too pretty and young to be alone" and "would you be interested in someone with
3 a good position?" Plaintiff felt uncomfortable and she tried to avoid having these
4 conversations with ALVARADO.

5 17. In November 2021, Plaintiff applied for a permanent custodian position with
6 CUSD at Tularcitos Elementary School. The position at Tularcitos went to an existing
7 permanent employee and in December 2021, Plaintiff was offered a permanent custodian job
8 at Carmel Middle School. Plaintiff was already uncomfortable around ALVARADO, but she
9 needed a permanent job, and she hoped that a custodian position at another school would open
10 up and she could transfer in the future.

11 18. In January 2022, Plaintiff started working as a fulltime permanent custodian at
12 Carmel Middle School. She worked the night shift, approximately 2PM to 11PM.
13 ALVARADO was her supervisor and she had to interact with him frequently. During the first
14 month, Plaintiff observed that ALVARADO would appear in her areas while she was
15 cleaning, and he would just watch her. Other times, she would unlock a room and he would
16 already be in there.

17 19. ALVARADO would overtly and explicitly sexually harass Plaintiff.
18 ALVARADO would stand behind her and smell her hair. She would be cleaning, and he
19 would come up behind her and hug her and put his arms around her waist. He would scratch
20 her back slowly, like running his hand down her back. One time he tried to forcibly kiss her.

21 20. In February 2022, Plaintiff asked him to order a cleaning product called "tango"
22 and he replied, "Okay, I'll get you tangas!" (Spanish for thong panties). Plaintiff asked a co-
23 worker, Ezequiel Melgosa, if she got the product name wrong. He said no and sent her a
24 picture of the product (Tango). He asked Plaintiff why, and she told him what ALVARADO
25 had said.

26 21. One day, ALVARADO said she should be his mistress in order for him to favor
27 her in getting overtime, less work, and for him to prioritize her at work. Plaintiff rejected his
28 advances and told him "No" and that she just came to do her job. She said she didn't want to

1 be his lover or in his favor.

2 22. After that, ALVARADO retaliated against Plaintiff by treating her harshly,
3 unfairly criticizing her, giving her extra work, and making unwarranted complaints about her
4 work. He denied her the tools and supplies she needed to do her work, like toilet paper, paper
5 towels, soap, and cleaning products. ALVARADO would find small stains on the carpets and
6 demand that Plaintiff wash it in front of him on her knees. He cornered Plaintiff and
7 mockingly said, "No one will believe you; they only believe us."

8 23. Plaintiff felt unsafe and that she could no longer endure the harassment silently.
9 In February 2022, she went to the Director of Facilities and Transportation, Dan Paul's office
10 to make a report about what she was suffering. Plaintiff, who speaks limited English as a
11 second language, took her adult son with her to translate. Mr. Paul took notes on a piece of
12 paper, and he said that this was very serious and would be dealt with. He said that he would
13 pass it on to CUSD Human Resources because it was a human resources problem. Mr. Paul
14 told Plaintiff that CUSD Human Resources would contact her.

15 24. Two months passed and nothing happened. The retaliation continued, and
16 ALVARADO was writing negative reports about Plaintiff's performance that were
17 unwarranted and unfairly critical. Plaintiff was a good and hardworking custodian, and she
18 was completing her tasks with the same skill and efficiency in the manner she had been trained
19 since being a substitute. But ALVARADO acted as if now, all of a sudden, her work was bad.

20 25. Plaintiff began receiving harassing phone calls on her personal cell phone,
21 during work hours, from the Carmel Middle School Office. At work, Plaintiff was provided a
22 radio to communicate with her co-workers. These calls started coming in on her personal
23 phone, in the afternoons, when school was out for the day. Plaintiff would answer and no one
24 would talk, and then she'd hang up, and the office number would call back.

25 26. On or about May 2022, Plaintiff went to the office and asked about the calls.
26 None of the office staff would be there at the time of the calls, and her co-workers told her to
27 talk with Assistant Principal Jennifer Barnes and Principal Daniel Morgan. Plaintiff met in-
28 person with Ms. Barnes and Mr. Morgan and showed them the call log with the repeated

1 incoming calls from their front office. It wasn't either of them, they were discussing who it
2 could be, and they asked if she suspected anyone. Plaintiff said yes that she suspected
3 ALVARADO. The principal asked why, and she told him that ALVARADO had been
4 sexually harassing her and that he cleans the Middle School Office area at the time the calls
5 were coming to her personal phone. Mr. Morgan said that he didn't want to hear about it, and
6 that that she had to take it up with HR. He said that she needed to see CUSD (Chief Human
7 Resources Officer) Craig Chavez. Mr. Morgan refused to hear her complaints of
8 ALVARADO's harassment and told her to make an appointment with Craig Chavez. Plaintiff
9 went to Mr. Chavez's office that same day and Mr. Chavez's secretary gave her an
10 appointment three days later.

11 27. The next day, before her appointment with Mr. Chavez, Ms. Barnes called
12 Plaintiff back into the middle school office and asked to see the call log on Plaintiff's personal
13 phone again. Ms. Barnes proceeded to delete the calls, saying something like, "there—now
14 there is nothing wrong."

15 28. When Plaintiff met with Mr. Chavez and his secretary, Plaintiff had no translator
16 and Mr. Chavez refused to speak Spanish with her. Mr. Chavez and his secretary appeared to
17 be taking some notes regarding Plaintiff's descriptions. Plaintiff told them about ALVARADO
18 touching her and verbally harassing her, and that someone was making the harassing calls to
19 her phone from the middle school office and hanging up (during the time when ALVARADO
20 was likely the only one there). They asked her some questions about the harassment. They did
21 not ask her if she had been harassed by anyone else. Mr. Chavez told Plaintiff that an
22 investigation would be conducted and that he would inform her about the investigation's
23 conclusions. However, Plaintiff was never contacted by anyone regarding an investigation and
24 Mr. Chavez never informed her of any outcome. After her meeting with Mr. Chavez and his
25 secretary, the harassment and retaliation continued as before.

26 29. On September 7, 2022, there was a CUSD meeting regarding the stadium lights
27 project. Plaintiff had set up the tables and chairs for the meeting in the library before she went
28 to go and clean her regular areas. While the meeting was taking place in the library, Plaintiff

1 was cleaning a classroom. ALVARADO showed up and demanded that she clean a carpet
2 stain in another location. She told him she would go do it after finishing the classroom she was
3 in. He yelled at her very loudly (like screaming level) that he wanted it done now. He got right
4 up in her face, yelling at her, close enough to bump her with his chest. ALVARADO wouldn't
5 let Plaintiff leave and began to push Plaintiff with his chest. Plaintiff was very upset and trying
6 to leave the room. He took a step back and yelled that he wanted Plaintiff on her knees to clean
7 the stain. Plaintiff ran out of the classroom very afraid, disoriented, and crying. As she was
8 running, she encountered Mr. Chavez's secretary, and the secretary saw Plaintiff upset and
9 crying. Plaintiff told Mr. Chavez's secretary what happened. Mr. Chavez's secretary wanted to
10 accompany Plaintiff back to the classroom to see if ALVARADO was still there. He was not
11 and Mr. Chavez's secretary said that they would talk to ALVARADO, but to Plaintiff, she
12 appeared very dismissive.

13 30. Plaintiff continued working her shift and she ran into Mr. Paul. Plaintiff was still
14 shaken and crying, and told him what happened. Mr. Paul listened to Plaintiff but had little
15 reaction and simply said that he would talk to human resources. He did not react as if this was
16 urgent or important. Plaintiff was increasingly distraught that both people saw her crying and
17 very desperate, and neither responded with any urgency. On information and belief, Mr. Paul,
18 Mr. Chavez's secretary, Ms. Barnes, and Mr. Morgan all failed to report or take any action to
19 investigate or prevent future harassment.

20 31. Later in September, having received absolutely no response to her multiple
21 reports, Plaintiff called the union office. The union told Plaintiff to report the harassment
22 (again) to CUSD, Principal's Secretary, Lisa Brazil. Plaintiff did not contact Ms. Brazil
23 because she had heard from other co-workers that Ms. Brazil did not respond to reports of
24 harassment and that she was biased in favor of defending the school district. Plaintiff returned
25 to the human resources office with her son (to interpret) to ask Mr. Chavez what was
26 happening about her harassment complaint. Mr. Chavez wasn't there and so Plaintiff's son
27 talked to the secretary. Mr. Chavez's secretary said that she would talk to Mr. Chavez and that,
28 in the meantime, ALVARADO was not allowed to talk to Plaintiff anymore. When Plaintiff

1 needed supplies or had questions, she was to talk to Mr. Morgan until the investigation
2 concluded.

3 32. The retaliation continued as before. ALVARADO would take Plaintiff's work
4 assignments to the principal, but he continued to give Plaintiff extra work. Mr. Morgan would
5 just hand Plaintiff the paper from ALVARADO without question. During this time period, Mr.
6 Morgan called Plaintiff into his office and he read her work evaluation prepared by
7 ALVARADO. The work evaluation was critical and negative, despite the fact that Plaintiff
8 had only positive feedback from the teachers or coworkers. Plaintiff tried to explain what was
9 happening to Mr. Morgan, but he dismissed her.

10 33. In October 2022, Plaintiff was called into Mr. Chavez office. She thought that
11 the meeting was to discuss the investigation of the sexual harassment. Mr. Chavez told
12 Plaintiff to leave the keys and that she was no longer employed. She asked him why, if she had
13 been a good employee? She even cleaned his office and there weren't any complaints even
14 from him. Plaintiff became upset, and Mr. Chavez continued to repeat that she wasn't needed
15 anymore, to leave her keys and get out. Plaintiff became more upset and went to the principal's
16 office to ask why she was being fired. Ms. Barnes wouldn't let Plaintiff speak with Mr.
17 Morgan and they kept telling her to leave. Mr. Chavez said that if she didn't leave, he would
18 call the police. Plaintiff told him yes, call the police, and then maybe something would be
19 done about what ALVARADO and MARTINEZ did to her. Plaintiff said she would call
20 herself, and Mr. Chavez laughed at her. He said, "Who are you going to call? Your son?
21 What's he going to do?" As she was walking out, Ms. Barnes followed Plaintiff to her car
22 while demanding she turn in her uniform. Plaintiff had to remove her shirt in the parking lot
23 and turn it over to Ms. Barnes. Plaintiff felt completely traumatized and defeated, and she left.

24 34. Based on the foregoing, Plaintiff was subjected to illegal sexual harassment and
25 retaliation. Notwithstanding Plaintiff's multiple reports about the workplace harassment she
26 was being subjected to, CUSD entirely failed in its duty and obligation to provide a safe and
27 harassment-free workplace for Plaintiff and failed to take appropriate action(s) to prevent said
28 sexual harassment in violation of the California Fair Employment and Housing Act ("FEHA");

1 California Government Code Section 12940, et seq.

2 **FIRST CAUSE OF ACTION**

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

5 35. Plaintiff alleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth herein.

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

11 37. The actions of ALVARDO and MARTINEZ towards Plaintiff as described
12 herein, created a hostile sexual environment which materially altered Plaintiff's working
13 conditions, and which constituted sexual harassment in violation of Government Code section
14 12940(j)(1).

15 38. As a direct, foreseeable and proximate result of the unlawful actions of
16 ALVARDO, MARTINEZ and CUSD, Plaintiff has suffered and continue to suffer
17 compensatory damages, including without limitation, lost wages, loss of future earnings,
18 emotional distress, mental anguish, embarrassment, humiliation, loss of future advancement,
19 and damage to her reputation in the business community, in the amount of at least \$25,000.00,
20 according to proof at the time of trial, which is in excess of the jurisdictional minimum for this
21 lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages,
22 together with prejudgment interest accruing from the date of the filing of this action pursuant
23 to California Civil Code sections 3281 and/or 3288, and/or any other provision of law
24 providing for prejudgment interest.

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

1 40. ALVARDO and MARTINEZ committed the acts alleged herein maliciously,
2 fraudulently, and oppressively, callously, in bad faith, with the wrongful intent of injuring
3 Plaintiff, and in conscious disregard of Plaintiff's rights and safety. The outrageousness of
4 ALVARDO and MARTINEZ's conduct is amplified due to ALVARDO and MARTINEZ's
5 abuse of their position with actual and apparent authority over Plaintiff, such as is commonly
6 found in employment relationships, and which is further amplified in this case given
7 ALVARDO and MARTINEZ's authority. As such, Plaintiff is entitled to an award of punitive
8 damages against ALVARDO and MARTINEZ in an amount according to proof.

9 **SECOND CAUSE OF ACTION**

10 **Sex Discrimination in Violation of the FEHA**
11 **(Plaintiff against Defendant CUSD)**

12 41. Plaintiff alleges and incorporates by reference all of the allegations contained in
13 the preceding paragraphs as though fully set forth herein.

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

16 43. CUSD discriminated against Plaintiff on account of her sex/gender. As described
17 above, Plaintiff suffered adverse employment action in the form of workplace harassment
18 which was motivated by her sex/gender, and those adverse employment actions materially
19 affected the terms and conditions of Plaintiff's employment. Sexual harassment is a form of
20 gender discrimination.

21 44. As a direct, foreseeable and proximate result of CUSD's unlawful actions,
22 Plaintiff has suffered and continues to suffer compensatory damages, including, without
23 limitation, lost wages, loss of future earnings, emotional distress, mental anguish,
24 embarrassment, humiliation, loss of future advancement, and damage to her reputation in the
25 business community, in the amount of at least \$25,000.00, according to proof at the time of
26 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
27 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
28 interest accruing from the date of the filing of this action pursuant to California Civil Code
sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment

1 interest.

2 45. As a direct, foreseeable, and proximate result of CUSD's unlawful actions,
3 Plaintiff has been forced to hire attorneys to prosecute the claims alleged herein and has
4 incurred and is expected to continue to incur attorneys' fees. Pursuant to California
5 Government Code section 12965(b), Plaintiffs request the award of attorneys' fees against the
6 CUSD.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Investigate and Prevent Harassment and Retaliation in Violation of FEHA (Plaintiff against Defendant CUSD)**

9 46. Plaintiff alleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs as though fully set forth herein.

11 47. Pursuant to the FEHA, CUSD was required to take reasonable steps to prevent
12 sexual harassment and retaliation, as mandated by Government Code Section 12940(k). As
13 alleged herein, CUSD failed to take all reasonable steps necessary to prevent such unlawful
14 conduct from occurring.

15 48. As alleged above, Plaintiff was repeatedly subjected to unabated sexual
16 harassment by her superiors, ALVARDO and MARTINEZ, that significantly altered the
17 conditions of Plaintiff's employment and created an abusive working environment. CUSD,
18 however, did nothing to rectify the unlawful conduct despite having received at least one or
19 more reports concerning ALVARDO and MARTINEZ's inappropriate behavior. Because of
20 CUSD's failure to act, the sexual harassment against Plaintiff persisted. Even after CUSD
21 finally investigated the matter and found that ALVARDO and MARTINEZ had engaged in the
22 reported behavior, in violation of the CUSD's sexual harassment policy, there was no
23 indication that any action had been taken against ALVARDO and MARTINEZ.

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

27 50. As a proximate result of CUSD's failure to take reasonable steps to prevent
28 sexual harassment and retaliation, Plaintiff has suffered and continues to suffer compensatory

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

9 51. As a proximate result of CUSD's failure to prevent discrimination and retaliation
10 in the workplace, Plaintiff has been forced to hire attorneys to prosecute the claims alleged
11 herein and has incurred and is expected to continue to incur attorneys' fees. Pursuant to
12 California Government Code section 12965(b), Plaintiff requests the award of attorneys' fees
13 against CUSD.

14 **FOURTH CAUSE OF ACTION**
15 **Retaliation in Violation of the FEHA**
(Government Code § 12940(m)(2))
(Plaintiff against Defendant CUSD)

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

18 53. California Government Code section 12940(m) prohibits employers from
19 retaliating against an employee.

20 54. As a proximate result of CUSD's retaliation against Plaintiff, she has suffered
21 and continues to suffer compensatory damages, including without limitation, lost wages, loss
22 of future earnings and earning capacity, loss of bonuses, emotional distress, mental anguish,
23 embarrassment, humiliation, loss of future advancement, and damage to her reputation in the
24 business community, in the amount of at least \$25,000.00, according to proof at the time of
25 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
26 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
27 interest accruing from the date of the filing of this action pursuant to California Civil Code §§
28 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

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

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

FIFTH CAUSE OF ACTION

Retaliation

(California Labor Code § 1102.5)

(Plaintiff against Defendants CUSD, ALVARDO and MARTINEZ)

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

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

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

60. As a proximate result of CUSD's retaliation against Plaintiff, she has suffered and continues to suffer compensatory damages, including without limitation, lost wages, loss of future earnings and earning capacity, loss of bonuses, commissions, emotional distress, mental anguish, embarrassment, humiliation, loss of future advancement, and damage to her reputation in the business community, in the amount of at least \$25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment interest accruing from the date of the filing of this action pursuant to California

1 Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for
2 prejudgment interest.

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

7 62. Defendants committed the acts alleged herein maliciously, fraudulently, and
8 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
9 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
10 punitive damages in an amount according to proof.

11 **SIXTH CAUSE OF ACTION**
12 **Wrongful Termination in Violation of Public Policy**
13 **(Plaintiff against Defendant CUSD)**

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

16 64. At all times mentioned herein, the State of California has had a substantial and
17 fundamental public policy as reflected in the FEHA. This statute requires Defendant to refrain
18 from retaliating against any employee for reporting unlawful sexual harassment and retaliation
19 on the basis of her sex/gender.

20 65. Nevertheless, Defendant violated these public policies by terminating Plaintiff
21 because she engaged in protected activity by exercising her rights under the FEHA.

22 66. As a proximate result of Defendant's wrongful termination of Plaintiff, she has
23 suffered and continues to suffer compensatory damages, including without limitation, severe
24 emotional distress, lost wages, benefits, and compensation, and loss of future earnings and
25 earning capacity in the amount of at least \$25,000.00, according to proof at the time of trial,
26 which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited
27 civil action. Plaintiff claims such amounts as damages, together with prejudgment interest
28 accruing from the date of the filing of this action pursuant to California Civil Code §§ 3281
and/or 3288, and/or any other provision of law providing for prejudgment interest.

67. Further, because the wrongful acts against Plaintiff were carried out, authorized, or ratified by Defendant's directors, officers, and/or managing agents, acting with malice, oppression, or fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff, he seeks punitive damages to deter Defendant from committing said illegal acts in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for and requests relief as follows:

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

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

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

DEMAND FOR JURY TRIAL

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

Dated: October 26, 2023

By: /s/ B. James Fitzpatrick
B. James Fitzpatrick
Attorneys for Plaintiff
JANE DOE

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EXHIBIT A



Civil Rights Department

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

October 26, 2023

[REDACTED]

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

RE: Notice of Case Closure and Right to Sue

CRD Matter Number: 202310-22466226

Right to Sue: [REDACTED] / Carmel Unified School District et al.

Dear [REDACTED]:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective October 26, 2023 because an immediate Right to Sue notice was requested.

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

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

Sincerely,

Civil Rights Department

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

In the Matter of the Complaint of

CRD No. 202310-22466226

Complainant,
vs.

Carmel Unified School District
4380 Carmel Valley Road
Carmel-By-The-Sea, CA 93923

Gustavo Alvarado

,

Roel Martinez

,

Respondents

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

2. Complainant is naming **Gustavo Alvarado** individual as Co-Respondent(s).
Complainant is naming **Roel Martinez** individual as Co-Respondent(s).

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

4. Complainant alleges that on or about **October 3, 2022**, respondent took the following adverse actions:

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

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

Additional Complaint Details: Complainant [REDACTED] was hired by Respondent Carmel Unified School District ("CUSD") on or about late 2019, as a substitute custodian. She worked intermittently as needed at different schools throughout the school district. Complainant was a good and hardworking employee and received positive feedback until she rejected and resisted harassment from the individual Respondents.

In the summer of 2021, Complainant (still a substitute custodian) was assigned to work at Carmel High School for the summer cleanup. Respondent Roel Martinez ("MARTINEZ"), Lead Custodian, was supervising the summer cleaning work at Carmel High School. MARTINEZ subjected Complainant to egregious and pervasive sexual harassment.

Complainant was afraid to say anything or report the workplace harassment she suffered from her supervisor for fear of retaliation. Complainant was hoping to apply for a permanent position with CUSD and she was afraid they wouldn't hire her and would find her problematic or a troublemaker if she reported the harassment. Complainant was also aware of news stories that CUSD was unresponsive to complaints of sexual harassment in the past and had failed to investigate or prevent sexual harassment.

In front of Complainant, MARTINEZ would frequently talk about sex. This happened multiple times daily on the occasions when Complainant worked in the same area as MARTINEZ. If female teachers walked by, MARTINEZ would make inappropriate comments about the teachers' bodies and physical appearances.

During the summer cleanup, one of the areas where Complainant was assigned to work was the girl's locker room. On more than one occasion, MARTINEZ overtly and explicitly sexually harassed Complainant when he encountered her in the gym/locker room area. Complainant was tasked with emptying the lockers of clothes left behind by the girls. On more than one occasion, when MARTINEZ saw panties (girls/women's underwear) in the lockers or in the clothes piles, he would throw them at Complainant and say suggestive things in a sexual manner, such as: "Try them on!", "Let's see how you look in these", or "these would look good on you!" Another time, Complainant was bending over, sweeping into a dustpan, when MARTINEZ walked past Complainant and spanked her on her buttocks. He said suggestively, "Careful—that's how the devil lost." The saying referred to a woman losing her virginity to the devil while being bent over. When Complainant protested or indicated her disapproval, MARTINEZ said something "like no one will ever believe you, but they always believe us."

Complainant was upset, distressed, and felt uncomfortable and unsafe working around MARTINEZ. But she was too afraid to mention his behavior because she did not want to jeopardize her work opportunities with CUSD, and she was afraid no one would believe her anyway, like her supervisor said.

As a substitute custodian, Complainant had also been assigned to work at Carmel Middle School, where Respondent Gustavo Alvarado ("ALVARADO") was the Lead Custodian. Complainant felt uncomfortable working with ALVARADO because he asked intrusive personal questions such as: "Where do you live?", "Do you have kids/ how many?", and "Are

1 you in a relationship?" When Complainant answered his questions, he responded
2 unprofessionally and inappropriately. He said things like, "You're too pretty and young to be
3 alone" and "would you be interested in someone with a good position?" Complainant felt
4 uncomfortable and she tried to avoid having these conversations with ALVARADO.

5 In November 2021, Complainant applied for a permanent custodian position with CUSD at
6 Tularcitos Elementary School. The position at Tularcitos went to an existing permanent
7 employee and in December 2021, Complainant was offered a permanent custodian job at
8 Carmel Middle School. Complainant was already uncomfortable around ALVARADO, but
9 she needed a permanent job, and she hoped that a custodian position at another school
10 would open up and she could transfer in the future.

11 In January 2022, Complainant started working as a fulltime permanent custodian at Carmel
12 Middle School. She worked the night shift, approximately 2PM to 11PM. ALVARADO was
13 her supervisor and she had to interact with him frequently. During the first month,
14 Complainant observed that ALVARADO would appear in her areas while she was cleaning,
15 and he would just watch her. Other times, she would unlock a room and he would already
16 be in there.

17 ALVARADO would overtly and explicitly sexually harass Complainant. ALVARADO would
18 stand behind her and smell her hair. She would be cleaning, and he would come up behind
19 her and hug her and put his arms around her waist. He would scratch her back slowly, like
20 running his hand down her back. One time he tried to forcibly kiss her.

21 In February 2022, Complainant asked him to order a cleaning product called "tango" and he
22 replied, "Okay, I'll get you tangas!" (Spanish for thong panties). Complainant asked a co-
23 worker, Ezequiel Melgosa, if she got the product name wrong. He said no and sent her a
24 picture of the product (Tango). He asked Complainant why, and she told him what
25 ALVARADO had said.

26 One day, ALVARADO said she should be his mistress in order for him to favor her in getting
27 overtime, less work, and for him to prioritize her at work. Complainant rejected his advances
28 and told him "No" and that she just came to do her job. She said she didn't want to be his
lover or in his favor.

After that, ALVARADO retaliated against Complainant by treating her harshly, unfairly
criticizing her, giving her extra work, and making unwarranted complaints about her work.
He denied her the tools and supplies she needed to do her work, like toilet paper, paper
towels, soap, and cleaning products. ALVARADO would find small stains on the carpets and
demand that Complainant wash it in front of him on her knees. He cornered Complainant
and mockingly said, "No one will believe you; they only believe us."

Complainant felt unsafe and that she could no longer endure the harassment silently. In
February 2022, she went to the Director of Facilities and Transportation, Dan Paul's office to
make a report about what she was suffering. Complainant, who speaks limited English as a
second language, took her adult son with her to translate. Mr. Paul took notes on a piece of

1 paper, and he said that this was very serious and would be dealt with. He said that he would
2 pass it on to CUSD Human Resources because it was a human resources problem. Mr.
Paul told Complainant that CUSD Human Resources would contact her.

3 Two months passed and nothing happened. The retaliation continued, and ALVARADO was
4 writing negative reports about Complainant's performance that were unwarranted and
5 unfairly critical. Complainant was a good and hardworking custodian, and she was
6 completing her tasks with the same skill and efficiency in the manner she had been trained
since being a substitute. But ALVARADO acted as if now, all of a sudden, her work was
bad.

7 Complainant began receiving harassing phone calls on her personal cell phone, during work
8 hours, from the Carmel Middle School Office. At work, Complainant was provided a radio to
9 communicate with her co-workers. These calls started coming in on her personal phone, in
the afternoons, when school was out for the day. Complainant would answer and no one
would talk, and then she'd hang up, and the office number would call back.

10 On or about May 2022, Complainant went to the office and asked about the calls. None of
11 the office staff would be there at the time of the calls, and her co-workers told her to talk with
12 Assistant Principal Jennifer Barnes and Principal Daniel Morgan. Complainant met in-person
13 with Ms. Barnes and Mr. Morgan and showed them the call log with the repeated incoming
14 calls from their front office. It wasn't either of them, they were discussing who it could be,
15 and they asked if she suspected anyone. Complainant said yes that she suspected
16 ALVARADO. The principal asked why, and she told him that ALVARADO had been sexually
17 harassing her and that he cleans the Middle School Office area at the time the calls were
coming to her personal phone. Mr. Morgan said that he didn't want to hear about it, and that
that she had to take it up with HR. He said that she needed to see CUSD (Chief Human
Resources Officer) Craig Chavez. Mr. Morgan refused to hear her complaints of
ALVARADO's harassment and told her to make an appointment with Craig Chavez.
Complainant went to Mr. Chavez's office that same day and Mr. Chavez's secretary gave
her an appointment three days later.

18 The next day, before her appointment with Mr. Chavez, Ms. Barnes called Complainant back
19 into the middle school office and asked to see the call log on Complainant's personal phone
again. Ms. Barnes proceeded to delete the calls, saying something like, "there—now there is
nothing wrong."

20 When Complainant met with Mr. Chavez and his secretary, Complainant had no translator
21 and Mr. Chavez refused to speak Spanish with her. Mr. Chavez and his secretary appeared
22 to be taking some notes regarding Complainant's descriptions. Complainant told them about
23 ALVARADO touching her and verbally harassing her, and that someone was making the
24 harassing calls to her phone from the middle school office and hanging up (during the time
25 when ALVARADO was likely the only one there). They asked her some questions about the
26 harassment. They did not ask her if she had been harassed by anyone else. Mr. Chavez
told Complainant that an investigation would be conducted and that he would inform her
about the investigation's conclusions. However, Complainant was never contacted by

1 anyone regarding an investigation and Mr. Chavez never informed her of any outcome. After
2 her meeting with Mr. Chavez and his secretary, the harassment and retaliation continued as
before.

3 On September 7, 2022, there was a CUSD meeting regarding the stadium lights project.
4 Complainant had set up the tables and chairs for the meeting in the library before she went
to go and clean her regular areas. While the meeting was taking place in the library,
5 Complainant was cleaning a classroom. ALVARADO showed up and demanded that she
clean a carpet stain in another location. She told him she would go do it after finishing the
6 classroom she was in. He yelled at her very loudly (like screaming level) that he wanted it
done now. He got right up in her face, yelling at her, close enough to bump her with his
7 chest. ALVARADO wouldn't let Complainant leave and began to push Complainant with his
chest. Complainant was very upset and trying to leave the room. He took a step back and
8 yelled that he wanted Complainant on her knees to clean the stain. Complainant ran out of
the classroom very afraid, disoriented, and crying. As she was running, she encountered Mr.
9 Chavez's secretary, and the secretary saw Complainant upset and crying. Complainant told
Mr. Chavez's secretary what happened. Mr. Chavez's secretary wanted to accompany
10 Complainant back to the classroom to see if ALVARADO was still there. He was not and Mr.
Chavez's secretary said that they would talk to ALVARADO, but to Complainant, she
11 appeared very dismissive.

12 Complainant continued working her shift and she ran into Mr. Paul. Complainant was still
shaken and crying, and told him what happened. Mr. Paul listened to Complainant but had
13 little reaction and simply said that he would talk to human resources. He did not react as if
this was urgent or important. Complainant was increasingly distraught that both people saw
14 her crying and very desperate, and neither responded with any urgency. On information and
belief, Mr. Paul, Mr. Chavez's secretary, Ms. Barnes, and Mr. Morgan all failed to report or
15 take any action to investigate or prevent future harassment.

16 Later in September, having received absolutely no response to her multiple reports,
17 Complainant called the union office. The union told Complainant to report the harassment
(again) to CUSD ,Principal's Secretary, Lisa Brazil. Complainant did not contact Ms. Brazil
18 because she had heard from other co-workers that Ms. Brazil did not respond to reports of
harassment and that she was biased in favor of defending the school district. Complainant
19 returned to the human resources office with her son (to interpret) to ask Mr. Chavez what
was happening about her harassment complaint. Mr. Chavez wasn't there and so
20 Complainant's son talked to the secretary. Mr. Chavez's secretary said that she would talk to
Mr. Chavez and that, in the meantime, ALVARADO was not allowed to talk to Complainant
21 anymore. When Complainant needed supplies or had questions, she was to talk to Mr.
Morgan until the investigation concluded.
22

23 The retaliation continued as before. ALVARADO would take Complainant's work
assignments to the principal, but he continued to give Complainant extra work. Mr. Morgan
24 would just hand Complainant the paper from ALVARADO without question. During this time
period, Mr. Morgan called Complainant into his office and he read her work evaluation
25 prepared by ALVARADO. The work evaluation was critical and negative, despite the fact

1 that Complainant had only positive feedback from the teachers or coworkers. Complainant
2 tried to explain what was happening to Mr. Morgan, but he dismissed her.

3 In October 2022, Complainant was called into Mr. Chavez office. She thought that the
4 meeting was to discuss the investigation of the sexual harassment. Mr. Chavez told
5 Complainant to leave the keys and that she was no longer employed. She asked him why, if
6 she had been a good employee? She even cleaned his office and there weren't any
7 complaints even from him. Complainant became upset, and Mr. Chavez continued to repeat
8 that she wasn't needed anymore, to leave her keys and get out. Complainant became more
9 upset and went to the principal's office to ask why she was being fired. Ms. Barnes wouldn't
10 let Complainant speak with Mr. Morgan and they kept telling her to leave. Mr. Chavez said
11 that if she didn't leave, he would call the police. Complainant told him yes, call the police,
12 and then maybe something would be done about what ALVARADO and MARTINEZ did to
13 her. Complainant said she would call herself, and Mr. Chavez laughed at her. He said, "Who
14 are you going to call? Your son? What's he going to do?" As she was walking out, Ms.
15 Barnes followed Complainant to her car while demanding she turn in her uniform.
16 Complainant had to remove her shirt in the parking lot and turn it over to Ms. Barnes.
17 Complainant felt completely traumatized and defeated, and she left.

18 Based on the foregoing, Complainant was subjected to illegal sexual harassment and
19 retaliation. Notwithstanding Complainant's multiple reports about the workplace harassment
20 she was being subjected to, CUSD entirely failed in its duty and obligation to provide a safe
21 and harassment-free workplace for Complainant and failed to take appropriate action(s) to
22 prevent said sexual harassment in violation of the California Fair Employment and Housing
23 Act ("FEHA"); California Government Code Section 12940, et seq.

1 VERIFICATION

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

5 On October 26, 2023, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Salinas, CA**
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