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ALAMEDA COUNTY

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CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:
RG19012087

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4 Attorney for Plaintiff
CESAR MONTERROSA

6 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **FOR THE COUNTY OF ALAMEDA**

8
9
10 CESAR MONTERROSA, an individual,

11
12 Plaintiff,

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14 v.

15
16 OAKLAND UNIFIED SCHOOL DISTRICT;
17 and DOES 1-10, inclusive,

18 Defendants.

) **Case No.:**

) **COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

) **(1) VIOLATION OF LABOR CODE §203**

) **(2) VIOLATION OF LABOR CODE
§1102.5**

) **(3) RACE DISCRIMINATION
(Cal. Gov. Code § 12900, et seq.)**

) **(4) RETALIATION
(Cal. Gov. Code § 12900, et seq.)**

) **DEMAND FOR JURY TRIAL**

19
20 Plaintiff CESAR MONTERROSA ("Plaintiff" or "MONTERROSA") files this
21 Complaint for Damages and Injunctive Relief, and complains of the named Defendants, and each
22 of them, jointly and severally, and for causes of action, alleges as follows:
23

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this matter pursuant to Article VI, § 10 of the
26 Constitution of the State of California.
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2. Venue is proper in Alameda County in that Plaintiff is a governmental entity headquartered in this County, part of the wrongs alleged herein occurred within this County, and Defendants are located in and/or transact business within this County.

3. Plaintiff has been damaged in excess of the jurisdictional amount of this Court.

INTRODUCTION

4. This action arises out of events during Plaintiff's employment with the OAKLAND UNIFIED SCHOOL DISTRICT ("OUSD").

THE PARTIES

5. Plaintiff MONTERROSA is an Hispanic Male, with 19 years of experience in facilities management.

6. Defendant OAKLAND UNIFIED SCHOOL DISTRICT ("OUSD") is a school district operating under the laws of the State of California, with field offices relevant to this lawsuit located in the County of Alameda.

7. Plaintiff is ignorant of the true names and capacities of defendants sued herein as "DOES 1-10, inclusive," and Plaintiff therefore sues such defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants is responsible in some manner for the occurrences, acts, and omissions alleged herein and that Plaintiff's injuries as alleged herein were proximately caused by such aforementioned defendants.

FACTS COMMON TO ALL CAUSES OF ACTION

8. Mr. Monterrosa was hired by OUSD in late 2008 as Facilities Coordinator.

9. From his hiring time to the date his termination present, Mr. Monterrosa diligently served the District.

1 10. In 2012 or 2013, Mr. Monterrosa received a positive performance evaluation for his work
2 at the District.

3 11. In December of 2017 Mr. Monterrosa received another positive performance evaluation,
4 and an award for dedication and hard work for the department.

5 12. In February, 2015 in the wake of the firing of Tim White, Mr. Monterrosa became Acting
6 Director of Facilities.

7 13. In May of 2016, Mr. Monterrosa was promoted to Director, after having served as Acting
8 Director for several months.

9 14. On April 29, 2016, Joe Dominguez became the Deputy Chief of Facilities, Planning, and
10 ManagEment, overseeing Buildings and Grounds, Custodial Services, and Capital.

11 15. Mr. Monterrosa worked closely with Mr. Dominguez, and shortly they began to deal with
12 very troubling financial mismanagement which had occurred at the District.
13
14

15 **The Central Kitchen Contract**

16 16. In June of 2016, Mr. Monterrosa brought to the Deputy Chief's attention a \$53,000,000
17 non-compliant contract, the Central Kitchen Contract, which had been executed by leadership
18 prior to Mr. Monterrosa becoming Acting Director.

19 17. The Joint Venture to whom the Central Kitchen contract had been awarded was having
20 problems, with the subcontractor communicating with the District that the prime contractor was
21 keeping them out of the loop and was not being paid.

22 18. The Central Kitchen contractor approved by the Oakland School Board was West Bay
23 Builders; however, Mr. Monterrosa noted that payments under the Central Kitchen contract were
24 being made to Thompson-Pacific.

25 19. As a result of these discrepancies, there were disagreements on payments, start date,
26 completion date, bond insurance.
27
28

1 20. Also in June, 2016, Deputy Chief Dominguez met with OUSD's General Counsel
2 Marion McWilliams to inform her of multiple contractual issues with all major construction
3 projects under Measure J.

4 21. Prior to June, 2016, all major contracts had been submitted by Cate Bottskoff and
5 previous General Counsel Jacqueline Minor with no formal bidding process, and with major
6 items missing such as construction end date, Guaranteed Maximum Price (GMP), and other non-
7 conforming issues such as construction services being performed during the pre-construction
8 phase of the project.

9 22. Mr. Dominguez, with the help of Mr. Monterrosa, sent a summary of these findings to the
10 office of the General Counsel for review. It was common knowledge throughout the District
11 that Mr. Monterrosa was working with and providing the information which Mr. Dominguez
12 was transmitting.

13 **Fund 25 and Fund 35 Misuse**

14 23. Throughout 2016, Mr. Monterrosa worked with the Deputy Chief who informed Vernon
15 Hal ("SBO") that fund 25 was not an allowable usage for charter school improvements and that
16 fund 35 (State Reimbursement) was not an allowable usage for central office rent.

17 **Misuse of Energy Rebates**

18 24. With the assistance of Mr. Monterrosa, the Deputy Chief, Mr. Dominguez, informed the
19 SBO that energy rebates must be used to keep energy projects moving across the District instead
20 of being used as part of the general fund revenue.

21 25. Throughout 2016, both Mr. Monterrosa and Mr. Dominguez worked on the financial
22 health of the District's capital program. They estimated during this time that the program was
23 deficient in the range of \$60-80 million dollars after analyzing the four projects. They found
24 that large projects had gone substantially over the budgets approved by the Oakland School
25 Board:

- 26 • Glenview \$10-14 million over budget

27 New contract was required, developer fee (fund 25) was used to close the funding gap

- 28 • Madison \$10-12 million over budget

1 New contract was required, developer fee (fund 25) was used to close the funding gap

- 2 • Fremont \$10 million over budget

3 New contract required

- 4 • Central Kitchen \$14 million over budget

5 New contract required

6
7 26. Mr. Dominguez, with the assistance of Mr. Monterrosa reported on smaller projects
8 having been started with board approved budgets at \$100,000 and ended with approximately \$1
9 million over the approved budget. They informed the SBO that controls are not being followed
10 with the facilities staff, and instances of offering free portables as a way to win a selection of a
11 contractor.

12 27. Originally, the SBO, Vernon Hal, indicated that Mr. Monterrosa and Mr. Dominguez
13 should fix the issues; however, when Mr. Monterrosa informed him that Developer Fees must
14 be used for projects (fund 25), Mr. Monterrosa began getting pushback.

15 28. In December, 2016 new Facilities counsel was hired, DWK. From January through
16 March 20, 2017, the SBO, Mr. Hal, self-assigned Fund 25 (Developer fees funds) to the SBO in
17 the amount of \$14.6 million.

18 29. On March 10, 2017, the Central kitchen \$53,000,000 contract was terminated due to
19 "convenience"; however, it was clearly terminated due to the non-compliance that Mr.
20 Monterrosa uncovered. An internal review of pay applications revealed approximately \$4
21 million of payments absent work or material in place.

22 30. Because of the pushback that Mr. Monterrosa was giving on this clearly inappropriate
23 financial conduct, on June, 14, 2017, Kenya Chatman engaged in serious misconduct in the
24 workplace.

25 31. On June 14, 2017, Kenya Chatman demanded the issuance of a large number of contracts
26 change orders.

27 32. Mr. Dominguez and Mr. Monterrosa refused to go along with the massive change orders.
28

1 33. The financial misconduct was so clear that two other employees made complaints about
2 the change order scheme.

3 34. Later that same week David Colbert tried to coerce one of the complaining employees to
4 stay quiet, stating “we need to stay together against the director” or words to that effect.

5 **Lincoln Water Damage Project – Fund 67 Misuse**

6 35. In another instance of fiscal mismanagement, the Lincoln School water damage project,
7 self-insurance paid for a portion of the repair work while the approximately \$8,000,000 claim
8 was proceeding against the builder and the architect.

9 36. In June, 2017 Mr. Hal directed the transfer of all water damage and insurance claims
10 which were properly held in “Fund 67” to “Facilities Funds”. Michael Smith stated that the
11 entire fix should be paid out of facilities funds. Mr. Monterrosa stood up and stated that Board
12 Approval would be required for that type of transfer. The monies that should have been
13 available in Fund 67 to repair this building were instead raided by Mr. Hal to balance the general
14 fund budget and pay for central office rent. Critical issues such as student safety were not being
15 considered; specifically, the lead contaminated water at McClymond’s High School and other
16 schools across the district.

17 18 **Nepotistic Self-Dealing In Internship Program**

19 37. Mr. Monterrosa also witnessed and complained about rampant nepotism and self-
20 dealing during this time period, including unauthorized summer internships by David Colbert,
21 with District employees hiring their own children for the program, including Pam Henderson,
22 Cynthia Harding and others.

23 38. Mr. Monterrosa received reports from the administration office that David Colbert was
24 coming in to the office at 10:00 a.m. and leaving at 2:00 p.m. and not documenting any of that
25 time off on his timesheet. Complaints about this conduct were made to the District's Human
26 Resources office.

27 39. In approximately September, 2017, Mr. Monterrosa informed Mr. Dominguez that
28 Account Manager Michael Ezeh was assigning Developer Fee Funds (“Fund 25”) to the SBO's

1 own discretion. Mr. Monterrosa inquired via email to Michael Ezeh which program was labeled
2 as "SBO discretion". Mr. Dominguez also emailed Michael Ezeh informing him that Developer
3 Fees cannot be used for the SBO's discretion, and that a project list must be provided to and be
4 approved by the Board of Education.

5 40. During this time period, Vernon Hal met with Deputy Chief Joe Dominguez and
6 informed him that Developer Fees funding had been allocated to SBO discretion line item
7 "special projects". Mr. Monterrosa provided a letter to Mr. Dominguez regarding the proper
8 usage of Developer Fees.

9 41. Mr. Dominguez also instituted strict time reporting requirement, and checked with the
10 unions to do so. Mr. Dominguez also attempted employee evaluations, which were sidelined
11 and thwarted by Mr. Hal and Mr. Colbert.

12 42. In May, 2017, Director Tadashi Nakadegawa went out on a medical leave of absence.
13 During this timeframe, multiple mismanagement issues were discovered by Mr. Monterrosa and
14 others.

15 43. In retaliation for his complaints of fiscal mismanagement, commencing on July 20,
16 2017, the Mr. Hal began taking a very hostile and demeaning tone in his bi-weekly meetings.
17 This extreme hostility lasted through November 2017.

18 44. Several staff reported these abusive meetings to HR and the SBO was directed to stop
19 these meetings sometime in December, 2017. In these meetings, facilities staff were given
20 permission to badger management without consequences during meetings lasting three to four
21 hours.

22 45. Ms. Nieves was informed by HR that her performance evaluation from Mr. Dominguez
23 was not a favorable one. In fact, Mr. Dominguez tried to terminate Ms. Nieves, however, HR
24 prevented this termination. HR allowed Linda and others to view Mr. Dominguez's reports after
25 he was terminated.

26 46. During this time period, Mr. Hal authorized staff to engage in humiliating conduct
27 towards Mr. Dominguez and Mr. Monterrosa, and to question any and all of of Mr. Dominguez's
28

1 meetings, demanding to know who would be present in the meeting, and what the meeting was
2 regarding.

3 47. In a departure from policy and practice, Mr. Hal named David Colbert as a single point
4 of contact for any staff issues.

5 48. Numerous employees reported the extreme hostility of these meetings to the District's
6 Human Resources Office.

7 49. In October, 2017, Mr. Colbert engaged in an unprofessional aggressive outburst in
8 office, yelling at supervisor. Mr. Monterrosa made a complaint concerning this misconduct;
9 however, upon information and belief, the District neither investigated nor took any remedial
10 action.

11 50. Mr. Monterrosa emailed Mr. Dominguez concerning the bizarre and harassing conduct.
12 On October 31, 2017, due to lack of action from the District, Deputy Chief Joe Dominguez filed
13 complaint with HR /Ombudsman office.

14 51. On October 25, 2017, Deputy Chief Dominguez had a follow up meeting with the
15 Superintendent and informed her about the harassment, hostile work environment, and illegal
16 fiscal transfers and spending of Developer Fees, Bond Funds and Facilities Funding.

17 52. It was common knowledge throughout the department that Mr. Monterrosa had supplied
18 Mr. Dominguez with much of the information upon which the reports of illegal fiscal transfers
19 was being made.

20 53. Because both the Human Resources office and the Budget office reported directly to the
21 SBO Vernon Hal, the initiatives that Mr. Dominguez and Mr. Monterrosa were working on to
22 correct non-compliance were sidelined by Mr. Hal. These included multiple budget-related
23 issues, employee discipline issues, including hiring and firing.

24 54. In December, 2017, Mr. Monterrosa heard from staff that Tim White was being hired as
25 the new Chief of facilities. Upon information and belief, Mr. White and Mr. Colbert
26 ("Coordinator of Facilities") are related.

27 55. Vernon Hal announced his resignation at the BOLT management on December 20,
28 2017.

1 56. On January 3, 2018, Mr. Hal announced his resignation, effective January 31, 2018, at the
2 Facilities staff meeting.

3 57. On January 29, 2018, Mr. Dominguez emailed and met with OUSD's General Counsel
4 Marion McWilliams regarding major issues and concerns involving Measure J and B being used
5 on Charter Schools and Developer Fees being used for Salaries/Benefits.

6 58. Mr. Dominguez continued to email Oakland Unified's General Counsel Marion
7 McWilliams regarding major concerns with Facilities funding being spent and allocated by SBO
8 Vernon Hal (Measure J, Measure B and Developer Fees) on Charter Schools, former General
9 Counsel Salary/Vacation/Payout and other salaries and benefits. These disclosures included a
10 powerpoint presentation by Mr. Dominguez. Mr. Monterrosa provided the information used in
11 the powerpoint presentation.

12 59. It was widely known throughout the District that Mr. Monterrosa was working with Mr.
13 Dominguez on presenting this information, including the powerpoint presentation, and calling
14 out the illegal conduct and fiscal mismanagement.

15 60. Mr. Dominguez had a meeting with David Colbert and his union representative, at which
16 he issued a memorandum of concern to Mr. Colbert. Shortly thereafter, on February 5, 2018,
17 Deputy Chief Joe Dominguez was called into District Office by Seth Eckstein and informed that
18 the District was releasing him from his contract.

19 61. The Director of custodial services (Roland Broach) was named interim chief of Facilities,
20 naming David Colbert as his point of contact.

21 62. On February 6, 2018 the Budget Office Staff engaged in outrageous and hostile
22 retaliatory conduct against all the individuals who were perceived as having knowledge of the
23 fiscal malfeasance.

24 63. On or about February 10, 2018, Michael Ezeh asked Mr. Monterrosa about defunding a
25 project. Mr. Monterrosa emailed Chief of Staff, Curtiss Sarikey and counsel Marion
26 McWilliams to inquire who was moving the funds around.

27

28

1 64. Both Sarikey and McWilliams eplied that “no one is moving funds around” or words to
2 that effect. As a result, Mr. Monterrosa reasonably believed that Mr. Hal was—after his
3 termination—moving funds around and working on a new spending plan.

4 65. On February 13, 2018, then former SBO, Mr. Hal, issued an email directing
5 movement/transfer of funds, stating that the main facilities leaders—including Mr. Monterrosa
6 —did not need to be involved in this movement of funds.

7 66. The following day, Mr. Monterrosa faxed a letter with attached documentation to the
8 California State Financial Crisis & Management Assistance Team (“FCMAT”) regarding the
9 improper fund transfers. At this time, there were conversations in the office amongst the staff
10 loyal to Mr. Hal that Mr. Monterrossa needed to be “removed”.

11 67. On March 26, 2018, Mr. Monterrosa emailed Julie Avil at FCMAT with information
12 concerning Fund 21. On April 2, 2018 he wrote again to Ms. Avil noting the increased hostility
13 in the workplace.

14 68. On April 9, 2018, Mr. Monterrosa received an email from the terminated Deputy, Mr.
15 Dominguez's email account – from Mr. Hal's previous executive assistant, Rosaura Altamirano,
16 demonstrating that the decisionmakers at OUSD had access to the email interchanges between
17 Mr. Rodriguez and Mr. Monterrosa, including emails that demonstrated Mr. Monterrosa's
18 whistleblowing.

19 69. On April 20, 2018, Mr. Monterrosa was placed on administrative leave, and his access to
20 email was terminated. The District provided no information whatsoever on why he was being
21 placed on administrative leave.

22 70. Mr. Monterrosa followed up on May 21, 2018 sending email to Sophia in Human
23 Resources.

24 71. On May 31, 2018 the FCMAT report on OUSD was issued, and the result confirmed
25 that Mr. Monterrosa's whistleblowing information comprised a significant portion of the
26 unfavorable results of the report.

27 72. On June 6, 2018, the Board of education approved a personnel report placing Mr.
28 Monterrosa on leave until the year 2050.

1 73. On July 13, 2018 Mr. Monterrosa received a letter with a Notice of Intent to Dismiss.
2 The allegations in the Notice of Intent to Dismiss were false and defamatory, and pretextually
3 fabricated falsehoods made to cover for the retaliatory and discriminatory animus of those who
4 have played a part in the serious fiscal mismanagement and possible fraud at OUSD.

5 74. Mr. Monterrosa's employment was ultimately terminated

6 75. OUSD has a long-term pattern and practice of fiscal mismanagement and retaliation
7 against any employee who speaks out against the fiscal mismanagement.

8 76. OUSD has a pattern and practice of treating Hispanic males less favorably than their non-
9 Hispanic counterparts, especially Hispanic males who call into question the actions of the non-
10 Hispanic individuals engaged in fiscal mismanagement.

11 77. OUSD has a pattern and practice of retaliating against Hispanic males who make
12 complaints of hostile work environment, by fabricating allegations against them.

13 78. OUSD implemented the foregoing pattern and practices in unlawfully terminating the Mr.
14 Monterrosa's employment on or about September 24, 2018.

15 79. On February 7, 2019 Mr. Monterrosa filed a complaint of discrimination and retaliation
16 with the California Department of Fair Employment and Housing, and received an immediate
17 right-to-sue letter.

18 80. On January 3, 2019 Plaintiff submitted a detailed Notice of Governmental Claim
19 pursuant to California Government Code Section 910 to OUSD. OUSD rejected the claim in
20 January, 2019.

21
22 **FIRST CAUSE OF ACTION**
23 **VIOLATION OF CALIFORNIA LABOR CODE § 203**
(Alleged by Plaintiff against all Defendants)

24 81. As a first, separate and distinct cause of action, Plaintiff complains of Defendants , and
25 for a cause of action alleges:

26 82. Defendants terminated MONTERROSA'S employment on or about September 20, 2018.
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1 83. At the time Defendants terminated MONTERROSA'S employment, Defendants failed to
2 pay MONTERROSA all remuneration, including salary, wages, bonuses, paid leave, accrued
3 vacation, and other remuneration due and payable to MONTERROSA.

4 84. As a proximate result of Defendant's wrongful acts, Plaintiff has suffered and continues
5 to suffer substantial losses incurred in seeking substitute employment and in earnings, bonuses,
6 seniority, leave accruals, retirement contributions and other employment benefits; and has
7 suffered and continues to suffer emotional distress in an amount according to proof at the time of
8 trial.
9

10 85. Pursuant to California Labor Code Section 203, MONTERROSA is entitled to waiting
11 time penalties.

12 86. WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

13 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.
14

15 **SECOND CAUSE OF ACTION**
16 **WHISTLEBLOWER RETALIATION IN VIOLATION OF**
17 **CAL. LAB. CODE §1102.5**
18 **(Alleged by Plaintiff against all Defendants)**

19 87. As a second, separate and distinct cause of action, Plaintiff complains of Defendants, and
20 for a cause of action alleges:

21 88. The factual allegations of Paragraphs 1 through 86 above, are re-alleged and incorporated
22 herein by reference.

23 89. Throughout 2015 up through the termination of his employment, MONTERROSA
24 engaged in activities protected by California Labor Code Section 1102.5, to wit,
25 MONTERROSA reported violations of law in the fiscal mismanagement of OUSD business,
26 and specifically provided information to FCMAT detailing violations of law and regulation by
27 Vernon Hal and OUSD.
28

1 90. Defendants perceived that MONTERROSA had reported, or was about to report
2 violations of law to regulatory and law enforcement authorities.

3 91. MONTERROSA suffered adverse employment actions of termination and failure to pay
4 all wages, salary and bonuses.

5 92. MONTERROSA' protected activities, and the perceptions that MONTERROSA would
6 report further violations of law to regulators and/or law enforcement was the cause of the
7 adverse employment actions suffered by Plaintiff.
8

9 93. At all relevant times, Defendants, and each of them, and their agents, and/or officers,
10 engaged in and/or ratified by their actions and/or inaction through their employees and/or
11 supervisors, the false representations of existing material facts.

12 94. As a proximate result of Defendant's wrongful acts, Plaintiff has suffered and continues
13 to suffer substantial losses incurred in seeking substitute employment and in earnings, bonuses,
14 deferred compensation, stock options, seniority, and other employment benefits; and has
15 suffered and continues to suffer emotional distress in an amount according to proof at the time
16 of trial.
17

18 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

19 **THIRD CAUSE OF ACTION**
20 **RETALIATION**
21 **(Cal. Gov. Code § 12900, et seq.)**
22 **(Alleged Against All Defendants)**

23 95. As a third, separate and distinct cause of action, Plaintiff complains of Defendants, and
24 for a cause of action, alleges:

25 96. The factual allegations of Paragraphs 1 through 94 above, are re-alleged and incorporated
26 herein by reference.

27 97. Jurisdiction is invoked pursuant to Cal. Gov. Code § 12965, as amended, seeking
28 injunctive relief and damages for violations of the Plaintiff's employment rights as protected by

1 the FEHA, Cal. Gov. Code § 12940, et seq., which prohibits retaliation against an employee for
2 making complaints and protesting or refusing to participate in discriminatory employment
3 practices prohibited by the FEHA.

4 98. Plaintiff was an employee of Defendants and is a person protected by the provisions of
5 the FEHA as he engaged in the protected activity by complaining of a hostile work environment
6 and discrimination.

7
8 99. Defendants are employers, covered by and subject to the FEHA, as they are doing
9 business in the State of California, County of Alameda, and has at least five (5) employees.

10 100. As alleged herein, Plaintiff engaged in protected activity, including making multiple
11 complaints of unlawful activities as set forth above.

12 101. Following Plaintiff's protected activity, he was subjected to a pattern of adverse
13 employment actions, including harassment, falsified allegations of misconduct, and discharge.

14
15 102. At all relevant times, Defendants and its supervisors, agents, and/or officers, engaged in
16 and/or ratified by their actions and/or inaction through their employees and/or supervisors, acts
17 of retaliation against based upon Plaintiff's protected activities.

18 103. In so doing the act and engaging in the activities alleged herein, Defendants, through their
19 officers, employees, and agents, did intend to retaliate against Plaintiff for his exercise of rights
20 under the FEHA and cause Plaintiff to suffer severe emotional and psychological distress, pain
21 suffering, humiliation, loss of enjoyment of life, and loss of self-esteem.

22
23 104. As a direct and proximate result of the willful, knowing, and intentional retaliation by
24 Defendant, Plaintiff has suffered and continues to suffer the loss of earnings and related
25 employment benefits, mental distress, anguish, and indignation. He is thereby entitled to general
26 and compensatory damages in an amount to be proven at trial.

1 105. Defendants, through its officers, managing agents, employees and/or its supervisors,
2 authorized, condoned and/or ratified the unlawful conduct described herein above.

3 106. Defendants committed the acts alleged herein by acting knowingly and willfully, with the
4 wrongful and illegal deliberate intention of injuring Plaintiff, from improper motives amounting
5 to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover
6 nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof
7 at time of trial, in addition to any other remedies and damages allowable by law.
8

9 107. As pleaded above, Plaintiff has duly exhausted his administrative remedies.

10 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

11 **FOURTH CAUSE OF ACTION**
12 **RACE DISCRIMINATION (DISPARATE TREATMENT)**
13 **(Cal. Gov. Code § 12900, et seq.)**
14 **(Alleged Against Defendant REGENTS and DOES 1-10)**

15 108. As a fourth, separate and distinct cause of action, Plaintiff complains of Defendants, and
16 for a cause of action, alleges:

17 109. The factual allegations of Paragraphs 1 through 107 above, are re-alleged and
18 incorporated herein by reference.

19 110. The FEHA (Cal. Gov. Code § 12940(a)) provides that it is an unlawful employment
20 practice for an employer, because of the race of any person to bar or to discharge the person from
21 employment or from a training program leading to employment, or to discriminate against the
22 person in compensation or in terms, conditions, or privileges of employment.

23 111. Plaintiff is a member of a class protected by FEHA: he is Hispanic.

24 112. As demonstrated above, Plaintiff MONTERROSA performed the duties of his job
25 competently, and at the time he suffered the adverse employment actions set forth above, was
26 qualified and competent to perform the essential job functions of his position.
27
28

1 113. Defendants, through their agents and employees, engaged in a pattern and practice of
2 unlawful race discrimination in violation of FEHA in connection with its disparate treatment of
3 Plaintiff, and the terms and conditions of his employment, including termination.

4 114. Defendants treated Plaintiff differently than his non-Hispanic counterparts, by subjecting
5 him to extra scrutiny, manufacturing false allegations of misconduct against him and terminating
6 his employment.

7 115. At all relevant times, Defendants and their supervisors, agents, and/or officers, engaged
8 in and/or ratified by their actions and/or inaction through their employees and/or supervisors,
9 acts of discrimination against Plaintiff MONTERROSA based upon his protected class.

10 116. As a direct result of the acts and conduct of Defendants as alleged herein, Plaintiff
11 MONTERROSA has suffered a loss of earnings and related employment benefits in an amount
12 to be proven at trial herein.

13 117. As a direct and proximate result of the willful, knowing, and intentional discrimination
14 against his, Plaintiff has suffered mental distress, anguish, and indignation. He is thereby
15 entitled to general and compensatory damages in an amount to be proven at trial.

16 118. Defendants, through its officers, managing agents, employees and/or its supervisors,
17 authorized, condoned and/or ratified the unlawful conduct described herein above.

18 119. As pleaded above, Plaintiff has duly exhausted his administrative remedies, obtaining a
19 Right to Sue.

20 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

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25 **PRAYER FOR RELIEF**

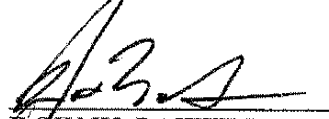
26 WHEREFORE, Plaintiffs pray for relief as follows:

- 27 1. For general damages in amounts according to proof and in no event in an amount
28 less than the jurisdictional limit of this Court;

- 1 2. For special damages in amounts according to proof;
- 2 3. For punitive damages against the individual Defendants, but not OUSD, in
- 3 amounts according to proof;
- 4 4. For back pay and benefits;
- 5 5. For front pay and benefits;
- 6 6. For damages to future earning capacity;
- 7 7. For waiting time penalties;
- 8 8. For attorneys' fees as provided by law;
- 9 9. For interest as provided by law;
- 10 10. For costs of suit herein; and
- 11 11. For a mandatory injunction requiring Defendant OUSD to institute, maintain and
- 12 report to the Court effective measures to train and monitor OUSD employees in
- 13 the mandates of the FEHA and the prohibitions on discrimination and retaliation;
- 14 and
- 15 12. Such other and further relief as the Court deems fair and just.

16
17 Dated: March 21, 2018

SMITH PATTEN


18
19 
20 _____
21 DOW W. PATTEN
22 Attorney for Plaintiff
23 CESAR MONTERROSA

24
25 **JURY DEMAND**

26 Plaintiff hereby demands trial by jury of all matters so triable.

27 Dated: March 21, 2018

SMITH PATTEN

28 

DOW W. PATTEN
Attorney for Plaintiff
CESAR MONTERROSA