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14 Denise Dalaimo Nussbaum

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF RIVERSIDE**

17 Denise Dalaimo Nussbaum, an individual,
18
19 Plaintiff,

20 vs.

21 Gary Vargas, an individual; Mount San
22 Jacinto College District (“MSJC”); Roger
23 W. Schultz, in his individual and official
24 capacity as Superintendent/President of
25 MSJC; and Jack Miyamoto, in his
26 individual and official capacity as Vice
27 President of Human Resources of MSJC;
28 and DOES 1 through 10, inclusive,

Defendants.

Case No.: RIC1506005

FIRST AMENDED COMPLAINT FOR
DAMAGES

1. ASSAULT
2. BATTERY
5. FALSE IMPRISONMENT
4. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
5. NEGLIGENCE
6. RESPONDEAT SUPERIOR LIABILITY OF PUBLIC ENTITY
7. SEX / GENDER DISCRIMINATION
8. SEXUAL HARASSMENT
9. RETALIATION
10. BREACH OF FIDUCIARY DUTY

DEPT: S302

JUDGE: Angel M. Bermudez

GENERAL ALLEGATIONS

1
2 1. At all times mentioned herein, Plaintiff Denise Dalaimo Nussbaum (“Plaintiff”), a
3 woman, was, and is now, an individual and a resident of the County of San Diego, State of
4 California, employed as a Professor of Sociology at Mount San Jacinto College District, also known
5 as Mount San Jacinto College (“MSJC”), in the County of Riverside. Until the recent events set
6 forth herein, Plaintiff served as Chair of the Department of Sociology at MSJC.

7 2. At all times mentioned herein, Defendant Gary Vargas (“Defendant Vargas”) was,
8 and is now, an individual and a resident of the State of California, employed as a Professor of
9 History at MSJC in the County of Riverside.

10 3. At all times mentioned herein, MSJC was, and is now, a public entity whose principal
11 place of business is in San Jacinto, California, in the County of Riverside.

12 4. At all times mentioned herein, Defendant Roger W. Schultz (“Defendant Schultz”)
13 was, and is now, an individual and resident of the State of California, employed as the
14 Superintendent/President of MSJC.

15 5. At all relevant times mentioned herein, Defendant Jack Miyamoto (“Defendant
16 Miyamoto”) was, and is now, an individual and resident of the State of California, employed as the
17 Vice President of Human Resources at MSJC.

18 6. Defendant DOES 1 through 10 are sued under fictitious names pursuant to California
19 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
20 each defendant sued under such fictitious name is in some manner responsible for the wrongs and
21 damages alleged herein, and in so acting was functioning as the agent, servant, partner, employee,
22 co-conspirator, and/or aider and abettor of one or more of the named Defendants, and in doing the
23 actions mentioned herein, was acting within the course and scope of his or her authority as such
24 agent, servant, partner and/or employee, and/or was acting with the permission, consent, and/or
25 knowledge of one or more of the other Defendants.

26 7. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, each Defendant, whether individual or corporate, or otherwise, was the agent of one or
28 more of the other named Defendants in doing the things herein alleged, was acting within the course

1 and scope of such agency or employment and with the permission, ratification, and consent of one or
2 more of the other Defendants.

3 8. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, each Defendant conspired with and/or aided and abetted one or more of the other
5 Defendants in the wrongful acts described herein.

6 9. On April 10, 2015, Plaintiff attended an “all-faculty” meeting of about 100 professors
7 and administrators of MSJC at MSJC’s Temecula Campus, 27447 Enterprise Circle West, Temecula,
8 California. Defendant Vargas was also present at this meeting.

9 10. For nearly two months prior to April 10, 2015, Plaintiff had been the victim of a
10 campaign of harassment by Defendant Vargas and other MSJC faculty members and students due to
11 her vocal opposition to plans by certain faculty to sponsor anti-Israel activist Miko Peled for a
12 speech on campus.

13 11. Due to this harassment and as a form of silent, civil protest, Plaintiff wore a
14 “sandwich board” sign to the April 10, 2015, all-faculty meeting. Plaintiff had written on the sign
15 statements calling for academic integrity, and quotes by Mahatma Gandhi and Martin Luther King,
16 Jr. She also brought to the meeting pamphlets and handouts concerning Israel.

17 12. During the all-faculty meeting, Plaintiff removed the sign and leaned it against the
18 wall near the table where she was sitting. After a break in the meeting, Plaintiff returned to discover
19 the sign was missing.

20 13. After a few moments, Plaintiff discovered the sign had been taken without her
21 permission by another MSJC professor, Bob Melsh, who was standing with Defendant Vargas,
22 Shahla Razavi, and Jim Davis. Mesh, Razavi and Davis are professors at MSJC.

23 14. Plaintiff walked over to Melsh and took the sign back from him, emphasizing to him
24 that “this is my private property.” After she took back the sign, Defendant Vargas, Melsh, Razavi,
25 and Davis began to argue with Plaintiff.

26 15. During this argument, Plaintiff informed Defendant Vargas that she had received a
27 complaint from a female MSJC student who said that Defendant Vargas had recently made anti-
28 feminist and misogynistic comments at an Honors Seminar. Plaintiff informed Defendant Vargas

1 that the student had expressed to Plaintiff that she felt insulted and intimidated by Defendant
2 Vargas's comments and demeanor toward women in general and that Defendant Vargas had
3 disrespected a female professor who was present at the Honors seminar. Plaintiff was aware of
4 Defendant Vargas's hostility and animus toward women who advocated for or on behalf of feminist
5 ideals.

6 16. Defendant Vargas began yelling in Plaintiff's face, "Who is she? Who is she? Have
7 her come to me! Have her say that to my face! She can say it to my face!" Because the student had
8 requested that her identity remain confidential, insofar as she feared retaliation from Defendant
9 Vargas and/or others, Plaintiff refused to break the student's confidence and told Defendant Vargas
10 "Not a chance! She's afraid of you! You're a bully! She'll never come talk to you!"

11 17. At this point, the all-faculty meeting was called back into order, and Plaintiff turned
12 away from Defendant Vargas to return to her seat. However, before she could do so, Defendant
13 Vargas violently grabbed and gripped Plaintiff's left arm so tightly that Plaintiff could not move, and
14 he shouted at her, "No, let's talk more about the Honors Seminar." Plaintiff tried to release her arm
15 from Defendant Vargas's grip, but was unsuccessful due to Defendant Vargas's superior physical
16 strength. Plaintiff told Defendant Vargas, clearly and loudly, "TAKE YOUR HANDS OFF ME!"
17 However, instead of releasing or even loosening his tight grip on Plaintiff's left arm, Defendant
18 Vargas intensified his grip causing Plaintiff intense pain, and Defendant Vargas repeated loudly,
19 "No, let's talk about the Honors Seminar." Plaintiff looked Defendant Vargas straight in the eyes
20 and yelled, "LET GO OF MY ARM!!!" loudly enough for most of those present at the all-faculty
21 meeting to hear her. Only, at this point, as Defendant Vargas realized many people were watching
22 him, did he finally loosen his grip slightly enough for Plaintiff to pull away from him by yanking her
23 arm forcefully. Defendant Vargas' tortious conduct was motivated and directed toward Plaintiff as a
24 woman and arose out of a discussion of Defendant Vargas's past history of sex/gender
25 discrimination and sexual harassment.

26 18. After Defendant released Plaintiff's arm, Plaintiff immediately left the building and
27 did not return to the meeting. Due to Defendant's assault, Plaintiff's left arm was visibly bruised,
28 she was in a large amount of pain, was, and continues to be, emotionally distraught, and fears for her

1 safety.

2 19. That same day, Plaintiff informed Defendant Schultz and other MSJC administration
3 officials by email of Defendant Vargas's unwanted physical attack. This email was followed up on
4 April 13, 2015, with a formal complaint (also via email) to Defendant Schultz and other MSJC
5 administration officials ("April 13th Administrative Complaint").

6 20. In fact, Plaintiff's April 13th Administrative Complaint referenced Plaintiff's earlier
7 April 3, 2015, formal complaint to Defendant Schultz about harassment and a hostile work
8 environment Plaintiff was suffering arising from Plaintiff's pro-Israel and pro-Jewish identification
9 and positions ("April 3rd Administrative Complaint") (the April 3rd Administrative Complaint and
10 the April 13th Administrative Complaint are collectively referred to herein as "Administrative
11 Complaints").

12 21. Pursuant to MSJC formal written policies promulgated pursuant to California state
13 law and regulations, on or about April 22, 2015, MSJC employed an outside investigator, Pat
14 McCurry of Pat McCurry and Associates ("Investigator"), purportedly to conduct an impartial fact-
15 finding investigation of Plaintiff's Administrative Complaints ("Investigation").

16 22. On or about May 11, 2015, the Investigator interviewed Plaintiff regarding the facts
17 relevant to her Administrative Complaints.

18 23. On information and belief, at the time of Plaintiff's interview, MSJC was represented
19 by the law firm of Currier & Hudson. Plaintiff and her counsel, The Rose Group law firm, were
20 unaware of Currier & Hudson's representation of MSJC. Currier & Hudson is also counsel of record
21 to Defendant Vargas in this lawsuit.

22 24. After listening to Plaintiff's description of the events surrounding Defendant Vargas's
23 physical assault, the Investigator recommended to Plaintiff that she lodge a criminal complaint
24 against Defendant Vargas with the Riverside County Sheriff's Department, in addition to pursuing
25 the Administrative Complaints.

26 25. The following day, Plaintiff's counsel emailed the Investigator documentation
27 supporting Plaintiff's Administrative Complaints and photos of bruises she incurred as a result of
28 being assaulted by Defendant Vargas.

1 26. On May 14, 2015, Plaintiff filed the original complaint in this matter against
2 Defendant Vargas, alleging damages arising from Defendant Vargas’s tortious conduct of assault,
3 battery, intentional infliction of emotional distress, false imprisonment, and negligence.

4 27. Soon after, Defendant Vargas was served with the summons and complaint in this
5 matter, and he promptly notified Defendant Schultz and MSJC. Unbeknownst to Plaintiff and her
6 counsel at the time, MSJC retained the very attorneys representing MSJC for purposes of the
7 “independent” Investigation, Kendall Swanson and Andrea Naested of Currier & Hudson, to
8 represent Vargas in this matter.

9 28. On May 18, 2015, Plaintiff appeared at the Riverside County Sheriff’s Department
10 for the purpose of filing a criminal complaint for assault against Vargas. The Riverside County
11 Sheriff’s Department informed Plaintiff that they could not accept the complaint because the MSJC
12 Police Department had jurisdiction.

13 29. On May 19, 2015, Plaintiff filed a criminal complaint for assault against Vargas with
14 the MSJC Police Department.

15 30. Several weeks later, Plaintiff’s attorneys finally learned that the attorneys MSJC was
16 paying to represent Vargas—Kendall Swanson, Andrea Naested, and others from the law firm of
17 Currier & Hudson—were in fact representing MSJC with regard to all legal matters concerning the
18 Investigation.

19 31. Beyond this obvious potential for a conflict of interest and corruption of both the
20 appearance and the fact of an independent fact-finding investigation, during the pendency of this
21 lawsuit and the Investigation, Kendall Swanson of Currier & Hudson also represented MSJC with
22 regard to Plaintiff’s request pursuant to California state law for workplace reasonable
23 accommodations. Specifically, Plaintiff provided confidential medical information to MSJC
24 regarding her medical disability arising from the emotional distress she was suffering as a result of
25 Defendant Vargas’s physical assault and the continuing hostile work environment at the MSJC
26 campus.

27 32. In other words, attorney Kendall Swanson and her law firm Currier & Hudson had
28 arranged matters with MSJC such that they were privy to confidential personnel information arising

1 from the Investigation and Plaintiff's confidential medical information relating to her statutory
2 request for a work accommodation, all while representing Plaintiff's adversary, Defendant Vargas,
3 in this litigation.

4 33. It did not take long for the appearance of a conflict of interest to become an actual
5 conflict and for the independence of the Investigation to be undermined and corrupted, effectively to
6 be used to retaliate against Plaintiff for taking her April 13th Administrative Complaint against
7 Defendant Vargas public by filing this lawsuit.

8 34. Specifically, soon after the filing of this lawsuit, Defendant Miyamoto, MSJC's Vice
9 President of Human Resources, instructed the Investigator to suspend the Investigation to allow
10 Defendant Vargas's attorneys at Currier & Hudson time to conduct their own investigation.

11 35. On or about June 26, 2015, Plaintiff's attorneys contacted the Investigator to inquire
12 about the status of the Investigation. The Investigator stated he had conducted just one additional
13 witness interview since Plaintiff's interview on May 11 because Defendant Miyamoto had instructed
14 him to suspend the Investigation due to the recent involvement of the attorneys representing Vargas
15 in this litigation.

16 36. During the pendency of the Investigation, MSJC personnel worked with Defendant
17 Vargas's attorneys at Currier & Hudson to run a shadow investigation by setting up interviews for
18 Defendant Vargas's lawyers with MSJC employee-witnesses, thereby allowing Vargas's attorneys
19 improper access for engaging witnesses critical to the "independent" Investigation.

20 37. Indeed, by the time the Investigator got around to interviewing these witnesses in
21 August of 2015, key elements of witness testimony had changed from earlier contemporaneous
22 written statements about the event in ways that strongly suggest that the witnesses had been coached
23 to describe the physical assault in a way that would exculpate Defendant Vargas.

24 38. The Investigator was fully aware of this improper shadow investigation conducted by
25 Vargas's attorneys and assisted by MSJC personnel, but he said nothing to MSJC by way of
26 admonition or in protest nor did the Investigator or anyone at MSJC inform Plaintiff and her
27 attorneys of this conduct.

28 39. Further, during the Investigation witness interview process, the Investigator made no

1 effort to learn with whom the witnesses had met at Currier & Hudson, what was discussed, or if the
2 witnesses had discussed their testimony with anyone else.

3 40. Most troubling, however, is the fact that Defendant Vargas' attorneys at Currier &
4 Hudson had ongoing communications with the Investigator about the Investigation during the
5 pendency of the Investigation relating to the actual substance of the Investigation. One example of
6 this patently improper conduct occurred on or about June 17, 2015, when the Investigator mailed the
7 verbatim transcript of his interview of Plaintiff to Defendant Vargas's attorney, Kendall Swanson of
8 Currier & Hudson.

9 41. To understand the impropriety of this breach of confidentiality and impartiality, one
10 need only read a letter from attorney Swanson, acting in her conflicted capacity as MSJC's attorney
11 for purposes of the Investigation, wherein she scolds Plaintiff's attorney, Robert Rose of The Rose
12 Group, as follows:

13 The District's Administrative Procedure 3410, Unlawful Discrimination, applicable to
14 the District's investigation of Dr. Nussbaum's complaints, provides that
15 "investigative processes can best be conducted within a confidential climate, and the
16 District does not reveal information about such matters except as necessary to fulfill
17 its legal obligations." AP 3410 also requires that the District "take reasonable steps
18 to ensure the confidentiality of the investigation and to protect the privacy of all
19 parties to the extent possible without impeding the District's ability to investigate and
20 respond effectively to the complaint."

21 The District will advise you once the investigation is completed. Until that time,
22 please refrain from contacting Mr. McCurry. If Mr. McCurry needs additional
23 information from your client he will contact you.

24 42. The corruption of the Investigation and the retaliation against Plaintiff for filing the
25 Administrative Complaints and this lawsuit extended even into the law enforcement process.

26 43. On July 9, 2015, Plaintiff left a voice message for new MSJC Police Chief Brown
27 asking that he inform her of the status of the criminal complaint she filed with MSJC on or about
28 May 19, 2015. Neither MSJC Police Chief Brown, nor anyone else from MSJC, returned Plaintiff's

1 voice message.

2 44. On July 15, 2015, Defendant Miyamoto responded to a July 1, 2015, letter addressed
3 to Defendant Schultz from Plaintiff's attorneys. The July 1 letter sought explanations from MSJC
4 why (1) MSJC instructed the Investigator to suspend the Investigation, (2) the MSJC Police
5 Department had not been investigating Plaintiff's criminal charges against Defendant Vargas for
6 assault, and (3) MSJC is paying Defendant Vargas's legal fees.

7 45. Defendant Miyamoto's July 15th letter misrepresented at least three important facts
8 relating directly to, and demonstrating further the corruption of, the Investigation.

9 46. First, Defendant Miyamoto falsely represented that the "independent investigation . . .
10 has not been suspended," when in fact it had been.

11 47. Second, Defendant Miyamoto falsely claimed that Plaintiff informed the MSJC
12 Police Department as early as May 18, 2015, that she declined to pursue her criminal complaint
13 against Defendant Vargas. Beyond the fact that this is a patently false statement, it begs credulity
14 insofar as Plaintiff had taken the time to go first to the Riverside County Sheriff's Department only
15 to be told that she must go to the MSJC Police Department to lodge her criminal complaint, which
16 she most certainly did do.

17 48. Third, Defendant Miyamoto misrepresented the fact that MSJC had already sought
18 the required extension from the State Chancellor to complete the Investigation after the required 90-
19 day period. Specifically, California law requires that the Investigation be completed within 90 days
20 of the submission of the Administrative Complaints (April 3 and 13, 2015). Further, California law
21 requires that if MSCJ required an extension of time to complete the Investigation, MSJC was
22 required to submit a written extension request to the State Chancellor and to provide Plaintiff a copy
23 of such request and to inform Plaintiff that "she may file written objections with the State Chancellor
24 within 5 days of receipt." California law further requires that any such extension request be
25 submitted to the State Chancellor 10 days in advance of the 90-day deadline. (Ninety days from
26 April 13, 2015, was July 12, 2015.)

27 49. Thus, Defendant Miyamoto attempted in his July 15 letter to give Plaintiff's counsel
28 the impression that he had sought the extension previously ("already sought") and did so in a timely

1 fashion. This was patently false. As of July 15, 2015, Defendant Miyamoto had not even requested
2 an extension. In fact, Defendant Miyamoto only sent a written extension request to the State
3 Chancellor by no earlier than his letter dated July 29, 2015.

4 50. Further, in Defendant Miyamoto's July 15 letter, he asserts that he sought an
5 extension to August 31, 2015. In fact, in his July 29 letter, he sought an extension on behalf of
6 MSJC to October 3, 2015.

7 51. Finally, Defendants Miyamoto and MSJC never provided Plaintiff with a copy of the
8 extension request (obviously because it would have exposed the ruse) and never provided Plaintiff
9 with notice of the right to object.

10 52. On July 16, 2015, Plaintiff left another voice message for MSJC Police Chief Brown
11 asking that he inform her of the status of the criminal complaint she filed with the MSJC Police
12 Department on or about May 19, 2015. No one from MSJC, including MSJC Police Chief Brown,
13 returned Plaintiff's voice message.

14 53. On July 28, 2015, Plaintiff left a voice message and sent an email to MSJC Police
15 Chief Brown, copied to Defendant Schultz and MSJC's Vice President of Student Services Bill
16 Vincent. Once again, Plaintiff asked if the MSJC Police Department was pursuing her criminal
17 complaint against Defendant Vargas. As in the past, no one from MSJC responded.

18 54. On July 31, 2015, MSJC representatives met with Plaintiff to discuss reasonable
19 requests she had made to be assured a safe work environment if she returned to teach on campus
20 during the Fall Semester. MSJC was represented at this meeting by Defendant Miyamoto, Brandon
21 Moore, MSJC's Human Resources Analyst, Jeannine Stokes, and two lawyers from the law firm of
22 Currier & Hudson (Kendall Swanson and Andrea Naested). Plaintiff's counsel requested that the
23 lawyers from the law firm of Currier & Hudson be excused from the meeting due to a conflict of
24 interest given their representation of Defendant Vargas in this litigation. Defendant Miyamoto
25 acknowledged the meeting was private and confidential, yet refused Plaintiff's request that the
26 Currier & Hudson attorneys be excluded from the meeting.

27 55. On August 4, 2015, Plaintiff's attorneys contacted the Investigator to again inquire
28 about status of the Investigation, in light of Defendant Miyamoto's denial that MSJC and he ever

1 suspended the Investigation (*see* ¶¶ 45-46 above). The Investigator stated that MSJC told him to
2 suspend the Investigation because Plaintiff had filed a lawsuit against Defendant Vargas. He also
3 stated that recently MSJC told him to resume the Investigation. The Investigator acknowledged that
4 he still had not interviewed Defendant Vargas, notwithstanding the fact that the Investigator had
5 provided the confidential verbatim transcript of the Investigator’s interview of Plaintiff, and other
6 pertinent information, to Defendant Vargas’s attorneys at Currier & Hudson.

7 56. On September 1, 2015, after Plaintiff’s repeated attempts to ascertain the status of the
8 criminal complaint lodged with the MSJC Police Department, the attorneys from the law firm of
9 Currier & Hudson sent a letter to Plaintiff’s counsel stating:

10 Effective July 31, 2015, the District’s Police Department was disbanded. The District
11 has contracted with Riverside County Sherriff’s Department to provide campus police
12 services. As such, Plaintiff’s complaint was referred to Riverside County Sherriff’s
13 Department for handling. Please direct any inquiries regarding the status of the
14 complaint to Riverside County Sherriff’s Department.

15 57. In this letter, MSJC’s attorney gratuitously repeated the lie that Plaintiff had
16 “declined prosecution” when making her initial criminal complaint to the MSJC Police Department
17 in May.

18 58. At no time prior to September 1, 2015, did MSJC or its MSJC Police Department
19 inform Plaintiff that it no longer had jurisdiction over her criminal complaint against Defendant
20 Vargas or that it transferred all of its police powers to the Riverside County Sheriff’s Department. In
21 fact, MSJC did not inform Plaintiff of the status of the criminal complaint until more than a month
22 after MSJC apparently disbanded its police department, and then only to inform Plaintiff that MSJC
23 no longer had responsibility for Plaintiff’s pending criminal complaint.

24 59. The Investigator completed the Investigation and submitted his report of the
25 Investigation (“Investigation Report”) to MSJC on or about September 23-25, 2015. The
26 Investigation Report is dated September 13, 2015.

27 60. The Investigation Report’s conclusions were biased in favor of Defendant Vargas,
28 and this is a direct and proximate result of the corruption of the Investigation set forth herein.

1 61. Specifically, notwithstanding witness statements corroborating Plaintiff’s April 13th
2 Administrative Complaint that Defendant Vargas did in fact grab or hold Plaintiff’s forearm to
3 prevent her from walking away from Defendant Vargas (*i.e.*, clearly an unwanted and inappropriate
4 touching following an accusatory conversation about Defendant Vargas’s history as someone who
5 demeans and bullies young women), and notwithstanding corroborating statements from witnesses
6 that they heard Plaintiff yell at Defendant Vargas at least once that “You need to let go of my arm,”
7 the Investigator concluded that Defendant Vargas did nothing more than gently touch Plaintiff.

8 62. The Investigation Report does not bother to explain under what circumstances a man,
9 who is not friendly with the woman, in the course of an emotional verbal disagreement,
10 appropriately touches the woman to prevent her from leaving and precisely at the time that the
11 woman is walking away under circumstances that make it clear that she does not wish to remain.

12 63. The Investigation Report ignores entirely California law and MSJC administrative
13 procedures that define and characterize physical harassment as follows:

14 Inappropriate or offensive touching, assault, or physical interference with free
15 movement. This may include, but is not limited to, kissing, patting, lingering or
16 intimate touches, grabbing, pinching, leering, staring, unnecessarily brushing against or
17 blocking another person, whistling or sexual gestures.

18 MSJC Admin. Proc. 3430 (Prohibition of Harassment) (emphasis added).

19 64. Moreover, the Investigation Report ignores entirely California law and MSJC
20 administrative procedures that define and characterize workplace violence as follows:

21 The following actions are considered violent acts:

22 (A) Striking, punching, slapping or assaulting another person.

23 (B) Fighting or challenging another person to fight.

24 (C) Grabbing, pinching or touching another person in an unwanted way whether
25 sexually or otherwise.

26 (D) Engaging in dangerous, threatening or unwanted horseplay.

27 MSJC Admin. Proc. 3510 (Workplace Violence Plan) (emphasis added).

28 65. In a letter dated October 16, 2015, Defendant Miyamoto, on behalf of MSJC,

1 informed Plaintiff that MSJC had rejected Plaintiff's Administrative Complaints, and notably, had
2 adopted in full the Investigation Report's conclusions regarding Defendant Vargas's physical assault
3 of Plaintiff. Specifically, the October 16 letter concludes:

4 With respect to the allegations in your complaints against District employees, after
5 reviewing the investigator's report, along with the attachments and transcribed
6 witness interviews, I concur with the investigator's determination that there is no
7 evidence to corroborate the allegations in your April 3rd and April 13th complaints.
8 Specifically, there is insufficient evidence to support your allegations that you have
9 been discriminated against and/or harassed by any of the accused employees. There
10 is also insufficient evidence to corroborate your allegations that Mr. Vargas assaulted
11 and battered you on April 10, 2015. The witnesses interviewed throughout the course
12 of the investigation did not report violent, threatening, or aggressive conduct on Mr.
13 Vargas' part.

14 66. MSJC's decision to reject Plaintiff's claims against Defendant Vargas are the direct
15 result of a corrupt and biased Investigation determined to retaliate unlawfully against Plaintiff for
16 filing the Administrative Complaints and this lawsuit. Moreover, MSJC's decision is advanced and
17 made possible by a gender bias that artificially and improperly requires "violence, threatening, or
18 aggressive conduct" to constitute unlawful physical harassment even in the face of sufficient
19 evidence to establish probable cause that there was a "touching [of] another person in an unwanted
20 way," an "inappropriate or offensive touching" or "physical interference with free movement."

21 67. The bottom line is that the evidence overwhelmingly established that Plaintiff turned
22 to withdraw from her heated conversation with Defendant Vargas. Plaintiff did not initiate any
23 physical contact nor invite in any conceivable way physical contact from Defendant Vargas. Indeed,
24 by turning to leave, Plaintiff's intent was manifestly just the opposite. Defendant Vargas reached
25 out and grabbed (or, according to some witnesses, held on to) Plaintiff's forearm to prevent her from
26 leaving.

27 68. Upon information and belief, MSJC did not discipline Defendant Vargas for the
28 conduct described herein nor did MSJC impose any corrective measures against any party for the

1 conduct described herein.

2 69. All of the acts of MSJC described hereinabove were carried out by, or done at the
3 instruction or behest of, Defendants Schultz and/or Miyamoto in their individual and/or official
4 capacities. All of the tortious and/or unlawful conduct of Defendant Miyamoto described herein was
5 committed in his individual capacity and/or in his official capacity as Vice President of Human
6 Resources for MSJC. Specifically, but not exclusively, Defendants MSJC, Schultz, and Miyamoto
7 favored Defendant Vargas over Plaintiff and further biased and corrupted the Investigation in favor
8 of Defendant Vargas to Plaintiff's disadvantage because Defendant Vargas was a man and Plaintiff
9 was a woman

10 70. All of the tortious and/or unlawful conduct of Defendant Schultz described herein
11 was committed in his individual capacity and/or in his official capacity as Superintendent/President
12 of MSJC.

13 71. Defendant Schultz knew or should have known of all of the tortious and/or unlawful
14 conduct of Defendant Miyamoto described herein; that such conduct was committed on behalf of
15 and/or at the behest of Defendant Schultz while acting under Defendant Schultz's control as an agent
16 of Defendant Schultz and/or pursuant to an agreement between Defendants Schultz and Miyamoto as
17 co-conspirators, and/or to aid and abet Defendant Schultz and was committed in his individual
18 capacity and/or in his official capacity as Vice President of Human Resources of MSJC.

19 72. On September 30, 2015, Plaintiff submitted her Notice of Claim pursuant to and in
20 compliance with the California Tort Claims Act, California Government Code §§ 900 *et seq.*, setting
21 forth in particularity Plaintiff's claims against MSJC as set forth herein. On November 18, 2015,
22 MSJC rejected Plaintiff's Notice of Claim.

23 73. On January 27, 2016, Plaintiff filed her Complaint of Employment Discrimination
24 before the State of California Department of Fair Employment and Housing pursuant to and in
25 compliance with the California Fair Employment and Housing Act §§ 12900 *et seq.*, setting forth in
26 particularity Plaintiff's claims against MSJC as set forth herein ("MSJC FEH Complaint"). On
27 January 27, 2016, Plaintiff received her right-to-sue notice from the California Department of Fair
28 Employment and Housing for the MSJC FEH Complaint.

1 necessarily, by reason of her injuries, incur additional like expenses for an indefinite period of time
2 in the future, all to Plaintiff's damage in a sum to be shown according to proof.

3 81. Defendant Vargas acted with malice, fraud and/or oppression and in conscious and
4 reckless disregard of Plaintiff's rights with the intent to cause injury and emotional distress to
5 Plaintiff. Defendant Vargas's conduct was outrageous and despicable and warrants the award of
6 punitive damages pursuant to California Civil Code § 3294 in an amount sufficient to punish
7 Defendant Vargas and make an example of him.

8 82. At all times relevant hereto and in all matters described herein, Defendant Vargas was
9 acting within the course and scope of his employment with MSJC and as such MSJC is liable for the
10 damages arising from Defendant Vargas's tortious conduct.

11 **SECOND CAUSE OF ACTION**

12 **BATTERY**

13 **(AS TO DEFENDANTS VARGAS & MSJC)**

14 83. Plaintiff hereby incorporates by reference all allegations set forth hereinabove as if set
15 forth in full herein.

16 84. Defendant Vargas made physical contact with Plaintiff with the intent to harm or
17 offend her. Plaintiff did not consent to the contact. Plaintiff was harmed and offended by Defendant
18 Vargas's offensive contact with her. Defendant intentionally and recklessly did acts which resulted
19 in offensive contact with the Plaintiff's person, including but not limited to: grabbing and tightly
20 holding Plaintiff by the arm causing serious physical and emotional injury.

21 85. As a direct, legal and proximate result of the actions of Defendant Vargas, Plaintiff
22 sustained serious temporary and permanent injuries to her person and will suffer a loss of income
23 and benefits, all to her damage in an amount to be shown according to proof. Plaintiff has also
24 suffered mental anguish, physical distress and humiliation. As a result of Defendant Vargas's
25 wrongful actions, Plaintiff has suffered damages in an amount within the court's general jurisdiction
26 according to proof.

27 86. As a direct, legal and proximate result of the actions of Defendant Vargas, Plaintiff
28 was compelled to and did seek medical and psychiatric services, and did incur related expenses.

1 Plaintiff is informed and believes, and upon such information and belief alleges, that she will
2 necessarily, by reason of her injuries, incur additional like expenses for an indefinite period of time
3 in the future, all to Plaintiff's damage in a sum to be shown according to proof.

4 87. Defendant Vargas acted with malice, fraud and/or oppression and in conscious and
5 reckless disregard of Plaintiff's rights with the intent to cause injury and emotional distress to
6 Plaintiff.

7 88. Defendant Vargas's conduct was outrageous and despicable and warrants the award
8 of punitive damages pursuant to California Civil Code § 3294 in an amount sufficient to punish
9 Defendant Vargas and make an example of him.

10 89. At all times relevant hereto and in all matters described herein, Defendant Vargas was
11 acting within the course and scope of his employment with MSJC and as such MSJC is liable for the
12 damages arising from Defendant Vargas's tortious conduct.

13 **THIRD CAUSE OF ACTION**

14 **FALSE IMPRISONMENT**

15 **(AS TO DEFENDANTS VARGAS & MSJC)**

16 90. Plaintiff hereby incorporates by reference all allegations set forth hereinabove as if set
17 forth in full herein.

18 91. Defendant Vargas did willfully and wrongfully interfere with Plaintiff's freedom of
19 movement and confined her against her will by violently grabbing Plaintiff by the arm and not
20 permitting her to move for an appreciable period of time. At no time did Plaintiff consent to
21 Defendant's actions. Nor did Defendant have a lawful reason to interfere with Plaintiff's freedom of
22 movement.

23 92. As a direct, legal and proximate result of the actions of Defendant Vargas, Plaintiff
24 sustained serious temporary and permanent injuries to her person and will suffer a loss of income
25 and benefits, all to her damage in an amount to be shown according to proof. Plaintiff has also
26 suffered mental anguish, physical distress and humiliation. As a result of Defendant Vargas's
27 wrongful actions, Plaintiff has suffered damages in an amount within the court's general jurisdiction
28 according to proof.

1 according to proof.

2 99. As a direct, legal and proximate result of the actions of Defendant Vargas, Plaintiff
3 was compelled to and did seek medical and psychiatric services, and did incur related expenses.
4 Plaintiff is informed and believes, and upon such information and belief alleges, that she will
5 necessarily, by reason of her injuries, incur additional like expenses for an indefinite period of time
6 in the future, all to Plaintiff's damage in a sum to be shown according to proof.

7 100. Defendant Vargas acted with malice, fraud and/or oppression and in conscious and
8 reckless disregard of Plaintiff's rights with the intent to cause injury and emotional distress to
9 Plaintiff. Defendant Vargas's conduct was outrageous and despicable and warrants the award of
10 punitive damages pursuant to California Civil Code § 3294 in an amount sufficient to punish
11 Defendant Vargas and make an example of him.

12 101. At all times relevant hereto and in all matters described herein, Defendant Vargas was
13 acting within the course and scope of his employment with MSJC and as such MSJC is liable for the
14 damages arising from Defendant Vargas's tortious conduct.

15 **FIFTH CAUSE OF ACTION**

16 **NEGLIGENCE**

17 **(AS TO DEFENDANTS VARGAS & MSJC)**

18 102. Plaintiff hereby incorporates by reference all allegations set forth hereinabove as if set
19 forth in full herein.

20 103. Defendant Vargas negligently, carelessly, recklessly and wantonly caused injury to
21 Plaintiff in that among other things: Defendant Vargas grabbed Plaintiff by the arm causing serious
22 injury to her person and emotional distress.

23 104. As a direct, legal and proximate result of the actions of Defendant Vargas, Plaintiff
24 sustained serious temporary and permanent injuries to her person and will suffer a loss of income
25 and benefits, all to her damage in an amount to be shown according to proof. Plaintiff has also
26 suffered mental anguish, physical distress and humiliation. As a result of Defendant Vargas's
27 wrongful actions, Plaintiff has suffered damages in an amount within the court's general jurisdiction
28 according to proof.

1 111. The acts and conduct of Defendants MSJC, Schultz, and Miyamoto described herein
2 constitute discrimination based on sex and/or gender in violation of the statutes, regulations, and
3 administrative procedures referenced hereinabove. Specifically, but not exclusively, Defendants
4 MSJC, Schultz, and Miyamoto favored Defendant Vargas over Plaintiff and further biased and
5 corrupted the Investigation in favor of Defendant Vargas to Plaintiff's disadvantage because
6 Defendant Vargas was a man and Plaintiff was a woman.

7 112. Further, Defendants MSJC, Schultz, and Miyamoto's actions as described herein
8 evidence a failure to prevent Defendant Vargas' discriminatory conduct, and their actions in
9 corrupting the Investigation and biasing its results in favor of Defendant Vargas serve to encourage
10 such conduct now and in the future in violation of the aforementioned statutes, regulations, and
11 administrative procedures.

12 113. As a direct, legal and proximate result of the actions of Defendants described herein,
13 Plaintiff was compelled to and did seek medical and psychiatric services, and did incur related
14 expenses. Plaintiff is informed and believes, and upon such information and belief alleges, that she
15 will necessarily, by reason of her injuries, incur additional like expenses for an indefinite period of
16 time in the future, all to Plaintiff's damage in a sum to be shown according to proof.

17 114. Defendants Vargas, Schultz, and Miyamoto acted with malice, fraud and/or
18 oppression and in conscious and reckless disregard of Plaintiff's rights with the intent to cause injury
19 and emotional distress to Plaintiff. These Defendants' conduct was outrageous and despicable and
20 warrants the award of punitive damages pursuant to California Civil Code § 3294 in an amount
21 sufficient to punish and make an example of them.

22 115. At all times relevant hereto and in all matters described herein, Defendants Vargas,
23 Schultz, and Miyamoto were acting within the course and scope of their employment with MSJC and
24 as such MSJC is liable for the damages arising from their wrongful conduct.

25 **EIGHTH CAUSE OF ACTION**

26 **SEXUAL HARASSMENT**

27 **(AS TO ALL DEFENDANTS)**

28 116. Plaintiff hereby incorporates by reference all allegations set forth hereinabove as if set

1 forth in full herein.

2 117. At all times herein mentioned, California’s Fair Employment and Housing Act
3 (“FEHA”), California Government Code § 12940 *et seq.*, was in full force and effect and fully
4 binding upon Defendants. Plaintiff was, and remains, a member of a group protected by the statute,
5 in particular § 12940(a), prohibiting sexual harassment in employment.

6 118. At all times herein mentioned, California Education Code §87100(b), Title 5,
7 California Code of Regulations (“5 CCR”) §§ 59300 and 59320, California Government Code §
8 815.6, and MSJC’s Administrative Procedures prohibiting sexual harassment were in full force and
9 effect and binding upon Defendants. Plaintiff was, and remains, a member of a group protected by
10 these statutes, regulations, and administrative procedures, prohibiting sexual harassment in
11 employment.

12 119. Defendant Vargas’s conduct described herein constitutes sexual harassment in
13 violation of the statutes, regulations, and administrative procedures referenced hereinabove.
14 Specifically, but not exclusively, Defendant Vargas’s tortious conduct was directed toward Plaintiff
15 as a woman and arose out of a discussion of Defendant Vargas’s past history of sex/gender
16 discrimination and harassment.

17 120. The acts and conduct of Defendants MSJC, Schultz, and Miyamoto described herein
18 constitute sexual harassment in violation of the statutes, regulations, and administrative procedures
19 referenced hereinabove. Specifically, but not exclusively, Defendants MSJC, Schultz, and
20 Miyamoto favored Defendant Vargas over Plaintiff and further biased and corrupted the
21 Investigation in favor of Defendant Vargas to Plaintiff’s disadvantage because Defendant Vargas
22 was a man and Plaintiff was a woman.

23 121. Further, Defendants MSJC, Schultz, and Miyamoto’s actions as described herein
24 evidence a failure to prevent Defendant Vargas’ unlawful conduct, and their actions in corrupting the
25 Investigation and biasing its results in favor of Defendant Vargas serve to encourage such conduct
26 now and in the future in violation of the aforementioned statutes, regulations, and administrative
27 procedures, and in particular California Government Code § 12940(k).

28 122. As a direct, legal and proximate result of the actions of Defendants described herein,

1 Plaintiff was compelled to and did seek medical and psychiatric services, and did incur related
2 expenses. Plaintiff is informed and believes, and upon such information and belief alleges, that she
3 will necessarily, by reason of her injuries, incur additional like expenses for an indefinite period of
4 time in the future, all to Plaintiff's damage in a sum to be shown according to proof.

5 123. Defendants Vargas, Schultz, and Miyamoto acted with malice, fraud and/or
6 oppression and in conscious and reckless disregard of Plaintiff's rights with the intent to cause injury
7 and emotional distress to Plaintiff. These Defendants' conduct was outrageous and despicable and
8 warrants the award of punitive damages pursuant to California Civil Code § 3294 in an amount
9 sufficient to punish and make an example of them.

10 124. At all times relevant hereto and in all matters described herein, Defendants Vargas,
11 Schultz, and Miyamoto were acting within the course and scope of their employment with MSJC and
12 as such MSJC is liable for the damages arising from their wrongful conduct.

13 **NINTH CAUSE OF ACTION**

14 **RETALIATION**

15 **(AS TO DEFENDANTS MSJC, SCHULTZ, AND MIYAMOTO)**

16 125. Plaintiff hereby incorporates by reference all allegations set forth hereinabove as if set
17 forth in full herein.

18 126. At all times herein mentioned, California's Fair Employment and Housing Act
19 ("FEHA"), California Government Code § 12940 *et seq.*, was in full force and effect and fully
20 binding upon Defendants. Plaintiff was, and remains, a member of a group protected by the statute,
21 in particular § 12940(h), prohibiting retaliation.

22 127. At all times herein mentioned, California's Labor Code § 6310 was in full force and
23 effect and fully binding upon Defendants. Plaintiff was, and remains, a member of a group protected
24 by the statutes prohibiting retaliation.

25 128. At all times herein mentioned, California Education Code §87100(b), Title 5,
26 California Code of Regulations ("5 CCR") §§ 59300 and 59320, California Government Code §
27 815.6, and MSJC's Administrative Procedures prohibiting retaliation were in full force and effect
28 and binding upon Defendants. Plaintiff was, and remains, a member of a group protected by these

1 statutes, regulations, and administrative procedures, prohibiting retaliation.

2 129. The acts and conduct of Defendants MSJC, Schultz, and Miyamoto described herein
3 constitute retaliation in violation of the statutes, regulations, and administrative procedures
4 referenced hereinabove. Specifically, but not exclusively, Defendants MSJC, Schultz, and
5 Miyamoto favored Defendant Vargas over Plaintiff and further biased and corrupted the
6 Investigation in favor of Defendant Vargas to Plaintiff's disadvantage because Plaintiff sought
7 enforce her rights to be free from assault, age/gender discrimination, and sexual harassment and to
8 otherwise engage in protected behavior.

9 130. As a direct, legal and proximate result of the actions of Defendants described herein,
10 Plaintiff was compelled to and did seek medical and psychiatric services, and did incur related
11 expenses. Plaintiff is informed and believes, and upon such information and belief alleges, that she
12 will necessarily, by reason of her injuries, incur additional like expenses for an indefinite period of
13 time in the future, all to Plaintiff's damage in a sum to be shown according to proof.

14 131. Defendants Schultz, and Miyamoto acted with malice, fraud and/or oppression and in
15 conscious and reckless disregard of Plaintiff's rights with the intent to cause injury and emotional
16 distress to Plaintiff. These Defendants' conduct was outrageous and despicable and warrants the
17 award of punitive damages pursuant to California Civil Code § 3294 in an amount sufficient to
18 punish and make an example of them.

19 132. At all times relevant hereto and in all matters described herein, Defendants Schultz
20 and Miyamoto were acting within the course and scope of their employment with MSJC and as such
21 MSJC is liable for the damages arising from their wrongful conduct.

22 **TENTH CAUSE OF ACTION**

23 **BREACH OF FIDUCIARY DUTY**

24 **(AS TO DEFENDANTS MSJC, SCHULTZ, AND MIYAMOTO)**

25 133. Plaintiff hereby incorporates by reference all allegations set forth hereinabove as if set
26 forth in full herein.

27 134. MSJC's Administrative Procedures serve as an agreement between MSJC and
28 Plaintiff regarding the procedures required of a complainant on the one hand, and on the other hand,

1 of MSJC as the investigatory and enforcement body for the matters set forth therein.

2 135. At all times herein mentioned, MSJC's Administrative Procedures expressly required
3 Plaintiff as the complainant to repose her trust in MSJC to conduct an impartial, unbiased, and
4 confidential Investigation into the Administrative Complaints.

5 136. At all times herein mentioned, MSJC's Administrative Procedures expressly required
6 MSJC to conduct the Investigation confidentially and knowing that Plaintiff was expressly required
7 to repose her trust in the integrity of MSJC's Investigation.

8 137. MSJC entered into its relationship and conducted the Investigation knowing the
9 fiduciary-level duties it owed to Plaintiff in the context of the Investigation.

10 138. The acts and conduct of Defendants MSJC, Schultz, and Miyamoto described herein
11 constitute a breach of the fiduciary duties MSJC owed to Plaintiff.

12 139. As a direct, legal and proximate result of the actions of Defendants described herein,
13 Plaintiff was compelled to and did seek medical and psychiatric services, and did incur related
14 expenses. Plaintiff is informed and believes, and upon such information and belief alleges, that she
15 will necessarily, by reason of her injuries, incur additional like expenses for an indefinite period of
16 time in the future, all to Plaintiff's damage in a sum to be shown according to proof.

17 140. Defendants Schultz, and Miyamoto acted with malice, fraud and/or oppression and in
18 conscious and reckless disregard of Plaintiff's rights with the intent to cause injury and emotional
19 distress to Plaintiff. These Defendants' conduct was outrageous and despicable and warrants the
20 award of punitive damages pursuant to California Civil Code § 3294 in an amount sufficient to
21 punish and make an example of them.

22 141. At all times relevant hereto and in all matters described herein, Defendants Schultz
23 and Miyamoto were acting within the course and scope of their employment with MSJC and as such
24 MSJC is liable for the damages arising from their wrongful conduct.

25 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 26 (1) For general, compensatory, and special damages in an amount subject to proof at
27 trial;
- 28 (2) For sums incurred and to be incurred for medical and mental health professional

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- services;
- (3) For punitive and exemplary damages in the amount of \$7,000,000;
 - (4) For interest provided by law including, but not limited to, California Civil Code § 3291;
 - (5) For costs of suit herein incurred;
 - (6) For attorneys' fees pursuant to statute; and
 - (7) For such other and further relief as the court may deem just and proper.

Dated: March 30, 2016



David Yerushalmi, Esq.
American Freedom Law Center
Attorneys for Plaintiff DENISE DALAIMO NUSSBAUM