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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF MERCED**

16 FERNANDO ECHEVERRIA, an individual,  
17 Plaintiff,  
18 v.  
19 MERCED CITY SCHOOL DISTRICT, a  
public entity; ROBERT WAYNE  
20 PLUMSKEY, an individual; and DOES 3-20,  
21 Defendants.

Case No. 22CV-03057

**FIRST AMENDED COMPLAINT FOR  
DAMAGES for:**

- 1) Negligence
- 2) Negligent Hiring, Supervision, and Retention
- 3) Sexual Battery
- 4) Sexual Harassment

*[Filed Pursuant to Code of Civil Procedure  
Section 340.1, as Amended by Assembly  
Bill 218]*

**[Jury Trial Demanded]**

1 Plaintiff Fernando Echeverria brings this action against Defendants MERCED CITY  
2 SCHOOL DISTRICT (“MCSD”), ROBERT WAYNE PLUMSKEY (“Plumskey”), and DOES 3–  
3 20 (together, “Defendants”), and based on information and belief alleges as follows:

#### 4 **INTRODUCTION**

5 1. Plaintiff Fernando Echevarria has overcome many substantial obstacles to become  
6 an upstanding member and leader of his community. One of those obstacles came early in life,  
7 when he was subjected to childhood sexual assault at the hands of a school teacher. Plaintiff now  
8 brings this lawsuit pursuant to Assembly Bill 218, through which the California Legislature  
9 recognized that it often can take years and sometimes decades for survivors of childhood sexual  
10 assault to be able to come forward, not merely to seek justice for himself but also to bring the  
11 issue of childhood sexual assault to light, to encourage responsible adults to prevent and protect  
12 against it, and to be a courageous example for other survivors of childhood sexual assault to be  
13 able to come forward.

14 2. Between 1970 and 1977, MCSD failed to keep its students safe from a sexual  
15 predator. MCSD allowed Plumskey, an 8<sup>th</sup> grade teacher at Herbert C. Hoover Middle School  
16 (“Hoover Middle School”), to orchestrate group masturbation sessions with middle school boys  
17 and to further sexually assault multiple boys individually. Plumskey’s abhorrent misconduct  
18 occurred in his classroom, during school hours, and with no supervision or monitoring from any  
19 MCSD staff.

20 3. MCSD knew, or should have known, that Plumskey was engaged in the grooming  
21 and assault of underaged boys for his own sexual gratification. With the approval and supervision  
22 of MCSD’s Vice-Principal, Plumskey assembled all-male classrooms (the only teacher allowed to  
23 do so at the otherwise co-educational school) and decorated his classroom to attract the interests of  
24 young boys. Plumskey draped his walls with suggestive imagery, surrounded his desk with  
25 lounge couches and plush rugs, and played sexually suggestive music to groups of adolescent  
26 boys.

27 4. Despite clear red flags of Plumskey’s conduct, MCSD did not take action to  
28 investigate or otherwise protect these children from Plumskey’s abuse, which regularly occurred

during the lunch period of Plaintiff's 8<sup>th</sup> grade year. MCSD never (1) investigated Plumskey's behavior; (2) prevented Plumskey's interaction and involvement with minors until a satisfactory investigation could be completed; and (3) complied with its most basic duty to ensure the safety of his students, and (4) reported suspected child abuse to the appropriate authorities.

5. By allowing Plumskey's misconduct to remain unchecked, and by affirmatively creating the environment that provided Plumskey unfettered access to young children, MCSD sanctioned, promoted, and emboldened Plumskey's authority, ratified his conduct, and allowed him to gain further access to other minors boys, solely for the satisfaction of Plumskey's own prurient sexual desires. Plaintiff was unfortunately one of those boys.

**PARTIES**

6. Plaintiff Fernando Echeverria is an adult male residing within Merced County. At all times relevant to this Complaint, Plaintiff was residing in Merced County, California. Plaintiff was born on October 27, 1962, and brings this Complaint pursuant to California Code of Civil Procedure section 340.1, as amended by Assembly Bill 218, for the childhood sexual assault he suffered at the hands of Defendants. Pursuant to California Government Code section 905(m) as amended by Assembly Bill 218, Plaintiff is specifically exempt from the claims presentation requirement for his claims against MCSD.

7. MCSD was and is a public entity having its principal place of business in Merced County, California. MCSD purposely conducts substantial educational business activities in the State of California and was the primary entity owning, operating, and controlling Hoover Middle School, and the activities, behavior, and conduct of its employee, servant, and/or agent Plumskey.

8. On information and belief, Plumskey currently resides in Elk County, Pennsylvania. At all times mentioned herein, Plumskey was employed by MCSD as an 8<sup>th</sup> grade homeroom/core teacher at Hoover Middle School.

9. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants DOES 3–20, inclusive, are unknown to Plaintiff. Accordingly, Plaintiff sues DOES 3–20 by such fictitious names pursuant to section 474 of the California Code of Civil Procedure. Plaintiff will seek leave to amend this Complaint to allege

1 their true names and capacities when they are ascertained. Plaintiff is informed and believes and  
2 thereon alleges that DOES 3–20 are legally responsible in some manner for the events,  
3 happenings, and/or tortious and unlawful conduct that caused the injuries and damages alleged in  
4 this Complaint.

5 10. On information and belief, at all times material hereto, Defendants were the agents,  
6 representatives, servants, employees, partners, and/or joint venturers of each and every other  
7 Defendant and were acting within the course and scope of said alternative capacity, identity,  
8 agency, representation and/or employment and were within the scope of their authority, whether  
9 actual or apparent. Each of the Defendants are responsible in some manner for one or more of the  
10 events and happenings described herein. Each Defendant approved and/or ratified the conduct of  
11 each other Defendant. Consequently, each Defendant is jointly and severally liable to Plaintiff for  
12 the damages sustained as a proximate result of his, her, or its conduct. Each of the Defendants  
13 proximately caused the injuries and damages alleged.

14 11. Whenever reference is made to “Defendants” in this Complaint, such allegation  
15 shall be deemed to mean the acts of Defendants acting individually, jointly, and/or severally.

16 **GENERAL FACTUAL ALLEGATIONS**

17 **A. *Background on Hoover Middle School.***

18 12. In the early-1970’s, Hoover Middle School was one of four public middle schools  
19 within MCSD providing education for South Merced youth. During all relevant periods herein,  
20 South Merced was a largely Hispanic community that faced many socio-economic struggles.

21 13. MCSD provided and oversaw the curriculum of Hoover Middle School, required  
22 all students to be placed in a district-sponsored academic schedule, including mandatory lunch  
23 breaks. Youth assigned to Hoover Middle School by MCSD were assigned a homeroom/core  
24 teacher with whom they would spend the first four academic periods, learning core subject matter  
25 as determined by MCSD. MCSD had complete control and authority to modify, alter, and  
26 suspend any assignments or curriculum unfit with MCSD’s educational goals, including the safety  
27 of its students.

1           14.       MCSD employed an administration team at Hoover Middle School that included  
2 Principal Don Shalvey and Vice-Principal Waters who coordinated, managed, and oversaw all  
3 instructional activity at Hoover Middle School including in-class activities, lunch time activities,  
4 and policies and procedures relating to the safety of its students. At all relevant times, MCSD  
5 staffed Hoover Middle School with a variety of custodians, teachers, counselors, and  
6 administrative staff whose primary responsibilities necessarily included the safety of the students  
7 in their custody.

8           **B.       *MCSD Hires Plumskey and Allows Numerous Red Flags to Go Unheeded.***

9           15.       In the early 1970s, MCSD hired Plumskey as a homeroom/core teacher at Hoover  
10 Middle School. On information and belief, Plumskey was able to assemble all-male 8<sup>th</sup> grade  
11 classes to teach, with the assistance if not encouragement of Vice-Principal Waters. On  
12 information and belief, this all-male class arrangement was neither a school nor district  
13 requirement, protocol, standard or directive, and should have immediately raised red flags for  
14 MCSD's staff calling for further inquiry, investigation, supervision, or monitoring.

15          16.       Unlike other teachers at MCSD, Plumskey designed and assembled his classroom  
16 to attract young boys in an attempt to make them feel comfortable in every way possible. MCSD  
17 allowed Plumskey to set up couches around his desk, lay rugs and mats on the floor, cover the  
18 windowed portion of the doors, allowed his students to eat snacks and drink soda in class  
19 throughout the core period, and placed provocative, non-educational posters throughout the  
20 classroom. MCSD even allowed Plumskey to install a sound system in his classroom to play  
21 sexually suggestive popular music.

22          17.       Upon information and belief, shortly prior to the 1976-1977 academic school year,  
23 Plumskey's all-boy classes prompted concerns among parents and others. In response, on  
24 information and belief, rather than investigate Plumskey's conduct or propensity for predation,  
25 Vice-Principal Waters and Plumskey simply arranged for Plumskey's 1976 8<sup>th</sup> grade classroom to  
26 be co-educational. Plaintiff was one of the boys abused in Plumskey's first co-educational class.

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1           **C.       *Plumskey Grooms and Sexually Abuses Plaintiff and Several Young Boys.***

2           18.       Plaintiff started attending Hoover Middle School in the Fall of 1974 when he was  
3 10 years old. In 1976, when Fernando was 12 years old, MCSD assigned Plumskey to be his core  
4 teacher for his 8<sup>th</sup> grade year.

5           19.       During Hoover Middle School's lunch period, students would generally disperse to  
6 the cafeteria area, and staff would congregate in the teachers' break room. For Plaintiff and a few  
7 unfortunate boys, they would instead assemble with Plumskey in his classroom at his invitation.  
8 What would happen in that classroom was horrific.

9           20.       While the young boys would sit on the couches and surround Plumskey's desk,  
10 Plumskey would show these students pornographic material displaying graphic sexual relations of  
11 all kinds. Plumskey would distribute the pornographic material to Plaintiff and the other boys,  
12 make highly sexualized comments, and encourage them to be vocal about their sexual desires and  
13 reactions to the images. Plumskey then used his power and influence to coerce the group of boys  
14 to engage in group self-gratification. This abhorrent activity caused Plaintiff to suffer from shame,  
15 embarrassment, confusion, and anger.

16           21.       Plumskey also sexually abused Plaintiff and other minor boys in other ways in one-  
17 on-one incidents of sexual assault.

18           22.       All this occurred regularly from Fall 1976 to Spring 1977, without any agent of  
19 MCSD ever monitoring, supervising, or checking in on these underaged boys, or questioning why  
20 they weren't at the cafeteria with the rest of the school, or investigating open rumors that  
21 Plumskey was distributing pornography to students. The systemic abuse perpetrated on multiple  
22 boys speaks volumes in terms of MCSD's negligence and reckless disregard for minors' safety.

23           23.       These abusive events at such a young developmental age caused Plaintiff  
24 significant pain and suffering throughout his adolescent and early-adult life.

25           24.       Plaintiff was unable to give free and/or voluntary consent to the sexual acts  
26 perpetrated against him by Plumskey, as he was a minor at the time of the assaults alleged herein.  
27 In addition to his being underaged, Plumskey held a position of authority over Plaintiff as his  
28 teacher, educator, and mentor.

1           25.     In early-1977, one of the other student victims, MINOR 1, who was believed to  
2 have received oral copulation from Plumskey, courageously reported Plumskey's misconduct to  
3 authorities. On June 6, 1977, Plumskey was convicted of Penal Code section 647a in the Merced  
4 Justice Court. On October 28, 1977, the Commission for Teacher Preparation and Licensing  
5 revoked Plumskey's credentials following his conviction. Upon information and belief, the school  
6 took no further action to investigate Plumskey's abuse, question potential victims, or much less to  
7 console the victims. MCSD simply pretended as if nothing happened, covering up the true scale  
8 of Plumskey's abuse and MCSD's culpability.

9           ***D.     MCSD Knew or Should Have Known that Plumskey Sexually Assaulted Minors.***

10          26.     Prior to and while Plumskey was sexually assaulting Plaintiff, Defendants knew or  
11 should have known, or were otherwise on notice, that Plumskey violated his role as a teacher and  
12 was misusing his position of authority and trust to gain access to minors, including Plaintiff. (See  
13 *M.W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 520, 523–25  
14 [holding that the correct standard of care is inquiry notice].)

15          27.     MCSD knew or should have known that Plumskey was engaging in or planning to  
16 engage in inappropriate conduct with his students. MCSD not only knew of Plumskey's abuse  
17 and grooming of young boys, but they facilitated it. MCSD arranged for Plumskey to have all-boy  
18 classrooms and allowed him to decorate the stage for his impending sexual misconduct. Despite  
19 apparently actually receiving notice of the red flags prior to 1977, MCSD took no substantial steps  
20 to inquire or otherwise protect Plumskey's students. MCSD (1) did not investigate why or how  
21 Plumskey maintained all-boy classrooms at a co-educational school; (2) did not limit Plumskey's  
22 interaction and involvement with minors until a satisfactory investigation could be completed; and  
23 (3) did not report suspected inappropriate behavior to any appropriate authorities. Instead, MCSD  
24 continued to employ Plumskey until he was arrested by local authorities in 1977. By allowing  
25 Plumskey's misconduct to remain unchecked, MCSD sanctioned, promoted, and emboldened  
26 Plumskey's conduct, with no regard for the safety of the Hoover Middle School students.

27          28.     As discussed herein, MCSD ignored clear "red flags" that Plumskey was engaging in  
28 inappropriate behavior, including the grooming and sexual abuse of minors. Between 1970 and

1 1977, Plumskey continuously showed favoritism to minor boys and invited them into his classroom  
2 during the lunch hour and at times after school. There, he flirted with them and otherwise sexually  
3 abused them. On information and belief, many of the boys, including Plaintiff, came from lower  
4 socio-economic backgrounds, making them prime targets for Plumskey to spoil with luxuries, gain  
5 their trust and reliance, and exploit their innocence. Plumskey also openly took advantage of  
6 opportunities that he was granted as a teacher to seclude students, either in confined areas, such as  
7 classrooms with closed and/or locked doors, or on off-campus activities with the knowledge and  
8 approval of MCSD.

9 29. Despite this knowledge, MCSD continued to employ Plumskey and failed to report  
10 any suspicions of his misconduct to law enforcement officials or the California Commission on  
11 Teacher Credentialing until he was arrested in or about April of 1977.

12 30. On information and belief, Defendants failed to take reasonable steps or implement  
13 reasonable safeguards to avoid acts of childhood sexual assault, including by failing to enact  
14 adequate policies and procedures or failing to ensure their policies and procedures were followed.  
15 As an example, MCSD failed to enact and/or enforce any policy that prevented its teachers, such as  
16 Plumskey, from being alone in a classroom with students.

17 ***E. MCSD is Responsible for Failing to Protect its Students.***

18 31. At all relevant times, Plumskey was an adult male employed by MCSD as a  
19 teacher at Hoover Middle School. In such capacity, Plumskey was under the direct supervision,  
20 employ, agency, and control of MCSD and DOES 3-20. Therefore, MCSD had a special  
21 relationship with Plumskey, and thus a duty to warn and protect Plaintiff from harm by them.  
22 Similarly, Plumskey's duties and responsibilities with MCSD included, in part, providing for the  
23 supervision, counseling, advisory, educational, and emotional needs and well-being of the  
24 students of Hoover Middle School.

25 32. Plaintiff is informed and believes, and thereon alleges, that at all times relevant  
26 herein, MCSD owned, operated, maintained, controlled, and staffed Hoover Middle School.  
27 MCSD promoted Hoover Middle School as a safe place where students could obtain a quality and  
28 safe education.



1           33. Plaintiff is informed and believes, and thereon alleges, that in employing Plumskey  
2 as a teacher at Hoover Middle School, Defendants gave him full power, control, and authority to  
3 provide teaching, mentoring, and/or counseling services to MCSD's students. By continuing to  
4 employ him, MCSD held Plumskey out to be a professional and safe teacher at Hoover Middle  
5 School.

6           34. As an employee, and with the endorsement of MCSD, Plumskey stood in a  
7 position of power, respect, confidence, trust, and authority among Plaintiff and numerous other  
8 minor students. Defendants lodged with Plumskey the color of authority, through which they  
9 were able to influence, direct, and assault Plaintiff, and to act illegally, unreasonably, and without  
10 respect for the person and safety of Plaintiff and other students.

11           35. At all times relevant hereto, Defendant MCSD was responsible for the supervision  
12 of its employees' and agents' activities, including those of Plumskey, and assumed responsibility  
13 for the well-being of the minors in its care, including Plaintiff.

14           36. Additionally, as a minor child under the custody, care, and control of Defendants,  
15 Defendants stood *in loco parentis* with respect to Plaintiff while he attended class, other  
16 educational and extracurricular activities, and other school-related functions at Hoover Middle  
17 School. As the responsible party and/or employer controlling Plumskey, MCSD also was in a  
18 special relationship with Plaintiff and owed special duties to her.

19           37. Prior to and during the sexual molestation and assault of Plaintiff, MCSD knew or  
20 should have known, or was otherwise on notice, that Plumskey violated his role as a teacher and  
21 used his position of authority and trust acting on behalf of MCSD to gain access to young  
22 children, including Plaintiff, which he used to inappropriately touch, molest, abuse, and assault  
23 Plaintiff.

24           38. Defendant MCSD is liable both directly and as a result of vicarious liability for the  
25 failure of its administrative staff to reasonably supervise its employees. (See *C.A. v. Williams S.*  
26 *Hart Union High School Dist.* (2012) 53 Cal.4th 861).

27           39. It simply cannot be disputed under California law that a special relationship and  
28 heightened duty extended to Plaintiff in these circumstances. "A special relationship is formed

1 between a school district and its students resulting in the imposition of an affirmative duty on the  
2 school district to take all reasonable steps to protect its students.” (See *M.W. v. Panama Buena*  
3 *Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 517).

4 40. Pursuant to the inquiry notice standards applicable to this situation, “[i]t is not  
5 necessary to prove that the very injury which occurred must have been foreseeable by the school  
6 authorities in order to establish that their failure to provide additional safeguards constituted  
7 negligence. Their negligence is established if a reasonably prudent person would foresee that  
8 injuries of the same general type would be likely to happen in the absence of such safeguards.”  
9 (*J.H. v. Los Angeles Unified School Dist.* (2010) 183 Cal. App.4th 123, 146). Furthermore, it is  
10 well-settled that “[f]oreseeability is determined in light of all the circumstances and does not  
11 require prior identical events or injuries.” (*M.W., supra*, 110 Cal.App.4th at 519).

12 41. The act of grooming, in and of itself, is a crime under California law. It is also  
13 foreseeable to MCSD that Plumskey’s grooming behavior could lead to sexual assault if  
14 unchecked. This is particularly true in light of the specific grooming that took place in this case.

15 42. Defendant MCSD had inquiry notice of the risks presented by Plumskey, as  
16 alleged herein, and MCSD had a special relationship with Plaintiff that required it to warn and  
17 protect Plaintiff from the abuse by Plumskey.

18 43. Defendants had a duty to disclose these facts to Plaintiff, his parents, and others,  
19 but negligently and/or intentionally suppressed, concealed, or failed to disclose this information  
20 for the express purpose of maintaining Plumskey’s respective image as an ethical, wholesome,  
21 safe, and trusted teacher at MCSD. The duty to disclose this information arose from the special,  
22 trusting, confidential, fiduciary, and *in loco parentis* relationship between Defendants and  
23 Plaintiff.

24 44. As a direct and proximate result of Plaintiff’s sexual assault by Plumskey, which was  
25 enabled and facilitated by Defendants, Plaintiff has suffered injury, all to his general, special, and  
26 consequential damage in an amount to be proven at trial, but in no event less than the minimum  
27 jurisdictional amount of this Court.

1           45.       MCSD's liability arises from its employees' and agents' actions taken within the  
2 course and scope of their employment subsequent to Plumskey's grooming and/or assaults of  
3 Plaintiff. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879.)

4           46.       Defendants knew or should have known of Plumskey's propensity and disposition to  
5 engage in sexual misconduct with minors before and during the period where he sexually assaulted  
6 Plaintiff, and Defendants knew of the probability that he would harass and abuse minors with whom  
7 he came into contact, such as Plaintiff. On information and belief, if MSCD took any reasonable  
8 efforts to investigate his all-boy classrooms, or his conduct in running his classroom and lunch time  
9 sessions, several minor boys could have been saved from Plumskey's deviant desires.

10          47.       As a student at Hoover Middle School and MCSD, where Plumskey was employed  
11 and worked, Plaintiff was under MCSD's supervision, care, and control, which created a special or  
12 fiduciary relationship. It was through this position of trust and confidence that Plumskey exploited  
13 Plaintiff in perpetuating his sexual assault and battery upon him.

14          48.       On information and belief, Defendants' failure to take appropriate action against  
15 Plumskey to protect its students and the public at-large resulted in Plumskey's ability to continue to  
16 enjoy access to minors at Hoover Middle School.

17          49.       As a direct and proximate result of Plaintiff's sexual assault by Plumskey, which was  
18 enabled and facilitated by Defendants, Plaintiff has suffered injury, all to Plaintiff's general, special,  
19 and consequential damage in an amount to be proven at trial, but in no event less than the minimum  
20 jurisdictional amount of this Court.

21          50.       The sexual acts perpetrated upon Plaintiff by Plumskey constitute childhood sexual  
22 assault as defined by California *Code of Civil Procedure* section 340.1, as modified by Assembly  
23 Bill 218, and were a violation of the California *Penal Code*, including, but not limited to, *Penal*  
24 *Code* sections 287, 288.3, 288.4, 289, and 647.6. Plaintiff is informed and believes and thereon  
25 alleges that all of the sexually abusive and harassing conduct alleged herein was done to satisfy  
26 Plumskey's respective prurient sexual desires.

27       ///

28       ///

1           51.     Due to MCSD's failure to uphold and fulfill its duties, Plumskey went on to groom,  
2 sexually assault, and ultimately ruin the lives of numerous minor underage children, including  
3 Plaintiff.

4                                   **FIRST CAUSE OF ACTION**

5                                   **NEGLIGENCE**

6                                   **(Against Defendants MCSD and DOES 3-20)**

7           52.     Plaintiff repeats, re-alleges, and incorporates herein by reference all consistent  
8 paragraphs of this Complaint as if fully set forth herein.

9           53.     Pursuant to California Government Code section 815.2, MCSD is liable for injuries  
10 proximately caused by the acts or omissions of its employees, agents, servants and/or joint  
11 venturers, where such acts or omissions were within the course and scope of employment.

12           54.     Defendants' employees' conduct, actions, and omissions served to create an  
13 environment in which Plumskey was afforded continuous secluded access to Plaintiff. Plaintiff  
14 was sexually abused, molested, and assaulted by Plumskey at just the age of 12 years old.

15           55.     Compulsory education laws create a special relationship between students and  
16 Defendants, and students have a constitutional guarantee to a safe, secure, and peaceful school  
17 environment. Defendants failed to acknowledge unsafe conditions and red flags in that sexual  
18 predator's behavior, and therefore failed to guarantee safe surroundings in an environment in  
19 which Plaintiff were not free to leave. Even more egregious, Defendants failed to have concrete  
20 rules and/or failed to enforce those rules regarding staff relationships with students designed to  
21 protect minor students from sexual abuse.

22           56.     As is set forth herein, Defendants failed to uphold numerous mandatory duties  
23 imposed upon them by state and federal law, and by written policies and procedures applicable to  
24 Defendants, including, but not limited to, the following: (1) duty to use reasonable care to protect  
25 students from known or foreseeable dangers; (2) duty to protect students and staff and provide  
26 adequate supervision; (3) duty to supervise faculty and students and enforce rules and regulations  
27 prescribed for schools, exercise reasonable control over students as is reasonably necessary to  
28 maintain order, protect property, or protect the health and safety of faculty and students or to

1 maintain proper and appropriate conditions conducive to learning; (4) duty to act promptly and  
2 diligently and not ignore or minimize problems; (5) duty to refrain from violating Plaintiff's right  
3 to protection from bodily restraint or harm; and (6) mandatory duty to report known or suspected  
4 incidents of sexual misconduct and abuse in accordance with Penal Code section 11166.

5         57. Defendants had a duty to protect students, including Plaintiff, who were entrusted  
6 to Defendants' care. Defendants owed Plaintiff, a minor at the time, a special duty of care, in  
7 addition to a duty of ordinary care, and owed Plaintiff the higher duty of care that adults dealing  
8 with minors owe to protect them from harm. Defendants were required, but failed, to provide  
9 adequate supervision and failed to be properly vigilant in ensuring that such supervision was  
10 sufficient to ensure the safety of Plaintiff and others minors exposed to Plumskey by MCSD.

11         58. MCSD was required but failed to exercise careful supervision of the moral  
12 conditions in their school. MCSD had a duty to and failed to adequately train and supervise all  
13 counselors, advisors, teachers, mentors and staff to create a positive and safe educational and  
14 athletic environment, including training to perceive, report and stop inappropriate conduct by other  
15 members of the staff, specifically including Plumskey, with minors.

16         59. By virtue of his unique authority and position as a homeroom/core teacher for  
17 Hoover Middle School, Plumskey was able to identify vulnerable victims, such as Plaintiff, upon  
18 whom he could perform sexual assault; to manipulate his authority to procure compliance with his  
19 sexual demands from the victims; and to induce the victims to continue to allow the assaults.  
20 Through his position, Plumskey had unique access to, and held a position of authority among,  
21 boys who were attending MCSD.

22         60. Defendants, by and through their agents, servants, and employees, knew or  
23 reasonably should have known of Plumskey's sexually abusive and exploitative propensities  
24 and/or that Plumskey was an unfit agent during his employment. It was foreseeable that if  
25 Defendants did not adequately exercise or provide the duty of care owed to minors in their care,  
26 including but not limited to Plaintiff, the minors entrusted to Defendants' care would be  
27 vulnerable to sexual assault by Plumskey.

61. Defendants breached their duty of care to Plaintiff and other students by allowing Plumskey to come into contact with them as minors without supervision; by failing to properly investigate Plumskey; by actively shielding Plumskey from responsibility for his sexual assaults of Plaintiff and other minors; by failing to inform or concealing from Plaintiff's parents, guardians, and/or law enforcement officials that Plumskey was or may have been sexually abusing minors; and by holding out Plumskey to the Merced community at large as being a person of stature and integrity.

62. As a direct and proximate result of Defendants' multiple and continuous breaches, Plaintiff has suffered and continues to suffer pain and suffering, relationship and intimacy issues, and emotional distress.

## SECOND CAUSE OF ACTION

## **NEGLIGENT HIRING/SUPERVISION/RETENTION**

**(Against Defendants MCSD and DOES 3–20)**

63. Plaintiff repeats, re-alleges, and incorporates herein by reference all consistent paragraphs of this Complaint as if fully set forth herein.

64. Pursuant to California Government Code section 815.2, MCSD is liable for injuries proximately caused by the acts or omissions of its employees, agents, servants and/or joint venturers, where such acts or omissions were within the course and scope of employment.

65. As an educational institution entrusted with the care of minors, where all students are entrusted to the teachers, counselors, coaches, advisors, mentors, faculty members, and administrators, MCSD expressly and implicitly represented that these individuals, including Plumskey, were not a sexual threat to minors and others who would fall under Plumskey's influence, control, direction, and guidance.

66. It cannot be disputed that MCSD had a duty to reasonably hire teachers and staff who were sufficiently qualified to undertake the mission, responsibilities, and duties of the profession established by all local, State, and Federal regulations. Upon belief, MCSD failed to conduct any reasonable investigation or inquiry into Plumskey's background, prior employment, and other reasonable methods to ensure the qualifications of Plumskey as a custodian of children.

1 On information and belief, Defendants failed to take reasonable steps or implement reasonable  
2 safeguards to establish guidelines, protocols, and minimum standards for employment at MCSD  
3 for the safekeeping of the South Merced children.

4 67. It is well-settled that a school district, such as MCSD, has a duty to supervise its  
5 students and employees. Supervision requires more than simply the presence of staff or  
6 administration on campus. It requires the knowledge and care as an institution as to the types of  
7 foreseeable harm that a student may encounter, and protecting against those harms by establishing,  
8 implementing, and enforcing adequate policies and procedures. Supervision requires adequate  
9 training, adequate staffing, and adequate involvement by staff and administration. (*J.H. v. Merced*  
10 *City School District* (2010) 183 Cal.App.4th 123, 134, 140–41.) MCSD met none of the  
11 requirements.

12 68. Defendants failed to provide such supervision to Plaintiff by allowing Plumskey to  
13 be alone with minor students in his classroom in closed doors with covered windows in violation  
14 of its own policies and/or the applicable standard of care. Defendants failed to take reasonable  
15 measures to prevent the grooming and sexual abuse of its students, including Plaintiff.

16 69. On information and belief, Defendants failed to take reasonable steps or implement  
17 reasonable safeguards to reasonably investigate, supervise and monitor teachers, or otherwise  
18 avoid acts of childhood sexual assault, including by failing to enact adequate policies and  
19 procedures or failing to ensure their policies and procedures were followed. Even if such  
20 procedures existed on paper, Defendants did not implement any system or procedure to oversee or  
21 monitor conduct towards minors, students, and/or others in its care during the time period alleged  
22 herein.

23 70. After being hired by Defendants, Plumskey openly and obviously groomed and  
24 assaulted multiple students, including Plaintiff. It thus appears that school leadership, staff, and  
25 employees otherwise were not able to recognize the signs of sexual abuse by Plumskey due to  
26 inappropriate training or lack thereof.

1           71.     On information and belief, had the school leadership and staff been trained to  
2 recognize red flags associated with grooming and abuse, they could have undertaken to cease,  
3 report, and stop Plumskey's misconduct before Plaintiff was sexually assaulted.

4           72.     While Plaintiff was being sexually abused by Plumskey, Defendants knew or  
5 should have known of the ongoing grooming and abuse of Plaintiff and other minor boys, but due  
6 to their lack of training, failed to recognize those signs. Defendants were aware or should have  
7 been aware of Plaintiff's significant vulnerability to sexual harassment, molestation and assault by  
8 Plumskey due to the socioeconomic status of the communities served by MCSD's schools and the  
9 involvement of MCSD's staff in the community.

10          73.     Defendants owed Plaintiff a duty to provide reasonable supervision of both Plaintiff  
11 and Plumskey, to use reasonable care in investigating Plumskey, and to provide adequate warning  
12 to Plaintiff and their families, and to families of other minors who were entrusted to Plumskey, of  
13 Plumskey's sexually abusive and exploitative propensities and unfitness.

14          74.     Defendants owed Plaintiff a duty not to retain Plumskey given his actions, which  
15 Defendants knew or should have known had they engaged in a meaningful and adequate  
16 investigation of his background and/or of allegations of sexual assault of Plaintiff and other  
17 students at Hoover Middle School.

18          75.     Defendants, by and through their agents, servants, and employees, knew or should  
19 have known of Plumskey's sexually abusive and exploitative propensities and/or that Plumskey  
20 was an unfit agent. Despite such knowledge, Defendants negligently failed to supervise Plumskey  
21 in his role as Plaintiff's core/homeroom teacher, in which position he was able to commit the  
22 wrongful acts against Plaintiff. Defendants failed to provide reasonable supervision of Plumskey,  
23 failed to use reasonable care in investigating Plumskey, and failed to provide adequate warning to  
24 Plaintiff and their families regarding Plumskey's sexually abusive propensities and unfitness.  
25 Defendants further failed to take reasonable measures to prevent future sexual assault despite clear  
26 warning that such sexual assaults were taking place.

27          76.     Defendants failed to properly evaluate Plumskey's conduct and performance as an  
28 employee of, or provider of services to Defendants, and failed to exercise the due diligence



1 incumbent upon employers to investigate employee misconduct, or to take appropriate disciplinary  
2 action. Defendants negligently continued to retain Plumskey as an 8<sup>th</sup> grade homeroom/core  
3 teacher, working or providing services for Defendants, which enabled him to continue engaging in  
4 the sexually abusive behavior described herein.

5 77. Defendants should have known that Plumskey engaged in dangerous and  
6 inappropriate conduct, and it was reasonably foreseeable that Plumskey was engaging in, or would  
7 engage in, illicit sexual activities with Plaintiff.

8 78. Defendants breached their duties to Plaintiff by, *inter alia*, failing to adequately  
9 monitor and supervise Plumskey and failing to stop Plumskey from committing wrongful sexual  
10 acts with minors, including Plaintiff, and continued to retain Plumskey despite clear warnings that  
11 sexual assaults of minors were occurring.

12 79. As a direct and proximate result of Defendants' multiple and continuous breaches,  
13 Plaintiff has suffered and continue to suffer pain and suffering, relationship and intimacy issues,  
14 and emotional distress.

15 **THIRD CAUSE OF ACTION**

16 **SEXUAL BATTERY**

17 **(Against Defendant Plumskey)**

18 80. Plaintiff repeats, re-alleges, and incorporates herein by reference all consistent  
19 paragraphs of this Complaint as if fully set forth herein.

20 81. During Plaintiff's time as a minor student at Hoover Middle School, Plumskey  
21 intentionally, recklessly, and wantonly made sexual advances, solicitations, and requests for  
22 sexual compliance based on Plaintiff's gender that was pervasive, and severe. The sexual  
23 harassment and assault included, but was not limited to, massaging, manipulating, kissing, and  
24 fondling Plaintiff's entire body. These incidents of sexual assault occurred while Plaintiff was  
25 under the control of MCSD and their agents acting in their capacity as teachers, counselors,  
26 mentors, advisors, coaches, and administrators on behalf of Defendants.

27 82. Plumskey did the aforementioned acts with the intent to cause harmful or offensive  
28 contact with an intimate part of Plaintiff's person and would offend a reasonable sense of personal

1 dignity. Further, said acts did cause a harmful or offensive contact with an intimate part of  
2 Plaintiff's person that would offend a reasonable sense of personal dignity. Plumskey knew or  
3 had reason to know that he was committing these acts against Plaintiff.

4 83. Because of Plumskey's position of authority over Plaintiff, Plaintiff's mental and  
5 emotional state, and Plaintiff's status as a minor, Plaintiff was unable to give meaningful consent  
6 to such acts.

7 84. As a result of the conduct described herein, Plaintiff has suffered and continues to  
8 suffer pain and suffering, relationship and intimacy issues, and emotional distress.

9 85. In subjecting Plaintiff to the wrongful treatment alleged herein, Plumskey acted  
10 willfully and maliciously with the intent to harm Plaintiff and in conscious disregard for Plaintiff's  
11 rights so as to constitute malice and oppression under Civil Code section 3294. Plaintiff is  
12 therefore entitled to the recovery of punitive damages in a sum to be shown according to proof at  
13 trial against Plumskey.

#### 14 **FOURTH CAUSE OF ACTION**

#### 15 **SEXUAL HARASSMENT**

#### 16 **(Against Defendants Plumskey and MCSD)**

17 86. Plaintiff repeats, re-alleges, and incorporates herein by reference all consistent  
18 paragraphs of this Complaint as if fully set forth herein.

19 87. Pursuant to California Government Code section 815.2, MCSD is liable for injuries  
20 proximately caused by the acts or omissions of its employees, agents, servants and/or joint  
21 venturers, where such acts or omissions were within the course and scope of employment.

22 88. During Plaintiff's time as a minor student at Hoover Middle School, Plumskey  
23 intentionally, recklessly, and wantonly made sexual advances, solicitations, requests, and demands  
24 for sexual compliance of a hostile nature based on Plaintiff's gender that were unwelcome,  
25 pervasive, and severe. The sexual harassment and assault included, but was not limited to,  
26 massaging, manipulating, kissing, and fondling Plaintiff's entire body, including Plaintiff's  
27 genitals. These incidents of sexual assault occurred while Plaintiff was under the control of  
28

1 MCSD and their agents acting in their capacity as teachers, counselors, and administrators on  
2 behalf of Defendants.

3 89. Because of Plaintiff's relationship with Defendants and Plaintiff's age of minority,  
4 Plaintiff was unable to terminate the relationship he had with Defendants.

5 90. Because of Plumskey's age and position of authority, Plaintiff's mental and  
6 emotional state, and Plaintiff's age of minority, Plaintiff was unable to give meaningful consent to  
7 his acts.

8 91. Even though Defendants and their employees knew or should have known of these  
9 activities by Plumskey, Defendants did nothing to investigate, report, supervise, or monitor  
10 Plumskey to ensure the safety of minors.

11 92. On information and belief, Defendants ratified and authorized Plumskey's sexual  
12 harassment, battery, and assault of Plaintiff by (1) allowing Plumskey to come into contact with  
13 Plaintiff as a minor without supervision, (2) failing to inform or concealing from Plaintiff's  
14 parents, guardians, or law enforcement officials that Plumskey was or may have been sexually  
15 abusing minors, (3) by holding out Plumskey to the MCSD community at large as being in good  
16 standing and trustworthy as a person of stature and integrity, (5) failing to take steps to timely  
17 remove Plumskey from Defendants' employ so as to prevent him from using his authority  
18 bestowed upon him by Defendants to gain access to minors and sexually harass and assault them,  
19 and (6) actively shielding Plumskey from responsibility and accountability for his sexual  
20 harassment and assault of Plaintiff and other minors.

21 93. Though not authorized to do so, Plumskey used his authority, power, and position  
22 as an educator of MCSD to carry out the sexual assaults of Plaintiff, and others, on behalf of  
23 MCSD. On information and belief, MCSD learned of Plumskey's unauthorized conduct through  
24 the reports and complaints by parents of allowing Plumskey to maintain all-boy classrooms and  
25 congregate. Despite the reports to MCSD's administration of information that objectively should  
26 have raised suspicion of Plumskey's potential grooming and abuse of male students, MCSD's  
27 administration took no action to investigate or punish Plumskey, including failing to discipline  
28 him, remove him from the classroom, or limit or supervise his interactions with minor boys.

1 Instead, MCSD continued to retain him as a teacher. By allowing Plumskey's misconduct to  
2 remain unchecked, MCSD sanctioned, promoted, and encouraged Plumskey's conduct of  
3 grooming young male students to position himself to assault these minor students with no regard  
4 for their safety or humanity.

5 94. Defendants' conduct (and the conduct of their agents) was a breach of their duties  
6 to Plaintiff.

7 95. As a direct and proximate result of Defendants' sexual harassment, Plaintiff have  
8 suffered and continue to suffer pain and suffering, relationship and intimacy issues, and emotional  
9 distress.

10 96. In subjecting Plaintiff to the wrongful treatment alleged herein, Plumskey acted  
11 willfully and maliciously with the intent to harm Plaintiff and in conscious disregard for Plaintiff's  
12 rights so as to constitute malice and oppression under Civil Code section 3294. Plaintiff is  
13 therefore entitled to the recovery of punitive damages in a sum to be shown according to proof at  
14 trial against Plumskey.

15 97. Plaintiff also seeks appropriate statutory penalties and attorney's fees pursuant to  
16 section 52 of the Civil Code.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for the following relief against Defendants:

- 3 1. For past, present, and future general damages in an amount to be determined at  
4 trial;
- 5 2. For past, present, and future special damages, in an amount to be determined at  
6 trial;
- 7 3. Any appropriate statutory damages;
- 8 4. For costs of suit;
- 9 5. For interest as allowed by law;
- 10 6. For any appropriate punitive or exemplary damages as to Plumskey only;
- 11 7. For attorney's fees pursuant to Code of Civil Procedure section 1021.5 and Civil  
12 Code section 51.9(b), or otherwise as allowable by law; and
- 13 8. For such other and further relief as the Court may deem proper.
- 14

15 DATED: September 30, 2022

GREENBERG GROSS LLP

16  
17 By: 

18 Brian L. Williams  
19 Daniel S. Cha  
Emily R. Mayers  
Brian P. Suba

20 JEFF ANDERSON & ASSOCIATES  
21 Michael Reck  
Hagerey Mengistu

22 *Attorneys for Plaintiff*

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DATED: September 30, 2022

By: Daniel C

JEFF ANDERSON & ASSOCIATES  
Michael Reck  
Hagerey Mengistu

DEMAND FOR JURY TRIAL