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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**
10

11 JANE BHJ DOE, an individual;

12 Plaintiff,

13 v.

14 BERKELEY UNIFIED SCHOOL DISTRICT,
a California local public entity; MATTHEW
15 BISSEL, an individual; and DOES 1 to 100,
inclusive.

16 Defendants.
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**ENDORSED
FILED
ALAMEDA COUNTY**

NOV 04 2021

CLERK OF THE SUPERIOR COURT
By *[Signature]*
JAMIE THOMAS, Deputy

Case No.: 21CV001771

Judge:

Dept.:

COMPLAINT FOR DAMAGES FOR:

1. NEGLIGENCE;
2. NEGLIGENT SUPERVISION;
3. NEGLIGENT HIRING/RETENTION;
4. NEGLIGENT FAILURE TO WARN,
TRAIN OR EDUCATE;
5. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
6. SEXUAL HARASSMENT (C.C. § 51.9);
7. SEXUAL ABUSE AND HARASSMENT
IN THE EDUCATIONAL
ENVIRONMENT (EDUCATION
CODE § 220);
8. BREACH OF FIDUCIARY DUTY;
9. CONSTRUCTIVE FRAUD (C.C. §
1573);
10. ASSAULT
11. SEXUAL BATTERY (C.C. § 1708.5);
12. GENDER VIOLENCE (C.C. § 52.4)

[DEMAND FOR JURY TRIAL]

[Filed pursuant to AB 218[C.C.P. §340.1]]

1 7. The Plaintiff's claims all arise out of sexual abuse and sexual assault claims that occurred
2 during the time periods of approximately 1997-1998. In 2019, the California State legislature
3 enacted Assembly Bill No. 281, which was signed by the Governor on October 13, 2019. This
4 law, as enacted, went into effect on January 1, 2020. Among other things, this law amended
5 statutory code sections Code of Civil Procedure section 340.1; Code of Civil Procedure section
6 1002 and Government Code section 905.

7 8. The amendments, among other things, extended the statute of limitations for childhood
8 sexual assault, inclusive of claims against persons or entities who owed duties of care to Plaintiff,
9 premised upon wrongful or negligent acts by those persons or entities.

10 9. As amended, Code of Civil Procedure section 340.1(q), further provides: Notwithstanding
11 any other provision of law, any claim for damages described in paragraphs (1) through (3),
12 inclusive, of subdivision (a) that has not been litigated to finality and that would otherwise be
13 barred as of January 1, 2020, because the applicable statute of limitations, claim presentation
14 deadline, or any other time limit had expired, is revived, and these claims may be commenced
15 within three years of January 1, 2020. A plaintiff shall have the later of the three-year time period
16 under this subdivision or the time period under subdivision (a) as amended by the act that added
17 this subdivision.

18 10. As amended, Government Code section 905(m), exempts out any requirement that a
19 Plaintiff asserting a claim for the recovery of damages suffered as a result of childhood sexual
20 assault make a government tort claim prior to filing litigation.

21 11. Pursuant to Assembly Bill No. 218, and changes to Code of Civil Procedure section 340.1;
22 Code of Civil Procedure section 1002 and Government Code section 905, Plaintiff may now bring
23 forward her legitimate claims.

24 12. The law with respect to Government Code section 905(m) changed rendering any board
25 policy that would bar the instant claims as not operative, due to nonconformance with the law, and
26 the failure to conduct any changes to these requirements to conform with the law.

27 13. Defendant BUSD, at all times mentioned herein was and is, a business entity of form
28 unknown, having its principal place of business in the County of Alameda, State of California.

1 The BERKELEY UNIFIED SCHOOL DISTRICT purposely conducts substantial educational
2 business activities in the State of California, and was the primary entity owning, operating and
3 controlling Berkeley High School, employing BISSELL and responsible for monitoring and
4 controlling his activities and behavior.

5 14. Berkeley High School (hereinafter “Berkeley High School”) is a public educational
6 institution in the BERKELEY UNIFIED SCHOOL DISTRICT, operating as a public High School
7 for students approximately 13 years of age through approximately 18 years of age.

8 15. Defendant BISSELL at all times mentioned herein was and is an adult male individual,
9 who Plaintiff is informed and believes, and on that basis alleges, currently resides in the County of
10 Contra Costa, in the State of California. During the period of time in which the childhood sexual
11 harassment and abuse of Plaintiff, alleged herein, took place, BISSELL was a teacher, mentor, and
12 advisor at Berkeley High School; employed by both the BERKELEY UNIFIED SCHOOL
13 DISTRICT and Berkeley High School. At all times herein alleged, BISSELL was an employee,
14 agent, and/or servant of the BERKELEY UNIFIED SCHOOL DISTRICT, Berkeley High School,
15 and was under their complete control and/or active supervision.

16 16. Defendants DOES 1 through 100, inclusive, and each of them, are sued herein under said
17 fictitious names. Plaintiff is ignorant as to the true names and capacities of DOE Defendants,
18 whether individual, corporate, associate, or otherwise, and therefore sue said Defendants by such
19 fictitious names. When their true names and capacities are ascertained, Plaintiff will request leave
20 of Court to amend this Complaint to state their true names and capacities herein.

21 17. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned
22 herein, each Defendant was responsible in some manner or capacity for the occurrences herein
23 alleged, and that Plaintiff’s damages, as herein alleged, were proximately caused by all said
24 Defendants. Defendants BERKELEY UNIFIED SCHOOL DISTRICT, BISSELL and DOES 1-
25 100 are sometimes collectively referred to herein as “Defendants” and/or as “All Defendants”;
26 such collective reference refers to all specifically named Defendants.

27 18. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned
28 herein, there existed a unity of interest and ownership among Defendants and each of them, such

1 that any individuality and separateness between Defendants, and each of them, ceased to exist.
2 Defendants and each of them, were the successors-in-interest and/or alter egos of the other
3 Defendants, and each of them, in that they purchased, controlled, dominated and operated each
4 other without any separate identity, observation of formalities, or other manner of division. To
5 continue maintaining the facade of a separate and individual existence between and among
6 Defendants, and each of them, would serve to perpetrate a fraud and an injustice.

7 19. At all times mentioned herein, BISSELL was an adult teacher, mentor, advisor and
8 employee of the BERKELEY UNIFIED SCHOOL DISTRICT, Berkeley High School, among
9 other schools, acting as an employee, agent, and/or servant of such and/or was under their
10 complete control and/or supervision, as well as the complete control of the Board, Superintendent
11 and Assistant Superintendents of BERKELEY UNIFIED SCHOOL DISTRICT. BISSELL was
12 employed as a teacher at the BERKELEY UNIFIED SCHOOL DISTRICT and/or Berkeley High
13 School. BISSELL was hired by the BERKELEY UNIFIED SCHOOL DISTRICT, Berkeley High
14 School to serve as a teacher, mentor, and advisor to high school students. In so doing, the
15 BERKELEY UNIFIED SCHOOL DISTRICT held BISSELL out to the public, Plaintiff and
16 Plaintiff's family to be of high ethical and moral repute, and to be in good standing with the
17 BERKELEY UNIFIED SCHOOL DISTRICT, the State of California, and the public in general.
18 In this capacity, BISSELL taught, mentored, and advised students regarding personal issues,
19 academics, future employment prospects, and general emotional and psychological issues. The
20 BERKELEY UNIFIED SCHOOL DISTRICT held BISSELL out to the public, Plaintiff and
21 Plaintiff's parents to be a highly-qualified teacher, mentor, and advisor who could and would
22 assist Plaintiff with working through personal and academic issues they faced. Inherent in this
23 representation was the understanding that BISSELL was a person of high ethical and moral
24 standing, selected to provide leadership, guidance, mentoring, and advising to students, including
25 Plaintiff. Plaintiff and her family reasonably assumed that BISSELL was a person worthy of their
26 trust.

27 20. Upon information and belief, BISSELL was at some time investigated by BERKELEY
28 UNIFIED SCHOOL DISTRICT, during the course of the abuse for sexual misconduct, however,

1 BERKELEY UNIFIED SCHOOL DISTRICT undertook no controls or methods to prevent
2 BISSELL from accessing Plaintiff both on and off campus during and following this investigation,
3 and he continued to use his position within BERKELEY UNIFIED SCHOOL DISTRICT to abuse
4 Plaintiff. Upon information and belief, BERKELEY UNIFIED SCHOOL DISTRICT undertook
5 no actions to prevent BISSELL from teaching, being around students, assaulting and abusing
6 minors, including this Plaintiff.

7 21. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned
8 herein, Defendants and each of them, were the agents, representatives and/or employees of each
9 and every other Defendant. In doing the things hereinafter alleged, Defendants and each of them,
10 were acting within the course and scope of said alternative personality, capacity, identity, agency,
11 representation and/or employment and were within the scope of their authority, whether actual or
12 apparent.

13 22. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned
14 herein, Defendants and each of them, were the trustees, partners, servants, joint venturers,
15 shareholders, contractors, and/or employees of each and every other Defendant, and the acts and
16 omissions herein alleged were done by them, acting individually, through such capacity and within
17 the scope of their authority, and with the permission and consent of each and every other
18 Defendant and that said conduct was thereafter ratified by each and every other Defendant, and
19 that each of them is jointly and severally liable to Plaintiff.

20 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

21 **I. PRIOR NOTICE THAT BISSELL PRESENTED A RISK OF SEXUAL**
22 **PROPENSITIES BY BERKELEY UNIFIED SCHOOL DISTRICT**

23 23. Plaintiff, upon information and belief, allege that prior to the date of his arrest,
24 BERKELEY UNIFIED SCHOOL DISTRICT knew or had reason to know of BISSELL's sexual
25 misconduct with minors at schools within BERKELEY UNIFIED SCHOOL DISTRICT,
26 including with the Plaintiff.

27 24. During BISSELL's term of employment at BERKELEY UNIFIED SCHOOL DISTRICT,
28 BISSELL did and would frequently engage female minors in grooming behavior indicative of an

1 intent to commit sexual contact.

2 25. This behavior included positioning himself behind Plaintiff during class time, pressing his
3 genitals against her back, to ensure that he could be close to Plaintiff during class time.

4 26. Upon information and belief, it is alleged that BISSELL was a teacher located and placed
5 at Berkeley High School by BERKELEY UNIFIED SCHOOL DISTRICT during the approximate
6 time period from 1997 to 2021. BISSELL further taught and/or mentored at Berkeley High
7 School during the same approximate time frame.

8 27. At all relevant times, Plaintiff was a student within BERKELEY UNIFIED SCHOOL
9 DISTRICT.

10 28. During all relevant times, BISSELL would exhibit behavior that was indicative of
11 grooming of Plaintiff in open and obvious manners, capable of being viewed by staff and
12 administrators of BERKELEY UNIFIED SCHOOL DISTRICT, including, but not limited to:

- 13 a. Placing himself directly behind female students, including Plaintiff, in order to grope the
14 students;
- 15 b. Pressing his genitals against female students during class time;
- 16 c. Focusing on female students in particular, and including Plaintiff;
- 17 d. Communicating one on one with minors;
- 18 e. Touching Plaintiff openly in the middle of class time sessions, by rubbing her back;
- 19 f. Hugging and touching students inappropriately, including Plaintiff, in open and obvious
20 locations on campus.

21 29. Upon information and belief, these behaviors were in violation of BERKELEY UNIFIED
22 SCHOOL DISTRICT policy, but Administration failed to cease such actions.

23 30. Upon information and belief, BERKELEY UNIFIED SCHOOL DISTRICT, knew or
24 should have known of the sexual propensities exhibited by BISSELL towards minors based on the
25 correspondence. Recognizing such risks to students, BERKELEY UNIFIED SCHOOL
26 DISTRICT, including its Administrators, concealed the crimes of BISSELL.

27 31. Upon information and belief, staff and administrators of BERKELEY UNIFIED SCHOOL
28 DISTRICT expressed concern that BISSELL presented a risk to students and should not be

1 transferred or allowed to continue to be present around minors.

2 32. Such efforts by BERKELEY UNIFIED SCHOOL DISTRICT were meant to conceal and
3 cover for BISSELL's abuse of minor students, as a concerted effort to hide the existence of abuse.

4 33. Upon information and belief, despite the clear knowledge that BISSELL was a risk and
5 acting sexually inappropriate with minor females, BERKELEY UNIFIED SCHOOL DISTRICT,
6 Berkeley High School and the Administration of same, failed to:

7 a. Mandatorily report BISSELL to law enforcement and/or child protective services despite
8 the existence of "reasonable suspicion";

9 b. Remove BISSELL from the school environment;

10 c. Recognize the existence of grooming behavior by BISSELL that was a predicate to his
11 ultimate sexual assault and sexual abuse of minor Plaintiff.

12 34. Despite the recognition that BISSELL's behavior discussing sexual acts and sexual
13 touching and other behavior with minor students during the course of their investigation,
14 BERKELEY UNIFIED SCHOOL DISTRICT undertook no corrective measures and allowed
15 BISSELL to remain in the school classroom and school environment, including by moving him to
16 another school in order to hide his prior misdeeds.

17 35. Upon information and belief, Berkeley High School was permitted to proliferate as a
18 sexual abuse breeding ground for teachers and staff of BERKELEY UNIFIED SCHOOL
19 DISTRICT, including BISSELL.

20 **II. FACTUAL ALLEGATIONS RELATIVE TO BERKELEY UNIFIED SCHOOL**
21 **DISTRICT RELATIVE TO SEXUAL ASSAULTS AND FAILURES TO REPORT**

22 36. Upon information and belief, BERKELEY UNIFIED SCHOOL DISTRICT, has a history
23 of failing to protect students from sexual misconduct of its staff members, teachers and
24 employees.

25 37. BERKELEY UNIFIED SCHOOL DISTRICT, upon information and belief, has had
26 multiple sexual perpetrators amongst its school staff, including teachers, coaches and classified
27 personnel.

28 38. Upon information and belief, Berkeley High School had prior perpetrators placing the
Administration on notice of the risk of abusive teachers, coaches and other staff.

1 39. The correlations between the BISSELL and other allegations against other staff members
2 of BERKELEY UNIFIED SCHOOL DISTRICT are stark and alarming, and show that the
3 BERKELEY UNIFIED SCHOOL DISTRICT continues its pattern and practice of protection of
4 predators over students. BISSELL evidences that the BERKELEY UNIFIED SCHOOL
5 DISTRICT has historically failed to protect the lives of its students going back more than twenty
6 years, and yet has on an ongoing basis continually failed in the protection of those minors with
7 whom they are entrusted.

8 40. Upon information and belief, BERKELEY UNIFIED SCHOOL DISTRICT failed to,
9 among other things:

- 10 a. Recognize the abuse that BISSELL was undertaking against students;
- 11 b. Report the abuse that BISSELL was undertaking against students in their roles as
12 mandatory reporters;
- 13 c. Failed to monitor BISSELL;
- 14 d. Disrupted an investigation of BISSELL;
- 15 e. Actively dissuaded victims from airing their abuse;
- 16 f. Destroyed evidence relative to abuse;
- 17 g. Moved BISSELL to other schools following accusations in a concerted effort to cover for
18 his abuse.

19 41. BERKELEY UNIFIED SCHOOL DISTRICT did nothing to change the environment in
20 which it operated from 1997 to the present. Rather, the Administration has simply reinforced the
21 practices that existed then and continue to exist today, creating a present and ongoing risk to those
22 who attend schools within BERKELEY UNIFIED SCHOOL DISTRICT.

23 **III. FACTUAL ALLEGATIONS RELATIVE TO BISSELL AND PLAINTIFF**

24 42. At all times material hereto, Plaintiff was a student within the BERKELEY UNIFIED
25 SCHOOL DISTRICT, and was a student in BISSELL's classroom in 10th grade, and was under
26 their complete control and supervision.

27 43. At all times material hereto, BISSELL was employed by Berkeley High School and the
28 BERKELEY UNIFIED SCHOOL DISTRICT as a teacher, mentor, coach, and advisor and/or

1 retained the power and control entrusted to him by the BERKELEY UNIFIED SCHOOL
2 DISTRICT. In such capacities, BISSELL was under the direct supervision, employ, agency, and
3 control of the BERKELEY UNIFIED SCHOOL DISTRICT, and DOES 1-100. His employment
4 duties and responsibilities with the named Defendants included, in part, providing for the
5 mentoring, advisory, educational, and emotional needs and well-being of students of BERKELEY
6 UNIFIED SCHOOL DISTRICT and other children, including Plaintiff.

7 44. BERKELEY UNIFIED SCHOOL DISTRICT operated as a nothing more than a grooming
8 opportunity for BISSELL's sexual desires with young girls, like Plaintiff and other individuals.

9 45. Through his positions with the BERKELEY UNIFIED SCHOOL DISTRICT, BISSELL
10 was put into direct contact with Plaintiff, a student within BERKELEY UNIFIED SCHOOL
11 DISTRICT and at Berkeley High School. BISSELL was assigned to teach, mentor, and advise
12 Plaintiff. It is under these circumstances that Plaintiff came to be under the direction and control
13 of BISSELL, who used his position of authority and trust over Plaintiff to sexually attack, abuse
14 and harass her.

15 46. BISSELL did sexually harass, molest, attack and abuse Plaintiff, who was a minor at the
16 time. Such conduct was done for BISSELL's sexual gratification, and which was performed on
17 Plaintiff without her free consent, as Plaintiff was a mere minor and thus unable to give valid,
18 legal consent to such sexual acts. These actions upon Plaintiff constituted conduct that is believed
19 to be in violation of California Penal Code §§ 261.5(c), 288a(b)(1), 288.2(a)(2), 647.6(a)(1), and
20 potentially other provisions.

21 47. As student within the BERKELEY UNIFIED SCHOOL DISTRICT, where BISSELL was
22 employed and worked, Plaintiff was under BISSELL's direct supervision, care and control, thus
23 creating a special relationship, fiduciary relationship, and/or special care relationship with
24 Defendants, and each of them. Additionally, as a minor child under the custody, care and control
25 of Defendants, Defendants stood in *loco parentis* with respect to Plaintiff while she was attending
26 school and school-related functions at the BERKELEY UNIFIED SCHOOL DISTRICT. As the
27 responsible parties and/or employers controlling BISSELL, Defendants were also in a special
28 relationship with Plaintiff, and owed special duties to Plaintiff.

1 48. Plaintiff is informed and believes, and on that basis alleges, that Defendants, knew or
2 should have known that BISSELL had engaged in unlawful sexually-related conduct with minors
3 in the past, and/or was continuing to engage in such conduct with Plaintiff. Defendants had a duty
4 to disclose to these facts to Plaintiff, her parents and others, but negligently and/or intentionally
5 suppressed, concealed or failed to disclose this information. The duty to disclose this information
6 arose by the special, trusting, confidential, fiduciary, and/or in loco parentis relationship between
7 Defendants and Plaintiff.

8 49. The BERKELEY UNIFIED SCHOOL DISTRICT, knew or should have known, of the
9 sexual abuse of minors within its care, including individuals such as Plaintiff. Further, upon
10 information and belief, staff within the BERKELEY UNIFIED SCHOOL DISTRICT, knew or
11 should have known that BISSELL had expressed such propensities of sexual abuse, sexual
12 misconduct and sexual harassment and directed them towards minor students and therefore had an
13 obligation of notice, and choose to act negligently and/or wrongfully in their duties towards the
14 Plaintiff.

15 50. The BERKELEY UNIFIED SCHOOL DISTRICT, knew or should have known, of the
16 sexual abuse of minors within its care, including individuals such as Plaintiff. Plaintiff is
17 informed, believes and thereon alleges that during the period of time in which BISSELL worked at
18 Berkeley High School for BERKELEY UNIFIED SCHOOL DISTRICT, the administration, staff
19 and district received notice as detailed herein and above, regarding BISSELL. Upon information
20 and belief, despite such notice and knowledge, BERKELEY UNIFIED SCHOOL DISTRICT hid
21 the process of the investigation from parents and the public, amounting to a cover up for which
22 treble damages are warranted. Such conduct was evidenced by BISSELL's relocation during time
23 periods in which BERKELEY UNIFIED SCHOOL DISTRICT was made aware of his sexual
24 proclivities involving minor students.

25 51. Plaintiff, upon information and belief, and thereon allege that Defendant BERKELEY
26 UNIFIED SCHOOL DISTRICT knew or should have known of the sexual abuse of Plaintiff by
27 BISSELL.

28 52. Defendants failed to take reasonable steps and/or implement reasonable safeguards to

1 avoid acts of unlawful sexual conduct by BISSELL, including, but not limited to preventing abuse
2 of Plaintiff by BISSELL avoiding placement of BISSELL in a function or environment in which
3 contact with children is an inherent part of that function or environment. Instead, Defendants
4 ignored and/or concealed the sexual harassment and abuse of Plaintiff and others by BISSELL that
5 had already occurred. Plaintiff is informed and believes, and on that basis alleges, that Defendants
6 and each of them were given notice of incidents of inappropriate conduct by BISSELL, including
7 such facts as those set forth in this Complaint.

8 53. Plaintiff is informed and believes, on that basis alleges, that prior to and during the sexual
9 harassment, assault and abuse of Plaintiff, Defendants knew or should have known that BISSELL
10 had violated his role as a teacher, mentor, advisor and faculty member, and used this position of
11 authority and trust acting on behalf of Defendants to gain access to children, including Plaintiff, on
12 and off the school facilities and grounds, in which he engaged in sexual misconduct, harassment
13 and abuse, with such children including Plaintiff.

14 54. With actual or constructive knowledge that Defendant BISSELL had previously engaged
15 in dangerous and inappropriate conduct, including sexually harassing and abusing other minors at
16 Berkeley High School and other minors, Defendants conspired to and did knowingly fail to take
17 reasonable steps, and failed to implement reasonable safeguards to avoid acts of unlawful sexual
18 conduct in the future by BISSELL, including, but not limited to, preventing or avoiding placement
19 of BISSELL in a function or environment in which contact with children is an inherent aspect of
20 that function or environment.

21 55. The Defendants and each of them, upon information and belief, have a history of the
22 covering up of sexual abuse claims, including, in particular the alleged destruction of evidence and
23 concerted cover ups that has arisen in past instances of sexual abuse cases involving employees of
24 BERKELEY UNIFIED SCHOOL DISTRICT in addition to the cover up by moving BISSELL
25 upon reporting of sexual misconduct. Upon information and belief, this is a basis for the
26 application of treble damages against BERKELEY UNIFIED SCHOOL DISTRICT.

27 56. Plaintiff further alleges that Defendants failed to report and did hide and conceal from
28 students, parents, teachers, law enforcement authorities, civil authorities and others, the true facts

1 and relevant information necessary to bring BISSELL to justice for the sexual misconduct he
2 committed with minors, as well as protect their fiduciaries, including Plaintiff. Defendants also
3 implemented various measures designed to, or which effectively, made BISSELL's conduct harder
4 to detect including, but not limited to:

- 5 a. Permitting BISSELL to remain in a position of authority and trust after Defendants knew
6 or should have known that BISSELL was sexually abusing, assaulting and/or harassing
7 students;
- 8 b. Placing BISSELL in a separate and secluded environment, including placing him in charge
9 of children, mentoring programs, advising programs, and youth programs where he
10 purported to supervise the children, which allowed him to sexually interact with and
11 sexually assault and abuse children, including Plaintiff;
- 12 c. Allowing BISSELL to come into contact with minors, including Plaintiff, without adequate
13 supervision;
- 14 d. Failing to inform, or concealing from Plaintiff's parents and law enforcement officials the
15 fact that Plaintiff and others were or may have been sexually abused, after Defendants
16 knew or should have known that BISSELL may have been sexually abusive and harassing
17 towards Plaintiff or others, thereby enabling Plaintiff to continue to be endangered and
18 sexually harassed, abused, and/or creating the circumstance where Plaintiff and others
19 were less likely to receive medical/mental health care and treatment, thus exacerbating the
20 harm to Plaintiff;
- 21 e. Holding out BISSELL to Plaintiff and her parents, students, and to the school community
22 as being in good standing and trustworthy;
- 23 f. Failing to take reasonable steps, and to implement reasonable safeguards to avoid acts of
24 unlawful sexual conduct by BISSELL with students, who were minor children;
- 25 g. Removing complaining students from BISSELL's presence and classroom without
26 addressing BISSELL's inappropriate and sexual misconduct;
- 27 h. Reprimanding, without reporting or removing BISSELL for his sexual misconduct with
28 female students; and

- 1 i. Failing to put in place a system or procedure to supervise or monitor employees,
2 volunteers, representatives or agents to insure that they did not harass or abuse minors in
3 Defendants' care, including Plaintiff.

4 57. By his position within the Defendants' institutions, Defendants and BISSELL demanded
5 and required that Plaintiff respect BISSELL in his position of teacher, mentor, and advisor at the
6 BERKELEY UNIFIED SCHOOL DISTRICT.

7 58. BISSELL engaged in open and obvious grooming behavior with Plaintiff, that should have
8 and would have placed BERKELEY UNIFIED SCHOOL DISTRICT on notice of sexual
9 misconduct by BISSELL, including but not limited to:

- 10 a. Placing himself directly behind female students, including Plaintiff, in order to grope the
11 students;
12 b. Pressing his genitals against female students during class time;
13 c. Focusing on female students in particular, and including Plaintiff;
14 d. Communicating one on one with minors;
15 e. Touching Plaintiff openly in the middle of class time sessions, by rubbing her back;
16 f. Hugging and touching students inappropriately, including Plaintiff, in open and obvious
17 locations on campus.

18 59. BISSELL utilized the foregoing steps to groom the Plaintiff.

19 60. BISSELL had several minor victims within the BERKELEY UNIFIED SCHOOL
20 DISTRICT.

21 61. Upon information and belief, BERKELEY UNIFIED SCHOOL DISTRICT transferred
22 BISSELL in order to hide the abuses that he had committed at Berkeley High School.

23 62. BISSELL abused Plaintiff in his classroom at Berkeley High School.

24 63. The incidents of abuse outlined herein took place while Plaintiff was under the control of
25 BISSELL, in his capacity and position as a teacher, mentor, and advisor at BERKELEY UNIFIED
26 SCHOOL DISTRICT, and while acting specifically on behalf of Defendants, including, but not
27 limited to, the following:

- 28 a. BISSELL was at all times relevant to this Complaint a teacher, mentor, and advisor at

1 Berkeley High School, an institution wholly operated by BERKELEY UNIFIED SCHOOL
2 DISTRICT.

- 3 b. While BISSELL sexually harassed, attacked and abused Plaintiff, Defendants were well
4 aware that BISSELL took an unusual interest, and spent an inordinate amount of time with
5 Plaintiff.
- 6 c. Beginning in or around 1997, the perpetrator BISSELL sexually abused, harassed and
7 molested the Plaintiff, including within BERKELEY UNIFIED SCHOOL DISTRICT's
8 classrooms. This sexual abuse of Plaintiff included, but is not limited to:
- 9 i. BISSELL engaging in sexual talk and innuendo by BISSELL;
 - 10 ii. BISSELL engaging in sexual fondling of the Plaintiff's body by BISSELL;
 - 11 iii. BISSELL pressing his genitals against Plaintiff.

12 64. As set forth more fully herein above, BISSELL did sexually harass and abuse Plaintiff,
13 who was a minor at the time. Plaintiff is informed and believes, and on that basis alleges, that
14 such conduct by Defendant BISSELL was based upon Plaintiff's gender, and was done for his
15 sexual gratification. These actions upon Plaintiff was performed by Defendant BISSELL without
16 the free consent of Plaintiff, who was a minor during all of the abuse period.

17 65. Plaintiff is informed and believes, and on that basis alleges, that Defendants and each of
18 them should have been aware of BISSELL's wrongful conduct at or about the time it was
19 occurring, and thereafter, but took no action to obstruct, inhibit or stop such continuing conduct, or
20 to help Plaintiff endure the trauma from such conduct. Despite the authority and ability to do so,
21 these Defendants negligently and/or willfully refused to, and/or did not, act effectively to stop the
22 sexual assaults on Plaintiff, to inhibit or obstruct such abuse, or to protect Plaintiff from the results
23 of that trauma.

24 66. During the period of abuse of Plaintiff at the hands of BISSELL, Defendants BERKELEY
25 UNIFIED SCHOOL DISTRICT had the authority and the ability to obstruct or stop BISSELL's
26 sexual assaults on Plaintiff, but negligently and/or willfully failed to do so, thereby allowing the
27 abuse to occur and to continue unabated. This failure was a part of Defendants' plan and
28 arrangement to conceal wrongful acts, to avoid and inhibit detection, to block public disclosure, to

1 avoid scandal, to avoid the disclosure of their tolerance of child sexual harassment and abuse, to
2 preserve a false appearance of propriety, and to avoid investigation and action by public authority
3 including law enforcement. Plaintiff is informed and believes, and on that basis alleges, that such
4 actions were motivated by a desire to protect the reputation of Defendants and each of them, and
5 to protect the monetary support of Defendants while fostering an environment where such abuse
6 could continue to occur.

7 67. Subsequent to her sexual abuse at the hands of BISSELL, Plaintiff began to experience
8 multiple mental, emotional and psychological problems, due to the sexual harassment and abuse
9 she suffered at the hands of BISSELL, including, but not limited to: Plaintiff being angry; Plaintiff
10 experiencing frequent anxiety; Plaintiff experiencing depression; Plaintiff feeling helpless;
11 Plaintiff experiencing sleeplessness; and Plaintiff having significant trust and control issues.

12 68. As a direct result of the sexual harassment and abuse of Plaintiff by BISSELL,
13 Plaintiff has had difficulty in reasonably or meaningfully interacting with others, including
14 those in positions of authority over Plaintiff, including supervisors, and in intimate, confidential
15 and familial relationships, due to the trauma of childhood sexual harassment, assault and abuse
16 inflicted upon them by BISSELL. This inability to interact creates conflict with Plaintiff's values
17 of trust and confidence in others, and has caused Plaintiff substantial emotional distress, anxiety,
18 nervousness and fear. As a direct result of Plaintiff's abuse and harassment by BISSELL, Plaintiff
19 experienced severe issues with her personal life, including issues with trust and difficulties in
20 maintaining meaningful relationships, and difficulty with school. These feelings have caused
21 Plaintiff substantial emotional distress, depression, anxiety, nervousness and fear.

22 69. As a direct and proximate result of the Defendants' tortuous acts, omissions, wrongful
23 conduct and/or breaches of their duties, whether willful or negligent, Plaintiff's employment and
24 personal development has or will be adversely affected. Plaintiff has or will lose wages as a result
25 of the abuse she suffered at the hands of Defendants, and will continue to lose wages in an amount
26 to be determined at trial. Plaintiff has suffered economic injury, all to Plaintiff's general, special
27 and consequential damage in an amount to be proven at trial, but in no event less than the
28 minimum jurisdictional amount of this Court.

1 70. As is set forth herein, Defendants and each of them have failed to uphold numerous
2 mandatory duties imposed upon them by state and federal law, and by written policies and
3 procedures applicable to Defendants, including but not limited to the following:

- 4 • Duty to use reasonable care to protect students from known or foreseeable dangers
5 (Government Code §§ 820, 815.2);
- 6 • Duty to use reasonable care to protect students from known or foreseeable dangers
7 (Government Code §§ 820, 815.2, 815.6);
- 8 • Duty to refrain from taking official action that contradicts the provisions of Article 1,
9 section 28(c) of the California Constitution;
- 10 • Duty to enact policies and procedures that are not in contravention of the Federal Civil
11 Rights Act, section 1983, and the 14th Amendment of the United States Constitution;
- 12 • Duty to protect students and staff, and provide adequate supervision;
- 13 • Duty to ensure that any direction given to faculty and students is lawful, and that adults act
14 fairly, responsibly and respectfully towards faculty and students;
- 15 • Duty to properly train teachers, athletic directors, athletic coaches, youth counselors,
16 mentors, administrators, and staff so that they are aware of their individual responsibility
17 for creating and maintaining a safe environment;
- 18 • Duty to supervise faculty and students and enforce rules and regulations prescribed for
19 schools, exercise reasonable control over students as is reasonably necessary to maintain
20 order, protect property, or protect the health and safety of faculty and students or to
21 maintain proper and appropriate conditions conducive to learning;
- 22 • Duty to exercise careful supervision of the moral conditions in the school;
- 23 • Duty to hold pupils to a strict account for their conduct on the way to and from school, on
24 the playgrounds or during recess;
- 25 • Duty to properly monitor students, prevent or correct harmful situations or call for help
26 when a situation is beyond their control;
- 27 • Duty to ensure that personnel are actually on hand and supervising students;
- 28 • Duty to provide enough supervision to students;

- 1 • Duty to supervise diligently;
- 2 • Duty to act promptly and diligently and not ignore or minimize problems;
- 3 • Duty to refrain from violating Plaintiff's right to protection from bodily restraint or harm,
- 4 from personal insult, from defamation, and from injury to their personal relations (Civil
- 5 Code § 43);
- 6 • Duty to abstain from injuring the person or property of Plaintiff, or infringing upon any of
- 7 their rights (Civil Code § 1708);
- 8 • Duty to report suspected incidents of child abuse and more specifically childhood sexual
- 9 abuse (Penal Code §§ 11166, 11167); and
- 10 • Duty to prevent discrimination or sexual harassment and abuse from occurring in public
- 11 educational facilities (Education Code § 200, et seq.); and
- 12 • Duty to not violate Title IX of the Education Amendments of 1972.

13 71. Compulsory education laws create a special relationship between students and Defendants,
14 and students have a constitutional guarantee to a safe, secure and peaceful school environment.
15 Defendants and each of them failed to acknowledge unsafe conditions, and therefore failed to
16 guarantee safe surroundings in an environment in which Plaintiff was not free to leave,
17 specifically including but not limited to allowing BISSELL to take children for purposes of sexual
18 activity and allowing BISSELL to operate isolated environments, incapable of monitoring from
19 the outside, wherein BISSELL sexually harassed and abused Plaintiff and others.

20 72. Defendants and each of them had and have a duty to protect students, including Plaintiff.
21 Defendants were required, and failed, to provide adequate campus and off-site school event
22 supervision, and failed to be properly vigilant in seeing that supervision was sufficient to ensure
23 the safety of Plaintiff and others.

24 73. Defendants and each of them lodged with BISSELL the color of authority, by which he
25 was able to influence, direct and abuse Plaintiff and others, and to act illegally, unreasonably and
26 without respect for the person and safety of Plaintiff.

27 74. Defendants and each of them had a duty to and failed to adequately train and supervise all
28 advisors, teachers, mentors and staff to create a positive, safe, spiritual and educational

1 environment, specifically including training to perceive, report and stop inappropriate conduct by
2 other members of the staff, specifically including BISSELL, with children.

3 75. Defendants and each of them had a duty to and failed to enact and enforce rules and
4 regulations prescribed for schools, and execute reasonable control over students necessary to
5 protect the health and safety of the student and maintain proper and appropriate conditions
6 conducive to learning.

7 76. Defendants and each of them were required to and failed to exercise careful supervision of
8 the moral conditions in their school, and provide supervision before and after school. This duty
9 extended beyond the classroom.

10 77. In subjecting Plaintiff to the wrongful treatment herein described and the cover up,
11 BISSELL acted willfully and maliciously with the intent to harm Plaintiff, and in conscious
12 disregard of Plaintiff's rights, so as to constitute malice and/or oppression under California Civil
13 Code section 3294. Plaintiff is therefore entitled, to the recovery of punitive damages, in an
14 amount to be determined by the court, against BISSELL, in a sum to be shown according to proof.

15 78. In subjecting Plaintiff to the negligent and wrongful treatment herein described and the
16 cover up of same, BERKELEY UNIFIED SCHOOL DISTRICT is liable for treble damages as to
17 this Plaintiff.

18 **FIRST CAUSE OF ACTION**
19 **NEGLIGENCE**

(Against all Defendants and Does 1 through 100)

20 79. Plaintiff re-alleges and incorporates by reference herein each and every allegation
21 contained herein above as though fully set forth and brought in this cause of action.

22 80. Plaintiff is informed and believes, and on that basis alleges that prior to and after the first
23 incident of BISSELL's sexual harassment, molestation, attack and abuse of Plaintiff, through the
24 present, Defendants, knew or should have reasonably known that BISSELL had or was capable of
25 sexually, and/or sexually abusing Plaintiff or other victims.

26 81. Defendants and each of them had special duties to protect the minor Plaintiff and the other
27 students within the BERKELEY UNIFIED SCHOOL DISTRICT, when such students were
28 entrusted to their care by their parents. Plaintiff's care, welfare and/or physical custody was

1 entrusted to Defendants. Defendants voluntarily accepted the entrusted care of Plaintiff. As such,
2 Defendants owed Plaintiff, minor children, a special duty of care, in addition to a duty of ordinary
3 care, and owed Plaintiff the higher duty of care that adults dealing with children owe to protect
4 them from harm. The duty to protect and warn arose from the special, trusting, confidential, and/or
5 fiduciary relationship between Defendants and Plaintiff. Plaintiff felt great trust, faith and
6 confidence in Defendants, and in BISSELL as their teacher, adviser and mentor.

7 82. Plaintiff is informed and believes, and on that basis alleges, that Defendants breached their
8 duties of care to the minor Plaintiff by allowing BISSELL to come into contact with the minor
9 Plaintiff and other students, without supervision; by failing to adequately hire, supervise and/or
10 retain BISSELL who they permitted and enabled to have access to Plaintiff; by failing to
11 investigate or otherwise confirm or deny such facts about BISSELL; by failing to tell or
12 concealing from Plaintiff, their parents, guardians and law enforcement officials that BISSELL
13 was or may have been sexually harassing and abusing minors; by failing to tell or concealing from
14 Plaintiff's parents, guardians or law enforcement officials that Plaintiff was or may have been
15 sexually harassed, assaulted and abused after Defendants knew or should have known that
16 BISSELL may have sexually harassed and abused Plaintiff or others, thereby enabling Plaintiff to
17 continue to be endangered and sexually harassed, and abused, and/or creating the circumstance
18 where Plaintiff was less likely to receive medical/mental health care or treatment, thus
19 exacerbating the harm done to Plaintiff; and/or by holding out BISSELL to Plaintiff and to her
20 parents as being in good standing and trustworthy. Defendants cloaked within the facade of
21 normalcy, Defendants' conduct, contact and actions with Plaintiff and/or disguised the nature of
22 the sexual harassment and abuse and contact.

23 83. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to
24 investigate or otherwise confirm or deny such facts, failing to reveal such facts to Plaintiff, the
25 community of the school, students, minors, and law enforcement agencies, placing and continuing
26 to place BISSELL in positions of trust and authority within the BERKELEY UNIFIED SCHOOL
27 DISTRICT, and holding out, and continuing to hold out BISSELL to Plaintiff, the public, the
28 community of the school, students, minors, and law enforcement agencies as being in good

1 standing and trustworthy.

2 84. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing to
3 adequately monitor and supervise BISSELL and/or stopping BISSELL from committing wrongful
4 sexual acts with minors including Plaintiff. This belief is founded on the fact that Plaintiff was
5 informed and believed that the Principal and other faculty members at BERKELEY UNIFIED
6 SCHOOL DISTRICT had suspected the abuse and/or harassment was occurring at the time, and
7 failed to investigate into the matter further despite the knowledge of the impropriety of the acts of
8 BISSELL. Based on these facts, Defendants knew and/or should have known of BISSELL's
9 incapacity to supervise and/or stop employees of Defendants from committing wrongful sexual
10 acts with minors.

11 85. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through their
12 employees and agents, were child care custodians and were under a statutory duty to report known
13 or suspected incidents of sexual harassment or abuse of minors to a child protective agency,
14 pursuant to California Penal Code § 11166, and/or not to impede the filing of any such report.

15 86. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew or
16 should have known that BISSELL, their agent, teacher, advisor, mentor and other counselors,
17 advisors, coaches, teachers and staff of Defendants had sexually abused, or harassed, or caused
18 harm, and other injuries to minors, including Plaintiff, giving rise to a duty to report such conduct
19 under California Penal Code § 11166.

20 87. Plaintiff is informed and believes, and on that basis alleges, that Defendants also

21 88. knew, or should have known in the exercise of reasonable diligence, that an undue risk to
22 minors, including Plaintiff, existed because Defendants did not comply with California's
23 mandatory reporting requirements.

24 89. By failing to report the continuing harassment and abuse, which Defendants and each of
25 them knew or should have known, and by ignoring the fulfillment of the mandated compliance
26 with the reporting requirements provided under California Penal Code § 11166, Defendants
27 created the risk and danger contemplated by the Child Abuse and Neglect Reporting Act, and as a
28 result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual harassment and

1 abuse.

2 90. Plaintiff was a member of the class of persons for whose protection California Penal Code
3 § 11166 was specifically adopted to protect.

4 91. Had Defendants adequately reported the abuse and harassment of Plaintiff and other
5 minors as required by California Penal Code § 11166, further harm to Plaintiff and other minors
6 would have been avoided.

7 92. As a proximate result of Defendants' failure to follow the mandatory reporting
8 requirements of California Penal Code § 11166, Defendants wrongfully denied Plaintiff and other
9 minors, the intervention of child protection services. Such public agencies would have changed
10 the then-existing arrangements and conditions that provided the access and opportunities for the
11 abuse and sexual harassment of Plaintiff by BISSELL.

12 93. The physical, mental, and emotional damages and injuries resulting from the sexual abuse
13 and harassment of Plaintiff by BISSELL, were the type of occurrence and injuries that the Child
14 Abuse and Neglect Reporting Act was designed to prevent.

15 94. As a result, Defendants' failure to comply with the mandatory reporting requirements of
16 California Penal Code section 11166 also constituted a per se breach of Defendants' duties to
17 Plaintiff.

18 95. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer
19 great pain of mind and body, shock, emotional distress, physical manifestations of emotional
20 distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life;
21 has suffered and continues to suffer and was prevented and will continue to be prevented from
22 performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings
23 and earning capacity, and/or has incurred and will continue to incur expenses for medical and
24 psychological treatment, therapy, and counseling.

25 **SECOND CAUSE OF ACTION**
26 **NEGLIGENT SUPERVISION**

(Against BERKELEY UNIFIED SCHOOL DISTRICT and Does 1 through 100)

27 96. Plaintiff re-alleges and incorporates by reference herein each and every allegation
28 contained herein above as though fully set forth and brought in this cause of action.

1 97. As an educational institution for minors, where all of the students are entrusted to the
2 counselors, advisors, mentors, coaches, faculty members, administrators and teachers, Defendants
3 expressly and implicitly represented that these individuals, including BISSELL, were not a sexual
4 threat to children and others who would fall under BISSELL's influence, control, direction, and
5 guidance.

6 98. Defendants negligently failed to supervise BISSELL in his position of trust and authority
7 as a teacher, advisor and mentor, and/or other authority figure, where he was able to commit
8 wrongful acts against the Plaintiff. Defendants failed to provide reasonable supervision of
9 BISSELL. Defendants further failed to take reasonable measures to prevent sexual harassment,
10 molestation, and abuse of minors, including Plaintiff.

11 99. Plaintiff is informed and believes, and on that basis alleges, that at no time during the
12 periods of time alleged did Defendants have in place a system or procedure to reasonably
13 investigate, supervise and/or monitor teachers, including BISSELL, to prevent pre-sexual
14 grooming and/or sexual harassment, and abuse of children, nor did they implement a system or
15 procedure to oversee or monitor conduct toward minors, students and others in Defendants' care.

16 100. Defendants and each of them were or should have been aware and understood how
17 vulnerable children were to sexual harassment and abuse by counselors, advisors, mentors,
18 coaches, teachers and other persons of authority within Defendants.

19 101. Defendants' conduct was a breach of their duties to Plaintiff.

20 102. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through
21 their employees and agents, were child care custodians and were under a statutory duty to report
22 known or suspected incidents of sexual abuse of minors to a child protective agency, pursuant to
23 California Penal Code section 11166, and/or not to impede the filing of any such report.

24 103. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew
25 or should have known that their agent, counselor, advisor, and mentor BISSELL, and other
26 teachers and staff of Defendants, had sexually abused or caused harm, and other injuries to minors,
27 including Plaintiff, giving rise to a duty to report such conduct under California Penal Code
28 section 11166.

1 104. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew,
2 or should have known in the exercise of reasonable diligence, that an undue risk to minors,
3 including Plaintiff, existed because Defendants did not comply with California's mandatory
4 reporting requirements.

5 105. By failing to report the continuing abuse, which Defendants and each of them knew
6 or should have known, and by ignoring the fulfillment of the mandated compliance with the
7 reporting requirements provided under California Penal Code section 11166, Defendants created
8 the risk and danger contemplated by the Child Abuse and Neglect Reporting Act, and as a result,
9 unreasonably and wrongfully exposed Plaintiff and other minors to sexual harassment and abuse.

10 106. Plaintiff was a member of the class of persons for whose protection California
11 Penal Code section 11166 was specifically adopted to protect.

12 107. Had Defendants adequately reported the sexual abuse and harassment of Plaintiff
13 and other minors as required by California Penal Code section 11166, further harm to Plaintiff
14 would have been avoided.

15 108. As a proximate result of Defendants' failure to follow the mandatory reporting
16 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and
17 other minors the intervention of child protection services. Such public agencies would have
18 changed the then-existing arrangements and conditions that provided the access and opportunities
19 for the sexual harassment and abuse of Plaintiff by BISSELL.

20 109. The physical, mental, and emotional damages and injuries resulting from the sexual
21 harassment and abuse of Plaintiff by BISSELL, were the type of occurrence and injuries that the
22 Child Abuse and Neglect Reporting Act was designed to prevent.

23 110. As a result, Defendants' failure to comply with the mandatory reporting
24 requirements of California Penal Code section 11166 also constituted a per se breach of
25 Defendants' duties to Plaintiff.

26 111. Defendants, and each of them, breached their duty to Plaintiff by, inter alia, failing
27 to adequately monitor and supervise BISSELL and/or stopping BISSELL from committing
28 wrongful sexual harassment and abuse of minors including Plaintiff. This belief is founded on the

1 fact that Plaintiff was informed and believed that the administration at BERKELEY UNIFIED
2 SCHOOL DISTRICT had suspected the abuse was occurring at the time, and failed to investigate
3 into the matter further, instead opting to relocate BISSELL to allow him to hide the abuse. Based
4 on these facts, Defendants knew and/or should have known of BISSELL's incapacity to supervise
5 and/or stop employees of Defendants from committing wrongful sexual acts with minors.

6 112. As a result of the above-described conduct, Plaintiff has suffered and continues to
7 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
8 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of
9 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be
10 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
11 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for
12 medical and psychological treatment, therapy, and counseling.

13 **THIRD CAUSE OF ACTION**
14 **NEGLIGENT HIRING/RETENTION**

(Against BERKELEY UNIFIED SCHOOL DISTRICT and Does 1 through 100)

15 113. Plaintiff re-alleges and incorporates by reference herein each and every allegation
16 contained herein above as though fully set forth and brought in this cause of action.

17 114. By virtue of Plaintiff's special relationship with Defendants and each of them, and
18 Defendants' relation to BISSELL, Defendants owed Plaintiff a duty to not hire and/or retain
19 BISSELL, given him dangerous and exploitive propensities, which Defendants knew or
20 reasonably should have known had they engaged in a meaningful and adequate investigation of his
21 background prior to hiring him.

22 115. As an educational institution and operator of a school, where all of the students are
23 minors entrusted to the schools and its employees and agents, Defendants expressly and implicitly
24 represented that the counselors, advisors, mentors, coaches, teachers and others, including
25 BISSELL, were not a sexual threat to children and others who would fall under BISSELL's
26 influence, control, direction, and guidance.

27 116. Plaintiff is informed and believes, and on that basis alleges, that at no time during
28 the periods of time alleged did Defendants have in place a system or procedure to reasonably

1 investigate, supervise and/or monitor teachers, including BISSELL, to prevent pre-sexual
2 grooming and/or sexual harassment and abuse of children, nor did they implement a system or
3 procedure to oversee or monitor conduct toward minors, students and others in Defendants' care.

4 117. Defendants and each of them were or should have been aware and understood how
5 vulnerable children were to sexual harassment, and abuse by teachers and other persons of
6 authority within the control of Defendants.

7 118. Plaintiff is informed, and believes, and on that basis alleges, that the Defendants
8 were put on notice, and should have known that BISSELL had previously engaged in dangerous
9 and inappropriate conduct, and that it was, or should have been foreseeable that he was engaging,
10 or would engage in illicit sexual activities with Plaintiff, and others, under the cloak of his
11 authority, confidence, and trust, bestowed upon him through Defendants.

12 119. Defendants were placed on actual and/or constructive notice that BISSELL had
13 engaged in dangerous and inappropriate conduct, both before his employment within Defendants,
14 and during that employment. Plaintiff is informed, and thereon alleges, that other third parties,
15 minors, students, law enforcement officials and/or parents informed Defendants of inappropriate
16 conduct committed by BISSELL.

17 120. Even though Defendants knew or should have known of these activities by
18 BISSELL, Plaintiff is informed that Defendants failed to use reasonable care in investigating
19 BISSELL and did nothing to investigate, supervise or monitor BISSELL to ensure the safety of
20 the minor students.

21 121. Defendants' conduct was a breach of their duty to Plaintiff.

22 122. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through
23 their employees and agents, were child care custodians and were under a statutory duty to report
24 known or suspected incidents of sexual abuse of minors to a child protective agency, pursuant to
25 California Penal Code section 11166, and/or not to impede the filing of any such report.

26 123. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew
27 or should have known that their agent, counselor, advisor and mentor, BISSELL, and other
28 employees, agents, teachers and staff within Defendants, had sexually abused or caused harm, and

1 other injuries to minors, including Plaintiff, giving rise to a duty to report such conduct under
2 California Penal Code section 11166.

3 124. Plaintiff is informed and believes, and on that basis alleges, that Defendants knew,
4 or should have known in the exercise of reasonable diligence, that an undue risk to minors,
5 including Plaintiff, existed because Defendants did not comply with California's mandatory
6 reporting requirements.

7 125. By failing to report the continuing harassment and abuse, which Defendants and
8 each of them knew or should have known, and by ignoring the fulfillment of the mandated
9 compliance with the reporting requirements provided under California Penal Code section 11166,
10 Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting
11 Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual
12 harassment and abuse.

13 126. Plaintiff was a member of the class of persons for whose protection California
14 Penal Code section 11166 was specifically adopted to protect.

15 127. Had Defendants adequately reported the sexual harassment and abuse of Plaintiff
16 and other minors as required by California Penal Code section 11166, further harm to Plaintiff and
17 other minors would have been avoided.

18 128. As a proximate result of Defendants' failure to follow the mandatory reporting
19 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and
20 other minors the intervention of child protection services. Such public agencies would have
21 changed the then-existing arrangements and conditions that provided the access and opportunities
22 for the harassment and abuse of Plaintiff by BISSELL.

23 129. The physical, mental, and emotional damages and injuries resulting from the
24 harassment and abuse of Plaintiff by BISSELL, were the type of occurrence and injuries that the
25 Child Abuse and Neglect Reporting Act was designed to prevent.

26 130. As a result, Defendants' failure to comply with the mandatory reporting
27 requirements of California Penal Code section 11166 also constituted a per se breach of
28 Defendants' duties to Plaintiff.

131. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

FOURTH CAUSE OF ACTION
NEGLIGENT FAILURE TO WARN, TRAIN OR EDUCATE
 (Against BERKELEY UNIFIED SCHOOL DISTRICT and Does 1 through 100)

132. Plaintiff re-alleges and incorporate by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

133. Defendants owed Plaintiff a duty to take reasonable protective measures to protect Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and abuse by BISSELL by properly warning, training or educating Plaintiff and other students about how to avoid such a risk.

134. Defendants breached their duty to take reasonable protective measures to protect Plaintiff and other minor students from the risk of childhood sexual harassment, molestation and abuse by BISSELL, such as the failure to properly warn, train or educate Plaintiff and other students about how to avoid such a particular risk that BISSELL posed-of sexual misconduct.

135. Defendants breached their duty to take reasonable protective measures to protect Plaintiff and other minor students from the risk of childhood sexual harassment, molestation, assault and abuse by BISSELL, by failing to supervise and stop employees of Defendants, including BISSELL, from committing wrongful sexual acts with minors, including Plaintiff.

136. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through their employees and agents, were child care custodians and were under a statutory duty to report known or suspected incidents of sexual molestation or abuse of minors to a child protective agency, pursuant to California Penal Code section 11166, and not to impede the filing of any such report.

1 137. Defendants knew or should have known that their agent, teacher, tutor, advisor,
2 counselor and mentor, BISSELL, and other teachers and staff of Defendants, had sexually
3 molested, abused or caused touching, battery, harm, and other injuries to minors, including
4 Plaintiff, giving rise to a duty to report such conduct under Penal Code section 11166.

5 138. Defendants knew or should have known in the exercise of reasonable diligence,
6 that an undue risk to minors, including Plaintiff, existed because Defendants did not comply with
7 California's mandatory reporting requirements.

8 139. By failing to report the continuing molestations and abuse, which Defendants knew
9 or should have known about, and by ignoring the fulfillment of the mandated compliance with the
10 reporting requirements provided under Penal Code section 11166, Defendants created the risk and
11 danger contemplated by the Child Abuse and Neglect Reporting Act, and as a result, unreasonably
12 and wrongfully exposed Plaintiff and other minors to sexual molestation and abuse.

13 140. Plaintiff was a member of the class of persons for whose protection Penal Code
14 section 11166 was specifically adopted to protect.

15 141. Had Defendants adequately reported the molestation of Plaintiff and other minors
16 as required by Penal Code section 11166, further harm to Plaintiff and other minors would have
17 been avoided.

18 142. As a proximate result of Defendants' failure to follow the mandatory reporting
19 requirements of Penal Code section 11166, Defendants wrongfully denied Plaintiff and other
20 minors the intervention of child protection services. Such public agencies would have changed the
21 then-existing arrangements and conditions that provided the access and opportunities for the
22 molestation of Plaintiff by BISSELL.

23 143. The physical, mental, and emotional damages and injuries resulting from the sexual
24 molestation of Plaintiff by BISSELL, were the type of occurrence and injuries that the Child
25 Abuse and Neglect Reporting Act was designed to prevent.

26 144. As a result of Defendants' failure to comply with the mandatory reporting
27 requirements of California Penal Code section 11166, also constitutes a per se breach of
28 Defendants' duties to Plaintiff.

145. As a result of the above-described conduct, Plaintiff has suffered and continues to suffer great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life; will sustain loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
 (Against All Defendants and Does 1 through 100)

146. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

147. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme. Among other things, Defendants tolerated and permitted an individual in the position of BISSELL to:

- a. Permitting BISSELL to groom students;
- b. With knowledge of BISSELL's dangerous propensities for sexual misconduct, removing the complaining students, but allowing BISSELL to remain in his position as a teacher;
- c. After receiving notice of BISSELL's dangerous propensities, moving him to other school locations;

148. Defendants' conduct toward Plaintiff, as described herein, was outrageous and extreme. Among other things, Defendants tolerated and permitted individuals in Administration to:

- a. Dissuade victims from reporting or going to the police;
- b. Dissuade victims from going to the press;
- c. Destroying evidence or failing to preserve evidence;
- d. Allowing a perpetrator to remain in his position with no warning, after questioning him about sexual misconduct with students;
- e. Allowing students to break the rules in order to be abused by BISSELL;

1 f. Watching as BISSELL left campus with victims.

2 149. A reasonable person would not expect or tolerate the sexual harassment and abuse
3 of Plaintiff by BISSELL. Plaintiff had great trust, faith and confidence in BISSELL and in
4 Defendants, which, by virtue of BISSELL's and Defendants' wrongful conduct, turned to fear.

5 150. Defendants' conduct toward Plaintiff, as described herein, was outrageous and
6 extreme.

7 151. A reasonable person would not expect or tolerate Defendants putting BISSELL in a
8 position of authority at the BERKELEY UNIFIED SCHOOL DISTRICT, which enabled
9 BISSELL to have access to minor students so that he could commit wrongful sexual acts,
10 including the conduct described herein, with minors, including Plaintiff. Plaintiff had great trust,
11 faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to
12 fear.

13 152. A reasonable person would not expect or tolerate Defendants to be incapable of
14 supervising and/or stopping employees of Defendants, including BISSELL, from committing
15 wrongful sexual acts with minors, including Plaintiff, or to supervise BISSELL. Plaintiff had great
16 trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct,
17 turned to fear.

18 153. Defendants' conduct described herein was intentional and malicious and done for
19 the purpose of causing or with the substantial certainty that Plaintiff would suffer humiliation,
20 mental anguish, and emotional and physical distress.

21 154. As a result of the above-described conduct, Plaintiff has suffered and continues to
22 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
23 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
24 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be
25 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
26 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for
27 medical and psychological treatment, therapy, and counseling.

28 155. Plaintiff is informed and based thereon alleges that the conduct of BISSELL was

1 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
2 the rights and safety of others, and was carried out with a conscious disregard of Plaintiff's right to
3 be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
4 California Civil Code section 3294, entitling Plaintiff to punitive damages against this Defendant
5 in an amount appropriate to punish and set an example of BISSELL.

6 **SIXTH CAUSE OF ACTION**
7 **SEXUAL HARASSMENT: (CIVIL CODE § 51.9)**
8 (Against All Defendants and Does 1 through 100)

9 156. Plaintiff re-allege and incorporates by reference herein each and every allegation
10 contained herein above as though fully set forth and brought in this cause of action.

11 157. Education Code section 220 states "No person shall be subjected to discrimination
12 on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity,
13 religion, sexual orientation, or any other characteristic that is contained in the definition of hate
14 crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an
15 educational institution that receives, or benefits from, state financial assistance or enrolls pupils
16 who receive state student financial aid."

17 158. Education Code section 201 states "All pupils have the right to participate fully in
18 the educational process, free from discrimination and harassment [...] California's public schools
19 have an affirmative obligation to combat racism, sexism, and other forms of bias, and a
20 responsibility to provide equal educational opportunity [...] Harassment on school grounds
21 directed at an individual on the basis of personal characteristics or status creates a hostile
22 environment and jeopardizes equal educational opportunity as guaranteed by the California
23 Constitution and the United States Constitution [...] There is an urgent need to prevent and
24 respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate
25 in California's public schools [...] It is the intent of the Legislature that this chapter shall be
26 interpreted as consistent with [...] Title IX of the Education Amendments of 1972 (20 U.S.C. Sec.
27 1681, et seq.) [...] the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair
28 Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except
where this chapter may grant more protections or impose additional obligations, and that the

1 remedies provided herein shall not be the exclusive remedies, but may be combined with remedies
2 that may be provided by the above statutes.”

3 159. The California Supreme Court has determined: “Responsibility for the safety of
4 public school students is not borne solely by instructional personnel. School principals and other
5 supervisory employees, to the extent their duties include overseeing the educational environment
6 and the performance of teachers and counselors, also have the responsibility of taking reasonable
7 measures to guard pupils against harassment . . .” C.A. v. William S. Hart Union High School
8 Dist. et. al. (2012) 53 Cal. 4th 861, 871.

9 160. “A principal is liable when it ratifies an originally unauthorized tort. The failure to
10 discharge an agent or employee may be evidence of ratification. . . If the employer, after
11 knowledge or opportunity to learn of the agent's misconduct, continues the wrongdoer in service,
12 the employer may become an abettor and may make himself liable in punitive damages.” Murillo
13 v. Rite Stuff Foods Inc. (1998) 65 Cal. App. 4th 833, 852 (internal citations omitted).

14 161. During Plaintiff’s time as a student within BERKELEY UNIFIED SCHOOL
15 DISTRICT, Defendant BISSELL intentionally, recklessly and wantonly made sexual advances,
16 solicitations, requests, demands for sexual compliance of a hostile nature based on Plaintiff’s
17 gender that were unwelcome, pervasive and severe, including but not limited to Defendant
18 BISSELL: sexually abusing, molesting and touching the Plaintiff, all while BISSELL was acting
19 in the course and scope of his agency/ employment with Defendants, and each of them.

20 162. The incidents of abuse outlined herein above took place while Plaintiff was under
21 the control of BISSELL, in his capacity and position teacher, advisor and mentor and while acting
22 specifically on behalf of Defendants.

23 163. During Plaintiff’s time as a student at Berkeley High School, Defendant BISSELL,
24 intentionally, recklessly and wantonly did acts which resulted in psychological harm to the
25 Plaintiff, including but not limited to, using his position as a teacher, coach, advisor, and mentor to
26 sexually harass and abuse the Plaintiff, and to use his authority and position of trust to exploit the
27 Plaintiff emotionally.

28 164. Because of Plaintiff’s relationship with BISSELL as a student at the BERKELEY

1 UNIFIED SCHOOL DISTRICT, and Plaintiff's young age as a minor student, Plaintiff was
2 unable to easily terminate the student-teacher, student-advisor, and student-mentor relationships
3 they had with Defendant BISSELL.

4 165. Because of BISSELL's position of authority over Plaintiff, and Plaintiff's mental
5 and emotional state, and Plaintiff's young age under the age of consent, Plaintiff was unable to,
6 and did not give meaningful consent to such acts.

7 166. Even though the Defendants knew or should have known of these activities by
8 Defendant BISSELL, Defendants did nothing to investigate, supervise or monitor Defendant
9 BISSELL to ensure the safety of the minor students, but instead ratified such conduct by retaining
10 BISSELL in employment and retaining the benefits of his employment.

11 167. Defendants' conduct was a breach of their duties to Plaintiff. Defendant
12 BERKELEY UNIFIED SCHOOL DISTRICT ratified BISSELL's illicit sexual harassment of
13 Plaintiff by retaining him in employment despite having knowledge (either constructive and/or
14 actual) that the sexual harassment and/or abuse was occurring.

15 168. As a result of the above-described conduct, Plaintiff has suffered and continues to
16 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
17 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of
18 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be
19 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
20 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for
21 medical and psychological treatment, therapy, and counseling.

22 169. Plaintiff is entitled to attorney's fees and costs from Defendants BERKELEY
23 UNIFIED SCHOOL DISTRICT pursuant to Civil Code section 52, especially given BERKELEY
24 UNIFIED SCHOOL DISTRICT's authorization or ratification of such acts by its managing agents,
25 officers or directors. Plaintiff is also entitled to treble damages for cover ups of the crimes of
26 BISSELL.

27 170. Plaintiff is informed and based thereon alleges that the conduct of BISSELL was
28 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for

1 the rights and safety of others, and was carried out with a conscious disregard of Plaintiff's right to
2 be free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
3 California Civil Code section 3294, entitling Plaintiff to punitive damages against this Defendant
4 in an amount appropriate to punish and set an example of BISSELL.

5 **SEVENTH CAUSE OF ACTION**
6 **SEXUAL ABUSE AND HARASSMENT IN THE EDUCATIONAL ENVIRONMENT**
7 **(EDUCATIONAL CODE § 220)**

(Against All Defendants and Does 1 through 100)

8 171. The Plaintiff re-allege and incorporate by reference herein each and every
9 allegation contained herein above as though fully set forth and brought in this cause of action.

10 172. The Plaintiff was harmed by being subjected to harassment at Defendant
11 BERKELEY UNIFIED SCHOOL DISTRICT and under administrators and DOES 1 through 100
12 because of her gender and Defendants are responsible for that harm.

13 173. The Plaintiff suffered harassment that was so severe, pervasive, and offensive that
14 it effectively deprived the Plaintiff of the right of equal access to educational benefits and
15 opportunities.

16 174. Plaintiff is informed and believes, and on that basis alleges, that Defendants had
17 actual knowledge that this sexual harassment, abuse, and molestation was occurring. Specifically,
18 Defendants had knowledge of the following facts:

- 19 a. Placing himself directly behind female students, including Plaintiff, in order to
- 20 grope the students;
- 21 b. Pressing his genitals against female students during class time;
- 22 c. Focusing on female students in particular, and including Plaintiff;
- 23 d. Communicating one on one with minors;
- 24 e. Touching Plaintiff openly in the middle of class time sessions, by rubbing her back;
- 25 g. Hugging and touching students inappropriately, including Plaintiff, in open and
- 26 obvious locations on campus.

27 175. In the face of this knowledge of sexual abuse, harassment, and molestation that was
28 being perpetrated upon the Plaintiff by BISSELL (as described above), Defendants BERKELEY

1 UNIFIED SCHOOL DISTRICT and BISSELL acted with deliberate indifference towards
2 responding to these alarms and preventing further abuse. Defendants BERKELEY UNIFIED
3 SCHOOL DISTRICT allowed BISSELL to remain in contact with minor children, in order to
4 sexually harass and abuse the Plaintiff.

5 176. As a result of the above-described conduct, the Plaintiff suffered and continue to
6 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
7 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
8 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be
9 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
10 loss of earnings and earning capacity, and has incurred and will continue to incur expenses for
11 medical and psychological treatment, therapy, and counseling.

12 **EIGHTH CAUSE OF ACTION**
13 **BREACH OF FIDUCIARY DUTY**
(Against all Defendants and Does 1 through 100)

14 177. Plaintiff re-alleges and incorporates by reference herein each and every allegation
15 contained herein above as though fully set forth and brought in this cause of action.

16 178. Defendants, as school teachers, staff, faculty, administrators and/or BERKELEY
17 UNIFIED SCHOOL DISTRICT officials were in a fiduciary relationship with Plaintiff, owing
18 them a special duty of due care. All Defendants (by and through their agents) are mandated
19 reporters with respect to claims of child abuse and child safety.

20 179. Moreover, Defendants owed the parents of the Plaintiff a statutory, common law
21 and constitutional duty to protect them and guarantee their safety at school. The parents of the
22 Plaintiff also have a constitutionally guaranteed interest in the rearing and upbringing of their
23 minor children, including but not limited to, the ability to ensure their child's safety both at home
24 and at school.

25 180. The Defendants also owed a special duty to the parents of the Plaintiff. As direct
26 victims for failure to notify of abuse of their minor children (See Phyllis P. v. Claremont Unified
27 School District (1986) 183 Cal. App. 3d at 1193) which held that a school district had a special
28 relationship with a parent because the parent was the “real and foreseeable” victim of the

1 defendants' negligent conduct. Direct victims may bring claims where there was a negligent
2 breach of a duty arising out of a preexisting relationship. Any breach committed by the Defendants
3 violates this special relationship and duty owed to the parents of the Plaintiff.

4 181. Defendants breached their fiduciary duty by failing to properly supervise BISSELL
5 and take appropriate steps to prevent the lewd and lascivious conduct perpetrated by BISSELL
6 against the Plaintiff. Defendants also failed to report BISSELL pursuant to Defendants' policy. In
7 addition, Defendants failed to report BISSELL's abuse or promptly notify the parents of the
8 Plaintiff or their minor children.

9 182. As a result of the above-described conduct, Plaintiff suffered and continues to
10 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
11 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
12 enjoyment of life; has suffered and continues to suffer and were prevented and will continue to be
13 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
14 loss of earnings and earning capacity, and have incurred and will continue to incur expenses for
15 medical and psychological treatment, therapy, and counseling.

16 **NINTH CAUSE OF ACTION**
17 **CONSTRUCTIVE FRAUD: (CIVIL CODE § 1573)**
18 (Against all Defendants and Does 1 through 100)

19 183. Plaintiff re-alleges and incorporates by reference herein each and every allegation
20 contained herein above as though fully set forth and brought in this cause of action.

21 184. By holding themselves out as qualified institutions of learning for children, by
22 holding BISSELL out as an agent of Defendants, and by allowing undertaking the academic,
23 psychological and emotional instruction and guidance of the minor Plaintiff through the actions of
24 BISSELL, Defendants entered into a fiduciary, special and confidential relationship with Plaintiff.

25 185. Defendants breached their fiduciary, special and confidential duties to the Plaintiff
26 by the wrongful and negligent conduct described herein above, and by so doing gained an
27 advantage over the Plaintiff in matters relating to their safety, security and health. In breaching
28 such duties, Defendants were able to sustain their status as institutions of high moral repute,
preserve their reputation in the community, including their administrators and staff, all at the

1 expense of Plaintiff's further injury and in violation of Defendants' mandatory duties.

2 186. By virtue of their fiduciary relationship and special relationship with Plaintiff,
3 Defendants owed the Plaintiff a duty to:

- 4 a. Investigate or otherwise confirm or deny such claims of sexual abuse;
- 5 b. Reveal such facts to the Plaintiff, their parents, and caretakers, the school community, and
6 law enforcement agencies;
- 7 c. Refuse to place BISSELL and other molesters in positions of trust and authority within
8 Defendants' institutions;
- 9 d. Refuse to hold out BISSELL to the school community, students, minors, parents and law
10 enforcement agencies as being in good standing and, trustworthy in keeping with his and
11 their position as a teacher, counselor, advisor, mentor and authority figure;
- 12 e. Refuse to assign BISSELL to positions of power within the school and over minor
13 students; and
- 14 f. Disclose to the Plaintiff and their parents, the public, the community, the school, students,
15 minors, and law enforcement agencies the wrongful, tortious, and criminal acts of
16 BISSELL.

17 187. Defendants' breached their respective duties by:

- 18 a. Making no or inadequate investigations of BISSELL;
- 19 b. Issuing no warnings about BISSELL;
- 20 c. Permitting BISSELL to routinely be alone and in control of minors, unsupervised;
- 21 d. Not having adopted a policy to prevent BISSELL from routinely having minors and minor
22 students in his unsupervised control;
- 23 e. Making no reports of any allegations of BISSELL 's dangerous and inappropriate conduct
24 prior to and during his employment at Defendants; and
- 25 f. Assigning and continuing to assign BISSELL to duties which placed him in positions of
26 authority and trust over minors, positions in which BISSELL could easily isolate and
27 sexually abuse minors.

28 188. At the time that Defendants engaged in such suppression and concealment of acts,

1 such acts were done for the purpose of causing the Plaintiff to forbear on their rights.

2 189. Defendants' misconduct did reasonably cause Plaintiff to forbear on their rights.

3 190. The misrepresentation, suppression and concealment of facts were likely to mislead
4 the Plaintiff and others to believe that Defendants had no knowledge of any charges, or that there
5 were no other charges of unlawful and sexual misconduct against BISSELL or others and that
6 there was no need for them to take further action or precaution.

7 191. The misrepresentation, suppression and concealment of facts by Defendants was
8 likely to mislead the Plaintiff and others to believe that Defendants had no knowledge of the fact
9 that BISSELL was a danger to students.

10 192. Defendants knew or should have known at the time they suppressed and concealed
11 the true facts regarding BISSELL and others' dangerous and inappropriate conduct that the
12 resulting impressions were misleading.

13 193. Defendants suppressed and concealed the true facts with the purpose of: preventing
14 Plaintiff, her parents, and others, from learning that BISSELL and others had been engaging in
15 dangerous and inappropriate conduct and were continuing to sexually harass, molest and abuse
16 minors and others under BISSELL's and Defendants' control, direction, and guidance, with
17 complete impunity; inducing people, including the Plaintiff and other benefactors and donors to
18 participate and financially support Defendants' school and other enterprises of Defendants;
19 preventing further reports and outside investigations into BISSELL's and Defendants' conduct;
20 preventing discovery of Defendants' own conduct; avoiding damage to the reputations of
21 Defendants; protecting Defendants' power and status in the community and the academic
22 community; avoiding damage to the reputation of Defendants and Defendants' institutions; and
23 avoiding the civil and criminal liability of Defendants, of BISSELL, and of others.

24 194. Defendants, with knowledge of the tortious nature of their own and each others'
25 conduct, gave each other substantial assistance to perpetrate the misrepresentations, fraud and
26 deceit alleged herein.

27 195. Defendants' suppression and concealment of facts, and in reliance thereon, were
28 induced to act or induced not to act, exactly as intended by Defendants. Specifically, Plaintiff was

1 induced to believe that there were no allegations of dangerous or inappropriate behavior of
2 BISSELL. Had Plaintiff and her parents or others known the true facts, they would have not
3 participated further nor continued to financially support the Defendants' activities alleged herein;
4 they would have reported the matters to the proper authorities, to other students and their parents
5 so as to prevent future recurrences; they would not have allowed children, including the Plaintiff,
6 to be alone with, or have any relationship with BISSELL; they would not have allowed children,
7 including the Plaintiff, to attend or be under the control of Defendants; they would have
8 undertaken their own investigations which would have led to discovery of the true facts; and they
9 would have sought psychological counseling for the Plaintiff, and for other children molested and
10 abused by BISSELL.

11 196. By giving BISSELL the position of teacher, counselor, advisor and mentor,
12 Defendants impliedly represented that BISSELL was safe and morally fit to give children
13 instruction, direction and guidance.

14 197. When Defendants made these representations or non-disclosure of material facts,
15 Defendants knew or should have known that the facts were otherwise. Defendants knowingly and
16 intentionally suppressed the material facts that BISSELL had engaged in dangerous and
17 inappropriate conduct, and knew of or learned of conduct, or should have learned of conduct by
18 BISSELL which placed Defendants on notice that BISSELL was likely abusing children. In fact,
19 Defendants had in place a policy and procedure for concealing child abusers as well as failing to
20 document or report such abuse in direct violation of their mandatory legal duties and obligations.

21 198. Because of the Plaintiff's young age, and because of the status of BISSELL as an
22 authority figure to the Plaintiff and their parents, Plaintiff was vulnerable to BISSELL. BISSELL
23 sought the Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability. Plaintiff's
24 vulnerability also prevented the Plaintiff from effectively protecting themselves from the sexual
25 advances of BISSELL. The Plaintiff's parent's vulnerability also prevented them from effectively
26 protecting their child from the sexual advances of BISSELL.

27 199. Defendants had the duty to obtain and disclose information relating to misconduct
28 of BISSELL.

1 200. Defendants misrepresented, concealed or failed to disclose information relating to
2 misconduct of BISSELL.

3 201. Defendants knew that they had misrepresented, concealed or failed to disclose
4 information related to misconduct of BISSELL.

5 202. Plaintiff justifiably relied upon Defendants for information relating to misconduct
6 of BISSELL.

7 203. Defendants, in concert with each other and with the intent to conceal and defraud,
8 conspired and came to a meeting of the minds whereby they would misrepresent, conceal or fail to
9 disclose information relating to the misconduct of BISSELL, the inability of Defendants to
10 supervise or stop BISSELL from sexually harassing, molesting and abusing the Plaintiff, and their
11 own failure to properly investigate, supervise and monitor his conduct with minors and students.

12 204. By so concealing, Defendants committed at least one act in furtherance of the
13 conspiracy.

14 205. As a result of the above-described conduct, Plaintiff have suffered and continues to
15 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
16 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
17 enjoyment of life; has suffered and continue to suffer and were prevented and will continue to be
18 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
19 loss of earnings and earning capacity, and has incurred and will continue to incur expenses for
20 medical and psychological treatment, therapy, and counseling.

21 206. In addition, when Plaintiff finally discovered the fraud of Defendants, and
22 continuing thereafter, Plaintiff experienced recurrences of the above-described injuries. In
23 addition, when the Plaintiff finally discovered the fraud of Defendants, and continuing thereafter,
24 the Plaintiff experienced extreme and severe mental anguish and emotional distress that the
25 Plaintiff had been the victim of Defendants' fraud; that Plaintiff had not been able to help other
26 minors being molested because of the fraud, and that the Plaintiff had not been able because of the
27 fraud to receive timely medical treatment needed to deal with the problems created by such abuse.

28 207. As a result of the above-described conduct, the Plaintiff suffered and continues to

1 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
2 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
3 enjoyment of life; has suffered and continues to suffer and were prevented and will continue to be
4 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
5 loss of earnings and earning capacity, and has incurred and will continue to incur expenses for
6 medical and psychological treatment, therapy, and counseling.

7 **TENTH CAUSE OF ACTION**

8 **ASSAULT**

(Against Defendant BISSELL Only and Does 1 through 100)

9 208. Plaintiff re-alleges and incorporates by reference herein each and every allegation
10 contained herein above as though fully set forth and brought in this cause of action.

11 209. Defendant BISSELL, in doing the things herein alleged all while BISSELL was
12 acting in the course and scope of his agency/employment with Defendants, put Plaintiff in
13 imminent apprehension of such contact or was intended to put Plaintiff in imminent apprehension
14 of such contact.

15 210. In doing the things herein alleged, Plaintiff was put in imminent apprehension of a
16 harmful or offensive contact by BISSELL, and actually believed BISSELL had the ability to make
17 harmful or offensive contact with Plaintiff's person.

18 211. Plaintiff did not consent to BISSELL's intended harmful or offensive contact with
19 Plaintiff's person, or intent to put Plaintiff in imminent apprehension of such contact.
20 Additionally, because Plaintiff was a minor during the time herein alleged, they lacked the ability
21 to consent to sexual contact with any person, especially with a mentor, teacher, coach and
22 counselor at the school they attended.

23 212. In doing the things herein alleged, BISSELL violated Plaintiff's rights, pursuant to
24 Civil Code section 43, of protection from bodily restraint or harm, and from personal insult. In
25 doing the things herein alleged, BISSELL violated his duty, pursuant to Civil Code section 1708,
26 to abstain from injuring the person of Plaintiff or infringing upon their rights.

27 213. As a result of the above-described conduct, Plaintiff has suffered and continues to
28 suffer great pain of mind and body, shock, emotional distress, physical manifestations of

1 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of
2 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be
3 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain
4 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for
5 medical and psychological treatment, therapy, and counseling.

6 214. Plaintiff is informed and based thereon alleges that the conduct of Defendant
7 BISSELL was oppressive, malicious and despicable in that it was intentional and done in
8 conscious disregard for the rights and safety of others, and was carried out with a conscious
9 disregard of Plaintiff's right to be free from such tortious behavior, such as to constitute
10 oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to
11 punitive damages against this Defendant in an amount appropriate to punish and set an example of
12 him.

13 **ELEVENTH CAUSE OF ACTION**
14 **SEXUAL BATTERY (CIVIL CODE §1708.5)**
(Against Defendant BISSELL Only and Does 1 through 100)

15 215. Plaintiff re-allege and incorporates by reference herein each and every allegation
16 contained herein above as though fully set forth and brought in this cause of action.

17 216. During Plaintiff's time as minor students at BERKELEY UNIFIED SCHOOL
18 DISTRICT, and DOES 1 through 100, Defendant BISSELL intentionally, recklessly and wantonly
19 did acts which were intended to, and did result in harmful and offensive contact with intimate
20 parts of Plaintiff's persons, including but not limited to Defendant BISSELL: engaging in sexual
21 touching, contact, and conduct with the Plaintiff.

22 217. Defendant BISSELL did the aforementioned acts with the intent to cause a harmful
23 or offensive contact with an intimate part of Plaintiff's persons, and would offend a reasonable
24 sense of personal dignity. Further, said acts did cause a harmful or offensive contact with an
25 intimate part of Plaintiff's person that would offend a reasonable sense of personal dignity.

26 218. Because of BISSELL's position of authority over Plaintiff, and Plaintiff's mental
27 and emotional state, and Plaintiff's young age, under the age of consent, Plaintiff was unable to,
28 and did not, give meaningful consent to such acts.

1 219. As a direct, legal and proximate result of the acts of Defendant BISSELL, Plaintiff
2 sustained serious and permanent injuries to her person, all to her damage in an amount to be
3 shown according to proof and within the jurisdiction of the Court.

4 220. As a direct result of the sexual abuse by BISSELL, Plaintiff has difficulty in
5 reasonably or meaningfully interacting with others, including those in positions of authority over
6 Plaintiff including supervisors, and in intimate, confidential and familial relationships, due to the
7 trauma of childhood sexual abuse inflicted upon them by Defendants. This inability to interact
8 creates conflict with Plaintiff's values of trust and confidence in others, and has caused Plaintiff
9 substantial emotional distress, depression, anxiety, nervousness and fear. As a direct result of the
10 molestation, assault and abuse by BISSELL, Plaintiff has had issues with her personal life, as
11 Plaintiff has issues with trust and have difficulty maintaining relationships. These feelings have
12 caused Plaintiff substantial emotional distress, depression, anxiety, nervousness and fear.

13 221. Plaintiff is informed and based thereon allege that the conduct of Defendant was
14 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for
15 the rights and safety of others, and was carried out with a conscious disregard of her right to be
16 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to
17 California Civil Code section 3294, entitling Plaintiff to punitive damages against Defendant in an
18 amount appropriate to punish and set an example of BISSELL.

19 **TWELFTH CAUSE OF ACTION**
20 **GENDER VIOLENCE: (CIVIL CODE § 52.4)**
 (Against Defendant BISSELL Only and Does 1 through 100)

21 222. Plaintiff re-alleges and incorporates by reference herein each and every allegation
22 contained herein above as though fully set forth and brought in this cause of action.

23 223. Defendants' acts committed against Plaintiff, as alleged herein, including the
24 sexual harassment and abuse of the minor Plaintiff constitute gender violence and a form of sex
25 discrimination in that one or more of Defendants' acts would constitute a criminal offense under
26 state law that has as an element the use, attempted use, or threatened use of physical force against
27 the person of another, committed at least in part based on the gender of the victim, whether or not
28 those acts have resulted in criminal complaints, charges, prosecution, or conviction.

224. Defendants' acts committed against Plaintiff, as alleged herein, including the sexual harassment and abuse of the minor Plaintiff constitutes gender violence and a form of sex discrimination in that Defendants' conduct caused a threatened physical intrusion or physical invasion of a sexual nature upon Plaintiff under coercive conditions, whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction.

225. As a proximate result of Defendant BISSELL's acts, Plaintiff is entitled to actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief pursuant to Civil Code section 3294 and Civil Code section 53. Plaintiff is also entitled to an award of attorney's fees and costs pursuant to Civil Code § 52.4, against Defendant BISSELL.

WHEREFORE, Plaintiff prays for a jury trial and for judgment against Defendants, and each of them, as follows:

FOR ALL CAUSES OF ACTION

1. For past, present and future general damages in an amount to be determined at trial;
2. For past, present and future special damages, including but not limited to past, present and future lost earnings, economic damages and others, in an amount to be determined at trial;
3. For appropriate punitive or exemplary damages against Defendant BISSELL;
4. For appropriate treble damages for a cover up against BERKELEY UNIFIED SCHOOL DISTRICT;
5. Any appropriate statutory damages;
6. For costs of suit;
7. For interest as allowed by law;
8. For attorney's fees and costs as applicable pursuant to California Code of Civil Procedure §§ 52.4, 1021.4 and 1021.5, and Civil Code §52 against Defendants BISSELL and BERKELEY UNIFIED SCHOOL DISTRICT and DOES 1 through 100, or otherwise as allowable by law and against BERKELEY UNIFIED SCHOOL DISTRICT pursuant to Title IX;

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9. For such other and further relief as the court may deem proper.

DATED: November 4, 2021

MANLY STEWART FINALDI

By: *Cristina J. Nolan*
MORGAN A. STEWART
SAUL E. WOLF
CRISTINA J. NOLAN
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff, JANE BHJ DOE, an individual, hereby demands a trial by jury.

DATED: November 4, 2021

MANLY STEWART FINALDI

By: *Cristina J. Nolan*
MORGAN A. STEWART
SAUL E. WOLF
CRISTINA J. NOLAN
Attorneys for Plaintiff