

CURRAN & CURRAN LAW  
Susan Curran, Esq.  
State Bar Association No. 227886  
90 N. Coast Hwy 101, Suite 103  
Encinitas, CA 92024  
Telephone: (760) 634-1229  
Facsimile: (760) 634-0729

Attorneys for Plaintiff

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SAN DIEGO COUNTY, CA

VIA FAX

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

ELAINE ALLYN, an individual

Plaintiff,

v.

FALLBROOK UNION ELEMENTARY  
SCHOOL DISTRICT, a public entity,  
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 37-2012-00054069-CU-WT-NC

COMPLAINT FOR DAMAGES

REQUEST FOR JURY TRIAL

Plaintiff ELAINE ALLYN [hereinafter referred to as "Plaintiff/Ms. ALLYN"] brings this Complaint against Defendant, FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT, an unknown entity [hereinafter referred to as "Defendant/FUESD"], and DOES 1 through 50 as follows:

PARTIES AND VENUE

1. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of DOES 1 through 50, at such time such information is ascertained by Plaintiff.

2. Plaintiff is informed and believes and thereon alleges that at all times relevant herein, each of the fictitiously named DOE Defendants are proximately responsible, either through negligence,

1 intentional misconduct, or contractually, for Plaintiff's injuries herein, and that each such fictitious  
2 Defendant acted as the agent of each of the other Defendants in this action.

3 3. Plaintiff is informed and believes and thereon alleges that Defendant FUESD is, and at all  
4 times relevant herein was, a public entity engaged in business in the North County of San Diego,  
5 California.

6 4. The acts and omissions alleged to have occurred herein were performed by Defendant  
7 FUESD and/or its management level employees and said acts were authorized or ratified by FUESD  
8 and/or its upper level managerial employees so as to render said businesses or individuals liable for  
9 the acts and omissions alleged herein.

10 5. At all times mentioned herein, each and every Defendant was the agent and/or employee  
11 of each and every other Defendant and in doing the things alleged was acting within the course and  
12 scope of such agency and/or employment, and in doing the acts herein alleged was acting with the  
13 consent, permission, and authorization of each of the remaining Defendants. All actions of each  
14 Defendant herein alleged were ratified and approved by the officers or managing agents of every  
15 other Defendant.

#### 16 17 GENERAL ALLEGATIONS

18 6. Plaintiff Ms. ALLYN was employed by Defendant FUESD for approximately eighteen  
19 (18) years. At the time of Ms. ALLYN's constructive termination she was the Director of  
20 Educational Technology. She was earning approximately \$109,077.88 per year as an exempt  
21 employee, plus benefits according to proof at trial.

22 7. In or about early August, 2011, Mr. Ray Proctor, the Associate Superintendent of Business  
23 Services at FUESD, demanded that Ms. ALLYN wipe out/cleanse FUESD's entire electronic data  
24 imaging from FUESD's archive system and to completely wipe out/cleanse all emails that were in  
25 the current trash area of the active system. The previous retention policy was a three-year retention  
26 policy that had been in place for at least 4 years. Ms. ALLYN refused his request as she knew this  
27 to be in violation of state and federal laws including applicable sections of the California  
28 Government Code pertaining to public agencies and reported the same to Mr. Proctor.

1           8. In or about mid August 2011, Ms. Candace Singh was hired as the new Superintendent for  
2 FUESD. Almost immediately after Ms. Singh was brought on board, Mr. Ray Proctor again  
3 demanded that Ms. ALLYN immediately wipe out/cleanse FUESD's entire electronic data imaging  
4 from FUESD's archive system and to re-set email retention to 7 days from the three-year retention  
5 policy that had been in place for at least 4 years. Ms. Singh agreed with Mr. Proctor. Ms. ALLYN  
6 again refused as she knew this to be in violation of state and federal laws including applicable  
7 sections of the California Government Code pertaining to public agencies and reported the same to  
8 both Ms. Singh and Mr. Proctor.

9           9. Ultimately, Ms. Singh directed Ms. ALLYN to wipe out/cleanse FUESD's entire electronic  
10 data imaging from FUESD's archive system and to completely wipe out all emails that were in the  
11 current trash area of the active system and to set email retention up to 1 year, with her ultimate goal  
12 to reduce the retention to 3 months. In response to Ms. ALLYN's strong objections, Ms. Singh said  
13 she would check with legal counsel regarding the laws and make a board policy regarding email  
14 retention. No board policy was ever created or communicated to Ms. ALLYN.

15           10. Thereafter, at Ms. Singh's and Mr. Proctor's direction, Ms. ALLYN directed a consultant  
16 to help dismantle the archive system. The consultant removed the programming and the server that  
17 archives email was shut down.

18           11. Ms. ALLYN was concerned and reluctant to go against Mr. Proctor's direction as she had  
19 learned through past experience that doing so invites Mr. Proctor's retaliation and disparate  
20 treatment. In or about 2005, Ms. ALLYN learned that Mr. Proctor made a very inappropriate remark  
21 at a District Cabinet meeting about Ms. ALLYN. After Ms. ALLYN was able to successfully  
22 negotiate a very good cell phone contract that saved the District money as well as provided better  
23 service, Mr. Proctor stated that Ms. ALLYN must have "slept with the vendor."

24           12. Ms. ALLYN was highly offended and complained to the Assistant Superintendent of  
25 Human Resources, who advised her to think about whether she really wanted to make that complaint  
26 as it would "ruin her career." She was told to go home and relax. Defendant failed to initiate any  
27 investigation or discipline of Mr. Proctor for his misconduct.

28           13. Unfortunately, her complaint was leaked to Mr. Proctor who then began on a decided



1 course of discrimination, harassment and retaliation against Ms. ALLYN. Over the next six years  
2 Mr. Proctor began disparately overly criticizing Ms. ALLYN as opposed to her male colleagues. Ms.  
3 ALLYN was given a smaller budget than her male counterparts and then criticized by Mr. Proctor  
4 when she could not meet his expectations that her male counterparts were able to meet as a result  
5 of their higher budgets. Mr. Proctor would sabotage Ms. ALLYN with her employees and vendors  
6 placing himself in front of Ms. ALLYN. Ms. ALLYN's staff was minimal and she was refused  
7 assistance, yet her male colleagues received the assistance they requested. Mr. Proctor referred to  
8 Ms. ALLYN as someone who was "unprofessional, an idiot and stupid." In Cabinet meetings  
9 attended by both Ms. ALLYN and Mr. Proctor, she would hear him make discriminatory remarks  
10 about female employees who "looked like a man" or another "who dressed like a hooker." Ms.  
11 ALLYN was also aware of other women who filed sexual harassment complaints against Mr. Proctor  
12 and were made to suffer similar discriminations as she was experiencing. Therefore, she kept her  
13 head down and did not complain to keep her job. Such misconduct was ongoing and continuing and  
14 is alleged to be an ongoing series of violations pursuant to the *Continuing Violations Doctrine*.

15 14. In or about January 2012, Ms. ALLYN was informed there had been a complaint made  
16 by a parent against one of the male teachers in the district who was allegedly video-taping children.  
17 On February 2, 2012, Mr. Dennis Bixler, Assistant Superintendent of Human Resources, requested  
18 Ms. ALLYN retrieve a video camera and retrieve the video footage.

19 15. On February 7, 2012, Ms. Singh called Ms. ALLYN and said the FUESD hired a private  
20 investigator to investigate the teacher, and that it was being kept quiet. She also told Ms. ALLYN  
21 the private investigator would be calling her for data and she was to cooperate. On the same day,  
22 Ms. Singh had called Ms. ALLYN, FUESD's consultant, who was pre-scheduled, was present to  
23 assist with a technical problem which he was able to fix.

24 16. On February 8, 2012, Bob Price, the investigator, requested that Ms. ALLYN give him  
25 electronic files and the teacher's emails. She complied; however, the files were extremely limited  
26 due to the new retention system put in place as directed by Mr. Proctor and Ms. Singh. On February  
27 10, 2012, Mr. Price and Ray Proctor arrived at Ms. ALLYN's office, unannounced. Mr. Price wanted  
28 thirty days of default files which Ms. ALLYN was unable to give him due to the way the archive

1 system was now reset at Mr. Proctor's and Ms. Singh's direction. Mr. Price was upset by this  
2 indicating and suggesting it was Ms. ALLYN's fault. Ms. ALLYN reported that it was Ms. Singh's  
3 and Mr. Proctor's decision to re-set the archive system to severely limit how far back electronic  
4 evidence could be obtained.

5 17. Mr. Proctor, clearly understanding he had a problem of *spoliation of evidence*, then asked  
6 her for the Admin password, which Ms. ALLYN thought was unusual. However, because he was  
7 her superior she gave the passwords to him. Thereafter, Ms. ALLYN checked the off-site back-up  
8 system to see if there were any additional log files there. Because she had not used this software, she  
9 asked for assistance from another employee who was able to get her into the system and pointed out  
10 where the back-up files were in the file structure. She provided the same to Mr. Price.

11 18. On February 14, 2012, Ms. ALLYN was called into Mr. Proctor's office. Mr. Price was  
12 present with Mr. Proctor and began asking Ms. ALLYN questions that clearly indicated she was  
13 being investigated? When Ms. ALLYN asked if she was being investigated, Mr. Proctor said, "After  
14 me you are the person in the district with the most confidential access and information." Ms.  
15 ALLYN knew she was being targeted as Mr. Proctor was clearly trying to cover his past misconduct  
16 of which Ms. ALLYN was aware. Ms. ALLYN was then accused of accessing and reading FUESD's  
17 employees's emails, clearly a ruse to attempt to diffuse who actually had caused the spoliation of  
18 electronic evidence problems. Ms. ALLYN explained that as the Director of Educational  
19 Technology, she was called upon to trouble shoot problems within employees' accounts, which  
20 necessitated logging into their email accounts. Additionally, Ms. ALLYN was authorized by the  
21 District's Online/Internet Services Board Policy to access emails and employee account without  
22 notice or consent. All District employees are notified of the same.

23 19. Ms. ALLYN denied "snooping" but made it clear she was aware that there were  
24 complaints and negative speculation regarding the speed at which grant funds were being used under  
25 Ms. Singh's direction. In fact, Ms. ALLYN was well aware of the wasteful use of taxpayers' monies,  
26 including \$30,000 spent on Ms. Singh's new office furniture and office remodel as well as a District  
27 kitchen re-model that included granite counter-tops. She also knew district staff had complained  
28 about Ms. Singh's use of grant monies. Ms. ALLYN was shocked to now learn that she was being

1 accused of snooping in Ms. Singh's emails regarding the same topic. In fact, Ms. ALLYN never read  
2 any of Ms. Singh's emails, only assisted her with some technical problems she was having in the  
3 past. But it was now apparent by FUESD's defiance and pre textural accusations against her, who  
4 had a lot of knowledge and information, there was likely electronic evidence of Ms. Singh's as well  
5 as Mr. Proctor's misconduct. Defendants were afraid Ms. ALLYN was aware of the same.

6 20. Mr. Price threatened Ms. ALLYN that her actions of accessing email accounts were  
7 criminal and she could "go to jail." This statement was a complete legal mis-representation as Ms.  
8 ALLYN was authorized by the District's Online/Internet Services Board Policy to access emails and  
9 employee account without notice or consent. Additionally, she was directed by Ms. Singh to gather  
10 information on the teacher who was accused of videotaping children, without his permission.

11 21. Ms. ALLYN was then placed on administrative leave and escorted from the grounds.

12 22. Thereafter, there were a series of three meetings that Ms. ALLYN was asked to attend.  
13 The first meeting lasted approximately three hours and was mainly conducted by Dennis Bixler,  
14 Assistant Superintendent of Human Resources. Bob Price was also in attendance. Ms. ALLYN was  
15 asked about FUESD's practice in maintaining electronic information, which she answered truthfully  
16 and honestly. Her truthfulness included reporting the direction by Ms. Singh and Mr. Proctor to  
17 wipe/delete/cleanse emails and trash directories in September 2011 as well as re-setting the archiving  
18 system. Ms. ALLYN was aware this was now proving to be legally troublesome for FUESD in light  
19 of the fact there was pending litigation over a teacher allegedly videotaping children. In response to  
20 how she was aware of certain issues regarding Ms. Singh's use of grant monies, she responded that  
21 after she was told by several people that the district staff had complained about Ms. Singh's use of  
22 grant monies, she brought the discussions to Ms. Singh's attention in an email. All three meetings  
23 the agents of FUESD were hostile and accusatory throughout the meetings. Ms. ALLYN was  
24 constantly asked, "Are you lying? Are you telling the truth?"

25 23. At the first meeting, Ms. ALLYN also reported Mr. Proctor's sexually harassing  
26 comment, her complaint about the same, FUESD's failure to investigate and the subsequent  
27 discrimination, harassment and retaliation she suffered as a result of her complaints. She now  
28 understood she was, again, being targeted by Mr. Proctor in an attempt to hide his own wrongdoing.



1 She also gave examples of other women who were being treated differently and to their detriment  
2 because they were women. One example she gave was a principal who complained. Thereafter, *that*  
3 *very day, that principal was placed on administrative leave.* She was subsequently brought back to  
4 the District office to work in an admin capacity due to public outrage. The person that will be  
5 replacing her as principal is a colleague of Ms. Singh's from her former district. In fact, Ms. Singh  
6 will be replacing two principals from over 50 candidates, both whom were colleagues from her  
7 former district. The board's conduct has been highly scrutinized by the community and the same has  
8 been reported in the media. The community is questioning why the principal, who brought stability  
9 to the school, had to be replaced with Singh's colleague, which will cost monies the District has been  
10 stating they don't have in answer to why the teachers have not been given raises in seven years.  
11 However, the board has received raises. Ms. ALLYN was/is thoroughly familiar with Proctor's and  
12 Singh's misconduct as was FUESD.

13 24. Continuing to act with complete disregard for any interests other than the board's own  
14 self serving interests, Dennis Bixler, Assistant Superintendent of Human Resources, *an underling*  
15 *to Ray Proctor, who Ms. ALLYN is informed and believes and herein alleges has been on a Personal*  
16 *Improvement Plan and instructed to run everything in his department through Ray Proctor,* opened  
17 an investigation with respect to Ms. ALLYN's complaints about Mr. Proctor. Ms. ALLYN was not  
18 surprised to learn that Mr. Proctor was not placed on administrative leave during the investigation,  
19 inconsistent with FUESD policy, nor was she surprised when the results of the investigation resulted  
20 in no findings of sexual harassment, discrimination and retaliation, because Mr. Bixler worked under  
21 Mr. Proctor. Additionally, the questions that Mr. Bixler asked her with respect to Mr. Proctor were  
22 transparently and obviously being written by Mr. Proctor himself; therefore, in essence Mr. Proctor  
23 was conducting his own investigation of himself while also conducting the alleged investigation of  
24 Ms. ALLYN.

25 25. On April 4, 2012, FUESD sent the Complaint Investigation Summary and Findings to  
26 Ms. ALLYN. As she predicted, FUESD failed to speak with witnesses who would have supported  
27 Ms. ALLYN's complaints, only those who would have been in a position to look into the matter at  
28 the time it happened, yet they did not. Therefore, the entire investigation was self serving to FUESD

1 administrators and compromised as set forth herein. The rational in the Summary is a pretextual  
2 loop hole as it sets forth that in order for Proctor to have "recommended adverse employment action  
3 against you in retaliation for your complaint, there would have first needed to be a complaint and Mr.  
4 Proctor would have needed to be informed of such a complaint." In other words, a finding of no  
5 discrimination/retaliation was found because the supporting, biased witnesses allegedly either did  
6 not remember hearing such comments or they could not remember where they heard it or chalked  
7 it up to "catty girl talk" and Proctor himself denied making discriminatory remarks.

8 26. On April 12, 2012, FUESD sent Ms. ALLYN a Notice of Intent to Recommend Dismissal  
9 of Senior Management Classified Employee and a Notice of Charges That There Exists Cause to  
10 Discipline a Senior Management Employee, Elaine Allyn. The facts/statements contained within the  
11 Notice of Charges were inaccurate, misrepresented, self-serving and in complete disregard to what  
12 Ms. ALLYN had stated in her meetings with FUESD investigators and administrators/agents. It is  
13 important to note that none of Ms. ALLYN's reports of discrimination and retaliation were  
14 mentioned in the notice.

15 27. On May 7, 2012, the Governing Board of the FUESD voted to terminate Ms. ALLYN.  
16 Ms. ALLYN is informed and believes and thereon alleges that she was terminated on a pretextual  
17 and false basis in violation of public policy and retaliation for reporting ongoing violations of gender  
18 discrimination/sexual harassment as well as misconduct relating to the spoliation of evidence and  
19 mishandling FUESD's electronic storage/servers by FUESD District Administrators that violates  
20 both state and federal law.

21 28. Ms. ALLYN received a letter dated May 10, 2012 notifying her she had been terminated  
22 as of May 7, 2012, however she would not receive her final paycheck until FUESD mailed it on May  
23 16, 2012. Additionally, no mention of reimbursement of monies owed to Ms. ALLYN for  
24 expenditures she paid for was made. At the time of the filing of this complaint, FUESD has failed  
25 to reimburse Ms. ALLYN and FUESD has also refused to return some of Ms. ALLYN's personal  
26 property which she had in her office.

27 29. On May 10, 2012, Ms. ALLYN filed a Government Tort Complaint pursuant to the  
28 California Government Tort Claims Act. FUESD rejected the claims on May 21, 2012 erroneously



1 opining the claims were "late" pursuant to the Government Code.

2 30. Ms. ALLYN is informed and believes and thereon alleges that she was terminated on a  
3 pretextual and false basis in violation of public policy and retaliation for reporting continuing  
4 violations of gender discrimination/sexual harassment as well as misconduct relating to the  
5 spoliation of evidence and mishandling FUESD's electronic storage/servers by FUESD District  
6 Administrators that violates both state and federal law.

7 31. Defendant FUESD's wrongful conduct has caused, and undoubtedly will continue to  
8 cause, severe economic and emotional damages to Plaintiff Ms. ALLYN. Defendant's conduct has  
9 also resulted in loss of sleep and anxiety, causing Ms. ALLYN further emotional distress and  
10 discomfort.

11 32. At all times relevant herein, Plaintiff conducted herself in accordance with all of the  
12 policies and procedures of Defendant FUESD and performed her employment duties in a proper  
13 fashion.

14 33. At all times relevant herein, Defendant FUESD was an employer within the definition  
15 of *Government Code* §12926(c). In addition, Defendant FUESD had an affirmative duty to  
16 investigate and take all reasonable steps to prevent discriminatory harassment from occurring in the  
17 workplace *Government Code* §12940 et seq.

18 34. Plaintiff has exhausted her administrative remedies both by filing her Government Tort  
19 claim and waiting the statutory time period and under *Government Code* §12960, et seq., and the  
20 Department of Fair Employment Housing has issued to Plaintiff Notices of Case Closure as to the  
21 discriminatory practices and events alleged herein as to Defendant FUESD.

22 35. As a direct and proximate result of the misconduct alleged above, Plaintiff has/will  
23 suffer lost income and benefits in an amount not less than \$972,000, all in an amount to be shown  
24 according to proof. Plaintiff claims such amount as damages together with prejudgment interest  
25 pursuant to *Civil Code* §3287 and/or any other provision of law providing for prejudgment interest.

26 36. As a direct and proximate cause of the wrongful activities alleged above, Plaintiff has  
27 suffered emotional distress directly associated with having to endure retaliation and unfairness  
28 directed towards Plaintiff; and/or unjust termination as a result of the same by Defendant FUESD.

1 By this complaint, Plaintiff does not waive any privacy rights she may have under *Cal. Const.*, Art.  
2 I, § 1; *Evid. Code* §994; *Evid. Code* §1014.

3  
4 FIRST CAUSE OF ACTION  
5 (Tortious Wrongful Termination in Violation of Fundamental  
6 Public Policies against Defendant FUESD and DOES 1-50)

7 37. Plaintiff refers to and incorporates by reference herein each and every allegation  
8 contained in paragraphs 1 through 36 above.

9 38. Plaintiff alleges that: (1) an employer-employee relationship existed; (2) Plaintiff engaged  
10 in a protected activity; (3) the Defendant employer subjected the employee to an adverse employment  
11 action; and (4) a causal link existed between the protected activity and the employer's adverse action.  
12 *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1066, 32 Cal. Rptr. 3d 436 (2005); *Mackey v.*  
13 *Department of Corrections*, 105 Cal. App. 4th 945 (2003). *Tameny v. Atlantic Richfield Co.*, 27  
14 Cal.3d 167, 179-180 (1980). The harassment, intimidation, discrimination, retaliation and ultimate  
15 wrongful termination against Plaintiff by Defendant was substantially due to Plaintiff engaging in  
16 legally protected activities namely Plaintiff's reporting continuing violation of discrimination/sexual  
17 harassment as well as misconduct relating to the spoliation of evidence and mishandling FUESD's  
18 electronic storage/ servers by FUESD District Administrators that violate both state and federal law.

19 39. Defendant FUESD had actual knowledge of the misconduct as well as the pervasive,  
20 harassing, intimidating, discriminating and retaliating environment in which Plaintiff was forced to  
21 work. Furthermore, Defendant FUESD maliciously and intentionally authorized and ratified the acts  
22 of Plaintiff's supervisors.

23 40. Defendant FUESD's wrongful/retaliatory acts were in violation of California law and  
24 were in Violation of Fundamental Public Policy as they are supported by both constitutional and  
25 statutory provisions.

26 41. Defendant FUESD violated these public policies by harassing, intimidating,  
27 discriminating and retaliating against Plaintiff. All of the foregoing are in violation of the public  
28 policy of this State, so as to entitle Plaintiff to sue for the injuries and damages suffered by her as  
a result thereof. Furthermore, Defendant FUESD by act/omission authorized and ratified the acts

1 of Plaintiff's supervisors.

2 42. As a proximate result of the misconduct of Defendant, Plaintiff has suffered and  
3 continues to suffer substantial losses in earnings, retirement benefits, and other employment benefits  
4 which she would have received had Defendant not committed such misconduct.

5 43. Plaintiff has also suffered and continues to suffer humiliation, embarrassment, mental and  
6 emotional distress, and discomfort, all to Plaintiff's damage in an amount not yet ascertained.  
7 Plaintiff will seek leave to amend this complaint to insert the amount when it is ascertained, or  
8 according to proof at trial.

9  
10 SECOND CAUSE OF ACTION

11 (Retaliation in Violation of *California Government Code* §12940, et seq.,  
12 against Defendant FUESD and DOES 1-50)

13 44. Plaintiff refers to and incorporates by reference herein each and every allegation  
14 contained in paragraphs 1 through 36 above.

15 45. Plaintiff alleges that: (1) she engaged in a protected activity; (2) the Defendant employer  
16 subjected the employee to an adverse employment action; and (3) a causal link existed between the  
17 protected activity and the employer's adverse action. The harassment, intimidation, discrimination,  
18 and retaliation against Plaintiff by Defendant FUESD was substantially due to Plaintiff's reporting  
19 sexual harassment as well as misconduct relating to the spoliation of evidence and mishandling  
20 FUESD's electronic storage/ servers by FUESD District Administrators that violate both state and  
21 federal law. These decisions were made by Defendant FUESD.

22 46. Defendant FUESD had actual knowledge of the misconduct as well as the pervasive,  
23 harassing, intimidating, discriminating and retaliating environment in which Plaintiff was forced to  
24 work. Furthermore, Defendant FUESD maliciously and intentionally authorized and ratified the acts  
25 of Plaintiff's supervisors.

26 47. As a proximate result of Defendant's bad faith harassment, intimidation, discrimination  
27 and retaliation against Plaintiff, Plaintiff has suffered and continues to suffer the injuries and  
28 damages alleged above.

///

THIRD CAUSE OF ACTION  
(Violation of *California Labor Code* §1102.5 against  
Defendant FUEDS and DOES 1-50)

48. Plaintiff refers to and incorporates by reference herein each and every allegation contained in paragraphs 1 through 36 above.

49. Pursuant to *California Labor Code* §1102.5(c) an employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

50. Plaintiff Ms. ALLYN was terminated for engaging in legally protected activities namely Plaintiff's reporting sexual harassment as well as misconduct relating to the spoliation of evidence and mishandling FUESD's electronic storage/ servers by FUESD District Administrators that violate both state and federal law.

51. An employer who has retaliated against a whistleblower may be ordered to: reinstate the employee with back-pay and benefits (*Lab. Code* §98.6(b)); pay the employee's actual damages (*Lab. Code* §1105); and pay a civil penalty of \$10,000 for each violation if the employer is a corporation or limited liability company (*Lab. Code* 1102.5 (f)).

FOURTH CAUSE OF ACTION  
(Gender Discrimination in Violation of *California Government Code*  
§12940, et seq., against Defendant FUEDS and DOES 1-50)

52. Plaintiff refers to and incorporates by reference herein each and every allegation contained in paragraphs 1 through 36 above.

53. The acts of Defendant alleged above constitute a violation of *Government Code* §12940, *et seq.* entitling Plaintiff to bring an action for damages.

54. The hostile, discriminatory treatment of Plaintiff was decided upon by Defendant FUESD substantially due to Plaintiff's gender, female. This decision was made by Defendant's management level employees.

55. Defendant had actual knowledge of the conduct of its management level employees as well as the pervasive discriminatory work environment Plaintiff was forced to work in. Furthermore, Defendant maliciously and intentionally authorized and ratified the acts of its employees and DOES



1 1 through 50.

2 56. Defendant FUESD's acts as alleged herein were in violation of public policy. The public  
3 policy which was violated by Defendant FUESD is the public policy of the State of California which  
4 prohibits an employer from harassing, retaliating or discriminating against its employees for, among  
5 other things, an employee's gender. Furthermore, it is illegal for an employer to fail to take all  
6 reasonable steps necessary to prevent discrimination and harassment from occurring. *Government*  
7 *Code* §12940 et seq.

8 57. As a proximate result of Defendant's bad faith harassment, intimidation, discrimination  
9 and retaliation against Plaintiff in violation of statutorily expressed public policy, Plaintiff has  
10 suffered and continues to suffer the injuries and damages alleged above.

11  
12 FIFTH CAUSE OF ACTION  
13 (Violation of *California Labor Code* §2802 against  
14 Defendant FUESD and DOES 1-50)

15 58. Plaintiff refers to and incorporates by reference herein each and every allegation  
16 contained in paragraphs 1 through 36 above.

17 59. *California Labor Code* §2802 sets forth, in pertinent part "(a) An employer shall  
18 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in  
19 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions  
20 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,  
21 believed them to be unlawful."

22 60. Defendant failed to reimburse Plaintiff for expenses she incurred in direct consequence  
23 of the discharge of her duties and her obedience to the directions of the employer.

24 61. Plaintiff seeks damages in an amount not yet ascertained. Plaintiff will seek leave to  
25 amend this complaint to insert the amount when it is ascertained, or according to proof at trial.

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1 manner and to refrain from discriminatory misconduct and retaliation. Plaintiff was protected from  
2 the type of termination which has been alleged herein.

3 69. The substantive reason for Plaintiff's mistreatment, and the procedures utilized by  
4 Defendant FUESD in terminating Plaintiff, violated the written Policies of Defendant FUESD,  
5 which, if adhered to, would have allowed Plaintiff to remain an employee of Defendant FUESD.  
6 Defendant's violation was a substantial factor in the causation of the injuries and damages alleged  
7 herein.

8  
9 EIGHTH CAUSE OF ACTION

10 (Failure to Investigate/Prevent Discrimination under *California Government Code*  
§12940, et seq. against Defendant FUESD and DOES 1-50)

11 70. Plaintiff refers to and incorporates by reference herein each and every allegation  
12 contained in paragraphs 1 through 36 above.

13 71. The hostile and discriminatory treatment of Plaintiff was decided upon by Defendant  
14 FUESD substantially due to Plaintiff's reporting sexual harassment complaints that were brought  
15 to her attention by her direct reports, investigating the same and for complaining about wage and  
16 hour violations by FUESD. This decision was made by Defendant FUESD's management level  
17 employees.

18 72. Defendant FUESD had actual knowledge of the conduct of their management level  
19 employees as well as the pervasive discriminatory work environment in which Plaintiff was forced  
20 to work. Furthermore, Defendant FUESD maliciously and intentionally authorized and ratified the  
21 acts of their employees.

22 73. As a direct and proximate result of Defendant FUESD's actions in violation of  
23 *Government Code* §12940, Plaintiff has suffered the injuries and damages alleged herein.

24  
25 NINTH CAUSE OF ACTION

26 (Negligence, Negligent Supervision, Training And Hiring  
against Defendant FUESD and DOES 1-50)

27 74. Plaintiff refers to and incorporates by reference herein each and every allegation  
28 contained in paragraphs 1 through 36 above.

1 75. Defendant FUESD had a duty to Plaintiff. Defendant FUESD breached the duty owed  
2 to Plaintiff by and through its consent of the acts and omissions of the individually named employees  
3 of Defendant as alleged herein, as well as the acts and omissions in allowing the pervasive, harassing  
4 and discriminatory work environment in which Plaintiff was forced to work. Defendant FUESD's  
5 breach of the duty owed to Plaintiff proximately caused the injuries and damages alleged herein.

6 76. Defendant FUESD negligently and carelessly hired, supervised, trained and retrained the  
7 Defendant's supervisors so as to proximately cause the injuries and damages alleged herein.

8 77. As a direct and proximate result of the misconduct alleged above, Plaintiff has suffered  
9 economic damages in an amount to be shown according to proof, plus interest.

10 78. As a proximate result of Defendant's misconduct as alleged above, Plaintiff has suffered  
11 embarrassment, humiliation and severe emotional and mental anguish all to her damage in an amount  
12 according to proof.

13  
14 TENTH CAUSE OF ACTION

15 (Breach of Implied Covenant of Good Faith and Fair Dealing  
16 against Defendant FUESD and DOES 1-50)

17 79. Plaintiff refers to and incorporates by reference herein each and every allegation set forth  
18 in paragraphs 1 through 36 above.

19 80. The employment agreement between Defendant FUESD and Plaintiff had an implied-in-  
20 law covenant of good faith and fair dealing. The covenant of good faith and fair dealing is implied  
21 in every employment contract. *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 683, 254 Cal. Rptr.  
22 211 (1988). Defendant covenanted to give full cooperation to the Plaintiff in her performance under  
23 the employment agreement, and that Defendant would refrain from any act which would prevent or  
24 impede any of the conditions of the employment agreement from being performed.

25 81. Plaintiff reasonably relied on the implied promise that Defendant would treat her fairly  
26 and not in violation of the law.

27 82. Plaintiff performed all the duties and conditions of the employment agreements.

28 83. Said Defendant knew that Plaintiff had fulfilled all her duties and obligations under the  
contract.



1 84. Defendant breached the implied covenant of good faith and fair dealing under the  
2 employment agreement by engaging in the misconduct as alleged herein. Defendant's motives were  
3 in bad faith/retaliatory in nature and extraneous to the employment relationship and were intended  
4 to deprive Plaintiff of the benefits thereof.

5 85. As a proximate result of Defendant's breach of the implied covenant of good faith and  
6 fair dealing, Plaintiff has suffered, and continues to suffer, losses in earnings and other employment  
7 benefits, to her damage in an amount to be established at trial.

8  
9 ELEVENTH CAUSE OF ACTION  
10 (Intentional Infliction of Emotional Distress against  
11 Defendant FUESD and DOES 1-50)

12 86. Plaintiff refers to and incorporates by reference herein each and every allegation  
13 contained in paragraphs 1 through 36 above.

14 87. On the dates set forth above, Plaintiff became aware she was being harassed, intimidated,  
15 discriminated and retaliated against by Defendant FUESD. The wrongful conduct was ratified and  
16 approved by Defendant.

17 88. Defendant FUESD intentionally, and with a malicious motive, engaged in conduct that  
18 was calculated to cause Plaintiff to suffer humiliation, mental anguish and emotional distress. This  
19 extreme and outrageous conduct by Defendants in concert together, included harassing, intimidating,  
20 discriminating and retaliating against Plaintiff without good cause and falsely justifying such actions.  
21 Defendant's conduct in confirming and ratifying the wrongful conduct of its supervisors and  
22 managers was done with the knowledge that it would cause Plaintiff severe emotional distress and  
23 hardship and with a wanton and reckless disregard of the consequences to Plaintiff.

24 89. Defendant's wrongful conduct against Plaintiff was extreme and outrageous in that at all  
25 times they knew they were harassing, intimidating, discriminating and retaliating against an  
26 employee who had worked with extraordinary commitment while in the employ of Defendant  
27 FUESD. Defendant knew that such arbitrary, intentional and wrongful conduct on the part of  
28 Defendant without good cause and under false pretenses would cause Plaintiff severe emotional  
distress and hardship, leave her without a job, or a career to which she had expended many years of

1 service in constructing, or a means to support herself and her family.

2 90. As a proximate result of Defendant's intentional conduct, Plaintiff was injured in her  
3 health, strength and activity, sustaining substantial shock and injury to her nervous system and  
4 person. All of the injuries have caused and continue to cause Plaintiff great mental distress, pain and  
5 suffering.

6 91. Plaintiff has suffered loss of reputation, income, shame, ridicule, and mortification, all  
7 to her general damage in an amount to be proven at the time of trial.

8  
9 TWELFTH CAUSE OF ACTION  
10 (Negligent Infliction of Emotional Distress against  
11 Defendant FUESD and DOES 1-50)

12 92. Plaintiff refers to and incorporates by reference herein each and every allegation  
13 contained in paragraphs 1 through 36 above.

14 93. On the dates set forth above, Plaintiff became aware that she was being harassed,  
15 intimidated, discriminated and retaliated against by Defendant FUESD. This wrongful conduct was  
16 ratified and approved by Defendant.

17 94. Defendant negligently engaged in the conduct of harassing, intimidating, discriminating  
18 and retaliating against Plaintiff without good cause and by falsely justifying such wrongful conduct  
19 even though Defendant knew or should have known that such wrongful conduct would cause  
20 Plaintiff to suffer humiliation, mental anguish, and emotional distress.

21 95. As a proximate result of Defendant's negligent conduct, Plaintiff was injured in her  
22 health, strength and activity, sustaining substantial shock and injury to her nervous system and  
23 person. All of the injuries have caused and continue to cause Plaintiff great mental distress, pain and  
24 suffering.

25 WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

26 1. For an award against Defendants, jointly and severally, of actual, consequential and  
27 incidental losses, including, but not limited to loss of income and benefits in an amount to be shown  
28 according to proof, together with prejudgment interest pursuant to *Civil Code* §3287 and/or 3288.

1 2. For an award against Defendants, jointly and severally, of general damages in an amount  
2 to be shown according to proof.

3 3. For exemplary and punitive damages for Defendant's oppression and malice, in an amount  
4 commensurate with Defendant's ability to pay, according to proof at trial.

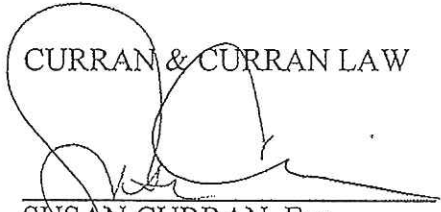
5 4. For costs of suit and attorneys fees under the DFEH.

6 5. For such other and further damages as the court deems just and proper.

7  
8  
9 Dated: May 30, 2012

By:

CURRAN & CURRAN LAW

  
SUSAN CURRAN, Esq.  
Attorney for Plaintiff

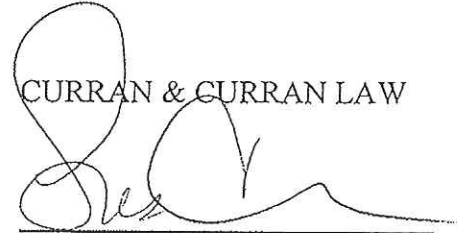
10  
11  
12  
13 JURY TRIAL DEMANDED

14 Plaintiff demands trial of all issues by jury.

15  
16  
17 Dated: May 30, 2012

By:

CURRAN & CURRAN LAW

  
SUSAN CURRAN, Esq.  
Attorney for Plaintiff