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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES

16 SUSANNA CONTRERAS SMITH
and CLEVE PELL,

17 Plaintiffs,

18 v.

19 MONTEBELLO UNIFIED
20 SCHOOL DISTRICT, a local public
21 educational agency; BENJAMIN
CARDENAS, an individual; LANI
22 CUPCHOY, an individual; JOANNA
FLORES, an individual; EDGAR
23 CISNEROS, an individual; RUBEN
J. ROJAS, an individual; and DOES
24 1 through 10 inclusive,

25 Defendants.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 29 2017

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden, Deputy

BC 666775

Case No.

COMPLAINT FOR:

(1) Retaliation in Violation of
California Labor Code § 1102.5

(2) Retaliation in Violation of
California Labor Code § 98.6

(3) Violation of the Bane Act,
California Civil Code § 52.1

(4) Violation of the California
Whistleblower Protection Act,
California Government Code §§
8547.3 and 8547.8

(5) Violation of the Reporting by
School Employees of Improper
Governmental Activities Act,
California Education Code §§ 44113
and 44114

By Fax

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**(6) Violation of the Whistleblower
Protection Provisions of the California
False Claims Act, California
Government Code § 12653(a)**

**(7) Injunctive Relief to Restrain Illegal
Expenditure and Waste of Public
Funds and Resources, California Code
of Civil Procedure § 526a**

DEMAND FOR JURY TRIAL

1 Plaintiffs Susanna Contreras Smith (“Contreras Smith”) and Cleve Pell
2 (“Pell”) (together, “Plaintiffs”), each allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs are whistleblowers who were wrongfully terminated when
5 they sought to investigate and expose political corruption involving the Chief
6 Business Officer and members of the Board of Education of Montebello Unified
7 School District (“MUSD”), one of the largest school districts in the country.

8 2. Plaintiff Susanna Contreras Smith was employed by MUSD as its
9 Superintendent of Schools, and Plaintiff Cleve Pell was employed by MUSD as
10 its Chief Financial and Operations Officer, when they learned that MUSD’s
11 recently-hired Chief Business Officer, Ruben J. Rojas, had obtained his position
12 through false statements and omissions on his employment application. Alarmed
13 to discover the proverbial wolf in sheep’s clothing in control of MUSD’s \$300
14 million annual spending budget, Contreras Smith and Pell began to discover facts
15 that Rojas was directing lucrative MUSD contracts to cronies in violation of
16 public contracting laws. To protect MUSD and its constituents, Contreras Smith
17 placed Rojas on administrative leave, and she and Pell brought their concerns to
18 MUSD’s Board of Education for a full and effective investigation. Their efforts
19 were thwarted, however, when his protectors on the Board of Education sought
20 to cover up the web of corruption surrounding Rojas, engineered his return from
21 leave by false pretenses, and then voted to terminate Contreras Smith and Pell in
22 retaliation for their whistleblowing. This lawsuit seeks to ameliorate the harm
23 inflicted on Plaintiffs, and to bring an end to the corrupt practices that the
24 Defendants allowed to occur at MUSD’s expense.

25 **BRIEF SUMMARY OF PLAINTIFFS’ ALLEGATIONS**

26 3. In June 2015, after the individual in a similar position announced
27 her retirement, MUSD hired Ruben J. Rojas (“Rojas”) as its Chief Business
28 Officer (“CBO”). MUSD was in need of an experienced person with impeccable

1 integrity and credentials to serve as CBO because MUSD was embarking on a
2 campaign to repair and upgrade its aging school facilities using budgetary funds
3 provided, in part, by state and federal programs, as well as a new \$300 million
4 bond issue. At the time, Susanna Contreras Smith served as MUSD’s
5 Superintendent of Education, Cleve Pell served as its Superintendent of Schools,
6 and David E. Kenney (“Kenney”) served as its legal counsel. The MUSD Board
7 of Education (“Board of Education” or “Board”) was then composed of members
8 Benjamin Cárdenas (“Cárdenas”), Edgar Cisneros (“Cisneros”), Lani Cupchoy
9 (“Cupchoy”), Hector A. Chacon (“Chacon”), and David Vela (“Vela”).

10 4. As time went on, Contreras Smith and Pell—who in July 2015 had
11 become Superintendent of Schools and Chief Financial and Operations Officer
12 (“CFOO”), respectively—discovered that instead of getting the seasoned
13 professional that Rojas claimed to be, MUSD had hired an individual who had
14 crisscrossed California looking for school districts to exploit for his personal
15 benefit. Time after time, Rojas would obtain a position with a school district,
16 only to be asked to leave soon thereafter – so he would simply move on to the
17 next opportunity. When Rojas applied to MUSD he hid his employment history
18 by making up a résumé filled with misrepresentations and omissions, and he
19 backed it up with falsified letters of recommendation. Unfortunately, with a
20 push from then-Board president Cárdenas and others working with him, MUSD
21 hired Rojas into a position that gave him power over the expenditure of MUSD’s
22 funds and the award of its contracts.

23 5. Within a year after being hired by MUSD, Rojas awarded a number
24 of lucrative MUSD contracts to contractors favored by him in violation of
25 California’s Public Contract Code and other laws. Rojas did so with the support
26 of members of the Board of Education, which was then composed of Cárdenas,
27 Cisneros, Cupchoy, Chacon, and newcomer Joanna Flores (“Flores”), who had
28 replaced Vela on the Board in November 2015.

1 6. Against this backdrop, Plaintiffs realized that Rojas’s apparently
2 shining résumé, which had included an appointment by Governor Jerry Brown to
3 the California Infrastructure and Economic Development Bank (the
4 “Infrastructure Bank”), was not what it appeared to be. Rather, Rojas had
5 omitted from his application that he had been hired, placed on administrative
6 leave, and fired from *two prior public school districts* for misconduct *within four*
7 *years* of submitting an employment application to MUSD. One of those school
8 districts even publicly removed Rojas’s signature authority prior to terminating
9 his employment.

10 7. To conceal his employment history, Rojas fabricated that he had
11 been employed by a small, obscure school district near Bakersfield, California,
12 Elk Hills School District (“Elk Hills”), during the timeframe of July 2011 to July
13 2013. Rojas even submitted a letter of recommendation in support of his
14 application from Elk Hills’s Superintendent, Jeff Tensley, a letter which Elk
15 Hills’s legal counsel subsequently told the press was not written by Tensley.

16 8. Contreras Smith and Pell started to learn of inconsistencies in
17 Rojas’s employment application in the fall of 2016, and repeatedly sought to
18 bring these issues to the attention of the members of the Board of Education.
19 Specifically, citing examples of apparent misstatements and omissions in Rojas’s
20 application, Contreras Smith and Pell repeatedly raised their concerns that such
21 an apparently untrustworthy individual had been given responsibility for
22 awarding contracts and spending MUSD’s \$300 million annual budget and its
23 recently passed Measure GS bond funds. Collectively, they sought to have the
24 Board investigate Rojas and take action to protect MUSD’s finances. In
25 response, however, certain members of the Board tried to prevent Plaintiffs from
26 taking any adverse action against Rojas, and tried to quash any genuine inquiry
27 into the allegations raised against him.

28

1 9. For example, in 2016, then-Board president Cárdenas met with
2 Kenney and threatened him, telling him to “back off” from inquiring into Rojas’s
3 background. With the backing of Contreras Smith and Pell, however, Kenney
4 continued to look into the facts surrounding Rojas’s false and misleading
5 application to MUSD. After learning of additional facts indicating Rojas’s
6 dishonesty, Contreras Smith sought to place a resolution before the Board at its
7 next regularly scheduled meeting to place Rojas on administrative leave pending
8 a formal investigation. But after hearing that Contreras Smith planned to bring
9 the Rojas resolution forward, certain members of the Board expressed their intent
10 not to attend the meeting, thereby forcing cancellation of the meeting due to a
11 lack of quorum. In response, Contreras Smith simply placed Rojas on
12 administrative leave using her own authority. Meanwhile, the Board hired a law
13 firm to conduct what was supposed to be an independent investigation of the
14 concerns expressed by Plaintiffs and Kenney. Contreras Smith, however, found
15 the law firm’s “independent investigation” to be woefully deficient because it
16 insufficiently investigated the allegations raised regarding Rojas.

17 10. On October 6, 2016, at a subsequent Board meeting, Contreras
18 Smith refused to reinstate Rojas despite the findings of the “independent
19 investigation.” To try to force her to change her mind, certain members of the
20 Board pressured Contreras Smith for several hours, and at one point expressly
21 threatened her and Pell’s continued employment with MUSD. Upon realizing
22 that Contreras Smith would not capitulate, members of the Board falsely offered
23 her a deal: temporarily reinstate Rojas and the Board would hold a special
24 meeting to allow all concerned to discuss fully the issues raised about Rojas.
25 After securing an agreement to hold such a special meeting on October 14, 2016,
26 Contreras Smith conditionally lifted Rojas’s suspension and began drafting an
27 agenda for the special meeting.

28

1 11. Shortly thereafter, then-Board president Cárdenas instructed
2 Contreras Smith to change the agenda for the promised special meeting. Rather
3 than meeting to review Rojas and his continued employment by MUSD,
4 Cárdenas directed that the Board would instead meet to review *Plaintiffs'*
5 employment with MUSD.

6 12. At the October 14, 2016 special meeting, in retaliation for blowing
7 the whistle on the CBO and his oversight of public funds, and without any
8 further investigation or discussion of the issues raised regarding Rojas, the Board
9 placed Contreras Smith and Pell on involuntary administrative leave.

10 13. On November 2 and 3, 2016, pursuant to the California Public
11 Records Act, Government Code § 6250 *et seq.*, Contreras Smith and Pell
12 requested, among other things, copies of: (1) contracts procured by Rojas and
13 approved by the Board that they believed violated California law because the
14 contracts did not abide by competitive bidding laws and were inflated; and
15 (2) statements of economic interests filed by Rojas and members of the Board
16 that they believed would reveal potential conflicts of interest with entities that
17 had been awarded lucrative MUSD contracts.

18 14. Soon thereafter, in the late evening of November 3, 2016, via a 4-1
19 vote, the Board took the ultimate retaliatory action and terminated the
20 employment of Contreras Smith and Pell. Accordingly, Contreras Smith and Pell
21 hereby institute this suit for damages to vindicate their rights as whistleblowers,
22 and to enjoin any further improper taking or appropriation of funds from the
23 public fisc by certain members of the Board and/or Rojas.

24 **PARTIES**

25 15. Plaintiff Contreras Smith is an individual residing in the city of La
26 Verne, Los Angeles County, California. Contreras Smith worked at MUSD for
27 more than four (4) years, as an Associate Superintendent of Accountability and
28 Compliance, Superintendent of Education, and most recently as Superintendent

1 of Schools. Contreras Smith served as sole Superintendent of Schools from July
2 1, 2015 until October 14, 2016, when the Board of Education placed her on
3 immediate administrative leave. On November 3, 2016, the Board terminated
4 Contreras Smith's employment contract. Contreras Smith's employment
5 contract had provided her with a yearly salary of \$265,000.00 (with step
6 increases), participation in the California State Teachers' Retirement System
7 ("CalSTRS"), participation in the Public Agency Retirement Services ("PARS")
8 program, and 45 days of paid vacation per year (with the ability to carry over 25
9 days annually).

10 16. Plaintiff Pell is an individual residing in the city of Montebello, Los
11 Angeles County, California. Pell worked at MUSD for fifty (50) years, including
12 as Superintendent of Schools alongside Contreras Smith, and most recently as
13 CFOO. Prior to Pell's service as CFOO, Pell served in other positions at MUSD,
14 including Counselor, Assistant Principal, and Principal at Bell Gardens High
15 School; and Principal, Assistant Director, and Director of Montebello Adult
16 Schools. Pell served as CFOO from July 1, 2015 until October 14, 2016, when
17 the Board placed him on immediate administrative leave. On November 3, 2016,
18 the Board terminated Pell's employment contract. Pell's employment contract
19 had provided him with a yearly salary of \$256,503.50 (with step increases),
20 participation in CalSTRS, participation in the PARS program, and 45 days of
21 paid vacation per year (with the ability to carry over 25 days annually).

22 17. Defendant MUSD is a public school district in the city of
23 Montebello, Los Angeles County, California. MUSD is comprised of at least
24 thirty (30) schools. For the 2015 to 2016 fiscal year, MUSD had an operating
25 budget of over \$300 million. MUSD also had access to \$300 million in funds
26 from a bond measure, Measure GS, passed by voters on June 7, 2016, and what
27 remained of approximately \$200 million in funds from two prior bond measures,
28 Measure M, passed by voters in 2004, and Measure EE, passed in 1998.

1 18. The Board of Education is MUSD’s governing and policy-making
2 body, tasked with providing educational accountability and leadership to the
3 community. The Board has five members, elected for staggered four-year terms.

4 19. Defendant Cárdenas is an individual residing in Los Angeles
5 County, California. At all relevant times, Cárdenas has been a member of the
6 Board, including, until very recently, serving as President of the Board.
7 Cárdenas is sued herein in his individual capacity.

8 20. Defendant Cupchoy is an individual residing in Los Angeles
9 County, California. At all relevant times, Cupchoy has been a member of the
10 Board. Cupchoy previously served as Vice President of the Board, and currently,
11 serves as President. Cupchoy is sued herein in her individual capacity.

12 21. Defendant Cisneros is an individual residing in Los Angeles
13 County, California. At all relevant times, Cisneros has been a member of the
14 Board. Currently, Cisneros serves as Vice President of the Board. Cisneros is
15 sued herein in his individual capacity.

16 22. Defendant Flores is an individual residing in Los Angeles County,
17 California. Flores was elected to the Board on November 3, 2015, and at all
18 relevant times has since served as a member of the Board. Currently, Flores
19 serves as Clerk of the Board. Flores is sued herein in her individual capacity.

20 23. Defendant Rojas is an individual residing in Riverside County,
21 California. At all relevant times, and until his termination on March 30, 2017,
22 Rojas served as the Chief Business Officer (“CBO”) of MUSD. Rojas is sued
23 herein in his individual capacity.

24 24. Plaintiffs are ignorant of the true names and capacities of the
25 defendants sued herein as Does 1 through 10, inclusive, and therefore sue these
26 defendants by fictitious names. Plaintiffs will amend their complaint to allege
27 the true names and capacities of the fictitiously named defendants as soon as they
28 are ascertained. Plaintiffs believe that each of these fictitiously named

1 defendants is responsible in some manner for the acts or omissions alleged herein
2 and that Plaintiffs' injuries and damages were proximately caused by the acts or
3 omissions of these defendants.

4 25. At all times material herein, each of the individual defendants was
5 the agent, co-conspirator, and/or partner of each of the remaining individual
6 defendants, and was, in doing the things complained of herein, acting within the
7 course and scope of said agency, employment, conspiracy, and/or partnership,
8 and acting also with the full knowledge and/or subsequent ratification of
9 his/her/its principals, co-conspirators, and/or partners.

10 **JURISDICTION AND VENUE**

11 26. This Court has personal jurisdiction over each of the defendants
12 because they are residents of California.

13 27. Venue is proper in this judicial district pursuant to California Code
14 of Civil Procedure § 395 because at least one defendant resides in this district,
15 and the conduct and injuries giving rise to this action occurred in this district.

16 **FACTUAL ALLEGATIONS**

17 **A. Rojas Exaggerates His Credentials And Conceals His True** 18 **Employment History To Secure Employment With MUSD**

19 28. On February 16, 2015, Rojas submitted an employment application
20 to MUSD for the position of CBO. In the application, résumé and other
21 materials submitted in support of his candidacy, Rojas made a number of
22 misrepresentations and omissions, and appears to have fabricated and forged
23 letters of recommendation.

24 29. On his employment application, Rojas represented, among other
25 things, that he served as Elk Hill's Director of Finance and Administrative
26 Services from July 2011 to July 2013. Inconsistently, Rojas stated in the cover
27 letter to his application that he served as Elk Hill's Assistant Superintendent of
28 Business Services. To substantiate his employment and performance at Elk

1 Hills, Rojas submitted a letter of recommendation purportedly written by Elk
2 Hills Superintendent, Jeff Tensley.

3 30. As alleged below, the truth is that Rojas was never employed by Elk
4 Hills, either as Director of Finance and Administrative Services or as Assistant
5 Superintendent of Business Services. Rather, Rojas was engaged by Elk Hills
6 for eight months as a consultant with respect to installation of a solar energy
7 system. Additionally, Elk Hills' legal counsel confirmed to the press that Mr.
8 Tensley did not write the letter of recommendation Rojas submitted to MUSD.

9 31. Rojas fabricated his employment with Elk Hills to conceal the fact
10 that between July 2011 and July 2013, Rojas was employed, suspended, and
11 terminated by two other public school districts—Kern County Superintendent of
12 Schools (“Kern County”) and Victor Valley Union High School District (“Victor
13 Valley”)—where he occupied positions similar to MUSD’s CBO position.

14 32. Because Rojas was applying for a position with MUSD that
15 involves oversight of hundreds of millions of dollars of public funds, and the
16 award of millions of dollars of contracts for goods and services on behalf of
17 MUSD, knowledge of Rojas’s true employment history was highly material to
18 assessing his ability, integrity, and fitness to serve as MUSD’s CBO.

19 **1. Rojas Conceals His Employment And Subsequent Suspension**
20 **And Termination For Misconduct By Kern County**
21 **Superintendent Of Schools**

22 33. In his employment application to MUSD, Rojas concealed his prior
23 employment, placement on administrative leave, and termination by Kern
24 County. Specifically, from July 1, 2011 to April 30, 2012, Rojas served on a
25 probationary basis as a Division Administrator of Maintenance, Operations, and
26 Transportation for Kern County. On March 19, 2012, Kern County placed Rojas
27 on immediate administrative leave “pending an investigation into allegations that
28 [Rojas] committed misconduct.” Shortly thereafter, on April 9, 2012, Rojas was

1 notified that his employment as Division Administrator with Kern County would
2 be terminated on April 30, 2012, due his failure “to successfully complete the
3 probationary period for the position of Division Administrator.”

4 **2. Rojas Claims Employment With Elk Hills When In Reality He**
5 **Merely Served As A Consultant For A Brief Period Of Time**

6 34. From May 9, 2012 to January 1, 2013, Rojas served as a *consultant*
7 to Elk Hills, *not* as Director of Finance and Administrative Services and *not* as
8 Assistant Superintendent of Business Services.

9 35. Specifically, in or around May 2012, Rojas apparently became
10 affiliated with a consulting company, California School Advisors, purportedly as
11 Vice President of Business Development. On May 9, 2012, on behalf of
12 California School Advisors, Rojas entered into a Consulting Services Agreement
13 (“Consulting Agreement”) with Elk Hills to install a renewable (solar) energy
14 system. Jeff Tensley, the Superintendent of Elk Hills, executed the contract on
15 behalf of Elk Hills.

16 36. On January 1, 2013, only eight (8) months after executing the
17 Consulting Agreement, Elk Hills terminated the Consulting Agreement.

18 **3. Rojas Conceals His Employment, Subsequent Suspension, And**
19 **Termination By Victor Valley Union High School District**

20 37. From October 4, 2012 to approximately July 16, 2013, Rojas served
21 as an Assistant Superintendent for Business Services to Victor Valley Union
22 High School District (“Victor Valley”).

23 38. Specifically, on September 24, 2012, Rojas entered into a contract
24 with Victor Valley to serve as an Assistant Superintendent for Business Services
25 for the term of October 4, 2012 to December 31, 2014. Rojas’s assigned
26 employee number was 16712.

27 39. On or about January 14, 2013, Victor Valley placed Rojas on
28 administrative leave.

1 40. Shortly thereafter, on January 18, 2013, Victor Valley’s Board of
2 Trustees adopted and passed Resolution No. 13-28 declaring an “unprecedented
3 fiscal emergency, the extent of which was unforeseen,” and implementing a
4 number of cost-saving measures. The actions of Employee #16712 contributed
5 to this “unprecedented fiscal emergency.”

6 41. Next, in February 2013, Victor Valley’s Board of Trustees voted
7 twice to remove the signature authority of Rojas.

8 42. On July 16, 2013, a Personnel Services Report was presented to
9 Victor Valley’s Board of Trustees requesting approval to terminate the
10 employment of Employee #16712, effective July 12, 2013.

11 43. On July 18, 2013, Victor Valley’s Board of Trustees approved the
12 resignation by agreement of Employee #16712. This agreement terminated the
13 employment of Rojas on or about July 16, 2013.

14 44. In short, Rojas concealed from MUSD that within three years of
15 submitting his application to MUSD, he had been placed on administrative leave
16 and terminated *twice* from positions similar to the CBO position he occupied at
17 MUSD by two different school districts (Kern County and Victor Valley). To
18 ensure that no one learned about his administrative leaves and terminations,
19 Rojas misrepresented that he was employed by Elk Hills from July 2011 to July
20 2013, when Rojas was really just a consultant with Elk Hills for eight months.

21 **4. Rojas Is Employed By Another School District And Is**
22 **Appointed To The Infrastructure Bank, Which Reveals His**
23 **Employment With Dansure Inc.**

24 45. On June 27, 2013, before Rojas’s employment with Victor Valley
25 was terminated, he entered into an employment agreement with yet another
26 school district, La Cañada Unified School District (“La Cañada”), for the
27 position of Chief Business & Operations Officer for a term commencing July 1,
28 2013 and ending June 30, 2015.

1 46. On July 12, 2013, while Rojas was still employed by Victor Valley
2 and now also employed by La Cañada, the Office of Governor Edmund G.
3 “Jerry” Brown Jr. issued a press release (the “Press Release”) stating that Rojas
4 had been appointed Deputy Executive Director of the California Infrastructure
5 and Economic Development Bank. Rather than reflecting (1) Rojas’s *fabricated*
6 *employment with Elk Hills*, (2) Rojas’s *employment history with Kern County*, or
7 (3) Rojas’s *then-current employment with Victor Valley and/or La Cañada*, the
8 Press Release stated that Rojas was employed since 2011 by an *altogether*
9 *different company*—Dansure Inc.—as the Executive Vice President of Global
10 Operations and Sustainability.

11 47. Dansure Inc. (“Dansure”) was a construction management
12 consulting firm prior to its dissolution. According to a 2013 filing with the
13 California Secretary of State, at the time that Rojas worked at Dansure, an
14 individual named Rueben Smith was a director of the corporation. As alleged
15 below, Rojas and Mr. Smith later sat on an interview panel to select and award a
16 multi-million dollar MUSD project management contract for MUSD
17 construction projects to a contractor, with which, at a minimum, Rojas had a
18 preexisting relationship, in violation of competitive bidding and conflicts of
19 interest laws.

20 48. Rojas separated from his position as Deputy Executive Director of
21 the Infrastructure Bank sometime in 2015.

22 49. On February 16, 2015, Rojas submitted his application to MUSD for
23 the position of CBO. During his interview, Rojas stated that if MUSD hired him
24 to serve as CBO, he would not be employed elsewhere simultaneously. Rojas
25 was eventually hired as CBO and on April 28, 2015 entered into an employment
26 agreement with MUSD for the term of June 1, 2015 to June 30, 2017, at an
27 annual salary of \$186,479 with step increases.
28

1 **MUSD Receives \$300 Million In Bond Revenues To Repair And**
2 **Upgrade Its Schools, Adding To Almost \$200 Million From Two Prior**
3 **Bond Measures**

4 50. On June 7, 2016, voters passed the “Montebello Unified School
5 District Student Safety, Classroom And Technology Improvement Measure”
6 (“Measure GS”), which authorized MUSD to sell \$300 million in bonds to raise
7 money to repair and upgrade schools, upgrade computer and science labs and
8 libraries, and implement renewable and cost-saving energy projects. To date, the
9 County of Los Angeles (“Los Angeles County”) has issued approximately \$100
10 million in bonds on behalf of MUSD, and will soon issue an additional \$30
11 million in bonds to fund Measure GS projects.

12 51. MUSD previously received access to a total of approximately \$200
13 million in funds from two prior bond measures passed by voters in 2004 and
14 1998. On November 2, 2004, voters passed Measure M, which authorized
15 MUSD to sell \$98 million in bonds to enhance safety and security, add
16 classrooms, promote class size reduction, and increase and upgrade information
17 technology. In 2005, 2008, and 2009, Los Angeles County issued bonds on
18 behalf of MUSD totaling \$98 million. On April 14, 1998, voters passed Measure
19 EE, which authorized MUSD to sell \$92 million in general obligation bonds, in
20 order to modernize schools through structural repairs and improvements to
21 existing facilities, upgrades of lighting, plumbing and other systems, and to
22 construct new schools, classrooms, and libraries. Bonds totaling \$92 million
23 were issued pursuant to Measure EE.

24 52. Through the School Facility Program established in 1998, the State
25 of California matches funds obtained by school districts through bond measures
26 to construct new facilities and upgrade existing ones. The State of California
27 matches district funds meant to construct new facilities on a dollar-for-dollar
28 basis, such that a qualifying project will be funded 50% by state funds and 50%

1 by district funds, and provides an overmatch of funds meant to upgrade existing
2 facilities in a ratio of 60% state funds to 40% district funds. As a result, when
3 voters passed Measure M providing \$98 million in bond funds, MUSD became
4 eligible for more than \$70 million in matching funds from the State of California.

5 **C. Defendants Act In Violation Of California’s Public Contract Code**
6 **And Competitive Bidding Laws**

7 53. Unbeknownst to Plaintiffs at the time, Rojas, with the support of
8 certain members of the Board and others, improperly awarded school projects to
9 certain contractors without complying with competitive bidding laws.

10 **1. Defendants Award Contracts To Preferred Contractors In**
11 **Violation Of Competitive Bidding Laws**

12 54. On February 3, 2016, several MUSD employees met to discuss an
13 upcoming facilities project and, specifically, a plan by Rojas and members of the
14 Board to structure and award the project to pre-selected contractors. In
15 attendance were: George Upegui, the Director of Maintenance, Operations &
16 Facilities Development; Michael Weaver, a Facilities Project Coordinator; Jeff
17 Woods, a Facilities Design Project Coordinator; Kevin Lee, a Departmental
18 Finance Manager; Tim Jones, a Facilities Project Coordinator; and Derrick
19 Williams, an Energy Manager.

20 55. Mr. Upegui explained that “the Board & Ruben” wanted to
21 “reward” those vendors who had helped with a prior asbestos cleanup project in
22 or around August 2015—specifically, to “reward” Castlerock Environmental,
23 Inc. and Argus Contracting LP. Mr. Weaver objected and explained that MUSD
24 could invite bids from Castlerock and Argus, but MUSD could not simply award
25 them the work because the work would need to be competitively bid and
26 awarded to the lowest bidder in accordance with the California Public Contract
27 Code.

28

1 56. Mr. Upegui explained that “the Board” and Rojas wanted to award
2 the contract to Castlerock and Argus, and would revise the structure of the
3 contract to guarantee that only certain contractors could get the work. Mr.
4 Upegui stated that this structure would allow the Board and Rojas to “select the
5 requested contractors and eliminate the ‘undesirable’ ones.”

6 57. Mr. Lee objected and warned the others that MUSD was “getting
7 very close to breaking the law.” He stated he was not comfortable with this plan.

8 58. That same month, MUSD issued a request for proposals (“RFP”) to
9 solicit bids for the removal of damaged rain gutters, painting of exterior
10 buildings, and replacement of door stenciling on various school sites, *Bid No.*
11 *08(15-16), Exterior Environmental Remediation and Painting at Various Sites,*
12 *MUSD Project No. 160104* (“Project No. 160104”).

13 59. The RFP stated that Project No. 160104 was to be awarded to the
14 lowest responsive and responsible bidder.

15 60. A.J. Fistes Corporation bid \$1,127,900 for Project No. 160104.
16 GDL Best Contractors, Inc. bid \$2,555,000 for Project No. 160104—more than
17 twice A.J. Fistes’s bid. One of GDL Best’s subcontractors, however, was
18 Castlerock.

19 61. MUSD rejected A.J. Fistes’s proposal and awarded Project
20 No. 160104 to GDL Best. In a March 7, 2016 letter from Mr. Upegui, MUSD
21 rejected A.J. Fistes’s lowest bid on the basis that it was nonresponsive because it
22 did not emboss a corporate seal next to the signature block or attach a financial
23 statement.

24 62. MUSD’s proffered reasons for rejecting A.J. Fistes’s bid were a
25 pretext to award the contract to GDL Best, and thereby “reward” GDL Best’s
26 subcontractor Castlerock. This is apparent for at least three reasons:

- 27 a. First, the two variances in A.J. Fistes’s proposal were
28 inconsequential and should have been waived because A.J. Fistes

1 was the lowest responsible bidder by over fifty percent (50%).
2 Section 00 21 13 paragraph 1.14(A) of the bid specifications for
3 Project No. 160104 expressly allows MUSD to waive any
4 irregularities in bids. “[I]t is ... well established that a bid which
5 substantially conforms to a call for bids may, though it is not strictly
6 responsive, be accepted *if the variance cannot have affected the*
7 *amount of the bid or given a bidder an advantage or benefit not*
8 *allowed other bidders* or, in other words, if the variance is
9 inconsequential.” *Konica Bus. Machines U.S.A. Inc. v. Regents of*
10 *Univ. of Cal.* (1998) 206 Cal. App. 3d 449, 454 (citations omitted).
11 The two variances in A.J. Fistes’s bid could not have affected the
12 amount of the bid or given A.J. Fistes an unfair advantage. MUSD
13 had hired A.J. Fistes for similar work in the recent past and already
14 had its financial statements. *See Bid Nos. 20(14-15), 22(14-15),*
15 *28(14-15)*. Moreover, corporate seals are not required to make
16 documents legally binding. *See Cal. Civ. Code § 1629* (“All
17 distinctions between sealed and unsealed instruments are
18 abolished.”). For these and other reasons, A.J. Fistes protested the
19 award of Project No. 160104 and is currently petitioning the Los
20 Angeles County Superior Court for mandamus relief in *A.J. Fistes*
21 *Corporation v. Montebello Unified School District and GDL Best*
22 *Contractors, Inc.*, No. BS161779 (L.A. Super. Ct.) (filed Apr. 19,
23 2016).

- 24 b. Second, Project No. 160104 was awarded to GDL Best, but GDL
25 Best’s proposal contained the same two variances—i.e., it did not
26 emboss a corporate seal next to the signature block and did not
27 attach financial statements.

28

1 c. Third, Project No. 160104 was awarded to GDL Best in violation of
2 California Public Contract Code § 20111.6. Section 20111.6
3 requires that when a district enters into a contract exceeding one
4 million dollars (\$1,000,000) and uses funds received from a state
5 school bond for a public project, that the district require prospective
6 bidders to submit a prequalification questionnaire and financial
7 statement. Cal. Pub. Cont. Code § 20111.6(a)-(b). In a June 2,
8 2016 letter to a senior accounting clerk at the Los Angeles County
9 Office of Education (“LACOE”), who had raised concerns
10 regarding MUSD’s non-compliance with the prequalification
11 requirement, Rojas admitted that Project No. 160104 was subject to
12 prequalification and that MUSD had failed to comply, which Rojas
13 conceded was “not standard protocol.” Rojas, however, attempted
14 to justify this violation by stating that the scope of work “posed
15 immediate health and safety concerns [which] required expedient
16 action,” and GDL Best was “the only viable option in eliminating
17 risk at the campuses.” Rojas’s statement to the senior accounting
18 clerk is belied by, at a minimum: (a) the fact that Project
19 No. 160104 *did* undergo competitive bidding and was *not* conducted
20 under emergency procedures; (b) the fact that the scope of the work
21 involved painting, stenciling, and removing damaged rain gutters,
22 *not* work designed to eliminate a threat to health and safety; and (c)
23 Defendants’ true motives as related by Mr. Upegui and reflected in
24 the February 3 Notes.

25 63. During the same meeting referenced in the February 3 Notes, Mr.
26 Upegui also discussed a \$24,000 invoice from Barraza & Sons for soil removal
27 from Schurr High School. Mr. Upegui explained that Rojas wanted to “get it
28 paid” so that Barraza & Sons would not hamper any efforts to pass a bond.

1 64. Mr. Lee explained that although he had heard the same comment
2 from Rojas, MUSD had already filed a notice of completion for the project and
3 paid the complete amount due for the project. Mr. Lee stated he considered the
4 project to be closed.

5 65. Mr. Upegui responded that MUSD would have to “get it paid one
6 way or another,” and suggested that if the invoice could not be paid using the
7 existing emergency resolution for soil removal, that MUSD could give Barraza
8 & Sons a consulting job for removal of soils at a different location and “pay for it
9 that way.” He explained that Barraza & Sons could do some consulting work at
10 another location and MUSD “could just add the [\$24,000] cost into their invoice
11 for the consulting work.”

12 66. Mr. Lee responded that he would not sign off on this approach
13 “knowing what I know now” because it was inappropriate and violated the
14 California Public Contract Code.

15 **2. Defendants Enter Into An Exclusive Contract With A Preferred**
16 **Contractor To Develop Public Land In Violation Of State Laws**

17 67. Defendants caused MUSD to enter into an exclusive agreement with
18 a preferred contractor to develop public land in violation of state laws.

19 68. MUSD owns approximately fifteen (15) acres of land located at
20 6360 Garfield Avenue, Commerce, California, 90040, which used to be the site
21 of Laguna Nueva Elementary School (the “Laguna Nueva Property”).

22 69. On or about June 20, 2016, MUSD posted the Agenda for the Board
23 Meeting to be held on June 23, 2016. Listed on the Agenda is item 8-1,
24 “Environmental Scan, Laguna Nueva Site.” The Agenda was misleading insofar
25 as it failed to disclose that the Board was actually contemplating entering into an
26 agreement to develop the Laguna Nueva Property, not merely assess the
27 property’s environmental condition.

28 70. On June 23, 2016, the Board authorized MUSD to enter into an

1 “Exclusive Negotiation Agreement” with Primestor Development, Inc.
2 (“Primestor”), for the period of June 24, 2016 through June 27, 2017, for the
3 exclusive right to analyze and negotiate future retail development of the vacant
4 Laguna Nueva Property. The Board’s Meeting Minutes state that “[a]pproval of
5 this Board Action will allow for the district to gain a full understanding of the
6 site condition, environmental state, and potential development of the site at no
7 cost to the district.”

8 71. Undisclosed in the Board’s Minutes is the fact that the Exclusive
9 Negotiation Agreement gives Primestor the *right of first refusal* to develop the
10 shopping center for approximately twenty million dollars (\$20 million). The
11 agreement improperly bypasses laws governing disposal of school property set
12 forth in California Education Code §§ 17387 through 17390, and the competitive
13 bidding required by, among other laws, California Public Contract Code
14 § 20162. Rojas signed the agreement on behalf of MUSD.

15 **3. Rojas And Members Of The Board Act To Award The**
16 **Lucrative Project Management Contract For Measure GS,**
17 **Measure EE, And Measure M Projects To A Preferred**
18 **Contractor That Once Employed Rojas And Whose Sister**
19 **Company Caused An Asbestos Contamination At MUSD**

20 72. Del Terra Construction, Inc. (“Del Terra Construction”) is a
21 company based in the City of Industry, California. It purports to provide
22 planning, program, project, construction management, and consulting services to
23 the K-14 educational market and municipalities. The company’s owner, founder,
24 President and CEO is Luis D. Rojas (“Luis Rojas”). Del Terra Construction
25 previously employed Ruben Rojas.

26 73. Luis Rojas owns and/or controls at least two other California
27 companies that either previously performed or currently are under contract to
28 perform work for MUSD. These include Evergreen Solar Solutions, Inc., which

1 in 2014 entered into agreements with MUSD for lighting upgrades, and
2 Evergreen Energy Solutions, Inc. (“Evergreen Energy”), which in 2015 entered
3 into agreements with MUSD for energy services (Resolution No. 12(2014-2015))
4 and energy auditing.

5 74. In August 2015, work performed by Evergreen Energy and a second
6 company, Enveniam, LLC, led to an asbestos contamination at MUSD. Poor
7 workmanship and mismanagement in installing energy efficient lighting led to
8 the disturbance and spread of asbestos across several MUSD schools. The
9 asbestos contamination forced MUSD to undertake a massive cleanup operation,
10 hiring at least five separate contractors to contain the contamination at a cost of
11 approximately \$3.5 million. On August 18, 2016, MUSD filed a lawsuit against
12 Evergreen Energy seeking to recoup the \$3.5 million, *Montebello Unified School*
13 *District v. Enveniam, LLC et al.*, No. BC630994 (L.A. Super. Ct.).

14 75. Despite Rojas’s prior employment with Del Terra Construction, and
15 the asbestos emergency caused by Evergreen Energy, Rojas and certain members
16 of the Board worked together to award a lucrative contract to Del Terra
17 Construction.

18 76. In early to mid-2016, MUSD requested proposals for a management
19 contract to manage projects to be funded from the Measure GS, Measure M, and
20 Measure EE bond proceeds, as well as other MUSD construction projects (the
21 “Project Management Contract”). On August 8, 2016, Rojas convened and sat
22 on a panel to consider the proposals received and to select the contractor. The
23 panelists Rojas selected were individuals holding the following positions:
24 “Director of Facilities- Pasadena,” “Former Superintendent-S/A” and “White
25 House PM/CM.” Rojas selected these panelists himself and they were
26 individuals Rojas knew and with whom Rojas had pre-existing relationships.

27 77. For example, Rueben Smith, who is the Executive Director of
28 Facilities and Construction Services for Pasadena City College, was the panelist

1 designated “Director of Facilities- Pasadena.” Mr. Smith had a preexisting
2 relationship with Rojas in that Mr. Smith was a director at Dansure, according to
3 Dansure’s filings with the California Secretary of State, at a time when Rojas’s
4 LinkedIn profile states Rojas was Dansure’s Executive Vice President of
5 Sustainability. Rojas’s LinkedIn profile also reflects that Mr. Smith has
6 “endorsed” Rojas for the following “skills”: project management, government,
7 renewable energy, strategic planning, sustainability, project planning, program
8 management, management, contract negotiation, and strategy.

9 78. Rojas, Mr. Smith, and their fellow panelists selected Del Terra
10 Construction. In doing so, these individuals went out of their way to disqualify
11 other bidders and ensure that Del Terra Construction would be awarded the
12 lucrative project management contract, just as the Project No. 160104 selection
13 committee had done vis-à-vis A.J. Fistes.

14 79. On August 18, 2016, at a regularly scheduled Board meeting, the
15 Board voted 5-0 to enter into the Project Management Contract with Del Terra
16 Construction, the *same day* MUSD filed suit against its sister company,
17 Evergreen Energy, for its role in causing an asbestos contamination.

18 80. According to the Board Meeting Minutes, the value of the Project
19 Management Contract totals “four and a half (4.5) percent of bond funds
20 provided by Measure GS, Measure M, Measure EE, State School Facilities
21 Funding and other applicable facilities funding.” As an example, 4.5% of
22 Measure GS bond funds *alone* amounts to \$13.5 million dollars.

23 81. Additionally, Chacon acknowledged at the December 15, 2016
24 Board of Education Meeting that the Project Management Contract contains an
25 “unlimited reimbursements” clause which, as Chacon stated, would allow Del
26 Terra Construction employees to submit reimbursement requests to MUSD for
27 routine overhead costs – even for their toilet paper.

28

1 **D. Plaintiffs Are Terminated For Blowing The Whistle On Rojas And**
2 **Raising Concerns Regarding The Misuse Of Public Funds**

3 **1. Plaintiffs Raise Concerns About Rojas's Fitness To Perform His**
4 **Duties As CBO To The Board, Despite Efforts Of Certain Board**
5 **Members To Quash Any Real Inquiry Into The Allegations**

6 82. On November 11, 2015, MUSD legal counsel David Kenney
7 provided to Contreras Smith and Pell a memorandum regarding apparent
8 irregularities in Rojas's application to MUSD (the "First Rojas Memo").

9 83. Contreras Smith and Pell were surprised to learn of the matters
10 contained in the First Rojas Memo, and wanted to ensure that they were true
11 before presenting such information to the Board. Contreras Smith and Pell also
12 questioned whether any other irregularities existed in Rojas's application to
13 MUSD. As such, Contreras Smith and Pell encouraged Kenney to continue
14 investigating Rojas's background.

15 84. When he learned about it, then-Board President Cárdenas ordered
16 Kenney to stop his investigation. Subsequently, Kenney told Contreras Smith
17 about the order from Cárdenas. Contreras Smith questioned why Cárdenas
18 would try to quash an investigation into Rojas's background, and again
19 encouraged Kenney to continue his investigation.

20 85. On August 16, 2016, after further investigation, Kenney provided to
21 Contreras Smith additional information concerning misrepresentations and
22 omissions discovered in Rojas's application to MUSD (the "Second Rojas
23 Memo"). In light of the misrepresentations, material omissions, and unexplained
24 inconsistencies in his application, and the concern shared by Contreras Smith and
25 Pell that Rojas was responsible for the expenditure of more than \$600 million in
26 state and federal funds, Contreras Smith forwarded the Second Rojas Memo to
27 the Board for its consideration and action.

28

1 86. On September 1, 2016, the Board voted 4-1 to authorize MUSD to
2 enter into an agreement with Olivarez Madruga LLP (now called Olivarez
3 Madruga Lemieux O’Neill, LLP) (“Olivarez Madruga”), a law firm, for “special
4 counsel legal services” to conduct an “independent investigation” of the
5 allegations against Rojas. Chacon cast the sole dissenting vote, expressing
6 concern about the cost of the agreement, which contained a “not to exceed”
7 clause of \$65,000, and the fact that the contract had not gone through the proper
8 competitive bidding process.

9 87. On September 9, 2016, Pell emailed Contreras Smith a
10 memorandum dated September 7, 2016 regarding Rojas (the “Third Rojas
11 Memo”), copying the Board and MUSD legal counsel, Kenney. In the Third
12 Rojas Memo, which echoed prior discussions between Pell and Contreras Smith
13 regarding issues related to Rojas, Pell stated that:

14 [I]t is my professional opinion that CBO Rojas has committed
15 serious fraudulent and criminal acts involving deceit. As a
16 result of those actions, MUSD must not continue to allow CBO
Rojas to access the finances of MUSD.

17 88. In support of his conclusions, Pell listed six fraudulent and/or
18 criminal acts in violation of state and federal law, which he believed had been
19 committed by Rojas to secure employment with MUSD. Pell also stated that he
20 believed that allowing Rojas to continue to serve as CBO would cause Pell and
21 Contreras Smith to violate their fiduciary duties to MUSD and “imperil[] the
22 recently-approved \$300M bond, regarding mandated disclosure(s) to investors
23 and governmental entities, as well as other applicable fiduciary obligations.”
24 Accordingly, Pell recommended that Contreras Smith place Rojas on immediate
25 administrative leave.

26 89. On September 12, 2016, Contreras Smith informed Cárdenas by
27 telephone of her intention to recommend that the Board place Rojas on paid
28 administrative leave at the regularly scheduled September 15, 2016 Board

1 meeting. After hearing this, Cárdenas told Contreras Smith that he would be
2 unable to attend the September 15 meeting due to a “scheduling conflict” that
3 would supposedly take him out of town that day. Later that day, Cupchoy and
4 Flores also contacted Contreras Smith and informed her that they also would be
5 unable to attend the September 15 meeting.

6 90. As a result of these last-minute absences, the September 15 meeting
7 was cancelled due to a lack of quorum, thereby preventing Contreras Smith from
8 presenting her recommendation to the Board to place Rojas on administrative
9 leave.

10 **2. Contreras Smith Places Rojas On Immediate Administrative**
11 **Leave**

12 91. On September 14, 2016, Contreras Smith exercised her own
13 authority and placed Rojas on administrative leave, effective immediately. In
14 correspondence which Contreras Smith attempted to have delivered to Rojas that
15 same day, Contreras Smith informed Rojas that the purpose of the leave was to
16 provide MUSD the opportunity to “investigate concerns that you may have
17 engaged in inappropriate and possibly fraudulent conduct.” The correspondence
18 directed Rojas to return his MUSD-issued property no later than 4:30 p.m. that
19 day, a directive with which Rojas never complied. Contreras Smith informed
20 members of the Board on the same day that she had placed Rojas on
21 administrative leave.

22 **3. Members of The Board Pressure Contreras Smith To Reinstate**
23 **Rojas, And Vote To Terminate MUSD Legal Counsel, David**
24 **Kenney, For Blowing The Whistle**

25 92. On October 6, 2016, the Board held its regularly scheduled meeting
26 (“October 6 Meeting”). Prior to the October 6 Meeting, Cárdenas informed
27 Contreras Smith that he wanted to change the order of the items set forth in the
28 closed session agenda. Unbeknownst to Contreras Smith at the time, Cárdenas’s

1 motive behind changing the agenda order was to wait until after members of the
2 Board had extracted Rojas's reinstatement from Contreras Smith, to then
3 terminate Kenney as MUSD's legal counsel in retaliation for investigating Rojas.

4 93. Specifically, Cárdenas informed Contreras Smith that the closed
5 session agenda would consider the agenda items originally listed (a) through (f)
6 in the following order: (d) conference with labor negotiator; (a) public employee
7 discipline/dismissal/release, or complaints against a public employee [Rojas];
8 (c) public employee complaint; (f) public employee employment for the position
9 of Assistant Superintendent, Human Resources; and (b) public employee
10 discipline/dismissal/release. At the time of the meeting, Contreras Smith was
11 unaware that item (b) concerned Kenney.

12 94. Cárdenas also informed Contreras Smith that he would like to
13 remove item (e), conference with MUSD legal counsel [i.e., Kenney], from the
14 agenda.

15 95. The open session of the Board meeting began at or around 6:00 p.m.
16 At or around 8:55 p.m. the Board dismissed the open session and recessed to
17 closed session to discuss the items on the re-ordered closed session agenda.

18 96. At MUSD, it was customary for the Executive Cabinet ("Executive
19 Cabinet"), comprised of the Superintendent of Schools, the CFOO, MUSD legal
20 counsel, the CBO, and others, to wait in a nearby conference room after
21 dismissal of open session if they were needed by the Board during the closed
22 session, such as to give updates on MUSD activities.

23 97. At the October 6 Meeting, the Board dismissed all of the members
24 of the Executive Cabinet after the open session except for Contreras Smith.
25 Contreras Smith and representatives from the Olivarez Madruga law firm then
26 joined the Board in closed session for a discussion about Rojas. Although
27 Kenney was not asked to remain by the Board, Contreras Smith requested that
28 Kenney wait in case he were needed for the discussion about Rojas. Despite

1 Contreras Smith’s repeated calls to hear from Kenney, the Board never allowed
2 Kenney into the closed session, which lasted for approximately 3 hours.

3 (a) The “Independent” Investigation of Rojas

4 98. At approximately 9:12 p.m., the Olivarez Madruga attorneys began
5 their presentation regarding their supposed “investigation” into the allegations
6 raised against Rojas.

7 99. Contreras Smith found Olivarez Madruga’s “investigation” to be
8 woefully deficient, in part because she believed it failed to address key facts and
9 issues. In fact, had Olivarez Madruga’s investigation been more thorough, it
10 would have more seriously considered whether Rojas violated or acted recklessly
11 with respect to potential violations of, for example, (1) Government Code
12 § 1090, proscribing awards of contracts in which a public employee has a
13 financial interest¹; and/or (2) Penal Code § 470 proscribing forgery,² and
14 analyzed Rojas’s fitness to serve as CBO in that context. Instead, Contreras

15
16 ¹ The Political Reform Act, Government Code § 1090 *et seq.*, prohibits any state
17 employees, including public school employees, from participating in their official capacities in
18 the award of any contract in which they are “financially interested.” *See* Gov. Code § 1090;
19 *People v. Elliott* (1953) 115 Cal App. 2d 410 (upholding conviction of a school board member
20 for a criminal violation of § 1090 for approving management contracts with an entity in which
21 the member had an interest). Having a “financial[] interest[]” means possessing “any financial
22 interest which might interfere with a state officer’s unqualified devotion to his public duty.
23 The interest may be direct or indirect. It includes any monetary or proprietary benefit, or gain
24 of any sort of the contingent possibility of monetary or proprietary benefits.” *People v. Honig*,
25 (1996) 48 Cal. App. 4th 289, 322. A violation of § 1090 is a felony, the penalties for which
26 are imprisonment, lifetime disqualification from holding any state office, and fines. *See* Gov.
27 Code § 1097.

28 ² California Penal Code § 470 provides that forgery occurs when any person “with the
intent to defraud, knowing that he or she has no authority to do so, signs the name of another
person” on documents specified by statute. *See also Lewis v. Superior Court* (1990) 217 Cal.
App. 3d 379, 383-84 (“[t]he offense, if any, is complete with the fabrication of the document
with the intent to defraud”). Courts have recognized that fabrication of letters, including
letters of recommendation, may support forgery convictions. *Green v. Lee* (C.D. Cal., No. 08
CV 8563 DSF, Aug. 7, 2012) 2012 WL 3655842, at *10 (fabrication of a letter and letterhead
from DreamWorks Records to defraud an individual of funds “could support a forgery
conviction”); *People v. Russel* (1964) 214 Cal. App. 2d 445, 452 (“false drawing of a letter of
recommendation [. . .] could be the subject of forgery). Forgery may be either a felony or a
misdemeanor. *See* Cal. Penal Code § 473.

1 Smith found Olivarez Madruga’s “investigation” to be poorly researched and
2 superficial in its analysis and conclusions.

3 (b) Members Of The Board Pressure Contreras Smith To
4 Reinstate Rojas, Vote To Terminate The Engagement of
5 MUSD Legal Counsel, And Appoint Olivarez Madruga As
6 Interim Legal Counsel

7 100. After Olivarez Madruga concluded its presentation, certain members
8 of the Board told Contreras Smith that they wanted to reinstate Rojas from
9 administrative leave. Because Contreras Smith, however, had placed Rojas on
10 administrative leave, only she could reinstate him. After the Olivarez Madruga
11 attorneys departed, for *several hours* extending late into the night, members of
12 the Board verbally berated Contreras Smith and pressured her to reinstate Rojas
13 from administrative leave. Contreras Smith, however, steadfastly refused to do
14 so. Among other things, Cárdenas told Contreras Smith that Rojas “did not
15 break any laws, let’s bring him back tomorrow.” Contreras Smith refused,
16 stating that she did not feel comfortable returning Rojas to his position
17 overseeing the expenditure of MUSD funds without a thorough investigation.

18 101. Contreras Smith told members of the Board that there were facts
19 giving reason to believe that Rojas may have committed fraud and forgery, and
20 that the allegations about Rojas had not been adequately addressed by Olivarez
21 Madruga. Contreras Smith reiterated concerns regarding Rojas’s fitness to
22 oversee MUSD’s \$300 million budget and \$300 million in Measure GS bond
23 funds and MUSD’s awards of public contracts. Contreras Smith told the Board
24 that she was concerned about the lack of transparency and that she was not
25 comfortable signing her name alongside Rojas’s name on MUSD contracts.
26 Contreras Smith stated that she objected to reinstating Rojas until all allegations
27 against him had been addressed, including those involving his oversight of public
28 contracts, because it was her obligation to protect MUSD and its students.

1 102. Contreras Smith also repeatedly offered to call in Kenney, who had
2 remained after the open session to answer any of the Board members' questions
3 about the facts he had uncovered concerning Rojas. Whenever Contreras Smith
4 made this offer, members of the Board would first look at each other, and then
5 would simply ignore Contreras Smith. Kenney was never allowed into the
6 closed session to share his findings or air his concerns.

7 103. In response to Contreras Smith's steadfast refusal to reinstate Rojas
8 from administrative leave, Cisneros asked "why are you getting so emotional
9 about this?," which Contreras Smith construed to be a jibe about her gender.
10 Cárdenas also asked "why are you taking this personally?" Contreras Smith
11 responded that she was not "taking it personally" or "emotionally." Rather, she
12 informed members of the Board that she was acting responsibly.

13 104. Cárdenas asked Contreras Smith if "anytime an allegation is
14 submitted, are we going to investigate it?" to which Contreras Smith replied that
15 she would investigate the allegation if it were serious.

16 105. At some point during the approximately three hour discussion,
17 Cisneros made a direct threat against Contreras Smith's employment as
18 Superintendent and Pell's employment as CFOO, stating: "you know, we can
19 evaluate the Executive Board. Maybe it's time to evaluate the Executive Board."
20 As Superintendent and as CFOO, Contreras Smith and Pell were both members
21 of MUSD's Executive Board. Unbeknownst to Contreras Smith at the time,
22 certain Board members would soon act to make good on that threat.

23 106. Toward the end of the three hour closed session, as it became
24 apparent that Contreras Smith could not be convinced to reinstate Rojas in the
25 absence of a real and thorough investigation of her concerns, Cisneros falsely
26 suggested a middle ground. The suggestion was that Contreras Smith would
27 bring Rojas back from administrative leave pending a special Board meeting to
28 be held a week later, at which time Contreras Smith, Pell, Kenney, Olivarez, and

1 Rojas would all be invited to present their positions concerning the issues raised
2 about Rojas. On this basis, Contreras Smith agreed to conditionally return Rojas
3 from administrative leave until the Board conducted the promised special
4 meeting to vet the concerns about Rojas thoroughly. Contreras Smith, however,
5 told Cisneros and the remaining Board members that she wanted the public
6 record to reflect that she objected to returning Rojas. In response, Cisneros
7 commented that Contreras Smith was “throwing us under the bus.”

8 107. Thereafter, members of the Board and Contreras Smith discussed
9 when the special Board meeting would occur and settled on the date of October
10 14, 2016, the following Friday.

11 108. Finally, the Board turned to item (b), the last item on the re-ordered
12 agenda, concerning “public employee discipline/dismissal/release.” Cárdenas
13 gave Contreras Smith a directive that “proper notice” should be provided to
14 Kenney, that Kenney should cease all legal activities and all representation on
15 MUSD’s behalf effective immediately, and that all of MUSD’s cases should be
16 transferred to *Olivarez Madruga*. Cárdenas also directed Contreras Smith to put
17 forth a request for proposals for legal services for MUSD. The Board then voted
18 four to one (4-1) to end the engagement of Kenney’s law firm, Kenney & Kropff,
19 as MUSD’s legal counsel, with Chacon casting the sole dissenting vote.

20 109. Shortly thereafter (at approximately 12:06 a.m. on October 7, 2016),
21 the Board reported what had taken place in closed session. With respect to item
22 (b), the Board reported only that a discussion had taken place, not that the Board
23 had taken any action with respect to the item, i.e., voted 4-1 to end Kenney &
24 Kropff’s engagement, and hired Olivarez Madruga as interim MUSD legal
25 counsel.

26 110. On October 10, 2016, Contreras Smith reinstated Rojas from
27 administrative leave based on the false representations that the Board would hold
28 a special meeting on October 14, 2016 to discuss the concerns raised by

1 Contreras Smith, Pell, Kenney, and others regarding Rojas and his oversight of
2 MUSD funds.

3 **4. Upon Achieving Their Objective Of Reinstating Rojas From**
4 **Administrative Leave, Defendant Board Members And Rojas**
5 **Retaliate Against Plaintiffs For Blowing The Whistle**

6 111. Though Kenney was terminated as MUSD legal counsel, it was
7 decided that the Special Board Meeting (“Special Meeting”) to discuss the
8 allegations against Rojas would still go forward on October 14, 2016. Rather
9 than considering the allegations against Rojas, however, certain members of the
10 Board instead used the Special Meeting to take retaliatory action against
11 Contreras Smith and Pell.

12 112. On October 11, 2016, Contreras Smith had her secretary email
13 Cárdenas the agenda Contreras Smith had drafted for the Special Meeting (“Draft
14 Agenda”). Consistent with the compromise she had reached with members of
15 the Board to return Rojas conditionally from leave, the only item on the Draft
16 Agenda was “Public employee discipline/dismissal/release, or complaints against
17 a public employee” – which referred to Rojas. True and correct copies of the
18 email and Draft Agenda are attached hereto as Exhibit 1.

19 113. The next day, October 12, 2016, new MUSD legal counsel, Rick
20 Olivarez, contacted Contreras Smith by telephone and informed her that
21 Cárdenas had revisions to the Draft Agenda. Olivarez followed his phone call
22 with an email to Contreras Smith, copying Cárdenas, summarizing Cárdenas’s
23 requested changes. Cárdenas directed Contreras Smith to remove the one item
24 she had placed on the Draft Agenda—the discussion of Rojas—which was
25 originally supposed to be the sole purpose for holding the Special Meeting.
26 Cárdenas directed that the discussion of Rojas be replaced with the following:
27 (1) Public Employee Performance Evaluation (Superintendent of Schools) [an
28 evaluation of Contreras Smith]; (2) Public Employee Performance Evaluation

1 (Chief Financial Officer) [an evaluation of Pell]; (3) Public Employee Discipline/
2 Dismissal/ Release [to place Contreras Smith on administrative leave]; (4) Public
3 Employee Discipline/ Dismissal/ Release [to place Pell on administrative leave];
4 and (5) Public Employee Appointment (Interim Superintendent) [to appoint an
5 interim superintendent to take over Contreras Smith's position]. A copy of the
6 final agenda for the Special Meeting is attached hereto as Exhibit 2.

7 114. On October 14, 2016, the Board held a special Board meeting at
8 approximately 9:00 a.m. At the special meeting, the Board did not review any
9 concerns about Rojas, as the Board members had promised they would do, but
10 instead voted to place Contreras Smith and Pell on administrative leave effective
11 immediately. The Board voted to appoint Dr. Anthony J. Martinez ("Dr.
12 Martinez"), who had previously served as Assistant Superintendent –
13 Instructional Services, as Interim Superintendent.

14 115. In separate letters dated October 14, 2016 ("October 14 Letters"),
15 MUSD notified Plaintiffs that their placement on administrative leave was
16 effective immediately. The only explanation provided for this immediate
17 administrative leave was "to provide th[e] District with an opportunity to
18 investigate some concerns." True and correct copies of the letters sent by MUSD
19 to Plaintiffs regarding their placement on administrative leave are attached hereto
20 as Exhibits 3 and 4.

21 116. On October 19, 2016, Contreras Smith met with MUSD legal
22 counsel Olivarez, and was informed by Olivarez that he was unaware of any
23 ongoing investigation of Contreras Smith by MUSD, despite the explanation
24 given in the October 14 Letter placing Contreras Smith on administrative leave.
25 Olivarez also informed Contreras Smith that there was no cause stated for the
26 action placing Contreras Smith on immediate administrative leave. Rather,
27 Olivarez explained, the Board members had simply decided "to go in a different
28 direction."

1 117. On October 28, 2016, Contreras Smith’s counsel spoke by telephone
2 with Lloyd Pilchen, one of MUSD’s attorneys at Olivarez Madruga. The call,
3 which was initiated by Pilchen, was to discuss Contreras Smith’s “options” going
4 forward. Consistent with Olivarez’s earlier representation, Pilchen confirmed
5 that there was no ongoing investigation of Contreras Smith despite language to
6 the contrary in the October 14 Letter to Contreras Smith. Pilchen informed
7 counsel for Contreras Smith that going forward, the Board could either terminate
8 Contreras Smith’s employment “for convenience,” or that Contreras Smith could
9 resign, but only if her resignation was accompanied by a release of her legal
10 claims. Pilchen stated that a resignation would *soften the appearance of*
11 *Contreras Smith’s separation* from MUSD and would make it *easier for her to*
12 *obtain alternative employment*—thereby *confirming* the Defendant Board
13 members’ intent to inflict reputational and economic harm on Contreras Smith.
14 Later that day, Pilchen sent Contreras Smith’s counsel an email purporting to
15 confirm the contents of their telephone conversation, but which mischaracterized
16 their earlier discussion.

17 118. On November 2, 2016, Contreras Smith’s counsel responded in
18 writing to Pilchen’s email, correcting the mischaracterizations contained therein
19 and reiterating that the placement of Contreras Smith on involuntary
20 administrative leave was retaliatory and a cover up aimed at quashing any
21 inquiry into the serious issues raised about Rojas and his oversight of MUSD’s
22 public contracts. The November 2 letter repeated that another way forward was
23 for Board to reverse course, first by reinstating Contreras Smith, and second by
24 truly addressing the concerns raised about Rojas and his oversight of MUSD’s
25 public contracts. Finally, the November 2 letter informed Pilchen that Contreras
26 Smith was continuing her investigation of her potential claims against MUSD,
27 and requested confirmation that MUSD was preserving all documents and
28 records potentially relevant to the issues raised by Contreras Smith. A true and

1 correct copy of the November 2 letter sent by Contreras Smith’s counsel is
2 attached hereto as Exhibit 5.

3 119. On November 2, 2016, counsel for Pell also sent a letter to MUSD
4 attorneys Olivarez and Pilchen, explaining Pell’s concerns about MUSD’s
5 adverse employment action against him after he sounded the alarm about the
6 fraud and submissions of false documentation by Rojas. Pell’s November 2
7 letter also highlighted a pattern of public school projects being awarded to
8 contractors outside of the competitive bidding process, which Pell discovered
9 during his investigation into the concerns about Rojas. Given the timing and
10 surrounding circumstances, the letter informed Olivarez and Pilchen that the
11 adverse employment action against Pell could only be interpreted as retaliation.
12 Finally, the letter alerted Olivarez and Pilchen to information that Pell had
13 received about MUSD personnel shredding documents and accessing Pell’s work
14 and personal email accounts, and requested that those actions cease immediately.
15 A true and correct copy of the November 2 letter sent by Pell’s counsel is
16 attached hereto as Exhibit 6.

17 120. On November 2 and 3, 2016, Plaintiffs separately served California
18 Public Records Act Requests (“PRA Requests”) on MUSD pursuant to the
19 California Public Records Act, Cal. Gov. Code § 6253 *et seq.*, to obtain copies of
20 contracts Plaintiffs believed were awarded in violation of competitive bidding
21 laws and other information reflecting Rojas’s and Board members’ conflicts of
22 interest. The PRA Requests seek, among other things, public records relating to:
23 the hiring of Rojas; statements of economic interests filed by Rojas and Board
24 members; economic or other relationships between the Board, Rojas, and various
25 individuals and entities with whom MUSD engaged as contractors; MUSD
26 contracts awarded to various entities about which Plaintiffs and others had raised
27 concerns of the lack of transparency, cronyism, and/or other illegality, such as
28 Del Terra Construction, Inc., Del Terra Education Foundation, Evergreen Energy

1 Solutions, LLC, Evergreen Solar Solutions, Inc., Castlerock Environmental, Inc.,
2 Argus Contracting LP, Primestor Development, Inc.; the Board’s decision to
3 seek at least \$75 million in additional bond funds; the expenditure of Measure
4 GS bond funds; and the establishment of a Citizen’s Bond Oversight Committee
5 as required by California Law after passage of a bond measure. As of the date of
6 this writing, more than seven (7) months have passed since the submission of
7 Plaintiffs’ PRA Requests. MUSD has failed to produce documents responsive to
8 the *vast majority* of those Requests in spite of MUSD’s obligation and agreement
9 to do so. True and correct copies of the PRA Requests served by Plaintiffs are
10 attached hereto as Exhibits 7 and 8.

11 121. On the evening of November 3, 2016, the Board held its next
12 regularly scheduled meeting. At the meeting, the agenda, which provided that
13 the Board would consider three cases of “[p]ublic employee
14 discipline/dismissal/release,” was revised to consider two (2) cases: those of
15 Contreras Smith and Pell. At approximately 8:40 p.m., MUSD legal counsel,
16 Olivarez, reported out of closed session that the Board members had voted 4-1 to
17 terminate the employment of Pell as Chief Financial and Operations Officer and
18 Contreras Smith as Superintendent of Schools, both “for convenience.” Chacon
19 cast the sole dissenting vote on each item.

20 122. On or about November 4, 2016, Plaintiffs separately received letters
21 from MUSD Interim Superintendent of Schools, Dr. Martinez, confirming that
22 on November 3, 2016, the Board members had voted 4-1 to terminate their
23 respective employment contracts, effective as of that day. True and correct
24 copies of the November 4, 2016 letter confirming termination of their respective
25 employment contracts are attached hereto as Exhibits 9 and 10.

1 **E. MUSD Terminates The Engagement Of Its Auditor After It Raises**
2 **Concerns Regarding Plaintiffs’ Terminations, The Qualifications And**
3 **Integrity Of Rojas, And Other Allegations Of Impropriety**

4 123. On December 1, 2016, MUSD’s auditor, Vasquez & Company LLP
5 (“Vasquez”), sent a letter to then-Board president Cárdenas, regarding concerns
6 it had with respect to personnel changes at MUSD as well as other allegations of
7 impropriety, and requested a meeting with the Board during closed session to
8 discuss those issues.

9 124. Specifically, Vasquez advised Cárdenas that it had been engaged to
10 audit MUSD’s basic financial statements, and MUSD’s compliance with state
11 and federal programs. Vasquez stated that it had concerns regarding (1) the
12 terminations of Contreras Smith as Superintendent and Pell as CFOO, (2) the
13 departures of others in key financial management positions, including the
14 resignation of MUSD’s Controller, (3) the placement of MUSD’s Chief
15 Technology Officer on administrative leave a year earlier, and (4) allegations
16 regarding Rojas’s “qualifications and integrity” with respect to his position as
17 CBO. Vasquez also noted that it had been informed independently of “other
18 allegations of impropriety.” Accordingly, Vasquez requested a meeting in closed
19 session with the Board at its earliest available date to discuss the aforementioned
20 issues and their impact on Vasquez’s ability to complete its audits, and render its
21 opinions. Cárdenas, however, did not respond to Vasquez’s request.

22 125. On December 9, 2016, Vasquez sent a second letter—this time to
23 the entire Board, and copying MUSD Interim Superintendent, Dr. Martinez, and
24 MUSD legal counsel, Rick Olivarez—reiterating the concerns it had raised in its
25 earlier letter. The second letter, which was marked “URGENT,” stated that
26 Vasquez had not received a response from Board president Cárdenas, and that
27 “additional matters” had arisen which would delay and possibly prevent
28 Vasquez’s completion of various audits for MUSD. Specifically, Vasquez noted

1 that “[c]ertain audit procedures have been delayed due to the actions of the
2 District management,” and that “other audit procedures must be expanded as new
3 information has come to our attention.” Vasquez advised the Board that it
4 should seek an extension of the deadline by which MUSD would be required to
5 file its audited financial statements with LACOE by at least thirty (30) days.
6 Additionally, Vasquez reiterated its request for a meeting with the Board.
7 Despite the urgency of its concerns, Vasquez did not receive a response.

8 126. On December 22, 2016, shortly after raising its concerns, Rojas
9 notified Vasquez by telephone that the Board had directed him to end Vasquez’s
10 engagement for auditing services, effective immediately. In contrast to the lack
11 of communication Vasquez had received thus far from MUSD officials, and, in
12 particular, from Rojas, Rojas contacted Vasquez to notify it of its termination
13 within forty-five (45) minutes of Vasquez’s request to Dr. Martinez for
14 additional documents and other information as part of its expanded audit. Rojas
15 did not provide a reason for ending the engagement. Instead, Rojas stated that
16 MUSD would retain another firm to conduct the audit of fiscal year 2016
17 financial statements and related state and federal compliance audits.

18 127. On December 29, 2016, Vasquez sent a third and final letter to the
19 Board, again copying Interim Superintendent, Dr. Martinez, and MUSD legal
20 counsel, Rick Olivarez. Vasquez acknowledged that it had been informed of the
21 end of its engagement, and stated that it was “incumbent upon Vasquez to inform
22 MUSD that it would incur a significant amount of professional fees in retaining
23 another firm of Certified Public Accountants to re-perform these audits which
24 were nearing completion.” Further, Vasquez informed the Board that by hiring
25 another auditing firm, “the District will not only miss the deadline imposed by
26 the State of California for submittal of the audits, it will be in danger of missing
27 the Federal deadline.”

28

1 128. Additionally, Vasquez advised the Board that at the time of its
2 termination, it had revised its risk assessment of MUSD to a “high risk”
3 category, and, as a result, had expanded its audit procedures in the areas of
4 “fraud, related party transactions and competitive procurements.” Vasquez
5 stated that this elevation of risk was due to “numerous factors including
6 communications from several sources alleging fraudulent and other improper
7 activity in the District’s Business Office, the high level of turnover among top
8 Business Office personnel, and the inability to communicate with and obtain
9 information from Mr. Rojas.”

10 129. In closing, Vasquez informed that Board that it would take no
11 further action with respect to the audits of MUSD’s financial statements or its
12 compliance with state or federal programs unless advised to do so by the Board.

13 130. On January 19, 2017, in spite of the risks and additional expense
14 involved, Rojas sought approval from the Board to enter into an agreement with
15 Christy White Associates for audit services. The Board voted four to one (4-1)
16 to approve the engagement. Chacon cast the sole dissenting vote, stating he
17 would vote against the item because it was associated with Rojas.

18 **F. An Extraordinary Audit Substantiates Allegations Of Fraud And**
19 **Misappropriation By Del Terra Group, Another Company Owned**
20 **And Operated By Luis Rojas, In A Northern California School**
21 **District**

22 131. In December 2016, shortly after Plaintiffs were terminated, the
23 Santa Clara County Office of Education and the Fiscal Crisis and Management
24 Assistance Team (“FCMAT”) entered into an agreement to conduct an AB 139
25 Extraordinary Audit (“Extraordinary Audit”) of Alum Rock Union Elementary
26 School District (“Alum Rock”) in accordance with California Education Code §
27 1241.5(b). The Extraordinary Audit was prompted by the receipt of anonymous
28 tips by Santa Clara County Superintendent of Schools that Del Terra Real Estate

1 Services, Inc. (d/b/a Del Terra Group) (“Del Terra Group”), another company
2 owned and operated by Luis Rojas, had (1) double-billed Alum Rock by
3 submitting fees and seeking payment pursuant to two different contracts – a
4 project management contract and a construction management contract; and
5 (2) invoiced Alum Rock approximately \$330,000 for construction management
6 services not yet performed.³ The purpose of the Extraordinary Audit was to
7 identify whether any potential fraud may have occurred, and to help Alum Rock
8 improve its internal control processes to avoid fraud or other illegal activities in
9 the future.

10 132. On June 9, 2017, FCMAT issued its findings with respect to its
11 Extraordinary Audit. The Extraordinary Audit concluded that “there is sufficient
12 evidence to demonstrate that fraud, misappropriation of funds and/or assets, or
13 other illegal activities may have occurred in the specific areas reviewed,” and
14 recommended that the Santa Clara County Superintendent of Schools notify,
15 among others, the local district attorney, the state controller, and the
16 Superintendent of Public Education of FCMAT’s findings.

17 133. Specifically, the findings noted that Alum Rock employees
18 expressed concerns regarding Alum Rock’s use of Del Terra Group, including
19 concerns about Del Terra Group’s alleged practices of circumventing contractual
20 reporting requirements and the cost of Del Terra Group’s services. FCMAT
21 found that “board members have used their influence over business transactions

22 ³ Similar to the Project Management Contract between MUSD and Del Terra
23 Construction, the project management contract between Alum Rock and Del Terra Group
24 provides that Del Terra Group shall receive four percent (4%) of bond funds remaining from
25 Measure J and applicable State School Facilities Funding. Measure J was passed by voters in
26 November 2012, and provided \$125 million in bond funds to, among other things, improve
27 neighborhood schools, fix deteriorating roofs, improve fire safety, repair and upgrade
28 classrooms, improve student safety and security, renovate outdated restrooms, upgrade
heating/ventilation/electrical systems for energy efficiency, and provide for computer
technology.

In addition to the project management contract, Alum Rock and Del Terra Group also entered into a separate construction management contract which provides that Del Terra Group shall receive six percent (6%) of construction costs relating to Measure J projects.

1 to deliberately override management’s recommendations and board policies on
2 the project and construction management of bond funds,” for example, by
3 directing staff to process transactions without documentation and to bypass
4 established internal control procedures on bidding and processing invoices for
5 the project and construction management contracts.

6 134. Moreover, FCMAT’s interviews “validated assertions that some
7 staff members felt intimidated and at times threatened by the governing board
8 regarding the use of Del Terra Group. Numerous reports indicated a climate of
9 fear, frustration, and discontent among the district’s staff and that the district is
10 beset with a negative operating environment that includes continued, pervasive
11 pressure to conduct business in disregard of established policies.” In fact, Alum
12 Rock staff reported that Del Terra Group representatives and board members told
13 staff not to ask questions, and that staff were subject to retribution by the board
14 when they did question Alum Rock’s dealings with Del Terra Group.

15 135. The FCMAT study team made multiple attempts to meet with Del
16 Terra Group representatives, but encountered a lack of cooperation. Requests for
17 documents from Del Terra Group also went unanswered.

18 **G. MUSD Sends Contreras Smith And Pell Large And Unexplained**
19 **Sums Of Money, Which Contreras Smith and Pell Did Not Accept**

20 136. Several months after terminating Plaintiffs’ employment, Contreras
21 Smith and Pell each received packages from the MUSD Controller’s Office
22 containing several checks in various denominations without any explanation.

23 137. Specifically, on or about January 24, 2017, Pell received a package
24 from MUSD’s Controller’s Office containing five (5) checks issued on January
25 12, 2017 in various denominations from \$12,666.40 to \$24,999.99. In total, the
26 checks equal \$112,666.36, after withholding of state and federal taxes. The
27 package did not contain correspondence explaining the purpose of the payment,
28 and neither Pell nor his counsel were informed of the reason for the payment.

1 138. Similarly, on or about February 7, 2017, Contreras Smith also
2 received a package from MUSD’s Controller’s Office containing twelve (12)
3 checks, issued on various dates, in varying denominations from \$14,569.93 to
4 \$24,999.99, separated into four (4) stacks. In total, the checks equal
5 approximately \$260,079.64, after withholding state and federal taxes. The
6 package did not contain correspondence explaining the purpose of the payment.

7 139. On February 8, 2017, counsel for Contreras Smith sent a letter to
8 MUSD attorneys Rick Olivarez and Lloyd Pilchen requesting an explanation for
9 the checks sent to Contreras Smith. On February 15, 2017, Pilchen sent an email
10 to Contreras Smith’s counsel stating that an explanation for the checks would be
11 forthcoming. An explanation, however, was not provided. On March 7, 2017, a
12 month after Contreras Smith received the checks, counsel for Contreras Smith
13 sent a second letter to Olivarez and Pilchen, again requesting an explanation for
14 the checks sent to Contreras Smith. Again, an explanation was not provided. To
15 date, an explanation for the checks has yet to be provided.

16 140. Contreras Smith did not cash any of these checks.

17 **H. Additional Allegations Of Falsified Employment History Come To**
18 **Light After Plaintiffs’ Termination**

19 141. On February 8, 2017, the Whittier Daily News published an article
20 raising allegations that Rojas falsified additional positions he listed on the
21 employment application submitted to MUSD.

22 142. Specifically, Rojas stated on his MUSD employment application
23 that he was employed by Los Angeles Community College District (“LACCD”)
24 from December 2006 to July 2011 as a “Deputy Director” overseeing
25 construction activities and LACCD’s bond outreach program. According to
26 LACCD representatives cited in the February 8 article, Rojas was never an
27 employee of LACCD, and instead worked as a consultant of URS Corporation,
28 which contracted with LACCD to manage a bond program.

1 143. Moreover, Rojas stated on his MUSD employment application that
2 he was employed by Los Angeles Unified School District (“LAUSD”) from
3 February 2001 to December 2006 as a Director of Revenue Enhancement. Both
4 the time frame and position are inaccurate. According to the February 8 article,
5 Rojas was employed for a fraction of that period—August 2002 to September
6 2006. Rather than serving as Director of Revenue Enhancement, Rojas spent the
7 majority of that time as a manager of Medi-Cal reimbursement and cost
8 recovery, and three months as a temporary special assistant of financial services.

9 144. Finally, Rojas stated that during his tenure as Deputy Executive
10 Director of the Infrastructure Bank, his supervisor was Kish Rajan, an individual
11 who purportedly served as Director of the Infrastructure Bank. The February 8
12 article, however, quoted Mr. Rajan who stated that he never supervised Rojas.
13 This was because Mr. Rajan served as Director for the Governor’s Office of
14 Business and Economic Development, a different state agency than the
15 Infrastructure Bank.

16 145. In total, it appears that Rojas falsified information with respect to at
17 least five (5) of the six (6) positions he listed on his MUSD employment
18 application.

19 **I. The Board Finally Votes To Terminate Rojas The Day After State**
20 **Lawmakers Approve An Audit Of MUSD And Amidst Increasing**
21 **Unrest In The Community**

22 146. On March 29, 2017, the Joint Committee of Legislative Audit of the
23 California State Assembly approved an audit of MUSD given allegations of
24 fiscal mismanagement and amidst increasing unrest in the community regarding
25 the Board’s refusal to fire Rojas. Specifically, California State Auditor Elaine
26 Howle stated that the audit would focus on contractors hired by MUSD, MUSD’s
27 hiring practices, and MUSD’s expenditure of funds, including bond funds.

28

1 147. On March 30, 2017, the day after the audit was approved, Board
2 members voted 5-0 to terminate Rojas’s employment contract “for convenience,”
3 effective immediately.

4 148. On May 24, 2017, the Whittier Daily News published an article
5 stating that after Rojas was terminated, MUSD paid Rojas \$108,534.70 to
6 compensate him for forty-one (41) unused vacation days and to “buy out” the
7 remaining months of Rojas’s employment contract. With respect to a “buy-out,”
8 the article stated that pursuant to Rojas’s contract, which was set to expire in
9 June 2019, provided that if Rojas were terminated, he would be paid either his
10 salary for the remainder of the term of his employment contract or for nine (9)
11 months, whichever was lower. A spokesperson for MUSD confirmed that “upon
12 his departure from the Montebello Unified School District the former Chief
13 Business Officer [i.e., Rojas] was provided final compensation per his contract
14 agreement.” Contrary to the suggestion made by MUSD’s spokesperson that
15 MUSD was contractually obligated to pay Rojas a severance, payment of a
16 severance upon the termination of an employee is discretionary pursuant to
17 Government Code § 53260.

18 **J. MUSD Personnel And Rojas Destroyed And Attempted To Destroy**
19 **Documents On Several Occasions Despite Being On Notice Of**
20 **Plaintiffs’ Claims And Despite A State Audit**

21 149. MUSD personnel including Rojas destroyed MUSD documents on
22 several occasions, including after the California State Assembly approved an
23 audit of MUSD and after Rojas had been terminated.

24 150. Specifically, at or around the time that Plaintiffs were on
25 administrative leave, Plaintiffs learned that that MUSD personnel were
26 destroying documents by shredding them or causing them to be shredded.
27 Plaintiffs also learned that MUSD personnel such as Rojas had requested access
28 to Plaintiffs’ work and personal email accounts. In light of this information, in

1 their November 2, 2016 letters Plaintiffs notified MUSD legal counsel, Rick
2 Olivarez and Lloyd Pilchen, of the document destruction, and informed them of
3 MUSD's duty to preserve all documents and records potentially relevant to the
4 issues raised by Plaintiffs.

5 151. On or about January 27, 2017, Rojas destroyed documents by
6 having his staff place documents into bins to be shredded by a professional
7 document destruction company. LACOE learned of the shredding and may have
8 ordered Rojas to cease and desist from his destruction of documents.

9 152. On or about May 11, 2017, after the State Assembly approved an
10 audit of MUSD and after MUSD had terminated Rojas's employment, Rojas
11 again destroyed or attempted to destroy documents by having his former MUSD
12 assistant, Cindy Colmenares, place documents into bins to be shredded by a
13 professional document destruction company. The documents were intercepted
14 before they could be destroyed.

15 **K. Plaintiffs Have Satisfied The Statutory Prerequisites To Bringing**
16 **Their Causes Of Action**

17 153. Plaintiffs have each satisfied the statutory prerequisites to bringing
18 their causes of action.

19 154. With respect to all causes of action asserted by Plaintiffs, on March
20 17, 2017, and April 11, 2017 respectively, Contreras Smith and Pell presented
21 their claims in accordance with the requirements of the California Tort Claims
22 Act, Government Code § 905, to the Board. On April 25, 2017, Contreras Smith
23 received notice that the Board had voted to reject her claim. On May 9, 2017,
24 Pell likewise received notice that the Board had voted to reject his claim.

25 155. With respect to Plaintiffs' causes of action brought pursuant to
26 Government Code §§ 8547.3 and 8547.8, on May 26, 2017, Plaintiffs separately
27 filed complaints with the State Personnel Board, which was within twelve (12)
28 months of the most recent acts of reprisal taken against Plaintiffs, i.e., their

1 respective terminations. On May 31, 2017, Plaintiffs separately received notice
2 that the State Personnel Board had rejected their claims.

3 156. With respect to Plaintiffs' causes of action brought pursuant to
4 Education Code §§ 44113-14, on June 28, 2017, Plaintiffs separately filed
5 complaints under penalty of perjury with the Montebello Police Department,
6 which was within twelve (12) months of their termination from MUSD, the most
7 recent acts of reprisal taken against them by Defendants.

8 **FIRST CAUSE OF ACTION**
9 **RETALIATION IN VIOLATION OF CALIFORNIA LABOR CODE**
10 **§ 1102.5**
11 **(By Each of Plaintiff Contreras Smith and Plaintiff Pell Against Defendants**
12 **MUSD and Cárdenas, Cupchoy, Cisneros, Flores, and Rojas in Their**
13 **Individual Capacities)**

14 157. Plaintiffs each re-allege and incorporate herein by this reference
15 each and every allegation set forth in paragraphs 1-156 of this Complaint as
16 though set forth fully herein.

17 158. California Labor Code § 1102.5 provides, in part, that “[a]n
18 employer, or any person acting on behalf of the employer, shall not retaliate
19 against an employee for disclosing information [. . .] to a government or law
20 enforcement agency, to a person with authority over the employee [. . .] who has
21 the authority to investigate, discover, or correct the violation or noncompliance [. . .]
22 . . .] if the employee has reasonable cause to believe that the information discloses
23 a violation of state or federal statute, or a violation of or noncompliance with a
24 local, state, or federal rule or regulation, regardless of whether disclosing the
25 information is part of the employee’s job duties.”

26 159. Plaintiffs each had an employer-employee relationship with MUSD.

27 160. Defendants Cárdenas, Cisneros, Cupchoy, Flores, and Rojas
28 believed that Plaintiffs had disclosed to the Board of Education, which had
authority over Plaintiffs and the authority to investigate, discover, or correct legal
violations, reasonable suspicions of violations of state and/or federal statutes,

1 rules, and/or regulations.

2 161. Plaintiffs each engaged in protected activity when they reported
3 reasonable suspicions of violations of state and/or federal statutes, rules, and/or
4 regulations to Defendants, who had authority over Plaintiffs and had authority to
5 investigate, discover, or correct the violations or noncompliance alleged above.

6 162. Plaintiffs each had reasonable cause to believe that the information
7 disclosed violations of state and/or federal statutes, rules, and/or regulations,
8 including, without limitation, California Government Code § 1090 (prohibiting
9 state employees from being financially interested in any contract made by them
10 in their official capacity, or by any body or board of which they are members),
11 and California Penal Code § 470 (proscribing forgery).

12 163. Defendants took adverse employment action against each of the
13 Plaintiffs by first placing them on an involuntary administrative leave, then by
14 terminating their employment.

15 164. Each Plaintiff's disclosure of information was a significant factor in
16 MUSD's decision first to place Plaintiffs on an involuntary administrative leave
17 and then to discharge Plaintiffs.

18 165. By reason of the foregoing, Plaintiffs have each been harmed.

19 166. Defendants' conduct was a substantial factor in causing each
20 Plaintiff's harm, which includes, without limitation: past and future lost
21 earnings; past and future lost benefits; emotional distress; mental suffering;
22 reputational damage; and other pecuniary loss.

23 167. Pursuant to California Code of Civil Procedure § 1021.5, which
24 provides that a "court may award attorney's fees to a successful party against one
25 or more opposing party in any action which has resulted in the enforcement of an
26 important right affecting the public interest," Plaintiffs each seek reasonable
27 attorneys' fees and costs incurred in bringing this claim.

28

SECOND CAUSE OF ACTION
RETALIATION IN VIOLATION OF CALIFORNIA LABOR CODE § 98.6
(By Each of Plaintiff Contreras Smith and Plaintiff Pell Against Defendants
MUSD and Cárdenas, Cupchoy, Cisneros, Flores, and Rojas in Their
Individual Capacities)

168. Plaintiffs each re-allege and incorporate herein by this reference each and every allegation set forth in paragraphs 1-156 of this Complaint as though set forth fully herein.

169. California Labor Code § 98.6 provides that an employer may not “discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee [. . .] because of the exercise by the employee [. . .] on behalf of himself, herself, or others of any rights afforded him or her.” Courts have determined that a plaintiff may assert a claim under § 98.6 for adverse action taken because of an employee’s exercise of rights afforded to him or her by other provisions of the Labor Code, such as § 1102.5. *See Grinzi v. San Diego Hospice Corp.* (2004) 120 Cal. App. 4th 72, 87; *Couch v. Morgan Stanley & Co., Inc.* (E.D. Cal. Aug. 7, 2015, No. 14-cv-10) 2015 WL 4716297, *17.

170. Plaintiffs each had an employer-employee relationship with MUSD.

171. Defendants took adverse employment action against each of the Plaintiffs by first placing them on an involuntary administrative leave, and then by terminating their employment.

172. Defendants’ decision to first place each of the Plaintiffs on an involuntary administrative leave and then to terminate Plaintiffs’ employment resulted from each Plaintiff’s exercise of his or her rights under Labor Code § 1102.5.

173. Labor Code § 1102.5, in part, affords Plaintiffs the right to be free from retaliation by their employer and/or any person acting on behalf of their employer, for disclosing information to a government body with authority to

1 investigate, discover, or correct the violation, so long as Plaintiffs reasonably
2 believed that the information disclosed was a violation of state or federal statutes.

3 174. By reason of the foregoing, Plaintiffs have each been harmed.

4 175. Defendants' conduct was a substantial factor in causing each
5 Plaintiff's harm, which includes, without limitation: past and future lost
6 earnings; past and future lost benefits; emotional damage; reputational damage;
7 and other pecuniary loss.

8 176. In addition to the remedies requested above, for each violation of
9 California Labor Code § 98.6 by Defendants, Plaintiffs each seek civil penalties
10 of \$10,000 pursuant to California Labor Code § 98.6(b)(3).

11 177. Plaintiffs are also each entitled to reinstatement and reimbursement
12 for lost wages and benefits pursuant to California Labor Code § 98.6(b)(1).

13 178. Pursuant to California Code of Civil Procedure § 1021.5, which
14 provides that a "court may award attorney's fees to a successful party against one
15 or more opposing party in any action which has resulted in the enforcement of an
16 important right affecting the public interest," Plaintiffs each seek reasonable
17 attorneys' fee and costs incurred in bringing this claim.

18 **THIRD CAUSE OF ACTION**

19 **VIOLATION OF THE BANE ACT, CALIFORNIA CIVIL CODE § 52.1**
20 **(By Each of Plaintiff Contreras Smith and Plaintiff Pell Against Defendants**
21 **MUSD and Cárdenas, Cupchoy, Cisneros, Flores, and Rojas in Their**
22 **Individual Capacities)**

23 179. Plaintiffs each re-allege and incorporate herein by this reference
24 each and every allegation set forth in paragraphs 1-156 of this Complaint as
25 though set forth fully herein.

26 180. California Civil Code § 52.1 makes it unlawful for any person to
27 interfere with an individual's exercise or enjoyment of any rights under the
28 Constitutions of the United States and California by use or attempted use of
threats, intimidation, or coercion. Article 1, section 2 of the California

1 Constitution guarantees the right to free speech to every person.

2 181. Plaintiffs each had an employer-employee relationship with MUSD.

3 182. Under California law, Plaintiffs have a right to speak about conduct
4 they reasonably believe to be illegal or in violation of the public's trust. Indeed,
5 because of their positions as Superintendent of Schools and Chief Financial and
6 Operations Officer, Plaintiffs had an obligation to protect the public from what
7 they suspected was activity that put public MUSD funds and resources at risk.

8 183. Plaintiffs each engaged in protected speech when they reported to
9 their superiors their reasonable suspicions that MUSD and Defendants had been
10 engaging in or were going to engage in illegal activity, or activities that violated
11 the public's trust.

12 184. Defendants made threats of violence, coercion, and/or intimidation
13 against each Plaintiff, causing Plaintiffs to reasonably believe that if they
14 exercised their right of free speech, Defendants would commit violence against
15 their property and that Defendants had the apparent ability to carry out the
16 threats.

17 185. Defendants acted violently against each Plaintiff and each Plaintiff's
18 property by first placing Plaintiffs on an involuntary administrative leave and
19 then by terminating their employment for exercising their rights to speak about
20 conduct they reasonably believe to be illegal or in violation of the public's trust.

21 186. By reason of the foregoing, Plaintiffs have each been harmed.

22 187. Defendants' conduct was a substantial factor in causing each
23 Plaintiff's harm, which includes, without limitation: past and future lost
24 earnings; past and future lost benefits; emotional distress; mental suffering;
25 reputational damage; and other pecuniary loss.

26 188. In addition to the remedies requested above, Plaintiffs each seek
27 treble damages pursuant to California Civil Code §§ 52(a) and 52.1(b).

28

1 189. Plaintiffs each seek exemplary damages pursuant to California Civil
2 Code § 52(b)(1).

3 190. Plaintiffs each seek civil penalties of \$25,000 per violation pursuant
4 to California Civil Code § 52(b)(2).

5 191. Plaintiffs each seek reasonable attorneys' fees and costs incurred in
6 bringing this claim pursuant to California Civil Code § 52(b)(3).

7 **FOURTH CAUSE OF ACTION**
8 **VIOLATION OF THE CALIFORNIA WHISTLEBLOWER**
9 **PROTECTION ACT, CALIFORNIA GOVERNMENT CODE §§ 8547.3**
10 **AND 8547.8**
11 **(By Each of Plaintiff Contreras Smith and Plaintiff Pell Against Defendants**
12 **MUSD and Cárdenas, Cupchoy, Cisneros, Flores, and Rojas in Their**
13 **Individual Capacities)**

14 192. Plaintiffs each re-allege and incorporate herein by this reference
15 each and every allegation set forth in paragraphs 1-156 of this Complaint as
16 though set forth fully herein.

17 193. Section 8547.3 of the California Whistleblower Protection Act
18 provides that “[a]n employee may not directly or indirectly use or attempt to use
19 the official authority or influence of the employee for the purpose of
20 intimidating, threatening, coercing, commanding, or attempting to intimidate,
21 threaten, coerce, or command any person for the purpose of interfering with the
22 rights conferred pursuant to this article.” Section 8547.3(c) provides that any
23 employee who violates subsection (a) may be liable to the injured party in an
24 action for civil damages.

25 194. Moreover, § 8547.8(c) provides that in addition to other penalties
26 provided by law, “any person who intentionally engages in acts of reprisal,
27 retaliation, threats, coercion, or similar acts against a state employee [...] having
28 made a protected disclosure shall be liable in an action for damages brought
against him or her by the injured party.”

1 195. Plaintiffs each had an employer-employee relationship with MUSD.

2 196. Defendants, and each of them, engaged in improper governmental
3 activities by violating state and/or federal laws or regulations, including by
4 engaging in fraud, coercion, conversion, malicious prosecution, misuse of
5 government property, and/or willful omission to perform their duties.
6 Defendants also engaged in economically wasteful conduct, gross misconduct,
7 incompetency and/or inefficiency.

8 197. Plaintiffs each made protected disclosures when they reported these
9 improper governmental activities, including waste, fraud, abuse of authority,
10 violations of state and/or federal law or regulations, and misuse of government
11 property.

12 198. Plaintiffs' communications each disclosed or demonstrated an
13 intention to disclose information evidencing these improper governmental
14 activities to those in a position of authority over them and with the power to
15 terminate them.

16 199. Plaintiffs each made their disclosures in good faith.

17 200. Thereafter, Defendants, and each of them, directly or indirectly,
18 used or attempted to use their authority or influence to intimidate, threaten,
19 coerce, command, or attempt to intimidate, threaten, coerce, or command
20 Plaintiffs for the purpose of interfering with Plaintiffs' rights to disclose the
21 improper governmental activities by affecting or threatening to affect reprisals
22 and/or taking, directing others to take, recommending, processing, or approving a
23 personnel action, including placement of Plaintiffs on an involuntary
24 administrative leave and termination.

25 201. As a result of Defendants' abuse of their authority, Plaintiffs were
26 terminated from their positions at MUSD.

27 202. Each Plaintiff's protected disclosures of Defendants' improper
28 governmental activities were contributing factors in Defendants' decision first to

1 place Plaintiffs on an involuntary administrative leave, and then to terminate
2 Plaintiffs.

3 203. By reason of the foregoing, Plaintiffs have each been harmed.

4 204. Defendants' conduct was a substantial factor in causing each
5 Plaintiff's harm, which includes, without limitation: past and future lost
6 earnings; past and future lost benefits; emotional distress; mental suffering;
7 reputational damage; and other pecuniary loss.

8 205. In addition to the damages provided above, Plaintiffs also each seek
9 punitive damages for Defendants' acts, which were malicious, pursuant to
10 California Whistleblower Protection Act § 8547.8(c).

11 206. Plaintiffs each seek reasonable attorneys' fees and costs of litigation
12 incurred in bringing this action pursuant to California Whistleblower Protection
13 Act § 8547.8(c).

14 **FIFTH CAUSE OF ACTION**
15 **VIOLATION OF THE REPORTING BY SCHOOL EMPLOYEES OF**
16 **IMPROPER GOVERNMENTAL ACTIVITIES ACT, CALIFORNIA**
17 **EDUCATION CODE §§ 44113 AND 44114**
18 **(By Each of Plaintiff Contreras Smith and Plaintiff Pell Against Defendants**
19 **MUSD and Cárdenas, Cupchoy, Cisneros, Flores, and Rojas in Their**
20 **Individual Capacities)**

21 207. Plaintiffs each re-allege and incorporate herein by this reference
22 each and every allegation set forth in paragraphs 1-156 of this Complaint as
23 though set forth fully herein.

24 208. Education Code § 44113(a) provides that "[a]n employee may not
25 directly or indirectly use or attempt to use the official authority or influence of
26 the employee for the purpose of intimidating, threatening, coercing,
27 commanding, or attempting to intimidate, threaten, coerce, or command any
28 person for the purpose of interfering with the right of that person to disclose to an
official agent matters within the scope of this article."

1 209. Education Code § 44114 further provides that in addition to all other
2 penalties provided by law, “a person who intentionally engages in acts of
3 reprisal, retaliation, threats, coercion, or similar acts against a public school
4 employee [...] for having made a protected disclosure shall be liable in an action
5 for damages brought against him or her by the injured party.”

6 210. Plaintiffs each had an employer-employee relationship with MUSD.

7 211. MUSD is a public school employer and Plaintiffs were each public
8 school employees. *See* Cal. Gov’t Code § 3540.1(i) and (k).

9 212. Defendants, and each of them, engaged in improper governmental
10 activities by violating state or federal laws or regulations, including engaging in
11 fraud, coercion, conversion, malicious prosecution, misuse of government
12 property, and/or willful omission to perform their duties. Defendants also
13 engaged in economically wasteful conduct, gross misconduct, incompetency
14 and/or inefficiency.

15 213. Plaintiffs each made protected disclosures when they reported these
16 improper governmental activities, including waste, fraud, abuse of authority,
17 violations of state and/or federal law or regulations, and misuse of government
18 property.

19 214. Plaintiffs’ communications each disclosed or demonstrated an
20 intention to disclose information evidencing these improper governmental
21 activities to those in a position of authority over them and with the power to
22 terminate them.

23 215. Plaintiffs each made their disclosures in good faith.

24 216. Thereafter, Defendants, and each of them, directly or indirectly,
25 used or attempted to use their authority or influence to intimidate, threaten,
26 coerce, command, or attempt to intimidate, threaten, coerce, or command
27 Plaintiffs for the purpose of interfering with Plaintiffs’ rights to disclose the
28 improper governmental activities by affecting or threatening to affect reprisals

1 and/or taking, directing others to take, recommending, processing, or approving a
2 personnel action, including placement of Plaintiffs on an involuntary
3 administrative leave and termination.

4 217. As a result of Defendants' abuse of their authority, Plaintiffs were
5 terminated from their positions at MUSD.

6 218. Plaintiffs' protected disclosures of Defendants' improper
7 governmental activities were each contributing factors in Defendants' decision
8 first to place Plaintiffs on an involuntary administrative leave, and then to
9 terminate Plaintiffs.

10 219. By reason of the foregoing, Plaintiffs have each been harmed.

11 220. Defendants' conduct was a substantial factor in causing each
12 Plaintiff's harm, which includes, without limitation: past and future lost
13 earnings; past and future lost benefits; emotional distress; mental suffering;
14 reputational damage; and other pecuniary loss.

15 221. In addition to the damages provided above, Plaintiffs also each seek
16 punitive damages for Defendants' acts, which were malicious, pursuant to
17 California Education Code § 44114(c).

18 222. Plaintiffs each seek reasonable attorneys' fees and costs of litigation
19 incurred in bringing this action pursuant to California Education Code §
20 44114(c).

21 **SIXTH CAUSE OF ACTION**
22 **VIOLATION OF THE WHISTLEBLOWER PROTECTION**
23 **PROVISIONS OF THE CALIFORNIA FALSE CLAIMS ACT,**
24 **CALIFORNIA GOVERNMENT CODE § 12653(a)**
25 **(By Each of Plaintiff Contreras Smith and Plaintiff Pell Against Defendants**
26 **MUSD and Cárdenas, Cupchoy, Cisneros, Flores, and Rojas in Their**
27 **Individual Capacities)**

28 223. Plaintiffs each re-allege and incorporate herein by this reference
each and every allegation set forth in paragraphs 1-156 of this Complaint as
though set forth fully herein.

1 224. Government Code § 12653(a) provides that “[a]ny employee [. . .]
2 shall be entitled to all relief necessary to make that employee [. . .] whole, if that
3 employee [. . .] is discharged, demoted, suspended, threatened, harassed, or in
4 any other manner discriminated against in the terms and conditions of his or her
5 employment because of lawful acts done by the employee [. . .] in furtherance of
6 an action under” the California False Claims Act.

7 225. Plaintiffs each had an employer-employee relationship with MUSD.

8 226. Plaintiffs each reasonably believed (and continue to believe) that
9 false or fraudulent claims have been submitted to MUSD for inflated charges and
10 for payment pursuant to illegal contracts, as illustrated by the examples alleged
11 herein, and that MUSD has sought payment or reimbursement from the State of
12 California and/or the United States of America for all or a portion of the funds
13 used to pay such claims, all thereby having defrauded the government of money,
14 property, and/or services through the submission of false or fraudulent claims for
15 payment or approval.

16 227. Namely, Plaintiffs each reasonably believed that false claims have
17 been submitted, including, without limitation, in the form of inflated bills for
18 services for public contracts and/or for illegally-awarded public contracts, as
19 follows:

20 a. Project No. 160104

21 i. In selecting a bid for the removal of damaged rain gutters,
22 painting of exterior buildings, and replacement of door
23 stenciling on various school sites, Project No. 160104,
24 Defendants awarded the contract to a severely inflated bidder
25 because that bidder used a subcontractor that MUSD, through
26 its agents and employees, acknowledged that it wanted to
27 reward. As a result, MUSD submitted, or conspired to
28 submit, a falsely inflated bill for Project No. 160104 to be

1 paid for through the Measure GS Bond.

2 ii. The A.J. Fistes Corporation, the unsuccessful bidder,
3 submitted a bid for \$1,127,900 for Project No. 160104. The
4 successful bidder, GDL Best Contractors, Inc., submitted a
5 bid for \$2,555,000 for Project No. 160104—more than twice
6 A.J. Fistes’s bid. One of GDL Best’s subcontractors,
7 however, was Castlerock—the subcontractor that Defendants
8 Cárdenas, Cisneros, Cupchoy, Flores, and Rojas indicated
9 that they wanted to reward.

10 b. The Primestor Contract to Develop the Vacant Laguna Nueva
11 Property

12 i. The Board authorized MUSD to enter into an “Exclusive
13 Negotiation Agreement” with Primestor Development, Inc.,
14 for the period of June 24, 2016 through June 27, 2017, for the
15 exclusive right to analyze and negotiate future retail
16 development of the vacant Laguna Nueva Property.

17 ii. The Exclusive Negotiation Agreement gives Primestor the
18 *right of first refusal* to develop the shopping center for
19 approximately twenty million dollars (\$20 million). The
20 agreement illegally bypasses laws governing disposal of
21 school property set forth in California Education Code
22 sections 17387 through 17390, and the competitive bidding
23 required by, among other laws, California Public Contract
24 Code section 20162

25 c. The Project Management Contract Awarded to Del Terra
26 Construction

27 i. In selecting a manager for the Project Management Contract
28 overseeing Measure GS, Measure M, and Measure EE as well

1 as other MUSD construction projects, MUSD, through its
2 employees and agents, awarded the contract to Del Terra
3 Construction. The value of the Project Management Contract
4 is believed to be at least \$13.5 million.

5 ii. Rojas with the support of Cárdenas, Cisneros, Cupchoy, and
6 Flores, ensured that the contract would go to Del Terra
7 Construction by handpicking the individuals, with whom
8 Rojas had a pre-existing relationship, who would sit on the
9 panel to select the contractor.

10 228. Plaintiffs were each concerned about the foregoing efforts to submit,
11 cause to submit, and/or conspire to submit false claims. Plaintiffs each engaged
12 in protected activities by: (1) investigating, reporting, and attempting to remove
13 Rojas; (2) seeking public records regarding contracts procured by Rojas and
14 approved by the Board that they believed violated California law, and (3) seeking
15 statements of economic interests filed by Rojas and members of the Board that
16 they believed would reveal potential conflicts of interest.

17 229. In so doing, Plaintiffs each acted in furtherance of a false claims
18 action and/or to stop the submission and payment of false claims.

19 230. Plaintiffs' acts in furtherance of a false claims action and/or to stop
20 the submission and payment of false claims were each a substantial motivating
21 factor for MUSD's decision, made through its employees and agents, first to
22 place Plaintiffs on an involuntary administrative leave, and then to terminate
23 Plaintiffs.

24 231. By reason of the foregoing, Plaintiffs have each been harmed.

25 232. Defendants' conduct was a substantial factor in causing each
26 Plaintiff's harm, which includes, without limitation: past and future lost
27 earnings; past and future lost benefits; emotional distress; mental suffering;
28 reputational damage; and other pecuniary loss.

1 233. Plaintiffs are also each entitled to reinstatement, double back pay,
2 interest on the double back pay, and other special damages pursuant to California
3 Government Code § 12653(b).

4 234. In addition to the damages provided above, Plaintiffs also each seek
5 punitive damages for Defendants’ acts pursuant to California Government Code
6 § 12653(b).

7 235. Plaintiffs each seek reasonable attorneys’ fees and costs of litigation
8 incurred in bringing this action pursuant to California Government Code §
9 12653(b).

10 **SEVENTH CAUSE OF ACTION**
11 **INJUNCTIVE RELIEF TO RESTRAIN AND PREVENT ILLEGAL**
12 **EXPENDITURE AND WASTE OF PUBLIC FUNDS AND RESOURCES,**
13 **CALIFORNIA CODE OF CIVIL PROCEDURE § 526a**
14 **(By Plaintiff Pell Against Defendants MUSD and Cárdenas, Cupchoy,**
15 **Cisneros, Flores, and Rojas in Their Individual Capacities)**

16 236. Plaintiff Pell re-alleges and incorporates herein by this reference
17 each and every allegation set forth in paragraphs 1-156 of this Complaint as
18 though set forth fully herein.

19 237. California Code of Civil Procedure § 526a authorizes taxpayer
20 actions “restraining and preventing any illegal expenditure of, waste of, or injury
21 to, the estate, funds, or other property of a county, town, city or city and county
22 of the state [. . .] against any officer thereof[.]” The primary purpose of the
23 statute is to “enable a large body of the citizenry to challenge governmental
24 action which would otherwise go unchallenged in the courts because of the
25 standing requirement.”

26 238. Plaintiff Pell is a resident and taxpayer in the Montebello Unified
27 School District, and has paid state and local taxes in the past year.

28 239. Plaintiff Pell brings this cause of action as a citizen-taxpayer under
California Code of Civil Procedure § 526a.

 240. MUSD, through its agents and employees, has acted and is

1 continuing to act in violation of the law by wasting, unlawfully disbursing,
2 and/or misusing Measure GS, Measure M, and Measure EE bond funds as well
3 as \$300 million of its operating budget as previously described.

4 241. MUSD, through its agents and employees, has acted and is
5 continuing to act in violation of the law by entering into an exclusive contract
6 with a preferred contractor to develop public land, thereby wasting, unlawfully
7 disbursing, and/or misusing public property.

8 242. For the reasons stated above, Plaintiff Pell requests that Defendants
9 be enjoined from further expenditures from public funds or from disposal of
10 public land.

11 243. Plaintiff Pell is entitled to recover from Defendants reasonable
12 attorneys' fees and costs incurred in bringing this action pursuant to California
13 Code of Civil Procedure § 1021.5, which provides that a "court may award
14 attorneys' fees to a successful party against one or more opposing party in any
15 action which has resulted in the enforcement of an important right affecting the
16 public interest[.]"

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs each pray for a judgment against Defendants as
19 follows:

20 **ON THE FIRST CAUSE OF ACTION**

21 244. For compensatory damages and other special and general damages
22 according to proof.

23 **ON THE SECOND CAUSE OF ACTION**

24 245. For compensatory damages and other special and general damages
25 according to proof;

26 246. For a civil penalty of \$10,000 per employee for each violation of
27 this section;

28 247. For reinstatement and reimbursement for lost wages and benefits.

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ON THE THIRD CAUSE OF ACTION

- 248. For compensatory damages and other special and general damages according to proof;
- 249. For treble damages;
- 250. For exemplary and punitive damages;
- 251. For a civil penalty of \$25,000 per employee for each violation of this section.

ON THE FOURTH CAUSE OF ACTION

- 252. For compensatory damages and other special and general damages according to proof;
- 253. For exemplary and punitive damages.

ON THE FIFTH CAUSE OF ACTION

- 254. For compensatory damages and other special and general damages according to proof;
- 255. For exemplary and punitive damages.

ON THE SIXTH CAUSE OF ACTION

- 256. For compensatory damages and other special and general damages according to proof;
- 257. For reinstatement;
- 258. For double back pay and interest on the double back pay;
- 259. For exemplary and punitive damages.

ON THE SEVENTH CAUSE OF ACTION

- 260. For an order enjoining Defendants from disposing of any public land or Measure GS, Measure M and/or Measure EE Bond funds until such time that the Court is satisfied that the unlawful conduct has ceased.

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ON ALL CAUSES OF ACTION

261. For an award of reasonable attorneys' fees and costs incurred in this action;

262. For prejudgment interest; and

263. For such other and further relief as the Court may deem just and proper.

DATED: June 29, 2017

GREENBERG GROSS LLP

By: 
Wayne R. Gross
Attorneys for Plaintiff
Susanna Contreras Smith

DATED: June 29, 2017

SPERTUS, LANDES & UMHOFFER, LLP


By: 
Matthew Donald Umhofer
Attorneys for Plaintiff Cleve Pell

EXHIBIT 1

Subject: Draft Agenda - October 14, 2016 - Special Board of Education Meeting

Date: Tuesday, October 11, 2016 3:17:38 PM PT

From: Jones, Diana

To: bcardenas79

CC: Smith, Susanna, Perez, Martha

To: Benjamin Cardenas

From: Susanna Contreras Smith

Re: Draft Agenda - October 14, 2016 - Special Board of Education Meeting

Mr. Rick Olivarez and I had an opportunity to meet and review the attached draft agenda for the special board of education meeting scheduled for Friday, October 14, 2016.

Mr. Olivarez will be contacting you later today to review the draft agenda with you.

DRAFT



MONTEBELLO UNIFIED SCHOOL DISTRICT

SPECIAL BOARD OF EDUCATION MEETING

DISTRICT OFFICE
BOARD ROOM
123 SOUTH MONTEBELLO BOULEVARD
MONTEBELLO, CALIFORNIA

FRIDAY, OCTOBER 14, 2016

9:00 a.m.

Board of Education

Mr. Benjamin Cárdenas, President
Dr. Lani Cupchoy, Vice President
Mr. Hector A. Chacon, Clerk
Mr. Edgar Cisneros, Member
Ms. Joanna Flores, Member

Administrative Cabinet

Ms. Susanna Contreras Smith, Superintendent of Schools
Mr. Cleve A. Pell, Chief Financial and Operations Officer
Mr. Ruben J. Rojas, Chief Business Officer
Dr. Anthony J. Martinez, Assistant Superintendent, Instructional Services

VISION STATEMENT

- We Value** - *An organization culture based upon both individual strengths and relationships in which learners flourish in an environment of collaboration, freedom of expression, high expectation and relationships*
- We Commit to** - *Continually refining our efforts to provide educational equity and high expectations for all students as we prepare them for success in college, career and beyond*
- We Believe** - *In developing and nurturing all of our students and staff through continuously creating conditions that promote rigor, relevance and relationships through our organization*

1. Call To Order/Flag Salute
2. Adoption of Agenda: Special Meeting – Friday, October 14, 2016

3. **Public Comment** (Only items listed on the agenda may be discussed at a special board meeting)

4. Recess –To Closed Session

Motion: _____; Second: _____; _____ a.m./p.m.

Closed Session Agenda:

- a) Public employee discipline/dismissal/release, or complaints against a public employee
(Govt. Code Section 54957)

5. Report Out – Closed Session

ADJOURNMENT - To next regular meeting scheduled Thursday evening,
October 20, 2016, at 6:00 p.m. (open session).

Motion: _____; Second: _____; _____ a.m./p.m.

EXHIBIT 2

PLEASE POST



MONTEBELLO UNIFIED SCHOOL DISTRICT

SPECIAL BOARD OF EDUCATION MEETING

DISTRICT OFFICE
BOARD ROOM
123 SOUTH MONTEBELLO BOULEVARD
MONTEBELLO, CALIFORNIA

FRIDAY, OCTOBER 14, 2016

9:00 a.m.

Board of Education

Mr. Benjamin Cárdenas, President
Dr. Lani Cupchoy, Vice President
Mr. Hector A. Chacon, Clerk
Mr. Edgar Cisneros, Member
Ms. Joanna Flores, Member

Executive Cabinet

Ms. Susanna Contreras Smith, Superintendent of Schools
Mr. Cleve A. Pell, Chief Financial and Operations Officer
Mr. Ruben J. Rojas, Chief Business Officer
Dr. Angel E. Gallardo, Director – Human Resources
Ms. Marlene M. Pitchford, Director – Classified Human Resources
Dr. Anthony J. Martinez, Assistant Superintendent, Instructional Services

VISION STATEMENT

- We Value** - An organization culture based upon both individual strengths and relationships in which learners flourish in an environment of collaboration, freedom of expression, high expectation and relationships
- We Commit to** - Continually refining our efforts to provide educational equity and high expectations for all students as we prepare them for success in college, career and beyond
- We Believe** - In developing and nurturing all of our students and staff through continuously creating conditions that promote rigor, relevance and relationships through our organization

1. Call To Order/Flag Salute
2. Adoption of Agenda: Special Meeting – Friday, October 14, 2016

3. Public Comment on Closed Session Agenda Items

4. Recess –To Closed Session

Motion: _____; Second: _____; _____ a.m./p.m.

Closed Session Agenda:

- a) Closed Session Pursuant to Government Code Section 54957 – Public Employee Performance Evaluation
Title: (Superintendent of Schools)
- b) Closed Session Pursuant to Government Code Section 54957 – Public Employee Performance Evaluation
Title: (Chief Financial Officer)
- c) Closed Session Pursuant to Government Code Section 54957 – Public Employee Discipline/ Dismissal/Release
- d) Closed Session Pursuant to Government Code Section 54957 – Public Employee Discipline/ Dismissal/Release
- e) Closed Session Pursuant to Government Code Section 54957 – Public Employee Appointment
Title: (Interim Superintendent)

5. Report Out – Closed Session

6. Public Comment (Only items listed on the agenda may be discussed at a special board meeting)

ADJOURNMENT - To next regular meeting scheduled Thursday evening,
October 20, 2016, at 6:00 p.m. (open session).

Motion: _____; Second: _____; _____ a.m./p.m.

EXHIBIT 3



MONTEBELLO UNIFIED SCHOOL DISTRICT

Human Resources Division
123 South Montebello Blvd., Montebello, CA 90640
(323) 887-7917 Fax: (323) 887-5885

CONFIDENTIAL

October 14, 2016

Sent Via Certified & Regular U.S. Mail
7005 1160 0005 1573 1040

Susanna Contreras Smith
6773 Cactus Drive
La Verne, CA 91750

RE: PLACEMENT ON ADMINISTRATIVE LEAVE WITH PAY

Dear Ms. Contreras Smith:

This letter is to notify you that you are hereby placed on paid administrative leave from your position as Superintendent of Schools. Your paid leave is effective immediately. The purpose of this leave is to provide that District with an opportunity to investigate some concerns. This leave is not intended to be disciplinary. You will remain on a paid leave until such time as you are otherwise notified by the District.

During the period of this leave, it is expected that you will be available to District staff and counsel, and that you will fully cooperate. Further, you are directed not to interfere with the District's business, including contacting any District employees. You will remain on paid administrative leave until such time as I notify you that this status has changed.

During the time you are on administrative leave, you are directed not to enter District property unless expressly authorized to do so by me. You are also directed to turn in all keys, equipment, materials, or other District property in your possession to the Director of Human Resources no later than 4:30 p.m., on Thursday, October 20, 2016. If you have any personal items you would like to take with you, please take them at that time or arrangements will be made for you to pick them up later.

A copy of this notice may be placed in your personnel file.

Very truly yours,

Angel E. Gallardo, Ed.D., Director, Human Resources

Cc: Anthony J. Martinez, Interim Superintendent of Schools
File

AEG: ga

EXHIBIT 4



MONTEBELLO UNIFIED SCHOOL DISTRICT

Human Resources Division
123 South Montebello Blvd., Montebello, CA 90640
(323) 887-7917 Fax: (323) 887-5885

CONFIDENTIAL

October 14, 2016

Sent Via Certified & Regular U.S. Mail

7005 1160 0005 1573 1033

Cleve A. Pell
740 N. Sanchez Street
Montebello, CA 90640

RE: PLACEMENT ON ADMINISTRATIVE LEAVE WITH PAY

Dear Mr. Pell:

This letter is to notify you that you are hereby placed on paid administrative leave from your position as Chief Financial and Operations Officer. Your paid leave is effective immediately. The purpose of this leave is to provide that District with an opportunity to investigate some concerns. This leave is not intended to be disciplinary. You will remain on a paid leave until such time as you are otherwise notified by the District.

During the period of this leave, it is expected that you will be available to District staff and counsel, and that you will fully cooperate. Further, you are directed not to interfere with the District's business, including contacting any District employees. You will remain on paid administrative leave until such time as I notify you that this status has changed.

During the time you are on administrative leave, you are directed not to enter District property unless expressly authorized to do so by me. You are also directed to turn in all keys, equipment, materials, or other District property in your possession to the Director of Human Resources no later than 4:30 p.m., on Thursday, October 20, 2016. If you have any personal items you would like to take with you, please take them at that time or arrangements will be made for you to pick them up later.

A copy of this notice may be placed in your personnel file.

Very truly yours,

A handwritten signature in cursive script that reads "Angel E. Gallardo".

Angel E. Gallardo, Ed.D., Director, Human Resources

Cc: Anthony J. Martinez, Interim Superintendent of Schools
File

AEG: ga

EXHIBIT 5



Howard M. Privette
Direct Dial: (949) 383-2770
HPrivette@GGTrialLaw.com

November 2, 2016

VIA ELECTRONIC MAIL: LPilchen@omlawyers.com

Lloyd Pilchen, Esq.
Olivarez & Madruga, LLP
1100 S. Flower St.
Suite 2200
Los Angeles, CA 90015

Re: Susanna Contreras Smith

Dear Mr. Pilchen:

I am writing in response to your email of October 28, 2016, which purports to confirm the “contents” of our telephone conversation of earlier that afternoon (a call that you initiated).

I note that, contrary to your representation at the outset of the telephone call that the purpose of the call was “an informal discussion of options regarding Ms. Smith’s status,” your email mischaracterizes my statements during our call as if I were setting forth a formal position on behalf of Ms. Contreras Smith. Your misstatement of what I communicated to you on the call, as well as the stated purpose of it, is quite disturbing.

As a threshold matter, I asked you whether there is any ongoing investigation concerning Ms. Contreras Smith (as suggested in the October 14, 2016 letter she received from your client, the Montebello Unified School District (“MUSD” or the “District”), informing her that the MUSD Board of Education (the “Board”) had decided to place her on paid administrative leave). You confirmed that there is no such investigation, which is what your partner Rick Olivarez previously told me on October 19, 2016. Mr. Olivarez also told me on that date that he was not aware of any other ongoing investigation that might correspond to the reference in the letter, which he asserted was included simply as “form” language that is used in such letters. He also told me that there was no stated cause given for the Board’s action to place Ms. Contreras Smith on administrative leave. He simply said that the Board had decided “to go a different direction.”

During our call on October 28, you asserted that there are two possible “options” regarding Ms. Contreras Smith’s status with the MUSD. First, you threatened that the Board could terminate Ms. Contreras Smith’s employment “for convenience.” Alternately, you proposed that Ms. Contreras Smith could resign her position with the District.

Lloyd Pilchen, Esq.

November 2, 2016

Page 2

In response, I told you that the Board's conduct in this matter is outrageous and violates Ms. Contreras Smith's rights as well as public policy. Ms. Contreras Smith has provided exemplary service to the District for years. In light of that service, and against a background of discriminatory conduct directed against her, the Board's action of placing Ms. Contreras Smith on involuntary administrative leave is clearly in furtherance of its surreptitious decision to quash an inquiry into the serious issues she previously raised concerning the District's Chief Business Officer and his oversight of the District's public contracts. I informed you that any further action by the Board taken against Ms. Contreras Smith would compound the harm already inflicted by its improper conduct to date.

With respect to your proposal that Ms. Contreras Smith resign, you also asserted that a resignation would have to be accompanied by a release of claims. When you failed to indicate that she would receive anything in return for releasing her claims, I asked why you thought this could possibly be a viable option. Your response was that a resignation would soften the outward appearance of her separation from the District, specifically noting that a resignation might make it easier for Ms. Contreras Smith to obtain alternate employment. By asserting that the Board's actions against her would impair her ability to obtain alternate employment, you confirmed both the harm already being inflicted on her reputation and standing in the community by the Board's actions, as well as the economic impact of that harm. Under the circumstances, I expressed to you that I could not conceive how this "option" as you described it would be acceptable to anyone in her position.

You asked if I could see any other way forward. Noting that you had not identified it as an option, I observed that the Board could immediately reverse its course and turn away from the perilous path it has set itself upon; and, as a first step in that direction, it could reinstate Ms. Contreras Smith. Obviously, such a course of action would also have to include the elimination of the concerns she has raised concerning the District's Chief Business Officer and the District's public contracts, as well as making her whole for the harm she has suffered to date.

In short, the proper message to take from our call is that neither of the two "options" you presented would be in any way appropriate or acceptable. The "options" you proffered would simply compound the grievous harm that the Board's misconduct has already inflicted upon Ms. Contreras Smith.



Lloyd Pilchen, Esq.
November 2, 2016
Page 3

Please note that our investigation of this matter is continuing, and Ms. Contreras Smith reserves all potential rights and claims. Under the circumstances, please confirm that the District and the Board are properly maintaining all documents and records potentially relevant to the issues raised by Ms. Contreras Smith.

Very truly yours,

A handwritten signature in blue ink, reading "Howard M. Privette", with a long horizontal flourish extending to the right.

Howard M. Privette

cc: Rick R. Olivarez, Esq.
Wayne R. Gross, Esq.

EXHIBIT 6

November 2, 2016

Rick Olivarez
Lloyd Pilchen
Olivarez Madruga, LLP
1100 S. Flower St., Suite 2200
Los Angeles, CA 90015
213.744.0099
ROlivarez@omlawyers.com
LPilchen@omlawyers.com

RE: Cleve Pell

Rick and Lloyd,

Mr. Pell is deeply disturbed by the recent conduct of the board of the Montebello Unified School District (MUSD). After Mr. Pell and others raised serious concerns about fraud and the submission of false documentation by a high-ranking school district executive, Mr. Pell was suddenly placed on leave without explanation, and you recently threatened to terminate him “for convenience.” This retaliatory conduct suggests that there are far deeper problems within the district that board is either turning a blind eye to or knowingly facilitating. The board must reverse its troubling course.

Mr. Pell has spent the majority of his adult life serving in school administration for MUSD and its community—*his* community. This was particularly true when he sent his September 7, 2016 memorandum to Superintendent Susanna Contreras Smith, Legal Counsel David Kenney, and the MUSD school board raising concerns about Ruben J. Rojas—specifically, concerns that Mr. Rojas fabricated letters of reference in connection with his employment application. As Mr. Pell noted in his memorandum, Mr. Rojas used fraud and false documentation to attain a position requiring the highest integrity, particularly in light of the position’s influence over

the expenditure of public funds like MUSD's recently authorized \$300 million bond. Mr. Pell believes others shared his concerns, including Mr. Kenney and Ms. Contreras Smith, as evidenced by the September 16, 2016 decision to place Mr. Rojas on administrative leave.

Mr. Pell was quite shocked when, on October 14, 2016—a month after his memo—the board placed him, Mr. Kenney, and Ms. Contreras Smith on administrative leave in a secret, closed-session, special board meeting. The only explanation given was that the board wanted an opportunity to “investigate some concerns.” To date, Mr. Pell has never been told what those concerns are, and has been given no opportunity to address them. The only possible explanation for the board's decision is that it was intended to punish him for raising concerns about a threat to the public fisc.

The board's treatment of Mr. Rojas has been quite different. Despite his submission of obviously fraudulent documentation to obtain his job, Mr. Rojas has been reinstated to a position of great trust. Yet his questionable behavior has continued—we recently learned that Mr. Rojas has sought access to Mr. Pell's school *and* personal email, and that MUSD personnel have been instructed to shred documents. As we look more closely at Mr. Rojas's background and his close connections with certain members of the MUSD school board, a pattern emerges of public school projects awarded to contractors outside of the competitive bidding process. Simply put, Mr. Pell's concerns about Mr. Rojas appear to have been well founded. Under these circumstances, one would have expected the board to reward Mr. Pell, not punish him. It's decision to take the latter course raises serious questions about the board's judgment and integrity.

We continue to investigate the matter and in the absence of a resolution, fully intend to pursue the matter. To that end, we must insist that MUSD personnel immediately cease destroying documents, and preserve all documents that could be relevant to the matters discussed in this letter. And of course, all MUSD

communications with Mr. Pell regarding this matter—from lawyers or any one else—should be directed to our firm.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew D. Umhofer". The signature is fluid and cursive, with a large initial "M" and "U".

Matthew Donald Umhofer

EXHIBIT 7



Howard M. Privette
Direct Dial: (949) 383-2770
HPrivette@GGTrialLaw.com

November 3, 2016

VIA U.S. MAIL AND E-MAIL:

Dr. Anthony J. Martinez
Interim Superintendent of Schools
Montebello Unified School District
123 S. Montebello Blvd.
Montebello, CA 90640
amartinez@montebello.k12.ca.us

Re: Public Records Act Request

Dear Dr. Martinez:

Pursuant to the California Public Records Act, Gov. Code § 6250 *et seq.*, we hereby request copies of the following public records, which we understand to be held by the Montebello Unified School District (“MUSD”).¹

1. All public records regarding preparation of the Agenda for the October 6, 2016 School Board Meeting.
2. All public records regarding preparation of the Agenda for the October 14, 2016 MUSD Special Board of Education Meeting.
3. All public records regarding preparation of the Agenda for the November 3, 2016 MUSD School Board Meeting.
4. All public records regarding any October 14, 2016 MUSD meeting, including, but not limited to the Special Board of Education Meeting.

¹ A “public record” includes “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency [including MUSD] regardless of physical form or characteristics.” Cal. Gov’t Code § 6252(e). Moreover, it is “indisputable” that emails constitute “public records” for the purposes of a Public Records Act request. *See Bertoli v. City of Sebastopol*, 233 Cal. App. 4th 353, 373 (2015); *Tracy Press, Inc. v. Sup. Ct.*, 164 Cal. App. 4th 1290, 1300 (2008) (same).

Dr. Anthony J. Martinez
November 3, 2016
Page 2

5. All public records regarding the October 14, 2016 decision to place Susanna Contreras Smith on paid administrative leave.
6. All public records regarding the October 14, 2016 decision to place Cleve Pell on paid administrative leave.
7. All public records regarding the decision to appoint Dr. Anthony J. Martinez as Interim Superintendent of Schools.
8. All public records regarding the decision to modify or change MUSD letterhead to remove the names of Susanna Contreras Smith and Cleve Pell.
9. All public records regarding efforts or requests by Ruben J. Rojas to access records (including official and/or personal emails) of any MUSD employee, including, but not limited to, Susanna Contreras Smith and Cleve Pell.
10. All public records regarding efforts or requests by Ruben J. Rojas to change the locks on or otherwise prohibit access to the offices of Susanna Contreras Smith and Cleve Pell.
11. All public records regarding efforts or requests by Ruben J. Rojas to change the locks on or otherwise prohibit access to any MUSD facilities.
12. All public records regarding Hector A. Chacon's resignation as Clerk of the MUSD Board of Education.
13. All public records regarding the decision to make or appoint Joanna Flores as Clerk of the MUSD Board of Education.
14. All public records regarding Ruben J. Rojas's application for employment with MUSD, including all attachments and letters of reference.
15. All public records regarding the hiring of Ruben J. Rojas.
16. All public records regarding concerns raised by Susanna Contreras Smith, Cleve Pell, David Kenney, and/or any other person regarding Ruben J. Rojas's application for employment with MUSD.
17. All public records regarding the results of any inquiry and/or investigation into concerns or allegations raised by any MUSD employee related to Ruben J. Rojas's application for employment with MUSD.

Dr. Anthony J. Martinez
November 3, 2016
Page 3

18. All public records regarding the September 16, 2016 decision to place Ruben J. Rojas on administrative leave.
19. All public records regarding any request to reinstate Ruben J. Rojas from the administrative leave on which he was placed on September 16, 2016.
20. All public records regarding the salary paid by MUSD to Ruben J. Rojas.
21. All public records regarding any October 6, 2016 MUSD meeting, including any meeting to discuss the administrative leave and/or investigation of Ruben J. Rojas.
22. All public records regarding any October 14, 2016 MUSD meeting, including any discussion of an investigation of Ruben J. Rojas.
23. All public records regarding the decision to terminate the contract of Kenney & Kropff, Lawyers.
24. All public records regarding the engagement of Rick Olivarez, Lloyd Pilchen, and/or Olivarez Madruga, LLP.
25. All public records regarding any agreements between MUSD and Rick Olivarez, Lloyd Pilchen, and/or Olivarez Madruga, LLP from January 1, 2013 to present.
26. All public records regarding the Personnel Commission meeting, scheduled for and/or held on November 1, 2016.
27. All public records regarding any relationship (personal, business, or economic) between Ruben J. Rojas and any of the following: Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon.
28. All public records regarding any relationship (personal, business, or economic) between Luis D. Rojas and any of the following: Ruben J. Rojas, Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon.
29. All public records regarding any relationship (personal, business, or economic) between Gustavo Camacho and any of the following: Ruben J. Rojas, Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon.
30. All public records regarding any relationship (personal, business, or economic) between Arturo Sneider and any of the following: Ruben J. Rojas, Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon.

Dr. Anthony J. Martinez

November 3, 2016

Page 4

31. All public records regarding any relationship (personal, business, or economic) between Leandro Tyberg and any of the following: Ruben J. Rojas, Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon.

32. All public records regarding any agreement between MUSD and any company associated or affiliated with Gustavo Camacho and/or Luis D. Rojas, including, but not limited to Evergreen Energy Solutions, Inc., Evergreen Energy Solutions, LLC, Del Terra Construction, Inc., Del Terra Education Foundation, and/or Alliance Services Group.

33. The final text of the “Montebello Unified School District Student Safety, Classroom And Technology Improvement Measure” (Measure GS), passed on June 7, 2016.

34. All public records regarding MUSD’s expenditure and intended expenditure of Measure GS funds.

35. All public records regarding proposals, decisions, approvals, and/or recommendations by Ruben J. Rojas concerning expenditure or intended expenditure of Measure GS funds.

36. All public records regarding proposals by contractors or vendors concerning expenditure or intended expenditure of Measure GS funds.

37. All public records regarding the independent performance and financial audits for Measure GS, including the identities of any persons or entities retained to perform the audits, the terms of those engagements, the scope of work to be performed, and the results of those audits.

38. All public records regarding the Independent Citizens’ Oversight Committee established in connection with Measure GS, including records concerning the membership and selection of the committee.

39. All public records regarding the issuance and sale of Measure GS bonds.

40. All public records regarding any Emergency Resolution proposed from January 1, 2013 to present.

41. All public records regarding any Emergency Resolution passed from January 1, 2013 to present, including the contracts awarded.

42. All public records regarding any requests for proposals, all proposals received, all evaluations of proposals, and all decision documents regarding the acceptance of proposals received from January 1, 2013 to present.

Dr. Anthony J. Martinez
November 3, 2016
Page 5

43. All public records regarding any bid protests received by MUSD from January 1, 2013 to present, including, but not limited to, all communications regarding bid protests.

44. All public records regarding any bids made by HMC Architects from January 1, 2013 to present.

45. All public records regarding communications between Veronica Gutierrez, Senior Accounting Clerk, and Ruben J. Rojas, Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon related to any bid projects or proposals from January 1, 2013 to present.

46. All public records regarding any MUSD employment positions (both permanent or provisional) created from January 1, 2013 to present, including the selection criteria for these positions.

47. All public records regarding any existing MUSD employment positions (both permanent or provisional) filled from January 1, 2013 to present, including the selection criteria for these positions.

48. All public records regarding any candidates submitted, recommended, and/or approved by Ruben J. Rojas for employment as MUSD employees (both permanent or provisional), including for any positions created by him.

49. All public records regarding the hiring and employment of Phyllyp B. Bardowell.

50. All public records regarding the hiring and employment of Genesis C. Vega.

51. All public records regarding the hiring and employment of Jody Thulin.

52. All public records regarding the salaries paid by MUSD to Phyllyp B. Bardowell, Genesis C. Vega, and Jody Thulin.

53. All public records regarding any committee(s) in which Phyllyp B. Bardowell has participated, including any committee(s) formed to select the recipient of a contract with MUSD.

54. All public records regarding any committee(s) in which Genesis C. Vega has participated, including any committee(s) formed to select the recipient of a contract with MUSD.

55. All public records regarding any committee(s) in which Jody Thulin has participated, including any committee(s) formed to select the recipient of a contract with MUSD.

Dr. Anthony J. Martinez
November 3, 2016
Page 6

56. All public records regarding bids submitted for replacement of lighting at Montebello Gardens Elementary School, Montebello Intermediate School, and Bell Gardens High School.

57. All public records regarding Resolution No. 12(2014-2015), Resolution to Approve the Energy Services Agreement with Evergreen Energy Solutions and Enveniam, Inc., including any amendments.

58. All public records regarding any work performed or to be performed by Evergreen Energy Solutions, Inc. and/or Evergreen Energy Solutions, LLC for MUSD from January 1, 2013 to present.

59. All public records regarding any payments made or to be made to Evergreen Energy Solutions, Inc. and/or Evergreen Energy Solutions, LLC by MUSD from January 1, 2013 to present.

60. All public records regarding any work performed or to be performed for MUSD by Evergreen Solar Solutions, Inc. from January 1, 2013 to present.

61. All public records regarding any payments made or to be made to Evergreen Solar Solutions, Inc. by MUSD from January 1, 2013 to present.

62. All public records regarding any work performed or to be performed for MUSD by Enveniam, Inc. from January 1, 2013 to present.

63. All public records regarding any payments made or to be made to Enveniam, Inc. by MUSD from January 1, 2013 to present.

64. All public records regarding any work performed or to be performed by South Coast Air Quality Management District for MUSD from January 1, 2013 to present.

65. All public records regarding any payments made or to be made to South Coast Air Quality Management District by MUSD from January 1, 2013 to present.

66. All public records regarding any work performed or to be performed by Alta Environmental for MUSD from January 1, 2013 to present.

67. All public records regarding any payments made or to be made to Alta Environmental by MUSD from January 1, 2013 to present.

68. All public records regarding any work performed or to be performed by Castlerock Environmental, Inc. for MUSD from January 1, 2013 to present.

Dr. Anthony J. Martinez
November 3, 2016
Page 7

69. All public records regarding any payments made or to be made to Castlerock Environmental, Inc. by MUSD from January 1, 2013 to present.
70. All public records regarding any work performed or to be performed by Argus Contracting LP for MUSD from January 1, 2013 to present.
71. All public records regarding any payments made or to be made to Argus Contracting LP by MUSD from January 1, 2013 to present.
72. All public records regarding any work performed or to be performed by American Technology Inc. for MUSD from January 1, 2013 to present.
73. All public records regarding any payments made or to be made to American Technology Inc. by MUSD from January 1, 2013 to present.
74. All public records regarding any work performed or to be performed by Titan Environmental for MUSD from January 1, 2013 to present.
75. All public records regarding any payments made or to be made to Titan Environmental by MUSD from January 1, 2013 to present.
76. All public records regarding any work performed or to be performed by Clark Seif Clark, Inc. for MUSD from January 1, 2013 to present.
77. All public records regarding any payments made or to be made to Clark Seif Clark, Inc. by MUSD from January 1, 2013 to present.
78. All public records regarding any work performed or to be performed by Primestor Development, Inc. for MUSD from January 1, 2013 to present.
79. All public records regarding any proposed or actual agreements between Primestor Development, Inc. and MUSD from January 1, 2013 to present.
80. All public records regarding any payments made or to be made to Primestor Development, Inc. by MUSD from January 1, 2013 to present.
81. All public records regarding MUSD's plans for the plot of vacant land located at 6360 Garfield Avenue, Commerce, California, 90040 (formerly the site of the Laguna Nueva Elementary School), including a copy of the Exclusive Negotiation Agreement with Primestor Development, Inc. regarding development of this site, and all public records concerning public notice (or lack thereof) of this transaction and its placement before the School Board for approval.



Dr. Anthony J. Martinez
November 3, 2016
Page 8

82. All public records regarding any work performed or to be performed by Del Terra Construction for MUSD from January 1, 2013 to present.

83. All public records regarding any payments made or to be made to Del Terra Construction by MUSD from January 1, 2013 to present.

84. All public records regarding any work performed or to be performed, or services rendered or to be rendered by Del Terra Education Foundation for MUSD from January 1, 2013 to present.

85. All public records regarding any payments made or to be made to Del Terra Education Foundation by MUSD from January 1, 2013 to present.

86. All public records regarding any work performed or to be performed by Barraza & Sons for MUSD from January 1, 2013 to present.

87. All public records regarding any payments made or to be made to Barraza & Sons by MUSD from January 1, 2013 to present.

88. All public records regarding the re-assignment of any MUSD contracts or agreements from January 1, 2013 to present.

89. All public records regarding Resolution No. 17(2016-2017) of the Board of Education of MUSD Authorizing the Issuance and Sale of its General Obligation Bonds, 2016 Election, Series A.

90. All public records concerning campaign or other contributions made to any of the following individuals from January 1, 2013 to present: Ruben J. Rojas, Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon.

91. All public records regarding statements of economic interests and/or conflicts of interest from the following individuals from January 1, 2013 to present: Ruben J. Rojas, Benjamin Cárdenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, and/or Hector A. Chacon.

92. All public records regarding any revisions, modifications, or deletions of Board of Education policies from January 1, 2013 to present.

93. All public records regarding MUSD's document retention policies from January 1, 2013 to present.

Dr. Anthony J. Martinez
November 3, 2016
Page 9

94. All public records regarding requests or efforts to delete or destroy MUSD documents (including electronic records such as emails), or change MUSD document retention policies from January 1, 2013 to present.

I ask for a determination of this Request within 10 days of receipt of this letter. If MUSD determines that any or all of the information qualifies for an exemption from disclosure and MUSD intends to withhold such information from disclosure, please identify the request or portion of request at issue, by number, and identify: (1) the claimed exemption; (2) whether the exemption is discretionary; and (3) whether MUSD determined it was necessary to exercise its discretion to withhold the information. To the extent MUSD determines that some, but not all, of the information in any given request is exempt from disclosure, please provide redacted copies of the responsive public records until any disagreements regarding exemptions can be resolved.

If I can provide any clarification that will help expedite MUSD's attention to my request, please contact me at (949) 383-2770 or at HPrivette@GGTrialLaw.com. In addition, please notify me if MUSD believes that duplication costs will exceed \$5,000, so that I may determine which records I want copied.

Thank you for your time and attention to this matter.

Regards,



Howard M. Privette

cc: Benjamin Cárdenas
Lani Cupchoy
Joanna Flores
Edgar Cisneros
Hector A. Chacon
Rick Olivarez
Lloyd Pilchen
Matthew Umhofer

EXHIBIT 8

November 2, 2016

Dr. Anthony J. Martinez
Interim Superintendent of Schools
Montebello Unified School District
123 S. Montebello Blvd.
Montebello, CA 90640
amartinez@montebello.k12.ca.us
(323) 887-7900 Ext: 2206

RE: Public Records Act Request

Dear Dr. Martinez,

Pursuant to the California Public Records Act, Government Code § 6250 et seq., we request copies of the following public records, which we understand to be held by the Montebello Unified School District (MUSD).¹

1. All public records concerning Ruben J. Rojas's application for employment with MUSD, including all attachments and letters of reference.
2. All public records regarding concerns or allegations raised by Cleve Pell, David Kenney, or Susanna Contreras Smith in connection with Ruben J. Rojas's application for employment with MUSD.

¹ A public record "includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency [including MUSD] regardless of physical form or characteristics." Cal. Gov't Code § 6252(e); see also AR 1340(a), Access to District Records. A public record specifically includes emails. See *Bertoli v. City of Sebastopol*, 233 Cal. App. 4th 353, 373 (2015) ("[I]t is indisputable that any e-mails contained on the City's municipal computers, to the extent they contain 'information relating to the conduct of the public's business,' constitute '[p]ublic records' for purposes of the PRA.").

3. All public records concerning the results of any inquiry into concerns or allegations raised in connection with Ruben J. Rojas's application for employment with MUSD.
4. All public records concerning the decision to place Ruben J. Rojas on administrative leave in September 2016.
5. All public records concerning any request to reinstate Ruben J. Rojas from the administrative leave on which he had been placed in September 2016.
6. All public records concerning the decision to reinstate Ruben J. Rojas from the administrative leave on which he had been placed in September 2016.
7. All public records concerning any October 6 or 7, 2016 MUSD meeting, including any meeting to discuss the administrative leave of Ruben J. Rojas, the anticipated administrative leave of Cleve Pell or Susanna Contreras Smith, and the decision to terminate (or begin the termination of) David Kenney and/or Kenney & Kropff from the position of legal counsel.
8. All public records concerning any October 14, 2016 MUSD meeting, including the special meeting on the morning of October 14, 2016.
9. All public records concerning the decision to place Cleve Pell on administrative leave in October 2016.
10. All public records concerning the decision to terminate (or begin the termination of) David Kenney and/or Kenny & Kropff from the position of legal counsel in October 2016.
11. All public records concerning the decision to place Susanna Contreras Smith on administrative leave in October 2016.
12. All public records concerning the resignation of Hector Chacon as Clerk of the MUSD school board.
13. All public records concerning requests by Ruben J. Rojas to access records (including requests to access official or personal emails, or both) of Cleve Pell, David Kenney, and Susan Contreras Smith.

14. All public records concerning requests or instructions to destroy documents or change document retention policies on or after June 1, 2016.
15. All public records concerning the Personnel Commission meeting scheduled for November 1, 2016.
16. All public records concerning the decision on or about October 17, 2016 to change district letterhead to remove Cleve Pell and Susanna Contreras Smith.
17. All public records concerning any personal, business, or economic relationship between Ruben J. Rojas and any of the following individuals: Benjamin Cardenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
18. All public records concerning any personal, business, or economic relationship between Ruben J. Rojas, Benjamin Cardenas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, or Hector Chacon and any of the following individuals: Gustavo Camacho, Gregory Salcido, or Brent Tercero.
19. All public records concerning any business or economic relationship between MUSD and any of the following individuals: Gustavo Camacho, Gregory Salcido, or Brent Tercero.
20. The final text of the "Montebello Unified School District Student Safety, Classroom And Technology Improvement Measure" (Measure GS), passed on June 7, 2016.
21. All public records concerning MUSD's expenditure and intended expenditure of Measure GS funds.
22. All public records concerning proposals by Ruben J. Rojas concerning expenditure or intended expenditure of Measure GS funds.
23. All public records concerning proposals by contractors or vendors concerning expenditure or intended expenditure of Measure GS funds.
24. All public records concerning the independent performance and financial audits for Measure GS, including the persons or entities retained to perform the audits and the results of the audits.

25. All public records concerning the Independent Citizens' Oversight Committee established in connection with Measure GS, including records concerning the membership and selection of the committee.
26. All public records concerning the issuance and sale of Measure GS bonds.
27. All public records concerning a February 3, 2016 meeting between the following MUSD employees: George Upegui; Michael Weaver; Jeff Woods; Kevin Lee; Tim Jones; and Derrick Williams.
28. All public records concerning Bid No. 08(15-16), Exterior Environmental Remediation and Painting at Various Sites, including records concerning whether to structure the project as a painting contract or an environmental consulting project, the request for proposals, all proposals submitted in response to the request for proposals, all evaluations of proposals, and all decision documents regarding the award of the project to GDL Best Contractors, Inc.
29. All public records concerning any inquiry or determination that Bid No. 08(15-16), Exterior Environmental Remediation and Painting at Various Sites, involved a scope of work that implicated immediate health and safety concerns requiring expedient or emergency action.
30. All public records concerning the litigation between MUSD and A.J. Fistes Corporation, *A.J. Fistes Corporation v. Montebello Unified School District and GDL Best Contractors, Inc.*, No. BS161779 (L.A. Super. Ct.) (filed Apr. 19, 2016), that pre-date the filing of the litigation, except as protected by the attorney-client privilege.
31. All public records concerning any bid protest of an MUSD-funded project from January 1, 2015 to the present, including all communications regarding bid protests from January 1, 2015 to the present.
32. All public records concerning MUSD's plans for the approximately-15-acre plot of vacant land located at 6360 Garfield Avenue, Commerce, California, 90040 (formerly the site of Laguna Nueva Elementary School), including a copy of the Exclusive Negotiation Agreement with Primestor Development, Inc. regarding the development of this site and all public records concerning public notice (or lack thereof) of this transaction and its placement before the school board for approval.

33. All public records concerning the Measure GS project management contract awarded to Del Terra Construction, including a copy of the agreement, the request for proposals, all proposals submitted in response to the request for proposals, all evaluations of proposals, and all decision documents regarding the award of the project management contract to Del Terra Construction.
34. All public records concerning invoices from and payments to Barraza & Sons from January 1, 2013 to the present.
35. All public records concerning communications from Barraza & Sons regarding school bonds.
36. All public records concerning any inquiry or determination that work performed or to be performed by Barraza & Sons implicated immediate health and safety concerns requiring expedient or emergency action.
37. All public records concerning any work performed or to be performed for MUSD by Castlerock Environmental, Inc., whether as a prime contractor or subcontractor, from January 1, 2013 to the present.
38. All public records concerning any work performed or to be performed for MUSD by Argus Contracting LP, whether as a prime contractor or subcontractor, from January 1, 2013 to the present.
39. All public records concerning any work performed or to be performed for MUSD by GDL Best Contractors, Inc. from January 1, 2013 to the present.
40. All public records concerning any work performed or to be performed for MUSD by A.J. Fistes Corporation from January 1, 2013 to the present.
41. All public records concerning any work performed or to be performed for MUSD by Barraza & Sons from January 1, 2013 to the present.
42. All public records concerning any work performed or to be performed for MUSD by Evergreen Solar Solutions, Inc. from January 1, 2013 to the present.
43. All public records concerning any work performed or to be performed for MUSD by Evergreen Energy Solutions, Inc. from January 1, 2013 to the present.

44. All public records concerning any work performed or to be performed for MUSD by Enveniam, Inc. from January 1, 2013 to the present.
45. All public records concerning any work performed or to be performed for MUSD by Primestor Development, Inc. from January 1, 2013 to the present.
46. All public records concerning any work performed or to be performed for MUSD by Del Terra Construction from January 1, 2013 to the present.
47. All public records concerning any work or services performed or to be performed for MUSD by Del Terra Education Foundation from January 1, 2013 to the present.
48. All public records concerning any work performed or to be performed for MUSD by HMC Architects from January 1, 2013 to the present.
49. All public records concerning any work performed or to be performed for MUSD by South Coast Air Quality Management District from January 1, 2013 to the present.
50. All public records concerning any work performed or to be performed for MUSD by Alta Environmental from January 1, 2013 to the present.
51. All public records concerning any work performed or to be performed for MUSD by American Technology Inc. from January 1, 2013 to the present.
52. All public records concerning any work performed or to be performed for MUSD by Titan Environmental from January 1, 2013 to the present.
53. All public records concerning any work performed or to be performed for MUSD by Clark Seif Clark, Inc. from January 1, 2013 to the present.
54. All public records concerning campaign or other contributions made by Castlerock Environmental, Inc. to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
55. All public records concerning campaign or other contributions made by Argus Contracting LP to one or more of the following individuals: Benjamin Cardenas,

- Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
56. All public records concerning campaign or other contributions made by GDL Best Contractors, Inc. to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
 57. All public records concerning campaign or other contributions made by Evergreen Solar Solutions, Inc. to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
 58. All public records concerning campaign or other contributions made by Evergreen Energy Solutions, Inc. to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
 59. All public records concerning campaign or other contributions made by Enveniam, Inc. to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
 60. All public records concerning campaign or other contributions made by Primestor Development, Inc. to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
 61. All public records concerning campaign or other contributions made by Del Terra Construction to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.
 62. All public records concerning campaign or other contributions made by Luis D. Rojas to one or more of the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.

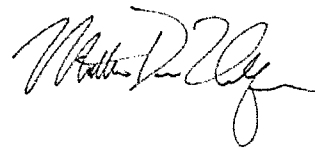
63. All public records concerning any MUSD employment positions (e.g., financial managerial positions) post-dating Ruben J. Rojas's date of employment with MUSD and to be supervised by Mr. Rojas, including public records concerning the selection criteria for these positions.
64. All public records concerning the individuals selected to fill any MUSD employment positions post-dating Ruben J. Rojas's date of employment with MUSD and to be supervised by Mr. Rojas, including all employment applications submitted to fill these positions and all communications concerning Mr. Rojas's recommendations regarding the individuals to be selected for these positions (whether permanently or provisionally).
65. All public records concerning any personal, business, or economic interest between Ruben J. Rojas and any individual selected to fill any MUSD employment positions post-dating Mr. Rojas's date of employment with MUSD and to be supervised by Mr. Rojas.
66. All public records concerning the recruitment or appointment of any individual to the position of Departmental Finance Manager (whether permanently or provisionally), including all communications concerning Mr. Rojas's recommendations for this position, all employment applications for this position, and all public records reflecting the composition of any interview panel(s).
67. All public records concerning the recruitment or appointment of any individual to the position of Director of Fiscal Services (whether permanently or provisionally), including all communications concerning Mr. Rojas's recommendations for this position, all employment applications for this position, and all public records reflecting the composition of any interview panel(s).
68. All public records concerning the extension or proposed extension of the provisional terms of employment for the Departmental Finance Manager.
69. All public records concerning the extension or proposed extension of the provisional terms of employment for the Director of Fiscal Services.
70. All public records concerning the hiring and employment of Phylp B. Bardowell.

71. All public records concerning any committee in which Phylip B. Bardowell has participated, including any committee formed to select the recipient of a contract with MUSD.
72. All public records concerning the hiring and employment of Genesis Vega.
73. All public records concerning any committee in which Genesis Vega has participated, including any committee formed to select the recipient of a contract with MUSD.
74. All public records concerning the hiring and employment of Jody Thulin.
75. All public records concerning any committee in which Jody Thulin has participated, including any committee formed to select the recipient of a contract with MUSD.
76. All public records concerning statements of economic interests or conflicts of interest from the following individuals: Benjamin Cardenas, Ruben J. Rojas, Lani Cupchoy, Edgar Cisneros, Joanna Flores, David Vela, and Hector Chacon.

Please respond to this request within 10 days of receipt. If MUSD determines that any public record or portion thereof qualifies for an exemption from disclosure, please identify the request or portion of request, by number, and: (1) identify the claimed exemption; (2) indicate whether the exemption is discretionary; and (3) indicate whether MUSD determined it was necessary to exercise its discretion to withhold the information. To the extent MUSD determines that some but not all of the information in a given request is exempt from disclosure, please provide redacted copies of responsive public records until we can resolve any disagreements regarding exemptions.

Please contact me if MUSD has any questions or if I can provide clarification that will help expedite this request. In addition, please notify me if MUSD believes that duplication costs will exceed \$5,000, so that I may determine which records I want copied.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Umhofer". The signature is fluid and cursive, with a large loop at the end.

Matthew Donald Umhofer

cc: Rick Olivarez (ROlivarez@omlawyers.com)
Lloyd Pilchen (LPilchen@omlawyers.com)
Howard M. Privette (HPrivette@GGTrialLaw.com)

EXHIBIT 9



MONTEBELLO UNIFIED SCHOOL DISTRICT

Anthony J. Martinez, Ph.D., Interim Superintendent of Schools
123 South Montebello Boulevard, Montebello, California 90640
(323) 887-7900, ext. 2201 • Fax: (323) 887-5890

November 4, 2016

**BY EMAIL AND U.S. CERTIFIED MAIL /
RETURN RECEIPT REQUESTED**

Howard M. Privette hprivette@ggtriallaw.com
Greenberg Gross LLP
650 Town Center Drive, Suite 1700
Costa Mesa, CA 92626

**Re: Termination for Convenience of Superintendent of Schools Contract -
Susanna Contreras Smith**

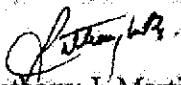
Dear Mr. Privette:

At a duly agendized Board meeting on November 3, 2016, the Board of Education of the Montebello Unified School District ("District") voted 4-1 to terminate your client Susanna Contreras Smith's agreement with the District for services as Superintendent of Schools dated June 26, 2015, in accordance with Section 14 therein. The termination is effective November 3, 2016.

Ms. Smith may contact Dr. Angel Gallardo of the Human Resources Division to arrange to receive her final paycheck, and to retrieve any personal belongings from the District Office. In addition, we ask Ms. Smith to return any District equipment in her possession to Dr. Gallardo.

If you have any questions, please contact me.

Very truly yours,


Anthony J. Martinez, Ph.D.
Interim Superintendent of Schools

BOARD OF EDUCATION
BENJAMIN CARDENAS, President
LANI CUPCHOY, Ph.D., Vice President
JOANNA FLORES, Clerk
EDGAR CISNEROS, Member
HECTOR A. CHACON, Member

ADMINISTRATION
ANTHONY J. MARTINEZ, Ph.D., Interim Superintendent of Schools
RUBEN J. ROJAS, Chief Business Officer
ANGEL E. GALLARDO, Ed.D., Assistant Superintendent, Human Resources
ANTHONY J. MARTINEZ, Ph.D., Assistant Superintendent - Instructional Services

EXHIBIT 10



MONTEBELLO UNIFIED SCHOOL DISTRICT

Anthony J. Martinez, Ph.D., Interim Superintendent of Schools
123 South Montebello Boulevard, Montebello, California 90640
(323) 887-7900, ext. 2201 • Fax: (323) 887-5890

November 4, 2016

**BY EMAIL AND U.S. CERTIFIED MAIL /
RETURN RECEIPT REQUESTED**

Mathew Donald Umhofer
SPERTUS, LANDES & UMHOFFER, LLP
1990 S. Bundy Dr, Suite 705
Los Angeles, CA 90025

matthew@spertuslaw.com

**Re: Termination for Convenience of Chief Financial and Operations Officer
Contract – Cleve Pell**

Dear Mr. Umhofer:

At a duly agendized Board meeting on November 3, 2016, the Board of Education of the Montebello Unified School District ("District") voted 4-1 to terminate your client Cleve Pell's agreement with the District for services as Chief Financial and Operations Officer dated June 26, 2015, in accordance with Section 14 therein. The termination is effective November 3, 2016.

Mr. Pell may contact Dr. Angel Gallardo of the Human Resources Division to arrange to receive his final paycheck, and to retrieve any personal belongings from the District Office. In addition, we ask Mr. Pell to return any District equipment in his possession to Dr. Gallardo.

If you have any questions, please contact me.

Very truly yours,

Anthony J. Martinez, Ph.D.
Interim Superintendent of Schools

BOARD OF EDUCATION
BENJAMIN CÁRDENAS, President
LANI CUPCHOY, Ph.D., Vice President
JOANNA FLORES, Clerk
EDGAR CISNEROS, Member
HECTOR A. CHACON, Member

ADMINISTRATION
ANTHONY J. MARTINEZ, Ph.D., Interim Superintendent of Schools
RUBEN J. ROJAS, Chief Business Officer
ANGEL E. GALLARDO, Ed.D., Assistant Superintendent, Human Resources
ANTHONY J. MARTINEZ, Ph.D., Assistant Superintendent - Instructional Services