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5 Attorneys for Plaintiff Kim Abagat

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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**  
9 **(Central Courthouse)**

10 KIM ABAGAT,

11 Plaintiff,

12 vs.

13 SAN DIEGO UNIFIED SCHOOL  
14 DISTRICT; MARNE FOSTER, in her  
15 individual capacity; and DOES 1  
through 20,

16 Defendants.

17 **CASE NO. 37-2016-00000311-CU-0E-CTL**

18 **COMPLAINT FOR DAMAGES:**

1. **Retaliation In Violation of Lab. Code  
§ 1102.5;**
2. **Disparate Treatment Based on Race  
(Gov. Code § 12940(a));**
3. **Retaliation In Violation of FEHA  
(Gov. Code § 12940(h));**
4. **Intentional Interference With  
Contractual Relations/Economic  
Relations;**
5. **Civil Conspiracy; and**
6. **Aiding and Abetting Tort of Another.**

19 Plaintiff Kim Abagat alleges:

20 **GENERAL ALLEGATIONS**

21 1. Plaintiff Kim Abagat ("Abagat") is an adult individual who resides in San Diego  
22 County, California.

23 2. Defendant San Diego Unified School District ("SDUSD") is a government entity  
24 located in San Diego County, California.

25 3. Defendant Marne Foster ("Foster") is an individual who resides in San Diego County,  
26 California.

27 4. The true names and capacities, whether individual or otherwise, of defendants Does  
28 1 through 20 are unknown to Abagat who, therefore, sues them by such fictitious names under CCP

1 § 474. Abagat is informed and believes that each of the defendants is responsible in some manner  
2 for the acts of omissions alleged in this complaint or caused him damages.

3 5. At all material times, all of the defendants were agents and employees of the other  
4 defendants and when doing the acts alleged in this complaint, they acted within the course and scope  
5 of such agency and employment.

6 6. Abagat is currently the Head Counselor for the School of Creative and Performing  
7 Arts ("SCPA") and is in her 15th year as a counselor and African American educator for the San  
8 Diego Unified School District ("SDUSD"), with 12 years as a Head Counselor. Abagat, along with  
9 other current and former SDUSD employees, such as former SCPA principal Mitzi Lizarraga  
10 ("Lizarraga") and former SCPA Vice Principal James Jacoby ("Jacoby"), has become entangled in  
11 Foster's abuse of power in her position at SDUSD as board president and trustee. It has become  
12 Foster's custom and practice to use her position and influence to interfere with the employment  
13 conditions of SDUSD employees, for her own personal gain without any benefit to SDUSD.

14 7. During the 2013-2014 school year, Abagat was assigned to be the counselor for the  
15 entire senior class, which at the time, included Foster's son. However, Foster asked Lizarraga for  
16 a special exception for her son such that SCPA counselor Megan Blum ("Blum") would be her son's  
17 counselor instead. Lizarraga acquiesced to this request, despite the fact that Foster did not follow  
18 the procedure that every other parent needed to follow and was instead given preferential treatment.  
19 However, in October, 2013, Foster sent an e-mail to Abagat requesting that Abagat assist her son  
20 with the "Common Application" process, which is a system used at SCPA for college applications  
21 of seniors.

22 8. After consulting with other SCPA employees and administrators, Abagat completed  
23 an accurate Common Application for Foster's son, as requested by Foster. The application submitted  
24 by Abagat was not positive due to Foster's son's serious disciplinary history and academic  
25 achievement. During this process, Foster's son had waived his rights to view the application before  
26 it was submitted. This waiver is common because it allows teachers and counselors to make  
27 confidential and honest assessments about students, so that colleges may make prudent decisions  
28 about the application process and teachers and counselors may do so without fear of reprisal.

1       9.     In December, 2013, Foster was able to obtain a copy of her son's Common  
2 Application which was submitted by Abagat. Abagat is informed and believes, and therefore alleges,  
3 that Foster was able to obtain this document directly from Blum, with whom Foster had a personal  
4 relationship, despite the fact that it was a confidential document.

5       10.    Instead of bringing this up with her supervisors, Blum completed a replacement  
6 Common Application for Foster's son, at Foster's request, without any basis or authority to do so. The  
7 replacement application was fraudulent and contained multiple misrepresentations and materially  
8 false statements regarding Foster's son's academic achievement and disciplinary history. Instead of  
9 being consistent with the truth, it was prepared in a manner to please Foster.

10      11.    Thereafter, SDUSD and Superintendent Cindy Marten ("Marten") hired an  
11 "independent" investigator to conduct a sham investigation to address Foster's complaint that  
12 Abagat's application for Foster's son was "racially discriminatory," when in reality, it was an honest  
13 and accurate report. The "investigation" concluded that the Common Application completed by  
14 Abagat was improper and that the Common Application by Blum was appropriate. In reality, the  
15 outcome of the investigation was a foregone conclusion and conducted only to give the false public  
16 perception that Foster had not abused her authority for the benefit of her son.

17      12.    SDUSD thereafter suspended Abagat, without pay, to punish and retaliate against  
18 Abagat for refusing to fraudulently give a false and inaccurate review for Foster's son and for  
19 refusing to violate state and federal law prohibiting fraud. The punishment and retaliation continued  
20 until May 30, 2015, when Abagat's last paycheck was deducted for the suspension.

21      13.    The suspension of Abagat is a continued pattern of Foster's custom and practice to  
22 use her position and influence to make retaliatory orders against SDUSD employees whom she  
23 believes wronged her. For example, Foster has a history of animosity toward Lizarraga for  
24 imposing discipline on her sons when they were students at SCPA. Prior to having her position at  
25 SDUSD, Foster had accused Lizarraga of targeting her sons for discipline because of their race, when  
26 in reality the disciplined was deserved. These complaints continued until 2014 when Foster's son  
27 was getting ready to graduate, but his unexcused absences made him ineligible to participate in  
28 certain graduation activities. Foster's son disregarded the procedures followed by all students to clear

1 absences and instead told administrators that his mother "took care of his absences" and was  
2 eventually allowed to participate after the area superintendent got involved. Lizarraga was  
3 eventually reassigned to a different position at SDUSD in June, 2014, despite the tremendous  
4 success that SCPA had achieved during her tenure as principal. At one point Foster's son even  
5 bragged that "his mother got Principal Lizarraga fired."

6        14.     Similarly, Jacoby, former Vice Principal at SCPA, was given an unwanted transfer  
7 in June, 2013, without cause, after Foster had accused him of being a racist for disciplining her sons  
8 for serious violations of school code and other laws. Again, the discipline was imposed because it  
9 was deserved, not because of Foster's sons' race. After discipline was imposed on one of Foster's  
10 sons in March, 2013, for a serious behavioral issue, Jacoby was told he was being reassigned to the  
11 classroom, without any cause. Instead, Jacoby agreed through duress to accept a lateral transfer to  
12 another school. These are just two examples of Foster's vindictive custom, practice and habit of  
13 abusing her position at SDUSD—for her own personal benefit--to retaliate against SDUSD employees  
14 for following district policy and the law instead of giving her sons preferential treatment and caving  
15 to her demands.

**FIRST CAUSE OF ACTION**  
**(Retaliation – Lab. Code § 1102.5 Against All Defendants)**

18 15. Abagat realleges paragraphs 1 through 14.

16. As alleged in paragraphs 8 through 12, Abagat refused to fraudulently give a false and inaccurate review for Foster's son on his Common Application and refused to violate SDUSD policy and procedures and in doing so, violate state and federal law prohibiting fraud.

22 17. SDUSD, Abagat's employer, suspended her, without pay, and Abagat's above refusal  
23 was a contributing factor for SDUSD's decision to suspend Abagat.

24 18. As a legal result of SDUSD's retaliation, Abagat suffered, and will continue to suffer,  
25 general and special damages to be proven at trial.

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**SECOND CAUSE OF ACTION**  
**(Racial Discrimination Against SDUSD and Does 1 to 20)**

19. Abagat realleges paragraphs 1 through 18.

20. SDUSD, Abagat's employer, suspended her, without pay. A substantial motivating reason for Abagat's suspension was race. As alleged in paragraphs 8 through 12, Abagat was accused of, and suspended for, creating an inaccurate application in a racially discriminatory manner, when in reality, she created a true and accurate application without regard to race or national origin, instead of giving preferential treatment to a particular student.

21. As a legal result of SDUSD's discrimination, Abagat suffered, and will continue to suffer, general and special damages to be proven at trial.

## **THIRD CAUSE OF ACTION (Retaliation – FEHA Against SDUSD and Does 1 to 20)**

22. Abagat realleges paragraphs 1 through 21.

13       23.    Abagat opposed practices forbidden under the FEHA, namely, that she refused to give  
14 preferential treatment because of race or national origin. SDUSD, Abagat's employer, suspended  
15 her, without pay. A substantial motivating reason for Abagat's suspension was race and her opposition  
16 and refusal to give preferential treatment because of race or national origin.

17 24. As a legal result of SDUSD's discrimination, Abagat suffered, and will continue to  
18 suffer, general and special damages to be proven at trial.

**FOURTH CAUSE OF ACTION**  
**(Intentional Interference With Contractual Relations/Economic Relations Against Foster**  
**and Does 1 to 20)**

25. Abagat realleges paragraphs 1 through 24.

22 26. Abagat has and did have an employment relationship and contract with SDUSD, of  
23 which Foster is aware. Foster's conduct, as described in paragraphs 6 through 14, made performance  
24 of the contract more expensive and difficult and Foster intended and knew that her conduct would  
25 disrupt the contractual relationship between Abagat and SDUSD, or was certain or substantially  
26 certain that it would occur. Alternatively, Foster knew Abagat and SDUSD were and are in a  
27 economic relationship which results in economic benefit to Abagat. Foster's conduct, as described  
28 in paragraphs 6 through 14, intended to disrupt that relationship, or knew that such disruption was

1 certain or substantially certain to occur. Such disruption did occur, for example, Abagat was  
2 suspended without pay.

3       27.     As a legal result of Foster's conduct, Abagat suffered, and will continue to suffer,  
4 general and special damages to be proven at trial.

5 28. Foster acted with malice, fraud and oppression, in conscious disregard of Abagat's  
6 rights, entitling Abagat to recover punitive damages against Foster pursuant to Civil Code 3294.

**FIFTH CAUSE OF ACTION**  
**(Civil Conspiracy Against Foster and Does 1 to 20)**

29. Abagat realleges paragraphs 1 through 28.

10 30. Foster was aware that SDUSD planned to retaliate against Abagat, as described in  
11 paragraphs 6 through 12, and Foster agreed with SDUSD and actually intended that SDUSD retaliate  
against Abagat.

**SIXTH CAUSE OF ACTION**  
**(Aiding and Abetting Tort of Another Against Foster and Does 1 to 20)**

31. Abagat realleges paragraphs 1 through 30.

15 32. Foster was aware that SDUSD planned to retaliate against Abagat, as described in  
16 paragraphs 6 through 12 and Foster agreed with SDUSD and actually intended that SDUSD retaliate  
17 against Abagat. Foster further gave substantial assistance and encouragement to SDUSD in  
18 furtherance of the retaliation.

19       33.     As a legal result of Foster's conduct, Abagat suffered, and will continue to suffer,  
20 general and special damages to be proven at trial.

## REQUEST FOR RELIEF

22 THEREFORE, plaintiff Kim Abagat requests a judgment against defendant San Diego  
23 Unified School District, Marne Foster, and Does 1 through 20 for:

1. General and special damages according to proof;
2. Attorneys' fees allowable by law;
3. Punitive damages against Foster only;

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1           4. Costs of suit, including expert's fees, allowable by law; and  
2           5. Other further relief.

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4 Date: January 6, 2016

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The Gilleon Law Firm  
Daniel M. Gilleon, Attorneys for  
Plaintiff Kim Abagat

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