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Government Code §§ 6103 & 26857*

Attorneys for Defendant FALLBROOK UNION ELEMENTARY SCHOOL  
DISTRICT

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SHAWNA VELASCO, an individual,  
Plaintiff,

v.

FALLBROOK UNION ELEMENTARY  
SCHOOL DISTRICT,  
Defendant.

Case No.: 23-cv-1469-LL-AHG

**ANSWER TO COMPLAINT**

**DEMAND FOR JURY TRIAL**

Courtroom: 5D  
Judge: Hon. Judge Linda Lopez

COMPLAINT FILED: August 10, 2023

Defendant FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT  
("Defendant"), severing itself from all other parties, and for itself alone, answers  
Plaintiff's Verified Complaint for Damages, as follows:

**INTRODUCTION**

1. The allegations in Paragraph 1 of the Verified Complaint for Damages  
require no response.

2. Defendant denies the allegations in Paragraph 2 of the Verified Complaint  
for Damages.

3. Defendant denies the allegations in Paragraph 3 of the Verified Complaint  
for Damages.

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1           4. Defendant denies the allegations in Paragraph 4 of the Verified Complaint  
2 for Damages.

3           5. Defendant denies the allegations in Paragraph 5 of the Verified Complaint  
4 for Damages.

5           6. The allegations in Paragraph 6 of the Verified Complaint for Damages  
6 require no response.

7                                   **PARTIES – PLAINTIFF**

8           7. Defendant lacks information or knowledge sufficient to form a belief as to  
9 the truth of the allegations in Paragraph 7 of the Verified Complaint for Damages, and  
10 therefore denies those allegations.

11                                   **PARTIES – DEFENDANT**

12           8. Defendant admits the allegations in Paragraph 8 of the Verified Complaint  
13 for Damages.

14                                   **JURISDICTION AND VENUE**

15           9. The allegations in Paragraph 9 of the Verified Complaint for Damages are  
16 legal conclusions for which no response is required.

17           10. The allegations in Paragraph 10 of the Verified Complaint for Damages  
18 are legal conclusions for which no response is required.

19           11. The allegations in Paragraph 11 of the Verified Complaint for Damages  
20 are legal conclusions for which no response is required.

21           12. Defendant lacks information or knowledge sufficient to form a belief as to  
22 the truth of the allegations in Paragraph 12 of the Verified Complaint for Damages, and  
23 therefore denies those allegations.

24                                   **STATEMENT OF FACTS**

25           13. Defendant admits that Plaintiff began working for the District as a  
26 Personnel Services Technician on or about September 1, 2017. Defendant denies all of  
27 the remaining allegations in Paragraph 13 to the extent they are inconsistent with this  
28 answering paragraph.

1           14. Defendant admits that Plaintiff's job duties included, but were not limited  
2 to: "monitor the automated Substitute Employee Management System (SEMS); respond  
3 to questions regarding SEMS and substituting opportunities within the District; assure  
4 proper classroom and employee coverage; prepare and process materials for substitute  
5 employees for the school district; and related work as required." Defendant denies all  
6 of the remaining allegations in Paragraph 14 to the extent they are inconsistent with this  
7 answering paragraph.

8           15. Defendant admits that Plaintiff's performance review for the period from  
9 9/1/17 to 3/1/18 reflects that she met or exceeded expectations. Defendant denies all of  
10 the remaining allegations in Paragraph 15 to the extent they are inconsistent with this  
11 answering paragraph.

12           16. Defendant lacks information or knowledge sufficient to form a belief as to  
13 the truth of the allegations in Paragraph 16 of the Verified Complaint for Damages, and  
14 therefore denies those allegations.

15           17. Defendant admits that on August 11, 2021, the District published its Safe  
16 School Reopening Plan for the 2021-2022 school year developed in consultation with  
17 the County of San Diego Health and Human Services Agency and based on guidance  
18 articulated by CDPH. Prior to the start of the 2021-2022 school year, the District  
19 notified all staff of their obligation to submit a record of a COVID-19 vaccination by  
20 their first day of work. If an employee did not submit a record of vaccination, he or she  
21 would be considered unvaccinated. Staff who were unvaccinated were required to  
22 submit proof of a COVID-19 test once per week and wear a mask or face covering while  
23 working inside a facility. Defendant denies all of the remaining allegations in paragraph  
24 17 to the extent they are inconsistent with this answering paragraph.

25           18. Defendant admits that on August 11, 2021, the District published its Safe  
26 School Reopening Plan for the 2021-2022 school year developed in consultation with  
27 the County of San Diego Health and Human Services Agency and based on guidance  
28 articulated by CDPH. Prior to the start of the 2021-2022 school year, the District

1 notified all staff of their obligation to submit a record of a COVID-19 vaccination by  
2 their first day of work. If an employee did not submit a record of vaccination, he or she  
3 would be considered unvaccinated. Staff who were unvaccinated were required to  
4 submit proof of a COVID-19 test once per week and wear a mask or face covering while  
5 working inside a facility. Defendant denies all of the remaining allegations in paragraph  
6 18 to the extent they are inconsistent with this answering paragraph.

7 19. Defendants admit that since Plaintiff had not submitted a record of  
8 vaccination, she was considered unvaccinated. Under the District’s Safe School  
9 Reopening Plan for the 2021-2022 school year, staff who were considered unvaccinated  
10 were required to submit proof of a COVID-19 test once per week and wear a mask or  
11 face covering while working inside a facility. Defendant denies all of the remaining  
12 allegations in Paragraph 19 to the extent they are inconsistent with this answering  
13 paragraph.

14 20. Defendant lacks information or knowledge sufficient to form a belief as to  
15 the truth of the allegations in Paragraph 20 of the Verified Complaint for Damages, and  
16 therefore denies those allegations.

17 21. Defendant lacks information or knowledge sufficient to form a belief as to  
18 the truth of the allegations in Paragraph 21 of the Verified Complaint for Damages, and  
19 therefore denies those allegations.

20 22. Defendant lacks information or knowledge sufficient to form a belief as to  
21 the truth of the allegations in Paragraph 22 of the Verified Complaint for Damages, and  
22 therefore denies those allegations.

23 23. Defendant admits that on August 11, 2021, Plaintiff texted Brian Morris,  
24 stating that she could not wear a mask or do weekly COVID testing “due to medical  
25 reasons, along with some other reasons,” and offered to discuss via phone. Defendant  
26 denies all of the remaining allegations in paragraph 23 to the extent they are inconsistent  
27 with this answering paragraph.

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1           24. Defendant admits that on August 11, 2021, Plaintiff texted Brian Morris,  
2 stating that she could not wear a mask or do weekly COVID testing “due to medical  
3 reasons, along with some other reasons,” and offered to discuss via phone. Defendant  
4 denies all of the remaining allegations in Paragraph 24 to the extent they are inconsistent  
5 with this answering paragraph.

6           25. Defendant admits that Brian Morris replied via text that “We need to hold  
7 an ADA interactive meeting with you to discuss how to reasonably accommodate you  
8 based on the work restrictions your doctor provides. You may work from home  
9 tomorrow until you provide me the medical note. Once I have it, then we can meet and  
10 discuss how to accommodate you.” Defendant denies all of the remaining allegations in  
11 paragraph 25 to the extent they are inconsistent with this answering paragraph.

12           26. Defendant lacks information or knowledge sufficient to form a belief as to  
13 the truth of the allegations in Paragraph 26 of the Verified Complaint for Damages, and  
14 therefore denies those allegations.

15           27. Defendant admits that on August 13, 2021, three days prior to the start of  
16 the 2021-2022 school year, Plaintiff provided the District a note from a health care  
17 provider at Graybill Medical Group stating "Due to her medical reason, she cannot wear  
18 a mask. She also cannot have weekly nasal swab for COVID infection screening."  
19 Defendant denies all of the remaining allegations in Paragraph 27 to the extent they are  
20 inconsistent with this answering paragraph.

21           28. Defendant admits that on August 16, 2021, Assistant Superintendent of  
22 Human Resources, Brian Morris, met with Plaintiff as part of an interactive process to  
23 determine whether there were one or more reasonable accommodations available to  
24 Plaintiff. Mr. Morris reviewed all employees' obligation to submit a record of their  
25 COVID-19 vaccination by the first day of school or they would be considered  
26 unvaccinated. Mr. Morris and Plaintiff discussed that unvaccinated staff must wear a  
27 mask/face covering while working inside and submit proof of a COVID-19 test once  
28 per week. Plaintiff shared she could not participate in a weekly nasal testing, so Mr.

1 Morris offered an alternative test consisting of a self-administered mouth swab. Plaintiff  
2 agreed to the mouth swab testing. Mr. Morris also proposed that Plaintiff wear a face  
3 shield as accommodation because her doctor's note stated she could not wear a face  
4 mask. Plaintiff stated she could not wear anything on her face or head, including a face  
5 shield, and asked to work from home. Mr. Morris discussed the requirements for staff  
6 to work on site, which included a mask or face covering for unvaccinated employees,  
7 to which Plaintiff responded she would contact her doctor about other options for a face  
8 covering at work. Defendant denies all of the remaining allegations in Paragraph 28 to  
9 the extent they are inconsistent with this answering paragraph.

10 29. Defendant admits that Mr. Morris offered an alternative test consisting of  
11 a self-administered mouth swab. Plaintiff agreed to the mouth swab testing. Mr. Morris  
12 also proposed that Plaintiff wear a face shield as accommodation because her doctor's  
13 note stated she could not wear a face mask. Plaintiff stated she could not wear anything  
14 on her face or head, including a face shield, and asked to work from home. Mr. Morris  
15 discussed the requirements for staff to work on site, which included a mask or face  
16 covering for unvaccinated employees, to which Plaintiff responded she would contact  
17 her doctor about other options for a face covering at work. Defendant denies all of the  
18 remaining allegations in Paragraph 29 to the extent they are inconsistent with this  
19 answering paragraph.

20 30. Defendant admits that Mr. Morris proposed that Plaintiff wear a face shield  
21 as accommodation because her doctor's note stated she could not wear a face mask.  
22 Plaintiff stated she could not wear anything on her face or head, including a face shield,  
23 and asked to work from home. Mr. Morris discussed the requirements for staff to work  
24 on site, which included a mask or face covering for unvaccinated employees, to which  
25 Plaintiff responded she would contact her doctor about other options for a face covering  
26 at work. Defendant denies all of the remaining allegations in Paragraph 30 to the extent  
27 they are inconsistent with this answering paragraph.

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1           31. Defendant admits that Plaintiff asked to work from home. Defendant  
2 further admits that Plaintiff and other employees were permitted to work remotely  
3 during a portion of the COVID-19 pandemic and that Plaintiff was permitted to work  
4 from home on August 12, 2021 and August 13, 2021, while awaiting a doctor's note.  
5 Defendant denies all of the remaining allegations in Paragraph 31 to the extent they are  
6 inconsistent with this answering paragraph.

7           32. Defendant lacks information or knowledge sufficient to form a belief as to  
8 the truth of the allegations in Paragraph 32 of the Verified Complaint for Damages, and  
9 therefore denies those allegations.

10          33. Defendant lacks information or knowledge sufficient to form a belief as to  
11 the truth of the allegations in Paragraph 33 of the Verified Complaint for Damages, and  
12 therefore denies those allegations.

13          34. Defendant lacks information or knowledge sufficient to form a belief as to  
14 the truth of the allegations in Paragraph 34 of the Verified Complaint for Damages, and  
15 therefore denies those allegations.

16          35. Defendant lacks information or knowledge sufficient to form a belief as to  
17 the truth of the allegations in Paragraph 35 of the Verified Complaint for Damages, and  
18 therefore denies those allegations.

19          36. Defendant lacks information or knowledge sufficient to form a belief as to  
20 the truth of the allegations in Paragraph 36 of the Verified Complaint for Damages, and  
21 therefore denies those allegations.

22          37. Defendant lacks information or knowledge sufficient to form a belief as to  
23 the truth of the allegations in Paragraph 37 of the Verified Complaint for Damages, and  
24 therefore denies those allegations.

25          38. Defendant lacks information or knowledge sufficient to form a belief as to  
26 the truth of the allegations in Paragraph 38 of the Verified Complaint for Damages, and  
27 therefore denies those allegations.

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1           39. Defendant lacks information or knowledge sufficient to form a belief as to  
2 the truth of the allegations in Paragraph 39 of the Verified Complaint for Damages, and  
3 therefore denies those allegations.

4           40. Defendant lacks information or knowledge sufficient to form a belief as to  
5 the truth of the allegations in Paragraph 40 of the Verified Complaint for Damages, and  
6 therefore denies those allegations.

7           41. Defendant lacks information or knowledge sufficient to form a belief as to  
8 the truth of the allegations in Paragraph 41 of the Verified Complaint for Damages, and  
9 therefore denies those allegations.

10          42. Defendant denies the allegations in Paragraph 42 of the Verified  
11 Complaint for Damages.

12          43. Defendant admits that on August 17, 2021, Plaintiff provided the District  
13 a note from a health care provider at Graybill Medical Group dated August 13, 2021  
14 stating "Due to her medical reason, she cannot wear a mask or a face shield. She also  
15 cannot have weekly nasal swab for COVID infection screening." Defendant denies all  
16 of the remaining allegations in Paragraph 43 to the extent they are inconsistent with this  
17 answering paragraph.

18          44. Defendant admits that on August 17, 2021, Plaintiff provided the District  
19 a note from a health care provider at Graybill Medical Group dated August 13, 2021,  
20 stating "Due to her medical reason, she cannot wear a mask or a face shield. She also  
21 cannot have weekly nasal swab for COVID infection screening." Defendant further  
22 admits that on August 17, 2021, Plaintiff submitted another note from a different health  
23 care provider, Synergy Orthopedic Specialists, stating she would be unable to work for  
24 approximately five (5) months and should be considered temporarily disabled until  
25 January 7, 2022. Defendant denies all of the remaining allegations in Paragraph 44 to  
26 the extent they are inconsistent with this answering paragraph.

27          45. Defendant admits the allegations in Paragraph 45 of the Verified  
28 Complaint for Damages.



1           46. Defendant admits the allegations in Paragraph 46 of the Verified  
2 Complaint for Damages.

3           47. Defendant admits that on December 29, 2021, Plaintiff emailed Brian  
4 Morris, stating that she was preparing to return to work on January 10, 2022, and  
5 inquiring regarding her schedule. Defendant also admits that on December 23, 2021,  
6 Plaintiff provided another note from her health care provider at Graybill Medical Group  
7 again stating "[d]ue to her medical reason, she cannot wear a mask or a face shield. She  
8 also cannot have weekly nasal swab for COVID infection screening." Defendant denies  
9 all of the remaining allegations in Paragraph 47 to the extent they are inconsistent with  
10 this answering paragraph.

11           48. Defendant admits that on January 6, 2022, Plaintiff provided the District a  
12 note from Synergy Orthopedic Specialists which stated Plaintiff may return to work on  
13 January 10, 2022, with the following restrictions "ability to sit/stand ab lib with breaks  
14 as needed, no overuse of stairs, no squatting, no lifting > 20 lbs." Defendant denies all  
15 of the remaining allegations in Paragraph 48 to the extent they are inconsistent with this  
16 answering paragraph.

17           49. Defendant admits that on January 6, 2022, Plaintiff provided the District a  
18 note from Synergy Orthopedic Specialists which stated Plaintiff may return to work on  
19 January 10, 2022, with the following restrictions "ability to sit/stand ab lib with breaks  
20 as needed, no overuse of stairs, no squatting, no lifting > 20 lbs." Defendant denies all  
21 of the remaining allegations in Paragraph 49 to the extent they are inconsistent with this  
22 answering paragraph.

23           50. Defendant admits that on December 29, 2021, Brian Morris emailed  
24 Plaintiff that another individual was now assigned to the sub desk. Mr. Morris advised  
25 Plaintiff she will return as a Personnel Services Technician in the Human Resources  
26 office but will have different day to day responsibilities and be assigned to a different  
27 desk area than when she left. Defendant also admits that on or about January 10, 2022,  
28 Mr. Morris met with Plaintiff, Plaintiff's union representative Shawnta Bailey, School

1 Secretary Vickie Nelson, Benefits and Risk Management Specialist Angie Gaulden, and  
2 District legal counsel Jon Pearl as part of the interactive process. Plaintiff was notified  
3 that the District could accommodate Plaintiff with the work restrictions set forth in the  
4 letter from Synergy Orthopedic Specialists. The participants also discussed the health  
5 order in place requiring universal masking and possible ways to accommodate Plaintiff  
6 in light of her December 23, 2021, note exempting her from wearing a mask or face  
7 shield and participating in a weekly nasal swab. Plaintiff informed the meeting  
8 participants she continued to be unvaccinated and could not wear a face covering. The  
9 participants discussed that Plaintiff had exhausted her sick leave and extended sick  
10 leave, but unpaid leave of absence was a temporary accommodation available to her.  
11 Plaintiff agreed to take an unpaid leave of absence effective January 10, 2022, through  
12 June 30, 2022. Plaintiff agreed to provide a new medical note on or before June 30,  
13 2022, authorizing her to return to work on July 1, 2022. Plaintiff was advised that if  
14 Plaintiff's note contained restrictions, the District would convene another interactive  
15 process meeting. On January 11, 2022, Plaintiff went out on unpaid leave. Defendant  
16 denies all of the remaining allegations in Paragraph 50 to the extent they are inconsistent  
17 with this answering paragraph.

18 51. Defendant lacks information or knowledge sufficient to form a belief as to  
19 the truth of the allegations in Paragraph 51 of the Verified Complaint for Damages, and  
20 therefore denies those allegations.

21 52. Defendant admits that on or January 10, 2022, Mr. Morris met with  
22 Plaintiff, Plaintiff's union representative Shawnta Bailey, School Sectary Vickie  
23 Nelson, Benefits and Risk Management Specialist Angie Gaulden, and District legal  
24 counsel Jon Pearl as part of the interactive process. Plaintiff was notified that the District  
25 could accommodate Plaintiff with the work restrictions set forth in the letter from  
26 Synergy Orthopedic Specialists. The participants also discussed the health order in  
27 place requiring universal masking and possible ways to accommodate Plaintiff in light  
28 of her December 23, 2021, note exempting her from wearing a mask or face shield and

1 participating in a weekly nasal swab. Plaintiff informed the meeting participants she  
2 continued to be unvaccinated and could not wear a face covering. The participants  
3 discussed that Plaintiff had exhausted her sick leave and extended sick leave, but unpaid  
4 leave of absence was a temporary accommodation available to her. Plaintiff agreed to  
5 take an unpaid leave of absence effective January 10, 2022, through June 30, 2022.  
6 Plaintiff agreed to provide a new medical note on or before June 30, 2022, authorizing  
7 her to return to work on July 1, 2022. Plaintiff was advised that if Plaintiff's note  
8 contained restrictions, the District would convene another interactive process meeting.  
9 On January 11, 2022, Plaintiff went out on unpaid leave. Defendant denies all of the  
10 remaining allegations in Paragraph 52, to the extent they are inconsistent with this  
11 answering paragraph.

12 53. Defendant admits that on or January 10, 2022, Mr. Morris met with  
13 Plaintiff, Plaintiff's union representative Shawnta Bailey, School Sectary Vickie  
14 Nelson, Benefits and Risk Management Specialist Angie Gaulden, and District legal  
15 counsel Jon Pearl as part of the interactive process. Plaintiff was notified that the District  
16 could accommodate Plaintiff with the work restrictions set forth in the letter from  
17 Synergy Orthopedic Specialists. The participants also discussed the health order in  
18 place requiring universal masking and possible ways to accommodate Plaintiff  
19 considering the December 23, 2021, note exempting her from wearing a mask or face  
20 shield and participating in a weekly nasal swab. Plaintiff informed the meeting  
21 participants she continued to be unvaccinated and could not wear a face covering. The  
22 participants discussed that Plaintiff had exhausted her sick leave and extended sick  
23 leave, but unpaid leave of absence was a temporary accommodation available to her.  
24 Plaintiff agreed to take an unpaid leave of absence effective January 10, 2022, through  
25 June 30, 2022. Plaintiff agreed to provide a new medical note on or before June 30,  
26 2022, authorizing her to return to work on July 1, 2022. Plaintiff was advised that if  
27 Plaintiff's note contained restrictions, the District would convene another interactive  
28 process meeting. On January 11, 2022, Plaintiff went out on unpaid leave. Defendant

1 denies all of the remaining allegations in Paragraph 53 to the extent they are inconsistent  
2 with this answering paragraph.

3 54. Defendant admits that on or about January 10, 2022, Mr. Morris met with  
4 Plaintiff, Plaintiff's union representative Shawnta Bailey, School Sectary Vickie  
5 Nelson, Benefits and Risk Management Specialist Angie Gaulden, and District legal  
6 counsel Jon Pearl as part of the interactive process. Defendant further admits that  
7 Plaintiff informed the meeting participants she continued to be unvaccinated and could  
8 not wear a face covering. The participants discussed that Plaintiff had exhausted her  
9 sick leave and extended sick leave, but unpaid leave of absence was a temporary  
10 accommodation available to her. Plaintiff agreed to take an unpaid leave of absence  
11 effective January 10, 2022, through June 30, 2022. Plaintiff agreed to provide a new  
12 medical note on or before June 30, 2022, authorizing her to return to work on July 1,  
13 2022. The meeting participants agreed that if Plaintiff's note contained restrictions, the  
14 District would convene another interactive process meeting. On January 11, 2022,  
15 Plaintiff went out on unpaid leave. Defendant denies all of the remaining allegations in  
16 this Paragraph 54 to the extent they are inconsistent with this answering paragraph.

17 55. Defendant lacks information or knowledge sufficient to form a belief as to  
18 the truth of the allegations in Paragraph 55 of the Verified Complaint for Damages, and  
19 therefore denies those allegations.

20 56. Defendant lacks information or knowledge sufficient to form a belief as to  
21 the truth of the allegations in Paragraph 56 of the Verified Complaint for Damages, and  
22 therefore denies those allegations.

23 57. Defendant lacks information or knowledge sufficient to form a belief as to  
24 the truth of the allegations in Paragraph 57 of the Verified Complaint for Damages, and  
25 therefore denies those allegations.

26 58. Defendant lacks information or knowledge sufficient to form a belief as to  
27 the truth of the allegations in Paragraph 58 of the Verified Complaint for Damages, and  
28 therefore denies those allegations.

1           59. Defendant admits that Plaintiff was on leave until June 30, 2022.  
2 Defendant denies all of the remaining allegations in Paragraph 59 to the extent they are  
3 inconsistent with this answering paragraph.

4           60. Defendant admits that on June 23, 2022, the District sent Plaintiff a letter  
5 ahead of Plaintiff's leave scheduled to end on June 30, 2022. The District requested that  
6 Plaintiff provide a letter of resignation by June 30, 2022, if she did not plan to return to  
7 work or a medical note releasing her to return to work as discussed at the January 2022  
8 interactive process meeting. The letter further explained if Plaintiff was not medically  
9 able to return to work or if was able to return to work, but the District could not  
10 accommodate her restrictions, the District would place Plaintiff on the 39-month rehire  
11 list. The letter invited Plaintiff to contact Mr. Morris if she was interested in  
12 reconvening an interactive process meeting in any case. Defendant denies all of the  
13 remaining allegations in Paragraph 60 to the extent they are inconsistent with this  
14 answering paragraph.

15           61. Defendant admits the allegations in Paragraph 61 of the Verified  
16 Complaint for Damages.

17           62. Defendant lacks information or knowledge sufficient to form a belief as to  
18 the truth of the allegations in Paragraph 62 of the Verified Complaint for Damages, and  
19 therefore denies those allegations.

20           63. Defendant lacks information or knowledge sufficient to form a belief as to  
21 the truth of the allegations in Paragraph 63 of the Verified Complaint for Damages, and  
22 therefore denies those allegations.

23           64. Defendant lacks information or knowledge sufficient to form a belief as to  
24 the truth of the allegations in Paragraph 64 of the Verified Complaint for Damages, and  
25 therefore denies those allegations.

26           65. Defendant lacks information or knowledge sufficient to form a belief as to  
27 the truth of the allegations in Paragraph 65 of the Verified Complaint for Damages, and  
28 therefore denies those allegations.

**FIRST CAUSE OF ACTION**

**VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

**(Against All Defendants (42 U.S. Code § 12101, et seq.))**

66. The allegations in Paragraph 66 of the Verified Complaint for Damages require no response.

67. The allegations in Paragraph 67 of the Verified Complaint for Damages are legal conclusions for which no response is required.

68. Defendant denies the allegations in Paragraph 68 of the Verified Complaint for Damages.

69. Defendant denies the allegations in Paragraph 69 of the Verified Complaint for Damages.

70. Defendant denies the allegations in Paragraph 70 of the Verified Complaint for Damages.

71. Defendant denies the allegations in Paragraph 71 of the Verified Complaint for Damages.

72. Defendant denies the allegations in Paragraph 72 of the Verified Complaint for Damages.

73. Defendant denies the allegations in Paragraph 73 of the Verified Complaint for Damages.

74. Defendant denies the allegations in Paragraph 74 of the Verified Complaint for Damages.

75. Defendant denies the allegations in Paragraph 75 of the Verified Complaint for Damages.

76. Defendant denies the allegations in Paragraph 76 of the Verified Complaint for Damages.

77. Defendant denies the allegations in Paragraph 77 of the Verified Complaint for Damages.

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**SECOND CAUSE OF ACTION**

**VIOLATION OF Cal. Gov. Code (FEHA) §§ 12940(a) and 12926(m)  
(Disability Discrimination)**

1  
2  
3  
4 78. The allegations in Paragraph 78 of the Verified Complaint for Damages  
5 require no response.

6 79. The allegations in Paragraph 79 of the Verified Complaint for Damages  
7 are legal conclusions for which no response is required.

8 80. Defendant admits the allegations in Paragraph 80 of the Verified  
9 Complaint for Damages.

10 81. The allegations in Paragraph 81 of the Verified Complaint for Damages  
11 are legal conclusions for which no response is required.

12 82. Defendant denies the allegations in Paragraph 82 of the Verified  
13 Complaint for Damages.

14 83. Defendant denies the allegations in Paragraph 83 of the Verified  
15 Complaint for Damages.

16 84. Defendant denies the allegations in Paragraph 84 of the Verified  
17 Complaint for Damages.

18 85. Defendant denies the allegations in Paragraph 85 of the Verified  
19 Complaint for Damages.

20 86. Defendant denies the allegations in Paragraph 86 of the Verified  
21 Complaint for Damages.

22 87. Defendant denies the allegations in Paragraph 87 of the Verified  
23 Complaint for Damages.

24 88. Defendant denies the allegations in Paragraph 88 of the Verified  
25 Complaint for Damages.

26 89. Defendant denies the allegations in Paragraph 89 of the Verified  
27 Complaint for Damages.

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**THIRD CAUSE OF ACTION**

**VIOLATION OF Cal. Gov. Code (FEHA) § 12940(m)**

**(Failure to Accommodate)**

1  
2  
3  
4 90. The allegations in Paragraph 90 of the Verified Complaint for Damages  
5 require no response.

6 91. Defendant denies the allegations in Paragraph 91 of the Verified  
7 Complaint for Damages.

8 92. Defendant denies the allegations in Paragraph 92 of the Verified  
9 Complaint for Damages.

10 93. Defendant denies the allegations in Paragraph 93 of the Verified  
11 Complaint for Damages.

12 94. Defendant denies the allegations in Paragraph 94 of the Verified  
13 Complaint for Damages.

14 95. Defendant denies the allegations in Paragraph 95 of the Verified  
15 Complaint for Damages.

16 96. Defendant denies the allegations in Paragraph 96 of the Verified  
17 Complaint for Damages.

18 97. Defendant denies the allegations in Paragraph 97 of the Verified  
19 Complaint for Damages.

**FOURTH CAUSE OF ACTION**

**VIOLATION OF Cal. Gov. Code (FEHA) § 12940(h)**

**(Retaliation)**

20  
21  
22  
23 98. The allegations in Paragraph 98 of the Verified Complaint for Damages  
24 require no response.

25 99. The allegations in Paragraph 99 of the Verified Complaint for Damages  
26 require no response.

27 100. The allegations in Paragraph 100 of the Verified Complaint for Damages  
28 are legal conclusions for which no response is required.



1 101. Defendant admits the allegations in Paragraph 101 of the Verified  
2 Complaint for Damages.

3 102. Defendant denies the allegations in Paragraph 102 of the Verified  
4 Complaint for Damages.

5 103. Defendant denies the allegations in Paragraph 103 of the Verified  
6 Complaint for Damages.

7 104. Defendant lacks information or knowledge sufficient to form a belief as to  
8 the truth of the allegations in Paragraph 104 of the Verified Complaint for Damages,  
9 and therefore denies those allegations.

10 105. Defendant lacks information or knowledge sufficient to form a belief as to  
11 the truth of the allegations in Paragraph 105 of the Verified Complaint for Damages,  
12 and therefore denies those allegations.

13 106. Defendant lacks information or knowledge sufficient to form a belief as to  
14 the truth of the allegations in Paragraph 106 of the Verified Complaint for Damages,  
15 and therefore denies those allegations.

16 107. Defendant denies the allegations in Paragraph 107 of the Verified  
17 Complaint for Damages.

18 108. Defendant denies the allegations in Paragraph 108 of the Verified  
19 Complaint for Damages.

20 109. Defendant denies the allegations in Paragraph 109 of the Verified  
21 Complaint for Damages.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 **(Failure to State a Cause of Action)**

25 **I.**

26 As a separate affirmative defense to the Verified Complaint for Damages, this  
27 answering Defendant alleges that the Verified Complaint for Damages, and each cause

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1 of action therein, fails to allege facts or other allegations sufficient to constitute a cause  
2 of action against answering Defendant.

3 **SECOND AFFIRMATIVE DEFENSE**

4 **(No Proximate Cause)**

5 **II.**

6 As a separate affirmative defense to the Verified Complaint for Damages, this  
7 answering Defendant is informed and believes and thereon alleges that the acts and  
8 omissions, if any, of Defendant were not the proximate cause of the losses, damage or  
9 injuries alleged in the Verified Complaint for Damages.

10 **THIRD AFFIRMATIVE DEFENSE**

11 **(Plaintiff's Comparative Fault)**

12 **III.**

13 As a separate affirmative defense to the Verified Complaint for Damages, this  
14 answering Defendant is informed and believes and thereon alleges, that the damages, if  
15 any, sustained or suffered by Plaintiff in the action on file herein, were proximately  
16 caused and contributed to by the negligence of Plaintiff, in that Plaintiff failed to  
17 exercise ordinary, reasonable care and caution concerning the matters alleged in the  
18 Complaint, which negligence bars recovery and/or reduces Plaintiff's recovery in  
19 proportion to the percentage of Plaintiff's negligence and/or any other fault of Plaintiff.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 **(Comparative Fault of Others)**

22 **IV.**

23 As a separate affirmative defense to the Verified Complaint for Damages, this  
24 answering Defendant is informed and believes and thereon alleges that if Defendant is  
25 in any way held responsible for the damages claimed herein by Plaintiff, that the  
26 damages so sustained were proximately caused and contributed to by primary and active  
27 fault, or the culpable acts, omissions, and fault of persons and entities other than  
28 Defendant, which persons and entities include each and every party to this action, and

1 Defendant therefore alleges that any and all damages awarded herein should be  
2 apportioned between all such responsible parties pursuant to the doctrines of  
3 comparative negligence, total indemnity and partial indemnity.

4 **FIFTH AFFIRMATIVE DEFENSE**  
5 **(Intervening and Superseding Cause)**

6 **V.**

7 As a separate and distinct affirmative defense, the damages Plaintiff claims to  
8 have sustained herein were proximately caused by third party conduct which was an  
9 intervening and superseding cause.

10 **SIXTH AFFIRMATIVE DEFENSE**  
11 **(Failure to Mitigate)**

12 **VI.**

13 As a separate affirmative defense to the Verified Complaint for Damages, this  
14 answering Defendant is informed and believes and thereon alleges that Plaintiff has  
15 failed, refused and neglected to reasonably mitigate Plaintiff's damages, which bars or  
16 diminishes any recovery herein by Plaintiff.

17 **SEVENTH AFFIRMATIVE DEFENSE**  
18 **(After-Acquired Evidence)**

19 **VII.**

20 As a separate affirmative defense to the Verified Complaint for Damages on file  
21 herein, this answering Defendant alleges that the after-acquired evidence doctrine  
22 shields it from liability or limits available relief where, after the decision to reassign or  
23 terminate Plaintiff's employment (i.e., the alleged adverse employment action), it learns  
24 for the first time about Plaintiff's wrongdoing that would have led to his re-assignment  
25 or termination in any event.

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1 **EIGHTH AFFIRMATIVE DEFENSE**

2 **(Legitimate, Non-Discriminatory Reasons)**

3 **VIII.**

4 As a separate affirmative defense to the Verified Complaint for Damages on file  
5 herein, this answering Defendant alleges that its alleged improper conduct, if any, was  
6 motivated by legitimate, non-discriminatory reasons.

7 **NINTH AFFIRMATIVE DEFENSE**

8 **(General Governmental Immunity)**

9 **IX.**

10 As a separate affirmative defense to the Verified Complaint for Damages, this  
11 answering Defendant alleges that the Verified Complaint for Damages, and each and  
12 every cause of action herein, is barred by the provisions of California Government  
13 Code, including without limitation, sections 815, 815.2(b), 820(b), 820.2 and 820.8.

14 **TENTH AFFIRMATIVE DEFENSE**

15 **(Reasonable Exercise of Mandatory Duty - Government Code § 815.6)**

16 **X.**

17 As a separate affirmative defense to the Verified Complaint for Damages, and  
18 each purported cause of action contained therein, this answering Defendant is informed  
19 and believes and thereon alleges that to the extent the Verified Complaint for Damages  
20 is based upon Defendant's failure to discharge a mandatory duty, the District is immune  
21 from liability herein by reason of Defendant's exercise of reasonable diligence in  
22 discharging that duty under the provisions of Government Code section 815.6.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 **(Exercise of Discretion Within Scope of Employment -**  
25 **Government Code § 820.2)**

26 **XI.**

27 As a separate affirmative defense to the Verified Complaint for Damages and  
28 each purported cause of action contained therein, this answering Defendant alleges that

1 the acts or omissions complained in the Verified Complaint for Damages were the result  
2 of the exercise of the discretion vested in public employees while acting in the scope of  
3 its public employment and whether or not such discretion was abused, Defendant is  
4 immune from liability herein under the provisions of Government Code section 820.2.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 **(Estoppel)**

7 **XII.**

8 As a separate affirmative defense to the Verified Complaint for Damages on file  
9 herein, this answering Defendant alleges that Plaintiff is estopped from asserting its  
10 claims against Defendant.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **(Waiver)**

13 **XIII.**

14 As a separate affirmative defense to the Complaint Verified Complaint for  
15 Damages file herein, this answering Defendant is informed and believes and thereon  
16 alleges that Plaintiff has engaged in conduct and activities sufficient to constitute a  
17 waiver of any alleged breach of warranty, breach of duty, negligence, act, omission, or  
18 any other conduct, if any, as set forth in Plaintiff's Complaint.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 **(Good Faith)**

21 **XIV.**

22 As a separate affirmative defense to the Verified Complaint for Damages on file  
23 herein, this answering Defendant is informed and believes and thereon asserts that all  
24 conduct attributed to it was conducted in good faith, which serves as a complete bar to  
25 this action.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 **(No Legal Cause)**

3 **XV.**

4 As a separate affirmative defense to the Verified Complaint for Damages on file  
5 herein, this answering Defendant is informed and believes and thereon alleges that the  
6 acts, and omissions, if any, of Defendant herein were not the legal cause of the losses,  
7 damage or injuries alleged in the Verified Complaint for Damages, as no employment  
8 relationship existed between District and Plaintiff.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 **(No Joint and Several Liability for Non-Economic Losses)**

11 **XVI.**

12 As a separate affirmative defense to the Verified Complaint for Damages on file  
13 herein, this answering Defendant denies that Defendant was responsible for Plaintiff's  
14 damages in the incident alleged in the Verified Complaint for Damages on file herein.  
15 However, if liability is found, answering Defendant may be held liable only for the  
16 amount of non-economic damages allocated to it in direct proportion to this answering  
17 Defendant's percentage of fault, pursuant to Civil Code section 1431.2.

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 **(Statute of Limitations)**

20 **XVII.**

21 As a separate and affirmative defense to the Verified Complaint for Damages on  
22 file herein, this answering Defendant is informed and believes that each of the causes  
23 of action alleged within the Verified Complaint for Damages are barred by the  
24 applicable statute of limitation pursuant to California Code of Civil Procedure section  
25 342.

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**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

**XVIII.**

As a separate affirmative defense to the Verified Complaint for Damages on file herein, and each purported cause of action contained therein, this answering Defendant alleges that the Verified Complaint for Damages, and each and every cause of action therein, is barred because of Plaintiffs' unclean hands.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Government Code § 820.9-Immunity for Decision of Governing Board)**

**XIX.**

As a separate affirmative defense to the Verified Complaint for Damages and each purported cause of action contained therein, this answering Defendant alleges that the acts or omissions complained in the Verified Complaint for Damages were the result of the decision of a governing board of a public entity Defendant, members of which cannot be vicariously liable for the acts or omissions of the public entity or advisory body.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Business Necessity/Job Relatedness)**

**XX.**

As a separate affirmative defense to the Verified Complaint for Damages on file herein, this answering Defendant asserts as a separate affirmative defense that its actions were lawful because it is necessary to the organizational operations safety and efficiencies and that the employment practice substantially accomplishes the business purpose. The business necessity/job relatedness affirmative defense serves as a bar to this action.

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1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Business Judgment)**

3 **XXI.**

4 As a separate affirmative defense to the Verified Complaint for Damages on file  
5 herein, this answering Defendant will assert that it exercised business judgment as a  
6 basis for the action taken against Plaintiff. As a result, no employer is liable for a good,  
7 bad, mistaken, unwise or unfair reason as long as the action is not for a discriminatory  
8 reason, which serves as a bar to this action.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 **(Health or Safety Risk)**

11 **XXII.**

12 As a separate affirmative defense to the Verified Complaint for Damages on file  
13 herein, this answering Defendant asserts that Plaintiff was unable to perform an  
14 essential job duty without endangering his health or safety, or the health or safety of  
15 others. The failure to perform the essential duties of Plaintiff's job serves as a bar to  
16 this action.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 **(Undue Hardship)**

19 **XXIII.**

20 As a separate affirmative defense to the Verified Complaint for Damages on file  
21 herein, this answering Defendant asserts that the proposed accommodations would  
22 create an undue hardship to the operation of Defendant's business. The undue hardship  
23 would serve as a complete bar to this action.

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1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(With Reasonable Accommodations, Plaintiff Could Not Perform**  
3 **Essential Functions of the Job)**

4 **XXIV.**

5 As a separate affirmative defense to the Verified Complaint for Damages on file  
6 herein, Plaintiff was provided with all requests for reasonable accommodations. The  
7 providing of reasonable accommodations serves as a bar to this action.

8 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

9 **(Engage in the Interactive Process)**

10 **XXV.**

11 As a separate affirmative defense to the Verified Complaint for Damages on file  
12 herein, this answering Defendant asserts that it has engaged in the interactive process  
13 with Plaintiff and provided all reasonable accommodations requested. In spite of  
14 providing reasonable accommodations, Plaintiff was unable to satisfactorily perform  
15 his job, including the essential functions of the job. Plaintiff's failure to perform the  
16 essential functions of his job serves as a bar to this action.

17 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

18 **(Immunity from Punitive Damages)**

19 **XXVI.**

20 As a separate affirmative defense to the Verified Complaint for Damages on file  
21 herein, Defendant asserts the immunity prohibiting the award of punitive damages  
22 against a public entity.

23 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

24 **(Failure to Exhaust Administrative Remedies)**

25 **XXVII.**

26 As a separate affirmative defense to the Verified Complaint for Damages on file  
27 herein, Defendant is informed and believes and thereon alleges that Plaintiff's claims

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1 are barred to the extent she failed to satisfy administrative prerequisites to the  
2 maintenance of her claims in this lawsuit.

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(Reservation of Additional Affirmative Defenses)**

5 **XXVIII.**

6 As a separate affirmative defense to the Verified Complaint for Damages and to  
7 every claim for relief therein, this answering Defendant does not have sufficient  
8 information to enable it to form a belief as to whether it has additional, as yet unstated,  
9 affirmative defenses. Defendant reserves the right to assert such defenses in the event  
10 that discovery indicates that the defense is appropriate.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, this answering Defendant prays that Plaintiff take nothing by  
13 way of the Verified Complaint for Damages, that Defendant be awarded its costs and  
14 attorneys' fees, and for such other and further relief as the Court may deem just and  
15 proper.

16 Dated: September 5, 2023

DEVANEY PATE MORRIS & CAMERON LLP

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18  
19 Bv:           /s/ Christina M. Cameron          

William C. Pate  
Christina M. Cameron

20  
21 Attorneys for Defendant FALLBROOK UNION  
ELEMENTARY SCHOOL DISTRICT