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County of Orange
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Clerk of the Superior Court
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8 **Attorneys for Plaintiff**

9 **ORANGE COUNTY SUPERIOR COURT,**
10 **STATE OF CALIFORNIA (Unlimited Jurisdiction)**

11 **700 Civic Center Drive West, Santa Ana, California 92702**

| | | |
|----|------------------------------------|--|
| 11 | NICHOLAS DIBS, |) Case No. 30-2018-01032439-CU-DF-CJC |
| 12 | |) Assigned for All Purposes to: |
| 13 | Plaintiff, |) Hon. Robert J. Moss |
| 14 | |) Dept. C14 |
| 15 | |) Complaint Filed: November 14, 2018 |
| 16 | v. |) |
| 17 | |) PETITION TO FILE LATE CLAIM AND |
| 18 | GABRIELA MAFI, |) FIRST AMENDED COMPLAINT FOR |
| 19 | JENNIFER CARTER, |) 1. Defamation |
| 20 | SARA WESCOTT, |) 2. Wrongful Termination |
| 21 | LISA CHAVEZ AKA LISA SWARTZ, |) 3. Violation of Civil Rights |
| 22 | JOLI ARMITAGE, |) 4. Misuse of Public Funds |
| 23 | GARDEN GROVE UNIFIED SCHOOL) | |
| 24 | DISTRICT, and Does 1 through 100) | |
| 25 | Inclusive,) | |
| 26 | |) |
| 27 | Defendants.) | |

28 Plaintiff alleges as follows:

PARTIES

1. Plaintiff NICHOLAS DIBS, an individual, brings this action on behalf of himself. Plaintiff is domiciled in and a resident of the State of California.
2. Plaintiff is informed and believes, and thereupon alleges that Defendants GABRIELA MAFI, JENNIFER CARTER, SARA WESCOTT, LISA CHAVEZ AKA LISA SWARTZ, and JOLI ARMITAGE are individuals and residents of the County of Orange.

1 3. Plaintiff is informed and believes, and thereupon alleges, that Defendant GARDEN
2 GROVE UNIFIED SCHOOL DISTRICT is a municipal school district located in
3 Garden Grove, California.

4 4. Plaintiff does not know the true names or capacities of the defendants sued herein as
5 DOES 1 through 100 inclusive, and therefore sues these defendants by such fictitious
6 names. Plaintiff will amend this complaint to allege their true names and capacities
7 when ascertained. Plaintiff is informed and believes, and thereon alleges, that each
8 of these fictitiously named defendants is responsible in some manner for the
9 occurrences herein alleged, and that Plaintiff's damages as herein alleged were
10 proximately caused by those defendants. Each reference in this complaint to
11 "defendant" or "defendants" or to a specifically named defendant refers also to all
12 defendants sued under fictitious names.

13 5. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned each of the Defendants, including all Defendants sued under fictitious
15 names, and each of the persons who are not parties to this action but are identified
16 by name or otherwise throughout this complaint, was the alter ego of each of the
17 remaining Defendants, was the successor in interest or predecessor in interest, and
18 was the agent and employee of each of the remaining Defendants and in doing the
19 things herein alleged was acting within the course and scope of this agency and
20 employment.

21 **GOVERNMENT TORT CLAIM COMPLIANCE AND ALTERNATIVE**
22 **PETITION TO FILE LATE CLAIM**

23 6. Plaintiff submitted a government tort claim on April 25, 2018.

24 7. In a written response, on May 14, 2018, Defendants stated that "due to the passage of
25 time, the district declines to process the complaint."

26 8. The Defendants' written response did not include the specific notice described in
27 Government Code § 911.3(a) nor did Defendants provide that notice subsequently.

28 9. Consequently, Defendants waived any defense that this claim is untimely.

1 (Government Code § 911.3(b).)

2 10. Nevertheless, although Plaintiff already satisfied the pre-lawsuit claims requirement,
3 out of an abundance of caution, Plaintiff submitted a second government tort claim
4 on August 20, 2018.

5 11. On August 23, 2018, Defendants denied the second tort claim.

6 12. Plaintiff files this lawsuit within six months of rejection of the original claim.

7 **FIRST CAUSE OF ACTION FOR DEFAMATION AGAINST ALL**

8 **DEFENDANTS**

9 13. Plaintiff incorporates in this cause of action the allegations contained in paragraphs 1
10 through 12, inclusive.

11 14. Plaintiff Nicholas Dibs is a credentialed science teacher who was working as a
12 substitute teacher for Garden Grove Unified School District (GGUSD) between
13 March 2001 and approximately April 26, 2017. His daily compensation was
14 approximately \$125.

15 15. The GGUSD Board of Trustees have ultimate supervisory responsibility for Plaintiff
16 and all named Defendants.

17 16. At all relevant times, Defendant Gabriela Mafi was the Superintendent of the
18 GGUSD; Defendant Sara Wescott was the Assistant Superintendent of Elementary
19 Education for GGUSD; Defendant Jennifer Carter was the Principal of Patton
20 Elementary School in the GGUSD; Defendant Lisa Chavez aka Lisa Schwartz was a
21 Director of Certificated Personnel for GGUSD and was responsible for oversight of
22 all substitute teachers working in the district; Defendant Jolie Armitage was
23 Assistant Superintendent, Personnel Services for GGUSD and the supervisor of
24 Schwartz.

25 17. Teri Rocco was an incumbent member of the Board of Education for the GGUSD
26 who had been appointed in 2015 and was running for election in November 2016.

27 18. GGUSD Board of Education voted to replace its at-large board representatives with
28

1 single-district representatives starting with its 2016 election. Plaintiff ran for the
2 position of GGUSD Area 1 Trustee in the 2016 election, announcing his candidacy in
3 December 2015. His primary opponent was Teri Rocco.

4 19. Patton Elementary School was located in Area 1 of the GGUSD.

5 20. Plaintiff resided in Area 1 of the GGUSD.

6 21. GGUSD provided Defendants Mafi, Carter, and Wescott with access to “School
7 Messenger,” an electronic phone alert messaging system which was supposed to be
8 used to transmit urgent or important official messages to the parents of school
9 children.

10 22. In campaigning for his seat on the Board, Plaintiff campaigned on the public
11 sidewalks in front of some of the district’s elementary schools in Trustee Area 1,
12 where he could meet with the parents who were considered most likely to vote in the
13 elections and offer them campaign literature.

14 23. Plaintiff was aware that it was his constitutional right to do this under both state and
15 federal law, so long as he did not venture onto school grounds, block pedestrian or
16 vehicular traffic, or harass anyone while campaigning.

17 24. At approximately 9:30 a.m. on Oct. 17, 2016, Defendant Mafi called Plaintiff and
18 spoke with him for about 19 minutes. She warned him against blocking school traffic
19 and against campaigning in front of elementary schools in Trustee Area 1, stating
20 that a number of parents were complaining. Plaintiff denied blocking traffic and
21 asserted a First Amendment constitutional right to campaign on public
22 sidewalks/areas. After considerable discussion, Mafi agreed that Plaintiff could
23 campaign on sidewalks. She advised him that it was not a good idea to give campaign
24 literature to students, because parents would likely get upset. Plaintiff agreed not to
25 give literature to elementary students.

26 25. At about 2:00 p.m. on Oct. 18th, Defendant Carter and her Assistant Principal, Julie
27 Kawai, both confronted Plaintiff, who was campaigning on the public sidewalk in
28 front of Patton Elementary School. They asked him to leave his sidewalk area near

1 where parents and students enter the school grounds, and to move further down the
2 sidewalk. Plaintiff responded that he was not blocking or interfering with anyone
3 entering or leaving the school and that he had a constitutional right to campaign on
4 the public sidewalk and public areas. He informed them that Dr. Mafi had confirmed
5 with him that he could campaign on the sidewalk as long as he did not block vehicle
6 traffic. Carter and Kawai appeared upset and walked away.

7 26. Later that day, Defendant Carter used the GGUSD “School Messenger Alert” to
8 record a text and voice message “alert” to parents and guardians of Patton's K-6
9 students. At approximately 6:05 p.m. on October 18, 2016, it was sent to 1,088
10 recipients, essentially every Patton student’s household.

11 27. October 18th was just three weeks before Election Day itself and at a time when
12 absentee ballots had just been distributed and were especially likely to be cast by
13 mail.

14 28. Given that Defendant Carter’s audience was those with children who attended the
15 Area 1 school, it is likely that the vast majority of those 1,088 recipients were Area 1
16 voters with additional voters among their associates and family members.

17 29. Both Rocco and Plaintiff received several endorsements leading up to the election.
18 Plaintiff was endorsed by the community organization Evolve, Americans for
19 Democratic Action SoCal, Orange County Water District Vice President and Director
20 Philip Anthony, Cypress City Councilman Rob Johnson, Garden Grove City
21 Councilman Phat Bui, Stanton City Councilman Al Ethans, Stanton City Councilman
22 David Shawver, former Garden Grove Unified Superintendent Dr. Ronald Walter,
23 and others.

24 30. In election material provided to voters, Plaintiff represented that he was a
25 “credentialed science teacher” and had taught in K-12 public schools since 1992. He
26 further represented that he was a “certificated on-call teacher for the GGUSD since
27 2001 to present, teaching in virtually all subjects and grade levels” in that school
28 district.

1 31. The November 8, 2016 election was close. The final election results were 8,920 votes
2 for Rocco, 7,752 votes for Plaintiff and 1,552 for Jonathan Bengco, who did not
3 campaign and was less well known in the community than Plaintiff.

4 32. Carter's communication via GGUSD's "School Messenger Alert" system made
5 multiple defamatory statements about Plaintiff and viewed in its entirety was clearly
6 defamatory.

7 33. Although it did not identify Plaintiff by name, it referred to him as being the person
8 who was passing out campaign literature at the school and who was running against
9 Rocco. Therefore, Plaintiff's identity was easily inferred by those who heard the
10 recorded message.

11 34. After Carter introduced herself as the Principal of Patton, she stated that Plaintiff
12 was observed in and around the school parking lot passing out campaign literature.
13 She noted that he was not one of "our" board of education members but was running
14 for office to replace "one of our incumbent board members, Teri Rocco." She further
15 stated that Plaintiff was "not a board member" and "not a teacher" before concluding
16 that he was "not authorized to pass out campaign materials on school grounds." She
17 then concluded by stating "The campaign material that was handed out can be
18 disregarded as not officially authorized by our district."

19 35. Given that this supposed fact was being announced to parents through an urgent and
20 emergency alert system, the gist of the message was that Plaintiff's actions were at
21 best sinister – and possibly illegal. The statement that Plaintiff was not "authorized"
22 was defamatory in context because he did not actually require to be authorized by
23 the school district, although anyone hearing the recording would be likely to think
24 otherwise. However, to the contrary, all of Plaintiff's conduct was completely legal
25 and protected by the First Amendment.

26 36. It was also factually untrue that Plaintiff was passing out any literature on school
27 grounds. Plaintiff was on public not school property.

28 37. It was also factually untrue that Plaintiff was not a teacher. In fact, he had been a

1 teacher in the district for 15 years. Carter was well aware of this fact but stated
2 otherwise to imply he had some nefarious purpose for skulking around the school
3 and further to discredit his campaign literature where he boasted about his long
4 service as a school teacher for GGUSD. Those persons who believed Carter's lie
5 would necessarily have to believe Plaintiff had lied about his qualifications to serve
6 on the school board.

7 38. Defendant Carter acted out of malice with the intent to defame Plaintiff to the local
8 voters so her preferred candidate (Rocco) would win the election.

9 39. Plaintiff is informed and believes and thereupon alleges that Carter acted with the
10 prior knowledge and approval of Defendants Wescott and Mafi and that all three
11 acted in the course of their employment with the GGUSD.

12 40. Moreover, Wescott and Mafi ratified Carter's conduct.

13 41. The authorization, approval and ratification occurred because Wescott and Mafi
14 shared Carter's preference that Rocco be elected.

15 42. Defendants' malice toward Plaintiff was so strong that they were willing to violate
16 state law by using the school messaging system for political purposes. Education
17 Code 7054 provides: "No school district or community college district funds,
18 services, supplies, or equipment shall be used for the purpose of urging the support
19 or defeat of any ballot measure or candidate, including, but not limited to, any
20 candidate for election to the governing board of the district." This offense can be a
21 felony punishable by up to three years in prison.

22 43. With respect to recipients who provided a cell phone number to the school, they also
23 received a text message alerting them that there was an audio message from the
24 Garden Grove Unified School District and the subject was "Board [of Education]
25 Message."

26 44. In addition, a printed transcript of the message was passed out to parents in the
27 following days by Carter or those acting on her behalf.

28 45. Carter's defamatory statements reached parents within the district, who would be

1 especially likely to vote in the school board election.

2 46. After receiving the recorded message, some parents posted comments on a closed
3 Facebook page (which Plaintiff subsequently discovered) corroborating that they had
4 received the defamatory message. For example, one parent posted “Patton called the
5 homes and said he (Plaintiff) is not to be approaching people and to let the office
6 know.” Another person posted “I just received a recorded call from my daughters
7 school in regards to Dibs passing out campaign information. I was informed that
8 this is NOT permitted and he’s been talked to [sic].”

9 47. Plaintiff did not discover the contents of the voice message alert, text message or the
10 private Facebook posts until August 21, 2017 or later.

11 48. After Defendants made the recorded message to the parents, but while Plaintiff was
12 still unaware of it, Defendants continued to harass and intimidate Plaintiff.

13 49. On October 24, 2016, Defendant Mafi called Plaintiff and spoke with him for about
14 32 minutes. She again complained that he should not be campaigning in front of
15 schools because (supposedly) a few parents had complained. He repeated that he
16 had a Constitutional right to campaign on public sidewalks and streets. Mafi tried to
17 intimidate Plaintiff into desisting by threatening to call Garden Grove City Manager
18 Scott Stiles and have the police investigate this matter. Plaintiff again refused to be
19 intimidated. Mafi said that she would ask the City Manager to have the Garden
20 Grove Police Department (“GGPD”) inform her as to whether or not it was legal for
21 Plaintiff to campaign in front of schools.

22 50. On Oct. 26, 2016, GGPD Sergeant Jim Holder of the “Youth Services Unit” spoke
23 with Plaintiff by phone for about 34 minutes. Sgt. Holder informed Plaintiff that he
24 had looked into the issues raised by Mafi. He had determined that Plaintiff had not
25 broken any laws and that it was perfectly legal for him to continue campaigning in
26 front of schools as he had been doing. It was also legal for Plaintiff to pass out
27 campaign handouts to anyone, adults and students. Plaintiff informed Sgt. Holder
28 that he preferred not to pass out campaign items to children (for them to give to

1 their parents) so as not to upset parents.

2 51. Sgt. Holder gave no indication that he had been asked to determine the legality of
3 Plaintiff's actions prior to the transmission of the defamatory emergency alerts to
4 parents in Area 1. He appeared to have responded to the request by Defendant Mafi
5 (as part of her threat against Plaintiff) of October 24, 2016.

6 52. Plaintiff was later informed of, and allowed to copy, additional comments attacking
7 him on a "closed" or "secret" Facebook page entitled the "West Garden Grove
8 Community" page. This page had some 3,600+ participants, the vast majority of
9 whom were also residents of Area 1. He again had no means of gaining access to this
10 "private publication" of defamatory information – having been refused entry to the
11 group – until August 2017 or so.

12 53. As a result of Defendants' conduct as set forth above, Plaintiff has suffered special
13 damages including for loss of wages and benefits, and for money spent for his
14 campaign, general damages for emotional distress, pain and suffering, and damage
15 to his reputation in the community.

16 54. Defendants acted with malice, fraud and oppression entitling Plaintiff to recovery of
17 punitive or exemplary damages.

18 **SECOND CAUSE OF ACTION FOR WRONGFUL TERMINATION AGAINST**
19 **ALL DEFENDANTS EXCEPT SARA WESCOTT AND JENNIFER CARTER**

20 55. Plaintiff incorporates in this cause of action the allegations contained in paragraphs 1
21 through 54, inclusive.

22 56. Plaintiff took some time off during and after the campaign but returned to work for
23 GGUSD in January 2017 at Rancho Alamitos High School on an occasional basis
24 (once or twice a month). After approximately five workdays, on or about April 26,
25 2017, Defendant Lisa Chavez aka Lisa Swartz, acting with the authorization and
26 approval of Defendant Jolie Armitage demanded that Plaintiff resign. She claimed
27 he had spent too much time aiding a student, which was a completely pretextual
28

1 excuse to force him out. She stated that if he did not resign, he would be fired, and
2 that firing would on his record should he try to apply for a job in another school
3 district. Because of these threats, Plaintiff was forced to resign, which constituted a
4 constructive discharge.

5 57. Defendants Armitage and Swartz acted in the course of their employment in
6 constructively discharging Plaintiff.

7 58. Plaintiff is informed and believes and thereupon alleges that Armitage and Swartz's
8 aforementioned actions were authorized, approved and ratified by Mafi.

9 59. All of these Defendants acted with malice in constructively discharging Plaintiff and
10 their actions were in retaliation for his campaign against Rocco.

11 60. The foregoing conduct constituted wrongful termination in violation of public policy
12 and violation of Labor Code § 1102 and Government Code § 3201, 3204

13 61. As a result of Defendants' conduct as set forth above, Plaintiff has suffered special
14 damages including for loss of wages and benefits, and for money spent for his
15 campaign, general damages for emotional distress, pain and suffering, and damage
16 to his reputation in the community.

17 62. Defendants acted with malice, fraud and oppression entitling Plaintiff to recovery of
18 punitive or exemplary damages.

19 **THIRD CAUSE OF ACTION FOR INTERFERENCE WITH CIVIL RIGHTS**

20 **AGAINST ALL DEFENDANTS**

21 63. Plaintiff incorporates in this cause of action the allegations contained in paragraphs 1
22 through 62, inclusive.

23 64. During the relevant period, Defendants interfered with, or attempted to interfere
24 with, Plaintiff's exercise or enjoyment of his constitutional right to free speech and
25 political activity under sections 2 and 3 et. al. of the state constitutions, by threats,
26 intimidation, or coercion. The threats, intimidation and coercion included verbal
27 harassment and threats to have plaintiff arrested if he persisted in his political
28

1 activity.

2 65. On various occasions during the relevant period, Plaintiff experienced one or more
3 form of threats, intimidation or coercion to deprive them of their statutory rights.

4 66. As a direct and proximate result of the aforementioned wrongful conduct by
5 Defendants, Plaintiff is entitled to recover actual damages according to proof and
6 statutory damages of \$25,000 per each violation pursuant to Civil Code § 52.1 (b)
7 and § 52 (b).

8 **FOURTH CAUSE OF ACTION FOR MISUSE OF PUBLIC FUNDS AGAINST**

9 **ALL DEFENDANTS**

10 67. Plaintiff incorporates in this cause of action the allegations contained in paragraphs 1
11 through 66, inclusive.

12 68. Plaintiff is within the past year and currently a payer of property and other taxes
13 which go toward the expenses of the Garden Grove Unified School District and is a
14 resident of the county where the district is located.

15 69. As set forth above, Defendants have illegally expended and wasted funds of the
16 Garden Grove Unified School District for political and personal purposes including
17 costs of the School Messenger Alert system and staff time used in planning and
18 conducting the robocalls.

19 70. Defendants have continued to misuse the Alert system as recently as shortly before
20 the November 2018 election.

21 71. Each of the individual defendants should be required to make restitution for the
22 value of the misused public resources and be enjoined from similar conduct in the
23 future.

24 **REQUEST FOR JURY TRIAL**

25 WHEREFORE, Plaintiff requests trial by jury.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment on all causes of action against
28

1 Defendants as follows:

- 2 1. For compensatory damages on the first and second causes of action in an amount in
- 3 excess of \$25,000;
- 4 2. For statutory damages of \$25,000 on the third cause of action for each violation
- 5 suffered by Plaintiff;
- 6 3. For declaratory relief on the fourth cause of action finding that Defendants misused
- 7 public funds in violation of Code of Civil Procedure § 526a;
- 8 4. For injunctive relief on the fourth cause of action prohibiting Defendants from
- 9 misusing the School Messenger alert system in the future;
- 10 5. For an order on the fourth cause of action requiring Defendants to repay the
- 11 monetary value of the public resources they misused;
- 12 6. For interest on the sum of money awarded as damages;
- 13 7. For punitive damages on the first, second and third causes of action in an amount
- 14 appropriate to punish Defendants for their wrongful conduct and set an example for
- 15 others;
- 16 8. For reasonable attorney's fees pursuant to Civil Code § 52.1 (h) and as otherwise
- 17 permitted by law;
- 18 9. For costs of suit incurred herein; and
- 19 10. For such other and further relief as the court may deem proper.

20 DATED: February 5, 2019

21 Respectfully submitted,

22 By /s/ Jeffrey Wilens

23 JEFFREY WILENS
24 Attorney for Plaintiff