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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

J.V. through his guardian ad litem,  
ANABEL FRANCO; B.K. through his  
guardian ad litem, CYNTHIA  
BROWN; and all other students  
similarly situated,

Plaintiffs,

vs.

POMONA UNIFIED SCHOOL  
DISTRICT; POMONA SPECIAL  
EDUCATION LOCAL PLANNING  
AREA; ANA PETRO, CHRISTINE  
GOENS, KAMERON SHIELDS,  
BEATRIZ KRIVAN, JENNIFER  
YALES, SELENE AMANCIO,  
BRIAN EL MAHMOUD, DANIELLA  
SOTO, MARY GARCIA, CINDY  
GREEN, ELAINE MARKOFSKI,  
SUPERINTENDENT RICHARD  
MARTINEZ in his Official Capacity  
only, and DOES 1-10,

Defendants.

**CASE NO. 2:15-cv-007895**

**CLASS ACTION COMPLAINT**

- 1) THE AMERICANS WITH DISABILITIES ACT OF 1990;
- 2) SECTION 504 OF THE REHABILITATION ACT OF 1973
- 3) UNRUH CIVIL RIGHTS ACT;
- 4) CALIFORNIA GOVERNMENT CODE SECTION 11135;
- 5) 42 U.S.C. SECTION 1983 (4<sup>TH</sup> AMENDMENT);
- 6) 42 U.S.C. SECTION 1983 (DUE PROCESS CLAUSE OF THE 14<sup>TH</sup> AMENDMENT);
- 7) 42 U.S.C. SECTION 1983 (EQUAL PROTECTION CLAUSE OF THE 14<sup>TH</sup> AMENDMENT);
- 8) FALSE IMPRISONMENT;
- 9) BATTERY;
- 10) ASSAULT;
- 11) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- 12) NEGLIGENT SUPERVISION;
- 13) NEGLIGENCE;

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)	14) CALIFORNIA EDUCATION CODE §§ 200, 201, 220, and 260;
)	15) ARTICLE I, SECTION 7(A) & ARTICLE IV, SECTION 16(A) OF THE CALIFORNIA CONSTITUTION.
)	<b>JURY TRIAL DEMANDED</b>

(continued from prior page)

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PLAINTIFFS, J.V. and B.K., through their guardians ad litem, allege as follows for themselves and all other students similarly situated:

**INTRODUCTION**

1. Plaintiffs submit this claim on behalf of themselves and all other similarly situated students for the violation of their civil rights, battery, assault, false imprisonment, intentional infliction of emotional distress, negligent supervision, and negligence based upon the Defendants’ violations of California and Federal laws.

2. Plaintiffs are disabled students, who, due to the severity of their disabilities were unable to report the abuse they were forced to endure, which included but was not limited to battery, assault, false imprisonment, and intentional infliction of emotional distress.

3. Defendants preyed on plaintiff students because of their disabilities, tasked unqualified and inadequately trained staff with supervising plaintiff students, failed to document and report incidents of abuse, and failed to take reasonable steps to prevent further abuse.

4. The abuse has occurred since at least August 2013, and no effort has been shown to adequately protect plaintiff students from the continued abuse. Defendants carried out a series of abusive acts upon the named Plaintiffs and other similarly situated students. Some of these acts are set forth

1 herein. Unfortunately, due to the nature of their disabilities, Plaintiffs J.V. and  
2 B.K. are unable to adequately answer questions regarding what happened to  
3 them or describe events which occurred in their classroom.

4 5. The harmful effects of the abuse suffered by Plaintiffs at the  
5 hands of the staff directly abusing them have been compounded by all  
6 Defendants' willful failure to adequately report, document, respond to, and  
7 prevent the abuse. Even after parents approached Defendants requesting  
8 information about the abuse that would allow them to mitigate their children's  
9 damages, Defendants failed to provide any meaningful information regarding  
10 what transpired in their children's classroom.

11 6. Plaintiffs timely filed Tort Claims Notices under Government  
12 Code section 910 *et seq.* Defendants rejected the Tort Claims Notice for J.V.  
13 on April 15, 2015 and for B.K. on August 13, 2015.

14 7. The alleged acts and Plaintiffs' damages are such that proceeding  
15 through due process before the Office of Administrative Hearings would be  
16 both futile and inadequate. Plaintiffs' injuries cannot be redressed under the  
17 IDEA's due process procedures.

18 8. Due to both the nature of Plaintiffs' disabilities, which preclude  
19 them from reporting the abusive acts, and the purposeful concealment of the  
20 acts by Defendants, Plaintiffs are at this point unable to describe all of the  
21 abusive acts directed at Plaintiffs and the exact length of time the abuse was  
22 endured. Plaintiffs expressly reserve their right to amend this Complaint to  
23 include additional facts and/or claims as discovery in this case proceeds.

### 24 **JURISDICTION**

25 9. This Court has subject matter jurisdiction over this action  
26 pursuant to 28 U.S.C. sections 1331 and 1367 for claims arising under the  
27 Americans with Disability Act of 1990, 42 U.S.C. sections 12101, *et seq.*,  
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1 1343 for claims arising under the United States Constitution, and for claims  
2 arising under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.  
3 sections 794, *et seq.*

4 10. Under the doctrine of pendant and supplemental jurisdiction, 28  
5 U.S.C. section 1367, this Court has jurisdiction over Plaintiffs' claims arising  
6 under California state law.

7 11. This Court has jurisdiction to issue a declaratory judgment  
8 pursuant to 28 U.S.C. sections 2201 and 2202.

9 **VENUE**

10 12. Pursuant to 28 U.S.C. section 1391(b), venue is proper in the  
11 district in which this Complaint is filed, which is the judicial district in which  
12 the claims have arisen, the Central District of California.

13 **PARTIES**

14 13. Plaintiffs J.V. and B.K. are students with autism who live within  
15 the school district boundary of the POMONA UNIFIED SCHOOL  
16 DISTRICT. Autism is a neurological disorder that presents with persistent  
17 deficits in social communication and social interaction across multiple  
18 contexts.

19 14. J.V. is a nine year old boy. As a result of his autism, he has a  
20 severe impairment in speech and language, perseverative behaviors, insistence  
21 upon sameness, stereotypy, and impairment in some social behaviors. J.V.  
22 resides in Pomona, California, with his mother, Anabel Franco ("Ms. Franco")  
23 and stepfather. He is a person with a disability at all times referenced herein  
24 within the meaning of all applicable state and federal disability non-  
25 discrimination laws. This action is brought by Ms. Franco on behalf of J.V.

26 15. Plaintiff B.K is a twelve year old young man. As a result of his  
27 autism, he has significant communicative, stereotypical, and adaptive deficits.  
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1 B.K. resides in Pomona, California, with his mother, Cynthia Brown (“Ms.  
2 Brown”). He is a person with a disability at all times referenced herein within  
3 the meaning of all applicable state and federal disability nondiscrimination  
4 laws. This action is brought by Ms. Brown on behalf of B.K.

5 16. Defendant POMONA UNIFIED SCHOOL DISTRICT (the  
6 “DISTRICT”) and POMONA SPECIAL EDUCATION LOCAL PLANNING  
7 AREA (“SELPA”) are local government entities within the meaning of Title II  
8 of the ADA, recipients of federal financial assistance within the meaning of  
9 Section 504 of the Rehabilitation Act, and have at least 50 employees. The  
10 DISTRICT and SELPA are also the recipients of financial assistance from the  
11 State of California. Presently, and at all times relevant to this Complaint, The  
12 DISTRICT and SELPA were and are business establishments within the  
13 meaning of the Unruh Civil Rights Act. The DISTRICT and SELPA are sued  
14 in their own right and on the basis of the acts of their officials, agents, and  
15 employees.

16 17. Defendant RICHARD MARTINEZ is Superintendent of the  
17 DISTRICT. The Superintendent accepts responsibility for the general  
18 efficiency of the school system, including the policies, practices, procedures,  
19 programs, activities, services, training, and employees of those schools. The  
20 Superintendent is responsible for the development of the school staff, and for  
21 the educational growth and welfare of the students, as well as for ensuring  
22 compliance with state and federal laws. The Superintendent is sued in his  
23 official capacity.

24 18. Defendant ANA PETRO was or is an instructional aide employed  
25 by the DISTRICT or SELPA. Defendant PETRO intentionally and unlawfully  
26 assaulted Plaintiff B.K. for no pedagogical purpose. She is sued in her  
27 individual and official capacity.  
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1           19. Defendant CHRISTINE GOENS is the principal of Simons  
2 Middle School. As principal, CHRISTINE GOENS has authority and control  
3 over Simons Middle School's programs and facilities, including policies,  
4 practices, procedures, programs, activities, services, training, and employees  
5 of those schools. The principal is responsible for ensuring that Simons Middle  
6 School complies with state and federal laws. CHRISTINE GOENS is sued in  
7 her individual and official capacities.

8           20. Defendants KAMERON SHIELDS, DOLORES MURILLO, and  
9 BEATRIZ KRIVAN were or are employed by the DISTRICT or SELPA as  
10 special education teachers. Teachers have authority and control of their  
11 classroom, including the policies, practices, procedures, facilities,  
12 maintenance, programs, activities, services, training, and employees of those  
13 classrooms. The teacher is responsible for ensuring that their classroom  
14 complies with state and federal laws. Defendants SHIELDS, MURILLO, and  
15 KRIVAN are sued in their individual and official capacities.

16           21. Defendant JENNIFER YALES was or is employed by THE  
17 DISTRICT or SELPA as the Director of Special Education. The Director of  
18 Special Education has authority and control of the special education  
19 classrooms, including the policies, practices, procedures, facilities,  
20 maintenance, programs, activities, services, training, and employees of those  
21 classrooms. The Director of Special Education is responsible for ensuring that  
22 the DISTRICT schools comply with special education laws. JENNIFER  
23 YALES is sued in her individual and official capacity.

24           22. Defendant CINDY GREEN was or is employed by the  
25 DISTRICT or SELPA as a special education coordinator. As a special  
26 education coordinator, CINDY GREEN was responsible for attending IEP  
27 Team meetings; developing educational programming, including behavior  
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1 intervention; and reporting to the Director of Special Education. CINDY  
2 GREEN is sued in her individual and official capacity.

3 23. Defendant SELENE AMANCIO is the principal of San Antonio  
4 Elementary School. As principal, SELENE AMANCIO has authority and  
5 control over San Antonio Elementary School programs and facilities,  
6 including policies, practices, procedures, programs, activities, services,  
7 training, and employees of those schools. The principal is responsible for  
8 ensuring that San Antonio Elementary School complies with state and federal  
9 laws. SELENE AMANCIO is sued in her individual and official capacity.

10 24. Defendant DANIELLA SOTO and Defendant MARY GARCIA  
11 were or are instructional aides employed by the DISTRICT or SELPA who  
12 intentionally and unlawfully restrained Plaintiff J.V. for no pedagogical  
13 purpose. DANIELLA SOTO and MARY GARCIA are sued in their individual  
14 and official capacities.

15 25. Defendant BRIAN EL MAHMOUD was or is a classroom aide  
16 employed by the DISTRICT or SELPA. EL MAHMOUD participated  
17 substantially in the events described herein against Plaintiff J.V. He is being  
18 sued in his individual and official capacity.

19 26. Defendant ELAINE MARKOFSKI was or is a health services  
20 assistant employed by the DISTRICT or SELPA. Defendant MARKOFSKI  
21 knowingly and purposefully participated in covering up the abuse of students  
22 by failing to document all injuries. Defendant MARKOFSKI is being sued in  
23 her individual and official capacity.

24 27. The names and capacities, whether individual, corporate,  
25 otherwise, sued herein as DOES 1-10, inclusive, are presently unknown, and  
26 Plaintiffs will amend the Complaint to insert them when ascertained.  
27 Plaintiffs are informed and believe and thereon allege that each of these  
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1 Defendants was a resident of this District and/or has principal offices or was  
2 doing business in this District and was and is responsible in some way for the  
3 events and damages alleged in this Complaint.

4 28. Plaintiffs are informed and believe that each of the Defendants is  
5 the agent, ostensible agent, alter ego, master, servant, trustor, trustee,  
6 employer, employee, representative, affiliate, related entity, partner, and/or  
7 associate, or such similar capacity, of each of the other Defendants, and at all  
8 times acting and performing, or failing to act or perform, within the course and  
9 scope of each similar aforementioned capacities, and with the authorization,  
10 consent, permission or ratification of each of the other Defendants, and is  
11 personally responsible in some manner for the acts and omissions of the other  
12 Defendants in proximately causing the violations and damages complained of  
13 herein, and have participated, directed, and have ostensibly and/or directly  
14 approved or ratified each of the acts or omissions of each of the other  
15 Defendants, as herein described.

16 29. Hereafter, references to “Defendants” shall include Paragraphs  
17 16-28, inclusive, above.

18 **FACTUAL ALLEGATIONS**

19 30. Plaintiffs incorporate, by reference herein, the allegations in  
20 paragraphs 1 through 29, as though fully set forth herein.

21 31. Defendants committed several acts against Plaintiffs J.V. and  
22 B.K. throughout the time period of August 2013 to present.

23 32. Defendants failed to adequately document these acts, failed to  
24 adequately report these acts, and failed to take reasonable steps to prevent  
25 further abuse.

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**Class Representative J.V.**

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2 33. From August 2011 to October 2014, Plaintiff J.V. attended San  
3 Antonio Elementary School (“San Antonio”), in an “Autism Spectrum and  
4 Related Disorders” (“ASRD”) class, which is a classroom designed  
5 exclusively for students with disabilities.

6 34. Prior to entering the ASRD class, J.V.’s individualized education  
7 plans (“IEPs”) indicated that he was “very sweet” and that his behaviors did  
8 not impede his learning.

9 35. Within the first month of attending San Antonio, J.V. came home  
10 with unexplained injuries, such as a black eye. Shortly thereafter, J.V.’s  
11 behaviors began to change, becoming more aggressive.

12 36. To address this change in behavior, on January 24, 2012, a mere  
13 four months after starting at San Antonio, Defendants developed a behavior  
14 intervention plan to explicitly include that J.V. should be restrained, stating  
15 that the staff should “apply physical blocking if aggression is towards other  
16 students or staff.” In January 2013, this plan was updated to state: “If [J.V.’s]  
17 aggression is directed toward another student, adults may move the other  
18 student to prevent injury.” This procedure was in place for the remainder of  
19 the time J.V. was enrolled at San Antonio.

20 37. During the 2011-2012 and 2012-2013 school years, Ms. Franco  
21 repeatedly contacted J.V.’s teacher, Ms. Murillo, the SELPA representatives,  
22 Patti Adams and Debbie Montoya, and his principals, Ms. Amancio and Ms.  
23 Ana Rico, raising concerns about his injuries and behavior changes, but the  
24 DISTRICT and SELPA refused to provide J.V. with additional support. As a  
25 result, on or about May 24, 2013, Ms. Franco filed a due process request with  
26 the Office of Administrative Hearings. Shortly thereafter, Ms. Franco and the  
27 DISTRICT entered into an agreement in which the DISTRICT agreed to  
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1 provide J.V. with a full time, one to one behavior aide, through an outside  
2 agency, Autism Spectrum Therapies (“AST”), beginning on August 15, 2013.  
3 AST is a private agency that provides individualized behavior intervention and  
4 Applied Behavior Analysis therapy for individuals with autism.

5 38. Notwithstanding, J.V. continued to sustain a series of serious  
6 injuries during the 2013-2014 school year. Although these injuries left visible  
7 marks, bruises, and scratches, Defendants frequently failed to notify  
8 Ms. Franco that J.V. had been injured. When Ms. Franco contacted  
9 Defendants to ask how the injury occurred, they responded that they did not  
10 know. These injuries include:

- 11 a. On or about April 27, 2014, J.V. came home with multiple bruises  
12 and a puncture wound on his back.
- 13 b. On or about May 17, 2014, J.V. came home with a swollen lip.
- 14 c. On or about August 29, 2014, J.V. came home with multiple bruises  
15 on his thigh and a bruise on his ankle the size of an egg.

16 39. In addition, Ms. Franco received a series of notifications that  
17 contained vague information about injuries J.V. sustained at school, which  
18 none of the staff from the DISTRICT or SELPA could explain to Ms. Franco.  
19 For instance, on August 29, 2013, Ms. Franco received a Parent Notification  
20 from Ms. Markofski that J.V. had a “scratch on face;” and on November 5,  
21 2013, Ms. Franco received notice from Ms. Markofski that J.V. had sustained  
22 a “head injury” while at school.

23 40. When Ms. Franco asked J.V. how he got hurt, J.V. sometimes  
24 replied “Mr. Brian,” the name of one of the classroom aides. Ms. Franco  
25 attempted to get further information from J.V., but given his limited  
26 communication abilities, he could not explain. Ms. Franco notified Ms.  
27 Murillo that J.V. had stated that he was injured because of Mr. Brian [El  
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1 Mahmoud], but she disregarded this concern, replying that she “didn’t know  
2 what J.V. meant.”

3 41. Ms. Franco made regular attempts to discuss J.V.’s injuries with  
4 Ms. Murillo, Ms. Krivan, Ms. Amancio, and the classroom aides Daniella  
5 Soto, Brian El Mahmoud, and Maria Garcia. These Defendants failed to  
6 provide an explanation, and frequently suggested his injuries were merely the  
7 result of J.V. being “clumsy.”

8 42. When these attempts were not effective, Ms. Franco contacted the  
9 SELPA administrators, Patti Adams, Cindy Green, or Jennifer Yales directly.  
10 Occasionally, upon noticing an injury, Ms. Franco went to the SELPA offices  
11 to discuss her concerns with the SELPA staff in person.

12 43. Coinciding with his unexplained injuries, J.V.’s behavior  
13 continued to become increasingly aggressive, eventually reaching the point of  
14 physical aggression and property destruction. Specifically, his incidences of  
15 aggression increased from seven times per day in January 2012 to 2.25 times  
16 per hour in January 2013 and went from “mild” in January 2013 to “moderate”  
17 in January 2014, with J.V. exhibiting aggressive behavior sometimes as often  
18 as fifteen times per hour. In a conversation with Ms. Amancio on or about  
19 January 14, 2014, Ms. Amancio stated that the other students had to be  
20 removed from class daily due to J.V.’s behaviors.

21 44. Ms. Franco also raised concerns about J.V.’s safety and behaviors  
22 at multiple IEP Team meetings, which were attended by Ms. Murillo, Ms.  
23 Krivan, Ms. Amancio, and SELPA staff Ms. Adams, Ms. Green, or Ms. Yales.  
24 For instance, at J.V.’s 2014 annual IEP, Ms. Franco presented a letter she had  
25 previously written that stated “[J.V.] has been a part of Mrs. Murillo’s class  
26 for the last three school years. During this time we have experience (sic) many  
27 challenges, a couple of major challenges being [J.V.’s] physical safety and  
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1 challenging behaviors.” She went on to raise concern about the lack of  
2 communication, stating “We have experienced a lack of communication  
3 among the team that has resulted in delaying appropriate intervention . . . we  
4 have requested incident reports for aggressive behaviors resulting in  
5 evacuating his peers out of the classroom, we are yet to receive those.”

6 45. As a result of her concerns related to J.V.’s repeated injuries, his  
7 regression in behavior, and Defendants’ failures to adequately address the  
8 situation, Ms. Franco requested an assessment by an outside evaluator,  
9 Marjorie Charlop, Ph.D. On or about April 20, 2014, Dr. Charlop provided  
10 Defendants with a “Functional Behavior Analysis Assessment Report” in  
11 which she concluded that Defendants’ behavior intervention program was  
12 being implemented in such a way that it was maintaining and reinforcing  
13 J.V.’s noncompliant behaviors. She warned Defendants “when behavior is  
14 reinforced, it will increase and occur more frequently, and most likely escalate  
15 to larger incidences.”

16 46. The results of this evaluation were shared at an IEP Team  
17 meeting that was convened on or about September 30, 2014, attended by  
18 Ms. Green, Ms. Murillo, and Ms. Amancio.

19 47. On or about August 7, 2014, Defendants finally responded to Ms.  
20 Franco’s concerns through a letter from Jennifer Yales, stating “it is the  
21 District’s position that [J.V.’s] physical safety is being appropriately addressed  
22 during the school day as provided by law . . . It appears you are requesting a  
23 different one-to-one aide based on your belief [J.V.’s] current aide is not  
24 ensuring [J.V.’s] safety in his educational environment. It is the District’s  
25 position that it has offered [J.V.] appropriate paraprofessional support  
26 throughout his school day.” In response to Ms. Franco’s concerns related to  
27 communication, Ms. Yales wrote “the District has provided you all requested  
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1 incident reports in its possession related to [J.V.'s] aggressive behaviors as  
2 provided by law.”

3 48. Following receipt of this letter, the classroom aides were  
4 instructed not to speak directly to Ms. Franco.

5 49. On or about October 2, 2014, when Ms. Franco picked J.V. up  
6 from school, Ms. Krivan told Ms. Franco that J.V. had lost a tooth during the  
7 school day. Ms. Franco was puzzled by this because J.V. did not have any  
8 loose teeth. Ms. Krivan told her that Ms. Markofski had checked him and that  
9 his mouth was still bleeding. Ms. Krivan gave Ms. Franco the tooth, which  
10 was cracked.

11 50. Later that day, after Ms. Franco left the school, Ms. Krivan called  
12 and stated that she had “forgotten” to tell her that J.V. had to be restrained that  
13 day. Ms. Franco asked for information regarding what had occurred, but Ms.  
14 Krivan was unable to explain, stating that she was not present when it  
15 occurred as she had been assisting another student at the time. She told Ms.  
16 Franco that there would be an incident report placed in J.V.'s backpack the  
17 following day that would provide her with the details.

18 51. Defendants failed to provide the promised written report on  
19 October 3, 2014. Over the next two weeks, Ms. Franco repeatedly contacted  
20 Ms. Krivan, Ms. Amancio, Ms. Green, and Ms. Yales in person, by email, and  
21 by telephone.

22 52. On or about October 17, 2014, 15 days after she was first  
23 informed J.V. was restrained, Ms. Franco met with Ms. Krivan, a program  
24 supervisor from AST, and a speech and language pathologist who worked for  
25 Defendants. Prior to this meeting, Ms. Franco had assumed that J.V. was  
26 restrained by his assigned behavior aide from AST. During this October 17  
27 meeting, however, Defendants told her that J.V. had not been restrained by his  
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1 AST aide. When Ms. Franco asked who restrained him, she was told that  
2 everything was written in the report, which she would receive shortly.

3 53. On or about October 20, 2014, J.V. came home from school with  
4 multiple bruises on his back along his rib cage. Ms. Franco texted pictures of  
5 the injuries to the DISTRICT nurse. The nurse promised to follow up on the  
6 injuries, however, no one at the school could explain how J.V. was injured.

7 54. On or about October 21, 2014, Ms. Franco finally received a  
8 written report regarding the incident on October 2, 2014. This report was not  
9 created by the DISTRICT, but instead was drafted by AST. The report stated  
10 that two classroom aides “held Cx’s arms and legs down while area was  
11 cleared of students and chairs. Speech therapist instructed them to stop  
12 because they were using an incorrect CPI hold on student.”

13 55. There is no documentation in any of the DISTRICT’s or  
14 SELPA’s records that a restraint, illegal or otherwise, was used on J.V. on  
15 October 2, 2014.

16 56. Following receipt of the written report, Ms. Franco requested a  
17 copy of all records from the health assistant. When she received these records,  
18 she contacted Ms. Markofski to inform her that she had not documented that  
19 she saw J.V. on October 2, 2014. Ms. Markofski stated she had not  
20 documented it because J.V. did not come to her office, but instead she went to  
21 his classroom. Upon Ms. Franco’s request, Ms. Markofski finally added it to  
22 her records.

23 57. The events that occurred while attending San Antonio have had a  
24 significant impact on J.V. In November 2014, J.V. was placed on mental  
25 health medication to address his anxiety.

1 58. Plaintiffs believe that further instances of abuse occurred and that  
2 further investigation is necessary to determine the full extent of both the abuse  
3 and injuries.

4 **Class Representative B.K.**

5 59. From August 2013 to March 2015, Plaintiff B.K. attended  
6 Simons Middle School (“Simons”) in a special education classroom  
7 exclusively attended by students with disabilities. During this entire period,  
8 Kameron Shields was the classroom teacher and, until the incident on  
9 March 5, 2015, Ana Petro was a classroom aide.

10 60. When Ms. Brown was first introduced to Ana Petro, Mr. Shields  
11 told her that Ms. Petro “does not take any stuff from B.K.”

12 61. Shortly after beginning at Simons, Ms. Brown began to notice  
13 that B.K. was regressing in previously acquired skills, such as writing. He also  
14 began to exhibit uncharacteristic behaviors. For instance, Mr. Shields called  
15 home, sometimes multiple times per week, to inform Ms. Brown that B.K. had  
16 been crying at school. B.K. would cry when he arrived at school on the bus,  
17 but not when Ms. Brown dropped him off. B.K. also began to have toileting  
18 accidents at school that necessitated the classroom aides to “clean him,”  
19 whereas he was able to toilet independently at home.

20 62. The school nurse also began to call Ms. Brown periodically to  
21 notify her that B.K. had scratches on his face and neck. Plaintiffs have  
22 repeatedly sought documentation regarding these incidents, but Defendants  
23 have failed to provide any documentation to date.

24 63. In or about November 2014, Ms. Brown noticed that B.K. would  
25 flinch and move away from other people when they got close, as if he was  
26 anticipating getting hurt. Shortly thereafter, in or about December 2014, B.K.

1 began to exclaim “Red Face!” if he thought he was in trouble or anticipated a  
2 punishment.

3 64. These new behaviors were concerning enough to Ms. Brown that  
4 she brought them to the attention of the IEP Team, including Mr. Shields, on  
5 February 24, 2015. Mr. Shields, the DISTRICT, and SELPA ignored these  
6 concerns and took no actions to address them.

7 65. On March 5, 2015, B.K. arrived home from school with a red  
8 mark on his face and swelling on his right knee. Several hours later, at  
9 approximately 5:00 p.m., Ms. Brown received a call from Simons’ Principal,  
10 Christine Goens, that two students had reported that B.K. had been pushed and  
11 slapped by a classroom aide. Ms. Goens informed Ms. Brown that the police  
12 had been notified.

13 66. Other than this brief information, Ms. Goens was not able or  
14 willing to provide any additional detail. In a home-school communication log  
15 that Ms. Brown received that day, Mr. Shields merely wrote “No school  
16 tomorrow, have a great weekend.”

17 67. Following this incident, Ms. Brown requested a copy of B.K.’s  
18 cumulative file, however, Ms. Goens told her that B.K.’s file had been lost,  
19 and she would have to “make it up.”

20 68. On March 17, 2015, Ms. Brown attended an IEP Team meeting,  
21 and requested information regarding the March 5 incident. In response, the  
22 DISTRICT and SELPA staff, including Mr. Shields, Ms. Goens, and Tammie  
23 Herring-Wilson (a SELPA administrator), stated that “pending the  
24 investigation, information could not be disclosed.”

25 69. Following his return to school after March 5, B.K. exhibited a  
26 significant change in behaviors. For the first time during the entirety of the  
27 2014-2015 school year, Mr. Shields began to send home reports that B.K.  
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1 “was trying to hit staff” and that he was not keeping his “hands to himself.”  
2 Upon receipt of these reports, Ms. Brown went to the school to observe B.K.’s  
3 behaviors; however, she was not immediately permitted to go to the classroom  
4 and was made to sit in the office. Shortly thereafter, she removed B.K. from  
5 Simons.

6 70. On April 20, 2015, Ms. Brown attended an IEP Team meeting,  
7 and requested information about what had happened to B.K. on March 5. The  
8 DISTRICT staff, including Ms. Goens and Mr. Shields responded that they  
9 would “not respond to questions about the incident in an IEP meeting.”

10 71. On June 4, 2015, Ms. Brown attended an IEP Team meeting, and  
11 again requested information about the March 5 incident. Again, the  
12 DISTRICT and SELPA staff, including Ms. Yales, Ms. Herring-Wilson,  
13 Ms. Goens, and Mr. Shields, responded that they could not provide  
14 information pending the police investigation.

15 72. On July 14, 2015, Ms. Brown sent a request for records to the  
16 Pomona Police Department seeking a copy of the March 5, 2015 police report,  
17 which she received approximately a month later. It was upon receipt of this  
18 police report that Ms. Brown, for the first time, was provided with details  
19 regarding B.K.’s injuries.

20 73. According to the police report, between 1:00 p.m. and 2:00 p.m.,  
21 two general education students were walking to their physical education class  
22 when they passed an open special education classroom and saw Ana Petro  
23 push B.K. against the wall and slap him in his face. Ana Petro saw the students  
24 “and smiled” at them.

25 74. To date, Ms. Brown has yet to receive any documentation from  
26 the DISTRICT or SELPA regarding what occurred on March 5, 2015.

1 75. The events that occurred while at Simons have had a significant  
2 impact on B.K. For the first time in his life, he is on mental health medication.  
3 He regularly wakes up in the middle of the night, and refuses to go back to  
4 sleep. He has been prescribed Benadryl to aid his sleep.

5 76. Plaintiffs believe that further instances of abuse occurred and that  
6 further investigation is necessary to determine the full extent of both the abuse  
7 and injuries.

8 **CLASS ALLEGATIONS**

9 77. Plaintiffs J.V. and B.K, bring this action on their own behalf and  
10 on behalf of all persons similarly situated. The class which Plaintiffs represent  
11 is composed of all students with disabilities attending school in Pomona  
12 Unified School District since August 2013 who have been denied their right to  
13 full and equal access to, and use and enjoyment of, the facilities, programs,  
14 services, and activities of the Pomona Unified School District because of  
15 abusive conduct towards children with disabilities.

16 78. The persons in the class are so numerous that joinder of all such  
17 persons is impractical and the disposition of their claims in a class action is a  
18 benefit to the parties and to the Court.

19 79. There is a well-defined community of interest in the questions of  
20 law and fact involved affecting the parties to be represented in that they were  
21 all denied their civil right to full and equal access to, and use and enjoyment  
22 of, the facilities, programs, services, and activities offered by the public  
23 schools operated by Defendants due to Defendants' abusive conduct towards  
24 children with disabilities.

25 80. Common questions of law and fact predominate.  
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1           81. The claims of Plaintiffs J.V. and B.K. are typical of those of the  
2 class and Plaintiffs J.V. and B.K. will fairly and adequately represent the  
3 interests of the class.

4           82. References to Plaintiffs shall be deemed to include the named  
5 Plaintiffs and each member of the class.

6           83. Defendants have failed to adequately supervise their employees  
7 which resulted in the foreseeable physical harm to Plaintiffs. Under California  
8 Law, Defendants had a statutory duty to ensure that staff who came into  
9 contact with Plaintiffs would provide an environment free of abuse and  
10 neglect.

11           84. California law has long imposed on school authorities a duty to  
12 supervise at all times the conduct of children on school grounds and to enforce  
13 those rules and regulations necessary for their protection. Defendants also had  
14 a duty to use reasonable measures to protect students from foreseeable injury  
15 at the hands of third parties acting intentionally or negligently. The school  
16 district is liable for injuries which result from a failure of its officers and  
17 employees to use ordinary care in these respects.

18           85. Defendants have violated their statutory duties to Plaintiffs,  
19 including their supervisory duties created under California Education Code  
20 sections 44807 and 44808.

21           86. Defendants have violated their statutory duties to Plaintiffs,  
22 including their supervisory duties under Welfare and Institutions Code section  
23 15630, *et seq.* which required them to report any incident that reasonably  
24 appears to be physical abuse to the adult protective service agency or local law  
25 enforcement agency immediately or as soon as was practicably possible and  
26 file a written report within two days. They also violated their duties under  
27 California Penal Code section 11166 which required them to report any  
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1 knowledge of a child whom the mandated reporter knows or reasonably  
2 suspects has been the victim of child abuse or neglect to the agency  
3 immediately or as soon as is practically possible by telephone and the  
4 mandated reporter shall prepare and send, fax, or electronically transmit a  
5 written follow up report thereof within 36 hours of receiving the information  
6 concerning the incident.

7 87. Defendants have violated their statutory duties to Plaintiffs,  
8 including multiple violations of California Education Code sections 56521.1  
9 and 56521.2 which in pertinent part prohibits the use of any interventions that:  
10 1) cause physical pain; 2) simultaneously immobilize all four extremities, 3)  
11 apply an amount of force that exceeds that which is reasonable and necessary  
12 under the circumstances, or 4) subjects the individual to verbal abuse, ridicule,  
13 or humiliation, or that can be expected to cause excessive emotional trauma.

14 88. Defendants have violated their statutory duty under California  
15 Penal Code section 11165.4 which prohibits “unlawful corporal punishment or  
16 injury” against a child, defined as “any cruel or inhuman corporal punishment  
17 or injury resulting in a traumatic condition.”

18 89. Defendant Richard Martinez violated his statutory duty under  
19 California Education Code section 260 by failing to enact an adequate formal  
20 or informal policy to ensure that the DISTRICT and SELPA are providing a  
21 learning environment free from discrimination based on the characteristics  
22 provided in California Education Code section 220, specifically disability.

23 90. Defendants continue to employ many of those responsible for the  
24 abuse outlined herein.

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**FIRST CLAIM FOR RELIEF**

(Violation of 42 U.S.C. §§ 12101, *et seq.* –  
Against the DISTRICT, SELPA, and DOES 1-10)

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4 91. Plaintiffs incorporate, by reference herein, the allegations in  
5 paragraphs 1 through 90, as though fully set forth herein.

6 92. Defendants' acts and omissions alleged herein are in violation of  
7 the Americans with Disabilities Act, 42 U.S.C. sections 12101, *et seq.*, and the  
8 regulations promulgated thereunder 28 C.F.R. Part 35, *et seq.*

9 93. Defendants' conduct described herein violated the ADA, in that  
10 Plaintiff students, who are students with disabilities, are either not provided  
11 programs, services, and activities that are provided to non-disabled students,  
12 or are provided programs, services, and activities that are not equal to, and are  
13 inferior to, the services provided to students who are not physically disabled.  
14 Plaintiff students in fact were abused because of their disabilities, which  
15 amounts to disability discrimination. Defendants have demonstrated a  
16 deliberate indifference that harm to Plaintiffs' federally protected rights under  
17 the ADA was substantially likely, and failed to act upon that likelihood.

18 94. Defendants' conduct violated and continues to violate the ADA  
19 and unless restrained from doing so, Defendants will continue to violate the  
20 ADA. Defendants' conduct, unless enjoined, will continue to inflict injuries  
21 for which Plaintiffs have no adequate remedy at law.

22 95. Consequently, Plaintiffs are entitled to injunctive relief pursuant  
23 to Section 308 of the ADA (42 U.S.C. section 12188). As a proximate cause of  
24 the actions of Defendants herein, Plaintiffs are also entitled to a Declaration  
25 that Defendants' actions or omissions violate Plaintiffs' rights under the ADA,  
26 Damages according to proof, Plaintiffs' reasonable attorneys' fees, Plaintiffs'

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1 costs of suit incurred herein, and such other and further relief as the Court  
2 deems just and proper.

3 **SECOND CLAIM FOR RELIEF**

4 (Violation of 29 U.S.C. §§ 794, *et seq.* - Against  
5 the DISTRICT, SELPA, and DOES 1-10)

6 96. Plaintiffs incorporate, by reference herein, the allegations in  
7 paragraphs 1 through 95, as though fully set forth herein.

8 97. Defendants' acts and omissions described herein have resulted in  
9 unequal access to the facilities, programs, services, and activities provided by  
10 Defendants as alleged herein in violation of 29 U.S.C. section 794, *et seq.*, the  
11 Rehabilitation Act of 1973, and the regulations promulgated thereunder, 34  
12 C.F.R. Pt. 104, *et seq.*

13 98. Defendants are the recipients of federal funds or an  
14 instrumentality of DISTRICT sufficient to invoke the coverage of Section 504.

15 99. Defendants unlawfully discriminated against Plaintiffs on the sole  
16 basis of disability.

17 100. Defendants have demonstrated a deliberate indifference that harm  
18 to Plaintiffs' federally protected rights under 29 U.S.C. §§ 794, *et seq.* was  
19 substantially likely, and failed to act upon that likelihood.

20 101. Plaintiffs J.V. and B.K. are qualified individuals with disabilities.

21 102. Solely by reason of their disabilities, Plaintiffs have been  
22 excluded from participation in, denied the benefit of, and subjected to  
23 discrimination in their attempts to receive full and equal access to the  
24 facilities, programs, services, and activities offered by Defendants.

25 103. As a proximate cause of the actions of Defendants herein,  
26 Plaintiffs are entitled to an order and judgment enjoining Defendants from  
27 violating Plaintiffs' rights under 29 U.S.C. §§ 794, *et seq.*, a Declaration that  
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1 Defendants' actions or omissions violate Plaintiffs' rights under 29 U.S.C. §§  
2 794, *et seq.*, Damages according to proof, Plaintiffs' reasonable attorneys'  
3 fees, Plaintiffs' costs of suit incurred herein, and such other and further relief  
4 as the Court deems just and proper.

5 **THIRD CLAIM FOR RELIEF**

6 (Violation of California Civil Code §§ 51, *et seq.* - Against the DISTRICT,  
7 SELPA, PETRO, GOENS, SHIELDS, KRIVAN, MURILLO, GREEN,  
8 YALES, AMANCIO, EL MAHMOUD, SOTO, GARCIA, MARKOFSKI, in  
his Official Capacity only, MARTINEZ, and DOES 1-10).

9 104. Plaintiffs incorporate, by reference herein, the allegations in  
10 paragraphs 1 through 103, as though fully set forth herein.

11 105. Defendants' actions described herein have violated and continue  
12 to violate the Unruh Civil Rights Act, California Civil Code sections 51, *et*  
13 *seq.*, in that Plaintiffs, who are students with disabilities, are either not  
14 provided programs, services, and activities that are provided to non-disabled  
15 students, or are provided programs, services, and activities that are not equal  
16 to, and are inferior to, the services provided to students that are not physically  
17 disabled. Plaintiffs in fact were abused because of their disabilities, which  
18 amounts to disability discrimination.

19 106. Defendants DISTRICT and SELPA are business establishments  
20 in the State of California as required by California Civil Code §51(b).

21 107. Defendants have committed additional violations of the Unruh  
22 Civil Rights Act in that the conduct alleged herein constitutes a violation of  
23 various provisions of the Americans with Disabilities Act, 42 U.S.C. sections  
24 12101, *et seq.*, as set forth above.

25 108. Defendants' actions were and are in violation of the Unruh Civil  
26 Rights Act, California Civil Code sections 51, *et seq.*, and therefore Plaintiffs  
27 are entitled to injunctive relief.  
28

1 109. The actions of the Defendants were the product of joint action  
2 between public entities and individual employees.

3 110. In addition, Defendants are liable to Plaintiffs for each and every  
4 offense for actual damages and multiple damages of up to three times the  
5 actual damages incurred but in no case less than \$4000 per offense pursuant to  
6 California Civil Code section 52.

7 111. Plaintiffs are also entitled to reasonable attorneys' fees and costs.

8 **FOURTH CLAIM FOR RELIEF**

9 (Violation of California Government Code §§ 11135, *et seq.* –  
10 Against the DISTRICT, SELPA, and DOES 1-10)

11 112. Plaintiffs incorporate, by reference herein, the allegations in  
12 paragraphs 1 through 111, as though fully set forth herein.

13 113. Plaintiffs are individuals with disabilities within the meaning of  
14 Section 11135(c) of the California Government Code.

15 114. Defendants receive financial assistance from the State of  
16 California sufficient to invoke the coverage of Sections 11135, *et seq.*, of the  
17 California Government Code.

18 115. Defendants employ more than fifty employees.

19 116. By its actions or inactions in refusing on the basis of disability to  
20 provide Plaintiffs full and equal access to the facilities, programs, services,  
21 and activities of the District, Defendants have denied Plaintiffs' rights under  
22 Sections 11135, *et seq.*, of the California Government Code and the  
23 regulations promulgated thereunder.

24 117. Plaintiffs have no adequate remedy at law. Unless the relief  
25 requested herein is granted, Plaintiffs will suffer irreparable harm in that, on  
26 the basis of disability, they will once again be discriminated against and  
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1 denied full and equal access to Defendants' facilities, programs, services, and  
2 activities.

3 118. As a proximate cause of the actions of Defendants herein,  
4 Plaintiffs are entitled to an order and judgment enjoining Defendants from  
5 violating Plaintiffs' rights under California Government Code §§ 11135, *et*  
6 *seq.*, a Declaration that Defendants' actions or omissions violate Plaintiffs'  
7 rights under California Government Code §§ 11135, *et seq.*, Damages  
8 according to proof, Plaintiffs' reasonable attorneys' fees, Plaintiffs' costs of  
9 suit incurred herein, and such other and further relief as the Court deems just  
10 and proper.

11 **FIFTH CLAIM FOR RELIEF**

12 (Violation of 42 U.S.C. Section 1983 - Fourth Amendment to the United  
13 States Constitution - Against PETRO, GOENS, SHIELDS, MURILLO,  
14 GREEN, EL MAHMOUD, SOTO, GARCIA, YALES, AMANCIO,  
15 KRIVAN, the DISTRICT, SELPA, in his Official Capacity only,  
16 MARTINEZ, and DOES 1-10)

16 119. Plaintiffs incorporate, by reference herein, the allegations in  
17 paragraphs 1 through 118, as though fully set forth herein.

18 120. Defendants' actions described herein constituted a seizure that  
19 was objectively unreasonable under the circumstances and objectively  
20 unreasonable in light of the educational objectives Defendants were trying to  
21 achieve, in violation of the Fourth Amendment to the United States  
22 Constitution.

23 121. Defendants the DISTRICT and SELPA, as state actors for  
24 purposes of section 1983, and Defendants El MAHMOUD, SOTO, GARCIA,  
25 and PETRO, as employees of the DISTRICT and/or SELPA, acted under the  
26 color of state law.

1           122. Defendants YALES, AMANCIO, GOENS, SHIELDS,  
2 MURILLO, GREEN, and KRIVAN are liable as supervisors because the  
3 actions described herein constituted culpable action or inaction in the training,  
4 supervision, and control of subordinates, acquiescence in the constitutional  
5 deprivation after a complaint was made, and showed a reckless or callous  
6 indifference to the rights of the Plaintiffs.

7           123. Defendants the DISTRICT and SELPA, as state actors for  
8 purposes of section 1983, and Defendants YALES, AMANCIO, GOENS,  
9 SHIELDS, MURILLO, GREEN, and KRIVAN, as employees of the  
10 DISTRICT and/or SELPA, acted under the color of state law.

11           124. As a proximate cause of the actions of Defendants herein,  
12 Plaintiffs are entitled to an order and judgment enjoining Defendants from  
13 violating Plaintiffs' rights under the Fourth Amendment to the Constitution of  
14 the United States, a Declaration that Defendants' actions or omissions violate  
15 Plaintiffs' rights under the Fourth Amendment to the Constitution of the  
16 United States, Damages according to proof, Punitive Damages (from  
17 individual Defendants only), Plaintiffs' reasonable attorneys' fees, Plaintiffs'  
18 costs of suit incurred herein, and such other and further relief as the Court  
19 deems just and proper.

20                               **SIXTH CLAIM FOR RELIEF**

21           (Violation of 42 U.S.C. Section 1983- Due Process Clause of the Fourteenth  
22 Amendment to the United States Constitution - Against Defendants PETRO,  
23 GOENS, SHIELDS, EL MAHMOUD, SOTO, GARCIA, YALES,  
24 AMANCIO, KRIVAN, MURILLO, GREEN, the DISTRICT, SELPA,  
MARTINEZ in his Official Capacity only, and DOES 1-10).

25           125. Plaintiffs incorporate, by reference herein, the allegations in  
26 paragraphs 1 through 124, as though fully set forth herein.

1           126. Defendants' actions described herein constituted egregious  
2 conduct in the form of excessive or brutal use of physical force in violation of  
3 Plaintiffs' Substantive Due Process rights under the Due Process Clause of the  
4 Fourteenth Amendment to the United States Constitution.

5           127. Defendants' actions described herein constituted force that was  
6 excessive, unjustified, and malicious, in violation of Plaintiffs' Substantive  
7 Due Process rights under the Due Process Clause of the Fourteenth  
8 Amendment to the United States Constitution.

9           128. Defendants the DISTRICT and SELPA, as state actors for  
10 purposes of section 1983, and Defendants El MAHMOUD, SOTO, GARCIA,  
11 and PETRO, as employees of the DISTRICT and/or SELPA, acted under the  
12 color of state law.

13           129. Defendants YALES, AMANCIO, GOENS, SHIELDS,  
14 MURILLO, GREEN and KRIVAN are liable as supervisors because the  
15 actions described herein constituted culpable action or inaction in the training,  
16 supervision, and control of subordinates, acquiescence in the constitutional  
17 deprivation after a complaint was made, and showed a reckless or callous  
18 indifference to the rights of the Plaintiffs.

19           130. Defendants the DISTRICT and SELPA, as state actors for  
20 purposes of section 1983, and Defendants YALES, AMANCIO, GOENS,  
21 SHIELDS, and KRIVAN, as employees of the DISTRICT and/or SELPA,  
22 acted under the color of state law.

23           131. As a proximate cause of the actions of Defendants herein,  
24 Plaintiffs are entitled to an order and judgment enjoining Defendants from  
25 violating Plaintiffs' rights to substantive due process under the Constitution of  
26 the United States, a Declaration that Defendants' actions or omissions violate  
27 Plaintiffs' rights to substantive due process under the Constitution of the  
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1 United States, Damages according to proof, Punitive Damages (from  
2 individual Defendants only), Plaintiffs' reasonable attorneys' fees, Plaintiffs'  
3 costs of suit incurred herein, and such other and further relief as the Court  
4 deems just and proper.

5 **SEVENTH CLAIM FOR RELIEF**

6 (Violation of 42 U.S.C. Section 1983 - Violation of the Equal Protection  
7 Clause of the Fourteenth Amendment to the United States Constitution –  
8 Against Defendants PETRO, GOENS, SHIELDS, El MAHMOUD, SOTO,  
9 GARCIA, YALES, AMANCIO, KRIVAN, MURILLO, GREEN, the  
DISTRICT, SELPA, MARTINEZ, in his Official Capacity only, and  
DOES 1-10).

10 132. Plaintiffs incorporate, by reference herein, the allegations in  
11 paragraphs 1 through 131, as though fully set forth herein.

12 133. Defendants' actions described herein have violated and continue  
13 to violate the Equal Protection Clause of the Fourteenth Amendment to the  
14 United States Constitution, in that Plaintiffs, who are students with disabilities,  
15 are either not provided programs, services, and activities that are provided to  
16 non-disabled students, or are provided programs, services, and activities that  
17 are not equal to, and are inferior to, the services provided to students are not  
18 physically disabled.

19 134. Defendants' actions described herein have violated and continue  
20 to violate the Equal Protection Clause of the Fourteenth Amendment to the  
21 United States Constitution, in that Plaintiff students were abused and continue  
22 to be exposed to potential abuse because of their disabilities, which amounts to  
23 disability discrimination.

24 135. Defendants the DISTRICT and SELPA, as state actors for  
25 purposes of section 1983, and Defendants El MAHMOUD, SOTO, GARCIA,  
26 and PETRO, as employees of the DISTRICT and/or SELPA, acted under the  
27 color of state law.

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1 136. Defendants YALES, AMANCIO, GOENS, SHIELDS,  
2 MURILLO, GREEN, and KRIVAN are liable as supervisors because the  
3 actions described herein constitute culpable action or inaction in the training,  
4 supervision, and control of subordinates, acquiescence in the constitutional  
5 deprivation after a complaint was made, and showed a reckless or callous  
6 indifference to the rights of the Plaintiffs.

7 137. Defendants the DISTRICT and SELPA, as state actors for  
8 purposes of section 1983, and Defendants YALES, AMANCIO, GOENS,  
9 SHIELDS, MURILLO, GREEN, and KRIVAN, as employees of the  
10 DISTRICT and/or SELPA, acted under the color of state law.

11 138. As a proximate cause of the actions of Defendants herein,  
12 Plaintiffs are entitled to an order and judgment enjoining Defendants from  
13 violating Plaintiffs' rights to equal protection under the Constitution of the  
14 United States, a Declaration that Defendants' actions or omissions violate  
15 Plaintiffs' rights to equal protection under the Constitution of the United  
16 States, Damages according to proof, Punitive Damages (from individual  
17 Defendants only), Plaintiffs' reasonable attorneys' fees, Plaintiffs' costs of suit  
18 incurred herein, and such other and further relief as the Court deems just and  
19 proper.

20 **EIGHTH CLAIM FOR RELIEF**

21 (False Imprisonment - Against Defendants SOTO, GARCIA,  
22 the DISTRICT, SELPA, and DOES 1-10)

23 139. Plaintiffs incorporate, by reference herein, the allegations in  
24 paragraphs 1 through 138, as though fully set forth herein.

25 140. Defendants SOTO and GARCIA intentionally and unlawfully  
26 exercised force or the implied threat of force to restrain or confine Plaintiffs  
27 when they committed the acts described herein.

1           141. The unlawful restraint of J.V. lasted for an appreciable amount of  
2 time.

3           142. Plaintiffs did not consent to Defendants SOTO and GARCIA's  
4 acts and as a result of the acts, Plaintiffs suffered harm and severe emotional  
5 distress.

6           143. California Government Code section 820 states that a public  
7 employee is liable for injury caused by his act or omission to the same extent  
8 as a private person.

9           144. California Government Code section 815.2 states that a public  
10 entity is liable for injury proximately caused by an act or omission of an  
11 employee of the public entity within the scope of his or her employment.

12           145. The DISTRICT and/or SELPA, public entities, were at all  
13 relevant times the employer of Defendants SOTO and GARCIA.

14           146. Defendants SOTO and GARCIA committed the acts described  
15 herein while acting within the scope of their employment with the DISTRICT  
16 and/or SELPA of educating, disciplining, and supervising Plaintiffs.

17           147. The DISTRICT and SELPA are therefore vicariously liable for  
18 the actions of its employees acting within the scope of their employment.

19           148. As a direct and proximate result of the actions of Defendants  
20 herein, Plaintiffs are entitled to Damages according to proof, Punitive  
21 Damages (from individual Defendants only), Plaintiffs' reasonable attorneys'  
22 fees, Plaintiffs' costs of suit incurred herein, and such other and further relief  
23 as the Court deems just and proper.

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1 **NINTH CLAIM FOR RELIEF**

2 (Battery - Against Defendants PETRO, El MAHMOUD,  
3 SOTO, GARCIA, the DISTRICT, SELPA, and DOES 1-10)

4 149. Plaintiffs incorporate, by reference herein, the allegations in  
5 paragraphs 1 through 148, as though fully set forth herein.

6 150. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA  
7 intentionally committed acts which resulted in harmful or offensive contact  
8 with the Plaintiffs' person when they committed the acts described herein.

9 151. During the commission of the acts alleged herein, Plaintiffs did  
10 not consent to the contact.

11 152. Defendants PETRO, El MAHMOUD, SOTO, GARCIA's  
12 harmful or offensive contact caused injury or harm to Plaintiffs.

13 153. California Government Code section 820 provides that a public  
14 employee is liable for injury caused by his act or omission to the same extent  
15 as a private person.

16 154. California Government Code section 815.2 provides that a public  
17 entity is liable for injury proximately caused by an act or omission of an  
18 employee of the public entity within the scope of his or her employment.

19 155. The DISTRICT and SELPA, public entities, were at all relevant  
20 times the employer of Defendants PETRO, El MAHMOUD, SOTO, and  
21 GARCIA.

22 156. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA  
23 committed the acts described herein while acting within the scope of their  
24 employment with the DISTRICT and/or SELPA of educating, disciplining,  
25 and supervising Plaintiffs.

26 157. The DISTRICT and SELPA are therefore vicariously liable for  
27 the actions of its employees acting within the scope of their employment.  
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1 158. As a direct and proximate result of the actions of Defendants  
2 herein, Plaintiffs are entitled to Damages according to proof, Punitive  
3 Damages (from individual Defendants only), Plaintiffs' reasonable attorneys'  
4 fees, Plaintiffs' costs of suit incurred herein, and such other and further relief  
5 as the Court deems just and proper.

6 **TENTH CLAIM FOR RELIEF**

7 (Assault - Against Defendants PETRO, El MAHMOUD,  
8 SOTO, GARCIA, the DISTRICT, SELPA, and DOES 1-10)

9 159. Plaintiffs incorporate, by reference herein, the allegations in  
10 paragraphs 1 through 158, as though fully set forth herein.

11 160. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA  
12 demonstrated the unlawful intent to inflict immediate injury on Plaintiffs when  
13 they committed the acts described herein.

14 161. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA's  
15 acts described herein placed Plaintiffs in imminent apprehension of harmful or  
16 offensive contact.

17 162. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA's  
18 harmful or offensive contact caused injury or harm to Plaintiffs.

19 163. California Government Code section 820 provides that a public  
20 employee is liable for injury caused by his act or omission to the same extent  
21 as a private person.

22 164. California Government Code section 815.2 provides that a public  
23 entity is liable for injury proximately caused by an act or omission of an  
24 employee of the public entity within the scope of his or her employment.

25 165. The DISTRICT and SELPA, public entities, were at all relevant  
26 times the employer of Defendants PETRO, El MAHMOUD, SOTO, and  
27 GARCIA.

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1 166. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA  
2 committed the acts described herein while acting within the scope of their  
3 employment with the DISTRICT and/or SELPA of educating, disciplining,  
4 and supervising Plaintiffs.

5 167. The DISTRICT and SELPA are therefore vicariously liable for  
6 the actions of its employees acting within the scope of their employment.

7 168. As a direct and proximate result of the actions of Defendants  
8 herein, Plaintiffs are entitled to Damages according to proof, Punitive  
9 Damages (from individual Defendants only), Plaintiffs' reasonable attorney's  
10 fees, Plaintiffs' costs of suit incurred herein, and such other and further relief  
11 as the Court deems just and proper.

12 **ELEVENTH CLAIM FOR RELIEF**

13 (Intentional Infliction of Emotional Distress - Against Defendants PETRO, EL  
14 MAHMOUD, SOTO, GARCIA, the DISTRICT, SELPA, and DOES 1-10)

15 169. Plaintiffs incorporate, by reference herein, the allegations in  
16 paragraphs 1 through 168, as though fully set forth herein.

17 170. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA  
18 engaged in extreme and outrageous conduct when they intentionally  
19 committed the acts described herein.

20 171. As a result of Defendants PETRO, El MAHMOUD, SOTO, and  
21 GARCIA's extreme and outrageous conduct, Plaintiffs have suffered severe  
22 emotional distress.

23 172. California Government Code section 820 provides that a public  
24 employee is liable for injury caused by his act or omission to the same extent  
25 as a private person.

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1 173. California Government Code section 815.2 provides that a public  
2 entity is liable for injury proximately caused by an act or omission of an  
3 employee of the public entity within the scope of his or her employment.

4 174. The DISTRICT and SELPA, public entities, were at all relevant  
5 times the employer of Defendants PETRO, El MAHMOUD, SOTO, and  
6 GARCIA.

7 175. Defendants PETRO, El MAHMOUD, SOTO, and GARCIA  
8 committed the acts described herein while acting within the scope of their  
9 employment with the DISTRICT and/or SELPA of educating, disciplining,  
10 and supervising Plaintiffs.

11 176. The DISTRICT and SELPA are therefore vicariously liable for  
12 the actions of its employees acting within the scope of their employment.

13 177. As a direct and proximate result of the actions of Defendants  
14 herein, Plaintiffs have sustained Damages according to proof.

15 178. Defendants' conduct constitutes a knowing disregard for the  
16 rights and safety of Plaintiffs sufficient to justify an award of Punitive  
17 Damages against the individual Defendants.

18 179. Plaintiffs are entitled to recover their reasonable attorney's fees  
19 and costs.

20 **TWELFTH CLAIM FOR RELIEF**

21 (Negligent Supervision - Against Defendants PETRO, GOENS, SHIELDS,  
22 EL MAHMOUD, SOTO, GARCIA, YALES, AMANCIO, KRIVAN,  
23 MURILLO, GREEN, the DISTRICT, SELPA, MARTINEZ, in his Official  
Capacity only, and DOES 1-10).

24 180. Plaintiffs incorporate, by reference herein, the allegations in  
25 paragraphs 1 through 179, as though fully set forth herein.

26 181. Defendants had a legal duty to exercise reasonable care in  
27 supervising "special needs" students in its charge pursuant to California  
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1 Education Code section 44807 and may be held liable for injuries proximately  
2 caused by the failure to exercise such care.

3 182. Plaintiffs are “special needs” students whom are particularly  
4 vulnerable and dependent upon the Defendants, who, correspondingly, had  
5 control over Plaintiffs’ welfare.

6 183. Defendants El MAHMOUD, SOTO, GARCIA, and PETRO  
7 breached his/her duties by failing to exercise reasonable care in supervising  
8 Plaintiffs while on the DISTRICT grounds when he/she inflicted the abuse  
9 described herein.

10 184. Defendants SHIELDS, YALES, AMANCIO, MURILLO,  
11 GREEN, and KRIVAN breached his/her duties by failing to exercise  
12 reasonable care in supervising Plaintiffs while on the DISTRICT grounds  
13 during the abuse described herein.

14 185. The DISTRICT, SELPA, and MARTINEZ breached their duties  
15 to Plaintiffs when they failed to supervise Plaintiffs and their employees while  
16 Plaintiffs were on the DISTRICT grounds during the abuse described herein  
17 and failed to ensure their teachers and classroom aides were adequately trained  
18 and provided proper supervision.

19 186. Defendants were aware of the probable dangerous consequences  
20 of their conduct, and willfully and deliberately failed to avoid those  
21 consequences. Defendants knew, or should have known, it was highly  
22 probable that harm would result from their actions described herein.

23 187. California Government Code section 820 provides that a public  
24 employee is liable for injury caused by his act or omission to the same extent  
25 as a private person.

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1 188. California Government Code section 815.2 provides that a public  
2 entity is liable for injury proximately caused by an act or omission of an  
3 employee of the public entity within the scope of his or her employment.

4 189. The DISTRICT and SELPA, public entities, were at all relevant  
5 times the employer of Defendants PETRO, GOENS, SHIELDS, EI  
6 MAHMOUD, SOTO, GARCIA, YALES, AMANCIO, MURILLO, GREEN,  
7 and KRIVAN.

8 190. Defendants PETRO, GOENS, SHIELDS, EI MAHMOUD,  
9 SOTO, GARCIA, YALES, AMANCIO, MURILLO, GREEN, and KRIVAN  
10 committed the acts described herein while acting within the scope of their  
11 employment with the DISTRICT and/or SELPA of educating, disciplining,  
12 and supervising Plaintiffs.

13 191. The DISTRICT and SELPA are therefore vicariously liable for  
14 the actions of its employee acting within the scope of their employment.

15 192. As the direct and proximate result of Defendants' negligence,  
16 Plaintiffs suffered and continue to suffer physical abuse and severe emotional  
17 distress.

18 193. As a direct and proximate result of the actions of Defendants  
19 herein, Plaintiffs are entitled to Damages according to proof.

20 **THIRTEENTH CLAIM FOR RELIEF**

21 (Negligence - Against PETRO, GOENS, SHIELDS, EI MAHMOUD, SOTO,  
22 GARCIA, YALES, AMANCIO, MURILLO, GREEN, and KRIVAN, the  
23 DISTRICT, SELPA, MARTINEZ, in his Official Capacity only, and  
DOES 1-10).

24 194. Plaintiffs incorporate, by reference herein, the allegations in  
25 paragraphs 1 through 193, as though fully set forth herein.

1           195. California law has long imposed on school authorities a duty to  
2 supervise at all times the conduct of children on school grounds and to enforce  
3 those rules and regulations necessary for their protection.

4           196. As set forth extensively above, Defendants breached their duties,  
5 statutory and otherwise, to provide Plaintiffs with a learning environment free  
6 from abuse.

7           197. Defendants were aware of the probable dangerous consequences  
8 of their conduct, and willfully and deliberately failed to avoid those  
9 consequences. Defendants knew, or should have known, it was highly  
10 probable that harm would result from their actions described herein.

11           198. As the actual and proximate cause of Defendant's negligence,  
12 Plaintiffs suffered and continue to suffer physical abuse and severe emotional  
13 distress.

14           199. California Government Code section 820 provides that a public  
15 employee is liable for injury caused by his act or omission to the same extent  
16 as a private person.

17           200. California Government Code section 815.2 provides that a public  
18 entity is liable for injury proximately caused by an act or omission of an  
19 employee of the public entity within the scope of his or her employment.

20           201. The DISTRICT and SELPA, public entities, were at all relevant  
21 times the employer of Defendants PETRO, GOENS, SHIELDS, EI  
22 MAHMOUD, SOTO, GARCIA, YALES, AMANCIO, MURILLO, GREEN,  
23 and KRIVAN.

24           202. Defendants PETRO, GOENS, SHIELDS, EI MAHMOUD,  
25 SOTO, GARCIA, YALES, AMANCIO, MURILLO, GREEN, and KRIVAN  
26 committed the acts described herein while acting within the scope of his/her  
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1 employment with the DISTRICT and/or SELPA of educating, disciplining,  
2 and supervising Plaintiffs.

3 203. The DISTRICT and SELPA are therefore vicariously liable for  
4 the actions of its employee acting within the scope of his/her employment.

5 204. As a direct and proximate result of the actions of Defendants  
6 herein, Plaintiffs have and continue to sustain Damages according to proof.

7 **FOURTEENTH CLAIM FOR RELIEF**

8 (Violation of California Education Code §§ 200, 201, 220, and 260 *et seq.* -  
9 Against MARTINEZ in his Official Capacity only)

10 205. Plaintiffs incorporate, by reference herein, the allegations in  
11 paragraphs 1 through 204, as though fully set forth herein.

12 206. Plaintiffs are individuals with disabilities within the meaning of  
13 Section 220 of the California Education Code.

14 207. Defendants the DISTRICT and SELPA receive financial  
15 assistance from the State of California sufficient to invoke the coverage of  
16 sections 220 and 260, *et seq.*, of the California Education Code.

17 208. By his actions or inactions in failing to enact an adequate formal  
18 or informal policy to ensure that the DISTRICT is providing a learning  
19 environment free from discrimination on the basis of disability as provided in  
20 California Education Code section 220, Defendant MARTINEZ denied  
21 Plaintiffs' rights under Sections 200, 201, 220, and 260, *et seq.*, of the  
22 California Education Code and the regulations promulgated thereunder.

23 209. Plaintiffs have no adequate remedy at law. Unless the relief  
24 requested herein is granted, Plaintiffs will suffer irreparable harm in that they  
25 will continue to be denied a learning environment free from discrimination on  
26 the basis of disability as provided in California Education Code section 220.

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1 210. As a proximate cause of the actions of Defendants herein,  
 2 Plaintiffs are entitled to an order and judgment enjoining Defendants from  
 3 violating Plaintiffs’ rights under California Education Code sections 200, 201,  
 4 220, and 260, *et seq.*, a Declaration that Defendants’ actions or omissions  
 5 violate Plaintiffs’ rights under California Education Code sections 200, 201,  
 6 220, and 260, *et seq.*, and reasonable attorneys’ fees and costs.

7 **FIFTEEN CLAIM FOR RELIEF**

8 (Violation of the Equal Protection Clause of the California Constitution,  
 9 Article I, Section 7(a) & Article IV Section 16(a) - Against PETRO,  
 10 GOENS, SHIELDS, EI MAHMOUD, SOTO, GARCIA, YALES,  
 11 AMANCIO, MURILLO, GREEN, KRIVAN, the DISTRICT, SELPA,  
 12 MARTINEZ, in his Official Capacity only, and DOES 1-10)

13 211. Plaintiffs incorporate, by reference herein, the allegations in  
 14 paragraphs 1 through 210, as though fully set forth herein.

15 212. Defendants’ actions have violated and continue to violate  
 16 Plaintiff’s right not to be deprived of equal protection of the laws under  
 17 California Constitution, Article I, Section 7(a) & Article IV Section 16(a), in  
 18 that Plaintiffs, who are students with disabilities, are either not provided  
 19 programs, services, and activities that are provided to non-disabled students,  
 20 or are provided programs, services, and activities that are not equal to, and are  
 21 inferior to, the services provided to students that are not physically disabled.  
 22 Plaintiff students in fact were abused because of their disabilities, which  
 23 amounts to disability discrimination.

24 213. Defendants PETRO, GOENS, SHIELDS, EI MAHMOUD,  
 25 SOTO, GARCIA, YALES, AMANCIO, MURILLO, GREEN, and KRIVAN  
 26 committed the acts described herein while acting within the scope of his/her  
 27 employment with the DISTRICT and/or SELPA of educating, disciplining,  
 28 and supervising Plaintiffs.

1 214. The DISTRICT and SELPA are also therefore vicariously liable  
2 for the actions of its employee acting within the scope of his/her employment.

3 215. As a proximate cause of the actions of Defendants herein,  
4 Plaintiffs are entitled to an order and judgment enjoining Defendants from  
5 violating Plaintiffs' rights to equal protection under the California Constitution  
6 and a Declaration that Defendants' actions or omissions violate Plaintiffs'  
7 rights to equal protection under the California Constitution.

8 WHEREFORE, Plaintiffs pray for relief as follows:

9 **PRAYER FOR RELIEF**

10 1. For an order and judgment enjoining Defendants from violating  
11 the Americans with Disability Act; Section 504 of the  
12 Rehabilitation Act of 1973; California Civil Code sections 51, *et*  
13 *seq.*, California Civil Code sections 54, *et seq.*, California  
14 Government Code section 11135, *et seq.*, California Education  
15 Code sections 200, 201, 220, and 260, *et seq.*, the California  
16 Constitution, and the United States Constitution;

17 2. For a Declaration that the POMONA UNIFIED SCHOOL  
18 DISTRICT'S policies, practices, or procedures concerning the  
19 improper discipline/behavior management of children with  
20 disabilities denied their right to full and equal access to, and use  
21 and enjoyment of, the facilities, programs, services, and activities  
22 of POMONA UNIFIED SCHOOL DISTRICT as required by  
23 law;

24 3. For a Declaration that Defendants' actions or omissions violate  
25 Plaintiffs' rights to substantive due process under the Constitution  
26 of the United States;

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- 4. For a Declaration that Defendants’ actions or omissions violate Plaintiffs’ rights to equal protection under the Constitution of the United States;
- 5. For a Declaration that Defendants’ actions or omissions violate Plaintiffs’ rights under the Fourth Amendment to the Constitution of the United States;
- 6. For a Declaration that Defendants’ actions or omissions violate Plaintiffs’ rights under the Equal Protection Clause of the California Constitution;
- 7. For damages according to proof;
- 8. For punitive damages (against individual Defendants only);
- 9. For Plaintiffs’ reasonable attorneys’ fees;
- 10. For costs of suit incurred herein; and
- 11. For such other and further relief as the Court deems just and proper.

Dated: October 7, 2015

PILLSBURY WINTHROP SHAW PITTMAN LLP

By:   /s/ Christine A. Scheuneman    
Christine A. Scheuneman

Dated: October 7, 2015

DISABILITY RIGHTS LEGAL CENTER

By:   /s/ Elizabeth Eubanks    
Elizabeth Eubanks  
Attorneys for Plaintiffs

**ATTESTATION**: The filer attests that concurrence in the filing of this document has been obtained from the signatories thereto.

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**JURY DEMAND**

Plaintiffs hereby demand a jury trial.

Dated: October 7, 2015          PILLSBURY WINTHROP SHAW PITTMAN LLP

By:     /s/ Christine A. Scheuneman      
Christine A. Scheuneman

Dated: October 7, 2015          DISABILITY RIGHTS LEGAL CENTER

By:     /s/ Elizabeth Eubanks      
Elizabeth Eubanks  
Attorneys for Plaintiffs

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