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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 S.G., a minor, by and through her guardian
17 *ad litem*, Brittany Dorn; A.D.G., and R.L.,
18 minors, by and through their guardian *ad*
19 *litem*, Derek Spencer; N.B., a minor, by
20 and through his guardian *ad litem*, Araceli
21 Boyce; A.G., a minor, by and through his
22 guardian *ad litem*, Karla Garcia;
23 CHRISTAL LORD; and DYANNA
24 SANABRIA; individually and as class
25 representatives;

26 *Plaintiffs,*

27 vs.

28 CITY OF LOS ANGELES, VINCENT
BERTONI, HIRO KOBAYASHI, 3568
MOTOR LLC, AND DOES 1 THROUGH
10.

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

1. VIOLATION OF CIVIL RIGHTS
42 U.S.C. §12101, *et seq*, Americans
with Disabilities Act
2. VIOLATION OF CIVIL RIGHTS
29 U.S.C. §794, *et seq*, Sec. 504 of
the Rehabilitation Act
3. VIOLATION OF CIVIL RIGHTS
42 U.S.C. §1983, Fourteenth
Amendment
4. VIOLATION OF CIVIL RIGHTS
42 U.S.C. §1983, Conspiracy

DEMAND FOR JURY TRIAL

I. INTRODUCTION

- 1
2 1. This lawsuit stands between 350 elementary school children and their teachers on
3 one side – and grave risks of cancer, far beyond legal limits – on the other.
- 4 2. For the several days prior to filing this action, through several pleas and
5 entreaties to officials, these children and their teachers have fought to no avail to
6 protect their health – and their lives. Meanwhile City of Los Angeles (“City”)
7 officials continued to confer, collaborate and conspire with a developer who
8 proposes to engage in a towering demolition, excavation and construction project
9 on the fence-line of the kindergarten playground at Palms Elementary School.
- 10 3. Per the City and developer’s own documentation, the project will send toxic dust,
11 vapors, PM2.5 and PM10 particles, volatile organic compounds, reactive organic
12 gases, NOx gas, and other poisonous contaminants into the air covering the
13 children’s playground and the school. Additionally, many of the children at Palms
14 Elementary School are in the Deaf and Hard of Hearing program and wear sound
15 amplifying listening devices to accommodate their disabilities. The construction
16 noise from the project will cause them pain and prevent them from learning.
- 17 4. Nevertheless, through backroom deals, and meetings with politicians where
18 parents were specifically excluded, the City and developer have pushed the
19 project through the approval process – with no Environmental Impact Review, no
20 Health Risk Analysis, and none of the standard protective measures for the 350+
21 children, or their teachers.
- 22 5. Neither the City, nor the developer, served the children, their parents, nor their
23 teachers, with notice of the planned construction, much less information about the
24 impacts of the construction, and the harm currently scheduled to befall them.
- 25 6. When the children’s parents and teachers first found out about the construction
26 project, and expressed concerns, the developer sought to placate them by offering
27 to *paint their handball wall*; their City councilman’s, Paul Koretz’, office told
28 them not to “*take it personally.*”

1 7. Every department, administrator and/or official supposedly in place to protect the
2 children and teachers of Palms Elementary School has failed them. The children
3 and teachers now seek justice and protection through this action, in this Court.
4

5 **II. JURISDICTION AND VENUE**

6 8. The children and their teachers (“Plaintiffs”) present federal claims for relief
7 under 42 U.S.C. §1983. Accordingly, federal jurisdiction is conferred upon this
8 Court by 28 U.S.C. §§ 1331 and 1343. Plaintiffs' claims arise out of acts of the
9 City of Los Angeles in concert, agreement and conspiracy with the developer, in
10 the County of Los Angeles, State of California. Accordingly, venue is proper
11 within the Central District of California.
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13

14 **III. PARTIES**

15 **A. PLAINTIFFS**

16 9. S.G., A.D.G., R.L., N.B., and A.G., are all minors who currently attend, and at
17 all times material herein, attended as pupils Palms Elementary School, located at
18 3520 Motor Avenue, in the City of Los Angeles, California. Each of them are
19 private residents in the County of Los Angeles, State of California. Each of them
20 brings suit individually, and as a class representative. Plaintiffs S.G., A.D.G.,
21 R.L., and N.B. are qualified individuals with disabilities under the ADA and
22 Section 504.

23 10. Plaintiff CHRISTAL LORD (“Lord”) is a private resident in the County of Los
24 Angeles, State of California. She is currently employed as a teacher at Palms
25 Elementary School, and at all times material herein, she was so employed. She
26 sues individually and as a class representative.

27 11. DYANNA SANABRIA (“Sanabria”) is a private resident in the County of Los
28 Angeles, State of California. She is currently employed as a teacher’s assistant at

1 Palms Elementary School, and at all times material herein, she was so employed.
2 She sues individually and as a class representative. Plaintiff Sanabria is a
3 qualified individual with a disability under the ADA and Section 504.
4

5 B. DEFENDANTS

6 12. Defendant City of Los Angeles ("City") is a public entity organized and existing
7 under the laws of the State of California. This defendant is sued in its own right
8 for City policies, practices and/or customs which cause plaintiffs' injuries in
9 violation of one or more federal constitutional guarantees, and on plaintiffs' state
10 law claims based on *respondeat superior*, under California Government Code
11 §815.2 and mandatory duties under California Government Code §815.6. The
12 City is a public entity for purposes of Title II of the ADA, and receives federal
13 financial assistance for purposes of Section 504.

14 13. Defendant Vincent Bertoni ("Bertoni") is, and at all times material herein was,
15 the Director of City Planning for the City of Los Angeles. As such, Bertoni is a
16 supervisor and policy-maker for the City. Defendant Hiro Kobayashi is, and
17 at all time material herein was, the developer ("Developer") of the "3568 Motor
18 Avenue" project ("the Project"), located in the City of Los Angeles, currently
19 scheduled to be built on the fence-line of Palms Elementary School. By contract,
20 defendant Kobayashi is personally obligated to defend, indemnify and hold
21 harmless the City of Los Angeles as to all legal actions related to the Project.

22 14. Defendant 3568 Motor LLC ("the LLC") is, upon information and belief, the
23 business entity formed and constituting the Project. At all times material herein,
24 the LLC was registered with the California Secretary of State, having its business
25 address in the County of Los Angeles.

26 15. Plaintiffs are ignorant of the true names and capacities of defendants sued herein
27 as DOES 1 through 10, inclusive, and therefore sue these defendants by such
28 fictitious names. Plaintiffs will give notice of this complaint, and of one or more

1 DOES' true names and capacities, when ascertained. Plaintiffs allege, based on
2 information and belief, that defendants DOES 1 through 10 are responsible in
3 some manner for the damages and injuries hereinafter complained of.

4 16. Upon information and belief, plaintiffs further allege that, at all times relevant
5 herein, Bertoni and/or Supervisory Doe defendants participated in, approved,
6 and/or ratified the unconstitutional and/or illegal acts complained of herein.

7 17. Plaintiffs are informed and believe that at all times relevant herein, the individual
8 defendants, and each of them, were the agents, servants and employees of each
9 other and/or their respective employers and were acting at all times within the
10 scope of their agency and employment, and with the knowledge and consent of
11 their principals and employers. At all times herein, defendants, and each of them,
12 acted in coordination with, approval of, and in conspiracy with one another. At
13 all times herein, defendants, and each of them, were acting under the color of law
14 – directly, and/or by conspiracy. All said defendants, and each of them, ratified
15 the aforesaid conduct committed under color of law. All entity defendants are
16 liable for the acts of their public employees, the individual defendants herein, for
17 conduct and/or omissions herein alleged, pursuant to the doctrine of Respondeat
18 Superior, codified at California Government Code § 815.2.

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IV. CLAIMS OF CLASS REPRESENTATIVES

18.Plaintiff S.G. is a student with a disability at Palms Elementary School. As an
accommodation for her disability-related learning needs, she wears a sound
amplifying listening device and participates in the school’s Deaf and Hard of
Hearing (“DHH”) program as part of her Individualized Education Program
 (“IEP”). In her classroom, as in all of the DHH classrooms, sound is controlled
via use of carpets on the classroom floor, fabric on the walls, and a drop ceiling
to minimize sound reverberation.

1 19. Sound control is necessary for the DHH classrooms because acoustic
2 interruptions are amplified and make it impossible for students who are new to
3 sounds to discern which sounds are voices and sources of information which
4 need to be interpreted, as opposed to sounds which should be filtered out as
5 noise. Background noise causes early attention fatigue. Amplification of sharp
6 unexpected sounds is painful because there is no chance to adjust volume, and
7 ongoing repetitive sounds are annoying and cause headaches.

8 20. Plaintiff A.D.G. is a student with a disability at Palms Elementary School. He
9 wears a sound amplifying listening device but does not participate in the DHH
10 program. For Plaintiff A.D.G., background noise is distracting and causes an
11 inability to focus. Amplification of sharp unexpected sounds can be painful and
12 ongoing repetitive sounds can be annoying and cause headaches.

13 21. Plaintiff N.B. is a student with a disability at Palms Elementary School. As an
14 accommodation for his disability-related learning needs, his IEP includes
15 services related to Autism Spectrum Disorder. As a result of his disability he is
16 easily and severely distracted by loud noises. Additionally, N.B. has been
17 diagnosed with mastocytosis. Environmental changes caused by dust, fumes and
18 chemicals have the high probability of triggering an anaphylactic allergic reaction
19 which could result in N.B.'s death.

20 22. Plaintiff R.L. is a student with a disability at Palms Elementary School. He has an
21 IEP and accommodations for his disability-related learning needs associated with
22 speech and language impairment. Loud noises distract his attention and interfere
23 with his ability to receive, interpret and replicate word formation, as well as
24 linguistic distinctions in intonation, inflection and cadence – which are necessary
25 to mastering effective communication, and effectively accessing and participating
26 in his curriculum.

27 23. Plaintiff A.G. is a student at Palms Elementary School. Like many elementary
28 school students, he is vibrant, curious, and intellectually agile. He also has

1 reactions to noise, dust and fumes which are manageable when not in quantities
2 above normal. However, when noise, dust and fumes are in increased quantities,
3 A.G. is distracted and cannot focus on his educational activities.

4 24.Plaintiff Lord is a teacher at Palms Elementary School. She spends no less than
5 six hours per day, five days per week inside of, and on the grounds surrounding,
6 the buildings comprising Palms Elementary School.

7 25.Plaintiff Sanabria is a teacher's assistant at Palms Elementary School. She spends
8 several hours per day, on mulitple days per week inside of, and on the grounds
9 surrounding, the buildings comprising Palms Elementary School. She is a cancer
10 survivor, but remains under doctor's instructions to limit exposure to
11 carcinogens, and is highly susceptible to relapse.

12 26.Palms Elementary is a pre-K through 5 primary school located in a fast-
13 developing section of West L.A., with a population of approximately 350 young
14 children. The vast majority of its student body is composed of minority students.
15 82.2% of the students are classified by the California Department of Education as
16 socioeconomically disadvantaged. 36% of the students are English learners. The
17 school is also the site of one of LAUSD's four Deaf and Hard of Hearing
18 program dedicated sites, a unique and specialized program designed to address
19 the needs of this population of young students.

20 27.Palms Elementary School is immediately adjacent the proposed construction
21 project. Moreover, the kindergarten playground is on the fence-line of the
22 Project. The Project will involve multiple years of demolition, excavation and
23 construction. The developer has indicated that the project is currently scheduled
24 to begin on December 18, 2017. The City has not conducted or required an
25 Environmental Impact Review, Health Risk Analysis, or any other protective
26 measures for the 350+ children, or their teachers, who will be at Palms
27 Elementary during the Project.

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1 28. During each school day at Palms Elementary School, the children eat lunch in the
2 outdoor areas with teachers and teaching assistants. The children also run, play,
3 breathe heavily and roll around on the ground in their outdoor play areas.

4 29. Per the City and developer's own documentation, the project will send toxic dust,
5 vapors, PM2.5 and PM10 particles, volatile organic compounds, reactive organic
6 gases, NOx gas, and other poisonous contaminants into the air covering the
7 children's playground and the school.

8 30. Plaintiffs are informed and believe that developer applied to the City for approval
9 to engage in the Project at some time in 2016.

10 31. As part of the approval process for developer's application, City and Bertoni
11 were required to perform a California Environmental Quality Act ("CEQA")
12 analyses to determine, lessen and/or eliminate any adverse environmental impacts
13 developer's Project would have on the community surrounding the Project.

14 32. At the earliest phases of community and environmental impact screening – the
15 exemption phase, developers are given the green light to move ahead with
16 demolition, excavation and construction projects that the Planning Dept. labels as
17 "exempt" for not crossing predetermined templates of environmental "thresholds
18 of significance."

19 33. Exemptions granted based upon these predetermined thresholds purportedly
20 mean that a project will have no significant impact on the environment, including
21 the people, surrounding the project. Plaintiff alleges, upon information and belief,
22 that in the case of persons with disabilities, this is simply untrue.

23 34. The predetermined thresholds used to exempt the projects do not include
24 consideration of persons with disabilities. Instead, the thresholds are set based
25 upon consideration of what is appropriate for persons under "normally
26 acceptable" circumstances.

27 35. City's Planning Dept.'s use of this process to exempt and approve projects is
28 discriminatory and it is harmful to adults and children with disabilities in Los

1 Angeles. Plaintiffs’ allege that City’s use of this discriminatory process
2 contributed to some, if not all, of their harm in this case.

3 36.Plaintiffs are informed and believe that in addition to the discriminatory process
4 used to screen developer’s application, developer’s application itself was flawed
5 in that developer intentionally omitted and misrepresented information in his
6 applications and filings to the City so as to secure further expedited processing
7 and environmental exemptions from the City for the Project.

8 37.Plaintiffs are informed and believe that City employees and officials were aware
9 of developer’s omissions and misrepresentations, but nevertheless made
10 arrangements and agreements with developer to expedite and approve the Project
11 contrary to law, as well as contrary to City’s own procedures.

12 38.Plaintiffs are informed and believe that on and before September 1, 2017, City
13 and developer were well aware that the children and teachers of Palms
14 Elementary School, as well as the school itself, were immediately adjacent to the
15 Project.

16 39.Plaintiffs are informed and believe that City and developer met and collaborated
17 to determine, plan and execute measures to sidestep legal and/or administrative
18 requirements and protocol which would have resulted in a notice to, and
19 participation by, plaintiffs and other similarly situated persons in the approval
20 process of the Project.

21 40.Plaintiffs are informed and believe that City and developer intentionally chose
22 not to send notice of the Project to the Palms children’s parents.

23 41.Plaintiffs are informed and believe that City and developer intentionally chose
24 not to send notice of the Project to the Palms teachers.

25 42.On September 1, 2017, City and Bertoni issued a “Director’s Determination”
26 letter (“Bertoni letter”) approving the Project, expediting it, and exempting it
27 from environmental review – even though it does not otherwise qualify to be
28 expedited or exempt from environmental review.

1 43. Page 13 of the Bertoni letter specifically states:

2 “Construction activities involving grading and foundation preparation
3 would primarily generate PM2.5 and PM10 emissions. Mobile sources
4 (such as diesel-fueled equipment onsite and traveling to and from the
5 Project Site) would primarily generate NOx emissions. The application
6 of architectural coatings would result primarily in the release of ROG
7 emissions. The amount of emissions generated on a daily basis would
8 vary, depending on the amount and types of construction activities
9 occurring at the same time.”

10 44. Exposure to these and other toxins, and the construction noise from the Project, is
11 scheduled to last at least two years.

12 45. The Bertoni letter also stated that the period within which to appeal the approval
13 ended on September 18, 2017. However, the Bertoni letter limited the group of
14 persons who could appeal to only owners or tenants of adjacent or abutting
15 property.

16 46. Plaintiffs and the children’s parents are not owners or tenants of property
17 abutting or adjacent the Project. They were not mailed notice of the Project.
18 Plaintiffs and parents became aware of the Bertoni letter only after they became
19 aware of the Project, on or near the Thanksgiving holiday of 2017 – purely by
20 way of rumor and happenstance.

21 47. Since becoming aware of the Bertoni letter, Palms parents and teachers have
22 made daily calls and sent daily emails to Bertoni’s office, LA City Councilman
23 Paul Koretz’ office, and various other City offices to ask to have their objections
24 heard as to the project. Without exception, plaintiffs and parents have been told
25 that it is too late to object to the project, and denied opportunities to have their
26 objections heard.

27 48. On and before November 30, 2017, Koretz’ office held a number of so-called
28 community meetings to discuss the project. Koretz’ office invited the developer

1 and purported neighborhood stakeholders, but refused to allow the meetings to be
2 attended by any, or even one, Palms parent. During a phone call with one of the
3 parents, Koretz’ office took the express position that any persons who were not in
4 favor of the project were not allowed to attend the meetings. After being
5 confronted with the fact that the meeting were very important because the
6 wellbeing of children was at stake, Koretz’ representative responded that the
7 parent should not “take it personally.”

8 49. Koretz’ office also expressly banned plaintiff Lord from attending and being
9 heard at the meetings. Plaintiff Lord was banned from the meetings because in an
10 earlier meeting she made statements in opposition to the Project.

11 50. The City, Bertoni, Koretz’ office and developer have made a concerted effort to
12 deny plaintiffs and parents the right and opportunity to know anything about the
13 project, be heard about it, or have the benefit of an environmental study of it.

14 51. Nevertheless, plaintiffs obtained an expedited review and analysis of the Bertoni
15 letter and Project from Dr. Paul Rosenfeld, a respected environmental scientist.
16 Dr. Rosenfeld’s December 5, 2017, review concluded that a proper health
17 analysis was necessary because the Project could result in significant cancer risks
18 to nearby adults and children far exceeding acceptable thresholds.

19 52. To date, the City has required no analysis from developer, including no
20 environmental impact report or health risk analysis. There are no protections
21 mandated for the children and their teachers at Palms Elementary School.

22

23 **V. CLASS ACTION ALLEGATIONS**

24 **A. COMMON FACTUAL ALLEGATIONS**

25 53. Plaintiffs are informed and believe that all children, teachers and staff at Palms
26 Elementary school work, play, live and breathe in the air in and near the indoor
27 and outdoor spaces of Palms Elementary School on a daily basis, and that they
28

1 will all be exposed to increased risks of cancer and other health concerns from
2 the toxins emitted by the Project.

3 54.Plaintiffs are informed and believe that numerous children at Palms Elementary
4 with IEPs will have their IEPs disrupted, diminished or made completely
5 unworkable by the noise emitted by the Project.

6 55.Plaintiffs are informed and believe that all children at Palms Elementary,
7 regardless of whether or not they have IEPs, will have their learning
8 environments disrupted and made ineffective by the noise and toxins emitted by
9 the Project.

10 56.Plaintiffs are informed and believe that none of the plaintiffs and parents at Palms
11 Elementary received notice of the Project prior to its approval, or its approval
12 becoming final.

13 57.On information and belief, plaintiffs allege the City's approval of land
14 development projects to the detriment of persons who are in harm's way without
15 notice, and intentional and systematic exclusion of persons in harm's way from
16 participation in opportunities to be heard, are/were done pursuant to defendants'
17 City's and Bertoni's policy and practice of failing to conform their actions to the
18 requirements of the law under the First and Fourteenth Amendments to the
19 federal Constitution, and applicable federal law.

20 58.On information and belief plaintiffs allege that defendants City, Bertoni and
21 DOES 1 through 10 conspired with developer, 3568 Motor LLC, and each other,
22 to commit the acts complained of herein, for political and financial benefit. On
23 information and belief, plaintiffs further allege that plaintiffs were subjected to
24 defendants' conduct entirely, or in part, because plaintiffs are, and/or attend or
25 work at a school which is, classified as socio-economically disadvantaged and/or
26 majority ethnic/racial minority.

27 59.Plaintiffs bring this action:
28

1 (i) on their own behalf, and on behalf of a class of all other persons similarly
2 situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class
3 is defined as those persons who work as employees, or who are enrolled as
4 students, at Palms Elementary School as of December 18, 2017;

5 (ii) on their own behalf, and additionally on behalf of a sub-class of all other
6 persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil
7 Procedure. The sub-class is defined as those persons who are enrolled as
8 students, at Palms Elementary School as of December 18, 2017, and who have
9 disabilities for which accommodations are provided as part of an IEP.

10 60. On information and belief, plaintiffs allege that defendants will engage in the
11 demolition, excavation and construction attendant to the Project, and continue
12 their aforementioned policy and practice of failing to give notice and denying
13 persons in harm's way opportunities to be heard unless enjoined and restrained
14 by the court. Without injunctive relief applicable to the class and sub-class
15 (hereinafter collectively referred to as "class") as a whole, the class members will
16 suffer irreparable harm for which there is no adequate remedy at law in that their
17 constitutional and statutory rights will be violated.

18 B. RULE 23 PREREQUISITES

19 I. Numerosity

20 61. In accordance with FRCP Rule 23(a) the members of the class are so numerous
21 that joinder of all members is impracticable. Plaintiffs understand the number of
22 class members to exceed 350 students, plus their teachers and staff persons at
23 Palms Elementary School. Plaintiffs are informed and believe and thereon allege
24 that the number of persons in the proposed class is in the hundreds.

25 II. Common Issues of Fact or Law

26 62. In accordance with FRCP Rule 23(a), there are questions of fact common to the
27 class. Plaintiffs are informed and believe and thereon allege that the common
28 questions of fact include, but are not limited to the following: (1) Whether the

1 plaintiffs were entitled to any notice regarding the Project; (2) Whether studies,
2 including an environmental impact report and health risk analysis need to be
3 performed for the Project, (3) Whether the Project poses risks to the health of the
4 plaintiffs; (4) Whether the Project poses risks to the educational interests of the
5 children.

6 63. In accordance with FRCP Rule 23(a), there are questions of law common
7 to the class. Plaintiffs are informed and believe and thereon allege that the
8 common questions of law include but are not limited to the following: (1)
9 Whether the defendants may lawfully visit grave health risks upon school
10 children, at school, before providing any notice to them or their parents; (2)
11 Whether the defendants may lawfully visit grave health risks upon school
12 teachers, at work, before providing any notice to them; (3) Whether the
13 defendants may lawfully infringe upon the educational rights of school children
14 before providing any notice to them or their parents; (4) Whether the defendants
15 may lawfully infringe upon the IEP-based accommodations for special needs of
16 school children before providing any notice to them or their parents; (5) Whether
17 the City's policy of denying notice and an opportunity to be heard before
18 infringing upon school children's and/or teachers' health and safety, violates the
19 Fourteenth Amendment; (6) Whether the City's policy of denying notice and an
20 opportunity to be heard before infringing upon school children's educational
21 rights, violates the Fourteenth Amendment; (7) Whether the conduct described
22 above constitutes a policy or custom of the defendants; (8) Whether
23 determination of damages suffered by a statistically representative sample of the
24 class provides the basis for determination of all class members' damages except
25 those who opt out of the class: or whether category damages may appropriately
26 be determined for the class members.

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28

1 III. Typicality

2 64. In accordance with FRCP, Rule 23(a) the claims of the representative
3 plaintiffs are typical of the class. Plaintiffs were given no notice or opportunity to
4 be heard before approval of a demolition, excavation and construction project
5 which threatens their constitutionally and/or federally protected health, safety,
6 and for the children – educational interests; approval of the project was done in
7 violation of applicable law and by conspiracy; plaintiffs face imminent,
8 immediate and irreparable harm as a result of defendants' conduct. The same is
9 true for every person who attends or works at the school.

10 65. Thus, plaintiffs have the same interests and have suffered the same type of
11 damages as the class members. Plaintiffs' claims are based upon the same or
12 similar legal theories as the claims of the class members. Each class member
13 faces actual harm as a result of being subjected to defendants' conduct and
14 policies. The harm faced by plaintiffs is similar in type and amount to the harm
15 faced by each class member.

16 66. In accordance with FRCP Rule 23 (a), the representative plaintiffs will fairly and
17 adequately protect the interests of the class. The interests of the representative
18 plaintiffs are consistent with and not antagonistic to the interests of the class.

19 IV. Maintenance and Superiority

20 67. In accordance with FRCP Rule 23(b)(1)(A), prosecutions of separate actions by
21 individual members of the class would create a risk that inconsistent or varying
22 adjudications with respect to individual members of the class would establish
23 incompatible standards of conduct for the parties opposing the class.

24 68. In accordance with FRCP Rule 23(b)(1)(B), prosecutions of separate actions by
25 individual members of the class would create a risk of adjudications with respect
26 to individual members of the class which would, as a practical matter,
27 substantially impair or impede the interests of the other members of the class to
28 protect their interests.

1 69. In accordance with FRCP Rule 23(b)(2), plaintiffs are informed and believe, and
2 thereon allege that the defendants have acted on grounds generally applicable to
3 the class.

4 70. In accordance with FRCP Rule 23(b)(3), the questions of law or fact common to
5 the members of the class predominate over any questions affecting only
6 individual members, and this class action is superior to other available methods
7 for the fair and efficient adjudication of the controversy between the parties.
8 Plaintiffs are informed and believe, and thereon allege that the interest of class
9 members in individually controlling the prosecution of a separate action is low in
10 that most class members would be unable to individually prosecute any action at
11 all. Plaintiffs are informed and believe, and thereon allege that the amounts at
12 stake for individuals are such that separate suits would be impracticable in that
13 most members of the class will not be able to find counsel to represent them.
14 Plaintiffs are informed and believe and thereon allege that it is desirable to
15 concentrate all litigation in one forum because all of the claims arise in the same
16 location, i.e., the County of Los Angeles. It will promote judicial efficiency to
17 resolve the common questions of law and fact in one forum, rather than in
18 multiple courts.

19 71. Plaintiffs do not know the identities of all of the class members. Plaintiffs are
20 informed and believe, and thereon allege that the identities of the class members
21 are ascertainable from school records, in particular computer records used to
22 track employment, enrollment and/or attendance. Plaintiffs are informed and
23 believe, and thereon allege that school records reflect the identities, including
24 addresses and telephone numbers, of the persons who are employed and enrolled
25 at Palms Elementary School.

26 72. Plaintiffs know of no difficulty that will be encountered in the management of
27 this litigation that would preclude its maintenance as a class action. The class
28 action is superior to any other available means to resolve the issues raised on

1 behalf of the class. The class action will be manageable because reliable records
2 systems exist from which to ascertain the members of the class. Liability can be
3 determined on a class-wide basis. Damages can be determined on a class-wide
4 basis using a damages matrix set by a jury, or by trying the damages of a
5 statistically valid sample of the class to a jury and extrapolating those damages to
6 the class as a whole. Moreover, plaintiffs are represented by counsel with class
7 action litigation experience, particularly against the City of Los Angeles.

8 73. In accordance with FRCP Rule 23(b)(3), class members must be furnished with
9 the best notice practicable under the circumstances, including individual notice to
10 all members who can be identified through reasonable effort. Plaintiffs are
11 informed and believe that Palms Elementary School computer employment,
12 enrollment and/or attendance records contain a last known address for class
13 members. Plaintiffs contemplate that individual notice be given to class members
14 at such last known address by first class mail. Plaintiffs contemplate that the
15 notice inform class members of the following:

- 16 A. The pendency of the class action, and the issues common to the class;
- 17 B. The nature of the action;
- 18 C. Their right to 'opt out' of the action within a given time, in which event
19 they will not be bound by a decision rendered in the class action;
- 20 D. Their right, if they do not 'opt out,' to be represented by their own counsel
21 and enter an appearance in the case; otherwise, they will be represented by the
22 named plaintiffs and their counsel; and
- 23 E. Their right, if they do not 'opt out,' to share in any recovery in favor of the
24 class, and conversely to be bound by any judgment on the common issues
25 adverse to the class.

26 74. Plaintiffs restate and incorporate by reference each of the foregoing and ensuing
27 paragraphs in each of the following causes of action as if each paragraph was
28 fully set forth therein.

1 **COUNT ONE - 42 U.S.C. §12131, et seq.**
2 **[AMERICANS WITH DISABILITIES ACT]**
3 **(Plaintiffs With Disabilities Against City)**

4 75. Each and every allegation throughout this entire complaint is incorporated as
5 though repeated and fully set forth herein.

6 76. Title II of the Americans with Disabilities Act (“ADA”), in particular, prohibits
7 discrimination against individuals with disabilities in the provision of services,
8 programs, or activities by public entities. 42 U.S.C. § 12132.

9 77. At all times relevant to this action, the City is a “public entity” within the
10 meaning of Title II of the ADA and provide a program, service or activity to the
11 general public.

12 78. At all times relevant to this action, the children with disabilities attending Palms
13 Elementary School are qualified individuals with disabilities. They are being
14 discriminated against and denied the benefits of the City’s services by being
15 excluded from consideration in the CEQA exemption screening because of their
16 disability. This exclusion unduly burdens them.

17 79. Pursuant to Title II public entities are required to provide meaningful access to
18 their programs, services and activities. Among the requirements to provide
19 meaningful access, public entities must modify their policies and procedures
20 when necessary to accommodate disability related needs, also known as
21 “reasonable accommodation.” 28 C.F.R. §35.130(b)(7). Public entities cannot
22 provide programs, services or benefits to a person with a disability that are not
23 equal to those provided to others or deny a person with a disability the
24 opportunity to participate in programs, services or activities. 28 C.F.R.
25 §35.130(b)(1). Moreover, a public entity may not, directly or through contractual
26 or other arrangements, utilize criteria or methods of administration that have the
27 effect of subjecting qualified individuals with disabilities to discrimination on the
28 basis of disability. 28 C.F.R. §35.130(b)(3)(i).

1 80.The challenged actions and omissions by defendants evince a failure to
2 accommodate plaintiffs. Defendant has done so with deliberate indifference to
3 Plaintiffs' rights under the ADA.

4 81.As a direct and proximate cause of the aforementioned acts, plaintiffs and class
5 members were damaged in an amount to be proven at trial.

6 82.As a result of the foregoing, Plaintiffs and members of the proposed class
7 suffered and continue to suffer injury, including, but not limited to, denial of
8 meaningful access to the benefits of Defendant's program.

9 83.Because Defendant's discriminatory and wrongful conduct is ongoing,
10 declaratory and injunctive relief are appropriate remedies. Plaintiffs seek
11 injunctive relief and attorneys' fees as a result.

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14 **COUNT TWO - 29 U.S.C. § 794(a)**

15 **[SECTION 504 OF THE REHABILITATION ACT OF 1973]**

16 **(Plaintiffs with Disabilities Against City)**

17 84.Each and every allegation throughout this entire complaint is incorporated as
18 though repeated and fully set forth herein.

19 85.Section 504 requires that "[n]o otherwise qualified individual with a disability in
20 the United States . . . shall, solely by reason of her or his disability, be excluded
21 from the participation in, be denied the benefits of, or be subjected to
22 discrimination under any program or activity receiving Federal financial
23 assistance." 29 U.S.C. § 794(a).

24 86.At all times relevant to this action, the City was a public entity receiving federal
25 financial assistance.

26 87.Under Section 504 public entities are required to provide meaningful access to
27 their programs, services and activities, and must provide reasonable
28 accommodations. Specifically, the aids, benefits and services may not deny a

1 person with a disability "an equal opportunity to achieve the same benefits that
2 others achieve in the program or activity". 28 C.F.R. 42.503(B)(1)(ii).

3 88. At all times relevant to this action, the children with special needs attending
4 Palms Elementary School are qualified individuals with disabilities. They are
5 being discriminated against and denied the benefits of the City's services by
6 being excluded from consideration in the CEQA exemption screening because of
7 their disability. This exclusion unduly burdens them.

8 89. Defendants acted in violation of Section 504 through failing to provide a full and
9 meaningful CEQA screening program that did not put plaintiffs' health at risk,
10 including by its failure to provide reasonable accommodations and incorporate
11 factors for persons with disabilities in its screening rubric. Defendants' failure is
12 the cause of the harm plaintiffs have suffered and further harm they face.

13 90. The challenged actions and omissions by defendants evince a failure to
14 accommodate plaintiffs, and caused plaintiffs harm. Defendant has done so with
15 deliberate indifference to Plaintiffs' rights under Section 504.

16 91. As a direct and proximate cause of the aforementioned acts, plaintiffs and class
17 members were damaged in an amount to be proven at trial.

18 92. As a result of the foregoing, Plaintiffs and members of the proposed class
19 suffered and continue to suffer injury, including, but not limited to, denial of
20 meaningful access to the benefits of Defendant's program.

21 93. Because Defendant's discriminatory and wrongful conduct is ongoing,
22 declaratory and injunctive relief are appropriate remedies. Plaintiffs seek
23 injunctive relief and attorneys' fees as a result.

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COUNT THREE - 42 U.S.C. §1983
[FOURTEENTH AMENDMENT]
(All Plaintiffs Against All Defendants)

1 94. Each and every allegation throughout this entire complaint is incorporated as
2 though repeated and fully set forth herein.

3 95. This cause of action arises under United States Code, Title 42, Sections 1983 and
4 1988, wherein Plaintiffs seek to redress a deprivation under color of law of a right,
5 privilege or immunity secured to them by the Fourteenth Amendment to the United
6 States Constitution.

7 96. The plaintiffs' rights to a safe and healthy workplace (teachers and staff); safe and
8 healthy access to education (all students); and free appropriate public education
9 (students with disabilities) -- are all well established as federally protected
10 interests.

11 97. The challenged actions and omissions by defendants invade and infringe upon all
12 of those interests and were taken as part of a plan to intentionally deprive
13 plaintiffs of notice and an opportunity to be heard in protection of those interests.

14 98. The invasion and infringement of those interests is itself a due process violation.
15 The denial of notice and an opportunity to be heard as to the invasion and
16 infringement of those interests is also a due process violation.

17 99. Therefore, plaintiffs and class members are entitled to bring suit and recover
18 damages pursuant to 42 U.S.C. §1983.

19 100. As a direct and proximate cause of the aforementioned acts, plaintiffs and class
20 members were damaged in an amount to be proven at trial.

21 101. As a result of the foregoing, Plaintiffs and members of the proposed class
22 suffered and continue to suffer injury, including, but not limited to, denial of due
23 process.

24 102. Because Defendants' discriminatory and wrongful conduct is ongoing,
25 declaratory and injunctive relief are appropriate remedies. Plaintiffs seek
26 injunctive relief and attorneys' fees as a result.
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COUNT FOUR - 42 U.S.C. §1983
[CONSPIRACY]
(All Plaintiffs Against All Defendants)

103. Each and every allegation throughout this entire complaint is incorporated as though repeated and fully set forth herein.

104. This cause of action arises under United States Code, Title 42, Sections 1983 and 1988, wherein Plaintiffs seek to redress a deprivation under color of law of a right, privilege or immunity secured to them by the Fourteenth Amendment to the United States Constitution.

105. Defendants and each of them, acted as described herein above, in conspiracy with, and with the agreement, knowledge, permission, ratification, and approval of, each other to violate plaintiffs’ civil rights, under the U.S. Constitution as stated herein this entire Complaint.

106. Therefore, plaintiffs and class members are entitled to bring suit and recover damages pursuant to 42 U.S.C. §1983.

107. As a direct and proximate cause of the aforementioned acts, plaintiffs and class members were damaged in an amount to be proven at trial.

108. As a result of the foregoing, Plaintiffs and members of the proposed class suffered and continue to suffer injury, including, but not limited to, denial of their civil rights.

109. Because Defendant’s discriminatory and wrongful conduct is ongoing, declaratory and injunctive relief are appropriate remedies. Plaintiffs seek injunctive relief and attorneys’ fees as a result.

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1 **VI. KNOWING AND WILLFUL ACTION**

2 110. Plaintiffs specifically allege that Defendants’ policies, customs and/or
3 practices, as described herein above, were within the control of Defendants and
4 within the feasibility of Defendants to alter, adjust and/or correct so as to prevent
5 some or all of the unlawful acts and injury complained of herein by Plaintiffs.

6 111. Plaintiffs specifically allege that Defendants, and each of them, made a
7 calculated, knowing and voluntary choice not to alter, adjust and/or correct their
8 policies, customs and/or practices, as described herein above, so as to prevent
9 some or all of the unlawful acts and injury complained of herein by Plaintiffs.
10 The conduct by Individual Defendants Bertoni and Kobayashi was with malice,
11 fraud and/or oppression, and said defendants are therefore liable for punitive
12 damages.
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14 **VII. PRAYER**

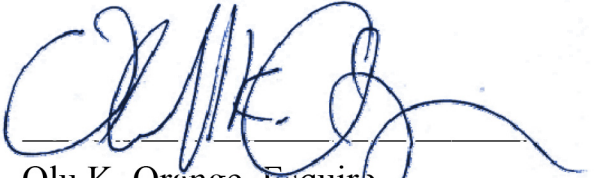
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16 WHEREFORE, plaintiffs, on behalf of themselves and the class members they
17 represent, request damages against each defendant as follows:

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- 19 1. General, presumed and special damages according to proof;
 - 20 2. Temporary, preliminary and permanent injunctive relief requiring that the
21 Project be subject to a governmentally mandated comprehensive
22 Environmental Impact Report and Health Risk Analysis before action is taken
23 in furtherance of its completion;
 - 24 3. Temporary, preliminary and permanent injunctive relief prohibiting defendants
25 from continuing to engage in the unlawful action and practices complained of
26 herein;
 - 27 4. As against the individual defendants only, punitive damages according to
28 proof;
 5. In addition to actual damages, statutory damages as may be allowed by law;

- 1 6. Attorneys' fees and costs under 42 U.S.C. §1988, 42 U.S.C. §12205, 29 U.S.C.
- 2 §794(b); and whatever other Statute or law may be applicable;
- 3 7. The costs of this suit and such other relief as is just and proper.

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Respectfully submitted,
DATE: December 15, 2017



Olu K. Orange, Esquire
Attorney for the Plaintiffs

JURY DEMAND

Plaintiffs hereby demand trial by jury in this action.

Respectfully submitted,
DATE: December 15, 2017



Olu K. Orange, Esquire
Attorney for the Plaintiffs