

1 NESENOFF & MILTENBERG, LLP.
ANDREW T. MILTENBERG (NY State Bar
2 No. 2399582; *admitted pro hac vice*)
amiltenberg@nmlplaw.com
3 STUART BERNSTEIN (NY State Bar
No. 2371953; *admitted pro hac vice*)
4 sbernstein@nmlplaw.com
GABRIELLE VINCI (NY State Bar
5 No.: 5309273; *admitted pro hac vice*)
363 Seventh Avenue, 5th Floor
6 New York, New York 10001-3904
Telephone: (212) 736-4500
7 Facsimile: (212) 736-2260

8 SUSAN STARK, SBN 147283
sstark@nmlplaw.com
9 4 Palo Alto Square
3000 El Camino Real, Suite 200
10 Palo Alto, California 94306

11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**
15

16 E.H., a minor by and through her guardian *ad*
17 *litem* SONYA HERRERA,

18 Plaintiff,

19 v.

20 VALLEY CHRISTIAN ACADEMY, FIRST
BAPTIST CHURCH, JOEL MIKKELSON,
21 and DOES 1-30,

22 Defendants.
23

Case No.: 2:21-cv-07574-SB-GJS

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF**

- 1) **Title IX (Sex Discrimination/Hostile Environment)**
- 2) **Violation of California Education Code Section 200 *et seq.*; and**
- 3) **Violation of Unruh Civil Rights Act**

JURY TRIAL DEMAND

24
25 Plaintiff E.H., a minor (“Plaintiff”) by and through her guardian *ad litem* Sonya Herrera, and
26 by her attorneys Nesenoff & Miltenberg, LLP and local counsel Palay Hefelfinger APC, as and for
27 her First Amended Complaint against Defendants Valley Christian Academy (“Defendant Valley
28

1 Christian”), First Baptist Church (“Defendant First Baptist”) and Joel Mikkelson (“Defendant
2 Mikkelson”), together, collectively referred to as (“Defendants”) alleges as follows:

3 **THE NATURE OF THE ACTION**

4 1. This action arises out of the abhorrent, intentional, and gross discrimination against
5 Plaintiff, a female student athlete enrolled at Cuyama Valley High School (“Cuyama Valley”), by
6 Defendants’ antiquated, misogynistic ideals and policies through which Defendants sought to min-
7 imize Plaintiff’s athletic ability and deprive her of athletic opportunities strictly due to her gender.

8 2. Plaintiff has been a competitive athlete from a young age, often out-performing
9 males in male-dominated sports.

10 3. Pursuant to district policies, Plaintiff sought to join, and indeed did make the roster
11 for, Cuyama Valley’s Varsity football team as one of two wide receivers on the team.

12 4. Plaintiff served an integral role on the team and proved herself as the fierce compet-
13 itor she had been her entire life, shocking spectators and her team alike, and breaking the mold of
14 what was once thought of as a male-only sport.

15 5. While there has been national praise for women being bold, talented, and strong
16 enough to break into male-dominated sports, Defendants not only lacked the same support and en-
17 thusiasm, but publicly denounced, ridiculed, intentionally and maliciously targeted Plaintiff as a
18 female athlete, and openly discriminated against her for daring to come onto their premises to play
19 football against Defendant Valley Christian’s all-male team.

20 6. Indeed, Defendant Valley Christian gawked at Plaintiff in disgust as if she were some
21 kind of spectacle and went as far as to change its whole football schedule due to the fact that they
22 *refused* to even compete against Cuyama Valley solely because Plaintiff, a female, was a member
23 of the team.

24 7. Incredibly, Defendants then sought to justify their blatant discrimination by quoting
25 their Biblical principals to “protect” women, which, ironically, are the same Biblical principals that
26 call for equality amongst all individuals.

27 8. In reality, Defendants were merely undermining Plaintiff’s athletic ability and stating
28 that she was not capable of playing at a man’s level, thereby painting Plaintiff as a weak, inadequate,

1 and entirely helpless creature strictly because of her gender, and publicly humiliated her in the pro-
2 cess.

3 9. As a result of Defendants' refusal to compete against Cuyama Valley while Plaintiff
4 was a participant on the team, Defendants deprived Plaintiff of educational opportunities which are
5 readily available to similarly situated males. Plaintiff was not able to compete at the same level or
6 in the same conference games as she would have been able to but for her gender.

7 10. Accordingly, based on the foregoing and as alleged herein, Plaintiff brings this action
8 for damages against Defendants for violations of (i) Title IX of the Educational Amendments of
9 1972, 20 U.S.C. § 1681, *et seq.* ("Title IX"); and (ii) the California State's Education Code §§ 200
10 *et. seq.* and Civil Code § 51 *et. seq.*

11 **JURISDICTION AND VENUE**

12 11. This Court's federal and supplemental jurisdiction is invoked pursuant to 28 U.S.C
13 § 1331 (federal question jurisdiction), 28 U.S.C § 1343(a)(3) (federal civil rights jurisdiction),
14 and 20 U.S.C § 1681, *et seq.* (Title IX of the Educational Amendments of 1972) and 28 U.S.C §
15 1367 because: (i) the case arises under the law of the United States; (ii) the claims brought under
16 Title IX of the Educational Amendments of 1972, and 20 U.S.C § 1681 are civil rights claims; and
17 (iii) the state law claims are so closely related to the federal law claims as to form the same case and
18 controversy under Article III of the U.S. Constitution.

19 12. This Court has personal jurisdiction over Defendant Valley Christian because it is
20 located in and conducts business within the State of California.

21 13. This Court has personal jurisdiction over Defendant First Baptist because it is located
22 in and conducts business within the State of California.

23 14. This Court has personal jurisdiction over Defendant Mikkelson on the grounds that
24 he is a resident of the State of California, was employed by Defendant Valley Christian and Defend-
25 ant First Baptist as school Superintendent.

26 15. At all relevant times herein, Defendant Mikkelson was acting as an agent on behalf
27 of Defendant Valley Christian and Defendant First Baptist in committing the wrongful acts as al-
28 leged herein.

1 26. In addition, during the relevant time of the acts alleged herein, Defendant Mikkelson
2 was, and on information and belief is, employed by Defendant Valley Christian as a teacher of Bible
3 Study. *See* <https://www.vcalions.com/people/joel-mikkelson/> (last accessed: Dec. 17, 2021).

4 27. Upon information and belief, Defendant Mikkelson receives compensation as an em-
5 ployee of Defendant Valley Christian.

6 28. All actions alleged herein against Defendant Mikkelson were taken in the course and
7 scope of his employment with Defendant First Baptist and Defendant Valley Christian.

8 29. On information and belief, Defendant Valley Christian, directly and/or indirectly,
9 receives federal financial assistance and is thus subject to Title IX.

10 30. By way of example and not limitation, Defendant First Baptist received \$391,812.00
11 in assistance from the federal paycheck protection program (the “PPP loan”) in April of 2020. The
12 loan was for the payment of wages in order to retain approximately 63 jobs. *See* [https://www.feder-
13 alpay.org/paycheck-protection-program/the-first-baptist-church-of-santa-maria-santa-maria-ca](https://www.federalpay.org/paycheck-protection-program/the-first-baptist-church-of-santa-maria-santa-maria-ca)
14 (last accessed: Dec. 17, 2021).

15 31. Upon information and belief, the federal PPP loan assistance funds were used by
16 Defendant First Baptist to pay, at least in part, the wages of employees of Defendant Valley Chris-
17 tian. By way of example, upon information and belief, Defendant Mikkelson received compensation
18 derived from the federal PPP loan funding as part of his status as an employee of Defendant First
19 Baptist and as an employee of Defendant Valley Christian.

20 32. In addition, upon information and belief, as a religious institution, Defendant First
21 Baptist and Defendant Valley Christian are tax exempt entities and therefore derive financial assis-
22 tance and/or receive a financial benefit from both the State of California and the United States gov-
23 ernment.

24 33. At all relevant times, as alleged more fully herein, each Defendant acted as an agent,
25 servant, employee, alter-ego and joint actor of the other Defendants and in doing the things alleged
26 herein acted within the course and scope of such agency, employment and in furtherance of their
27 joint actions. Each of the Defendant’s acts as alleged herein was done with the permission and
28 consent of each of the other Defendants.

1 39. Women have also been infiltrating the National Football League, as there are cur-
2 rently eight coaches and twelve scouts that are female. *See* Timothy Wahl, *Women’s interest and*
3 *participation in football growing sharply*, American Football International (April 2, 2021).

4 40. The result has been that barriers that have once been built to keep women out of
5 men’s sports are slowly being broken down, as it has been acknowledged that “[b]oys and girls are
6 often funneled into different sports long before biology gives boys an advantage, for reasons that
7 may be more social than physical,” and that the challenges of women breaking into men’s sports are
8 largely sociological rather than physical. *See* Jane McManus, *Can women play with the men?*, ESPN
9 (May 9, 2011).

10 41. Moreover, the value of women as assets on football teams has been recognized. As
11 Steve Olmeyer of CBS Sports stated, “[t]eams need diversity in player size, and skills to be success-
12 ful [but] the game is much deeper than just the players. And in the NFL of today, women are finding
13 their footing.” *See* Wahl.

14 42. Women have proven so capable of competing in traditionally male-dominated sports
15 that 2,401 females joined male high school varsity football teams in 2017 alone. *Id.* By way of
16 example, and not limitation:

- 17 a. Erin DiMeglio, quarterback for her high school team in South Florida, made
18 a game winning pass in her first game in 2012;
- 19 b. In 2018, a Mississippi girl, Kaylee Foster, kicked a game-deciding extra point
20 for her high school team;
- 21 c. In 2015, Brooke Liebsch became quarterback for Liberty North High School
22 freshman team in Missouri;
- 23 d. Lisa Spangler played middle linebacker for Fort Vancouver High School in
24 Washington in 2011;
- 25 e. Erin Dimeglio played as the first female quarterback in Florida varsity history
26 in 2012;
- 27 f. Mary Kate Smith became the first female to make the South Jones High
28 School team in Mississippi in 2014 as kicker; and

1 g. In 2015, Tatum Koenig became the first female to play football at West
2 Branch High School located in Iowa, playing wide receiver and safety.

3 43. The thousands of females that have joined male football teams have proven to be
4 capable, not endangered, and plenty talented.

5 44. As a result, while there is still room for improvement, many schools have actively
6 enacted and/or made changes to their policies to allow for equal access for all players, regardless of
7 their sex or gender identity, to compete on sports teams.

8 45. Unfortunately, Defendant Valley Christian was not among the litany of schools who
9 embraced this move towards equality and equal opportunity.

10 46. Rather, Defendant Valley Christian, relying on the very antiquated and misogynistic
11 views of womanhood that served to place barriers on women’s participation in athletics in the first
12 place, actively nurtured and endorsed an educational environment fraught with discriminatory prin-
13 cipals which served to preclude Plaintiff’s participation on the football team.

14
15 **II. Defendant Valley Christian’s Membership in the California Interscholastic**
16 **Federation**

17 47. The California Interscholastic Federation (“CIF”) is responsible for the governance
18 of oversight of high school sports in the State of California and its membership includes both public
19 and private high schools.

20 48. The CIF is organized and operates exclusively under California’s State Department
21 of Education and is governed by the CIF Federated Council which consists of school superinten-
22 dents, principals, athletic directors, educators, and allied organizations.

23 49. At all times relevant to this Complaint, Defendant Valley Christian was a member
24 school of the CIF.

25 50. Indeed, in Defendant Valley Christian’s Handbook, Defendant Valley Christian
26 states that it “is a member of the CIF, division 5A and participates in the Coast Valley League” and
27 fields an “eight-man” football team that is comprised of its high school “senior boys.” Handbook at
28 p. 34.

1 51. At all relevant times, Cuyama Valley was and is a member school of the CIF and
2 competes in the Coast Valley League alongside Defendant Valley Christian.

3 52. Pursuant to CIF’s “2020-2021 Constitution and Bylaws, Article I, Name and Pur-
4 pose”, one of the many purposes of the CIF is “to serve as an organization through which member
5 high schools may mutually adopt rules relating to interscholastic athletics (grades 9-12) and estab-
6 lish agreed upon minimum standards for certain aspects of the interscholastic athletic program . . .
7 .” Article I, Paragraph 11 (A).

8 53. One of the stated purposes of the CIF is that it “promotes equal opportunity for all
9 the youth in California secondary school athletic programs regardless of “disability, sex, gender,
10 gender identity, gender expression, nationality, race or ethnicity, religion or sexual orientation.”
11 Article I, Paragraph 11 (F).

12 54. The CIF further provides as one of its “16 Principles of Pursuing Victory with
13 Honor”, is that “[b]ecause of the powerful potential of sports as a vehicle for positive personal
14 growth, a broad spectrum of school sports experiences should be made available to all of our diverse
15 communities.” Article I, Paragraph 12 (M).

16 55. In accordance with the above principles, in sports where a school has separate boys’
17 and girls’ teams, girls are not allowed on boys’ teams, however in sports such as football and baseball
18 that do not have girls’ teams, girls are allowed to play. Article 30, Section 300.

19 56. “School boards, superintendents, principals, school administrators and everyone in-
20 volved at any level of governance in the CIF must maintain ultimate responsibility for the quality
21 and integrity of the CIF programs. Such individuals must assure that education and character de-
22 velopment responsibilities are not compromised to achieve sports performance goals and that the
23 academic, social, emotional. . . and ethical well-being of student-athletes is always placed above
24 desires and pressures to win.” Article I, Paragraph 12 (I).

25 57. The CIF will not tolerate discriminatory conduct or practices in its athletic programs
26 and related activities, and mandates that “[m]ember schools are responsible for monitoring and as-
27 suring compliance with [the] standards [specified in CIF’s Constitution and Bylaws].” Article I,
28 Paragraph 11 (G).

1 58. “Membership in the [CIF] is contingent upon compliance with the rules and regula-
2 tions of the organization’s Constitution and Bylaws”, including, without limitation, the CIF’s non-
3 discrimination provision(s). Article I, Paragraph 11 (G).

4 59. Accordingly, upon information and belief, regardless of a member school’s personal
5 convictions, beliefs, or practices, each member school *must* comply with the CIF’s rules, regula-
6 tions, and policies, which include without limitation, compliance with Title IX and related regula-
7 tions prohibiting discriminatory conduct based on sex.

8 60. Upon information and belief, membership in the CIF is voluntary and, in the event
9 the CIF’s rules and regulations conflict with a school’s beliefs or practices, a school can opt not to
10 become a member without facing consequences.

11 61. As a member of the CIF, Defendant Valley Christian was thus obligated to abide by
12 and enforce the terms, conditions, policies, and regulations of the CIF.

13 62. Moreover, as a member school of the CIF, Defendant Valley Christian was obligated
14 to comply with the provisions of Title IX and all applicable civil rights laws because a condition of
15 membership in the CIF is to “not discriminate on the basis of sex” and “[p]rivate schools in the CIF
16 [are obligated to] comply with Title IX as it is a ‘civil rights’ issue protected by federal law”. *See*
17 *CIF, Equity in Athletics* at p. 3.

18 63. Where a member school fails to comply with the CIF Constitution and Bylaws, it is
19 subject to a penalties, sanctions, and possible suspension from the CIF. *See CIF Article 2.*

20
21 **III. Plaintiff’s History as an Athlete and Member of Cuyama Valley’s Football Team**

22 64. Plaintiff began attending Cuyama Valley school district in 2010.

23 65. From a young age, Plaintiff demonstrated exceptional talent as a multi-sport athlete
24 in sports that are largely male-dominated, playing baseball, football, and volleyball. She is also an
25 accomplished horsewoman in rodeo and races stock cars.

26 66. Plaintiff is accustomed to being the only female on the team of a predominantly male
27 sport. For example, Plaintiff has previously won prize money for her performance in racing mini
28 stocks, a sport that typically only involves males, in the modified adult men’s category.

1 67. Plaintiff’s athletic ability never held her back nor put her in danger. To the contrary,
2 Plaintiff has consistently risen to the challenge and has often outperformed her male teammates and
3 competitors.

4 68. During the 2020-2021 academic year, Cuyama Valley had one varsity football team,
5 which operated under an “eight-man football” system wherein there are eight players on the field at
6 once, as opposed to eleven in traditional football.

7 69. Plaintiff, having experience in football including many years playing in community
8 flag football leagues, was a standout in varsity team tryouts given her exceptional athleticism, speed,
9 and agility, and earned the position of wide receiver on the team.

10 70. Plaintiff was the only female on the roster of Cuyama Valley’s football team for the
11 2020-2021 school year.

12 71. Plaintiff’s name, which is typically a name associated with a female gendered indi-
13 vidual, was published on the roster to all teams in the Coast Valley League from the beginning of
14 the 2020-2021 football season.

15 72. Cuyama Valley’s roster was also available online via MaxPreps, the online source
16 for high school sports where coaches, school administrators, and others can access information about
17 a high school team, its players, season record and more.

18 73. As one of only two rostered wide receivers on Cuyama Valley’s football team, Plain-
19 tiff took her position seriously. Plaintiff trained vigorously and prepared herself during summer
20 workouts and training sessions to be ready to compete in all scrimmages and games that Cuyama
21 Valley was scheduled to play in for the 2020-2021 football season.

22 **IV. Plaintiff Plays Her First Scrimmage Against Valley Christian**

23 74. During the Spring of 2021, Defendant Valley Christian participated in CIF regulated
24 games, including scrimmages and regularly scheduled season games.

25 75. As part of the Spring 2021 schedule, Defendant Valley Christian hosted ‘home-
26 based’ scrimmages and games wherein Defendant Valley Christian invited rival teams to compete
27 on Defendant Valley Christian’s football field.

28

1 76. During the season, Defendant Valley Christian invited Cuyama Valley’s football
2 team, including Plaintiff, to participate in a Defendant Valley Christian ‘home-based’ scrimmage at
3 Defendant Valley Christian’s school.

4 77. Accordingly, on March 13, 2021, Plaintiff travelled to Defendant Valley Christian’s
5 campus to play in a league scheduled scrimmage game.

6 78. Plaintiff played nearly the entire game as wide receiver for Cuyama Valley with no
7 issue.

8 79. Significantly, Plaintiff had her helmet on for the entire game, so no one from De-
9 fendant Valley Christian’s team knew that she was female.

10 80. Not a single member of the team complained while Plaintiff was playing or made
11 any negative comments about her athletic ability. To the contrary, the game was played as a typical,
12 competitive eight-man football game without issue.

13 81. The game was attended by several spectators, many of which, upon information and
14 belief, were Defendant Valley Christian students, employees, and administrators.

15 82. Similarly, none of the spectators made any negative comments or had any concerns
16 regarding the game while it was being played.

17 83. The issue regarding Plaintiff and her gender status occurred at the conclusion of the
18 scrimmage when Plaintiff removed her helmet. Only when her helmet was removed could Defend-
19 ant Valley Christian’s team, coaches, parents and, on information and belief, Defendant Mikkelson,
20 see that Plaintiff was, in fact, female, and that the Defendant Valley Christian football team had
21 been competing against a *female* the entire scrimmage.

22 84. After visually seeing that Plaintiff was a female, the observers, coaches and admin-
23 istrators of Defendant Valley Christian, including Defendant Mikkelson, glared at Plaintiff while
24 shaking their heads in disbelief.

25 85. The staring and headshaking persisted as Plaintiff quietly exited the football field,
26 mortified and chastised. Plaintiff made her way towards the parking lot to find solace in her mother,
27 but she could feel the rebuke of Defendant Valley Christian’s team and the spectators even as she
28 walked away.

1 86. Plaintiff was humiliated, embarrassed and shocked by the public display of unwel-
2 comed reactions and conduct by Defendant Valley Christian, including without limitation, their
3 coaches, athletic director(s), and school administrators, who were present at the time it became ap-
4 parent that Plaintiff, a female, had played in a football game on their premises opposite their high
5 school boys varsity football team.

6 87. Plaintiff did not understand or know at the time why she was stared down and glared
7 at in the demeaning, unwelcoming and hostile manner by Defendant Valley Christian though she
8 would unfortunately learn that she had become the target of such public distain because she, a fe-
9 male, had dared to compete in a “men’s sport.”

10
11 **V. Defendant Valley Christian Announces It Will No Longer Compete Against Cuyama Valley Based Solely on Plaintiff’s Gender**

12 88. Approximately two days after Plaintiff was publicly scarred and humiliated by the
13 whispers and stares at the game against Defendant Valley Christian, she learned through her high
14 school athletic department that Defendants First Baptist and Mikkelson had notified Cuyama Val-
15 ley’s Superintendent, “Mr. Gamino,” that Plaintiff was not welcome on Defendants Valley Chris-
16 tian’s and First Baptist’s shared premises to compete in a football game there again solely due to
17 the fact that she was female.

18 89. Indeed, Defendants Valley Christian and Mikkelson were so offended and disgusted
19 that a female was a member of Cuyama Valley’s football team that they made the decision to uproot
20 their entire football schedule to avoid playing against Cuyama Valley and Plaintiff.

21 90. Defendant Mikkelson sent a didactic letter to Mr. Gamino, which sought to justify
22 Defendants’ discriminatory and biased decision not to permit Plaintiff back on Defendant Valley
23 Christian’s football field.

24 91. Mikkelson’s letter consisted of pretextual excuses for Defendants’ abhorrent, patron-
25 izing behavior, claiming that Defendant Valley Christian “is guided, first, by the authority of the
26 Bible,” and noted that, following instruction from the Bible, Defendants had a policy prohibiting
27 “physical contact between boys and girls at Valley Christian Academy.” *See* Letter (undated) from
28

1 Defendant Mikkelson, Defendant First Baptist and Defendant Valley Christian to Mr. Gamino (here-
2 inafter, the “Mikkelson Discrimination Letter,” attached hereto as Exhibit A).

3 92. Defendant Mikkelson went on to provide more excuses, such as stating how the
4 teachings at Defendant Valley Christian focused on training men to “protect and provide for their
5 families in the future,” and to “follow values” wherein women are treated, in essence, as helpless
6 but “precious” beings meant to be treated with “respect.” *Ibid.*

7 93. In other words, in Defendants’ eyes, Plaintiff, as a woman, was too weak and frail to
8 compete in a “man’s sport” such as football, even though she already had done so, against Defendant
9 Valley Christian, successfully.

10 94. Incredibly, despite the fact that Cuyama Valley’s football roster was readily available
11 to Defendants, Defendant Mikkelson asserted in his letter that Defendants were “not aware that
12 [Cuyama Valley’s] roster included a young lady” and declared, in no uncertain terms, that Defend-
13 ants “[would] not play a team that has a female as part of its football team.” *Ibid.* (emphasis added.)

14 95. Defendants made it clear to Plaintiff, among others, that their refusal to play Cuyama
15 Valley’s football team was for no reason other than their intentional discriminatory animus against
16 Plaintiff based on her gender.

17 96. Indeed, but for Plaintiff’s gender as female, Defendants would not have refused to
18 play Cuyama Valley’s football team again.

19 97. As evidenced by Defendant Mikkelson’s letter, Plaintiff, as a female, was unwel-
20 come on a male football team and because of her gender she was forbidden from coming onto De-
21 fendants Valley Christian’s and First Baptist’s shared premises for the purpose of competing.

22 98. As a result of Defendant Valley Christian’s actions, not only was Plaintiff forbidden
23 to participate in extracirricular sports at Defendant Valley Christian, she was also restricted from
24 participating in those same activities at her own school if and when Defendant Valley Christian was
25 the opponent.

26 99. Such decision was in direct contravention of the mandates of the CIF, which require
27 its member schools to adhere to its non-discrimination policies and which decreed that females may
28 compete on teams with males where there is no single-sex sports team for females, such as football.

1 100. Although Defendant Valley Christian is a member school of the CIF and represents
2 itself to other CIF member high school sports teams that as a condition of being a member school it
3 must adhere to antidiscrimination policies, including compliance with Title IX and all applicable
4 and related regulations governing such conduct, Defendant Valley Christian intentionally promul-
5 gated, and upon information and belief, continues to promulgate, insidious discriminatory practices
6 to the direct detriment of female students.

7 101. Not only was Defendant Valley Christian’s actions intentionally discriminatory
8 against Plaintiff on the basis of her gender, upon information and belief, Defendant Valley Chris-
9 tian’s assertion that to have their male football players compete against a female would be contrary
10 to their religious convictions was also false.

11 102. Indeed, throughout the 2021 season, Cuyama Valley’s football team, including Plain-
12 tiff, played against several Christian schools, who on information and belief, adhere to similar reli-
13 gious tenets as Valley Christian, and raised no objection and found no issue allowing their male
14 football players compete in a contact sport against a female.

15 103. Indeed, during the 2021 year, publicly available information online reflecting school
16 game schedules shows that Cuyama Valley played games and/or scrimmages against the following
17 religious schools: (i) Trinity Christian School, a Christian school whose mission is to “honor God
18 by providing a Biblically based, academically excellent, classical education...”; (ii) Lutheran High
19 School, La Verne, a high school focused on “providing quality Christian education” and a “Christ
20 focused education” to students; (iii) Calvary Baptist, a private Christian school operated by the Cal-
21 vary Baptist Church dedicated to “training young people who are willing to give their best to the
22 service of the Lord”; (iv) Coastal Christian High School, whose mission is to “prepar[e] students to
23 serve God in all of life...”; and (v) Desert Christian School, which is dedicated to providing its
24 students with “an excellent Christian education experience.”

25 104. The majority of Cuyama Valley’s football opponents, like Defendant Valley Chris-
26 tian, were Christian schools which were similarly led by faith and dedicated to the teachings of
27
28

1 Scripture, God and religion. Unlike Defendant Valley Christian, however, none of the other Chris-
2 tian schools whose football teams played against Cuyama Valley raised any objection, based on
3 their religious beliefs, tenets, faith or otherwise, to playing a game against a female football player.

4 105. Upon information and belief, Defendant Valley Christian’s refusal to allow Plaintiff
5 to participate in interscholastic athletics (e.g., football games) was not rooted in its educational min-
6 istry with a conviction to faith, but in its intentional, egregious and discriminatory animus toward
7 women and archaic notions about their physical attributes, abilities and competence.

8 106. High school sports’ officials, including an official from Cuyama Valley, as repre-
9 sentatives of the CIF, informed Defendants that their conduct in refusing to play a game with
10 Cuyama Valley based on Plaintiff’s gender violated state and federal laws, the applicable provisions
11 of the CIF, and other regulations governing interscholastic athletic participation.

12 107. Despite this, Defendants have refused to reconsider their discriminatory decision and
13 have confirmed their commitment to exclude Plaintiff from football games at Defendant Valley
14 Christian due entirely and only because of Plaintiff’s gender.

15 108. As a result of Defendants’ actions and/or inactions, Plaintiff has suffered severe emo-
16 tional distress.

17 **FIRST CLAIM FOR RELIEF**

18 **Violation of Title IX --Sex Discrimination and/or Hostile Environment**
19 **(Against Defendant Valley Christian)**

20 109. Plaintiff refers to, and incorporates by reference, paragraphs 1 through 108 as though
21 fully stated herein.

22 110. Title IX provides, in relevant part, that: “No person in the United States shall, on the
23 basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrim-
24 ination under any education program or activity receiving Federal financial assistance.”

25 111. Title IX applies to all public and private educational institutions that receive federal
26 funds, including a religious school, such as Defendant Valley Christian, absent an exemption.

27 112. Title IX prohibits discrimination based on sex in a school’s “education program or
28 activity,” which includes all the school’s operations.

1 113. On information and belief, Defendant Valley Christian receives federal financial as-
2 sistance and is thus subject to Title IX. Alternatively, Defendant Valley Christian, as a member
3 school of the CIF, is obligated to comply with and is subject to Title IX.

4 114. Title IX includes an implied private right of action, without any requirement that
5 administrative remedies, if any, be exhausted. An aggrieved plaintiff may seek money damages and
6 other relief.

7 115. Title IX requires schools to promptly investigate complaints of gender discrimination
8 and sexual harassment, and to take interim measures to ensure that students are not subjected to a
9 hostile education environment. The failure to do so amounts to “deliberate indifference” for which
10 schools may be held liable under Title IX

11 116. Defendant Valley Christian, as a member school of the CIF and given its obligations
12 to comply with Title IX, knew, or in the exercise of due care should have known, that it and De-
13 fendant First Baptist’s employees, including without limitation, Defendant Mikkelson, harbored dis-
14 criminatory beliefs and held unlawful biases against females which motivated their action and treat-
15 ment of females, specifically, Plaintiff.

16 117. Defendant Valley Christian intentionally discriminated against Plaintiff based on
17 Plaintiff’s gender by deliberately refusing to allow Plaintiff to play football on Defendants’ premises
18 because she is female.

19 118. Defendant Valley Christian, as a member school of the CIF, was aware of its obliga-
20 tions under the auspices of the CIF and its obligations to comply with Title IX.

21 119. Despite such knowledge, Defendant Valley Christian created an environment which
22 facilitated and promoted discrimination against females in interscholastic athletics for the purpose
23 of depriving female athletes, such as Plaintiff, of educational opportunities based on sex.

24 120. After notice of Defendants’ discriminatory actions, Defendant Valley Christian acted
25 with deliberate indifference by refusing to remedy, among other things, Defendant Mikkelson’s and
26 Defendant First Baptist’s violations of Plaintiff’s rights to compete in interscholastic sports in an
27 environment free from gender discrimination pursuant to the rules and regulations promulgated by
28 the CIF and Title IX.

1 130. As a private school member of the CIF, Defendant Valley Christian is obligated un-
2 der the various applicable sections of the CIF to comply with the provisions of Title IX and all
3 applicable civil rights laws, which includes the applicable provisions of the California Education
4 Code because “a condition of membership in the CIF [requires that Defendant Valley Christian] not
5 discriminate on the basis of sex”.

6 131. The California legislature specifically declared its intent that an action under the Ed-
7 ucation Code shall be interpreted as consistent with Title IX (Cal. Ed. Code 201 (g)).

8 132. A plaintiff may maintain an action for monetary damages against a school district
9 when the plaintiff alleges that she suffered severe, pervasive, and offensive harassment that effec-
10 tively deprived the plaintiff of the right of equal access to educational benefits and opportunities;
11 the school had actual knowledge of the harassment; and the school responded with deliberate indif-
12 ference. *See Donovan v. Poway Unified School Dist.*, 167 Cal.App.4th 567, 603-09 (2008).

13 133. The California legislature recognized that all pupils enrolled in the state public
14 schools have the inalienable right to participate in their educational activities and programs (e.g.,
15 interscholastic sports) that are safe, secure, and peaceful. Cal. Ed. Code 32261 (a), Article I, section
16 28 (c) of the California State Constitution.

17 134. As described herein and above, Defendant Valley Christian failed in its responsibil-
18 ities to provide an environment free from discrimination to Plaintiff.

19 135. Specifically, Defendant Valley Christian created an environment which facilitated
20 and promoted discrimination against females in interscholastic athletics for the purpose of depriving
21 female athletes, such as Plaintiff, of educational opportunities on the basis of sex.

22 136. Defendant Valley Christian deprived Plaintiff of equal access to educational oppor-
23 tunities and failed to provide Plaintiff with an environment free from discrimination when Defend-
24 ant Valley Christian, by and through its agents and representatives, including, but not limited to,
25 Defendant Mikkelson, intentionally barred Plaintiff from engaging in football games on its premises
26 on the basis of Plaintiff’s gender.

27 137. After notice of Defendants’ discriminatory actions, Defendant Valley Christian acted
28 with deliberate indifference by refusing to remedy, among other things, Defendant Mikkelson’s and

1 Defendant First Baptist’s violations of Plaintiff’s rights to compete in interscholastic sports in an
2 environment free from gender discrimination pursuant to the rules and regulations promulgated by
3 the CIF, Title IX, and the California Education Code.

4 138. Defendant Valley Christian’s failure to investigate and/or remedy Defendant Mik-
5 kelson’s decision to bar Plaintiff from participation in further football games based solely on Plain-
6 tiff’s gender was intentional and unreasonable in light of the known circumstance.

7 139. Defendants Valley Christians actions and/or inactions and/or omissions constitute
8 “deliberate indifference”.

9 140. As a direct and foreseeable result of Defendant Valley Christian’s actions and/or in-
10 actions, Plaintiff has sustained, and will continue to sustain, substantial injury, damage, and loss,
11 including, but not limited to, mental anguish; severe emotional distress; injury to reputation, loss of
12 educational opportunities; and loss of possible future career prospects.

13 141. Accordingly, as a result of Defendant Valley Christian’s actions and/or inactions,
14 Defendant Valley Christian is liable to Plaintiff for damages in an amount to be determined at trial.

15 **THIRD CLAIM FOR RELIEF**

16 **Violation of the Unruh Civil Rights Act, Cal. Civil Code Section 51 *et seq***
17 **(against Defendants Valley Christian and First Baptist)**

18 142. Plaintiff refers to, and incorporates by reference, paragraphs 1 through 141 as though
19 fully stated herein.

20 143. The Unruh Civil Rights Act, Cal. Civ. Code 51 *et seq.*, provides that all persons are
21 entitled to full and equal services in all business establishments regardless of their sex or gender and
22 that no business establishment shall discriminate against a person based on their sex or gender.

23 144. Cal. Civ. Code 52 (a) declares: “Whoever denies, aids or incites a denial, or makes
24 any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every
25 offense for the actual damages, suffered by any person denied the rights provided in Section 51,
26 51.5, or 51.6.”

27 145. Cal. Civ. Code 52 (a) applies to Valley Christian and First Baptist. *See also Aikins v.*
28 *St. Helena Hosp.*, 843 F. Supp. 1329, 1339 (N.D. Cal. 1994).

1 146. A school is considered a “business establishment” for purposes of the Unruh Civil
2 Rights Act. Cal. Civ. Code 51.5.; *Nicole M. By and Through Jacqueline M. v. Martinez Unified*
3 *School District*, 964 F.Supp. 1369 (N.D. Cal. 1997).

4 147. Moreover, a religious school may be considered a “business establishment” with re-
5 spect to interactions and transaction with nonmembers. *See Doe v. California Lutheran High School*
6 *Assoc.*, 170 Cal. App. 4th 828, 836 (2009).

7 148. Defendants Valley Christian and First Baptist derive a substantial amount of revenue
8 from members of the public, including, but not limited to, receipt of tuition from students, contribu-
9 tions from alumni, and use of their facilities by non-church attendees and members of the public
10 who, on information and belief, utilize their space for purposes not compliant with their religious
11 beliefs.

12 149. Based on the substantial revenue that Defendants Valley Christian and First Baptist
13 collectively receive from members of the public, Defendants Valley Christian and First Baptist are
14 business establishments within the meaning of California Civil Code Sections 51.5 and 51(e)(5),
15 and are thus prohibited from discriminating against any person on the basis of sex or gender.

16 150. Defendants Valley Christian and First Baptist intentionally discriminated against
17 Plaintiff on the basis of her gender and deprived Plaintiff of the advantages, privileges and ability
18 to come onto Defendants’ premises because of Plaintiff’s status as a female athlete.

19 151. As a direct and foreseeable result of Defendants Valley Christian’s and First Baptist’s
20 actions and/or inactions, Plaintiff has sustained, and will continue to sustain, substantial injury, dam-
21 age, and loss, including, but not limited to, mental anguish; severe emotional distress; injury to
22 reputation, loss of educational opportunities; and loss of possible future career prospects.

23 152. Defendants Valley Christian and First Baptist collectively discriminated against
24 Plaintiff on the basis of sex and are in violation of the Unruh Civil Rights Act.

25 153. Accordingly, as a result of Defendants Valley Christian’s and First Baptist’s actions
26 and/or inactions, Defendants Valley Christian and First Baptist are liable to Plaintiff for damages in
27 an amount to be determined at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- (i) Damages in an amount to be determined at trial to compensate Plaintiff for past and future pecuniary and/or non-pecuniary damages, including but not limited to damages to Plaintiff's physical well-being, emotional and psychological damages, loss of educational opportunities and /or career opportunities, damages to reputation, past and future economic losses, and loss of future career prospects;
- (ii) Judgment for attorneys' fees, pursuant to any applicable statute(s);
- (iii) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;
- (iv) Prejudgment interest and post judgment interest as may be permitted by law and statute;
- (v) Injunctive Relief because Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to her constitutional rights to equal protection under the law unless Defendants are enjoined from the continuous implementation and enforcement of the unequal treatment to high school athletes based on sex as currently provided under their existing policies or any other order they may claim gives them the right to prevent a female from competing in a high school athletic event with their school and on their premises; and
- (vi) Such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff requests a jury trial on all questions of fact, claims and issues raised by her Complaint.

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Dated: December 20, 2021

Respectfully Submitted,

NESENOFF & MILTENBERG, LLP

By: /s/ Susan Stark

Susan Stark, Esq.
Andrew T. Miltenberg, Esq.
(admitted pro hac vice)
Stuart Bernstein, Esq.
(admitted pro hac vice)
Gabrielle M. Vinci, Esq.
(admitted pro hac vice)

Attorneys for Plaintiff

-and-

PALAY HEFELFINGER, APC

By: /s/ Brian Hefelfinger

Brian Hefelfinger, Esq.

Local Counsel for Plaintiff