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MAR 05 2014

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

John Vargas
4129 Main Street
Riverside, CA 92501

Representation in Pro Per

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

IN THE MATTER OF

JOHN VARGAS
270181

A MEMBER OF THE STATE BAR

) **Case Nos.**
) **13-O-11081, 13-O-12008,**
) **13-O-12317, 13-O-12588, 13-O-13702**

) **RESPONSE TO DISCIPLINARY**
) **CHARGES**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE member of the State Bar 270181 John Vargas hereby issues a
General and Specific denial of all charges and allegations .

COUNT ONE
Case 13-O-11081

1. As to Count One, Respondent issues a General Denial.

COUNT TWO
Case 13-O-11081

2. As to Count Two, Respondent issues a General Denial.



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COUNT THREE
Case 13-O-11081

3. As to Count Three, Respondent issues a General Denial.

COUNT FOUR
Case 13-O-11081

4. As to Count Four, Respondent issues a General Denial.

COUNT FIVE
Case 13-O-12008

5. As to Count Five, Respondent issues a General Denial.

COUNT SIX
Case 13-O-12008

6. As to Count Six, Respondent issues a General Denial.

COUNT SEVEN
Case 13-O-12008

7. As to Count Seven, Respondent issues a General Denial.

COUNT EIGHT
Case 13-O-12008

8. As to Count Eight, Respondent issues a General Denial.

COUNT NINE
Case 13-O-12008

9. As to Count Nine, Respondent issues a General Denial.

COUNT TEN
Case 13-O-12008

10. As to Count One, Respondent issues a General Denial.

COUNT ELEVEN
Case 13-O-12317

11. As to Count Eleven, Respondent issues a General Denial.

COUNT TWELVE

Case 13-O-12317

12. As to Count Twelve, Respondent issues a General Denial.

COUNT THIRTEEN

Case 13-O-12317

13. As to Count Thirteen, Respondent issues a General Denial.

COUNT FOURTEEN

Case 13-O-12588

14. As to Count Fourteen, Respondent issues a General Denial.

COUNT FIFTEEN

Case 13-O-12588

15. As to Count Fifteen, Respondent issues a General Denial.

COUNT SIXTEEN

Case 13-O-12588

16. As to Count Sixteen, Respondent issues a General Denial.

COUNT SEVENTEEN

Case 13-O-12588

17. As to Count Seventeen, Respondent issues a General Denial.

COUNT EIGHTEEN

Case 13-O-12588

18. As to Count Eighteen, Respondent issues a General Denial.

COUNT NINETEEN

Case 13-O-12588

19. As to Count Nineteen, Respondent issues a General Denial.

COUNT TWENTY

Case 13-O-13702

20. As to Count Twenty, Respondent issues a General Denial.

COUNT TWENTY-ONE

Case 13-O-13702

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2 21. As to Count Twenty-One, Respondent issues a General Denial.

3 COUNT TWENTY-TWO
4 Case 13-O-13702

5 22. As to Count Twenty-Two, Respondent issues a General Denial.

6 **SPECIFIC DENIALS TO CHARGES AND ALLEGATIONS**

7 Case 13-O-11081
8 Charges ONE through FOUR inclusive

9 Respondent asserts the following specific denial of Charges ONE through FOUR
10 inclusive. Lilia Contreras was a bankruptcy client from August 2011. She approached me
11 Around July 2011, as she was in need of a bankruptcy. I prepared and filed her Chapter 7
12 Petition on August 21, 2011. The only unusual item was that on 09/06/2011 I filed the statement
13 of related cases and indicated that there were no previous filings. Although later discussions
14 revealed that there was in fact another bankruptcy filing in the 1990's under Ms. Contreras then
15 married name of Jauregui. I proceeded to amend and re-file the Statement of Related Cases on
16 11/03/2011 under Docket #21.

17 I received a notification on 12/07/2011 Docket #22, the order dismissing the filing. It
18 appeared that I scanned several forms and filed on 09/06/2011 and entered on the web site that I
19 included the Attorney Disclosure. In actuality I did not include the form, as it was not scanned
20 by accident. The Bankruptcy was dismissed. There was another issue with the filing and that
21 was the client had not taken the 2nd mandatory class in Financial Management as required after
22 the initial 341(a) creditors hearing.

23 After some discussion as to what happened and what we needed to do, we decided to re-
24 file the bankruptcy as opposed to reopening for the one document. I thought that this would be
25 the cleanest way to handle the issue. On April 12, 2012 we refilled the bankruptcy 6:bk-12-
26 19102. Except for the Financial Management Class form, everything was filed by 04/24/2013.
27 After some time of her boyfriend called and stopping by the office threatening me, it looked as if
28 this case would finish. All we needed was for the client to still take the Financial Management
class. The client finally took the required class and she filed on her own directly to the court in
May. The Court issued a Discharge one July 25, 2012.

1 Although the there was some delay, the client was not prejudiced as she was not being
2 garnished by any of the creditors. I was never formally fired from this case. I was continually
3 harassed by her then boyfriend on the phone and in my office. The work was completed by me
4 that I was hired to complete

5 Case 13-O-12008
6 Charges FIVE through TEN inclusive

7 Ms. Randle walked into my office one day with a grocery bag full of documents stating
8 that the Bank was illegally trying to foreclose on her home and that her attorney had screwed up
9 her quiet title lawsuit. She also stated that she would need to sue Hemet School District for
10 abuse on her minor daughter MM.

11 Ms. Randle contracted for \$4,500.00 but in actuality paid a total of \$4,000.00 for three
12 cases. Case #1 was to rework your quiet title action. Case #2 was to draft a civil lawsuit against
13 Hemet Unified School District and Case #3 finally defend your daughters potential criminal
14 action based on her fight at school. The payment details were as follows; 10/29/2012 - \$2,000,
15 11/09/2012 - \$1,000, 01/11/2013 – \$1,000. I have included an accounting (Exhibit A)

16 As to the quiet title action, the main issue was that client stopped paying their mortgage
17 for several years and the bank had already foreclosed and a sale date was pending. In October of
18 2012 Ms. Randle came into my office complaining about a lawsuit that was drafted and filed on
19 your behalf by your then attorney Tory Erickson. She complained that he botched your Quiet
20 Title lawsuit by placing the wrong loan number on the lawsuit as well as misrepresented your
21 actions on the suit. There was also a demurrer and sale date pending.

22 Ms. Randle filed her own skeleton bankruptcy with the Bankruptcy Court in October
23 2012. Her case was dismissed. You then asked me to file a Chapter 7 bankruptcy under my
24 name as part of our efforts to save your home. After I filed a chapter 7 for you without extra
25 fees, we received notice that the Bankruptcy was dismissed as it was filed less than 8 years from
26 your last bankruptcy.

27 The lender LNV filed a demurrer which would have been granted. In response, I then
28 drafted and filed a 1st amended complaint against lender LNV replacing the complaint drafted by
her previous attorney. Working with LNV's attorneys, I received and presented to Ms. Randle
an offer from the bank. They agreed to write off the 2nd note of \$75,000 in exchange to dropping
the lawsuit. Ms. Randle refused the offer stating that the lender LNV had no standing and that

1 the 2nd was illegally transferred and thus already forgiven. Although, a review of the paperwork
2 shows that the Lender had not forgiven the loan.

3 The Lender then set another sale date. Ms. Randle stated that she wanted to stop the sale
4 with a Chapter 13. I filed the Bankruptcy to which Ms. Randle stated that she just wanted just to
5 push the date out but without the intent to complete. We received a new sale date, but you
6 reiterated that you would never come up with a plan payment because you felt that the LNV
7 forged documents and was not entitled to payment. This filing was then dismissed.

8 LNV finally filed another demurrer and posted a sale date. Ms. Randle asked that I file
9 an Ex Parte TRO/Preliminary injunction to stop the sale, which I did (and paid the filing fees).
10 As it was a low probability move, I contacted LNV's attorneys and arranged for another
11 postponement of the upcoming sale until after the demurrer. This sale postponement negated
12 that need for the Ex Parte. I informed you of this. If the demurrer was upheld, the ex parte
13 would have been moot. The demurrer was answered and filed with the court.

14 At the demurrer, I hired another attorney Jordan Ferrell to attend. We were unable to
15 overcome the Tender rule, because we could not prove that LNV forged documents related to
16 your loan which would have separated the deed from the promissory note. This was explained;
17 but Ms. Randle and her husband Dr. Mitchell refused to hear the reality. The Demurrer was
18 sustained and the complaint was dismissed without leave to amend. We had a reasonable offer
19 worth over \$75,000 but Ms. Randle refused and insisted on taking a low probability lawsuit
20 forward.

21 The second case was the lawsuit against the HUSD (Exhibit B). When I met the
22 Randle's in October 2012, they described a case to me about how your daughter was involved in
23 a fight at school and was subsequently suspended. You stated that you wanted me to investigate
24 and sue Hemet Unified School District and several employees of the district.

- 25 • I reviewed video Ms. Randle provided me of the altercation involving her daughter as well as
26 another fight involving the bully in another fight.
- 27 • I reviewed medical records, home school records and rules as well as correspondence from
28 school officials.

- 1 • I conducted on campus visits in Hemet to speak to the School Safety Officer as well visits to
2 the police station in Hemet.
- 3 • I drafted mailed certified correspondence to the District Superintendent.
- 4 • I spoke to the Probation department in regards to the class Ms. Randle's daughter was
5 requested to take in lieu potential criminal charges.
- 6 • I drafted and forwarded to all documentation.

7 Based on reviewing the lawsuit which I drafted and forwarded to Ms. Randle, she felt that it
8 was a simple negligence action and did not address the other concerns she had. These included
9 the corruption and complicity of the Hemet Police Department in the abuse against her daughter
10 as well as the rest of your family. You also wanted me to add causes of action addressing the
11 continued abuse of your daughter at the hands of school officials. This included but was not
12 limited to harassment, retaliation and abuse of the home study rules. Finally, Ms. Randle wanted
13 me to add the myriad of imaginedvabuses that her and her family suffered at the hands of the
14 school district.

15 What started out as a simple negligence action turned into a paranoid witch-hunt of officials
16 in Hemet. A Negligence lawsuit was one thing, but I would not file a lawsuit that addressed
17 unfounded and imagined issues.

18

19 The third issue was the defense of their daughter if and when she was charged criminally.
20 After discussing with the probation department and reviewing correspondence, charges were
21 never filed and we did not have to defend her in court.

22

23 After reviewing the history and numerous conversations, there was really nothing that I could
24 have done to make her happy, short of miracles. She had a losing lawsuit drafted by another
25 attorney and I tried to fix. The family called incessantly, including minutes after our last call.

26 A simple negligence suit turned into a global attack to redress real and imagined slights
27 of the entire city of Hemet toward the Randle/Mitchell family. The LNV lawsuit went from a
28 great offer to a no-win accusation of forged and manufactured documents.

1 Also, all files and documents were returned to Ms. Randle. I have not further items of
2 theirs in my possession.

3 Case 13-O-12588
4 Charges FOURTEEN through NINETEEN inclusive

5 I took Abraham Alonso's criminal case INF1203015. During this time, I relieved the
6 Public Defender on or about December 20, 2012. From that point I worked the case through
7 several hearings in 2012 including; January 18, February 1, February 11 2013, March 5, and
8 March 14.

9 I had a hearing for Mr. Alonso, but also was involved in double murder Trial in
10 Victorville, CA in FVI902692, for the same day. I called the DA and informed her that I could
11 not be at the hearing and need to trail the hearing. The hearing was set and I was still involved in
12 trial. I informed the client and at that point I was fired. They stated that they were going to go
13 with another attorney.

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John Vargas

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Exhibit A

Accounting of Hours

Received \$4,000 with a billing rate of \$250.00 per hour, for a total of 16 hours.
We conducted 58.5 hours of work for a total of \$14,625.

Case #1

- Review and Organization
 - 4 hours
- Drafting of lawsuit
 - 8 hours
- Bankruptcy Filings
 - 6 hours
- Filing Lawsuit
 - 1 hour
- Negotiating with Opposing Counsel
 - 1 hour
- Responding to Demurrer
 - 3 hours
- Hiring Replacement Atty for Demurrer and reviewing case
 - 2 hours
- Drafting and Filing Ex Parte
 - 4 hours
- Phone Calls
 - 4 hours
- In Office Meetings
 - 5 hours

Case #2

- Review and Organization
 - 2 hours
- Research and Drafting Lawsuit
 - 10 hours
- Review of correspondence
 - 1.5 hours
- Writing HUSD
 - 1 hour
- Visit to Hemet to interview On Campus Police
 - 3 hours
- Review Police Report
 - 1 hour
- Review Videos
 - 1 hour

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- Phone Calls
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Exhibit B

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**John Vargas
The Vargas Law Group
4129 Main Street, Suite 202
Riverside, CA 92501**

Attorney for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE**

Dr. Frederick Mitchell on behalf of)	Case No.
Megan Mitchell, a minor)	
)	<i>Verified Complaint</i>
Plaintiff,)	<i>1. Negligence</i>
)	<i>2. Intentional Infliction of</i>
vs.)	<i>Emotional Distress</i>
)	
Hemet Unified School District, Erin)	
Henten, Mark Attebery, Dr. Michael)	
Roe, Cheyenne Martinez, Richard)	
Husband and Does 1 - 10,)	
)	
Defendants		

COMES NOW Plaintiff, Megan Mitchell, a minor via her mother Dr. Frederick Mitchell, by and through counsel herein, for causes of action against the above- named Defendants, alleges and states a claim as follows:

JUDICIAL NOTICE

The general rule of Judicial Notice is that the Court may take judicial notice of the existence of statements contained within judicially noticeable documents but it may NOT accept the truth of those statements by judicial notice. Although the existence of statements contained in a court record can be judicially noticed, the truth of the statements is not subject to judicial notice. *Big Valley Band of Pomo Indians v. Superior Court*, 133 Cal.App.4th 1185, 35 Cal.Rptr. 3d 357 (2005).

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TABLE OF AUTHORITIES

STATUTES

1. California Education Code §815.2(a) and (b)
2. California Education Code §49079
3. California Government Code §§ 820(a) and 815.2(a)

CASE LAW

4. *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d 508, 513
5. *Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747
6. *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448, 1458-1461
7. *In re William G.* (1985) 40 Cal.3d 550
8. *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 806- 807
8. *Ziegler v. Santa Cruz City High Sch. Dist.* (1959) 168 Cal.App.2d 277, 284
9. *Thompson v. Sacramento City Unified School Dist.* (2003) 107 Cal.App.4th 1352

Code of Civil Procedure §335.1

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GENERAL ALLEGATIONS

1. All allegations in this Complaint are based upon information and belief except for those allegations which pertain to the Plaintiffs named herein. Plaintiff's information and belief is based upon, *inter alia*, the investigation conducted to date by Plaintiff. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

PARTIES

- 2. Plaintiff Megan Mitchell, (hereinafter "Plaintiff") is a minor, residing in Riverside County. She is represented in this matter by her father and legal guardian Dr. Frederick Mitchell.
- 3. Defendant Hemet Unified School District is a government entity situated in Riverside County.
- 4. Defendant Erin Henten is an individual and employee of Hemet Unified School District and resides in Riverside County.
- 5. Defendant Mark Attebery is an individual and employee of Hemet Unified School District and resides in Riverside County.
- 6. Defendant Dr. Michael Roe is an individual and employee of Hemet Unified School District and resides in Riverside County.
- 7. Defendant Richard Husband is an individual and employee of Hemet Unified School District and resides in Riverside County.
- 8. Defendant Cheyenne Martinez is an individual residing in Riverside County.
- 9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10 ("DOE Defendants") inclusive, and therefore sues said DOE defendants by such fictitious names. Plaintiff is informed and believes and based on such information and belief avers that each of the DOE Defendants is contractually, strictly, negligently, intentionally, vicariously liable and otherwise legally responsible in some manner for the facts and omissions

1 described herein. Plaintiff will amend this Complaint to set forth the true names and capacities of
2 each DOE Defendant when they are ascertained.

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6 **JURISDICTION**

7 10. The transactions and events which are the subject matter of this Complaint all occurred
8 within the County of Riverside, State of California.

9 **FACTUAL ALLEGATIONS**

10 11. On October 23, 2012 Megan Mitchell was sitting on a bench waiting for her ride home at
11 the usual pick up location across from Tahquitz High School. A crowd of students started to
12 gather around Ms. Mitchell. Ms. Mitchell was approached by another student, Cheyenne
13 Martinez. Ms. Martinez began to threaten Ms. Mitchell and was encouraged by the gathering
14 crowd. While threatening Ms. Mitchell, Cheyenne started to "put her hair up" and to slowly
15 close the distance between her and Ms. Mitchell. It was apparent that Ms. Martinez was there to
16 assault Ms. Mitchell whom she had never met. Although, the parties had never met, Ms.
17 Mitchell knew of Ms. Martinez notorious reputation of viscous assaults on other students. Ms.
18 Martinez swung with a closed fist and struck Ms. Mitchell in the head. Ms. Mitchell fought back
19 and when it appeared that Ms. Martinez was not going to prevail, students in the crowd separated
20 them. As a result of the assault, Ms. Mitchell was subsequently suspended from school and is
21 facing criminal charges. Due to injuries sustained, she was forced to attend home study.

22 The school officials were aware of Ms. Martinez previous on campus assaults including
23 placing other students in the hospital. The assault on Ms. Martinez did not stop with Martinez
24 fight, but continued by the administration. Ms. Mitchell was suspended for 5 days for defending
25 herself against a predator. Due to injuries, she was required to see her doctor and was placed on
26 home study.

27 **FIRST CAUSE OF ACTION**

28 **Negligence**

1 15. All of the foregoing allegations are incorporated at this point as though fully set forth in
2 detail. The negligence and damages occurred between April and May of 2010 which places it
3 within the Statute of limitations. Code of Civil Procedure §335.1 extends the statute of
4 limitations to two years. *Avila v. Citrus Community College Dist.*, 38 Cal. 4th 148, 41 Cal. Rptr.
5 3d 299, 131 P.3d 383, (2006).

6 16. Defendant's Hemet Unified School District School District (HUSD) and Dr. Michael Roe
7 (Roe) breached their duty to Plaintiff Megan Mitchell, which caused actual and proximate
8 damages to Plaintiff.

9 **Defendants Duty to Plaintiff**

10 17. Under *People v. Young*, 20 Cal. 2d 832, 129 P.2d 353 (1942), a Plaintiff must be owed a
11 duty by Defendant to bring a cause of negligence. The duty must be clear and identifiable.

12 18. Ample case authority establishes that school personnel owe students under
13 their supervision a protective duty of ordinary care, for breach of which the school
14 district may be held vicariously and directly liable. (*Dailey v. Los Angeles Unified*
15 *Sch. Dist.* (1970) 2 Cal.3d 741, 747; *Leger v. Stockton Unified School Dist.* (1988)
16 202 Cal.App.3d 1448, 1458-1461.)

17 19. California Education Code §815.2(a), states: A public entity is liable for
18 injury proximately caused by an act or omission of an employee of the public
19 entity within the scope of his employment if the act or omission would, apart from
20 this section, have given rise to a cause of action against that employee or his
21 personal representative.

22 19. Here, HUSD and Roe had a duty under §815.2 to exercise ordinary care for
23 the safety of their students. Part of this care was to ensure that violent predators
24 were not in the position to bully and assault other students. As such, when they
25 first learned that Defendant Cheyenne Martinez was involved in assaults on other
26 students, they had a duty under §815.2 to affirmatively protect the student body.

27 21. The protective actions are defined under California Education Code § 48900
28 Grounds for Expulsion or Suspension which states that a pupil shall not be
suspended from school or recommended for expulsion, unless the superintendent or the
principal of the school in which the pupil is enrolled determines that the pupil has
committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive: (a) (1)
Caused, attempted to cause, or threatened to cause physical injury to another person.
(2) Willfully used force or violence upon the person of another, except in self-defense.

1 21. The code clearly states that the use of force is a grounds for expulsion.
2 Subsection (f) goes on to classify bullying as grounds for expulsion as well.

3 22. Further, California Government code holds Principals and School Districts are
4 liable for acts or omissions of their employees (Cal. Govt. Code §§ 820(a) and
5 815.2(a))

6 23. The school districts duty is further defined *In re William G.* (1985) 40 Cal.3d
7 550, the court held that [T]he right of all students to a school environment fit for
8 learning cannot be questioned. Attendance is mandatory and the aim of all schools
9 is to teach. Teaching and learning cannot take place without the physical and
10 mental well-being of the students. The school premises, in short, must be safe and
welcoming.

11 24. The duty owed to students is further refined in *Hoyem v. Manhattan Beach City*
12 *Sch. Dist.* (1978) 22 Cal.3d 508, 513.), which held The standard of care imposed
13 upon school district employees is that degree of care “which a person of ordinary
14 prudence, charged with (comparable) duties, would exercise under the same
circumstances.

15 25. The case law as well as legislative statutes have developed and refined a
16 duty owed by school districts and employees for direct and vicarious liability in
17 their acts or omissions. Here, the school district had a duty to ensure that Plaintiff
18 Megan Mitchell had a safe environment to learn. The school district’s duty
19 included expelling violent predators with a history of assaults on campus, as the
Hoyem court defined under the ordinary prudent person standard.

20 **Defendants Breach of Duty to Plaintiff**

21 22. According to *Alva v. Cook*, 49 Cal. App. 3d 899, 123 Cal. Rptr. 166 (1975), breach of a
22 specific duty occurs when a person at the time of the negligent act or omission should have
23 reasonably foreseen that such act or omission could result in damage to another.

24 In this case, Defendants HUSD and ROE had the duty to protect students with ordinary prudence
25 and had the authorization under California Statues to expel a student if they presented a danger
26 based to other students.

1 23. The Alva court further held that the duty is breached if the Defendant failed to exercise
2 actions commensurate with the reasonably foreseeable risk of danger.

3
4 23. Here, the school administration knew or should have known about the violent assaults
5 carried out by Defendant Martinez. One such offense is an assault by Ms. Martinez on another
6 minor student identified as R.G. Martinez' assault on RG was particularly vicious with Martinez
7 beating an apparently unconscious R.G. and pounding her head into the concrete in front of the
8 administration building with no help from other students or administration. The assault resulted
9 in R.G., being taken away by ambulance. Video of this assault has been forward to the Riverside
10 County Sheriff Department. (This office will subpoena the disciplinary records of Ms. Martinez
11 to determine what is there and just as importantly, what is not there.)

12 24. After this and other assaults, Martinez was still enrolled in Taquitz High School in the
13 Hemet Unified School District. Although the administration knew of the assaults they did not
14 taken adequate steps to prevent her from further assaulting other students, including the Plaintiff
15 Megan Mitchell.

16 25. The court in *Hoyem v. Manhattan Beach City Sch. Dist.* (1978) 22 Cal.3d
17 508, 513, held that Districts may be held liable for injuries caused by the failure to
18 exercise as defined by the Ordinary Prudent Person. Further either a total lack of
19 supervision or ineffective supervision may constitute a lack of ordinary care.
20 (*Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 806-
21 807.)

22 26. As there was a duty held by the HUSD and its administrators notably ROE,
23 the fact that they did not supervise the activity of known predators by allowing
24 them in school, they breached their duty owed to the students. Either a total lack
25 of supervision or ineffective supervision may constitute a lack of ordinary care.
26 (*Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 806-
27 807.)

28 27. Even if there have been no prior injuries or acts of violence at a particular
location, if school authorities are aware of threats of violence, they must take
reasonable preventive measures. (*Leger v. Stockton Unified School Dist.* (1988)
202 Cal.App.3d 1448, 1460.) Care must be taken to foresee and avoid any

1 situation that could be potentially dangerous, even if the precise injury has never
2 occurred before. (*Ziegler v. Santa Cruz City High Sch. Dist.* (1959) 168
3 Cal.App.2d 277, 284.) Again, in the present case, HUSD and its administrators
4 knew or should of known of the violence perpetrated by Martinez and should have
reasonably foreseen that she would assault another student

5 28. Here as the Defendants had a duty and by not expelling Martinez, they broke
6 this duty and placed Megan Mitchells life in danger.

7 **Defendants Causation of Damages**

8 25. California courts have held that Legal Cause is met where the Defendants actions were a
9 substantial factor in bringing about the Plaintiffs injury or damage. *Mitchell v. Gonzales*, 54 Cal.
10 3d 1041, 1 Cal. Rptr. 2d 913 (1991); CACI 430. In addition, the standard is relatively broad,
11 where the Defendants contribution is more than theoretical or negligible. *Bockrath v. Aldrich*
12 *Chemical Co.*, 21 Cal 4th 71, 79 (1999); *Bunch v. Hoffinger*, 123 Cal. App 4th 1278 (2004).

13 26. Code of Civil Procedure §425.10(a)(1) requires complaints to contain a “statement of the
14 facts constituting the cause of action, in ordinary and concise language,” including the cause of
15 the injury, “more than a hunch, a speculative belief or wishful thinking [is required]: it requires a
16 well-founded belief.” *Bockrath v. Aldrich Chemical Co.*, 21 Cal. 4th 71, 82 (1999). In the
17 present case, the failure of the school administration to expel Martinez is the proximate cause of
18 the assault on Megan Mitchell. *Osborn v. Whittier*, 103 Cal. App. 2d 609, 230 P.2d 132 (1951).

19 27. By not acting expelling Martinez, the Defendants ignored a reasonably foreseeable
20 violent assault. A similarly situated reasonable school district and administration would have
21 understood the reasonably foreseeable damages and effect of leaving a predator on campus.
22 *George A. Hormel & Co. v. Maez*, 92 Cal. App. 3d 963, 155 Cal. Rptr. 337 (1979).

23 **Damages Incurred as a result of Defendants Negligence**

24 28. “If the allegedly negligent conduct does not cause damage, it generates no cause of action
25 in tort. The mere breach of a ... duty, causing only nominal damages, speculative harm, or the
26 threat of future harm — not yet realized — does not suffice to create a cause of action for
27 negligence.” *Budd v. Nixen*, 6 Cal. 3d 195, 200, 98 Cal. Rptr. 849 (1971), *superseded, in part, by*
28

1 statute in Laird v. Blacker, 229 Cal. App. 3d 159, 279 Cal. Rptr. 700, (1991). Here the Damages
2 are proximate and direct to the omission by Roe and vicariously by HUSD

3 29. As a direct and proximate result of the negligent acts as set forth above, Plaintiff Gabriel
4 Martin Del Campo suffered damages to his house, loss of rental for the home and workshop, and
5 has suffered mental anguish, all damages in a sum of over \$80,000 as may be proved at trial of
6 this case.

7
8 **SECOND CAUSE OF ACTION**

9 **Intentional Infliction of Emotional Distress**

10
11 **THIRD CAUSE OF ACTION**

12 **Intentional Infliction of Emotional Distress**

13 **DEMAND FOR TRIAL BY JURY**

14 Plaintiff hereby request a trial by jury of no less than twelve (12) persons on all issues so
15 triable pursuant to California Civil Procedure 592 and 210.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff prays as follows with regard to each of the above causes of action:

- 18 1. Damages as the court sees fit.
19 2. Declaratory Relief – Reversal and removal of the suspension of Megan Mitchell from her
20 record, Correction of her grades for the 2012 school year.

21
22 DATED: February 25, 2013

23
24 _____
John Vargas

25 Pro Per

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VERIFICATION

I, Dr. Frederick Mitchell, is the Plaintiff in the above entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed this 30th Day of January, 2013, in Riverside, California.

Frederick Mitchell

DECLARATION OF SERVICE

I, the undersigned, over the age of eighteen, declare that I am / am not a party to the within action, in the City and County of Los Angeles, on 03-05-14, served the following document(s):

Response to Disciplinary Charges
13-011081, 13-0-12008, 13-0-12317, 13-0-12582
13-0-13702

by personal delivery:

Tim Byer
845 S. FIGUEROA
LOS ANGELES, CA 90017

other:

I declare under penalty of perjury at Los Angeles, California, on the date shown below, that the foregoing is true and correct.

Dated: 03-05-14

