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11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN MATEO**

13 **Thomas Schemkes,**

14 Plaintiff,

15 v.

16 **Menlo Park City School District; Menlo**
17 **Park City School District Board of**
18 **Education; Sherwin Chen** in his official
19 capacity as a Member of the Menlo Park City
20 School District Board of Education and in his
21 individual capacity; **Scott Saywell** in his
22 official capacity as a Member of the Menlo
23 Park City School District Board of Education
24 and in his individual capacity; **Francesca**
25 **Segrè** in her official capacity as a Member of
26 the Menlo Park City School District Board of
27 Education and in her individual capacity;
28 **David Ackerman** in his individual capacity;
Stacey Jones in her individual capacity; **Jed**
Scolnick in his official capacity as a Member
of the Menlo Park City School District Board
of Education; **Josh Spira** in his official
capacity as a Member of the Menlo Park City
School District Board of Education; **Kristen**
Gracia in her official capacity as
Superintendent of the Menlo Park City School

Case No. 24-CIV-07905

First Amended Complaint

1. Religious Discrimination in Employment in violation of California Fair Employment and Housing Act
2. Termination of Employment in violation of California Education Code
3. Mistreatment in Employment in violation of California Education Code
4. Failure to Pay Earned Wages in violation of California Labor Code
5. Retaliation for Non-Interference with Student Speech in violation of California Education Code
6. Retaliation for Free Speech in violation of the First Amendment
7. Retaliation for Free Speech in violation of the California Constitution

JURY TRIAL DEMANDED

1 District and in her individual capacity; **Erik**
2 **Burmeister** in his individual capacity; and
3 **Danielle O’Brien** in her official capacity as
4 Principal of Hillview Middle School and in
5 her individual capacity.

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Defendants.

Introduction

1. This case concerns a public-school district and its agents’ unjust treatment and termination of a teacher in violation of California civil-rights, education, and labor law, as well as his federal and state constitutional rights to free speech.

2. The California Fair Employment and Housing Act (“FEHA”) prohibits an employer from discriminating against an employee or job applicant based on his religion. (Cal. Gov. Code § 12940, subd. (a).) What’s more, FEHA includes within this religious-discrimination protection a prohibition against an employer taking adverse action against an employee on the basis of either his actual or perceived religious identity, or because of the employee’s association with another’s actual or perceived religious identity. (Cal. Gov. Code §§ 12926, subds. (a) & (o).)

3. The California Labor Code, moreover, provides that where a public-school district purports to employ a teacher on a “temporary” basis, the school’s failure to indicate in a written statement the “length of employment” makes that employment “probationary” and therefore subject to termination only for cause—as does any employment expected to last more than three months. (Cal. Educ. Code §§ 44916, 44919, & 44948.)

4. Additionally, when construing the obligations of the parties in carrying out a teacher’s “probationary” employment under the Labor Code, the employer must abide by a covenant of good faith and fair dealing. (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* [hereafter *Carma Developers*] (1992) 2 Cal.4th 342, 373-372.)

5. The California Labor Code further provides that, when it comes to the payment of wages, the employer must pay the wages the employee has earned, and in an itemized and

1 accurate paycheck; and, at any termination, the employer must immediately pay the terminated
2 employee any earned and unpaid wages. (Cal. Lab. Code §§ 201, subd. (a) & 226, subd. (a).)

3 6. Also, the California Education Code forbids a public school or its agents from
4 dismissing or retaliating against a teacher for honoring the speech of students in the classroom.
5 (Cal. Ed. Code § 48907, subd. (g); see also Cal. Ed. Code §§ 48950, subd. (g).)

6 7. Finally, both the U.S. and California Constitutions protect the free-speech rights of
7 public-school teachers inside and outside of the classroom. (U.S. Const. amend. I; 42 U.S.C.
8 § 1983; Cal. Const., Art. I, § 2, subd. (a).)

9 8. But one week after Plaintiff Thomas Schemkes started teaching 6th-grade science for the
10 Menlo Park City School District (or “District”)—as a supposed “temporary” teacher yet for an
11 unspecified time within a three-month period for which such appointments are only permitted—
12 the District and its agents named herein in their official and/or individual capacities (or
13 “Defendants”) unceremoniously, without good cause, and in bad faith fired and retaliated
14 against Mr. Schemkes because of his actual or perceived identity as a religious believer and
15 Christian, his actual or perceived religious and Christian association, his refusal to silence
16 student questions about religion, and his speech on matters of public concern—including
17 religion—inside and outside of the classroom.

18 9. Defendants told Mr. Schemkes he was “not a good fit.” But Mr. Schemkes’ termination
19 promptly followed his allowing a student-initiated discussion of the Bible in class, his sharing
20 with a school official at a staff gathering his interest in Jesus Christ, and that same official’s
21 command to him thereafter “not to talk about God or quote from the Bible in your class.”

22 10. Adding insult to injury, the District did not immediately pay Mr. Schemkes the wages he
23 had earned at the time of his termination, nor did it provide him a properly itemized and
24 accurate accounting.

25 11. Because of Defendants’ unlawful conduct, Mr. Schemkes suffered a loss of
26 employment, lost wages, and emotional distress.
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1 applicable limitations periods during the pendency of that process. Defendants have been on
2 notice of the facts in this complaint since at least the start of the CRD process, they therefore are
3 not prejudiced in forming a defense to the claims herein, and Mr. Schemkes has at all times
4 pursued his claims against Defendants in good faith—including filing them well within either
5 their untolled or tolled limitations periods, as necessary. (*Cervantes v. City of San Diego* (9th
6 Cir. 1993) 5 F.3d 1273, 1275.)

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8 30. San Mateo County is a proper venue for this action. (Cal. Code Civ. Proc. § 395(a).) It is
9 the county where the unlawful practices were committed; alternatively, it is the county where
10 the District’s administrative offices are and where records relevant to the unlawful practice are
11 maintained and administered. (Gov. Code § 12965, subd. (b).)

12 **Statement of Facts**

13 31. Mr. Schemkes has been a public-school teacher for more than twenty years.

14 32. Mr. Schemkes is also a member of the Catholic Church.

15 33. Mr. Schemkes was formerly employed as a 6th-grade science teacher at Hillview Middle
16 School in the Menlo Park City School District.

17 34. The District hired Mr. Schemkes, effective August 8, 2022. The District’s appointment
18 letter indicated that Mr. Schemkes was being hired as a “1.0 FTE Temporary Teacher,” and it
19 shared as a post-script after a signature line for Mr. Schemkes a purported provision from the
20 Education Code that “All temporary employees may be dismissed at any time during the course
21 of their contract at the pleasure of the Board.” At no point in the appointment letter, however,
22 did it indicate a length of employment.

23 35. The week beginning August 21, 2022, Hillview Middle School started the school year.

24 36. A curriculum was not yet available for the science teachers in the first week of classes,
25 so the department head instructed them to conduct “Get to know you” exercises with their
26 students until the curriculum was finalized.

1 37. The only planned activity that week was a lab assignment the department head
2 organized, which Mr. Schemkes had his students complete alongside another class.

3 38. Aside from the lab assignment, there were no other requirements or guidelines for the
4 science teachers to follow besides coming up with activities to fill the time until they received
5 the curriculum.

6 39. While another science teacher had his students do an art project, Mr. Schemkes decided
7 to have a class discussion of Charles Darwin's theory of evolution and the origin of human life.

8 40. After lecturing on the science behind the theory of evolution, Mr. Schemkes asked his
9 students if they had heard other theories about the origin of life.

10 41. One student suggested aliens mated with monkeys. Another suggested humans came
11 from Adam and Eve, to which Mr. Schemkes acknowledged that some people believe in God
12 and that he created humans. Mr. Schemkes then moved on with his lesson plan.

13 42. That night at a staff gathering, Interim Principal Danielle O'Brien asked Mr. Schemkes
14 about his personal interests. He told her about a screenplay he was writing about the history of
15 the first century and the life of Jesus.

16 43. The next day, Interim Principal O'Brien asked Mr. Schemkes if he had been teaching
17 about the Bible in his class. Mr. Schemkes responded that he led a discussion on the origin of
18 life when a student brought up the topic of Adam and Eve to which he acknowledged that some
19 people believe in that creation story.

20 44. Interim Principal O'Brien seemed satisfied with his explanation but warned Mr.
21 Schemkes he might get questions about the class discussion at a parent-night gathering that
22 evening.

23 45. At parent night, some parents asked Mr. Schemkes about the class discussion. Mr.
24 Schemkes explained he was merely posing an open question to the students, and that he did not
25 affirm the truth of the student's mention of humans coming from Adam and Eve. Rather, he
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1 only acknowledged the existence of that belief. The parents seemed satisfied with his
2 explanation.

3 46. The following morning, Interim Principal O'Brien sent Mr. Schemkes an email saying,
4 "You will not talk about God or quote from the Bible in your class, you will follow our
5 curriculum."

6 47. Later in the day, Interim Principal O'Brien sat in on Mr. Schemkes' class when he had
7 his students do an exercise about writing science fiction. Interim Principal O'Brien shared with
8 Mr. Schemkes that she loved the idea of that activity.

9 48. At the end of the day, however, Assistant Superintendent Kristen Gracia and another
10 employee of the District came to Mr. Schemkes' classroom. The District officials handed Mr.
11 Schemkes a copy of his appointment letter and told him he was a temporary employee subject to
12 termination at any time "at the pleasure of the Board."

13 49. Assistant Superintendent Gracia then handed Mr. Schemkes a paper signed by
14 Superintendent Erik Burmeister stating that Mr. Schemkes was being fired effective
15 immediately and demanded that he sign it. In handing him the termination, Assistant
16 Superintendent Gracia told Mr. Schemkes, "You are just not a good fit."

17 50. Mr. Schemkes is informed and believes, and on that basis alleges, that the members of
18 the Menlo Park City School District Board of Education approved his termination. At the time,
19 the Menlo Park City School District Board of Education was composed of Sherwin Chen, Scott
20 Saywell, Francesca Segrè, David Ackerman, and Stacey Jones.

21 51. Mr. Schemkes requested to speak with his union representative before he signed
22 anything he did not understand.

23 52. Assistant Superintendent Gracia then had Mr. Schemkes escorted out of the school.

24 53. Mr. Schemkes did not immediately receive a final paycheck with an accurate
25 breakdown, nor did he receive the requisite pay for his work.
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1 (1987) 191 Cal.App.3d 1318, 1327.) Notably, the plaintiff’s burden here is “not onerous.” (*Tex.*
2 *Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981).)

3 62. Accordingly, a plaintiff can establish a prima facie case of discrimination in violation of
4 Government Code section 12940, subdivision (a), where he can show that “(1) he was a member
5 of a protected class, (2) he was qualified for the position he sought or was performing
6 competently in the position he held, (3) he suffered an adverse employment action, such as
7 termination, demotion, or denial of an available job, and (4) some other circumstance suggests
8 discriminatory motive.” (*Guz v. Bechtel Nat. Inc.*, *supra*, 24 Cal.4th at p. 1113.)

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10 63. Here, Mr. Schemkes is a member of the Catholic Church, and after Interim Principal
11 O’Brien became aware of the class discussion in which a student mentioned Adam and Eve and
12 later learned about Mr. Schemkes’ writings on Jesus, he was both known or perceived among
13 relevant school officials to be religious and Christian, as well as known or perceived to be
14 associated with religion and Christianity.

15 64. After learning about Mr. Schemkes’ Christian affiliation, Interim Principal O’Brien
16 reprimanded him in an email, instructing him not to talk about God or quote from the Bible and
17 to follow the school’s (as yet nonexistent) curriculum—and this was even after their
18 conversation in which Mr. Schemkes had disabused Interim Principal O’Brien of the misguided
19 perception he was teaching about Creationism.

20 65. Almost immediately following Interim Principal O’Brien’s reprimand, Mr. Schemkes
21 was then subject to adverse action in the form of termination of his employment without any
22 explanation other than Assistant Superintendent Gracia telling Mr. Schemkes that he was “just
23 not a good fit”—a revelation that, again, the District indicated only after learning of Mr.
24 Schemkes’ actual or perceived Christian identity and association.

25 66. In any event, there is no evidence that Mr. Schemkes was teaching about religion or
26 Creationism or that he was non-compliant with a school curriculum. In fact, the opposite is true.
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1 67. Though there was no curriculum ready, Mr. Schemkes had his class complete the only
2 activity the department head had planned for that week. And in his science class, he was
3 teaching about Darwin’s theory of evolution and the origin of life—a topic frequently covered
4 in science curricula. What’s more, it was a student who brought up the topic of Adam and Eve
5 to which Mr. Schemkes merely responded. Accordingly, any arguments Mr. Schemkes’ firing
6 was based on his non-compliance with the curriculum or his teaching religion in the classroom
7 are pretextual.

8 68. Rather, it was not until school officials learned of Mr. Schemkes’ Christian affiliation
9 and believed he might push Creationism in the classroom that they decided to get rid of him.

10 69. The District violated FEHA where, among other things, it terminated Mr. Schemkes
11 because of his actual or perceived identity as a religious believer and Christian; his actual or
12 perceived religious and Christian association; his refusal to silence questions from his students
13 about religion and the Bible, as well as on the false, inadequately investigated, and take-it-or-
14 leave-it premise that he was teaching about religion or Creationism or that he was non-
15 compliant with a school curriculum; and his exercise of free speech.

16 70. The District’s mistreatment violated FEHA and caused Mr. Schemkes emotional and
17 financial hardship in the form of mental distress, loss of income, and loss of medical insurance
18 at a time he and his daughters needed it—all of which he seeks to recover for through a damage
19 award and all other applicable legal remedies.

20 71. In further remedy, Mr. Schemkes also seeks backpay, reinstatement, and other forms of
21 equitable relief—including a public apology and a policy change that prevents similar
22 mistreatment in the future.

23 72. As a prevailing party, Mr. Schemkes is also entitled to recover, and seeks, reasonable
24 attorneys’ fees and costs. (See Code Civ. Proc. § 1021; Gov. Code § 12965, subd. (b).)
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**Second Cause of Action
Termination of Employment
in Violation of Education Code
Cal. Educ. Code §§ 44916, 44919, 44948
(Against Defendant Menlo Park City School District)**

73. Mr. Schemkes realleges and incorporates by reference all paragraphs of this Complaint.

74. When it comes to the employment of teachers in public schools, Sections 44919 and 44920 of the California Education Code permit the hiring of a “temporary” teacher, but only “from day to day during the first three months of any school term” or for a school year where they are replacing another teacher who “has been granted leave for a semester or year, or is experiencing a long-term illness.” In the event a supposed temporary teacher’s duties are not so limited, they are treated as a “probationary” employee. (Cal. Ed. Code § 44919.)

75. Moreover, when it comes to the employment of temporary teachers in particular, Section 44916 of the California Education Code further requires that any district making a supposedly temporary assignment to clarify how long the teacher will be working. It states:

The classification shall be made at the time of employment and thereafter in the month of July of each school year. At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment ***and the length of time for which the person is being employed.*** If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status.

Education Code § 44916 (emphasis added).

1 76. The California Education Code also provides, in instances where a teacher is considered
2 to be a “probationary employee,” a school district “shall dismiss [them] during the school year
3 for cause only, as in the case of permanent employees.” (Cal. Ed. Code § 44948.)

4 77. Finally, and as the California Supreme Court has held, “good cause” to terminate an
5 employee includes only “fair and honest reasons, regulated by good faith on the part of the
6 employer, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or
7 pretextual. A reasoned conclusion, in short, supported by substantial evidence gathered through
8 an adequate investigation that includes notice of the claimed misconduct and a chance for the
9 employee to respond.” (*Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal. 4th 93, 108.)

10 78. Here, Mr. Schemkes’ appointment letter dated July 29, 2022, provided he was “being
11 offered a position as a 1.0 FTE Temporary Teacher in the Menlo Park City School District
12 effective August 8, 2022” and his “salary placement is Step 7, BA + 90 upon verification of
13 experience and units.”

14 79. The appointment letter concluded with a line for Mr. Schemkes’ signature—which he
15 provided—after the sentence “I accept this contract of employment for the 2022-23 school
16 year.”

17 80. Lastly, the appointment letter added as a post-script that “We have been advised that we
18 need to make you aware that Ed Code 44954 states that ‘All temporary employees may be
19 dismissed at any time during the course of their contract at the pleasure of the Board.’”

20 81. Notably, however, the appointment letter Mr. Schemkes signed failed to include the
21 “length of time” of his supposed temporary appointment—in violation of Section 44916.

22 82. The appointment letter does speak of Mr. Schemkes “accept[ing] this contract of
23 employment for the 2022-23 school year.” But not only does this observation still not specify a
24 particular “length of time” for employment, any supposed inference that the “2022-23 school
25 year” delineates all or the large part of a year would violate the three-month limit on temporary
26 employment under Section 44919—a limit that could not otherwise be exceeded under Section
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1 44920 because, based on information and belief, Mr. Schemkes' appointment was not in
2 replacement of a teacher on a year-long leave or suffering long-term illness.

3 83. Accordingly, Mr. Schemkes' status was that of a probationary employee protected by
4 the Education Code's requirement that his employment be terminated only for good cause.

5 84. But the District fired Mr. Schemkes without good cause, where, among other things, the
6 District terminated Mr. Schemkes because of his actual or perceived identity as a religious
7 believer and Christian; his actual or perceived religious and Christian association; his refusal to
8 silence questions from his students about religion and the Bible, as well as on the false,
9 inadequately investigated, and take-it-or-leave-it premise that he was teaching about religion or
10 Creationism or that he was non-compliant with a school curriculum; and his exercise of free
11 speech.

12 85. The District's violation of Mr. Schemkes' rights under the Education Code caused him
13 to lose, among other things, the benefit of his employment. In remedies for this violation, Mr.
14 Schemkes seeks primarily backpay, reinstatement, and other forms of equitable relief—
15 including applicable policy change—as well as any available recovery of an amount for
16 reasonable attorneys' fees.

17
18 **Third Cause of Action**
19 **Mistreatment in Employment**
20 **in Violation of Education Code**
21 **Cal. Educ. Code §§ 44916, 44919, 44948**
22 **(Against Defendant Menlo Park City School District)**

23 86. Mr. Schemkes realleges and incorporates by reference all paragraphs of this Complaint.

24 87. Once an employer has agreed to hire an employee, "California law will supply a
25 covenant of good faith and fair dealing, which requires that neither party do anything to deprive
26 the other of the benefits of the agreement." (*Kelecheva v. Multivision Cable T.V. Corp.*
27 [hereafter *Kelecheva*] (1993) 18 Cal.App.4th 521, 531.)

28 88. Moreover, where an employment arrangement includes a requirement to terminate only
for good cause, the lack of such cause breaches the covenant. (*Kelecheva, supra*, 18

1 Cal.App.4th at p. 532.) Notably, in establishing the absence of good cause, the plaintiff “would
2 *not* be required to prove that defendant, in fact, discharged him for reasons that would violate
3 federal or state labor law.” (*Id.*) Rather, an employer’s failure to follow its own policies,
4 frustration of the employee’s procedural rights, or even an abuse of discretion, among other
5 things, would suffice to breach the covenant. (*Id.*; *Kuhn v. Dept. of Gen. Servs.* (1994) 22
6 Cal.App.4th 1627, 1638; *Carma Developers, supra*, 2 Cal.4th 342, at p. 372.)

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8 89. As described in the Second Cause of Action above, Mr. Schemkes was a probationary
9 employee protected by the Education Code’s requirement that his employment be terminated
10 only for good cause. (See Cal. Educ. Code §§ 44916, 44919, 44948.)

11 90. The District breached the covenant of good faith and fair dealing arising from Mr.
12 Schemkes’ rights under the Education Code, where, among other things, it terminated Mr.
13 Schemkes because of his actual or perceived identity as a religious believer and Christian; his
14 actual or perceived religious and Christian association; his refusal to silence questions from his
15 students about religion and the Bible, as well as on the false, inadequately investigated, and
16 take-it-or-leave-it premise that he was teaching about religion or Creationism or that he was
17 non-compliant with a school curriculum; and his exercise of free speech.

18 91. The District’s foregoing breach of the covenant of good faith and fair dealing in
19 violation of the Education Code caused Mr. Schemkes to lose, among other things, the benefit
20 of his employment. In remedy for this violation, Mr. Schemkes seeks primarily backpay,
21 reinstatement, and other forms of equitable relief—including applicable policy change—as well
22 as any available recovery of an amount for reasonable attorneys’ fees.

23
24 **Fourth Cause of Action**
25 **Failure to Pay Earned Wages and Wage Statement**
26 **in violation of Labor Code**
27 **Cal. Lab. Code §§ 201, 226**
28 **(Against Defendant Menlo Park City School District)**

92. Mr. Schemkes realleges and incorporates by reference all paragraphs of this Complaint.

1 93. California recognizes the right of an employee to the wages promised him. After all,
2 “because of the economic position of the average worker and, in particular, his dependence on
3 wages for the necessities of life for himself and his family, it is essential to the public welfare
4 that he receive his pay when it is due.” (*Kerr’s Catering Service v. Dept. Industrial Relations*
5 (1962) 57 Cal.2d 319, 326.)

6 94. Moreover, California Labor Code Section 201, subdivision (a) independently provides
7 that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of
8 discharge are due and payable immediately.”

9 95. Additionally, California Labor Code Section 226, subdivision (a) requires employers
10 to provide at the time of each payment of wages an accurate and itemized statement of
11 earnings, hours worked, rates, deductions, net wages, payment period, employee and
12 employer identifying information, and other relevant information.

13 96. But Mr. Schemkes did not receive a final paycheck—promptly at the time of his
14 termination or otherwise. Mr. Schemkes also did not receive all of the wages he was owed,
15 nor did he receive an accurate and itemized statement.

16 97. The District’s mistreatment of Mr. Schemkes when it comes to his wages deprived
17 him of the benefit of his employment and violated his rights under the California Labor
18 Code, resulting in financial and other losses. For remedies on this, Mr. Schemkes seeks the
19 unpaid wages (with interest), all available statutory penalties, and any other available form of
20 legal or equitable relief, as well as any available recovery of an amount for reasonable
21 attorneys’ fees.
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23 **Fifth Cause of Action**
24 **Retaliation for Non-Interference with Student Speech**
25 **in Violation of Education Code**
26 **Cal. Educ. Code § 48907**
27 **(Against All Defendants)**

28 98. Mr. Schemkes realleges and incorporates by reference all paragraphs of this Complaint.

1 99. The California Education Code protects the right of public-school students to exercise
2 free speech in the classroom. (Cal. Ed. Code § 48907, subd.(a).) In support of that right,
3 moreover, the Code further forbids a public school or its agents from dismissing or retaliating
4 against a teacher “solely for acting to protect a pupil engaged in the [protected speech]” or
5 “refusing to infringe” on that speech. (*Id.*, subd. (g).)

6 100. Here, a student expressed in the classroom that humans came from Adam and Eve. And
7 although Mr. Schemkes did not respond by teaching about religion or Creationism, he protected
8 and refused to infringe on the students’ right to speak on such matters—including after being
9 asked about the exchange by parents and challenged by school officials.

10 101. Shortly thereafter, Interim Principal O’Brien warned Mr. Schemkes “not to talk about
11 God or quote from the Bible in your class” and then, without any intervening issue, Assistant
12 Superintendent Gracia fired him that same day.

13 102. Defendants’ actions violated Section 48907 in retaliating against Mr. Schemkes for his
14 protection of, and refusal to infringe upon, student speech in the classroom.

15 103. Defendants’ mistreatment of Mr. Schemkes’ rights under the Education Code deprived
16 him of, among other things, a job—resulting in financial and other losses. For remedies on this,
17 Mr. Schemkes seeks primarily backpay, reinstatement, and other forms of equitable relief—
18 including a public apology and policy changes to ensure a more inclusive classroom—as well as
19 any available recovery of an amount for reasonable attorneys’ fees.

20
21 **Sixth Cause of Action**
22 **Retaliation for Free Speech**
23 **in Violation of the First Amendment**
24 **U.S. Const., amend. I; 42 U.S.C. § 1983;**
25 ***Ex Parte Young* (1908) 209 U.S. 123**
26 **(Against All Defendants)**

27 104. Mr. Schemkes realleges and incorporates by reference all paragraphs of this Complaint.

28 105. The First Amendment to the U.S. Constitution, as applied to the states through the
Fourteenth Amendment, protects Mr. Schemkes from retaliation for exercising his free-speech
rights.

1 106. A plaintiff makes out a retaliation claim under the First Amendment where: (1) he
2 engaged in protected speech; (2) the defendant took an adverse employment action against him;
3 and (3) his speech was a substantial or motivating factor for the adverse action. (*Howard v. City*
4 *of Coos Bay* (9th Cir. 2017) 871 F.3d 1032, 1044 [internal quotation marks omitted].)

5 107. Teacher speech inside and outside the classroom on “matters of public concern” is
6 protected under the U.S. Constitution. (*Pickering v. Bd. of Educ.* (1968) 391 U.S. 574, 568.)

7 108. Among other things, Mr. Schemkes’ conversation in class regarding the origin of life in
8 response to student comments concerned an important issue of ongoing and historical public
9 concern—and in the absence of an established curriculum. His conversation with colleagues
10 outside of the classroom pertained to his writing on Jesus; again, a matter of public concern.

11 109. Mr. Schemkes was terminated promptly thereafter, following being reprimanded by
12 Interim Principal O’Brien for “talk[ing] about God.” The arrival of Assistant Superintendent
13 Gracia and her staff in Mr. Schemkes’ classroom shows that this was no routine dismissal.

14 110. These circumstances, among others, demonstrate that Mr. Schemkes’ speech in and
15 outside of the classroom was a substantial or motivating factor for the decision by the
16 Defendants—including Interim Principal O’Brien, Assistant Superintendent Gracia,
17 Superintendent Burmeister, and the Board and its members—to fire him. Mr. Schemkes was
18 terminated with no explanation or opportunity to defend himself.

19 111. The actions of Defendants were under color of state law. They were willful, intentional,
20 and in reckless disregard for Mr. Schemkes’ constitutional rights. Their conduct violates clearly
21 established constitutional rights of which a reasonable person would have known.

22 112. Defendants’ violation of Mr. Schemkes’ rights under the First Amendment caused Mr.
23 Schemkes emotional and financial hardship in the form of mental distress, loss of income, and
24 loss of medical insurance at a time he and his daughters needed it—all of which he seeks to
25 recover for through a damage award and all other applicable legal remedies.
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1 113. In further remedy, Mr. Schemkes also seeks backpay, reinstatement, and other forms of
2 equitable relief—including a public apology and a policy change that prevents similar
3 mistreatment in the future.

4 114. Defendants are persons under 42 U.S.C. § 1983 who were or are acting under color of
5 state law.

6 115. Defendants are subject to suit for prospective relief in their official capacity under the
7 doctrine of *Ex Parte Young* (1908) 209 U.S. 123. Monetary relief is available against
8 Defendants in their individual capacities.

9 116. As a prevailing party, Mr. Schemkes is also entitled to recover, and seeks, reasonable
10 attorneys' fees and costs. (See 42 U.S.C. § 1988.)

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12 **Seventh Cause of Action**
13 **Retaliation for Free Speech**
14 **in Violation of the California Constitution**
15 **Cal. Const., art. I, § 2, subd. (a)**
16 **(Against All Defendants)**

17 117. Mr. Schemkes realleges and incorporates by reference all paragraphs of this Complaint.

18 118. Under the California Constitution, individuals have a right to freely speak, write, and
19 publish their sentiments on all subjects. (Cal. Const., Art I, § 2, subd. (a).) This protection
20 extends to public-school teachers, who have a right to speak freely and effectively on public
21 questions and the right to petition for redress of grievances resulting from retaliation for free
22 speech. (*L.A. Teachers Union v. L.A. City Bd. of Educ.* (1969) 71 Cal.2d 551, 557-558.)

23 119. Among other things, Mr. Schemkes' conversation in class regarding the origin of life in
24 response to student comments concerned an important issue of ongoing and historical public
25 concern—and in the absence of an established curriculum. His conversation with colleagues
26 outside of the classroom pertained to his writing on Jesus; again, a matter of public concern.

27 120. Mr. Schemkes was terminated promptly thereafter, following being reprimanded by
28 Interim Principal O'Brien for "talk[ing] about God." The arrival of Assistant Superintendent
Gracia and her staff in Mr. Schemkes' classroom shows that this was no routine dismissal.

1 121. These circumstances, among others, demonstrate that Mr. Schemkes' speech in and
2 outside of the classroom was a substantial or motivating factor for the decision by the
3 Defendants—including Interim Principal O'Brien, Assistant Superintendent Gracia,
4 Superintendent Burmeister, and the Board and its members—to fire him. Mr. Schemkes was
5 terminated with no explanation or opportunity to defend himself.

6 122. The actions of Defendants were under color of state law. They were willful, intentional,
7 and in reckless disregard for Mr. Schemkes' rights under the California Constitution. Their
8 conduct violates clearly established constitutional rights of which a reasonable person would
9 have known.

10 123. Defendants are persons who were or are acting under color of state law. Defendants are
11 subject to suit for prospective relief in their official capacity.

12 124. Defendants' mistreatment of Mr. Schemkes' rights under the California Constitution
13 deprived him of, among other things, a job—resulting in financial and other losses. For
14 remedies on this, Mr. Schemkes seeks primarily backpay, reinstatement, and other forms of
15 equitable relief—including a public apology and policy changes to ensure a more inclusive
16 classroom—as well as any available recovery of an amount for reasonable attorneys' fees.

17 **Prayer for Relief**

18 125. WHEREFORE, Mr. Schemkes incorporates by reference all allegations contained in the
19 preceding paragraphs of this Complaint as though fully stated here, and prays that the Court
20 grant the following relief from Defendants:

21 (a) Issue a declaratory judgment that the Defendants' practices complained of in this
22 Complaint are unlawful and violate, among other things, the California Fair Employment and
23 Housing Act, California Education Code, California Labor Code, and the U.S. and California
24 Constitutions;

25 (b) Enjoin the District and its agents from pursuing any policy of restricting student or
26 teacher speech in the classroom, in accordance with applicable law;
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1 (c) Order the District and its agents to adopt a policy that makes clear a commitment to
2 inclusive discussion in the classroom, in accordance with applicable law;

3 (d) Award Mr. Schemkes all appropriate and legally available monetary relief, including
4 lost compensation and benefits, in an amount to be determined at trial to make him whole for
5 the loss he suffered as a result of the unlawful conduct alleged in this Complaint;

6 (e) Award all appropriate and legally available compensatory damages to Mr. Schemkes
7 to fully compensate him for the pain, suffering, and other expenses caused by the harmful
8 conduct alleged in this Complaint;

9 (f) Award all appropriate and legally available punitive damages from the individual
10 defendants for the malicious and reckless conduct described herein, in the amounts to be
11 determined at trial;

12 (g) Award Mr. Schemkes interest at the legal rate on damages and any other monetary
13 relief as appropriate, including pre- and post-judgment interest;

14 (h) Order the District and its agents to reinstate Mr. Schemkes, at an appropriate rank
15 and pay;

16 (i) Award all applicable statutory penalties for unpaid or mispaid wages;

17 (j) Award Mr. Schemkes an amount of reasonable attorney's fees and costs for the work
18 of his attorneys in pursuit of this action and the protection of his rights pursuant to applicable
19 law—including, but not limited to California Government Code Section 12965, California Code
20 of Procedure Section 1021.5, California Labor Code Section 218.5, 42 U.S.C. §1988, and upon
21 any other basis as allowed by law;

22 (k) Award Mr. Schemkes all costs, disbursements, and expenses he paid or that were
23 incurred on his behalf;

24 (l) Award such additional relief the Court deems just and proper, as well as any other
25 relief as allowed by law or in equity.
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