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Clerk of the Superior Court
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9 ATTORNEY FOR AIDEN SOLIS DIAZ

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12 AIDEN SOLIS DIAZ, BY AND THROUGH
13 HIS GUARDIAN AD LITEM ALYSSUM
14 DIAZ,

15 Plaintiff,

16 vs.

17 SAN DIEGO UNIFID SCHOOL DISTRICT, A
18 GOVERNMENT ENTITY; AND DOES 1-20,

19 Defendant

Case No.: 37-2021-00009604-CU-NP-CTL

COMPLAINT

- 20 1. NEGLIGENCE (GOV. CODE §§ 815.2
21 AND 820)
22 2. NEGLIGENT SUPERVISION, HIRING
23 OR RETENTION (GOV. CODE §§ 815.2
24 AND 820)
25 3. VIOLATION OF 42 U.S.C. 1983;
26 4. VIOLATION OF THE AMERICAN WITH
27 DISABILITIES ACT ;
28 5. VIOLATION OF SECTION 504 OF THE
REHABILITATION ACT OF 1973;
6. VIOLATION OF TITLE VI OF THE CIVIL
RIGHTS ACT OF 1964.

29 Plaintiff, AIDEN SOLIS DIAZ by and through his guardian ad litem ALYUSSUM DIAZ,
30 alleges as follows:

PARTIES

COMPLAINT
SOLIS DIAZ V. SAN DIEGO UNIFIED SCHOOL DISTRICT ET AL.

1 1. Plaintiff AIDEN SOLIS DIAZ (“AIDEN”) is a minor who at all times relevant to
2 this complaint was residing in San Diego County. He brings this action by and through his mother
3 and guardian ad litem, ALYUSSUM DIAZ (“MOTHER”). At all relevant times giving rise to the
4 allegations in this complaint, AIDEN was a student at Porter Elementary School (“PES”), where
5 Plaintiff was injured.

6 2. AIDEN is a minor child with a disability; AIDEN is Native American.

7 3. Defendant SAN DIEGO UNIFIED SCHOOL DISTRICT (“SDUSD”) is a
8 government entity providing educational services in San Diego County. Defendant SDUSD is
9 responsible for operating PES, where Plaintiff was injured. At all material times, SDUSD was an
10 educational institution that received and benefitted from state financial assistance and enrolled
11 students who received state financial aid.
12

13 4. The true names and capacities, whether individual or otherwise, of defendants
14 Does 1 through 20 are unknown to Plaintiffs, who, therefore, sue them by such fictitious names
15 under CCP § 474. Plaintiff is informed and believes that each of the defendants is responsible in
16 some manner for the acts of omissions alleged in this complaint or caused him damages.
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18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

19 5. Pursuant to the California Government Claims Act, Plaintiffs submitted a timely
20 claim to SDUSD; said claim was accepted and subsequently rejected by SDUSD on September
21 4, 2020, is attached hereto as Exhibit 1 and is incorporated by reference herein.

22 6. SDUSD is a public entity duly incorporated and operating under California law as
23 a school district. Defendant SDUSD is a public entity subject to Title II of the Americans with
24 Disabilities Act of 1990, the requirements of the Rehabilitation Act of 1973, the requirements of
25 California state law requiring full and equal access to public facilities pursuant to Government
26 Code §§ 11135 and 4450 et seq., and to all other legal requirements referred to in this Complaint.
27

1 Because they said the bully was a troubled kid, whose mother was in prison and lived with his
2 Grandmother. The principal refused to remove the bully, yet told MOTHER she should remove
3 AIDEN from the school. MOTHER refused.

4
5 14. AIDEN continued to be abused at school through first grade, yet school official
6 continuously refused to remove the bully(s).

7
8 15. Finally, AIDEN stopped going to school because he was too scared for his own safety.
9 AIDEN would scream and cry at the mention of going to school because he was so fearful of .
10 the ongoing abuse he suffered.

11 **FIRST CAUSE OF ACTION**
12 **(Negligence; Gov. Code § 815.2, 820)**

13 16. Plaintiff realleges paragraphs 1 through 15.

14 17. Defendant SDUSD is and was, at all times relevant to this complaint, a public
15 school district operating under the laws of the State of California. SDUSD owns, operates and/or
16 manages PES. “A public entity is liable for injury proximately caused by an act or omission of an
17 employee of the public entity within the scope of his employment if the act or omission would,
18 apart from this section, have given rise to a cause of action against that employee or his personal
19 representative.” (Gov. Code § 815.2) “Except as otherwise provided by statute (including Section
20 820.2), a public employee is liable for injury caused by his act or omission to the same extent as
21 a private person.” (Gov. Code § 820(a))

22 18. Defendants, acting through managing agents and school administrators, had a duty
23 to protect the minor Plaintiff entrusted to their care by Plaintiff's parents. Plaintiff's care, welfare,
24 and/or physical custody were temporarily entrusted to Defendants and Defendants voluntarily
25 accepted the entrusted care of the minor Plaintiff. As such, Defendants owed this child minor a
26

1 special duty of care, in addition to a duty of ordinary care, and owed the minor Plaintiff's the
2 highest duty of care that adults dealing with children owe to protect them from harm.

3 19. Defendants, by and through their agents, servants and employees, knew or
4 reasonably should have known that AIDEN was subjected to ongoing physical abuse by other
5 students. It was foreseeable that if Defendants did not adequately exercise or provide the duty of
6 care owed to children in their care, including but not limited to Plaintiff, the children entrusted to
7 Defendants' care would be vulnerable to physical injury.
8

9 20. Defendants' failure to implement basic safety protocols, its failure to develop
10 implement protocols to prevent AIDEN from ongoing bullying and physical attacks by othe
11 students breached their duty of care to AIDEN. Defendants, acting through managing agents and
12 school administrators, breached their duty of care to the minor Plaintiff: 1) by allowing known
13 student bullies to have unfettered and unsupervised access to AIDEN; 2) by failing to adequately
14 hire, supervise, or retain PES personnel; 3) by failing to investigate or properly address the
15 claims of abuse against AIDEN, specifically regarding lack of proper safety protocols to prevent
16 injuries to AIDEN while on school property; 4) by failing to tell or concealing from Plaintiff's
17 parents, guardians, or law enforcement officials that Plaintiff has suffered serious injuries at the
18 hands of other PES student; 5) by creating the circumstance where Plaintiff was less likely to
19 receive medical health care and treatment, thus exacerbating the harm done to Plaintiff. As such,
20 SDUSD engaged in conduct that was reckless and totally outside the range of ordinary activity
21 involved in the teaching.
22

23 21. Because SDUSD fell below the standard of care in supervising students during
24 school hours and while on school property, Plaintiff's continuing and inalienable constitutional
25 and statutory rights to be from harm or threat of harm and to have free access to education were
26 violated because Plaintiff sustained severe injuries from a school bullies who were unsupervised
27 and uncontrolled by SDUSD, despite knowing that they were a danger to AIDEN.
28

1 22. As a result of the above-described conduct, Plaintiff has suffered, and continues to
2 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
3 emotional distress, embarrassment, loss of self-esteem, and loss of enjoyment of life; were
4 prevented and will continue to be prevented from performing Plaintiff’s daily activities and
5 obtaining the full enjoyment of life; and/or has incurred and will continue to incur expenses for
6 medical and psychological treatment, physical therapy, and counseling.
7

8 **SECOND CAUSE OF ACTION**
9 **(Negligent Supervision, Hiring or Retention; Gov. Code § 815.2, 820)**

10 23. Plaintiff realleges paragraphs 1 through 22.

11 24. SUHSD employed teachers charged with protecting the safety of their students,
12 including AIDEN.

13 25. Defendant SDUSD is and was at all times relevant to this complaint, a public
14 school district operating under the laws of the State of California. SDUSD owns, operates and/or
15 manages PES. Further, PES staff at all times relevant to this action, were employed by SDUSD
16 and/or PES as coaches for the OHS cheer team. “A public entity is liable for injury proximately
17 caused by an act or omission of an employee of the public entity within the scope of his
18 employment if the act or omission would, apart from this section, have given rise to a cause of
19 action against that employee or his personal representative.” (Gov. Code § 815.2) “Except as
20 otherwise provided by statute (including Section 820.2), a public employee is liable for injury
21 caused by his act or omission to the same extent as a private person.” (Gov. Code § 820(a))
22 “[P]ublic school district may be vicariously liable in hiring, supervising and retaining a school
23 employee.” (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 879.)

24 26. PES staff were unfit to protect and supervise AIDEN. A significant part of their
25 job was to supervise students and ensure they refrained from placing them in unreasonable or
26 avoidable danger.
27

1 27. Upon information and belief, parents made numerous complaints to SDUSD prior
2 the ongoing bullying of AIDEN, including but not limited to, complaints about staff's ongoing
3 failure to follow proper safety protocols to protect AIDEN from ongoing abuse and bullying.
4 SDUSD was on notice as to the unfitness of the supervisors and knew or should have known that
5 the staff was unfit to supervise and protect AIDEN. Had AIDEN been adequately supervised by
6 school staff , they would have taken steps to address previous complaints about the ongoing
7 bullying of AIDEN. SDUSD failed to take an adequate action against the individuals bullying
8 AIDEN and the faculty and staff who continuously failed to protect him.
9

10 28. As a result of the inaction and lack of supervision, AIDEN was harmed and
11 suffered greatly as a result of the incompetence, unfitness and reckless disregard for student safety
12 by PES faculty, staff and administration.

13 29. As a result of the above-described conduct, Plaintiff has suffered, and continues to
14 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
15 emotional distress, embarrassment, loss of self-esteem, and loss of enjoyment of life; were
16 prevented and will continue to be prevented from performing Plaintiff's daily activities and
17 obtaining the full enjoyment of life; and/or has incurred and will continue to incur expenses for
18 medical and psychological treatment, physical therapy, and counseling.
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21 **THIRD CAUSE OF ACTION**
22 **(Violation of Constitutional Rights 42 U.S.C. § 1983)**

23 30. Plaintiff realleges paragraphs 1 through 29.

24 31. Defendants violated AIDEN's rights under the Fourth Amendment to the United
25 States Constitution by actions, including but not limited to subjecting him to unreasonable and
26 unjustifiable force while at school.

1 32. Defendants violated AIDEN’S rights to Equal Protection Clause of the Fourteenth
2 Amendment to the United States Constitution by actions, including, but not limited to, depriving
3 him of equal protection under the law on the basis of his Native American heritage.

4 33. Defendants violated AIDEN’s rights under the Fourth Amendment to the United
5 States Constitution by actions, including, but not limited to acting with deliberate indifference to
6 the risk of harm to AIDEN by other students.

7
8 34. Defendants violated AIDEN’s rights under the Due Process Clause to the
9 Fourteenth Amendment of the United States Constitution by actions, including, but not limited
10 to:

- 11 a. Intentionally interfering with the parent-child relationship by concealing
12 information of AIDEN’s physical and emotional trauma inflicted at school;
13 b. Intentionally interfering with Plaintiff’s right to receive nurturing, comfort and
14 support from his Mother regarding a highly traumatic event.

15 35. As a proximate result of the aforementioned violations, AIDEN has suffered the
16 damages heretofore alleged.

17
18 **FOURTH CAUSE OF ACTION**
19 **(Discrimination in Violation of the Americans with Disabilities Act)**

20 36. Plaintiff realleges paragraphs 1 through 35.

21 37. Plaintiff was entitled to the protections of “Public Services” provision for Title II
22 of the Americans with Disabilities Act of 1990. Title II Subpart A prohibits discrimination by any
23 “public entity,” including any state or local government as defined by 42 U.S.C. Section 12131,
24 section 201 of the ADA.

25 38. Pursuant to 42 U.S.C. Section 12132, Section 202 of Title II, no qualified
26 individual with a disability, by reason of such disability, shall be excluded from participation in
27 or be denied the benefit of any services, programs or entities of a public entity or be subjected to

1 discrimination by any such entity. Plaintiff was at all times relevant to this Complaint is a
2 qualified individual with a disability as therein defined.

3 39. SDUSD has failed in its responsibilities under Title II to provide its services,
4 programs and activities in a full and equal manner to disabled persons as described hereinabove,
5 including failing to ensure that educational services are provided on an equal basis to children
6 with disabilities and free of hostility towards their disability.
7

8 40. SDUSD has further failed in its duties under Title II to provide its services ,
9 programs and activities in a full and equal manner to disabled persons as described hereinabove
10 by subjecting plaintiff to a hostile educational environment.

11 41. As a result of SDUSD's failure to comply with its duty under Title II Plaintiff has
12 suffered damages including special and general damages according to proof.

13 **FIFTH CAUSE OF ACTION**

14 **(Violation of Section 504 of the Rehabilitation Act of 1973)**

15 42. Plaintiff realleges paragraph 1 through 41.

16 43. Plaintiff is informed and believes and thereon alleges that SDUSD has at all
17 relevant times the recipient of federal financial assistance, and that part of the financial
18 assistance has been used to fund the operations and the activities that take place therein.
19

20 44. By their actions and inactions in denying equal access to educational services by
21 subjecting Plaintiff to a hostile educational environment, defendant has violated Plaintiff's
22 rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 and the
23 regulations promulgated thereunder.

24 45. As a result of SDUSD's failure to comply with its aforementioned duties,
25 Plaintiff has suffered special and general damages according to proof.

26 **SIXTH CAUSE OF ACTION**
27 **(Violation of Civil Rights Act of 1964)**

1 46. Plaintiff realleges paragraph 1 through 41..

2 47. Plaintiff is informed, believes and therefore alleges that SDUSD has at all relevant
3 times the recipient of federal financial assistance , and that part of that financial assistance has
4 been used to fund the operation, construction and/or maintenance of the specific public facilities
5 described herein and the activities that take place therein.

6 48. Plaintiff is informed and believes that he was targeted and harassed on the basis of
7 race.

8
9 49. SDUSD had actual notice that the harassment of Plaintiff was based on his
10 race/ethnicity.

11 50. By failing to conduct adequate investigation of known or suspected misconduct,
12 SDUSD exhibited deliberate indifference to the racial harassment of AIDEN.

13 51. SDUSD’s failure to promptly and appropriately respond to the racial harassment
14 resulted in AIDEN being excluded from participation in, being denied the benefits of, and being
15 subjected to discrimination in SDUSD in violation of Title VI.

16 52. As a result of SDUSD’s failure to comply with its duty under Section 601 of Title
17 VI of the Civil Rights of 1964, 42 U.S.C. Section 2000d et seq and its implementing regulation.
18 Plaintiff has suffered damages including special and general damages according to proof.

19
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21 **REQUEST FOR RELIEF**

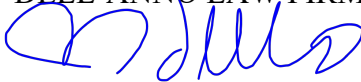
22 THEREFORE, Plaintiff requests judgment against San Diego Unified School District, and
23 Does 1 through 20 as follows:

- 24 a. Special and general damages according to proof;
- 25 b. Costs of court; and
- 26 c. Other further relief the justified under the law.
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Date: March 4, 2021

DELL'ANNO LAW FIRM, APC



Marlea F. Dell'Anno,
Attorneys for Plaintiff