

ELECTRONICALLY  
FILED  
10/8/2019 5:21 PM

SAN LUIS OBISPO SUPERIOR COURT  
BY   
D. Rincon, Deputy Clerk

Gloria Allred, Esq. (SBN 65033)  
Nathan Goldberg, Esq. (SBN 61292)  
Christina Cheung, Esq. (SBN 280148)  
Byron R. Lau, Esq. (SBN 280519)  
ALLRED, MAROKO & GOLDBERG  
6300 Wilshire Boulevard, Suite 1500  
Los Angeles, CA 90048  
Telephone: (323) 653-6530  
Facsimile: (323) 653-1660

Allen K. Hutkin, Esq. (SBN 143200)  
HUTKIN LAW FIRM  
1220 Marsh Street  
San Luis Obispo, CA 93401  
Telephone: (805) 544-1500  
Facsimile: (805) 544-1532

Attorneys for JANE N.R. DOE, an individual, JANE S.C. DOE, an individual, and JANE E.A. DOE, an individual.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN LUIS OBISPO

JANE N.R. DOE, an individual, JANE S.C.  
DOE, an individual, and JANE E.A. DOE, an  
individual,

PLAINTIFFS,

vs.

LUCIA MAR UNIFIED SCHOOL DISTRICT,  
a public entity; JUSTIN MAGDALENO, an  
individual; and DOES 1 through 50, inclusive,  
Defendants.

Case No. 19CV-0599

**COMPLAINT FOR DAMAGES**

1. NEGLIGENT HIRING,  
SUPERVISION, AND RETENTION  
(GOV'T CODE § 815.2)
2. BREACH OF MANDATORY DUTY  
(GOV'T CODE §§ 815.6 & 820)
3. SEXUAL HARASSMENT (CAL. CIV.  
CODE § 51.9)
4. SEXUAL HARASSMENT IN  
EDUCATIONAL SETTING (EDU.  
CODE § 220)
5. INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS
6. SEXUAL BATTERY
7. BATTERY
8. ASSAULT

**JURY TRIAL DEMANDED**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16

17  
18  
19  
20  
21  
22  
23  
24  
25  
26

28



1 childhood sexual harassment, molestation, and abuse. As such, S.C.'s true name is concealed in  
2 order to protect her true identity and to preserve her privacy. S.C. was a minor at the time of all  
3 incidents alleged herein. S.C.'s birthdate is \*\*/\*\*/2001. Pursuant to Cal. Gov't Code § 905(m),  
4 S.C. is specifically exempt from the claims presentation requirements for her claims against  
5 Defendant LUCIA MAR UNIFIED SCHOOL DISTRICT for the unlawful sexual molestation  
6 and sexual abuse she suffered by the then-teacher/Head Coach of the Girls' Wrestling Team,  
7 JUSTIN MAGDALENO, in fall 2015 until MAGDALENO's leave from the program in or about  
8 October of 2017.

9         4.       PLAINTIFF JANE E.A. DOE (hereinafter "E.A."), who at all relevant times  
10 mentioned herein was a resident in the County of San Luis Obispo, State of California. E.A. is a  
11 victim of childhood sexual harassment, molestation, and abuse. As such, E.A.'s true name is  
12 concealed in order to protect her true identity and to preserve her privacy. E.A. was a minor at  
13 the time of all incidents alleged herein. E.A.'s birthdate is \*\*/\*\*/2000. Pursuant to Cal. Gov't  
14 Code § 905(m), S.C. is specifically exempt from the claims presentation requirements for her  
15 claims against Defendant LUCIA MAR UNIFIED SCHOOL DISTRICT for the unlawful sexual  
16 molestation and sexual abuse she suffered by the then-teacher/Head Coach of the Girls'  
17 Wrestling Team, JUSTIN MAGDALENO, during her participation on the team in the 2015-16  
18 and 2017-18 school years.

19         5.       JANE N.R. DOE, JANE S.C. DOE, and JANE E.A. DOE shall collectively be  
20 referred as "PLAINTIFFS" or individually as "PLAINTIFF" hereinafter.

21         6.       PLAINTIFFS are informed and believe, and based thereon allege that Defendant  
22 LUCIA MAR UNIFIED SCHOOL DISTRICT (hereinafter "LMUSD") is now and at all relevant  
23 times a public entity existing under the laws of the State of California, having its principal place  
24 of business in the County of San Luis Obispo, State of California. PLAINTIFFS are further  
25 informed and believe, and based thereon allege that Nipomo High School ("Nipomo HS") is an  
26 educational institution owned, controlled, run, supervised, and operated by LMUSD and operates  
27 as a high school for students approximately 14 years of age through approximately 18 years of  
28 age.

1           7.     PLAINTIFF are informed and believe, and based thereon allege that Defendant  
2 JUSTIN MAGDALENO (hereinafter "MAGDALENO") is an individual, who now and at all  
3 relevant times herein, is a resident of the County of San Luis Obispo, State of California. During  
4 the relevant time period, MAGDALENO was the Head Coach of the Nipomo HS girls' wrestling  
5 team and a teacher at Nipomo HS.

6           8.     The true names and capacities, whether individual, corporate, partnership,  
7 associate, public entity, or otherwise, of Defendants sued herein as DOES 1 through 50,  
8 inclusive, are currently unknown to PLAINTIFFS, who therefore sues said Defendants by such  
9 fictitious names pursuant to Cal. Code of Civil Procedure Section 474. PLAINTIFFS are  
10 informed and believe, and based thereon allege, that each of the Defendants designated herein as  
11 a fictitious defendant is legally responsible in some manner for the events and happenings  
12 referred to herein, and caused injury and damage proximately thereby to PLAINTIFFS as  
13 hereinafter alleged. PLAINTIFFS will seek leave of court to amend this Complaint to show the  
14 true names and capacities of the Defendants designated herein as DOES when the same have  
15 been ascertained.

16           9.     Whenever in this complaint reference is made to Defendant(s), or any of them,  
17 such allegation shall be deemed to include all fictitiously named defendants.

18           10.    At all times mentioned herein, Defendants, and each of them, are and were the co-  
19 conspirators, aiders, abettors, agents, representatives, and/or employees of the other Defendants,  
20 and in acting as described herein were acting within the course and scope of their alternative  
21 personality, capacity, identity, agency, representation, and/or employment and were within the  
22 scope of their authority, whether actual or apparent, and with the full knowledge, consent,  
23 authority, ratification, and/or permission of the other Defendants.

24           11.    At all times mentioned herein, Defendants, and each of them, are and were the  
25 trustees, partners, servants, joint venturers, shareholders, contractors, and/or employees of each  
26 and every other Defendant, and the acts and omissions herein alleged were done by them, acting  
27 individually, through such capacities and within the scope of their authority, and with the  
28 permission and consent of each and every other Defendant and said conduct was thereafter



1 ratified by each and every other Defendant, and each of them is jointly and severally liable to  
2 each PLAINTIFF.

3 12. The subject incidents upon which this Complaint is based occurred in and around  
4 Nipomo HS located at 525 Thompson Ave., Nipomo, California. As such, jurisdiction and  
5 venue is proper in San Luis Obispo County Superior Court.

6 **SPECIFIC FACTUAL ALLEGATIONS AS TO ALL PLAINTIFFS**

7 13. PLAINTIFFS are informed and believe, and based thereon allege, in or about  
8 summer 2008, while Defendant MAGDALENO was employed at Santa Maria Joint Union High  
9 School District as a teacher and the coach of the girls' wrestling team at Pioneer Valley High  
10 School, Defendant MAGDALENO inappropriately touched a female student during a school  
11 camping trip at Lake Nacimiento, provided her and other underage females with alcohol,  
12 displayed his buttocks, and offered to flash his genitals in exchange for beer. PLAINTIFFS are  
13 further informed and believe that this incident was later reported to the police.

14 14. On information and belief, Defendant MAGDALENO resigned from his position  
15 at Santa Maria Joint Union High School District in 2009 as a result of the above incident.

16 15. On information and belief, beginning in the 2012-2013 academic year, LMUSD  
17 employed MAGDALENO as a teacher at Nipomo HS.

18 16. In the fall of 2013, LMUSD hired, approved, designated, controlled and/or  
19 supervised MAGDALENO as the Head Coach of the girls' wrestling team at Nipomo HS. This  
20 was the first time Nipomo HS had a girls' wrestling program. MAGDALENO remained Head  
21 Coach of the girls' wrestling team until his resignation in October of 2017.

22 17. S.C. was a student at Mesa Middle School, also owned, controlled, run,  
23 supervised, and operated by LMUSD, from about September 2013 to about May 2015. S.C. was  
24 a member of the co-ed wrestling team at Mesa Middle School.

25 18. While S.C. was attending a tournament with the Mesa Middle School wrestling  
26 team during the 2014-15 school year, she first met MAGDALENO when he approached her to  
27 recruit her for the Nipomo HS girls' wrestling team. He complimented her wrestling ability and  
28 guaranteed her a position on the varsity team if she joined the next year when she was a

1 freshman student at Nipomo H.S. Based upon MAGDALENO's guarantee of a place on the  
2 varsity team, S.C. decided to join the girls' wrestling program at Nipomo HS the following year.

3 19. PLAINTIFFS began their freshmen year at Nipomo HS in the fall of 2015 and  
4 joined the Girls' Wrestling program that same semester. Each PLAINTIFF regularly attended  
5 practices and meets during the academic year 2015-2016.

6 20. During the academic year 2015-2016, N.R. and S.C. were also students in the  
7 mathematics class that MAGDALENO taught. During this mathematics class, MAGDALENO  
8 pressured N.R. to join the Girls Wrestling team.

9 21. As a result of MAGDALENO's abuse towards them and others, N.R. and E.A.  
10 ceased their participation in the girls' wrestling team after their freshmen year. E.A. rejoined the  
11 girls' wrestling team in fall 2017 hoping to protect her friend, S.C., who was still on the team,  
12 but ceased her participation shortly after complaining about MAGDALENO's abuse because she  
13 feared retaliation by Magdaleno and other members of the girls' wrestling team who were allied  
14 with him.

15 22. From fall 2015 through fall 2017, PLAINTIFFS witnessed Defendant  
16 MAGDALENO engage in a predatory pattern of abusing and sexually harassing students on the  
17 girls' wrestling team as well as students in his classes on a near daily basis on campus. During  
18 practice, he was extremely controlling and dominating over the female students. No other adults  
19 were present during a majority of the practices and MAGDALENO excluded parents from  
20 attending practices. His conduct towards PLAINTIFFS and towards other female minors in their  
21 presence included, but is not limited to:

- 22 a. Slapping and unnecessarily touching the buttocks of the female minors  
23 (including S.C. and E.A.);
- 24 b. Staring in a sexual manner at female students in class and/or during practice  
25 (including all PLAINTIFFS);
- 26 c. Commenting on the size and shape of their buttocks (including E.A. and S.C.;  
27 N.R. witnessed this);
- 28 d. Controlling female minors on the wrestling team by discouraging them from



- 1 dating anyone and demeaning anyone they dated (including all  
2 PLAINTIFFS);
- 3 e. Giving nicknames to female wrestlers to ridicule, humiliate, and/or embarrass  
4 them, including mocking wrestlers' body parts and looks by calling them  
5 "spatula," "squatty," "E.T." and "pit bull," referring to N.R. as "senior  
6 slayer," and racially abusing E.A., who is African American, and another  
7 African-American female wrestler by calling both students "Blacky Chan";
- 8 f. Using excessive force in demonstrating wrestling moves and/or wrestling  
9 female minors even before wrestling practice commenced, causing several  
10 bodily injuries (including N.R. and S.C.; E.A. witnessed this);
- 11 g. Using excessive force or verbal abuse to punish female minors if they lost a  
12 match or did something to upset him (including all PLAINTIFFS);
- 13 h. On at least one occasion threatening to physically batter the PLAINTIFFS and  
14 other female minors if they did not follow his orders to use excessive force to  
15 cause bodily injury to another female minor as "punishment" for allegedly  
16 stealing a phone;
- 17 i. Lingering in touching female minors, including touching their breasts and/or  
18 vaginal area, after "demonstrating" wrestling moves on them or wrestling with  
19 them (including all PLAINTIFFS);
- 20 j. Swearing at and threatening to shun and "hate" female minors, including all  
21 PLAINTIFFS, if any left the team to purposefully foster a fearful environment  
22 and acting on such threats towards female minors who quit the team;
- 23 k. Tickling, touching the hair, and massaging the shoulders of female minors,  
24 including N.R., during class hours and before and during wrestling practice  
25 (E.A. and S.C. witnessed this).

26 23. During the fall 2016, N.R. went to the then Assistant Principal of Nipomo High  
27 School, Matt David, to complain about MAGDALENO's sexual harassment and physical  
28 intimidation towards her and other female wrestlers. On information and belief, Defendant

1 LMUSD failed to conduct any investigation or take any prompt, remedial steps to protect these  
2 girls from further sexual harassment, sexual abuse, or physical abuse by MAGDALENO.

3 24. On information and belief, on or about June 1, 2017, MAGDALENO served as  
4 the eleventh grade Powder-Puff football coach. The Powder-Puff football game took place in the  
5 presence of the entire student body and most school administrators and staff. During the game,  
6 MAGDALENO verbally confronted a male student, swore at him, made threatening comments  
7 to him, and pushed him in front of the entire school.

8 25. In June of 2017, during the last week of class for the academic year 2016-2017,  
9 S.C observed MAGDALENO forcefully grab a female student, who was also a participant on the  
10 girls' wrestling team, during class. This incident took place in one of Nipomo HS's classrooms  
11 and during a class MAGDALENO taught. The female student was wearing a dress (romper) at  
12 the time and MAGDALENO reached between her legs and lifted her up by her vaginal area and,  
13 due to her loose clothing, exposed her underwear to others. The female student screamed for  
14 him to stop and tried to cover herself up. MAGDALENO laughed and continued to assault her  
15 for a few minutes before releasing her.

16 26. Despite this gross misconduct, LMUSD allowed MAGDALENO to coach the  
17 girls' wrestling team and to engage in one-on-one interactions with them. LMUSD knew or  
18 should have known of the above allegations against MAGDALENO and that he was unfit to be a  
19 teacher or to serve as the Head Coach of the girls' wrestling team at Nipomo HS. Nonetheless,  
20 LMUSD failed to properly supervise MAGDALENO and gave him unfettered access to  
21 PLAINTIFFS and other students who participated in the girls' wrestling team.

22 27. On information and belief, LMUSD knew, approved of, and/or provided  
23 permission to MAGDALENO, as part of his regular job duties, to operate, run and/or manage a  
24 girls' wrestling program, including a summer wrestling camp (hereinafter referred to as  
25 "Summer Wrestling Camp"), for minor females at Nipomo HS on behalf of LMUSD.

26 28. Following the 2016-17 school year, S.C. participated in the 2017 Summer  
27 Wrestling Program on weekdays that summer.

28 29. The training took place in a small, enclosed room at NIPOMO HS. No other



1 adults were present; MAGDALENO was alone with several minor female students from  
2 NIPOMO HS's girl's wrestling team. While S.C. and the other minor female students were  
3 alone with MAGDALENO, he obscured the windows to prevent anyone who may have walked  
4 by the room from seeing inside.

5 30. As MAGDALENO had done during the academic year, under the guise of  
6 demonstrating wrestling moves, MAGDALENO used excessive force to batter and assault S.C.  
7 and other minor females for the purpose of exerting his dominance and control over them based  
8 on their gender. He continued to engage in this despicable conduct on a near daily basis during  
9 the 2017 Summer Wrestling Program.

10 31. Defendant MAGDALENO targeted S.C. and frequently battered her under the  
11 pretext of demonstrating "wrestling moves" on her. S.C. often had bruises on her body and was  
12 in physical pain after Defendant MAGDALENO's batteries and felt embarrassed and humiliated  
13 by his conduct.

14 32. At the beginning of the 2017-2018 school year, MAGDALENO continued the  
15 aforementioned illegal conduct towards the female students, including E.A. (who had re-joined  
16 the wrestling team briefly in the 2017-18 academic year) and S.C.

17 33. In early October of 2017, Defendant MAGDALENO slapped S.C.'s buttocks  
18 during a practice. It was so blatantly brazen and unrelated to the demonstration of any wrestling  
19 move that S.C. was shocked. He also commented that S.C. had "a lot of cushion back there."

20 34. On or about October 10, 2017, S.C., E.A., and another female student met with  
21 the Assistant Principal, Matt David, to report DEFENDANT MAGDALENO's sexual  
22 harassment and misconduct towards Nipomo HS female students. They told Mr. David that  
23 MAGDALENO made them feel uncomfortable. Some of the examples provided included  
24 MAGDALENO's inappropriate touching of them on a near daily basis, commenting on their  
25 buttocks, breast size, and how attractive they looked, and using intimidating tactics to keep them  
26 in line. Mr. David did not appear surprised.

27 35. Even after these reports, LMUSD allowed MAGDALENO to remain as the Head  
28 Coach of the girls' wrestling team and as a teacher thereby enabling him to retaliate against

1 PLAINTIFFS for their complaints about him.

2 36. On information and belief, shortly thereafter, MAGDALENO called a team  
3 meeting and directed the female students loyal to him to harass and bully those he perceived had  
4 complained about him to school administrators. On information and belief, he instructed those  
5 loyal to him to retaliate against those he believed had reported his sexual harassment and other  
6 illegal behavior to LMUSD.

7 37. Based on information and belief, at least ten students, including all PLAINTIFFS  
8 formally accused MAGDALENO of sexual assault, sexual harassment, and/or hostile  
9 educational environment shortly after the October 10, 2017 complaint. These students reported  
10 that MAGDALENO touched their buttocks, inner thighs, waists, and vaginas, and had made  
11 repeated inappropriate sexual comments about their bodies. These students expressed that  
12 MAGDALENO was so violent and controlling of them and their bodies during practice that they  
13 were in complete fear of him. MAGDALENO solidified his control over the team by telling  
14 these students that he was part of "school administration" and "untouchable."

15 38. On or about October 18, 2017, another female student, who had experienced  
16 MAGDALENO's sexual harassment and sexual and physical abuse, e-mailed LMUSD's then  
17 Superintendent at the time to inform her of the sexual harassment and abuse allegations against  
18 MAGDALENO and the fact that no one took any steps to protect them after concerns were  
19 previously brought to LMUSD's attention.

20 39. Even after these additional complaints, LMUSD still allowed MAGDALENO to  
21 attend an overnight AVID school trip the weekend of October 24, 2017 as one of the chaperones.  
22 One of the female minors who accompanied S.C and E.A. to complain about Magdaleno in  
23 October of 2017 attended this trip. MAGDALENO saw her and glowered at her and stared at  
24 her in an intimidating manner the entire day.

25 40. On information and belief, during this trip, MAGDALENO threatened that female  
26 student and loudly stated, "If I had a baseball bat, I'd kill that kid and her mom."

27 41. LMUSD administrators initially tried to keep the accusations against  
28 MAGDALENO quiet. On information and belief, the then-Assistant Principal assured



1 MAGDALENO that the complaints against him would not be included in his file and that he  
2 could continue to coach the girls' wrestling team.

3 42. Facing immense pressure, LMUSD finally placed MAGDALENO on a paid  
4 administrative leave at the end of October 2017.

5 43. PLAINTIFFS are informed and believe, and based thereon allege, that LMUSD  
6 conducted an investigation into the complaints against MAGDALENO between October to  
7 November 2017. N.R., S.C., and E.A. were interviewed and provided further details of their  
8 complaints against MAGADALENO. LMUSD investigation confirmed many of the complaints  
9 against MAGDALENO (i.e., that MAGDALENO had inappropriately touched the students'  
10 breast area, groin area, or upper leg area and had made derogatory comments about the students'  
11 buttocks) and concluded that the complained of behavior "violated LMUSD's policies and  
12 procedures prohibiting sexual harassment . . . prohibiting retaliation against those who make  
13 complaints of harassment."

14 44. On information and belief, on or about June 28, 2018, LMUSD reached an  
15 agreement with MAGDALENO that allowed him to resign and be paid a severance. Further, the  
16 agreement stated that the only information it will provide to future prospective employers will be  
17 his position, dates held, and salary information—*nothing about the nearly one dozen allegations*  
18 *of sexual battery and sexual harassment against him.*

19 45. Even after MAGDALENO was no longer physically present on campus at  
20 Nipomo HS, PLAINTIFFS faced continuing bullying from other students and administrators for  
21 the rest of their time as students at Nipomo HS. Other members of the girls' wrestling team  
22 blamed PLAINTIFFS for MAGDALENO being removed as coach of the team and others called  
23 them "liars."

24 46. Plaintiff N.R. faced bullying and ridicule on a near weekly basis from classmates  
25 at Nipomo HS for being one of the students who had complained about MAGDALENO. Even  
26 though N.R. reported this bullying to school administrator Rebecca Ferguson, LMUSD did  
27 nothing to investigate or take any remedial steps to stop the bullying and ridicule N.R. was  
28 experiencing. As a result, months into her senior year at Nipomo HS, N.R. decided to leave the

1 school and enroll in an independent study program at home.

2 47. Plaintiffs S.C. and E.A. also faced bullying from other students at Nipomo HS for  
3 complaining about MAGDALENO. Amongst the bullying they experienced, other Nipomo HS  
4 students called them “liars” and/or blamed them for “ruining” the wrestling program.

5 48. As a teacher and the Head Wrestling Coach of the girls’ wrestling team at  
6 Nipomo HS, LMUSD placed MAGDALENO in direct contact with students and aspiring female  
7 wrestlers, almost all of whom were minors, from the beginning of his employment until the fall  
8 2017. It is under these circumstances that PLAINTIFFS came to be under the direction and  
9 control of MAGDALENO, who used his position of authority and trust over PLAINTIFFS to  
10 take advantage of her young age and vulnerability so that he could sexually abuse her as  
11 described herein.

12 49. By hiring MAGDALENO to serve as a teacher and Head Wrestling Coach of the  
13 girls’ wrestling team to educate, advise, and/or mentor minor female children, LMUSD held  
14 MAGDALENO out to the public, including PLAINTIFFS and their families, to be of high  
15 ethical and moral repute, and to be in good standing with DEFENDANTS and the public.  
16 Inherent in these representations was the understanding that MAGDALENO was selected to  
17 educate, lead, guide, mentor, and counsel minors such as PLAINTIFFS. PLAINTIFFS and their  
18 families reasonably assumed that MAGDALENO was worthy of their trust. As a result,  
19 MAGDALENO was put in a position to coach, mentor, and counsel minor female students at  
20 Nipomo HS, including PLAINTIFFS.

21 50. At all times material hereto, LMUSD employed MAGDALENO as a teacher,  
22 head coach, and advisor at Nipomo HS. In such capacity, MAGDALENO was under the direct  
23 supervision, employ, agency, and control of LMUSD and DOES 1-50. His employment duties  
24 and responsibilities with the named Defendants included, in part, providing for supervision,  
25 coaching, advisory, educational, and well-being of students of Nipomo HS and other minor  
26 students attending school within the LMUSD, including PLAINTIFFS.

27 51. MAGDALENO was placed in direct contact with PLAINTIFFS and other minor  
28 female students through his position with LMUSD. MAGDALENO was the Head Coach of the



1 girls' wrestling team at Nipomo HS, of which PLAINTIFFS were members. Defendants  
2 assigned MAGDALENO to teach, coach, counsel, direct, advise, and mentor PLAINTIFFS. It is  
3 under these circumstances that PLAINTIFFS came to be under the direction and control of  
4 MAGDALENO, who used his position of authority and trust over PLAINTIFFS to sexually  
5 harass, molest, and abuse them.

6 52. As students at Nipomo HS during the 2015-2018 school years, where  
7 MAGDALENO was employed and worked, PLAINTIFFS were under MAGDALENO's direct  
8 supervision, care, and control, thus, creating a special relationship, fiduciary relationship, and  
9 confidential relationship with Defendants. Additionally, as minor children under the custody,  
10 care and control of Defendants, Defendants stood in *loco parentis* with respect to PLAINTIFFS  
11 while they were attending school-related functions at Nipomo HS and LMUSD. As responsible  
12 parties and employers controlling MAGDALENO, Defendants were in a special relationship  
13 with PLAINTIFFS and owed special duties to PLAINTIFFS.

14 53. Prior to and during PLAINTIFFS' enrollment in Nipomo HS in 2015,  
15 PLAINTIFFS are informed and believe and based thereon allege that LMUSD and NIPOMO HS  
16 knew or should have known that MAGDALENO posed an unreasonable risk of sexually  
17 inappropriate conduct (i.e. sexual abuse, sexual exploitation, and inappropriate sexual  
18 relationships, etc.) towards minor females to whom he was exposed through his employment or  
19 otherwise. Defendants knew or should have known that MAGDALENO would use his position  
20 of authority and trust acting on behalf of Defendants to gain access to children, including  
21 PLAINTIFFS, on the school facilities and ground, which allowed him to sexually abuse minor  
22 females, including PLAINTIFFS.

23 54. Despite the awareness of LMUSD and/or DOES 1-50 of the danger of sexual  
24 assault and/or sexual battery and/or sexual advances and/or any other sexually inappropriate  
25 conduct that MAGDALENO posed towards minor females he encountered through his  
26 employment, LMUSD failed to bar MAGDALENO from contact with such females, failed to  
27 control him, failed to warn females or parents of the danger posed by MAGDALENO, failed to  
28 limit MAGDALENO'S duties, failed to remove MAGDALENO from teaching or supervising

1 athletic programs as necessary, failed to supervise or monitor MAGDALENO, and otherwise  
2 failed to act reasonably to prevent MAGDALENO from sexually assaulting and/or sexually  
3 battering and/or engaging in any sexually inappropriate behavior towards female minors he  
4 encountered through his employment.

5 55. Prior to PLAINTIFFS' enrollment at Nipomo HS in 2015, Defendants failed to  
6 take reasonable steps and to implement reasonable safeguards to avoid acts of unlawful sexual  
7 conduct by MAGDALENO, including preventing the sexual harassment, molestation, and/or  
8 sexually inappropriate conduct by MAGDALENO towards PLAINTIFFS, avoiding placement of  
9 MAGDALENO in a function or environment in which contact with children is an inherent part  
10 of that function or environment.

11 56. Defendants also implemented various measures designed to, or which effectively,  
12 made MAGDALENO'S conduct harder to detect including:

- 13 a. Permitting MAGDALENO to remain in a position of authority and trust after  
14 Defendants knew or should have known he sexually harassed and/or sexually  
15 abused female minors;
- 16 b. Placing MAGDALENO in a separate and secluded environment, including  
17 placing him in charge of young children, which allowed him to sexually and  
18 physically interact with and abuse minor children such as PLAINTIFFS;
- 19 c. Allowing MAGDALENO to come into contact with minors, including  
20 PLAINTIFFS, without any supervision;
- 21 d. Failing to inform PLAINTIFFS and law enforcement officials of the fact that  
22 PLAINTIFFS and others were or may have been sexually abused after  
23 Defendants knew or should have known that MAGDALENO may have  
24 sexually abused PLAINTIFFS or others, thereby enabling PLAINTIFFS to  
25 continue to be endangered and sexually abused, and creating the circumstance  
26 where PLAINTIFFS and others were less likely to received medical/mental  
27 health care and treatment, thus exacerbating the harm to PLAINTIFFS;



- 1 e. Holding out MAGDALENO to PLAINTIFFS and to the community as being  
2 in good standing and trustworthy; and  
3 f. Failing to take reasonable steps, and to implement reasonable safeguards to  
4 supervise or monitor employees, volunteers, representatives or agents such as  
5 MAGDALENO to avoid acts of unlawful sexual conduct by MAGDALENO  
6 with students, especially those who were minor children;

7 57. As a direct and proximate result of Defendants' unlawful conduct as alleged  
8 hereinabove, N.R., S.C., and E.A. all have suffered physical injury, severe emotional distress,  
9 humiliation, embarrassment, mental and emotional distress and anxiety, and economic harm, all  
10 in an amount exceeding the jurisdictional minimum of the Superior Court according to proof at  
11 trial.

12 **FIRST CAUSE OF ACTION**

13 **(For Negligent Hiring, Retention, and Supervision under Gov't Code Sections 815.2 and**  
14 **820 against Defendants LMUSD and DOES 1-50)**

15 58. PLAINTIFFS repeat and reallege by reference each and every allegation  
16 contained hereinabove and incorporate the same as though fully set forth herein.

17 59. Defendants have a mandatory duty of care to protect each PLAINTIFF while she  
18 was a minor within Defendants' supervision and/or care during her involvement in the Girls'  
19 Wrestling Program at Nipomo HS.

20 60. Further, pursuant to Cal. Edu. Code §§ 44830, 44870, 44662(b), Defendants have  
21 a duty to hire, properly retain, and supervise/discipline their employees and agents, including  
22 MAGDALENO and the instructional technique and strategies he used, so as to avoid  
23 unreasonable harm to minors who attended programs at Nipomo HS. Defendants failed to take  
24 necessary, proper, or adequate measures to prevent the violation of PLAINTIFFS' rights and  
25 injury to PLAINTIFFS.

26 61. Defendants had special duties to PLAINTIFFS and/or to their parents to protect  
27 PLAINTIFFS, or had a duty to control the conduct of MAGDALENO by way of the special  
28 relationship existing between those individuals. Defendants owed a duty to protect each

1 PLAINTIFF while she was enrolled in the wrestling program at Nipomo HS because their  
2 parents had entrusted the Defendants to care for such students' welfare, safety, and physical  
3 custody. Defendants voluntarily accepted the entrusted care of PLAINTIFFS. PLAINTIFFS and  
4 their parents instilled great trust, faith and confidence in Defendants, and in MAGDALENO as  
5 PLAINTIFFS' coach and mentor.

6 62. As a result of this special, trusting relationship between Defendants and  
7 PLAINTIFFS, they had a mandatory duty of care to properly monitor, supervise, control,  
8 oversee, warn, and discipline its employees so as to avoid unreasonable harm to minors who  
9 participated in programs at Nipomo HS. Defendants, including their administrators, employees,  
10 and/or agents had a duty to control, monitor, and supervise MAGDALENO in his interactions  
11 with students of LMUSD, many of whom were minor children, during the training sessions that  
12 took place within the course and scope of his employment at Nipomo HS in order to prevent the  
13 reasonably foreseeable harm that he would sexually harass and/or harm them.

14 63. In addition to Defendants' failures as enumerated above, Defendants hired,  
15 retained MAGDALENO, and failed to terminate him despite that it knew, or should have known,  
16 of his propensity to assault, batter, sexually harass, and sexually abuse minor children entrusted  
17 to his care.

18 64. Defendants had a duty to control, monitor, and supervise MAGDALENO in his  
19 interactions with students, many of whom were minor children, during the training sessions that  
20 took place within the course and scope of his employment in order to prevent the reasonably  
21 foreseeable harm that he would assault, batter, sexually harass, sexually abuse, and/or harm  
22 them. Instead, Defendants negligently supervised MAGDALENO by giving him unfettered  
23 access to female minors at Nipomo HS and allowing him to spend time alone with these minors,  
24 including PLAINTIFFS, despite having knowledge or constructive knowledge of the danger  
25 MAGDALENO posed to minor children.

26 65. Defendants knew or should have known that Defendant MAGDALENO had  
27 exhibited a pattern of violent, aggressive behavior as well as predatory sexual abuse and sexual  
28 harassment of minor students.



1           66. Defendants knew or should have known that their failure to properly supervise,  
2 control, oversee, and monitor MAGDALENO and PLAINTIFFS would result in serious harm  
3 and injury to PLAINTIFFS and therefore MAGDALENO was unfit and incompetent to care for  
4 PLAINTIFFS and other minor children.

5           67. Defendants knew or should have known that children, including PLAINTIFFS,  
6 were vulnerable to assault, battery, sexual harassment, molestation, and abuse by counselors,  
7 advisors, mentors, coaches, and other persons of authority.

8           68. Defendants LMUSD and DOES 1-50 negligently supervised and retained  
9 MAGDALENO as described herein and failed to properly supervise PLAINTIFFS's safety as  
10 described herein. Defendants failed to take necessary, proper, or adequate measures to prevent  
11 the violation of PLAINTIFFS's rights and injury to PLAINTIFFS. In addition to Defendants'  
12 failures as enumerated herein, Defendants hired and retained MAGDALENO and did not  
13 terminate him despite that it knew, or should have known of, his propensity to batter, assault,  
14 sexually touch, and molest minor children entrusted to his care.

15           69. By failing to report the continuing molestations and abuse, which Defendants  
16 knew of or should have known of, and by failing to comply with the mandatory reporting  
17 requirements of Cal. Penal Code § 11164 *et seq.*, Defendants created the risk and danger  
18 contemplated by the Child Abuse and Neglect Reporting Act, and as a result, unreasonably and  
19 wrongfully exposed PLAINTIFFS and other minors to sexual molestation and abuse.

20           70. Defendants LMUSD and DOES 1-50's negligent supervision and retention of  
21 MAGDALENO, by and through their administrators, employees, and/or agents, was a substantial  
22 factor in causing PLAINTIFFS's harms and injuries.

23           71. Pursuant to Government Code Section 815.2(a), Defendant LMUSD and DOES  
24 1-50 are vicariously liable for injuries to PLAINTIFFS caused by their administrators,  
25 employees, and/or agents' negligent supervision and retention of MAGDALENO.

26           72. As a direct and proximate result of Defendants' unlawful conduct as alleged  
27 hereinabove, PLAINTIFFS have been severely harmed and offended emotionally and physically  
28 and otherwise, all to their special and general damages, all in amounts exceeding the

1 jurisdictional minimum of the Superior Court according to proof at trial.

2 **SECOND CAUSE OF ACTION**

3 **(For Breach of Mandatory Duties Pursuant to Gov't Code Section 815.6 and 820 against**  
4 **Defendants LMUSD and DOES 1-50)**

5 73. PLAINTIFFS repeat and reallege by reference each and every allegation  
6 contained hereinabove and incorporate the same herein as though fully set forth herein.

7 74. Government Code Section 815.6 provides, "Where a public entity is under a  
8 mandatory duty imposed by an enactment that is designed to protect against the risk of a  
9 particular kind of injury, the public entity is liable for an injury of that kind proximately caused  
10 by its failure to discharge the duty unless the public entity establishes that it exercised reasonable  
11 diligence to discharge the duty."

12 75. Defendant LMUSD and DOES 1-50 owed a duty of care to PLAINTIFFS and/or  
13 to PLAINTIFFS's parents, or had a duty to control the conduct of MAGDALENO by way of the  
14 special relationship existing between those individuals. Defendants owed a duty to protect  
15 PLAINTIFFS while they were enrolled at NIPOMO HS because their parents had entrusted the  
16 Defendants to care for PLAINTIFFS' welfare, safety, and physical custody. Defendants  
17 voluntarily accepted the entrusted care of PLAINTIFFS. As such, Defendants owed  
18 PLAINTIFFS, each of whom were minor children at the time of the events described herein, a  
19 special duty of care, in addition to an ordinary duty of care, and owed PLAINTIFFS the higher  
20 duty of care that adults dealing with children owe to protect them from harm. The duty to  
21 protect and warn arose from the special relationship between Defendants and PLAINTIFFS.  
22 PLAINTIFFS and their parents instilled great trust, faith, and confidence in Defendants, and in  
23 MAGDALENO as PLAINTIFFS's coach and mentor.

24 76. Defendants COUNTY, LACPR and Does 1-50 had the responsibility and  
25 mandatory duty to adequately and properly investigate, hire, train, and supervise its staff and to  
26 protect minors from harm caused by unfit and dangerous individuals hired as employees.

27 77. Under the Child Abuse and Neglect Reporting Act, Cal. Penal Code § 11164 *et*  
28 *seq.*, Defendants LMUSD, and DOES 1-50 were child care custodians and were under a statutory



1 duty to report known or suspected incidents of sexual molestation or abuse of minors to a child  
2 protective agency, pursuant to Cal. Penal Code § 11164 *et seq.*, and/or not impede the filing of  
3 any such report.

4 78. Cal. Civ. Code § 43 imposes a mandatory duty upon Defendants to refrain from  
5 violating PLAINTIFFS's right to protection from bodily restraint or harm, from personal insult,  
6 from defamation, and from injury to their personal relations.

7 79. Cal. Civ. Code § 1708 imposes a mandatory duty upon Defendants to refrain from  
8 injuring the person or property of PLAINTIFFS, or infringing upon any of their rights.

9 80. Cal. Edu. Code § 44807 and Cal. Code Regulations, Title 5, Section 5552,  
10 establish a mandatory duty of care owed by Defendants to PLAINTIFFS so as to provide her  
11 with responsible and appropriate supervision while she was attending Nipomo HS. Defendants  
12 failed to do so given their knowledge or constructive knowledge of MAGDALENO's prior  
13 misconduct towards at least one female minor in 2008 while he was a teacher at Pioneer Valley  
14 High School, prior to PLAINTIFFS's enrollments at Nipomo HS in 2015.

15 81. PLAINTIFFS, each of whom were minors at the time of the events alleged herein,  
16 were members of the class of persons under the protection of Cal. Penal Code § 11164 *et seq.*

17 82. Defendants knew or should have known that their agent, employee, counselor,  
18 advisor, and mentor, MAGDALENO had sexually molested, abused or caused touching, battery,  
19 harm, and other injuries to minors, including PLAINTIFFS, giving rise to a duty to report such  
20 conduct under Cal. Penal Code § 11164 *et seq.*

21 83. Prior to and after the first incident of MAGDALENO's sexual harassment,  
22 molestation, and abuse of PLAINTIFFS, through October 2017, Defendants knew or should have  
23 known that MAGDALENO had or was capable of sexually, physically, and mentally abusing  
24 minors, including PLAINTIFFS.

25 84. Defendants breached their duties of care to PLAINTIFFS by, amongst other  
26 things, allowing MAGDALENO to come into contact with PLAINTIFFS without supervision;  
27 by failing to investigate allegations of sexual abuse of minors; by failing to warn PLAINTIFFS,  
28 their parents, and law enforcement officials that MAGDALENO was or may have been sexually

1 harassing, molesting, and abusing minors; by holding out MAGDALENO to PLAINTIFFS and  
2 to their parents and guardians as being in good standing and trustworthy, and by failing to  
3 otherwise take any preventive action to control MAGDALENO's conduct with PLAINTIFFS.

4 85. As a result of Defendants' breach of their mandatory duties, MAGDALENO  
5 sexually abused and molested PLAINTIFFS.

6 86. Had Defendants fulfilled their duty and responsibility, PLAINTIFFS would not  
7 have been subject to all or most of the unlawful acts committed by MAGDALENO. Defendants  
8 are liable for the injury caused to PLAINTIFFS for their breach of their mandatory duties as  
9 described herein pursuant to Gov't Code Section 815.6

10 87. As a direct and proximate result of Defendants' unlawful conduct as alleged  
11 hereinabove, PLAINTIFFS have been severely harmed and offended emotionally and physically  
12 and otherwise, all to their special and general damages, all in amounts exceeding the  
13 jurisdictional minimum of the Superior Court according to proof at trial.

14 **THIRD CAUSE OF ACTION**

15 **(For Sexual Harassment in violation of Cal. Civ. Code § 51.9 against All Defendants)**

16 88. PLAINTIFFS repeat and reallege by reference each and every allegation  
17 contained hereinabove and incorporate the same herein as though fully set forth herein.

18 89. Cal. Civ. Code § 51.9 states that a person is liable in a cause of action for sexual  
19 harassment under this section when the plaintiff proves (1) there is a business, service or  
20 professional relationship between plaintiff and defendant or defendant holds himself out as being  
21 able to help plaintiff establish a business, service, or professional relationship with the defendant  
22 or a third party; (2) the defendant has made sexual advances, solicitations, sexual requests,  
23 demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical  
24 conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and  
25 pervasive or severe; (3) the plaintiff has suffered or will suffer economic loss or disadvantage or  
26 personal injury, including, but not limited to emotional distress or violation of a statutory or  
27 constitutional right, as a result of the conduct described in paragraph (2).



1           90.     During PLAINTIFFS's participation in the Girls' Wrestling program and/or as a  
2 student in MAGDALENO's class, MAGDALENO intentionally, recklessly and wantonly made  
3 sexual advances, solicitations, requests, demands for sexual compliance and/or engaged in other  
4 verbal, visual, or physical conduct of a hostile nature based on PLAINTIFFS's gender that were  
5 unwelcome, severe, and pervasive. MAGDALENO intentionally, recklessly, and wantonly did  
6 acts which resulted in harmful and offensive contact with intimate parts of PLAINTIFFS's  
7 persons, including but not limited to MAGDALENO using the authority and trust inherent in his  
8 position as the Head Coach of the girls wrestling team at NIPOMO HS to exploit them  
9 physically, psychologically, and emotionally. Many of these acts were done for  
10 MAGDALENO's sexual gratification; all while MAGDALENO was acting in the course and  
11 scope of his agency/employment with LMUSD. MAGDALENO also verbally and physical  
12 abused PLAINTIFFS and engaged in other conduct of a hostile nature based on PLAINTIFFS'  
13 gender as alleged hereinabove.

14           91.     The incidents of sexual molestation and abuse as alleged hereinabove took place  
15 while PLAINTIFFS were under the care of MAGDALENO, in his capacity and positions as the  
16 Head Coach of the girls' wrestling team and/or teacher, while acting specifically on behalf of  
17 LMUSD. As such, PLAINTIFFS had a business, professional, and/or service relationship with  
18 MAGDALENO as defined in Cal. Civ. Code §§ 51.9(a)(1)(E) and/or 51.9(A)(1)(H).

19           92.     Because of PLAINTIFFS's young age and relationship with MAGDALENO as a  
20 student at Nipomo HS and participation in the Girls' Wrestling program, PLAINTIFFS were  
21 unable to easily terminate their coach/teacher-student and/or mentor/mentee relationship with  
22 MAGDALENO.

23           93.     Because of MAGDALENO's position of authority over PLAINTIFFS, and  
24 PLAINTIFFS's mental and emotional state, and their young age under the age of consent,  
25 PLAINTIFFS were unable to, and did not consent to such acts.

26           94.     Although Defendants knew or should have known of MAGDALENO's  
27 misconduct, Defendants did nothing to investigate, to supervise or monitor MAGDALENO to  
28 ensure the safety of PLAINTIFFS or other minors in his custody, care, and/or control.

1 Defendants, by their failure to investigate, to respond to the charges against MAGDALENO, to  
2 terminate MAGDALENO's employment, or to discipline him after he was reported to have  
3 committed sexual misconduct and/or other intentional torts against minor students at Nipomo  
4 HS, thus, ratified MAGDALENO's sexual misconduct as alleged herein.

5 95. As a direct and proximate result of Defendants' unlawful conduct as alleged  
6 hereinabove, PLAINTIFFS have been severely harmed and offended emotionally and physically  
7 and otherwise, all to her special and general damages, all in amounts exceeding the jurisdictional  
8 minimum of the Superior Court according to proof at trial.

9 96. The aforementioned conduct by Defendants was willful, wanton, and malicious.  
10 At all relevant times, Defendants acted with conscious disregard of the PLAINTIFFS's rights  
11 and feelings. Defendants acted with the knowledge of or with reckless disregard for the fact that  
12 their conduct was certain to cause injury and/or humiliation to PLAINTIFFS. By virtue of the  
13 foregoing, PLAINTIFFS are entitled to recover punitive and exemplary damages from  
14 MAGDALENO and DOES 1-50 according to proof at trial.

15 **FOURTH CAUSE OF ACTION**

16 **(Gender Harassment in Educational Setting in Violation of Education Code § 200 *et seq.***  
17 **against Defendants LMUSD and Does 1-50)**

18 97. PLAINTIFFS repeat and reallege by reference each and every allegation  
19 contained hereinabove and incorporate the same herein as though fully set forth herein.

20 98. Cal. Edu. Code § 201(f) states that "It is the intent of the Legislature that each  
21 public school undertake educational activities to counter discriminatory incidents on school  
22 grounds and . . . to minimize and eliminate a hostile environment on school grounds that impairs  
23 the access of pupils to equal educational opportunity."

24 99. Cal. Edu. Code § 212.5(c) defines "sexual harassment" as "Conduct that has the  
25 purpose or effect of having a negative impact upon the individual's . . . academic performance,  
26 or of creating an intimidating, hostile, or offensive . . . education environment."

27 100. Cal. Edu. Code § 220 prohibits discrimination on the basis of sex in education  
28 programs and activities. Sexual harassment of students by other students is a form of



1 discrimination prohibited by Cal. Edu. Code § 220. Once a school has notice of possible sexual  
2 harassment of students—whether carried out by employees, other students, or third parties –it  
3 should take immediate and appropriate steps to investigate or otherwise determine what occurred  
4 and take steps reasonably calculated to end any harassment, eliminate a hostile environment if  
5 one has been created, and prevent the harassment from occurring again.

6 101. Defendants LMUSD is an educational institution who are, at all relevant times,  
7 obligated to fulfill the duties and requirements imposed by Cal. Edu. Code § 200 *et seq.*, as set  
8 forth hereinabove. Defendants LMUSD is liable for teacher-on-student harassment and student-  
9 on-student harassment if it acts with deliberate indifference to known acts of harassment in its  
10 programs or activities.

11 102. As alleged hereinabove, the gender-based harassment by MAGDALENO towards  
12 PLAINTIFFS on a near daily basis was so severe, pervasive, and objectively offensive as to alter  
13 the conditions of their education, create an abusive educational environment, and deprived them  
14 of the right of equal access to educational benefits and opportunities provided by LMUSD.

15 103. As alleged hereinabove, the gender-based harassment by PLAINTIFFS' peers  
16 towards PLAINTIFFS on a near daily basis was so severe, pervasive, and objectively offensive  
17 as to alter the conditions of their education, create an abusive educational environment, and  
18 deprived them of the right of equal access to educational benefits and opportunities provided by  
19 LMUSD.

20 104. As alleged hereinabove, LMUSD and/or Nipomo HS officials with authority to  
21 address the alleged harassment and to institute correct measures had actual knowledge of the  
22 sexual harassment each PLAINTIFF was experiencing.

23 105. Defendants failed to take any immediate, effective remedial steps to eliminate the  
24 known gender-based teacher-on-student harassment and/or student-on-student harassment, such  
25 as by investigating PLAINTIFFS' reports of harassment/bullying or disciplining those engaging  
26 in harassing conduct towards PLAINTIFFS. Defendants' lack of response to the reported  
27 harassment was clearly unreasonable in light of all the known circumstances and amounted to  
28 deliberate indifference.

1           106. The conduct of LMUSD as alleged hereinabove resulted in PLAINTIFFS being  
2 subjected to discrimination in Defendants' education program on account of their sex in violation  
3 of Cal. Edu. Code § 220.

4           107. As a direct and proximate result of Defendants' unlawful conduct as alleged  
5 hereinabove, PLAINTIFFS have been severely harmed and offended emotionally and physically  
6 and otherwise, all to their special and general damages, all in amounts exceeding the  
7 jurisdictional minimum of the Superior Court according to proof at trial.

8                                   **FIFTH CAUSE OF ACTION**

9                           **(Intentional Infliction of Emotional Distress against All Defendants)**

10           108. PLAINTIFFS repeat and reallege by reference each and every allegation  
11 contained hereinabove and incorporate the same herein as though fully set forth herein.

12           109. As described herein, during PLAINTIFFS's participation in the Girls' Wrestling  
13 Program and/or as a student at Nipomo HS in MAGDALENO's classroom, Defendant  
14 MAGDALENO intentionally, recklessly, and wantonly made sexual advances, solicitations,  
15 requests, demands for sexual compliance of a hostile nature towards PLAINTIFFS, each of  
16 whom were minors at the time of the events described herein. His conduct was physical and  
17 violent in nature, at times involving the touching of PLAINTIFFS, and making offensive contact  
18 with their bodies. This conduct was outrageous.

19           110. Defendant MAGDALENO's conduct described herein was intentional and  
20 malicious and done for the purpose of causing, or with the substantial certainty that it would  
21 cause PLAINTIFFS to suffer humiliation, mental anguish, and emotional and physical distress.

22           111. As to Defendants LMUSD and DOES 1-50, their conduct towards PLAINTIFFS,  
23 as described herein, was outrageous and extreme.

24           112. A reasonable person would not expect or tolerate Defendants LMUSD and DOES  
25 1-50 putting MAGDALENO in positions of authority at NIPOMO HS, which enabled  
26 MAGDALENO to have access to minor students, including PLAINTIFFS, so that he could  
27 commit wrongful sexual acts with them, including the conduct described herein above.  
28 PLAINTIFFS held great trust, faith, and confidence in Defendants, which, by virtue of



1 Defendants' wrongful conduct, turned to fear. Moreover, by failing to report MAGDALENO or  
2 honor any of their legal reporting obligations and by failing to promptly notify each PLAINTIFF  
3 or her respective parents or guardians of the abuse, Defendants knew that PLAINTIFFS would  
4 be directly harmed. Defendants owed a direct duty to PLAINTIFFS, who were intended victims  
5 of Defendants' failures, and can recover for any emotional distress proximately caused thereby.

6 113. A reasonable person would not expect or tolerate Defendants LMUSD and DOES  
7 1-50 to be incapable of supervising and preventing employees of Defendants, including  
8 MAGDALENO, from committing wrongful sexual acts with minor students, including  
9 PLAINTIFFS, or to properly supervise MAGDALENO to prevent such abuse from occurring, or  
10 to promptly notify parents or authorities.

11 114. Defendants LMUSD and DOES 1-50 conduct as described herein was intentional  
12 and malicious and done for the purpose of causing, or with the substantial certainty that it would  
13 cause PLAINTIFFS to suffer humiliation, mental anguish, and emotional and physical distress.

14 115. As a direct and proximate result of Defendants' unlawful conduct as alleged  
15 hereinabove, PLAINTIFFS have been severely harmed and offended emotionally and physically  
16 and otherwise, all to their special and general damages, all in amounts exceeding the  
17 jurisdictional minimum of the Superior Court according to proof at trial.

18 116. The aforementioned conduct by Defendants was willful, wanton, and malicious.  
19 At all relevant times, Defendants acted with conscious disregard of PLAINTIFFS's rights and  
20 feelings. Defendants also acted with the knowledge of or with reckless disregard for the fact that  
21 his conduct was certain to cause injury and/or humiliation to PLAINTIFFS. PLAINTIFFS are  
22 further informed and believe that Defendants intended to cause fear, physical injury and/or pain  
23 and suffering to PLAINTIFFS. By virtue of the foregoing, PLAINTIFFS are entitled to recover  
24 punitive and exemplary damages from Defendants according to proof at trial.

25 ///

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **(For Sexual Battery against Defendants MAGDALENO and DOES 1-50)**

3 117. PLAINTIFFS S.C. and E.A. repeat and reallege by reference each and every  
4 allegation contained hereinabove and incorporate the same herein as though fully set forth  
5 herein.

6 118. Cal. Civ. Code § 1708.5(a) provides: A person commits a sexual battery who  
7 does any of the following: (1) acts with the intent to cause a harmful or offensive contact with an  
8 intimate part of another, and a sexually offensive contact with that person directly or indirectly  
9 results. (2) Acts with the intent to cause a harmful or offensive contact with another by use of his  
10 or her intimate part, and a sexually offensive contact with that person directly or indirectly  
11 results. (3) Acts to cause an imminent apprehension of the conduct described in paragraph (1) or  
12 (2), and a sexually offensive contact with that person directly or indirectly results.

13 119. Cal. Civ. Code § 1708.5(d) defines "intimate part" as the sexual organ, anus,  
14 groin, or buttocks of any person, or the breast of a female.

15 120. Cal. Civ. Code § 1708.5(f) defines "offensive contact" to mean contact that  
16 offends a reasonable sense of personal dignity.

17 121. PLAINTIFFS S.C. and E.A. allege that Defendant MAGDALENO committed the  
18 act of civil sexual battery in violation of Cal. Civ. Code § 1708.5, when in 2015, 2016, and 2017,  
19 he willfully, maliciously, and intentionally subjected S.C. and E.A. to the forceful, harmful,  
20 and/or offensive touching of their bodies, including breasts, buttocks, and/or vaginal area against  
21 their will and without their consent.

22 122. Because of MAGDALENO's position of authority over PLAINTIFFS S.C. and  
23 E.A., and their mental and emotional state, PLAINTIFFS S.C. and E.A., by virtue of their young  
24 age, could not and did not give consent to such acts.

25 123. As a direct and proximate result of MAGDALENO's unlawful conduct as alleged  
26 hereinabove, PLAINTIFFS have been severely harmed and offended emotionally and physically  
27 and otherwise, all to their special and general damages, all in amounts exceeding the  
28 jurisdictional minimum of the Superior Court according to proof at trial.



124. The aforementioned conduct by Defendants was willful, wanton, and malicious. At all relevant times, Defendants acted with conscious disregard of the PLAINTIFFS's rights and feelings. Defendants also acted with the knowledge of or with reckless disregard for the fact that his conduct was certain to cause injury and/or humiliation to PLAINTIFFS. PLAINTIFFS are further informed and believe that Defendants intended to cause fear, physical injury and/or pain and suffering to PLAINTIFFS. By virtue of the foregoing, PLAINTIFFS are entitled to recover punitive and exemplary damages from MAGDALENO and DOES 1-50 according to proof at trial.

### SEVENTH CAUSE OF ACTION

**(For Battery against Defendants MAGDALENO and DOES 1-50)**

125. PLAINTIFFS repeat and reallege by reference each and every allegation contained hereinabove and incorporate the same herein as though fully set forth herein.

126. In performing the acts described herein, Defendant MAGDALENO acted with the intent to make a harmful and offensive contact with each of PLAINTIFFS' persons.

127. Defendant MAGDALENO did, in fact, bring himself into offensive and unwelcome contact with each of the PLAINTIFFS as described hereinabove.

128. At all relevant times, each of the PLAINTIFFS found the contact by Defendant MAGDALENO to be offensive to her person and dignity. At no time, by virtue of their ages, could any of the PLAINTIFFS consent, nor did they consent, to any of the acts by Defendant MAGDALENO alleged hereinabove.

129. Because of MAGDALENO's position of authority over PLAINTIFFS, and PLAINTIFFS's mental and emotional state, PLAINTIFFS, by virtue of their age, could not and did not consent to such acts.

130. As a result of MAGDALENO's acts as hereinabove alleged, PLAINTIFFS were physically harmed and/or experienced offensive contact with their persons.

131. As a direct and proximate result of MAGDALENO's unlawful conduct as alleged hereinabove, PLAINTIFFS have been severely harmed and offended emotionally and physically

1 and otherwise, all to their special and general damages, all in amounts exceeding the  
2 jurisdictional minimum of the Superior Court according to proof at trial.

3 132. The aforementioned conduct by Defendants was willful, wanton, and malicious.  
4 At all relevant times, Defendants acted with conscious disregard of the PLAINTIFFS's rights  
5 and feelings. Defendants also acted with the knowledge of or with reckless disregard for the fact  
6 that his conduct was certain to cause injury and/or humiliation to PLAINTIFFS. PLAINTIFFS  
7 are further informed and believe that Defendants intended to cause fear, physical injury and/or  
8 pain and suffering to PLAINTIFFS. By virtue of the foregoing, PLAINTIFFS are entitled to  
9 recover punitive and exemplary damages from MAGDALENO and DOES 1-50 according to  
10 proof at trial.

11 **EIGHTH CAUSE OF ACTION**

12 **(Assault against Defendants MAGDALENO and DOES 1-50)**

13 133. PLAINTIFFS repeat and reallege by reference each and every allegation  
14 contained hereinabove and incorporate the same herein as though fully set forth herein.

15 134. When MAGDALENO saw each PLAINTIFF, including during her participation  
16 in the Girls' Wrestling Program and/or in class and/or in other areas at Nipomo HS,  
17 MAGDALENO intended to cause her apprehension of an imminent harmful and offensive  
18 contact with her person.

19 135. As a result of Defendant MAGDALENO's acts, each PLAINTIFF was in fact,  
20 placed in great apprehension of imminent harmful and offensive contact with her person.

21 136. In performing the acts alleged hereinabove, MAGDALENO acted with the intent  
22 of making contact with each PLAINTIFF's person.

23 137. At no time did any of the PLAINTIFFS consent to any of the acts by  
24 MAGDALENO alleged hereinabove.

25 138. MAGDALENO's conduct as described above, caused PLAINTIFFS to be  
26 apprehensive that MAGDALENO would subject them to further intentional invasions of their  
27 right to be free from offensive and harmful contact and demonstrated that at all times material  
28



1 herein, MAGDALENO had a present ability to subject them to an intentional offensive and  
2 harmful touching.

3 139. As a direct and proximate result of Defendants' unlawful conduct as alleged  
4 hereinabove, PLAINTIFFS have suffered physical injury, severe emotional distress, humiliation,  
5 embarrassment, mental and emotional distress and anxiety, and economic harm, all in an amount  
6 exceeding the jurisdictional minimum of the Superior Court according to proof at trial.

7 140. The aforementioned conduct by Defendants was willful, wanton, and malicious.  
8 At all relevant times, Defendants acted with conscious disregard of the PLAINTIFFS's rights  
9 and feelings. Defendants also acted with the knowledge of or with reckless disregard for the fact  
10 that his conduct was certain to cause injury and/or humiliation to PLAINTIFFS. PLAINTIFFS  
11 are further informed and believe that Defendants intended to cause fear, physical injury and/or  
12 pain and suffering to PLAINTIFFS. By virtue of the foregoing, PLAINTIFFS are entitled to  
13 recover punitive and exemplary damages from MAGDALENO and DOES 1-50 according to  
14 proof at trial.

15 **WHEREFORE**, PLAINTIFFS pray judgment be entered in their favor against  
16 Defendants, and each of them, as follows:

17 **FOR ALL CAUSES OF ACTION**

- 18 1. For non-economic and general damages to in an amount to be proven at trial;  
19 2. For economic and special damages to be proven at trial;  
20 3. For punitive and exemplary damages against Defendants MAGDALENO and  
21 DOES 1-50 to be proven at trial;  
22 4. For attorneys' fees and costs as allowed by law;  
23 5. For prejudgment and post-judgment interest as allowed by law;  
24 6. For injunctive relief; and  
25 7. For such other and further relief as the Court may deem just and proper.

26 ///

27 ///

28 ///


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**JURY TRIAL DEMANDED**

PLAINTIFFS demand trial of all issues by jury.

DATED: October 8, 2019

ALLRED, MAROKO & GOLDBERG

By:   
GLORIA ALLRED  
CHRISTINA CHEUNG  
BYRON R. LAU  
Attorneys for PLAINTIFFS,  
JANE N.R. DOE, JANE S.C. DOE, and  
JANE E.A. DOE