

1 RANDALL L. WINET (State Bar No. 116384)
WINET PATRICK GAYER CREIGHTON & HANES
2 1215 WEST VISTA WAY
VISTA, CALIFORNIA 92083-6227
3 Telephone: (760) 758-4261
Email: rwinet@wpgch.com
4

5 Attorneys for Defendants David Miyashiro,
James Miller, Jo Alegria, Tamra Otero, Karen Clark-Mejia
6
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JILANNE D. BARTO, an individual,
12 Plaintiffs,

13 vs.

14 DAVID MIYASHIRO, in his official
capacity as Superintendent Cajon Valley
15 Union School District; JAMES MILER,
JO ALEGRIA, TAMARA OTERO,
16 KAREN CLARK-MEJIA, each in their
official capacity as Trustee of Cajon
17 Valley Union School District Board of
Trustees; and DOES 1 to 50, inclusive,
18

19 Defendants.
20

CASE NO. '19CV2261 WQHKSC
ACTION DATE: 11/26/2019

**MOTION TO DISMISS THE
COMPLAINT FOR LACK OF
SUBJECT MATTER
JURISDICTION [F.R.C.P. 12(b)(1)
AND (6)]**

NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT

Date: January 27, 2020
Courtroom: 14B

Judge: William Q. Hayes and
Magistrate: Karen S. Crawford

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

TABLE OF CONTENTS

I. FACTUAL BACKGROUND 1

II. PROCEDURAL HISTORY 3

III. SUMMARY OF ARGUMENT 3

IV. LEGAL AUTHORITY FOR MOTION
TO DISMISS 4

V. THE DEFENDANTS ARE IMMUNE FROM SUIT
IN FEDERAL COURT PURSUANT TO THE ELEVENTH
AMENDMENT TO THE CONSTITUTION 6

VI. THE LIMITED EXCEPTIONS TO ELEVENTH
AMENDMENT IMMUNITY DO NOT APPLY
TO THE CAUSES OF ACTION IN THIS CASE 8

 A. FIRST AND SECOND CAUSES OF ACTION FOR
 VIOLATIONS OF FIRST AMENDMENT AND
 RETALIATION UNDER 42 U.S.C. § 1983 9

 B. PLAINTIFF'S THIRD AND FOURTH CLAIM FOR
 RELIEF FOR INJUNCTIVE AND DECLARATORY
 RELIEF ARE BARRED BY THE
 ELEVENTH AMENDMENT 12

VII. CONCLUSION 13

TABLE OF AUTHORITIES

FEDERAL CASES

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

Ashcroft v. Iqbal, 556 U.S. 662 5

Barker-Hatch v. Viejas Group Baron Long Capitan Grande Band of Digueno Mission Indians of Viejas Group Reservation, California, 83 F.Supp.2d 1155 . 4

Belanger v. Madera Unified School District, 963 F. 2d 6, 7

Bell Atlantic Corporation v. Twombly 550 U.S. 544 5, 11

Brown v. California Department of Corrections, 554 F.3d 747 10

Citing to Brandon v. Holt, 469 U.S. 464 10

Consumer Solutions REO, LLC v. Hillery, 658 F. Supp. 2d 1002 4

Dittman v. California, 191 F.3d 1020 10

Douglas v. California Department of Youth Authority 271 F.3d 812 9

Durning v. Citibank, N.A., 950 F.2d 1419 7

Eaglesmith v. Ward 73 F.3d 857 7

Edelman v. Jordan, 415 U.S. 651 6

Eleventh Amendment. Sato v. Orange County Department of Education, 861 F. 3d 6

Eleventh Amendment. Stanley v. Trustees of the California State University, 433 F.3d 1129 8

Erickson v. Pardus (2007) 551 U.S. 89 5

Garrett v. Commonwealth Mortgage Corporation of America, 938 F.2d 591 4

Huskey v. City of San Jose, 204 F.3d 893 11

Jackson v. Hayakawa, 682 F.2d 1344 6, 8

Kentucky v. Graham, 473 U.S. 159 10

Kimel v. Florida Board of Regents, 528 U.S. 62 6

Kokkonen v. Guardian Life Insurance Company of America, 511 U.S. 375 5

Lacey v. Maricopa, 693 F.3d 896 11

Monell v. New York City Department of Social Services, 436 U.S. 958 6, 8

1	<u>Ninigret Development Corporation v. Narragansett Indian Wetuomuck Housing Authority</u> , 207 F.3d 21	4
2	<u>Pena v. Gardner</u> , 976 F.2d 469	7
3	<u>Pennhurst State Schools and Hospital v. Halderman</u> , 465 U.S. 89	12, 13
4	<u>Roe ex rel. Callahan v. Gustine Unified School District</u> 678 F.Supp.2d 1008 ...	7
5	<u>Seminole Tribe of Florida v. Florida</u> , 517 U.S. 44	13
6	<u>Stones v. Los Angeles Community College District</u> (C.D. Cal. 1983) 572 F.Supp.	
7	1072	7
8	<u>Warren v. Fox Family Worldwide, Incorporated</u> , 328 F.3d 1136	5
9	<u>Will v. Michigan Department of State Police</u> , 491 U.S. 58	10
10	STATE CASES	
11	138 Southern Ct. 459	7
12	<u>Hall v. City of Taft</u> (1956) 47 Cal.2d 177	7
13	<u>Kirchmann v. Lake Elsinore Unified School District</u> (2000)	
14	83 Cal.App.4th 1098	7
15	FEDERAL STATUTES	
16	Fed. R. Civ. P. 8	5
17	Fed. R. Civ. P. 8(a)	5
18	Fed. R. Civ. P. 8(a)(2)	5
19	Fed. R. Civ. P. 12(b)(1)	4, 5
20	Fed. R. Civ. P. 12(b)(6)	4, 5
21	Fed. R. Civ. P. 12(h)(2)	4
22	U.S. Const. Amend. XI	6
23	42 U.S.C. § 1983	3, 9, 10, 11, 12, 14
24	STATE STATUTES	
25	<u>Government Code</u> § 54963(a)(b)	2
26		
27		

1 RANDALL L. WINET (State Bar No. 116384)
WINET PATRICK GAYER CREIGHTON & HANES
2 1215 WEST VISTA WAY
VISTA, CALIFORNIA 92083-6227
3 Telephone: (760) 758-4261
Email: rwinet@wpgch.com

4 Attorneys for Defendants David Miyashiro,
5 James Miller, Jo Alegria, Tamra Otero, Karen Clark-Mejia

6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JILANNE D. BARTO, an individual,
11 Plaintiffs,

12 vs.

13 DAVID MIYASHIRO, in his official
capacity as Superintendent Cajon Valley
14 Union School District; JAMES MILER,
JO ALEGRIA, TAMARA OTERO,
15 KAREN CLARK-MEJIA, each in their
official capacity as Trustee of Cajon
16 Valley Union School District Board of
Trustees; and DOES 1 to 50, inclusive,
17 Defendants.

CASE NO. '19CV2261 WQHKSC
ACTION DATE: 11/26/2019

**DEFENDANTS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO
DISMISS THE COMPLAINT FOR
LACK OF SUBJECT MATTER
JURISDICTION [F.R.C.P. 12(b)(1)
AND (6)]**

NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT

Date: January 27, 2020
Courtroom: 14B

Judge: William Q. Hayes and
Magistrate: Karen S. Crawford

18
19
20 Defendants DAVID MIYASHIRO, JAMES MILLER, JO ALEGRIA,
21 TAMARA OTERO and KAREN CLARK-MEJIA submit the following
22 memorandum of points and authorities in support of their Motion to Dismiss the
23 Complaint for lack of subject matter jurisdiction.

24 **I.**

25 **FACTUAL BACKGROUND**

26 The Cajon Valley Union School District (hereinafter "CVUSD") is a
27 California public entity school district. CVUSD is located in east San Diego county

28

1 and provides public education services for students in grades kindergarten through
2 eighth grade. The school district has a Superintendent (David Miyashiro) as well as
3 five members of its Board of Trustees. The Board of Trustees consists of Jilanne D.
4 Barto (Plaintiff), James Miller, Jo Alegria, Tamara Otero and Karen Clark-Mejia
5 (Defendants).

6 CVUSD has been involved in ongoing litigation involving wrongful
7 termination claims raised by several prior employees. In at least two of those cases,
8 the Plaintiff based part of her claims upon alleged statements made by Plaintiff
9 Jilanne D. Barto that occurred in Board of Trustee closed session meetings. The
10 disclosure of closed session communications is specifically prohibited under
11 California law and the Ralph M. Brown Act. Government Code § 54963(a)(b). Ms.
12 Barto denied that she disclosed confidential closed session communications, even
13 though the Plaintiff in these cases asserted this improper disclosure.

14 Due to Ms. Barto being a potential witness in those cases, she was requested
15 not to be present or address those cases during closed session. Although Ms. Barto
16 originally objected to not being present, she later acknowledged that these claims
17 were being made and agreed not to be present during closed session
18 communications involving these specific cases.

19 Separate and apart from these cases, three separate employees at CVUSD
20 came forward and made formal individual complaints against Jilanne D. Barto. An
21 investigation was conducted to address these formal complaints. Ms. Barto was
22 contacted to provide her statement and information in response to these complaints.
23 She refused to provide a statement. Therefore, the investigation continued, and the
24 investigation concluded that the evidence supported these complaints against Ms.
25 Barto. Because these claims were made directly against Ms. Barto, she was not part
26 of the closed session Board meeting to discuss these allegations against her.

27 ///

28

1 Federal Court pursuant to the Eleventh Amendment of the United States.

2 Therefore, the Complaint should be dismissed in its entirety.

3 **IV.**

4 **LEGAL AUTHORITY FOR MOTION TO DISMISS**

5 A motion to dismiss for lack of subject matter jurisdiction or failure to state a
6 claim upon which relief can be granted tests the formal sufficiency of the statement
7 of a claim for relief in the Complaint. Fed. R. Civ. P 12(b)(1). The proper medium
8 for challenging the sufficiency of factual allegations is also through a Fed. R. Civ.
9 P. 12(b)(6) motion. Consumer Solutions REO, LLC v. Hillery, 658 F. Supp. 2d
10 1002 (N.D. Cal. 2009).

11 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows for dismissal
12 where there is a “lack of jurisdiction over the subject matter” of the suit. Fed. R.
13 Civ. P. 12(b)(1). Federal courts are courts of limited jurisdiction; judicial power
14 extends only to cases and controversies over which the court has subject matter
15 jurisdiction. Fed. R. Civ.P. 12(b)(1); Barker-Hatch v. Viejas Group Baron Long
16 Capitan Grande Band of Digueno Mission Indians of Viejas Group Reservation,
17 California, 83 F.Supp.2d 1155, 1156 (S.D. Cal. 2000).

18 Federal courts are presumptively without jurisdiction over civil actions and
19 the burden of establishing the contrary rests upon the party asserting jurisdiction. A
20 federal court must consider its own subject matter jurisdiction prior to ruling on any
21 other motion. Ninigret Development Corp. v. Narragansett Indian Wetuomuck
22 Housing Authority, 207 F.3d 21, 28 (1st Cir. 2000).

23 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) is appropriate when the
24 face of the Plaintiff's pleading shows that Plaintiff cannot establish facts that would
25 entitle her to relief. Garrett v. Commonwealth Mortgage Corp. of America, 938
26 F.2d 591, 594 (5th Cir. 1991). The defense for failure to state a claim may be made
27 at any time, even during trial. Fed. R. Civ. P. 12(h)(2).

1 Fed. R. Civ. P. 8 provides that "[a] pleading that states a claim for relief must
2 contain. . . a short and plain statement of the claim showing that the pleader is
3 entitled to relief." Fed. R. Civ. P. 8(a)(2). "[A] plaintiff's obligation to provide the
4 'grounds' of her 'entitlement' requires more than labels and conclusions, and a
5 formulaic recitation of the elements of a cause of action will not do." Bell Atlantic
6 Corp. v. Twombly 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)). Rather,
7 the allegations in the Complaint "must be enough to raise a right to relief above the
8 speculative level." Bell, supra, at page 555.

9 Although a defendant is the moving party on a Rule 12(b)(1) motion, the
10 plaintiff has the burden of proof in establishing federal subject matter jurisdiction
11 because the plaintiff is the party who invoked the court's jurisdiction. Kokkonen v.
12 Guardian Life Insurance Co. of America, 511 U.S. 375, 376-378 (1994). In
13 considering a 12(b)(6) motion, all allegations of material fact are taken as true.
14 Erickson v. Pardus (2007) 551 U.S. 89, 94. However, conclusory statements not
15 supported by actual factual allegations need not be accepted. Ashcroft v. Iqbal, 556
16 U.S. 662, 678 (2009).

17 Case law provides that the Defendants can bring this motion to dismiss
18 pursuant to both Rule (1) and (b)(6) of the Federal Rules of Civil Procedure. See
19 Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003)
20 (questions of subject matter jurisdiction and plaintiff's substantive claim for relief
21 can be intertwined). Under either Rule, the facts and information show that the
22 Defendants being sued in their official capacity as members of the Board of
23 Trustees are an arm of the state with immunity from suit in federal court pursuant to
24 the Eleventh Amendment of the U.S. Constitution.

25 ///

26 ///

27

28

V.

**THE DEFENDANTS ARE IMMUNE FROM SUIT IN FEDERAL
COURT PURSUANT TO THE ELEVENTH AMENDMENT
TO THE U.S. CONSTITUTION**

The Complaint against the Defendants should be dismissed in its entirety for lack of jurisdiction. All of the Defendants are being sued in their official capacity as the Superintendent and Board of Trustees of CVUSD. CVUSD is a state public entity School District. The Eleventh Amendment immunity not only extends to the State itself, but also actions against State officials sued in their official capacity, because such actions are actions against the government entity to which the officer is an agent. Jackson v. Hayakawa, 682 F.2d 1344, 1350 (9th 1993); Monell v. New York City Department of Social Services, 436 U.S. 958, 690, n.55 (1978); Edelman v. Jordan, 415 U.S. 651 (1974).

The Eleventh Amendment to the United States Constitution provides: "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. Amend. XI. The Eleventh Amendment immunity extends not only to the State itself, but State agencies and arms of the State. See Belanger v. Madera Unified School District, 963 F. 2d 248, 250(9th Cir. 1992). Further, the Eleventh Amendment precludes federal court jurisdiction "over suits against non-consenting states." Kimel v. Florida Board of Regents, 528 U.S. 62, 73 (2000). In California, there have been numerous federal court decisions which have concluded that California school districts are arms of the State and entitled to sovereign immunity under the Eleventh Amendment. Sato v. Orange County Department of Education, 861 F. 3d 923, 934 (9th Cir. 2017) (concluding that California school districts remain arms of the State and enjoy Eleventh Amendment immunity following

1 passage of State Legislation which reformed the financing and governance of
2 California public schools). cert. denied, 138 S. Ct. 459 (2017).

3 Courts have long held that California school districts are state agencies and
4 arms of the state for purposes of applying Eleventh Amendment immunity.

5 Belanger v. Madera Unified School Dist. 963 F.2d 248, 250-251 (9th Cir. 1992);

6 Stones v. Los Angeles Community College Dist. (C.D. Cal. 1983) 572 F.Supp.

7 1072, 1077; Kirchmann v. Lake Elsinore Unified School Dist. (2000) 83

8 Cal.App.4th 1098, 1101-1102; Hall v. City of Taft (1956) 47 Cal.2d 177, 179. In

9 Belanger v. Madera Unified School Dist. 963 F.2d 248 (9th Cir. 1992), the Ninth

10 Circuit determined that a California school district (like CVUSD) was immune from
11 suit in federal court under the Eleventh Amendment.

12 The Belanger court reviewed the California state education system and the
13 relevant law implementing it, and held that a "school district is an agent of the state
14 that performs state governmental functions and that a judgment would be satisfied
15 out of state funds." Belanger, supra at p. 254; see also Eaglesmith v. Ward 73 F.3d
16 857, 860 (9th Cir. 1996). The determination of these facts entitled the school
17 district to immunity under the Eleventh Amendment.

18 Although school districts can own property in their own name, the beneficial
19 ownership of property of the public schools is in the state. Hall, supra, at p. 179-
20 181; Belanger, supra, at p. 254. Further, despite some of the functions that school
21 districts perform, school districts have the corporate status as agents of the state. Id.
22 at p. 254.

23 "The Eleventh Amendment's bar against suing an arm of the state in federal
24 court applies equally to federal and state law claims." Roe ex rel. Callahan v.
25 Gustine Unified School Dist. 678 F.Supp.2d 1008 (E.D. Cal. 2009) (citing Durning
26 v. Citibank, N.A., 950 F.2d 1419, 1422-1423 (9th Cir.1991); Pena v. Gardner, 976
27 F.2d 469, 473 & n. 6 (9th Cir.1992)). Pursuant to the Eleventh Amendment,
28

1 First, a state may waive its Eleventh Amendment defense.
2 Second, Congress may abrogate the States' sovereign
3 immunity by acting pursuant to a grant of constitutional
4 authority. Third, under the *ex parte Young doctrine*, the
Eleventh Amendment does not bar a suit against a state
official when that suit seeks. . . prospective injunctive
relief."

5 Douglas v. California Department of Youth Authority 271 F.3d 812, 817-818 (9th
6 Cir. 2001), amended at 271 F.3d 910 (9th Cir. 2001) (citations omitted).

7 Here, the limited exceptions to the Eleventh Amendment do not apply to the
8 claims for relief asserted by Plaintiff.

9 **A. FIRST AND SECOND CLAIMS FOR RELIEF FOR**
10 **VIOLATIONS OF FIRST AMENDMENT AND RETALIATION UNDER 42**
11 **U.S.C. § 1983**

12 The first two claims for relief of the Complaint are brought by Plaintiff
13 pursuant to 42 U.S.C. § 1983. These two claims for relief are brought against the
14 Defendants in their official capacity as Superintendent and as members of the Board
15 of Trustees, and are subject to Eleventh Amendment immunity.

16 42 U.S.C. § 1983 provides:

17 Every *person* who, under color of any statute, ordinance,
18 regulation, custom, or usage, of any State or Territory or
the District of Columbia, subjects, or causes to be
19 subjected, any citizen of the United States or other person
within the jurisdiction thereof to the deprivation of any
20 rights, privileges, or immunities secured by the
Constitution and laws, shall be liable to the party injured
21 in an action at law, suit in equity, or other proper
proceeding for redress, except that in any action brought
22 against a judicial officer for an act or omission taken in
such officer's judicial capacity, injunctive relief shall not
23 be granted unless a declaratory decree was violated or
declaratory relief was unavailable. For purposes of this
24 section, any Act of Congress applicable exclusively to the
District of Columbia shall be considered to be a statute of
25 the District of Columbia. [Emphasis Added]

26 When the above legislation was passed, Congress did not abrogate a State's
27 sovereign immunity under the Eleventh Amendment for § 1983 claims. § 1983

1 actions were not intended to abrogate a State's Eleventh Amendment immunity.
2 Kentucky v. Graham, 473 U.S. 159, 169, n. 17 (1985); see also Dittman v.
3 California, 191 F.3d 1020, 1026 (9th Cir. 1999); Brown v. California Department of
4 Corrections, 554 F.3d 747, 752 (9th Cir. 2009).

5 The wording of § 1983 states that it applies to a "person." In interpreting this
6 statute, the courts have addressed this term in several contexts. One of the main
7 contexts was when a lawsuit was brought in federal court against a state and a state
8 officers working in his/her official capacity. In that situation, the U.S. Supreme
9 Court concluded that neither a state, branch of the state, nor its officials acting in
10 their official capacities are "persons" under § 1983. Will v. Michigan Department
11 of State Police, 491 U.S. 58, 71 (1989).

12 In the Will decision, a Michigan state employee brought an action against the
13 Michigan State Department of Police and its Director while acting in his official
14 capacity for a claim under § 1983. The United States Supreme Court conducted a
15 comprehensive review of the history of § 1983 and concluded that a state or branch
16 of the state is not a "person" within the meaning of § 1983 pursuant to Congress'
17 purpose in enacting the statute and the application of the Eleventh Amendment. Id.
18 at page 65, 66. Further, the court explained that the state official acting in his
19 official capacity was not a "person" as that term is defined within the meaning of
20 the statute. In explaining its decision, the U.S. Supreme Court states that although
21 State officials literally are persons, a suit against a state official in his or her official
22 capacity is not a suit against the official, but rather a suit against the official's
23 office. (Citing to Brandon v. Holt, 469 U.S. 464, 471 (1985)). As such, the suit
24 against the state official is no different from a suit against the State itself. Thus,
25 there is no reason to adopt a different rule as it applies to State officials, particularly
26 when such a rule would allow the plaintiff/petitioner to circumvent Congressional
27 intent by the mere pleading device of suing a State official. The U.S. Supreme
28

1 Court held that neither a State nor its officials acting in their official capacities are
2 "persons" under § 1983. Id. at page 70-71.

3 The Complaint in the present case sues Dr. Miyashiro in his official capacity
4 as the School Board's Superintendent, and sues each of the individual Trustees in
5 their official capacities as being part of the Board of Trustees. Consistent with the
6 U.S. Supreme Court Decision in Will, neither a State nor its officers acting in their
7 official capacities are "persons" under § 1983, so the claims against them must be
8 dismissed.

9 Even if Plaintiff were permitted to assert a § 1983 claim against State
10 officials, the Plaintiff has failed to allege sufficient facts demonstrating a nexus
11 between the adverse action by the Defendants and Plaintiff's protected speech or
12 retaliation. This causal nexus is required under the law. Huskey v. City of San
13 Jose, 204 F.3d 893, 899 (9th Cir. 2000). When Plaintiff claims that persons are
14 seeking to conspire against plaintiff to prevent protected speech or enter in a
15 conspiracy to retaliate, the plaintiff must provide specific allegations explaining
16 that alleged conspiracy, not conclusory allegations. Bell Atlantic Corp. v.
17 Twombly, 550 U.S. 544, 567 (2007). In determining whether Plaintiff has alleged
18 sufficient facts to show a conspiracy, the court looks to a variety of factors to make
19 this determination. In particular, the courts will determine if there is evidence of a
20 specific agreement between the alleged conspirators, the scope of the conspiracy,
21 the role of the Defendants in the conspiracy as specified in the pleading, and a
22 description of when and how this conspiracy purportedly operated. See Lacey v.
23 Maricopa, 693 F.3d 896, 937 (9th Cir. 2012); Steshenko v. Gayrard, 44 F.Supp.3d
24 941, 954-955 (2014).

25 In the Steshenko case, a graduate school applicant filed a civil rights suit
26 against a Board of Trustees for a State school and two heads of the graduate
27 program claiming various violations, including a § 1983 claim. The court explained
28

1 that the plaintiff's failure to plead an adequate causal nexus between plaintiff's
2 claim of speech and retaliation was sufficient grounds to dismiss the § 1983 claim.
3 Id. at page 955.

4 Here, Plaintiff asserts a hodgepodge claims against each individual member
5 of the Board of Trustees (which are denied), but fails to establish a causal nexus
6 between these alleged actions and Plaintiff's claim for violation of speech and
7 retaliatory action. Therefore, Defendants respectfully request the court dismiss
8 Plaintiff's § 1983 claims.

9 **B. PLAINTIFF'S THIRD AND FOURTH CLAIM FOR RELIEF**
10 **FOR INJUNCTIVE AND DECLARATORY RELIEF ARE BARRED BY THE**
11 **ELEVENTH AMENDMENT**

12 In the Complaint, Plaintiff alleges a third claim of relief for injunctive relief
13 against Defendants because Plaintiff claims that Defendants' violation of her
14 constitutional rights will "continue" unless the Defendants are enjoined or
15 restrained. Defendants believe Plaintiff asserted this cause of action in an effort to
16 circumvent the Eleventh Amendment and to claim an exception to the Eleventh
17 Amendment pursuant to the *ex parte Young* doctrine. However, this argument does
18 not withstand scrutiny.

19 The *ex parte Young* narrow exception to the Eleventh Amendment applies
20 only where the State officials are allegedly violating federal law; it does not reach
21 suits seeking relief against State officials for violations of state law. Pennhurst
22 State Schools and Hospital v. Halderman, 465 U.S. 89, 106 (1984). A review of the
23 Complaint shows that many of the allegations made by plaintiff involve alleged
24 violations of state law for actions such as entering into improper contracts, being
25 paid for district business expenses, complaining about travel and conference costs,
26 being denied a position on a committee and various functions of being a State
27 ///

28

1 official for a public school district. These state "claims" are not subject to the *ex*
2 *parte Young* exception to the Eleventh Amendment.

3 The federal claims for relief are for violations of 42 U.S.C. § 1983 as noted
4 above. These claims are not viable claims against State officials since they are not
5 "persons" within the definition of 42 U.S.C. § 1983 and Plaintiff has failed to
6 alleged the necessary nexus between the acts of each State official and her
7 purported conspiracy. Since Defendants cannot be liable under this federal cause of
8 action for past conduct, Defendants cannot be enjoined or restrained for future
9 conduct based upon the same legal theory. This would be consistent with the
10 Supreme Court's interpretation of the Eleventh Amendment and the *ex parte Young*
11 exception, which is that the exception should be provided a narrow, rather than an
12 expansive interpretation. Pennhurst State School and Hospital v. Halderman, *supra*,
13 at page 102. A plaintiff cannot invoke the *ex parte Young* exception to the Eleventh
14 Amendment for future injunctive or declaratory relief when the basis for that
15 injunctive or declaratory relief is based on a claim not viable under federal law. See
16 Seminole Tribe of Florida v. Florida, 517 U.S. 44, 75 (*ex parte Young* exception to
17 Eleventh Amendment does not apply when the claim for future injunctive relief is
18 sought to enjoin an unenforceable federal statute).

19 **VII.**

20 **CONCLUSION**

21 The Eleventh Amendment bars Plaintiff's claim in federal court against State
22 officials working in their official capacity. The State officials are not "persons"
23 within the meaning of 42 U.S.C. § 1983, and the claims for relief based upon that
24 statute must be dismissed. Further, Plaintiff has not provided the required pleading
25 to uphold and support a claim of conspiracy among public officials. Since Plaintiff

26 ///

27 ///

1 has not asserted a viable federal claim against Defendants, an effort to enjoin
2 Defendants from similar claims in the future fails, with all Defendants having
3 Eleventh Amendment Immunity.

4 Dated: December 20, 2019

WINET PATRICK GAYER
CREIGHTON & HANES

7 By: s/Randall L. Winet
8 Attorneys for Defendants David
9 Miyashiro, James Miller, Jo Alegria,
10 Tamra Otero, Karen Clark-Mejia
11 Email: rwinet@wpgch.com

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28