

Clerk of Court  
 Superior Court of CA,  
 County of Santa Clara  
 20CV369931  
 Reviewed By: R. Tien

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SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SANTA CLARA

KATHLEEN KRIER,  
 Plaintiff,

Case No. : 20CV369931

COMPLAINT:

Violations of the Fair Employment  
 And Housing Act

v.

PALO ALTO UNIFIED SCHOOL  
 DISTRICT; and  
 Does 1 through 40, inclusive,

REQUEST FOR JURY TRIAL

Defendants.

Plaintiff alleges on information and belief:

1. Defendant PALO ALTO UNIFIED SCHOOL DISTRICT (referred to herein as PAUSD) is a governmental entity, created and existing under the laws of the State of California.

2. PAUSD is subject to the Fair Employment and Housing Act (referred to herein as FEHA), set forth in sections 12900 et seq of the California Government Code, in that at all times relevant to this action it has regularly had more than five employees.

3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1-40, inclusive, and therefore she sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that plaintiff's injuries as herein alleged were proximately caused by the aforementioned

1 defendants.

2 4. Plaintiff is an adult person and a resident of the County of Contra Costa, State of  
3 California.

4 5. At all times relevant to the allegations herein, plaintiff had protected status under  
5 FEHA because of her age, sex, sexual orientation and disability: She was 55 years of age, a  
6 woman, and a lesbian.

7 6. The unlawful employment practices complained of herein occurred in the State of  
8 California.

9 7. Plaintiff has complied with the claim filing requirements of FEHA and exhausted  
10 administrative remedies.

11 8. This complaint is based on investigation to date. Plaintiff reserves the right to  
12 amend this complaint as additional information is obtained through formal discovery under  
13 the California Code of Civil Procedure, or otherwise.

14 **FACTUAL BACKGROUND**

15 9. During the four school years from 2014 to 2018 plaintiff taught computer science  
16 and coached the robotics team at a public high school in the San Francisco Bay Area. She was  
17 tenured. She enjoyed a good reputation, the robotics team was successful, and the diversity of  
18 the students in the program increased substantially -- more women students, more minority  
19 students, and more students with disabilities took part. Her students were successful in  
20 applying to well regarded institutions of higher learning.

21 10. Toward the end of the 2017-2018 school year, the administration of Palo Alto  
22 High School (referred to herein as PAHS) contacted plaintiff. PAHS is part of and  
23 administered by PAUSD. They asked her to fill the positions of computer science teacher and  
24 coach of the robotics team at PAHS. Those positions was formerly held by a man.

25 11. At that time, according to the administration, there were two problems with the  
26 robotics team at PAHS: First, safety problems had resulted in injuries to students. Second,  
27 there was a lack of diversity among the students.  
28

1           12. In addition to performing the regular duties of computer science teacher and  
2 robotics coach, the administration asked plaintiff to deal with both the safety problems and  
3 lack of diversity among the students on the robotics team.

4           13. Plaintiff entered an employment agreement with PAUSD to teach computer  
5 science and coach the robotics team at PAHS for the 2018 - 2019 school year.

6           14. The agreement was for one year and included a probationary period, but the  
7 administration assured plaintiff that the agreement would be renewed in the succeeding years,  
8 that they were committed to her as teacher and coach.

9           15. In reliance on the agreement and the accompanying assurances, plaintiff resigned  
10 her tenured position at the other San Francisco Bay Area public high school, gave up her rent  
11 controlled apartment in Berkeley, California, and moved to Palo Alto, California, incurring  
12 substantial expenses, and leased an apartment near PAHS.

13           16. Plaintiff was a paid employee of PAUSD from on or about August 8, 2018, until  
14 on or about October 18, 2018, during which time she served as computer science teacher and  
15 coach of the robotics team at PAHS. She also participated in transitional activities over the  
16 summer of 2018 for which she was paid by PAUSD. The acts and omissions alleged herein  
17 occurred during that time.

18           17. The circumstances plaintiff encountered were such that in order to increase  
19 diversity among the students on the robotics team she was required to confront discrimination  
20 based on protected status under FEHA, including but not limited to sex, race, ethnicity and  
21 national origin.

22           18. Such discrimination was particularly offensive to plaintiff who had personally  
23 faced discrimination based on her protected status in prior times.

24           19. In California, such discrimination is against public policy as set forth in the  
25 California Constitution, FEHA and other laws.

26           20. The robotics team had a booster group which plaintiff believes was a nonprofit  
27 corporation, with members, officers and directors. It may have been an association of some  
28 other form.

1           21. The booster group – members, officers or directors, or people otherwise affiliated  
2 with and acting in concert with the booster group, depending on the context, are referred to  
3 herein as BOOSTERS.

4           22. Many BOOSTERS were parents of students who either were, had been or hoped  
5 to be members of the robotics team.

6           23. BOOSTERS charged students substantial dues if they wanted to be on the robotics  
7 team. This presented a barrier to low income students who tended to be people of protected  
8 status under FEHA.

9           24. BOOSTERS required that team meetings be held after school, in the evening,  
10 unlike other student body programs. This presented a barrier to students who rode the bus to  
11 school and who tended to be people of protected status under FEHA.

12           25. Much of the time, access to the team's facilities was limited to a small group of  
13 students whose parents were BOOSTERS and who knew how to get in without a key.

14           26. BOOSTERS were influential in choosing who would be on the robotics team, as  
15 well as which students were named captains of or placed on smaller sub teams, such as "the  
16 build team," which comprised the robotics team as a whole.

17           27. The membership of the robotics team was not diverse, racially, ethnically or by  
18 sex.

19           28. Shortly after plaintiff assumed her position at PAHS, on or about August 13,  
20 2018, there was a meeting to introduce her to the students. In addition to the students,  
21 BOOSTERS were also in attendance. One of the officers of BOOSTERS said to plaintiff that  
22 a woman could not be a robotics coach. Another officer of BOOSTERS said that plaintiff was  
23 a jogger whereas his son was a marathon runner, so she could not coach him. Another officer  
24 of the BOOSTERS repeatedly referred to plaintiff as "he" or "him."

25           29. Those remarks were extremely offensive to plaintiff who was a highly qualified  
26 and successful teacher and coach, a woman, and a lesbian.

27           30. Those remarks encouraged bias against and harassment of plaintiff.  
28

1           31. Shortly thereafter, on or about August 15, 2018, when plaintiff went to her office,  
2 she found that her gay pride rainbow flag had been broken and put in the trash.

3           32. As plaintiff took steps to increase diversity among the students in the robotics  
4 program, she observed discrimination against and harassment of women and minority  
5 students, which she found highly offensive.

6           33. On or about September 21, 2018, plaintiff attended a meeting with students to  
7 select the robotics team for the 2018-2019 school year. Approximately 70 students were  
8 chosen for the team.

9           34. At that meeting, plaintiff proposed several students (7 or 9) for consideration.  
10 Those students would have broadened the diversity of the robotics team. The students  
11 allowed two of them to be on the team. The discussion that took place was highly offensive to  
12 plaintiff.

13           35. After the meeting, plaintiff drove home, took a nap, and returned to her car to go  
14 back to PAHS for an event. She found that the windshield had been broken.

15           36. Shortly thereafter, some students, some BOOSTERS and others pursued a  
16 campaign to pressure PAUSD to remove plaintiff from her position as coach of the robotics  
17 team.

18           37. That campaign was harassment of plaintiff based on her protected status and in  
19 retaliation for her efforts to increase diversity among the students on the robotics team and to  
20 stop discrimination against and harassment of others.

21           38. That campaign continued until on or about the time plaintiff resigned. It included  
22 but was not limited to the matters alleged below.

23           39. On or about September 25, 2018, a student filed a complaint against plaintiff with  
24 PAUSD.

25           40. That complaint was prepared at the direction of, or with the assistance or  
26 encouragement of BOOSTERS.

27           41. Students and BOOSTERS met with administrators, including plaintiff's  
28 supervisors at PAHS, and complained about plaintiff.

1           42. On or about October 9, 2018, students and BOOSTERS attended a meeting of the  
2 board of education of PAUSD, where they voiced complaints against plaintiff.

3           43. The next day, on or about October 10, 2018, a local newspaper reported on the  
4 meeting and those complaints.

5           44. On or about October 11, 2018, a different student filed a complaint against  
6 plaintiff.

7           45. Like the complaint filed on or about September 25, 2018, that complaint was also  
8 prepared at the direction of, or with the assistance or encouragement of BOOSTERS.

9           46. On or about October 12, 2018, the assistant superintendent of PAUSD gave  
10 plaintiff a letter telling her that she was being placed on paid non-disciplinary administrative  
11 leave and that she had to leave the school.

12           47. (Intentionally left blank).

13           48. On or about October 18, 2018, plaintiff resigned.

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15           **FIRST CAUSE OF ACTION: FAILURE TO PREVENT HARASSMENT**

16                           **BY NONEMPLOYEES**

17                           (Gov. Code, § 12940(j))

18           49. Plaintiff incorporates by reference all allegations in paragraphs 1-48, inclusive, as  
19 if fully set forth herein.

20           50. Plaintiff alleges this cause of action against her employer, defendant PAUSD.

21           51. In the course of her employment with PAUSD, plaintiff was subjected to  
22 harassment based on her protected status, which is alleged above, by BOOSTERS and others  
23 who were not employees of PAUSD.

24           52. PAUSD knew or should have known that the conduct of those people placed  
25 employees at risk of harassment. In this context, PAUSD refers to plaintiff's supervisors or to  
26 other administrators at PAHS or PAUSD.

27           53. PAUSD failed to take immediate and appropriate preventive or corrective action.

28           54. The ability to take preventive action was within the control of PAUSD.

1 55. Plaintiff was harmed.

2 56. PAUSD's failure to take immediate and appropriate steps to prevent or put an end  
3 to the harassment was a substantial factor in causing plaintiff's harm.

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5 **SECOND CAUSE OF ACTION: WORK ENVIRONMENT HARASSMENT**  
6 **CONDUCT DIRECTED AT PLAINTIFF**

7 (Gov. Code, §§ 12923, 12940(j))

8 57. Plaintiff incorporates by reference all allegations in paragraphs 1-56, inclusive, as  
9 if fully set forth herein.

10 58. Plaintiff alleges this cause of action against her employer, defendant PAUSD.

11 59. Plaintiff was subjected to harassing treatment because of her protected status.

12 60. The harassing conduct was severe or pervasive.

13 61. A reasonable person in plaintiff's circumstances would have considered the work  
14 environment to be hostile, intimidating, offensive, oppressive, or abusive.

15 62. Plaintiff considered the work environment to be hostile, intimidating, offensive,  
16 oppressive, or abusive.

17 63. One or more of plaintiff's supervisors knew or should have known of the conduct  
18 and failed to take immediate and appropriate corrective action.

19 64. Plaintiff was harmed.

20 65. The conduct was a substantial factor in causing plaintiff's harm.

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22 **THIRD CAUSE OF ACTION: WORK ENVIRONMENT HARASSMENT**  
23 **CONDUCT DIRECTED AT OTHERS**

24 (Gov. Code, §§ 12923, 12940(j))

25 66. Plaintiff incorporates by reference all allegations in paragraphs 1- 65, inclusive, as  
26 if fully set forth herein.

27 67. Plaintiff alleges this cause of action against her employer, defendant PAUSD.

1 68. Plaintiff personally witnessed harassing conduct directed at others based on their  
2 protected status that took place in her immediate work environment.

3 69. The harassing conduct was severe or pervasive.

4 70. A reasonable person in plaintiff's circumstances would have considered the work  
5 environment to be hostile, intimidating, offensive, oppressive, or abusive.

6 71. Plaintiff considered the work environment to be hostile, intimidating, offensive,  
7 oppressive, or abusive.

8 72. One or more of plaintiff's supervisors knew or should have known of the conduct  
9 and failed to take immediate and appropriate corrective action.

10 73. Plaintiff was harmed.

11 74. The conduct was a substantial factor in causing plaintiff's harm.  
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13 **FOURTH CAUSE OF ACTION: FAILURE TO PREVENT HARASSMENT,**  
14 **DISCRIMINATION OR RETALIATION**

15 (Government Code, § 12940(k))

16 75. Plaintiff incorporates by reference all allegations in paragraphs 1- 74, inclusive, as  
17 if fully set forth herein.

18 76. Plaintiff alleges this cause of action against her employer, defendant PAUSD.

19 77. Plaintiff was subjected to harassment, discrimination or retaliation based on her  
20 protected status and based on her protected status and in retaliation for her efforts to increase  
21 diversity among the students on the robotics team and to stop discrimination against and  
22 harassment of others, all in the course of her employment with PAUSD.

23 78. PAUSD failed to take all reasonable steps to prevent such harassment,  
24 discrimination, or retaliation.

25 79. Plaintiff was harmed.

26 80. PAUSD's failure to take reasonable steps to prevent such harassment,  
27 discrimination, or retaliation was a substantial factor in causing plaintiff's harm.

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1 **FIFTH CAUSE OF ACTION: CONSTRUCTIVE DISCHARGE**

2 81. Plaintiff incorporates by reference all allegations in paragraphs 1- 80, inclusive, as  
3 if fully set forth herein.

4 82. Plaintiff alleges this cause of action against her employer, defendant PAUSD.

5 83. PAUSD through it's officers, directors, managing agents, or supervisory  
6 employees intentionally created or knowingly permitted working conditions to exist that were  
7 so intolerable that a reasonable person in plaintiff's position would have had no reasonable  
8 alternative except to resign.

9 84. Plaintiff resigned because of those working conditions.

10 85. Plaintiff was harmed.

11 86. PAUSD's creating or knowingly permitting such working conditions to exist was  
12 a substantial factor in causing plaintiff's harm.

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14 **PLAINTIFF'S HARM**

15 87. Plaintiff's harm as alleged above, includes but is not limited to the following:

16 a. Past economic loss including lost earnings, lost profits, medical expenses, moving  
17 expenses and other past economic loss;

18 b. Future economic loss including lost earnings, lost profits, medical expenses, and  
19 other future economic loss;

20 c. Past noneconomic loss, including physical and mental suffering;

21 d. Future noneconomic loss, including physical and mental suffering.

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1 WHEREFORE, plaintiff prays for the following:

- 2 1. Compensatory damages according to proof, but not less than \$450,000.00;
- 3 3. Attorneys' fees on all causes of action as provided by statute;
- 4 4. Costs of suit; and
- 5 5. Such other and further relief as the court may deem proper.
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8 **REQUEST FOR JURY TRIAL**

9 Plaintiff also requests a trial by jury in this action.

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13 John C. Elsbree

14 Attorney for Plaintiff

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