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CLEVELAND McKINNEY

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

CLEVELAND McKINNEY,

Plaintiff,

vs.

OAKLAND UNIFIED SCHOOL DISTRICT,  
VANESSA SIFUENTES, JAROD SCOTT, in  
their personal capacity, and DOES 1-10  
inclusive,

Defendants.

) Case No.: 20-cv-06792-JSC

) **FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF**

) (Civil Rights)

) DEMAND FOR JURY TRIAL

Plaintiff CLEVELAND McKINNEY complains against defendants OAKLAND  
UNIFIED SCHOOL DISTRICT, and in their personal capacities, VANESSA SIFUENTES,  
JAROD SCOTT, and DOES 1-10 inclusive, as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff Cleveland McKinney, former Assistant Principal at McClymonds High  
School in Oakland, California, brings this action against defendants Oakland Unified  
School District, OUSD Executive Director of High School Instruction Vanessa Sifuentes,

1 and former McClymond's High School principal Jarod Scott for terminating him in  
2 retaliation for his complaints about unsafe and discriminatory school conditions,  
3 including tainted water, disproportionate suspensions of Black children, staff assaulting  
4 students, misappropriation of funds, sexual harassment of female students, and other  
5 protected acts.

6 2. Defendants removed this case to federal court. This Court has jurisdiction over  
7 this matter under 28 U.S.C. § 1331. Venue is proper in the Northern District of  
8 California because the events giving rise to the claim occurred in this District.

9 **PARTIES**

10 3. At all times relevant to this controversy, plaintiff CLEVELAND McKINNEY was  
11 the Assistant Principal of McClymonds High School, an employee of OAKLAND  
12 UNIFIED SCHOOL DISTRICT, and a resident of Richmond, California.

13 4. At all times relevant to this controversy, defendant OAKLAND UNIFIED  
14 SCHOOL DISTRICT was a public agency located in Oakland, California.

15 5. At all times relevant to this controversy, defendant VANESSA SIFUENTES was  
16 the Executive Director of High School Instruction at OUSD.

17 6. At times relevant to this controversy, defendant JAROD SCOTT was a Principal  
18 at McClymonds High School.

19 7. The true names and capacities of the defendants sued herein as Does 1 through  
20 10, inclusive, are presently unknown to plaintiff, who therefore sues these defendants by  
21 such fictitious names. Plaintiff will amend this Complaint to reflect the true names and  
22 capacities of these defendants once such information is ascertained. Plaintiff is  
23 informed and believe and based thereon allege that Does 1 through 10, inclusive, are  
24 responsible in some manner for the events and happenings referred to herein, either in  
25 contractual or in tort, or both, and caused the damage to plaintiff as alleged herein.

26 **STATEMENT OF FACTS**

27 8. Plaintiff Cleveland McKinney has been an exceptional teacher and school  
28 administrator since 1985, with no history of discipline until defendants began retaliating

1 against him in 2016. He has an excellent track record of improving schools around the  
2 East Bay. He is widely recognized for his outstanding work supporting and elevating  
3 African American students as well as other students.

4 9. In 2012, Oakland Unified School District (OUSD) was in the process of settling an  
5 Office of Civil Rights (OCR) complaint against it for discriminatory discipline, including  
6 unwarranted suspensions, against African American students.

7 10. In September 2012, OCR and OUSD agreed to a settlement (“the 2012  
8 Agreement”) addressing the discriminatory discipline and other related matters such as  
9 trauma sensitivity and restorative justice.

10 11. McClymonds High School in Oakland had and continues to have a 90% Black  
11 student population. It was the pilot school for the 2012 Agreement.

12 12. In or around 2013, OUSD’s then High School Network Executive Officer and  
13 former McClymond’s principal Kevin Taylor selected McKinney to become Assistant  
14 Principal of McClymonds because of McKinney’s previous achievements.

15 13. In February 2014, McKinney became McClymond’s Assistant Principal.

16 14. In March 2014, the Office of Civil Rights and Department of Education spent a  
17 month with McClymond’s then-principal Tinisha Hamberlin and McKinney, working  
18 with them to implement the 2012 Agreement. McKinney helped craft the discipline  
19 policies in real time and on paper. He worked with OUSD, developed the Discipline  
20 Handbook, and taught teachers how to discipline students.

21 15. McClymonds appointed McKinney the on-site administrator with school-wide  
22 responsibility for discipline as per the requirements of the 2012 Agreement.

23 16. In August 2016, OUSD hired Jarod Scott and Plashan McCune as Co-Principals.

24 17. On August 22, 2016, McKinney reported to OUSD Administrator Stephen  
25 Littlejohn that the water in McClymond’s locker rooms appeared dirty and orange.  
26 McKinney requested that the water be tested because of his reasonable belief that the  
27 water was dangerous and injurious to students.

1 18. McKinney reported his concern and request via email to several OUSD managers  
2 and staff, including Kenneth Watts, Manager of Buildings and Grounds; Sorbor Twegbe,  
3 Health and Safety Manager; Mark Griggs, Lead of Plumbing and Irrigation; Rebecca  
4 Cingolani, Risk Management Officer; and Charles Smith, Director of Buildings and  
5 Grounds.

6 19. Administrators sent the water out for testing. The test result showed extremely  
7 high levels of lead emanating from the school's water pipes.

8 20. McKinney forwarded the test results to McCune.

9 21. The school then tested water at only limited sites, but not throughout the  
10 campus.

11 22. In November 2016, OUSD appointed Vanessa Sifuentes as Executive Director of  
12 High School Instruction and directed her to oversee the water and buildings at  
13 McClymonds.

14 23. McKinney and others, including former McClymonds basketball coach Ben  
15 Tapscott, had to argue with administrators to conduct testing of all areas while the  
16 students and teachers still used the water. McKinney, Tapscott, and the community  
17 fought for a Water/Facilities Oversight Committee in order to get information from the  
18 administrators.

19 24. Smith and Sifuentes told school staff there was nothing wrong with the water.  
20 They advised letting the water run for five minutes, even for the cooking water in the  
21 kitchen. Any observer could see that the water was still dirty even after letting it run.

22 25. Administrator Rebecca Littlejohn, formerly Cingolani, stated that she would not  
23 spend \$90,000 to \$100,000 to fix corroded pipes, and the District would just put filters  
24 on the pipes.

25 26. Sifuentes and Scott regularly met with McKinney. In these meetings and the  
26 years following, McKinney complained about the tainted water and incidents of  
27 disproportionate discipline that were in violation of the 2012 Agreement. He  
28 complained about teachers who were suspending Black students for not having pencils,

1 asking to use the bathroom, talking, or chewing gum; and teachers who needlessly  
2 berated Black students.

3 27. McKinney reported to Sifuentes and Scott that Truancy Specialist Alberta Smith  
4 was hitting children. McKinney reported that Smith punched a girl in the throat in a  
5 meeting with many witnesses. Sifuentes and Scott stated they would investigate it, and  
6 then decided there was no merit to the complaint. However, Smith admitted to beating  
7 children in a parent meeting.

8 28. Smith continued to assault children. Sifuentes personally witnessed Smith hitting  
9 a child.

10 29. McKinney reported to Sifuentes and Scott that a teacher was reporting to school  
11 late and intoxicated and threatening to assault students. They took no action, except for  
12 reporting to teachers that McKinney had complained about their misconduct.

13 30. In addition, McKinney reported the following to Scott and Sifuentes:

- 14 a. mismanagement of the budget by Sifuentes and Scott, including  
15 redirecting a \$50,000 donation for student activities to administrator  
16 salaries;
- 17 b. a teacher's sexual harassment of female Muslim students;
- 18 c. a teacher threatening to assault a student and then file false claims against  
19 that student;
- 20 d. a teacher shooting dice and gambling with students;
- 21 e. a Spanish teacher who admitted he could not speak Spanish;
- 22 f. an extreme mice infestation;
- 23 g. broken temperature controls resulting in freezing or 101-degree conditions  
24 at the school;
- 25 h. other maintenance problems at the school;
- 26 i. improper hiring and classification;
- 27 j. an afterschool program falsely claiming it was providing services to  
28 students;

1 k. continued retaliation against himself;

2 l. and continued violations of the 2012 Agreement against Black students.

3 31. After these meetings with McKinney, Sifuentes and Scott disciplined McKinney,  
4 including preparing write ups that were not placed in his personnel file as required by  
5 policy.

6 32. In December 2016, McClymonds became the first Oakland public high school to  
7 win the state championship in football.

8 33. In March 2017, Sifuentes, McCune, and Scott insisted that the public evaluate  
9 McKinney, against union rules and district policy. After the Union grieved the  
10 misconduct, the three apologized.

11 34. Shortly thereafter, OUSD sent a notice of demotion to McKinney but did not  
12 execute the decision.

13 35. In March 2017, McKinney took a stress leave for several days due to the  
14 retaliation.

15 36. In May 2017, Sifuentes attempted to change McKinney's job duties without union  
16 representation or negotiation.

17 37. Also in May 2017, Dr. Kyla Johnson Trammel replaced Antwon Wilson as  
18 Superintendent.

19 38. It was not until August 2017 that OUSD revealed to the public, including parents  
20 of McClymonds students, that there was lead in the kitchen tap water. It was not until  
21 then that OUSD tested the water at other schools. Elementary school administrators  
22 and OUSD Board President James Harris stated that they were not aware of the  
23 unusually high lead levels at school sites until they were notified by media.

24 39. In September 2017, Sifuentes did a walkthrough of McClymonds locker rooms  
25 with McKinney. McKinney expressed to her that the students needed new lockers. He  
26 questioned why there was money for all the other OUSD schools' needs but not for  
27 McClymonds. McClymonds has by far the largest Black population by percentage of the  
28 student body of any of these schools. The entire McClymonds football team was African

1 American.

2 40. Sifuentes knew that McClymonds' athletes had to strip down and change on the  
3 football field and leave their equipment on the field due to the abysmal condition of the  
4 locker room. Students were forced to strip in front of adults. Leaving equipment on the  
5 field caused arguments between students.

6 41. McKinney reasonably believed he was reporting violations of the 2012  
7 Agreement, discriminatory treatment of African Americans, improper governmental  
8 conduct, and health, safety, and privacy violations.

9 42. Sifuentes told McKinney he should raise money from the community to repair the  
10 school.

11 43. A month later, after Tapscott publicly confronted her about the water issue and  
12 the comment that McKinney should raise money to fix the discriminatory conditions,  
13 Sifuentes apologized to McKinney.

14 44. In November 2017, Sifuentes said to McKinney, "Cleveland, you have so much  
15 power. Why don't you work with me in forming a different narrative to the community  
16 to keep them at ease?" in reference to the tainted water issue.

17 45. McKinney and community members continued to fight for clean water.  
18 Community members began donating water.

19 46. In December 2017, Golden State Warriors player Steph Curry donated a  
20 Hydration Station, athletic uniforms, and shoes.

21 47. In February 2018, Sifuentes told McKinney, "Why are you so concerned about  
22 helping these people and everyone? Why don't you just go along with what we [she and  
23 the District] are doing? What do you gain from this?" McKinney did not cease  
24 advocating for the community.

25 48. In March 2018, Sifuentes began to cry when Coach Tapscott confronted her about  
26 OUSD's lack of action fixing the water issue and the school's crumbling infrastructure.

27 49. Nevertheless, in March 2018, Sifuentes and Scott again issued a letter of  
28 demotion to McKinney with no evaluation, in violation of the Union contract. The Union

1 again grieved it, and OUSD did not implement the demotion.

2 50. In July 2018, Scott and Sifuentes instructed McKinney that he must move from  
3 Room 217 to Room 108 in the basement. Room 217 was physically and socially the heart  
4 of the school as all students of every grade, teachers, other staff, and parents passed by  
5 the room. Room 108 was moldy with a stale stench. The carpet was filthy. Upon entering  
6 the room, McKinney instantly began coughing and wheezing as he suffered from  
7 allergies and asthma. The head custodian stated that the office was uninhabitable.

8 51. McKinney provided a doctor's note stating that he could not be in that office due  
9 to his health problems.

10 52. Scott and Sifuentes continued to harass and pressure McKinney to move into  
11 Room 108. McKinney refused. Scott asked, "How about that room next to the  
12 bathroom?" McKinney responded that it was a custodial closet. Scott said, "Are you sure  
13 you can't fit in there?" and began laughing.

14 53. McKinney again had to take a stress leave.

15 54. In August 2018, Scott threatened McKinney that Scott would dock him for taking  
16 vacation hours that Scott had previously approved.

17 55. Sifuentes and Scott were unresponsive to McKinney's continued complaints,  
18 except for Sifuentes telling him to "watch his tone."

19 56. In September 2018, McKinney met with Superintendent Johnson-Trammel and  
20 related to her the disturbing list of improper and unlawful activities occurring at  
21 McClymonds under Scott and Sifuentes. The Superintendent stated that she had not  
22 heard about any of these complaints, but took no action.

23 57. McKinney organized others to call the Superintendent to raise these issues.

24 58. In October 2018, Sifuentes and Scott refused to pay McKinney for his work for a  
25 program agreed to in July 2016. The Union grieved the matter, and they paid McKinney  
26 months later in February 2019.



1 59. Also in October 2018, Sifuentes ordered an investigation into how McKinney  
2 collected money for parking during games, implying he was embezzling the funds.  
3 Human Resources found no misconduct by McKinney.

4 60. In December 2018, McKinney again met with Superintendent Johnson-Trammel  
5 and again described the problems at McClymonds. The Superintendent took no action.

6 61. In March 2019, Sifuentes and Scott again sent McKinney a letter of demotion.  
7 Over 200 community members attended a School Board meeting to protest this  
8 retaliation against him. The demotion violated the Union contract and policies and was  
9 past the deadline to take such actions. The demotion did not take place as the Assistant  
10 Principal contract automatically renewed where it was past the deadline.

11 62. Sifuentes and Scott knowingly retaliated against McKinney for his exercise of his  
12 First Amendment rights, with malice and oppression as described above.

13 63. That summer, Principal Scott resigned and Jeff Taylor took his place.

14 64. In August 2019, when the school community was on summer break, Sifuentes  
15 succeeded in demoting McKinney and reclassifying him as a classified rather than a  
16 certified employee.

17 65. On March 17, 2020, Principal Taylor called McKinney to inform him that his  
18 position was no longer funded, and he did not have a job for the coming school year.

19 66. As of June 2020, OUSD terminated McKinney, claiming budget cuts.

20 **CLAIMS**

21 **FIRST CLAIM – VIOLATION OF THE FIRST AMENDMENT**

22 **OF THE UNITED STATES CONSTITUTION**

23 **(against defendants Vanessa Sifuentes**  
24 **and Jarod Scott in their personal capacities)**

25 (42 U.S.C. § 1983)

26 67. Plaintiff incorporates by reference paragraphs 1 through 66 above as though fully  
27 set forth herein.

1 68. By virtue of the foregoing, defendants Vanessa Sifuentes and Jarod Scott, acting  
2 under color of state law, wrongfully deprived plaintiff of his free speech rights  
3 guaranteed under the Constitution of the United States by participating in adverse  
4 employment actions against plaintiff in retaliation for his speech addressing issues of  
5 public concern and his refusal to participate in unethical and unlawful conduct by  
6 defendants.

7 **SECOND CLAIM – TITLE VI RETALIATION**  
8 **(against defendant Oakland Unified School District)**

9 (42 U.S.C. § 2000d *et seq*)

10 69. Plaintiff incorporates by reference paragraphs 1 through 68 above as though fully  
11 set forth herein.

12 70. By virtue of the foregoing, defendant retaliated against plaintiff for his speech  
13 complaining of racially discriminatory conditions at the school.

14 **THIRD CLAIM – TITLE IX RETALIATION**  
15 **(against defendant Oakland Unified School District)**

16 (20 U.S.C. § 1681 *et seq.*)

17 71. Plaintiff incorporates by reference paragraphs 1 through 70 above as though fully  
18 set forth herein.

19 72. By virtue of the foregoing, defendant retaliated against plaintiff for his speech  
20 complaining about conduct toward female students.

21 **FOURTH CLAIM – CALIFORNIA LABOR CODE § 1102.5**  
22 **(against defendant Oakland Unified School District)**

23 (California Labor Code § 1102.5)

24 73. Plaintiff incorporates by reference paragraphs 1 through 72 above as though fully  
25 set forth in this claim.

26 74. By virtue of the foregoing, defendant retaliated against plaintiff for his speech  
27 complaining about acts that he reasonably believed were unlawful.  
28

**FIFTH CLAIM – CALIFORNIA LABOR CODE § 6310**  
**(against defendant Oakland Unified School District)**

(California Labor Code § 6310)

75. Plaintiff incorporates by reference paragraphs 1 through 74 above as though fully set forth in this claim.

76. By virtue of the foregoing, defendant retaliated against plaintiff for exercising his and others' rights to workplace health and safety.

**DAMAGES**

77. As a result of the actions of defendants, plaintiff has been injured and has suffered damages as follows:

- a) He has lost compensation and other employment-related benefits to which he was entitled and will lose such compensation and benefits in the future;
- b) He has suffered from emotional distress, embarrassment and humiliation, and has suffered damage to his professional reputation and standing;
- c) He has had to pay medical and other costs.

WHEREFORE, plaintiff requests that this Court grant him relief as follows:

- 1) Injunctive relief;
- 2) Compensatory damages for lost wages and benefits, in an amount to be determined;
- 3) Interest at the legal rate;
- 4) General damages for emotional distress, pain and suffering, in an amount to be determined;
- 5) Special damages for out-of-pocket expenses;
- 6) Civil penalties;
- 7) Attorney fees;
- 8) Punitive damages against individual defendants;
- 9) Costs of suit; and

10) Such other and further relief as the Court may deem proper.

Dated: December 17, 2020

SIEGEL, YEE, BRUNNER & MEHTA

By: /s/ Sonya Z. Mehta  
Sonya Z. Mehta

Attorneys for Plaintiff  
CLEVELAND MCKINNEY

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