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14 ADVANCEMENT OF COLORED PEOPLE

15 [ADDITIONAL COUNSEL LISTED ON NEXT PAGE]

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF CONTRA COSTA

18 UNLIMITED JURISDICTION

19 EAST COUNTY BRANCH OF THE  
20 NATIONAL ASSOCIATION FOR THE  
21 ADVANCEMENT OF COLORED PEOPLE,

22 Plaintiff,

23 v.

24 ANTIOCH UNIFIED SCHOOL DISTRICT,

25 Defendant.

Case No.

**COMPLAINT FOR SPECIFIC  
PERFORMANCE OF SETTLEMENT  
AGREEMENT AND DECLARATORY  
RELIEF**

**JURY TRIAL DEMANDED**

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1 East County Branch of the National Association for the Advancement of Colored People  
2 (“Plaintiff” or “ECNAACP”) makes the following allegations against Defendant Antioch Unified  
3 School District (“Defendant,” “AUSD” or “District”):

4 **NATURE OF THE ACTION**

5 1. The ECNAACP brings this action to enforce the terms of the parties’ March 25,  
6 2015 Interim Settlement Agreement (“Agreement”), in which the District agreed to address the  
7 ECNAACP’s allegations that the District engages in a pattern and practice of discriminating  
8 against African American students in its disciplinary and special education policies and practices.

9 2. The ECNAACP has received complaints from its members regarding the District’s  
10 discriminatory disciplinary practices since at least 2004.

11 3. Prior complaints regarding discrimination in the District’s disciplinary practices  
12 led to a 2009 settlement between the District and the American Civil Liberties Union of Northern  
13 California (“ACLU-NC”) and 2009 resolution agreements between the District and the U.S.  
14 Department of Education, Office for Civil Rights (“OCR”). Prior complaints regarding  
15 discrimination in the District’s special education policies and practices led to 2010 resolution  
16 agreements between the District and the U.S. Department of Education, OCR.

17 4. The ECNAACP continued receiving complaints regarding the District’s  
18 discriminatory disciplinary policies as well as the identification and evaluation of students with  
19 disabilities and the provision of a free appropriate public education (FAPE) in the least restrictive  
20 environment (LRE). Based on these complaints and its own investigations, in or around 2013, the  
21 ECNAACP presented the district with a request for a structured settlement in lieu of a complaint  
22 to remedy enumerated violations under Title VI of the Civil Rights Act of 1964 (“Title VI”), 42  
23 U.S.C. § 2000d *et seq.*, Section 504 of the Rehabilitation Act (“Section 504”), 29 U.S.C. § 794,  
24 Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, (“ADA”), and the  
25 Individuals with Disabilities Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*

26 5. After more than a year of negotiating the ECNAACP’s federal civil rights claims,  
27 the parties entered into an Interim Settlement Agreement in 2015. Under the Agreement’s terms,  
28 the District consented to retain and compensate leading experts in the fields of school discipline,

1 special education, and social psychology to investigate the ECNAACP's claims and make  
2 recommendations to rectify the District's practices.

3 6. The Agreement requires the District to cooperate in good faith with these experts  
4 and to provide the experts with access to the necessary information required to enable the experts  
5 to write their reports and recommendations. In exchange for the District's performance, the  
6 ECNAACP agreed to meet and confer, following receipt of the experts' reports and  
7 recommendations, and to attempt to negotiate a final settlement in good faith. If the parties were  
8 unable to reach a final agreement about implementing the recommendations, the agreement  
9 allows the ECNAACP to pursue all available remedies.

10 7. The District has refused to comply with the terms of the Agreement. Rather than  
11 cooperating with the experts, the District has deliberately sabotaged the experts' performance and  
12 thus prevented meaningful and timely review of the District's practices. As a consequence, the  
13 experts have not been able to complete their investigations or reports.

14 8. The ECNAACP has satisfied all of its obligations under the Agreement to ensure  
15 that the experts complete their reports in a timely manner. The District has failed to implement  
16 the Agreement and the experts have been unable to perform their duties for at least 8 months.  
17 This delay has meant that the harms alleged by Plaintiff to African American students, both with  
18 and without disabilities, have gone unaddressed for an entire school year.

19 9. Because of the District's breach of the Agreement and refusal to rectify its  
20 noncompliance, the ECNAACP brings this action for specific performance of the Agreement and  
21 for declaratory relief pursuant to California Civil Code sections 3384 and 1060, respectively.

## 22 **THE PARTIES**

23 10. The ECNAACP is, and at all times mentioned was, a non-profit corporation  
24 incorporated under the laws of the State of California with its principal place of business at 186 E.  
25 Leland Rd., Pittsburg, California 94565. The ECNAACP is a local branch of the National  
26 Association for the Advancement of Colored People, the nation's oldest and largest civil rights  
27 organization. It monitors equal opportunity in the public and private sectors, including in the area  
28 of education.

1 11. Among the members of the ECNAACP are parents, grandparents, educators, and  
2 other community members who advocate for civil rights in their communities. Members of the  
3 organization's Education Committee spend countless hours in the District attending  
4 Individualized Education Program ("IEP") meetings, participating in School Board meetings, and  
5 assisting African American parents whose children have been disciplined or need special  
6 education services.

7 12. The ECNAACP brings this complaint as an organizational complainant on its own  
8 behalf, as it is a signatory to the Agreement. Mr. Willie Mims, the ECNAACP's Education  
9 Chair, signed the Agreement on behalf of the ECNAACP.

10 13. AUSD is a public entity duly incorporated and operating under California law as a  
11 school district, located in Antioch, California. AUSD is the local educational agency ("LEA")  
12 responsible for the administration and operation of public schools in Antioch, California and parts  
13 of Oakley, California. The District receives financial assistance from the State of California and  
14 is funded directly by the State of California to provide educational services to children who reside  
15 and/or are enrolled in public schools within its boundaries.

16 14. AUSD is run by an elected Board of Trustees, including Diane Gibson-Gray  
17 (President), Walter Ruehlig (Vice President), Fernando Navarro, and Debra Vinson. Former  
18 Board President Claire Smith signed the Agreement on behalf of AUSD. The current  
19 Superintendent is Stephanie Anello ("Ms. Anello").<sup>1</sup>

20 **JURISDICTION AND VENUE**

21 15. Jurisdiction and venue are proper in the Superior Court of California, County of  
22 Contra Costa, because (i) the District entered into the Agreement in this judicial district; (ii) the  
23 District is located in this judicial district, and was located in this judicial district when the parties  
24 entered into the contract; and (iii) the Agreement between the parties, and the obligations  
25

26 \_\_\_\_\_  
27 <sup>1</sup> Ms. Anello was previously the Assistant Superintendent of Educational Services as well  
28 as the Interim Superintendent.

1 contained therein, were to be performed in the County of Contra Costa. Cal. Civ. Proc. Code  
2 §§ 394, 395. The amount in controversy exceeds the jurisdictional minimum.

### 3 GENERAL ALLEGATIONS

#### 4 **The ECNAACP Alleges that the District Discriminates Against African American Students.**

5 16. Since at least 2004, the ECNAACP has received complaints from its members  
6 regarding the District's discriminatory disciplinary practices against African American students.  
7 Complaints regarding discrimination in the District's disciplinary practices led to a 2009  
8 settlement between the District and the ACLU-NC and a 2009 resolution agreements between the  
9 District and the U.S. Department of Education, OCR. Additional complaints regarding  
10 discrimination in the District's special education policies and practices led to 2010 resolution  
11 agreements between the District and the U.S. Department of Education, OCR. The ECNAACP,  
12 however, continued to receive complaints thereafter. The ECNAACP accordingly initiated an  
13 investigation into the District's policies and practices, its records regarding the District's  
14 suspension and expulsion rates and the reasons for such disciplinary practices, and information  
15 regarding the District's special education procedures.

16 17. The ECNAACP's investigation revealed troubling findings. Both data and family  
17 testimonials demonstrated that the District engages in a pattern and practice of failing to identify  
18 African American students in the general education program who have disabilities. The  
19 investigation also showed that the District failed to adequately evaluate and provide special  
20 education services and supports to African American students with disabilities. Moreover, the  
21 District discriminatorily excludes African American students with and without disabilities from  
22 the District's educational programs through excessive suspension and expulsions, as well as other  
23 forms of exclusionary discipline, which unnecessarily denies students access to classroom  
24 instruction.

25 18. The ECNAACP identified three factors that act together to harm African American  
26 students through producing disparate rates of suspension and expulsion: (1) the District's failure  
27 to identify and serve African American students with disabilities; (2) its subjective discipline  
28

1 code; and (3) its use of exclusionary discipline rather than educational interventions to address  
2 behavioral issues. As a result of these practices, in 2012-2013, African American students  
3 represented only 24.8% of the District's student population, yet received 57.3% of all out-of-  
4 school suspensions and 61.4% of all expulsions. Further, African American students represented  
5 35.5% of students with disabilities identified under the IDEA, but received 69.3% of all  
6 suspensions and 76.2% of all expulsions of IDEA students.

7 19. These disparities have remained essentially unchanged. For example, in 2014-  
8 2015, African American students represented only 25.98% of the student population, yet received  
9 59.97% of all out-of-school suspensions and 65% of all expulsions. African American students  
10 with disabilities continue to represent an overwhelming percentage of students eligible under the  
11 IDEA excluded from classroom instructions. In 2013-2014, the most recent publicly-available  
12 data disaggregated by race and disability, African American students were 36.42% of District  
13 students eligible for services under the IDEA. Of the students eligible for services under the  
14 IDEA, however, African American students were 57.80% of the students receiving at least one in-  
15 school suspension; 56.03% receiving at least one out-of-school suspension; 62.56% of students  
16 receiving more than one out-of-school suspension; and 50% of students who were expelled. The  
17 District's failure to identify African American students with disabilities in combination with its  
18 exclusionary disciplinary practices leads already struggling or failing students to fall further  
19 behind.

20 20. Rapid demographic change within AUSD has created fertile ground for  
21 discriminatory decision-making that impacts educational services, including the imposition of  
22 discipline. In 1990, both Antioch and AUSD were more than three-quarters white. Today,  
23 Antioch has a majority of residents of color, and AUSD has a majority of students of color.  
24 AUSD's administrators, teachers, and pupil services staff remain overwhelmingly white. Some  
25 of the discriminatory decision-making is the result of phenomenon such as implicit bias, racial  
26 anxiety, and the use of racial stereotypes.

27 21. Research demonstrates that even well-intentioned people have implicit biases that  
28 are more likely to influence their behavior amidst such rapid demographic change. Indeed,

1 AUSD staff members have acknowledged that the District has not yet caught up to the rapid  
2 cultural changes in Antioch. Ms. Anello, for example, told the *Contra Costa Times* in October  
3 2013 that “cultural bias,” either recognized or unrecognized, is partially responsible for the  
4 disproportionate number of discretionary disciplinary referrals of African American students.<sup>2</sup>

5 22. Many teachers who have been accustomed to working with a predominately white  
6 student body are anxious around Black children. Many of these teachers have not been exposed  
7 to large numbers of Black students and fear that these students are dangerous based on negative  
8 stereotypes about “urban” youth.

9 23. Low expectations for African American students also reflect implicit and other  
10 biases. Many of the African American students whom the District excludes from its classrooms  
11 through excessive discipline have been failing academically for years, with no academic  
12 interventions, and no referrals to evaluate the causes of their poor academic performance. On  
13 information and belief, when African American parents request a referral for an educational  
14 evaluation, the District often rebuffs them, delays a referral, or tells them to provide an outside  
15 diagnosis as a condition for receiving an evaluation.

16 24. AUSD evaluations also reflect low expectations: The ECNAACP received  
17 testimonials from numerous students demonstrating that AUSD more than once disregarded a  
18 struggling African American student’s Attention Deficient/Hyperactivity Disorder (ADHD)  
19 diagnosis in favor of stereotyping that student as uncooperative, oppositional, or having a  
20 behavior disorder. Even when African American students are identified as students with  
21 disabilities, AUSD provides sub-standard behavioral plans that require adherence to all school  
22 conduct rules, rather than assuring procedural protections. The systemic violations of special  
23 education laws result in the disproportionate suspension of African American students with

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24 <sup>2</sup> Paul Bugarino, Antioch Unified looks at ways to improve achievement for African-  
25 American male students, *Contra Costa Times*, Oct. 11, 2013,  
26 [http://www.contracostatimes.com/contracostatimes/ci\\_24293769/antioch-unified-looks-at-ways-](http://www.contracostatimes.com/contracostatimes/ci_24293769/antioch-unified-looks-at-ways-improve-achievement-african)  
improve-achievement-african.



1 disabilities, often for behavior that could and should be addressed through proper behavioral  
2 interventions.

3 25. Based on these findings, the ECNAACP alleged that the District both engages in a  
4 pattern and practice of failing to identify students in the general education program who are  
5 disabled, and fails to evaluate and provide special education services and support to African  
6 American students with disabilities. Moreover, the District discriminatorily excludes African  
7 American students with and without disabilities from the District's educational programs by  
8 disproportionately imposing suspensions and expulsions, as well as other forms of exclusionary  
9 discipline. The disproportionate discipline of African American students with and without  
10 disabilities denies these students access to classroom instruction.

11 26. As a result of the District's pattern and practice of discriminating against its  
12 African American students, the ECNAACP sought to bring suit under Title VI, 42 U.S.C.  
13 § 2000d *et seq.*, Section 504, 29 U.S.C. § 794, the ADA, 42 U.S.C. § 12131 *et seq.*, and the  
14 IDEA, 20 U.S.C. § 1400 *et seq.*

15 **The Parties Begin Negotiating and Enter Into a Structured Negotiations Agreement.**

16 27. Beginning in 2014, the parties began discussing the ECNAACP's findings with the  
17 goal of negotiating a settlement agreement.

18 28. During January and February 2014, the parties met and entered into a Structured  
19 Negotiations Agreement. Mr. Willie Mims attended the meeting on behalf of the ECNAACP,  
20 along with ECNAACP's counsel from the Disability Rights Education & Defense Fund  
21 ("DREDF"), the Equal Justice Society ("EJS"), and the National Center for Youth Law  
22 ("NCYL"). The District was represented by then-Superintendent Donald Gill, as well as the  
23 District's former counsel.

24 29. The Structured Negotiations Agreement was intended to: (1) protect the interests  
25 of the parties during the pendency of negotiations concerning ECNAACP's claims; (2) provide an  
26 "alternative to litigation in the form of good faith negotiations concerning disputed claims over  
27 the legality of AUSD's disciplinary practices and special education programs and services"; and  
28

1 (3) “achieve the shared goal of providing a timely and complete resolution of the issue[s].” The  
2 Agreement was to last for three months.

3 30. After signing the Structured Negotiations Agreement, the parties continued  
4 negotiating the ECNAACP’s claims. They did not reach an agreement to resolve those claims,  
5 however, during the three month period.

6 **The Parties Continue Negotiating, and Ultimately Enter an Interim Settlement Agreement.**

7 31. The parties’ negotiations continued after the expiration of the Structured  
8 Negotiations Agreement through the course of 2014 and into 2015. During that time, the  
9 ECNAACP continued receiving complaints from African American students and parents  
10 regarding the District’s discriminatory disciplinary and special education policies. The  
11 ECNAACP continued to highlight these issues to the District as part of the ongoing negotiations.

12 32. After months of negotiations and multiple discussions and meetings, on March 25,  
13 2015, the ECNAACP and the District agreed to an Interim Settlement Agreement. The Interim  
14 Agreement is attached as Exhibit A to this Complaint. The Agreement was signed by Mr. Willie  
15 Mims on behalf of the ECNAACP and then-AUSD Board President Claire Smith, as well as  
16 counsel representing both parties. (*See Ex. A.*) The Agreement was intended to provide interim  
17 procedures pending complete resolution of the parties’ claims in a final settlement agreement.

18 **Terms of the Agreement**

19 33. In light of the ECNAACP’s allegations and evidence of the District’s pattern and  
20 practice of discriminating against African American students, the Agreement requires the District  
21 to engage the following experts (“Experts”) to perform the following agreed-upon specific tasks:

- 22 (1) Dan Losen (“Mr. Losen”), Director of the Center for Civil Rights Remedies at the  
23 University of California, Los Angeles, to review the District’s disciplinary data, policies,  
24 and practices;
- 25 (2) Professor Jeffrey Sprague (“Dr. Sprague”) of the University of Oregon, to review  
26 IDEA/Section 504 practices, including Child Find practices, and to conduct an assessment  
27 of behavioral and academic services; and  
28

1 (3) Professor John A. Powell (“Mr. Powell”) and Ingrid Melvaer Paulin of the University of  
2 California, Berkeley Haas Institute for a Fair and Inclusive Society, the Center for  
3 Policing Equity, Professor Rachel D. Godsil, Director of Research for Perception Institute  
4 and Seton Hall University School of Law, and researchers working under their supervision  
5 (collectively “Social Psychology Experts”), to examine the relationship between  
6 psychological phenomena and disproportionate outcomes. (Ex. A ¶¶ 1.1-1.3.)

7 34. The District specifically requested that the above individuals serve as experts to  
8 investigate the District’s own policies and practices. The Experts are leading individuals in their  
9 field. They are highly qualified to make recommendations to remedy the District’s ongoing  
10 discriminatory practices.

11 35. The Agreement requires the Experts to collaborate with lead expert Mr. Losen “to  
12 produce report(s) specific to the District discussing the experts’ findings and proposing necessary  
13 remediation if warranted.” (Ex. A ¶ 1.4.)

14 36. The Agreement also requires the parties and their counsel to provide the Experts  
15 “with information they deem relevant to the experts’ assessment and analysis of the District.”  
16 (Ex. A ¶ 1.4.) The Agreement therefore encourages and obligates both parties to communicate  
17 with the experts.

18 37. Because the District controls access to relevant information, the Agreement further  
19 provides that, for each Expert, the District must “cooperate with reasonable requests for  
20 information in a timely fashion,” and “collaborate with [each expert] in good faith.” (Ex. A  
21 ¶¶ 2.3, 3.3, 4.3.)

22 38. Indeed, the Agreement outlines in detail each Expert’s plan of action, as well as  
23 the District’s specific obligations with respect to each Expert.

24 39. **Terms of the Agreement Regarding Mr. Losen.** With respect to Mr. Losen, the  
25 Agreement specifies that “Mr. Losen will review the District’s disciplinary data, practices, and  
26 policies,” as well as serve as “lead expert,” meaning that he will coordinate all review and  
27 recommendations of the special education and Social Psychology Experts. (Ex. A ¶ 2.) The  
28 Agreement estimates that “Mr. Losen’s analysis could take as much as 20 days, including at least

1 three (3) days on-site and the rest off-site.” (Ex. A ¶ 2.1.) The parties acknowledged that Mr.  
2 Losen would “prepare and present a report specific to the District.” (Ex. A ¶ 2.3.) The District  
3 agreed to pay Mr. Losen up to \$60,000 plus travel expenses for his work. (Ex. A ¶ 2.1.)

4 40. The Agreement also outlines the further obligations the District has with respect to  
5 Mr. Losen. Under its terms, the District must “ensure Mr. Losen has full access to, and the  
6 cooperation of, the District’s designated data keeper for the purpose of access to district  
7 disciplinary . . . data.” (Ex. A ¶ 2.2(a).) The District further agreed that “[t]he District’s  
8 designated data keeper will consult and collaborate with Mr. Losen in good faith.” (*Id.*) The  
9 District further agreed to provide Mr. Losen with access to all of the District’s Fiscal Year (“FY”)  
10 2013-2014 data, all District data going back at least three years, the District’s most recent  
11 California Longitudinal Pupil Achievement Data System (“CALPADS”), and the District’s 2013-  
12 2014 Civil Rights Data Collection (“CRDC”) data. (Ex. A ¶¶ 2.2(b)-(c).)

13 41. **Terms of the Agreement Regarding Dr. Sprague.** With respect to Dr. Sprague,  
14 the Agreement states that Dr. Sprague will “serve as the special education expert,” and will  
15 specifically “complete an assessment of the District’s Special Education Programs.” (Ex. A  
16 ¶ 3.1.) The Agreement provides additional details regarding the scope of Dr. Sprague’s work in  
17 Appendix A attached to the Agreement. (Ex. A, Appendix A.) The District acknowledges in the  
18 Agreement that Dr. Sprague’s initial analysis could take as long as 30 days, including five (5) to  
19 ten (10) days on-site and the rest off-site. (Ex. A ¶ 3.2.) The parties acknowledged that Dr.  
20 Sprague would “prepare and present a report specific to the District.” (Ex. A ¶ 3.4.) The District  
21 agreed to pay Dr. Sprague up to \$60,000 plus travel expenses for his work. (Ex. A ¶ 3.2.)

22 42. As with Mr. Losen, the Agreement requires the District to “ensure Dr. Sprague has  
23 full access to, and the cooperation of, the District’s designated data keeper for the purposes of Dr.  
24 Sprague’s analysis.” (Ex. A ¶ 3.3(a).) The District must further ensure that its “designated data  
25 keeper consult[s] and collaborate[s] with Dr. Sprague in good faith.” (*Id.*) The District further  
26 agreed to provide Dr. Sprague with access to all of the District’s FY 2013-2014 Special  
27 Education/Section 504 data and IEP/Section 504 Plan files going back at least three years, the  
28 District’s latest CALPADS entries, and the District’s 2013-2014 CRDC data. (Ex. A ¶¶ 3.3(b)-

1 (c.) Finally, the District agreed “to work in good faith to make administrators and teachers  
2 available for participation in survey, interview and other examination” and “to facilitate  
3 communication with administrators and teachers to engage in interviews with Dr. Sprague.” (Ex.  
4 A ¶ 3.3(d).)

5 43. **Terms of the Agreement Regarding the Social Psychology Experts.** With  
6 respect to the Social Psychology Experts, the Agreement specifies that the Social Psychology  
7 Experts “will serve as experts in psychological phenomena such as ‘implicit bias,’ ‘racial  
8 anxiety,’ and ‘stereotype threat’ and coordinate all reviews and recommendations with Mr.  
9 Losen.” (Ex. A ¶ 4.) The Agreement specifies that the Social Psychology Experts will use data  
10 collected by Mr. Losen and/or Dr. Sprague and other qualitative and quantitative organizational  
11 analyses, including surveys and other psychological measurements of administrators and teachers,  
12 “to provide a diagnosis or opinion as to the systemic effect . . . of [certain] influences, such as  
13 ‘implicit bias,’ ‘racial anxiety,’ or ‘stereotype threat,’” and to provide recommendations for  
14 specific interventions that the District should consider to address any such effect. (Ex. A ¶ 4.1.)  
15 The District agreed to pay the Social Psychology Experts up to \$20,000 for the initial analysis.  
16 (Ex. A ¶ 4.2.)

17 44. The Agreement also specifies the District’s obligations with respect to the Social  
18 Psychology Experts. It requires the District to ensure that the Social Psychology Experts “have  
19 full access to, and the cooperation of, the District’s designated data keeper for purposes of their  
20 analysis.” (Ex. A ¶ 4.3(a).) Furthermore, the District agreed that its designated data keeper  
21 would “consult and collaborate with the [S]ocial [P]sychology [E]xperts in good faith.” (*Id.*) The  
22 District further agreed “to work in good faith to make administrators and teachers available for  
23 participation in survey, interview and other examination.” (Ex. A ¶ 4.3(b).) Moreover, the  
24 Agreement requires the District to “work with [S]ocial [P]sychology [E]xperts towards obtaining  
25 the consent of individual administrators and teachers for the teachers’ participation in the social  
26 psychological measures.” (*Id.*) The District further agreed “to facilitate communication with  
27 administrators about the social psychological measures” and to “allow reasonable on-duty time  
28 for administrators and teachers to participate in the social psychological measures.” (*Id.*)

1           45. Both parties agreed that the Social Psychology Experts would keep confidential:  
2 (a) notes and recordings of interviews with administrators and teachers; (b) all data and  
3 information containing personally identifiable information from administrators or teachers; (c)  
4 researcher correspondence, notes, and unpublished opinions derived from or that would reveal  
5 other confidential data; and (d) any other records or data containing personal information and  
6 personally identifiable data that the parties so designate during the terms of the Agreement. (Ex.  
7 A ¶¶ 4.5(a)-(d).)

8           46. The Agreement further specifies a framework for dispute resolution:

9           47. **First**, the parties agreed that the Experts would complete their reports and  
10 recommendations by December 31, 2015. The parties agreed to extend this deadline for “good  
11 cause and with the consent of the Parties.” (Ex. A ¶ 5.1.)

12           48. **Second**, the parties agreed to meet and confer, on a date to be determined,  
13 following receipt and review of the experts’ reports and recommendations. (Ex. A ¶ 5.2.)

14           49. **Third**, the parties agreed to negotiate a final settlement agreement in good faith  
15 within the parameters of the expert recommendations. (Ex. A ¶ 5.2.)

16           50. The Agreement specifically states that only if the parties cannot reach a resolution  
17 regarding the experts’ recommendations can the ECNAACP bring suit. (Ex. A ¶ 5.2.)

18                           **The District Has Refused to Comply With the Terms of the Agreement.**

19           51. The District has failed and refused, and continues to fail and refuse, to perform the  
20 conditions of the Agreement. Specifically, the District has refused to cooperate and work in good  
21 faith with the Experts, has failed to respond to requests for information, and has impeded the  
22 Experts from performing the tasks necessary to finalize their reports and recommendations. The  
23 District’s failure to comply with the Agreement with respect to each Expert is set forth below.

24                           **The District Refuses to Cooperate With the Social Psychology Experts.**

25           52. The District has failed to perform its obligations under the Agreement with respect  
26 to the Social Psychology Experts, specifically, and without limitation, by (1) failing to work in  
27 good faith to make administrators and teachers available for participation, survey, interview, and  
28

1 other examination; (2) failing to work with the Social Psychology Experts toward obtaining the  
2 consent of individual administrators and teachers for participation in the social psychological  
3 measures; (3) failing to facilitate communication with administrators about the social  
4 psychological measures; and (4) failing to allow for reasonable on-duty time for administrators  
5 and teachers to participate in the social psychological measures. (Ex. A ¶¶ 4.3(b).)

6           **53. The District Has Stymied the Experts’ Attempt to Obtain the Consent of**  
7 **Individual Administrators and Teachers for Participation in Social Psychological Measures.**

8 The District has sabotaged the Experts’ attempts to secure District employees’ participation in the  
9 social psychological measures necessary to perform the Social Psychology Experts’ investigation  
10 and analysis.

11           54. Under the Agreement, the Social Psychology Experts were to survey teachers and  
12 administrators regarding implicit bias issues. As detailed above, the District is required to work  
13 with the Social Psychology Experts to obtain individual administrators’ and teachers’ consent to  
14 participate in these social psychological measures.

15           55. The Experts discussed their proposed survey with the District in September 2015.  
16 They expressed their desire for the survey to be administered district-wide and requested the  
17 District’s assistance in presenting the survey to administrators and teachers union representatives  
18 to gain buy-in and consent to the survey instruments.

19           56. The Experts ultimately met to discuss the survey with the District and teacher  
20 union representatives in October 2015. The District and union representatives expressed concern  
21 that survey information would not be confidential. The Experts explained that information  
22 regarding administrators and teachers’ personally identifiable information would remain  
23 confidential.

24           57. The District’s Director of Special Education, Ruth Rubalcava (“Ms. Rubalcava”),  
25 attended the October 2015 meeting. Ms. Rubalcava was particularly antagonistic towards the  
26 survey specifically and the Agreement generally. Despite the Experts’ assurances to the contrary,  
27 Ms. Rubalcava, acting on the District’s behalf, incorrectly informed union representatives that the  
28 Experts’ work would not be confidential and that the Experts would be able to identify teachers

1 by name. Upon information and belief, she warned that the Experts' work would cause the  
2 District to fire allegedly "racist" teachers, and that the teachers would be "tools" in a lawsuit  
3 against the District.

4 58. Upon information and belief, Ms. Rubalcava knew these allegations were untrue,  
5 as she had been present for discussions clarifying the confidentiality provisions of the Agreement.  
6 Indeed, the Agreement guarantees the confidentiality of the Experts' data and analysis. This  
7 includes all administrators' and teachers' personally identifiable information. (Ex. A ¶ 4.5.) To  
8 further dispel these unfounded concerns, the Social Psychology Experts provided the District with  
9 an analysis of confidentiality protections associated with the proposed surveys on or about  
10 November 14, 2015.

11 59. The Social Psychology Experts' request for teacher and administrator survey  
12 participation and information is reasonable. Indeed, the Agreement specifically requires it. (Ex.  
13 A ¶ 4.3(a).) The District has refused to work with the Social Psychology Experts to ensure that  
14 they have access to this information. In fact, upon information and belief, the District informed  
15 union representatives that participation in the survey was unnecessary.

16 60. Based on the District's overall lack of support for the survey, union representatives  
17 discontinued work with the Social Psychology Experts to obtain consent from teachers to  
18 participate in the confidential surveys.

19 61. The District's conduct has thus sabotaged the Social Psychology Experts' ability to  
20 conduct surveys, interviews, and other examinations of District staff. As a result, the Experts  
21 have been unable to perform their analyses and reports under the Agreement.

22 62. To date, the District has failed and continues to fail to work with the Social  
23 Psychology Experts towards obtaining the consent of individual administrators and the teachers  
24 for participation in the social psychology measures. As a result, the Social Psychology Experts  
25 have been unable to move forward with their survey instrument, which is necessary for them to be  
26 able to complete their reports and recommendations under the Agreement.

27  
28



1 **The District Refuses to Cooperate With Mr. Losen.**

2 63. The District has failed to perform its obligations under the Agreement with respect  
3 to Mr. Losen, specifically, and without limitation, by (1) repeatedly failing to cooperate with  
4 reasonable requests from Mr. Losen in a timely fashion; (2) failing to ensure that Mr. Losen has  
5 full access to, and cooperation of, the District's designated data keeper for the purposes of his  
6 analysis, and that the designated data keeper consults and collaborates with Mr. Losen in good  
7 faith; and (3) failing to allow timely access by Mr. Losen to data possessed by the District. (Ex.  
8 A ¶¶ 2.2(a)-(c).)

9 64. **The District Fails to Cooperate With Reasonable Requests From Mr. Losen**  
10 **in a Timely Fashion.** As the lead Expert, Mr. Losen repeatedly sought to work with the District  
11 to assist the Social Psychology Experts in gaining consent from teachers and administrators to  
12 participate in social psychological measures.

13 65. Mr. Losen detailed Ms. Rubalcava's attempt to thwart the Expert's work in  
14 communications with Ms. Anello in November 2015. He asked the District to address Ms.  
15 Rubalcava's behavior and ensure she refrain from further undermining the Experts' investigation.  
16 Despite Mr. Losen's expressed concern about her obstructionism, upon information and belief,  
17 Ms. Rubalcava continues to serve as a key District contact for the Agreement.

18 66. Moreover, the District's refusal to cooperate with the Agreement or timely respond  
19 to the Experts resulted in Mr. Losen requesting an extension, to which the District never  
20 responded. On December 28, 2015, Mr. Losen wrote to counsel for both parties, requesting an  
21 extension of the due date for his analysis and report. He explained that an extension was  
22 necessary primarily due to concerns about whether the District was cooperating in good faith with  
23 the Expert team.

24 67. The ECNAACP responded, agreeing to the extension. To date, however, upon  
25 information and belief, the District has not responded to Mr. Losen's request.

26 68. **The District Fails to Ensure That Mr. Losen Has Full Access to, and**  
27 **Cooperation of, the District's Designated Data Keeper for Purposes of Access to the**  
28 **District's Disciplinary and Related Data.** Although the person identified by the District to

1 respond to the Experts' data requests, Mr. Jason Murphy,<sup>3</sup> provided Mr. Losen with requested  
2 data, there were discrepancies between state-reported data and data gathered in conjunction with  
3 the 2009 ACLU-NC settlement. Mr. Losen asked the District to explain these discrepancies, but  
4 the District did not respond satisfactorily. Given these discrepancies and the District's efforts to  
5 stymie the teacher-survey as detailed above, Mr. Losen was thus hesitant to continue his analysis  
6 of data provided by the District for his report.

7         **69. The District Fails to Allow Timely Access by Mr. Losen to Data Possessed by**  
8 **the District.** The District has also failed to provide Mr. Losen with the complete set of data that  
9 he has requested, or in a format the he could easily use. As a result of the District's lack of  
10 cooperation, Mr. Losen has been unable to complete any significant analysis or provide any  
11 recommendations as outlined under the Agreement.

12                                 **The District Refuses to Cooperate with Dr. Sprague.**

13         70. The District has also failed to perform its obligations under the Agreement with  
14 respect to Dr. Sprague, specifically, and without limitation, by (1) repeatedly failing to cooperate  
15 with reasonable requests from Dr. Sprague in a timely fashion; (2) failing to ensure that Dr.  
16 Sprague has full access to, and cooperation of, the District's designated data keeper for the  
17 purposes of his analysis, and that the designated data keeper consults and collaborates with Dr.  
18 Sprague in good faith to allow for timely access by Dr. Sprague to data possessed by the District;  
19 and (3) failing to work in good faith with Dr. Sprague to make administrators and teachers  
20 available for participation in survey, interview, and other examination, and to facilitate  
21 communication with administrators and teachers to engage in interviews with Dr. Sprague. (Ex.  
22 A ¶¶ 3.3(a)-(d).)

23         **71. The District Repeatedly Fails to Cooperate With Reasonable Requests From**  
24 **Dr. Sprague in a Timely Fashion.** The District has consistently and repeatedly failed to

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27                 <sup>3</sup> Mr. Murphy is currently the Director of Educational Services.

1 cooperate with Dr. Sprague's requests and has not responded to Dr. Sprague in a timely fashion  
2 as required by the Agreement:

3 72. For example, on or about July 2015, in accordance with the Agreement, Dr.  
4 Sprague drafted a Special Education Services Assessment and Recommendations Proposed  
5 Assessment Plan ("Assessment Plan"). Dr. Sprague requested comments on and approval of the  
6 Assessment Plan from the District, which were required before Dr. Sprague could move forward  
7 with the Assessment Plan.

8 73. Dr. Sprague later sent his assessment plan to counsel for the ECNAACP. Counsel  
9 provided Dr. Sprague with comments on or about July 30, 2015. The District, however, did not  
10 respond to Dr. Sprague's request for comment.

11 74. Dr. Sprague followed up with the District at the beginning of the 2015 school year.  
12 Later in the fall, Ms. Anello phoned Dr. Sprague, asking why "child find" was included in his  
13 proposal. Dr. Sprague responded that this was outlined as part of the scope of his work under the  
14 agreement. (*See Ex. A, Appendix A.*) Ms. Anello also suggested that Dr. Sprague turn his  
15 assessment into an Institutional Review Board ("IRB") proposal so that he could access students'  
16 individualized education programs ("IEPs"). Ms. Anello, however, never formally approved the  
17 plan.

18 75. On November 19, 2015, counsel for the ECNAACP, at a meeting arranged with  
19 the goal of getting the Agreement back on track, urged counsel for the District to edit Dr.  
20 Sprague's proposal. Finally, on November 30, 2015, counsel for the District informed Dr.  
21 Sprague that it would review the Assessment Plan and acknowledged that the District had  
22 received a copy of the Assessment Plan in September 2015.

23 76. On or about December 5, 2015, Dr. Sprague sent counsel for the District another  
24 copy of the Assessment Plan. He specifically sent a Microsoft Word (text-editable) version of the  
25 Assessment Plan so that counsel for the District could easily provide comments.

26 77. Counsel for the District, however, never provided comments on the Assessment  
27 Plan. To this date, the District has failed to provide comments on or approval of the Assessment  
28

1 Plan, despite numerous requests from Dr. Sprague. As such, Dr. Sprague has been unable to  
2 move forward with his Assessment Plan.

3 **78. The District's Point Person for Special Education Has Refused to Collaborate**  
4 **with Dr. Sprague in Good Faith, Thereby Preventing Dr. Sprague from Gaining Timely**  
5 **Access to Data Possessed by the District and Other Information Necessary for His Report.**

6 At all relevant times, Ms. Rubalcava has been the point person designated by the District to  
7 interface with the Experts around special education. As detailed above, she has undermined the  
8 Experts' attempts to gain information necessary for their reports. The District has done nothing  
9 to prevent Ms. Rubalcava from stonewalling the Experts' efforts, in violation of the Agreement.

10 79. Ms. Rubalcava has also ignored Dr. Sprague's reasonable requests for necessary  
11 information related to special education issues. For example, on or about August 28, 2015, Dr.  
12 Sprague attempted to contact Ms. Rubalcava in order to begin his research and set up site visits.  
13 He received no response from Ms. Rubalcava.

14 80. Moreover, on or about October 2015, Dr. Sprague attempted to discuss a checklist  
15 and evaluation sheet with Ms. Rubalcava. Again, this was necessary before he could begin his  
16 analysis.

17 81. Ms. Rubalcava failed to respond to Dr. Sprague. As such, he was unable to begin  
18 his analysis.

19 **82. The District Failed to Work in Good Faith With Dr. Sprague to Make**  
20 **Administrators and Teachers Available for Participation in Survey, Interview, and other**  
21 **Examination, and to Facilitate Communication with Administrators and Teachers to**  
22 **Engage in Interviews with Dr. Sprague.** Ms. Rubalcava stymied Dr. Sprague's investigation,  
23 much in the same way she stymied the investigation of the Social Psychological Experts. She  
24 failed to respond to Dr. Sprague's requests for interviews with special education staff. She also  
25 failed to respond to Dr. Sprague's requests to schedule site visits to the District, except that she  
26 once responded to offer dates that Dr. Sprague had already identified as dates when he was not  
27 available.  
28

**The District Repudiates the Agreement.**

1  
2           83.     The ECNAACP has, on numerous occasions, attempted to work with the District  
3 to get the Agreement back on track. The District has repeatedly failed to respond in a timely  
4 manner or in a manner demonstrating its commitment to comply with the terms of the Agreement.

5           84.     On November 3, 2015, counsel for the District asked to meet with counsel for the  
6 ECNAACP. A meeting was set for November 19, 2015.

7           85.     On November 19, 2015, counsel for the ECNAACP met with counsel for the  
8 District with the intention of getting the Agreement back on track and setting clear deadlines.  
9 Counsel for both parties discussed issues including communication and the District's commitment  
10 to provide the Experts with access to the Antioch union representative as well as information  
11 necessary for their reports. At the conclusion of the meeting, counsel for both parties reached a  
12 mutual agreement on how to move forward on these issues, including having more consistent  
13 communication between counsel, having joint communication with the Experts, and having a  
14 meeting with Ms. Anello in the near future. This mutual agreement was subject to the approval of  
15 the District. Counsel for the District informed counsel for the ECNAACP that they would update  
16 them with the District's response to the meeting.

17           86.     Counsel for the District failed to do so. They provided no updates to the  
18 ECNAACP or its counsel regarding the District's response to the November 19 meeting.

19           87.     On November 30, 2015, counsel for the ECNAACP emailed counsel for the  
20 District and asked for an update regarding the District's response. Counsel for the District  
21 responded on November 30, 2015, saying that they would: 1) make edits to Dr. Sprague's  
22 proposed Assessment Plan; 2) help to set up meetings between the District and Mr. Powell; 3)  
23 help to set up a meeting with the union representative to discuss teacher participation in the Social  
24 Psychology Experts' study; and 4) speak with Mr. Losen regarding information needed from the  
25 District for his study.

26           88.     Counsel for the ECNAACP responded on November 30, 2015, asking that the  
27 District send dates it was available to meet with Mr. Powell. Counsel for the District responded  
28

1 on November 30, 2015, informing counsel for the ECNAACP that it would meet with the District  
2 on December 2, 2015 to determine potential dates for the District to meet with Mr. Powell.

3 89. Counsel for the District again failed to set up a meeting with Mr. Powell.  
4 Following these communications, counsel for the District also never contacted counsel for the  
5 ECNAACP regarding the District's availability.

6 90. On December 4, 2015, counsel for the ECNAACP contacted counsel for the  
7 District, asking for an update regarding the December 2, 2015 meeting between the District and  
8 its counsel and whether the District had given counsel potential dates to meet with Mr. Powell.  
9 Counsel for the District responded that day, informing counsel for the ECNAACP that they did  
10 not get dates from the District, but that it would reach out to the District that day and provide the  
11 ECNAACP with updates.

12 91. Again, counsel for the District failed to do so. After the above email exchange,  
13 counsel for the District had no further contact with counsel for the ECNAACP about the District's  
14 availability for a meeting with Mr. Powell.

15 92. On January 5, 2016, counsel for the ECNAACP again contacted counsel for the  
16 District, requesting that the District update counsel for the ECNAACP regarding the District's  
17 response to the November 19, 2015 meeting between counsel for the District and counsel for the  
18 ECNAACP. Counsel for the District informed counsel for the ECNAACP that day that it would  
19 speak to the District on January 8, 2016 to discuss next steps.

20 93. Counsel for the District again failed to contact counsel for the ECNAACP with an  
21 update.

22 94. On January 11, 2016, counsel for the ECNAACP contacted counsel for the  
23 District, asking for an update. Counsel for the District responded that it would provide an update  
24 on January 22, 2016.

25 95. On or about February 5, 2016, counsel for the ECNAACP learned that the District  
26 had terminated the counsel who had negotiated the Agreement and retained new counsel.

27 96. On or about February 24, 2016, the District's new counsel contacted counsel for  
28 the ECNAACP, stating that it was reviewing the Agreement and history of the parties'

1 negotiations. Counsel for the District requested a number of documents relevant to the  
2 Agreement, which counsel for the ECNAACP subsequently provided. Counsel for the District  
3 also stated that the District had “buyer’s remorse” regarding its obligations under the Agreement.

4 97. On March 14, 2016, counsel for the ECNAACP contacted counsel for the District,  
5 requesting that the District inform the ECNAACP of its intentions regarding implementing the  
6 Agreement. The email requested that the District inform the ECNAACP by March 16, 2016 of  
7 how the District would like to proceed. The District did not respond.

8 98. On March 24, 2016, counsel for the ECNAACP again contacted counsel for the  
9 District, forwarding its March 14, 2016 email, and again asked that the District respond regarding  
10 its intentions. Although counsel for the District responded that day, counsel failed to inform the  
11 ECNAACP of its intentions and instead requested a follow-up conference call.

12 99. On March 30, 2016, counsel for the ECNAACP and counsel for the District  
13 discussed the Agreement. During the conference call, counsel for the District informed counsel  
14 for the ECNAACP that it intended to meet with the District to discuss the possibility of entering  
15 into a Final Settlement Agreement. Counsel for the District promised to update the ECNAACP  
16 once it spoke with the District, and confirmed it would respond within a week’s time.

17 100. The District’s counsel failed to respond within the promised timeframe.

18 101. On Friday, April 8, 2016, counsel for the ECNAACP again contacted counsel for  
19 the District, requesting that the District inform the ECNAACP of its intentions. The District  
20 again failed to respond.

21 102. On April 20, 2016, the ECNAACP sent the District a demand letter. The letter  
22 details the District’s noncompliance with the Agreement as well as its refusal to participate in  
23 discussions to ensure the Experts complete their reports. The ECNAACP demanded that the  
24 District provide written confirmation that it would agree to perform all obligations under the  
25 Agreement, including: (1) providing the Experts with information they seek in a timely manner  
26 (2) collaborating with each Expert in good faith; and (3) ensuring that Experts are able to  
27 complete all necessary investigations by the close of this school year so that they may complete  
28

1 their reports this summer. The ECNAACP demanded confirmation within ten days of the letter.  
2 The Demand Letter is attached as Exhibit B to this Complaint.

3 103. Counsel for the District responded to the demand on April 29, 2016. Although the  
4 District disagreed with the ECNAACP's position, counsel for the District stated that it was  
5 willing to move forward in good faith to get the Agreement back on track. Counsel also stated  
6 that the District was in agreement with meeting with the ECNAACP and its counsel.

7 104. The ECNAACP responded on May 9, 2016. It requested that the District confirm  
8 its agreement to a meeting before June 1 with the ECNAACP, its counsel, the District's Interim  
9 Superintendent, and the District's Board of Trustees President. The ECNAACP asked that the  
10 District confirm its agreement to such a meeting by May 13.

11 105. On May 13, counsel for the District responded. Counsel did not agree to a meeting  
12 by June 1, but rather stated that it would discuss with the District how the District wanted to  
13 proceed.

14 106. The ECNAACP confirmed that this response was unsatisfactory on May 31, 2016  
15 date. It demanded a meeting before June 24, and confirmation as such by June 10. The  
16 ECNAACP confirmed that it would file suit if the District continued to delay meaningful  
17 negotiations.

18 107. The District backtracked from its April 29, 2016 agreement to convene a meeting.  
19 It refused to discuss the Agreement unless the ECNAACP provided substantive responses to the  
20 District's previously expressed concerns with the Agreement. It also required the ECNAACP to  
21 produce all its communications with the Experts, as if such communication would be in violation  
22 with the terms of the Agreement, which provides that both parties may freely communicate with  
23 the Experts. Finally, the District refused to meet unless the parties attended a JAMS mediation  
24 and refused to guarantee the participation of District decision-makers at that mediation.

25 108. Because the District's response was not in good faith, the ECNAACP files this  
26 complaint.

27  
28



1 **The ECNAACP Has Suffered Harm as a Result of the District's Refusal to Comply with the**  
2 **Agreement.**

3 109. The ECNAACP has performed all of its obligations, covenants, and promises  
4 under the Agreement and stands ready to perform any such obligations, covenants, and promises  
5 that it may be required to perform in the future by the Agreement.

6 110. The ECNAACP, by and through its counsel, has repeatedly worked to ensure that  
7 the District complies with its obligations under the Agreement. The District has refused to  
8 negotiate in good faith and has repudiated its obligations under the Agreement.

9 111. The ECNAACP has been harmed as a result of District's breach of the Agreement.  
10 Because of the District's noncompliance, the Experts have been unable to complete their analyses  
11 of the District's policies and procedures in accordance with the Agreement. The ECNAACP  
12 refrained from pursuing its legal rights against the District during the pendency of the Agreement  
13 in exchange for the District's promise to collaborate with the Experts in good faith. The District  
14 has not done so. Meanwhile, the ECNAACP continues to receive reports that the District  
15 discriminates against African American students, both with and without disabilities. The District  
16 has delayed meaningful efforts to remedy this ongoing harm.

17 112. Relief in the form of monetary damages is inadequate in this case. The Agreement  
18 does not provide for monetary compensation if the District breaches the Agreement. Instead, the  
19 Agreement is intended to address the District's pattern and practice of discriminating against  
20 African American students with and without disabilities. Because monetary damages will not  
21 adequately compensate the ECNAACP, the ECNAACP requests that the Court order specific  
22 performance.

23 113. Without specific performance, the ECNAACP will suffer irreparable harm, as the  
24 District's pattern and practice of discriminating against African American students will continue.  
25 Specifically, the District will continue to fail to perform its legal obligation to identify African  
26 American students who are eligible for special education services and to provide these students  
27 with the services they need and deserve. Moreover, the District will continue to systematically  
28 exclude African American students from the District's educational program through its

1 discriminatory and excessive suspension and expulsion practices, thereby denying such students  
2 equal educational opportunities under law.

3 **FIRST CAUSE OF ACTION**  
4 **(Breach of Interim Settlement Agreement/Specific Performance)**

5 114. Plaintiff realleges and incorporates herein by reference each and every allegation  
6 contained in paragraphs 1 through 113, inclusive, as though fully set forth herein and made a part  
7 hereof.

8 115. On or about March 25, 2015, the ECNAACP and Defendant entered into the  
9 Agreement in which Defendant agreed, among other things, to hire and cooperate with experts in  
10 the fields of student discipline, special education, and social psychology in exchange for the  
11 ECNAACP's agreement to refrain from suing the District for its pattern and practice of  
12 discriminating against African American students in the District.

13 116. The Agreement is valid and enforceable. The ECNAACP has performed all  
14 conditions, covenants, and promises under the Agreement.

15 117. The Agreement set forth December 31, 2015 as the deadline by which "[a]ll expert  
16 reports and recommendations shall be due to the parties." (Ex. A ¶ 5.1.) By reason of the conduct  
17 described herein, the District has breached and continues to breach the Agreement by refusing to  
18 perform its obligations under the Agreement with respect to each Expert, thereby preventing the  
19 Experts from completing their investigations and reports.

20 118. Specifically, with regard to the Social Psychology Experts, the District has also  
21 breached the contract, specifically, and without limitation, by (1) failing to work in good faith to  
22 make administrators and teachers available for participation, survey, interview, and other  
23 examination; (2) failing to work with the Social Psychology Experts towards obtaining the  
24 consent of individual administrators and the teachers for participation in the social psychological  
25 measures; (3) failing to facilitate communication with administrators about the social  
26 psychological measures; and (4) failing to allow for on-duty time for administrators and teachers  
27 to participate in the social psychological measures.

1           119. With regard to Mr. Losen, the District has breached the Agreement by: (1) failing  
2 to cooperate with reasonable requests from Mr. Losen in a timely fashion; (2) failing to ensure  
3 that Mr. Losen has full access to, and cooperation of, the District's designated data keeper for the  
4 purposes of his analysis, and that the designated data keeper consults and collaborates with Mr.  
5 Losen in good faith; and (3) failing to allow timely access by Mr. Losen to data possessed by the  
6 District.

7           120. With regard to Dr. Sprague, the District has breached the Agreement by: (1)  
8 repeatedly failing to cooperate with reasonable requests from Dr. Sprague in a timely fashion; (2)  
9 failing to ensure that Dr. Sprague has full access to, and cooperation of, the District's designated  
10 data keeper for the purposes of his analysis, and that the designated data keeper consults and  
11 collaborates with Dr. Sprague in good faith to allow for timely access by Dr. Sprague to data  
12 possessed by the District; and (3) failing to work in good faith with Dr. Sprague to make  
13 administrators and teachers available for participation in survey, interview, and other  
14 examination, and to facilitate communication with administrators and teachers to engage in  
15 interviews with Dr. Sprague.

16           121. Moreover, the District has failed to communicate with either the Experts or the  
17 ECNAACP to extend the timeframe for completion of the Agreement under the process provided  
18 in the Agreement at paragraph 5.1. (Ex. A ¶ 5.1.)

19           122. On or about April 20, 2016, Plaintiff made demand on Defendant for specific  
20 performance of the Agreement, but Defendant has failed and refused and continues to fail and  
21 refuse to perform as required under the Agreement.

22           123. Because the Agreement requires the District to perform specific obligations to  
23 address the ECNAACP's discrimination claims and does not provide for monetary relief, the  
24 ECNAACP cannot be adequately compensated for Defendant's breach, and accordingly has no  
25 adequate remedy at law.

26           124. As a result of the District's breach, the ECNAACP and its members will suffer  
27 continuing and irreparable harm as described herein. The ECNAACP and its members will  
28 continue to suffer from the District's discriminatory practices. Without proceeding with the

1 Agreement to a final settlement agreement, the ECNAACP will incur significant costs in pursuing  
2 legal remedies to address this discrimination. These costs may only be avoided through the  
3 District allowing the Experts to complete their reports so that the parties may negotiate  
4 implementation of the Expert's recommendations.

5 125. Accordingly, the ECNAACP requests the issuance of an order of specific  
6 performance directing Defendant to comply with its obligations under the Agreement, in the form  
7 of a preliminary injunction and/or permanent injunction as set forth with particularity below.

8 **SECOND CAUSE OF ACTION**  
9 **(Declaratory Relief)**

10 126. Plaintiff realleges and incorporates herein by reference each and every allegation  
11 contained in paragraphs 1 through 125, inclusive, as though fully set forth herein and made a part  
12 hereof.

13 127. The facts set forth above establish a present and actual controversy between the  
14 parties as to their legal rights and duties under the Agreement. The ECNAACP contends that the  
15 District has breached and continues to breach its obligations under the Agreement. The  
16 ECNAACP is informed and believes that the District contends that it is not in breach of the  
17 contract.

18 128. The ECNAACP further contends that the District has no right under the  
19 Agreement to declare the Agreement, or any term thereof, terminated, and that the District has a  
20 surviving obligation to comply with the terms of the Agreement, including: (1) cooperating with  
21 reasonable requests for information from the Experts in a timely fashion; (2) ensuring the Experts  
22 have full access to, and the cooperation of, the District's designated data keeper for purposes of  
23 their analysis; (3) ensuring that the District's designated data keeper consults and collaborates  
24 with the Experts in good faith; (4) allowing timely access to Mr. Losen and Dr. Sprague of data  
25 possessed by the District; (5) working in good faith with Dr. Sprague to make administrators and  
26 teachers available for participation in survey, interview, and other examination, and to facilitate  
27 communication with administrators and teachers to engage in interviews with Dr. Sprague; (6)  
28 working in good faith to make administrators and teachers available for participation in survey,

1 interview and other examination; (7) working with the Social Psychology Experts towards  
2 obtaining the consent of individual administrators and the teachers for the teachers' participation  
3 in the social psychological measures; (8) retracting prior false, undermining, or fear-inducing  
4 statements made to union representatives or staff regarding the Experts, and refraining from  
5 issuing any additional misinformation or any threatening language, implied or otherwise, to staff  
6 within the District about their participation in the social psychological measures; and (9)  
7 facilitating communication with administrators about the social psychological measures and  
8 allowing reasonable on-duty time for administrators and teachers to participate in the social  
9 psychological measures.

10 129. Accordingly, the ECNAACP seeks a declaration from the Court as to the parties'  
11 respective rights and obligations under the Agreement.

### 12 **PRAYER FOR RELIEF**

13  
14 WHEREFORE, Plaintiff prays that this Court enter a judgment in Plaintiff's favor and  
15 against Defendant as follows:

16 1. That Plaintiff be awarded specific performance in the form of a preliminary  
17 injunction and/or permanent injunction enjoining Defendant, their representatives, principals,  
18 officers, directors, servants, employees and agents, and all persons and entities acting thereunder,  
19 in concert to comply with its obligations under the Agreement, and any other provisional relief  
20 which the Court deems just and proper, as follows: (1) cooperating with reasonable requests for  
21 information from the Experts in a timely fashion; (2) ensuring the Experts have full access to, and  
22 the cooperation of, the District's designated data keeper for purposes of their analysis; (3)  
23 ensuring that the District's designated data keeper consult and collaborate with the Experts in  
24 good faith; (4) allowing timely access to Mr. Losen and Dr. Sprague of data possessed by the  
25 District; (5) working in good faith with Dr. Sprague to make administrators and teachers available  
26 for participation in survey, interview, and other examination, and to facilitate communication  
27 with administrators and teachers to engage in interviews with Dr. Sprague; (6) working in good  
28 faith to make administrators and teachers available for participation in survey, interview, and

1 other examination; (7) working with the Social Psychology Experts towards obtaining the consent  
2 of individual administrators and the teachers for the teachers' participation in the social  
3 psychological measures; (8) retracting prior false, undermining, or fear-inducing statements made  
4 to union representatives or staff regarding the Experts, and refraining from issuing any additional  
5 misinformation or any threatening language, implied or otherwise, to staff within the District  
6 about their participation in the social psychological measures; and (9) facilitating communication  
7 with administrators about the social psychological measures and allowing reasonable on-duty  
8 time for administrators and teachers to participate in the social psychological measures.

9         2. For a declaration that Plaintiff is correct in its contentions that: (1) the Agreement  
10 is valid and enforceable; (2) the Agreement requires (a) cooperating with reasonable requests for  
11 information from the Experts in a timely fashion; (b) ensuring the Experts have full access to, and  
12 the cooperation of, the District's designated data keeper for purposes of their analysis; (c)  
13 ensuring that the District's designated data keeper consult and collaborate with the Experts in  
14 good faith; (d) allowing timely access to Mr. Losen and Dr. Sprague of data possessed by the  
15 District; (e) working in good faith with Dr. Sprague to make administrators and teachers available  
16 for participation in survey, interview, and other examination, and to facilitate communication  
17 with administrators and teachers to engage in interviews with Dr. Sprague; (f) working in good  
18 faith to make administrators and teachers available for participation in survey, interview, and  
19 other examination; (g) working with the Social Psychology Experts towards obtaining the consent  
20 of individual administrators and teachers for the teachers' participation in the social psychological  
21 measures; (h) retracting prior false, undermining, or fear-inducing statements made to union  
22 representatives or staff regarding the Experts, and refraining from issuing any additional  
23 misinformation or any threatening language, implied or otherwise, to staff within the District  
24 about their participation in the social psychological measures; and (i) facilitating communication  
25 with administrators about the social psychological measures and allowing reasonable on-duty  
26 time for administrators and teachers to participate in the social psychological measures.

27         3. That Plaintiff be awarded its costs and reasonable attorneys' fees, to the extent  
28 permitted by law.

1 4. That this Court order such other and general and equitable relief as it deems just  
2 and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands trial by jury of all issues so triable under the law as provided by  
5 California Civil Procedure Code section 631.

6 Dated: July 6, 2016

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