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NAYIRI NAHABEDIAN, and KRISTINE  
8 TONOLI, in their individual and official capacities

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 RAY SHELTON,  
12 Plaintiff,  
13  
14 vs.  
15 VIVIAN EKCHIAN, etc., et al.,  
16 Defendants.

Case No. 2:23-cv-10427-CBM-SSC  
[Hon. Consuelo B. Marshall]

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT AND FOR MORE  
DEFINITE STATEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION  
OF JOHN J. MANIER**

[Fed. R. Civ. P. 12(b)(6), (e)]

Date: June 4, 2024  
Time: 10:00 a.m.  
Ctrm: 8D

Trial Date: None Set

17  
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21  
22 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

23 PLEASE TAKE NOTICE that on June 4, 2024, at 10:00 a.m. or as soon  
24 thereafter as the matter may be heard before the Honorable Consuelo B. Marshall in  
25 Courtroom 8D of the above-entitled Court, located at the First Street Courthouse,  
26 350 West First Street, 8th Floor, Los Angeles, CA 90012, Defendants Vivian  
27 Ekchian, Ed.D., Darneika Watson, Ph.D., Kathleen Cross, Ingrid Gunnell, Shant  
28 Sahakian, Jennifer Freemon, Nayiri Nahabedian, and Kristine Tonoli, in their

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1 respective individual and official capacities, and each of them (collectively  
2 Defendants, and Individual Defendants in their individual capacities) will, and  
3 hereby do, move this Court pursuant to Fed. R. Civ. P. 12(b)(6) for an Order  
4 dismissing, with prejudice, the First Amended Complaint for Injunctive/Declaratory  
5 Relief and Damages (Dkt. No. 11) (FAC) filed by Plaintiff Ray Shelton (Shelton),  
6 and Count 1, Count 2, and Count 3 therein, on the grounds that the FAC fails to state  
7 a claim upon which relief can be granted against Defendants, or any of them, and  
8 Defendants are entitled to qualified immunity in their respective individual  
9 capacities under 42 U.S.C. § 1983.

10 Defendants will, and hereby do, further move this Court pursuant to Fed. R.  
11 Civ. P. 12(e) for a more definite statement, on the grounds that the FAC is so vague  
12 or ambiguous that Defendants cannot reasonably prepare a response.

13 This Motion is based on this Notice, the Memorandum of Points and  
14 Authorities and Declaration of John J. Manier attached hereto, all pleadings and  
15 papers on file in the instant action, and any other matters that may be considered by  
16 the Court at any hearing on this Motion.

17 This Motion is made following a conference of counsel pursuant to L.R. 7-3  
18 which occurred on April 15, 2024.

19 DATED: April 25, 2024

BALLARD ROSENBERG  
GOLPER & SAVITT, LLP

By: 

Linda Miller Savitt  
John J. Manier

Attorneys for Defendants VIVIAN EKCHIAN,  
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SHANT SAHAKIAN, JENNIFER FREEMON,  
NAYIRI NAHABEDIAN, and KRISTINE  
TONOLI, in their individual and official capacities

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Introduction**

Glendale Unified School District (GUSD) employed Plaintiff Ray Shelton as a teacher for 25 years. Shelton’s FAC (Dkt. No. 11) alleges that he was placed on administrative leave pending an investigation, and accused in an email of “hate speech,” one day after he briefly spoke at an April 2023 meeting of the GUSD Board of Education (School Board or Board). The FAC implies that Shelton’s employment has ended, but *strategically evades* explaining how, or disclosing what specific words and images Shelton used during the Board meeting, or even stating whether he was identified by name in the “hate speech” email.

Shelton now sues under 42 U.S.C. § 1983 for alleged violation of his First Amendment rights. But his FAC fails to state facts sufficient to constitute a claim against any of the eight Defendants he names individually and in their respective official capacities within GUSD—let alone the 10 “Doe” Defendants. The FAC discusses Shelton’s beliefs and GUSD’s alleged policies on gender identity issues, but its vague and ambiguous allegations fail to establish that Shelton *spoke* or “petitioned” on a matter of public concern, or experienced an adverse employment action—let alone that any specific Individual Defendant engaged in particular actionable conduct. Nor do the FAC’s allegations suffice to overcome qualified immunity for the Individual Defendants, or establish municipal liability for Defendants in their official capacities.

This Court also should order Shelton to provide a more definite statement, especially given the vague and ambiguous nature of his shotgun allegations against “Defendants” without specification.

**II. The FAC’s Allegations**

**A. The Parties**

GUSD employed Shelton for 25 years as a fifth-grade teacher at the Mark Keppel Visual and Performing Arts Elementary School (Mark Keppel, Keppel, or

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1 the School). (FAC ¶¶ 7, 13, 35, ¶¶ 37-38.) At all relevant times, Keppel’s Principal  
 2 was Kristine Tonoli. (*Id.* ¶ 30.) Vivian Ekchian, Ed.D., now retired, was GUSD’s  
 3 Superintendent. (*See id.* ¶¶ 23-24.) The current Superintendent, Darneika Watson,  
 4 Ph.D., was GUSD’s Chief Human Resources and Operations Officer. (*Id.* ¶ 27.)  
 5 Kathleen Cross, Ingrid Gunnell, Shant Sahakian, Jennifer Freemon, and Nayiri  
 6 Nahabedian all were School Board members. (*Id.* ¶¶ 14-18.)

7 **B. GUSD’s Alleged “Policies” and Shelton’s Stated Beliefs**

8 Shelton taught his students that “the human species has two sexes”—male and  
 9 female—which he describes as his “belief” and a “fact” attacked by “politically-  
 10 motivated activists,” including Defendants, who believe “there are more than two  
 11 sexes” and “biological sex itself is a social construct.” (FAC ¶¶ 39-41.) The FAC  
 12 alleges “these activist-driven ideas have started creeping into official GUSD policy”  
 13 (*id.* ¶ 42), which it labels “Sex-Change Policies” and describes in full as follows: (1)  
 14 “keeping a secret file on students who have decided to use pronouns that do not  
 15 correspond to their natal sex and a ‘preferred’ cross-sex name which is different  
 16 from their given one”; (2) “permitting natal males, who ‘identify’ as the opposite  
 17 sex, to use girls’ locker rooms and bathrooms at school”; (3) “mandating that  
 18 teachers and students use ‘preferred pronouns’ regardless of natal sex, even if this  
 19 violates the users’ deeply held religious or personal beliefs”; (4) “teaching  
 20 elementary school children about various [unspecified] sexual positions”; and (5)  
 21 concealing “all of this information from parents.” (FAC ¶ 43.)

22 The FAC asserts Shelton’s belief that these policies “required members of the  
 23 school community to subscribe to a political orthodoxy that violated their deeply  
 24 held personal and religious beliefs,” and “jeopardized the health and safety of  
 25 children” who lack a fully-developed “capacity to understand the long-term  
 26 consequences of their decisions,” especially as to “sex and identity.” (FAC ¶¶ 7, 44.)  
 27 Shelton believes parents need to be “intimately involved” in “serious decisions  
 28 involving their children, especially those with permanent physical or psychological

1 implications,” and have “fundamental right to control the upbringing and education  
2 of their children.” (*Id.* ¶¶ 45-46.) Shelton “wants to protect children from making  
3 potentially irreversible and life-changing decisions that they may later regret,” and  
4 believes “children should not be encouraged to undertake social or medical  
5 transition,” “especially” if “concealed from parents” or made without their  
6 involvement, “because of the complex social, spiritual, and psychological issues  
7 involved in changing one’s sex—especially when paired with chemical hormone  
8 and surgical interventions.” (*Id.* ¶ 47) Notably, despite coining the loaded term  
9 “Sex-Change Policies,” the FAC *does not allege* GUSD “policy” favors school-age  
10 children undergoing such changes or interventions. (*Id.* ¶¶ 43, 47.)

11 Shelton also believes “educators have free speech rights that may be impacted  
12 by educational policy relating to sex identity” (FAC ¶ 48) and “every human being  
13 deserves to be treated with dignity and respect. *However*, [he] believes that referring  
14 to a child by a pronoun that does not correspond to their natal sex does not constitute  
15 dignity or respect,” and instead believes “this is harmful both to the child and the  
16 speaker, because it is untrue.” (*Id.* ¶ 49, italics added.) Shelton adds “as a gay man”  
17 that the so-called “Sex-Change Policies cause harm to gay people because they are a  
18 form of gay conversion therapy that attempt to convince individuals they are ‘born  
19 in the wrong body’ rather than simply attracted to the same sex.” (*Id.* ¶ 50.)

### 20 C. Vague and Ambiguous Allegations Regarding Shelton’s Speech

21 Shelton attended a School Board meeting on April 18, 2023, “as a private  
22 citizen” and community member. (FAC ¶¶ 8, 51.) During a “public comment  
23 portion of the meeting,” Shelton gave “a short speech” which he now depicts as  
24 defending “scientific, biological fact in opposition to GUSD’s newly-adopted,  
25 politically faddish Sex-Change Policies.” (*Id.* ¶ 52, italics added. *But see* Dkt. No. 1  
26 ¶ 51 [Shelton allegedly spoke in opposition to only “*some of*” GUSD’s policies]  
27 [italics added].) Shelton “expressed his sincere personal belief, based in scientific  
28 fact, that these GUSD policies were causing mental, physical, and emotional harm

1 to the children who were being experimented on by adults pursuing a political  
 2 agenda.” (*Id.* ¶ 53.) Shelton alleges his speech involved “a matter of public concern”  
 3 and that his participation in the meeting neither interfered “with the performance” of  
 4 his teaching duties nor disrupted “any education activities” at Keppel. (FAC ¶¶ 8,  
 5 54-57.) The FAC offers *no quotes or further information* on Shelton’s speech—and  
 6 does not identify any Defendant who allegedly witnessed it. (*Id.* ¶¶ 51-57.)

7 **D. Shotgun Allegations of Actions by “Defendants”**

8 When Shelton “arrived to teach his class the morning after the meeting” (*i.e.*,  
 9 April 19, 2023), Principal Tonoli allegedly “pulled” him “out of his class and  
 10 directed him to Tonoli’s office,” where an unnamed “School Board administrator sat  
 11 waiting.” (FAC ¶ 58.) Unspecified “Defendants” said Shelton “was under  
 12 investigation for unspecified ‘misconduct’ and was being put on administrative  
 13 leave pending discipline,” and gave him a letter from Dr. Watson “to that effect.”  
 14 (*Id.* ¶¶ 9, 59.) *The FAC does not attach Dr. Watson’s letter as an exhibit*, but only  
 15 describes it as stating Shelton was to meet “with human resources” regarding the  
 16 investigation and he could have a union representative present. (*Id.* ¶ 60.) The FAC  
 17 alleges Dr. Ekchian, Dr. Watson, and Principal Tonoli were “responsible for the  
 18 decision to place Mr. Shelton on leave,” without offering any factual basis for this  
 19 conclusion or describing their alleged responsibility for the decision. (*Id.* ¶ 61.)

20 “Later that day, Defendant Tonoli published an email to the entire Mark  
 21 Keppel community,” *which is not attached as an exhibit* and is described only as  
 22 “publicly disparaging” Shelton, “accusing” him “of ‘hate speech’” at the School  
 23 Board meeting, “and stating that he is no longer on campus.” (FAC ¶¶ 9, 62.) The  
 24 FAC claims Principal Tonoli “admitted” in some unspecified manner “that  
 25 Defendants’ conduct against Mr. Shelton was in direct retaliation for the personal  
 26 views he expressed at the school board meeting.” (*Id.* ¶ 63.)

27 The FAC accuses Principal Tonoli of having “unlawfully revealed details  
 28 regarding Mr. Shelton’s personnel matter”—but never specifies which “details”

1 were “revealed” or when, or how this was unlawful. (FAC ¶ 64.) It states Principal  
2 Tonoli “[admitted] in the letter [*sic*] that such matters are required to be kept  
3 confidential” (*id.*), despite having only attributed an email to Tonoli (*id.* ¶ 62).

4 Unspecified “Defendants” allegedly “barred” Shelton “from school-related  
5 activities and events,” “never allowed [him] to return to his classroom,” and  
6 specifically “barred” him from “his students’ fifth-grade graduation”—which “he  
7 deeply cherished” and describes as “a devastating loss.” (FAC ¶¶ 10, 67-68.) By  
8 placing him on leave, unspecified “Defendants” attacked Shelton’s “credibility as an  
9 educator,” “sullied his personal and professional reputation,” and cost him  
10 unspecified “opportunities to develop his skills as an educator” and “mentor his  
11 students.” (*Id.* ¶¶ 69-70.) The FAC speculates Shelton’s “personnel file now  
12 contains derogatory information” that would “likely” harm his prospective  
13 employment prospects—but it never identifies this “information” or even alleges  
14 that Shelton has sought new employment. (*Id.* ¶ 71.)

15 The FAC argues “punishing” Shelton for his communications serves no  
16 “legitimate or compelling state interests and is not narrowly tailored to serve any  
17 such interests.” (FAC ¶ 72.) It alleges unspecified Defendants “sent a message to all  
18 GUSD employees that speaking on matters of public concern that conflict with  
19 [unspecified] District heterodoxy will be met with punishment, including suspension  
20 and termination,” that they acted “with the intent to chill” the speech of Shelton and  
21 “other employees who disagree with GUSD’s radical, child-harming policies,” and  
22 that these “actions were reasonably likely to deter” someone in Shelton’s position  
23 “from speaking out against these policies.” (*Id.* ¶¶ 73-74.)

24 The FAC alleges employees speaking “in favor of these policies have never  
25 been punished or disciplined,” and claims one third-grade teacher was “publicly  
26 lauded” in an unspecified manner by the School Board for supposedly showing her  
27 class “content” identified only as “sexually inappropriate” and “in furtherance of  
28 Defendants’ policies.” (FAC ¶¶ 75-76.) Other teachers, identified only as having

1 “supported” the “Sex-Change Policies,” allegedly subjected Shelton to “a public  
2 campaign of harassment and personal attacks”—which the FAC entirely fails to  
3 describe except to state that these teachers “named [Shelton] specifically in their  
4 campaign.” (*Id.* ¶ 77.) The FAC contends “Defendants took no action against these  
5 teachers” (*id.*), without alleging they were ever asked to do so.

6 **E. Vague and Ambiguous Allegations Regarding the School Board**

7 The FAC states that GUSD’s School Board governs Glendale’s public  
8 schools and “has final policymaking and decision-making authority for rules,  
9 regulations, and decisions that govern school personnel, including the actions  
10 challenged herein.” (FAC ¶¶ 19-20.) It broadly asserts the Board “has acquiesced in,  
11 sanctioned, and supported, and continues to acquiesce in, sanction, and support the  
12 actions of the other Defendants in enforcing the policies and procedures governing  
13 GUSD employees, specifically in the punitive measures taken against Mr. Shelton in  
14 retaliation for the exercise of his First Amendment rights,” and has “refused to  
15 instruct GUSD personnel, including other Defendants, to rescind the disciplinary  
16 measures taken against Mr. Shelton or otherwise modify district policies to comply  
17 with constitutional mandates.” (*Id.* ¶¶ 21-22.)

18 The FAC alleges that “the School Board conspired” in some entirely  
19 unspecified manner with Principal Tonoli “regarding the content and publishing of  
20 the email” to the Keppel community (FAC ¶ 65), that the Board “reviewed”  
21 removing Shelton from his classroom and placing him on leave, and that the Board  
22 “approved the actions” in some entirely unspecified manner (*id.* ¶ 66).

23 The FAC claims the Board “explicitly changed the rules of its meetings to  
24 prevent individuals from being able to voice their opposition to its policies,”  
25 supposedly “in direct retaliation for these individuals’ previous efforts to convince  
26 the Board to change the Sex-Change Policies.” (FAC ¶ 79.) But it never identifies  
27 “these individuals” or their “previous efforts”—nor does it specify any supposed  
28 rule change, even though the Board’s policies are a matter of public record. *See,*

1 e.g., [https://www.gusd.net/8454\\_3](https://www.gusd.net/8454_3) (last visited April 25, 2024). The FAC also does  
 2 not allege any rule change adversely affected Shelton, and instead asserts Shelton’s  
 3 “speech did not violate any GUSD School Board rules.” (FAC ¶ 55.)

4 The FAC offers one final, vague anecdote about “a special needs GUSD  
 5 student and her mother” who allegedly “attended a Board meeting and voiced their  
 6 opposition to these policies” in some unspecified manner. (FAC ¶ 80.) The student  
 7 supposedly faced abuse and harassment from her teacher “and the school,” but the  
 8 only detail is some unidentified person “calling her a ‘bigot.’” (*Id.*) The FAC claims  
 9 “Defendants took no action against the teacher because she was aligned with their  
 10 ideological beliefs,” but does not allege such action was requested. (*Id.*)

11 Notably, *the FAC does not allege Shelton was punished, disciplined,*  
 12 *suspended, or terminated,* or that his administrative leave was unpaid or disclosed to  
 13 the public. (*See* FAC ¶¶ 22, 25-26 [referencing “disciplinary measures” without  
 14 specifying any].) Nor does it allege that Shelton’s leave extended after the “fifth-  
 15 grade graduation ceremony,” or describe the investigation connected with this leave,  
 16 or state when, how, or why Shelton’s employment ended—except to cryptically  
 17 refer to his employment in the past tense. (*See id.* ¶¶ 7, 13, 35-38.)

#### 18 **F. Purported Claims for Relief**

19 The original Complaint purported to state two counts under § 1983 for  
 20 violation of the First Amendment’s speech and petition rights, based on alleged  
 21 viewpoint discrimination and retaliation. (Dkt. No. 1 ¶¶ 69-86.) The FAC alleges  
 22 these same counts (FAC ¶¶ 82-99), but still does not explain any substantive  
 23 difference between the two counts, and they appear more properly framed as a  
 24 single count. *See* Ninth Cir. Manual of Model Jury Instructions 9.9 (single  
 25 instruction for public employee 1st Am. claim under § 1983). The FAC also adds a  
 26 third count for “conspiracy.” (FAC ¶¶ 100-07.)

27 Shelton alleges he engaged in “speech and petition on matters of public  
 28 concern” that is protected against “viewpoint discrimination” (FAC ¶ 83), and that

1 “Defendants” punished him “for publicly expressing his views” (*id.* ¶ 85) and  
2 punished and threatened him in retaliation “for expressing his views regarding  
3 GUSD’s Sex-Change Policies” (*id.* ¶ 91).

4 Shelton also alleges the First Amendment protects his “right to present his  
5 views in the ways that he chooses, including his choice of words and images,  
6 regardless of whether others would find his speech disagreeable or offensive.” (FAC  
7 ¶ 84.) However, the FAC adds no information about Shelton’s “choice of words”  
8 *and no facts at all regarding his choice of “images”*—let alone any of his images or  
9 words that others “would” *or did* find “disagreeable or offensive” (*id.*), or “would”  
10 *or did* construe as “hate speech” (*id.* ¶ 62).

### 11 **III. Shelton’s FAC Fails to State a Claim Under § 1983.**

12 A pleading must include a “short and plain statement of the claim showing  
13 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “To survive a motion to  
14 dismiss, a complaint must contain sufficient *factual matter*, accepted as true, to  
15 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662,  
16 678 (2009) (italics added) quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
17 (2007)). The complaint must allege “factual content that allows the court to draw the  
18 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*  
19 This standard does not demand “‘detailed factual allegations,’” but requires “more  
20 than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (quoting  
21 *Twombly*, 550 U.S. at 555). It also requires more than “facts that are ‘merely  
22 consistent with’ a defendant’s liability” or that offer the “sheer possibility that a  
23 defendant has acted unlawfully.” *Id.*

24 It “will not do” for a pleading to offer mere “labels and conclusions” or “a  
25 formulaic recitation of the elements of a cause of action,” *Twombly*, 550 U.S. at 555,  
26 or “naked assertion[s]” without “further factual enhancement,” *id.* at 557. Although  
27 this Court must accept as true the FAC’s factual allegations, this tenet “is  
28 inapplicable to legal conclusions” and threadbare, conclusory recitals “of the

1 elements of a cause of action.” *Id.* at 555.

2       Shelton’s § 1983 claims require him to plead and prove he was deprived of a  
3 First Amendment right “under color of state law.” *American Mfrs. Mut. Ins. Co. v.*  
4 *Sullivan*, 526 U.S. 40, 49-50 (1999). A government employer may not stifle free-  
5 speech rights its employees “would otherwise enjoy as citizens to comment on  
6 matters of public interest.” *Pickering v. Board of Educ.*, 391 U.S. 563, 568 (1968).  
7 But the government “has far broader powers” as employer than “as sovereign.”  
8 *Garcelli v. Ceballos*, 547 U.S. 410, 418 (2006) (quoting *Waters v. Churchill*, 511  
9 U.S. 661, 671 (1994) (plurality op.)). “As *Pickering* itself counseled,” the  
10 government’s interests “in orderly administration must be considered and weighed  
11 against” the speaker’s First Amendment interests.” *Ohlson v. Brady*, 9 F.4th 1156,  
12 1163 (9th Cir. 2021).

13       The Ninth Circuit has held a plaintiff bears the burden of proving: (1) they  
14 spoke “on a matter of public concern”; (2) they spoke “in the capacity of a private  
15 citizen and not a public employee”; and (3) the government “took adverse  
16 employment action” in which the speech “was a substantial or motivating factor.”  
17 *Eng v. Cooley*, 552 F.3d 1062, 1070-71 (9th Cir. 2009) (cleaned up, citations  
18 omitted), *cert. denied*, 558 U.S. 1110 (2010). If the plaintiff makes all three  
19 showings, the burden shifts to the government to prove it was adequately justified in  
20 “treating the employee differently” from others in the general public, or that it  
21 would have taken the same action “even absent the protected speech.” *Id.* at 1071.

22       **A. Shelton’s Allegations Are Too Vague and Conclusory to Establish**  
23       **Essential Elements Of His § 1983 Claims Against Defendants.**

24       **1. He Hasn’t Sufficiently Pled Protected Speech On a Matter of**  
25       **Public Concern.**

26       A public employee’s speech “cannot be protected unless it substantially  
27 involved matters of public concern.” *Johnson v. Multnomah Cnty.*, 48 F.3d 420, 422  
28 (9th Cir. 1995) (cleaned up, citations omitted). If the employee makes this showing,

1 the employer must show “its legitimate administrative interests outweigh the First  
2 Amendment interest in [the employee’s] freedom of speech.” *Id.* (citing *Pickering*,  
3 391 U.S. at 568). Public employee speech is protected “when it can fairly be  
4 considered to relate to any matter of political, social, or other concern to the  
5 community”—which “must be determined by the content, form, and context of a  
6 given statement, as revealed by the whole record.” *Id.* (cleaned up) (quoting  
7 *Connick v. Myers*, 461 U.S. 138, 146-48 (1983)). “Content is the greatest single  
8 factor in the *Connick* inquiry.” *Id.* at 424 (cleaned up, citations omitted).

9 However, Shelton’s FAC provides only vague hints at the content of his  
10 “short speech.” (FAC ¶¶ 52-53.) It never reveals *how* he defended any “scientific,  
11 biological fact,” or *how* he opposed all of “GUSD’s newly-adopted, politically  
12 faddish Sex-Change Policies,” or *what* supposedly constituted “children ... being  
13 experimented on by adults pursuing a political agenda.” (*Id.*)

14 In fact, the FAC offers *no examples* of Shelton’s “choice of words and  
15 images,” in his speech or at the meeting. (FAC ¶ 84.) This makes it *impossible to*  
16 *assess* whether Shelton’s words or images “concerned information that is of inherent  
17 relevance to the public evaluation of the performance of government agencies,” or  
18 merely addressed “internal administrative procedures” and was not of public  
19 concern. *Johnson*, 48 F.3d at 425 (cleaned up, citations omitted).

20 The FAC’s indefinite examples also make it impossible to evaluate whether  
21 GUSD’s “legitimate administrative interests outweigh the First Amendment  
22 interest” in whatever words or images Shelton used. *Id.* at 422. In particular, this  
23 vagueness precludes assessing whether Shelton’s words or images were reasonably  
24 viewed as “hate speech,” or offensive to others who attended the School Board  
25 meeting, to provide a legitimate basis for an investigation. (*See* FAC ¶¶ 62, 84.)

26 The FAC alleges Shelton’s speech was “on a matter of public concern” and  
27 “did not violate any GUSD School Board rules,” and that his participation in the  
28 meeting neither interfered “with the performance” of his teaching duties nor

1 disrupted “any education activities.” (FAC ¶¶ 54-57.) But these are mere  
 2 conclusions, not factual allegations, and are insufficient to survive a motion to  
 3 dismiss. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555-57.

#### 4 **2. He Hasn’t Pled Any “Petitioning” Activity At All.**

5 The First Amendment also protects the right “to petition the Government for a  
 6 redress of grievances.” But Shelton alleges only that he “gave a short speech” at the  
 7 School Board meeting, not that he petitioned GUSD or any other government entity  
 8 to redress grievances. (FAC ¶¶ 52-55, 74.) He alleges no facts to support his  
 9 conclusory assertion that his “speech” constituted a “petition.” (*Id.* ¶ 83.) Although a  
 10 case alleging a petition “just as easily could” be brought under the speech clause,  
 11 *see Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011), the converse does  
 12 not follow—not all speeches constitute petitions to redress grievances, and Shelton  
 13 offers no factual basis to characterize his vaguely-alleged speech as a petition.

14 Moreover, as with speech claims, a government employee must establish that  
 15 any “petitioning” involved a matter of public concern. *Guarnieri*, at 398-99. Shelton  
 16 has not pled sufficient facts to meet this requirement. (*See* pp. 16-18, *supra.*) At a  
 17 minimum, this Court should dismiss Shelton’s claims to the extent they purport to  
 18 arise under the First Amendment’s Petition Clause.

#### 19 **3. He Hasn’t Sufficiently Pled an Adverse Employment Action.**

20 The Ninth Circuit has defined an adverse employment action under § 1983 as  
 21 one that was “reasonably likely to deter employees from engaging in protected  
 22 activity.” *Dahlia v. Rodriguez*, 735 F.3d 1060, 1078 (9th Cir. 2013) (*en banc*), *cert.*  
 23 *denied sub nom. City of Burbank v. Dahlia*, 571 U.S. 1198 (2014). This standard is  
 24 “derived” from Title VII cases, *id.* at 1079, under which a plaintiff “must show that  
 25 a reasonable employee would have found the challenged action materially adverse.”  
 26 *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 68 (2006). “Minor annoyances”  
 27 are “normally” insufficient, because “it is important to separate significant from  
 28 trivial harms.” *Id.*

1 The Ninth Circuit has held “that, under some circumstances, placement on  
2 administrative leave could constitute an adverse employment action.” *Dahlia*, at  
3 1078. The *Dahlia* plaintiff “was placed on administrative leave pending discipline”  
4 after he participated in an internal affairs investigation. *Id.* at 1064-65. He alleged  
5 “that administrative leave prevented him from taking the sergeant’s exam, required  
6 him to forfeit on-call and holiday pay, and prevented him from furthering his  
7 investigative experience.” *Id.* at 1079. The court found these impacts plus “the  
8 general stigma resulting from placement on administrative leave appear ‘reasonably  
9 likely to deter employees from engaging in protected activity.’” *Id.* (quoting  
10 *Coszalter v. City of Salem*, 320 F.3d 968, 976 (9th Cir. 2003)).

11 The FAC’s allegations regarding Shelton’s administrative leave are not  
12 sufficient to establish that this amounted to an adverse employment action. Shelton  
13 alleges the leave “attacked his credibility as an educator,” “sullied his personal and  
14 professional reputation,” and cost him “opportunities to develop his skills as an  
15 educator and to mentor his students.” (FAC ¶¶ 69-70.) But these vague and  
16 conclusory assertions literally could be applied to *every* instance a teacher is placed  
17 on administrative leave—contrary to *Dahlia*’s holding that such a leave “*could*” be  
18 an adverse action “*under some circumstances*” as opposed to all circumstances.  
19 *Dahlia*, at 1078 (italics added).

20 Unlike the plaintiff in *Dahlia*, Shelton does not allege he was deprived of  
21 promotional opportunities or additional pay. The FAC states Shelton was put on  
22 leave while “he was under investigation,” and now asserts this was “pending  
23 discipline” (FAC ¶ 59)—an allegation absent from the original Complaint (Dkt. No.  
24 1 ¶ 58). *But the FAC alleges no facts suggesting the leave was disciplinary in and of*  
25 *itself*. The FAC vaguely refers to “disciplinary measures” against Shelton, but does  
26 not specify any discipline that was ever imposed. (FAC ¶¶ 22, 25-26.)

27 The FAC also does not allege the investigation of Shelton was an adverse  
28 action in and of itself, or retaliatory or discriminatory—or even describe what

1 investigation occurred after Shelton was placed on leave. (FAC ¶ 59.) Moreover, no  
 2 published Ninth Circuit decision has held that an investigation by itself “per se  
 3 violates the First Amendment,” *even if* undertaken for retaliatory motives. *Moore v.*  
 4 *Garnand*, 83 F.4th 743, 752-53 (9th Cir. 2023) (distinguishing *White v. Lee*, 227  
 5 F.3d 1214, 1238 (9th Cir. 2000), where “scope and manner” of investigation  
 6 violated First Amendment rights).

7 The only other action mentioned in the FAC was Principal Tonoli’s “email to  
 8 the entire school community,” which supposedly accused Shelton of “hate speech”  
 9 at the School Board meeting. But this email is otherwise not quoted or described, or  
 10 attached as an exhibit—nor does Shelton even allege he was identified by name in  
 11 the email. (FAC ¶¶ 9, 62-63.) Again, the FAC’s vague allegations are insufficient to  
 12 establish that the email—or any other actions, separately or together—were  
 13 “materially adverse,” *Burlington Northern*, 548 U.S. at 68, or “reasonably likely to  
 14 deter employees from engaging in protected activity,” *Dahlia*, 735 F.3d at 1078.

15 **B. Shelton’s Allegations Are Too Vague and Conclusory to Establish**  
 16 **Actionable Conduct by Any Specific Individual Defendant.**

17 Even if the FAC were deemed to have sufficiently alleged any adverse action  
 18 against Shelton, it does not allege sufficient facts to establish that *any specific*  
 19 *Individual Defendant* engaged in actionable conduct.

20 **1. School Board Members**

21 Five of the eight Individual Defendants—Kathleen Cross, Ingrid Gunnell,  
 22 Shant Sahakian, Jennifer Freemon, and Nayiri Nahabedian—are identified only as  
 23 School Board members and are never mentioned again in the FAC. (*See* FAC ¶¶ 14-  
 24 18.) The FAC repeats the original Complaint’s vague allegation that the Board  
 25 “acquiesced in, sanctioned, and supported the actions of the other [*unspecified*]  
 26 Defendants in enforcing the policies and procedures governing GUSD employees,  
 27 specifically in the [*unspecified*] punitive measures” against Shelton.” (*Id.* ¶ 21; Dkt.  
 28 1 ¶ 21.) The FAC adds a new conclusory allegation that the Board “participated in”

1 these unspecified actions in some unspecified manner, “and continues to” do so.  
 2 (FAC ¶ 21.) But the only action the FAC identifies in this regard is Principal  
 3 Tonoli’s email to the Keppel community, in which the Board supposedly  
 4 “conspired” in some unspecified manner. (*Id.* ¶ 65.) *Even if* individual members  
 5 could be personally liable for the Board’s collective action—a proposition that lacks  
 6 legal support—Shelton only offers *mere conclusions*, not facts, which are  
 7 insufficient to establish a claim against any Board member. *See Iqbal*, 556 U.S. at  
 8 678; *Twombly*, 550 U.S. at 555-557.

9 The FAC also accuses the Board of refusing “to instruct GUSD personnel ...  
 10 to rescind the “disciplinary measures” against Shelton “or otherwise modify  
 11 [*unspecified*] district policies to comply with [*unspecified*] constitutional mandates.”  
 12 (FAC ¶ 22; Dkt. 1 ¶ 22.) But the FAC’s only attempt at specification in this regard is  
 13 its new, conclusory allegation that the Board “reviewed” and “approved” the  
 14 decisions to remove Shelton “from his classroom and place him on leave.” Again,  
 15 Shelton alleges no facts as to how this supposed approval was manifested. (FAC ¶  
 16 66.) These conclusory allegations likewise fail to meet the *Iqbal/Twombly* standard.

## 17 2. Dr. Ekchian, Dr. Watson, and Principal Tonoli

18 The original Complaint did not purport to identify who decided to place  
 19 Shelton on leave. The FAC now vaguely alleges “Tonoli, Ekchian, and Watson”  
 20 were “responsible” for this decision—but alleges *no facts* to support this conclusion  
 21 or to describe this alleged responsibility. (FAC ¶ 61.) *Even if* the FAC’s allegations  
 22 were deemed sufficient to show the administrative leave was an adverse action (they  
 23 are not, *see pp. 18-20, supra*), its conclusory assertions are insufficient under *Iqbal*  
 24 and *Twombly* to state a claim against Dr. Ekchian, Dr. Watson, or Principal Tonoli  
 25 based on this decision.

26 The only other actions the FAC attributes to Principal Tonoli are having  
 27 “pulled” Shelton out of class and directing him to the Principal’s office, where  
 28 “Defendants” told him he was under investigation and on administrative leave (FAC

1 ¶¶ 58-59), and publishing the email “accusing” Shelton of “hate speech” (*id.* ¶ 62).  
2 But the FAC’s allegations are insufficient to show that the email was an adverse  
3 action or even mentioned Shelton (*see pp.* 18-20, *supra*), or that Principal Tonoli  
4 participated in placing Shelton on administrative leave, commencing an  
5 investigation, or undertaking an adverse action of any kind. *See Iqbal*, 556 U.S. at  
6 678; *Twombly*, 550 U.S. at 555-57.

7 The FAC’s other allegations against these Defendants are even more  
8 conclusory. Dr. Ekchian was supposedly “aware of the [*unspecified*] retaliatory and  
9 unconstitutional actions” against Shelton, is accused of refusing “to instruct GUSD  
10 personnel ... to rescind” *unspecified* “disciplinary measures” against Shelton “or  
11 otherwise modify [*unspecified*] district policies to comply with [*unspecified*]  
12 constitutional mandates” (FAC ¶ 25), allegedly had “a duty to ensure” disciplinary  
13 actions were applied consistently and lawfully—and in some *unspecified* manner,  
14 she allegedly “confirmed, sanctioned, and ratified the [*unspecified*] other  
15 Defendants’ [*unspecified*] discriminatory, retaliatory, and unconstitutional  
16 discipline” of Shelton. (*Id.* ¶ 26.) Dr. Watson is broadly alleged to have had  
17 “authority and responsibility for governing and regulating GUSD employees” (*id.* ¶  
18 28) and is vaguely accused of having “exercised her authority to punish Mr. Shelton  
19 for exercising his First Amendment rights” (*id.* ¶ 29), and the letter placing Shelton  
20 “under investigation for unspecified ‘misconduct’” and “on administrative leave”  
21 bore her name (*id.* ¶ 59). And Principal Tonoli is broadly alleged to have had  
22 “authority and responsibility for governing and regulating Mark Keppel teachers”  
23 (*id.* ¶ 31), and is vaguely accused of having “exercised her authority to punish Mr.  
24 Shelton for exercising his First Amendment rights” (*id.* ¶ 32). None of these vague  
25 and conclusory allegations suffices to state a claim against Dr. Ekchian, Dr. Watson,  
26 or Principal Tonoli. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555-57.

27 Most of the FAC’s allegations are against “Defendants,” without further  
28 specification. (*See* FAC ¶¶ 62, 67, 69, 71, 73-74, 76, 85-86, 89, 91, 93-96, 99, 101-

1 104, 107.) But this is plainly insufficient “factual matter” to raise a “reasonable  
2 inference” that any specific Individual Defendant “is liable for the misconduct  
3 alleged.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570); *accord* pp. 28-  
4 30, *infra*. Accordingly, the FAC fails to allege facts sufficient to state a claim  
5 against any of the Individual Defendants in their respective individual capacities.  
6 This entitles each of the Individual Defendants to dismissal.

7 **C. Shelton Fails to Allege Sufficient Facts to Overcome Qualified**  
8 **Immunity for the Individual Defendants.**

9 Government officials enjoy qualified immunity from suit in their individual  
10 capacities under § 1983 if their conduct “does not violate clearly established  
11 statutory or constitutional rights of which a reasonable person would have known.”  
12 *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To overcome qualified immunity, a  
13 plaintiff must show the asserted right’s “contours” were “sufficiently clear that a  
14 reasonable official would understand that what he is doing violates that right”—*i.e.*,  
15 “in the light of pre-existing law the unlawfulness must be apparent.” *Hope v. Pelzer*,  
16 536 U.S. 730, 739 (2002) (cleaned up). The standard is “objective reasonableness.”  
17 *Harlow*, 457 U.S. at 818. It immunizes “all but the plainly incompetent or those who  
18 knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

19 Qualified immunity is “an immunity from suit,” and “is effectively lost if a  
20 case is erroneously permitted to go to trial.” *Pearson v. Callahan*, 555 U.S. 223, 231  
21 (2009) (cleaned up, citation omitted). It is “fundamental” that qualified immunity be  
22 determined as early as possible. *Robinson v. Solano Cnty.*, 278 F.3d 1007, 1012 (9th  
23 Cir. 2002) (*en banc*).

24 The qualified immunity analysis has two prongs: (1) whether the facts  
25 establish “a violation of a constitutional right”; and (2) whether that right “was  
26 ‘clearly established’ at the time of the defendant’s alleged misconduct.” *Pearson*,  
27 555 U.S. at 232. As to the second prong, on a motion to dismiss, courts “consider  
28 whether the complaint alleges sufficient facts, taken as true, to support the claim that

1 the officials’ conduct violated clearly established constitutional rights of which a  
2 reasonable [official] would be aware ‘in light of the specific context of the case.’”  
3 *Keates v. Koile*, 883 F.3d 1228, 1235 (9th Cir. 2018) (quoting *Mullenix v. Luna*, 577  
4 U.S. 7, 12 (2015) (*per curiam*)).

5 The discussion above (pp. 16-23) shows Shelton has failed to allege sufficient  
6 facts to establish any Individual Defendant violated his First Amendment rights. At  
7 a minimum, that same discussion shows Shelton has not alleged sufficient facts to  
8 show that any Individual Defendant engaged in conduct that “violated clearly  
9 established constitutional rights” of which the Individual Defendant reasonably  
10 would have been aware in light of the specific context of this case. *Keates*, at 1235.

11 In particular, there are no allegations that would have put any Individual  
12 Defendant on notice that the content, form, and context of Shelton’s “short speech”  
13 at the School Board meeting, which no Defendant is identified as having attended  
14 (FAC ¶¶ 52-53), involved a matter of “public concern,” let alone whether Shelton’s  
15 First Amendment interests outweighed GUSD’s “legitimate administrative  
16 interests.” *Johnson*, 48 F.3d at 422. Paragraphs 52-53 conspicuously omit any  
17 reference to Shelton’s specific choice of “images,” as referenced at paragraph 84.

18 To the contrary, the FAC suggests only that Principal Tonoli’s email accused  
19 Shelton of “hate speech,” without further elaboration. (FAC ¶ 62.) This is  
20 insufficient to show the Principal or any other Defendants were on notice that  
21 Shelton’s words or images involved a matter of public concern, or that his First  
22 Amendment interests outweighed GUSD’s legitimate administrative interests.

23 Nor are there any allegations that would have put any Individual Defendant  
24 on notice that their personal actions caused Shelton to experience an adverse  
25 employment action. The Ninth Circuit has held administrative leave “could” be an  
26 adverse action “under some circumstances,” *Dahlia*, 735 F.3d at 1078, but has never  
27 held as such under facts similar to those alleged in Shelton’s FAC. It is a central  
28 tenet of qualified immunity that courts are “not to define clearly established law at a

1 high level of generality.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (citations  
2 omitted). Instead, the law must be “particularized” to the case’s facts, to avoid  
3 converting qualified immunity into “virtually unqualified liability simply by  
4 alleging violation of extremely abstract rights.” *Anderson v. Creighton*, 483 U.S.  
5 635, 639-40 (1987). This is an “exacting standard,” *City & Cnty. of S.F. v. Sheehan*,  
6 575 U.S. 600, 611 (2015), and requires a high “degree of specificity,” *Mullenix*, 577  
7 U.S. at 13. Shelton’s allegations are the *polar opposite* of “particularized,” and  
8 plainly insufficient to establish any Individual Defendant was on reasonable notice  
9 that placing him on administrative leave constituted an adverse action.

10 Furthermore, the Ninth Circuit has specifically held there is no clearly-  
11 established law under which an allegedly retaliatory investigation by itself may  
12 violate the First Amendment. *Moore*, 83 F.4th at 752-53. And Shelton fails to  
13 sufficiently describe Principal Tonoli’s email—including whether it mentions him  
14 by name—to remotely support the notion that the email itself was an adverse action  
15 at all, much less under clearly-established law. *Burlington Northern*, 548 U.S. at 68;  
16 *Dahlia*, 735 F.3d at 1078.

17 The FAC’s allegations are insufficient to establish that any of the Individual  
18 Defendants “violated clearly established constitutional rights” of which they  
19 reasonably would have been aware under the facts alleged by Shelton. *Keates*, 883  
20 F.3d at 1235. Qualified immunity is an additional basis for granting dismissal in  
21 favor of the Individual Defendants. *Id.*

22 **D. Shelton’s Allegations Fail to Establish Municipal Liability.**

23 Shelton’s claims against Defendants in their respective official capacities are,  
24 in effect, claims against their respective offices, and “no different” from claims  
25 against GUSD itself. *See Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71  
26 (1989). However, an entity such as GUSD cannot be vicariously liable for torts  
27 allegedly committed by its employees. *Monell v. Department of Soc. Servs.*, 436  
28 U.S. 658, 691 (1978) (cited in *Christie v. Iopa*, 176 F.3d 1231, 1243 (9th Cir.

1 1999)). Instead, municipal liability may attach only “when execution of a  
 2 government’s policy or custom, whether made by its lawmakers or by those whose  
 3 edicts or acts may fairly be said to represent official policy, inflicts the injury.” *Id.* at  
 4 694 (cited in *Ulrich v. City & Cnty. of S.F.*, 308 F.3d 968, 984 (9th Cir. 2002)).

5 The Ninth Circuit has held a plaintiff seeking to hold a municipal entity liable  
 6 under § 1983 must proceed on one of three distinct theories: that a municipal  
 7 employee was acting (1) “pursuant to an expressly adopted official policy,” (2)  
 8 “pursuant to a longstanding practice or custom,” or (3) “as a ‘final policymaker.’”  
 9 *Lytle v. Carl*, 382 F.3d 978, 982 (9th Cir. 2004) (citation omitted). However,  
 10 Shelton’s FAC fails to plead sufficient facts under any of these theories.

11 The *only* purported GUSD “policies” alleged in the FAC are “keeping a secret  
 12 file on students” based on their choice of pronouns and “cross-sex” names, allowing  
 13 “natal males” identifying as girls “to use girls’ locker rooms and bathrooms,”  
 14 “mandating that teachers and students” use students’ chosen pronouns regardless of  
 15 the users’ religious or personal beliefs, “teaching elementary school children about  
 16 various [unspecified] sexual positions,” and concealing “all of this information from  
 17 parents.” (FAC ¶ 43.) Notably, the FAC does not specify whether what it calls “Sex-  
 18 Change Policies” (*id.*) were “expressly adopted” and “official,” or rather “pursuant  
 19 to a longstanding practice or custom.” *Lytle*, 382 F.3d at 982; *see Monell*, 436 U.S.  
 20 at 691 (custom must be so “persistent and widespread” that it constitutes a  
 21 “permanent and well settled” policy). Moreover, *the FAC does not allege that any of*  
 22 *these policies inflicted injury on Shelton—i.e., caused Shelton to be subjected to an*  
 23 *adverse employment action—as the law requires. Monell*, 436 U.S. at 694.

24 In fact, the FAC alleges *no policy or longstanding custom of taking adverse*  
 25 *employment action against GUSD employees for merely speaking in opposition to*  
 26 *the above-described policies* (or any others). Although Shelton opines “that  
 27 educators have free speech rights that may be impacted by educational policy  
 28 relating to sex identity” (FAC ¶ 48), he identifies *no policy* of infringing upon

1 educators’ free speech rights, much less a policy of taking adverse action based on  
2 exercise of such rights.

3 To the contrary, the only GUSD employee the FAC identifies as experiencing  
4 adverse action for opposing GUSD policies is *Shelton himself*. He alleges the  
5 actions against him “sent a message to all GUSD employees” and were intended to  
6 “chill” the speech of Shelton and “other employees who disagree with GUSD’s  
7 radical, child-harming policies.” (FAC ¶¶ 73-74.) The FAC vaguely claims the  
8 School Board retaliated against *unidentified* individuals’ *unspecified* “previous  
9 efforts to convince the Board to change the Sex-Change Policies” by making  
10 *unspecified* changes to “the rules of its meetings to prevent individuals from being  
11 able to voice their opposition to its policies.” (*Id.* ¶ 79.) The only other anecdotal  
12 allegation of “retaliation” is an unidentified teacher and “the School” ostensibly  
13 calling a student “a ‘bigot’” after she and her mother voiced opposition to “the Sex-  
14 Change Policies.” (*Id.* ¶ 80.) The FAC alleges “Defendants took no action,” but does  
15 not allege any action that was requested. (*Id.*) These allegations do not even purport  
16 to constitute an official policy or longstanding custom or practice of adversely  
17 acting against *employees* who speak publicly against GUSD policies—whether in  
18 the context of gender identity (or “Sex-Change”) issues or otherwise.

19 Conversely, the FAC notes that “GUSD employees who have spoken publicly  
20 in favor of these policies have never been punished or disciplined in any way”—but  
21 the only “example” consists of *one* teacher being “lauded” for unspecified content  
22 she supposedly showed her class, not public speaking regarding policies. (FAC ¶¶  
23 75-76.) The FAC newly accuses unidentified teachers of unspecified harassment and  
24 personal harassment against Shelton, and claims “Defendants took no action against  
25 these teachers,” but alleges no facts showing they were asked to do so. (*Id.* ¶ 77.)  
26 Moreover, allegations of the *lack* of punishment or discipline for unspecified  
27 conduct do not establish an official policy or longstanding custom or practice of  
28 affirmatively acting against employees who speak publicly *against* GUSD policies.

1 The FAC also *does not allege* that any GUSD employee “was acting as a  
2 ‘final policymaker’” in connection with any ostensible adverse actions against  
3 Shelton. *Lytle*, 382 F.3d at 982; *see McMillian v. Monroe Cnty.*, 520 U.S. 781, 785  
4 (1997) (plaintiff must prove local government official acted as a final policymaker  
5 “in a particular area, or on a particular issue”). To the contrary, the FAC expressly  
6 admits that *the School Board collectively*—not any single individual—has “final  
7 policymaking” authority for “the actions challenged herein.” (FAC ¶¶ 19-20.) And  
8 the FAC’s new allegations against the Board are patently insufficient to state a  
9 claim. (*See pp. 20-21, supra.*)

10 Shelton therefore fails to allege any facts that could establish the GUSD may  
11 be held liable under § 1983 and the *Monell* line of authority. The Motion to Dismiss  
12 should be granted in favor of all Defendants in their respective official *and*  
13 individual capacities (*see pp. 16-25, supra.*)

#### 14 **E. The New Conspiracy Count Fails As Well.**

15 Although the FAC purports to add a third count for conspiracy, this is not a  
16 separate basis for liability, and instead requires actual deprivation of Shelton’s First  
17 Amendment rights. *Hart v. Parks*, 450 F.3d 1059, 1071 (9th Cir. 2006). The  
18 foregoing discussion shows Shelton cannot establish any such deprivation, which is  
19 fatal to his conspiracy count. *Id.* Shelton also pleads *no facts* establishing or even  
20 suggesting the necessary “meeting of the minds” among *any* combination of  
21 Defendants to violate his First Amendment rights. *See Steel v. City of San Diego*,  
22 726 F. Supp. 2d 1172, 1179 (S.D. Cal. 2010) (denying motion to dismiss where  
23 plaintiff alleged communications that could support meeting of minds). The  
24 conspiracy count adds nothing and should be dismissed.

#### 25 **F. The “Doe” Defendants Should Be Dismissed.**

26 As if it were not enough to name eight Defendants in their individual and  
27 official capacities, Shelton’s FAC also purports to sue “DOES 1-10, inclusive”  
28 (down from 50 in the original Complaint, Dkt. No. 1). The use of “Doe” to identify

1 defendants generally “is not favored” in federal court, although a pseudonym many  
2 be used if a defendant’s identity is genuinely unknown at the time an action is filed.  
3 *Gillespie v. Civiletti*, 629 F.2d 637, 642-43 (9th Cir. 1980). However, federal courts  
4 have dismissed claims against “Doe” defendants if the pleading does not “even  
5 minimally explain how any of the unidentified parties [plaintiff] seeks to sue  
6 personally caused a violation of his constitutional rights.” *Estate of Serna v. County*  
7 *of San Diego*, No. 20-cv-2096-LAB-DDL, 2023 WL 2025057, at \*3 (S.D. Cal. Feb.  
8 15, 2023) (cleaned up, citations omitted).

9 Shelton’s FAC includes only the most perfunctory, boilerplate “Doe”  
10 allegations. He purports to be unaware of their “true names and capacities” and  
11 vaguely alleges each “is responsible in some [unspecified] manner for the activities  
12 alleged in the FAC.” (FAC ¶ 33.) He also lumps in the “Does” with all other  
13 Defendants as each others’ agents, principals, servants, etc., which is the only hint  
14 that the “Does” might be associated with GUSD in some unstated way. (*Id.* ¶ 34.)

15 This will not do. Shelton sheds no genuine light on the “Doe” defendants’  
16 true identities, and fails “to made individualized allegations” against them, which is  
17 “improper.” *Rhue v. Signet Domain LLC*, No. C 13-8664 DMG (JC), 2015 WL  
18 4111701, at \*5 (C.D. Cal. Jul. 8, 2015). “At a minimum,” Shelton “must refer to  
19 each unidentified defendant by a separate fictitious name” (*e.g.*, Doe 1, Doe 2, etc.)  
20 “and allege facts that demonstrate a causal link between each such individual’s  
21 actions and an alleged constitutional violation.” *Id.* (original italics); *cf. MGA Entm’t*  
22 *v. Dynacraft BSC, Inc.*, No. 2:17-cv-08222-ODW-KS, 2018 WL 2448123, at \*8  
23 (C.D. Cal. May 30, 2019) (sufficient for plaintiff to identify four defendants “by the  
24 only identification currently available” (store names and URLs), but plaintiff must  
25 provide more specific identification “quickly” pursuant to discovery).

26 Because the FAC treats all 10 “Does” as an unallocated group with no  
27 specific allegations against them, and provides no “factual matter” to raise a  
28 “reasonable inference” that any of them “is liable for the misconduct alleged,” this

1 Court should dismiss all 10 “Does.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550  
2 U.S. at 570).

3 **G. The Dismissal Should Be With Prejudice.**

4 Shelton filed his FAC in response to Defendants’ Motion to Dismiss the  
5 *original* Complaint and for a More Definite Statement, which followed a meet-and-  
6 confer letter and discussion—all of which specifically pointed out the original  
7 Complaint’s deficient allegations. (Dkt. No. 10 at 15-36.) Presumably, the FAC  
8 represents Shelton’s best effort to state a claim, but he has failed to do so—nor can  
9 he allege any facts to overcome qualified immunity. Accordingly, his FAC should  
10 be dismissed with prejudice. *See Moore v. Kayport Package Express*, 885 F.2d 531,  
11 538 (9th Cir. 1989) (leave needn’t be given “if a complaint, as amended, is subject  
12 to dismissal”).

13 **IV. Defendants Are Entitled to a More Definite Statement.**

14 The foregoing discussion establishes that the FAC is not only subject to  
15 dismissal for failure to state a claim, but “is so vague or ambiguous” that Defendants  
16 “cannot reasonably prepare a response” in their individual or official capacities, and  
17 therefore are entitled to “a more definite statement.” Fed. R. Civ. P. 12(e). The  
18 Supreme Court has indicated that Rule 12(e) motions are particularly appropriate as  
19 to *civil rights claims against public officials who may be entitled to qualified*  
20 *immunity*, to compel a plaintiff to allege “specific, nonconclusory factual allegations  
21 that establish improper motive causing cognizable injury.” *Crawford-El v. Britton*,  
22 523 U.S. 574, 598 (1998).

23 Defendants respectfully ask this Court to order Shelton to provide a more  
24 definite statement as to the following vague and ambiguous allegations:

- 25 ● the content of Shelton’s “short speech” at the School Board meeting on  
26 April 18, 2023—specifically, what he said about “GUSD’s newly-adopted” policies  
27 and what “words and images” he used (FAC ¶¶ 51-57, 84);
- 28 ● a copy of the “image[.]” Shelton used at the meeting (*id.* ¶ 84);

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- 1           ● which “Defendants” allegedly told Shelton “he was under investigation  
2 for unspecified ‘misconduct’ and was being put on administrative leave,” and which  
3 of them “handed him a letter from Defendant Watson to that effect” (*id.* ¶¶ 58-60);
- 4           ● the content of Dr. Watson’s letter concerning the investigation (*id.*);
- 5           ● what facts support Shelton’s new assertion that Dr. Ekchian, Dr.  
6 Watson, and Principal Tonoli were somehow “responsible” for placing him on leave  
7 and thereby “attacked his credibility as an educator and sullied his personal and  
8 professional reputation” (*id.* ¶¶ 61, 69);
- 9           ● the content of Principal Tonoli’s “email to the entire Mark Keppel  
10 community”—specifically, what words it used to allegedly accuse Shelton of “hate  
11 speech” at the School Board meeting “and admitting to removing him from  
12 campus,” and whether the email even mentioned Shelton by name (*id.* ¶ 62);
- 13           ● when and how did Principal Tonoli “admit[]” to “retaliation” (*id.* ¶ 63);
- 14           ● which “details” Principal Tonoli supposedly “revealed” regarding  
15 Shelton’s “personnel matter,” and how this was “unlawful[]” (*id.* ¶ 64);
- 16           ● what facts support the conclusory assertions that “the School Board  
17 conspired with Tonoli” regarding her email “as retaliation” (*id.* ¶ 65), and  
18 “reviewed” and “approved” removing Shelton from his classroom and placing him  
19 on leave (*id.* ¶ 66);
- 20           ● which “Defendants” allegedly “never allowed” Shelton “to return to his  
21 classroom” and “barred” him from the fifth grade graduation (*id.* ¶¶ 67-68);
- 22           ● which specific “opportunities” Shelton lost “to develop his skills as an  
23 educator and to mentor his students” (*id.* ¶ 70);
- 24           ● what “derogatory information” is in Shelton’s personnel file (*id.* ¶ 71);
- 25           ● which “Defendants” allegedly “sent a message to all GUSD employees  
26 that speaking on matters of public concern that conflict with District heterodoxy will  
27 be met with punishment, including suspension and termination,” and to which  
28 “District heterodoxy” does this refer (*id.* ¶ 73);

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- 1       ● which “Defendants” allegedly intended “to chill” the speech of Shelton
- 2 and “other employees who disagree with GUSD’s radical, child-harming policies,”
- 3 and which of their specific “actions were reasonably likely to deter” someone in
- 4 Shelton’s position “from speaking out against these policies” (*id.* ¶ 74);
- 5       ● what “sexually inappropriate content” did a third grade teacher show
- 6 her class, and how did the Board “publicly laud[.]” her (*id.* ¶ 76);
- 7       ● what constituted “harassment” and “attacks” against Shelton (*id.* ¶ 77);
- 8       ● what rule changes were made for Board meetings (*id.* ¶ 79);
- 9       ● the content of a student and her mother’s “opposition to [GUSD]
- 10 policies,” the context of a “teacher” and “school ... calling her a ‘bigot,’ and the
- 11 content of any other alleged abuse and harassment” (*id.* ¶ 80);
- 12       ● what specific action or actions constituted punishment or discipline of
- 13 Shelton (*see id.* ¶¶ 22, 25-26); and
- 14       ● when, how, and why Shelton’s employment ended, when his leave
- 15 ended, and whether that leave was paid or unpaid (*see id.* ¶¶ 7, 13, 35-38).

16 **V. Conclusion**

17 Defendants respectfully ask this Court to grant their Motion to Dismiss, with  
18 prejudice, and/or grant their Motion for a More Definite Statement.

19 DATED: April 25, 2024

BALLARD ROSENBERG  
GOLPER & SAVITT, LLP

21 By: 

22 \_\_\_\_\_  
Linda Miller Savitt  
John J. Manier

23 Attorneys for Defendants VIVIAN EKCHIAN,  
24 Ed.D., DARNEIKA WATSON, Ph.D.,  
25 KATHLEEN CROSS, INGRID GUNNELL,  
26 SHANT SAHAKIAN, JENNIFER FREEMÓN,  
27 NAYIRI NAHABEDIAN, and KRISTINE  
28 TONOLI, in their individual and official capacities



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1           4.       On April 10, 2024, I emailed another meet-and-confer letter to Mr.  
2 Pivtorak, which explained Defendants’ intent to file a Motion to Dismiss and for a  
3 More Definite Statement as to Shelton’s FAC, summarized the factual bases for it,  
4 and requested a conference of counsel. A true and copy of this letter is attached as  
5 **Exhibit A**. Mr. Pivtorak and I conducted the conference of counsel on April 15,  
6 2024, and agreed that the meet-and-confer requirement of L.R. 7-3 had been  
7 satisfied, but we were unable to reach a resolution that eliminated the necessity for  
8 Defendants’ proposed Motion or a hearing thereon. Mr. Pivtorak and I also  
9 discussed potential motion hearing dates, and we agreed that Defendants would  
10 notice their motion for hearing on June 4, 2024, and file it no later than April 26,  
11 2024 (a 10-day extension from the previous deadline of April 16, 2024).

12           I declare under penalty of perjury under the laws of the United States of  
13 America that the foregoing is true and correct.

14           Executed on April 25, 2024, at Encino, California.

15 

16 \_\_\_\_\_  
17 John J. Manier  
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**BALLARD ROSENBERG  
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The Law Firm For Employers

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April 10, 2024

**VIA ELECTRONIC MAIL ONLY**

David Pivtorak, Esq.  
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Los Angeles CA 90017  
E-Mail: david@piv4law.com

Re: *Shelton v. Ekchian, et al.*  
U.S.D.C. (C.D. Cal.) No. 2:23-cv-10427

Dear Mr. Pivtorak:

On behalf of all Defendants, I am writing to initiate a conference of counsel pursuant to L.R. 7-3 regarding Defendants' proposed motion to dismiss for failure to state a claim and for a more definite statement as to Plaintiff Ray Shelton's First Amended Complaint (FAC) (Dkt. No. 11). Fed. R. Civ. P. 12(b)(6), (e).

Like the original Complaint, the FAC consists of "shotgun" allegations against all "Defendants," without *specific facts* (as opposed to conclusions) establishing which individual Defendants are allegedly responsible for particular acts or omissions. The FAC's ostensible attempts to cure the vagueness and ambiguity of the original Complaint are ineffectual.

For example, the FAC vaguely alleges that Dr. Ekchian, Dr. Watson, and Principal Tonoli were somehow "responsible" for placing Mr. Shelton on administrative leave, but states no supporting facts. It again alleges that Principal Tonoli published "an email to the entire Mark Keppel community accusing Mr. Shelton of 'hate speech' at the school board meeting and admitting to removing him from campus." But again, the FAC does not purport to quote from the email or attach it as an exhibit, nor does it describe Ms. Tonoli's ostensible "admission" of "retaliation" against Mr. Shelton or identify "the personal views" which supposedly motivated the retaliation.

The only action the FAC attributes to School Board members is supposedly conspiring with Principal Tonoli in publishing the email. But the FAC alleges no facts to support this bare conspiracy allegation. Nor does it allege facts to support the conclusory allegation that the Board "reviewed" and "approved" the decisions to remove Mr. Shelton "from his classroom and place him on leave."

The FAC again states that Mr. Shelton has a First Amendment "right to present his views in the ways that he chooses, including his choice of words *and images*." (Emphasis added.) But

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the FAC’s conclusory summary of Mr. Shelton’s speech at the April 18, 2023 GUSD School Board meeting again makes no reference to any “images”—and conspicuously evades admitting that *Mr. Shelton held up a sign with four “Progress Pride” flags arranged to form a swastika.* (See last page of this correspondence.) This fact is not a distraction, as you suggested in our previous meet-and-confer on March 5, 2024, but is central to one of the dispositive issues in this case—the justification for Mr. Shelton being placed on leave pending an investigation of his conduct in holding up the swastika sign (on Holocaust Remembrance Day, of all days). The FAC offers insufficient detail to ascertain whether Mr. Shelton was speaking on a matter of public concern, or whether his asserted free speech rights outweighed GUSD’s legitimate interests in protecting its students and board meeting attendees from being subjected to words or images that are widely considered to be deeply offensive.

In the prayer for relief, the FAC seeks injunctive relief that would include rescission of “any disciplinary action taken against Plaintiff” and removal of “any reference of discipline and any other actions taken against Plaintiff.” But the FAC again identifies no “disciplinary action,” and specifically provides insufficient detail to ascertain whether the administrative leave was considered disciplinary. (In fact, it was a paid administrative leave pending a GUSD investigation, which was not completed before the effective date of Mr. Shelton’s retirement from GUSD—a retirement he announced several weeks before the April 18 board meeting.)

The above discussion, along with Defendants’ original motion (Dkt. No. 10) and my meet-and-confer letter of February 16, 2024, illustrate why Mr. Shelton should be ordered to provide a more definite statement under Rule 12(e), particularly as to the following vague and ambiguous allegations:

- the content of Mr. Shelton’s “short speech” at the School Board meeting on April 18, 2023—specifically, what he said about “GUSD’s newly-adopted” policies and what “words and images” he used (FAC ¶¶ 51-57, 84);
- a copy of the “image[]” Mr. Shelton used at the meeting (*id.* ¶ 84);
- which “Defendants” allegedly told Mr. Shelton “he was under investigation for unspecified ‘misconduct’ and was being put on administrative leave,” and which of them “handed him a letter from Defendant Watson to that effect” (*id.* ¶¶ 58-60);
- the content of Dr. Watson’s letter concerning the investigation (*id.*);
- what facts support Mr. Shelton’s new assertion that Dr. Ekchian, Dr. Watson, and Principal Tonoli were somehow “responsible” for placing him on leave and thereby “attacked his credibility as an educator and sullied his personal and professional reputation” (*id.* ¶¶ 61, 69);

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- the content of Principal Tonoli’s “email to the entire Mark Keppel community”—specifically, what words it used to allegedly accuse Mr. Shelton of “hate speech” at the School Board meeting “and admitting to removing him from campus,” and whether the email even mentioned Mr. Shelton by name (*id.* ¶ 62);
- when and how did Principal Tonoli “admit[]” to “retaliation” (*id.* ¶ 63);
- which “details” Principal Tonoli supposedly “revealed” regarding Mr. Shelton’s “personnel matter,” and how this was “unlawful[]” (*id.* ¶ 64);
- what facts support the conclusory assertions that “the School Board conspired with Tonoli” regarding her email “as retaliation” (*id.* ¶ 65), and “reviewed” and “approved” removing Mr. Shelton from his classroom and placing him on leave (*id.* ¶ 66);
- which “Defendants” allegedly “never allowed” Mr. Shelton “to return to his classroom” and “barred” him from the fifth grade graduation (*id.* ¶¶ 67-68);
- which specific “opportunities” Mr. Shelton lost “to develop his skills as an educator and to mentor his students” (*id.* ¶ 70);
- what “derogatory information” is in Mr. Shelton’s personnel file (*id.* ¶ 71);
- which “Defendants” allegedly “sent a message to all GUSD employees that speaking on matters of public concern that conflict with District heterodoxy will be met with punishment, including suspension and termination,” and to which “District heterodoxy” does this refer (*id.* ¶ 73);
- which “Defendants” allegedly intended “to chill” the speech of Mr. Shelton and “other employees who disagree with GUSD’s radical, child-harming policies,” and which of their specific “actions were reasonably likely to deter” someone in Mr. Shelton’s position “from speaking out against these policies” (*id.* ¶ 74);
- what “sexually inappropriate content” did a third grade teacher show her class, and how did the Board “publicly laud[]” her (*id.* ¶ 76);
- what constituted “harassment” and “attacks” against Mr. Shelton (*id.* ¶ 77);
- what rule changes were made for Board meetings (*id.* ¶ 79);
- the content of a student and her mother’s “opposition to [GUSD] policies,” the context of a “teacher” and “school ... calling her a ‘bigot,’” and the content of any other alleged abuse and harassment” (*id.* ¶ 80);

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- what specific action or actions constituted punishment or discipline of Mr. Shelton (*see id.* ¶¶ 22, 25-26); and
- when, how, and why Mr. Shelton’s employment ended, when his leave ended, and whether that leave was paid or unpaid (*see id.* ¶¶ 7, 13, 35-38).

In its present form, the FAC’s vague and ambiguous allegations fail to state sufficient facts to constitute a claim against any individual Defendant—particularly any claim that would survive the defense of qualified immunity—which warrants dismissal under Rule 12(b)(6).

Moreover, the FAC fails to state any facts that would establish municipal liability under Section 1983 pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978). Accordingly, the “official” capacity allegations should be dismissed.

Lastly, all “Doe” defendants should be dismissed. Although the FAC complies with L.R. 19-1’s limit of 10 “Doe or fictitiously named parties,” the law further requires a complaint to make “individualized allegations about each,” rather than referring to them as “an indistinguishable group.” *MGA Entertainment, Inc. v. Dynacraft BSC, Inc.*, No. 2:17-cv-08222-ODW-KS, 2018 WL 2448123, \*8 (C.D. Cal. May 30, 2018). Mr. Shelton’s FAC lumps “DOES 1-10, inclusive” together without differentiation, which is impermissible.

Please contact me no later than Friday, April 12, 2024, to schedule the required conference of counsel. Thank you.

Very truly yours,

BALLARD ROSENBERG GOLPER & SAVITT, LLP



John J. Manier

cc: Linda Miller Savitt, Esq.

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