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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 RAY SHELTON,
13 Plaintiff(s),
14 vs.

15 VIVIAN EKCHIAN; DARNEIKA
16 WATSON, individually, and in her
17 official capacity as Chief Human
18 Resources and Operations Officer and
19 Interim Superintendent; KATHLEEN
20 CROSS, individually, and in her official
21 capacity as a Board of Education
22 member; INGRID GUNNELL,
23 individually, and in her official capacity
24 as a Board of Education member;
25 SHANT SAHAKIAN, individually, and
26 in her official capacity as a Board of
27 Education member; JENNIFER
28 FREEMON, individually, and in her
official capacity as a Board of Education
member; NAYIRI NAHABEDIAN,
individually, and in her official capacity
as a Board of Education member;
KRISTINE TONOLI; and DOES 1-10,
inclusive;

Defendants.

CASE NO. 2:23-cv-10427-CBM-SSC

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO MOTION TO
DISMISS FIRST AMENDED
COMPLAINT AND FOR MORE
DEFINITE STATEMENT**

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

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1 **I. INTRODUCTION**

2 This lawsuit seeks to vindicate a public-school teacher’s clearly established
3 constitutional right to free speech. Plaintiff, Ray Shelton’s, First Amended Complaint
4 alleges that he spoke as a private citizen at a school board meeting against certain
5 district policies that were harming children in the community. The very next day,
6 Defendants—who are policymakers in the district, and have supervisory authority over
7 school personnel like Plaintiff—took retaliatory action by placing him on administrative
8 leave, initiating a disciplinary investigation, and publicly accusing him of “hate
9 speech,” never allowing him to return to his classroom and preventing him from
10 attending graduation with his students.

11 The overarching and repetitive theme of Defendants’ motion to dismiss is the
12 claim that Plaintiff’s complaint is too vague and ambiguous for Defendants to formulate
13 a response. This is belied, however, by the fact that Defendants dedicate six entire pages
14 of their motion just to reciting the complaint’s detailed factual allegations. Thus, when
15 stripped of its conclusory labels of vagueness, Defendants’ genuine concern is that they
16 cannot use Rule 12(b)(6) as a unilateral discovery mechanism or motion for summary
17 judgment.

18 But on a motion to dismiss the Court may only determine whether Plaintiff’s
19 allegations, if proved, would state a claim on which relief could be granted. And the
20 Court’s review is limited to the contents of the complaint alone. Here, the facts which
21 establish liability against Defendants are recited in the motion itself. Plaintiff spoke as a
22 private citizen at a school board meeting on a matter of public concern. Defendants then
23 took an adverse action against him, admittedly because of his protected speech.
24 Moreover, Defendants have not introduced any evidence—nor can they at this stage—
25 that their actions were justified. Thus, Plaintiff’s complaint adequately alleges a prima
26 facie case of First Amendment retaliation.

27 Defendants are also not entitled to qualified immunity for their actions because a
28 schoolteacher’s right to speak out against district policies has been well established for

1 over 50 years. The FAC’s specific, factual allegations are also sufficient to establish
2 municipal liability and a conspiracy by the defendants to retaliate against Plaintiff.
3 Finally, their motion for a more definite statement must be denied because such motions
4 are designed to strike at unintelligibility rather than want of detail, which is not the case
5 here. For these reasons, Defendants’ motions fail.

6 II. FACTS

7 A. The Parties

8 Plaintiff Ray Shelton (“Plaintiff” or “Shelton”) was a venerated fifth-grade
9 teacher at the at the Mark Keppel Visual and Performing Arts Elementary School
10 (“Mark Keppel”), a public school under the authority and control of the Glendale
11 Unified School District (“GUSD”). ECF No. 11 (“First Amended Complaint” or
12 “FAC”) at ¶ 13. At the time of the complaint, Mr. Shelton had been employed by
13 GUSD as a teacher for 25 years. *Id.* at ¶ 35. Mr. Shelton was universally beloved by his
14 students and their parents, well-respected by his colleagues, and—over the course of his
15 career—earned many professional awards and accolades. *Id.* at ¶¶ 36-37. Mr. Shelton
16 took particular pride in teaching biology and science, two academic fields which he also
17 has a personal interest in. *Id.* at ¶ 38.

18 Defendants Kathleen Cross (“Cross”), Ingrid Gunnell (“Gunnell”), Shant
19 Sahakian (“Sahakian”), Jennifer Freemon (“Freemon”), and Nayiri Nahabedian
20 (“Nahabedian”) (collectively, the “Board Members”) were members of the GUSD
21 Board of Education during the time period relevant to the complaint. *Id.* at ¶¶ 14-18.
22 The GUSD Board of Education is a public body that governs public schools in
23 Glendale, California and has final policymaking and decision-making authority for
24 rules, regulations, and decisions that govern school personnel. *Id.* at ¶¶ 19-20.

25 Defendant Vivian Ekchian (“Ekchian”) was the superintendent of GUSD. *Id.* at ¶
26 23. As alleged in the FAC, she was GUSD’s chief executive officer whose powers
27 included oversight and control of the district, including responsibility for reviewing
28 disciplinary actions taken against personnel, like Mr. Shelton. *Id.* at ¶¶ 24, 26.

1 Defendant Darneika Watson (“Watson”) was the Chief Human Resources and
2 Operations Officer of GUSD who possessed the authority and responsibility for
3 governing and regulating employees. FAC at ¶¶ 27-28. Defendant Kristine Tonoli
4 (“Tonoli”) was the principal of Mark Keppel during the time relevant to the FAC. *Id.* at
5 ¶ 30. Tonoli possessed the authority and responsibility for governing and regulating
6 Mark Keppel teachers, including Mr. Shelton. *Id.* at ¶ 31.

7 **B. Defendants Implement Sex-Change Policies for Children**

8 During recent years GUSD, under the influence of political activists, has started
9 implementing policies that deny the biological reality that the human species has two
10 sexes: Male and female. FAC ¶¶ 39-42. Mr. Shelton has taught this basic biological fact
11 for years to his students and deeply believes it himself. *Id.* at ¶¶ 39-40. The activist-
12 driven policies seek to assert the unscientific belief that biological sex itself is a social
13 construct. *Id.* at ¶ 41.

14 The specific policies that GUSD has implemented, “include, but are not limited
15 to, keeping a secret file on students who have decided to use pronouns that do not
16 correspond to their natal sex and a ‘preferred’ cross-sex name which is different from
17 their given one; permitting natal males, who ‘identify’ as the opposite sex, to use girls’
18 locker rooms and bathrooms at school; mandating that teachers and students use
19 ‘preferred pronouns’ regardless of natal sex, even if this violates the users’ deeply held
20 religious or personal beliefs; and teaching elementary school children about various
21 sexual positions” (the “Sex-Change Policies.”). *Id.* at ¶ 43. It is GUSD’s policy to
22 conceal all of this information from parents. *Id.*

23 Mr. Shelton opposes these policies and believes that children do not have a fully
24 developed capacity to understand the long-term consequences of their decisions,
25 especially when it comes to sex and identity. *Id.* at ¶ 44. He also believes that parents
26 must be intimately involved in any serious decisions involving their children and that
27 these policies threaten their fundamental right to control the upbringing and education
28 of their children. *Id.* at ¶¶ 45-46.

1 Mr. Shelton wants to protect children in the school district from making
2 potentially irreversible and life-changing decisions that they may later regret. FAC at ¶
3 47. He also believes that, because of the complex social, spiritual, and psychological
4 issues involved in changing one’s sex—especially when paired with chemical hormone
5 and surgical interventions—children should not be encouraged to undertake social or
6 medical transition due to their inability to assess the long-term consequences. This is
7 especially true when these decisions are actively concealed from parents or otherwise
8 made without parental involvement. *Id.*

9 As a gay man, Mr. Shelton also believes that GUSD’s Sex-Change Policies cause
10 harm to gay people because they are a form of gay conversion therapy that attempt to
11 convince individuals they are “born in the wrong body” rather than simply attracted to
12 the same sex. *Id.* at ¶ 50.

13 **C. Mr. Shelton Speaks Out Against the Policies at a School Board Meeting**

14 Because of his strong, scientifically grounded ideas and his desire to protect
15 children at GUSD from harm, Mr. Shelton attended a GUSD Board of Education
16 meeting to speak out against GUSD’s policies. *Id.* at ¶¶ 51-52. He attended as a private
17 citizen and not in any representative capacity as a GUSD employee. *Id.* at ¶ 51.

18 During the public comment portion of the meeting, Mr. Shelton gave a short
19 speech in front of the school board, opposing the Sex-Change Policies and advocating
20 for science and biological facts. *Id.* at ¶ 52. Mr. Shelton expressed his sincere personal
21 belief that the Sex-Change Policies were causing mental, physical, and emotional harm
22 to the children who were being experimented on by adults pursuing a political agenda.
23 *Id.* at ¶ 53. The speech was given as a private citizen on a matter of public concern. *Id.*
24 at ¶ 54. Mr. Shelton’s speech did not violate any GUSD School Board rules. *Id.* at ¶ 55.
25 Mr. Shelton’s participation in the School Board meeting did not interfere with the
26 performance of his duties as a Mark Keppel educator. *Id.* at ¶ 56. Mr. Shelton’s
27 participation in the School Board meeting did not disrupt any educational activities at
28 Mark Keppel. *Id.* at ¶ 57.

1 **D. Defendants Retaliate Against Mr. Shelton**

2 When Mr. Shelton arrived to teach his class the morning after the meeting,
3 Defendant Tonoli pulled Mr. Shelton out of his class and directed him to Tonoli’s
4 office, where a School Board administrator sat waiting. FAC at ¶ 58. He was told that
5 he was under investigation for unspecified “misconduct” and was being put on
6 administrative leave pending discipline. *Id.* at ¶ 59. Mr. Shelton also received a letter
7 from Defendant Watson to that effect. *Id.* The letter informed Mr. Shelton that he was
8 to have a further meeting with human resources regarding the disciplinary investigation
9 against him and that he had a right to have a union representative present at the meeting.
10 *Id.* at ¶ 60. The Defendants responsible for the decision to place Mr. Shelton on leave
11 were Tonoli, Ekchian, and Watson. *Id.* at ¶ 61.

12 Later that day, Tonoli published an email to the entire Mark Keppel community
13 publicly disparaging Mr. Shelton, accusing him of “hate speech” at the school board
14 meeting, and stating that he is no longer on campus. *Id.* at ¶ 62. Defendant Tonoli
15 admitted that Defendants’ conduct against Mr. Shelton was in direct retaliation for the
16 personal views he expressed at the school board meeting. *Id.* at ¶ 63. The FAC also
17 alleges that the Board Members conspired with Tonoli regarding the content and
18 publishing of the email as retaliation for Mr. Shelton exercising his First Amendment
19 rights.

20 The Board Members reviewed the decisions to remove Mr. Shelton from his
21 classroom and place him on leave and, despite having the power to reverse them,
22 approved the actions. *Id.* at ¶ 66. Defendants barred Mr. Shelton from school-related
23 activities and events and never allowed Mr. Shelton to return to his classroom.
24 Defendants also barred Mr. Shelton from attending his students’ fifth-grade graduation
25 ceremony—something that he deeply cherished every year to commemorate the
26 achievement of his students and to be able to celebrate with them and their families
27 before they moved on to middle school. *Id.* at ¶ 67. By placing Mr. Shelton on leave,
28

1 Defendants attacked his credibility as an educator and sullied his personal and
2 professional reputation. FAC at ¶ 69.

3 Because of the administrative leave, Mr. Shelton lost opportunities to develop his
4 skills as an educator and to mentor his students. *Id.* at ¶ 70. Additionally, Mr. Shelton’s
5 personnel file now contains derogatory information, based on Defendants’ retaliatory
6 conduct, that is likely to harm his prospects with prospective employers. *Id.* at ¶ 71.

7 Defendants, through their retaliatory actions, also sent a message to all GUSD
8 employees that speaking on matters of public concern, that conflict with their Sex-
9 Change Policies, will be met with punishment, including suspension and termination.
10 *Id.* at ¶ 73. GUSD employees who have spoken publicly in favor of these Sex-Change
11 Policies have never been punished or disciplined in any way. *Id.* at ¶ 75. On the other
12 hand, GUSD retaliated against individuals and families who opposed the Sex-Change
13 Policies. *Id.* at ¶ 78. Thus, Defendants’ retaliatory conduct against Mr. Shelton
14 conformed to an official policy, custom, or practice. *Id.* at ¶ 81.

15 III. ARGUMENT

16 A. The Standard on a Motion to Dismiss

17 Federal Rule of Civil Procedure 8(a) requires that a complaint must contain a
18 “short and plain statement of the claim showing that the pleader is entitled to relief.”
19 Fed. R. Civ. P. 8(a); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Rick-Mik*
20 *Enters. v. Equilon Enters., LLC*, 532 F.3d 963, 970 (9th Cir. 2008). Claimants do not
21 have to detail the facts upon which they base their claim and the “short and plain
22 statement of the claim” need only be sufficient to give “the defendant fair notice of
23 what the [plaintiff’s] claim is and the grounds upon which it rests.” *Twombly*, 550
24 U.S. at 555.

25 On a motion to dismiss, material allegations are assumed to be true, “even if
26 doubtful in fact,” *Twombly*, 550 U.S. at 555, and are construed in the light most
27 favorable to the plaintiff. *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).
28 “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is

1 entitled to offer evidence to support the claims.” *Hydrick v. Hunter*, 500 F.3d 978, 985
2 (9th Cir. 2007).

3 **B. Mr. Shelton Engaged in Protected Activity**

4 In the Ninth Circuit, a public-sector employee establishes a First Amendment
5 retaliation claim by showing that he “(1) []he engaged in protected speech; (2) the
6 defendants took an ‘adverse employment action’ against h[im]; and (3) h[is] speech was
7 a ‘substantial or motivating’ factor for the adverse employment action.” *Dodge v.*
8 *Evergreen School District #114*, 56 F.4th 767, 776 (9th Cir. 2022). If the employee
9 proves these elements “the burdens of evidence and persuasion ... shift to the
10 Defendants to show that the balance of interests justified their adverse employment
11 decision.” *Id.*

12 However, because the balancing test requires a factual inquiry and a developed
13 record, the dismissal stage is not the appropriate time for a court to make that
14 determination. *Hyland v. Wonder*, 972 F.2d 1129, 1140 (9th Cir. 1992) (“We have
15 previously recognized that this balancing inquiry cannot be resolved by this court at
16 such an early stage in the proceedings.”). Thus, a complaint that sufficiently establishes
17 a prima facie case of retaliation must necessarily survive a motion to dismiss.

18 **1. Mr. Shelton’s criticism of GUSD policies as a private citizen is a**
19 **matter of public concern**

20 A public employee engages in protected speech when he speaks on a matter of
21 public concern as a private citizen. *Dodge*, 56 F.4th at 777. “Whether an employee's
22 speech addresses a matter of public concern must be determined by the content, form,
23 and context of a given statement, as revealed by the whole record.” *Connick v. Myers*,
24 461 U.S. 138, 147–148 (1983). Here, the FAC alleges that Mr. Shelton attended a
25 school board meeting that was open to the public. FAC at ¶¶ 51-52. He attended the
26 meeting as a private citizen and not in a representative capacity as a GUSD employee.
27 *Id.* He gave a speech during the public comment portion of the meeting, which is
28 usually reserved for issues affecting school policies and the community in general. Mr.

1 Shelton’s speech addressed an issue of public concern—specifically, GUSD’s Sex-
2 Change Policies. FAC at ¶ 52. His speech addressed how the policies defy science and
3 biological reality and cause physical, mental, and emotional harm to students subject to
4 them as well as the adults who are charged with enforcing them. *Id.* at ¶ 53.

5 In *Pickering v. Board of Education*, the seminal case on the issue, The Supreme
6 Court recognized a public-school teacher’s right to criticize an administration’s
7 policies because such criticism is, by definition, a matter of public concern. 391 U.S.
8 563, 571–572 (1968) (“[m]ore importantly, the question whether a school system
9 requires additional funds is a matter of legitimate public concern on which the
10 judgment of the school administration, including the School Board, cannot, in a society
11 that leaves such questions to popular vote, be taken as conclusive.”). Although
12 *Pickering* involved the issue of school funding, the holding stands for the broader
13 proposition that teachers who speak about school policies generally speak on issues
14 that affect the public and should be afforded the same right to do so as any member of
15 the impacted community. See *id.* (“[t]eachers are, as a class, the members of a
16 community most likely to have informed and definite opinions as to how funds allotted
17 to the operations of the schools should be spent. Accordingly, it is essential that they be
18 able to speak out freely on such questions without fear of retaliatory dismissal.”).

19 Since *Pickering*, courts have generally accepted that a teacher who speaks
20 publicly about school policies or comments on school district operations is speaking on
21 a matter of public concern. See *Connick*, 461 U.S. at 162 (acknowledging “the
22 importance of allowing teachers to speak out on school matters.”); see also, *Lytle v.*
23 *Wondrash*, 182 F.3d 1083, 1088 (9th Cir. 1999) (“[a]n expression relating to any matter
24 of political, social, or any other concern to the community is protected.”); see also,
25 *Settlegoode v. Portland Public Schools*, 371 F.3d 503, 514 (9th Cir. 2004) (“[t]eachers
26 are uniquely situated to know whether students are receiving the type of attention and
27 education that they deserve and, in this case, are federally entitled to.”). This principle
28 is so strong that the Supreme Court has held that even a teacher’s *private* complaint to

1 her school's principal about school policies and practices which she perceived as
2 racially discriminatory touched on a matter of public concern. *Givhan v. Western Line*
3 *Consolidated School District*, 439 U.S. 410, 412-413 (1979).

4 Defendants' claim that the FAC's allegations are vague and ambiguous as to the
5 contents of Mr. Shelton's speech is incoherent. The FAC specifically identifies what
6 the Sex-Change Policies are, states that Mr. Shelton's speech opposed them, and gives
7 a detailed description of the nature of the opposition. The Motion's real complaint, that
8 the FAC does not reproduce a word-for-word transcript of the speech, seeks to thwart
9 the short-plain statement requirement of Rule 8(a). The FAC gives Defendants more
10 than enough information regarding the content, form, and context of Mr. Shelton's
11 speech to give them fair notice of the allegations against them. See *Connick*, 461 U.S.
12 at 147-148. Defendants' argument is also disingenuous because the FAC alleges that
13 they personally witnessed the speech and punished Plaintiff specifically because of its
14 content. They cannot now turn around and claim that they cannot formulate a response
15 to facts of which they are personally aware.

16 The Motion's claim that Mr. Shelton did not engage in petitioning activity also
17 does not make sense. Generally, "[a]lthough the right to petition and the right to free
18 speech are separate guarantees, they are related and generally subject to the same
19 constitutional analysis." *Wayte v. United States*, 470 U.S. 598, 610 n.11 (1985). The
20 First Amendment protects citizens' rights to petition the government for redress of
21 grievances. See *Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S.
22 463, 464 (1979). "[T]he right to petition extends to all departments of the government,
23 including the executive department, the legislature, agencies, and the courts." *White v.*
24 *Lee*, 227 F.3d 1214, 1232 (9th Cir. 2000). The Supreme Court has held that complaints
25 or criticisms regarding the policies of nonlegislative and nonjudicial public agencies,
26 such as a county board of supervisors, constitutes petitioning activity. *California Motor*
27 *Transport v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). This necessarily includes
28 complaints to, or criticism of, local school boards. See *id.*

1 Thus, Mr. Shelton’s speech about specific GUSD policies that were harming both
2 students and adults is indisputably a matter of public concern and protected under the
3 First Amendment.

4 **C. Defendants’ Retaliation Against Mr. Shelton Constitutes an Adverse**
5 **Employment Action**

6 Mr. Shelton also suffered an adverse employment action when Defendants used
7 the power of the state to punish him for his protected speech. The Ninth Circuit has
8 adopted the “reasonably likely to deter” test to determine if an adverse employment
9 action has taken place for purposes of First Amendment retaliation. *Greisen v. Hanken*,
10 925 F.3d 1097, 1113 (9th Cir. 2019). “Under this test, the plaintiff must prove that the
11 employer's action was reasonably likely to deter [him] from engaging in
12 constitutionally protected speech. The plaintiff need not have suffered a tangible loss.”
13 *Dodge*, 56 F.4th at 778 (cleaned up). If the government’s retaliatory action “would
14 chill or silence a person of ordinary firmness from continuing to speak out” then it has
15 committed a constitutional violation. *Id.* at 779 (cleaned up).

16 Under this test we have recognized that [v]arious kinds of
17 employment actions may have an impermissible chilling effect,
18 including minor acts of retaliation, and [i]nformal measures, such as
19 the threat of invoking legal sanctions and other means of coercion,
20 persuasion, and intimidation. We have also recognized that the
21 insinuation or threat that some form of punishment or adverse
22 regulatory action may follow can also chill a person from speaking
23 and violate the First Amendment. [E]ven a threat of disciplinary
24 action may constitute adverse employment action for purposes of
25 First Amendment retaliation.

26 *Id.* (cleaned up).

27 *Dodge* is instructive: There, plaintiff, a public-school teacher, wore a Make
28 America Great Again (“MAGA”) hat to a teachers-only “cultural sensitivity and racial
29 bias training” that he was required to attend by his employer. *Id.* at 773. The plaintiff
30 wore the hat into the building and placed it in front of him during the training. *Id.* “The
31 professor leading the training saw Dodge's hat and complained to [the principal] after
32 the training that she felt intimidated and traumatized.” *Id.* The principal also learned

1 that the hat upset some of the other teachers at the training. “One teacher had cried, and
2 another found the hat ‘threatening.’” *Id.* There was no evidence that the plaintiff did
3 anything to interfere with or disrupt the training. *Id.* After the training, the plaintiff’s
4 principal told plaintiff not to wear the hat again or he would need to bring his union rep.
5 *Id.* at 774. The Ninth Circuit held that a jury could find that the principal’s actions
6 amounted to an adverse employment action in violation of plaintiff’s First Amendment
7 rights. *Id.* at 787.

8 Here, Defendants’ entire course of conduct against Mr. Shelton constituted a
9 campaign of “harassment designed both to prevent him from voicing his opinion and to
10 punish him for his having already done so,” including Defendants’ “defamatory
11 statements...with the intent of discrediting him.” *Allen v. Scribner*, 812 F.2d 426, 429
12 (9th Cir. 1987), *amended* 828 F.2d 1445 (9th Cir. 1987). Specifically, Defendants
13 placed Mr. Shelton on administrative leave; publicly threatened and defamed him;
14 prevented him from returning to his classroom for the rest of the school year and kept
15 him from his students’ graduation; and put derogatory information regarding this
16 incident in his personnel file.

17 **1. The FAC states a claim against Principal Tonoli**

18 The retaliatory conduct against Mr. Shelton is significantly more egregious than
19 what the Ninth Circuit found sufficient to allege a First Amendment retaliation claim in
20 *Dodge*. Here, Mr. Shelton’s speech was given at a meeting that was open to the public
21 rather than part of his employment duties. And while the threats in *Dodge* were made
22 privately to the teacher by his principal, Mr. Shelton’s principal, Defendant Tonoli,
23 made similar accusations against him as the defendant in *Dodge* but Tonoli announced
24 them to the whole community. See *Brodheim v. Cry*, 584 F.3d 1262, 1270 (9th Cir.
25 2009) (threats do not need to be specific or explicit to constitute an adverse action.).
26 Tonoli’s conduct was also worse because the public nature of her email elevated the
27 threats to Mr. Shelton, making them significantly more imminent. See *Greisen*, 925
28 F.3d at 1113 (retaliatory speech is actionable if it is “part of a campaign of harassment”

1 or if it “intimat[es] that some form of punishment or adverse regulatory action would
2 follow.”). Finally, the defendant in *Dodge* only threatened disciplinary action against
3 plaintiff and warned him that he would need to have his union representative present if
4 she had to talk to him again about his hat. Here, Mr. Shelton was actually placed on
5 administrative leave by Tonoli and investigated, a much more credible threat of
6 discipline than the mere warning given in *Dodge*. FAC at ¶ 61. And, because he was
7 placed on leave and investigated, Mr. Shelton actually had to go through the process of
8 having a union representative for the retaliatory process. *Id.* at ¶ 60.

9 Finally, while no “tangible loss” is required for a First Amendment retaliation—
10 and the Ninth Circuit found that *Dodge* had adequately alleged a violation without
11 one—Mr. Shelton did suffer an actual loss because of his leave and investigation. The
12 FAC alleges that he suffered the loss of finishing the school year with his students and
13 the professional opportunities that came with that. See *Dahlia v. Rodriguez*, 735 F.3d
14 1060, 1079 (9th Cir. 2013) (paid administrative leave in retaliation for plaintiff’s
15 exercise of First Amendment rights can constitute an adverse action). Mr. Shelton also
16 alleges that he was deprived of the ability to see his students graduate and now has
17 derogatory information in his personnel file because of Defendants’ retaliatory
18 conduct. Thus, he has sufficiently pled a retaliation claim against Defendant Tonoli.

19 **2. The FAC states a claim against the Board Members**

20 The FAC also alleges that the individual Board Members participated in
21 violating Mr. Shelton’s constitutional rights. The Board Members are sued in their
22 individual capacities for damages and in their official capacities for prospective
23 injunctive relief. The Supreme Court has held that members of a school board, which
24 acts by majority vote, may be held individually liable for 42 U.S.C. § 1983 violations.
25 See *Wood v. Strickland*, 420 U.S. 308, 319-22 (1975) (holding that individual members
26 of a school board who voted to expel a student could not receive absolute immunity
27 from the student's claim that the expulsion decision violated her rights to procedural
28 due process). The “Ninth Circuit [also] implicitly recognizes that members of a council

1 or board, which acts by majority vote, may be held individually liable for their
2 conduct.” *Minster v. Gates*, No. 01-01867-CBM, 2001 WL 1112684, at *3 (C.D. Cal.
3 2001).

4 The Board Members govern GUSD public schools and have final policymaking
5 and decision-making authority for rules, regulations, and decisions regarding
6 personnel, like Mr. Shelton. FAC at ¶¶ 19-20. Moreover, they personally participated
7 in the unconstitutional retaliation against Mr. Shelton by not only being instrumental in
8 the chain of events that punished Mr. Shelton for his speech but also by ratifying the
9 conduct of the other Defendants as well as creating and enforcing policies that were
10 intended to chill the speech of individuals who wanted to speak out against their Sex-
11 Change Policies.

12 Specifically, the Board Members participated in and approved the drafting and
13 publication of Tonoli’s letter, making them complicit in violating Mr. Shelton’s
14 constitutional rights. FAC at ¶ 65. Additionally, the Ninth Circuit has “found municipal
15 liability on the basis of ratification when the officials involved adopted and expressly
16 approved of the acts of others who caused the constitutional violation.” *Trevino v.*
17 *Gates*, 99 F.3d 911, 920 (9th Cir. 1996); *see also, Larez v. City of Los Angeles*, 946
18 F.2d 630, 645–48 (9th Cir.1991) (individual filed a complaint with the LAPD alleging
19 excessive force was used against him in a search, LAPD investigated it, and the police
20 chief signed a letter stating that none of the complaints would be sustained, thereby
21 ratifying the investigation and search). Here, the Board Members reviewed the decision
22 to remove Mr. Shelton from his classroom and the retaliatory investigation. *Id.* at ¶ 66.
23 Despite knowing that these actions were unconstitutional, and having the power to
24 reverse them, the Board members ratified the decisions and let them stand.

25 The Board Members complain that they cannot formulate a response because the
26 FAC does not allege that they witnessed the speech. ECF No. 16 (“Motion” or “Mot.”)
27 at 11. But the FAC alleges, in clear black and white, that “Mr. Shelton gave a short
28 speech in front of the Board.” FAC ¶ 52. So their claim that they are not sufficiently ‘on

1 notice’ regarding the contents of Mr. Shelton’s speech rings hollow, since they
2 witnessed it in person. Regardless, the conduct at issue is the retaliation that followed
3 the speech and liability does not at all hinge on any individual Defendant witnessing the
4 speech personally. What matters is Defendants’ retaliatory conduct in response to
5 speech that Defendants knew was constitutionally protected, which is adequately
6 alleged in the FAC. See *Dodge*, 56 F.4th at 773 (principal who took retaliatory action
7 only heard about plaintiff’s actions second-hand).

8 Finally, the Board Members have the power to remove the derogatory
9 information about Mr. Shelton from his personnel file, which they refuse to do—a
10 separate constitutional violation. FAC ¶¶ 20-22. See *Choi v. Wolfgang*, No. 14-01707-
11 VAP, 2014 WL 12873338, at *5 (C.D. Cal. 2014) (plaintiff stated a claim for injunctive
12 relief for “clearing ... all false and stigmatizing statements” and reference to her
13 discharge “from plaintiff’s files.”). Thus, Mr. Shelton also states a claim against the
14 Board Members for prospective injunctive relief.

15 **3. The FAC states a claim against HR head Watson**

16 To establish liability under § 1983, “requisite causal connection can be
17 established not only by some kind of direct personal participation in the deprivation,
18 but also by setting in motion a series of acts by others which the actor knows or
19 reasonably should know would cause others to inflict the constitutional injury.”
20 *Dahlia*, 735 F.3d at 1078 n.22.

21 The FAC alleges that, as part of her duties, Watson was one of the individuals
22 responsible for the decision to place Mr. Shelton on leave, pending a disciplinary
23 investigation, in retaliation for exercising his constitutional rights. *Id.* at ¶ 61. The
24 Human Resources letter from Watson to Mr. Shelton also accused Mr. Shelton of
25 “misconduct” and told him to have his union representative at the meeting regarding
26 his disciplinary investigation. *Id.* at ¶¶ 59-60. Watson was, thus, not only personally
27 responsible for taking retaliatory action against Mr. Shelton but also set in motion the
28 acts which she knew would lead to the injuries suffered by Plaintiff, i.e., the retaliatory

1 investigative process; excluding Mr. Shelton from campus and the stigma surrounding
2 it because of Tonoli’s disparaging email to the community; and the damaging
3 information in Plaintiff’s personnel file.

4 “The power of a threat lies not in any negative actions eventually taken, but in
5 the apprehension it creates in the recipient of the threat.” *Dodge*, 56 F.4th at 781. The
6 entire investigative process initiated by Watson created the apprehension in Mr.
7 Shelton, as it would in any reasonable person, that there was a serious threat of
8 discipline in store. The process *was* the punishment, in other words. Watson is,
9 therefore, also personally liable for violating Mr. Shelton’s First Amendment rights.

10 **4. The FAC states a claim against Superintendent Ekchian**

11 As the superintendent of GUSD, Defendant Ekchian had oversight
12 responsibilities to the district and its employees, like Mr. Shelton. FAC at ¶ 24.
13 Ekchian had a duty to ensure that any disciplinary actions taken against Mr. Shelton
14 were applied in a consistent and lawful manner. *Id.* at ¶ 26. The FAC alleges that
15 Ekchian failed in that duty in multiple ways: First, she personally participated in the
16 retaliatory decision to place Mr. Shelton on leave and sanctioned or ratified the
17 decision to keep him out of the classroom despite knowing that he was punished for
18 exercising his First Amendment rights. *Id.* at ¶¶ 25-26, 61. Second, despite being
19 responsible for personnel decisions in the district she refused to instruct her
20 subordinates to rescind the actions against Plaintiff. *Id.* at ¶ 25. Third, she failed to
21 modify the official policy, custom, or practice of GUSD to retaliate against individuals
22 who spoke out against its Sex-Change Policies. *Id.* at ¶ 78. Finally, she failed to take
23 steps to remove the derogatory information from Mr. Shelton’s personnel file that was
24 only there due to Defendants’ unconstitutional retaliation.

25 As discussed, above, a “supervisor is only liable for constitutional violations of
26 [her] subordinates if the supervisor participated in or directed the violations, or knew of
27 the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045
28 (9th Cir. 1989). Here, Ekchian personally participated in the constitutional violations

1 against Mr. Shelton. But the FAC also alleges that Ekchian failed to take any action to
2 prevent them by sitting on her hands as the retaliatory investigation into Mr. Shelton
3 continued and prevented him from performing his classroom duties or allowing him to
4 officially participate in his students' graduation. Ekchian also ratified the conduct of her
5 subordinates, which provides a separate basis for liability against her. See *Trevino*, 99
6 F.3d at 920.

7 **D. Mr. Shelton's Protected Speech Was a Substantial Motivating Factor in the**
8 **Adverse Actions Against Him**

9 "[I]n evaluating whether the government's adverse employment action was
10 motivated by the employee's speech, [the Court] must assume the truth of the plaintiff's
11 allegations." *Eng v. Cooley*, 552 F.3d 1062, 1071 (9th Cir. 2009). Mr. Shelton alleges
12 that his speech motivated the adverse actions against him by Defendants: The very next
13 morning after Mr. Shelton's speech, Defendants Tonoli, Ekchian, and Watson made the
14 decision to place him on leave. FAC at ¶ 61. Later that day, Tonoli published the
15 disparaging email that accused Mr. Shelton of "hate speech" where she admitted that
16 Defendants' actions against Plaintiff were taken because of his constitutionally
17 protected expression at the board meeting. *Id.* at ¶¶ 62-63. The FAC also alleges that
18 Tonoli did not act alone. The Board participated in and approved the drafting and
19 publication of the letter, making them complicit in violating Mr. Shelton's
20 constitutional rights. *Id.* at ¶ 65.

21 This "suggests it is not only possible, but also plausible that Plaintiff's
22 activities...substantially motivated" Defendants' decision to place Mr. Shelton on leave,
23 publicly threaten him, prevent him from returning to his classroom for the rest of the
24 school year, and putting derogatory information regarding this incident in his personnel
25 file. *Riel v. City of Santa Monica*, No. 14-04692-BRO, 2014 WL 12694159, at *5 (C.D.
26 Cal. 2014). Thus, Plaintiff "has submitted sufficient evidence of a prima facie First
27 Amendment retaliation claim" against Defendants. *Dodge*, 56 F.4th at 781.

1 **E. The Court Cannot Perform the *Pickering* Balancing at the Pleading Stage**

2 Under the *Pickering* analysis, once the plaintiff establishes a prima facie
3 retaliation claim, the burden shifts to defendants to prove that they had a legitimate
4 administrative interest in preventing plaintiff’s speech that outweighed his First
5 Amendment rights. *See Hyland*, 972 F.2d at 1139-1140. However, “[b]ecause of the
6 inherently fact-intensive nature of this inquiry, the Court can rarely perform the
7 *Pickering* balancing on a motion to dismiss.” *Guadalupe Police Officer's Association*
8 *v. City of Guadalupe*, No. 10–8061-GAF, 2011 WL 13217672, at *10 (C.D. Cal.
9 2011). And, notably, it is “the government, not Plaintiff[], [which] bears the burden to
10 establish that the restriction on speech is justified under the *Pickering* test.” *Id.* Thus, at
11 the pleading stage, a plaintiff “need not allege facts demonstrating that the restriction
12 (or potential restriction) is not justified by legitimate administrative concerns.” *Id.*

13 “Dismissal for failure to state a claim is proper only if it is clear that no relief
14 could be granted under any set of facts that could be proved consistent with the
15 allegations.” *Argabright v. United States*, 35 F.3d 472, 474 (9th Cir. 1994) (cleaned up)
16 (superseded by statute on other grounds in *Hinck v. U.S.*, 550 U.S. 501 (2007)). Here,
17 Defendants do not dispute the truth of Mr. Shelton’s allegations or make any argument
18 that his speech reasonably threatened their legitimate administrative interests.

19 Conversely, the FAC alleges that Mr. Shelton’s speech did not interfere with the
20 performance of his duties as a Mark Keppel educator. FAC ¶ 56. Plaintiff’s
21 participation in the school board meeting also did not disrupt any education activities at
22 his school. *Id.* at ¶ 57. At this stage in the proceedings, Defendants are precluded from
23 introducing evidence that Mr. Shelton’s speech interfered with the performance of his
24 work duties, let alone whether they were “sufficiently disruptive to justify [Defendants’
25 retaliatory conduct] despite the protected content of the speech.” *Hyland*, 972 F.2d at
26 1140. “Because the Court must assume the truth of Plaintiff’s allegations, and
27 Defendants do not dispute them, the Court [must find] Defendants fail to satisfy their
28

1 burden to establish Plaintiff's speech reasonably threatened their legitimate
2 administrative interests.” *Riel*, 2014 WL 12694159, at *7 (cleaned up).

3 **F. The FAC Sufficiently States a Municipal Liability Claim**

4 “In this circuit, a claim of municipal liability under section 1983 is sufficient to
5 withstand a motion to dismiss even if the claim is based on nothing more than a bare
6 allegation that the individual [officials’] conduct conformed to official policy, custom,
7 or practice.” *Lee v. City of Los Angeles*, 250 F.3d 668, 682–683 (9th Cir. 2001) (cleaned
8 up). The FAC alleges that “Defendants’ retaliatory conduct against Mr. Shelton
9 conformed to an official policy, custom, or practice.” FAC at ¶ 81. It also alleges that
10 Defendants’ conduct, as described above, was “intentional, deliberate, willful,
11 systematic, and conducted in callous disregard of the federally protected rights of
12 Plaintiff.” *Id.* at ¶ 89. The FAC further describes that it was GUSD’s official policy,
13 custom, or practice to retaliate “against individuals and families who opposed the Sex-
14 Change Policies.” *Id.* at ¶ 78. These allegations are sufficient to show “that the policies
15 were the moving force behind the constitutional violation.” *Lee*, 250 F.3d at 682–683
16 (internal quotation marks omitted).

17 Further, “discriminatory enforcement of a speech restriction amount[s] to
18 viewpoint discrimination in violation of the First Amendment.” *Menotti v. City of*
19 *Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005). To prevail in a viewpoint discrimination
20 claim, a plaintiff must establish that the government took action against him “because
21 of not merely in spite of” his message. *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 970 (9th
22 Cir. 2009). A plaintiff can demonstrate an intentionally discriminatory government
23 action by contrasting how the government enforced its speech policies against him
24 versus those whose message it supports. See *Hoye v. City of Oakland*, 653 F.3d 835,
25 855 (9th Cir. 2011). Here, because Defendants punished those who spoke out against its
26 Sex-Change Policies and rewarded those who supported them, there is a contrast in
27 enforcement that amounts to viewpoint discrimination. FAC at ¶ 78.

1 Finally, as to Ekchian and the Board Member Defendants, “[i]f the authorized
2 policymakers retain the authority to measure the official's conduct for conformance
3 with *their* policies, or if they approve a subordinate's decision and the basis for it, their
4 ratification would be chargeable to the municipality because their decision is final.”
5 *Bouman v. Block*, 940 F.2d 1211, 1231 (9th Cir. 1991) (cleaned up). As discussed,
6 above, Ekchian and the Board Members retained this authority and ratified the
7 retaliation against Mr. Shelton. Thus, the FAC sufficiently alleges a claim for municipal
8 liability.

9 **G. Defendants’ Conspiracy is Adequately Detailed in the FAC**

10 To state a conspiracy claim under § 1983, a plaintiff must “demonstrate the
11 existence of an agreement or meeting of the minds to violate constitutional rights.”
12 *Crowe v. Cnty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010) (internal quotation
13 marks omitted). “Such an agreement need not be overt, and may be inferred on the basis
14 of circumstantial evidence such as the actions of the defendants.” *Id.* “A plaintiff may
15 allege a § 1983 claim based on a conspiracy to deprive him of his constitutional rights
16 so long as there has been an actual constitutional deprivation.” *Minster*, 2001 WL
17 1112684, at *4. “Under a § 1983 conspiracy theory, liability may be imposed on all
18 participants in the conspiracy without regard to who committed the particular act.” *Id.*
19 (internal quotation marks omitted).

20 Here, Plaintiff has demonstrated the existence of a constitutional violation. He
21 has also demonstrated an overt conspiracy, specifically with regard to his forced leave
22 and investigation as well as the derogatory email that served as a threat to chill his
23 speech and that of others who dared to speak out against GUSD’s Sex-Change Policies.
24 Even without these overt acts, the conspiracy can be inferred from the evidence
25 surrounding the immediate punitive actions taken against Mr. Shelton by Defendants
26 the day after he spoke out at the school board meeting and everything that followed. See
27 *Crowe*, 608 F.3d at 440. Thus, the FAC states a claim for relief on the conspiracy cause
28 of action.

1 **H. Defendants are Not Entitled to Qualified Immunity Because Mr. Shelton’s**
2 **Right to Oppose District Policies Is Clearly Established**

3 In assessing a qualified immunity defense's viability in a suit under § 1983, the
4 Court must “follow[] the familiar two-step framework...asking first whether the
5 [government official's] conduct violated a federal right and, second, whether the right
6 was clearly established at the time.” *Beck v. City of Upland*, 527 F.3d 853, 861 (9th Cir.
7 2008) (cleaned up). “This second tier of analysis is meant to consider the unique context
8 of the particular case and law, that is whether it would be clear to a reasonable [official]
9 that his conduct was unlawful in the situation he confronted.” *Potera–Haskins v.*
10 *Gamble*, 519 F.Supp.2d 1110, 1116 (D. Mont. 2007) (cleaned up).

11 Defendants claim that the FAC’s “vagueness precludes assessing whether
12 Shelton’s words or images were reasonably viewed as ‘hate speech,’ or offensive to
13 others who attended the School Board meeting.” Mot. at 17. But that is not the standard
14 under which qualified immunity is evaluated. “That controversial political speech
15 cannot be quelled because others may find the speech objectionable is clearly
16 established.” *Dodge*, 56 F.4th at 787.

17 Since *Pickering*, existing precedent “clearly establish[es] that disagreement with
18 a disfavored political stance or controversial viewpoint, by itself, is not a valid reason to
19 curtail expression of that viewpoint at a public school.” *Id.* at 786. Whether others at the
20 school board meeting considered Mr. Shelton’s defense of biological reality “hate
21 speech” or were offended by it is a red herring and completely irrelevant. Here, again,
22 *Dodge* is directly on point. The defendants in *Dodge* also argued that the plaintiff’s
23 protected speech offended others who disagreed with it and they were entitled to
24 qualified immunity because they punished plaintiff based on that “disruption.” The
25 Ninth Circuit found that qualified immunity did not apply when the claim of disruption
26 was only based on disagreement with the speech itself. See *id.* (“[m]oreover, these cases
27 each considered restrictions on disfavored or unpopular speech in the name of
28 preventing disruption, when the only disruption was the effect controversial speech has
on those who disagree with it *because they disagree with it.*”) (emphasis in original);

1 *see also, Settlegoode*, 371 F.3d at 515-516 (while co-workers testified that they were
2 “hurt,” “upset,” “furious,” and “outraged” by a teacher’s letters to administrators, the
3 defendants presented no evidence of “actual injury to the department.”).

4 The FAC alleges that Mr. Shelton’s speech did not disrupt his teaching duties or
5 the operations of the school itself. Indeed, there is no way it could have. Mr. Shelton’s
6 speech was given at a public meeting, outside of school hours, and was not part of Mr.
7 Shelton’s official teaching duties. The question of whether people at the meeting were
8 offended has no bearing here. But, regardless, there is no evidence before the Court that
9 anyone was even offended or objected to the speech. So the entire point is moot.

10 Thus,

11 [a]pplying these principles, we ask whether it is patently unreasonable
12 for a school official to believe that [government officials] could
13 lawfully threaten a subordinate's employment because [they disagreed
14 with his political messaging]. This case presents one of the rare
15 occasions where the *Pickering* balancing test so clearly cuts in
16 [plaintiff’s] favor that the violation of his First Amendment rights was
17 clearly established. In other words, it was patently unreasonable for
18 [Defendants] to believe that [they] could restrict [Plaintiff’s] speech to
19 quell what was, in reality, nothing more than the natural effect that
20 disfavored political speech often has on those with different
21 viewpoints.

22 *Dodge*, 56 F.4th at 784

23 Defendants are, therefore, not entitled to qualified immunity here.

24 **I. The FAC Gives Defendants More Than Enough Detail to Formulate a**
25 **Response**

26 Defendants’ motion for a more definite statement fails because it is not aimed to
27 resolve alleged ambiguities in the FAC. Instead, it seeks to circumvent the Federal
28 Rules of Civil Procedure by improperly using Rule 12(e) as a discovery tool or a
premature motion for summary judgment.

1 Federal Rule of Civil Procedure 12(e) is designed to strike at
2 unintelligibility, rather than want of detail. The rule permits a party to
3 move for a more definite statement when a pleading is so vague or
4 ambiguous that the party cannot reasonably prepare a response. Such
5 a motion must be considered in light of the liberal pleading standards
6 set forth in Rule 8(a)(2). *It is not the function of a Rule 12(e) motion*
to enable the defendants to ascertain details of the plaintiff's case or
to require the plaintiff to provide evidentiary material that may
properly be obtained by discovery.

7 *Pamer v. Schwarzenegger*, No. 07-1902-MCE, 2010 WL 785851, at *1 (E.D. Cal.
8 2010) (emphasis added).

9 Here, Defendants are essentially using this motion as a tool to obtain all the
10 benefits of discovery without the reciprocal obligations and asking the Court to
11 impermissibly weigh evidence at the dismissal stage. As the motion itself demonstrates,
12 Defendants are seeking information that is either exclusively in their possession or
13 requires a level of detail far beyond the requirements of Rule 8(a)(2). For instance,
14 Defendants require a transcript of Mr. Shelton's speech, which they themselves
15 witnessed; the email that Defendant Tonoli herself sent; and exact details of how they
16 conspired *with each other* to punish Mr. Shelton for his constitutionally protected
17 speech. Mot. at 31-32.

18 "[A] motion for more definite statement is proper only where the complaint is so
19 vague or ambiguous that the opposing party cannot respond even with a simple denial."
20 *Id.* at *2. That is not the case here. Defendants artfully gloss over the fact that all the
21 details they request are within their possession or knowledge. The FAC alleges that
22 Defendants, at least the Board Members, were present at the board meeting where Mr.
23 Shelton made his speech. They also drafted and published the email that they complain
24 was not attached to the FAC. Further, all the actions they took against Mr. Shelton were
25 in direct response to his speech and their retaliation confirms their knowledge of its
26 contents. Otherwise, it would be absurd for them to accuse him of "hate speech" or to
27 continue the investigation against him. Further, they spend six whole pages of their
28 motion describing the factual—not legal or conclusory—allegations of the FAC. Thus,

1 this motion is not actually a proper motion under Rule 12(e). It is simply a poorly
2 disguised attempt to prematurely, and unilaterally, obtain evidentiary information
3 without the concurrent obligations of discovery.

4 **J. Leave to Amend Should be Liberally Granted**

5 Defendants' motion to dismiss is improper because they cannot show "beyond
6 doubt" that Plaintiff "can prove no set of facts...which would entitle him to relief."
7 *Vasquez v. L.A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007). Accepting all of Plaintiff's
8 allegations of fact as true and construing the complaint in the light most favorable to
9 Plaintiff, he has more than adequately established a case of First Amendment retaliation
10 against Defendants. *Id.*

11 However, if the Court finds that any of Plaintiff's allegations are insufficient, Mr.
12 Shelton should be granted leave to amend to cure any defect. Under Federal Rule of
13 Civil Procedure 15(a)(2), the Court is to freely grant leave "when justice so requires."
14 Fed. R. Civ. P. 15(a)(2). "Dismissal without leave to amend is improper unless it is
15 clear, upon de novo review, that the complaint could not be saved by any amendment."
16 *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir.
17 2004); *see also, McAfee v. Francis*, No. 11-00821-LHK, 2011 WL 3293759, at *3
18 (N.D. Cal. 2011) (granting leave to amend after plaintiff failed to oppose motion to
19 dismiss where the court determined the complaint could be cured by amendment). Here,
20 given that the Court has not previously ruled on the sufficiency of the allegations,
21 Plaintiff should be afforded an opportunity to correct any deficiencies, should the Court
22 find any.

23 **IV. CONCLUSION**

24 Based on the foregoing, Plaintiff respectfully requests that the Court deny
25 Defendants' motions to dismiss and for a more definite statement in their entirety. If
26 the Court dismisses any claim, Plaintiff requests the opportunity to amend to cure the
27 deficiency.

THE PIVTORAK LAW FIRM

Dated: May 14, 2024

By: /s/ David Pivtorak
David Pivtorak
Attorneys for Plaintiff
RAY SHELTON

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Certificate of Compliance

The undersigned, counsel of record for Plaintiff, Ray Shelton, certifies that this brief contains 7,942 words, which complies with the word limit of L.R. 11-6.1.

THE PIVTORAK LAW FIRM

Dated: May 14, 2024

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