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11 BRET HARTE UNION HIGH SCHOOL DISTRICT

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 BRET HARTE UNION HIGH SCHOOL
15 DISTRICT, a political subdivision of the
16 state of California,

17 Plaintiff

18 v.

19 FIELDTURF USA, INC., a Florida
20 corporation; FIELDTURF, INC., a
21 Canadian corporation; and FIELDTURF
22 TARKETT SAS, a French corporation

23 Defendants.

CASE NO.:

**COMPLAINT FOR BREACH OF
CONTRACT, FRAUD, NEGLIGENT
MISREPRESENTATION, AND
RECOVERY UNDER CALIFORNIA
UNFAIR COMPETITION AND
FALSE CLAIMS ACTS**

[Jury Demand Included]

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JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 USC § 1332 in that there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000.

VENUE

2. The contract and actions at issue were performed in Calaveras County, California. Venue, therefore, lies in the United States District Court for the Eastern District of California pursuant to 28 USC § 1391, and in the Fresno Courthouse pursuant to L.R. 120.

PARTIES

3. Plaintiff, BRET HARTE UNION HIGH SCHOOL DISTRICT (“DISTRICT”) is a public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California and is, thus, a political subdivision of the state of California. The DISTRICT currently operates three public secondary high schools which serve the citizens of Calaveras County, California.
4. Defendant, FIELDTURF USA, INC. (“FUSA”), is a Florida corporation with its principal place of business in Canada, doing business in California. FUSA installed the artificial turf fields which are the subject matter of this action, and may have also manufactured them.
5. Defendant, FIELDTURF, INC. (“FTI”), is a Canadian corporation, which is, upon information and belief, a sister corporation of FUSA. FTI may have manufactured the artificial turf fields which are the subject matter of this action.

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6. Defendant, FIELDTURF TARKETT SAS (“FTS”), is a French corporation, which is, upon information and belief, the parent corporation of both FUSA and FTI and is, thus, responsible for the actions of each of them. FTS may have also manufactured the artificial turf fields which are the subject matter of this action.
7. FUSA, FTI and FTS are collectively referred to herein as “FIELDTURF.” FIELDTURF manufactures and installs artificial turf fields and, at all times relevant hereto, claimed that it had completed more the 2500 such installations throughout the world.
8. FIELDTURF does not manufacture the fibers from which it manufactures its fields. At all times relevant hereto, FIELDTURF exclusively obtained such fibers from a foreign company known as TenCate Thiolon (“TenCate”) whose manufacturing facilities are located in the Middle East.

STATEMENT OF FACTS

9. As part of its Measure K bond program passed by the DISTRICT’s voters in 2008, the DISTRICT’s Board of Education began to investigate the possibility of installing a synthetic turf athletic field at the DISTRICT’s campus at Bret Harte High School.
10. In furtherance of the investigation, the Board directed DISTRICT staff to study the various artificial turf products available on the market and the suppliers of those products, one of which was FIELDTURF.

FIELDTURF’s Representations and Warranties

11. FIELDTURF’s marketing materials touted its products by stating that they were made from a patented monofilament fiber available only to FIELDTURF, which it marketed under the trade name of “Fieldturf Duraspine,” among others.

1 FIELDTURF represented that, because of the use of the Fieldturf Duraspine
2 fiber, its fields were more durable and had a longer product life than those of its
3 competitors. Among the representations that FIELDTURF made in its marketing
4 materials were that:

- 5 • purchasers would be able to “amortize the life of [a FIELDTURF] field on
6 a 10+ year basis;”
- 7 • “although FieldTurf sometimes cost more to install, it is actually cheaper
8 over the long term. Sometimes almost \$1,000,000 cheaper!”
- 9 • FIELDTURF fields have a “Turf Life [of] 8-10 years;”
- 10 • Duraspine “provides the industry’s strongest wear resistance and superior
11 pile recovery. It’s the most durable fiber...;”
- 12 • “FieldTurf has proven to be the most durable system in the world;”
- 13 • “All of FieldTurf’s components are made from the highest quality
14 materials;”
- 15 • Duraspine is “renowned for its durability and resistance to matting;”
- 16 • “FieldTurf has proven to be the most durable and longest-lasting synthetic
17 turf system in the marketplace;”
- 18 • “FieldTurf may be priced slightly higher but it costs significantly less;”
19 and
- 20 • FieldTurf installs “10 pounds of infill per square foot [of field] (7 pounds
21 of silica sand plus 3 pounds of cryogenic rubber) [which is] vital to safety,
22 durability and longevity.”

23 12.FIELDTURF buttressed its representations concerning the durability and quality
24 of its Duraspine fields by extending an eight-year manufacturer’s warranty to the
25 DISTRICT, touting that it could do so because FIELDTURF “inspect[ed] all
26 aspects of the product from fiber to finishing.”

27 13. In reliance upon the foregoing and other representations FIELDTURF had made
28 concerning its fields, in or about August 2009, the DISTRICT entered into a

1 written contract with FUSA through the California Multiple Award Schedule
2 system (the “Contract”) whereby FUSA agreed to furnish and install an artificial
3 turf, dual use football/soccer field at Bret Harte High School in exchange for a
4 total payment by the DISTRICT of \$592,113.48. A copy of the Contract is
5 attached hereto as Exhibit "A" and incorporated herein by this reference.

6 14. Under the Contract, FUSA agreed to furnish and install an artificial turf field to
7 the DISTRICT made of the Fieldturf Duraspine monofilament fibers which
8 FIELDTURF had described at length in its marketing materials. Specifically, the
9 Contract provides in relevant part:

10
11 FieldTurf wishes to contract to sell, supply, and install an artificial in-filled
12 playing surface identified as FTOM-2S 2 inches thick outdoor artificial
13 grass in-filled playing surface as well as Brock underlayment for use as a
14 football and soccer field measuring approximately 88,900 square feet (the
15 “Product”) to be installed on a suitable existing base at the Site, consistent
16 with CMAS program requirements (*id.* at Recitals);

16 FieldTurf shall provide the District with the following items (“Product(s)”) and services pursuant to this Agreement:

- 17 • FTOM-2S 2 inches thick outdoor artificial grass in-filled
18 playing surface as well as Brock underlayment for use as a football and
19 soccer field measuring approximately 89,410 square feet;
- 20 • Inlaid soccer and football lines;
- 21 • SweepRight maintenance equipment.

21 FieldTurf shall deliver all Products, labor, and materials... (*id.* at para. 4)

22 Equipment and Labor. FieldTurf shall furnish all tools, equipment,
23 apparatus, facilities, transportation, labor, and material necessary to furnish
24 the services herein described, the services to be performed at such times
25 and places as directed by and subject to the approval of the authorized
26 District representative indicated in the Work specifications attached hereto.
27 (*id.* at para. 10)

28 15. FUSA completed installation of the field in or about October 2009 and, at that
time, provided the DISTRICT with an eight-year warranty, again, leading the

1 DISTRICT to believe that the field at issue would last at least eight years. A true
2 and correct copy of the warranty is attached hereto as Exhibit "B" and
3 incorporated herein by this reference.

4 16. In addition to the eight-year warranty described in FIELDTURF's marketing
5 materials and provided to the DISTRICT, FUSA also warranted and represented
6 in the Contract, that, among other things, the field it installed is "free from all
7 defects in materials and workmanship" and "free from defects in design."

8 17. The representations and warranties which FIELDTURF and FUSA made in the
9 marketing materials and the Contract were false and FIELDTURF and FUSA
10 knew they were false, or at the very least, FIELDTURF and FUSA recklessly
11 disregarded the possibility of their falsehood at the time FUSA entered into the
12 Contract with the DISTRICT.

FIELDTURF's Lawsuit Against TenCate

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16 18. On March 1, 2011, only seventeen months after it finished installing the field
17 under the Contract, FIELDTURF commenced an action against TenCate in the
18 United States District Court for the Northern District of Georgia bearing case no.
19 4:11-CV-50-TWT (the "TenCate Action"). In its complaint in the TenCate
20 Action, FIELDTURF alleged that from 2005 through March 2011, TenCate was
21 FIELDTURF's exclusive supplier of the monofilament fabric which
22 FIELDTURF marketed under the name of Fieldturf Duraspine, among others.
23 FIELDTURF further alleged, *inter alia*, that prior to 2007, TenCate changed both
24 the formula and the process by which it made the Fieldturf Duraspine fiber,
25 rendering the fiber "less durable," thereby "increasing the likelihood of
26 premature fiber degradation under certain conditions" and further, manufactured
27 the fiber without an "adequate amount of ultraviolet stabilizers required to
28

1 prevent loss of tensile strength,” thus exacerbating the fiber’s “premature
2 disintegration during the warranty period.”

3 19. FIELDTURF’s complaint in the TenCate action alleges that during 2009, which,
4 importantly, was at or prior to the time that it entered into the Contract with the
5 DISTRICT:

6 a. FIELDTURF “received complaints from a significant number of customers
7 in North America who had purchased...Duraspine fields. Some customers
8 reported that the fibers on their fields were splitting and shedding during
9 routine use (e.g., covering player uniforms during sports games and
10 practices). Other customers reported excessive thinning and fading of the
11 fibers – especially along white and yellow lines, logos and other field areas
12 composed of colored yarn. Still other customers reported that large areas of
13 their fields in all colors had degraded dramatically.”

14 b. “In many instances, customers complained that fiber in one tufted row of a
15 field was failing, while fiber of the same color in an immediately adjacent
16 tufted row was not failing. The existence of variable degradation rates in
17 fiber exposed to the same environmental and wear conditions suggested, at
18 a minimum, that the [TenCate] was not performing in a uniform manner.
19 Upon information and belief, such a marked variability in performance
20 means that TenCate had quality control issues in their extrusion processes
21 that resulted in alterations to what should have been chemically
22 indistinguishable fibers.”

23 c. FIELDTURF representatives including Howard McNeil (Senior Vice
24 President of Operations) and Brian Waters (Director of Logistics and
25 Purchasing) reported customer complaints to TenCate.

26 20. In reality, FIELDTURF began receiving customer complaints about Duraspine
27 fields failing and commenced its own investigation into the defects in the
28 Duraspine fibers as early as 2006.

1 21. Incredibly, during the trial of the TenCate Action, Eric Dalieri, FIELDTURF's
2 CEO, testified under oath that in a four-year period, FIELDTURF spent \$7.9
3 million to "investigate and pursue its claims [against TenCate]." Dalieri also
4 testified that at the very same time that FIELDTURF filed the lawsuit against
5 TenCate, it (1) considered the Duraspine fiber to be defective; (2) was,
6 nevertheless, in the process of installing 41 new fields made with the defective
7 fibers without telling its customers their fields would likely fail prematurely; (3)
8 was replacing the defective fields that did fail with the same defective material,
9 and (4) continued to make a profit on the defective fields at the expense of their
10 unknowing customers. Excerpts from the transcript of Mr. Dalieri's testimony
11 are attached hereto as Exhibit "C" and incorporated herein by this reference
12 ("Evolution" is TenCate's trade name for FIELDTURF's "Duraspine").

13 22. FIELDTURF did not disclose any of the foregoing to the DISTRICT prior to, at,
14 or after the time the DISTRICT entered into the Contract with it.

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16 **The Field Installed by FUSA Under the Contract Failed Prematurely**

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18 23. The allegations which FIELDTURF made in the TenCate Action in effect
19 predicted what would happen to the field installed by FUSA under the Contract.

20 24. In or about 2014, the DISTRICT noticed that the field installed by FUSA
21 pursuant to the Contract was failing. The types of failures experienced at the field
22 included breaking, splitting and thinning of the individual fibers characterized by
23 fibrillation, fiber breakage and pile layover, just as FIELDTURF admitted was
24 occurring in its complaint in the TenCate Action.

25
26 **FIELDTURF Fails to Honor Its Warranties and Representations**

27 25. When the DISTRICT reported the failures with the field and made a warranty
28 claim to FIELDTURF, FIELDTURF refused to replace the field with a non-

1 defective product that complied with the promises and representations made by
2 FIELDTURF at no cost to the DISTRICT, instead doing nothing more than
3 attempting to extract more money from the DISTRICT by suggesting that it pay
4 FIELDTURF for a maintenance program even though the field had already
5 failed.

6 26. As of the filing of this complaint, and despite demand therefor having been
7 made, FIELDTURF has failed and refused to replace the field with one that
8 complies with its original warranty and representations. The DISTRICT now
9 brings this action to seek relief from the actions and inactions of FIELDTURF.

10
11 **FIRST CLAIM**

12 (Breach of Contract)

13 27. The DISTRICT incorporates all of the preceding allegations of this complaint as
14 if fully set forth herein.

15 28. The DISTRICT has performed all of its obligations under the Contract, except
16 those waived, excused or prevented by the actions or inactions of FIELDTURF.

17 29. FIELDTURF and FUSA have breached the Contract by, *inter alia*, furnishing
18 and installing a field which did not conform to the representations and warranties
19 made by FIELDTURF and FUSA, and by failing to replace the defective field
20 with a field which did conform to such warranties and representations at no cost
21 to the DISTRICT.

22 30. In every contract there is implied the covenant of good faith and fair dealing
23 whereby the parties agree that neither will do anything that will injure the right of
24 the other to receive the benefits of the agreement.

25 31. FIELDTURF and FUSA, at all times relevant herein, had a duty to act fairly and
26 in good faith with respect to the DISTRICT.

27 32. As fully described hereinabove, FIELDTURF and FUSA breached their
28 obligation to act fairly and in good faith toward the DISTRICT.

1 33.As a result of the numerous Contract breaches by FIELDTURF and FUSA,
2 including, but not limited to, those set forth in paragraph 28 hereof and the breach
3 of the implied covenant of good faith and fair dealing, DISTRICT has suffered
4 damages in an exact amount yet to be determined, but which are currently
5 estimated to be \$592,113.48, plus interest thereon at the statutory rate from and
6 after October 1, 2009 (the approximate date of payment by the District), and
7 attorneys' fees, expenses and costs, as provided by the Contract, which states at
8 Paragraph 19:

9 In the event that any action is brought to enforce this Agreement, the
10 prevailing party shall be entitled to reasonable attorneys' fees, expenses
11 and costs in addition to all other relief to which that party may be entitled.

12 34.The DISTRICT was forced to retain the services of legal counsel to pursue this
13 action against FIELDTURF and FUSA. DISTRICT retained the services of
14 Lindborg & Mazor LLP and is entitled to recover its reasonable attorneys' fees,
15 expenses and costs herein.

16 **SECOND CLAIM**

17 (Fraud)

18 35. The DISTRICT incorporates all of the preceding allegations of this complaint as
19 if fully set forth herein.

20 36.At the times and in the manners set forth in this complaint, FIELDTURF and
21 FUSA made the representations set forth in paragraphs 11, 12 and 15 hereof to
22 the DISTRICT.

23 37.Those representations were, in fact, false. The true facts were as alleged by
24 FIELDTURF in its complaint in the TenCate Action (except that the customer
25 complaints and FieldTurf's own investigation date back to as early as 2006) and
26 as testified to by FIELDTURF's CEO, Eric Daliere during the trial thereof.

27 38.In addition to the foregoing, FIELDTURF and FUSA failed to reveal and
28 intentionally suppressed the facts set forth in paragraphs 16-21 hereof. The

1 suppression of these facts was likely to mislead the DISTRICT and did, in fact,
2 mislead the DISTRICT in light of the other representations made by
3 FIELDTURF and FUSA concerning their product.

4 39. When FIELDTURF and FUSA made the representations and withheld the
5 information set forth above, they knew such representations to be false or made
6 them with reckless disregard for their falsity, and with the intention that the
7 DISTRICT rely upon them, or with the expectation that the DISTRICT would act
8 in the manner it did.

9 40. The DISTRICT, at the time these representations were made by FIELDTURF
10 and FUSA, and at the time the DISTRICT entered into and performed the
11 Contract with FUSA, was ignorant of the falsity of the representations and
12 believed them to be true. In justifiable reliance on these representations, the
13 DISTRICT paid FUSA the sum of \$592,113.48. Had the DISTRICT known the
14 actual facts, it would not have taken such action.

15 41. As a proximate result of the misrepresentations and suppressions of fact by
16 FIELDTURF and FUSA, the DISTRICT has been damaged in an exact amount
17 yet to be determined, but which damages are currently estimated to be in the sum
18 of \$592,113.48, plus interest thereon at the statutory rate.

19 42. The aforementioned conduct of FIELDTURF and FUSA was an intentional
20 misrepresentation, deceit, or concealment of a material fact known to them with
21 the intention on their part of depriving the DISTRICT of property or legal rights
22 or otherwise causing injury, and was despicable conduct that subjected the
23 DISTRICT to a cruel and unjust hardship in conscious disregard of the
24 DISTRICT's rights, so as to justify an award of exemplary and punitive damages.

25 **THIRD CLAIM**

26 (Negligent Misrepresentation)

27 43. The DISTRICT incorporates all of the preceding allegations of this complaint as
28 if fully set forth herein.

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44. FIELDTURF and FUSA, and each of them, made affirmative misrepresentations and false promises to the DISTRICT and suppressed key facts from the DISTRICT relative to the field which FIELDTURF and FUSA provided to the DISTRICT under the Contract.

45. When FIELDTURF and FUSA made the misrepresentations and false promises, including but not limited to those set forth in paragraphs 11, 12 and 15 hereof, they had no reasonable grounds for believing them to be true in light of their knowledge of the true facts as set forth in paragraphs 16-21 hereof.

46. When FIELDTURF and FUSA made the misrepresentations and false promises, and withheld the information set forth above, they did so with the intention that the DISTRICT rely upon them, or with the expectation that the DISTRICT would act in the manner it did.

47. FIELDTURF's and FUSA's affirmative misrepresentations, false promises and suppressions were of material facts, essential to the DISTRICT's decision to enter into the Contract. Had the truth been disclosed to the DISTRICT at the contracting stage, the DISTRICT would not have entered into the Contract with FIELDTURF and FUSA, and each of them.

48. The DISTRICT justifiably and actually relied on the affirmative misrepresentations and false promises made to it by FIELDTURF and FUSA and did, in fact, alter its position and entered into the Contract with FUSA.

49. As a proximate result of the affirmative misrepresentations, false promises and suppressions of fact by FIELDTURF and FUSA, the DISTRICT has been damaged in an exact amount yet to be determined, but which damages are currently estimated to be in the sum of \$592,113.48, plus interest thereon at the statutory rate.

FOURTH CLAIM

(Unfair Competition)

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3 50. The DISTRICT incorporates all of the preceding allegations of this complaint as
4 if fully set forth herein.

5 51. Under California Business and Professions Code § 17200 et seq., a
6 business may not engage in any “Unfair Competition” including, but not limited
7 to any unlawful, unfair or fraudulent business act or practice.

8 52. FIELDTURF and FUSA operate a business to which section 17200
9 applies. As such, FIELDTURF and FUSA owe all of customers a duty not to
10 engage in conduct prohibited by law.

11 53. FIELDTURF and FUSA breached their duties to their customers, and their
12 actions and inactions, as alleged herein above, constitute acts of unfair
13 competition within the meaning of California Business and Professions Code
14 Section 17203. The DISTRICT is informed and believes that FIELDTURF and
15 FUSA have responded to similar customer complaints and warranty claims from
16 their other customers in a similar or worse fashion and that FIELDTURF and
17 FUSA will continue to do those acts unless the Court orders them to cease and
18 desist.

19 54. FIELDTURF and FUSA have failed and refused to accede to the DISTRICT's
20 request for restitution of the sums paid it by the DISTRICT and the DISTRICT is
21 informed and believes and thereon alleges that FIELDTURF and FUSA have
22 likewise refused, and in the future will refuse, to accede to others' requests for
23 refunds.

24 55. The DISTRICT is without an adequate remedy at law; and accordingly, is
25 entitled to permanent injunctive relief and restitution of all sums paid under the
26 Contracts, plus interest at the statutory rate.

27 56. The DISTRICT has incurred and, during the pendency of this action, will incur
28 expenses for attorney's fees, expenses and costs herein. Such attorney's fees and

1 costs are necessary for the prosecution of this action and will result in a benefit to
2 the public.

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4 **FIFTH CLAIM**

5 (False Claims Act)

6 57. The DISTRICT incorporates all of the preceding allegations of this complaint as
7 if fully set forth herein.

8 58. The DISTRICT is its own prosecuting authority under Government Code §
9 12652(b).

10 59. Each and every invoice submitted by FUSA under the Contract constitutes a false
11 claim within the meaning of the California False Claims Act, California
12 Government Code, §§ 12650, *et seq.*

13 60. Specifically, FUSA knew the field at issue did not conform to the warranties and
14 representations made in FIELDTURF's advertising materials and in the Contract
15 when FUSA submitted the invoices under the Contract, and/or FUSA and
16 FIELDTURF were the beneficiaries of inadvertent false claims at the time such
17 invoices were submitted, and when FUSA and FIELDTURF discovered the
18 falsity of the claims as set forth in the complaint in the TenCate Action, FUSA
19 and FIELDTURF failed to inform the DISTRICT thereof within a reasonable
20 period of time, all in violation of California Government Code, § 12651, thus
21 entitling the District to damages in the amount of three times the sums paid on
22 the invoices submitted under the Contract, plus civil penalties in the amount of
23 \$10,000 per invoice, and costs of this action.

PRAYER FOR RELIEF

Wherefore, the DISTRICT prays for judgment as follows:

On the First Claim for Relief:

1. Damages in an amount to be proven at trial, but which are currently estimated to be at least \$592,113.48, plus interest thereon at the statutory rate from and after the date of payment by the DISTRICT;
2. Reasonable attorneys' fees;
3. Costs of suit; and
4. Such other relief as the Court deems proper.

On the Second Claim for Relief:

1. Damages in an amount to be proven at trial, but which are currently estimated to be at least \$592,113.48, plus interest thereon at the statutory rate from and after the date of payment by the DISTRICT;
2. For an award of punitive and exemplary damages sufficient to punish defendants and deter similar future conduct by others;
3. Costs of suit; and
4. Such other relief as the Court deems proper.

On the Third Claim for Relief:

1. Damages in an amount to be proven at trial, but which are currently estimated to be at least \$592,113.48, plus interest thereon at the statutory rate from and after the date of payment by the DISTRICT;
2. Costs of suit; and
3. Such other relief as the Court deems proper.

1 On the Fourth Claim for Relief:

- 2 1. Restitution of all sums paid under the Contracts in the sum of \$592,113.48, plus
3 interest thereon at the statutory rate from and after the date of payment by the
4 DISTRICT;
- 5 2. For an order permanently enjoining Defendants from responding to a warranty
6 claim made with respect to any field installed prior to July 1, 2011 in any other
7 manner other than a full replacement of that field at no cost to the customer;
- 8 3. Attorneys' fees and costs of suit; and
- 9 4. Such other relief as the Court deems proper.

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11 On the Fifth Claim for Relief:

- 12 1. For treble damages in the sum of \$1,776,340.44, plus interest thereon at the
13 statutory rate from and after the date of payment of the invoices by the
14 DISTRICT;
- 15 2. For civil penalties in the amount of \$10,000.00 per invoice for each invoice
16 submitted under the Contract;
- 17 3. Costs of suit; and
- 18 4. Such other relief as the Court deems proper.

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20 **JURY DEMAND**

21 The DISTRICT demands a trial by jury on the claims for relief in this Complaint.

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24 Dated: March 16, 2016

LINDBORG & MAZOR LLP

25
26 By: /s/ Irina J. Mazor, Esq.
27 Peter F. Lindborg, Esq. and Irina J. Mazor, Esq.
28 Attorneys for Plaintiff, BRET HARTE UNION
HIGH SCHOOL DISTRICT