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MAY 20 2011

Initial: _____

5 Attorney for Claimant
6 [REDACTED], a minor, through her parents

7 SANTA CLARA COUNTY
8 SUPERIOR COURT

9 CLAIM OF [REDACTED], a minor, by and) GOVERNMENT TORT CLAIM
10 through her Parents, (Pursuant to Government
Code §905 et seq.),

11 Claimant,

12
13 v.

14 PALO ALTO UNIFIED SCHOOL DISTRICT
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16

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18 CLAIM

19 Plaintiff [REDACTED], a minor, is presently in 4th grade at [REDACTED] School in the
20 Palo Alto Unified School District (hereinafter PAUSD or "District"). She was recently assessed by
21 the District and found to be eligible for special education under the disability classification of Other
22 Health Impaired (OHI).

23 [REDACTED] transferred to [REDACTED] Elementary in April 2011. Prior to that she attended [REDACTED]
24 Elementary School, which is also in the District. [REDACTED] attended [REDACTED] from the beginning of 1st
25 grade in August 2007 through the date of her transfer to [REDACTED] in April 2011.

26 [REDACTED] presented in 1st grade with significant reading and learning deficits. She had made
27 only minimal progress in kindergarten and by the middle of 1st grade was reading at a level 3, over
28

1 13 levels below her grade level. Her math skills were behind grade level as she struggled with the
2 most basic concepts of addition and subtraction. With 1:1 assistance she was able to improve in her
3 deficit areas but entered 2nd grade still significantly behind in math, reading and writing.

4 The crux of this claim surrounds the District's actions in ██████ 2nd and 3rd grades. In 2nd
5 grade, ██████ teacher was ██████ ██████ identified ██████ learning deficits early
6 on and arranged for ██████ to work once each week with a math specialist ██████. Unfortunately,
7 the extra math resource was too little to provide much assistance for ██████ and she continued to
8 founder in math. However, although ██████ was still far behind her peers in math and writing skills,
9 her school work started to exhibit perfect scores, albeit with many eraser marks. However, when
10 ██████ parents would test her themselves with basic math equations, ██████ would not know the
11 answers despite apparently knowing the answers in the classroom. According to ██████ ██████
12 would simply give her the answers if she didn't know them herself. When this issue was discussed
13 with ██████, she feigned insult and refused any further discussion, stating that in her class
14 ██████ was doing fine in math and she was doing all the work herself.

15 In the spring of 2009, ██████ took the MARS test and purportedly received a score of 35 out
16 of 40. Other classroom math tests in the late spring (May 2009) showed scores of 48 and 49 out of
17 50, respectively. It appeared from these scores that ██████ had not only reached grade level in math,
18 but had become highly proficient. Her writing samples also showed great improvement when
19 compared to the end of 1st grade.

20 In 3rd grade, ██████ continued with ██████ and a math specialist and her school work
21 continued to show perfect scores. She took the MARS test again in the spring and appeared to do
22 very well. Again, her end of school year math quizzes and writing samples showed nearly perfect
23 scores.

24 It was not till 4th grade, and a new teacher ██████ that it was learned ██████
25 math, writing and reading skills were well below grade level after all. ██████ parents were told that
26 she was a "low achieving" child and that "we are in the tail end of being able to fix this." Basic math
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1 problems were foreign to [REDACTED] and she did not know the difference between a noun, verb and
2 adjective. Nor did she know basic capitalization, punctuation and simple page orientation.

3 In early December 2010, [REDACTED] parents requested an assessment by the District to
4 determine the basis for [REDACTED] learning disabilities. In a letter on December 13, 2010, the District
5 rejected that request, citing, in part, the MARS math testing of 2nd grade and other "data points"
6 from [REDACTED] past testing.

7 The District's response led [REDACTED] parents to review the MARS tests more carefully as it
8 was clear to them the MARS test results and their daughter's math skills were not in sync. Their
9 investigation of the 2nd grade MARS test uncovered the following: 1) every page had writing that
10 was not [REDACTED] 2) every page had many eraser marks where it is clear a previous answer was
11 erased and covered with the correct answer. The MARS test is very clear in its instructions that
12 during the administration of the test, the teacher can only read the problem to a student having
13 trouble decoding the words but cannot "provide any additional guidance or help." Teachers are also
14 instructed to say "it is important that you show all your work so do not erase any of your work."

15 A review of the end of year Classroom Timed Math tests showed similar corrections and
16 erasures and numbers that were not written by [REDACTED] Further, when given the same problems two
17 years later, when her math skills should have been two years further along, she could not solve a
18 great number of the problems she supposedly solved so perfectly in 2nd grade. Finally, when shown
19 the test and asked why there were so many erasures and numbers that were not hers, [REDACTED]
20 acknowledged that [REDACTED] helped her with the test and gave her the answers.

21 The same investigation and analysis was conducted regarding the MARS test and classroom
22 tests of 3rd grade and the identical findings and conclusions were drawn, namely, that [REDACTED] did not
23 take these tests by herself and that they were not accurate reflections of her skills and knowledge, as
24 is intended by the tests. Rather, it was and is apparent that the test scores were fraudulently
25 manufactured in order to provide the appearance that [REDACTED] was learning the material and did not
26 have a learning disability or need additional educational supports. As a result, [REDACTED] was not
27 assessed in 2nd nor 3rd grade and did not receive the supports she needed to meet or approach grade
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1 level standards. Despite some additional supports in 4th grade (provided privately by her parents)
2 and the recent assessments and IEP, [REDACTED] is still far behind her peers due to the actions of [REDACTED]
3 [REDACTED] and other District staff, if any, involved in the testing fraud of [REDACTED] 2nd and 3rd grade.
4 Moreover, a due process hearing pursuant to the IDEA will not fully compensate [REDACTED] for her
5 damages.

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7 VIOLATIONS

8 [REDACTED] and PAUSD violated [REDACTED] state, federal and civil rights when they
9 intentionally modified her test results to indicate [REDACTED] was learning educational material she was
10 not learning, for the purpose of avoiding the obligation to conduct assessments and provide
11 additional educational supports. Their actions over the course of two years severely damaged [REDACTED]
12 by stunting her educational growth and causing her severe emotional distress.

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14 DAMAGES

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16 1. Emotional distress damages in the amount of \$500,000;
17 2. Compensatory education in the amount of \$50,000;
18 3. A permanent injunction enjoining similar actions by [REDACTED] or other teachers within the
19 District;
20 4. Punitive damages; and
21 5. Attorney's fees.

22
23 DATED: May 13, 2011

TOLLNER LAW OFFICES

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26 By: 
27 DAVID H. TOLLNER, ESQ.
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