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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CHRISTOPHER CERBONE, an individual,	)	Case No.: CIVDS2014814
	)	
Plaintiff,	)	<i>[Assigned for all purposes to the Honorable</i>
	)	<i>Donald R. Alvarez, Department S23]</i>
vs.	)	
	)	PLAINTIFF'S FIRST AMENDED
EEC, f.k.a. EXCELSIOR EDUCATION	)	COMPLAINT FOR DAMAGES FOR:
CENTER, dba EXCELSIOR CHARTER	)	
SCHOOLS, a California corporation, MIKERI	)	1. RETALIATION IN VIOLATION OF
MALONEY, a.k.a. MICHAEL MALONEY, an	)	LABOR CODE § 1102.5;
individual, and DOES 1 to 100, inclusive,	)	2. WRONGFUL TERMINATION IN
	)	VIOLATION OF PUBLIC POLICY –
	)	WHISTLEBLOWING;
Defendants.	)	3. DEFAMATION;
	)	4. FALSE LIGHT;
	)	5. INTENTIONAL INTERFERENCE WITH
	)	CONTRACTUAL RELATIONS; AND
	)	6. CIVIL PENALTY PURSUANT TO
	)	LABOR CODE § 2698, et seq.
	)	DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Christopher Cerbone (“Plaintiff” or “Cerbone”), for causes of action against Defendant EEC, f.k.a. Excelsior Education Center, dba Excelsior Charter Schools, a California corporation (“Excelsior,” or “Employer Defendant”), Defendant Mikeri “Mike” Maloney, a.k.a. Michael Maloney (“Maloney”), and Does 1 to 100 (collectively with Employer Defendant, “Defendants”), alleging as follows:

PARTIES

1. Plaintiff Christopher Cerbone is, and at all times relevant was, an individual residing in San Bernardino County, California. From June 11, 2019 through his involuntary and wrongful termination on or about November 22, 2019, Plaintiff was employed by Employer Defendant as Director, Athletics of Employer Defendant’s Victorville high school campus, located at 18422 Bear Valley Road, Victorville, CA 92395.

2. Defendant Excelsior is, and at all times relevant was, a California nonprofit public benefit corporation that employed Plaintiff and other non-exempt employees throughout California, with corporate offices at 15505 Civic Drive, Victorville, CA 92392.

3. Defendant Mikeri “Mike” Maloney a.k.a. Michael Maloney is, and at all times relevant was, an individual residing in San Bernardino County whose sons attended Excelsior Charter School, Victorville campus and played for the football team.

4. Plaintiff currently is unaware of the true names of the Defendants sued herein as Does 1 through 100, inclusive. Plaintiff sues said Defendants by said fictitious names and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint. Plaintiff is informed and believes, and thereon alleges, that Does 1 through 100 are the partners, joint employers, agents, owners, shareholders, directors, members, officers, managers or employees of the Employer Defendant. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, each defendant was an employer, principal, agent, manager, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or

1 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
2 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all
3 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
4 complaint. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
5 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
6 each defendant did, knew or should have known about, authorized, ratified, adopted, approved,
7 controlled, or aided and abetted the conduct of all other Defendants, which proximately caused the
8 damages herein alleged. Plaintiff is informed and believes, and thereon alleges, that each of said
9 Defendants is in some manner intentionally, negligently, willfully or otherwise responsible for the
10 acts, omissions, occurrences, and transactions alleged herein.

11 5. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
12 and omissions alleged herein was performed by, or is attributable to, the Employer Defendant
13 and/or Does 1 through 100, each acting as the agent, employee, alter ego, and/or joint venturer of,
14 or working in concert with, each of the other co-Defendants and was acting within the course and
15 scope of such agency, employment, joint venture, or concerted activity with legal authority to act on
16 the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the
17 official policy and practice of the Employer Defendant.

18 6. Pursuant to the applicable Wage Order, the Employer Defendant and the business
19 entities sued as Does 1 through 100 ("Employer Defendants") were and are Plaintiff's employers
20 within the meaning of the Wage Order and applicable Labor Code sections. Under California law,
21 Employer Defendants are jointly and severally liable as employers, or other persons acting on
22 behalf of Employer Defendants, for violating, or causing to be violated, the violations alleged herein
23 because they have each exercised sufficient control over the terms, wages, hours, working
24 conditions, and employment of Plaintiff. Each Employer Defendant had the power to hire and fire
25 Plaintiff and other employees, supervise and control their work schedule and/or conditions of
26 employment, determine their rate of pay and/or control how, or if, Plaintiff and other employees
27 were paid for time worked. Employer Defendants suffered or permitted Plaintiff to work and/or
28 engaged Plaintiff and others so as to create a common law employment relationship. As joint

1 employers of Plaintiff, Employer Defendants are jointly and severally liable for the penalties and all
2 other relief available to Plaintiff as alleged herein.

3 **JURISDICTION AND VENUE**

4 7. Jurisdiction for this matter properly lies with this Court because the monetary
5 damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior
6 Court and will be established according to proof at trial. This Court also has jurisdiction over this
7 action pursuant to the California Constitution, Article VI, § 10.

8 8. This Court also has jurisdiction in this matter because during his employment,
9 Plaintiff was a California citizen, as were Employer Defendant and Maloney. Further, there is no
10 federal question at issue, as the issues herein are based solely on California statutes and law.

11 9. Venue is proper in this Court because Defendants employ persons, including
12 Cerbone, in this county, and thus a substantial portion of the transactions and occurrences related to
13 this action occurred in this county. Cal. Code Civ. Proc. § 395. Moreover, the principal violations of
14 California law occurred in California, and the conduct of Defendants which form the basis for
15 Plaintiff's claims occurred within or arose out of California and within this county.

16 **GENERAL ALLEGATIONS**

17 10. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 9, inclusive,
18 as if fully set forth herein.

19 11. Employer Defendant hired Mr. Cerbone to be its Site Director, Athletics of the
20 Victorville campus in June 2019 for the 2019-2020 school year, with an effective start date of
21 August 21, 2019 and an end date of June 26, 2020. Mr. Cerbone was tasked with bringing a failing
22 athletics department to prominence, particularly in football, a tall order considering the dominance
23 of other local non-charter schools. A former Division I football player and Certified Strength and
24 Conditioning Specialist, Mr. Cerbone also served as Defensive Coordinator of the football team
25 and, with the explicit endorsement of Principal Lindsey Lee, organized a strength training program
26 to teach coaches of all Excelsior sports teams how to properly instruct their athletes to use the
27 weight room equipment. In addition, as Site Administrator, Mr. Cerbone was responsible for
28 ensuring that fans at sporting events – including students, parents, visitors, and coaches – were safe

1 from abuse or from dangerous situations.

2 12. Prior to his hire, Mr. Cerbone had years of experience as a high school administrator,
3 including as an Assistant Principal, a Head of Discipline, Facilities, and Campus Safety, a Strength
4 and Conditioning Coach, and a Dean of Students. Employer Defendant induced Mr. Cerbone to
5 leave his home in San Diego County for Victorville when its Deputy Superintendent Dr. Ronnie
6 Henderson promised Mr. Cerbone in June 2019, before Mr. Cerbone accepted Excelsior's job offer
7 that required him to relocate, that he would have autonomy in his new position. Both Dr. Henderson
8 and Principal Lee promised Mr. Cerbone he would have their full support in dealing with parents,
9 students, and coaches. Mr. Cerbone made clear to Henderson and Lee that he was particularly
10 concerned about the inordinate degree of influence the parents wielded at Excelsior. For example,
11 several parents are teachers, or "Facilitators," at Excelsior. Both Dr. Henderson and Principal Lee
12 falsely assured Mr. Cerbone that parent interference would not be an issue for him and that they
13 would back his decisions regarding personnel in the athletic department or interactions with parents
14 and students, so long as those decisions were consistent with the school's mission and within the
15 law. Upon information and belief, the coaches' employment contracts specifically delegated the
16 sole right of discharge to the Athletic Director.

17 13. However, neither Dr. Henderson nor Principal Lee intended to support Mr. Cerbone
18 if he did not maintain the status quo, i.e., acquiescing to parents' desires and conduct no matter how
19 wrong the parents might be. And Dr. Henderson did not intend to allow Mr. Cerbone to execute his
20 duties fully and faithfully as Athletic Director, including uncovering corruption by Excelsior
21 Facilitators that could have led to Excelsior students being banned from collegiate athletics. Thus,
22 despite assurances that he would have the administration's backing as Athletic Director, Excelsior
23 retaliated against Mr. Cerbone, first by suspending him on a "paid administrative leave," then by
24 firing him, because he reported to and was working with an administrator regarding a fraudulent
25 scheme to misrepresent to universities how many on campus classes certain student athletes were
26 taking, because he reported a parent's illegal and disruptive conduct, and because he refused to
27 participate in what he believed to be the illegal firing of the head football coach.

28 14. Mr. Cerbone was told by the outgoing Athletic Director that she believed some

Facilitators were falsifying the transcripts of student athletes to reflect that those students were taking classes on campus, when in fact they had not. Excelsior is predominantly an independent study charter school, which means most students do not take classes on school premises. To be eligible to play sports in college, the National Collegiate Athletic Association (“NCAA”) requires high school student-athletes to complete sixteen core courses, including ten before the students’ seventh semester, from such subjects as English, mathematics, natural or physical sciences, and social science. These core courses must be taught on campus, rather than taken as independent study (i.e., off campus). Excelsior knew this to be true because prior to Mr. Cerbone’s arrival Excelsior had petitioned the NCAA to review its independent study course qualifications to determine whether they conformed with the core course requirements and the NCAA had rejected Excelsior’s petition, specifically determining that Excelsior’s independent study courses did not meet the NCAA’s core course requirements.

15. At the beginning of the Fall 2019 semester, Excelsior’s Curriculum Coordinator (himself a former Facilitator), Dale Lee, informed Mr. Cerbone that he believed certain Excelsior Facilitators assigned to oversee specific student athletes, in order to preserve the students’ NCAA eligibility, intentionally were altering those students’ transcripts to show the students were taking classes on campus when in fact the students were taking independent study classes. Mr. Cerbone believed that this was potentially a widespread practice as one Facilitator admitted directly to Mr. Cerbone that she had altered the transcript of the student she oversaw. Mr. Cerbone had good cause to investigate this issue in his capacity as Athletic Director and was actively pursuing his investigation when Excelsior forced Mr. Cerbone to take paid administrative leave. Upon information and belief, Employer Defendant fired Mr. Cerbone before he could complete his investigation, in substantial part, because it believed he would uncover proof of a systemic fraudulent scheme and would report it to law enforcement or to the government (school district).

16. Through his work as a coach on the football team, Mr. Cerbone also became familiar with Defendant Maloney, whose two sons played on the football team. Maloney frequently yelled at coaches and referees during games in an abusive manner, in violation of Education Code section 44811, subdivision (a), which provides, “Any parent, guardian, or other person whose conduct in a

1 place where a school employee is required to be in the course of his or her duties materially disrupts
2 class work or extracurricular activities or involves substantial disorder is guilty of a misdemeanor.”
3 Upon information and belief, Maloney had done this prior to Mr. Cerbone’s arrival and had not
4 been previously disciplined by Excelsior. Both Dr. Henderson and Principal Lee knew of Maloney’s
5 outrageous conduct but neither warned Mr. Cerbone about Maloney before Mr. Cerbone started his
6 employment with Excelsior, and, contrary to their initial representations before Mr. Cerbone was
7 hired, Excelsior did not support Mr. Cerbone once he complained about Maloney to school officials.

8 17. On or about October 24, 2019, well into the high school football season and fed up
9 with Maloney’s unchecked and continuous belligerence, Mr. Cerbone emailed Dr. Henderson and
10 District Administrator Jaime Lowe (who also functioned as the head of Human Resources, or HR)
11 to complain that Maloney was acting disrespectfully and in a harassing manner towards the coaches
12 and had been doing so for years without consequence. Further, Mr. Cerbone called Dr. Henderson’s
13 attention to a threatening voicemail Maloney had left with Principal Lee, who had shared the
14 message with Mr. Cerbone.

15 18. Rather than open an investigation, Dr. Henderson wrote, “I am working diligently to
16 deescalate the situation...We are working on addressing your concerns.” Henderson’s response did
17 not directly address the written complaint of a parent’s wrongdoing; instead, Dr. Henderson wrote,
18 “I understand there is clearly discord between the parties.” In so doing, Dr. Henderson chose to
19 characterize the complaint as a simple personality conflict instead of an employee complaint of
20 parent misconduct that supposedly had started prior to Mr. Cerbone’s arrival, which should have
21 been an issue of great concern to the school’s athletic department. Mr. Cerbone was seeking an
22 investigation and corrective action by the administration regarding Maloney’s conduct; it seemed
23 from Dr. Henderson’s email that none would be initiated based on the October 24 email.

24 19. On or about October 25, 2019, Mr. Cerbone sent a formal written complaint to
25 Lowe’s office about Maloney’s conduct. Mr. Cerbone specifically noted Maloney had violated
26 California Education Code § 44811(a). Mr. Cerbone described Maloney’s “insulting, disrespectful
27 language and harassing behavior.” He reminded Excelsior that Maloney had “shouldered” (i.e.,
28 physically assaulted) a football coach the previous year and that Principal Lee was aware that other

1 coaches on the team had prepared witness statements after the incident in which they corroborated
2 that Maloney had instigated the contact, yet she had chosen to ignore the coaches' statements. The
3 principal's lack of action, Mr. Cerbone complained, resulted in "giving this parent license to
4 continue he [sic] horrendously disrespectful behavior this season." Mr. Cerbone also complained
5 Lowe was responsible for allowing Maloney's conduct to continue, as (1) Lowe had personally
6 witnessed Maloney's outbursts at a game, and (2) Mr. Cerbone believed Principal Lee likely had
7 told Lowe about Maloney's well-documented disruptive behavior. Mr. Cerbone then named five
8 coaches (Excelsior employees) who were affected by Maloney's conduct, apart from himself.

9 20. Excelsior never investigated Mr. Cerbone's October 25 complaint. Instead, Dr.
10 Henderson embarked on a retaliation campaign against Mr. Cerbone, including pressuring Mr.
11 Cerbone to discipline and remove the head coach of the football team (one of the five coaches Mr.
12 Cerbone had identified in his letter), falsely accusing Mr. Cerbone of instituting a rogue
13 weightlifting policy (implying Mr. Cerbone was either insubordinate or endangering the health and
14 safety of students), placing Mr. Cerbone on paid administrative leave without stating the policy or
15 code section Mr. Cerbone had purportedly violated, and concluding with terminating Mr. Cerbone
16 after only two weeks of an administrative leave that was supposed to last over seven months. The
17 retaliation all occurred within one month of Mr. Cerbone's October written complaints.

18 21. On or about October 29, 2019, Dr. Henderson emailed Mr. Cerbone and instructed
19 him to formally reprimand and remove the head football coach for the remaining three days of the
20 season, contending that the head coach had "used an unauthorized, public Instagram account to post
21 information about the disciplinary action of a student athlete." Mr. Cerbone understood the account
22 to be a sanctioned, private group account that was shared solely by members of the football team
23 and their parents, and Mr. Cerbone also understood that the coach had merely responded to a
24 demand from Maloney with information that all team members already knew (as opposed to
25 randomly posting information about disciplinary actions). This led Mr. Cerbone to believe that Dr.
26 Henderson had not thoroughly investigated the matter. Given that, the October 29 email seemed to
27 be a retaliatory act against Mr. Cerbone aimed at applying further pressure and setting him up to
28 fail; either willfully participate in dismissing a report without justification or be deemed

1 insubordinate. Mr. Cerbone refused to fire the head coach, who was supposed to be under his
2 charge, for a reason he believed lacked good cause.

3 22. On or about November 8, 2019, Dr. Henderson placed Mr. Cerbone on paid
4 administrative leave through June 20, 2020. No reason was given for the forced leave, but
5 Henderson gave the following directive, among others: “Do not contact any Excelsior employees in
6 person, by phone (calling or text message) or by email.” Mr. Cerbone understood this instruction to
7 be a direct reference to his work with the Curriculum Coordinator, particularly since the day he was
8 placed on administrative leave, November 8, Mr. Cerbone was informed by someone in his office
9 that the Curriculum Coordinator was looking for him, ostensibly to discuss the NCAA issue.

10 23. On or about November 12, 2019, Dr. Henderson responded in writing to Mr.
11 Cerbone’s October 25 complaint. Because Mr. Cerbone had begun his complaint, “I am writing this
12 complaint that I have been knowingly been [sic] subjected to Hostile Work Environment,” Dr.
13 Henderson detailed that Excelsior had investigated a complaint of hostile work environment, in
14 particular of sexual harassment, and had not found any evidence of sexual harassment. Thus, instead
15 of investigating Mr. Cerbone’s complaints about a parent’s alleged tortious and criminal conduct,
16 Dr. Henderson, in his capacity of Deputy Superintendent of Excelsior, intentionally
17 mischaracterized Mr. Cerbone’s October 25 complaint as a failed sexual harassment complaint and
18 summarily dismissed the complaint.

19 24. On or about November 19, 2019, Mr. Cerbone, frustrated by Excelsior’s continued
20 refusal to address his complaints about a harassing parent whom he believed was breaking the law
21 and causing disruptions to school employees and other attendees at the games, filed a written
22 complaint with Angel Arrington, Project Manager for the San Bernardino County Superintendent’s
23 office. Mr. Cerbone reiterated his complaints about Maloney to Ms. Arrington, documenting that
24 Maloney had “a storied history of both verbal and physical abuse against the former AD as well as
25 former football coaches,” which included screaming at the former Athletic Director and shoving a
26 football coach. Mr. Cerbone described Maloney’s outrageous conduct during the just-concluded
27 season and reported Maloney’s threatening voicemail to the school principal. Mr. Cerbone also
28 complained that Dr. Henderson had placed him on administrative leave because Mr. Cerbone had

1 refused to perpetuate the school's position that the head football coach had resigned, rather than had
2 been fired three days before the last game of the season.

3 25. On or about November 21, 2019, Dr. Henderson sent Mr. Cerbone a letter
4 terminating Mr. Cerbone's employment effective November 22, 2019, which also effectively ended
5 Mr. Cerbone's health insurance coverage. No reason was given for the termination decision.

6 26. On or about November 2, 2019, Maloney posted on the Facebook page of a local
7 newspaper, the Victor Valley News, that Excelsior had retaliated against him for complaining about
8 Mr. Cerbone. Maloney made a number of false representations in the Facebook post designed to
9 portray Mr. Cerbone in a false light, including describing Mr. Cerbone as someone who "bull[ied] a
10 child," exhibited "poor judgment with children," used "coercion to cover up poor choices," showed
11 "manipulation, vengefulness, instigation...physical threats of a female parent, instability, and just a
12 lack of good character," as well as engaged in "unsafe practices," supposedly used "racial epithets
13 of a class stereotype," and conspired with the head football coach to harm Maloney's son because
14 "the head coach and AD are friends and came to the school this year together." In his post, Maloney
15 also falsely stated that Mr. Cerbone was a "coach with all these incidents who is under investigation
16 [and who] is allowed to be on the field coaching unsupervised." Maloney uploaded three
17 photographs of Mr. Cerbone to the Facebook page to accompany his written statements so that the
18 general public could identify Mr. Cerbone by sight. Upon information and belief, Maloney made the
19 same false and misleading statements to individuals at Excelsior with the authority to terminate Mr.
20 Cerbone prior to Mr. Cerbone's termination, including but not limited to Dr. Henderson.

21 27. In early December 2019, Maloney posted to the Facebook page of the Spring Valley
22 Lake Citizens Group, which upon information and belief was comprised of individuals residing
23 within the same school district as Excelsior. In the December post, Maloney accused Mr. Cerbone
24 of engaging in "multiple other incidents" including "bullying of a child, poor judgment with
25 children, coercion to cover up poor choices, manipulation, vengefulness, instigation, disrespecting
26 multiple parent and students, racial epithets of social stereotypes, unsafe practices, physical threats
27 of a female parent, instability and just lack of good character." As with the other Facebook post,
28 Maloney referred to Mr. Cerbone as "this coach with all these incidents who is under investigation

1 is allowed to be on the field coaching unsupervised” and uploaded three photographs of Mr.
2 Cerbone to accompany the post.

3 28. In or about early November 2019, Maloney also started a petition on a website called
4 Change.org entitled, “Remove Christopher Cerbone as Athletic Director from Excelsior Charter
5 Schools.” In it, Maloney made many false or impliedly false statements, including but not limited to
6 allegations that Mr. Cerbone: bullied students and parents; uttered “racial epithets of a class stereo
7 type [sic]”; physically threatened a female parent by describing her attire; engaged in inappropriate
8 conversations with a parent; exhibited “poor judgment implying student athletes are the reason for
9 an elderly coaches poor health”; engaged in discrimination; coerced “students, parents & staff”;
10 engaged in multiple acts of retaliation against parents for “speaking out” and against the students of
11 those parents; and intimidated students and parents alike. The petition also falsely asserted, “It is
12 Believed he has a Contract of 5+ years keeping him in place until the 2023-2024 school year at a
13 minimum,” implying Mr. Cerbone would be with the school for a long time unless action was taken
14 to disrupt his contract.

15 29. Since his termination, Mr. Cerbone has applied to various positions in high school
16 education. At least one potential employer that expressed a strong initial interested in Mr. Cerbone
17 as a job candidate concluded after conducting a Google search that the negative attention from
18 Maloney’s petition made Mr. Cerbone a “big risk” that they could not afford to take. Based on the
19 petition alone, Mr. Cerbone never even received an interview for the position.

20 **FIRST CAUSE OF ACTION**

21 **WHISTLEBLOWER RETALIATION, IN VIOLATION OF LABOR CODE § 1102.5**

22 **(Against Employer Defendants)**

23 30. Plaintiff incorporates by reference and re-alleges the allegations contained in
24 paragraphs 1 through 29, inclusive, as though fully set forth herein.

25 31. At all relevant times, Labor Code section 1102.5 was in full force and effect and
26 was binding on Employer Defendants. Section 1102.5(b) provides, in relevant part, “An employer,
27 or any person acting on behalf of the employer, shall not retaliate against an employee for
28 disclosing information, or because the employer believes that the employee disclosed or may

1 disclose information, to a government or law enforcement agency, to a person with authority over
2 the employee or another employee who has the authority to investigate, discover, or correct the
3 violation or noncompliance... if the employee has reasonable cause to believe that the information
4 discloses a violation of state or federal statute, or a violation of or noncompliance with a local,
5 state, or federal rule or regulation, regardless of whether disclosing the information is part of the
6 employee's job duties."

7 32. As detailed further above, Mr. Cerbone engaged in protected conduct including, but
8 not limited to:

- 9 a. Investigating a fraudulent scheme regarding falsifying academic transcripts and
10 reporting to a school administrator who had authority to investigate or discover the
11 violation; and
- 12 b. Reporting to a person with authority over Mr. Cerbone – who also was a person
13 with authority to investigate or correct the violation – as well as to the school
14 district itself, a parent's conduct that materially disrupted extracurricular activities
15 (football games) where school employees were required to be present in the course
16 and scope of their duties.

17 33. At the time that he engaged in such protected activity, Mr. Cerbone had reasonable
18 cause to believe that such conduct violated state laws, including but not limited to Penal Code
19 section 115(a) ("Every person who knowingly procures or offers any false or forged instrument to
20 be filed, registered, or recorded in any public office within this state, which instrument, if genuine,
21 might be filed, registered, or recorded under any law of this state or of the United states, is guilty of
22 a felony"), Penal Code section 134 ("Every person guilty of preparing any false or ante-dated
23 book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or
24 allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial,
25 proceeding, or inquiry whatever, authorized by law, is guilty of a felony"), and Education Code
26 section 44811(a) ("Any parent, guardian, or other person whose conduct in a place where a school
27 employee is required to be in the course of his or her duties materially disrupts class work or
28 extracurricular activities or involves substantial disorder is guilty of a misdemeanor").

1 34. Excelsior believed Mr. Cerbone would report his findings of fraudulent Facilitator
2 activity to the Curriculum Coordinator, a person at Excelsior with the authority to investigate and
3 discover the violations. Further, Excelsior believed that Mr. Cerbone would report the fraudulent
4 academic transcript scheme to either the government (school district) or to law enforcement, and
5 therefore placed Mr. Cerbone on paid administrative leave – and then terminated him preemptively
6 – in substantial part before he could complete his investigation and uncover proof of the scheme.

7 35. Excelsior also engaged in the above-described retaliation (falsely accusing Mr.
8 Cerbone of instituting a rogue weightlifting policy, placing him on paid administrative leave, and
9 terminating Mr. Cerbone), in substantial part, because Mr. Cerbone reported what he believed to be
10 a parent’s criminal conduct and the school’s refusal to address the conduct both to a person with
11 authority over him (Dr. Henderson) and to the school district (an arm of the government).

12 36. Section 1102.5(c) provides, “An employer, or any person acting on behalf of the
13 employer, shall not retaliate against an employee for refusing to participate in an activity that
14 would result in a violation of state or federal statute, or a violation of or noncompliance with a
15 local, state, or federal rule or regulation.”

16 37. As detailed above, Mr. Cerbone refused to participate in what he believed was the
17 unjustified and illegal termination of his subordinate, the head football coach, for a purely
18 pretextual reason and refused to lie that the coach had resigned, in violation of Education Code
19 sections 45101(h) (“No disciplinary action may be maintained [against classified employees] for
20 any ‘cause’ other than as defined herein”) and 45113(b) (“An employee designated as a permanent
21 employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation
22 of the governing board of the school district...”). Firing the head coach for an illegal reason would
23 have violated Mr. Cerbone’s rights under Labor Code section 2856 (“An employee shall
24 substantially comply with all the directions of his employer concerning the service on which he is
25 engaged, except where such obedience is impossible or unlawful...”), which he opposed.
26 Moreover, in requiring Mr. Cerbone to fire the head football coach supposedly for cause when he
27 knew the stated termination reason was not based on good cause, Mr. Cerbone understood
28 Excelsior was imposing a new and unreasonable burden on him to comply with the Deputy

1 Superintendent's instructions (which flew in the face of Mr. Cerbone's supposed autonomy as
2 Athletic Director), also in violation of Section 2856. Further, Mr. Cerbone reasonably believed that
3 Dr. Henderson's instruction to fire the head coach was a direct act of retaliation against Mr.
4 Cerbone for having complained about Maloney, in violation of Labor Code section 1102.5(b),
5 which Mr. Cerbone also opposed.

6 38. As a direct and proximate result of the wrongful conduct of Employer Defendants,
7 and each of them, Plaintiff has suffered compensatory damages, including lost earnings and other
8 economic damages, as well as sums expended in treatment of mental and emotional injuries, in an
9 amount to be ascertained at the time of trial.

10 39. As a direct and proximate result of the wrongful conduct of Employer Defendants,
11 and each of them, Plaintiff necessarily will continue to expend sums of money for treatment of
12 mental and emotional injuries, in an amount to be ascertained at the time of trial.

13 40. As a direct and proximate result of the wrongful conduct of Employer Defendants,
14 and each of them, Plaintiff has suffered mental and emotional distress and has been damaged
15 generally, in an amount to be ascertained at the time of trial.

16 41. The actions of Employer Defendants as alleged herein were carried out with malice,
17 oppression or fraud, with willfulness and/or reckless indifference to the rights of Plaintiff, with full
18 knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights guaranteed under
19 the law. Plaintiff is entitled to punitive damages for the purpose of deterring such unlawful,
20 malicious, oppressive and/or fraudulent conduct. Defendants' conduct described herein was
21 engaged in by officers, directors, and/or managing agents for the Defendant and/or ratified by
22 officers, directors, and/or managing agents.

23 **SECOND CAUSE OF ACTION**

24 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY –**

25 **WHISTLEBLOWER RETALIATION**

26 **(Against Employer Defendants)**

27 42. Plaintiff incorporates by reference and re-alleges the allegations contained in
28 paragraphs 1 through 41, inclusive, as though fully set forth herein.

1 43. Plaintiff's employment was terminated because of Employer Defendants' violation
2 of fundamental and substantial public policies that were well-established at the time of his
3 termination. Specifically, California Labor Code section 1102.5 reflects the broad public policy
4 interest in encouraging workplace whistleblowers to report unlawful acts without fearing retaliation.

5 44. At all relevant times mentioned in this complaint, Labor Code section 1102.5 was in
6 full force and effect and was binding upon Employer Defendants, and each of them. This law
7 prohibits retaliation against employees who disclose reasonable suspicions of illegal activity or
8 conduct by their employer to a government or law enforcement agency, or to the employer itself. It
9 also protects employees from retaliation for refusing to participate in illegal activity. Section 1102.5
10 reflects the State's broad public policy interest in encouraging workplace "whistleblowers," who
11 may report concerns regarding an employer's suspected illegal conduct without fear of retaliation.

12 45. Plaintiff made a protected complaint about what he believed was a parent's illegal
13 and disruptive activity, and he investigated and intended to report on what he believed was a
14 widespread fraudulent scheme being perpetrated by Excelsior Facilitators. As detailed above,
15 Employer Defendants retaliated against Plaintiff by suspending and then terminating his
16 employment, in substantial part, because of his disclosure and investigation.

17 46. As a direct and proximate result of the wrongful conduct of Employer Defendants,
18 and each of them, Plaintiff has suffered compensatory damages, including lost earnings and other
19 economic damages, as well as sums expended in treatment of mental and emotional injuries, in an
20 amount to be ascertained at the time of trial.

21 47. As a direct and proximate result of the wrongful conduct of Employer Defendants,
22 and each of them, Plaintiff necessarily will continue to expend sums of money for treatment of
23 mental and emotional injuries, in an amount to be ascertained at the time of trial.

24 48. As a direct and proximate result of the wrongful conduct of Employer Defendants,
25 and each of them, Plaintiff has suffered mental and emotional distress and has been damaged
26 generally, in an amount to be ascertained at the time of trial.

27 49. The actions of Employer Defendants as alleged herein were carried out with malice,
28 oppression or fraud, with willfulness and/or reckless indifference to the rights of Plaintiff, with full

1 knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights guaranteed under
2 the law. Plaintiff is entitled to punitive damages for the purpose of deterring such unlawful,
3 malicious, oppressive and/or fraudulent conduct. Defendants' conduct described herein was
4 engaged in by officers, directors, and/or managing agents for the Defendant and/or ratified by
5 officers, directors, and/or managing agents.

6 **THIRD CAUSE OF ACTION**

7 **DEFAMATION PER SE**

8 **(Against Defendant Maloney)**

9 50. Plaintiff incorporates by reference and re-alleges the allegations contained in
10 paragraphs 1 through 49, inclusive, as though fully set forth herein.

11 51. Upon information and belief, Maloney made false statements of fact of and
12 concerning Mr. Cerbone, which were understood by the recipient(s) to be of and concerning Mr.
13 Cerbone, and which tended to injure Mr. Cerbone directly in his occupation to individuals who
14 worked for Employer Defendant and who had authority to terminate Mr. Cerbone, including but
15 not limited to Dr. Henderson, including but not limited to statements that Mr. Cerbone supposedly:

- 16 a. Engaged in "bullying a child";
- 17 b. Exhibited "poor judgment with children" over whom he had authority;
- 18 c. Used "coercion to cover up poor choices";
- 19 d. Showed "manipulation, vengefulness, instigation...physical threats of a female
20 parent, instability, and just a lack of good character";
- 21 e. Engaged in "unsafe practices";
- 22 f. Used "racial epithets of a class stereotype,"; and
- 23 g. Conspired with the head football coach to harm Maloney's son.

24 52. Maloney made these false and defamatory accusations, impugning Plaintiff's
25 honesty, integrity, and competence in his occupation, despite knowing the statements were false.

26 53. When Maloney made the aforementioned statements, he deliberately and
27 intentionally communicated false and damaging statements, knowing that the statements would
28 seriously injure Mr. Cerbone's reputation and his ability to earn a living.

1 54. The defamatory statements were published with the intent to communicate fact, not
2 opinion, and they were understood by the recipients to be assertions of fact, not opinion.

3 55. Upon information and belief, the person(s) who received or heard the false and
4 defamatory accusations reasonably understood that the statements were about Mr. Cerbone and
5 reasonably understood that the statements to mean that Mr. Cerbone had, in fact, committed the
6 acts or had exhibited the traits described in the statements.

7 56. At the time they were made, it was reasonably foreseeable that the defamatory
8 statements would be repeated to other individuals, including but not limited to prospective
9 employers.

10 57. Further, within one year of the date this lawsuit was filed, Mr. Cerbone has been or
11 will have under a strong compulsion to self-publish the false and defamatory statements published
12 by Maloney to third persons, including but not limited to prospective employers who, as a matter
13 of course, asked why his employment with Excelsior ended.

14 58. Maloney lacked reasonable ground for belief in the truth of the defamatory
15 statements and thereafter acted in reckless disregard of Mr. Cerbone's rights.

16 59. The above complained-of publications by Maloney were made with hatred and ill
17 will towards Mr. Cerbone and with the design and intent to vex, annoy, or injure Mr. Cerbone, Mr.
18 Cerbone's good name, his reputation, employment and employability. Maloney published these
19 statements, not with an intent to protect any interest intended to be protected by any privilege, but
20 with negligence, recklessness and/or an intent to injure Mr. Cerbone and destroy his reputation.
21 Therefore, no privilege, conditional or otherwise, existed to protect Maloney from liability for any
22 of these publications or republications.

23 60. Mr. Cerbone is informed, believes and fears that these false and defamatory per se
24 statements will continue to be published by Maloney and will be foreseeably republished by their
25 recipients, all to the ongoing harm and injury to Mr. Cerbone's business, professional, and personal
26 reputations. Mr. Cerbone also seeks redress in this action for all foreseeable republications,
27 including his own compelled self-publication of these defamatory statements.

28 61. As a proximate result of Maloney's conduct, Mr. Cerbone has suffered and

1 continues to suffer harm to his professional reputation and occupation, including substantial losses
2 in earnings and other employment and retirement benefits, and has suffered and continues to suffer
3 shame, mortification, embarrassment, humiliation hurt feelings, and/or mental anguish, all to his
4 damage, in an amount according to proof, but in any event no less than one million dollars.

5 62. Maloney committed the acts alleged herein maliciously, fraudulently and
6 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive
7 amounting to despicable conduct, and in conscious disregard of Mr. Cerbone's rights. Mr. Cerbone
8 thus is entitled to recover punitive damages from Maloney in an amount according to proof.

9 **FOURTH CAUSE OF ACTION**

10 **FALSE LIGHT**

11 **(Against Defendant Maloney)**

12 63. Plaintiff incorporates by reference and re-alleges the allegations contained in
13 paragraphs 1 through 62, inclusive, as though fully set forth herein.

14 64. Maloney published false or impliedly false statements about Mr. Cerbone that
15 showed Plaintiff in a false light to large numbers of people in the public eye, as described in
16 greater detail above, including but not limited to that Mr. Cerbone supposedly:

- 17 a. Bullied students and parents;
- 18 b. Uttered "racial epithets of a class stereo type [sic]";
- 19 c. Physically threatened a female parent by describing her attire;
- 20 d. Engaged in inappropriate conversations with a parent;
- 21 e. Exhibited "poor judgment implying student athletes are the reason for an elderly
22 coaches poor health";
- 23 f. Engaged in discrimination;
- 24 g. Coerced "students, parents & staff";
- 25 h. Conspired with the head football coach to harm Maloney's son;
- 26 i. Engaged in multiple acts of retaliation against parents for "speaking out" and
27 against the students of those parents; and
- 28 j. Intimidated students and parents alike.

66. In publishing the aforementioned statements, Maloney knew the publication of such statements would create a false impression of Mr. Cerbone and/or acted in reckless disregard for the truth or falsity of the publicized matter and the false light in which Mr. Cerbone would be placed.

67. Maloney's public comments exposed Mr. Cerbone to hatred, contempt, ridicule, and/or obloquy, and, in fact, Mr. Cerbone did suffer strong public criticism and verbal abuse.

68. As a proximate result of Maloney's conduct, Mr. Cerbone has suffered and continues to suffer mental distress as well as harm to his occupation and his reputation, in an amount according to proof, but in any event no less than one million dollars.

69. Maloney's conduct was a substantial factor in causing Mr. Cerbone harm.

70. Maloney committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to despicable conduct, and in conscious disregard of Mr. Cerbone's rights. Mr. Cerbone thus is entitled to recover punitive damages from Maloney in an amount according to proof.

FIFTH CAUSE OF ACTION

INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

(Against Defendant Maloney)

71. Plaintiff incorporates by reference and re-alleges the allegations contained in paragraphs 1 through 70, inclusive, as though fully set forth herein.

72. A valid employment contract existed between Mr. Cerbone and Excelsior effective June 2019.

73. Maloney knew of the contract between Mr. Cerbone and Excelsior and intended to disrupt and in fact did disrupt the performance of that contract, by taking actions that made performance of that contract more difficult, as alleged above, including but not limited to publishing false and defamatory statements to individuals at Excelsior with authority to discipline and/or terminate Mr. Cerbone and by publicly disseminating statements about Mr. Cerbone

1 intended to portray Mr. Cerbone in a false light.

2 74. When he published false and defamatory statements about Mr. Cerbone to
3 Excelsior, or publicly published statements intended to portray Mr. Cerbone in a false light,
4 Maloney knew that disruption of the contract was certain or substantially certain to occur. Through
5 his actions, Maloney intended to get Mr. Cerbone fired, including by publishing false statements of
6 and concerning Mr. Cerbone to individual(s) at his employer with the authority to terminate his
7 employment, publicly shaming or humiliating Mr. Cerbone, and circulating an online petition
8 entitled "Remove Christopher Cerbone as Athletic Director from Excelsior Charter Schools" in
9 which Maloney falsely asserted, "It is Believed he has a Contract of 5+ years keeping him in place
10 until the 2023-2024 school year at a minimum," implying Mr. Cerbone would be with the school
11 for a long time unless action was taken to disrupt his contract.

12 75. As a proximate result of Maloney's wrongful conduct, Plaintiff has suffered and
13 continues to sustain substantial losses in earnings and other employment and retirement benefits in
14 an amount according to proof at the time of trial, but in any event no less than one million dollars.

15 76. Maloney's conduct was a substantial factor in causing Mr. Cerbone harm.

16 77. Maloney's actions as alleged herein were carried out with malice, willfulness and/or
17 reckless indifference to the rights of Plaintiff, with full knowledge of their unlawfulness, and with
18 the intent to deprive Plaintiff of rights guaranteed under the law. Plaintiff is entitled to punitive
19 damages for the purpose of deterring such unlawful, malicious, oppressive and/or reckless conduct.

20 **SIXTH CAUSE OF ACTION**

21 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699**

22 **(On Behalf of All Aggrieved Employees)**

23 **(Against Employer Defendants)**

24 78. Plaintiff incorporates by reference and re-alleges the allegations contained in
25 paragraphs 1 through 77, inclusive, as though fully set forth herein.

26 79. At all relevant times mentioned in this complaint, Labor Code section 1102.5 was in
27 full force and effect and was binding upon Employer Defendants, and each of them.

28 80. Section 1102.5(f) provides, "In addition to other penalties, an employer that is a

1 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand
2 dollars (\$10,000) for each violation of this section.” Defendant Excelsior is a corporation.

3 81. Pursuant to Labor Code section 2699(a) (which provides that any provision of the
4 Labor Code that provides for a civil penalty to be assessed and collected by the Labor and
5 Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions,
6 board agencies or employees) may, as an alternative, be recovered through a civil action brought by
7 an aggrieved employee on behalf of himself or herself and other current or former employees) and
8 Labor Code sections 1102.5(f) and 2699(f) (which establishes a civil penalty for violations of all
9 Labor Code provisions except those for which a civil penalty is specifically provided), Plaintiff
10 seeks recovery of the applicable civil penalty, as follows:

11 a. A civil penalty under Labor Code § 1102.5(f) not to exceed ten thousand dollars
12 (\$10,000) for each violation of Section 1102.5 (subdivisions (b), (c), or (d)).

13 82. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all civil
14 penalties obtained under Labor Code sections 1102.5 to be allocated to the LWDA, for education of
15 employers and employees about their rights and responsibilities under the Labor Code, and twenty-
16 five percent (25%) to all aggrieved employees.

17 83. Further, Plaintiff is entitled to recover reasonable attorneys’ fees and costs pursuant
18 to Labor Code section 2699(g)(1) and any other applicable statute.

19 84. Labor Code section 2699.3(a) states in pertinent part: “A civil action by an aggrieved
20 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
21 listed in Section 2699.5 shall commence only after the following requirements have been met: (1)
22 (A) The aggrieved employee or representative shall give written notice by online filing with the
23 Labor and Workforce Development Agency and by certified mail to the employer of the specific
24 provisions of this code alleged to have been violated, including the facts and theories to support the
25 alleged violation.”

26 85. Plaintiff’s civil action alleges violations of a provision listed in Labor Code section
27 2699.5 (Section 1102.5). As such, Labor Code section 2699.3(a) applies to this action.

28 86. Labor Code §2699.3(a) further states in pertinent part: “(2)(A) The agency shall

1 notify the employer and the aggrieved employee or representative by certified mail that it does not
2 intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice
3 received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65
4 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved
5 employee may commence a civil action pursuant to Section 2699.”

6 87. Plaintiff exhausted his administrative remedies by timely filing a notice pursuant to
7 The Labor Code Private Attorneys General Act of 2004 (“PAGA”) with the LWDA of the specific
8 provisions of the Labor Code alleged to have been violated, including the facts and theories to
9 support the alleged violations, and by serving such notice via certified mail on Defendant Excelsior.
10 Plaintiff’s PAGA notice dated July 13, 2020 is attached hereto as **Exhibit A**.

11 88. As of December 9, 2020 (65 calendar days after the October 5, 2020 PAGA notice
12 was filed online), Plaintiff had not received any notification that the LWDA intended to investigate
13 the alleged violations. As such, Plaintiff has complied with Labor Code section 2699.3(a) and has
14 been authorized therefrom to commence a civil action which includes a cause of action pursuant to
15 Labor Code section 2699.

16 89. Further, as of November 9, 2020 (33 calendar days after Plaintiff’s October 5, 2020
17 PAGA notice was mailed to Excelsior via certified mail), Plaintiff has not received from Employer
18 Defendants written notice by certified mail that the alleged violations have been cured, including a
19 description of actions taken. As such, Plaintiff has complied with Labor Code section 2699.3(c) and
20 has been authorized therefrom to commence a civil action which includes a cause of action pursuant
21 to Labor Code section 2699.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For an award of general damages in an amount according to proof;
2. For an award of special and compensatory damages, including but not limited to, loss of wages, salary, benefits, back pay, front pay, future lost income and benefits, and other economic losses, and interest thereon, in an amount according to proof;
3. For punitive or exemplary damages on each of the applicable causes of action;
4. For civil penalties pursuant to Labor Code §§ 1102.5 and 2699.3;
5. For an award of prejudgment and post-judgment interest; and
6. For such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on the causes of action and claims so triable.

DATED: January 13, 2021

SANSANOWICZ LAW GROUP, PC.



Leonard H. Sansanowicz, Attorneys for
Plaintiff CHRISTOPHER CERBONE

Exhibit A



SANSANOWICZ

LAW GROUP, P.C.

1635 Pontius Ave, Second Floor | Los Angeles, CA 90025

Tel: (323) 677-0200 | Fax: (323) 549-0101

July 13, 2020

VIA ELECTRONIC MAIL TO LABOR AND WORKFORCE DEVELOPMENT AGENCY

Check to be mailed to:

Department of Industrial Relations

Accounting Unit [payment of \$75.00 filing fee]

455 Golden Gate Avenue, 10th Floor

San Francisco, CA 94102

Re: EEC, f.k.a. Excelsior Education Center, dba Excelsior Charter Schools (hereafter, "Excelsior")

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, Calif. Labor and Workforce Development Agency, and Excelsior

From: Christopher Cerbone, subjected to the Labor Code violations set forth below

Mr. Cerbone, through his counsel, submits this Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a)/(c), and alleges the facts and theories to support the below alleged violations. Unless the Labor & Workforce Development Agency ("LWDA") proceeds against Employer, Mr. Cerbone intends to pursue a civil action against Employer, seeking attorney fees and penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Excelsior, a charter high school, employed Mr. Cerbone as Athletic Director and football coach, from June 11, 2019 through Mr. Cerbone's involuntary and wrongful termination effective November 22, 2019. Excelsior retaliated against Mr. Cerbone allegedly in violation of Labor Code section 1102.5, as follows:

Mr. Cerbone reported to a person with authority over Mr. Cerbone – and reported to the school district, an arm of the government – that a parent's conduct materially disrupted extracurricular activities (football games) where school employees were required to be present in the course and scope of their duties, Mr. Cerbone reasonably believed violated Education Code section 44811(a) ("Any parent, guardian, or other person whose conduct in a place where a school employee is required to be in the course of his or her duties materially disrupts class work or extracurricular activities or involves substantial disorder is guilty of a misdemeanor"). Mr. Cerbone also investigated a fraudulent scheme involving Excelsior schoolteachers falsifying academic transcripts, which Mr. Cerbone reasonably believed violated Penal Code section 115(a) ("Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United states, is guilty of a felony") and Penal Code section 134 ("Every person guilty of preparing any

false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of a felony”). Because of both, Excelsior placed Mr. Cerbone on a forced and unwanted administrative leave, then fired him in retaliation for such protected conduct. Such retaliatory motives violated Labor Code §1102.5(b).

Excelsior further retaliated against Mr. Cerbone for refusing to participate in an activity that would result in a violation of state or federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation, in violation of Labor Code §1102.5(c). Specifically, Mr. Cerbone refused to follow the instructions of Excelsior’s Deputy Superintendent, Dr. Ronnie Henderson, to fire the head football coach for a pretextual reason that Mr. Cerbone knew was without good cause, which he reasonably believed violated Education Code sections 45101(h) (“No disciplinary action may be maintained [against classified employees] for any ‘cause’ other than as defined herein”) and 45113(b) (“An employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board of the school district...”). Further, firing the head coach for an illegal reason would have violated Mr. Cerbone’s rights under Labor Code section 2856 (“An employee shall substantially comply with all the directions of his Excelsior concerning the service on which he is engaged, except where such obedience is impossible or unlawful...”), which he opposed. Moreover, in requiring Mr. Cerbone to fire the head football coach supposedly for cause when he knew the stated termination reason was not based on good cause, Mr. Cerbone understood Excelsior was imposing a new and unreasonable burden on him to comply with the Deputy Superintendent’s instructions, also in violation of Section 2856. Further, Mr. Cerbone reasonably believed that Dr. Henderson’s instruction to fire the head football coach was a direct act of retaliation against Mr. Cerbone for having complained about the parent’s disruptive and illegal behavior, in violation of Labor Code section 1102.5(b), which Mr. Cerbone opposed.

Excelsior hired Mr. Cerbone to be its Site Director, Athletics of the Victorville campus in June 2019 for the 2019-2020 school year, with an effective start date of August 21, 2019 and an end date of June 26, 2020. Mr. Cerbone was tasked with bringing a failing athletics department to prominence, particularly in football, a tall order considering the dominance of other local non-charter schools. A former Division I football player and Certified Strength and Conditioning Specialist, Mr. Cerbone also served as Defensive Coordinator of the football team and, with the explicit endorsement of Principal Lindsey Lee, organized a strength training program to teach coaches of all Excelsior sports teams how to properly instruct their athletes to use the weight room equipment. In addition, as Site Administrator, Mr. Cerbone was responsible for ensuring that fans at sporting events – including students, parents, visitors, and coaches – were safe from abuse or from dangerous situations.

Prior to his hire, Mr. Cerbone had years of experience as a high school administrator, including as an Assistant Principal, a Head of Discipline, Facilities, and Campus Safety, a Strength and Conditioning Coach, and a Dean of Students. Excelsior induced Mr. Cerbone to leave his home in San Diego County for Victorville when its Deputy Superintendent Dr. Ronnie Henderson promised Mr. Cerbone in June 2019, before Mr. Cerbone accepted Excelsior’s job offer that required him to relocate, that he would have autonomy in his new position. Both Dr. Henderson and Principal Lee promised Mr. Cerbone he would have their full support in dealing with parents, students, and coaches. Mr. Cerbone made clear to Henderson and Lee that he was particularly concerned about the inordinate degree of influence the parents wielded at Excelsior. For example, several parents are teachers, or “Facilitators,”

at Excelsior. Both Dr. Henderson and Principal Lee falsely assured Mr. Cerbone that parent interference would not be an issue for him and that they would back his decisions regarding personnel in the athletic department or interactions with parents and students, so long as those decisions were consistent with the school's mission and within the law. Upon information and belief, the coaches' employment contracts specifically delegated the sole right of discharge to the Athletic Director.

However, neither Dr. Henderson nor Principal Lee intended to support Mr. Cerbone if he did not maintain the status quo, i.e., acquiescing to parents' desires and conduct no matter how wrong the parents might be. And Dr. Henderson did not intend to allow Mr. Cerbone to execute his duties fully and faithfully as Athletic Director, including uncovering corruption by Excelsior Facilitators that could have led to Excelsior students being banned from collegiate athletics. Thus, despite assurances that he would have the administration's backing as Athletic Director, Excelsior retaliated against Mr. Cerbone, first by suspending him on a "paid administrative leave," then by firing him, because he reported to and was working with an administrator regarding a fraudulent scheme to misrepresent to universities how many on campus classes certain student athletes were taking, because he reported a parent's illegal and disruptive conduct, and because he refused to participate in what he believed to be the illegal firing of the head football coach.

Mr. Cerbone was told by the outgoing Athletic Director that she believed some Facilitators were falsifying the transcripts of student athletes to reflect that those students were taking classes on campus, when in fact they had not. Excelsior is predominantly an independent study charter school, which means most students do not take classes on school premises. To be eligible to play sports in college, the National Collegiate Athletic Association ("NCAA") requires high school student-athletes to complete sixteen core courses, including ten before the students' seventh semester, from such subjects as English, mathematics, natural or physical sciences, and social science. These core courses must be taught on campus, rather than taken as independent study (i.e., off campus). Excelsior knew this to be true because prior to Mr. Cerbone's arrival Excelsior had petitioned the NCAA to review its independent study course qualifications to determine whether they conformed with the core course requirements and the NCAA had rejected Excelsior's petition, specifically determining that Excelsior's independent study courses did not meet the NCAA's core course requirements.

At the beginning of the Fall 2019 semester, Excelsior's Curriculum Coordinator (himself a former Facilitator), Dale Lee, informed Mr. Cerbone that he believed certain Excelsior Facilitators assigned to oversee specific student athletes, in order to preserve the students' NCAA eligibility, intentionally were altering those students' transcripts to show the students were taking classes on campus when in fact the students were taking independent study classes. Mr. Cerbone believed that this was potentially a widespread practice as one Facilitator admitted directly to Mr. Cerbone that she had altered the transcript of the student she oversaw, which Mr. Cerbone reported to Mr. Lee. Mr. Cerbone had good cause to investigate this issue in his capacity as Athletic Director and was actively pursuing his investigation when Excelsior forced Mr. Cerbone to take paid administrative leave. Upon information and belief, Excelsior fired Mr. Cerbone before he could complete his investigation, in substantial part, because it believed he would uncover proof of a systemic fraudulent scheme and would further report it to law enforcement or to the government (school district).

Through his work as a coach on the football team, Mr. Cerbone also became familiar with Mikeri "Mike" Maloney, whose two sons played on the football team. Maloney frequently yelled at

coaches and referees during games in an abusive manner, in violation of Education Code section 44811, subdivision (a), which provides, “Any parent, guardian, or other person whose conduct in a place where a school employee is required to be in the course of his or her duties materially disrupts class work or extracurricular activities or involves substantial disorder is guilty of a misdemeanor.” Upon information and belief, Maloney had done this prior to Mr. Cerbone’s arrival and had not been previously disciplined by Excelsior. Both Dr. Henderson and Principal Lee knew of Maloney’s outrageous conduct neither warned Mr. Cerbone about Maloney before Mr. Cerbone started his employment with Excelsior, and, contrary to their initial representations before Mr. Cerbone was hired, Excelsior did not support Mr. Cerbone once he complained about Maloney to school officials.

On or about October 24, 2019, well into the high school football season and fed up with Maloney’s unchecked and continuous belligerence, Mr. Cerbone emailed Dr. Henderson and District Administrator Jaime Lowe (who also functioned as the head of Human Resources, or HR) to complain that Maloney was acting disrespectfully and in a harassing manner towards the coaches and had been doing so for years without consequence. Further, Mr. Cerbone called Dr. Henderson’s attention to a threatening voicemail Maloney had left with Principal Lee, who had shared the message with Mr. Cerbone.

Rather than open an investigation, Dr. Henderson wrote, “I am working diligently to deescalate the situation... We are working on addressing your concerns.” Henderson’s response did not directly address the written complaint of a parent’s wrongdoing; instead, Dr. Henderson wrote, “I understand there is clearly discord between the parties.” In so doing, Dr. Henderson chose to characterize the complaint as a simple personality conflict instead of an employee complaint of parent misconduct that supposedly had started prior to Mr. Cerbone’s arrival, which should have been an issue of great concern to the school’s athletic department. Mr. Cerbone was seeking an investigation and corrective action by the administration regarding Maloney’s conduct; it seemed from Dr. Henderson’s email that none would be initiated based on the October 24 email.

On or about October 25, 2019, Mr. Cerbone sent a formal written complaint to Lowe’s office about Maloney’s conduct. Mr. Cerbone specifically noted Maloney had violated California Education Code § 44811(a). Mr. Cerbone described Maloney’s “insulting, disrespectful language and harassing behavior.” He reminded Excelsior that Maloney had “shouldered” (i.e., physically assaulted) a football coach the previous year and that Principal Lee was aware that other coaches on the team had prepared witness statements after the incident in which they corroborated that Maloney had instigated the contact, yet she had chosen to ignore the coaches’ statements. The principal’s lack of action, Mr. Cerbone complained, resulted in “giving this parent license to continue he [sic] horrendously disrespectful behavior this season.” Mr. Cerbone also complained Lowe was responsible for allowing Maloney’s conduct to continue, as (1) Lowe had personally witnessed Maloney’s outbursts at a game, and (2) Mr. Cerbone believed Principal Lee likely had told Lowe about Maloney’s well-documented disruptive behavior. Mr. Cerbone then named five coaches (Excelsior employees) who were affected by Maloney’s conduct, apart from himself.

Excelsior never investigated Mr. Cerbone’s October 25 complaint. Instead, Dr. Henderson embarked on a retaliation campaign against Mr. Cerbone, including pressuring Mr. Cerbone to discipline and remove the head coach of the football team (one of the five coaches Mr. Cerbone had identified in his letter), falsely accusing Mr. Cerbone of instituting a rogue weightlifting policy

(implying Mr. Cerbone was either insubordinate or endangering the health and safety of students), placing Mr. Cerbone on paid administrative leave without stating the policy or code section Mr. Cerbone had purportedly violated, and concluding with terminating Mr. Cerbone after only two weeks of an administrative leave that was supposed to last over seven months. The retaliation all occurred within one month of Mr. Cerbone's October written complaints.

On or about October 29, 2019, Dr. Henderson emailed Mr. Cerbone and instructed him to formally reprimand and remove the head football coach for the remaining three days of the season, contending that the head coach had "used an unauthorized, public Instagram account to post information about the disciplinary action of a student athlete." Mr. Cerbone understood the account to be a sanctioned, private group account that was shared solely by members of the football team and their parents, and Mr. Cerbone also understood that the coach had merely responded to a demand from Maloney with information that all team members already knew (as opposed to randomly posting information about disciplinary actions). This led Mr. Cerbone to believe that Dr. Henderson had not thoroughly investigated the matter. Given that, the October 29 email seemed to be a retaliatory act against Mr. Cerbone aimed at applying further pressure and setting him up to fail; either willfully participate in dismissing a report without justification or be deemed insubordinate. Mr. Cerbone refused to fire the head coach, who was supposed to be under his charge, for a reason he believed lacked good cause.

On or about November 8, 2019, Dr. Henderson placed Mr. Cerbone on paid administrative leave through June 20, 2020. No reason was given for the forced leave, but Henderson gave the following directive, among others: "Do not contact any Excelsior employees in person, by phone (calling or text message) or by email." Mr. Cerbone understood this instruction to be a direct reference to his work with the Curriculum Coordinator, particularly since the day he was placed on administrative leave, November 8, Mr. Cerbone was informed by someone in his office that the Curriculum Coordinator was looking for him, ostensibly to discuss the NCAA issue.

On or about November 12, 2019, Dr. Henderson responded in writing to Mr. Cerbone's October 25 complaint. Because Mr. Cerbone had begun his complaint, "I am writing this complaint that I have been knowingly been [sic] subjected to Hostile Work Environment," Dr. Henderson detailed that Excelsior had investigated a complaint of hostile work environment, in particular of sexual harassment, and had not found any evidence of sexual harassment. Thus, instead of investigating Mr. Cerbone's complaints about a parent's alleged tortious and criminal conduct, Dr. Henderson, in his capacity of Deputy Superintendent of Excelsior, intentionally mischaracterized Mr. Cerbone's October 25 complaint as a failed sexual harassment complaint and summarily dismissed the complaint.

On or about November 19, 2019, Mr. Cerbone, frustrated by Excelsior's continued refusal to address his complaints about a harassing parent whom he believed was breaking the law and causing disruptions to school employees and other attendees at the games, filed a written complaint with Angel Arrington, Project Manager for the San Bernardino County Superintendent's office. Mr. Cerbone reiterated his complaints about Maloney to Ms. Arrington, documenting that Maloney had "a storied history of both verbal and physical abuse against the former AD as well as former football coaches," which included screaming at the former Athletic Director and shoving a football coach. Mr. Cerbone described Maloney's outrageous conduct during the just-concluded season and reported Maloney's threatening voicemail. Mr. Cerbone also complained that Dr. Henderson had placed him on

administrative leave because Mr. Cerbone had refused to perpetuate the school's position that the head football coach had resigned, rather than had been fired three days before the last game of the season.

On or about November 21, 2019, Dr. Henderson sent Mr. Cerbone a letter terminating Mr. Cerbone's employment effective November 22, 2019, which also effectively ended Mr. Cerbone's health insurance coverage. No reason was given for the termination decision.

Thus, Excelsior's conduct, through its officers and/or managing agents, violated Labor Code §§1102.5(b) and 1102.5(c) and subjects Excelsior to a civil penalty pursuant to Labor Code §1102.5(f).

Pursuant to Labor Code §2699.3(c)(2)(A), Employer may cure the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then Employee may immediately thereafter commence a civil action against Employer pursuant to Labor Code §2699. Please advise within sixty-five (65) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Thank you for your consideration.

Very Truly Yours,



Leonard H. Sansanowicz

cc (via certified mail):

- 7019 2280 0001 8023 5907, EEC, f.k.a. Excelsior Education Center, dba Excelsior Charter Schools, c/o Theresa M. Marchlewski, Jackson Lewis, P.C., 725 South Figueroa Street, Los Angeles, CA 90017

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I, the undersigned, am over the age of 18 years and not a party to this action. My business
4 address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located
in Los Angeles County, where the service herein occurred.

5 On the date of execution hereof, I caused to be served the following attached document/s:

6 **FIRST AMENDED COMPLAINT**

7 on the interested parties in this action, addressed as follows:

8 Attorneys for Defendant EEC:

9 Theresa M. Marchlewski, Esq.
10 Jade M. Brewster, Esq.
JACKSON LEWIS, P.C.
11 725 South Figueroa Street, Suite 2500
Los Angeles, CA 90017
12 Tel: (213) 630-8248 / Fax: (213) 689-0430
Email: Theresa.Marchlewski@jacksonlewis.com
13 Email: Jade.Brewster@jacksonlewis.com

14 using the following service method:

15 **X VIA ELECTRONIC MAIL:** Service by electronic mail was made either pursuant to a
16 Court Order, pursuant to agreement between the parties permitting the same, or as a
17 professional courtesy in addition to other proper service. The electronic mail was sent to
18 an electronic mail address maintained by the person on whom the document is served as
last given by those persons. I personally requested a "delivery receipt" for this electronic
mail message, and, unless disallowed by the recipient, received the same.

19 *and on Defendant Mikeri Maloney, addressed as follows:*

20 Mikeri Maloney
18499 Kalin Ranch Drive
21 Victorville, CA 92395

22 *using the following service method:*

23 **X VIA PERSONAL DELIVERY:** I caused the document to be served to be personally
24 delivered by hand to the addressee pursuant to California Code of Civil Procedure §1011.

25 I DECLARE under penalty of perjury that the foregoing is true and correct.

26 Executed on January 13, 2021, at Los Angeles, California.

27 

28 Cielo Guilatco