

JACOB D. FLESHER – SBN 210565
JASON W. SCHAFF – SBN 244285
JEREMY J. SCHROEDER – SBN 223118
FLESHER SCHAFF & SCHROEDER, INC.
2202 Plaza Drive
Rocklin, CA 95765
Telephone: (916) 672-6558
Facsimile: (916) 672-6602

Attorneys for plaintiff,
B. DOE, a minor, by and through his Guardian,
KERRIE WAGNER

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

* * *

B. DOE, a minor, by and through his Guardian,
KERRIE WAGNER,

Plaintiff,

vs.

NAPA VALLEY UNIFIED SCHOOL DISTRICT,
a public entity; ANNIE PETRIE, an individual;
TROY MOTT, an individual; GERALD HARRIS,
an individual; JESUS MARTINEZ, an individual;
J.T., an individual minor; D.O., an individual
minor; B.B., an individual minor; J.Z., an
individual minor; R.J., an individual minor; JOHN
TORRES, an individual; FLORA TORRES, an
individual; and, DOES 1 through 100, inclusive,

Defendants.

CASE NO.

Complaint filed: 6/29/17
Trial Date: n/a

**COMPLAINT FOR DAMAGES; DEMAND
FOR JURY TRIAL**

Plaintiff, B. DOE, by and through his Guardian, KERRIE WAGNER, complains of defendants,
NAPA VALLEY UNIFIED SCHOOL DISTRICT, TROY MOTT, GERALD HARRIS, JESUS
MARTINEZ, J.T., D.O., B.B., J.Z., R.J., JOHN TORRES, FLORA TORES, and DOES 1 through 100,
and each of them, and alleges:

COMMON ALLEGATIONS

1. At all times herein mentioned, plaintiff, B. DOE, a minor, resided in the City of Napa,
County of Napa, State of California, within boundaries of the United States District Court for the
Northern District of California, and was a student and football player at Napa High School, a public

1 school within the jurisdiction of defendant, NAPA VALLEY UNIFIED SCHOOL DISTRICT. KERRIE
2 WAGNER is the natural mother and general guardian of B. DOE.

3 **2.** Defendant, NAPA VALLEY UNIFIED SCHOOL DISTRICT (“NVUSD”), is, and at all
4 times mentioned was, a public entity and school district maintaining the ownership, maintenance,
5 administration, control and supervision of Napa High School, located at 2475 Jefferson Street, Napa, CA
6 94558. As such, the California Education Code requires a reasonable, proper and safe education for
7 students in the ninth through twelfth grades at Napa High School. At all times material herein, NVUSD
8 received federal financial assistance, within the meaning of 20 U.S.C. § 1681(a), both generally and
9 specifically with respect to the programs and activities at Napa High School. With regard to the California
10 law claims, NVUSD has statutory liability pursuant to California Government Code §§ 815.2, 815.6 and
11 820.

12 **3.** Defendant, ANNIE PETRIE, is, and at all times mentioned was, an individual over the age
13 of 18, residing in the County of Napa, State of California, within the boundaries of the United States
14 District Court for the Northern District of California, and was an employee of NVUSD as the Principal at
15 Napa High School.

16 **4.** Defendant, TROY MOTT, is, and at all times mentioned was, an individual over the age
17 of 18, residing in the County of Napa, State of California, within boundaries of the United States District
18 Court for the Northern District of California, and was an employee of NVUSD as a football coach at
19 Napa High School.

20 **5.** Defendant, GERALD HARRIS, is, and at all times mentioned was, an individual over the
21 age of 18, residing in the County of Napa, State of California, within boundaries of the United States
22 District Court for the Northern District of California, and was an employee of NVUSD as a football coach
23 at Napa High School.

24 **6.** Defendant, JESUS “CHUY” MARTINEZ (“MARTINEZ”), is, and at all times mentioned
25 was, an individual over the age of 18, residing in the County of Napa, State of California, within
26 boundaries of the United States District Court for the Northern District of California, and was an
27 employee of NVUSD as a football coach at Napa High School.

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1 **7.** Defendant, J.T. (“JT”), is, and at all times mentioned was, an individual under the age of
2 18, residing in the City of Napa, County of Napa, State of California, within boundaries of the United
3 States District Court for the Northern District of California, and was a student and football player at Napa
4 High School.

5 **8.** Defendant, D.O., is, and at all times mentioned was, an individual under the age of 18,
6 residing in the City of Napa, County of Napa, State of California, within boundaries of the United States
7 District Court for the Northern District of California, and was a student and football player at Napa High
8 School.

9 **9.** Defendant, B.B, is, and at all times mentioned was, an individual under the age of 18,
10 residing in the City of Napa, County of Napa, State of California, within boundaries of the United States
11 District Court for the Northern District of California, and was a student and football player at Napa High
12 School.

13 **10.** Defendant, J.Z., is, and at all times mentioned was, an individual under the age of 18,
14 residing in the City of Napa, County of Napa, State of California, within boundaries of the United States
15 District Court for the Northern District of California, and was a student and football player at Napa High
16 School.

17 **11.** Defendant, R.J., is, and at all times mentioned was, an individual under the age of 18,
18 residing in the City of Napa, County of Napa, State of California, within boundaries of the United States
19 District Court for the Northern District of California, and was a student and football player at Napa High
20 School.

21 **12.** Defendant, JOHN TORRES, is, and at all times mentioned was, an individual over the age
22 of 18, residing in the County of Napa, State of California, within boundaries of the United States District
23 Court for the Northern District of California, and was the parent of defendant, JT.

24 **13.** Defendant, FLORA TORRES, is, and at all times mentioned was, an individual over the
25 age of 18, residing in the County of Napa, State of California, within boundaries of the United States
26 District Court for the Northern District of California, and was the parent of defendant, JT.

27 **14.** Plaintiff is informed and believes, and thereupon alleges, that at all times mentioned,
28 defendants, DOES 1 through 50, and each of them, were minor children students at Napa High School

1 residing in the City of Napa, County of Napa, State of California, within boundaries of the United States
2 District Court for the Northern District of California.

3 **15.** Plaintiff is informed and believes, and thereupon alleges, that at all times herein
4 mentioned, defendants, DOES 51 through 75, and each of them, were adult teachers, administrators
5 and/or coaches at Napa High School residing within the jurisdiction of the United States District Court for
6 the Northern District of California.

7 **16.** Plaintiff is informed and believes, and thereupon alleges, that at all times herein
8 mentioned, defendants, DOES 76 through 100, and each of them, were the parents of minor children
9 identified herein as defendants, D.O., B.B., J.Z., R.J., DOES 1 through 50, residing within the jurisdiction
10 of the United States District Court for the Northern District of California.

11 **17.** At all times mentioned herein, defendants, and DOES 1 through 100, and each of them,
12 were the agents, servants and employees of each of the remaining defendants and were at all times
13 mentioned herein acting within the course and scope of that agency or employment.

14 **18.** Plaintiff does not know the true names and/or capacities of DOES 1 through 100, and
15 upon information and belief alleges Defendants were in some way negligently or carelessly responsible
16 for the injuries and damages herein alleged. Plaintiff prays leave to amend this Complaint to insert the
17 true name of defendants when their identities are ascertained. Each reference herein to "Defendant,"
18 "Defendants," or a specifically named defendant refers also to all defendants sued as DOES. Defendants
19 are individuals, corporations, partnerships and other entities which are engaged in, joined in, and
20 conspired with the other wrongdoers in carrying out the events and the negligent and/or unlawful conduct
21 described in this Complaint, or ratified the acts of the other defendants described herein.

22 **19.** At all times material herein, defendants, NVUSD, PETRIE, MOTT, HARRIS,
23 MARTINEZ and DOES 51 through 75, and each of them, owned and possessed a legal duty to provide
24 reasonable and necessary supervision, control and observation over the students in their custody, care
25 and/or control, including Plaintiff, who was a student and football player at Napa High School. NVUSD
26 is required to employ properly educated, trained, credentialed, certified and responsible teachers,
27 instructors, supervisors, aides, coaches, security and/or other staff and/or personnel at Napa High School
28 to instruct and supervise students, NVUSD is legally required to provide proper and safe education, and

1 reasonable training during all times when the school is open and while school sports activities are
2 ongoing. This duty is reflected, in part and without limitation, by the following:

3 **a.** Government Code § 815.2 provides in relevant part that “[a] public entity is liable
4 for injury proximately caused by an act or omission of an employee of the public entity within the
5 scope of his employment if the act or omission would, apart from this section, have given rise to a
6 cause of action against that employee or his personal representative.” Under Government Code §
7 815.2(a), a school district is vicariously liable for injuries proximately caused by the negligent
8 failure of its employees to adequately supervise student conduct. NVUSD employees, specifically
9 those involved in supervising the victim student plaintiff and student perpetrators involved herein,
10 and/or or those involved in the training, instructing and supervising those personnel who were in a
11 position to observe, control and/or prevent such assault from occurring herein breached their legal
12 duties to plaintiff;

13 **b.** A special relationship exists between a school district and its students, imposing an
14 affirmative duty on the part of NVUSD to take all reasonable steps to protect them. Either a total
15 lack of supervision or ineffective supervision may constitute a lack of ordinary care on the part of
16 those responsible for supervising Napa High School student athletes;

17 **c.** Pursuant to California Constitution, Article I, § 28(f)(1), all students and staff of
18 public primary, elementary, junior high, and senior high schools have an inalienable right to
19 attend campuses that are safe, secure, and peaceful;

20 **d.** Pursuant to California Education Code § 44807, every teacher in the public school
21 system must hold pupils to strict account for their conduct on the way to and from school, on the
22 playgrounds, or during recess;

23 **e.** When a public entity, such as NVUSD, is under a mandatory duty imposed by
24 California Constitution, Article I, § 28(f)(1) and/or California Education Code § 44807, that is
25 designed to protect against the risk of a particular kind of injury, the public entity is liable for an
26 injury of that kind proximately caused by its failure to discharge its duty, unless the entity
27 establishes that it exercised reasonable diligence to discharge the duty. California Government
28 Code § 815.6; and,

1 **f.** California Code of Regulations, Title 5, §§ 5530, 5531, 5550 and 5551.

2 **20.** Plaintiff started for Napa High School's freshman football team for most of the 2016
3 season with great success. Shortly before the "Big Game" against crosstown rival Vintage High School,
4 the coaches for Napa High School promoted Plaintiff and several other freshman players to the junior
5 varsity squad. J.T. served as the starting quarterback and leader of the junior varsity team. D.O., B.B., J.Z.
6 and R.J. were also junior varsity players.

7 **21.** On October 31, 2016, as a regular football practice concluded leading up to the Big Game,
8 J.T., D.O., B.B., J.Z., R.J. and several teammates approached Plaintiff in "the Jock Block." The Jock
9 Block was an area of the boys' locker room reserved for members of the school's athletic teams and
10 referred to as such by school staff to promote a culture of entitlement among the athletes. Plaintiff had
11 disrobed down to his underwear, when J.T., D.O., B.B., J.Z., R.J. and several teammates grabbed him and
12 forced him to the ground. J.T., D.O., B.B., J.Z., R.J. and several teammates then held Plaintiff down,
13 grabbed his genitals, beat him, and penetrated his anus through his underwear with their fingers. During
14 this sexual assault and battery, J.T., D.O., B.B., J.Z., R.J. and several teammates also hurled various
15 verbal epithets and threats, creating ample commotion to warn any nearby staff member if they were
16 present. Plaintiff eventually freed himself from his assailants and attempted to escape, only to be dragged
17 back into the Jock Block by J.T., D.O., B.B., J.Z., R.J. and several teammates. J.T., D.O., B.B., J.Z., R.J.
18 and several teammates then continued to assault Plaintiff. At one point during the attack, one of the
19 attackers shoved his hand into Plaintiff's underwear while saying words to the effect: "it will hurt less if
20 you stop struggling."

21 **22.** At the same time J.T., D.O., B.B., J.Z., R.J. and several teammates assaulted Plaintiff,
22 other freshmen players were also attacked in a similarly aggressive manner. The attacks occurred in the
23 absence of any supervision by school staff, teachers or coaches, while encouraged and cheered on by
24 onlooking football players without intervening. The attacks were eventually halted by the appearance of a
25 school maintenance worker.

26 **23.** The aggressive, violent and brutal attack was part of a tradition of ritualistic hazing of
27 football players at Napa High School. There is a long-standing pervasive culture, spanning multiple years
28 within the football and related cheerleading athletic programs at Napa High School that defendants,

1 **29.** At all times alleged in this Complaint, Plaintiff was a student at Napa High School and
2 was a member of Napa High School's football program.

3 **30.** In engaging in and performing the acts, omissions and conduct alleged above, officials of
4 defendant, NVUSD, who at a minimum had authority to address the culture of hazing, and particularly the
5 acts of male-on-male sexual violence which became part of the ritualistic hazing of student athletes, and
6 to institute corrective and preventative measures on behalf of NVUSD, including, but not limited to,
7 PETRIE, MOTT, HARRIS, MARTINEZ and DOES 51 through 75, who had actual or constructive
8 knowledge of the hazing practices, and particularly the hazing associated with the Big Game. Despite
9 their knowledge of the heinous acts of male-on-male physical and sexual assault which were part of the
10 football program's hazing rituals, NVUSD, PETRIE, MOTT, HARRIS, MARTINEZ and DOES 51
11 through 75, condoned the rituals and left the football players unsupervised so they could undertake the
12 them, and thereby failed to protect students such as plaintiff, and plaintiff specifically, from male-on-male
13 sexual violence on campus.

14 **31.** At all times mentioned in this Complaint, NVUSD, PETRIE, MOTT, HARRIS,
15 MARTINEZ and DOES 51 through 75, had and exercised substantial control over those harassed,
16 including B. DOE, and the context in which the known harassment occurred. This included the school
17 grounds on which the assault and harassment occurred and, specifically, the Jock Block and the male
18 locker room.

19 **32.** The sexual violence described above was so severe, pervasive, and objectively offensive
20 that it deprived plaintiff access to one or more educational opportunities or benefits.

21 **33.** NVUSD, PETRIE, MOTT, HARRIS, MARTINEZ and DOES 51 through 75 knew or
22 should have known of the numerous acts of objectively offensive touching involving multiple student
23 victims as they occurred over a number of years. Those defendants had actual knowledge of the ritualistic
24 hazing or knew of the substantial risk of sexual abuse on the Napa High School campus as part of the
25 hazing rituals at Napa High School.

26 **34.** NVUSD, PETRIE, MOTT, HARRIS, MARTINEZ and DOES 51 through 75 exhibited
27 deliberate indifference, acquiescence and ratification of the hazing culture and practices at Napa High
28 School, including the incident involving Plaintiff.

1 encouraging and/or ratifying a culture of hazing, harassment and intimidation at Napa High School. This
2 additionally constituted a negligent and unreasonable breach of their affirmative duty to maintain,
3 manage, control and operate Napa High School premises and staff to provide necessary and adequate
4 supervision and security on the Napa High School premises for students and student athletes such as
5 plaintiff. Defendants, NVUSD, PETRIE, MOTT, HARRIS, MARTINEZ and DOES 51 through 75, and
6 each of them, failed to perform one or more mandatory duties, within the meaning of California
7 Government Code § 815.6, including but not limited to:

8 **a.** Their duty to protect students generally under California Education Code § 44807
9 and California Code of Regulations, Title 5, §§ 5530, 5531, 5550 and 5551;

10 **b.** Their duty to protect students generally under Section 28(f) of Article I of the
11 California Constitution;

12 **c.** Their duty under California Education Code § 32261; and,

13 **d.** Their duty pursuant to the special relationship between them and plaintiff within
14 the compulsory nature of education under California Education Code § 48200.

15 **44.** Defendant, NVUSD, is liable for the negligence of defendants, PETRIE, MOTT,
16 HARRIS, MARTINEZ and DOES 51 through 75, and each of them, pursuant to California Government
17 Code § 815.2(a).

18 **45.** After the incident defendant, NVUSD, took a coerced statement from the victim plaintiff,
19 then gave that confidential information, along with his identity, to JOHN TORRES, FLORA TORRES
20 and/or JT, who used that information in an effort to intimidate and coerce plaintiff and his family.

21 **46.** As an actual, direct, proximate and legal result of the wrongful conduct of Defendants,
22 NVUSD, PETRIE, MOTT, HARRIS, MARTINEZ and DOES 51 through 75, and each of them, alleged
23 herein, plaintiff suffered and incurred, and will suffer and incur in the future, significant educational
24 detriment, humiliation, disability, pain, suffering, fear, anxiety, loss of enjoyment of life, loss of quality of
25 life, emotional distress, medical expenses, loss of future earnings and loss of earning capacity, and other
26 general and special damages in an amount according to proof.

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THIRD CAUSE OF ACTION

NEGLIGENCE

Against Defendants, J.T., D.O., B.B., J.Z., R.J., and DOES 1 through 50

47. Plaintiff realleges and incorporates by reference all paragraphs above as though set forth fully herein.

48. Defendants, J.T., D.O., B.B., J.Z., R.J., and DOES 1 through 50, and each of them, negligently and carelessly failed to control their bodies, and with the direct aid of one another, while engaging in aggressive, forceful, violent, belligerent, hostile, intimidating, humiliating and otherwise physically and emotionally destructive conduct in the form of grabbing, striking, assaulting, and otherwise brutalizing plaintiff about his body, or encouraging other to so do, so as to cause plaintiff severe and permanent personal injuries and damages.

49. As an actual, direct, proximate and legal result of the wrongful conduct of Defendants, J.T., D.O., B.B., J.Z., R.J., and DOES 1 through 50, and each of them, alleged herein, plaintiff suffered and incurred, and will suffer and incur in the future, significant educational detriment, humiliation, disability, pain, suffering, fear, anxiety, loss of enjoyment of life, loss of quality of life, emotional distress, medical expenses, loss of future earnings and loss of earning capacity, and other general and special damages in an amount according to proof.

FOURTH CAUSE OF ACTION

SEXUAL BATTERY

Against Defendants, J.T., D.O., B.B., J.Z., R.J., and DOES 1 through 50

50. Plaintiff realleges and incorporates by reference all paragraphs above as though set forth fully herein.

51. Defendants, JT, DO, BB, JZ, RJ, and DOES 1 through 50, and each of them, touched, or caused to be touched, plaintiff, in a sexual manner, with the intent to harm, offend and/or humiliate plaintiff.

52. Plaintiff did not consent to the harmful and offensive touching.

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1 emotional distress, medical expenses, loss of future earnings and loss of earning capacity, and other
2 general and special damages in an amount according to proof.

3 **SIXTH CAUSE OF ACTION**

4 **FALSE IMPRISONMENT**

5 **Against Defendants, J.T., D.O., B.B., J.Z., R.J., and DOES 1 through 50**

6 **61.** Plaintiff realleges and incorporates by reference all paragraphs above as though set forth
7 fully herein.

8 **62.** Defendants J.T., D.O., B.B., J.Z., R.J., and DOES 1 through 50, and each of them,
9 intentionally deprived plaintiff of his freedom of movement by use of physical force., which compelled
10 plaintiff to stay on the ground for an appreciable time.

11 **63.** Plaintiff did not consent to the restraint and confinement, causing him actual harm.

12 **64.** Defendants, J.T, D.O., B.B., J.Z., R.J., and DOES 1 through 50, acted maliciously,
13 oppressively and with a conscious disregard for the rights, safety and well-being of plaintiff, such that an
14 award of exemplary and punitive damages should be imposed against these defendants.

15 **65.** As an actual, direct, proximate and legal result of the wrongful conduct of Defendants
16 J.T., DO, BB, JZ, RJ, and DOES 1 through 50, and each of them, alleged herein, plaintiff suffered and
17 incurred, and will suffer and incur in the future, significant educational detriment, humiliation, disability,
18 pain, suffering, fear, anxiety, loss of enjoyment of life, loss of quality of life, emotional distress, medical
19 expenses, loss of future earnings and loss of earning capacity, and other general and special damages in an
20 amount according to proof.

21 **SEVENTH CAUSE OF ACTION**

22 **VICARIOUS LIABILITY FOR WILLFUL MISCONDUCT OF A MINOR**

23 **Against defendants, JOHN TORRES, FLORA TORRES and DOES 76 through 100**

24 **66.** Plaintiff realleges and incorporates by reference all paragraphs above as though set forth
25 fully herein.

26 **67.** Defendants, JOHN TORRES, FLORA TORRES, who had a duty to provide proper
27 supervision and control of J.T., a minor child. California Civil Code § 1714.1, are the parents of J.T.

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1 SECOND, THIRD, FOURTH & EIGHTH CAUSES OF ACTION:

- 2 1. Special Damages according to proof;
- 3 2. General Damages according to proof;
- 4 3. Costs of Suit; and,
- 5 4. Such other and further relief as may be proper.

6 FIFTH, SIXTH & SEVENTH CAUSES OF ACTION

- 7 1. Special Damages according to proof;
- 8 2. General Damages according to proof;
- 9 3. Exemplary Damages;
- 10 4. Costs of Suit; and,
- 11 5. Such other and further relief as may be proper.

12 **JURY DEMAND**

13 Plaintiff demands a trial by jury.

14 DATED: June 29, 2017

FLESHER SCHAFF & SCHROEDER, INC.

/s/ Jacob D. Flesher

By _____

JACOB D. FLESHER

JASON W. SCHAFF

JEREMY J. SCHROEDER

Attorneys for plaintiff, B. DOE