

1 TERRI KEYSER-COOPER, Nevada Bar 3984
125 Edgewater Parkway, Reno, NV 89519
2 1548 Kachina Ridge Dr., Santa Fe, NM 87507
(775) 337-0323
3 keyserscooper@lawyer.com

4 DIANE K. VAILLANCOURT, Nevada Bar #9277
223 John St., Santa Cruz, CA 95060
5 (831) 332-2303
vaillancourt@cruzio.com ≠
6 *Attorneys for Plaintiff Vanessa Bowie-Middleton*

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 VANESSA BOWIE-MIDDLETON

Case No. 3:24-cv-00320-ART-CLB

11 Plaintiff,

12 v.

13 WASHOE COUNTY SCHOOL DISTRICT,

14
15 Defendant.
16 _____/

**OPPOSITION TO MOTION TO
DISMISS; ALTERNATIVELY,
OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT ON
THE QUESTION OF TERMS &
CONDITIONS OF EMPLOYMENT**

17 **I. INTRODUCTION**

18 This case is about a blatantly racist directive. It is about a workplace in which the school
19 principal feels entitled to stifle a Black kitchen manager’s ability to perform her job duties in order to
20 accommodate the racial prejudices of the school’s white teachers who are uncomfortable with the
21 sound of her “Black voice” maintaining order in the school cafeteria. This is a case ripe for partial
22 summary judgment even before discovery begins. It is about racial discrimination on its face. There
23 is no need to infer if the challenged employment action was race-based.

24 The directive given was explicitly and overtly based on race and only race. The principal did
25 not see a reason to hide the racial motivation behind her directive. There is no need to litigate if the
26 challenged employment action actually happened. One witness overheard the principal’s directive as
27 it was being made. Another witness confirmed the change in the kitchen manager’s duties and the

1 racially discriminatory reason behind it. There is no question that similarly situated white employees
2 were treated differently. White kitchen managers and their white subordinates could continue
3 performing those same job duties the Black kitchen manager was told she could not perform because
4 of her blackness. There ought to be no question that Plaintiff suffered material interference with
5 “terms, conditions, and privileges of employment” under Title VII as a matter of law. The Ninth
6 Circuit has a case precisely on point addressing a similar directive to a Black food manager.

7 In January 2022, the white principal of Bohach Elementary School in Sparks, Nevada, Heidi
8 Gavrilles (“Gavrilles”), instructed Plaintiff Vanessa Bowes-Middleton – then the school’s Black
9 nutrition manager – that she could no longer address student misconduct in the cafeteria or reprimand
10 misbehaving students even though that had been an intrinsic part of her job duties since she was first
11 hired as a kitchen worker. (Am. Compl., ECF No. 7, ¶¶27-28). The justification for this curtailment
12 of Plaintiff’s job responsibilities was that white teachers at the school felt uncomfortable hearing
13 Plaintiff’s Black voice.¹ (Am. Compl., ECF No. 7, ¶29). Gavrilles explained to Plaintiff that these
14 teachers were all “white middle class” and “not used to hearing the sound of a Black voice;” that
15 because of the white teachers’ discomfort at hearing Plaintiff speak, Plaintiff must stop reprimanding
16 students for misconduct in the cafeteria, and she must also stop using the cafeteria PA system to make
17 lunchroom announcements. (Am. Compl., ECF No. 7, ¶¶29, 32).

18 Gavrilles did not tell Plaintiff that she had said or done anything wrong, that she violated any
19 rule or policy, or that reprimanding student misconduct was **not** part of her job. Her sole express
20 concern was that Plaintiff sounded “Black,” which made certain white teachers uncomfortable.
21 Plaintiff’s kitchen subordinate, Jennifer Frith (“Frith”), a white woman who overheard Gavrilles give
22 Plaintiff this directive, remained free to continue reprimanding students—only Plaintiff was singled
23 out and only because she is Black. (Am. Compl., ECF No. 7, ¶¶ 36-39. 85).

24
25
26
27 ¹ As Bowes-Middleton recalls, **all** but one of the Bohach teachers in 2022 were white.

1 So doing, Gavrilles materially interfered with the terms and conditions of Plaintiff's
2 employment, limited her possibilities for advancement, rendered her a less valuable employee, and
3 adversely affected her job responsibilities. (Am. Compl., ECF No. 7, ¶¶74-78). For seven months,
4 until the directive was rescinded, Plaintiff would see students yelling, pushing, fighting, and throwing
5 food in the cafeteria, and could not reprimand or discipline them. As a result, the school environment
6 suffered. While Plaintiff suffered the humiliation of this race-based directive, the safety, security, and
7 well-being of the children were also impacted.

8 **II. PLAINTIFF MORE THAN MEETS THE "PLAUSIBILITY" STANDARD**

9 Under Federal Rule of Civil Procedure 8, Plaintiff's complaint "must contain sufficient factual
10 matter, accepted as true to 'state a claim to relief that is *plausible* on its face.'" *Ashcroft v. Iqbal*, 556
11 U.S. 662, 678 (2009) (emphasis added). "Because there are alternative ways to establish a claim for
12 racial discrimination, no particular method of establishing a discrimination claim—such as the prima-
13 facie-case framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)—is
14 mandatory at the pleading stage." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511 (2002) ("noting,
15 for example, that 'if a plaintiff is able to produce direct evidence of discrimination, he may prevail
16 without proving all the elements of a prima face case'"). Instead, the standard to survive a motion to
17 dismiss is simply whether, in light of the requirements of the substantive law invoked, the plaintiff
18 has pleaded sufficient "factual content that allows the court to draw the reasonable inference that the
19 defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Here, Vanessa Bowie-
20 Middleton ("Plaintiff") has provided a highly detailed, comprehensive, and meticulous recital of the
21 facts which more than plausibly describe the alleged racial misconduct with specificity. The facts
22 alleged provide direct evidence of unlawful wrongdoing in easy to understand language. Defendant's
23 assertions to the contrary are patently wrong; they border on frivolous.

24 **III. DEFENDANT RAISES THREE UNMERITORIOUS JURISDICTIONAL CLAIMS**

25 **A. Failure To Exhaust – Wrong on the Law**

26 **1. Failure to Exhaust is an Affirmative Defense Not a Jurisdictional Requirement**

1 Defendant, Washoe County School District (“WCSD”) alleges Plaintiff has failed to allege
2 any facts that she exhausted her administrative remedies under Title VII and thus her Amended
3 Complaint must be dismissed. (Def. Bf., ECF No. 12, 6:5-6). Defendants are wrong on the law. There
4 is no jurisdictional requirement related to a charge filing requirement and the United States Supreme
5 Court made that expressly clear in *Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843, 1846 (2019).
6 *Fort Bend* states: “Title VII’s charge-filing instruction is *not of jurisdictional cast*....” (See also, *EPA*
7 *v. EME Homer City Generation, L.P.*, 572 U.S. 489, 512 (2014). The Court added that Title VII’s
8 charge-filing requirement is a “processing rule,” not a jurisdictional prescription delineating the
9 adjudicatory authority of courts.” *Fort Bend* at 1851.

10 Instead of being a jurisdictional requirement as Defendant’s allege, failure to exhaust is an
11 *affirmative defense* that should be pleaded. *Davis v. Fort Bend Cnty.*, 893 F.3d 300, 307 (5th Cir.
12 2018). The Fifth Circuit’s opinion regarding the exhaustion requirement was expressly affirmed when
13 the case went up on appeal to the United States Supreme Court. See also *Flagg v. Stryker Corp.*, 819
14 F.3d 132, 142 (5th Cir. 2016) (en banc) (“Absent a jurisdictional nature to ‘failure to exhaust,’ we
15 treat such failures to exhaust as affirmative defenses, not jurisdictional prerequisites.”).

16 **2. Plaintiff Properly Exhausted Her Administrative Claim**

17 Defendant correctly acknowledges that Plaintiff’s Amended Complaint alleges that “Plaintiff
18 filed her charge of discrimination with NERC, received her Right to Sue letter, and timely filed her
19 Complaint on July 23, 2024.” (Def. Bf., ECF No. 12, 7:13-14). Plaintiff went above and beyond what
20 was required. She was not required to do even that. If Defendant had communicated to Plaintiff what
21 it wrongly assumed was a jurisdictional failure instead of filing an unwarranted motion to dismiss,
22 the issue would likely have been resolved and no motion to dismiss on jurisdictional grounds filed.
23 An affirmative defense is not jurisdictional. A 12(b)(6) motion cannot be made based on an
24 affirmative defense. There is no authority anywhere that a 12(b)(6) motion can be made based on an
25 affirmative defense, certainly not after the Supreme Court ruling in *Fort Bend*. Finally, there is no
26 requirement for Plaintiff to refute Defendant’s potential affirmative defense in her Complaint.

27
28

1 If Defendant had not been so hasty in filing an unwarranted jurisdictionally based motion to
2 dismiss, it could have instead called Plaintiff’s counsel and asked: “When was the NERC complaint
3 filed, when did Plaintiff receive her right to sue letter?” Defendant would have promptly been given
4 a copy of her dated NERC complaint and her Right to Sue letter.² Defendant would have immediately
5 understood not only that there was no jurisdictional basis to file a 12(b)(6) but also that raising an
6 affirmative defense on the question would fail as well. Defendant had no basis to file a 12(b)(6)
7 motion based on failure to exhaust—it is borderline frivolous.

8 **B. Failure to Allege Sufficient Facts re Disparate Treatment Based On Race**

9 Defendant’s argument that Plaintiff has failed to state a prima facie claim of race-based
10 disparate treatment is also borderline frivolous. Plaintiff’s Complaint is a lengthy, meticulously
11 detailed recitation of facts constituting direct evidence of disparate treatment based on race. (Def. Bf.,
12 ECF No. 12, 9:1-10). Black letter law makes clear that all facts in a complaint must be accepted as
13 true and must be construed in favor of the non-moving party. *Mattioda v. Nelson*, 98 F.4th 1164, 1173
14 (9th Cir. 2024)

15 Plaintiff’s Complaint states that she is African-American, which is undisputably a protected
16 class (Am. Compl., ECF No. 7, ¶3); she was performing according to Defendant’s legitimate
17 expectations as she received outstanding evaluations (Am. Compl., ECF No. 7, ¶ 26); and she suffered
18 an adverse employment action because of her race (Am. Compl., ECF No. 7, ¶¶ 27-32). Plaintiff has
19 painstakingly set forth well-pleaded facts soundly providing direct evidence of disparate treatment
20 based on race.

21 **1. Direct Evidence Of Disparate Treatment Based on Race**

22 Direct evidence “is evidence which, if believed, proves the fact [of the discriminatory animus]
23 with inference or presumption.” Racist or sexist statements constitute such “direct evidence.” Direct
24

25
26 ² An affirmative defense of failure to exhaust will not be successful either. Plaintiff filed her
27 original complaint on September 28, 2022, well within the 300 day requirement and received her
28 Right to Sue letter on May 1, 2024. She timely filed her Complaint well within the 90 day requirement.
Plaintiff was not required to assert this in her Complaint.

1 evidence typically consists of clearly sexist, racist, or similarly discriminatory statements or actions
2 by the employer. *Godwin v. Hunt-Wesson*, 150 F.3d 1217, 1221 (9th Cir. 1998). The plaintiff is
3 required to produce “very little” direct evidence of the employer’s discriminatory intent to move past
4 summary judgment. *Id.* at 122 (quoting *Lindahl v. Air France*, 930 F.2d 1434, 1438 (9th Cir. 1991).

5 The usual procedure for proving a prima facie case in a Title VII case is by the burden shifting
6 analysis established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 793, 802 (1973). However, the
7 analysis is entirely different if the plaintiff has direct evidence. If the plaintiff has direct evidence of
8 disparate treatment, the *McDonnell Douglas* burden shifting analysis does not apply. “A plaintiff can
9 establish a prima facie case of disparate treatment without satisfying the *McDonnell Douglas* test if
10 she provides evidence suggesting that the employment decision was based on a discriminatory
11 criterion illegal under the Civil Rights Act.” *International Brotherhood of Teamsters v. United States*.
12 431 U.S. 324, 358 (1977). The *McDonnell Douglas* framework is **inapplicable** when the plaintiff
13 presents direct evidence of discrimination. See *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111,
14 121 (1985) (“[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct
15 evidence of discrimination.”).” *Nguyen v. Qualcomm, Inc.*, No. 11-55580, D.C. No. 3:09-cv-01925-
16 MMA-WVG (9th Cir. Dec 24, 2012).

17 Gavrilles’ order that Plaintiff must no longer reprimand unruly lunchroom students constituted
18 direct evidence of racial animus. Gavrilles singled Plaintiff out for different treatment from Plaintiff’s
19 white subordinate Jennifer Frith. (Am. Compl., ECF No. 7, ¶¶36-39). This was in direct contradiction
20 to how Plaintiff had been trained by her superior Terri Braunworth and other cafeteria workers at
21 other schools. (Am. Compl., ECF No. 7, ¶¶11-12,17, 21-22). Gavrilles’ order was solely about
22 disparate treatment based on race. Gavrilles made clear to Plaintiff that white teachers did not like the
23 way Plaintiff spoke and did not want her reprimanding cafeteria students even though it was plainly
24 part of Plaintiff’s job. (Am. Compl., ECF No. 7, ¶¶27-32). Plaintiff also alleged two witnesses,
25 Jennifer Frith and Lonnie Feemster, heard Gavrilles **confirm** that she made these race based
26 statements to Plaintiff and **defend** the right of white teachers to refuse to listen to a Plaintiff’s Black
27 sounding voice. (Am. Compl., ECF No. 7, ¶¶ 40-50).

1 **2. Plaintiff Suffered an Adverse Action That Materially Affected the Terms and**
2 **Conditions of Her Employment**

3 Defendant’s next argument is that Plaintiff failed plausibly to allege an adverse employment
4 action or interference with her essential job duties. Here too, Defendant is wrong on the law. An
5 adverse employment action is one that “materially affect[s] the compensation, terms, conditions, or
6 privileges of...employment.” *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008). *Judie v.*
7 *Hamilton*, 872 F.2d 919, 920 (9th Cir. 1989) dealt with an adverse employment action strikingly
8 similar to that in this case. In *Judie*, a Black male was employed at Western State Hospital as a Food
9 Manager 1. The specifications for Food Manager 1, included supervising employees in a variety of
10 tasks. Judie alleged that his supervisor restricted Judie's supervisory responsibilities on the basis of
11 his race.³ Judie argued that restrictions on his supervisory responsibilities discriminated against him
12 in the terms, conditions, and privileges of employment in violation of Title VII, 42 U.S.C. §2000e-2.
13 Judie further argued that the ability to supervise constitutes a term, condition, or privilege of
14 employment. He further argued that supervisory responsibilities would provide him with experience
15 necessary to progress in his chosen field. Thus, the denial of this experience constitutes a “limit” that
16 would “tend to deprive [him] of employment opportunities” as well as a benefit.

17 The Ninth Circuit agreed with Judie’s arguments, holding that supervisory responsibilities
18 were part and parcel of a food manager’s job at the hospital. It held:

19 The hospital is not obligated to permit Judie to assume wide supervisory
20 responsibilities. But it cannot preclude him from exercising such responsibilities on
21 the basis of race. Judie presented evidence that he has been denied the benefit of
22 exercising supervisory responsibilities, and that his supervisor, who did not allow him
23 these responsibilities, possessed racial animus against him. We hold, therefore, that
24 there is a genuine issue of material fact as to whether discrimination has been the cause
25 of Judie's limited supervisory responsibilities.

26 ³ In *Judie*, the Plaintiff lacked direct evidence of the employment action being on the “basis
27 of race.” That was a matter of inference based on evidence of the supervisor’s racial animus. Unlike
28 in this case, Judie’s supervisor did not directly state that the job restriction was because Judie was
29 Black or because others were uncomfortable with his blackness. The matter was remanded for trial to
30 determine if the directive at issue was race-based. Here, by contrast, the question of a race-based
31 interference with the terms and conditions of employment ought to be as a matter of law.

1 *Id.* at 921-22.

2 Here, Plaintiff was the kitchen manager at Bohach and possessed supervisory
3 responsibilities. (Am. Compl., ECF No. 7, ¶¶13, 15). One of her job duties was supervising and
4 ensuring student cafeteria safety. Defendant concedes that Plaintiff has properly pleaded these facts
5 taken directly from Plaintiff's Amended Complaint and, for purposes of its Motion, states them as
6 true. Defendant states:

7 As the Kitchen Manager, Plaintiff alleges in part, that her job duties included ensuring
8 the safety of all students; participating when necessary in the discipline, warning, and
9 reprimanding of all misbehaving students in the cafeteria environs, and using the
10 cafeteria public address system to make announcements. (Am. Compl., ECF No. 7,
11 ¶15). Plaintiff was instructed by other managers and nutrition service workers to keep
12 order in the cafeteria and address misbehavior. (Am. Compl., ECF No. 7, ¶¶17, 18, 19,
13 20). "See something, Say something" is the discipline policy. (Am. Compl., ECF No.
14 7, ¶¶18-19). The Amended Complaint alleges that on or about January 27 or 28, 2022,
15 Ms. Gavrilles told Plaintiff that she did not want her disciplining students because
16 white teachers were uncomfortable with Plaintiff, a black woman, reprimanding
17 students in the cafeteria. Ms. Gavrilles allegedly also prohibited Plaintiff from using
18 the PA system because her voice was offensive to teachers. (Am. Compl., ECF No. 7,
19 ¶¶27-29).

20 (*Def. Bf. ECF 12, 3:11-22*).

21 Further, Plaintiff has alleged that white staff at Bohach, namely Plaintiff's kitchen subordinate
22 Jennifer Frith, continued to discipline unruly students while Plaintiff could not only because of her
23 race. (Am. Compl., ECF 7, (Am. Compl., ECF No. 7, ¶¶36-39, 85). The complaint also alleges Ms.
24 Frith overheard Gavrilles' instruction to Plaintiff and recites facts alleging Ms. Frith wrote an email
25 attesting to these facts to Lisa Atkerson, Plaintiff's supervisor. (Am. Compl., ECF No. 7, ¶ 40).
26 Finally, Plaintiff's Amended Complaint makes clear that Plaintiff was trained at Bohach by the white
27 former kitchen manager Terri Braunworth. Ms. Braunworth stated: "Correcting misbehavior was an
28 important part of her job (at Bohach)." Ms. Braunworth explained that Plaintiff was not to let student
disruption just go. She told Plaintiff: "If she 'let it go' things could get worse." Plaintiff properly
alleged she was taught the importance of order and safety in the cafeteria and the importance of
addressing unruly student behaviors as they occurred. It was drilled into Plaintiff by all her kitchen
managers and all her older more experienced nutrition workers, at all schools, whether as an on-call

1 trainee, or a kitchen manager, that she must not ignore misconduct—especially the fighting, which
2 presented a serious safety and security issue.” (Am. Compl., ECF No. 7, ¶17).

3 Plaintiff’s Amended Complaint illuminates how this material change in Plaintiff’s job
4 responsibilities affected her adversely. Plaintiff states: “Rather than subject herself to the humiliating
5 option of relying on a subordinate [Ms. Frith] to do an essential task a job responsibility that she
6 previously held, Plaintiff withdrew and stopped engaging with the students.” (Am. Compl., ECF No.
7 7, ¶39). She was now “prevented from doing her job. And that interfered with her ability to maintain
8 order in the lunchroom.” (Am. Compl., ECF No. 7, ¶76). Previously, as the Amended Complaint
9 alleges, Plaintiff reprimanded students every day, generally once during each of the three daily
10 Bohach lunchroom shifts.” This was something Plaintiff had been trained to do as well as the fact that
11 it was a “necessary, vital, and critical function of maintaining school lunchroom order, safety and
12 security.” (Am. Compl., ECF No. 7, ¶75).

13 The importance of this material and adverse change in Plaintiff’s job description cannot be
14 overstated. The Amended Complaint alleges: “If fights broke out, which they frequently did, if
15 students were pushed and shoved, if bullying occurred forcing victimized children to cry, it was a
16 problem that required immediate attention. Plaintiff was required to act by order of WCSD, yet
17 Plaintiff was prevented from acting, because of her race. Plaintiff could only stand mutely by,
18 permitting misconduct to continue.” (Am. Compl., ECF No. 7, ¶78). With Plaintiff unable to
19 reprimand or stop student misconduct, the risk to student safety and security increased. With Plaintiff
20 effectively “muzzled” and unable to quell the daily food fights, violence, and disruption that regularly
21 occurred, the lunchroom was at risk as student safety was in jeopardy. (Am. Compl., ECF No. 7, ¶80).

22 **3. Similarly Situated**

23 WCSD argues that Plaintiff’s Amended Complaint fails to allege any specific individuals
24 outside of Plaintiff’s protected class who were treated differently in similar circumstances. (Def. Bf.
25 11:19-22). This is obviously incorrect. Plaintiff has listed three white kitchen WCSD workers who
26 had ability to discipline misbehaving students and were similarly situated to Plaintiff and outside the
27 protected group. First, Terri Braunworth, a white former Bohach kitchen manager, who instructed

1 Plaintiff that if “duty teachers” were not present she must act to maintain safety and security by
2 addressing the issue with errant students because it was part of her job. (Am. Compl., ECF No. 7,
3 ¶11, 17, 21). When Ms. Braunworth left and Plaintiff was promoted to kitchen manager Plaintiff was
4 “similarly situated” to Ms. Braunworth, in the exact same position as Ms. Braunworth, yet was treated
5 differently than Ms. Braunworth. And, Ms. Braunworth was clearly similarly situated to Plaintiff as
6 both performed the identical job duty.

7 Second, Plaintiff alleges subordinate worker, Ms. Frith, was a white kitchen worker at Bohach
8 and similarly situated to Plaintiff. Both worked in the Bohach kitchen. Plaintiff’s complaint alleges
9 that Frith could discipline unruly students while she was instructed to refrain from disciplining student
10 misconduct. (Am. Compl., ECF No. 7, ¶36, 85).

11 Third, Plaintiff alleges she also worked with white Marcia Iverson, a kitchen worker with 17
12 years’ experience. Ms. Iverson stressed to Plaintiff that reprimanding unruly students was necessary
13 and part of the kitchen workers’ job. Whether it occurred once a week, every other day, or every day,
14 it was a necessary part of the job to keep order. (Am. Compl., ECF No. 7, ¶12, 22). Plaintiff worked
15 with Ms. Iverson at Spanish Springs High School and was similarly situated to Ms. Iverson.

16 **III. WCSD IMPROPERLY BYPASSES THE RULES BY INSERTING AS EXHIBITS**
17 **DOCUMENTS NOT MENTIONED IN THE COMPLAINT TO SHORT CIRCUIT**
18 **RESOLUTION OF A WELL-PLEADED COMPLAINT**

19 Defendant has submitted two exhibits in support of its argument that a nutrition worker’s job
20 does not include discipline in the job description for those jobs. (Def. Bf. ECF 12-1 and ECF 12-2).
21 The purpose of including those exhibits is to convince the Court on the factual issue of whether or
22 not Plaintiff’s job involved disciplining unruly cafeteria students. Defendant is aware that the Court
23 cannot consider material outside the complaint. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d
24 912, 925 (9th Cir. 2001).

25 Inserting documents as factual exhibits to create a defense to the well-pled allegations in the
26 complaint, is not permissible. “Otherwise, defendants could use the doctrine to insert their own
27
28

1 version of events into the complaint to defeat otherwise cognizable claims.” *Khoja v. Orexigen*
2 *Therapeutics, Inc.*, 899 F. 3d 988, 1002 (9th Cir. 2018).⁴

3 In support of its “right” to insert job descriptions for WCSD kitchen workers, Defendant
4 misrepresents the holding of *Parrino v. FHP*, 146 F.3d 699, 706 (9th Cir. 1998). In *Parrino*, the
5 complaint at issue set forth false allegations concerning the contents of a document integral to the
6 case. Here, the written job descriptions are not integral to Plaintiff’s claims. She never refers to them,
7 she never mentions them, she never relies on them, nor does she propose to allege their contents.
8 Instead, Plaintiff relies one-hundred-percent upon instructions given her by her supervisors as to her
9 actual job duties.

10 Still, Defendant offers its documents as evidence of a factual dispute—whether or not
11 Plaintiff’s job involved disciplining unruly cafeteria students. It is error for the Court to rely on any
12 documents outside the amended Complaint to resolve a factual dispute. *Glob. Network Commc’ns,*
13 *Inc. v. City of New York*, 458 F.3d 150, 156-57 (2nd Cir. 2006). “Submitting documents not mentioned
14 in the complaint to create a defense is nothing more than another way of disputing the factual
15 allegations in the complaint but with the perverse added benefit: unless the district court converts the
16 defendant’s motion to dismiss into a motion for summary judgment, the plaintiff receives no
17 opportunity to respond to the defendant’s new version of the facts. Without that opportunity to
18 respond to the defendant’s newly expanded version of the complaint—accepted as true the pleading
19 stage—can easily topple otherwise cognizable claims. Although the incorporation-by-reference
20 doctrine is designed to prevent artful pleading by plaintiffs, the doctrine is not a tool for defendants
21
22

23 ⁴ Defendant reads too much into *Koja*’s holding concerning judicial notice of public records
24 in a motion to dismiss. First, it is questionable whether a job description presented without foundation
25 may constitute a public record under Fed. R. Evid. 201. Second, the Ninth Circuit was clear: Courts
26 cannot take judicial notice of disputed facts contained within a judicially noticed document. Here,
27 Defendant proposes that the job duties listed in the attached job descriptions contradict Plaintiff’s
28 assertion that one of her job duties was to address or reprimand student misconduct in the classroom.
Plaintiff vigorously disputes Defendant’s constricted depiction of her job duties.

1 to short circuit the resolution of a well-pleaded claim.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.
2 3d at 1003.

3 **A. Defendant’s Exhibits Serve Only to Create More Facts in Dispute**

4 Should the Court decide to consider Defendant’s exhibits as to what the nutrition worker’s job
5 actually entails, Plaintiff directs the Court’s attention to Defendant’s Exhibit 2, “Nutrition Services
6 Elementary Manager” which purports to list the job duties for the kitchen manager position. It states
7 in all caps:

8 **THIS JOB DESCRIPTION IS NOT A COMPLETE STATEMENT OF**
9 **ESSENTIAL FUNCTIONS, RESPONSIBILITIES OR REQUIREMENTS.**
10 **REQUIREMENTS ARE REPRESENTATIVE OF THE MINIMUM LEVEL OF**
11 **KNOWLEDGE, SKILL, AND/OR ABILITIES. MANAGEMENT RETAINS**
12 **THE DISCRETION TO ADD OR CHANGE TYPICAL DUTIES OF A**
13 **POSITION AT ANY TIME.**

14 *(Def. Bf., ECF 12-2, page 2)*

15 Similarly, Defendant’s Exhibit 1, which purports to list the job duties for a Nutrition Services
16 Worker. It states in bold and in all caps:

17 **THIS JOB SPECIFICATION SHOULD NOT BE CONSTRUED TO IMPLY**
18 **THAT THESE REQUIREMENTS ARE THE EXCLUSIVE STANDARDS OF**
19 **THE POSITION. INCUMBENTS MAY BE REQUIRED TO FOLLOW ANY**
20 **OTHER INSTRUCTIONS, AND TO PERFORM ANY OTHER RELATED**
21 **DUTIES AS MAY BE REQUIRED BY THEIR SUPERVISOR**

22 *(Def. Bf., ECF 12-1, page 3)*

23 The words of Defendant’s exhibit make clear that the job duties listed for a nutrition services
24 manager and a nutrition services worker are incomplete and, instead, they are subject to change
25 depending on instructions from supervisors. Defendant has submitted these exhibits to persuade the
26 Court that the issue is definitive: Plaintiff was not required to discipline unruly cafeteria children. But
27 the exhibits themselves make clear that a kitchen manager is required to discipline unruly students if
28

1 she is instructed to do so, trained to do so, and expected to do so by her supervisor.⁵ At best, with
 2 these attached job descriptions, Defendant attempts to raise a disputed factual issue.

3 **B. Should the Court Accept Defendant’s Exhibits, Plaintiff Offers Her Own Exhibits**
 4 **Establishing That Correcting Student Misconduct Was Part of the Job**

5 Plaintiff declares in support of her First Amended Complaint: “As part of my job
 6 responsibilities, I was informed by my direct Bohach supervisor Ms. Braunworth, and other cafeteria
 7 workers, that correcting misbehavior was an important **part of my job.**” (Exh. 1, Decl. of Plaintiff,
 8 ¶¶12-15). Terri Braunworth, former Bohach kitchen manager states in her Declaration that addressing
 9 student misconduct was “part of the job.” (Exh. 2, Decl. of Braunworth, ¶¶5-6). Marcia Iverson,
 10 former nutrition worker for 17 years, states in her Declaration that it was “part of her job” as a
 11 Nutrition Worker to reprimand unruly students to try to keep order. (Exh. 3, Decl. of Iverson, ¶¶4-8).

12 **IV. CONCLUSION**

13 Defendant’s Motion to Dismiss must be denied. First, Defendant mistakenly asserts that the
 14 failure to exhaust in a Title VII case is a jurisdictional prerequisite when instead it is an affirmative
 15 defense (meaning Plaintiff is not required to allege it). Second, Defendant argues that Plaintiff has
 16 failed plausibly to allege an adverse employment action or interference with her essential job duties,
 17 but fails to acknowledge Ninth Circuit precedent squarely on point in *Judie*. Third, Defendant argues
 18 that Plaintiff has failed plausibly to allege “similarly situated employees who are not Black, but
 19 ignores allegations concerning Plaintiff’s white supervisor Braunworth (who trained Plaintiff to
 20 discipline misbehaving students), her white co-worker Iverson (who also trained Plaintiff to do same),
 21 and her white subordinate Frith (who continued to discipline misbehaving students after Plaintiff was
 22 instructed to stop).

23 Defendant has shown it understands it must accept Plaintiff’s alleged facts as true going so
 24 far as to recite many of them in its Motion. Then it proceeds to dispute those same facts. This is an

25
 26 ⁵ On its face, the kitchen worker’s job description authorizes Plaintiff, Frith’s supervisor, to
 27 instruct her subordinate to discipline misbehaving cafeteria students while at the same time WCS
 28 forbade Plaintiff from doing exactly as her own supervisor instructed her. This is just another sign of
 the absurdity of Defendant’s position.

1 improper use of Rule 12(b)(6). Defendant compounds its many errors by attaching exhibits to its
2 dismissal motion in an attempt to create a factual dispute over Plaintiff's actual job duties, thereby
3 converting its Motion to Dismiss into a one for summary judgment. In response, Plaintiff also submits
4 her exhibits, namely the Declarations of Plaintiff, Ms. Braunworth, and Ms. Iverson, which strongly
5 support and outline in detail the strength of Plaintiff's claims.

6 Respectfully submitted,

7 DATED: This 27 day of December 2024,

8 /s/ Terri Keyser-Cooper

9 TERRI KEYSER-COOPER
10 DIANE K. VAILLANCOURT
11 *Attorneys for Plaintiff Bowie-Middleton*

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Terri Keyser-Cooper, declare as follows:

I am over the age of 18 years and not a party to this action. My business address is 125 Edgewater Parkway, Reno, NV 89519

On this date, I served a copy of the following documents on the parties in this action as follows:

OPPOSITION TO MOTION TO DISMISS; ALTERNATIVELY, OPPOSITION TO MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF TERMS AND CONDITIONS OF EMPLOYMENT

BY UNITED STATES MAIL. By placing a true copy of the above-referenced document(s) in the United States Mail in a sealed envelope with postage prepaid to the addressee(s) listed below.

BY FACSIMILE TRANSMISSION. By transmitting a true copy of the document(s) by facsimile transmission

BY HAND-DELIVERY. By delivering a true copy enclosed in a sealed envelope to the address(es) shown below.

BY ELECTRONIC SERVICE. By electronically mailing a true copy of the document(s) to defendants at the email addresses via the Court’s electronic filing procedure:

Neil A. Rombardo
WASHOE COUNTY SCHOOL DISTRICT
P.O. Box 30425
Reno, NV 89520
nrombardo@washoeschools.net

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

DATED: December 27, 2024 /s/ Terri Keyser-Cooper
TERRI KEYSER-COOPER

Exh. 1

Decl. of Plaintiff

Exh. 1

Decl. of Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF VANESSA BOWIE-MIDDLETON

I, Vanessa Bowie-Middleton, declare under penalty of perjury that the following assertions are true and correct and made with personal knowledge. I have direct and personal knowledge of the facts set forth in the following paragraphs and, if called and sworn as a witness, I would competently testify to these facts:

1. I am an African American female, a citizen of the United States, and a residence of Sparks, Nevada.

2. I am currently employed at the WASHOE COUNTY SCHOOL DISTRICT (“WCSD”) at Mendive Middle School as a cafeteria worker.

3. I have decades of experience working in the food industry as a cook, baker, supermarket bakery manager, and caterer.

4. I began my employment with WCSD on or about September 14, 2019 by working as an on-call Trainee Nutrition Worker.

5. From approximately October 12, 2019 until September 11, 2020, I worked as a Nutrition Worker I at several schools within the WCSD system, including but not limited to: Spanish Springs High School, Spanish Springs Elementary, Sky Ranch Elementary, Mendive Middle School, and Desert Skies Middle School. I worked with and was trained by several Nutrition Workers and Kitchen Managers.

6. From approximately September 12, 2020 until January 18, 2021, I worked as a Nutrition Worker I at Bohach Elementary School in Reno, Nevada. I worked at Bohach under the direction of Terri Braunworth, who worked as the Bohach Elementary Kitchen Manager. Ms. Braunworth is white.

7. While at Spanish Springs High School, I also worked with Marcia Iverson, a Nutrition

1 Worker I with seventeen years of experience. Ms. Iverson is white.

2 8. On or about January 2021, Ms. Braunworth left Bohach and I replaced her as Bohach
3 Kitchen Manager. I remained at Bohach until approximately January 27, 2023, when I left to
4 become a Nutrition Worker at Mendive Middle School where I remain today.

5 9. At Bohach I was responsible for: 1) inventory control; 2) ordering of food; 3)
6 scheduling; 4), baking, and warming all pre-cooked food sent to the school; 5) sanitizing the tables;
7 6) cleaning the kitchen, the floors, the worktables, the food preparation equipment, and everything
8 else in the kitchen to assure maximum cleanliness; 7) supervising and serving three staggered lunch
9 meals for up to and including 453 elementary students; 8) scanning student cards; 9) ensuring the
10 safety of all students; 10) participating when necessary in the discipline, warning, and reprimanding
11 of all misbehaving students in the cafeteria and environs; and 11) using the cafeteria public address
12 system to make announcements to students as to dismissal of the lunch period, clean up, and other
13 routine and necessary daily activities to maintain order in the school cafeteria.

14 10. When I worked at Bohach as a cafeteria manager, I did not hire any kitchen workers.
15 That was done by others. I did not talk to lawyers, and I had no authority to bind the district in any
16 way.

17 11. Bohach elementary students were generally good students and well behaved.
18 However, the students were crowded together, packed "like sardines" in the cafeteria for their
19 lunchtime meals. Children are children. They would sometimes yell, throw food, fight in lines, steal
20 things, and hit one another. Sometimes they just pushed and shoved each other and picked on other
21 students to make them cry. Sometimes there was bullying and fist fights.

22 12. As part of my job responsibilities, I was informed by my direct Bohach supervisor Ms.
23 Braunworth, and other cafeteria workers, that correcting misbehavior was an important part of my
24

1 job. I was specifically told not to stand idly by when children threw food, fought, yelled, and
2 behaved poorly. I was absolutely not to ignore misconduct. I was told that if I ignored misconduct,
3 things could get worse. I was taught order and safety must take priority in the cafeteria, and I must
4 address unruly student behavior when it occurred, especially the fighting, which could present a
5 serious safety and security risk. Warnings were the rule, and sometimes reprimands.

6
7 13. I was taught in my orientation that WCSD policy was “See Something, Say Something.”
8 That slogan was imprinted on the back of our kitchen badges. All nutrition workers at all the
9 schools where I worked were instructed it was part of the job to “say something” when they “saw
10 something.” Misconduct such as fighting, stealing, bullying, and throwing food were unacceptable.

11 14. Also, in the cafeteria were “duty teachers.” These teachers would act as monitors in
12 the cafeteria but were often not present when misconduct occurred. I was told by both Ms.
13 Braunworth, and Ms. Iverson, that if duty teachers were not present I must act to maintain safety
14 and security—that meant addressing the misconduct before it escalated. Ms. Braunworth warned me
15 that often no one was around to see the misconduct and I must not ignore it because it was part of
16 my job.

17
18 15. Ms. Iverson told me that over her 17 years as a WCSD nutrition worker she was required
19 to reprimand students more and more. Students increased their unruly behaviors Ms. Iverson
20 stressed that reprimanding unruly students was necessary, part of the job, and whether it occurred,
21 once a week, every other day, or every day, it was part of my job to keep order.

22
23 16. When I was Bohach Kitchen Manager, the teachers were very often missing, I was
24 generally required to reprimand a student at least once during each of the three lunch time shifts.
25 The discipline metric generally used was to give two warnings to a misbehaving student, then have
26 them stand by the wall until it was time for recess break.

1 17. I observed all nutrition workers and all kitchen managers at all the schools that I worked
2 at reprimand misconduct when they saw it.

3 18. I loved my job, especially as a kitchen manager at Bohach. I especially loved the
4 children, talking to them, laughing with them, greeting them, and bantering with them—all of that
5 was great fun for me. I learned their names. They shared details of their lives with me. I brought in a
6 speaker and played “Happy” songs for the children and other music they enjoyed. Every aspect of
7 the job was wonderful to me and —I felt appreciated, valued, secure and respected.

9 19. My evaluations were outstanding.

10 20. On or about January 27 or 28th, 2022, I was happily working at Bohach as kitchen
11 manager when I was approached by Bohach Principal Heidi Gavrilles in the kitchen. Ms. Gavrilles
12 informed me that some of the white teachers did not want a black woman reprimanding any
13 students in the cafeteria. Ms. Gavrilles told me that I not to discipline and student misconduct in the
14 future. She explained that the “white teachers” did not like the way I spoke and felt a Black woman
15 should not be giving instructions to unruly cafeteria students in the future—even though I had been
16 doing so for the duration of my employment without problem, correction, or incident. Ms. Gavrilles
17 was very specific, white teachers were uncomfortable hearing her voice. They did not like the sound
18 of a black person talking because it made them “uncomfortable.”

19 21. In the same conversation, Principal Gavrilles told me that I was also now also
20 prohibited from using the public address system. I had been using it to dismiss the children or to
21 make announcements regarding cafeteria clean up. When I inquired as to the reason for this change,
22 Ms. Gavrilles told me that it was the same issue, my black voice was offensive to the white
23 teachers, they didn’t want to hear me speak at all. Ms. Gavrilles did not say that it was because of
24 any change in my job duties, only that the white teachers objected to hearing my voice.
25
26
27
28

1 22. I have a very slight accent. It am hardly discernible. I grew up in northern California,
2 not in the deep south. I am easily understood by everyone, and I have an excellent command of the
3 English language.

4 24. As I understood it, if I was white, I could continue to discipline misbehaving
5 students but because I am black, my job had changed, the terms and conditions of my employment
6 were now different. And the change in the terms and conditions of my job were based exclusively
7 on my race and not on anything I had said or done, or any problem that I had caused.
8

9 25. Ms. Gavrilles expressed no concern over how I would feel about this change. She did
10 not seem to realize that as a black person I would be shocked and outraged. I believe any black
11 person would be. I could be seen but not heard. I wondered if Ms. Gavrilles had not heard of the
12 civil rights laws and if she had heard that singling out a black person on the basis of his or her race
13 was prohibited by federal law.
14

15 26. I understood that my subordinate in the kitchen, Jennifer Frith, a white woman, could
16 continue to discipline unruly students because she was white while I was singled out for this change
17 but my subordinate, Ms. Frith would not. Which meant of course that if I saw student misbehavior,
18 throwing food, etc., I was prohibited from saying anything to him but my white subordinate could
19 say something and reprimand the misconduct.
20

21 27. I was hurt, humiliated, and devastated. I withdrew and stopped engaging with the
22 students. My morale went down. I stopped talking to the children, stopped laughing with them,
23 correcting them, warning them, and kibitzing with them in the friendly happy way I had done
24 previously.

25 28. Ms. Frith heard Principal Gavrilles make these statements. On February 4, 2022,
26 Ms. Firth wrote an email to Lisa Atkerson, the cafeteria supervisor, describing what had heard:

27 When I entered into the kitchen Thursday morning I didn't want to intrude in on the
28

1 conversation so I went and sat at the desk to start the paperwork for the day, at that
2 time the principle (sic) was giving Vanessa a run down on how she would like the
3 kids to be reprimanded, and that some of the white teachers didn't want a black
4 woman to reprimand their students, the conversation seemed to be coming to a close
when I heard the principle (sic) say a black person's tone and language am different
to a white persons.

5 29. On or about February 3, 2022, I was at a loss for what to do but I decided to contact
6 the National Association for the Advancement of Colored People ("NAACP"). I spoke with Lonnie
7 Feemster, the current President of the Tri-State Conference for the NAACP which includes, Idaho,
8 Nevada, and Utah. Mr. Feemster was also the Education Chair for the Reno-Sparks NAACP. I
9 explained to Mr. Feemster that Ms. Gavrilles told me I could not reprimand students because the
10 White teachers objected to hearing my voice because I "sounded black" and that made them
11 uncomfortable. I told him the white teachers felt I should not be speaking because my "dialect" was
12 wrong and my tone was wrong.

13
14 30. I shared with Mr. Feemster that I felt shocked and humiliated and had no idea why my
15 being black justified my being told not to speak. I told him I had no idea why white teachers
16 suddenly wanted me to stop speaking. Did they think I was an animal, sub-human, someone who
17 could not speak proper English and was incapable of giving simple instructions to children?
18

19 31. I also told Mr. Feemster that I often used the PA system to address the children. We
20 were shortstaffed in the cafeteria because people were getting sick with Covid. I had to use the PA
21 system to dismiss the children so I could clean the tables to get ready for the next lunch. I would say
22 things like: "It's getting too loud in here; we need to quiet it down" and also to let them know it was
23 time to wrap up their lunchboxes, gather up their trash, and be ready when the garbage came
24 around. I told Mr. Feemster that Ms. Gavrilles said she did not want me using the PA system at
25 all—for the same reason, that the white teachers did not want to hear a black voice telling the
26 children what to do.
27
28

1 32. I asked Mr. Feemster to speak to Principal Gavrilles. On February 9, 2022, Mr. Feemster
2 telephoned Ms. Gavrilles. He discussed with her what I had relayed to him.

3 33. When I talked to him after he called Principal Gavrilles, he told me that Ms.
4 Gavrilles made it very clear to him that many of the White teachers had complained about my tone
5 and dialect. She referenced one teacher from Montana who express that she did not like the sound
6 of black voices and was “uncomfortable” hearing me talk. According to what Ms. Gavrilles told Mr.
7 Feemster, the Montana teacher particularly objected to hearing me talk because she was “not used
8 to being around Black people.” Mr. Feemster added that Ms. Gavrilles had politely informed him
9 that “middle class white teachers” were not used to being around Black people, didn’t want to listen
10 to their dialect, and did not think they had the ability or the approved dialect to give simple
11 instructions to an unruly student. He told me he was “shocked.” He thought she was overly
12 concerned about how white teachers felt and not at all about how I felt. In response, Ms. Gavrilles
13 told Mr. Feemster that she believed herself to be a “progressive” person and had read Nell Painter.
14

15 34. Following his conversation with Ms. Gavrilles, Mr. Feemster wrote a memo confirming
16 that I had not been wrong and that what I had told him was confirmed by Ms. Gavrilles herself. He
17 came away from his conversation with Ms. Gavrilles with the belief that she did not think I had the
18 right, ability, or the approved dialect to give simple instructions to unruly students.
19

20 35. I was shocked, devastated, and sickened by this obviously discriminatory conduct. At
21 age 60, I had experienced racial discrimination in the past—in jobs, in stores, and in some personal
22 interactions with white people. These experiences were hurtful, upsetting, and physically and
23 emotionally exhausting.
24

25 36. With the prohibition on talking to students and with the immediate cease and desist order
26 regarding the PA system, my old feelings of rejection based on discriminatory practices came back
27
28

1 to me. All the times I was called “nigger.” The many unfair, bigoted remarks I had suffered through
2 over the years, even as a child, came right back to hit me in my face again. I had endured all manner
3 of indignities in the past based on my race, because I needed the job and the paycheck. I thought
4 Bohach was different. I thought working at Bohach was working in a happy place where I was
5 respected and well-liked.

6
7 37. I became not just emotionally devastated but physically sick. I was disgusted, appalled,
8 and repulsed that that Ms. Gavrilles would use my race to change my job responsibilities. I was
9 upset that white teachers would complain about me to Ms. Gavrilles.

10 38. I could not sleep. I was stressed. I had migraines, stomach pain, constant nausea, and
11 nightmares. I thought about dying. I felt I had reached my limit. I wanted to die. I felt suicidal.
12 Although I am a deeply religious woman, suicide was on my mind. I began seeing a therapist.

13
14 39. On or about mid-February 2022, I had surgery for kidney stones. Research has
15 shown a strong link between stressful life events and kidney stones. To further complicate my
16 condition, my rheumatoid arthritis disability was affected. It is well-known that stress can
17 physically affect rheumatoid arthritis.

18 40. In the months that followed, I was hospitalized numerous times for complications
19 from rheumatoid arthritis and auto immune system failures. My doctors told me that severe stress
20 can be a contributing factor to all of the physical distress I was experiencing.

21
22 41. I was further upset because my young grandson was a student at Bohach, one of the
23 very few Black students. I did not know if the “white teachers” that had complained about me to
24 Ms. Gavrilles were teaching my grandson. I worried that if my job could so easily be changed
25 because white teachers did not want me disciplining students, perhaps my grandson was a student of
26 one of those teachers. I feared that teachers who believed that black people were inferior and not to
27

1 be treated with respect, would be teaching my precious grandson. I agonized that perhaps my
2 grandson would not be called on in class, or would be silenced by his teachers because he is black.

3 42. I explained the incident to my supervisor Lisa Atkerson. I wrote that I viewed the
4 discriminatory remarks of Ms. Gavrilles as highly disrespectful, insensitive, and discriminatory. I
5 wrote: "I am not an animal; I am a human being like everyone else. The unprofessionalism of
6 Principal Gavrilles and other teachers am and should not be accepted in the workplace.
7

8 43. On or about March 8, 2022, I received an email from WCSD representative John
9 Listinsky, asking what could be done to fix the problem. I emailed Mr. Listinsky that I was
10 "uncomfortable" not knowing what Bohach teachers had a problem with my race as a Black woman
11 and my language? I explained how my mental "well-being" had been shaken as how I was "greatly
12 concerned about how teachers and the principal are insensitive with their racist comments."
13

14 44. Mr. Listinsky responded by saying, "What can be done to fix the situation?" He did not
15 reference the critical issue that the terms and conditions of my employment had been altered
16 because of my race and that I was still prohibited from disciplining students because I am black.

17 45. I believe Mr. Listinsky knew and understood exactly how the situation could be "fixed."
18 It could be fixed by lifting the prohibition on my disciplining misbehaving students and restoring
19 me to the job responsibilities I have always had. It could also be fixed by once again allowing me to
20 do what all cafeteria managers before me had always done, use the PA system to make
21 announcement. But he did not do that.
22

23 46. I was told that WCSD had opened an investigation. The investigation was headed by
24 Area Superintendent Jeana Curtis. I was interviewed. I explained how the incident affected me. I
25 explained how I had suffered from "unbearable" migraines, insomnia, and felt paranoid. I explained
26 that I had physical symptoms and had sought medical treatment for my anxiety and other
27
28

1 symptoms. I explained I did not know which of the white teachers had complained about my race to
2 Ms. Gavrilles and that caused me anxiety. I told her that I wondered whether these white teachers
3 wanted to prohibit me from even talking to white students. Was I supposed to keep my mouth shut
4 because I was black?

5
6 47. On or about April 8, 2022, I emailed Ms. Curtis asking if I was still prohibited from
7 talking or disciplining students. I asked: "What am it about my race that some of the white teachers
8 don't like and will there be any future interference in the future? What is it about my race that
9 makes my language unacceptable?" I wanted to know what I was doing wrong other than being
10 black. I wanted to know whether or not I would continue to be prohibited from disciplining
11 misbehaving students or would my race continue to prevent me from performing one of my basic
12 job duties?

13
14 48. Ms. Curtis did not respond to my email or answer any of my questions.

15
16 49. On or about April 11, 2022, Ms. Curtis formally notified me that my "complaint" was
17 closed. Ms. Curtis indicated that she did not find "sufficient evidence" to substantiate the
18 allegations. Ms. Curtis did not address my concerns about whether I was still precluded from
19 disciplining students or giving them warnings about student misconduct. Ms. Curtis ignored that
20 issue. Ms. Curtis ended her letter by writing: "If at any time I can be of further assistance, please
21 feel free to contact me." Was this sarcasm? What "assistance" had she given me? None that I could
22 tell. In fact, in closing my complaint she validated Ms. Gavrilles, the white teachers, and everything
23 they had done to me on the basis of my race.

24
25 50. I had made it very clear to Ms. Curtis that I wanted to know if the directive given to me
26 by Ms. Gavrilles, was still in place. I wanted to know what about my blackness made me different
27 than everyone else. I wanted to know why all other staff could discipline misbehaving students,
28

1 even my white subordinate Ms. Frith the kitchen, but I could not.

2 51. Upon hearing that the investigation was closed, I again emailed Ms. Curtis asking for the
3 names of the white teachers who had complained about my speaking. I was extremely concerned
4 that one of them might be teaching my grandson. I wrote: "I do not want my grandson to interact
5 with any of these teachers with superiority and racial bias. I want my grandson to be treated fairly
6 and where he can thrive and be successful. Again, I am respectfully asking for clarification. I would
7 like to know who these teachers are. I am not sure why that was not a part of your investigation but
8 I believe that I am entitled to some reasonable answers." I closed my email by asking again whether
9 the prohibition on her correcting the misbehavior of white children in the cafeteria was still in place.
10 Ms. Curtis did not respond.
11

12 52. On April 21, 2022, Ms. Curtis emailed me to discuss having a "meeting" with Ms.
13 Gavrilles to "close out your complaint." I emailed back that I had asked several questions and have
14 **not** received answers. I wrote: "It is my belief that I have not been treated fairly in this
15 investigation. Why is that? I believed that you have not done a thorough and sufficient job in
16 addressing all the issues." I did not receive a response from Ms. Curtis my very specific questions.
17 Of primary concern to me was whether I was still prohibited from talking to students, reprimanding
18 unruly misconduct, and using the PA system as I had always done. That would have required a
19 simple yes or no, but Ms. Curtis continue to ignore those questions.
20
21

22 53. Later that same day, April 21, 2022, Ms. Curtis wrote I that the complaint would be
23 closed and would remain closed. Ms. Curtis again ignored the pivotal issue of whether I would
24 continue to be precluded from reprimanding misbehaving because of my race while all the white
25 kitchen staff would continue reprimanding misbehaving students.

26 54. From April to August of 2022, I heard nothing from the school district on the issue. I
27
28

1 refrained from disciplining any of the unruly students I saw. The students behavior went unchecked
2 which caused problems in the cafeteria and did not contribute to the safety and security of the
3 students. I had to just let it go because I was ordered to let it go. The unruly students I saw, I just let
4 continue to be unruly because I was ordered to do so.

5
6 On or about August of 2022, more than six months after the incident, out of the blue, I was
7 contacted by WCSD employee Tiffany McMasters. Ms. McMasters informed me that I was no
8 longer prohibited from disciplining misbehaving students. She explained that my job
9 responsibilities would not altered in the future on the basis of my race. It took WCSD more than six
10 months to correct their discriminatory conduct.

11 55. I am now working as a Nutrition Worker I at Mendive Middle School. When I see
12 misbehavior on the part of the Mendive students, I point it out to them like all the other kitchen
13 workers do.

14
15 DATED this 22 day of November, 2024

16 /s/ Vanessa Bowie-Middleton
17 VANESSA BOWIE-MIDDLETON
18
19
20
21
22
23
24
25
26
27
28

Exh. 2 Decl. of Terri Braunworth

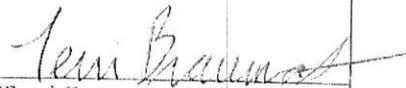
Exh. 2 Decl. of Terri Braunworth

DECLARATION OF TERRI BRAUNWORTH

I, TERRI BRAUNWORTH, declare under penalty of perjury that the following statements are true and correct and made with personal knowledge:

1. I am an employee of the Washoe County School District. I have worked for the district for five and one-half years. I have worked as a Nutrition Worker sub and a Kitchen Manager.
2. I am a White woman.
3. I have worked at Shaw Middle School, Spanish Springs High School, Spanish Springs Elementary, Jessie Hall elementary, Tyler Elementary, Alice Smith Elementary, Trainer Middle School, and Bohach Elementary and now I am the Kitchen Manager at Sun Valley Elementary.
4. I worked with Vanessa Bowie Middleton at Spanish Springs High School and at Bohach Elementary. I am very familiar with Vanessa's work. When I left Bohach Elementary I went to Sun Valley Elementary as the Kitchen Manager and Vanessa became the Kitchen Manager at Bohach Elementary.
5. On the back of our ID badges, it said "See something, say something" which I took to mean that if we saw misbehavior we should correct it, give a warning, or give a reprimand. We were not supposed to ignore misbehavior. Some kids just don't care, they don't want to listen and you have to address that conduct. It was part of the job.
6. Sometimes kids could be very loud, they can throw food, they can make another kid cry, they can push each other. We would need to say that their unruly behavior was not acceptable. I was not going to stand around and watch them misbehavior. Sometimes there would be a "duty teacher" around but often there was no one around and it was necessary for the nutrition worker and the kitchen manager to correct the child's behavior then and there and not just let it go.
7. At the Bohach Elementary there would be 150 kids having lunch in three shifts. It could be very loud and it was important to make sure the kids followed the rules and behaved.
8. When I worked with Vanessa, everyone loved her. The kids especially really loved Vanessa. I heard her reprimand students who were unruly. She was always appropriate. When I went to Sun Valley Elementary I wished I could have taken Vanessa with me. I would have taken her in a heartbeat if there had been an opening there.

Dated this 7 day of August, 2024


Terri Braunworth

Exh. 3 Decl. of Marcia Iverson

Exh. 3 Decl. of Marcia Iverson

DECLARATION OF MARCIA IVERSON

I, MARCIA IVERSON, declare under penalty of perjury that the following statements are true and correct and made with personal knowledge:

1. I am a former employee of the Washoe County School District. I worked for the district for seventeen and one-half years.
2. I am a White woman.
3. I worked as a Worker I in the nutrition department at Spanish Springs High School.
4. As a nutrition worker I saw misbehavior on the part of students a lot. The students would sometimes be quite unruly. They would start fights, steal things, push their way to the front of the line, yell and scream.
5. It was part of my job as a Nutrition worker to reprimand unruly students to try and keep order. Sometimes we served food off a cart in the hallways and sometimes we served food in the cafeteria.
6. Over the years it became necessary to reprimand more and more as the students became more unruly. No one ever told me not to reprimand misbehaving students, it was necessary and part of my job, but I was told not to get in the middle of fights because I could get hurt.
7. I worked with Vanessa Bowie-Middleton for a time at Spanish Springs High School. We would both reprimand students as it was necessary—sometimes maybe three times a week, sometimes maybe every day, it would depend. Every week was different, but the kids were quite unruly and it was important for us to try to keep order.
8. Vanessa was always appropriate. When she reprimanded students she was clear and easy to understand.

Dated this 7th day of August, 2024



MARCIA IVERSON