

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF NEW YORK

BETSY BENEDITH, SHERWYN BESSON,  
and KENNETH SMITH

*Plaintiff*

v.

MALVERNE UNION FREE SCHOOL DISTRICT,  
JAMES BROWN, ET AL.,

*Defendant*

Civil Action No.

**CV 11 5964**

**SPATT, J.**

**BROWN, M. J.**

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* See Attached

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

The Law Office of Steven A. Morelli, P.C.  
Attorneys for Plaintiff  
1461 Franklin Avenue  
Garden City, NY 11530  
(516) 393-9151

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER  
CLERK OF COURT

07 DEC 2011

Date:

~~12/06/2011~~

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**List of Defendants**

MALVERNE UNION FREE SCHOOL DISTRICT  
301 Wicks Lane,  
Malverne, NY 11565

JAMES BROWN (Last Known Buisness Address)  
301 Wicks Lane,  
Malverne, NY 11565

JAMES HUNDERFUND (Last Known Buisness Address)  
301 Wicks Lane,  
Malverne, NY 11565

ROSALINDA RICCA (Last Known Buisness Address)  
301 Wicks Lane,  
Malverne, NY 11565

VINCENT ROMANO (Last Known Buisness Address)  
301 Wicks Lane,  
Malverne, NY 11565

Steven A. Morelli  
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*Attorneys for Plaintiffs*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**CV 11 5964**

-----  
BETSY BENEDITH, SHERWYN BESSON,  
and KENNETH SMITH,

Plaintiffs,

COMPLAINT

- against -

*Jury Trial Demanded*

MALVERNE UNION FREE SCHOOL DISTRICT,  
JAMES BROWN, JAMES HUNDERFUND,  
ROSALINDA RICCA, and VINCENT ROMANO,

**SPATT, J.  
BROWN, M. J.**

Defendants.

-----X

Plaintiffs BETSY BENEDITH, SHERWYN BESSON, and KENNETH SMITH, by and through their attorneys, The Law Office of Steven A. Morelli, P.C., respectfully allege, upon knowledge as to themselves and their own actions and upon information and belief as to all other matters, as follows:

**PRELIMINARY STATEMENT**

1. It is not hard to figure out that you are being discriminated against when your supervisor calls you a nigger and routinely reminds you that you are a black woman. This was the case for Plaintiff Betsy Benedith, an Assistant Principal in the Malverne Union Free School District ("Malverne UFSD"). In fact, although her supervisor, Principal James Brown, is also an

African-American, he specifically told her that she received less favorable treatment than her white counterparts from him because he did not want it to seem as if he was playing favorites by providing positive opportunities to another African-American employee. In essence, he provided more favorable treatment to his white employees so that he could avoid the purported appearance of impropriety caused by providing any favorable treatment at all to Ms. Benedith.

2. Such was the culture in Malverne UFSD—a pervasive atmosphere of racial discrimination that extends through all levels of administration and teaching. Three African-American teachers and administrators, the plaintiffs herein, have suffered from an administration that has limited their opportunities to advance, retaliated against their employment and even their children, and ultimately tried to remove them through termination, excess, or transfer.

3. Betsy Benedith, a hard-working and passionate assistant principal at Malverne High School for three years, was subject to active sabotage of her efforts to succeed and unfairly discriminated against in favor of a Caucasian assistant principal. Through the course of her employment, her Caucasian counterpart received more responsibilities and opportunities to seek professional development, while administrators conspired to limit her advancement opportunities and diminish her performance. Finally, she was promised to be “excessed” with tenure at the end of the 2011 school year, which was unfairly contingent on there being no public protest at her leaving. But after protests she had no involvement with erupted at a Board of Education meeting, she was simply terminated despite her excellent performance.

4. Sherwyn Besson, an exemplary African-American business teacher at Malverne High School for the past seven years, has been subject to increasing discrimination in his employment that culminated in his full-time position being abolished and replaced with a half-time position. Further, even his two children have been subject to retaliation for his complaints of

discrimination, with his fourth-grade son being taken out of normal classes for several months by an apparently deliberate decision from top administrators to punish Mr. Besson. These acts represent a systematic effort by the Defendants to force Mr. Besson's constructive discharge, since they cannot terminate him permanently due to his tenured status.

5. Kenneth Smith, an experienced and popular African-American mathematics teacher at Malverne High School for five years, was discriminated against in his course assignments, access to professional development and proper classroom equipment, economic opportunities, disciplinary actions, and final transfer from the high school. In particular, he was wrongly blamed for writing an anonymous letter regarding the unethical assistance teachers were giving to students, and made the target of absurd charges from administrators and colleagues. Despite the fact that his students performed overall much better on Regents examinations than the district average, he was finally transferred from the school because of their poor performance on one question on one Regents exam, a standard that has never been applied to his Caucasian colleagues.

6. This action is brought under 42 U.S.C. § 1981, the First Amendment, Substantive Due Process Clause, and Equal Protection Clause of the United States Constitution pursuant to 42 U.S.C. § 1983, Title VII of The Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, the New York State Human Rights Law, N.Y. Exec. Law §§ 290 *et seq.*, and the Nassau County Human Rights Law; and also contains any other cause of action which can reasonably be inferred from the facts set forth herein, to redress violations of Plaintiffs' rights as guaranteed by the laws of the United States and the State of New York prohibiting unlawful discrimination in employment.

### **JURISDICTION AND VENUE**

7. This Court has original jurisdiction over Plaintiffs' federal law claims pursuant to 28 U.S.C. §§ 1331 & 1343, and supplemental jurisdiction over Plaintiffs' state law claims pursuant to U.S.C. § 1367.

8. Venue is proper pursuant to 28 U.S.C. § 1391.

9. Plaintiff Sherwyn Besson filed a timely Charge of Discrimination with the United States Equal Employment Opportunity Commission (EEOC). Mr. Besson is currently awaiting receipt of his Notice of Right to Sue.

10. Plaintiff Kenneth Smith filed a timely Charge of Discrimination with the United States Equal Employment Opportunity Commission. Mr. Smith is currently awaiting receipt of his Notice of Right to Sue.

### **PARTIES**

11. Plaintiff BETSY BENEDITH is a 41-year-old African/Hispanic-American female and a resident and domiciliary of Kings County, New York. At all times relevant to this complaint, Plaintiff was an employee of Malverne UFSD.

12. Plaintiff SHERWYN BESSON is a 43-year-old African-American male and a resident and domiciliary of Nassau County, New York. At all times relevant to this complaint, Plaintiff was an employee of Malverne UFSD.

13. Plaintiff KENNETH SMITH is a 46-year-old African-American male and a resident and domiciliary of Nassau County, New York. At all times relevant to this complaint, Plaintiff was an employee of Malverne UFSD.

14. Defendant MALVERNE UNION FREE SCHOOL DISTRICT, at all relevant times, was and still is a public school district and municipal corporation organized and existing under

the laws of the State of New York, and a recipient of federal and state financial assistance, with its administrative office located at 301 Wicks Lane, Malverne, NY 11565. At all times relevant to this complaint, Defendant was the employer of Ms. Benedith, Mr. Besson, and Mr. Smith.

15. Defendant JAMES BROWN, at all times relevant to this complaint, was the principal of Malverne High School. Upon information and belief, Mr. Brown is a resident and domiciliary of Nassau County, New York.

16. Defendant JAMES HUNDERFUND, at all times relevant to this complaint, was and still is the superintendant of the Malverne UFSD. Upon information and belief, Dr. Hunderfund is a resident and domiciliary of Nassau County, New York.

17. Defendant ROSALINDA RICCA, at all times relevant to this complaint, was and still is the chairperson of the mathematics department at Malverne High School. Upon information and belief, Ms. Ricca is a resident and domiciliary of Nassau County, New York.

18. Defendant VINCENT ROMANO, at all times relevant to this complaint, was and still is an assistant principal at Malverne High School. Upon information and belief, Mr. Romano is a resident and domiciliary of Nassau County, New York.

19. The individually named defendants, as individuals who had control over the terms and conditions of Plaintiffs' employment, are all employers within the meaning of the New York State Human Rights Law.

20. As set forth below, the individually named defendants directly participated in the discriminatory and retaliatory conduct against the Plaintiffs.

### **FACTUAL ALLEGATIONS**

#### ***Betsy Benedith***

21. Betsy Benedith has been a well-regarded and passionate teacher and administrator in



New York public schools since 1994. She worked as a pass room teacher and later as a dean in the Uniondale school district starting in 2001, and received her New York State school administrator's certification in 2004. Throughout her years of teaching and administrating in other districts, Ms. Benedith has only received positive evaluations and ratings.

22. In 2007, Ms. Benedith was hired by Malverne UFSD as the dean of students in the Howard T. Herber Middle School. The principal of the middle school told her she was not allowed to observe teachers, even though all the chair people in her unit observed teachers. When Ms. Benedith was interviewed for the dean's position, she was asked if she had experience observing teachers. But upon information and belief, the Caucasian dean of students who replaced her the next year, Daniel Nehlsen, was allowed to observe teachers within the first year of attaining the position. He was also granted tenure in his third year despite alleged "budget cuts."

23. In 2008, Ms. Benedith was promoted to a newly created assistant principal position at Malverne High School. At Malverne High School, both assistant principal positions were filled by new hires in 2008, one by Ms. Benedith and one by Vincent Romano, a Caucasian male administrator who had been an assistant principal at Howard T. Herber Middle School for one year prior. The principal during this time was James Brown, an African-American male. Although Ms. Benedith was promoted to the high school first, Mr. Romano was unbelievably given seniority over Ms. Benedith when he was appointed. Further, Mr. Romano was given tenure in 2010, because Malverne UFSD gave him credit for his one year of teaching as an administrator at the middle school level. On the other hand, Ms. Benedith's dean position was also an administrative position, but she did not receive credit for it and was required to work three years before receiving tenure.

### *Discrimination Between the Two Assistant Principals*

24. While both assistant principal positions were supposed to be equal in rank and to work as a cohesive team, this was decidedly not the case in reality. Mr. Brown had an unfair preference for Mr. Romano. Over time, Mr. Romano would be given more responsibilities and opportunities that were denied to Ms. Benedith. By way of a brief example, Ms. Benedith had to request materials through Mr. Romano's full-time secretary, and was only given for herself two part-time secretaries, which created a lot of inconsistencies throughout the workday.

25. From the start, Mr. Romano and Mr. Brown had offices close to one another on the second floor, while Ms. Benedith's office was located far away on the first floor near the cafeteria. Over the years, all meetings of the administrators and teachers would be held either in Mr. Romano or Mr. Brown's office. Ms. Benedith would often not be consulted in decisions made in these meetings or even notified that they were occurring.

26. Mr. Romano was given charge of the master schedule for the school, a budget to buy office supplies, and organization of staff development meetings, all of which Ms. Benedith was precluded from handling. Many memos written by Mr. Romano would exclude Ms. Benedith, and many memos from teachers and staff members were sent to Mr. Brown and Mr. Romano only. Ms. Benedith was thus excluded from many important discussions, and the atmosphere was such that teachers did not respect Ms. Benedith's position as Assistant Principal.

27. In addition, Mr. Romano was given much more financial backing for his independent projects, such as a college fair, than Ms. Benedith received for her projects, such as a Martin Luther King Day celebration, which received no funding. When Mr. Romano completed his projects, he would receive letters of commendation in his file. On the other hand, Ms. Benedith was offered no such recognition for her successful projects.

28. Upon information and belief, Mr. Romano was allowed to attend seven or eight professional development conferences and courses from 2008 to 2011, while Ms. Benedith was only allowed to attend one such program. Ms. Benedith requested to attend more programs, but was denied funding each time, while Mr. Romano did not seem to have problems gaining funding for his professional development.

29. Ms. Benedith was assigned control over 10<sup>th</sup> and 12<sup>th</sup> grade students, while Mr. Romano was assigned control over 9<sup>th</sup> and 11<sup>th</sup> grade students. While Ms. Benedith made efforts to keep this delineation in place, Mr. Romano would frequently issue disciplinary actions against 10<sup>th</sup> and 12<sup>th</sup> graders, even though he was not supposed to do so. In one such case, Mr. Romano suspended a 12<sup>th</sup> grade honor roll student for five days for trying to report to Ms. Benedith for his infraction.

30. In addition, while Ms. Benedith followed district rules in assigning discipline to her students, Mr. Romano frequently made deals with students that reduced their detentions and suspensions. The result was that in the monthly reports of students suspended, Ms. Benedith would always have many more suspended students among her grades than Mr. Romano did. This led to a negative reflection on Ms. Benedith's performance.

31. Soon after Ms. Benedith was hired, Mr. Brown tried to explain his unfair preference for Mr. Romano by saying that since Mr. Brown and Ms. Benedith were both black, he did not want others to think he preferred her due to their shared race.

32. Mr. Brown would often give "advice" to Ms. Benedith that pointed out her racial background. Several times he told her that "You're black, you're a woman, you're smart, and you're beautiful, and they [the white staff members] are not going to like you because of that, and at the end of the day they're going to look out for each other. And at the end of the day

you're always going to be a nigger, and when you wake up in the morning you're always going to be black." At other times, he would tell her that "you can do whatever you want, it doesn't matter how good it is, but you can't change who you are," referring to her race.

33. Ms. Benedith resented these racial comments, even if they came as a form of "advice," since she believed she should do the best job she could regardless of her racial background. However, due to the general environment of discrimination, Ms. Benedith was frequently prevented from succeeding to the best of her abilities in her position.

#### ***Discrimination through the Course of Ms. Benedith's Employment***

34. During the 2008-09 schoolyear, Ms. Benedith was in charge of the security officers in the school. However, Mr. Romano would frequently order them to run errands or dismiss them without informing Ms. Benedith, resulting in disorder and undermining Ms. Benedith's authority over her subordinates.

35. One time when Mr. Romano had allowed the officers to leave early without consulting Ms. Benedith, two students were discovered having sex in a bathroom without security officers nearby to prevent this from happening. When Ms. Benedith asked where the officers were, Mr. Romano said they were in his office, but she later found out this was untrue based on viewing school cameras that showed his office empty at the time. When the sex incident was reported to the Board of Education, Ms. Benedith was in fact blamed, and the responsibility over security officers taken away from her and given to Mr. Romano.

36. In August 2009 and 2010, there were major district-wide conferences followed by teacher training days. While both assistant principals were supposed to present to the teachers, only Mr. Romano was actually told about the events beforehand, and hence Ms. Benedith could not perform her duty of presenting teacher development programs.

37. In June 2010, Ms. Benedith was in charge of the proctoring of final examinations. Since there was concern about possible cheating among teachers helping students, Ms. Benedith ordered the social studies teachers not to review test materials while monitoring the exams. The teachers evidently complained to Mr. Romano about this, and Mr. Romano called Ms. Benedith to reprimand her for her legitimate order. Later, Ms. Benedith discovered from reviewing school cameras that all of the social studies teachers were in Mr. Romano's office when he had called her, with speakerphone on, and argued with her, hence undermining her authority in front of her subordinates.

38. Further, Mr. Romano would frequently call the teachers who were proctoring exams to run errands for him, sometimes resulting in classrooms left unattended during the exams. This reflected poorly on Ms. Benedith's performance, and was another example of the "sabotage" Mr. Romano engaged in over the years.

39. Despite the environment of discrimination and favoritism, Ms. Benedith received a positive year-end evaluation for the 2008-09 school year. She did not receive any evaluation for the 2009-10 school year.

40. In October 2010, Ms. Benedith was in charge of supervising the PSAT examinations given to 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> grade students. After making sure that all teachers were properly prepared and understood how to proctor the exams, Ms. Benedith went over to the Howard T. Herber Middle School to monitor the 12<sup>th</sup> grade students, who had a special event at that school for the day. She was surprised to receive a call from a security officer at the high school telling her to return to the high school immediately and report to Mr. Brown.

41. Returning to the high school, Ms. Benedith went to see Mr. Brown, who told her that things were out of control and that teachers were confused. However, when Ms. Benedith asked

the director of pupil services, Thedra McCrae, what was wrong, Ms. McCrae said everything was fine. Mr. Brown also could not provide the names of the teachers who were claiming to be confused, and when Ms. Benedith requested to meet with the teachers who allegedly had concerns about her, his response was “Don’t blame me, I’m just the messenger.” Then Mr. Romano arrived and admitted that he was the one who had made the complaint saying that things were out of control, even though the testing was going well.

### ***Ms. Benedith’s Termination***

42. In November 2010, Ms. Benedith was informed by Mr. Brown that there would be budget cuts at the end of the year, and that she should expect to be “excessed” at that time because she was the most junior administrator. Ms. Benedith was surprised to hear this because she had more seniority than Mr. Nehlsen, the middle school dean, and the English department chairperson, who were not going to be excessed. However, she was told that they counted in different “units,” and that since she was the most junior in her unit, she would be excessed.

43. At the time, Mr. Brown promised Ms. Benedith that he, Superintendent James Hunderfund, and other administrators would help her find another job in another district, and would recommend her highly. He also promised that she would be excessed with tenure, which meant that she would be able to return to the school if an assistant principal position reopened within seven years.

44. In January 2011, Ms. Benedith received her mid-year evaluation, only the second evaluation she received since starting at Malverne High School. The evaluation was not positive, citing alleged problems Ms. Benedith had in relationships with teachers and a high number of suspended students among the grades in her control. However, when Ms. Benedith asked Mr. Brown which teachers she had poor relationships with, he would not answer. Further, as noted

above, the reason she had more suspended students than Mr. Romano did was because she followed written protocol in assigning discipline, instead of making special deals as Mr. Romano did behind closed doors. At this time, Ms. Benedith began to realize that Mr. Brown might not be trying to help her find a new position at all, and that this false evaluation of her performance was being used as a pretext for discrimination.

45. Also around January, several 11<sup>th</sup> graders were promoted to 12<sup>th</sup> grade without consulting with Ms. Benedith, which would have been the proper procedure. Most of these students had already exceeded the attendance limit and were not passing academically. This had a negative reflection on graduation rate for Ms. Benedith's students at the end of the school year.

46. On March 25, 2011, Ms. Benedith was summoned to Ms. McCrae's office, where in the presence of several other administrators she was handed a letter saying that her services would no longer be required at the end of her probationary period on June 24, 2011. This was not excess with tenure as promised, but simply a termination. Moreover, had Ms. Benedith received the same credit for her past service as Mr. Romano did, she would have already been tenured and not subject to a probationary period.

47. Ms. Benedith was shocked, and demanded a meeting with Superintendant James Hunderfund. On March 31, they met and Dr. Hunderfund promised her that she would be given excess with tenure as long as she wrote a letter of resignation. However, he said that he could not provide a written letter of recommendation because, to Ms. Benedith's surprise, Mr. Brown had expressed negative opinions about her work, and indeed had recommended against her being granted tenure. Further, Dr. Hunderfund warned that if there was any community protest or outcry at her leaving her position, "all deals were off."

48. The next day, Ms. Benedith was informed that Dr. Hunderfund's lawyer advised him and wanted her to write an "irrevocable" letter of resignation for her file before she would be granted an excess with tenure. When she asked her union representative if Dr. Hunderfund's deal could be put into writing, he refused, saying his verbal promise was good enough, and that if she submitted the letter of resignation she would receive tenure.

49. Ms. Benedith also confronted Mr. Brown about his negative recommendation, and Mr. Brown angrily refuted that he had given a negative recommendation at all. Given this general confusion over what was happening to her employment, Ms. Benedith decided not write her letter of resignation at the time.

50. Starting on April 8, students started approaching Ms. Benedith and telling her how sorry they were that she was leaving. Ms. Benedith was surprised because she had not informed anyone of her conversations with Mr. Brown or Dr. Hunderfund about her losing her position. She was also informed that there might be a student and parent protest against her leaving at the April 11 meeting of the Board of Education.

51. Ms. Benedith then had a meeting with Mr. Brown, who said he had also heard about the possible protest, and said to her that "there was reason to believe" that she was the one who had told the students to organize the protest. Mr. Brown also warned her that her tenure was on the line based on whether a protest occurred at the Board of Education meeting. Ms. Benedith stringently denied being involved, as she had told no one that she was losing her position and knew that her deal to receive excess with tenure depended on there not being a public protest.

52. Further, from what Ms. Benedith heard, these rumors all said that she was being laid off due to budget cuts. In reality, she was being terminated, not excessed, and had Ms. Benedith really wanted to create public outrage, she would have told people she was being terminated to



rally them to her cause.

53. Protests did occur at the Board of Education meeting on April 11. Ms. Benedith only found out about this in a later Long Island Herald newspaper article, which said that several hundred students had signed a petition requesting the Board reconsider laying off an administrator “whom they could relate to.”

54. Despite Ms. Benedith’s lack of involvement with these protests, she heard nothing more about the deal to give her excess with tenure for the rest of the year. Mr. Brown informed her soon after the Board of Education meeting that it was “out of his hands” whether she would be given the deal or not.

55. In June 2011, Ms. Benedith received her termination letter, stating that a May 10 meeting of the Board Education had decided she would be terminated, effective July 1, 2011. She was terminated and not given tenure or a chance to return.

56. Out the four district administrators whose tenure was up for review at the time, Ms. Benedith was the only one who was not granted tenure and was in fact terminated, while three white administrators were all granted tenure. These white administrators who received tenure were Virginia Harnischfeger, the district-wide social studies chairperson; Yvonne Dava, the district-wide foreign language and ESL chairperson; and Daniel Nehlsen, the dean of students at Howard T. Herber Middle School, whom Ms. Benedith had seniority over.

57. On the last day of her work, June 24, Ms. Benedith received her year-end evaluation report, which was fairly outrageous in its claims. The report claimed that she had not properly warned a 12<sup>th</sup> grade student about his attendance problems, which caused him not to graduate. However, Ms. Benedith had taken all proper steps to make sure he was notified about his attendance problems. Mr. Brown also had met with the student, his parents, guidance counselor,

and Ms. Benedith, and approved the classes he made up during the school day, after school, and Saturday detentions. He stated to all in attendance that the student would graduate, congratulated him, and allowed the student to attend all senior activities. Once Ms. Benedith sought legal counsel in May, the student was informed two days before graduation that he could not attend graduation and would not receive his diploma until August. Further, she is aware of several others students who had worse attendance problems and who were still allowed to graduate, often because Mr. Romano had intervened on their behalf. Despite the sinister nature of such an act, it is clear that the administration purposely prevented this student from graduating in order to make negative marks in Ms. Benedith's year-end evaluation.

58. The pervasive discrimination and sabotage of her work efforts has caused Ms. Benedith emotional trauma over the course of her employment, especially since the controversies over her termination started in March 2011. Ms. Benedith has suffered many sleepless nights and severe anxiety over what she believes is blatantly unfair and racist treatment. Because she currently does not have health insurance, she is unable to seek a therapist to help cope with her problems.

***Sherwyn Besson***

59. From September 2004 to the present, Mr. Besson has been employed as an exemplary teacher in the Business Department of Malverne High School. In the 2005-06 school year, he gained tenured status.

60. Mr. Besson is the father of two minor children, daughter AB and son IB, who at various times have been students in the Malverne UFSD.

61. Mr. Besson has consistently received praise in his end-of-year evaluations, with marks of "meets district standards" in every category in every evaluation from 2004 to 2011.

62. In 2008, Mr. Besson was awarded “Educator of the Year” by the National Association for the Advancement of Colored People (NAACP).

63. Over the course of his employment, Mr. Besson has noticed discrimination against African-American teachers in areas such as the rating of evaluations, assignment of administrative duties, and compensation for extracurricular activities, including against himself.

64. For example, from 2006 to 2010, Mr. Besson received ratings of “Good” from his classroom observations. However, based on comparing his evaluations with others, Mr. Besson believes his performance in these ratings merits a “Very Good” or “Excellent” rating. These higher grades appear to be reserved for Caucasian teachers.

65. Mr. Besson and the other African-American teachers have also received excessive administrative duties, such as having to monitor large study halls, to which their Caucasian colleagues are not assigned.

66. Further, Mr. Besson has found disparities in the amount of payment teachers are given for helping extracurricular activities. For example, for the six years Mr. Besson was coach of the boys’ soccer team at Malverne High School, he was paid \$1,000 less per year for his coaching than the Caucasian female teacher coaching the girls’ volleyball team, despite that his schedule was more demanding and his team was larger.

#### ***Retaliation for Decision to Send Daughter to Private School***

67. Over the past few years, even Mr. Besson’s children have suffered from multiple acts of discrimination and retaliation.

68. At the end of the 2007-08 school year, Mr. Besson’s daughter AB was the 8<sup>th</sup> grade valedictorian at Howard T. Herber Middle School. In order to present his daughter with a different educational environment than the high school where he taught, Mr. Besson decided to

send her to a private high school, Long Island Lutheran Middle and High School, for her high school education.

69. Around the end of the school year in 2008, Dr. Hunderfund “recommended” that Mr. Besson enroll AB at Malverne High School, implying that if he did not, he would suffer retribution. Mr. James Brown, the principal at Malverne High School, also made several remarks about Mr. Besson’s decision. He recommended that Mr. Besson enroll AB at Malverne High School, and said that doing so could “help [him] professionally in his career,” and that he would have access to preferential courses and teachers. Mr. Besson declined this advice at the time.

70. In the 2008-2009 school year, AB had access to school busing provided by Malverne UFSD to Lutheran High School, which is located within the school district.

71. Mr. Besson sent an application for busing for the 2009-10 year on July 14, 2009, which was after the formal April 1 deadline. In August, he received notification that his request was untimely and, therefore, transportation would not be provided for his daughter.

72. However, Mr. Besson is aware of other students whose applications were sent later, as late as August 2009, who still secured public busing to their private schools that year.

73. Upon information and belief, the termination of busing for his daughter was in retaliation for Mr. Besson’s decision to send her to a private school. This ultimately caused him financial harm in the form of lost income, as he had to spend time daily to transport his daughter to and from Lutheran High School.

***Mr. Besson’s Protected Speech Regarding Malverne UFSD***

74. As a conscientious citizen and member of the community, and as a parent of children attending school in the district, Mr. Besson has at numerous times spoken out to administrators and the general public about various issues regarding Malverne UFSD.

75. On January 29, 2009, Mr. Besson sent an e-mail to Dr. Hunderfund criticizing the activities students were asked to perform for Black History Month, which Mr. Besson felt were insensitive and offensive.

76. On March 20, 2009, Mr. Besson verbally complained to the principal of Malverne High School, James Brown, about how Malverne UFSD was not in compliance with its written attendance and grading policy.

77. At the October 13<sup>th</sup> 2009 Board of Education meeting for Malverne UFSD, Mr. Besson gave a speech during the “public comment” time wherein he criticized the permanent hiring of Dr. Hunderfund as superintendant (Dr. Hunderfund was serving as interim superintendant at the time). In his speech, Mr. Besson argued that Dr. Hunderfund’s past ethical violations, high salary, and lack of background with minority students all suggested that he was not the best choice for the district, and that a good-faith effort should be made to search for an alternate superintendant.

78. After his speech, Mr. Besson was asked by Board of Education member Peg O’Connor why he was so angry, to which he responded that he was “passionate” about the topic, not angry. Several other members of the NAACP also spoke up about the same issue after his speech.

79. Soon after his October 2009 speech at the Malverne Board of Education, Mr. Besson’s union leader Bonnie Dreska told him that Dr. Hunderfund was not happy about the speech and had told her to let Mr. Besson know “do not let that happen again.” Ms. Dreska warned Mr. Besson at this time that he should “expect retaliation.”

80. Mr. Brown, principal of Malverne High School, also warned Mr. Besson that he should be careful about what he says, and that criticisms like the one he made “have a way of

coming back to bite you.”

81. Within a week of this speech, Mr. Besson received an e-mail from Dr. Hunderfund to all faculty which asked them not to make public speeches against the administration.

### ***Retaliation Against Mr. Besson's Son***

82. Soon after October 2009, Mr. Besson began noticing negative changes in the behavior of his son, IB, who had always been a top student in previous grades, receiving marks of 4 and 3 (on a scale with 4 as highest) in his courses. IB at that time was a fourth-grade student in Davison Avenue Elementary School, a public school that is part of Malverne UFSD.

83. The negative behavior was finally explained on March 19, 2010, when Mr. Besson received a letter from IB's teacher, Cynthia Thorp, informing him that IB was falling behind in his classes. When Mr. Besson asked her why, Ms. Thorp said it had to do with the fact that IB was frequently taken out of class to “special sessions” with another teacher, Carol Black.

84. After investigating the matter further, Mr. Besson discovered that Ms. Black's “sessions” were conducted with two or three students at any time in small rooms in the school, and consisted of nothing more than cutting-and-pasting, coloring exercises, and aimless reading exercises. Ms. Black had a reputation as a “problem teacher” who was moved from school to school and given sinecure positions. IB's near-daily sessions with Ms. Black not only had little educational value, but also took IB away from his core math and English classes, explaining why he was falling behind in those subjects since October 2009.

85. On March 25, 2010, after Mr. Besson's request for more information about these sessions, IB stopped being taken out of classes to have sessions with Ms. Black. But by that point, the damage to his education was already done, as six months of these pointless diversions from his normal studies had significantly slowed his reading and math abilities.

86. Mr. Besson immediately requested to see Edward Tallon, the principal of Davison Elementary, who met with him on April 19, 2010. At their meeting, Mr. Tallon refused to answer Mr. Besson's questions of why IB was put into special sessions with Ms. Black and why Mr. Besson was not notified of these sessions until March. Finally, Mr. Tallon revealed to Mr. Besson that the decisions to move him into these classes did not come from himself or Ms. Thorp, but rather from administrators "higher up," referring to Dr. Hunderfund.

87. Discovering this shocking retaliation aimed against his son, after the semester ended Mr. Besson was forced to take his son out of the Malverne public school system. In September 2010, Mr. Besson enrolled IB in a private elementary school rather than the public Howard T. Herber Middle School as planned, costing him extra tuition and his son a chance of continuing in the school district.

#### ***Discrimination and Retaliation in Mr. Besson's Employment***

88. After his October 2009 speech at the Board of Education, Mr. Besson also began noticing changes in the way that he was treated at work. He began noticing that necessary equipment would not be present in his classroom, that he was getting less support from the school IT department for the computers he used to teach his students, and that responses to his correspondence with school administrators were delayed more than before.

89. Mr. Besson also began experiencing problems with the scheduling of his classes, and he received reprimands for trivial infractions that he had never experienced before.

90. Starting from this time, Mr. Besson began hearing warnings from his friends, Betsy Benedith and others, who informed Mr. Besson that they had heard members of the Board and Dr. Hunderfund say that they would "get him," and was told that Dr. Hunderfund had claimed that he would punish Mr. Besson "even if it meant shutting down the whole business

department.”

91. In November 2009, Mr. Besson was subject to a classroom observation with a report that was unusually critical, harsh, and punitive. After receiving this report, Mr. Besson asked the chairperson of the Business Department if “she was the one sent to get me,” based on the warnings he had gotten from his union president. This comment was inserted into the post-observation report, an illegal and unethical act. Mr. Besson asked the union to have the comment removed from the record, but only part of it was.

92. Mr. Besson filed the first of his two EEOC complaints against Malverne UFSD for racial discrimination and retaliation in August 2010.

93. In March 2011, Mr. Besson helped to lead a “Men of Lakeview” community meeting, which has nothing to do with the Malverne UFSD or Mr. Besson’s employment, in which he discussed some of the problems minority boys faced, including the fact that minority teachers were greatly underrepresented in Malverne schools despite the fact that the district’s students are over 80% Hispanic and black.

94. After his March 2011 “Men of Lakeview” public meeting, Mr. Besson was informed by several colleagues of a “stop talking to Besson campaign” led by Dr. Hunderfund and one of his colleagues. He started noticing that co-workers and administrators with whom he had been on friendly terms in the past would ignore him in work or private settings.

95. On May 19, 2011, these subtler retaliations finally culminated: Mr. Besson was informed in writing that his teaching position was abolished, and that he would be “excessed” and placed on a waiting list for future positions in the district. At this time, Mr. Besson was among a total of 19 teachers who were excessed in the Malverne UFSD.

96. On July 13, 2011, Mr. Besson was offered to be reinstated in a part-time (“0.5”)



position as a business teacher in Malverne High School, at a salary of \$47,428, which is only half of his previous salary of approximately \$94,500. This 0.5 position also did not provide health insurance or pension benefits, which were reserved for “0.6” or higher positions.

97. Mr. Besson soon learned that, out of the 19 excessed teachers, two moved to other districts, and *all 16 others* were reinstated at “0.8” or full-time positions. Mr. Besson was the sole teacher reinstated at a 0.5 position.

98. Having no choice, Mr. Besson still accepted this effective demotion, which is the position where he currently teaches. His current salary, for unknown reasons, is actually only \$46,750 and not the \$47,428 stated in the initial offer.

99. To add insult to injury, the district has also retaliated against Mr. Besson in setting his teaching schedule in the 2011-12 school year. After assigning another teacher to teach classes that only Mr. Besson has experience teaching, the school has assigned Mr. Besson to teach periods 2, 8, and 9, purposefully creating a large gap in his daily schedule.

100. In September 2011, Mr. Besson filed his second EEOC complaint alleging racial discrimination and retaliation by Malverne UFSD.

101. Mr. Besson believes that these retaliatory actions represent a systematic attempt to encourage him to resign from Malverne UFSD, since he cannot be terminated due to his tenured status.

102. Mr. Besson’s finances, family life, and health have all suffered from the environment of discrimination and retaliation. Due to the halving of his income, he has been forced to take money from his pension plan and life insurance policy to pay for his house and daily expenses. Further, he has suffered emotional distress, sleepless nights, and family problems due to his worries about work.

***Kenneth Smith***

103. Mr. Smith has been employed as a teacher since 1997, and by the Malverne UFSD since 2002, when he was hired as a mathematics teacher at the Howard T. Herber Middle School.

104. After teaching at the middle school for three years, Mr. Smith requested a transfer to teach mathematics at Malverne High School in the fall of 2005. At Malverne, he worked under the direct supervision of Rosalinda Ricca, a Caucasian woman and the chairperson of the mathematics department, and three principals, the last being James Brown.

105. Until recently, Mr. Smith only received exemplary ratings for his observations and year-end evaluations at Malverne High School. From 2005 to 2009, he received ratings of “good” or “very good” on all of his observations, and marks of “meets district standards” in all categories on his year-end evaluations. In 2011, he also received an education award for outstanding and dedicated service from the Lakeview branch of the NAACP.

106. While at Malverne High School, Mr. Smith established a close rapport with many students, who viewed him as a role model whom they could talk to after classes about all aspects of their lives. Since he transferred to the high school after teaching several years at the middle school, many students knew him for five or six years and were particularly friendly with him.

107. Despite his excellent performance and good relationships with students, Mr. Smith was subject to pervasive racial discrimination in Malverne High School in the assignment of classes, facilities in his classroom, economic opportunities, opportunities for professional development, and final transfer away from the high school.

***Discrimination in Assignment of Classes, Conduct of Observations, and Access to Resources***

108. From 2005 to 2007, Mr. Smith was assigned only lower-level and non-honors mathematics courses, despite his higher seniority over Gerilyn Schroder and Lauren Knudsen,

Caucasian female teachers who were assigned higher-level and honors courses.

109. In the 2007-08 school year, Mr. Smith was finally assigned two honors-level “Math B” courses, in which he prepared his students very well for future examinations. In January 2009, he found out that 20 out of 22 students he taught in Math B the previous year had passed the Regents examination, compared to an overall district passage rate of 51%. However, Ms. Ricca refused to give him credit for this accomplishment, instead claiming that their current teacher, Rachel Ruisi, a Caucasian woman, was to be given credit, despite that when Ms. Ruisi taught Math B, her students did not pass the Regents significantly more than the district average.

110. In 2008, Mr. Smith applied for the open position as dean of the Howard T. Herber Middle School. Mr. Smith did not receive the position despite that, compared to Daniel Nehlsen, the Caucasian male who eventually given the position, Mr. Smith had more seniority, previously taught in the Howard T. Herber middle school for three years, and also had eight years of experience teaching at a middle school level versus no years of experience for Mr. Nehlsen.

111. In May 2008, Mr. Smith requested to receive two honors-level courses again for the coming 2008-09 school year. However, Ms. Ricca falsely told him that it was “district policy” to assign no more than one honors course per teacher, later retracting the statement to say it was her own policy not to do so. Mr. Smith was only given one honors level course which contained approximately 12 students to teach in the coming year, and the other honors course with approximately 25 students was given to Christine Connell, a newly hired Caucasian female teacher.

112. During the 2008-09 school year, Ms. Ricca scheduled Mr. Smith’s observation to occur in 5<sup>th</sup> period, after a half-day of special visitors coming to the school in periods 1 to 4. This negatively affected his students’ behavior and made the observed class an inaccurate

representation of Mr. Smith's teaching abilities. Further, this year and in previous years, Ms. Ricca never showed Mr. Smith the rubric by which she was grading his observed class, which is part of the normal procedures for post-observations.

113. In May 2009, Mr. Smith was informed by a student in one of his classes that he knew his schedule for the coming year. After confirming that the student indeed did know his schedule, Mr. Smith discovered that Ms. Ricca had revealed his schedule to Kristen Burban, another female Caucasian mathematics teacher, who in turn unethically revealed it to this student.

114. On May 20, 2009, Mr. Smith again requested two honors-level courses for the coming 2009-10 school year. Ms. Ricca only gave him one honors-level course, and gave the second course he had requested to Ms. Burban, a Caucasian woman who was a new untenured teacher with only one year in the school district.

115. During the scheduling of the 2009-10 school year, one of the mathematics teachers went on maternity leave and her classes became available to distribute among the other teachers. Mr. Smith was never offered a chance to teach one of these classes as his sixth class for extra income. The district argued that giving him a sixth class would have given him four classes in a row to teach, a practice they claimed to oppose at the time, but the two Caucasian teachers who ended up receiving the extra courses ended up with four or more classes in a row to teach, and the extra income.

116. During the 2009-10 school year, Regents Assistance Program classes were available for mathematics teachers to teach before or after school. Despite that Mr. Smith was available to teach them before school started, and indeed was usually one of the earliest teachers arriving at school, he was never notified about the option of scheduling them in the morning. Other

Caucasian mathematics teachers were given and took the opportunity of teaching these courses for extra income.

117. Throughout the 2009-10 school year, Mr. Smith was not afforded the same professional development opportunities that his Caucasian colleagues were offered. In fact, by the end of the year he had not been allowed to attend a single development program, while all of the Caucasian teachers had attended at least one training program.

118. Further, the computer and equipment available to Mr. Smith in his classroom were greatly inferior to those available to his Caucasian colleagues. Despite his requests, his aging computer was never replaced with a newer model, and he never received a “Promethean” smart board, even though other Caucasian teachers had received newer computers and Promethean boards.

119. On October 27, 2009, Mr. Smith received an observation from Ms. Ricca that inaccurately judged his teaching performance, and for which he only received a “satisfactory” score. This was the first time during his ten-year tenure that he had received such a low rating in an observation.

120. On October 28, 2009, the post-observation conference with Ms. Ricca was conducted while Mr. Smith was on hallway duty, so that their entire conversation could be heard by students and other staff in the halls. He was ridiculed and embarrassed by this unprofessional conduct. Upon information and belief, all of the Caucasian teachers had post-observations conducted behind closed doors with an appropriate degree of privacy. Mr. Smith wrote a rebuttal to this observation.

#### *Retaliation for Anonymous Complaint Letter*

121. In May 2010, an anonymous letter was sent to the New York State Education

Department that reported teachers were giving illegal assistance to Malverne students in mathematics Regents examinations. This triggered an investigation by the Education Department on possible ethical violations in the Malverne UFSD. While Mr. Smith did not write this letter, Malverne administrators believed he wrote it, and he was blamed for doing so.

122. On June 7, 2010, Mr. Smith was called into a meeting with school administrators, where he was questioned about whether he knew of unethical behavior during the proctoring of Regents examinations. While Mr. Smith did not admit to writing the anonymous letter, he proclaimed that he was aware of teachers improperly assisting students during examinations from having seen such behavior in past years.

123. In his June 11, 2010, response letter to the New York State investigators, Superintendent Hunderfund repeatedly pointed out Mr. Smith as the writer of the anonymous letter, thereby defaming Mr. Smith. Dr. Hunderfund falsely claimed that Mr. Smith held a “personal animus” toward the Math Department and school administrators because of a critical performance evaluation and because he had been turned down for the dean’s position at the middle school two years ago.

124. From this May investigation onward, Mr. Smith faced ever-increasing scrutiny and retaliation from other teachers and administrators, who incorrectly blamed him for writing the allegations about the pervasive cheating in the school. A proverbial “witch hunt” occurred from teachers who were illegally helping students, and Mr. Smith became its main target.

125. In June 2010, Mr. Smith was not allowed to proctor or grade any of the mathematics Regents examinations, despite having done so in previous years.

126. On June 10, Mr. Smith was summoned to Principal Brown’s office over his supposed lack of teaching of calculator use to his students. Ms. Ricca had complained in the past that Mr.

Smith was not properly teaching students how to use their graphing calculators. In reality, this dispute came from a difference in teaching philosophy between Ms. Ricca and Mr. Smith, who believed in teaching the mathematical principles first before showing how to do problems on the calculator. Mr. Smith told Mr. Brown that he was teaching students how to use their calculators after he taught them the mathematical principles.

127. On June 15, Mr. Smith was summoned to Principal Brown's office on charges of supposedly taking photographs of the Regents examinations. Upon information and belief, one of the other mathematics teachers had seen him using his cell phone while sitting outside the examination room, and reported it to Mr. Brown as him taking photographs of the exams. Mr. Smith denied the fanciful claim that he was taking photographs of the tests.

128. On June 17, teachers Gina Cappellino and Silvana Russo were summoned to Principal Brown's office, this time because Mr. Smith had helped clear two calculators for a teacher who was proctoring a Regents exam. He only did this after the teacher requested his assistance. Upon information and belief, mathematics teacher Ms. Knudsen reported to the principal that Mr. Smith was somehow illegally helping the students by setting up their calculators. Several teachers from the Foreign Language department were called into Mr. Brown's office and were intensely interrogated about the incident. This is another example of the type of absurd allegations that Mr. Smith had to endure during this period. Had Mr. Smith not been under such intense scrutiny due to the retaliatory scheme of the Defendants, none of these complaints against him would have occurred or been taken to the level that they were.

129. Also on June 17, Mr. Smith discovered that his school email account had been tampered with, and all of his inbox emails moved into the "Delete" section. Mr. Besson also found the same had happened to his email account. This tampering did not occur for any of the

Caucasian teachers in the school.

130. On June 18, Mr. Smith was falsely accused by Ms. Burban of doing a student's take-home examination. Mr. Smith had helped the student by answering some general questions, but he did not help him complete any portion of the test. The student was accused on June 18 of using illegal assistance, but denied that Mr. Smith had done anything more than help him with general concepts. Still, the student was put under pressure to say that Mr. Smith had illegally helped him, and forced to testify again in a July 12 meeting with school officials. Mr. Smith was not made aware of this frivolous investigation until August, and refuted it at the time.

131. Also on June 18, Principal Brown tried to summon Mr. Smith to his office again. Since Mr. Smith had been summoned to his office several times in the few days prior to report back on frivolous accusations, he said that he would talk to Mr. Brown only with a union representative present. Mr. Brown viewed this as insubordination, and wrote a disciplinary memo to Mr. Smith on June 22 stating his actions as insubordinate. Later on, he would use this incident as a reason to transfer Mr. Smith away from the high school.

132. On June 23, nine days after it was signed by Mr. Brown and Mrs. Ricca with only one day before the end of the school year, Mr. Smith received his year-end evaluation. He barely had enough time to write a rebuttal to it, which he did, because the evaluation incorrectly cited that he was not teaching enough use of the graphing calculator in his classes. The evaluation also claimed that he should partake in more professional development courses, after a year when he was actually given no chances at all to take such courses. For the first time, he received "Needs Improvement" on several categories rather than having all "Meets District Standards" as he was accustomed to receiving.

### *Transfer from the High School to the Middle School*



133. After the final examinations were over, on July 1 Ms. Ricca sent a letter to Assistant Superintendent Richard Banyon reporting that a majority of students in Mr. Smith's class had gotten a certain question wrong on their Trigonometry Regents examination. This question required use of a calculator, and Ms. Ricca argued that Mr. Smith not properly teaching calculator use was the reason they got these questions wrong.

134. On August 3 in a phone call to his residence, Mr. Smith was informed by Mr. Banyon that he was being transferred to the middle school. Mr. Smith then contacted union leadership and made an appointment to meet with Mr. Banyon on August 9 to ascertain the reasoning for the transfer from the high school to the middle school. The reason was allegedly because of the one question the students had gotten wrong on the Trigonometry Regents. On August 9, Mr. Smith tried to question Mr. Banyon about the statistics comparing his students' overall performance on the exam to the district average, but Mr. Banyon claimed not to have it at the time.

135. On August 13, Mr. Smith received a letter confirming his transfer to the Howard T. Herber Middle School in the coming 2010-11 school year. Despite his five years of successful teaching at the high school level, the discriminatory and retaliatory efforts of the administration resulted in him teaching at the middle school level, a less prestigious assignment for a number of reasons. To Mr. Smith's knowledge, no other teacher has ever been transferred from one school to another based on their students' performance on one question on an exam, nor have any of the Caucasian teachers had their students' performance on individual questions scrutinized like his were.

136. Mr. Smith later found out that the 75% of his students in his two classes had passed the Trigonometry Regents. This is compared to a district-wide average passage rate of 42% on

the same exam. So, despite his students' overall superior performance on the exam, Mr. Smith was blamed for their performance on one question and punitively transferred.

137. Mr. Smith adamantly opposed his transfer to the middle school because he had built a strong rapport with the high school students. Mr. Smith pursued an administrative grievance against this decision at the time.

138. Since his transfer from the high school, Mr. Smith has noticed continued discrimination against him at the Howard T. Herber Middle School. This is very evident, for example, in the equipment in their classes – Mr. Smith and the only other African-American math teacher in the middle school use the only classrooms without Promethean boards, while other Caucasian math teachers have or have access to them.

139. In the 2010-11 school year at the middle school, Mr. Smith was assigned to the schedule of the Caucasian teacher who switched with him to go to the high school, so his schedule could not be changed much in retaliation. Mr. Smith received only one honors course to teach that year.

140. However, in the current 2011-12 school year, Mr. Smith has been again assigned one honors course, this time with only 11 students, some of whom have behavioral problems and themselves claim they should not be in an honors-level class. Mr. Smith believes the assignment of these “problem” students to his honors-level class is an attempt to lower the average test grades in his classes and hence set him up for future criticism via the new teacher evaluation system.

141. Like in 2009-10, in the 2010-11 school year Mr. Smith was not allowed to attend any professional development programs. This has put him at a disadvantage in job interviews for higher positions, because he has been asked which professional development programs may help

his work, and he cannot answer because he has had none for two years. In the current 2011-12 school year, Mr. Smith has again been rejected from three out of the four professional development programs he has applied to so far, while the applications of Caucasian teachers are routinely granted.

142. In June 2011, Mr. Smith had an arbitration hearing for his grievance against his transfer to the middle school. In mediation between his union and Malverne UFSD, Mr. Smith was offered a chance to return to the high school in three years if a spot was open and if he took development courses on calculator use in the meantime. He rejected this offer at the time. However, arbitrator Howard Edelman's decision was exactly the same as the mediation offer he received, leading to the supposition that, against established rules, the arbitrator had been informed of the mediation results and based his decision on them. Mr. Smith is also aware that Mr. Edelman was recently hired by the Malverne UFSD in October 2011 to work as a mediator for the district, further putting his neutrality for deciding the case in question.

143. Believing that he would be allowed to return to the high school after being vindicated by the arbitration hearing, in 2010-11 Mr. Smith continued monitoring the after-school detention period at Malverne High School, which he had done for five years before. However, since the arbitration has refused to allow him to return, Mr. Smith is no longer emotionally able to handle the frequent questions from former students asking him when he would return. Therefore, he has resigned from monitoring detentions at Malverne High School, which represents a loss of \$7,500 in yearly income for him.

144. Since the start of the discriminatory and retaliatory actions against him, Mr. Smith has suffered from anxiety and emotional stress resulting from his caustic and discriminatory work environment. He has especially resented being a target of the "witch hunt" to find cheating

teachers, as colleagues and administrators have constantly sought to find him committing a mistake, and have come to absurd lengths to accuse him of wrongdoing.

### **CLAIMS FOR RELIEF**

145. By reason of the foregoing, the Defendants have unlawfully discriminated against the Plaintiffs in their terms, conditions and privileges of employment, in that they created a hostile work environment, subjected them to an atmosphere of adverse acts, and treated them disparately, because of their race and good-faith opposition to discriminatory practices, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et. seq.*; 42 U.S.C. § 1981; the New York State Human Rights Law, the Nassau County Human Rights Law, and the Equal Protection Clause of the United States Constitution.<sup>1,2</sup>

146. By reason of the foregoing, the Defendants, while acting under color of state law, deprived Mr. Besson and Mr. Smith of their constitutional rights of freedom of speech, as secured by the First Amendment to the United States Constitution by retaliating against them for their speech on matters of public concern and their complaints of racial discrimination, and, in Mr. Smith's case, his perceived speech on matters of public concern.

147. By reason of the foregoing, the Defendants, while acting under color of state law, deprived Mr. Besson of his constitutional rights to privacy in the educational decisions he makes for his children, as secured by the Fourteenth Amendment to the United States Constitution by retaliating against him for his decision to send his children to a private school and his

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<sup>1</sup> As Plaintiff Betsy Benedith has not filed a charge of discrimination with the EEOC, she does not bring her claims pursuant to Title VII.

<sup>2</sup> As the Plaintiffs have not filed Notices of Claim against the Malverne UFSD, they bring their claims under the New York State Human Rights Law and the Nassau County Human Rights Law only against the individually named defendants.

questioning of the means in which is son was being educated.

148. The Malverne UFSD intentionally committed, condoned or was deliberately indifferent to the aforementioned violations of Plaintiffs' constitutional rights. Such deliberate indifference may be inferred in the following ways:

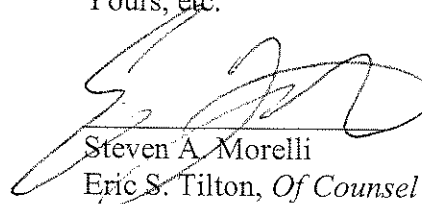
- i. Defendant's custom or practice of discriminating against Plaintiffs based on their race, opposition to discriminatory practices, speech on matters of public concern. The discriminatory practices were so persistent and widespread that they constitute the constructive acquiescence of policymakers.
- ii. Inadequate training/supervision was so likely to result in the discrimination that policymakers can reasonably be said to have been deliberately indifferent to the need to provide better training and supervision.
- iii. Supervisors failed to properly investigate and address allegations of discrimination.
- iv. Policymakers engaged in and/or tacitly condoned the discrimination.

**WHEREFORE**, Plaintiffs demands judgment against Defendants for all compensatory, emotional, physical, and punitive damages (against the individual defendants only), lost pay, front pay, injunctive relief, and any other damages permitted by law. It is further requested that this Court grant reasonable attorneys' fees and the costs and disbursements of this action and any other relief to which Plaintiffs are entitled.

Further, Plaintiffs demand a trial by jury.

Dated: Garden City, New York  
December 5, 2011

Yours, etc.



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