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KATHERINE GOMEZ

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

KATHERINE GOMEZ,

Plaintiff,

vs.

EVERGREEN SCHOOL DISTRICT,

Defendant.

) Case No.:

) **COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

) (Civil Rights)

) DEMAND FOR JURY TRIAL

Plaintiff KATHERINE GOMEZ complains against defendant EVERGREEN
SCHOOL DISTRICT as follows:

PRELIMINARY STATEMENT

1. Plaintiff Katherine Gomez, former Superintendent of Evergreen School District brings this action against defendant Evergreen School District for unequal pay, discrimination on the basis of gender, and retaliation for her complaints about unequal pay.

JURISDICTION

2. This action arises under the federal Equal Pay Act, 29 U.S.C. § 206(d)(1) and Title VII, 42 U.S.C. § 2000e *et seq.* The Court has jurisdiction over this matter under 28 U.S.C. § 1331.

3. The state law claims here are so related to claims in the action within original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. The Court has supplemental jurisdiction over the related state law claims under 28 U.S.C. § 1367.

VENUE

4. Venue is proper in the Northern District of California because the events or omissions giving rise to the claim occurred in this District.

PARTIES

5. At all times relevant to this controversy, plaintiff KATHERINE GOMEZ was the Superintendent and an employee of EVERGREEN SCHOOL DISTRICT and a resident of San Jose, California.

6. At all times relevant to this controversy, defendant EVERGREEN SCHOOL DISTRICT was a public agency located in San Jose, California.

STATEMENT OF FACTS

7. Defendant Evergreen School District (“the District”) paid plaintiff, its former Superintendent Katherine Gomez, substantially less in salary and benefits than her male predecessor, Clifton Black, who had held the same position directly before her. The two performed substantially equal and substantially similar work and had substantially similar experience, education, and ability.

8. Ms. Gomez had over thirty years’ experience, all at Evergreen School District, as a teacher, English Language Development specialist, assistant principal, principal, director, assistant superintendent, and finally superintendent. Mr. Black had similar work experience.

1 9. Ms. Gomez earned a Master of Arts Education (Administration and Supervision)
2 degree in 1997. Neither Ms. Gomez nor Mr. Black held a doctorate.

3 10. Both Superintendents' job duties were composed of the following: serving as
4 Chief Executive Officer of the District and Secretary to the Board of Trustees of the
5 District, and selection, placement, and transfer of all employees.

6 11. The Evergreen School District Board of Trustees were the decision makers for
7 both Ms. Gomez's and Mr. Black's compensation.

8 12. Ms. Gomez served as Superintendent of the District from 2011 until she retired in
9 January 2019.

10 13. Ms. Gomez's male predecessor Clifton Black served as Superintendent of the
11 District from 2005 to 2011.

12 14. Ms. Gomez was the District's first female Superintendent.

13 15. Ms. Gomez was a successful Superintendent. Under her leadership, the District
14 received local, state, and even national recognition. These entities awarded the District
15 two National Blue Ribbon awards, nine California Distinguished School awards, and
16 three Gold Ribbon awards. In 2018, the state of California named the District a
17 California Exemplary School District, one of only 23 in the state. The District was
18 recognized by prominent national organizations including The White House,
19 Partnership for 21st Century Schools, Ed Leader 21, the New Tech Network, Getting
20 Smart, and the League of Innovative Schools.

21 16. Jim Zito, Evergreen School District Board of Trustees member during Ms.
22 Gomez's tenure, was a leading decision maker regarding her compensation.

23 17. Throughout Ms. Gomez's tenure as Superintendent, Mr. Zito engaged in sexist
24 bullying behavior against her and sabotaged her efforts. He misrepresented her
25 statements and the facts, and downplayed her accomplishments.

26 18. In 2011-12, Ms. Gomez's first year, the District paid Ms. Gomez a slightly lower
27 base salary than Mr. Black, without considering inflation in superintendents' salaries.
28

1 19. Ms. Gomez had requested \$180,000. Mr. Zito said he wanted her to start at
2 \$175,000 because “that was the salary Black received.” While Mr. Black did start at that
3 salary, the District had awarded him a 3% retroactive increase in his first year.

4 20. In their respective second years as Superintendent, the District paid Mr. Black
5 \$192,867 plus benefits (2006-07), while it kept Ms. Gomez at \$180,000, with fewer
6 benefits (2012-13). This was about a \$12,000 difference, without considering inflation in
7 superintendents’ salaries.

8 21. In their respective third years as Superintendent, the District paid Mr. Black
9 \$200,679 plus benefits (2007-08), while it kept Ms. Gomez at \$180,000, with fewer
10 benefits (2013-14). This was about a \$20,000 difference.

11 22. In their respective fourth years as Superintendent, the District paid Mr. Black
12 \$200,679 plus benefits (2008-09), while it paid Ms. Gomez only \$185,850, with fewer
13 benefits (2014-15). This was about a \$15,000 difference.

14 23. In 2015, the District decided to conduct a comparative study of salary and
15 benefits.

16 24. On July 13, 2015, the District released its “Evergreen School District Total
17 Compensation Study.” This study showed that Ms. Gomez was the lowest paid
18 Superintendent by a significant amount out of seven comparable school districts.

19 25. The District thus knew and/or was recklessly disregarding its unequal pay of Ms.
20 Gomez.

21 26. In their respective fifth years as Superintendent, the District paid Mr. Black
22 \$225,459 plus benefits (2009-10), while it paid Ms. Gomez a salary of \$191,426, with
23 fewer benefits (2015-16). This was about a \$34,000 difference.

24 27. In their respective sixth years as Superintendent, the District paid Mr. Black
25 \$225,459 plus benefits (2010-11), while it kept Ms. Gomez at \$191,426, with fewer
26 benefits (2016-17). This was about a \$34,000 difference.

27 28. On June 14, 2016, Ms. Gomez met with Mr. Zito and Board Member Vince
28 Songcayawon who composed the ad hoc committee to discuss her salary proposal. She

1 reminded them of the compensation study and that her position was
2 undercompensated.

3 29. On June 27, 2016, she sent a memo to Mr. Zito and Mr. Songcayawon with a
4 comparison chart of her and Mr. Black's compensation.

5 30. In June 2016, Ms. Gomez complained about the unequal pay issue to the Board
6 during negotiations. She raised that the District paid Mr. Black significantly more than
7 her. Ms. Gomez recommended a transparent salary scale to alleviate the inequity.

8 31. On October 13, 2016, Ms. Gomez again complained to the Board about unequal
9 pay. At that meeting, the Board acknowledged that she was underpaid and orally agreed
10 to retroactively increase her salary by 4.5% to July 1, 2016 after negotiations with the
11 various unions were over. The Board acknowledged that the increase would not make
12 Ms. Gomez whole, but agreed to revisit the matter when the parties renegotiated her
13 contract in June 2017.

14 32. Mr. Zito opposed the 4.5% increase.

15 33. Board President Bonnie Mace offered to put the agreement to increase Ms.
16 Gomez's salary in writing but did not.

17 34. During this Board meeting, Board member Sylvia Arenas said that Ms. Gomez's
18 unequal pay sounded like gender discrimination.

19 35. A Board member reported that Mr. Zito stated the only reason two female Board
20 members wanted to increase Ms. Gomez's pay was because they had "the same thing
21 between their legs."

22 36. Board members Sylvia Arenas and Sylvia Alvarez walked out in disgust.

23 37. In June 2017, the Board proposed only a 2% retroactive increase to July 1, 2016
24 for Ms. Gomez.

25 38. Ms. Gomez asked the Board members if they recalled their previous agreement
26 from October. President Mace, Mr. Zito, and Board Member Alvarez stated that they
27 did. Ms. Mace and Mr. Zito refused to honor the previous agreement. Ms. Mace cited
28 "declining enrollment," indicating less funds, for the Board's refusal to honor the

1 October 2016 agreement.

2 39. However, the District's budget had increased from 2009 to 2018.

3 40. For over a year, Ms. Gomez attempted to negotiate with the District for a fair
4 salary. The District refused to negotiate in good faith and make Ms. Gomez whole.

5 41. During these negotiations, the District agreed to provide a 2% increase
6 retroactive to July 2016 and a 2.5% increase retroactive to July 2017, but only if Ms.
7 Gomez agreed to modify her three year contract to only one year, which term would be
8 renewed only at the Board's discretion based on a satisfactory performance review. Ms.
9 Gomez declined the offer.

10 42. On September 7, 2017, Ms. Gomez's representative advised the District's attorney
11 that she would be filing a Fair Employment and Housing Act (FEHA) complaint
12 regarding the unequal pay and requested that attorney instruct the District not to
13 retaliate.

14 43. On November 29, 2017, the District advised Ms. Gomez that it wished to
15 negotiate a separation agreement with her, to be effective June 30, 2018.

16 44. On or around December 21, 2017, the Board provided Ms. Gomez with a
17 retaliatory, false, and unwarranted negative midyear performance evaluation. The Board
18 had never before conducted a midyear review of Ms. Gomez.

19 45. On December 14, 2017, the District's Chief Business Officer Nelly Yang filed a
20 FEHA complaint against the District for gender discrimination based on unequal pay.

21 46. On December 21, 2017, Ms. Gomez informed the Board about Ms. Yang's
22 complaint.

23 47. Board Member Balaji Vekatraman sarcastically stated, "Great, who's next?"

24 48. On January 22, 2018, Board Member Sylvia Alvarez told Ms. Yang that, "Now
25 that you filed the [FEHA] complaint, all the Board members are mad at you."

26 49. From 2017 to 2018, Ms. Gomez worked as the District's Superintendent for her
27 seventh year. The District kept her income at \$191,426.

1 50. On February 1, 2018, Ms. Gomez filed a FEHA complaint for gender
2 discrimination.

3 51. In the Spring of 2018, the District's Director of Pupil Services Carole MacLean
4 commented to Ms. Gomez that Mr. Zito was sexist. She later explained that he always
5 seemed to question the women on their presentations but not the men. Ms. MacLean
6 pointed out that Mr. Zito appeared not to listen to the women as opposed to the men.

7 52. On May 22, 2018, Ms. Gomez and the District had a mediation of the unequal pay
8 issue through the Department of Fair Employment and Housing (DFEH). The District
9 again refused to make Ms. Gomez whole.

10 53. In August 2018, the District issued Ms. Gomez a retaliatory false and negative
11 performance review despite her excellent performance. The evaluation misrepresented
12 and degraded Ms. Gomez's achievements. It stated that she had created an "adversarial
13 relationship" with the Board.

14 54. From 2018 to January 2019, when she retired, Ms. Gomez worked as the
15 District's Superintendent for her eighth and final year. The District kept her income at
16 \$191,426.

17 55. Recently, significant evidence of Mr. Zito's sexist behavior against other women
18 employees of the District has come to light.

19 56. The Vice President of the Evergreen Teachers' Association (ETA) Suzanne Lima
20 publicly spoke about Mr. Zito's sexist and bullying treatment of women. She commented
21 that during Union President Brian Wheatley's ten years of delivering comments to the
22 Board, Mr. Zito had not interrupted him. However, while Ms. Lima was giving public
23 comment, Mr. Zito humiliatingly interrupted her to ask if her comment was "relevant."
24 The audience booed him, and the Board President advised Mr. Zito that Ms. Lima had
25 the floor and to let her speak.

26 57. In addition, the ETA has accused Mr. Zito of attempting to bully, threaten, and
27 intimidate numerous female teachers during and after Board meetings and at school
28 sites.

1 58. Evergreen teacher Sarah Ciccarello accused Mr. Zito of angrily yelling in her face
2 after she spoke at a Board meeting about classroom needs, and then claiming she lied
3 about the incident in a letter to his supporters and on his website.

4 59. The District discriminated against Ms. Gomez by refusing to pay her at a wage
5 rate equal to an employee of the opposite sex working in the same establishment and
6 performing substantially equal or substantially similar work on a job requiring
7 substantially equal or substantially similar skill, effort, and responsibility, and which
8 were performed under similar working conditions and this differential was based on her
9 sex, female.

10 60. The District willfully underpaid Ms. Gomez.

11 61. Ms. Gomez's pursuit of internal remedies and her DFEH complaint equitably
12 tolls her Equal Pay Act complaints under 29 U.S.C. § 206(d)(1) and California Labor
13 Code § 1197.5.

14 62. As a direct and legal result of defendant's differential payment of wages and other
15 discriminatory conduct which was based on plaintiff's sex, female, plaintiff has lost
16 substantial employment benefits, including lost wages, the precise amount of which will
17 be proven at trial.

18 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19 63. The Department of Fair Housing and Employment issued Ms. Gomez a right to
20 sue letter on January 17, 2020.

21 64. On or around May 1, 2020, the Equal Employment Opportunity Commission
22 issued Ms. Gomez a right to sue letter.

23 **FIRST CLAIM – DENIAL OF EQUAL PAY - FEDERAL**

24 (29 U.S.C. § 206(d)(1))

25 65. Plaintiff incorporates by reference paragraphs 1 through 64 above as though fully
26 set forth herein.

27 66. By virtue of the foregoing, defendant denied plaintiff's right to equal pay.
28

1 76. By virtue of the foregoing, defendant failed to prevent discrimination and
2 retaliation against plaintiff in violation of Cal. Gov't Code §§ 12940(a), (j)(1) & (k).

3 **SEVENTH CLAIM - RETALIATION**

4 (California Labor Code § 1102.5)

5 77. Plaintiff incorporates by reference paragraphs 1 through 76 above as though fully
6 set forth in this claim.

7 78. By virtue of the foregoing, defendant retaliated against plaintiff in violation of
8 California Labor Code § 1102.5.

9 **DAMAGES**

10 79. As a result of the actions of defendants, plaintiff has been injured and has
11 suffered damages as follows:

- 12 a) She has lost compensation and other employment-related benefits to which
13 she has been entitled and will lose such compensation and benefits in the
14 future;
- 15 b) She has suffered from emotional distress, embarrassment and humiliation,
16 and has suffered damage to her professional reputation and standing.

17 WHEREFORE, plaintiff requests that this Court grant her relief as follows:

- 18 1) Compensatory damages for lost wages and benefits, in an amount to be
19 determined;
- 20 2) Interest at the legal rate;
- 21 3) General damages for emotional distress, pain and suffering, in an amount
22 to be determined;
- 23 4) Liquidated damages;
- 24 5) Special damages for out-of-pocket expenses;
- 25 6) Attorney fees;
- 26 7) Costs of suit; and
- 27 8) Such other and further relief as the Court may deem proper.
- 28

DEMAND FOR JURY TRIAL

In accordance with the Federal Rules of Civil Procedure, Rule 38(b), and Northern District Local Rule 3-6, plaintiff Katherine Gomez hereby demands a jury trial.

Dated: May 1, 2020

SIEGEL, YEE, BRUNNER & MEHTA

By: /s/ Sonya Z. Mehta
Sonya Z. Mehta

Attorneys for Plaintiff
KATHERINE GOMEZ

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