



Harmeet K. Dhillon
Harmeet@DhillonLaw.com

May 31, 2022

VIA EMAIL AND U.S. MAIL

Dr. John Malloy
Superintendent
San Ramon Valley Unified School District
699 Old Orchard Drive
Danville, CA 94526
jmalloy@srvusd.net

Megan Keefer
California High School
Principal
9870 Broadmoor Drive
San Ramon, CA 94583
mkeefer@srvusd.net

Re: Cease and Desist Regarding your Violations of California Cheer Member's Rights

Dear Dr. Malloy and Ms. Keefer:

This firm represents eighteen California High School Cheer and Stunt Team Students (together, the "Cheer Team"), by and through their parents (together "Cheer Family"), in connection with their legal claims regarding your violations of their statutory, common law, and contractual rights. Please direct all communication regarding this matter to Dhillon Law Group.

A response is requested by Thursday, June 2, 2022, at 5pm Pacific.

The purpose of this letter is to put you on notice of the facts and evidence supporting our clients' claims and to order your cease and desist regarding your despicable, malicious, and damaging conduct towards innocent children.

EXECUTIVE SUMMARY

On Friday, May 20, 2022, shortly before midnight at California High School in San Ramon, California, the results for Sideline Cheer tryouts were posted online on the Cheer Team’s Instagram account, calhighcheer, and physically at the high school. The results were posted via anonymous student numbers to protect student privacy. Seven African Americans tried out for the Cheer Team; one did not make the roster.

About an hour (at 1:00 am) after the anonymous Team list became public, the Cheer Instagram page as well as the Cheer advisor received messages from the mother of the one African American student who did not make the team asking why her daughter’s number was not posted. The Cheer advisor offered to meet with the mother and go over the score sheets. Unable to believe that maybe her daughter just wasn’t talented enough to make the Team, and with malicious intent to retaliate against the Cheer program and the innocent Cheer students, the mother fabricated a social media post accusing the Cheer Team of racist acts.¹



¹ At this time, the Cheer Team has reason to believe that both the student and the mother participated in verbal and written defamation against the Cheer Team. However, the level of fault between the two is not yet know and likely will not be known until court ordered discovery. Accordingly and for clarity in this document, the Cheer Team refers to these parties as “Disgruntled Student” and “Disgruntled Mother.”

Dr. Malloy
Ms. Keefer
May 31, 2022
Page 3 of 18

The Disgruntled Mother's post was false and defamatory for numerous reasons. First, as stated, the Team is not "all-white"; six African Americans made the Cheer Team and the Disgruntled Student was the only African American who tried out and did not to make the Cheer Team. Second, the mannequin head the squad has used as their mascot head for the last five years is not black.



The left-hand picture is the photograph of the mannequin circulated by the Disgruntled Mother. The right-hand picture is one that was featured in the California High School Yearbook last year. Simply put, the mannequin is not black. The dramatic and noticeable difference between the two photographs suggests that some party may have darkened the mannequin's appearance through a filter or photoshop to manufacture controversy.

Third, the post also falsely stated the mannequin head was named "Kareem." In fact, the mannequin head is from a well-known cosmetology company, and, as can be found online for purchase today, is named "Karine."



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**Ladella Beauty 26-28" Cosmetology (Heavy Density)"
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Brand: Ladella Beauty
Color: Dark Brown
Manufacturer: Ladella Beauty

The Disgruntled Mother's defamatory post caught fire. It was reposted to black social media pages throughout the Bay Area, and beyond. Members of the Cheer Team woke up to death threats, doxxing, and accusations that they were racists and committed racist acts all over social media.

The Cheer Family and coaches immediately informed California High School and the San Ramon Valley Unified School District ("District" or "Administration") what was going on, including the genesis of the post, the true origins and complexion of their mascot, and the overwhelming, debilitating harassment and threats being directed towards the Cheer Team. Despite being armed with this information, the Administration did the unthinkable. Superintendent Malloy—without undertaking any investigation, whatsoever—started to put out public statements and do media interviews on behalf of the District *affirming* the false and defamatory allegations in the Disgruntled Mother's post.

The Cheer Family worked diligently and in good faith to get the District to correct the record. They thought the problem was a lack of understanding rather than a willful desire to scapegoat and destroy the reputation of innocent children. When repeated attempts to meet or release a statement outlining the true facts were denied, they knew the Administration's efforts to gaslight them and the public about the situation were purposeful.

Dr. Malloy
Ms. Keefer
May 31, 2022
Page 5 of 18

On May 23, the Superintendent sent an email to the entire school district calling the Cheer Team's "**disturbing**" use of the mannequin a "**hurtful**" and "**offensive**" "**racist act.**" Two hours later, Principal Megan Keefer sent an email to the entire California High School community stating that she was "**outraged that our community has been traumatized by this, and by the other acts of hate and bigotry that have taken place at Cal High this school year**" and called the incident "**an extremely harmful and racist situation.**" Superintendent Malloy took to the media circuit. Some of the many media quotes proffered by Malloy include that **the District "underst[ood] that it was wrong,"** that there needed to be "accountability" for these acts, and numerous apologies for the rampant racism this supposedly epitomized.

Fueled by this confirmation of the defamatory allegations made in the Disgruntled Mother's post, the controversy spiraled out of control. News outlets across the nation began reporting about the "black mannequin" head used as a mascot by the "all-white cheer team," as well as the District's acknowledgement that it was "racist" and "hurtful." Attacks against the Cheer Team, predictably, escalated. Multiple parents and students begged the District for an opportunity to correct the record; the Superintendent, while gladly responding to media outlets at the drop of the hat, refused to meet with parents, and refused to provide *any* corrections to his statements. As a result, the Cheer Team has suffered severe emotional, psychological, and reputational damage. Their safety is threatened daily. Their college recruiting has been interrupted. When they walk down the hallways at school, they are heckled with claims they are racists, often accompanied by other derogatory attacks on their persons. Some cannot even attend school because they have been threatened by other students, threats of which the District is aware and refuses to investigate.

Superintendent Malloy's choice to bully and harass blameless students is despicable. He knowingly advanced an utterly false narrative on the backs of innocents to bask in his ten minutes in the spotlight. His rhetoric and race baiting is beyond the pale. The Cheer Team and Cheer Family call for his immediate removal and a District-wide investigation, a public retraction, a public apology, and actual investigations into this matter which will exonerate the Cheer Team of all allegations that their choice of mascot was a racist act or the result of racist intent.

FACTUAL BACKGROUND

Meet Karine:

Brand: Ladella Beauty ★★★★☆ 15
Ladella Beauty 26-28" Cosmetology (Heavy Density)" Yaki" Hair
Texture Synthetic Fiber Mannequin Manikin Training Head - Karine





Karine is a cosmetology school training mannequin produced by Ladella Beauty Mannequin. Karine was originally gifted to a former stunt and Cheer Team member to help the team practice styling hair for their competitions. Karine, like her original purchaser who is Hispanic, has a tan complexion.

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Originally just a way for the Team to try out new hairstyles, after bringing Karine to a meet and having a particularly good performance, the Team decided Karine was good luck and made her their mascot. Karine shortly became a permanent fixture on the Team.

For five years now, Karine has served as the Cheer Team mascot. At every event, the Cheer Team styles Karine's hair like that of the Team. She has regularly appeared in the school yearbook:



Tradition:
Dancing with a softball
Bringing a mannequin
head to matches

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And team pictures:



This silly, innocent, and fun Team bonding activity has been known for years, including by California High School leadership (hence why the mannequin head was regularly featured in the school yearbook). Cheerleaders across the racial and ethnic spectrum have participated in that tradition. No one—no student, administrator, parent, coach, or athletic director—has ever suggested the mannequin was offensive. The team treated the mannequin head with respect and as an integral part of their Team family. There were no racial or ethnic undertones associated with the mannequin. That was, until May 20, 2022.

During the week of May 16, the California High School Cheer Sideline Team held tryouts. 107 total individuals tried out, including seven African American students. Of those seven, six made the Cheer Team and one did not. And it was not until this one student failed to make the Cheer Team that suddenly Karine was transformed from an innocent, fun, high school tradition, to a symbol of racism and hate.

This transformation was not organic or by accident. When the lone failed African American cheerleader did not make the Team, her Disgruntled Mother circulated a post on social

Dr. Malloy
Ms. Keefer
May 31, 2022
Page 9 of 18

media with the false allegation that an all-white cheer team was using a black mannequin head as its mascot.



This allegation was utterly false as the Team is and has never been all-white, the mannequin is not black, and the mannequin's name is Karine, not Kareem. On information and belief, the Disgruntled Student and/or the Disgruntled Mother circulated the false narrative to defame and retaliate against the Cheer Team. These bad actors race baited the entire community, and scapegoated innocent students, because of what can only be assumed to be petty bitterness.

The Cheer Family and Coaches made immediate calls to try to protect students and correct the record. They asked the school to investigate their claims about the mannequin head, which they knew would corroborate and vindicate the Cheer Team. The District flatly refused to undertake *any* investigation. The Cheer Family repeatedly asked for investigations into the original post which disseminated the defamatory allegations. The District refused. The Cheer

Dr. Malloy
Ms. Keefer
May 31, 2022
Page 10 of 18

Family asked to be able to put out a statement with the true history of Karine. The District refused. The Cheer Family even brought evidence to the District about specific threats Cheer Team members were receiving online, in school hallways, and in the classrooms and asked, in fact begged, District leadership to intervene. The District refused.

Yet more than just a dereliction of their duties and rights towards Cheer Team members, the District took an active role in defaming, maligning, and harassing the Cheer Team. In a communication to 14,000 community members district wide, Superintendent Malloy said that the “disturbing” image projected by the mannequin was “hateful and hurtful.” In another email to the entire California High School listserv, Principal Megan Keefer expressed “outrage” that people were being “traumatized” by the “extremely harmful and racist situation in [the] community” which she suggested was an “act[] of hate and bigotry.” Malloy gave press interviews and his quotes were used in local and national media news outlets as far as Dallas, Texas, Charlotte, North Carolina, and Miami, Florida. In his many, many interviews, he suggested that the Cheer Team’s use of the mannequin was an example of racism and discrimination, was “intolerable for its offensive and racist implications,” and said that the District recognized it was “wrong” and would not be “accepted or tolerated.” In short, the District repeatedly affirmed the lies in the Disgruntled Mother’s original retaliatory post with full knowledge that they were erroneous.

The damage to the mental and emotional health of these students has been catastrophic. Many cannot attend school because of the active threats of violence outstanding which the school has refused to acknowledge or address. Those who have continued to attend are jeered and ridiculed in the hallways as racist bigots. Teachers repeatedly play news clips reciting the Administrations’ lies and then single out Cheer Team members in class to have to respond. Those who are graduating in a few short days do not even know if they can attend graduation because of the death threats they have received. All Cheer Team members worry about the impact this will have on college applications and future job prospects. And all of this, *all of this*, could have been prevented if the school would have followed its own policies and procedures rather than rushing to the cameras and rushing to judgement.

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LEGAL LIABILITY

1. **Superintendent Malloy And His Administration Are Guilty Of Bullying The Cheer Team**

The San Ramon Unified School District Anti-Bullying Policy (BP 5145.3) states that any employee who permits or engages in discriminatory harassment, intimidation, bullying, or retaliation “**shall be subject to disciplinary action**, up to and including dismissal.” The policy applies to “all acts constituting unlawful discrimination or harassment related to school activity or to school attendance,” or to off-campus acts which “have an impact or create a hostile environment at school.”

“Unlawful discrimination occurs when prohibited conduct is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.”

"Bullying/Harassment/Discrimination" is defined as: “physical, verbal, nonverbal or written conduct that is so severe and pervasive that it affects a student's ability to participate in or benefit from an education program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.”

Superintendent Malloy is responsible for facilitating and encouraging a bullying campaign against the Cheer Team by he and his Administration's amplification and affirmation of a defamatory narrative. Very shortly after the Disgruntled Mother's defamatory image with its false narrative started circulating on social media, the Superintendent and Principal of California High School were informed by multiple sources that the statements included in the viral post were false, and that the mannequin photograph may have been maliciously altered to create controversy. Further, Malloy and the Administration knew that these false allegations were being maliciously circulated on behalf of a resentful person who did not make the Cheer Team. Despite this, and despite knowing that Cheer Team was being harassed, doxed, receiving death

threats, and more, Malloy chose to advance what he knew to be a false narrative by making repeated press statements alleging the mannequin was black, racist, hurtful, discriminatory, and more.

Rather than correcting the false narrative that the Team was all white or had not admitted any African American students, rather than telling the truth about the perceived race of the mannequin, rather than standing up for innocent students who were being threatened with violence to the point they could not attend school in safety, Superintendent Malloy affirmed and perpetuated the malicious false narrative by stating that the Cheer Team's innocent, playful, and harmless mascot was "hateful," "intolerable," "harmful," and "racist."

And Superintendent Malloy did not just make these offensive and destructive allegations about these students once in haste. They were made repeatedly and with full knowledge of both their falsity and the harm he was inflicting on these students. Parents begged him to do something to stand up for the truth and protect these innocents. He did nothing but pursue his own personal agenda to be a media darling so that he could be patted on the back for his "courage" of standing up to non-existent, racist acts. He pandered to false race baiting rather than standing up for the innocent.

This man does not belong in charge of children. His cohorts who sided with him and approved of his efforts to slander the Cheer Team don't belong in charge of children. They have shown their utter disdain for truth, justice, and a despicable willingness to destroy the reputations and futures of innocent students when they think it bolsters their "anti-racist" image. The Cheer Team demands an immediate investigation by an outside investigator into Superintendent Malloy and his Administration's bullying and harassment of the Cheer Team.

Breach of Contract and Negligence Per Se

California courts have characterized "the terms of [the student/school relationship] described in student handbooks [] as essentially contractual." *Karimi v. Golden State Sch. Of Law* (2019) 361 F.Supp.3d 956, 966. Moreover, when a school makes a specific assurance to provide a given service in a school handbook, courts are "not [] hesitant to apply contract law" when interpreting the school's legal obligation to under that assurance. *Id.* "A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2)

plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.” *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1388.

Relatedly, the District’s violations of education statutes and the School’s Handbook are also negligence per se. Under the doctrine of negligence per se, compliance with the standard of conduct established by the relevant statute, ordinance, or regulation is adopted as the duty of care. *Alarid v. Vanier* (1958) 50 Cal.2d 617, 622. This creates a rebuttable presumption of negligence where the statute, ordinance, or regulation is violated. *Elsner v. Uveges* (2004) 34 Cal.4th 915, 927.

The District Violated the Cheer Team’s Student Rights

The 2021-2022 San Ramon Valley Unified School District Family Handbook lists as “Student Rights”:

- The right to attend school in an academic and social climate that is free from fear and violence
- The right to receive fair and reasonable treatment from those who are responsible for enforcing standards of student conduct
- The right to be free from harassment, threats, or intimidation (includes but not limited to ethnic, racial, religious, sexual, sexual orientation) that are pervasive and create an intimidating, hostile, or offensive learning atmosphere

The District violated these rights because the District, by its repeated public statements condemning the Cheer Team under false pretenses, created a fearful and hostile school environment for the Team. Team members received death threats, threats against their physical safety, and were publicly maligned as racists because of the District’s claims. They did not receive fair treatment from the District as the District did not undertake *any* investigation prior to publicly accusing the Team of “hateful” racist acts. Their repeated public pronouncements of the Team’s racism were harassing, threatening, intimidating, pervasive, and created an intimidating, hostile, and offensive learning atmosphere for the Team.

Team members have had to stay home from school for fear of their safety. The threats of violence by students have been reported to the Administration, who has done nothing to

intervene. Those Team members who have chosen to attend school have been yelled at in the hallways and singled out in classroom discussions by faculty and staff who use classroom discussions to call them to account for their “participation” in the “racist” acts described herein. The District created and then amplified a dangerous and hostile situation for the Cheer Team, and further has taken no steps to protect those students that the District’s malfeasance put in danger.

The District Has Taken No Action Against The Disgruntled Student, Despite Her Cyber-Bullying And Other Gross Violations Of Student Conduct Regulations

Under Student Responsibilities in the Family Handbook, students are:

- Required to act respectfully towards all other students and are not permitted to demean, tease, ridicule, or intimidate others by word, action, or sexual harassment.
- Required to behave in such a way that does not disrupt the learning of others.
- Further, behavior that infringes on the safety of any student is unacceptable and a student shall not intimidate or harass another student through words or actions.

The Handbook defines cyber bullying as “the use of electronic information and communication devices to willfully and repeatedly harm either a person or persons through the medium of electronic text, photos, or videos. Handbook examples of cyber bullying include:

- Sending/posting false, cruel, hurtful or vicious messages/comments
- Posting of a student picture without their permission

Under the heading “Inappropriate Use of Technology,” the Handbook states “students should never do anything that harms another student or prevents them from learning. Any use of technological media that interrupts a student’s right to learn will not be tolerated.”

The Handbook also states that “students have **the right to be free from bullying, intimidation, and harassment** while on any of our campuses or **associated with any school/district related activity.**” California Education Code § 48900.4 states that a pupil may be suspended or expelled if the pupil intentionally engages in harassment, threats, or intimidation directed at another pupil that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the

rights of either school personnel or pupils by creating an intimidating or hostile educational environment.

The Disgruntled Student is guilty of cyber bullying. She, in conjunction with her mother, created a false narrative that has disrupted Cheer Team students' right to learn. She was also responsible, in whole or in part, for posting false, cruel, hurtful and vicious messages and comments against the Cheer Team. She further posted an individual student's picture without permission.

The Disgruntled Student did not respect the members of the Cheer Team when she and/or her mother, posted malicious, false allegations suggesting the Cheer Team committed racist acts through their Team mascot. Her words and actions were meant to demean and intimidate other members of the Team, and they had their intended impact. Her actions disrupted the Cheer Team's ability to learn, and her behavior infringed on the safety of other Team members. Her intimidation and harassment of fellow students has not been acknowledged, let alone investigated, by the Administration. She has continued to be able to spew her lies without repercussion. Only the members of the Cheer Team have suffered.

Defamation and False Light Claims

Defamation is an "invasion of the interest in reputation" that involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage. *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 27; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369. Publication occurs when the statement is communicated to at least one person other than the plaintiff who understands its defamatory meaning and that it refers to plaintiff. *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1242. Even if a defamatory publication does not expressly mention an individual, it is actionable if the publication refers to them "by clear implication." *Blatty v. New York Times Co.*, (1986) 42 Cal. 3d 1033, 1044. Defamation *per se* exists when the false statement charges plaintiff with criminal activity, or which, by natural consequence, causes actual damage. Civ. C. §46; *see also McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112. Actual malice means that the defamatory statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not." *Khawar v. Globe Int'l, Inc.* (1998) 19 Cal. 4th 254 (internal citation omitted). Similarly, false light is an invasion of privacy

Dr. Malloy
Ms. Keefer
May 31, 2022
Page 16 of 18

based on publicity that places a person before the public in a false light that would be highly offensive to the reasonable person, and where the defendant knew or acted in reckless disregard as to the falsity of the publicized matter and the false light in which plaintiff would be placed. *Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1264.

Here, the District's public statements repeatedly affirmed to the public that the false statements made in the Disgruntled Mother's defamatory post were true. The Administration's repeated confirmation of these false facts suggested to the public that the Cheer Team had committed racist acts with hateful intent. The District's statements affirming that the Cheer Team engaged in racist acts were defamatory. Being called a racist and allegations that they committed racist acts placed the Cheer Team in a false light. The District had repeatedly been put on notice that the claims made in the Disgruntled Mother's post were false, meaning that the District made its statements with malice, making the District liable for punitive damages. The Cheer Team's investigations are ongoing and likely to uncover further examples of the District's tort liability.

YOUR DUTY TO PRESERVE ALL EVIDENCE

Litigation is likely to ensue in this matter. Under governing state and federal laws, you are hereby placed on notice that you, as well as all of your agents and affiliates, have an obligation to maintain hard copies of documents, as well as all e-mail, mobile, and other electronically stored information, pertaining to this dispute and the surrounding events, including all communications with or about the Cheer Team, or their family members, in connection with the matters described herein.

You must retain all copies of material that exist on any storage medium, including sources of data such as portable hard drives, memory cards, "thumb drives," cloud platforms, mobile telephones, and smartphones. This list is not exhaustive; these potential locations of relevant data are included by way of example only, and all documents relating in any way to the dispute set forth herein must be preserved. It may be necessary for you or other persons under your control, such as managers, employees, and agents, to take affirmative steps to ensure that evidence is not destroyed. Please take such steps immediately. Failure to do so could result in, among other things, court-imposed sanctions and criminal charges.

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CEASE AND DESIST DEMAND

The Cheer Team demands the following actions:

1. The District immediately remove Superintendent Malloy from his responsibilities and hire an outside investigator to investigate Malloy and the District's bullying and harassment of the Cheer Team, the results, evidence, and findings of which to be published in a public report;
2. The District issue immediate retractions of all public statements mentioning the Cheer Team or the incident discussed herein from May 20, 2022, to present;
3. The District begin an immediate investigation into the use of the mannequin head to determine the true facts regarding its use by the Cheer Team and publish those true facts in a public report;
4. The District begin an immediate investigation into the student and parent who started this controversy, including forensic investigation into whether those parties purposefully darkened the mannequin image or otherwise is guilty of cyber bullying the Cheer Team;
5. The District immediately cease from making any statements accusing the Cheer Team of racist acts or racist intent in regards to the allegations discussed herein;
6. The District issue an immediate public apology to all members of the Cheer Team, and publish a statement to all media outlets that have covered this story, the language of which to be negotiated between the parties.
7. The District provide security to protect the Cheer Team from the those who would wish to carry out their threats of violence. This includes protecting Cheer Team members at graduation, at summer practices and events, and next year at football games.

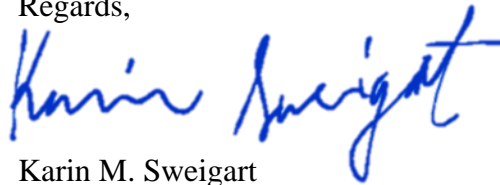
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Dr. Malloy
Ms. Keefer
May 31, 2022
Page 18 of 18

CONCLUSION

You may wish to notify your insurance carrier of the potential for liability in this matter. **A response is requested by Thursday, June 2, 2022, at 5pm Pacific.** Should you wish to discuss the contents of this letter, please contact me at (ksweigart@dhillonlaw.com).

Regards,



Karin M. Sweigart

CC:

Christopher George
cgeorge@srvusd.net

Ken Mintz
kmintz@srvusd.net

Rachel Hurd
rhurd@srvusd.net

Laura Bratt
lbratt@srvusd.net

Shelley Clark
sclark@srvusd.net

Susan Ordway
sordway@srvusd.net