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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CHARLES TOLLIVER; J.T., a minor by and through her guardian ad litem CHARLES TOLLIVER; and T.M., a minor by and through her guardian ad litem NANCY MARRIOTT-TOLLIVER,

Plaintiffs,

vs.

LYON COUNTY SCHOOL DISTRICT and CITY of YERINGTON.

Defendants.
_____/

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs Charles Tolliver, Charles Tolliver as guardian ad litem for J.T., and Nancy Marriott-Tolliver as guardian ad litem for T.M., by and through counsel Terri Keyser-Cooper and Kerry S. Doyle, hereby move for a preliminary injunction to ensure the girls' safety, both physically and mentally, and reverse some of the hardships imposed upon the family because of the systemic racism at Yerington High School and within the Yerington Police Department. This motion is brought pursuant to Federal Rule of Civil Procedure 65, and is supported by the attached exhibits, the records in this action, and any such other matter that the Court deems it proper to consider.

I. INTRODUCTION

Since before beginning of the school year, Yerington High School ("YHS") students J.T. and T.M. (collectively, "the girls") have been harassed, abused, and threatened by their fellow students. The threats culminated in Snapchat posts in which a male YHS student captioned a photograph of himself posing with guns and knives: "The redneck god of gods we about to go nigger huntin." Another post threatened: "Porch monkeys here I come." As J.T. and T.M. had suffered through three months of being called "nigger" by their classmates, they knew they were the targets of the threats. Lyon County School District ("LCSD"), YHS, and the Yerington Police Department ("YPD") were immediately made aware of the threats, yet failed to create or share a safety plan for the girls and failed to provide notice of what efforts were made (if any) to punish the male student featured in the pictures. The YPD, in defending the posts as an exercise of free speech, shredded the family's police reports, insisting there was no crime and there would be no investigation.

At the same time the posts were made, the girls' father Charles Tolliver ("Tolliver") was trespassed from school grounds by YHS Principal Duane Mattice ("Mattice") who accused Tolliver of violating the school's civility code when Tolliver challenged Mattice's handling of the allegations of racism at YHS. Caucasian men who had violated the same policy by yelling profanities at Nancy Marriott-Tolliver ("Marriot-Tolliver"), the girls' mother and Tolliver's wife, were not reprimanded in any manner. Mattice stripped Tolliver of his power to protect his daughters by advocating for them with YHS administrators or even being present at school events at the very time his daughters needed that assistance most.

II. INJUNCTIVE RELIEF SOUGHT

Tolliver, J.T., and T.M. have now brought a complaint to remedy the systemic racism in LCSD, YHS, and the YPD, seeking among other things injunctive relief to remedy the wrongs created by their treatment on the basis of race and the administration's participation in and indifference to that treatment. However, Tolliver and the girls cannot wait for relief until the conclusion of this action. To ensure their safety, a preliminary injunction imposing safety measures and investigatory remedies is necessary.

First, Plaintiffs seek an order directing the parties work together to select an Independent Oversight Reviewer from among the several organizations existing in Nevada or nationally to conduct oversight of the YHS. For example, the Equity Assistance Center ("EAC"), part of the U.S. Department of Education, is available to review the YHS situation, review and revise policies, provide intensive bullying prevention, cultural diversity, and sensitivity training. The EAC is **free** of charge to school districts, their experts will come to Yerington without LCSD cost. (See Exh. 15, Dec. of Terri Keyser-Cooper, Exh. 16, documents from EAC).[1]

Second, Plaintiffs seek an order directing LCSD and YHS to comply with the anti-bullying laws embodied in NRS Chapter 388, including identifying a safety team, creating a safety plan for the girls, conducting thorough investigations of all allegations, and issuing written findings of those investigations.

Third, Plaintiffs seek an order directing the YPD to select and work with an independent law enforcement entity to investigate the potential danger of three male students involved with the posting on Snapchat, "The redneck god of gods we about to go nigger hunting," and "Porch monkeys here I come" and "If y'all get offended over words such as nigger or porch monkey then you just need to learn to grow the fuck up and quit being such a libtarted[sic] piece of shit." The YPD shredded the complaints made in reference to these posts, wrongly insisting that they are protected by "free speech" and refusing to investigate the wrongdoers. Plaintiffs' have a reasonable

[1] The Settlement Agreement with the Northeastern Local School District and the U.S. Department of Justice, Civil Rights Division, in much the same situation, came up with a detailed analysis of how an Oversight Review might be implemented in a school district. Similarly, in *Jane Doe v. Anoka-Hennepin School District No. 11,* Defendants entered into a comprehensive Settlement Agreement to resolve complaints stemming from both Title VI and Title IX complaints. Also, in The United States Department of Justice and the Board of Regents of the University of New Mexico, the parties agreed on a complex series of policies and procedures to clarify what conduct qualifies as sexual and racial harassment and to effectuate a prompt and reasonable time frame for an independent impartial investigation.

need to know if these male students have access to weapons, have a history of violence, and/or have psychological problems.[2]

Fourth, Plaintiffs seek an order directing Defendants to fund mental health services provided by an independent counselor to allow the girls a venue to discuss their feelings without fear of reprisal and mitigate the impacts of the months of psychological abuse.

Fifth and sixth, Plaintiffs seek an order lifting the trespass order against Tolliver and expunging the suspension against J.T.

III. FACTUAL BACKGROUND

YHS is a high school in the LCSD. YHS has a very small percentage of African-American students. YHS is almost entirely composed of Caucasian students with some Hispanic and Native American students. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 3).

On or about August 19, 2017, a student at YHS, C.T., called J.T. and T.M. "niggers" while they were waiting in line at the Lyon County fairgrounds for a carnival ride. C.T. also said she would "beat them until she saw her knuckles bloody." The girls, greatly disturbed, reported the incident to Tolliver and Marriott-Tolliver ("their parents") who later reported it to LCSD. J.T. had never met C.T. before that night; C.T. and J.T. had no ongoing dispute or reason to dislike each other aside from C.T.'s racist epithets and threats. (Exh. 2, Dec. of J.T., ¶ 5).

On or about August 25, 2017, at a football game at YHS, J.T. was watching the game and sitting next to another YHS student J.B. T.M. was nearby. C.T. said to J.B., "I thought you didn't like niggers." The girls, greatly disturbed, reported the incident to Tolliver and Marriott-Tolliver, who later reported it to YHS and the LCSD. (Exh. 2, Dec. of J.T., ¶ 6). C.T.'s behavior was not limited to extracurricular activities. Beginning on or about the first day of the 2017 YHS school year, C.T. and her friend L.U. called J.T. nigger on a near daily basis in the hallways of YHS for more than **three months**. Another female student, S.V., stood by C.T. and L.U. The name-calling was focused on J.T., but T.M. was sometimes present and a target of the racist epithets. This name-

[2] A Settlement Agreement was reached between the United States' Investigation of the University of Montana's Office of Public Safety and the Missoula Police Department ("MPD") when the MPD refused to investigate claims of sexual harassment made against members of the football teams. More than 120 complaints were made and the MPD refused to investigate any.

calling made J.T.'s life a "nightmare." C.T. and her friends L.U. and S.V., would not only call J.T. a nigger, but would also block her passage, snicker, point, taunt, and laugh at her. (Exh. 2, Dec. of J.T., ¶ 7). Both girls told their parents who warned them not to react lest they "get in trouble." (Exh. 2, Dec. of J.T., ¶ 8). J.T. dreaded going to school and seeing these girls. (Exh. 2, Dec. of J.T., ¶ 9).

J.T. was on the cross-country team. C.T., who had no involvement with the cross-country team, would watch practice and yell profanities at J.T., calling her a nigger and telling her to "suck my clit." C.T. sent J.T. a message via Snapchat during one cross-country practice. The message contains a picture of C.T., sticking out her tongue and raising her middle finger. The picture is captioned "Suck my clit bitch!" (Exh. 2, Dec. of J.T., ¶ 10; and Exh. 3, posting by C.T.).

On or about September 12, 2017, a boys' volleyball game took place in the YHS gym. J.T. was sitting with male student J.B. and T.M. was nearby. C.T. said to J.B. in a voice loud enough for J.T. to hear, "I thought you didn't like niggers." J.T. turned to T.M., telling her she wanted to leave because of what C.T. had said. As the girls were getting up to leave, C.T. threatened to fight both T.M. and J.T. The girls reported this to their parents who then reported it to YHS Principal Duane Mattice ("Mattice") and Assistant Principal Monie Byers ("Byers"). (See Exh. 2, Dec. of J.T., ¶ 11).

On September 13, 2017, Marriott-Tolliver reported these incidents in writing to YHS by e-mailing Mattice and Byers. Marriott-Tolliver reported the many incidents of C.T., L.U. and S.V.'s use of racist epithets, threats, incitements to fight, and physical interference, including two that had happened that day and the incident at the volleyball game the night before. Mattice did not respond. Byers stated that she would investigate. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 12-13).

That afternoon, Marriott-Tolliver picked the girls up from school. As the three drove toward the exit of the school parking lot, T.M. pointed out C.T. sitting nearby in a dark blue truck. C.T. saw the girls and began cursing at them, calling them "bitches and cunts." Marriott-Tolliver parked the car, got out, and began video-recording while C.T. screamed profanities. Both girls jumped out of the car and began hollering at C.T., but Marriott-Tolliver cautioned them to get back in the car and be quiet. C.T. turned her aggression on Marriott-Tolliver, calling the older woman a "bitch" and a "cunt." (Exh. 1, Dec. of Marriott-Tolliver, ¶ 14).

Marriott-Tolliver saw that C.T.'s stepfather, Trinity Eriksen, a YHS football coach and LCSD employee, was in front of the school and should have been able to hear his step-daughter's profanities. Marriott-Tolliver walked over to Eriksen, asking him: "Is this how you allow your child to speak to an adult?" As Marriott-Tolliver approached Eriksen, C.T. continued yelling at her and attempted to block her physically. Eriksen responded by calling Marriott-Tolliver, a "fucking bitch." Eriksen warned Marriott-Tolliver to: "Get the fuck out of here, we will let the school handle this." Jeff Miller, another YHS football coach and Lyon County Sheriff's deputy, was also present and told Marriott-Tolliver, "Get the fuck out of here." (Exh. 1, Dec. of Marriott-Tolliver, ¶ 15). Marriott-Tolliver, outraged that YHS coaches would talk to her in such outrageous fashion, telephoned Byers multiple times to report the incident. Unable to reach Byers, Marriott-Tolliver e-mailed Byers a written report and the video of the incident. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 16).

On the evening of September 13, 2017, J.T. and T.M. had powder puff football, their parents came to watch. Marriott-Tolliver received a call from Byers saying Trinity Eriksen had called her explaining that Marriott-Tolliver had been in a "confrontation" with his stepdaughter, C.T. Byers told Marriott-Tolliver that she was immediately "trespassed from school grounds" for having a confrontation with a student. Byers told Marriott-Tolliver she was a "danger" to students. Marriott-Tolliver was shocked, Byers knew that C.T. had been calling the girls niggers and Byers was reacting by penalizing her. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 17).

Marriott-Tolliver told Byers she had a video of the incident, repeated her previous day's report that C.T. had been calling her daughters "nigger" for weeks and trying to provoke fights with the girls, and referred Byers to the earlier e-mail in which Marriott-Tolliver described the incident with C.T. Byers, dismissive of the video, reiterated her command that Marriott-Tolliver leave the school grounds immediately and not return until the matter was resolved. Byers reduced the direction to writing, e-mailing Marriott-Tolliver, with a copy to Mattice, telling Marriott-Tolliver not to "come on campus again until we sort all of this out." (Exh. 1, Dec. of Marriott-Tolliver, ¶ 18 and Exh. 4, Byers memo).

The next morning, September 14, 2017, Tolliver took J.T. and T.M. to school as Marriott-Tolliver was "trespassed" from school grounds. Tolliver wanted to speak to Mattice about the racial harassment occurring near daily and the parking lot incident of the day before. Tolliver was disgusted and upset, the family had notified Mattice and Byers of the nigger taunts, harassment and humiliation, but the only action that appeared to have been taken was an order that his wife not be allowed on campus. Mattice and Byers claimed to need to investigate C.T.'s behavior before taking any action, but Byers had trespassed Marriott-Tolliver without any further inquiry. Tolliver was angry and wanted to hear what was being done to stop racial tormenting and harassment. (Exh. 5, Dec. of Tolliver, ¶ 17).

As Tolliver, J.T. and T.M. went into the school that morning, they saw C.T. and Trinity Eriksen in the school parking lot. Eriksen told Tolliver he was there to "press trespass charges" against Marriott-Tolliver based on her "confrontation" with C.T. Tolliver told Eriksen not to talk to his wife, Marriott-Tolliver, the way he had talked to her the day before and proceeded into YHS to meet with Mattice. (Exh. 5, Dec. of Tolliver, ¶ 18).

Although Tolliver told Mattice he was there to discuss his daughters being called "niggers" and he wanted something to be done to stop the racist conduct, Mattice belittled the seriousness of the issues Tolliver was raising and demonstrated his insensitivity to those issues by commenting instead upon how well he hoped the girls' basketball team would be that year with the addition of J.T. to the school. (Exh. 5, Dec. of Tolliver, ¶ 19). Mattice further infuriated Tolliver by refusing to discuss the reports of C.T., L.U., and S.V.'s race-based bullying of the girls, instead insisting on meeting with the girls alone to obtain statements regarding the previous afternoon's "confrontation" between Marriott-Tolliver and C.T. (Exh. 5, Dec. of Tolliver, ¶ 20).

Tolliver was so angered by Mattice's refusal to address the racism running rampant in his school, Tolliver called Mattice a bigot, excused himself from the meeting, and left the school. Byers called Marriott-Tolliver to come to the school and be present with him and the girls for the remainder of any investigation. (Exh. 5, Dec. of Tolliver, ¶ 21).

Marriott-Tolliver was allowed to be present at the school while the girls were interviewed by Mattice, Byers, and Officer Flores ("Flores") of the YPD. Marriott-Tolliver and the girls spent more

than 1½ hours with Mattice and Byers recounting the daily taunting, harassment and racist hostility. They also wrote statements for Flores. (Exh. 5, Dec. of Tolliver, ¶ 22). Marriott-Tolliver was also given an opportunity to show the video of her "confrontation" with C.T. to Byers and Mattice. Later Flores showed the video to Eriksen in turn. Based upon the video evidence showing C.T. was the aggressor and had lied about her conduct, the "trespass" order against Marriott-Tolliver was lifted and all allegations against her were dropped. (Exh. 1, Dec. of Marriott-Tolliver, ¶¶ 23-24).

Despite the time spent, no apparent action against C.T. was taken. C.T. and her friends continued verbally harassing J.T. and T.M. in the halls, bathrooms, and at extra-curricular activities. Marriott-Tolliver notified Byers of the ongoing behavior and her concern that YHS had swept aside their complaints in the "investigation" into her "confrontation" with C.T. Byers, copying Mattice, claimed to be "addressing the situation," but citing privacy concerns, informed Marriott-Tolliver she could not reveal what, if any, disciplinary actions were taken. It did not appear any disciplinary action was imposed on C.T. because her conduct continued, becoming even more aggressive. If YHS or LCSD imposed any disciplinary action on C.T. or her friends, it was ineffective to stop their behaviors. (Exh. 1, Dec. of Marriott-Tolliver, ¶¶ 25-27, Exh. 2, Dec. of J.T. ¶ 23).3

Instead of continuing to contact the non-responsive YHS administration, Marriott-Tolliver contacted Alan Reeder ("Reeder") of the LCSD. She was instructed to make reports of the bullying via the Nevada Department of Education website and told that Byers had informed the LCSD there had been no issues in the previous week. This was untrue. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 29).

Marriott-Tolliver electronically reported her bullying complaints via the Department of Education's website and received confirmations of their receipt, informing her that YHS would create a safety plan for the girls and begin an investigation. No safety plan was created. The family never received any written reports of actions taken as a result of an investigation. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 30; Exh. 6 Letter from Dept. of Education). On September 27, 2017, Marriott-

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[3] Indeed, on or about September 25, 2017, J.T. was in the restroom when C.T. shoulder bumped her so hard J.T. was nearly shoved into the bathroom door. J.T. immediately reported this incident to Mattice, who was in the hallway. Mattice responded that he was busy and would have to get back to J.T.; he never did. (Exh. 2, Dec. of J.T. ¶ 24).

Tolliver met with Reeder at the LCSD with J.T. and T.M. The purpose of the meeting was to discuss the name-calling, threats, profanity, and hostility against the girls. Marriott-Tolliver and the girls spent over one hour discussing the details of the situation and providing Reeder with written statements. Reeder said he "would look into it." (Exh. 1, Dec. of Marriott-Tolliver, ¶ 32).

Instead of resolving issues, YHS teachers became directly involved in the defense of the racist environment at YHS. On or about October 2, 2017, T.M.'s Health class, taught by Mrs. Mattice the wife of Principal Mattice, had a lesson on mental health that turned to a discussion of racism, the KKK, and bigotry. Mrs. Mattice asked the class to tell her about problems in their daily lives that might be causing them stress. T.M. raised her hand and said, "I don't like being called a nigger." Mrs. Mattice shot back: "It goes both ways!" T.M. said, "How does it go both ways?" Mrs. Mattice said words to the effect of "people can be racist about anything." T.M. was extremely uncomfortable with what she perceived as Mrs. Mattice's defense of the use of the word "nigger" and dismissiveness about the noxious history associated with the word. (Exh 7, Dec. of T.M., ¶ 31).

Without teachers or administrators effectively disciplining C.T. and her friends, they too continued their harassment of J.T. On or about October 3, 2017, J.T. was coming out of a door at school with male student J.B. L.U., who was outside, looked over her shoulder to J.B., called J.T. a "bitch," and turned her backpack to force J.T. to walk into a bush or be struck. J.T. and Marriott-Tolliver reported the incident to Byers who said she would "review the cameras" and "investigate." (Exh. 2, Dec. of J.T. ¶¶ 2-27). Byers later stated that it appeared to her that L.U.'s conduct was accidental. Tolliver and Marriott-Toliver asked to review the videotape with Byers given the history of YHS's treatment of the girls' complaints. Tolliver and Marriott-Tolliver set a meeting with Byers for the morning of October 6, 2017. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 35).

On or about October 6, 2017, J.T., Tolliver, and Marriott-Tolliver went to the school to review the video. When the family emerged from their vehicle, C.T., L.U., and S.V. and two other girls blocked the sidewalk, forcing the family to walk around them in the grass. C.T. approached Tolliver, an adult African-American male, and said: "You don't even know the definition of a nigger!" J.T., shocked and outraged that C.T. would use racial epithets toward her father, threw down her backpack and went toward C.T. (Exh. 5, Dec. of Tolliver, ¶ 31, Exh. 2, Dec. of J.T. ¶ 28).

Tolliver immediately told J.T. to watch herself, retrieve her backpack, and to go quietly into the office. Tolliver cautioned J.T. not to say anything to C.T. and not to risk getting herself in trouble because she was angry at C.T. (Exh. 5, Dec. of Tolliver, ¶ 32). C.T. continued her verbal assault of Tolliver, saying: "Nigger means ignorant, your daughter is ignorant." Exasperated, C.T., Tolliver said: "If you call my daughter a nigger again, there will be consequences." Tolliver, Marriott-Tolliver, and J.T. proceeded into the office for their meeting with Byers. Instead of being greeted by Byers as planned, Mattice met them in the office. Tolliver, disappointed with Mattice and his wife's treatment of their family, politely refused Mattice's offer to meet with the family, stating that they would wait for Byers. (Exh. 5, Dec. of Tolliver, ¶ 33).

Mattice reacted nonsensically, telling Tolliver that this was the second time he had violated the school's "civility" policy, delivered Tolliver a copy of the policy, and informed him that based upon those violations Tolliver would be trespassed from the school for a year and that Mattice would be calling law enforcement to enforce the order. (Exh. 5, Dec. of Tolliver, ¶ 34, Exh. 8, Civility Policy). Mattice trespassed Tolliver for this alleged second "incident of incivility" despite there being no apparent repercussions for Caucasian men, including Trinity Eriksen and Jeff Miller, who repeatedly used profanities and otherwise violated the so-called civility policy.

Tolliver reacted angrily, telling Mattice that he could call the police as Tolliver knew he had done nothing unlawful. J.T., hoping to avoid further conflict, encouraged her father to leave before the YPD were called and walked him to the front door of the school, where C.T., L.U., S.V. and their friends were still standing. (Exh. 5, Dec. of Tolliver, ¶ 35)

Tolliver left the school grounds, but C.T. continued taunting J.T., who reacted by again approaching C.T. and yelling back at her. Byers approached as J.T. reacted to C.T.'s taunts and, labelling J.T. the aggressor, suspended J.T. for three days beginning that morning. It is unknown if C.T. or L.U. received any discipline. (Exh 2, Dec. of J.T. ¶ 33). The family had gone to watch the videotape of a confrontation between J.T. and L.U., but in the flurry of trespass orders and suspensions the video was not watched.

When Tolliver left the school grounds, he parked near the school, waiting for his family to finish meeting with administrators and for the YPD to arrive so that he could give his statement.

YPD Officers Del Guidice and Spinuzi arrived at the school first, but later joined Tolliver who was still waiting outside the school. After J.T. and Marriott-Tolliver joined Tolliver and the YPD officers, the family gave oral reports to the police regarding the day's events. The family then went to the LCSD building to file additional statements. After going to the LCSD, the family went to the YPD to file additional written reports. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 45).

On the evening of October 8, 2017, J.T. and T.M. were together in their room when they saw friends' posts on Snapchat. Those friends screenshotted a post by YHS student D.C. that depicted, R.B., another YHS student, in his underwear, bare chested, with knives and guns, and the caption: "The redneck god of gods we about to go nigger huntin." In another snapchat photo, R.B. with the same knives and guns, is pictured saying: "Porch monkeys here I come." Soon after, another YHS, M.L. posted a response to the Snapchat photos, stating: "If y'all get offended over words such as nigger or porch monkey then you just need to learn to grow the fuck up and quit being such a libtarted [sic] piece of shit. That's all I gotta say to you niggers." (Exh. 2, Dec. of J.T., ¶ 35; Exh. 9, copy of Snapchat post; Exh. 10, copy of Snapchat post; Exh. 11, copy of Snapchat Post). The girls were shocked, horrified, and terrified by the Snapchat posts of their classmates. After showing the images to their parents, both girls stayed up all night crying. Both knew they were the ones targeted because they had made complaints about being called niggers at school for months. (Exh. 2, Dec. of J.T., ¶ 36)

That night, Marriott-Tolliver reported the incidents and the names of all three of the boys who made the posts to Reeder by e-mail attaching the images. Marriott-Tolliver informed Reeder that neither she nor Tolliver felt that the girls were safe in the school. Reeder made no commitments to investigate or discipline the students, saying only that he would "be in touch." (Exh. 1, Dec. of Marriott-Tolliver, ¶ 49). Nearly frantic, in addition to reporting the racist, cyber-bullying threats to the LCSD, Marriott-Tolliver contacted Joe Hart of Channel 4 news and the President of the local chapter of the NAACP. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 50).

On October 9, 2017, both girls stayed home from school. T.M. was too upset and scared to go to school and J.T. was actually relieved that she was suspended and could stay home where she

felt safe. Marriott-Tolliver went to the school to let them know T.M. would not be going to school and to pick up any homework the girls might have. (Exh. 2, Dec. of J.T., ¶ 38)

On or about October 9, 2017, Marriott-Tolliver received a telephone call from LCSD Superintendent Wayne Workman requesting that she and Tolliver come to his office to discuss the problem of racial harassment. Marriott-Tolliver and Tolliver were informed that another YHS student, R.H. and friends, had been driving around the school flying the confederate flag. Tolliver and Marriott-Tolliver went to the LCSD, spending approximately two hours discussing the racist nightmare at YHS. Superintendent Workman and Deputy Reeder said they would "investigate everything." (Exh. 1, Dec. of Marriott-Tolliver, ¶ 52).

On October 9, 2017, Officer Flores of the YPD, took statements from Tolliver, Marriott-Tolliver, and T.M. Flores told Marriott-Tolliver that the racist statements posted by YHS students with knives and guns coupled with threats to go to "nigger hunting" were protected by the First Amendment and were "free speech." He told the shocked Marriott-Toller that nothing would be done. Although law enforcement alleged they could do nothing to protect the girls from the racist threats their classmates had made, that night or the next day Deputy Spinuzzi of the Lyon County Sheriff's Office served Tolliver with a temporary restraining order filed by Michelle Eriksen on behalf of her two YHS daughters C.T. and L.T. (Exh. 1, Dec. of Marriott-Tolliver, ¶¶ 53-54).

T.M. and J.T. (who was still suspended) again stayed home from school on or about October 10, 2017, because they were even more frightened after hearing that the racist threats had been accompanied by students flying the confederate flag at YHS.

J.T. was alerted that she would be required to sign a "behavioral contract" authored by Byers in order to return to school after her suspension. J.T. and T.M. went to the LCSD with Tolliver for J.T. to sign a behavioral contract. At that time, Byers informed T.M. that if she had any confrontations with C.T., J.T. would be punished for it. (Exh. 2, Dec. of J.T., ¶ 40).

That day, Marriott-Tolliver also wrote to Reeder to challenge Mattice's letter trespassing Tolliver, which they received by certified mail as their children were being threatened and YHS appeared to be doing nothing to stop the wrongdoers. In the official letter, Mattice attempted to justify his actions by claiming that Tolliver had threatened C.T. when he told her there would be

consequences if she called his daughters niggers again. Even if it could be considered wrong to tell a misbehaving child there will be consequences for her actions, Mattice could not have relied on Tolliver's statement to C.T. because he had no knowledge of it at the time he trespassed Tolliver. (Exh. 5, Dec. of Tolliver, ¶ 50).

On or about October 11, 2017, J.T. and T.M. returned to school. Students called them "snitches" because their parents, Tolliver and Marriott-Tolliver, had reported the Snapchat posts to the administration. For the rest of October 2017, J.T. and T.M. continued to be harassed. Students called them snitches, bitches, and niggers because their parents went to the media. The girls reported the incidents to the school and wrote reports and were told the incidents would be "investigated." (Exh. 2, Dec. of J.T., ¶¶41-41).

On or about October 12, 2017, Marriott-Tolliver went to the YPD requesting to speak to Officer Flores and to obtain copies of all the police reports filed by the family. Flores said he did not have any reports because they were "shredded." Flores said he was told by his Chief, Darren Wagner, to shred them. Flores said there were "no crimes" and therefore no need to keep any of the reports. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 59). On or about October 13, 2017, Marriott-Tolliver spoke with Lyon County Sheriff Alvin McNeil ("McNeil"). McNeil said the postings were protected under freedom of speech and were a "parental issue." McNeil admitted that boy with the knives and guns who said he was going "nigger hunting" was the son of his deputy, Josh Barnes, who would handle it "as a parent." (Exh. 1, Dec. of Marriott-Tolliver, ¶ 60).

One male student, male J.T.[4] told T.M.: "You and J.T. are punks for going to the news with this and if you weren't niggers you wouldn't have this problem." Friends ignored J.T. and T.M. at lunch. Another student, R.B. said he would say nigger and cry about it so he could get on the news too. A different student approached J.T. saying: "Why did you and T.M. have to go to the news? It's not our fault that you and T.M. are pathetic ignorant bitches." Male J.T. told T.M., "No one likes you guys because you take everything to the news and if you weren't niggers this wouldn't be happening." Other students such as B.C., D.N. and E.M. made comments on Facebook saying the

[4] Because this male student's initials are identical to plaintiff J.T., he has been differentiated by referring to him as male J.T.

girls "deserved" what they were getting. The comments made by YHS students on October 30, 2017 were reported to Mattice and Byers who said they would "investigate." (Exh. 2, Dec. of J.T., ¶ 43).

While the girls were trying to deal with the ongoing harassment at school, Tolliver and Marriott-Tolliver were trying to challenge the trespass letter Mattice issued to Tolliver. In a meeting with Workman and Reeder, they discussed the trespass letter and obtained permission for Tolliver to attend the girls' sporting events and to pick them up and drop them off at school. However, Tolliver would need to seek permission from Mattice to be on school grounds for any other reason. LCSD and YHS refused to rescind the trespass letter, stating that they simply could not give Tolliver "the opportunity to come and go without asking permission" unless he could make it through the basketball season without further incidents. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 66). Tolliver, whose daughters were attending school with boys who had posted photos of themselves with weapons saying they were going to hunt niggers, was prohibited from being on campus because somehow, he was a threat. (Exh. 1, Dec. of Tolliver, ¶ 59).

Tolliver was so scared for his daughters' safety and occupied with police reports and meetings with the LCSD that he turned down work on projects that were in Reno or further away because it made him too anxious to be away from Yerington in case something happened at the school. (Exh. 1, Dec. of Tolliver, ¶ 41).

The cyber-bullying continued as a student accessed J.T.'s Snapchat account. On or about November 25, 2017, a YHS student approached J.T. asking if she had sent a Snapchat message to all of her Snapchat contacts that said: My name is J.T. Toliver and I like to "fuck boys on quads and I am the biggest and most hated slut in Yerington." J.T., in shock, had no idea who had hacked into her account and sent out the message. Soon after the hacked message was sent out, students had screenshot the message and reposted it. J.T. and Marriott-Tolliver immediately reported the conduct to Byers, who again repeated that she would investigate. (Exh. 2, Dec. of J.T., ¶ 44).

Students' racial slurs also continued as during this time, M.L., who had posted the Snapchat comment defending the use of the words "nigger" and "porch monkey," told J.T. and T.M. they were "niggers" and made it clear that he "doesn't regret calling them niggers" because now he is "famous." (Exh. 2, Dec. of J.T., ¶ 45).

On or about December 8, 2017, the girls telephoned Marriott-Tolliver to pick them up because the school had invited a speaker to comment to the student body on racial issues. The speaker, an alumnus who was formerly related to Trinity Eriksen and has no apparent public-speaking or diversity training, defended Yerington, saying "only a few people" were behaving in a racist manner and it ought not and did not taint the entire community. The speaker praised Yerington. The girls were the focus of attention as students began staring at them, leaving them feeling ostracized and uncomfortable. The girls felt targeted, as if they were the cause of the problem and by raising the issue of the racial hostility against them, were being singled out for dislike and hostility. (Exh. 2, Dec. of J.T., ¶ 46). The girls have identified 22 students who have either called them nigger or harassed them in some manner. (Exh. 2, Dec. of J.T., ¶ 45; Exh, 7, Dec. of T.M., ¶ 53).

J.T. and T.M., began having difficulty sleeping and experienced severe headaches due to stress and fear. The girls worried continually about "what's next" – what other horrifying post or message or racist comments would they will be subjected to. (Exh. 2, Dec. of J.T., ¶ 47; Exh, 7, Dec. of T.M., ¶ 53). They have expressed severe anger issues and their academic performance has suffered. (Exh. 1, Dec. of Marriott-Tolliver, ¶¶ 71-73).

Tolliver and Marriott-Tolliver do not have the financial option of moving from Yerington. They have several children in their blended family and good paying jobs they cannot easily replicate. They are hoping the Court will grant them sufficient relief that LCSD can make changes so that their daughters can go to school in a supportive scholastic environment free from racism and harassment. (Exh. 1, Dec. of Marriott-Tolliver, ¶ 74).

IV. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS GIVEN THE DELIBERATE INDIFFERENCE TO A RACIALLY HOSTILE ENVIRONMENT AND FAILURE TO COMPLY WITH STATE LAW MANDATES

A preliminary injunction is justified if the Plaintiffs can demonstrate: (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). In this case, Plaintiffs seek varied relief, but all of the remedies are based upon violations of Title VI of the Civil Rights Act of 1964,

under which recipients of federal funds are mandated to prevent discrimination on the basis of race. 42 U.S.C. § 2000d. Plaintiffs are likely to succeed on the merits of those claims given LCSD, YHS, and YPD's refusal or failure to take effective remedial action to prevent the ongoing racially hostile environment at YHS.

Without relief pending this action, Plaintiffs will remain subject to the irreparable harm of fear and anxiety that stem from the threats of physical violence, the danger of going to school with students threatening to use weapons, and the toxic racist environment at YHS. By contrast, neither the school district nor local law enforcement can claim to suffer any injury from meeting their clearly established legal duties to mitigate damages during the pendency of this action.

A. Plaintiffs Are Likely to Succeed in Establishing LCSD and YHS's Deliberate Indifference to the Racially Hostile Environment at YHS

Title VI prohibits intentional discrimination on the basis of race, color, or national origin by recipients of federal funds, including public educational institutions. 42 U.S.C. § 2000d; 34 C.F.R. § 100.13(g)(2)(ii) & (i). Title VI prohibits not only direct discrimination in a school system's policies and actions of its employees or agents, it also holds a school system liable when it is deliberately indifferent to harassment of students by teachers or other students. *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1033 (9th Cir. 1998); *see also Njoroge v. Vocational Training Insts., Inc.*, 2017 U.S. Dist. LEXIS 174505, at *21 (W.D. Wash. Oct. 19, 2017).

1. Standards to Establish a Title VI Violation

To prevail on their claim, J.T. and T.M. must show: (1) LCSD had the requisite control, (2) the harassment was severe and discriminatory, (3) LCSD had actual knowledge, and (4) LCSD responded inadequately to the harassment. *See Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 666 (2nd Cir. 2012). A school district cannot deny it has control over harassment that occurs on school grounds, during school activities, or during school hours. *Id.* at 665. Reports to school administrators, as officials of the funding recipient, satisfy the requirement for actual knowledge. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 285 (1998). Here, there is no dispute LCSD had the requisite control and actual knowledge. Reports of each incident of harassment were made to YHS administrators and a Deputy Superintendent of LCSD at or near the time they occurred.

(Exh. 1, Dec. Marriot-Tolliver ¶¶ 4, 6, 11, 12,16,18, 23-25, 27, 29, 30-31, 45, 49, 52-53, 57, 63, 65, 68.) Therefore, the only questions that may be raised are whether YHS and LCSD were deliberately indifferent to harassment that was severe and pervasive.

2. The Harassment at YHS Is Severe, Pervasive, and Offensive

Discrimination under Title VI is not limited to being excluded from, or denied the benefits of, a particular school program. 42 U.S.C. § 2000d; 34 C.F.R. § 100.3(a). Discriminatory actions "[r]estrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit" under the school system. 34 C.F.R. § 1003.3(b)(1)(iv). Educational benefits include an academic environment free from racial hostility. *Hayut v. State Univ. of N.Y.*, 352 F.3d 733, 750 (2nd Cir. 2003) ("We also find that . . . [misconduct that] simply created a disparately hostile educational environment relative to her peers . . . could be construed as depriving [the victim] of the benefits and educational opportunities available at [the school]"). To create a hostile environment to which a school district must respond, the harassment must be "severe, pervasive, and objectively offensive" and discriminatory in effect. *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 650-51 (1999).

Courts have adopted a 'totality of the circumstances' approach that rejects disaggregation of the allegations and requires only that the alleged incidents **cumulatively** have resulted in the creation of a hostile environment. *Crandell v. N.Y. Coll. Of Osteopathic Med.*, 87 F.Supp.2d 304, 319 (S.D.N.Y. 2000). The issue is not whether each incident of harassment standing alone is sufficient to sustain the cause of action in a racially hostile environment case, but whether—taken together—the reported incidents make out such a case. *Williams v. Gen. Motors Corp.*, 187 F.3d 553, 562 (6th Cir. 1999). "Whether a hostile educational environment exists is a question of fact, determined with reference to the totality of the circumstances, including the victim's race and age. Racial harassment creates a hostile environment if it is sufficiently severe that it would interfere with the educational program of a reasonable person of the same age and race as the victim." *Monteiro*, 158 F.3d at 1033.

The Ninth Circuit has held that frequent use of the word "nigger" by white classmates could establish severe and pervasive harassment. "It does not take an educational psychologist to conclude that being referred to by one's peers by the most noxious racial epithet in the contemporary American lexicon, being shamed and humiliated on the basis of one's race, and having school authorities ignore or reject one's complaints would adversely affect a Black child's ability to obtain the same benefit from school as her white counterparts." *Id*. at 1033-34. "Defendants do not—and cannot—dispute that such conduct particularly use of the reviled epithet 'nigger,' raises a question of severe harassment going beyond simple teasing and name-calling." *Zeno,* 702 F.3d at 667; *see also DiStiso v. Cook,* 691 F.3d 226, 242-43 (2nd Cir. 2012). Moreover, the Ninth Circuit has emphasized that ninth grade is a particularly sensitive time for a student, rendering students uniquely susceptible to the adverse effects of such harassment. *Montiero*, 158 F.3d at 1034 ("Ninth grade is a sensitive time in a child's life. It is the beginning of high school, when a young adolescent is highly impressionable and is making decisions about education that will affect the course of her life.").

Plaintiffs J.T. and T.M. were called nigger dozens of times by several students, in school sponsored events, in the hallways, on the athletic field, in the school gym, and in the parking lot over a four-month period. C.T. taunted Marriott-Tolliver with profanities in the parking lot and insulted Tolliver by announcing to him, "You don't know the definition of a nigger." C.T. also proclaimed J.T. was a "nigger" because she is "ignorant." (Exh. 2, Dec. of J.T., ¶¶ 28-29). The girls were the subject of threats made by male students by R.B, D.C. and M.L. who warned they would go "nigger hunting" and ludicrously proclaimed, "Porch monkeys here I come." (Exh. 9-11). J.T. had her Snapchat account hacked into with profanities stating: "My name is J.T. Toliver and I like to "fuck boys on quads and I am the biggest and most hated slut in Yerington." (Exh. 2, Dec. of J.T., ¶ 44). Then, failing to obtain a remedy from YHS or LCSD, when their parents went to the news media, the girls were reviled with retaliatory student taunts: "Why did you and have to go to the news? It's not our fault that you are pathetic ignorant bitches." And, "No one likes you guys because you take everything to the news and if you weren't niggers this would not be happening." (Exh. 2, Dec. of J.T., ¶ 43). Also, the girls have been shoved, falsely accused of misdeeds, shunned,

and ostracized. When J.T got angry with one of the primary harassers, C.T., and yelled at her, it was J.T. who was suspended and not the white C.T.

Plaintiffs J.T. and T.M. are likely to succeed in establishing that the racial hostility at YHS is severe, pervasive and offensive. *See DiStiso,* 691 F.3d at 242-43; *Zeno,* 702 F.3d at 667; *Montiero*, 158 F.3d at 1034. Worse, it is ongoing. J.T. and T.M. have identified 22 students who have targeted them with racial epithets, and humiliating comments. (Exh. 2, Dec. of J.T., ¶ 45).

3. Title VI Intentional Discrimination Is Demonstrated If the Response to Severe and Pervasive Racial Harassment Is Deliberately Indifferent

Once severe and pervasive harassment is established, intentional discrimination by the school district is demonstrated in the Title VI context if the response to that harassment is deliberately indifferent. Actions taken or not taken must be clearly unreasonable. "[A] plaintiff may demonstrate [a] defendant's deliberate indifference to discrimination 'only where the recipient's response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.'" *Vance v. Spencer Cty. Pub. Sch. Dist.,* 231 F.3d 253, 260 (6th Cir. 2000) (quoting *Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. at 648 (1999)). "Where a school district has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior. Where a school district has actual knowledge that its efforts to remediate are ineffective, and it continues to use those same methods to no avail, such district has failed to act reasonably in light of the known circumstances." *Id.* at 261. The Court in *Patterson v. Hudson Area Sch.,* 551 F.3d 438, 448 (6th Cir. 2009), explained that a school may take some remedial action, and may discipline some harassers, but if the harassment continues against the same students, the school's actions may still be unreasonable:

> Even though a school district takes some action in response to known harassment, if further harassment continues, a jury is not precluded by law from finding that the school district's response is clearly unreasonable. We cannot say that, as a matter of law, a school district is shielded from liability if that school district knows that its methods of response to harassment, through effective against an individual harasser, are ineffective against persistent harassment against a single student.

Therefore, a school district must not only take initial action to remedy racial harassment, it must continually evaluate the environment and adjust its approach. *See Zeno*, 702 F.3d at 668-69.

It is unknown what if any discipline LCSD has imposed because neither LCSD nor YHS has made written reports of its investigation available. *See* NRS 388.1351. Regardless of whether LCSD has imposed some discipline, it is ineffective because the harassment has continued and escalated. (Exh. 2, Dec. of J.T.; Exh. 3, Dec. of T.M.). The disciplinary steps that Plaintiffs know YHS and LCSD have taken have not only been ineffective to stop the harassment, those steps have targeted the girls and their parents: trespassing Marriot-Tolliver after C.T. hurled insults at her; trespassing Tolliver for "incivility"; and suspending J.T. for standing up to her harasser. Because the administrators' responses to the reports of harassment have been clearly unreasonable, the Plaintiffs are likely to succeed in establishing deliberate indifference.

4. LCSD Can Control the Behaviors of Its Students and Staff

LCSD Deputy Superintendent Reeder e-mailed Marriott-Tolliver: "We cannot control other peoples' behaviors." (Exh. 12). Reeder's offhand, casual attitude epitomizes LCSD's indifference. LCSD can and must control both student and staff behaviors. If harsh discipline does not work, LCSD can suspend, transfer, and remove harassing students and uncivil staff. Title VI mandates schools be free from racially harassing conduct. Plaintiffs have a right to enjoy the educational benefits of attending a school free from racial persecution and should not have to worry about what horror will come next and how it will be condoned, minimized, or trivialized. (Exh. 1, Dec. of J.T. ¶¶ 47-48; Exh. 7, Dec. of T.M. ¶¶ 53-54).

5. YHS Failed to Implement a Safety Plan as Required by Nevada Law

In Nevada, the Legislature adopted specific measures that must be taken to address bullying on the basis of race. *See* NRS 388.132. In particular, NRS 388.1343 requires each school to establish a safety team that must include a counselor, a teacher, and a parent in addition to the principal or his designee. NRS 388.1344. Additionally, NRS 388.1351 imposes specific requirements on school administrations regarding preserving students' safety, conducting investigations, and disseminating information regarding those investigations. Immediately upon receiving a report, the school must "take any necessary action to stop the bullying and ensure the

safety and wellbeing of the reported victim or victims . . . ." NRS 388.1351(2).[5] These statutes and the Department of Education's ("DOE") accompanying regulations establish the minimum a school district must do to have its response to bullying deemed reasonable. *See Davis*, 526 U.S. at 648-49. While compliance may not be reasonable in all situations, non-compliance is clearly unreasonable. *See Zeno*, 702 F.3d at 670; *Vance*, 231 F.3d at 262.

On or about September 25, 2017, Marriott-Tolliver filed a complaint with the Nevada DOE. On September 27, 2017, Marriott-Tolliver received an acknowledgment of her letter from Lauren Hamlin of the DOE: "The School **will** create a safety plan to ensure the safety and well-being of your student and being the investigation." (Exh. 6, emphasis added). To date, there is no evidence that YHS has established a school safety team or that such a team has performed its duties. (Exh. 1, Dec. of Marriott-Tolliver, ¶¶ 29-30). Until J.T. and T.M. reported their harassment to the Nevada DOE, LCSD had not even adopted a policy in compliance with Department regulations. In failing to make the results of the investigation known to Plaintiffs, the girls and their family have been prevented from appealing the outcome of proposed discipline (or the failure to impose any) as contemplated by NRS 388.1351(9) and DOE regulations.

The DOE committed that YHS would create a safety plan after the bullying was reported in compliance with NRS 388.1351(2). In light of the actual threats against the girls from male students who threatened to "go nigger hunting" and warned "porch monkeys here I come," a safety plan that ensures all students are protected from potential violent outbursts is not only reasonable but required. The girls fear the ongoing threats may portend of real danger since some students have access to guns and other weapons and may intend to harm them. (Exh. 7, Dec. of T.M. ¶¶35, 51,

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[5] The Nevada DOE Office for a Safe and Respectful Learning Environment calls this creating a "safety plan" to be put in place while conducting an investigation. An investigation must be conducted, after notification to the parents of the alleged victims and aggressors, not later than two school days after the report and must involve interviews with all the alleged aggressors, victims, and their parents. NRS 388.1351(3) & (5). Once the investigation is complete, the school must complete a written report and disseminate that report, subject to redaction for privacy laws, to all of the parents or guardians involved. NRS 388.1351(6). Finally, within ten days after a report, the school must meet with the victim "to inquire about the well-being of the reported victim and to ensure that the reported bullying or cyber-bullying, as applicable, is not continuing." NRS 388.1351(7).

53, Exh. 1 Dec. of J.T. ¶36, 45). Tolliver, a union iron worker, is so concerned about the safety of the girls that he refused all jobs that would have taken him away from Yerington for a month. (Exh. 5, Dec. of Tolliver ¶41). Because YHS and LCSD have not met the minimum standards of response to racist harassment established by Nevada law, the Plaintiffs are likely to succeed in establishing deliberate indifference.

6. YHS Attempts at Mitigation Have Failed to Remedy Situation

Principal Mattice and his wife, rather than acting to stop the harassment, have added to the toxic environment. Mattice ignored J.T.'s report of wrongdoing by C.T. When J.T. reported to Mattice that C.T. had shoved her in the restroom, Mattice said he would "get back to her") but never did. (Exh. 2, Dec. of J.T. ¶24).

Mattice trespassed Tolliver from school grounds for violating a civility policy that was not enforced against Caucasian parents like Trinity Eriksen or YHS employees like Jeff Miller. (Exh. 7, Dec. of Tolliver at ¶34), Exh. 1, Dec. of Marriot-Tolliver at ¶¶ 14-19). Mattice's wife, YHS's health teacher, in responding to T.M. comment that she did not like to be called a nigger, defended the use of the word, saying racism can "go both ways" and one could be "racist about anything." (Exh 7, Dec. of T.M. at ¶34). T.M., who was specifically complaining about students calling her nigger everyday, was confronted with a response that did not outright condemn that behavior but appeared to defend and explain it as acceptable.

Even Defendants' attempt at a non-disciplinary remedy, a Unity Day held December 8, 2017, was a fiasco. First, the event was hosted by an alumnus who was formerly related to Trinity Eriksen, the stepfather of C.T., one of the wrongdoers and the YHS employee who had yelled profanities at Marriott-Tolliver. The Unity Day message was that no one in Yerington had done anything wrong by threatening J.T. and T.M., their school was full of good-hearted people and the racism alleged was clearly a misunderstanding. (Exh. 2, Dec. of J.T. ¶34). Both J.T. and T.M. felt targeted by the Unity Day message. Plaintiffs felt as though they were being blamed for the problem and if they would just drop their complaints everything would be fine. (Exh. 2, Dec. of J.T. ¶34, Exh. 7, Dec. of T.M. ¶52). This attempt to quiet victims reporting harassment to enable the school community to return to normalcy is an unreasonable response to reports of racial harassment.

Because the school administrators' actions are not reasonably calculated to end the harassment, threats, and violence faced by the girls, the girls are likely to succeed on the merits of their claim for deliberate indifference against YHS and LCSD. Pending the litigation of that claim, the Court should order relief that can serve to mitigate the damages already done, force the school administration to comply with state and federal law, and most importantly, protect the girls from potential violence and retaliation.

B. Plaintiffs Are Likely to Succeed in Establishing YPD's Deliberate Indifference to Racial Hostility by Refusing to Investigate Threats Made Against Them

The Snapchat posts depicting YHS student R.B. with knives and guns and the caption: "The redneck god of gods we about to go nigger huntin" and "Porch monkeys here I come," represent a **clear and present danger** to Plaintiffs. After every horrific school shooting, educators say: "If you see something, say something!" After every school massacre, educators wonder: "What were the telltale signs? How could this have been prevented?" Here, there is no mystery, the warning signs are obvious. Plaintiffs do not want to wait until gunfire erupts and students are slaughtered before action is taken. Preposterously and nonsensically, the YPD refuses to investigate R.B. and the students associated with him in these racist posts, D.C. and M.L. The YPD has absurdly "shredded" its police reports on the matter, insisting such statements are protected by the First Amendment. (Exh. 1, Dec. of Marriott-Tolliver, ¶59). YPD Officer Flores told Marriott-Tolliver he was instructed by Chief Wagner, to shred the police reports because there were "no crimes" and nothing to be done. Plaintiffs request an independent law enforcement entity conduct an investigation on these young men to determine if they have access to weapons, proclivities to violence, and dangerous hatred of African-Americans.

1. True Threats Are Not Protected by the First Amendment

The First Amendment generally prohibits the Government from restricting speech based on its message or viewpoint, *Ashcroft v. ACLU,* 535 U.S. 564, 573 (2002), but the First Amendment's free-speech protections are not absolute, *see Chaplinsky v. New Hampshire,* 315 U.S. 568, 571 (1942). The Government may permissibly restrict speech on the basis of content in certain categories because the harms imposed by these categories of unprotected speech "overwhelmingly

outweigh" First Amendment concerns. *New York v. Ferber,* 458 U.S. 747, 763-64 (1982); *United States v. Stevens*, 559 U.S. 460 (2010).

"True threats" are one such category of unprotected speech." *United States v. Alvarez,* 132 S.Ct. 2537, 2544 (2012). Threats of violence contribute nothing to public discourse and enjoy no First Amendment protection. *See Virginia v. Black,* 538 U.S. 343, 359 (2003); *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382-83 (1992). In *Black,* the Court defined true threats as "those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." 538 U.S. at 359-60. To punish a threat criminally, the Ninth Circuit has held a true threat must satisfy both an objective and subjective test.[6] *United States v. Bagdarsarian*, 652 F.3d 1113, 1118 (9th Cir. 2011). The objective element is met if "a reasonable person who heard the statement would have interpreted it as a threat." *Id*. at 1119. The subjective test requires inquiry into the intent of the person who made the statement; however, it does not require that a suspect admit such intent, instead it looks at the facts surrounding the threat to determine if such intent could be inferred. *Id*. at 1122-23.

2. <u>Refusing to Investigate True Threats Presents a Danger to Plaintiffs</u>

The Supreme Court held when a student threatens violence against other students, his words are as much beyond the constitutional pale as yelling fire in a crowded theatre. *Ponce v. Socorro Independent School Dist.,* 508 F.3d 765, 772 (5th Cir. 2007). J.T. and T.M. are reasonably frightened that students J.B., D.C. and M.L, and perhaps others, will harm them. A student armed with weapons threatening to "nigger hunting" represents a true threat and is nothing to ignore. Both J.T. and T.M. perceived they were the intended targets of potential violence. (Exh. 2, Dec. of J.T. ¶36, Exh. 7, Dec. of T.M. ¶35). The YPD unbelievably refused to investigate these claims by outlandishly shredding the police reports. These young men could be arrested for a violation of NRS 200.571, Crimes Against the Person Harassment; or NRS 202.448, Crimes Against Public Health and Safety; and/or violations of the federal Shepard/Byrd Act—and yet, unbelievably, the

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[6] It is important to note that the subjective test required for a criminal conviction is not required before a school may impose discipline for speech. *O'Brien v. Welty*, 818 F.3d 920, 932 (9th Cir. 2016).

YPD turned a blind eye. After the recent spate of school shootings, the focus has been on what school officials, law enforcement and others can do or could have done to prevent violence. Here, the warning signs are obvious. We do not want a tragedy to make us wonder why something was not done earlier.

Because YPD refuses to investigate true threats made by white boys against black girls, Plaintiffs are likely to succeed on the merits of their Title VI claim against YPD. Pending the litigation of that claim, the Court should order relief that mandates the YPD to immediately affiliate with independent law enforcement agency to investigate if these white male students are dangerous, have access to weapons, have a history of violence, and have psychological problems indicating sufficient hatred of African-Americans to do them harm.

C. Tolliver Is Likely to Succeed in Establishing Discriminatory Intent in the Issuance of a Trespass Order Against Him

It is ironic and paradoxical that Caucasian Mattice ordered African-American Tolliver kicked off the YHS campus, not to be permitted entry again for one full year, for protesting racist conduct towards his daughters. Such a situation is thankfully unique. Tollivers' daughters are called niggers, threatened, pushed around, intimidated and bullied, and when their Black father righteously protests, the White man punishes him. This sounds like the days of slavery; well before even extreme conduct of Jim Crow. Mattice insists that Tolliver for challenging the contemptable racial conduct–for daring to raise his voice and demand action be taken—is the problem, and not the school for allowing it to continue. Such behavior would be shameful if it were not so despicable, it would be absurd if it were not so preposterous. Any reasonable parent on hearing daily complaints from his children of racism would be angry. Any reasonable parent would, as Tolliver did, go to the school to make complaints and demand action.

On September 14, 2017, Tolliver went to see Mattice to complain about his daughters' treatment and the treatment of his wife Marriott-Tolliver being trespassed from YHS. "I fully expected Mattice would show concern and outrage that my daughters were being called niggers. Mattice was anything but. Mattice belittled the seriousness of the issues I raised and demonstrated his insensitivity to the issues by commenting upon how well he hoped the girls' basketball team

would perform that year with the addition of J.T." (Exh 7, Dec. of Tolliver, ¶19). Tolliver was infuriated when Mattice refused to discuss the reports Marriott-Tolliver had filed on race-based bullying, minimizing the problem as if it were simple teasing. Tolliver was so incensed, he called Mattice a "bigot." (Exh 7, Dec. of Tolliver, ¶¶20-21).

On October 6, 2017, Tolliver went again to YHS to meet with Byers to review the video of an incident between J.T. and L.U. As he was entering the school, one of J.T.'s primary harassers, C.T., told Tolliver, "You don't know the definition of a nigger." A moment later C.T. said, "Nigger means ignorant, your daughter is ignorant." J.T., who was with Tolliver, got angry to hear her father talked to in such a manner. Tolliver, trying to keep the peace, immediately instructed J.T. to "watch herself, retrieve her backpack, and go quietly into the office." Tolliver told C.T., "If you call my daughter a nigger again, there will be consequences." (Exh 7, Dec. of Tolliver, ¶¶31-33).

Inside, where Mattice could not have heard any of the interaction with C.T., Mattice became infuriated when Tolliver refused to meet with him, instead waiting to meet with Byers. According to Tolliver, Mattice "Just lost it." Mattice told Tolliver it was the "second time" he had violated the civility policy, gave Tolliver a copy of the policy and ordered Tolliver off school grounds for an entire year. Mattice, quick to take action against African-American Tolliver, sent Tolliver a letter memorializing the trespass order the very same day. (Exh. 13).[7]

Because YHS has ordered Tolliver off school grounds and in doing so has treated Tolliver in a racially discriminatory manner, Tolliver is likely to succeed on the merits of his Title VI claim against LCSD. Pending the litigation of that claim, the Court should order immediate relief that mandates the LCSD lift the trespass order against Tolliver. Tolliver should be able to come and go on YHS in a manner consistent with all Caucasian parents.

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[7] It does not appear that Caucasian Trinity Eriksen, a YHS employee, who was "uncivil" to Marriott-Tolliver when he called her a "fucking bitch" and warned her to "get the fuck out" when she attempted to get him to address his stepdaughter C.T.'s profanities, was disciplined. Nor is there any mention that Jeff Miller, another YHS employee, was disciplined when he told Marriott-Tolliver the same day to "get the fuck out of here." (Exh. 1, Dec. of Marriott-Tolliver ¶15). Yet when Eriksen complained to Byers about Marriott-Tolliver, Byers immediately moved to punish Marriott-Tolliver. Byers immediately ordered Marriott-Tolliver off school grounds and told Marriott-Tolliver she was a "danger" to students. (Exh. 1, Dec. of Marriott-Tolliver ¶17).

D. J.T. Is Likely to Succeed in Establishing Discriminatory Intent in Her Suspension

J.T. was suspended from YHS because on October 6, 2017, when C.T. told Tolliver he did not know what a nigger was J.T. got angry. J.T. yelled at C.T., infuriated that C.T. would use racial slurs with her father, Tolliver. After Tolliver left YHS grounds, as demanded by Mattice, C.T. continued to taunt J.T. Byers approached just as J.T. was reacting to C.T.'s goading by yelling at her, and immediately labeled J.T. as the aggressor, suspending J.T. for three days. (Exh 7, Dec. of J.T. ¶33). It appears, once again, that Caucasian C.T., who provoked the incident, was not disciplined, only the African-American, J.T. was penalized. It is ironic: An African-American girl is verbally abused by a Caucasian girl, the African-American girl reacts, the African-American girl is punished, and the Caucasian girl is not. This is the essence of discriminatory conduct—treating people differently on the basis of their skin. J.T. harsh disciplinary suspension was unjustified.

Because YHS has suspended J.T. and in doing so has treated J.T. in a racially discriminatory manner, J.T. is likely to succeed on the merits of her Title VI claim against LCSD. Pending the litigation of that claim, the Court should order immediate relief that mandates the LCSD expunge the order of suspension from J.T.'s school records.

V. IRREPARABLE HARM

"The basis of injunctive relief in the federal courts is irreparable harm and inadequacy of legal remedies." *LA. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980). Irreparable harm cannot be remedied by monetary damages. *Id.* (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("Mere injuries, no matter however substantial, in terms of money, time and energy necessarily expended . . . are not enough.")). Intangible injuries, however, may constitute irreparable harm. *Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597 603 (9th Cir. 1991). Irreparable harm must be immediate. *Caribbean Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988).

Plaintiffs will suffer immediate and irreparable harm in the absence of a preliminary injunction. The LCSD has failed to prevent the continuing racial harassment and is demonstrably ill equipped to understand how to remedy the large racist student population. Expert help in the form of independent oversight is necessary. An Independent Reviewer may provide assessment, training

and recommendations. The failure of the LCSD to adequately stop the harassment has empowered and emboldened student harassers—J.T. and T.M. have identified 22 harassers—and the YPD has refused to investigate potentially dangerous young men. Plaintiffs do not want to wait until gunfire erupts and students are slaughtered before action is taken. Such potential for actual danger was recognized by Justice Alito in his concurrence in *Morse v. Frederick*, 551 U.S. 393, 424 (2007):

> School attendance can expose students to threats to their physical safety that they would not otherwise face. Outside of school, parents can attempt to protect their children in many ways and may take steps to monitor and exercise control over the persons with whom their children associate. Similarly, students, when not in school, may be able to avoid threatening individuals and situations. During school hours, however, parents are not present to provide protection and guidance, and students' movements and their ability to choose the persons with whom they spend time are severely restricted. Students may be compelled on a daily basis to spend time at close quarters with other students who may do them harm. Experience shows that schools can be places of special danger.

Emotional injuries qualify as irreparable – they are not monetarily compensable, nor can they be measured in terms of "time [or] energy necessarily expended." *L.A. Mem'l Coliseum Comm'n*, 634 F.2d at 1202; *see Chalk v. U.S. Dist. Court Cent. Dist. of Cal.*, 840 F.2d 701, 709-710 (9th Cir. 1988) (concluding that plaintiff's emotional problems arising from disability discrimination were irreparable). *Tamara v. El Camino Hosp.*, 964 F. Supp. 2d 1077, 1087 (N.D. Cal. 2013). In *E.E.O.C. v. Chrysler Corp.*, 546 F.Supp. 54 (E.D.Mich.1982), *aff'd*, 733 F.2d 1183 (6th Cir.1984), where the court granted a preliminary injunction ordering reinstatement of employees terminated in violation of the Age Discrimination in Employment Act. The court acknowledged that the loss of income and its effects were compensable after trial and did not constitute irreparable harm. *Id.* at 546 F.Supp. at 69-70. Nonetheless, irreparable injury was found in the emotional stress, depression and reduced sense of well-being, which constituted "psych-logical and physiological distress…the very type of injury Congress sought to avert." *Id.* at 70.

VI. BALANCE OF THE EQUITIES

A preliminary injunction may issue only if the balance of equities tips in the movant's favor. *Winter,* 555 U.S. at 20. The Court must "balance the interests of all parties and weigh the damage to each." *L.A. Mem'l Coliseum Comm'n,* 634 F.2d at 1203. Here, the balance of equities tips in

Plaintiffs' favor. It will not burden the LCSD to work with experts to implement plans and procedures to eradicate racism and/or removing offenders from the schools. It will not burden YPD to work with an independent law enforcement entity to investigate the students who sent threatening internet posts. These students may have access to weapons, violent histories, and attitudes that present a clear and present danger. Finally, in 2015, the Nevada Legislature created $11.2 million in grants to provide social workers or other licensed mental health workers. S.B. 504, 2015 Leg., 78th Sess. (Nev. 2015). Perhaps some of these funds may be utilized to pay for counseling for J.T. and M.T. to mitigate the possibility of permanent harm from expose to racists students.

VII. PUBLIC INTEREST

In passing Title IV of the Civil Rights Acts Congress acknowledged a strong public interest in tearing down the shameful wall of exclusion and discrimination against people of color. The public has a strong interest cleansing its schools of racism and preventing the use of the reviled epithet of "nigger" in its schools. There is a strong public interest in opposing bias, unfairness and bigotry, and making public schools a place for opportunity for all and hatred for none.

VIII. THE RELIEF REQUESTED IS TAILORED TO MITIGATE THE DAMAGES ALREADY INCURRED, FORCE DEFENDANTS TO COMPLY WITH STATE AND FEDERAL LAW AND PROTECT THE GIRLS FROM POTENTIAL DANGER

Plaintiffs face immediate emotional harm and physical danger. If LCSD fails to take immediate action, the wreckage will be difficult to repair. The anger and frustration J.T. and M.T. experience daily will affect their scholastic performance and future academic opportunities. Further, if YPD does not take action, one of several threatening students may actually cause harm. The Ninth Circuit has clearly established that being called "nigger" and having those complaints ignored or excused by the administration creates very serious damage:

> As the Investigative Guidance notes, "verbal harassment of a young child by fellow students that is tolerated or condoned in any way by adult authority figures is likely to have a far greater impact than similar behavior would on an adult." 59 Fed. Reg. 11449. A school where this sort of conduct occurs unchecked is utterly failing in its mandate to provide a nondiscriminatory educational environment.

Monteiro v. Tempe Union High Sch. Dist., 158 F.3d at 1034. Moreover, Nevada has specifically authorized courts to mandate compliance with its anti-bullying laws. Therefore, plaintiffs seek

mandatory relief to prevent further damage, protect from the threats of physical violence, and avert retaliatory harassment that might arise from the filing of this action.

The Court can limit further discrimination or retaliation by ordering LCSD and YHS to work with Plaintiffs on the retention of an Independent Oversight Review, by the Department of Education's EAC, or the NAACP, or other qualified entities. Qualified organizations can provide training, assessment, and instruction on corrective actions to eradicate explosive racial situations. These methods are typically employed in Title VI actions and have been required as reasonable steps to prevent racial discrimination. *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d at 655. Further, the LCSD and YHS should be ordered to immediately construct a safety plan.

To lessen the impacts of the months of abuse, Defendants should also be ordered to fund mental health services provided by an independent private counselor to allow the girls a venue to discuss their feelings without fear of reprisal. The girls have expressed severe anger and disappointment. Their increasing frustration, loneliness, and other emotional anguish will only worsen unless professionally addressed by trained psychological counselors at LCSD expense.

To assuage the fears of the family and remedy the obvious injustice, the Court should also order YHS and LCSD to lift the trespass order against Tolliver, who was deemed uncivil for insisting that administrators adequately address the racial harassment of his daughters, and expunge the suspension of J.T., who verbally confronted one of her harassers after months of abuse.

Finally, to prevent physical violence, the Court should order an independent law enforcement agency to investigate the threats made by male students in their Snapchat posts. As of the date of filing, both the YPD and the Lyon County Sheriff's Office have refused to investigate, leaving Plaintiffs terrified for their safety and at times too frightened to go to school.

IX CONCLUSION

For all the above reasons, Plaintiffs respectfully request the preliminary injunction relief requested be ordered by the Court.

DATED: This 4 day of January 2018

/s/ Terri Keyser-Cooper
TERRI KEYSER-COOPER
KERRY S. DOYLE