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

TIM GALLI,

Plaintiff,

No. C 09-03775 JSW

v.

PITTSBURG UNIFIED SCHOOL DISTRICT,  
BARBARA WILSON and PERCY MCGEE,

Defendants.

**ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS AND MOTION TO  
STRIKE**

Now before the Court is the motion to dismiss and the motion to strike filed by Defendants Pittsburg Unified School District (the "PUSD"), Barbara Wilson ("Wilson") and Percy McGee ("McGee") (collectively, "Defendants"). These matters are now fully briefed and ripe for decision. The Court finds that these matters are appropriate for disposition without oral argument and these matters are deemed submitted. See N.D. Civ. L.R. 7-1(b). Accordingly, the hearing set for December 11, 2009 is VACATED. Having carefully reviewed the parties' papers and the relevant legal authority, the Court hereby grants in part and denies in part Defendants' motion to dismiss and their motion to strike.

**BACKGROUND**

In this action, Plaintiff Tim Galli ("Plaintiff") is suing Defendants for what he contends was an improper constructive discharge. He alleges that he was constructively discharged in retaliation for voicing his concern regarding financial improprieties and that he was denied due

1 process. Defendants move to dismiss all of Plaintiff's claims and move to strike Plaintiff's  
2 requests for relief. The Court shall address additional facts as necessary to its analysis in the  
3 remainder of this Order.

#### 4 ANALYSIS

##### 5 A. Legal Standard Applicable to Motion to Dismiss.

6 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the  
7 pleadings fail to state a claim upon which relief can be granted. The complaint is construed in  
8 the light most favorable to the non-moving party and all material allegations in the complaint  
9 are taken to be true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). The court,  
10 however, is not required to accept legal conclusions cast in the form of factual allegations, if  
11 those conclusions cannot reasonably be drawn from the facts alleged. *Clegg v. Cult Awareness*  
12 *Network*, 18 F.3d 752, 754-55 (9th Cir. 1994) (citing *Papasan v. Allain*, 478 U.S. 265, 286  
13 (1986)). Conclusory allegations without more are insufficient to defeat a motion to dismiss for  
14 failure to state a claim upon which relief may be granted. *McGlinchy v. Shell Chemical Co.*,  
15 845 F.2d 802, 810 (9th Cir. 1988). Even under the liberal pleading standard of Federal Rule of  
16 Civil Procedure 8(a)(2), a plaintiff must do more than recite the elements of the claim and must  
17 "provide the grounds of [its] entitlement to relief." *Bell Atlantic Corporation v. Twombly*, 127  
18 S. Ct. 1955, 1959 (2007) (citations omitted). The pleading must not merely allege conduct that  
19 is conceivable. Rather, plaintiffs must allege "enough facts to state a claim to relief that is  
20 plausible on its face." *Id.* at 1974.

##### 21 1. Defendants Are Not Immune.

22 Ordinarily, the Eleventh Amendment bars official-capacity suits against state officials  
23 such as Defendants. *See Kentucky v. Graham*, 472 U.S. 159, 169-70 (1985). However, a suit  
24 against state officials seeking prospective injunctive relief from unconstitutional state action is  
25 not barred. *See id.* at 167 n.14; *Ex parte Young*, 209 U.S. 123, 159-60 (1908). This principle  
26 generally is referred to as the *Ex parte Young* exception and is limited to prospective injunctive  
27 relief from continuing or impending state action which violates the federal constitution or a  
28 federal statute. *See Armstrong v. Wilson*, 124 F.3d 1019, 1026 (9th Cir. 1997).

1 Here, Plaintiff seeks reinstatement based on his alleged wrongful termination. The  
2 parties dispute whether reinstatement constitutes prospective or retrospective injunctive relief.  
3 However, the Ninth Circuit has made clear that “reinstatement constitutes prospective  
4 injunctive relief because a wrongful discharge is a continuing violation.” *Flint v. Dennison*,  
5 488 F.3d 816, 825 (9th Cir. 2007) (citing *Doe v. Lawrence Livermore Nat’l Lab.*, 131 F.3d 836,  
6 841 (9th Cir. 1997)). Because Plaintiff seeks prospective injunctive relief from Defendants to  
7 remedy alleged constitutional violations, his suit is not barred by the Eleventh Amendment.

8 Moreover, to the extent Plaintiff sues Wilson and McGee in their individual capacities,  
9 the Eleventh Amendment does not bar claims against them, including claims for damages or  
10 retrospective injunctive relief. “[T]he Eleventh Amendment provides no shield for a state  
11 official confronted by a claim that he had deprived another of a federal right under the color of  
12 state law.” *Hafer v. Melo*, 502 U.S. 21, 30 (1991) (citation omitted). To bring a claim against a  
13 state official in their individual capacity, “it is enough to show that the official, acting under  
14 color of state law, caused the deprivation of a federal right. *Id.* at 26 (citation omitted).  
15 Defendants argue that Plaintiffs must allege facts that show Wilson and McGee acted  
16 independently of PUSD’s policies and protocols. (Mot. at 9.) However, the Supreme Court has  
17 rejected this argument. In *Hafer*, the plaintiff tried to distinguish between acts taken outside of  
18 the official’s authority or not essential to the operation of state government and acts within the  
19 official’s authority and necessary to the performance of governmental functions. *Id.* at 28. The  
20 Court held that the distinction urged by the plaintiff found no support in the broad language of §  
21 1983 and that state officers are not “absolutely immune from personal liability under § 1983  
22 solely by virtue of the ‘official’ nature of their acts.” *Id.* at 28, 31; *see also McDade v. West*,  
23 223 F.3d 1135, 1140(9th Cir. 2000) (acts by an officer are under “color of law” if they are  
24 “performed while the officer is acting, purporting, or pretending to act in the performance of his  
25 or her official duties”).

26 Here, Plaintiff alleges that Wilson brought charges against him and that McGee voted  
27 with the PUSD Board on those charges to terminate Plaintiff. (Compl., ¶ 16, 86.) Plaintiff  
28 further alleges that when the Board voted to terminate his employment, they placed him on

1 leave without pay, which was constructive discharge and forced Plaintiff to take early  
2 retirement. (*Id.*, ¶ 96.) The Court finds such allegations, taken as true, are sufficient to  
3 demonstrate that Wilson and McGee were personally involved in the deprivation of his federal  
4 rights.

## 5 2. Plaintiff's First Amendment Claim.

6 In order to state a claim against a government employer for violation of the First  
7 Amendment, an employee bears the burden of demonstrating: “(1) whether the plaintiff spoke  
8 on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public  
9 employee; [and] (3) whether the plaintiff's protected speech was a substantial or motivating  
10 factor in the adverse employment action.” *Robinson v. York*, 566 F.3d 817, 822 (9th Cir. 2009)  
11 (quoting *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir.2009)). A public employee's speech is  
12 protected if it addresses “a matter of legitimate public concern.” *Id.* (quoting *Pickering v. Bd. of*  
13 *Educ.*, 391 U.S. 563, 571 (1968). If the employee meets this burden, the employer may prevail  
14 by demonstrating either that: (a) under the balancing test established by *Pickering* that its  
15 “legitimate administrative interests outweigh the employee's First Amendment rights;” or (b)  
16 “under the mixed motive analysis established by *Mt. Healthy City Sch. Dist. Bd. of Educ. v.*  
17 *Doyle*, 429 U.S. 274, 287 (1977), the employer would have reached the same decision even in  
18 the absence of the employee's protected conduct.” *Roe v. City of San Diego*, 356 F.3d 1108,  
19 1112, *rev'd on other grounds*, 125 S.Ct. 521 (2004); *see also Alpha Energy Savers, Inc. v.*  
20 *Hansen*, 381 F.3d 917, 923 (9th Cir. 2004).

21 The parties dispute whether Plaintiff has alleged sufficient facts to demonstrate whether  
22 he spoke as a private citizen or as a public employee. In *Garcetti v. Ceballos*, 547 U.S. 410  
23 (2006), the Supreme Court held that when a public employee speaks pursuant to his or her  
24 official duties, the speech is not protected because any restriction on that speech “simply  
25 reflects the exercise of employer control over what the employer itself has commissioned or  
26 created.” *Id.* at 422. The Court distinguished “work product” that “owes its existence to [an  
27 employee]'s professional responsibilities” from “contributions to the civic discourse,” which  
28 “retain the prospect of constitutional protection” for the speaker. *Id.* at 421-22. The Ninth

1 Circuit has held “that statements are made in the speaker’s capacity as citizen if the speaker  
2 ‘had no official duty’ to make the questioned statements, ... or if the speech was not the product  
3 of ‘perform[ing] the tasks [the employee] was paid to perform.’” *Posey v. Lake Pend Oreille*  
4 *Sch. Dist. No. 84*, 546 F.3d 1121, 1127 (9th Cir. 2008) (quoting *Marable v. Nitchman*, 511 F.3d  
5 924, 932-933 (9th Cir. 2007) and *Freitag v. Ayers*, 468 F.3d 528, 544 (9th Cir. 2006)). The  
6 determination of whether the speech in question was spoken as a public employee or a private  
7 citizen is a mixed question of fact and law. *Id.* at 1129, 1131 (holding that “when there are  
8 genuine and material disputes as to the scope and content of the plaintiff’s job responsibilities,  
9 the court must reserve judgment ... until after the fact-finding process.”); *see also Robinson*, 566  
10 F.3d at 823-824 (holding that the scope of the public employee’s job duties was a question of  
11 fact”).

12 Here, Plaintiff alleges that on March 29, 2008, PUSD placed him in the position of  
13 Director of New Construction and Career Technician Education. (Compl., ¶ 27.) He does not  
14 allege what his duties were in this position. In June of 2008, PUSD placed Plaintiff in the  
15 position of Director of New Construction, Maintenance, Operations, Facilities, Grounds,  
16 Technology, and Career Technical Education. (*Id.*) In this position, Plaintiff:

17  
18 was responsible for attending contractor meetings, overseeing the purchase of  
19 new furniture and technological equipment, coordinating design of classrooms,  
20 coordinating Career Technical Education oversight meetings, serving as the  
21 point of contact with the public regarding new construction in PUSD, overseeing  
22 updates to PUSD construction standards, overseeing dozens of grounds and  
23 maintenance crew, organizing small bid packages for repair work, representing  
24 PUSD in negotiation meetings with contractors, subcontractors, and the district  
25 on change orders and budgets, exercising final walk through signing authority on  
26 renovations and new construction, and organizing the PUSD Board Facilities  
27 Subcommittee, among similar tasks.

23 (Compl., ¶ 28.) Plaintiff reported directly to Assistant Superintendent of Business, Mark  
24 Bonnet (“Bonnet”), and his “second-line” supervisor was Superintendent Barbara Wilson  
25 (“Wilson”). (*Id.*)

26 Plaintiff alleges that in May of 2008, he became aware of certain budgetary practices he  
27 found both questionable and concerning. He raised his concerns with Bonnet regarding what he  
28 believed was PUSD’s improper allocation of deferred maintenance funding for the adult

1 education roofing renovation project. (*Id.*, ¶ 3.) In September of 2008, Plaintiff raised the  
2 following additional concerns to Bonnet:

3 (1) improper use of deferred maintenance funding; (2) the possible improper  
4 encroachment by the adult education program into the general fund and the ADA  
5 funding stream for K-12; (3) the apparent failure of the adult education program  
6 to pay operational costs in water and electrical in addition to failing to contribute  
to maintenance, grounds, and technology services; and (4) violations committed  
during the modernization of the Boy's and Girl's club.

7 (*Id.*, ¶ 4.) From September of 2008 through May of 2009, Plaintiff repeatedly raised these  
8 issues with Bonnet, Wilson, PUSD Board of Trustees President Ruben Rosales, and PUSD  
9 Board of Trustees members Percy McGee, Jr. and Joe Arenivar. (*Id.*, ¶ 5.) Towards the end of  
10 2008 and into 2009, Plaintiff also became aware of a financial conflict of interest between  
11 McGee and Wilson. (*Id.*, ¶ 9.) Over a period of several months, Plaintiff began to press Board  
12 members to question McGee regarding his financial status with Wilson. (*Id.*, ¶ 85.)

13 Out of concern that PUSD, through Wilson, had violated state grant requirements  
14 regarding the transfer of title for the Boy's and Girl's Club, Plaintiff emailed Wilson, copying  
15 McGee and Arenivar. (*Id.*, ¶ 59.) In response to an email from Wilson asking Plaintiff why he  
16 was doing this, Plaintiff responded that "he believed it to be his job as a civil servant to  
17 denounce wrongdoing when he identified it." (*Id.*, ¶ 60.)

18 Plaintiff argues that he was not required, in his position as Director of New  
19 Construction, Maintenance, Operations, Facilities, Grounds, Technology, and Career Technical  
20 Education to report on issues outside of his chain of command and that the issues on which he  
21 raised concerns were not directly related to his responsibilities. He contends that he was not  
22 responsible for examining the general fund or the adult education fund budgets and was not  
23 required to examine the proper titling of properties. Defendants counter that the concerns  
24 Plaintiff raised relate to the areas listed in his job title and that Plaintiff emailed that he raised  
25 these concerns because "he believed it to be his job as a civil servant to denounce wrongdoing  
26 when he identified it." The scope of Plaintiff's job duties is a question of fact. *See Robinson*,  
27 566 F.3d at 823-824. Plaintiff has not alleged sufficient facts in his complaint regarding the  
28 scope of his job duties to enable to Court to make a determination at this procedural stage

1 regarding whether all of the issues raised by Plaintiff were done as part of his official duties.  
2 Therefore, the Court denies Defendants' motion to dismiss Plaintiff's First Amendment claim.

3 **3. Plaintiff's Procedural Due Process Claim.**

4 The Fourteenth Amendment provides that no State shall "deprive any person of life,  
5 liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Determining  
6 whether Plaintiff was deprived of due process involves a two-part inquiry: (1) whether he was  
7 deprived of a protected interest, and (2) if so, what process he was due. *Logan v. Zimmerman*  
8 *Brush Co.*, 455 U.S. 422, 428 (1982). Thus, to state a procedural due process claim, Plaintiff  
9 must establish that he had a protectible interest. *Bateson v. Geisse*, 857 F.2d 1300, 1305 (9th  
10 Cir. 1988).

11 The Fourteenth Amendment's due process guarantee applies to public employees who  
12 have a "property interest" in the terms or conditions of their employment. *Board of Regents v.*  
13 *Roth*, 408 U.S. 564, 576 (1972). That interest is established "by existing rules or  
14 understandings that stem from an independent source such as state law-rules or understandings  
15 that secure certain benefits and that support claims of entitlement to those benefits." *Id.* at 577.  
16 "[A] public employee in California who can establish the existence of rules and understandings,  
17 promulgated and fostered by state officials, that justify her legitimate claim to continued  
18 employment absent sufficient cause, has a property interest in such continued employment  
19 within the purview of the due process clause." *McGraw v. City of Huntington Beach*, 882 F.2d  
20 384, 389 (9th Cir. 1989) (citing *Skelly v. State Personnel Board*, 15 Cal. 3d 194, 207 (1975)).

21 The California Supreme Court has held that:

22 The state has a constitutional obligation to provide a hearing to decide whether  
23 dismissal or suspension is appropriate. A teacher also has a right to an  
24 opportunity to respond to the particular charges asserted by the district and to  
25 clear his or her name. An opportunity to challenge the state's factual  
26 determinations before an impartial and disinterested decision maker satisfies the  
27 two central concerns of procedural due process, the prevention of unjustified or  
28 mistaken deprivations and the promotion of participation and dialogue by  
affected individuals in the decisionmaking process.

27 *California Teachers Ass'n v. State of California*, 20 Cal.4th 327, 344 (1999)(internal quotation  
28 marks and citation omitted).

1 Here, Plaintiff alleges that the decision makers were biased, that he was not given  
2 adequate notice, and that he was not given an adequate opportunity to challenge the state's  
3 factual determinations. The fact that Plaintiff retired before the Commission on Professional  
4 Competence had an opportunity to hold a hearing on his termination is not fatal to Plaintiff's  
5 claim. Plaintiff alleges that by placing him on administrative leave without pay, he was  
6 constructively discharged. The Court declines to find, at this procedural stage, that Plaintiff  
7 cannot state a procedural due process claim premised on constructive, as opposed to actual,  
8 discharge. Therefore, the Court denies Defendants' motion to dismiss Plaintiff's procedural due  
9 process claim.

#### 10 4. Plaintiff's State Law Claims.

11 Defendants argue that because all of Plaintiff's federal claims should be dismissed, the  
12 Court should decline to exercise supplemental jurisdiction over Plaintiff's state law claims.  
13 However, because the Court is not dismissing Plaintiff's federal claims, Defendants argument to  
14 dismiss Plaintiff's state law claims on this ground fails.

15 However, Defendants also argue that Plaintiff's state law claims should be dismissed  
16 based on the State's immunity under the Eleventh Amendment. PUSD "is a state agency for  
17 purposes of the Eleventh Amendment." *See Freeman v. Oakland Unified School Dist.*, 179  
18 F.3d 846, 846 (9th Cir. 1999). Moreover, contrary to Plaintiff's argument, "28 U.S.C. § 1367 is  
19 not a congressional abrogation of state sovereign immunity." *Id.* (citing *Pennhurst State Sch.*  
20 *and Hosp. v. Halderman*, 465 U.S. 89, 121 (1984)). Although a State may waive its sovereign  
21 immunity, the "test for determining whether a State has waived its immunity from federal-court  
22 jurisdiction is a stringent one." *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 241  
23 (1985). The Supreme Court has found a waiver only if the State voluntarily invokes federal  
24 jurisdiction or if the State makes a "clear declaration" that it intends to submit itself to federal  
25 jurisdiction. *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S.  
26 666, 675-676 (1999) (citing *Pennhurst*, 465 U.S. at 99) (State's consent to suit must be  
27 "unequivocally expressed"). Therefore:

28 a State does not consent to suit in federal court merely by consenting to suit in  
the courts of its own creation. *Smith v. Reeves*, 178 U.S. 436, 441-445, 20 S.Ct.



1 919, 44 L.Ed. 1140 (1900). Nor does it consent to suit in federal court merely  
2 by stating its intention to “sue and be sued,” *Florida Dept. of Health and*  
3 *Rehabilitative Servs. v. Florida Nursing Home Assn.*, 450 U.S. 147, 149-150,  
4 101 S.Ct. 1032, 67 L.Ed.2d 132 (1981) (*per curiam*), or even by authorizing  
suits against it “in any court of competent jurisdiction,” *Kennecott Copper*  
*Corp. v. State Tax Comm’n*, 327 U.S. 573, 577-579, 66 S.Ct. 745, 90 L.Ed. 862  
(1946).

5 *College Sav. Bank*, 527 U.S. at 676.

6 Plaintiff argues that California has waived its immunity to being sued in federal court  
7 through the California Whistleblower Protection Act, Cal. Gov. Code §§ 8547, *et seq.* and the  
8 Reporting by School Employees of Improper Governmental Activities Act, Cal. Ed. Code §§  
9 44110, *et seq.* Both of these statutes provide that persons who violate them shall be liable “in  
10 an action for damages” and that “[p]unitive damages may be awarded by the court where the  
11 acts of the offending party are proven to be malicious.” *See* Cal. Gov. Code § 8547.8(c); Cal.  
12 Ed. Code § 44114(c). This language is analogous to the language the Supreme Court has  
13 repeatedly rejected as insufficient to provide the clear intent required to waive sovereign  
14 immunity. *See College Sav. Bank*, 527 U.S. at 676. Therefore, the Court finds that Plaintiff’s  
15 state-law claims against the PUSD and Wilson and McGee in their official capacities are barred  
16 by the Eleventh Amendment and, thus, will be dismissed.

17 However, the Eleventh Amendment does not bar state law claims against state officials  
18 acting in their individual capacities. *See Stoner v. Santa Clara County Office of Educ.*, 502  
19 F.3d 1116, 1125 (9th Cir. 2007) (“An individual capacity suit for damages against state officials  
20 alleged to have personally violated [a federal statute] does not implicate the principles of state  
21 sovereignty protected by ... our Eleventh Amendment jurisprudence because such an action  
22 seeks damages from the individual defendants rather than the state treasury.”). Therefore, to the  
23 extent Plaintiff brings his state-law claims against Wilson and McGee in their individual  
24 capacities, they are not barred by the Eleventh Amendment and will not be dismissed.

25 **B. Plaintiff’s Motion to Strike**

26 **1. Legal Standard Applicable to Motion to Strike.**

27 Federal Rule of Civil Procedure 12(f) provides that a court may “order stricken from any  
28 pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous

1 matter.” Immaterial matter “is that which has no essential or important relationship to the claim  
2 for relief or the defenses being pleaded.” *California Dept. of Toxic Substance Control v. ALCO*  
3 *Pacific, Inc.*, 217 F. Supp. 2d 1028, 1032 (C.D. Cal. 2002) (internal citations and quotations  
4 omitted). Impertinent material “consists of statements that do not pertain, or are not necessary  
5 to the issues in question.” *Id.* Motions to strike are regarded with disfavor because they are  
6 often used as delaying tactics and because of the limited importance of pleadings in federal  
7 practice. *Colaprico v. Sun Microsystems Inc.*, 758 F. Supp. 1335, 1339 (N.D. Cal. 1991). The  
8 possibility that issues will be unnecessarily complicated or that superfluous pleadings will cause  
9 the trier of fact to draw unwarranted inferences at trial is the type of prejudice that is sufficient  
10 to support the granting of a motion to strike. *California Dept. of Toxic Substances Control*, 217  
11 F. Supp. at 1028.

## 12 **2. Plaintiff’s Remedies.**

13 Defendants argue, and Plaintiff agrees, that the Eleventh Amendment bars Plaintiff from  
14 recovering damages or retroactive injunctive relief against PUSD or Wilson and McGee in their  
15 official capacities under his § 1983 claims. To the extent Plaintiff’s complaint is unclear and  
16 purports to seek such recovery against PUSD or Wilson and McGee in their official capacities,  
17 the Court grants Defendants’ motion to strike such requests for relief. However, as the Court  
18 discusses above, seeking reinstatement is not retroactive relief. Moreover, as both parties agree,  
19 the Eleventh Amendment is not a bar to Plaintiff seeking damages and retroactive injunctive  
20 relief against Wilson and McGee in their individual capacities. As the Court discusses above,  
21 Plaintiff adequately alleges brings claims against Wilson and McGee in their individual  
22 capacities. Therefore, the Court denies Defendants’ motion to strike Plaintiff’s request for relief  
23 against Wilson and McGee in their individual capacities for damages and/or injunctive relief, to  
24 the extent Plaintiff seeks such recovery. Finally, Defendants seek to strike Plaintiff’s request  
25 for punitive damages against PUSD, Wilson and McGee pursuant to California Government  
26 Code § 818. As all parties agree, the Eleventh Amendment bars recovery against PUSD or  
27 Wilson and McGee in their official capacities for any damages, let alone punitive damages,  
28 under Plaintiff’s § 1983 claims. The court has already dismissed Plaintiff’s state law claims

1 against PUSD and Wilson and McGee in their official capacities. Therefore, Plaintiff does not  
2 have any claims upon which he could request punitive damages against PUSD or Wilson and  
3 McGee in their official capacities.

4 To the extent Plaintiff seeks punitive damages against Wilson and McGee in their  
5 individual capacities, § 818 does not provide any bar. “California Government Code § 818 bars  
6 any award of punitive damages against a public entity.” *Westlands Water Dist. v. Amoco*  
7 *Chemical Co.*, 953 F.2d 1109, 1113 (9th Cir.1991); *see also Kizer v. County of San Mateo*, 53  
8 Cal. 3d 139, 146 (1991). Although suits against public officials in their official capacity are  
9 “equivalent to a suit against the governmental entity itself,” *see Larez v. City of Los Angeles*,  
10 946 F.2d 630, 646 (9th Cir. 1991), suits against public officials in their individual capacity are  
11 not. Therefore, the Court denies Defendants’ motion to strike Plaintiff’s request for punitive  
12 damages against Wilson and McGee in their individual capacities.

### 13 CONCLUSION

14 For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART PART  
15 Defendants’ motion to dismiss. The Court DENIES Defendants’ motion as to Plaintiff’s First  
16 Amendment and procedural due process claims, and GRANTS Defendants’ motion as to  
17 Plaintiff’s state-law claims against PUSD and Wilson and McGee in their official capacities.  
18 To the extent Plaintiff brings his state-law claims against Wilson and McGee in their individual  
19 capacities, the Court DENIES Defendants’ motion to dismiss.

20 The Court GRANTS IN PART and DENIES IN PART PART Defendants’ motion to  
21 strike. To the extent Plaintiff’s complaint is unclear and purports to seek damages or retroactive  
22 injunctive relief against PUSD or Wilson and McGee in their official capacities, the Court  
23 GRANTS Defendants’ motion to strike. However, reinstatement is not retroactive relief, and  
24 therefore, Plaintiff’s request to be reinstated is not struck. The Court DENIES Defendants’  
25 motion to strike Plaintiff’s request for relief against Wilson and McGee in their individual  
26 capacities for damages and/or injunctive relief, to the extent Plaintiff seeks such recovery.  
27 Because the Court dismissed Plaintiffs’ state-law claims against PUSD and Wilson and McGee  
28 in their official capacities, there are no remaining claims on which Plaintiff seeks punitive

1 damages against these defendants. Therefore, Defendants' motion to strike these remedies is  
2 DENIED as MOOT. Finally, the COURT DENIES Defendants' motion to strike Plaintiff's  
3 request for punitive damages against Wilson and McGee in their individual capacities.

4 **IT IS SO ORDERED.**

5  
6 Dated: November 30, 2009

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9 JEFFREY S. WHITE  
10 UNITED STATES DISTRICT JUDGE  
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