

APPENDIX A

Case:19-55357, 08/11/2020, ID: 11784486, DktEntry:
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FILED
AUG 11 2020
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

LORCAN KILROY, an individual,
Plaintiff-Appellant,

v.

No.19-55357

LOS ANGELES UNIFIED
SCHOOL DISTRICT

BOARD OF EDUCATION; et al.,

2:16-cv-09068-DMG-JDE

Defendants-Appellees

ORDER

Before: SCHROEDER, CANBY, and TROTT, Circuit
Judges.

The panel recommends denying the substitute/
corrected petition for rehearing en banc.

The full court has been advised of the suggestion for
rehearing en banc and no judge of the court has
requested a vote on it. Fed. R. App. P. 35(b).

The substitute/corrected petition for rehearing en
banc is DENIED.

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26-1, Pages 1 of 3

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JUN 23 2020
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UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

LORCAN KILROY, an individual,
Plaintiff-Appellant,

No.19-55357

v.

LOS ANGELES UNIFIED
SCHOOL DISTRICT

BOARD OF EDUCATION; et al., D.C. No.

2:16-cv-09068-DMG-JDE

Defendants-Appellees

MEMORANDUM*

Appeal from the United States District Court for the
Central District of California

Dolly M. Gee, District Judge, Presiding

Submitted June 19, 2020**

Before: SCHROEDER, CANBY, and TROTT, Circuit
Judges.

Lorcan Kilroy appeals pro se the district court's
grant of summary judgment in his action under 42
U.S.C. § 1983 against Los Angeles School District
Board of Education and individual defendants,
arising from his termination from his

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employment as a teacher. We review the district court's summary judgment de novo. *Roybal v. Toppenish Sch. Dist.*, 871 F.3d 927, 931 (9th Cir. 2017). We affirm. The district court properly granted summary judgment in favor of defendants on Counts 9 and 10, alleging denial of due process. We assume that Kilroy had both a protected property interest in his continued employment as well as a protected liberty interest because the misconduct charge at issue implicated his reputation. See *Blantz v. Cal. Dep't of Corr. & Rehab.*, 727 F.3d 917, 922 (9th Cir. 2013) (government employee has protected property interest in employment if he has a legitimate claim to tenure or can be fired only for cause); *Tibbetts v. Kulongoski*, 567 F.3d 529, 535-36 (9th Cir. 2009) (in the employment termination context, a liberty interest is implicated if the charge impairs a reputation for honesty or morality). The required notice provided to Kilroy satisfied the requirements of due process because it included (1) a statement of charges, (2) identified all of the grounds for termination, and (3) informed him he would be dismissed in thirty days if he did not request a hearing. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) ("The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story."); *Roybal*, 871 F.3d at 933. As noted by the district court, "Plaintiff does not dispute that he

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received these notices and did not request a hearing.” He was not terminated until approximately one month after the expiration of the period to request a hearing. Kilroy also received sufficient notice and opportunity to be heard prior to his suspension. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (in determining what procedures are sufficient to comport with due process, court must weigh private interest at stake, risk of erroneous deprivation, and government interest).

AFFIRMED.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

APPENDIX B

Lorcan Kilroy

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Respondent In Pro Per

BEFORE THE CALIFORNIA COMMISSION ON
TEACHER CREDENTIALING

In The Matter Of The
Accusation Against:
Respondent:

PROOF OF SERVICE
ON A STATE OR
LOCAL
GOVERNMENT
OFFICER

Lorcan Kilroy
Respondent.

CTC Case No.:
1-40504819

I, Eric Montoya declare as follows:

(name of server)

1. At the time of service I was at least 18 years of age
and not a party to this lawsuit.

2. I served copies of the following documents(A-G) :
Two page paper copy of a cover letter dated January 16th, 2015 from Lorcan Kilroy addressed to Hon. Kamala Harris titled ***"Fair Notice To Hon. Kamala Harris of Constitutional Deprivations Ratified by Subordinate Attorney General Deputies Against Teacher Lorcan Kilroy"***, and referencing below documents.

EXHBIT A : An 11 page paper copy of an email dated Feb 27, 2013 from Lorcan Kilroy (lorcankilroy@gmail.com) addressed to Hon. Harris, (kamala.harris@doj.ca.gov) indicating that the email had the subject heading: ***"Re. LAUSD possible Ed Code# 49079 criminal violations/possibly covering up abuse incident"***. Within the body of the email was the following text authored by Lorcan Kilroy:

"Another disturbing incident about a different matter ... district possibly covering up of abuse ... At Van Nuys High in Spring 2012 a student minor (I have name) reported to me last semester that a teacher [REDACTED] in her class had put his hands around a students neck and shaken him. Then an adult special education aide named Ian Olivera(unsure of last name spelling) told me that during same incident, the teacher told the student: "if you come back in my classroom you're life is in danger". The student witness said an assistant

principal she identified as Phyllis Baer came to the incident and took written statements from students. However then later I asked the teacher [REDACTED] what happened he said he only had to go to an office for a few days, that he "lost it" and that the people at the site "backed him up " ...thats all .. no police involvement no reporting to credential commission mentioned This semester I asked another special ed aide in my classroom what had happened. He said "aw I guess they decided to give that teacher a chance because he's a good teacher"

EXHIBIT B . One page copy of a letter dated Febuary 12, 2014 from Lorcan Kilroy addressed to Honorable Kamala D. Harris c/o Susan M. Carson, Office of Attorney General of the State of California 1300 "I" Street Sacramento, California 95814-2919 and indicating the subject of the letter was: RE: Vergara Case/weight of LAUSD mismanagement & request for investigatory inquiry into potential conflicts of interest and possible criminal activities of CTC and LAUSD/ LAPD involving child abuse coverup, non-reporting to CTC , and CTC criminal coverup/cronyism with John Deasy of LAUSD. The letter references what is indicated as "enclosed email, documents Of LAUSD child abuse coverup on CD. first

amended Central District Federal Complaint on CD".

EXHIBIT C: A 2 page paper copy of an email dated Feb 27, 2014 from Lorcan Kilroy (lorcankilroy@gmail.com) to Hon. Harris (kamala.harris@doj.ca.gov) with subject heading: ***"LAUSD possible Ed Code# 49079 criminal violations/possibly covering up abuse incident"***

EXHIBIT D. A 5 page copy of a letter dated Nov 7, 2014 from Lorcan Kilroy to Hon. Harris at physical address ***"Hon. Kamala D. Harris, Office of the Attorney General, 455 Golden Gate, Suite 11000., San Francisco, CA 94102-7004"***, with subject title ***"Re: United States Federal Court cv13-06373DMG(FFM) Kilroy v. Los Angeles Unified School District Board Of Education, et al.- Confer wih Ex Parte's re. Motion for Temporary Restraining Order on Deprivation of Professional License"***, and a 2 page paper copy of an email dated Nov 7, 2014 from Lorcan Kilroy (lorcankilroy@gmail.com) addressed to Hon. Harris electronically at and to physical address ***"Office of the Attorney General, 455 Golden Gate, Suite 11000, San Francisco, CA 94102-7004"***. That email indicated subject heading of ***"11072014 confer TRO CTC/Ag to Waldow, Delassio, Hon. Harris, East & ntc of constitutional depriving"*** and a PDF attachment that bore the title ***"11072014"***

confer ex partes re mtn. TRO.pdf'."

EXHIBIT E. A 13 page paper copy of an email string , most recent message dated Nov 16,2014 from lorcan Kilroy (lorcankilroy@gmail.com) addressed to Hon. Harris (kamala.harris@doj .ca.gov) . The email string had the subject heading:

"11162014 Subordinate Attny. General Officials Waldow & Delassio attempts to block emails and service to Hon Harris to chill Noticing of Constitutional Deprivations by subordinates re. protecting Liability of John Deasy and LAUSD Board of Education Members personally ratifying coverup of child abuse in Federal Case cv13-06373DMG(FFM)"

The email contained in the message body a paste of a letter which indicated the letter was sent US Mail to 2 physical addresses: Hon. Kamala Harris, [REDACTED] Pacific Palisades CA 90272 " and " Hon. Kamala Harris c/o Douglas Emhoff, 2049 Century Park East Ste 2100 Los Angeles CA 90067. The email indicated 5 documents were attached as PDF's to the email string and that the PDF's bore the following titles:

1.11122014 to CTC:AG officials re. #1-40504819 Additional Noticing of Constitutional Deprivations To Cover Up Liability of John Deasy and LAUSD Board of Education Members .pdf

- 2. Teacher Lorcan Kilroy's June 11, 2013 reporting of John Deasy to CTC counsel Michael Barth for "picking and choosing" whom to suspend based on improper motives and covering up child abuse and Oct 23 2013 letter of exoneration of Deasy by CTC". Pdf**
- 3. Teacher Lorcan Kilroy's Aug 13, 2013 reporting to CTC of teacher [REDACTED]'s abuse of a student at Van Nuys High school with CTC attorney Barth acknowledgement of receipt of the reporting". . pdf**
- 4. Excerpts from LAUSD initial disclosures containing incident report and witness statements regarding teacher [REDACTED]'s abusing a student at Van Nuys High school in April 2012.pdf**
- 5. An email from LAUSD attorney Amie Park confirming initial disclosures pertain to [REDACTED]'s incident report and not private personnel records. . pdf**

DOCUMENT F. Ten page paper copy of document titled: **DECLARATION OF LORCAN KILROY AND NOTICE OF CONSTITUTIONAL DEPRIVATIONS**, signed and dated by Lorcan Kilroy on Nov 21, 2014.

(hereinafter referred to as "copies").

- 3. I served the defendant KAMALA HARRIS her individual capacity.**

4. I served the copies by: (check only one):

☐ a. Personal Service in compliance with the Federal Rules of Civil Procedure. I personally delivered copies to the defendant named in Paragraph 3.

Date: _____ Time: _____

Address: _____ (street)
_____ (city, state, zipcode)

☐ b. Substitute Service at Defendant's Residence in compliance with the Federal Rules of Civil Procedure. I personally delivered copies to a person of suitable age residing at the defendant's residence and informed him or her of the general nature of the papers. I left the copies with:

Name _____

Date: _____ Time: _____

Address:

260 Clara Street Unit 6

San Francisco-South Of Market CA, 94107

☒ c. Combination Service at Defendants Place of Business in compliance with the California Code of Civil Procedure. I made at least 3 attempts to personally serve the defendant.

Attempt 1: Date: 2/25/15 Time: 8:05 AM

Office of The Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

Attempt 2: Date: 2/26/15 Time: 11:08 AM

Office of The Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

Attempt 3: Date: 2/27/15 Time: 4:57 PM

Office of The Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

I personally delivered copies to a person
apparently in charge of the office or place of
business who was at least 18 years of age and
informed him or her of the general nature of
the papers. I left the copies with:

Name: Konstantin Chaykovsky

Date: 3/2/15 Time: 2:04 PM

Address: 455 Golden Gate #11000 (street)

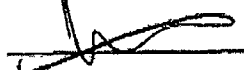
San Francisco, CA 94102-7004 (city, state, zip
code)

I then also mailed copies to the office or place
of business addressed to the defendant on
, (Date) 3/2/15

I am a registered California process server.
I declare under penalty of perjury that the
foregoing is true and correct.

Executed on 3/2/15 (date)

At San Francisco, CA (place of signing)

 (Signature)

Eric Montoya (Name)

APPENDIX C

<p>emailed to him on behalf of Local district Superintendent Byron Maltez by Maxine Baker alongside the document described in # 64 above, a document marked "Notice of Unsatisfactory Act "signed by JOHN PLEVACK which contained statements, (full name of students redacted here), that Plaintiff :<i>"looked at students S.V. and W.P., 7th grade students at Millikan Middle School, while they were dressing for dance class, causing them to feel uncomfortable"</i> and that Plaintiff: <i>"stared at students' buttocks while they were doing their stretching exercises in class, causing them to feel uncomfortable"</i> and that Plaintiff: <i>"stood outside of and leered into,</i></p>	
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<i>the girl's dressing area while the girls were changing for dance class"</i>	
<u>#65 The statements described in # 64 above were offered as "charges" relative to a "Notice Of Suspension" signed by PLEVACK dated Dec 15, 2015, and given to Plaintiff that day, despite the fact that Plaintiff had previously, (on Dec 11, 2015), placed PLEVACK in</u>	<u>Decl. Kilroy in support of MSJ ¶ 41.</u> <u>Decl. Kilroy in support of MSJ EXH.</u> <u>D</u>

<u>receipt of his declaration under penalty of perjury denying the sexualized falsifications, (Dkt. 183 in related case cv13-06373), by handing it to PLEVACK physically and by emailing it to him.</u>	
<u>#66 Plaintiff was placed on "unpaid suspension" beginning Jan 13, 2016, (his last paid day Jan 12, 2016), and was noticed of that fact via a letter from JUSTO AVILA that simultaneously offered him an opportunity to elect a hearing within 30 days or his termination would become final.</u>	<u>Decl. Kilroy in support of MSJ ¶ 42.</u> <u>Decl. Kilroy in support of MSJ EX D.</u>
<u>#67 Plaintiff's pay was never reinstated, after Jan 12, 2016.</u>	<u>Decl. Kilroy in support of MSJ ¶ 43.</u>
<u>#68 Plaintiff's termination became final</u>	<u>Decl. Kilroy in support of MSJ ¶ 44.</u>

<u>on Feb 17, 2016.</u>	
#69 Local District Northeast operations coordinator Rhonda C. Sparks informed Plaintiff via a Jan 12, 2016 email, (that she copied to LAUSD staffer Irene Hyland), that as of Jan 13, 2016, Plaintiff would be on "unpaid status".	Decl. Kilroy in support of MSJ ¶ 42. Decl. Kilroy in support of MSJ EXH D.
#70 Local District Northeast operations coordinator Rhonda C. Sparks informed Plaintiff via a telephone call on Jan 12,	Decl. Kilroy in support of MSJ ¶ 42. Decl. Kilroy in support of MSJ EXH D

<u>Plaintiff's Fact:</u>	<u>Plaintiff's Evidence:</u>	<u>Defendants' Objections and Statement of Dispute:</u>
signed by JOHN PLEVACK which contained statements, (full name of students redacted here), that Plaintiff : "looked at students S. V. and W.P., 7th grade students at Millikan Middle School, while they were dressing for dance class, causing them to feel uncomfortable" and that Plaintiff:		

<p>"stared at students' buttocks while they were doing their stretching exercises in class, causing them to feel uncomfortable" and that Plaintiff: "stood outside of and leered into, the girl's dressing area while the girls were changing for dance class"</p>		
<p><u>#66 The statements described in # 64 above were offered as "charges" relative to a "Notice Of Suspension" signed by PLEVACK dated Dec 15, 2015. and given to Plaintiff that</u></p>	<p><u>Decl. Kilroy in support of MSJ ¶ 41.</u> <u>Decl. Kilroy in support of MSJ EXH. D</u> s</p>	<p><u>Defendants contest this purported fact because it is argumentative as it infers that Plaintiffs alleged declaration from a separate litigation proceeding was disregarded by John Plevack</u></p>

<u>Plaintiff's Fact:</u>	<u>Plaintiff's Evidence:</u>	<u>Defendants' Objections and Statement of Dispute:</u>
<u>2015), placed PLEVACK in receipt of his declaration under penalty of perjury denying the sexualized falsifications, (Dkt. 183 in related case cv13-06373), by handing it to PLEVACK physically and by emailing it to him.</u>		
<u>#67 Plaintiff was placed on "unpaid suspension" beginning Jan</u>	<u>Decl. Kilrov in support of MSJ ¶ 42. Decl. Kilrov in support of MSJ</u>	<u>Uncontested</u>

<u>13, 2016.</u> <u>(his last paid</u> <u>day Jan 12,</u> <u>2016), and was</u> <u>noticed of that</u> <u>fact via a letter</u> <u>from</u> <u>JUSTO AVILA</u> <u>that</u> <u>simultaneously</u> <u>offered him an</u> <u>opportunity to</u> <u>elect a hearing</u> <u>within 30 days</u> <u>or his</u> <u>termination</u> <u>would become</u> <u>final.</u>	<u>EX. D.</u>	
<u>#68: Plaintiff's</u> <u>pay was</u> <u>never</u> <u>reinstated, after</u> <u>Jan12, 2016.</u>	<u>Decl. Kilroy in</u> <u>support of MSJ</u> <u>¶ 43.</u>	<u>Uncontested</u>
<u>#69: Plaintiff's</u> <u>termination</u> <u>became final</u> <u>on Feb 17, 2016.</u>	<u>Decl. Kilroy in</u> <u>support of MSJ</u> <u>¶ 44.</u>	<u>Uncontested</u>