

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DR. SHIMON WARONKER,

DOCKET NO.:

Plaintiff,

-against

HEMPSTEAD UNION FREE SCHOOL DISTRICT,
BOARD OF EDUCATION OF THE HEMPSTEAD
SCHOOL DISTRICT, DAVID B. GATES, in his individual
and official capacity, RANDY STITH, in his individual and
official capacity, LAMONT E. JOHNSON, in his individual
and official capacity, and Patricia Wright as a necessary party
in her capacity as Clerk of the Hempstead School District,

Defendants.

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**DECLARATION OF DR. SHIMON WARONKER IN
SUPPORT OF PLAINTIFF'S ORDER TO SHOW CAUSE,
AND MEMORANDUM OF LAW
SEEKING INJUNCTIVE RELIEF**

I, **DR. SHIMON WARONKER**, declare under the pains and penalties of perjury, pursuant to 28 U.S.C. Section 1746, that the following statements are true and correct, to the best of my knowledge:

1. I am the Plaintiff in the underlying Complaint in this action and I submit this Declaration in support of Plaintiff's Order to Show Cause and Memorandum of Law Seeking Injunctive Relief and all Supporting Papers.

2. The following facts are submitted to provide the Court with the context and underlying facts preceding the decision of the Hempstead Board of Education to suspend me, by placing me on Administrative Leave with Pay. I provide context in four parts: hiring and contract; Month 1 (June 2017); Months 2-5 (July-November 2017); Month 6 (December 2017 and beginning

of January 2018).

HIRING AND CONTRACT

3. When I applied to the Hempstead Union Free School District, I read the reports that showed dismal academic results for decades (it is one of the bottom 3 out of 740 performing districts in the State of New York), violence, corruption, and unruly board meetings.

4. Having led successful transformative efforts in tough areas in New York City like the South Bronx (New York Times, February 8, 2008, p. A1), Brownsville (New York Times, March 23, 2012, Op-ed by David Brooks), and East Flatbush, wrote a dissertation for my Doctorate from Harvard on Reflective Educational Practice, and had prior military service, I felt that all my formative experiences would enable me to tackle this challenging assignment.

5. The students of Hempstead are in many ways like I was – educationally disadvantaged. Most are minorities or immigrants from Central and Latin America: I was born in Chile, and came to this country when I was 11 years old and didn't know how to speak English.

6. I have a track record of great success with helping students from different backgrounds, because I treat all students as if they were my children.

7. After putting in an application with ECRA Group/HYA (the Recruiters), and successfully been screened by the recruiters on March 23, 2017, I was scheduled for an in person interview on April 4, 2017 in the Law offices of Hamburger, Maxon, Yaffe & McNally in Melville, NY.

8. After waiting a couple of hours, I was told by the recruiters that the minority of the Board had put in a restraining order on the majority, because of the location of the interview. They told me that they would be trying to remove the order to proceed and I had the option of waiting or rescheduling. I told them to reschedule me as I wanted to be able to meet and be interviewed by all

the Board members.

9. On April 13, I had a video conference interview with all five members of the Board.
10. On April 20, I had an in-person interview at the Hempstead Public Library with all five members during which Trustee Dr. David Gates did not ask me any questions. I asked him, "Did you not ask me any questions because you have already made up your mind, or is it because your colleagues have asked sufficient questions?" His response was, "I am satisfied with the questions my colleagues have raised."
11. On April 24, Trustees Maribel Toure, Melissa Figueroa and Gwen Jackson came at separate times so that there would not be a quorum to do their due diligence and visited one of the schools I helped establish, The New American Academy, in Brownsville, NY.
12. On April 26, Trustee Johnson came to visit the same school and said that he was impressed.
13. Afterwards, the Board expressed their interest in hiring me and we began contract negotiations. I shared with the Board that if they wanted the kind of transformative change they saw that I had to be able to tap organizations I have worked for or been affiliated in the past. I did not want there to be a possible cloud of conflict of interest.
14. Section 15 of the contract between the Board and me, dated May 11, 2017, states:

The Superintendent has had professional or financial relationships with organizations that he may recommend that the District enter into transactions in order to help the District attract, develop and retain talent to improve the instruction for students. These organizations include but are not limited to:

1. *The Harvard Graduate School of Education;*
2. *The National Board for Professional Teaching Standards;*
3. *The New American Initiative; and*
4. *The New York City Leadership Academy.*

The Superintendent will not draw any compensation from the above entities during the term of this Agreement to eliminate any possible conflict of interest.

15. This clause was critical for me, as I wanted to do everything above board and not have my name tainted with the level of corruption that Hempstead UFSD possesses. I especially included the New American Initiative because I was the founder and CEO of this not for profit.

16. In addition, having noticed how the Board members behaved in an uncivil manner, clause 14 was included in the contract, regarding civility and respect, it reads:

The Board and the Superintendent both recognize the importance of mutual respect. An environment of mutual trust and respect is necessary if the School District is to promote integrity and success. Mutual trust and respect are prerequisites for open communication, an honest dialogue about values, goals and expectations.

This requires freedom of expression without fear of retribution and values the diversity of persons' ideas and choices differing from one's own. It recognizes that being in a diverse community is an advantage to encouraging discovery and creativity.

Respect for individuals and respect for institutional values involve balancing the claims of personal autonomy with the goals and mission of the School District.

The Board and the Superintendent accept the premise that diverse opinions are of significant value in any relationship and that the sharing of these opinions help in solving problems and lead to a more fruitful relationship.

17. This clause was also important for me, because I wanted to set a tone of integrity, respect and sharing of ideas to improve outcomes for our students.

18. The Board has not adhered to either of the above clauses as I will show, has maligned my character and reputation and has now placed me on Administrative Leave in clear violation of my contract that states that I cannot be suspended without due process.

19. In late May, one of the Trustees, Melissa Figueroa, who was running for reelection

was found to have had marijuana in her car after Hempstead Police officers stopped her. As she was arrested and brought into the police headquarters at approximately midnight, Trustee LaMont Johnson was present, according to her, and he filmed the event on his cellphone. She claimed that she was framed and that Trustee Johnson's brother, who serves as a Lieutenant in the Hempstead PD, was involved in the framing. She lost her seat a couple of days later to Trustee Randy Stith, who was applying to the same police department and is now a police officer in Hempstead. Stith pled guilty to a second-degree harassment violation, for assaulting a woman with a bottle of bleach, splashing the chemical in her eyes. He served five days in jail, paid \$200 in fines and \$120 in court surcharges and received a one-year conditional discharge, court records show.

20. At or about this same time of the election, Trustee Gates told Trustee Jackson that they had a better campaign and that they had used District Employee lists to help Stith's campaign. Trustee Jackson said that that was illegal to take and use District employee confidential information. The Board majority took great steps to have Trustee Johnson provide details on this matter and in May launched a hearing to find out if what Jackson said was true.

21. Following an initial investigation, during which facts disclosed that Trustee Johnson had obtained the employee confidential information and supplied it to Stith campaign, a hearing officer was appointed and hearing was scheduled and conducted. Trustee Johnson was extended extensive due process to defend and present his side (see attached Hearing Officer's Report **Exhibit L**), however it appeared that the intent of Trustee Johnson was to stall and delay the hearing process. In late June, the hearing officer found sufficient evidence, including emails and employee lists being exchanged by Trustee Johnson. Trustee Johnson was found to have committed the breach of his office and the board appointed Mary Crosson.

22. Mr. Johnson filed a petition with the Commissioner of Education to become reinstated.

MONTH 1, JUNE 2017

23. I began my work on June 2, 2017 in order to begin my assessment of the school district while personnel were still in the District, as during the Summer months most personnel are on vacation. I met with parents, civic groups, community leaders, board members individually (although I tried to engage him, Trustee Gates never met with me for a one-on-one), teachers, labor union leaders, students and numerous different individuals and organizations to begin to get a sense of the District.

24. One of the most alarming things I learned was that there had been a fire that destroyed most of the financial records of the District in February 2017. I spoke with the Board President, Ms. Toure, and found out that they had in September of 2016 issued an RFP for a forensic auditor. The RFP was due on February 2017.

25. I immediately reviewed the seven firms that applied to the RFP and interviewed three firms. I selected Plante Moran, because it was an international firm of high caliber and had done work with the Educational Authority in Detroit, Michigan that had led to numerous arrests and uncovering of deep and systemic corruption. On June 27, I made a recommendation to the Board to hire Plante Moran.

26. I planned a Board Retreat at Harvard for five days in July and asked all five members to join me so that we could learn some skills together and establish a working partnership.

27. With the Board's approval, we hired the New American Initiative to help me establish innovative and sustainable practices in the District. We also hired four Master Teachers to help improve the pedagogy of the District through work developed at Harvard called "Teacher

Rounds” (that are similar to medical rounds).

28. The second most alarming thing that I found was fear. Everyone with whom I spoke was afraid of retribution, of reprisals, of harm to their families.

29. I came to reassure folk that I had a solid contract and that I intended to stay for the full four years. At first many people did not believe me, as they thought that the Board with Johnson, Gates and Stith would remove me in July. However, since the Board had removed Johnson, the people of the District were slowly beginning to muster the courage to speak.

MONTHS 2-5 JULY – NOVEMBER 2017

30. During the interview process, I had shared that the first thing I would do was to establish a transition team to help me develop a four-year strategic plan for the district (as the old adage goes, “If you fail to plan, plan to fail.”).

31. Randi Weingarten, President of the American Federation of Teachers and Ambassador James Woolsey, former Director of the Central Intelligence Agency, agreed to cochair the team. Many distinguished members joined the team including: Dr. Felix Rodriguez, President of Queens College; Burt Sacks, Vice-Chancellor, CUNY; Irma Zardoya, CEO of the NYC Leadership Academy; and many others distinguished experts inside and outside the community. We included parents, teachers, teaching assistants, labor leaders, and administrators as well.

32. The transition team included five committees: Leadership, Organizational Culture and Mission; Teaching and Learning; Organizational Effectiveness and Efficiency; Equity; and Family and Community Engagement. Each committee was to be led by one of the board members. **Trustees Stith and Gates declined to be part of the process.** Trustees Toure, Jackson and Crosson led all five committees as a result.

33. On July 5, I met Trustee Stith for the first time officially and I shook hands with him.

He publicly said during the board meeting that he was happy to shake my hand as I will be removed and he would be saying goodbye to me very soon. (See **Exhibit W** letter memorializing the incident that I sent to Trustee Stith on July 7). As part of that incident, Trustee Stith engaged in statements and actions which were offensive to me as an observant and practicing Jewish person. Those were also addressed in my letter to him.

34. During July 9-14, I went to Harvard with three members of the Board: Trustees Toure, Jackson and Crosson and some cabinet members. **Trustees Gates and Stith refused to attend.**

35. During the summer months, I worked to ensure that schools had proper staffing. I had to remove two personnel, the Assistant Superintendent for Business and Operations who could not tell me how much money we had in the budget in June, and the High School principal for serious issues that I felt I could not grant him tenure.

36. A group calling itself "Hempstead for Hempstead" let me know that if I let the High School Principal go, there would be "war." I said that I had to do what was best for the students of our district.

37. Based on the information I have gained, Hempstead for Hempstead was founded by Thomas Parsley (according to him). He had been a prior board member and is allied with Trustees Stith and Gates. He was convicted of Grand Larceny and removed from the Board and he had also been arrested and convicted as a 3rd Degree Sexual Offender. Hempstead for Hempstead has no fixed address, website or registration.

38. It came to my understanding that Hempstead for Hempstead hired Gotham Government Relations, a large public relations firm that upon information and belief normally costs \$100,000 to retain. They have put out numerous press releases maligning my name and reputation

since the threat that there would be “war.”(see Exhibit X). Moreover, trustees Gates and Stith accused me of lying, stealing and benefitting from our students. Their thinking is reflected in the Gotham press releases.

39. I arranged conflict mediation training for our Board and cabinet level officers during August 20-22. Trustees Toure, Jackson and Crosson attended. **Trustees Gates and Stith refused to attend.** When I asked Trustee Gates why he didn’t want to come to the trainings and why he didn’t give me his cell phone number so we can have dialogue, he responded in front of several Board members, lawyers and others, “I don’t trust you. You are my enemy.”

40. I shared with him that I was not his enemy and that we had to all be on the same side to help the children.

41. The corruption in the District began to be uncovered as people realized that I was here to help clean things up and I was not afraid. I uncovered theft of District property by a teacher which led to the teacher’s arrest. We found serious financial issues that we reported to the Nassau District Attorney’s office in October. Employees then began informing me of serious financial malfeasance.

42. The Board approved the retention of the law firm, Raiser and Kenniff, LLC, experts in investigating financial crimes.

43. In June 2017, the Board approved the hiring of Plante Moran, forensic auditors, and in September, we still did not have a contract. The Board’s General Counsel, John Sheahan from the firm Guercio and Guercio, was opposed to certain contractual terms.

44. In October, the Board President, Maribel Toure and I went to visit the offices of Guercio and Guercio and met with partner Greg Guercio and questioned why we were having such difficulty with the contract. He recommended that we use a local forensic firm. We said that it was unacceptable as in order to uncover the corruption we needed a national firm without connection to

Hempstead or local politics.

45. Guercio and Guercio were demanding an unreasonable term in the contract with Plante Moran, which was “unlimited indemnification.” After we said that this is nonnegotiable, Guercio reversed their position and soon thereafter, in October, the District had a contract with Plante Moran. Over a year after the Board had voted to hire a Forensic Auditing firm, a fire that destroyed the records and my constant pressing for a contract, the District finally had an agreement.

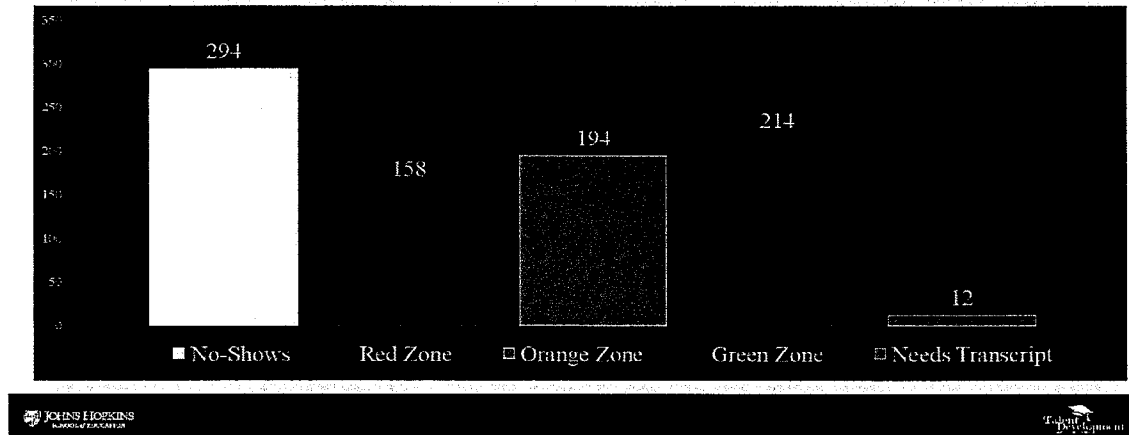
46. In late September 2017, the Commissioner of Education appointed Dr. Jack Bierwirth as a Distinguished Educator to oversee the Hempstead School District. Only one other District in New York State, Buffalo School District, received this oversight.

47. From August to September, I did a thorough review of the facilities of all the schools and administrative offices and found vermin infestation, mold, 1,600 students in crumbling portable classrooms (some dating back to 1983), leaking roofs, graffiti, and old boilers. I presented these alarming findings in September.

48. The Director of Facilities, Tim Gregg, said publicly at a Board meeting and in our August 30 assembly of all the staff, “I have served under 9 previous Superintendents and none have reviewed the facilities like Dr. Waronker.”

49. In October, I began to analyze High School student transcripts, student by student, with the Guidance Counselors, to assess the progress of our students. Out of 872 students, the staff was only confident that 214 students, 25%, had the requisite credits and Regents exams (they need 5 passing exams) to graduate on time. **294 students were no shows (meaning they had not been attending school for over 20 consecutive days (in some cases a couple of years) and had to be disenrolled from school. This also means that the District was billing the State for students it did not have attending school. (See the chart below)**

Overall Breakdown of Seniors – 872 total



50. Academically what I found was something I had never seen in my life before in any academic institution. I spoke with over 200 teachers at the Middle School and High School to learn about their issues. Below are highlights of some of the issues raised by our faculties:

- a. Middle school – Students are promoted even if they fail all of their classes. Many students come in and cannot read or write. Reading specialists were eliminated, but there was no expertise in the classrooms to help students who were so far behind the curricular standard.
- b. High School English Department – 90% of students are level 1 in 8th Grade, yet placed in Honors English. Teachers found that the criteria used for placement was if they took Algebra in Middle School.
- c. High School Math Department – Students who fail Algebra are then placed in Geometry. If they fail Geometry they are placed in Trigonometry.
- d. High School Social Studies Department – Students are placed in US History Regents in 9th Grade. This course is given across the State in 11th Grade for its developmental and cognitive requirements. Only 17% of our students pass the exam.
- e. High School Science Department – Chemistry used to have two passing course requirements (Algebra and Biology) as they are building blocks for the course. Students are placed in Chemistry without any course requirements.

f. High School English Language Learners Department – Some teachers have between 40-50 students in their classes and they had a plan almost entirely funded by the State for the SIFE (Students with Interrupted Formal Education) that would require 4 classrooms, but were told there was no space. Students are not placed according to Part 154; meaning that students who have gained more proficiency in English are not placed in more English classes as per State Regulations.

g. All teachers have said that students can take the Regents exams without having to attend classes, yet teachers are graded on the student performance.

51. Students are not being placed in their Zone of Proximal Development (meaning that if you give Calculus to a Kindergartner, it is outside their ZPD) and as a result students either shut down, become disruptive or stop attending school, because our educational program is not meeting their needs. The district has done educational malpractice, in my professional opinion.

52. I asked each department to take back their departments and reorganize the High School. Each Department started to present plans to me in how to meet the needs of students.

53. For instance, the math department recommended assessing the incoming students and placing them in either Basic Math, pre-Algebra, or Algebra, as opposed to placing them all automatically in Algebra.

MONTH 6 DECEMBER 2017 TO BEGINNING OF JANUARY 2018

54. On November 27, 2017, Commissioner of Education Elia reappointed Mr. LaMont Johnson back on the Board and the majority changed. My ability to continue to improve academic outcomes and root out the corruption also changed.

55. One of the first things the Board did was to fire the Special Investigators. They did this in Emergency session on November 29, 2017, just two days after the return of Mr. Johnson. They fired Raiser and Kenniff, LLC, and refused to pay for any work they had done up to that point.

This was the only action they took in that emergency session.

56. On December 6, 2017, I sent an e-mail to the Board letting them know that I had serious concerns over illegal financial activity, and that I had notified law enforcement agencies as well as the Commissioner of Education. (see **Exhibit R**)

57. On December 7, 2017 two things happened. One was that as I turned my car into the High School for the Board meeting, in the early evening, people opened gunfire and riddled the corner house at that precise moment near the school entrance. We proceeded to have the Board meeting after the police secured the area. Second, I recommended to the Board we tear down the Rhodes building and begin a Bond to rebuild a school on the site. The Board voted down the resolution.

58. Thereafter, on December 22, 2017, the Board suspended my authority and proceeded to fire the Master Teachers. Even though, these teachers were working 12-14 hours a day and had almost completed a \$5.4 million dollar grant for the district in addition to all their other responsibilities. These hard working teachers were let go right before the holidays!

59. Also on December 22, 2017, the Board terminated its contract with the New American Initiative, which was leading the transformative work with listening and communicating skills, conflict mediation, reflective and collaborative hiring practices, helping develop the Strategic Plan for the district, etc. In addition, they did the 1st reading of a new policy on Administrative Leave with Pay. I told their labor counsel, Mr. John Scher, that this policy was aimed at me and he denied it, saying that the basis was for employees who should have been in investigation.

60. The Board then had an emergency meeting on January 3, 2018, and read the Administrative Leave with Pay a second time. They had made material changes to the policy, yet they considered it a second read.

61. I then had an extensive conversation with Mr. Scher and told him, if the Board does not want me, then they should negotiate a settlement of my contract, but I stressed to him that this process in which they were engaging could not continue. He said that the Board does not intend to remove me. I told him, if they are setting this up to remove me and that was the case, then I must fight for the students. As a receiver of the middle and high schools, the Commissioner has given me extraordinary powers to supersede the Board. I told him that I would have to exercise those powers in order to be able to help the students.

62. On January 5, I sent two letters to the Board of Education superseding their authority; one to bring back the Master Teachers; and the other to tear down a wall in the High School cafeteria, because the previous administration had too many students in any given lunch period, so many students had to sit on the floor. (see **Exhibit S**)

63. On January 5, 2017 I sent an open letter to the community to ask for collaboration as per my contract. I needed the Board, the community and all stakeholders to collaborate with me to help our students. (see Exhibit T)

64. On January 8, Dr. Bierwirth's report became public and required a reply to the state by February 2, 2018.

65. On January 9, the Board read the Administrative Leave with Pay policy a third time and **immediately** placed me on Administrative leave. During the executive session, I requested a

copy of the alleged seven claims of misconduct, which had been showed to me in said session. My request was denied.

66. Section 10 of my contract with the Hempstead UFSD provides:

The Superintendent shall not be suspended, disciplined, or terminated, without just cause and only for alleged acts of material breach of this Agreement, neglect of duty, gross misconduct, or disability from performing of his duties according to the evidentiary standard hereinafter set forth and only following a fair hearing before an impartial hearing officer.

67. The entire Administrative Leave with Pay policy the Board instituted was an attempt to bypass my contract which says that I cannot be suspended, unless they follow the procedures listed.

68. As to my suspension, I was not given any hearing, was not given anything in writing listing charges and/or specifications, and was not given the chance to address any alleged charges.

69. My suspension was not voluntary and it is one that I oppose and take very seriously, as I have never been treated like this in my entire career. Also this suspension has placed a great cloud over me, my reputation and my good professional name, all with out reason, without cause and without any consideration for what it does to me and my family.

70. Of equal concern and impact is the wording in the Resolution (**Exhibit N**) which was hand carried by Mr. Stith on January 9, 2017 and stated in part that:

RESOLVED, that the District's Superintendent of Schools, Shimon Waronker, is placed on Administrative Leave of Absence with Pay, for 60 days, **pending the conduct of investigations in the confidential attachment annexed hereto**; and it is further

RESOLVED, the District's Superintendent of Schools, Shimon Waronker, while on such Administrative Leave of Absence with Pay, **shall cooperate fully, and full time, with the District's Special Council appointed to investigate Shimon Waronker's involvement in and the circumstances surrounding the publishing of the RFP, the responses to the RFP, the negotiations of the contract, the drafting of the contract and the engagement of the New American Initiative ("NAI"), and any all services rendered by NIA (sic), the processing of**

payments made to NAI, and the receipt of payments by NAI; and it is further

RESOLVED, the District's Superintendent of Schools, Shimon Waronker, while on such Administrative Leave of Absence with Pay, **shall cooperate fully, and full time, with the District's Labor Counsel regarding any other investigation that may be pending or is being conducted or that may arise;** and it is further

RESOLVED, the District's Technology Office is directed to **restrict access to, shut down remote access, and prohibit deletion of any and all email accounts, or the contents thereof, if used, accessed, monitored, or available to Shimon Waronker,** while he is on such Administrative Leave of Absence with Pay; and it is further,:

RESOLVED, the District's Acting Superintendent shall have authority to grant or deny access to Shimon Waronker to the District's property, real or personal, while he is on such Administrative Leave of Absence with Pay, as the District's Acting Superintendent deems fit; and it is further:

RESOLVED, that **Shimon Waronker shall not enter upon the District's real property, while he is on such Administrative Leave of Absence with Pay, without the written permission of the District's Acting Superintendent given in advance;** (Exhibit N) Emphasis added

71. The impact of this language is nothing less than scandalous. On its face, it is clear that I am being investigated by a Special Counsel for alleged wrongdoing concerning the issuance of an RFP and then more troubling the claim of an investigation concerning the New American Initiative, the very organization that I disclosed as part of my contract and gave full disclosure and also contracted that *"The Superintendent will not draw any compensation from the above entities during the term of this Agreement to eliminate any possible conflict of interest."* (See **Exhibit Q**)

72. I have not been afforded any process, no less Due Process. Every day that I remain out on this suspension is a further injury to me and my rights. It is also clear to me that the actions taken against me have been acts of retaliation for me taking the steps to address the mismanagement and acts that appear to be criminal in nature, and my reporting them to the Board and then to other governmental office including the Commissioner.

73. I have refused to be intimidated by the Defendants, however I have continued to be belittled and demeaned without any justification for that treatment. I was hired and came to Hempstead to do a very tough job, but in understanding that, I did not agree to be abused and be violated on level that I could never imagine.

74. What I discovered in the Hempstead School District is an abomination and a plague on those who are impacted the most, the children. I cannot, and will not allow these acts of disregard for rule of law and basic professional decorum to go unchecked. I also cannot allow threats, coercion and bullying to be the model we place before the children of Hempstead (my children) as how things are to be done.

75. I came to Hempstead to try and heal, collaborate and bring a sense of stability. From what has transpired,, that is not what Mr. Stith, Mr. Gates and Mr. Johnson have in mind.

76. On January 17, 2018, without any notice or any reason, the Board Majority fired the Deputy Superintendent (Dr. McDonald) and the Principal of the High School (Mr. Klein). Both of these men came to help turn the District around and were released by a hand carry

resolution.

77. My rights have been and continue to be violated. If the Court does not issue the requested injunctive relief, I will continue to be harmed and those that are cause the injury will be empowered.

Dated: Hempstead, New York
January 19, 2018

Respectfully submitted,



DR. SHIMON WARONKER