

1 DANIEL K. SPRADLIN - State Bar No. 82950
dspradlin@wss-law.com
2 ROBERTA A. KRAUS - State Bar No. 117658
rakraus@wss-law.com
3 WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
4 Costa Mesa, California 92626-7670
Telephone: (714) 558-7000
5 Facsimile: (714) 835-7787

6 Attorneys for Defendants CAPISTRANO UNIFIED SCHOOL
DISTRICT and DR. JAMES CORBETT

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 CHAD FARNAN, a minor, by and
through his parents BILL FARNAN and
12 TERESA FARNAN,

13 Plaintiff,

14 v.

15 CAPISTRANO UNIFIED SCHOOL
DISTRICT; DR. JAMES CORBETT,
16 individually and in his official capacity as
an employee of Capistrano Unified School
17 District; and DOES 1 through 20,
inclusive,

18 Defendants.

19
20 CALIFORNIA TEACHERS
ASSOCIATION/NEA; and
21 CAPISTRANO UNIFIED EDUCATION
ASSOCIATION,
22

23 Union Intervenors/Defendants.

24
25 ///

26 ///

27 ///

28 ///

CASE NO.: SACV07-1434-JVS (ANx)

**DEFENDANTS' MOTION FOR
LEAVE TO FILE AN AMENDED
ANSWER; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF DANIEL K.
SPRADLIN**

HEARINGS PENDING:

TYPE: Motions
DATE: July 13, 2009
TIME: 1:30 P.M.
COURTROOM: 10C/Judge Selna

1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 13, 2009, at 1:30 p.m. or as soon
3 thereafter as the matter may be heard in Courtroom 10C of the above-entitled Court,
4 located in the Ronald Reagan Federal Building, 411 West Fourth Street, Santa Ana,
5 California 92701, Defendants CAPISTRANO UNIFIED SCHOOL DISTRICT
6 (“CUSD”) and DR. JAMES CORBETT (“Dr. Corbett”) (sometimes collectively
7 “Defendants”) will and hereby do move this Court for leave to file an amended answer
8 in order to plead qualified immunity as an affirmative defense in this matter. A copy
9 of this amended answer is attached as Exhibit A.

10 This motion is based on this notice, the attached memorandum of points and
11 authorities and declaration of Daniel K. Spradlin, the Court’s order re the parties’
12 motions for summary judgment, the evidence filed by the parties’ in support of their
13 motions for summary judgment, such matters of which this Court may be asked to
14 take judicial notice, as well as the pleadings and records on file in this matter.

15 DATED: June 8, 2009

WOODRUFF, SPRADLIN & SMART, APC

16
17 By: Daniel K. Spradlin

18 DANIEL K. SPRADLIN
19 ROBERTA A. KRAUS
20 Attorneys for Defendants CAPISTRANO
21 UNIFIED SCHOOL DISTRICT and DR.
22 JAMES CORBETT
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION 1
 A. Statement of Facts 2
2. THE FEDERAL RULES OF CIVIL PROCEDURE REQUIRE THAT
LEAVE TO AMEND BE “FREELY GIVEN” 6
 A. The Amendment is Not Sought in Bad Faith 7
 B. The Amendment is not Futile 10
 C. The Amendment will not Cause Undue Prejudice to Farnan 10
 D. The Amendment will not Create Undue Delay 12
3. CONCLUSION 12

WOODRUFF, SPRADLIN
& SWARTZ
ATTORNEYS AT LAW
COSTA MESA

TABLE OF AUTHORITIES

FEDERAL CASES

Anderson v. Creighton, 483 U. S. 635 (1987).....9, 11

Ascon Properties, Inc. v. Mobil Oil Company, 866 F.2d 1149 (9th Cir. 1989).....7

Behrens v. Pelletier, 516 U.S. 299, 116 S.Ct. 834, 133 L.Ed.2d 773 (1996).....8

Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048 (9th Cir. 2003).....10

Foman v. Davis, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962).....6

Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)8, 11

In re Circuit Breaker Litigation, 175 F.R.D. 547 (C.D. Cal. 1997).....10

Malley v. Briggs, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986)8

Morongo Band of Mission Indians v. Rose, 893 F.2d 1074 (9th Cir. 1990).....7, 10

Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001).....8

Thornton v. McClatchy Newspapers, Inc., 261 F.3d 789 (9th Cir. 2001).....7

U.S. v. Webb, 655 F.2d 977 (9th Cir. 1981).....6

United States v. Lanier, 520 U.S. 259, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997).....11

FEDERAL STATUTES

Federal Rules of Civil Procedure, Rule 15(a).....6, 10

TREATISES

Moore, Moore's Federal Practice ¶ 15.14 (3d ed. 2008).....6

WOODRUFF, SPREADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

Throughout this litigation Plaintiff CHAD FARNAN, a minor, by and through his parents BILL FARNAN and TERESA FARNAN (“Farnan”) has asserted that “the gravamen of [his] case was and remains the barrage of religious hostility expressed by Dr. Corbett throughout the Fall 2007 semester during his Advanced Placement European History class.”¹ As posited by Farnan, this case at no time “concern[ed] a few incidental statements of a teacher that may periodically reflect upon the teacher’s personal beliefs” but concerned Dr. Corbett’s alleged “continual and incessant actions.”²

Yet, on May 1, 2009, this Court found that Dr. Corbett did not engage in a continual and incessant barrage of religious hostility. Instead, this Court determined that Dr. Corbett violated the Establishment Clause when Dr. Corbett stated “religious, superstitious nonsense” during a discussion about the lawsuit filed against CUSD, Dr. Corbett and others by former biology teacher John Pelozza who had refused to teach the state mandated curriculum (the theory of evolution) but instead taught creationism in the classroom. Dr. Corbett made this single statement during the course of one lecture while teaching his year-long AP European History course. The Court found that no other statement attributed to Dr. Corbett during this year-long AP European History course violated the Establishment Clause and that there was no evidence presented sufficient to establish that Dr. Corbett had a pattern and practice of violating the Establishment Clause.

It is because of this ruling that it has become apparent that Dr. Corbett is entitled to a determination of qualified immunity in his favor. While the Court has held that the single statement by Dr. Corbett violated the Establishment Clause, in

¹ See, Plaintiff’s reply to Defendants’ opposition to Plaintiff’s motion for summary judgment, 1:4-6.

² See, Plaintiff’s opposition to Defendants’ motion for summary judgment, 10:14-16.

1 2007 the law was not established that a single statement by a teacher made during one
2 lecture given in the course of a year-long class could trigger an Establishment Clause
3 violation. Accordingly, it did not become apparent that Dr. Corbett would be entitled
4 to a qualified immunity defense until the Court's ruling on the parties' motions for
5 summary judgment on May 1, 2009. As a direct result of the Court's May 1, 2009
6 ruling, Defendants now seek leave to amend Defendants' answer to include qualified
7 immunity as an affirmative defense.³

8 **A. Statement of Facts**

9 On December 13, 2007, Farnan filed his complaint against CUSD and Dr.
10 Corbett seeking damages and injunctive relief. A first amended complaint
11 subsequently was filed and Defendants answered the first amended complaint on
12 March 19, 2008. On April 28, 2008 the motion of Intervenors, CALIFORNIA
13 TEACHERS ASSOCIATION/NEA and CAPISTRANO UNIFIED EDUCATION
14 ASSOCIATION ("Union Intervenors") was granted and the Union Intervenors'
15 answer to Farnan's first amended complaint was filed. In their answer the Union
16 Intervenors' asserted the qualified immunity defense on Dr. Corbett's behalf. (See,
17 Exhibit B)

18 Prior to the filing of Defendants' answer, and up through this Court's ruling on
19 the parties' motions for summary judgment, Farnan has contended that Dr. Corbett
20 made anti-Christian or anti-religious comments on a daily basis throughout the 2007
21 semester; that anti-Christian comments essentially were the theme of Dr. Corbett's
22 lectures. According to Farnan, it was the continual and incessant comments attributed
23 to Dr. Corbett that violated the Establishment Clause. Examples of Farnan's position
24 in this regard are voluminous and can be found, by way of illustration, in the
25 following documents:

26 _____
27 ³ Pursuant to the Joint proposal for disposition of the equitable and other remaining
28 issues, this motion is filed concurrently with Defendants' post-summary judgment
motion for a determination that Dr. Corbett is entitled to qualified immunity ("motion
for determination")

1 (1) Farnan's first amended complaint in which Farnan asserts: "On a regular
2 basis during the Fall 2007 semester . . ." (4:7-11); "Parents and/or students have
3 complained to the District for many years regarding Dr. Corbett's religious hostility
4 expressed in his classroom" (9:26-27); and "Dr. Corbett continues to spend a large
5 portion of class time . . . , he clearly demonstrates hostility towards religion . . .", "As
6 a result of his ongoing comments . . ." (10:3-7);

7 (2) Farnan's opposition to Defendants' motion to dismiss in which Farnan
8 asserts: "statements made by Dr. Corbett are continual and incessant" (10:14);
9 "continual and incessant disapproval of religion" (10:23); "For months Chad Farnan
10 sat in an AP European History class . . . learning . . . about Dr. Corbett's own
11 propagation of a 'religion of secularism'" (12:11-14); and "When taken together, [Dr.
12 Corbett's comments] are clearly anti-Christian diatribes" (15:12-13);

13 (3) Farnan's responses to Defendants' special interrogatories, response nos. 5
14 and 7 in which Farnan asserts: "Throughout the Fall 2007 semester, Dr. Corbett made
15 numerous statements regarding Christianity and religion generally that expresses a
16 viewpoint that is derogatory, disparaging, and belittling regarding religion and
17 Christianity in particular. . . . While there are individual comments that are
18 particularly offensive and expressive of said viewpoints, those and all of his
19 comments must be taken in context of the entire lecture and class environment . . ."
20 (6:16-25 and 7:20-28);

21 (4) Farnan's opposition to Defendants' motion for summary judgment:
22 "Plaintiffs brought this action with the intent to quell the religious hostility that has
23 germinated for many years in Dr. Corbett's public classroom at Capistrano Valley
24 High School" (1:2-4); "numerous hostile comments of Dr. Corbett" (4:4-5); "the
25 Court must inquire into the purpose for the overreaching theme established by Dr.
26 Corbett's lectures" (6:6-7); "[Dr. Corbett] states it many times, and in many ways,
27 both indirectly and directly" (6:16-17); "Dr. Corbett is using his bully pulpit to spew
28 his propaganda . . ." (8:12-13); "Dr. Corbett's statements regarding religion and

1 Christianity, both in Chad's class and other classes, send primarily a message of
2 disapproval of religion" (9:2-4); "Defendants' actions fail the third prong of the
3 Lemon test because the statements made by Dr. Corbett are continual and incessant,
4 and the School District has done nothing to lessen them" (9:18-20); "*This case does*
5 *not concern a few incidental statements of a teacher that may periodically reflect*
6 *upon the teacher's personal beliefs. Instead, it concerns Dr. Corbett's continual and*
7 *incessant actions . . .*" (10:14-16; emphasis added); and "When applying the correct
8 standard, and reviewing all of Dr. Corbett's comments instead of singling out a few
9 comments . . ." (14:24-26);

10 (6) Farnan's memorandum of points and authorities in support of motion for
11 summary judgment: "[T]eachers, including [Dr. Corbett] violate the Establishment
12 Clause when they use the classroom to *repeatedly express* disapproval of religion,
13 religious faith, and the resulting worldviews" (1:6-8; emphasis added); "Defendants'
14 decision to 'teach' anti-Christian themes" (15:8-9); "barrage of hostility aimed at Dr.
15 Corbett's students over the years past" (17:16-17); "the statements of Dr. Corbett are
16 continual and incessant" (18:3-4);

17 (7) Declaration of Chad Farnan in support of Farnan's' motion for summary
18 judgment:⁴ "Dr. James Corbett spent a significant amount of class time discussing
19 topics and issues not relevant to European history" (2:19-20); "On a regular basis
20 during the fall 2007 semester, Dr. Corbett discussed a wide variety of topics not
21 related to Advanced Placement European History" (3:3-4); "While teaching the
22 subject of the class and while discussing various other topics, Dr. Corbett made
23 statements and expressed viewpoints that were derogatory, disparaging, and belittling
24 regarding religion and Christianity in particular" (3:5-9); "These comments were not
25 limited to one particular day, but instead occurred on most days that I was in his
26

27 ⁴ Many of these same assertions are also contained in Plaintiff's statement of
28 uncontroverted facts and conclusions of law in support of his motion for summary
judgment. (See, for example, fact nos. 9, 10, 11, 36, 37)

1 classroom” (3:10-11); “Dr. Corbett’s anti-Christian viewpoints are well-known by the
2 students at my high school as they are often presented through comments he makes
3 during class” (3:12-14); “Dr. Corbett made many comments regarding his personal
4 bias against Christianity” (3:15-16); “When Dr. Corbett was talking to my class, he
5 regularly included his own ideas about God and religion” (3:16-17); “As a result of his
6 ongoing comments . . .” (3:19-20);

7 (8) Farnan’s reply to Defendants’ opposition to Farnan’s motion for
8 summary judgment: “*The gravamen of Plaintiffs’ case was and remains the barrage*
9 *of religious hostility expressed by Dr. Corbett throughout the Fall 2007 semester*
10 *during his Advanced Placement European History class” (1:4-6; emphasis added); and*

11 (9) Farnan’s response to Defendants’ objections to Farnan’s evidence
12 submitted by Farnan in support of his motion for summary judgment: “Dr. Corbett’s
13 habit or routine practice of making negative or hostile comments about religion and
14 Christianity . . .” (3:21-22)

15 This Court, itself, in denying Defendants motion to dismiss, also noted that the
16 gist of Farnan’s claim against Defendants is based on Farnan’s claim that his rights
17 were violated by a “practice and policy hostile toward religion and favoring irreligion
18 over religion.” (Court’s minute order denying motion to dismiss, ¶2)

19 Now, following the ruling by this Court on the parties’ motions for summary
20 judgment, it has become apparent that Dr. Corbett is entitled to a qualified immunity
21 defense. As noted above, up until that ruling Farnan at all times asserted that it was the
22 barrage of comments made by Dr. Corbett that violated the Establishment Clause and
23 that this case was not about “a few incidental statements;” however, that is exactly
24 what this Court ruled when it granted Farnan’s motion for summary judgment on the
25 single, incidental statement that in essence stated the teaching of creationism in a high
26 school biology class was “religious, superstitious nonsense.” Thus, with this ruling it
27 has become apparent to Defendants’ counsel that Dr. Corbett is entitled to qualified
28 immunity; however, that defense was not asserted in the answer filed on behalf of Dr.

1 Corbett. Thus, leave to amend is sought and should be granted.

2 **2. THE FEDERAL RULES OF CIVIL PROCEDURE REQUIRE THAT**
3 **LEAVE TO AMEND BE “FREELY GIVEN”**

4 Rule 15(a) of the Federal Rules of Civil Procedure provides that leave of court
5 is required to amend any pleading more than 20 days after that pleading is served;
6 however, Rule 15(a) expressly provides that such leave “shall be freely given when
7 justice so requires.” Regarding Rule 15(a), the United States Supreme Court in
8 Foman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962), held that
9 “this mandate *is to be heeded*.” (Emphasis added) Indeed, the United States Supreme
10 Court and the Ninth Circuit have repeatedly reaffirmed that leave to amend is to be
11 granted with extreme liberality. (See for example, Ibid [leave to amend should be
12 freely given]; U.S. v. Webb, 655 F.2d 977, 979 (9th Cir. 1981) [courts should be
13 guided by the policy favoring decisions on the merits “rather than on the pleadings or
14 technicalities”]; 3-15 J. Moore, Moore's Federal Practice ¶ 15.14 (3d ed. 2008) [“A
15 liberal, pro-amendment ethos dominates the intent and judicial construction of Rule
16 15(a)”])

17 The decision to grant or deny leave to amend lies within the discretion of the
18 district court. (Foman v. Davis, supra, 371 U.S. at 182) In Foman, the plaintiff
19 sought to amend her complaint after the district court entered judgment dismissing the
20 complaint. In holding that the district court abused its discretion when it refused to
21 grant the requested leave to amend, the Foman court stated:

22 “In the absence of any apparent or declared reason – such as undue delay,
23 bad faith or dilatory motive on the part of the movant, repeated failure to
24 cure deficiencies by amendments previously allowed, undue prejudice to
25 the opposing party by virtue of allowance of the amendment, futility of
26 amendment, etc. – the leave sought should, as the rules require, be ‘freely
27 given.’” (Ibid.)

28 The Court continued that:

1 “ . . . outright refusal to grant the leave without justifying reason
2 appearing for the denial is not an exercise of discretion; it is merely abuse
3 of that discretion and inconsistent with the spirit of the Federal Rules.”

4 (Ibid.)

5 Leave to amend should be granted unless the amendment would cause prejudice
6 to the opposing party, is sought in bad faith, is futile, or creates undue delay. (Ascon
7 Properties, Inc. v. Mobil Oil Company, 866 F.2d 1149, 1160 (9th Cir. 1989)) The
8 Ninth Circuit has held that mere delay in seeking leave to amend is not a sufficient
9 basis for denying a motion to amend. (Morongo Band of Mission Indians v. Rose,
10 893 F.2d 1074, 1079 (9th Cir. 1990) [finding that even a two-year delay is “not alone
11 enough to support denial”])

12 **A. The Amendment is Not Sought in Bad Faith**

13 In determining whether an amendment is sought in bad faith, courts have
14 inquired whether the party seeking amendment has previously engaged in dilatory
15 tactics and have evaluated the value of the proposed amendment. (See, Thornton v.
16 McClatchy Newspapers, Inc., 261 F.3d 789, 799 (9th. Cir. 2001) [magistrate’s finding
17 of bad faith based on plaintiff’s history of dilatory tactics during the proceedings and
18 the doubtful value of the proposed amendment])

19 Here, Defendants are raising the qualified immunity defense at the first
20 practicable moment. The qualified immunity defense was not available to Defendants
21 until the court’s ruling on May 1, 2009, when this Court determined that Dr. Corbett
22 violated the Establishment Clause when Dr. Corbett stated “religious, superstitious
23 nonsense” during a discussion about the lawsuit filed against CUSD, Dr. Corbett and
24 others by former biology teacher John Peloza. Mr. Peloza refused to teach the state
25 mandated curriculum (the theory of evolution) but instead taught creationism in the
26 classroom. This ruling, as explained below, rendered the qualified immunity defense
27 available to Defendants for the first time in this litigation.

28 ///

1 As set forth in Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d
2 396 (1982), the qualified-immunity defense “shield[s] [government agents] from
3 liability for civil damages insofar as their conduct does not violate clearly established
4 statutory or constitutional rights of which a reasonable person would have known.”
5 (Id. at 818; see also, Behrens v. Pelletier, 516 U.S. 299, 305-306, 116 S.Ct. 834, 133
6 L.Ed.2d 773 (1996))

7 Under Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001),
8 two inquiries are to be made in determining whether a public official is entitled to
9 qualified immunity. The first is whether the alleged acts, when construed in the light
10 most favorable to the plaintiff, show that the official’s conduct violated a
11 constitutional right. (Id. at 200-201) If no constitutional right was violated even under
12 the plaintiff’s allegations, the official is entitled to judgment; however, if a
13 constitutional violation could be established under a favorable view of the evidence
14 submitted, the court must move to the second step in the analysis.

15 The second step involves an inquiry into whether the constitutional right was
16 clearly established and “must be undertaken in light of the specific context of the case,
17 not as a broad general proposition.” (Ibid.) Quoting Malley v. Briggs, 475 U.S. 335,
18 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986), the Saucier court stated that qualified
19 immunity protects “all but the plainly incompetent or those who knowingly violate the
20 law.” (Saucier v. Katz, supra, 533 U.S. at 202) The inquiry on this prong is not
21 whether a particular right is established in a vacuum but whether it was established on
22 the specific facts of a particular case. (Id. at 202 [the court must find that the right was
23 clearly established in light of the specific facts of a particular case such that “a
24 reasonable official would understand that what he is doing violates that right”])

25 Under qualified immunity, public employees remain immune as long as their
26 actions do not violate clearly established [federal] statutory, or constitutional rights of
27 which a reasonable person would have known. (Harlow v. Fitzgerald, supra, 457 U. S.
28 at 818-819 [allegations of malice are insufficient to overcome application of qualified

1 immunity]; see also, Anderson v. Creighton, 483 U. S. 635, 640-641 (1987) [an
2 official's subjective belief is irrelevant; court applies an objective standard]]

3 When this Court ruled on May 1, 2009, it determined the first prong of the
4 inquiry, i.e., Dr. Corbett violated the Establishment Clause when he made the single
5 statement during one lecture that creationism was "religious, superstitious nonsense."
6 This determination triggered, for the first time, the possibility of a qualified immunity
7 defense.

8 Up until the Court rendered its decision, Farnan was contending that Dr.
9 Corbett made anti-Christian or anti-religious comments on a daily basis throughout
10 the 2007 semester and that anti-Christian comments essentially were the theme of Dr.
11 Corbett's lectures. Farnan clearly stated that the gist of his action was the "barrage of
12 religious hostility" expressed throughout the Fall 2007 semester and that his action did
13 not concern "a few incidental statements" of Dr. Corbett.

14 While case law did exist in 2007 that would seem to support Farnan's claim that
15 a curriculum or class theme based on anti-Christian or anti-religious teachings could
16 be a violation of the Establishment Clause no such case law existed at that time that a
17 single comment by a teacher during a year-long course would be such a violation.
18 Thus, if Farnan's contentions were accepted as true, it did not appear that a viable
19 qualified immunity defense existed.

20 This Court's ruling, however, is not based on Dr. Corbett making anti-Christian
21 or anti-religious comments on a daily basis such that it was a theme of Dr. Corbett's
22 AP European History course. Instead, this Court has held that a single comment made
23 during a single lecture is sufficient to trigger an Establishment Clause violation. It is
24 this ruling that now requires this Court to decide the second prong of the qualified
25 immunity defense. As explained here and in Defendants' concurrently filed motion for
26 determination, the qualified immunity defense was not available until the Court's
27 ruling on May 1, 2009. Following the Court's ruling, Defendants diligently brought
28 this matter to the Court's attention as quickly as possible. Defendants' request for

1 leave to amend was motivated by the Court's ruling, not by an interest in delaying the
2 proceedings.

3 **B. The Amendment is not Futile**

4 Where the legal basis for an amendment is tenuous, futility supports the refusal
5 to grant leave to amend. (Morongo Band, *supra*, 893 F.2d at 1079) Here, as more
6 fully explained in Defendants' concurrently filed motion for determination, the
7 amendment would not be futile. Qualified immunity now appears to provide a
8 complete defense to Farnan's claims due to this Court's May 1st ruling. In fact, an
9 argument could be made that a request for leave to amend made *prior* to the Court's
10 May 1st ruling most likely would have been considered legally tenuous in light of
11 Farnan's allegations up until that time. It is this Court's May 1st ruling that supports
12 the viability of the proposed amendment and renders this request anything but futile.

13 **C. The Amendment will not Cause Undue Prejudice to Farnan**

14 Regarding the "prejudice" element, it is the opposing party who has the burden
15 of demonstrating such prejudice. (See, In re Circuit Breaker Litigation, 175 F.R.D.
16 547, 551 (C.D. Cal. 1997)) The prejudice demonstrated *must be substantial*.
17 (Morongo Band of Mission Indians v. Rose, *supra*, 893 F.2d at 1079) Prejudice is the
18 touchstone inquiry under Rule 15(a). (Eminence Capital, LLC v. Aspeon, Inc., 316
19 F.3d 1048, 1052 (9th Cir. 2003) "Absent prejudice, or a strong showing of any of the
20 remaining factors, there exists a presumption under Rule 15(a) in favor of granting
21 leave to amend." (*Ibid.*)

22 Here, Farnan has known since April 28, 2008 that a qualified immunity defense
23 could be asserted in this matter. The Union Intervenors' answer to Farnan's first
24 amended complaint asserted qualified immunity as an affirmative defense. (See,
25 Union Intervenors' addendum to the joint proposal for disposition of the equitable and
26 other remaining issues, filed May 22, 2009 and the Union Intervenors' answer filed
27 with this Court on April 28, 2008) Accordingly, Farnan has been on notice for over
28 one year that the qualified immunity defense would be asserted by the Union

1 Intervenor on Dr. Corbett's behalf. In fact, based on the Union Intervenor's assertion
2 of the affirmative defense, Dr. Corbett already is entitled to a determination of
3 qualified immunity. Defendants, therefore, bring this motion in an abundance of
4 caution. On this basis, there can be little, if any, prejudice to Farnan if Defendants are
5 granted leave to amend.

6 In addition, contrary to Farnan's prior contentions, Farnan will not be required
7 to conduct further discovery if leave to amend is granted. Previously, Farnan asserted
8 that if leave to amend is granted Farnan will need to investigate "into the knowledge
9 and intent of Dr. Corbett with regard to the constitutional violation to combat the
10 affirmative defense of qualified immunity." (Joint proposal for disposition of the
11 equitable and other remaining issues, pp. 9-10) Farnan is incorrect.

12 The determination of whether Dr. Corbett is entitled to a qualified immunity
13 defense is not based on a subjective standard. Rather, under the second prong of the
14 test now at issue, a public official can be liable for a constitutional violation "only if
15 'the contours of the right [violated are] sufficiently clear that a *reasonable* official
16 would understand that what he is doing violates that right'." (United States v. Lanier,
17 520 U.S. 259, 270, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997) (Emphasis added)

18 Under qualified immunity, public employees remain immune as long as their
19 actions do not violate clearly established [federal] statutory or constitutional rights of
20 which a reasonable person would have known. (Harlow v. Fitzgerald, supra, 457 U. S.
21 at 817-818 [allegations of malice are insufficient to overcome application of qualified
22 immunity]; see also, Anderson v. Creighton, supra, 483 U.S. at 640-641 [an official's
23 subjective belief is irrelevant; court applies an objective standard])

24 Thus, Dr. Corbett's subjective belief is irrelevant because this Court is required
25 to apply an objective standard. (See, Anderson v. Creighton, supra, 483 U.S. at 640-
26 641)) As such, there will be no need to conduct further discovery to determine the
27 knowledge and intent of Dr. Corbett should leave to amend be granted and any
28 claimed prejudiced to Farnan on this basis is inaccurate.

1 **D. The Amendment will not Create Undue Delay**

2 As discussed previously, no further discovery would be required in order to
3 determine the viability of the qualified immunity defense. The defense is based on an
4 objective standard, not what Dr. Corbett believed at the time; therefore, further
5 discovery would be without merit. Additionally, the Court has already approved a
6 briefing schedule to facilitate a determination of whether Dr. Corbett is entitled to the
7 defense. As such, the amendment will not create any undue delay. If anything, the
8 consideration of the qualified immunity defense will expedite this action. If Farnan's
9 claim is barred by the defense, the issue can be resolved now and the necessity of a
10 trial or further consideration regarding injunctive relief or damages will be obviated.

11 **3. CONCLUSION**

12 In light of the above, this Court should grant Defendants leave to file an
13 amended answer asserting qualified immunity as an affirmative defense and should
14 deem the answer attached as Exhibit A filed and served as of the date of the hearing
15 on this motion.

16 DATED: June 8, 2009

WOODRUFF, SPRADLIN & SMART, APC

17
18 By: Daniel K. Spradlin

19 DANIEL K. SPRADLIN
20 ROBERTA A. KRAUS
21 Attorneys for Defendants CAPISTRANO
22 UNIFIED SCHOOL DISTRICT and DR.
23 JAMES CORBETT
24
25
26
27
28

DECLARATION OF DANIEL K. SPRADLIN

I, Daniel K. Spradlin, declare as follows:

1. I am an attorney admitted to practice law in the State of California and the United States District Court for the Central District of California. I am a director with the law firm of Woodruff, Spradlin & Smart, counsel of record for Defendants Capistrano Unified School District (“CUSD”) and Dr. James Corbett (collectively “Defendants”). As the primary handling attorney for this litigation, I have reviewed the pleadings and files maintained by my office in connection with this case, including the pleadings, discovery files, and materials relating to this incident. If called as a witness, I could and would competently testify to the following facts:

2. On December 13, 2007, Farnan filed his complaint against CUSD and Dr. Corbett seeking damages and injunctive relief. A first amended complaint subsequently was filed and Defendants answered the first amended complaint on March 19, 2008. On April 28, 2008 the motion of Intervenors, CALIFORNIA TEACHERS ASSOCIATION/NEA; and CAPISTRANO UNIFIED EDUCATION ASSOCIATION (“Union Intervenors”) was granted and the Union Intervenors’ answer to Farnan’s first amended complaint was filed. In their answer the Union Intervenors asserted the qualified immunity defense on Dr. Corbett’s behalf. (A copy of the Union Intervenors’ answer is attached as Exhibit B)

3. Because of the way that Farnan postured his case, an affirmative defense on the basis of qualified immunity was not asserted on Dr. Corbett’s behalf. For example, in his first amended complaint, Farnan asserted: “On a regular basis during the Fall 2007 semester . . .” (4:7-11); “Parents and/or students have complained to the District for many years regarding Dr. Corbett’s religious hostility expressed in his classroom” (9:26-27); and “Dr. Corbett continues to spend a large portion of class time . . . , he clearly demonstrates hostility towards religion . . .”, “As a result of his ongoing comments . . .” (10:3-7). Additionally, Farnan made the following assertions in his opposition to Defendants’ motion to dismiss: “statements made by Dr. Corbett

1 is using his bully pulpit to spew his propaganda . . .” (8:12-13); “Dr. Corbett’s
2 statements regarding religion and Christianity, both in Chad’s class and other
3 classes, send primarily a message of disapproval of religion” (9:2-4);
4 “Defendants’ actions fail the third prong of the Lemon test because the
5 statements made by Dr. Corbett are continual and incessant, and the School
6 District has done nothing to lessen them” (9:18-20); “*This case does not*
7 *concern a few incidental statements of a teacher that may periodically reflect*
8 *upon the teacher’s personal beliefs. Instead, it concerns Dr. Corbett’s continual*
9 *and incessant actions . . .*” (10:14-16; emphasis added); and “When applying
10 the correct standard, and reviewing all of Dr. Corbett’s comments instead of
11 singling out a few comments . . .” (14:24-26);⁵

- 12 ■ “[T]eachers, including [Dr. Corbett] violate the Establishment Clause when
13 they use the classroom to *repeatedly express* disapproval of religion, religious
14 faith, and the resulting worldviews” (1:6-8; emphasis added); “Defendants’
15 decision to ‘teach’ anti-Christian themes” (15:8-9); “barrage of hostility aimed
16 at Dr. Corbett’s students over the years past” (17:16-17); “the statements of Dr.
17 Corbett are continual and incessant” (18:3-4);⁶
- 18 ■ “Dr. James Corbett spent a significant amount of class time discussing topics
19 and issues not relevant to European history” (2:19-20); “On a regular basis
20 during the fall 2007 semester, Dr. Corbett discussed a wide variety of topics not
21 related to Advanced Placement European History” (3:3-4); “While teaching the
22 subject of the class and while discussing various other topics, Dr. Corbett made
23 statements and expressed viewpoints that were derogatory, disparaging, and
24 belittling regarding religion and Christianity in particular” (3:5-9); “These
25 comments were not limited to one particular day, but instead occurred on most
26

27 ⁵ Farnan’s opposition to Defendants’ motion for summary judgment

28 ⁶ Farnan’s memorandum of points and authorities in support of motion for summary judgment

1 days that I was in his classroom” (3:10-11); “Dr. Corbett’s anti-Christian
2 viewpoints are well-known by the students at my high school as they are often
3 presented through comments he makes during class” (3:12-14); “Dr. Corbett
4 made many comments regarding his personal bias against Christianity” (3:15-
5 16); “When Dr. Corbett was talking to my class, he regularly included his own
6 ideas about God and religion” (3:16-17); “As a result of his ongoing comments
7 . . .” (3:19-20);⁷

- 8 ■ “*The gravamen of Plaintiffs’ case was and remains the barrage of religious*
9 *hostility expressed by Dr. Corbett throughout the Fall 2007 semester during his*
10 *Advanced Placement European History class*” (1:4-6; emphasis added);⁸ and
- 11 ■ “Dr. Corbett’s habit or routine practice of making negative or hostile comments
12 about religion and Christianity . . .” (3:21-22)⁹

13 6. After this Court made its May 1, 2009 ruling on the parties’ motions for
14 summary judgment this office diligently began researching whether a qualified
15 immunity defense was now available to Dr. Corbett. After determining that Dr.
16 Corbett now was entitled to a finding of qualified immunity on his behalf, this office
17 engaged in a meet and confer conference with Farnan’s counsel and with counsel for
18 the Union Intervenors in order to complete the Court ordered joint proposal for
19 disposition of equitable and other issues. In that conversation I advised all counsel that
20 this office would seek a determination of qualified immunity on Dr. Corbett’s behalf.
21 That issue was again raised and partially briefed in Defendants’ portion of the joint
22 proposal of counsel filed with this Court on May 22, 2009.

23 7. A copy of Defendants’ proposed amended answer is attached as Exhibit
24 A.

25 _____
26 ⁷ Declaration of Chad Farnan in support of Farnan’s motion for summary judgment

27 ⁸ Farnan’s reply to Defendants’ opposition to Farnan’s motion for summary judgment

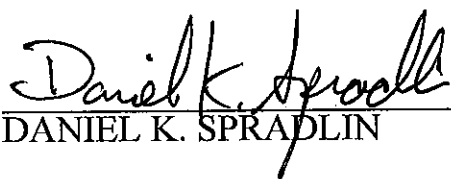
28 ⁹ Farnan’s response to Defendants’ objections to Farnan’s evidence submitted by
Farnan in support of his motion for summary judgment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

///

I declare under penalty of perjury under the laws of the United States that the foregoing facts are true and correct, and if called upon to do so, I could and would competently testify thereto.

Executed on June 8th, 2009, in Costa Mesa, California.



DANIEL K. SPRADLIN

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1 DANIEL K. SPRADLIN - State Bar No. 82950
dspradlin@wss-law.com
2 WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
3 Costa Mesa, California 92626-7670
Telephone: (714) 558-7000
4 Facsimile: (714) 835-7787

5 Attorneys for Defendants CAPISTRANO UNIFIED SCHOOL
DISTRICT and DR. JAMES CORBETT
6
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 CHAD FARNAN, a minor, by and
through his parents BILL FARNAN and
12 TERESA FARNAN,

13 Plaintiff,

14 v.

15 CAPISTRANO UNIFIED SCHOOL
DISTRICT; DR. JAMES CORBETT,
16 individually and in his official capacity as
an employee of Capistrano Unified School
17 District; and DOES 1 through 20,
inclusive,

18 Defendants.
19

20 CALIFORNIA TEACHERS
ASSOCIATION/NEA; and
21 CAPISTRANO UNIFIED EDUCATION
ASSOCIATION,
22

23 Union Intervenors/Defendants.
24

25 ///

26 ///

27 ///

28 ///

CASE NO.: SACV07-1434-JVS (ANx)

BEFORE THE HONORABLE
JAMES V. SELNA; COURTROOM 10C

**[PROPOSED] FIRST AMENDED
ANSWER OF DEFENDANTS
CAPISTRANO UNIFIED SCHOOL
DISTRICT AND DR. JAMES
CORBETT TO PLAINTIFF'S FIRST
AMENDED COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1 Defendants CAPISTRANO UNIFIED SCHOOL DISTRICT and DR. JAMES
2 CORBETT answer the first amended complaint on file herein as follows:

3 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

4 1. Answering Paragraphs 1, 2, 3, 4, 6, 9, 12 and 13 of the first amended
5 complaint, these answering Defendants have no information or belief sufficient to
6 enable them to answer the allegations contained in said Paragraphs, and basing their
7 denial on said grounds, deny generally and specifically, all and singular, each and
8 every allegation contained therein.

9 2. Answering Paragraph 5 of the first amended complaint, these answering
10 Defendants based upon information and belief admit that Chad Farnan is a minor and
11 was a student at Capistrano Valley High School at the times alleged in the complaint.
12 Except as so admitted, these answering Defendants deny the balance of the allegations
13 on lack of information and belief.

14 3. Answering Paragraph 7 of the first amended complaint, these answering
15 Defendants admit the allegations contained therein.

16 4. Answering Paragraph 8 of the first amended complaint, these answering
17 Defendants admit that Dr. James Corbett was at all times relevant to this lawsuit an
18 employee and teacher for the Capistrano Unified School District and that on the face
19 of the first complaint Plaintiff is suing Dr. Corbett in his individual and official
20 capacity.

21 5. Answering Paragraph 10 of the first amended complaint, these answering
22 Defendants admit the allegations contained therein.

23 6. Answering Paragraph 11 of the first amended complaint, these answering
24 Defendants admit that they are informed and believe that Chad Farnan is a sophomore
25 at Capistrano Valley High School. Except as so admitted, these answering Defendants
26 deny the balance of the allegations on lack of information and belief.

27 7. Answering Paragraph 14 of the first amended complaint, these answering
28 Defendants admit that on a regular basis in the fall 2007 semester Dr. Corbett

1 discussed a wide variety of topics to enrich his students in the instruction of Advanced
2 Placement European History. These answering Defendants further admit that
3 unbeknownst to Dr. Corbett statements may have been made which were intended to
4 provoke discussion which were beyond the comprehension level of Plaintiff Chad
5 Farnan. Except as so admitted, these Defendants deny specifically the remaining
6 allegations contained in Paragraph 14.

7 8. Answering Paragraph 15 of the first amended complaint, these answering
8 Defendants admit, based upon information and belief, that the Plaintiff has apparently
9 misunderstood and/or misconstrued a number of comments made by Dr. Corbett in his
10 classroom. As to the specific allegations, Defendants are informed and believe that
11 Plaintiff Chad Farnan surreptitiously recorded portions of Dr. Corbett's lectures and
12 classroom discussion all in violation of California Education Code section 51512, and
13 in violation of California Penal Code section 632. These answering Defendants further
14 allege that Plaintiff edited and/or extracted portions of such transcripts to convey Dr.
15 Corbett's meaning in classroom discussion in a false light. Defendants lack
16 information and belief as to the authenticity of the specific comments, and note that
17 they are taken out of context, and therefore deny the allegations contained therein until
18 the completion of discovery.

19 9. Answering Paragraph 17 of the first amended complaint, these answering
20 Defendants deny generally and specifically, all and singular, each and every allegation
21 contained therein, and more particularly deny that by reason of the premises alleged,
22 or for any cause whatever, Plaintiff suffered injuries or damages as alleged, or any
23 other sum or sums, or at all.

24 10. Answering Paragraph 18 of the first amended complaint, these answering
25 Defendants have no information or belief sufficient to enable them to answer the
26 allegations contained in said Paragraphs, and basing their denial on said grounds, deny
27 generally and specifically, all and singular, each and every allegation contained
28 therein.

1 11. Answering Paragraph 19 of the first amended complaint, these answering
2 Defendants admit that Dr. Corbett was acting in the course and scope of his
3 employment and except as so admitted, deny the balance of the allegations.

4 12. Answering Paragraphs 20 and 21 of the first amended complaint, these
5 answering Defendants deny generally and specifically, all and singular, each and
6 every allegation contained therein, and more particularly deny that by reason of the
7 premises alleged, or for any cause whatever, Plaintiff suffered injuries or damages as
8 alleged, or any other sum or sums, or at all.

9 **AS TO THE FIRST CLAIM FOR RELIEF**

10 13. Answering Paragraph 21 [sic] of the first amended complaint, these
11 answering Defendants refers to their answer to the allegations incorporated by
12 reference into said Paragraph and incorporate said answer herein by reference as
13 though fully set forth and for the same effect.

14 14. Answering Paragraphs 22, 23, 24 and 25 of the first amended complaint,
15 these answering Defendants deny generally and specifically, all and singular, each and
16 every allegation contained therein, and more particularly deny that by reason of the
17 premises alleged, or for any cause whatever, Plaintiff[suffered injuries or damages as
18 alleged, or any other sum or sums, or at all.

19 **FIRST AFFIRMATIVE DEFENSE TO EACH CLAIM FOR RELIEF**

20 As an affirmative defense, Defendants allege at all times alleged herein Dr.
21 Corbett acted in an objectively reasonable manner and is entitled to the qualified
22 immunity of good faith as a defense to actions brought as civil rights violations under
23 42 U.S.C. section 1983.

24 ///

25 ///

26 ///

27 ///

28 ///

1 WHEREFORE, Defendants pray that Plaintiff take nothing by way of his
2 complaint and that said Defendants be dismissed with costs herein incurred and for
3 such other and further relief as the Court deems just and proper.

4 DATED: June 8, 2009

WOODRUFF, SPRADLIN & SMART, APC

5
6 By: *Daniel K. Spradlin*

7 DANIEL K. SPRADLIN
8 Attorneys for Defendants CAPISTRANO
9 UNIFIED SCHOOL DISTRICT and DR.
10 JAMES CORBETT

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Defendants CAPISTRANO UNIFIED SCHOOL DISTRICT and DR. JAMES CORBETT hereby request a trial by jury.

DATED: June 8, 2009 WOODRUFF, SPRADLIN & SMART, APC

By: *Daniel K. Spradlin*

DANIEL K. SPRADLIN
Attorneys for Defendants CAPISTRANO
UNIFIED SCHOOL DISTRICT and DR.
JAMES CORBETT

1 MICHAEL D. HERSH - [State Bar No. 144095]
mhersh@cta.org
2 CALIFORNIA TEACHERS ASSOCIATION - LEGAL DEPARTMENT
11745 East Telegraph Road
3 Santa Fe Springs, California 90670
Telephone: 562.478.1348
4 Fax: 562.478.1434

5
6 Attorneys for Union Intervenors CALIFORNIA TEACHERS ASSOCIATION;
and CAPISTRANO UNIFIED EDUCATION ASSOCIATION

7
8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

10
11 CHAD FARNAN, a minor, by and
12 through his BILL FARNAN and
TERESA FARNAN,

13
14 Plaintiff,

15 v.

16
17 CAPISTRANO UNIFIED SCHOOL
DISTRICT; DR. JAMES CORBETT,
18 et al.,

19 Defendants.

20
21 CALIFORNIA TEACHERS
ASSOCIATION/NEA; and
22 CAPISTRANO UNIFIED
EDUCATION ASSOCIATION,

23
24 Union Intervenors for
Defendants.
25

Case No. : SACV-07-1434 JVS (ANx)

BEFORE THE HONORABLE
JAMES V. SELNA – COURTROOM 10C

UNION INTERVENORS' ANSWER
TO FIRST AMENDED
COMPLAINT

1 **JURISDICTION**

2 1. Responding to paragraph 1 of the First Amended Complaint (“FAC”),
3 Intervenor California Teachers Association (“CTA”) and Capistrano Unified
4 Education Association (“CUEA”), together referred to herein as “Union
5 Intervenor,” admit that the FAC raises federal claims under the First and
6 Fourteenth Amendments to the United States Constitution.

7 2. Responding to paragraph 2 of the FAC, Union Intervenor admit that
8 the Court has original jurisdiction over the raised federal law claims by operation
9 of 28 U.S.C. §§ 1331 and 1343.

10 3. Responding to paragraph 3 of the FAC, Union Intervenor admit that
11 this Court has authority to issue injunctive relief under 28 U.S.C. § 1343, or costs
12 and attorney’s fees under 42 U.S.C. § 1988(b).

13
14 **VENUE**

15 4. Responding to paragraph 4 of the FAC, Union Intervenor admit that
16 venue is proper in the United States District Court for the Central District of
17 California, Southern Division because a substantial part of the alleged events
18 giving rise to the claims occurred within the Central District.

19 5. Responding to paragraph 5 of the FAC, Union Intervenor admit all
20 factual allegations therein.

21 6. Responding to paragraph 6 of the FAC, Union Intervenor admit all
22 factual allegations therein.

23
24 **IDENTIFICATION OF THE DEFENDANTS**

25 7. Responding to paragraph 7 of the FAC, Union Intervenor admit all
26 factual allegations therein.

27 8. Responding to paragraph 8 of the FAC, Union Intervenor admit all
28 factual allegations therein.

1 9. Responding to paragraph 9 of the FAC, Union Intervenors are
2 without sufficient knowledge or information to form a belief as to the truth of the
3 allegations contained therein, and on that basis deny each and every allegation
4 contained therein.

5
6 **FACTUAL ALLEGATIONS**

7 10. Responding to paragraph 10 of the FAC, Union Intervenors admit all
8 factual allegations therein.

9 11. Responding to paragraph 11 of the FAC, Union Intervenors admit
10 that plaintiff Farnan is a 16-year-old sophomore at Capistrano Valley High School.
11 Union Intervenors are without sufficient knowledge or information to form a
12 belief as to the truth of the allegation that plaintiff Farnan is an honors student
13 whose goal is to attend either the University of Southern California or the
14 University of California at Los Angeles, and on that basis deny that allegation.

15 12. Responding to paragraph 12 of the FAC, Union Intervenors are
16 without sufficient knowledge or information to form a belief as to the truth of the
17 allegation, and on that basis deny that allegation.

18 13. Responding to paragraph 13 of the FAC, Union Intervenors are
19 without sufficient knowledge or information to form a belief as to the truth of the
20 allegation, and on that basis deny that allegation.

21 14. Responding to paragraph 14 of the FAC, Union Intervenors are
22 without sufficient knowledge or information to form a belief as to the truth of the
23 allegation, and on that basis deny that allegation.

24 15. Responding to paragraph 15 of the FAC, Union Intervenors are
25 without sufficient knowledge or information to form a belief as to the truth,
26 context, or accuracy of the quotations set forth in subparagraphs (a) through (i),
27 and on that basis deny those allegations.

28 ///

1 16. Responding to paragraph 16 of the FAC, Union Intervenors are
2 without sufficient knowledge or information to form a belief as to the truth of the
3 allegation, and on that basis deny that allegation.

4 17. Responding to paragraph 17 of the FAC, Union Intervenors are
5 without sufficient knowledge or information to form a belief as to the truth of the
6 allegation, and on that basis deny that allegation.

7 18. Responding to paragraph 18 of the FAC, Union Intervenors are
8 without sufficient knowledge or information to form a belief as to the truth of the
9 allegation, and on that basis deny that allegation.

10
11 **ALLEGATIONS OF LAW**

12 19. Responding to paragraph 19 of the FAC, Union Intervenors are
13 without sufficient knowledge or information to form a belief as to the truth of the
14 allegation, and on that basis deny that allegation.

15 20. Responding to paragraph 20 of the FAC, Union Intervenors are
16 without sufficient knowledge or information to form a belief as to the truth of the
17 allegation, and on that basis deny that allegation.

18 21. Responding to paragraph 21 of the FAC, Union Intervenors are
19 without sufficient knowledge or information to form a belief as to the truth of the
20 allegation, and on that basis deny that allegation.

21
22 **CLAIMS FOR RELIEF**

23 21. Responding to paragraph 21 (apparently an inadvertent
24 misnumbering) re-allege and incorporate herein by reference the responses to
25 plaintiff's allegations set forth above.

26 22. Responding to paragraph 22, Union Intervenors deny that allegation.

27 23. Responding to paragraph 23, Union Intervenors deny that allegation.

28 24. Responding to paragraph 24, Union Intervenors deny that allegation.

1 25. Responding to paragraph 25, Union Intervenors deny that allegation.
2

3 **AFFIRMATIVE DEFENSES**

4 1. As a first affirmative defense, Union Intervenors assert that the
5 factual allegations in the FAC fail to state a claim of the Establishment Clause of
6 the First Amendment because the alleged statements of Defendant Corbett do not
7 taken apart or as pattern of such statements, plausibly favor “irreligion” over
8 “religion” nor any particular religious group over another.

9 2. As a second affirmative defense, Union Intervenors assert that the
10 relief sought by plaintiff would violate the First Amendment expressive rights and
11 inalienable free speech rights pursuant Article I, section 2 of the California
12 Constitution of Defendants and Union Intervenors, as well as those of students,
13 California agencies and officials responsible for setting teacher standards and
14 curricula, and the public at large.

15 3. As a third affirmative defense, Union Intervenors assert that the relief
16 sought by Plaintiff would violate the Establishment Clause of the First
17 Amendment by equating religious beliefs and practices that are not based upon
18 established historical, social and scientific facts with curricula and teaching
19 material based upon established historical, social and scientific facts.

20 4. As a fourth affirmative defense, Union Intervenors assert that the
21 relief sought by plaintiff would violate Article IX, section 1 of the California
22 Constitution which states that, “A general diffusion of knowledge and intelligence
23 being essential to the preservation of the rights and liberties of the people, the
24 Legislature shall encourage by all suitable means the promotion of intellectual,
25 scientific, moral and agricultural improvement.”

26 5. As a fifth affirmative defense, Union Intervenors assert that the relief
27 sought by plaintiff would violate Article IX, section 8 of the California
28 Constitution which states in relevant part, “nor shall any sectarian or

1 denominational doctrine be taught, or instruction thereon be permitted, directly or
2 indirectly in any of the common schools of this State.”

3 6. As a sixth affirmative defense, Union Intervenors assert that the
4 statements of Dr. Corbett alleged in the FAC were performed within the scope of
5 his official duties and were subject to a qualified immunity.

6 7. As a seventh affirmative defense, Union Intervenors assert that
7 plaintiff's claims are barred by the doctrine of estoppel because of his illegal tape
8 recording of a classroom in violation of section 51512 of the California Education
9 Code.

10 8. As an eighth affirmative defense, Union Intervenors assert that
11 plaintiff failed to exhaust administrative remedies available through the defendant
12 School District and State Department of Education prior to filing the Complaint
13 and FAC.

14 9. As a ninth affirmative defense, Union Intervenors assert that plaintiff
15 failed to join as defendants persons so situated as a practical matter as to impair
16 the effectiveness of the relief sought by plaintiff, including, but not limited to,
17 State and school district officials responsible for setting professional teaching
18 standards and AP course curricula.

19 10. As a tenth affirmative defense, Union Intervenors assert that the
20 allegation that Plaintiff is “uncomfortable going to class and feels like Dr. Corbett
21 has created an atmosphere where he cannot effectively learn” in paragraph 18 of
22 the FAC, is not a cognizable injury resulting from an Establishment Clause
23 violation where such discomfort will naturally result whenever students encounter
24 doctrines and historical, social and scientific facts or contrary opinions in a public
25 school that conflict with a student's sincerely held beliefs.

26 ///

27 ///

28 ///

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 I am over the age of 18 and not a party to the within action; I am employed by WOODRUFF,
4 SPRADLIN & SMART in the County of Orange at 555 Anton Boulevard, Suite 1200, Costa Mesa,
CA 92626-7670.

5 On June 8, 2009, I served the foregoing document(s) described as **DEFENDANTS'**
6 **MOTION FOR LEAVE TO FILE AN AMENDED ANSWER; MEMORANDUM OF POINTS**
AND AUTHORITIES; DECLARATION OF DANIEL K. SPRADLIN

7 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the
attached mailing list;

8 by causing the foregoing document(s) to be electronically filed using the Court's Electronic
9 Filing System which constitutes service of the filed document(s) on the individual(s) listed
on the attached mailing list:

10 **(BY MAIL)** I placed said envelope(s) for collection and mailing, following ordinary
11 business practices, at the business offices of WOODRUFF, SPRADLIN & SMART, and
addressed as shown on the attached service list, for deposit in the United States Postal
12 Service. I am readily familiar with the practice of WOODRUFF, SPRADLIN & SMART for
collection and processing correspondence for mailing with the United States Postal Service,
13 and said envelope(s) will be deposited with the United States Postal Service on said date in
the ordinary course of business.

14 **(BY OVERNIGHT DELIVERY)** I placed said documents in envelope(s) for collection
15 following ordinary business practices, at the business offices of WOODRUFF, SPRADLIN
& SMART, and addressed as shown on the attached service list, for collection and delivery
16 to a courier authorized by _____ to receive said documents, with
delivery fees provided for. I am readily familiar with the practices of WOODRUFF,
17 SPRADLIN & SMART for collection and processing of documents for overnight delivery,
and said envelope(s) will be deposited for receipt by _____ on said
18 date in the ordinary course of business.


19 **(BY FACSIMILE)** I caused the above-referenced document to be transmitted to the
20 interested parties via facsimile transmission to the fax number(s) as stated on the attached
service list.

21 **(BY PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of the
addressee(s).

22 (State) I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct.

24 (Federal) I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made. I declare under penalty of perjury that the
25 above is true and correct.

26 Executed on June 8, 2009 at Costa Mesa, California.

27 
28 _____
Laura F. Perez

WOODRUFF, SPRADLIN
& SMART
ATTORNEYS AT LAW
COSTA MESA

1 **CHAD FARNAN et al. v. CAPISTRANO UNIFIED SCHOOL DISTRICT**

2 **USDC CASE NO. SACV07-1434-JVS (ANx)**
3 **ASSIGNED TO: HON. JAMES V. SELNA**

4 **ATTACHED SERVICE LIST**

5 **ADVOCATES FOR FAITH AND FREEDOM**

6 Jennifer L. Monk, Esq.
7 24910 Las Brisas Road, Suite 110
8 Murrieta, CA 92562
Telephone: (951) 304-7583
Facsimile: (951) 600-4996

Attorneys for Plaintiff
**CHAD FARNAN, a minor, by and
through his parents BILL FARNAN and
TERESA FARNAN**

9 Michael D. Hersh, Esq.
10 **CALIFORNIA TEACHERS ASSOCIATION –**
11 **LEGAL DEPARTMENT**
12 11745 East Telegraph Rd.
Santa Fe Springs, CA 90670
Telephone: (562) 478-1410
Facsimile: (562) 478-1434

Attorneys for Intervenors
**CALIFORNIA TEACHERS
ASSOCIATION and CAPISTRANO
UNIFIED EDUCATION
ASSOCIATION**

13 1/6/09
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28