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JAMES CORBETT

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 CHAD FARNAN, etc.,

11 Plaintiff,

12 v.

13 CAPISTRANO UNIFIED SCHOOL  
DISTRICT, et al.,

14 Defendants.

15  
16 CALIFORNIA TEACHERS  
ASSOCIATION/NEA; and  
17 CAPISTRANO UNIFIED EDUCATION  
ASSOCIATION,

18 Union Intervenors/Defendants.  
19

CASE NO.: SACV07-1434 JVS (ANx)

**DEFENDANTS' SUPPLEMENTAL  
BRIEF RE EFFECT OF UNION  
INTERVENORS' PLEADING OF  
QUALIFIED IMMUNITY AS AN  
AFFIRMATIVE DEFENSE ON  
DEFENDANTS' MOTION SEEKING  
A DETERMINATION REGARDING  
QUALIFIED IMMUNITY**

HEARINGS PENDING:

TYPE: Motions

DATE: August 31, 2009

TIME: 1:30 P.M.

COURTROOM: 10C/Judge Selna

20 1. Dr. Corbett is entitled to have the Qualified Immunity Defense  
21 Determined by the Court because the Defense was Properly Raised in the Intervenors'  
22 Answer: On April 28, 2008, this Court granted the Intervenors' motion to intervene  
23 without limitations and ordered the Intervenors to file an answer to the first amended  
24 complaint. (4/28/08 minute order) In their April 28, 2008 answer, the Intervenors'  
25 sixth affirmative defense states: ". . . *the statements of Dr. Corbett* alleged in the FAC  
26 *were performed within the scope of his official duties and were subject to a qualified*  
27 *immunity.* (Emphasis added) Thus, the Intervenors' qualified immunity defense was  
28 asserted to benefit Dr. Corbett. Intervenors have joined in Defendants' pending

1 motions seeking to determine qualified immunity for Corbett. Because the Intervenor  
2 asserted the qualified immunity defense on his behalf, Dr. Corbett is entitled to have  
3 this Court determine the defense at this time.

4 In Stewart-Warner Corp. v. Westinghouse Electric Corp., 325 F.2d 822 (2nd  
5 Cir. 1963), Canadian Westinghouse intervened as a defendant in Stewart-Warner's  
6 patent infringement action against Canadian's parent corporation. (Id. at 824)  
7 Canadian's answer was substantially the same as the defendant's but also added  
8 assertions of further acts of unfair competition, including counterclaims for  
9 declaratory judgment, injunctive relief and damages for unfair competition. (Ibid.)  
10 The district court struck the counterclaims and corresponding affirmative defenses  
11 presumably because they "improperly attempt[ed] to enlarge the issues of the main  
12 action;" however, the appellate court reversed. (Id. at 826) In reversing, the appellate  
13 court stated: "Where there exists a sufficiently close relationship between the claims  
14 and defenses of the intervenor and those of the original defendant to permit  
15 adjudication of all claims in one forum and in one suit without unnecessary delay –  
16 and to avoid as well the delay and waste of judicial resources attendant upon requiring  
17 separate trials – the district court is without discretion to deny the intervenor the  
18 opportunity to advance such claims." (Id. at 827) The court also found important the  
19 fact that the defendant and the intervenor's interests closely paralleled one another.

20 In Stewart-Warner, the issue decided was whether the intervenor could broaden  
21 the scope of the litigation by asserting additional claims and defenses. The court  
22 permitted it to do so because the additional claims and defenses were essential to  
23 resolving the original action; thus, permitting them to be heard and decided would not  
24 necessarily be broadening the scope of the case.

25 In Genentech, Inc. v. Bowen, 676 F.Supp. 301 (D. D.C. 1987), the court  
26 rejected the argument that the intervenors there could not raise claims not raised by  
27 Genentech, noting that "[i]ndeed, providing an opportunity to litigate claims not  
28 adequately raised by the parties is one of the purposes of intervention," and agreeing

1 with the Stewart-Warner court that the “whole tenor and framework of the Rules of  
2 Civil Procedure preclude application of a standard which strictly limits the intervenor  
3 to those defenses and counterclaims which the original defendant could himself have  
4 interposed.” (Genentech, Inc. v. Bowen, supra, 676 F.Supp. at 308, fn. 20)

5 Intervenor have asked this Court to determine the qualified immunity defense  
6 in Dr. Corbett’s favor. Dr. Corbett is entitled to have this Court determine the issue of  
7 qualified immunity because the defense was raised on his behalf by Intervenor.

8 2. Alternatively, Dr. Corbett should be allowed to amend his Answer to  
9 Raise the Defense for Himself: There is no waiver or prejudice to Farnan because the  
10 qualified immunity defense was asserted by Intervenor. In Charpentier v. Godsil, 937  
11 F.2d 859 (3rd Cir. 1991), the plaintiff sued multiple defendants, including Dr. Lewis.  
12 During the litigation some defendants, but not Dr. Lewis, asserted in their answers the  
13 doctrine of immunity. Before trial, the plaintiff settled most of his claims or won them  
14 via summary judgment, leaving Dr. Lewis as the only remaining defendant. After  
15 judgment was entered against him Dr. Lewis sought to raise immunity for the first  
16 time; however, the district court denied his request. The plaintiff argued there had  
17 been a waiver under Federal Rules of Civil Procedure, Rule 8(c). On appeal the  
18 appellate court reversed pointing out that (1) amendments are to be liberally granted;  
19 (2) answers of other defendants raised the defense; and (3) the trial brief of another  
20 defendant alerted the other parties to it. (Id. at 864) Thus, the defense should have  
21 been allowed.

22 Because Intervenor’s answer raised the qualified immunity defense it has not  
23 been waived and Farnan will not be prejudiced by permitting Defendants’ also to raise  
24 the defense. Liberality allows Defendants to amend the answer to raise the issue.

25 DATED: August 20, 2009

WOODRUFF, SPRADLIN & SMART, APC

26 By: Daniel K. Spradlin

27 DANIEL K. SPRADLIN  
28 ROBERTA A. KRAUS  
Attorneys for Defendants, CAPISTRANO UNIFIED  
SCHOOL DISTRICT and DR. JAMES CORBETT

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  
4 WOODRUFF, SPRADLIN & SMART in the County of Orange at 555 Anton  
Boulevard, Suite 1200, Costa Mesa, CA 92626-7670.

5 On August 20, 2009, I served the foregoing document(s) described as  
6 **DEFENDANTS' SUPPLEMENTAL BRIEF RE EFFECT OF UNION**  
7 **INTERVENORS' PLEADING OF QUALIFIED IMMUNITY AS AN**  
**AFFIRMATIVE DEFENSE ON DEFENDANTS' MOTION SEEKING A**  
**DETERMINATION REGARDING QUALIFIED IMMUNITY**

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

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

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

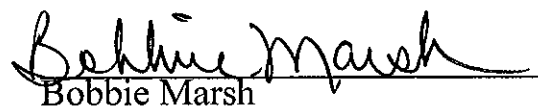
16  **(BY OVERNIGHT DELIVERY)** I placed said documents in envelope(s) for  
17 collection following ordinary business practices, at the business offices of  
WOODRUFF, SPRADLIN & SMART, and addressed as shown on the attached  
18 service list, for collection and delivery to a courier authorized by 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

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

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

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

26 Executed on August 20, 2009 at Costa Mesa, California.

27   
28 Bobbie Marsh

WOODRUFF, SPRADLIN  
& SMART  
ATTORNEYS AT LAW  
COSTA MESA

