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8 Attorneys for Defendants ROSEVILLE JOINT UNION
9 HIGH SCHOOL DISTRICT; JAMES JOINER;
10 R. JAN PINNEY; TONY MONETTI; STEVEN
11 LAWRENCE; DONALD GENASCI; RONALD SEVERSON.

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 LARRY CALDWELL,

No. 2:05-CV-00061-FCD-JFM

15 Plaintiff,
16 vs.

17 ROSEVILLE JOINT UNION HIGH SCHOOL
18 DISTRICT; JAMES JOINER and R. JAN
19 PINNEY, in their official capacities as members
20 of the Board of Education; TONY MONETTI,
21 in his official capacity as Superintendent;
22 STEVEN LAWRENCE in his official capacity
23 as Assistant Superintendent for Curriculum and
24 Instruction; DONALD GENASCI, in his
25 official capacity as Deputy Superintendent for
26 Personnel and Chief Compliance Officer;
27 RONALD SEVERSON, in his official capacity
28 as Principal of Granite Bay High School; and
DOES 1-10,

Defendants.

**DEFENDANTS, ROSEVILLE JOINT
UNION HIGH SCHOOL DISTRICT;
JAMES JOINER; R. JAN PINNEY
TONY MONETTI; STEVEN
LAWRENCE; DONALD GENASCI;
AND RONALD SEVERSON'S NOTICE
OF MOTION FOR RULE 11
SANCTIONS**

[F. R. C. P. Rule 11(c)(1)(A)]

**Date: August 4, 2006
Time: 10:00 a.m.
Courtroom: 2
Judge: Hon. Frank C. Damrell, Jr.
Trial: None Set**

TO THE COURT AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on August 4, 2006, at 10:00 a.m., in Courtroom No. 2,
before the Honorable Frank C. Damrell, Jr., District Judge, located at 501 "I" Street, Sacramento,
California 95814, Defendants, ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT, JAMES
JOINER and R. JAN PINNEY, in their official capacities as members of the Board of Education;
TONY MONETTI, in his official capacity as Superintendent; STEVEN LAWRENCE in his official
capacity as Assistant Superintendent for Curriculum and Instruction; DONALD GENASCI, in his

1 official capacity as Deputy (Assistant) Superintendent for Personnel and Chief Compliance Officer;
2 RONALD SEVERSON, in his official capacity as Principal of Granite Bay High School (hereafter
3 collectively "Defendants"), will move the Court for an Order imposing Federal Rule 11(c)(2)
4 sanctions for the filing and maintaining of the original and all subsequently filed and maintained
5 amended complaints in this action, on the following grounds:

6 (1) The filing and maintaining of this action was done for the improper purpose of
7 retaliation for the District's 3 to 2 vote to reject the QSEP into the District's high school curriculum,
8 pursuant to Rule 11(b)(1).

9 (2) The filing and maintaining of this action was done to harass and embarrass the
10 defendants, and to cause them to incur increased litigation costs, attorneys fees and expenses, pursuant
11 to Rule 11(b)(1).

12 (3) The filing and maintaining of this action was done for a political purpose and not for
13 the vindication of the Plaintiff's federal constitutional rights, pursuant to Rule 11(b)(1).

14 (4) The filing and maintaining of the claims and contentions in this action were done in
15 degradation of existing established law and settled legal precedent, pursuant to Rule 11(b)(2).

16 (5) The filing and maintaining of this action was done in bad faith and is a frivolous
17 lawsuit, pursuant to Rule 11(b)(2).

18 (6) That the filing and maintaining of this action was done based upon the use of
19 "information and belief " allegations that had no reasonable evidentiary support, pursuant to Rule
20 11(b)(3).

21 (7) That the Defendants are entitled to a dismissal of the remaining claims for prospect
22 relief, pursuant to Rule 11(c)(1)(A), because the Fourth Amended Complaint has been filed and
23 maintained in violation of Federal Rules of Civil Procedure, Rule 11(b)(1)-(3), for an improper
24 purpose to harass the Defendants, in retaliation for the District's refusal to adopt the QSEP program
25 into the District's curriculum on June 1, 2004, for an improper political reason and not to vindicate
26 any actual or future prospective violations of Larry Caldwell's federal constitutional rights.

27 This Motion for Sanctions will be based upon this Notice, the accompanying Memorandum
28 of Points and Authorities, the declarations of James B. Carr, the Supporting Declarations of James

1 Joiner, Jan Pinney, Tony Monetti, Donald Genasci, Steven Lawrence, and Ronald Severson filed in
2 support of the concurrently filed First and Second Motions for Summary Adjudication of Issues in this
3 action; all of the documentary evidence submitted herein by the Defendants in support of their
4 concurrently filed First and Second Motion for Summary Adjudication of Issues, all Points and
5 Authorities filed in support of the Defendants' concurrently filed First and Second Motions for
6 Summary Adjudication of Issues, all other pleadings and papers on file in this action, on the October
7 25, 2005 Memorandum and Order entered by this Court, all evidence of which the Court may take
8 Judicial Notice, and on such other evidence as may be presented to the Court at the time of the
9 Hearing of this Motion for Sanction under Rule 11(c)(1)(A) and (c)(2).

10 DATED: June 21, 2006

Respectfully Submitted,

11 EVANS, WIECKOWSKI & WARD LLP

12 By: /James B. Carr/

13 JAMES B. CARR
14 jcarr@lomde.com

15 Attorneys for Defendants,
16 Roseville Joint Union High School District,
17 James Joiner, R. Jan Pinney, Tony Monetti,
18 Steven Lawrence, Donald Genasci and Ronald
19 Severson
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1 **DECLARATION OF SERVICE**

2 [Federal Rules of Civil Procedure, Rule 5(b)]
3 [CCP §§1011, 1012, 1012.5, 1013 and 1013a]

4 I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the
5 within-entitled case. I am an employee of EVANS, WIECKOWSKI & WARD, LLP and my business address
6 is 745 University Avenue, Sacramento, California 95825.

7 On this date, I served the following document:

8 **DEFENDANTS, JAMES JOINER; R. JAN PINNEY; TONY MONETTI; STEVEN
9 LAWRENCE; DONALD GENASCI AND RONALD SEVERSON'S NOTICE OF SECOND
10 MOTION FOR SUMMARY ADJUDICATION OF ISSUES; MEMORANDUM OF POINTS
11 AND AUTHORITIES; SEPARATE STATEMENT OF UNDISPUTED FACTS; LIST OF
12 EXHIBITS; DECLARATION OF JAMES B. CARR; DECLARATION OF TONY MONETTI;
13 DECLARATION OF JAMES JOINER; DECLARATION OF DON GENASCI;
14 DECLARATION OF RON SEVERSON; DECLARATION OF R. JAN PINNEY; and
15 DECLARATION OF STEVEN LAWRENCE**

16 XX__ By electronic mail/transmission.

17 LARRY JACK CALDWELL
18 Attorney at Law
19 caldewellandassociates@surewest.net

20 KEVIN TRENT SNIDER
21 Attorney at Law
22 kevinSnider@pacificjustice.org

23 MATTHEW BROWN McREYNOLDS
24 Attorney at Law
25 mattmcreynolds@pacificjustice.org

26 I am familiar with the business practice of the EVANS, WIECKOWSKI & WARD, LLP with regard
27 to collection and processing of documents for mailing with electronic mail and the United States Postal Service.
28 The documents described above were electronically mailed (transmitted) to the e-mail addresses listed above
on the date stated below from the EVANS, WIECKOWSKI & WARD, LLP, pursuant to said business
practices, that same day in the ordinary course of business.

I certify by the act of filing that the original document was produced on paper purchased as recycled.
(CRC, Rules 981.1, and 201.)

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was
executed at Sacramento, California on June ____, 2006

/James B. Carr/
JAMES B. CARR

1 Mathew D. Evans (State Bar #78771)
James B. Carr (State Bar #53274)
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6 R. JAN PINNEY; TONY MONETTI; STEVEN
LAWRENCE; DONALD GENASCI; RONALD SEVERSON.
7

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10 LARRY CALDWELL,

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DISTRICT; JAMES JOINER and R. JAN
PINNEY, in their official capacities as members
14 of the Board of Education; TONY MONETTI,
in his official capacity as Superintendent;
15 STEVEN LAWRENCE in his official capacity
as Assistant Superintendent for Curriculum and
16 Instruction; DONALD GENASCI, in his
official capacity as Deputy Superintendent for
17 Personnel and Chief Compliance Officer;
RONALD SEVERSON, in his official capacity
18 as Principal of Granite Bay High School; and
DOES 1-10,

19 Defendants.
20 _____/

**POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANTS,
ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT, JAMES JOINER,
R. JAN PINNEY, TONY MONETTI,
STEVEN LAWRENCE, DONALD
GENASCI AND RONALD SEVERSON'S
MOTION FOR RULE 11 SANCTIONS**

[F. R. C. P. Rule 11(c)(1)(A)]

Date: August 4, 2006
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Trial: None Set

21
22 **TO THE COURT AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

23 The Defendants, Roseville Joint Union High School District, and JAMES JOINER, R. JAN
24 PINNEY, TONY MONETTI, STEVEN LAWRENCE, DONALD GENASCI, and RONALD
25 SEVERSON, all of whom were sued in their official capacities, as actors for the District (hereafter
26 collectively "Defendants"), submit the following Points and Authorities in Support of their Motion
27 for Rule 11 Sanctions.

28 ///

I.

INTRODUCTION

A. Procedural Status of Case.

The Plaintiff in this action is Larry Caldwell, who is a resident of and a parent with at least one child attending a school in the Roseville Joint Union High School District. [FHAC Para. Nos. 3-4.] Mr. Caldwell is also an attorney at law, licensed by the State Bar of California (SBN 88867). He has appeared in this action as a pro se plaintiff; however, he does have two associate counsels in the case, who are Kevin T. Snider (California SBN 170988) and Mathew McReynolds (California SBN 234797), both from the Pacific Justice Institute. [FHAC Caption, Page 1.]

The individual Defendants, James Joiner, R. Jan Pinney, Tony Monetti, Steven Lawrence, Donald Genasci, and Ronald Severson, are members of Board of Trustees, officers, officials and/or employees of the Roseville Joint Union High School District. They have been sued in their official capacities, for prospective relief under 42 U.S.C. § 1983 for violations of the Plaintiff's federal constitutional rights under the First and Fourteenth Amendments. [FHAC Para. Nos. 5-10.]

The Defendants previously brought a Motion to Dismiss the Third Amended Complaint. On October 25, 2005 the Court issued its Memorandum and Order, granting in part and denying in part the Defendant's Motion to Dismiss. The Court is requested to take judicial notice of its own Memorandum and Order issued in this action. [Caldwell v. Roseville Joint Union High School District, et al., 2005 U.S. Dist LEXIS 24923* 36-38 (October 25, 2005).]

The only claims left in this matter are the claims for prospective relief under 42 U.S.C. § 1983 for injunctive and declaratory relief for alleged future violations of the Plaintiff's First Amendment Free Speech rights, his First Amendment Free Exercise of Religion and Establishment Clause rights and his Equal Protection and Procedural Due Process rights claims under the Fourteenth Amendment, against the individual defendants. [Caldwell, supra at *36-38.]

To reiterate, all claims for damages, including nominal damages and all other claims for relief, have been ordered dismissed without leave to amend, as to the Roseville Joint Union High School District. All state law claims against all individual defendants have been dismissed without leave to amend, based on the Eleventh Amendment. All claims against the Roseville Joint Union High School

1 District have been dismissed without leave to amend, based upon the bar of Eleventh Amendment
2 Sovereign Immunity. [Ibid. *36-38.]

3 The Defendants have also concurrently filed a First Motion for Summary Adjudication of
4 Issues, relating to the First Amendment prospective claims, except for the Establishment Clause
5 claims, and a Second Motion for Summary Adjudication of Issues, relating to the First Amendment
6 Establishment Clause claims and the Equal Protection and Procedural Due Process claims under the
7 Fourteenth Amendment. Both of said motions, and all supporting papers, are incorporated herein by
8 reference, as is set forth in full in support the Defendants' Rule 11 Sanctions motion.

9 The Defendants now bring this Motion for Rule 11 Sanctions against the Plaintiff and his legal
10 counsels for the filing and maintaining of this action in violation of Federal Rule 11(b)(1)-(3). The
11 Defendants are entitled to appropriate sanctions in the discretion of the Court including an order
12 dismissing with prejudice all prospective claims for injunctive and declaratory relief remaining in the
13 FHAC, together with a monetary award for reasonable attorneys fees, costs and expenses, and such
14 further orders as are necessary and proper to defer repetition of such conduct by the Plaintiff and
15 others similarly situated. [Federal Rule 11(c)(2).]

16 The Defendants' Separate Statements of Undisputed Facts, filed in support of their First and
17 Second Motions for Summary Adjudication, are incorporated here in by reference as if set forth in full,
18 in support of the Defendants' Rule 11 Sanctions Motion. (References will be identified as "**UMF**
19 **Nos.**") The Court is further requested to take judicial notice of the Defendants' First and Second
20 Motions for Summary Adjudication, filed concurrently herewith their Rule 11 Sanctions Motion,
21 including all of the Supporting Declaration filed in said Motions for Summary Adjudication [Federal
22 Rule of Evidence, Rule 201.]

23 **B. Reasons for Imposition of Sanctions.**

24 **1. Harassment and Improper Purpose.**

25 This action has been brought by the Plaintiff and his counsels for an improper purpose, which
26 was to harass and to embarrass the Defendants in retaliation for the Districts' refusal to adopt the
27 QSEP on June 1, 2004, wherein it was voted down by the School Board by a 3 to 2 vote. [Federal
28 Rule 11(b)(1).] [**UMF Nos. 7-14, 19-20, and 23-30**.] This action was further pursued for an improper

1 political agenda and not to vindicate any violations of the Plaintiff's constitutional rights under the
2 First and Fourteenth Amendments. [UMF Nos. 19-21, 27, 33-36, 40-41, and 52-56.]

3 The pursuit of Plaintiff's claims for prospective equitable relief relating to injunctive and
4 declaratory relief claims were likewise done with an improper purpose, because there had been a vote
5 on June 1, 2004, that defeated the QSEP, and the Plaintiff knew some six months later, when he filed
6 the complaint in January 2005, that there had been no violations of any prospective constitutional
7 rights, yet he filed and pursued this action, anyway. [UMF Nos. 9-10, 14, 19-23, 26-27, 36-37, 40-41,
8 and 49-56.]

9 The last factual date set forth in the FHAC is June 1, 2004. [FHAC, Para. 14.] However, the
10 plaintiff intentionally and purposely omitted to plead the fact that there was a vote on the QSEP, which
11 was taken on June 1, 2004. He then waited for over 6 months to file his complaint, and yet he still
12 claimed that he was entitled to prospective equitable injunctive and declaratory relief for continued
13 violations of 42 U.S.C. § 1983 from June 1, 2004 forward to the present, while purposely omitting the
14 vote on the QSEP that occurred on June 1, 2004. [UMF Nos. 24-27, 29, 41, 51 and 53-56.]

15 The original complaint in this action was not filed until on or about January 13, 2005. Since
16 that time there have been a First, Second, Third and now a Fourth Amended Complaint (hereafter
17 "FHAC") filed in this case. Neither the original complaint, nor any of the amended complaints filed
18 since January 24, 2005, have set forth any facts that have occurred in the period from June 1, 2004,
19 up and to the filing of the FHAC on October 27, 2005. (See: Supporting Declarations to First and
20 Second Motions for Summary Adjudication by Tony Monetti, including **Exhibits A-Y, inclusive**; by
21 James Joiner, including **Exhibits Nos. 1-7, inclusive**; by Donald Genasci, including **Exhibits AA-**
22 **BB**; by Ronald Severson, including **Exhibits A-F, inclusive**; by R. Jan Pinney; and by Steven
23 Lawrence, all of which are incorporated herein by reference as if set forth in full.) There are no factual
24 allegations upon which to base any claims for prospective equitable relief for any violations of the
25 First Amendment or Fourteenth Amendment. All allegations have been made on "information and
26 belief." The Court is requested to take judicial notice of its own files, orders and records in this
27 action. [Fed. Rules of Evidence, Rule 201.]

28 The FHAC contains nothing but conclusory statements that something might happen in the

1 future, and refers to the alleged past conduct of the defendants, all of which predate June 1, 2004.
2 [FHAC Nos. 5-10.] [UMF Nos. 7, 9, 11-20, 33-41 and 49-52.] A claim for prospective relief
3 for a 42 U.S.C. § 1983 violation of constitutional rights cannot be based on past conduct. Even if the
4 plaintiff has suffered past injuries, he does not have standing to seek equitable relief, unless he faces
5 a real and immediate threat of repeated injury. [Nelson v. King County, 895 F. 2d 1248, 1251-1254
6 (9th Cir. 1990).] A plaintiff seeking prospective relief must show that he is immediately in danger
7 of sustaining some direct injury and that threatened injury may be not be "conjectural" or
8 "hypothetical." [City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983); Lujan v. Defenders of
9 Wildlife, 504 U.S. 555, 560, 564 (1992).]

10 The only operative facts set forth in the FHAC are for alleged past actions for the period of
11 June 3, 2003 through June 1, 2004. [FHAC Para. No. 14.] There are absolutely no material facts
12 alleged, or that can be established by the Plaintiff, that establish any future claimed threat of any
13 deprivation or infringement or violation of any the First Amendment and/or Fourth Amendment rights
14 claimed by Plaintiff Caldwell. The plaintiff's case is now moot. [UMF Nos. 6-9, 14-20, 30, 32-36,
15 40-41 and 49-52.]

16 2. Claims not Warranted by Existing Settled Precedent.

17 The claims and legal contentions advanced by the plaintiff were not supported by existing law,
18 and they were all frivolous. [Federal Rule 11(b)(2).] The Plaintiff and his counsel were fully aware
19 of existing Supreme Court precedent that the teaching of evolution in the public schools was not the
20 establishment of a religion, nor was it an unconstitutional violation of the Plaintiff's own religious
21 beliefs, and that it did not impose any religious belief upon the Plaintiff. [Edwards v. Aguillard, 482
22 U.S. 578, 587-597 (1987).]

23 Further, the Plaintiff and his counsels knew that the imposition of creationist science and/or
24 intelligent design into the District's High School curriculum was unconstitutional and the
25 establishment of religion, which the Government had a right (a legitimate government purpose) to
26 question and to inquire into the religion viewpoints that were inherent in the QSEP, as part of its
27 discretionary duty to establish the District's high school science curriculum. [Lemon v. Krutzman, 403
28 U.S. 602, 612-613 (1971); Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 267 (1988);

1 Downs v. Los Angeles Unified School District, 223 F. 3d 1003, 1012 (9th Circuit 2000); Leebaret v.
2 Harrington and FairField Board of Education, 332 F. 3d 134, 141 (2nd. Cir. 2003); Vernon v. City of
3 Los Angeles, 27 F. 3d 1385, 1393 (9th Cir. 1994); Brown v. Woodland Joint Unified School District,
4 27 F. 3d 1373 (9th Cir. 1994); Peloza v. Capistrano Unified School District, 37 F. 3d 517, 521-522
5 (9th Cir. 1994).]

6 **3. Lack of Evidentiary Support of Allegations and Factual Contentions.**

7 The allegations and contentions made in the FHAC were made on "**information and belief**,"
8 without any evidentiary support, and/or any reasonable belief that there was any evidentiary support
9 for said allegations. [Federal Rule 11(b)(3).] Please see the Defendants' concurrently filed First and
10 Second Motions for Summary Adjudication, including the Defendants' Separate Statement of Facts,
11 which are incorporated herein by reference, which show the lack of any evidentiary support for the
12 contentions raised in the FHAC. [**UMF Nos. 7-9, 14-20, 27, 30, 36, 38-39, 41-51 and 56.**]

13 The signing of the complaint (and the various amended complaints) was a false certification
14 that there was any evidentiary support for this action. [Federal Rule 11(b)(3).] This action was filed
15 in bad faith, and it was continued to be pursued in bad faith with the knowledge by the Plaintiff and
16 his counsel that there was no reasonable expectation of any factual support for the allegation and
17 contentions contained in the FHAC. [Antonious v. Spalding & Evenflo Companies, 275 F. 3d 1066,
18 1072 (Fed. Cir. 2002); View Engineering, Inc. v. Robotic Vision Systems, Inc., 208 F. 3d 981, 984-
19 986.]

20 **III.**

21 **LEGAL ARGUMENT**

22 **A. The Intentional Omission of Material Facts.**

23 The Plaintiff's QSEP proposal for the science and biology curriculum was in fact placed on the
24 Board Agenda for May 4, 2004. [Caldwell, supra at *25.] [**FHAC P. 25.**] At that time, it died for
25 lack of a second and no vote was taken. The Board President, L. Dean Forman, then had the matter
26 re-submitted and re-scheduled for presentation at the June 1, 2004 School Board meeting. The QSEP
27 was in fact set for public debate and public hearing on June 1, 2004. There was a public debate,
28 including public impute by Larry Caldwell, and then the matter was voted upon by the Board. The

1 vote was 3 to 2, not to adopt the Caldwell QSEP, into the District Science and Biology Curriculum.
2 [UMF Nos. 24-30.] (See: Board Transcriptions and Board Minutes, Exhibits A-B, V-W and X-
3 Y, to the Supporting Declaration of Tony Monetti.)

4 On June 1, 2004, the members of the board were as follows, and they voted as follows:

5	(1) Joiner	No
6	(2) Pinney	No
7	(3) L. Dean Forman	Yes
8	(4) Kelly Lafferty	Yes
9	(5) Gary Kidder	No

10 [UMF Nos. 29.] (See: Supporting Declarations of Tony Monetti, Para. 10, and Exhibits A-B; of
11 James Joiner, Para. 13; and R. Jan Pinney, Para. 12-15.)

12 Consequently, prior to the filing of this action in January 2005, Mr. Caldwell did in fact have
13 his QSEP program presented to the School Board on June 1, 2004, and it was voted down and not
14 adopted by the School Board. This act occurred after the June 3, 2003 through June 1, 2004 time
15 period that is alleged in the FHAC. [TAC/FHA P. 14.] Mr. Caldwell intentionally and knowingly
16 omitted this most material fact from his original and all subsequently filed amended complaints in this
17 action. He has intentionally deceived this Court by this calculated pleading maneuver, and as such,
18 he has violated Federal Rule 11(b)(1)-(3). [UMF. Nos. 26-30.]

19 This intentional omission of the fact that there had been a vote on the QSEP on June 1, 2004,
20 from his pleadings created the false illusion that he had "prospective" equitable claims against the
21 Defendants via the Ex Parte Young doctrine. Without this intentional and false pleading maneuver,
22 the action filed by Caldwell would have been dismissed by the Court on the Defendant's prior Motion
23 to Dismiss, because there would have been no basis for any prospective equitable claims for relief
24 against these Individual Defendants.

25 Any such claim for prospective injunctive and declaratory relief after June 1, 2004, to the
26 present are moot. [UMF Nos. 20, 22, 27, 30, 40-41 and 49-52.] There is no justiciable controversy
27 at this time, nor was there any in January 2005, when this case was originally filed with the Court.
28 [City of Los Angeles v. Lyons, 461 U.S. 95, 101.] Yet, the Plaintiff and his counsel have filed and

1 continue to pursue this case, which is a violation of Rule 11(b)(1)-(3).

2 This was an intentional deception on this Court. It has caused the District and the Individuals
3 to have to expend time, costs, and attorneys fees in the defense of this action. This is a violation of
4 Federal Rules of Civil Procedure, Rule 11(b). Mr. Caldwell intentionally omitted the material fact
5 that a vote (3 to2) on the QSEP had been taken on June 1, 2004. These crucial facts are fatal to Mr.
6 Caldwell's constitutional claims in this case. He did not allege any actual facts to support his claims
7 for prospective relief (only vague allegations made on "**information and belief**"), because he knew
8 that there were no such facts.

9 He has intentionally and willfully omitted the true material facts about the vote against his
10 QSEP from his original and all other amended complaints, including his FHAC. Rule 11(b)(3)
11 required that the Plaintiff certify that he had evidentiary support for his factual contentions and
12 allegations. There are none! [Whitehead v. Food Max of Mississippi, Inc., 332 F. 3d 796 (5th
13 Circuit, 2003); American International Adjustment Co. v. Galvin, 86 F. 3d 1455 (7th Circuit, 1996).]

14 This action was filed against the Defendants in bad faith.

15 **B. Frivolous Contentions Not Support by Existing Precedent.**

16 Pursuant to Rule 11(b)(2), the signature of the party and/or his counsel to a complaint, certifies
17 that the claims are warranted by existing law. This case was filed and pursued in contradiction to the
18 overwhelming body of existing law as set forth by the settled precedents of the United States Supreme
19 Court, the Ninth Circuit Court of Appeals, the Eastern District of California authorities, and California
20 State law authorities. [Edwards v. Aguillard, supra; Pelozo v. Capistrano, supra; Brown v. Woodland
21 Unified School District, supra; Kizmiller v. Dover Area, supra ; Hazelwood School District v.
22 Kuhlmeier, supra; Leebaert, supra; Downs v. Los Angeles USD, supra; Cornelius v. NCAAP, supra;
23 Perry Education Association, supra.]

24 It was filed in bad faith. It was not supported by existing United States Supreme Court
25 precedents, or by any non-frivolous arguments in the support of the alteration of existing law. [In re
26 Sargent, 136 F.3d 349, 352 (4th Circuit, 1998).] There was no chance of success under the existing
27 precedents.

28 Therefore, the Individual Defendants request that this Court enter an order describing the

1 specific conduct that appears to violate subsection (b), and direct the attorneys and the plaintiff to
2 show cause why they have not violated subsection (b). [Rule 11 (c)(1)(B).] [Sprewell v. Golden
3 State Warriors, 231 F. 3d 520, 530 (9th Circuit 2000).]

4 The Individual Defendants, as well as the District, are entitled to sanctions from the Court
5 under Rule 11 and under 42 USC § 1988, because the Plaintiff's action against these Individual
6 Defendants was unreasonable, frivolous, meritless and vexatious. [Robert v. Spalding, 783 F. 2d 867,
7 874 (9th Cir. 1986); Coverdell v Department of Social & Health Services, 834 F. 2d 758, 770 (9th Cir.
8 1987.] The "colorable claims" alleged under § 1983 are without merit or any material factual support,
9 and have only been made on "information and belief" without reasonable belief under the
10 circumstances. [Rule 11(b).]

11 In addition, the prospective claims allegation for the Ex Parte Young, 209 U.S. 123 (1908)
12 prospective relief exception to the bar of federal qualified immunity, were made only "*information*
13 *and belief*" without any material factual support or any reasonable belief that any alleged future
14 constitutional violations could be established. The only reasons that Ex Parte Young could even be
15 applied by the Court was made possible by the deceptive pleading omission by the Plaintiff and his
16 associate counsels, and could only be established by the intentional and purposeful omission of the
17 most important material fact in this case; i.e., that the Board of Trustees did in fact place the QSEP
18 matter on the June 2004 School Board meeting agenda, where it was debated and voted down by a 3
19 to 2 vote.

20 This fact eliminates any "reasonable belief" that there would be any "future prospective facts
21 or actions" by the Individual Defendants that would in anyway establish any basis for injunctive or
22 declaratory relief in this case. The entire FHAC is based upon a fraud upon this Court. It is based
23 upon the intentional deceptive pleading practices of Larry Caldwell and his two associate counsels.
24 The FHAC is and was nothing but a sham pleading. Thus, the Individual Defendants and the District
25 are entitled to sanctions, attorneys fees and costs in this matter. [Rule 11(b)(3).]

26 **C. Improper Purposes and Harassment of the Defendants.**

27 This action was brought for an improper purpose, which was to harass and embarrass the
28 District and the Individual Defendants, because they had refused to adopt the Caldwell QSEP program

1 and accompanying materials into the District High School science and biology curriculum on June 1,
2 2004, wherein it was voted down 3 to 2 by the School Board. [Whitehead v. Food Max of
3 Mississippi, Inc., 332 F. 3d 796 (5th Circuit, 2003); Rule 11(b)(1).]

4 This was part of an intentional political agenda by the Plaintiff and his counsel in retaliation
5 for the refusal of the District's Board to adopt the QSEP into the curriculum on June 1, 2004. The suit
6 was filed to attempt to influence the political make-up of the School Board and to continually harass
7 the Individual Defendants, as well as an attempt to impose an establishment of religion into the
8 District's science curriculum. [UMF. Nos. 27-29, 35, 37 and 53-56.] (See: Supporting Declaration
9 of James Joiner, **Exhibits Nos. 1-7**, inclusive.)

10 It was not filed to vindicate any actual violations of Larry Caldwell's constitutional rights, but
11 for an improper pursue which was to intimate and harass the District, as well as to punish the
12 Individually Named Defendants (all of whom are also "Christians") for not giving Mr. Caldwell
13 deferential treatment regarding the presentation of his QSEP program at Board Meetings and at CIT
14 community meetings. The Individual Defendants were just doing their jobs under the law.

15 Mr. Caldwell's representation that the QSEP was totally secular was a blatant
16 misrepresentation of fact to the Court. [FHAC Para. 14.] [Rule 11(b)(1)] [UMF Nos. 38-39, 43-48
17 and 50-52.] His QSEP and CIT materials were in fact not "strictly secular," but in fact, they contained
18 a religious and a political agenda regarding the advancement of the Christian Fundamentalist religious
19 viewpoint of creationist science, intelligent design and anti-evolutionary theories. [Edwards v.
20 Aguillard, supra at 587-597; Kitzmiller v. Dover Area District School, supra.] (See: **Exhibits A-B,**
21 **C-D, E, M-N, O-P, Q-R, S, T-U, V-W and X-Y**, to Tony Monetti Supporting Declaration; See:
22 **Exhibits Nos. 2-7, inclusive**, to James Joiner Supporting Declaration; See: **Exhibits A-F, inclusive**,
23 to Ronald Severson Supporting Declaration.)

24 In addition, The Court is requested to take judicial notice of the August 1, 2005 speech by
25 President George W. Bush, wherein he publically advocated the adoption of intelligent design (a
26 particular religious doctrine) into the curriculums of the public schools in this Nation. [Federal Rules
27 of Evidence, Rule 201(b).] (See: **Exhibit D**, to Tony Monetti Supporting Declaration, which is
28 incorporated herein by reference.) This e-mail letter was sent to the District by Mr. Caldwell, which

1 is and admission that Caldwell's advocacy of QSEP was not strictly secular, but was in fact the
2 advocacy of a particular religious viewpoint into the District's high school curriculum.

3 Therefore, this case has been filed and pursued for an improper motive. It is frivolous and was
4 pursued in bad faith by the Plaintiff and his counsels. The Defendants should be awarded appropriate
5 sanctions to deter this type of conduct, as well as reasonable attorneys fees, costs and expenses
6 incurred in the defense of this unreasonable, frivolous, meritless and vexatious litigation.

7 V.

8 **CONCLUSION**

9 Based upon the foregoing, the Defendants are entitled to an order from the Court imposing
10 monetary and issue sanctions against Mr. Caldwell and his counsels. They are further entitled to an
11 order dismissing with prejudice (without leave to amend) the remaining prospective equitable claims
12 for injunctive and declaratory relief contained in the Fourth Amended Complaint.

13 The Defendants request leave of the Court to submit further supplemental declarations and
14 evidence as to all attorneys fees, costs and expenses incurred in the defense of this action, including
15 the costs and fees incurred in bringing this Rule 11(c) motion, and request that the Court set a separate
16 OSC Re: Rule 11 Sanctions Hearing to determine why sanctions should not be imposed upon Mr.
17 Caldwell and his counsel.

18 DATED: June 21, 2006

Respectfully Submitted,

EVANS, WIECKOWSKI & WARD LLP

By: /James B. Carr/

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24 Roseville Joint Union High School District,
25 James Joiner, R. Jan Pinney, Tony Monetti,
26 Steven Lawrence, Donald Genasci and Ronald
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9 HIGH SCHOOL DISTRICT; JAMES JOINER;
10 R. JAN PINNEY; TONY MONETTI; STEVEN
11 LAWRENCE; DONALD GENASCI; RONALD SEVERSON.

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 LARRY CALDWELL,

No. 2:05-CV-00061-FCD-JFM

15 Plaintiff,

16 vs.

**DECLARATION OF JAMES B. CARR
IN SUPPORT OF DEFENDANTS'
MOTION FOR RULE 11 SANCTIONS**

17 ROSEVILLE JOINT UNION HIGH SCHOOL
18 DISTRICT; JAMES JOINER and R. JAN
19 PINNEY, in their official capacities as members
20 of the Board of Education; TONY MONETTI,
21 in his official capacity as Superintendent;
22 STEVEN LAWRENCE in his official capacity
23 as Assistant Superintendent for Curriculum and
24 Instruction; DONALD GENASCI, in his
25 official capacity as Deputy Superintendent for
26 Personnel and Chief Compliance Officer;
27 RONALD SEVERSON, in his official capacity
28 as Principal of Granite Bay High School; and
DOES 1-10,

Date: August 4, 2006
Time: 10:00 a.m.
Courtroom: 2
Judge: Hon. Frank C. Damrell, Jr.
Trial: None Set

Defendants.

I, James B. Carr, declare:

1. I am over age eighteen, a resident of the State of California and a citizen of the United States of America.

2. I am an attorney licensed to practice law in the State of California, and I have been admitted to practice in the Eastern District of California and in the United States Ninth Circuit Court of Appeals.

3. I am an associate attorney with the Law Office of Evans, Wieckowski & Ward, LLP,

1 attorneys of record for defendants, Roseville Joint Union High School District, James Joiner, R. Jan
2 Pinney, Tony Monetti, Steven Lawrence, Donald Genasci and Ronald Severson. I have personal
3 knowledge of the facts set forth herein, and I could competently testify to these facts, if called as a
4 witness.

5 4. The defendants, Roseville Joint Union High School District, James Joiner, R. Jan
6 Pinney, Tony Monetti, Steven Lawrence, Donald Genasci and Ronald Severson, has concurrently filed
7 First and Second Motions for Summary Adjudication of Issues, accompanied by Supporting
8 Declarations by James Joiner, R. Jan Pinney, Tony Monetti, Steven Lawrence, Donald Genasci and
9 Ronald Severson, supported by Separate Statements of Material Facts, and Memorandums of Points
10 & Authorities. Said pleadings and documents are incorporated by reference, as if set forth in full, in
11 support of the Defendants' Motion for Rule 11 Sanctions.

12 5. The Defendants have also filed a separate "**List of Exhibits**," which sets forth the
13 documentary evidence (exhibits) that have been filed in support of the Defendants' First and Second
14 Motions for Summary Adjudication of Issues, as follows: Tony Monetti Declaration, **Exhibits A-Y,**
15 **inclusive**; James Joiner Declaration, **Exhibits Nos. 1-7, inclusive**; Donald Genasci Declaration,
16 **Exhibits AA-BB**; and Ronald Severson Declaration, **Exhibits A-F, inclusive**. Said List of Exhibits
17 and all of said Exhibits are hereby incorporated by reference, as if set forth in full, into the Defendants'
18 Motion for Rule 11 Sanctions filed with this Court.

19 6. I have also filed Declarations in Support of the Defendants' First and Second Motions
20 for Summary Adjudication of Issues, which are hereby incorporated by reference, as if set forth in full,
21 in support of the Defendants' Motion for Rule 11 Sanctions.

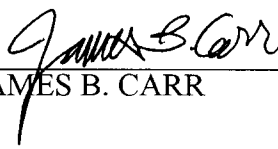
22 7. The Tony Monetti Supporting Declaration contains, and marked as **Exhibits A, F,**
23 **H, J, M, O, Q, T, W and X**, true and correct transcriptions, which were ordered prepared by my
24 office by the Cooksey Transcription Services (certified court reporters) from compact disc recordings
25 by the Roseville Joint Union High School District of the oral proceedings of School Board Meetings,
26 conducted on the following dates: June 1, 2004; January 4, 2005; April 19, 2005; May 17, 2005; July
27 1, 2003; August 5, 2003; September 2, 2003; April 20, 2004; and May 4, 2004, respectively. They
28 are hereby incorporated into this Motion for Rule 11 Sanctions by reference, as if set forth in full.

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8. My office will file, upon the order of the Court, supporting information and a complete statement of attorneys fees and costs incurred to date in the defense of this action on behalf of the Roseville Joint Union High School District, James Joiner, R. Jan Pinney, Tony Monetti, Steven Lawrence, Donald Genasci and Ronald Severson.

9. The Defendants' Motion for Sanctions has been made in good faith, and it has not been filed for purposes of delay, harassment and/or for any improper purpose.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and was executed on June 21, 2006 at Sacramento, California.



JAMES B. CARR