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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 Union Intervenors/Defendants.

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

**DEFENDANTS' REPLY TO
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
LEAVE TO FILE AN AMENDED
ANSWER; MEMORANDUM OF
POINTS AND AUTHORITIES**

HEARINGS PENDING:

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

23 Defendants Capistrano Unified School District ("CUSD") and Dr. James
24 Corbett ("Dr. Corbett") (sometimes collectively "Defendants") submit the following
25 memorandum of points and authorities in reply to the opposition of Plaintiff Chad
26 Farnan ("Farnan") to Defendants' motion for this Court to grant Defendants' leave to
27 file an amended answer in order to plead qualified immunity as an affirmative defense
28 in this matter.

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& SMART
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION**

3 Defendants seek leave to amend their answer on file in this action to include a
4 qualified immunity defense. Farnan opposes this motion on four basic grounds. First,
5 Farnan argues that the request for leave is sought in bad faith. Second, Farnan argues
6 that the request must be denied because the amendment sought is futile. Third, Farnan
7 asserts that leave should not be granted because he would be unduly prejudiced.
8 Finally, Farnan argues that the amendment will cause undue delay.

9 None of Farnan’s contentions has merit.

10 **2. FARNAN HAS NOT SHOWN THAT THE AMENDMENT SOUGHT IS**
11 **IN BAD FAITH**

12 Farnan argues that the amendment should be denied because it is sought in “bad
13 faith.” Farnan fails in his opposition to explain or provide any basis for his conclusion
14 that the amendment is sought in bad faith. Farnan notes that in determining whether an
15 amendment is sought in bad faith, courts have to look at whether the party seeking
16 amendment has “previously engaged in dilatory tactics” and evaluated the value of the
17 proposed amendment, citing Thornton v. McClatchy Newspapers, Inc., 261 F.3d 789,
18 799. (Opposition, 4:11-15) Despite this clear statement of the law, Farnan provides no
19 evidence or argument that Defendants have engaged in dilatory tactics. That is
20 because Defendants have not done so.

21 All Farnan argues is that the proposed amendment has no value because Farnan
22 is seeking only nominal damages against Dr. Corbett. Not surprisingly, Farnan
23 provides no citation to case law that holds that a qualified immunity is valueless in
24 cases where a plaintiff seeks only nominal damages. Even if that were the case,
25 however, courts have held that qualified immunity bars claims for damages such as
26 costs and attorney’s fees.

27 “A question has been presented in this appeal about whether the
28 monetary damages which the defense of qualified immunity bars include

1 plaintiffs' claims for costs, expenses of litigation, and attorneys' fees.
2 [Footnote omitted] The answer is 'yes.' We hold that, for qualified
3 immunity purposes, the term 'damages' includes costs, expenses of
4 litigation, and attorneys' fees claimed by a plaintiff against a defendant in
5 the defendant's personal or individual capacity. . . . [¶]The policy that
6 supports qualified immunity-especially removing for most public
7 officials the fear of personal monetary liability-would be undercut greatly
8 if government officers could be held liable in their personal capacity for a
9 plaintiff's costs, litigation expenses, and attorneys' fees in cases where the
10 applicable law was so unsettled that defendants, in their personal
11 capacity, were protected from liability for other civil damages."
12 (D'Aguanno v. Gallagher, 50 F.3d 877, 881 (11th Cir. 1995))

13 As set forth in Defendants' moving papers summarizing the countless
14 statements made by Farnan in multiple documents filed by him in this litigation, this
15 case at no time "concern[ed] a few incidental statements of a teacher that may
16 periodically reflect upon the teacher's personal beliefs" but concerned Dr. Corbett's
17 alleged "continual and incessant actions."¹ When this Court ruled on the parties'
18 motions for summary judgment, however, the Court determined that a single,
19 incidental statement by Dr. Corbett did violate the Establishment Clause. The Court's
20 findings also showed that Dr. Corbett did not engage in continual and incessant
21 violations of the Establishment Clause. Thus, the result achieved by Farnan in this
22 litigation was vastly different from the result he sought. As much as Farnan may now
23 want to back away from his written statements or pretend they do not exist, he cannot;
24 simply, there are too many statements made by Farnan explaining how he viewed this
25 case against Dr. Corbett, i.e., that "the gravamen of [his] case was and remains the
26 barrage of religious hostility expressed by Dr. Corbett throughout the Fall 2007

27 _____
28 ¹ See, Plaintiff's opposition to Defendants' motion for summary judgment, 10:14-16.

1 semester during his Advanced Placement European History class.”²

2 Once this Court made its determination that a single statement by Dr. Corbett
3 was sufficient to cause an Establishment Clause violation, Dr. Corbett’s right to assert
4 the qualified immunity defense also was triggered. Under that defense, the important
5 inquiry is whether or not the right at issue was clearly established. As stated by the
6 court in Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), the
7 inquiry is not whether a particular right is established in a vacuum but whether it was
8 established on the specific facts of a particular case. (Id. at 202 [the court must find
9 that the right was clearly established in light of the specific facts of a particular case
10 such that “a reasonable official would understand that what he is doing violates that
11 right”])

12 As noted by the Ninth Circuit in Walker v. Gomez, 370 F.3d 969, 978 (9th Cir.
13 2004):

14 “The second prong of the *Saucier* inquiry operates at a *high level of*
15 *specificity*. It is *insufficient that the broad principle underlying a right is*
16 *well-established*. . . . While it is well-established that racial
17 discrimination in the assignment of prison jobs is unconstitutional, . . . it
18 has not been clearly established that such race-based differentiation is
19 unconstitutional in the context of a prison-wide lockdown instituted in
20 response to gang-or race-based violence. Defendants are therefore
21 entitled to qualified immunity.” (Emphasis added; see also, Rudebusch v.
22 Hughes, 313 F.3d 506, 518 (9th Cir. 2002) [finding that while the general
23 rules were we enough established, “the specific contours of the law . . .
24 were not well developed or sufficiently clear at the time”])

25 Here, Farnan asserts that the proper inquiry is whether the law was established
26 that an Establishment Clause violation occurs when a government actor conveys a

27
28 ² See, Plaintiff’s reply to Defendants’ opposition to Plaintiff’s motion for summary judgment, 1:4-6.

1 message of disapproval of religion. While the “broad principle” underlying the right
2 that Farnan asserts was violated may have been well-established, that is not the proper
3 inquiry under the qualified immunity. As this Court has clearly noted, the inquiry on
4 this prong of the qualified immunity defense operates “at a high level of specificity.”
5 Thus, the inquiry is, as noted by Defendants, whether it was established in 2007 that a
6 teacher could violate the Establishment Clause simply by making a single statement in
7 the classroom during a year-long course.

8 This Court’s ruling, which was not based on a finding that Dr. Corbett made
9 anti-Christian or anti-religious comments on a daily basis such that it was a theme of
10 Dr. Corbett’s AP European History course, triggered the qualified immunity defense.
11 As explained here and in Defendants’ concurrently filed motion for determination, the
12 qualified immunity defense was not available until the Court’s ruling on May 1, 2009.
13 Following the Court’s ruling, Defendants diligently brought this matter to the Court’s
14 attention as quickly as possible. Defendants’ request for leave to amend is not brought
15 in bad faith but solely is motivated by the Court’s ruling, not by an interest in delaying
16 the proceedings.

17 **3. FARNAN HAS NOT SHOWN THAT THE AMENDMENT IS FUTILE**

18 Where the legal basis for an amendment is tenuous, futility supports the refusal
19 to grant leave to amend. (Morongo Band of Mission Indians v. Rose, 893 F.2d 1074,
20 1079 (9th Cir. 1990))

21 Farnan argues that the amendment sought by Defendants is futile because there
22 has been a final ruling in this case. Farnan is incorrect. There has been no final ruling
23 and no judgment has been entered against Dr. Corbett. As more fully explained in
24 Defendants’ moving papers, qualified immunity now appears to provide a defense to
25 Farnan’s claims due to this Court’s May 1st ruling. It is this Court’s ruling that
26 supports the viability of the proposed amendment and renders this request anything
27 but futile.

28 ///

1 **4. FARNAN HAS NOT SHOWN THAT THE AMENDMENT SOUGHT**
2 **WILL CAUSE HIM UNDUE PREJUDICE**

3 Farnan claims that to permit the amendment sought by Defendants will “only
4 add to the injustice that Defendants have already caused Plaintiffs.” Farnan does not
5 specify the “injustice” that Defendants have causes him.

6 As noted in Defendants’ moving papers, Farnan has the burden of
7 demonstrating any claimed prejudice. (See, In re Circuit Breaker Litigation, 175
8 F.R.D. 547, 551 (C.D. Cal. 1997)) The prejudice demonstrated *must be substantial*.
9 (Morongo Band of Mission Indians v. Rose, *supra*, 893 F.2d at 1079) Prejudice is the
10 touchstone inquiry under Rule 15(a). (Eminence Capital, LLC v. Aspeon, Inc., 316
11 F.3d 1048, 1052 (9th Cir. 2003)) “Absent prejudice, or a strong showing of any of the
12 remaining factors, there exists a presumption under Rule 15(a) in favor of granting
13 leave to amend.” (Ibid.)

14 Farnan argues that prejudice will result to him if the requested amendment is
15 allowed because the parties already have engaged in significant discovery and filed
16 numerous motions. Farnan’s reliance on Folomon v. N. Am. Life & Cas. Co., 151
17 F.3d 1132, 1139 (9th Cir. 1998) is misplaced because if amendment is allowed here,
18 no further discovery will be necessary and no delay will result.

19 Further, Farnan’s claim that he will be prejudiced because of the significant
20 discovery conducted and the filing of multiple motions in this case ignores the fact
21 that such discovery and motions would have occurred even if Dr. Corbett had raised
22 the qualified immunity defense at an earlier time. Dr. Corbett is not the only defendant
23 in this matter. Farnan also sued CUSD. Further, CALIFORNIA TEACHERS
24 ASSOCIATION/NEA and CAPISTRANO UNIFIED EDUCATION ASSOCIATION
25 (“Union Intervenors”) were permitted to intervene in this litigation. Thus, even if Dr.
26 Corbett obtained an early victory in this litigation, the matter still would have
27 proceeded against CUSD (qualified immunity applies only to individuals) and the
28 discovery and motions still would have been necessary.

1 Because there is no need to conduct further discovery to determine the qualified
2 immunity issue, and because the discovery and motions undertaken to date were
3 relevant and necessary not only to Dr. Corbett but to CUSD and the Union Intervenors
4 as well, Farnan will not suffer any prejudice by permitting this amendment.

5 **5. FARNAN HAS NOT SHOWN THAT PERMITTING THE**
6 **AMENDMENT WILL CREATE UNDUE DELAY**

7 Farnan apparently concedes that allowing the amendment will not result in
8 undue delay in reaching a final conclusion of this litigation; however, Farnan claims
9 that the amendment should be denied because Defendants unduly delayed in seeking
10 it.

11 As noted in Defendants' moving papers, the Ninth Circuit has held that mere
12 delay in seeking leave to amend is not a sufficient basis for denying a motion to
13 amend. (Morongo Band of Mission Indians v. Rose, *supra*, 893 F.2d at 1079) In
14 Morongo Band of Mission Indians, while the Court did deny leave to amend, it did so
15 based on reasons other than mere delay. The court found that the opposing party
16 would be prejudiced if the amendment were allowed because permitting the new
17 claims to be raised in the amended complaint would have greatly altered the nature of
18 the litigation and would have required the defendants to undertake an entirely new
19 course of defense. (*Ibid.*) These facts, however, do not exist here.

20 The qualified immunity defense is based on an objective standard, not what Dr.
21 Corbett believed at the time; therefore, further discovery would be without merit.
22 Additionally, the Court has already approved a briefing schedule to facilitate a
23 determination of whether Dr. Corbett is entitled to the defense. As such, the
24 amendment will not create any undue delay. If anything, the consideration of the
25 qualified immunity defense will expedite this action.³


26 _____
27 ³ Defendants agree that a finding of qualified immunity does not impact on Farnan's
28 request for an injunction. Other grounds, however, preclude the granting of an
injunction. (See, Defendants' opposition to Farnan's supplemental brief, filed 6/15/09)

1 **6. CONCLUSION**

2 In light of the above, this Court should grant Defendants leave to file an
3 amended answer asserting qualified immunity as an affirmative defense and should
4 deem the answer previously provided to this Court filed and served as of the date of
5 the hearing on this motion.

6 DATED: June 22, 2009

WOODRUFF, SPRADLIN & SMART, APC

7
8
9 By: 

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ROBERTA A. KRAUS
Attorneys for Defendants CAPISTRANO
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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 22, 2009, I served the foregoing document(s) described as **DEFENDANTS'**
6 **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO**
FILE AN AMENDED ANSWER; MEMORANDUM OF POINTS AND AUTHORITIES

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.

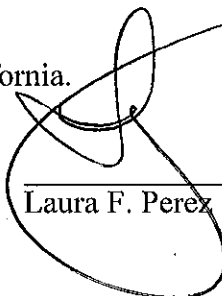
19 **(BY FACSIMILE)** I caused the above-referenced document to be transmitted to the
interested parties via facsimile transmission to the fax number(s) as stated on the attached
20 service list.

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
25 whose direction the service was made. I declare under penalty of perjury that the
above is true and correct.

26 Executed on June 22, 2009 at Costa Mesa, California.

27 
28 _____
Laura F. Perez

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

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