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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

23 Union Intervenors/Defendants.  
24

25 ///

26 ///

27 ///

28 ///

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

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION FOR  
ORDER AMENDING SCHEDULING  
ORDER AND TO AMEND ANSWER  
TO ASSERT QUALIFIED  
IMMUNITY AS AN AFFIRMATIVE  
DEFENSE; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF DANIEL K.  
SPRADLIN**

HEARINGS PENDING:

TYPE: Motions  
DATE: August 31, 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 August 31, 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 move this Court for an order amending the Scheduling Order and  
8 extending the time limit for hearing motions to amend and to determine the  
9 applicability of the qualified immunity defense and to amend their answer. A copy of  
10 this amended answer is attached as Exhibit A.

11 This motion is made on the grounds that good cause justifies the granting of this  
12 motion.

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

18 DATED: July 24, 2009

WOODRUFF, SPRADLIN & SMART, APC

19  
20 BY: 

21 DANIEL K. SPRADLIN  
22 ROBERTA A. KRAUS  
23 Attorneys for Defendants CAPISTRANO  
24 UNIFIED SCHOOL DISTRICT and DR.  
25 JAMES CORBETT  
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WOODRUFF, SPREADLIN  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1. INTRODUCTION

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

11 On May 1, 2009, this Court found that Dr. Corbett did *not* engage in a continual  
12 and incessant barrage of religious hostility as alleged by Farnan; however, this Court  
13 did find that that Dr. Corbett violated the Establishment Clause when he made the  
14 single statement “religious, superstitious nonsense” during a discussion about a prior  
15 lawsuit filed against CUSD, Dr. Corbett and others by former biology teacher John  
16 Pelozza who had refused to teach the state-mandated curriculum (the theory of  
17 evolution) but instead taught creationism in the classroom. The Court found that no  
18 other statement attributed to Dr. Corbett during the AP European History course  
19 violated the Establishment Clause and that there was no evidence presented sufficient  
20 to establish that Dr. Corbett had a pattern and practice of violating the Establishment  
21 Clause.

22 It is because of this ruling that it has become apparent that Dr. Corbett is  
23 entitled to a determination of qualified immunity in his favor. While the Court has  
24 held that the single statement by Dr. Corbett violated the Establishment Clause, in  
25 2007 the law was not established that a single statement by a teacher made during one

26 \_\_\_\_\_  
27 <sup>1</sup> See, Plaintiff’s reply to Defendants’ opposition to Plaintiff’s motion for summary  
28 judgment, 1:4-6.

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

1 lecture given in the course of a year-long class could trigger an Establishment Clause  
2 violation. Accordingly, it did not become apparent that Dr. Corbett would be entitled  
3 to a qualified immunity defense until the Court's ruling on the parties' motions for  
4 summary judgment on May 1, 2009.

5 At the same time that it made its ruling on the motions for summary judgment,  
6 this Court also ordered the parties to file a joint proposal for disposition of the  
7 equitable *and any other remaining issues* no later than May 22, 2009. On May 22,  
8 2009, the parties filed their joint proposal in which Defendants proposed filing a  
9 motion to amend their answer under Federal Rules of Civil Procedure, Rule 15, and  
10 filing a motion for determination of qualified immunity in Dr. Corbett's favor. At the  
11 status conference on June 1, 2009, the Court set the proposed motions for hearing on  
12 July 13, 2009, and adopted the proposed briefing schedule set forth in the joint  
13 proposal.

14 On July 13, 2009, this Court denied Defendants' motion to file an amended  
15 answer, *without prejudice*, because Defendants first needed to apply to this Court to  
16 amend the Scheduling Order, which set a deadline of August 17, 2008 for amending  
17 pleadings, and denied the motion for qualified immunity as moot, *without prejudice*,  
18 pending a proper motion to amend the Scheduling Order so that the Court could rule  
19 on Defendants' motion to amend their answer. Defendants now seek to amend the  
20 Scheduling Order so that this Court may hear and rule on their motion to amend their  
21 answer and motion for determination of qualified immunity in favor of Dr. Corbett.  
22 Further, as a direct result of the Court's May 1, 2009 ruling, Defendants now also seek  
23 leave to amend Defendants' answer to include qualified immunity as an affirmative  
24 defense. Defendants also concurrently file their post-summary judgment motion for a  
25 determination that Dr. Corbett is entitled to qualified immunity.

26 **A. Statement of Facts**

27 On December 13, 2007, Farnan filed his complaint against CUSD and Dr.  
28 Corbett seeking damages and injunctive relief. A first amended complaint

1 subsequently was filed and Defendants answered the first amended complaint on  
2 March 19, 2008. On April 28, 2008, the motion of Intervenors, CALIFORNIA  
3 TEACHERS ASSOCIATION/NEA and CAPISTRANO UNIFIED EDUCATION  
4 ASSOCIATION (“Union Intervenors”) was granted and the Union Intervenors’  
5 answer to Farnan’s first amended complaint was filed. In their answer the Union  
6 Intervenors’ asserted the qualified immunity defense on Dr. Corbett’s behalf. (See,  
7 Exhibit B)

8         Prior to the filing of Defendants’ answer, and up through this Court’s ruling on  
9 the parties’ motions for summary judgment, Farnan has contended that Dr. Corbett  
10 made anti-Christian or anti-religious comments on a daily basis throughout the 2007  
11 semester; that anti-Christian comments essentially were the theme of Dr. Corbett’s  
12 lectures. According to Farnan, it was the continual and incessant comments attributed  
13 to Dr. Corbett that violated the Establishment Clause. Examples of Farnan’s position  
14 in this regard are voluminous and can be found, by way of illustration, in the  
15 following documents:

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

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

28 ///

1 (3) Farnan's responses to Defendants' special interrogatories, response nos. 5  
2 and 7 in which Farnan asserts: "Throughout the Fall 2007 semester, Dr. Corbett made  
3 numerous statements regarding Christianity and religion generally that expresses a  
4 viewpoint that is derogatory, disparaging, and belittling regarding religion and  
5 Christianity in particular. . . . While there are individual comments that are  
6 particularly offensive and expressive of said viewpoints, those and all of his  
7 comments must be taken in context of the entire lecture and class environment . . ."  
8 (6:16-25 and 7:20-28);

9 (4) Farnan's opposition to Defendants' motion for summary judgment:  
10 "Plaintiffs brought this action with the intent to quell the religious hostility that has  
11 germinated for many years in Dr. Corbett's public classroom at Capistrano Valley  
12 High School" (1:2-4); "numerous hostile comments of Dr. Corbett" (4:4-5); "the  
13 Court must inquire into the purpose for the overreaching theme established by Dr.  
14 Corbett's lectures" (6:6-7); "[Dr. Corbett] states it many times, and in many ways,  
15 both indirectly and directly" (6:16-17); "Dr. Corbett is using his bully pulpit to spew  
16 his propaganda . . ." (8:12-13); "Dr. Corbett's statements regarding religion and  
17 Christianity, both in Chad's class and other classes, send primarily a message of  
18 disapproval of religion" (9:2-4); "Defendants' actions fail the third prong of the  
19 Lemon test because the statements made by Dr. Corbett are continual and incessant,  
20 and the School District has done nothing to lessen them" (9:18-20); "*This case does  
21 not concern a few incidental statements of a teacher that may periodically reflect  
22 upon the teacher's personal beliefs. Instead, it concerns Dr. Corbett's continual and  
23 incessant actions . . .*" (10:14-16; emphasis added); and "When applying the correct  
24 standard, and reviewing all of Dr. Corbett's comments instead of singling out a few  
25 comments . . ." (14:24-26);

26 (5) Farnan's memorandum of points and authorities in support of motion for  
27 summary judgment: "[T]eachers, including [Dr. Corbett] violate the Establishment  
28 Clause when they use the classroom to *repeatedly express* disapproval of religion,

1 religious faith, and the resulting worldviews” (1:6-8; emphasis added); “Defendants’  
2 decision to ‘teach’ anti-Christian themes” (15:8-9); “barrage of hostility aimed at Dr.  
3 Corbett’s students over the years past” (17:16-17); “the statements of Dr. Corbett are  
4 continual and incessant” (18:3-4);

5 (6) Declaration of Chad Farnan in support of Farnan’s’ motion for summary  
6 judgment:<sup>3</sup> “Dr. James Corbett spent a significant amount of class time discussing  
7 topics and issues not relevant to European history” (2:19-20); “On a regular basis  
8 during the fall 2007 semester, Dr. Corbett discussed a wide variety of topics not  
9 related to Advanced Placement European History” (3:3-4); “While teaching the  
10 subject of the class and while discussing various other topics, Dr. Corbett made  
11 statements and expressed viewpoints that were derogatory, disparaging, and belittling  
12 regarding religion and Christianity in particular” (3:5-9); “These comments were not  
13 limited to one particular day, but instead occurred on most days that I was in his  
14 classroom” (3:10-11); “Dr. Corbett’s anti-Christian viewpoints are well-known by the  
15 students at my high school as they are often presented through comments he makes  
16 during class” (3:12-14); “Dr. Corbett made many comments regarding his personal  
17 bias against Christianity” (3:15-16); “When Dr. Corbett was talking to my class, he  
18 regularly included his own ideas about God and religion” (3:16-17); “As a result of his  
19 ongoing comments . . .” (3:19-20);

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

24 (8) Farnan’s response to Defendants’ objections to Farnan’s evidence  
25 submitted by Farnan in support of his motion for summary judgment: “Dr. Corbett’s  
26 \_\_\_\_\_

27 <sup>3</sup> 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 habit or routine practice of making negative or hostile comments about religion and  
2 Christianity . . .” (3:21-22)

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

7 Now, following the ruling by this Court on the parties’ motions for summary  
8 judgment, it has become apparent that Dr. Corbett is entitled to a qualified immunity  
9 defense. As noted above, up until that ruling Farnan at all times asserted that it was the  
10 barrage of comments made by Dr. Corbett that violated the Establishment Clause and  
11 that this case was not about “a few incidental statements;” however, that is exactly  
12 what this Court ruled when it granted Farnan’s motion for summary judgment on the  
13 single, incidental statement that in essence stated the teaching of creationism in a high  
14 school biology class was “religious, superstitious nonsense.” Thus, with this ruling it  
15 has become apparent to Defendants’ counsel that Dr. Corbett is entitled to qualified  
16 immunity; however, that defense was not asserted in the answer filed on behalf of Dr.  
17 Corbett. Thus, a modification to the scheduling order and leave to amend Defendants’  
18 answer is sought and should be granted.

19 **2. GOOD CAUSE EXISTS FOR AMENDING THE SCHEDULING ORDER**

20 The Scheduling Order set August 17, 2008 as the deadline for filing amended  
21 pleadings and set a deadline of January 28, 2009 for hearing dispositive motions.  
22 Subsequently, the law and motion cut off date was extended to March 30, 2009 by this  
23 Court’s order dated February 6, 2009. Now, Defendants bring this motion seeking to  
24 extend the deadlines so that this Court can hear and determine Defendants’ request to  
25 amend their answer and for this Court to determine the qualified immunity defense in  
26 Dr. Corbett’s favor.

27 Federal Rules of Civil Procedure, Rule 16(b)(4) provides that “[a] schedule may  
28 be modified only for good cause and with the judge's consent.” (See also, Johnson v.

1 Mammoth Recreations, Inc., 975 F. 2d 604, 608 (9th Cir. 1992) [stating that  
2 scheduling orders entered before the final pretrial conference may be amended upon a  
3 showing of “good cause”]) The “good cause” standard is met if the party seeking the  
4 amendment shows diligence. (Ibid.) Factors to be considered include whether matters  
5 that were not, and could not have been, foreseeable at the time of the scheduling  
6 conference caused the need for amendment and whether the moving party was diligent  
7 in seeking amendment once the need to amend became apparent. (Ibid.)

8 If the trial court determines that refusal to allow a modification of a pre-trial  
9 order could result in injustice, while allowing the modification would cause no  
10 substantial injury to the opponent and no more than a slight inconvenience to the  
11 court, modification is appropriate. (See, United States v. First Nat. Bank of Circle, 652  
12 F.2d 882, 887 (9th Cir. 1981)) If good cause is found, then the court turns to Rule 15  
13 to determine whether the amendment sought should be granted. (Johnson v. Mammoth  
14 Recreations, Inc., supra, 975 F.2d at 608)

15 Here, good cause justifies the amending of the Scheduling Order. As shown  
16 below and in the accompanying declaration of Daniel K. Spradlin, Defendants have  
17 been diligent throughout each stage of this litigation.

18 As noted above, throughout this litigation Farnan has asserted that “the  
19 gravamen of [his] case was and remains the barrage of religious hostility expressed by  
20 Dr. Corbett throughout the Fall 2007 semester during his Advanced Placement  
21 European History class.” This case at no time “concern[ed] a few incidental  
22 statements of a teacher that may periodically reflect upon the teacher’s personal  
23 beliefs” but concerned Dr. Corbett’s alleged “continual and incessant actions.”

24 Yet, on May 1, 2009, this Court found that Dr. Corbett did not engage in a  
25 continual and incessant barrage of religious hostility. Instead, this Court determined  
26 that Dr. Corbett violated the Establishment Clause when he made the single statement  
27 “religious, superstitious nonsense.” The Court found that no other statement attributed  
28 to Dr. Corbett during the AP European History course violated the Establishment

1 Clause and that there was no evidence presented sufficient to establish that Dr. Corbett  
2 had a pattern and practice of violating the Establishment Clause.

3 It is because of this ruling that it has become apparent that Dr. Corbett is  
4 entitled to a determination of qualified immunity in his favor. While the Court has  
5 held that the single statement by Dr. Corbett violated the Establishment Clause, in  
6 2007 the law was not established that a single statement by a teacher made during one  
7 lecture given in the course of a year-long class could trigger an Establishment Clause  
8 violation. Accordingly, it did not become apparent that Dr. Corbett would be entitled  
9 to a qualified immunity defense until the Court's ruling on the parties' motions for  
10 summary judgment on May 1, 2009. As a direct result of the Court's May 1, 2009  
11 ruling, Defendants now seek leave to amend the scheduling order so that this Court  
12 may hear and rule on Defendants' motion to amend their answer to include qualified  
13 immunity as an affirmative defense. As shown by the accompanying declaration of  
14 Daniel K. Spradlin, Defendants have been diligent in defending this action and have  
15 not unreasonably delayed in bringing to Farnan's and this Court's attention the need to  
16 amend the answer as soon as such need became apparent and necessary. Based on this  
17 Court's May 1, 2009 and July 13, 2009 rulings, Defendants now move for an order  
18 amending the Scheduling Order so that this Court may consider and rule on  
19 Defendants' motion to amend their answer and motion for determination of qualified  
20 immunity.

21 **3. THE FEDERAL RULES OF CIVIL PROCEDURE REQUIRE THAT**  
22 **LEAVE TO AMEND BE "FREELY GIVEN"**

23 Once the Court finds good cause under Rule 16 for amending the scheduling  
24 order, the Court then turns to Rule 15 to determine whether the amendment sought  
25 should be granted. (See, Johnson v. Mammoth Recreations, Inc., supra, 975 F.2d at  
26 608)

27 Rule 15(a) of the Federal Rules of Civil Procedure provides that leave of court  
28 is required to amend any pleading more than 20 days after that pleading is served;

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

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

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

23 The Court continued that:

24 “. . . outright refusal to grant the leave without justifying reason  
25 appearing for the denial is not an exercise of discretion; it is merely abuse  
26 of that discretion and inconsistent with the spirit of the Federal Rules.”  
27 (Ibid.)

28 ///

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

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

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

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

24 As set forth in Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d  
25 396 (1982), the qualified-immunity defense “shield[s] [government agents] from  
26 liability for civil damages insofar as their conduct does not violate clearly established  
27 statutory or constitutional rights of which a reasonable person would have known.”  
28 (Id. at 818; see also, Behrens v. Pelletier, 516 U.S. 299, 305-306, 116 S.Ct. 834, 133

1 L.Ed.2d 773 (1996))

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

10 The second step involves an inquiry into whether the constitutional right was  
11 clearly established and "must be undertaken in light of the specific context of the case,  
12 not as a broad general proposition." (Ibid.) Quoting Malley v. Briggs, 475 U.S. 335,  
13 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986), the Saucier court stated that qualified  
14 immunity protects "all but the plainly incompetent or those who knowingly violate the  
15 law." (Saucier v. Katz, supra, 533 U.S. at 202) The inquiry on this prong is not  
16 whether a particular right is established in a vacuum but whether it was established on  
17 the specific facts of a particular case. (Id. at 202 [the court must find that the right was  
18 clearly established in light of the specific facts of a particular case such that "a  
19 reasonable official would understand that what he is doing violates that right"])

20 Under qualified immunity, public employees remain immune as long as their  
21 actions do not violate clearly established [federal] statutory, or constitutional rights of  
22 which a reasonable person would have known. (Harlow v. Fitzgerald, supra, 457 U. S.  
23 at 818-819 [allegations of malice are insufficient to overcome application of qualified  
24 immunity]; see also, Anderson v. Creighton, 483 U. S. 635, 640-641 (1987) [an  
25 official's subjective belief is irrelevant; court applies an objective standard])

26 When this Court ruled on May 1, 2009, it determined the first prong of the  
27 inquiry, i.e., Dr. Corbett violated the Establishment Clause when he made the single  
28 statement during one lecture that creationism was "religious, superstitious nonsense."

1 This determination triggered, for the first time, the possibility of a qualified immunity  
2 defense.

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

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

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

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

27 Where the legal basis for an amendment is tenuous, futility supports the refusal  
28 to grant leave to amend. (Morongo Band, supra, 893 F.2d at 1079) While Farnan

1 may argue is that the proposed amendment has no value because Farnan is seeking  
2 only nominal damages against Dr. Corbett, case law does not support this conclusion.  
3 In addition to barring a claim for nominal damages, the qualified immunity defense  
4 also bars claims for damages such as costs and attorney's fees.

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

19 As such, the requested amendment would not be futile. Qualified immunity now  
20 appears to provide a complete defense to Farnan's claims due to this Court's May 1st  
21 ruling. In fact, an argument could be made that a request for leave to amend made  
22 *prior* to the Court's May 1st ruling most likely would have been considered legally  
23 tenuous in light of Farnan's allegations up until that time. It is this Court's May 1st  
24 ruling that supports the viability of the proposed amendment and renders this request  
25 anything but futile.

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

27 Regarding the "prejudice" element, it is the opposing party who has the burden  
28 of demonstrating such prejudice. (See, In re Circuit Breaker Litigation, 175 F.R.D.

1 547, 551 (C.D. Cal. 1997)) The prejudice demonstrated *must be substantial*.  
2 (Morongo Band of Mission Indians v. Rose, *supra*, 893 F.2d at 1079) Prejudice is the  
3 touchstone inquiry under Rule 15(a). (Eminence Capital, LLC v. Aspeon, Inc., 316  
4 F.3d 1048, 1052 (9th Cir. 2003)) “Absent prejudice, or a strong showing of any of the  
5 remaining factors, there exists a presumption under Rule 15(a) in favor of granting  
6 leave to amend.” (*Ibid.*)

7 No prejudice will result to Farnan if the requested amendment is allowed. The  
8 parties already have engaged in significant discovery and filed numerous motions. If  
9 amendment is allowed here, no further discovery will be necessary and no delay will  
10 result.

11 First, Farnan has known since April 28, 2008 that a qualified immunity defense  
12 could be asserted in this matter. The Union Intervenors’ answer to Farnan’s first  
13 amended complaint asserted qualified immunity as an affirmative defense. (See,  
14 Union Intervenors’ addendum to the joint proposal for disposition of the equitable and  
15 other remaining issues, filed May 22, 2009 and the Union Intervenors’ answer filed  
16 with this Court on April 28, 2008) Accordingly, Farnan has been on notice for over  
17 one year that the qualified immunity defense would be asserted by the Union  
18 Intervenors on Dr. Corbett’s behalf and had ample opportunity to conduct discovery  
19 regarding that defense if he so desired.

20 Second, contrary to Farnan’s prior contentions, Farnan will not be required to  
21 conduct further discovery if leave to amend is granted. Previously, Farnan asserted  
22 that if leave to amend is granted Farnan will need to investigate “into the knowledge  
23 and intent of Dr. Corbett with regard to the constitutional violation to combat the  
24 affirmative defense of qualified immunity.” (Joint proposal for disposition of the  
25 equitable and other remaining issues, pp. 9-10) Farnan is incorrect.

26 The determination of whether Dr. Corbett is entitled to a qualified immunity  
27 defense is not based on a subjective standard. Rather, under the second prong of the  
28 test now at issue, a public official can be liable for a constitutional violation “only if

1 'the contours of the right [violated are] sufficiently clear that a *reasonable* official  
2 would understand that what he is doing violates that right'." (United States v. Lanier,  
3 520 U.S. 259, 270, 117 S.Ct. 1219, 137 L.Ed.2d 432 (1997)) (Emphasis added)

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

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

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

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

25 As discussed previously, no further discovery would be required in order to  
26 determine the viability of the qualified immunity defense. The defense is based on an  
27 objective standard, not what Dr. Corbett believed at the time; therefore, further  
28 discovery would be without merit. If anything, the consideration of the qualified

1 immunity defense will expedite this action. If Farnan's claim is barred by the defense,  
2 the issue can be resolved now and the necessity of further consideration regarding  
3 damages or attorney's fees will be obviated.

4 **4. CONCLUSION**

5 In light of the above, this Court should grant Defendants' request to amend the  
6 Scheduling Order and should grant Defendants leave to file an amended answer  
7 asserting qualified immunity as an affirmative defense, deeming the answer attached  
8 as Exhibit A filed and served as of the date of the hearing on this motion.

9 DATED: July 24, 2009

WOODRUFF, SPRADLIN & SMART, APC

10  
11 By: 

12 DANIEL K. SPRADLIN  
13 ROBERTA A. KRAUS  
14 Attorneys for Defendants CAPISTRANO  
15 UNIFIED SCHOOL DISTRICT and DR.  
16 JAMES CORBETT  
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1 the Fall 2007 semester . . .” (4:7-11); “Parents and/or students have complained to the  
2 District for many years regarding Dr. Corbett’s religious hostility expressed in his  
3 classroom” (9:26-27); and “Dr. Corbett continues to spend a large portion of class  
4 time . . . , he clearly demonstrates hostility towards religion . . .”, “As a result of his  
5 ongoing comments . . .” (10:3-7). Additionally, Farnan made the following assertions  
6 in his opposition to Defendants’ motion to dismiss: “statements made by Dr. Corbett  
7 are continual and incessant” (10:14); “continual and incessant disapproval of religion”  
8 (10:23); “For months Chad Farnan sat in an AP European History class . . . learning . .  
9 . about Dr. Corbett’s own propagation of a ‘religion of secularism’” (12:11-14); and  
10 “When taken together, [Dr. Corbett’s comments] are clearly anti-Christian diatribes”  
11 (15:12-13). In fact, when this Court denied Defendants’ motion to dismiss, it noted  
12 that the gist of Farnan’s claim against Defendants is based on Farnan’s claim that his  
13 rights were violated by a “practice and policy hostile toward religion and favoring  
14 irreligion over religion.” (Court’s minute order denying motion to dismiss, ¶2)

15 5. In an effort to learn the basis of Farnan’s contentions against Defendants,  
16 this office propounded written discovery, including interrogatories and demands for  
17 production of documents, on Farnan. Farnan also propounded written discovery on  
18 CUSD and Dr. Corbett. Attorneys for all parties took and completed numerous  
19 depositions in this matter, including depositions of parties and percipient witnesses.

20 6. In his interrogatory responses, Farnan asserted: “Throughout the Fall  
21 2007 semester, Dr. Corbett made numerous statements regarding Christianity and  
22 religion generally that expresses a viewpoint that is derogatory, disparaging, and  
23 belittling regarding religion and Christianity in particular. . . . While there are  
24 individual comments that are particularly offensive and expressive of said viewpoints,  
25 those and all of his comments must be taken in context of the entire lecture and class  
26 environment . . .” (6:16-25 and 7:20-28)

27 7. When the parties filed their cross-motions for summary judgment there  
28 was nothing in Farnan’s moving or opposing papers that alerted Defendants that

1 Farnan was now contending that a single statement made by Dr. Corbett violated the  
2 Establishment Clause. Farnan continued to posit that it was the sum total of the  
3 statements – the “constant barrage” of statements – that violated the Establishment  
4 Clause. Farnan continued to assert in his papers as follows:

- 5     ▪ “Plaintiffs brought this action with the intent to quell the religious hostility that  
6       has germinated for many years in Dr. Corbett’s public classroom at Capistrano  
7       Valley High School” (1:2-4); “numerous hostile comments of Dr. Corbett” (4:4-  
8       5); “the Court must inquire into the purpose for the overreaching theme  
9       established by Dr. Corbett’s lectures” (6:6-7); “[Dr. Corbett] states it many  
10      times, and in many ways, both indirectly and directly” (6:16-17); “Dr. Corbett  
11      is using his bully pulpit to spew his propaganda . . .” (8:12-13); “Dr. Corbett’s  
12      statements regarding religion and Christianity, both in Chad’s class and other  
13      classes, send primarily a message of disapproval of religion” (9:2-4);  
14      “Defendants’ actions fail the third prong of the Lemon test because the  
15      statements made by Dr. Corbett are continual and incessant, and the School  
16      District has done nothing to lessen them” (9:18-20); “*This case does not  
17      concern a few incidental statements of a teacher that may periodically reflect  
18      upon the teacher’s personal beliefs. Instead, it concerns Dr. Corbett’s continual  
19      and incessant actions . . .*” (10:14-16; emphasis added); and “When applying  
20      the correct standard, and reviewing all of Dr. Corbett’s comments instead of  
21      singling out a few comments . . .” (14:24-26);<sup>4</sup>
- 22     ▪ “[T]eachers, including [Dr. Corbett] violate the Establishment Clause when  
23       they use the classroom to *repeatedly express* disapproval of religion, religious  
24       faith, and the resulting worldviews” (1:6-8; emphasis added); “Defendants’  
25       decision to ‘teach’ anti-Christian themes” (15:8-9); “barrage of hostility aimed  
26       at Dr. Corbett’s students over the years past” (17:16-17); “the statements of Dr.

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27  
28 <sup>4</sup> Farnan’s opposition to Defendants’ motion for summary judgment.

1 Corbett are continual and incessant” (18:3-4);<sup>5</sup>

- 2 ■ “Dr. James Corbett spent a significant amount of class time discussing topics  
3 and issues not relevant to European history” (2:19-20); “On a regular basis  
4 during the fall 2007 semester, Dr. Corbett discussed a wide variety of topics not  
5 related to Advanced Placement European History” (3:3-4); “While teaching the  
6 subject of the class and while discussing various other topics, Dr. Corbett made  
7 statements and expressed viewpoints that were derogatory, disparaging, and  
8 belittling regarding religion and Christianity in particular” (3:5-9); “These  
9 comments were not limited to one particular day, but instead occurred on most  
10 days that I was in his classroom” (3:10-11); “Dr. Corbett’s anti-Christian  
11 viewpoints are well-known by the students at my high school as they are often  
12 presented through comments he makes during class” (3:12-14); “Dr. Corbett  
13 made many comments regarding his personal bias against Christianity” (3:15-  
14 16); “When Dr. Corbett was talking to my class, he regularly included his own  
15 ideas about God and religion” (3:16-17); “As a result of his ongoing comments  
16 . . .” (3:19-20);<sup>6</sup>

- 17 ■ *“The gravamen of Plaintiffs’ case was and remains the barrage of religious  
18 hostility expressed by Dr. Corbett throughout the Fall 2007 semester during his  
19 Advanced Placement European History class” (1:4-6; emphasis added);<sup>7</sup> and*

- 20 ■ “Dr. Corbett’s habit or routine practice of making negative or hostile comments  
21 about religion and Christianity . . .” (3:21-22)<sup>8</sup>

22 8. After this Court made its May 1, 2009 ruling on the parties’ motions for  
23 summary judgment this office diligently began researching whether a qualified  
24

25 <sup>5</sup> Farnan’s memorandum of points and authorities in support of motion for summary  
26 judgment.

27 <sup>6</sup> Declaration of Chad Farnan in support of Farnan’s motion for summary judgment.

28 <sup>7</sup> Farnan’s reply to Defendants’ opposition to Farnan’s motion for summary judgment.

<sup>8</sup> Farnan’s response to Defendants’ objections to Farnan’s evidence submitted by  
Farnan in support of his motion for summary judgment.

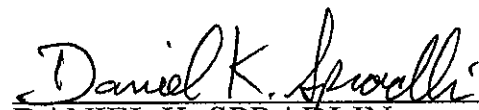
1 immunity defense was now available to Dr. Corbett. After determining that Dr.  
2 Corbett now was entitled to a finding of qualified immunity on his behalf, this office  
3 engaged in a meet and confer conference with Farnan's counsel and with counsel for  
4 the Union Intervenors in order to complete the Court ordered joint proposal for  
5 disposition of equitable and other issues. In that conversation I advised all counsel that  
6 this office would seek a determination of qualified immunity on Dr. Corbett's behalf.  
7 That issue was again raised and partially briefed in Defendants' portion of the joint  
8 proposal of counsel filed with this Court on May 22, 2009.

9 9. The parties to this action have been diligent in conducting discovery in  
10 this matter and in raising, researching and addressing relevant issues. As soon as this  
11 office determined that the qualified immunity defense was a viable defense following  
12 this Court's ruling on the parties' motions for summary judgment this office was  
13 diligent in advising the other parties and this Court of Defendants' intent to raise this  
14 issue and to seek leave to amend their answer.

15 10. A copy of Defendants' proposed amended answer is attached as Exhibit  
16 A.

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

20 Executed on July 27, 2009, in Costa Mesa, California.

21  
22   
23 DANIEL K. SPRADLIN  
24  
25  
26  
27  
28

# **EXHIBIT A**

1 DANIEL K. SPRADLIN - State Bar No. 82950  
dspradlin@wss-law.com  
2 ROBERTA A. KRAUS - State Bar No. 117658  
bkraus@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

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**

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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 ///

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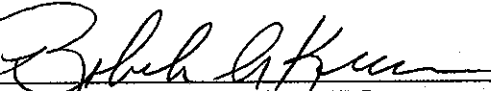
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1 WHEREFORE, Defendants pray that Plaintiff take nothing by way of his  
2 complaint and that said Defendants be dismissed with costs herein incurred and for  
3 such other and further relief as the Court deems just and proper.

4 DATED: July 24, 2009

WOODRUFF, SPRADLIN & SMART, APC

5  
6 By: 

7 DANIEL K. SPRADLIN  
8 ROBERTA A. KRAUS  
9 Attorneys for Defendants CAPISTRANO  
10 UNIFIED SCHOOL DISTRICT and DR.  
11 JAMES CORBETT  
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WOODRUFF, SPRADLIN  
& SMART  
ATTORNEYS AT LAW  
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**DEMAND FOR JURY TRIAL**

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

DATED: July 24, 2009

WOODRUFF, SPRADLIN & SMART, APC

By: 

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

6 On July 24, 2009, I served the foregoing document(s) described as **DEFENDANTS'**  
7 **NOTICE OF MOTION AND MOTION FOR ORDER AMENDING SCHEDULING ORDER**  
8 **AND TO AMEND ANSWER TO ASSERT QUALIFIED IMMUNITY AS AN**  
9 **AFFIRMATIVE DEFENSE; MEMORANDUM OF POINTS AND AUTHORITIES;**  
10 **DECLARATION OF DANIEL K. SPRADLIN; [PROPOSED] FIRST AMENDED ANSWER**  
11 **OF DEFENDANTS CAPISTRANO UNIFIED SCHOOL DISTRICT AND DR. JAMES**  
12 **CORBETT TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND DEMAND FOR**  
13 **TRIAL BY JURY AS EXHIBIT A**

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

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

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

**(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  
service list.

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

**(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  
above is true and correct.

Executed on July 24, 2009 at Costa Mesa, California.



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**

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

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