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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

CHAD FARNAN, a minor, by and through his parents **BILL FARNAN** and **TERESA FARNAN**;

Plaintiffs,

vs.

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

Defendants.

Case No.: SACV07-1434 JVS (ANX)

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE AN AMENDED ANSWER AND MEMORANDUM OF POINTS AN AUTHORITIES IN SUPPORT THEREOF

Date: July 13, 2009
Time: 1:30 p.m.
Dept: 10C
Judge: James V. Selna

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PLAINTIFFS' RESPONSE TO DEFENDANTS'

MOTION FOR LEAVE TO FILE AN AMENDED ANSWER

Plaintiff, Chad Farnan, a minor, by and through his parents, Bill Farnan and Teresa Farnan (hereinafter referred to as "Plaintiffs"), submit the following Opposition to Defendants' Motion for Leave to File an Amended Answer:

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendants should not be granted leave to amend their Answer in order to raise qualified immunity as an affirmative defense at such an extraordinarily late stage in this litigation, as they have had ample time to plead this defense previously. Defendants have failed to provide this Court with a legitimate reason for failing to plead qualified immunity as an affirmative defense, and if this Court permits them to take such an action, it will only add to the injustice that Defendants have already caused Plaintiffs. Granting leave to amend Defendants' Answer would not only result in injustice to the Plaintiffs, but it would not even provide the protection to the Defendants that qualified immunity is designed to provide. Defendants have already incurred the cost of litigation, as have Plaintiffs, who did so in good faith. Furthermore, Plaintiffs are seeking only nominal damages, not an exorbitant sum that would warrant qualified immunity.

Defendants' repeated failures to raise qualified immunity during the pretrial proceedings of this case – they did not raise it in their Answer, Motion to Dismiss, Motion for Summary Judgment, or Opposition to Plaintiff's Motion for Summary Judgment – was a strategic choice that Defendants cannot now undo as a response to this Court's finding Dr. Corbett's actions to be a constitutional violation. This Court ruled on the dispositive motions for summary judgment, finding an Establishment Clause violation, and Defendants now seek to raise a defense that has been waived and lost.

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ARGUMENT

The threshold question presented by Defendants' Motion for Leave to File an Amended Answer ("Motion") is whether it is even possible for Defendants to raise an affirmative defense, qualified immunity, which has not been raised at any point during lengthy litigation. Defendants' failure to acknowledge the existence of this question or to provide this Court with any legal authority stating that the defense has not been lost is telling. Plaintiffs have addressed Defendants' inability to raise qualified immunity at this stage in the litigation in both Plaintiffs' Supplemental Briefing Pursuant to Order dated June 1, 2009 and Plaintiffs' Opposition to Defendants' concurrently filed Motion that improperly seeks a "post summary judgment order" from this Court as to Dr. Corbett's qualified immunity. As a result, Plaintiffs will not restate the entirety of those arguments but will refer this Court to the aforementioned briefing prior to its consideration of whether Defendants can satisfy the standard for leave to amend the complaint at such a late stage of the litigation.

Additionally, the Defendants' delay in seeking to amend their Answer and their failure to argue qualified immunity are significant, both in terms of procedure and because it is relevant in determining whether this Court should grant leave to amend at this time. Defendants cite *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074 (9th Cir. 1990), for the proposition that "a mere delay in seeking leave to amend is not a sufficient basis for denying a motion to amend." (Motion 7, lns. 7-11.) Defendants fail to provide a complete picture of this case, however, the analysis of which is far broader than Defendants indicate. *Morongo* does not provide a basis for this Court to grant Defendants' Motion for Leave to Amend. In *Morongo*, the court actually denied the plaintiff the right to amend on the basis that "new claims set forth in the amended complaint would have greatly altered the nature of the litigation and would have required defendants to have undertaken, at a late hour, an entirely new course of defense." *Morongo*, 893 F.2d at 1079. The court further stated that "[t]he delay of nearly two years, while not alone enough to support denial, [was] nevertheless

relevant." *Id*. As the *Morongo* court stated, the fact that eighteen-months has passed since this litigation began is relevant to this Court's decision as to whether qualified immunity can be asserted for the first time at this stage of the litigation and whether to deny Defendant's Motion for Leave to Amend. Defendants' delay should be taken into consideration in light of the substantial prejudice it would cause to Plaintiffs.

Should this Court find that qualified immunity has not been waived altogether, however, this Court still should not grant Defendants' Motion for Leave to Amend the Answer (hereinafter "Motion for Leave to Amend") and allow Defendants to raise qualified immunity as an affirmative defense. Under Rule 15(a), an affirmative defense may be added to an answer by consent of the opposing party or leave of the court. Fed. R. Civ. P., Rule 15(a). In deciding whether to grant leave to amend, courts balance a number of factors to determine when "justice so requires" leave to amend. Fed. R. Civ. P., Rule 15; 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1487. In the Ninth Circuit, as elsewhere, "[f]ive factors are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility, and whether the plaintiff has previously amended the complaint." *Johnson v. Buckly*, 356 F.3d 1067, 1077 (9th Cir. 2004) (citing *Nunes v. Ashcroft*, 348 F. 3d 815, 818 (9th Cir. 2003)).

I. Defendants Should Not Be Granted Leave to Amend Their Answer Because the Amendment Is Sought in Bad Faith.

The first paragraph of Defendants' argument reveals the flaw in Defendants' analysis – a flaw that is woven throughout their briefing and is intrinsic in the arguments they now assert. Citing to *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) for the proposition that leave to amend should be granted with liberality, Defendants state the following: "[C]ourts should be guided by the policy favoring decision on the merits 'rather than on the pleadings or technicalities.'" (Motion, p. 6, lns. 9-14.). Plaintiffs wholeheartedly agree. Failing to plead qualified immunity does not, however, involve "pleadings or technicalities."

On May 1, 2009, this Court ruled that Dr. Corbett violated the Establishment Clause. Defendants now seek leave to amend the Answer to add an affirmative defense that was never asserted prior to the ruling on the merits. Defendants' briefs rely on case law supporting leave to amend a pleading after an early dismissal due to a procedural technicality in order to obtain a ruling on the merits. There is no procedural technicality here. Defendants' reliance is therefore misplaced. Defendants requested a ruling on the merits in the form of a motion for summary judgment, and opposed the same from Plaintiff, and now wish to unwind the clock and seek leave to amend. That is neither the purpose nor the intent behind the case law upon which Defendant relies. Defendants' Motion is sought in bad faith.

As noted by Defendants, "[i]n determining whether an amendment is sought in bad faith, courts have inquired whether the party seeking amendment has previously engaged in dilatory tactics and have evaluated the value of the proposed amendment." (Motion p. 7, lns. 13-18 (citing *Thornton v. McClatchy Newspapers, Inc*., 261 F.3d 789, 799 (9th Cir. 2001).) Here, there is absolutely no value to the proposed amendment at this stage in the litigation and, despite providing the above-mentioned cite, Defendants do not even attempt to state the value of the proposed amendment. Generally speaking, both Plaintiffs and Defendants agree that the qualified immunity defense "shield[s] [government agents] from liability for civil damages . . . ." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *see also* Motion, p. 8, lns. 1-6 . Plaintiffs seek only nominal damages, and both Plaintiffs and Defendants have incurred the expense of litigation. Defendants' amendment is completely void of value, both to Plaintiffs and Defendants themselves, and is sought in bad faith following this Court's ruling on the merits.

Regarding their eleventh-hour assertion of the affirmative defense, Defendants contend that this Court's May 1, 2009 ruling on the Party's Motions for Summary Judgment "rendered the qualified immunity defense available to Defendants for the first time in this litigation." (Motion, p. 7, lns. 26-27.) According to Defendants, it was at this time that this Court "determined the first prong of the [qualified immunity] inquiry,

i.e. Dr. Corbett violated the Establishment Clause when he made the single statement during one lecture that creationism was 'religious, superstitious nonsense.'" (Motion p. 9, lns. 3-5.) This determination, said Defendants, "triggered . . . the possibility of a qualified immunity defense." (*Id*.) As is true with several of Defendants' arguments made in this Motion and the concurrently filed "Motion for Determination," Defendants fail to provide any legal authority that even remotely provides precedent for such a statement. As Defendants later note, Intervenors understood that qualified immunity was a possible defense upon the filing of their Answer. (Motion p. 10.) That fact demonstrates that Plaintiffs' Complaint had clearly raised the possibility of such a defense, which is always, at minimum, a possibility where a lawsuit is filed against a state entity in federal court.

Further, Defendants argue that a determination of whether Dr. Corbett violated the Establishment Clause is somehow relevant to this Court's determination to grant leave to amend. It is not, however, one of the prongs a court is required to look into when making the inquiry as to whether Defendants are entitled to qualified immunity. Defendants base their assertion on a faulty interpretation of the standard for determining whether a public official is entitled to qualified immunity. The qualified immunity defense "'requires a two-part inquiry: (1) [w]as the law governing the state official's conduct clearly established [and] (2) [u]nder that law could a reasonable state official have believed his conduct was lawful" *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir. 2001) (citing *Browning v. Vernon*, 44 F.3d 818, 822 (9th Cir. 1995). The relevant inquiry for the first prong of qualified immunity is (1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right, and (2) if so, whether that right was "'clearly established' at the time of the defendant's alleged misconduct." *Pearson v. Callahan*, 129 S. Ct. 808, 811 (2009) (citing *Saucier v. Katz*, 533 U.S. 194, 194 (2001)).

It is quite obvious from Plaintiffs' First Amended Complaint that the one and only cause of action Plaintiffs asserted was that Dr. Corbett had violated the

Establishment Clause while teaching his Fall 2007 Advanced Placement European History class. The facts alleged by Plaintiff clearly established a violation of a constitutional right. Even so, affirmative defenses do not require a determination that a law was violated before they must be asserted. Further, as is fully addressed in Plaintiffs' Opposition to Defendants' concurrently filed "Motion for Determination," this right was clearly established at the time of Defendants' misconduct.

Defendants' entire argument is premised on their irrelevant and incorrect assertion that this Court's ruling that one statement violated the Establishment Clause was a novel ruling by this Court, which thereby rendered an affirmative defense, qualified immunity, applicable for the first time. To support this premise, however, Defendants take a myriad of Plaintiffs' quotes out of context in order to support their assertion that in order for this Court to find an Establishment Clause violation, Dr. Corbett must have made incessant and continual comments displaying his disapproval of Christianity. Although Plaintiffs continue in their contention that this did occur in Dr. Corbett's classroom, this is not the standard that has been established by the Supreme Court or the standard that was set forth by Plaintiffs. Instead, Plaintiffs consistently asserted that an Establishment Clause violation occurs when a government actor conveys a message of disapproval of religion. Moreover, Defendants should have asserted qualified immunity as an affirmative defense in their Motion to Dismiss or, at minimum, in the Answer. As Defendants well know, despite their inclusion of a plethora of quotes found in documents drafted throughout the entirety of the eighteen-month litigation, the Motion to Dismiss was filed following the filing of the First Amended Complaint, and their Answer was filed following the First Amended Complaint and Opposition to Motion to Dismiss. In other words, seven of the nine quotes relied upon by Defendants are not even relevant to Defendants' argument as discovery had not commenced and the cross-motions for summary judgment had not yet been filed. (Motion, pp. 3-5.)

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Finally, Defendants' assertion that a court had not yet ruled that a single statement made by a teacher could violate the Establishment Clause is irrelevant to the inquiry of whether a public official is entitled to qualified immunity. The law does not require that this Court's final ruling be clearly established, but that Plaintiffs' allegations, as stated in their complaint, show that Defendants' conduct was in violation of a constitutional right that was clearly established. This is at least partially due to the fact that the law does not even contemplate the assertion of qualified immunity after the Court has made a ruling on the merits. Defendants' statement that that "if Farnan's contentions were accepted as true, it did not appear that a viable qualified immunity defense existed" is contrary to Defendants' statement that "case law did exist in 2007 that would seem to support Farnan's claim" and, more importantly, is contrary to the law. (Motion 9, lns. 14-19.)

Based on the aforementioned information, Defendants' assertion that this Court's May 1, 2009 ruling rendered the qualified immunity defense available to Defendants for the first time lacks any and all merit. Defendants did not raise the defense of qualified immunity in their Answer, Motion to Dismiss, Motion for Summary Judgment, or Opposition to Plaintiffs' Motion for Summary Judgment. They have not provided even one justifiable reason for their failure to argue qualified immunity as an affirmative defense during the pretrial proceedings and prior to a ruling on the merits. Defendants' leave to amend the Answer is sought in bad faith, and defendants should not be granted leave to amend their Answer.

II. Defendants Should Not Be Granted Leave to Amend Their Answer Because the Amendment Is Futile.

Defendants' argue that the amendment of their Answer is not futile and that "an argument could be made that a request for leave to amend made *prior* to the Court's May 1, 2009 ruling most likely would have been considered legally tenuous in light of Farnan's allegations up until that time." (Motion, p. 10, lns. 8-11. Defendants' statement that "an argument could be made" to this effect is evidence of the absurdity of

this contention, as even the Defendants themselves don't actually commit to this argument. Clearly, Defendants could have made a request for leave to amend their answer prior to this Court's May 1, 2009 ruling and, more importantly, should have asserted the qualified immunity defense at one of many opportunities throughout the litigation. Defendants seek leave to amend their Answer after a final ruling has been issued in this case. This in and of itself is evidence of the futility of this Motion. The privilege of qualified immunity "is 'an immunity *from suit* rather than a mere defense to liability." *Castaldo v. Stone*, 192 F. Supp. 2d 1124, 1138 (D. Col. 2001) (emphasis added). After eighteen months of litigation and countless hours of discovery and depositions (on both sides of the lawsuit), this Court has ruled on the dispositive cross-motions and issued a ruling on the merits in Plaintiffs' favor. It is absurd then for Defendants to argue now, at this point in the litigation, that they should be immune "from suit." *Id*. Further, Defendants' make this argument without providing any legal authority to support their contention that qualified immunity can be used merely as a defense to liability and nothing else. Finally, Defendants would gain nothing from asserting qualified immunity in the face of nominal damages and an injunction; conversely, Plaintiffs' would be substantially prejudiced.

Defendants' allowing the case to be fully litigated for approximately eighteen months only to argue qualified immunity following a final ruling on the merits is an injustice to Plaintiffs and would further be futile in light of the type of damages sought by Plaintiffs. Therefore, this Court should not grant Defendants leave to amend their Answer because such an amendment would be futile.

III. Defendants Should Not Be Granted Leave to Amend Their Answer Because The Amendment Will Cause Undue Prejudice.

According to courts and commentators, prejudice is the most important, and the most oft used, reason to deny leave to amend. *See Jackson v. Bank of Haw.*, 902 F.2d 1385, 1387 (9th Cir. 1990); 6 Charles Alan Wright, Arther R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1487 (2d ed. 1990). In considering prejudice,

courts generally look to see what hardship the moving party will endure if leave is not granted, the reason the moving party failed to include the material in the original pleading, and the injustice that would result to the party opposing the motion. 6 Charles Alan Wright, Arther R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1487 (2nd ed. 1990).

Here, because Plaintiffs are seeking only nominal damages, the hardship Defendants will endure if leave is not granted is virtually non-existent. Furthermore, this case involves a single cause of action for violation of the Establishment Clause against a School District official and the School District itself. There is therefore no justifiable reason for Defendants' failure to assert the defense at one of multiple opportunities at earlier stages in the litigation. Finally, the injustice that would result to Plaintiffs if leave to amend is granted at this time is significant. As discussed above, both parties have engaged in significant discovery and filed numerous motions. "Prejudice and undue delay are inherent in an amendment asserted after the close of discovery and after dispositive motions have been filed, briefed, and decided." *Campbell v. Emory Clinic*, 166 F.3d 1157, 1162 (11th Cir. 1999). Allowing the case to be fully litigated for approximately eighteen months only to grant immunity at the tail end of the case would be an injustice to Plaintiffs. *Id*.; *see also, Solomon v. N. Am. Life & Cas. Ins. Co*., 151 F.3d 1132, 1139 (9th Cir. 1998) (motion "on the eve of the discovery deadline" properly denied because it would have required reopening discovery, thus delaying proceedings).

Defendants contend that the amendment of their Answer will not cause undue prejudice to Plaintiffs because the Union Intervenors asserted this affirmative defense on Dr. Corbett's behalf. (Motion 11, lns. 1-3.) Defendants claim that "based on Union Intervenors' assertion of the affirmative defense, Dr. Corbett already is entitled to a determination of qualified immunity" and for that reason "Defendants . . . bring this motion in an abundance of caution." (Motion 11, lns. 2-4.) This statement is disingenuous at best. To begin with, the Union Intervenors cannot assert an affirmative

defense on behalf of another party, Defendant Dr. Corbett. *See Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982) ("Qualified or 'good faith' immunity is an affirmative defense that *must be pleaded by a defendant official*.") (emphasis added) (citing *Gomez v. Toledo*, 446 U.S. 635 (1980)). Additionally, Dr. Corbett is not entitled to a "determination of qualified immunity" simply because the Union Intervenors pleaded it in their Answer. This ignores the fact that it was not pleaded by Defendant Dr. Corbett himself. Most importantly, however, affirmative defenses that are pleaded in the answer and never argued are lost. *See Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 1998) ("Most defenses . . . may be waived as the result of course of conduct during litigation. [I]f a defendant were to engage in 'sandbagging' by raising the issue . . . on a motion to dismiss, deliberately refraining from pursuing it any farther when his motion is denied in the hopes of receiving a favorable disposition on the merits, and then raising the issue again . . . only if he were unhappy with the district court's ultimate decision, then we would not hesitate to find that the defendant had waived [the defense]."); *New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1071, 1073 (C.D. Cal. 2003) ("Defendants were given an opportunity to litigate the personal jurisdiction issues before the Court addressed the merits of the pending motion. Defendants simply refused to do so."): *see also*, *Yeldell v. Tutt*, 913 F.2d 533, 538-39 (8th Cir. 1990) (holding that defendants did not successfully "preserve[] their right" to raise an affirmative defense by raising it in their answer but failing to reassert it at any point thereafter and, specifically, that "[a]sserting a jurisdictional defect in the answer did not 'preserve the defense in perpetuity'" (citation omitted)). If Dr. Corbett is entitled to a "determination of qualified immunity" simply because it was pleaded in Union Intervenors' Answer, then it follows that he would also be entitled as a matter of course to numerous defenses that were pled in the same Answer but never argued throughout the litigation. Such defenses include estoppel and exhaustion of administrative remedies. Defendants' argument would indicate that, "in the abundance of caution,"

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they could seek leave to amend the Answer to add estoppel and be entitled to a determination following a ruling on the merits.

Defendants additionally appear to argue that Union Intervenors' inclusion of qualified immunity in their Answer placed Plaintiffs on notice that Defendants could also assert the defense and, therefore, Plaintiffs would not be prejudiced if Defendants now amend their Answer to include this defense. (Motion 10, lns. 22-23.) While it is true that Plaintiffs have known that Defendants could have asserted the defense of qualified immunity in their Answer, Motion to Dismiss, Opposition to Plaintiffs' Motion for Summary Judgment, Defendants' Motion for Summary Judgment, or at any time during the pretrial proceedings, Plaintiff was not and could not have been aware that Defendants would attempt to raise the affirmative defense after the close of discovery and after the dispositive motions have been filed, briefed, and ruled upon. Allowing the case to be fully litigated for approximately eighteen months only to grant immunity at the tail end of the case would be an injustice to Plaintiffs for which "notice" in the form of another party's assertion of the defense would not be not sufficient justification. More significantly, Defendants cite no legal authority to support their proposition that providing notice in an Answer in any way even lessens the prejudice incurred by Plaintiffs as a result of Defendants' actions. *See Campbell v. Emory Clinic*, 166 F.3d 1157, 1162 (11th Cir. 1999) ("Prejudice and undue delay are inherent in an amendment asserted after the close of discovery and after dispositive motions have been filed, briefed, and decided.").

Defendants should not be granted leave to amend their answer because the amendment sought is unduly prejudical to Plaintiffs.

IV. Defendants Should Not Be Granted Leave to Amend Their Answer Because the Amendment Will Cause Undue Delay.

Defendants' arguments regarding the undue delay caused by a possible amendment to their Answer this late in the litigation do not fully address the appropriate concerns based on the applicable legal authority. The simple fact that this Court

allowed Defendants to brief this issue at the same time other more relevant issues were being addressed by this Court does not establish that no undue delay will occur. Undue delay concerns not only the delay in proceeding forward with the case, but "whether appellants unduly delayed in filing their motion." See, *Jackson v. Bank of Haw.*, 902 F. 3d 836, 1387-88 (9th Cir. 1990). Furthermore, "whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading" is relevant to the inquiry of whether a party has unduly delayed in filing their motion. Id. (citing *E.E.O.C. v. Boeing Co.*, 843 F.2d 1213, 1222 (9th Cir.), cert. denied, 488 U.S. 889, 109 S.Ct. 222, 102 L.Ed.2d 212 (1988); *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1324 (9th Cir.), vacated on other grounds, 459 U.S. 810 (1982).

In the matter presently before this Court, Defendants have unduly delayed raising the issues of the proposed additional affirmative defense. From the start of this case Defendants knew, or should have known, all of the facts and theories raised by this new claim of qualified immunity. Defendants had ample opportunity to raise this issue and yet chose to remain silent. Qualified immunity could have been asserted in the Answer, in Defendants' Motion to Dismiss, in his Opposition to Plaintiffs' Motion for Summary Judgment, and in Defendants' Motion for Summary Judgment. At each of these points in time, Defendants knew all of the same facts that they know now, and their failure to raise qualified immunity until this point thus constitutes undue delay and forecloses leave to amend.

Finally, Defendants argue that should this Court grant Defendants' Motion for Leave to Amend, this would expedite this case. "If Farnan's claim is barred by the defense, the issue can be resolved now and the necessity of a trial or further consideration regarding injunctive relief or damages will be obviated." (Motion, p. 12, lns. 8-10.) Defendants, however, fail to realized that "a defense of qualified immunity is not available for prospective injunctive relief." *Vance v. Barrett,* 345 F.3d 1083, 1091 (9th Cir. 2003) (citing Presbyterian Church (U.S.A.) v. United States, 870 F.2d 518,

527 (9th Cir.1989) ("Qualified immunity is an affirmative defense to damage liability; it does not bar actions for declaratory or injunctive relief."). Therefore, contrary to Defendants assertions, injunctive relief will remain an issue to be determined this Court. This Court should deny Defendants' Motion for Leave to Amend both because of Defendants long and unfounded delay in filing their motion and because an amendment would further delay this litigation.

CONCLUSION

For the foregoing reasons, this Court should deny Defendants' Motion for Leave to Amend because the request is sought in bad faith, is futile and prejudicial to Plaintiffs, and is untimely. Furthermore, if Defendants are granted leave to amend their Answer, this would cause undue prejudice and undue delay to Plaintiffs.

DATED: June 15, 2009

ADVOCATES FOR FAITH & FREEDOM

By: s/Jennifer L. Monk

Jennifer L. Monk
Email: jmonk@faith-freedom.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 24910 Las Brisas Road, Suite 110, Murrieta, California 92562.

On June 15, 2009, I caused to be served the foregoing documents described below on the following interested parties in this action:

OPPOSITION TO DEFENDANTS' "POST-SUMMARY JUDGMENT MOTION FOR A DETERMINATION THAT DR. CORBETT IS ENTITLED TO QUALIFIED IMMUNITY

☒ Via **ELECTRONIC CASE FILING**, by which listed counsel will automatically receive e-mail notices with links to true and correct copies of said documents:

- **Michael D Hersh**
  mhersh@cta.org
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  bkraus@wss-law.com
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  dspradlin@wss-law.com

Executed on June 15, 2009, at Murrieta, California.

☒ (Federal) I declare that I am a member of the Bar of this Court at whose direction the service was made.

s/ Jennifer L. Monk
Email: jmonk@faith-freedom.com